

Overview of Workers' Compensation Benefits

Presented to the LMAC
1/19/2010

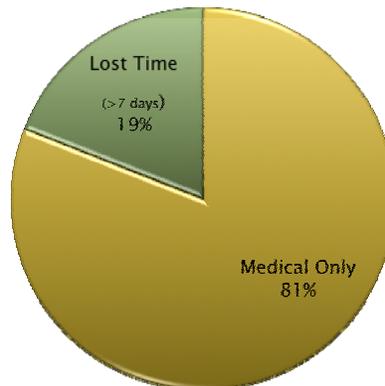
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Over 80% of claims are Medical Only...

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



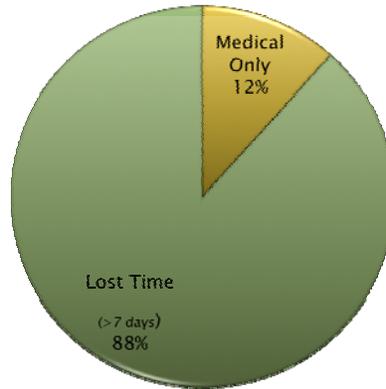
Source: CompScope™, Benchmarks 8th Edition, The Databook, Workers' Compensation Research Institute, Jan 2008

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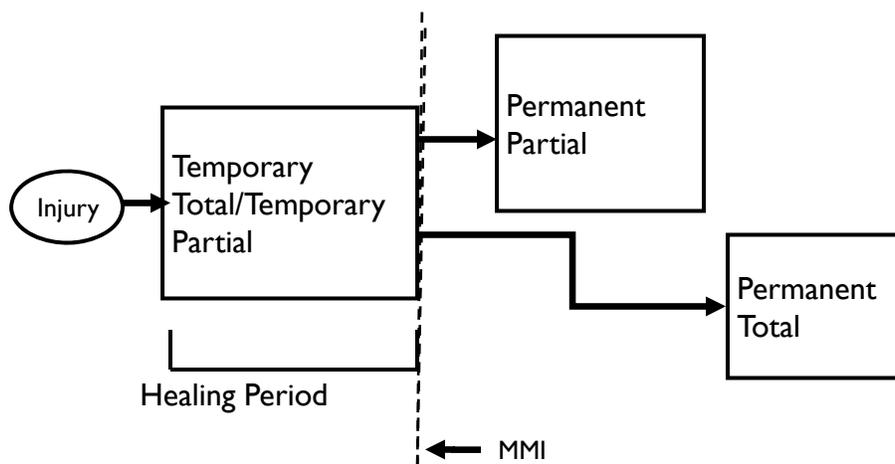
...but they only account for 12% of the Total WC Claim Payments

% 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



General Definition of Benefit Types Generally Paid in Workers' Compensation

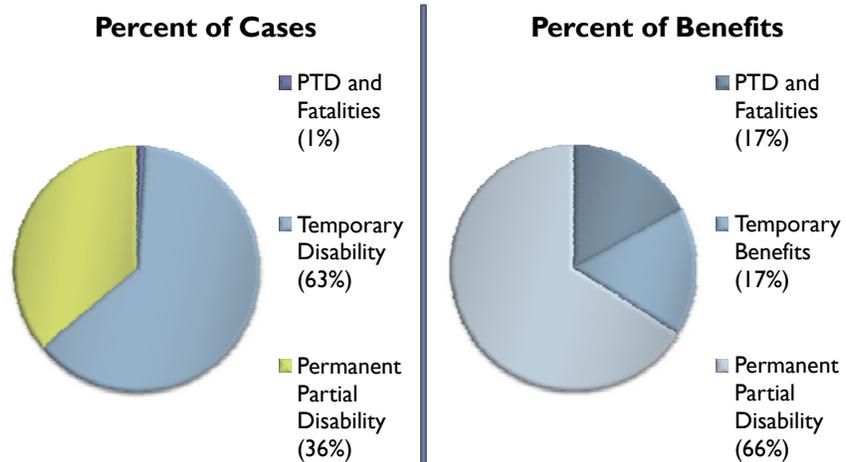
- ▶ **Temporary Total Disability (TTD)**
- ▶ **Temporary Partial Disability (TPD)**
- ▶ **Permanent Partial Disability (PPD)**
- ▶ **Permanent Total Disability (PTD)**
- ▶ Fatality (sometimes called dependency) Benefits
- ▶ Retraining or Rehabilitation Benefits
- ▶ Disfigurement Benefits
- ▶ Medical

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Distribution of Indemnity Cases and Costs

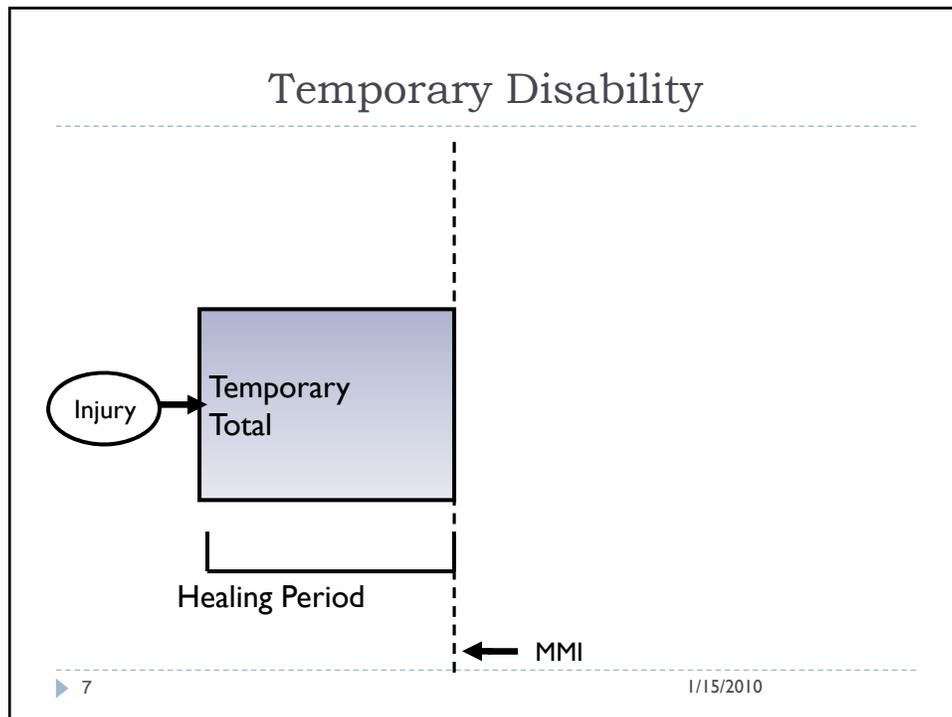
(2004 Accident Year)



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

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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 or the amount they earned?
- ▶ When should temporary total disability benefits end?

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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, AK , CA, CO, CT, DE, DC, HI, IL, IA, MD, MN, MO, NH, OK, OR , RI, UT, VT, WA , WI, WY	MT* , WV,	ID , MA, MS, NV, ND ,	AZ, AR, FL, GA, IN, KS, KY, LA**, ME, MI, NE, NJ, NM , NY, NC, OH, PA, SC, SD , TN, TX, VA,
<ul style="list-style-type: none"> •MT is actually 32 hours or 4 days, whichever is less •** LA is actually 1 week 				

▶ 9 Source: WC Laws, 2nd Edition, Workers' Compensation Research Institute, 2009 1/15/2010

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 ND	CT DE NJ SD WV WI	WY	MN VT	AZ, AR, CA, CO, DC, ID , IL, IN, IA, KY, ME, MD, MI, MS, MO, NH, NY, OH, OR , PA, SC, TN, TX, UT, WA	AL, FL, GA, KS, MA, NC, VA	AK NM	LA, NE	HI, MT , OK, RI

Source: WC Laws, 2nd 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 benefit:
 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

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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, WA **	AL, AZ, AR, CA, CO, DE, DC, FL, GA, HI, IL, IN, KS, KY, LA, MD, MN, MS, MO, MT , NE, NV, NM , NY, ND , OR , PA, SC, SD , TN, UT, VT, VA, WV, WI, WY	ID	NJ, OK, TX*	OH	CT, RI	AK , IA, ME, MI,

*TX – If employee earns less than \$8.50 per hour, they get 75% of gross AWW for first 26 wks.

**WA – Add 5% of married on DOI and 2% per dependent up to 75% of gross AWW

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Source: WC Laws, 2nd Edition, Workers' Compensation Research Institute, 2009

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

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

▶ 13 Source: WC Laws, 2nd Edition, Workers' Compensation Research Institute, 2009 1/15/2010

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

▶ 14 *Estimated since SD has a minimum of \$299 or the actual wage less federal withholding, whichever is less. 1/15/2010

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 Tax

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

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Spendable Earnings Approach

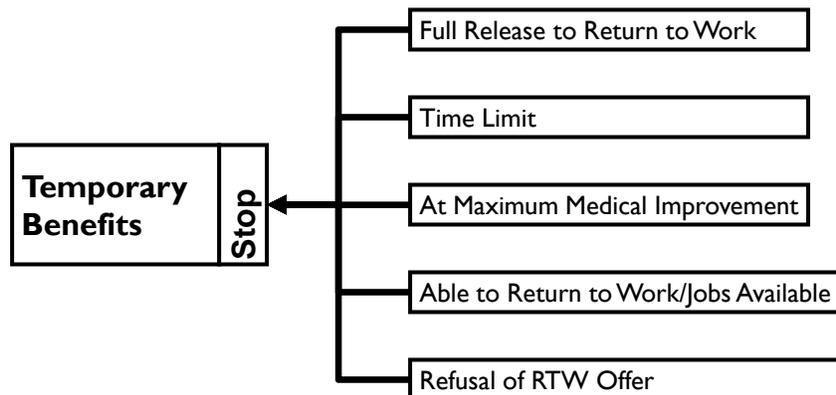
- * **More equitable**
- * **More difficult to calculate**
- * **Needs tables or computer program**
- * **More difficult to explain**

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How States Have Answered These Public Policy Issues

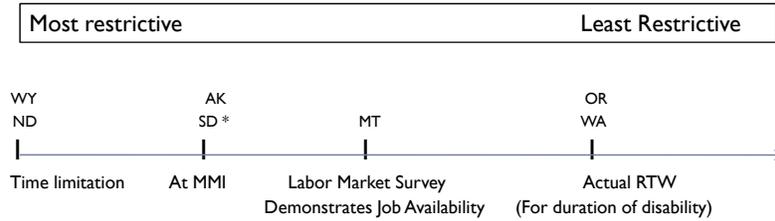
When Should Temporary Total Benefits End?



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Variations on Length of Temporary Total

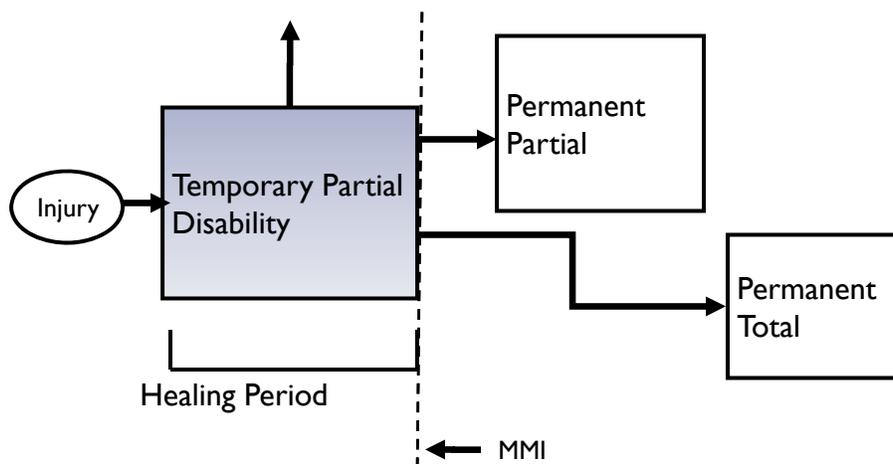


- South Dakota -TTD benefits continue for 60 days after the finding of an ascertainable loss (if the employee is unable to return to their job at injury) if the employee is actively preparing to engage in a program of vocational rehabilitation.
- ID -?
- ▶ NM – has a limitation of 700 weeks total indemnity

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Temporary Partial Disability



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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

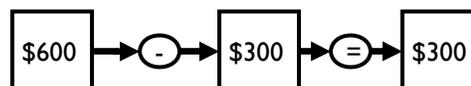
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Temporary Partial Disability Calculation in Montana



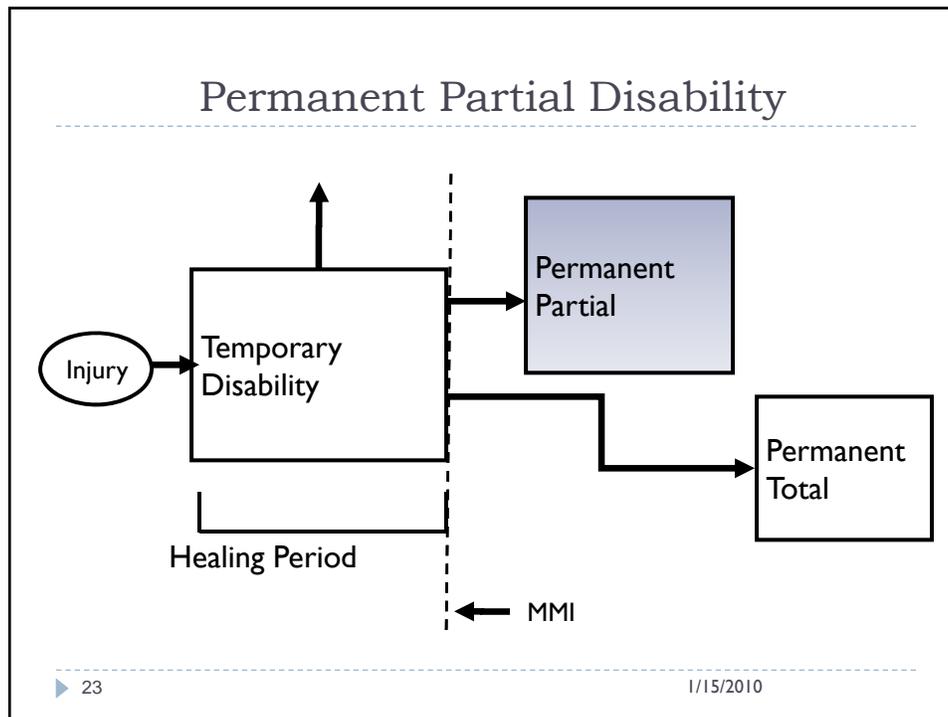
Assume AWW=\$600, Current Wages=\$300



Note: Benefit for TPD = \$300 (not taxable); Earnings working ½ time = \$300 (taxable)

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Permanent Partial Disability

- ▶ The area of greatest variation among the states and the most difficult to design so it is adequate, equitable and effective
- ▶ 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”**

*Barth and Niss, *Permanent Partial Disability Benefits: Interstate Differences*, 1999, WCRI
**39-71-116(24)

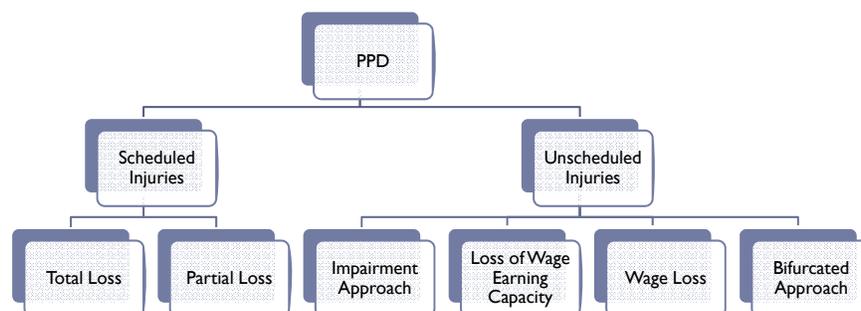
Permanent Partial Disability

- ▶ Amount paid for PPD is based on one or more of the following factors:
 - ▶ 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 edition)
 - ▶ Modifiers for age, education, and other factors (MT)

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Permanent Partial Disability: Structural Variations



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

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Schedules

Delaware	
Hand	220 Weeks
Arm	250 Weeks
Foot	160 Weeks
Leg	250 Weeks
Thumb	75 Weeks
First finger	50 Weeks
Second finger	40 Weeks
Third finger	30 Weeks
Fourth finger	20 Weeks
Great toe	40 Weeks
Other toes	15 Weeks
Eye	200 Weeks

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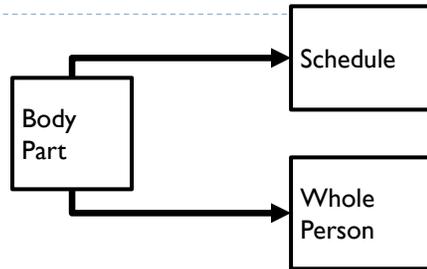
Permanent Partial Disability – Structural Variations: Unscheduled Benefits

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, SD , TX, UT, VT, VA, WA , WV	CA, ID , IL, IA, MD, MS, MO, NE, NM , NY, OR , SC, WY	AZ, LA, ME, MA, MI, NH, ND , OH, PA, RI	AL, AR, DC, KS, KY, MT , NC, TN, WI

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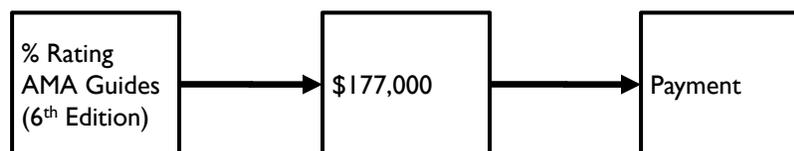
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Unscheduled Losses

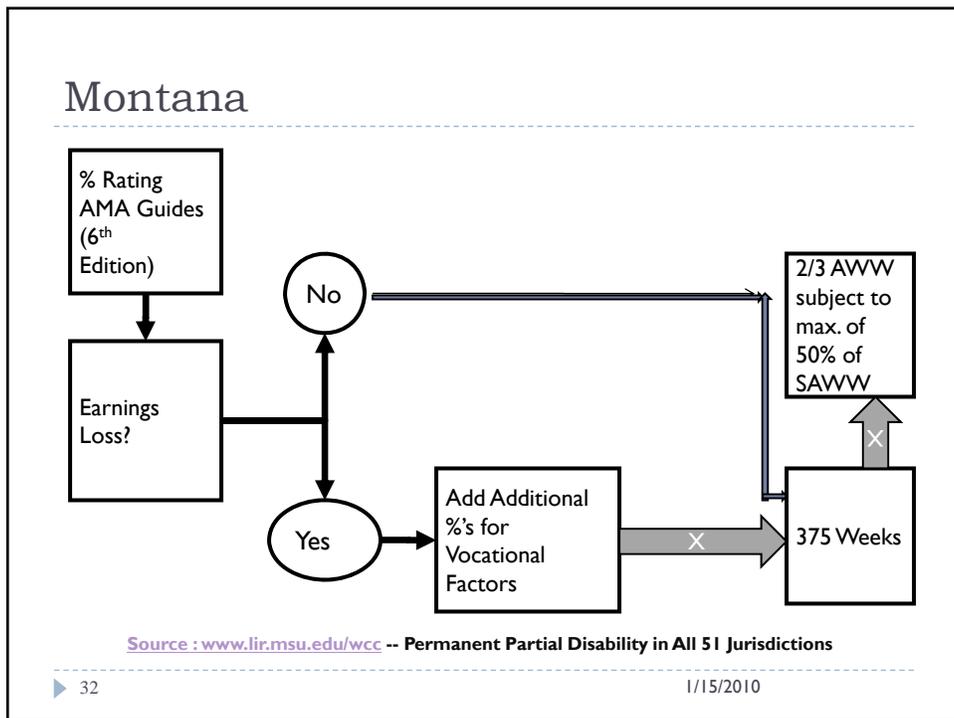
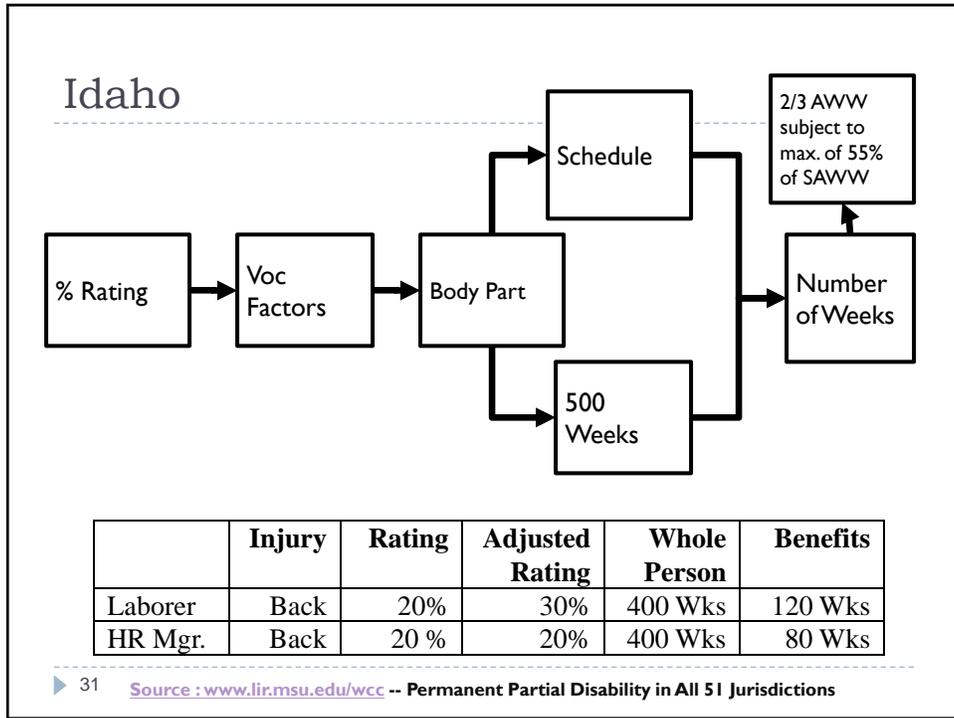


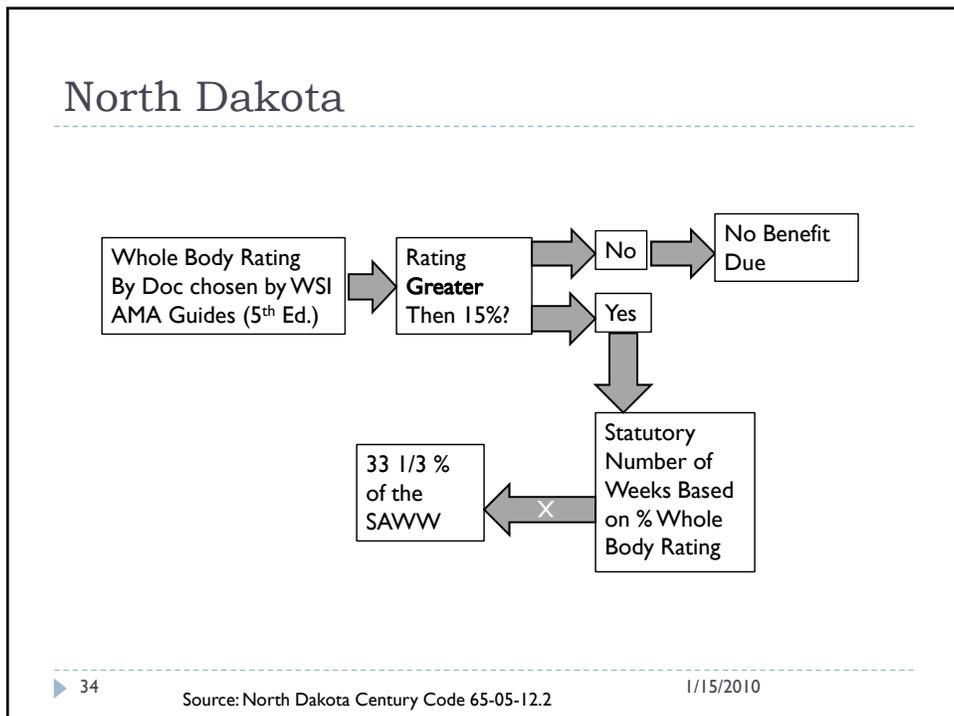
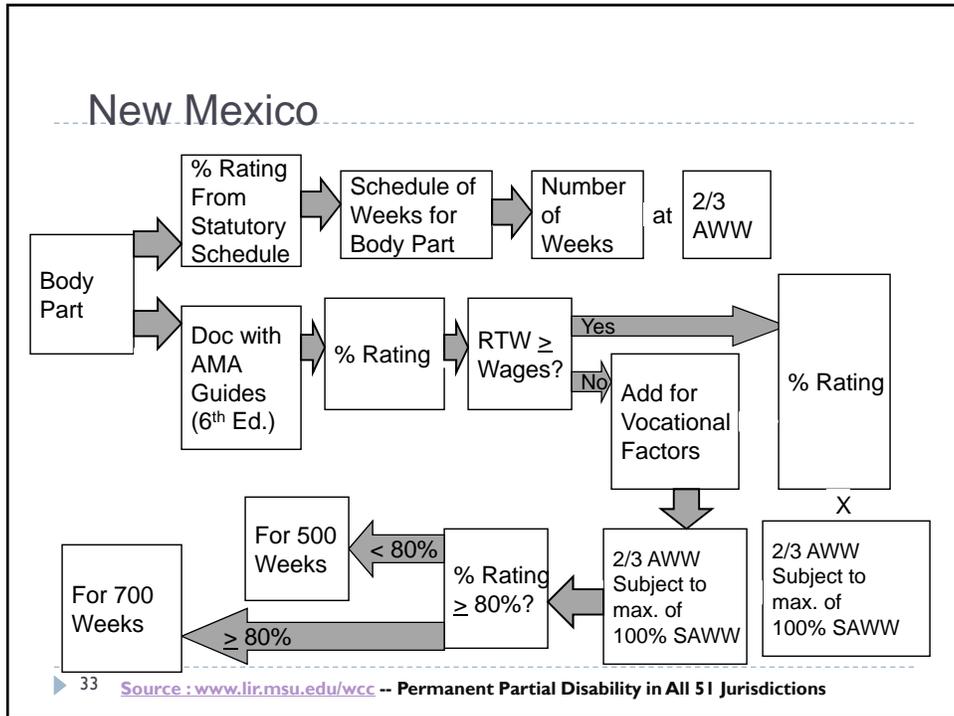
	Injury	Rating	Value	Duration	Rate
Mr. A.	Hand	30%	220 Weeks	66 Weeks	2/3 AWW
Mr. B.	Back (Whole Person)	20 %	400 Weeks	80 Weeks	2/3 AWW

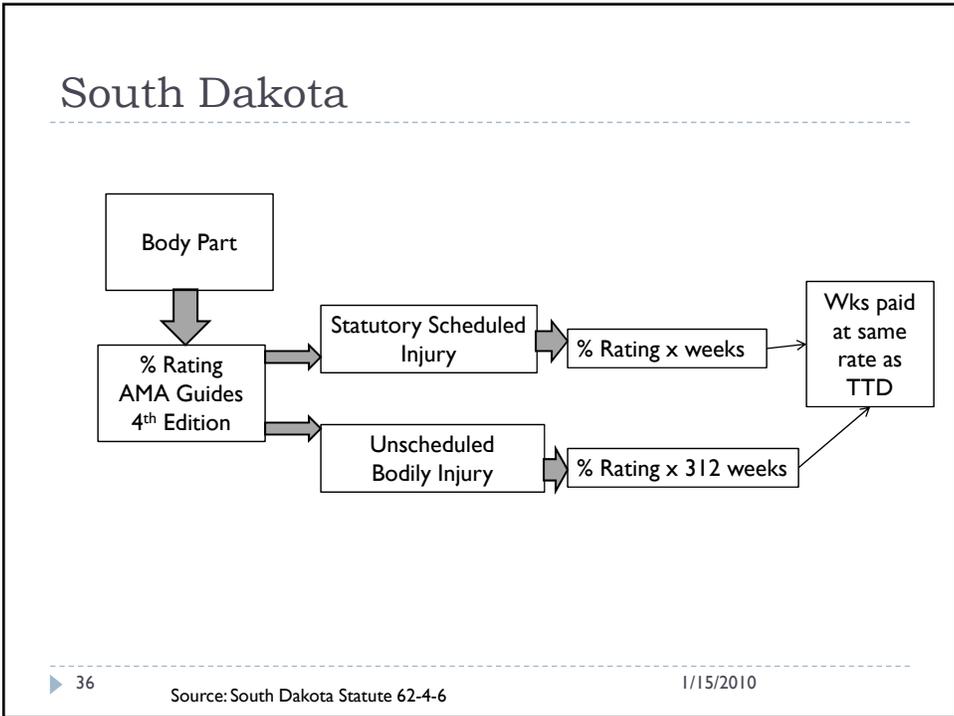
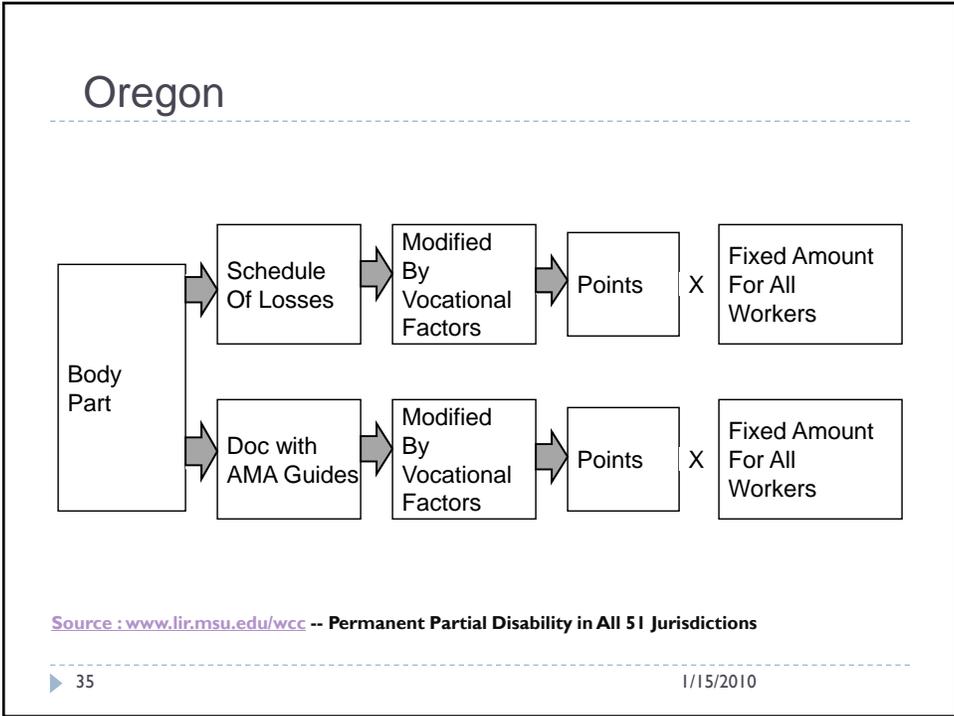
Alaska

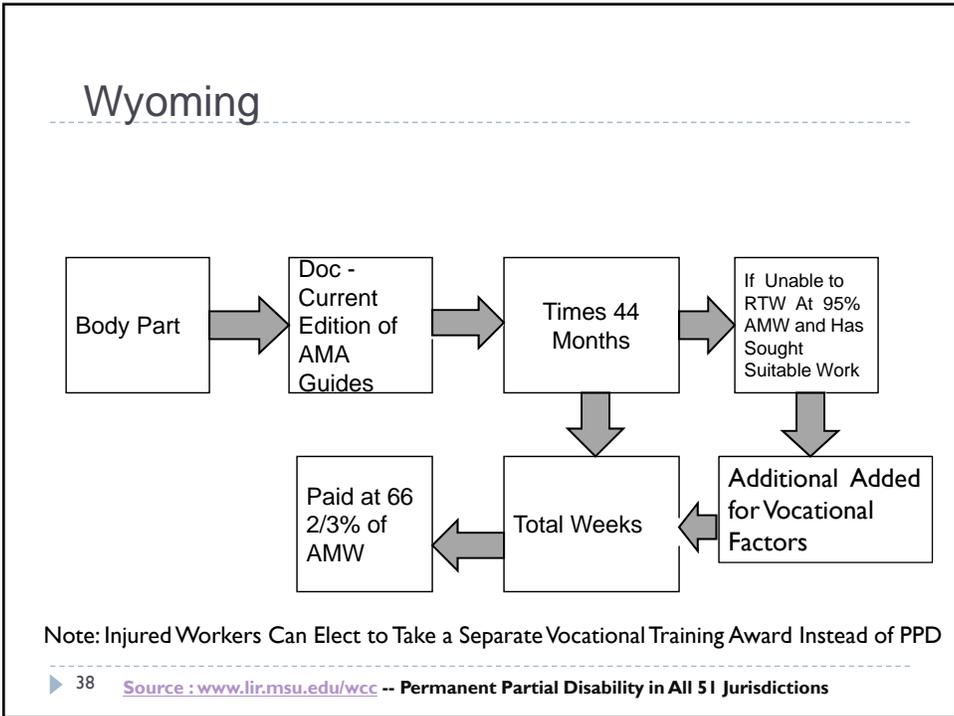
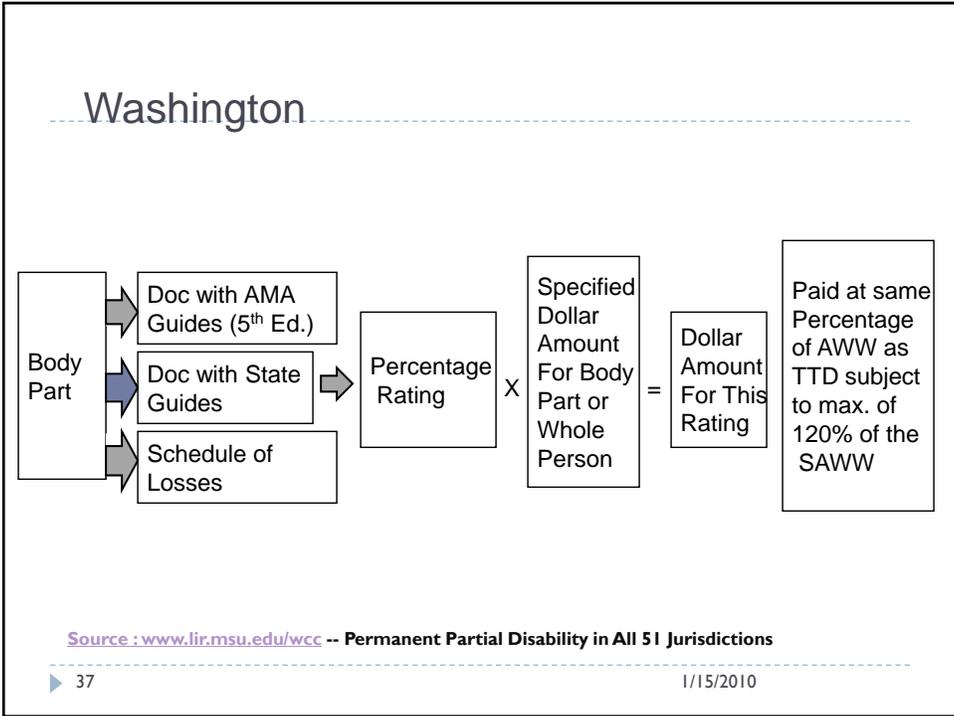


Source : www.lir.msu.edu/wcc -- Permanent Partial Disability in All 51 Jurisdictions









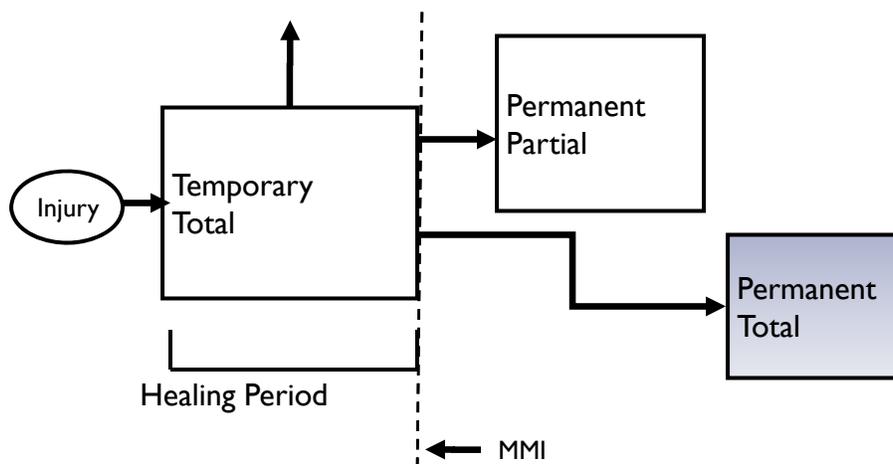
Permanent Partial Disability Comparisons

Benefit Comparisons and Analysis of Case Studies and Survey Data in Progress

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Permanent Total Disability



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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 Social Security Retirement	Montana North Dakota
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	DC, South Carolina Indiana	Age 70	West Virginia
		Age 75 (if injured over age 70)	Florida
800 Weeks	Michigan	\$125,000 max.	Kansas

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/return to work for the injured worker

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Questions?

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