

## A REVIEW AND COMPARISON OF WORKMEN'S COMPENSATION EXPERIENCE IN NEW YORK STATE AND WISCONSIN

BY FRANK HARWAYNE

In an attempt to get at the underlying facts concerning the difference in Workmen's Compensation cost between New York State and Wisconsin, a study has been undertaken with respect to the specific law provisions and also with respect to the actual experience.

### *Legal Basis*

With respect to the law as of the present date (January 1956) there are some differences between the two states. These are readily apparent in Exhibits A through D which are based on *Analysis of Workmen's Compensation Laws* prepared by the U. S. Chamber of Commerce. In New York State there is no limitation as to the length of time benefits are payable to widows, whereas in Wisconsin benefit payments are limited to 1000 weeks for widows under age 50, graduating down to 500 weeks at higher ages. The rate of benefits to widows is subject to a maximum of \$24.00 per week in New York, and \$32.50 per week in Wisconsin. For a widow with children, the maximum is \$40.00 per week in New York, and \$32.50 per week in Wisconsin. In Wisconsin the rate of payment is 50% of average weekly wages for a widow or a child, subject to a maximum benefit of 50%. In New York the childless widow gets 40%; the orphan gets 30%; the maximum in any case is 66 $\frac{2}{3}$ %.

With regard to permanent total awards, benefits are payable for life in both states. In New York two-thirds of wages are paid subject to a \$36.00 maximum per week. In Wisconsin 70% of wages is paid subject to a maximum of \$45.50. As for temporary total cases, the percentage of wages and the maximum weekly amounts are identical to that for permanent total and are payable for the duration of the disability. In New York, total amounts are limited to \$6500, whereas in Wisconsin no limit applies. In both instances additional amounts are available for vocational rehabilitation.

With regard to schedule awards for permanent partial disabilities, Wisconsin allows payments for temporary total disability in addition to the allowance for permanent partial, but New York allows payments for temporary total disability in addition to permanent partial awards, with certain deductions from the period of total disability. As a sample of the maximum amounts available in New York, loss of an arm at the shoulder may cost up to \$11,232, whereas in Wisconsin the comparable amount is \$18,500. Loss of a thumb in New York may go up to \$2700 and up to \$4625 in Wisconsin. Loss of hearing in both ears may go up to \$5,400 in New York and \$12,333 in Wisconsin.

In both New York and Wisconsin, payments of medical cost are payable without limit.

In New York there is a seven day waiting period which is eliminated if the injury lasts more than 35 days. In Wisconsin the waiting period is only three days and is eliminated if the injury lasts more than 10 days.

In a summary of all the foregoing instances it is apparent that the benefits available under the Wisconsin law compare favorably with those of the New York law.

#### *Provisions Regarding Administration*

With regard to the manner of claim settlement, there appears to be a marked difference between the two states. In New York State claims are settled by the Workmen's Compensation Board. On application, the Board must grant a hearing. Where there is a thirty days' default or a refusal, a claim for the commuted value is filed with the County Clerk and judgment entered. Review may be had by the Board on application or on its own motion, and modification may be made by the Board at any time; special conditions may apply. In Wisconsin claims are settled by agreement or compromise, subject to review by the Industrial Commission within one year. Disputed cases are settled by the Commission, the Commissioner or an Examiner. Judgment is rendered in Circuit Court on presentation of a certified copy of the award. The Commission may review an award made by an Examiner, or the Commissioner within 20 days. It may also review an action on its own motion within 20 days. Compromises may be modified within one year, except that occupational disease is subject to review within 6 years. Attorneys' fees are limited to 20% of recovery, unless previously authorized by the Commission. If there is admitted liability, fees are limited to 10%, but not more than \$100. In New York attorneys' fees must be approved by the Board.

It is quite possible that the ability of the insurance carrier to make agreements and compromises with the injured workman affects insurance costs.

#### *Comparison of Experience*

As for the experience in the two states, a careful survey of the experience for policy years 1951 and 1952 has been made, as well as a review of manual rates. In order to reap the benefit of aggregates approximately 45 classifications were considered, these classifications being the same ones which were analyzed by Mr. Roger Johnson in the Spring of 1953. Also, in order to make the figures comparable between the two states, the concentration of relatively high hazard business in Wisconsin has been taken into account by weighting the Wisconsin experience by classification by the New York volume for each of the forty-five classifications. As a check on the procedure, New York experience was also averaged on the basis of the distribution of business in Wisconsin. In both instances the comparisons are revealing. For ease of understanding and in order to emphasize the

general magnitude of the figures, the percentages following are those of Exhibits 1 through 4, rounded to the nearest 5%. The average rate for these 45 classifications in Wisconsin is approximately 45% below the average rate in New York. Of equal importance is the fact that the proposed pure premium, that is the provision in the rates for loss cost per \$100 of payroll in Wisconsin is 55% below that in New York. In New York the proposed pure premium represents 70% of the average rate, whereas in Wisconsin it represents only 55% of such rate. In other words, it can be said that insurance costs are higher in New York than they are in Wisconsin, but it is equally true that a greater proportion of the manual dollars charged in New York are incurred in benefits than of the dollars charged in Wisconsin.

In Wisconsin carriers incur 55% less than they incur in New York for the payment of serious cases, and 60% less for indemnity cases as a whole. Medical costs are 40% below New York costs. On a combined basis, Wisconsin costs are 55% below New York costs. This of course, means that actual costs in New York are more than double those of Wisconsin, in spite of the maximum amounts available under the Workmen's Compensation Laws.

A somewhat different analysis of the loss cost components of relative claim frequency and average claim cost is informative. Concerning frequency, in Wisconsin the incidence of serious claims is 40% to 45% below that of New York, whereas the incidence of non-serious claims is 5% to 15% below. On a combined basis, Wisconsin frequency is 5% to 15% less than that of New York for indemnity cases. Apparently the marked difference in cost between New York and Wisconsin cannot be attributed in any great measure to the incidence of claims, although it must be admitted that the infrequent serious claim has exerted some influence on the total cost.

It is in the average claim cost that we find rather large differences. In Wisconsin the average cost of a serious claim runs 20% to 25% below that of New York. Even more significantly, the average cost of a non-serious claim in Wisconsin runs 55% to 60% below the average cost in New York.

The magnitude of these differences appears to be contrary to the conclusions reached through a survey of the benefits made available by the Workmen's Compensation Law. The Wisconsin law makes available benefits both more frequent and more costly than the New York law. It is surprising to find that in actual practice the costs seem to run the other way. That such costs are real and not fictional, we can be assured of when we examine the run-off of losses. In New York State the rate making practice has been to incorporate loss developments up to fifth report, which is 66 months after the policy has expired. We find that adjustments have been consistently upward on each successive reporting, and necessarily conclude that the losses are real and do not represent padding on the part of the companies. In further support of this, the New York supplementary insurance expense exhibit likewise confirms this fact. Since the difference does not appear to be explainable on the basis of the provisions in the bene-

fits payable under the Workmen's Compensation Law, it would appear that the difference in cost must be attributed to the difference in practical operation of the law, in insurance carriers' interpretations of the operation of the law, or in actual difference in hazard for the same operations (i.e. lesser standards of safety).

Whatever the cause, it does seem apparent that costs in New York State exceed those in Wisconsin. It seems unfortunate that some employer and employee groups have labelled such costs as excessive, because the foregoing analysis would seem to indicate that these costs are actually benefits being afforded to the injured workmen in New York State.

ANALYSIS OF WORKMEN'S COMPENSATION LAWS  
Benefits for Widows and Children

	<i>New York</i>	<i>Wisconsin</i>	<i>Remarks</i>
Maximum Period:	Not Specified	1000 weeks	N. Y. Payable until death or remarriage. Wisconsin reducing period over age 50. Maximum reduction 50%.
Maximum Per Week:			
Widow Only	\$24.00	\$32.50	
Widow and Children	40.00	32.50	
Maximum Amounts:			
Widow Only	No limit	See Remarks	Wisc. 4 times avg. annual earnings, not to exceed 70% of weekly wage for maximum period.
Widow and Children	No limit	See Remarks	Aggregate for children 4 times average annual wage, to accrue at rate of 13% of surviving parent's indemnity.
Minimum Per Week:			
Widow Only	\$ 5.00	\$10.00	
Per Cent of Wages:			
Maximum	66⅔%	50%	Wisc. aggregate amount calculated on basis of 70% of avg. annual wage.
Widow Only	40	50	Weekly installments payable
One Child Only	30	50	50% of avg. weekly wage.

WORKMEN'S COMPENSATION

Benefits for Permanent and Temporary Total Disabilities

	<i>New York</i>	<i>Wisconsin</i>	<i>Remarks</i>
Maximum % of Wages	66 $\frac{2}{3}$ %	70%	Additional Compensation for vocational rehabilitation.
Maximum Weekly Payment	\$36.00	\$45.50	
Minimum Weekly Payment:			N. Y. actual wage if less.
Permanent	15.00	14.00	
Temporary	12.00	8.75	
Time Limit:			
Permanent	Life	Life	
Temporary	Disability	Disability	
Amount Limit—Temporary	\$6500	None	
		<i>Waiting Period and Medical Benefits</i>	
Waiting Period	7 days	3 days	If disability continues for longer than retroactive period compensation is paid for the waiting period.
Retroactive Period	35 days	10 days	
Medical Benefits—			
Limitations	None	None	
Artificial Appliances			
Furnished	Yes	Yes	

## WORKMEN'S COMPENSATION

Maximum Amounts Which Could be Paid in Dollars for  
Scheduled Injuries

	<i>New York</i>	<i>Wisconsin</i>	<i>Remarks</i>
Arm at Shoulder	\$11,232	\$18,500	New York: Compensation for temporary disability allowed in addition to permanent partial disability with certain limitations as to period. Wisconsin: Based on employees 50 years of age or less. Additional weeks compensation for healing period. Compensation for temporary disability allowed in addition to allowance for permanent partial disability.
Hand	8,784	14,800	
Thumb	2,700	4,625	
First Finger	1,656	2,160	
Second Finger	1,080	1,665	
Third Finger	900	962	
Fourth Finger	540	1,036	
Leg at Hip	10,368	18,500	
Foot	7,380	9,250	
Great Toe	1,368	3,083	
Other Toes	576	Scheduled	
One Eye	5,760	10,175	
Hearing One Ear	2,160	1,850	
Hearing Both Ears	5,400	12,333	

WORKMEN'S COMPENSATION  
STATUTORY PROVISIONS

	<i>New York</i>	<i>Wisconsin</i>
Administration Notice to Employer	Workmen's Compensation Board. In writing within 30 days; excusable.	Industrial Commission. Within 30 days, excusable.
Claim Filing	Within 2 years after accident or death.	Within 2 years after injury or death; all rights barred after 6 years from injury, death or last payment. Excusable if employer knew of disability.
How Claims Are Settled	By Board; on application board must grant hearing. In default or refusal claim for commuted value filed with county clerk and judgment entered.	By agreement, or compromise subject to review by Commission within 1 year. Disputed cases settled by Commission, Commissioner or examiner.
Award Effect	Judgment on 30 day default.	Judgment in Circuit Court on certified copy of award.
Review by Agency	By Board on application or own motion.	By Commission within 20 days from examiner or Commissioner.
Modifications	By Board at any time. Subject to special conditions.	By Commission on its own motion within 20 days, compromises may be modified within 1 year. If occupational disease, subject to review within 6 years.
Court Appeals	To Appellate Division of Supreme Court 30 days; further appeal to Court of Appeals.	To Circuit Court for Dane County within 30 days; further appeal to Supreme Court.
Attorney Fees	Enforceable on approval of Board.	Limited to 20% of recovery unless previously authorized by Commission. If admitted liability not to exceed 10% or \$100.



Exhibit 1

45 CLASSES NEW YORK AND WISCONSIN WORKMEN'S  
 COMPENSATION DATA  
 AVERAGE RATES AND PROPOSED PURE PREMIUMS  
 APPLICABLE AS OF JANUARY 1, 1956

	<i>On New York Distribution of Payroll</i>			<i>On Wisconsin Distribution of Payroll</i>		
	<i>New York</i>	<i>Wisconsin</i>	<i>Change</i>	<i>New York</i>	<i>Wisconsin</i>	<i>Change</i>
Average Rate	\$1.201	\$.673	—44%	\$1.797	\$.969	—46%
<i>Proposed Pure Premiums</i>						
Serious	\$ .246	\$.087	—65%	\$ .380	\$.133	—65%
Non-Serious	<u>.372</u>	<u>.161</u>	<u>—57%</u>	<u>.547</u>	<u>.229</u>	<u>—58%</u>
Indemnity	\$ .618	\$.248	—60%	\$ .927	\$.362	—61%
Medical	<u>.230</u>	<u>.134</u>	<u>—42%</u>	<u>.331</u>	<u>.183</u>	<u>—45%</u>
Total	\$ .848	\$.382	—55%	\$1.258	\$.545	—57%
<i>Ratio Total Proposed Pure Premiums to Average Rate</i>						
	71%	57%		70%	56%	

45 CLASSES NEW YORK AND WISCONSIN WORKMEN'S  
COMPENSATION EXPERIENCE  
POLICY YEARS 1951 AND 1952 PURE PREMIUMS ADJUSTED FOR  
ADOPTED DEVELOPMENT FACTORS

	<i>On New York Payroll Distribution</i>			<i>On Wisconsin Payroll Distribution</i>		
	<i>New York</i>	<i>Wisconsin</i>	<i>Change</i>	<i>New York</i>	<i>Wisconsin</i>	<i>Change</i>
<b>Serious :</b>						
1951	.217	.099	—54%	.352	.146	—59%
1952	.159	.070	—56%	.231	.112	—52%
1951-2	.188	.085	—55%	.290	.128	—56%
<b>Non-Serious :</b>						
1951	.392	.161	—59%	.578	.242	—58%
1952	.408	.159	—61%	.589	.221	—62%
1951-2	.400	.161	—60%	.584	.231	—60%
<b>Indemnity :</b>						
1951	.609	.260	—57%	.930	.388	—58%
1952	.567	.229	—60%	.820	.333	—59%
1951-2	.588	.246	—58%	.874	.359	—59%
<b>Medical :</b>						
1951	.234	.140	—40%	.336	.197	—41%
1952	.215	.132	—39%	.306	.176	—43%
1951-2	.224	.137	—39%	.321	.186	—42%
<b>Total</b>						
1951	.843	.400	—53%	1.266	.585	—54%
1952	.782	.361	—54%	1.126	.509	—55%
1951-2	.812	.383	—53%	1.195	.545	—54%

45 CLASSES NEW YORK AND WISCONSIN WORKMEN'S  
COMPENSATION EXPERIENCE  
POLICY YEARS 1951 AND 1952 ON NEW YORK DISTRIBUTION OF PAYROLL

	<i>Frequency per million \$ payroll</i>			<i>Average Claim Cost</i>		
	<i>New York</i>	<i>Wisconsin</i>	<i>Change</i>	<i>New York</i>	<i>Wisconsin</i>	<i>Change</i>
<b>Serious :</b>						
1951	.18	.11	—39%	12,097	9106	—25%
1952	.15	.09	—40%	11,165	8244	—26%
1951-2	.16	.10	—38%	11,680	8478	—27%
<b>Non-Serious :</b>						
1951	6.20	6.10	— 2%	633	264	—58%
1952	6.04	5.72	— 5%	675	278	—59%
1951-2	6.12	5.89	— 4%	654	273	—58%
<b>Indemnity :</b>						
1951	6.38	6.21	— 3%	956	421	—56%
1952	6.19	5.81	— 6%	917	401	—56%
1951-2	6.28	5.99	— 5%	937	410	—56%

45 CLASSES NEW YORK AND WISCONSIN WORKMEN'S  
 COMPENSATION EXPERIENCE  
 POLICY YEARS 1951 AND 1952 ON WISCONSIN DISTRIBUTION OF PAYROLL

	<i>Frequency per million \$ payroll</i>			<i>Average Claim Cost</i>		
	<i>New York</i>	<i>Wisconsin</i>	<i>Change</i>	<i>New York</i>	<i>Wisconsin</i>	<i>Change</i>
<b>Serious:</b>						
1951	.28	.15	—46%	12,300	9508	—23%
1952	.20	.12	—40%	11,109	9043	—19%
1951-2	.25	.14	—44%	11,754	9294	—21%
<b>Non-Serious:</b>						
1951	9.46	8.32	—12%	611	291	—52%
1952	9.06	7.49	—17%	650	293	—55%
1951-2	9.27	7.90	—15%	630	292	—54%
<b>Indemnity:</b>						
1951	9.74	8.47	—13%	822	454	—45%
1952	9.26	7.61	—18%	820	431	—47%
1951-2	9.52	8.04	—16%	821	449	—45%