

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH  
WORKERS' COMPENSATION AGENCY  
LANSING, MICHIGAN

**ADEQUACY OF BENEFITS PAID UNDER  
THE WORKERS' DISABILITY COMPENSATION ACT  
THIRTEENTH BIENNIAL STUDY**

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This report is submitted biennially in odd-numbered years by March 1 of the reporting year. The report is prepared under the statutory obligation of MCLA 4189.364, which requires: "...The study shall evaluate the effects of inflation on benefits and other factors that the director considers relevant." It is time for a look at the "other factors" that impact on injured workers in this state that are collecting Workers' Compensation benefits.

The impact of inflation on the specific weekly rate is easily measured by calculation. Although rates have increased over time, higher wage earners continue to suffer from the impact of the **maximum rate limits**. Workers in 2007 earning over \$803.17 per week do not receive any additional compensation beyond the maximum weekly workers compensation rate of \$723. That weekly wage is equal to \$20 per hour and there are many skilled workers earning more. Also, the higher wage earners tend to have fringe benefit plans but the value of those plans drops out of the calculation for workers eligible for more than \$535 per week in workers' compensation benefits.

Although the weekly wage loss benefit rates are calculated on the "after tax" value of the earnings, the 1981 amendments as interpreted by the Michigan Court of Appeals, precludes adjustment of after tax earnings calculations based on revised Federal Tax code provisions which would increase an injured worker's weekly benefit rate.

The National Academy of Social Insurance (<http://nasi.org/>) reported on a comprehensive study of the "Adequacy of Earnings Replacement in Workers' Compensation Programs." The study found that "the best yardstick to measure the adequacy of benefits" are wage loss studies. There are a number of advantages to this approach. These studies look at actual wage replacement rather than some average or estimate of statutory benefits. They take into account wages earned by the worker after the injury as well as the fact that for most workers wages increase over time. Finally they can be tailored to examine various aspects of the system. For example in other states they have compared the extent of wage replacement in long-term as compared to short-term disabilities. In some states they have shown that relative small category of cases accounted for most of the "average" inadequacy of benefits. These studies have been done in California, Wisconsin, Washington, Oregon and New Mexico. It is recommended that Michigan sponsor such a study in order to fully evaluate the adequacy of benefits here. The Workers' Compensation Research Institute is also seeking to include Michigan in future a study regarding benefit adequacy but that program has not started.

The termination of **fringe benefits** issue goes beyond the simple impact in the calculation of average weekly wage. Since the Workers' Compensation Act does not require employers to continue fringe benefits while an individual receives benefits under the Act, many families lose their **health insurance**. Even if weekly benefits are paid under the Act, they are not sufficient to allow injured workers to effectively use the option to continue benefits under "COBRA." If the injured worker is the principal breadwinner in the family and the employment is the source of the family health coverage then the whole family is adversely affected. If no other health insurance is available, the injured worker suffers since the medical care provided under the Act is

limited to the conditions found related to the injury. For example, a worker disabled with knee problems will not have medical expenses covered for heart problems.

Although MCLA 418.356 provides for an increase in benefits after “**2 years of continuous disability**,” this only applies to lower wage rate cases. The increase only comes if the worker has a weekly compensation rate that is less than 50% of the state average weekly wage. The worker also must show 2 years of disability at a level similar to that required for Social Security Disability. However, if the worker is disabled to that extent, it is likely that SSD benefits are being paid and the increase from the 2 year continuous benefit will do little more than reduce the SSD benefit due to caps specified in the SSD program.

There are **age-based reductions** in benefits that need to be addressed. Under present law, when a worker is receiving benefits, there is a 5% reduction in weekly benefits at age 65 and an additional 5% reduction each year thereafter until the weekly benefit rate is cut in half. (MCLA 418.357(1)) Also, there is coordination of benefits (MCLA 418.354) for age based social security with the requirement that the worker apply for social security retirement benefits when eligible to do so. However, the Social Security Administration has revised the age for full retirement on a graduated basis. “Boomers” will have to reach 66 or more to receive full benefits and being forced to apply early would adversely affect long term benefit amounts. The statutory age reduction in the weekly benefit rate commences before the worker is eligible for full social security retirement benefits. Also, workers are staying on the job significantly longer than age 65 and are working for more than “pocket money” to supplement social security benefits. Recent case law regarding aggravation of degenerative conditions has severely limited the ability of an injured older worker to receive benefits. (*Rakestraw*) It may be time to consider expanding the coverage of the Vocational Handicap certification to include diseases of the aging process (MCLA 418.901)

The **vocational rehabilitation** benefits available under the Act need review and possible revision in light of the level of training an unskilled worker must undergo to become part of the modern high tech work force. It is a long road from unskilled work to computer literacy.