

Giving Workers the Cold Shoulder

Shifting the Risk Under Iowa's Workers' Compensation Law

Emily Schott, Matthew Glasson and Colin Gordon

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Workers' compensation is our oldest social insurance system, representing a century-old commitment to sharing the costs associated with workplace injuries on an industry-wide basis. The system is designed both to protect individual employers from unpredictable lawsuits associated with industrial accidents, while ensuring reliable, predictable and timely benefits for workers who sustain injuries or illnesses on the job. Unlike our old-age pension and unemployment insurance programs, workers' compensation is primarily a matter of state law.¹ Although the details vary from state to state, the general principles are the same everywhere. Workers' compensation is a "no fault" insurance system paid for by covered employers. Workers who are injured at work are eligible for compensation for medical care, rehabilitation and cash benefits covering lost earnings and earning power. Families of workers who die of job-related injuries or illness are entitled to survivor benefits.

This venerable, carefully balanced system has served Iowa workers and employers well. But, in the now-infamous legislative session of 2017, lawmakers made sweeping changes to Iowa's workers' compensation statute. These changes make it harder for workers to file claims, narrow employers' liability, limit attorney fees, and reclassify specific injuries in order to dramatically reduce both the amount and duration of benefits.²

The 2017 changes to Iowa's workers' compensation system represent a substantial and intentional shift in the costs and the risks associated with industrial hazards, away from employers and insurance companies, and onto workers, their families, and taxpayers. The changes clearly mimic employer-friendly "reforms" already enacted in over 30 other states.³ These were not, as they were characterized by the bill's sponsors, simply technical tweaks to a system that was "out of balance" or imposing undue burdens in Iowa employers.⁴

In order to grasp the gravity and importance of these changes, we need to understand the historical background, the impetus for reform, and the implications for Iowa workers and their families. The first section below traces the origins and development of workers' compensation in Iowa. The second section sketches the political and economic forces that shaped changes to the law in Iowa and elsewhere. The third section describes the 2017 changes in detail. The fourth section focuses on one of the most important elements of the new system — the reclassification of shoulder injuries. By analyzing a large sample of shoulder injury cases, under the old and the new rules, we demonstrate how starkly and successfully the new statute shifts the cost of occupational injury.

A Short History of Workers' Compensation

The Industrial Revolution fundamentally altered the nature of work in the modern world, but the law did not keep pace. As the 19th century drew to a close, American law and politics clung to the notion that workers and employers were equal parties in the employment relationship, one selling labor and one buying, each with equal bargaining power and both fully aware of the costs, benefits, and risks of employment.⁵ In the event of injuries or illnesses at work, this meant that the fault or liability of employers was defined very narrowly, under traditional common law principles. The employer's only obligation was to warn workers of hidden dangers that they could not see for themselves. Courts routinely held that workers in dangerous occupations had voluntarily assumed the risk that came with their jobs. And employers were off the hook if any of the fault could be attributed to other workers (the "fellow servant rule") or to the contributory negligence of the injured workers themselves.⁶

This approach to workplace liability was troubling for a number of reasons. It ignored the heightened and routine risks that came with the industrial revolution. "[W]ork injuries on a tremendous scale are a permanent feature of modern life," as E.H. Downey observed during the first debate over workers' compensation in Iowa,

Every mechanical employment has a predictable hazard: of a thousand men who climb to dizzy heights in erecting steel structures a certain number will fall to death, and of a thousand girls who feed metal strips into stamping machines a certain number will have their fingers crushed. So regularly do such injuries occur that every machine-made commodity may be said to have a definite cost in human blood and tears — a life for so many tons of coal, a lacerated hand for so many laundered shirts.⁷

As such risks became routine, reformers argued that the costs should not be borne solely by the injured workers themselves. "As the work is done for the employer, and therefore ultimately for the public," President Theodore Roosevelt said in 1907, "it is a bitter injustice that it should be the wage-worker himself and his wife and children who bear the whole penalty."⁸

In turn, while the law relieved employers of liability for most work-related injuries or illnesses, in those cases where employers were found responsible, legal costs and settlements were increasingly expensive and unpredictable. And the increasing number of crippling injuries and lack of compensation corroded labor relations and damaged the reputations of industrial employers. Early in the century, many states passed laws that broadened the definition of employer liability making it somewhat easier for workers to bring successful claims. For these reasons, many employers eventually saw the attraction of reform and joined the clamor for a "social insurance" solution to the cost of workplace injury or illness.⁹

Once employers and employees were on the same page, reform proceeded quickly. New York passed the first workers' compensation law in 1910, followed by 10 more states in 1911, three in 1912, eight (including Iowa) in 1913, and 21 more by 1920.¹⁰ These laws, with some variation from state to state, all contain the same basic set of compromises. Workers who are injured on the job are entitled to compensation for their injuries, without regard to fault. Compensation includes medical costs, lost-time and monetary compensation for permanent injuries or death. The amount of compensation, however, is limited by law. Workers are prohibited from taking their claims to court and instead have disputed claims determined by a state administrative agency.¹¹ Employers are required to pay the cost of compensation, but the cost is covered by insurance. In most states, including Iowa, employers are required to purchase private insurance to cover the compensation required by law. Or an employer may elect to be self-insured, upon proof of financial

responsibility. A few states (*e.g.*, North Dakota) have their own state-run insurance pools. In Iowa, the 1913 statute was supported by both the Iowa Manufacturers' Association and the State Federation of Labor, both of whom saw in the new system a more equitable distribution of risk and a more timely and predictable provision of benefits. That distribution of cost was praised by the Iowa Supreme Court in an early decision upholding the law. In its decision in *Tunnicliff v. Bettendorf*, 204 Iowa 168, 214 N.W. 516 (1927) the Iowa Supreme Court said,

It is the very spirit of the Workmen's Compensation Act — the fundamental idea that is its basis — that the disability of a workman resulting from an injury arising out of and in the course of his employment is a loss that should be borne by the industry itself, as an incident of operation — in a sense an item of the cost of production, and as such, passed on to the consumer of the product, and not suffered alone by the workman or the employer, according to individual fault or negligence.

Workers' compensation has changed little in the last century. Over time, coverage has broadened and state statutes now cover over 90 percent of the workforce. In Iowa, the only notable exclusions are domestic and casual workers who earn less than \$1,500/year, agricultural workers whose employers have an annual payroll of less than \$2,500, and officers of family farm corporations.¹² When a National Commission surveyed the landscape of workers' compensation in the early 1970s, it reaffirmed the importance of broad coverage and adequate benefits, and pressed for new federal thresholds and guidelines — in part to overcome the unevenness in state programs, in part to ensure that those programs were responsive to changes in medical care and occupation risk.¹³

Shifting the Cost

While states pressed forward with many of the recommendations made by the National Commission, reform stalled as the fiscal crisis of the 1970s — and its attendant competitive anxieties — set in.¹⁴ The right turn in American politics animated a renewed commitment — in state and federal politics — to slash business costs, curtail workers' rights, cut taxes, pare back social provision, and lighten state regulation of business activity. In this atmosphere, workers' compensation was especially vulnerable: Its "burden" was exaggerated by rising medical costs and more expansive approaches to occupational health (including new attention to repetitive motion injuries).¹⁵ And, as a state program, it became an easy target for legislators eager to engage in a "race to the bottom" for new business investment.

The premise that workers' compensation costs and claims were "out of control," however, proved hard to sustain.¹⁶ While benefits and employers' costs ticked up in the late 1980s and early 1990s, they came down just as quickly. Nationally, the cost to employers of workers' compensation fell from just over \$2.00/per \$100 of wages in the early 1990s, to only \$1.32/per \$100 dollar of wages by 2015.¹⁷ In Iowa, employers in 1988 paid \$2.79 in workers compensation premiums for every \$100 paid in wages; by 2014, the premium cost had fallen back to \$1.88. In the five years leading up to the spring 2017 legislative session, workers compensation benefits and costs in Iowa — measured in the aggregate or as a share of wages, changed little.¹⁸

Although clearly a solution in search of a problem, cuts to state workers' compensation systems have accelerated over the last decade. Between 2003 and 2015, 33 states passed laws that reduced benefits, established arbitrary time limits, sharply constrained workers' choice of doctor, and made it more difficult for those with certain injuries and diseases to qualify for benefits at all.¹⁹ The pace and focus of "reform" reflected not the costs of compensation — which were

trending down everywhere — but turnover in statehouses that created new openings for business-friendly legislative change.

Consider Iowa. Although the state’s workers’ compensation system scored well on virtually all important metrics, low-wage manufacturers — particularly in food processing — were persistent critics. The meatpacking firm Tyson Foods, which had taken the lead in the rollback of workers’ compensation in Arkansas in the 1990s, acquired a major interest in Iowa with purchase of Iowa Beef Processors (IBP) in 2001 — and immediately took aim at the state’s compensation system. Tyson formed an association of self-insured firms²⁰ which included most of the state’s leading manufacturing and retail employers and began lobbying for legislative and administrative changes. When Terry Branstad was returned as governor in 2011 after a 12-year hiatus, one of the first pieces of paper to hit his desk was a long memo from Tyson²¹ detailing what it saw as excessive workers’ compensation settlements. Republicans did not completely control the Legislature, so Branstad was unable to deliver the changes sought by Tyson. However, under Iowa law, the Governor can appoint the Workers’ Compensation Commissioner, the head of the state agency that administers the workers’ compensation law. Branstad demanded that Commissioner Christopher Godfrey resign, so that he could appoint someone more “business friendly” to replace him. When Godfrey refused, Branstad slashed the pay of the Commissioner to the statutory minimum in an attempt to force his resignation.²²

Five years later, when Branstad’s party matched its House majority with a strong margin in the State Senate, the legislation that would eviscerate the state’s workers’ compensation system was already cued up and ready to go.

What happened in 2017?

In 2017, the Legislature passed HF518, making a huge number of changes to Iowa workers’ compensation law. To a large extent, HF518 is a hodgepodge, containing massive devastating reductions in the amount of compensation that injured workers will receive, combined with super-specific changes that will affect only a handful of cases each year. Some of the changes seem to fall into the “sore-loser” category, *i.e.*, statutory changes that reverse specific decisions by the Iowa Supreme Court. It is almost as if HF518 was assembled from the “wish list” of every insurance company lawyer who has lost a workers’ comp case in the last 25 years. The only constant among all the changes is that they are bad for workers. HF518 does not contain a single change that improves the law. Probably the most significant impact will be on workers who have serious, permanent disabilities.

The only constant among all the 2017 changes is that they are bad for workers. Probably the most significant impact will be on workers who have serious, permanent disabilities.

Permanent partial disabilities. Workers who suffer an on-the-job injury that results in a permanent loss of function, but does not result in total disability are classified as having a “permanent partial disability”, sometimes known by its acronym PPD. Under workers compensation law, permanent partial disabilities are divided into two main categories. Injuries to the extremities (hands, arms, feet, legs, etc.) are called “scheduled” injuries. Compensation for those injuries is determined by reference to a list (schedule) contained in the law.²³ Individual factors do not matter. Everyone’s hand is worth the same number of weeks (190) of benefits regardless of personal circumstances. A carpenter will receive the same number of weeks as a

teacher, despite the differing impact on their careers. However, the weekly compensation rate will vary depending on the worker's average pay.

Injuries that affect the head, neck or torso are classified as "body-as-a-whole" (BAAW) injuries and are compensated in a more complicated way. The body as a whole is worth 500 weeks of benefits and the worker is compensated in proportion to the impairment to his/her body. A serious back injury that results in a 10 percent impairment to the worker's physical function would result in 50 weeks of benefits. However, the law requires that the injured worker be compensated not just for the physical impairment, but also for the anticipated loss in earning capacity (known as industrial disability). Things like age, education, previous work experience, intelligence, motivation, etc. all are considered. An older worker with limited education and whose work experience is limited to manual labor will be much more affected by a back injury than a young, highly educated IT professional, for example, and should receive a higher level of industrial disability.

The four most significant changes in HF518 all reduce compensation for body-as-a-whole injuries. As a consequence of these changes:

1. **Shoulder injuries will no longer be considered body-as-a-whole injuries.** HF518 reclassifies shoulder injuries as scheduled member injuries. This change in nomenclature will result in an enormous reduction in the amount of compensation paid to workers who have a permanent injury to their shoulders. It will especially affect older, less educated workers in physically demanding jobs. The impact of this change will be catastrophic for workers with shoulder injuries occurring after July 1, 2017. *Our study shows that, on average, workers with shoulder injuries will receive 73.2 percent less in compensation. That is \$72,036 less than the*

Light Duty under the New Law

It will be very risky for a worker to turn down an offer of light duty. If a worker has temporary restrictions, an employer may (but is not required to) offer the worker temporary work that is consistent with the restrictions. The worker must accept the offered light duty or lose his/her compensation. The only exception is that a worker may refuse an offer of light duty if it is not "suitable." A few years ago, the Iowa Supreme Court decided that location of the work is properly considered in determining whether the work is suitable under the workers' compensation statute. In *Neal v. Annett Holdings, Inc.*, 814 N.W.2d512 (Iowa 2012), the court decided that the offer of light duty to an over the road trucker was not suitable because it would have required him to work in the employer's office, 387 miles from his home. The great distance made the light duty offered unsuitable, even though the employer offered to pay for the driver's motel room and transportation home every other weekend. The court quoted the Workers' Compensation Commissioner's decision saying, "Being away from the support of your wife and family, especially while recovering from a serious work injury, is not an insignificant matter." HF518 apparently overruled that case. Now, work is presumed to be "geographically suitable" if it is offered at the employer's principal place of business or established place of operation, even if the worker travels more than 50 percent of the time in his/her regular job. It's still not clear what other factors go into the definition of suitable.

Light duty offers and refusals will be formalized and riskier. An employer is now required to notify the worker of an offer of temporary work, in writing. The communication must include details about lodging, meals and transportation. It would make sense for the offer to describe the duties, the hours and the rate of pay, but the statute does not require that. The communication must also warn the worker that refusing an offer of temporary work that is suitable may result in the worker forfeiting all compensation for the time of the refusal. A worker can still decline an offer of temporary work if the worker believes that the work is not "suitable." The worker must do so in writing and the communication must state the reasons why the worker thinks the work is not suitable. If the worker does not decline the offer in writing or does not state the reasons why the work is unsuitable, the worker forfeits the right to receive weekly workers' compensation benefits. If the worker corrects his/her mistake later and does communicate the reasons to the employer, then weekly benefits start again from the time of that communication. The lost benefits cannot be recovered.

average worker will receive for a permanent injury. Details of our study are described in the next section.

2. **Older workers with body as-a-whole injuries are penalized.** HF518 requires that, in evaluating a body as-a-whole injury, the agency must consider “the number of years in the future it is reasonably anticipated that the employee would work.” This is a major change in how body-as-a-whole injuries are compensated. The greatest impact will be on older workers, particularly those who work in physically demanding jobs. For example, a construction worker who suffers a serious back injury that prevents him from lifting more than 5 pounds or climbing ladders might have only a 25 percent physical impairment to the body as a whole, but the impact on his ability to earn a living (industrial disability) will be much higher. Before HF518, an older worker might be considered more disabled than a younger worker, because it is likely that a younger worker can go back to school or be retrained in a different occupation. That is more challenging for a 64-year-old to do. HF518 turns the evaluation process on its head. Now, under HF518, the 64-year-old will still receive compensation for the 25 percent physical impairment, but little or nothing for industrial disability because it is considered “reasonable” to assume that he would only work a year or two longer anyway. It does not matter if the worker testifies that he planned to work until he was 90, the standard is not related to the worker’s actual intention. Under HF518, compensation is based on what can be “reasonably anticipated.” Adding this factor does not negatively affect younger workers, but it does not help them, either. The agency may still decide that their industrial disability should be lower, based on the assumption that they can be retrained or learn a new skill.
3. **Workers with permanent injuries can lose part of their compensation, even after the case has been decided.** A worker who has a body as a whole

Other Changes in the New Law

Workers who test positive on a drug test will have a harder time collecting workers’ compensation. Previously, a worker was disqualified from receiving benefits if the worker’s intoxication (drugs or alcohol) was a substantial factor in causing the employee’s injury. All kinds of drugs are included, both legal and illegal, except prescription medication that is being taken exactly as directed by the doctor.¹ Under HF518 if an employee tests positive for alcohol or drugs following an injury, the injury is presumed to have been caused by the intoxication, and the burden of proof shifts to the employee to prove that he/she was not intoxicated or that the intoxication was not a substantial cause of the injury.

New limits on amounts employers can be required to pay for a second impairment rating. An injured worker who is not satisfied with the impairment rating given by a “company doctor” can still get a second opinion at the employer’s expense. However, under HF518, the amount an employer has to pay is limited to the “typical fee” for impairment ratings “in the local area.” And if it turns out the injury is not work related, the employer doesn’t have to pay at all.

Interest on late payments slashed. HF518 drastically reduces the interest an employer must pay if they fall behind in making required workers’ compensation payments. After July 1, 2017, late payments will accrue interest at a rate equal to one-year treasury bonds at the time of injury, plus 2 percent.¹ This very low interest rate will eliminate much of the financial incentive for employers to pay benefits when they are due.

No benefits while your case is on appeal. Under HF518, filing of an appeal by an employer/insurance company acts as an automatic “stay” of the Commissioner’s award of benefits. In other words, the injured worker will not receive any benefits while the appeal is pending.¹ This puts a tremendous amount of economic strain on injured workers and may be used by some insurance companies to pressure workers into settling for less than they should receive.

Missing a scheduled medical evaluation can result in loss of benefits. If a worker refuses to go to an evaluation, or just doesn’t show up, the worker will forfeit weekly benefits “for the period of the refusal.”

injury that results in a substantial industrial disability can have the compensation for the industrial disability **taken away**, if she is offered a job that pays the same or more than she was making at the time of the injury. There is no requirement that the job offered be “suitable.” This change could result in a devastating loss of compensation for many injured workers with significant industrial disabilities.

For example, a machinist who works in a factory in Keokuk suffers a head injury that affected his fine motor skills and made it difficult for him to do the precision work necessary to do his job as a machinist. Before HF518, he would likely be awarded a fairly high level of compensation for industrial disability, but that compensation could be revoked completely if he is later offered a better paying job. If, for example, he is offered a job as a parts inspector in a factory in Sioux City, on the night shift, that pays more than his old job, he will lose all compensation for his industrial disability. His industrial disability benefits will be taken away whether he actually accepts the job or not. He may decide that he does not want to work nights or uproot his family and move across the state, but if he turns down the offer, his industrial disability benefits stop.

4. **The “Fresh Start Rule” is eliminated.** The idea of the “fresh start rule” is that a worker with a pre-existing impairment that is significant enough to affect his/her earning capacity probably is already being paid at a lower wage rate than a perfectly healthy worker. To offset this effect, the loss is measured in proportion to the pre-existing reduced capacity, not against a healthy non-disabled person. In other words, everyone starts with a 100 percent earning capacity, regardless of any prior health conditions. Now, the agency can only award compensation for the disability caused by the most recent injury. So, PPD awards to workers with pre-existing disabilities will be substantially reduced.

Permanent total disability. HF 518 also diminishes compensation to workers with permanent total disabilities (PTD). These are people who have been injured so severely that they cannot work at all in any occupation. PTD benefits are payable for the life of the injured worker or they were before HF518. Among the changes in HF518:

1. **Permanent total disability benefits may not be permanent anymore.** HF518 allows an employer to periodically challenge whether an injured worker is *still* totally disabled. Remember this is after the administrative law judge has determined as a matter of fact that the worker is *permanently* disabled. Under the new law, an employer can challenge that finding over and over. The amended statute does not appear to place any limits on when or how often an employer could make that kind of challenge.
2. **A worker who becomes permanently and totally disabled loses previously awarded permanent partial disability benefits.** At first glance this might sound like a reasonable rule, but the real-world results can be harsh and contradictory. Imagine, for example, a nurse practitioner working for a hospital has a serious head injury and cannot do her old job any longer. She receives a 30 percent BAAW impairment rating from the physician, but because of the devastating impact of the injury on her job prospects, she is awarded an 80 percent industrial disability. She would receive 400 weeks (80 percent x 500 weeks) of benefits at a high weekly rate. Imagine then that she takes a job in a convenience store at very low wages. She falls, injuring her spinal cord, and is now totally disabled. She will be eligible for PTD benefits, at the much lower weekly rate, from the convenience store and the hospital can now stop paying for the original injury, even though they have not paid the full 400 weeks. *Her total amount of compensation may actually be reduced as a result of becoming totally disabled.*

3. **Earning money can reduce benefits.** An injured worker who is receiving PTD benefits will lose those benefits in any week in which he/she receives (1) gross earnings from any employer or (2) payment for services from any source if the amount of either of those (or both combined) is at least 50 percent of the state average weekly wage. (Effective July 1, 2017, the state average weekly wage was \$860.06.) An injured worker cannot receive PTD benefits in any week in which he/she is receiving unemployment benefits, regardless of the amount of those benefits.

Shouldering the Burden

When the 2017 Iowa Legislature enacted HF518, making sweeping changes to Iowa’s century-old workers’ compensation law, many observers predicted that the changes would negatively affect injured workers. However, it was difficult to accurately predict the impact of the changes. HF518 changed many aspects of Iowa’s workers’ compensation system, but one of the most profound was the change in how shoulder injuries would be evaluated and compensated. A closer examination of this change offers us a clear and quantifiable glimpse of the intent and the impact of the new law.

Prior to the enactment of HF518, shoulder injuries were considered to be “injuries to the body as a whole,” which meant that in evaluating the extent of that disability, the Division of Workers’ Compensation considered a wide array of factors, including not just the worker’s physical impairment, but also factors such as the worker’s age, education, skills, special training, physical fitness, and motivation. All of these factors were considered by an administrative law judge (often referred to as deputy commissioners or “deputies”) in arriving at a determination of the worker’s “industrial disability.”

The 2017 amendments fundamentally change how shoulder injuries will be evaluated. The result will be a huge reduction in the amount of compensation, 73.2 percent for the average worker.

HF518 reclassified shoulder injuries as “scheduled injuries.” This means that deputies can no longer take these other factors into account, and that disability ratings have become narrowly and coldly formulaic: The new law specifies that a shoulder is worth 400 weeks of benefits (the highest number of any scheduled member). For all shoulder injuries occurring on or after July 1, 2017, the compensation will be set by simply multiplying the physical impairment rating times the weekly rate times 400 weeks.

In order to assess the implications of the new law, and its revised approach to shoulder injuries, we reviewed all shoulder cases appearing in “arbitration” decisions from calendar year 2017. (In the context of the workers’ compensation system, “arbitration” is the term of art given to cases decided by deputies at the first level of the administrative process.) Unlike the general reporting of claims and settlements, arbitration cases offer us key details regarding the nature of the injury, the location and industry in which it occurred,

Table 1. One in 4 Litigated Cases Involve Shoulder Injuries, 2017

	Cases	Percent of all cases	Percent of shoulder cases
2017 Arbitration cases	322	100	
Shoulder cases	87	27.4	100
Decided in favor of claimant	76	23.6	87.4
Permanent partial disability awarded	70	21.7	80.5
Final sample (shoulder-only injuries)	66	20.5	75.9

and the work history and demographic background of the claimants. These details allow us to replay the 2017 cases under the new rules and protocols for shoulder injuries, offering us a direct comparison of awards under the old and the new systems. There were 322 arbitration cases in 2017. Of that number, 87 involved an alleged shoulder injury. The claimants prevailed in 76 of these cases and were awarded permanent partial disability benefits in 70 of them (80.5 percent). We removed from the analysis four cases that involved injuries to more than one body part (*e.g.*, shoulder and neck, or injury to both shoulders), leaving us with a sample of 66 cases.

The key demographics of workers represented in the sample are summarized in the table below. Most were men, with an average age of 51, an average job tenure of 11 years, and limited education. At least seven of the claimants received their education outside the United States (Mexico, Bosnia, Liberia and China) and for several English was not their first language (an interpreter was used in six of the hearings).

The largest number of injured workers were employed in meatpacking and other manufacturing settings; only two claimants were public employees. With one or two exceptions, the claimants were employed in blue-collar jobs at the time of their injuries and through most of their careers. Several of the injured workers had received specialized training in construction skills (heavy equipment operation, carpentry, electrical, welding, asbestos removal, etc.) and a few had computer or health care training. The length of the injured workers' work experience varied widely, from less than a month to 46 years, averaging 11 years on the job at the time of injury. Weekly wages also ranged widely, from \$195.96 to \$1,390.09; the average weekly rate was \$520.08, the median was \$479.06. In the original adjudication of these cases, deputies were primarily focused on determining permanent partial disability rates based on the "body as a whole" injury, and the factors appropriate to that standard. While deputies obviously considered the extent of a claimant's shoulder impairment, they did not always describe the physical impairment precisely. For example, a decision might say, "Dr. Black gave the claimant a rating of 5 percent impairment of the upper extremity, but Dr. White said it was only 3 percent." In most cases the deputy would say something like: "I find that Dr. White is more credible, because..." In some cases, the conflict was left unresolved, because the precise degree of impairment was not central to a "body as a whole" injury case. Under the new system, of course, it is necessary to resolve such conflicts. For the purposes of this study, in those cases where it was not clear which rating the deputy found most credible, we used the highest rating. (This would have the effect of reducing the difference in the amount of compensation received under the two

Table 2. Typical claimant: Male, over 50, HS education or less

Demographics	Number	Share
Gender		
Male	40	60.6
Female	26	39.4
Education*		
Less than high school	23	34.8
High school or GED	26	39.4
Some college	7	10.6
BA/BS/AA degree	6	9.1
Industry		
Other manufacturing	17	25.8
Meat processing	14	21.2
Transportation/warehousing	8	12.1
Retail	8	12.1
Other	7	10.6
Construction	7	10.6
Agriculture	3	4.5
Public Sector	2	3
Average age**	51.3 years	
Average job tenure***	11 years	
Average weekly benefit rate	\$520.08	

* In four cases, the claimant's education is not described in the decision.

** Only an approximate age was given for five of the claimants.

*** In nine cases the claimants' length of employment was not stated.

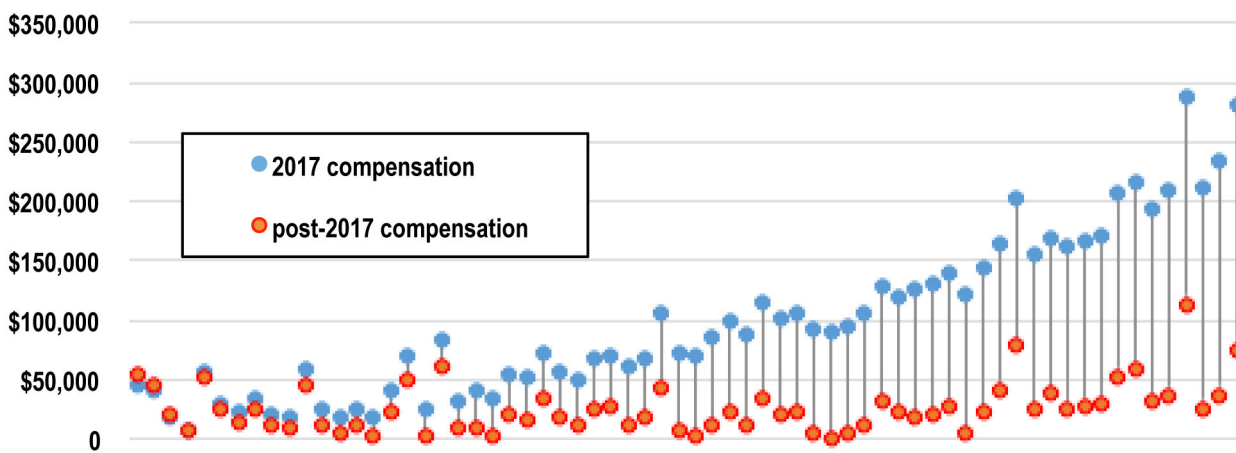
different systems.) In some cases, there was no rating of the upper extremity. Instead, the physician provided only a “body as a whole” rating. In those cases, we used the conversion chart in the AMA Guides, to establish the “upper extremity” rating, again using the higher value if the result was ambiguous.

Among our 66 cases, impairment ratings ranged from 1 percent to 37 percent. The average (mean) impairment rating was 12 percent. The median was 11 percent. The corresponding permanent partial disability (PPD) ratings also varied widely, from 5 percent to 80 percent. The average (mean) PPD rating was 39 percent; the median was 35 percent. Keep in mind that impairment ratings are measuring physical limitations only. PPD ratings, for shoulder injuries prior to 2017, are measuring the impact on the workers ability to earn a living. So, there is not always a strong correlation between the two numbers. For a highly skilled, well-educated claimant, even a significant physical injury may not have a huge impact on future earnings. But, for a claimant with few skills and a work history limited to manual labor, a minor injury might have a devastating impact. One claimant with a 29 percent impairment to the upper extremity, for example, was given a 20 percent PPD rating. Another claimant with a 1 percent impairment to the upper extremity received a 60 percent PPD rating.

Weekly wage rates and PPD ratings were available for all 66 cases, so we can easily calculate the total amount of compensation in each case. The amounts ranged from \$6,989 (5 percent PPD) to \$287,903 (75 percent PPD). The average (mean) amount was \$98,454; the median was \$85,170. We also calculated the total amount of compensation for the same 66 cases that would have been awarded under the new system. In these cases, there is no impairment rating for the “shoulder,” since a shoulder was not a scheduled injury at the time and there was no section of the AMA Guide explaining how to rate a shoulder impairment. For purposes of our study, we decided to treat the upper extremity rating in our 66 cases as if that same rating would apply to a shoulder.

According to our calculations, under the new system, the total compensation awarded in these cases would decline substantially (see Figure 1 below). The new range would be from \$1,219 to \$113,626. The average (mean) would be \$26,418; the median would be \$23,209. In other words, the total compensation received for a permanent disability arising out of an “average” shoulder injury would decline by \$72,036 or 73.2 percent.

Figure 1. Substantial Decline in Shoulder Injury Awards with Changes to 2017 Iowa Work Comp Law

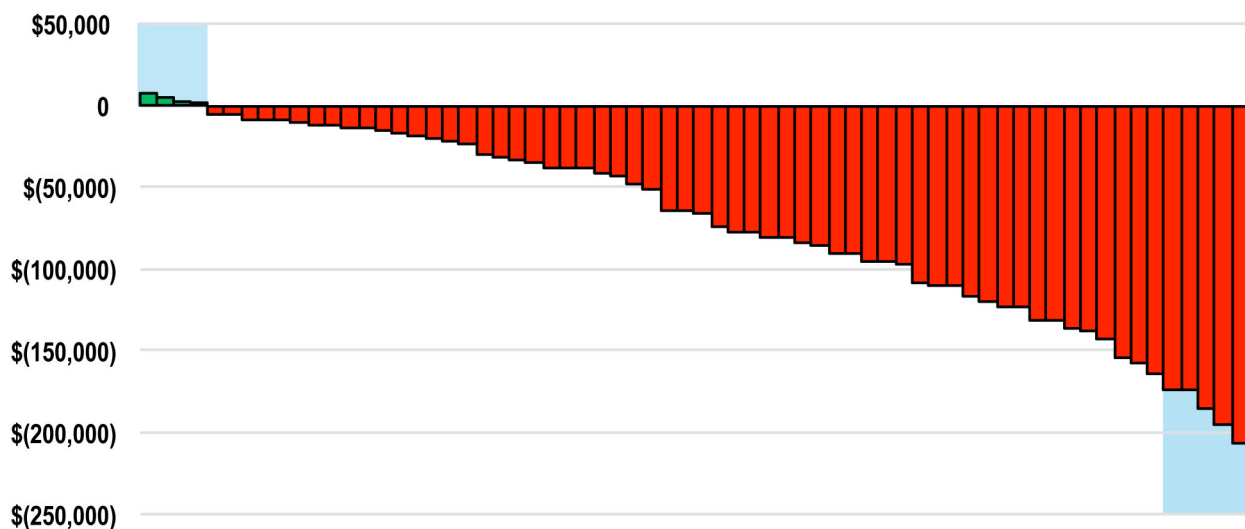


Those losing the most under the new system will be older workers, and those with higher levels of industrial disability, limited education, a history of manual labor, no special skills or training, and those with other disabilities.

On the other hand, young, well-educated, highly skilled workers may not be affected as much. In fact, a small handful of workers actually would do better under the new system (see Figure 2 below). By our calculations, just four workers in the sample (left side of Figure 2), with PPD ratings ranging from 5 percent to 20 percent, would actually do better under the new system. This is true because, under the new system, a shoulder is worth 400 weeks of benefits, compared to only 250 weeks for an arm. Those four workers would have received 12 percent to 16 percent more money (\$839 to \$7,439) under the new system. The remaining 62 workers would have received less under the new system. The reduction in total compensation ranges from \$5,287 to \$206,379. In percentage terms, the reductions amount to a loss in the value of total compensation from 9 percent to 99 percent. The median loss would be 75 percent.

Figure 2. Vast Majority See Wide Range of Reduced Benefits in Shoulder Cases Post-2017

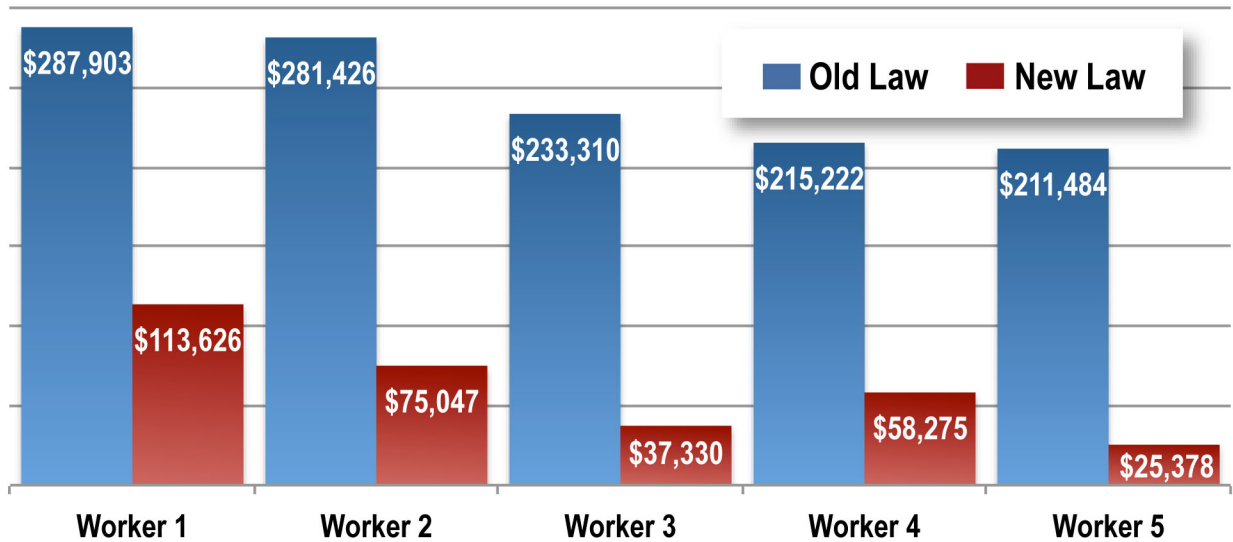
Difference in Net Compensation, pre- and post-2017 (66 cases, ordered from smallest to largest change)



Among the “top 10,” those with the largest percentage loss, one worked in retail, one in agriculture, two in construction and six in meatpacking or other food processing. A majority had less than a high school education, three were immigrants, and one had a learning disability. Under the old system, these factors led the deputies to award these individuals significant amounts of industrial disability. Under the new system these factors would not be considered. For example, the 49-year-old asbestos removal worker in our sample would see his total compensation reduced from \$91,389 to \$1,219. The 31-year old woman from Liberia, injured in a meatpacking plant, would see her compensation reduced from \$121,989 to \$4,504. The 52 year-old Mennonite truck driver would receive \$25,378 instead of \$211,484.

Figure 3 shows what benefits resulted for the workers facing those five widest disparities — the five bars on the far right of Figure 2.

Figure 3. Five case examples yielding widest disparities in injured workers' benefits under old, new laws



Community college to the rescue? While HF518 was being debated, opponents of the bill were aware that the host of proposed changes would have a devastating impact on injured workers, though the full extent of the damage was probably not accurately anticipated at that point. Sponsors of the bill nonetheless pushed it through over all objections. The only significant concession made in the final version of the bill was in response to concerns about the reclassification of shoulder injuries. As a result, HF518 was amended to add a new type of benefit, available only to workers with a shoulder injury resulting in a permanent disability.

Workers with a permanent injury affecting their shoulders may be entitled to financial assistance to allow them to attend community college for the purpose of being retrained for a different occupation. There are many restrictions and conditions on this new kind of financial assistance. These benefits are available only to workers with *shoulder* injuries so severe that they “cannot return to gainful employment.” That standard is so high that, if applied literally, it would only provide benefits to workers who are *totally* disabled as the result of a shoulder injury. That would be a very small number of cases. ***None of the workers in our sample of 66 shoulder cases adjudicated in 2017 would have come close to this standard.***

The hypothetical worker who might meet that standard would have to be evaluated by Iowa Workforce Development to determine if the worker would benefit

Other Changes

lowa law will not apply to some out-of-state injuries. It will be harder for an Iowa resident to use the Iowa workers' compensation law for injuries occurring outside of Iowa. A resident of Iowa who is injured while working outside of Iowa will be covered by Iowa law, if the employer has a place of business in Iowa, but now, only if the worker regularly works from that location.

Narrowing range of information considered in impairment ratings. The agency is newly prohibited from considering testimony from non-doctors, family members, friends, co-workers or anyone else, in determining the extent of physical disability. Prior to this change, it was not unusual for a spouse to testify about how the injury had affected the worker's ability to perform daily tasks at home. That kind of testimony is now prohibited. The administrative law judges (deputy commissioners) are also prohibited from applying their own expertise in evaluating the worker's disability. They are required to rely on the doctor's evaluation exclusively.

Protective lawsuits now prohibited. The law now prohibits a worker from suing an employer who violates the requirement to comply with the workers' compensation law or who asks workers to waive their rights under the law.

from “post-secondary career and technical education programs” in certain fields: agriculture, family and consumer sciences, health occupations, business, industrial technology, and marketing.

If Workforce Development determines that such a worker would “benefit from participation,” the worker would be directed by IWD to attend the nearest community college for the purpose of obtaining a degree or certificate that would allow the worker to return to the workforce.

If the worker enrolls in a community college program chosen for him/her by IWD, within six months after being directed to do so by IWD, the insurance company will pay the community college for the worker’s tuition and fees up to a total of \$15,000. If the worker submits documentation, proving that he/she was required to purchase supplies as a condition of participation in a required class and that he/she actually did purchase the supplies, the insurance company will reimburse the worker the actual cost of the supplies. The worker will not receive any financial compensation for the time that he/she is attending college, not even the \$100/week vocational rehabilitation benefit payable to workers with non-shoulder injuries (taken away by HF518).

The insurance company can require periodic updates from the community college about the worker’s progress. If the worker does not meet the attendance standards of the community college or if the worker does not receive a passing grade in every class, all benefits under the “community college” program will stop. If the worker does **not** enroll in the community college as directed by IWD with six months, the worker forfeits all benefits under the “community college” program.

There are so many restrictions on this program and so many pitfalls for the injured worker that it is extremely unlikely that the community college program will turn out to benefit any significant number of workers. At any rate, it is absolutely clear that this largely inaccessible community college benefit does not begin to address the very real and devastating loss caused by reclassifying shoulders as scheduled members.

Conclusion

Our study suggests strongly that the change in the method used for evaluating shoulder injuries under HF518 will have a very significant impact on the total amount of compensation received by injured workers. The change from the “body as a whole” to “scheduled member” system will mean that workers with permanent disabilities resulting from shoulder injuries will receive far less in compensation. The “typical worker” with a shoulder injury could expect to lose about 75 percent of his/her compensation. The change will have the largest impact on the most vulnerable workers. Older workers with less education, fewer skills, learning disabilities, or language issues will be particularly hard hit. Some of these workers will see their compensation reduced by more than 90 percent.

The change will have the largest impact on the most vulnerable workers. ... Injured workers and taxpayers will end up footing most of the bill.

This is an enormous cost shift, from a long-established and reliable system of compensation financed by small premiums paid by employers, to one in which injured workers and taxpayers end up footing most of the bill. By one 2012 estimate, state workers’ compensation systems cover less than half of the direct medical costs of occupational injuries or illness, and about 12 percent of the indirect costs (mostly lost earnings).²⁴ Of those costs not picked up by workers’ compensation,

about half are “out of pocket” costs borne by injured workers and their families, a small fraction (just over 12 percent) is covered by private insurance, and the rest (about a third) is shuffled onto other public programs — including Social Security Disability Insurance, Medicare, and Medicaid.²⁵ “Under these conditions,” as the Department of Labor concluded in 2016, “injured workers, their families and taxpayers subsidize unsafe employers.”²⁶

The dataset of arbitrated shoulder cases from 2017 provides us a startling glimpse into the impact of just one of the most extreme changes to Iowa’s workers’ compensation system. In this universe of cases, we find the average claimant losing out on \$72,000 in compensation under the new rules, and some losing as much as \$200,000. The broader impact is not hard to fathom. There are about 50,000 nonfatal workplace injuries reported in Iowa each year.²⁷ The new rules mark a massive shift in the costs and risks of those injuries. Claims paid by insurance companies and self-insured employers will fall. The costs borne by workers and their families, and by other public programs, will rise accordingly.

Changes to the workers’ compensation law, like the bill rushed through in Iowa in 2017, have the intent and impact of relieving employers of much of the burden of workplace injury and illness, and forcing injured workers and taxpayers to foot the bill instead. As we assess the impact and implications of the new system, it is worth recalling the words of those who fought for Iowa’s first workers’ compensation law just over a century ago. As Assistant Attorney General Henry Sampson underscored,

The wisdom embodied in such legislation, will be so evident that no considerate person will indulge the thought of even a partial backward step towards the old system characterized by incalculable waste to the detriment of every consumer of the product of human energy; by a distressing and unequal distribution of the misfortunes incident to necessary industrial pursuits, particularly those misfortunes to employees by personal injury losses; by a lowering tendency of moral standards in the making and enforcing of claims for such losses and by the perversion of human perception of individual responsibility.²⁸

Indeed, the “consequences of imposing this pecuniary burden upon the injured workmen and their families,” as another reformer noted, “are such as no civilized community can afford to tolerate.”²⁹

¹ There are federal laws that govern workers’ compensation for railroad workers, maritime workers and federal employees.

² Kevin Hardy, [Branstad signs bills limiting workers’ compensation, blocking minimum wage hikes](#), Des Moines Register (March 30, 2017).

³ See Michael Grabell and Howard Berkes, [The Demolition of Workers’ Compensation](#), ProPublica (March 2015); American Legislative Exchange Council, [Statement of Principles on Workers’ Compensation](#) (September 2016).

⁴ [Republicans push overhaul of workers’ comp through Iowa House](#), Cedar Rapid Gazette (March 16, 2017).

⁵ See Elizabeth Anderson, *Private Government: How Employers Rule Our Lives (and Why We Don’t Talk about It)* (Princeton, 2017).

⁶ E.H. Downey, “History of Work Accident Indemnity in Iowa,” (Iowa Economic History Series, State Historical Society of Iowa, 1912), 11-51; P. Blake Keating, “Historical Origins of Workmen’s Compensation Laws in the United States: Implementing the European Social Insurance Idea,” *The Kansas Journal of Law & Public Policy* 11:2 (2001), 279-308.

⁷ Downey, “History of Work Accident Indemnity in Iowa,” 5.

⁸ Downey, “History of Work Accident Indemnity in Iowa,” 5-9; Roosevelt quoted in Michael Grabell and Howard Berkes, [The Demolition of Workers’ Compensation](#), ProPublica (March 2015)

⁹ James Weinstein, “Big Business and the Origins of Workmen’s Compensation,” *Labor History* 8:2 (1967), 156-174; Robert Asher, “The Origins of Workmen’s Compensation in Minnesota,” *Minnesota History* 44:4 (1974), 42-153; Price V. Fishback, Shawn Everett Kantor, “The Adoption of Workers’ Compensation in the United States, 1900-1930” (NBER Working Paper No. 5840, 1996), 14, Table 3.

¹⁰ Fishback and Kantor, “The Adoption of Workers’ Compensation in the United States.”

¹¹ National Academy of Social Insurance, [Workers’ Compensation: Benefits, Coverage and Costs](#) (Washington, October 2017), 4-5

¹² Iowa Code, Title 3, Chapter 85, [Workers’ Compensation](#).

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- ¹³ [Report of the National Commission on State Workmen's Compensation Laws](#) (Washington, 1972)
- ¹⁴ Department of Labor, "[State Workers' Compensation Laws in Effect on January 1, 2004 Compared with the 19 Essential Recommendation of the National Commission](#)" (Department of Labor, 2004); John Burton, "[The National Commission on State Workmen's Compensation Laws: Reflections of the Former Chairman](#)," *IAIABC Journal* 40:2 (2003), 15-31; Grabell and Berkes, "[The Demolition of Workers' Compensation](#)."
- ¹⁵ Department of Labor, "[Does the Workers' Compensation System Fulfill its Obligation to Injured Workers?](#)" (2016), 2-3.
- ¹⁶ Grabell and Berkes, "[The Demolition of Workers' Compensation](#)."
- ¹⁷ National Academy of Social Insurance, "[Workers' Compensation: Benefits, Coverage and Costs](#)," 3
- ¹⁸ National Academy of Social Insurance, "[Workers' Compensation: Benefits, Coverage and Costs](#)," 24-40, Tables 9 through 14; Kevin Hardy and Brianne Pfannenstiel, "[Is Iowa workers' comp out of control? The data say no](#)," *The Des Moines Register* (March 13, 2017).
- ¹⁹ Grabell and Berkes, "[The Demolition of Workers' Compensation](#)."
- ²⁰ Currently in Iowa, 58 companies are self-insured. This list includes most of the state's largest private employers in manufacturing (Tyson, Hormel, Deere, Rockwell-Collins, Pella, Procter & Gamble, Winnebago, Whirlpool), health care (Mercy Medical), retail (Lowe's, Target, QuikTrip), and financial services (Principal Financial) and accounts for about a quarter of all compensations claims in the state. See Iowa Insurance Division, "[Self-Insured Workers' Compensation](#)"; National Academy of Social Insurance, "[Workers' Compensation: Benefits, Coverage and Costs](#)," 22, Table 8.
- ²¹ <https://www.documentcloud.org/documents/2644850-Tyson-Foods-Talking-Points-for-Gov-Terry-Branstad.html>
- ²² Michael Grabell, "[Tyson Foods' Secret Recipe for Carving Up Workers' Comp](#)," *ProPublica* (December 11, 2015).
- ²³ The schedule appears in Iowa Code Section 85.34. Compensation ranges from 15 weeks for a toe other than the great toe to 250 weeks for an arm.
- ²⁴ J. Paul Leigh and James P. Marcin, "Workers' Compensation Benefits and Shifting Costs for Occupational Injury and Illness" *Journal of Environmental and Occupational Medicine* 54:2 (2012), 445-450.
- ²⁵ Grabell and Berkes, "[The Demolition of Workers' Compensation](#)."
- ²⁶ Department of Labor, "[Does the Workers' Compensation System Fulfill its Obligation?](#)," 6.
- ²⁷ Based on data for 2014 (53,400), 2015 (48,300), and 2016 (47,900) available at Bureau of Labor Statistics, "State Occupational Injuries, Illnesses, and Fatalities," <https://www.bls.gov/iif/oshstate.htm#IA>
- ²⁸ Henry Sampson (Assistant Attorney General) to A.B. Funk, Iowa Industrial Commissioner, in Henry Sampson, "Iowa Workmen's Compensation: Legal Opinions (Iowa Industrial Commission, 1916), 5.
- ²⁹ Downey, "History of Work Accident Indemnity in Iowa," 5.