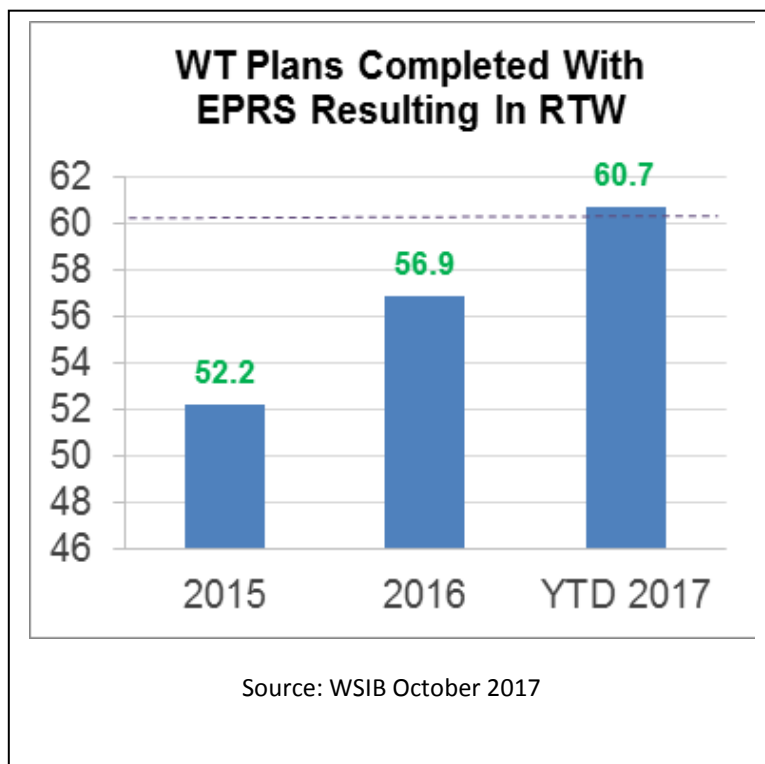


The Problem With Deeming

Background

Overall, more than 90% of workers who miss time from work because of a work injury get back to work at their pre-injury wages in less than a year. But the vast majority of those injuries are temporary. People need time to heal, they make a full recovery, they go back to their pre-injury employer and they get on with their lives.

Workers with permanent injuries who cannot return to their pre injury employment have very different experiences. They are eligible for Return to



Work assistance from the WSIB. This can include language training, skills training or formal education, job search training and assistance with placement with a new employer (External Placement - EPRS). When they complete the program, they will be deemed or determined able to work in their new job field. Their compensation for lost earnings will be reduced by the amount people earn at jobs in that field.

The problem is that about 40% of those injured workers the WSIB is assisting with placement outside of their pre-injury employer cannot get the job they were trained for, but their WSIB benefits are still cut as if they were working. Some of those fortunate enough to find employment are not able to sustain it but their WSIB benefits remain cut as if they were working.

The actual experience varies for different potential occupations and types of disability. Many of the injured workers we see are considered able to

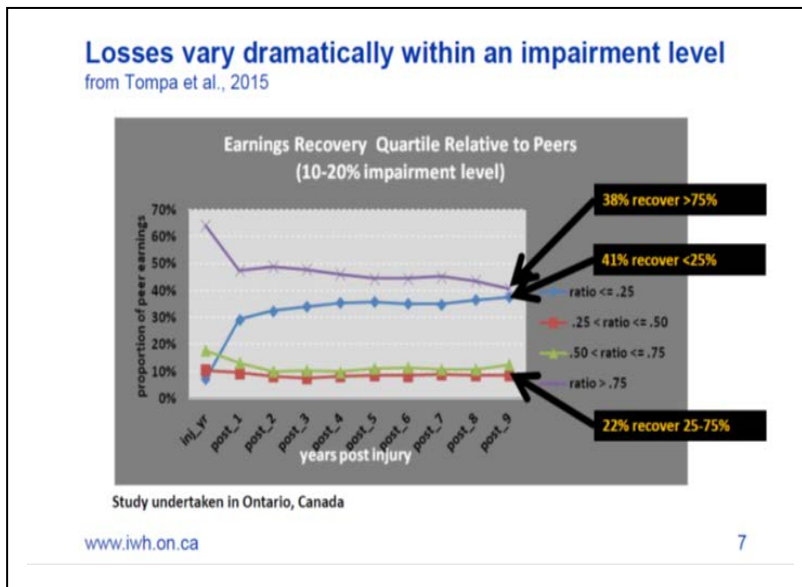
Top SO NOC Code	WT Plans Closed	Employed %
145-LIBRARY, CORRESPONDENCE AND RELATED INFORMATION CLERKS	90	54
147-RECORDING, SCHEDULING AND DISTRIBUTING OCCUPATIONS	41	61
642-RETAIL SALESPERSONS AND SALES CLERKS	39	49
741-MOTOR VEHICLE AND TRANSIT DRIVERS	36	75
421-PARALEGALS, SOC. SERV. WRKRS. & OCCUPS. IN EDUC. & REL., NEC	25	64
742-HEAVY EQUIPMENT OPERATORS	24	71
223-TECHNICAL OCCUPS. IN CIVIL, MECHANICAL & INDUSTRIAL ENGINEER	22	82
144-ADMINISTRATIVE SUPPORT CLERKS	19	74
661-CASHIERS	18	17
143-FINANCE AND INSURANCE CLERKS	17	59
141-CLERICAL OCCUPATIONS, GENERAL OFFICE SKILLS	13	38
225-TECHNICAL OCCUPS. IN ARCHITECTURE, DRAFTING, SURVEYING & MAP	13	77
665-SECURITY GUARDS AND RELATED OCCUPATIONS	12	58
122-ADMINISTRATIVE AND REGULATORY OCCUPATIONS	11	82
124-SECRETARIES, RECORDERS AND TRANSCRIPTIONISTS	11	91

Source: WSIB October 2017

return to work in customer service occupations. For injured workers who complete a training program to become retail sales clerks, cashiers or other clerical skills, the WSIB reports that less than 50% are employed after their program. Although this

suggests that employment is probably not available, the WSIB will reduce their loss of earnings benefits as if they were fully employed.

In a presentation to the Injured Workers and Social Assistance Conference



in November 2017, Emile Tompa presented an analysis by the Institute for Work and Health of wage loss data from the WSIB and the Canada Revenue Agency. Looking at injured workers with a permanent injury recognized and rated by the WSIB at 10 to 20% impairment, the

largest group of injured workers, 41%, recover less than 25% of their earnings compared to their uninjured peers.

This is the story behind Prof. Peri Ballantyne’s research findings that 45% of people with a recognized permanent impairment are unemployed at 54 months post injury and experiencing full wage loss. She found 46% live in or near poverty, and 9% live in deep poverty (Poverty status of worker compensation claimants with permanent impairments (2015) in Critical Public Health - Ballantyne et al).

When the ‘wage loss’ model of workers compensation was proposed by Prof. Paul Weiler in the 1980’s, he wanted a more precise method of compensation, rather than the “rough justice” of the permanent disability pension system. He proposed that only exceptional situations would require deeming or determining an injured worker to have income that he or she does not have. **It “...would require a tangible indication that suitable work was in fact available to the worker, presumably through evidence that the employer, the Board, or some other agency had made a specific job offer to him.”** (Reshaping Workers Compensation for Ontario, 1980, p. 62)

That never happened. The problem with deeming or determining is that it presumes full employment among permanently injured workers when the reality in our society is that about 45% of people with disabilities are not employed. Research cited above shows that the reality is not much different for injured workers. The result is a spiral of unemployment, poverty, disability and deteriorating health and a trail of destroyed families and lives. This is not an acceptable result in a system that was developed to replace the courts as the arbiter of justice for injured workers. Deeming has got to go.

Injured Workers’ Consultants