

BUSINESS OF HEALTH

At a loss

Injured workers in Massachusetts are eligible for a fraction of the maximum payouts allowed in other states – and the business community has few incentives to change that

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If you're a worker in Massachusetts who has his or her arm severed off while on the job, the average maximum payout you can receive in direct disability pay for that injury is \$52,245. But if you worked that same job, and suffered that same injury, across the border in New Hampshire, you'd receive more than five times as much, according to a 2015 investigation by the nonprofit journalism outfit ProPublica and National Public Radio. Across the country in Nevada, you'd get 16 times as much. In fact, there's only one state in the country – Alabama – where you'd get a smaller payout for losing your arm than you would here in the Bay State.

The state of workers' compensation in Massachusetts isn't quite as dire as that figure suggests, since injured employees receive a regular payment in addition to the so-called "loss of function" award. Still, despite its progressive reputation, healthy local economy and massive building boom, the Bay State ranks no better than the middle of the pack nationwide in what businesses pay out to injured workers under state law, according to the attorneys who represent employees injured on the job.

"It doesn't seem to be a very balanced scheme ... not only in Massachusetts, but nationwide," said Gerard Carney, a Boston lawyer who represents injured workers.

Benefits were significantly more favorable for Massachusetts workers before former Gov. William Weld pushed through major reforms in the early 1990s. That effort was itself a response to changes in benefits implemented during the Michael Dukakis administration in the 1980s. The Dukakis-era reforms helped injured workers receive benefits more quickly and improved the rehabilitation services on offer, but led to a higher volume of cases than anticipated, a 1989 KPMG report found.

Workers' compensation insurance costs for employers more than doubled from 1988 to 1991, according to the Associated Industries of Massachusetts.

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— ALAN PIERCE,
Salem-based attorney

With the state mired in a recession, Weld pushed through legislation in 1991 that resulted in new limits on benefits, including cutting the length of time that injured workers can receive some benefits from five to three years. At the same time, the average rates for workers' comp insurance plummeted. In the years since, employers have held up Weld's reform as a smashing success, saying it has kept businesses and jobs in-state.

Workers' comp lawyers, unsurprisingly, feel differently. "Those changes represented rather drastic cuts in the amount of benefits that injured workers receive," Salem-based attorney Alan Pierce said. "I don't usually like to use the word 'reform.' It made something better for business, but it made something worse for injured workers."

Low-paid workers are hurt most by the way the Massachusetts system is currently set up. While employees in many other states receive larger loss-of-function awards for severe injuries, the compensation of Massachusetts workers is more dependent on their wages. If workers are incapacitated for six or more days, they can receive 60 percent of their average weekly wage for up to three years. In other states, workers receive two-thirds of previous wages. Considering that many workers who get hurt were living paycheck-to-paycheck before their injury, that extra 6-to-7 percent in lost wages can make a big difference, Pierce said.

Since the early 1990s, there have been few, if any, major changes to workers' compensation laws in Massachusetts. For example, recent efforts on Beacon Hill to increase disability pay have gone nowhere. More limited legislation to expand compensation for scarring, which is currently only covered if it is to the face, neck or hands, passed the Senate but did not advance from the House.

"The goal is to always try to achieve a balanced system of fair, affordable premiums in exchange for satisfactory benefits delivered in a timely and efficient manner," Pierce said. "We right now are out of balance, but not grossly out of balance."



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