

## **Update on Workers' Compensation Practices for Hearing Loss**

Susan C. Megerson, MA, CCC-A  
**Associates in Acoustics, Inc.**  
[www.esion.com](http://www.esion.com) (303) 670-9270  
[scmegerson@mindspring.com](mailto:scmegerson@mindspring.com)

**American Industrial Hygiene Association Conference & Expo**  
New Orleans, LA  
June 7, 2001

Although prevention of hearing loss is always the primary goal of a successful Hearing Conservation Program (HCP), there are times when employees (with or without occupational hearing loss) will file for compensation. It is essential that the Industrial Hygienist be prepared for these times, both by being familiar with hearing loss compensation practices in his or her state/jurisdiction, and by maintaining careful and detailed HCP records which will be of benefit during assessment and processing of a claim.

A new survey of workers' compensation practices for hearing loss in American states/territories and Canadian provinces has been conducted and published in a chapter entitled "Workers' Compensation" by Robert A. Dobie, MD and Susan C. Megerson in The Noise Manual, 5<sup>th</sup> Edition, American Industrial Hygiene Association, edited by E. H. Berger et. al. (2000). The authors obtained the data in late 1998 and early 1999 by a written survey of workers' compensation officials in various jurisdictions. In some cases, the state or province supplied a copy of relevant statutes while others simply completed the survey.

Although this state survey is an excellent tool for general education and comparison purposes, due to the many special circumstances and qualifiers surrounding the processing of a workers' compensation claim for hearing loss, it is important for hearing conservation professionals to become completely familiar with regulations and procedures within their jurisdiction. In practice, hearing loss claim evaluations are subject to many nuances that require an in-depth understanding of applicable regulations and practices. Interested parties are encouraged to contact their applicable workers' compensations office to request the most current and comprehensive information available.

Following are highlights of the survey for U.S. states, territories and other jurisdictions. Please refer to the book chapter for a more complete synopsis of results and for information on Canadian practices.

### **CALCULATION OF IMPAIRMENT AND AWARDS**

Many methods have been used over the years to calculate impairment ratings for hearing loss. Results of the survey revealed that the most commonly specified method for calculating hearing impairment is the latest formula recommended by the American Academy of Otolaryngology (AAO), the "AAO-79" method. Over forty percent of states/territories reported utilizing the AAO-79 formula by specific reference or by virtue of a requirement to follow the most recent American Medical Association workers' compensation guideline (which specifies use of the AAO-79 formula). Six states reported still utilizing an older AAO method, the "AAOO-59" formula, and several states reported having adopted other variations. It is notable that a full third of jurisdictions stated that a specific formula is not required, rather, that impairment ratings are based on "medical evidence". Table 1 provides a summary of reported impairment formulas currently in use in the U.S. and Canada.

The process for determining monetary awards for workers' compensation claims is typically based on applying the impairment rating to a schedule for lump sum payments, or to extended payments based on a percentage of the individual's wages. There is a great deal of variation across states and provinces in the amount of awards provided for occupational hearing loss. Depending on the U.S. jurisdiction, maximum awards were reported to range from as little as \$9,000 to as much as \$150,000 over and above replacement of lost wages.

**Table 1: Reported Methods for Calculating Hearing Impairment**

<b>Impairment Formula</b>	<b>Impairment Formula Definition (single ear)</b>	<b>Jurisdictions Reporting Use/ Comments</b>
"Medical Evidence"	Impairment rating determined by examining professional	AL, AZ, CT, DE, ID, IN, KY, LA, MA, MS, NE, NH, NM, OH, TN, VT, WY, Guam, New Brunswick, Prince Edward Island, Quebec
AAO-79/AMA	Average hearing levels > 25 dB at 500, 1000, 2000 and 3000 Hz; 1.5% per dB	AK, AR, CA, CO, Washington DC, FL, IA, KS, MN, NV, NY, NC, ND, OK, PA, RI, SC, SD, TX, UT, VA, WA, WV, U.S. DOL-FECA, U.S. DOL-Longshoreman, Ontario, Yukon Territories
AAO-59	Average hearing levels > 25 dB at 500, 1000, and 2000 Hz; 1.5% per dB	GA, HI, ME, MD, MO, MT
Illinois	Average hearing levels > 30 dB at 1000, 2000 and 3000 Hz; 1.82% per dB	IL
Michigan	Non-applicable*	*Individuals are compensated only if an injury to the ear causes a loss of wages
New Jersey	Average hearing levels > 30 dB at 1000, 2000 and 3000 Hz; 1.5% per dB	NJ
Oregon	Average hearing levels > 25 dB at 500, 1000, 2000, 3000, 4000, and 6000 Hz; 1.5% per dB	OR
Wisconsin	Average hearing levels > or = 30 dB at 500, 1000, 2000 and 3000 Hz; 1.6% per dB	WI, Northwest Territories, Saskatchewan
British Columbia	Average hearing levels > 28 dB at 500, 1000, and 2000 Hz; 2.5% per dB	British Columbia
Manitoba/ Nova Scotia	Average hearing levels > or = 35 dB at 500, 1000, 2000 and 3000 Hz	Manitoba, Nova Scotia

**OTHER CONSIDERATIONS**

**Waiting Period**

Seventy percent of jurisdictions indicated that no waiting period is necessary for filing a compensation claim. For those jurisdictions that do impose a waiting period, reported time frames ranged from three days to six months.

**Duration and Level of Exposure**

Many U.S. states include a provision that excludes a claim when the occupational noise exposure is below a specified level, such as 90 dBA TWA. Most Canadian provinces specified minimum exposures of 85 to 90 dBA. In addition, a number of jurisdictions require that the noise exposure duration exceed a minimum number of days, months or years (particularly in Canada) in order for a claim to be considered. These requirements underscore the importance of accurate and complete noise exposure assessment records as part of the HCP.

**Statute of Limitations**

The statute of limitations for filing claims varies from jurisdiction to jurisdiction, and was reported to be as short as 30 days to as long as 5 years. In some states, the date of injury is "the last date exposed" to noise, while in others it is the date the employee became aware of the hearing loss or its work-relatedness. Approximately half of Canadian provinces reported no statute of limitations.

**Age Adjustments**

Over 40 states and provinces indicated that some type of deduction in impairment/award may be made for presbycusis, or hearing loss related to aging. In other jurisdictions, use of a "low fence" of 25 to 30 dB HL is usually considered to account for the effects of aging on hearing.

### **Tinnitus**

Although tinnitus (ringing in the ears) typically accompanies noise-induced hearing loss, only about half of the states and provinces responded that tinnitus is taken into effect when calculating awards.

### **Apportionment or Allocation among Employers**

Over 80% of jurisdictions reported that there is some provision for apportioning pre-existing hearing loss to previous employer(s). This consideration reinforces the importance of baseline and pre-placement audiograms as part of a company's HCP.

### **Hearing Aids**

In most states, hearing impairment is evaluated without consideration of the effect a hearing aid or other prosthesis might have on the claimant's ability to understand speech. However, most states and all Canadian provinces reported some provision for hearing aids as part of the claimant's compensation.

### **Use of Hearing Protection Devices (HPDs)**

Although many workers' compensation laws do not address the question of personal HPDs, approximately 40% of U.S. states indicated that claims would be denied or an award penalty assessed if an individual was found to have willfully disregarded a requirement to wear HPDs. Canadian provinces reported no such provision.

Again, for more information, refer to the complete chapter in The Noise Manual and your local workers' compensation office. Changes, updates, new interpretations and precedents are frequent. And although a successful HCP will minimize hearing loss, a good working knowledge of the compensation system will help you improve the effectiveness of your efforts and reduce the financial impact of workers' compensation activity for your company.

## **REFERENCES/RESOURCES**

Dobie, R.A. and Megerson, S.C. (2000). Workers' Compensation, in The Noise Manual, 5<sup>th</sup> Edition, Berger, E.H., Royster, L.H., Royster, J.D., and Driscoll, D.P. (Eds.), American Industrial Hygiene Association, Fairfax, VA. {to order, contact AIHA at (703-849-8888) or [www.aiha.org](http://www.aiha.org)}

Dobie, R.A. (1993). Medical-Legal Evaluation of Hearing Loss, Van Nostrand Reinhold, New York, NY.

AAO-HNS (1998). "Evaluation of People Reporting Occupational Hearing Loss," Subcommittee on the Medical Aspects of Noise, American Academy of Otolaryngology-Head and Neck Surgery, Alexandria, VA.