

WORKERS' COMPENSATION POLICY REVIEW

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Summary of the Contents

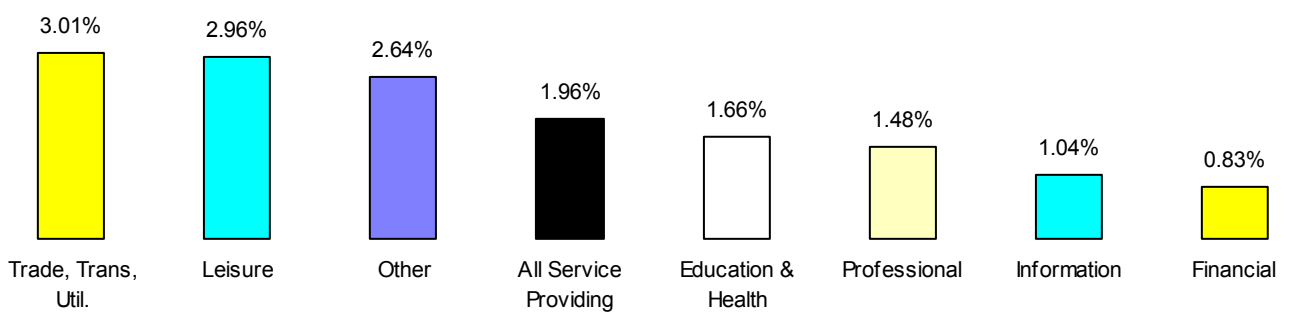
Workers' compensation costs vary considerably among private sector employers depending on factors such as geographical location and the industry. The Bureau of Labor Statistics increased the information on employers' costs in 2004, and Florence Blum and John Burton analyze the augmented data. As shown below, workers' compensation costs for all employers in service-producing industries averaged 1.96 percent of payroll. However, the range among service industries was substantial: workers' compensation costs were 3.01 percent of payroll in trade, transportation, and utilities, but only 0.83 percent of payroll for financial industries.

Ed Welch asserts that a great deal has been written about the problems that employers and insurers experienced in workers' compensation and that the complaints resulted in many changes favoring employers. He identifies a series of problems with the program that adversely affect workers and provides "A Bill of Rights for Injured Workers" to deal with these problems.

The final two items examine the coverage of work-related diseases by workers' compensation programs. John Burton describes a number of legal aspects of state workers' compensation laws that preclude many workers with work-related diseases from receiving benefits.

A recent publication by J. Paul Leigh and John A. Robbins is summarized. First, they use epidemiological data to estimate the deaths associated with occupational diseases. Second, they use data from state workers' compensation programs to estimate the number of compensable deaths attributed to occupational diseases. Third, they compare the epidemiological data and the program data to estimate that workers' compensation programs did not compensate 98.9 percent of the deaths due to occupational disease in 1999.

Workers' Compensation Costs as a Percentage of Gross Earnings by Industry for Service-Providing Industries



Source: Table 3B, Row 12.

Workers' Compensation Costs In 2004: Regional, Industrial, and Other Variations

by Florence Blum and John F. Burton, Jr.

The employers' costs of workers' compensation vary among industries and occupations, according to 2004 data published by the Bureau of Labor Statistics (BLS), which is part of the U.S. Department of Labor.¹ The BLS data also indicate that workers' compensation costs differ by establishment size, by union-nonunion status, and by geographical location within the United States. In previous years, the BLS data were only disaggregated to four census regions. However, the data are now available for nine census divisions.

The BLS data used in this article provide information on the employers' costs per hour worked for wages and salaries and for benefits (including workers' compensation and other legally required benefits). The BLS data are published every quarter, and we calculated the 2004 annual average by averaging the BLS results for March, June, September, and December of 2004. The BLS data are based on samples that varied in the quarter surveys in 2004 from 8,200 to 9,800 establishments in the private sector and 800 establishments in the state and local government sector.²

COST DIFFERENCES BY REGION

Workers' compensation costs as a percentage of wages and salaries are shown for the four census regions and the United States in Figure A and Table 1. (The states that comprise the four census regions are shown in the Notes to Table 1.) The employers' workers' compensation costs are above the national average in one region, and below the national average in three regions.³ What is perhaps surprising is the ranking of the regions, and in particular the finding that the Northeast is the region with the lowest workers' compensation costs (as a percentage of gross earnings).

The derivation of the national and regional figures shown in Figure A helps explain these findings. The BLS data used to construct Figure A are shown in Table 1. *Total remuneration* per hour worked averaged \$23.59 for employers in private industry throughout the United States in 2004 (row 1).⁴ The \$23.59 of total remuneration includes *gross earnings* that averaged \$19.00 per hour (row 2) and *benefits other than pay* that averaged \$4.60 per hour (row 6).

The gross earnings figure includes wages and salaries as well as paid leave and supplemental pay. The term *gross earnings* and *payroll* are used interchangeably in this article.

Benefits other than pay include employer contributions for insurance, retirement and savings, legally required benefits, and other benefits.⁵ *Workers' compensation*, which averaged \$0.47 per hour worked (row 9A), is one of the *legally required benefits* that are included in the BLS's total figure of \$2.05 per hour for that category (row 9).

We used the BLS data in rows (1), (2), and (9A) of Table 1 to compute the figures listed in rows (11) and (12) of that table. For the private sector in the United States in 2004, workers' compensation expenditures (\$0.47) were 1.97 percent of total remuneration (\$23.59) and 2.45 percent of gross earnings (or payroll) (\$19.00).

The same procedure used to calculate workers' compensation as a percentage of gross earnings (row 12 of Table 1) for the United States -- namely, to divide the workers' compensation expenditures per hour (row 9A) by gross earnings per hour (row 2) -- was used to calculate the regional results for workers' compensation as a percentage of gross earnings shown in Figure A and in row (12) of Table 1. Thus, for the Northeast, workers' compensation expenditures of \$0.43 per hour were divided by gross earnings of \$21.31 per hour to produce the figure of 2.01 percent -- which is workers' compensation costs as a percentage of gross earnings in the Northeast in 2004.

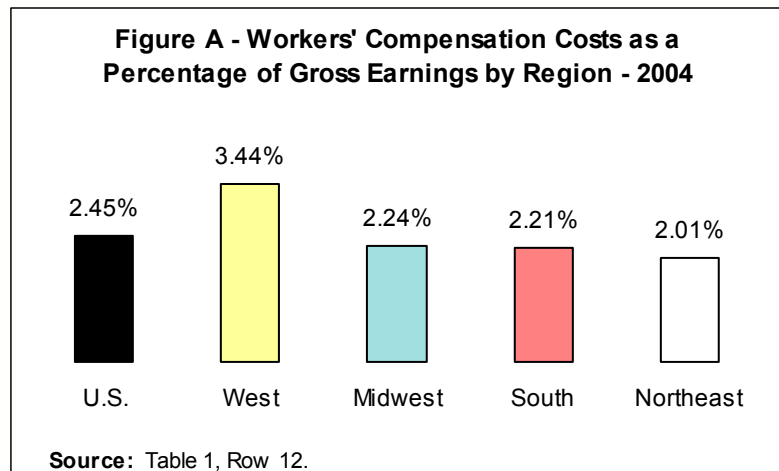


Table 1
Workers' Compensation Costs by Census Region in 2004
for Employers in Private Industry
(In Dollars Per Hours Worked)

		U.S.	Northeast	South	Midwest	West
(1)	Total Remuneration	23.59	26.43	21.03	23.60	25.14
(2)	Gross Earnings	19.00	21.31	17.06	18.84	20.21
(3)	Wages and Salaries	16.83	18.66	15.23	16.66	17.99
(4)	Paid Leave	1.51	1.85	1.30	1.46	1.60
(5)	Supplemental Pay	0.65	0.80	0.53	0.72	0.63
(6)	Benefits Other Than Pay	4.60	5.12	3.98	4.76	4.93
(7)	Insurance	1.67	1.87	1.48	1.80	1.67
(8)	Retirement Benefits	0.84	0.98	0.68	0.92	0.85
(9)	Legally Required Benefits	2.05	2.23	1.79	1.98	2.39
(9A)	Workers' Compensation	(0.47)	(0.43)	(0.38)	(0.42)	(0.70)
(10)	Other Benefits	0.04	0.05	0.03	0.06	0.02
(11)	Workers' Compensation As Percentage of Remuneration	1.97%	1.62%	1.79%	1.79%	2.76%
(12)	Workers' Compensation As Percentage of Gross Earnings	2.45%	2.01%	2.21%	2.24%	3.44%

Notes: For All Tables - See Page 13.

For Table 1:

The **Northeast** Census Region is comprised of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

The **South** Census Region is comprised of Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

The **Midwest** Census Region is comprised of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

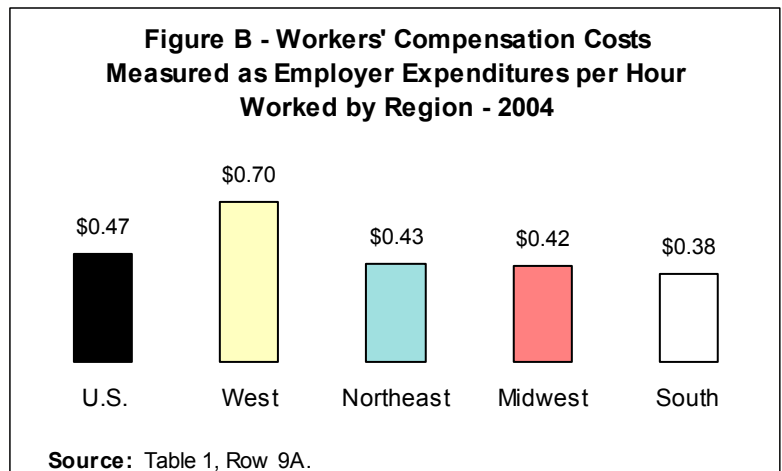
The **West** Census Region is comprised of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Source: *Employer Costs for Employee Compensation - March 2004*, News Release USDL: 04-1105 (June 24, 2004), Tables 5 and 7.
Employer Costs for Employee Compensation - June 2004, News Release USDL: 04-1805 (September 15, 2004), Tables 5 and 7.
Employer Costs for Employee Compensation - September 2004, News Release USDL: 04-2490 (December 15, 2004), Tables 5 and 7.
Employer Costs for Employee Compensation - December 2004, News Release USDL: 05-432 (March 16, 2005), Tables 5 and 7.

An alternative way to measure regional differences in workers' compensation costs is shown in Figure B. Workers' compensation is measured as costs per hour worked, as shown in row (9A) of Table 1. In contrast to the results presented in Figure A -- which indicated that the Northeast had the lowest workers' compensation costs (as a percentage of gross earnings) -- the results presented in row (9A) of Table 1 and in Figure B indicate that the Northeast's workers' compensation costs (\$0.43 per hour) were greater than the Midwest's (\$0.42 per hour) and the South's (\$0.38 per hour) workers' compensation costs per hour worked.

Appendix A examines how the regions can switch their relative costs compared to the United States, depending on which measure of workers' compensation costs is used. That interregional differences in workers' compensation can vary depending on which measure of workers' compensation costs is used leads to an obvious question: Which is the "proper" measure that

should be used to compare regions in terms of their workers' compensation costs: workers' compensation costs as a percentage of gross earnings (as shown in Figure A) or workers' compensation costs per hour worked (as shown in Figure B)?



In our view, no measure of workers' compensation costs is invariably preferable for all comparisons. Rather, the choice of measurement depends on the purpose of the comparison. For example, an employer seeking a state or region with the least expensive operating environment may decide that workers' compensation costs per hour is the best measure of costs. In contrast, a policymaker concerned about adequacy of benefits may decide that workers' compensation costs as a percentage of payroll is the best measure.⁶

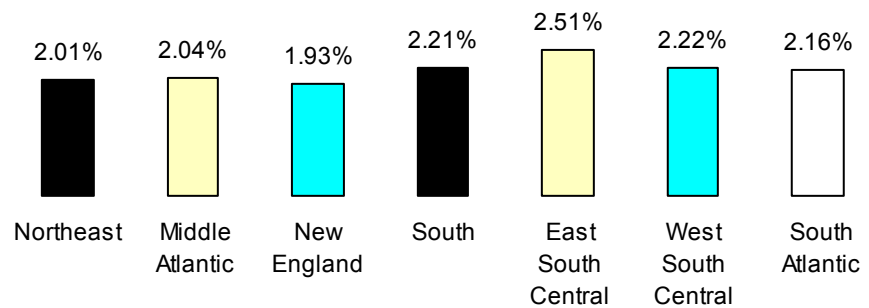
In the remainder of this article, we confine our discussion to workers' compensation costs as a percentage of gross earnings (or payroll). This format reflects the most common approach in workers' compensation studies. The reader who wishes to make comparisons in terms of workers' compensation costs per hour will be able to do so, however, because hourly cost data are also presented in all of the tables in this article.

COST DIFFERENCES BY CENSUS DIVISION

The BLS data on the employers' costs of workers' compensation are available for the nine census divisions for the first time in 2004 and are shown in Table 2 and in Figures C and D. The four census regions analyzed in the previous sections are composed of the nine census divisions examined in this section. (The states that comprise the nine census regions are shown in the Notes to Table 2.)

Panel A of Table 2 and Figure C provide data on the employers' costs of workers' compensation in the Northeast region and its two components (the New England and Middle Atlantic divisions) and the South region and its three components (the South Atlantic, East South Central, and West South Central divisions). One interesting result shown in Figure C is that workers' compensation costs as a percent of payroll are higher in each of the three census divisions that are part of the South region than in either of the census divisions that are part of the Northeast region.

Figure C - Workers' Compensation Costs as a Percentage of Gross Earnings by the Northeast and South Census Regions and by Divisions in those Regions - 2004

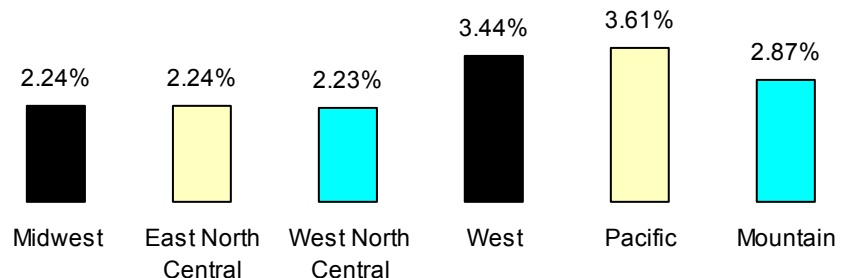


Source: Table 2, Panel A, Row 12.

Panel B of Table 2 and Figure D provide data on the employers' costs of workers' compensation in the Midwest region and its two components (the East North Central and West North Central divisions) and the West region and its two components (the Mountain and Pacific divisions). One interesting result shown in Figure D is that workers' compensation costs as a percent of payroll are higher in both of the census divisions that are part of the West region than in either of the census divisions that are part of the Midwest region.

Among the nine census divisions included in Figures C and D, a striking and somewhat surprising result is that the two census divisions with the highest workers' compensation costs as a percent of payroll (namely the Pacific and Mountain divisions) are both in the West

Figure D - Workers' Compensation Costs as a Percentage of Gross Earnings by the Midwest and West Census Regions and by the Divisions in those Regions - 2004



Source: Table 2, Panel B, Row 12.

Table 2
Workers' Compensation Costs by Census Region and Division in 2004
for Employers in Private Industry
(In Dollars Per Hours Worked)

Panel A: Northeast and South Regions

		U.S.	Northeast	New England	Middle Atlantic	South	South Atlantic	East South Central	West South Central
(1)	Total Remuneration	23.59	26.43	25.01	27.02	21.03	21.54	19.86	20.75
(2)	Gross Earnings	19.00	21.31	20.31	21.72	17.06	17.56	15.87	16.78
(3)	Wages and Salaries	16.83	18.66	17.95	18.95	15.23	15.70	14.04	15.01
(4)	Paid Leave	1.51	1.85	1.66	1.93	1.30	1.36	1.19	1.26
(5)	Supplemental Pay	0.65	0.80	0.70	0.84	0.53	0.51	0.64	0.52
(6)	Benefits Other Than Pay	4.60	5.12	4.69	5.31	3.98	3.98	3.98	3.97
(7)	Insurance	1.67	1.87	1.64	1.96	1.48	1.46	1.58	1.47
(8)	Retirement Benefits	0.84	0.98	0.87	1.03	0.68	0.67	0.63	0.72
(9)	Legally Required Benefits	2.05	2.23	2.16	2.26	1.79	1.82	1.75	1.75
(9A)	Workers' Compensation	(0.47)	(0.43)	(0.39)	(0.44)	(0.38)	(0.38)	(0.40)	(0.37)
(10)	Other Benefits	0.04	0.05	0.04	0.06	0.03	0.03	0.03	0.03
(11)	Workers' Compensation As Percentage of Remuneration	1.97%	1.62%	1.57%	1.64%	1.79%	1.76%	2.00%	1.80%
(12)	Workers' Compensation As Percentage of Gross Earnings	2.45%	2.01%	1.93%	2.04%	2.21%	2.16%	2.51%	2.22%

Panel B: Midwest and West Regions

		U.S.	Midwest	East North Central	West North Central	West Mountain	Pacific
(1)	Total Remuneration	23.59	23.60	24.30	22.02	25.14	26.87
(2)	Gross Earnings	19.00	18.84	19.27	17.90	20.21	21.55
(3)	Wages and Salaries	16.83	16.66	16.92	16.07	17.99	19.15
(4)	Paid Leave	1.51	1.46	1.55	1.28	1.60	1.75
(5)	Supplemental Pay	0.65	0.72	0.80	0.55	0.63	0.65
(6)	Benefits Other Than Pay	4.60	4.76	5.03	4.12	4.93	5.32
(7)	Insurance	1.67	1.80	1.92	1.52	1.67	1.77
(8)	Retirement Benefits	0.84	0.92	1.01	0.73	0.85	0.94
(9)	Legally Required Benefits	2.05	1.98	2.05	1.84	2.39	2.58
(9A)	Workers' Compensation	(0.47)	(0.42)	(0.43)	(0.40)	(0.70)	(0.78)
(10)	Other Benefits	0.04	0.06	0.07	0.03	0.02	0.03
(11)	Workers' Compensation As Percentage of Remuneration	1.97%	1.79%	1.78%	1.82%	2.76%	2.89%
(12)	Workers' Compensation As Percentage of Gross Earnings	2.45%	2.24%	2.24%	2.23%	3.44%	3.61%

Notes: For All Tables - See Page 13.

For Table 2:

The **New England** Census Division is comprised of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

The **Middle Atlantic** Census Division is comprised of New Jersey, New York, and Pennsylvania.

The **South Atlantic** Census Division is comprised of Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

The **East South Central** Census Division is comprised of Alabama, Kentucky, Mississippi, and Tennessee.

The **West South Central** Census Division is comprised of Arkansas, Louisiana, Oklahoma, and Texas.

The **East North Central** Census Division is comprised of Illinois, Indiana, Michigan, Ohio, and Wisconsin.

The **West North Central** Census Division is comprised of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

The **Mountain** Census Division is comprised of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

The **Pacific** Census Division is comprised of Alaska, California, Hawaii, Oregon, and Washington.

Source: *Employer Costs for Employee Compensation - March 2004*, News Release USDL: 04-1105 (June 24, 2004), Tables 5 and 7.

Employer Costs for Employee Compensation - June 2004, News Release USDL: 04-1805 (September 15, 2004), Tables 5 and 7.

Employer Costs for Employee Compensation - September 2004, News Release USDL: 04-2490 (December 15, 2004), Tables 5 and 7.

Employer Costs for Employee Compensation - December 2004, News Release USDL: 05-432 (March 16, 2005), Tables 5 and 7.

Table 3A
Workers' Compensation Costs by Major Industry Groups in 2004
for Employers in Private Industry
(In Dollars Per Hours Worked)

	All Workers	All Goods-Producing	Construction	Manufacturing
(1) Total Remuneration	23.59	27.66	27.45	27.54
(2) Gross Earnings	19.00	21.18	21.11	21.08
(3) Wages and Salaries	16.83	18.35	19.08	17.89
(4) Paid Leave	1.51	1.68	0.93	2.02
(5) Supplemental Pay	0.65	1.15	1.10	1.17
(6) Benefits Other Than Pay	4.60	6.48	6.34	6.46
(7) Insurance	1.67	2.31	1.80	2.52
(8) Retirement Benefits	0.84	1.42	1.30	1.45
(9) Legally Required Benefits	2.05	2.67	3.23	2.38
(9A) Workers' Compensation	(0.47)	(0.88)	(1.40)	(0.62)
(10) Other Benefits	0.04	0.08	*	0.12
(11) Workers' Compensation As Percentage of Remuneration	1.97%	3.18%	5.11%	2.26%
(12) Workers' Compensation As Percentage of Gross Earnings	2.45%	4.16%	6.65%	2.95%

Notes: For All Tables - See Page 13.

For Table 2B: **Goods-Producing** includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

Source: *Employer Costs for Employee Compensation - March 2004*, News Release USDL: 04-1105 (June 24, 2004), Tables 5 and 6.

Employer Costs for Employee Compensation - June 2004, News Release USDL: 04-1805 (September 15, 2004), Tables 5 and 6.

Employer Costs for Employee Compensation - September 2004, News Release USDL: 04-2490 (December 15, 2004), Tables 5 and 6.

Employer Costs for Employee Compensation - December 2004, News Release USDL: 05-432 (March 16, 2005), Tables 5 and 6.

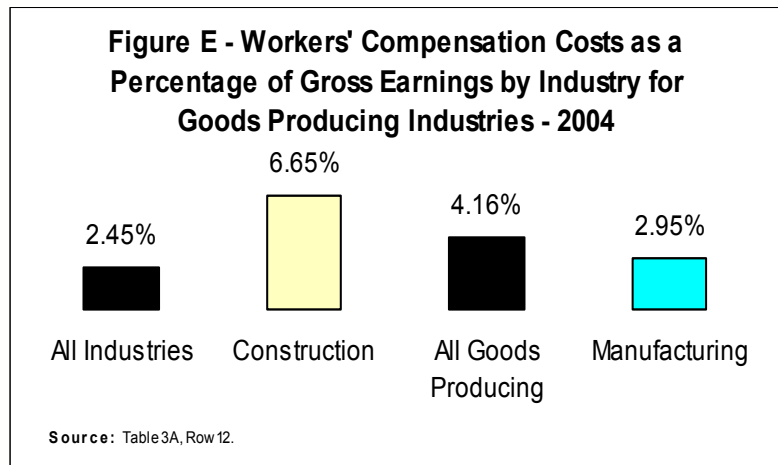
census region, while the two census divisions with the lowest workers' compensation costs as a percent of payroll (namely the New England and Middle Atlantic divisions) are both in the Northeast census region. The Pacific census division is distinguished by having both the highest workers' compensation costs measured as dollars per hour worked (\$0.78) and the highest workers' compensation costs as a percent of payroll (3.61 percent) among the nine census divisions (Table 2, lines (9A) and (12)). A snap quiz: does the presence of California in the Pacific census division have anything to do with these results?

COST DIFFERENCES BY INDUSTRY

The BLS data for 2004 also reveal that employers' costs of workers' compensation as a percentage of gross earnings vary among industries in the private sector (Figures E and F and row 12 of Tables 3A and 3B). The national average for employers' workers' compensation costs was 2.45 percent of gross earnings in 2003. (This all-industry average, in row 12 and the "all workers"

column of Table 3A, is the same as the U.S. average in Table 1.)

Workers' compensation data on industries throughout the United States can be compared at two levels of disaggregation. First, a distinction can be made between "goods-producing" industries (mining, construc-



**Table 3B
Workers' Compensation Costs by Major Industry Groups in 2004
for Employers in Private Industry
(In Dollars Per Hours Worked)**

		All Service Providing	Trade Transportation & Utilities	Information	Financial Activities	Professional & Business Services	Education & Health Services	Leisure & Hospitality	Other Services
(1)	Total Remuneration	22.58	19.81	34.08	32.10	27.18	25.16	10.53	20.40
(2)	Gross Earnings	18.45	15.84	27.78	26.06	22.68	20.60	8.79	16.64
(3)	Wages and Salaries	16.46	14.27	23.96	22.46	20.14	18.36	8.33	15.00
(4)	Paid Leave	1.47	1.13	2.85	2.29	1.87	1.82	0.33	1.32
(5)	Supplemental Pay	0.53	0.44	0.97	1.32	0.67	0.42	0.13	0.32
(6)	Benefits Other Than Pay	6.09	6.10	6.10	6.03	4.49	4.55	4.57	4.57
(7)	Insurance	1.51	1.48	2.61	2.37	1.53	1.79	0.43	1.32
(8)	Retirement Benefits	0.69	0.66	1.16	1.38	0.76	0.73	0.10	0.59
(9)	Legally Required Benefits	1.90	1.82	2.43	2.18	2.17	2.04	1.20	1.85
(9A)	Workers' Compensation	(0.36)	(0.48)	(0.29)	(0.22)	(0.34)	(0.34)	(0.26)	(0.44)
(10)	Other Benefits	0.03	0.02	0.10	0.11	0.03	*	*	*
(11)	Workers' Compensation As Percentage of Remuneration	1.61%	2.41%	0.85%	0.68%	1.23%	1.36%	2.47%	2.16%
(12)	Workers' Compensation As Percentage of Gross Earnings	1.96%	3.01%	1.04%	0.83%	1.48%	1.66%	2.96%	2.64%

Notes: For All Tables - See Page 13.
For Table 2B: **Service-Providing** includes utilities; wholesale trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Source: *Employer Costs for Employee Compensation - March 2004*, News Release USDL: 04-1105 (June 24, 2004), Tables 5 and 6.
Employer Costs for Employee Compensation - June 2004, News Release USDL: 04-1805 (September 15, 2004), Tables 5 and 6.
Employer Costs for Employee Compensation - September 2004, News Release USDL: 04-2490 (December 15, 2004), Tables 5 and 6.
Employer Costs for Employee Compensation - December 2004, News Release USDL: 05-432 (March 16, 2005), Tables 5 and 6.

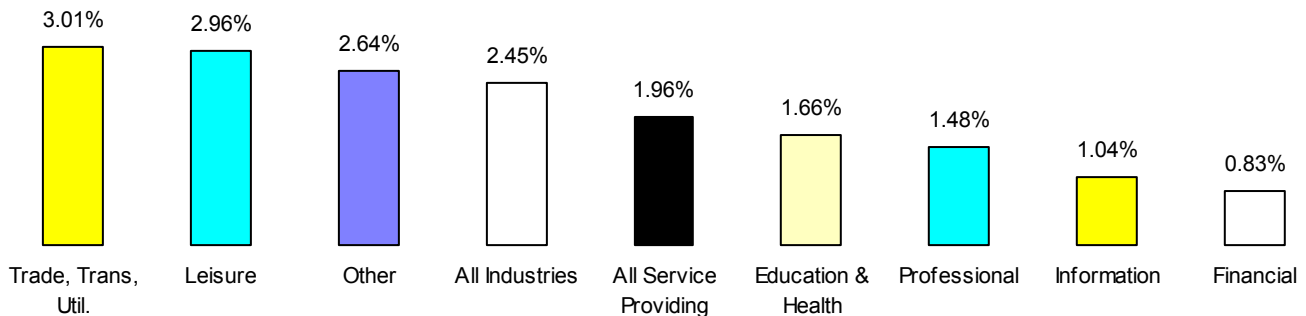
tion, and manufacturing) and "service-providing" industries (including transportation, communication, and public utilities; wholesale and retail trade; finance, insurance, and real estate; services; and other service industries as shown in the notes to Tables 3A and 3B). In 2004, national workers' compensation costs were, on average, 4.16 percent of gross earnings (payroll) for all goods-producing industries and 1.96 percent of gross earnings (payroll) for all service-providing industries (see row 12 of Tables 3A and 3B and Figures E and F).

Workers' compensation data on industries can be further disaggregated to show employers' costs for spe-

cific goods-producing industries and specific service-providing industries. As shown in Figure E and Table 3A, the employers' costs of workers' compensation for all goods-producing industries was 4.16 percent of payroll, and for specific goods-producing industries ranged from 6.65 percent of payroll for the construction industry to 2.95 percent of payroll for the manufacturing industry.

In a similar manner, as shown in Figure F and Table 3B, the employers' costs of workers' compensation for all service-providing industries was 1.96 percent of payroll, and for specific service-providing industries

Figure F - Workers' Compensation Costs as a Percentage of Gross Earnings by Industry for Service-Providing Industries



Source: Table 3A and 3B, Row 12.

Table 4
Workers' Compensation Costs by Major Occupational Groups in 2004
for Employers in Private Industry
(In Dollars Per Hours Worked)

	All Workers	Management Professional & Related Occupations	Sales & Office Occupations	Service Occupations	Nat. Resources Construction & Maintenance Occupations	Production Transportation & Material Moving Occupations
(1) Total Remuneration	23.59	40.88	18.81	11.80	26.71	20.44
(2) Gross Earnings	19.00	33.88	15.26	9.61	20.48	15.54
(3) Wages and Salaries	16.83	29.44	13.73	8.95	18.32	13.61
(4) Paid Leave	1.51	3.23	1.14	0.49	1.30	1.17
(5) Supplemental Pay	0.65	1.20	0.40	0.17	0.86	0.77
(6) Benefits Other Than Pay	4.60	7.00	3.56	2.20	6.24	4.90
(7) Insurance	1.67	2.45	1.46	0.74	2.01	1.86
(8) Retirement Benefits	0.84	1.55	0.52	0.18	1.26	0.90
(9) Legally Required Benefits	2.05	2.92	1.55	1.28	2.94	2.08
(9A) Workers' Compensation	(0.47)	(0.36)	(0.24)	(0.32)	(1.19)	(0.73)
(10) Other Benefits	0.04	0.08	0.03	*	0.03	0.05
(11) Workers' Compensation As Percentage of Remuneration	1.97%	0.88%	1.25%	2.67%	4.46%	3.56%
(12) Workers' Compensation As Percentage of Gross Earnings	2.45%	1.06%	1.54%	3.28%	5.82%	4.68%

Notes: See page 13.

Source: *Employer Costs for Employee Compensation - March 2004*, News Release USDL: 04-1105 (June 24, 2004), Table 1.
Employer Costs for Employee Compensation - June 2004, News Release USDL: 04-1805 (September 15, 2004), Table 1.
Employer Costs for Employee Compensation - September 2004, News Release USDL: 04-2490 (December 15, 2004), Table 1.
Employer Costs for Employee Compensation - December 2004, News Release USDL: 05-432 (March 16, 2005), Table 1.

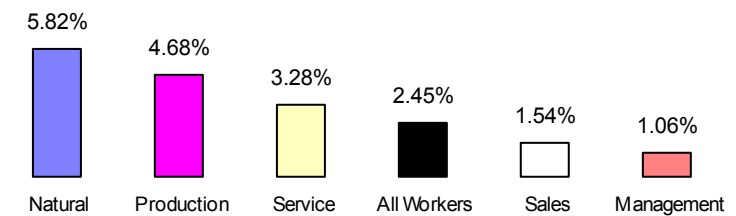
ranged from 3.01 percent of payroll for trade, transportation, and utility industries to 0.83 percent of payroll for financial industries. There is a wide disparity of workers' compensations costs for employers within the service sector. Of particular interest, three specific service-producing industries (trade, transportation, and utilities, with workers' compensation costs at 3.01 percent of payroll; leisure, with costs at 2.96 percent of payroll; and other services, with costs at 2.64 percent of payroll) have higher workers' compensation than the average for all employers (namely 2.45 percent of payroll).

COST DIFFERENCES BY OCCUPATION

The employers' costs of workers' compensation as a percentage of payroll also vary among major occupational groups in the private sector, as shown in Figure G and in Table 4. The national average cost of employers' workers' compensation was 2.45 percent of payroll in 2004. (See Table 4, row 12, "All Workers" column. The U.S. average is the same in all tables in this article.) Three occupational groups had, on average, workers' compensation costs that exceeded the national average: natural resources, construction, and maintenance workers, for whom workers' compensation costs averaged 5.82 percent of

payroll; production, transportation, and material moving workers, for whom workers' compensation costs averaged 4.68 percent of payroll; and service workers, for whom employers' workers' compensation costs averaged 3.28 percent of payroll. In sharp contrast, employers' workers' compensation costs for sales workers were, on average, only 1.54 percent of payroll, and workers in management positions had workers' compensation costs that were only 1.06 percent of payroll in 2004. (See Table 4, row 12 and Figure G). These substantial cost differences presumably reflect the differences in the number and severity of workplace injuries and diseases experienced by workers in these occupations.

Figure G - Workers' Compensation Costs as a Percentage of Gross Earnings by Major Occupational Group - 2004



Source: Table 4, Row 12.

Table 5
Workers' Compensation Costs by Establishment Employment Size in 2004
for Employers in Private Industry
(In Dollars Per Hours Worked)

	All Workers	1-49 Workers	50-99 Workers	100-499 Workers	500 or More Workers
(1) Total Remuneration	23.59	19.64	20.19	23.93	33.45
(2) Gross Earnings	19.00	16.18	16.33	19.14	26.32
(3) Wages and Salaries	16.83	14.67	14.62	16.92	22.59
(4) Paid Leave	1.51	1.01	1.20	1.55	2.70
(5) Supplemental Pay	0.65	0.50	0.51	0.67	1.03
(6) Benefits Other Than Pay	4.60	3.46	3.85	4.79	7.14
(7) Insurance	1.67	1.14	1.46	1.87	2.66
(8) Retirement Benefits	0.84	0.45	0.51	0.83	1.85
(9) Legally Required Benefits	2.05	1.88	1.88	2.06	2.50
(9A) Workers' Compensation	(0.47)	(0.49)	(0.49)	(0.46)	(0.41)
(10) Other Benefits	0.04	*	*	0.03	0.13
(11) Workers' Compensation As Percentage of Remuneration	1.97%	2.49%	2.41%	1.91%	1.23%
(12) Workers' Compensation As Percentage of Gross Earnings	2.45%	3.03%	2.99%	2.39%	1.57%

Notes: See page 13.

Source: *Employer Costs for Employee Compensation - March 2004*, News Release USDL: 04-1105 (June 24, 2004), Tables 5 and 8.
Employer Costs for Employee Compensation - June 2004, News Release USDL: 04-1805 (September 15, 2004), Tables 5 and 8.
Employer Costs for Employee Compensation - September 2004, News Release USDL: 04-2490 (December 15, 2004), Tables 5 and 8
Employer Costs for Employee Compensation - December 2004, News Release USDL: 05-432 (March 16, 2005), Tables 5 and 8.

COST DIFFERENCES BY ESTABLISHMENT SIZE

An establishment is defined as an economic unit that: 1) produces goods or services at a single location (such as a factory or store) and 2) is engaged in one type of economic activity.⁷ Many firms (or companies) thus consist of more than one establishment.

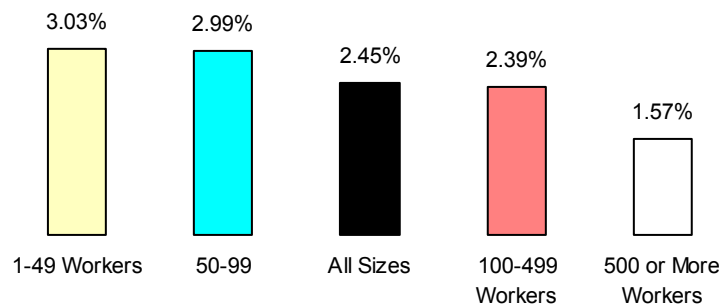
The BLS data on the employers' costs of workers' compensation allow comparisons among establishments of various sizes (as measured by number of employees). As shown in Figure H and in Table 5, there is a clear tendency for workers' compensation costs to decline with increasing establishment size. The national average for employers' workers' compensation costs across all establishments was 2.45 percent of payroll. Those establishments with fewer than 50 employees had workers' compensation costs that, on average, were 3.03 percent of gross earnings in 2004, and workers' compensation costs in establishments with 50 to 99 employees were 2.99 percent of payroll. In contrast, those establishments with 100 to 499 workers had workers' compensation costs that averaged 2.39 percent of payroll and establishments with 500 or

more workers had costs that averaged 1.57 percent of payroll -- both figures below the national (all-establishments) average.

COST DIFFERENCES BY BARGAINING STATUS

The employers' costs of workers' compensation as a percentage of gross earnings also vary between un-

Figure H - Workers' Compensation Costs as a Percentage of Gross Earnings by Establishment Employment Size - 2004



Source: Table 5, Row 12.

Table 6
Workers' Compensation Costs by Bargaining Status in 2004
for Employers in Private Industry
(In Dollars Per Hours Worked)

		All Workers	Union	Nonunion
(1)	Total Remuneration	23.59	32.34	22.56
(2)	Gross Earnings	19.00	23.71	18.44
(3)	Wages and Salaries	16.83	20.45	16.41
(4)	Paid Leave	1.51	2.20	1.43
(5)	Supplemental Pay	0.65	1.06	0.60
(6)	Benefits Other Than Pay	4.60	8.62	4.12
(7)	Insurance	1.67	3.38	1.47
(8)	Retirement Benefits	0.84	2.28	0.66
(9)	Legally Required Benefits	2.05	2.85	1.95
(9A)	Workers' Compensation	(0.47)	(0.87)	(0.42)
(10)	Other Benefits	0.04	0.11	0.03
(11)	Workers' Compensation As Percentage of Remuneration	1.97%	2.68%	1.84%
(12)	Workers' Compensation As Percentage of Gross Earnings	2.45%	3.66%	2.25%

Notes: See page 13.

Source: *Employer Costs for Employee Compensation - March 2004*, News Release USDL: 04-1105 (June 24, 2004), Table 5.
Employer Costs for Employee Compensation - June 2004, News Release USDL: 04-1805 (September 15, 2004), Table 5.
Employer Costs for Employee Compensation - September 2004, News Release USDL: 04-2490 (December 15, 2004), Table 5.
Employer Costs for Employee Compensation - December 2004, News Release USDL: 05-432 (March 16, 2005), Table 5.

ionized and nonunionized workers, as shown in Figure I and in Table 6. The employers' costs of workers' compensation for unionized workers in 2004 was 3.66 percent of payroll and the comparable figure for nonunionized workers was 2.25 percent. The national average (unionized and nonunionized workers) was 2.45 percent. (See Table 6, row 12.)

One possible explanation for these cost differences between nonunionized and unionized workers is that unions have been more successful in organizing workers in relatively hazardous industries, such as mining, construction, and manufacturing, than they have been in organizing other industries that have relatively fewer workplace injuries and diseases. Thus, the higher costs are not due to unions, but are instead a reflection of the elevated risks of workplace injuries and diseases found in the industries that unions have organized. Another possible explanation is that unions provide information and assistance to members who are injured on the job, thus increasing the likelihood that unionized members will receive workers' compensation benefits, which in turn increases the employers' costs of workers' compensation for those workers.

CONCLUSIONS

The employers' costs of workers' compensation measured as a percentage of payroll (or measured as costs per hour) vary systematically by region and census division, by industry group, by occupational, by establishment size, and by bargaining status. The information derived from the BLS data should be useful to firms trying to place their own workers' compensation costs in perspective and to policymakers attempting to

**Figure I - Workers' Compensation Costs
as a Percentage of Gross Earnings by
Bargaining Status - 2004**



Source: Table 6, Row 12.

assess the costs of the workers' compensation programs in a particular jurisdiction relative to costs elsewhere. Ideally, the BLS data will be expanded in future years to present even greater detail by industry, occupation, and (in particular) by individual states.

ENDNOTES

1. The BLS data used in this article were published in U.S. Department of Labor 2004a, 2004b, 2004c, and 2005. The national 2004 data for private industry employees, state and local employees, and all non-federal employees were analyzed in Burton 2005. The previous article analyzing regional, industrial, and other variations is Blum and Burton 2004.

2. The numbers of private sector establishments in the quarterly samples were approximately 8,200 in March 2004; 9,800 in June 2004; 9,800 in September 2004; and 9,700 in December 2004. The number of establishments in the state and local sector was approximately 800 for each of the quarterly samples in 2004.

3. Generally, two regions will be above the national average and the remaining two regions will be below the national average. However, in 2004 workers' compensation costs in one region (the West) were very high compared to the national average, while the costs in the other three regions were only moderately lower than the national average. As a result, three regions had costs below the national average and only one region had costs above the national average in 2004.

4. The BLS uses the term "total compensation" for wages and salaries *plus* total benefits. We have instead used the term "total remuneration," lest the references to "total compensation" and to "workers' compensation" (one of the BLS's subcategories under "total benefits") become too confusing.

5. Specifically, the *gross earnings* figure includes wages and salaries; paid leave (vacations, holidays, sick leave, and other leave); and supplemental pay (premium pay, shift pay, and nonproduction bonuses). The *benefits other than pay* figure includes insurance (life insurance, health insurance, sickness and accident insurance); retirement and savings (pensions, savings and thrift); legally required benefits (Social Security, federal unemployment, state unemployment, and workers' compensation); and other benefits (includes severance pay and supplemental unemployment benefits).

6. The latter decision reflects a judgment that, since workers' compensation benefits are generally tied to workers' pre-injury wages, and thus benefits and costs ought to increase proportionately with wages, costs as a percentage of wages and salaries should be the same across states and regions.

For example, suppose that in all regions, for every 1,000 hours worked, there are work injuries that result in the loss of 50 hours of work. Also suppose that two-thirds of lost wages are replaced by workers' compensation benefits in all regions. (A two-thirds replacement rate is a commonly used measure of adequacy.)

Using the data on hourly gross earnings shown in Table 1, the total payroll in the **South** for 1,000 hours worked is \$17,060 (\$17.06 X 1,000 hours); the total amount of workers' compensation benefits is \$568.66 (\$17.06 X 50 hours X 2/3 replacement rate); benefits (assumed to be the same as costs for this example) as a percentage of gross earnings in the **South** are 3.33 percent (\$569 divided by \$17,060).

Using the data on hourly gross earnings shown in Table 1, the total wage bill in the **Northeast** for 1,000 hours worked is \$21,310 (\$21.31 X 1,000 hours); the total amount of workers' compensation benefits is \$710.33 (\$21.31 X 50 hours X 2/3 replacement rate); benefits (assumed to be the same as costs for this example) as a percentage of wages and salaries in the **Northeast** are 3.33 percent (\$710.33 divided by \$21,310).

7. U.S. Department of Labor, 2004, "Notes on Current Labor Statistics," 111.

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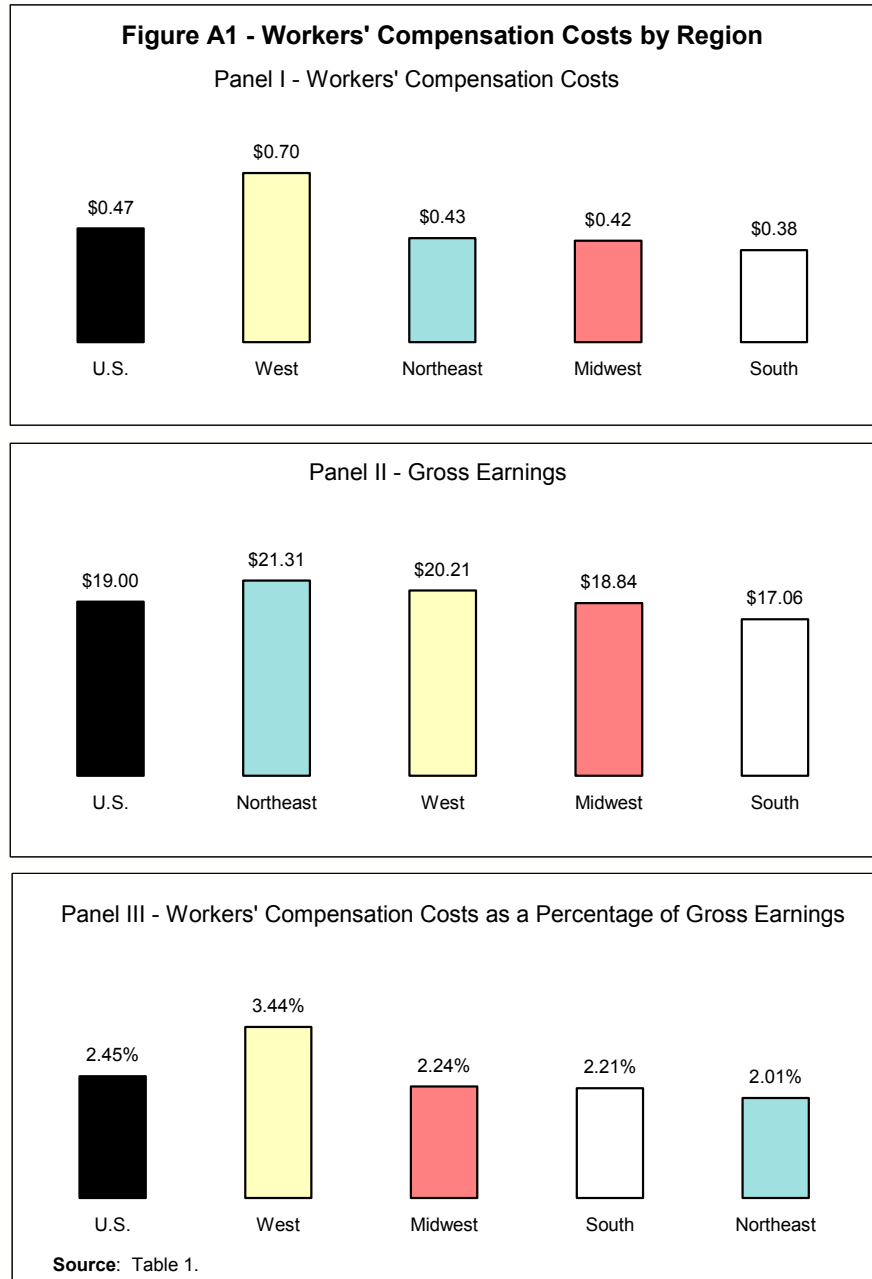
APPENDIX A

Alternative Ways to Measure Regional Differences in Workers' Compensation Costs

This appendix examines how regions can switch their relative costs compared to the United States depending on which measure of workers' compensation costs is used. The explanation is provided by a closer examination of the arithmetic procedure used in computing workers' compensation costs as a percentage of gross earnings. The workers' compensation costs per hour (row 9A of Table 1 and Appendix Figure A1: Panel I, which is the same as Figure B in the article) have to be divided by gross earnings per hour (row 2 of Table 1 and Appendix Figure A1: Panel II) in order to produce the figures on workers' compensation costs as a percentage of wages and salaries (row 12 of Table 1 and Appendix Figure A1: Panel III, which is the same as Figure A in the article). The relationships between these numerators and denominators for the four regions account for the fluctuations in rankings between Figure A and Figure B in the article.

Consider the Northeast. Workers' compensation costs per hour in the Northeast (\$0.43 per hour) are nine percent below the national average for workers' compensation costs (\$0.47 per hour). Nonetheless, in terms of workers' compensation costs per hour worked, the Northeast ranked second among the four census regions (ahead of the Midwest and the South. Of importance is that the hourly gross earnings in the Northeast (\$21.31 per hour -- row 2 of Table 1) are 12 percent more than the national average for gross earnings (\$19.00 -- row 2 of Table 1). As a result of these high wages, the Northeast's workers' compensation costs as a percentage of gross earnings (2.01 percent -- which is \$0.43 divided by \$21.31) is 0.44 percentage points less than the national average of workers' compensation costs as a percentage of gross earnings (2.45 percent -- or \$0.47 divided by \$19.00). The

Figure A1 - Workers' Compensation Costs by Region



Northeast's combination of workers' compensation costs that were less than the national average and wages that were well above the national average means that workers' compensation costs as a percent of payroll are lower in the Northeast than in the other three census regions.

Notes for Tables 1 - 6.

1. The text and all tables in this article use the term "remuneration" in place of the term "compensation" which is used by the BLS.
2. Total remuneration (row 1) = gross earnings (row 2) + benefits other than pay (row 6).
3. Gross earnings (row 2) = wages and salaries (row 3) + paid leave (row 4) + supplemental pay (row 5).
4. Benefits other than pay (row 6) = insurance (row 7) + retirement benefits (row 8) + legally required benefits (row 9) + other benefits (row 10).
5. Workers' compensation (row 9A) is one of the legally required benefits (row 9).
6. Workers' compensation as percent of remuneration (row 11) = workers' compensation (row 9A) / total remuneration (row 1).
7. Workers' compensation as percent of gross earnings (row 12) = workers' compensation (row 9A) / gross earnings (row 2).
8. Results in rows (2), (6), (11), and (12) were calculated by Florence Blum and John F. Burton, Jr.
9. Individual items may not sum to total remuneration because of rounding in BLS data.
10. * means cost per hour worked is \$0.01 or less
11. The data in Tables 1-6 are annual averages of the quarterly data presented in the quarterly surveys conducted by the Bureau of Labor Statistics. We calculated the annual averages, which are not weighted to reflect changes in employment among quarters.

A Book of Possible Interest to Subscribers

Workplace Injuries and Diseases: Prevention and Compensation: Essays in Honor of Terry Thomason has been published by the W.E. Upjohn Institute for Employment Research. The volume, edited by Karen Roberts, John F. Burton, Jr., and Matthew M. Bodah, is based on a conference held at the University of Rhode Island in honor of Terry Thomason, who was a distinguished scholar of workers' compensation, workplace safety, and collective bargaining before his untimely death in 2002.

The book contains 11 chapters, including "Economic Incentives and Workplace Safety" by Terry Thomason, which is an insightful review of the literature on topics such as the effect of experience rating in workers' compensation on safety. "The Adequacy of Workers' Compensation Cash Benefits" by Leslie I. Boden, Robert T. Reville, and Jeff Biddle documents the inadequacy of permanent partial disability benefits in California, New Mexico, Oregon, Washington, and Wisconsin. "Health Care and Workers Compensation" by Cameron Mustard and Sandra Sinclair examines the relatively low cost of health care for injured workers in Canada compared to the U.S. Peter Barth, in "Revisiting Black Lung: Can the Feds Deliver Workers' Compensation for Occupational Disease?", examines the role of the Federal Government in providing benefits to workers who arguably have not been well served by state workers' compensation programs. Karen Roberts explores "The Structure of and Incentives from Workers' Compensation Pricing" in her chapter. John Burton, in "Permanent Partial Disability Benefits," proposes five criteria for evaluating PPD benefits, including delivery system efficiency and affordability.

301 Pages. \$20.00 paper. ISBN 0-88099-324-3. Published July 2005. Available from the W. E. Upjohn Institute for Employment Research, 300 S. Westnedge Avenue, Kalamazoo, MI 49007-4686. Phone: 888-227-8569. Fax: 269-343-7310. Online: <http://www.upjohninstitute.org/publications/titles/wid.html>

A Bill of Rights for Injured Workers

by Edward M. Welch

INTRODUCTION

In the last 20 years, a great deal has been written about the problems that employers and insurers experience with the workers' compensation system. These complaints have resulted in many changes that favor employers. However, very little has been written about the problems that confront injured workers. This lack of balance in discussions of the problems has had a significant impact on public attitudes toward workers' compensation. Most people in our society today believe that workers' compensation is a system that greatly favors workers. This is simply not true. There are many ways in which workers are at a great disadvantage in the system. This article is intended to highlight some of the problems in the system that tend to favor employers to the disadvantage of men and women who are injured at work. I will use this analysis of the problems as the basis for a "Bill of Rights," listing some things that workers should be able to expect from the system, but generally do not now receive.

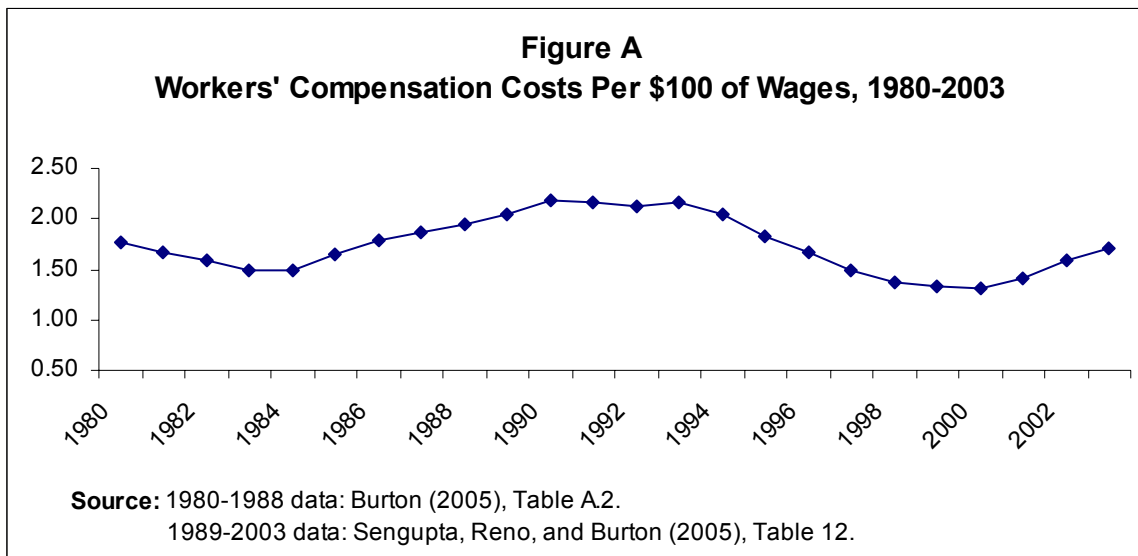
EMPLOYERS' COSTS

Before discussing the problems that workers face, a few things should be said about costs. From the mid-1980s to the early 1990s costs of the workers' compensation program increased. Employers rightly complained about these increases. These complaints led to legislative, judicial, and attitudinal changes in the workers' compensation system. As a result, costs are down dramatically.

Figure A shows the employers' costs of workers' compensation, as reported by the National Academy of Social Insurance. It is one of the most widely accepted sources of data tracking employers' costs. Other sources are available, but they all follow basically the same trend.

Costs as a percent of payroll are down. They have gone up in the last couple of years, but in 2003 they were still 19 percent below the costs in 1993. What other business expense is 19 percent lower today than it was ten years ago?

Employers complain that even though costs are down, they are still too high. This may be true for some employers, but employers have it within their own power to control their workers' compensation costs. In the late 1980s, a study was conducted in Michigan that compared cost differences among employers within the same industry within the same state (Habeck, Leahy, Hunt, Welch, and Chan 1991, 210-42). The authors found that the differences among employers within each industry within Michigan were bigger than the differences among states. In every one of 29 industries examined, the worst employers had ten times as many claims per worker as the best employers. What accounted for the differences? The research pointed to three things: 1) safety, 2) disability management, and 3) corporate culture. I would add to that list: claims management.



Employers can control their own workers' compensation costs. The Workers' Compensation Center at Michigan State University offers a week-long certificate program that teaches the best techniques used by the most successful employers. Time after time, workers' compensation managers come to us with records showing that a few years ago the workers' compensation costs for their employers were several million dollars. After the implementation of an aggressive workers' compensation program, they were cut to a few hundred thousand dollars.

For the most part, these cost reduction techniques involve things that help workers at the same time that they reduce costs for employers – safety programs, early return-to-work, quality healthcare, quickly paying deserving claims, and aggressively fighting undeserving ones.

I recognize that cost is an important issue for employers. We should keep in mind, however, that costs have dropped dramatically in the last ten years and that employers have it within their own power to reduce their costs without resorting to legal changes that will reduce benefits for deserving workers.

A CHANGE OF ATTITUDE

In response to the increase in costs in the 1980s and early 1990s, insurance companies and employers participated in a nationwide campaign that has changed attitudes towards workers' compensation. One result of the campaign was a significant reduction in workers' compensation benefits paid to workers after 1992. Figure B shows that workers' compensation benefits peaked in 1992 and then sharply declined. Even though benefits have increased since 2000, benefits

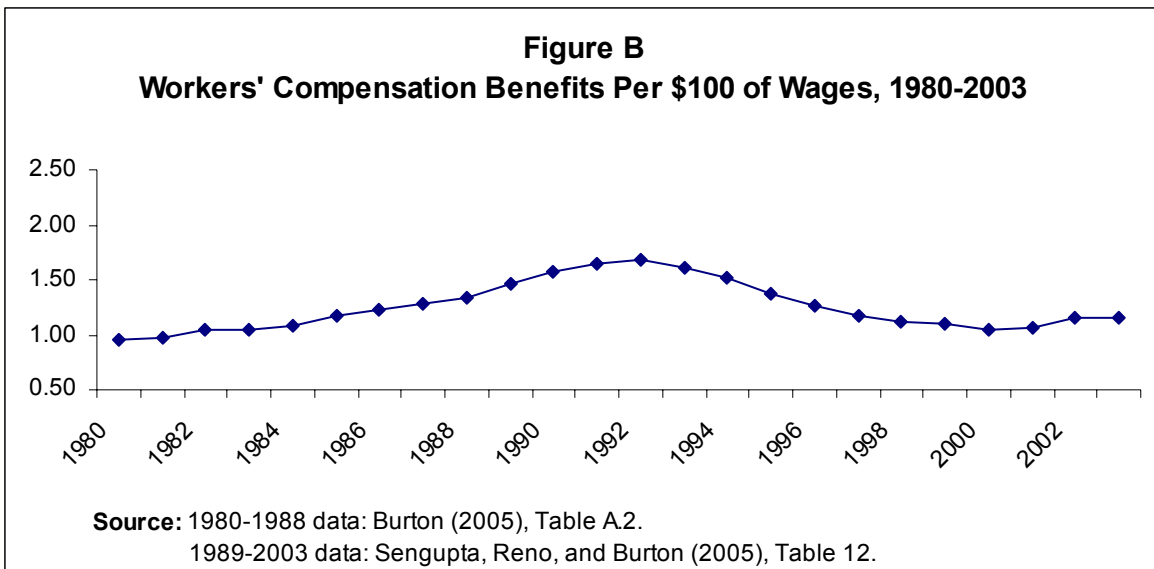
per \$100 of payroll were down 31 percent from 1992 to 2003.

Part of the rationale for the reform of the 1990s was workers fraud. However, most experts in the field, as well as experienced claims managers, say that only a very small percentage of claims involve actual intentional fraud. Nevertheless, the publicity campaigns put great emphasis on fraudulent workers. As a result of this, large portions of the public see workers' compensation as a system that gives generous benefits to fraudulent claims. There is no real evidence that employee fraud is common, but it is an attitude that is widely accepted by journalists and the public.

Claimants' attorneys share a frequent experience. Men and women who have been hurt on the job come to attorneys. They are embarrassed and say apologetically, "I want you to understand, I'm not like all those other people who file for workers' compensation. I really did get hurt." What have we come to, that workers feel that they have to apologize to their own attorney when seeking to enforce the rights they are given under the law?

AN INJURED WORKER'S BILL OF RIGHTS

In the sections that follow, I offer what I call "An Injured Worker's Bill of Rights." I highlight some of the biggest problems in workers' compensation that need to be called to the attention of the public and offer a set of list of workers' rights. I hope that many of these rights can eventually result in legislative change. The proposals offered here, however, are intended more to heighten public awareness, a step we must take first before we move on to specific legislative changes.



Benefit Adequacy

There is a widespread assumption that workers' compensation benefits are generous. They are not. Following the great catastrophe that this nation experienced on 9/11, we appointed a commission to compensate the victims. After very careful consideration, the commission came up with a scheme for doing so. Under that scheme, as under workers' compensation, recipients give up a right to file civil law suits, and instead received an amount that was determined by certain calculations.

For the families of 9/11 victims, the average award for a death claim was \$2.1 million dollars. The average award for an injury claim was \$384,000 dollars. It is hard to calculate the "average" award across state workers' compensation systems that is comparable to the awards for the 9/11 victims, but these figures are at least ten times the average award given to workers who are injured on the job. Blum and Burton (2004, Table 2) indicate that in 2000, the latest year for which data are available, the national averages for cash benefits were \$187,605 for fatal cases, \$215,088 for permanent total disability cases, \$40,332 for permanent partial disability cases, and \$5,147 for temporary total disability cases.

Why were the 9/11 deaths and injuries worth ten times as much as the deaths and injuries that occur on jobsites every day? Was that a unique situation? Yes. Were they over compensated? They do not feel that they were. Is it because they were mostly white-collar jobs? That would not be fair. Are ordinary work-related deaths and injuries drastically under-compensated? I think so.

The National Academy of Social Insurance has recently completed a study analyzing the adequacy of workers' compensation benefits (Hunt 2004). It found them lacking in many ways.

Most seriously injured workers suffer a large life-long wage loss that is not replaced by workers' compensation benefits.

Workers' compensation should replace 80% of the after-tax wage loss for work-related injuries.

Defusing Myths

There is a widespread belief that injured workers can live well on the benefits they receive. There is a widely accepted assumption that workers return to work at well-paying jobs immediately after receiving large workers' compensation settlements. Admittedly, these

things happen from time to time, but there is no evidence that this is normal or frequent. It is quite likely that a large number of workers are required to borrow from friends and face repossession of their cars, furniture, and homes while living on workers' compensation benefits.

The NASI study discussed above (Hunt 2004) endorsed the use of wage-loss studies, which are able to document what really happens to workers. We should stop making decisions based on stories and myths, and conduct the research that is necessary to find out what really happens to people.

The widespread belief that workers live well off of workers' compensation is not based on fact.

States should conduct the research necessary to determine what happens to workers who suffer on-the-job injuries.

Cost of Living Allowances

Virtually every other system for compensating individuals includes adjustments for increases in the cost of living. Most workers' compensation systems do not. For the vast majority of injuries, this is not important because they are of short duration. In a few cases where workers are truly disabled from a long lasting injury, the results can be devastating. Their benefits stay at the same level, while the cost of living and the wages of uninjured workers increase.

The purchasing power of workers' compensation benefits erodes as time goes by.

Workers' compensation benefits should be indexed for increases in the wages.

Pre-existing Conditions

As medical science learns more about the things that can go wrong with the human body, it is more often able to point to certain pre-existing situations that made the individual vulnerable to the work-related event that resulted in an impairment. A number of states have changed their laws to reduce benefits under those circumstances. This is unfair to workers.

Economists tell us that workers' compensation is designed to replace reductions in an individual's wage earning capacity. The best measure of anyone's wage earning capacity prior to the workplace injury is the wages that an employer was willing to pay. To whatever extent a pre-existing condition reduced an individual's wage earning capacity, that factor was already

reflected in the preinjury wages. In every workers' compensation system, the calculation of benefits begins with the average weekly wage the worker was receiving at the time of the injury. Accordingly, any further reduction in benefits because of a pre-existing injury charges the worker double for that situation.

There are many individuals in the workforce who have a variety of weaknesses. The fact that they are willing to work in spite of these weaknesses should not reduce the benefits they receive if they do work and are then injured.

The laws in many states make it harder for a worker to get benefits if he or she works in spite of the presence of some pre-existing weakness.

No worker should be penalized because he or she works in spite of a pre-existing condition.

Older Workers

Employers frequently express concerns that they will have more workers' compensation claims as the workforce ages. The data suggest that older workers file fewer claims, although they tend to be off work for longer periods of time. At least one study has suggested that the balance will result in lower, not higher, costs to employers.

Even if we accept the premise that older workers are weaker and worn out and more likely to become disabled, this does not justify any reduction in the benefits they should receive. To whatever extent this is true, it means that in the past, employers have received a bonus by having younger, stronger, healthier workers. Having taken advantage of that situation in the past, they should not now be allowed to reduce benefits to the same people as they grow older.

There are some aspects of workers' compensation laws, such as those dealing with pre-existing conditions, that tend to discriminate against older workers. Michigan, for example, has a specific provision that makes it harder to get benefits if an individual suffers from a "condition of the aging process." These provisions are unfairly discriminatory.

The laws in some states make it harder for older workers to qualify for benefits and/or reduce the amount of benefits paid to older workers.

Workers' compensation laws should not discriminate against older workers.

Fraud

The publicity campaigns of the 1980s and 1990s emphasized fraudulent claims by workers. Most insurers, however, will admit that more dollars are involved in employer fraud than in worker fraud. This fraud involves employers who misrepresent payroll, either by not reporting all of their payroll, reporting their payroll in the wrong classifications, or classifying individuals as "independent contractors" when they are really employees. Recent developments have also revealed that the costs of workers' insurance have been increased because brokers and insurance companies present fraudulently inflated bids to employers.

Employer fraud adds substantially to the cost of workers' compensation.

There should be aggressive procedures for identifying and prosecuting fraud by employers, insurers, and agents. These procedures should include civil and criminal penalties.

Starving Out Workers

In many states, the workers' compensation system allows employers to withhold benefits while a worker hires an attorney and waits for the system to hold a formal hearing. While this is happening, the insurance company or employer earns interest on the money that should be paid to the worker, and the worker has no income. For a while, the workers are able to borrow money from friends, but this is quickly exhausted. They begin to miss mortgage and car payments, and frequently lose their possessions and sometimes their homes.

Many states allow employers to withhold benefits from workers while disputes are resolved.

Workers' compensation systems should not allow employers and insurers to starve out workers while they await an adjudication of their rights.

Pay What You Owe

In many states, employers are allowed to withhold benefits even though they admit that they owe them. For example, in a typical case, an employer will argue that the impairment rating should be 5%. The worker will argue that the impairment rating should be 15%. Litigation is likely to result in a final impairment rating of somewhere around 10%, but before a decision is made by the workers' compensation agency, the parties usually bargain and agree on some compromise. Many states allow the employer to withhold any payment

while the litigation and negotiation takes place. This gives an unfair advantage to the employer – it should be required to pay the benefits for a 5% impairment immediately.

Many states allow employers to withhold from workers benefits that are not disputed.

Employers should be required to pay immediately amounts they clearly owe.

Penalty for Denying Claims

There will always be legitimate differences of opinion over whether a worker is disabled and/or what caused a specific disability. Employers should have a right to litigate these questionable claims. Sometimes, however, employers deny benefits for arbitrary reasons. In most states, the system includes no penalty for an employer or insurance company that arbitrarily denies benefits and forces a worker to litigate. This encourages them to do exactly that and often forces the worker to hire and pay an attorney, and take a relatively small, compromise settlement. There should be something in the system that rewards employers who pay promptly and fairly, and punishes employers who do not. This could take a variety of forms, including punitive interest rates or payment of attorney fees.

In many states, there is no incentive for employers to pay promptly, and no disincentive for employers to withhold benefits.

There should be a penalty for employers who unfairly deny the payment of benefits, and/or an incentive for employers to pay promptly.

Prompt Hearings

One of the biggest problems that workers face in asserting their rights is the long delay that occurs in litigated cases. One alternative would be to have prompt hearings within a few weeks that would make a preliminary determination as to whether or not benefits should be paid until a final more formal proceeding could take place.

In many states, there is a long delay before hearings can be held.

Within 30 days of filing a claim, there should be at least a preliminary hearing, which will determine whether benefits will be paid pending the outcome of the litigation.

Attorney Fees

Virtually every state limits the amount of money an injured worker can spend on his or her attorney, but places no limit on the amount of money that an employer can spend defending against claims. Suppose we passed a law that dealt with situations in which businesses sued banks. If the law limited the amount of money that businesses could spend on their attorneys, but put no limit on the amount banks could spend on their attorneys, everyone would agree that this is unfair. We would say it was a denial of equal protection of the law. Why isn't this same situation unfair in the workers' compensation setting?

Some people argue that we enforce these limits in order to protect workers. That may have been the original intent, but in some states today the primary effect is to protect employers.

Most states limit the amount of money a worker can spend on his or her attorney, but put no limit on the amount an employer can spend.

All parties to workers' compensation proceedings should have the same access to effective legal representation.

Withholding Healthcare

In many states today, either by law or by practice, employers can withhold from injured workers needed healthcare while the disputed case is being litigated. This should not be the case.

In many states, employers can withhold healthcare from workers.

Employers should not be allowed to withhold needed healthcare while a workers' compensation dispute is being litigated.

Controlling Healthcare

There are many political disputes over who should control the choice of healthcare providers. Employers give many arguments concerning this, including the controlling of costs and cooperation in return-to-work. They have been quite successful in persuading legislatures on this issue. The fact is that in many states today, an employer is free to assign the worker to a doctor who is likely to favor the employer when offering opinions concerning the cause or extent of disability, or readiness to return to work. Ideally, most employers do not take advantage of this, but it should not be allowed by the law.

In many states, employers can force workers to go to physicians who give opinions favorable to the employer's point of view.

Employers should not be allowed to require workers to treat with physicians whose opinions will favor the employer in disputed cases.

THIS IS JUST A START

This article is intended to be just a beginning. Others may wish to add additional issues to this list, and perhaps suggest ways in which these issues could be better formulated. I would welcome any suggestions.

The next step is to educate the public about these issues. Unions might wish to start by educating their own membership. They need to discuss these issues at union meetings and in union publications. When the union rank and file is sold on these concepts, they can move on to educate the broader public. After that, attention can be turned to implementing some of these concepts in more specific legislative proposals.

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About the Author

Ed Welch is the director of the Workers' Compensation Center in the School of Labor and Industrial Relations at Michigan State University. From 1991 to 1999 he was the editor of the newsletter *On Workers' Compensation*. He was the Director of the Michigan Bureau of Workers' Disability Compensation from 1985 through 1990. Prior to that, he was a claimants' attorney in Muskegon and Battle Creek, Michigan and was a high school teacher before going to law school. He is known for his ability to explain the complex aspects of workers' compensation in a simple and entertaining manner.

Ed has written *Employers' Guide to Workers' Compensation*, an analysis of the legal and practical aspects of workers' compensation, published by the Bureau of National Affairs. He has also written several editions of *Workers' Compensation in Michigan: Law and Practice*. This book has become the standard legal treatise on workers' compensation in Michigan. It is, however, not written in a legalistic style, and consequently, anyone familiar with workers' compensation can read and understand it. He has edited *Workers' Compensation Strategies for Lowering Costs and Reducing Workers' Suffering* and published many articles related to workers' compensation.

Ed has a Bachelor's Degree in English, a Master's Degree in Guidance and Counseling, and a Law Degree, all from the University of Michigan. He was elected a charter member for workers' compensation of the National Academy of Social Insurance and currently is a member of the National Academy's Steering Committee for Workers' Compensation. He was the Vice President of the International Association of Industrial Accident Boards and Commissions. He served as the secretary to a Labor/Management Discussion Group on Workers' Compensation, which was co-chaired by the National Association of Manufacturers and the AFL-CIO. He served as the neutral co-chair of the Workers' Compensation Committee of the American Bar Association's Labor and Employment Law Section. He served as a member of the Board of Directors of the Institute for Work and Health, a research organization in Toronto, Ontario.

In 1990, he received the outstanding achievement award in workers' compensation, from the National Association of Manufacturers, the Alliance of American Insurers, and the American Insurance Association. (Not bad for a former claimants' attorney.)

I have known Ed for at least 25 years, beginning when we were regular attendees at the National Symposium on Workers' Compensation. We then served as Co-Directors of the National Symposium from 1991 to 2001, sometimes a trying experience. We nonetheless remained close friends through these decades—in part because of our devotion to University of Michigan sports. Go Blue. (Except, of course, when Michigan plays Rutgers in the Rose Bowl.)

John Burton

Coverage of Work-Related Diseases by Workers' Compensation Programs

by John F. Burton, Jr.

This article is a portion of the statement by John Burton at a Hearing on the Proposed Physician Rules for the Energy Employees Occupational Illness Compensation Program Act held by the U.S. Department of Energy in Washington, D.C. on October 10, 2001. The statement serves as a companion to the next entry in the *Workers' Compensation Policy Review*, namely the summary of the article by J. Paul Leigh and John A. Robbins.

My name is John F. Burton, Jr. I am a Professor in the School of Management and Labor Relations at Rutgers: The State University of New Jersey. I conduct research on workers' compensation and on occupational safety and health, and I am the Editor of the *Workers' Compensation Policy Review*. I am currently the Chair of the Steering Committee on Workers' Compensation for the National Academy of Social Insurance and a member of the Workers' Advocacy Advisory Committee for the Department of Energy, although I am submitting this statement solely on my own and not as a representative of these organizations.

I served as the Chairman of the National Commission on State Workmen's Compensation Laws in 1971-72. The Occupational Safety and Health Act of 1970 created the National Commission and its members were appointed by President Richard Nixon. The National Commission submitted its unanimous report to the President and the Congress in 1972.

I. BACKGROUND ON MY COMMENTS ON THE PROPOSED RULES

A. A Brief History of the Coverage of Work-Related Diseases

The Report of the National Commission on State Workmen's Compensation Laws contained 84 recommendations, of which 19 were designated as essential. The National Commission Report did not devote much attention to the topic of work-related diseases. However, one of the essential recommendations was R2.13: "We recommend that all States provide full coverage for work-related diseases."

The Department of Labor continues to monitor the compliance of state workers' compensation laws with the 19 essential recommendations. As of January 1, 2001, all 50 states plus the District of Columbia are considered in compliance with recommendation R2.13, which suggests that the coverage of work-related diseases by state workers' compensation programs is not a problem.

The basis for the compliance assessment for R2.13 by the Department of Labor is, however, confined to only one aspect of state workers' compensation programs. Historically, state workers' compensation programs limited coverage to specific occupational diseases that were included in a schedule in the statute. The schedule of occupational diseases often contained a description of a process or type of work that had to match the occupational diseases in order for the worker to be eligible for workers' compensation benefits. Thus, §3.2 of the New York Workers' Compensation statute provides that "anthrax" associated with the process of

There are, unfortunately, a number of other aspects of state workers' compensation laws that preclude many workers with work-related diseases from receiving benefits.

"Handling of wool, hair, bristles, hides or skins" is a compensable occupational disease. The New York statute has a list of 29 specific occupational diseases with associated processes. If New York only had these 29 specific occupational diseases with the associated processes, then the Department of Labor would not consider them in compliance with recommendation R.2.13 of the National Commission. However, New York has as entry 30 in its statute "Any and all occupational diseases" which are associated with "any and all employments" covered by the act, and it is on the basis of this final entry that New York is given credit for complying with recommendation R2.13. As of January 1, 2001 all states have such an apparent "catch-all" occupational disease category, which is why the Department of Labor considers all states in compliance with recommendation R2.13.

There are, unfortunately, a number of other aspects of state workers' compensation laws that preclude many workers with work-related diseases from receiving benefits. The most comprehensive assessment of limitations on full coverage of work-related diseases by state workers' compensation laws were conducted by Lloyd Larson (1979) and Peter Barth (1980).

1. Limitations from the Definitions of Work-Related Diseases

Larson (1979:12) reported that many of the statutory definitions of occupational diseases “are loaded down with qualifiers and restrictive clauses which make genuine ‘full’ coverage still unachieved, unless through liberal rulings by the administrative agencies or the courts.” He noted, for example, that 21 states only compensated diseases that are due to a risk or hazard “peculiar to the employee’s trade, process, occupation, or employment,” and many of these states add a requirement that the hazard also be “characteristic of” the employment. While Larson refers to liberal rulings providing genuine full coverage, the fate of the apparently inclusive language in the New York statute provides a counter example of court interpretation. As discussed by Barth (1980), the New York Court of Appeals interpreted the phrase “any and all occupational diseases” to require the disease to be a natural and unavoidable result of the worker’s particular occupation. Thus, even though a worker could establish that he contracted tuberculosis as a correction officer in a state facility, the Court denied compensation because that disease was not a natural result of that occupation.

Larson (1979:13) also indicated that “about 30 states exclude ‘ordinary diseases of life’ or ‘diseases to which the general public is equally exposed,’ or use some other language to indicate that the risk of contracting a disease must be ‘in excess of the ordinary hazard of employment as such.’” As Larson makes clear, these qualifying conditions for diseases are not applied to work-related injuries.

2. Limitations from Time Limits for Filing Claims

Larson (1979:20) also provides examples of time limits for filing claims that adversely affect some workers with work-related diseases. For example, some 13 states had requirements “that a disease to be compensable must manifest itself or cause disablement, or be contracted within a certain period after the last injurious exposure” and four states required the disease must manifest itself or cause disablement within a certain period after the last day of work.

3. Limitations from the Use of the Accident Test

Barth (1980: 105-114) also examines the use of the accident test as an obstacle to compensating work-related diseases. Workers’ compensation statutes were introduced in most states by 1920 and almost all these laws contained four legal test that all had to be met for a worker to be eligible for workers’ compensation benefits: (1) there must be an injury (2) by accident

(3) arising out of (4) and in the course of employment. The accident test proved particularly troublesome for diseases in many jurisdictions, where the courts interpreted the accident requirement to require (1) unexpectedness (a) of cause and (b) of result, and (2) a definite time (a) of cause and (b) of result. This narrow view of the meaning of accident meant that many diseases could not qualify for benefits because, for example, the exposure to the toxic substance occurred over an extended period and the manifestation of the disease also was gradually disabling. State workers’ compensation programs dealt with this narrow interpretation of the accident test by establishing separate statutes or sections of workers’ compensation statutes to deal with work-related diseases. Nonetheless, as Barth indicates in the handling of heart cases, the accident test was adapted to decide which conditions qualified for benefits. Other states made a broader use of the accident test in determining the compensability of work-related diseases.

4. Historical Assessment of the Coverage of Work-Related Diseases

The preceding paragraphs provide a very truncated discussion of the historical coverage of work-related diseases. I do not deal with some of the topics covered by Larson (1979) or Barth (1980) that in general restrict coverage of occupational diseases, such as the use of presumptions and the limits on cash benefits and/or medical benefits for certain types of work-related diseases. I am nonetheless confident of these conclusions applicable to workers’ compensation programs as of 1980: (1) many work-related diseases did not qualify for workers’ compensation benefits, and (2) workers’ compensation programs used much more restrictive legal tests for compensating work-related diseases than for compensating work-related injuries.

B. The Current Status of the Coverage of Work-Related Diseases

I am unaware of any recent study of the coverage of work-related diseases by workers’ compensation programs that is comparable in scope and depth to the Larson (1979) and Barth (1980) studies. There are, however, several reasons to believe that there are still significant gaps in coverage of work-related diseases.

1. Limitations from the Definitions of Work-Related Diseases

I am unaware of any state that has in the last two decades removed the limitations in their definitions of occupational diseases, such as the requirements that the diseases be “peculiar to the employee’s trade, process, occupation, or employment” and/or the hazard

leading to the diseases must also be characteristic of the worker's employment. Nor am I aware of any state that has extended coverage to "ordinary diseases of life" even when the workplace is the source of a particular worker's illness. In addition, the New York statutory language covering "any and all occupational diseases" has not been amended to overcome the court's narrow interpretation of this language.

2. Limitations from Time Limits for Filing Claims

My impression is that several states have amended their workers' compensation statutes since the 1970s to liberalize their statute of limitations. Nonetheless, there are still statutes with statutory requirements that make it impossible for workers with diseases that are clearly work-related to qualify for workers' compensation benefits, as is evident from recent court decisions.

In *Tisco Intermountain v. Industrial Commission*, 744 P.2d 1340 (Utah 1987) the Supreme Court of Utah held that the widow of George Jakob Werner was not entitled to workers' compensation benefits. The decision stated that it was undisputed that he had been exposed to asbestos from 1947 until 1971. He first experienced symptoms of a medical problem in 1981, which led to surgery in 1982 and his death in 1983 "from complications attendant to peritoneal meso-

I believe that currently a substantial proportion (and perhaps a majority) of diseases that would be considered work-related using a medical test for causality would not meet the legal tests for workers' compensation benefits...

thelioma." The Utah Occupational Disease Disability Law required that death from an occupational disease must result within three years from the last date on which the employee actually worked for the employer against whom benefits are claimed. Since Werner had not worked for the employer where he had been exposed to asbestos since 1971, he was disqualified from obtaining benefits.

In *Cable v. Workmen's Comp. Appeals Bd.*, 664 A2d 1349 (Pa. 1995), the Supreme Court of Pennsylvania denied benefits to Kenneth Cable. He had worked at Gulf Oil where he was periodically exposed to the carcinogens coumene and benzene, most recently in 1981. Gulf Oil no longer employed him after March 1983. In July 1988, he was diagnosed with bladder cancer and was advised that the cause was his exposure to coumene and benzene. The manifestation of

the cancer occurred less than 300 weeks after he ended his employment with Gulf, but more than 300 weeks after his last exposure to the carcinogens. The Pennsylvania workers' compensation act provides, in part, that "whenever occupational disease is the basis for compensation . . . it shall apply only to disability or death resulting from such disease and occurring within three hundred weeks after the last date of employment in an occupation or industry to [sic] which he was exposed to hazard of such disease . . ." The court held that the cancer was not compensable because the relevant employment for the statute of limitations is the period of employment in which the employee was exposed to the coumene and benzene, not the subsequent period of employment with the employer in which he was not exposed to the carcinogens.

Iowa is another state with a statute of limitations that can limit the compensability of work-related diseases. Iowa workers' compensation statute Sec. 85A.12 bars workers' compensation benefits unless signs and symptoms manifest themselves within one year of last injurious exposure. This provision has been interpreted to deny benefits to disabled workers in several cases, including *Ganske v. Spahn & Rose Lumber Co.*, 580 N.W.2d 812 (Iowa 1998).

3. Limitations from the Use of the Accident Test

The accident test is still used in some states to deny benefits to workers disabled with work-related diseases. I can attest to the vitality of the doctrine in Idaho, because I helped argue a case before the Idaho Supreme Court last year. Robert Combes aggravated a preexisting but non-disabling condition of asthma by a gradual exposure to dust, pollen, and animal dander over a three to six month period. As a result, Combes was permanently and totally disabled. The court ruled in *Robert Combes v. Industrial Special Indemnity Fund*, ___ P3d. ___ (Idaho 2000) that Combes did not meet the accident requirement for occupational disease benefits because there was no single traumatic event that led to his disability.

4. Other recent limitations on Compensability or Work-Related Diseases

The rapid increases in workers' compensation costs in the late 1980s and early 1990s resulted in a number of changes in workers' compensation programs during the 1990s. One category of those changes involved the adoption by many states of more restrictive rules governing benefit eligibility. An excerpt from Spieler and Burton (1998) is included as an Appendix to these remarks. Many of the changes affected the compensability of injuries as well as diseases, but there

was probably a disproportionate effect on diseases from these statutory changes.

5. Assessment of the Current Coverage of Work-Related Diseases

The studies by Larson (1979) and Barth (1980) documented restrictions on the compensability of work-related diseases that were found in most state workers' compensation laws. Since then, some of the most restrictive statutes of limitations may have been liberalized. However, the general tightening of eligibility rules during the 1990s has probably overwhelmed any liberalizing developments. I believe that currently a substantial proportion (and perhaps a majority) of diseases that would be considered work-related using a medical test for causality would not meet the legal tests for workers' compensation benefits in state workers' compensation programs. Clearly the success rate for work-related disease claims will vary among states and among conditions. But the protection provided by state workers' compensation programs to workers with work-related diseases in general is inadequate and inequitable.

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Summary of an Important Publication: Occupational Disease and Workers' Compensation: Coverage, Costs, and Consequences

By J. Paul Leigh and John A. Robbins

Published in *The Millbank Quarterly*, Vol. 82, No. 4, 2004, pp. 689-721.

Available from: The full text of the article is reprinted in the *Workers' Compensation Compendium 2005-06 Volume One*. Information on the *Compendium* is provided on page 27.

Digest. Leigh and Robbins find that most occupational diseases are not covered by workers' compensation programs in the U.S. The authors reach this conclusion using a three-stage analytical process. First, they use epidemiological data to estimate the deaths and medical costs associated with occupational disease. Second, they use workers' compensation data to estimate the numbers of cases and deaths attributed to occupational disease that are covered by the program and the costs of those cases. Third, the results of the first two stages are compared to estimate the amount of under compensation of occupational disease by workers' compensation programs and the extent of cost shifting from workers' compensation to other sources of support.

In the first stage, the epidemiological data indicate that the occupational diseases causing the greatest number of deaths are, in order, cancer, chronic respiratory diseases, and circulatory diseases. The point estimate for the number of deaths from all types of occupational disease in 1999 was 67,121. Because of the difficulties in making precise estimates, the estimated range of 1999 deaths was from 46,405 to 94,024. The direct costs due to occupational diseases include *inter alia* payments for hospitals and physicians; rehabilitation; nursing home care; medical equipment; and insurance administration. The point estimate of the direct costs for fatalities resulting from occupational diseases and for osteoarthritis in 1999 was \$15.35 billion, with a range from \$9.49 billion to \$24.73 billion. The indirect costs due to occupational diseases include wages lost by disabled workers, household productivity losses, and employer productivity losses, which includes training replacements for diseases workers. The point estimates of the indirect costs for fatal diseases and osteoarthritis in 1999 was \$14.87 billion, with a range from \$9.52 billion to \$21.70 billion.

In the second stage of the analysis, the authors contacted 48 state workers' compensation programs to obtain information on the number of cases, the costs of those cases, and the number of deaths. Only 16 states could provide sufficient information on the "nature of

illness" to allow Leigh and Robbins to identify those cases involving occupational diseases. In these 16 states, disease claims represented 8.05 percent of all claims. There were only seven states that had data on the costs of disease claims; in these states, diseases accounted for 6.88 percent of the total costs of the workers' compensation claims. The Bureau of Labor Statistics, a federal agency, collects information nationally on workplace injuries and diseases, and for 1999, disease cases accounted for 7.88 percent of all reported cases involving days away from work.

...the comparison indicates that workers' compensation programs did not compensate 98.9 percent of the deaths due to occupational disease in 1999...

As another part of the second stage, Leigh and Robbins calculated that the annual number of deaths due to occupational diseases in the 15 state workers' compensation programs with available data averaged 278.98 between 1990 and 2002. Extrapolating the 15-state figure to a national figure suggests that 736 deaths due to occupational diseases were compensated by workers' compensation programs in 1999. The authors also estimated that in 1999 the workers' compensation programs spent \$1.630 billion, \$1.867 billion, or \$1.907 billion (depending on the assumptions used) on the direct costs (medical benefits as broadly defined above) resulting from occupational disease.

The third stage of the analysis compared the epidemiological estimates with the workers' compensation estimates of the number and costs of occupational disease. On the assumption that the 15 states with data from their workers' compensation programs are representative of the nation, the comparison indicates that workers' compensation programs did not compensate 98.9 percent of the deaths due to occupational disease in 1999, with a range of estimates from 91.9 percent to 99.9 percent. (The 98.9 percent figure is based on the estimates that nationally workers' compensation pro-

grams compensated 736 deaths resulting from occupational disease out of 67,121 deaths due to occupational diseases.) An examination of medical costs indicates that workers' compensation expenditures represented 12.2 percent of the epidemiological estimates of medical costs for occupational diseases in 1999, with a range of estimates from 20.0 percent to 6.4 percent. (The 12.2 percent figure is based on the estimates that in 1999 workers' compensation expended \$1.867 billion on medical care for diseases nationally while the epidemiological estimate of medical costs resulting from occupational diseases was \$15.35 billion.)

Leigh and Robbins provide several conclusions for their three-stage analysis. First, workers' compensation coverage is especially weak for occupational diseases that result in death. Second, workers' compensation coverage of nonfatal occupational diseases is better, including illnesses such as carpal tunnel syndrome, hernia, and dermatitis. Third, and most important, workers' compensation covers only a small portion – no more than 20 percent – of the costs of occupational diseases.

Who pays for the costs of occupational disease when workers' compensation does not? ...workers and their families probably bear the greatest share of direct costs...

The authors also discuss: Who pays for the costs of occupational disease when workers' compensation does not? They conclude that workers and their families probably bear the greatest share of direct costs, since they may have to pay deductibles or co-payments under alternative insurance plans or the entire medical bill if they do not have insurance. Other bearers of the medical costs not paid for by workers' compensation include private health insurance, Medicaid, and Medicare, which is likely to absorb many of the costs since deaths from occupational disease often occur after age 65.

Leigh and Robbins then consider the question: What should be done about the problems associated with the lack of coverage for occupational diseases by the workers' compensation program? Their answer contains three possible approaches.

First, there are several examples of federal programs that deal with the consequences of diseases not adequately compensated by normal insurance arrangements. One example is the Black Lung Trust, established in 1969, which provides medical and cash benefits to current and retired coal workers stricken by black

lung diseases and to their survivors. A substantial portion of the benefits is paid with a per-ton coal tax on coal companies. Another example is the tobacco settlement, which required the major tobacco companies to transfer substantial funds to the states' Medicaid programs.

Second, the authors suggest a specific program to deal with osteoarthritis. The medical literature suggests that hip and knee injuries often develop osteoarthritis. The proffered policy would require carriers and employers to notify the worker and Medicare when there is an injury to the knee or hip, and would require insurers to hold reserves for osteoarthritis medical care that might be needed for 30 years after the initial injury.

Third, Leigh and Robbins consider policies to deal with fatal occupational diseases. They are skeptical of the ability of state workers' compensation programs to deal with these fatalities based on several concerns: states will engage in a "race to the bottom" by cutting benefits in order to attract or keep businesses; the difficulties in determining the appropriate premiums for long-term exposures; and the ineffectiveness of states in dealing with asbestos and silicosis. An alternative is a federal program that would be financed by taxes paid by employers. The authors recognize several obstacles to this solution: Would legal obstacles preclude the implementation of a federal program? How would premiums be determined? Who would provide the medical care? The authors provide some brief suggestions about dealing with these obstacles (such as developing a policy that only applies to medical expenditures made by Medicare).

Finally, Leigh and Robbins provide some limitations to their results. First, there are some limits in the methodology, including the procedure used to make the epidemiological estimates of the numbers of occupational deaths. Second, the authors' estimates for nonfatal diseases are likely to be understated. Third, the calculations do not include some programs that compensate for occupational diseases, such as the Radiation Exposure Compensation Program. Fourth, because there are variations across states regarding which diseases are compensable, the approach was to measure which diseases were and were not compensable in a representative sample of states. Fifth, the article has emphasized medical costs because indirect costs (such as lost wages) are difficult to calculate for retired persons. However, the authors argue that a full accounting of indirect costs would likely greatly increase their estimates of the costs of occupational diseases and the amount of cost shifting from the workers' compensation program to workers' families and to other private and public programs.

Editor's Comments. I commend Leigh and Robbins for their careful use of data from two data sources – the epidemiological studies of the prevalence of occupational diseases and the administrative records from state workers' compensation programs – to demonstrate the woeful record of workers' compensation in providing benefits to workers disabled by occupational diseases and to their families. They qualify their results in part because of the lack of adequate workers' compensation data from most states, but the central finding – that in 1999, workers' compensation programs nationally provided medical benefits that represented only 12 percent (with a range of estimates from 6 to 20 percent) of the epidemiological estimates of the medical costs of occupational diseases – has important implications for workers' compensation programs.

Leigh and Robbins do not devote much attention to the sources of the limited coverage of occupational diseases by workers' compensation programs. They note the U.S. Chamber of Commerce reports that 44 states and the District of Columbia allow “all diseases” to be compensated by workers' compensation. However, as

...reforms in the compensability rules in state workers' compensation programs – while surely appropriate – are likely to result in many instances where workers disabled by occupational diseases are unable to obtain workers' compensation benefits.

discussed in my article in this issue of the *Workers' Compensation Policy Review*, (“Coverage of Work-related Diseases by Workers' Compensation Program”), this favorable record of coverage is misleading because of the variety of limitations that most if not all states impose on the compensability of diseases that are not imposed on the compensability of injuries. Moreover, even when there are no legal constraints to compensability, as Leigh and Robbins note, for a disease to be found compensable, “in general there must be an unimpeachable link between exposure at a specific job and a corresponding disease.” While such a link may be relatively easy to establish in epidemiological studies that involve groups of workers, establishing such a link in an individual case is much more difficult because of the complex etiology of many diseases.

The challenges of establishing causation for many work-related diseases means that reforms in the compensability rules in state workers' compensation programs – while surely appropriate – are likely to result in many instances where workers disabled by occupational diseases are unable to obtain workers' compensation benefits. One approach I have advocated for

compensation of backs – namely set up a separate program for workers with back disorders that covers both work-related and non-work-related causes – could be extended to most diseases. Another approach suggested by Leigh and Robbins that warrants further consideration is a federal program financed by taxes on employers that would reimburse Medicare for expenses resulting from certain categories of diseases. Given the financial strains of the Medicare program and the recent efforts by the federal government to ensure that settlements in workers' compensation cases make allowances for expenditures from the Medicare program (discussed by Edward M. Welch, “Medicare: New Developments and Their Implications for Workers' Compensation.” In John F. Burton, Jr., Florence Blum, and Elizabeth H. Yates, *Compendium on Workers' Compensation 2005-06 Volume One*), there may be a serious interest by Congress in legislation that deals with the shifting of the costs of occupational diseases from workers' compensation programs to other sources of support.

WORKERS' COMPENSATION COMPENDIUM 2005-06 VOLUME ONE

The **Workers' Compensation Compendium 2005-06** is the first edition of an annual publication designed to serve several audiences:

(1) *workers' compensation practitioners*, such as state and federal administrators and adjudications, employers, union officials, insurers, attorneys, who need current information about the benefit levels, coverage provisions, costs, and other aspects of workers' compensation programs in various states;

(2) *workers' compensation policymakers* who want analyses of significant issues, such as the policies that may control workers' compensation medical costs and the challenges to the exclusive remedy provision, which limits the right of injured workers' to bring tort suits against their employers; and

(3) *researchers* who need information about recent studies and program developments in order to improve their own analyses.

The *2005-06 Compendium* consists of four parts published in two volumes.

Volume One contains Parts I and II of the 2005-06 Compendium.

Part I includes reprints of significant articles from the first 26 issues of the *Workers' Compensation Policy Review*, spanning the issues from January/February 2001 through March/April 2005, as well as some material that will appear in subsequent issues of the *Policy Review*.

Part I also includes significant articles, chapters, and reports that were originally published elsewhere but that warrant reprinting in the *2005-06 Compendium*. These articles originally appeared in the *Monthly Labor Review*, *The Millbank Quarterly*, the *Journal of the American Medical Association*, the *Journal of Occupational and Environmental Medicine*, and the *IAIABC Journal*. The chapters and reports originally appeared in the *International Encyclopedia of Business & Management* and in publications of the Workers Compensation Research Institute, the Labor and Employment Relations Association (formerly the Industrial Relations Research Association), the RAND Institute for Civil Justice and Health, and the California Commission on Health and Safety and Workers' Compensation.

Part II contains a detailed Subject Index plus a Jurisdiction Index to the articles, chapters, and reports contained in Part I.

The Editor of Volume One is John F. Burton, Jr. Florence Blum and Elizabeth H. Yates are the Associate Editors.

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