December 1, 2024

Honorable Kathy Hochul
New York State Governor
NYS Capitol
Albany, NY 12224

Honorable Andrea Stewart-Cousins
NYS Senate President Pro Tempore and
Majority Leader
LOB, Room 907
Albany, NY 12247

Honorable Carl E. Heastie
NYS Assembly Speaker
LOB, Room 932
Albany, NY 12248

Honorable Liz Krueger
NYS Senate Finance Committee Chair
Capitol, Room 416
Albany, NY 12247

Honorable Helene E. Weinstein
NYS Assembly Ways and Means Chair
LOB, Room 923
Albany, NY 12248

Honorable Jessica Ramos
NYS Senate Labor Committee Chair
LOB, Room 946
Albany, NY 12247

Governor Hochul and Legislative Leaders,

Pursuant to Section 35 of the Workers' Compensation Law, and as part of the 2017 Workers' Compensation Reforms, the Workers' Compensation Board is charged with tracking and reporting annually on all injured workers who have been awarded permanent partial disability (PPD) status. This report covers claims and employment data available for the period July 1, 2023, through June 30, 2024.

Today, we are pleased to share our 2024 Safety Net Report on the number of these injured workers who: (I) have returned to gainful employment; (II) have been re-categorized to permanent total disability (PTD) or total industrial disability (TID) status; (III) remain subject to duration limitations set forth in paragraph w of subdivision three of Section 15 of article 2; and (IV) have not returned to work, and whose indemnity payments have expired.

Of note this year, employment rates for injured workers with a PPD classification whose indemnity (wage replacement) benefits have expired have exceeded pre-COVID levels. This increase occurred despite the general aging of the population.

Finally, we have included information and data from our Integrated Services unit demonstrating ongoing efforts to further increase the percentage of injured workers who are able to return to work.

Sincerely,

Clarissa M. Rodriguez
Chair, New York State Workers' Compensation Board

2024 SAFETY NET REPORT

Summary of key findings

1. **The percentage of injured workers with a permanent partial disability (PPD) classification who returned to work has increased, despite the general aging of the population.** In the 2023 Safety Net Report, the Board reported that 34.7% (9,709) of injured workers with a PPD classification still subject to the cap and living in New York State had returned to gainful employment. This year's report showed that, despite the general aging of the population, 37.8% (11,875) had returned to gainful employment.

2. **A significant number of injured workers (post 2007 PPD reforms) opt to settle their claims in lieu of a PPD classification.** Four out of five post 2007-reform injured workers opt to settle their case with a Section 32 settlement in lieu of or after a PPD classification.

3. **We project 108 applications will be received in 2024 from injured workers seeking redetermination of benefits due to extreme hardship.** In 2023, 145 eligible injured workers applied for an extension of benefits on the grounds of financial hardship referred to as an extreme hardship redetermination pursuant to Workers' Compensation Law (WCL) §35(3). The Board received 81 extreme hardship applications from eligible injured workers in the first eight months of 2024.

Background

The 2007 Workers' Compensation Reforms set indemnity (wage replacement) benefit caps on PPD cases where the injured worker was less than 100% disabled. The maximum indemnity benefit period is 10 years, or 520 weeks, from the date of classification. Note that necessary medical treatment and care are lifetime benefits and are not subject to caps. This report covers reported claims and employment data available for July 1, 2023, through June 30, 2024.

The Board has a data-sharing agreement with the NYS Department of Labor (DOL) to provide confirmation of employment for injured workers who have received a PPD classification. The NYS DOL maintains employment records only for traditional "W-2" employees who work and reside in NYS. Thus, the employment statistics included in this report exclude any injured workers who are employed as gig platform workers (e.g., Uber or Doordash), self-employed individuals, independent contractors, those working for employers outside New York State, and those who are retired or are no longer seeking employment.

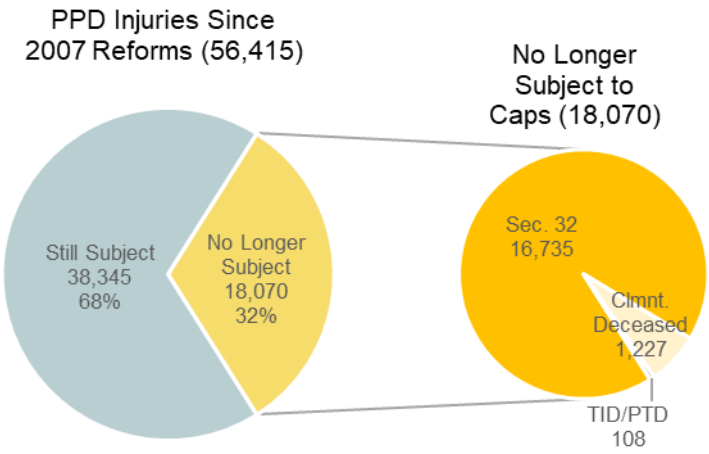
Population size

As of September 13, 2024, 56,415 injuries have occurred since the 2007 reforms that were classified as PPD and became subject to the statutory indemnity benefit caps, as compared to a cumulative count of 51,456 in last year's report.

Of those PPD cases, 32.0% (18,070) are no longer subject to the indemnity benefit caps (see figure 1), due to resolution through alternate paths (such as lump-sum settlements), a finding of "Total Industrial Disability" (TID) or Permanent total disability (PTD) or because the injured worker is deceased. This leaves a population of 38,345 injured workers with a PPD classification (see Figure 1), whose average age is 59.

Of the 38,345 who remain subject to the indemnity benefit caps, an estimated 56% (21,553) have compensation remaining before their indemnity benefits expire. (see Figure 2)

Figure 1: Total PPD Injuries – Subject to Cap vs. No Longer Subject



Likely permanently partially disabled

In addition to this population of injured workers, there is a larger group of injured workers whose claims have the characteristics of a PPD claim but have elected to take a lump-sum benefit prior to receiving a classification. "Likely PPD" is identified by the Board during the creation of the Section 32 Resolution or via other claim characteristics including the injured part of body. Since the reforms, we estimate that there are 132,775 of these likely PPD injured workers (see Figure 3), who have an average age of 55. Four out of five post 2007-reform injured workers opt to settle their case with a Section 32 settlement in lieu of or after a PPD classification.

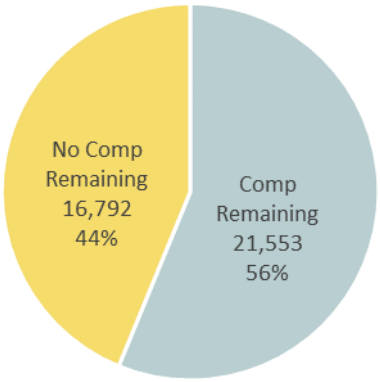


Figure 3: Total PPD Population

Total PPD Population	Claim Count
PPD Classification	56,415
"Likely PPD"*	132,775
Total	**189,190**

*Claims with related PPD body part and Section 32 with no PPD classification

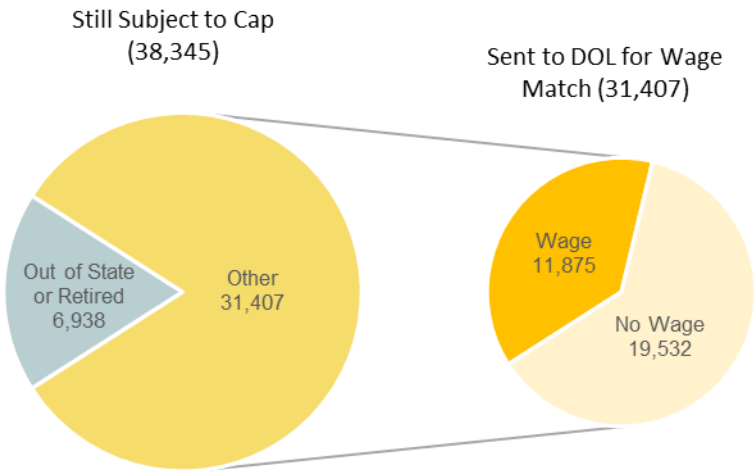
Employment

- **Injured workers who returned to gainful employment**
  When the 2007 reforms were enacted, the expectation was that injured workers subject to the benefit cap would eventually return to work. Of the 38,345 injured workers, 18.1% (6,938) have either moved out of NYS, retired from NYS or NYC service, or cannot be matched to NYS wage records (for example, the Social Security number may be missing or incorrect).

  Of the remaining 31,407 injured workers, at least 37.8% (11,875) (see Figure 4) were working for a NYS employer (i.e., had NYS wage records), from July 1, 2023, through June 30, 2024. Of those injured workers, 92.9% (11,030) also had wages in at least one quarter between July 1, 2022, and June 30, 2023, indicating that they were continuously employed.

  Of the combined population of likely PPD injured workers and those who received a Section 32 settlement after their PPD classification, 35.0% were working for a NYS employer from July 1, 2023 through June 30, 2024.

  Figure 4: Injured Workers Who Remain Subject to Cap

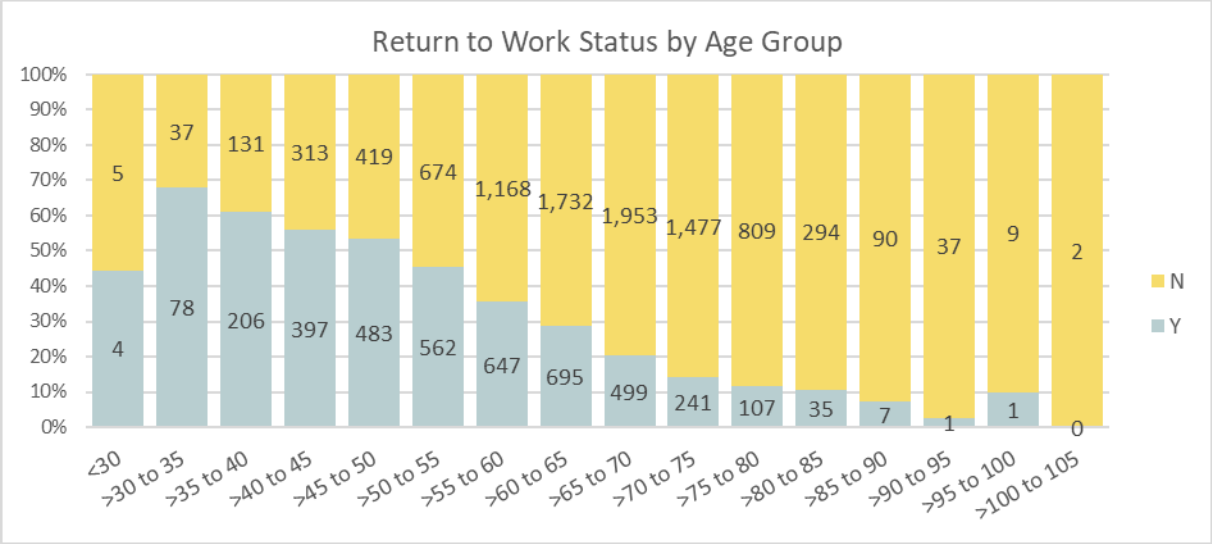
- **Injured workers seeking redetermination of benefits due to extreme hardship.**
  Section 35(3) of the Workers' Compensation Law allows an injured worker whose loss of wage-earning capacity (LWEC) has been set at greater than 75% (referred to below as "valid") to apply to the Board for a redetermination of their benefits from permanent partial disability (PPD) to either permanent total disability (PTD) or a total industrial disability (TID) due to extreme financial hardship. This threshold was lowered from 80% LWEC to 75% LWEC as part of the 2017 reforms. Workers who meet the criteria can apply within one year of when their lost wage benefits will end.

  In the first eight months of 2024, the Board received 81 applications for redetermination of benefits that met the requirements defined above. This is a decrease from the 105 received in the first eight months of 2023. Since the 2017 reforms, 35 cases have been recategorized to PTD or TID due to extreme hardship out of a total 510 applications that met the requirements defined above.

- **Injured workers who remain out of work despite the expiration of their indemnity benefits**
  There are 21,553 injured workers with a PPD classification who have not exhausted their indemnity benefits, according to Board records. In contrast, there are 16,792 who have exhausted their indemnity benefits. Currently, of the 16,792 injured workers, 78.2% (13,124) still reside in NYS and have not retired. Wage records indicate that of these 13,124 NYS residents, at least 30.2% (3,969) appear to have returned to gainful employment with a NYS employer. The remaining 69.8% (9,155) of injured workers do not appear to be working in NYS despite expiration of their indemnity benefits. As noted above, some of these workers may be working or collecting Social Security, but their income is not reported as a "wage."

- **Aging Safety Net population**
  As we move further from the 2007 reforms, the Safety Net population continues to age. At the time of this report, the median age of those 13,124 injured workers is 63.1. In other words, 50% of this group is older than 63.1. The graph below shows this population by five-year age buckets. Blue (Y) represents those who had a wage reported last year. Yellow (N) represents those who did not. For injured workers 60 years or younger, 46.4% returned to work. For those older than 60, only 19.8% returned to work.

Figure 5: Return to Work Status by Age Group



Additional steps taken by the Board to increase the number of injured workers who return to work

Pursuant to WCL section 35(4)(ii), the Board is also required to report efforts that help injured workers return to work once they are able to do so. While the Board recognizes that medical treatment is the primary concern, the Board continues to offer supportive services in the areas of mental health and vocational assistance for those injured on the job who must attach to the labor market and are medically able to do so with or without limitations. The Board recognizes that this combination of services, including assistance with obtaining medical treatment, is paramount to a healthy recovery and a safe return to work. The Board's efforts include:

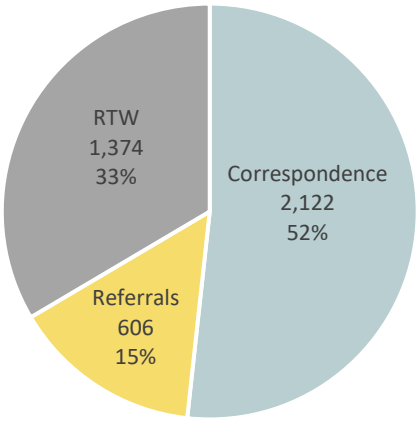
- Return to Work (RTW) outreach continued with a letter writing campaign to injured workers with a PPD classification who exhausted their indemnity benefits in 2024. The initiative offered information and services for those in need of employment assistance and/or social services. Injured workers were asked to complete a survey assessing their needs and interests regarding vocational services and social work support. Those who responded seeking assistance were contacted by vocational rehabilitation counselors (VRCs) and/or licensed master social workers (LMSWs) who provided social services as well as employment resources to include:
  - Resume development,
  - Mock interview preparation,
  - Training or new career path exploration,
  - Housing, medical care, food insecurity, Social Security benefits, and/or mental health support,
  - Reasonable accommodations and/or language assistance, and
  - Referral to Adult Career and Continuing Education Services- Vocational Rehabilitation (ACCES-VR) and/or the New York State Department of Labor

This year's targeted population whose indemnity benefits expired in 2024 comprised of 3,383 injured workers, including 1,269 who appeared to have returned to employment as reported by the New York State Department of Labor. Approximately 26 survey responses were received by injured workers expressing interest to receive Board services and/or assistance to return to work.

Support 24 weeks post-injury or sooner

The Vocational Rehabilitation unit continued to provide RTW support and outreach to injured workers who remain unemployed 24 weeks post injury. In the first three quarters of 2024, 2,122 injured workers were referred for vocational training and support. These support services included ACCES-VR, New York State Department of Labor, English as a Second Language (ESL) and General Education Development (GED) programs and community based vocational organizations. Additional employment-related services were requested by 1,374 injured workers such as contact with current employers, labor market attachment support, and resume writing assistance. The unit also provided outreach and support correspondence for 606 injured workers referred by internal or external partners (see Figure 6). In 2024, the unit continued its networking initiative with other NYS agencies and disability organizations to secure additional resources offering job training and employment services.

Figure 6: VRC Services Provided Jan 1 - Sep 30, 2024



- Licensed Master Social Workers (LMSWs) continued providing mental health and financial support to injured workers as these hardships can often be barriers for recovery and a successful return to work. In the first three quarters of 2024, this unit provided 1,482 correspondences on behalf of injured workers requesting financial, housing, and food pantry assistance including support for Medicare and Social Security services. Overall, this Unit offered services to 4,633 Injured Workers.
- The Board continued to use the RTW website as a tool to guide all injured workers, employers and carriers searching for information regarding RTW guidance and business planning. In the first three quarters of 2024, the site was viewed 14,158 times.

Conclusion

In summary, efforts to monitor and support injured workers impacted by the 2007 Reforms remains a priority and commitment for the Board. Specifically, this year's report intentionally demonstrates a more comprehensive image of the Safety Net Injured Worker who is more likely returning to work as an older adult, settling their claim in lieu of a PPD classification, or experiencing financial hardship. To address these challenges, the Board is enhancing services through early outreach, expert agency assistance, and the establishment of robust networks for safeguards and protections.