

# Overview of Workers' Compensation Benefits

Presented to the EAIC  
3/30/2010

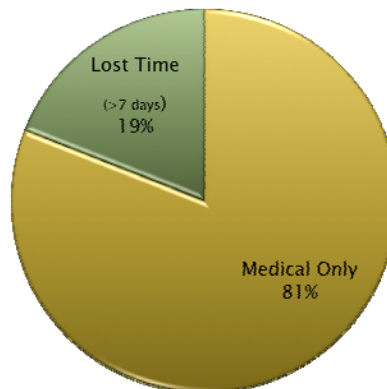
Ann Clayton  
Ann Clayton and Associates

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## Only 19% of Claims Involve Lost Time...

**% of Total WC Claims by Claim Type**  
2005 claims as of 2007



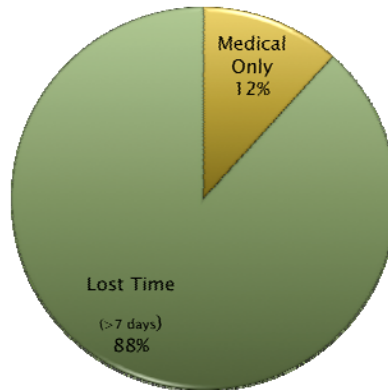
Source: CompScope™, Benchmarks 8th Edition, The Databook, Workers' Compensation Research Institute, Jan 2008

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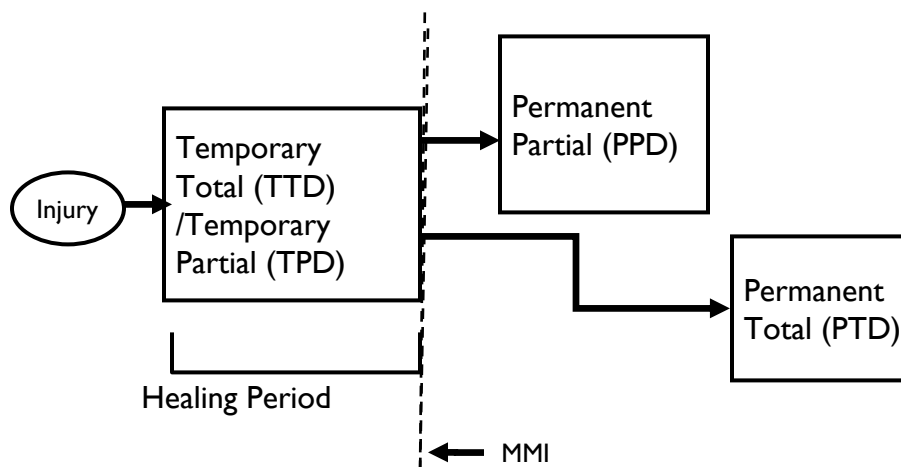
## ...But They Account for 88% of the Total WC Claim Payments

**% of Total WC Paid by Claim Type**  
2005 claims as of 2007



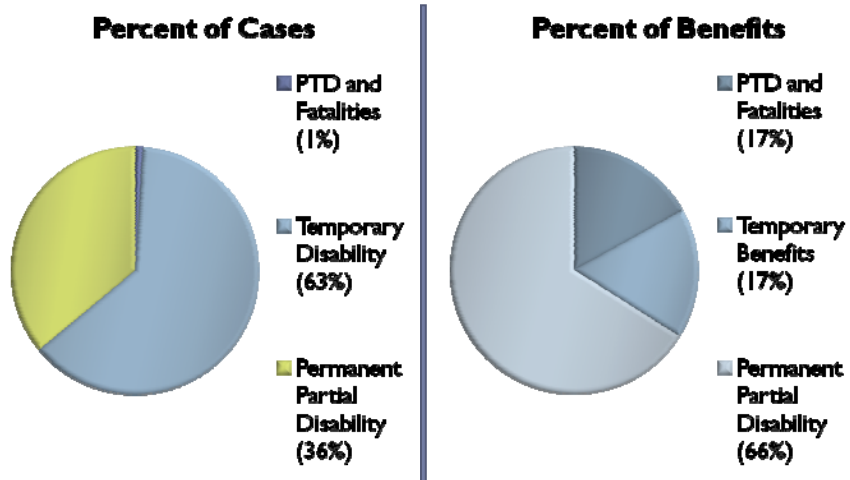
Source: CompScope™, Benchmarks 8th Edition, The Databook, Workers' Compensation Research Institute, Jan 2008

## Workers' Compensation Indemnity Benefits General Overview



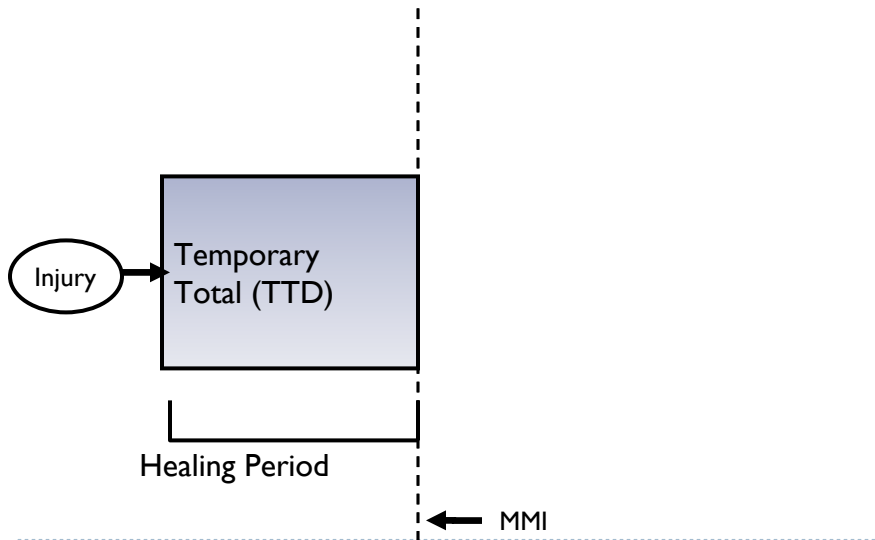
# Distribution of Indemnity Cases and Costs

(2004 Accident Year)



Source: Annual Statistical Bulletin, NCCI 2008, Exhibits X and XII

# Temporary Disability



## Issues Involved in Temporary Total Disability

- ▶ Should there be a waiting period before an injured worker is entitled to workers' compensation benefits? If so, how long should it be?
- ▶ Should that waiting period be reimbursed if the worker is off work for more than a few days or weeks?
- ▶ How much of the injured worker's wage should be covered while they are healing and unable to work?
- ▶ Should the same amount be given to all workers regardless of the number of dependents and tax obligations or the amount they earned?
- ▶ When should temporary total disability benefits end?

## How States Have Answered These Public Policy Issues

Should there be a waiting period and how long should it be?

No Waiting Period	Three-Day Waiting Period	Four-Day Waiting Period	Five-Day Waiting Period	Seven-Day Waiting Period
	AL, <b>AK</b> , CA, CO, CT, DE, DC, HI, IL, IA, MD, MN, MO, NH, OK, <b>OR</b> , RI, UT, VT, <b>WA</b> , WI, <b>WY</b>	<b>MT*</b> , WV,	<b>ID</b> , MA, MS, NV, <b>ND</b> ,	AZ, AR, FL, GA, IN, KS, KY, LA**, ME, MI, NE, NJ, <b>NM</b> , NY, NC, OH, PA, SC, <b>SD</b> , TN, TX, VA,

•MT is actually 32 hours or 4 days, whichever is less

•\*\* LA is actually 1 week

## How States Have Answered These Public Policy Issues

Should that waiting period be reimbursed if the worker is off work for more than a few days or weeks?  
"Retroactive Period"

5 Days	7 Days	8 Days	10 Days	14 Days	21 Days	28 Days	6 Weeks	None
NV <b>ND</b>	CT DE NJ <b>SD</b> WV WI	<b>WY</b>	MN VT	AZ, AR, CA, CO, DC, <b>ID</b> , IL, IN, IA, KY, ME, MD, MI, MS, MO, NH, NY, OH, <b>OR</b> , PA, SC, TN, TX, UT, <b>WA</b>	AL, FL, GA, KS, MA, NC, VA	<b>AK</b> <b>NM</b>	LA, NE	HI, <b>MT</b> , OK, RI

Source: WC Laws, 2<sup>nd</sup> Edition, Workers' Compensation Research Institute, 2009

## How States Have Answered These Public Policy Issues

How much of the injured worker's wage should be replaced when they are healing and unable to work at all?

- ▶ Goal is usually to place it at a level that is fair, but not high enough to create a disincentive to return to work
- ▶ Three factors that affect the level of benefits:
  1. The statutory method of calculating the workers' compensation rate
  2. The statutory maximum and minimum compensation rates allowed
  3. The result of these on individual workers due to their federal and state tax obligations

## How States Have Answered These Public Policy Issues

How much of the injured worker's wage should be replaced while they are healing and unable to work at all?

Method of Calculating the Weekly TTD Payment

60% of Gross AWW	66-2/3% of Gross AWW	67% of Gross AWW	70% of Gross AWW	72% of Gross AWW	75% of Spendable Wage	80% of Spendable Wage
MA, NH, <b>WA**</b>	AL, AZ, AR, CA, CO, DE, DC, FL, GA, HI, IL, IN, KS, KY, LA, MD, MN, MS, MO, <b>MT</b> , NE, NV, <b>NM</b> , NY, <b>ND</b> , <b>OR</b> , PA, SC, <b>SD</b> , TN, UT, VT, VA, WV, WI, <b>WY</b>	<b>ID</b>	NJ, OK, TX*	OH	CT, RI	<b>AK</b> , IA, ME, MI,
<p>*TX – If employee earns less than \$8.50 per hour, they get 75% of gross AWW for first 26 wks.  **WA – Add 5% if married on DOI and 2% per dependent up to 75% of gross AWW</p>						

## How States Have Answered These Public Policy Issues

How much of the injured worker's wage should be replaced while they are healing and unable to work at all?

Maximum/Min. Compensation Rate for Comparator States

State	Maximum TTD Benefit	Actual Maximum/Min. Amount as of July 1, 2008
Alaska	<b>120% of SAWW</b>	\$706/\$207*
Idaho	<b>90% of SAWW</b>	\$556.20/\$92.70
Montana	<b>100% of SAWW</b>	\$604/No Min.
New Mexico	<b>100% of SAWW</b>	\$635.46/\$36
North Dakota	<b>110% of SAWW</b>	\$689/\$376*
Oregon	<b>133% of SAWW</b>	\$1,051.21/\$50**
South Dakota	<b>100% of SAWW</b>	\$598/\$299*
Washington	<b>120% of SAWW</b>	\$1043.49/***
Wyoming	<b>100% of SAWW</b>	\$815/No Min.

\* Or actual wage, whichever is less    \*\* Or 90% of AWW if less    \*\*\*Variable according to number of dependents

## How States Have Answered These Public Policy Issues

How much of the injured worker's wage should be replaced while they are healing and unable to work at all?

Example Results on Individual Workers in Comparator States

State	Worker Makes \$100 a week/3 dependents	Worker Makes \$400 a week /no dependents	Worker Makes \$1000 a week/3 dependents	Worker Makes \$1500 a week/3 dependents
Alaska	\$92.35	\$267.60	\$673.47	\$939.00
Idaho	\$92.70	\$266.67	\$556.20	\$556.20
Montana	\$66.67	\$266.67	\$604	\$604
New Mexico	\$66.67	\$266.67	\$635.46	\$635.46
North Dakota	\$66.67	\$266.67	\$666.67	\$689
Oregon	\$66.67	\$266.67	\$666.67	\$1035
South Dakota	\$92.35*	\$267.60*	\$598	\$598
Washington	\$69	\$276	\$690	\$1035
Wyoming	\$66.67	\$266.67	\$666.67	\$815

▶ 13 \*Estimated since SD has a minimum of \$299 or the actual wage less federal withholding, whichever is less. 3/23/2010

## How States Have Answered These Public Policy Issues

Should the same amount be given to all workers regardless of the number of dependents?

Example of Effect of Using Gross aww vs. Spendable vs. WA Method

(All Workers Earn \$600 a Week)	Single Worker	Worker with Spouse and one Child	Worker with Spouse and Three Children	Worker with Six Children
Weekly Amt. Payable if 662/3 of Gross Wage (Montana)	\$400	\$400	\$400	\$400
Weekly Amt. Payable if 80% Spendable (Iowa)	\$372.28	\$406.82	\$417.49	\$427.33
Washington Method	\$360	\$402	\$426	\$432

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## WC Benefits Are Not Subject to Income Taxes

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When working:	Wages – Taxes	=	Spendable Earnings
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When On Comp:	Benefits	=	Spendable Earnings
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## Spendable Earnings Approach

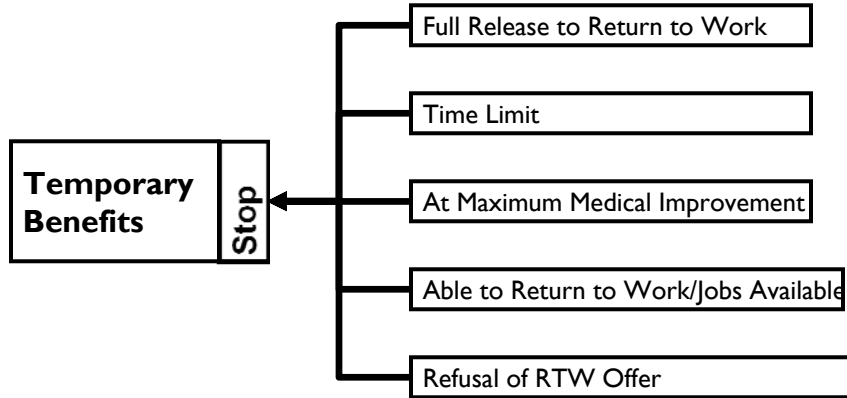
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- **More equitable**
- \* **More difficult to calculate**
- \* **Needs tables or computer program**
- \* **More difficult to explain**
  
- **Interesting alternative is Washington**

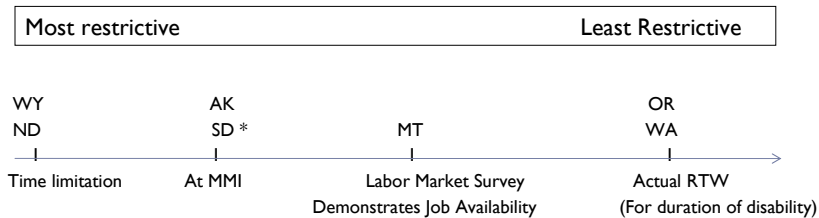


## How States Have Answered These Public Policy Issues

### When Should Temporary Total Benefits End?

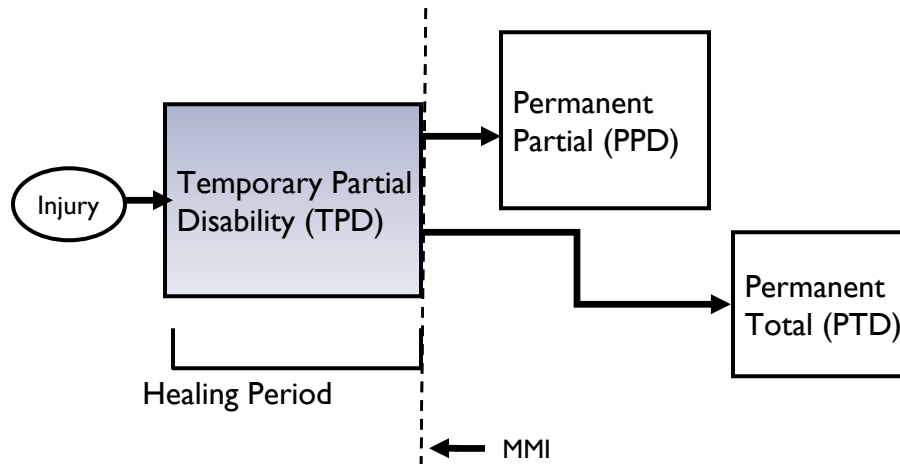


## Variations on Length of Temporary Total



- South Dakota -TTD benefits continue for 60 days after the finding of an ascertainable loss (if the employee is unable to return to their job at injury) if the employee is actively preparing to engage in a program of vocational rehabilitation.
- ID →?
- ▶ NM – has a limitation of 700 weeks total indemnity

## Temporary Partial Disability

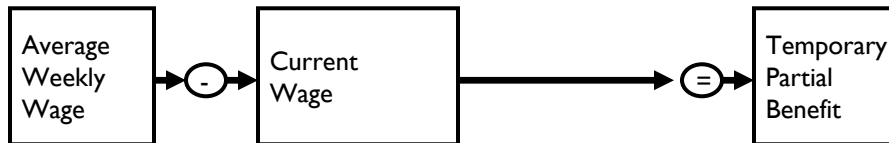


## Temporary Partial Disability

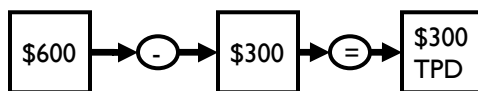
- ▶ Paid when an employee returns to work at a reduced wage as a direct result of the injury
- ▶ Most often used to supplement income when:
  - ▶ Employee returns to work at reduced hours while still treating
  - ▶ Employee returns to work in another job that pays less money due to inability to do job at injury any longer

Some states pay TPD only until maximum healing, others pay it during any period of wage loss that is not TTD or PTD

## Temporary Partial Disability Calculation in Montana

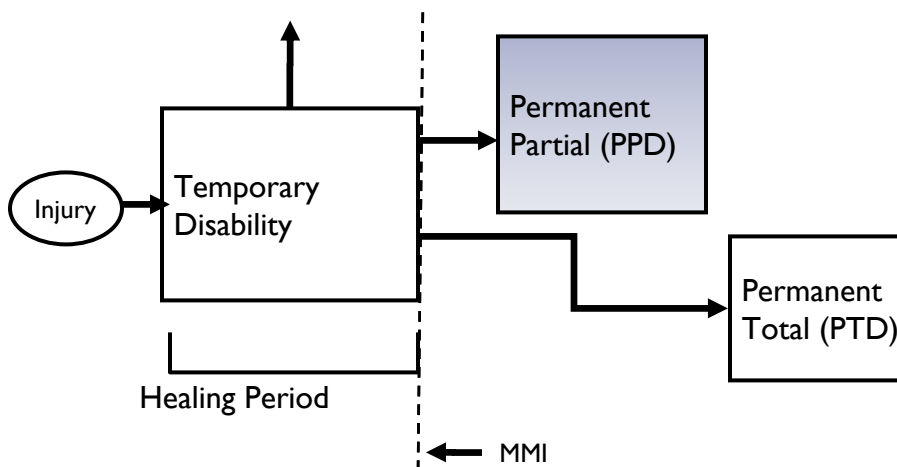


Assume AWW=\$600, Current Wages=\$300



Note weekly benefit for TTD = \$400 (not taxable); Earnings working 1/2 time = \$600 (\$300 of which is not taxable)

## Permanent Partial Disability



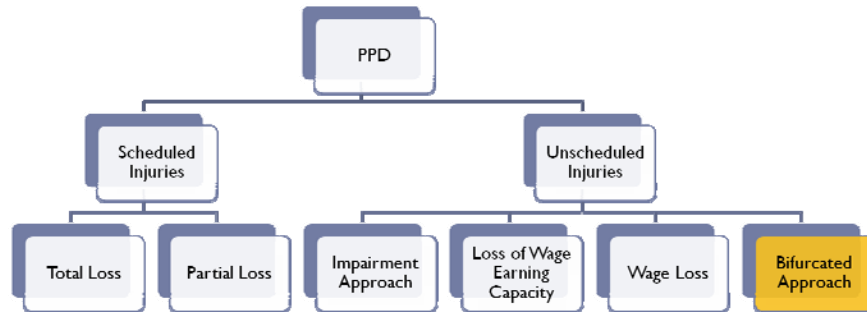
## Permanent Partial Disability

- ▶ The area of greatest variation among the states and the most difficult to design so it is **predictable, adequate, equitable and efficient**
- ▶ Designed to compensate a worker for their “*permanent*” loss of future income and non-economic losses\* due to the permanent residuals of their work related injury
- ▶ Design challenges exist in keeping costs reasonable, equitable, predictable, administered efficiently, and perceived as fair
- ▶ Montana defines PPD as “a physical condition in which a worker, after reaching maximum medical healing:
  - ▶ Has a permanent impairment established by objective medical findings;
  - ▶ Is able to return to work in some capacity but the permanent impairment impairs the worker’s ability to work; and
  - ▶ Has an actual wage loss as a result of the injury”\*\*

## Permanent Partial Disability

- ▶ Amount paid for PPD is based on one or more of the following factors:
  - ▶ Benefit structure and philosophy
  - ▶ Statutory schedule of benefits (in some states, not MT)
  - ▶ Maximum unscheduled benefits (in some states, including MT)
  - ▶ Compensation rate (in states where benefit varies according to earnings)
  - ▶ Formula used in the calculations
  - ▶ Impairment rating (not in wage loss states)
  - ▶ Reference used as a rating guide (MT uses current AMA 6<sup>th</sup> edition)
  - ▶ Modifiers for age, education, and other factors (MT)

## Permanent Partial Disability: Structural Variations



\*Barth and Niss, *Permanent Partial Disability Benefits: Interstate Differences, 1999*, WCRI

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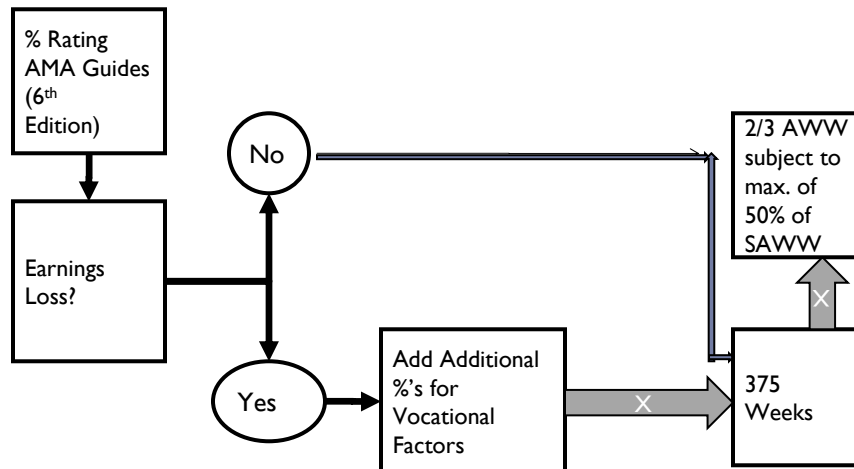
## Permanent Partial Disability – Structural Variations: Unscheduled Benefits

Impairment Approach	Loss of Wage Earning Capacity Approach	Wage Loss Approach	Bifurcated Approach
AK, CO, CT, DE, FL, GA, HI, IN, MN, NJ, NV, OK, <b>SD</b> , TX, UT, VT, VA, <b>WA</b> , WV	CA, <b>ID</b> , IL, IA, MD, MS, MO, NE, <b>NM</b> , NY, <b>OR</b> , SC, <b>WY</b>	AZ, LA, ME, MA, MI, NH, <b>ND</b> , OH, PA, RI	AL, AR, DC, KS, KY, <b>MT</b> , NC, TN, WI

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## Montana



Source : [www.lir.msu.edu/wcc](http://www.lir.msu.edu/wcc) -- Permanent Partial Disability in All 51 Jurisdictions

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## PPD Compensation Paid By States

as of 7/1/2008 (WCRI WC Laws – 2<sup>nd</sup> Edition)

State	Weekly Compensation for PPD	Maximum Weekly Amount for PPD	Total Weeks	Total Limitation on PPD
Alaska	80% of spendable wages	120% of the SAWW (\$939)	None	\$177,000
Idaho	55% of the SAWW	55% of the SAWW (\$339.90)	500	\$169,950
Montana	66 2/3% of worker's AWW	50% of the SAWW (\$304)	375	\$113,250
New Mexico	66 2/3% of worker's AWW	100% SAWW (\$635.46)	500 or 700	\$317,730 if rating <80% \$444,822 if > rating
North Dakota	33 1/3% of the SAWW	33 1/2% of the SAWW (\$382.74)	1500	No PPD paid unless rating is at least 16%; total possible is \$574,110
Oregon	Each % impairment = 1 wk at SAWW; Each % of work disability = worker's AWW x 1.5	100% SAWW for impairment (\$790.38); 133% SAWW for work loss (\$1051.21)	Not Applicable	\$302,945.73
South Dakota	66 2/3% of the worker's AWW	100% of the SAWW (\$598)	312	\$186,576
Washington	60% of AWW if single (plus 5% if married and 2% per dependent with max of 75% of AWW)	120% of the SAMW (961.43)	Not Applicable	\$174,258.99
Wyoming	66 2/3% of the worker's AWW	2/3 of SWAW (\$362.22)	44 months	\$66,938.26

**Maximum PPD Benefit Rates and Whole Body Values in Lower PPD Maximum States as of 7/1/2008**

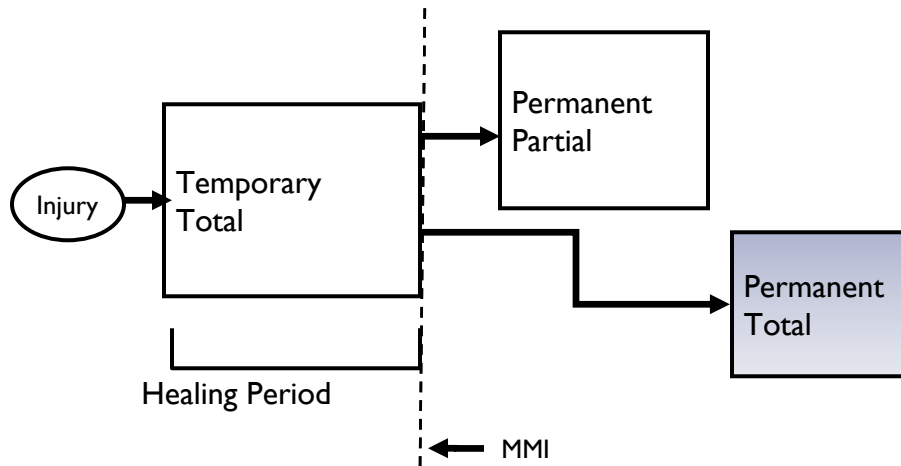
State	Maximum PPD Weekly Rate	Maximum Number of Weeks for Unscheduled Injuries
Alabama	\$220	300
California	\$230	
Colorado	\$247.42	400 weeks and also a \$ limit
Montana	\$302	375 weeks
North Dakota	\$382.74	No permanent impairment payment unless rating is at least 16% of the whole body; maximum whole body impairment is 1500 weeks
Oklahoma	\$289	500 weeks
Wisconsin	\$272	1000 weeks

**Illustrative Impact of Montana's PPD Benefit Structure on Three Workers**

Injured Worker's Situation (all were injured on 7/1/2008)	Type of Permanent Injury	Wage at Time of Injury	Impairment Benefits Due	Additional Vocational Statutory Modifiers Added	Resulting Rating	Resulting PPD Benefits Due
23 year old plumber with vocational school training who does medium labor activity and is back to work at MMI	Back injury; 10% Impairment rating	\$800/wk	\$11,325 (\$302* x 37.5 wks)	None, employee is back to work with no loss of earnings	10% Impairment rating only	\$11,325
53 year old construction worker with no HS diploma, does heavy labor activity and is not RTW at MMI	Back injury; 10% Impairment rating	\$800/wk	\$11,325 (\$302* x 37.5 wks)	Add 1% for age over 40; add 1% for education less than 12 years; 20% for wage loss; and add 5% for heavy labor activity that he can no longer do	37% rating	\$41,902.50 (\$302 x 138.75 weeks)
59 year old administrative assistant with college diploma who does light labor activity and is not RTW at MMI	Back injury; 10% Impairment rating	\$800/wk	\$11,325 (\$302* x 37.5 wks)	Add 1% for age and 20% for wage loss	31% rating	\$35,107.50 (\$302 x 116.25 weeks)

▶ 30 \*Note that 2/3% of the AWW of all three workers is \$533.33 a week. PPD benefits in Montana pay a weekly maximum amount of 50% of the statewide average weekly wage, which on 7/1/2008 was \$302. 3/23/2010

## Permanent Total Disability



## Permanent Total Disability

Qualify	Duration	Rate
Loss of Two Members	400 – 800 Weeks	Percent of Average Weekly Wage
Unable to do any work at all	Age Limit/Retirement Age/Soc Sec.	Amount fixed for everyone
Other Definitions	Life or Duration of Disability	Cost of Living Escalators



## Permanent Total Disability

### Limits on PTD

5 years following determination of PTD	Florida	Eligible for SS Retirement	<b>Montana North Dakota</b>
80 months and then subject to annual review	Wyoming	Retirement Age	Tennessee Kentucky
401 Weeks for some injuries	Texas	Age 67 (Rebuttable Presumption)	Minnesota
450 Weeks	Mississippi		
500 Weeks	Dist. of Col.	Age 70	West Virginia
	South Carolina Indiana	Age 75 (if injured over age 70)	Florida
800 Weeks	Michigan	\$125,000 max.	Kansas

## Is PTD A Cost Driver?

Percentage of Indemnity Paid on PTD Claims  
(For 2001/2002 Policy Period at 5<sup>th</sup> Report)

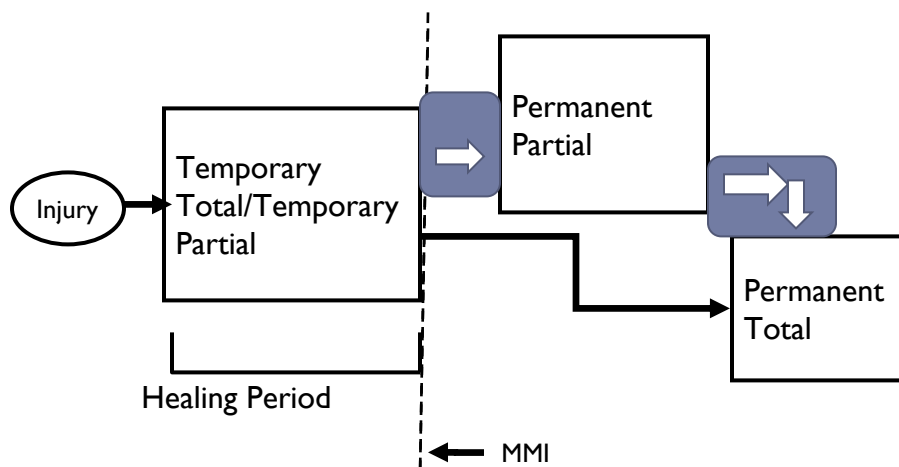
State	Percentage of Indemnity Paid on PTD Claims
Alaska	1.5%
Idaho	1.6%
Montana	4.2%
New Mexico	1.9%
Oregon	1.5%
South Dakota	1.6%

Source: NCCI

## Number of PTD Cases Reported With Payments To The Employment Relations Division By All Payers

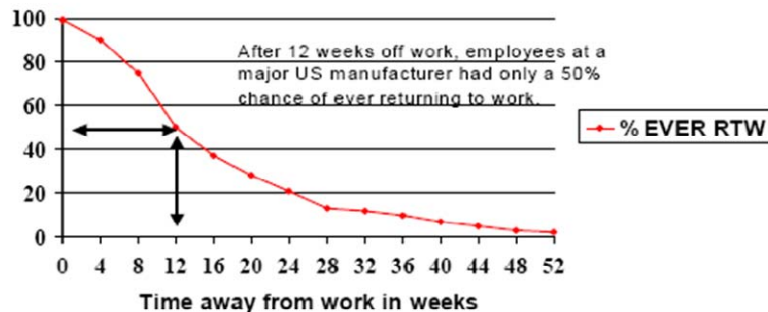
Year	By End of 4 <sup>th</sup> Year	By End of 5 <sup>th</sup> Year
2001	40	45
2002	39	40
2003	39	33
2004	25	26
2005	25	----

## Friction Points in the Montana System



## Return To Work – Vocational Rehabilitation Services Often Occur Too Late

### Time Is Of The Essence



Source: "Preventing Needless Work Disability by Helping People Stay Employed" ACOEM, 2005

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## Bottom Line-

There is no state that appears to have the "perfect" benefit system

Goals are to arrive at a "fair" system that provides adequate benefits; is equitable and efficient; results in a "reasonable" cost to employers; and results in a successful recovery and return to work for the injured worker.

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## Conclusions

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Montana's benefits structure is fairly easy to understand and appears to be efficient as measured by the litigation rate.

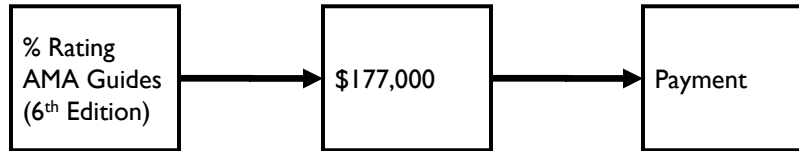
It could be revised to be more predictable, equitable and adequate without losing the current efficiency which should lower costs for employers and benefit most workers at the same time.

## Questions?

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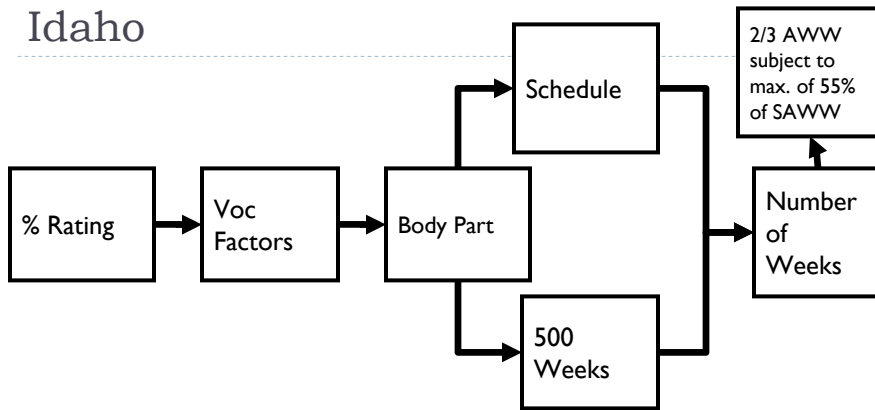
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781-402-0012

# Alaska



Source : [www.lir.msu.edu/wcc](http://www.lir.msu.edu/wcc) -- Permanent Partial Disability in All 51 Jurisdictions

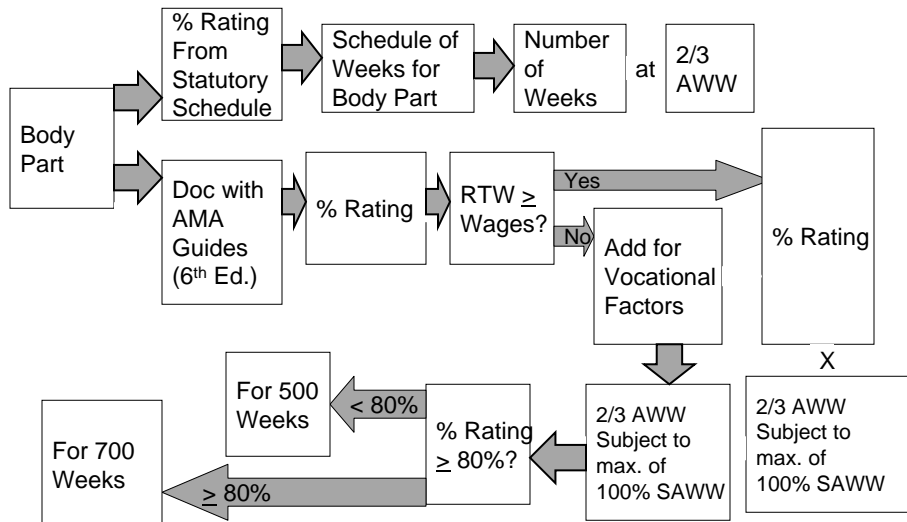
# Idaho



	Injury	Rating	Adjusted Rating	Whole Person	Benefits
Laborer	Back	20%	30%	400 Wks	120 Wks
HR Mgr.	Back	20 %	20%	400 Wks	80 Wks

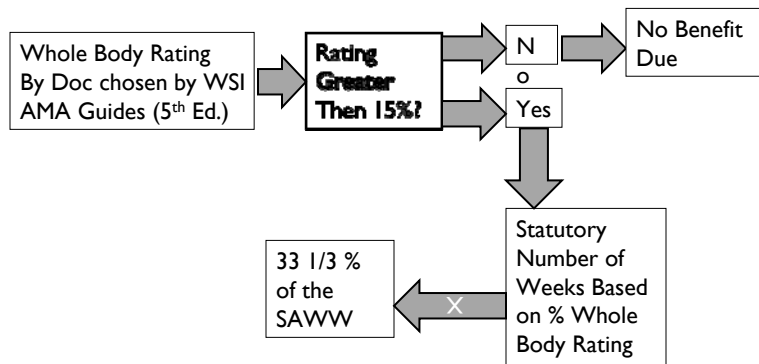
▶ 42 Source : [www.lir.msu.edu/wcc](http://www.lir.msu.edu/wcc) -- Permanent Partial Disability in All 51 Jurisdictions

## New Mexico



43 Source : [www.lir.msu.edu/wcc](http://www.lir.msu.edu/wcc) -- Permanent Partial Disability in All 51 Jurisdictions

## North Dakota

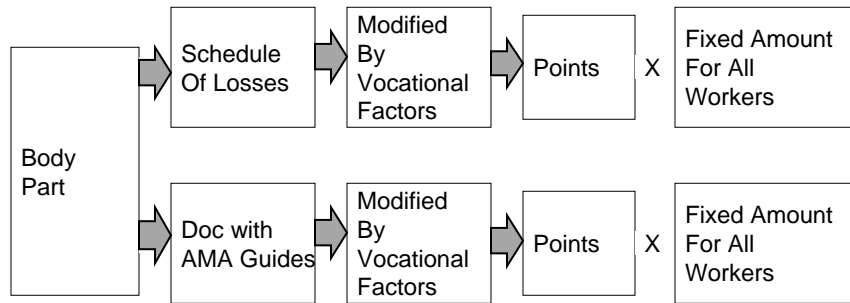


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Source: North Dakota Century Code 65-05-12.2

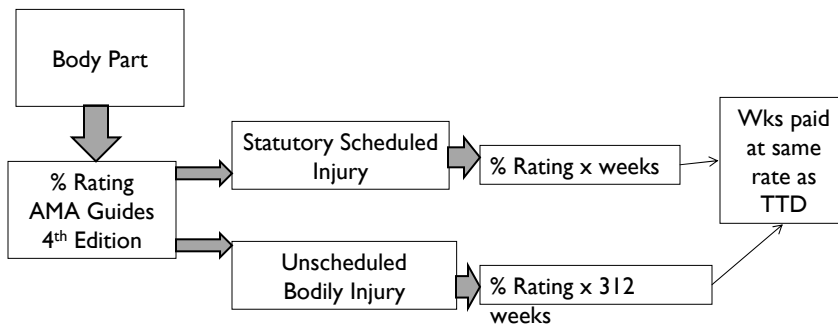
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# Oregon

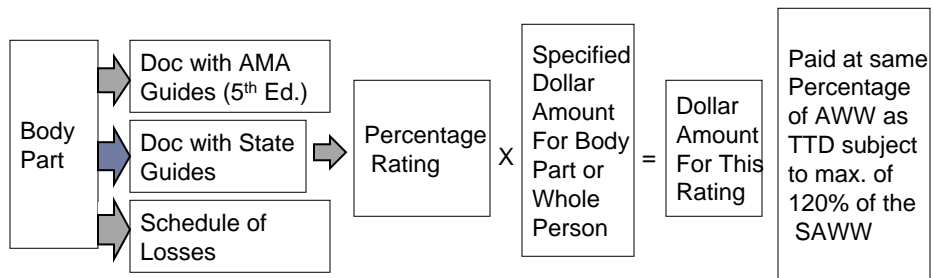


Source : [www.lir.msu.edu/wcc](http://www.lir.msu.edu/wcc) -- Permanent Partial Disability in All 51 Jurisdictions

# South Dakota

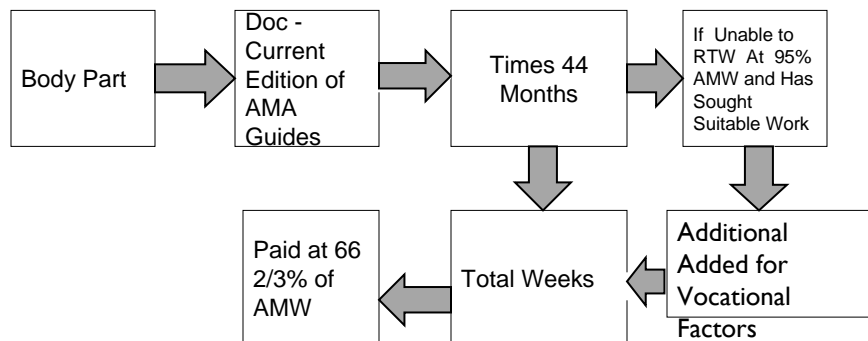


## Washington



Source : [www.lir.msu.edu/wcc](http://www.lir.msu.edu/wcc) -- Permanent Partial Disability in All 51 Jurisdictions

## Wyoming



Note: Injured Workers Can Elect to Take a Separate Vocational Training Award Instead of PPD



## Distribution of Paid Benefits as Reported to ERD

Year	Medical	TTD	TPD	PPD	PTD	VR	Total
2001	\$78,218,767	\$39,388,921	\$2,023,585	\$20,338,470	\$4,830,755	\$3,302,665	\$148,103,163
	52.81%	26.60%	1.37%	13.73%	3.26%	2.23%	
2002	\$79,535,674	\$37,384,224	\$2,157,384	\$33,792,002	\$4,469,897	\$3,118,307	\$160,457,488
	49.57%	23.30%	1.34%	21.06%	2.79%	1.94%	
2003	\$80,352,856	\$37,371,593	\$2,589,748	\$29,508,817	\$5,124,306	\$3,202,371	\$158,149,691
	50.81%	23.63%	1.64%	18.66%	3.24%	2.02%	
2004	\$74,289,425	\$31,425,342	\$2,208,822	\$25,378,118	\$3,243,473	\$2,920,717	\$139,465,897
	53.27%	22.53%	1.58%	18.20%	2.33%	2.09%	
2005	\$71,996,099	\$40,389,565	\$2,086,638	\$19,523,250	\$2,096,530	\$4,549,765	\$140,641,847
	51.19%	28.72%	1.48%	13.88%	1.49%	3.24%	
2006	\$68,869,054	\$29,685,687	\$2,052,998	\$13,414,718	\$1,266,331	\$8,265,438	\$123,554,226
	55.74%	24.03%	1.66%	10.86%	1.02%	6.69%	
2007	\$61,509,815	\$24,812,020	\$2,014,779	\$7,867,613	\$163,086	\$5,272,504	\$101,639,817
	60.52%	24.41%	1.98%	7.74%	0.16%	5.19%	