

# Longshoremen's Protective Union (I.L.A.) Local 1953



" NONE CEASE TO RISE ...BUT THOSE WHO CEASE TO CLIMB"



*Longshoremen's  
Protective Union*

**Submission to the 2020 Worker's Compensation Statutory  
Review.**

**"None cease to rise... but those who cease to climb"**

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Injured Workers' Groups has often raised the concern that many injured workers are not given proper time to heal and are pushed back to work prematurely. The purpose of this submission is to engage the Government and Workplace NL in a conversation about their mistaken and harmful philosophy that "early and safe" return to work is always preferable. We want the change to be official Workplace NL policy, which should be consistent with the "early **and safe**" return to work legislation and with the evidence in current research:

*s.89,89.1 The worker shall co-operate in his or her early and safe return to work ..."*  
(emphasis added).

This debate is often misunderstood as injured workers wanting benefits instead of work. Let us be clear that injured workers, particularly the permanently disabled workers we represent, want to return to work as soon as they are able. However, this work must be safe, and the emphasis on "immediate" return to work can disrupt the healing process and does not work as a rule. Each case should be decided according to the individual injured workers' situation and "**time to heal**" should be safeguarded **officially**. This is a fundamental principle of workers compensation confirmed by the Supreme Court of Canada in the 2013 Martin and Laseur decision. Looking at the Nova Scotia chronic pain regulation, the court said:

*"...the treatment of injured workers suffering from chronic pain under the Act is not based on an evaluation of their individual situations, but rather on the indefensible assumption that their needs are identical. In effect, the Act stamps them all with the "chronic pain" label, deprives them of a personalized evaluation of their needs and circumstances, and restricts the benefits they can receive to a uniform and strictly limited program." (par. 99)*

"Is the worker expected to return immediately after injury?"

"Although next day return to work (RTW) is not unusual for a worker with a minor or simple injury, a quick RTW can be too early for a worker with a complicated injury (e.g. that involves an inconclusive diagnosis or additional surgery). However, if a worker does not return to work, he or she may be viewed as non-compliant (s.89) Duty to Cooperate and could lose or face a reduction in compensation benefits."

“In some cases, a worker experiences pain and health problems beyond the usual symptoms. In these situations, the insurer might prompt the worker to RTW before the injury is fully understood, which can contribute to delayed healing or re-injury.”

Work absences after an initial RTW might signal pain or worsening injury. Absences might also indicate that the worker could benefit from additional recovery time.”

“If there is concern about the safety of returning to work because the extent of a worker’s injury is unclear or functional abilities are difficult to identify, delayed RTW to give time to heal or time for further assessment could prevent a failed RTW.”

This sounds like a well-balanced approach to individual circumstances. But the disappearance of “**Time to Heal**” has buried this sound approach.

### **Confusing Early Mobilization (Medical Rehabilitation) and Early Return to Work**

The idea that “time to heal causes harm” is extremely dangerous to injured workers. It should be noted that the discarding “**Time to Heal**” does not promote the depicted “lengthy, passive rehabilitation before returning to work”. It in fact noted that the idea of “no lost time” (if possible) began two decades earlier with the WCB medical rehabilitation strategy of the early 1990’s. The document was warning that there should not be an “extremist” interpretation that early return to work should not be immediate or unsafe. The new theory conflates two things that are not identical. Early activity is good (medically approved and according to individual circumstances). Staying at work or returning to work immediately requires a different threshold of recovery and is not identical to early mobilization or early physical rehabilitation.

### **The Workplace is no Rehabilitation Centre**

Once physical rehabilitation is equated with staying at work, the misconception that the workplace is a rehabilitation center takes hold. But the workplace is no rehabilitation center. It has a different purpose (to produce a profit and maximize production), it has a different climate, is fast paced, and often marked by hostility to injured worker by employers, supervisors, and sometimes co-workers. The NL Government has heard extensively from workers across NL on the dismal situation facing precarious workers. The horror stories abound, with workers facing hostility, not being paid properly, and so on. The **Don Dunphy Inquiry** reported, with extreme concern, an injured workers quality of life. We do not need any more crucified injured workers in our province. While not all employers are the same, why should we pretend that employers provide a supportive “rehabilitation center-like” environment? “**Time to Heal**” provided a necessary respite. Forcing the injured workers back to work prematurely is inhumane. It will not work if our goal is sustainable employment.

Research shows a significant rate of re-injury after return to work. Forcing seriously injured workers back to work is counterproductive (i.e. high risk of re-injury) and does not result in sustainable employment. Information began to emerge from research in the 1990s which found that early return to work did not necessarily result in sustainable employment. This indicates that about one third of the workers who had returned early to work were not able to sustain it. A more recent analysis by the Institute for Work and Health shows that re-injury after return to work remains a very significant problem. It concludes that, in

Ontario, a large fraction of lost-time claims are repeat claims and a large fraction of repeat claims are with the same employer. It also found that the risk of repeat claim depends on age & duration of previous claim. Long-duration claims have lower re-injury risk, long-duration claims followed by re-injury had lower wage replacement and medical costs (Repeat workers' compensation claims, Etches, Mustard et al, IWH Plenary Series, Toronto, January 31, 2012,). This suggests that, when injured workers are given a longer time to heal before returning to work, the re-injury rate is lower; and when there is a reinjury, the workers compensation costs are less than they are for injured workers who returned to work sooner and were also reinjured? This suggests that the recent reduction in benefits expense for the WSIB may be short lived. Is **facilitating recovery at work** receiving the desired functional outcomes in our province?

Interview data show that injured workers who are unable to return to work are forced to re-evaluate their sense of identity. Following workplace injury, a number of changes take place: the loss of gainful employment challenges a worker's own internal sense of well-being; it is frequently cause for friends and family to regard them differently; and it leads to new people intruding into their lives. These changes...serve to reinforce the sense of having a new and less socially valued identity to get used to: the identity of injured worker. We recommend that Workplace provide social work/psychological services to those injured workers who are having trouble in dealing with the altered life experiences caused by a workplace injury early in the claim process. It is our hope that the provision of these services would not be just another item on a list of available resources to injured workers, but rather a system-wide genuine understanding that workplace injuries engage more than physical and vocational rehabilitation, but also family, social and psychological issues, which need to be resolved. We have seen consistent manipulative use of the Act regarding sections 19.1,19.4,54.1,74.1,89,89.1 and often we see the real merits and justice of each individual case misses the mark for the crucified worker.

The **Longshoremen's Protective Union** started organizing on the St. John's waterfront in 1890, becoming officially unionized in 1903. Our first union hall was in downtown St. John's at 3 Victoria Street, known today as the LPSU Hall. It housed many of the strike votes, meetings, and debates held by the Labour Movement of Newfoundland's working class. As a union dedicated to its members, and generations of stevedores, we believe that occupational health and safety and the protection of our workers and their benefits for the sake of their livelihood, are of the highest priority and that, as the working class of this province, we must put our trust in the Workers' Compensation System to provide us with protection from financial burden due to occupational injury and/or illness.

## **Meredith Principles**

The Meredith principals were designed by Sir William Ralph Meredith in 1913 and are the foundation of our workers compensation system. These principles were based on a historic compromise between workers and employers. Injured workers sacrificed their right to sue a negligent employer, and in return they were guaranteed compensation benefits.

The five **Meredith Principles** are:

1. **No-fault compensation:** Workplace injuries are compensated regardless of fault. The worker and employer give up their rights to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.
2. **Collective liability:** The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
3. **Security of payment:** a fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.
4. **Exclusive jurisdiction:** All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims. The board is not bound by legal precedent; it has the power and authority to judge each case on its individual merits.
5. **A Public System with an independent board:** The governing board is both autonomous and non-political. The board is financially independent of government or any special interest group. The administration of the system is focused on the needs of its worker and employer clients, providing service with efficiency and impartiality, and providing a social safety net for those injured or made ill as a result of their work and for the families of those who die because of their work.

In his 1913 final report, Justice Meredith wrote "...the true aim of a compensation law is to provide for the injured workman and his dependents and to prevent their becoming a charge upon their relatives or friends, or the community at large." We must never forget the 'true aim' of our workers' compensation system.

Given the diversity of the modern workforce, we need to ensure our system meets the "true aim" provision, that it works effectively for all kinds of workers and that we avoid what Justice Meredith called half measures. In his words, "half measures that mitigate but do not remove injustice are, in my judgement, to be avoided."

Today we question whether the current workers' compensation system in NL has been successful in honouring Justice Meredith's 'true aim', or if half measures are not being avoided. Unfortunately, it appears that half measures are all too common. These recommendations are designed to help change this.

**Now is the time to start building a stronger, more transparent workers' injury/illness/fatality prevention and compensation system.**

We believe workers' compensation system is focused primarily on decreasing the number of compensation claims and employer assessment rates, and rather than the safety of workplaces and healthy workers. We ask that Workplace NL be more transparent in their demonstration of how workers are better protected and supported, from prevention through to return to work and, where necessary, longer-term disability. We believe this change can happen through a plan that emphasises prevention, embraces meaningful changes in policies and practices, and utilizes surveillance and diligent evaluation. The financial sustainability of workers' compensation is best served through effective injury prevention. Safer workplaces and less injuries will result in a reduced number of claims and a healthier bottom line.

**COVID-19 and the Need for New Pandemic Legislation**

For many Canadian employees, measures to address the COVID-19 pandemic have ranged from unemployment to working from home. In the case of our longshoremen, who continued to work through this pandemic to continue to provide Newfoundlanders and Labradorians with the goods they need, the measures went as far as maintaining physical distance and being provided Personal Protective Equipment (PPE). The willingness to go back to work in the midst of the pandemic allowed others to stay home thereby reducing the spread of infection and ultimately the duration and health consequences of the pandemic.

In regular circumstances many workers might have exercised their right to refuse unsafe work. Instead, they have gone to work trusting that their travels to and from work would be safe, that because of access to appropriate, employer-provided infection control measures, including personal protective equipment (PPE), they would not contract the COVID-19 virus.

Many employees that are economically impacted are able to access EI and special government benefits. Those required to work however, have to trust that their workplace is safe and that they will have access to necessary PPE to limit exposures.

The pandemic reminds us of the importance of three basic worker rights and why they exist:

1. The right to know about the hazards in the workplace. Workers must be provided with the equipment and receive the training to stay safe while at work.
2. The right to participate in decisions that could affect their health and safety.

3. The right to refuse work that could endanger their health and safety or that of co-workers.

Workers are at risk of the virus at work, at home and in the community. If a worker becomes infected, they have a high potential of infecting others. Workers' fears about infection and spreading infection is a large trigger for mental stress.

COVID-19 is a driver to inform workers on why they have a right to know their worksite is safe and why they have a right to participate in discussions about what management must do to ensure their occupational health and safety.

Workers must be assured that if they contract the virus, their health and their financial needs will be taken care of, including lodging to quarantine away from their families. Workers' compensation must be available to those workers should they become ill, and available to their families if they should die. In saying this, workers' compensation must be available immediately to these workers.

At time, a worker who tests positive for COVID-19 at work can apply for workers' compensation to cover a portion of their lost wages and assist with recovery. But what happens if a worker gets sick and has no access to a test and yet, according to public health rules, they must self-isolate and stay away from work for 14 days? What happens if their exposure at work is from an infected transient delivery person who is asymptomatic? Will they be able to prove that they were made sick at work? If they are exposed while travelling to work will they be eligible for compensation?

These questions have become relevant due to the pandemic but will continue to stay relevant. Public health and science authorities have predicted there will be future pandemics. Workers' compensation will need to be modernized in order to address situations where workers are put in harm's way with no real option but to go to work. Conclusive presumptive coverage is designed to help us address these kinds of situations. Presumption reduces adjudication time for claims and ensures that workers and their families have the resources they require should they need to self-isolate or become ill.

Establishing conclusive presumptive coverage would make the claims process much simpler and allow the injured worker to receive the assistance with utmost efficiency. It would also reduce the mental stress these workers experience in waiting for adjudication. British Columbia is putting forth movement to implement conclusive presumptive coverage. Potential exposures

during the journey to work and for a work-related pandemic illness like COVID-19 will be included.

**Recommendation: The Government of NL amend the *Workplace Health, Safety and Compensation Act* to provide conclusive presumptive coverage for work-related pandemic illness to those workers deemed essential.**

### **Income Replacement Rate (IRR)**

Before April 2018, NL had an Income Replacement Rate (IRR) of 80%, the lowest in Canada. This legislated choice was made when there was a deficit to the injury fund during the 1990s. Injured workers paid a price, that was not commensurate, to help with revitalizing the fund. The NLFL advocated for an increase to the IRR again and again, and it was recommended the province increase the IRR to 85% in the 2013 Statutory Review.

Five years later, on April 1, 2018, there was a legislated amendment to increase the IRR to 85%. Even after this amendment, NL continues to have one of the lowest income replacement rates in Canada. Six jurisdictions provide a 90% IRR.

Workplace NL's 2018 Annual Performance Report stated, "The Injury Fund has been fully-funded for five years. In that time, there has been a 38 percent decrease in the assessment rates paid by employers to fund the system, including a discount of \$0.21 per \$100 payroll in 2019." This is especially galling to injured workers, when the primary purpose of the injury fund is to take care of injured workers. It is unacceptable for injured workers be financially penalized as a result for a workplace injury or illness and even more unacceptable when the injury fund is in surplus and employer assessment rates are so dramatically reduced. Each year, employer assessment rates continually decrease and yet it takes five years to have a legislative change that proposes a reasonable increase in the Income Replacement rate.

A decree to increase the Income Replacement rate for injured workers was brought to the convention floor for debate at the December 2019 NLFL Constitutional Convention. When the question was called, the resolution in support of an IRR increase to 100% of net income passed unanimously.

**Recommendation: Any worker injured or made ill from work be compensated at 100% IRR until such time as they are able to return to work and their pre-injury earnings.**



**Recommendation: The Government of NL be required to respond to the recommendations from the Statutory Review Committee within six months of receiving the committee's report.**

### **Maximum Compensable Assessment Earnings (MCAE)**

While there is no mention of maximum benefits in the Meredith Principles, workers compensation legislation states that injured workers will receive an IRR of 85% of their net-income up to a maximum gross (pre-tax) income of \$66,980. This places an extra penalty on many high-paying jobs. Many of these jobs are considered dangerous such as mining, oil and gas, construction, and **cargo marine transport work such as stevedoring.**

Currently, the MCAE for Manitoba is \$127,000; Alberta is \$98,400; BC is \$95,400; NWT and Nunavut are \$94,500; Yukon is \$90,750; Saskatchewan is \$88,906; and BC is \$87,100. At the NLFL's December 2019 convention, a resolution addressing the MCAE issue was also debated. Once again, the delegate vote was unanimous that the ceiling must immediately increase to \$90,000 with annual CPI adjustments.

Workplace NL announces the next year's Maximum Compensable Assessment Earnings (MCAE) around the end of each year. The legislation mandates MCAE to be adjusted on an annual basis, taking into account the annual Consumer Price Index (CPI).

**Recommendation: That the Maximum Compensable Assessment Earnings be increased immediately to \$90,000 with an annual CPI adjustment.**

### **A Minimum Wage Floor**

Although the MCAE is a ceiling for determining benefits, we believe there also needs to be a floor. A large number of workers earn minimum wage, and many are involved in part-time, precarious work. The members of our union constantly face the challenges of precarious work. If any of these workers are injured or become ill at work, their compensation would mean a 15% drop in income making nearly impossible for them to stay afloat financially. Just as Quebec has done, Newfoundland must amend legislation so that no worker will receive benefits less than the province's minimum wage.

**Recommendation: That the *Workplace Health, Safety and Compensation Act* be amended to state that no injured worker can receive less than the province's minimum wage.**

## Top Ups

The workers' compensation legislation that directly interferes with a union's ability to negotiate provisions in a collective agreement to assist members with the cost of pensions and other benefits the worker would lose when injured and in receipt of Workers' Compensation Benefits needs to be rescinded (See section 81.1 and 81.2 of the *Act*). It is common practice for collective agreements to provide Supplemental Unemployment Benefit (SUB) plans and top-ups to Employment Insurance, maternity, parental, sick leave, and short-term disability, as well as workers compensation benefits.

Newfoundland is the only province that violates this right to free collective bargaining guaranteed by law and has been since the 1990s.

**Recommendation: That unions be able to negotiate supplemental benefits that would help injured workers, and that Sections 81.1 and 81.2 of the *Workplace Health, Safety and Compensation Act* be withdrawn.**

## Retirement Benefits

The L.S.P.U (I.L.A.) Local 1953 is calling for a review of recent amendments to section 75 of the *Act*, introduced on January 1, 2019. The new "Retirement Benefit" amendment was intended to improve retirement benefits for injured workers, but the amendment has further deteriorated a flawed process, and has resulted in an unfair rate that reduces pensions to poverty levels. At the age of 65, injured workers and their survivors are left with a minimal percentage in a lump sum payment that is not remotely close to the pension rate they would be entitled to if not for their injury. This legislation needs to provide injured workers and their families a fair and equitable pension.

Injured workers are end up penalized upon turning 65. Although it is not the intention, the reality is that various claimants, younger and older, are left to suffer. Many injured workers preferred the former process. There is no "grandfather clause" to cover these workers. Under the current legislation, workers are given a lump sum payment then their workers' compensation ceases. As part of Bill 36, the spouse who survives the injured worker is entitled to this single lump sum payment when and only if the spouse survives the worker before the injured worker's 65 birthday. If the worker receives their lump sum upon turning 65 then passes away, there is **no entitlement to the spouse**. This is causing enormous hardship for too many injured workers and their families. Often the spouse is female and is left to rely on other forms of government assistance.

Retirement benefits should reflect the actual pension amount the worker would have received if they had continued to work and contribute to their pension plans. A surviving spouse should be entitled to a survivor's benefit the same as they would be with the Canada Pension Plan (CPP).

The L.S.P.U (I.L.A.) Local 1953 and retired member [REDACTED] have been party to the Statutory Review Committee on both January 18, 2001, and January 26, 2006. We have also filed complaints to the Human Rights Commission and the Office of the Citizens' Representative. As a result, under the present Act, they were either denied or not addressed. Although we take exception to the fact that, in part, Section 75 (1) of the Act covers the injured worker's spouse, there are still amendments required for Workplace NL to truly take responsibility to maintain reasonable levels of loss benefits. Workplace NL website claims "Our priority is to ensure injured workers and **dependents** receive the necessary benefits and services." We are to assume spouses after the age of 65 aren't dependents.

**Recommendation: That Workplace NL review the "Pension Benefit Replacement" under the *Workplace Health, Safety and Compensation Act* to ensure that when an injured worker is unable to contribute to their Employer Sponsored Pension Plan (ESPP) and Canada Pension Plan (CPP), as a result of workplace compensable injury, that they are entitled to "Pension Loss Replacement" that is equal to the actual loss an injured worker is experiencing and reflect the actual pension amount the worker would have received if they had continued to work and contribute to their pension plans, regardless of the period of time of disablement. Don't leave widowed spouses in the cold and dark.**

#### **Early and Safe Return to Work (ESRTW)**

Early and Safe Return to Work (ESRTW) is an essential component of the workers compensation system. Once a worker is able to return to the workforce safely and without economic penalty, then ESRTW becomes key.

The goal of ESRTW is to help the injured worker get back to work in a safe and gradual manner. It is important to eliminate the possibility of re-injury. The role the employer plays is crucial to ESRTW. All employers and workers are obligated under Section 89 of the *Act* to co-operate in a worker's early and safe return to suitable and available employment with the injured employee. According to the *Act*, the employer has the responsibility to provide "suitable employment that is available and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings." (See section b)

The Client Services Policy RE-05 explains that Workplace NL is responsible for transmitting the re-employment obligation to the workplace parties and ensuring compliance. The employment obligation not being imminent is a problem. Most workers find that they are not able to return to the workplace and earn the same income as before their injury. Too many employers are claiming undue hardship. Workplace NL must investigate this to ensure the validity of these claims, determine any non-compliance, and enforce applicable penalties.

**Recommendation: That Workplace NL enforce Return to Work (RTW) policies to ensure employers are meeting the legislative requirement to provide employees a suitable job that restores the workers pre-injury income.**

### **Labour Market Re-entry (LMR)**

When the employer informs Workplace NL that they are not able to accommodate employment of an injured worker, the worker is referred to a Labour Market Re-entry (LMR) assessment service to assist them in finding feasible future employment opportunities. LMR services are contracted out to external providers. Because they are provided externally, it is difficult to determine whether the LMR program is actually helping workers the way it should, or if it is merely a tool to lower workers' replacement earnings.

We are unable to determine the number of injured workers actually able to return to work at or near the same rate of income as before their injury, and how effective the tools are that measure injured workers' RTW functional abilities.

Functional Assessments consider the injured worker's ability to sit, stand, and walk. Other abilities such as reaching, bending, crouching, etc. are assessed but not considered in ESRTW planning. Therefore, an injured worker with a shoulder injury could be assessed to RTW for 8+ hours with no consideration to their ability to reach. Only their sit, stand, and walking abilities are considered.

Too many injured workers are unable to return to work with their previous employer at pre-injury rates enter the LMR process only to be found to be "capable of earning" in a job that does not exist. Because the "phantom jobs" are considered to exist by Workplace NL, the injured employee's compensation benefits are either cut or significantly reduced.

The following concerns with LMR, which we believe must be addressed:

- Failure to ensure RTW with the pre-injury employer is exhausted;

- The policy criteria for suitable employment is too broad (suitable employment can be anywhere in NL, no matter where the worker lives);
- Assigns “fault” in a “no fault” system;
- Concern that Experience-rating (PRIME) may discourage employers from hiring injured workers, thus reducing their opportunities for real and meaningful employment;
- External LMR providers may be focused on more employer (client) costs rather than the safe return to work of injured workers and their concerns; and
- There is an over-reliance on Functional Capacity Evaluations to determine whether a worker can truly perform the work.

LMR fails workers. It reduces their benefits by adjudging for jobs that don't exist. LMR does not allow Workplace NL to properly track what has happened to injured workers and to respond to their needs.

We believe that LMR services should be offered internally rather through an external provider. What happens to LMR workers must be tracked to determine if they have found suitable employment. By merely adjudging the benefits of injured workers, Workplace NL is failing injured workers and performing an appalling deterioration of the Meredith principles which address “no-fault” and guaranteed benefits.

**Recommendation: That Workplace NL eliminate external providers and have LMR work done internally, and that workers in the LMR system are tracked and their information maintained to ensure successful LMR. Further, that a review of the concerns outlined in our submission be addressed with a goal to ensure that injured workers remain in meaningful employment, based on relevant assessments, pre-injury earnings, and appropriate skills.**

### **Proportionment**

It is contrary to Judge Meredith's intent to use proportionment to deny an injured workers' compensation benefits. As a result, injured workers are not properly compensated.

To argue that a portion of a worker's disability or impairment is not work-related, and thereby deny them their full entitlement, is unnecessarily penalizing injured workers, and especially older workers for aging, or wear and tear on a body, such as arthritis, after many years of work.

For example, a long-time manual labourer falls at work and experiences an arm injury. They are approved for workers' compensation benefits but following an MRI, it is found that there was some arthritis. Workplace NL argues that the worker's pains were not caused by the fall at work

but due to ongoing arthritis (“pre-existing conditions”) and decides to proportion (reduce) the worker’s benefits. If a worker was adequately able to do their work prior to their injury, then the compensation they are due should not be reduced post-injury.

**Recommendation: That Workplace NL eliminate their proportionment policy and instead, ensure all injured workers are fully compensated.**

### **Prevention and Occupational Disease**

Our union renounces the view that occupational disease is no longer an ongoing, current issue. While progress has been made on reducing exposures to some carcinogens, allergens, and materials responsible for occupational disease, such as asbestos, others are still very much with us and new chemicals are being introduced all the time. The health effects of many of these chemicals are still unknown.

The 2019 **Burden of Occupational Cancer in Canada Report**, produced by the Occupational Cancer Research Centre in Ontario, contains some sobering findings:

- Exposures to cancer causing agents in the workplace are responsible for over 10,000 cancers each year in Canada.
- The leading carcinogens are solar radiation, asbestos, diesel engine exhaust, and crystalline silica.
- The province with the highest attributable fraction of lung cancer caused by silica exposure is **Newfoundland and Labrador**.
- The highest attributable fractions of lung cancer by diesel engine exhaust are Nova Scotia, New Brunswick, and **Newfoundland and Labrador**.

Other kinds of occupational disease include occupational respiratory diseases, noise-induced hearing loss, and dermatitis. A crab asthma study done by Memorial University clearly documented the problem of under-reporting and why it exists. There is no targeted surveillance or prevention program for this sector in Newfoundland.

Noise-induced hearing loss claims are common in multiple sectors including stevedoring, pointing to the need for improved prevention in this area as well. The large number of claims and high cost for work-related musculoskeletal or ‘soft tissue’ industries in the province is a reminder that vigorous injury prevention is needed.

We desperately need to accurately evaluate the state of workplace safety in the province, to identify shortcomings in the system, fix them and improve prevention. Safer workplaces and work practices are the key to achieving the Workplace NL mandate and supporting the Meredith principles, while also ensuring workers' compensation financial sustainability.

**Recommendation: That Workplace NL replace their existing prevention strategy with a well-designed, well-resourced, multi-faceted set of initiatives and strategies designed in consultation with workers, unions, employers, and OHS experts; customized for key safety challenges like occupational disease and soft tissue injuries and rigorously evaluate and fine-tune these strategies going forward.**

### **The Role and Importance of Research in Prevention Planning**

Research has highlighted just how limiting standardized ergonomics training and interventions are when they are limited to brief visits by professionals to workplaces, and individualized adjustments to workstations. These standardized training sessions do not take into account the larger system of production and do not often follow up.

There are more alternative models available, like Participatory Ergonomics (PE), where trained ergonomists assist in working with both workers and workplaces to identify hazards, observe how jobs are actually done, draw on the knowledge of workers and others to identify high risk activities, and ways those can be eliminated/modified. This allows workers and workplaces to invest in building ergonomics knowledge and capacity in the workplace.

Participatory ergonomics, or some version of this approach, could be a core element in a more vigorous soft tissue injury prevention strategy for the province and members of trades unions. Soft tissue damage is one of the greatest causes of lost time injuries in the cargo marine transport industry, so the implementation of participatory ergonomics would greatly assist in the reduction of lost time incident frequency rates in the sector. (See attached graphs)

It is crucial for Workplace NL to invest in the recruitment and retention of stronger OHS research and training capacity which will provide access to up to date research on occupational disease and occupational health relevant to NL.

**Recommendation: That Workplace NL engage with Memorial's SafetyNet to evaluate the current prevention programs around occupational disease and soft-tissue injuries, and fully investigate opportunities in research collaborations with will benefit prevention plans.**

## **Prevention and Occupational Health Clinics**

Although improved and more complete surveillance will help improve the efficiency of prevention initiatives, more needs to be done to address the gaps in the system. An **Occupational Health Clinic** staffed with an occupational physician, industrial nurses, occupational hygienist and ergonomist, similar to the Occupational Health Clinics for Ontario Workers (OHCOW) that have been operating in Ontario for 30 years, would be a great benefit to our province's workers, especially in more physically demanding industries.

Occupational health clinics focus on identifying and addressing occupational hazards including chemical, biological, physical, ergonomic, and psychosocial hazards. They have a clinical branch that diagnoses and treats workers and provides expert clinical support to workers' advisors around claims. This is important for workers in NL who are not represented by unions. Many of these workers are precariously employed, much like our dockers, and thus more vulnerable to injury and illness and less able to voice their concerns or file a claim, without fear of repercussions.

The clinic would give workers, worker reps on OHS committees, and unions a place to present and discuss their concerns. Staff would also help workers recognize the hazards in their workplaces and their health-related consequences. Workers would then be better equipped to exercise their right to participate in a meaningful fashion in designing and implementing interventions to eliminate, control, or minimize occupational disease exposures.

Clinic staff would work with Workplace NL, as well as worker and employer representatives on sector safety associations to help them identify key hazards using improved surveillance and other data; including data from clinic practice with workers. They could also provide expertise and support to Service NL inspectors when confronted with particularly complex occupational health issues.

Clinic staff could also help rural health professionals in OHS training and they could help ensure there is OHS-related capacity in the health centres. This is done in Quebec in the Community Health Clinics (CLSCs). An occupational health clinic could host interns from Memorial University and CNA, thus providing improved opportunities for research and training in the field of OHS in the province.



**Recommendation: That Workplace NL invest in a worker and community focused, independent occupational health clinic to help identify and address occupational hazards and provide medical examinations for a full range of work-related illnesses.**

### **Full Public Disclosure of PRIME Rebates**

PRIME is a program implemented by Workplace NL that provides substantial rebates to companies if they commit to safety and effectively lower their claims costs. PRIME rebates have returned over \$150 million to employers since its creation in 2005.

It is a system that encourages claims suppression, aggressive RTW practices, and income/wage adjudging, which has been addressed in this submission already.

Our union disagrees with the theory behind experience rating in saying that workplace safety will be improved through financial incentives. Instead, we think PRIME undermines the very authenticity of our workers' compensation system.

Experience rating escapes from the historic compromise by introducing incentives that directly conflict with the fundamental principles of Meredith, most significantly that it has reintroduced fault to a system that was intended to be no-fault, and that it dissolves the principle of "collective" liability.

The overall lack of transparency of the PRIME program is especially concerning to our union. If Workplace NL is going to renounce millions of dollars annually in assessment funds, the public should know who the beneficiaries are.

Employers can receive PRIME rebates for safety and their workers won't even know about it. If a particular employee is doing an amazing job at keeping their workplace safe, and is committed to worker safety, then let's recognize them as a beacon to follow. If Newfoundland Power can advertise the beneficiaries of their rebate program, so should Workplace NL. Transparency and accountability will benefit us all.

**Recommendation: That Workplace NL conduct an independent review that examines experience rating and how it erodes the Meredith principles while encouraging claims suppression in NL, and whether alternative premium models would better create a safer workplace.**

**Recommendation: Workplace NL make public the rebate amount and the name of companies who have benefited from the PRIME program.**

## The Importance of Surveillance and Data Sharing in Prevention

A multi-faceted prevention system for occupational disease and soft tissue injuries benefits from an even stronger system of surveillance and sharing of claims data. The installment of Workplace NL's claims data in the Newfoundland and Labrador Centre for Health Information (NLCHI) would allow individual researchers to access and link claims with other health data. This occurs regularly in British Columbia through the collaboration between WorkSafe BC and the Pop Health Unit at the University of British Columbia.

Sharing Workplace NL's data would lay the foundation for better surveillance of occupational diseases and soft tissue injuries in Newfoundland, help to identify those diseases and injuries as well as any clusters at the community level, and facilitate follow-ups and a deeper analysis of the occupational diseases and injuries.

It would also start to generate data on the proportion of work-related health issues and costs paid for by MCP and individual workers versus what is covered by the compensation system – which is essential to achieve the Meredith principles.

This surveillance would be low cost with targeted examination funded using Workplace NL's research fund and would allow the province to start to support all the investments that go into building multiple datasets for the prevention of injury and occupational disease.

Canada's weak system for surveillance of injuries, disease, and fatalities is a problem for NL. Meaningful comparisons across jurisdictions and industries are essential for documenting key sources and types of injuries/illnesses that require attention and for addressing how well we are doing compared to other provinces.

Upon review of the Association of Workers Compensation Boards of Canada statistics on Lost Time Claims & Fatalities there is not a category for Marine Transport or Marine Cargo activity. There is statistics for Transportation & Storage industry and Trades, Transport & Equipment Operators & related occupations. The LSPU has received data from our affiliates in the United States (**Appendix A**) which gives a view in the lost time injury in our Port Stevedoring Industry. We have no statistical data on the Ports LTI occurrences in our Province or Country. The Total LTI data from all USMX (United States Maritime Alliance) ports is relevant data that is very similar to our LTI occurrences. There is more LTI occurrences when **lashing** than any of the other crafts completed on the piers. We have had similar occurrences in our Ports. Slips/Trips/Falls & strains are the type of injury that occurs most often according to USMX data and this is consistent with our ports as well. The lost time injury and incident rate in the

Province's Ports should be recorded so the data can be analyzed. This data is necessary as a preventative safety measure in the longshoring industry.

**Recommendation: That Workplace NL lobby the federal government to establish a strong, national surveillance system for occupational injury and disease that allows for comparisons across industries and provinces/territories, and that makes it possible to link compensation claims data with health data derived from medical records.**

***(Reference Appendix A: LTI Statistics ILA USMX 2015-2019)***

**Sources:**

Signorino ,Ronald L . President, The Blueoceana Company, Inc.

ILA-USMX Joint Safety Committee

COMMISSION OF INQUIRY RESPECTING THE DEATH OF DONALD DUNPHY: Barry, Leo.  
The Honourable Commissioner

Report on the History and Treatment of Donald Dunphy by Workplace Citizens' Representative  
File #485CF16 Issued Pursuant to Section 16 of the Citizens' Representative Act March 10, 2017,  
Fleming, Barry G. Q.C., Citizens Representative.

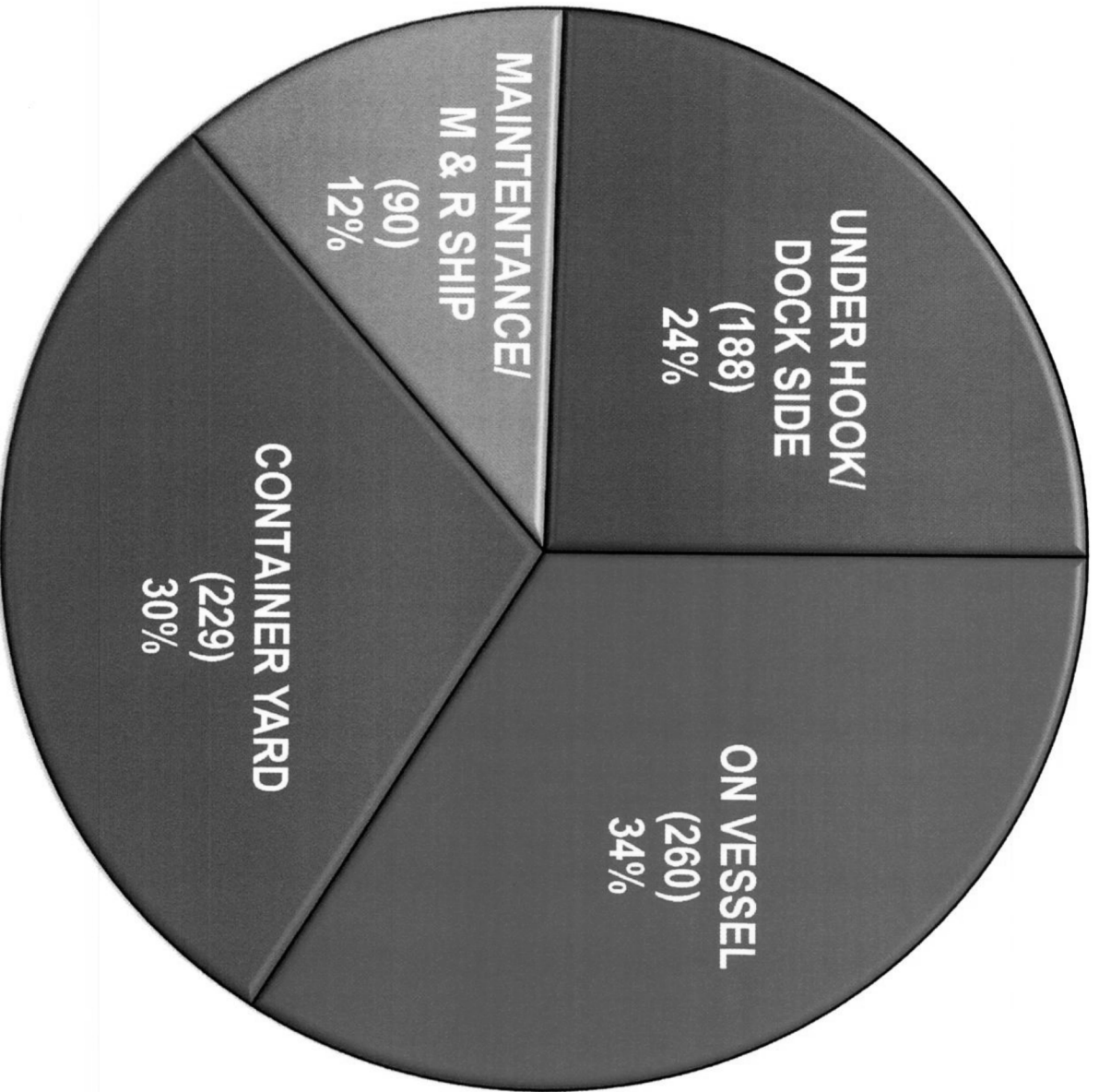
LSPU injured worker files

Newfoundland Labrador Federation of Labour, Stat Review Submission 2020

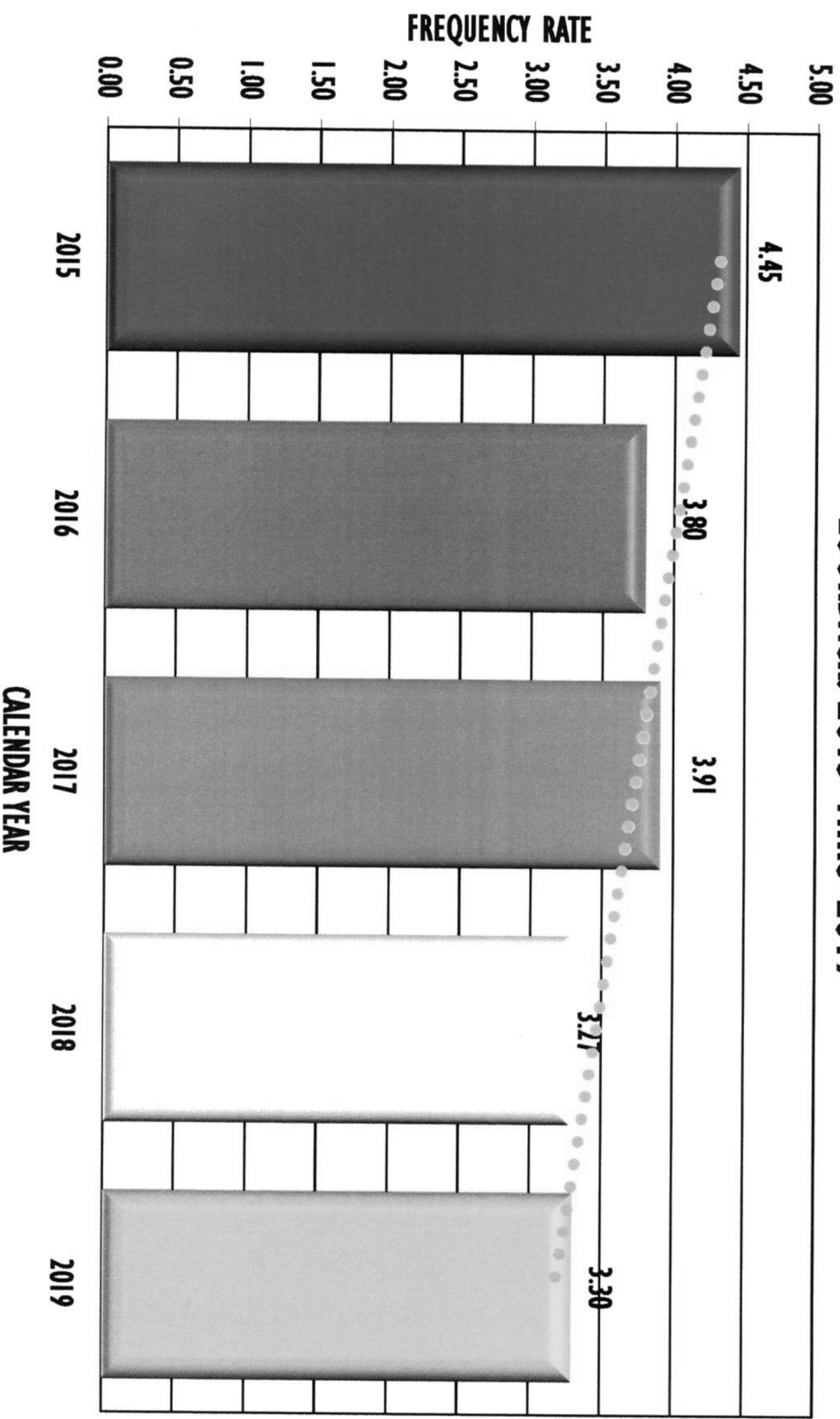
<https://injuredworkersonline.org/injured-workers-community/ontario-network-of-injured-workers-groups-oniwg/>

**APPENDIX A**

**LOST TIME INCIDENT DATA FROM ALL USMX PORTS BY LOCATION OF INJURY  
JANUARY THRU DECEMBER 2019 (767 INJURIES TOTAL)**



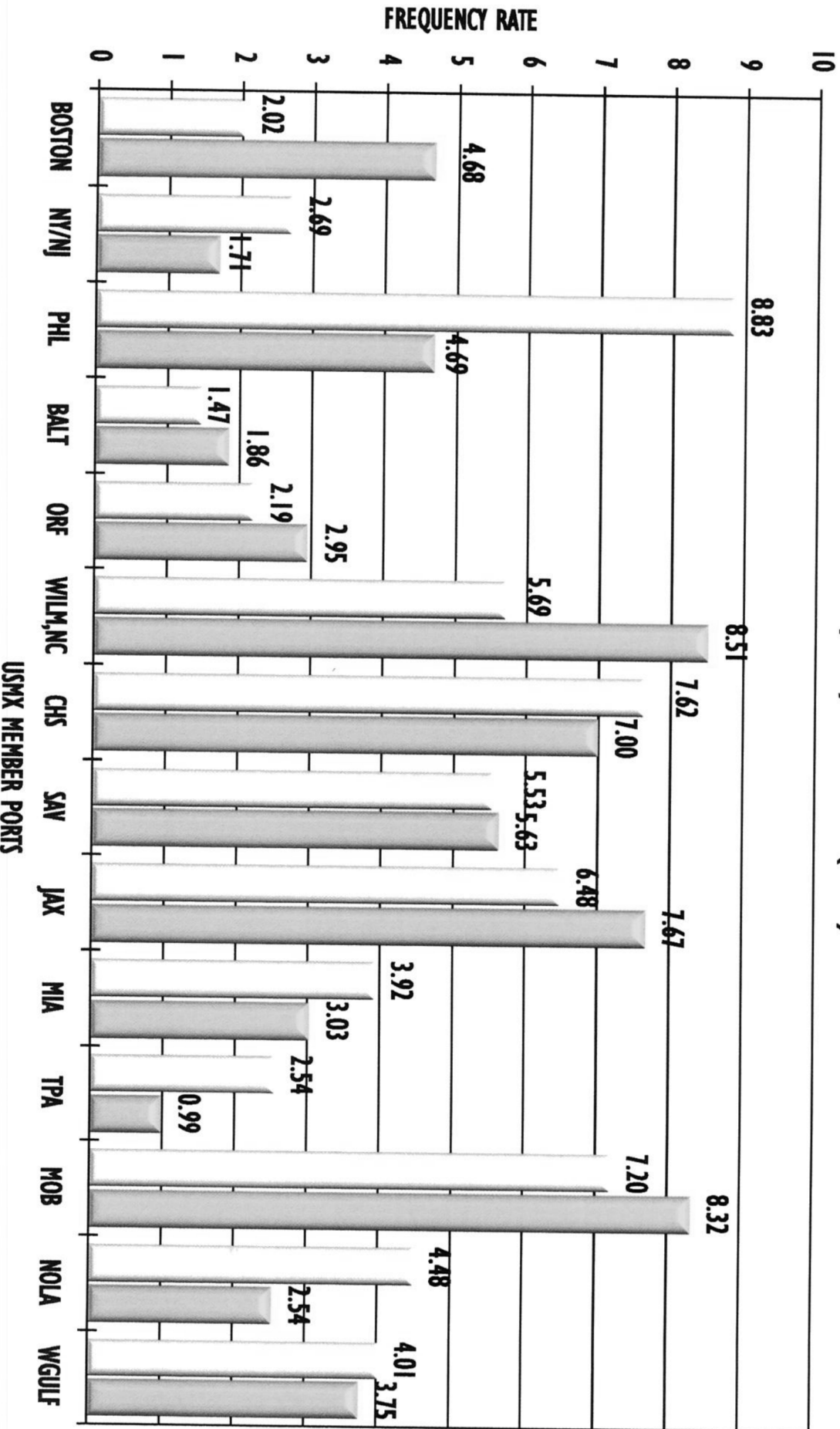
## LOST TIME INCIDENT FREQUENCY RATES (LTIFR) IN USMX PORTS LOOKBACK: 2015 THRU 2019



The lost time injury and illness incident rate is based upon Occupational Safety and Health Administration (OSHA) recordkeeping criteria and is considered a national standard used by the government for most industries. The formula considers the number of lost time incidents and illnesses occurring in a workplace and the hours worked during the time period. It is based on a workplace of 100 workers averaging 2,000 hours per year.

**FORMULA:** (Lost time injuries & illnesses x 200,000/total hours worked = incident rate.)

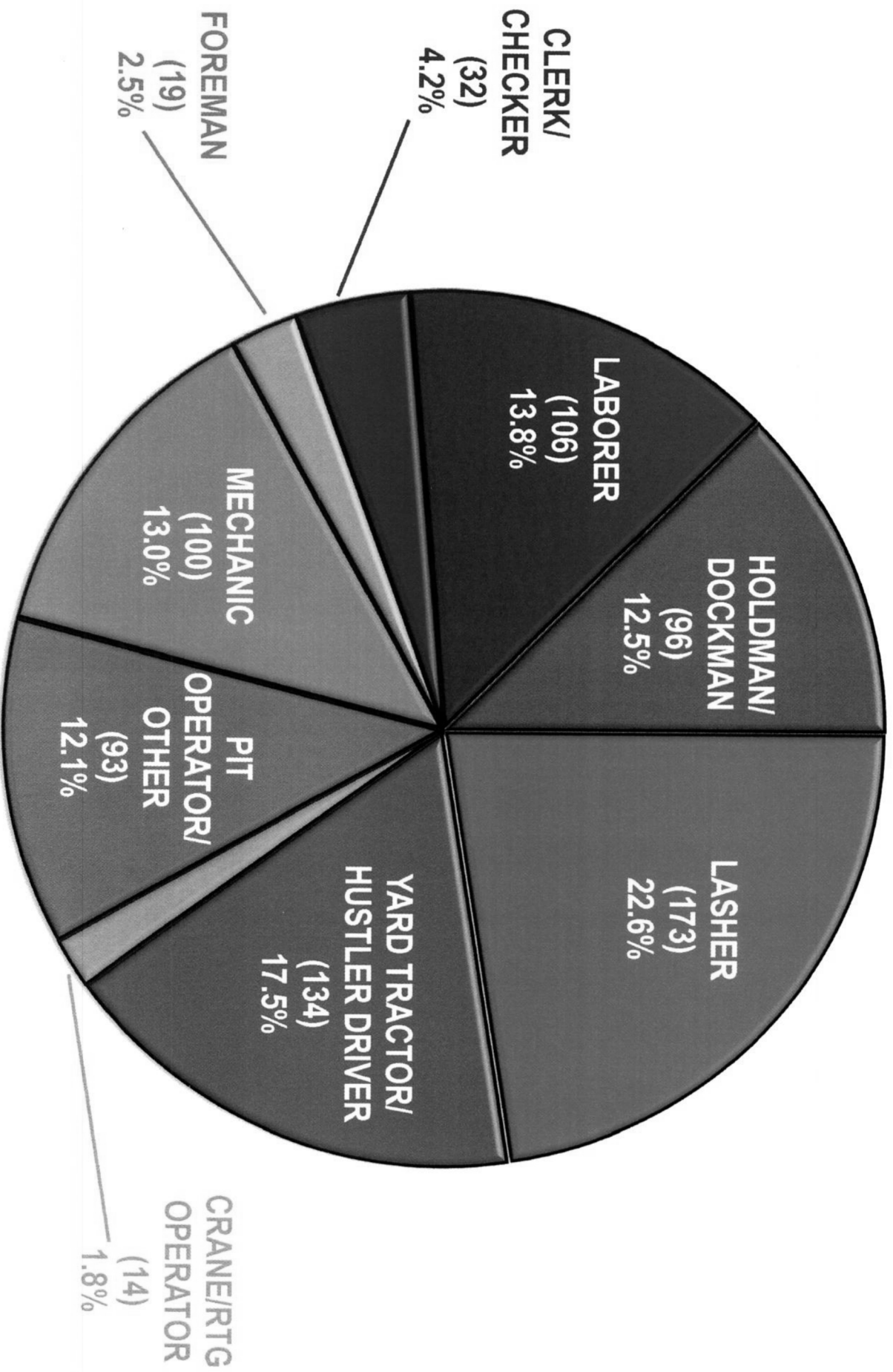
# OVERALL LOST TIME INCIDENT FREQUENCY RATES (LTIFR) IN USMX MEMBER PORTS 2018 (3.27) vs. 2019 (3.30)



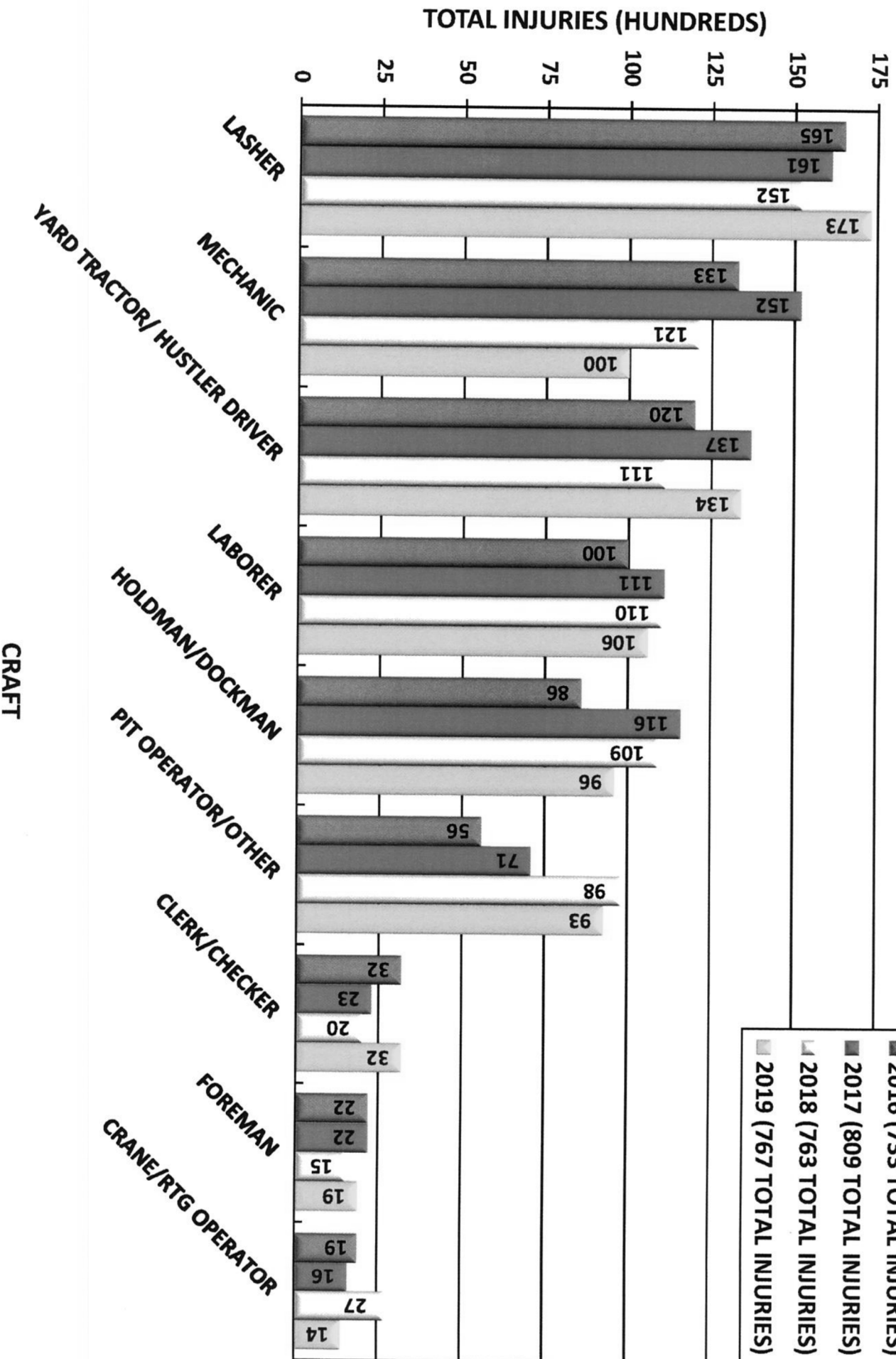
█ 2018 
 █ 2019

USMX MEMBER PORTS

LOST TIME INCIDENT DATA FROM ALL USMX PORTS BY CRAFT  
JANUARY THRU DECEMBER 2019 (767 INJURIES TOTAL)

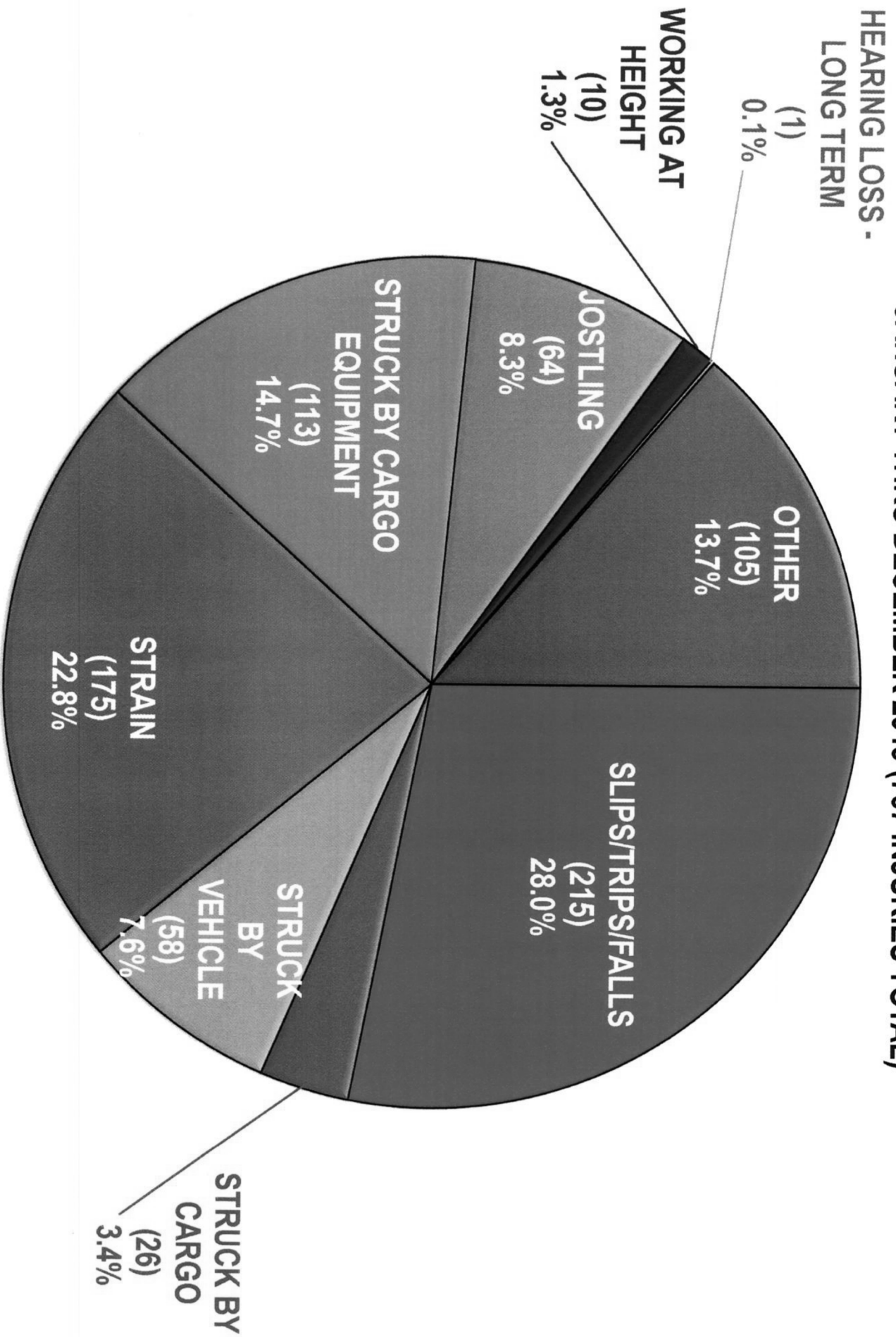


**TOTAL LTI DATA FROM ALL USMX PORTS BY CRAFT  
LOOKBACK: 2016 THRU 2019**





**LOST TIME INCIDENT RATE FROM ALL USMX PORTS BY TYPE  
JANUARY THRU DECEMBER 2019 (767 INJURIES TOTAL)**



# TOTAL LTI DATA FROM ALL USMX PORTS BY TYPE LOOKBACK: 2016 THRU 2019

