

Can we get a rate adjustment?



by Andrew Bribriesco

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How weekly benefit rates are outdated and cause the financial imprisonment of workers, especially totally disabled workers.

Imagine having your weekly earnings cut by almost 35%. Imagine this reduction will last six months while you recuperate from a disabling work injury. What impacts would it have on your life? Would you need to move? Would you be able to pay for your car? How about your health insurance? Without earning salary from your employer, who will be responsible for paying the premiums? How will it affect your 401k contributions?

Even when an employer accepts a work injury, the economic effects of receiving weekly workers' compensation benefits (rather than regular pay) is usually the cause of economic distress and, many times, the cause of a financial crisis for workers and their families. The source of this economic hardship can be found in how the law sets forth the worker's weekly benefit rate.

For those unfamiliar with workers' compensation laws, the weekly benefit rate will typically be determined by taking the weekly earnings of 13 representative weeks of the worker immediately before the work injury¹ divided by 13. The weekly earnings include shift differential pay, but not overtime or premium pay. Iowa Code §85.36(6). Overtime hours

are included in the weekly earnings, but at regular pay. *Id.* Depending on the exemptions of the worker, then the weekly benefit rate can be calculated using the Iowa Workers' Compensation Manual found online.

The workers' compensation rate – which is etched in stone at the time of injury – is out of touch with modern society. Manual laborers and low-wage earners generally bank on “overtime” and time-and-a-half pay to cover their family's bills, costs of living, and other unforeseen expenses that happen (medical bills, house damage from storms, etc).

For the weekly rate to not account for overtime is devastating to these types of workers, especially hard workers that consistently perform overtime. Because the weekly benefit rate does not include overtime at time-and-a-half pay, it essentially penalizes employees who worked hard before their injury.

When workers are receiving their weekly benefit rate (which is typically a 33-40% reduction of typical earnings), the workers are still responsible for covering their health insurance premiums from that amount. On top of that, there is lost contributions to the 401k (both their own and employer matching) and missing out on performance bonuses. These economic losses are not recoverable under Iowa workers' compensation laws.

Weekly Benefit Rates That Are Etched In Stone Doom Totally Disabled Workers.

Now imagine that *for the rest of your life* your weekly earnings will be cut by almost 35%. What would your life look like then? Would you be in the same house? Would you be thriving or struggling to survive? What if your injury occurred while you were working part-time in college? What if you had 25 years left to live? What about 50 years?

I have an adjudicated permanently and totally disabled worker that probably has the best example of how the weekly benefit rate can “doom” someone. Following appeals and not to mention the on-going alternate care battles that will happen throughout her lifetime, the client is scheduled to receive approximately

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\$350.00 per week for the rest of her life. This translates to approximately \$1,400.00 per month and \$16,800.00 per year. As the law is written today, this client will receive \$16,800.00 for the rest of her life. It is written in stone! My client is about 40 years old and, when she is 75 years old, she will be receiving the same \$16,800.00 without any consideration to inflation.

If you can imagine, insurance companies are not motivated to settle for a fair value for a case like this because a worker has almost no options at this time under the law.² I say at this time, because I am still an optimist that there are still good legislators, judges, and other policy makers on both sides of aisle who might see the injustice the weekly benefit rate being set in stone has on people.

Many states have cost of living adjustments (COLAs) for adjudicated permanently and totally disabled workers, such as the neighboring state of Illinois. Many unions have COLAs built-in to their agreements and, of course, Social Security recipients are eligible for COLAs. In fact, a COLA is so significant, the official Social Security webpage provides a detailed history of the purpose, legislative history, and triumph of COLAs.

Prior to 2017, a worker like my client above had the possibility of a commutation. So instead of receiving weekly checks, the Commissioner would typically order all but one week of a workers **expected life-time** in a lump sum so that the worker and the workers' family would have economic protection from inflation. The main argument used in favor of these Commutation hearings were that the rate does not have COLA.

In 2017, the Iowa Legislature made substantial changes to the workers' compensation laws that were essentially all bad for the injured worker. Along with other harmful changes, the Legislature took away the ability to have

a commutation. Constitutional challenges may exist in the face of such injustices that permanently disabled workers face – especially with young and immigrant workers who may never be eligible to apply for social security disability. Yet, for almost 4 years, insurance companies have had the upper hand with the most vulnerable workers and may continue for their lifetime.

Why leave workers to doom? It's time for the system to regain its balance and, at minimum, allow workers who are completely disabled to have an increase in their workers' compensation rate.

- 1 The week of the employee's injury is not included in this equation. Iowa Code § 85.36(6).
- 2 Weekly benefits for a permanently and totally disabled worker end when the worker dies and, because of that, insurance companies will not willingly just settle for 50 years-worth of benefits with the possibility of the life ending much sooner than that.

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