Every state has enacted workers’ compensation laws to protect employees against loss of income and for medical payments due to work related injury, accident, illness, or disease. The workers’ compensation program is administered by a state agency and most employers are required by law to participate. The exceptions to this are Texas and New Jersey, which have voluntary systems in operation.

The basic elements of the workers’ compensation system common across states include the following:

- Benefits are provided for accidental job-related injury. An employee is entitled to statutory benefits from the business when they suffer a “personal injury by accident arising out of and in the course of employment.”

- Benefits include partial replacement of lost wages, medical and rehabilitation benefits, and death benefits.

- Covered businesses and types of jobs are defined by state law.

- Fault is generally not an issue. Neither the employee’s own negligence in causing the accident nor the business’ complete lack of fault are factors in deciding whether the worker gets benefits.

- Employees give up the right to sue the business for the work-related injury or illness in exchange for the assured benefits under the Workers’ Compensation program.

- Employees retain the right to sue negligent third parties if a third party’s negligence helped cause the accident. Proceeds from the lawsuit are used first to reimburse the employer for benefits paid to the employee.

For businesses, the Workers’ Compensation program limits their liability for on-the-job injuries to the remedies/benefits available under the workers’ compensation statute in their respective State. The following are the types of benefits typically available to injured workers under the Workers’ Compensation program:

- Income replacement for partial or total disability of a temporary or permanent nature. Wage loss benefits usually cover about one-half to two-thirds of the employee’s average weekly wage. Practically all-state laws place lower and upper limits on the weekly amounts payable.
• Medical costs
• Rehabilitation costs
• Coverage for certain occupational diseases that are established in State laws.
• Survivor’s benefits in the case of a fatal illness or injury.

The above benefits under Workers’ Compensation apply only to work-related injuries. Benefits are not available for self-inflicted injuries or those caused by intoxication or substance abuse.

Coverage

As indicated above, specific standards and guidelines for the Workers’ Compensation program are established in state law. State laws dictate how much Workers’ Compensation insurance must be purchased by businesses, the types of employment covered, and the percentage of wage replacement to the injured worker. As a result, while variations exist in coverage and benefits between states, within a state little difference will exist between the Workers’ Compensation packages provided by different employers.

In most states, the state law covers employers who have at least one employee. Some states exempt small businesses. How a “small business” is defined varies, but generally is defined as businesses with fewer than three, four or five employees.

In addition to working for a business covered by their state’s law, an individual’s type of work or position must also be covered. The following are frequently excluded, or not covered, by the Workers’ Compensation program:

• Business owners
• Independent contractors
• Domestic employees in private homes
• Farm workers
• Maritime workers
• Railroad employees
• Unpaid volunteers
Workers’ Compensation for Federal Government Employees

The following information is excerpted in part from the US DOL publication CA-550, “Questions and Answers about the Federal Employees’ Compensation Act (FECA)”

The federal Employees’ Compensation Act (FECA) provides for worker’s compensation benefits for federal civilian employees who are injured on the job. FECA is administered by the Office of Workers’ Compensation Programs (OWCP), U.S. Department of Labor, through 12 district offices located across the United States.

The costs for the workers’ compensation payments are paid from the Employees’ Compensation Fund, which OWCP administers. Each year, each employer reimburses the Fund for the amounts paid to its employees in workers’ compensation benefits during the previous year.

Coverage

All civilian employees of the United States, except those paid from non-appropriated funds, are covered. Special legislation provides coverage to Peace Corps and VISTA volunteers; Federal petit or grand jurors; volunteer members of the Civil Air Patrol; Reserve Officer Training Corps Cadets; Job Corps, Neighborhood Youth Corps, and Youth Conservation Corps enrollees; and non-federal law enforcement officers under certain circumstances involving crimes against the United States.

FECA coverage is extended to federal employees regardless of the length of time on the job or the type of position held. Part-time, seasonal, and intermittent employees are covered.

All kinds of injuries, including diseases caused by employment, are covered if they occur in the performance of duty. However, benefits cannot be paid if injury or death is caused by willful misconduct of the injured employee, by intent to bring about the injury or death of oneself or another, or by intoxication of the injured employee.

Diseases and illnesses aggravated, accelerated or precipitated by the employment are covered. The employee must submit medical and factual evidence showing that the employment aggravated, accelerated, or precipitated the medical condition.

Eligibility

The employee must provide medical and factual evidence to establish five basic elements:
• The claim was filed within the time limits set by the FECA;

• The injured or deceased person was an employee within the meaning of the FECA;

• The employee actually developed a medical condition (or damaged a prosthesis) in a particular way;

• The employee was in the performance of duty when the event(s) leading to the claim occurred; and

• The medical condition found resulted from the event(s) leading to the claim.

A notice or claim must be filed within three years of the date of injury. However, if a claim is not filed within three years, compensation may still be paid if written notice of injury was given within 30 days, or the employer had actual knowledge of the injury within 30 days after it occurred.

Benefits

Under FECA, injured workers are provided partial wage replacement, vocational rehabilitation, and medical benefits. This is similar to the common types of benefits provided injured workers under state Workers’ Compensation laws.

Wage-loss compensation is paid at two-thirds of the employee’s pay rate if he or she has no dependents, or three-fourths of the pay rate if he or she is married or has one or more dependents. The maximum payment per month cannot exceed three-fourths of the highest rate of basic pay provided for Grade GS-15. Basic pay excludes locality pay.

Conditions that result in a reduction of the wage replacement benefit include the following:

(a) The employee returns to work and has actual earnings from employment, either with the original employer, or with a new employer, or from self-employment, and those earnings do not equal the wages of the job held at the time of injury, as adjusted for inflation.

(b) The employee can earn wages in a particular job which is both medically and vocationally suitable, and which is reasonably available in the employee’s commuting area. Compensation can be reduced even if the employee does not actually work in the job identified. When compensation is reduced on this basis, OWCP issues a formal decision describing the job, its physical requirements, and the vocational preparation needed for it.
**Benefit Payment Period**

Compensation payments can be made after wage loss begins and the medical evidence shows that the employee cannot perform the duties of his or her regular job. No waiting period is required when permanent disability exists, or when the disability causing wage loss exceeds 14 days.

Short-term compensation payments are issued each week. The period covered may include compensation for several days to several weeks. Long-term compensation payments are issued every four weeks.

An employee may receive compensation payments for as long as the medical evidence shows that total or partial disability exists and is related to the accepted injury or condition. OWCP requires most employees receiving compensation for disability to undergo medical examinations at least once a year. This evaluation is usually obtained from the employee’s treating physician. OWCP may, however, require the employee to be examined by another physician.

Compensation ends when:

- The employee returns to full duty in the job held when injured, or is otherwise re-employed in a job which results in no loss of wages;

- The employee refuses an offer of a suitable job, and the cause for refusal is not reasonable. OWCP will decide whether the job offer was suitable and whether the refusal was reasonable.

Acceptable reasons for refusal include, but are not limited to: withdrawal of the offered position by the employer; acceptance of other work by the employee which fairly and reasonably represents his or her earning capacity; and a worsening of the employee’s medical condition, as documented by the medical evidence, to the point that the employee is disabled for the job in question.

Unacceptable reasons for refusal include, but are not limited to: the employee’s preference for the area in which he or she currently resides; personal dislike of the position offered or the work hours scheduled; lack of potential for promotion; lack of job security; retirement; and previously-issued rating for loss of wage-earning capacity based on a constructed position where the employee is not already working at a job which fairly and reasonably represents his or her wage-earning capacity.
• The employee abandons a suitable job. OWCP will decide whether the job was suitable and whether the reason for abandonment was reasonable and apply its finding retroactively.

• OWCP receives medical evidence showing that the employee no longer has limitations from the work-related injury which affected the performance of his or her duties when the injury occurred, or that the employee’s disability is not usually related to the work-related injury;

• A beneficiary is convicted of defrauding the federal government with respect to a claim for benefits.

**Title II or SSDI**

Dependent on the dollar amount of an individual’s workers’ compensation or public disability benefit, receipt of these types of benefits may result in a reduction of their or their family's SSDI cash benefit. Generally, speaking about ten percent of SSDI beneficiaries are impacted by receipt of workers’ compensation or public disability benefit. The following provides information on the formula used to determine how the SSDI cash benefit is affected.

**Step One:**

Establish the exact amount of the following figures:

• the dollar amount of the monthly SSDI cash benefit that is received by the individual. In cases where there are spouses’ and/or children’s insurance benefits paid on the wage-earners record, it will be necessary to determine the SSDI total family benefit paid.

• the dollar amount of the workers’ compensation or public disability insurance benefit received.

• the dollar amount that represents 80% of the beneficiaries average current earnings

SSA defines the average current earning as the highest of the following:

1) the average earnings used by the Social Security Administration to figure the SSDI benefit,

2) the person’s average monthly earnings from any work that they performed that was covered by Social Security during the five highest years in a row after 1950, or

3) the person’s average monthly earnings for work during the five-year period immediately prior to becoming disabled.
Again, the average current earnings are the highest of these three amounts.

Once the average current earnings are determined, 80% of this figure is used as the benchmark in determining the impact on the SSDI cash benefit. In summary, for step one we have established the amount of SSDI benefit received, the amount of the workers’ compensation or public disability benefit received, and finally the 80% of the average current earnings benchmark.

**Step Two:**

- Determine which is higher, the SSDI benefit or the 80% of the average current earnings figure. Using whichever of the two figures is higher, subtract from this figure the dollar amount of the workers’ compensation or public disability benefit. The remaining amount represents the new adjusted SSDI monthly benefit.

**Step Three:**

- Add the adjusted SSDI benefit to the workers’ compensation or public disability benefit to arrive at the total monthly income received by the individual from these two sources.

**Example I**

Harold is receiving a monthly SSDI benefit. He becomes eligible for a workers’ compensation benefit in September of 2000. In step one, establish the following factors for Harold. His monthly SSDI benefit is $507.90. His workers’ compensation benefit each month is $410. Eighty percent of his average current earnings are $800.

**Step One:**

<table>
<thead>
<tr>
<th>SSDI Benefit</th>
<th>$507.90</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers’ Compensation benefit</td>
<td>$410.00</td>
</tr>
<tr>
<td>80% of average current earnings</td>
<td>$800.00</td>
</tr>
</tbody>
</table>

In step two, take the greater of his SSDI cash benefit and 80 % of average current earnings figure. In Harold’s case, his 80% of average current earnings is higher than $800. From the $800 amount, subtract the $410 workers’ compensation benefit. This leaves Harold with the revised SSDI cash benefit of $390.

**Step Two:**

| Greater of 80% of ACE/SSDI | $800.00 |
| Workers Compensation Benefit | $-410.00 |
| Adjusted SSDI Monthly Benefit | $390.00 |
In the final step, add the adjusted SSDI benefit of $390 to the workers' compensation benefit of $410. This provides Harold of a total monthly income from these two sources of $800.

**Step Three:** Add Adjusted SSDI to Workers’ Compensation Benefit

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted SSDI</td>
<td>$390.00</td>
</tr>
<tr>
<td>Workers’ Compensation Benefit</td>
<td>$410.00</td>
</tr>
<tr>
<td><strong>Total Monthly Income</strong></td>
<td><strong>$800.00</strong></td>
</tr>
</tbody>
</table>

**Example II**

Example of an SSDI beneficiary with family members receiving an SSDI benefit on his wage record. Tom is entitled to a monthly SSDI cash benefit of $559.30. His wife and two children are also entitled to monthly benefits of $93.20 each. The total family benefit under SSDI is $838.90. Tom also begins to receive workers' compensation benefit of $500.

In step one established the following for Tom. The SSDI total family benefit is $838.90. The workers’ compensation monthly benefit is $500, and Tom’s 80% of average current earnings figure is $820.10.

**Step One:**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SSDI Benefit</td>
<td>$838.90</td>
</tr>
<tr>
<td>Workers’ Compensation Benefit</td>
<td>$500.00</td>
</tr>
<tr>
<td>80% of Average Current Earnings</td>
<td>$820.10</td>
</tr>
</tbody>
</table>

In step two, take the SSDI total family benefit, which is the higher of the two figures when compared to the 80% of the average current earnings figure. Again, the SSDI total family benefit figure is $838.90. From this figure subtract the $500 workers’ compensation benefit. This results in an adjusted SSDI amount of $338.90. Tom’s wife and two children will lose their benefits altogether as the reduction is always taken from the dependents’ benefits first. The remaining amount of the reduction is then subtracted from Tom’s benefit to arrive at the $338.90 figure.

**Step Two:**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SSDI Benefit</td>
<td>$838.90</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>$500.00</td>
</tr>
<tr>
<td><strong>Revised SSDI</strong></td>
<td><strong>$338.90</strong></td>
</tr>
</tbody>
</table>

In the final step, add Tom’s revised SSDI of $338.90 to his $500 workers’ compensation benefit. This gives him a total monthly benefit of $838.90. This is the exact amount of the SSDI total family benefit that was previously received by Tom and his family members.
Step Three:

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>SSDI</td>
<td>$338.90</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>+500.00</td>
</tr>
<tr>
<td>Total Monthly Benefit</td>
<td>$838.90</td>
</tr>
</tbody>
</table>

Important Points

- While the beneficiary may experience a reduction in his or her SSDI cash benefit, the total amount of the combined SSDI and workers’ compensation will never be less than the total amount of SSDI received by the individual and their family prior to reduction.

- Changes in factors such as family composition and the amount of the workers’ compensation or public disability benefit received will result in a recalculation of the reduction. This may potentially mean an adjustment in the SSDI cash benefit. All changes must be reported by the beneficiary to the Social Security Administration.

- Some individuals may receive a lump sum workers’ compensation payment to settle their claim. The adjustment to the person's SSDI cash benefit in these instances is made by prorating the lump sum payment over the number of months the workers' compensation benefit would normally be made if the person had not gotten the lump sum.

- The reduction in SSDI due to a workers’ compensation benefit will continue until the month that the individual reaches age 65 or the month that the workers’ compensation payment stops, whichever comes first.

- In addition to workers’ compensation, other public disability payments may affect a person's SSDI cash benefit. This includes payments made under a federal, state or local government law or plan that pays for conditions that are not job related. Examples include civil service disability benefits, military disability benefits, state temporary disability benefits, and state or local government retirement benefits which are based on disability. The adjustment to a person’s SSDI cash benefit for these types of payments is determined in the same manner as described above for the workers’ compensation benefit.

Title XVI or SSI

Supplemental Security Income or SSI is a program that is based on economic need. The more that a person has in income both earned and unearned income the less they receive in SSI cash benefit. For purposes of the SSI program, a workers’ compensation benefit is considered to be one type of unearned income. Therefore, a person who receives a workers’ compensation benefit or other public disability benefit will experience a reduction in their SSI. Specifically, the SSI cash benefit will be reduced by the amount of the monthly workers’ compensation payment or public disability benefit less the $20 general exclusion. Assuming that this exclusion has not already been applied to some other form of unearned income that the person receives.
It’s important to keep in mind that workers’ compensation benefits or other public disability benefits will also impact SSI when deeming is involved. This includes both situations of spouse to spouse deeming as parent to child deeming. If the spouse or parent begins to receive a workers’ compensation benefit, a portion of this benefit will be deemed as being available to the SSI recipient, and will consequently result in a reduction in their SSI cash benefit.

A potentially greater concern than the impact on the SSI cash benefit is the potential loss of Medicaid eligibility due to receipt of the workers’ compensation or public disability benefit. The receipt of a workers’ compensation or other public disability benefit will only result in a loss of Medicaid coverage in situations where the amount of the workers’ comp or public disability benefit in a given month is sufficient to place the person over their break-even point.

The break-even point is the point at which the individual is no longer eligible to receive a SSI cash benefit. When an individual reaches their break-even point, their eligibility for Section 1619b is determined. The 1619B provision enables individuals who qualify to continue their Medicaid coverage in spite of the fact that they are no longer eligible for an SSI cash benefit. To be eligible for 1619B, there are a number of requirements that must be met. One of these requirements is that the sole reason that the person lost their eligibility for SSI cash benefit must be due to the fact that they have earnings over the allowable limits. In other words, an individual will not meet the criteria for 1619B if the reason for loss of the SSI cash benefit is due to unearned income (such as a workers’ compensation benefit) placing them over their break-even point. Also, keep in mind that the likelihood that a person’s Medicaid eligibility will be affected is even greater for individuals who already receive some other type of unearned income such as SSDI.

In summary, the receipt of a workers’ compensation or public disability benefit will have a significant impact on a person’s Social Security disability benefits. In some cases, their health care coverage will be affected as well. Consequently, Benefit specialists must commit the time and resources necessary to become familiar with their own states’ workers’ compensation statute as well as its implications for beneficiaries and recipients who receive these benefits.