SOMETHING MORE IMPORTANT THAN MONEY—VOCATIONAL REHABILITATION IN WORKERS' COMPENSATION CASES

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This article is an extensive survey of and commentary on the law of vocational rehabilitation under the workers' compensation statutes and case law of Alaska, the other forty-nine states, Washington, D.C., the veteran's vocational rehabilitation programs, the Federal Employees' Compensation for Work Injuries Act, and the Longshoremen's and Harbor Workers' Compensation Act. Mr. Croft first discusses the history, purposes, and philosophies of vocational rehabilitation. He then thoroughly discusses the types and varieties of vocational rehabilitation benefits, with special emphasis on disability compensation during vocational rehabilitation. An enlightening comparison of seven different vocational rehabilitation schemes follows this analysis. Mr. Croft then concludes with some observations on and suggestions for improving vocational rehabilitation. The Appendices contain an exhaustive summary of important vocational rehabilitation features in fifty-three jurisdictions.

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I. INTRODUCTION

Vocational rehabilitation — "the restoration of the handicapped [to] the fullest physical, mental, social, vocational, and economic usefulness of which they are capable"[1]— has become a major goal of workers' compensation.[2] As Professor Arthur Larson, a noted authority on workers' compensation, recognizes, "It is probably no exaggeration to say that in this field [vocational rehabilitation] lies the greatest single opportunity for significant improvement in the benefits afforded by the workmen's compensation system."[3]

Workers' compensation statutes typically provide disabled workers with an evaluation for potential vocational rehabilitation,[4] actual rehabilitation services,[5] maintenance,[6] and travel allowances.[7] The worker receives compensation for loss of ability to earn wages at either temporary or permanent disability rates.[8] To encourage employers to hire the handicapped, some statutes provide for payment of disabled

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1. Comment, *Vocational Rehabilitation in the Workers' Compensation System,* 33 ARK. L. REV. 723, 742-43 (1980) (quoting The National Council on Rehabilitation).

Proposed Alaska Workers' Compensation Board regulations define vocational rehabilitation as "a program of services, not limited to medical services, designed to restore an injured or disabled employee to gainful employment." ALASKA ADMIN. CODE tit. 8, § 47.060(4) (Proposed Draft), *reprinted in* Z. JACKSON, PRESENTATION OF PRELIMINARY FINDINGS OF A COMPREHENSIVE STUDY OF VOCATIONAL REHABILITATION IN THE ALASKA WORKERS' COMPENSATION PROGRAM 4 app. (1982).

2. Alaska's workers' compensation program is codified at ALASKA STAT. §§ 23.30.005-.270 (1984 & Supp. 1985).

3. 2 A. LARSON, WORKMEN'S COMPENSATION LAW § 61.25, at 10-784 (1983). *See* Z. JACKSON, *supra* note 1, at 1-2.

4. *See* ALASKA STAT. § 23.30.041(e) (1984); *see also* Aranda v. D.A. & S. Oil Well Servicing, Inc., 98 N.M. 217, 224, 647 P.2d 419, 424-26 (Ct. App. 1982) (upholding district court order allowing injured worker to submit to vocational evaluation at cost and expense of employer provided employee requests evaluation and despite fact that employee may later refuse to undertake rehabilitation).

5. Vocational rehabilitation services may include vocational evaluation, counseling, retraining, on-the-job training, and job placement assistance. ALASKA ADMIN. CODE tit. 8, § 47.060(6) (Proposed Draft), *reprinted in* Z. JACKSON, *supra* note 1, at 4 app.

6. Maintenance typically refers to supplemental compensation received during rehabilitation. For example, former ALASKA STAT. § 23.30.040(e) (repealed 1982) provided for supplemental payments during rehabilitation.

7. Travel allowances typically include the reasonable cost of board, lodging, and transportation when rehabilitation temporarily requires the worker to leave his customary residence. *See, e.g.,* ALASKA STAT. § 23.30.041(g) (1984); Ryan v. NAPA, 268 Ark. 1065, 1067, 598 S.W.2d 443, 445-46 (Ct. App. 1980).

8. The availability of compensation during vocational rehabilitation varies from state to state, depending on statutory provisions and case law, and often turns on whether the disabled worker has reached the point of medical stability. *See, e.g.,* Bignell v. Wise Mechanical Contractors, 651 P.2d 1163, 1167 (Alaska 1982); Cleator v. Indus. Comm'n, 129 Ariz. 179, 181, 629 P.2d 1015, 1017 (Ct. App. 1981). For a more elaborate discussion of these issues, see *infra* notes 95-175 and accompanying text.

workers' rehabilitation benefits during on-the-job training.[9] Recently, a few states have adopted innovative and far-reaching changes in the availability of these benefits.[10]

This article explores the types of benefits available throughout the United States to workers eligible for vocational rehabilitation by comparing and discussing the workers' compensation plans of Alaska and the other states, the Federal Employee's Compensation for Work Injuries Act ("FECWIA"),[11] and the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA").[12] The article also addresses the financing of vocational rehabilitation and the general benefits to society resulting from recent trends in the vocational aspects of workers' compensation laws. The article concludes by recommending ways to improve vocational rehabilitation systems.

II. WORKERS' COMPENSATION VOCATIONAL REHABILITATION

A. The Meaning of Disability

In all fifty states, statutes govern the award of benefits to workers who, in the course and scope of their employment, suffer injury or illness resulting in disability.[13] Definitions of disability vary from statute to statute. For example, the Alaska Workers' Compensation Act[14] defines "disability" as the "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."[15]

The concept of disability includes two separate but related components. The first of the components is medical or physical impairment as evidenced by serious disfigurement, loss of parts of the body, or by medical testimony that the injured employee cannot perform the exertions required by his former job.[16] The second component is wage loss, the inability to earn "suitable wages," defined as the wages that

9. *See, e.g.,* ALASKA STAT. § 23.30.045(c) (1984) (during on-the-job training, rehabilitation benefits paid from a special state fund); *see also* Dresser Indus. Inc./Atlas Div. v. Hiestand, 702 P.2d 244, 246 (Alaska 1985).

10. *See, e.g., Bignell,* 651 P.2d at 1168; Int'l Paper Co. v. Indus. Comm'n, 99 Ill. 2d 458, 459 N.E.2d 1353 (1984); Nat'l Tea Co. v. Indus. Comm'n, 97 Ill. 2d 424, 454 N.E.2d 672 (1983); Hunter Corp. v. Indus. Comm'n, 86 Ill. 2d 489, 427 N.E.2d 1247 (1981); ALASKA STAT. § 23.30.041 (1984); MINN. STAT. ANN. § 176.102 (West Supp. 1985); Walsh, *Employees' Claims for Concurrent Payment of Temporary Disability and Retraining Benefits,* 6 WM. MITCHELL L. REV. 731 (1980).

11. 5 U.S.C. §§ 8101-49 (1982) and 18 U.S.C. §§ 292, 1920-21 (1982).

12. 33 U.S.C. §§ 901-45, 947-50 (1978 & Supp. 1985).

13. *See generally* U.S. CHAMBER OF COMMERCE, ANALYSIS OF WORKERS' COMPENSATION LAWS (1983).

14. ALASKA STAT. §§ 23.30.005-.270 (1984 & Supp. 1985).

15. *Id.* § 23.30.265(10).

16. 2 A. LARSON, *supra* note 3, at § 57.11.

the employee was receiving at the time of the injury.[17] In each individual case, these components may independently affect the worker's eligibility for compensation. Professor Larson illustrates the difference between physical impairment and wage loss as follows:

> A claimant may be, in a medical sense, utterly shattered and ruined, but may by sheer determination and ingenuity contrive to make a living for himself; conversely, a claimant may be able to work, in both his and the doctor's opinion, but awareness of his injury may lead employers to refuse him employment. . . . An absolute insistence on medical disability in the abstract would produce a denial of compensation in the latter case, although the wage loss is as real and as directly traceable to the injury as in any other instance. At the other extreme, an insistence on wage loss as the test would deprive the claimant in the former illustration of an award, thus not only penalizing his laudable efforts to make the best of his misfortune but also fostering the absurdity of pronouncing a man nondisabled in spite of the unanimous contrary evidence of medical experts and of common observation. The proper balancing of the medical and the wage-loss factors is, then, the essence of the "disability" problem in workmen's compensation.[18]

B. The Definition of Vocational Rehabilitation

In the context of workers' compensation, vocational rehabilitation includes both physical restoration to minimize the worker's medical impairment and vocational restoration to minimize his wage loss. To be effective, the two must be accomplished together, enabling the injured worker to adapt to his specific disability so that he may maintain gainful employment.[19] Most authorities recognize vocational rehabilitation as a necessary and effective part of any workers' compensation program that seeks to fulfill its responsibility to the injured worker and to society.[20]

Within the workers' compensation system, vocational rehabilitation aims "to restore the industrially injured worker to a state of employability equal to, or as near as possible to that of his pre-injury

17. *See* ALASKA STAT. § 23.30.265(10) (1984). According to Professor Larson, the second component is *actual* wage loss, the inability to earn wages after the injury. 2 A. LARSON, *supra* note 3, at § 57.11.

18. 2 A. LARSON, *supra* note 3, at § 57.11; *see* Aikins v. Happy Hour, Inc., 209 Neb. 236, 239, 306 N.W.2d 914, 916-17 (1981) (noting that disability is defined in terms of employability and earning capacity with wage loss as only one indicator of loss of earning capacity); *In re* Livesay, 55 Or. App. 390, 394, 637 P.2d 1370, 1372 (1981) (permanent total disability may be based on a combination of medical and nonmedical conditions including age, education and conditions of the labor market).

19. *See* Note, *Rehabilitation Within the Workmen's Compensation Framework*, 19 RUTGERS L. REV. 401, 404 (1965).

20. Z. JACKSON, *supra* note 1, at 7-8.

status."[21] The Alaska statute recognizes that the purpose of vocational rehabilitation is the restoration of the disabled worker to "suitable gainful employment."[22] It establishes a hierarchy of goals, ranging from work in the same or similar occupation to work in an occupation requiring an academic achievement level different from that possessed by the worker at the time of his injury.[23]

Apart from economic considerations, the humanitarian purposes of workers' compensation legislation figure strongly in its vocational rehabilitation aspects. The Insurance Rehabilitation Study Group, an organization composed of members of the insurance industry, stated the purpose of vocational rehabilitation in a 1975 report:

> While insurance losses and benefits are usually stated in monetary terms, the full consequences of human disability cannot be measured by money alone. Earnings lost due to accident or sickness can be replaced and medical expenses can be reimbursed, but there is no meaningful way to financially translate the value of an arm or a leg, or the personal dignity of being able to contribute to society as a useful member rather than merely existing disabled and dependent. . . . If insurance is to protect against these human losses, it must do more than provide financial compensation alone. It must also strive to restore such losses. Insurance should provide the means for disabled workers to return to gainful employment whenever possible, and to regain as much functional independence as they can, even if they cannot return to work. Compensation cannot accomplish these goals without rehabilitation.[24]

The vocational rehabilitation counselor must start a disabled worker off in the direction of full recovery and also smooth the way for his return to the workplace:

> Mostly, a vocational counselor combats the disabled individual's fear of the unknown. Remember, that worker has gone from being independent to very dependent. And even though he usually doesn't like that very much, the trauma and insecurity caused by his accident plus a host of other factors can make him hold on to what he has left.
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> To get that man or woman to let go of his or her financial

21. *Id.* at 6. Vocational rehabilitation programs outside the context of workers' compensation tend to emphasize the severely disabled and the young, seeking to make them employable, often for the first time, through classroom or sheltered education. Workers' compensation, on the other hand, generally serves a clientele with existing valuable work skills and therefore tends not to be oriented toward the classroom. *Id.* at 7. A further distinction can be found in the fact that private industry generally bears the cost of workers' compensation vocational rehabilitation, while state and federal governments finance vocational rehabilitation programs not related to workers' compensation. *Id.*

22. *See* ALASKA STAT. § 23.30.041(e), (i) (1984).

23. *Id.* § 23.30.041(i).

24. Z. JACKSON, *supra* note 1, at 8 (quoting THE INSURANCE REHABILITATION STUDY GROUP).

> security blanket (a workers' compensation or long-term disability check) and abandon all his supporters to go out into the cold, cruel world again, perhaps even to start a new career—that takes training and experience and a deep understanding of human motivation. In practice, it's fairly sophisticated. But basically a good counselor takes careful aim with his boot and provides a pretty hefty nudge.[25]

According to one commentator, the most frequent and well founded criticism of modern workers' compensation is that it creates an impediment to the worker's restoration.[26] Other commentators have found that workers' compensation provides neither adequate nor timely rehabilitation services.[27] According to Professor Larson, while ten percent of the two million workers injured each year could benefit from rehabilitation, only three percent receive the kind of services they really need.[28]

Vocational rehabilitation involves more than post-accident care. To be effective, the process of rehabilitation must begin before the emergency arises. "Rehabilitation must begin with an employment climate that reassures each employee that in the event of a work injury he will be given as fair and as sympathetic consideration for continuing employment or for re-employment as the circumstances will permit."[29] Effective vocational rehabilitation thus depends on a positive societal attitude toward the role of the disabled and handicapped in the workplace. This attitude must be reflected in the employer's ability to create confidence among his workers that worthwhile employment opportunities will exist after possible accidents.

C. A Brief History of Vocational Rehabilitation

While vocational rehabilitation has received increased attention in the past decade, both physical and vocational rehabilitation have been associated with workers' compensation programs since such programs began seventy years ago.[30] Workers' compensation laws arose

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25. Lauterbach, *Coaching the Disabled Back to Work,* INDUSTRY WEEK, April 5, 1982, at 52, 55 (quoting Dr. G. Berk Lynch II, vice president of Crawford Rehabilitation Services, Inc., Atlanta, Ga.). *See also* M. BERKOWITZ, WORK DISINCENTIVES AND REHABILITATION (1980).

26. E. CHEIT, INJURY AND RECOVERY IN THE COURSE OF EMPLOYMENT 284 (1961).

27. *See* Z. JACKSON, *supra* note 1, at 1; NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS 20-22 (1972) [hereinafter cited as NATIONAL COMMISSION].

28. 2 A. LARSON, *supra* note 3, § 61.21.

29. Sterner, *The Rehabilitation of Injured Employees,* 1963 A.B.C. SEC. OF INS., NEGL. & COMPENSATION L. 243, 248 (1963).

30. *See* I. SANCHEZ, E. WORKMAN, C. MORRIS, J. MILLER & M. EDELSTEIN, THE CALIFORNIA WORKERS' COMPENSATION REHABILITATION SYSTEM 6 (1981) [hereinafter cited as CALIFORNIA REHABILITATION SYSTEM]; INDUSTRIAL INDEM-

as an alternative to ineffective common law rules that supplied little relief to the injured worker.[31] The employer liability statutes that evolved in the mid-nineteenth century were the precursors of modern workers' compensation statutes. These laws restricted the employer's use of common law defenses such as contributory negligence, the fellow-servant doctrine, and assumption of risk. Under these laws, however, the worker still had to prove that his injuries were due to his employer's negligence. The complexities of the workplace and the reluctance of fellow workers to testify against their employer often made this task quite difficult to accomplish. In order to provide injured workers with adequate, prompt, and guaranteed payments for medical care and wage loss, while at the same time limiting the employer's financial liability, legislatures incorporated the principle of employer liability without fault into the framework of workers' compensation. This radical departure from the common law and the employer liability laws acknowledged that compensation for work-related accidents is a cost of production: the costs of work-related injuries were to be allocated to the employer, not because of any presumption that he was to blame for every individual tragedy, but because of the inherent hazards of industrial employment.[32]

Many of the early advocates of workers' compensation legislation looked to the origin of vocational rehabilitation when formulating their own programs.[33] Zee P. Jackson, in her study of the Alaska program, traces the origins of vocational rehabilitation programs in the United States to 1914, when a member of the Massachusetts Industrial Accident Board traveled to Germany to study its seminal vocational rehabilitation program. Following the study and a meeting in 1916 of the International Association of Industrial Accident Boards and Commissions, Massachusetts enacted the first state vocational rehabilitation law in 1918.[34] This law authorized the Massachusetts Board of Education to retrain victims of industrial accidents and diseases.[35]

Several states followed Massachusetts' lead.[36] Recognizing that the rehabilitation of disabled workers was a primary goal of workers' compensation, the California Industrial Accident Commission noted in a 1919 report that:

> If a man cannot work, he cannot live. If he can but half work, he

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NITY CO., VOCATIONAL REHABILITATION: ADDED HOPE FOR INJURED WORKERS, INSURER, Pub. No. 83-A (1983).

31. For a general history, *see* Epstein, *The Historical Origins and Economic Structure of Workers' Compensation Law,* 16 GA. L. REV. 775 (1982).

32. *See id.*

33. CALIFORNIA REHABILITATION SYSTEM, *supra* note 30, at 6.

34. Z. JACKSON, *supra* note 1, at 6; M. BERKOWITZ, *supra* note 25, at 16.

35. *Id.*

36. *See* Z. JACKSON, *supra* note 1, at 6.

> can but half live. The mills of our industries have ground off his arms, or hands, or legs, or feet, or put out his eyes. But there is a practical and easy solution to the problem of his rehabilitation. The solution is not a pension. He does not ask that. The offer of a pension would be a moral crime. He asks simply a new industrial chance through industrial re-education. . . . To this he is entitled by our industrial prosperity achieved, in part, at his expense. To this he is entitled by the very humanity of the age.[37]

That same year, California established a special fund for the rehabilitation of injured workers.[38]

During the following year, Congress passed the Vocational Rehabilitation Act of 1920,[39] which established the federal/state vocational rehabilitation program. Within the next eighteen months, thirty-four states passed the vocational rehabilitation legislation necessary to obtain federal funds under the Act.[40] These funds were made available to the states through the Federal Board of Education on a matching basis with the state and federal governments each supplying one-half of the funding.[41] While the Vocational Rehabilitation Act of 1920 focused on the needs of the industrially injured worker, subsequent federal legislation emphasized different aspects of vocational rehabilitation.[42]

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37. E. CHEIT, *supra* note 26, at 282 (quoting CALIFORNIA INDUSTRIAL ACCIDENT COMM'N, REPORT ON SPECIAL INVESTIGATIONS OF SERIOUS PERMANENT INJURIES (1914-1918) (1919)).

38. E. CHEIT, *supra* note 26, at 282.

39. Ch. 219, 41 Stat. 735 (formerly codified as amended at 29 U.S.C. §§ 31-42b (repealed 1973)); for current provisions on federal/state vocational rehabilitation, see 29 U.S.C. §§ 701-796i (1976 & Supp. V 1981).

40. CALIFORNIA REHABILITATION SYSTEM, *supra* note 30, at 6-7.

41. *Id.*

42. For example, the 1936 Randolph-Sheppard Act authorized the establishment of vending stands operated by the blind in public buildings. Ch. 638, 49 Stat. 1559 (1936) (codified as amended at 20 U.S.C. §§ 107-107f (1982)).

The Vocational Rehabilitation Act of 1954 dramatically increased federal/state funding for vocational rehabilitation. It also financed additional research and training programs and provided funding for the building or remodeling of rehabilitation facilities. Ch. 655, 68 Stat. 662 (1954) (formerly codified as amended at 29 U.S.C. §§ 31-42(b) (repealed 1973)).

The Rehabilitation Act of 1973, replacing the Vocational Rehabilitation Act of 1920, forbids discrimination in employment and advancement on the basis of disability by business and industry receiving federal funds. Pub. L. No. 93-112, 87 Stat. 357, 390 (codified as amended at 29 U.S.C. §§ 701-796i) (1976 & Supp. V 1981)). Section 503, 29 U.S.C. § 793 (1976 & Supp. V 1981), requires companies receiving over $2,500 in federal government contracts—approximately half of all businesses in the United States—to actively recruit disabled employees. L. BRUCK, ACCESS: THE GUIDE TO A BETTER LIFE FOR DISABLED AMERICANS 43 (1978). Goods and services that employers may provide to disabled workers under the Act include evaluation of rehabilitation potential; counseling, guidance, referral, and placement; vocational training; physical and mental restoration services; maintenance; interpretive services for the

By the 1970's, the private vocational rehabilitation services industry had grown tremendously. State legislatures had gradually expanded available compensation benefits, causing outgoing payments to soar more than 400 percent between 1970 and 1976.[43] Since that time, benefit costs have continued to climb steadily. According to one estimate, the private sector's annual assessment for private compensation insurance coverage increased from $3.5 billion in 1970 to $15.3 billion in 1980.[44] These figures do not include costs absorbed by the growing number of self-insured companies, nor do they include the premiums paid into state-administered workers' compensation insurance funds.[45] In an effort to reduce premiums paid to such state funds, some employers have increased their utilization of private rehabilitation programs.[46]

Budget cuts in the 1980's also induced growth in private rehabilitation services by forcing state agencies to focus almost exclusively on the catastrophically injured and the poor. With this loss of state aid, private agency services have been needed to accomplish vocational rehabilitation in workers' compensation cases.[47]

Third, employers have often become frustrated with state agencies that operate under the federal mandate to maximize the potential of all disabled persons. Some employers perceive this general mandate as antagonistic to their goal of restoring the worker to the workplace as quickly and as inexpensively as possible. To further that goal, these employers increasingly utilize private rehabilitation services.[48]

Despite the many gains in workers' compensation programs and vocational rehabilitation made in the recent past, the National Commission on State Workmens' Compensation Laws observed in 1972 that "the basic principles of the present program are largely those established 50 or 60 years ago," and cautioned that those principles "can be completely understood only in the context of the forces present at their creation."[49] While the basic principles underlying the programs may have remained fairly constant, the environment in which they are now expected to operate has become increasingly complex. Technical advances have produced new and often indeterminable physical and

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deaf and reader services for the blind; recruitment and training services; rehabilitation teaching services; occupational licenses, tools, equipment, initial stocks and supplies; transportation in connection with vocational rehabilitation; and technological aids and devices. 29 U.S.C. § 723 (1982).

43. LAUTERBACH, *supra* note 25, at 54.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. NATIONAL COMMISSION, *supra* note 27, at 35.

toxic hazards for employees. Furthermore, the medical profession's improved understanding of the various factors that cause certain diseases and injuries has led to an increase in the number of diseases and injuries considered to be work-related. After reviewing the current state of the workers' compensation system, the National Commission reported several problems, most notably the system's failure either to provide for compensation reflective of rising wage levels, or to reduce the amount of litigation associated with workers' compensation claims.[50]

The National Commission also found significant problems in the systems designed to deliver vocational rehabilitation to injured workers. In its report the National Commission stated, "Vocational guidance and instruction services are spotty and placement services for rehabilitated workers are generally inadequate."[51] The author of a 1982 study of the Alaska program also concluded that the Alaska delivery system was "not providing timely and adequate rehabilitation services to a substantial number of those injured workers who could benefit from them."[52] If industrially-disabled workers are to gain a meaningful position in the work force, the system surely must improve the availability and practicality of vocational rehabilitation for those who require it.

III. PHILOSOPHY OF VOCATIONAL REHABILITATION

Vocational rehabilitation within the framework of workers' compensation generally aims to restore the industrially-injured worker to suitable gainful employment in the shortest time possible. Still, state legislatures and courts differ greatly in their expressions of the philosophy behind, and purpose of, workers' compensation vocational rehabilitation. These differences, in turn, affect both the foundation eligibility criteria and the consequences of a refusal of benefits under these criteria.

A. The Purposes and Goals of Workers' Compensation Vocational Rehabilitation

Several basic views of vocational rehabilitation permeate workers' compensation law. First, commentators have stressed the humanitarian nature of workers' compensation and vocational rehabilitation. For example, Zee P. Jackson recognizes that one of the "underlying concepts" of vocational rehabilitation is the preservation of "the intrinsic dignity of man, his feeling of self-worth and his right to life,

50. *Id.*
51. *Id.* at 20.
52. Z. JACKSON, *supra* note 1, at 1.

liberty and the pursuit of happiness."[53] Similarly, the National Commission on State Workmen's Compensation Laws acknowledges that "[t]he worker's feeling of worth and well-being is a legitimate concern."[54]

A second tenet of vocational rehabilitation prevalent in workers' compensation law revolves around the economic considerations at stake. All state workers' compensation statutes that contain a policy statement on the purpose of vocational rehabilitation recognize the primary purpose as restoring the worker to gainful employment.[55] The Minnesota statute specifically provides:

> Rehabilitation is intended to restore the injured employee, through physical and vocational rehabilitation, so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.[56]

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53. *Id.* at 7.

54. NATIONAL COMMISSION, *supra* note 27, at 39.

55. IDAHO CODE § 72-501A (Supp. 1985); KAN. STAT. ANN. § 44-510g (1981); KY. REV. STAT. § 342.710(a) (Supp. 1984); ME. REV. STAT. ANN. tit. 39, § 81 (Supp. 1985); MINN. STAT. ANN. § 176.102(1) (West Supp. 1985); NEB. REV. STAT. § 48-162.01(1) (1984); NEV. REV. STAT. § 616.222 (1985); N.D. CENT. CODE § 65-05.1-01 (1985); OR. REV. STAT. § 656.268(1) (1983); R.I. GEN. LAWS § 28-33-41 (Supp. 1985); WASH. REV. CODE § 51.32.095(1) (Supp. 1986); WIS. STAT. ANN. § 102.42(9)(a) (West Supp. 1985).

56. MINN. STAT. ANN. § 176.102(1) (West Supp. 1985).

Nevada law states that rehabilitation may be ordered "[t]o aid in returning an injured employee to work or to assist in lessening or removing any resulting handicap." NEV. REV. STAT. § 616.222 (1985).

North Dakota's statute reads the most broadly, providing services "so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation." N.D. CENT. CODE § 65-05.1-01 (1985).

In Oregon, the relevant statute provides that one purpose of workers' compensation "is to restore the injured worker as soon as possible and as near as possible to a condition of self support and maintenance as an able-bodied worker." OR. REV. STAT. § 656.268(1) (1983). *See* Firkus v. Alder Creek Lumber, 48 Or. App. 251, 257, 617 P.2d 620, 623 (1980).

Rhode Island law provides, "The department of labor, division of workers' compensation and the workers' compensation commission shall expedite the rehabilitation of and the return to remunerative employment of all disabled employees . . . ." R.I. GEN. LAWS § 28-33-41 (Supp. 1985). The Rhode Island statute further provides that "rehabilitative services shall be appropriate to the needs and capabilities of injured workers." *Id.*

As another example, the Nebraska Workmen's Compensation Act provides for vocational rehabilitation services when a worker is "unable to perform work for which he has previous training or experience."[57] In a separate section, the statute imposes penalties upon an employer who refuses without reasonable cause to undertake vocational rehabilitation that is in the "best interests" of the worker and that will increase his earning capacity.[58] The Nebraska Supreme Court, in *Sidel v. Travelers Insurance Co.*,[59] extrapolating from this "best interests" standard, held that the state Workmen's Compensation Court may order vocational rehabilitation whenever a worker has suffered a reduction in earning power because of a compensable injury and vocational rehabilitation will increase his earning capacity.[60]

While not discounting the importance of the humanitarian aspects of returning a worker to employment, Zee P. Jackson's economic analysis of Alaska vocational rehabilitation stresses considerations of efficiency:

> The timely return of an industrially injured worker to a safe employment status, commensurate with that held at the time of injury, through the investment of necessary resources, is a logical goal in a workers' compensation program. The end result is an economic as well as a social asset to the injured worker, the compensation system and society. Well-managed, cost-effective rehabilitation will enable many disabled workers to return to productive jobs and thus reduce compensation costs.[61]

While the extensive vocational rehabilitation required in special circumstances may be quite costly, the typical case involves an expenditure of only $1,200 to $1,800.[62] Several factors mitigate the overall cost of vocational rehabilitation. Because rehabilitation reduces the length of temporary disability, it speeds the worker's return to employment and consequently ends his need for compensation. Additionally, employers in a position to rehire a disabled employee regain a loyal, experienced worker and generate good will for their business.[63] Some reports have shown that employers consistently save between ten and eleven dollars for every dollar spent on rehabilitation.[64]

A third view of vocational rehabilitation is as an insurance pro-

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57. NEB. REV. STAT. § 48-162.01(3) (1984).
58. *Id.* § 48-162.01(6).
59. 205 Neb. 541, 288 N.W.2d 482 (1980).
60. *Id.* at 549, 288 N.W.2d at 486.
61. Z. JACKSON, *supra* note 1, at 7; *see also* Shasta Convalescent Hosp. v. Workers' Compensation Appeals Bd., 132 Cal. App. 3d 997, 1001, 183 Cal. Rptr. 602, 603 (1982) (purpose of rehabilitation is to return injured employee to gainful employment as soon as practicable and as close as possible to maximum self-support).
62. LAUTERBACH, *supra* note 25, at 55.
63. *See id.* at 53-54.
64. *Id.* at 53.

gram providing compensation for work-related accidents or illnesses.[65] Commentators taking this position analyze the scope of the "insurance coverage" to determine the type and extent of benefits available. This view of workers' compensation as a cash indemnity or insurance program, however, fails to recognize that an employee's disability can have a tremendous overall impact on the employee's family and financial outlook. As the National Commission on State Workmen's Compensation Laws noted,

> [t]oo often workers' compensation is viewed simply as a cash indemnity to pay the worker for loss of earnings or impairment or both. The cash benefits are important, but equally so are medical care and rehabilitation services. The objectives of workmen's compensation include repair of the damage both to the earning capacity and the physical condition of the workers.[66]

As a fourth philosophy of vocational rehabilitation, some commentators simply characterize rehabilitation as a form of restitution owed the injured worker. "[S]ince it was an industrial injury which necessitated his removal from a job, restitution is not complete until the worker is returned to a job."[67]

Finally, and in contrast to the fourth view, the Alaska Supreme Court has described vocational rehabilitation as a method by which an employee mitigates the damages owed him by his employer. In *Bignell v. Wise Mechanical Contractors,*[68] the court wrote that, just as the law generally requires an injured employee to submit to reasonable medical treatment, "[t]here is no reason why a similar rule should not apply to mitigation through vocational rehabilitation."[69]

B. Eligibility for Vocational Rehabilitation Benefits

Most state laws entitle a worker to vocational rehabilitation benefits if he has suffered a permanent injury or illness in the course of his employment that prevents him from performing work for which he has previous training or experience.[70] Therefore, the factors to be con-

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65. *See* Note, *supra* note 19, at 401.

66. NATIONAL COMMISSION, *supra* note 27, at 38.

67. Note, *Eligibility for Vocational Rehabilitation Under the Maine Workers' Compensation Act: Troubling New Standards,* 32 ME. L. REV. 237, 261 (1980) (footnote omitted).

68. 651 P.2d 1163 (Alaska 1982).

69. *Id.* at 1168; *see also* Kalevas v. J.H. Williams & Co., 27 A.D.2d 22, 23-24, 275 N.Y.S.2d 546, 548 (1966), *aff'd,* 20 N.Y.2d 812, 231 N.E.2d 290, 284 N.Y.S.2d 704 (1967) (recognizing considerable logic in requiring a compensation claimant to mitigate his damages by doing all in his power to obtain work, but refusing to require submission to rehabilitation as a precondition to compensation); Leedy v. Knox, 34 Or. App. 911, 581 P.2d 530, 535 (1978) (recognizing that worker's permanent disability award is subject to modification upon completion of rehabilitation program).

70. *See, e.g.,* Camp v. Blount Bros. Corp., 195 Neb. 459, 465, 238 N.W.2d 634,

sidered in assessing eligibility for benefits include the nature of the worker's physical disability and the degree of impairment of his wage-earning capacity. It is intuitively obvious that a third factor to be considered is the feasibility of the worker's proposed vocational rehabilitation plan.

1. *The Nature of the Worker's Physical Disability.* Generally speaking, in order to qualify him for rehabilitation, the injury or illness suffered by the worker must lead, or be likely to lead, to permanent disability.[71] For example, in *Timberline Sawmill & Lumber v. Industrial Commission,*[72] a Colorado court of appeals held that where implicit in the Commission's finding on a workmen's compensation claim is the conclusion that a worker is permanently disabled as a result of his injury, vocational rehabilitation is to be made available. This aid must be provided even though the worker has not yet asserted a claim for permanent partial disability.

Other than the requirement of permanent disability, most statutes do not base eligibility for rehabilitation on the type of injury or illness suffered by the worker. There are, however, exceptions to the general rule. South Carolina, for example, limits the availability of vocational rehabilitation to employees suffering from ionizing radiation injury.[73]

2. *Impairment of the Worker's Wage-Earning Capacity.* After finding that an employee is likely to suffer permanent disability, the next step in deciding whether an employee is eligible for vocational rehabilitation is determining whether the employee's wage-earning capacity has diminished to the point that he should pursue vocational rehabilitation. Proper measurement of wage-earning capacity should focus not only on the amounts previously earned, but on the career or employment opportunities the employee has lost by virtue of his disability.

A substantial number of states focus on the injured worker's inability to earn pre-injury wages in determining rehabilitation eligibility. For example, a Florida district court of appeals, in *Walker v. New Fern Restorium,*[74] noted that "Ordinarily, rehabilitation should be

638 (1976) (injured worker is entitled to vocational rehabilitation services, including retraining and job placement as may be necessary to restore him to suitable employment); Behrens v. Ken Corp., 191 Neb. 625, 627, 216 N.W.2d 733, 735 (1974); Wilson v. Lewis, 273 S.E.2d 96 (W. Va. 1980).

71. *See, e.g.,* ALASKA STAT. § 23.30.041(c) (1984); HAW. REV. STAT. § 386-25(a) (Supp. 1984); IDAHO CODE § 72-450 (Supp. 1985); IOWA CODE ANN. § 85.70 (West 1984).

72. 624 P.2d 367 (Colo. Ct. App. 1981).

73. S.C. CODE ANN. § 42-13-90 (Law. Co-op. 1976).

74. 409 So. 2d 1201 (Fla. Dist. Ct. App. 1982).

provided voluntarily by the employer or carrier when the injured employee is no longer able to earn pre-injury wages."[75] The Colorado workers' compensation statute requires that before providing vocational rehabilitation benefits, a claimant's injury must preclude him from performing any work for which he has previous training.[76] In *Timberline Sawmill,* a Colorado court of appeals construed this requirement as not to include all work, but merely work that pays nearly as well as the work from which the claimant was precluded by his injury.[77] This view that the injured worker is entitled to vocational rehabilitation benefits when unable to continue working at a simlar wage level is shared by several other states.

In the Illinois case of *Hunter Corp. v. Industrial Commission,*[78] an employer argued that while the claimant could no longer work as a journeyman pipefitter, he could market his knowledge and abilities in antique dealing and wood carving and thus eliminate the need for vocational rehabilitation. The Illinois Supreme Court disagreed that the potential alternative employment absolutely obviated the need for rehabilitation:

> That one is able to generate some income through an activity does not of itself permit a conclusion that one can support oneself by that activity. The record shows that the claimant's interest in collectibles may be characterized as a hobby rather than as an activity through which the claimant is supporting himself.[79]

The Illinois Supreme Court observed, however, that vocational rehabilitation need not automatically restore all claimants to their pre-injury economic status. In some cases pre-injury earnings might be unrepresentatively high. On the other hand, the court noted that an injured employee who had earned subsistence level wages prior to his injury should not be restricted to that amount.[80]

3. *Post Rehabilitation Potential Under An Appropriate Plan.* Finally, even though a claimant is otherwise eligible for vocational reha-

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75. *Id.* at 1204; *see also* City of Miami v. Simpson, 459 So.2d 326 (Fla. Dist. Ct. App. 1984).

76. COLO. REV. STAT. § 8-49-101(4) (Supp. 1985).

77. 624 P.2d 367 (Colo. Ct. App. 1981).

78. 86 Ill. 2d 489, 427 N.E.2d 1247 (1981).

79. *Id.* at 497, 427 N.E.2d at 1250-51.

80. *Id.* at 498, 427 N.E.2d at 1251. In contrast to the approach discussed above, the Maine Supreme Court had severely restricted the availability of vocational rehabilitation under its former vocational rehabilitation provisions by adopting a conservative approach that insisted on a worker's total or near total disability before he was eligible for rehabilitation aid. *See* McInnis v. Town of Bar Harbor, 381 A.2d 739 (Me. 1978); Lancaster v. Cooper Indus., 387 A.2d 5 (Me. 1978). It is not clear how these cases are affected by the state's new vocational rehabilitation provisions. *See* ME. REV. STAT. ANN. §§ 81-90 (Supp. 1985).

bilitation, he must proffer an acceptable plan of rehabilitation prior to receipt of any aid.[81] Usually the worker must obtain administrative approval of the plan he suggests before it can become effective.[82] This approval often depends on such factors as (1) the cost of the plan, (2) the length of time required to complete the plan, (3) the prospects of employment upon completion of the plan, and (4) the worker's prospects for successfully completing the plan.[83]

An example should demonstrate the potential interaction of these factors. In *Bishop v. Town of Barre,*[84] the claimant submitted a vocational rehabilitation plan under which he would receive $2,695 to establish a small livestock business. This venture would have yielded an estimated $200 annually. The Vermont Supreme Court upheld the Labor Commissioner's denial of the plan on the grounds that its return was insufficient to qualify the operation of the business as "suitable employment."[85]

C. Penalties for Refusing to Participate in Vocational Rehabilitation

Many jurisdictions provide that a claimant's refusal to participate in vocational rehabilitation results in the forfeiture of his disability compensation throughout the period of refusal.[86] This is the case in Alaska.[87] Other states may only suspend or reduce the amount of the payments during the period of the worker's non-participation.[88] Some states, however, make these reductions in compensation difficult for an employer to obtain. For example, in Louisiana, the employer must show by clear and convincing evidence that the claimant's continuing disability is due to his willful and unreasonable failure to undergo vocational rehabilitation.[89]

Other states do not reduce benefits for non-participation in vocational rehabilitation. In Colorado, if a worker withdraws from a vocational rehabilitation program, the amount of any permanent partial disability benefits he ultimately receives will be calculated as though

81. *See, e.g.,* ALASKA STAT. § 23.30.041(f) (1984); *see also infra* notes 214-20 and accompanying text.

82. *See, e.g.,* ALASKA STAT. § 23.30.041(f) (1984).

83. *See, e.g., infra* note 209 and accompanying text.

84. 140 Vt. 564, 442 A.2d 50 (1982).

85. *Id.* at 578, 442 A.2d at 57.

86. *See, e.g.,* Wilmington Hous. Auth. v. Gonzales, 333 A.2d 172 (Del. Super. Ct. 1975).

87. ALASKA STAT. § 23.30.041 (1984).

88. *See, e.g.,* KY. REV. STAT. §§ 342.710, .715 (1983).

89. American Home Assur. Co. v. Johnson, 373 So.2d 742, 744 (La. Ct. App. 1979).

he had successfully completed the program.[90] Similarly, in Oklahoma, a worker's refusal to participate in a vocational rehabilitation program does not lead to any reduction in his benefits.[91]

IV. VOCATIONAL REHABILITATION BENEFITS

A. Type and Scope of Vocational Rehabilitation Benefits and Compensation

In order to promote the vocational rehabilitation of workers who are unable to return to suitable gainful employment as a result of work-related injuries or illnesses, workers' compensation statutes provide various benefits. These benefits typically include the following: evaluations, services, and job placement opportunities, as well as compensation for disability and other supplemental benefits.[92]

Along with the benefits typically provided, injured workers often need additional special benefits during the rehabilitation process. A worker who pursues vocational rehabilitation will likely have extra expenses that might include transportation, tuition, tools, special clothing and uniforms, books, supplies, occupational and professional license fees, and, if the rehabilitation program requires the worker to live away from home, room and board.

For vocational rehabilitation to be successful, the benefits provided must permit an injured worker to concentrate and focus on his program free from unnecessary financial and other distractions. To this end, enough money must be provided to the worker during the vocational rehabilitation period to cover his expenses for such essentials as groceries and rent, so that the worker need not feel guilty for imposing a financial burden on his family. Moreover, many workers undergoing vocational rehabilitation may need counseling services because they often develop a deep fear of returning to work in a new occupation. For example, a worker in rehabilitation may fear the prospect of irregular or marginal employment, his own potentially inadequate job performance, and rejection by employers, fellow workers, customers, or others.

Incentives may also be necessary to encourage the worker to give up the relative economic security provided by the variety of governmental income supplements available to him in addition to workers' compensation, in exchange for the uncertainties associated with em-

90. COLO. REV. STAT. § 8-49-101(5) (Supp. 1985). *See* Oller v. Champion Parts Rebuilders, Inc., 635 S.W.2d 276 (Ark. Ct. App. 1982); Kalevas v. J.H. Williams & Co., 27 A.D. 2d 22, 275 N.Y.S.2d 546 (1966), *aff'd,* 20 N.Y.2d 812, 231 N.E.2d 290, 284 N.Y.S.2d 704 (1967).

91. OKLA. STAT. ANN. tit. 85, § 16(A) (West Supp. 1985).

92. *See, e.g.,* MINN. STAT. ANN. § 176.102 (West Supp. 1985); N.M. STAT. ANN. § 52-1-50 (Supp. 1983).

ployment in a new field. The availability of food stamps, medical and legal aid for the poor, Aid to Families with Dependent Children, Social Security Disability Insurance, and a host of other benefits, both public and private, may very well remove much of the relevant economic advantages of returning to work and so undercut the motivation necessary for a worker to successfully pursue vocational rehabilitation. Providing benefits during rehabilitation may serve to counter this motivational drain.

A comprehensive workers' compensation vocational rehabiliation plan should provide all of the benefits mentioned above. A number of statutes extend the above list by providing additional innovative benefits that are either designed to assist the worker directly or to encourage employers to rehire their injured workers or to hire the disabled.[93] Newly-hired disabled workers may particularly need these additional incentives because of the potentially difficult and lengthy adjustment periods they may face. Employers, too, may need special incentives to encourage them to make the substantial job modifications that the employment of disabled workers may require. To the extent that such incentives are available, they will greatly enhance a vocational rehabilitation program's chances of success.[94]

B. Disability Compensation During Vocational Rehabilitation

In order to provide the financial security necessary to enable an injured worker to concentrate on his rehabilitation, some statutes provide compensation for a worker during vocational rehabilitation. Where provided, this compensation usually takes the form of disability compensation.

Typically, disability compensation takes one of two forms. The first is temporary disability compensation, which provides compensation to workers suffering injuries of a temporary nature. It is sometimes subdivided into temporary total disability compensation and temporary partial disability compensation, depending on whether the worker is totally or partially disabled. The second general type of aid is permanent disability compensation, which provides compensation to workers suffering injuries of a more lasting nature. This form of compensation may also be divided into permanent total disability compensation and permanent partial disability compensation.

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93. *See infra* notes 195-203 and accompanying text.

94. A number of social factors must also be taken into account when fashioning benefit programs. As Levitan and Taggart have pointed out, a disproportionate number of the work-disabled have complicated mental or physical problems that are compounded by limited education, limited work experience, other employment impairment, or socio-economic considerations. Levitan & Taggart, *Employment Problems of Disabled Persons,* 100 MONTHLY LAB. REV. 3 (1977).

Some statutes do not provide any disability compensation to injured workers during vocational rehabilitation, while some provide one or more types or subdivisions of disability compensation. The various state and federal schemes are discussed below.

1. *Temporary Disability Compensation Not Provided During Vocational Rehabilitation.* Many states provide injured workers temporary total or partial disability compensation only until the worker reaches a certain stage in his recovery or improvement in his medical condition. To the extent that the employee undergoes vocational rehabilitation before his medical condition improves to the level of this cut-off condition, he is compensated during vocational rehabilitation. In these states, however, after the worker reaches the cut-off condition he is not compensated at all despite the fact that he is still completing his vocational rehabilitation and thus is unlikely to be working. The worker must face vocational rehabilitation with the potential disadvantage of financial worries and concerns.

Currently twenty states cut off temporary disability compensation at a predetermined stage of medical condition or treatment, regardless of whether the worker is participating in a vocational rehabilitation program at that time.[95] Some of these states enforce this result by statute, some by case law.

In six states the temporary disability compensation ends when the injured worker achieves maximum medical recovery. These states are: Alabama,[96] Georgia,[97] Mississippi,[98] South Carolina,[99] Tennessee,[100] and Virginia.[101] Alabama, however, will allow the injured worker permanent disability compensation under certain circumstances discussed later in this article.[102] Therefore, not all Alabama injured workers are denied all compensation during their vocational rehabilitation even if they reach maximum medical recovery during their rehabilitation periods.

Other states use cut-off stages similar to the maximum medical recovery scheme. New Mexico terminates temporary disability compensation when the injured worker reaches a static or stationary con-

95. *See infra* notes 96-123 and accompanying text.

96. Floyd v. Hous. Auth., 397 So.2d 136 (Ala. Civ. App.), *cert. denied,* 397 So.2d 139 (Ala. 1981).

97. Nance v. Argonaut Ins. Co., 143 Ga. App. 537, 239 S.E.2d 156 (1977).

98. MISS. CODE ANN. § 71-3-17 (1972 & Supp. 1985). *See* Azwell v. Franklin Assoc., 374 So.2d 766 (Miss. 1979).

99. Burns v. Joyner, 264 S.C. 207, 213 S.E.2d 734 (1975).

100. Brown Shoe Co. v. Pipes, 581 S.W.2d 140 (Tenn. 1979).

101. County of Spotsylvania v. Hart, 218 Va. 565, 238 S.E.2d 813 (1977).

102. *See infra* notes 146-47 and accompanying text.

dition.[103] Compensation is cut off in Montana[104] and New Hampshire[105] when the injured worker achieves medical stability. Temporary disability compensation terminates in Delaware when the injured worker's medical condition becomes fixed,[106] in Indiana when the worker reaches a permanent and quiescent state of medical condition,[107] and in Arizona when the injured worker reaches a stationary physical condition.[108]

Using a different approach, Nevada provides that compensation for "temporary total disability ceases when any physician or chiropractor determines that the employee is capable of any gainful employment."[109] Similarly, the Wyoming statute provides, "As soon as the recovery is so complete that the earning power of the employee at a gainful occupation for which he is reasonably suited by experience or training, is substantially restored, the [temporary total disability] payment shall cease."[110]

Arkansas courts have held that under that state's workers' compensation program, benefits for temporary disability cease at the beginning of the vocational rehabilitation period. In *Model Laundry & Dry Cleaning v. Simmons,*[111] the Arkansas Workers' Compensation Commission had found that an injured worker should receive rehabilitation payments at the statutory rate of temporary partial disability payments. The Arkansas Court of Appeals reversed, however, finding no necessary connection between statutory provisions concerning temporary disability[112] and provisions[113] providing rehabilitation benefits.[114] Similarly, in *Ryan v. NAPA,*[115] the Arkansas Court of Appeals held that where a claimant is entitled to permanent partial disability benefits, the payment of such benefits must be suspended during

103. Lane v. Levi Strauss & Co., 92 N.M. 504, 590 P.2d 652 (Ct. App. 1979).

104. MONT. CODE ANN. § 37-71-116(12), (13) (1981); Anderson v. Carlsons Transp., 178 Mont. 290, 583 P.2d 440 (1978).

105. Dodier v. State Dep't of Labor, 117 N.H. 315, 373 A.2d 341 (1977).

106. Pusey v. Natkins & Co., 428 A.2d 1155, 1157 (Del. 1981).

107. Allen v. United Tele. Co., 168 Ind. App. 696, 345 N.E.2d 261 (1976).

108. ARIZ. REV. STAT. ANN. §§ 23-1044(F), -1047(A) (1983); Cleator v. Indus. Comm'n, 129 Ariz. 179, 629 P.2d 1015 (Ct. App. 1981).

109. NEV. REV. STAT. § 616.585(3) (1985).

110. WYO. STAT. § 27-12-402(b) (1983).

111. 596 S.W.2d 337 (Ark. Ct. App. 1980).

112. *See* ARK. STAT. ANN. § 81-1313(b) (1983), which provides for a payment to the employee who suffers partial disability resulting in a decrease of his average weekly wages. The payment is to be sixty-six and two-thirds percent of the difference between the employee's average weekly wage before the accident and his wage earning capacity after the injury. *Id.*

113. *Id.* § 81-1310(f) (Supp. 1985).

114. 596 S.W.2d at 339.

115. 598 S.W.2d 443 (Ark. Ct. App. 1980).

vocational rehabilitation.[116]

Five states — Missouri,[117] North Carolina,[118] Pennsylvania,[119] Utah,[120] and Vermont[121] — provide that temporary disability compensation is only available during an injured worker's healing process. When the worker is healed, the compensation ends. The Vermont decision in *Bishop v. Town of Barre,*[122] defined the end of the healing process as the time when the recovery process ends, or when the worker has achieved maximum possible restoration of his earning power.[123] Still, despite the impact that rehabilitation may exert on restoration of earning power, these states do not seem to perceive vocational rehabilitation to be a part of the healing process.

2. *Temporary Disability Compensation Provided During Vocational Rehabilitation.* Eight states provide that temporary disability compensation is available to the injured worker both during his medical recovery and afterward throughout his vocational rehabilitation period. The worker may receive either temporary partial disability or temporary total disability compensation. In effect, these eight states have decided that a worker has not fully recovered, and is still temporarily disabled, until he completes his rehabilitation.

In *Bignell v. Wise Mechanical Contractors,*[124] the Alaska Supreme Court, construing former Alaska statute section 23.30.191,[125] held that a worker with an unscheduled disability,[126] whose condition has stabilized medically, but who was still pursuing an approved vocational rehabilitation program, should continue to receive temporary disability benefits.[127] The Alaska Workers' Compensation Board later applied the *Bignell* holding to those cases involving scheduled disabilities, reasoning that the considerations that underlie the holding apply

116. *Id.* at 445.

117. MO. ANN. STAT. § 287.170(1) (Vernon Supp. 1986).

118. N.C. GEN. STAT. §§ 97-31 (1985).

119. 77 PA. CONS. STAT. ANN. § 513(25) (Purdon Supp. 1985).

120. UTAH CODE ANN. §§ 35-1-65, -67 (Supp. 1985).

121. Bishop v. Town of Barre, 140 Vt. 564, 442 A.2d 50 (1982).

122. *Id.*

123. *Id.* at 571, 442 A.2d at 52.

124. 651 P.2d 1163 (Alaska 1982).

125. ALASKA STAT. § 23.30.191 (repealed 1982). For current Alaska law concerning rehabilitation of injured workers, see ALASKA STAT. § 23.30.041 (1984). ALASKA STAT. § 23.30.041(g) (1984) provides that "Temporary disability under [ALASKA STAT. §§ 23.30.185 or 23.30.200] shall be paid throughout the rehabilitation process."

126. A "scheduled disability" in workers compensation law is a disability, such as the loss of an arm, for which a specific sum of money is payable by statute. BLACK'S LAW DICTIONARY 699 (Abridged 5th ed. 1983).

127. 651 P.2d at 1168.

with equal strength to scheduled disability cases.[128]

Consistent with the Alaska approach, the Illinois Supreme Court held in *Hunter Corp. v. Industrial Commission,*[129] that a claimant should continue to receive temporary disability benefits during vocational rehabilitation. Temporary disability compensation is necessary because "[u]ntil the claimant has completed a prescribed rehabilitation program, the issue of the extent of permanent disability cannot be determined."[130] And, of course, no permanent disability compensation can be awarded until the permanent disability is determined.

In Florida, the date of maximum medical recovery is artificially established as the date vocational rehabilitation is completed.[131] Temporary disability compensation, therefore, is available to the injured worker throughout his rehabilitation.

Oregon also provides temporary disability compensation throughout the vocational rehabilitation period. This compensation, however, is reduced by any sums that the injured worker earns while participating in the vocational rehabilitation.[132]

In Wisconsin, temporary disability compensation is available during vocational rehabilitation. When the injured worker, however, is temporarily unable to work only because of his participation in the rehabilitation, his compensation is limited to a forty week time period unless the administering agency finds additional training is necessary.[133]

The other states that provide temporary disability compensation benefits during vocational rehabilitation are Idaho,[134] Louisiana,[135] and Nebraska.[136]

3. *Only Temporary Total Disability Provided During Vocational Rehabilitation.* In addition to the schemes in the states just discussed, another nine statutory schemes provide some temporary disability compensation to the injured worker during his vocational rehabilitation. These states, however, only provide compensation for temporary total disabilities, and not for temporary partial disabilities. From the potential claimant's point of view, this scheme is clearly not as desira-

128. *See, e.g.,* Allphin v. Market Basket, Alaska Workers' Comp. Bd. No. 67-11-0011 (Feb. 25, 1983).

129. 86 Ill. 2d 489, 427 N.E.2d 1247 (1981).

130. *Id.* at 501, 427 N.E.2d at 1252.

131. FLA. STAT. §§ 440.15(2), .90(1) (West 1981 & Supp. 1983); Cenvill Communities, Inc. v. Brown, 409 So.2d 1147 (Fla. Dist. Ct. App. 1982).

132. OR. REV. STAT. § 656.268(1), (2), (5) (1983).

133. WIS. STAT. ANN. § 102.43(5) (West Supp. 1985).

134. IDAHO CODE § 72-450 (Supp. 1985).

135. LA. REV. STAT. § 23-1226(F) (West 1985).

136. NEB. REV. STAT. §§ 48-121(5), -162.01(4) (1984).

ble as one providing both types of compensation. Still, the schemes will provide some claimants with compensation during their rehabilitation that will allow them to concentrate more of their attention upon rehabilitation and less upon financial worries.

The states of California,[137] Hawaii,[138] Kansas,[139] Maryland,[140] South Dakota,[141] Washington,[142] and West Virginia[143] all provide temporary total disability compensation to injured workers during their vocational rehabilitation.

In effect, the Colorado statute also provides temporary total disability during vocational rehabilitation. The provision awards a weekly maintenance allowance to injured workers during their vocational rehabilitation. This allowance is equivalent in amount to the temporary total disability compensation the worker would receive were it not for the rehabilitation.[144]

The FECWIA provides temporary total disability compensation to injured workers, with increases in compensation for dependents of the worker, during vocational rehabilitation. This sum is reduced, however, in the amount of the employee's earnings during his rehabilitation, other than earnings from employment undertaken pursuant to the rehabilitation itself.[145]

4. *Permanent Disability Compensation Provided During Vocational Rehabilitation.* Five statutory schemes provide injured workers with permanent disability compensation during vocational rehabilitation.

Alabama somewhat ameliorates the hardship of not providing temporary disability compensation during vocational rehabilitation by providing permanent disability compensation under certain circumstances. The Alabama statute provides the worker with permanent partial disability compensation as soon as his injury has reached the point of medical stability regardless of his potential for vocational rehabilitation.[146] Under certain circumstances the statute also provides

137. CAL. LABOR CODE § 139.5 (West Supp. 1984).
138. HAWAII REV. STAT. § 386-25(c) (Supp. 1985).
139. KAN. STAT. ANN. § 44-510(g) (1981).
140. MD. ANN. CODE art. 101, § 36(a), (c) (Supp. 1983).
141. S.D. COMP. LAWS ANN. § 62-4-5.1 (1978).
142. WASH. REV. CODE § 51.32.095 (Supp. 1986).
143. W. VA. CODE § 23-4-9 (1981).
144. COLO. REV. STAT. § 8-49-101 (Supp. 1985).
145. 5 U.S.C. § 8104(b) (1982).
146. ALA. CODE § 25-5-57(a)(3) (Supp. 1985). For a discussion of the recognition that an injured worker is entitled to compensation during the "healing period" or time between the injury and the time of maximum medical recovery, see Goodyear Tire & Rubber Co. v. Bradley, 473 So. 2d 514 (Ala. Civ. App. 1985); Butler v. Moretti-Harrah Marble Co., 431 So. 2d 1291 (Ala. Civ. App. 1983); Defence Ordinance Corp. v. England, 52 Ala. App. 565, 295 So. 2d 419 (Civ. App. 1974).

permanent total disability compensation regardless of the potential for vocational rehabilitation. The statute defines permanent total disability as "[t]he total and permanent loss of sight of both eyes, or the loss of both arms or shoulders, or any physical injury or mental impairment resulting from an accident which . . . permanently and totally incapacitates the employee from working at or being retrained for gainful employment."[147] Thus, where the worker's condition has reached medical stability, and he is at present totally disabled but it is uncertain whether his injury is permanent, the worker may be able to obtain continued compensation for total disability if he can demonstrate that his incapacity prevents him from being retrained for gainful employment.

Under the LHWCA, a claimant's medical condition and not his vocational status apparently determines whether he is disabled and therefore entitled to compensation. The Benefits Review Board has held that "[a] disability does not become permanent until [the] claimant has reached maximum medical improvement."[148] The Board has further held, "Granted that a purpose of the Act may be to rehabilitate injured workers, that is not the proper criteria for denying a claimant a permanent disability."[149] Apparently, where the claimant's medical condition has stabilized, he is entitled to compensation for permanent disability, even though potential vocational rehabilitation might significantly lessen his disability. The Board thus does not consider the potential for vocational rehabilitation in determining the extent of a claimant's compensable disability, even though rehabilitation might significantly reduce the claimant's loss of wage-earning capacity and even though refusal to undergo rehabilitation may have economic consequences arising from the employee's diminished earning capacity.[150]

Although California provides the injured worker with temporary total disability during vocational rehabilitation as discussed above, the state goes one step further by also providing some permanent disability compensation. In *Tangye v. Beck & Co.*,[151] the state Workers' Compensation Appeals Board held that an employee is entitled to permanent disability compensation while he is adjusting to a new jobsite.[152] Therefore, if the worker is undergoing vocational

147. ALA. CODE § 25-5-57(a)(4)(d) (Supp. 1985).

148. Mendez v. Bernuth Marine Shipping, Inc., 11 BEN. REV. BD. SERV. (MB) 21, 28 (1979).

149. Perry v. Stan Flowers Co., 8 BEN. REV. BD. SERV. (MB) 533, 537 (1978).

150. *Mendez*, 11 BEN. REV. BD. SERV. at 29. As to the difficulty of employers obtaining a rehabilitation evaluation, see the discussion of the LHWCA *infra* text accompanying notes 263-69.

151. 43 Cal. Comp. Cases 3 (Workers Comp. Appeals Bd. 1978).

152. *Id.* at 6. *See* CAL. LABOR CODE § 139.5 (West Supp. 1985).

rehabilitation while he is adjusting to this new job site, he is entitled to receive additional compensation.

In its decision in *Clark v. General Electric Co.*,[153] a New York court decided that an injured worker is eligible for permanent disability benefits when the worker is subject to a condition of continuing pain, continuing need for medical treatment, or his medical condition becomes settled.[154] Participation by the worker in a vocational rehabilitation program does not affect the rate of permanent disability compensation.[155]

New Jersey provides that an injured worker may receive permanent total disability compensation for only 450 weeks. If the worker submits to vocational rehabilitation as ordered by the rehabilitation commissioner, however, he may continue to receive the permanent disability payments even after the 450 week period expires.[156]

5. *Permanent Disability Compensation Not Provided During Vocational Rehabilitation.* Some states clearly do not provide permanent disability compensation during vocational rehabilitation. Other states have not clearly stated whether they will provide permanent disability compensation during vocational rehabilitation, making its acquisition uncertain.

Arkansas provides neither temporary disability nor permanent disability compensation to injured workers during vocational rehabilitation. In Arkansas, therefore, injured workers receive no financial compensation during rehabilitation other than maintenance and travel expenses. In upholding this result, an Arkansas court of appeals, in *Ryan v. NAPA*,[157] held that where a claimant is entitled to permanent partial disability benefits, the payment of such benefits must be suspended during vocational rehabilitation. Furthermore, not until completion of vocational rehabilitation does it become "the responsibility of the employer to resume and pay out the employee's permanent partial disability entitlement."[158]

153. 68 A.D.2d 960, 414 N.Y.S.2d 766 (1979).

154. *Id.* at 961, 414 N.Y.S.2d at 767.

155. Thomas v. Kornblum, 17 A.D.2d 889, 233 N.Y.S.2d 634 (1962).

156. N.J. REV. STAT. § 34:15-12(b) (Supp. 1983).

157. 598 S.W.2d 443 (Ark. Ct. App. 1980).

158. *Id.* at 445; *see also* Gray v. Armour & Co., 598 S.W.2d 434 (Ark. Ct. App. 1980). In *Gray*, a claimant who had reached medical stability argued that no permanent partial disability benefits should be paid while he was engaged in vocational rehabilitation, but rather that maintenance benefits should be awarded. The claimant further argued that the maintenance benefits awarded should reflect not only the additional cost to maintain his participation in his program, but also the cost of all other household and living expenses. 598 S.W.2d at 434. The Commission directed the employer to pay the costs of rehabilitation together with maintenance and travel expenses. The court of appeals approved the Commission's interpretation that

The portion of the Utah statute covering permanent disability compensation provides that a finding of permanent total disability is tentative until the worker is referred to, and cooperates with, the State Department of Education's Division of Vocational Rehabilitation.[159] If the Division certifies that the worker fully cooperated in efforts to rehabilitate himself and that he cannot be rehabilitated, then the worker is entiled to receive permanent total disability compensation.[160] Thus, the statute apparently requires that every worker make a complete but unsuccessful attempt at vocational rehabilitation before he becomes eligible for permanent total disability compensation. A worker is deemed automatically totally permanently disabled, however, if he has suffered the loss of complete function of "both hands, both arms, both feet, both legs, both eyes," or any combination of two of these different organs.[161] Therefore, such an automatically designated worker could conceivably receive permanent total disability compensation while undergoing rehabilitation. Permanent partial disability compensation is available during rehabilitation in Utah because, unlike total disability, partial disabilities do not have to be certified.[162]

In Colorado, permanent partial disability compensation is not available until after the worker completes his vocational rehabilitation program.[163] Because, as discussed earlier, Colorado does provide a weekly allowance equivalent to temporary total disability[164] at least some Colorado workers are compensated during their rehabilitation.

In Louisiana, permanent disabilities cannot be determined while a worker is participating in a vocational rehabilitation program;[165] therefore, no permanent disability compensation award can be made until the rehabilitation is complete. Louisiana does provide, however, temporary total and temporary partial disability compensation during rehabilitation for injured workers as discussed earlier.[166]

"[r]easonable maintenance means all (reasonable) additional living expenses incurred by the claimant as a result of pursuing his program of rehabilitation." *Id.* at 435.

159. UTAH CODE ANN. §§ 35-1-67 (Supp. 1985).

160. *Id.*

161. *Id.*

162. *Id.* Because, in addition to not providing permanent total disability benefits during vocational rehabilitation, Utah also does not provide any temporary disability benefits to the worker during vocational rehabilitation, see *supra* note 120, it appears unlikely that a worker will receive the compensation he needs in order to concentrate on his rehabilitation.

163. COLO. REV. STAT. § 8-49-101(5) (Supp. 1985).

164. *See supra* note 144 and accompanying text.

165. LA. REV. STAT. § 23-1226(G) (West 1985).

166. *See supra* note 135.

6. *Other Statutory Schemes Providing Compensation During Vocational Rehabilitation.* Three states expressly provide that the availability of disability compensation is determined without regard for the potential impact of vocational rehabilitation. An additional three states provide alternative systems to the previously discussed disability compensation schemes.

The Michigan Court of Appeals, in *Frammolino v. Richmond Products,*[167] decided that vocational rehabilitation does not affect an injured worker's right to disability compensation.[168] This holding suggests that a worker can receive either permanent or temporary disability compensation while he is participating in vocational rehabilitation if he otherwise meets the established eligibility criteria for those benefits.

Similarly, in Oklahoma an injured worker is entitled to the same weekly benefits during vocational rehabilitation to which he would otherwise be entitled were he not undergoing rehabilitation.[169] Rhode Island also provides that compensation payments shall not be diminished or terminated while a worker participates in an approved vocational rehabilitation program.[170]

The Kentucky legislature has provided that during the period a worker is eligible for permanent total disability benefits and is actively pursuing Board ordered vocational rehabilitation, his disability benefits are to be calculated by taking eighty percent of his average weekly wage[171] and multiplying it by the percentage of his disability as determined in the Kentucky workers' compensation statute.[172] This provision serves as an incentive to participate in rehabilitation since the disability benefits of workers not participating in vocational rehabilitation are calculated using only sixty-six and two-thirds percent of the average weekly wage.[173]

Under Minnesota's alternative scheme, during vocational rehabilitation the injured worker receives up to 156 weeks of compensation in an amount equaling up to 25 percent of the benefits otherwise payable to him as disability compensation.[174]

North Dakota has enacted a similar statute awarding the worker a rehabilitation allowance in lieu of disability compensation in order to effect the vocational rehabilitation. This amount can be up to 125 per-

167. 79 Mich. App. 18, 260 N.W.2d 908 (1978).
168. *Id.* at 28, 260 N.W.2d at 914.
169. OKLA. STAT. ANN. tit. 85, § 16(D) (West Supp. 1985).
170. R.I. GEN. LAWS § 28-33-41 (1983).
171. This figure may not exceed one-hundred percent of the state's average weekly wage. KY. REV. STAT. § 342.715 (1985).
172. *Id.*
173. *Id.* § 342.730(1).
174. MINN. STAT. ANN. § 176.102(11) (West Supp. 1985).

cent of the compensation that the worker would otherwise be entitled to receive.[175] The extra benefits provided by Kentucky, Minnesota, and North Dakota to workers undergoing vocational rehabilitation serve as an incentive for workers to undertake rehabilitation and hopefully escape the benefit roles entirely once the rehabilitative process is completed.

C. Maintenance Benefits

1. *Purpose and Scope of Maintenance Benefits.* The purpose of maintenance benefits is to supplement other compensation payments, thereby providing the claimant with funds needed to offset the increased living expenses that a disabled worker may incur during rehabilitation.[176] In light of this purpose, the concepts of disability and wage loss relevant to other types of compensation are not applicable to maintenance benefits.[177]

Maintenance payments promote vocational rehabilitation by helping to relieve the claimant of financial distractions and worries.[178] Ideally, such payments should act as an incentive for the employee to complete his vocational rehabilitation program successfully by enabling him to maintain his normal standard of living while participating in the program.[179]

The District of Columbia,[180] fourteen states,[181] the FECWIA, and the LHWCA all offer maintenance benefits during vocational re-

175. N.D. CENT. CODE § 65.05.1-06 (1985).

176. *See, e.g.,* Model Laundry & Dry Cleaning v. Simmons, 596 S.W.2d 337, 339 (Ark. Ct. App. 1980).

177. *Id.*

178. *See* ARK. STAT. ANN. § 81-1310(f) (Supp. 1985), which provides that "an employee who is entitled to receive compensation benefits for permanent disability shall be paid reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation." *See also* ARIZ. REV. STAT. ANN. § 23-1065(A)(1) (1983), which provides that the State Industrial Commission may make additional awards as necessary "to enable injured employees to accept the benefits of any law of the state, or of the United States, or both jointly, for promotion of vocational rehabilitation of persons disabled in industry."

179. *See* Comment, *Vocational Rehabilitation in the Workers' Compensation System,* 33 ARK. L. REV. 723, 739 (1980).

180. D.C. CODE ANN. §§ 1-624.11(b), 36-307(a) (1981).

181. *See* ALASKA STAT. § 23.30.041(g) (Supp. 1985); ARIZ. REV. STAT. ANN. § 23-1065(A)(1) (1983); CAL. LABOR CODE § 139.5(c) (West Supp. 1986); ILL. REV. STAT. ch. 48, § 138.8(a) (Supp. 1983); IOWA CODE ANN. § 85.70 (West Supp. 1982); ME. REV. STAT. ANN. tit. 39, § 87 (Supp. 1985); MICH. COMP. LAWS ANN. § 418.319 (West. 1985); MINN. STAT. ANN. § 176.102 (West Supp. 1984); MISS. CODE ANN. § 71-3-19 (1972 & Cum. Supp. 1985); MONT. CODE ANN. §§ 39-71-1003, -1004 (1983); N.M. STAT. ANN. § 52-1-50 (Supp. 1983); N.Y. WORK. COMP. LAW § 15(3)(v)(9) (McKinney Supp. 1983); N.D. CENT. CODE § 65-05.1-.05 (1985); OHIO REV. CODE ANN. § 4121.63 (Page Supp. 1982).

habilitation.[182] The maintenance benefits provided by state statutes range from ten dollars per week in Mississippi[183] to an amount not exceeding fifty dollars per week in Montana[184] and the District of Columbia.[185] In other states, an employer may be required to provide claimants with such benefits as the "reasonable expenses of travel and maintenance,"[186] "additional living expenses necessitated by the rehabilitation program,"[187] or "all maintenance costs and expense[s]" incidental to vocational rehabilitation.[188] Alaska law specifically provides that a claimant who demonstrates "extreme financial hardship" may receive two hundred dollars per month for maintenance.[189]

2. *Availability of Maintenance Benefits When Residence Away from Home is Required.* Twenty states,[190] including Alaska, specifically provide for the payment of all or some portion of the reasonable cost of room, board and travel when a worker is required to reside away from his customary residence to pursue vocational rehabilitation. Another six states do not have such separate provisions, but nevertheless

182. *See supra* notes 124-75 for a discussion of the availability of other benefits during vocational rehabilitation.

183. MISS. CODE ANN. § 71-3-19 (1972 & Cum. Supp. 1985).

184. MONT. CODE ANN. § 39-71-1003 (1983).

185. D.C. CODE ANN. § 36-307(a) (1981).

186. ARK. STAT. ANN. § 81-1310(f) (Supp. 1985).

187. CAL. LAB. CODE § 139.5(c) (West Supp. 1986).

188. ILL. ANN. STAT. ch. 48, § 138.8(a) (Smith-Hurd Supp. 1985).

189. ALASKA STAT. § 23.30.041(g) (1984). The theory and purpose behind each state's formulation of maintenance benefits varies widely. For example, New Mexico requires employers to pay up to $3,000 as may be deemed necessary in the discretion of the trial court for the claimant's "board, lodging, travel and other expenses and for the maintenance of his family during the period of rehabilitation." N.M. STAT. ANN. § 52-1-50 (Supp. 1985). In contrast, Arkansas courts have held that maintenance provisions are not designed to maintain a claimant's household during rehabilitation. Gray v. Armour & Co., 598 S.W.2d 434, 436 (Ark. Ct. App. 1980). In North Dakota, the Workmen's Compensation Bureau may award up to $5,000 to each claimant upon his successful completion of a rehabilitation contract with the Bureau "for the actual expenses of relocation or remodeling of living and business facilities." N.D. CENT. CODE § 65-05.1-.06 (1985).

190. ALA. CODE § 25-5-57 (1975); ALASKA STAT. § 23.30.041 (1983); ARK. STAT. ANN. § 81-1310(f) (Supp. 1985); Gray v. Armour & Co., 598 S.W.2d 434, 435 (Ark. Ct. App. 1980); Mosely v. Delaware, 372 A.2d 178 (Del. 1977); FLA. STAT. ANN. § 440.49(D) (West Supp. 1985); GA. CODE ANN. § 34-9-200.1(a) (Supp. 1985); KAN. STAT. ANN. § 44-510(f) (1981); KY. REV. STAT. § 342-710 (1983); LA. REV. STAT. § 23-1226(E) (West 1985); MD. ANN. CODE art. 101, § 36(d) (Supp. 1985); MASS. GEN. LAWS ANN. ch. 152, §§ 30, 30B (1976); MINN. STAT. ANN. § 176.102(g) (West Supp. 1985); NEB. REV. STAT. § 48-162.01(4) (1984); N.H. REV. STAT. § 281:21-b (Supp. 1985); OKLA. STAT. ANN. tit. 85, § 16(D) (West Supp. 1985); R.I. GEN. LAWS § 28-38-41 (Supp. 1985); S.C. CODE ANN. § 42-13-90(b) (Law. Co-op. 1977); VT. STAT. ANN. tit. 21, § 641(b) (Supp. 1985); WASH. REV. CODE § 51.32.110(3) (Supp. 1985); WIS. STAT. ANN. § 102.61 (West Supp. 1985).

cover these costs under provisions relating to maintenance or vocational rehabilitation services.[191] Two states provide coverage only for transportation.[192] This leaves twenty-two states and the District of Columbia with no specific statutory provisions authorizing maintenance away from the home,[193] and seventeen states with no maintenance provisions at all.[194]

D. Miscellaneous Benefits

Individual state and federal programs have placed different emphasis on specific concerns of vocational rehabilitation resulting in a wide variety in benefits available to participants in particular rehabilitation programs. This wide variety is readily demonstrated by a brief examination of some of the special provisions found in a few statutory schemes.

In Oregon, the Handicapped Persons' Civil Rights Act[195] requires that injured workers must, upon demand, be reemployed by their former employer in available and "suitable work."[196] In *Carney v. Guard Publishing Co.*,[197] the Oregon Court of Appeals construed "suitable work" to mean a position that the injured worker could perform without substantial training or rehabilitation.[198] The court observed that while injured workers "occupy a preferred hiring position and *must* be reemployed if suitable positions are available, the Act does not require an employer to substitute an injured employee for a noninjured one, or to create positions specifically for previously injured workers."[199] Moreover, the employer's duty to exercise preference in hiring the injured worker does not last indefinitely. It expires once the employer has offered the injured worker suitable

191. *See* ARIZ. REV. STAT. ANN. § 23-1065(A)(1) (1985); CAL. LAB. CODE § 139.5(c) (West Supp. 1986); ILL. REV. STAT. ch. 48, § 138.8 (Supp. 1985); ME. REV. STAT. ANN. tit. 39, § 87 (Supp. 1985); MICH. COMP. LAWS ANN. § 418.319 (Supp. 1983); N.M. STAT. ANN. § 52-1-50 (Supp. 1983).

192. *See* COLO. REV. STAT. § 8-49-101(i)(a) (Supp. 1985); MONT. CODE ANN. § 39-71-1003 (1983).

193. D.C., Iowa, Mississippi, New York, North Dakota, Ohio, and those states listed in note 194 *infra* do not provide their residents with maintenance payments covering the additional expenses of away from home rehabilitation.

194. Connecticut, Hawaii, Idaho, Indiana, Missouri, Nevada, New Jersey, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming have no maintenance statutes.

195. OR. REV. STAT. §§ 659.400-.435 (1983).

196. *Id.* § 659.420(1).

197. 48 Or. App. 147, 616 P.2d 548, *modified,* 48 Or. App. 927, 630 P.2d 867 (1980).

198. *Id.* at 155, 616 P.2d at 563.

199. *Id.* at 152, 616 P.2d at 552 (emphasis in original).

employment.[200]

Washington's statutory scheme represents another interesting example of the great variety found in vocational rehabilitation. The Washington Industrial Insurance Statute requires an employer, either through the state insurance fund or as a self-insurer, to pay the cost of child or dependent care in addition to the costs of books, tuition, fees, supplies, equipment, and transportation.[201] Furthermore, the statute declares, "Modification of the injured worker's previous job is recognized as a desirable method of returning the injured worker to suitable gainful employment."[202] In order to help employers meet the costs of job modification and to encourage them to modify jobs for the retraining or hiring of workers with disabilities caused by work-related injuries, the Supervisor of Industrial Insurance is authorized under the Washington statute to pay job modification costs from a special fund in an amount not to exceed $5000 per worker for each job modification.[203]

As a final example, in Minnesota, the Workers' Compensation Division provides vocational rehabilitation services to dependent surviving spouses who need rehabilitation assistance in order to become self-supporting. Unlike injured employees, however, surviving spouses approved for vocational rehabilitation are not entitled to receive extra compensation during rehabilitation.[204]

V. SEVEN WORKERS' COMPENSATION VOCATIONAL REHABILITATION SCHEMES

A brief outline of the workers' compensation vocational rehabilitation statutes in Alaska, Tennessee, North Dakota, Michigan, the FECWIA and LHWCA, and the veterans' program illustrates the great variety among vocational rehabilitation programs, not only in terms of the benefits afforded and the procedures required by each program, but also, in a more basic sense, in terms of the philosophies underlying these programs. Naturally, the specific goals and purposes behind a particular program will strongly dictate the form that program takes in actual implementation. These schemes are discussed and compared below in detail.

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200. *Id.* On the worker's petition for reconsideration on the grounds that the employer had abandoned its assignment of error on the question of what constitutes suitable employment, the court withdrew the portion of its former opinion addressing that issue. 48 Or. App. 927, 929, 630 P.2d 867, 868 (1980). *Cf.* Williams v. Waterways Terminal Co., 69 Or. App. 388, 686 P.2d 441 (1984) (discharge of worker, whether lawful or unlawful, terminates reinstatement rights).

201. WASH. REV. CODE ANN. § 51.32.095 (Supp. 1986).

202. *Id.* § 51.32.250.

203. *Id.*

204. MINN. STAT. ANN. §§ 176.102(1a), .102(11) (West Supp. 1985).

A. Alaska

In 1982, Alaska added a comprehensive vocational rehabilitation section to its workers' compensation statute.[205] The amended statute authorizes the Alaska Workers' Compensation Board to employ a rehabilitation administrator who is charged with implementing the statute's vocational rehabilitation provisions.[206]

Under the new Alaska statute, if a worker suffers a permanent disability that precludes his return to "suitable gainful employment," he is entitled to be fully evaluated by a qualified rehabilitation professional within ninety days after the date of his injury for participation in a rehabilitation plan.[207] If the medical, physical, or emotional state of the worker prevents a full evaluation, a rehabilitation professional must prepare a preliminary evaluation setting forth (1) the factors precluding a full evaluation, (2) an indication as to when the worker will be ready for a full evaluation, and (3) any other information that can be ascertained at the time of the preliminary evaluation.[208]

A full evaluation of the worker must include the following determinations: whether the rehabilitation plan will enable the worker to return to "suitable gainful employment," whether the worker could return to employment without the rehabilitation plan, the likely cost of the plan, and an estimate of whether the continuing benefits and compensation due the worker after conclusion of the plan are likely to be more or less than if the plan were not implemented.[209]

The Alaska statute establishes a descending order of preference among five categories of rehabilitation plans:

> (1) prosthetic devices and training that enables work at the same or similar occupation as at the time of injury;
> (2) work site modification and vocational training for the same or similar occupation;
> (3) on-the-job training for a new occupation;
> (4) vocational training for a new occupation; and
> (5) academic training for a new occupation if the educational level is attainable by the employee and employment in the new occupation is believed to be available to the employee in his community at the time academic training is completed.[210]

If an employee can return to suitable gainful employment upon com-

205. Act of July 1, 1982, ch.93, § 3, 1982 Alaska Sess. Laws 498 (codified at ALASKA STAT. § 23.30.041 (1984)).

206. ALASKA STAT. § 23.30.041(a)-(b) (1984). The rehabilitation administration is also responsible for studying physical and vocational rehabilitation on a continuing basis. *Id.*

207. *Id.* § 23.30.041(c).

208. *Id.*

209. *Id.* § 23.30.041(d).

210. *Id.* § 23.30.041(e).

pletion of a rehabilitation plan of higher preference, then the employer need not offer a more costly plan of lower preference.[211]

The employer and worker may work together to develop a particular vocational rehabilitation plan. If they cannot agree upon a plan, however, either the employer or the worker may submit a plan to the rehabilitation administrator for approval. The administrator must approve, modify, or deny a plan within fourteen days after it has been submitted. If dissatisfied with the result, any party may seek review of the administrator's decision within ten days of its issuance.[212]

Vocational rehabilitation services are available to each participant for up to thirty-seven weeks, and upon a determination that special circumstances exist, the rehabilitation administrator may extend services for an additional thirty-seven weeks.[213] Of course, the employer or carrier may voluntarily provide services on an extended basis, if either wishes to do so.[214] The employer must pay (1) all costs of an approved vocational rehabilitation plan, (2) temporary disability compensation throughout the process, and (3) the reasonable cost of board, lodging, and travel if rehabilitation requires the worker to reside away from his customary residence.[215]

If the worker refuses to participate in a vocational rehabilitation program approved by the administrator or agreed to by the parties, he will forfeit his disability compensation for the period of refusal.[216] Should the worker subsequently begin participating in the proposed plan within two months of the date of his refusal, successfully complete it, and then obtain employment for thirty consecutive business days following the completion of the plan, the worker will receive a lump sum payment equal to one quarter of the compensation previously forfeited.[217]

The Alaska rehabilitation provisions also clarify the meaning of the phrase "restored to suitable gainful employment" by specifying that the worker shall be returned to work in the following order of preference:

> (1) work at the same or similar occupation with the same employer or an employer in the same industry as the employer at the time of injury; (2) an occupation using essentially the same skills as the job at the time of injury but in a different industry; (3) an occupation using different skills but using the employee's academic achievement level at the time of injury; or (4) an occupation requiring an

211. *Id.*
212. *Id.* § 23.30.041(f).
213. *Id.* § 23.30.041(g).
214. *Id.*
215. *Id.*
216. *Id.* § 23.30.041(h).
217. *Id.*

> academic achievement level that is different from that attained at the time of injury.[218]

In addition, the statute defines "suitable gainful employment," in part, as employment that "offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to the individual's gross weekly earnings as determined at the time of injury."[219]

B. Tennessee

In contrast to the Alaska statute, the Tennessee Workmen's Compensation Act[220] contains only one provision relating to vocational rehabilitation. That provision authorizes the Tennessee Commissioner of Labor to cause the Division of Workers' Compensation to refer all "feasible cases for vocational rehabilitation" to the state Department of Education.[221] The Tennessee Supreme Court criticized the state's lack of comprehensive vocational rehabilitation legislation in its 1974 decision in *Mayes v. Genesco, Inc.*[222] In *Mayes,* the court ruled that in the absence of any reference in the Workmen's Compensation Act to vocational rehabilitation, and in the absence of a comprehensive vocational rehabilitation program available to all disabled workers, the state's trial courts were not required to consider the vocational rehabilitation potential of an employee as a factor in assessing the extent of his disability.[223] The court noted:

> Attempting to assess potential, whether it be vocational rehabilitation potential, or the potential of any other project is at most speculative. One can only guess that an individual will achieve a desired result because others similarly situated have done so. However, no guarantee can be made. For this reason, we conclude that vocational rehabilitation potential need not be considered by the Trial Court in assessing the extent of the disability.[224]

The Tennessee Supreme Court went on to express displeasure in its own conclusion:

> It is desirable to have the trial courts consider vocational rehabilitation as opposed to considering vocational rehabilitation potential when assessing the extent of an employee's disability. This cannot be accomplished, however, until a procedure is established whereby the court would not have to make its final disability rating until after the employee has completed a rehabilitation program.[225]

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218. *Id.* § 23.30.041(i).
219. *Id.* § 23.30.265 (28).
220. TENN. CODE ANN. §§ 50-6-101 to -410 (1983 & Supp. 1985).
221. *Id.* § 50-6-233(b) (Supp. 1985).
222. 510 S.W.2d 882 (Tenn. 1974).
223. *Id.* at 884.
224. *Id.*
225. *Id.*

In a subsequent opinion,[226] however, without reference to *Mayes,* the Tennessee Supreme Court approved the admission of testimony concerning a vocational rehabilitation evaluation. The court stated that the testimony of a vocational examiner concerning tests he had conducted was "relevant to the issue of industrial disability and is an additional way to bring home to the trier of fact the impact of the injury on the earning capacity of the [worker]."[227]

Despite the lack of comprehensive state rehabilitation legislation as well as the court's confusing signals on the use of vocational rehabilitation, Tennessee does have a separate vocational rehabilitation statute designed to allow the state to obtain the full benefits of federal vocational rehabilitation laws. In the Vocational Rehabilitation Law of Tennessee,[228] which contains provisions applicable to all persons in the state needing vocational rehabilitation, the Tennessee legislature acted to secure compliance with the provisions of the Federal Rehabilitation Act of 1973, which provides funds to state vocational rehabilitation programs meeting the standards specified in the Act.[229] Section 49-11-606(a) provides, "The state board of education shall formulate a plan of cooperation in accordance with the provisions of federal acts and of this part [the Vocational Rehabilitation Law of Tennessee] with respect to the administration of the worker's compensation or liability laws."[230]

Section 49-11-602 contains a comprehensive list of definitions applicable to the state's vocational rehabilitation law. These definitions differ from those found in workers' compensation vocational rehabili-

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226. Brown Shoe Co. v. Pipes, 581 S.W.2d 140 (Tenn. 1979).

227. *Id.* at 142.

228. TENN. CODE ANN. §§ 49-11-601 to -614 (1983).

229. Pub. L. No. 93-112, 87 Stat. 357 (1973) (establishing Rehabilitation Services Administration and providing for joint federal-state funding of vocational rehabilitation programs meeting specified standards). *See* TENN. CODE ANN. § 49-11-605(a) (1983). Section 49-11-605 authorizes the state board to cooperate fully with the federal government:

> (a) The state board, through the division, shall cooperate, pursuant to agreements with the federal government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation and is authorized to adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.
>
> (b) Upon designation by the state board, the division may perform functions and services for the federal government relating to individuals under a physical or mental disability, such services and such individuals to be in addition to those enumerated in this part and part 7 of this chapter [authorizing establishment of vocational training centers].

Id. § 49-11-605.

230. *Id.* § 49-11-606(a).

tation statutes. The Tennessee program covers a wider range of people and attempts to meet broader social problems than a program focused solely on the work-disabled. The term "handicapped individual," for example,

> means an individual . . . under a physical or mental disability which constitutes a substantial handicap to employment, but which is of such a nature that appropriate vocational rehabilitation services may reasonably be expected to render him able to engage in a remunerative occupation, or to . . . substantially achieve such ability of independent living as to dispense with the need of institutional care or . . . an attendant at home.[231]

Unlike its meaning in the Tennessee Workmen's Compensation Act,[232] "remunerative occupation" in the context of Tennessee's joint federal-state vocational rehabilitation program means "employment as an employee or self-employed, practice of a profession, homemaking or farm and family work for which payment is in kind rather than cash, sheltered employment, and home industry or other homebound work of a remunerative nature."[233]

"Vocational rehabilitation services" extend to diagnostic services and transportation incidental to such services including testing services, training, guidance, placement, maintenance not exceeding the estimated costs of subsistence during vocational rehabilitation, occupational licenses, tools, equipment, initial stocks and supplies, transportation, and physical rehabilitation.[234] The term "maintenance," however, carries a meaning similar to its meaning in other vocational rehabilitation provisions.[235]

Vocational rehabilitation to eligible handicapped individuals[236] is

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231. *Id.* § 49-11-602(6).

232. Namely, work of the same or similar nature, yielding approximately the same wages and opportunities. *See* TENN. CODE ANN. §§ 50-6-101 to -410 (1983 & Supp. 1985).

233. *Id.* § 49-11-602(12).

234. *Id.* § 49-11-602(15).

235. *See supra* text accompanying notes 176-89. "Maintenance" in Tennessee law means "the provision of money to cover a handicapped individual's necessary living expenses and health maintenance essential to achieving his vocational rehabilitation." TENN. CODE ANN. § 49-11-602(7).

236. An "eligible handicapped individual" is one "who is a bona fide resident of the state of Tennessee at the time of his application, whose vocational rehabilitation is determined feasible by the division of vocational rehabilitation," and who, "after full consideration of his eligibility for any similar benefit by the way of pension, compensation, and insurance," needs financial aid to participate in vocational rehabilitation. *Id.* § 49-11-602(3). *Cf. id.* § 49-11-610, stating that vocational rehabilitation services shall be provided in accordance with policy promulgated by the State Board of Education to any handicapped individual whose vocational rehabilitation can be satisfactorily attained and who is eligible therefor under the terms of agreement with the federal government.

funded through state appropriations, federal grants, and donations from private and public sources.[237] The state board is authorized to contract with appropriate federal agencies to secure the maximum benefits available under the federal program.

As even a brief overview of the two Tennessee statutes reveals, if an industrially disabled worker in Tennessee is to obtain vocational rehabilitation benefits, he must obtain them through the federal/state vocational rehabilitation framework.[238] Unlike Alaska, which provides vocational rehabilitation within its workers' compensation statute, Tennessee forces the disabled worker to go completely outside workers' compensation for vocational rehabilitation opportunities.[239]

C. North Dakota

North Dakota law evidences yet another approach to vocational rehabilitation. The state provides for comprehensive vocational rehabilitation services in its workers' compensation act.[240] The North Dakota legislature's policy statement concerning its workers' compensation statute declares that

> disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.

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237. *Id.* §§ 49-11-607 to -608.

238. *See supra* notes 228-37.

239. Even though forced to go outside state workers' compensation legislation to obtain relief, the industrially disabled who participate in federal/state programs may benefit from the favorable federal tax treatment their employers receive for participating in these programs. Section 51 of the Internal Revenue Code, I.R.C. § 51 (1985), establishes a credit for employers that hire new employees with a substantial handicap to employment and who have been referred to the employer upon or while receiving vocational rehabilitation services pursuant to a federal/state program or the veterans program. Under Section 51, the employer receives a credit equal to fifty percent of the first $6,000 of the worker's qualified first-year wages and twenty-five percent of the first $6,000 of the worker's qualified second-year wages. *Id.* § 51(a)-(b). The wages for which the employer already receives credit may not, however, include any amounts paid for any period to an individual for whom the employer receives federally funded payments for on-the-job training. *Id.* § 51(c)(2). The Internal Revenue Code specifically excludes from the group covered by the credit those individuals who have been previously employed by the employer at any time when they were not members of a group otherwise qualified for Section 51 treatment. *Id.* § 51(i)(2). This limitation clearly represents a policy directly contrary to that of the workers' compensation statutes, which seek to encourage the rehiring of the same worker. *See also* Section 190 of the Internal Revenue Code, which provides that a taxpayer may elect to deduct up to $35,000 of the cost of making any facility or public transportation vehicle owned or leased by the taxpayer in connection with his business more accessible to and usable by handicapped and elderly individuals. 26 U.S.C.A. § 190 (West 1978 & Supp. 1985).

240. N.D. CENT. CODE §§ 65-05-07, 65-05.1-01 to .1-07 (1985).

> It is the purpose of this chapter to provide for the health and welfare by ensuring to workmen's compensation claimants otherwise covered by this title, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.[241]

The North Dakota Workmen's Compensation Bureau provides rehabilitation services out of a fund derived from the state surplus fund.[242]

The North Dakota statute directs the Bureau to appoint a director of rehabilitation services and other staff members to carry out the following duties: (1) to fulfill the purposes of the rehabilitation statute, (2) to cooperate with federal and state agencies charged with vocational rehabilitation, (3) to make determinations on individual claims concerning the extent and duration of the Bureau's involvement in providing rehabilitation services, (4) to enter into agreements and promulgate such rules and regulations as may be advantageous in carrying out the purpose of the statute, and (5) to provide such rehabilitation services and allowances as may be most beneficial to the claimant within the limitations of the statute.[243]

The North Dakota statute specifies that an injured worker has a responsibility "to seek, obtain, and retain reasonable and substantial employment in order to reduce the period of temporary disability to a minimum."[244] If, as a direct result of his injury, the worker is unable to obtain substantial employment, he must promptly notify the Bureau and thereafter be available for an evaluation of his rehabilitation potential. Once the Bureau determines that a rehabilitation program is necessary and feasible, the injured worker must make himself available for rehabilitation services.[245]

If an injured worker fails to comply with the Bureau's determination without reasonable cause, the Bureau must, by formal order, discontinue all lost-time worker's compensation benefits during the period of non-compliance.[246] If the worker fails to comply for a period of six months after the order discontinuing benefits becomes final, "the bureau shall have no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or rehabilitation benefits."[247] The non-complying worker thus loses all past and potential benefits.

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241. *Id.* § 65-05.1-01.
242. *Id.* § 65-05-07.
243. *Id.* § 65-05.1-02.
244. *Id.* § 65-05.1-04.
245. *Id.*
246. *Id.*
247. *Id.*

The North Dakota statute is unique in providing that when the Bureau of Workmen's Compensation determines that it is necessary to provide a rehabilitation program to a claimant, it must enter into a "rehabilitation contract" with the claimant. The contract must address, but is not limited to, the following matters:

> 1. A description of the rehabilitation program to include the actual time, place, cost, and other significant data involved in the particular program.
> 2. The equipment and tools necessary for the training and vocational performance and the ownership thereof.
> 3. The amount of rehabilitation allowance to be paid to the claimant and the manner in which the allowance is to be disbursed.
> 4. The claimant's faithful performance of the terms of the contract.[248]

The Bureau must also provide attorney's fees from its general fund to the claimant's attorney for his role in effecting the contract.[249]

In order to implement the purposes of the contract, the Bureau may award the claimant a "rehabilitation allowance" in lieu of temporary total, temporary partial, and permanent total benefits, limited to the amount and used for the purpose set forth in the rehabilitation contract.[250] This allowance may not exceed one hundred and twenty-five percent of the amount of the total weekly compensation and dependent benefits that the claimant is otherwise entitled to receive.[251] Upon the claimant's successful completion of his contract, the Bureau may award him an additional sum to be used to defray the actual expenses of any relocation or remodeling of living and business facilities.[252] This amount shall not exceed an aggregate amount of $5000 over the remainder of the claimant's life, regardless of any claim the worker may subsequently bring.[253]

D. Michigan

As a heavily industrialized state, Michigan serves as a useful contrast to Alaska. When, as a result of a work-related injury, a worker is unable to perform work for which he has previous training or experience, section 418.319 of the Michigan Worker's Disability Compensation Act of 1969[254] entitles him to such vocational rehabilitation services, including retraining and job placement, as may be reasonably

248. *Id.* § 65-05.1-05.
249. *Id.* The claimant's attorney's fees are paid according to a schedule established by the Bureau. *Id.*
250. *Id.* § 65-05.1-06.
251. *Id.*
252. *Id.*
253. *Id.*
254. MICH. COMP. LAWS ANN. §§ 418.101 to -.419 (West 1985 & Supp. 1985).

necessary to restore him to useful employment. The worker need not be totally disabled to qualify for rehabilitation services. Thus, in *Barrett v. Bohn Aluminum & Brass Co.*,[255] a Michigan court of appeals upheld a vocational rehabilitation program even though the claimant was able to perform some work without rehabilitation. The court did this in order to enable him to obtain "the skills necessary to again compete with the able-bodied in the economic marketplace."[256]

If the employer does not voluntarily offer vocational rehabilitation services or the worker does not voluntarily accept them, the Director of the Michigan Bureau of Workers' Compensation may refer the employee to a bureau-approved facility for evaluation.[257] This referral may be made upon the director's own motion or upon the application of the worker, the employer, or the employer's compensation carrier.[258] Upon receiving an evaluation report on the need for a rehabilitation program and the kind of service or training necessary and appropriate to render the worker fit for a remunerative occupation, the Director may then order that the recommended services and treatment be provided at the employer's expense.[259]

Several additional aspects of the Michigan statute are noteworthy. For example, the Director may also order the employer to pay the costs of transportation and any "extra and necessary expenses" arising out of the worker's program during the period of vocational rehabilitation.[260] Additionally, the award of vocational rehabilitation benefits does not affect the worker's right to disability benefits.[261] Benefits are limited in duration to fifty-two weeks, but may be extended for an additional fifty-two weeks by special order of the Director after making a review of the worker's progress in his program.[262]

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255. 69 Mich. App. 636, 245 N.W.2d 147 (1976).

256. *Id.* at 642, 245 N.W.2d at 151. *Compare Barrett, id., with* Ayoub v. Ford Motor Co., 101 Mich. App. 740, 300 N.W.2d 508 (1980). In *Ayoub,* the court found that the worker had acted in bad faith in leaving "favored employment" when the nature of the work changed. The worker cited an unrelated physical ailment as his reason for terminating his employment. He then returned to college and, nearly a year later, claimed workers' compensation benefits and vocational rehabilitation services at the expense of his former employer. The court held that Ayoub was not entitled to a vocational rehabilitation program because he had failed to follow the statutory application procedure, and that his enrollment at a university was not a rehabilitative program within the meaning of the statute. 101 Mich. App. at 746-47, 300 N.W.2d at 510-11.

257. MICH. COMP. LAWS ANN. § 418.319(1) (West 1985).

258. *Id.*

259. *Id.*

260. *Id.*

261. Frammolino v. Richmond Products, 79 Mich. App. 18, 28, 260 N.W.2d 908, 914 (1977).

262. MICH. COMP. LAWS ANN. § 418.319(1) (West 1985).

E. The Longshoremen's and Harbor Workers' Compensation Act and the Federal Employees' Compensation for Work Injuries Act

Federal workers' compensation programs affect a substantial number of those persons who are injured in the course of their employment.

The LHWCA covers disability resulting from an injury occurring on the navigable waters of the United States and adjoining piers, wharfs, dry docks, terminals, building ways, marine railways, or other adjoining areas customarily used by employers in loading, unloading, repairing, or building vessels.[263]

Section 939(c)(2) of the Act provides that the Secretary of Labor shall direct the vocational rehabilitation of a worker who is permanently disabled.[264] Section 908(g), however, recognizes that the Secretary may require vocational rehabilitation of an employee who "is or may be expected to be totally or partially incapacitated for a remunerative occupation."[265] The Secretary must arrange for vocational rehabilitation through appropriate public or private agencies, and, when such services are not otherwise available, pay for such services out of a special fund.[266] A worker participating in an approved vocational rehabilitation plan may receive up to twenty-five dollars per week in maintenance payments out of the special fund.[267]

Participation by an injured worker in a rehabilitation program is purely voluntary.[268] While a claimant has a duty to submit to medical or surgical treatment, neither the act nor accompanying regulations require that a claimant undergo rehabilitation or training.[269]

Under the FECWIA, the Secretary of Labor may direct a permanently disabled federal worker to undergo vocational rehabilitation.[270] The Secretary then furnishes the vocational rehabilitation services. A worker pursuing an approved program is entitled to disability compensation at the rate set for total disability, reduced by any earnings received from remunerative employment other than employment undertaken pursuant to the rehabilitation program.[271] The Secretary may also award the worker an additional two hundred dollars per

263. 33 U.S.C. § 903 (1982).
264. *Id.* § 939(c)(2).
265. *Id.* § 908(g).
266. *Id.* § 939(c)(2).
267. *Id.* § 908(g).
268. Berkman v. Todd Ship Yards, 7 BENEFITS REV. BD. SERV. 933, 938 (1978).
269. Simpson v. Seatrain Terminal of California, 15 BENEFITS REV. BD. SERV. 187, 190 (1982).
270. 5 U.S.C. § 8104(a) (1982).
271. *Id.*

month for maintenance.[272]

F. Vocational Rehabilitation Programs for Veterans

The most comprehensive of the vocational rehabilitation programs designed to aid those injured in connection with their employment is the veterans' program.[273] The broad statement of the program's goals underscores the comprehensive nature of the veterans' vocational rehabilitation program: "to provide for all services and assistance necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment."[274]

An "employment handicap" for purposes of vocational rehabilitation under the veterans' program means "an impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests."[275] A "vocational goal" means to achieve "a gainful employment status consistent with a veteran's abilities, aptitudes, and interests."[276] A veteran with a service-connected disability is entitled to a rehabilitation program upon a determination by the Veteran's Administration that he is in need of rehabilitation because of an employment handicap.[277]

Among the many services available through the veterans' program are the following: (1) "educational, vocational, psychological, employment, and personal adjustment counseling;" (2) a work-study allowance; (3) placement and post-placement services; (4) "personal adjustment and work adjustment training;" (5) vocational training, individualized tutorial assistance, tuition, fees, books, supplies, licensing fees, equipment, and other treatment, care, and services; (6) "prosthetic appliances, eyeglasses and other corrective and assistive devices;" (7) services needed by the veteran's family for the veteran's effective rehabilitation; (8) homebound training and/or self-employment for the most severely disabled; (9) travel and incidental expenses, plus a special transportation allowance to offset extra expenses during rehabilitation, job searching, and the initial employment stage; (10) special services including language training, voice and speech correction, training in ambulation and one-hand typing, orientation, reader and interpreter services, and telecommunications; (11) "services necessary to enable a veteran to achieve maximum inde-

272. *Id.* § 8111(b).
273. 38 U.S.C. §§ 1500-1521 (1982).
274. *Id.* § 1500.
275. *Id.* § 1501(1).
276. *Id.* § 1501(8).
277. *Id.* § 1502.

pendence in daily living;" and (12) "other incidental goods and services determined by the Administrator to be necessary. . . ."[278] The veteran is entitled to a subsistence allowance during rehabilitation and for two months after the conclusion of rehabilitation. This allowance can be reduced on an equitable basis when the veteran receives wages from an employer.[279]

The veteran participating in FECWIA rehabilitation may also obtain interest-free loans for up to twice the amount of his full-time institutional monthly subsistence allowance. These loans are repaid in installments by deductions from the veteran's future compensation payments, pensions, subsistence allowances, educational assistance allowances, and retirement pay.[280]

VI. CONCLUSION

Vocational rehabilitation of injured workers has become a primary goal of many workers' compensation programs. It is a humane, cost-effective, and sensible approach to the compensation of workers suffering from work-related injuries or illnesses. Payments for lost wages and medical care incorporated into workers' compensation awards are essential, but they are not designed to restore the worker completely to the position he occupied before his accident or disabling illness. The injured worker, employers, and insurance carriers all benefit from effective vocational rehabilitation programs. A worker who successfully participates in vocational rehabilitation will be able to return to gainful employment and will no longer need to rely on the security of a compensation check. Vocational rehabilitation programs also greatly benefit society at large. In economic terms, one more person is paying taxes, and contributing to national productivity. Perhaps more importantly, we create a more responsive, humane, and fair society by working with disabled workers and providing an employment environment where workers are assured that they will be able to return to productive, self-supportive lives if they are struck with a disabling accident or illness.

Much innovation and improvement is still needed in the vocational rehabilitation field, and its accomplishment will require the persistent, creative efforts of all involved. First, the costs of vocational

278. *Id.* § 1504(a).

279. *Id.* § 1508(a)(1)-(2), (c)(1).

280. *Id.* § 1512. Other provisions found in the veterans' program concern such matters as the period of eligibility, duration of benefits, initial and extended evaluations, entitlement to independent living services and assistance for the severely handicapped for whom vocational rehabilitation is not reasonably feasible, rehabilitation sources, the promotion of employment and training opportunities, employment assistance, and rehabilitation research. *Id.* §§ 1503, 1505-1506, 1509, 1515-1517, 1519.

rehabilitation and physical restoration are most properly imposed upon the employer as one of the costs of doing business. The employer should provide not only the costs of retraining and job placement, but also incidental costs such as travel, uniforms, books and supplies, and room and board, if residence away from home is required. During the vocational rehabilitation process, a worker needs the assurance of a steady stream of income so he may participate in his program without the distraction of financial worries. He should therefore continue receiving compensation for lost wages during rehabilitation at a rate equivalent to temporary total or temporary partial disability. Additional maintenance payments may also be necessary in individual cases to assure the individual's completion of his rehabilitation.

Innovative programs that provide spouses of deceased workers with vocational training and provide employers with funds to modify the workplace so as to hire or re-hire handicapped workers should be encouraged and tested. Rehabilitation efforts should be initiated soon after the worker becomes disabled, before he settles into a pattern of dependency on workers' compensation benefits and income transfers. A legislature must, however, keep in mind that often a certain length of time must pass before an employee is psychologically prepared to embark on a vocational rehabilitation program.

Incentives for both workers and employers must be created to guarantee the success of vocational rehabilitation. After a hearing, a worker's compensation should be suspended or forfeited for his unjustified refusal to participate in vocational rehabilitation. Employers will be provided incentives because a worker who completes vocational rehabilitation will not require the same degree of supplemental compensation in the future as he had required prior to rehabilitation. In vocational rehabilitation lies the promise of restoring the worker to the labor force in a manner that is both humane and economical. If this goal is achieved, the worker will be able to return to his rightful position in the workplace, earning substantially the same wages and enjoying substantially the same opportunity for advancement in his occupation as he possessed prior to his unfortunate disability.

APPENDIX A:
AN OVERVIEW OF WORKERS' COMPENSATION VOCATIONAL REHABILITATION

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Ala.	Ala. Code §§ 25-5-57(a)(4)b, d, i, j; 25-5-77(c)(d) (1975 & Supp. 1985)		ER elects; or EE requests and treating physician opines that EE cannot return to former employment and both physician and VR specialist write that VR is reasonably calculated to restore EE to gainful employment and is in best interest of EE.	TTD or TPD terminate upon max med recovery. *Floyd v. Hous. Auth.*, 397 So.2d 136 (Ala. Civ. App.), *cert. denied*, 397 So.2d 139 (Ala. 1981). PPD available thereafter. § 25-5-57(a)(3). PTD if injury totally incapacitates EE from working or being retrained for gainful employment. § 25-5-57(a)(4)d.	ER pays for evaluation; voc rehab.	
Alaska	Alaska Stat. §§ 23.30.041, 23.30.045 (1984)		EE entitled to full evaluation for VR within 90 days of injury if EE suffers a permanent disability that precludes return to suitable gainful employment.	TTD or TPD. § 23.30.-041. *See Bignell v. Wise Mechanical Contractors*, 651 P.2d 1163 (Alaska 1982).	ER pays reasonable costs of evaluation and plan.	Board may award $200/month in case of extreme hardship.

ER = employer
EE = employee
TD = temporary disability
PD = permanent disability
TPD = temporary partial disability
TTD = temporary total disability
PPD = permanent partial disability
PTD = permanent total disability

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Ariz.	Ariz. Rev. Stat. Ann. § 23-1065(A)(1) (1983)			TTD and TPD terminate when physical condition becomes stationary. §§ 23-1044(F), 23-1047(A). *See Cleator v. Indus. Comm'n*, 129 Ariz. 179, 629 P.2d 1015 (Ariz. Ct. App. 1981).		Comm'n may provide additional awards from special fund to enable EE to accept Fed. or State VR.
Ark.	Ark. Stat. Ann. § 81-1310(f) (Supp. 1985)		EE entitled to receive PTD or PPD; EE must request VR prior to determination of permanent disability payments.	TTD and TPD terminate upon end of healing period. Claimant undergoing VR after med recovery not entitled to permanent disability benefits, nor to special temporary benefits. *Ryan v. Napa*, 598 S.W.2d 443 (Ark. Ct. App. 1980); *Model Laundry & Dry Cleaning v. Simmons*, 596 S.W.2d 337 (Ark. Ct. App. 1980).	ER pays necessary costs of VR and reasonable expense of travel.	
Cal.	Cal. Labor Code §§ 139.5, 4651.2, 5405.5, 5410, 5803 (West 1971 & Supp. 1986)		EE must request VR w/in 1 yr. from date of last finding of permanent disability or Appeals Bd. approval of compromise and release; except EE may institute proceedings w/ in 5 yrs. after date of injury if there is a need for VR.	TTD. Cal. Labor Code § 139.5 (West Supp. 1986). EE entitled to permanent disability while adjusting to new job site. *Tangye v. Beck & Co.*, 43 Cal. Comp. Cases 3 (1978).	ER provides all reasonable and necessary voc. training.	ER pays additional living expenses necessitated by VR program.

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Colo.	Colo. Rev. Stat. § 8-49-101 (Supp. 1985)		EE unable to perform work for which he has previous training or experience and which pays as well as that for which EE is disabled. *Timberline Sawmill & Lumber v. Indus. Comm'n*, 624 P.2d 367 (Colo. Ct. App. 1981).	Weekly maintenance equivalent to TTD. Colo. Rev. Stat. § 8-49-101(1)(1) (Supp. 1985). PPD not available until after program. *Id.* § 8-49-101(5).	ER pays for VR, tuition, fees, transportation.	
Conn.	Conn. Gen. Stat. §§ 31-283a to 31-283e; 31-313(b) (Supp. 1985)		Compensable injury which disables EE from customary or most recent work.	Provisions for TTD and TPD deleted from statutes May 9, 1983. Pub. Act No. 83-65.	Workers' Rehab. Div. provides programs financed by special fund.	
Del.	Del. Code Ann. tit. 19, § 2322(a) (Supp. 1985)			Temporary benefits terminate once EE's medical condition becomes fixed. *Pusey v. Natkin & Co.*, 428 A.2d 1155, 1157 (Del. 1981).	ER provides reasonable VR services.	
D.C.	D.C. Code Ann. § 36-307 (1981)				ER provides VR services, including necessary travel expenses.	ER provides up to $50/week.

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Fla.	Fla. Stat. Ann. §§ 440.15(2), 440.49 (West 1981 & Supp. 1985)		Compensable injury precluded EE from earning wages earned prior to injury. *See Walker v. New Restorium*, 409 So.2d 1201 (Fla. Dist. Ct. App. 1982).	TTD or TPD. Fla. Stat. §§ 440.15(2); 440.49(1). Date of max. med. improvement is artificially established by statute after VR program is completed. *See Cenvill Communities, Inc. v. Brown*, 409 So.2d 1147 (Fla. Dist. Ct. App. 1982). EE who suffers certain serious injuries is entitled to TTD at increased rate of 80% of the average weekly wage for 6 months after date of injury if pursuing VR.	ER provides appropriate training and education for suitable gainful employment.	
Ga.	Ga. Code Ann. §§ 34-9-200, 34-9-200.1 (Supp. 1985)		Workers' Comp. Bd. deems VR required and likely to restore EE to suitable employment.	Max. med. recovery marks end of temporary disability benefits. *Nance v. Argonaut Ins. Co.*, 143 Ga. App. 537, 239 S.E.2d 156 (1977).	ER pays for rehab. benefits which in opinion of State Bd. of Workers' Comp. are reasonably necessary and likely to restore EE to suitable employment.	
Hawaii	Hawaii Rev. Stat. § 386-25 (Supp. 1984)		Dir. of Labor & Indus. Relations refers EEs who have or may have suffered permanent disability and who can be vocationally rehabilitated.	TTD. Hawaii Rev. Stat. § 386-25(c) (Supp. 1984).		

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Idaho	Idaho Code §§ 72-432(9), -433, -450, -501A (Supp. 1985)	Rehab. Div. established to assist in reducing period of temporary disability and to aid in restoring EE to gainful employment with least possible permanent physical impairment.	Indus. Comm'n may authorize or order retraining following a hearing or informal conference upon finding that a permanently disabled EE, after period of recovery, is receptive to and in need of VR to restore earning capacity.	ER pays TTD or TPD benefits. Idaho Code § 72-450 (Supp. 1985).		
Ill.	Ill. Rev. Stat. ch. 48, § 138.8 (Supp. 1985)			TTD or TPD during VR. *Hunter Corp. v. Indus.* Comm'n, 86 Ill. 2d 489, 427 N.E.2d 1247 (1981).	ER pays for treatment, instruction, and training necessary for VR.	ER pays all maintenance costs and expenses.
Ind.	none			TTD and TPD cease once injury has reached a permanent and quiescent state. Fact that EE cannot return to work does not compel a finding of temporary disability. *Roush v. W. R. Duncan & Son*, 96 Ind. App. 122, 130, 183 N.E. 410, 413 (1932); *Allen v. United Telephone Co.*, 168 Ind. App. 696, 701-02, 345 N.E. 2d 261, 265 (1976); *Callahan v. Lovelace Truck Service*, 169 Ind. App. 162, 164, 346 N.E.2d 623, 624 (1976).		

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Iowa	Iowa Code Ann. §§ 85.34, .37, .70 (West 1984)		Injury resulted in permanent partial or permanent total disability and EE cannot return to gainful employment because of disability.	Where PPD suffered, ER pays compensation during healing period. Healing period ends when EE returns to work, significant improvement from injury not anticipated or EE capable of returning to substantially similar employment, whichever occurs first. Compensation for PPD begins at termination of healing period. PTD paid weekly during period of disability. Iowa Code Ann. §§ 85.34, .37 (West 1984).		ER pays $ 20/week in addition to any other benefit payments.
Kan.	Kan. Stat. Ann. § 44-510g (1981)	Primary purpose of workers' comp. is to restore EE to substantial and gainful employment.	EE unable to perform work for which he has previous training, education, qualification, or experience; or unable to perform other substantial and gainful employment.	TTD. Kan. Stat. Ann. § 44-510g(g) (1981).	ER pays costs of evaluation. ER pays VR costs only if federal or state agency does not.	
Ky.	Ky. Rev. Stat. Ann. §§ 342.710, .715 (Baldwin Supp. 1985)	Primary purpose of workers' comp. is restoration of injured EE to to gainful employment.	Entitled to VR as may be reasonably necessary to restore him to suitable employment when he is unable to perform work for which he has previous training or experience.	80% of EE's average weekly wage not to exceed 100% of the state's average weekly wage times the percentage of his disability if eligible for PTD and actively participating in Bd. ordered VR. Ky. Rev. Stat. Ann. § 342.715 (Baldwin Supp. 1985).	ER pays for VR services.	

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
La.	La. Rev. Stat. Ann. § 23-1226 (West 1985)		Entitled to VR when injury precludes EE from earning wages equal to wages earned prior to injury.	TTD or TPD. La. Rev. Stat. Ann. § 23-1226(F) (West 1985). Permanency cannot be adjudicated while EE is employed pursuant to rehab. program. *Id.* § 23-1226 (G).	ER provides appropriate training and education.	
Me.	Me. Rev. Stat. Ann. tit. 39 §§ 81-90 (Supp. 1986)	Restoration of EE to gainful employment consistent with priorities of section 86.	Administrator must find EE suitable for VR following submission of evaluation of suitability. Me. Rev. Stat. Ann. tit. 39 §§ 85(2), 83(2) (Supp. 1986).	Rehab. plan may provide for comp. up to amount payable for total disability. Me. Rev. Stat. Ann. tit. 39 § 87(2)(E) (Supp. 1986).	Rehab. plan may provide that ER cover costs of reasonable and proper rehab. services; VR diagnosis and plan preparation; tuition, books and fees; other services and supplies necessary to carry out plan. Me. Rev. Stat. Ann. tit. 39 § 87(2)(A), (B), (C), (F) (Supp. 1986).	Rehab. plan may provide that ER pay a sum each week for sustenance and travel, not to exceed 25% of statewide weekly average. Me. Rev. Stat. Ann. tit. 39 § 87(2)(C) (Supp. 1986).
Md.	Md. Ann. Code art. 101, § 36(9) (1985)		Entitled to VR as may be reasonably necessary to restore him to suitable employment when he is disabled from performing work for which he was previously qualified.	TTD. Md. Ann. Code art. 101, § 36(9)(c) (1985).	ER pays expenses of VR. Workers' Comp. Comm'n may allow transportation costs in unusual cases.	
Mass.	Mass. Gen. Laws Ann. ch. 152, §§ 30A-30D (West 1976)		Rehab. Comm'n must find EE fit and eligible for VR.		ER pays reasonable and necessary costs of VR services.	

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Mich.	Mich. Comp. Laws Ann. § 418.319 (West 1985)		Entitled to VR services as may be reasonably necessary to restore him to useful employment, when unable to perform work for which he has previous training or experience.	Award of VR benefits does not affect EE's right to disability benefits. *Frammolino v. Richmond Products*, 260 N.W.2d 908, 914 (1977).	ER pays for VR services and treatment.	ER pays for transportation and other necessary expenses arising out of VR.
Minn.	Minn. Stat. Ann. § 176.102 (West Supp. 1985)	Rehab. intended to restore EE, through PR and VR, so that EE may return to a job related to EE's former employment or to a job in another work area which produces an economic status as close as possible to that the EE would have enjoyed without the disability.	Comm'nr makes determination that EE eligible for rehab. services.	ER pays up to 156 weeks of compensation in amount equal to 125% of benefits otherwise payable to EE. Minn. Stat. Ann. § 176.102(5), (11) (West Supp. 1985).	ER pays for evaluation of EE and preparation of plan; services and supplies needed to carrying out plan; reasonable cost of books, tuition, custodial daycare and travel; moving expenses; and costs of travel and daycare while job interviewing.	Comm'nr may award additional comp. if unusual or unique retraining circumstances, not to exceed 25% of comp. otherwise payable.
Miss.	Miss. Code Ann. § 71-3-19, 71-3-105 (1972)		EE is or may be expected to be totally or partially incapacitated for remunerative occupation.	Compensation for TTD terminates upon max. med. recovery. Miss. Code Ann. § 71-3-7 (1972 & Supp. 1983). *Azwell v. Franklin Associates*, 374 So.2d 766 (Miss. 1979).		ER pays up to $ 10/week.

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Mo.	Mo. Ann. Stat. § 287.144 (Vernon 1965 & Supp. 1986)			TTD or TPD payable during healing period. Mo. Ann. Stat. § 287.190(1) (Vernon 1965 & Supp. 1986). *See Baer v. City of Brookfield*, 366 S.W.2d 469, 471 (Mo. Ct. App. 1963); *Carenza v. Vulcan-Cincinnati, Inc.*, 368 S.W.2d 507, 514-15 (Mo. Ct. App. 1963).		
Mont.	Mont. Code Ann. § 39-71-1002 to -71-1005 (1985)		Dep't of Social and Rehab. Services certifies EE's entrance into course of VR. EE must be permanently disabled.	Medical stability marks end of temporary disability. *See Anderson v. Carlsons Transport*, 178 Mont. 290, 583 P.2d 440 (1978); Mont. Code Ann. §§ 37-71-116(16), 39-71-1003 (1985)	State fund pays for tuition, books, and necessary equipment.	State fund provides living expenses up to $ 50/week.
Neb.	Neb. Rev. Stat. §§ 48-121, -162.01, -162.02 (1984 & Supp. 1985)	One of primary purposes of Workers' Comp. Act is to restore EE to gainful employment.	EE entitled to reasonably necessary VR when he is unable to perform work for which he has previous training or experience in order to restore him to suitable employment.	TTD or TPD. Neb. Rev. Stat. §§ 48-121(5), -162.01(4) (1984 & Supp. 1985)	VR fund pays for evaluation and report, training, treatment, and services.	
Nev.	Nev. Rev. Stat. §§ 616.083, .086, .222, .223, .277, .1725 (1985)	To aid in getting injured workmen back to work or to assist in lessening or removing any handicap.	Consultation with injured worker and treating physician with respect to whether proposed VR is compatible with worker's age, sex, or physical condition.	TTD shall cease when any competent med. authority determines EE is capable of any gainful employment. Nev. Rev. Stat. § 616.585(3) (1985).	State Indus. Ins. System pays VR expenses.	

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
N.H.	N.H. Rev. Stat. Ann. § 281:21-b (1978 & Supp. 1985)		EE unable to perform work for which he has previous training or experience. Entitled to VR as may be reasonably necessary to restore EE to suitable employment.	Med. stabilization marks end of healing period and temporary disability. *Dodier v. State Dep't of Labor*, 117 N.H. 315, 319, 373 A.2d 341, 343-44 (1977); *see* N.H. Rev. Stat. Ann. § 281:26 III) (1978 & Supp. 1985).	ER pays such VR services as Labor Comm'ner deems necessary; ER provides books, tools, and basic materials.	
N.J.	N.J. Stat. Ann. § 34:15-12(b) (West 1959 & Supp. 1985)			PTD compensation shall cease after 450 weeks unless EE submits to educational rehab. as ordered by rehab. commn'er.		
N.M.	N.M. Stat. Ann. § 52-1-50 (1978 & Supp. 1985)		Entitled to VR when unable to return to former job.	Temporary disability ceases when EE's physical condition becomes static or stationary. *Lane v. Levi Strauss & Co.*, 92 N.M. 504, 506, 590 P.2d 652, 654 (Ct. App. 1979).	ER provides VR services, including retraining or job replacement as may be necessary to restore EE to suitable employment.	ER pays up to $3000 as may be deemed necessary in discretion of court for board, lodging, travel, and other expenses and maintenance.
N.Y.	N.Y. Work. Comp. Law § 15(3)(v), (9) (McKinney 1965 & Supp. 1986)		EE expected to be totally or partially incapacitated for a remunerative occupation. Worker required to participate in Bd.-approved program as soon as practical.	Compensation for permanent disability available when med. condition is settled. *Clark v. General Electric Co.*, 68 A.D.2d 960, 414 N.Y.S.2d 766, 767 (1979); *Cecere v. Niagara County*, 71 A.D.2d 759, 760, 419 N.Y.S.2d 315, 317 (1979). Participation in VR does not change rate of compensation. *Thomas v. Kornblum*, 17 A.D.2d 889, 890, 233 N.Y.S.2d 634, 635-36 (1962).	VR fund provides additional compensation necessary for rehabilitation	VR fund pays up to $ 30 per week toward maintenance

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
N.C.	none			Compensation for temporary disability available during healing period. N.C. Gen. Stat. §§ 97-31 (1985). *See also Perry v. Hibreten Furniture Co.*, 35 N.C. App. 518, 521, 241 S.E.2d 697, 700, *aff'd in part*, 249 S.E.2d 397 (N.C. 1978); *Crawley v. Southern Devices, Inc.*, 31 N.C. App. 284, 288, 299 S.E.2d 325, 328, *cert. denied*, 234 S.E.2d 2 (N.C. 1977).		

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
N.D.	N.D. Cent. Code § 65-05.1-.01 to .07 (1985)	Employment related disability creates a burden upon the health and general welfare of citizens of the state and upon prosperity of the state and its citizens. Rehabilitation chapter aims to assist claimant and his family in adjustments to injury by providing comprehensive rehabilitation services, including medical, psychological, economic, and social rehab.	EE unable to obtain substantial employment. EE must notify Workmen's Comp. Bureau. Bureau then decides after testing whether EE is eligible for VR.	Bureau may award rehab. allowance in lieu of disability comp. to effect rehab. contract, not to exceed 125% of weekly comp. otherwise entitled to receive. N.D. Cent. Code § 65-05.1-06 (1985).	Bureau provides VR program, equipment, and tools pursuant to a rehab. contract wherein EE promises faithful performance of terms of contract.	Bureau pays rehab. allowance. Upon successful completion of contract, claimant entitled to as much as $5000 to relocate or remodel business and living facilities as his condition requires.
Ohio	Ohio Rev. Code Ann. §§ 4121.61-.69 (Page 1980 & Supp. 1984)	To aid claimants in returning to work or to assist in lessening or removing any resulting handicap.	Rehab. Services Comm'n must certify that VR is feasible and that EE is capable of being vocationally rehabilitated.	Permanent character of disability is determined through an evaluation by the medical department of the Bureau of Workers' Comp. Ohio Rev. Code Ann. § 4123.56 (Page 1973).	Rehab Services Comm'n pays costs of VR.	Rehab Services Comm'n pays weekly amounts not to exceed amount claimant would receive for TTD, but not less than 50% of current state avg. weekly wage.

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Okla.	Okla. Stat. Ann. tit. 85 § 16 (West Supp. 1985)		Entitled to VR services to restore him to gainful employment when he is unable to perform same occupational duties as he was performing prior to injury.	Weekly comp benefits to which EE is otherwise entitled. Okla. Stat. Ann. tit. 85 § 16(D) (West Supp. 1985).	ER provides any services or training as Workers' Comp. Court deems necessary.	
Or.	Or. Rev. Stat. §§ 656.206, .258, .268, .283 (1985)	One purpose of chapter is to restore injured worker as soon as possible and to a condition of self-support and maintenance as an able-bodied worker.		TTD or TPD during VR, proportionately reduced by any sums earned during VR. Or. Rev. Stat. § 656.268(1), (2), (5) (1985). Carriers who are requested to make TTD payments to a medically stable EE in VR are reimbursed by the Workers' Comp Board. Or. Rev. Stat. § 656.728(3) (1985). *See Leedy v. Knox*, 581 P.2d 530 (1978).	Insurer or ER shall pay a vocational assistance provider for all voc. assistance service.	
Pa.	none			TTD or TPD available during healing period. *See, e.g.*, 77 Pa. Cons. Stat. Ann. § 513 (25) (Purden Supp. 1985).		
R.I.	R.I. Gen. Laws §§ 28-33-41, -41.1, -38-1 to -38-25 (Supp. 1985)	To expedite the rehabilitation of and return to remunerative employment of all disabled EEs.	Every carrier and certified ER must submit a VR evaluation if EE has total or severe permanent disability and ER has paid comp. for 3 months and is still paying comp.	Compensation payments shall not be diminished or terminated while EE participated in approved VR. R.I. Gen. Laws § 28-33-41 (Supp. 1985).	ER bears expense of VR services.	

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
S.C.	S.C. Code Ann. § 42-13-90 (Law Co-op. 1976)		EE suffers ionizing radiation injury or medical restrictions resulting from radiation and skills are not transferable to work not involving radiation exposure.	Temporary disability ends with maximum medical recovery. *Burns v. Joyner*, 264 S.C. 207, 213 S.E.2d 734 (1975); *Hines v. Hendricks Canning Co.*, 263 S.C. 399, 211 S.E.2d 220 (1975).	ER provides VR, retraining, and job placement.	
S.D.	S.D. Codified Laws Ann. § 62-4-5.1 (1978)		EE unable to return to his usual and customary line of employment and is totally disabled.	TTD comp available during VR. § 62-4-5.1 (1978).		
Tenn.	Tenn. Code Ann. § 50-6-233(b) (1985)			Comp for temporary disability available until EE attains maximum med. recovery from injury. *Brown Shoe Co. v. Pipes*, 581 S.W.2d 140 (Tenn. 1979).		
Tex.	Tex. Rev. Civ. Stat. Ann. art. 8306, § 7 (Supp. 1986)					
Utah	Utah Code Ann. §§ 35-1-67, -69 (Supp. 1985)			Temporary disability terminated upon fixed state of recovery, *i.e.*, when physical condition finally heals. Comp. for permanent disability is not available until completion of VR or certification that EE cannot be rehabilitated. Utah Code Ann. §§ 35-1-65, -67 (Supp. 1985).	Indus. Comm'n pays State Bd. of Educ., Div. of VR up to $1000 from second injury fund for VR and training.	

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Vt.	Vt. Stat. Ann. tit. 21, § 641 (Supp. 1985)		EE unable to perform work for which he has prior training or experience. VR as reasonably necessary to restore him to suitable employment.	Temporary disability benefits end once recovery process ends or worker has achieved max possible restoration of his earning power. At that point, worker has reached end result of healing process. *Bishop v. Town of Barre*, 140 Vt. 564, 442 A.2d 50 (Vt. 1982).	ER provided VR services, including retraining and job placement; reasonable cost of books, tools, basic materials.	
Va.	Va. Code § 65.1-88 (Supp. 1985)		ER furnishes VR at direction of Indus. Comm'n.	Comp. for temporary disability ceases upon maximum medical recovery. *County of Spotsylvania v. Hart*, 218 Va. 565, 238 S.E.2d 813 (Va. 1977).	ER furnishes reasonable and necessary VR services.	
Wash.	Wash. Rev. Code §§ 51.32.095, .110, .250 (Supp. 1986)	Primary purpose of workers' comp. title is restoration of injured worker to gainful employment.	VR necessary and likely to restore EE to gainful employment after evaluation and before permanent disability rating. Supervisor of Indus. Ins. makes determination.	TTD. Wash. Rev. Code § 51.32.095 (Supp. 1986).	ER or Indus. Ins. pays for VR, books, tuition, fees, supplies, equipment, transportation, and necessary expenses up to $3000 in any 52 week period.	
W. Va.	W. Va. Code § 23-4-9 (1985)		Workmen's Comp. Commn'r determines that EE has sustained or is likely to sustain permanent disability. EE susceptible to VR and can be returned to remunerative employment.	TTD available during VR. W. Va. Code § 23-4-9 (1985).	State Fund pays amount as may be necessary for VR up to $10,000.	

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Wis.	Wis. Stat. Ann. §§ 102.42(9), .43(5), .61 (West Supp. 1985)	One of primary purposes of workers' comp. chapter is restoration of injured EE to gainful employment.	EE must undertake VR within 60 days of date he has sufficiently recovered to do so, or as soon thereafter as officer or agency in charge of VR permits him to do so.	TTD or TPD available during VR. When EE is temporarily disabled on account of receiving VR and not otherwise from his injury, TTD limited to 40 weeks. But 40-week limitation does not apply if Dep't of Indus., Labor, and Human Relations determines that additional training is warranted. Wisc. Stat. Ann. § 102.43(5) (Supp. 1985).	ER pays actual and necessary expenses of travel.	
Wyo.	none			TTD ceases "[a]s soon as the recovery is so complete that the earning power of the employee at a gainful occupation for which he is reasonbly suited by experience or training, is substantially restored...." Wyo. Stat. § 27-12-402(b) (1983). *See In re Iles*, 56 Wyo. 443, 110 P.2d 826 (1941).		
FECWIA	5 U.S.C. §§ 8104, 8111(b) (1982)		Sec. of Labor may direct permanently disabled individual to undergo VR.	TTD and augumented comp. for dependents available during rehabilitation, less any earnings during rehabilitation other than earnings from employment undertaken pursuant to VR. 5 U.S.C. § 8104(b) (1982).	Sec. provides VR services with funds from ER's Comp. Fund.	Sec. may pay up to $200/month.

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
LHWCA	33 U.S.C. §§ 908, 939(c), 944 (1982)		EE is or may be expected to be totally or partially incapacitated.		Sec. of Labor pays for VR services and prostheses from § 944 Special Fund.	Sec. pays $25/week from § 944 Special Fund.

APPENDIX B:
AN OVERVIEW OF WORKERS' COMPENSATION VOCATIONAL REHABILITATION, CONTINUED

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Ala.	Reasonable charges for necessary board, lodging, and travel.				Loss of comp. for each week of refusal; Loss of right to receive a permanent and total disability rating.	ER may petition to revise award of permanent total disability comp. if EE no longer suffers permanent and total disability due to VR.
Alaska	Reasonable cost of board, lodging, and travel.		37 weeks. *Rehab.* Administrator may extend VR for another 37 weeks if special circumstances exist.		*Forfeit comp.* during period of refusal to participate in evaluation or plan. May recover 25% upon successful completion of VR.	Statute establishes order among VR plans and meaning of return to suitable gainful employment. Alaska Stat. § 23.30.041(3) (Supp. 1983).
Ariz.	See maintenance					

ER = employer
EE = employee
TD = temporary disability
PD = permanent disability
TPD = temporary partial disability
TTD = temporary total disability
PPD = permanent partial disability
PTD = permanent total disability

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Ark.	Additional cost of room and board. *Gray v. Armour & Co.*, 598 S.W.2d 434, 435 (Ark. Ct. App. 1980). ER pays reasonable expense of travel.	None. *See Gray v. Armour & Co.*, 598 S.W.2d 434 (Ark. Ct. App. 1980).	60 weeks		Workers' Comp. Comm'n may consider whether VR would diminish permanent disability. *Smelser v. S.H. & H. Drilling Corp.*, 593 S.W.2d 61, 62 (Ark. Ct. App. 1980).	EE, if not working or receiving other weekly benefits, is entitled to payment at his regular weekly benefit rate for a period of 6 weeks commencing on date of request for VR while parties explore VR potential.
Cal.	See maintenance					ER may not petition to decrease or terminate temporary disability benefits during VR. *See generally Shasta Convalescent Hospital v. Workers' Compensation Appeals Bd.*, 132 Cal. App. 3d 997, 183 Cal. Rptr. 602 (Cal. App. 1982).
Colo.	ER pays transportation		26 weeks. Dir. of Indus. Comm'n may extend VR services for additional 26 weeks.	If ER or ins. carrier does not provide VR, Dir. may refer EE to qualified physician or facility for VR evaluation. If VR reasonably necessary, ER must pay costs.	If EE withdraws from VR program, PPD is calculated as though he successfully completed VR.	Div. of Labor to cooperate with Dep't of Soc. Services regarding VR.

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Conn.						Conn. Gen. Stat. § 31-283a (Supp. 1985) establishes a div. of workers' rehab. within workers' comp. comm'n.
Del.	ER pays reasonable cost of board, lodging, and travel. *See Mosely v. Delaware*, 372 A.2d 178 (Del. 1977).				Loss of comp. for each week of refusal to accept Bd. ordered VR. *Wilmington Hous. Auth. v. Gonzales*, 333 A.2d 172 (Del. Super. Ct. 1975).	
D.C.					Suspension of comp. during period of refusal.	Mayor monitors VR.
Fla.	Reasonable cost of board, lodging, and travel.		26 weeks. Dep. Comm'ner, upon finding it necessary and proper, may extend for additional 26 weeks.		Refusal to accept rehab. results in 50% reduction in weekly comp.	Dep. Comm'ner must determine whether there is a reasonable probability that EE can be rehabilitated before adjudication of permanent and total disability.
Ga.	ER pays reasonable costs of board, lodging, and travel.		26 weeks. Workers' Comp Bd. may extend for additional period if required and likely to restore EE to suitable employment.		Bd. in its discretion may suspend, reduce, or limit comp.	

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Hawaii				Dir. of Labor & Indus. Rel. makes referrals to Dep't of Soc. services and Housing and private VR providers.		Dir. adopts rules regarding additional living expenses and VR costs.
Idaho	ER pays reasonable travel expenses to and from facility. If EE outpatient, ER pays daily subsistence as ordered by the Comm'n to cover reasonable expenses of board, lodging and transportation.		52 weeks. Indus. Comm'n may extend for additional 52 weeks if it finds extension advisable after application and hearing.			Rehab. Div. established within Indus. Comm'n.
Ill.	See maintenance					
Ind.						
Iowa			13 weeks. Indus. Comm'n may extend for additional 13 weeks if circumstances indicate continuation will accomplish VR.			
Kan.	If ER furnishes VR, reasonable costs of board, lodging and travel not to exceed $2000 for any 26-week period. Dir. may require ER to pay additional $1000. Such costs may be borne by Federal, State or other public agency.		26 weeks if VR at ER's expense. After hearing, in extremely unusual case, Dir. may extend for additional 26 weeks.	Dir. of Div. of Worker's Comp. may refers EE to federal, state, or public agency which may provide services at no cost to ERs.	Suspension of compensation. If refusal exists beyond 90 days, Dir. must cancel comp.	Statute provides for rehab. administrator.

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Ky.	ER pays reasonable cost of board, lodging, and travel.		52 weeks. Bd. may extend period after hearing in unusual cases.	Workers' Comp Bd. may refer EE to physician of facility for evaluation of suitability of VR, and based on response, order that VR be provided.	50% loss of comp. for each week of refusal.	Statute creates rehab. panel.
La.	ER pays reasonable cost of board, lodging, and travel.		26 weeks. Dir. or court may extend 26 weeks if necessary and proper.	Upon application of ER, EE or Insurer, Dir. may refer EE to physician or facility for purpose of evaluating EE's need of VR and the scope of VR necessary to restore EE to suitable gainful employment. Based on evaluation, Dir. may order VR.	Weekly comp. reduced by 50% during period of refusal.	*See Hughes v. Webster Parish Police Jury*, 414 So.2d 1353 (La. Ct. App. 1982).

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Me.	See maintenance		Determined during plan development and included in plan. Me. Rev. Stat. Ann. tit. 39 § 87(2)(F) (Supp. 1985).	Upon mandatory filing of report by ER, administrator may order evaluation of suitability of VR. Employee has final decision on which approved provider conducts evaluation. Me. Rev. Stat. Ann. tit. 39 § 83(1), (2) (Supp. 1985).	Suspension of benefits for no longer than period of refusal. Me. Rev. Stat. Ann. tit. 39 § 87(4) (Supp. 1985)	Rehabilitation plan, which may provide for a variety of services and costs, developed following a positive evaluation of suitability of VR. Plan must be approved by administrator. In-house VR allowed. Me. Rev. Stat. Ann. tit. 39 § 83(3), 83(4), 84. Employer reimbursed from Employment Rehab. Fund for actual direct costs of VR, provided certain conditions met. Me. Rev. Stat. Ann. tit. 39 §§ 84(3), 87(6) (Supp. 1985).
Md.	ER pays up to $40 per week.		24 months	Workmen's Comp. Comm'n refers EE to appropriate VR evaluation agency.	Forfeits all TTD during period of refusal.	*See* Cruy, *The Developing Law on Equal Employment Opportunity for the Handicapped: An Overview and Analysis of the Major Issues*, 7 U. Balt. L. Rev. 183 (1978).

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Mass.	ER pays necessary expenses for travel, room and board.			Div. of Indus. Accidents and Rehab. Bd. refer EE to an impartial Rehab. examiner. ER required to provide Rehab. Bd. name of any EE receiving comp. for 6 months.		EE not required to accept VR.
Mich.	See maintenance		52 weeks. Dir., after review, by special order may extend additional 52 weeks, or portion thereof.	Dir. of Bureau of Workers' refers EE to bureau-approved facility for evaluation.	Dir. determines loss or reduction of comp for each week of the period of refusal except comp. for partial disability.	
Minn.	ER pays reasonable costs of board and lodging.	Rehab. Serv. Sec. of Workers' Comp. Div. may provide VR to a dependent spouse who is in need of VR to become self-supporting.	156 weeks	Generally, ER to provide rehab. consultation w/in 5 days after EE has 60 days of lost work. If not, comm'r will do so.	Comp. may be suspended, terminated or altered if EE uncooperative.	Statute creates Rehab. Review panel to hear appeals, study rehab., recommend rehab. rules.
Miss.			52 weeks			

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Mo.						Workers' Comp. Div. to study methods of returning EEs to work, and to cooperate with other state departments to secure suitable employment.
Mont.	State Indus. Accident Rehab. Account provides actual and necessary travel expenses.				Termination of biweekly benefits.	
Neb.	ER provides reasonable costs of board, lodging, and travel.				Comp. suspended, limited, or reduced.	Insurers and self-insurers pay annual tax toward VR fund.
Nev.					Loss of benefits other than accident benefits.	
N.H.	ER pays reasonable cost of board, lodging, and travel.		1 year. After informal hearing in unusual case, Commn'r may extend period as may be reasonable and necessary to accomplish successful results.		Loss of comp for each week of refusal.	VR and PR personnel staff within Workmen's Comp Div.
N.J.						

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
N.M.	see maintenance	see maintenance		Court refers all cases in need of VR to appropriate public or private agencies in NM or in any other state.	Refusal does not result in forfeiture or diminution of any award.	*Lane v. Strauss & Co.*, 92 N.M. 504, 507, 590 P.2d 652, 654 (Ct. App. 1979), distinguishes rehab. from VR as the restoration of an individual to his greatest potential—physically, mentally, socially, and vocationally.
N.Y.					Refusal does not affect right to disability benefits. *Kalevas v. J.H. Williams & Co.*, 27 A.D.2d 22, 24, 275 N.Y.S.2d 546, 548-49 (1966).	VR constitutes care and treatment. Dep't of Labor cooperates with Dep't of Education in providing VR.
N.C.						

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
N.D.			Rehab. contract establishes duration of program.		Discontinuance of lost-time benefits during period of refusal. If noncompliance continues for 6 months after final order discontinuing benefits, Bureau loses all jurisdiction to award further disability comp. benefits.	Bureau pays claimant's attorney's fees for purposes of effecting rehab. contract. Dir. of Rehab. Services responsible for program.
Ohio			Living maintenance payments not to exceed 6 months unless comm. decides claimant will benefit by an extension.	Indus. Comm'n refers to Rehab Serv. Comm'n all claimants with respect to whom it believes inquiry into VR should be made.		
Okla.	ER pays reasonable cost of board, lodging, travel, tuition, books, necessary equipment.		52 weeks. Court may extend for additional 52 weeks after affording interested parties an opportunity to be heard.	Judge of Workers' Comp. Court refers EE to qualified physician or facility.	Refusal to accept VR does not diminish benefits.	Court to cooperate with VR Sec. of Dep't of Human Services and Employment Service of Okla. Employment Security Comm'n.
Or.						
Pa.						

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
R.I.	Reasonable expenses for board, lodging, and travel.				Comp. suspended while injured EE wilfully refuses to participate in approved VR program.	ERs or carriers must contribute to Donley Rehab. Center for rehabilitation of injured workers.
S.C.	Reasonable cost of board, lodging, and travel.			52 weeks. Indus. Comm'n may extend for 26 weeks by special order after opportunity to be heard.	Loss of comp for each week during period of refusal.	
S.D.						
Tenn.				Div. of Workers' Comp. to refer all feasible cases for VR to Dep't of Education.		
Tex.				Indus. Accident Bd. refers EE to Rehab. Comm'n when VR is indicated.		If artificial appliances would improve EE's occupational opportunities, they must be furnished. Tex. Rev. Civ. Stat. Ann. art. 8306, § 7d (Vernon 1986).
Utah			ER's maximum liability is 6 years, after which second injury fund is used.	If EE tentatively has a PTD, Indus. Comm'n must refer him to Div. of VR.	Refusal results in loss of PTD comp. from Second Injury Fund once ER's liability for PTD ends (after 312 weeks).	

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
Vt.	Reasonable cost of board, lodging, and travel.			Comm'ner of Labor and Indus. may refer EE to qualified physician or facility for evaluation.	Loss of comp. for each week of refusal if Commn'r so directs.	
Va.					EE barred from further comp. until refusal ceases. No comp. shall be paid for period of suspension unless Indus. Comm'n finds refusal justified.	
Wash.	ER pays reasonable cost of board and lodging.	ER pays for child or dependent care.	52 weeks ($3000 plus TTD); Supervisor may after review extend VR another 52 weeks.		Dep't of Labor may reduce, suspend, or deny comp. for refusal to participate after notice given.	Second Injury Fund pays ER up to $5000 per worker per job modification to encourage ERs to hire workers with disability from work-related injury.

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
W. Va.						Permanently disabled EE must prove by a preponderance of evidence that he can be vocationally rehabilitated and returned to remunerative employment. *Estes v. Workmen's Compensation Commn'er*, 150 W. Va. 492, 147 S.E.2d 400 (W. Va. 1966).
Wis.	ER pays actual and necessary costs of maintenance.			40 weeks. Limitation does not apply if Dep't finds additional VR is warranted.		
Wyo.						
FECWIA					Sec. may reduce prospectively the EE's monetary compensation in accordance with what probably would have been his wage-earning capacity in the absence of his failure to cooperate.	

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/ responsibilities	miscellaneous
LHWCA				Sec. provides EEs receiving comp. or VR services and assists EEs in obtaining best services possible.		