Washington Research Council

Policy Brief

February 20, 2013 PB 13-03

More Reforms for Workers' Compensation

Briefly

Although 2011 reforms to workers' compensation have yielded savings, the system continues to face financial hardships that will require further cost-saving changes. Several bills recently passed by the state Senate would help.

A compromise between business and labor led to significant workers' compensation reforms in 2011. The reforms allowed workers, for the first time in the state, to opt for a structured settlement and close their claims. But, although significant, the reforms enacted were also modest: They arbitrarily limited the option of these agreements to workers aged 55 and older. Further, the system has not been working as intended, making it difficult for willing workers to get a settlement.

Meanwhile, although the legislation has yielded some savings, the system continues to face severe financial hardships that will require further cost-saving changes.

2011 Reforms

The 2011 compromise (EHB 2123) resulted in several important policy changes, including allowing limited structured settlements for certain workers, suspending cost-of-living adjustments for 2012, offsetting pension benefits for prior permanent partial disability awards, creating a Stay-at-Work program in which employers receive wage subsidies for giving injured workers transitional work, and establishing a health care provider network. (For more details on the reforms, see our 2011 brief, "New Reforms to Workers' Compensation." For more details on why the reforms were necessary, see "The Time Has Come to Fix Workers' Compensation.")

As enacted, Washington's version of voluntary settlements applies only to workers who are at least 55 years old (or 53 on or after Jan. 1, 2015, or 50 on or after Jan. 1, 2016). Rather than allowing workers to agree to a lump sum payment, the legislation requires that the claim be resolved with a structured settlement, and medical benefits are not eligible. The settlements are provided via a periodic payment schedule of 25 to 150 percent of the average monthly wage, but the first payment may be up to six times the average monthly wage. For those without representation, an industrial appeals judge must ensure that the worker "has an adequate understanding of the agreement and its consequences," and the judge may only approve the agreement if it is in the "best interest of the worker." A streamlined approval process is allowed for workers with attorneys, but all agreements must be approved by the Board of Industrial Insurance Appeals (BIIA).

Implementation of the reforms has not been entirely smooth. In one case, a worker's structured settlement agreement was rejected by the BIIA. In considering whether the agreement met the "requirements of a claim resolution structured settlement agreement," the BIIA said, "As part of that determination, we believe we must evaluate whether the agreement is in the best interest of the worker." This, despite the fact that the worker was represented by an attorney. As a dissent argues, "Because the Legislature did not identify best interest as a factor for consideration by the Board when a worker is represented by an attorney, the Board is precluded from applying it to Mr. Zimmerman's CRSSA." (*Zimmerman*)

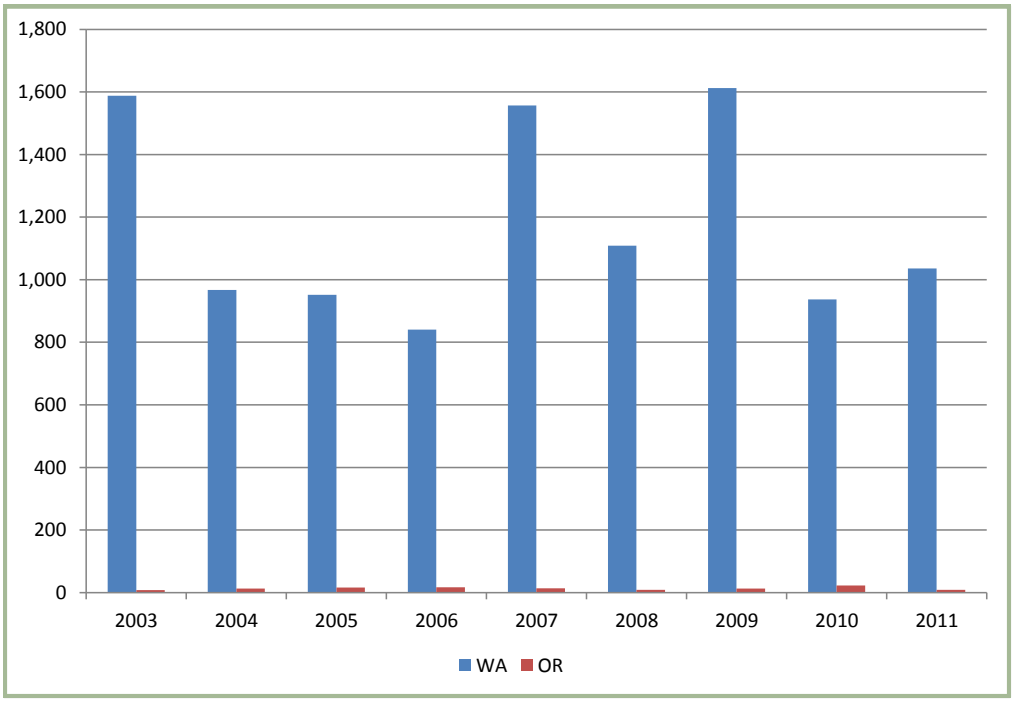


Chart 1: Total Permanent Disability Pensions Awarded

So far only 28 structured settlements have been approved (15 with the state fund and 13 with self-insurers). More work is necessary to ensure that implementation follows legislative intent and to make this option available to more workers, thereby reducing pension costs and increasing savings. As the 2011 reform legislation notes, "controlling pension costs is key to a financially sound workers' compensation system for employers and workers."

A High Cost System

Washington paid the highest benefits in the nation in 2010 (the most recent data available), at $865.67 dollars per covered worker. This amount is almost twice as high as the national average of $443.47, and well above benefits paid by the second- and third-highest states, Alaska ($740.22) and California ($663.08). By this measure, Washington paid the highest benefits in the country in 2008, 2009 and 2010, and they increased each year. In terms of benefits as a percent of covered wages, Washington paid the second most (1.80 percent), behind Montana (1.95 percent). (WashACE)

We talk about the high benefits of Washington's system because good data on costs are not available. As the National Academy of Social Insurance wrote in its 2012 report on workers' compensation, "several studies . . . demonstrate that the level of statutory benefits is a major determinant of the costs of workers' compensation in a state" (NASI).

One driver of costs is total permanent disability (TPD) pensions. In January 2011, Governor Gregoire made several reform proposals. As noted at the time, "one of every 19 time-loss claims becomes a lifetime pension—a rate that has doubled in the past 10 years. And lifetime pension claims comprise half of all workers' compensation costs" (L&I 2011a). Indeed, "On pension awards, Washington is an outlier. The Upjohn Institute estimated that Washington has 'two to four times the [total permanent disability] incidence of the highest other states'" (WRC 2011b).

In fiscal year (FY) 2011, the Department of Labor and Industries (L&I) awarded 1,036 TPD pensions, compared with 9 awarded in Oregon in calendar year 2011. (L&I awarded 925 in FY 2012; Oregon's 2012 numbers are not yet available.)

Oregon first allowed voluntary settlements (called claim disposition agreements, or CDAs) in 1990. They are one reason Oregon's TPD pensions are so much lower than Washington's. In Oregon, the number of TPD awards has fallen about 95 percent since 1988. Further, "Since 1991, the board has approved an average of about 3,200 CDAs per year. There were 3,180 CDAs in 2011" (ODCBS).

System Solvency

Audits of the workers' compensation system over the past three years have placed high probabilities on funds becoming insolvent. (The accident fund was insolvent in 2010.) The recession has contributed, but the audits also point to time loss claim duration, frequency of pension awards, and insufficient premium rates. (SAO 2010)

The December 2011 audit found that although contingency reserves increased

	June 30, 2010	June 30, 2011	June 30, 2012
Accident	($358,125)	$63,250	$34,599
Medical Aid	$539,335	$716,119	$545,771
Combined	$181,210	$779,369	$580,370

Table: Contingency Reserves (Dollars in Thousands)

in FY 2011, they were "at historically low levels." According to the audit, the reserves increase was due to 2011 reforms that "created a structured settlement option for injured workers and a statewide medical provider network;" "a premium rate increase;" and "improved investment earnings." (SAO 2011)

Unfortunately, the reserve situation did not continue to improve in FY 2012. To reach a target contingency reserve to loss ratio based on other states' reserves, the actuarial firm estimated that rates would have to increase by 7 percent for the accident fund and by 15.2 percent for the medical aid fund annually over five years. (SAO 2012) (According to L&I, reserves had grown to $804 million by September 30, 2012, and are projected to be $720 million as of December 31, 2012.)

Premium Rates

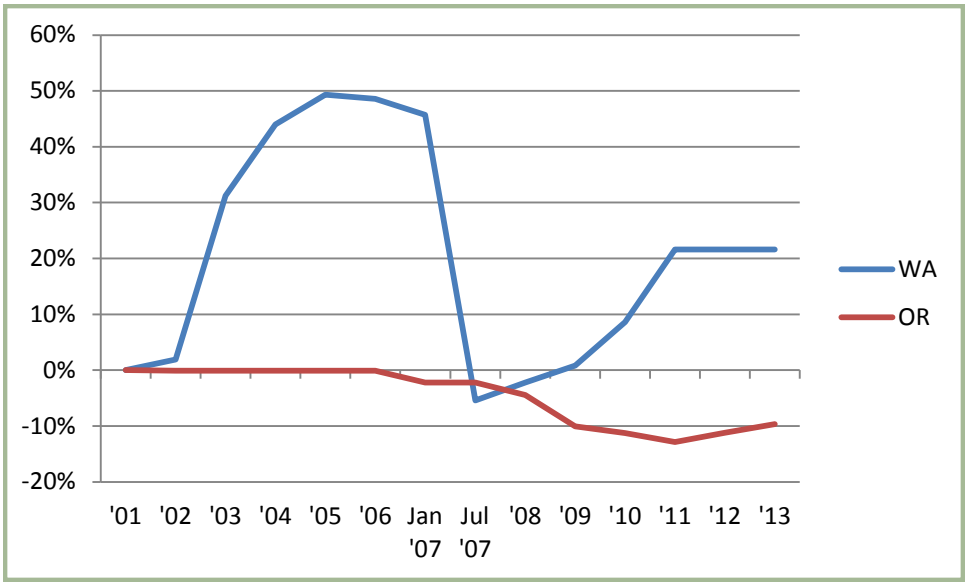
For 2012, L&I did not increase overall premium rates. First proposing a 2.5 percent average increase, L&I opted instead to keep overall rates flat "due to public testimony about the impact of the recession and recent positive trends in claims duration" (L&I 2011b).

There was also no overall increase in premiums in 2013. In proposing the rate, L&I said, "Savings due to reforms are beating expectations. L&I is now projecting the reforms passed in 2011 will save $1.5 billion over 4 years, $300 million higher than originally estimated" (L&I 2012a).

The indicated rate was actually negative 4.2 percent, and "without the savings from the reform legislation, the 2013 indicated rate would have been approximately 4 percent" (L&I 2012b). Because L&I opted to hold the overall rate at the 2012 level, $82 million will be available this year to beef up reserves.

As of June 30, 2012, the combined contingency reserve was about 5 percent of liabilities. L&I's informal target range for the contingency reserve as a percent of liabilities is 8.7 percent to 29.6 percent (or $1.034 billion to $3.524 billion). (In 2007, an outside actuarial consultant for L&I estimated the likelihood that the reserves would become insolvent at various percentages of liabilities; those likelihoods were deemed most acceptable within this range.) At a September 2012 meeting of the Workers' Compensation Advisory Committee, L&I proposed a goal of a combined contingency reserve of 14 percent of liabilities within 10 years ($1.682 billion). L&I would also like to reduce the pension discount rate from 6.5 percent to 4.5 percent. These changes would require rate increases of up to 5.5 percent a year. (L&I 2012b)

Chart 2: Cumulative Rate Increases



2013 Legislation

On February 4, three workers' compensation bills were passed by the Senate:

- SB 5112 would allow retrospective rating plan employers and groups to schedule medical examinations and consultations (only with those providers on L&I's approved examiner list), and vocational rehabilitation assessments (again, only with providers approved by L&I). L&I "retains the final authority over decisions with respect to any individual claim."

- ESSB 5127 would keep the existing structured settlements law largely in place. It modifies the age requirement so that a worker could agree to a structured settlement at the age of 40. The bill also specifies the original intent of the 2011 law, that if a worker is represented by an attorney, BIIA approval is not contingent on an industrial appeals judge's determination that the agreement "is in the best interest of the worker."
- ESSB 5128 would replace the existing structured settlements law, and instead allow injured workers of any age to enter into voluntary settlement agreements (VSA). VSAs would have to be approved by the BIIA, and they could resolve claims for all benefits except medical. If a worker does not have an attorney, the worker must meet with a settlement officer "to ensure that the worker has an adequate understanding of the settlement proposal and its consequences." Additionally, the settlement officer may only approve the VSA for a non-represented worker if it is in the worker's best interest. Further, when a worker is on temporary total disability, his employer may provide him light duty or transitional work. In such cases, the worker's disability payments would stop when the light duty or transitional job starts. The employer would no longer have to get a doctor's permission in advance of the work.

Comment

In order to meet the goals L&I has set for increasing the system reserves, premium rate increases will be required. To reduce the impact on employers, it is important to continue to reform the system to bring it more in line with the rest of the country. Allowing more workers the option to settle their claims, whether with structured settlements or lump sum payments, would be a good thing.

References

Department of Labor and Industries (L&I). 2011a. "Governor Gregoire proposes improvements to workers' comp." January 5.

-----. 2011b. "No increase for workers' compensation rates in 2012." December 1.

-----. 2012a. "No overall rate increase for workers' comp rates in 2013." September 17.

-----. 2012b. Workers' Compensation Advisory Committee Meeting Minutes. September 17.

In Re: Daniel B. Zimmerman, Docket No. 12 S0007, Board of Industrial Insurance Appeals (2012).

National Academy of Social Insurance (NASI). 2012. "Workers' Compensation: Benefits, Coverage, and Costs, 2010." August.

Oregon Department of Consumer and Business Services (ODCBS). 2012. "2012 Report on the Oregon Workers' Compensation System." September.

Washington Alliance for a Competitive Economy (WashACE). 2012. "2013 Competitiveness Redbook."

Washington Research Council (WRC). 2011a. "The Time Has Come to Fix Workers' Compensation." PB 11-03. March 8.

-----. 2011b. "New Reforms to Workers' Compensation." PB 11-14. June 8.

Washington State Auditor's Office (SAO). 2010. "Worker's Compensation Program, July 1, 2009 through June 30, 2010." December 30.

-----. 2011. "Worker's Compensation Program, July 1, 2010 through June 30, 2011." December 27.

-----. 2012. "Worker's Compensation Funds, July 1, 2011 through June 30, 2012." December 28.

WASHINGTON RESEARCH COUNCIL
16300 Christensen Road, Ste. 207
Tukwila, Washington 98188
206-467-7088
fax: 206-467-6957
www.researchcouncil.org