

# MAINE STATE LEGISLATURE

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AUGUSTA MAINE

ANNUAL REPORT ON THE  
STATUS OF THE MAINE WORKERS' COMPENSATION SYSTEM  
SUBMITTED TO THE 114TH LEGISLATURE

APRIL 13, 1990

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Joseph A. Edwards  
Superintendent  
Department of Professional  
and Financial Regulation  
Bureau of Insurance

William A. Peabody  
Acting Director  
Department of Labor  
Bureau of Labor Standards

Ralph L. Tucker  
Chairman  
Workers' Compensation  
Commission

John R. McKernan, Jr.  
*Governor*



James H. McGowan  
*Acting Commissioner*

William A. Peabody  
*Acting Director*

**DEPARTMENT OF LABOR**  
**Bureau of Labor Standards**

April 13, 1990

The Honorable John L. Martin  
Speaker of the House  
State House Station #2  
Augusta, ME 04333-0002

The Honorable Charles P. Pray  
President of the Senate  
State House Station #3  
Augusta, ME 04333-0003

Dear Speaker Martin and President Pray:

We are pleased to submit to the 114th Legislature the second Annual Report on the Status of the Maine Workers' Compensation System pursuant to Public Law 1987, Chapter 599. This document summarizes the results of data collection by the three agencies involved and is intended to present a profile of the workers' compensation system including costs, administration, adequacy, and an evaluation of the entire system.

Like its predecessor, this report is organized into three sections. The report itself, however, is a cooperative effort.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joe Edwards", written over a horizontal line.

Joseph A. Edwards  
Superintendent  
Bureau of Insurance

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm A Peabody", written over a horizontal line.

William A. Peabody  
Acting Director  
Bureau of Labor Standards

Sincerely,

A handwritten signature in dark ink, appearing to read "Ralph L Tucker", written over a horizontal line.

Ralph L. Tucker  
Chairman  
Workers' Compensation  
Commission

**REPORT ON THE 1989 MARKET FOR WORKERS' COMPENSATION INSURANCE**

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

BUREAU OF INSURANCE

## REPORT ON THE 1989 MARKET FOR WORKERS' COMPENSATION INSURANCE

Rates in the voluntary market and safety pool increased by an average of 22.5 percent on March 20, 1989. The increases varied by amounts ranging from a low of 3.9 percent to a high of 37.6 percent, applicable to new and renewed policies as of that date.

In the one year period ending December 31, 1989, five companies became self-insured in the State and two companies terminated their right to self-insure.

While these figures are still subject to final audit, the preliminary report on calendar year 1988 shows the market coverage in the following percentages:

Hanover	21	6%
A.I.G.	18.6	
C.U.	12.0	
Maine Bonding	12.0	
Travelers	9.3	
Liberty	6.1	
U.S.F. & G.	5.0	
Fidelity & Casualty	3.4	
Hartford	3.2	
Aetna	2.8	
All Other	6.0	

The total premium volume on a calendar year basis for 1988 was about \$260 million. Estimated premium for policy year 1988 for the residual market is \$223 million.

Very preliminary and partial figures for the residual market for 1989 (only \$148 million) show the following percentages:

Hanover	30.0%
A.I.G.	29.4
C.U.	15.5
Travelers	10.4
Maine Bonding	3.9
U.S.F. & G.	3.3
Hartford	3.1
Fidelity & Casualty	3.0
All Other	1.4

Although most policies are still in the residual market, in recent months there has been increased activity in the voluntary market. In fact, during 1989 there were some companies who reinstated their authority to write workers' compensation business.

OCCUPATIONAL INJURY AND ILLNESS DATA SYSTEM

DEPARTMENT OF LABOR

BUREAU OF LABOR STANDARDS

## OCCUPATIONAL INJURY AND ILLNESS DATA SYSTEM

The Bureau of Labor Standards' participation in the Workers' Compensation data system has evolved into three complex and interrelated functions: statistics gathering and dissemination, large data-set transfer, and data consultation.

### Statistics Gathering and Dissemination

The most intensive of these activities are the two data collection and dissemination programs, the Annual Survey of Occupational Injuries and Illnesses (OSHA 2005), and the Supplementary Data System (SDS); each partially funded through the U. S. Department of Labor, Bureau of Labor Statistics. Two Annual publications are produced: Occupational Injuries and Illnesses in Maine and Characteristics of Work-Related Injuries and Illnesses in Maine. Both are available, free of charge for single copies.

### The Annual Survey of Occupational Injuries and Illnesses

The Annual Survey's focus is measurement of the degree of the occupational injury and illness problem by year, state, industrial classification, and size class. Provisions are built into the process for comparisons from year-to-year, from state-to-state, from industry-to-industry and from size class-to-size class and various combinations of the above. Its primary use is targeting occupational safety and health efforts and assessing progress. Due to the survey format and the need to develop nationally comparable data, it does not involve Workers' Compensation data as such, but relies on Federal definitions and procedures. One of the questions asked of employers is the total number of hours worked by all employees during the calendar year. This serves as the common denominator for all the rates generated, making the

comparisons mentioned above statistically valid and useful. Otherwise the rates would not account for such variables as the number of workers and the average number of hours each employee is exposed to the work environment.

The Annual Survey is based on a "stratified sample survey" methodology, meaning that only enough establishments are asked to complete the form in each subgroup (industry by size class) to obtain valid statistics for that subgroup. This keeps the cost of the survey down, provides more time for quality control and analysis. In addition, it creates less of an imposition on employers.

The past year in the Annual Survey program things went very smoothly. The survey management activities were transferred to a personal computer during the year, coinciding nicely with the Bureau's move to Hallowell and the problems that posed in continued efficient use of the state's central mainframe computer system.

There recently has been a great deal of interest in the OSHA recordkeeping aspect of the program and, as a result, a good many outreach seminars have been held to advise people of their recordkeeping responsibilities, and to answer sometimes very difficult and technical questions on the various aspects of the recordkeeping requirements. We anticipate additional growth in this activity and, then, eventually a tapering off. This should coincide with the implementation of the revised OSH statistical program.

#### The Supplementary Data System

In contrast to the Annual Survey, the Supplementary Data System is highly related to the Workers' Compensation system. Since workers' compensation laws vary greatly, there are glaring differences among the statistics produced by the various state participants due to first report submission regulations alone. As a result, the data is generally not useful in terms of



the differences from state to state. Furthermore, the data does not include any common denominator to account for differences in the number of workers or the number of hours worked by all employees, as does the Annual Survey data. Consequently, rates useful for comparison purposes have not been developed. On the positive side, however, there is a direct link of the SDS data to the Workers' Compensation system, as it provides detailed characteristics data on a case-by-case basis. Together, all these fields enable searches for specific classes of cases on any (or any combination) of the Workers' Compensation data fields and Supplementary Data System fields. This combined data set is available to a wide range of users.

The past year was the first full year the Bureau of Labor Standards was located at the Hallowell Annex, away from the Bureau of Data Processing's computer operations. During the year, remote job entry was made possible on local equipment first through a rather tenuous dial-up phone connection, then later through the Workers' Compensation Commission's direct line. The latter connection not only served to reestablish services to the previous levels, but produced further productivity since most of the data is analyzed on the state's IBM mainframe in the State Office Building. As a result, there was a 110% increase in computer activity with the same staff level, greatly improving the timeliness of work performed and increasing the Bureau's capacity to meet data requests. The beginning of 1990 saw the Bureau getting an even better connection to the IBM mainframe, and a local printer connection that provides printed output in Hallowell -- both items that will further enhance productivity.

Some potentially good news comes in terms of the Supplementary Data System coding workload. It appears the tide may be turning in the number of first reports received for 1989. The number of first reports for 1989, as of

3/18/90 is 80,574. The total for 1988 with almost a full year of additional collection, is 80,987. This decrease compares favorably to about a 5,000-case increase from 1987 to 1988. The stem in the increase may be due to any one or both of two causes.

In the Supplementary Data System there was a turnover of one coder during the year that seriously affected the ability to keep coding up to date for about three months. The coding step involves getting first reports from the Workers' Compensation Commission, coding, and then returning the reports within 48 hours. (First reports come in at a rate of about 320 per workday.) With two coders up to full speed and a statistician or two from other programs to help out, this is no problem. However, with one full-time coder gone and the timing such that no statisticians from outside the Supplementary Data System were available, a backlog quickly developed and grew to that point where it negatively affected the Workers' Compensation Commission's ability to process its paperwork. As a result about 10,000 first reports had to be photocopied and processed later as time permitted. The problem might have been lessened had the list from which to fill the position been up-to-date. Unfortunately, the recruitment procedures are such that updates are not made until vacancies occur. In any case, the backlog was in the process of being caught up by the end of the year as the coding position was filled and a statistician from another program was freed up to help. This, however, serves to illustrate the delicate balance needed in this program just to keep up-to-date, and to prevent the problem from affecting the Workers' Compensation Commission administrative activities. The Bureau anticipates that one additional statistician will be available when needed in the upcoming year to lessen this possibility in the future.

## Revised Occupational Safety and Health Statistical Programs

The big news concerning these two statistical programs is that the federal Bureau of Labor Statistics has announced a revision that in effect combines the best features of the two programs into a single package. At this time it appears that the two federal programs will be combined. The State will then maintain the Supplementary Data System. The Bureau is promoting the implementation of a unitary system that would allow the State to continue to use federal money to support the SDS. The key may be that there be no conflicting disclosure and quality control requirements imposed by the federal Bureau of Labor Statistics. This would provide a wholly flexible data collection and reporting system that would minimize duplication of effort, both on the part of the employer, and on the part of the Bureau.

In the more distant future, plans for the combined programs call for quarterly estimation and data dissemination. At time of publication, however, data is presented as of February 11, 1990 from an already-existing system. The ability to tabulate and analyze data so quickly should not go unnoticed. The ability to do so underscores the point that there are some very intensive uses of the data, largely aimed at pro-active consultation and enforcement activities. A "sentinel" program by which data is tabulated and analyzed regularly would go a long ways in promoting either or both consultation and/or enforcement activities. Such a program would require knowledge and material resources, and moral support not currently available.

### Large Data-Set Transfer

Over the past year, the Research and Statistics Division has planned, written and implemented computer programs to provide large data sets on a regular basis for the Maine Self-Insured Guarantee Authority (MSIGA) and the Bureau of Insurance, for use in their respective data systems. However, in

the upcoming year, the actual running of these programs will be turned over to the individual participants. The computer programs and procedures are already in place and relatively easy to implement. New programming for any data transfers will be planned, programmed, and debugged (as before) by the Research and Statistics Division Staff and then given to the requesting agencies, provided they have access to the state's IBM mainframe. Those who do not have access will need to request runs through the Workers' Compensation Commission or Bureau of Labor Standards.

The position charged primarily with maintaining the Bureau's programming and computer system was left vacant most of the year as a result of budgetary problems. The position will also be vacated for the remainder of the biennium. This, coupled with the Bureau's purchase of a new computer system in 1990 meant a serious lack of staff time to devote to this area. While not critical, should any of the other statisticians performing programming leave, the Division may be in serious trouble and will likely have to curtail these services.

In the future, data file transfers will be restricted to those requiring a minimum of programming on the mainframe end so as to maximize access. Agencies requesting Workers' Compensation data will be asked to program on their end such that unneeded data fields simply are not read into their own databases. By doing this, the Research and Statistics Division staff can concentrate on other special programming needs. This should reduce computer costs and enable the Division to provide data to a greater number of requesters.

Future plans (that are pretty much on hold for now) being considered in this area include actively promoting the dissemination of this data to individual employers. In the next few months, the Bureau of Labor Standards will

be obtaining a much more powerful and fully-featured computer system that will be able to write data to a greater variety of computer media. If the resources are there, the Bureau could isolate over a full year of data and offer it to the employers in varying combinations for them to do their own research. If the programming resources are there we could also provide them with description files and spreadsheet-ready or data base-ready file and data-volume descriptions data to simplify things further. The employers could then download a complete mini data system, ready to perform analysis on the data for their own companies.

In the future and with additional support it may be beneficial to both the business community and the various agencies to investigate the possibility of establishing an on-line statewide reporting system. Such a system could either be restricted to statistical uses, or could, if not immediately, eventually evolve into an on-line work place incident tracking system. Ideally such a system would collect all the data and then appropriately notify the constituent agencies, insurers, and maybe even the federal government. Such a system, with appropriate security and ease of access, could greatly cut down on the duplication of effort now taking place which will worsen with the new federal reporting requirements scheduled to be in place by 1992. A large system as this might incorporate artificial intelligence technology to route and record each case appropriately given the variety of needs served. Admittedly, there are some major issues, not to mention a great number of details, to work out but it may well be worth considering given the overwhelming need for up-to-date information.

## Data Consultation

By-and-large the most important function the Bureau has provided in the past, and can offer for the future, is that of data consultation. Being responsible for its collection and tabulation as well as being the major user of the data, we are aware of most of the strengths and pitfalls in its use and interpretation. The accumulated knowledge of the Bureau can aid others in avoiding pitfalls already encountered, and weave through the administrative information to get to the statistical data and use it properly and effectively. Consultation is available not only on the data itself but also on the data products to utilize it.

In the future the Bureau intends to continue aiding others as much as possible. The staff will do all they can to aid others to use the data. Programming will present a problem over the short term due to positions left vacant for lack of funding. They enthusiastically tabulate and analyze data for worthwhile projects inside or outside the agency, especially since it provides a departure from the day-to-day survey and coding activities. On the other hand it takes time and computer and programming resources away from those same day-to-day activities. Due to the interaction of our agency with the Workers' Compensation Commission for the Supplementary Data System, and with the U.S. Bureau of Labor Statistics for the Annual Survey, we must see these day-to-day processing activities as our primary objectives, and all else as secondary, since funding depends on completion of these day-to-day activities. In the case of the Supplementary Data System, any departure from ordinary processing brings on problems. As an example, photocopying leaves gaps in otherwise continuous data and coding from copies is never as complete as the data from the originals due to the quality of some of the copies.

The progress of the Bureau for the immediate future in working towards improving the various Workers' Compensation data projects lies in hands outside the Bureau. Continuing as we have in the past hinges on an unrealistically optimistic view of cooperation from outside sources. The one bright spot is the cooperation the Bureau has received from our two major partners on this project; the Bureau of Insurance and the Workers' Compensation Commission. Their personnel have been most receptive to our suggestions and, in the past year, have demonstrated a willingness to take on more of the day-to-day activities the Bureau has performed for them in the past. The Bureau can only hope that any cutbacks in these other two agencies will not diminish their ability or desire to do so in the future.

CURRENT STATUS OF THE MAINE WORKER'S COMPENSATION SYSTEM

WORKERS' COMPENSATION COMMISSION



## CURRENT STATUS OF THE MAINE WORKERS' COMPENSATION SYSTEM

### Overview of the Maine Workers' Compensation Commission

The Workers' Compensation Commission is an independent state agency. Established in 1916, it preceded most of the existing administrative departments. Workers' Compensation Commissioners are appointed by the Governor and confirmed by the Legislative Committee on Judiciary. In Maine, litigation of disputed claims occurs within the Commission rather than the court system. This was the Commission's sole mission until the 1980's.

Major legislative reforms occurred in 1983, 1985 and 1987. These added administrative and regulatory functions to the Commission. Today, the agency, besides hearing claims, administers the informal conference system, oversees rehabilitation activity, investigates abuse and monitors individual cases. Adjudication of disputes remains its most important responsibility in terms of the effect on injured workers, employers and insurance carriers. These reforms not only changed the character of the Commission but also increased its size.

In 1983, the agency had a staff of 36 housed in a central office in Augusta. Commissioners traveled throughout the state moving from one hearing location to the next. Today, the Commission has a central office in Augusta and five regional offices. The staff numbers nearly 120. Administrative activity is conducted primarily from the central Augusta office. Hearings, informal conferences, vocational rehabilitation conferences and other activities occur mainly in regional offices. Some hearings continue to be held at distant locations for the convenience of the affected workers.

Computerization has been critical to this transition, both in terms of supporting operations and enabling the Commission to be more active in collecting data pertinent to administration of the workers' compensation system. The process, however, has been slow and difficult.

The agency purchased its first computer system in 1985. Hardware problems and inadequate staffing for this start-up phase created numerous problems, particularly a delay in developing computer support for vocational rehabilitation and litigation. In March and April 1988, a larger computer was installed and additional data processing staff was hired. The Commission is now making better progress at expanding data processing operations.

In 1989 we expanded computer support to the Office of Employment Rehabilitation. In the next two years, we anticipate development of computer support for litigation at formal hearings. The litigation application will improve our capacity to analyze this controversial area of the workers' compensation environment.

#### Statutory Mandate

Title 39 M.R.S.A., section 92 details many of the responsibilities of the Commission, including adjudication and the management of the Office of Employee Assistants, Office of Employment Rehabilitation and the Abuse Investigation Unit.

Section 93, Part 6 mandates that the Commission take an active role in the administration of the Act and that the Commission monitor individual cases to ensure that workers receive the full amount of compensation to which they are entitled.

Sections 94-A and 106-A mandate that the Commission provide an explanation of the compensation system to the worker after a First Report is filed.

Section 94-B mandates that the Commission assist workers in preparing for informal conferences.

Sections 96-105 define many aspects of the formal litigation procedure.

Sections 81-90 define many aspects of the rehabilitation oversight process.

### Basic Injury Information

A First Report of Injury or Disease form is filed with the Commission if an accident requires medical treatment by a physician or one or more days of work is missed. This is an important form. It contains the names and addresses 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.

Most First Reports are for medical-only injuries. As may be seen in the following table, the total number of First Reports has skyrocketed during the last few years. We believe this may be attributable to medical only First Reports being reported more consistently now than in the past.

The number of disabling injuries and illnesses, where one or more days of work is lost has grown more slowly. One would expect that the relationship is that higher employment leads to more reports, and that is correct. However, the relationship is complex. Disabling cases seem to increase faster than employment during periods of economic growth and decrease more rapidly during economic contractions.

<u>Year</u>	<u>Total First Reports</u>	<u>Disabling Cases</u>
1978	47,518	17,396
1979	50,537	19,363
1980	51,531	19,846
1981	50,712	19,810
1982	47,188	18,212
1983	49,214	19,140
1984	63,838	23,620
1985	64,033	23,296
1986	67,872	24,336
1987	75,326	25,528
1988	78,958	26,431

Information from the First Report is electronically stored and shared by the Workers' Compensation Commission and the Bureau of Labor Standards, Research and Statistics Division.

#### Nondisputed Payments Data

Initial payment information is reported to the Commission on a Memorandum of Payment form. To verify correct payment, this preliminary information is later checked against another form which establishes the workers' average weekly wage. This information is electronically recorded.

A discontinuance is filed by the carrier-employer when the affected employee returns to work for cases where payment is made for lost wages. This reports total cost and the date the period of incapacity ended. On long term cases, interim reports are made at six-month intervals. This data is also electronically stored.

Such filings are purely statistical data gathering. These filings do not support Commission operations or the operations of the carrier or employer. Because the Commission does not make any use of this information, it has no direct method to identify missing data. Filing compliance problems have prevented the Commission from becoming a reliable source of information as to duration of disability or system cost. This means that we cannot analyze the number of serious long term cases and their contribution to overall benefit expenditure.

It is widely believed that system cost in Maine and elsewhere is basically a function of a relatively small number of very serious cases. Details as to the nature of the injury or illness, extent of disability, industry of the employer, and the actual cost of these cases would benefit legislative policy decisions. Resource constraints have prevented the Commission from developing appropriate audit and enforcement procedures. These would require

additional professional staff and enhanced computer support. Almost by definition, such regulatory activity would be intrusive.

#### Disputed Claims Data

If the carrier or employer does not believe the injury or illness is work-related or that they are not liable for some other reason, then the claim may be challenged. The first step in the dispute resolutions process is to file a Notice of Controversy (NOC). This form, which lists the reason for the dispute, triggers the informal conference process. Occasionally, petitions are also routed through an informal conference. Data from the NOC is electronically stored. Informal conferences are heard in ten different locations, involving twelve employee assistants and eleven commissioners. Commission staff use the computer to schedule informal conferences.

Conferences are held for about 40 percent of filings. This low percentage is attributable to three basic causes.

- (1) Many conferences are canceled because the underlying problem was simple enough to be taken care of by the parties prior to the conference date.
- (2) Alternatively, the conference is waived in some cases because the underlying problem is too complex to resolve without litigation.
- (3) Some NOC's are filed even if there is no problem and there is no reason for a conference. These are often called "protective" NOC's. Failure to file a Notice of Controversy within 44 days of a claim may lead to a default, being legally presumed to accept its compensability. Hence, a carrier or employer may file a NOC simply to protect itself from this possibility.

In 1989, filings for informal conferences totaled a little less than 20,000. The Commission held just over 7,100 informal conferences. Nearly 12,400 informal cases did not require a conference. About 500 informal cases were still outstanding on January 1, 1990.

The outcome of each NOC, including the date of informal conference, if any, is electronically stored. Computer programs use this data to generate administrative reports. This prevents informal conference cases from becoming lost in the process.

If the problem is not worked out at the informal conference, one of the parties may file a petition for formal litigation. If a petition is filed, the case is tried in front of a Commissioner, who is the fact-finder for workers' compensation cases.

During the period 1987 through 1989 the Commission maintained petition filings and dispositions data on a personal computer. This was used to keep track of formal petitions that needed to be scheduled, tabulate the number of open petitions per Commissioner and, particularly, to focus attention on petitions undecided two years after the filing date.

This data is used to generate a monthly docket and disposition summary. These are compiled every three months into a quarterly report to the Governor, the Speaker of the House, and the President of the Senate. This report, which is statutorily mandated, summarizes the individual commissioner's case load and progress.

In late 1989, the Commission transferred this data to its Honeywell DPS-6, a small mainframe computer. This will enable the Commission to do a better job of maintaining and analyzing litigation data in the future. In addition, it is a step towards developing comprehensive computer support for litigation activities. This will link litigation, first report, payment and vocational

rehabilitation data. Resource constraints have inhibited our ability to move as quickly as the staff would like on this project. However, the Commission intends to make some progress during 1990.

### Rehabilitation

The Commission's Office of Employment Rehabilitation regulates the development and implementation of rehabilitation plans for injured workers with long term disabilities. During 1987, 1988, and part of 1989, the Commission maintained its vocational rehabilitation data on a personal computer. In mid-1989, a comprehensive application was implemented on the mainframe. This has improved the efficiency of plan reviews and administrative conference scheduling.

### Administration

At the direction of the Joint Committee on Audit and Program Review, the Commission conducted a study of the early pay legislation during 1989. This study has enabled the Commission to develop better measurements of system operations.

### Timeliness of Benefits

The Workers' Compensation Commission has developed a computer program which calculates the number of days from the date of incapacity to the date of first payment for wage loss cases. By way of comparison, the Commission performed a similar analysis on a sample of 1983 cases during the summer of 1989. The results for 1983, 1986, 1987 and 1988 are displayed on the following table.

<u>Year of First Payment</u>	<u>Percent Paid 1-14 Days</u>	<u>Percent Paid 15-21 Days</u>	<u>Percent Paid 22-28 Days</u>	<u>Percent Paid 28+ Days</u>
1983	16	10	6	68
1986	45	17	10	28
1987	41	20	12	27
1988	35	19	12	34

The improvement in the timeliness of first benefit payments in recent years as compared to 1983 is largely attributable to the early pay legislation which became effective in 1984.

#### Informal Conferences

Timeliness of informal conference scheduling is an important measurement of Commission administration. The statutory requirement for scheduling an informal conference is within 21 days from the date when the Notice of Controversy is filed. The Commission has never been able to conform to this deadline. From 1986 through 1989 an average of 40 to 50 days passed between the filing of a Notice of Controversy and the date of an informal conference.

The number of controversies has grown each year. Only the appointment of additional commissioners and authorization of additional employee assistants enabled us to maintain this level of service. Filings and utilization have increased substantially since 1984, when the legislation became effective. Accurate filing data only became available in 1986.

<u>Year</u>	<u>Filings for Informal Conference</u>	<u>Informal Conferences Held</u>
1986	11,526	5,842
1987	14,304	7,079
1988	16,734	6,646
1989	19,913	7,117

There are two major reasons for this growth. First, the number of years covered by the early pay system has increased, therefore, the number of cases



eligible for informal conference is larger. Disputes in a current year are a cumulative product of injuries occurring in that year and those from prior years which are now in controversy. For example, in a sample of 5,343 informal conferences held during 1988:

- 2,981 or 56 percent related to injuries occurring in 1988;
- 1,241 or 23 percent related to injuries occurring in 1987;
- 578 or 11 percent related to injuries occurring in 1986;
- 321 or 6 percent related to injuries occurring in 1985; and
- 222 or 4 percent related to injuries occurring in 1984.

The second major cause is the increase in employment. Growth in the number of disputes going through the system would be expected to occur for the first five years or so even if employment levels remained constant. However, this action has been accelerated because employment levels began to rise dramatically at about the time the early pay system was implemented. Hence, even more injuries and disputes are being brought into the system.

Maine Annual Average  
Employment 1984 - 1989

<u>Year</u>	<u>Average Employment</u>
1984	445,700
1985	459,100
1986	477,400
1987	502,600
1988	527,500
1989	543,700*

\*Preliminary

Part of our study of the informal conference system attempted to evaluate the effectiveness in resolving disputed claims. We found no statistical evidence to suggest that informal conferences reduce litigation. However, we did find evidence that informal conferences seem to resolve minor claim problems. Survey responses from workers involved in the process

indicated informal conferences are less effective in more complex disputes. Our sample consisted of workers with more serious injuries or illnesses who had attended an informal conference. This group reported that the informal conference resolved the problem about one-third of the time.

### Litigation

Litigation, as measured by the number of petitions filed, bears a strong, positive statistical relationship to the number of disabling cases. Petitions filed within a year of the occurrence tend to be petitions for an initial award of compensation benefits. Later petitions tend to initiate litigation to review the degree of ongoing disability.

<u>Year</u>	<u>Average Employment</u>	<u>Disabling* Cases</u>
1980	418,300	19,846
1981	419,200	19,810
1982	415,500	18,212
1983	425,000	19,140
1984	445,700	23,620**
1985	459,100	23,296
1986	477,400	24,336
1987	502,600	25,528
1988	527,500	26,341
1989	543,700***	24,678

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

\*\* Estimate

\*\*\* Preliminary

The number of petitions filed annually has grown markedly. This we believe is a direct result of underlying employment growth during the decade. The effect of this increase in employment and in disabling cases on litigation is cumulative because, as noted previously, litigation in a current year relates to incidents occurring in several previous years. The cumulative

effect of increased employment during these prior years is that there is more litigation today than ever before.

<u>Year</u>	<u>Annual Petitions Filed</u>
1980	5,308
1981	5,796
1982	5,940
1983	7,360
1984	5,968
1985	5,919
1986	7,471
1987	8,140
1988	11,036
1989	12,899

The 12,899 petitions filed in 1989 reflects nine to ten thousand litigated cases as more than one petition may be filed during litigation.

In 1988, the Commission used statistical techniques to identify a relationship between petitions filed in a current year and disabling cases occurring two years earlier. In 1989, more powerful statistical software was purchased. This method showed that employment levels in prior years bore an even stronger relationship to the number of petitions filed in the current year than previous calculations had demonstrated.

There is a strong likelihood that the Commission will eventually develop the capability of forecasting litigation levels. It is anticipated that 13,665 petitions will be filed in 1990. However, the forecasting methodology is still under development and this estimate may prove to be too low.

The number of petitions filed annually will continue to increase at least until the middle of the 1990's. Maine will not again see litigation levels of the early 1980's, where approximately 6,000 petitions were filed annually, unless an economic catastrophe occurs and employment levels drop by roughly 100,000 jobs.

Delay in adjudicating formal petitions has been an area of concern for many years. In early 1987, the Commission released a study on delay and inaugurated a small, computerized tracking system in response to that study. At that time, the Commission discovered that the total number of pending petitions was about 7,500 statewide. That level of backlog held during 1988 despite a significant increase in petition filings and, in fact, the number of cases which had been undecided for more than two years decreased. In 1989, the number of undecided petitions increased to the 8,500 level. On the other hand, petitions undecided more than two years were reduced to about 300, the lowest since records were first kept in mid-1986.

Litigation of a petition continues to take about a year. This figure is in line with other states and is faster than the courts for cases of comparable value and complexity. States with more rapid hearing timelines for workers' compensation often involve situations where the agency's administrative ruling may be followed by a full trial in district court. Therefore, it is in court, not the state workers' compensation agency, where litigation occurs.

### Adequacy of Benefits

An influential study entitled The Report of the National Commission on State Workers' Compensation Laws issued in 1973 contained certain recommendations which have become commonly accepted benchmarks. Since adequacy of benefits is ultimately a political determination, these recommendations were expressed as a minimum standard rather than as an ideal benefit structure.

Benefits for total disability were recommended to be at least two-thirds of the affected workers' average weekly wage. Total disability benefits were recommended to be paid for the duration of the disability or for life, if the

disability was permanent. The waiting period recommended was to be no more than three days. The maximum weekly benefit to be at least 200 percent of average weekly wage. An additional suggestion was that compensation for partial disability be a combination of separate benefits for impairment and for disability.

Maine's statute on total incapacity follows these recommendations except in the area of the maximum weekly benefit. The current maximum weekly benefit is 137 percent of state average weekly wage. Maine's statute on partial benefits also follows the suggestion of the National Commission.

#### Timeliness of Benefits

The law mandates that payment for wage loss be made or the case controverted within 14 days. In 1988, 35 percent of applicable claims were made within 14 days, 54 percent within 21 days, and 66 percent within 28 days. If the insurance market becomes less chaotic, the industry may do better in terms of complying with the statutory timelines. In an uncertain economic environment, investment decisions as to additional staff and offices tend to be negative.

In 1988, the Commission was contemplating a computer supported process for monitoring payment timeliness on individual cases and working with insurers and adjustment companies to improve timeliness. This project has been placed on hold due to resource constraints.

Additionally, complaints have been raised regarding delay in making payments following a Commission decision. In the past, this issue has been anecdotal and no statistical data was available as to the nature and extent of the problem. During the 1987 emergency session, the penalties provision of the statute was strengthened. During 1989, the Commission received an estimated 425 complaints and collected fines totalling \$89,503.

### Costs of the System

Costs of the system are a matter of frequent concern. During the 1987 emergency session, the benefit structure for partial disability was reduced. It was argued that a significant percentage of system costs under the then existing benefit structure was related to permanent partial cases, where the affected worker has lost some, but not all, of their earning capacity as a result of work-related injury or illness.

The example originally presented to the Second Special Session of 1987 estimated the potential benefits to a worker making the state average weekly wage (\$310.87) with a 50 percent loss of earnings capacity. Taking into account the then existing inflation adjustment and the lack of a durational limit, the cost of such a case was projected to be \$912,000. The amended benefit structure placed a 400 week durational limit and eliminated the inflation adjustment. Under the new structure, the cost of this hypothetical case would be  $\$310.87 \times \frac{2}{3} \times 50\% \times 400$  or \$41,500. Adding an additional year of total disability covering the hearing period will give a reasonable estimate of the total cost of such a case. The total disability benefit would be  $\$310.87 \times \frac{2}{3} \times 52$  or \$10,777. So, the estimated total cost of such a case would be \$41,500 plus \$10,777 or \$52,277.

While the benefit cut from \$912,000 to \$52,277 is significant, it will take a few years for this change to be fully reflected in statewide costs. If the argument that these partial cases are a large percent of a total system costs is correct, then Maine should experience a clear reduction in its projected costs of partial weekly benefits.

By way of interstate comparison, the Commission receives an annual publication from the National Foundation for Unemployment and Workers'

Compensation Insurance summarizing fiscal data for state workers' compensation systems. This data shows that rural states with agricultural economies tend to be the least expensive. States with resource extraction industries tend to be most expensive. These states also tend to rank high in OSHA incidence rates of occupational injuries and illnesses. The point to this is that a complex relationship exists between industrial mix, workplace safety and health, and the cost of workers' compensation. Maine's costs are more similar to Washington and Oregon than to other New England States.

#### Evaluation Perspective of Workers' Compensation Commission

Many states have been confronted by workers' compensation problems in the past few years. This trend seems to have had a more severe impact in Maine than elsewhere. Our economy includes a preponderance hazardous employment. Our incidence rates, as measured by the OSHA standards are among the highest in the nation, approximately twice the national average.

Workers' compensation expense per employee is also high. Again, approximately twice the national average. These costs make workers' compensation a chronic legislative issue.

Public dissatisfaction exists on both sides. Workers in the system often feel they are unprotected from abuse by carriers and employers. Carriers and employers feel they are unable to have people removed from compensation benefits fast enough and that, in some case, undeserving individuals receive benefits. Both parties feel the system is difficult to understand.

The performance of carriers and adjusting companies is a source of concern. Prompt payment is not being made on a significant number routine

indemnity cases. The informal conference process is too often use as an investigative tool rather than as a process to resolve the actual dispute.

Although there will always be situations where problems develop, the current level of late payment and delayed adjustment reflects a statewide difficulty in claims processing. To a significant degree, the Commission believes these problems reflect an underlying instability in the benefit financing mechanism. Until this is corrected, the Commission sees little opportunity to address these problems through administrative action.

As in last year's report, the Commission continues to see opportunities to improve the efficiency of the dispute resolution process at both the formal and informal level. This opportunity has been tempered somewhat by the increase in petition filings and by resource constraints.