STUDY OF THE WORKMEN'S COMPENSATION LAW IN HAWAII

LEGISLATIVE REFERENCE BUREAU

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STATE OF HAWAII

STUDY OF THE WORKMEN'S COMPENSATION LAW IN HAWAII

by
STEFAN A. RIESENFELD
Professor of Laws
University of California

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LEGISLATIVE REFERENCE BUREAU

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FOREWORD

The Legislative Reference Bureau was requested by the First State Legislature to examine Hawaii's workmen's compensation law with the purpose of clarifying and recodifying the statutory provisions. It soon became apparent that to review the law in such a way as to be able to make worthwhile suggestions for its recodification necessitated comprehensive study of the workmen's compensation program in Hawaii. We were fortunate in that Dr. Stefan A. Riesenfeld, Professor of Law at the University of California (Berkeley), a recognized authority on workmen's compensation, agreed to undertake the conduct of such a study for the Bureau.He was assisted in the preparation of portions of the report by V. Carl Bloede, Associate Researcher, Mrs. Patricia K. Putman, Assistant Researcher, and John E. Parks IV, Assistant in Research, members of the Bureau staff.

The report is designed to accomplish several objectives: (a) provide a review and analysis of the State's present workmen's compensation legislation and its practical operation, including the costs of insurance (chapters 1 through 6); (b) identify major changes in program orientation and administration which appear desirable (chapter 7); (c) identify formal, technical and minor improvements which should be made in the State law (chapter 8); and (d) provide a draft of a recodified workmen's compensation law which removes ambiguities and inconsistencies in the present legislation and which may be enacted without effecting major substantive or procedural changes in the existing law (Appendix A).

The cooperation and interest of the Department of Labor and Industrial Relations and particularly the Workmen's Compensation Division of that department, the Insurance Division of the Department of Treasury and Regulation, the Hawaii Casualty and Insurance Rating Bureau, the American Federation of Labor and Congress of Industrial Organizations, the International Longshoremen's and Warehousemen's Union, the Hawaii Employers Council, and the National Council on Compensation Insurance facilitated the preparation of this report. The Bureau thanks the members of these organizations and the other individuals who have helped.

Tom Dinell
Director

January, 1963

INTRODUCTION

Workmen's compensation is the oldest branch of social insurance operative in the United States. It was introduced after prolonged study of similar reforms that had been enacted in various European countries during the last quarter of the nineteenth century.[1] Its initial development may be attributed to the need for protecting workmen against some of the physical and economic hazards that were inherent in the then rapidly emerging industrial society. It was necessary, however, in order to achieve this objective, to bring into being new legal principles so as to remedy a situation in which employers, as a result of both civil law and common law rules, were responsible for injuries or death of their employees only in cases of legal fault, in which employees or their dependents had the burden of proof of the negligence of the employer and, in cases of dispute, had to resort to protracted and costly litigation.

A New System of Legal Relations

Workmen's compensation then is a branch of social insurance for workers aimed at protection against the consequences of work injuries. It replaces the traditional doctrines of tort liability with a new and independent system of legal relations. The basis of the employees' rights and remedies and the correlative duties of the employers must not be sought in notions of tort or contract law. Rather, workmen's compensation legislation creates a novel statutory relationship between the parties in which, generally speaking, the right to benefits depends on three elements: the occupational status of the injured worker, the character of the harm sustained, and the connection of the harm with the employment. More specifically, the right to benefits in a particular jurisdiction in an individual case depends upon each of the three elements as defined and limited by the applicable workmen's compensation legislation. Important variations among the workmen's compensation laws of the individual states are due to the manner in which these three basic elements are spelled out. Needless to say, however, the principal differences today lie in the measure and magnitude of the benefits afforded.

The Goals of Compensation Legislation

The goals of workmen's compensation legislation have undergone certain shifts during the half-century in which the system has

[1]For a more complete discussion of the history, nature, types and constitutionality of workmen's compensation legislation see Stefan A. Riesenfeld and Richard C. Maxwell, Modern Social Legislation (Brooklyn: The Foundation Press, Inc., 1950) pp. 127-153; U.S. Dep't of Labor, Growth of Labor Law in the United States, 157-165 (1962).

been operative in the United States. While in the early years the primary emphasis rested on the payment of cash benefits desiged to provide income maintenance for the injured employee or his surviving dependents for a more or less limited period of time, the modern approach seeks satisfaction of more ambitious aims. The present-day goals of workmen's compensation are threefold: (1) medical restoration and physiological rehabilitation as far as possible; (2) return of the permanently disabled worker to some gainful employment whenever possible, even where new skills must be developed; (3) provision of substantial relief for the economic and other losses incurred. The embodiment of these goals in workmen's compensation legislation is a clear recognition that society bears a responsibility to insure that an injured worker and his family must not shoulder the whole burden of work injuries and therefore ought to provide the means necessary to restore him, as far as possible, to a productive role in society and to compensate him and his family, in an adequate manner, for his economic and physical losses.

The Theory of Financing the Costs of Compensation

The traditional theory underlying the financing of the costs of compensation is deceptively simple: namely, that the cost of the product should include the cost of the trade risk which could and should be shifted to the consumer. The theory is still widely accepted, but it is recognized today that compensation laws only achieve a division of a part of the social cost between labor and industry and not a passing on of the full costs to the consumer as an element of the price of the final product. Actually, the financial burden of workmen's compensation is a charge on society which is distributed in a complex fashion between labor, industry, consumers and citizens at large, although the exact incidence is a matter of debate.

The Development of Compensation Legislation in Europe and the United States

Workmen's compensation insurance was well-established in Europe long before its acceptance in the United States. Germany was the first nation to meet the problems posed by the traditional doctrine of tort liability by replacing it with the establishment of new statutory employer-employee relationships. In 1871 Germany enacted an employers' liability law. This was followed in 1881 by a proposal for a comprehensive system of social insurance, a measure which had its origin in the desire of the government to counteract the political gains of the Social Democrats. In 1874 the basic Accident Insurance Act was passed. This in turn was supplemented by a series of social accident insurance laws.[2] Other

[2]For details see Brooks, Compulsory Insurance in Germany, in Fourth Special Report of the U.S. Commissioner of Labor 84 (1893); and 1 Workmen's Insurance and Compensation Systems in Europe, 24th Ann. Rep. of the Commissioner of Labor, 1909, 983 (1911).

Continental countries followed the German example.[3]

The course of developments in England was similar to that in Germany.[4] The defenses based on (1) common employment or the fellow servant rule, (2) assumption of risk, and (3) contributory negligence as a bar to redress, all screened the employer from the hazards of tort liability. Beginning with the Employer's Liability Act of 1880, a series of changes were made in the English law which included the passage of the first workmen's compensation act in 1897 and culminated in the passage of the National Insurance (Industrial Injuries) Act in 1946, which placed the provision for protection against interruption of earnings from industrial injuries into a general system of social insurance.

The movement for similar legislation in the United States began just before the turn of the century, stimulated in part by the release of several government reports.[5] There was growing agreement that the then existing system of employers liability was unjust and uneconomical, but there was much controversy as to the proper remedy. The first attempt at a radical change in the traditional system of employers liability was made in Maryland in 1902 when a cooperative accident fund was established by an Act which was shortly thereafter declared unconstitutional.[6] Bills in several states proposing investigatory commissions on the subject of employers liability were defeated in the early 1900's. The first federal compensation act was passed in 1908, but it applied only to limited classes of employees of the federal government.[7]

The year 1909 was the real beginning of compensation legislation in the United States. A state compensation insurance fund for the coal mining industry was established in Montana in that year,[8] and three states (Minnesota, New York and Wisconsin) established commissions to study compensation legislation. The United States and other states appointed similar commissions the following year. The reports of these investigatory commissions generally agreed that: (1) large portions of all fatal and non-fatal injuries remained

[3]Compensation acts of general coverage and with compulsory or optional insurance features were passed by Austria (1887), Norway (1894), Finland (1895), Denmark (1898), France (1898), Italy (1898), Spain (1900), Netherlands (1901), Sweden (1901), Luxembourg (1902), Belgium (1903), Russia (1903) and Hungary (1907).

[4]For a history of the British Compensation law until 1941 see Wilson and Levy, Workmen's Insurance and Compensation (2 vols. 1939 and 1941).

[5]Op. cit. supra note 2. See also Willoughby, Workingmen's Insurance (1898) and Seventeenth Annual Report of the Bureau of Labor Statistics of the State of New York for 1899, 555 (1900).

[6]Md. Laws 1902, c. 139; see The State Cooperative Accident Fund of Maryland, 9 Bull. Bureau of Labor 645 (1904); Franklin v. United Railways and Electric Co. of Baltimore, 2 Baltimore City Reports 309 (1904).

[7]35 Stat. 556, c. 236 (1908).

[8]Mont. Laws 1909, c. 67 declared unconstitutional because of the failure to exonerate the employer from further liability, Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 119 Pac. 554 (1911).

uncompensated; (2) the sums actually paid were frequently inadequate token compensation; (3) recoveries were obtained only after protracted litigation; (4) the attorneys of the injured workmen retained a large share of the sum actually obtained; and (5) an undue portion of the premiums paid by industry went to the insurance companies for administrative costs and profits and was thus socially wasted.

By 1911 twelve states had passed compensation or industrial insurance acts which, while they varied considerably from jurisdiction to jurisdiction, were all designed to remedy the situation (or at least a segment thereof) which had grown up under the regime of traditional tort principles.[9] Most other states followed suit. Hawaii adopted its first compensation law in 1915, an Act which is discussed in greater detail in chapter I. The last states to enact compensation legislation were Arkansas (1940) and Mississippi (1948). Lingering doubts as to the general constitutionality of compensation legislation were removed in 1917 when the United States Supreme Court upheld the existing types of compensation laws.[10]

[9]Md. Laws 1910, c. 153; N.Y. Laws 1910, c. 674 and c. 352; Cal. Stats. 1911, c. 399; Ill. Laws 1911, 314; Kans. Laws 1911, c. 218; Mass. Acts and Res. 1911, c. 751; N.H. Laws 1911, c. 163, N.J. Acts 1911, c. 95; Nev. Stats. 1911, c. 183; Ohio Laws 1911, 524; Wash. Laws 1911, c. 74; Wis. Laws 1911, c. 50.

[10]New York Central R.R. Co. v. White, 243 U.S. 188, 37 Sup. Ct. 247, 61 L.Ed. 667 (1917); Hawkins v. Bleakly, 243 U.S. 210, 37 Sup.Ct. 255, 61 L. Ed. 678 (1917); Mountain Timber Co. v. Washington, 243 U.S. 219, 37 Sup. Ct. 260, 61 L.Ed. 685 (1917).

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CHAPTER 1

DEVELOPMENT OF THE HAWAII LAW

Workmen's compensation laws in the United States contain provisions for the regulation of four major categories of subjects: (a) coverage in its occupational, risk-selective, and geographical aspects; (b) types and measures of benefits; (c) administrative and procedural organization; and (d) security of payment. The coverage provisions define who will be covered and under what conditions; the benefit provisions spell out the extent to which he will be covered; the administrative provisions specify the manner in which a claim will be determined; and the security payment provisions define how the receipt of benefits by the persons entitled thereto is assured. When changes occur in workmen's compensation laws in Hawaii and elsewhere, it is the provisions within these major categories and not the categories themselves which are changed.

Summary of the development of the Hawaii law

Hawaii adopted its first workmen's compensation act in 1915, based, in large measure, on the uniform act, drafted by the commissioners on Uniform State Laws. The Hawaii Act, like compensation laws in other jurisdictions, in the course of time, has been subjected to a long sequence of amendments. As a result, the present form of the statute bears the telling marks of patchwork, and many incongruities and ambiguities have crept into the once fairly consistent scheme of the legislation. Broadly speaking the subsequent alterations have extended to all four aspects of the law, viz. coverage, types and measures of benefits, administration and security of payment.

Coverage. The coverage of the Hawaii law has always been relatively broad. It has also been compulsory and exclusive. Over the years it has been extended to include formerly excepted classes of employees with higher earnings until now all employees in industrial employment and all public employees are covered regardless of the amount of their earnings.

Types and Measures of Benefits. Generally speaking, workmen's compensation laws in the United States provide for several types of benefits, usually classified as medical benefits and indemnity benefits, with a subdivision of the latter into death benefits and disability benefits. Indemnity benefits are usually--but to a varying degree--earnings-related. Most American benefit formulae specify one or more specific rates of compensation measured as a percentage of the weekly wage and then limit their operation by means of specified minima and maxima as to weekly benefit amount,

duration, aggregate amount or combinations of such ceilings. The Hawaiian Act conforms to this pattern.[1]

The most important changes which have occured in the Hawaii law have affected the benefit formulae. These amendments were made for two principal purposes: (a) to liberalize and balance the benefit structure, and (b) to adjust the amounts so as to keep pace with the rising wage levels. This latter aim was necessitated because of the fact that benefits do not automatically rise with the wage level but are subject to fixed ceilings which need constant adjustment in times of inflationary pressures.

Table 1 shows the development of the provisions specifying: (a) rates of compensation for various types of injuries; (b) maximum weekly benefit payments for various types of injuries; (c) minimum weekly benefit payments for various types of injuries; and (d) upper and lower limits on earning base used in the computation of death benefits.

A review of the data in the table indicates the continual upward adjustment in benefit levels and liberalization of benefit provisions. The compensation rates for disability have increased from 50 and 60 per cent to 66-2/3 per cent; the maximum weekly benefits for total disability, both permanent and temporary, from $18 to $75; the maximum weekly benefit for permanent partial disability from $12 to $112.50 and for temporary partial disability from $12 to $50; the compensation rate for death benefits from 25 and 60 per cent to 35 and 66-2/3 per cent; and the maximum weekly earning base from $36 to $112.50. Parallel increases have occurred in the durational limits for which benefits may be paid and in the aggregate amounts of such benefits.

Other significant changes relating to benefits include the adoption and expansion of a catalogue of schedule injuries covering all permanent injuries to listed members; the shift from compensation based on reduction of earning capacity in cases of permanent partial disability to that based on loss of physical function; and the establishment of a special fund which can be drawn on to pay certain benefits beyond the statutory limits.

Administration. Initially, responsibility for administration of the workmen's compensation law was lodged in county industrial accident boards. A fundamental reorganization of the administration of the law occurred in 1939 with the creation of a department of

[1]For the general structure of and trends in the benefit formulae of the various jurisdictions see the comparative surveys of workmen's compensation laws compiled and published from time to time originally by the U. S. Bureau of Labor Statistics and now by the Bureau of Labor Standards. The first of them was U. S. Bureau of Labor Statistics, Bulletin No. 126, 1914; the current one is U. S. Bureau of Labor Standards, Bulletin No. 161, State Workmen's Compensation Laws, 1960 with 1961 Supplement.

Table 1

CHANGES IN COMPENSATION RATES, BENEFITS AND EARNING BASE
FOR TOTAL DISABILITY, PARTIAL DISABILITY, AND DEATH
UNDER HAWAII'S WORKMEN'S COMPENSATION LAW
1915 TO PRESENT

Type of Claim	CHANGES EFFECTIVE AS OF:										
Comparative Item	July 1 1915	May 2 1917	May 2 1923	April 27 1927	May 12 1939	May 11 1943	July 1 1949	May 10 & July 1 1951	July 1 1955	July 1 1957	July 1 1959
Total Disability, Permanent:											
Compensation Rate (per cent)	60	60	60	60	60	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3
Maximum Weekly Benefit (dollars)	18	18	20	20	25	25	35	35	50	75	75
Minimum Weekly Benefit (dollars)	3	3	5	5	5	8	8	8 [a]	18	18	18
Total Disability, Temporary:											
Compensation Rate (per cent)	60	60	60	60	60	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3
Maximum Weekly Benefit (dollars)	18	18	20	20	25	25	35	35	50	75	75
Minimum Weekly Benefit (dollars)	3 [b]	3 [b]	5 [b]	5 [b]	5 [b]	8 [b]	8 [b]	8 [b]	18 [b]	18 [b]	18 [b]
Partial Disability, Permanent, Scheduled:											
Compensation Rate (per cent)	50	50	50	50	60	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3
Maximum Weekly Benefit (dollars)	12	None [c]	None [c]	None [c]	None [c]	25	35	35	50	75	112.50
Minimum Weekly Benefit (dollars)	None	None	None	5 [d]	5 [d]	8 [b&e]	8 [b&e]	8 [b&e]	18 [b&f]	18 [b&f]	18 [b&f]
Partial Disability, Permanent, Non-Scheduled:											
Compensation Rate (per cent)	50	50	50	50	60	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3
Maximum Weekly Benefit (dollars)	12	None [c]	None [c]	None [c]	None [c]	None [c]	None	35 [g]	50	75	112.50
Minimum Weekly Benefit (dollars)	None	None	None	5 [d]	5 [d]	8 [d]	8 [d]	8 [b,e&g]	18 [b&f]	18 [b&f]	18 [b&f]

Table 1 (continued)

Type of Claim	CHANGES EFFECTIVE AS OF:										
Comparative Item	July 1 1915	May 2 1917	May 2 1923	April 27 1927	May 12 1939	May 11 1943	July 1 1949	May 10 & July 1 1951	July 1 1955	July 1 1957	July 1 1959
Partial Disability, Temporary:											
Compensation Rate (per cent)	50	50	50	50	60	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3	66-2/3
Maximum Weekly Benefit (dollars)	12	12	12	12	12	25	25	25	35	50	50
Minimum Weekly Benefit (dollars)	None	None	None	None	None	None	None	None	8	8	8
Death:											
Compensation Rates (per cent)	25-60	25-60	25-60	25-60	25-60	25-66-2/3	25-66-2/3	25-66-2/3	35[h]-66-2/3	35-66-2/3	35-66-2/3
Maximum Weekly Earning Base (dollars)	36	36	36	36	50	37.50	52.50	52.50	75	112.50	112.50
Minimum Weekly Earning Base (dollars)	5[i]	5[i]	5[i]	5[i]	5[i]	12[i]	12[i]	12[i]	27[i&j]	30[i]	30[i]

Source: Laws of Hawaii.

Notes: This table does not show durational limit or limits as to aggregate amounts.

a Minimum for reduced rate is $10.

b Or full wage, whichever is less.

c A ceiling on benefit payments resulted for practical purposes from the fact that Hawaii law excluded from coverage until July 1, 1949, employees who received wages exceeding a specified weekly amount or salaries exceeding a specified annual amount.

d For minors only.

e Flat $8 for minors.

f Flat $18 for minors.

g The existence or absence of weekly maxima and minima was not clearly indicated by the 1951 changes relating to non-schedule cases.

h Applies only to cases of wholly dependent beneficiaries.

i In addition, weekly death benefits may not exceed the average weekly wage.

j The law provides also that weekly benefits may not exceed 66-2/3 per cent of the average weekly wage (without consistency with the provision summarized in note i).

labor and industrial relations, and within that department a bureau of workmen's compensation, and the establishment of boards to hear appeals. No major change in administrative arrangements has been made subsequently.

Security of Payment. The original Act provided that compensation was to be secured by insurance with a private carrier or by gaining approval as a self-insurer. No important change has occurred with respect to requirements governing these two alternatives.

The original Act of 1915

The first Workmen's Compensation Act of Hawaii was passed by the territorial legislature during the regular session of 1915 (Session Laws of Hawaii 1915, Act 221). The statute was substantially in the form approved by the Commissioners on Uniform State Laws during their 24th annual session in 1914,[2] but subject to some significant omissions and modifications. The Hawaii law eliminated all provisions of the uniform act for a state insurance fund, excluded non-resident aliens from entitlement to death benefits, included persons "treated as adopted" within the adopted dependents category, and made a few changes in the coverage formula, such as replacing the phrase "all public and all industrial employment" with the phrase "any and all industrial employment" The uniform act, which was adopted by only one other jurisdiction,[3] was subsequently withdrawn as obsolete.[4]

Occupational, Risk-Selective and Territorial Aspects of Coverage. The law as originally passed had a relatively broad occupational coverage basis. It extended to all public employment by the Territory and its political subdivisions (excepting that of elective or high salaried public officials) and all industrial employment by private employers, defined as employment in a trade or occupation which is carried on for the sake of pecuniary gain. It excluded employees whose employment was purely casual or not for the purpose of the employer's trade or business or whose remuneration from any one employer, excluding overtime, exceeded $36 per week.

The Act covered personal injury by accident arising out of and in the course of covered employment, including injury caused by the wilful act of a third person directed against an employee

[2]Proceedings of the 24th Annual Conference of the Commissioners on Uniform State Laws, 99, 307 (1914).

[3]Laws of Idaho 1917, c. 81.

[4]Proceedings of the 38th Annual Conference of the Commissioners on Uniform State Laws, 30, 31 (1928).

because of his employment, but excluding injury caused by the employee's wilful intention to injure himself or another or by his intoxication. Death resulting from injury within six months was covered. Disease, except that resulting from injury by accident, was excluded.

The coverage was compulsory and exclusive, barring all remedies by the employee, his personal representatives, dependents and next of kin against the employer. The Act applied to workmen hired within the Territory to work outside thereof and subsequently sustaining injury outside the Territory, except where the contract of hiring stipulated otherwise.

Types and Measures of Benefits. The Hawaii Act instituted a fairly complex scheme of death benefits (apart from a burial benefit limited to $100) to dependents, containing variations as to the rate of compensation as well as to duration, depending on the number and classes of dependents. The rates of compensation, measured by the deceased's average weekly wage, ranged from 25 per cent (in the case of one dependent grandchild, brother or sister, or partially dependent parent) to 60 per cent (in the case of a dependent widow or widower and three or more dependent children). The average weekly wages upon which the computation of the weekly death benefits was predicated (earning base) were subject to a ceiling of $36 and a floor of $5, provided that the total weekly benefits in no case exceeded the full average weekly wage. The maximum duration was limited to 312 weeks with an exception in the case of dependent children. The latter were entitled to benefits until the age of sixteen years and to a maximum of 104 weeks beyond that age, if incapacitated and unmarried. In addition, the total compensation payable in death cases was subject to a global limit of $5,000, with the further qualification that in cases of death occurring after a period of disability, the duration of the payability death benefits was shortened by the period of disability.

Medical benefits were limited to the first fourteen days of disability and to an amount not exceeding $50.

With respect to disability indemnity benefits the original Act differentiated between the cases of total disability and partial disability. Benefits for total disability were payable at a rate of 60 per cent of the average weekly wages, but subject to a weekly benefit floor of $3 in cases of permanent total disability and a weekly benefit ceiling of $18. The duration was limited to 312 weeks and the aggregate amount to $5,000. Where total disability followed partial disability, the period of partial disability was to be deducted from the maximum duration. In addition the law provided for a waiting period of two weeks. Certain losses of members and other injuries were deemed to cause permanent total disability.

The law specified both a general formula for computing benefits and a special schedule of benefits in cases of specified injuries for cases of partial disability. The general formula set the benefits for partial disability at a rate of 50 per cent of the probable weekly wage loss, payable after the expiration of a waiting period of two weeks for the period of disability but for not longer than 312 weeks. Maximum weekly benefits were limited to $12. Any preceding period of total disability was to be deducted from the maximum period of 312 weeks, and the maximum amount of compensation was in no case to exceed $5,000. Disfigurement resulting in diminished earning capacity was specifically included as a possible case of partial disability.

The law contained, in addition, a schedule of compensation for the loss or loss of use of specified members of the body (leg, arm, foot, hand) and for the loss of hearing in both ears, fixed at 50 per cent of the average weekly wage but not to exceed $12 per week, payable for periods ranging from 208 weeks to 312 weeks.

Administration and Procedure. The law of 1915 entrusted the administration of the Act to a number of industrial accident boards, one being created in each county. Proceedings for compensation started with a claim for compensation to be made within three months after the date of the injury. If the injured worker and the employer were able to come to an agreement in conformity with the Act, the board was to grant its approval, and the matter was terminated in that fashion. If no such agreement was reached, the board was to form a three-man committee of arbitration. If the committee failed to make an award within thirty days or a party was dissatisfied with the award, the board itself was to make a determination after full trial. Decisions of the board were subject to appeal to the appropriate circuit court. The board retained the power to end, diminish or increase any compensation previously agreed upon or awarded, on the ground of a change of conditions.

Security of Payment. The Act contained detailed provisions to assure the payment of compensation. Compensation was to be secured either by insurance with a private carrier or by obtaining approval as self-insurer upon proof of sufficient financial ability. Policies with commercial carriers were to cover the entire compensation liability and to include other standard clauses.

Subsequent developments

The Workmen's Compensation Act was extensively modified in the years following its adoption. The most important changes are noted in the sections which follow.

The 1917 Amendments. The first legislative session subsequent to that in which the original statute was passed brought the

first set of amendments (Session Laws of Hawaii 1917, Act 227). The new legislation made some changes in the provisions governing coverage, computation and measure of benefits, and the procedure and security of payment.

The definition of industrial employment was clarified so as to include employers pursuing professions. The coverage of diseases was amplified so as to extend to any diseases "proximately caused by (covered) employment and resulting from the nature of such employment". Medical benefits were raised to $150, and their restriction to the first two weeks was eliminated. The waiting period was shortened to seven days in cases of total disability and completely eliminated for cases of partial disability.

The most significant changes occurred in the provisions for permanent partial disability. The former brief schedule of benefits for specified permanent partial disability was replaced by an elaborate catalogue comprising the loss or loss of use of a long list of members, components of members, and other specified parts of the body. Certain cases of disfigurement, viz. serious facial or head disfigurement, were included as "schedule injuries" and the amount of compensation, subject to a $5,000 maximum, left to the discretion of the board. Moreover, whether advertently or inadvertently, the $12 weekly ceiling on the benefit amounts for partial disability was eliminated in cases of schedule injuries and the same fixed simply at 50 per cent of the average weekly earnings for specified varying numbers of weeks.[5] The limitation to an aggregate of $5,000 and the deduction from the specified periods of a preceding period of total disability apparently likewise no longer applied to the schedule injuries. The theory of this scheme, as explained by the Hawaii Supreme Court, was that "an award for permanent partial disability is made not solely with regard to the direct loss of earning power by reason of the injury but with regard also to the impairment of physical efficiency for the remainder of the life of the injured employee."[6] Yet, the new approach introduced a curious and irrational inconsistency and imbalance with the non-schedule cases.

In addition, the amendments of 1917 streamlined and tightened the provisions relating to procedure and compensation insurance.

Amendments of 1923, 1927, and 1937. The monetary limits on medical benefits were completely eliminated in 1923 (Session Laws of Hawaii 1923, Act 249), and it was specified that the amounts for schedule injuries were in addition to the compensation for medical expenses. The floor and ceiling on total disability bene-

[5]Of course, for most practical purposes there was a limit of $18 owing to the exclusion from coverage of employees receiving more than $36 per week (excluding overtime) from any one employer.

[6]Ching Hon Yet v. See Sang Co., 24 Hawaii 731, at 740 (1919).

fits were raised to $5 and $20 respectively, with the exception that in cases of temporary total disability, benefits should not exceed the actual average weekly wage. The catalogue of schedule injuries was further extended so as to cover all permanent injuries to the listed members or components of members regardless of the loss of earning capacity. The amendments restored the aggregate limit of $5,000 on the entire indemnity benefits for total and partial disability resulting from the injury.

In addition, the notice provisions were simplified by dispensing with notice where medical services were furnished by the employer or the carrier.[7]

A general floor of $5 on weekly benefits for permanent partial disabilities of minors was added in 1927, and the schedule was again expanded to cover simultaneous permanent injuries to several fingers or toes in 1933 (Session Laws of Hawaii 1927, Act 207, and Session Laws of Hawaii 1933, Act 37).

A new regime to facilitate the employment of handicapped workers was introduced in 1937 (Session Laws of Hawaii 1937, Act 66). If an employee who had previously incurred a permanent partial disability through loss of a hand or a foot, sustained a compensable accident resulting in the loss of a hand or a foot or having lost the sight in one eye lost the sight in the other, the employer or his insurance carrier was made liable only for compensation for the permanent partial disability caused by the subsequent injury. The employee remained entitled to benefits for total permanent disability, but the remaining balance was to be paid out of a newly created special compensation fund, collected from payments imposed in death cases where the dead employee left no dependents.

The 1939 Amendments. The end of the depression period in 1939 brought a major revision of the benefit formulae and the earnings limits of covered employees (Session Laws of Hawaii 1939, Act 206), as well as a reorganization of the administration of the Act (Session Laws of Hawaii 1939, Act 237). The new statute differentiated sharply the cases of permanent total disability, temporary total disability, permanent partial disability and temporary partial disability. Benefits for permanent total disability were fixed at 60 per cent of the average weekly wage, with a minimum of $5 and a maximum of $25, subject to a time limit of 312 weeks and an aggregate ceiling of $5,000. Benefits for temporary total disability were to be paid on the same scale, but workers with average weekly earnings of less than $5 were only to receive the full amount of their average weekly wage. Maximum duration

[7]Act 93, Session Laws of Hawaii 1931 and Act 180, Session Laws of Hawaii 1933, further amended the notice provisions.

of such benefits was fixed at 312 weeks and the maximum aggregate amount at $5,000. There was a waiting period of seven days for temporary total disability of 49 days or less. The rate of compensation for permanent partial disability of the types enumerated in the schedule was increased to 60 per cent of the average weekly wage. Otherwise the prior schedule was retained for cases of permanent partial disability not covered by the schedule. In cases of temporary partial disability, the benefits were fixed at 60 per cent of the probable wage loss, with a limitation to 312 weeks and an aggregate limit of $5,000 on the entire indemnity benefits for disability. In cases of temporary partial disability, the additional weekly ceiling of $12 on benefits was preserved as well as the proviso requiring the inclusion of any preceding period of total disability in the maximum of 312 weeks.

For cases of death benefits, the limit of the average weekly wages to be considered in the computation was raised to $50.

Coverage was extended to include employees with weekly earnings, excluding overtime, from any one employer of $50 or less. Special rules were added to cover loaned employees.

The creation of a department of labor and industrial relations in the same year brought a reorganization of the administration of the Act. The chief administrative officer of the department was designated director of labor and industrial relations. The department consisted of four bureaus, one of them being the bureau of workmen's compensation. Each bureau was under the immediate supervision of an assistant director. There were established a labor and industrial relations appeal board for the Territory and three special industrial accident boards, one each for the counties of Hawaii, Maui and Kauai. The director, through the bureau of workmen's compensation, was authorized to exercise original jurisdiction over all compensation cases, assuming the powers formerly vested in the industrial accident boards. Appeals from the decisions of the director were provided either to the labor and industrial relations appeal board for cases from the city and county of Honolulu or to one of the three industrial accident boards for cases arising in the other respective counties. A further appeal with right to jury trial was likewise provided, jurisdiction thereof being vested in the appropriate circuit court.

The Amendments of 1941, 1943, and 1945. In 1941 coverage against death was expanded so as to comprise death resulting from injury within one year (Session Laws of Hawaii 1941, Act 253).

The legislative session of 1943 accomplished a major revision of the benefit structure relating to rates of compensation, duration of benefits, floors and ceilings on weekly payments and aggregate limits, as well as other liberalizations (Session Laws of Hawaii 1943, Act 157). The amendments raised the rate of compensation

from 60 per cent of the average weekly wage or, where applicable, of the probable weekly wage loss to 66-2/3 per cent. This increase, accordingly, affected the rate of compensation for death where the deceased leaves a widow or widower and three or more dependent children, for total disability whether permanent or total, for schedule and non-schedule cases of permanent partial disability, and for temporary partial disability. In addition, the maximum rate of compensation for death cases where the deceased leaves no surviving spouse but more than five dependent children was increased to the same amount.

The amendments eliminated all 312-week limits on the duration of benefits throughout the statute, i.e., on dependents' benefits in death cases, on benefits for permanent or temporary total disability, for general permanent partial disability, for certain schedule cases of permanent partial disability, and for temporary partial disability. In the cases of schedule injuries and temporary partial disability, however, shorter limits were inserted, evidently to counter-balance the increase in the basic rate of compensation. In the case of schedule injuries such adjustments of the duration were made throughout the schedule. Maximum duration for temporary partial disability was fixed at 260 weeks.

The aggregate limits for death benefits or for the entire disability benefits in any case were raised to $7,500. A similar limit was newly introduced for combined disability and death benefits.

The minima and maxima of weekly wages to be used in the computation of death benefits as well as the floors and some of the ceilings on weekly disability benefits were likewise raised. Thus the weekly earning base of death benefits was to range from $12 to $37.50. Existing floors for weekly benefits in cases of total disability and of permanent partial disability of minors were increased to $8. Maximum weekly benefits for temporary partial disability were raised to $25. In addition the amendments reinserted a floor of $8 and a ceiling of $25 on benefits for schedule injuries.

In conjunction with this change in the benefit levels, the amendments modified the coverage provisions so as to include private employees whose weekly remuneration does not exceed $100 and public officials whose salary is not more than $2,400. The limit on the age of dependency for children was raised to eighteen years, and burial expenses were covered up to $200.

The amendments of 1945 established elective coverage for private employers pursuing a trade, occupation or business not for the sake of pecuniary gain and for employees earning more than $100 a week and provided for a monthly allowance of $50 to defray expenses for an attendant needed by a person suffering compensable

permanent total disability (Session Laws of Hawaii 1945, Act 10). Procedure was streamlined by eliminating the resort to the committee of arbitration and tightening the reporting requirements.

The Amendments of 1947 and 1949. Amendments of 1947 established a division of industrial safety within the bureau of workmen's compensation with the power of establishing and enforcing safety standards. Materials and equipment necessary were to be financed out of the special fund which was re-styled as special compensation and accident prevention fund (Session Laws of Hawaii 1947, Acts 64 and 81).

The legislative session of 1949 resulted in a bevy of amendments. Compulsory coverage was extended to all employees in industrial employment regardless of the amount of their weekly earnings and to all non-elective public officials regardless of the amount of their annual salary (Session Laws of Hawaii 1949, Act 110). Death was made compensable if resulting from the injury within three years (Session Laws of Hawaii 1949, Act 129). The maximum of the average weekly wage to be considered in the computation of death benefits was raised to $52.50, and burial expenses were covered up to $300 (Session Laws of Hawaii 1949, Act 111). Non-resident alien dependents of certain categories were entitled to 50 per cent of the regular dependents' benefits (Session Laws of Hawaii 1949, Act 293). The maximum aggregate benefit was raised to $10,500 in the cases of permanent total disability, permanent partial disability, and combined disability and death benefits. The case of successive temporary total and partial permanent disability was no longer specially provided for (Session Laws of Hawaii 1949, Acts 130, 184, and 204). The ceiling on weekly benefits in the cases of permanent or temporary total disability and permanent partial disability of a schedule type was raised to $35. The waiting period in cases of temporary total disability was cut down to five days, and the period after which retroactive payments from the date of disability are required was shortened to twenty-one days (Session Laws of Hawaii 1949, Act 131). The schedule benefits for the loss of the first phalanx of the thumb or finger and loss of one eye by enucleation were increased and provision was made for the payment of any unpaid portions of schedule benefits to dependents, in case the injured worker died without having received the total amounts specified in the schedule (Session Laws of Hawaii 1949, Acts 112 and 113). Several amendments improved the administration and enforcement of the law. Thus the reporting requirements were revised so as to assure a more efficient supervision of the observance of the Act, there was a clarification of the effects which the receipt by the employee of the excess of a recovery on a third party claim has upon the subsequent increase of an award, and penalties were introduced for default in prompt payment (Session Laws of Hawaii 1949, Acts 115, 354, and 206).

The Amendments of 1951. In 1951 the aggregate maxima of benefits for death, temporary total disability and temporary partial disability were raised to $10,500, and an aggregate maximum for the case of successive total and partial disability fixed at the same amount was reinserted (Session Laws of Hawaii 1951, Acts 49 and 50). Additional benefits were provided for permanent total disability, payable after reaching the amount of $10,500. The additional benefits were imposed upon the special compensation and accident prevention fund at a rate of 50 per cent of the regular weekly benefits but not less than $10 per week. Most of all, the amendments of that year completed the shift from compensation based on reduction of earning capacity to that based on loss of physical function in cases of permanent partial disability by radically rewording the subsection relating to the non-schedule cases. Disability determined as a percentage of permanent total disability was to be compensated as a corresponding percentage of $10,500. Facial and head disfigurement were made compensable without requiring qualification as "serious," and the schedule for losses of one or more phalanxes of thumb or finger was revised again. Third party liability finally was subjected to a new regime (Session Laws of Hawaii 1951, Act 194).

The Amendments of 1953. Amendments of 1953 revised the regime of compensation for subsequent injuries so as to extend it to all injuries which because of a preexisting disability cause permanent total disability but that without such previous disability would have caused only partial disability (Session Laws of Hawaii 1953, Act 98). The new provisions, accordingly, enhanced the employment opportunities of handicapped workers. Other amendments of the same year increased the maximum amount payable for burial expenses to $400, raised the rate of compensation of death benefits for a surviving dependent spouse without dependent children to 50 per cent, and modified the categories of non-resident alien dependents entitled to death benefits (Session Laws of Hawaii 1953, Act 46). Finally the provisions relating to notice of injury, claim of compensation, and continuing jurisdiction of the director were revised, and the scope of possible liability in tort of an employee vis-a-vis a coemployee was clarified (Session Laws of Hawaii 1953, Acts 46, 51, and 266).

The Amendments of 1955. Another extensive revision of the benefit structure and of the various limitations built into the law took place in 1955. Important changes were made in aggregate maxima of compensation payments payable to the beneficiaries or chargeable to the employer or carrier, in the ceilings and floors for weekly benefits, and on the rate of compensation for death accorded to certain classes or constellations of dependents (Session Laws of Hawaii 1955, Act 13). Thus the aggregate maximum of benefits for any one death (except those of widows incapable of self-support, children under the age of eighteen and unmarried

children over eighteen incapable of self-support), of benefits chargeable to the employer for permanent total disability, of benefits for temporary total disability, and for combined total and partial disability was raised to $20,000. The same amount was fixed as the basis for computing the compensation accorded for non-schedule permanent partial disability. The amendments suppressed the previously existing limit on consecutive disability and death benefits, restricting at the same time the devolution of unpaid installments for permanent partial disability to cases where death is not caused by the disabling injury itself.

Death was made compensable if resulting from a covered injury regardless of the period of time elapsing between such injury and death. The rate of compensation for various categories and constellations of dependents was raised; e.g., the maximum rate of 66-2/3 per cent of the average weekly wage was granted if a spouse and only one dependent child survived, and the basic rate of compensation for an orphaned child was increased to 40 per cent. Similar adjustments were made in other cases, subject to the limitation that the sum of all weekly death benefits could not exceed 66-2/3 per cent of the average weekly wage or, if such average was less than $27, the full amount thereof. The lower and the upper limits of the wage base in the percentage computation of death benefits were raised to $27 and $75 respectively. The entitlement to death benefits of non-resident aliens was again modified. Most of all, as intimated before, non-remarried widows lacking the capability of self-support were now entitled to life pensions.

The minimum and maximum weekly benefits for permanent and temporary total disability and for permanent partial disability were raised to $18 and $50 respectively. In the cases of temporary total and permanent partial disability the qualification was retained that the weekly benefits might not exceed the actual average weekly wage with the exception, however, that minors in cases of permanent partial disability were entitled to the statutory minimum. The minimum weekly benefits payable by the special fund for permanent total disability after payment of the statutory maximum chargeable to the employer was likewise raised to $18. The waiting period in cases of temporary total disability was shortened to two days and retroactive payment imposed, if the duration of the disability exceeds seven days.

The benefits for temporary partial disability were revised by raising the maximum to $35, introducing a floor of $8, and removing specific limits on the duration except those resulting from the maximum aggregate amount of $20,000.

In addition the amendments raised the monthly allowance for attendants of permanently and totally disabled workers to $150

and authorized payments for rehabilitation up to $1,000 to be paid from the special fund. Other amendments of that year concerned medical attendance and examination and the administration of the standards of industrial safety (Session Laws of Hawaii 1955, Acts 14 and 27).

The Amendments of 1957. Amendments of 1957 raised the prior maximum aggregate amount of $20,000, wherever it applied to limit or serve as basis for the computation of death or disability benefits, to $25,000, increased the upper and lower limits on average weekly earnings used in the percentage computation of death benefits to $30 and $112.50 respectively, and increased the maxima of weekly benefits for permanent or temporary total disability and for permanent partial disability to $75 and of the maximum weekly benefit for temporary partial disability to $50

(Session Laws of Hawaii 1957, Acts 214 and 215). The maximum amount of compensation for disfigurement was increased to $7,000, and the previous restriction to cases affecting the face or head was eliminated. Other substantive amendments limited the devolution of unpaid installments of benefits for permanent disability, if death intervenes, to exclude any liability of the special fund, extended the subsequent injuries regime to cases where the subsequent injury results in an increase in a permanent partial disability, lengthened the periods of compensation for a number of schedule injuries, restoring, inter alia, the old limit of 312 weeks for the loss of an arm, liberalized the provisions governing the determination of the average weekly wages, and clarified the relation between benefits for permanent partial disability and other types of disability(Session Laws of Hawaii 1957, Acts 216, 55, 78, 81, and 133). Procedural amendments changed the provisions governing time specified for interposing claims for compensation and the cost of unsuccessful appeals initiated by employers (Session Laws of Hawaii 1957, Acts 133 and 214).

The Amendments of 1959. In 1959 the law was again amended in a variety of respects. The coverage was extended to elective officials and a presumption established that a claim interposed in proceedings for compensation was one properly made and for a compensable injury (Session Laws of Hawaii 1959, Act 240). The benefit provisions underwent a further liberalization. A statutory minimum of $2,000 for death benefits was introduced and the status of dependent parents and grandparents clarified (Session Laws of Hawaii 1959, Act 48). The rate of benefits for permanent total disability after exhaustion of the maximum chargeable to the employer was raised to the regular rate, the maximum of weekly benefit payments for permanent partial disability was increased to $112.50 (corresponding to a maximum effective weekly wage of $168.75) and the compensation for disfigurement made additional to that for other schedule injuries (Session Laws of Hawaii 1959,

Acts 240 and 78). The provisions regulating the determination of the average weekly wage were likewise once more expanded (Session Laws of Hawaii 1959, Act 78). Revision was made of the provisions regulating the time limits on claims for compensation, the costs of frivolous proceedings, and the right of the employee to institute, or join in, a third party action (Session Laws of Hawaii 1959, Acts 240, 241, and 185).

The Amendments of 1961. The First State Legislature made few amendments to the law. The maximum amount payable for burial expenses was increased to $1,000 (Session Laws of Hawaii 1961, Act 5), and the periods of compensation for the loss of a second or third finger were lengthened (Session Laws of Hawaii 1961, Act 3). The director was specifically authorized to promulgate fee schedules for medical, surgical and hospital services (Session Laws of Hawaii 1961, Act 152), and the statute of limitations was enlarged, with special provisions added for cases involving claims based on certain poisons or on radioactivity exposure (Session Laws of Hawaii 1961, Act 115).

CHAPTER 2

QUANTITATIVE ASPECTS OF COVERAGE

The tendency in the evolution of workmen's compensation laws in Hawaii as elsewhere has been to cover an increasingly larger portion of the labor force and to reduce continually the potential wage loss of those covered. While it is simple to ascertain the exact coverage of the wage loss under the law, it is not possible to know with any degree of accuracy the size of the covered labor force. It must be stated at the outset that the available statistics relating to coverage and relative costs of workmen's compensation are distressingly inadequate and frequently given on changing bases with the result that in many cases only very rough estimates and approximations are possible.

Coverage of labor force and payroll

No accurate information exists on the size of the labor force regularly covered by workmen's compensation and of the payroll subject to such coverage. However, it is possible to arrive at approximate figures in two different ways: (a) by generalizing and extrapolating certain data available for that portion of the payroll which is insured with private carriers and (b) by utilizing the monthly Labor Force Estimates published by the division of employment security of the department of labor and industrial relations.

Estimates on the Basis of Insurance Data. Hawaii, throughout the history of workmen's compensation, has permitted three forms of security for compensation payments, viz.: (a) insurance with private carriers; (b) self-insurance of private employers; and (c) government self-insurance. The relative distribution of benefit payments attributable to each of these categories is available and indicated in Table 2.

For that portion of the statewide payroll which is insured with private carriers against compensation liability, data are available which permit an estimate of the current volume of the payrolls and number of workers covered by the compensation law. Unfortunately, the direct data relating to covered payrolls on a policy year basis are not recent. Further, they are subject to an exclusion of all wages that exceed a specified amount, i.e., $100 per week until policy year 1956/1957; $300 per week beginning with policy year 1957/1958. There are, however, more recent data as to standard earned premiums on a calendar year basis which permit extrapolation in the light of the trends gleaned from the policy year data. Table 3 gives the pertinent data.

Table 2

BENEFIT PAYMENTS BY TYPE OF COMPENSATION INSURANCE
State of Hawaii
1952-1961

Calendar Year	Total	Private Insurance	Per Cent of Total	Self-Insurance by Private Employment	Per Cent of Total	Government Self-Insurance	Per Cent of Total
1952	$1,651,114	$ 903,449	54.7	$ 523,720	31.7	$220,723	13.4
1953	1,738,542	969,304	55.8	503,972	29.0	264,278	15.2
1954	1,990,883	1,079,779	54.2	627,738	31.5	278,380	13.9
1955[a]	4,149,795[b]	2,375,348	57.2	1,122,444	27.0	651,761	15.7
1956	2,113,045[c]	1,351,125	63.9	486,206	23.1	273,310	12.9
1957	2,379,623[c]	1,506,729	63.3	566,091	23.8	306,643	12.9
1958	2,593,240[c]	1,750,532	67.6	507,873	19.6	328,708	12.7
1959	3,033,760[c]	2,033,346	67.0	584,915	19.3	415,120	13.7
1960	3,235,157[c]	2,162,709	66.9	651,980	20.2	420,093	12.9
1961	4,792,518[b]	3,635,150	75.9	759,372	15.8	397,996	8.3

Source: Compiled from data collected by the Workmen's Compensation Division, Department of Labor and Industrial Relations.

a Annual statistics prior to 1955 included only closed cases; 1955 figures are high because of change in depositing practice which combined payments in closed cases with those in pending cases.

b Excludes reopened cases.

c Covers closed and pending cases.

The table shows that for the policy years between August 1, 1954, and July 31, 1959, the standard earned premiums[1] have been approximately 1.5 per cent of the underlying portion of the payroll. Using this factor of 1.5 per cent it can be estimated that for the calendar year 1960 the underlying portion of the payroll amounted to $469,460,000. Since this estimate excludes that portion of the payroll which exceeds $16,600 per individual worker, it is necessary to add an amount which equals the excluded portion. Using data compiled from tax returns, it is estimated that four per cent of the total insured payroll is excluded. Hence the total insured payroll for the calendar year 1960 may be estimated at $488,238,000. Since the privately insured payroll is estimated as being 67 per cent of the total payroll (see Table 2), the latter can be estimated as totalling $728,698,000 for calendar year 1960. The average weekly wage of injured workers during the calendar year 1960 was $82.67

[1]Standard earned premiums are not net premiums earned, but amounts obtained by applying manual rates after elimination of the off-balance factor (see chapter V for a discussion of the off-balance factor).

(or $4,299 per annum). If one assumes this wage is also the average wage for the covered workers, then it may be estimated that the State Workmen's Compensation Act covered approximately 170,000 workers in 1960.

Table 3

PAYROLLS AND STANDARD EARNED PREMIUMS
FOR COMPENSATION INSURANCE
State of Hawaii
1948-1960

Period (Policy Year or Calendar Year):	Payrolls	Standard Earned Premiums	Premium as Per Cent of Payroll
P.Y. 1-1-48 to 12-31-48	$153,522,109	$2,071,109	1.35
P.Y. 1-1-49 to 12-31-49	145,631,419	1,761,443	1.21
P.Y. 1-1-50 to 7-31-50	111,297,600	1,288,028	1.16
P.Y. 8-1-50 to 7-31-51	172,253,896	1,982,657	1.15
C.Y. 1951	a	2,028,110	
P.Y. 8-1-51 to 7-31-52	179,182,201	2,108,059	1.18
C.Y. 1952	a	2,045,621	
P.Y. 8-1-52 to 7-31-53	192,879,800	2,343,113	1.21
C.Y. 1953	a	2,312,383	
P.Y. 8-1-53 to 7-31-54	197,931,456	2,655,637	1.37
C.Y. 1954	a	2,506,898	
P.Y. 8-1-54 to 7-31-55	210,045,032	3,062,513	1.46
C.Y. 1955	a	2,836,324	
P.Y. 8-1-55 to 7-31-56	235,638,072	3,591,566	1.53
C.Y. 1956	a	2,818,192	
P.Y. 8-1-56 to 7-31-57	256,799,074	4,120,580	1.61
C.Y. 1957	a	3,854,381	
P.Y. 8-1-57 to 7-31-58	307,535,568	4,732,054	1.54
C.Y. 1958	a	4,165,227	
P.Y. 8-1-58 to 7-31-59	428,184,329	6,624,829	1.55
C.Y. 1959	[370,500,000][b]	5,557,473	1.50
C.Y. 1960	[469,460,000][b]	7,041,923	1.50

Source: Compiled from data collected by the National Council on Compensation Insurance.

a Data are not available.

b Estimates prepared by author.

Estimates on the Basis of Monthly Labor Force Estimates. A second method of estimating coverage is to utilize comparable data from the Labor Force Estimates of the division of employment security, taking into account the coverage provisions of the Hawaiian Compensation Act. Relying on the twelve months' averages for 1960, the following were covered:

Category	Number of Employees
Manufacturing:	25,940
Construction and Mining:	15,840
Transportation, Communication Utilities:	14,910
Trades:	40,070
Insurance, Banking, Real Estate:	8,040
Service Industries:	24,000
Government:	19,960
Agriculture:	23,050
Total	171,810

The Labor Force Estimates list an additional group of around 25,000 workers, "including domestic and self-employed workers". Domestic workers, however, are covered only if employed in "industrial employment" and self-employed workers are not covered by workmen's compensation. On the other hand, some of the transportation and maritime workers included are actually covered by special federal statutes and therefore are not subject to the coverage of the state Act. Taking account of the corrections necessary in view of the inappositeness of the figures pertaining to these two categories, the average annual coverage under the state law for 1960 may be estimated at 173,000. Using the average weekly wage of an injured worker in 1960, the annual payroll may be estimated as follows: 173,000 x 82.67 x 52 = $743,699,000. This figure is in satisfactory agreement with the results arrived at above using insurance data.

Using the monthly Labor Force Estimates for 1961 the various categories of the average regular labor force covered and the cor-

responding annual payroll may be estimated as follows:

Category	Number of Employees
Manufacturing:	25,761
Construction and Mining:	17,604
Transportation, Communication Utilities:	15,033
Trades:	42,924
Insurance, Banking, Real Estate:	10,018
Service Industries:	26,052
State Government:	23,188
Agriculture:	22,368
Total	182,948

Using similar corrections for excesses and omissions as made above and an average weekly wage of $85.31 (based on 1961 experience), the final estimates for 1961 are 184,000 workers and a $816,246,000 annual payroll.

Coverage of weekly wage loss

The coverage of the weekly wage loss is a function of benefit levels and benefit distribution. Since medical benefits are not subject to limitations, the discussion applies only to the levels of indemnity benefits, i.e., compensation for wage loss and physical impairment.

Benefit Levels. Benefit levels are the composite result of (a) rate of compensation, (b) maxima and minima of weekly benefits, (c) durational limitations, and (d) limitations on aggregate amounts. Since workmen's compensation, within certain limits and with certain qualifications, ought to relieve the injured workers, or his family in case of death, from the effects of the injury on his earnings, the relation between weekly earnings and ceilings on weekly benefit is of crucial importance.

In Hawaii the basic rate of compensation has varied in the course of time and has not always been identical for different types of disability. The basic rate of compensation for total

disability (whether temporary or permanent) was 60 per cent from July 1, 1915, to May 10, 1943, and thereafter 66-2/3 per cent of the weekly wage. The basic rate for permanent disability of the schedule type was 50 per cent from July 1, 1915, to May 11, 1939, 60 per cent from May 12, 1939, to May 10, 1943, and thereafter 66-2/3 per cent.

The weekly benefit ceiling on benefits for total disability was initially $18, was increased from time to time (in order to keep up with rising wage scales), and is at present $75. The maximum weekly benefit payment for permanent partial disability caused by schedule injuries was originally $12; no specific ceiling existed between May 2, 1917, and May 11, 1943, but a practical limitation resulted from the fact that employees in private employment earning more than a specified weekly amount exclusive of overtime payments ($36 from 1915 to 1939; $50 from 1939 to 1943; $100 from 1943 to 1949) were excluded from coverage. A weekly maximum for schedule permanent partial disability was reintroduced in 1943 (effective May 11) being fixed at $25 from that date until July 1, 1949, at $35 after that date until June 30, 1955, at $50 after that date until June 30, 1957, at $75 after that date until June 30, 1959, and at $112.50 after that date.

Ceilings on weekly benefit payments mean that weekly earnings exceeding a particular amount are not reflected in benefit payments. This amount is called the maximum effective weekly wage. It is expressed by the following equation:

$$\text{maximum effective weekly wage} = \frac{\text{maximum weekly benefit.}}{\text{rate of compensation}}$$

Generally speaking, an adequate schedule of benefits requires that the maximum effective weekly wage lies substantially above the average and median weekly wage of the covered or injured workers, i.e., that the preponderant majority of the injured members of the labor force receive weekly benefits at the basic rate. There may be a slight difference between the average weekly wage for the total labor force and for injured workers, if either (a) the coverage is selective or (b) the incidents of accident frequency are not uniformly distributed over the various wage brackets.

Table 4 and Chart 1 show the development of the effective maximum weekly wage for purposes of benefits for total and scheduled permanent partial disability, the average weekly wage in the State and the average weekly wage of injured workers covered by workmen's compensation insurance.

CHART 1 – **AVERAGE WAGE AND MAXIMUM EFFECTIVE WEEKLY WAGE**

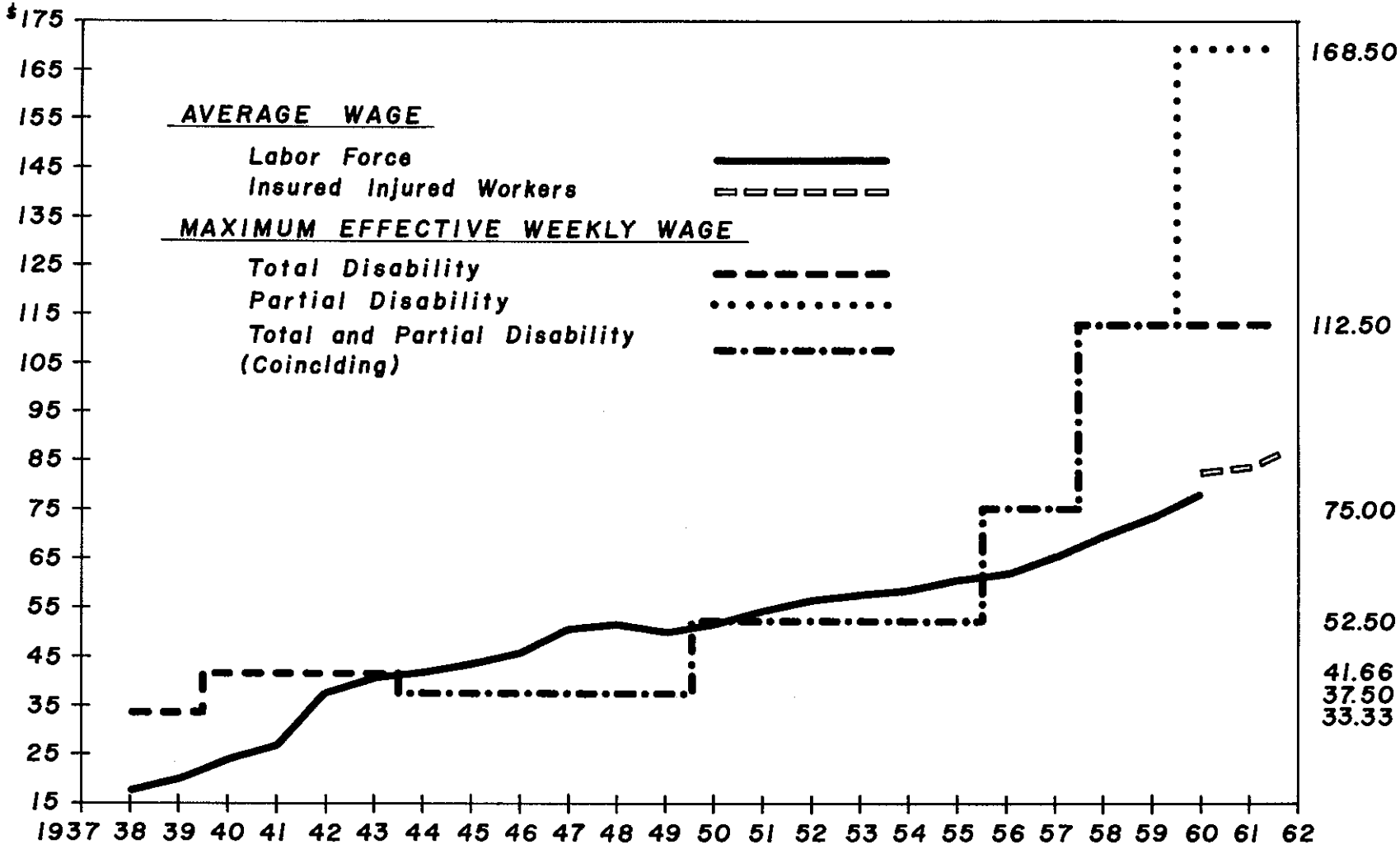

Table 4

MAXIMUM EFFECTIVE AND AVERAGE WEEKLY WAGE
State of Hawaii
1938-1961

Year	Maximum Effective Weekly Wage		Average Weekly Wage	
	Total Disability	Scheduled Permanent Partial Disability	Labor Force*	Insu Inju Wor
1938	$ 33.33	[$ 36.00][a]	$17.03	
1939	41.66[b]	[50.00][a]	19.49	
1940	"	"	23.60	
1941	"	"	26.32	
1942	"	"	37.33	
1943	37.50[c]	37.50	40.55	
1944	"	"	41.44	
1945	"	"	43.24	
1946	"	"	45.20	
1947	"	"	50.66	
1948	"	"	51.46	
1949	52.50[d]	52.50	49.95	
1950	"	"	51.63	
1951	"	"	54.37	$56.
1952	"	"	56.48	58.
1953	"	"	57.41	62.
1954	"	"	58.54	61.
1955	75.00[e]	75.00	60.14	60.
1956	"	"	61.61	62.
1957	112.50[f]	112.50	65.14	65.
1958	"	"	69.62	70.
1959	"	168.50[g]	73.19	76.
1960	"	"	78.21	82.
1961	"	"	---	85.

Sources:

*Compiled from data on average weekly wage of labor collected by Department of Labor and Industrial Rel (relates to labor force covered by unemployment insur

Table 4 (continued)

MAXIMUM EFFECTIVE AND AVERAGE WEEKLY WAGE

**Compiled from data on average weekly wage of insured injured workers collected by National Council on Compensation Insurance.

a Practical limit resulting from exclusion from coverage of workers in private employment earning more than the indicated amount exclusive of overtime.

b Effective as of May 12, 1939.

c Effective as of July 1, 1943.

d Effective as of July 1, 1949.

e Effective as of July 1, 1955.

f Effective as of July 1, 1957.

g Effective as of July 1, 1959.

h Applies only to first 6 months.

There is no question that the majority of workers, even in the case of total disability, still receive the basic compensation rate of 66-2/3 per cent of their average weekly earnings and that, at least since 1955, the ceilings have not lagged behind the actual wage levels. A consideration of the wage distribution supports this conclusion.

Wage Distribution. Unfortunately, current statistics of the wage distribution in Hawaii were not available, but data of this nature, based on the weekly wages paid by the insured employers in the jurisdictions permitting private compensation insurance during the last three calendar months of 1953 were collected and published by the National Council on Compensation Insurance.[2] Used with proper qualifications, they still permit a rough estimate of the effects of the currently operative maximum effective wage on the standard rate of compensation, especially in view of the fact that the 1954 investigation of the National Council revealed that the country-wide wage distribution existing in 1953 was not greatly different from that existing some thirty years earlier, although

[2]National Association of Insurance Commissioners Proceedings (New York, 1955), p. 164 ff; Barney Fratello, "Workmen's Compensation Injury Table" and "Standard Wage Distribution Table, Their Development and Use in Workmen's Compensation Insurance Rate-making", Proceedings of the Casualty Acturial Society (1955) 110 at 151 ff.

the new distribution showed a slightly heavier weight in the higher wage brackets.[3]

The "special call" data for Hawaii showed the percentage wage distribution[4], as presented in Table 5.

Table 5

WAGE DISTRIBUTION
State of Hawaii
1953

Ratio of Actual Wage to Average Wage Per Cent	Employees Receiving Equal or Less Than Indicated Wage Per Cent	Ratio of Actual Wage to Average Wage Per Cent	Employees Receiving Equal or Less Than Indicated Wage Per Cent
10	0.00	130	69.11
25	0.19	145	82.82
40	1.16	160	90.35
55	4.25	175	93.63
70	10.62	190	96.14
85	25.48	205	97.49
100	43.24	220	98.07
115	61.97	250	99.03

Source: Fratello, op. cit. supra note 2.

Applying this percentage distribution to the situation in 1961, taking $85.31 as the average weekly wage and $112.50 as the maximum effective weekly wage, it follows that the maximum effective weekly wage equals 131.87 per cent of the average weekly wage and that, accordingly, 70 per cent of the covered workers receive the full standard rate of compensation in cases of temporary total disability.

It should be noted from Table 5 that in Hawaii in 1953 only 43.24 per cent of the regularly covered labor force received the average weekly wage or less or, in other words, that at that time 56.76 per cent of the workers earned more than the average wage. It is possible that the economic development in the Islands which has taken place since the data were collected has brought the wage distribution in Hawaii into greater harmony with that existing on the mainland. Wage distribution in the individual western states,

[3]Fratello, op. cit. supra note 2, at pp. 150 and 169.

[4]Fratello, op. cit. supra note 2, p. 157.

the western average, and the national average, are given in Table 6.

Table 6

CUMULATIVE PERCENTAGE OF WORKERS EARNING 100 PER CENT AND 130 PER CENT OF THE AVERAGE WEEKLY WAGE

SELECTED STATES
1953

State or Area	Per Cent of Workers Earning 100 Per Cent or More of Average Weekly Wage	Per Cent of Workers Earning 130 Per Cent or More of Average Weekly Wage
California	53.00	82.63
Colorado	55.88	79.06
Idaho	54.83	78.36
Montana	55.24	78.10
New Mexico	55.95	77.10
Utah	48.92	83.08
Hawaii	43.24	69.11
Western Average	52.44	78.21
National Average	56.61	80.77

Source: Fratello, op. cit. supra note 2, at p. 158.

Hence, if it could be assumed that the Hawaii wage distribution developing since 1953 has become more similar to that generally in the western states, it would follow that presently about 75 per cent of the covered workers receive the standard rate of compensation in cases of permanent or temporary total disability.

CHAPTER 3

BENEFIT STRUCTURE AND DISTRIBUTION

The nature and types of benefits accorded by the workmen's compensation laws in the United States reflect the essential aims of this field of social legislation. As has been pointed out in the introduction, two basic goals of compensation statutes are:

(a) to restore the injured worker, to the greatest possible extent, physiologically and as a productive member of society; and

(b) to compensate him or his family adequately for the losses consequent upon his personal injury or death.

Accordingly the statutes provide for medical and allied restorative benefits needed to perform the first goal and for income and indemnity benefits designed to accomplish the second objective.

Income and indemnity benefits are either disability benefits or death benefits, depending upon the effect of the compensable event. The disability for which income and indemnity benefits are payable may vary in extent and duration. Traditionally four categories of disability are differentiated, classified as permanent total disability, permanent partial disability, temporary total disability, and temporary partial disability. The definition of, and proper compensation for, the various classes of disability have provoked innumerable controversies involving fundamental questions of social justice and require some detailed analysis.

Medical benefits

Medical benefits under Hawaii law are now unlimited and their developmental trends depend primarily on extrinsic factors, such as injury frequency and severity, and cost of medical care.

Injury severity as well as cost of medical care are both affected by durational elements and therefore, to that extent, depend on medical advances. Medical costs, in addition, are determined by a series of other factors, such as costs of diagnostic or curative techniques (including equipment and personnel), fee and wage scales, etc. The single remaining control over the magnitude of medical costs consists in the power over the fee schedules.

It is frequently asserted that medical costs make-up an ever-increasing proportion of the benefits and have risen at a much faster rate than the wage related indemnity benefits. Actually this is not the case. Table 7 shows the medical benefits as percentages of the total benefits for insured employers and self-

Table 7

RATIO OF MEDICAL BENEFITS TO TOTAL BENEFITS
FOR INSURED EMPLOYERS AND SELF-INSURERS
State of Hawaii
1949-1961

FOR CARRIER-INSURED EMPLOYERS ONLY

Policy Year	Total Benefits	Medical Benefits	Ratio (per cent)
1949	$ 834,797	$ 366,398	43.9
1950	727,522	293,714	40.4
1950/1951	1,154,260	486,987	42.1
1951/1952	1,083,802	456,942	42.2
1952/1953	1,299,186	561,186	43.2
1953/1954	1,323,125	559,664	42.3
1954/1955	1,147,089	514,481	44.9
1955/1956	1,736,405	609,746	35.1
1956/1957	1,862,852	698,158	37.5
1957/1958	2,267,400	821,293	36.2
1958/1959	3,607,659	1,226,179	34.0

FOR SELF-INSURERS AND INSURED EMPLOYERS

Calendar Year	Total Benefits	Medical Benefits	Ratio (per cent)
1952	$1,651,114	$ 713,100	43.2
1953	1,738,542	735,545	42.3
1954	1,990,883	798,889	40.1
1955[a]	4,149,795	1,716,520	41.4
1956[b]	2,113,045	883,136	41.8
1957[c]	2,379,623	995,218	41.8
1958[d]	2,593,240	1,073,478	41.4
1959[e]	3,033,760	1,201,665	39.6
1960[f]	3,235,159	1,268,687	39.2
1961[g]	4,792,518	1,899,706	39.0

Sources: For policy years: Compiled from data collected by the National Council on Compensation Insurance.
For calendar years: Compiled from data collected by the Workmen's Compensation Division, Department of Labor and Industrial Relations.

a Amounts reflect change in reporting basis (initiated in that year) from "cases closed" to payments in all pending cases.

b Excludes 1,576 pending cases.

c Excludes 897 reopened cases, involving total benefits of $73,566 for which no breakdown is available, and 2,370 pending cases.

d Excludes 731 reopened cases, involving total benefits of $59,499 for which no breakdown is available, and 2,517 pending cases.

e Excludes 838 reopened cases, involving total benefits of $83,333 for which no breakdown is available, and 2,808 pending cases.

f Excludes 1,069 reopened cases, involving total benefits of $147,323 for which no breakdown is available, and 4,813 pending cases.

g Excludes 1,276 reopened cases, involving total benefits of $165,128 for which no breakdown is available, and 1,538 pending cases.

insurers by calendar year and of insured employers by policy year. Medical benefits amount to approximately 40 per cent of the total benefits. The table also shows that there is no significant difference between the ratio based on data including the self-insurers and that based on data excluding them.

Theories of workmen's compensation as related to income and indemnity benefits for disability

Income and indemnity benefits have the purpose of compensating the injured workman and his family for the loss produced by the injury. Traditionally this loss has been expressed in two general terms: "disability" and "death". Originally most compensation laws focused on the purely economic side of the loss: the deprivation of wages which the employee would have earned but for the injury. Gradually, however, the emphasis has shifted, and it has been contended that the losses of the injured worker and the compensation which is due him should not be predicated exclusively on, and measured entirely by, the effect of the injury on his subsequent earnings. Thus the concept of disability has become one of the most crucial and perplexing notions in the law of workmen's compensation. Generally speaking, three major schools of thought have emerged, known respectively as (1) Whole Man Theory, (2) Loss of Earning Capacity Theory, and (3) Actual Wage Loss Theory.[1]

The gist of the Whole Man Theory is the thesis that the primary criteria for assessing the loss resulting from a work injury ought to be of a physiological and psychiatric character and that other, especially economic, factors should play at best a subordinate role. Conversely, the Loss of Earning Capacity Theory and the Actual Wage Loss Theory proceed on the basic orientation that the compensable loss should be a matter of economic dimensions and that the proper measuring rod for its determination consists in the effects of the work injury on the victim's wage earning capacity in the normal labor market or on his actual income level respectively. Medical factors seen in that perspective must be reflected in a reduction of earnings capacity or income level.

The Whole Man Theory is the response to the instinctive and understandable feeling that a work-connected impairment of the natural capacities of the worker, whether physiological or mental, deserves some indemnification, regardless of whether or not it has adverse consequences of an economic character. Yet, when it comes to putting price tags on functional impairments, this approach leads either into the quicksand of making highly subjective and unsubstantiable judgments about the value of individual functions to dif-

[1] U.S. Bureau of Labor Standards, Workmen's Compensation Problems; Proceedings, 42d Annual Convention of the International Association of Industrial Accident Boards and Commissions, Bulletin 192 (Washington: U.S. Government Printing Office, 1957), pp. 18-31, 72-86, especially at p. 29.

ferent persons or into the self-contradictory position of predicating the compensation on the basis of former income, unless an uncomfortably equalitarian system of flat benefit amounts, varying only with the seriousness of the physiological or psychiatric impairment, is adopted. The Loss of Wage Earning Capacity Theory and the Actual Wage Loss Theory on the other hand have a purely materialistic and unemotional orientation that neglects the legitimate reaction that some impairments might constitute such discomfort to, and be felt as such harm by, the victim that denial of compensation in such a case would be sensed as unjust and an unfair discrimination.

Actually, no existing American workmen's compensation law has consistently followed one or the other school of thought; rather they have attempted compromises at varying points. As a rule, indemnity benefits in the United States are earnings-related. Uniform or flat amounts exist mainly for the totals of survivor benefits. Flat disability benefit formulae are extremely rare.[2] All states, except California, have schedules for listed permanent partial disabilities and vary greatly both in the construction of these schedules and the treatment of the non-schedule cases.

Since each of the three basic approaches has serious intellectual shortcomings which makes a consistent and unqualified adherence unacceptable, the lawmakers -- whether legislatures or courts -- have attempted a vast array of hybrids and created a veritable muddle. Generally speaking, the statutes differentiate between various categories of disability on the basis of degree and duration and employ the classes of permanent total disability, temporary total disability, permanent partial disability, and temporary partial disability. The actual scope and structure of these classes, however, show bewildering discrepancies.

Permanent Total Disability. All American jurisdictions, save one, define permanent total disability by reference to an occupational test, i.e., absence of employability or employment, although most, if not all of them, have prescribed schedules of specified physiological impairments which are "presumed" or "conclusively presumed" to cause total disability.

By far the most common general standard for determining the existence of permanent total disability is the prospective ability of the victim to find regular employment of some type in the normal labor market during the period of his ordinary work-life expectancy and without overtaxing his endurance. An occupational test is applied even in such jurisdictions which -- like Hawaii[3] and New

[2]Stefan A. Riesenfeld, "Efficacy and Costs of Workmen's Compensation," California Law Review, XLIX (October 1961), 634, text at ftn. 17 and 18.

[3]Rev. Laws of Hawaii Sec. 97-25 (a) (1955) refers to total and permanent disability for work.

Jersey[4] -- follow the whole man approach in all cases of permanent partial disability including the non-schedule cases. There seems to be decisional agreement to the effect that a person may be permanently and totally disabled for purposes of compensability, although the victim is not totally helpless and may find sporadic employment in times of labor shortage or be able to do some jobs under greater than expectable endurance of pains.[5]

Actually, the annual number of injuries causing permanent total disabilities and the annual amounts of income and indemnity benefits paid in this type of case are not a substantial portion of the total number of cases which require some income and indemnity benefits or of the total amounts paid for non-medical benefits. Of course, the aggregate paid for income and indemnity benefits for a single case of permanent total disability may run into a sizable figure. Table 8 shows the number of, and amount of income and indemnity benefits paid for, permanent total disability cases in Hawaii in relation to the number of all cases involving income and indemnity benefits and the aggregate amounts of such benefits.

Temporary Total Disability. Conversely, the number of temporary total disability cases and the amount of income and indemnity benefits paid for temporary total disability constitute in many jurisdictions the bulk in number and amounts of all cases involving payment of non-medical benefits. Of course, the existing ratios vary sharply from jurisdiction to jurisdiction since the number of, and amounts paid for, cases of temporary total disability involving income and indemnity benefits are primarily a function of the provisions governing waiting period. In Hawaii, which has a two-day waiting period, one of the shortest in the nation, the proportion of the number of and amounts paid for temporary total disability cases entailing income and indemnity benefits is consequently relatively high. Moreover, it must not be overlooked that income and indemnity benefits for temporary disability are frequently paid in cases which are not classified under this rubric, but as permanent partial disability (including disfigurement) cases or death cases because the temporary total disability terminated either with a residual permanent partial disability or the demise of the victim.

Table 9 indicates the number of temporary total disability cases entailing payment of income and indemnity benefits and the aggregate amounts paid as such benefits for temporary total disability in relation to the number of all cases involving payment of in-

[4]See the leading cases of Cleland v. Verona Radio, 130 N.J.L. 588, 33 A2d 712 (Supr. Ct. 1943); Valson v. Star Electric Motor Co., 15 N.J. Super. 565, 83 A2d 656 (County Ct. 1951).

[5]Stefan A. Riesenfeld and Richard C. Maxwell, Modern Social Legislation (Brooklyn, N.Y.: Foundation Press, 1950), p. 304; Arthur Larson, The Law of Workmen's Compensation (New York: Mathew Bender and Co., 1957), 2 vols.

Table 8

PERMANENT TOTAL DISABILITY CASES IN RELATION TO ALL CASES INVOLVING PAYMENT OF INCOME AND INDEMNITY BENEFITS
State of Hawaii
1952-1961

Year	All Cases Involving Income and Indemnity Benefits		Permanent Total Disability			
	Number	Amount	Number	Per Cent of Total	Amount	Per Cent of Total
1952[a]	4,516	$ 938,014	6	.13	$ 33,200	3.54
1953[a]	4,402	1,002,997	2	.05	14,787	1.47
1954[a]	4,024	1,191,994	5	.12	32,272	2.71
1955[b]	6,243	2,433,275	18	.29	127,883	5.26
1956[c]	5,884	1,229,909	25	.42	35,568	2.89
1957[d]	6,617	1,384,405	23	.35	26,714	1.93
1958[e]	6,868	1,519,762	25	.36	28,966	1.91
1959[f]	7,714	1,832,095	22	.29	52,049	2.84
1960[g]	8,084	1,966,470	29	.36	37,166	1.89
1961[h]	9,818	2,892,812	26	.27	25,699	.89

Source: Compiled from data collected by the Workmen's Compensation Division, Department of Labor and Industrial Relations.

[a]"Cases closed" basis.

[b]Amounts reflect change in reporting basis (initiated in that year) from "cases closed" to payments in all pending cases.

[c]Excludes 1,576 pending cases.

[d]Excludes 897 reopened cases, involving total benefits of $73,566 for which no breakdown is available, and 2,370 pending cases.

[e]Excludes 731 reopened cases, involving total benefits of $59,499 for which no breakdown is available, and 2,517 pending cases.

[f]Excludes 838 reopened cases, involving total benefits of $83,333 for which no breakdown is available, and 2,808 pending cases.

[g]Excludes 1,069 reopened cases, involving total benefits of $147,323 for which no breakdown is available, and 4,813 pending cases.

[h]Excludes 1,276 reopened cases, involving total benefits of $165,128 for which no breakdown is available, and 1,538 pending cases.

Table 9

NUMBER OF TEMPORARY TOTAL DISABILITY CASES EXCEEDING WAITING PERIOD AND AMOUNTS OF INCOME AND INDEMNITY BENEFITS PAID FOR TEMPORARY TOTAL DISABILITY IN RELATION TO ALL CASES INVOLVING INCOME AND INDEMNITY BENEFITS
State of Hawaii
1952-1961

Year	All Cases of Income and Indemnity Benefits		Temporary Total Disability Cases			
	Number	Amount	Number of Cases so Classified	Per Cent of Total	Amounts of Income Indemnity Benefits for All Total Temporary Disability	Per Cent of Total
1952[a]	4,516	$ 938,014	3,443	76.24	$ 576,405	61.45
1953[a]	4,402	1,002,997	3,928	89.23	536,979	53.54
1954[a]	4,024	1,191,994	3,443	85.56	576,405	48.36
1955[b]	6,243	2,433,275	5,376	86.11	1,096,965	45.08
1956[c]	5,884	1,229,909	5,270	89.57	668,981	54.39
1957[d]	6,617	1,384,405	5,961	90.09	758,928	54.82
1958[e]	6,868	1,519,762	6,193	90.17	858,447	56.49
1959[f]	7,714	1,832,095	7,002	90.77	1,057,819	57.74
1960[g]	8,084	1,966,470	7,274	90.38	1,065,297	54.17
1961[h]	9,818	2,892,812	8,637	87.97	1,575,057	54.45

Source: Compiled from data collected by the Workmen's Compensation Division, Department of Labor and Industrial Relations.

[a] "Cases closed" basis.

[b] Amounts reflect change in reporting basis (initiated in that year) from "cases closed" to payments in all pending cases.

[c] Excludes 1,576 pending cases.

[d] Excludes 897 reopened cases, involving total benefits of $73,566 for which no breakdown is available, and 2,370 pending cases.

[e] Excludes 731 reopened cases, involving total benefits of $59,499 for which no breakdown is available, and 2,517 pending cases.

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[h] Excludes 1,276 reopened cases, involving total benefits of $165,128 for which no breakdown is available, and 1,538 pending cases.

come and indemnity benefits and the aggregate amounts of such benefits in Hawaii for the years 1952-1961.

Permanent Partial Disability -- Schedule Cases. All American jurisdictions with the exception of California have inserted into their compensation laws a schedule that specifies fixed compensation payments for listed functional impairments. In such cases the effect of the scheduled functional impairment on the wage earning capacity or the income level is immaterial.[6] The compensation for the schedule cases, however, is usually specified in terms of weekly benefits, their number varying according to the type of impairment. In other words there is a differentiation of the amounts payable to individual claimants on the basis of their prior earning record regardless of the effect on their subsequent earnings.

A great discrepancy exists in the number of weekly benefits awarded by the different jurisdictions for the same type of schedule

Table 10

NUMBER OF WEEKLY BENEFITS FOR PRINCIPAL SCHEDULE INJURIES
Selected Jurisdictions

Type of Injury	Hawaii	Fla.	Ill.	N.J.	Wisc.	New York	Longshoremen's & Harbor Workers Compensation Act
Arm	312	200	235	300	500		
Leg	288	200	200	275	500		
Hand	244	175	190	230	400		
Foot	205	175	155	200	250		
Thumb	75	60	70	75	125		
Index Finger	46	35	40	50	60		
2nd Finger	30	30	35	40	45		
3rd Finger	25	20	25	30	26		
Little Finger	15	15	20	20	28		
Big Toe	38	30	35	40	83-1/2		
Other Toe	16	10	12	15	25		
Eye (enucleation)	160	175	160	225	275		
Eye (loss of vision)	140	175	150	200	250	160	160
Loss of Hearing of Both Ears	200	150	125	200	333-1/3	150	200
Loss of Hearing of One Ear	52	40	50	60	50	60	52

Source: Prepared from statures of jurisdictions.

[6]For references see Riesenfeld, Modern Social Legislation, 299.

injuries, and the relation of individual schedule benefits to other schedule benefits likewise shows little consistency.[7] Table 10 lists the number of weekly benefits allocated by selected jurisdictions to certain types of schedule injuries.

Permanent Partial Disability -- Non-Schedule Cases. The proper method for the rating of permanent partial disabilities that do not fall within the categories catalogized in the schedule presents the most perplexing problems, and it in that situation where the difference between the opposing schools of thought becomes most acute.

The majority of jurisdictions consider reduction of wage earning capacity or wage loss to be the appropriate test for determining the degree of disability and do not permit extrapolation of the schedules on purely medical lines, except in cases involving partial loss of use of a scheduled member.

Illustrative of this type of approach is the provision in the Longshoremen's and Harbor Workers' Compensation Act:[8]

> "Other Cases. In all other cases in this class of disability the compensation shall be 66-2/3 per cent of the difference between his average weekly wages and his wage earning capacity in the same employment or otherwise..."

Usually the statutes of this character prescribe special standards for the assessment of the wage earning capacity which give paramount weight to post-injury wages and disregard purely physiological and psychiatric criteria.[9]

A substantial number of jurisdictions, however, prescribe an extension of the schedule to comparable cases and measure the disability in the residual cases as functional impairment expressed in terms of a percentage of permanent total disability in consonance with the ideas of the whole man theory.

The prototype of this approach is the law of New Jersey. In that state the statute specifies as part of its schedule of permanent partial disability:

> "In all lesser or other cases involving permanent loss, or where the usefulness of a member or any physical function is permanently impaired, the compensation shall be 66-2/3

[7]For details see Earl F. Cheit, Injury and Recovery in the Course of Employment (New York: John Wiley & Sons, 1961), p. 161.

[8]Longshoremen's & Harbor Workers' Comp. Act, 33 U.S.C.A. sec. 908(c) 21.

[9]N.Y. Workmen's Compensation Law sec. 15 (5a); Longshoremen's & Harbor Workers' Comp. Act, 33 M.S.C.A. sec. 908 (h). The latter section amplifies the New York criteria.

per cent of (daily) wages, and the duration of compensation shall bear such relation to the specific periods of time stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule.

In cases in which the disability is determined as a percentage of total and permanent disability the duration of the compensation shall be a corresponding portion of (550) weeks."[10]

Hawaii inserted a slightly modified copy of this portion of the New Jersey act into its own compensation law in 1951[11] and thereby changed radically the basic approach of its compensation system from a qualified loss of wage earning capacity theory to the whole man theory. The draftsmen of the amendment overlooked that their graft onto the Hawaii Act overlapped with a paragraph already contained in the law which likewise prescribed an extension of the schedule in cases of less than total loss of a member named in the schedule or less than total loss of use thereof. This overlap has continued until the present day.

Other jurisdictions belonging to this whole man theory family are Missouri,[12] Washington,[13] West Virginia[14] and Wisconsin.[15]

Increase in Permanent Partial Disability Awards. Workmen's compensation programs in many states have been criticized for placing an undue weight on the compensation for partial disabilities, and thereby producing excessive litigiousness and claim costs, with a resulting obstacle to effective rehabilitation.[16]

[10]N.J. Stats. Ann. sec. 34:15-12(22) (West 1959).

[11]Session Laws of Hawaii 1951, Act 50.

[12]Mo. Rev. Stat. sec. 287.190(3) (1959), construed in Komosa v. Monsanto Chemical Co., 317 S.W.2d 396, 400 (Mo. 1958); Teel v. Burkart Mfg. Co., 271 S.W. 2d 259 (Mo. App. 1954); Gordon v. Chevrolet-Shell Div. of General Motors Corp., 269 S.W. 2d 163 (Mo. App. 1954); Robinson v. Beatrice Foods Co., 260 S.W. 2d 346 (1953).

[13]Wash. Rev. Code secs. 51.08.150 and 51.32.080(2) (1950 & Supp.) construed in Dowell v. Dept. of Labor and Ind., 51 Wash 2d 428, 319 P. 2d 843 (1957); Enevold v. Dept. Labor & Ind., 51 Wash 2d 648, 320 P.2d 1096 (1958); Page v. Dept. Labor and Ind., 52 Wash 2d 706, 328 P.2d 663 (1958).

[14]W. Va. Code of 1961 (Michie Ann.) sec. 2531 (c) construed in Walk v. Hutchinson Coal Co. 134 W. Va. 223, 58 S.E.2d 791 (1950) (injury to testicles) and authorities cited.

[15]Wisc. Stat. Ann. sec. 102.44(3) (1961) construed in Wagner v. Industrial Comm. 273 Wisc. 553, 567a, 80 N.W.2d (1957); Green Bay Drop Forge Co. v. Industrial Comm., 265 Wisc. 38, 60 N.W. 2d 409, 61 N.W.2d 847 (1953); Northern States Power Co. v. Industrial Comm. 252 Wisc. 70, 30 N.W.2d 217 (1947).

[16]See especially the report of Judge Callahan as Commissioner under Section 6 of the Executive Law, Costs, Operations and Procedures under the Workmen's Compensation Law of the State of New York, Second Report, 1958; Louis S. Reed, Medical Care under the New York Workmen's Compensation Program (Ithaca, N.Y.: Sloan Institute of Hospital Administration, Cornell University, 1960), p. 159; but contrast Harwayne, A Review and Comparison of Workmen's Compensation Experience in New York State and Wisconsin, 43 Proc. Casualty Actuarial Society 8 (1956), and Mangano, Workmen's Compensation and the Litigation Bogy, 33 N.Y.S.B.J. 297 (1961).

It is an uncontestable fact that in some jurisdictions the aggregate paid for permanent partial disabilities seems to be disproportionate to that of the indemnity payments made for other types of disability. Yet it should not be overlooked that the ratio between "permanent partials" and "temporary totals", which usually constitute the main items of income and indemnity payments, depends in large measure on the length of the waiting period applicable in the particular jurisdiction. Hence, seeming lack of proportionality may be as much the fault of unreasonable waiting periods as of excessive liberality in awarding compensation.

Table 11 shows the relation existing in 1959 between temporary total and permanent partial disability cases in selected jurisdictions (Hawaii, Illinois, New York and Wisconsin).

Table 11

TEMPORARY TOTAL AND PERMANENT PARTIAL DISABILITY CASES AS PER CENT OF TOTAL INCOME AND INDEMNITY PAYMENTS
Selected States
1959

State	Temporary Total Disability		Permanent Partial Disability	
	Per Cent of Cases With Indemnity Benefits	Per Cent of Total Income & Indemnity Payments	Per Cent of Cases With Indemnity Benefits	Per Cent of Total Income & Indemnity Payments
Hawaii[1]	91.0	53.7[a]	6.5	34.8
Illinois[2]	40.6	9.5[b]		83.6
New York[3]	58.6	17.0[b]		68.4
Wisconsin[4]	87.6	27.9[b]	11.9	57.9

Source: [1]Annual Report of the Department of Labor and Industrial Relations, State of Hawaii.

[2]Illinois Department of Labor, Annual Report on Compensable Work Injuries (1959), p. 8.

[3]Gellhorn & Lauer, Administration of New York Workmen's Compensation Law.

[4]Wisconsin, Statistical Release No. 3652 (1961) at 149.

[a]Number of cases classified as temporary total disability, permanent partial disability or disfigurement; total payments of indemnity benefits in all pending cases so classified.

[b]On "cases closed" basis.

The table shows the substantial divergence which exists in the selected jurisdictions with respect to the percentage that the number of, and amounts of indemnity payments made in, cases classified as permanent partial or disfigurement cases constitute of the number of, and amounts of indemnity payments made in, all cases classified as compensable cases, i.e., cases involving income and indemnity benefits. A corresponding disparity, though in the inverse order, exists with respect to the cases classified as temporary total disability. That category includes injuries which cause inability to work for a period of time exceeding the statutory waiting period but which do not produce residual permanent partial disability or disfigurement. One might expect this type of case to constitute the bulk of all compensable cases at least as to numbers. Such is the case in Hawaii and most jurisdictions, but has ceased to be true in Illinois where since 1953, the permanent partial disability cases have outrun all other cases taken together.

When it comes to the amounts of cases classified as permanent partial disability or disfigurement cases, it must be understood the amounts appearing in the statistics of Illinois, New York and Wisconsin include substantial amounts paid for temporary total disability preceding the ultimate permanent partial disability and that these sums are not included in the tabulation of cases classified as temporary total disability cases.

At any rate if properly interpreted the cases show that the length of the waiting period is the most important single factor governing the distribution of income and indemnity benefits among the cases entailing such payments. In other words, states with longer waiting periods, like Illinois and New York, screen out a large number of injuries with short healing periods and without residual effects and therefore tend to have a seeming disproportion of injuries leaving some other minor permanent partial disability,. Most of their indemnity payments are crowded into that type of case. In Hawaii, certainly, temporary total disability is still, in number and amount, the greatest category of income and indemnity benefits.

Disfigurement Cases. While complaints about excessive numbers and amounts of permanent partial disability awards in general, as are heard in Illinois, New Jersey and New York, are not warranted and have not been voiced in Hawaii, similar criticism has been raised against the number and amounts of awards for disfigurement. Certainly the statutory provisions of Hawaii, especially in consequence of the amendments made in 1957[17] and 1961[18] are among the most liberal provisions existing in the United States for

[17]Session Laws of Hawaii 1957, Act 214.

[18]Session Laws of Hawaii 1961, Act 99.

that type of physical impairment. As a result special attention has been placed upon the numerical and quantitative aspects of disfigurement awards.

Tables 12 and 13 present data designed to show the growing proportion of disability awards in the numerical and quantitative distribution (a) of all awards of income and indemnity benefits and (b) of awards for all permanent impairments less than total disability. Unfortunately, not all cases involving disfigurement awards are classified as disfigurement cases. Hence the numbers given do not include all awards for disfigurement but only those classified as that type of case. The amounts, conversely, contain all sums paid for disfigurement, even in cases not so classified.

Since the statistics of other jurisdictions include within the benefit payments listed for cases of permanent partial disability and disfigurement the amounts paid for temporary total disability connected with the injury causing the residual partial disability or disfigurement, an alternative table is compiled for Hawaii showing the Hawaii experience also on that basis.

Tables 12 and 13 show that the proportion paid as compensation for scars has increased considerably as a result of the two last amendments and is now four times the amount paid as income and indemnity benefits for permanent total disability. (Compare Table 8)

The amount spent in Hawaii for scars is now twice the size of the compensation payments made for disfigurement, even in the states which otherwise pay a higher percentage of the total for permanent partial and disfigurement cases than Hawaii. See Table 14.

It is believed that the proportion of indemnity benefits paid for scars is out of proportion with the general system and allocates amounts to trivial impairments at the expense of injury victims who need improvement of their lot, i.e., employees in the lower wage brackets suffering severe permanent partial disabilities. Disfigurements should be compensable only if they are of a substantial character.

Temporary Partial Disability. This category receives little practical use. It is designed to cover employees who are back at work but, until full restoration, can work only at lower rates of remuneration. The statistics of the department usually do not include payments in this category as a separate class.

Indemnity and income benefits for death

Loss of the breadwinner as the result of an industrial accident or employment connected disease entitles the dependents to death benefits. The statute enumerates various types of family members

Table 12

DISFIGUREMENT CASES AND AWARDS FOR DISFIGUREMENT COMPARED WITH NUMBER AND AMOUNTS OF ALL CASES INVOLVING INCOME AND INDEMNITY BENEFITS AND OF COMBINED PERMANENT PARTIAL DISABILITY AND DISFIGUREMENT CASES AND AWARDS

State of Hawaii
1952-1961

Year	All cases involving income and indemnity awards		Permanent Partial Disability and Disfigurement Combined				Disfigurement Alone			
	Number	Amount	Number	Per Cent of Total	Amount	Per Cent of Total	Number	Per Cent of Total	Amount	Per Cent of Total
1952[a]	4,516	$ 938,014	385	8.53	$ 309,089	33.0	52	1.15	$ 9,168	.98
1953[a]	4,402	1,002,997	455	10.34	391,668	39.0	67	1.52	11,707	1.17
1954[a]	4,024	1,191,994	540	13.42	438,114	36.8	73	1.81	18,524	1.55
1955[b]	6,243	2,433,275	744	11.92	755,841	31.1	99	1.59	27,537	1.13
1956[c]	5,884	1,229,909	466	7.92	391,762	31.9	57	.97	12,714	1.03
1957[d]	6,617	1,384,405	511	7.72	451,762	32.6	48	.73	11,870	.86
1958[e]	6,868	1,519,762	536	7.80	485,820	32.0	101	1.47	22,335	1.47
1959[f]	7,714	1,832,095	591	7.66	563,242	30.7	106	1.37	38,803	2.12
1960[g]	8,048	1,966,470	656	8.15	710,844	36.3	155	1.93	42,712	2.14
1961[h]	9,818	2,892,812	1,065	10.85	1,117,669	38.6	337	3.43	107,159	3.70

Source: Compiled from data collected by the Workmen's Compensation Division, Department of Labor and Industrial Relations.

[a]"Cases closed" basis.

[b]Amounts reflect change in reporting basis (initiated in that year) from "cases closed" to payments in all pending cases.

[c]Excludes 1,576 pending cases.

[d]Excludes 897 reopened cases, involving total benefits of $73,566 for which no breakdown is available, and 2,370 pending cases.

[e]Excludes 731 reopened cases, involving total benefits of $59,499 for which no breakdown is available, and 2,517 pending cases.

[f]Excludes 838 reopened cases, involving total benefits of $83,333 for which no breakdown is available, and 2,808 pending cases.

[g]Excludes 1,069 reopened cases, involving total benefits of $147,323 for which no breakdown is available, and 4,813 pending cases.

[h]Excludes 1,276 reopened cases, involving total benefits of $165,128 for which no breakdown is available, and 1,538 pending cases.

Table 13

INCOME AND INDEMNITY BENEFITS IN CASES OF PERMANENT PARTIAL DISABILITY AND DISFIGUREMENT COMBINED AND IN CASES OF DISFIGUREMENT ALONE, COMPARED WITH TOTAL AMOUNTS OF INCOME AND INDEMNITY BENEFITS
State of Hawaii
1952-1961

Year	Total Income and Indemnity Benefit Payments	Permanent Partial Disability and Disfigurement Combined		Disfigurement Only	
		Amount	Per Cent of Total	Amount	Per Cent of Tota
1952[a]	$ 938,014	$ 451,363	48.1	$ 12,427	1.3
1953[a]	1,002,997	542,320	54.1	15,617	1.6
1954[a]	1,191,994	660,142	55.4	21,189[i]	1.8
1955[b]	2,443,275	1,156,557	47.5	32,498[j]	1.3
1956[c]	1,229,909	440,172	35.8	13,078[k]	1.1
1957[d]	1,384,405	491,677	35.5	14,486[l]	1.0
1958[e]	1,519,762	541,858	35.7	24,297[m]	1.6
1959[f]	1,883,095	636,856	34.8	41,571[n]	2.3
1960[g]	1,966,470	839,067	42.7	51,091[o]	2.6
1961[h]	2,892,812	1,330,075	46.0	142,651[p]	4.9

Source: Compiled from data collected by the Workmen's Compensation Division, Department of Labor and Industrial Relations.

[a]"Cases closed" basis.

[b]Amounts reflect change in reporting basis (initiated in that year) from "cases closed" to payments in all pending cases.

[c]Excludes 1,576 pending cases.

[d]Excludes 897 reopened cases, involving total benefits of $73,566 for which no breakdown is available, and 2,370 pending cases.

[e]Excludes 731 reopened cases, involving total benefits of $59,499 for which no breakdown is available, and 2,517 pending cases.

[f]Excludes 838 reopened cases, involving total benefits of $83,333 for which no breakdown is available, and 2,808 pending cases.

Table 13 (continued)

[g]Excludes 1,069 reopened cases, involving total benefits of $147,323 for which no breakdown is available, and 4,813 pending cases.

[h]Excludes 1,276 reopened cases, involving total benefits of $165,128 for which no breakdown is available, and 1,538 pending cases.

[i]Includes $461 for disfigurement, not classified as disfigurement cases.

[j]Includes $6,284 for disfigurement, not classified as disfigurement cases.

[k]Includes $2,464 for disfigurement, not classified as disfigurement cases.

[l]Includes $1,750 for disfigurement, not classified as disfigurement cases.

[m]Includes $10,365 for disfigurement, not classified as disfigurement cases.

[n]Includes $12,143 for disfigurement, not classified as disfigurement cases.

[o]Includes $10,140 for disfigurement, not classified as disfigurement cases.

[p]Includes $28,715 for disfigurement, not classified as disfigurement cases.

Table 14

PROPORTION OF INDEMNITY PAYMENTS IN DISFIGUREMENT AND PERMANENT PARTIAL DISABILITY CASES ILLINOIS AND NEW YORK Selected Years

State	Year	Total Indemnity Payments	Permanent Partial and Disfigurement		Disfigurement Only	
			Amount	Per Cent of Total	Amount	Per Cent of Total
Illinois[1]	1958	$ 30,699,385	$25,893,380	84.3	$706,508	2.3
	1959	30,549,923	25,524,859	83.6	703,157	2.3
	1960	34,796,951	29,368,294	84.4	726,454	2.1
New York[2]	1959	107,406,472	73,449,109	68.4	1,689,627	1.6

Source: [1]Illinois, Department of Labor, Annual Report of Compensable Work Injuries, Part II, for 1958, 1959 and 1960.

[2]Gellhorn and Lauer, Administration of the New York Compensation Law (mimeographed 1961).

as possible dependents and establishes a hierarchy of entitlement between members of various classes. Widows and unmarried children under eighteen are conclusively presumed to be dependent, but in other cases actual dependency must be shown. Partial dependency suffices for entitlement to full benefits. The rate of compensation varies, also according to the class to which the dependent belongs. The law has a set of multiple limits on the weekly and total benefit amounts. Compensation payable to dependents for any one death shall not exceed $25,000, but this limit is not applicable to a widow who is unmarried and incapable of self-support, or to a child under eighteen or incapable of self-support and unmarried. In the latter case, however, benefits terminate at the latest upon expiration of 104 weeks after the age of eighteen.

Although the aggregate amounts payable on account of one death may be $25,000 or, in the case of widows physically or mentally incapable of support and in the case of minor dependent children, even more, the numerical and quantitative distribution of annual payments for death cases is not very substantial within the total paid annually for income and indemnity benefits. Table No. 15 indicates the relative proportion of death benefit payments by number and amount in the benefit structure of the State. It can be seen therefrom that there are about 15 fatal work injuries per year and that the number of such cases in current payment status has varied between 89 and 123. The benefits payable are between 6 and 10 per cent of the total.

Overlap between workmen's compensation and other public income maintenance programs

In appraising the adequacy of the benefit schedules for death and various types of disability under workmen's compensation, the ever-increasing overlap between workmen's compensation and other public provisions for income maintenance in cases of disability or death must be considered. Two types of such other income maintenance programs are particularly important: sick leave and pension provisions for public employees and the Old Age Survivors and Disability Insurance System under the Social Security Act.

Relation Between Workmen's Compensation and Sick Leave and Retirement Provisions for Public Employees. The overlap between sick leave and retirement provisions for public employees and workmen's compensation has prompted sporadic interventions by legislatures against cumulation of benefits.

The U.S. Employees' Compensation Act of 1916 contained from its date of enactment provisions against cumulation of remuneration or pensions and for the dove-tailing between sick leave and disability income benefits.[19]

[19] 39 U.S. Stats. 742 (1916), secs. 7 and 8.

Table 15

PROPORTION OF INDEMNITY AND INCOME BENEFITS FOR DEATH TO THE TOTAL OF SUCH BENEFITS
State of Hawaii
1952-1961

Year	Total Indemnity and Income Benefit Cases		Death Cases			
	Number	Amount	Number	Per Cent of Total	Amount	Per Cent of Total
1952[a]	4,516	$ 938,014	17	.38	$ 67,876	7.24
1953[a]	4,402	1,002,997	16	.36	59,563	5.94
1954[a]	4,024	1,191,994	36	.90	145,203	12.18
1955[b]	6,243	2,433,275	105	1.68	452,586	18.60
1956[c]	5,884	1,229,909	123	2.09	133,598	10.86
1957[d]	6,617	1,384,405	122	1.84	146,999	10.62
1958[e]	6,868	1,519,762	114	1.66	146,529	9.64
1959[f]	7,714	1,832,095	99	1.28	158,985	8.68
1960[g]	8,084	1,966,470	89	1.11	153,163	7.79
1961[h]	9,818	2,892,812	90	.91	174,387	6.03

Source: Compiled from data collected by the Workmen's Compensation Division, Department of Labor and Industrial Relations.

[a]"Cases closed" basis.

[b]Amounts reflect change in reporting basis (initiated in that year) from "cases closed" to payments in all pending cases.

[c]Excludes 1,576 pending cases.

[d]Excludes 897 reopened cases, involving total benefits of $73,566 for which no breakdown is available, and 2,370 pending cases.

[e]Excludes 731 reopened cases, involving total benefits of $59,499 for which no breakdown is available, and 2,517 pending cases.

[f]Excludes 838 reopened cases, involving total benefits of $83,333 for which no breakdown is available, and 2,808 pending cases.

[g]Excludes 1,069 reopened cases, involving total benefits of $147,323 for which no breakdown is available, and 4,813 pending cases.

[h]Excludes 1,276 reopened cases, involving total benefits of $165,128 for which no breakdown is available, and 1,538 pending cases.

In its current form[20] the U.S. Employees' Compensation Act outlaws cumulation of income benefits under the Act and remuneration from the United States except for services actually performed, but with the qualifications (a) that an employee may combine indemnity benefits for scheduled injuries and (b) that whenever a person is simultaneously entitled to compensation benefits and other disability or death benefits under any other act of Congress because of service by him or, in case of death, he may elect between the benefits available to him. Such election must be made within a year from the injury or death.

In addition, the U.S. Employees' Compensation Act[21] provides that resort to compensation may be postponed until unutilized annual or sick leave has been exhausted.

Similar provisions are found in the laws of several states.[22]

In Hawaii the law regulating the retirement system for public officers and employees provides[23] that amounts payable by the State or any county as disability or death benefits under the provisions of the workmen's compensation law shall be offset against and payable in lieu of the disability and death benefits under chapter 6 of the Revised Laws of Hawaii 1955. After exhaustion of the benefits under the workmen's compensation law, benefits from the employees' retirement system shall be resumed.

Special provisions exist for injured employees of the police and fire departments of the City and County of Honolulu. They are continued on the payroll of the respective departments, but their salaries are credited to their compensation benefits.[24]

Overlap Between Workmen's Compensation and Survivors and Disability Insurance Under OASDI. The recent expansion and facilitation of coverage under the survivors and disability insurance programs of the federal Social Security Act has multiplied the instances of overlapping protection and made them the rule, rather than the exception. Survivors Insurance, which was added to Old Age Insurance in 1939, never excluded any cumulation of its benefits with death benefits under workmen's compensation. Conversely, when insurance against permanent and total disability was added to OASI in 1956, the pertinent sections contained a provision (42 U.S.C. sec. 424 (1957)) which reduced the benefits available under

[20] 5 U.S.C.A. Cum. Supp. 1961 sec. 757.

[21] 5 U.S.C.A. Cum. Supp. 1950 sec. 758.

[22] E.g. Minn. Stats. 1957 sec. 176.021, subd. 5 and 6.

[23] Rev. Laws of Hawaii 1955, sec. 6-56 (1961 Supp.)

[24] Rev. Laws of Hawaii 1955, sec. 149-7 (1961 Supp.)

:he new program by the amounts received under a workmen's com-)ensation law or plan of the United States or a state. This provi-sion, however, was repealed in 1958, in pursuance of a new Congressional policy to the effect that OASDI should be a common and nearly universal "floor of protection" with respect to all hazards covered thereby.

As a result the weekly benefits for permanent total disability payable to an injured employee and death benefits payable to the employee's dependents under the Hawaii Workmen's Compensation Act are at present frequently substantially supplemented by benefits payable under the OASDI, a situation that merits a more detailed consideration.

Coverage of Survivors and Disability Insurance Under OASDI. The OASDI program today is nearly universal in its coverage. With a very few minor exceptions it extends to all employees in private employment, including full-time domestic employees in a private home.[25] But while workmen's compensation protection attaches on the first day of covered work, OASDI benefits are available only upon acquisition of "insured status".[26] The law distinguishes between different types of insured status as a requisite for the entitlement of different beneficiaries. The two main types requisite in the Old Age and Survivors protection part of the program are called "fully insured" status[27] and "currently insured" status,[28] respectively. To be currently insured, an individual needs six quarters of coverage during the thirteen-quarter period ending with the quarter in which he died or became entitled to old age insurance benefits or disability insurance benefits, while acquisition of fully insured status requires one quarter of coverage for each calendar year elapsing after 1950 or, if later, the year when the employee reached age 21, and before the year in which the employee died or reached age 62 if female or 65 if male, provided that always at least six quarters of coverage are required. In other words most regular employees, who have worked for more than one and one-half years, will have coverage. Disability insured status under the disability insurance program, however, requires, apart from fulfillment of modified conditions for fully insured status, an additional period of coverage, i.e., twenty quarters during the forty-quarter period ending with the quarter in which the employee became totally disabled. In other words the federal protection against disability is available only to employees who have been in employment for at least five years.

[25] 42 U.S.C. sec. 409, 410.

[26] 42 U.S.C. sec. 414.

[27] 42 U.S.C. sec. 414(a).

[28] 42 U.S.C. sec. 414(b).

Special Conditions of Entitlement to Survivors and Disability Benefits. Survivors benefits are accorded to the widow, widower, divorced wife, the children and parents of the deceased, provided that they comply with specified conditions of entitlement.[29] In the case of a widow, survivors benefits are available if she either has attained the age of 62 or has a child of the employee in her care who is likewise entitled to benefits. Children, to qualify, must be unmarried and either under eighteen or suffering from a disability. Survivors benefits of children and widows with qualifying children in their care require only currently insured status of the deceased; survivors benefits of widows without qualifying children in their care and of parents require fully insured status.

Dependent survivors benefits are calculated as a percentage of the primary insurance amount, which in turn depends on the average monthly wage. The amount of the insurance benefits for a widow without qualifying children and for parents are fixed at 82-1/2 per cent of the primary insurance amount and for a widow with qualifying children or for a qualifying child at 75 per cent each. The statute provides for family maxima and if the sum of all dependents benefits exceed this amount, the individual amounts shall be proportionately reduced.[30]

Disability benefits are available for the disabled employee himself and for his wife or husband, divorced wife, children or parents, provided, again, that these dependents meet certain specified conditions of entitlement. The wife of the disabled employee is entitled to benefits for herself, if she is either 62 years of age or has a qualifying child in her care. Her benefit is fixed at 50 per cent of the primary amounts, and the child's insurance benefits are likewise fixed at 50 per cent in such case with the same family maximum applying as in the other cases.

Benefit Levels of Survivors and Disability Insurance. The current wage base of the program includes the first $4,800 of annual wages. Average monthly wages in excess of $400 are not reflected in benefits.

The statute no longer contains an express benefit formula but rather includes a table, specifying primary insurance amounts and family maxima for various steps of average monthly wages, ranging from $67 or less to $400.[31] However, the individual primary insurance amounts, lying between the minimum of $40 and the maximum of $127, are actually determined on the basis of a formula which fixes the primary amount at the rate of 58.85 per cent for the first

[29] 42 U.S.C. sec. 402(e), (f), (g), and (d).

[30] 42 U.S.C. sec. 403(a).

[31] 42 U.S.C. sec. 415.

$110 and 21.4 per cent of the remainder up to $290.[32] The family maximum is computed by using a formula which fixes it at 150 per cent of the primary insurance amount for the average monthly wage of $127 or less, at 80 per cent of the average monthly wage in the range between $128 and $314, and reaches the maximum of $254 at an average monthly wage of $315.[33]

Focusing on the level of the rate of primary benefit payments to average earnings, it follows that at the low end of the earnings spectrum, rate is a decreasing multiple of the actual earnings until an average monthly wage of $40 is reached. From $40 to $67 the benefit rate decreases from 100 per cent to 58.85 per cent; it remains at that level for average monthly wages from $68 to $110 and then decreases again until it reaches 31.75 per cent at $400. For monthly earnings above $400 it decreases further since the portion of earnings in excess of that amount is not reflected in benefits. Maximum family benefits are more than 100 per cent of the actual average monthly wage until the latter reaches $60; after that their rate decreases from 100 per cent to 80 per cent until $127 is reached and remains at the latter level until $314. At $315 and upwards their rate decreases again.

The Nature of Cumulative Benefits. Since the dependents benefits under the survivors insurance program and the primary and dependents benefits under the disability insurance program are cumulative to the benefits under the workmen's compensation program, concern has been expressed about a possible excessiveness of the pyramided benefits.

Tables 16 and 17 show the benefit rates (expressed as percentages of the average earnings) which exist for selected weekly income levels and family compositions. It should be noted that the pay period unit under the state workmen's compensation program is the average weekly wage, while under the OASDI program it is the average monthly wage. The relation between the two units is given by the formula:

$$\text{Average Weekly Wage} = \frac{12}{52} \text{ Average Monthly Wage}$$

The tables show that at an average weekly wage of $88 (which is approximately the current average weekly wage in the State) death benefits for the dependents of a deceased worker leaving a widow and two minor children would be 133.28 per cent of his wage and that the benefits for permanent total disability of a worker with coverage under the federal program and the same family composi-

[32] U.S. Social Security Administration, Analysis of Benefits, OASDI Program, 1960 Amendments, Actuarial Study No. 50 p. 9. (Washington: U.S. Government Printing Office, 1960)

[33] Ibid., 22.

Table 16

BENEFIT RATES FOR DEATH BENEFITS UNDER WORKMEN'S COMPENSATION IN HAWAII AND OASDI FOR SELECTED EARNINGS AND FAMILY COMPOSITIONS

Average Weekly Wage	Corresponding Average Monthly Wage	Workmen's Compensation		OASDI			
		Widow (per cent)	Widow and Children (per cent)	Widow Aged 62 (per cent)	Widow and One Child (per cent)	Widow and Two Children (per cent)	Family Maximum (per cent)
26.00	$112.67	57.69	76.92	47.66	86.62	86.62	86.62
50.00	216.67	50	66.67	33.50	60.92	81.69	81.69
70.00	303.33	50	66.67	28.85	52.42	78.62	80.44
80.00	346.67	50	66.67	27.37	49.79	73.27	73.27
88.00	381.33	50	66.67	26.62	48.41	66.61	66.61
95.00	411.67	50	66.67	25.46	46.30	61.70	61.70
100.00	433.33	50	66.67	24.18	43.98	58.62	58.62
112.50	487.50	50	66.67	21.50	39.10	52.10	52.10
120.00	520.00	46.88	62.50	20.15	36.65	46.80	46.80

Source: Laws of Hawaii; U.S. Social Security Act.

Table 17

BENEFIT RATES FOR TOTAL DISABILITY UNDER WORKMEN'S COMPENSATION IN HAWAII AND OASDI FOR SELECTED EARNINGS AND FAMILY COMPOSITIONS

Average Weekly Wage	Corresponding Average Monthly Wage	Workmen's Compensation (per cent)	OASDI			
			Single Worker (per cent)	Worker and Wife Aged 62 (per cent)	Wife and One Child (per cent)	Wife and Two Childrer (per cent)
$ 26.00	$112.67	66.67	57.69	79.35	86.62	86.62
50.00	216.67	66.67	40.61	55.85	81.23	81.60
70.00	303.33	66.67	34.94	48.07	69.89	80.44
80.00	346.67	66.67	33.17	45.63	66.34	73.27
88.00	381.33	66.67	32.26	44.37	64.51	66.61
95.00	411.67	66.67	30.85	42.44	61.70	61.70
100.00	433.33	66.67	29.31	40.32	58.62	58.62
112.50	487.50	66.67	26.05	35.84	52.10	52.10
120.00	520.00	62.50	24.42	33.60	48.85	48.85

Source: Laws of Hawaii; U.S. Social Security Act.

tion would be of the same magnitude. However, it is necessary to remember that only one-half of the amounts receivable under the federal program are employer-financed. Hence the total employer-financed portion of the benefits in the indicated cases would be only 99.98 per cent of the wages of the deceased. In view of this situation the alarm voiced in certain quarters seems to be exaggerated, and there seems to exist no adequate reason for introducing provisions into the state compensation law designed to reduce the amounts or rate of compensation where the beneficiaries receive benefits under OASDI, except perhaps with respect to the $255 for burial expenses payable under OASDI. It must be remembered, however, that true wages are subject to tax withholdings while the OASDI and compensation benefits are not so reduced. To that extent, the benefits exceed the take-home pay.

Nevertheless the availability of supplementary benefits in cases of death and total disability under the OASDI program makes it reasonable that any future improvements of the benefit structure under the state law should focus in the first place on workers suffering severe permanent partial disability and in the second place on workers suffering prolonged temporary total disability who have large families.

CHAPTER 4

COST AND COST ALLOCATION OF WORKMEN'S COMPENSATION INSURANCE

The Hawaii workmen's compensation law requires that private employers secure compensation to their employees either by insurance with a private carrier authorized to write workmen's compensation insurance or guarantee insurance in the state or by self-insurance upon terms and proof satisfactory to the director of the department of labor and industrial relations.[1]

Currently, approximately two-thirds of all the risks covered by workmen's compensation are covered by workmen's compensation insurance with licensed carriers. The remaining risks consist of: (1) employment with the State or its subdivisions and (2) employment with 81 authorized private self-insurers.[2] The self-insurers employ a labor force of approximately 34,000 persons in Hawaii and carry an annual payroll in the neighborhood of $150,000,000 for these employees.

The cost of private insurance for workmen's compensation therefore is an important factor in an appraisal of the operation and efficiency of workmen's compensation in the State.

The Nature of Workmen's Compensation Insurance

Compensation insurance performs a number of important functions in addition to its primary purpose of protecting the injured worker against possible insolvency of his employer. Seen from the side of the employer, insurance with private carriers serves primarily to: (1) spread the individual risks of industrial injury among all employers, especially employers in the same occupational category and (2) relieve the individual employer of the handling of compensation claims and the administrative details of benefit payments. In addition, the insurance companies may furnish some consultative services regarding certain operations.

Insurance carriers render these services on a business basis, expecting to make a profit from their operation. Carriers are private business enterprises and are organized either in the form of a stock company or in the form of a mutual company or reciprocal

[1]Rev. Laws of Hawaii 1955 sec. 97-90.

[2]See list of self-insurers in Appendix B.

insurer.[3] They may be either carriers organized in the state or in a sister state or abroad and licensed to operate in the state. In the case of stock companies the stockholders are entitled to the distribution of the profits from business, unless the company operates on a so-called participating basis which entitles the policy holders to share in the profits.[4] Members in mutuals are the holders of insurance contracts. Surplus from the operations are distributed to them.[5]

Mutual companies usually follow acquisition practices which differ from those of stock companies. They employ to a large extent a direct writing practice, i.e., work without the intervention of independent insurance agents. As a result they are able to minimize acquisition expenses but usually concentrate on the larger risks.

Generally speaking, stock companies and mutuals must apply identical manual rates. However, in order to equalize competitive advantages between stock carriers and mutuals, the authorities in charge of fixing insurance rates limit the premium discounts which mutuals may grant to larger risks to a lower percentage than those allowed to stock carriers.

The following data shows the discounts from the standard premiums currently permitted to the two classes of carriers.

Division of Standard Premium	Stock Company Discount	Non-Stock (Mutual) Company Discount
First $ 1,000	---	---
Next $ 4,000	9.0%	3.0%
Next $ 95,000	14.0%	6.0%
Over $100,000	16.5%	8.5%

Since the policy holders in non-stock companies receive annual dividends, the disadvantage of lower premium discounts may be more than balanced by the additional dividends. Dividends paid by non-stock carriers in Hawaii from 1951-1960 are set out in Table 18a.

[3]Rev. Laws of Hawaii 1955 secs. 181-161ff., secs. 181-171ff., secs. 181-211ff.

[4]Rev. Laws of Hawaii 1955 secs. 181-178, 181-194.

[5]Rev. Laws of Hawaii 1955 sec. 181-163.

Table 18a

DIVIDENDS PAID AND CREDITED TO HAWAII POLICY-HOLDERS
BY MUTUAL WORKMEN'S COMPENSATION INSURERS
State of Hawaii
1951-1960

Name of Carrier	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
American Mutual Liability Insurance	$ --	$ --	$ --	$ --	$ --	$ --	$ --	2	$ 96	$ 3,857
Electric Mutual Liability Insurance	--	--	--	--	--	--	--	--	--	42
Employers Mutual Liability Insurance	73	190	228	499	213	263	335	461	11,328	5,953
Liberty Mutual	10,809	7,906	9,502	10,239	12,045	17,720	46,774	50,886	54,517	53,250
Lumbermen's Mutual Casualty	25	40	26	120	146	117	12	22	42	--
Michigan Mutual Liability	--	--	--	--	--	--	--	--	--	2
Total	$10,907	$8,136	$9,756	$10,858	$12,404	$18,100	$47,121	$51,371	$65,983	$63,104
Percentage Share of Total Earned Premiums Returned as Dividends	8.1	39.5	9.9	8.3	14.6	7.7	14.9	11.4	13.2	12.4

Source: Annual Reports of the Insurance Commissioner, State of Hawaii.

Table 18b

INCOME AND SHARE OF MUTUAL COMPANIES IN DIRECT
EARNED PREMIUMS FROM WORKMEN'S
COMPENSATION INSURANCE
State of Hawaii
1951-1960

Name of Carrier	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
American Mutual Liability Insurance	$ --	$ --	$ --	$ --	$ --	$ --	$ --	$ 667	$ 26,875	$ 12,897
Electric Mutual Liability Insurance	--	--	--	--	--	--	--	--	207	174
Employers Mutual Liability Insurance	893	1,085	1,772	3,293	2,485	2,214	2,508	21,193	98,294	95,196
Liberty Mutual	133,570	19,477	96,137	127,327	115,899	232,183	314,000	421,382	295,518	400,957
Lumbermen's Mutual Casualty	290	398	689	378	93	336	--	187	3,172	811
Michigan Mutual Liability	--	--	--	--	--	--	--	--	--	19
Total	$134,753	$20,566	$98,598	$130,998	$118,477	$234,733	$316,508	$443,429	$424,066	$510,054
Percentage Share of Total Earned Premiums (stock and mutual)	6.9	1.1	2.3	5.6	4.5	7.0	8.2	9.8	8.1	8.1

Source: Annual Reports of the Insurance Commissioner, State of Hawaii.

Workmen's compensation insurance is a special type of casualty insurance[6] and subject to control by the state insurance commissioner.[7] In 1960 compensation insurance in Hawaii was written by 59 different carriers, consisting of 4 domestic, 47 sister-state and 8 alien companies. Six of the 59 companies operated on the mutual principle. During 1960 mutual carriers as shown in Table 18b, wrote policies with a direct earned premium of $510,054 or 8.1 per cent of the total direct earned premiums derived from business in Hawaii which aggregated $6,290,833. The share of the mutual carriers in the business of compensation insurance in the State has not been large during the last decade, consistently remaining below the 10 per cent mark. The dividends paid back to policy holders have likewise been modest in absolute figures, although they have constituted a significant percentage of the premium income of the mutual carriers.

Workmen's Compensation Insurance Rates and Ratemaking

Workmen's compensation insurance rates in Hawaii, since passage of the Act regulating insurance rates for casualty insurance in 1947,[8] are subject to approval by the insurance commissioner and, inter alia, must not be excessive, inadequate, or unfairly discriminatory.[9] In setting the rates, "due consideration shall be given to past and prospective loss experience within and outside (the State), to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by the carriers to the policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable (to the State), and to all other relevant factors within and outside (the State)".[10] Risks may be grouped by classifications for the establishment of rates, and such classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions or both.[11]

Rating Organizations and Ratemaking. The Hawaii rate regulatory Act permits the establishment of rating organizations of which the individual carriers may be members or subscribers and which

[6]Rev. Laws of Hawaii 1955 sec. 181-12.

[7]See the Annual Reports of the Insurance Commissioner, State of Hawaii, for relevant data about the operations of workmen's compensation insurance in Hawaii.

[8]Session Laws of Hawaii 1947, Act. 60.

[9]Id., sec. 3(a)4.

[10]Id., sec. 3(a)1.

[11]Id., sec. 3(a)3.

may make the filings on behalf of such individual carriers and perform all other rating services needed.[12] In addition, the Act recognizes and allows advisory organizations which assist rating organizations in ratemaking by the collection and furnishing of loss or expense statistics or by the submission of recommendations.[13] The rating organization which is in charge of rate filings on behalf of the workmen's compensation insurance carriers is the Hawaii Casualty and Surety Rating Bureau. Its advisory organization is the National Council on Compensation Insurance in New York City. The latter organization was established in 1921 by the casualty insurance industry engaged in writing workmen's compensation insurance at the suggestion of the National Association of Insurance Commissioners. Since that time the workmen's compensation committee of that association and the National Council have cooperated in working out the basic principles governing compensation insurance ratemaking and the various steps to be performed in connection with the periodic rate revisions in the individual states.

While a number of states, especially those with large populations and therefore with a statistically significant experience of their own, have more or less extensively modified, or departed from, the approach or particular methods followed by the National Council and the National Association of Insurance Commissioners, the techniques developed by these two groups may perhaps still be considered as the standard procedure. Since the passage of the rate regulatory Act, it has been applied without any material departures in the rate revisions in Hawaii. The rating law, in fact, reflects the notions underlying the standard procedure.[14]

The currently operative procedure goes back to a major revision adopted in 1943[15] although since that time a considerable number of modifications and innovations have been introduced. The various reports and resolutions pertaining to workmen's compensation insurance ratemaking and adopted or approved by the National Association of Insurance Commissioners are published in the Proceedings of that association and furnish the authoritative information about the present status of that process.[16] Moreover, the actuary of the National Council has described the details in a

[12] Id., secs. 6 and 7.

[13] Id., sec. 10.

[14] The Hawaii Casualty and Surety Rate Regulatory Law is the model act drafted in 1946 by an all-industry committee in conjunction with the National Association of Insurance Commissioners in response to the federal McCarran-Ferguson Act.

[15] National Association of Insurance Commissioners, Proceedings 74th Sess. 142 (1943).

[16] National Association of Insurance Commissioners, Proceedings 80th Sess. 220 (1949), in conjunction with 79th Sess. 432 (1948).

pamphlet made available by the Casualty Actuarial Society.[17] Obviously it is neither necessary nor feasible to give a detailed description and account of the standard ratemaking procedure in this report. Rather, it is intended to present a brief summary of its basic features and then to analyze its operation in Hawaii.

The Manual Classification Gross Rates. Workmen's compensation insurance rates are not identical for the whole spectrum of occupational hazards covered by the state laws but vary for different occupational risk classifications, described and identified by code number in the workmen's compensation insurance manual. The manual originated at the turn of the century as a result of the voluntary cooperation of the competing carriers and, in the course of time, underwent numerous revisions. At present it includes in the neighborhood of 630 classifications.[18] The objective of the ratemaking process, accordingly, is the determination and readjustment of these manual classification gross rates, so far as operative in the particular jurisdiction. Premium rates for nearly all classifications are determined on the basis of the payroll exposure and expressed in units of $100.

In practice, the manual classification gross rates are rarely charged to the individual employer taking out a compensation insurance policy; his actual premium rates are adjusted to his own special risk situation on the basis of various standard merit or experience rating plans and may be subject to an authorized premium minimum or loss and expense constants for small risks.[19] As a result, the premiums actually earned and charged by the carriers in a particular jurisdiction, i.e., the net earned premiums, are not identical with the so-called standard earned premiums, which are the premiums prior to premium discounts and retrospective rating.

The manual classification gross rates are composed of two fundamental components: (1) the pure premium portion, designed to cover the statistically expected losses (benefit payments to claimants);[20] and (2) the expense allowance, designed to cover operating expenses, profit from underwriting and reserves for contingencies.

[17]Ralph M. Marshall, Workmen's Compensation Insurance Ratemaking, Casualty Actuarial Society, 1961.

[18]See Riesenfeld, Modern Social Legislation, 375.
A comparison of the manual rates for compensation insurance for selected occupational classifications in Hawaii and four other states constitutes Appendix C of this report. The listed occupational classifications were selected because of their importance in Hawaii; together they make up over 75 per cent of the total payroll in the State.

[19]For details regarding loss constants, expense constants, and premium minima, see Marshall, op. cit. supra note 10 at pp. 19, 48, 61, 62.

[20]The standard ratemaking procedure provides for special catastrophe and disease loadings of $.01 each, to be added to the pure premium part of the rate, Marshall, op. cit. supra note 10, at p. 60.

The proper size of the expense allowance and the items to be included therein have been the subject of many discussions and controversies. Its determination, as approved by the National Association of Insurance Commissioners, has varied from time to time. At present -- not counting a special expense constant of $10 chargeable to employers having policies with premiums of less than $500 -- the expense allowance in Hawaii (including an allowance for loss adjustment expenses)[21] is 41.45 per cent of the gross manual rates. In order to prevent misunderstandings it should be noted at this point that the actual overhead borne by employers for insurance with private carriers does not quite reach this figure because: (1) the actual premiums charged allow certain discounts and reductions to larger policy holders and (2) mutual carriers return some of the premiums collected in form of dividends.

Statistically, then, 58.55 per cent of the manual classification gross rates should be expended for the payment of benefits. This is called the permissible loss ratio. If the actual loss ratio experienced in the period preceding the rate revision exceeds the permissible loss ratio, an upward adjustment of the rates is called for; conversely if it falls below, the rates ought to be lowered.

Adjustment of Rates. In actual practice the ratemaking process does not consist of a separate determination of the rate changes required by each classification, but rather it comprises two main steps: (1) the adjustment of the state rate level, i.e., the weighted average of all manual classification rates applicable in the state, both overall and for the three broad industry groups (manufacturing, contracting, and all other); and (2) the determination of classification relativity in terms of pure premiums, i.e., the distribution of the average change, accomplished by the readjustment of the state rate level, among the various classifications operative in the state. In Hawaii the number of reviewed classifications during the last rate revision was 198 representing 98 per cent of the premium.

Since manual rate level changes are predicated on the experience during a specified period preceding the new determination, the selection of the proper experience period is of great importance. The standard ratemaking procedure utilizes the indications flowing from two different experience periods: (1) the latest available 24 months of policy year data; and (2) the latest available 12 months of calendar year data. The change indicated by the latter experience is called the rate level adjustment factor.

[21] In recent years the National Council has recommended the presentation of loss adjustment expenses as part of the rate portion designed to cover losses and fixed them at 14 per cent of the losses. While this change may have public relations value, it has no particular statistical significance. For details, see National Association of Insurance Commissioners, Proceedings 170 (1955).

Policy year data consist of the underwriting experience under all policies written for a period of one year and becoming effective during a specified twelve-month period. Until 1956 all compensation insurance policies were written for a period of one year. Since 1956 small risk policies may be written for a three-year period at rates fixed for that term, subject to certain modifications.[22] As a result the standard rate-making procedure was modified in 1960 so as to include the experience of the three-year fixed rate policies as a separate item using two consecutive reportings.[23] Since a substantial amount of time is required to determine and collect the experience on the policies, there is always a considerable lag between the policy years utilized to produce the relevant experience used in the rate-making process and the date when the rates based thereon are going into effect.[24]

As a result intervening economic or technological trends may seriously impair the statistical relevancy of the policy year period data utilized in the rate-making process. To offset this shortcoming, the use of a rate level adjustment factor, based on recent calendar year experience was introduced in 1948.[25] Its computation, fixed in a somewhat pragmatic fashion, was redefined in 1950[26] and utilizes the aggregate underwriting results of the latest available twelve-month period.

It should be noted that the experience figuring in the computations is not the actual experience, but a modified experience produced by adjustments made to reflect intervening changes in rate levels, benefit levels, and other necessary corrections. Thus the

[22]Three-year policies at fixed rates were authorized by the National Association of Insurance Commissioners at its 1955 meeting pursuant to a recommendation of its Workmen's Compensation Small Policy Economics Subcommittee, National Association of Insurance Commissioners, Proceedings 401 (1955). The Three-Year Fixed Rate Policy program (applicable to policies with an annual premium of $100 or less) is still considered to be in an experimental stage, Workmen's Compensation Small Policy Economics Subcommittee Report, National Association of Insurance Commissioners, Proceedings 467 (1960).

[23]See Report of National Council to Subcommittee of Technicians, National Association of Insurance Commissioners, Proceedings 468 (1960).

[24]Thus for a proposed rate revision, scheduled to become effective in September, 1961, the following policy period dates were utilized in the filings:

One-year policies, effective 8-1-56 to 7-31-57

One-year policies, effective 8-1-57 to 7-31-58

Three-year policies written during 1956.

[25]See National Association of Insurance Commissioners, Proceedings 432, 436 (1948); Id., 220, 468 (1949).

[26]National Association of Insurance Commissioners, Proceedings 536 (1950). The Rate Level Adjustment Factor is determined by means of the loss ratio of the latest available calendar year on the basis of the earned standard premiums adjusted for rate level changes (including that indicated by the two latest policy years of experience) with losses adjusted to current low level. For details, see Marshall, op. cit. supra note 10, at p. 20ff.

premiums used in computing the policy period experience are "premiums at current collectible rates",[27] and similarly the losses are the amounts incurred adjusted to present law levels and an "ultimate" reporting basis.[28] Similarly the calendar year experience is composed of the standard earned premium[29] adjusted to present rate level[30] and the incurred losses adjusted to present low level.[31]

Special attention is called to the fact that "premiums at current collectible rates" and "standard earned premiums" both reflect the effect of experience rating.[32] Apart from certain expense constants and minimum premiums, small risks up to an annual premium of $750 are written at the manual rates. Risks above this size are subject to rate increases or decreases in accordance with the risks' own indications pursuant to the experience rating plan. Prolonged operation of this plan has demonstrated that the decreases and increases of the manual rates do not balance and that the plan causes an off-balance of the premiums realized under the rates unless they are adjusted for this effect. Therefore the indicated rates must be increased by a correction for the off-balance factor which is subject to recomputation at the various rate revisions.[33]

The result of the operations outlined so far is the calculation of the factor which indicates whether and by what percentage the manual premium level, both over-all and for the three major industry groups (manufacturing, contracting and all other), should be decreased or increased.

The distribution of this average change among the various classifications which make up the three major groups requires some additional complex calculations aiming at the determination of the classification pure premium portion contained in the manual rate for each classification.[34] A detailed discussion of the operations

[27]"Premiums at current collectible rates" are premiums arrived at by unloading the applicable manual rates through elimination of catastrophe and disease loading, offsetting reductions for loss constant premiums, and the correction for the off-balance factor inserted to obviate the effects of experience rating. See Marshall, op. cit. supra note 10, at p. 10.

[28]For details, see Marshall, op. cit. supra note 10, at pp. 11-15.

[29]Standard earned premiums are premiums earned prior to decreases produced by premium discounts and retrospective rating.

[30]For details, see Marshall, op. cit. supra note 10, at p. 21.

[31]Marshall, op. cit. supra note 10, at p. 22.

[32]See Marshall, op. cit. supra note 10, at p. 21.

[33]See Marshall, op. cit. supra note 10, at pp. 25-29.

[34]For details, see Marshall, op. cit. supra note 10, at p. 31.

performed in this phase of the standard rate-making procedure ever, is not required for the purposes of this report.

Operation of Rating Procedure in Hawaii

The Casualty Insurance Rate Making Law of Hawaii we effect on October 1, 1947. The first compensation insurance set thereunder became operative on January 1, 1949. Prior t date the compensation insurance rates had been free from gc mental control and quite "redundant," i.e., excessive. In re tion of this fact the first rate revision made under the aegis regulatory law reduced the state manual rate level by 20 per

Rate Revisions Since 1947. Since January 1, 1949, a num rate revisions have taken place to reflect changes in benefit l wage scales, industrial safety and other material factors. have resulted in both upward and downward adjustments of th level. New rates went into effect on October 1, 1949; April 1, October 1, 1953; January 1, 1955; July 1, 1955; May 1, 1956; Ap 1957; July 1, 1957; July 1, 1958; September 1, 1959; Septem 1960; and April 1, 1962.

Table 19 and chart II show the changes of the manual rate resulting from the revisions since 1947: (1) with respect to each ceding rate level, and (2) cumulatively with respect to the existing prior to the rate regulatory law.

The table and chart make it plain that the manual rate since the enactment of the rate regulatory law has never reache height existing prior thereto and that the rate level exist: present is 16 per cent above that existing on January 1, 1949. the rates are fixed as percentages of the exposed pay rol follows that the costs of workmen's compensation have approximately in proportion to the rise in pay rolls and cc living.

The Effect of the Off-Balance Factor on Rates. Care mu taken, however, not to draw distorted conclusions from the rel changes of the manual rate level. In the first place, sinc revision of 1953, the manual rates contain a factor which inf them in order to correct for the off-balance produced by the ex ence rating plan.[35] While the computation of the premiums cha is based on the manual rates and, accordingly, they reflect ove cost changes, the relative effects of other factors are more veniently compared by eliminating the off-balance factor an changes from the rates and drawing the permissible conclu from the resulting changes in the collectible rate level.

[35] See supra p. 101 at note 33.

Table 19

STATE MANUAL RATE LEVEL CHANGES
State of Hawaii
1947-1962

Effective Date	Per Cent Change (from Index of 1.000)		Cumulative Change Relative to 1947 (Index of 1.000)
1-1-1949	.800	(-20.0)	.800
10-1-1949[a]	1.130	(+13.0)	.904
4-1-1950[a]	.750	(-25.0)	.678
10-1-1953	1.139	(+13.9)	.772
1-1-1955	.961	(- 3.9)	.742
7-1-1955	1.224	(+22.4)	.908
5-1-1956	.931	(- 6.9)	.845
4-1-1957	.973	(- 2.7)	.822
7-1-1957[a]	1.106	(+10.6)	.909
7-1-1958	.954	(- 4.6)	.867
9-1-1959	.958	(- 4.2)	.831
9-1-1960	.987	(- 1.3)	.820
4-1-1962	1.133	(+13.3)	.929

Source: Compiled from data furnished by the Insurance
sion, Department of Treasury and Regulation.

[a] New, Renewal and Outstanding Policies.

CHART 2 – **COMPARATIVE MANUAL RATE LEVELS FOR WORKMEN'S COMPENSATION INSURANCE**

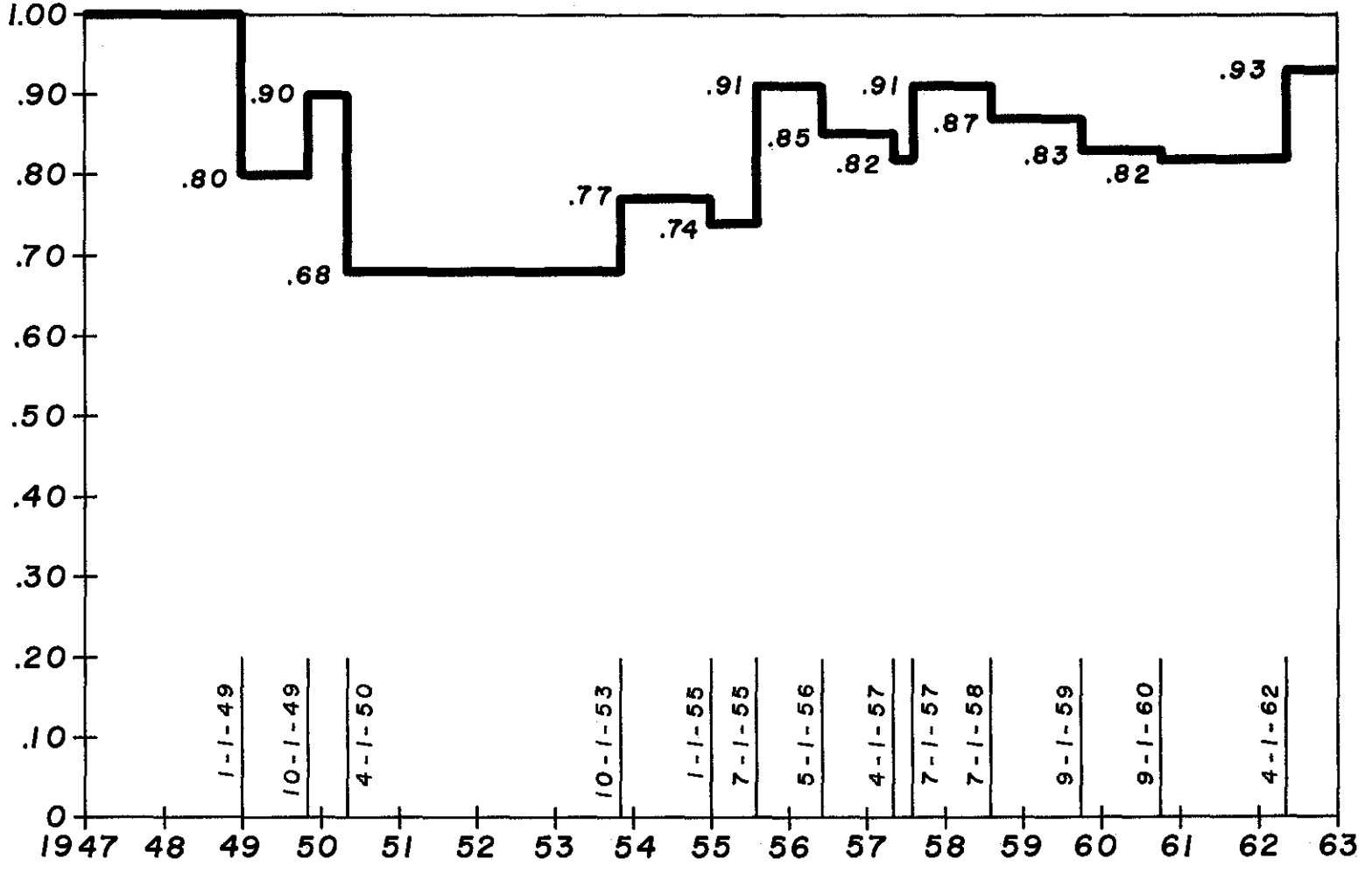

Table 20 indicates the off-balance factors inserted in the consecutive rate revisions and the relative and cumulative changes in the collectible rate level. The table shows that the collectible rate level in 1962 is only 90 per cent of that existing in 1947 in spite of all intervening liberalizations, a telling comment on the need which existed for rate regulation.

Table 20

OFF-BALANCE FACTORS AND CORRESPONDING CHANGES IN COLLECTIBLE RATE LEVEL
State of Hawaii
1949-1962

Effective Date of Rates	Off-Balance Factor	Change in Collectible Rate Level (from Index of 1.000)	Cumulative Change Relative to 1947 (Index of 1.000)
1-1-1949	1.000	.800	.800
10-1-1949	1.000	1.130	.904
4-1-1950	1.000	.750	.678
10-1-1953[a]	1.050	1.085	.736
1-1-1955	1.061	.951	.700
7-1-1955	1.061	1.224	.857
5-1-1956	1.072	.922	.790
4-1-1957	1.083	.963	.761
7-1-1957	1.083	1.106	.842
7-1-1958	1.072	.963	.811
9-1-1959	1.061	.967	.784
9-1-1960	1.050	.997	.782
4-1-1962	1.040	1.144	.895

Source: Compiled from data collected by the National Council on Compensation Insurance.

[a]Introduction of Factor, set at 1.050.

Modification of the Ratemaking Procedure Since 1947. In the second place, the changes in the manual rate level reflect not only changes in the operation of the law due to developments in the milieu, such as wage levels, medical costs, industrial safety, etc., or in the benefit structure, but also modifications of the rating procedure itself, such as alterations of the premium base, experience selection, expense requirements, or methods of expense allocation. Since

1947 the following changes in the rating and ratemaking process have taken place and, to a varying degree, resulted in rate level changes:

(1) Changes in the pay roll limitation plan, raising the weekly limit from $100[36] to $300[37] (with corresponding reduction of manual rates);

(2) Changes in the $10 expense constant plan for small policies from $300 maximum to $500 maximum, pursuant to the uniform expense constant program of 1951;[38]

(3) Changes made in 1950 in computing the rate level adjustment factor[39] originally adopted in 1948;[40]

(4) Introduction of the off-balance factor;[41]

(5) Adoption of the uniform profit and contingencies factor;[42]

(6) Changes in expense loading;[43]

(7) Introduction of new rate-making methods for fixed three-year policies[44] adopted pursuant to the program effective in 1956;[45] and

(8) Revision of the experience rating plan in 1961, raising, inter alia, the eligibility point to $750.46

The Cost of Insurance in Hawaii. In order to get an additional indication of the costs of, and cost-developments in, the operation

[36]The pay roll limitation plan, excluding wages exceeding a weekly limit of $100 was introduced with effective date October 1, 1946, National Association of Insurance Commissioners, Proceedings 51, 53 (1947).

[37]Made in the 1958 rate revision, pursuant to general change adopted in 1957, see Marshall, Workmen's Compensation Insurance Ratemaking 51 (1961).

[38]National Association of Insurance Commissioners, Proceedings 395, 397 (1951).

[39]National Association of Insurance Commissioners, Proceedings 536 (1950).

[40]National Association of Insurance Commissioners, Proceedings 61, 321, 431 (1948), Id., 220, 468 (1949).

[41]In the 1953 rate revision.

[42]National Association of Insurance Commissioners, Proceedings 415, 421 (1951); Hawaii adopted this factor even prior to 1951.

[43]National Association of Insurance Commissioners, Proceedings 170 (1955).

[44]National Association of Insurance Commissioners, Proceedings 467, 468 (1960).

[45]National Association of Insurance Commissioners, Proceedings 414 (1955), Id., 202 (1956).

of workmen's compensation, to the extent that it is insured with private carriers, the relation between pay rolls (as given in the unit plan data) and earned premiums (on standard basis) may be studied in Table 21. In appraising the significance of this procedure it must be kept in mind that the wage data do not include that portion of the pay rolls which exceeds the applicable pay roll limitation ($100 a week for policy years up to 1957/1958, $300 a week for policy years 1957/1958 and later) and that the earned premiums are on a standard base, i.e., reflect the operation of the experience rating plan but do not indicate the reductions due to premium discounts and retrospective rating although they include the amounts collected as expense and loss constants. According to the figures of the National Council, the national average of the income from

Table 21

WORKMEN'S COMPENSATION INSURANCE
PREMIUMS AS PERCENTAGE OF
PAY ROLLS
State of Hawaii
1948-1959

Policy Year	Pay Rolls[a]	Standard Earned Premium	Ratio Per Cent
1-1-48 to 12-31-48	$153,522,105	$2,071,109	1.35
1-1-49 to 12-31-49	145,631,419	1,761,443	1.21
1-1-50 to 7-31-50	111,297,600	1,288,028	1.16
8-1-50 to 7-31-51	172,253,896	1,982,657	1.15
8-1-51 to 7-31-52	179,182,201	2,108,059	1.18
8-1-52 to 7-31-53	192,879,806	2,343,113	1.21
8-1-53 to 7-31-54	197,931,456	2,655,637	1.34
8-1-54 to 7-31-55	210,045,032	3,062,513	1.46
8-1-55 to 7-31-56	235,638,072	3,591,566	1.52
8-1-56 to 7-31-57	256,799,074	4,120,580	1.60
8-1-57 to 7-31-58	309,279,853	4,754,740	1.54
8-1-58 to 10-31-59	428,184,329	6,624,829	1.55

Source: Compiled from data collected by the National Council on Compensation Insurance.

[a]The data for policy years 1-1-48 to 7-31-57 are on the basis of a pay roll limitation of $100 per week; the data since 8-1-57 is on the basis of pay roll limitation of $300 per week.

expense constants is 2.5 per cent of the total amounts collected.[46] Taking account of the return to the large employers of some of the premiums in the form of discounts the actual costs of workmen's compensation in Hawaii amounted to about $1.45 per $100 of pay roll for the policy period from August 1958 through October 1959.

This table reveals that the relative costs of workmen's compensation (the average cost per $100 pay roll) have constantly risen between August 1, 1950, and July 31, 1957, climbing from 1.15 per cent to 1.60 per cent or, in other words, increasing by 39 per cent. This is in fair agreement with the over-all change in the manual rate level which between August 1, 1950, and July 31, 1957, rose by 35 per cent (1.151 x .961 x 1.224 x .931 x .973 x 1.106).[47] The slight decline during policy year August 1, 1957, to July 31, 1958, is chiefly due to the increase in the pay roll limitation, which reflected itself in a decrease in rates.

The reasons for the steady rise in relative costs may be found in three factors: (1) growing effect of the $100 pay roll limit; (2) rise of certain costs at a rate exceeding that of the wage scale; and (3) steady liberalization of the law. Undoubtedly the last factor is the most significant one. At any rate, the table shows also that the average relative premium cost of workmen's compensation is still not much more than 1.5 per cent of the labor cost. To be exact, it should be stated that the actual ratio of premiums to pay rolls is somewhat less because of the amounts returned to the employers in the form of premium discounts under the premium discounts and retrospective rating plans and of dividends from participating carriers.

Expenses and the Establishment of State Funds. The expense and expense allocation of the private insurance system, the overhead, has been a matter of great concern to the employers affected, to labor and to the insurance industry itself. In some jurisdictions it has prompted the establishment of state funds. Nine jurisdictions (Ohio, Washington, Oregon, Nevada, Wyoming, North Dakota, West Virginia, Puerto Rico and the Virgin Islands) have created so-called exclusive public insurance funds (state funds) to which employers must subscribe. Two of these jurisdictions (Ohio and West Virginia) permit self-insurance as an alternative; the others exclude this possibility.

Moreover eleven other jurisdictions[48] have established so-called competitive state funds, i.e., governmental institutions

[46] National Council on Compensation Insurance, Annual Report 1961, p. 7; Annual Report 1962, p. 8.

[47] Marshall, op. cit. supra at 24.

[48] See supra Table 19.

which write compensation insurance in competition with the private stock or mutual companies at the regular rates but with special dividend incentives. The competitive funds in California and New York control a very substantial share of the compensation insurance market in their states. The other funds are less vigorous.

Development of the Expense Allowance. The expense allowance is fixed as a specified percentage of the manual rates. Over the years this expense allowance has fluctuated around the 40 per cent mark. The other 60 per cent of the manual rate is designed to be used for benefit payments and corresponds to the permissible loss ratio.

In determining the appropriate size of the expense allowance included in the manual rates the National Council on Compensation Insurance in accord with the National Association of the Insurance Commissioners has taken the view that the allowance should be determined on the basis of the average needs of that type of private insurance with the highest average expense requirements, i.e., that of the non-participating stock carriers. Mutuals are able to operate in a a more economical fashion, mainly because of their use of a direct underwriting procedure with the consequent lowering of acquisition costs. But it was felt that a rate differentiation between mutuals and stock carriers was undesirable and that an expense loading below the average requirement of stock carriers would be confiscatory as to them.[49] In order to determine the average expense requirements and the graduation of expenses by size of risk, the National Association of Insurance Commissioners in conjunction with the National Council on Compensation Insurance embarked on a factual study on the basis of an expense exhibit required from the carriers.[50] The study resulted in the adoption of a uniform expense constant of $10 on risks subject to a premium of less than $500[51] and a confirmation of the premium discounts available under premium discount or retrospective rating plans.

Actual Expense Charges. As has been pointed out, the portion of the manual rates designed to produce adequate income for the carriers to cover the expenses of their operations has changed from time to time and included varying items.

[49]Arizona, California, Colorado, Idaho, Maryland, Michigan, Montana, New York, Oklahoma, Pennsylvania, and Utah.

[50]For the original considerations leading to the practice of uniform judgment loading see Hobbs, Workmen's Compensation Insurance 544 (1939) and Hobbs, Workmen's Compensation Expense Loading Memorandum to National Association of Insurance Commissioners, 270 (1944).

[51]About these inquiries, their preparation and results see National Association of Insurance Commissioners, Proceedings 244 (1944); Id., 111, 176 (1945); Id., 429 (1946); Id., 60 (1947); Id., 61, 23 (1948); Id., 137, 470 (1949); Id., 120, 514 (1950); Id., 214, 388 (1951).

Following the adoption of the uniform expense constant program and the consequent reduction in rates, first applied in Hawaii in the revision of October 1, 1953, the expense allowance was set at 41.5 per cent allocated as follows:

Factor	Per Cent
Acquisition	17.5
Taxes	3.0
Profit and Contingency	2.5
Loss Adjustment	8.2
Inspection and Bureau	2.6
Administration and Audit	7.7
Total	41.5

In 1955 the National Council decided to lower the expenses, except the loss adjustment, by .8 per cent and to compute the loss adjustment as 14 per cent of the loss. As a result the expense allowance was lowered to 40.8 per cent and the permissible loss ratio raised to 59.2 per cent. The allocation was as follows:

Factor	Per Cent
Acquisition	17.5
Taxes	3.0
Profit and Contingency	2.5
Loss Adjustment	8.3
Inspection and Bureau	2.5
Administration and Audit	7.0
Total	40.8

In the rate revision of July 1, 1957, a new change was necessary owing to the increase of taxes from 3.0 per cent to 3.75 per cent. The resulting allocation is as follows:

Factor	Per Cent
Acquisition	17.50
Taxes (Exclusive of Federal Income Taxes)	3.75
Profit and Contingency	2.50
Loss Adjustment	8.20
Inspection and Safety	2.00
General Administration, Audit and Bureau	7.50
Total	41.45

This allowance of 41.45 per cent was retained in the subsequent rate revisions.

In appraising this figure it must be borne in mind that 41.45 per cent is the portion of the manual rate and that the actual overhead portion of the collected net premiums is subject to certain upward and downward modifications: (1) small risks (under $500) are subject to the expense constant program and produce an extra-income for operating expenses estimated as corresponding to 2.5 per cent of the total premiums collected; and (2) premium discount and retrospective rating plans available to larger risks with premium over $1,000 insured with stock carriers produce a net discount which in the 1962 rate revision was estimated at 7.36 per cent of the standard premiums.

The resulting actual portion of net premiums collected by the non-participating carriers for profit and expense (including loss adjustment) purposes accordingly is 36.8 per cent without including the effect of the expense constant and 38.34 per cent if the effect of the expense constant is taken into account. However, this figure is the over-all average. Small employers may pay considerably more because they do not qualify for discounts and are subject to the expense constant. Large employers, conversely, pay less because they are entitled to discounts and are not subject to the expense constant.

Disputes About the Justification of the Expense Constant and Profit and Contingency Allowance. The justification of the expense constant for small policies is a matter of considerable doubt. There is no question that the administrative expenses connected with the processing of small policies are percentage wise greater than those connected with larger policies. Nevertheless it is not a foregone conclusion that therefore the extra costs should fall on the small employer rather than be distributed over the insured employers at large. California, after a brief experimentation with expense constants, eliminated them from its ratemaking process as not warranted under the California ratemaking law. To be sure, holders of small policies enjoy a certain benefit from the fact that they are charged the manual rates based on the experience of their whole class despite the fact that the loss experience of small establishments is statistically more unfavorable than that of large establishments. But this does not necessarily enhance the equity of the expense constant.

The inclusion of the 2.5 per cent profit and contingency factor has been the subject of an even greater dispute. It was approved by the National Association of Insurance Commissioners in 1951 only after a bitter fight. It is the statistical expression of an annual profit from underwriting as such. It does not take account of the income which insurance companies receive from the investment of their reserves and unearned premiums, and from the absorption of unutilized reserves, receipts which in last analysis also originated in the insurance operations. This income is actually quite substantial.

Results of the Ratemaking Process

The aim of the ratemaking process is to arrive at rates which are adequate and not excessive. The meaning of this phrase is legislatively elucidated by enumerating certain factors to be considered.[52] The gist of the mandate requires that the insurance carriers shall make a fair profit from the long-range operation of the program.

Sources of Profits for Compensation Insurance Carriers. Profits of the casualty insurance carriers may stem from two sources: (1) from the underwriting business itself, i.e., the ratio between premiums earned and losses incurred plus costs of operations, and (2) from investment of the capital to be set aside as reserves for future payments falling due on incurred losses and from interest on advance payments of premiums. It has been maintained consistently by the insurance industry that the potential profits from investment should not be considered as a factor in the setting of rates, and the phrasing of the model rate regulatory law

[52]National Association of Insurance Commissioners, Proceedings 415, 421 (1951).

has lent some statutory support to that contention. Moreover the industry has argued -- and the National Association of Insurance Commissioners, after a heated debate, has supported this argument -- that the manual rates should include 2.5 per cent for profits and contingencies.

As a result, it may be concluded that the rates are adequate and not excessive if over a long run they yield a corresponding amount, adjusted for premium discounts (or equivalent reductions) and expense constants, as underwriting profit to the carriers.

The Permissible Net Loss Ratio. Unfortunately, the necessary adjustments and the computation of a "permissible net loss ratio" run into formidable practical obstacles rendering the latter quantity a quite elusive figure. Apart from the difficulties introduced by the interstate retrospective rating plans, the chief difficulties result from the facts that the premium discounts and their equivalents in the retrospective rating formulae differ for stock companies and mutuals and that the percentage reduction of

Table 22

COMPENSATION INSURANCE EXPERIENCE
State of Hawaii
1949-1961

Year	Direct Premiums Written	Direct Losses Paid	Direct Losses Incurred	Direct Premiums Earned	Relative Weight of Direct Premiums Earned Compared to 1949-1961 Total	Loss Ratio (4:5)
1949	$ 1,772,118	$ 807,345	$ 923,060	$ 1,868,924	.0417	49.4
1950	1,699,791	846,391	929,987	1,731,256	.0386	53.7
1951	2,020,004	1,101,624	1,339,916	1,944,396	.0434	68.9
1952	1,967,069	1,182,045	1,228,855	1,953,384	.0436	62.9
1953	2,339,916	1,228,634	1,515,665	2,244,662	.0501	67.5
1954	2,361,956	1,334,397	1,503,419	2,358,116	.0526	63.8
1955	2,771,130	1,318,237	1,274,794	2,651,981	.0592	48.1
1956	3,458,580	1,483,273	1,799,639	3,341,104	.0746	53.9
1957	3,975,355	1,735,172	2,134,590	3,862,160	.0862	55.3
1958	4,575,151	1,997,919	2,591,785	4,520,336	.1009	57.3
1959	5,364,043	2,334,063	2,975,272	5,264,310	.1175	56.8
1960	6,797,239	3,046,446	4,010,883	6,290,833	.1404	63.8
1961	6,718,820	n/a	5,248,825	6,784,778	.1514	77.4
Total	$45,791,199	n/a	$27,476,690	$44,806,240	1.0002	61.3

Source: Annual Reports of the Insurance Commissioner, State of Hawaii.

the standard premium produced by these discounts vary considerably from year to year.

Accordingly, the computation of a permissible net loss ratio for statistical or ratemaking purposes would produce somewhat inaccurate and therefore unreliable results; nevertheless the calculation of an approximate permissible net loss ratio may be helpful and sufficiently close for a semi-quantitative interpretation of the significance of the available actual net loss ratio.

Table 22 lists direct premiums written, direct losses paid, direct premiums earned, and direct losses incurred on the basis of the data published by the insurance commissioner for the years following the introduction of the rating process (1949-1961). It also lists the relative weight which the annual amounts of the earned direct premiums have with respect to the 1949-1961 total and the actual loss ration (i.e. ratio of direct losses incurred to direct premiums earned).

The data furnished by the National Council for loss ratios for the period 1956-1960, based on net earned premiums and net incurred losses, show some differences from the loss ratios computed by the insurance commissioner on the basis of direct premiums earned and direct losses incurred, but the divergence is not of significant magnitude.

Underwriting Experience
(National Council Data)
State of Hawaii
1956-1960

Year	Net Earned Premium	Net Incurred Losses	Loss Ratio
1956	$ 2,608,895	$ 1,471,132	56.4
1957	3,583,297	2,064,974	57.6
1958	3,951,869	2,246,669	56.9
1959	5,208,692	2,980,563	57.2
1960	6,327,020	3,987,047	63.0
Total	$21,679,773	$12,750,385	58.8

The aggregate loss ratio for the same period on the basis of direct losses incurred and direct premium earned would be 13,512,169: 23,278,743 = 58.1.

The Aggregate Underwriting Experience. In order to determine whether this actual aggregate loss ratio of 61.3 per cent for the period 1949-1961 indicates a proper working of the ratemaking process or whether the process resulted in undue gains or losses for the carriers, an aggregate permissible net loss ratio or a reasonably close approximation thereof must be computed for the same period, i.e. the permissible loss ratio fixed for manual rates must be adjusted so as to reflect properly the effects (1) of premium discounts and the equivalents in retrospective rating and (2) of the expense constants.

Unfortunately, only estimated effects of the discounts granted by the stock companies are available, and not of those granted by the mutuals. However, it is believed that no major inaccuracies are produced by ignoring this lack. In the first place the amount of premiums written by mutuals in Hawaii is fluctuating but never in excess of 10 per cent (see Table 18b). In the second place although mutuals are compelled to grant lesser discounts than the stock carriers (see p. 53), they tend to write larger policies with the result that the aggregate percentage of discounts granted by the mutuals will approach that granted by the stock carriers.

Table 23 shows the percentage reduction of standard premium as a result of discounts and their equivalents by stock carriers in Hawaii as estimated by the National Council for various years. Gaps are filled by interpolation. An aggregate average is computed on the basis of the relative weight of the premium base.

Estimating, accordingly, that the average reduction of the standard premium produced by the premium discounts for the period 1949-1961 amounted to 6.89 per cent and that the expense constant during the same period produced an additional 2.5 per cent of that premium, it follows that the net total premium income amounted to (100 - 6.89) x 1.025 or 95.44 per cent of the standard premium. As a result the permissible net loss ratio for the period 1949-1961 is computed as 61.3. It follows that on that basis (as a result of the heavy losses in 1961), the underwriting experience for the years 1949-1961 equalled exactly the target figure and that the aggregate profit from underwriting for that period corresponded to the equivalent of the 2.5 per cent included in the manual rates for that purpose.

In addition to income from underwriting and investment, inflated "incurred" losses may be another hidden source of income for the carriers. According to the figures for 1949-1960 shown in Table 22, the aggregate direct losses incurred during that period totalled $22,227,865 while the losses paid during that period amounted to $18,415,546, leaving a difference to be used for the payment of outstanding claims from that period of $3,812,319. While it is true that loss developments are taken into account in determining the experience during the two policy years which form

Table 23

ESTIMATED REDUCTION OF STANDARD PREMIUM
PRODUCED BY DISCOUNTS AND EQUIVALENTS
GRANTED BY STOCK CARRIERS
State of Hawaii
1949-1961

Year	Estimated Per Cent Reduction of Standard Premium Produced by Discount	Weight of Premium Base (Table 22)	Index of Per Cent Reduction
1949	5.50[a]	.042	.2310
1950	5.50[a]	.039	.2145
1951	5.50[a]	.043	.2365
1952	5.50[a]	.044	.2420
1953	5.60	.050	.2800
1954	5.60	.053	.2968
1955	5.90	.059	.3481
1956	6.20[a]	.075	.4650
1957	6.30[a]	.086	.5418
1958	6.47	.101	.6470
1959	7.36	.116	.8832
1960	8.50[a]	.140	1.1900
1961	8.75[a]	.151	1.3125
Total Reduction (in per cent), 1949-1961:			6.888

Source: Compiled from data collected by the National Council on Compensation Insurance.

[a]Interpolated data.

the basis of the ratemaking process and that movements in reserves are included in the calendar experience used in computing the state rate level adjustment factor, nevertheless continued inflated losses would not be reflected in the latter fashion and only inadequately in the development factors. The proper loss valuation for rating purposes and the propriety of the $3,812,319 difference noted above are questions which merit further study and checking by the rating authorities.

The Cost of Insurance in Hawaii and Other Jurisdictions

The cost of compensation insurance is higher in Hawaii than in most but not all of the other jurisdictions, as a review of the data presented in Table 24 indicates. The cost per $100 of insured payroll varies from a low of 70 cents in Maine and Virginia to a

Table 24

THE AVERAGE COST OF WORKMEN'S COMPENSATION INSURANCE (EARNED PREMIUMS) PER $100 OF INSURED PAYROLL IN 42 JURISDICTIONS IN THE UNITED STATES POLICY YEAR 1958[a]

Rank	Jurisdiction	Cost Per $100 Insured Payroll	Rank	Jurisdiction	Cost Per $100 Insured Payroll
1	New Mexico	$2.50		Connecticut	$1.10
2	Oklahoma	2.40		Minnesota	1.10
3	Louisiana	2.30		Tennessee	1.10
4	Alaska	2.00		Vermont	1.10
5	Arizona	1.80	26	New Hampshire	1.00
	Arkansas	1.80		South Carolina	1.00
	Mississippi	1.80		Utah	1.00
	Texas	1.80		Wisconsin	1.00
9	Florida	1.60	30	District of Columbia	.90
	Hawaii	1.60		Georgia	.90
11	Montana	1.50		Kentucky	.90
12	Idaho	1.40		Nebraska	.90
	New Jersey	1.40	34	Alabama	.80
	New York	1.40		Illinois	.80
15	Massachusetts	1.30		Indiana	.80
	Rhode Island	1.30		Iowa	.80
17	Kansas	1.20		Michigan	.80
	Maryland	1.20		North Carolina	.80
	Missouri	1.20		South Dakota	.80
20	California	1.10	41	Maine	.70
	Colorado	1.10		Virginia	.70

U.S. Average: $1.20

Source: Letter from U.S. Social Security Administration, Division of Program Research, dated July 2, 1962.

[a]Data relate primarily to private-carrier experience but include data for a few competitive state funds that cannot be segregated. Cost has been rounded to the nearest ten cents. Comparative data were not available for omitted states.

high of $2.50 in New Mexico. The cost in Hawaii for policy year 1958 was $1.60 per $100 of payroll or ninth highest among the 42 jurisdictions for which data were available. The range of costs is very broad, insurance in the jurisdiction with the highest cost amounting to three and a half times as much as that in the lowest cost jurisdiction. The median rate is $1.10 which occurred in six states. The average cost of insurance in all of the major industrial states was less than in Hawaii. The Hawaii cost, as was noted earlier in Table 21, is higher now than it was ten years ago.

In interpreting the comparative data on costs, it is useful to note that the cost of compensation insurance is a function of several factors, none of which would be identical for any two jurisdictions and all of which affect the final premium bill. These factors include the qualitative and quantitative nature of the risk exposure; the provisions of the compensation law, especially with respect to coverage and benefit structure and distribution; the administration of the law, especially with respect to strictness or liberality of interpretation; and the provisions of the law governing the setting of compensation insurance rates and the administration of those provisions.

CHAPTER 5

REHABILITATION[1]

Rehabilitation has been defined in various ways by different groups and individuals. Functionally speaking, rehabilitation has two objectives: (1) to eliminate or reduce, to the greatest possible extent, any disability resulting from a personal injury and (2) to train the person to overcome, to the greatest possible extent, the occupational handicaps flowing from his disability.

Rehabilitation, thus defined, has a dual aspect: one being of a medical and therapeutical nature, the other of a vocational and educational nature. Although these two aspects can be separated conceptually, it must be understood that in terms of the individual needing rehabilitation these two types of services frequently should be rendered as an integrated whole.

Unfortunately, legal and professional barriers frequently prevent pursuit of the most promising and effective approaches to rehabilitation of injured employees. In order to appreciate these difficulties, a brief outline of the institutional framework in which rehabilitation must operate is presented.

Vocational rehabilitation under the vocational rehabilitation Act and the vocational rehabilitation amendments of 1954

The federal government, recognizing the need for public vocational rehabilitation services, has developed a program of grants-in-aid to assist the states in meeting the costs of vocational rehabilitation services and the extension and improvement thereof.[2] These grants are made on the basis of a complex matching formula predicated on the population and the per capita income of the state in relation to that of the United States.[3] To be eligible to receive federal assistance in meeting the costs of rehabilitation services, the state must operate under a plan complying with specified federal standards and approved by the Secretary of Health, Education and Welfare.[4] The plan, inter alia, must "designate the State agency administering or supervising the administration of vocational education in the State, or a State rehabilitation agency (primarily concerned with vocational rehabilitation), as the sole

[1] An excellent examination of rehabilitation within the framework of the New York law is the New York University Workmen's Compensation Study, published in 1960 by the now defunct New York University Center for Rehabilitation Services.

[2] The federal law is contained in 29 U.S.C. sec. 31-42.

[3] 29 U.S.C. secs. 32 and 41(h) and (i).

[4] 29 U.S.C. sec. 35 (a) (1).

State agency to administer the plan, or to supervise its administration in a political subdivision of the State by a sole local agency of such political subdivision, except that where under the State's law the State blind commission, or other agency which provides assistance or services to the adult blind, is authorized to provide them rehabilitation services, such State blind commission or other State agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind (or to supervise the administration of such part in a political subdivision of the State by a sole local agency of such political subdivision) and the State vocational education agency or the State rehabilitation agency shall be designated as the sole State agency with respect to the rest of the State plan." Vocational rehabilitation services are defined by a lengthy and complex statutory catalogue covering training, guidance, and placement services and, in case of need, financial assistance with respect thereto, including maintenance, not exceeding the estimated cost of subsistence, during rehabilitation, and transportation except where necessary in connection with determination of eligibility or nature and scope of services.[5]

Vocational rehabilitation in Hawaii

In order to participate in the federal program, Hawaii has charged two agencies with the administration of its rehabilitation services: the division of rehabilitation[6] and the department of social services[7] (with respect to visually handicapped employees). Under the provisions of the federal Act in its current form, the division of workmen's compensation may not be placed in charge of that part of the total rehabilitation process which is within the province of the two other agencies, but is restricted to making referrals for diagnosis and further action.

According to the information furnished by the division of vocational rehabilitation, the agency serviced 50 injured employees as of December 31, 1961. The disability status of these workers was as follows:

Temporary total:	31
Permanent partial:	19

[5]29 U.S.C. sec. 41(a).

[6]Rev. Laws of Hawaii 1955 secs. 42-30 to 42-36.

[7]Rev. Laws of Hawaii 1955 ch. 109.

The vocational rehabilitation services rendered fell into the following categories:

Counseling and guidance:	50
Vocational testing:	29
Diagnostic procedure (medical):	50
Prosthetic appliance (not related to compensable injury):	1
Training and training material:	2
Maintenance:	1
Transportation:	1
Tools, equipment and licenses:	1
Job finding:	32
Follow up to placement:	15

Statutory provisions facilitating prompt and effective rehabilitation as part of the workmen's compensation laws

Considerable efforts have been made in recent years to insert statutory provisions into the compensation laws, designed to strengthen the attainment of rehabilitation as one of the principal goals of modern workmen's compensation legislation. A number of causes have been identified as main barriers to effective rehabilitation: (1) lack of financial resources; (2) undue delay in diagnosis and referral of promising cases; (3) divided administrative responsibility and lack of proper administrative supervision; (4) reluctance of private practitioners to make proper use of available facilities and techniques and (5) undue concern with the forensic and indemnity aspects of the law. Most of these causes are by-products of the total social milieu in which the American systems operate and do not occur under the celebrated Ontario system which is a paternalistic, completely regimented state fund with clinics, medical personnel and rehabilitation services of its own. While there is little prospect of a perfect system of rehabilitation in an imperfect world, a number of statutory schemes for alleviating the situation have been adopted by the different jurisdictions.

Provisions relating to rehabilitation currently exist in the compensation acts of 25 states (including Hawaii)[8], the District of Columbia and Puerto Rico, and in the two federal statutes. Twenty-

[8]Alaska, Arizona, Arkansas, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Washington, West Virginia, and Wisconsin.

two of these jurisdictions (including Hawaii)[9] provide for maintenance and other cash benefits for and during rehabilitation, to be financed either by the employer, a special fund, or the state fund, and payable in addition to the regular indemnity and maintenance benefits. Three state fund jurisdictions[10] and Rhode Island have established special rehabilitation centers for injured employees as part of their workmen's compensation administration and one state fund state has made special financial arrangements with the state university for that purpose.[11] In Minnesota a special bureau of workmen's rehabilitation has been established with the task of stydying all notices of injury to ascertain whether rehabilitation services are indicated.[12] A similar program exists in Texas.[13] If it is concluded that such services may be useful, the employee is informed of the available facilities. New York has initiated similar procedures by administrative order. A few jurisdictions try to promote resort to rehabilitation procedures by predicating "further" disability benefits for permanently and totally disabled employees on their submission to rehabilitation, if recommended. Such jurisdictions are New Jersey[14] and Utah.[15] Under the U.S. Employees Compensation Act, benefits of a disabled employee may be reduced, if, without good cause, he has failed to comply with an order directing vocational rehabilitation and if acceptance of such services would have increased his earning capacity.[16]

Pennsylvania seems to be the only jurisdiction which has tried to cope with the problem of expense allocation. A statute of 1961[17] imposes the financial responsibility for payments necessary to meet living requirements for disabled or injured persons and their families during the period of rehabilitation and training and for an additional trial period of employment in the first place on the State Board of Vocational Rehabilitation and only if such federal and state funds are not available, on the Second Injury Reserve and Rehabilitation Fund.

[9]Alaska, Arizona, Arkansas, Connecticut, District of Columbia, Hawaii, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New York, North Dakota, Ohio, Oregon, Pennsylvania, Utah, West Virginia, Wisconsin, U.S. (Employees and Longshoremen and Harbor Workers Acts).

[10]Oregon, Puerto Rico, and Washington.

[11]Ohio.

[12]Minn. Stats. 1961, sec. 176.631.

[13]Vernon's Texas Stats. sec. 8306 (1958 Suppl.)

[14]Rev. Stats. of N.J. 1937, sec. 34:15-12, par. 2.

[15]Utah Rev. Stats. sec. 35-1-67.

[16]5 U.S.C. sec. 756d(2)

[17]Pennsylvania Laws 1961, c.476.

CHAPTER 6

ADMINISTRATION

Administrative Requirements of Workmen's Compensation

A workmen's compensation law can be only as good as its administration. An organization providing for clear allocation of responsibility, efficient and streamlined procedures, adequate supervisory powers, and a sufficient staff having the necessary professional qualifications is indispensable for the attainment of the social aims of the program and a proper handling of the complex problems arising under a modern law. Such matters include:

(1) processing the employers' reports of injuries and their intermediate and final reports concerning payments made, for the purpose of culling therefrom the necessary statistical information regarding the operation of the law;

(2) supervising the prompt and correct payment of medical expenses and income and indemnity benefits, and calling for necessary information whenever such action is indicated;

(3) adjudicating contested claims and petitions, and issuing all necessary interlocutory orders in the course of the proceedings;

(4) issuing rules and regulations, either of a substantive character (implementing or interpreting the legal standards aiming at uniform application of the law and for the guidance of the public) or of a procedural nature (designed to assure expeditious and effective enforcement of the statute), including preparation of the necessary forms;

(5) regulating the proper charges for medical services, gathering all information necessary to assure that the injured employee receives the medical treatment best equipped to minimize to the greatest possible extent, any residual disability, and supervising the employee's access to qualified practitioners of his choice;

(6) making all necessary arrangements with other agencies to promote vocational rehabilitation, where promising;

(7) determining and authorizing all charges against the special compensation fund and taking all necessary steps to

assure that it is adequate to meet incurred liabilities and that it is credited with all payments owed thereto; and

(8) processing workmen's compensation insurance policies and notices of intention to cancel, and issuing certificates of compliance or orders for self-insurance after making the necessary determinations.

Systems of Compensation Administration in the United States

The institutional organization of the administration of workmen's compensation in the United States varies greatly from jurisdiction to jurisdiction and is hard to classify or to describe except on a jurisdiction-by-jurisdiction analysis. The survey given by the U. S. Department of Labor Standards is more misleading than helpful.[1] Originally most states vested the jurisdiction over compensation matters in a separate and independent commission or board, called an "industrial accident board", "industrial accident commission", or some such name. Gradually, in what is probably now the majority of jurisdictions, the administration of workmen's compensation was transferred into departments of labor, varying, however, as to the degree of integration from time to time and creating quite complex patterns of responsibility. In Massachusetts,[2] e.g., it is now provided:

> There shall be in the department (of labor and industries), but not under its supervision or control, a division of industrial accidents consisting of the industrial accident board hereinafter provided for. The division shall be under the supervision and control of the chairman of the board, who shall be its executive and administrative head.

In New York the integration of workmen's compensation into the department of labor at present is likewise largely a matter of form. Workmen's Compensation Law, section 142, provides:

> The workmen's compensation board, subject to the provisions of this chapter and of the provisions of the labor law as to the distribution of functions, shall succeed to all the rights, powers, duties and obligations of the department of labor, the industrial commissioner and the industrial board, in so far as they relate to workmen's compensation except such as are vested in the chairman of the board by this article and except with respect to article six of this chapter.

[1]U. S. Bureau of Labor Standards, State Workmen's Compensation Laws Bull. No. 161, p. 68.

[2]*Mass. Ann. Laws, ch. 23, secs. 14 and 16 (1961 and Suppl.).*

In addition, Labor Law, section 21, provides:

> The commissioner shall be the administrative head of the department and shall have, notwithstanding any provision of law to the contrary, general administrative supervision over the several divisions, boards, commissions, bureaus and agencies thereof, whether established under the provisions of this chapter or the workmen's compensation law....

Generally speaking, it may be said that the predelection in the mid-thirties for vesting the chief responsibility for the administration of workmen's compensation in the single head of a labor department has proved to be impracticable.

Methods of Handling Compensation Claims in the United States

Generally speaking, there exist three approaches to the disposition of compensation claims, called "agreement system", "direct payment system" and "hearing system".

Under the agreement system prevailing in the majority of jurisdictions[3] compensation liability is expected to be settled normally and promptly by an agreement, in accordance with the terms of the act, between the injured employee or his dependents on the one side and the employer or the insurer on the other side. Compensability or the benefit amount becomes controversial and requires formal adjudication only in the minority of cases. Agreements must be filed with the commission and usually it is mandatory that they be approved by the commission.

Under the direct payment system[4] no formal agreement is required, and the employer is expected to pay medical expenses and weekly benefits promptly following the injury. If there is a dispute, the employee or the employer may petition for a determination of the controversy.

The hearing system provides that most compensation matters are set for hearing, regardless of whether or not there is a dispute between the parties. This system is followed in New York.

The System and Method of Compensation Administration in Hawaii

In Hawaii the director of labor and industrial relations, as head of the department of labor and industrial relations, is

[3]Op. cit. supra, note 1, p. 21.

[4]The direct payment system is applied, for example, in Michigan, Minnesota, Wisconsin and the Longshoremen's and Harbor Workers' Act.

formally in charge of the administration of workmen's compensation.[5] Within the department, there is a division of workmen's compensation, headed by an administrator of the division of workmen s compensation.

Methods of Handling Claims. The Hawaii Act in its original form seems to have contemplated that the agreement system would be the normal way of settling compensation cases.[6] The need for formal approval by the board or later the director, the lack of any binding effect against the employee[7], and the gradual[8], abolition of the clumsy arbitration committees provided for by the original Act have led to the practical result that Hawaii has joined the ranks of the direct payment system jurisdictions and that the two sections relating to agreements or the absence thereof[9] are in their current form, to that extent, anachronistic and obsolete.

The Hearing Process. The administrator (and staff) conduct all original hearings in controverted cases, but the responsibility for the actual decision, upon the recommendation by the administrator, rests with the director.[10] If the administrator of the division of workmen's compensation is not able to conduct the hearing himself, he may assign this task to the "hearings officer" on his staff or any other person designated for that purpose by the director. The results of such hearings by other officers are reviewed by the administrator of the division of workmen's compensation and, if completed according to his directions, are transmitted by him for formal action by the director. The administrator or any other officer conducting a hearing, may call upon the "medical advisor" for assistance. The director, through the division, may also call on the legal services of the deputy attorney general assigned to the department or of the county attorney of any county wherein a hearing is held or investigation conducted.

Any party dissatisfied with an award of the director may appeal therefrom within 20 days after recept of a copy therefrom either to one of the three industrial accident boards created for the counties of Hawaii, Kauai and Maui[11] or to the labor and industrial

[5]Rev. Laws of Hawaii 1955 (1961 Suppl.) sec. 14A-26.

[6]Session Laws of Hawaii 1915, Act 221, sec. 30.

[7]Session Laws of Hawaii 1917, Act 227, sec. 6, amending Session Laws of Hawaii 1915, Act 221, sec. 30.

[8]The committees were totally abolished in 1945, Session Laws of Hawaii 1945, Act 10.

[9]Rev. Laws of Hawaii 1955 secs. 97-58, 97-59.

[10]Ibid.

[11]Rev. Laws of Hawaii 1955 sec. 97-62, in conjunction with sec. 97-56 and sec. 14A-26, par. 4.

relations appeal board[12] in cases of injuries occurring in the city and county of Honolulu. The appellate boards, upon such appeal, are required to hold a full hearing de novo and may certify questions of law to the supreme court for determination.[13]

From the decisions of the appellate boards, further appeal lies to the circuit court in the county where the injury occurred.[14] The appeal is upon questions of fact as well as law and is a trial de novo. Either party is entitled to claim trial by jury.[15] Judgments by the circuit courts are subject to further appeal to the supreme court. Other decisions of the director, e.g., decisions regarding applications for orders of self-insurance with or without deposits of security, are subject to appeals to the appellate board and the circuit courts in the same fashion.[16]

Awards and decisions by the director, appellate boards or the circuit courts, even if unappealed, have only semi-finality and may be modified or caused to be modified by the director on the ground of a change in conditions or because of a mistake in a determination of fact related to the physical condition of the injured employee, if application is made to that effect within ten years after the last payment of compensation or the rejection of a claim.[17]

Personnel. The administrator of the division of workmen's compensation is the executive in charge of the operational program. He is assisted by a professional staff comprised of a medical advisor, who is a qualified physician, a hearings officer, and an inspector; and by a secretarial, statistical, and clerical staff of seven persons.

The county agents of the department of labor and industrial relations in the counties of Hawaii, Kauai, and Maui are charged with the administration of all state labor laws, including the operation of the workmen's compensation program, in their respective counties. One of the more important functions of these county agents is to serve as hearings officers for workmen's compensation claims. They also are responsible for convening the industrial

[12]Rev. Laws of Hawaii 1955 sec. 97-62, in conjunction with sec. 97-1, sec. 88-10 and sec. 14A-26, par. 4.

[13]Rev. Laws of Hawaii 1955 sec. 97-62.

[14]Rev. Laws of Hawaii 1955 sec. 97-63.

[15]Ibid.

[16]Rev. Laws of Hawaii 1955 secs. 97-64 and 97-90.

[17]Rev. Laws of Hawaii 1955 secs. 97-61 and 97-65.

accident boards in cases of appeals from awards. The county agents may request legal services from the county attorneys but, aside from part-time secretarial help, they do not employ a staff to conduct the workmen's compensation program. Questions which county agents may have involving operational or policy matters concerning workmen's compensation are referred to the administrator. Ultimate responsibility for the program, however, lies with the director of the department of labor and industrial relations.

Workload. According to the data furnished by it, the division processed 29,138 reports of injuries transmitted to it by employers during calendar year 1961. During the same period 1,447 hearings were held in contested cases and 4,018 compensation orders issued. Three thousand nine hundred and ten orders involved the award of some type of benefits; the remainder were denials. Of the 29,138 reported cases involving absence from work for one or more days or requiring medical services, 27,600 were closed during the calendar year; 1,538 remained open. In addition to the 29,138 new cases, the division followed payments in 6,485 pending cases from previous years and closed 5,888 thereof. Finally it handled 1,276 reopened cases.

In its activities relating to security for payment, the division processed 15,246 workmen's compensation insurance policies covering 10,976 employers. The operations involved 3,397 new policies, 7,742 renewals, 1,082 endorsements, and 3,025 cancellations and expirations. The number of authorized self-insurers during that year was 81.

Exercise of Rule-Making Power. The rule-making power conferred by various provisions of the workmen's compensation law has found only sparse application. The last printed collection of Rules and Regulation for the Administration and Enforcement of the Workmen's Compensation Law was issued with an effective date of September 1, 1943. This issue, called Rule VII, contained six operative sections, dealing with (1) scope of coverage of compensation insurance policy; (2) time and place of filing of first reports; (3) computation of wages; (4) market value of board, lodging, fuel, etc.; (5) notice of insurance; and (6) communication of notice of intention to cancel insurance policy. Parts of Rule VII have become obsolete because of changes in living costs and others are in need of clarification and complementation, in view of judicial interpretations of the governing statutory provisions[18] and subsequent amendments thereof.[19]

[18]See, especially, Clara Kali, 37 H. 173 (1959), 37 H. 517 (1947).

[19]Session Laws of Hawaii 1959, Act 241, sec. 1.

Special Compensation Fund

The financial standing of the special compensation fund, established in section 97-99, Revised Laws of Hawaii 1955, has become increasingly precarious in recent years. The purpose of the fund is to finance benefit payments, services, and purchase of equipment which the law refrains from charging to individual employers. The amount of its revenues are uncertain from year to year, but the total annual demands on the fund have been increasing rapidly. Though there still remains a cash balance in the fund, it has been described as "actuarially bankrupt".

Receipts. The principal source of revenue for the fund is the deposit of $2,000 by the employer required in every case of an injury causing death to an employee where there are no dependents entitled to compensation. Provision is also made for the deposit in the fund of certain fines levied by the director and of interest earned on the outstanding balance of the fund, but these are negligible sources of income. Since the annual income of the fund depends on the number of workers who are killed in industrial accidents in any one year without leaving dependents eligible for compensation, the amount to be received is not predictable. During the past five years, the annual receipts of the fund have varied from a high of over $15,000 in fiscal year 1958-59 to a low of $6,000 in 1961-62, as a review of the data in Table 25 indicates. It is not possible to finance a continuing program of services from a fund with such an unstable source of income; in fact there may be just a touch of amorality in basing the well-being of the fund on the death of workers who have no qualified dependents.

Expenditures. The director is authorized to expend moneys from the special compensation fund for: (1) the purchase or rental of informational material on accident prevention or of equipment or mechanical devices to be used in determining safe working conditions (Section 97-100, Revised Laws of Hawaii 1955); (2) the services of an attendant, not to exceed $150 per month, for an employee who has been awarded compensation for permanent total disability and who is in need of constant attendance (Section 97-25 (a), Revised Laws of Hawaii 1955, as amended); (3) compensation in instances of permanent total disability where the award exceeds the $25,000 maximum liability of an employer (Section 97-25(a), Revised Laws of Hawaii 1955, as amended); (4) compensation and medical expenses under an award where there has been default by the liable employer (Section 97-26.7, Revised Laws of Hawaii 1955, as amended); (5) the increased compensation which is due to an employee who receives an injury which would, of itself, cause only permanent partial disability but which, when combined with a previous disability, results in an increase in permanent partial disability or in total disability (Section 97-27, Revised Laws of

Table 25

FINANCIAL STATUS OF SPECIAL COMPENSATION FUND
State of Hawaii
1957-1962

	Fiscal Year Ending June 30				
	1958	1959	1960	1961	1962
Balance on Hand July 1	$62,028.32	$59,217.04	$60,499.19	$57,194.36	$52,609.47
Receipts[a]	8,898.04	15,123.88	12,350.00	10,025.00	6,053.00
Disbursements:					
Statistical Services	1,200.00	800.00	800.00	900.00	1,200.00
Current Expenses	1,201.07	1,500.17	1,588.43	653.83	1,128.80
Equipment	286.60	434.26	589.89	166.59	765.18
Services of Attendants	4,685.00	4,650.00	4,367.74	3,850.57	3,600.00
Compensation	4,336.65	6,457.30	8,308.77	9,038.90	10,411.30
Total Disbursements	11,709.32	13,841.73	15,654.83	14,609.89	17,105.28
Balance on Hand June 30	$59,217.04	$60,499.19	$57,194.36	$52,609.47	$41,557.19

Source: Department of Labor and Industrial Relations, State of Hawaii, Annual Reports.

[a]Includes interest.

Hawaii 1955, as amended), and (6) expenses for explanation, instruction, necessary transportation and maintenance during retraining and rehabilitation (Section 97-26.5, Revised Laws of Hawaii 1955).

Disbursements from the fund have increased during the past five years from $11,700 to over $17,000, as shown in Table 25. The amount expended for each of the various purposes has remained relatively constant, or at least the variations are not extremely important except for compensation. The expenditures for this purpose have more than doubled in the past five years, primarily as a result of changes in statutory provisions.

Present and Future Status of the Fund. The balance in the fund has decreased from a high of over $62,000 on July 1, 1958, to a low of $41,600 as of June 30, 1962. Revenues, as noted above, are unpredictable. If the various industrial safety programs are as successful as desired and if the employees who are killed have eligible dependents, then the revenues of the fund will be nil. Expenditures, on the other hand, are increasing rapidly. Awards outstanding at this time which will result in payments from the special compensation fund commencing during the period 1962 through 1969 total almost $20,000. To this sum should be added the costs of awards yet to be made including those in second injury cases and those in which the total exceeds the employer's maximum liability. There is a delay of at least six and a half years in the impact on the fund of this latter type of award.

If disbursements continue to exceed revenues by the same amount as in 1961-62, the fund will have a zero balance in four years. The available data indicate, however, that the difference between disbursements and revenues is likely to increase significantly in the years ahead and that the balance in the fund will be exhausted in less than four years.

CHAPTER 7

MAJOR RECOMMENDATIONS

Major recommendations, which appear in this chapter, are different in nature and scope than the recommendations for formal, technical, and minor improvements which appear in Chapter VIII. Each of the major recommendations represents a substantial departure from current practices relating to the organization and management of the compensation function. The major recommendations are designed to insure, without making any exchange in coverage or benefit levels, that the workmen's compensation program is administered effectively, fairly, and consistently; that the covered workers receive the maximum amount of effective protection; and that the insurance costs are prudently and equitably distributed over the policyholders. The recommendations for formal, technical and minor improvements, on the other hand, are concerned with necessary changes in the law in order to insure fair and equitable treatment of various classes of covered workers.

The major recommendations, it should be noted, have not been incorporated into the Workmen's Compensation Law Recodified which constitutes Appendix A of this report. There is a need first to review the major recommendations and reach policy decisions as to their desirability. The statutory changes which will be necessary to effect the recommendations are neither extensive nor complex. The four major recommendations are as follows:

1. The workmen's compensation division should be reorganized so as to provide for the initial hearing of contested cases by independent hearings officers and for review of cases by a single expert appeals board;

2. Compensation insurance rates should be established by a properly constituted expert board;

3. Rehabilitation, both therapeutical and vocational, should be accepted as one of the principal goals of the workmen's compensation program and new emphasis given to achieving this goal; and

4. Necessary steps should be taken to reestablish and insure the continuing solvency of the special compensation fund.

Reorganization of the Workmen's Compensation Division with Respect to the Hearing of Contested Cases

The growth of the workmen's compensation system as well as the adoption of the Administrative Procedures Act[1] make necessary a reorganization of the workmen's compensation division especially with respect to the hearing of contested cases. The present processes do not assure an expeditious disposition of the initial hearing of a contested case nor do they make adequate provisions for independent and informed review of decisions of the first instance.

It is recommended that there be independent departmental hearings officers located in the several counties who would hear contested cases and who would make and have full responsibility for decisions of the first instance. There should be hearings officers assigned to hear cases in each of the counties. Hearings officers on Neighbor Islands may be assigned other duties. The number of officers necessary to hear cases in the city and county of Honolulu remains to be determined.

The appeal from the decision of a hearings officer should lie to a newly constituted three-member appeal board. The appeal board should be placed within the department of labor and industrial relations for administrative purposes as defined in the Hawaii State Government Reorganization Act of 1959.[2] The membership of the board should include a chief hearings officer who possesses legal qualifications, the medical officer of the workmen's compensation division, and the administrator of the workmen's compensation division who should serve as chairman of the board. Proceedings before the board would be subject to the provisions of the Administrative Procedures Act. The board in an appealed case would be permitted to hear such additional evidence as it deemed necessary.

The appeal board would be permitted to act as a tribunal of first and last resort in cases where both parties waive the right to a hearing before a hearings officer and when the docket of the appeal board permits the assumption of the case and the board gives its consent. The members of the board would be prohibited from interfering in the hearing of contested cases by the hearings officers except when decisions are appealed to the board. Meeting of the appeal board could be held on Oahu and on the Neighbor Islands as necessitated by the caseload.

[1]Session Laws of Hawaii 1961, Act 103.

[2]Session Laws of Hawaii, Second Special Session 1959, Act 1, sec. 6.

It is further recommended that appeals from the decisions of the appeal board should lie directly to the Supreme Court by means of a petition for review. Judicial trial de novo should be abolished.

The director of the department of labor and industrial relations, upon the advice of the administrator of the workmen's compensation division, should promulgate such rules as are necessary to provide for uniformity in the application of the law and procedural expediency in the hearing of cases. The adoption of such rules should be in accordance with the provisions of the Administrative Procedures Act.

The above recommendation for the reorganization of the workmen's compensation division with respect to the hearing of contested cases will provide for expeditious initial hearings and responsible decisions of the first instance and for separate and independent review of cases in which the decision of the hearings officer is not accepted by one or both of the parties to a case. The nature of the membership of the appeal board will assure that the decisions of the hearings officers are reviewed by qualified officials. The substitution of a single state-wide appeal board will assure a degree of expertise and consistency not otherwise easily obtainable. Providing for direct appeal to the Supreme Court from decisions of the appeal board makes possible review of decisions by a single judicial agency.

Determination of Compensation Insurance Rates

The determination of compensation insurance rates necessitates familiarity with the insurance business and insurance regulation and with the workmen's compensation program. Further, since compensation insurance is compulsory, the State has a serious obligation to make sure that all relevant data, knowledge, and viewpoints are considered in the determination of rates. Some of the major policy decisions, as for instance the introduction of expense constants or differentiation of discounts by sizes of risk, are made by the industry and National Association of Insurance Commissioners without hearing and without the advice of organizations representing employers, especially small employers. Workmen's compensation is social insurance, and there may be questions of social wisdom, as well as of fairness in weighting the system against one group of employers. At present the small employer, for instance, is deprived of the benefit of discount and moreover saddled with an expense constant.

It is recommended that a compensation insurance board be created and that this board be placed in the department of treasury and regulation for administrative purposes.[3]

[3] Ibid.

The membership of the board should consist of the insurance commissioner (or his deputy), the administrator of the workmen's compensation division, and one public representative, appointed by the Governor, who possesses a high degree of expertise about compensation insurance and especially about the problems faced by small employers. The board should be responsible for the setting of compensation insurance rates and for reviewing those rates annually. The board should conduct its business in accordance with the provisions of the Administrative Procedures Act[4], including providing adequate opportunities for public hearings during the rate determination process. The board should specify the information which it desires the carriers or their licensed rating organization to furnish annually, as well as the data which it wishes to have available on an on-call basis. The board should also utilize data, especially those relating to past and future loss experiences in Hawaii, which is available from the workmen's compensation division.

It is suggested that the Minnesota state law governing compensation insurance ratemaking may serve as a useful model in drafting similar legislation for Hawaii.[5] In redrafting the compensation insurance regulatory statute, some attention should be given to revising the language which assures the carriers of profits so as to provide that the profits need not necessarily be derived from the insurance business alone.

The above recommendation for the establishment of a compensation insurance board responsible for the determination of compensation insurance rates will provide effective means for making certain that the necessary data are considered by the agency responsible for setting rates and that the membership of the board will be such that those individuals best qualified by training and position to interpret the relevant data and make the necessary social judgments will be responsible for the decisions as to rates.

Strengthening Rehabilitation Services

There should be a clear, general recognition in the statute that rehabilitation of the injured employee is a primary function of workmen's compensation. Financial responsibility for all necessary therapeutic services ought to be a part and parcel of the liability for functional restoration which is imposed upon the employer. The statute should be specific on the point. During the time that the services indicated are primarily of a therapeutic nature, the employee should be considered as temporarily and totally disabled and entitled to income benefits on that basis.

[4]See footnote 1.

[5]Minn. Stats. 1961 sec. 79.

Maintenance of the employee and his family during a period primarily of vocational retraining should be defrayed by public funds and not charged to the individual employer. Under current institutional arrangements the basic maintenance expenses should be charged against the funds allocated to the state agencies in charge of vocational rehabilitation. Special compensation funds may be resorted to for the supplementation of such expenses in order to provide for items which cannot be financed otherwise or to bring maintenance up to the statutory level.

The workmen's compensation division should have administrative responsibility for prompt initiation of steps towards physical and vocational rehabilitation and in that connection should have the power of supervising medical practice in order to induce resort to available rehabilitation facilities. The administrator of the division, on the advice of his medical officer, should have the authority to determine the need for and sufficiency of any medical or medical rehabilitation aid furnished or to be furnished; and, in this regard, he should be authorized to order a change in the physician, hospital or rehabilitation facility when such a change is deemed desirable. Further, it should be a special duty of the medical officer to establish the necessary liaison with the medical societies and other related groups to assure that there is adequate understanding of the rehabilitation function of the workmen's compensation program and sufficient coordination of effort and that the division is kept informed as to the rehabilitation services and facilities which are available.

The recent Montana and Pennsylvania statutes are good examples of the approach suggested here. Montana Laws 1961, chapter 21, section 3, provides:

> The eligibility of any injured workman to receive other benefits under the workmen's compensation act...shall in no way be affected by his entrance upon a course of vocational rehabilitation as herein provided, but he shall be paid, in addition thereto, upon the certification of the vocational rehabilitation division from funds herein provided, (1) actual and necessary travel expenses from his place of residence to the place of training and return, (2) his living expenses while in training away from home in an amount not in excess of $30 per week, his expenses for tuition, books and necessary equipment in training.

Pennsylvania Laws 1961, chapter 476, section 7.1, Rehabilitation and Training, Industrial Cases; Limitations, provides:

> (a) ...the State Board of Vocational Rehabilitation may provide vocational rehabilitation and vocational training and services to individuals injured in industrial accidents or who

incurred industrial disabilities and are entitled to benefits under "The Pennsylvania Workmen's Compensation Act" or "The Pennsylvania Occupational Disease Act." These services and benefits may also be provided prior to the availability of Federal funds or services and prior to the availability of other State services or funds and may be supplemental thereto.

(b) The State Board of Vocational Rehabilitation may make money payments necessary to meet living requirements for disabled or injured individuals and their families during the period of vocational rehabilitation and training and for an additional sixty day trial period of employment, if the disabled or injured individual is cooperative and demonstrates satisfactory progress.

(c) The cost of providing the services and benefits herein provided shall be paid for first with Federal or State funds, if and when available, and if no such funds are available, shall, then and in such event, be paid from the Second Injury Reserve and Rehabilitation Fund.

Care should be exercised in drafting a Hawaii statute governing rehabilitation in workmen's compensation cases to differentiate between the provisions pertaining to expediting therapeutic rehabilitation and those relating to vocational rehabilitation. The distinction is desirable because of the present institutional arrangements governing rehabilitation and in order to give increased emphasis to vocational rehabilitation, the phase which has received less than adequate attention in years past.

The above recommendations for the strengthening of the rehabilitation services will result in a better-balanced workmen's compensation program, a program which is designed and equipped to restore the injured worker to useful service, to the greatest extent possible, as well as to indemnify him for injuries received.

Financing of the Special Compensation Fund

The balance in the workmen's compensation fund, a special fund, is dangerously low. It is clear that the expenditures from the fund are going to continue to exceed receipts unless some fundamental change in the function or funding of the fund is made. It is unlikely that there will be any decrease in the nature of the demands made upon the fund; rather an increased burden on the fund is to be expected. Therefore it is necessary to increase its receipts.

It is recommended that: (1) a portion of the gross premium tax collected on compensation insurance policy premiums be diverted to the workmen's compensation fund; (2) a charge of equal propor-

tion be imposed on the self-insurers and the state and county governments, neither of which pay the insurance premium tax; and (3) this charge or contribution also be credited to the special fund. The present tax rate is 3.25 per cent of premiums for foreign carriers and 2.25 per cent for domestic insurers. This tax is passed on to the employers by means of the expense loading of the pure premiums. It is suggested that either an amount equal to a specified percentage of total gross premiums be credited to the special fund and the remaining portion continue to be credited to the general fund or, if it is deemed inadvisable to reduce the revenues credited to the general fund from this source, an additional percentage tax be levied on gross premiums of compensation policy premiums which revenue would then be credited to the special fund. The important point is that the size of premiums paid provides the most equitable measure of the contribution which each employer should make to the special fund.

The equivalent amount to be contributed by the self-insurers should be determined by the compensation insurance board on the basis of the total premium which each self-insurer would have had to pay had he been insured by a commercial carrier, making due allowance for experience ratings and discounts.[6] The compensation board should also make a similar determination as to the amounts which the legislature, the council, and the boards of supervisors should appropriate to the special fund as their equivalent shares.

The above recommendation for the financing of the workmen's compensation fund will insure the solvency of the fund in the forseeable future as well as insure that the employer beneficiaries of the workmen's compensation program -- the insured employers, the self-insurers, and the state and county governments -- share equally in assuming the costs of financing the fund. Whether a specified portion of the existing tax may be credited to the fund or an additional levy must be imposed depends on the state of the general fund.

[6]There is some question of whether it is equitable or not to exempt self-insurers from the insurance premium tax, or a tax in lieu thereof, simply because they have received permission from the State not to carry insurance with a commercial carrier. This is a matter which, while not within the scope of this study, may be worth looking into further.

CHAPTER 8

FORMAL, TECHNICAL AND MINOR SUBSTANTIVE CHANGES

In proposing a recodified form of the law care has been taken to attain the following objectives: (1) tighter and more logical organization of the Act; (2) simplification and clarification of the statutory language; (3) elimination of internal inconsistencies and obsolete remnants of previous versions of the law; and (4) minor improvements, to eliminate unnecessary hardships and inequities. Some of the verbal and minor structural changes and the reasons therefore are self-evident. It is felt, however, that some of the fundamental ideas and concepts of the law require explanation and comment.

Substantive Aspects

The following discussion focuses on: (1) coverage; (2) various aspects of the benefit structure, especially the regime of income and indemnity benefits in cases of disability and death; (3) wage base of the income and indemnity benefits; and (4) other substantive matters.

Elements of Coverage

Generally speaking, coverage under workmen's compensation acts requires the concurrence of four factors, viz. (1) existence of an employment relation of the type to which the statute applies (occupational aspect); (2) occurrence of a personal injury necessitating medical attention or causing disability or loss of life (risk aspect); (3) connection between the personal injury and the employment (causative aspect); and (4) sufficient contacts between the state and the compensable event (territorial aspect). Coverage may be compulsory or optional.

Occupational coverage: compulsory scope. So far as the occupational aspect is concerned Hawaii has gradually attained nearly universal compulsory coverage. Under the present Act only two classes of employees are exempt: (1) employees hired for personal, family or household purposes; and (2) employees of non-profit organizations.

The recodification includes new definitions of the terms "employee", "employer" and "employment" designed to clarify and properly express this situation. The word "workmen" is eliminated from the body of the law, and, for traditional reasons, left solely in the title.

Employment is broadly defined so as to cover all service relations established by a contract of hire, express or implied, appointment or election, i.e., all private or public dependent service relations. The definition implies negatively that service as indepent contractor or as co-owner of the enterprise is excluded.

The definition of employee is phrased so as to make it clear that coverage extends to all public employees and to all private employees, except those who are not hired for the purpose of the employer's trade, business, occupation or profession. Trade, business, occupation, or profession may be defined so as to exclude or include activities of non-profit organizations, according to whether it is required, or declared to be immaterial, that the commercial, occupational, or professional activities be conducted for profit. The proposed draft is phrased so as to amend the existing law and extend coverage to employees of non-profit organizations, in accord with the general trend of American compensation acts.

The existing exemption of employees "whose employment is purely casual and not for the purpose of the employer's trade or business" is deleted as unnecessary and inconsistent with the other coverage provisions. An employee who is employed in the employer's trade, business, occupation or profession is covered regardless of whether his employment is "regular" or "casual". An employee who is hired for purely personal, family or household purposes is not covered regardless of whether his employment is "regular" or "casual". Hence the existing exception is redundant and misleading.

The definition of "employer" specifies that Hawaii has no "size of establishment" or numerical requirements, that public entities are under the sweep of the Act, and that the legal representative steps into the shoes of the deceased employer.

The clause referring to the position of the insurer is rephrased so as to clarify the legal situation.

The "contractor clause" contained in the existing definition of "employer" is rephrased and transferred to the definition of "employee". This positional shift is made for the reason that the effect of the clause is to make the employees of the contractor the "statutory employees" of the owner of the business who has contracted out the particular job.

It is recommended, however, that the present rule be qualified so as to place either the exclusive or the primary liability on the direct employer, if he has taken out compensation insurance and the wages of the employee figure in the premium base. The differ-

ence between placing the "exclusive" liability on the employer rather than the "primary" liability lies in the effect of this distinction on the tort liability of the owner and his other employees. If it is desired to shield the owner and his other employees from third party liability, then secondary liability must be left imposed upon the owner. Vice versa, if it is desired to give the victim in cases of negligence an action at law either against the owner or his negligent employees, the direct employer must be exclusively liable.

The suggested form of the statute makes the insured direct employer exclusively liable.

The rules respecting "borrowed employees" are likewise retained, but again with the suggestion of a qualification, if the lender has a policy covering the loaned employee. Choice between "primary" and "exclusive" liability of the insured lender in that case is again made in favor of exclusive liability.

Occupational coverage: voluntary scope. The Hawaii Act, in section 97-4, provides for voluntary coverage of employees who are not subject to compulsory coverage. The provision is retained with slight verbal changes to indicate that the voluntary coverage extends to persons in an employer's employment who are not "employees" within the meaning of the Act, but are deemed to be such as long as the voluntary coverage is effective. Under the present scope of compulsory coverage the provision for voluntary coverage may benefit: (a) employees of non-profit organizations; and (b) employees hired solely for personal, family or household purposes. If compulsory coverage is extended to employees of non-profit organizations, as recommended, only class (b) would remain within the scope of section 97-4.

The law leaves the decision exclusively to the employer, although the employee loses his right to sue at common law. Nevertheless, it is recommended to retain this system, since proper benefit scales should make coverage desirable.

Work injuries covered: exclusive character of coverage. The provisions of section 97-3 as to the hazards covered by the act have been retained without substantive alterations. The formula "by accident arising out of and in the course of employment" is traditional and has been given a broad and liberal interpretation by the courts and administrative agencies. Any change in phraseology would unsettle a sound and commendable decisional trend. The same holds true with reference to the coverage of the so-called occupational diseases. The blanket-formula approach, followed by Hawaii as well as by many other jurisdictions, has worked in a satisfactory manner and avoided unnecessary difficulties in differentiating between occu-

pational diseases and diseases caused by accident. Hence the present system is kept, except for a slight simplification in phraseology.

The provision that accident arising out of and in the course of employment includes the wilful act of third persons directed against an employee because of his employment has been retained, but shifted from the definition section to the section defining work injury.

For the same reasons the exclusions contained in section 97-6 likewise have been transferred to section 97-3. The clause placing the burden of proof on the employer claiming the exclusion has been deleted as superflous in view of the presumptions added in 1959 (Sec. 97-57.5).

A definition of "work injury" referring to the hazards covered by section 97-3 has been added to the definition section in order to allow simplification of the language of other sections.

Coverage of the Act is exclusive, i.e., it excludes liability of the employer for damages, at common law or otherwise, on account of the work injury to the employee, his legal representative, spouse, dependents, next of kin or any one else. The provision in section 97-7 paragraph 1 to that effect is retained with slight changes in phraseology made to eliminate certain difficulties of construction that have arisen in other jurisdictions.

The immunity from liability for damages shields only the employer (and, subject to certain qualifications, other employees of such employer, see infra section 97-8) but not third parties. Other persons to whom an individual renders services without being considered their employee (see the definition of employee) remain liable for damages.

Former section 97-7 paragraph 2 is transferred to the new section 97-6 which governs the territorial aspects of coverage. Where coverage under the Act exists, the employer who has properly secured payment of compensation is not liable for damages at common law or otherwise on account of the work injury of the employee.

Territorial and federal aspects of coverage. The present statute contains several provisions relating to the territorial aspects of coverage: section 97-7 paragraph 2 and section 97-8 paragraph 1 deal with out of state work injuries suffered by employees hired within the state. Section 97-8 paragraph 2 deals with the enforcement of foreign compensation laws by the administrative agencies and courts of Hawaii.

The provision prescribing enforcement of foreign compensation laws by the administrative agencies and courts of this State is unique and impracticable. It is recommended that it be deleted and replaced by a provision making the compensation law of this State apply to all work injuries sustained by employees within the territorial boundaries of the State. If the application of such a rule to an employee hired outside the State and only temporarily present within the State is deemed to create undue hardship on his employer, a clause may be added which relegates the injured employee and his dependents in that case to claims under the compensation law of the state where he was hired and enforceable in the agencies of that state, provided that reciprocity is granted to Hawaii employers under similar conditions. Provisions to that effect exist in a number of states.

The rules of sections 97-7 paragraph 2 and 97-8 paragraph 1 are combined in a new section 97-6 paragraph 2. Employees who have been hired in the State are entitled to compensation under this Act for work injuries suffered even though such injury was sustained without the State. Under the present Act such liability is exclusive only if there is an agreement to that effect, although an agreement to that effect is presumed. This system is anachronistic. The coverage is made exclusive in all cases where it is compulsory. A clause providing that all contracts of hire made within the State shall be deemed to contain a stipulation for the exclusive liability under the State Workmen's Compensation Act is retained only in order to preclude other states from imposing tort liability on Hawaii employers for work injuries sustained by their employees outside the state.

The scope of the permissible coverage under the state compensation law of employees and employers engaged in interstate commerce or maritime pursuits presents well known difficulties. The Supreme Court of the United States has recently exhibited a tendency to relax the previously rigid but unpredictable standards. Former section 97-9 is redrafted so as to state affirmatively that the coverage of the Act shall extend to employers and employees engaged in interstate and foreign commerce and to employees in maritime employment and their employers to the extent permissible under the Constitution and laws of the United States.

Third party liability. The provisions governing liability for damages of third parties have been left unaltered except for minor changes in language. The portion of the last paragraph which immunizes fellow employees acting in the course of their employment from third party liability has been transferred to the first paragraph of the section. The portion of the paragraph which subjects fellow employees to third party liability for wilful and wanton infliction of harm is left in its former position.

Types of Benefits

Benefits accorded by modern workmen's compensation laws in consequence of a work injury are of two major classes: (1) services and supplies reasonably necessary for medical and occupational restoration and rehabilitation or defrayal of the reasonable expenses thereof, (2) income and indemnity benefits in cases of disability or death.

The recodification of the Act, accordingly, divides the rules governing benefits into two main sections, entitled medical and rehabilitation benefits, and income and indemnity benefits. Medical and rehabilitation benefits are designed to provide for services, supplies and facilities needed to restore the injured worker to the fullest extent possible in his physical capacities and as a self-supporting member of the community; income and indemnity, conversely, are for the purpose of compensating the victim of a work injury or his dependents for his losses in earnings and his remaining loss of physical function.

Medical and rehabilitation benefits. At present, provisions for medical and rehabilitation benefits are scattered over various sections of the Act, such provisions being found in sections 97-22, 97-26(c), 97-25(a) paragraph 3 and 97-26.5. The recodification rearranges and combines the pertinent provisions.

Section 97-22 (renumbered as section 97-10) is retained with slight changes in language and the insertion of a new clause pertaining to the service of specialists. If specialists of the needed type are practicing within the State the selection must be made among them, but if no specialists of the type needed are practicing within the State, the director may authorize selection from out-of-state specialists. The clause sanctions existing practice.

Renumbered section 97-11 regulates the liability for the furnishing of artificial members and other restorative aids and supplies. It makes no change in the existing law, as contained in section 99-26(c).

Section 97-25(a), paragraph 3, relating to the furnishing of the services of an attendant is retained without change but transferred to the provisions relating to medical benefits, in view of the fact that the services of such attendant constitute a special type of nursing services.

The section on rehabilitation, formerly section 97-26.5, now renumbered section 97-13, is expanded by addition of a new subsection (a). The first sentence of this new subsection codifies and makes explicit an interpretation which has been followed by the divi-

sion of workmen's compensation even under the existing law: entitlement to medical benefits includes medical services, supplies and aids needed for medical rehabilitation. The second sentence empowers the director to take necessary measures to insure that proper medical rehabilitation services are furnished. It is recognized that supervision of the furnishing of proper medical services is needed for an efficient administration of the law.

Income and indemnity benefits: types and beneficiaries. All workmen's compensations acts operating in the United States provide for income and indemnity benefits. Traditionally these benefits are divided into two main categories: disability benefits and death benefits. Disability benefits are paid to the disabled worker himself, although some states provide for additional dependents' allowances; death benefits, by their nature, are paid to specified surviving dependents.

Disability benefits in turn are divided into four kinds, depending on the type of disability to be compensated: benefits for (1) permanent total disability, (2) temporary total disability, (3) permanent partial disability, and (4) temporary partial disability. The recodification retains this division. For the sake of clarity and in view of their greater practical importance, however, the recodification places the sections governing income and indemnity benefits for disability ahead of the sections governing death benefits, all of them to be followed by certain provisions common to both categories of benefits.

Benefits for permanent and temporary total disability. The new section 97-14 deals with weekly benefits payable in cases of permanent or temporary total disability. The recodification relates these provisions to two new definitions in section 97-1 relating to "disability" and "total disability". Total disability is defined in the customary manner, but taking account of the fact that the concept of disability in Hawaii is purely functional and physiological and varies from that accepted in the majority of American jurisdictions.

Otherwise, the provisions governing benefits for permanent total disability remain unchanged in substance and have undergone only minor stylistic changes, clarification and rearrangement. The rule regarding the maximum amount of compensation for total disability, whether permanent or temporary, chargeable to the employer is transferred to a new subsection (c). The imposition of liability on the special compensation fund for permanent total disability payments after that $25,000 limit is reached is left in subsection (a).

Permanent partial disability. The existing provisions concerning permanent partial disability are in need of a substantial over-

hauling. The current form of the law is the result of repeated patchwork, the different components stemming from a variety of other statutes stitched together without regard to their matching.

Until 1951 the system consisted of a lengthy schedule providing compensation for a fixed number of weeks for various types of partial disability in the following arrangement: (1) loss of various members, included in a statutory catalogue; (2) loss of use of these members; (3) partial loss or loss of use of these members; (4) multiple simultaneous loss or loss of use of several of the specified members; and (5) loss due to amputation. The schedule was followed by a catch-all "other cases" clause which provided for compensation in all cases of permanent partial disability not covered by the schedule on the basis of reduction in earning capacity not to exceed 312 weeks.

The statute since 1917 listed loss of hearing in the catalogue of losses of members rather than as loss of the use of a member, but omitted the ear in the loss of use clause. In 1949 loss of vision was likewise included specially in the losses of members catalogue, but elimination of the word "eye" in the loss of use clause was overlooked. The recodification makes this correction.

In 1951 the old "all other cases" clause was replaced with a new "all lesser and other cases" clause which was a copy of the same clause in the New Jersey compensation law (N.J. Stat. Ann. (1959), Sec. 34:15(22)). The Hawaii draftsmen made one significant change: In the cases in which permanent partial disability is compensated as a percentage of permanent total disability, the compensation for total disability in the New Jersey statute was expressed as a quantity equal to weekly compensation for 450 weeks, while the Hawaii counterpart replaced it with a fixed sum of then $10,500.

Unfortunately the graft never completely fitted the base upon which it was planted, in view of the fact that Hawaii had (and still has) a special "partial loss or loss of use" clause, while New Jersey lacks a section of that kind in its schedule. Hence the other cases clause is recodified so as not to overlap with the partial loss or loss of use of a scheduled member clause, but rather so as to complement it. The all other cases clause consists of two parts: The first sentence specifies compensation for permanent partial disability in cases which are comparable to schedule cases. The second sentence deals with the residual situations where the permanent partial disability can only be rated in terms of a percentage of total disability. In the latter case the proper standard to be selected as standard compensation for permanent total disability raises troublesome questions. At present the statute fixes it at $25,000, although such compensation actually may be higher, and the sum of $25,000 is merely the amount chargeable

to the employer and collectible by the dependents in case of death. Moreover, the increase in 1959 of weekly compensation payments for permanent partial disability to a weekly maximum of $112.50 has restricted the duration of payments in such cases to a maximum of 222.22 weeks which is less than the schedule provides for the loss of an arm (312) weeks), leg (288 weeks), or hand (244 weeks) and creates a serious inconsistency in the system. To accommodate full compensation for loss of an arm in all cases, a maximum of 312 x $112.50 = $35,100 would be necessary.

It is recommended that compensation be determined for permanent partial disability in cases where it is rated as percentage of total disability not as a sum equal to a percentage of a fixed dollar amount, but rather in terms of its duration as a percentage of a fixed period of weeks of payment, such period set at 420 weeks.

It is further recommended to delete from section 97-26(a) the clause which fixes the weekly benefits of workers having average weekly wages of less than $18 at one hundred per cent of their actual earnings rather than at a flat minimum of $18. Compensation for permanent partial disability compensates the worker primarily for loss of bodily integrity rather than for loss of earnings. While the measure of compensation is in part based on the prior earnings record, the weekly amount figuring in the compensation should in any case be not less than $18. Such a rule not only would be more consistent with that followed in the case of permanent total disability, but would also avoid justified criticism of the social justice of the system.

The clauses relating to (a) the independence of compensation for permanent partial disability from subsequent earning capacity (sec. 97-26(a), par. 1, first sentence) and (b) the time of the payment are combined in a special paragraph with the heading "unconditional nature and time of commencement"; the clause relating to the exclusive nature of compensation for permanent partial disability is deleted as unnecessary and confusing. The reference to the separateness of the compensation for disfigurement is transferred to the paragraph dealing with that type of disability.

Disfigurement. It is recommended that the extent of compensable disfigurement be clarified by addition of the word "substantial". The present formulation permits dissipation of significant amounts needed in more deserving cases for scars which are trivial and of no significant consequence. The clause which specifies that disfigurement is not included in other cases of permanent partial disability is transferred, with slight verbal changes, to the paragraph dealing with disfigurement.

Temporary partial disability. The provisions for weekly compensation in cases of temporary partial disability have been re-

phrased slightly to adjust the language to the purely physiological definition of disability. Consequently the phrase "disability for work" is replaced by the formula "disability causing diminished capacity for work.' The method of computing the compensation in these cases has been retained. It is recommended, however, that the establishment of a minimum in such cases be deleted. It makes little sense to pay a greater amount, if the actual wage loss is less, and the disability is merely temporary. Of course any residual permanent partial disability would be compensated at least at the minimum rate.

Determination of the existence and degree of partial disability; maximum compensation. The provision that no determination of partial disability shall be made until two weeks from the injury is transferred from the section governing temporary partial disability to a new section governing both permanent and temporary partial disability. Actually, it is more important in cases of permanent partial disability and is the counterpart to a corresponding rule governing determination of permanent total disability.

The ceiling governing maximum compensation for partial disability (section 97-26(d)) has been revised in order to take care of the difficulties produced by the 1959 increase of compensation for permanent partial disability which in some cases exceeds the $25,000 limit. In these cases the total liability of the employer should be at least the amount flowing from the application of the schedule, although no additional sums would be added for any preceding period of temporary total disability. A sentence has been added amending the existing law in that manner.

Subsequent injuries which would increase disability. The provisions relating to subsequent injuries have been retained except for slight changes in language made to clarify the applicable rules.

Flat minimum for minors. It is recommended that the flat minimum for minors be deleted upon condition that the recommendation for introduction of a flat minimum for all cases of permanent partial disability be adopted. Obviously in such a case the need for the provision in question would no longer exist.

Payment after death. The provisions for payment of an unpaid balance of compensation for disability to his dependents in case the disabled employee dies for causes unconnected with the compensable work injury have been retained. Slight changes have been made to improve clarity and the consistency with the provisions governing compensable death.

The basic scheme of the provisions governing death benefits. The provisions governing compensation for a work injury causing death are contained in five sections: sections 97-2; 97-20; 97-21; 97-23; and 97-24. The Act grants (a) a funeral and burial allowance and (b) weekly income benefits to dependents of the deceased. To be eligible for dependents' benefits a claimant must belong to one of the specified classes of members of the deceased's family and must have been dependent upon the dead employee either actually or as a matter of law. The current Act provides for different rates of compensation, varying according to the class to which the dependent belongs and whether there are other dependent relatives belonging to the same class. The classes are arranged in order and are mutually exclusive; in other words, existence of a dependent in a preceding class excludes all dependents in the succeeding classes regardless of what rate of compensation the higher ranking dependent is entitled to receive. If no dependent entitled to benefits exists, the employer must pay $2,000 to the special compensation fund. Entitlement to benefits terminates if the condition of actual or conclusively presumed dependency ceases to exist or upon occurrence of other specified events. Such termination enures to other dependent members of the same class where such dependents exist. If there are no dependents in the same class, the Act, as currently operative, apparently does not permit succession of the dependents of the next inferior class. If the employer is in doubt as to who of competing rival claimants is the proper recipient, he may secure a determination from the director.

Need for clarification and elimination of inconsistencies and duplications. The five sections establishing the system of weekly death benefits outlined above contain many inconsistencies, overlaps and confusing provisions. Some of the basic defects go back to the original Act of 1915. Subsequent amendments have multiplied the discrepancies and contradictions. As a minimum goal the recodification endeavors to place the pertinent sections into a logical arrangement, to eliminate inconsistencies and redundancies, and to clarify the controlling rules.

It is, however, urged that the legislature consider adoption of a modified scheme which retains the present maximum rate of total weekly benefits of 66-2/3 per cent of average weekly wage, the present maximum aggregate amount of weekly benefits, the present division into classes and the present variations in rates of compensation for various types of dependents; but which provides that if the weekly benefits of one class do not consume the permissible maximum of 66-2/3 per cent of the average weekly wage, the next succeeding class is entitled to the balance and that if on termination of benefits to one recipient, the amounts are not wholly distributable to other members of the same class, the termination enures to the benefit of the next succeeding class of

dependents. Such an alternative scheme would require a rephrasing of the first sentence of section 97-23 in its present form and of subsections (d) and (e) of section 97-23, inclusion of a sentence allocating the unconsumed balance to the next succeeding class, and addition of a conforming provision in the last paragraph.of section 97-21.

Recodification of Section 97-2. Section 97-2 is recodified in a manner which eliminates all references to married status and dependency. Considerations of the latter type may be determinative of actual or conclusively presumed dependency but do not govern family status. The definition of "grandchild" is simplified since the exclusion of stepchildren of a child would exclude stepchildren of adopted children and stepchildren.

Recodification of Section 97-23. Section 97-23, recodifed as section 97-19 constitutes the basic grant of death benefits and therefore is moved ahead of the sections governing dependency and duration of benefits. The new section follows the existing structure. The grant of a funeral and burial allowance is placed into a separate subsection. The provision for the floor and ceiling average weekly wages upon which the computation of the benefits are based is transferred from the present section 97-24 to the first clause of subsection (b) of the new principal section 97-19.

The provision specifying the maximum aggregate rate of weekly payments is transferred to a separate subsection, with the addition of a clause providing for proportionate reduction, if necessary. It is recommended that the clause which provides that the weekly death benefit must not exceed the amount of the deceased worker's average weekly wage be stricken. The deceased may have maintained his family with earnings which are produced by self-employment rather than covered employment, the possibility of such self-employment being removed by his death. Hence the aggregate weekly benefits payable to dependents should not fall below the amount resulting from a calculation based on the minimum average weekly wage which the statute permits to be considered in the computation.

The liability of the employer to the special compensation fund in cases where the deceased employee is not survived by dependents entitled to receive benefits is retained. It is, however, recommended that the fund receive any remaining balance in cases where the weekly benefits to which surviving dependents are entitled do not amount to a total of $2,000. At present the statute contains a mysterious clause specifying that the weekly death benefits shall not be less than $2,000 (section 97-21) but does not provide who is entitled to the balance, if the period of compensation of entitled dependents terminates before the whole amount is consumed, especially as dependents of other classes are not substituted.

Eligibility of dependents. The section governing dependency has been revised so as to contain all rules determining which persons are deemed to be dependents. The provisions contained in section 97-20 and the clauses referring to marriage and dependency in section 97-2 are combined, so as to reproduce the existing system with certain modifications and clarifications.

The present law differentiates between two types of dependents. With respect to one category (encompassing the surviving, non-separated widow, unmarried children under eighteen and unmarried children incapable of self-support under twenty) dependency is deemed to exist as a matter of law, regardless of the circumstances. In the other category dependency must be found actually to exist; in the case of a separated widow, a widower, a parent or grandparent such dependency need only be partial, while in the case of a grandchild, a brother or sister the dependency must be total. Entitlement of a married child under eighteen likewise requires dependency, but the statute fails to specify whether partial dependency suffices. Consistency with the scheme as a whole would permit the conclusion that no more than partial dependency must be found in such a case.

The recodification proceeds on the theory that, except where the statute specifically requires that to be a dependent a family member be actually and wholly dependent, a finding of dependency requires only that the deceased contributed a substantial portion of the living expenses of a family member. In the cases of a married child under eighteen, a non-separated widow and the widower, partial dependency will entitle the dependent to the full rate of benefits; in the cases of a parent or grandparent, partial dependency entitles such dependent only to half of the rate provided for the case of total dependency.

The recodification clarifies that dependency must exist at the time of the fatal injury in all cases. The present statute specifies such a requirement only for certain categories of dependents. It is, however, believed that reliance on mere potential dependency would render an efficient administration impossible, and that no consideration should be given to the possibility that certain family members might have become dependent on deceased had he continued to live.

The position of alien dependents residing abroad is left unchanged, but the statutory language is changed slightly for purposes of clarification.

Duration of dependents' weekly benefits. The provisions governing the duration of weekly benefits to dependents are retained but rearranged and rephrased so as to clarify the existing rules. In

the case of an unmarried child, his or her dependents' benefits will terminate either upon attainment of age eighteen or upon marriage; but in the case of a married child under eighteen who was dependent upon deceased, benefits remain payable during the period of actual dependency until attainment of the age of eighteen. At present an unmarried child who is incapable of self-support is entitled to benefits until attainment of age twenty. It is recommended that this limitation be eliminated and that only the $25,000 limitation be applied. If this recommendation is followed, the words "except in the case of a child over eighteen and incapable of self-support" should be inserted after the word "child" in section 97-21(b). If the recommendation is not followed, a corresponding clause should be inserted in the cases of a brother, sister and grandchild incapable of self-support. Otherwise an incapacitated brother, sister, or grandchild would enjoy a better position than an incapacitated child. Since in the case of a brother, sister or grandchild, actual and total dependency is required, his married or unmarried status is irrelevant.

In subsection (c) the words "in the same class" are added after "dependents" in order to make clear that the existing system does not permit shifts of benefit payments to members of a subsequent class.

Effects of erroneous payment; insanity of beneficiary. The provisions regarding erroneous payment contained in section 97-24 paragraph 2 are transferred to a separate section, numbered section 97-22. The language is modified so as to cover also the case of an erroneously omitted member of the same class.

Earnings Base of the Benefit Formulae.

In the preponderant majority of compensation laws, benefits are calculated on the basis of the injured worker's pre-injury average weekly wages. The determination of what kind of receipts and advantages are to be included in the concept of wages and the establishment of the proper methods for computing the average weekly wages have been the subject of much controversy. It is recommended that the existing pertinent provisions be modified in a number of respects.

Wages. It is recommended that the definition of "wages" (section 97-1) be expanded so as to include tips. The inclusion or exclusion of tips in the computation of wages for purposes of computing social insurance benefits has been a matter of considerable disagreement. Under the OASDI system, tips are excluded unless the employee has to account for them to the employer. Code of Federal Regulations, Title 42, sec. 403.828, lists under the catalogue of exclusions from wages:

Tips or gratuities paid directly to an employee by a customer of an employer and not accounted for by the employee to the employer.

Conversely, a number of compensation laws expressly or by judicial construction include tips from customers as wages. Thus the Longshoremen's and Harbor Workers' Compensation Act includes as wages "gratuities received in the course of employment from others than the employer".[1] Judicial interpretation has reached the same result in England and Massachusetts.[2] Tips are excluded in Colorado.[3] Pennsylvania includes tips only with respect to "employments in which employees customarily receive not less than one-third of their remuneration in tips or gratuities not paid by the employer".[4]

It is recommended to add to the definition of wages in section 97-1 after the word "remuneration": "and gratuities received in the course of employment from others than the employer to the extent that they are customary and expected in that type of employment or accounted for by the employee to the employer."

Computation of average weekly wages. Income and indemnity benefits to which either the injured employee or, in case of death, his dependents are entitled are expressed in terms of percentages of his pre-injury "average weekly wages" or in terms of the difference between such pre-injury average weekly wages and his expected post-injury wages. Hence the proper method of computation of this basic element of the benefit formulae is of crucial importance for a fair and adequate benefit structure.

Obviously, the drafting of rules for the computation of this somewhat artificial and elusive quantity, designed to govern different employment situations and histories, presents vexing and perplexing questions of social justice. These problems mirror the existing confusion about the basis and rationale of compensability, manifested in the three theories mentioned before: the whole man theory, the loss of earning capacity theory, and the actual wage loss theory. The conflict between the various approaches is heightened by the fact that the insurer receives premiums on the actual wages paid by the employer in whose employ the personal injury was sustained and that measuring benefits on any earnings base different from that underlying the premiums may cast an undue burden on the insurer. However, in conjunction with the latter argument,

[1] 33 U.S.C. sec. 902.

[2] Penn. v. Spiers and Pond Ltd. 1 KB. 766 (1908); Power's Case, 275 Mass. 519.

[3] Colorado Rev. Stats. 1953 sec. 81-8-1-4.

[4] Pennsylvania Workmen's Compensation Law, 1939, sec. 309(e).

it must not be overlooked that no such hardship exists where the computation of earnings merely ignores periods of non-exposure.

The rules for the computation of average weekly wages which are contained in the workmen's compensation laws of the different jurisdictions vary greatly as to content and complexity, and it can hardly be said that any of them exhibits such outstanding virtues of equity or consistency that it should be adopted in toto as a model. Hawaii, in fact, seems to have one of the most liberal regulations of the matter, a result which was brought about by judicial interpretations[5] and legislative amendments.[6]

The Hawaii provision on the subject, as originally enacted, was a modified version of the British Compensation Act of 1906.[7] The changes from the British model, made by the drafters of the Uniform Act in 1914, followed comparable alterations made by the drafters of the Massachusetts Compensation Act of 1911.[8] The gist of these changes was to place heavy emphasis on the total employment history of the injured employee during the calendar year preceding the date of his injury.[9] The Massachusetts Act alleviated some of the rigors of this rule by reducing the divisor by the number of weeks (in excess of two) which the employee lost from employment during such year,[10] but the Uniform Act and the Hawaii law omitted even this qualification. The Hawaii Act, however, following the English model and in accord with the provisions in other American compensation laws,[11] permitted resort to the average wages of a comparable employee of the same employer or an employer of the same district, where reliance on the employee's own employment history failed to furnish a feasible basis for computing his average weekly wages. Moreover, the Hawaii Act tempered some other harsh results liable to flow from the "last year's average" rule with the provision that the rule should not be applied so as to depress advantages resulting from current advances in the rate of remuneration.

[5] In re Martin, 33 H. 412 (1935) (inclusion of overtime); Forrest v. Davies & Co., 37 H. 517 (1947) (average wages include all earnings from concurrent covered employments).

[6] Session Laws of Hawaii 1957, Act 81, Session Laws of Hawaii 1959, Act 241.

[7] 6 Edw. VII, c. 58, Schedule I, sec. 2(a), quoted in Hawaiian Canneries Co., Ltd. v. Dependents of Clara Kali, 43 H. 173, at 181 (1959).

[8] Mass. Acts and Res. 1914, c. 751, Part V, sec. 2.

[9] See the discussion in Hawaiian Canneries Co., Ltd. v. Dependents of Clara Kali, supra note 7, at 182.

[10] A similar qualification exists in the Tennessee Workmen's Compensation Act, passed in 1919, Public Act of Tenn. 1919, c. 123, sec. 2 c and Indiana Workmen's Compensation Act of 1929 (Burns Ind. Stats. Ann. 1952, sec. 40-1701(c)). The Indiana and Tennessee Acts, however, apply this method only for earnings in the employment in which the injured employee was working at the time of the injury.

[11] E.g., in Massachusetts and Tennessee.

The Supreme Court, in two early decisions, gave the statute a most liberal construction by ruling that it included overtime[12] (a quantity which is excluded by a number of compensation laws[13]) and included earnings from concurrent independent employments.[14] But in Hawaiian Canneries Co. Ltd. v. Dependents of Clara Kali, the Court felt constrained to hold that seasonal workers' average weekly wages were to be computed on the basis of the annual average of his earnings from covered employment, with the result in the case before the Court that the average weekly wages thus computed fell below the minimum specified in the statute for the computation of percentage death benefits.[15] The decision prompted an immediate statutory amendment which altered the rule applied in the Hawaiian Canneries case and specified that the average wage should never be lower than the average wage of a person in comparable employment employed as a full-time worker on an annual basis.

As a result, the present law is composed of a set of rules in hierarchical order. The overriding mandate demands that the computation must arrive at a fair result, such fairness -- as the Supreme Court has glossed -- being judged in the light of the employee's employment pattern. The implementation of this mandate is prescribed by a non-exclusive set of further rules:

1. Where feasible, the employee's own employment history during the past twelve months shall be the basis of computation, regardless of whether the employee was in continuous employment with the same employer or had consecutive jobs of different nature or pay scale.

2. To prevent this rule from depriving the employee of the advantage of a recent advance in pay, the general method is qualified by the exclusion of employment periods not corresponding to the employee's current wage level.

3. The rigors of the rule in cases of intermittent or seasonal employment are alleviated by requiring that in no case shall the injured employee's average weekly wages be determined to be less than the average wages of a comparable employee employed on a full-time annual basis.

4. Where the employment of the employee is so recent or sporadic that computation of his average weekly wages on the

[12] In re Martin, supra note 5.

[13] E.g., Wisc. Stats. 1959 sec. 102.11(1) (a); U.S. Employees Compensation Act, 5 USCA sec. 762(b).

[14] Forrest v. Davies & Co., supra note 5.

[15] 43 H. 173 (1959). The Court upheld an award of death benefits in excess of the average weekly wages, although the award disregarded the express statutory mandate to the contrary, contained in section 97-24.

basis of his own employment record is not feasible, resort may likewise be had to the average wages of a person in comparable employment.

The proposed recodification retains the structure and scope of the regulation. The only significant innovation recommended is a proviso to the effect that the temporary or permanent character of the disability be also a factor to be considered in determining the earnings base of the benefits, following some recent decisions of the Supreme Court of California.[16] It is proposed, however, to change the language and arrangement of the different portions of the section, so as to spell out more clearly the interpretation placed upon it by the Supreme Court and to prevent possible misunderstanding and misapplication:

1. In the principal statement it is inserted that the determination shall be made "in the light of the employee's employment pattern and the permanent or temporary character of the disability", in order to make sure that proper weight is given to all relevant factors of the employee's past employment history and to the nature of its present interruption.

2. It is recommended that the sub-rule prescribing that, whenever appropriate and feasible, the average weekly wages shall be determined on the basis of the employee's earnings record during the preceding twelve months' period be qualified by an exception which excludes weekly periods in which the employee was, by reason of personal circumstances, unable to work, in order to prevent undue depressing of the average. Similar exceptions were made in England and exist in the comparable statutes of Massachusetts and Tennesse.[17] It is believed that regulation is fairer than basing the average only on the last continuous work period, as is the rule in some other states.

3. In the sub-rule which provides that average weekly wages of employees in intermittent or seasonal employment shall not be less than the average weekly wages in comparable full-time employment on an annual basis, it is inserted that this "floor" applies only to the total average wages and only to the type of employment in which the injury occurred, in order to prevent pyramiding of two intermittent or seasonal jobs into two concurrent annual employments.

[16]Argonaut Insurance Co. v. Industrial Acc. Comm. 57 A.C.A. 635 (1962); California Comp. & Fire Co. v. Industrial Acc. Comm. 57 A.C.A. 643 (1962).

[17]See supra note 11.

4. It is recommended that a special rule be inserted for the computation of the average wages of minors and young adults for purposes of benefit determination in cases of permanent disability or death. Analogous rules are contained in many statutes, for instance, the Longshoremen and Harbor Workers,[18] Illinois,[19] Wisconsin,[20] Massachusetts,[21] and Colorado.[22] The recommended form is most similar to the Wisconsin statute, but the hypothetical average wage is applied only in cases of permanent disability and death.

5. The greatest difficulty exists in the cases where the employee holds two jobs at the same time, especially if he combines full-time and part-time employment. The Hawaii Supreme Court has ruled that where both employments are covered, the average wage is computed by combining the wages of both employments.[23] This rule is in contrast to that applied in most jurisdictions[24] prevailed in England[25] and has found express statutory sanction in Massachusetts[26] and Maine[27]. In Pennsylvania the statute combines wages from concurrent employments only if the employer in whose employment the injury occurred was notified of the other employment prior to the injury.[28] The recodification spells out the rule laid down by the Hawaii Supreme Court by specifying that the average weekly wage must reflect the "earnings from all covered employment". The statute as drafted is intended to imply the rule that in the case of covered full-time employment coupled with additional covered part-time employment, the proper method of computation must be based on the employee's own

[18] 33 U.S.C. sec. 910(e).

[19] Ill. Stats. 1961 c. 48 sec. 172.45(c).

[20] Wisc. Stats. 1959 sec. 102.11(1) (g).

[21] Mass. Ann. Laws c. 152 sec. 51 (1957).

[22] Colorado Rev. Stats. 1953, sec. 81-8-1-4.

[23] Forrest v. Davies & Co., 37 H. 516 (1947).

[24] Larson, The Law of Workmen's Compensation (1961), sec. 60.31.

[25] Lloyd v. Midland Ry. (1914), 2 KB. 53.

[26] Mass. Ann. Laws, c. 152, sec. 1: "In case the injured worker is employed in the concurrent service of more than one insured employer..., his total earnings from the several insured employers shall be considered in determining his average weekly wages." Construed in Nelson's Case, 333 Mass. 401, 31 N.E.2d 193 (1956) to apply to independent concurrent employments.

[27] Rev. Stats. of Maine 1944, c. 26, sec. 2 IX D, restricted to regular concurrent employments during the ordinary working hours.

[28] Pennsylvania Workmen's Compensation Act, 1939, sec. 309(e).

earnings from his full-time and part-time employment and that no resort should be had to the "comparable employment" exception.[29]

While it seems fair and equitable that the employee's benefits should reflect the average of his total annual earnings, even where the injury occurs during and because of his part-time job, a question may be raised as to the propriety of burdening the part-time employer with the total cost. The full-time employment may fall into a category with entirely different pay scales. It might be thought to be more equitable to limit the employer's liability to a benefit amount corresponding to the benefits to which an employee engaged in comparable employment on a full-time annual basis would be entitled, and to place the residual liability on the special compensation fund. A recommendation to that effect must be dependent on the adoption of the new method of financing the special compensation fund recommended in this report. In that event the section should contain an additional subsection specifying:

"Where an employee is engaged in concurrent full-time and part-time employment covered by this act and sustains a personal injury in his part-time employment under the conditions specified in sec. 97-3, the liability of the employer shall be limited to such benefits as would be payable to an employee in comparable employment, engaged as full-time employee on an annual basis in the type of employment in which the injury occurred. The balance of his benefits shall be paid by the special compensation fund."

6. A concluding subsection is added conferring expressly upon the director the power of issuing rules for the application and implementation of the section. This subsection merely confirms a power already possessed.

Other Substantive Matters

Credit for voluntary payments and advantages furnished in kind. The recodification combines present section 97-31, which accords credit for advantages furnished in kind and present section 97-32, which allows deduction for voluntary payments. Changes made are purely matters of style, except that it is spelled out that credit is also allowable for advantages in kind continued to be furnished to dependents, as for instance, permission to the deceased's family to remain in housing furnished by the employer.

[29]Cf. King's Case, 234 Mass. 137 (1919).

Modification of pay periods. Section 97-33 is retained without change.

Commutation of payments. The section on commutation is changed in two respects: (1) It is recommended that commutation shall be authorized only if it is in the best interest of the injured employee or of dependents entitled to benefits and if it does not impose undue hardship upon the employer; and (2) the reference to particular actuarial tables is replaced by a reference to more modern and appropriate tables and by giving the director the power to select other suitable tables upon consultation with the chief actuary of the Social Security Administration.

The American Remarriage Tables are published in Proceedings of the Casualty Actuarial Society, Vol. XIX p. 279; Record of the American Institute of Actuaries, Vol. XXXVIII p. 5, and Proceedings of the Casualty Actuarial Society, Vol. XXXVI p. 73.

Appointment of Trustee. Section 97-35 is retained, except for changes in language.

Payment from special compensation fund in case of default. Section 97-26.7 permitting payment from the special compensation fund in case of default by an uninsured and insolvent employer is changed slightly in two respects: (1) the necessity of an award against the defaulting employer is eliminated and payments are authorized also to dependents entitled to benefits in case of the employee's death; and (2) the duty of reimbursement is conditioned upon an order of the director, for the purpose of giving the employer an opportunity of a formal determination of his liability. This latter change is necessary because of the elimination of the necessity of an award as pre-requisite of the emergency payment.

Status of right to compensation and of compensation payments received. Sections 97-36 and 97-37 paragraph 1 are combined. The term "preference" is replaced by the term "status as a lien" in order to cover all possible forms of such privileged status and to avoid confusion with a term used in bankruptcy. Section 97-37 paragraphs 2 and 3 are transferred to the part dealing with contested claims.

Administrative and Procedural Aspects

Rearrangement and Streamlining of Provisions Governing Administrative and Adjudicatory Functions

The provisions governing the role of the various agencies in the administration of the law have been rearranged and streamlined for the purpose of clarity and logical sequence. Since the bulk of

the compensation cases is of the uncontested type, it seemed appropriate to divide the current part III into two major divisions of which the first deals with the general organizational aspects, the powers and functions of the agencies, and the supervision of uncontested cases while the second deals with the procedure in contested claims. In view of the overall structure of the statute the present part IV was included as a division C into the new part III.

Abolition of the "agreement system". Workmen's compensation statutes, when grouped according to the method of handling compensation cases, are divided into three classes according to the system followed. These systems are called "hearing system", "agreement system" and "prompt payment system". Under the hearing system every case is set for hearing, which represents a time-consuming and cumbersome approach, although it prevents underpayments. Under the agreement system the compensation liability in every case must be embodied in an agreement between the parties or an award. Under the prompt payment system, the employer or carrier makes the prescribed payments and reports them to the supervising agency; formal intervention is needed only in contested cases. The Hawaii law has gradually drifted from the agreement system to the prompt payment system. The recodification represents the culmination of this development. "Agreements" are no longer considered a regular method of determining compensation liability. Agreements and compromises are envisaged only as a method of terminating controversies. They are valid only if conforming to the statutory standards and if approved by and incorporated in a decision by the director, appellate board or court. In such case it is the decision terminating the controversy which is enforceable. Accordingly, the current section 97-59 (recodified as section 97-45) is transformed into the basic provision governing procedure in contested claims before the tribunal of original jurisdiction, while section 97-58 (recodified as section 97-37) is reduced to a primarily negative prescription, and current section 97-67(c) is eliminated.

Other changes. All other changes are chiefly of a formal character, intended to eliminate inconsistencies and oversights in former amendments.

Thus the current section 97-64 (recodified as section 97-32) is transformed into the key section regulating the adjudicatory jurisdiction of the director and all other sections dealing with the determination of controversies are made subordinate thereto. The inconsistency between current section 97-67 (which permits the director to grant a stay or supersedes) and current section 97-64 (which does not) is resolved in the former sense, in view of the fact that the omission in section 97-64 was only due to an error made in 1939.

The "assistant to the director" is now styled administrator of the division of workmen's compensation, to conform with the general trend of departmental reorganization in the State.

All other changes are minor and self-explanatory.

Parts V, VI and VII. Parts V, VI and VII are left intact. Changes made concern only matters of style and arrangement. Since "compensation" includes medical expenses, the special reference to medical expenses in part VI is suppressed.

APPENDIX A

CHAPTER 97
WORKMEN'S COMPENSATION LAW
PART I. GENERAL PROVISIONS

Sec. 97-1. Definitions. In this chapter, unless the context otherwise requires:

"Appellate board" means the labor and industrial relations appeal board or one of the industrial accident boards provided for in chapter 88.

"Compensation" means all benefits accorded by this chapter to an employee or his dependents on account of a work injury as defined in this section; it includes medical and rehabilitation benefits, income and indemnity benefits in cases of disability or death, and the allowance for funeral and burial expenses.

"Covered employment" means employment of an employee as defined in this section or of a person for whom the employer has provided voluntary coverage pursuant to section 97-4.

"Director" means the director of labor and industrial relations.

"Disability" means loss or impairment of a physical or mental function.

"Division" means the division of workmen's compensation in the department of labor and industrial relations.

"Employee" means any individual in the employment of another person except where such employment is solely for personal, family or household purposes.

Where an employee is loaned or hired out to another person for the purpose of furthering such other person's trade, business, occupation, or profession, the employee shall, beginning with the time when the control of the employee is transferred to such other person and continuing until such control is returned to the original employer, be deemed to be the employee of such other person regardless of whether he is paid directly by such other person or by the original employer. The employee shall be deemed to remain in the sole employment of the original employer if the insurer of the original employer receives premiums based on the employee's wages.

Where by reason of there being an independent contractor, or for any other reason, the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on is not the direct employer of persons there employed such persons shall nevertheless be deemed his employees within the meaning of this Act, unless the direct employer has provided insurance for the payment of compensation to them.

"Employee in comparable employment" means a person, other than the injured employee, who is employed in the same grade in the same type of work by the same employer or, if there is no person so employed, a person, who is employed in the same grade in the same type of work by another employer in the same district.

"Employer" means any person having one or more persons in his employment. It includes the legal representative of a deceased employer and the State, any county or political subdivision of the State, and any other public entity within the State.

The insurer of an employer is subject to such employer's liabilities and entitled to his rights and remedies under this Act as far as applicable.

"Employment" means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire express or implied.

"Insurer of an employer" means any stock, mutual, reciprocal or other insurer authorized to transact the business of workmen's compensation insurance or guarantee insurance within the State from whom an employer has obtained such insurance.

"Person" means any individual and any body of individuals, corporate or unincorporated, partnership or firm.

"Personal injury" includes death resulting therefrom.

"Total disability" means disability of such an extent that the disabled employee has no reasonable prospect of finding regular employment of any kind in the normal labor market.

"Trade, business, occupation, or profession" means all commercial, occupational, or professional activities, whether conducted for pecuniary gain or not. It includes all activities of non-profit organizations conducted in pursuit of their purposes.

"Wages" means all remuneration for services constituting employment. It includes the market value of board, lodging, fuel and other advantages having a cash value which the employer has paid as a part of the employee's remuneration and gratuities received in the course of employment from others than the employer to the extent that they are customary and expected in that type of employment or accounted for by the employee to the employer.

"Work injury" means a personal injury suffered under the conditions specified in section 97-3.

Sec. 97-2. Definitions relating to family relationships. "Child" includes a posthumous child, adopted child, stepchild,

and illegitimate child acknowledged prior to the personal injury.

"Brother" or "sister" includes a half brother or half sister, a stepbrother or stepsister, and a brother or sister by adoption.

"Grandchild" includes a child of an adopted child and a child of a stepchild, but does not include a stepchild of a child.

"Parent" includes a stepparent or a parent by adoption.

"Grandparent" includes a parent of a parent by adoption, but does not include a parent of a stepparent, a stepparent of a parent or a stepparent of a stepparent.

Sec. 97-3. Injuries covered. If an employee suffers personal injury either by accident arising out of and in the course of the employment or by disease proximately caused by, or resulting from the nature of, the employment his employer or the special compensation fund shall pay compensation to the employee or his dependents as hereinafter provided.

Accident arising out of and in the course of the employment includes the wilful act of a third person directed against an employee because of his employment.

No compensation shall be allowed for an injury which an employee has caused by his wilful intention to injure himself or another or by his intoxication.

Sec. 97-4. Voluntary coverage. Any employer who has individuals in his employment who are not employees as defined in section 97-1 may elect to provide coverage for them under this chapter. During the period for which such election is effective the employer and the individual in his employment covered thereby shall be deemed to be employees and be subject in all respects to the provisions of this chapter.

Election by any employer to provide coverage under this chapter shall be made by securing compensation to the individuals in his employment affected thereby in the manner provided in section 97-58 and giving the notice prescribed by section 97-59.

Every employer who elects to provide coverage under the terms of this section shall be bound by such election until January 1 of the next succeeding year and for terms of one year thereafter. Any such employer may elect to discontinue such coverage for personal injuries occurring after the expiration of any such calendar year by filing notice of such election with the director at least sixty days prior to the expiration of any such calendar year and at the same time posting notices to that effect conspicuously in such places of work that they can reasonably be expected to come to the attention of all individuals affected thereby.

Sec. 97-5. Exclusiveness of right to compensation. The

rights and remedies herein granted to an employee or his dependents on account of a work injury suffered by him shall exclude all other liability of the employer to the employee, his legal representative, spouse, dependents, next of kin or any one else entitled to recover damages from such employer, at common law or otherwise, on account of the injury.

Sec. 97-6. Territorial applicability. The provisions of this chapter shall be applicable to all work injuries sustained by employees within the territorial boundaries of the State.

If an employee who has been hired in the State suffers work injury, he shall be entitled to compensation under the provisions of this chapter even though such injury was sustained without the State. Such right to compensation shall exclude all other liability of the employer for damages as provided in section 97-5. All contracts of hire of employees made within the State shall be deemed to include an agreement to that effect.

Sec. 97-7. Interstate and foreign commerce and maritime employment. To the extent permissible under the constitution and the laws of the United States, the provisions of this chapter shall apply to employees and employers engaged in interstate and foreign commerce and to employees in maritime employment and their employers not otherwise provided for by the laws of the United States.

Sec. 97-8. Liability of third person. When a work injury for which compensation is payable under this chapter has been sustained under circumstances creating in some person other than the employer or another employee of such employer acting in the course of his employment a legal liability to pay damages on account thereof, the injured employee or his dependents (hereinafter referred to collectively as the employee) may claim compensation under this chapter and recover damages from such third person.

If the employee commences an action against such third person he shall without delay give the employer written notice of the action and the name and location of the court in which the action is brought by personal service or registered mail. The employer may, at any time before trial on the facts, join as party plaintiff.

If within nine months after the date of the personal injury the employee has not commenced an action against such third person, the employer, having paid or being liable for compensation under this chapter, shall be subrogated to the rights of the injured employee. Except as limited by chapter 241, the employee may at any time commence an action or join in any action commenced by the employer against such third person.

No release or settlement of any claim or action under this section is valid without the written consent of both employer and employee. The entire amount of such settlement is subject to the employer's right of reimbursement for his

compensation payments under this chapter and his expenses and costs of action.

If the employer has not joined in the action, the court on his application shall allow, as a first lien against the entire amount of any judgment for damages recovered by the employee, the amount of the employer's compensation payments under this chapter. After reimbursement for his compensation payments the employer shall be relieved from the obligation to make further compensation payments to the employee under this chapter up to the entire amount of the balance of the judgment, if satisfied, without any deduction.

The amount of compensation paid by the employer or the amount of compensation to which the injured employee is entitled shall not be admissible in evidence in any action brought to recover damages.

Another employee of the same employer shall not be relieved of his liability as a third party, if the personal injury is caused by his wilful and wanton misconduct.

Sec. 97-9. Contracting out forbidden. No contract, rule, regulation or device whatsoever shall operate to relieve the employer in whole or in part from any liability created by this chapter.

PART II. COMPENSATION

A. Medical and Rehabilitation Benefits

Sec. 97-10. Medical services and supplies. Immediately after a work injury sustained by an employee and so long as reasonably needed the employer shall furnish to the employee all medical, surgical, and hospital services and supplies as the nature of the injury requires.

Whenever medical care is needed, the injured employee may select any physician or surgeon who is practicing on the island where the injury was incurred to render such care. If the services of a specialist are indicated, the employee may select any such physician or surgeon practicing in the State. The director may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available. Upon procuring the services of such physician or surgeon, the injured employee shall give proper notice of his selection to the employer within a reasonable time after the beginning of the treatment. If for any reason during the period when medical care is needed, the employee wishes to change to another physician or surgeon, he may do so in accordance with rules prescribed by the director. If the employee is unable to select a physician or surgeon and the emergency nature of the injury requires immediate medical attendance, or if he does not desire to select a physician or surgeon and so advises the employer, the employer shall select the physician or surgeon. Such selection, however, shall not deprive the employee of his

right of subsequently selecting a physician or surgeon for continuance of needed medical care.

The liability of the employer for medical, surgical, and hospital services and supplies required shall be limited to such charges as prevail in the community in which the physician or surgeon selected has his office for similar treatment of injured persons of a like standard of living, when the treatment is paid for by the patient. The director shall from time to time make determinations of such charges and shall promulgate fee schedules based upon such determinations. The liability of the employer may exceed the amounts set forth in such fee schedule only under conditions prescribed by the director.

If it appears to the director that the injured employee has wilfully refused to accept the services of a competent physician or surgeon selected as provided in this section, or has wilfully obstructed such physician or surgeon or medical, surgical or hospital services or supplies, the director may in his discretion consider such refusal or obstruction on the part of the injured employee to be a waiver by him in whole or in part of his right to medical, surgical and hospital services and supplies, and may in his discretion suspend the weekly benefit payments, if any, to which such employee is entitled so long as such refusal or obstruction continues.

Sec. 97-11. Artificial member and other aids. Where an injury results in the amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of natural or artificial teeth, or the loss of vision which may be partially or wholly corrected by the use of lenses, the employer shall furnish an artificial member to take the place of each member lost and, in the case of correctible loss of vision, a set of suitable glasses. Where it is certified to be necessary by a licensed physician or surgeon chosen by agreement of the employer and the employee, the employer shall furnish such other aids, appliances or apparatus as are required to cure or relieve the effects of the injury. When a licensed physician or surgeon, chosen as above, certifies that it is necessitated by ordinary wear, the employer shall repair or replace such artificial members, aids or appliances.

Where an employee suffers the loss of or damage to any artificial member, aid or appliance by accident arising out of and in the course of his employment, the employer shall repair or replace such member, aid or appliance, whether or not the same was furnished initially by the employer.

The liability of the employer for artificial members, aids, apparatus or supplies as is imposed by this section shall be limited to such charges as prevail in the same community for similar equipment of a person of a like standard of living when the equipment is paid for by that person.

Sec. 97-12. Services of attendant. When the director finds that the service of an attendant for the injured employee is constantly necessary he may award a sum of not more than $150 a month, as the director may deem necessary, for the pro-

curement of such service. Such payments shall be made from the special compensation fund upon order of the director.

Sec. 97-13. Rehabilitation. (a) The medical services, supplies and aids to which an employee suffering a work injury is entitled shall include such services, supplies and aids as are reasonably needed for his greatest possible medical rehabilitation. The director, on competent medical advice, may determine the need for or sufficiency of medical rehabilitation services furnished or to be furnished to the employee and may order any needed change of physician, hospital or rehabilitation facility.

(b) The director may make expenditures from the special compensation fund for the retraining and rehabilitation of permanently disabled persons under this chapter. Expense of evaluation, instruction, necessary transportation, and maintenance during the period of retraining and rehabilitation may be paid in whole or in part under this section, but no more than $1,000 shall be paid to or on behalf of any one disabled person.

B. Income and Indemnity Benefits

I. FOR DISABILITY

Sec. 97-14. Total disability. (a) Permanent total disability. Where a work injury causes permanent total disability the employer shall pay the injured employee a weekly benefit equal to sixty-six and two-thirds per cent of his average weekly wages, but no more than $75 nor less than $18 a week.

In the case of the following injuries, the disability caused thereby shall be deemed permanent and total:

(1) The permanent and total loss of sight in both eyes;

(2) The loss of both feet at or above the ankle;

(3) The loss of both hands at or above the wrist;

(4) The loss of one hand and one foot;

(5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or one leg and one arm;

(6) An injury to the skull resulting in incurable imbecility or insanity.

In all other cases the permanency and totality of the disability shall be determined on the facts. No adjudication of permanent total disability shall be made until after two weeks from the date of the injury.

After the employer has paid the maximum amount of weekly benefit payments specified in subsection (a), the disabled

employee shall receive further compensation at the same rate from the special compensation fund.

(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of such disability but, except as otherwise provided, not including the first two days thereof shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, but not more than $75 nor less than $18 a week, or, if his average weekly wages are less than $18 a week, at the rate of one hundred per cent of his average weekly wages. In case the total disability exceeds seven days, the compensation shall be allowed from the date of such disability.

(c) Maximum benefits chargeable to employer. The aggregate liability of the employer for weekly benefit payments under both preceding subsections shall not exceed the sum of $25,000.

Sec. 97-15. Partial disability. (a) Permanent partial disability. Where a work injury causes permanent partial disability the employer shall pay the injured worker a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, but not more than $112.50 nor less than $18 a week, for the period named in the schedule as follows:

Thumb. For the loss of thumb, seventy-five weeks;

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks;

Second finger. For the loss of a second finger, commonly called the middle finger, thirty weeks;

Third finger. For the loss of a third finger, commonly called the ring finger, twenty-five weeks;

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks;

Phalanx of thumb or finger. Loss of the first phalanx of the thumb shall be equal to the loss of three-fourths of the thumb, and compensation shall be three-fourths of the amount above specified for the loss of the thumb. The loss of the first phalanx of any finger shall be equal to the loss of one-half of the finger, and compensation shall be one-half of the amount above specified for loss of the finger. The loss of more than one phalanx of the thumb or of any finger shall be considered as loss of the entire thumb or finger;

Great toe. For the loss of a great toe, thirty-eight weeks;

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks;

Phalanx of toe. Loss of the first phalanx of any toe

shall be equal to the loss of one-half of the toe; and the compensation shall be one-half of the amount specified for the loss of the toe. The loss of more than one phalanx of any toe shall be considered as the loss of the entire toe;

Hand. For the loss of a hand, two hundred and forty-four weeks;

Arm. For the loss of an arm, three hundred and twelve weeks;

Foot. For the loss of a foot, two hundred and five weeks;

Leg. For the loss of a leg, two hundred and eighty-eight weeks;

Eye. For the loss of an eye by enucleation, one hundred and sixty weeks. For loss of vision in an eye, one hundred and forty weeks. Loss of binocular vision or of eighty per cent of the vision of an eye shall be considered loss of vision of the eye.

Ear. For the permanent and complete loss of hearing in both ears, two hundred weeks. For the permanent and complete loss of hearing in one ear, fifty-two weeks. For the loss of both ears, eighty weeks. For the loss of one ear, forty weeks.

Loss of use. Permanent loss of the use of a hand, arm, foot, leg, thumb, finger, toe or phalanx shall be equal to and compensated as the loss of a hand, arm, foot, leg, thumb, finger, toe or phalanx.

Partial loss or loss of use of member named in schedule. Where a work injury causes permanent partial disability resulting from partial loss or partial loss of use of a member named in this schedule and where such disability is not otherwise compensated in this schedule, compensation shall be paid for a period which stands in the same proportion to the period specified for the total loss or loss of use of such member as the partial loss or loss of use of that member stands to the total loss or loss of use thereof.

More than one finger or toe of same hand or foot. In cases of permanent partial disability resulting from simultaneous injury to the thumb and one or more fingers of one hand, or to two or more fingers of one hand, or to the great toe and one or more toes other than the great toe of one foot, or to two or more toes other than the great toe of one foot, the disability may be rated as a partial loss or loss of use of the hand or the foot and the period of benefit payments shall be measured accordingly. In no case shall the compensation for loss or loss of use of more than one finger or toe of the same hand or foot exceed the amount provided in this schedule for the loss of a hand or foot.

Amputation. Amputation between the elbow and the wrist shall be rated as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be rated as

the equivalent of the loss of a foot. Amputation at or above the elbow shall be rated as the loss of an arm. Amputation at or above the knee shall be rated as the loss of a leg.

Disfigurement. In cases of personal injury resulting in substantial disfigurement the director may, in his discretion, award such compensation as he deems proper and equitable in view of such disfigurement but not to exceed $7,000. Disfigurement is separate from other permanent partial disability and includes scarring and other disfiguring consequences caused by medical, surgical and hospital treatment of the employee.

Other cases. In all other cases of permanent partial disability resulting from the loss or loss of use of a part of the body or from the impairment of any physical function, weekly benefits shall be paid at the rate and subject to the limitations specified in this subsection for a period which bears the same relation to a period named in the schedule as the disability sustained bears to a comparable disability named in the schedule. In cases in which the permanent partial disability must be rated as a percentage of total disability the duration of the weekly compensation shall be a corresponding portion of 420 weeks.

Unconditional nature and time of commencement of payment. Compensation for permanent partial disability shall be paid regardless of the earnings of the disabled employee subsequent to the injury. Payments shall not commence until after termination of any temporary total disability that may be caused by the injury.

(b) Temporary partial disability. Where a work injury causes partial disability, not determined to be permanent, which diminishes the employee's capacity for work, the employer, beginning with the first day of such disability and during the continuance thereof, shall pay the injured employee weekly benefits equal to sixty-six and two-thirds per cent of the difference between his average weekly wages before the injury and the weekly wages he is capable of earning thereafter, but not more than $50 a week.

(c) Provisions common to permanent and temporary partial disability; maximum benefits. No determination of partial disability shall be made until two weeks from the date of the injury. The aggregate liability of an employer for benefits under this section and section 97-14(b) shall not exceed $25,000 except that in cases where the application of subsection (a) of this section by itself produces a higher amount of compensation that amount shall constitute his total liability for weekly benefits under these sections.

Sec. 97-16. Subsequent injuries which would increase disability. If an employee receives an injury which of itself would cause a permanent partial disability but which, combined with a previous disability, results in a greater permanent partial disability or in permanent total disability, the employer shall pay compensation only for such disability as would have been caused by the injury without the previous

disability. The employee shall be entitled to full compensation for his actual permanent partial or total disability, and, after receipt of the compensation payable by the employer, weekly payments of the balance of the compensation to which the employee is entitled shall be made out of the special compensation fund by orders of the director drawn on the treasurer of the State.

Sec. 97-17. Minors. In cases of permanent partial disability of minors, the weekly benefit payments shall not in any event be less than $18.

Sec. 97-18. Payment after death. Where an employee is entitled to weekly benefits for permanent total or permanent partial disability and dies from any cause other than the compensable work injury, payment of any unpaid balance of such benefits to the extent that the employer is liable therefor shall be made weekly to his dependents specified in section 97-20, as follows:

(a) To a dependent widow or widower, for the use of the widow or widower and the dependent children, if any. The director may from time to time apportion such compensation among the widow or widower and any dependent children.

(b) If there be no dependent widow or widower, but one or more dependent children, then to such child or children to be divided equally among them if more than one.

(c) If there be no dependent widow, widower, or child, but there be a dependent parent, then to such parent, or if both parents be dependent, to both of them, to be divided equally between them; or if there be no such parents, but a dependent grandparent, then to such grandparent, or if more than one, then to all of them to be divided equally among them.

(d) If there be no dependent widow, widower, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, then to such dependent, or if more than one, then to all of them to be divided equally among them.

(e) If there be no such dependents, the unpaid balance of the compensation shall be paid in a lump sum into the special compensation fund; if such amount exceeds $2,000, only $2,000 shall be so paid.

II. FOR DEATH

Sec. 97-19. Entitlement to and rate of compensation. (a) Funeral and burial allowance. Where a work injury causes death, the employer shall pay funeral and burial expenses not to exceed $1,000 to the mortician selected by the family or next of kin of the deceased or in the absence of such family or next of kin, by the employer.

(b) Weekly benefits for dependents. In addition, the employer shall pay weekly benefits to the deceased's dependents at the percentages of the deceased's average weekly wages

specified below, taking into account not more than $112.50 and not less than $30 per week:

To the dependent widow or widower, if there be no dependent children, fifty per cent.

To the dependent widow or widower, if there be one or more dependent children of the deceased, sixty-six and two-thirds per cent. The compensation to the widow or widower shall be for the use and benefit of the widow or widower and of the dependent children, and the director may from time to time apportion the compensation between them in such way as he deems best.

If there be no dependent widow or widower, but a dependent child, then to such child forty per cent, and if there be more than one dependent child, then to such children in equal parts sixty-six and two-thirds per cent.

If there be no dependent widow, widower or child, but there be a dependent parent, then to the parent, if wholly dependent fifty per cent, or if partially dependent twenty-five per cent; if both parents be dependent, then one-half of the foregoing compensation to each of them; if there be no dependent parent, but one or more dependent grandparent, then to each of them the same compensation as to a parent.

If there be no dependent widow, widower, child, parent or grandparent, but there be a dependent grandchild, brother or sister, or two or more of them, then to such dependents thirty-five per cent for one dependent, increased by fifteen per cent for each additional dependent, to be divided equally among such dependents if more than one.

(c) Maximum weekly amounts. The sum of all weekly benefits payable to the dependents of the deceased employee shall not exceed sixty-six and two-thirds per cent of his average weekly wages, computed by observing the limits specified in subsection (b). If necessary, the individual benefits shall be proportionally reduced.

(d) Liability to special compensation fund in the absence of dependents. If there be no dependents who are entitled to benefits under this section the employer shall pay the sum of $2,000 for any one death into the special compensation fund, pursuant to an order made by the director. The employer, pursuant to an order made by the director, shall pay any remaining balance into the special compensation fund, if the weekly benefits to which dependents are entitled terminate without totalling the sum of $2,000.

Sec. 97-20. Dependents. (a) The following persons, and no others shall be deemed dependent and entitled to income and indemnity benefits under this chapter:

A child who is (1) unmarried and either under eighteen years or incapable of self-support, regardless of whether or not actually dependent upon deceased or (2) married and under eighteen years, if actually dependent upon deceased;

The widow, if either living with the deceased at the time of the injury or actually dependent upon him;

The widower, if incapable of self-support and actually dependent upon deceased;

A parent or grandparent, if actually dependent upon the deceased;

A grandchild, brother or sister, if (1) under eighteen years or incapable of self-support and (2) actually and wholly dependent upon the deceased.

(b) A person shall be deemed to be actually dependent upon deceased, if he or she contributed all or a substantial portion of the living expenses of such person at the time of the injury.

(c) Alien dependents not residing in the United States at the time of the injury or leaving the United States subsequently shall be limited to the dependent widow and children of the deceased or, in the absence of such widow or child, to his dependent parent or parents. The aggregate amount of weekly benefit payments to alien dependents not residing in the United States shall not exceed $10,000 for any one death and such dependents shall maintain annual proof of such dependency as required by the director.

Sec. 97-21. Duration of dependents' weekly benefits. (a) The weekly benefits to dependents shall continue:

To a widow, until death or remarriage, with two years' compensation in one sum upon remarriage.

To a widower, until termination of his incapability of self-support or until remarriage.

To or for a child, (1) so long as unmarried, until attainment of the age of eighteen or until termination of his incapability of self-support, or (2) until marriage; except that in the case of a married child under eighteen weekly benefits shall continue during the period of actual dependency until attainment of the age of eighteen.

To a parent or grandparent, for the duration, whether continuous or not, of such actual dependency, provided that the amount of the weekly benefits shall at no time exceed the amount payable at the death.

To or for a grandchild, brother or sister, for the period in which he or she remains actually and wholly dependent until attainment of the age of eighteen or termination of the incapability of self-support.

(b) The aggregate weekly benefits payable on account of any one death shall not exceed $25,000, but this limitation shall not apply with respect to benefits to a widow who is physically or mentally incapable of self-support and unmarried as long as she remains in that condition and to benefits to a

child except in the case of an unmarried child over eighteen incapable of self-support as long as he or she is otherwise entitled to such compensation.

(c) Upon the cessation under this section of compensation to or for any person, the benefits of the remaining dependents in the same class for any further period during which they are entitled to weekly payments shall be in the amounts which they would have received, had they been the only dependents entitled to benefits at the time of the employee's death.

Sec. 97-22. Effect of erroneous payment; insanity of beneficiary. If an employer in good faith pays weekly benefits to a dependent who is inferior in right to another dependent or with whom another dependent is entitled to share, such payment shall discharge the employer, unless and until such other dependent notifies the employer of his claim. In case the employer is in doubt as to the respective rights of rival claimants, he may institute proceedings before the director for determination of the proper beneficiary.

Benefits to a person who is insane shall be paid to his guardian.

III. PROVISIONS COMMON TO BENEFITS FOR DISABILITY AND DEATH

Sec. 97-23. Computation of average weekly wages. Average weekly wages shall be computed in such a manner that the resulting amount represents most fairly, in the light of his employment pattern and the duration of his disability, the injured employee's average weekly wages from all covered employment at the time of the personal injury.

1. Where appropriate and feasible such computation shall be made on the basis of the injured employee's earnings from covered employment during the twelve months preceding his personal injury; but if during that period, the employee, because of sickness or similar personal circumstances was unable to engage in employment for one or more weeks then the number of such weeks shall not be included in the computation of the average weekly wage.

2. Where an employee at the time of the injury was employed at higher wages than during any other period of the preceding twelve months then his average weekly wages shall be computed exclusively on the basis of such higher wages.

3. Where, by reason of the shortness of the time during which the employee has been in the employment or the casual nature or terms of the employment, it is not feasible to compute the average weekly wages on the basis of the injured employee's own earnings from such employment, regard may be had to the average weekly wages which during the twelve months preceding the injury was being earned by an employee in comparable employment.

4. In no case shall the total average weekly wages of any employee be computed as a lower amount than the average weekly wages earned at the time of the injury by an employee in com-

parable employment engaged as a full-time employee on an annual basis in the type of employment in which the injury occurred.

5. If an employee, while under twenty-five years of age, sustains a work injury causing permanent disability or death, his average weekly wages shall be computed on the basis of the wages which he would have earned in his employment had he been twenty-five years of age.

6. The director is authorized to issue rules for the determination of the average weekly wages in particular classes of cases, consistent with the principles laid down in the first paragraph of this section.

Sec. 97-24. Credit for voluntary payments and supplies in kind. (a) Any payments made by the employer to the injured employee during his disability or to his dependents which by the terms of this chapter were not payable when made, may, subject to the approval of the director, be deducted from the amount payable as compensation; provided that the deduction shall be made by shortening the period during which the compensation must be paid, or by reducing the total amount for which the employer is liable and not the amount of weekly benefits.

(b) If the employer continues to furnish to the injured employee, during his disability, or to his dependents, during their entitlement to weekly benefits, board, lodging, fuel and other advantages the value of which has been included in the calculation of wages as provided in section 97-1, the furnishing of such advantages may be considered as payment in kind of that portion of the compensation which is based on such remuneration in kind; but if at any time during the compensation period the employer ceases to furnish such advantages, no further deduction of the value of such advantages as payment in kind from the compensation shall be permissible.

Sec. 97-25. Non-weekly periodic payments. The director, upon the application of either party, may, in his discretion, having due regard for the welfare of the employee or his dependents and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

Sec. 97-26. Commutation of periodic payments. Upon application of the disabled employee, his dependents or the employer, the director may order that the periodic benefit payments be commuted to one or more lump sum payments equal to the present value at the time when the lump sum payments are due of the future benefit payments, computed at four per cent true discount compounded annually, if he finds that such commutation is in the best interest of the employee or his dependents and does not impose undue hardship upon the employer.

The probability of the death of the disabled employee or of a dependent entitled to benefits before the expiration of the period during which he is entitled to receive such payments and the probability of the remarriage of the widow shall be determined in accordance with the latest United States Life Tables and the American Remarriage Tables, respectively, as

adjusted and corrected on the basis of the most recent available experience, or in accordance with any other appropriate actuarial tables selected by the director, upon advice of the Chief Actuary of the Social Security Administration. The probability of the happening of any other contingency affecting the amount or duration of the benefit payments shall not be considered.

Payment of such lump sums shall discharge the employer of his liability for the corresponding income and indemnity benefits.

Sec. 97-27. Trustee in case of lump sum payments. Whenever for any reason the director deems it advisable, any lump sum which is payable as provided in the preceding section shall be paid to a suitable individual or corporation appointed by the circuit judge in whose jurisdiction the work injury occurred as trustee to administer or apply the same for the benefit of the disabled worker or the dependent entitled thereto in the manner determined by the director. The receipt of the trustee for the amount so paid shall discharge the employer of his liability.

Sec. 97-28. Payment from the special compensation fund in case of default. Where an injured employee or his dependents fail to receive prompt and proper compensation and this default is caused by the insolvency of an employer who has not secured compensation to his employees, the director, to the extent he deems it appropriate upon due consideration of the current commitments payable from the special compensation fund, may pay compensation from the fund to such employee or dependent. The disbursements in any one case shall not exceed $1,000.

The employer, upon order of the director, shall reimburse the special compensation fund for the sums paid therefrom under this section, and the fund, represented by the director, shall be subrogated to all the rights and remedies of the individual receiving such payments.

Sec. 97-29. Legal status of right to compensation and compensation payments. (a) The right to compensation under this chapter shall not be assignable, and the right to compensation and compensation payments received shall be exempt from the reach of creditors.

(b) The right to compensation under this chapter shall have the same status as a lien or the same priority for the whole thereof with respect to the assets of the employer as are accorded by law to any unpaid wages for labor.

PART III. ADMINISTRATION

A. Organizational Provisions; Powers and Functions of Agencies; Processing of Uncontested Cases

Sec. 97-30. Duties and powers of the director in general. The director, through the division of workmen's compensation,

shall be in charge of all matters of administration pertaining to the operation and application of this chapter. He shall have and exercise all powers necessary to facilitate or promote the efficient execution of the provisions of this chapter and, in particular, shall supervise, and take all measures necessary for, the prompt and proper payment of compensation.

If an injury which may be compensable under this chapter is reported to, or comes to the notice of, the division of workmen's compensation, the administrator of the division and his staff shall investigate such injury to the extent as may appear necessary and report the findings with the recommendation of the administrator of the division to the director. The director shall cause to be printed and furnished free of charge to any employer or employee such blank forms as he deems requisite to the performance of his functions. The blanks shall also be supplied by the director to the clerks of the respective circuit courts, who shall furnish the same to any employer or employee free of charge pursuant to any rules issued by the director.

Sec. 97-31. Rule-making powers. In conformity with and subject to the provisions of chapter 6C, the director shall make rules, not inconsistent with the provisions of this chapter, which he deems necessary for or conducive to its proper application and enforcement. Upon publication such rules shall be binding upon all persons affected thereby.

Sec. 97-32. Original jurisdiction over controversies. Unless otherwise provided, the director shall have original jurisdiction over all controversies and disputes arising under this chapter. The decisions of the director shall be enforceable by the circuit court as provided in section 97-50. There shall be a right of appeal from the decisions of the director to the appellate board and thence to the circuit court as provided in sections 97-46 and 97-47, but in no case shall an appeal operate as a supersedeas or stay unless the director or the appellate board or the circuit court so orders.

Sec. 97-33. Appeals to labor and industrial relations appeal board. The labor and industrial relations appeal board provided for by chapter 88 and section 14A-26 shall exercise all powers and functions conferred by this chapter on the appellate board with respect to any work injury sustained in the city and county of Honolulu or sustained by an employee of a resident of such city and county while the employee is without the State or on a vessel operated by a resident of such city and county.

Sec. 97-34. Industrial accident boards in Hawaii, Maui and Kauai, composition, functions, remuneration. There shall be a board to be known as the industrial accident board in each of the counties of Hawaii, Maui and Kauai, consisting of three members to be appointed and removable by the governor in the manner prescribed in Section 80 of the Organic Act. Members of the board shall hold office for three years, the term of every member of the board being scheduled to expire in a different year. One member shall be appointed to each board every year for the full term of three years. Members

shall be eligible for reappointment. One member of each board shall be designated by the governor as chairman.

Each such board shall exercise all powers and functions conferred by this chapter on the appellate board with respect to any work injury sustained by an employee of a resident of such county while the employee is without the State or on a vessel operated by a resident of such county. The board shall have no other functions or duties.

The members of such boards shall be entitled to the same remuneration and expenses as the members of the labor and industrial relations appeal board which, together with the necessary administrative expenses of such boards, shall be paid as provided in section 88-12.

Sec. 97-35. Majority control. Any decision or order of the appellate board to be made under this chapter requires the assenting vote of a majority of the members of the board.

Sec. 97-36. Assistance of county attorney. The county attorney of any county wherein a hearing is held or an investigation is made under this chapter on request shall act as attorney for the director or the appellate board whenever requested so to act by the director or the board.

Sec. 97-37. Agreement or compromise. No agreement or compromise in regard to a claim for compensation shall be valid unless it is approved by decision of the director as conforming to the provisions of this chapter and made part of such decision.

No compromise in regard to a claim for compensation shall be effected and approved in any appeal until after the director has been notified of the proposed terms thereof and has had an opportunity to be heard relative thereto.

Sec. 97-38. Medical examination by employer's physician. After an injury and during the period of disability, the employee, whenever ordered by the director, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer. The employee shall have the right to have a physician or surgeon designated and paid by himself present at the examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability.

If an employee refuses to submit himself to, or in any way obstructs, such examination his right to claim compensation for the work injury shall be suspended until the refusal or obstruction ceases and no compensation shall be payable for the period during which the refusal or obstruction continues.

In cases where the employer is dissatisfied with the progress of the case or where major and elective surgery, or either, is contemplated, he may appoint a physician or surgeon of his choice who shall examine the injured employee and make

a report to the employer. If the employer remains dissatisfied this report may be forwarded to the director.

Sec. 97-39. Examination by impartial physician. The director may appoint a duly qualified impartial physician to examine the injured employee and to report. The fees for such examination shall be paid from the funds appropriated by the legislature for the use of the division.

B. Contested Cases

Sec. 97-40. Notice of injury; waiver. No proceedings for compensation under this chapter shall be maintained unless written notice of the injury has been given to the employer as soon as practicable after the happening thereof. Such notice may be given by the injured employee or by some other person on his behalf. Failure to give such notice shall not bar a claim under this chapter if (1) the employer or his agent in charge of the work in the place where the injury was sustained had knowledge of the injury; or (2) medical, surgical or hospital service and supplies have been furnished to the injured employee by the employer; or (3) for some satisfactory reason such notice could not be given and the employer has not been prejudiced by such failure.

Unless the employer is prejudiced thereby notice of injury shall be deemed to have been waived by the employer if objection to the failure to give such notice is not raised at the first hearing on a claim in respect of such injury of which the employer is given reasonable notice and opportunity to be heard.

Sec. 97-41. Claim for compensation; limitation of time. The right to compensation under this chapter shall be barred unless a written claim therefor is made to the director (1) within two years after the date of the injury, and (2) within five years after the date of the accident or occurrence which caused the injury.

The foregoing limitations of time shall not apply to a claim for injury caused by compressed air or due to occupational exposure to, or contact with, arsenic, benzol, beryllium, zirconium, cadmium, chrome, lead or fluorine or to exposure to X-rays, radium, ionizing radiation or radioactive substances, but such claim shall be barred unless it is made to the director, in writing, within two years after knowledge that the injury was proximately caused by, or resulted from the nature of, the employment. The claim may be made by the injured employee or his dependents or by some other person on his or their behalf. The claim shall state in ordinary language the time, place, nature and cause of the injury.

Sec. 97-42. When claim within specified time is unnecessary or waived. (a) If payments of income and indemnity benefits have been made voluntarily by the employer, the making of a claim within the time prescribed in section 97-41 shall not be required. No such payments shall be deemed to have been made if the payments are in the nature of

a gift and not intended as compensation, or are made by welfare or benefit organizations operating under direction or control of the employer, or are for medical, surgical or hospital services and supplies, or are made as wages during periods of partial or total disability if the employer notifies the director at the time in writing that such payments of wages are not in lieu of and shall not be considered as compensation.

(b) Unless the employer is prejudiced thereby, failure to make a claim within the time prescribed in section 97-41 shall not bar a claim to compensation if objection to such failure is not raised at the first hearing on the claim of which the employer is given reasonable notice and opportunity to be heard.

Sec. 97-43. Limitation of time with respect to minors and mentally incompetent. No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor dependent so long as he has no guardian or next friend.

Sec. 97-44. Presumptions. In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:

(1) that the claim is for a covered work injury;

(2) that sufficient notice of such injury has been given;

(3) that the injury was not caused by the intoxication of the injured employee; and

(4) that the injury was not caused by the wilful intention of the injured employee to injure himself or another.

Sec. 97-45. Proceedings upon claim. If a claim for compensation is made to him the director shall make such further investigation as he deems necessary and, after due notice and opportunity to be heard has been given to the parties in interest, render a decision awarding or denying compensation, stating his conclusions of fact and rulings of law. The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.

Sec. 97-46. Appeals. A decision of the director shall be final and conclusive between the parties, except as provided in section 97-48, unless within twenty days after a copy has been sent to each party, either party appeals therefrom by filing a written notice of appeal with the director or the county agent.

In all cases of appeal the appellate board shall be notified of the pendency thereof by the division and no compromise shall be effected in the appeal except in compliance with the provisions of section 97-37.

The appellate board shall hold a full hearing de novo on the appeal and make its decision in writing which shall be in

the same form as is required in section 97-45 for the decisions of the director and shall be filed with the records of the proceedings. A copy of the decision shall be sent to each party.

The appellate board may certify questions of law to the supreme court for determination.

Sec. 97-47. Appeals from appellate board. The decision of the appellate board upon any appeal to it shall be final and conclusive between the parties except as provided in section 97-48, unless within twenty days after a copy has been sent to each party, either party appeals to the circuit court in the county wherein the injury was sustained or wherein the employer resides if the injury was sustained while the employee was without the State or on a vessel operated by a resident of the county.

In all cases of such appeal the director and the appellate board shall be notified of the pendency thereof by the clerk of the court in which the proceedings are pending and no compromise shall be effected except in compliance with the provisions of section 97-37.

In all appeal cases in which a trial by jury is had the cause shall be submitted to the jury on questions of fact stated to them by the court pursuant to section 231-27. The right of trial by jury shall be deemed to be waived unless claimed within ten days from the date the appeal is entered. The court may, by proper rules, prescribe the procedure to be followed in the case of such appeals, and shall give such appeals precedence over all other civil cases.

Sec. 97-48. Reopening of cases; continuing jurisdiction of director. (a) In the absence of an appeal and within twenty days after a copy of the decision has been sent to each party, the director may upon his own motion or upon the application of any party reopen a case to permit the introduction of newly discovered evidence, and may render a revised decision.

(b) The director may at any time, either of his own motion or upon the application of any party, reopen any case on the ground that fraud has been practiced on the director or on any party and render such decision as is proper under the circumstances.

(c) On the application of any party in interest, supported by a showing of substantial evidence, on the ground of a change in, or of a mistake in a determination of fact related to, the physical condition of the injured employee, the director may, at any time prior to ten years after date of the last payment of compensation, whether or not a decision awarding compensation has been issued, or at any time prior to ten years after the rejection of a claim, review a compensation case and issue a decision which may award, terminate, continue, reinstate, increase or decrease compensation. No compensation case may be reviewed oftener than once in six months, and no case in which a claim has been rejected shall

be reviewed more than once if on such review the claim is again rejected. Such decision shall not affect any compensation previously paid, except that an increase of the compensation may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, a decrease of the compensation may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased compensation shall be deducted from any unpaid compensation in such manner and by such method as may be determined by the director. In the event any such decision increases the compensation in a case where the employee has received damages from a third party pursuant to section 97-8 in excess of compensation previously awarded, the amount of such excess shall constitute a pro tanto satisfaction of the amount of the additional compensation awarded. This paragraph shall not apply when the employer's liability for compensation has been discharged in whole or in part by the payment of a lump sum in accordance with section 97-26.

Sec. 97-49. Conforming prior decisions on appeal. Upon the filing of a certified copy of a decision of the director rendered pursuant to section 97-48 with the appellate board or the circuit court, the board or court shall revoke or modify its prior decision so that it will conform to the decision of the director.

Sec. 97-50. Enforcement of decisions awarding compensation; judgment rendered thereon. (a) Any party in interest may file in the circuit court in the jurisdiction of which the injury occurred, a certified copy of (1) a decision of the director awarding compensation, from which no appeal has been taken within the time allowed therefor; or (2) a decision of the director awarding compensation, from which decision an appeal has been taken but as to which decision no order has been made by the director or the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay; or (3) a decision of the appellate board awarding compensation, from which no appeal has been taken within the time allowed therefor; or (4) a decision of the appellate board awarding compensation, from which an appeal has been taken but as to which decision no order has been made by the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay. The court shall render a judgment in accordance with such decision and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom.

(b) In all cases where an appeal from the decision concerned has been taken within the time provided therefor, but where no order has been made by the director or the appellate board or the court that the appeal shall operate as a supersedeas or stay, the decree or judgment of the circuit court shall provide that the decree or judgment shall become void in the event that the decision or award of the director or appellate board, as the case may be, is finally set aside.

Sec. 97-51. Default in payments of compensation, penalty. If any compensation payable under the terms of a final decision or judgment is not paid by a self-insured employer or an insurance carrier within twenty-one days after it becomes due, as provided by such final decision or judgment, there shall be added to such unpaid compensation an amount equal to ten per cent thereof, payable at the same time as, but in addition to, such compensation, unless the non-payment is excused by the director after a showing by the employer or insurance carrier that the payment of the compensation could not be made on the date prescribed therefor owing to conditions over which he had no control.

Sec. 97-52. Costs. (a) If the director, appellate board or any court finds that proceedings under this chapter have been brought, prosecuted or defended without reasonable ground the whole costs of the proceedings may be assessed against the party who has so brought, prosecuted or defended such proceedings.

(b) If an employer appeals a decision of the director, appellate board or circuit court, the costs of the proceedings of the appellate board, circuit court or the supreme court of the State of Hawaii, together with reasonable attorney's fees shall be assessed against the employer, if the employer loses.

Sec. 97-53. Attorneys', physicians' and other fees. Claims of attorneys and physicians for services under this chapter and claims for any other services rendered in respect of a claim for compensation, to or on account of any person shall not be valid unless approved by the director or, if an appeal is had, by the appellate board or court deciding the appeal. Any claims so approved shall be a lien upon such compensation in the manner and to the extent fixed by the director, the appellate board or the court.

Any person who receives any fee, other consideration or gratuity on account of services so rendered, without approval of such fee, other consideration or gratuity in conformity with the preceding paragraph shall be fined not more than $1,000, or imprisoned not more than one year, or both.

C. Reports, Inspections, False Representations

Sec. 97-54. Reports of injuries, other reports, penalty. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment, when known to him or brought to his attention.

Within fifteen days after the employer has knowledge of such injury causing absence from work for one day or more or requiring medical treatment beyond ordinary first aid, he shall make a report thereon to the director. The report shall set forth the name, address, and nature of the employer's business and the name, age, sex, wages and occupation of the injured employee and shall state the date and hour of the accident, if the injury is produced thereby, and the nature and cause of the injury and such other information as the director may require.

On June 30 and December 31 of each year the employer shall make a report to the director with respect to each injury on which he is continuing to pay compensation, showing all amounts theretofore paid by him on account of such injury.

The reports required by this section shall be made on forms to be obtained from the director pursuant to section 97-30 and deposit of reports in the United States mails, addressed to the director, within the time specified shall be deemed compliance with the requirements of this section.

When an injury results in immediate death, the employer shall within forty-eight hours notify personally or by telephone a representative of the division in the county where the injury occurred.

Any employer who wilfully refuses or neglects to make any of the reports or give any notice required by this section shall be fined not more than $100, or imprisoned not more than ninety days, or both.

Sec. 97-55. Reports of physicians, surgeons and hospitals. Within thirty days after being requested to do so by the employer or the director, any physician, surgeon or hospital that has given any treatment or rendered any service to an injured employee shall make to the employer and to the director a report of such injury and treatment, on a form to be obtained from the director for that purpose pursuant to section 97-30.

No claim under this chapter for medical or surgical treatment, or hospital services and supplies, shall be valid and enforceable unless the reports are made as hereinbefore provided, except that the director may excuse the failure to make such report within thirty days when he finds it in the interests of justice to do so.

The director shall furnish to the injured employee a copy of the final report of the attending physician or surgeon or, if more than one physician or surgeon should treat or examine the employee, a copy of the final report of each such physician or surgeon.

Deposit of the reports required by this section in the United States mail, addressed to the director and to the employer, within the time limit specified, shall be deemed compliance with the requirements of this section.

Sec. 97-56. Inspections. The director may inspect the plants and establishments of all employers in the State and the inspectors designated by the director shall have free access to such premises during regular working hours, and at other reasonable times.

Sec. 97-57. Penalties for false representations. If for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be fined not more than $250.

PART IV. SECURITY FOR COMPENSATION; FUNDS

A. Security for Compensation

Sec. 97-58. Security for payment of compensation; misdemeanor. (a) Employers, except the State, any county or political subdivision of the State or other public entity within the State, shall secure compensation to their employees in one of the following ways:

(1) By insuring and keeping insured the payment of compensation with any stock, mutual, reciprocal or other insurer authorized to transact the business of workmen's compensation insurance in the State;

(2) By obtaining and keeping in force guarantee insurance with any insurer authorized to do such guarantee business within the State;

(3) By depositing and maintaining with the State treasurer security satisfactory to the director securing the payment by the employer of compensation according to the terms of this chapter;

(4) Upon furnishing satisfactory proof to the director of his solvency and financial ability to pay the compensation and benefits herein provided, no insurance or security shall be required, and the employer shall make payments directly to his employees, as they may become entitled to receive the same under the terms and conditions of this chapter.

Any person who wilfully misrepresents any fact in order to obtain the benefits of subdivision (4) of this section shall be guilty of a misdemeanor.

(b) Any decision of the director rendered under the provisions of paragraphs (3) and (4) of this section with respect to the amount of security required or refusing to permit no security to be given shall be subject to review on appeal in conformity with sections 97-46 and 97-47.

Sec. 97-59. Notice of insurance. If the insurance so effected is not under paragraphs (3) or (4) of section 97-58 the employer shall forthwith file with the director in form prescribed by the director a notice of his insurance together with a copy of the contract or policy of insurance.

Sec. 97-60. Failure to give security for compensation; penalty; injunction. If an employer fails to comply with the provisions of section 97-58 he shall be liable to a penalty of not less than $25 or of $1 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the director in the name of the State, and the amount so collected shall be paid into the special compensation fund created by section 97-67. The director may, however, in his discretion, for good cause shown, remit all or any part of such penalty in excess of $25, provided the employer in default forthwith complies with

section 97-58. With respect to such actions, the attorney general or any county attorney or public prosecutor shall prosecute the same if so requested by the director.

Furthermore, if any employer is in default under section 97-58, for a period of thirty days, he may be enjoined by the circuit court of the circuit in which his principal place of business is from carrying on his business any place in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director.

Sec. 97-61. The insurance contract. Every policy of insurance or guarantee contract issued by an insurer of an employer as defined in section 97-1 which covers the liability of the employer for compensation shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by filing a separate claim or by making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of the compensation. Payment in whole or in part of compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

All insurance policies shall be of a standard form, the form to be designated and approved by the commissioner of insurance of the State. No policy of insurance different in form from the designated and approved form shall be approved by the director.

Sec. 97-62. Knowledge of employer imputed to insurance carrier. Every policy and contract shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all respects be bound by and subject to the orders, findings and decisions rendered against the employer for the payment of compensation under the provisions of this chapter.

Sec. 97-63. Insolvency of employer not to release insurance carrier. Every policy and contract shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier from the payment of compensation for an injury suffered by a covered employee during the life of the policy or contract.

Sec. 97-64. Cancellation of insurance contracts. No policy or contract of insurance or guaranty issued by a stock company or mutual association against liability arising under this chapter shall be canceled within the time limited in the contract for its expiration until at least ten days after

notice of intention to cancel such contract, on a date specified in the notice, has been filed with and served on the director and the employer.

Sec. 97-65. Insurance by the State, counties and municipalities. The State, any county or other political subdivision of the State, and any other public entity within the State which is liable to its employees for compensation, may insure with any authorized insurance carrier.

Sec. 97-66. Employees not to pay for insurance; penalty. No agreement by an employee to pay any portion of the premium paid by his employer, or to contribute to a benefit fund or department maintained by the employer, or to the cost of mutual or other insurance maintained for or carried for the purpose of securing compensation as herein required, shall be valid; and any employer who makes a deduction for that purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be fined not more than $250.

B. Special Compensation Fund

Sec. 97-67. Special compensation fund established. There is hereby created a fund to be known as the special compensation fund which shall consist of payments made to it as provided in this chapter. The treasurer of the State shall be custodian of the fund, and all disbursements therefrom shall be paid by him upon orders by the director.

Every employer, pursuant to an order made by the director, shall pay into the funds the amounts specified in sections 97-18(e) and 97-19(d) under the conditions prescribed for such payment. Whenever such amount is paid into the fund and it is subsequently determined by the director, the appellate board or the circuit court having jurisdiction that a dependent is entitled to benefits excluding or diminishing the entitlement of the fund, the director, appellate board or court shall order the refund of the sum to which the fund is not entitled and the treasurer of the State as custodian shall immediately make such refund upon receipt by him of a certified copy of the order. In cases where an order of the director ordering payment into the fund is reversed on appeal the employer is relieved of any duty to make payments into the fund.

Sec. 97-68. Purchase of accident prevention equipment. Whenever in the opinion of the director it is necessary to purchase or rent informational material on accident prevention or equipment or mechanical devices for use of the division in determining safe working conditions, such purchases or rentals may be made from the special compensation fund on approval of the director; provided that such expenditures shall not exceed $2,500 in any calendar year.

PART V. APPLICABILITY TO HAWAII GUARD AND VOLUNTEER PERSONNEL

A. Hawaii Guard

Sec. 97-69. Who entitled to compensation. If a member of the Hawaii National Guard or Hawaii State Guard suffers a personal injury arising out of and in the performance of his duty therein, compensation shall be paid to him or his dependents by the State for such injury in the manner and in the amounts provided for in this chapter; provided that if in any case arising after May 10, 1951, any such member or his dependents receive compensation from the federal government by reason of such injury, the amount of such compensation shall be deducted from the amount which may thereafter become due from the State.

Sec. 97-70. Terms defined. "Personal injury", "compensation" and "dependents" within the meaning of the foregoing section has the same meaning as is given to these terms in sections 97-1 and 97-20.

Sec. 97-71. Administration. This part shall be administered by the director. He may promulgate such additional rules and regulations relative thereto as he deems necessary or convenient for carrying out the purposes of this part. Procedure in respect of claims hereunder, including procedure upon appeals, shall correspond to the procedure provided in this chapter, except that notice of injury shall be given to the commanding officer of the unit to which the injured person is attached and the commanding officer shall in turn report the same to the division.

Sec. 97-72. Appropriation. So much of the state insurance fund as may be necessary is hereby appropriated for the purpose of section 97-69 and for the purpose of paying compensation awarded under the provisions of Act 131 of the Session Laws of Hawaii 1943, Act 160 of the Session Laws of Hawaii 1945, and Act 169 of the Session Laws of Hawaii 1947.

B. Volunteer Personnel

Sec. 97-73. Volunteer personnel, medical, etc., expenses. Any person who is injured in performing service for the State or any county in any voluntary or unpaid capacity under the authorized direction of a public officer or employee, and who has not secured payment of his hospital and medical expenses from the State or the county under any other provision of law and has not secured payment thereof from any third person, shall be paid his reasonable hospital and medical expenses under the provisions of this chapter.

Sec. 97-74. Administration and procedure. The provisions of section 97-72 shall be administered by the director. Procedure in respect of claims hereunder, including procedure upon appeals, shall correspond to the procedure provided under this chapter. Notice of injury shall be given to the head of

the department for which the injured person is performing service, and the department head shall report the injury to the division. The director may make such rules and regulations as he may deem necessary or convenient for carrying out the provisions of section 97-72.

Sec. 97-75. Time for giving notice, etc. Any time fixed for giving of notice of injury or for any other substantive purpose as to any injuries within the purview of section 97-72 which may have occurred prior to May 25, 1945, but subsequent to December 7, 1941, shall be construed to run from May 25, 1945.

Sec. 97-76. Appropriation. So much of the state insurance fund as may be necessary is hereby appropriated and shall, with the approval of the governor, be expended to pay claims found to be due under section 97-72 for services performed under the authorized direction of a public officer or employee.

APPENDIX B

COMPANIES WHICH ARE SELF-INSURED FOR PURPOSES OF WORKMEN'S COMPENSATION STATE OF HAWAII THROUGH JUNE 30, 1963

Employers	Nature of Business
OAHU	
Alexander & Baldwin, Inc. (Kauai Pineapple Co., A Div. of A&B)	Pineapple packer and grower
American Can Company, Hawaiian Div.	Can manufacture
Beatrice Foods Co., dba: Dairymen's Association, Ltd.	Milk and ice cream
Trustees, Bernice P. Bishop Estate	Estate
Bethlehem Steel Company	Manufacture of steel shipbuilding & repair
C. Brewer and Co., Ltd.	Sugar and insurance
California Packing Corp.	Growing & canning pineapples
Canadian Pacific Air Lines, Ltd.	Air transportation
Chicago Bridge & Iron Company	Fabrication & erection steel plate structures
City Transfer Co. Ltd.	Hauling, shipping & storage
Coco-Cola Bottling Company of Honolulu, Inc.	Bottlers of soft drinks
Dillingham Corporation and its subsidiaries: Hawaiian Land Co., Ltd. Kolo Transportation Corp. Oahu Railway & Terminal Warehousing Co., Ltd. Hawaiian Tug & Barge Co., Ltd. Young Brothers, Limited	General contracting, land development & marine transportation
Dole Corporation	Growing & canning pineapples
E. I. Du Pont De Nemours & Co.	Wholesale & retail paint
Ewa Plantation Company	Sugar producers
Fasi, Frank F., Supply Co.	House moving, etc.
Hawaii Brewing Corp., Ltd.	Beer manufacturing, cold storage
Hawaii Newspaper Agency, Inc.	Newspaper printing, advertising, circulation
Hawaiian Bitumuls & Paving Co., Ltd.	Paving contractor
Hawaiian Dredging-Morrison-Knudsen a Joint Venture	Construction-Molokai tunnel

The Hawaiian Electric Co., Ltd.	Electric utility
Hawaiian Evangelical Assn. of Congregation-Christian Churches	Christian Mission Work
Hawaiian Sugar Planters' Assn.	Sugar cane culture
HC&D Moving & Storage Co. Inc.	Overseas shipping
HC&D Van & Storage, Ltd.	Moving, storage & shipping
Honolulu Construction & Draying Co., Ltd.	Concrete products, quarry operations
Honolulu Star-Bulletin, Ltd.	Printing & publishing
Honolulu Star-Bulletin, Ltd. & Advertiser Publishing Co., Ltd. dba: Hawaii Newspaper Operators	Newspaper printing, advertising
Kahuku Plantation Company	Sugar plantation
Kamehameha Schools	Private school
Kodak Hawaii, Ltd.	Photo service & supplies
Leahi Hospital	Tuberculosis hospital
National Biscuit Company	Manufacture & sales of products (only distribution in Hawaii)
Oahu Sugar Company, Ltd.	Sugar producers
Oahu Transport Co., Ltd.	Transportation of property
Pell Company, Inc.	Machinery & mill supplies
Plantation Housing, Ltd.	Housing rental and maintenance
Quantas Empire Airways Ltd.	Airline
Sears, Roebuck and Co.	Mail order & retail department stores
Shell Oil Company	Petroleum products
Sheraton Hawaii Corp.	Hotel operation
Singer Sewing Machine Co.	Retail sale of sewing machines
Standard Oil Co. of Calif. Western Operations, Inc.	Petroleum products
Sun Life Assurance Co. of Canada	Life insurance
Waiahole Water Co., Ltd.	Water company
Waialua Agricultural Co. Limited	Sugar plantation
Western Electric Co. Inc.	Manufacturing & distributors, electrical apparatus
Wilson & Co., Inc.	Meat packers & distributors
HAWAII	
Hakalau Sugar Company, Ltd.	Sugar producers
Hamakua Mill Company	Sugar producers

Hawaiian Agricultural Co.	Sugar producers
Hawaiian Irrigation Co., Ltd.	Plantation irrigation
Hawaiian Ranch Co., Ltd.	Ranch management
Hilo Sugar Co., Ltd.	Sugar producers
Honokaa Sugar Company	Raw sugar producers
Hutchinson Sugar Co., Ltd.	Sugar producers
Kapapala Ranch, Inc.	Ranching
Keauhou Ranch, Inc.	Ranching
Kohala Ditch Co., Ltd.	Furnishing irrigation
Kohala Sugar Company	Sugar producers
Laupahoehoe Sugar Co.	Sugar producers
Naalehu Ranch and Dairy, Inc.	Ranching & dairy
Onomea Sugar Company	Sugar producers
Paauhau Sugar Co., Ltd.	Sugar producers
Pahala Hospital	Hospital
Pepeekeo Sugar Company	Sugar producers
Puna Sugar Co., Ltd.	Sugar producers
KAUAI	
East Kauai Water Co., Ltd.	Water company
Grove Farm Co., Inc.	Sugar cane & pineapple growing
Kekaha Sugar Co., Ltd.	Sugar producers
Kilauea Sugar Co., Ltd.	Sugar producers
The Lihue Plantation Co., Ltd.	Sugar producers
McBryde Sugar Co., Ltd.	Sugar producers
Olokele Sugar Co., Ltd.	Sugar producers
MAUI	
Baldwin Packers, Limited	Pineapple growers
East Maui Irrigation Co., Ltd.	Water development
Hawaiian Commercial and Sugar Co.	Sugar producers
Kahului Railroad Co.	Port facility
Maui Pineapple Co., Ltd.	Pineapple producers
Pioneer Mill Co., Ltd.	Sugar producers
Wailuku Sugar Company	Sugar producers

Employers	Nature of Business

APPENDIX C

A COMPARISON OF THE MANUAL RATES FOR COMPENSATION INSURAN FOR SELECTED OCCUPATIONAL CLASSIFICATIONS IN HAWAII, FLORID ILLINOIS, MICHIGAN AND WISCONSIN FOR 1960[a] AND DISTRIBUTION OF PAYROLL BY OCCUPATIONAL CLASSIFICATIONS IN HAWAII FOR 1958-1959

Code	Occupational Classification	Payroll Dollars	Distribution of Total Payroll (Per Cent)	Manual Rate (Dollars Per $100 of Payroll)				
				Hawaii	Florida	Illinois	Michigan	Wisco
2003	Bakeries	$ 3,852,063	1.19	$ 1.92	$ 1.68	$ .93	$ 1.09	$ .8
2501	Clothing Manufacturing	6,815,033	2.10	.28	.55	.39	.45	.4
2585	Laundries N.O.C.	2,771,689	.85	1.13	1.64	.95	.98	1.0
2586	Cleaning or Dyeing	2,144,820	.66	.86	1.06	.65	.74	.5
2737	Sash Door Assembly Millwork	2,361,166	.73	2.80	3.91	1.57	2.04	1.3
2802	Carpentry Shop Only			2.67	3.91	1.57	2.04	1.3
4299	Printing	3,442,127	1.06	.86	.85	.55	.57	.5
4304	Newspaper Publishing			.90	.85	.55	.57	.5
3724	Millwright Work N.O.C.	1,845,190	.57	1.76	2.92	2.88	2.30	1.5
5022	Masonry N.O.C.			3.08	2.68	1.75	2.07	1.5
5215	Concrete Work Incidental to	5,228,299	1.61					
	Private Dwellings 3 Story			3.00	2.98	1.13	2.48	1.4
5219	Military Reservations			3.23	2.50	1.13	2.48	1.4
5183	Plumbing N.O.C.	3,999,033	1.23	2.31	2.27	1.75	1.63	1.5
5184	Steam Pipe Insulation			2.37	2.27	1.75	1.63	1.5
5190	Electrical Wiring in Building	5,793,103	1.79	2.09	1.99	1.36	1.28	1.23
7536	Cable Installation in Conduits			2.37	1.99	1.36	1.28	1.23
5213	Concrete Construction Monolithic	7,176,281	2.21	4.54	6.02	3.34	3.53	2.51
5221	Concrete Work Floors, etc.	1,938,513	.60	3.02	3.29	1.69	1.78	1.76
5403	Carpentry N.O.C.	6,459,230	1.99	5.12	5.71	4.05	2.79	3.56
5474	Printing, Decorating	6,315,973	1.95	2.64	3.74	2.34	N.A.	1.92
5506	Street or Road Construction Paving	1,914,037	.59	3.42	3.68	2.80	3.46	2.76
5507	Street or Road Construction Right of Way	2,483,290	.77	4.40	3.68	3.34	4.41	2.76
5645	Carpentry Detached Private Residences	7,031,030	2.17	4.22	3.49	2.55	N.A.	2.22
5651	Carpentry Dwelling 3 Story	2,656,346	.82	3.15	3.49	3.20	N.A.	2.45
9800	Erect Dwelling 2 Story Carpentry			2.85	3.46	3.20	2.79	2.45
6617	Excavation N.O.C.	2,501,953	.77	5.59	4.12	2.15	3.42	3.34
8227	Contractors Permanent Yards	2,618,492	.81	1.53	2.60	1.33	1.44	1.23
0005	Nurserymen	1,815,468	.56	1.41	2.07	1.68	1.73	1.56
0008	Truck Gardening			1.41	N.A.	1.68	1.73	1.56
0014S	Farms N.O.C.			2.89	--	--	--	--
0019S	Fish Ponds Maintenance	5,050,998	1.56	3.28	--	--	--	--
0015S	Farms, Not Including Dairies			2.10	--	--	--	--
7219	Truckmen N.O.C.			4.30	5.12	2.22	N.A.	1.98
7222	Truckmen Oil Field Equipment	4,628,689	1.43	4.52	5.12	5.03	4.12	1.98
8293	Storage Warehouse Furniture	620,012	.20	4.52	3.76	2.39	3.25	2.14
7309	Stevedoring N.O.C.	8,289,802	2.56	2.29	7.78	10.42	7.81	10.40

Code	Occupational Classification	Payroll Dollars	Distribution of Total Payroll (Per Cent)	Manual Rate (Dollars Per $100 of Payroll) Hawaii	Florida	Illinois	Michigan	Wisconsi
7380	Chauffeurs N.O.C.	4,520,983	1.39	$ 1.72	$ 1.84	$ .97	$ 1.06	$ .90
8607	Geophysical Exploration N.O.C.			1.67	1.78	.97	1.06	.90
7382	Bus, Taxicab Cos, Employees Other than Garage Employees	3,341,277	1.03	1.49	1.44	1.48	1.72	.73
7403	Scheduled Aircraft All Other Except Flying Personnel	4,895,856	1.51	1.11	1.20	.89	1.08	1.09
7423	Aircraft Operations Ground Employees	1,286,639	.40	1.12	1.42	1.07	1.31	1.25
7500	Gas Works	1,205,446	.37	1.79	2.11	1.06	1.03	1.09
7539	Electric Light or Power Cos. N.O.C.	1,325,745	.41	4.17	2.79	2.14	1.92	1.68
8008	Clothing Stores Retail	5,029,371	1.55	.25	.64	.35	.42	.31
8017	Stores Retail N.O.C.	8,137,445	2.51	.32	.91	.45	.48	.29
8018	Stores Wholesale N.O.C.			.94	2.01	1.03	1.23	.90
8034	Grocery Stores Wholesale	5,738,628	1.77	.97	2.01	1.03	1.23	.90
8048	Fruit, Vegetable Stores Wholesale			.92	2.01	1.03	1.38	1.02
8033	Meat Combined Grocery and Provision Stores Retail	7,852,588	2.42	1.06	1.72	.92	1.03	.70
8044	Furniture Stores	1,747,807	.54	.81	1.68	.87	.85	.71
8050	Five and Ten Cent Stores	2,176,966	.67	.48	.88	.56	.65	.37
8232	Lumber Yards, No Second-Hand	2,568,438	.79	2.86	2.91	2.30	2.52	2.15
8387	Automobile Accessories Service Stations	3,445,042	1.06	1.39	2.37	1.03	1.35	.96
8391	Automobile Garages	9,345,614	2.88	1.67	2.46	1.03	1.35	1.17
8709	Stevedoring Talleymen	2,128,704	.66	1.43	1.69	1.21	1.16	1.17
8742	Salesman Outside	27,350,378	8.43	.19	.43	.18	.19	.35
8748	Automobile Salesmen	2,946,879	.91	.24	.97	.38	.43	.50
8810	Clerical Office N.O.C.	72,582,965	22.38	.08	.16	.08	.08	.06
8838	Public Libraries, Museums			.08	.16	.08	.08	.06
8833	Hospitals Professional Employees	11,413,166	3.52	.41	.51	.31	.39	.35
9015	Building Operations by Owner Lessee	2,045,585	.63	1.62	2.25	1.34	1.63	1.68
9023	Building Dwellings, Operations, 1 Story			1.66	2.25	1.34	1.63	1.68
9024	Motels, Motor Courts, Etc.	11,706,461	3.61					
9052	Hotels			1.58	1.96	.93	1.14	1.68
9040	Hospitals, All Other Employees	2,251,237	.69	.89	1.96	.93	1.14	1.03
9077	U.S. Armed Service Risks	5,312,261	1.64	1.28	1.24	1.06	1.37	1.21
9079	Restaurant	21,656,083	6.69	.44	1.01	.82	.77	.40
9154	Theatres, All Other Employees	1,739,869	.54	.98	1.63	1.04	1.15	.86
9014	Building Operations by Contractors	765,311	.24	.32	.60	.53	.62	.54
	TOTAL:	$324,269,381[b]	99.92[c]	$ 1.62	$ 3.12	$ 1.34	$ 1.63	$ 1.68

Sources: Questionnaires to selected jurisdictions; Hawaii data from National Council on Compensation Insurance.

[a]Hawaii: September 1, 1960; Florida: September 1, 1960; Illinois: November 1, 1960; Michigan: December 1, 1960; and Wisconsin: March 1, 1960.

[b]This figure, which is the total payroll dollars for the selected occupational classifications in Hawaii, constitutes 75.73 per cent of the total for all occupational classifications - $428,184,329.

[c]Not 100 per cent because of rounding.

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