

North Dakota Workers Compensation

**Interim Permanent Partial  
Impairment Study**

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## History of PPI Benefits in North Dakota

Originally, the Workers Compensation Act did not provide permanent partial impairment benefits, but rather authorized permanent partial disability benefits (1919 N.D. Laws ch. 162, Section 3E). It was not until 1974, when the North Dakota Supreme Court determined that an injured worker was entitled to both a permanent total disability award and a permanent partial disability award, that the concept of permanent partial impairment began developing into what it is today under North Dakota's statutory scheme. (See Buechler v. N.D. Workmen's Compensation Bureau, 222 N.W.2d 858 (N.D. 1974).)

In 1919, an injured worker received either total disability or temporary partial disability benefits, or an award of permanent partial disability benefits. An injured worker's permanent partial benefit amount was calculated by multiplying 66 2/3% of his weekly wages by a number of weeks specified by disability percentage. For example, an injured worker with a 1% disability received 5.2 weeks of benefits (5.2 weeks of benefits were awarded for each percentage of disability, so an injured worker with a 10% disability received 52 weeks of benefits).

In 1927, the number of weeks awarded was changed to round numbers; for example, the 5.2 weeks referenced above was changed to five weeks. Also in 1927, a schedule of specific benefits for specific injuries was created, and later was codified at section 65-05-13, N.D.C.C. For instance, an injured worker who suffered the loss of an arm at the shoulder was awarded 234 weeks of benefits subject to a minimum of \$1,404 and a maximum of \$4,680.

The schedule was amended in 1929 to include some new specific injuries and to change some of the benefit amounts, decreasing some and increasing others. In 1943, the schedule was amended to remove the minimum and maximum dollar amounts and to provide only an award based on a number of weeks.

In 1949, the benefit amount for permanent partial disability and scheduled injuries was changed from 66 2/3% of weekly wages to \$22.00/week. The benefit amount was increased in 1955 to \$31.50/week, and the number of weeks awarded for scheduled injuries also was increased. For example, the number of weeks awarded for loss of an arm at the shoulder increased from 234 to 250. In subsequent years, the rates changed as follows:

<u>Year</u>	<u>Rate</u>
1973	\$40.00
1983	\$60.00

In 1989, the weekly benefit amount was changed from \$60.00/week to 33 1/3% of the state's average weekly wage (SAWW). In 1989, the SAWW was \$313.00 so the weekly

benefit equaled \$104.33. As such, an injured worker receiving a 10% impairment would receive \$5,211.50 (\$104.33 X 50). Prior to the 1989 increase, an injured worker with a 10% impairment would have received \$3,000.00 (50 weeks X \$60.00).

In 1995, the PPI benefit system underwent appreciable change. Sections 65-05-12, 65-05-13, and 65-05-14 were repealed, and section 65-05-12.2 was created. Under the new provision, the benefit amount for a worker injured after July 31, 1995 was 33 1/3% of the SAWW; the benefit amount for an injured worker injured before August 1, 1995, was \$122.00/week.

More significantly, the statute was revised in 1995 to create a minimum PPI threshold of 16%. Two factors seem to have primarily influenced the creation of that threshold. The first was that most adults have some degree of disability no matter what their work injury history may be (see Exhibit 1 - testimony extract of Ms. Julie Leer, bureau counsel, before the Senate Industry, Business, and Labor Committee on January 31, 1995).

The second factor was the increase that occurred in 1989 when the weekly PPI benefit jumped by about 74% (from \$60 to \$104.33).

Exhibit 2 shows a history of PPI awards from 7/1/87 - 6/30/99. This exhibit is arranged to show the number of PPI awards per fiscal year with a breakout of those awards by type of claim (either time-loss or medical-only). The number of PPI awards grew steadily through the mid-1990's, reaching its peak during the 1995-1996 fiscal year when 1,502 PPI awards were made. By contrast, only 294 PPI awards were made in the 87-88 fiscal year. Thus, in eight years the frequency of PPI awards had more than quintupled.

Another intent behind the PPI benefit structure change in 1995 was to award higher benefits to those who were more severely injured. For those with impairments at approximately 50% or more, awarded weeks were increased. For example, an injured worker with a 60% impairment under the old law received 300 weeks of benefits. Under the 1995 law, a 60% impairment produced a benefit obligation of 400 weeks. For someone with a 90% award, the increase was from 450 weeks to 1,000 weeks.

In 1999, the legislature again addressed permanent impairment awards by increasing awards in the 16% to 26% range by five weeks at each percentage. For example, a 16% award went from five to ten weeks; a 26% award went from thirty to thirty-five weeks. The legislature also significantly increased benefits for those with impairments of 50% or more. A 60% impairment jumped from 400 weeks to 465 weeks. A 90% award jumped from 1,000 to 1,215 weeks.

Another change in the 1999 legislation is that the benefit rate to be paid for impairments is the rate in effect on the date the evaluation is accomplished. That is, if a claimant was injured in 1996 but has his impairment evaluation in 2000, his benefit rate will be 33 1/3% of the SAWW in effect in the year 2000.

The actuarial estimate of the fiscal impact of HB 1422 was an increase in the rate level of 1.5%. An increase in discounted reserves was estimated to be between \$7 million and \$9 million.