

THE FINANCIAL INJURY OF IOWA WORKERS' COMPENSATION: THE IMPACT OF COMMUTATION LAW CHANGES ON PERMANENT TOTALLY DISABLED WORKERS

ABSTRACT

An Iowa worker injured on the job in 1961 is paid the same weekly rate in 2022. In “Permanent Total Disability” cases, where an injured worker may never be able to work again, compensation structures such as commutations and cost of living adjustments help ensure the injured worker is able to maintain—at a minimum—an average quality of life and a safe and secure future.

In 2017, the Iowa legislature dramatically changed Iowa’s workers’ compensation laws to work to the benefit of employers and insurance carriers. Among these major, pro-employer changes was the amendment of section 85.45, which only allows for commutations upon mutual agreement of all parties. This Note will take the position that the fundamental purpose of the workers’ compensation system requires a permanently and totally disabled worker to have either (1) the ability to file a commutation proceeding or (2) a cost of living increase applied to their benefit rate. Although commutations are not limited to permanent total disability, this Note is limited to that analysis.

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I. INTRODUCTION

A fundamental purpose of workers' compensation is to benefit injured workers.¹ Consequently, workers' compensation statutes are to be liberally construed in favor of the worker.² Based upon this purpose and when applying a pro-worker interpretation, a Permanently and Totally Disabled (PTD) worker must have either (1) the ability to file a commutation proceeding or (2) a cost of living increase applied to their benefit rate. To not do one of the two would violate the very purpose of the law, as PTD workers will not be able to provide for basic needs based upon the increased cost of living.³ In 2017, extensive amendments were made to Iowa's workers' compensation laws by the Iowa legislature.⁴ These changes made it increasingly difficult for PTD workers to file a commutation.⁵ Other states' workers' compensation laws—by statute—allow for cost of living increases to PTD workers' rates, but Iowa does not.⁶

In the absence of offering one of these two avenues, PTD workers in Iowa are forced to cope with the physical injuries and illnesses they suffer from while simultaneously struggling through and trying to survive the financial injury the Iowa workers' compensation system inflicts on them.

II. IOWA WORKERS' COMPENSATION IN GENERAL

The Iowa Division of Workers' Compensation (DWC) is the state government entity charged with educating the public about Iowa's workers'

1. Griffin Pipe Prods. Co. v. Guarino, 663 N.W.2d 862, 865 (Iowa 2003).

2. Ewing v. Allied Constr. Servs., 592 N.W.2d 689, 691 (Iowa 1999); Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 678 (Iowa 2015).

3. See Michael Grabell & Howard Berkes, *The Demolition of Workers' Comp*, PROPUBLICA (Mar. 4, 2015), <https://www.propublica.org/article/the-demolition-of-workers-compensation> [<https://perma.cc/VU5W-5NZ9>] (“[New] cutbacks have been so drastic in some places that they virtually guarantee injured workers will plummet into poverty.”).

4. H.F. 518, 87th Gen. Assemb., Reg. Sess. (Iowa 2017).

5. See *infra* Part III.

6. See *infra* Part VI.A.

compensation system.⁷ Pursuant to Iowa's workers' compensation laws, most employers are required to provide benefits to employees who suffer from injuries or illnesses arising out of and in the course of employment.⁸ In Iowa, an "injury" is broadly defined to include any health impairment resulting from employment activities.⁹ This excludes the normal building up and tearing down of body tissues and preexisting injuries and diseases, unless aggravated or worsened by the employment.¹⁰

Employers subject to Iowa's workers' compensation laws are required to provide coverage against these injuries through workers' compensation liability insurance.¹¹ Employers provide this insurance by either purchasing it from a private carrier or qualifying as a self-insurer.¹² When the insurance is provided through a private insurance company, the employer pays the premium charges, and the insurance company or adjusting company pays the workers' compensation benefits to the injured worker.¹³ If self-insured, the employer or adjusting company pays the workers' compensation benefits to the injured worker.¹⁴

A. *Benefits Explained*

Benefits provided by law to employees who suffer from a work-related injury or illness include medical benefits and disability benefits.¹⁵ Medical benefits pay for all reasonable and necessary medical care incurred to treat

7. *Iowa Workers' Compensation Questions & Answer Brochure*, IOWA.GOV: IOWA WORKFORCE DEV., <https://www.iowaworkcomp.gov/brochure> [<https://perma.cc/Q28Y-H59X>].

8. IOWA CODE § 85.61(7) (2023); *FAQ: Iowa Division of Workers' Compensation (DWC)*, IOWA.GOV: IOWA WORKFORCE DEV., <https://www.iowaworkcomp.gov/faq-iowa-division-workers-compensation-dwc> [<https://perma.cc/ZNP3-FBWW>].

9. *Id.* § 85.61(4).

10. *Almquist v. Shenandoah Nurseries, Inc.*, 254 N.W. 35, 39 (Iowa 1934) ("The result of changes in the human body incident to the general processes of nature do not amount to a personal injury.").

11. *Id.* § 87.1; *id.* § 87.14A.

12. *Id.* § 85.3; *id.* § 87.1; *id.* § 87.11.

13. *Compliance Requirements*, IOWA.GOV: IOWA WORKFORCE DEV., <https://www.iowaworkcomp.gov/compliance-requirements> [<https://perma.cc/MLA4-M8PP>].

14. *Duties and Responsibilities of Employers, Insurance Carriers, and Self-Insured Employers*, IOWA.GOV: IOWA WORKFORCE DEV., <https://www.iowaworkcomp.gov/duties-and-responsibilities-employersinsurance-carriers-and-self-insured-employers> [<https://perma.cc/G7ZB-NFYP>].

15. *Id.* § 85.27.

the injury—including, but not limited to, reasonably necessary transportation expenses and, under certain circumstances, lost wages when an employee leaves work for medical treatment.¹⁶ Disability benefits act as wage replacement benefits.¹⁷ The five main types of disability benefits are healing period (HP),¹⁸ temporary partial disability (TPD),¹⁹ temporary total disability (TTD),²⁰ permanent partial disability (PPD),²¹ and permanent total disability (PTD).²² Generally, disability benefits compensate injured workers based on 80 percent of their average spendable weekly earnings²³ (commonly referred to as average weekly wage (AWW)) and the extent of their disability.²⁴ An employee's AWW is calculated in accordance with Iowa Code § 85.36, dependent upon how the employee is compensated.²⁵ As a general rule, the AWW is calculated by adding up the employee's wages from the 13-week period before their date of injury and then dividing by 13.²⁶ Once an AWW is determined, reference is made to two annually-issued Iowa DWC ratebook documents: a ratebook spreadsheet containing tables with rates of worker's compensation benefits and a ratebook information document which contains general information on rights and responsibilities under Iowa workers' compensation laws.²⁷ These ratebook documents take the AWW, worker's marital status, and number of exemptions to reveal the payable weekly rate.²⁸

16. *Id.*; *id.* § 85.27(7).

17. *See* Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 164 (Iowa 1983) (quoting 3 A. LARSON, WORKMEN'S COMPENSATION LAW § 82.71, at 573 (1983 ed.)).

18. *Id.* § 85.34(1).

19. *Id.* § 85.33(2)–(5).

20. *Id.* §§ 85.32, 85.33(1).

21. *Id.* § 85.34(2).

22. *Id.* § 85.34(3).

23. "Spendable weekly earnings" is defined as "that amount remaining after payroll taxes are deducted from gross weekly earnings." *Id.* § 85.61(9).

24. *Id.* § 85.34(3)(a).

25. *Id.* § 85.36.

26. *Id.*; *Calculating the Rate of Compensation – Tips, Tricks and Traps*, PEDDICORD WHARTON: BLOG (Apr. 16, 2018), <http://www.peddicordwharton.com/news/calculating-the-rate-of-compensation-tips-tricks-and-traps> [<https://perma.cc/25MJ-VQAV>].

27. *Ratebook Documents*, IOWA.GOV: IOWA WORKFORCE DEV., <https://www.iowaworkcomp.gov/ratebook> [<https://perma.cc/H5EH-53K5>]; *Ratebook Spreadsheets*, IOWA.GOV: IOWA WORKFORCE DEV., <https://www.iowaworkcomp.gov/ratebook-spreadsheets> [<https://perma.cc/KK33-TDYY>].

28. *See Ratebook Spreadsheets*, *supra* note 27.

B. Wage Replacement Benefits in Practice

To better understand how workers' compensation benefits are calculated, a comparison of two PTD workers is outlined below.

Prior to this analysis, it is important to note that under Iowa law, PTD does not mean the injured worker is in a state of absolute helplessness.²⁹ Instead, PTD occurs when “the injury wholly disables the employee from performing work that the employee’s experience, training, intelligence, and physical capacity would otherwise permit the employee to perform.”³⁰ Further, when establishing PTD, the employee does not need to “look for a position outside the employee’s ‘competitive labor market’” in accordance with the “odd-lot” doctrine, which finds an employee is considered to have suffered PTD if they “can only perform work ‘so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.’”³¹ Once PTD has been established, the injured worker is then compensated in accordance with Iowa Code § 85.34(3).³²

PTD Example #1:³³

On July 1, 1999, Maria Garcia, a married mother of three, was working as a meat packing laborer when she was injured on the job. Maria was compensated at a set hourly rate and paid biweekly. Her seven paychecks from the weeks immediately preceding her date of injury were as follows: check 1: \$600; check 2: \$600; check 3: \$600; check 4: \$400; check 5: \$600; check 6: \$600; and check 7: \$600.

When an employee is compensated on an hourly basis, their rate is computed using earnings from their “last completed period of thirteen consecutive calendar weeks immediately preceding the injury.”³⁴ To ensure a fair representation of lost wages, if one or more of those 13 weeks does not fairly represent the employee’s customary earnings, representative weeks can be substituted.³⁵ In Maria’s scenario, her fourth check was not a fair reflection of her customary earnings because it includes a pay period with

29. See *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 633 (Iowa 2000).

30. *Id.* (citing *Diederich v. Tri-City R.R.*, 258 N.W. 899, 902 (Iowa 1935)).

31. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 524 (Iowa 2012) (quoting *Guyton v. Irving Jensen Co.*, 373 N.W.2d 101, 105 (Iowa 1985)).

32. IOWA CODE § 85.34(3) (2023).

33. This is an ongoing fictional scenario based on real-life workers' compensation claims.

34. *Id.* § 85.36(6).

35. *Id.*

days she took time off to spend with family visiting from out of town. As a result, this paycheck is omitted from the calculation and replaced with the closest previous week with earnings that fairly represent her customary earnings. Therefore, Maria's eighth check—representative check 8: \$600—will be used in the formula instead of the fourth.

Formula: AWW = 13 representative total weekly earnings \div 13

Since Maria was paid biweekly, each check contains two weeks of work. Accordingly, the formula is adjusted to: AWW = 14 representative total weekly earnings \div 14.

Using this equation, Maria's AWW comes out to \$300 (\$4,200 \div 14) when rounded up to the nearest dollar.³⁶ Now that Maria's AWW has been determined, we apply this number to the Iowa DWC's rate table.³⁷ Since Maria is married with three children, we look at the rate based on the marital status of "M" and five exemptions.³⁸ After applying Marias's AWW, marital status, and number of exemptions to the rate table, Maria's weekly benefit rate comes out to \$217.40.³⁹

PTD Example #1 Summary:

Maria Garcia	
Date of Injury	07/01/99
AWW	\$300
PTD Rate (Based on married, 5 exemptions)	\$217.40

PTD Example #2:⁴⁰

On July 1, 2020, Sofia Lopez, a single woman with no children, was working as a nurse practitioner when she was injured on the job. Sofia was paid biweekly, and her seven paychecks from the weeks immediately

36. The minimum wage in 1999 was \$5.15 for all covered, nonexempt workers. *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938 - 2009*, U.S. DEP'T LAB.: WAGE & HOUR DIV., <https://www.dol.gov/agencies/whd/minimum-wage/history/chart> [<https://perma.cc/646C-4UMN>].

37. *Ratebook Spreadsheets*, *supra* note 27.

38. *Id.*

39. DIV. WORKERS' COMP., IOWA WORKERS' COMPENSATION MANUAL 26 (1999), <https://www.iowaworkcomp.gov/sites/authoring.iowadivisionofworkcomp.gov/files/Ratebook%20-%201999%E2%80%932000%20-%20Information.pdf> [<https://perma.cc/4E9V-X2BV>].

40. This is an ongoing fictional scenario based on real-life workers' compensation claims.

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preceding her date of injury are as follows: check 1: \$2,400; check 2: \$2,400; check 3: \$2,400; check 4: \$2,400; check 5: \$2,400; check 6: \$2,400; and check 7: \$2,400.

Since no outliers are in the provided checks, no replacement representative weeks are needed. Thus, following the same line of calculations, Sofia's checks are plugged into the adjusted formula reflecting a biweekly pay date: $AWW = 14$ representative total weekly earnings $\div 14$.

Using this equation, Sofia's AWW comes out to \$1,200 ($\$16,800 \div 14$). Now that Sofia's AWW has been determined, we apply this number to the Iowa DWC's rate table. Since Sofia is single with no children, we look at the rate based on the marital status of "S" and one exemption. After applying Sofia's AWW, marital status, and number of exemptions to the rate table, Sofia's weekly benefit rate comes out to \$723.96.⁴¹

PTD Example #2 Summary:

Sofia Lopez	
Date of Injury	07/02/20
AWW	\$1,200
PTD Rate (Based on single, 1 exemption)	\$723.96

III. COMMUTATIONS

While most workers' compensation benefits are paid over time, in certain cases, under Iowa Code § 85.45, future payments of workers' compensation benefits can be commuted to a present worth lump sum payment.⁴² These lump sum payments exist in two forms: full and partial.⁴³ A full commutation is the lump sum payment of all remaining future benefits.⁴⁴ Upon approval of a full commutation, the injured worker loses their future rights to any additional benefits, including medical benefits.⁴⁵ Conversely, a partial commutation is the lump sum payment of a portion of

41. *Ratebook Spreadsheet – 2020-2021*, IOWA.GOV: IOWA WORKFORCE DEV., <https://www.iowaworkcomp.gov/ratebook-spreadsheet-%E2%80%94-2020%E2%80%932021> [https://perma.cc/YX3F-SXM9].

42. IOWA CODE §§ 85.45, 85.47, 85.48 (2023).

43. *Id.*

44. *Workers' Compensation Settlement Explanations*, IOWA.GOV: IOWA WORKFORCE DEV., <https://www.iowaworkcomp.gov/workers-compensation-settlement-explanations> [https://perma.cc/GG5T-7V5G]; see also *id.* §§ 85.45, 85.47.

45. *Workers' Compensation Settlement Explanations*, *supra* note 44; see also *id.* §§ 85.45, 85.47.

remaining future benefits.⁴⁶ When future benefits are commuted, they are discounted to the present value.⁴⁷ Upon approval of a partial commutation, the injured worker's entitlement to disability benefits is established, but their future rights to additional benefits are not terminated.⁴⁸

Prior to the 2017 legislative changes (hereinafter 2017 amendments) to Iowa's workers' compensation laws, a commutation was permitted under section 85.45 on the following conditions:

- a. When the period during which compensation is payable can be definitely determined.
 - b. When it shall be shown to the satisfaction of the workers' compensation commissioner that such commutation will be for the best interest of the person or persons entitled to the compensation, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor.
 - c. When the recipient of commuted benefits is a minor employee, the workers' compensation commissioner may order that such benefits be paid to a trustee as provided in section 85.49.
 - d. When a person seeking a commutation is a surviving spouse, an employee with a permanent and total disability, or a dependent who is entitled to benefits as provided in section 85.31, subsection 1, paragraph "a", subparagraphs (3) and (4), the future payments which may be commuted shall not exceed the number of weeks which shall be indicated by probability tables designated by the workers' compensation commissioner for death and remarriage, subject to the provisions of chapter 17A.
2. Future payments of compensation shall not be commuted to a present worth lump sum payment when the employee is an inmate as set forth in section 85.59.⁴⁹

In the 2017 amendments, "only upon application of a party to the

46. *Workers' Compensation Settlement Explanations*, *supra* note 44; *see also id.* §§ 85.45, 85.48.

47. *Workers' Compensation Settlement Explanation*, *supra* note 44.

48. *Workers' Compensation Settlement Explanation*, *supra* note 44; *see also id.* § 85.45; IOWA CODE § 85.48 (2017).

49. IOWA CODE § 85.45 (2017).

commissioner and upon written consent of all parties to the proposed commutation or partial commutation”⁵⁰ was added to the introductory language of section 85.45, subsection 1, and a third, new subsection was added:

3. The parties to any commutation or partial commutation of future payments agreed to and ordered pursuant to this section may agree that the employee has the right to benefits pursuant to section 85.27 under such terms and conditions as agreed to by the parties, for a specified period of time after the commutation or partial commutation agreement has been ordered by the workers’ compensation commissioner. During that specified period of time, the commissioner shall have jurisdiction of the commutation or partial commutation agreement for the purpose of adjudicating the employee’s entitlement to benefits provided for in section 85.27 as provided in the agreement.⁵¹

The section 85.45 amended language emphasized above materially modified PTD workers’ rights in filing for a commutation,⁵² requiring full and partial commutations filed on or after July 1, 2017, to be done in agreement from both the employer and insurance carrier.⁵³ In other words, if the employer or workers’ compensation insurance company do not agree to a commutation, there is no way for the injured worker to receive a lump sum payment of future benefits.

While this change has not received as much attention as other 2017 amendments, its impact is consequential. The addition of a consent requirement has entirely removed the threat of workers’ compensation insurance carriers facing a petition for commutation for a large amount of future benefits.⁵⁴ Instead, workers’ compensation insurance carriers are now

50. IOWA CODE § 85.45 (2023) (containing the new language); *c.f.* IOWA CODE § 85.45 (2017).

51. IOWA CODE § 85.45 (2023).

52. *See* H.F. 518, 87th Gen. Assemb., Reg. Sess. (Iowa 2017).

53. *Workers’ Compensation Settlement Explanations*, *supra* note 44.

54. Gary G. Mattson, *Recent Changes to Iowa Workers’ Compensation Law*, LAMARCA L. GRP. (Mar. 12, 2019), <https://www.lamarcalandry.com/articles/recent-changes-to-iowa-workers-compensation-law-march-12-2019/> [<https://perma.cc/E7WY-YQPK>] (“During its 2017 Session, the Iowa legislature dramatically changed portions of Iowa Workers’ Compensation Law contained in Iowa Code Chapters 85 and 86. . . . None of the changes benefit injured workers. The legislature submitted no legislative history to explain the basis or need for the changes.”).

granted considerable leverage when negotiating with injured workers—especially those with high weekly benefit rates.⁵⁵

IV. A SHIFT IN THE “LITIGIOUS LOTTERY”

With the livelihood of Iowans in mind, it is difficult to comprehend why such extreme restrictions were allowed in the 2017 amendments—although they came as no surprise after Iowa lawmakers and business groups pushed tirelessly to overhaul the old workers’ compensation system that they believed was unfairly tilted in favor of injured workers and, as a result, was significantly raising employers’ costs.⁵⁶ These reform advocates referred to the pre-2017 law change in the Iowa workers’ compensation system as a “litigious lottery,” “unsustainable,” and “a cautionary tale” despite data from the National Council on Compensation Insurance—which sets Iowa’s workers’ compensation insurance premiums—showing “no large increases in premium costs, claims, or medical costs associated with workplace injuries.”⁵⁷ Instead, quite the contrary was revealed from the records with Iowa employers seeing a decrease of 4.7 percent in their workers’ compensation premiums in 2016.⁵⁸ Republican economist and academic John Burton—who studies workers’ compensation—disputed the reform advocates’ claims of a workers’ compensation crisis, noting that at a national level—even with a slight uptick in recent years preceding 2017—Iowa employers were paying some of the lowest costs since the 1980s.⁵⁹ To counteract this argument, reform advocates cite Iowa’s jump in state rankings when comparing workers’ compensation premium costs at a national level.⁶⁰ In 2016, Iowa’s workers’ compensation premiums were the 24th highest in the nation.⁶¹ This is a 46.67 percent increase in rank from Iowa’s placement as 45th lowest in the nation in 2006.⁶² While this rising in rank should not be ignored, labor groups and plaintiff’s lawyers argued it was attributed to other states slashing their benefits.⁶³ By 2022, the Oregon

55. *Id.*

56. Kevin Hardy & Brianne Pfannenstiel, *Is Iowa Workers’ Comp Out of Control? The Data Say No*, DES MOINES REG., <https://www.desmoinesregister.com/story/money/business/2017/03/13/iowa-workers-comp-out-control-data-say-no/99012336/> [https://perma.cc/3GZX-NDE2] (Mar. 28, 2017, 3:31 PM).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

Department of Consumer and Business Services reported Iowa had dropped in rank down to 30th highest in the nation.⁶⁴ Whether that can be attributed to the 2017 amendments is up for debate.

What is not up for debate is how “[t]he only constant among all the changes is that they are bad for workers.”⁶⁵ Instead of being homegrown responses to issues within the Iowa workers’ compensation system, the amendments mimic employer-friendly “reforms” enacted in 33 other states, breaking down Iowa’s once venerable, carefully balanced system.⁶⁶

Representative Mary Wolfe—an Iowa Democrat for Clinton County—summarized the real reasoning behind the 2017 amendments as an outside agenda based on insurance premiums, not abuses in the system:

It’s that insurance companies are raising their premiums. And so one way to force or to hope that those premiums are going to be lowered is if we gut the workers’ compensation system to the point where insurers can be pretty darn sure that they’re going to be paying out on a lot fewer claims.⁶⁷

This rationale is supported by the inevitable consequences of requiring all parties to agree to a commutation.⁶⁸

V. PRO-EMPLOYER, ANTI-WORKER

It is challenging to find any necessity for the 2017 amendment to section 85.45—outside of further stripping injured workers of their rights—

64. Dep’t Consumer & Bus. Servs., *2022 Workers’ Compensation Premium Index Rates*, OREGON.GOV, <https://www.oregon.gov/dcbs/cost/Pages/premium-index-rates.aspx> [https://perma.cc/C4AB-SGL3].

65. EMILY SCHOTT, MATTHEW GLASSON & COLIN GORDON, *GIVING WORKERS THE COLD SHOULDER* 2 (Sept. 2018), https://www.iowapolicyproject.org/2018docs/180920-workers_comp-xs.pdf [https://perma.cc/GYF5-M78K].

66. Brianne Pfannenstiel, *Branstad Signs Bills Limiting Workers’ Compensation, Blocking Minimum Wage Hikes*, DES MOINES REG. (Mar. 30, 2017, 6:47 PM), <https://www.desmoinesregister.com/story/news/politics/2017/03/30/branstad-signs-bills-limiting-workers-compensation-blocking-minimum-wage-hikes/99819450/> [https://perma.cc/WL7Q-FJXN] (citing Grabell & Berkes, *supra* note 3); SCHOTT, GLASSON, & GORDON, *supra* note 65.

67. Brianne Pfannenstiel, *Iowa House Approves Scaled-Back Workers’ Comp Bill*, DES MOINES REG., <https://www.desmoinesregister.com/story/news/politics/2017/03/16/iowa-house-approves-scaled-back-workers-comp-bill/99159514/> [https://perma.cc/CW82-MEVE] (Mar. 17, 2017, 11:55 AM).

68. See IOWA CODE § 85.48 (2023).

given the already significant barriers for an injured worker to overcome a contested commutation.⁶⁹ In *Dameron v. Neumann Brothers, Inc.*, the Iowa Supreme Court held that “the decision whether to allow commutation must turn on the statutory guideline, best interest of the claimant, and the focus should be on the worker’s personal, family, and financial circumstances, and the reasonableness of the worker’s plans for using the lump sum proceeds.”⁷⁰ In making this determination, the Iowa DWC must look at and apply a benefit-detriment balancing of the following four factors:

1. The workers age, education, mental and physical condition, and actual life expectancy (as contrasted with information provided by actuarial tables).
2. The worker’s family circumstances, living arrangements, and responsibilities to dependents.
3. The worker’s financial condition, including all sources of income, debts and living expenses.
4. The reasonableness of the worker’s plan for investing the lump sum proceeds and the worker’s ability to manage invested funds or arrange for management by others (for example, by a trustee or conservator).⁷¹

Ultimately, the court held that the “worker’s preference and the benefits to the worker of receiving a lump sum payment [should be] weighed against the potential detriments that would result if the worker invested unwisely, spent foolishly, or otherwise wasted the fund so it no longer provided the wage-substitute intended by our worker’s compensation law.”⁷²

The *Dameron* analysis⁷³ emphasizes what is in the best interest of an injured worker, over what is in the best interest of the employer or insurance carrier—unless the lump sum payment will “entail undue expense, hardship or inconvenience” upon the liable party.⁷⁴ Since legislative intent was conveniently never written into the 2017 amendments, it can only be

69. See *Dameron v. Neumann Bros., Inc.*, 339 N.W.2d 160, 165 (Iowa 1983).

70. *Id.* at 164 (citing *Diamond v. Parsons Co.*, 129 N.W.2d 608, 616–17 (Iowa 1964)) (applying the *Diamond* factors with the new statutory guidelines).

71. *Id.* (citing *Diamond*, 129 N.W.2d at 616–17).

72. *Id.*

73. This analysis was previously known as the *Diamond* principles, as *Diamond v. Parsons Co.* was the case originally governing workers’ compensation commutations. *Id.* at 162. The analysis was modified slightly in *Dameron* due to legislative changes. *Id.*

74. *Id.* at 163 (quoting IOWA CODE § 85.45 (1981)).

reasonably assumed that employers and insurance carriers amended the language of section 85.45 to shift an injured-worker-friendly statute to only apply when and if the employer and insurance carrier allow it.⁷⁵

When and if the employer and insurance carrier agree to a commutation, it is anticipated that the 2017 amendments will essentially eradicate partial commutations.⁷⁶ This is because partial commutations, unlike full commutations, preserve an injured worker's right to lifetime medical care.⁷⁷ Employers and insurance carriers are in the business of managing risk.⁷⁸ In order to mitigate risk in settlement negotiations, employers and insurance carriers look to extinguish an injured worker's future rights through a section 85.35 compromised settlement to not be placed in a position where they are on the hook for the injured worker's medical care until they die.⁷⁹

The governing PTD compensation statute, Iowa Code § 85.34(3), holds “[t]he weekly compensation is payable until the employee is no longer permanently and totally disabled.”⁸⁰ This portion of the Code has long been interpreted to establish that when a person who has been receiving weekly PTD workers' compensation benefits dies, their weekly checks die with them.⁸¹ Consequently, there is high motivation for employers and insurance carriers to resist commutations and instead hold out hope that the injured worker dies before reaching the age of their calculated life expectancy.

With the 2017 amendment to section 85.45, it is more feasible for employers and insurance carriers to take this “wait-it-out” approach.⁸² This is of detriment to injured workers who want to receive a commutation of benefits for reasons such as: ending the financial uncertainty around how long their workers' compensation payments would continue; budgeting for future medical treatment around the settlement amount instead of submitting bills to insurance and having to wait for the check to arrive;

75. See IOWA CODE § 85.45 (2023).

76. See *id.*

77. *Id.* § 85.48.

78. See *Underwriting*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“The act of assuming a risk by insuring it; the insurance of life or property.”).

79. See generally *id.* § 85.35.

80. *Id.* § 85.34(3)(a).

81. See *id.* § 85.34(3); *Diamond v. Parsons Co.*, 129 N.W.2d 608, 616 (Iowa 1964).

82. See *Thornton v. Am. Interstate Ins. Co.*, 940 N.W.2d 1, 9 (Iowa 2020) (“According to [plaintiff], damages for pain and suffering and loss of mind and body arise from injuries suffered by [plaintiff] due to [defendant's] bad-faith acts and omissions related to the delay in providing [plaintiff] with his replacement wheelchair.”).

approaching the age of requirement; or gaining the freedom to treat with medical providers of their choosing. Now, instead of having the court apply the *Dameron* analysis and determine what is in the best interest of the injured worker, the injured worker is never even able to make their application for commutation heard unless the employer and insurance carrier authorize it.⁸³ An authorization is unlikely to be granted unless it is of benefit to the employer and insurance carrier through reduced administrative costs.

One proposed resolution to this inequitable deprivation—absent reversal of the 2017 amendment to section 85.45—is the Iowa legislature enacting a statute which allows for a cost of living increase to PTD workers' benefit rates.⁸⁴ While it seems logical an injured worker's weekly benefit amount would be entitled to a cost of living increase, this is not the case in Iowa.⁸⁵

VI. COST OF LIVING ADJUSTMENTS IN WORKERS' COMPENSATION

The idea of cost of living adjustments (COLAs) is not something new. Social Security has provided COLAs since 1975.⁸⁶ If workers' compensation benefits had underwent the same automatic Social Security COLAs, injured workers would have seen a benefit increase of 181.7 percent.⁸⁷ COLAs work to account for inflation, similar to the federal minimum wage.⁸⁸ Throughout history, the federal minimum wage has been increased by Congress 22 times.⁸⁹ These increases have been essential to the livelihood of Americans as basic living expenses continue to rise.⁹⁰

83. *Dameron v. Neumann Bros., Inc.*, 339 N.W.2d 160, 163 (Iowa 1983); *id.* § 85.35.

84. *See* MINN. STAT. § 176.645 (2023); N.D. CENT. CODE § 65-05.2-01 (2023).

85. *DI 52120.090 Iowa Workers' Compensation (WC)*, SOC. SEC. ADMIN., <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120090> [<https://perma.cc/3MTA-W9WQ>].

86. *Cost-of-Living Adjustments*, SOC. SEC. ADMIN., <https://www.ssa.gov/oact/cola/colaseries.html> [<https://perma.cc/9E4W-555N>].

87. *See id.*

88. Annalyn Kurtz, Tal Yellin & Will Houpp, *The US Minimum Wage Through the Years*, CNN BUS. (Apr. 9, 2019), <https://www.cnn.com/interactive/2019/business/us-minimum-wage-by-year/index.html> [<https://perma.cc/Z7XY-FXBK>].

89. *Id.*

90. \$1 in January of 1999 has the same buying power as \$1.71 in January of 2022. A cumulative inflation rate of 71 percent. *See CPI Inflation Calculator*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/E92S-WRF3>].

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In applying these adjustments to the PTD scenarios outlined earlier,⁹¹ rate increases would be as follows:

PTD Example #1:

Maria Garcia	
Date of Injury	07/01/99
AWW	\$300
PTD Rate (Based on married, five exemptions)	\$217.40 ⁹²
Social Security Rate (Based on COLA from July 1999 to January 2021)	\$580 ⁹³
Federal Minimum Wage Rate (Based on percent increase from July 1999 to January 2021)	\$363.28 ⁹⁴

PTD Example #2:

Sofia Lopez	
Date of Injury	07/02/20
AWW	\$1,200
PTD Rate (Based on single, one exemption)	\$723.96 ⁹⁵
Social Security Rate (Based on COLA increases from July 2020 to January 2021)	\$733.37 ⁹⁶

91. *See supra* Part II.B.

92. IOWA CODE § 85.34 (2023).

93. *Cost-of-Living Adjustments*, *supra* note 86.

94. *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938 - 2009*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/minimum-wage/history/chart> [<https://perma.cc/A9K9-2TUK>].

95. *Id.* § 85.34.

96. In January 2021, Social Security and Supplemental Security Income (SSI) benefits underwent a 1.3 percent increase. *Cost-of-Living Adjustment (COLA) 2021 Social Security Changes*, SOC. SEC. ADMIN., <https://www.ssa.gov/news/press/factsheets/colafacts2021.pdf> [<https://perma.cc/NQ7E-S69D>].

Federal Minimum Wage Rate (Based on percent increase from July 1999 to January 2021)	\$723.96 ⁹⁷
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While the percentage increase may seem minimal to some, it is an acknowledgement by the state that living costs increase over time. By allowing for COLAs in Iowa's workers' compensation when inflation occurs, PTD workers living on the fixed income of their weekly rate will be better equipped to maintain a viable standard of living.⁹⁸ The whole purpose of COLAs is they keep employee wages reasonable compared to living expenses; and because weekly rates are a replacement of employee wages, the same standard should be applied.⁹⁹ In the absence of COLAs, PTD workers are punished solely because a significant time has passed since their workplace injury occurred.¹⁰⁰ This is seen in Iowa workers' compensation system as seriously injured clients who are unable to work are stuck receiving the same PTD benefit amount from the time they are injured until they die or their case is over.¹⁰¹

A. Do Other States Allow for Workers' Compensation Cost of Living Adjustments?

The Division of Workers' Compensation in 28 out of the 50 states (in addition to the Virgin Islands and District of Columbia) provide some sort of COLA or supplemental benefit adjustment for their injured workers.¹⁰² With workers' compensation laws differing in every state, each division has different eligibility requirements, compensation calculations, and payout

97. The federal minimum wage has not changed since 2009. *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938 - 2009*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/minimum-wage/history/chart> [<https://perma.cc/ZKA9-JCLM>].

98. See Kimberly Amadeo, *What is a Cost of Living Adjustment?*, The BALANCE (Oct. 31, 2021), <https://www.thebalance.com/what-is-the-cost-of-living-adjustment-3305736#citation-27> [<https://perma.cc/BH74-6N4D>].

99. *Id.*

100. *Cost-of-Living Adjustments to Workers' Compensation Benefits*, OSTERBAUER MINN. INJ. L. FIRM (May 22, 2018), <https://osterbauerlawfirm.com/blog/cost-of-living-adjustments-to-workers-compensation-benefits/> [<https://perma.cc/6N38-QQ47>] ("Since some workers receive workers' compensation benefits for years after their injuries, they need cost-of-living adjustments so that their benefits are not artificially low just because significant time has passed.").

101. See IOWA CODE § 85.34(3) (2023).

102. See *infra* Part VI.A.3.

schedules as outlined in Part VI.A.3.¹⁰³ To gain a general understanding of other states' approaches to providing these additional benefits and scratch the surface of how Iowa workers could be impacted by taking that same approach, the COLA offerings of Illinois and Minnesota have been applied to the two PTD scenarios provided in Part II.B.¹⁰⁴

1. *Illinois*

Illinois provides rate adjustments to PTD workers through their state Rate Adjustment Fund (RAF).¹⁰⁵ In 1975, Illinois' RAF was created to pay COLAs to either (1) the survivors of fatally injured workers or (2) PTD workers.¹⁰⁶ Those eligible for RAF payments receive payments starting "on the second July 15th after a final decision" has been made on their claim.¹⁰⁷ When applied in practice, this means that if a PTD award is entered by the Commission on July 1, 2021, the PTD worker will not be eligible for a RAF payment until July 15, 2023.¹⁰⁸ RAF recipients receive compensation equivalent to the percentage increase in the statewide average weekly wage, as calculated by the Illinois Department of Employment Security.¹⁰⁹ A payees' eligibility for RAF payments remains intact until the cessation of their eligibility for survivor's or PTD benefits.¹¹⁰

In applying Illinois RAF payments to the PTD scenarios outlined earlier,¹¹¹ rate increases would be as follows:

PTD Example #1:

Maria Garcia	
Date of Injury	07/01/99
AWW	\$300

103. *See infra* Part VI.A.3.

104. *See supra* Part II.B.

105. *Rate Adjustment Fund*, ILL. WORKERS' COMP. COMM'N, <https://www2.illinois.gov/sites/iwcc/resources/Pages/raf.aspx> [https://perma.cc/G72A-WBAK].

106. *Id.*

107. *Id.*

108. *Assessments*, ILL. WORKERS' COMP. COMM'N, <https://www2.illinois.gov/sites/iwcc/resources/Pages/funds.aspx#raf> [https://perma.cc/7WAC-QANF].

109. *Rate Adjustment Fund*, *supra* note 105.

110. *Id.*

111. *See supra* Part II.B.

PTD Rate (Based on married, five exemptions)	\$217.40
Illinois PTD Rate (Based on 2020 COLA rate year and 2001 eligibility start year.)¹¹²	\$344.78 ¹¹³

PTD Example #2:

Due to Sofia's July 1, 2020, date of injury, she would not yet be eligible for a RAF payment.¹¹⁴

2. Minnesota

Minnesota also allows for the annual adjustment of workers' compensation benefits under Minn. Stat. § 176.645.¹¹⁵ Unlike Illinois, workers with a temporary total disability (TTD), temporary partial disability (TPD), and permanent total disability (PTD) and dependency benefits are eligible for this annual increase in weekly rate for as long as the life of their claim.¹¹⁶ The only factor affecting these benefits—outside of a living claim—is the date of injury.¹¹⁷ The date of injury affects Minnesota's annual adjustment of workers' compensation benefits by determining: (1) if any adjustments are due, (2) when the first adjustment is made, and (3) the percent increase that is applied.¹¹⁸ Minnesota's COLAs tend to be higher than that of the Social Security Administration.¹¹⁹

112. For purposes of the calculation, a final decision date of July 1, 2000, is used. *Rate Adjustment Fund*, *supra* note 105.

113. The cumulative RAF calculation for a 2020 COLA rate year and 2001 eligibility start year is 58.59 percent. *Id.*

114. *Id.*

115. MINN. STAT. § 176.645 (2023); *Work Comp: Disability Benefits – Annual Adjustment of Benefits*, MINN. DEPT. OF LAB. & INDUS., <https://www.dli.mn.gov/business/workers-compensation/work-comp-disability-benefits-annual-adjustment-benefits> [https://perma.cc/367T-6CHH].

116. *Id.* § 176.645; *Rate Adjustment Fund*, *supra* note 105.

117. *Id.* § 176.645.

118. *Id.*

119. *Compare* MINN. DEPT. OF LAB. & INDUS., COMMON MINNESOTA WORKERS' COMPENSATION BENEFIT ADJUSTMENTS (2022), <https://www.dli.mn.gov/sites/default/files/pdf/annladj.pdf> [https://perma.cc/R66E-NXRX], *with Cost-of-Living Adjustments*, *supra* note 86.

In applying Minnesota's COLAs to the PTD scenarios outlined earlier,¹²⁰ rate increases would be as follows:

PTD Example #1:

Maria Garcia	
Date of Injury	07/01/99
AWW	\$300.00
PTD Rate (Based on married, five exemptions)	\$217.40
Minnesota PTD Rate (Based on COLAs from 2003 through 2020.)¹²¹	\$295.60 ¹²²

PTD Example #2:

Due to Sofia's July 1, 2020, date of injury, she would not yet be eligible for an adjustment of benefits.¹²³

These are only two applied examples of the lost earning capacity Iowa injured workers are stripped of by the Iowa legislature and Iowa DWC. Outside of Illinois and Minnesota, 26 other states, the District of Columbia, and the Virgin Islands provide some sort of benefit adjustment to injured workers.¹²⁴ The Iowa legislature should take this majority approach into consideration and enact a COLA statute. All the Iowa legislature would need to decide is:

1. What types of cases will be eligible for the COLA;
2. How is the COLA amount going to be determined; and

120. *See supra* Part II.B.

121. For dates of injury between October 1, 1995, and September 30, 2013, the first weekly rate COLA is made on the fourth anniversary of the injury and all weekly rate COLAs are made annually thereafter. *Work Comp: Disability Benefits – Annual Adjustment of Benefits*, *supra* note 115; *Adjustment of Benefits*, WORKERS' COMP. REINSURANCE ASS'N, https://www.wcra.biz/index.php?option=com_content&view=article&id=91&Itemid=322 [https://perma.cc/AZU2-WZW8].

122. *Adjustment of Benefits*, *supra* note 121.

123. For dates of injury on and after October 1, 2013, the first weekly rate COLA is made on the third anniversary of the injury and all weekly rate COLAs are made annually thereafter. *Work Comp: Disability Benefits – Annual Adjustment of Benefits*, *supra* note 115; *Adjustment of Benefits*, *supra* note 121.

124. *See infra* Part VI.A.3.

3. When will the COLA go into effect?

A national analysis of how state legislatures answered these three questions to determine workers' compensation benefit adjustments for injured workers in their state is provided below.¹²⁵

3. *State Specific Workers' Compensation Procedures*

Alabama:

"There are no provisions for a cost of living increase. The initial payment amount is locked based on the date of injury for the duration of the award."¹²⁶

Alaska:

"Alaska does not provide for cost of living increases for any type of [workers' compensation] payment."¹²⁷

Arizona:

"Arizona does not provide for cost of living increases for any type of [workers' compensation] payment."¹²⁸

Arkansas:

Beginning January 1, 1989, COLAs are provided every January 1st for temporary total disability and permanent total disability benefits.¹²⁹

California:

Annual COLAs are provided "only for life pension and [permanent total disability] benefits. These COLAs, [provided] every January 1, are

125. See *infra* Part VII.

126. DI 52120.005 *Alabama Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 25, 2008), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120005> [<https://perma.cc/HG77-E45A>].

127. DI 52120.010 *Alaska Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Feb. 23, 2016), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120010> [<https://perma.cc/VZF9-UZ98>].

128. DI 52120.020 *Arizona Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 29, 2021), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120020> [<https://perma.cc/59CA-PWSC>].

129. DI 52120.025 *Arkansas Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Nov. 14, 2018), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120025> [<https://perma.cc/Q73P-M99Z>].

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available only to [injured workers with dates of] injuries occurring on or after January 1, 2003.”¹³⁰

Colorado:

Permanent total disability benefits with a date of injury occurring on or after July 1, 1991, and before July 1, 1994, receive a 2 percent COLA every July 1.¹³¹

Connecticut:

Annual COLAs, provided every October 1, apply only to permanent total disability benefits (or temporary total disability benefits who have been totally disabled for a period of five years or more) with a date of injury occurring on or after July 1, 1993.¹³² “COLAs are calculated differently depending on the injured worker’s date of injury.”¹³³

Delaware:

“Delaware does not provide COLAs on its [workers’ compensation].”¹³⁴

District of Columbia:

Annual COLAs—also referred to as “supplemental allowance”—are provided to permanent total disabled individuals every January 1.¹³⁵

Florida:

Florida Workers’ Compensation does not provide for a traditional [COLA]. However, individuals who are permanently and totally disabled are potentially eligible for a supplemental yearly increase of 3 percent. The increase is only payable [to injured workers] under the age

130. *DI 52120.030 California Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Mar. 22, 2017), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120030> [<https://perma.cc/Z927-Y975>].

131. COLO. REV. STAT. § 8-42-111(4) (2022).

132. *DI 52120.040 Connecticut Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (May 9, 2018), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120040> [<https://perma.cc/4NEF-WX89>].

133. *Id.*

134. *DI 52120.045 Delaware Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Mar. 5, 2018), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120045> [<https://perma.cc/DZQ2-L4FJ>].

135. *DI 52120.050 District of Columbia Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (June 24, 2013), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120050> [<https://perma.cc/J7Q8-5DKL>].

of 62 [who] are not subject to offset due to receipt of Social Security benefits. When the [injured worker turns] 62, if they are eligible for Social Security benefits, they lose entitlement to the supplemental benefits if the date of injury is on or after July 1, 1990. For injuries prior to July 1, 1990, the supplemental payments continue.¹³⁶

Georgia:

“Georgia does not provide any cost of living increases.”¹³⁷

Hawaii:

Hawaii Workers’ Compensation does not provide for traditional COLAs.¹³⁸ However, permanent total disability benefits are eligible for supplemental allowances.¹³⁹ Permanent total supplemental allowances are provided every tenth year on January 1, beginning on January 1, 1992, to permanent and totally disabled workers with a date of injury prior to the January 1st effective date.¹⁴⁰ The supplemental allowance is “[p]aid by the employer with no application required.”¹⁴¹

Idaho:

“Idaho does not provide for a cost of living increase of any type of [workers’ compensation] payment.”¹⁴²

Illinois:

A COLA is only provided for recipients of [permanent total disability] benefits. To qualify, the [injured worker’s] case must have been closed by a decision. Beginning in the second year after the award was issued, the recipient will receive an amount from the Commission’s

136. *DI 52120.055 Florida Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (June 4, 2018), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120055> [<https://perma.cc/NWT5-AV25>].

137. *DI 52120.060 Georgia Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Jan. 7, 2010), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120060> [<https://perma.cc/GXR6-7DKM>].

138. *DI 52120.070 Hawaii Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 2, 2010), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120070> [<https://perma.cc/TE4H-9GKJ>].

139. *Id.*

140. *Id.*

141. *Id.*

142. *DI 52120.075 Idaho Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 25, 2008), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120075> [<https://perma.cc/A6ZM-WE2R>].

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Rate Adjustment Fund (RAF) that reflects the increase in the State-wide average weekly wage during the preceding year. These payments are made monthly and are payments made separately and in addition to the regular [permanent total disability] benefit. The monthly payments are adjusted July 15th of each year.¹⁴³

Indiana:

“Indiana does not provide a cost of living increase of [workers’ compensation].”¹⁴⁴

Iowa:

“Iowa does not give COLAs on its [workers’ compensation].”¹⁴⁵

Kansas:

“Kansas does not provide COLAs on its [workers’ compensation].”¹⁴⁶

Kentucky:

“Kentucky [workers’ compensation] pays out at the original amount for the duration of the award. There are no provisions for a cost of living increase.”¹⁴⁷

Louisiana:

“Louisiana does not provide for cost of living increases for any type of [workers’ compensation] payment.”¹⁴⁸

143. *DI 52120.080 Illinois Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Dec. 11, 2013), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120080> [<https://perma.cc/5UG9-EUQ8>].

144. *DI 52120.085 Indiana Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 25, 2008), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120085> [<https://perma.cc/8P44-QWDF>].

145. *DI 52120.090 Iowa Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Oct. 25, 2018), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120090> [<https://perma.cc/3NUJ-EZBY>].

146. *DI 52120.095 Kansas Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (May 20, 2020), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120095> [<https://perma.cc/PQ9Y-W3JY>].

147. *DI 52120.100 Kentucky Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Mar. 23, 2012), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120100> [<https://perma.cc/U8CQ-D72W>].

148. *DI 52120.105 Louisiana Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 25, 2008), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120105> [<https://perma.cc/RS67-NKD5>].

Maine:

COLAs are provided to injured workers with dates of injuries between January 1, 1972, and December 31, 1992.¹⁴⁹

Maryland:

COLAs became effective January 1, 1988.¹⁵⁰ “COLAs only apply to [workers’ compensation] paid for injuries or occupational diseases on or after that date.”¹⁵¹ Only permanent and totally disabled individuals are entitled to COLAs each January 1st.¹⁵² “COLAs are reduced for individuals who are also entitled to [social security] benefits to the extent necessary to avoid a reduction of the [social security] benefits.”¹⁵³

Massachusetts:

COLAs apply to permanent total disability benefits with a date of injury at least 24 months prior to October 1 of the COLA year.¹⁵⁴

COLAs are given every year on October 1.¹⁵⁵ The “COLA is payable as long as the increase would not cause additional offset in [social security benefits].”¹⁵⁶ Injured workers may request for a voluntary waiver of social security benefits in order to qualify for the COLAs.¹⁵⁷ The month the voluntary waiver takes effect, the benefit is increased by all the COLAs that applied in the interim.¹⁵⁸

149. *Information for Annual Adjustments of the Weekly Compensation Rate*, MAINE WORKERS’ COMP. BD. (July 1, 2022), <https://www.maine.gov/wcb/Departments/claims/cola.html> [<https://perma.cc/F23N-26BS>].

150. *DI 52120.115 Maryland Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (May 11, 2020), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120115> [<https://perma.cc/WXT8-LSGF>]; STATE OF MD. WORKERS’ COMP. COMM’N, ANNUAL COST OF LIVING ADJUSTMENT (COLA) (July 2022), <https://www.wcc.state.md.us/PDF/Rates/COLA.pdf> [<https://perma.cc/24SS-ZE9E>].

151. *DI 52120.115 Maryland Workers’ Compensation (WC)*, *supra* note 150.

152. *Id.*

153. *Id.*

154. *DI 52120.120 Massachusetts Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Dec. 17, 2015), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120120> [<https://perma.cc/VV8H-T8M9>].

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

2023] *Commutation Law & Permanent Totally Disabled Workers* 713Michigan:

Michigan does not provide for [COLAs] for any type of [workers' compensation] payments.

However, adjustments in the [workers' compensation benefit] base amount can be made when the number of dependents changes (i.e., [child attains age 18]).

The State statute also provides that if injury occurs on or after [January 1, 1982], and at the time [the] disabled worker is entitled to a compensation rate less than 50 percent of the State average weekly wage, after two years of continuous disability, the injured worker may petition for an increase.¹⁵⁹

Minnesota:

For date[s] of injuries [October 1, 1995,] and later[,] [t]he first COLA is paid on the [fourth] anniversary of the [date of injury]. Future COLAs are then paid every year on the anniversary date of the injury.

For [dates of injuries between October 1, 1992, and September 30, 1995,] COLAs were paid on the anniversary date of the injury and the first COLA was delayed until the [second] anniversary.

For [dates of injuries between October 1, 1975, and September 30, 1992,] COLAs were paid every year effective on October [1].

For [dates of injuries] prior to [October 1, 1975,] there were no COLA increases.¹⁶⁰

Mississippi:

"Mississippi does not pay a cost of living increase or any other increase."¹⁶¹

159. *DI 52120.125 Michigan Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Dec. 17, 2015), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120125> [<https://perma.cc/RWY5-FF3M>].

160. *DI 52120.130 Minnesota Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Jan. 31, 2014), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120130> [<https://perma.cc/8L6K-P49W>].

161. *DI 52120.135 Mississippi Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 25, 2008), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120135> [<https://perma.cc/7KMF-EB4J>].

Missouri:

“Missouri does not give COLAs on [workers’ compensation] payment[.]”¹⁶²

Montana:

Annual COLAs are given each July 1st to permanent total disability benefits after 104 weeks of benefits have been paid.¹⁶³ COLAs for dates of injury prior to March 26, 2003, are limited to 3 percent.¹⁶⁴

Nebraska:

“Nebraska does not give COLAs on its [workers’ compensation].”¹⁶⁵

Nevada:

Permanent total disability benefit COLAs are payable for dates of injuries on or after January 1, 2004.¹⁶⁶

A COLA “of 2.3 percent is effective [on] January 1 immediately after the year in which the worker becomes entitled to receive” permanent total disability benefits.¹⁶⁷ “Subsequent COLAs [are paid on] January 1 of each successive year.”¹⁶⁸

New Hampshire:

An injured employee is entitled to a COLA if:

1. “They are receiving total disability benefits . . . as of the third

162. *DI 52120.140 Missouri Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Nov. 2, 2020), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120140> [<https://perma.cc/2H86-UURQ>].

163. *DI 52120.145 Montana Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Dec. 2, 2011), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120145> [<https://perma.cc/FZ7Q-XVW9>].

164. *Id.*

165. *DI 52120.150 Nebraska Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Aug. 19, 2021), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120150> [<https://perma.cc/HQ9B-4AXD>].

166. *DI 52120.155 Nevada Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Mar. 31, 2022), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120155> [<https://perma.cc/U4MJ-AYAY>].

167. *Id.*

168. *Id.*

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anniversary date of their injury[;]”¹⁶⁹

2. “Have been denied Social Security benefits[;]”¹⁷⁰

3. “Are receiving less than [60 percent] of the current State average weekly wage.”¹⁷¹

(For dates of injuries prior to February 8, 1994, the injured worker “must be receiving less than [66 percent] of the current State average weekly wage.”)¹⁷²

New Jersey:

Amendments made in 1980 to New Jersey’s workers’ compensation laws made provisions for annual COLAs—also referred to as supplemental benefits—for some injured workers.¹⁷³ “[I]n order to receive a COLA, the [injured] worker:

[1.] Must be receiving [permanent total] or Second Injury Fund [workers’ compensation benefits; and]

[2.] Must have a date of injury prior to [January 1, 1980].”¹⁷⁴

New Mexico:

Since January of 1988, COLAs have been provided January of each year.¹⁷⁵

New York:

“[New York] does not give COLAs on its [workers’ compensation].”¹⁷⁶

169. *Cost of Living Adjustment*, N.H. DEP’T OF LAB. (2019), <https://www.nh.gov/labor/workers-comp/employee-benefits/cost-living.htm> [<https://perma.cc/ZDG5-9BCF>].

170. *Id.*

171. *Id.*

172. *Id.*

173. *DI 52120.165 New Jersey Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Oct. 6, 2011), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120165> [<https://perma.cc/7VEB-L34C>].

174. *Id.*

175. *DI 52120.170 New Mexico Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Mar. 15, 2016), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120170> [<https://perma.cc/BKF5-QF4Y>].

176. *DI 52120.175 New York Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Aug. 24, 2020), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120175> [<https://perma.cc/7LH2-EBXU>].

North Carolina:

“North Carolina does not provide a cost of living increase.”¹⁷⁷

North Dakota:

For claims filed before January 1, 2006, [an injured worker] who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the [injured worker] is entitled to temporary total disability benefits, permanent total disability benefits, or death benefits.

For claims filed after December 31, 2005, [an injured worker] who is receiving permanent total disability benefits or death benefits and who has been receiving disability or death benefits for a period of at least three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits lasts as long as the [injured worker] is entitled to permanent total disability benefits or death benefits.¹⁷⁸

Ohio:

Ohio Workers' Compensation does not provide for a traditional COLA.¹⁷⁹ However, the Disabled Workers' Relief Fund (DWRF) “guaranteed amount increases yearly and was created to help permanently and totally disabled individuals keep pace with the cost of living. If an [injured worker] is below the DWRF guaranteed level, they will receive increases yearly based upon the DWRF increase.”¹⁸⁰

177. *DI 52120.180 North Carolina Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Dec. 29, 2009), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120180> [<https://perma.cc/NFJ7-BUHP>].

178. N.D. CENT. CODE § 65-05.2-01 (2023).

179. *See DI 52120.195 Ohio Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Oct. 28, 2019), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120195> [<https://perma.cc/T3Z3-UST7>].

180. *Id.*

Oklahoma:

“Oklahoma does not provide for cost of living increases for [workers’ compensation] payments.”¹⁸¹

Oregon:

Each year Oregon adjusts “temporary total disability, permanent partial disability, permanent total disability, and death benefits” for all dates of injuries occurring on or after July 1, 1973.¹⁸² These adjustments are made using the State average weekly wage.¹⁸³

Oregon also has a Retroactive Program benefit which is “an additional amount paid to eligible workers or their beneficiaries when benefit levels are lower than what is currently being paid for like injuries. Program recipients are primarily workers previously determined to have a permanent total disability and beneficiaries of workers who suffered fatal injuries.”¹⁸⁴

Temporary benefits normally increase every July 1st.¹⁸⁵ Permanent benefits increase every October 1st.¹⁸⁶

Pennsylvania:

“Pennsylvania does not give COLAs on it [workers’ compensation].”¹⁸⁷

181. *DI 52120.200 Oklahoma Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Jan. 9, 2023), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120200> [<https://perma.cc/FC99-ZZEA>].

182. Bulletin No. 111 (Revised) from Sally Coen, Adm’r, Or. Workers’ Comp. Div. to Workers’ Comp. Insurers & Self-Insured Emps. 1 (May 23, 2022) [hereinafter Bulletin No. 111], https://wcd.oregon.gov/Bulletins/bul_111.pdf [<https://perma.cc/33YX-KCLF>]; Corrected Bulletin No. 384 from Sally Coen, Adm’r, Or. Workers’ Comp. Div. to Workers’ Comp. Insurers & Self-Insured Emps. 3 (Jan. 31, 2022) [hereinafter Bulletin No. 384], https://wcd.oregon.gov/Bulletins/bul_384.pdf [<https://perma.cc/N5Q7-AFP8>]; *DI 52120.205 Oregon Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Dec. 9, 2015), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120205> [<https://perma.cc/Z4BF-Y6KV>].

183. Bulletin No. 111, *supra* note 182.

184. Bulletin No. 384, *supra* note 182, at 1.

185. *Id.* at 3.

186. *Id.* at 1.

187. *DI 52120.210 Pennsylvania Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Feb. 8, 2022), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120210> [<https://perma.cc/A2XM-8W44>].

Puerto Rico:

“Puerto Rico does not provide regular COLAs on its [workers’ compensation].”¹⁸⁸

Rhode Island:

Temporary total disability and permanent total disability benefits are eligible for a COLA every May 10th if their benefit award extends beyond 52 weeks.¹⁸⁹

Temporary partial disability benefits that extend “beyond 312 weeks” are eligible for “a COLA. . . May 10th of each year after the end of the 312 weeks.”¹⁹⁰

In addition, it is worth noting that:

Dependent benefits of up to \$15 per week per dependent may be added to [total incapacity workers’ compensation benefits], but the total of both payments is then limited to 80 percent of the worker’s pre-injury average weekly wage. . . . Dependent benefits are not added to [permanent incapacity workers’ compensation benefits].¹⁹¹

South Carolina:

“[South Carolina] does not provide a [COLA]. The periodic payment amount awarded will not change for the duration of the claim.”¹⁹²

South Dakota:

A COLA is applied to permanent total benefits every July 1st “at least twelve months following the date on which the benefit was first payable.”¹⁹³

188. *DI 52120.215 Puerto Rico Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Aug. 5, 2020), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120215> [<https://perma.cc/3QM7-TEB7>].

189. *DI 52120.220 Rhode Island Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 25, 2008), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120220> [<https://perma.cc/82EL-9ES9>].

190. *Id.*

191. *Id.*

192. *DI 52120.225 South Carolina Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Nov. 26, 2012), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120225> [<https://perma.cc/RKX5-STZL>].

193. *DI 52120.230 South Dakota Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Nov. 20, 2013), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120230> [<https://perma.cc/3874-Z8M2>].

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“There are instances when the weekly compensation rate for all other workers’ compensation benefits may be increased. This occurs when the injured worker can show that the earnings have substantially changed since the date of injury.”¹⁹⁴

Tennessee:

“Tennessee does not pay a [COLA] or any other increase.”¹⁹⁵

Texas:

“Lifetime Income Benefits (LIBs) are the only workers’ compensation benefits increased by COLAS.”¹⁹⁶ If approved for LIBs, “the insurance carrier is required to apply a 3 percent [COLA] annually.”¹⁹⁷

Utah:

Utah Workers’ Compensation does not provide for a traditional COLA with the exception of Employers’ Reinsurance Fund (ERF) permanent total minimum payments.¹⁹⁸ Payments made by the ERF include:

“[Permanent total] payments in excess of 312 weeks for injuries occurring before” July 1, 1994; and “[s]econd injury [permanent total] payments in excess of 156 weeks for injuries occurring from [July 1, 1988] to [June 30, 1994].”¹⁹⁹

“Payments to a worker receiving the minimum ERF [permanent total] payment may be readjusted each July 1st based on changes in the State average weekly wage.”²⁰⁰

194. *Id.*

195. *DI 52120.235 Tennessee Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Jan. 14, 2019), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120235> [<https://perma.cc/EG5F-WYDQ>].

196. *DI 52120.240 Texas Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Aug. 30, 2021), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120240> [<https://perma.cc/DYH7-32WZ>]; *Lifetime Income Benefits and Death Benefits in the Texas Workers’ Compensation System*, TEX. DEP’T OF INS.: DIV. OF WORKERS’ COMP. [hereinafter *Texas Workers’ Compensation System*], <https://capitol.texas.gov/tlodocs/84R/handouts/C0402016032213001/5ed3c3aa-f701-41b2-a886-9bcf2a0fa785.PDF> [<https://perma.cc/CME3-QSHX>].

197. *Texas Workers’ Compensation System*, *supra* note 196, at 1.

198. *DI 52120.245 Utah Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (May 20, 2013), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120245> [<https://perma.cc/U9AN-AGNL>].

199. *Id.*

200. *Id.*

Vermont:

Anyone receiving periodic workers' compensation benefits on July 1 is entitled to an increase in their benefit.²⁰¹

For temporary total disability benefits, the COLA "cannot cause the [benefit] to exceed the worker's average weekly wage or weekly net income, whichever was less."²⁰²

For temporary partial disability benefits, the COLA "must be adjusted weekly if the worker's wages vary from week to week. Dependency benefits are not included in the amount increased."²⁰³

For permanent partial disability and permanent total disability benefits, the COLA "cannot cause the [benefit] to exceed the average weekly wage, and dependency benefits are not included in the amount increased."²⁰⁴

Virginia:

"Only individuals receiving [temporary total disability] or [permanent total disability] benefits are entitled to [COLAs]."²⁰⁵

[COLAs] must be specifically requested by the [injured] worker. Also, [an injured] worker is only eligible to receive a COLA if [their workers' compensation] and Social Security benefits [are] less than a certain limit set by [Virginia Workers' Compensation] regulations. Because of this, beneficiaries often stop receiving COLAs once [the Social Security Administration processes its Disability Insurance benefits].²⁰⁶

"COLAs are effective October 1st of each year if the date of the accident was prior to July 1st of that year and if the worker is entitled to them."²⁰⁷

201. *DI 52120.250 Vermont Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Apr. 23, 2019), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120250> [<https://perma.cc/E832-EGXW>].

202. *Id.*

203. *Id.*

204. *Id.*

205. *DI 52120.255 Virginia Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Sept. 27, 2022), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120255> [<https://perma.cc/M6K8-J47H>].

206. *Id.*

207. *Id.*

Virgin Islands:

Any worker receiving permanent total disability benefits with “the maximum weekly income benefit rate continuously for over two years, shall have their benefits adjusted after those two years. The COLA increase takes place in January of each year.”²⁰⁸

Washington:

Washington pays COLAs to injured workers receiving temporary total disability and permanent total disability benefits each July 1st.²⁰⁹

“For dates of injury on or after July 1, 2011, [the temporary total disability and permanent total disability benefit COLA] is not effective until the second July 1st after the date of injury.”²¹⁰

All [temporary total disability and permanent total disability benefits] are eligible for a full COLA increase, regardless of when benefits began. . . . Temporary total disability benefit COLAs are payable immediately. [Permanent total disability benefit] COLA[s] increase[] first appear in the August 15 check, which will include the difference due from July 1.²¹¹

West Virginia:

“West Virginia does not give COLAs on its [workers’ compensation]. It used to give escalations . . . but due to a change in state law no escalations were given [July 1,] 2003 or later.”²¹²

Wisconsin:

In Wisconsin, there are no COLAs; the benefit amount is locked for the duration of the award.²¹³

208. *DI 52120.260 Virgin Islands Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Feb. 28, 2019), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120260> [<https://perma.cc/P4D2-8BTN>].

209. *DI 52120.265 Washington (WA) Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (July 27, 2022), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120265> [<https://perma.cc/W77N-ADNH>].

210. *Id.*

211. *Id.*

212. *DI 52120.270 West Virginia Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Jan. 14, 2019), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120270> [<https://perma.cc/33L3-GTRZ>].

213. *DI 52120.275 Wisconsin Workers’ Compensation (WC)*, SOC. SEC. ADMIN. (Oct.

Wyoming:

As of July 1, 2009, Wyoming provides for COLA increases.²¹⁴ Wyoming pays COLAs to injured workers receiving permanent total benefits each year on July 1.²¹⁵ The COLA is not to exceed 3 percent.²¹⁶

B. Should Iowa Workers' Compensation Have Cost of Living Adjustments?

Iowa Code § 85.34 states that PTD workers are to be compensated according to “the extent of the disability and upon the basis of eighty percent per week of the employee’s average spendable weekly earnings”²¹⁷ So, when PTD workers are living off 80 percent or less of what they were making at the time of their injury due to increases in cost of living, injured workers are essentially taking pay cuts every year.

Those who oppose commutations often argue a commutation in and of itself acts more as a torts damage award than a wage replacement.²¹⁸ They discourage commutations on the preface that being paid weekly benefits allows for employees to be compensated at the rate in which they experience the loss.²¹⁹ Non-injured workers are typically paid on a weekly basis; and since workers’ compensation benefits are designed to replace lost earning capacity, the idea is that weekly benefits do this—not a lump sum payment.²²⁰ However, this argument had already been accounted for in the *Dameron* analysis which weighed the pros and cons of converting an injured workers’ weekly benefits into a lump sum, taking into consideration unwise investments, foolish spending, and otherwise wastes of funds.²²¹ The power should be maintained within the court without the employer and insurance

30, 2009), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120275> [<https://perma.cc/9G3A-6THH>].

214. *DI 52120.280 Wyoming Workers' Compensation (WC)*, SOC. SEC. ADMIN. (Nov. 14, 2018), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0452120280> [<https://perma.cc/4GYH-6LNL>].

215. *Id.*

216. *Id.*

217. IOWA CODE § 85.34 (2023).

218. See Pfannenstiel, *supra* note 67 (“Supporters say the changes are necessary to curtail costs and keep Iowa competitive with other states with lower premiums.”).

219. See Hardy & Pfannenstiel, *supra* note 56.

220. See *id.* (“Reform advocates have called Iowa’s workers’ compensation system a ‘litigious lottery,’ ‘unsustainable,’ and ‘a cautionary tale.’”).

221. See *Dameron v. Neumann Bros., Inc.*, 339 N.W.2d 160, 164 (Iowa 1983).

carrier acting as gatekeepers when determining whether a commutation is appropriate.²²²

Reform advocates also argue PTD workers can apply for other work-support programs to supplement these unchanging weekly checks.²²³ However, not all injured workers will be eligible for those federal public benefits proven to help low-wage families survive including the means-tested Supplemental Nutrition Assistance Program (SNAP) (commonly referred to as “food stamps”), Supplemental Security Income (SSI), nonemergency Medicaid, and Temporary Assistance for Needy Families (TANF).²²⁴ Whether it is an undocumented construction worker,²²⁵ a 22-year-old caregiver who has only worked one year,²²⁶ or a newly single mother of three who recently re-entered the workforce after a decade of being a stay-at-home mom,²²⁷ there is a population of injured workers who are locked in at a benefit amount that is 80 percent of their wage from the date of their injury until the day that they die, with no supplementary assistance available to them.²²⁸ More universally, does this argument not threaten and undercut the entire purpose of workers’ compensation to provide for injured workers if they have to look elsewhere for the support they need following a work injury?

C. *Doing Away With the 2017 Amendment to Iowa Code § 85.45*

If the Iowa legislature is unwilling to enact a statute providing COLAs or supplemental benefits to PTD workers, it must repeal the 2017 amendment to section 85.45. Not only does the amendment discourage

222. *See id.* at 164–65.

223. U.S. DEP’T OF LAB., DOES THE WORKERS’ COMPENSATION SYSTEM FULFILL ITS OBLIGATIONS TO INJURED WORKERS? 21–23 (2016).

224. *See* Peter S. Fisher & Natalie Veldhouse, *The Cost of Living in Iowa — 2019 Edition, Supplement Strengthening Pathways to the Middle Class: Backgrounder*, IOWA POL’Y PROJECT (Jan. 8, 2020), <http://iowapolicyproject.org/2020Research/200108-COL2.html> [<https://perma.cc/X7VF-B27U>].

225. *See Fact Sheet: Immigrants and Public Benefits*, NAT’L IMMIGR. F. (Aug. 21, 2018), <https://immigrationforum.org/article/fact-sheet-immigrants-and-public-benefits/> [<https://perma.cc/86SV-LFPL>]; *Staff Mgmt. v. Jimenez*, 839 N.W.2d 640, 649 (Iowa 2013) (holding section 85.61(11) of the Iowa Code’s broad definition of “employee” did not exclude undocumented workers).

226. *See Disability Benefits*, SOC. SEC. ADMIN., <https://www.ssa.gov/benefits/disability/qualify.html> [<https://perma.cc/UVQ5-A78B>].

227. *See supra* note Part II.B.

228. IOWA CODE § 85.34 (2023).

commutations and agreement among parties, it also creates an unspoken ripple effect on comprised settlements under section 85.35(3).²²⁹

An injured worker's ability to file for a commutation of benefits—absent consent from the employer and insurance carrier—opens the door for compromised settlements. This is because pre-2017 amendments, if an employer and insurance carrier were unwilling to enter into a compromised settlement with an injured worker, the injured worker could essentially force the employer and insurance carrier to pay the money out through a commutation of benefits granted by the Workers' Compensation Commissioner.²³⁰

When granted a lump sum payment of benefits through a commutation or compromised settlement, injured workers are afforded the opportunity to invest the money and generate return. This return then acts as an off-set to the annual increase in living expenses their weekly benefit amount does not account for.

VII. CONCLUSION

The 2017 cutback of Iowa's workers' rights tossed decades of legislation into the trash. By neither (1) granting PTD workers the ability to file a commutation proceeding or (2) applying cost of living adjustments to PTD workers' benefits, the Iowa DWC continues to undermine its responsibility to support injured workers.²³¹

As cost of living increases, PTD benefits—which already only account for a fraction of the workers' pre-injury pay—become inadequate. The common example used to exhibit this disparity is the price of a gallon of milk.²³² In 2000, the average price of a gallon of milk in the United States was \$2.78.²³³ In 2021, that same gallon of milk, when adjusted for inflation, would cost \$4.04.²³⁴ This 45 percent increase is representative of the large price workers have had to pay for the already life-altering injuries they suffered at

229. *See id.* § 85.35(3); *see generally id.* § 85.45.

230. *Id.* § 85.35(3); *see generally* IOWA CODE § 85.45 (2008) (amended 2017).

231. *See Griffin Pipe Prods. Co. v. Guarino*, 663 N.W.2d 862, 865 (Iowa 2003) (“With respect to the workers’ compensation statute in particular, we keep in mind that the primary purpose of chapter 85 is to benefit the worker. . .”).

232. *Milk Prices by Year and Adjusted for Inflation*, U.S. INFLATION CALCULATOR, <https://www.usinflationcalculator.com/inflation/milk-prices-adjusted-for-inflation/> [https://perma.cc/A8LW-UBWL].

233. *Id.*

234. *Id.*

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work. PTD workers' purchasing power and financial security continues to be diminished as they and their families quality of life suffers in return.²³⁵

The 2017 amendments are "outrageous"²³⁶ and a "slap in the face"²³⁷ to Iowa workers. They represent a "substantial and intentional shift in the costs and the risks associated with industrial hazards, away from employers and insurance companies, and onto workers, their families, and taxpayers."²³⁸

While not all wrongs will be righted by overturning the section 85.45 commutation consent requirement or offering additional compensation through a COLA, it is a step in the right direction toward the rebalancing of Iowa's workers' compensation to a mutually beneficial system.

*Emelia Edwards**

235. See Grabell & Berkes, *supra* note 3.

236. Hardy & Pfannenstiel, *supra* note 56.

237. Pfannenstiel, *supra* note 67.

238. SCHOTT, GLASSON & GORDON, *supra* note 65.

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