THE TRUTH ABOUT THE BUSINESS COUNCIL'S PLAN TO ONCE AGAIN SLASH COMPENSATION FOR PERMANENT INJURY:

A CONTINUED ASSAULT ON LOW WAGE WORKERS

By: Robert E. Grey

In its 2015 Legislative and Regulatory Agenda, the Business Council called for a reduction in "schedule loss awards," which are paid to workers who suffer permanent damage to limbs, vision or hearing on the job.[1] If this were to be carried out, it would slash benefits for workers, many of whom would actually receive less money for the same injury than they would have received twenty-five years ago. After adjusting for inflation, they would be even further behind.

Contrary to the Business Council's claims, schedule loss awards are not a "windfall" to workers with permanent injuries. Workers' compensation benefits failed to keep pace with inflation for two decades, with balance being restored only recently. A reduction in schedule loss awards would amount to a twenty-year rollback in benefits, with the most severe impact being felt by low wage workers, many of them immigrants.

Workers' compensation benefits largely depend on how much a worker earns, known as the "average weekly wage" (or "AWW"). An injured worker's maximum weekly payment is two-thirds of his or her average weekly wage, subject to the maximum rate in effect on the date of the accident.

From 1992 through 2007, the maximum weekly benefit rate was $400 per week. This rate was potentially available to any worker who earned at least $600 per week, while those who

[1] "Fix New York: The 2015 Legislative and Regulatory Agenda," Business Council of New York State, available at: http://www.bcnys.org/inside/gac/2015/Fix-New-York-2015-Legislative-and-Regulatory-Agenda.pdf

earned less received benefits commensurate with their wages.[2] For example, a worker who earned $450 per week was paid $300 per week for total disability (two-thirds of his or her average weekly wage), while a worker who earned $800 per week was paid $400 per week (the maximum weekly benefit rate).

In 2007, the Legislature increased the weekly maximum benefit rate in stages for future years, while simultaneously imposing new time limitations (or "caps") on permanent partial disability benefits. As a result, the maximum weekly benefit rate has increased over the past eight years as shown on the chart below.

Date of Injury	**Maximum Rate**
7/1/1992	$400
7/1/2007	$500
7/1/2008	$550
7/1/2009	$600
7/1/2010	$739.83
7/1/2011	$772.96
7/1/2012	$792.07
7/1/2013	$803.21
7/1/2014	$808.65

It is important to remember that for the reasons discussed above, these increases in the maximum weekly benefit did not affect all workers equally. According to the Workers' Compensation Board's Annual Report for 2013, "[t]here is a wide distribution of AWW in accepted claims in 2012. Approximately one-third of claims had an AWW of less than $600. One quarter of claims had an AWW between $600 - $899. Nearly 40% of claims had an AWW

[2] The amount of benefits an injured worker actually receives also depends on other factors, such as his or her "degree of disability." In practice, this often results in workers receiving less than the maximum rate for the period of temporary disability.

of $900 or more."[3] The Board's data about the wage distribution of injured workers is reproduced below.

Average Weekly Wage	Number of Claimants	Percentage of Claimants
Not Available	1,604	2.2%
$149 or less	1,020	1.4%
$150 - $299	4,831	6.7%
$300 - $449	8,685	12.0%
$450 - $599	9,191	12.7%
$600 - $749	9,769	13.5%
$750 - $899	8,046	11.1%
$900 - $1,204.81	12,447	17.2%
$1,204.82 or more	16,834	23.2%

Although the 2007 legislation increased the maximum weekly benefit rate available to workers earning more than $600 per week, there was no increase for those earning $600 per week or less – about one-third of those in the system. Moreover, low wage workers were subject to the new time limitations on permanent partial disability benefits, which could previously be paid for life. Overall, these workers received no benefit from the increase in the maximum weekly benefit rate, while losing thousands of dollars individually (and millions of dollars collectively) in benefits for injuries that permanently prevent them from returning to work.[4]

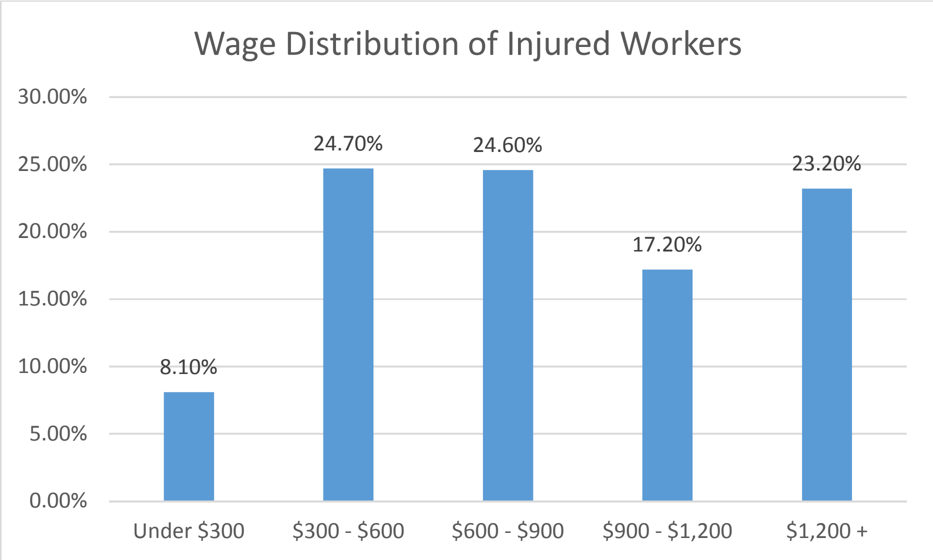
[3] New York State Workers' Compensation Board 2013 Annual Report, available at: http://www.wcb.ny.gov/content/main/TheBoard/2013AnnualReport.pdf

[4] The "safety net reports" produced by the New York State Department of Labor in 2008, 2009 and 2010 (the last year the report was produced) show that low wage workers have a higher rate of permanent partial disability than those with higher earnings. It should also be noted that although high-wage workers with short-term disabilities benefit from the increased maximum weekly benefit rates, those gains are more than offset by the loss of permanent disability benefits for workers in these wage distribution categories as well.

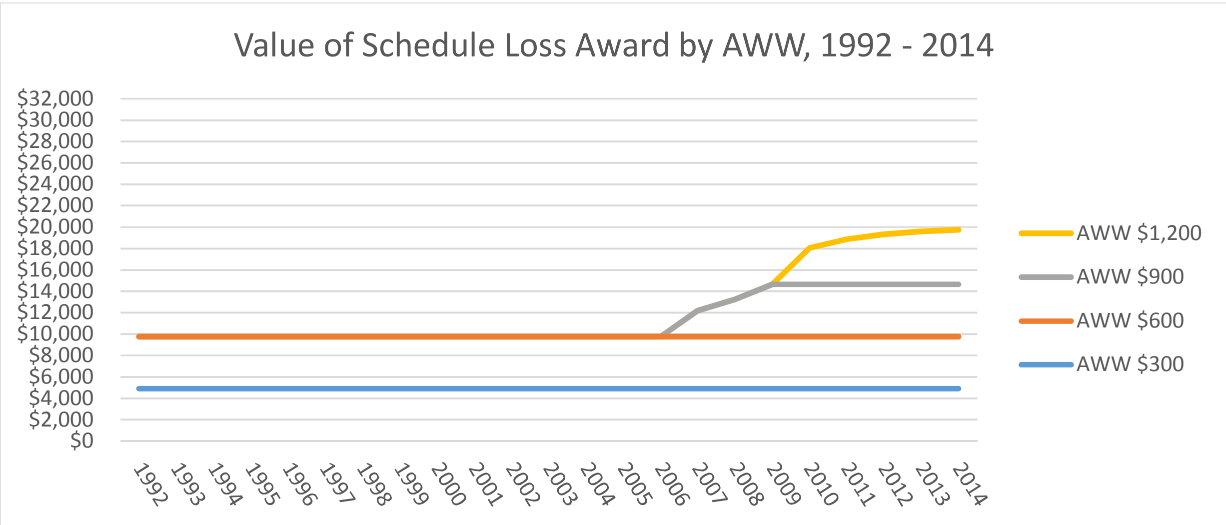
The increase in the maximum weekly benefit rate primarily affected two types of workers' compensation benefits: temporary total disability benefits and schedule loss of use awards for workers who earn more than $600 per week. The Business Council now advocates for the reduction of schedule loss of use awards not only for workers whose benefits increased as a result of the 2007 legislation, but for **all** injured workers. If enacted, this policy would re-victimize the same low wage workers whose benefits were slashed in 2007.

The Workers' Compensation Law provides benefits for the permanent loss or loss of use of an arm, leg, hand, foot, finger, toe, vision, or hearing. These awards are paid in weeks of benefits, which depend on which body part was injured and the extent of the loss. For example, a ten percent loss of use of a hand entitles the worker to payment of twenty four and two-fifths weeks of benefits. The benefit weeks are paid at the injured worker's maximum weekly benefit rate, which in turn depends on his or her average weekly wage and date of accident. Thus, a worker who earned $600 per week would be entitled to $9,760 for a ten percent "schedule loss" of a hand (24.4 weeks x $400 per week = $9,760). However, any wages or compensation the worker was paid for time out of work would be deducted from this award.

Because the amount of a schedule loss award depends on the rate of compensation, which in turn is based on the injured workers' wage, these awards have not increased for low wage workers since 1992. As shown on the chart below, nearly one-third of all injured workers fall into this category. Another twenty-five percent earn between $600 and $900 per week, which means that they have received no benefit from increases in the maximum weekly rate since 2009, when it rose to $600 per week.

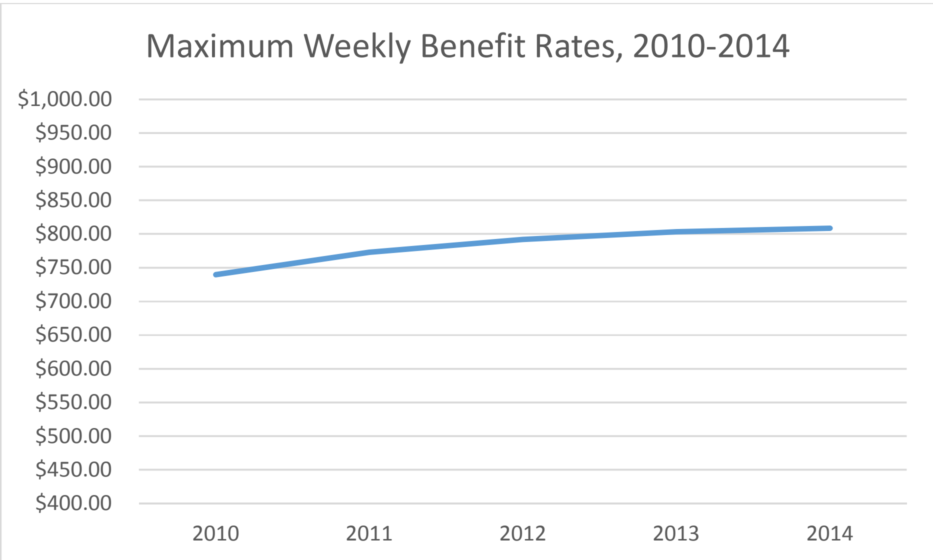


The graph below shows the change in value of a schedule loss award for a ten percent loss of use of the hand for workers earning $300 per week, $600 per week, $900 per week and $1,200 per week over a twenty-three year period from 1992 to 2014.

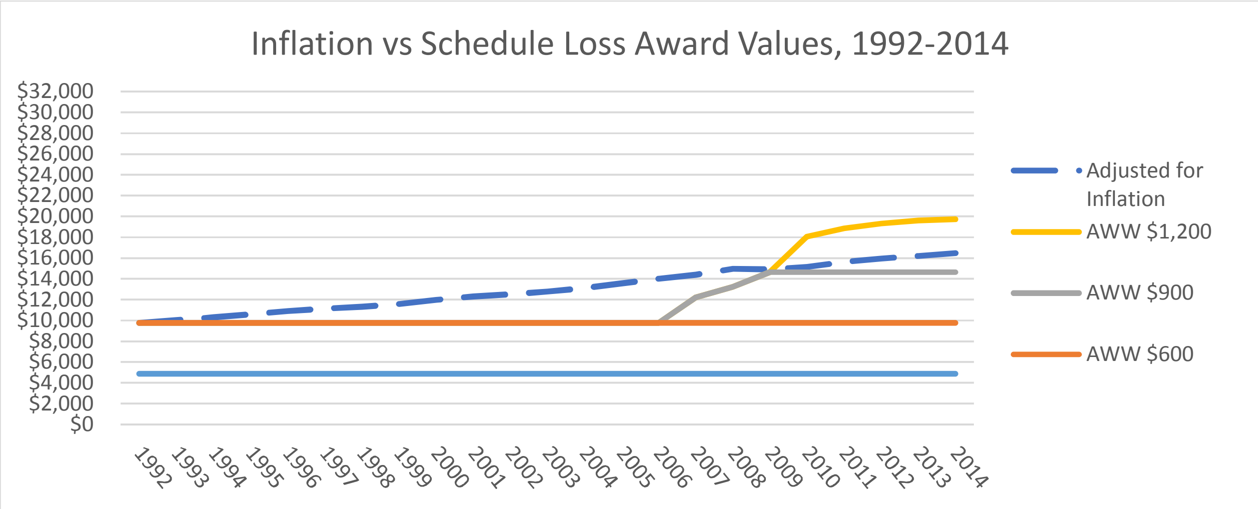


As the graph shows, there has been no increase in the value of schedule loss awards for workers who earned $600 per week or less since 1992, nearly a quarter-century. Workers who earn between $600 and $900 per week saw a modest increase in the value of their awards between 2007 and 2009, after which they have remained flat for the past five years. Workers at the upper end of the bracket between $900 and $1,200 per week continued to receive incremental increases between 2009 and 2014, but awards for these workers will not rise further in future years. Only those who earn more than $1,200 per week – less than a quarter of injured workers – will receive any future increase in schedule loss awards, and those increases will be minimal and incremental.

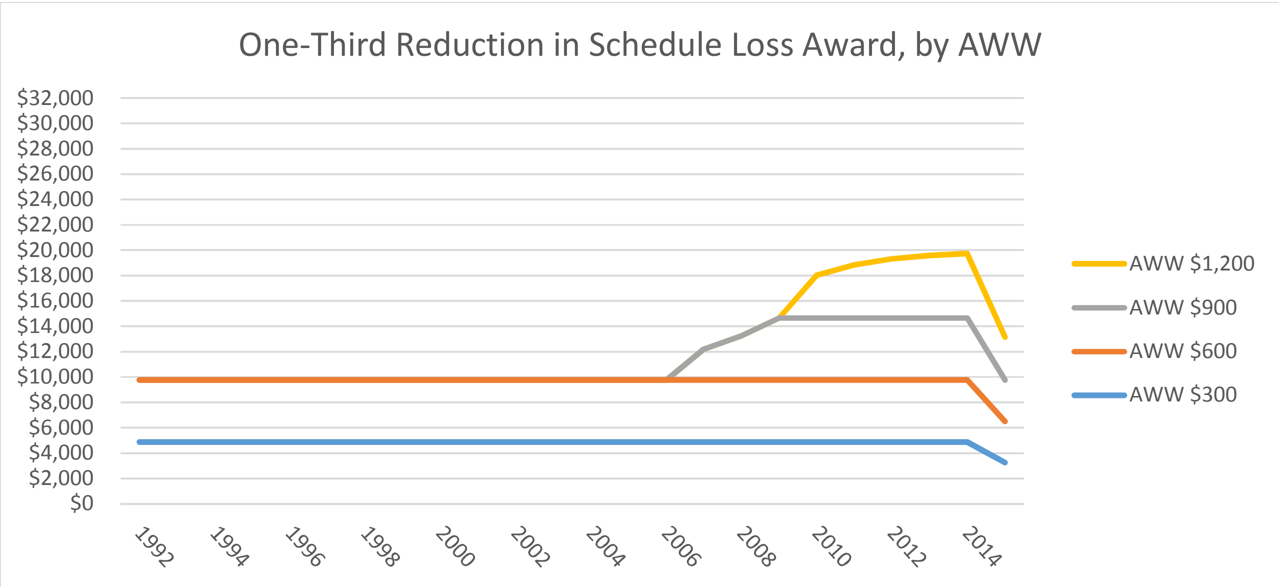
The graph below shows the incremental rate of increase in the maximum benefit rate (and associated schedule loss awards) from 2010 to 2014. As noted above, these incremental changes impact only workers who earn in excess of $900 per week.



The historic inadequacy of workers' compensation awards for schedule loss is easily demonstrated by including the impact of inflation. As shown in the previous graph, the value of schedule loss awards for workers who earn less than $600 per week has remained flat for the past twenty-three years. Awards for those earning between $600 and $900 per week remained flat for fifteen years, rose for three years and have since remained flat for the past five. The graph below shows awards failed to keep pace with inflation for all workers in every year from 1992 to 2009, and has continued to lag inflation for three-quarters of injured workers through 2014.

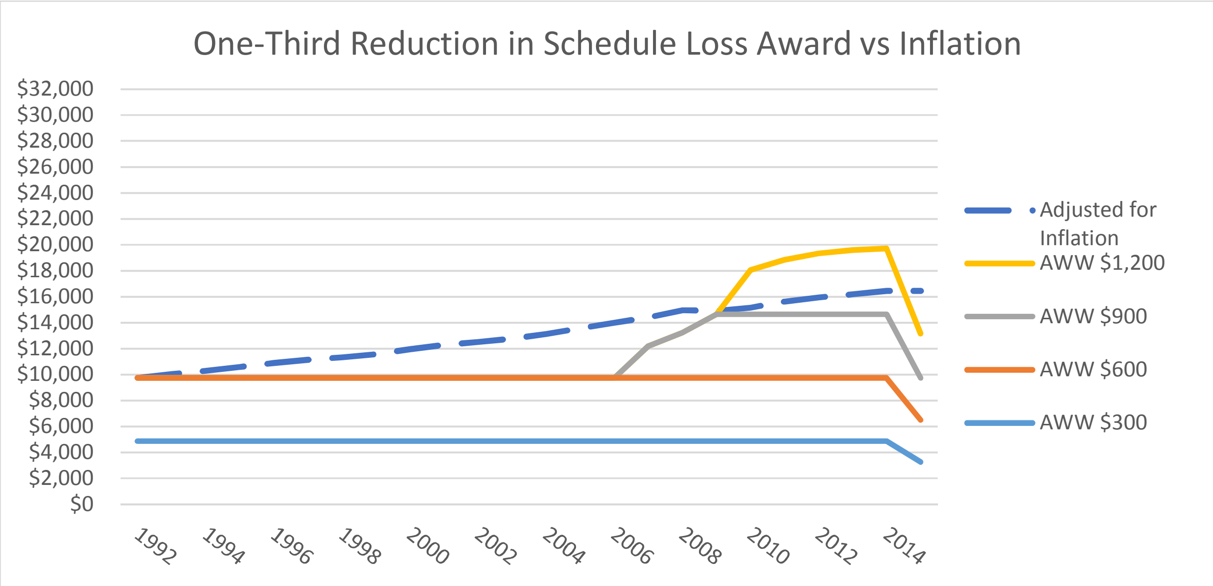


Against this background, the Business Council and others advocate for the outright reduction of schedule loss awards. The graph below shows the impact of a one-third reduction in schedule loss awards.



It is apparent that a one-third reduction in schedule loss awards would cut benefits for low wage workers to a level below what they received for the same injury in 1992 in “nominal dollars."[5] Workers who earn between $600 and $900 per week would return to their 1992 benefit levels (in nominal dollars), while benefits for high wage workers would be only minimally higher than they were in 2007.

The graph below includes data for inflation, showing that a decrease in schedule loss awards would only further exacerbate the inadequacy of workers' compensation benefits compared to rising costs.

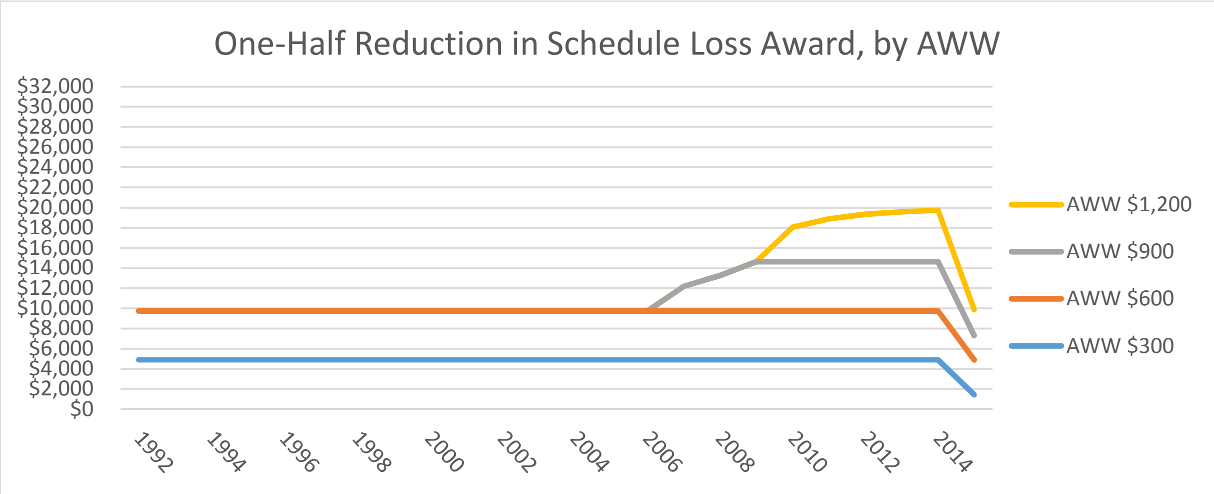


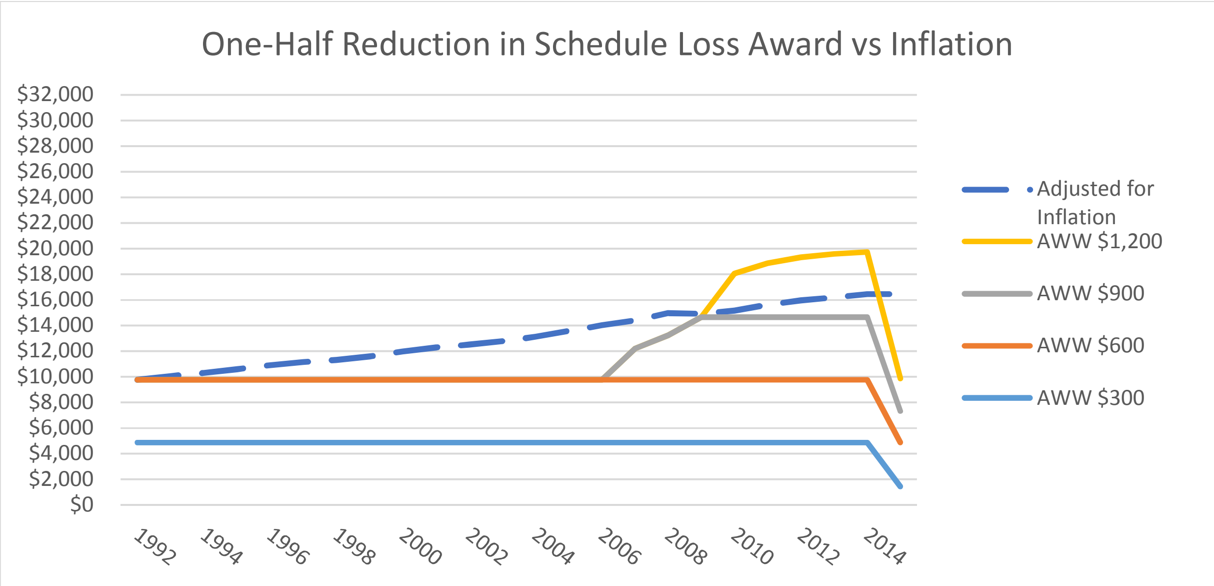
It is apparent that a downward adjustment in schedule loss awards would leave workers in all wage categories with fewer "real dollars" in compensation than they received for same injury in 1992.[6] For many, benefits in 2015 would be worth less than half of what they received in 1992.

[5] "Nominal dollars" are dollars unadjusted for inflation. In the example shown on the chart, a worker who received $9,760 for his or her injury in 1992 would receive $6,506 for the same injury in 2015, a reduction of $3,254 nominal dollars. By contrast, "real dollars" include the impact of inflation. By this measure, $9,760 in 1992 was worth $16,468 in 2015. This means that the loss in "real dollars" is $9,962. Put another way, a one-third reduction in an award in nominal dollars in 2015 means that the award is worth less than half of what it was worth in 1992 in real dollars.

[6] See note 5, above

The graphs below show the impact of a fifty percent reduction in schedule loss awards, both in nominal dollars and against inflation. A reduction of this magnitude would slash benefits for all workers who earn less than $1,200 per week (seventy-seven percent of injured workers) to a lower figure in nominal dollars than they received in 1992. The loss would be especially severe for low-wage workers. In real dollars, awards in 2015 would be worth about twenty-five percent of their value in 1992.





Although the harshest impact of a reduction in schedule loss awards would fall on low wage workers, it must also be noted that existing schedule loss awards also often fail to adequately compensate high wage workers for their wage loss. According to the Board's data, twenty-three percent of injured workers earn more than $1,200 per week, while the maximum workers' compensation benefit is $808.65 weekly.[7] As a result, a worker who earns $1,600 per week does not receive two-thirds of his or her wage loss for an on-the-job injury, but instead only receives about half.

An example may help illustrate the issue. A construction worker earning $1,600 who breaks his hand on the job and is out of work for fifteen weeks loses $24,000 in wages ($1,600 per week multiplied by 15 weeks). If he is later found to have a ten percent schedule loss of use of his hand, the award is worth $19,731.06 (twenty four and two fifths weeks multiplied by $808.65 per week). For this high-wage worker, the schedule loss award fails to adequately compensate him for over $4,000 of his actual wage loss.

Conclusion

The data shows that schedule loss awards have not increased for low wage workers since 1992. Those who earn $600 per week or less – about one-third of all injured workers – receive the same benefits for an injury today as they did twenty-three years ago. When inflation is taken into account, their awards today are worth forty percent less than their value in 1992.

With the exception of a three year period from 2007-2009, schedule loss awards have also been stagnant for workers who earn between $600 per week and $900 per week – another

[7] For injuries occurring between July 1, 2014 and June 30, 2015.

twenty-five percent of the injured worker population. For these workers, too, the value of their awards continues to lag inflation by about twelve percent.

Overall, schedule loss awards fail to adequately compensate three-quarters of injured workers as compared to inflation. On the opposite end of the spectrum, the awards fail to adequately compensate high wage earners for their actual wage loss.

The Business Council's proposal to reduce schedule loss awards would serve only to further exacerbate the existing inequities of the workers' compensation system. A reduction in schedule loss awards would have a severe impact on low wage workers. These workers would receive less compensation in 2015 than they did in 1992 for the same injuries, and would fall even farther behind inflation. At the same time, uncompensated wage loss for high-wage workers would increase.

At a time when the insurance industry is reaping record profits from workers' compensation insurance, and employer costs are near their lowest point in a quarter-century, there is simply no justification for this assault on benefits for injured workers.

Dated: Farmingdale, New York
April 18, 2015