NEW YORK STATE OF OPPORTUNITY | Department of Labor

2016 Annual Safety Net Report of the Commissioner

Roberta Reardon, Commissioner

Submitted pursuant to Section 35(4) of the Workers' Compensation Law, Chapter 6 of the Laws of 2007

In 2007, New York State enacted a set of reforms, with the cooperation of labor and business, to improve critical aspects of the workers' compensation system. Initially, the 2007 reforms increased the maximum weekly benefit rate from $400 to $500 per week to begin addressing concerns over inadequate maximum benefits due to years of inflation. Each year thereafter, the maximum benefit rate was to be reevaluated and adjusted based on New York State's average weekly wage. Today, the maximum benefit level has reached $864 per week.

The 2007 reforms also changed the method for determining an injured worker's weekly wage replacement benefit (benefit). Prior to the reforms, injured workers with permanent partial disabilities could be paid a prorated benefit over their lifetime. The reforms set a cap on the number of weeks of benefits that these injured workers are eligible to be paid. Therefore, depending on the level of disability, their benefits are now capped at a maximum of ten years. Only those workers deemed 100% disabled are automatically granted lifetime benefits.

Pursuant to Section 35 of the Workers' Compensation Law, the Department of Labor (Department) is required to issue a report that examines injured workers who have been classified with a Permanent Partial Disability (PPD)[1] Non Scheduled Loss (NSL)[2] since the 2007 workers' compensation reforms. The report shows how many of these injured workers: returned to gainful employment; had their claim re-categorized as Totally Industrially Disabled (TID)[3]; remain subject to statutory duration limitations on PPD benefits (benefit cap); or remain out of work despite the expiration of their indemnity benefits.

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[1] Permanent Partial Disability (PPD) is when part of the employee's wage-earning capacity has been permanently lost. There are two types of PPD benefits, depending on the body part affected and the nature of the permanent disability: schedule loss of use (SLU) and non-schedule loss (NSL). The severity of the disability is measured when the employee has reached maximum medical improvement (MMI).

[2] Non-Schedule Loss (NSL) is a permanent disability involving a part of the body or condition that is not covered by an SLU award (e.g. spine, pelvis, lungs, heart, brain, etc.). Non-schedule benefits are based on the employee's permanent loss of earning capacity. If the work-related accident or date of disablement occurred before March 13, 2007, benefits are payable as long as the partial disability exists and results in wage loss. If the work-related accident or date of disablement occurred on or after March 13, 2007, benefits are payable for a maximum number of weeks as determined by the injured worker's loss of wage-earning capacity.

[3] Totally Industrially Disabled (TID) is when an injured worker is classified with a permanent disability and is adjudged to be totally unemployable.

As of October 4, 2016, there are 22,416 Permanent Partial Disability (PPD) injuries that occurred since the 2007 reforms that could be subject to the statutory benefit caps. Of those, 5,089 injured workers' cases are not subject to the benefit caps due to resolution through alternate paths, such as lump sum settlements pursuant to Workers' Compensation Law Section 32.

Of the remaining 17,327 injured workers subject to the benefit caps, less than three percent have exhausted, or are about to exhaust, their weekly benefits. Specifically, 163 injured workers, or 0.9%,[4] have exhausted their benefits and 327, or 1.9%, are within a year of exhausting their benefits (see Appendix II).

I. Returned to gainful employment

As part of the 2007 reforms, it was expected that injured workers subject to a PPD cap would eventually return to work. Overall, the statistics seem to indicate that very few injured workers that were classified with a permanent partial disability have had their benefits cut off. Of the 163 workers who have exhausted their benefits, approximately 30 have returned to gainful employment. (See Appendix I.)

II. Re-categorized as Totally Industrially Disabled (TID) [5]

Section 35(3) of the Workers' Compensation Law allows an injured worker whose loss of wage-earning capacity has been set at greater than 80% to apply to the Workers' Compensation Board (Board) for a determination of permanent total disability or a total industrial disability due to extreme hardship. Workers can apply within one year of when their lost wage benefits will end.

None of the 163 injured workers who have exhausted their benefits, nor the 327 injured workers who are within one year of exhausting their benefits, are eligible for this extreme hardship redetermination as shown in Appendix II, Table 3.

Additionally, of the remaining 16,837 injured workers, less than 11% (1,788) may be eligible for a redetermination in the future. (See Appendix II, Table 4.)

III. Remain subject to Statutory Benefit Caps

The 2007 reforms set benefit caps on PPD cases where the injured worker was greater than 80% disabled. The maximum benefit period is ten years, or 520 weeks, from the date of classification. Up to 16,837, or approximately 97%, of the injured workers still have more than 50 weeks of statutory benefits available to them. (See Appendix II.)

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[4] According to the Workers' Compensation Board's Claims Information System, these injured workers were classified as PPD, have received continuing payments from the carrier, and appear to have exhausted their total PPD benefit weeks.

[5] As shown in Table 1 in Appendix I, only 14 injured workers (less than 0.1% of all PPD injured workers through October 4, 2016) have been re-categorized as TID. Return-to-work outcomes for these injured workers were included in Table 1 for the first four quarters after the accident quarter. As shown in Table 1, TID injured workers were one of the least likely of any of the PPD injured worker categories to be working in the quarters after the accident. Since there were fewer than ten TID injured workers who had been classified as of July 1, 2015, these injured workers were not reflected in Table 2 due to confidentiality.

IV. Remain out of work despite the expiration of their indemnity benefits

Records indicate that of the 163 injured workers whose benefits were subject to the statutory benefit cap, 133 did not receive wages in New York State in the second quarter of 2016. This does not necessarily indicate that they were not working since we are simply matching the injured worker against the wage data. The wage data does not take into consideration injured workers who have moved out of state, are self-employed, have independent contractor status or qualify for Social Security Disability benefits, or other situations where their income is not reported as "wages."

Finally, the law also requires the Commissioner of Labor to report additional steps the Commissioner thinks are necessary to reduce the number of workers who have neither returned to work nor been re-categorized from permanent partial disability.

The Department has been working with the Board to make information about return-to-work and career services more accessible to both injured workers and employers. Links to the Department's career services have been posted on the Board's website, as well as links to vocational rehabilitation resources and other career centers.

The Board is also reaching out to injured workers who have either exhausted their benefits or are coming up on their benefit cap to provide information and assistance in returning to the workforce, including referral to the Department's Career Centers for job search assistance and services.

There are 96 of these Career Centers throughout the state. They offer injured workers receiving workers' compensation benefits the same services offered to all customers, including job search assistance, job referrals, job search and resume development workshops, referrals to training programs, and other specialized services to work with any disability or limitation the injured worker chooses to disclose. No customer is required to report a disability or that they are receiving workers' compensation.

Appendix I

Returned to gainful employment

Methodology: Return-to-Work Rates of PPD Injured Workers

To estimate return-to-work rates, this report matches post-reform PPD NSL injured worker data provided by the Board with employer-reported Unemployment Insurance wage data from the Department of Taxation and Finance (DTF) through June 30, 2016. This match was done for four quarters after the date of accident and for four quarters after the date of PPD classification. Data subjected to the match includes PPD claims with accidents prior to July 1, 2015, (Table 1) and PPD claims with classifications prior to July 1, 2015, (Table 2) so that a full four quarters of matching results could be reported for each table.

	Count of PPD claims - accidents	**Count of PPD claims - classifications**
Prior to July 1, 2015	20,795	14,385
New: July 1, 2015 to October 4, 2016	21	6,188
Unable to match with wage records	1,600	1,025
Moved out of New York State	-	818
Total as of October 4, 2016	22,416	22,416

Workers' compensation records were matched by social security number against the DTF wage data. Injured workers were included in the match if they received any payments defined as wages from any employer doing business in New York State; those with payments defined as pension were excluded. Note that the DTF wage data does not include information (and possible matches) for injured workers who may be self-employed or who have moved out of New York State. The population of injured workers who moved out of state (based on the Board's case records) was removed from Table 2 below.

The above PPD claims counts were grouped into seven categories:

- Subject to the statutory benefit cap:
  - Injured worker may have returned to work, no continuing payments
  - Injured worker is receiving continuing payments
  - Injured worker reached statutory duration cap
- Not subject to the statutory benefit cap (but included for comparative purposes):
  - Injured worker subsequently deceased
  - Injured worker exchanged PPD benefits for binding Section 32 Agreement
  - Injured worker was subsequently classified as TID
  - Injured worker was subsequently classified as PTD

Results:

Table 1 shows that 20,795 PPD injured workers (with accident dates prior to July 1, 2015) had wages in the accident quarter. As expected, injured workers who are not subject to the statutory benefit cap were less likely to be working in the four quarters following their accident than those injured workers who have lower degrees of disability/loss of wage-earning capacity and are subject to the benefit cap. Please note that while Table 1 shows a relatively high percentage of PPD injured workers with wages in the first and second quarters after injury, these wages may not indicate that the injured worker actually returned to work. The Department cannot specify if the reported wages are for work performed, sick pay, or vacation pay.

Table 1. PPD Injured Workers with Wages in the Accident Quarter and Percent Working in the Following 4 Quarters by PPD Outcome Accident Dates March 13, 2007 – June 30, 2015

PPD Outcome	Injured Workers with Wage Records in Accident Quarter		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total*	1st	2nd	3rd	4th
Subject to Benefit Cap						
Return to work / No CCP[1]	2,237	10.8%	81.1%	72.0%	69.3%	68.6%
Still have CCP / Remain Subject to the Cap	13,722	66.0%	67.8%	51.2%	43.4%	39.0%
Reached Cap	151	0.7%	76.2%	55.0%	51.0%	40.4%
Weighted Average - Cap			69.7%	54.1%	47.1%	43.1%
Not Subject to Benefit Cap						
Injured Worker Deceased	150	0.7%	68.7%	46.7%	42.7%	34.0%
Section 32 Agreement	4,505	21.7%	59.8%	43.5%	36.0%	31.1%
TID Classification	14	0.1%	71.4%	35.7%	35.7%	35.7%
PTD Classification	16	0.1%	75.0%	68.8%	50.0%	50.0%
Weighted Average - No Cap			60.2%	43.7%	36.2%	31.3%
Total	20,795	100.0%				

* Detail does not add up to 100.0% due to rounding.
Note: Accident date must have occurred prior to July 1, 2015 for inclusion in Table 1.

Table 2 shows that PPD injured workers in all outcome categories were much less likely to be working in the quarters following their classification date, compared with the quarters following their accident date.

[1] CCP means the carrier is to continue payment.

Table 2. PPD Injured Workers Residing in New York State or Contiguous States with Wages in the Accident Quarter and Percent Working in the 4 Quarters Following Classification by PPD Outcome* (Accident Dates March 13, 2007 – June 30, 2015)

PPD Outcome	Injured workers with Wage Records in Accident Quarter		Percent Working in Quarters Following Classification Quarter			
	Number	Percent of Total**	1st	2nd	3rd	4th
Subject to Benefit Cap						
Return to work? / No CCP	1,398	9.7%	60.9%	61.4%	60.9%	60.5%
Still have CCP / Remain Subject to the Cap	8,822	61.3%	10.7%	10.0%	9.8%	9.6%
Reached Cap?	143	1.0%	21.7%	21.7%	18.9%	19.6%
Weighted Average - Cap			17.6%	17.1%	16.8%	16.6%
Not Subject to Benefit Cap						
Injured Worker Deceased	135	0.9%	5.9%	3.7%	3.0%	2.2%
Section 32 Agreement	3,876	26.9%	15.1%	15.3%	16.1%	17.7%
PTD Classification	11	0.1%	9.1%	9.1%	9.1%	9.1%
Weighted Average - No Cap			14.8%	14.9%	15.6%	17.2%
Total	14,385	100.0%				

* Injured workers with TID classification are not included on this table since wage data cannot be reported for fewer than ten injured workers due to confidentiality restrictions.
** Detail does not add up to 100.0% due to rounding.
Note: Classification Date must have occurred prior to July 1, 2015, for inclusion in Table 2.

Appendix II

An analysis of the Board's claims data was conducted to estimate the number of weeks remaining for post-reform PPD claims that are subject to the statutory benefit cap. Of the 17,327 claims (as of October 4, 2016) that have been subject to the benefit cap, 163 claims, or 0.9%, have exhausted their benefits, 327 claims, or 1.9%, are within a year of exhausting their benefits, and the remaining 16,837 have more than 50 weeks of statutory benefits available. In fact, 77% of injured workers (13,328) have over 200 weeks (approximately 3.8 years) of benefits remaining. See Table 3.

Table 3. Estimated Benefits Weeks Remaining in Post-Reform PPD Claims

Estimated Benefits Remaining	Benefit Cap Expired	Actively using PPD benefits	Possibly Returned to Work / Used some PPD benefits	Possibly Returned to Work / No PPD benefits	Total	Percent*
0 Weeks	163	-	-	-	163	0.9%
1 to 50 Weeks	-	319	8	-	327	1.9%
51 to 100 Weeks	-	603	9	-	612	3.5%
101 to 200 Weeks	-	2,536	58	-	2,594	15.0%
201 to 300 Weeks	-	5,397	199	1,355	6,951	40.1%
301 to 400 Weeks	-	5,002	134	415	5,551	32.0%
Greater than 400 Weeks	-	708	11	107	826	4.8%
Unknown	-	219	-	84	303	1.7%
Total	163	14,784	419	1,961	17,327	100.0%

Source: As of October 4, 2016. NYS Workers' Compensation Board Claims Information System.

* Detail does not add up to 100.0% due to rounding.

Of the 17,327 injured workers who are subject to the statutory duration cap, 1,788, or 10%, have a degree of disability that makes them eligible to apply for lifetime benefits through an extreme hardship redetermination[6] (see Table 4). None of the 163 injured workers whose benefits have expired nor the 327 injured workers whose benefits will be exhausted in the coming year (as shown in Table 3, above) are eligible for such lifetime benefits. Records indicate that none of these injured workers had a loss of wage-earning capacity greater than 80%.

[6]Workers' Compensation Law Section 35(3) states that if an injured worker has a loss of wage-earning capacity greater than 80%, the injured worker can request that the Board reclassify him or her, within one year of the exhaustion of indemnity benefits under Workers' Compensation Law Section 15(3)(w), with either a total disability or a total industrial disability due to factors reflecting extreme hardship.

Table 4. Estimated Benefits Remaining in Post-Reform PPD Claims with Degree of Disability Greater Than 80%

PPD Outcome	Estimated Benefits Remaining	Actively using PPD benefits	Possibly Returned to Work / Used some PPD benefits	Possibly Returned to Work / No PPD benefits	Total
Return to work? / No CCP	301 to 400 Weeks	-	4	-	4
	Greater than 400	-	7	63	70
Still have CCP / Remain Subject	101 to 200 Weeks	52	-	-	52
	201 to 300 Weeks	270	-	-	270
	301 to 400 Weeks	899	-	-	899
	Greater than 400	493	-	-	493
Total		1,714	11	63	1,788