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# Annual Report on the Status of the Maine Workers' Compensation System, 1997

Maine Workers' Compensation Board

Maine Bureau of Labor Standards

Maine Bureau of Insurance

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Annotated  
Re,



# **Annual Report on the Status of the Maine Workers' Compensation System**

Submitted to the  
118th Legislature

February 1997

Brian K. Atchinson  
Superintendent  
Bureau of Insurance  
Dept. of Professional  
& Financial Regulation

Paul Dionne  
Executive Director  
Workers' Compensation  
Board

Alan C. Hinsey  
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Bureau of Labor Standards  
Department of Labor

Angus S. King, Jr.  
*Governor*



Valerie R. Landry  
*Commissioner*

Alan C. Hinsey  
*Director*

## Department of Labor

February 3, 1997

The Honorable Angus King  
Governor  
1 State House Station  
Augusta Maine 04333-0001

The Honorable Elizabeth Mitchell  
Speaker of the House  
2 State House Station  
Augusta, Maine 04333-0003

The Honorable Mark Lawrence  
President of the Senate  
3 State House Station  
Augusta, Maine 04333-0003

Dear Governor King, Representative Mitchell and Senator Lawrence:

We are pleased to submit to the Governor and the 118th Legislature, the Annual Report on the Status of the Maine Workers' Compensation System as required by Title 39-A, Section 358(2). These three individual reports are from the agencies most involved with the Workers' Compensation system. They summarize results of data collection and profile the current status of the Workers' Compensation system, including costs, administration, adequacy and timeliness of benefits and an evaluation of the entire system, including a summary of occupational safety and health in Maine.

Sincerely,

A handwritten signature in dark ink, appearing to read "BK Atchinson".

Brian K. Atchinson  
Superintendent  
Bureau of Insurance  
Dept. of Professional  
& Financial Regulation

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul R. Dionne".

Paul Dionne  
Executive Director  
Workers' Compensation  
Board

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan C. Hinsey".

Alan C. Hinsey  
Director  
Bureau of Labor Standards  
Department of Labor

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## Executive Summary

Title 39-A Section 358(2) provides for the Director of the Bureau of Labor Standards, the Superintendent of Insurance and the Executive Director of the Workers' Compensation Board to submit an annual report to the Governor and the Legislature on the results of data collection and a profile of the workers' compensation system, including costs, administration, adequacy and timeliness of benefits and evaluation of the entire workers' compensation system. This document is a compilation of reports from each of the three agencies involved in the collection of data and other aspects of Maine's workers' compensation system.

There have been dramatic changes in Maine's Workers' Compensation system since January 1, 1993. The Blue Ribbon Commission developed legislation enacted in 1992 repealed and replaced nearly all aspects of the workers' compensation system, including the benefits, administration and insurance provisions of the law. The benefit structure was revised to place costs in line with those of other states. The administration of the system was transferred to a labor management board to give oversight to those two groups with direct interest in the effective operation of the system. The hearings and appeal procedures and personnel were changed. On the insurance side rates were deregulated and a newly created assessable mutual insurer, Maine Employers Mutual Insurance Company, replaced the former and controversial residual market facility. Finally, data collection and monitoring was required to be sure that the changes produced the intended results of a fair, efficient and less costly workers' compensation system.

This report discusses the major changes that have occurred since the 1992 legislation became effective. The number of disabling cases, which had increased by approximately 70% from 1977 to 1990, decreased by nearly 50% from 1990 to 1995. This reduction has contributed to a substantial reduction in workers' compensation indemnity benefits and a resulting reduction in workers' compensation costs to insured and self-insured employers. Some reduction may be attributable to reporting lapses for injuries where the number of days of missed work is less than the seven day waiting period needed to qualify for wage loss benefits. However, the reduction of disabling cases also appears to be the result of safety programs, return to work and alternative work programs implemented by insurers and employers, as the number of cases with days of restricted work activity have increased as the number of cases with days away from work have decreased. Maine Employers Mutual Insurance Company deserves credit and appreciation for its activities in promoting safety and return to work practices statewide. Despite the reduction, Maine's incident rate of lost workday cases, adjusted to a comparable industry mix, remains well above the United States incidence rate. Data collected by the Board indicates that young workers and newly hired workers continue to be more likely to be injured, suggesting that additional training and safety efforts should be focused on these areas, especially as the economy improves and young and new workers will constitute an increasing portion of the labor force.

Initial benefit payment information is reported to the Board. An analysis of the data indicates that in recent years for non-litigated cases a higher percentage of claims' initial payments are made within 14 days or less and that for a smaller percentage of cases initial payments are made between 31 and 60 days from the date of incapacity.

A major change in the 1992 Blue Ribbon Commission legislation was the replacement of the informal conferences with a "troubleshooting" and mediation informal dispute resolution system. Data indicates that 70% of the cases with a dispute are resolved without a formal hearing. Of the remaining cases not resolved, about 6% of all disputed cases do not proceed to the formal level. The number of cases assigned to formal hearings is less than half of the level prior to the 1992 law change.

The Board adopted a worker advocate pilot project to assist injured workers at the mediation process, and as of October 1, 1996 the program was expanded to all regional offices. In 1996 the Board has also, in part, implemented the Independent Medical Examiner process.

Technological advances have affected the workers' compensation data collection process. A major insurer and a major agency are submitting first reports of injury electronically, and the Board is actively developing EDI (Electronic Data Interchange) procedures.

The current state of the data collection process, particularly benefit cost data collected by the Workers' Compensation Board, does not allow for as thorough an analysis of the workers' compensation system as contemplated by the Act. Data quality problems prevent an evaluation as to the costs, utilization, performance, adequacy and timeliness of benefits, and long term post-injury economic status of injured workers. This data is important to policy makers in order to make informed decisions regarding the functioning of current law.

The Board has made significant progress in collecting data regarding dispute resolution. Information exists in electronic format to answer many questions about Troubleshooting, Mediation, and Formal Hearings.

With respect to the insurance market, the replacement of the old "assigned risk" plan with a domestic employer mutual insurer, the deregulation of rates, and revisions to the benefits and administration has resulted in return to a competitive workers' compensation insurance market. The number of insurers with rates on file has grown from two in 1992 to approximately 90 today. Employers have premium reduction options, such as schedule rating, multiple rate tiers and dividend and retrospectively rated plans. Effective January 1, 1997, the Bureau has approved an advisory loss cost reduction of 12.5%, the fourth consecutive advisory loss cost reduction, totaling 34.4% over four years.

Self-insurance continues to be a significant part of the Maine workers' compensation market, representing approximately 45% of the estimated premium. The growth in self-insurance has slowed and some employers have returned to the commercial market. Most self-insureds have directly experienced the savings resulting from the 1992 law change as well as from safety, claims management and return to work programs.

The report that follows provides details on the items summarized plus additional information on other aspects of the workers' compensation system. Many of the changes implemented by the 1992 legislation have taken time to become fully operational. Future data collection and monitoring efforts will provide the necessary information to evaluate the consequences of these changes.

## **I. INTRODUCTION**

Title 39-A, Section 358, ¶2 calls for the Director of the Bureau of Labor Standards, the Superintendent of the Bureau of Insurance, and the Executive Director of the Workers' Compensation Board to meet at least three times a year. These meetings are to review data collection activities concerning the workers' compensation system. The section also calls for an annual report to the Governor and the Legislature about the results of data collection and to profile the workers' compensation system.

The following describes how available data originates and presents summary information as required by Title 39-A, Section 358, ¶2.

## **II. HISTORICAL BACKGROUND**

Prior to workers' compensation, injured employees could sue if hurt at work. However, employers could defend themselves by asserting that the accident was not their fault. They could assert legal defenses of assumption of risk by the employee, negligence by the employee, and negligence by a co-worker.

Employees, if they prevailed in court, were eligible to receive damages for pain and suffering. However, recoveries, especially for minor injuries, were rare. In the legal climate of the late nineteenth and early twentieth centuries, employees faced a difficult burden of proof.

States enacted workers' compensation laws with two purposes in mind. One was to routinely provide benefits for wage loss and medical treatment without requiring legal action. The other, less recognized purpose was to exempt employers from damages for pain and suffering, the most costly aspect of many awards in personal injury lawsuits.



Maine statute originated in 1916. Other states enacted similar laws at about this time. Workers' compensation predates large scale government programs like social security, Medicare, or unemployment insurance. For these modern governmental programs, a public entity collects taxes, administers claims, and writes checks. Under workers' compensation, insurance or self-insurance finances the system. Private entities, rather than a governmental agency, administer claims and pay benefits.

Although the system was "no fault," disputes still occurred about whether an injury was work-related and the degree of disability. In Maine and elsewhere, state agencies often functioned as a quasi-judicial alternative to the court system. Administrators maintained data to process disputes rather than administer benefits.

Workers' compensation was a stable system from its inception to approximately the 1970's. Then, a bi-partisan consensus developed that benefits should be raised. In the late 1970's, following national trends, Maine's Legislature passed laws that raised benefit levels and increased the number of employers covered by the system.

Also, during this period injuries such as back strain or carpal tunnel syndrome became recognized as work-related. This brought more ambiguous injuries with longer periods of disability into the system. A simple fracture may heal in a few months with no residual effects. Work-related back problems or carpal tunnel syndrome can create medical issues and disability that last for years and years. The relationship of the injury and the current disability to employment is not always clear. Disputes are common.

The combination of higher benefits and more complex injuries increased both the system's expenditures and the potential for disputes. Although a bi-partisan consensus supported these

changes, few, at the time, appreciated how much they would raise costs.

By the early-1980's, however, it had become apparent. For approximately the next decade, workers' compensation was a controversial political issue. Although reforms were to reduce costs, they also expanded the operations of the state agency of the time, the Workers' Compensation Commission, the predecessor to the Workers' Compensation Board. The agency grew in the early 1980's from 35 employees to about 110.

Part of this growth resulted from adding a less formal step to the dispute resolution process. It was believed this would resolve many less serious claims problems without the need for litigation. Implementing this involved establishing regional offices in Portland, Lewiston, Augusta, Bangor, and Caribou. It was also believed, rightly or wrongly, that more public monitoring of private claims handling would reduce disputes and lower costs. That, too, contributed to the agency's growth.

These new operations expanded the data maintained by the State agency. However, the Workers' Compensation Board continues to have better information about dispute resolution, its core operation, than it does about costs and claims processing.

### **III. DESCRIPTION OF DATA COLLECTION ACTIVITIES AND ADMINISTRATIVE SUMMARY**

#### **A. Organization.**

Policy is established by an eight-member board having an equal number of employee and employer representatives. The Governor appoints these members from nominees submitted by the AFL-CIO and the Maine Chamber of Commerce and Industry or other bona fide organization or association of employers. These

appointments are subject to review by the Joint Standing Committee on State and Local Government with confirmation by the Senate.

The agency is administered by an Executive Director (during the summer of 1996 the Board appointed Paul R. Dionne whose appointment became effective on September 1, 1996). Regional Offices are located in Augusta, Bangor, Caribou, Lewiston, and Portland. The Central Office is in Augusta. Mediation and formal hearings are conducted at these and other offices. Some hearings are held at locations closer to the residence of the injured worker.

**B. Program.**

The Board exists to resolve disputes between employers and employees over work-related injuries since fair and effective resolution of disputes enhances Maine workplaces for all Maine's people. To ensure the efficient implementation of the Workers' Compensation Act, the Board is actively engaged in the promulgation of rules and regulations; the resolution of disputes through troubleshooting, mediation, and formal hearing; the monitoring of payments to injured workers; the monitoring and enforcement of insurance coverage; the supervision of medical protocols, utilization review, medical fee schedules, and enforcement guidelines; the implementation of an independent medical examiner system; the administration of a Vocational Rehabilitation Fund and vocational rehabilitation services; the predetermination of independent contractor applications; and the investigation and prosecution of complaints of misrepresentation, fraud, illegal conduct, and violations of the Act through its Abuse Investigation Unit.

**C. Initial Injury Reports.**

First Reports are filed for cases involving missed work or controverted medical only injuries. They contain the name and

address of the affected worker, the employer, the insurance carrier, a description of the incident, date of incapacity, and other information necessary for processing a claim.

Information from the First Report is electronically stored and used by the Workers' Compensation Board and the Bureau of Labor Standards, Technical Services Division. The Workers' Compensation Board uses the information to identify insurance coverage and to send a brief letter to the injured worker verifying the First Report. An Employee Pamphlet presenting basic material about the workers' compensation system is included with the letter. The Technical Services Division codes accident information from the First Reports and is the primary source of accident and safety analysis. Prior to the law changes of 1991, First Reports were required for non-controverted medical only injuries. The elimination of this requirement reduced the number of First Reports filed in 1992 and subsequent years.

The number of disabling injuries and illnesses, where one or more days of work is lost, has declined each year since 1991. It is difficult to determine the exact reasons for the decline, but certain factors should be cited, such as safety programs, return to work programs, and the change in the reporting system.

#### **First Reports, Disabling Cases, and Employment 1986-1995**

<b><u>Year</u></b>	<b><u>Total First Reports</u></b>	<b><u>Disabling Cases*</u></b>	<b><u>Average Non-Farm Wage and Salary Employment</u></b>
1986	67,872	24,336	477,400
1987	75,326	25,528	502,600
1988	78,958	26,431	527,500
1989	80,349	26,006	547,120
1990	75,155	26,693	539,250
1991	58,541	21,919	515,050
1992	24,298	19,418	513,570
1993	20,033	16,831	520,280
1994	19,231	16,016	533,420
1995	17,498	13,817	540,100

\*A disabling case is defined as an injury or illness resulting in one or more days away from work.

#### **D. Coverage Data.**

Payers file coverage information with the Board. This data is electronically maintained. It permits the Board to identify which insurance carrier or self-insured adjuster is assigned a particular claim. Employers not providing coverage are pursued by the Workers' Compensation Board's Abuse Investigation Unit.

#### **E. Initial Payment Data.**

Initial benefit information is reported to the Board on a Memorandum of Payment form. To verify correct payment, this preliminary information is later checked against another filing which establishes the worker's average weekly wage. The Memorandum of Payment also provides data to calculate the promptness of first payment, from the date of incapacity to the date of payment. This information is electronically recorded.

Timelines for first payments on injury years 1986 through 1996 are displayed on the following tables.

**Promptness of First Payment by Injury Year  
Non-litigated Cases  
Percent of First Payments by Interval**

<b><u>Injury Year</u></b>	<b><u>14 Days or Less</u></b>	<b><u>15 to 30</u></b>	<b><u>31 to 45</u></b>	<b><u>45 to 60</u></b>	<b><u>60 or More</u></b>	<b><u>Total</u></b>
1986	40%	32%	11%	5%	11%	100%
1987	36%	34%	12%	6%	13%	100%
1988	34%	34%	12%	6%	14%	100%
1989	34%	36%	12%	6%	12%	100%
1990	38%	33%	11%	6%	12%	100%
1991	43%	30%	10%	6%	11%	100%
1992	46%	30%	9%	5%	10%	100%
1993	39%	35%	10%	5%	11%	100%
1994	44%	32%	8%	4%	12%	100%
1995	49%	30%	8%	4%	10%	100%
1996	51%	29%	7%	4%	9%	100%

**F. Other Payment Data.**

Lump sum agreements are approved by a Board Hearing Officer. The amount and date of settlement is entered into the agency's computerized database.

The carrier/employer files other payment documents at case closure or at six-month intervals. These reports total costs for several categories of benefits. This data is also electronically stored.

These payment documents do not support Board operations or those of the employer/carrier. Consequently, there is no direct method to become aware of missing or inaccurate data.

**G. Electronic Data Interchange.**

Technological advances may in time improve the quality of financial data available to policy makers. Electronic transfer of data is becoming more and more feasible. Within a few years it may become possible for all payers to initiate a machine to machine transfer of summary financial data on individual claims from their computers to a central computerized data base.

The Workers' Compensation Board is actively developing so-called EDI (Electronic Data Interchange) procedures. Today, Maine Employers' Mutual Insurance Company and the Dunlap Agency submit coverage information and First Reports electronically. Other payers are developing this capacity.

**H. Dispute Resolution Data and Process Description.**

Between 1984 and 1992, an informal conference was required before litigation. At that conference, an adjudicator reviewed the case and advised both sides about the probable ruling based on

evidence available at the time. Agency staff, known as Employee Assistants, worked with injured employees.

The Workers' Compensation Act of 1992 changed the procedure. Troubleshooters and Mediators replaced the Employee Assistants, the goal being to resolve as many cases as possible without litigation.

When a dispute arises, a Troubleshooter contacts both sides in an attempt to resolve the problem. This is usually done by mail and phone. Approximately 50% of controversies are resolved at the Troubleshooting stage.

If a case is not resolved, it is referred to Mediation. This involves a face-to-face meeting between the parties and a Workers' Compensation Board Mediator. The process allows the parties to reach a voluntary resolution of the case through discussions and negotiations.

About 40% of cases referred to mediation are either resolved at or before mediation. This represents approximately 20% of the original disputes. Therefore, approximately 70% (50% at troubleshooting plus 20% at mediation) are resolved without requiring formal hearing.

Unresolved cases may proceed to formal hearing. The formal hearing process is quasi-judicial and is presided over by a Workers' Compensation Board Hearing Officer. Once the evidence is closed, the Hearing Officer will render a written decision on the case.

A Hearing Officer's decision is final. There is a discretionary appeal to the Supreme Court of Maine on matters of statutory interpretation.

Although approximately 30% of disputes are potentially subject to the formal hearing process, there is a drop-off of about 6%. Therefore, less than 23% of disputes reach the formal stage. A table displaying the outcome of disputes initiated in 1995 follows.

**Troubleshooting and Mediation**  
**Outcomes of 11,501 Injuries with Disputes Initiated in 1995**  
**All Injury Years**

	<u>Number</u>	<u>Percent</u>
<u>Troubleshooting</u>		
Resolved at Troubleshooting	5,848	51% (5,848/11,501)
Forwarded to Mediation	<u>5,653</u>	<u>49%</u> (5,653/11,501)
Injuries Through Troubleshooting	<u>11,501</u>	<u>100%</u>
<u>Mediation</u>		
Resolved Prior to Mediation	829	7% (829/11,501)
Resolved at Mediation	1,512	13% (1,512/11,501)
Not Resolved at Mediation	<u>3,312</u>	29% (3,312/11,501)
Subset of Injuries Through Mediation	<u>5,653</u>	<u>49%</u> (5,653/11,501)
<u>Post Mediation</u>		
Not Forwarded to the Formal Level	690	6% (690/11,501)
To Formal Hearing	<u>2,622</u>	<u>23%</u> (2,622/11,501)
Subset of Injuries Post Mediation	<u>3,312</u>	<u>29%</u> (3,312/11,501)

*Compare to other states?*

*2 months through system*

Parties initiate disputes at all three levels by filing documents called Petitions and Notices of Controversy. The Workers' Compensation Board uses its computer system to track these documents and associated First Report information through the dispute resolution process. The applications support scheduling and case tracking operations.

The following tables summarize administrative operations for each level. They use "Cases" as a unit of measure. That unit

*Monitoring would observe need for pamphlets & formalities.*



requires explanation because cases, claims, and injuries are often used interchangeably during conversations. For individual situations, often, they are the same. However, differences exist because employees sometimes have experienced more than one injury. Petitions may be filed on multiple dates of injury for such a person at the same time. The issues in question are interrelated.

The whole dispute or "Case" encompasses all the filings on all the injuries relating to one employee at one point in time. A case is the unit of work on someone's desk. However, it is not always the same thing as an injury. Mathematically, each case involves approximately 1.2 injuries.

1993 was a start-up year for the Troubleshooting step.

#### Troubleshooter Data

	<u># Cases To Trouble- shooting</u>	<u># Cases Disposed</u>	<u>Percent Resolved</u>	<u>Avg. # Days</u>	<u>Median # Days</u>
1993	12,625	8,995	65%	105	96
1994	12,060	13,142	52%	81	61
1995	9,740	10,698	54%	74	65
<u>1996</u>	<u>9,101</u>	<u>9,014</u>	<u>55%</u>	<u>70</u>	<u>60</u>

As of January 2, 1997, 2,039 cases were pending at Troubleshooting.

1993 was a start-up year for Mediators.

### Mediation Data Summary

	<u>Cases Assigned</u>	<u>Cases Disposed</u>	<u>Average Days at Mediation</u>	<u>Median Days at Mediation</u>
1993	3,773	2,285	N/A	N/A
1994	6,846	6,943	75	N/A
1995	5,370	5,866	82	63
1996	<u>5,068</u>	<u>4,759</u>	<u>80</u>	<u>58</u>

As of January 2, 1997, 1,258 cases were pending at Mediation.

### Number of Cases/Type of Disposition

	<u>Resolved* Prior to Mediation</u>	<u>Resolved at Mediation</u>	<u>Mediation Unsuccessful</u>	<u>Total</u>
1993	352	816	1,117	2,285
1994	1,147	1,999	3,797	6,943
1995	974	1,631	3,261	5,866
1996	<u>623</u>	<u>1,249</u>	<u>2,887</u>	<u>4,759</u>

### Percent Type of Disposition

	<u>Resolved Prior to Mediation*</u>	<u>Resolved at Mediation</u>	<u>Mediation Unsuccessful</u>	<u>Total</u>
1993	15%	36%	49%	100%
1994	17%	29%	55%	100%
1995	17%	28%	56%	100%
1996	<u>13%</u>	<u>26%</u>	<u>61%</u>	<u>100%</u>

\* Resolved prior to mediation means that the parties reach an agreement after the Troublesooter has forwarded the case to Mediation but before a meeting at the Workers' Compensation Board has been held.

## **I. Formal Hearing Data.**

Between 1988 and 1990, a computer had been used to maintain a record of petitions filed and disposed. However, a computer application to schedule and track cases through the process was not operational until late 1990.

Only the number of petitions to formal is available prior to 1993. They have been mathematically converted to the number of cases.

### **Petitions and Cases** **Assigned to Formal Hearing 1984-1996**

	<b><u>Petitions</u></b>	<b><u>Cases</u></b>
1984	5,968	3,226
1985	5,919	3,199
1986	7,471	4,038
1987	8,140	4,400
1988	11,030	5,962
1989	12,899	6,972
1990	14,759	7,978
1991	15,001	8,109
1992	12,072*	6,525*
1993	5,231	2,828
1994	5,570	3,011
1995	5,938	3,194
1996	<u>5,099</u>	<u>2,860</u>

\* In December, 1992, approximately 5,600 petitions were filed. In 1992, we had been receiving about 1,000 petitions a month. The additional 4,600 petitions (5,600 - 1,000) related to legal uncertainties created by the passage of legislation in November, 1992. The figures of 12,702 petitions and 6,525 cases exclude these 4,600 petitions to display what normal filings would have been in 1992.

The formal hearing process underwent a drastic transition in 1993. The former Commissioners were all replaced by ten new Hearing Officers. The timeliness and number of decisions in the initial year were low. The performance of Hearing Officers has

improved steadily to the point where more cases are being decided then enter the formal hearing system.

Administrative statistics on the formal hearing process are presented for 1994 through 1996.

**Cases Assigned and Disposed**

	<b><u>Assigned</u></b>	<b><u>Disposed*</u></b>
1994	3,011	2,569
1995	3,194	3,393
<u>1996</u>	<u>2,860</u>	<u>3,155</u>

\* Dispositions include Decisions, Dismissals, and Lump Sum Settlements.

The number of pending cases as of January 2, 1997 is 2,485 less than a year of cases assigned.

**J. Profile of the System - Disputes.**

A serious injury may create disability that persists for decades. Accordingly, the payment period may extend for decades. It is common, however, at some point in the claim cycle for the claim to be settled with a lump sum payment. It takes a period of years for actual costs of an injury to become known.

Most workers' compensation claims are simple and flow through the system smoothly. Many problems are resolved at troubleshooting and mediation. Costs and litigation are driven disproportionately by a relatively small number of serious, long-term injuries.

Data about such things as the number of First Reports or cases with disputes during a calendar year describe the agency's

annual workload. However, activity in one calendar year provides only partial insight into the system as a whole.

The following chart displays a distribution litigation initiated in 1995 by the underlying injury year.

**Cases to Formal 1995 by Year of Primary Injury**

<b><u>Year of Injury</u></b>	<b><u># of Cases</u></b>	<b><u>Percent</u></b>	<b><u>Cumulative Percent</u></b>
Pre-1980	48	1.6%	1.6%
1980	14	0.5%	2.0%
1981	24	0.8%	2.8%
1982	37	1.2%	4.0%
1983	33	1.1%	5.1%
1984	63	2.0%	7.1%
1985	65	2.1%	9.2%
1986	90	2.9%	12.1%
1987	130	4.2%	16.3%
1988	174	5.6%	22.0%
1989	227	7.4%	29.3%
1990	265	8.6%	37.9%
1991	279	9.0%	47.0%
1992	443	14.4%	<u>61.3%</u>
1993	456	14.8%	76.1%
1994	548	17.8%	93.9%
<u>1995</u>	<u>189</u>	<u>6.1%</u>	<u>100.0%</u>
<u>Total</u>	<u>3,085</u>	<u>100.0%</u>	

As may be seen, the tail extends backward for more than a decade. 61.3% of the cases initiated in 1995 related to injuries occurring before 1993.

A similar pattern exists for lump sum settlements.

**Injuries Lump Summed in 1995**  
**Distribution by Injury Year**

<u>Year of Injury</u>	<u># Lump Sum Settlements</u>	<u>Percent</u>	<u>Cumulative Percent</u>
Pre-1985	3	0.1%	0.1%
1985	67	2.9%	3.0%
1986	103	4.4%	7.4%
1987	140	6.0%	13.3%
1988	173	7.4%	20.7%
1989	250	10.7%	31.4%
1990	318	13.6%	44.9%
1991	344	14.7%	59.6%
1992	499	21.3%	80.9%
1993	300	12.8%	93.7%
1994	123	5.2%	98.9%
<u>1995</u>	<u>25</u>	<u>1.1%</u>	<u>100.0%</u>
<u>Total</u>	<u>2,345</u>	<u>100.0%</u>	

Nearly 81% of lump sum settlements occurring in 1995 were for pre-1993 injury dates.

**K. Statistical Summaries by Type of Coverage and Injury Year.**

The agency's database supports an analysis both by injury year and by the type of payer. Maine Employers' Mutual Insurance Company (MEMIC) was created by the 1992 reforms. It bears similarities to group self-insurance. It offers employers an alternative to private insurance and to the controversial assigned risk pool existing in 1992 and earlier years.

Between 1993 and 1996, MEMIC grew from 20% to 40% of coverage as measured by First Reports. Since 1994, MEMIC has made a higher percentage of routine initial benefit payments within 14 days. It has also disputed a lower percentage of First Reports at Troubleshooting, Mediation, and Formal Hearing.

**Distribution of First Reports by Type of Coverage**  
**Number and Percent of First Reports**  
**Injury Years 1993 through 1996 as of January 21, 1997**

<u>Type of Coverage</u>	<u>Injury Year 1993</u>		<u>Injury Year 1994</u>		<u>Injury Year 1995</u>		<u>Injury Year 1996</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Carriers	7,393	37%	2,952	15%	2,908	17%	3,176	20%
Self-insurance	8,568	43%	8,010	42%	6,835	39%	6,003	39%
MEMIC	<u>4,070</u>	<u>20%</u>	<u>8,260</u>	<u>43%</u>	<u>7,742</u>	<u>44%</u>	<u>6,021</u>	<u>41%</u>
Total	<u>20,031</u>	<u>100%</u>	<u>19,222</u>	<u>100%</u>	<u>17,485</u>	<u>100%</u>	<u>15,200</u>	<u>100%</u>

**Percent of First Payments Made Within 14 Days of Incapacity Date**

<u>Type of Coverage</u>	<u>Year of Injury</u>		
	<u>1993</u>	<u>1994</u>	<u>1995</u>
Carriers	44%	43%	41%
Self-insurance	36%	39%	40%
MEMIC	<u>37%</u>	<u>50%</u>	<u>61%</u>
<u>Average</u>	<u>39%</u>	<u>44%</u>	<u>49%</u>

**Percent of First Payments Made Within 30 Days of Incapacity Date**  
**Non-litigated Injuries**

<u>Type of Coverage</u>	<u>Year of Injury</u>		
	<u>1993</u>	<u>1994</u>	<u>1995</u>
Carriers	74%	73%	71%
Self-insurance	76%	77%	78%
MEMIC	<u>71%</u>	<u>77%</u>	<u>82%</u>
<u>Average</u>	<u>74%</u>	<u>76%</u>	<u>78%</u>

### Injuries to Troubleshooting by Type of Coverage and Injury Year\*

<u>Type of Coverage</u>	<u>Injury Year 1993</u>		<u>Injury Year 1994</u>		<u>Injury Year 1995</u>	
	<u># First Reports</u>	<u>% to Trblshting. at Least Once</u>	<u># First Reports</u>	<u>% to Trblshting. at Least Once</u>	<u># First Reports</u>	<u>% to Trblshting. at Least Once</u>
MEMIC	4,070	39%	8,260	35%	7,742	27%
Self-insurance	8,568	42%	8,010	39%	6,835	38%
Carriers	<u>7,393</u>	<u>47%</u>	<u>2,952</u>	<u>43%</u>	<u>2,908</u>	<u>44%</u>
Statewide	<u>20,031</u>	<u>43%</u>	<u>19,222</u>	<u>38%</u>	<u>17,485</u>	<u>34%</u>

\*Injury year 1996 is not included because many Notices of Controversy and Petitions on 1996 injuries will be filed in 1997 or later calendar years.

### Injuries to Mediation by Type of Coverage and Injury Year\*\*

<u>Type of Coverage</u>	<u>Injury Year 1993</u>		<u>Injury Year 1994</u>		<u>Injury Year 1995</u>	
	<u># First Reports</u>	<u>% to Mediation at Least Once</u>	<u># First Reports</u>	<u>% to Mediation at Least Once</u>	<u># First Reports</u>	<u>% to Mediation at Least Once</u>
MEMIC	4,070	19%	8,260	16%	7,742	11%
Self-insurance	8,568	16%	8,010	16%	6,835	13%
Carriers	<u>7,393</u>	<u>20%</u>	<u>2,952</u>	<u>20%</u>	<u>2,908</u>	<u>17%</u>
Statewide	<u>20,031</u>	<u>18%</u>	<u>19,222</u>	<u>17%</u>	<u>17,485</u>	<u>13%</u>

\*\*Injury year 1996 is not included because many Notices of Controversy and Petitions on 1996 injuries will be filed in 1997 or later calendar years.

### Injuries to Formal by Type of Coverage and Injury Year\*\*\*

<u>Type of Coverage</u>	<u>Injury Year 1992</u>		<u>Injury Year 1993</u>		<u>Injury Year 1994</u>	
	<u># First Reports</u>	<u>% to Formal at Least Once</u>	<u># First Reports</u>	<u>% to Formal at Least Once</u>	<u># First Reports</u>	<u>% to Formal at Least Once</u>
MEMIC	0	0%	4,070	10%	8,260	7%
Self-insurance	9,352	14%	8,568	10%	8,010	9%
Private Insurance	<u>14,939</u>	<u>17%</u>	<u>7,393</u>	<u>12%</u>	<u>2,952</u>	<u>10%</u>
Statewide	<u>24,291</u>	<u>16%</u>	<u>20,031</u>	<u>11%</u>	<u>19,222</u>	<u>8%</u>

\*\*\*Injury years 1995 and 1996 are not included because it takes at least two calendar years to get a picture of litigation for an individual injury year.



### **L. Profile of the System - Costs.**

Although data maintained by the Workers' Compensation Board is not sufficient to support a financial analysis of the system, it does illustrate the degree to which costs are driven by a relatively small percentage of serious injuries.

As may be seen, the top 10% of injuries accounted for 56% of reported costs. The top 20% accounted for almost 75%. Injury year 1988 is used because much of the costs attributable to these injuries has been reported to the Board at this point of the claim cycle.

#### **Costs Reported Percent of Injuries v. Percent of Cost Injury Year 1988**

##### **Percentile of Injury**

Lowest 10%	0.1%
Second 10%	0.1%
Third 10%	0.2%
Fourth 10%	0.2%
Fifth 10%	0.4%
Sixth 10%	1.1%
Seventh 10%	4.6%
Eighth 10%	13.1%
Ninth 10%	24.3%
<u>Top 10%</u>	<u>56.0%</u>

Costs reported as of early December, 1996 on 1988 injuries total \$344,654,307. Excluded from this figure are claims with less than \$100 paid for wage loss or on a lump sum.

**Costs Reported**  
**Percent of Injuries v. Percent of Cost**  
**Injury Year 1988**

<u>Percentile of Injury</u>	<u># Injuries</u>	<u>Cumulative Percent of Injuries</u>	<u>Cumulative Costs</u>	<u>Cumulative Percent of Costs</u>
Lowest 10%	1,156	10%	\$ 181,171	0.1%
Second 10%	2,312	20%	\$ 512,543	0.2%
Third 10%	3,468	30%	\$ 1,037,728	0.3%
Fourth 10%	4,624	40%	\$ 1,853,007	0.5%
Fifth 10%	5,780	50%	\$ 3,170,094	0.9%
Sixth 10%	6,936	60%	\$ 6,879,482	2.0%
Seventh 10%	8,092	70%	\$ 22,730,452	6.6%
Eighth 10%	9,248	80%	\$ 67,880,791	19.7%
Ninth 10%	10,404	90%	\$151,598,711	44.0%
<u>Top 10%</u>	<u>11,560</u>	<u>100%</u>	<u>\$344,654,307</u>	<u>100.0%</u>

**M. Lump Sums Amount Comparison.**

The average amount of lump sum settlements is a way to compare costs between injury years. However, this chart only illustrates a trend. It doesn't provide a basis for more comprehensive financial analysis.

**Cost Trends as Illustrated by Average Lump Sum**

<u>Year of Claim Cycle</u>	<u>Injury Year 1993</u>		<u>Injury Year 1988</u>		<u>Injury Year 1986</u>	
	<u>Average Settl.</u>	<u>Year of Settl.</u>	<u>Average Settl.</u>	<u>Year of Settl.</u>	<u>Average Settl.</u>	<u>Year of Settl.</u>
1st	\$13,154	1993	\$18,456	1988	\$ 16,405	1986
2nd	\$16,069	1994	\$28,572	1989	\$ 22,783	1987
3rd	<u>\$28,335</u>	<u>1995</u>	\$30,287	1990	\$ 38,163	1988
4th			\$34,337	1991	\$ 51,014	1989
5th			\$39,160	1992	\$ 58,686	1990
6th			\$39,995	1993	\$ 56,759	1991
7th			\$43,463	1994	\$ 55,980	1992
8th			<u>\$42,679</u>	<u>1995</u>	\$ 62,456	1993
9th					\$ 74,252	1994
<u>10th</u>					<u>\$107,520</u>	<u>1995</u>

The average value of lumps seems to be declining. However, we are too early in the claim cycle for 1993 injuries to see the full extent of that reduction. Based on experience with the 1987 benefit reductions, it appears that decrease in average lump sum settlements become more pronounced later in the claims cycle. Substantial anecdotal evidence exists that the cost of the system is declining.

### Summary of Dispute Resolution Process

The new statute established a three-tier dispute resolution process (troubleshooting, mediation, and formal hearing or arbitration). Notices of Controversy and Petitions which result in claims assigned (see below) are processed by the NOCS/Petitions Division.

#### Troubleshooting

	<u>Cases Assigned</u>	<u>Cases Disposed</u>
1993	12,625	8,995
1994	12,060	13,142
1995	9,740	10,698
1996	9,101	9,014

The number of claims pending at Troubleshooting as of January 2, 1997 is 2,039 compared to 1,930 in January, 1996.

#### Mediation

	<u>Cases Assigned</u>	<u>Cases Disposed</u>
1993	3,773	2,285
1994	6,846	6,943
1995	5,370	5,866
1996	5,068	4,759

The number of claims pending at Mediation as of January 2, 1997 is 1,258 compared to 1,013 in January, 1996.

### **Formal Hearing**

	<b><u>Cases Assigned</u></b>	<b><u>Cases Disposed</u></b>
1994	3,011	2,569
1995	3,194	3,393
1996	2,860	3,155

The number of claims pending at the Formal Hearing level as of January 2, 1997 is 2,485 compared to 3,126 in January, 1996.

#### **IV. WORKER ADVOCATE PROGRAM**

1996 was a transition year for the Worker Advocate Program. On October 1, 1996, the Workers' Compensation Board expanded the program from a pilot program involving only the Augusta Regional Office to a statewide program with an advocate in every Regional Office.

This program is part of the dispute resolution process. That process is made up of troubleshooting, mediation, and formal litigation. Advocates are available at the mediation stage to assist injured workers whose claims are disputed.

The advocate program was developed by the Board in response to unrepresented injured workers who had difficulties understanding and exercising their rights under the workers' compensation law. Without an advocate, injured workers often have difficulty processing their claims. The goal is to resolve the disputed claims as early in the dispute resolution process as possible, and approximately 50% of the disputes referred to the advocates are being resolved.

Advocates educate injured workers and assist in the preparation and presentation of claims at the Mediation level. If mediation is unsuccessful, the advocate's role does not extend to the formal hearing phase.

**A. Scope of the Program.**

- Advocates are available for workers who were injured after December 31, 1992 and who do not have an attorney.
- Advocates can help only at the mediation phase.
- Advocates have been available since October 1, 1996 at each Regional Office located in Augusta, Bangor, Caribou, Lewiston, and Portland.
- Advocates do not provide legal representation.
- Advocates educate injured workers about the workers' compensation system and assist in the preparation and presentation of cases at mediation.

**B. Results.**

- Since October 1, 1996, advocates have been available at each Regional Office. Early results indicate that approximately one-half of the disputes were resolved with the help of advocates.
- A survey of injured workers who used the advocate services showed a higher level of understanding of the dispute resolution process. Workers using the advocate also felt better prepared for mediation than those workers who did not use the advocate in preparing for mediation.
- The advocates have been involved with the development of an employee pamphlet which will serve to further assist employees. A second pamphlet dealing only with mediation has also been developed.

- The worker advocate pilot project which ended September 30, 1996 compiled statistics regarding the number of workers served, the rate of dispute resolution at the advocate's stage, etc. Those statistics are attached as Appendix 1.

## V. LEGAL ISSUES

### A. Assessment.

The major legal issue facing the Board involves the interpretation of 39-A M.R.S.A. §154, the former version of the assessment statute. The issue of whether the statute requires that the Board's assessment be calculated as a rate to be applied to premiums or as a dollar amount to be collected from insurance companies is in the final stages of litigation. Hanover Insurance Company challenged the Board's interpretation in a Rule 80C action brought in Superior Court. While Hanover prevailed in Superior Court, the Board has appealed to the Law Court and oral argument was held on December 2, 1996. We expect a decision to be forthcoming in the near future. If the Board prevails on appeal, the agency could receive in excess of \$300,000.00.

The case will not, however, have considerable precedential value because Section 154 has been amended to reflect the wishes of the insurance companies, including Hanover. The Board worked with the major workers' compensation insurance carriers in 1995 to amend the statute to require an insurer to attach a percentage rate to employers' premiums in order to raise the Board's operating revenues. The Board sets the rate prior to the beginning of the fiscal year and has the authority to change it, if necessary.

## **B. Rulemaking Initiatives.**

The following rules are currently at some stage of the Administrative Procedure Act process:

1. **Utilization Review/Low Back Protocol/Permanent Impairment Rating Guide.** This proposed rule is awaiting Board action with respect to the public comments. The comment period is closed and the rule is on the Board's agenda for February, 1997.
2. **Employee/Employer Consent Form Procedures.** This rule will provide a form and procedures for employees with closed-ended periods of incapacity who wish to voluntarily resolve their claims. A public hearing was held on December 18, 1996.
3. **Provisional Orders.** This rule would clarify procedures under 39-A M.R.S.A. §205(9) for discontinuing benefits and issuing provisional orders.
4. **Medical Fee Schedule.** The narrative portion of the Medical Fee Schedule has been filed with the Secretary of State's Office and went into effect on January 1, 1997. The section of the Medical Fee Schedule listing the dollar values associated with the various CPT codes is projected to go into effect April 1, 1997. The last update to the Medical Fee Schedule was effective April 4, 1994.

The following rules are being reviewed by staff and will soon be entering the APA process:

1. **Fringe Benefits.** A rule clarifying the methods for including fringe benefits in an employee's average weekly wage is on the Board's agenda for February, 1997.
2. **Collection of Permanent Impairment Ratings.** Pursuant to the requirements of 39-A M.R.S.A. §213, the Board is expected to proposed emergency rules in February, 1997 to begin collecting pertinent data regarding levels of injured employees' permanent impairment for actuarial review by January 1, 1998.
3. **Hospital Fee Schedule.** Staff will propose a fee schedule for hospitals in 1997. To date, hospitals have been specifically excluded from the Medical Fee Schedule, even when rendering identical treatment. However, effective January 1, 1997, the narrative portion of the Medical Fee Schedule will apply to outpatient treatment performed by hospitals.
4. **Attorneys' Fees.** 39-A M.R.S.A. §325 requires that the Board promulgate rules to clarify methods by which attorneys can collect fees from injured workers for services rendered. Staff has begun researching the experience of other states and will proposed rules for the Board's review in 1997.

This completes the summary of rulemaking initiatives that are presently pending. Other issues may be addressed as they come up.

## **VI. BUDGET AND ASSESSMENT ISSUES**

Title 39-A, Section 154 authorizes an assessment on workers' compensation insurers (as a pass through) and self-insureds and it is capped at \$6,000,000 annually. This statute was part of the



reform package enacted in 1992, which became effective on January 1, 1993. The agency issued its first assessment for purposes of this statute and as a completely dedicated fund agency in May of 1993. This assessment was for Fiscal Year 94 which began on July 1, 1993. The agency so far has issued four assessments, the most recent of which was issued on May 1, 1996 for Fiscal Year 97 which began on July 1, 1996.

The Board remained within this cap since its enactment, i.e. the funding has remained the same over the past four fiscal years even though the cost of doing business has increased dramatically in many areas. The fact that the Board has little control over some of these significant increases, such as health and retirement costs, for example, cannot be ignored. The Board's costs have increased even though it is making every effort and more to remain within this assessment cap while simultaneously absorbing high increases and also attempting to be pro-active. The fact that the Board was able to create four and one-half Worker Advocate positions thereby creating a new program to assist injured workers without raising its assessment, for example, is a significant achievement.

Increases over FY94 (the base year used for comparative purposes because it was the first full year funded by the assessment) are notable. Major increases in expenditures in FY95 exceeded the base year by \$377,939; FY96 expenditures exceeded it by \$628,602; and the projections for FY97, the current fiscal year, are that major expenditures will exceed the base year by \$917,809. The most important reasons for these increases are:

- A. The Board has experienced some turnover of employees beginning with FY94 as the most significant when all commissioners were replaced by hearing officers, most of which started at lower salary steps than the former commissioners. Many other positions were affected by the creation of mediators, troubleshooters, and, more recently, by the creation of Worker Advocates.

- B. The Board has now filled most of its vacancies. (Some positions had been vacant for some time. This reduced its personnel costs and helped create a balance at the end of each fiscal year that could be brought forward to help fund the coming fiscal year.) FY97, for example, assumes that all positions will be filled all year, thereby projecting full funding costs for the fiscal year.
- C. While positions were being dramatically changed, left vacant, filled and reclassified, health and retirement costs were also increasing. These increases added to the cost of the payroll by significant amounts, even though the number of employees employed by the Board remains the same.
- D. Another important line item that the Board has had to absorb is the State Cost Allocation Program (STACAP). The Board is a dedicated fund agency and it is, therefore, charged for services provided to it by the State, such as its offices at the Deering Building, for example. Actual FY95 and FY96 costs absorbed were \$108,358 and \$90,127 respectively. The cost for FY97 is projected to be \$145,990 due to an increase in the rate charged the Board.

The Board has kept expenditures within the assessment cap. Projections for FY97 and especially for the next biennium, however, indicate that the Legislature may have to revisit the question regarding the adequacy of the cap. Additional information will be provided in future annual reports to assist the Legislature in this regard.

## **VII. MEDICAL AND REHABILITATION ISSUES**

1996 brought changes to the Office of Medical and Rehabilitation Services. A new Deputy Director was hired,

medical protocols for six diagnoses were withdrawn, 22 physicians were appointed as Independent Medical Examiners under 39-A M.R.S.A. §312, and a request for proposal was issued to establish a resource based relative value fee schedule.

The withdrawn medical protocols were replaced with guidelines on the care of acute low back problems as promulgated by the Agency for Health Care Policy and Research and went to public hearing on October 31, 1996.

Regulations concerning utilization review also went to public hearing on October 31st. These regulations require that any entity performing utilization review on medical care given to injured workers under workers' compensation must be accredited by the Utilization Review Accreditation Commission (URAC).

Regulations proposing that the Workers' Compensation Board adopt the 4th Edition of the American Medical Association Permanent Impairment Guidelines went to public hearing and comment will be reviewed by the Workers' Compensation Board in early 1997.

The IME system is now in place. To date, 66 cases have been reviewed by the Independent Medical Examiners.

The bidder who was awarded the contract to prepare an RBRVS Fee Schedule has completed their work. This will now go to public hearing.

Rehabilitation Services will be revamped in 1997 to make them more pro-active. The staff of OMRS has implemented a program where the Claims Resolution Specialists and/or the Worker Advocates ask the injured workers if they anticipate a need for rehabilitation services.

1997 will bring new challenges to the Office of Medical and Rehabilitation Services.

Protocols for pain and carpal tunnel will be promulgated and we will be monitoring the effectiveness of our Fee Schedule, the Independent Medical Examiner process, and protocols.

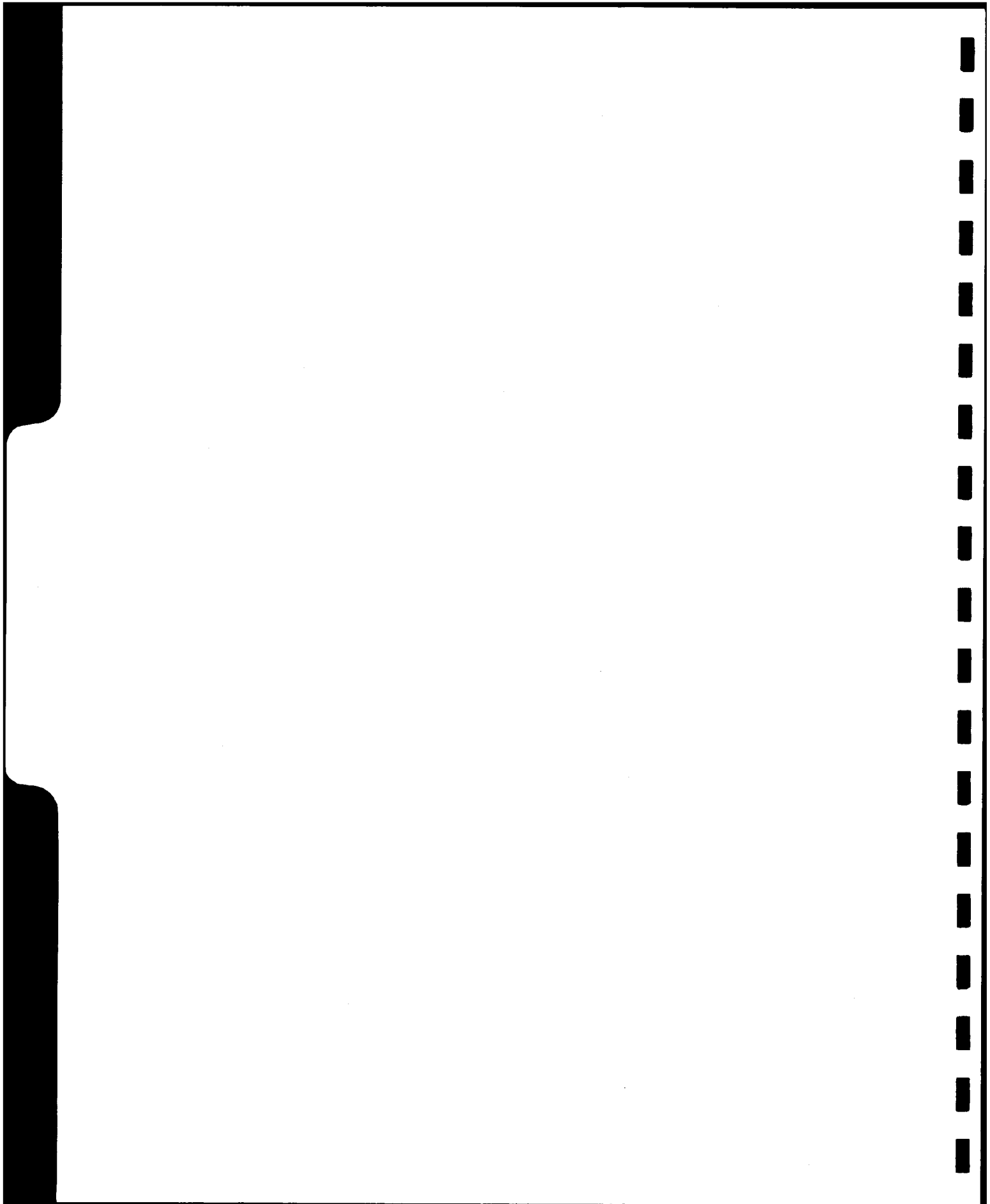
## **VIII. SUMMARY**

The Workers' Compensation Act of 1992 went into effect on January 1, 1993. The reforms have had a significant impact on workers' compensation in Maine. The collaborative effort between Labor and Management appears to have brought stability to the system. The dispute resolution system is resolving a high percentage of cases in a low cost and timely manner, as envisioned by the Act. The formal hearing process continues to improve in that more cases are being resolved in a more timely manner. The Independent Medical Examiner program has been partially implemented and should be totally implemented in 1997. The Worker Advocate Program has been implemented at all five Regional Offices to assist unrepresented employees at the Mediation phase. Electronic Data Interchange has been established between the Workers' Compensation Board and MEMIC and the Dunlap Agency. Cost controls and medical cost containment are being established through Utilization Review, Protocols, and Medical Fee Schedules. Data collection is an important aspect of the system which must be given greater attention.

The Workers' Compensation Board continues to operate efficiently under its authorized assessment of \$6,000,000. The introduction of the Worker Advocate Program within the present budgeting constraints demonstrates that the Board is making efficient use of its resources.



**B. Competition in the Maine Workers' Compensation Market:**  
Bureau of Insurance



The State of Competition in the Maine  
Workers' Compensation Market

Pursuant to M.R.S.A. 24-A Section 2383-A this report reviews the state of competition in the workers' compensation market in Maine.

Maine Bureau of Insurance  
January 6, 1997



### **1) Workers' Compensation Market Competition: Voluntary Market 1988 - 1992.**

Prior to the 1992 Blue Ribbon Commission Reform legislation, insurance carriers were writing very few risks in the voluntary market (those employers which were voluntarily underwritten by insurers) and the vast majority of all insured employers were written in what was known as the "assigned risk pool in the residual market" or the "Pool". The Pool operated for the years 1988 through 1992.

On a calendar year basis, the percentage of premium written in the voluntary market for the years 1988 through 1992 was:

<b>Year</b>	<b>Voluntary Market Share</b>	<b>Residual Market Share</b>
<b>1988</b>	<b>17.7%</b>	<b>82.3%</b>
<b>1989</b>	<b>9.4%</b>	<b>90.6%</b>
<b>1990</b>	<b>12.2%</b>	<b>87.8%</b>
<b>1991</b>	<b>21.8%</b>	<b>78.2%</b>
<b>1992</b>	<b>17.4%</b>	<b>82.6%</b>

#### **Data Source: National Council on Compensation Insurance (NCCI) 1992 Management Summary**

During this period, insured employers in Maine had few options to obtain workers' compensation other than to self-insure or to be assigned to a servicing carrier. In response to these conditions, the 1992 Blue Ribbon Commission Reform legislation, Public Law 885 "An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws" was enacted establishing the Maine Employers' Mutual Insurance Company and an open competitive rating environment.

During the same period, the Pool incurred deficits which continue to affect the workers' compensation insurance market to this day. Although recent deficit estimates are significantly lower than those projected a few years ago, Public Law 289 "An Act to Create the Workers' Compensation Residual Market Deficit Resolution and Recovery Act", approved by the Governor on June 23, 1995, provides a mechanism to fund this deficit and required certain insurance carriers to contribute \$65 million dollars by January 1, 1996. It also fixed the employers' share of the deficit and reduced the surcharge on insurance policies to 6.32 percent of workers' compensation premium. This law has added stability to the workers' compensation marketplace. Recent deficit estimates project that the funding provided by PL 289 will yield a small surplus after all claims are paid.

Maine Employers Mutual Insurance Company was established as an employer-owned mutual insurance company and replaced the Pool beginning January 1, 1993. Although Maine

Employers' Mutual is the only workers' compensation insurance company in Maine which is required to accept all risks that apply (there are a few circumstances in which they can deny coverage), they do not view themselves solely as a market of last resort and have manifested a commitment to provide a superior level of service which is answerable to the owners of the company, their policyholders-the employers of Maine. In 1996, Maine Employers' Mutual reduced their rates an average of 8.2% and eliminated their capital contribution effective January 1, 1996. The capital contribution has gone from 15% in 1993 to being entirely eliminated in a period of three years.

As a result of the 1992 Blue Ribbon Commission Reform legislation, the National Council on Compensation Insurance (NCCI) is no longer allowed to file full rates for workers' compensation in Maine. (NCCI is a rating organization which files advisory loss cost rates and rating plans on behalf of member insurers and as of 1993, NCCI could only file loss cost rates.) Each insurer writing workers' compensation in Maine is required to file their own rates utilizing their own expense and profit provisions.

## 2) Recent Experience in the Maine Workers' Compensation Market:

The experience of insurers writing workers' compensation policies has improved significantly in recent years as measured by industry-wide loss ratios. The 1995 calendar year loss ratio of .57 represents a 25% decrease from the 1994 level of .82 and represents a 70% decrease from the 1991 level of 1.87. Cumulatively these loss ratios are a sign of the tremendous improvement in the Maine workers' compensation insurance market.

### Calendar Year Loss Ratios in Maine, 1988 - 1995:

Year	Loss Ratio
1988	1.44
1989	1.54
1990	1.44
1991	1.87
1992	.99
1993	.80
1994	.82
1995	.57

*1/3 rd of costs before*

Source: Annual Statement Page 14 Compilations

*Amount of cost would  
provide need to determine  
fairness of current rates.*

**3) Market Shares and Market Activity By Insurance Co.(Group):**  
**Calendar Year 1995 Market Share Based on Written Premium:**

<b>Company</b>	<b>Market Share</b>
<b>Maine Employers' Mutual Insurance Company</b>	<b>67.5</b>
<b>Acadia Insurance Company</b>	<b>8.8</b>
<b>Commercial Union Insurance Companies</b>	<b>6.0</b>
<b>Hanover of Maine Insurance Companies</b>	<b>4.9</b>
<b>Redland Insurance Company</b>	<b>2.9</b>
<b>The Netherlands Insurance Companies</b>	<b>2.0</b>
<b>Reliance National</b>	<b>1.5</b>

As additional carriers continue to reenter the market resulting in more options for Maine employers, we expect that market shares in 1996 will look markedly different from the 1995 numbers.

**4) Rate Differentials:**

Prior to the 1992 Blue Commission Reform legislation all insurance companies charged the same base rates (manual rates) for workers' compensation insurance. Although each employer's actual premium was modified by their own experience, there was little or no differentiation in the manual rates. Since 1/1/93, each insurance company is required to file its own manual rates based upon its expense and profit provisions. (NCCI continues to annually make an advisory filing of pure premium rates, which are rates for losses and loss adjustment expenses, excluding all other expenses and profit provisions.) The most recent NCCI loss cost filing calls for an overall rate reduction of 12.5% effective January 1, 1997. The 1996 NCCI loss cost filing had an overall rate reduction of 10.9%. This followed an average decrease of 12.5% in 1995 and a 3.8% decrease occurring in 1994. (The attached charts do not reflect the 1997 NCCI loss cost filing.)

As of November 1996 eighty-eight insurance carriers have filed and received approval from the Bureau to sell workers' compensation insurance in Maine at specified rates. At this time, data is not available regarding the amount of business each of these companies is writing in Maine. However, the attached charts show the high and low rates for the 140 largest classification codes (in terms of payroll) for all workers' compensation insurers and compares the high and low rates to the rate which Maine Employers' Mutual Insurance charges for that classification code. For many classification codes, the wide range underscores the new competitive nature of workers' compensation insurance in Maine and underscores the importance of employers exploring options in securing coverage for workers' compensation claims.

Competitive rating has allowed for "niche" marketing. A company with expertise in certain areas can utilize that proficiency to lower the rate for specific risks and return an acceptable profit to the carrier.

#### **5) Tiered Rating, Schedule Rating, Dividend Plans, Retrospective Rating, and Large Deductibles:**

Another feature of the new workers' compensation insurance market in Maine is the introduction of tiered rating, scheduled rating, dividend plans and the increased use of retrospective rating and large deductibles.

Tiered rating provides a means for an individual carrier to offer more than one set of base rates. The carrier develops the underwriting criteria applicable to each tier and files the criteria and rates which are then reviewed to assure that they are not unfairly discriminatory.

Nearly two-thirds of the insurance companies with filed rates have received approval to utilize scheduled rating in Maine. Scheduled rating allows the insurance company to consider other factors that may not be reflected in an employer's experience rating when determining an individual employer's premium. Elements such as safety plans, medical facilities, safety devices, and premises are considered and can result in a change in premium by as much as twenty-five percent.

Indications are that retrospective rating plans are being widely utilized in Maine. Retrospective rating is a means by which an employer's final premium is a direct function of the loss experience for that policy period. To the extent the employer controls its losses it receives a reduced premium and, conversely, pays a higher premium in the event it has poor experience. Retrospective rating utilizes minimum and maximum amounts for a policy and is typically written for large employers.

Finally, several companies offer large deductible plans in Maine where by the employer agrees to pay a deductible that can be in excess of \$100,000 per claim. The insurance company is required by law to pay all losses associated with this policy and then bills the deductible amounts to the insured employer. The advantages of this product are that the employer gets a discount for assuming some of the risk and it offers an alternative to self-insurance.

#### **6) Insurers Entering the Maine Workers' Compensation Market:**

Since the Blue Ribbon Commission Reform legislation was enacted in October of 1992, a large number of insurance companies have reentered the Maine workers' compensation market. During that time frame, exits from the workers' compensation market have been minimal. The nation's largest workers' compensation insurer, Liberty Mutual returned to the market in 1995 and one of Maine's domestic insurers, Mutual Fire of Saco was purchased and renamed Eastguard with the specific intent of entering the Maine workers' compensation market. Other insurers recently reentering the Maine workers' compensation market include ITT Hartford, Aetna, Travelers, and Zurich. To date for calendar year 1996 thirty-three companies have obtained authority to write workers' compensation coverage.

## 7) Self-Insurance:

Self-insurance represents a significant part of the workers' compensation market in Maine and is a viable alternative for many employers in the State. Since 1988, nineteen new self-insured groups have been formed in Maine bringing the total number of groups to twenty-one. These twenty-one groups represent approximately 1300 employers. Additionally, there are approximately 144 individual self-insured employers in Maine of which about 70 have become self-insured since 1988. Since 1985 the self-insurers' estimated standard premium has grown from more than \$52 million to about 172 million dollars. It is estimated that self-insureds now represent over 45% of the workers' compensation market in Maine in terms of annual standard premium. However, the growth in self-insurance has experienced a decline in the last few years and some former self-insured employers have returned to the commercial market. The competitive market could cause further returns from self-insurance to the commercial insurance market. Some carriers have filed rating plans to allow them to assume the balance of a self-insurer's existing exposure and transition into a fully insured program.

## 8) Conclusion

When contrasted with the conditions which existed during the years 1988 through 1992, the competition in the Maine workers' compensation market has clearly improved and many Maine employers have more options. However, according to economic theory, an industry is perfectly competitive only when a large number of firms selling a homogeneous commodity is so large, and each individual firm's share of the market is so small, that no individual firm is able to affect the price of the commodity. By this definition, Maine does not yet have a competitive market. However, when one considers the range among workers' compensation rates, the number of carriers in the market place, and the overall decline in rate levels since 1994, Maine's workers' compensation market is healthier, many employers have greater options and lower costs, and market competition has significantly improved.

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*[Handwritten signature]*

Workers' Compensation Rates for Selected Carriers as of 11-13-96

COD	DESCRIPTION	LOW	MEMIC(std)	HIGH
34	FARM: POULTRY/EGG	\$11.07	\$15.99	\$18.80
42	LANDSCAPE GARDENING	\$6.92	\$9.99	\$11.75
1463	ASPHALT WORKS	\$7.05	\$10.18	\$11.98
2003	BAKERY	\$4.60	\$6.64	\$9.77
2070	CREAMERY	\$5.45	\$7.87	\$9.25
2111	CANNERY	\$4.79	\$6.91	\$8.13
2113	CANNERY SARDINES	\$5.48	\$7.91	\$9.30
2157	BOTTLING	\$4.33	\$6.25	\$7.35
2220	YARN OR THREAD MFG	\$6.00	\$8.66	\$10.19
2286	WOOL SPINNING/WEAVING	\$4.62	\$6.67	\$8.34
2302	SILK THREAD/YARN MFG	\$4.44	\$6.41	\$8.20
2380	WEBBING MFG	\$3.01	\$4.35	\$5.87
2501	CLOTHING MFG	\$3.26	\$4.70	\$5.53
2585	LAUNDRY	\$5.62	\$8.11	\$9.54
2623	TANNING	\$6.80	\$9.82	\$12.89
2660	BOOT OR SHOE MFG	\$6.59	\$9.51	\$11.18
2688	LEATHER GOODS MFG	\$4.03	\$5.82	\$6.84
2702	LOGGING OR LUMBERING	\$30.63	\$44.22	\$52.00
2710	SAW MILL	\$11.88	\$17.15	\$20.34
2731	PLANING/MOLDING MILL	\$5.79	\$8.36	\$10.38
2802	CARPENTRY SHOP ONLY	\$8.32	\$12.02	\$15.52
2812	CABINET WORK	\$5.00	\$7.22	\$9.51
2841	WOODENWARE MFG	\$5.86	\$8.46	\$10.44
2883	FURNITURE MFG WOOD	\$4.83	\$6.98	\$8.21
3030	IRON OR STEEL FABRICATION SHOP	\$8.25	\$11.91	\$15.40
3076	FIREPROOF EQUIPMENT MFG	\$2.74	\$3.96	\$4.66
3113	TOOL MFG NOT DROP/MAC	\$2.77	\$4.00	\$5.27
3179	ELECTRICAL APPARATUS MFG	\$4.94	\$7.13	\$9.60
3507	CONSTRUCTION/AGRI MACHINE MFG	\$4.14	\$5.98	\$7.86
3574	COMPUTING/RECORDING MACHINE MFG	\$3.51	\$5.06	\$5.96
3629	PRECISION PARTS MFG	\$2.38	\$3.43	\$4.04
3632	MACHINE SHOP	\$3.69	\$5.33	\$6.27
3634	VALVE MFG	\$3.39	\$4.89	\$5.82
3643	ELECTRIC POWER/TRANS EQUIP MFG	\$3.44	\$4.97	\$5.84
3681	TELEVISION/RADIO/TELEPHONE MFG	\$2.66	\$3.84	\$4.68
3724	MACHINERY/EQUIPMENT ERECTION	\$17.82	\$25.73	\$30.25
3726	BOILER INSTALLATION/REPAIR-STEAM	\$17.64	\$25.47	\$29.95
3826	AIRCRAFT ENGINE MFG	\$2.04	\$2.95	\$3.47
4000	SAND DIGGING	\$6.66	\$9.62	\$11.31
4034	CONCRETE PRODUCTS MFG	\$8.83	\$12.74	\$14.98
4112	INCANDESCENT LAMP MFG	\$1.61	\$2.33	\$3.41
4207	PULP MFG CHEMICAL PROCESS	\$1.29	\$1.86	\$2.19
4239	PAPER MFG	\$5.22	\$7.54	\$8.99
4279	PAPER GOODS MFG	\$3.18	\$4.59	\$7.22

Workers' Compensation Rates for Selected Carriers as of 11-13-96

4299	PRINTING	\$2.73	\$3.95	\$4.64
4304	NEWSPAPER PUBLISHING	\$4.10	\$5.91	\$6.95
4361	PHOTOGRAPHERS	\$2.79	\$4.03	\$4.74
4431	PHONOGRAPH RECORD MFG	\$4.81	\$6.95	\$8.17
4484	PLASTC MFG: MOLDED	\$4.25	\$6.14	\$7.22
4511	ANALYTICAL CHEMIST	\$1.80	\$2.60	\$3.06
4693	PHARM/SURGICAL MFG	\$1.83	\$2.64	\$3.10
5022	MASONRY	\$20.44	\$29.51	\$34.71
5183	PLUMBING	\$7.30	\$10.53	\$12.39
5190	ELETRICAL WIRING WITHIN BUILDING	\$4.50	\$6.49	\$7.63
5191	OFFICE MACHINE REPAIR	\$0.86	\$1.24	\$1.55
5192	VENDING MACHINE SERVICE AND SALES	\$6.37	\$9.20	\$10.82
5213	CONCRETE CONSTRUCTION	\$16.88	\$24.37	\$28.65
5215	CONCRETE WORK PRIVATE RESIDENCE	\$10.78	\$15.56	\$18.30
5221	CONCRETE WORK	\$6.32	\$9.12	\$13.25
5403	CARPENTRY NOC	\$23.79	\$34.35	\$40.39
5437	CARPENTRY INSTALL CABINETS AND TRIM	\$8.66	\$12.50	\$14.70
5445	WALLBOARD INSTALLATION	\$14.87	\$21.47	\$25.25
5474	PAINTING/PAPERHANGING	\$10.24	\$14.78	\$17.64
5479	INSULATION WORK	\$5.40	\$7.80	\$9.19
5506	STREET OR ROAD CONSTRUCTION PAVING	\$7.03	\$10.14	\$11.93
5507	STREET/ROAD CONSTRUCTION SUBGRADE	\$11.83	\$17.08	\$20.09
5538	SHEET METAL WORK	\$7.94	\$11.46	\$13.48
5551	ROOFING ALL KINDS	\$24.03	\$34.70	\$40.80
5606	CONTRATOR EXECUTIVE	\$3.43	\$4.96	\$5.83
5645	CARPENTRY ONE/TWO FAMILY DWELLING	\$7.38	\$10.65	\$13.32
5651	CARPENTRY 3 STORIES OR LESS	\$9.89	\$14.28	\$16.79
6217	EXCAVATION	\$12.44	\$17.96	\$21.11
6306	SEWER CONSTRUCTION	\$7.60	\$10.98	\$12.91
7219	TRUCKING: NOC	\$12.03	\$17.36	\$20.42
7380	DRIVERS AND CHAUFFEURS	\$6.45	\$9.31	\$10.95
7382	BUS COMPANY	\$5.61	\$8.10	\$10.29
7390	BEER OR ALE DEALERS	\$4.67	\$6.74	\$9.24
7403	AIRCRAFT OPER REG SCH CARRIERS	\$2.85	\$4.12	\$4.85
7423	AIRCRAFT OPERATIONS ALL OTHERS	\$3.41	\$4.92	\$5.78
7520	WATERWORKS OPERATION	\$3.04	\$4.39	\$5.52
7539	ELECTRIC LIGHT OR POWER	\$3.18	\$4.59	\$5.40
7600	TELEPHONE ALL OTHERS	\$3.63	\$5.24	\$6.16
7610	RADIO OR TV BROADCASTING	\$0.76	\$1.09	\$1.28
7720	POLICE OFFICERS	\$2.87	\$4.15	\$4.88
7723	PRIVATE DETECTIVE OR PATROL AGENCY	\$4.01	\$5.79	\$7.32
8001	STORE: FLORISTS	\$2.12	\$3.06	\$3.66
8006	STORE: GROCERY RETAIL	\$2.39	\$3.45	\$4.06
8008	STORE: CLOTHING RETAIL	\$1.63	\$2.36	\$2.78
8010	STORE: HARDWARE RETAIL	\$1.77	\$2.56	\$3.01

Workers' Compensation Rates for Selected Carriers as of 11-13-96

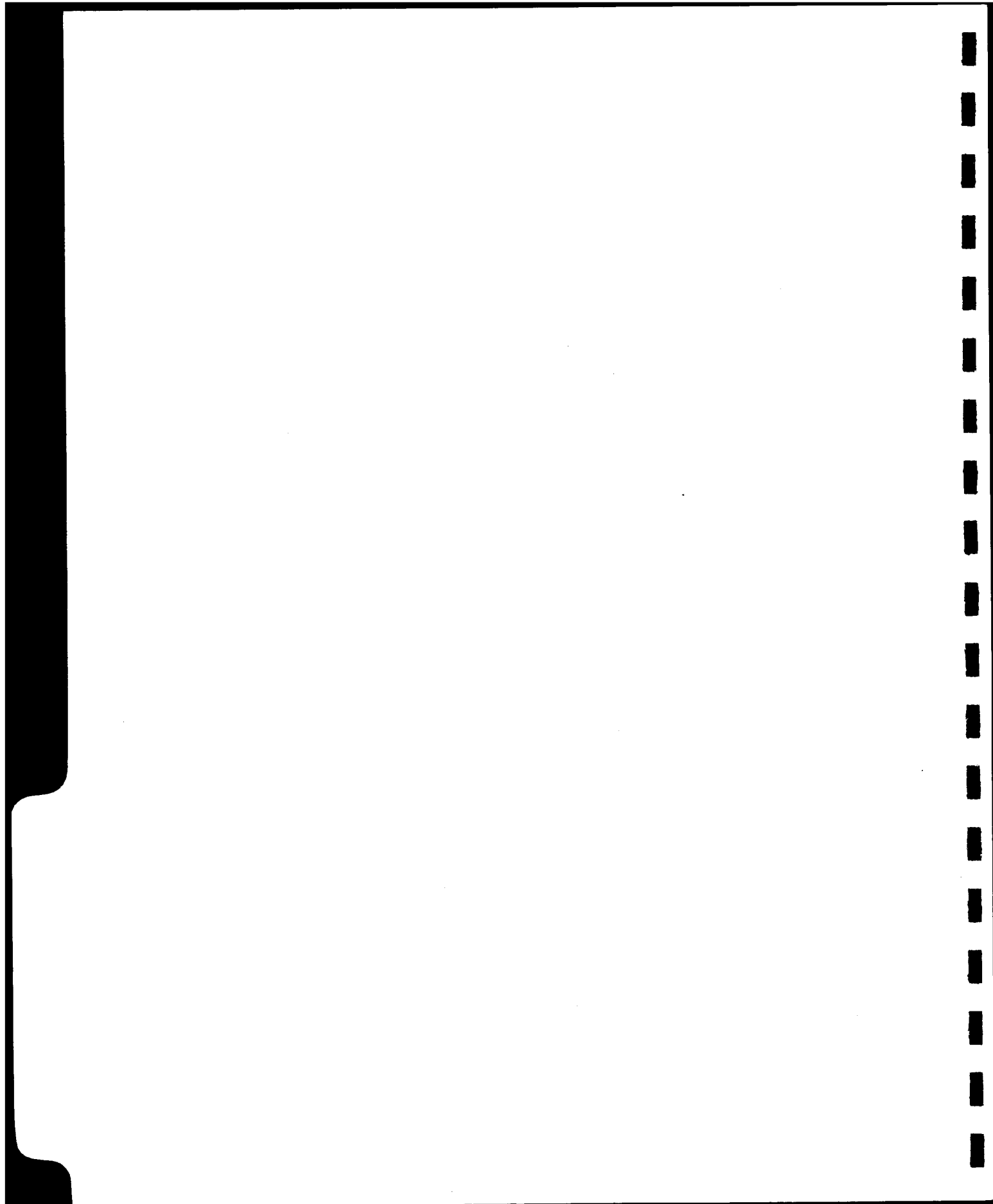
8013	STORE: JEWELRY	\$0.67	\$0.97	\$1.14
8017	STORE: RETAIL NOC	\$1.42	\$2.05	\$2.41
8018	STORE: WHOLESALE NOC	\$5.39	\$7.79	\$9.16
8021	STORE: MEAT WHOLESALE	\$8.81	\$12.72	\$14.95
8024	SEAFOOD DEALER	\$7.15	\$10.32	\$12.13
8032	STORE: CLOTHING WHOLESALE	\$3.09	\$4.46	\$7.01
8033	STORE: PROVISIONS COMBINED	\$2.64	\$3.81	\$4.88
8039	STORE: DEPARTMENT RETAIL	\$2.62	\$3.79	\$4.45
8044	STORE: FURNITURE	\$3.87	\$5.59	\$6.57
8046	STORE AUTO PARTS NEW RETAIL	\$2.17	\$3.14	\$3.69
8058	BUILDING MATERIALS DEALER	\$2.58	\$3.72	\$4.37
8107	MACHINERY DEALER	\$4.09	\$5.90	\$6.94
8111	PLUMBERS SUPPLIES	\$3.91	\$5.64	\$8.84
8227	CONSTRUCTION OR ERECTION YARD	\$3.83	\$5.54	\$6.51
8232	LUMBERYARD NEW MATERIALS	\$3.98	\$5.75	\$6.76
8235	SASH, DOOR AND MILLWORK DEALER	\$4.12	\$5.95	\$7.00
8350	GASOLINE DEALERS	\$4.20	\$6.06	\$7.42
8380	AUTOMOBILE SERVICE CENTER	\$4.19	\$6.05	\$7.11
8385	BUS COMPANY GARAGE EMPLOYEES	\$2.98	\$4.30	\$5.86
8393	AUTO BODY REPAIR	\$3.97	\$5.72	\$7.81
8601	ARCHITECT OR ENGINEER CONSULTING	\$1.28	\$1.85	\$2.25
8720	INSPECTION OF RISKS FOR INSURANCE	\$1.39	\$2.01	\$2.36
8742	SALESPERSON/OUTSIDE MESSENGER	\$0.87	\$1.25	\$1.47
8748	AUTOMOBILE SALESPERSON	\$2.16	\$3.13	\$3.67
8755	LABOR UNION	\$1.12	\$1.62	\$1.90
8803	AUDITORS TRAVELLING	\$0.27	\$0.39	\$0.46
8810	CLERICAL/OFFICE EMPLOYEE NOC	\$0.65	\$0.94	\$1.11
8820	ATTORNEY ALL EMPLOYEES	\$0.76	\$1.09	\$1.28
8829	CONVALESCENT OR NURSING HOME	\$6.07	\$8.77	\$10.31
8831	HOSPITAL VETERINARY	\$1.28	\$1.85	\$2.18
8832	PHYSICIAN AND CLERICAL	\$0.65	\$0.94	\$1.11
8833	HOSPITAL PROFESSIONAL EMPLOYEE	\$1.65	\$2.38	\$2.80
8835	NURSING- HOME HEALTH	\$3.44	\$4.97	\$5.98
8868	COLLEGE PROFESSIONAL & CLERICAL	\$0.58	\$0.84	\$0.98
8901	TELEPHONE OFFICE AND CLERICAL	\$0.45	\$0.65	\$0.76
9014	BUILDING OPERATIONS BY CONTRACTOR	\$5.14	\$7.42	\$8.73
9015	BUILDING OPERATIONS BY OWNER	\$4.98	\$7.19	\$8.46
9016	AMUSEMENT PARK	\$3.09	\$4.46	\$5.43
9033	HOUSING AUTHORITY	\$2.21	\$3.19	\$4.10
9040	HOSPITAL ALL OTHER EMPLOYEES	\$3.84	\$5.55	\$6.53
9052	HOTEL ALL OTHER EMPLOYEES	\$3.15	\$4.55	\$5.35
9058	HOTEL: RESTAURANT EMPLOYEES	\$2.37	\$3.42	\$4.43
9060	COUNTRY CLUB	\$2.30	\$3.31	\$3.90
9061	CLUB NOC AND CLERICAL	\$2.32	\$3.35	\$3.94
9063	YMCA, YWCA	\$1.19	\$1.72	\$2.03



# Workers' Compensation Rates for Selected Carriers as of 11-13-96

9079	RESTAURANT NOC	\$2.45	\$3.54	\$4.17
9101	COLLEGE: ALL OTHER EMPLOYEES	\$2.89	\$4.18	\$4.91
9180	AMUSEMENT DEVICE NOT TRAVELLING	\$9.29	\$13.42	\$15.78
9402	STREET CLEANING	\$6.03	\$8.70	\$10.23
9403	GARBAGE COLLECTION	\$7.57	\$10.92	\$13.16
9410	MUNICIPAL	\$3.86	\$5.58	\$6.56
9519	HOUSEHOLD APPLIANCE REPAIR ELECTRIC	\$2.26	\$3.26	\$3.94
9521	HOUSE FURNISHINGS INSTALLATION	\$5.86	\$8.46	\$9.95
9586	BARBER SHOP	\$1.18	\$1.71	\$2.05
9620	FUNERAL DIRECTOR	\$0.84	\$1.21	\$1.64





**Making Informed Decisions:  
Occupational Health and  
Safety in Maine and  
A Discussion of Selected  
Workers' Compensation Issues:**

by the

**Bureau of Labor Standards**

*Evaluate over  
TOP 200 &  
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## Introduction

The report that follows is provided by the Department of Labor, Bureau of Labor Standards. The information is designed to be a component of the Annual Report on the Status of the Workers' Compensation System in Maine.

Because of the unique perspective of the Bureau of Labor Standards, we have first provided a "snapshot" of the status of workplace safety and health in Maine, followed by our assessment of data issues related to a more complete understanding of the Workers' Compensation System and the general condition of workplace safety and health.

To do this we have organized the report into the following sections:

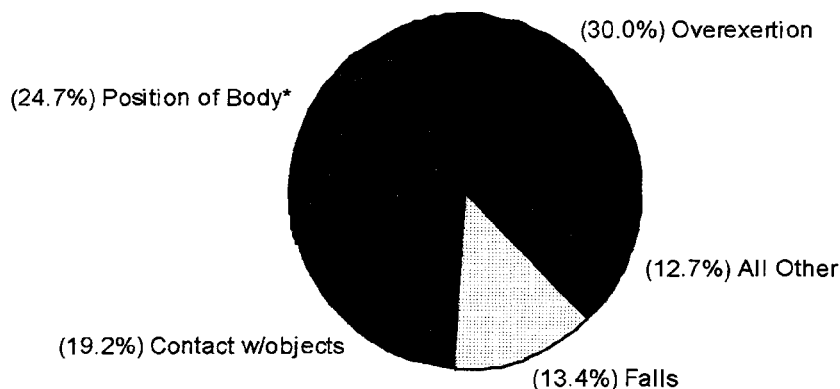
- **Workplace Safety and Health Overview: a snapshot of factors driving injuries and illness in Maine workplaces:**
  - Event or Exposure - What causes the Injury or Illness
  - Age Group of Injured Workers
  - Experience Level of Injured Workers
  - Worker's Compensation Claim History in Maine
  - The Move to Restricted Work
  - Maine's Incidence Rate compared to the Rest of the U.S.
  - The Effect of Maine's Economy on Lost Workday Rates
- **Workers' Compensation Data Integrity Issues:**
  - Promptness of First Payments in Non-Litigated Cases
  - Data Integrity
    - ✓ Issue: Missing or Incomplete Information on Costs
    - ✓ Issue: Audits needed to make sure First Reports are Filed
    - ✓ Issue: Permanent Impairment Threshold Adjustment
  - Data Collection: Positive Steps Being taken by the Workers' Compensation Board
- **New Initiatives Planned by the Bureau of Labor Standards**
- **Making Informed Decisions - A Conclusion**

## Event or Exposure of Injured Worker

Workers' Compensation claim data provides detailed information regarding the event or exposure of the injury or illness. This data is important because it helps us understand the causes of injuries and illnesses so we can develop programs to reduce those cases.

The two most prevalent causes of an injury or illness in the workplace are "overexertion" and "position of body". **Overexertion** applies to cases, usually non-impact, in which the injury or illness resulted from *excessive physical effort directed to an object*. These involve pushing, pulling, lifting, carrying, throwing an object. **Position of the body** applies to cases where the injury resulted from the *assumption of an unnatural position* or from voluntary or involuntary motions induced by sudden noise, fright or efforts to recover from slips or loss of balance (not resulting in falls). It also includes repetitive motion resulting from bodily motion which imposes stress or strain upon some part of the body due to a task's repetitive nature. These involve bending, crawling, twisting, running, sitting, slipping, walking, repetitive use of tools, repetitive placing, grasping, moving objects, or typing etc.

### Event or Exposure of Injury Disabling Cases, Maine, 1995



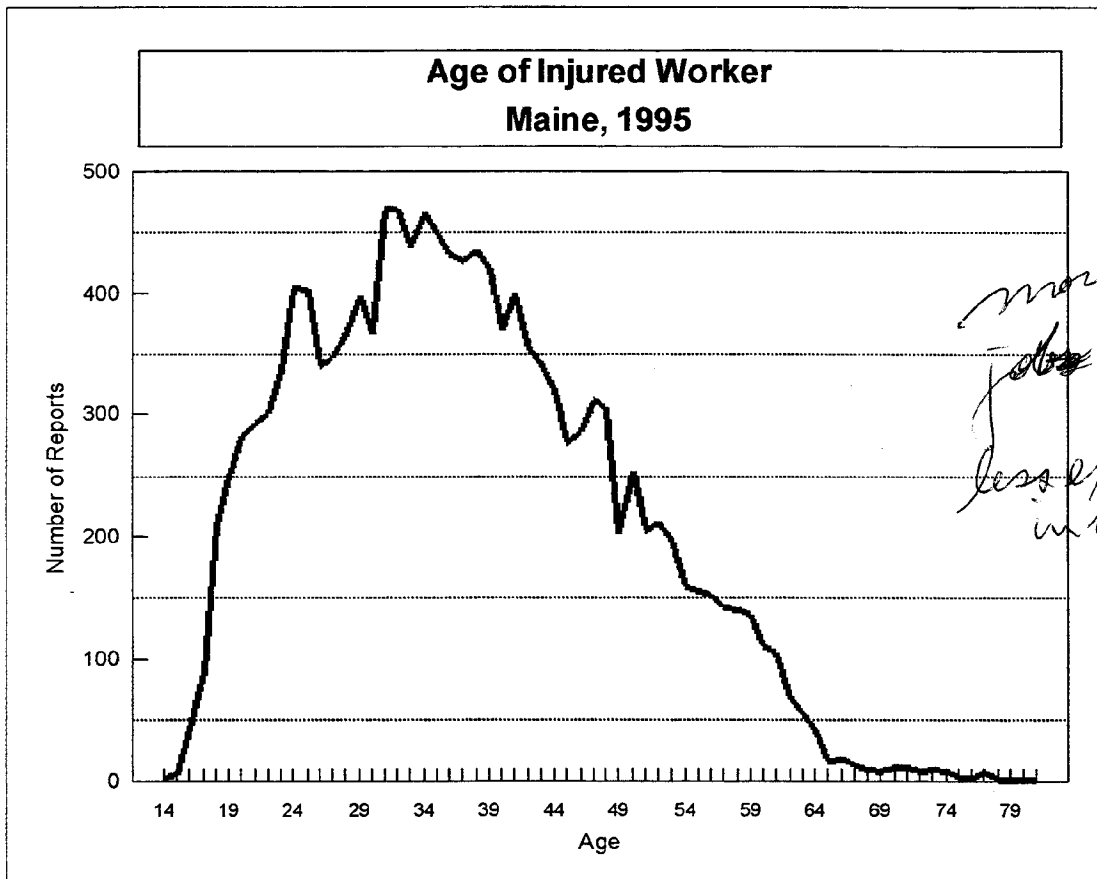
\*Includes repetitive motion, sitting, walking, slips, etc.

*11/2 of answer*

**Key Point:** Clearly, overexertion and position of the body play a major part in lost-time injuries and illnesses accounting for nearly 55% of all lost-time cases in Maine in 1995. Education on ergonomics needs to be a major focus in preventing these type of disabling cases in the future.

## Age Groups of Injured Workers

One focus of education of occupational safety and health issues is to the young workers entering the workforce. Workers under 30 years old accounted for nearly 30% of all lost-time injuries and illnesses in Maine in 1995. Another 16% were between the ages of 30 and 34. Education is now being implemented in schools to help these young workers learn proper lift and carrying techniques as well as other ergonomic issues. Over 61% of all injuries and illnesses occurring to workers in Maine were under 40 years old.



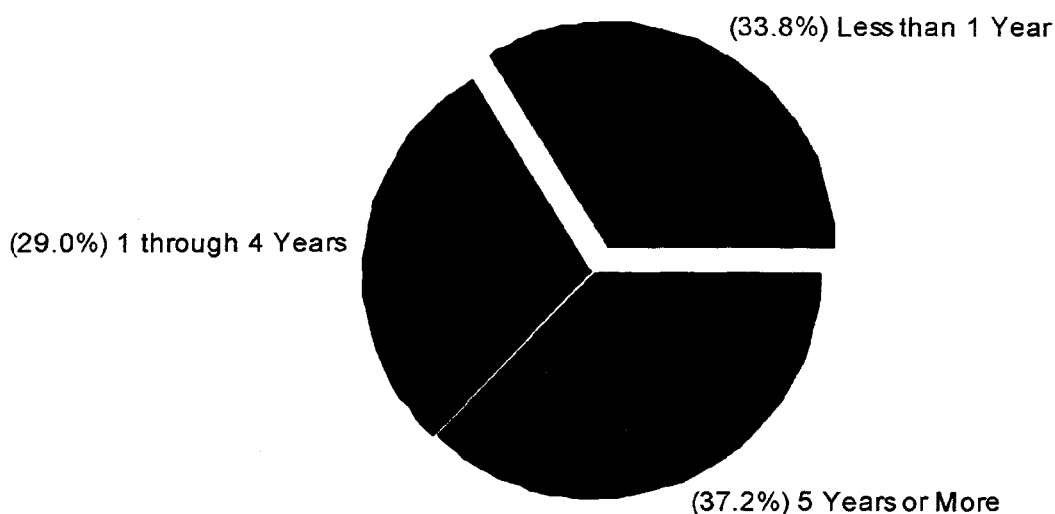
**Key Point:** With over 61% of injuries and illnesses occurring to workers less than 40 years old, and nearly 55% of events being overexertion and position of body, emphasis needs to be placed on educating the workers early on in their career with lifting techniques and good body ergonomics.



### Years of Service of Injured Workers

The chart below shows how long an employee had been working for his or her current employer when injured. More than a third of all workers who lost time in 1995 were injured within the first year of being hired. Over 62% of all lost-time injuries and illnesses in Maine in 1995 occurred before an employee had been working for five years with his current employer

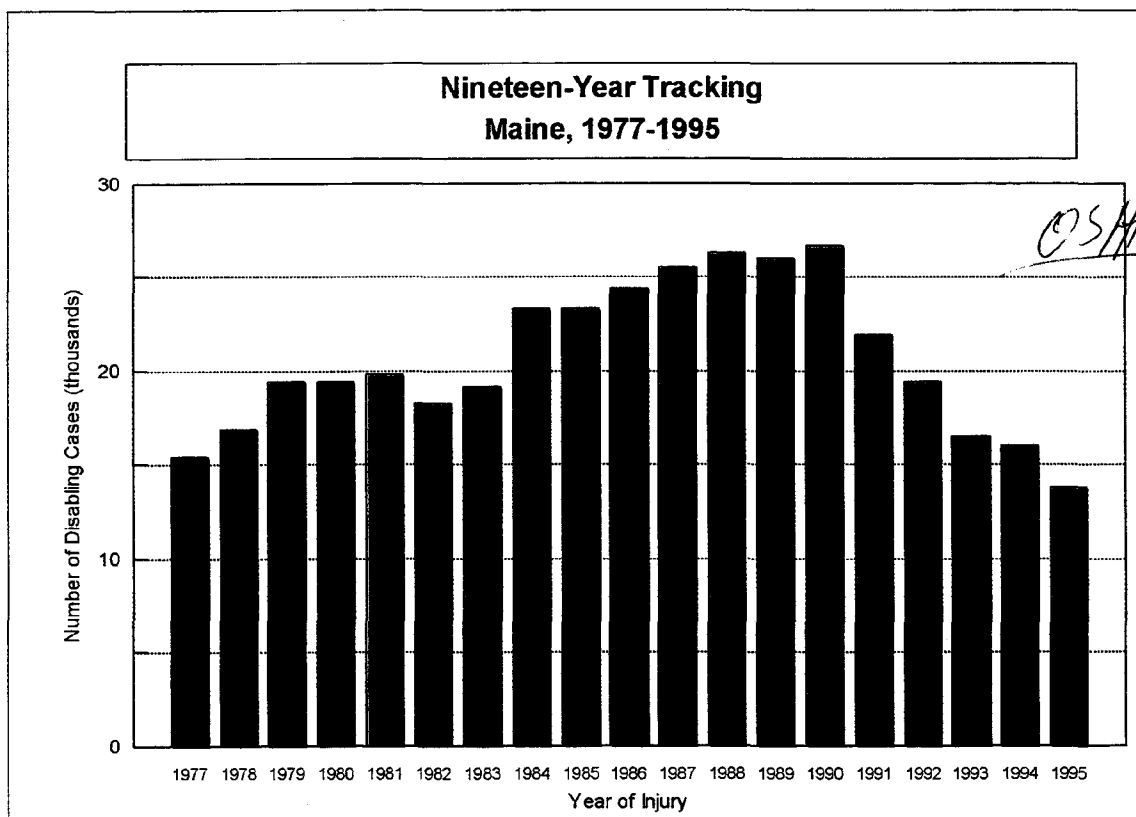
### Years of Service of Injured Workers Maine, 1995



**Key Point:** Since over one-third of all workplace injuries and illnesses happen to workers with less than one year of experience on the job, training in occupational safety and health should be a priority soon after they are hired. Training should include education about the dangers they will be exposed to. Also, as the economy improves, new and inexperienced workers will make up a greater portion of the labor force. Therefore, we may see an increase in the injury rate as the economy improves.

## Workers Compensation Claim History in Maine

The bar graph below shows the number of lost-time cases reported to the Workers' Compensation Board since 1977. Businesses, insurance companies, and State and Federal regulators have formed effective partnerships in the past few years which have helped to lead to the downward trend in lost-time injuries and illnesses in Maine. In recent years, some employers have implemented return-to-work programs to try to lower their Workers' Compensation costs. Consequently, some of the cases that previously would have been included in our claims count now result in restricted work activity only. The numbers may also be falling as a result of the latest Workers' Compensation reform.

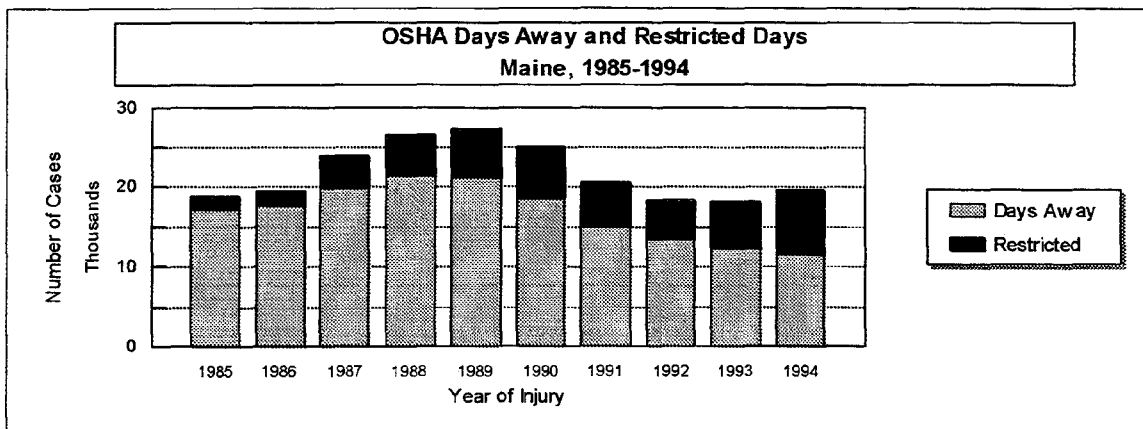


**Key Point:** *The number of reported lost-time injuries and illnesses have clearly fallen over the past five years. While the decline in claims may be related to the Workers' Compensation reforms and increased emphasis on workplace health and safety, other factors such as the economy, putting employees on restricted or light duty and potential under-reporting may have played a significant role in that decline as well.*

## OSHA Days Away and Restricted Days

In addition to the data supplied by the Workers' Compensation Board, the Bureau of Labor Standards has another source of information which provides us with knowledge about cases involving restricted work activity and the rates of injuries and illnesses for each 100 full-time workers. We collect data on injuries and illnesses for the U. S. Bureau of Labor Statistics in the Annual Survey of Occupational Injuries and Illnesses. This information is based on OSHA recordable injuries and illnesses (unchanged by Workers' Compensation reforms) and provides us with some insights that can't be detected by looking at Workers' Compensation data only.

In the past, two severity categories of OSHA recordable cases, those with days away from work and those with restricted work activity have consistently increased and decreased in step with each other regardless of the number of cases that occurred. For instance, when there was an increase in the number and rate of cases with days away from work, there was also an increase in the number and rate of cases with restricted work activity. The same was true for decreases. Over the past three survey periods, 1992 through 1994, a shift developed in the way collected cases were recorded; the rates for these two severity categories have diverged. The total lost workday cases incidence rate, which included both cases involving days away from work and cases involving restricted work activity, has been consistent from 1992 through 1994. However, in 1994, as compared to 1993, the incidence rate for cases with days away from work has decreased 19.5%, while the incidence rate for cases with restricted work activity has increased 53.3%. This suggests a widespread change in the way in which cases are managed once they occur.

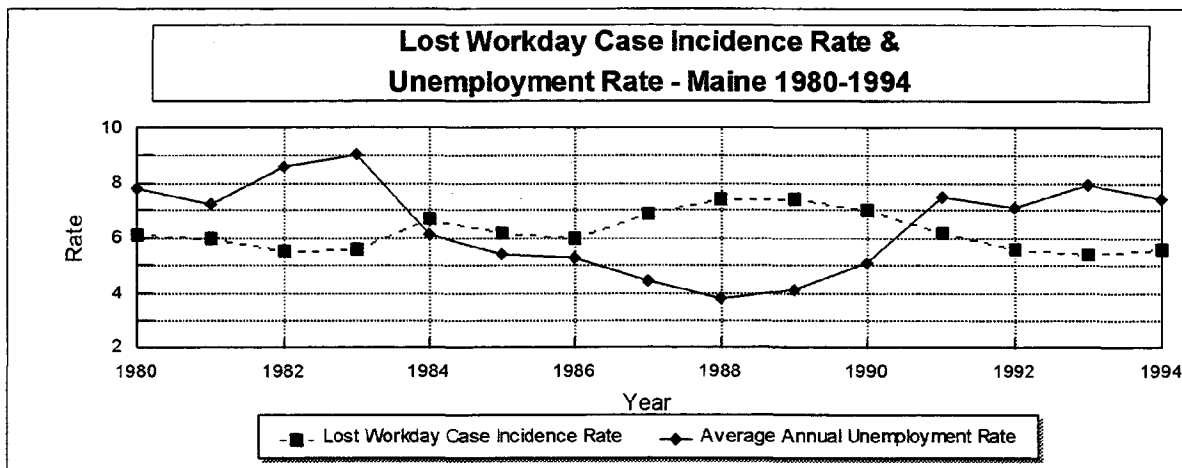


**Key Point:** *It is apparent that employees that were injured or became ill were being placed on light duty (restricted) activity sooner and more frequently than in the past. This could have significant influence on the reduced numbers being reported to Workers' Compensation because they do not need to be reported. However, be aware that the total number of workplace injuries and illnesses in 1994 is slightly higher than those reported in 1985.*

## Maine's Economy and the OSHA Lost Workday Case Incidence Rate

How does the condition of Maine's economy relate to changes in OSHA's workday case incidence rate? Below is a line graph comparing the state's OSHA workday case incidence rate and the unemployment rate. What the lines show is that as the unemployment rate decreases, the likelihood of exposure to an OSHA lost-time or restricted time injury or illness goes up; the two are inversely related. (In one statistical model, we found that the variance in the unemployment rate "explained" 75% of the variance of the incidence rate). This relationship is likely due partly to the fact that in times of high unemployment there are relatively more workers to select from in the hiring process. Employers can choose from a greater selection and is more likely to be able to choose someone with more experience in their field. And from other data we have seen that a low level of experience is related to a high proportion of the accidents.

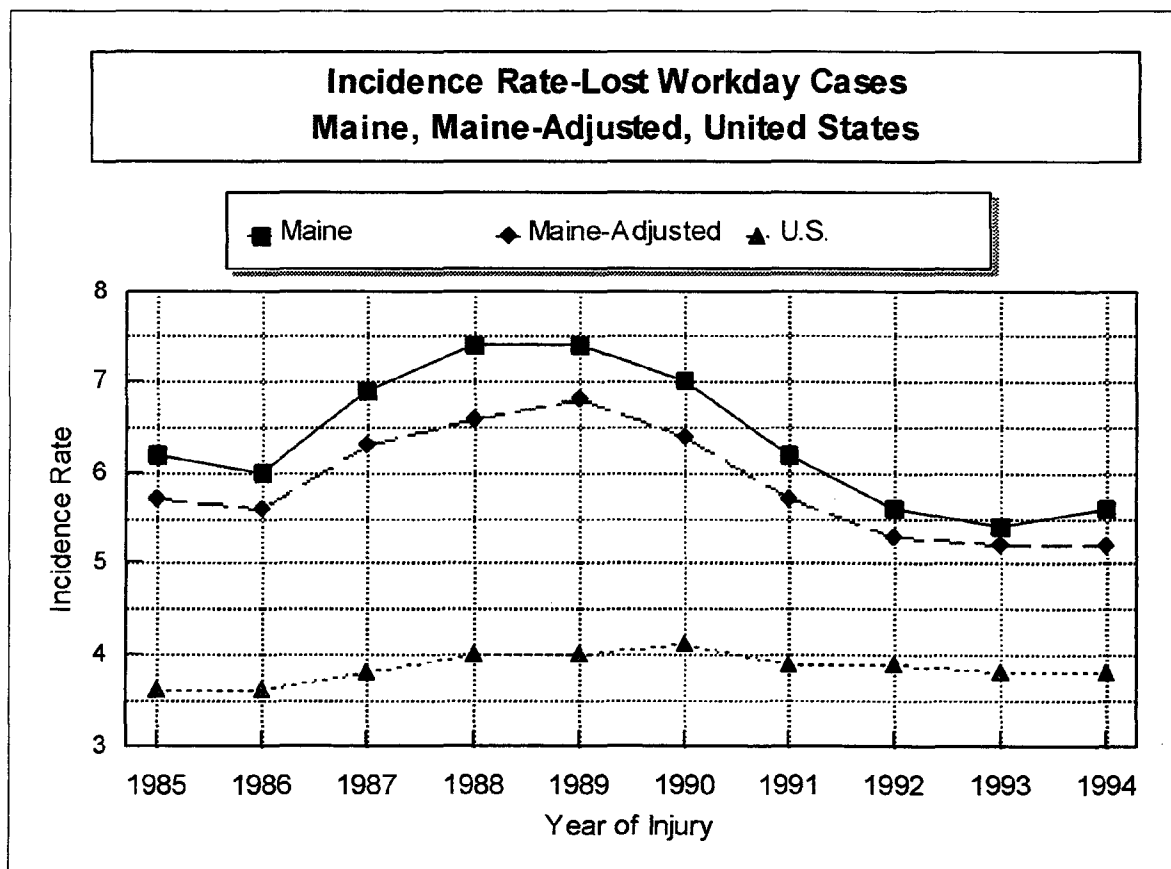
In 1989, the estimated hours worked and the employment peaked in Maine and we have approached what economists call "full employment". Following that was the recession in 1990. Coincidentally, this is the time the latest Workers' Compensation crisis was at its peak with insurance companies pulling out even after substantial rate hikes.



**Key Point:** *This strong relationship between the economy and the case rate signifies the need to look at the training offered to those people who are unemployed and a need to keep our guard up during good economic times. The question becomes, Is it possible to maintain a strong economy in Maine without the costs of more injuries and illnesses on the job? Historically, that has not been the case, although we are seeing signs that the link is not as strong as it once was.*

## Incidence Rate-Lost Workday Cases

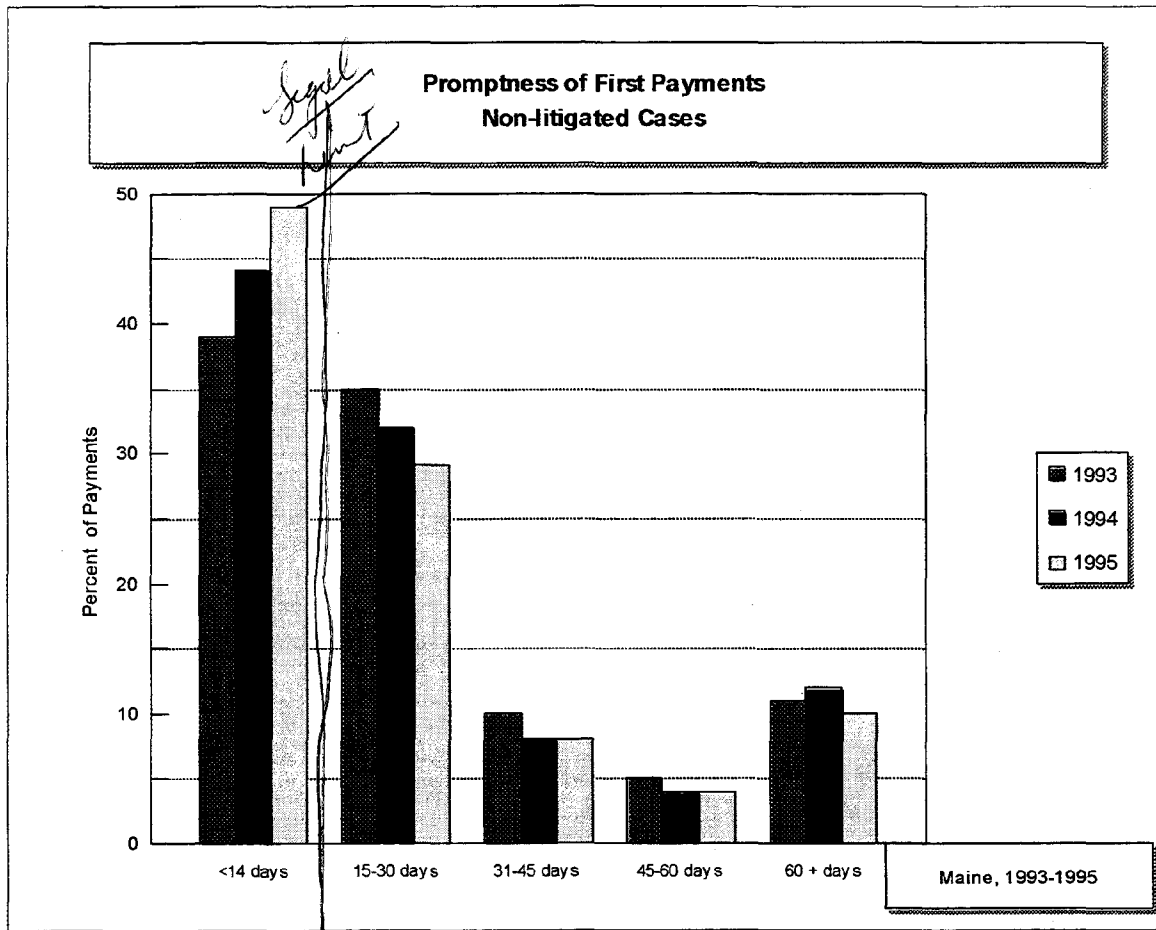
The line graph below tracks the incidence rates from the annual survey for Maine and the U. S. over a 10-year period. It shows Maine's unadjusted incidence rate for cases resulting in lost time (square box), its adjusted incidence rate (diamond) and the U. S. incidence rate (triangle). In order to compare Maine's incidence rates with rates for the United States, an adjustment must be made to account for the differences in the industries present in these two groups. This adjustment has the effect of equalizing the distribution of employment in various industries to allow a fair comparison.



**Key Point:** Even after this adjustment, Maine's rates are higher than the nationwide rates. However, we seem to be closing in.

## Promptness of First Payments in Non-Litigated Cases

The bar graph below shows how quickly an employee who is out on disability due to a work-related injury or illness, gets his/her first Workers' Compensation payment. Promptness of receiving a first payment within 14 days has increased from 39% in 1993 to 49% in 1995, a 25% increase.



**Key Point:** In 1995, nearly half of employees with non-litigated cases received their first payment within 14 days, and nearly 87% within the first month. Although this may seem like an adequate response time for First Reports, it is important to note that the statutory mandate is that payment of wage loss be made or the case be controverted within 14 days. This has been a lingering problem but, hopefully, the increases in the percent of payments made within the 14 day statutory mandate will continue to improve.

## Data Integrity

The Workers' Compensation Act requires the Workers' Compensation Board to collect, maintain and monitor the accuracy of reportable cases. This includes collecting First Reports, and analyzing data such as: cost, interim reports, diagnostic reports, dispute resolution, payments information, timeliness and fairness of the system, attorney involvement and litigation and post injury economic status of workers. The Workers' Compensation Board is the central collection point for this information and a primary source of Workers' Compensation data for policy makers.

The following pages provide our evaluation of the status of selected data collection issues at the Workers' Compensation Board, as required in Section 358(2). Until the Workers' Compensation Board data is fully collected, monitored and analyzed, policy makers will continue to decide workers' compensation issues without the benefit of all the data required in the Workers' Compensation Act. Anecdotal or even possibly inaccurate data would be the basis for major policy decisions.

On the following pages are selected issues regarding data integrity:

- Missing or Incomplete Information on the Cost of WC Claims
- Audits Needed to Make Sure First Reports Are Filed
- Permanent Impairment Threshold Adjustment

In addition to reviewing data concerns, we also have provided a review of the positive steps being taken by the Workers' Compensation Board in regards to data collection and monitoring.

## **Issue: Missing or Incomplete Information on the Cost of Workers' Compensation Claims**

Cost data is an important source of information when evaluating the effectiveness of the Workers' Compensation system. It is also useful in determining where agencies involved in injury and illness prevention should allocate their resources. In 1990, the last full year when injuries involving medical bills only were reported to the then Workers' Compensation Commission, over 75,000 First Reports were being processed. Claims handling and adjudication were high top priorities and information gathering and monitoring was viewed as a lower priority.

In the past, staffing in the Workers' Compensation Payments Section was inadequate to proceed with full-scale, high quality data collection. The Bureau of Labor Standards' interest in this information has remained constant over the years and in 1995. A set of computer programs was developed by the Bureau with the assistance of Payments Division staff to identify unreported cost data. In November, 1995, the Bureau developed a proposal for collecting this missing information. In April, 1996, the first proactive attempt to collect information on costs was made. Information was sought on about 6,500 claims (1993-1995) which positively had overdue reports.

The collection process revealed that in a small percentage of cases, employers are continuing to pay the employee's salary. The staff at the Board developed procedures to require appropriate forms to be filed for these cases. However, these costs are not being filed as either indemnity or under their own category on forms that track Workers' Compensation costs.

In June, 1996, the Board switched to a new computer system. Some significant computer related problems have had to be worked out. As a result, efforts to collect missing and complete cost data have been reduced to manual monitoring.

### ***Possible Actions:***

- ➔ *Analyze the data flow between employers, insurers and the WC Board to make sure the process is efficient and complete*
- ➔ *The WC Board should conduct audits to identify missing information, collect it, and develop checks on accuracy to make sure quality data exists*
- ➔ *Make data collection a priority and provide adequate resources to ensure the data is collected and monitored effectively*
- ➔ *Data collection and monitoring should be considered a vital part of the Workers' Compensation's Board mission*



## **Issue: Audits Needed to Make Sure First Reports Are Filed**

During 1996, an employer asked the Bureau of Labor Standards for a profile of the injuries and illnesses experienced by their employees. The total number of claims in the resulting profile was much lower than expected. The employer agreed to send the Bureau their OSHA 200 logs, forms used to track OSHA recordable injuries and illnesses, to compare against reported claims. The audit revealed that First Reports had not been submitted to the Board for claims involving one to seven days away from work. These cases are required and are reflected in BLS statistics but do not involve indemnity (payment for lost wages under Workers' Compensation). We do not know if this is a small problem or if this incident represents a larger under-reporting problem.

Staff from the Workers' Compensation Board and the Bureau of Labor Standards did meet with the insurance carrier to try to clear up the problem. Other sources of information will have to be collected to ensure that reported information is complete. BLS can provide printouts of reported Workers' Compensation claims to assist in auditing. Other priorities, however, may prevent the board from spot checking to try to ensure that the correct number of reports are being filed.

### **What are the implications of this?**

- The Workers' Compensation Board makes assessments made against both insurance carriers and self-insureds. Each is treated as a separate group for assessment purposes. Since the portion of the overall assessment placed on these two groups is based on the number of First Reports filed, an underreporting by one group would lead to an increased assessment for the other.
- Additionally, the federal OSHA has used the data to target for its Top 200 program and the Bureau of Labor Standards uses the data to help allocate its inspection, consultation, and education resources. If an underreporting problem does exist, resources may not be placed where they are needed the most.
- Agencies are using the number of First Reports in the decisionmaking process.

### ***Possible Actions:***

- ➔ ***Monitor First Report filing by comparing reported lost-time claims to other sources of lost time data***
- ➔ ***Audit employer files to make sure all required data has been reported***

## Issue: Permanent Impairment Threshold Adjustment

Section 213 of the 1992 Workers' Compensation Act sets duration limits for partial incapacity of 260 weeks for cases with 15% or less impairment. Those above 15% receive benefits for the duration of the disability and those at or below 15% receive no more than 260 weeks.

Section 213 has an adjustment provision to ensure that if benefit costs are reduced through safety efforts and other claims management practices, the more serious cases will still be allowed full durational payments. It requires that 25% of all cases receive benefits for the duration of the injury and the remaining 75% receive no more than 260 weeks. Depending on the adjustment, full durational payment may go above or below the original 15%. (The 260 week limit may be extended by 52 weeks each year the Maine frequency is less than the countrywide frequency.)

Threshold adjustment is based on an actuarial review of cases. The first adjustment is due January 1, 1998 and every two years thereafter. The actuarial review must be *for all cases that received a permanent impairment rating since 1/1/93*. This includes *all* cases involving permanent injury, including those settled by lump sum agreement.

It is now impossible for all permanent injury cases post 1/1/93 to be reconstructed for actuarial review. If the review is not completed before 1/1/98, no new standard can be set. As a result, some injured workers with an impairment rating under 15% could argue that they are in the 25% group and entitled to full durational payments. If the number of people eligible for durational benefits increases significantly, the Employment Rehab Fund (a special assessment on insurers and self-insurers used to cover any unfunded liability) would soon run out of money for those newly eligible for durational payments.

The Workers' Compensation Board is considering a threshold review based on only those cases for which a rating has been established. It is our understanding that an RFP has been developed to contract with an actuary to perform the case review. This has the potential of excluding cases with a lower degree of permanent impairment which could increase the 15% threshold.

*Confession: Rubin report.*  
Although overall lost-time cases have been reduced, it is not certain that this reduction would result in a lowering of the 15% threshold.

### **Possible Actions:**

- ➔ *Eliminate the all-cases review requirements and allow the Workers' Compensation Board to review 1997 cases only as the basis for the threshold reduction*
- ➔ *Move the RFP process along as soon as possible to contract with an actuary to perform the case review*

## Data Collection: Positive Steps Being Taken by the Workers' Compensation Board

While we have pointed out several data integrity issues the Workers' Compensation Board may want to address, we are also pleased to point out a number of positive steps that the Board is taking in regards to data collection and monitoring. Below are some examples of how the Workers' Compensation Board is investing time to improve the accuracy of some of its data.

- **Record of Coverage:** Efforts have been made to make sure that all employers who are required to have insurance have reported this to the board. The board has reduced the number of employers with no recorded coverage from 65,000 to below 6,000. This is important for the following reasons: 1) it reduces the number of cases going into the dispute process because of no recorded coverage; 2) it reduces social cost shifting by making sure employers are covered. Without insurance, employers could face liability and employees may be forced to collect from welfare or social security; 3) employers who do carry insurance as required by law will compete on equal footing with others who are required to carry Workers Compensation insurance.  
*how many ~~the ones~~ not have had coverage had they not done this?*
- **Payment of Entitled Benefits:** The Payment's Section has a method of monitoring claims to make sure that injured employees are receiving the benefits they are entitled to.
- **Good data on Dispute Resolutions and Formal Hearings:** Data provided by the Board indicates that the backlog at the formal hearing level continues to decline.
- **Forms and Data Collection Advisory Committee:** The Board established in 1996 a Forms and Data Collection Advisory Committee. While a review of data and forms is essential to improving the Workers' Compensation system, the group is only able to get together about once a month so a comprehensive review of the data collection system will be difficult to achieve. Thus far, the group has worked on simplifying some forms. There are plans to review the data needs of various agencies, employers, insurers, and employees. The Board will have to make a commitment to give serious consideration to the recommendations of the committee. Without the commitment of the Workers' Compensation Board, the efforts of the Forms and Data Collection Advisory Committee may be wasted.

## **New Initiatives at the Bureau of Labor Standards**

The Bureau of Labor Standards is the agency responsible for not only analyzing the data of occupational health and safety in Maine, but also developing health and safety programs and strategies to improve working conditions. The Bureau offers a full range of health and safety services through its Workplace Health and Safety Division, including inspecting worksites, consultations, and extensive training. In addition, we have used the data analysis discussed earlier in this report to lead us to the development of several new initiatives to specifically address the concerns that the data points to. Here are several of the new initiatives that the Bureau of Labor Standards will be advancing this year:

### **A. Young Workers Project**

Because we know that young workers are a group at high risk of workplace injuries and illnesses (see Page C-3), we have developed the Young Workers Project. It is designed to provide services to educators, students and employers to ensure young people enter the workforce knowing their rights as workers and how to work in a safe and healthy manner. Current activities under the Young Workers Project include:

- Development of school curriculum (with the Department of Education and the Curriculum Resource Center of Maine);
- Production of a video for teens;
- Facilitation of a School-to-Work Action Team on workplace health and safety and employment rights; and
- Preparation of a pamphlet to include with youth work permits.

### **B. Outreach and Education Program**

The Outreach and Education Campaign seeks to increase public knowledge of workplace health and safety and other employment rights. In the process, people in Maine will become more aware of Maine Department of Labor services. A major strategy of the campaign is to partner with other agencies that provide services to employers, employees, and potential employers and employees. The Outreach and Education Campaign includes plans for a major statewide safety and health initiative.

### **C. State as the Employer Initiatives**

The Department of Labor, through its Bureau of Labor Standards, is coordinating a comprehensive effort to improve workplace safety and health and reduce workers' compensation costs within state government. In the early stages of development, this program will include an annual state government health and safety conference, enhanced safety and health training for employees, return-to-work programs, targeted enforcement of safety and health regulations, and accountability at all levels of state government.

### **D. Targeting Strategies**

To provide services where most needed, Bureau of Labor Standards has devised a system for identifying employers with multiple injuries and illnesses who may not have other resources to help them improve workplace safety and health. The Bureau of Labor Standards has also developed a Targeting Inspections Program for enforcement of workplace safety and health regulations in the public sector. A similar program is already in place for enforcement of wage and hour regulations.

### **E. Health and Safety Programs for Small Businesses**

Many small businesses in Maine have not experienced the same rate of injury and cost reductions that larger businesses have over the past several years. Therefore, the Department of Labor and the Maine Chamber & Business Alliance have formed a partnership to jointly develop programs and services to assist small businesses in reducing injuries and controlling costs.

## **Making Informed Decisions--A Conclusion**

Accurate and complete data is necessary to make informed decisions. We at the Bureau of Labor Standards believe that the data collection and monitoring as contemplated by the Workers' Compensation Act of 1992 is an important component of an effective Workers' Compensation system. Presently, more effort needs to be placed on quality data collection, especially in the area of Workers' Compensation cost data. In addition, more effort is needed to monitor filings of First Report.

Cost data should be important to all policymakers, and it is already important to those interested in injury and illness prevention. Monitoring collection of all required First Reports should be important to employers and insurers as well. Employers face potential liability for not filing and insurers may have to pay on claims later if time to review cases lapses. Additionally, group assessments may be affected if all First Reports are not filed as required. The lack of data on the extent of permanent partial impairment affects many parties. In 1998, injured employees will first begin to reach the 260 week limit contained in the 1992 Act and some will want to seek durational benefits while insurers and employers may feel that some of these employees should have their benefits end at the 260 week point. Potential litigation could ensue unless a solution is reached.

Because the Workers' Compensation data is required by law, many people may incorrectly believe that the data is being fully collected and monitored. Collecting complete, quality data is not an easy task. It requires time, effort and resources. We at the Bureau believe that policymakers and the general public deserve the highest quality data to evaluate the total effectiveness of the Workers' Compensation system. We therefore strongly recommend that all parties involved strive to fulfill the data collection and monitoring requirements of the Workers' Compensation Act by providing the resources and commitment needed to accomplish the task.

We want to commend the Workers' Compensation Board for the steps they have taken to improve data collection and monitoring and encourage the Board to continue their efforts. The Bureau of Labor Standards stands ready to assist the Workers' Compensation Board in this worthwhile endeavor.

We don't know!