The Minnesota Experience with Workers’ Compensation Reform

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The Problem and the Political Environment

From 1975, when it first became a hot political issue, the debate over workers' compensation in Minnesota has been characterized by more heat than light. Employers' complaints about high costs were initially supported mainly by anecdotal information about abuses in individual cases, and proposed solutions were more intuitive than based on any particular strategy of addressing high cost impact areas. Upon examination, anecdotal stories of abuses frequently turned out to have been exaggerated. One collection of 25 "horror stories" presented by employers to a legislative committee in 1977 as evidence of the excessive liberality of Minnesota judges led to an investigation which discovered that 14 of the 25 cases had never been before judges but had rather been decided without litigation by insurance companies on their own motion. Intuitive solutions frequently turned out, upon adoption, not to have any substantial im-

*This paper was originally scheduled to be presented at the conference, however, the final legislative debate on the reforms coincided with the conference and Mr. Keefe was unable to make the presentation.
pact on costs of the system. A list of proposals by the insurance industry in 1979 had all been adopted by 1981 without any apparent substantial impact on costs. While complaints tended to focus on payments to undeserving individuals, proposed solutions tended to focus on across-the-board benefit cuts.

By the early 1980s, analytical understanding of what was different about the Minnesota system and whether that system was actually more costly began to become available. A legislative study in 1979, a study by the insurance division in 1981, and a study by the Citizens League in 1982 began to point at key aspects of the nature of Minnesota’s workers’ compensation problem. In addition, the studies identified another problem, perhaps equally severe, of poor service to injured workers.

Comparisons of average workers’ compensation rates from state to state were at first used to determine the degree of the Minnesota problem. It was quickly discovered that these comparisons were misleading because of the important effects of differences in industrial mix from state to state and from socio-economic differences which lead to differences in litigation and system utilization from state to state. Furthermore, parallel state-to-state comparisons ignored the real competitive problems which individual businesses face. Nationwide average workers’ compensation rates are far less important to employers than the actual workers’ compensation rates in similar classifications in states where the employers’ competition is found.

More detailed examination of rates on a classification-by-classification basis by Insurance Commissioner Michael Markman in 1981 showed that Minnesota workers’ compensation rates were indeed substantially higher than rates in surrounding states, even though not particularly higher than rates in some more heavily industrialized states on the East
and West Coasts. In fact, the study showed workers’ compensation rates averaging 70 percent higher in Minnesota than in our neighboring state of Wisconsin, which has a quite similar industrial and socio-economic mix as well as a somewhat similar average benefit level. Furthermore, the Markman study showed that differences in compensation rates tend to be more pronounced in those industries with the highest rates, particularly in classifications containing large numbers of small businesses. This creates particular economic problems because those are the very businesses which find their competition in the neighboring State of Wisconsin, and in which workers’ compensation rates are a more important competitive factor. For example, the lumbering industry, found heavily in both northern Minnesota and northern Wisconsin, has a workers’ compensation rate of almost $50 per $100 of payroll in Minnesota. Although the average increase in Minnesota over Wisconsin rate levels is 70 percent, a number of rate classifications had differences of as much as 200 or 300 percent.

Analysis of the reasons for these differences in Minnesota as compared to Wisconsin turned up interesting information about the impact of benefit levels. Maximum weekly benefit levels in both states are quite similar. The Citizens League study showed that scheduled awards for various bodily parts turned out to be quite similar for an average wage earner in each state, although there is a broader range and therefore a higher maximum (and a lower minimum) in Minnesota than in Wisconsin. The Minnesota cost-of-living escalator turns out to have an impact on rates of only approximately 1 percent or 2 percent once investment income is taken into consideration as it is in the Minnesota rating structure (although not yet in the Wisconsin rating structure).

The 1977-79 legislative study suggested one reason for these differences when it found a strong correlation between
average workers’ compensation rate levels and litigation rates in various states, including Minnesota and Wisconsin. As of 1979, the Minnesota litigation rate was approximately three times that of Wisconsin (petitions for hearing amounted to approximately 10 percent of first reports of an injury in Minnesota as opposed to barely 3 percent in Wisconsin). The Markman report zeroed in more precisely on the reasons for the substantially higher costs in Minnesota when it discovered that the Minnesota system has the following important differences from Wisconsin in frequency and severity of disability:

- The rate of permanent total disability cases per lost time injury is approximately 20 times as high in Minnesota as it is in Wisconsin (63 permanent total cases per 10,000 lost time injuries in Minnesota as opposed to 3 in Wisconsin).

- The average duration of temporary total disability in Minnesota is approximately 50 percent longer than it is in Wisconsin.

- The frequency of permanent partial disability cases is approximately 60 percent higher in Minnesota than it is in Wisconsin.

- The average payment for partial disability is 20 percent higher in Minnesota than it is in Wisconsin (in spite of the apparent similarity in the two state schedules).

- The average medical cost per case is approximately 50 percent higher in Minnesota than it is in Wisconsin.

Analysis of the two state systems seems to show that the major reason for the difference in the cost of compensation for work-related disability in Minnesota as compared to Wisconsin is not the level of compensation so much as it is the amount of disability compensated.
In order to determine the reasons for the difference in the amount of disability actually being compensated in Minnesota, a great deal of attention has been given to comparisons of the state’s system with that used in the State of Wisconsin and to the methods used by a number of businesses in Minnesota that have managed to substantially reduce the costs of their own workers’ compensation program within the structure of the existing Minnesota laws and benefit levels by changing their internal company practices.

In Minnesota, a significant number of private companies, usually larger self-insuring employers (although larger companies purchasing insurance have also enjoyed these improvements), have recently reformed their internal workers’ compensation programs and accomplished savings of anywhere from 20 percent to 50 percent of their workers’ compensation costs. These company-sponsored programs usually contain an important safety component. Companywide commitments to preventing accidents in the first place are extremely effective in dealing with the workers’ compensation costs.

More modern loss control methods adopted after the fact also seem to have a substantial impact on reducing the actual disability that needs to be compensated. By instituting vigorous early intervention and return-to-work programs, aggressive Minnesota employers have found that they can substantially reduce the disability resulting from even serious injuries. Such programs also seem to result in improved employer-employee relations and substantially reduced litigation rates.

The State of Wisconsin seems to accomplish similar results by having an active early intervention philosophy of state administration of the workers’ compensation law. This administration seems to accomplish the same kinds of substantially better return-to-work rates and substantially lower
litigation rates that are accomplished individually by certain companies in Minnesota.⁶

This analysis of the workers’ compensation problem in Minnesota suggests a possible solution to the political problem surrounding workers’ compensation as well as to the policy problem of how to control workers’ compensation costs for employers and, incidentally, how to improve the system from the point of view of workers at the same time. Since attention to the amount of disability in the system seems to offer much more promise for controlling workers’ compensation rates, and since the level of disability is just as much a problem for employees and, therefore, their union representatives, it should be possible to develop a coalition of business and labor support for certain programs designed to both reduce costs and improve service.

This political strategy was suggested by the Citizens League study in Minnesota and adopted by the new administration of Governor Rudy Perpich, elected in November 1982, which, incidentally, hired the chairman of the Citizens League study as Commissioner of Labor and Industry to take responsibility for the administration’s workers’ compensation legislative program.

The strategy adopted by the administration was to develop a workers’ compensation program which would reform the workers’ compensation system in order to improve service, reorganize the benefit structure to encourage return-to-work programs, both on the part of employers and injured employees, and reduce the costs to the employers by reducing the amount of disability that needs to be compensated. The point was to change the conception of the system from a closed, win/lose system where, if premiums are to go down, benefits must go down, to an open system where a win/win solution is possible with premium costs going down while injured workers enjoy an increase in the sum of benefits and
wages as a result of less frequent and severe duration of disability.

It was believed that the amount of political warfare that had been engaged in over the past several years over the problems in the system was actually contributing to the problem by exaggerating the perception of employers and employees of the system as an adversary system where employees and employers are necessarily at odds. Successful workers' compensation administrators insisted on the necessity of good employer-employee relationships and a mutual sense of trust in order to accomplish effective rehabilitation and return-to-work programs, particularly in the case of serious or difficult injuries such as back conditions.

Although major reform legislation was adopted by the legislature incorporating the concepts recommended by the administration, a major part of that political strategy, that of getting business-labor agreement in support of the changes, was a failure, at least in part. The state's major labor organization actively opposed the legislation, at least its key provision, and few other labor organizations were willing to come forward in any public way to support the legislation. At first, however, prospects seemed much better. The initial strategy was begun by seeking out a wide variety of key leaders among business, labor, insurance, legal, medical, and rehabilitation groups and trying to sell the concept of a reorganization of the system based on good activist management like that of Wisconsin and a redesign of the benefit structure which would maintain overall benefit levels but provide increased incentives for employers to provide return-to-work programs and for employees to accept jobs offered. The relatively good credibility of the recent studies of workers' compensation and the implications of their analyses of the nature of the Minnesota problem were par-
particularly helpful in gaining business and insurance support for the administration strategy.

The studies were viewed with a great deal more suspicion by organized labor, but preliminary agreement with the strategy of developing a business-labor compromise proposal was obtained from that quarter as well. Various service groups involved in workers' compensation, i.e., defense attorneys, rehabilitation consultants, medical personnel, and so on, were particularly receptive to the approach suggested by the administration with the exception of the Trial Lawyers Association, which viewed proposed changes in benefit structure with suspicion.

In an attempt to follow the Wisconsin model, the Workers' Compensation Advisory Council was reactivated and populated with appointments representing key leaders from business, labor and insurance groups as well as a sprinkling of expertise from the medical and legal communities. This group spent many hours working over detailed proposals to reform and improve administration, introduce nonadversarial means of resolving disputes and provide more objective means for establishing compensation for permanent partial disabilities. This commission was not, however, able to face in any constructive way the very difficult benefit issues that most students of workers' compensation felt needed to be addressed in order to accomplish a major reform of the system. The public nature of the advisory council forum, combined with the high degree of hostility and mistrust engendered by recent bitter political battles, seemed to make it impossible for the Advisory Council to come to grips with these issues.

As a result, talks were opened between a key spokesman for business and a key spokesman for labor in an attempt to put together a compromise package on the benefit issues that would make the rest of the compromise being worked on by
the Advisory Council acceptable to both sides. These talks proceeded productively for some time but eventually broke down over a fundamental quandry in the political positions of the two groups. Labor felt obliged to resist any benefit cuts but was prepared to make moderate compromises if it could accomplish in the same legislation a state compensation insurance fund. Business was vigorously opposed to the idea of a state compensation insurance fund but was willing to consider it if substantial benefit reform was offered. Labor was unable to face substantial benefit cuts even in return for a state compensation insurance fund.

The solution proposed at that time by the administration was a recommendation of the Citizens League study designed to be a major reform in the benefit structure without being a major cut in benefit levels. This so-called two-tiered benefit system (an attempt at a synthesis of the strong points of wage loss compensation for permanent partial disability and more traditional schedule-type systems) was first considered of academic interest only. It became clear, however, that it provided the only possible solution to the fundamental political problem of business demanding major benefit change and labor unable to agree to major benefit cuts. Talks proceeded on the details of the two-tiered benefit structure system for some time, with most parties hopeful that some solution could be reached. At one point most people believed an agreement over the whole package had been reached, but when the parties sat down the next morning to ratify the agreement, it turned out that labor was not prepared to accept the two-tiered system without a further substantial benefit increase which was clearly unacceptable to the administration as well as to business and insurance interests.

It was widely believed at that time that vigorous opposition to the two-tiered benefit structure system from the plaintiffs' attorneys was instrumental in convincing labor of
the inadvisability of supporting that concept. Although invited by the administration to participate in the development of the two-tiered system, plaintiffs' attorneys refused and instead fought it vigorously, mainly by lobbying key leaders in organized labor. Although AFL-CIO leaders denied being influenced by attorney pressure, it was well known that the key labor spokesman had been embarrassed two years earlier when trial lawyers used their wide influence in local unions to attack a business-labor compromise bill.

Even without labor support, business groups approached the administration and offered to support the administration's compromise package as a balanced approach to solving the workers' compensation problem. The governor and significant majorities in both houses in Minnesota are Democrats, and it was believed that even though a compromise could not be reached with labor, any legislation would have to be perceived as moderate and friendly to labor in order to have a chance at passage.

As a matter of fact, the administration-sponsored legislation with the support of business and insurance groups as well as the medical association and other support organizations, not only passed both houses by overwhelming votes, but actually received a majority of the Democratic votes in each house as well as all of the Republican votes. Some smaller union groups expressed public and private support for the so-called compromise legislation, including the most radical steelworkers' union on the Minnesota Iron Range, home territory of Governor Perpich.

Although labor vigorously opposed the two-tiered system for compensating permanent partial disability, they did continue to support the rest of the bill, including some modest benefit reductions, and the state compensation insurance fund which passed in separate legislation. Although the battle to pass the legislation was extremely hard-fought and at
times quite bitter, there seemed to be a general agreement to avoid tampering with the noncontroversial sections of the bill as long as the political dispute could be limited to the two-tiered system. As a result, the product of the Workers' Compensation Advisory Council, even though not formally agreed on by them, was maintained essentially intact.

The Two-Tiered System for Compensating Permanent Partial Disability

The most controversial and unusual aspect of the legislation finally passed in Minnesota was the new two-tiered system for compensating permanent partial disability which developed out of the Citizens League study of workers' compensation completed in 1982. The system attempts to be a synthesis of the advantages of wage loss systems and traditional schedule systems for compensating permanent partial disability.

In my view, a view ultimately shared by the Citizens League study committee which I chaired, the most compelling arguments for wage loss systems are the equity arguments raised against schedule systems. Studies of the amount of workers' compensation benefits paid as compared to actual economic losses in wages and medical costs by various workers in certain states have clearly shown that some employees are compensated much more than their actual economic loss while others are compensated much less. This inequity tends to be consistent in that those employees with the most serious injuries and the highest economic losses are paradoxically those who are most undercompensated by typical schedule systems.

On the other hand, rehabilitation experts argue that systems for compensating disability of any sort tend to contribute to the degree of disability by reducing the normal
economic incentives for return to work. Schedule systems seem to offer an advantage over wage loss systems in that they discontinue the dependency relationship between the worker and the insurance company at the earliest possible opportunity. That minimizes the effect of compensation on functional overlay and incentives for return to work. Schedule systems also minimize the necessity for insurance companies to maintain relatively large numbers of open reserves against the potential of future wage loss, a very expensive proposition in the current insurance rating system.

Wage loss systems are also touted as reducing litigation by eliminating the attraction of large lump-sum payments to litigants and their attorneys.

These claims have not been established in practice as yet. It is still too early to assess the impact of wage loss on Florida’s litigation problem. Michigan and Pennsylvania, two states which have had wage loss systems for some time, have not enjoyed low litigation rates although the litigation problems in those states may be, in part, the result of socio-economic factors. Litigation rates tend to be higher in more heavily industrialized, urbanized areas as compared to socially conservative rural areas. Nevertheless, wage loss has not resulted in low litigation rates in those states. It can be argued that the ongoing dependency relationship between the insurance company and the claimant inherent in the wage loss system creates an endless source of reasons for litigation. If the only way of preventing that litigation is by not providing adequate money to support fees for the claimant to hire expert help, that is not a fair way to control litigation.

The state that has the best success at avoiding litigation, given its socio-economic makeup, is probably the State of Wisconsin, with a relatively high degree of industrialization and a startlingly low litigation rate. The Wisconsin system
benefits from a very detailed set of disability schedules which avoid litigation over degree of disability by minimizing the grounds for dispute over degree of disability.

The Minnesota two-tiered system for compensating permanent partial disability attempts to resolve the equity issues raised against scheduled systems by wage loss supporters. John Burton, for example, has shown that in Wisconsin, Alabama and Florida (before wage loss), with systems similar in structure to permanent partial disability systems, workers with more serious injuries tend to have their actual economic losses less well-compensated than those with less serious injuries. The new Minnesota system attempts to correct this equity problem by distinguishing between minor and serious injuries, and by distinguishing between those workers who are able to return to employment quickly and easily and those who are unable to do so.

Litigation control is accomplished through authority of the Department of Labor and Industry to develop detailed disability schedules to eliminate causes for dispute. Testimony from the medical community indicates that disputes over degree of disability tend not to reflect disputes over diagnoses but rather differences in medical opinions over what disability results from a given medical condition. The Medical Association is providing substantial support to the Department in developing schedules which will list specific conditions (e.g., laminectomy with good result—15 percent) by the effective date of the Act—January 1, 1984.

The system provides better equity for more serious injuries through a sliding scale of compensation for degree of disability (see appendix 1). As a result, 60 percent disability of the body pays substantially more than four times as much as 15 percent of the body.

In addition, the employer is liable for a lower permanent partial disability award if he makes the employee a suitable
job offer within 90 days after the date of maximum medical improvement. The job offered need not be the employee’s old job, but it must meet rehabilitation standards which include such aspects as permanency, benefits, salary levels and so on. The basic rehabilitation test is that the new job help the employee to recover an economic status as close as possible to the one that he enjoyed before the accident. Temporary partial disability payments to make up partial wage loss are available indefinitely. The job offered need not be with the old employer. Any job found by the employee during a 90-day period after maximum medical improvement qualifies.

If the job offer is made within the prescribed time period, the employee is entitled to an impairment award which is somewhat smaller than the current permanent partial disability award. The impairment award is based on a dollar amount for the whole person, with no difference resulting from differences in wage levels. This provides the same compensation for a rich person’s hand as a poor person’s hand if each is able to return to his old job or another job like it.

If the job offer is not made during the prescribed time period, the employee is entitled to a substantially larger economic recovery benefit which is based on the degree of disability and his wage at the time of the injury. That benefit vests on the expiration of the 90-day period and the employee is entitled to it regardless of whether he finds a job or not in the future.

On the other hand, either the impairment or the economic recovery benefit is paid to the employee as a lump sum only when he goes to work (the impairment benefit when he accepts the job offer, the economic recovery benefit when he finds a job on his own). If the employee does not choose to go to work for whatever reason, he begins receiving either award as a weekly benefit replacing temporary total disability payments.
Under the old Minnesota system, temporary total disability benefits continue for an unlimited period of time as long as a worker suffers disability as a result of his injury. This gives Minnesota, in effect, a wage loss system in addition to a fairly generous schedule system. Cost control is only accomplished by insurers working with employees to make sure that they continue to make a diligent effort to seek work. Lack of cooperation with a rehabilitation plan or lack of a diligent effort to seek work is grounds for termination, but suits over termination of benefits are frequently lost by employers and insurers. This system results in a constant train of cutoffs followed by litigation followed by reinstatement followed by cutoffs, making effective rehabilitation unlikely and contributing to the relatively high incidence of permanent total disability and the relatively long duration of temporary total disability in Minnesota as compared to Wisconsin.

The new two-tiered system replaces the stick of the employer’s threats to cut off benefits with the economic incentive of lump-sum payment when the employee finds a job on his own. Rehabilitation services are available to the employee during that time, but the insurance company no longer has any substantial economic interest in forcing the employee to look for work. The employee’s incentive to look for work is the same as the incentive which makes most of us work—simple financial gain.

The details of the Minnesota two-tiered benefit system are discussed in more detail in the Appendices.

Other Major Provisions in Minnesota Legislation

Medical Monitoring System

To get control of medical costs and medical utilization under the workers’ compensation system in Minnesota, a
substantial system of medical monitoring has been established based on peer review systems in use in other sectors.

A panel consisting of medical providers, employer representatives, employee representatives, and the general public will review charges for medical services as well as utilization of those services, and relative quality of clinical results, and establish standards which will serve as maximums for what insurance companies will be required to reimburse. Providers who are found to be abusing the system, either by overcharging or overtreating without good clinical results, will be disqualified from reimbursement by the system.

Medical testimony over degree of disability in litigated cases will be submitted by report only unless the workers’ compensation judge orders the doctor to testify in court. Standardized medical report forms will be designed which provide the information necessary to determine where the injury fits in the disability schedules to reduce the need for substantial judgmental issues to be considered in court.

**Mandatory Rehabilitation in Minnesota**

Under the new law, insurers will be required to do an assessment of whether there is a need for rehabilitation after 60 days of lost time in the case of most injuries and 30 days of lost time in the case of back injuries. A study of the rehabilitation system had shown that a number of fairly serious back cases were going one to two years before being referred to rehabilitation as a result of conservative treatment practices by inexperienced providers. Any employee who is not able to return to his former job will be entitled to rehabilitation services. When there is a dispute over primary liability, rehabilitation services will be provided by the state and charged to the insurer if primary liability is established.
Nonadversarial Methods of Resolving Disputes

Substantial increases in staffing of the Department of Labor and Industry patterned after staffing levels in Wisconsin will provide much more extensive assistance to injured employees, employers and claims adjusters who require help under the new law. Department employees, both compensation specialists and rehabilitation specialists, will be trained in mediation techniques so that they can help to resolve disputes. Departmental attorneys who had filed claims petitions against employers on behalf of employees will be phased out over a period of years and replaced with nonadversarial support for injured workers. Employees whose disputes with insurance companies cannot be resolved by normal departmental procedures will be referred to a new full-time mediation department which will attempt to accomplish settlement. Settlement judges will examine claim petitions submitted for cases where settlement out of court seems probable, and will require the parties to come in to settlement conferences even before the normal pre-trial conferences. The major emphasis upon nonadversarial methods of resolving litigation is intended not only to avoid the cost associated with litigation but also to avoid the bitterness engendered by adversarial methods and their resulting detrimental effects on rehabilitation and return-to-work programs.

Deregulation of Workers' Compensation Insurance Rates

Effective January 1, 1984, there will be no further state regulation of workers' compensation rates. The new system is essentially a "file and use system" similar to the regulation system for other lines of insurance in Minnesota. This deregulation is a result of a phased-in process that began two
years ago as a result of 1981 legislation. The Workers' Compensation Rating Association (Minnesota's industry-supported rating bureau) will not be permitted to publish proposed rates. Normal anti-trust laws will apply to the insurance industry in spite of federal exemptions, and information available from the Rating Association will be limited to pure premium determinations. Competition between insurance companies under partial deregulation has already resulted in substantial discounts to more attractive employers. It is widely believed that the increased competition resulting from deregulation will encourage insurers to experiment in rehabilitation and return-to-work programs, as well as to reward those employers who are successful with such programs with lower premiums.

There is considerable evidence that these effects are present already. Testimony from employers to legislative committees in 1983 indicated that a wide variety of discount plans are being offered by insurers in an attempt to gain market share. Over 20 insurers have filed plans offering discounts of from 5 to 20 percent off manual rates, and more are expected to do so.

**Conclusion**

There is no question that it is easier politically for organized labor to oppose reforms in workers' compensation systems designed to control costs. Workers' compensation is a complicated technical area, and most laymen assume that costs and premiums are directly linked. Although that is not necessarily true, as the experience in Wisconsin has clearly shown, it is certainly easier for labor to oppose those changes which offer promise of reducing costs. Such opposition has the side effect of increasing the credibility of the legislation with businessmen who also assume that benefits must be cut in order to save premium dollars.
In spite of the relatively acrimonious political debate over workers' compensation in Minnesota, there is some reason to believe that the initial strategy of developing a rapprochement between business and labor may still be possible. The Workers' Compensation Advisory Council is being consulted extensively by the department in the development of administrative rules to implement the new act, and there is some reason to hope that the substantial improvements in service to injured workers may win friends in organized labor as the act becomes effective.

The two-tiered system may be of some interest to students of workers' compensation in other states as an attempt to meet the equity issues so correctly raised by wage loss proponents as well as providing a system which minimizes its contribution to the total disability to be compensated.

Even if the theory of the two-tiered system is sound, it may not work unless case law decisions are consistent with the philosophy of the new system. Having noticed that previous Supreme Court decisions relied heavily on a law review article by Senate Counsel after the passage of the major 1979 legislation, the Department of Labor and Industry is preparing a detailed law review article with a wide variety of hypothetical cases in order to provide guidance both for practitioners in the field as well as (we hope) for judges faced with difficult precedent-setting decisions.10

It is hoped that the new system will offer a way that the state can provide a generous system of compensation for injured workers at a cost which permits its employers to be sufficiently competitive with their counterparts in other states, that they can maintain the jobs for those employees, both before and after they have been injured.
NOTES


9. Ibid.

Appendix 1
Overview of the 1983 Workers' Compensation Law
H.F. No. 274*

This summary deals with the major provisions of Minnesota Laws 1983, Ch. 290, the amendments to Minnesota's Workers' Compensation Law. The 1983 amendments are intended to restructure and redistribute benefits, to improve the administration of the system, and to lower the workers' compensation costs of Minnesota employers. A schematic of events and benefits is presented in appendix 2.

Permanent Partial Disability

Sections 44-64. Economic recovery compensation and impairment compensation replace permanent partial disability benefits and eliminate temporary total benefits after maximum medical improvement is reached. Whether impairment or economic recovery is payable for permanent partial disability depends on whether the employer makes a job offer meeting statutory criteria. Impairment compensation is paid if a job offer is made; the payment is a lump sum if the offer is accepted, and is weekly if the offer is rejected. Economic recovery compensation is paid weekly if no job offer is made. The total economic recovery compensation payable is intended to be greater than the lump-sum impairment compensation, creating an incentive for the employer to make a job offer. The new system does not become effective until the Commissioner of Labor and Industry has promulgated rules for establishing the percentage of loss of function to a body part. Greater detail is provided in the section-by-section analysis which follows.

Section 59. Economic recovery compensation for permanent partial disability is payable where no suitable job offer has been made within 90 days after the employee has reached maximum medical improvement or has completed an approved retraining program. Temporary total compensation cannot be paid concurrently with economic recovery compensation. Minn. Stat. § 176.101, subd. 3p.

Section 44. The amount of economic recovery compensation is $66\frac{2}{3}$ percent of the weekly wage at the time of injury, subject to the statutory

*This summary was prepared by Joan Volz, vice president and general counsel, Workers' Compensation Reinsurance Association.
maximum. The number of weeks of compensation is determined by multiplying the percent of disability to the body as a whole by the number of weeks set forth in the new statutory schedule. The new schedule is presented in appendix 3. For example, a 25 percent disability is multiplied by 600 weeks to give 150 weeks of compensation. A 100 percent disability is multiplied by 1,200 weeks, giving a maximum of 1,200 weeks of economic recovery compensation. The amendment does not become effective until the Commissioner of Labor and Industry has adopted rules scheduling the percent of disability to the body as a whole caused by the loss of particular members. Minn. Stat. § 176.101, subd. 3a.

Section 60. Economic recovery compensation is paid weekly. If an employee who is receiving economic recovery compensation returns to work for at least 30 days, remaining economic recovery benefits are paid in a lump sum. The periodic payments are not subject to the annual adjustment of Minn. Stat. § 176.645. Minn. Stat. § 176.101, subd. 3q.

Section 48, 49, 65. Impairment compensation for permanent partial disability is payable where a job offer meeting the statutory criteria has been made. Temporary total compensation cannot be paid concurrently with impairment compensation.

The job offer must be made within 90 days after the employee has reached maximum medical improvement or has completed a retraining program. The job offered must be within the employee’s physical capabilities and must result in an economic status similar to that which the employee would have had without the disability.

The job offer may come from an employer other than the employer at the time of injury. If the job differs from the employee’s old job, the offer must be in writing. The employee must act upon the job offer within 14 days. Minn. Stat. § 176.101, subd. 3e. The job offer may be made prior to reaching maximum medical improvement. Minn. Stat. § 176.101, subd. 3f. Whether a job offer meets the statutory criteria may be resolved in an administrative conference. Minn. Stat. § 176.101, subd. 3v.

Section 45. The amount of impairment compensation is determined by multiplying the percent of disability to the body as a whole by the statutorily scheduled amount. The new schedule for impairment compensation is listed in appendix 4. For example, a 25 percent disability is multiplied by $75,000, giving an impairment amount of $18,750. A 100 percent disability is multiplied by $400,000, making the maximum im-
pairment compensation $400,000. As with economic recovery compensation, the impairment compensation provisions are not effective until rules have been adopted. Minn. Stat. § 176.101, subd. 3b.

Section 50. Impairment compensation is paid in a lump sum 30 days after the employee returns to work. Minn. Stat. § 176.101, subd. 3g.

Sections 47, 48, 59, 63. Temporary total compensation is payable until 90 days after reaching maximum medical improvement or ending an approved retraining program, whichever is later. It ceases when the employee returns to work. If there is no permanent partial disability, the employee receives 26 weeks of economic recovery compensation in the absence of a job offer. Minn. Stat. § 176.101, subs. 3d, 3e, 3p, 3t(b).

Sections 55-57. Refusal of a job offer affects the type and timing of benefit payments. Impairment compensation is paid weekly rather than in a lump sum, although a subsequent return to work entitles the employee to a lump-sum payment of the balance. Temporary total compensation ceases. The amount of the weekly impairment compensation is equal to the amount of temporary total compensation the employee was receiving. An employee who refuses a job offer but later works at a lower paying job cannot receive temporary partial compensation or rehabilitation. Minn. Stat. § 176.101, subs. 31-3n.

Section 58. Permanent total disability entitles the employee to both permanent total benefits and impairment compensation. The impairment compensation is paid at the same interval and amount as permanent total compensation. Impairment compensation ceases when the total amount to which the employee is entitled has been paid. As under current law, permanent total compensation under the new law is paid weekly and is subject to annual escalation and the social security offset. The weekly impairment compensation, however, cannot be escalated or offset by social security. Permanent total compensation cannot be offset by any impairment or economic recovery compensation the employee may have received. Economic recovery compensation ceases when an employee is determined to have permanent total disability. Minn. Stat. § 176.101, subd. 3o.

Sections 52, 54, 63. Monitoring period compensation is payable to an employee who accepts a job offer, returns to work, and is later laid off because of economic conditions. The layoff must occur prior to the expiration of the monitoring period, which begins to run upon the employee's return to work. The amount of weekly monitoring period compensation is equal to the amount of weekly temporary total benefits
the employee was receiving. The compensation is paid during the balance of the monitoring period, or, if it is less, the monitoring period minus impairment compensation already paid. For this purpose, impairment compensation is converted to weeks by dividing it by the employee’s compensation rate for temporary total disability. Minn. Stat. § 176.101, subds. 3i and 3t(a). Where the layoff is due to seasonal conditions, the employee may continue receiving temporary partial disability compensation and may, if eligible, also receive unemployment compensation. Minn. Stat. § 176.101, subd. 3k.

Sections 46, 62. The maximum impairment and economic recovery compensation payable cannot exceed the maximum payable for a disability to the body as a whole. After receiving maximum economic recovery or impairment compensation, an employee is entitled to further economic recovery or impairment compensation only if a greater permanent partial disability is sustained. Minn. Stat. § 176.101, subds. 3c and 3s.

Section 63. The maximum economic recovery compensation is at least 120 percent of the impairment compensation that would be received if impairment compensation were payable. Minn. Stat. § 176.101, subd. 3t.
Appendix 2

Summary of New Temporary Total, Permanent Partial, and Permanent Total Benefits

Diagram showing flowchart of benefits processes.
Appendix 3
Schedule for Economic Recovery Compensation

Multiply Percent of Disability by Scheduled Weeks

<table>
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<tr>
<th>Percent of disability</th>
<th>Weeks of compensation</th>
</tr>
</thead>
<tbody>
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<td>26-30</td>
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<tr>
<td>31-35</td>
<td>680</td>
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<tr>
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</tr>
<tr>
<td>41-45</td>
<td>760</td>
</tr>
<tr>
<td>46-50</td>
<td>800</td>
</tr>
<tr>
<td>51-55</td>
<td>880</td>
</tr>
<tr>
<td>56-60</td>
<td>960</td>
</tr>
<tr>
<td>61-65</td>
<td>1,040</td>
</tr>
<tr>
<td>66-70</td>
<td>1,120</td>
</tr>
<tr>
<td>71-100</td>
<td>1,200</td>
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</tbody>
</table>
## Appendix 4

### Schedule for Impairment Compensation

Multiply Percent of Disability by Scheduled Amount

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<thead>
<tr>
<th>Percent of disability</th>
<th>Amount</th>
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<tr>
<td>36-40</td>
<td>90,000</td>
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<tr>
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<tr>
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<td>100,000</td>
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<tr>
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<tr>
<td>96-100</td>
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</tbody>
</table>