

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations: Workers' Compensation
Schedule for Rating Permanent Disabilities**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTION 9805**

Section 9805 Schedule for Rating Permanent Disabilities, Adoption,
Amendment

BACKGROUND TO REGULATORY PROCEEDING

Under Labor Code section 4658, injured workers who are permanently disabled as a result of their occupational injuries or illnesses are entitled to compensation based on their percentage of disability. The percentage, which can range from 0.25% to 100% (total permanent disability), is determined by rating a physician's evaluation of the injured worker's impairment according to the permanent disability rating schedule (PDRS) adopted by the Administrative Director of the Division of Workers' Compensation (DWC) under the authority of Labor Code section 4660. The physician's evaluation, set forth in a written medical report (such as a primary treating physician's permanent and stationary report), can only be made after the worker's impairment has reached the point of maximum medical improvement. Under the PDRS, the more serious levels of permanent disability, which have a greater adverse affect on a worker's earning capacity, correspond with higher percentage ratings and greater compensation.

Permanent disability ratings are usually performed by the Disability Evaluation Unit (DEU) of DWC. The ratings are utilized by workers' compensation administrative law judges, injured workers, and insurance claims administrators to determine permanent disability benefits. DEU prepares three types of rating determinations: (1) formal, done at the request of a workers' compensation judge; (2) consultative, done on litigated cases at the request of a party's attorney or a DWC information and assistance officer; and (3) summary, done on non-litigated cases at the request of a claims administrator or injured worker.

In 2004, Labor Code section 4660, the statute establishing the PDRS, was amended by Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004) to substantially change the long-standing method by which the state of California evaluates permanent disability resulting from an occupational injury. Prior to the amendment, a disabling condition was evaluated under one of two distinct systems: the objective-subjective index or the work capacity index. Under the former, objective factors (measurable functional

or physical loss of a body part) was combined with subjective factors (non-measurable loss, such as perceived levels of pain) to produce a percentage rating. Under the latter, specific descriptions detailing the loss of a worker's pre-injury capacity to perform work functions (i.e., "no heavy lifting") were given a percentage rating. If both indexes were considered, the one producing the higher percentage rating was used. The two primary changes effected by Senate Bill 899 were: (1) the adoption of the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (AMA Guides), as the sole method for evaluating an injured worker's impairment, thereby eliminating the use of subjective factors in determining a worker's percentage of permanent disability; and (2) the necessity of considering an injured worker's diminished future earning capacity in determining the percentage of permanent disability.

To determine the "nature of the physical injury or disfigurement," Labor Code section 4660(b)(1) now requires the use of the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the AMA Guides. Regarding an injured worker's future earning capacity, Labor Code section 4660(b)(2) expressly provides that an injured worker's diminished future earning capacity shall be reflected as "a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees". The section further provides that the Administrative Director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice (RAND), and upon data from additional empirical studies.

The changes mandated by Senate Bill 899 were adopted by the Administrative Director in the Permanent Disability Rating Schedule (PDRS) effective January 1, 2005 (2005 PDRS).

Labor Code section 4660(c) requires the Administrative Director to update the PDRS at least once every five years. Pursuant to Labor Code section 4660(d), the PDRS "shall promote consistency, uniformity, and objectivity." Correspondingly, Title 8, California Code of Regulations section 9805.1 requires the Administrative Director of DWC to collect data for 18 months, through June 30, 2006, to evaluate the effects of the January 2005 Permanent Disability Rating Schedule (PDRS). The Administrative Director is required under the regulation to evaluate the collected data to determine the aggregate effect of the diminished future earning capacity adjustment on the permanent partial disability ratings under the 2005 PDRS and revise, if necessary, the diminished future earning capacity adjustment factor to reflect consideration of an employee's diminished future earning capacity due to injuries.

Empirical data collected by the DWC in the period following the adoption and utilization of the 2005 PDRS indicates that the schedule, which was based on empirical data and findings by the RAND under the PRDS in effect prior to 2005 (the 1997 PDRS), should be revised to correspond to the finding in DWC's most recent empirical studies of injured worker age, part of the body injured, and workers' diminished future earning capacity.

The amended regulation and proposed 2009 PDRS which reflect the findings in DWC's studies, promotes consistency, uniformity, and objectivity in the evaluation and compensation of permanent disability.

The Division sought advice and suggestions regarding the proposed 2009 PDRS from a selected advisory committee. The committee, comprised of individuals representing injured workers, private and public employers, and claims administrators, were provided with detailed information regarding the Division's possible revisions and solicited for suggestions and alternatives. Meetings were held with the advisory committee on August 8, 2007 and September 24, 2007.

In 2007, Senate Bill 936 (Perata) would have doubled the number of weeks an injured worker could receive permanent disability benefits. The bill, although passed by the Assembly and the Senate, was vetoed by the Governor in October 2007. Recognizing the importance of developing a permanent disability rating schedule based on empirical data, the Governor, in his veto message of SB 936, expressly instructed the Division to revise the PDRS according to its research: "... I am directing the Administrative Director of the Division of Workers' Compensation to finalize her review of the new schedule and commence rulemaking as soon as possible to make any changes deemed necessary."

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Division relied upon:

- (1) "*Return to Work Rates for Injured Workers with Permanent Disability*," Division of Workers' Compensation (January 2007),
<http://www.dir.ca.gov/dwc/ReturnToWorkRates/ReturnToWorkRates.htm>
- (2) "*Wage Loss for Injured Workers with Permanent Disabilities*," Division of Workers' Compensation (March 2007),
<http://www.dir.ca.gov/dwc/WageLossForInjuredWorkerswithTD/WageLossForInjuredWorkerswithTD.htm>
- (3) "*Uncompensated Wage Loss for Injured Workers with Permanent Disabilities*," Division of Workers' Compensation (May 2007),
<http://www.dir.ca.gov/dwc/UncompensatedWageLossforInjuredWorkerswithPD/UncompensatedWageLossforInjuredWorkerswithPD.html>
- (4) "*Age Adjustment in the California Permanent Disability Rating Schedule*," Division of Workers' Compensation (August 2007)
- (5) "*Analysis of Ratings under the New PD Schedule through June 30, 2007*," University of California, Berkeley (August 2007),
http://www.dir.ca.gov/chswc/Reports/memo_on_new_ratings_through_june_30_07_revised_aug_9.pdf

(6) “2007 Legislative Cost Monitoring Report,” Workers’ Compensation Insurance Rating Bureau of California (October 2007),
https://wcirbonline.org/resources/data_reports/pdf/2007_cost_monitoring_report.pdf

(7) “Cost Estimation (1.2-1.5) – PDRS – 12May2008,” prepared by the Division of Workers’ Compensation (May 2008)

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None of the proposed regulations mandates the use of specific technologies or equipment.

FACTS ON WHICH THE AGENCY RELIES IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS

The Administrative Director has determined that the proposed regulations will not have a significant adverse effect on business.

All employers in the State of California that are governed by the California workers’ compensation statute, including the State itself and every local agency, are required to pay permanent partial disability indemnity to injured workers whose injury results in permanent partial disability.

The estimated average permanent disability rating for all claims that have been or will be rated under the current 2005 PDRS (compared to claims that have already been rated by the Disability Evaluation Unit) is 17.7%, producing an average expected liability for each claim of \$17,162 in PD indemnity benefits. It is estimated that revising the FEC Adjustment Factors and the Age Adjustment Factors to correspond with DWC’s research will result in an average rating of 19.9%, producing a total PD payment of \$19,962. The revisions will therefore increase an average permanent disability rating by approximately 13%; the average dollars awarded per rating will be increased by 16%. See “*Cost Estimation (1.2-1.5) – PDRS – 12May2008*,” prepared by the Division of Workers’ Compensation (May 2008). The percentage increases approximate somewhere between \$200 and \$400 million in additional permanent disability (PD) benefits annually.

Although the proposed changes to the future earnings capacity adjustment factors in the 2009 PDRS will increase the amount of permanent disability benefits paid to injured workers by between \$200 million and \$400 million over the 2005 PDRS, the total amount of permanent disability benefits paid will still be far less than that paid under the 1997 PDRS, the schedule in effect at the time SB 899 became law. Empirical data collected by DWC shows that the average permanent disability rating decreased by 29.2% following adoption of the 2005 PDRS. Further, any increase in the amount of permanent disability benefits paid under the proposed 2009 PDRS will likely be offset by the decrease in the amount of claims that are eligible for an award of permanent disability benefits. Empirical evidence has shown the number of the workers’ compensation claims

eligible for permanent disability benefits have decreased since the adoption of the AMA Guides as the exclusive means for evaluating permanent impairment. Further, increases may be further offset by increased return to work rates. Under Labor Code section 4658(d), permanent disability benefits may be reduced by 15% if an employer offers an injured worker either regular, modified, or alternative work within 60 days after a disability becomes permanent and stationary.

Additionally, there will be some small costs related to training staff and updating computer systems to incorporate the changes of the revised permanent disability rating schedule.

Generally, benefits will accrue to all businesses and other entities that employ individuals in the State of California because the permanent disability rating schedule is being revised in a manner intended to promote consistency, uniformity, and objectivity based on the AMA Guides and taking into account the occupation, age and diminished earning capacity of the injured worker.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATION AND REASONS FOR REJECTING THOSE ALTERNATIVES

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

Section 9805 Schedule for Rating Permanent Disabilities, Adoption, Amendment.

Specific Purpose of Section 9805:

The purpose of this section is to adopt and incorporate by reference the Schedule for Rating Permanent Disabilities that shall be applied to determine the percentages of permanent disability for occupational injuries occurring on or after January 1, 2009. The schedule is effective January 1, 2009, and must be amended at least once every five years.

Necessity:

The amendment and incorporated 2009 PDRS is necessary to comply with the mandates of Labor Code section 4660. Subdivision (a) of the statute requires that in determining an injured worker's percentage of permanent disability, "account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity." Subdivision (b)(2) of the statute provides that an employee's diminished future earning capacity "shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees." Subdivision (d) of section

4660 expressly provides that the PDRS “shall promote consistency, uniformity, and objectivity.” The subdivision further provides that any amendment to the 2005 PDRS must apply prospectively and must only apply to permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule.

The 2005 PDRS applies an adjustment to the injured worker’s whole person impairment standard (determined from the AMA Guides) to take consideration of an injured worker’s diminished future earnings capacity (the FEC adjustment). Consideration of this factor is expressly required under Labor Code section 4660(a) (“In determining the percentages of permanent disability, account shall be taken of ... [the employee’s] age at the time of injury, consideration being given to an employee’s diminished future earning capacity.”) The FEC adjustment factors in the 2005 PDRS are based on a ratio of average standard permanent disability ratings under the 1997 PDRS to proportional wage losses experienced by injured workers in 22 separate injury categories. This numeric formula was utilized by RAND in its “Evaluation of California’s Permanent Disability Rating Schedule, Interim Report” (December 2003) to examine whether permanent disability ratings were distributed equally between different types of impairments, i.e., a rating of 36 percent for an injured shoulder would correspond to the same percentage of wage loss as a 36 percent rating for an injured back. A ratio of 1.0 indicates that the average standard rating for the specified body part would approximately equal the proportional wage loss experienced by the injured worker. A ratio of less than 1.0 would mean that the disability resulted in a greater relative loss of earning capacity compared to the standard permanent disability rating. A ratio of more than 1.0 would mean that the disability resulted in a lesser relative loss earning capacity compared to the standard permanent disability rating.

The ratios for the injury categories, using empirical data provided by RAND, ranged from 1.81 for hand and finger injuries, to 1.570 for knee injuries, to 1.100 for thoracic spine injuries, to 0.740 for shoulder injuries, to 0.450 for psychiatric injuries. See Table B on page 1-7 of the 2005 PDRS. The ratios were divided into eight evenly spaced ranges; each range, as shown on Table A on page 1-7 of the 2005 PDRS, was assigned an adjustment factor to increase the AMA whole person impairment rating between 10% for impairments at the highest end of the ratios, to 40% for impairments at the lowest end. The purpose of the FEC adjustment factor was to reduce any disproportion between the severity of an injured worker’s disability, as reflected in the permanent disability rating, and the injured worker’s percentage of wage loss resulting from the occupational injury.

Since the implementation of the 2005 PDRS, DWC has gathered data to determine whether the schedule was effective in providing permanent disability benefits that correlate to an injured worker’s wage loss and the part of the body injured. The Division collected 18 months (Jan. 1, 2005 - Jun. 30, 2006) of data on return-to-work rates and wage loss; conducted a three-phase study (released in January, March, and May 2007) to determine how much wage loss is incurred by injured workers with permanent disabilities under the 2005 PDRS once indemnity benefits and return-to-work rates are considered; and conducted public forums and advisory committee meetings to discuss study results

and receive public input. DWC is required to evaluate the data to determine the aggregate effect of the FEC adjustment factors on permanent partial disability ratings under the 2005 PDRS and revise the FEC adjustment factors as necessary.

The adoption of the AMA Guides, a move to an objective standard of rating permanent disability, resulted in a percentage decrease in permanent disability ratings. In a study dated August 8, 2007, the Commission for Health and Safety and Workers' Compensation found that permanent disability ratings have decreased by 42 percent on average. DWC's own studies have shown that ratings done within 18 months of injury have decreased by 48 percent on average; ratings done within 42 months of injury have decreased by 29 percent on average.

For the PDRS to "promote consistency, uniformity, and objectivity," as mandated by Labor Code section 4660(d), DWC must ensure that the PDRS is based on current data. The 2005 PDRS was based on empirical data and findings from the "Evaluation of California's Permanent Disability Rating Schedule, Interim Report" (December 2003), prepared by the RAND Institute for Civil Justice (RAND), and RAND's subsequent report entitled "Data for Adjusting Disability Ratings to Reflect Diminished Future Earnings and Capacity in Compliance with SB 899" (December 2004). This data did not evaluate disability ratings under the AMA Guides, but instead evaluated ratings under disability rating schedules that were in existence prior to the Senate Bill 899 reforms. The wage loss calculation in the RAND report analyzed workers injured in 1991 to 1996. For the FEC adjustment factors to appropriately address the correlation of permanent disability ratings to proportional wage loss, the basis for the FEC adjustment, they must be updated to reflect average standard ratings under the 2005 PDRS, the adopted schedule that utilizes the AMA Guides, and more recent wage loss information.

DWC first evaluated return to work rates for injured workers. See "*Return to Work Rates for Injured Workers with Permanent Disability*," Division of Workers' Compensation (January 2007). Return-to-work rates are an important consideration because, as RAND found, injured workers who continue working at their at-injury employer may actually receive statutory indemnity benefits that exceed their earning losses after taxes are considered. Return-to-work rates may substantially affect wage loss data as the Senate Bill 899 reforms include upward and downward adjustments to weekly permanent disability benefits depending on an injured worker's return-to-work status. See Labor Code section 4658(d)(2) and (3).

The return-to-work rates under the 2005 PDRS show that more employees who have sustained permanent disability are going back to work since the implementation of return-to-work incentives as part of SB 899. DWC found that the percentage of permanently disabled workers employed four quarters after the quarter in which they were injured increased by about five percentage points—from 64.6 percent to 70 percent—between 2003 and 2005. Further, return-to-work rates at 12 months varied significantly by part of body and ranged from 53 percent for psychiatric injuries to 78 percent for upper extremity injuries. The return-to-work rate for spine injuries increased from 60 percent to 70 percent; knee injuries increased from 75 percent to 86 percent. While hand and arm

injuries saw an increase in return-to-work rates there was a decrease in return-to-work rates for shoulder injuries, from 73 percent to 71 percent. More interestingly, return-to-work rates rose with age, up to age 60. Data indicates that workers over age 60 had higher return-to-work rates than any age category under age 40.

Following its return-to-work study, DWC analyzed three-year wage loss data for workers injured Oct. 1, 2000 to Jun. 30, 2003. See *“Wage Loss for Injured Workers with Permanent Disabilities,”* Division of Workers’ Compensation (March 2007). Using the research methodology utilized by RAND in its 2003 report for permanently disabled workers injured between 1991 and 1996, DWC found that the three-year proportional wage loss calculated for 2000 through 2003 (14.93 percent) was slightly changed from the 1991 through 1996 time period (14.25 percent) calculated by RAND. For the two periods, 1991 – 1996 and 2000 – 2003, the proportion of wage loss for injured workers was essentially the same. Correspondingly, the ratio of permanent disability ratings over wage loss was very similar between the two time periods: 1.09 in the RAND study and 1.16 in the DWC study.

DWC subsequently refined the methodology for calculating proportional wage loss experienced by injured workers by using a propensity scoring method, which utilizes a larger sample of workers than that used by RAND, and takes into account the higher return-to-work rates and increased temporary disability benefits. (In 2002, the Legislature passed Assembly Bill 749, which increased temporary disability rates over three years, starting in 2003, and mandated that minimum and maximum payments be tied to increases in the state average weekly wage.) The propensity scoring method first estimates the probability of injury using all available characteristics of the data assembled from the Employment Development Department’s base wage file (which includes size of firm, tenure of workers, and industry), and DWC’s Workers’ Compensation Information System. Then the earnings of the injured workers are subtracted from those who are uninjured (the counterfactual group). After total wage loss is calculated, benefits paid to the injured worker are deducted to determine two additional measures: total uncompensated wage loss and uncompensated wage loss after temporary disability payments are included. See *“Uncompensated Wage Loss for Injured Workers with Permanent Disabilities,”* Division of Workers’ Compensation (May 2007).

For workers injured in calendar year 2002 who were rated under the 1997 PDRS, DWC found, using the propensity scoring method, that the average three-year proportionate uncompensated wage loss for workers injured in 2002 is 16.5 percent, which is equivalent to a \$17,900 reduction in total earnings during the first three years after the injury. Counterfactual earnings averaged \$108,300; injured workers average earnings are \$70,600. Therefore, an injured worker’s total wage loss averages \$37,700. After subtracting estimated wage replacement benefits - temporary and permanent disability indemnity payments - of \$19,800, the resulting uncompensated wage loss averages \$17,900. Data shows that uncompensated wage loss differs significantly by part of body. Three-year proportionate uncompensated wage loss ranges from knee injuries reporting a net gain of 3.1 percent in earnings to psychiatric injuries reporting uncompensated wage loss of 37 percent.

The tax-free indemnity benefits replaced \$19,800 of lost wages during the three-year period, which is slightly over half (52.5 percent) of the taxable wages lost (\$37,700). Of this amount, permanent disability payments represent about \$9,000. It must be noted that the sum of benefits paid over the three-year period doesn't include all indemnity payments ultimately received by the injured worker, as some permanent disability payments occur after the three-year period of the study ends.

In addition to refining wage loss data, DWC compared permanent disability ratings under both the 2005 PDRS and its predecessor, the 1997 PDRS. The comparison was made using workers injured in 2002 who received a rating under the 1997 PDRS within 42 months of the date of injury, and workers who were injured prior to October 1, 2003 and were rated within 42 months of the date of injury using the 2005 PDRS. The data showed that the average permanent disability rating decreased from 28.1 (1997 PDRS) to 19.9 (2005 PDRS) for workers in these samples who were rated by the DEU within 42 months of the date of injury. This amounted to a decrease of 29.2 percent. For parts of the body that had reduced ratings between the 1997 PDRS and the 2005 PDRS, the range was from a 1.3 percent reduction in ratings for eye injuries to a 56.3 percent reduction for ankle injuries. However, hearing, respiratory and psychiatric injuries experienced increases in average ratings between the 1997 PDRS and the 2005 PDRS. See Table 2 on page 8 of *“Uncompensated Wage Loss for Injured Workers with Permanent Disabilities,”* Division of Workers' Compensation (May 2007).

A comparison of rating under the 1997 PDRS and the 2005 PDRS shows that although the ratings used in creating the ratios and FEC adjustment factors in the 2005 PDRS were based on the pre-SB 899 permanent disability rating schedules, the implementation of the 2005 PDRS and assigned FEC categories based on the RAND data proved somewhat effective in reducing the disparity in compensation between parts of body. Relatively over-compensated knee, ankle, and elbow injuries (with the FEC adjustment factor of 1.142857) experienced above-average decreases in permanent disability ratings; relatively under-compensated psychiatric injuries (FEC adjustment factor of 1.4) experienced an overall gain in ratings.

For the FEC adjustment factors in the proposed 2009 PDRS, DWC applied the statutorily mandated RAND formula of average standard ratings over proportional wage loss to produce a new ratio of average standard ratings over proportional wage loss for 11 body parts. See Table B, page 1-8, of proposed 2009 PDRS. These ratios essentially reflect the effect of the AMA Guides for permanent disability on an injured worker's proportional wage loss. The ratios range from 2.462 for the knee; 1.670 for psychiatric injuries; 0.897 for the shoulder; 0.686 for the spine; to 0.498 for the ankle.

Various injury categories shown in Table B do not list a ratio of average standard ratings to proportional wage loss. These injury categories, which together account for less than 3% of all ratings, include eyes, toe(s), hearing, respiratory, heart, hip, soft tissue, and post-traumatic head. Empirical data does not exist to establish a valid statistical sample of standard ratings under the 2005 PDRS. For the proposed 2009 PDRS, these injury

categories will remain the same FEC rank as they were initially assigned under the 2005 PDRS.

Similar to the 2005 PDRS, the range of ratios is divided into eight evenly spaced ranges, ranked from 1 to 8. Each injury category falls within one of these eight ranges, based on its rating/wage loss ratio. See Table A, page 1-7, of the proposed 2009 PDRS.

Revised FEC adjustment factors, applied to the AMA Guides' whole person impairment standard before adjusting for occupation and age, have been established to correspond to the range of ratios. For the new ratios, DWC applied a range of adjustment factors ranging from 1.2 at the lowest end of the ratios to 1.5 at the highest end. This range reflects a continuation of the methodology utilized in the 2005 PDRS, which takes into account the 2003 RAND report, with the factors "stepped up" at both the bottom and the top to reflect the more recent data on average ratings.

In addition to necessitating a revision to the FEC adjustment factors, empirical data recently collected by DWC also indicates that a revision to the PDRS's age adjustment factor is in order. Labor Code section 4440 expressly provides that an injured worker's age at the time of injury be considered when determining the worker's permanent disability rating. The age adjustment factor is applied to an injured worker's impairment standard after the standard is modified by the FEC and occupational adjustment factors.

The 2005 PDRS (and previous versions of the PDRS) applies an age adjustment factor based on the historic belief that as one ages, one is less able to compete on the open labor market. Currently, the table for age adjustment (Section 6 of the PDRS) lowers the permanent disability rating for injured workers under the age of 37, and raises the rating for workers over the age of 41. A rating of 40 would produce a final rating of 35 for a 22 year-old; 39 for a 32 year-old; 40 for a 39 year-old; 44 for a 47 year-old; and 50 for a 62 year-old. For any given rating under the 2005 PDRS, the difference between the highest increase-in-rating (bump up, for ages 62 & over) and lowest decrease-in-rating (bump down, for ages 21 and under) varies from a minimum of zero to a maximum of 17. The highest difference, 17, is for ratings between the ages of 43 and 63.

Empirical data now shows that the age adjustment factor as applied in the 2005 PDRS does not correspond to the proportional wage loss experienced by injured workers across all age categories. Based on data from workers injured in 2001 and 2002, there does not appear to be any empirical evidence that an injured worker's age provides a differential effect on proportional wage loss sufficient to justify treating individuals from age 20 to 55 any differently from one another based solely on their age. See *"Age Adjustment in the California Permanent Disability Rating Schedule,"* Division of Workers' Compensation (August 2007). Average permanent disability ratings are shown to increase linearly with age. Average ratings range from 20 (age 16-19) to 34.9 (age 65-80); the estimated average permanent disability rating for workers of all ages was 27.5. However, proportional wage loss for injured workers does not match this linear progression. Instead, proportional wage loss has a wave pattern with respect to age; it increases from age category 16-19 (33.2 percent) to age 20-24 (37.5 percent); it decreases until hitting a

minimum at age 50-54 (27.3 percent); it then increases rapidly to peak at age 65-80 (40 percent). While wage loss has its greatest effect on the youngest workers (21 years or younger) and the oldest (approximately 52 and over), an injury to a 25 year old has the same effect as an injury to a 45 year old.

The proposed 2009 PDRS reflects the collected empirical data by increasing the final rating for workers 21 and younger; removing any age adjustments for workers between the ages of 22 and 51, and retaining the 2005 PDRS table's increase in ratings for workers in the age categories 52-56, 57-61, and 62 and over.