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Memorandum To: Ron Minsk  
National Economic Council

From: David Michaels, PhD, MPH  
Assistant Secretary  
for Environment, Safety and Health



Subject: Work Products from Inter-Agency Working Groups

Attached are work products from two Inter-Agency Working Groups formed by the National Economic Council in response to President Clinton's direction for a study of occupational disease among the Department of Energy (DOE) contractor workers.

As you know, on July 15, 1999, Secretary Richardson announced that the Administration would propose legislation to establish a new program to compensate victims of beryllium disease. At the same time, the President tasked the National Economic Council to coordinate an interagency process to examine whether other illnesses would warrant inclusion in such a program and how this should be accomplished. Experts in the fields of occupational medicine, public health, and social insurance were assembled to examine these issues. Staff from the Departments of Health and Human Services, Labor, Justice and Defense joined DOE in these efforts; the results do not therefore reflect the views of any particular agency.

The first paper examines the link between exposure to occupational hazards and illnesses in the DOE contractor workforce. The second reviews benefits available to DOE contractor personnel from state workers' compensation programs. The efforts of these two groups provide important input that will be useful in crafting a sound, science-based approach to the issues raised by the President: whether there are other occupational illnesses in DOE nuclear weapons complex, and, if so, how workers with these conditions should be compensated.

If you need additional information, please do not hesitate to contact me.

## **Executive Summary**

### **Benefits Available to Department Of Energy Contractor Personnel From State Workers' Compensation Programs**

Pursuant to a Presidential memorandum and direction from the President's National Economic Council (NEC), an interagency working group reviewed the state workers' compensation programs available to Department of Energy (DOE) contractor workers and compared the benefit levels of these programs, as well as those available to federal employees under the Federal Employees' Compensation Act (FECA), for workers with occupational illnesses.

Workers' compensation benefits for an injury or illness that a DOE contractor worker sustains on the job are paid through the state workers' compensation program in that state where the particular DOE facility is located. For the relatively small number of DOE federal employees, workers' compensation benefits are paid by the FECA program, managed by the U.S. Department of Labor, regardless of location of the facility where the injury or illness occurs.

This review assesses the differences in benefits between and among state and federal programs for DOE contractor workers with the same or similar occupational illnesses and evaluates the experience of DOE contractor workers with occupational illnesses in state systems.

Because DOE contractor workers have different claims systems and benefits levels available to them for occupational illnesses depending on the state in which the DOE facility where they worked is located, workers with the same or similar illnesses awarded state workers' compensation benefits are likely to receive differing levels of benefits depending on the state they worked in.

An important difference in benefit levels between the states and FECA is in the level of wage replacement. The maximum salary upon which a wage replacement benefit is calculated varies significantly from state to state. This salary cap determined in each state based on typical wages in that state can be below the actual earnings of many DOE contractor employees. FECA's weekly benefits are based on Federal salary scales and, as a result, are capped at higher levels. The working group found the impact of disparities among states and between states and the FECA system in wage replacement to be potentially large.

Differences between states in regard to criteria that define eligibility for compensation, such as "statutes of limitation" may also contribute to disparities in what a worker may receive in compensation. Many occupational diseases, such as some cancers, manifest years after cessation of exposure to the hazardous agent. This problem of a latency is well recognized and documented in the compensation literature, and depending on how eligibility is defined, may present an insurmountable barrier to receiving compensation given a particular state's statute of limitations.

Problems related to the recognition and reporting of occupational diseases have been well-described in the medical and scientific literature. Under reporting is acknowledged to be substantial, making it difficult to rely solely on existing data or currently reported cases to fully characterize the degree to which workers with occupational illnesses in the DOE workforce are receiving workers' compensation benefits.<sup>1, 2, 3</sup>

Concurrent with this review, the DOE conducted a preliminary survey of its contractor workers with the aim of soliciting reports from individuals who believe they have a work-related illness and to learn about their experiences with applying for workers' compensation. Results from this survey of over 1500 self-selected workers indicate that many current and former DOE contractor workers who believe they have occupational illnesses related to their employment at a DOE facility have not filed claims for state workers' compensation. Workers gave a variety of reasons for not filing, including: not believing they could establish the work-relatedness of their illness; not knowing eligibility rules; pursuing claims under other benefits systems such as disability insurance and Medicare; and believing that the company discouraged them from filing.

Given the inherent differences among state workers' compensation systems, it is clear that a DOE contractor worker is very unlikely to receive the same treatment in any two states, no matter how similar the illness, facility, work and income rate. Further, evidence provided by DOE contractor workers suggests that many of them are deterred from filing claims for occupational illness because of what they perceive as a low likelihood of obtaining benefits.

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<sup>1</sup> "What Percentage of Workers with Work Related Illnesses receive Workers' Compensation Benefits?" Biddle, Roberts, Rosenman and Welch, NIOSH (5R01 CCR 512124).

<sup>2</sup> "Why Most Workers with Occupational Repetitive Trauma do not File for Workers' Compensation" Rosenman, Gardiner, Wang, Biddle, Hogan, Reilly, Roberts and Welch.

<sup>3</sup> Evidence on the Level and Determinants of Workers' Compensation Take-up Rates, Workers' Biddle and Roberts, NIOSH (5R01 CCR 512124).

## **Benefits Available to Department Of Energy Contractor Personnel From State Workers' Compensation Programs**

On July 15, 1999, President Clinton issued a memorandum to the Secretaries of Defense (DOD), Labor (DOL), and Energy (DOE), the Attorney General (DOJ), the Director of the Office of Management and Budget (OMB), and the Assistant to the President for Economic Policy directing them to examine the establishment of an occupational illness compensation program for Energy contractor personnel. The memorandum established an interagency review coordinated by the National Economic Council (NEC) to assess, by March 31, 2000, whether there are illnesses in addition to those caused by beryllium, that warrant inclusion in this program, and, if so, how this should be accomplished.

Pursuant to this direction, the NEC established two working groups. As part of the first working group, a panel of federal experts examined the following questions:

- 1-1 What is the evidence that current and former contractor workers at DOE facilities are at increased risk of illness resulting from exposures to occupational hazards uniquely associated with nuclear weapons production?
- 1-2 How strong is this evidence?

The second interagency group, comprised of representatives from DOE, DOD, the Department of Health and Human Services (DHHS), and DOL, focused on questions related to current workers' compensation systems and the benefits they provide to workers with occupational illnesses. This report documents the work of this second interagency working group and addresses the following questions:

- 2-1 What are the differences between state and federal workers' compensation programs in the relevant jurisdictions in providing coverage for occupational illnesses?
- 2-2 What are the differences in benefits between federal and state programs for DOE contractor workers with the same or similar occupational illnesses?
- 2-3 What is the experience of DOE contractor workers with occupational illnesses in state workers' compensation systems?

The DOE and its predecessor agency, the Atomic Energy Commission, have operated and continue to operate a nationwide network of large industrial sites and research laboratories that are owned by the government and operated by private contractors for the purpose of producing, testing, and maintaining the nation's nuclear weapons stockpile. The vast majority of workers responsible for DOE operations work for these private companies under contract to DOE. As such, work-related injuries and illnesses that occur during employment by a contractor are

covered by the state workers' compensation system where the facility is located. For DOE federal employees, workers' compensation benefits are provided by a single system administered by the DOL under the Federal Employees' Compensation Act (FECA) irrespective of the location of the facility where the federal worker is employed.

## I. Workers' Compensation Overview

### A. State Systems

State workers' compensation systems began developing in the early 1900's. These workers' compensation systems evolved uniquely in different jurisdictions, although most workers' compensation programs share common features. Employers are typically required by law to provide defined benefits to workers who have an injury or illness that arises out of and in the course of employment, without regard to fault.

### B. System for Federal Employees

FECA, administered by the Department of Labor, is the law that provides workers' compensation benefits to civilian employees of the United States for injuries and illnesses sustained in the performance of duty. Like state compensation systems, it provides medical coverage, wage loss compensation for cases of disability, vocational rehabilitation, and survivor benefits. It differs from most state compensation systems in that it offers a non-adversarial system for resolution of disputes regarding claims decisions. Wage loss compensation of up to three-fourths of a disabled worker's salary (as opposed to the states more common two-thirds) is provided. FECA's wage replacement maximum rate is more than \$1,401 per week for a totally disabled worker and is higher than all state maximum rates.

FECA allows an injured employee to make the initial selection of physician or facility for treatment of an injury. An agency may examine the employee at its own facility in accordance with Office of Personnel Management regulations, but the employee's choice of physician must be honored, and treatment by the employee's physician must not be delayed. FECA's time limit on filing an occupational illness claim is within three years after injury, death or disability, or the date at which the claimant knows or should know that the illness is related to his employment.

### C. Basic Workers' Compensation System Attributes

In general, employees give up the right to sue employers for any injury or illness covered by workers' compensation statutes. In most states, workers retain the right to sue the employer only for negligence, or third parties for causes such as product liability and medical malpractice. These "no-fault" and "exclusive remedy" provisions are common to all workers' compensation systems. Other basic attributes of state and federal workers' compensation programs are:

- Full Coverage Of Medical Care For Covered Conditions: The employee pays no co-

payment or deductibles for expenses including all prescriptions and associated medical costs;

- **Wage Replacement or Indemnity:** The employee receives a proportion of wages lost while disabled up to a specified maximum. In most states, compensation is paid at two-thirds of the employee's average weekly wage. FECA pays up to three-fourths of the wage available to workers with dependents. Maximum weekly payment amounts and duration of benefits vary from state to state;
- **Vocational Rehabilitation:** The employee receives a set of services, including occupational therapy, retraining, and job placement, designed to help return an ill or injured worker to gainful employment; and
- **Survivor Benefits:** Benefits may also be paid to spouses and minor dependents of workers who have died from work-related injury or illness.

To be eligible for compensation, workers' compensation systems require that illnesses and injuries be caused by or related to the worker's employment. However, the determination of "work-relatedness" may vary depending on the language and definitions used in a particular compensation statute (e.g., exposure at work may be "a direct cause of," "a predominant cause of," or "a major cause of" the illness). For cancer and other long-latency illnesses, it may be difficult to establish a specific work-related cause as there may be a variety of workplaces and/or personal risk factors that may have contributed to the illness. Further, a worker who has had a number of employers over the course of a long career may have difficulty establishing which exposure at which workplace caused or contributed to the illness even if it can be determined to be occupational in origin. All these factors contribute to the difficulties workers face trying to establish the work-relatedness of an illness.

States vary on the issue of provider choice. In some states, the injured worker is able to choose the medical provider who treats the injury or illness. In other states, the employer or the employer's insurer makes this choice. FECA permits employee choice of provider. The trend in state systems in recent years has been to limit employee provider choices.

Because workers' compensation systems were originally developed to deal with occupational injuries, their benefit systems are better suited to injury claims. For example, all state systems have established a predetermined set of benefits for specific injuries, such as loss of a finger or foot or loss of function in an arm or leg. However, for occupational illnesses, no system of predetermined benefits exist, and claims must be adjudicated on a case-by-case basis through an evidentiary process. Some state programs have separate claims procedures for certain, specified occupationally-related diseases (e.g., asbestosis), but they do not establish a predetermined level of benefits for accepted claims. This means more evidence, such as exposure data and information that links exposures to illness, is required before compensation benefits are awarded. Much of this evidence is beyond the ability of an ill worker to obtain.

As a result, workers with known occupational illnesses generally fail to file for workers' compensation benefits at much higher rates than workers with an occupational injury. Between 9 and 46 percent of workers with an occupational illness file a workers' compensation claim, and filing rates vary depending on the industry and diagnosis.<sup>1</sup> The severity of a worker's health condition and the perceived generosity of the benefits available affect the likelihood of filing a workers' compensation claim. Workers with occupational illnesses who are not receiving workers' compensation benefits often pursue claims under other public benefits systems, such as Medicare and social security disability, as well as under corporate disability insurance policies.<sup>2</sup>

## II. Report Approach

For Task 2-1, to address the differences in the systems of benefits among various state workers' compensation programs and between these programs and the federal system, the report focuses on those states that have major DOE nuclear weapons-related facilities. The states included in this analysis are:

Alaska	California	Colorado	Idaho	Illinois
Iowa	Kentucky	Nevada	New Mexico	Ohio
South Carolina	Tennessee	Texas	Washington	

Appendix A compares the workers' compensation statutory provisions for these states and the FECA system. The levels of compensation benefits received by DOE contractor employees through the respective state compensation programs are compared to the benefits that would have been provided to workers had they been covered under a federal workers' compensation program.

In conducting the comparative analysis, information on existing state and federal workers' compensation systems was obtained from the following sources (see References section at the end of this report for complete citations):

- Department of Labor's State Workers' Compensation Laws (1999);
- Survey of Workers' Compensation Laws by the Alliance of American Insurers (1997-1998);
- Analysis of Workers' Compensation Laws by the U.S. Chamber of Commerce (1998);
- Workers' Compensation Business Management Guide by CCH Incorporated (1999)

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<sup>1</sup> "What Percentage of Workers with Work Related Illnesses receive Workers' Compensation Benefits?" Biddle, Roberts, Rosenman and Welch, NIOSH (5R01 CCR 512124).

<sup>2</sup> Assistant Secretary for Policy Evaluation and Research, U.S. Department of Labor, An Interim Report to Congress on Occupational Diseases, (June 1980).

- Managed Care and Medical Cost Containment in Workers' Compensation, A National Inventory (1998-1999); and
- Permanent Partial Disability Benefits: Interstate Differences from the Workers' Compensation Research Institute (1999).

In conducting this comparative analysis, the working group focused on those attributes of workers' compensation systems that have the greatest potential to influence whether and to what level benefits are received under workers' compensation. These attributes include:

1. wage replacement benefits
2. death and survivor benefits
3. disease coverage
4. medical benefits
5. vocational rehabilitation provisions
6. pre-existing conditions
7. benefits offsets with other systems
8. appeals processes
9. statutes of limitations

To address Task 2-2, hypothetical examples of workplace illnesses relevant to the experience of DOE contractor workers are used to illustrate differences in how such workers would be treated under various state systems as well as in the federal system. These hypothetical examples are combined with, and help amplify, the discussion of system differences related to Task 2-1. The tables in Appendix A contain the information that details these differences.

Information on the compensation experience of DOE contractor workers with occupational illnesses for Task 2-3 was collected from several sources. First, over 3,000 copies of a questionnaire designed by the working group were distributed to current and former contractor workers by local unions and at DOE-sponsored public meetings held at Portsmouth, Oak Ridge, Rocky Flats, Hanford, Burlington, IA and the Nevada Test Site (see Appendix B). To facilitate reporting, DOE posted the questionnaire on its webpage, and maintained a toll-free telephone line for those workers and their family members who preferred to call in their response to the questionnaire. Completion of the survey was voluntary and anonymous. As of March 15, 2000, over 1500 questionnaires were completed.

The working group recognizes that the questionnaire survey does not provide a complete picture of the workers' compensation experiences of DOE contractor workers. There may be many reasons why a worker may choose to report or not to report his experience. A number of factors could influence who completes a questionnaire ranging from a desire to receive a benefit to fear of job retribution for reporting an illness. Any of a number of factors would potentially bias the interpretation of the information collected. Nevertheless, the working group felt it

important to include the information in the report as the concerns expressed by workers must be considered in any policy decision to change the current system of providing workers' compensation benefits to DOE contractor employees.

Finally, information on actual contractor compensation claims paid for the years 1996 and 1997 was obtained. The total number of new and ongoing workers' compensation claim paid and the number of illness and disease claims paid is summarized in the findings section of this paper for the major DOE facilities, except Rocky Flats.

### III. Findings

#### A. Task 2-1: What Are The Differences Between State And Federal Workers' Compensation Programs In The Relevant Jurisdictions In Providing Coverage For Occupational Illnesses? Task 2-2: What Are The Differences In Benefits Between Federal And State Programs For DOE Contractor Workers With The Same Or Similar Occupational Illnesses?

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Given the inherent differences among state compensation systems, a DOE contractor employee cannot expect the same level of benefits in any two states, no matter how similar the illness, facility, work and income rate. The differences among state workers' compensation benefit provisions, and between state programs and FECA are summarized in Appendix A, Table 1-7.

For purposes of this review, the working group focused on those system attributes with the greatest potential impact on worker benefits: 1) level and duration of wage replacement, 2) statutes of limitation for filing claims; and 3) medical provider choice.

##### 1. Level of Wage Replacement

Under FECA, wage replacement compensation is paid at three-fourths of a worker's pay rate if he or she is married or has one or more dependents. FECA has the highest wage replacement maximum rate of the systems examined in this report at more than \$1,401 per week for a worker temporarily disabled. It should be noted, however, that under the current federal salary structure (ranging from under \$16,000 to over \$100,000 per year) very few employees would be eligible for this maximum rate.

For a worker with a work-related disability that renders him unable to work for a temporary period of time (temporary total disability), most states' compensation programs would replace approximately two thirds of the pre-injury wage paid as a weekly benefit. The highest maximum wage replacement among the states for a similar disability is in Illinois at a rate of \$863 per week; the lowest maximum benefit is in New Mexico at \$392 per week. However, unlike FECA, state wage replacement benefits are subject to a maximum annual level, set by rule or

statute, above which wages are not replaced. Thus, a typical hourly contractor employee at Los Alamos National Laboratory making \$40,000 per year (the salary range for hourly employees at Los Alamos is from \$24,000 to \$52,000 per year) may only be eligible for wage replacement benefits of up to approximately \$20,000 in New Mexico (\$392 per week for 52 weeks). Similar limits would apply to DOE contractor workers in other states. (See Appendix A). However, given the higher benefit wage replacement maximums available under FECA, it is unlikely that any DOE contractor employees would face such limitations on the amount of wage replacement benefits they are awarded.

When reviewing the maximum weekly benefits from the various state and federal systems studied here, it is important to note the significant difference in the foundation of the benefit maximums. A state system's maximum typically derives from the statewide average weekly non-agricultural wages, usually adjusted annually. The FECA maximum, however, is statutorily set at 75 percent of the monthly pay of the maximum rate of basic pay for GS-15 employees, the highest salary level in regular federal employment. This difference in foundation accounts for the significant differences among the maximum benefit levels. It is important to note that relatively few workers qualify for the maximum benefit in any system, hence the benefit maximum is usually not the most appropriate system quantifier.

## 2. Duration of Wage Replacement

The length of time that a worker can receive wage replacement for disability also varies widely. The following hypothetical situation illustrates this issue further. In 1975, a 35-year-old miner is hired by a DOE contractor. His job involves drilling, blasting, and removing rock for the construction of tunnels. In 1985, the miner is diagnosed with silicosis. The worker begins to notice shortness of breath on exertion, but he is still able to work. His health continues to decline, and in 1990, at age 50, he is no longer able to work and files a workers' compensation claim which is accepted.

FECA and most states provide benefits for the duration of the disability. However, Idaho lowers the benefit maximum after the first year, and then reduced benefits continue for the duration of the disability. This hypothetical worker would be only 52 years old when his workers' compensation benefits could cease in Texas after only 104 weeks. In Tennessee, a 400-week benefit maximum duration could leave this worker without wage replacement benefits by age 58, and the South Carolina limit of 500 weeks could end benefits when this worker is 60. However, it should be noted that even under FECA, few long-term disability cases result in determinations of permanent total disability and the award of wage replacement benefits for the duration of the disability. FECA regulatory requirements direct vocational rehabilitation and/or administrative determinations on wage-earning capacities in such cases, and this can result in a reduction or termination of benefits.

## 3. Statute of Limitations

State statutes of limitation requirements are variably defined; some are triggered by workplace exposure, others require the diagnosis of an illness or knowledge of the relationship between an illness and employment, and still others are triggered by disability. For example, Colorado limits a claimant's filing window to two years after exposure. South Carolina requires filing within two years of diagnosis of an occupational disease. FECA allows three years from injury or disability or the claimant knows (or should know) the relationship between the illness and their work.

As a result of these variations, some state statute of limitations requirements may preclude a worker's ability to file a successful compensation claim for a long-latency illness. The following hypothetical situation illustrates this issue further. In 1977, a 35-year-old machinist is hired by a plant that produces nuclear weapons components. His job duties include machining beryllium, steel, plutonium, and uranium components, and he is trained with respect to the hazards of his position. In 1989, on routine screening, he is found to be beryllium sensitive. In 1991, he is diagnosed with chronic beryllium disease (CBD), but he is still able to work. By 1995, his lung function is below normal, and he is no longer able to wear a respirator and protective gear but continues to work. In 1997, he is unable to do his job because of his health.

If the worker filed in a claim in 1991 when he was diagnosed with CBD, but still able to work, his workers' compensation benefits could be denied in Colorado because he knew of his exposures dating back to 1977, after which he had only one year to file. If the worker filed his claim in 1995, when his lung function no longer permitted him to wear a respirator, benefits could be denied in South Carolina because he knew of his CBD diagnosis in 1991, after which he had only two years to file. Under the FECA system, the worker would still be eligible to apply for benefits.

#### 4. Medical Care Provider

With respect to medical benefits provisions, all state systems that were evaluated for this report cover work-related diseases, according to their statutory provisions, with varied language regarding occupational diseases specifically. Choice of medical provider varies among states. California, Colorado, Idaho, New Mexico, and South Carolina have some form of employer or insurer choice of medical provider for workers' compensation medical care. Illinois, Kentucky, Nevada, Ohio, Tennessee Texas, Washington, and FECA allow employees to choose their medical provider.

There are a number of different specific statutes and rules regarding provision of and reimbursement for medical care in various workers' compensation systems. Many systems, including FECA, allow or mandate the use of medical fee schedules. Many others use managed care organizations and/or medical treatment parameters to control costs.

#### B. Task 2-3: What Is the Experience Of DOE Contractor Workers With Occupational Illnesses In State Workers' Compensation Systems?

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## 1. Workers' Compensation Questionnaire

Information gathered from public meetings and from responses to the “Workers’ Compensation Questionnaire” (see Appendix B) indicate that many current and former DOE contractor workers believe they have an illness (or illnesses) attributable to their occupational exposures to workplace contaminants. DOE received over 1,500 completed questionnaires by mail, at public meetings, or via the toll-free phone line. The majority of the questionnaire respondents had not filed for state workers’ compensation. Many of those workers who had filed for compensation expressed dissatisfaction with their experience or the outcome of their claim.

Responses to the questionnaire suggest a general reluctance on the part of workers who believe they have a work-related illness to file for workers’ compensation. A variety of reasons were given for this reluctance, including:

- Not believing they could establish the work-relatedness of their illness because they lacked a physician diagnosis of a work-related illness or lacked documented information on their workplace exposures;
- Not knowing eligibility rules, particularly statutes of limitation requirements, resulting in a failure to file claims in a timely manner;
- Pursuing claims under other benefits systems such as disability insurance and Medicare, sometimes on the recommendation of the contractor; and
- Believing that the contractor discouraged them from filing and that if they filed they would be “outgunned” by corporate technical and legal resources.

Among those who reported an occupational illness and who had filed for workers’ compensation, reasons for dissatisfaction with their experience, the process, or the outcome include:

- Received inadequate benefits amount;
- Received benefits for an inadequate length of time;
- Benefits payments received were offset by other previously obtained benefits paid by other programs and/or by attorney fees;
- Denied benefits; and
- Required to use up all leave time prior to receipt of any benefits.

The results from the questionnaire survey presented here do not represent a systematic,

unbiased analysis of how well state workers' compensation systems are performing for DOE contractor workers. This information, provided by current and former DOE workers and obtained on a voluntary and confidential basis, highlights many of the issues and concerns that affect the provision of compensation benefits for work-related illnesses. Clearly those with the greatest incentive to respond to the questionnaire were those workers who felt that they had an occupational illness for which they were not being fairly compensated.

## 2. Analysis of Current Workers' Compensation Claims

For the two-year period, 1996 through 1997, the benefits departments of most of the major contractors that operate DOE facilities (except for Rocky Flats) submitted information on the total number of new and ongoing workers' compensation that were being paid and the number of those claims that represented occupational disease. The following table summarizes this information.

<u>Year</u>	<u>Total # Claims</u>		<u># Illness/Disease Claims</u>	
	<u>New</u>	<u>Ongoing</u>	<u>New</u>	<u>Ongoing</u>
1996	2,254	2,550	25	85
1997	2,124	2,886	23	58

For these two years, occupational illness and disease claims paid represent approximately one to two percent of the total number of workers' compensation claims paid by DOE contractors. The results of the survey questionnaire suggest that many former DOE contractor workers who believe they have an occupational illness have not applied for workers' compensation.

## IV. Summary

Workers' compensation benefits for occupational illnesses sustained by DOE contractor workers are paid through the state workers' compensation program in the state where the particular DOE facility is located. Given the inherent differences among state workers' compensation systems, it is clear that a DOE contractor worker is very unlikely to receive the same treatment in any two states, no matter how similar the illness, facility, work and income rate. Further, evidence provided by DOE contractor workers suggests that many of them are deterred from filing claims for occupational illness because of what they perceive as a low likelihood of obtaining benefits. For DOE federal employees working at these same sites, workers' compensation benefits are paid under a single, nationwide program, managed by the U.S. Department of Labor, regardless of location of the facility where the injury or illness occurs. In contrast to most state programs, this system provides higher wage replacement levels for disabilities, more flexibility in the choice of medical provider, and a longer eligibility window for filing claims.

## References

1. “What Percentage of Workers with Work Related Illnesses receive Workers’ Compensation Benefits?” Biddle, Roberts, Rosenman and Welch, NIOSH (5R01 CCR 512124).
2. “Why Most Workers with Occupational Repetitive Trauma do not File for Workers’ Compensation” Rosenman, Gardiner, Wang, Biddle, Hogan, Reilly, Roberts and Welch.
3. “Evidence on the Level and Determinants of Workers’ Compensation Take-up Rates, Workers” Biddle and Roberts, NIOSH (5R01 CCR 512124).
4. Assistant Secretary for Policy Evaluation and Research, U.S. Department of Labor, An Interim Report to Congress on Occupational Diseases, (June 1980).
5. Department of Labor’s Bureau of Labor Statistics (BLS) Annual Survey of Workplace Injuries and Illnesses in 1998, published in January of 2000.
6. State Workers' Compensation Laws, U.S. Department of Labor, Employment Standards Administration, Office of Workers’ Compensation Programs (January 1999).
7. State Workers’ Compensation Administrative Profiles, U.S. Department of Labor, Employment Standards Administration, Office of Workers’ Compensation Programs (October 1996).
8. Analysis of Workers’ Compensation Laws, U.S. Chamber of Commerce (1998).
9. Survey of Workers’ Compensation Laws, Alliance of American Insurers, 1997-1998 edition.
10. Workers' Compensation Business Management Guide, CCH Incorporated (with 1999 updates).
11. Managed Care and Medical Cost Containment in Workers’ Compensation, A National Inventory, 1998 - 1999, Tanabe, Workers’ Compensation Research Institute, 1998.
12. Permanent Partial Disability Benefits: Interstate Differences, Barth and Niss, Workers’ Compensation Research Institute (1999).

## APPENDIX A

### Comparison of Selected Features of State and Federal Workers' Compensation Systems

This appendix contains information about a number of statutory provisions in different workers' compensation programs. All systems that were reviewed provide medical benefit coverage to ill or injured workers, and replace a portion of their lost wages when their workers' compensation claim is accepted for a work related illness or injury. Additional detail about these and other system attributes is found below, and in Tables 1 through 7 at the end of this appendix.

#### I. Illnesses at Work

When workers' compensation systems were developing, the workplace and tasks performed were vastly different from today. Systems grew and changed based mostly on experience with injuries, not illnesses. In recent years, increasing numbers of occupational illnesses have been identified and reported, yet they remain only a small portion of the all reported illnesses and injuries. According to the Department of Labor's Bureau of Labor Statistics (BLS) Annual Survey of Workplace Injuries and Illnesses in 1998, there were 392,000 newly reported cases of occupational illness, compared with 5.5 million non-fatal occupational injuries during the same time period. Dust diseases of the lung, and respiratory conditions due to toxic agents combined, accounted for only 5% of the illnesses in 1998.

According to the BLS, the survey provides estimates of the number and frequency of workplace injuries and illnesses based on logs kept by private industry employers during the year. These records reflect the year's injury and illness experience, but, also, the employer's understanding of which cases are work-related under current record keeping guidelines. The number of injuries and illnesses reported can also be influenced by the level of economic activity, working conditions and work practices, worker experience and training, and the number of hours worked.

The survey measures the number of new work-related illness cases which are recognized, diagnosed, and reported during the year. Some conditions (for example, long-term latent illnesses caused by exposure to carcinogens) often are difficult to relate to the workplace and are not adequately recognized and reported. These long-term latent illnesses are believed to be understated in the survey's illness measures. In contrast, the overwhelming majority of the reported new illnesses are those that are easier to directly relate to workplace activity (for example, contact dermatitis or carpal tunnel syndrome).<sup>1</sup>

#### II. Benefit Levels and Durations

##### A. Temporary Total Disability (TTD)

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<sup>1</sup> Department of Labor's Bureau of Labor Statistics (BLS) Annual Survey of Workplace Injuries and Illnesses in 1998, published in January of 2000.

All state workers' compensation programs provide wage replacement benefits to ill or injured workers. These benefits vary dramatically in their wage replacement levels and durations. Additional detail is found in Table 1 below. Benefits available to injured workers in the FECA system differ from those in each state program. Most of the states under consideration here, and FECA, provide temporary total disability (TTD) wage replacement benefits to ill or injured workers for the duration of their disability, or the time during which they are unable to work because of their work illness or injury. Some states have limits on the amount or duration of these wage replacement benefits. In Texas, injured workers' benefits are limited in most cases to 104 weeks or maximum medical improvement (MMI), the point at which no improvement of the medical condition is expected. Injured or ill workers in Tennessee and South Carolina have wage replacement benefits limited to 400 and 500 weeks respectively. In Idaho, the maximum dollar amount paid to injured workers decreases after a year.

Below are the 1999 maximum weekly wage replacement levels in the states we examined, and the approximate annual wage that these benefits would replace fully. State weekly benefit maximums range between \$400 and \$900 in various states. Injured workers who are eligible for FECA could have their pre-injury wage replaced to a much higher level than workers in all state systems. FECA provides up to \$1,401 per week to injured employees. Wage replacement rates in state systems are statutorily defined, most replacing two thirds of a worker's pre-injury wages, paid without taxes, and capped at the rates seen and described below. The approximate annual incomes, above which injured workers would not have their income reimbursed, are seen in the column on the right below.

<u>Weekly Maximum</u>	<u>Approximate Maximum Annual Income Compensated</u>	
New Mexico:	\$392.05	\$30,579
Idaho	\$410.40	\$32,011
South Carolina	\$483.47	\$37,678
Kentucky	\$487.20	\$34,747
California	\$490.00	\$34,947
Tennessee	\$515.00	\$40,018
Colorado	\$519.61	\$40,564
Texas	\$523.00	\$40,798
Nevada	\$532.63	\$41,734
Ohio	\$567.00	\$44,230
Washington	\$692.70	\$55,464
Illinois	\$862.80	\$67,231
Iowa	\$947.00	\$73,866
FECA	\$1,401.94	\$109,351

Many DOE contractor employees at the facilities in the states under study are highly skilled, and many workers have been with their employer for many years. DOE contractor employees' overall average annual incomes are above \$40,000 for bargaining and hourly, non-bargaining employees at several major sites.

A worker who receives FECA benefit levels would not have their income capped until above \$100,000 annually. Workers in Iowa would have wages replaced up to about \$74,000, and workers in Illinois are subject to a cap above \$67,000. Except in these systems, benefit maximums would likely apply to at least some injured or ill DOE contractor employees in state workers' compensation systems. Injured workers in Washington would receive benefits up to above \$55,000 annually. Some DOE contractor employees would likely have their benefits capped if they received workers' compensation benefits in some systems. Injured and ill workers in New Mexico can lose income above \$30,579, Idaho workers above \$32,011, South Carolina workers are capped at \$37,678, Kentucky workers at \$34,747, and California workers have their income capped at \$34,947. In Tennessee, a worker's income would be capped at approximately \$40,018, in Colorado, capped at \$40,564, and workers in Texas would lose pre-injury income above \$40,798 per year.

**B. Permanent Partial Disability (PPD)**

Most jurisdictions use a schedule, or list, that defines permanent partial disability (PPD) benefits for specific losses of a body part or its' use. These benefits are mainly expressed in terms of a number of weeks or a dollar amount. An example of what different workers' compensation systems provide for a similar scheduled occupational permanent loss of hearing in both ears is found below (5). The approximate maximum total scheduled benefit available in various workers' compensation systems is seen.

Approximate Maximum Benefit Amount  
Occupational Hearing Loss in Both Ears

FECA	\$280,388
Illinois	\$172,560
Iowa	\$152,600
South Carolina	\$ 79,773
Tennessee	\$77,250
Ohio	\$ 70,875
New Mexico	\$ 58,808
Texas	\$ 54,900
Idaho	\$ 43,890
Colorado	\$ 39,681
California	% of Permanent Total Disability (PTD)
Kentucky	% of Permanent Total Disability (PTD)
Nevada	% of Permanent Total Disability (PTD)
Washington	N/A

In most jurisdictions, these schedules do not apply to internal organs, like lungs, or to cancers. These are unscheduled awards, which are handled differently in the different jurisdictions. The more subjective nature of these PPD's can increase the possibility of attorney involvement, as the amount and nature of the permanent partial disability (PPD) can be in dispute. These unscheduled conditions are handled differently in various jurisdictions (11). There are four basic categories: *wage loss*, *impairment*, *loss of wage earning capacity*, and *bifurcated*.

A *wage loss* system is one where unscheduled PPD loss compensation is based on the actual wages the worker has lost because of the work related illness or injury. An *impairment* system compensates the change in physical or mental health, medically, that is the result of a workplace illness or injury. A *loss of wage earnings capacity* system is one where unscheduled PPDs are compensated by determining the disability, and its likely effect on the injured worker's ability to earn income in the future. This method considers personal attributes of the worker, like age and experience, as well as the labor market locally in determining the amount of compensation to which an injured worker is entitled. In a *bifurcated* system, if a worker is able to return to work at their pre-injury wage, it is an impairment system, otherwise, it is a loss of wage earnings capacity system.

Ohio is a wage loss system, with unscheduled PPD benefits based on the worker's actual lost wages. Ill or injured workers in California, Idaho, Illinois, New Mexico and South Carolina have these benefits based on their loss of wage earning capacity. In Colorado, Nevada, Texas and Washington, workers' benefits are impairment based, and workers in Kentucky and Tennessee are in a bifurcated system. This further complicates comparisons and creates differences in benefits paid to workers with similar conditions. It is very difficult to compare adequacy and equity across these different types of systems. The same occupational disease may result in no benefit to a worker who can continue to work in one system, while providing full benefits to a worker who is able to return to work in another system.

PPD benefits are most often paid at the same rate as TTD benefits, and subject to durational limits, as brief as 400 weeks for a worker with an unscheduled injury in Colorado, and as long as the duration of disability for ill or injured workers in the FECA system. FECA's maximum weekly benefit level, where an ill or injured workers could get as much as \$1401.94 per week in their wages replaced, is considerably above wage replacement levels even the next highest jurisdiction, Iowa, who pays ill or injured workers up to \$947.00 per week. The lowest weekly wage replacement maximum benefit available among these states is New Mexico, where a worker recovers up to a maximum benefit of \$392.05 per week.

### C. Permanent Total Disability (PTD)

Permanent total disability (PTD) benefits also have differences in the workers' compensation programs we reviewed. Permanent total disability benefits are typically provided at the same rates, with the same maximums, as TTD benefits. Many states in our analysis, and FECA provide PTD benefits for ill or injured workers for the duration of their disability or for the worker's life. South Carolina workers, Tennessee workers, and Texas workers have benefits

that cease at 500 weeks, 400 weeks, and 401 weeks, respectively. For workers in Idaho, there is a reduction in the maximum benefit after a year, to 60% of the SAWW, or about \$273.00 per week, compared with a maximum of \$410.40 for the first year.

### C. Death and Burial Benefits

Death benefits are based on income, like TTD, and are paid throughout widow or widowerhood, or until 18 years old for minor dependents. Maximum burial benefits are quite varied, with FECA providing up to \$800, compared with Illinois at up to \$6,000. Other jurisdictions range in between these amounts.

### III. Nature of Coverage and Medical Coverage

Tables 2 and 3 in this appendix have additional detail on state statutory provisions regarding overall coverage and medical benefit coverage. Workers' compensation programs vary regarding the specific nature of medical coverage and overall coverage. All state systems that were evaluated here cover work-related diseases, according to statutory provisions, with varied language regarding occupational diseases specifically. In some states, workers who are ill or injured choose their medical provider, in others the employer or insurer makes the provider choice. In Illinois, Kentucky, Nevada, Ohio, Tennessee Texas, Washington, and FECA, ill or injured workers choose their medical provider. California, Colorado, Idaho, Iowa, New Mexico, and South Carolina have some form of employer or insurer choice of medical provider for those workers who have workers' compensation illnesses and injuries.

FECA has a 3 day wait for wage replacement benefits, with a 14 day retroactive period, after which the first 3 of missed wages are reimbursed. States range from 3 to 7 days for duration of work-related disability required prior to receipt of wage replacement benefits. Likewise, they vary between 1 and 4 weeks of disability before the initial waiting period is reimbursed.

One of the basic workers' compensation system attributes, common to all of the systems we studied, was first dollar medical coverage for all covered injuries or illnesses. There are no co-payments or deductibles for injured workers to pay. Prescriptions and other medically-related expenses are paid in full. There are a number of different specific statutes and rules regarding provision of and reimbursement for medical care in workers' compensation the various systems. Some systems allow or mandate the use of medical fee schedules, managed care organizations and/or medical treatment parameters, while others are silent about these provisions. Workers with similar conditions may have different options and choices in different systems.

States' statutory provisions vary regarding statutes of limitations for filing a worker's compensation claim. Additional detail is found in Table 2 in this appendix. The variations are quite extensive, with the limits running from exposure for workers in Kentucky, or from disability for workers in Illinois, New Mexico, Ohio and Tennessee. Knowledge of disability begins the statutory time limits for ill or injured workers in Nevada, Texas and Washington, and diagnosis tolls the statute for workers in South Carolina. Time limits for claims filing also vary a great deal between systems. FECA allows 3 years after injury, death, disability or knowledge by claimant. State durational limits for filing workers' compensation claims range from 60 days for Idaho workers, to 25 years from last exposure for workers with radiation or asbestosis illnesses in Illinois. Most filing limits are between 1 and 3 years. 20 years is allowed for radiation or asbestos related diseases for Kentucky workers. An ill worker in Colorado is allowed 5 years to file a claim for radiation, asbestosis and silicosis.

#### IV. Causation

In all state workers' compensation systems, as well as FECA, workers must show causation between their exposure at work and the illness or injury they are reporting for compensation. This may be difficult for workers with conditions such as cancer, and other diseases with long latency periods, especially those diseases that also occur in the non-worker population. It is difficult to identify which exposure accounts for an illness, and it may not be clear when the condition started. As seen in Table 2, workers' compensation systems vary as to the specific language governing coverage of occupational illnesses.

For workers in Colorado, Illinois, Nevada, South Carolina, Tennessee, and Texas, an illness must have arisen out of and in the course of employment. Kentucky workers must have a causal connection between working conditions and disease and in Washington, a worker's disease must arise naturally and proximately out of employment. In New Mexico, workers are covered, with occupational diseases peculiar to the occupation in which the employee was engaged, and due to causes in excess of the ordinary hazards of employment and includes any disease due to, or attributable to contact with any radioactive material by an employee in the course of their employment.

#### V. Rehabilitation Benefits and Pre-Existing Conditions

Tables 4 and 5 found at the end of this appendix have additional detail on statutory provisions covering rehabilitation and pre-existing conditions. Most jurisdictions have provisions for vocational rehabilitation benefits, for workers who will be unable to return to their jobs, with wage replacement benefits available during training. Benefit level maximums are variable, the same as the TTD benefit maximums. Some jurisdictions require the employer or insurer to provide these benefits, others do not.

Much of the language on pre-existing conditions in state workers' compensation statutes and rules has to do with how disability awards for injuries are related to prior similar awards, and how to calculate the disability percentages and payments.

## VI. Benefit Offsets

Most state jurisdictions have language that deals with the interaction between state workers' compensation systems and other systems like Social Security Disability Income (SSDI). Table 6 of this appendix contains specific information as to which benefits are affected and how. In Tennessee, at Oak Ridge, for some workers, long term disability (LTD) plans specify an offset of all wage replacement benefits paid by other systems, including workers' compensation, before LTD wage replacement benefits are paid. The financial offset is equal to wage replacement benefits, including TTD and PPD, that have been paid to the worker. The PPD benefits offset may be higher than that received by the worker, since attorney fees are included in what must be offset before LTD benefits are paid. This application is not limited to similar or related injuries. Workers report that this provision can affect their decision about filing a workers' compensation claim. Many jurisdictions have offset provisions, that most often relate to contributions from different systems paying benefits for the same condition.

## VII. Appeals Provisions

Time limits on the ability to appeal workers' compensation decisions vary, as do many other workers' compensation system attributes. For ill or injured workers in the FECA system, 30 days (for a hearing) to 1 year (for a recommendation or appeal). This is significantly longer than most jurisdictions, keeping in mind that the appeals processes and appeals bodies vary system to system. Workers in Tennessee have 10 days to appeal, with Washington and Ohio workers given 60 days. Table 7 of this appendix has additional detail.

## VIII. Insurance Arrangements

Three of the states under consideration are among a very few with exclusive state funds, where the state is the sole provider of workers' compensation insurance to employers in the state. Nevada was such a system until January of this year, and Ohio and Washington remain exclusive. FECA is run as an exclusive option for Federal employees, and shares some attributes with other exclusive funds. In other state systems, commercial insurance companies sell workers' compensation in a competitive market.

Texas permits employers to elect whether or not to purchase workers' compensation insurance. Self insurance is permitted in all of the jurisdictions we are analyzing, and is typically for large employers, or groups of employers, who are able to satisfy regulatory requirements. Deductible policies are increasingly used in workers' compensation around the country in recent years, where large companies are responsible for the losses associated with claims, up to a certain dollar amount. This amount can be quite large for each claim.

DOE facilities vary as to the type of workers' compensation insurance arrangement that is found. Contractors at Los Alamos, Oak Ridge, Sandia, WIPP, Idaho, Savannah River and

Hanford are all self-insured for workers' compensation. Rocky Flats contractors are insured with a private insurer, but they have a very large deductible for each claim.

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**TABLE 1**  
**SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)**  
**Workers' Compensation Provisions: Benefits**

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Jurisdiction	Percentage of average system wages replaced by workers' compensation (%)	Temporary Total Disability (TTD)/Permanent Total Disability (PTD) Maximum Weekly Benefit (\$)	TTD Maximum Benefit Duration	PTD Maximum Benefit Duration	Permanent Partial Disability (PPD) Maximum Weekly Benefit (\$)	PPD Maximum Benefit Duration	Maximum Weekly Death Benefit for Survivors (\$)	Death Benefit for Survivors: Maximum Duration	Maximum Burial Benefit (\$)
FECA	66 2/3% - 75% (dependent based) maximum based on employee pay grade ★	1,401.94	duration of disability	duration of disability	1,401.94	duration of disability	1,401.94	widow or widowerhood/children until 18	800
California	66 2/3	490.00	duration of disability	life	230.00	694.25 weeks	490.00	life with a maximum of \$145,000 - \$260,000 (dependent based) ★	5,000
Colorado	91	519.61	duration of disability	life	519.61	208 weeks/400 weeks for unsheduled	519.61	widow or widowerhood/children until 18	4,000
Idaho	90	410.40 - yr 1 273.60 - after	52 weeks, then 60% SAWW	52 weeks; then 60% SAWW	250.80	proportion of 500 week whole body	273.60	500 weeks	6,000
Illinois	133 1/3	862.80	duration of disability	life	465.67	500 weeks	862.80	widow or widowerhood/children until 18	4,200
Iowa	200	947.00	duration of disability	duration of disability	872.00	500 weeks	947.00	widow or widowerhood/children until 18	5,000
Kentucky	100	487.20	duration of disability ★	duration of disability	365.40	425 weeks for disability of 50% or less; 520 for more than 50% disability	243.00 - 365.40 (dependant based)	widow or widowerhood/children until 18	4,000
Nevada	100	532.63	duration of disability	life	532.63	Age 70 or 5 years (the greater of the two)	532.63	widow or widowerhood/children until 18	5,000
New Mexico	85	392.05	duration of	life	392.05	500 weeks if less than	392.05	700 weeks	3,000

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**TABLE 1**  
**SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)**  
**Workers' Compensation Provisions: Benefits**

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Jurisdiction	Percentage of average system wages replaced by workers' compensation (%)	Temporary Total Disability (TTD)/Permanent Total Disability (PTD) Maximum Weekly Benefit (\$)	TTD Maximum Benefit Duration	PTD Maximum Benefit Duration	Permanent Partial Disability (PPD) Maximum Weekly Benefit (\$)	PPD Maximum Benefit Duration	Maximum Weekly Death Benefit for Survivors (\$)	Death Benefit for Survivors: Maximum Duration	Maximum Burial Benefit (\$)
Ohio	100	567.00	disability duration of disability	life	567.00	80%;700 weeks if more than 80% 1/3 of the SAWW for a portion of 200 weeks plus wage loss for 200 weeks ★	567.00	widow or widowerhood/children until 18	3,200
South Carolina	100	483.47	500 weeks	500 weeks	483.47	500 weeks	483.47	500 weeks	2,500
Tennessee	NA	515.00	400 weeks	400 weeks	515.00	400 weeks	515.00	widow or widowerhood/children until 18	4,500
Texas	75	523.00	104 weeks (or MMI ★	401 weeks ★	366.00	401 weeks	523.00	widow or widowerhood/children until 18	2,500
Washington	110 SAMW	692.70	duration of temporary disability	life	payments based on permanent impairment	★ see note	692.70	widow or widowerhood/children until 18	200% SAMW

★ Notes

- FECA** (1): 75% for a worker with one or more dependents; 66 2/3% for a worker without dependents.
- California** (8): the top range is for workers with three or more dependents.
- Kentucky** (3): Until Social Security benefits.
- Ohio** (6): For unscheduled injuries.
- Texas** (3): MMI is maximum medical improvement, or the point at which no further improvement of the condition is expected.
- (4): Life for injuries defined as statutory PTD.
- Washington** (6): If award exceeds three times state's average monthly wage (SAMW), employee receives one payment at three times SAMW, balance in monthly payments per TTD schedule plus 8% interest per annum on unpaid balance.

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TABLE 2

SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT ( FECA)

Workers' Compensation Provisions: Coverage and Provider Choice

Jurisdiction	(1) Waiting; Retro Period for Benefits	(2) Medical Conditions Covered	(3) Occupational Disease (OD) - Nature of Coverage	(4) Occupational Disease - Time Limit on Filing	(5) Initial Choice of Provider
FECA	3 days(TD only); more than 14 days	all diseases	Any disease or condition produced in the work environment over a period longer than one workday.	within 3 yrs after injury, death or disability and claimant knows or should know relation to employment (Sec. 8122 of Title 5, USC)	employee choice
California	3 days (TTD only); 14 days	all diseases	All "cumulative" injuries are covered - some restrictions on asbestosis claims (ex. no lump sum payments) (Sec. 3208)	1 year from the date of injury or death, or the last payment of compensation. (Sec. 5405) ★	employer/insurer ★
Colorado	3 days; more than 2 weeks	all diseases	No provisions for exposure to injurious substances. Most OD's are covered, provided that injury arose out of and in the course of employment.	2 years from date of injury or death. 5 years for radiation, asbestosis, silicosis, etc. (Sec. 8-43-103)	employer/insurer
Idaho	5 days; more than 2 weeks	all diseases	Within 1 year after last exposure, 4 years for silicosis, 7 years for death following continuous disability. The employer is liable for non-acute disease only if the exposure lasts for 60 days. Silicosis exposure must occur in 5 years during the during 10 years prior to disablement. The last 2 years need to be in the state, unless the employment was with the same employer.	written notice within 60 days after the first manifestation of an OD, to the industrial commission if the employer cannot be reasonably located within 90 days after the first manifestation; within 1 year of exposure, 4 for silicosis. For radiation, within 1 year of incapacity, disability, death and claimant knows or should know relation to employment. (Sec. 72-448) ★	employer may designate at <b>time of hire</b> , otherwise employee choice
Illinois	3 days (TTD); 14 days or more	all diseases	All ODs are covered provided that it is established that the disease arose out of (or was aggravated as a result of) in the course of employment. Exposure to injurious substances covered - atomic radiation, beryllium and asbestos are all mentioned.	within 3 yrs of disability, 2 years of last paid compensation; radiation or asbestosis - 25 yrs from last exposure (Sec. 310/6)	employee choice
Iowa	3 days (TTD/PTD); more than 14 days	all diseases	Disability or death - within 1 year after last exposure; 3 years for pneumoconiosis, 7 years for death following continuous disability.	within 1 year of death or disablement; for radiation - within 90 days after disablement or death and claimant knows or should know relation to employment.	employer/insurer
Kentucky	7 days; more than two weeks	all diseases	ODs are covered provided there is a causal connection between working conditions and disease. No specific listing of injurious substances is included in the act. Kentucky Coal Workers' Pneumoconiosis Fund covers mine workers.	within 3 yrs of exposure; 20 yrs for radiation or asbestos related disease (Sec. 342.316) ★	employee choice unless employer contracts with an approved managed care plan

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TABLE 2

SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT ( FECA)

Workers' Compensation Provisions: Coverage and Provider Choice

Jurisdiction	(1) Waiting; Retro Period for Benefits	(2) Medical Conditions Covered	(3) Occupational Disease (OD) - Nature of Coverage	(4) Occupational Disease - Time Limit on Filing	(5) Initial Choice of Provider
Nevada	5 days; 5 consecutive days, or 5 within 20 days	all diseases	All ODs arising out of and in the course of employment are covered. For exposure to injurious substances, employee must be exposed not less than 1 year.	within 7 days after the employee has knowledge of the disability and its relationship to employment (Sec. 617.342). For silicosis and diseases related to asbestos, employee, or survivors, has 1 year from the date of disability, death, or from the date they knew or should have known of the relationship between the disease and the employment. (Sec. 617.460) ★	employee choice unless employer is with a managed care organization
New Mexico	7 days; 4 weeks	all diseases	All ODs peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment and includes any disease due to, or attributable to exposure to contact with any radioactive material by an employee in the course of employment.	within 1 year of disability; radiation - 1 year from diagnosis ★	employer/insurer can direct care during the first 60 days, or thereafter if employee makes initial choice
Ohio	7 days; 2 weeks ★	all diseases	Any disease contracted in the course of employment, which by its causes and the characteristics of its manifestation results in a hazard that distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general. Provides a listing of injurious substances, including but not limited to anthrax, arsenic, lead, radiation, etc.	2 years after the disability from the disease begins, or within a longer period of time that does not exceed 6 months after the disease has been diagnosed by a licensed physician, or within 2 years after death. (Sec. 4123.85) ★	employee choice from a certified provider pool, or MCO pool, may be restricted to choice from a certified managed care program
South Carolina	7 days; more than 14 days	all diseases	Any OD arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged.	within 2 yrs of diagnosis; radiation - limit from date of disability and claimant knows/should know relation to employment (Sec. 42-15-40) ★	employer/insurer choice
Tennessee	7 days; 14 days	all diseases	Any disease arising out of and in the course of employment. (Sec. 50-6-301) When an employee has an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of that disease, and the insurer at the time of the exposure are liable, without right or contribution from any prior employer or insurer.	Suit must be commenced within 1 year after the beginning of the incapacity for work resulting from an OD. If death results, a suit must be commenced within 1 year after the death. (Sec. 50-6-306) ★	employee chooses from list of at least three providers, which is developed by insurer/employer
Texas	7 days; 4 weeks	all diseases	Any disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. It does not include ordinary diseases of life to which the general public is exposed	1 year from the date on which the employee knew or should have known that the disease was related to the employment.	employee choice from Commission approved list

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TABLE 2

SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT ( FECA)

Workers' Compensation Provisions: Coverage and Provider Choice

Jurisdiction	(1) Waiting; Retro Period for Benefits	(2) Medical Conditions Covered	(3) Occupational Disease (OD) - Nature of Coverage	(4) Occupational Disease - Time Limit on Filing	(5) Initial Choice of Provider
			outside of employment, unless that disease is an incident to a compensable injury or occupational disease.	(Sec. 409-003)	
Washington	3 days (TTD); 14 days	all diseases	Any disease or infection that arises naturally and proximately out of employment.	2 years following the date the worker had written notice from a physician of the existence of an OD and that a claim for disability may be filed. (Sec. 51.28.055)	employee choice
★ Notes					
<b>California</b>		(4):	Peace Officers, including firefighters, who develop cancer during service are eligible for benefits if they can demonstrate that they were exposed to a known carcinogen during employment.		
		(5):	unless employee has notified employer, in writing, in advance, of a provider with whom the employee will treat in the event of an illness or injury; employee may change after 30 days of employer/insurer provider		
<b>Idaho:</b>		(4):	For silicosis, a worker who is affected but not disabled may waive full compensation and, if later disabled, receive benefits up to \$5,000.		
<b>Kentucky</b>		(4):	Where disablement occurs after 5 years' exposure, or results from silicosis or pneumoconiosis, apportioned between employer and Special Fund: Fund pays 75% of cost if not conclusively proven to result from last exposure, otherwise pays 40%. Employer pays balance. After 12/12/96, Special Fund has no liability.		
<b>Nevada</b>		(4):	If claimant worked as a police officer or fire fighter for 5 continuous years and subsequently develops heart or lung disease, it is presumed to have arisen out of employment.		
<b>New Mexico</b>		(4):	Occupational Disease Disablement Law applies to employers of 3 or more but excepts employers of ranching or agricultural laborers, employers of private domestic servants and qualified real estate salespersons. Unless worker is receiving disability compensation for work, death within 3 years is compensable. Above time limits do not apply to exposure of radioactive or fissionable materials where onset limit is 10 years from last day worked.		
<b>Ohio</b>		(1):	waiting period payment applies only in cases of permanent disability		
		(4):	Includes asbestosis, silicosis, and coalminer's pneumoconiosis. Worker who is affected but not disabled by respiratory dust disease and changes occupation, may receive 50% of the SAWW weekly for 30 weeks and immediately following expiration of that award, claimant may receive 66 2/3% of wages lost from change of occupation for 100 weeks, but may not exceed 50% of the SAWW.		
<b>South Carolina</b>		(4):	A worker who is affected but not disabled may waive compensation (except radiation).		
<b>Tennessee</b>		(4):	For coalminer's pneumoconiosis, same as Federal Black Lung Act.		

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TABLE 3

SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

Workers' Compensation Provisions: Medical Benefits

Jurisdiction	Medical Payment Rules	(1)	Medical Care Rules	(2)
FECA	<p>Payment for medical and other health services furnished by physicians and other persons for work connected injuries shall, except as provided below, be no greater than a maximum allowable charge for such service as determined by the Director. The schedule of maximum allowable charges is not applicable to charges for appliances, supplies, services, or treatment provided and billed for by hospitals, pharmacies, or nursing homes, but is applicable to charges for services or treatment furnished by a physician in a hospital or nursing home setting.</p>		<p>A claimant has an initial choice of physician. The designated agency official shall give the claimant an opportunity to select a duly qualified physician, after advising the claimant of those physicians excluded under the provisions of this part. An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown for the request.</p>	
California	<p>A fee schedule for medical-legal expenses adopted by the administrative director, is prima facie evidence of the reasonableness of fees charged. The fee schedule is based on procedure codes, relative values, and a conversion factor to produce fees that are equivalent to those paid to physician for comparable work.</p>		<p>After 30 days from the date of injury is reported, employee may be treated by a physician of the employee's choice or at a facility of the employee's choice within a reasonable geographic area. If the employee notified his/her employer in writing prior to the date of injury that he/she had a personal physician, the employee has the right to be treated by that physician from the date of injury.</p>	
Colorado	<p>The director will establish a schedule fixing the fees for which all medical, surgical, hospital, dental, nursing, and vocational rehabilitation treatment rendered to employees is compensated, and it is unlawful, void, and unenforceable as a debt for any physician, chiropractor, hospital, person, or institution to contract with, bill, or charge any patient for services that are in excess of the fee schedule unless such charges are approved by the director.</p>		<p>The employer or insurer has the right in the first instance to select the physician who attends the employee. If the services of a physician are not tendered at the time of the injury, the employee has the right to select a physician or chiropractor.</p>	
Idaho	<p>No specific provisions in the workers' compensation statute.</p>		<p>The employee may petition the commission for a change of physician to be provided by the employer, but must provide written notice to the employer or surety of the request to afford the employer an opportunity to fulfill its obligations under this provision. Upon receiving written notice, the employer must render its written decision on the claimant's request within 14 days. If any dispute arises over the issue of a request for change of physician, the industrial commission will conduct an expedited hearing to determine whether or not the request for change of physician should be granted, and will render a decision within 14 days after the filing of the response by the employer.</p>	
Illinois	<p>The Commission has the power to determine the reasonableness and fix the amount of any fee charged by any person, including attorneys, physicians, surgeons, and hospitals, for any service performed in connection with the Act, or for which payment is to be made under the Act or rendered in securing any right under the Act.</p>		<p>The employee may at any time elect a physician, surgeon, and hospital services at the employer's expense. As an alternative, upon agreement between the employer and the employees, or the employees' exclusive representative, and subject to the approval of the Commission, the employer will maintain a list of physicians, to be known as a Panel of Physicians who are accessible to the employees. The employer must post this list in a place or places easily accessible to employees. The employee will have the right to make an alternative choice of physician from the Panel if the employee is not satisfied with the physician first selected.</p>	

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TABLE 3

SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

Workers' Compensation Provisions: Medical Benefits

	(1)	(2)
Jurisdiction	Medical Payment Rules	Medical Care Rules
Iowa	According to statute, the employer is responsible for reasonable and necessary medical services. There is no medical fee schedule, and the billed amount is often paid. The DWC determines what is reasonable and necessary in the event of a dispute.	The current statute allows regulation of medical and hospital charges with a fee schedule, however there is not currently one in use. There are no DRGs or other service or fee regulations in place. There are no specific statutory provisions for the formation or regulation of managed care organizations, although they are permitted.
Kentucky	There will be an administrative fee schedule requiring all fees, charges, and reimbursements under Sec. 342.020 and this section, to be fair, current, and reasonable and limited to charges for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what is reasonable, the commissioner can consider the increased security of payment afforded by the chapter. On or before November 1, 1994, and on July 1 every two years thereafter, the schedule of fees will be revised and updated, if appropriate.	In the absence of the designation of a managed health care system by the employer, the employee may select a medical provider to treat the injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee.
Nevada	All fees and charges for accident benefits are subject to regulation by the division and must not exceed the fees and charges usually paid in the state for similar treatment nor be unfairly discriminatory as between persons legally qualified to provide for similar treatment nor be unfairly discriminatory as between persons legally qualified to provide the particular service for which the fees or charges are asked.	<p>The administrator shall establish a panel of physicians and chiropractors to treat injured employees, and every employer whose insurer has not entered into a contract with an organization for managed care must maintain a list of the medical personnel on the panel who are reasonably accessible to its employees.</p> <p>The injured employee whose insurer has not entered into a contract with an organization for managed care may select a treating physician or chiropractor from the panel and, if dissatisfied with such first choice, may select another physician or chiropractor within 90 days of the injury.</p>
New Mexico	The director will adopt and promulgate regulations establishing a schedule of maximum charges as deemed necessary for treatment or attendance, service, devices, apparatus or medicine provided by a health care provider. The rates in the schedules of maximum charges must not fall below the 60 <sup>th</sup> percentile or above the 80 <sup>th</sup> percentile of current rates for health care providers. In determining current rates for health care providers, the director shall utilize a variety of health care provider charges, including the charges of those providers serving low-income, Medicare, and Medicaid patients.	<p>The employer must either initially select the health care provider for the injured worker or permit the worker to make the selection. The selection remains in effect for the first 60 days from the date worker receives treatment from the initially selected provider.</p> <p>After expiration of the initial 60-day period, the party who did not make the initial selection may select a health care provider by filing a notice of the name and address of the party's choice at least 10 days before treatment from that health care provider begins.</p>
Ohio	No specific provisions in the workers' compensation statute.	<p>The deputy administrator for medical management and cost containment will oversee the implementation of the Qualified Health Plan System (Sec. 4121.44, as amended by H.B. 7, L.1995). A health care advisory council will develop standards for qualification of health care plans of the Qualified Health Plan System to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to an employee for a compensable injury or occupational disease.</p> <p>Health care plans that meet the approved Qualified Health Plan standards will be considered</p>

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TABLE 3

SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

Workers' Compensation Provisions: Medical Benefits

Jurisdiction	Medical Payment Rules	(1)	Medical Care Rules	(2)
			qualified health care plans and are eligible to become part of the Qualified Health Plan System. Any employer or group of employers may provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to an employee for an injury or occupational disease that is compensable through a qualified health plan.	
South Carolina	All physicians' fees and hospital charges are subject to the approval of the commission. No physician or hospital can collect a fee in a workers' compensation case until it has made the necessary reports to the commission.		The employee must submit to a physical examination, at reasonable times and places, by a physician designated and paid by the employer or the commission. The employee will have the right to have a physician of the employees' choice present.	
Tennessee	Physicians' fees and hospitals charges are subject to the approval of the commissioner or the court before which the matter is pending. Unless a medical fee or charge is contested, the department will deem it to be reasonable. If a fee or charge is contested, the department will permit a party to seek review only of the contested fee or charge in any court with jurisdiction to hear a matter pursuant to Sec. 50-6-225. A court may review such a case solely for the purpose of approving such fees and charges.		The employer must designate a group of three or more physicians or surgeons, not associated together in practice, if available in the community, from which the employee can choose the operating surgeon or the attending physician. The listing of physicians or surgeons can include chiropractors. The employer's liability is limited to the charges prevailing for similar treatment in the community where the injured employee lives.	
Texas	The commission will establish by rule medical policies and fee guidelines governing the provision and payment of medical services. They will also establish a division of medical review.		After January 1, 1993, the employee must choose the initial doctor from a list of doctors approved by the commission, except in an emergency. If the employee is dissatisfied with the initial choice, the employee may notify the commission in writing (telephone may be used in an emergency) stating the reasons for the request to select an alternative doctor. All doctors duly licensed in the state as of January 1, 1993, or on their licensure are included on the list. Doctors not licensed in the state may apply with the commission for inclusion on the approved list.	
Washington	The director will make available a fee schedule of the maximum charges to be made by any physician, surgeons, chiropractor, hospital, druggist, and physicians' assistants acting under a supervising physician, or other agency or person rendering services to injured workers.  No service covered under this title may be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees will be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action," nor does such a fee schedule constitute a "rule."		An injured worker must receive proper and necessary medical and surgical services at the hands of a physician of the workers' own choice, if conveniently located, and proper and necessary hospital care and services during the period disability from the injury, limited in point of duration as follows:  In the case of <i>permanent partial disability</i> , not to extend beyond the date when compensation is awarded.  In case of <i>temporary disability</i> , not to extend beyond the time when monthly allowances cease.  In case of a <i>permanent total disability</i> , not to extend beyond the date on which a lump-sum settlement is made or the worker is placed upon the permanent pension roll.	

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TABLE 4  
SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)  
Workers' Compensation Provisions: Vocational Rehabilitation

Jurisdiction	(1) Benefits during Training and Rehabilitation	(2) Vocational Rehabilitation - Special Provisions
FECA	TTD plus maximum \$200/month maintenance	If person fails to undergo vocational rehabilitation, administrator may reduce benefit if rehabilitation would have increased earnings.
California	TTD plus maintenance at \$247.00 (limited to 52 weeks) and living expenses necessitated by rehabilitation; terminated vocational rehabilitation (VR) services may be restored within 5 years after injury in certain cases	Rehabilitation program is compulsory on part of employer or insurer. Rehabilitation trainee is considered employee of training employer for insurance purposes. Employees restricted to 1 rehabilitation plan, which must be completed within 18 months. Expenditures are capped at \$16,000 on all vocational rehabilitation plans. Cap applies to all expenses, counseling fees, training, maintenance allowance, and costs associated with or arising out of vocational rehabilitation services. Counselor fees are capped at \$4,500.
Colorado	Weekly maintenance equal to TTD; VR may be terminated by any party upon 14 days of written notice to all parties	Voluntary benefit offered by carrier after 7/2/87. If employee refuses offer of vocational rehabilitation, Permanent Total (PT) benefits will not be awarded.
Idaho	TTD plus transportation costs	Administered by the Rehabilitation Division. Temporary Total (TT) or Temporary Partial (TP) may be payable where retraining is authorized. Period of retraining not to exceed 52 weeks unless the Commission, following application and hearing, extends the period.
Illinois	TTD plus incidental maintenance expenses	Physical, mental and vocational rehabilitation as necessary. Institutional care, if required.
Iowa	\$20 per week in addition to other benefits, in some cases, for up to 26 weeks	When PPD or PTD prevents return of an employee to a pre-injury employer, the employee may be eligible for the additional \$20 per week if they are in a retraining program developed by a state rehabilitation counselor, as approved by the Industrial Commission.
Kentucky	Normal weekly compensation plus board, lodging and travel if away from home	Unlimited medical rehabilitation; vocational rehabilitation up to 52 weeks (may be extended). Employee's refusal results in loss of 50% of compensation.
Nevada	An allowance that would not exceed TTD	Insured is authorized to provide necessary rehabilitation services. Employee refusal results in loss of all benefits.
New Mexico	TTD plus board, lodging, tuition, travel and all other expenses for up to two years	Only in cases of occupational disease; employer must furnish.
Ohio	TTD rate, minimum 50% of the SAWW for 6 months (renewable)	Rehabilitation Division is within the Bureau of Workers' Compensation and may make all necessary expenditures medically including treatment of non-occupational conditions inhibiting return to work.
South Carolina	TTD	no specific statutory provision in general, except for radiation exposures (42-13-90)
Tennessee	no specific statutory provision	Division of workers' compensation refers feasible cases to Department of Education pursuant to plan providing full or partial recovery of expenses from employer or insurer.
Texas	no specific statutory provision	Insurer furnishes necessary medical care and services for physical rehabilitation. Commission may notify employees of vocational rehabilitation services through the Texas Rehabilitation Commission and private providers. Commission keeps registry of private providers of rehabilitation services.
Washington	Maximum 104 weeks TTD plus maximum \$3,000 in any 52	Supervisor may extend period for another 52 weeks. Department pays employer's cost of job modification, or

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TABLE 4

SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)  
 Workers' Compensation Provisions: Vocational Rehabilitation

Jurisdiction	(1) Benefits during Training and Rehabilitation	(2) Vocational Rehabilitation - Special Provisions
	week period for books, tuition, fees, supplies, child care or dependent care, and travel; board and travel if away from home; job modification costs not to exceed \$5,000	accommodations, medically necessary for the worker to participate in a retraining plan, to a total maximum of %5,000.

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TABLE 5

SELECTED JURISDICTIONS AND FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

Workers' Compensation Provisions: Pre-Existing Conditions

Jurisdiction	Statutory Provisions Concerning Pre-Existing Conditions
FECA	Diseases and illnesses aggravated, accelerated or precipitated by the employment are covered. The employee must submit medical and factual evidence that establishes that the employment aggravated, accelerated, or precipitated the condition.
California	In case of aggravation of any disease existing prior to a compensable injury, compensation is allowed only for the proportion of the disability due to the aggravation of the prior disease which is reasonably attributed to the injury.
Colorado	The fact that an employee has suffered a previous disability or received compensation therefore will not preclude compensation for a later injury or death, but the employees' average weekly earnings at the time of the later injury are used to determine the compensation payable.
Idaho	In cases of permanent disability less than total, if the degree or duration of disability resulting from an accident or occupational disease is increased or prolonged because of a pre-existing physical impairment, the employer is liable only for the additional disability from the injury or disease.
Illinois	In computing the compensation to be paid to any employee who, before the accident for which compensation is claimed, had sustained an injury resulting in the loss of use of any body member (including hand, arm, thumb or fingers, leg, foot, toes, etc.), such loss of use will be deducted from any award made for the subsequent injury.
Iowa	
Kentucky	
Nevada	If there is a previous disability, as the loss of one eye, one hand, one foot or any other previous permanent disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury. But the deduction for a previous award for permanent partial disability must be made in a reasonable manner and must not be more than the total amount which was paid for the previous award for permanent partial disability.
New Mexico	
Ohio	<p>If an employee was injured or suffered a disease while actively serving in the Armed Forces during a period of war as defined in the "Veterans' Pension and Readjustment Assistance Act of 1967," or between May 1, 1940 and December 7, 1941, and then suffers a workplace injury or occupational disease, the commission can apportion the compensation. Compensation attributable to the service injury is payable out of the statutory surplus fund and is not merit-rated or treated as part of the employer's accident or occupational disease experience. Self-insured employers can be reimbursed from the surplus fund for compensation attributable to the service injury.</p> <p>If a handicapped employee is injured, disabled, or dies as the result of a compensable injury or occupational disease and the administrator awards compensation and it appears to the satisfaction of the administrator that the injury, occupational disease, or death would not have occurred but for the preexisting physical or mental impairment, all compensation and benefits payable on account of the disability or death will be paid from the surplus Fund. On the other hand, if the administrator finds that the injury or occupational disease would have been sustained or suffered without regard to the employees' preexisting impairment but that the resulting disability or death was caused at least in part through aggravation of the employees' disability, the administrator will determine in manner that is equitable and reasonable and based on the medical evidence the amount of disability or proportion of the cost of the death award that is attributable to the employees' preexisting disability and that amount will be charged to the statutory surplus fund.</p>
South Carolina	If an employee has a permanent disability or has sustained a permanent injury in a previous job, other than that in which the employee receives a subsequent permanent injury by accident, the employee will be entitled to compensation only for the degree of disability which would have resulted from the later accident if the earlier disability or injury had not existed. Exception: The employee may receive further benefits as provided by the second injury fund if the subsequent injury qualifies.
Tennessee	If an employee has previously sustained a permanent physical disability from any cause or origin and becomes permanently and totally disabled through a subsequent injury,

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TABLE 5

SELECTED JURISDICTIONS AND FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

Workers' Compensation Provisions: Pre-Existing Conditions

Jurisdiction	Statutory Provisions Concerning Pre-Existing Conditions
Texas	<p data-bbox="254 277 2018 396">the employee is entitled to compensation from the employer or insurer only for the disability that would have resulted from the subsequent injury. The previous injury is not considered in estimating the compensation to which the employee may be entitled from the employer or insurer. However, in addition to compensation for the subsequent injury and after completion of the payments for that injury, the employee will be paid the remainder of the compensation that would be due for the permanent total disability out of the second injury fund.</p> <p data-bbox="254 415 2018 505">If a subsequent compensable injury, together with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund will compensate the employee for the remainder of the lifetime income benefits to which the employee was entitled.</p>
Washington	<p data-bbox="254 521 2018 578">If an injured employee receives a subsequent injury that results in permanent total disability, the employee will receive the pension to which the employee would be entitled, notwithstanding the payment of a lump sum for the prior injury.</p> <p data-bbox="254 613 2018 701">If it is determined that an injured worker had, at the time of injury, a preexisting disease and that the disease delays or prevents complete recovery from the injury, it must be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and the extent of permanent partial disability that the injury would have caused were it not for the disease, and compensation will be awarded only for that portion.</p>

NEC Task 2-1  
 TABLE 6  
 SELECTED JURISDICTIONS  
 Workers' Compensation Provisions: Offsets

Jurisdiction	Statutory Offset Provisions
California	<p>Section 4753 - Additional compensation for subsequent injuries shall be reduced by any monetary payments from any source, except pension or service-connected disability which was incurred in the U.S. armed forces.</p> <p>Section 4905 - Permits liens to be made against temporary total disability indemnity for any unemployment compensation disability benefits being received.</p>
Colorado	<p>Section 8-42-103 - Death benefits are reduced by 100% of the social security death benefit. In disability cases, the reduction is by ½ of the social security benefits. The law eliminates the offset of permanent total disability benefits against private pension plans.</p>
Idaho	
Illinois	
Iowa	
Kentucky	<p>Section 342.730 - If an injury or last exposure occurs before an employee's 65<sup>th</sup> birthday, any income benefits awarded must be reduced by 10% beginning at age 65, and by 10% each year thereafter until and including age 70. Income benefits are not reduced beyond the employee's 70<sup>th</sup> birthday.</p> <p>Section 342.730(5) - All income benefits shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan, which extends income benefits for the same disability covered by the Workers' Compensation Act, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits.</p>
Nevada	<p>Section 616.6285 - An employee receiving benefits for temporary total, permanent partial, or permanent total disability must have that compensation reduced by the amount of the federal benefits received under social security. After a reduction has been established, no further reduction may be made because of an increase in federal benefits.</p>
New Mexico	<p>Section 52-1-70 - Offsets unemployment compensation benefits against total disability benefits. If a worker is concurrently entitled to both types of benefits, the unemployment compensation benefits shall be primary, and total disability benefits shall be supplemental only, and the sum of the two benefits shall not exceed the amount of total disability benefits otherwise payable.</p>
Ohio	<p>Section 5123.56 - Applies an offset against temporary total disability payments in the event of concurrent and duplicative benefits under an employer funded nonoccupational benefits plan.</p> <p>Section 4123.56 (D) - If the employee is also receiving social security retirement benefits, the weekly benefit amount that the employee is entitled to receive cannot exceed 66 2/3% of the state's average weekly wage.</p>
South Carolina	<p>Section 42-7-67 (A) &amp; (C) - Compensation for an injury or death of a member of the State National Guard will be reduced by the amount of any Federal benefit payments; however, if the state benefits are greater than the Federal benefits due, the member may elect to receive the state benefits and thereby not be subject to any offset of benefit payments.</p>
Tennessee	<p>Section 50-6-114 (B) - Any employer may offset from compensation benefits any payment made to an employee under an employer funded disability plan for the same injury, provided that the disability plan permits such an offset. Such offset may not result in the employee receiving less than the employee would otherwise receive under the Workers' Compensation Act.</p>
Texas	
Washington	<p>Section 51.32 - Reduces temporary and permanent total disability benefits to allow an offset for Social Security retirement benefits under the Federal OASDI, in a manner similar to Section 51.32.220.</p> <p>Section 51.32.220 - Reduces temporary and permanent total disability benefits for persons under age 65 by an amount equal to the benefits payable under Federal OASDI,</p>

NEC Task 2-1  
TABLE 6  
SELECTED JURISDICTIONS  
Workers' Compensation Provisions: Offsets

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Jurisdiction	Statutory Offset Provisions
	under certain conditions. Section 51.32.225 - Workers' compensation total disability benefits to persons under the age of 65 are reduced by the amount that combined with social security benefits exceeds 80% of the employee's AWW.

NEC Task 2-1  
 TABLE 7  
 SELECTED JURISDICTIONS and FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)  
 Workers' Compensation Provisions: Appeals

Jurisdiction	(1) Time for Appeal	(2) Court for Appeals	(3) Appeals Process and Procedure
FECA	90 days to 1 year	Employees Compensation Appeal Board	application for review - there is no court appeal - Board has the authority to make final decision on appeals
California	45 days	Supreme Court or District Court of Appeals	Writ of Review
Colorado	20 days 15 days	Court of Appeals Supreme Court	Court of Appeals' review any decision of the Industrial Claims Appeals Office writ of certiorari; courts will not alter factual findings which are supported by substantial evidence
Idaho	42 days	Supreme Court	notice of appeal
Illinois	20 days 30 days	Circuit Court Appellate Court Supreme Court	proceeding for review  as prescribed by court (jurisdiction discretionary)
Iowa	30 days 20 days	District Court Supreme Court	petition for judicial review as in civil actions
Kentucky	30 days	Workers' Compensation Board Court of Appeals Supreme Court	notice of appeal as in civil actions
Nevada	30 days	District Court	petition for judicial review
New Mexico	30 days	Court of Appeals	as in civil actions
Ohio	60 days	Court of Common Pleas	notice of appeal and petition by claimant or employer
	no provision	Supreme Court	
South Carolina	30 days	Court of Common Pleas	as in civil actions
Tennessee	10 days	Circuit Court	as in civil actions
	no provision	Supreme Court	writ of error
Texas	40 days	Court of county where employee resided at time of injury or death and court of county where employee resided on the date disability began or any county agreed to by the parties for an occupational disease.	appeal decision
Washington	60 days	Superior Court	notice of appeal

30 days

further appeal

as in civil actions

**Sources for Tables 1 through 7:**

1. State Workers' Compensation Laws, U.S. Department of Labor (January 1999)
2. State Workers' Compensation Administrative Profiles, U.S. Department of Labor (January 1999)
3. Analysis of Workers' Compensation Laws, U.S. Chamber of Commerce (1998)
4. Survey of Workers' Compensation Laws, Alliance of American Insurers (1997-1998)
5. Workers' Compensation Business Management Guide, CCH Incorporated (with 1999 updates)
6. Managed Care and Medical Cost Containment in Workers' Compensation, A National Inventory, 1998 - 1999, Workers' Compensation Research Institute
7. Permanent Partial Disability Benefits: Interstate Differences from the Workers' Compensation Research Institute (1999)

Appendix B

Workers' Compensation Transmittal Letter and Questionnaire

November 15, 1999

Dear Worker:

In July, the Department of Energy (DOE) proposed a program which, if enacted into law by Congress, would provide compensation benefits to DOE contractor workers with certain occupational diseases, such as beryllium disease. This proposed program would give these workers access to the same type of benefits that are now available to Federal employees. Because we know that exposure to other toxic and radioactive material may contribute to occupational illness, we have started collecting additional information on DOE work-related exposures and illnesses, and on the experiences of workers who have occupational illnesses with existing workers' compensation programs.

We need your help to collect this information. We would like to hear *your* stories about any work-related illnesses -- including beryllium disease -- as well as experiences you have had with your state's workers' compensation system. *Your* stories -- in your own words -- will help us know what DOE contractor workers go through in trying to obtain benefits. We need this kind of input to evaluate whether the proposed new compensation program for workers with beryllium disease should ultimately be expanded to workers with other illnesses.

*This is where you can help.* You can either call us toll free or fill out the attached questionnaire and mail it to us. Either way, you do not have to identify yourself; you can provide your information to us without giving your name. If you'd like to call, please telephone us at 1-877-447-9756 and tell us your experiences. You can call from 7:00 am to 7:00 pm (Eastern Standard Time), Monday through Friday, from November 15 to December 20, 1999. If you'd prefer to use the questionnaire, simply fill out the attached form and return it to us in the stamped envelope provided.

We want to hear from you about *your* experiences. Please call or send in the questionnaire before December 20, 1999, as we are hoping to collect this valuable information as quickly as possible.

Thank you for your help.

Sincerely,

/s/

Paul J. Seligman, M.D., M.P.H.  
Deputy Assistant Secretary  
Environment, Safety and Health

Enclosure

**WORKERS' COMPENSATION QUESTIONNAIRE**  
TO BE TREATED IN A CONFIDENTIAL MANNER  
USE IS RESTRICTED

*IF YOU NEED MORE SPACE TO ANSWER THE QUESTIONS, USE THE LAST PAGE PLEASE.*

**QUESTIONS RELATED TO ILLNESS AND EXPOSURE:**

1. AT WHICH DOE FACILITY DID/DO YOU WORK? \_\_\_\_\_

2. NUMBER OF YEARS EMPLOYED AT DOE: \_\_\_\_\_

3. OCCUPATION AT TIME OF EXPOSURE: \_\_\_\_\_

4. EMPLOYER AT TIME OF EXPOSURE: \_\_\_\_\_

5. DO YOU NOW HAVE OR HAVE YOU EVER HAD AN ILLNESS YOU BELIEVE TO BE RELATED TO YOUR WORK AT A DOE FACILITY?     yes     no (If no, questionnaire is complete)

5a. IF YES, PLEASE DESCRIBE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. WHAT YEAR DID THIS ILLNESS BEGIN? \_\_\_\_\_ ARE YOU STILL ILL?     yes     no

7. HAVE YOU BEEN SEEN BY A DOCTOR FOR THIS ILLNESS?  yes     no

7a. IF YES:

WHAT TYPE OF DOCTOR DID YOU SEE?     Family Doctor     Occupational Medicine Doctor  
 Specialist Doctor     Other type of Doctor, please describe: \_\_\_\_\_

WHAT WERE THE DOCTOR'S FINDINGS? \_\_\_\_\_

\_\_\_\_\_

7b. IF YOU HAVE NOT SEEN A DOCTOR, WHY NOT? \_\_\_\_\_

\_\_\_\_\_

8. WHAT DO YOU THINK YOU WERE EXPOSED TO THAT CAUSED THIS ILLNESS? (Name the Substances, If Known, And Tell Us How You Were Exposed) \_\_\_\_\_

\_\_\_\_\_

9. DO YOU STILL WORK AT THE SAME JOB WHERE YOU WERE EXPOSED?  yes     no

9a. IF NO: WHY NOT? \_\_\_\_\_

\_\_\_\_\_

**QUESTIONS RELATED TO WORKERS' COMPENSATION:**

10. HAVE YOU FILED FOR STATE WORKERS' COMPENSATION FOR THIS CONDITION?  yes  no

10a. IF YES: WHAT YEAR DID YOU FILE AND IN WHAT STATE? \_\_\_\_\_

11. DID YOU USE OR NEED ASSISTANCE IN FILING YOUR CLAIM?  yes  no

11a. IF YES: WHERE DID YOU GO FOR HELP?  UNION  CO-WORKER  
 FAMILY MEMBER OR FRIEND  ATTORNEY  HEALTH PROVIDER  
 STATE AGENCY  OTHER, Please describe: \_\_\_\_\_

12. HAVE YOU RECEIVED ANY BENEFITS?  yes  no

12a. IF YES: WHAT KIND OF BENEFITS HAVE YOU RECEIVED OR ARE YOU RECEIVING NOW AND FOR HOW LONG? \_\_\_\_\_

12b. WERE THESE BENEFITS ADEQUATE?  yes  no Please explain your answer. \_\_\_\_\_

13. IF YOU WERE DENIED BENEFITS, WHAT WAS THE REASON? \_\_\_\_\_

14. IF YOU DID NOT FILE FOR WORKERS' COMPENSATION, PLEASE TELL US WHY \_\_\_\_\_

***QUESTIONNAIRE CONTINUES ON THE NEXT PAGE***



## Appendix C

### Input From Public Meetings, Toll-Free Phone Line, and Questionnaire Survey

#### I. Questionnaire Survey

Beginning in August 1999, the Department of Energy initiated a number of outreach efforts to learn more about work-related health concerns from its current and former contractor workforce and the experiences with workers' compensation systems. DOE's Assistant Secretary for Environment, Safety and Health, held a series of public meetings in the communities surrounding current and former DOE facilities associated with nuclear weapons production. The purpose of these meetings was to seek direct input from workers regarding their health concerns and experiences with filing for workers' compensation for these health problems. At all sites, in addition to the public meetings, several separate meetings were held with small groups of workers and their families.

The following is a listing of the dates, location and attendance of these public meetings:

<u>Date</u>	<u>Location</u>	<u># Attended</u>	<u># Testified</u>
8/1/99	Paducah	200	20
9/16-17/99	Paducah	250	20
10/29-30/99	Portsmouth	250	50
12/8-9/99	Oak Ridge	575	65
12/15-16/99	Rocky Flats	275	50
1/6/00	Burlington	150	35
2/3-4/00	Hanford	600	50
2/25/00	Nevada Test Site	275	63
3/18/00	Los Alamos	475	45

Concerns raised regarding occupational illnesses potentially related to working at DOE facilities and concerns regarding workers' compensation raised at many of these meetings can be found at: <http://www.eh.doe.gov/benefits/meetings/meetings.html>

## II. Toll-Free Phone Line and Questionnaires

In August 1999, DOE established a toll-free phone line for workers to call in to ask questions and to relay any health concerns. As of March 15, 2000, the DOE had received 1,398 calls.

To assist in obtaining input for this report, a questionnaire was distributed at the public meetings mentioned above and by labor unions at these sites asking DOE employees about health concerns and their experience with workers' compensation systems (Appendix B). Workers were given the option of completing the questionnaire over the telephone using the toll-free phone line. As of March 15, 2000, 1562 questionnaires had been completed. Among those who answered the questions of the questionnaire, 1,068 (68%) affirmatively to the question, "Do you now have or have you ever had an illness you believe to be related to your work at a DOE facility?" Many respondents reported multiple illnesses, including:

<u>Type of Illness</u>	<u># (%)</u>
Cancer	619 (45%)
Beryllium	42 ( 3%)
Lung Disease (not cancer)	100 ( 7%)
Asbestosis	54 ( 4%)
Reproductive (not cancer)	8 ( 1%)
<u>Other</u>	<u>544 (40%)</u>
TOTAL	1367

Workers listed a wide range of potential hazards in response to the question, "What do you think you were exposed to that caused this illness?" The table below lists the hazards and the number of respondents who indicated that the material caused their illness. Many respondents reported multiple exposures.

### METALS

Arsenic	2
Beryllium	181
Chromium	2
Lead	6
Lithium	4
Mercury	34
Nickel (welding)	14
Stainless steel	2
Titanium	1
Zinc	1
"Heavy metals" (unspecified)	32

## RADIONUCLIDES

Cesium	4
Iodine	2
Plutonium	106
Radiation (unspecified)	246
Strontium	5
Technetium	176
Thorium	7
Transuranics (unspecified)	12
Tritium	11
Uranium	142
Uranium fluoride (green salt)	15
Uranium oxide (yellow powder)	5
Uranium hexafluoride	30

## GASES/PARTICLES

Asbestos	141
Carbon monoxide	1
Chlorine	5
Hydrogen fluoride/fluorine	27
Freon	5
Hydrogen chloride	4
Radon gas	1
Silica	9

## CHEMICALS/CHLORINATED HYDROCARBONS

Acids (unspecified)	4
Benzene	2
Carbon tetrachloride	3
Chemicals (unspecified)	69
Cyanide	4
Gunpowder/TNT/explosives	12
MOCA	1
PCBs	9
Perchloroethylene	3
Solvents (unspecified)	16
Toluene	2
Toluene diisocyanate (TDI)	1
Trichloroethylene (TCE)	18

Of the 780 individuals who had reported having seen a doctor for what they believed to be an occupational illness, 86 (11%) indicated that they had applied for workers' compensation, and 38 (5%) had received a physician's diagnosis of an occupational illness.

Among the 86 individuals who applied for workers' compensation, 29 reported receiving benefits. Of the 38 who had received a physician's diagnosis of an occupational illness, 9 applied for and 6 received workers' compensation benefits.

### III. DOE Contractor Worker Experiences with State Workers' Compensation Systems

Many workers chose to detail their experiences with state workers' compensation systems either as part of their response to the questionnaire, in their calls to DOE's toll-free number, or at the time of the public meetings held by the Department. The patterns of workers' reported experience is summarized in this appendix along with several actual "stories" which illustrate some of the concerns that have been raised.

#### A. Workers Can't Establish the "Work-Relatedness" of their Illness

Many workers did not file workers' compensation claims because they did not believe that they could successfully establish that their illness was caused by exposures that they received while working at a DOE facility. One of the reasons cited is their inability to accurately or adequately document the nature and level of their exposures, sometimes despite their knowledge of the processes and substances with which they worked. Further, many workers who have been diagnosed with an illness, particularly a cancer, received no information from their doctors as to whether the worker's illness may have been related to workplace exposure. In some cases, the topic simply did not come up. In others, doctors did not have an adequate work exposure history to make a definitive linkage to an occupational cause. In still others, workers believed that doctors were reticent to identify an occupational cause because they fear repercussions from the workers' employer.

#### B. Workers Feel "Outgunned"

Many workers stated that they could not find or could not afford legal representation to support them in filing workers' compensation claims and handling the evidentiary nature of the claims adjudication process. In contrast, workers felt that their employer and/or its insurance company was ready to spend thousands of dollars defending themselves against worker claims, including the procurement of expert witnesses to support their employers' case. Without the resources to establish "a level playing field," many workers choose not to file workers' compensation claims.

#### C. Problems With Workers' Compensation Systems

Many workers have problems with the statute of limitations provisions of state workers' compensation laws. Most of these laws are designed to address occupational injuries rather long-latency illnesses such as cancer. By the time a cancer has been diagnosed, it may be long after the statute of limitations for filing a compensation claim has expired. Further, some workers indicated that they believe that state compensation laws are in a continual state of flux

and that the nature of available coverage keeps changing has served as a deterrent to filing their claims.

Many workers filed claims under their employers' long-term disability insurance programs rather than to file a workers' compensation claim. Using disability insurance requires that the worker demonstrate that he or she is unable to work, but does not involve establishing that the disability is work-related (in fact, the work-relatedness of the disabling condition is not a criteria for eligibility for benefits under such programs, e.g., the worker was in a car accident). Disability benefit payments are predicated on the assumption that the worker will recover and return to work. Initially, it generally provides higher benefits than those offered by state workers compensation, such as 100% of wage replacement, than what a worker would receive under workers' compensation. For a work-related injury that involves a limited period of disability, where full recovery occurs, and where no future health consequences occur from the injury, using disability insurance may be an "acceptable" means of providing a benefit to an injured worker, shifting the cost from the workers' compensation system to the disability insurance policy.

However, for a condition that may recur or for which there are potential long-term or future health sequelae, accepting disability insurance benefits may be problematic. First of all, disability insurance is generally of limited duration. By accepting disability benefits, the worker is unlikely to file for workers' compensation. Statutes of limitations for filing workers' compensation claims will begin in most states at least by the time of the initial diagnosis of the illness. Thus, if a worker accepts disability benefits and does not file for workers' compensation, he may preclude his ability to successfully filing for workers' compensation benefits in the future (e.g., upon retirement).