

# WORKERS' COMPENSATION POLICY REVIEW

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### FEATURED TOPICS

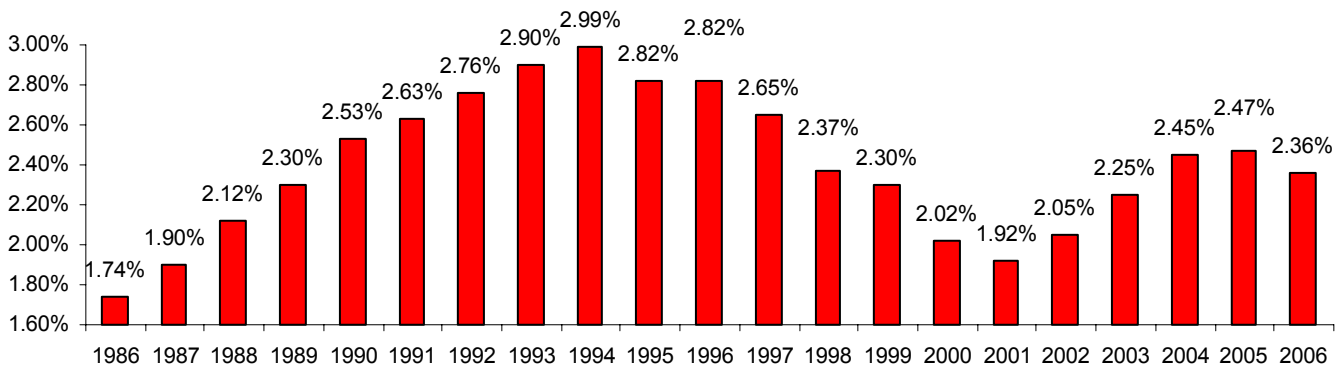
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## Summary of the Contents

The employers' costs of workers' compensation for employees in private industry declined in 2006, reversing a four-year trend of higher costs. Workers' compensation costs as a percent of payroll declined from 2.47 percent in 2005 to 2.36 percent in 2006 in the private sector. There was also a decline in workers' compensation costs as a percent of payroll in the state and local sector, where costs declined from 1.66 percent in 2005 to 1.63 percent in 2006. Employers of the most inclusive category of employees – all non-federal employees – also experienced a decline from 2.31 percent of payroll in 2005 to 2.21 percent of payroll in 2006. In the private sector, as shown in the figure below, the employers' costs of workers' compensation in recent years are higher than the recent low of 1.92 percent of payroll in 2001, but are lower than in the period from 1993 to 1996, when costs as a percent of payroll always exceeded 2.8 percent of payroll.

The second article examines the coverage of work-related diseases by the New York Workers' Compensation Law. The topic received considerable attention when workers participating in the World Trade Center rescue, recovery, and clean-up operations were temporarily barred from filing claims because of the statute of limitations in the New York statute. John Burton identifies the restrictive definition of occupational diseases as the primary source of the bar to recovery for these workers. New York devised a solution for the rescue workers, which Burton views as both questionable for workers affected by the World Trade Center tragedy and of no value to other workers in the state afflicted by work-related diseases.

**Workers' Compensation Costs as a Percentage of Gross Earnings, Private Industry Employees, 1986-2006**



Source: Tables 1, 2, 3, 4, and 5.

Note: Data for 2002-2006 are annual averages; data for earlier years are for March.

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## Workers' Compensation Costs for Employers 1986 to 2006

by John F. Burton, Jr.

The employers' costs of worker' compensation as a percent of payroll decreased in 2006 after increasing the four previous years. The decline in employers' costs relative to payroll occurred for workers in the private sector, for workers in the state and local government sector, and for all non-federal employees.

These findings are based on data from the Bureau of Labor Statistics (BLS), which recently released information on the employers' costs of workers' compensation in December 2006. Similar information is available for private sector employees for each March between 1986 and 2001, as shown in Tables 1 and 2. The tables also provide information on the employers' costs of workers' compensation for each March between 1991 and 2001 for state and local government employees and for all non-federal employees.

The BLS has published data on the employers' costs of workers' compensation in the private sector, the state and local government sector, and for all non-federal employers on a quarterly basis since March 2002, as shown in Tables 3, 4, and 5. These quarterly data have been used to calculate the annual averages of workers' compensation costs for 2002 to 2006 included in Tables 3 to 5.

Tables 1 to 5 present information on two measures of the employers' costs of workers' compensation: in costs per hour worked (which is how the BLS reports the data) and in costs as a percentage of payroll (which

were calculated for this article). Information on the BLS survey and the methodology used to prepare the information in this article are contained in Appendix A.

### ANNUAL DATA

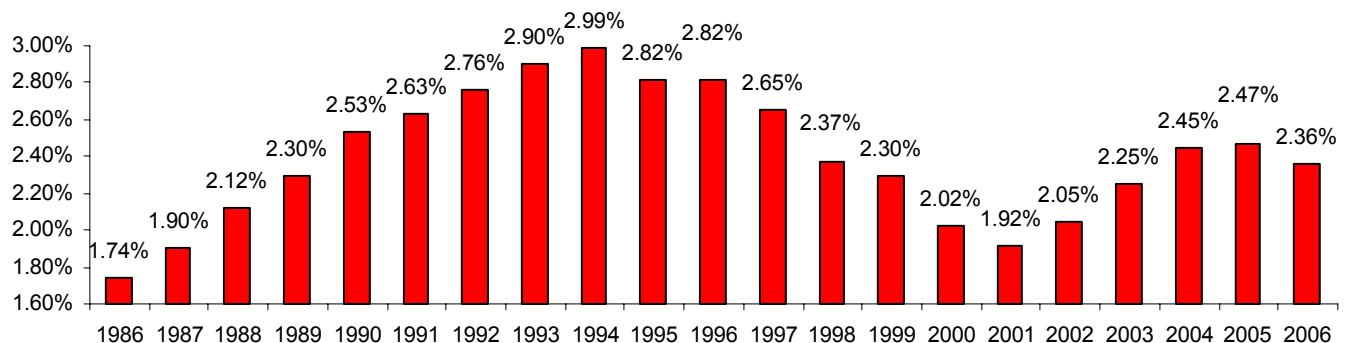
The analysis in this section uses the BLS March data (from Tables 1 and 2) as the measures of workers' compensation costs through 2001 since those March results are the only data for those years. For 2002 to 2006, the analysis relies on the annual averages of BLS data (from Tables 3, 4, and 5) as the measure of workers' compensation costs for those years.<sup>1</sup>

### Workers' Compensation Costs As A Percent of Payroll

For reasons explicated in the concluding section, I believe the most useful measure of employers' expenditures on workers' compensation is workers' compensation costs as a percent of payroll.

**Private Sector Employees.** The employers' costs of workers' compensation as a percent of gross earnings (payroll) for private sector employees from 1986 to 2006 are shown in Figure A and in Panel A of Tables 1 to 5. Employers' expenditures on workers' compensation in private industry represented 1.74 percent of payroll in 1986, increased in each of the next eight years until peaking at 2.99 percent of payroll in 1994, and then declined for seven years until reaching 1.92 per-

**Figure A - Workers' Compensation Costs as a Percentage of Gross Earnings, Private Industry Employees, 1986-2006**



**Source:** Tables 1, 2, 3, 4, and 5.

**Note:** Data for 2002-2006 are annual averages; data for earlier years are for March.

**Table 1 - Total Remuneration, Wages and Salaries, and Workers' Compensation, March 1986-1993**  
(In Dollars Per Hours Worked)

<b>Panel A: Private Industry Employees</b>		<b>1986</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>
(1)	Total Remuneration	13.25	13.42	13.79	14.28	14.96	15.40	16.14	16.70
(2)	Gross Earnings	10.90	11.08	11.32	11.72	12.24	12.55	13.06	13.43
(3)	Wages and Salaries	9.67	9.83	10.02	10.38	10.84	11.14	11.58	11.90
(4)	Paid Leave	0.93	0.93	0.97	1.00	1.03	1.05	1.09	1.11
(5)	Supplemental Pay	0.30	0.32	0.33	0.34	0.37	0.36	0.39	0.42
(6)	Benefits Other Than Pay	2.36	2.35	2.47	2.56	2.72	2.85	3.07	3.26
(7)	Insurance	0.73	0.72	0.78	0.85	0.92	1.01	1.12	1.19
(8)	Retirement Benefits	0.50	0.48	0.45	0.42	0.45	0.44	0.46	0.48
(9)	Legally Required Benefits	1.11	1.13	1.22	1.27	1.35	1.40	1.47	1.55
(9A)	Workers' Compensation	(0.19)	(0.21)	(0.24)	(0.27)	(0.31)	(0.33)	(0.36)	(0.39)
(10)	Other Benefits	0.02	0.02	0.02	0.02	*	*	0.02	0.04
(11)	Workers' Compensation as Percent of Remuneration	1.43%	1.56%	1.74%	1.89%	2.07%	2.14%	2.23%	2.34%
(12)	Workers' Compensation as Percent of Gross Earnings	1.74%	1.90%	2.12%	2.30%	2.53%	2.63%	2.76%	2.90%
<b>Panel B: State and Local Employees</b>							<b>1991</b>	<b>1992</b>	<b>1993</b>
(1)	Total Remuneration						22.31	23.49	24.44
(2)	Gross Earnings						17.48	18.40	19.07
(3)	Wages and Salaries						15.52	16.39	17.00
(4)	Paid Leave						1.75	1.80	1.86
(5)	Supplemental Pay						0.21	0.21	0.21
(6)	Benefits Other Than Pay						4.84	5.08	5.36
(7)	Insurance						1.63	1.84	2.02
(8)	Retirement Benefits						1.85	1.82	1.87
(9)	Legally Required Benefits						1.34	1.40	1.44
(9A)	Workers' Compensation						(0.26)	(0.28)	(0.30)
(10)	Other Benefits						0.02	0.02	0.03
(11)	Workers' Compensation as Percent of Remuneration						1.17%	1.19%	1.23%
(12)	Workers' Compensation as Percent of Gross Earnings						1.49%	1.52%	1.57%
<b>Panel C: All Non-Federal Employees</b>							<b>1991</b>	<b>1992</b>	<b>1993</b>
(1)	Total Remuneration						16.45	17.27	17.88
(2)	Gross Earnings						13.30	13.89	14.29
(3)	Wages and Salaries						11.81	12.33	12.68
(4)	Paid Leave						1.16	1.20	1.22
(5)	Supplemental Pay						0.33	0.36	0.39
(6)	Benefits Other Than Pay						3.16	3.38	3.59
(7)	Insurance						1.10	1.23	1.32
(8)	Retirement Benefits						0.65	0.67	0.70
(9)	Legally Required Benefits						1.39	1.46	1.53
(9A)	Workers' Compensation						(0.32)	(0.35)	(0.38)
(10)	Other Benefits						0.02	0.02	0.04
(11)	Workers' Compensation as Percent of Remuneration						1.95%	2.03%	2.13%
(12)	Workers' Compensation as Percent of Gross Earnings						2.41%	2.52%	2.66%

**Notes:** See Notes for Tables 1-5.

**Sources:** Data in rows (1), (3) to (5), and (7) to (10) of Panels A, B, and C:  
**1986-1990:** U.S. Department of Labor, 2000b, Tables 140, 150, 158, 165, 169  
**1991-1993:** U.S. Department of Labor, 2000b, Tables 1, 3, 5, 17, 19, 21, 33, 35, 37, 49, 51, 53, 65, 67, 69, 81, 83, 85, 97, 99, 101, 112, 114, 116, 126, 128, 130

**Table 2 - Total Remuneration, Wages and Salaries, and Workers' Compensation, March 1994-2001**  
(In Dollars Per Hours Worked)

<b>Panel A: Private Industry Employees</b>		<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
(1)	Total Remuneration	17.08	17.10	17.49	17.97	18.50	19.00	19.85	20.81
(2)	Gross Earnings	13.69	13.81	14.19	14.69	15.19	15.62	16.37	17.16
(3)	Wages and Salaries	12.14	12.25	12.58	13.04	13.47	13.87	14.49	15.18
(4)	Paid Leave	1.11	1.09	1.12	1.14	1.16	1.20	1.28	1.37
(5)	Supplemental Pay	0.44	0.47	0.49	0.51	0.56	0.55	0.60	0.61
(6)	Benefits Other Than Pay	3.39	3.29	3.31	3.29	3.31	3.38	3.48	3.65
(7)	Insurance	1.23	1.15	1.14	1.09	1.10	1.13	1.19	1.28
(8)	Retirement Benefits	0.52	0.52	0.55	0.55	0.55	0.57	0.59	0.62
(9)	Legally Required Benefits	1.60	1.59	1.59	1.62	1.63	1.65	1.67	1.73
(9A)	Workers' Compensation	(0.41)	(0.39)	(0.40)	(0.39)	(0.36)	(0.36)	(0.33)	(0.33)
(10)	Other Benefits	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.02
(11)	Workers' Compensation as Percent of Remuneration	2.40%	2.28%	2.29%	2.17%	1.95%	1.89%	1.66%	1.59%
(12)	Workers' Compensation as Percent of Gross Earnings	2.99%	2.82%	2.82%	2.65%	2.37%	2.30%	2.02%	1.92%
<b>Panel B: State and Local Employees</b>		<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
(1)	Total Remuneration	25.27	24.86	25.73	26.58	27.28	28.00	29.05	30.06
(2)	Gross Earnings	19.71	19.48	20.16	20.90	21.53	22.19	23.08	23.94
(3)	Wages and Salaries	17.57	17.31	17.95	18.61	19.19	19.78	20.57	21.34
(4)	Paid Leave	1.94	1.95	1.99	2.06	2.11	2.17	2.26	2.34
(5)	Supplemental Pay	0.20	0.22	0.22	0.23	0.23	0.24	0.25	0.26
(6)	Benefits Other Than Pay	5.57	5.38	5.56	5.69	5.76	5.81	5.97	6.13
(7)	Insurance	2.15	2.03	2.07	2.09	2.15	2.22	2.38	2.56
(8)	Retirement Benefits	1.90	1.78	1.90	1.95	1.94	1.91	1.84	1.73
(9)	Legally Required Benefits	1.49	1.55	1.56	1.61	1.63	1.64	1.70	1.78
(9A)	Workers' Compensation	(0.31)	(0.31)	(0.31)	(0.30)	(0.30)	(0.30)	(0.31)	(0.34)
(10)	Other Benefits	0.03	0.02	0.03	0.04	0.04	0.04	0.05	0.06
(11)	Workers' Compensation as Percent of Remuneration	1.23%	1.25%	1.20%	1.13%	1.10%	1.07%	1.07%	1.13%
(12)	Workers' Compensation as Percent of Gross Earnings	1.57%	1.59%	1.54%	1.44%	1.39%	1.35%	1.34%	1.42%
<b>Panel C: All Non-Federal Employees</b>		<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
(1)	Total Remuneration	18.30	18.21	18.68	19.22	19.76	20.29	21.16	22.15
(2)	Gross Earnings	14.58	14.62	15.05	15.59	16.11	16.57	17.33	18.14
(3)	Wages and Salaries	12.95	12.98	13.36	13.85	14.30	14.72	15.36	16.07
(4)	Paid Leave	1.23	1.21	1.24	1.27	1.30	1.34	1.42	1.51
(5)	Supplemental Pay	0.40	0.43	0.45	0.47	0.51	0.51	0.55	0.56
(6)	Benefits Other Than Pay	3.72	3.59	3.64	3.63	3.66	3.73	3.83	4.00
(7)	Insurance	1.37	1.28	1.27	1.23	1.25	1.29	1.36	1.46
(8)	Retirement Benefits	0.73	0.70	0.75	0.75	0.75	0.76	0.77	0.78
(9)	Legally Required Benefits	1.58	1.58	1.59	1.62	1.63	1.65	1.67	1.73
(9A)	Workers' Compensation	(0.39)	(0.38)	(0.38)	(0.38)	(0.35)	(0.35)	(0.33)	(0.34)
(10)	Other Benefits	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.03
(11)	Workers' Compensation as Percent of Remuneration	2.13%	2.09%	2.03%	1.98%	1.77%	1.72%	1.56%	1.53%
(12)	Workers' Compensation as Percent of Gross Earnings	2.67%	2.60%	2.52%	2.44%	2.17%	2.11%	1.90%	1.87%

**Notes:** See Notes for Tables 1-5.

**Sources:** Data in rows (1), (3) to (5), and (7) to (10) of Panels A, B, and C:  
**1994-1999:** U.S. Department of Labor, 2000b, Tables 1, 3, 5, 17, 19, 21, 33, 35, 37, 49, 51, 53, 65, 67, 69, 81, 83, 85, 97, 99, 101, 112, 114, 116, 126, 128, 130  
**2000:** U.S. Department of Labor, 2000c, Tables 1, 3, and 5.  
**2001:** U.S. Department of Labor, 2001, Tables 1, 3, and 5.

**Table 3 - Total Remuneration, Wages and Salaries, and Workers' Compensation, Quarterly March 2002 - December 2003  
(In Dollars Per Hours Worked)**

<b>Panel A: Private Industry Employees</b>	<b>March 2002</b>	<b>June 2002</b>	<b>Sept. 2002</b>	<b>Dec. 2002</b>	<b>2002 Average</b>	<b>March 2003</b>	<b>June 2003</b>	<b>Sept. 2003</b>	<b>Dec. 2003</b>	<b>2003 Average</b>
(1) Total Remuneration	21.71	21.83	22.01	22.14	21.92	22.37	22.61	22.84	22.92	22.69
(2) Gross Earnings	17.86	17.94	18.05	18.16	18.00	18.26	18.41	18.59	18.61	18.47
(3) Wages and Salaries	15.80	15.90	16.00	16.08	15.95	16.15	16.31	16.46	16.49	16.35
(4) Paid Leave	1.44	1.44	1.45	1.47	1.45	1.47	1.46	1.48	1.48	1.47
(5) Supplemental Pay	0.62	0.60	0.60	0.61	0.61	0.64	0.64	0.65	0.64	0.64
(6) Benefits Other Than Pay	3.86	3.89	3.95	3.98	3.92	4.11	4.20	4.25	4.31	4.22
(7) Insurance	1.40	1.42	1.45	1.46	1.43	1.52	1.57	1.59	1.62	1.58
(8) Retirement Benefits	0.63	0.62	0.63	0.64	0.63	0.67	0.67	0.68	0.70	0.68
(9) Legally Required Benefits	1.80	1.82	1.84	1.85	1.83	1.89	1.93	1.95	1.96	1.93
(9A) Workers' Compensation	(0.35)	(0.37)	(0.38)	(0.38)	(0.37)	(0.40)	(0.41)	(0.42)	(0.43)	(0.42)
(10) Other Benefits	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03
(11) Workers' Compensation as Percent of Remuneration	1.61%	1.69%	1.73%	1.72%	1.69%	1.79%	1.81%	1.84%	1.88%	1.83%
(12) Workers' Compensation as Percent of Gross Earnings	1.96%	2.06%	2.11%	2.09%	2.05%	2.19%	2.23%	2.26%	2.31%	2.25%
<b>Panel B: State and Local Employees</b>	<b>March 2002</b>	<b>June 2002</b>	<b>Sept. 2002</b>	<b>Dec. 2002</b>	<b>2002 Average</b>	<b>March 2003</b>	<b>June 2003</b>	<b>Sept. 2003</b>	<b>Dec. 2003</b>	<b>2003 Average</b>
(1) Total Remuneration	31.29	31.20	31.89	32.32	31.68	32.62	32.99	33.62	33.91	33.29
(2) Gross Earnings	24.83	24.72	25.17	25.46	25.05	25.66	25.96	26.26	26.43	26.08
(3) Wages and Salaries	22.14	22.00	22.40	22.68	22.31	22.85	23.14	23.42	23.56	23.24
(4) Paid Leave	2.43	2.45	2.49	2.49	2.47	2.51	2.52	2.55	2.58	2.54
(5) Supplemental Pay	0.26	0.27	0.28	0.29	0.28	0.30	0.30	0.29	0.29	0.30
(6) Benefits Other Than Pay	6.46	6.47	6.72	6.85	6.63	6.96	7.02	7.36	7.48	7.21
(7) Insurance	2.82	2.85	2.96	3.02	2.91	3.12	3.16	3.32	3.39	3.25
(8) Retirement Benefits	1.74	1.72	1.81	1.84	1.78	1.85	1.86	1.99	2.03	1.93
(9) Legally Required Benefits	1.84	1.84	1.89	1.92	1.87	1.93	1.94	1.98	1.99	1.96
(9A) Workers' Compensation	(0.34)	(0.35)	(0.36)	(0.37)	(0.36)	(0.36)	(0.37)	(0.38)	(0.38)	(0.37)
(10) Other Benefits	0.06	0.06	0.06	0.07	0.06	0.06	0.06	0.07	0.07	0.07
(11) Workers' Compensation as Percent of Remuneration	1.09%	1.12%	1.13%	1.14%	1.12%	1.10%	1.12%	1.13%	1.12%	1.12%
(12) Workers' Compensation as Percent of Gross Earnings	1.37%	1.42%	1.43%	1.45%	1.42%	1.40%	1.43%	1.45%	1.44%	1.43%
<b>Panel C: All Non-Federal Employees</b>	<b>March 2002</b>	<b>June 2002</b>	<b>Sept. 2002</b>	<b>Dec. 2002</b>	<b>2002 Average</b>	<b>March 2003</b>	<b>June 2003</b>	<b>Sept. 2003</b>	<b>Dec. 2003</b>	<b>2003 Average</b>
(1) Total Remuneration	23.15	23.20	23.44	23.66	23.36	23.93	24.19	24.48	24.59	24.30
(2) Gross Earnings	18.91	18.92	19.09	19.24	19.04	19.39	19.57	19.76	19.80	19.63
(3) Wages and Salaries	16.76	16.78	16.93	17.06	16.88	17.17	17.35	17.52	17.56	17.40
(4) Paid Leave	1.59	1.59	1.60	1.62	1.60	1.63	1.63	1.64	1.65	1.64
(5) Supplemental Pay	0.56	0.55	0.56	0.56	0.56	0.59	0.59	0.60	0.59	0.59
(6) Benefits Other Than Pay	4.24	4.26	4.35	4.41	4.32	4.54	4.64	4.73	4.78	4.67
(7) Insurance	1.61	1.63	1.67	1.69	1.65	1.77	1.81	1.86	1.88	1.83
(8) Retirement Benefits	0.80	0.78	0.80	0.82	0.80	0.85	0.86	0.88	0.90	0.87
(9) Legally Required Benefits	1.80	1.82	1.85	1.86	1.83	1.89	1.93	1.95	1.96	1.93
(9A) Workers' Compensation	(0.35)	(0.36)	(0.38)	(0.38)	(0.37)	(0.39)	(0.41)	(0.42)	(0.42)	(0.41)
(10) Other Benefits	0.03	0.03	0.03	0.04	0.03	0.03	0.04	0.04	0.04	0.04
(11) Workers' Compensation as Percent of Remuneration	1.51%	1.55%	1.62%	1.61%	1.57%	1.63%	1.69%	1.72%	1.71%	1.69%
(12) Workers' Compensation as Percent of Gross Earnings	1.85%	1.90%	1.99%	1.98%	1.93%	2.01%	2.10%	2.13%	2.12%	2.09%

**Note** See Notes for Tables 1-5.

**Sour** Data in rows (1), (3) to (5), and (7) to (10) of Panels A, B, and C:

**March 2002:** U.S. Department of Labor, 2002a, Tables 1, 3, and 5.

**June 2002:** U.S. Dept. of Labor, 2002b, Tables 1, 3, and 5.

**September 2002:** U.S. Dept. of Labor, 2002c, Tables 1, 3, and 5.

**December 2002:** U.S. Dept. of Labor, 2003a, Tables 1, 3, and 5.

**March 2003:** U.S. Dept. of Labor, 2003b, Tables 1, 3, and 5.

**June 2003:** U.S. Dept. of Labor, 2003c, Tables 1, 3, and 5.

**September 2003:** U.S. Dept. of Labor, 2003d, Tables 1, 3, and 5.

**December 2003:** U.S. Dept. of Labor, 2004, Tables 1, 3, and 5.

**Table 4 - Total Remuneration, Wages and Salaries, and Workers' Compensation, Quarterly March 2004 - December 2005  
(In Dollars Per Hours Worked)**

		March 2004	June 2004	Sept. 2004	Dec. 2004	2004 Average	March 2005	June 2005	Sept. 2005	Dec. 2005	2005 Average
<b>Panel A: Private Industry Employees</b>											
(1)	Total Remuneration	23.29	23.41	23.76	23.90	23.59	24.17	24.24	24.34	24.71	24.37
(2)	Gross Earnings	18.80	18.84	19.13	19.21	19.00	19.37	19.44	19.49	19.84	19.54
(3)	Wages and Salaries	16.64	16.71	16.96	17.02	16.83	17.15	17.21	17.23	17.51	17.28
(4)	Paid Leave	1.50	1.49	1.52	1.53	1.51	1.54	1.54	1.55	1.61	1.56
(5)	Supplemental Pay	0.66	0.64	0.65	0.66	0.65	0.68	0.69	0.71	0.72	0.70
(6)	Benefits Other Than Pay	4.50	4.56	4.64	4.70	4.60	4.80	4.80	4.86	4.88	4.84
(7)	Insurance	1.65	1.66	1.68	1.70	1.67	1.76	1.76	1.78	1.81	1.78
(8)	Retirement Benefits	0.80	0.82	0.85	0.88	0.84	0.90	0.88	0.90	0.89	0.89
(9)	Legally Required Benefits	2.01	2.04	2.07	2.08	2.05	2.10	2.12	2.14	2.14	2.13
(9A)	Workers' Compensation	(0.45)	(0.47)	(0.47)	(0.47)	(0.47)	(0.48)	(0.48)	(0.49)	(0.48)	(0.48)
(10)	Other Benefits	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04
(11)	Workers' Compensation as Percent of Remuneration	1.93%	2.01%	1.98%	1.97%	1.97%	1.99%	1.98%	2.01%	1.94%	1.98%
(12)	Workers' Compensation as Percent of Gross Earnings	2.39%	2.49%	2.46%	2.45%	2.45%	2.48%	2.47%	2.51%	2.42%	2.47%
<b>Panel B: State and Local Employees</b>											
(1)	Total Remuneration	34.21	34.13	34.72	35.16	34.56	35.50	35.46	36.16	36.55	35.92
(2)	Gross Earnings	26.59	26.44	26.78	27.07	26.72	27.25	27.18	27.56	27.86	27.46
(3)	Wages and Salaries	23.69	23.52	23.83	24.10	23.79	24.26	24.17	24.52	24.83	24.45
(4)	Paid Leave	2.60	2.61	2.64	2.66	2.63	2.68	2.69	2.72	2.72	2.70
(5)	Supplemental Pay	0.30	0.31	0.31	0.31	0.31	0.31	0.32	0.32	0.31	0.32
(6)	Benefits Other Than Pay	7.62	7.68	7.94	8.07	7.83	8.25	8.28	8.59	8.69	8.45
(7)	Insurance	3.48	3.51	3.62	3.68	3.57	3.76	3.79	3.94	3.98	3.87
(8)	Retirement Benefits	2.07	2.12	2.23	2.28	2.18	2.34	2.33	2.48	2.51	2.42
(9)	Legally Required Benefits	2.02	2.00	2.04	2.06	2.03	2.10	2.11	2.12	2.15	2.12
(9A)	Workers' Compensation	(0.39)	(0.40)	(0.41)	(0.41)	(0.40)	(0.44)	(0.46)	(0.45)	(0.47)	(0.46)
(10)	Other Benefits	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
(11)	Workers' Compensation as Percent of Remuneration	1.14%	1.17%	1.18%	1.17%	1.16%	1.24%	1.30%	1.24%	1.29%	1.27%
(12)	Workers' Compensation as Percent of Gross Earnings	1.47%	1.51%	1.53%	1.51%	1.51%	1.61%	1.69%	1.63%	1.69%	1.66%
<b>Panel C: All Non-Federal Employees</b>											
(1)	Total Remuneration	24.95	24.96	25.36	25.57	25.21	25.87	25.86	26.05	26.46	26.06
(2)	Gross Earnings	19.97	19.95	20.24	20.37	20.13	20.56	20.55	20.65	21.02	20.70
(3)	Wages and Salaries	17.71	17.70	17.96	18.07	17.86	18.22	18.21	18.28	18.59	18.33
(4)	Paid Leave	1.66	1.66	1.68	1.70	1.68	1.72	1.70	1.72	1.77	1.73
(5)	Supplemental Pay	0.60	0.59	0.60	0.60	0.60	0.62	0.64	0.65	0.66	0.64
(6)	Benefits Other Than Pay	4.97	5.01	5.11	5.18	5.07	5.31	5.30	5.40	5.45	5.37
(7)	Insurance	1.93	1.93	1.96	1.99	1.95	2.06	2.05	2.10	2.13	2.09
(8)	Retirement Benefits	0.99	1.01	1.05	1.08	1.03	1.11	1.09	1.13	1.13	1.12
(9)	Legally Required Benefits	2.01	2.03	2.06	2.07	2.04	2.10	2.12	2.13	2.15	2.13
(9A)	Workers' Compensation	(0.44)	(0.46)	(0.46)	(0.46)	(0.46)	(0.47)	(0.48)	(0.48)	(0.48)	(0.48)
(10)	Other Benefits	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04
(11)	Workers' Compensation as Percent of Remuneration	1.76%	1.84%	1.81%	1.80%	1.80%	1.82%	1.86%	1.84%	1.81%	1.83%
(12)	Workers' Compensation as Percent of Gross Earnings	2.20%	2.31%	2.27%	2.26%	2.26%	2.29%	2.34%	2.32%	2.28%	2.31%

**Note:** See Notes for Tables 1-5.

**Source:** Data in Panel A: U.S. Department of Labor, 2007, Table 9.

Data in Panel B: U.S. Department of Labor, 2007, Table 5.

Data in Panel C: U.S. Department of Labor, 2007, Table 1.

cent of payroll in 2001. Costs subsequently began to increase for the next four years from 2.05 percent of payroll in 2002, 2.25 percent of payroll in 2003, 2.45 percent of payroll in 2004, and 2.47 percent of payroll in 2005 before decreasing in 2006 to 2.36 percent of payroll.

**State and Local Government Employees.** The employers' costs of workers' compensation as a percent of payroll for employees in the state and local government sector from 1991 to 2006 are shown in Figure B and Panel B of Tables 1 to 5. This sector's workers' compensation costs started at 1.49 percent of payroll in 1991, increased until reaching 1.59 percent of payroll in 1995, dropped to 1.34 percent of payroll in 2000, rebounded to 1.42 percent of payroll in 2001 and 2002, and increased to 1.43 percent of payroll in 2003, 1.51 percent of payroll in 2004, and 1.66 percent of payroll in 2005, which represents the highest cost of workers' compensation in the state and local government sector since the data series began in 1991. The costs of workers' compensation state and local government employees then decreased slightly in 2006 to 1.63 percent of payroll.

**All Non-Federal Employees.** Workers' compensation costs for 1991 to 2006 for all non-federal employees, a category that includes private industry employees along with state and local government employees, are presented in Figure C and in Panel C of Tables 1 to 5. Workers' compensation costs for employers of all non-federal employees represented 2.41 percent of payroll in 1991, increased to a peak of 2.67 percent in 1994, declined from 1994 to 2001, when it was 1.87 percent of payroll, and then increased for four years to 2.31 percent of payroll in 2005. In 2006 the workers' compensation costs as a percent of payroll for all non-federal employees decreased to 2.21 percent.

	March 2006	June 2006	Sept. 2006	Dec. 2006	2006 Average
<b>Panel A: Private Industry Employees</b>					
(1) Total Remuneration	25.09	25.16	25.52	25.67	25.36
(2) Gross Earnings	20.17	20.20	20.52	20.62	20.38
(3) Wages and Salaries	17.73	17.77	18.04	18.11	17.91
(4) Paid Leave	1.71	1.70	1.73	1.76	1.73
(5) Supplemental Pay	0.73	0.73	0.75	0.75	0.74
(6) Benefits Other Than Pay	4.91	4.94	5.00	5.06	4.98
(7) Insurance	1.85	1.87	1.89	1.92	1.88
(8) Retirement Benefits	0.91	0.91	0.93	0.94	0.92
(9) Legally Required Benefits	2.15	2.16	2.18	2.20	2.17
(9A) Workers' Compensation	(0.47)	(0.48)	(0.48)	(0.49)	(0.48)
(10) Other Benefits	0.00	0.00	0.00	0.00	0.00
(11) Workers' Compensation as Percent of Remuneration	1.87%	1.91%	1.88%	1.91%	1.89%
(12) Workers' Compensation as Percent of Gross Earnings	2.33%	2.38%	2.34%	2.38%	2.36%
<b>Panel B: State and Local Employees</b>					
(1) Total Remuneration	36.96	37.01	37.91	38.26	37.54
(2) Gross Earnings	28.21	28.21	28.83	29.05	28.58
(3) Wages and Salaries	25.01	24.96	25.53	25.74	25.31
(4) Paid Leave	2.88	2.92	2.98	2.99	2.94
(5) Supplemental Pay	0.32	0.33	0.32	0.32	0.32
(6) Benefits Other Than Pay	8.75	8.80	9.08	9.20	8.96
(7) Insurance	4.03	4.06	4.18	4.22	4.12
(8) Retirement Benefits	2.54	2.56	2.68	2.75	2.63
(9) Legally Required Benefits	2.18	2.18	2.22	2.23	2.20
(9A) Workers' Compensation	(0.46)	(0.47)	(0.46)	(0.47)	(0.47)
(10) Other Benefits	0.00	0.00	0.00	0.00	-
(11) Workers' Compensation as Percent of Remuneration	1.24%	1.27%	1.21%	1.23%	1.24%
(12) Workers' Compensation as Percent of Gross Earnings	1.63%	1.67%	1.60%	1.62%	1.63%
<b>Panel C: All Non-Federal Employees</b>					
(1) Total Remuneration	26.86	26.86	27.31	27.54	27.14
(2) Gross Earnings	21.37	21.35	21.72	21.87	21.58
(3) Wages and Salaries	18.82	18.80	19.12	19.24	19.00
(4) Paid Leave	1.88	1.88	1.91	1.94	1.90
(5) Supplemental Pay	0.67	0.67	0.69	0.69	0.68
(6) Benefits Other Than Pay	5.49	5.51	5.59	5.67	5.57
(7) Insurance	2.18	2.19	2.22	2.26	2.21
(8) Retirement Benefits	1.15	1.15	1.18	1.21	1.17
(9) Legally Required Benefits	2.16	2.17	2.19	2.20	2.18
(9A) Workers' Compensation	(0.47)	(0.48)	(0.48)	(0.48)	(0.48)
(10) Other Benefits	0.00	0.00	0.00	0.00	-
(11) Workers' Compensation as Percent of Remuneration	1.75%	1.79%	1.76%	1.74%	1.76%
(12) Workers' Compensation as Percent of Gross Earnings	2.20%	2.25%	2.21%	2.19%	2.21%

**Note:** See Notes for Tables 1-4.

**Source Data in Panel A:** U.S. Department of Labor, 2007, Table 9.  
**Data in Panel B:** U.S. Department of Labor, 2007, Table 5.  
**Data in Panel C:** U.S. Department of Labor, 2007, Table 1.

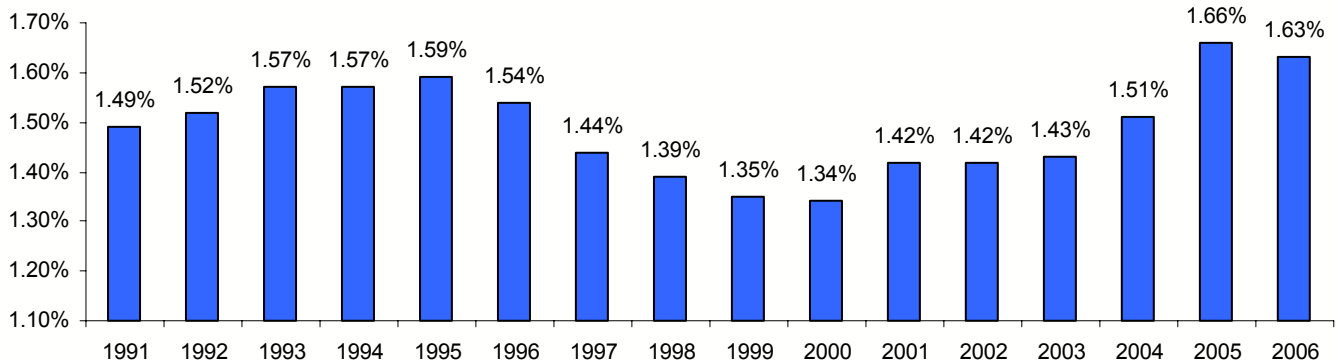


**Notes for Tables 1– 5**

**Notes:** \* = \$0.01 or less

- (1) Table 1 and the text of this article use the term “remuneration” in place of the term “compensation” that is used in the BLS publications, and use the term “All non-federal Employees” in place of the term “Civilian Workers” that is used in the BLS publications.
- (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.

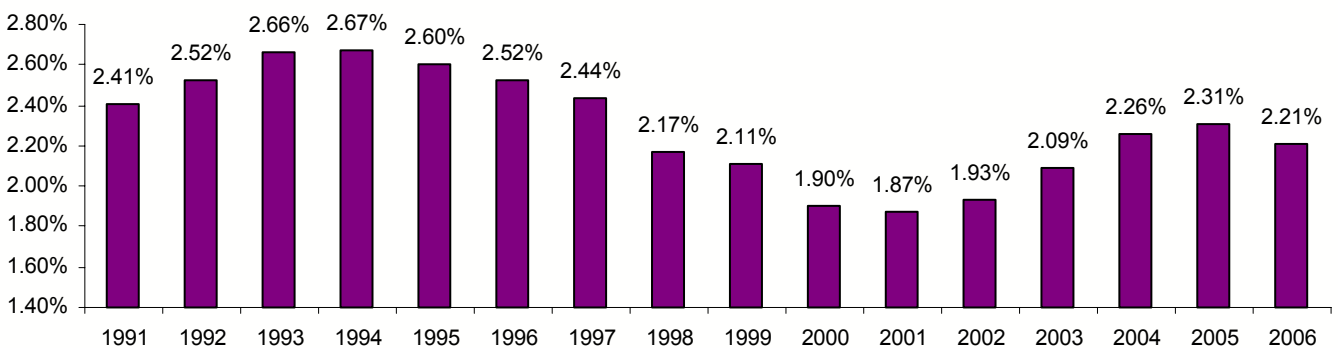
**Figure B - Workers' Compensation Costs as a Percentage of Gross Earnings, State and Local Government Employees, 1991-2006**



**Source:** Tables 1, 2, 3, 4, and 5.

**Note:** Data for 2002-2006 are annual averages; data for earlier years are for March.

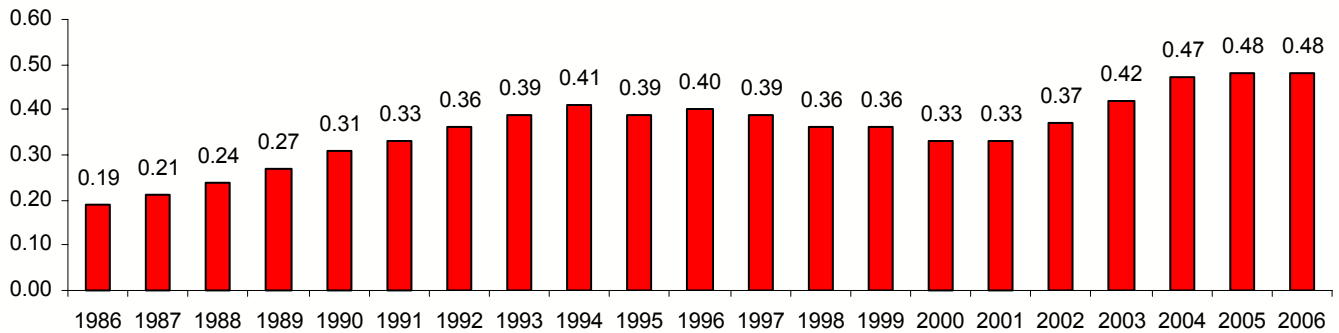
**Figure C - Workers' Compensation Costs as a Percentage of Gross Earnings, All Non-Federal Employees, 1991-2006**



**Source:** Tables 1, 2, 3, 4, and 5.

**Note:** Data for 2002-2006 are annual averages; data for earlier years are for March.

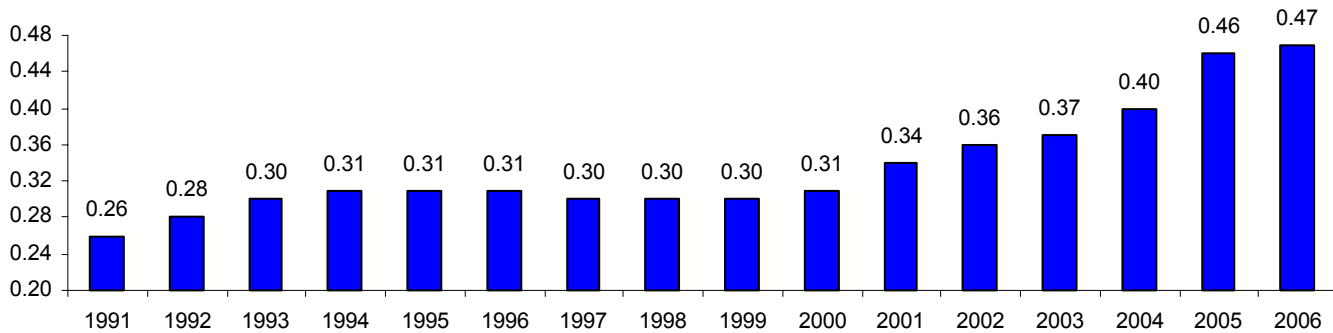
**Figure D - Workers' Compensation Costs for Private Industry Employees, 1986-2006 (In Dollars per Hour Worked)**



**Source:** Tables 1, 2, 3, 4, and 5.

**Note:** Data for 2002-2006 are annual averages; data for earlier years are for March.

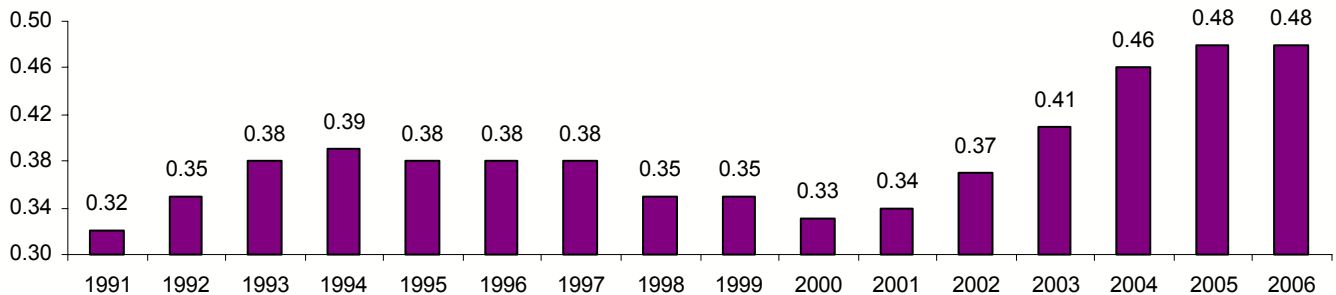
**Figure E - Workers' Compensation Costs for State and Local Government Employees, 1991-2006 (In Dollars per Hour Worked)**



**Source:** Tables 1, 2, 3, 4, and 5.

**Note:** Data for 2002-2006 are annual averages; data for earlier years are for March.

**Figure F - Workers' Compensation Costs for All Non-Federal Employees, 1991-2006 (In Dollars per Hour Worked)**



**Source:** Tables 1, 2, 3, 4, and 5.

**Note:** Data for 2002-2006 are annual averages; data for earlier years are for March.

## Costs Per Hour Worked

An alternative measure of the employers' costs of workers' compensation is employers' expenditures on the program in dollars per hour worked.

**Private Sector Employees.** The employers' costs of workers' compensation in dollars per hour worked for private sector workers from 1986 to 2006 are shown in Figure D and Panel A of Tables 1 to 5. Using this measure of employers' costs, the costs in the private sector began at \$0.19 per hour in 1986, increased to \$0.41 per hour in 1994, declined in most years until reaching \$0.33 per hour in 2000 and 2001, and then increased to \$0.37 per hour in 2002, \$0.42 per hour in 2003, \$0.47 per hour in 2004, and \$0.48 in 2005. Workers' compensation costs in dollars per hour remained at \$0.48 per hour for all private sector employees in 2006.

**State and Local Government Employees.** The employers' costs of workers' compensation in dollars per hour worked for workers in the state and local government sector from 1991 to 2006 are shown in Figure E and Panel B of Tables 1 to 5. The employers' costs of workers' compensation per hour worked in the state and local government sector were \$0.26 in 1991 (the first year with data), increased to \$0.31 in 1994, fluctuated in a narrow band between \$0.30 and \$0.31 per hour from 1994 to 2000, and then increased rapidly for six years until costs were \$0.46 per hour worked in 2005. In 2006, the costs of workers' compensation per hour worked increased slightly to \$0.47 in the state and local government sector.

**All Non-Federal Employees.** The employers' costs of workers' compensation in dollars per hour worked for all non-federal government employees from 1991 to 2006 are shown in Figure F and Panel C of Tables 1 to 5. Workers' compensation costs per hour worked for all non-federal government employees were \$0.32 in 1991 (the first year with data), increased to \$0.39 in 1994, declined to \$0.33 in 2000, and then increased significantly to \$0.37 in 2002, \$0.41 in 2003, and \$0.46 per hour worked in 2004. Employers' costs for all non-federal employees increased moderately in 2005 to \$0.48 per hour worked, and remained at this level in 2006.

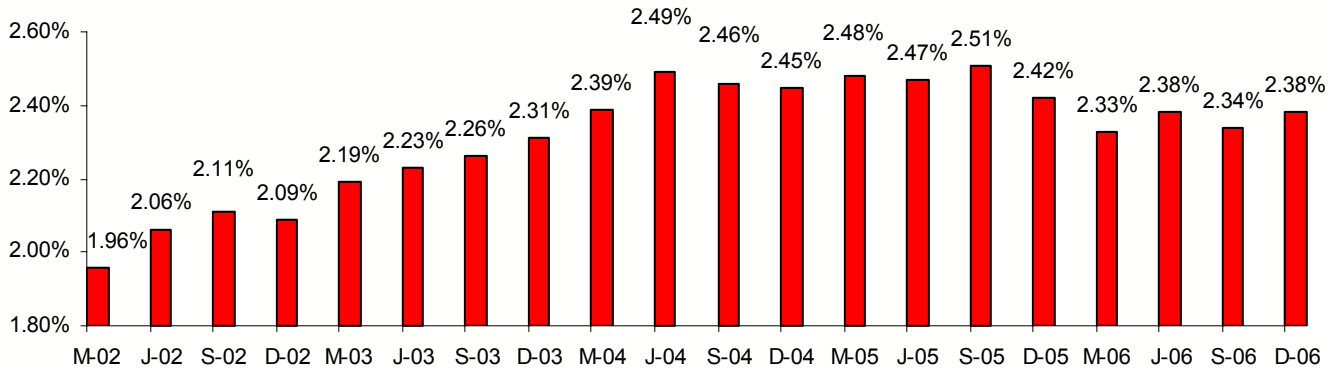
## QUARTERLY DATA

### Workers' Compensation Costs as Percent of Payroll

**Private sector employees.** The trends in workers' compensation costs in the private sector since March 2002 are further documented in Figure G and Panel A of Tables 3 to 5, which present information on the 20 quarters of data available under the new BLS quarterly publication schedule. The employers' costs of 1.96 percent in March 2002 increased until September 2002, dropped slightly in December 2002, and subsequently resumed an increase in every quarter until June 2004, when costs represented 2.49 percent of payroll. Costs for employers in the private sector fluctuated in a relatively narrow range of 2.45 percent to 2.51 percent of payroll between June 2002 and September 2005. Costs then dropped in the last quarter of 2005, reaching 2.42 percent of payroll in December 2005. Workers' compensation costs in 2006 dropped to 2.33 percent of payroll in March 2006, increased to 2.38 percent in June 2006, dropped to 2.34 percent in September 2006, before rising again to 2.38 percent in the final quarter of 2006. The employers' costs of workers' compensation in the private sector varied from 2.33 percent to 2.38 percent of payroll in the four quarters of 2006, consistently below the costs in the previous two years, which varied from 2.39 percent to 2.51 percent of payroll in the eight quarters of 2004 and 2005.

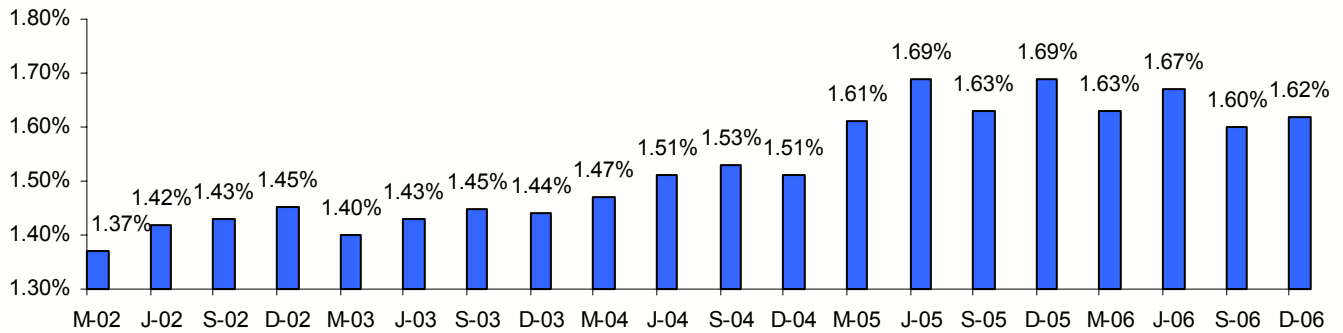
**State and Local Government Employees.** The fluctuations in workers' compensation costs in the state and local sector in recent years are evident in the 20 quarters of data available included in Figure H and Panel B of Tables 3 to 5. The employers' costs increased from 1.37 percent of payroll in March 2002 to 1.45 percent of payroll in December 2002, dropped to 1.40 percent of payroll in March 2003, and then matched the previous peak of 1.45 percent of payroll in September 2003, before declining again to 1.44 percent of payroll in December 2003. Costs in the sector then generally increased for eight quarters, reaching a new peak of 1.69 percent of payroll in June 2005, followed by a decline to 1.63 percent of payroll in September 2005 and a rebound to the peak of 1.69 percent of payroll in December 2005. In March 2006 workers' compensation costs decreased again to 1.63 percent of payroll, then increased and decreased in the second and third quarters before increasing again in December 2006 to 1.62 percent of payroll. Workers' compensation costs in the state and local sector ranged from 1.60 percent to 1.67 percent of payroll in the four quarters of 2006, somewhat below the range of 1.61 percent to 1.69 percent of payroll in 2005.

**Figure G**  
**Workers' Compensation Costs as a Percentage of Gross Earnings,**  
**Private Industry Employees, March 2002 - December 2006**



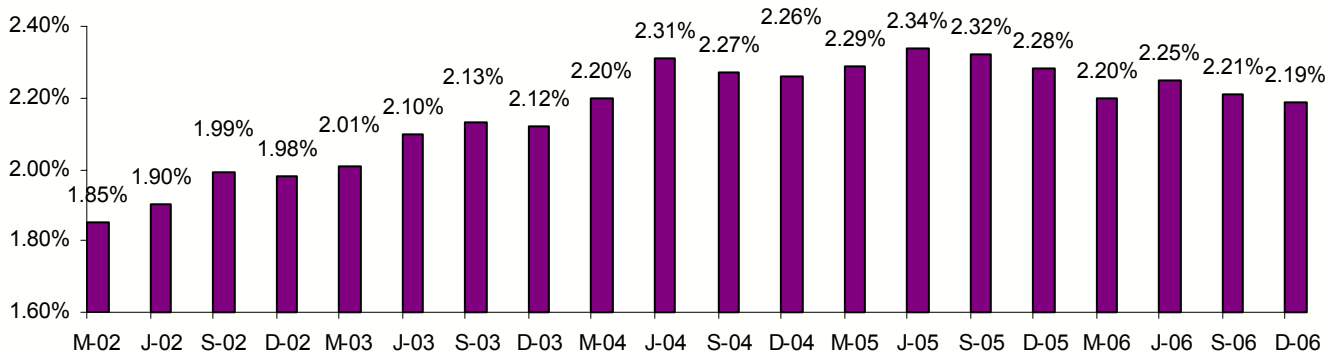
Source: Tables 3, 4, and 5.

**Figure H**  
**Workers' Compensation Costs as a Percentage of Gross Earnings,**  
**State and Local Employees, March 2002 - December 2006**



Source: Tables 3, 4, and 5.

**Figure I**  
**Workers' Compensation Costs as a Percentage of Gross Earnings,**  
**All Non-Federal Employees, March 2002 - December 2006**



Source: Tables 3, 4, and 5.

**All Non-federal Employees.** A general trend towards higher workers' compensation costs for all non-federal employers between 2002 and mid-2004 is shown in the data in Figure I and in Panel C of Tables 3 to 5. The employers' costs of 1.85 percent of payroll in March 2002 was followed by nine quarters of generally increasing costs until costs reached 2.31 percent of payroll in June 2004. Then costs fluctuated until reaching a recent peak of 2.34 percent in June 2005, followed by two quarters of decline through December 2005, when workers' compensation costs were 2.28 percent of payroll. The decline continued in March 2006 when workers' compensation costs were 2.20 percent of payroll, increased to 2.25 percent in the second quarter, followed by another two quarters of decline through December 2006 to 2.19 percent of payroll. Workers' compensation costs for all non-federal employees ranged from 2.19 percent to 2.25 percent of payroll in the four quarters of 2006, consistently below the range of 2.28 percent to 2.34 percent of payroll in 2005.

### Workers' Compensation Costs per Hour Worked

**Private Sector Employees.** The quarterly data indicate that private sector employers expended \$0.35 per hour on workers' compensation in March 2002 and that these expenditures increased almost every quarter until reaching \$0.47 per hour in June 2004 (Figure J and Panel A of Tables 3 to 5). Since June 2004, employers' costs have varied within a narrow range, with costs at \$0.49 per hour worked in December 2006.

**State and Local Government Employees.** The quarterly data indicate that state and local government employers expended \$0.34 per hour on workers' compensation in March 2002 and that these expenditures fluctuated between \$0.36 and \$0.38 per hour between September 2002 and December 2003 (Figure K and Panel B of Tables 3 to 5). Cost then increased significantly in the state and local government sector during 2004 and 2005, reaching \$0.47 per hour worked in December 2005. Costs in 2006 remain stable, varying between \$0.46 and \$0.47 per hour worked.

**All Non-Federal Employees.** The quarterly data indicate that state and local government employers expended \$0.35 per hour on workers' compensation in March 2002 and that these expenditures increased in most quarters until they reached \$0.48 per hour worked in June 2005. Since then, employers' workers' compensation costs for all non-federal employees have been at a plateau of \$0.48 per hour worked except for a brief decrease to \$0.47 in March 2006 (Figure L and Panel C of Tables 3 to 5).

## RECENT INCREASES AND DECREASES IN WORKERS' COMPENSATION COSTS

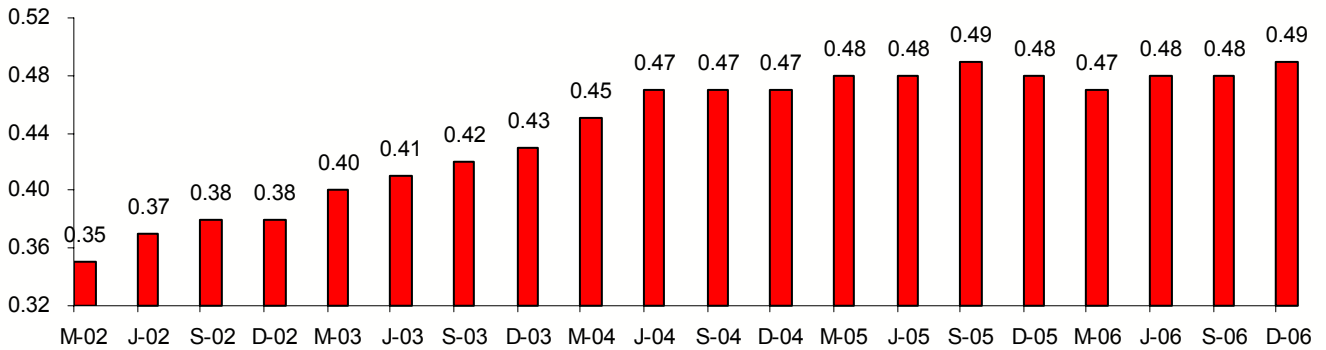
The most comprehensive set of employers represented in the BLS survey are those employing all non-federal employees. For those employers, the low point for employers' costs as a percent of payroll occurred in March 2002, when the costs represented 1.85 percent of payroll. Tables 6, 7, and 8 indicate the increases and decreases in workers' compensation costs since March 2002.

### Employer's Costs as a Percent of Payroll

**Private Sector Employees.** The employers' costs of workers' compensation as a percent of payroll increased from 1.96 percent in March 2002 to 2.38 percent of payroll in December 2006 (Figure G and Table 6, Panel A, Column (1)). This represents a cumulative increase of costs of 21.4 percent over the twenty quarters (Table 6, Panel A, Column (2)). The quarterly data can also be used to calculate annual rates of increase or decrease in workers' compensation costs over the preceding year. For example, private sector employers' costs were 1.96 percent of payroll in March 2002 and 2.19 percent of payroll in March 2003, which represents an 11.7 percent increase in costs over the twelve months (Figure M and Table 6, Panel A, Column (3)). The data indicate the employers' costs of workers' compensation as a percent of payroll in the private sector were down all four quarter in 2006: the declines were 6.0 percent in March 2006, 3.6 percent in June 2006, 6.8 percent in September 2006 and 1.7 percent in December 2006 from the corresponding quarters in 2005.

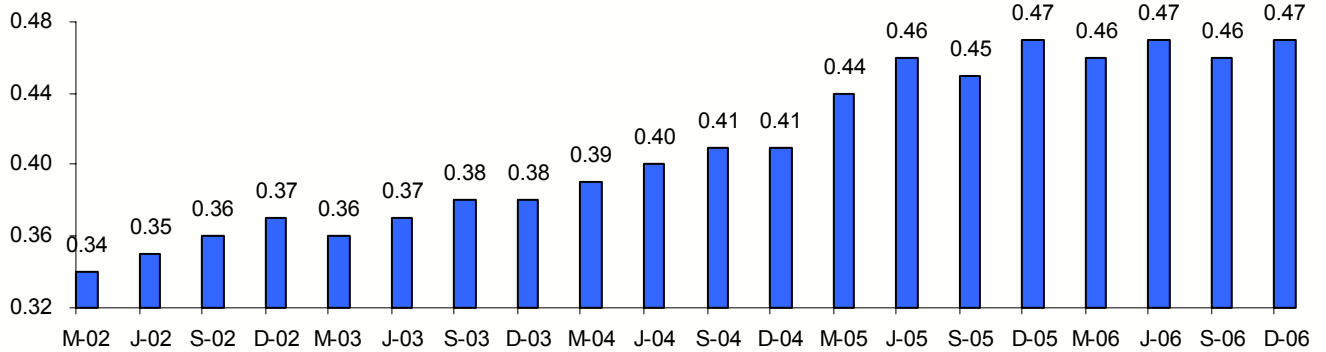
**State and Local Employees.** The employers' costs of workers' compensation as a percent of payroll increased from 1.37 percent of payroll in March 2002 to 1.62 percent of payroll in December 2006 (Figure H and Table 7, Panel A, Column (1)). This represents a cumulative increase in costs of 18.2 percent over twenty quarters (Table 7, Panel A, Column (2)). The quarterly data can also be used to calculate annual rates of increase or decrease in workers' compensation costs over the preceding year. For example, state and local government sector employers' costs were 1.37 percent of payroll in March 2002 and 1.40 percent of payroll in March 2003, which represents a 2.2 percent increase in costs over the twelve months (Figure N and Table 7, Panel A, Column (3)). The data indicate the employers' costs of workers' compensation as a percent of payroll in the state and local sector were up 1.2 percent in March 2006, and then down 1.2 percent in June 2006, 1.8 percent in September 2006 and 4.1 percent in December 2006 from the corresponding quarters in 2005.

**Figure J**  
**Workers' Compensation Costs for Private Industry Employees,**  
**March 2002 - December 2006 (in Dollars per Hour Worked)**



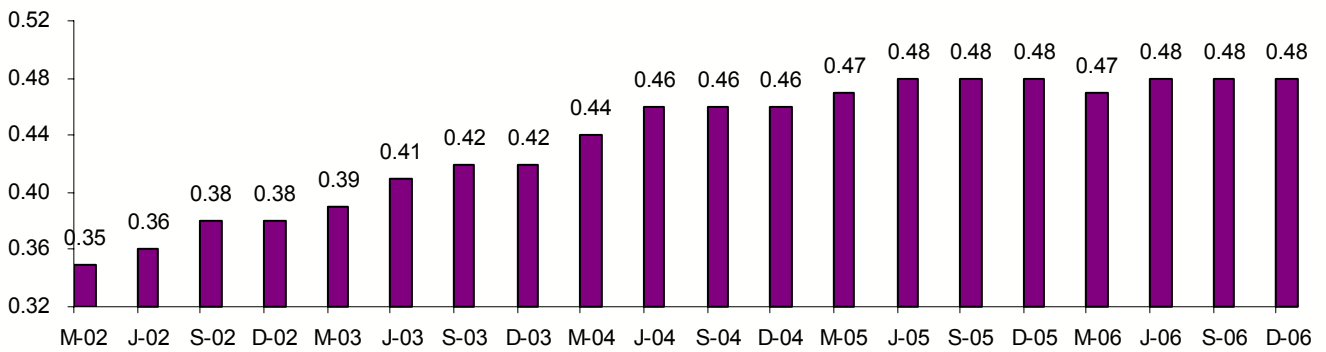
Source: Tables 3, 4, and 5.

**Figure K**  
**Workers' Compensation Costs for State and Local Employees,**  
**March 2002 - December 2006 (in Dollars per Hour Worked)**



Source: Tables 3, 4, and 5.

**Figure L**  
**Workers' Compensation Costs for All Non-Federal Employees,**  
**March 2002 - December 2006 (in Dollars per Hour Worked)**



Source: Tables 3, 4, and 5.

**Table 6 - Employers' Cost of Workers' Compensation  
Increases Since March 2002**

**Private Industry Employees**

**Panel A: As Percent of Gross Earnings (Payroll)**

	<b>Employers' Costs as % of Payroll (1)</b>	<b>Cumulative Increase Since March 2002 (2)</b>	<b>Increase Over Twelve Months (3)</b>
March 2002	1.96		
June 2002	2.06	5.1%	
September 2002	2.11	7.7%	
December 2002	2.09	6.6%	
March 2003	2.19	11.7%	11.7%
June 2003	2.23	13.8%	8.3%
September 2003	2.26	15.3%	7.1%
December 2003	2.31	17.9%	10.5%
March 2004	2.39	21.9%	9.1%
June 2004	2.49	27.0%	11.7%
September 2004	2.46	25.5%	8.8%
December 2004	2.45	25.0%	6.1%
March 2005	2.48	26.5%	3.8%
June 2005	2.47	26.0%	-0.8%
September 2005	2.51	28.1%	2.0%
December 2005	2.42	23.5%	-1.2%
March 2006	2.33	18.9%	-6.0%
June 2006	2.38	21.4%	-3.6%
September 2006	2.34	19.4%	-6.8%
December 2006	2.38	21.4%	-1.7%

**Panel B: In Dollars Per Hours Worked**

	<b>Employers' Costs in Dollars (1)</b>	<b>Cumulative Increase Since March 2002 (2)</b>	<b>Increase Over Twelve Months (3)</b>
March 2002	0.35		
June 2002	0.37	5.7%	
September 2002	0.38	8.6%	
December 2002	0.38	8.6%	
March 2003	0.40	14.3%	14.3%
June 2003	0.41	17.1%	10.8%
September 2003	0.42	20.0%	10.5%
December 2003	0.43	22.9%	13.2%
March 2004	0.45	28.6%	12.5%
June 2004	0.47	34.3%	14.6%
September 2004	0.47	34.3%	11.9%
December 2004	0.47	34.3%	9.3%
March 2005	0.48	37.1%	6.7%
June 2005	0.48	37.1%	2.1%
September 2005	0.49	40.0%	4.3%
December 2005	0.48	37.1%	2.1%
March 2006	0.47	34.3%	-2.1%
June 2006	0.48	37.1%	0.0%
September 2006	0.48	37.1%	-2.0%
December 2006	0.49	40.0%	2.1%

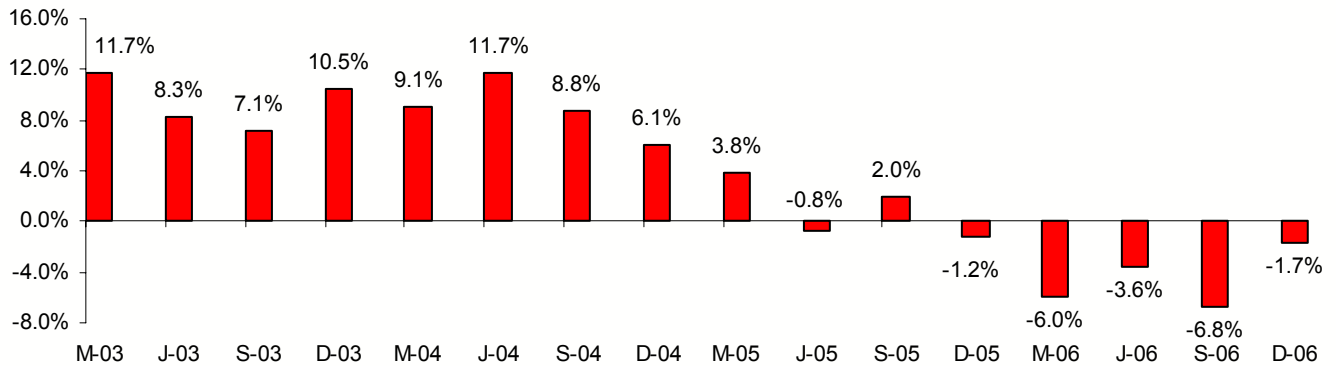
**Source:** Tables 3, 4, and 5, Rows (9A) and (12) of Panel A.

**All Non-Federal Employees.** The employers' costs of workers' compensation as a percent of payroll increased from 1.85 percent of payroll in March 2002 to 2.19 percent of payroll in December 2006 (Figure I and Table 8, Panel A, Column (1)). This represents a cumulative increase of costs of 18.4 percent over the twenty quarters (Table 8, Panel A, Column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, all non-federal employers' costs were 1.85 percent of payroll in March 2002 and 2.01 percent of payroll in March 2003, which represents an 8.6 percent increase in costs over the twelve months (Figure O and Table 8, Panel A, Column (3)). The data indicate the employers' costs of workers' compensation as a percent of payroll for all non-federal employees were down all four quarters in 2006: the declines were 3.9 percent in March 2006, 3.8 percent in June 2006, 4.7 percent in September 2006 and 3.9 percent in December 2006 from the corresponding quarters in 2005.

**Workers' Compensation Costs  
per Hour Worked**

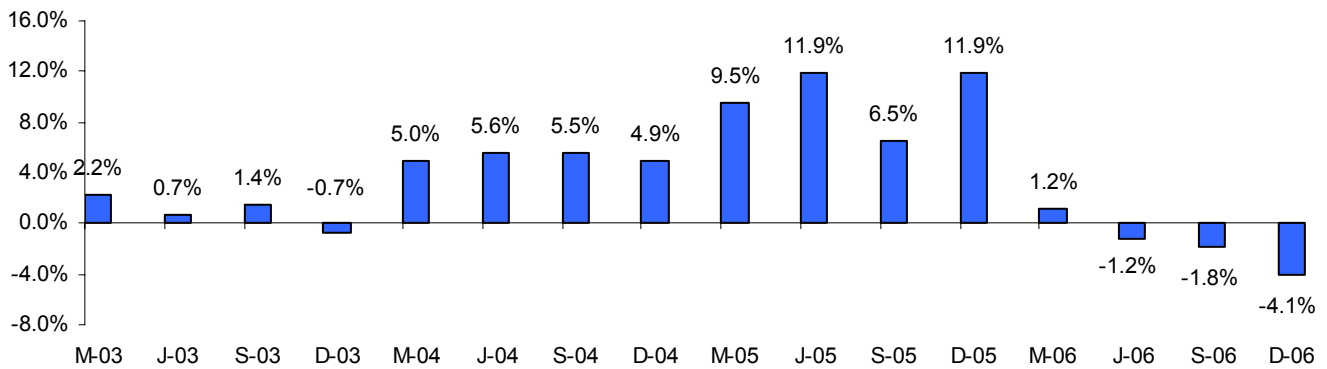
**Private Sector Employees.** The employers' costs of workers' compensation per hour worked increased from \$0.35 in March 2002 to \$0.49 percent of payroll in December 2006 (Figure J and Table 6, Panel B, Column (1)). This represents a cumulative increase of costs of 40.0 percent over the twenty quarters (Table 6, Panel B, Column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, private sector employers' costs were \$0.35 per hour in March 2002 and \$0.40 in March 2003, which represents a 14.3 percent increase in costs over the twelve months (Figure P and Table 6, Panel B, Column (3)). The data indicate the employers' costs of workers' compensation in dollars per hour worked in the private sector fluctuated in 2006: the costs were down 2.1 percent in March 2006, unchanged in June 2006, down 2.0 percent in September 2006 and then up 2.1 percent in De-

**Figure M - Workers' Compensation Costs as a Percent of Payroll:  
Annual Percentage Rates of Increase - Private Industry**



Source: Table 6, Panel A.

**Figure N - Workers' Compensation Costs as Percent of Payroll:  
Annual Percentage Rates of Increase - State and Local**



Source: Table 7, Panel A.

**Figure O - Workers' Compensation Costs as Percent of Payroll:  
Annual Percentage Rates of Increase - All Non-Federal**



Source: Table 8, Panel A.



**Table 7 - Employers' Cost of Workers' Compensation Increases Since March 2002**

**State and Local Employees**

**Panel A: As Percent of Gross Earnings (Payroll)**

	<b>Employers' Costs as % of Payroll (1)</b>	<b>Cumulative Increase Since March 2002 (2)</b>	<b>Increase Over Twelve Months (3)</b>
March 2002	1.37		
June 2002	1.42	3.6%	
September 2002	1.43	4.4%	
December 2002	1.45	5.8%	
March 2003	1.40	2.2%	2.2%
June 2003	1.43	4.4%	0.7%
September 2003	1.45	5.8%	1.4%
December 2003	1.44	5.1%	-0.7%
March 2004	1.47	7.3%	5.0%
June 2004	1.51	10.2%	5.6%
September 2004	1.53	11.7%	5.5%
December 2004	1.51	10.2%	4.9%
March 2005	1.61	17.5%	9.5%
June 2005	1.69	23.4%	11.9%
September 2005	1.63	19.0%	6.5%
December 2005	1.69	23.4%	11.9%
March 2006	1.63	19.0%	1.2%
June 2006	1.67	21.9%	-1.2%
September 2006	1.60	16.8%	-1.8%
December 2006	1.62	18.2%	-4.1%

**Panel B: In Dollars Per Hours Worked**

	<b>Employers' Costs in Dollars (1)</b>	<b>Cumulative Increase Since March 2002 (2)</b>	<b>Increase Over Twelve Months (3)</b>
March 2002	0.34		
June 2002	0.35	2.9%	
September 2002	0.36	5.9%	
December 2002	0.37	8.8%	
March 2003	0.36	5.9%	5.9%
June 2003	0.37	8.8%	5.7%
September 2003	0.38	11.8%	5.6%
December 2003	0.38	11.8%	2.7%
March 2004	0.39	14.7%	8.3%
June 2004	0.40	17.6%	8.1%
September 2004	0.41	20.6%	7.9%
December 2004	0.41	20.6%	7.9%
March 2005	0.44	29.4%	12.8%
June 2005	0.46	35.3%	15.0%
September 2005	0.45	32.4%	9.8%
December 2005	0.47	38.2%	14.6%
March 2006	0.46	35.3%	4.5%
June 2006	0.47	38.2%	2.2%
September 2006	0.46	35.3%	2.2%
December 2006	0.47	38.2%	0.0%

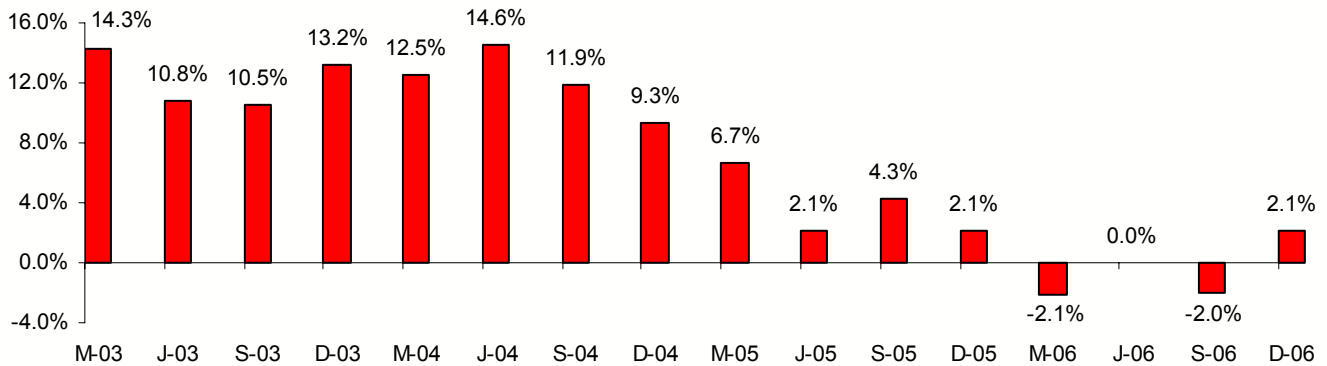
**Source:** Tables 3, 4, and 5, Rows (9A) and (12) of Panel B.

December 2006 compared to the corresponding quarters in 2005.

**State and Local Employees.** The employers' costs of workers' compensation per hour worked increased from \$0.34 in March 2002 to \$0.47 in December 2006 (Figure K and Table 7, Panel B, Column (1)). This represents a cumulative increase of costs of 38.2 percent over twenty quarters (Table 7, Panel B, Column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, state and local government sector employers' costs were \$0.34 per hour worked in March 2002 and \$0.36 per hour worked in March 2003, which represents a 5.9 percent increase in costs over the twelve months (Figure Q and Table 7, Panel B, Column (3)). The data indicate the employers' costs of workers' compensation in dollars per hour worked in the state and local sector were generally up in 2006: the costs were up 4.5 percent in March 2006, 2.2 percent in June 2006, 2.2 percent in September 2006 and then unchanged in December 2006 compared to the corresponding quarters in 2005. These results in 2006 are in sharp contrast to the results in 2005 as shown in Figure Q, when costs per hour worked in the state and local sector were increasing from 9.8 percent to 15.0 percent over the preceding year.

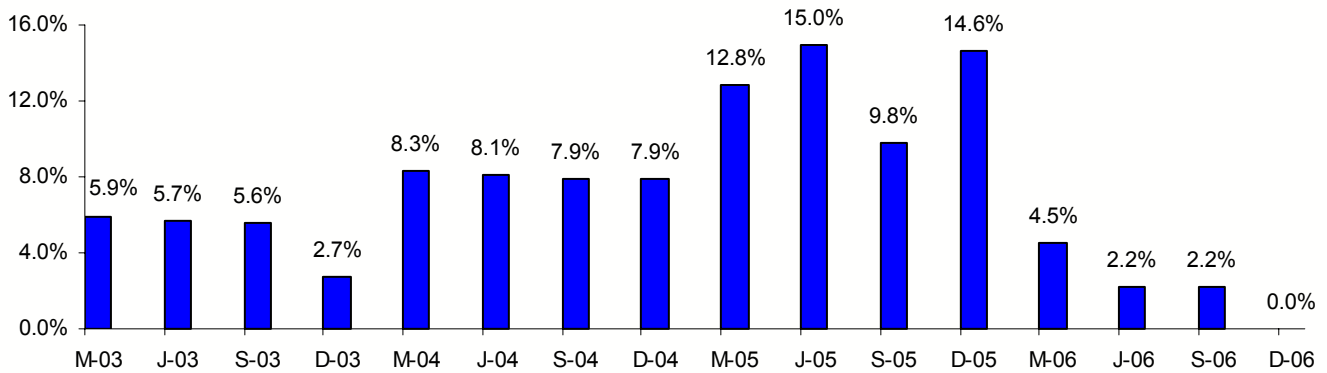
**All Non-Federal Employees.** The employers' costs of workers' compensation per hour worked increased from \$0.35 in March 2002 to \$0.48 in December 2006 (Figure L and Table 8, Panel B, Column (1)). This represents a cumulative increase of costs of 37.1 percent over the twenty quarters (Table 8, Panel B, Column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, all non-federal employers' costs were \$0.35 per hour worked in March 2002 and \$0.39 in March 2003, which represents an 11.4 percent increase in costs over the twelve months (Figure R and Table 8, Panel B, Column (3)). The data indicate the employers' costs of workers' compensation in dollars per hour worked for all non-federal em-

**Figure P - Workers' Compensation Costs in Dollars Per Hour Worked:  
Annual Percentage Rates of Increase - Private Industry**



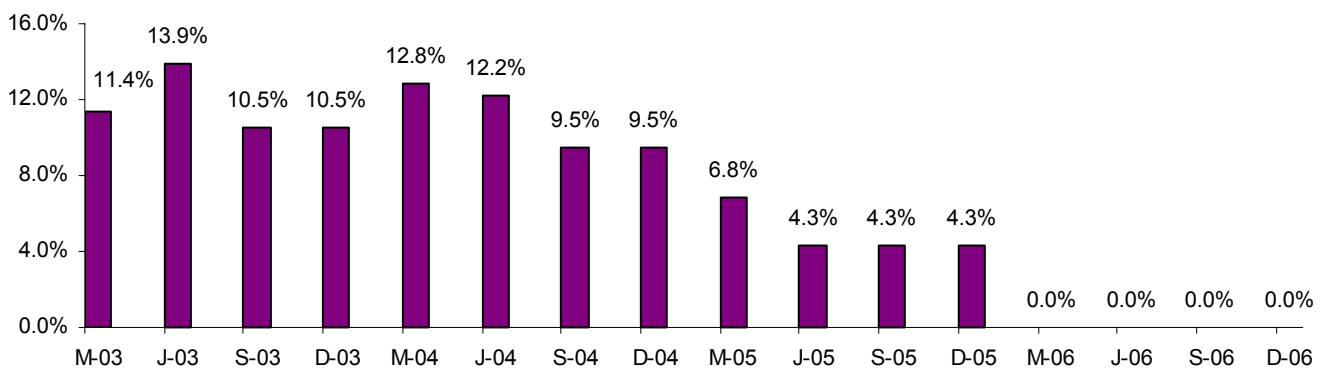
Source: Table 6, Panel B.

**Figure Q - Workers' Compensation Costs in Dollars Per Hour Worked:  
Annual Percentage Rates of Increase - State and Local**



Source: Table 7, Panel B.

**Figure R - Workers' Compensation Costs in Dollars Per Hour Worked:  
Annual Percentage Rates of Increase - All Non-Federal**



Source: Table 8, Panel B.

**Table 8 - Employers' Cost of Workers' Compensation Increases Since March 2002****All Non-Federal Employees****Panel A: As Percent of Gross Earnings (Payroll)**

	<b>Employers' Costs as % of Payroll (1)</b>	<b>Cumulative Increase Since March 2002 (2)</b>	<b>Increase Over Twelve Months (3)</b>
March 2002	1.85		
June 2002	1.90	2.7%	
September 2002	1.99	7.6%	
December 2002	1.98	7.0%	
March 2003	2.01	8.6%	8.6%
June 2003	2.10	13.5%	10.5%
September 2003	2.13	15.1%	7.0%
December 2003	2.12	14.6%	7.1%
March 2004	2.20	18.9%	9.5%
June 2004	2.31	24.9%	10.0%
September 2004	2.27	22.7%	6.6%
December 2004	2.26	22.2%	6.6%
March 2005	2.29	23.8%	4.1%
June 2005	2.34	26.5%	1.3%
September 2005	2.32	25.4%	2.2%
December 2005	2.28	23.2%	0.9%
March 2006	2.20	18.9%	-3.9%
June 2006	2.25	21.6%	-3.8%
September 2006	2.21	19.5%	-4.7%
December 2006	2.19	18.4%	-3.9%

**Panel B: In Dollars Per Hours Worked**

	<b>Employers' Costs in Dollars (1)</b>	<b>Cumulative Increase Since March 2002 (2)</b>	<b>Increase Over Twelve Months (3)</b>
March 2002	0.35		
June 2002	0.36	2.9%	
September 2002	0.38	8.6%	
December 2002	0.38	8.6%	
March 2003	0.39	11.4%	11.4%
June 2003	0.41	17.1%	13.9%
September 2003	0.42	20.0%	10.5%
December 2003	0.42	20.0%	10.5%
March 2004	0.44	25.7%	12.8%
June 2004	0.46	31.4%	12.2%
September 2004	0.46	31.4%	9.5%
December 2004	0.46	31.4%	9.5%
March 2005	0.47	34.3%	6.8%
June 2005	0.48	37.1%	4.3%
September 2005	0.48	37.1%	4.3%
December 2005	0.48	37.1%	4.3%
March 2006	0.47	34.3%	0.0%
June 2006	0.48	37.1%	0.0%
September 2006	0.48	37.1%	0.0%
December 2006	0.48	37.1%	0.0%

**Source:** Tables 3, 4, and 5, Rows (9A) and (12) of Panel C.

employees were unusual in 2006: the costs in March 2006, June 2006, September 2006 and December 2006 were exactly the same as the costs in the corresponding quarters in 2005.

**ANALYSIS****Employers' Costs in Historical Context**

Workers' compensation costs as a percentage of gross earnings (or payroll) is the most common measure of employers' costs used in the workers' compensation literature. The rationale is that over time employer expenditures on remuneration for employees, including wages, health insurance, pensions and workers' compensation, increase. For example, between 1991 (March) and 2006 (annual), private sector employers' expenditures for workers' compensation increased from \$0.33 to \$0.48 per hour worked, which represents a

***That workers' compensation expenditures for private sector employers represented 2.63 percent of payroll in 1991 (March) and 2.36 percent of payroll in 2006 (annual) provides information more useful than simply stating that workers' compensation costs per hour increased by 45 percent over those 15 years.***

45 percent increase. In isolation, a 45 percent increase in workers' compensation costs per hour worked may sound like a substantial increase. However, over that same period -- between 1991 (March) and 2006 (annual), the gross earnings (payroll) paid by employers for private sector employees increased from \$12.55 to \$20.38 per hour worked (Panel A, Tables 1 and 5), which is a 62 percent increase. Workers' compensation costs per hour worked have increased less rapidly than payroll since 1991, which helps put the workers' compensation cost developments in perspective.

Another way to put in perspective the developments over time in employer expenditures on workers' compensation is to compare them to payroll in each year. That workers' compensation expenditures for private sector employers represented 2.63 percent of payroll in 1991 (March) and 2.36 percent of payroll in 2006 (annual) provides information more useful than simply stating that workers' compensation costs per hour increased by 45 percent over those 15 years.

The preceding sections have documented the changes in employer expenditures on workers' compensation as a percent of payroll for three levels of aggregation of employees. For private sector employees, where the data are available since 1986, the costs increased from 1986 to 1994, declined sharply through 2001, and increased from 2001 to mid-2004. The costs were then relatively stable until the last quarter of 2005, and then declined in 2006 (Figures A and G).

For state and local government employees, where the data are only available since 1991, the pattern is roughly similar to the private sector until the last few years: employers' costs increased through 1995, declined until 2000, and then increased modestly through December 2004. Then, for reasons currently unknown, workers' compensation costs as a percent of payroll significantly increased in the state and local government sector in 2005 before declining slightly in 2006 (Figures B and H).

Finally, for all non-federal employees (which primarily consists of private sector employees), the data series shows an increase in employers' costs from 1991 through 1994, followed by a decline in employers' costs between 1995 and 2001. Costs then generally increased through 2005 before declining slightly in 2006 (Figures C and I).

While these increases in costs after 2002 are noteworthy, the recent run-up in workers' compensation costs for private sector employers nonetheless means that costs as a percent of payroll in 2006 were lower than in any year between 1990 and 1998. A similar finding pertains to the employers' costs as a percent of payroll for all non-federal employers, which were lower in 2006 than in all the years between 1991 and 1997. The "odd" sector is state and local government, where the employers' costs of workers' compensation as a percent of payroll were higher in 2006 than in any other year since the data series began in 1991 – except for the record setting year of 2005.

## A Comparison to Other Sources of Data on Employers' Costs

The BLS information on employers' expenditures on workers' compensation has some advantages over other sources of data on workers' compensation. One significant advantage, compared to the annual data prepared by the National Academy of Social Insurance (NASI), is timeliness: the most recent NASI data pertain to 2004 (Sengupta, Reno, and Burton 2006), while BLS data for 2006 are already available. The BLS data on employers' costs are also disaggregated by census region and division, major industry group, occupational group, establishment employment size, and bargaining status -- useful distinctions that are not available in the NASI data, which only includes data on employers' costs at the national level.<sup>2</sup>

The BLS data also have their limitations when compared to the NASI data. The foremost limitation of the BLS data is that they only measure costs to employers, not benefits paid to workers. The NASI data, for example, provide national and state-specific information on benefit payments that differentiate among the types of insurance arrangements (private carriers, state funds, and self-insurers) and that distinguish between medical and cash benefit payments. The NASI national data on benefits and costs also include the federal sector, which are missing from the BLS data on costs.

The NASI data and BLS data are, to a considerable degree, complementary and, as such, both sources of information are valuable. One problem, however, is that the two data series are not entirely consistent with one another. For example, the NASI data for 2004 (the latest year with data currently available from that source) indicate that the employers' costs of workers' compensation were 1.76 percent of covered payroll for employers in all sectors (including the federal government); the BLS data for all non-federal employees in 2004 estimates that workers' compensation costs for that group were 2.26 percent of payroll.<sup>3</sup> In addition, the NASI data show 1990 as the peak year (with employers' costs at 2.18 of payroll), while the BLS data (as shown in Figure C and Table 1) for all non-federal employees show continuing increases in workers' compensation costs as a percent of payroll through 1994, with a decrease in costs only beginning in 1995. But even though the NASI and BLS data have different peak years, both sources of data indicate that the employers' costs of workers' compensation measured as a percent of payroll substantially declined during the latter half of the 1990s. We will continue to publish updates as the NASI annual and BLS quarterly data are available.

## Appendix A Source of the Information and Methodology

Tables 1 to 8 and Figures A through R are based on data published by the Bureau of Labor Statistics (BLS), which is a part of the U.S. Department of Labor.<sup>4</sup> The most recent BLS data for December 2006 are based on a national survey of about 49,000 occupations in approximately 11,000 establishments in the private sector and about 3,400 occupations in approximately 800 establishments in state and local government. (Sample sizes were smaller for earlier surveys.) The BLS published annual data based on the survey conducted each March from 1986 to 2002. Beginning with March 2002, the BLS has conducted the survey every quarter, and this article includes the data on workers' compensation costs through December 2006. This appendix discusses the data from March 2006 shown in Table 5 (since the March 2006 data are most comparable to the data from earlier years).<sup>5</sup>

The BLS data on Employer Costs for Employee Compensation (ECEC) measure the average cost per employee hour worked that employers pay for wages and salaries and various benefits, including benefits voluntarily paid as well as legally required benefits, such as workers' compensation. I have calculated workers' compensation as a percent of gross earnings (payroll) for this article, as explained below.

Data are available since 1986 for private sector employers' expenditures per hour on employees' total remuneration, and (as shown in Panel A of Tables 1 to 5) on a number of components of remuneration, including wages and salaries, paid leave, insurance, and legally required benefits (including separate information on workers' compensation).<sup>6</sup> Comparable data pertaining to state and local government employees (Panel B of Tables 1 to 5) and to all non-federal employees (Panel C of Tables 1 to 5) are available for the period 1991 to 2006.

The only employees not included in this BLS data series are federal government, agriculture, and household workers, who in aggregate account for only about 4 percent of all employees. Of the 96 percent of all employees who are included in the BLS data, private industry employees clearly predominate (83 percent of all employees), whereas state and local government employees account for the remaining 13 percent of all employees.<sup>7</sup>

### Private Industry Employees

The March 2006 data for private industry employees presented in Panel A of Table 5 further explain the BLS data series. In 2006, private sector employers spent, on average, \$25.09 per hour worked on *total remuneration* (row 1). The \$25.09 of total remuneration included *gross earnings* of \$20.17 per hour (row 2) and *benefits other than pay* of \$4.91 per hour (row 6).<sup>8</sup> *Gross earnings*, or *payroll*, included wages and salaries (\$17.73 per hour; row 3), paid leave (\$1.71 per hour; row 4), and supplemental pay (\$0.73 per hour; row 5). *Benefits other than pay* included insurance (\$1.85 per hour; row 7), retirement benefits (\$0.91 per hour; row 8), legally required benefits (\$2.15 per hour; row 9), and other benefits (\$0.00 per hour; row 10). *Workers' compensation*, which averaged \$0.47 per hour worked (row 9A), is one of the legally required benefits (row 9).<sup>9</sup>

The BLS data in Panel A of Table 5 indicate that private sector employers' workers' compensation expenditures (\$0.47 per hour) were 1.87 percent of total remuneration (row 11) and 2.33 percent of gross earnings (payroll) (row 12) in March 2006.<sup>10</sup>

### State and Local Government Employees

The BLS data with respect to state and local government employees' remuneration are only available since 1991. There are several interesting differences between the employer expenditure patterns in the state and local government sector (Panel B of Tables 1 to 5) and in the private sector (Panel A). In March 2006, for example, the state and local sector had higher figures than the private sector for gross earnings per hour (\$28.21 vs. \$20.17, row 2); benefits other than pay (\$8.75 vs. \$4.91, row 6); and, therefore, total remuneration (\$36.96 vs. \$25.09, row 1). Workers' compensation costs per hour worked were slightly lower in the state and local sector (\$0.46) than in the private sector (\$0.47) (row 9A). However, because of the higher wages in the government sector, workers' compensation costs as a percentage of gross wages and salaries (payroll) in 2006 were considerably lower in the state and local government sector than in the private sector (1.63 percent vs. 2.33 percent, row 12), as they have been each year from 1991 to 2006.

### All Non-Federal Employees

The most comprehensive variant of the BLS data, the data for all non-federal employees, is shown in Panel C of Tables 1 to 5. Available since 1991, this grouping, which is the total of private sector employees and state and local government employees, covers about 95 percent of all U.S. employees.

In March 2006, total remuneration per hour worked for all non-federal employees averaged \$26.86 per hour (row 1) and gross earnings (payroll) averaged \$21.37 per hour (row 2). Workers' compensation expenditures were \$0.47 per hour in March 2006 (row 9A), which represented 2.20 percent of payroll (row 12).

## ENDNOTES

1. Since costs increased in most months between March 2002 and December 2004, the annual averages for 2002, 2003, and 2004 exceed the employers' costs during March in those years (as shown in Tables 3 and 4), which means there is a discontinuity between the data through 2001 and the data for 2002-04. For example, if the data from March 2002 had been used in Figure A instead of the annual average for 2002, the employers' costs in the private sector would have been 1.96 percent rather than 2.05 percent.

2. The 2005 BLS data on employers' costs disaggregated by industry, occupation, census region and division, establishment size, and bargaining status will be analyzed in the March/April 2006 issue of the *Workers' Compensation Policy Review*.

3. The differences between the NASI data and the BLS data used in this article in the employers' costs of workers' compensation as a percentage of payroll are greater than is immediately obvious. The NASI data relate the employers' costs for workers' compensation only to the payroll of employers who are covered by state or federal workers' compensation programs. The costs would be a lower percentage if the base were payroll for all employers (whether covered or not), which is the base used for the BLS data.

4. Citations to the U.S. Department of Labor publications containing the data used to prepare this article are provided in the references.

5. The data are from the survey conducted in March 2006. The BLS uses the current-cost approach. That is, the costs do not pertain to the costs for the previous year. Rather, annual costs are based on the current price of the benefits and current plan provisions as of March 2006. The annualized cost of these March 2006 benefits are then divided by the annual hours worked to yield the cost per hour worked for each benefit, including workers' compensation benefits. Thus, if the annual workers' compensation premium per worker is \$800 and the employee works 2,000 hours per year, the workers' compensation cost is \$0.40 per hour worked. For further explanation of the BLS data, see Appendix A of U.S. Department of Labor 2000a.

6. This article uses the term "remuneration" in place of the term "compensation" that is used in the BLS publications in order to more clearly distinguish between workers' compensation and remuneration.

7. U.S. Department of Labor 2000a. See Chart 1, "Coverage of the Employment Cost Index, Total Civilian Employment, 1999." Comparable data for 2000 to 2006 should not differ much from the 1999 data.

8. The terms "gross earnings" and "benefits other than pay" are not used in the BLS publications. These terms are used here to make the base for calculating workers' compensation costs as a percentage of payroll comparable to measures used in other publications.

9. The parentheses around the workers' compensation figures in row 9A of each panel in Tables 1, 2, 3, and 4 are to show that these figures are included in the legally required benefits figures in row 9 of each panel.

10. Relating workers' compensation costs to "gross wages" (which is straight-time hourly wages plus paid leave and supplemental pay) is based on advice in an April 7, 1995 letter to me from Mr. Albert Schwenk, Supervisory Economist, Division of Employment Cost Trends, Bureau of Labor Statistics, U.S. Department of Labor. I appreciate this suggestion from Mr. Schwenk.

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*Workplace Injuries and Diseases: Prevention and Compensation: Essays in Honor of Terry Thomason* has recently been selected as one of the **Noteworthy Books in Industrial Relations and Labor Economics, 2005** by the Industrial Relations Section of Princeton University. 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.

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## The Coverage of Work-Related Diseases in New York

by John F. Burton, Jr.

The coverage of work-related diseases is one of the failings of workers' compensation programs in most jurisdictions.<sup>1</sup> The recent reforms in New York that provide workers' compensation benefits to workers and volunteers who participated in the clean-up of the World Trade Center provide an informative case study. In this article, the New York approach to compensating work-related diseases is placed in an historical context and is compared to approaches used in other jurisdictions.

### The Accident Test

Workers' compensation statutes were enacted in most states by 1920. Almost all of these laws contained four legal tests that had to be met in order for a worker to be eligible for workers' compensation benefits: (1) there must be an injury (2) by accident (3) arising out of and (4) in the course of employment.<sup>2</sup>

The accident test served to bar compensation for many work-related diseases, as documented by Barth (1980: 105-114). Although many diseases contracted

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***...the more restrictive reading of the accident test is still used in some jurisdictions to deny benefits for work-related diseases.***

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as a result of sudden unexpected exposure were held to be compensable, e.g., pneumonia contracted while working in a sudden storm was compensated, compensation was often denied for diseases associated with chronic exposure to adverse agents at the workplace, especially when the manifestations of the disease were gradually disabling.

In recent decades, the accident test has generally been interpreted in a manner more favorable to workers, and thus is normally satisfied when either the source or the result of the injury is unexpected. However, the more restrictive reading of the accident test is still used in some jurisdictions to deny benefits for work-related diseases. An example where benefits were denied because the worker did not meet the accident test is *Combes v. Industrial Special Indemnity*, 20 P.3d 689 (Ida. 2000). Combes aggravated a preexisting but non-disabling condition of asthma by gradual exposure to

dust, pollen, and animal dander over a three to six month period. As result, Combes was permanently and total disabled. The court ruled that Combes did not meet the accident requirement for occupational diseases because there was no single traumatic event that led to his disability.

### The Initial Solution: Separate Provisions for Work-Related Diseases

Many states provided a partial remedy to the obstacles posed by the accident test by adding a list or schedule of compensable occupational diseases to their workers' compensation statutes (or by including such a list in a new occupational disease statute). An example of such a schedule is Section 3(2) of the New York Workers' Compensation Law, which includes 29 specific diseases with associated processes, ranging from (1) Anthrax resulting from handling of wool, hair, bristles, hides, or skins, to (29) Silicosis or other dust diseases resulting from any process involving exposure to silica or other harmful dust.<sup>3</sup> While the schedules of compensable diseases help those workers whose diseases are included, the schedules in most workers' compensation statutes are typically obsolete in terms of current medical knowledge. The schedule of 29 diseases in the New York Workers' Compensation Law has not been updated for decades.

### Definitions of Work-Related Diseases

All state workers' compensation laws that contain a schedule of work-related diseases now contain a residual category providing for coverage of other occupational diseases. For example, Section 3(2) of the New York Workers' Compensation Law provides as a 30<sup>th</sup> category of coverage: "Any and all occupational diseases." In addition, Section 48 of the New York statute provides that a disease not covered by Section 3(2) is compensable if the disease meets the statutory definition of an accidental personal injury.

Considering (1) the 29 diseases specifically enumerated in the statute, (2) the residual category covering all occupational diseases, (3) and the Section 48 safeguard for other diseases, universal coverage of work-related diseases might be expected in New York. However, despite the apparently expansive coverage of work-related diseases provided by the 30<sup>th</sup> category of

Section 3(2), the scope of coverage is constricted by Section 2(15) of the New York Workers' Compensation Law, which provides that "Occupational Disease" means a disease resulting from the nature of employment and contracted therein." As a result, the "any and all occupational diseases" category in Section 3(2) has been interpreted by the New York courts to only apply to diseases that result from some usual aspect of the job. Thus a moderate amount of temperature change commonly found outside work or in other jobs that nonetheless led to splotches on the legs of a theatre ticket seller was held not to be compensable in *Goldberg v. 954 Marcy Corp.*, 276 N.Y. 313 (1938) because such temperature fluctuations were not considered normal for this job.<sup>4</sup>

### Statute of Limitations

Gifis (1996: 485) defines a statute of limitations as "any law which fixes the time within which parties must take judicial action to enforce rights or else be thereafter barred from enforcing them." In workers' compensation, a statute of limitations specifies the date by which a disabled worker must initiate a claim or lose the opportunity to receive benefits.

**The Statute of Limitations in Other Jurisdictions.** The statute of limitations poses particular problems for work-related diseases in jurisdictions other than New York, as can be illustrated by several cases.

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 the he had been exposed to asbestos from 1947 to 1971. He first experienced symptoms of a medical problem in 1981, which led to surgery and his death in 1983 "from complications attendant to peritoneal mesothelioma." 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.

The adverse impacts of statutes of limitations are not confined to Utah. During his employment with Gulf Oil, Kenneth Cable was periodically exposed to the carcinogens coumene and benzene, most recently in July 1981. He was no longer employed by Gulf Oil 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, for disability or death under this act, 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 hazards of such disease ..." 77 PA. CONS. STAT. § 411(2). The Supreme Court of Pennsylvania held the cancer was not compensable because the relevant employment for the statute of limitations is the employment in which the employee was exposed to the coumene and benzene, not the subsequent employment with the employer in which he was not exposed to the carcinogens. *Cable v. Workmen's Comp. Appeal Bd.*, 664 A.2d 1349 (Pa. 1995).

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**...a long latency period for a work-related disease can interact with a restrictive statute of limitations to defeat a claim for workers' compensation benefits.**

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The statute of limitations also adversely affected construction workers in Connecticut, who were exposed to toxic chemicals, including benzene, while building a plant in 1999 but who did not become ill or die until 2004. As reported by Juliano (2004), Ronald Nobili, president of the union local, said "The statute says that a person has one year from the date of the incident to file a claim. The problem is that this kind of cancer has a five-year latency period."

**A Humane Alternative.** The *Cable* and *Tisco Intermountain* cases and the Connecticut news account provide examples of how a long latency period for a work-related disease can interact with a restrictive statute of limitations to defeat a claim for workers' compensation benefits. The sad truth is that the families of the workers in Connecticut, Utah, and Rhode Island would have been better off financially if the workers would have died sooner. A more humane alternative would be for these states to adopt statutes of limitations that run from the date of impairment or disability rather than from the date of last exposure.

**The New York Statutes of Limitations.** Section 28 of the New York Workers' Compensation Statute provides two rules for timely claims.<sup>5</sup>

For accidents:

The right to claim compensation under this chapter shall be barred, except as hereinafter provided, unless within two years after the accident, or if death results therefrom within two years after such death, a claim for compensation shall be filed . . .

For diseases:

The right of an employee to claim compensation under this chapter for disablement caused by any occupational diseases . . . shall not be barred by the failure of the employee to file a claim within such period of two years, provided such claim shall be filed after such period of two years and within two years after disablement and after the claimant knew or should have known that the disease is or was due to the nature of the employment.

These statutes of limitations in New York surely sound like the humane approach endorsed above. But wait.

## The New York Tangle

Rudy Washington, Deputy Mayor of New York City on September 11, 2001, rushed to the World Trade Center after the planes struck the building and spent considerable time at the site for weeks afterwards. He subsequently developed severe respiratory ailments and filed a claim for workers' compensation benefits in December 2004. In March 2006, a workers' compensation Administrative Law Judge (ALJ) ruled that Washington was entitled to health care benefits because he had been injured on the job. The next month, however, lawyers for the city appealed, arguing that he was not entitled to benefits because he did not file his claim within two years of the injury. After a spate of news accounts, Mayor Michael Bloomberg intervened on Washington's behalf and the appeal was withdrawn (Chan 2006).

Rudy Washington's plight was caused because he was tangled in several features of the New York workers' compensation statute: (1) the list of 29 occupational diseases specifically enumerated in the Section 3(2) of the workers' compensation statute is quite restrictive (e.g., byssinosis caused by a process involving exposure to raw cotton). (2) The Section 3(2) residual category of "any and all occupational diseases" has been interpreted to require the disease to be produced as "the natural incident of a particular occupation." Washington did not meet this test for an occupational

disease because a respiratory disease is not natural consequence of being a Deputy Mayor. (3) Since Washington did not have an occupational disease, he was required to establish his eligibility for workers' compensation benefits by demonstrating that his disability resulted from an accidental injury, which he was able to do. (4) The statute of limitations for an occupational disease is two years from disablement or after the claimant knew or should have known that the disease is due to the nature of the employment. However, Washington did not have an occupational disease as defined in the New York statute, so he could not use this statute of limitation. (5) The statute of limitations for injury is two years from the date of the injury. Since more than two years passed between September 11, 2001 and December 2004, when Washington filed his claim, he did not qualify for benefits.

## The Solution to the New York Tangle?

Rudy Washington was rescued from this tangle of requirements by the intervention of a benevolent Mayor. Others tangled after 9/11 were rescued by legislation enacted in August 2006 by the New York legislature applicable to "participants in the World Trade Center rescue, recovery and clean-up operations" that extended the statute of limitations to allow claims filed within two years after (1) the participant was disabled from a qualifying condition or (2) the participant knew or should have known that the qualifying condition was causally related to his or her participation in the rescue, recovery, and clean-up operations, whichever is the later date. A qualifying condition was defined as "any latent disease or condition resulting from a hazardous exposure during participation in World Trade Center rescue, recover or clean-up operations."<sup>6</sup>

The extended statute of limitations and the definition of a qualifying condition surely sound like the humane solution to the legal obstacles faced by rescue workers at the World Trade Center. But wait.

## What's Wrong with the New York Reforms?

The New York legislation enacted in 2006 not only extends the statute of limitations and broadly defines a qualifying condition that may warrant workers' compensation benefits, but also adds Section 162, which provides:

In order for the claim of a participant in World Trade Center rescue, recovery and clean-up operations to come within the application of this article, such participant must file a written and sworn statement with the board . . . indicating the dates and locations of such participation and the

name of such participant's employer during the period of participation. Such statement must be filed not later than one year after the effective date of this article. . . . The filing of such a statement shall not be considered the filing of a claim for benefits under this chapter.

Since Governor Pataki signed the legislation on August 14, 2006, participants in the World Trade Center rescue, recovery and clean-up operations have until August 14, 2007 to file the form indicating their participation in those operations. In essence, the 2006 legislation both liberalizes the normal statute of limitations and imposes a registration requirement that *de facto* creates a new statute of limitations for the affected workers.

While there may be arguments in favor of the registration requirement in order to help determine the extent of potential liability arising from a unique exposure,<sup>7</sup> nonetheless there is no equivalent registration requirement for the 29 occupational diseases specified in Section 3(2) of the New York Workers' Compensation Law. And whatever the merits of the registration requirement, will the New York legislature eventually modify the August 2007 cut-off date if, for example, a rash of workers who do not register by 2007 are disabled in 2010 by work-related diseases caused by exposures to toxic substances during the clean-up operations?

Another questionable aspect of the 2006 legislation is the narrow scope of workers and volunteers who are helped. What happens to a worker in the World Trade Center on September 11 who survived the tragedy but who inhaled toxic substances that resulted in a disease in 2007? If the disease is one of those 29 enumerated in Section 3(2), then the worker has two years after disablement to file a claim. If the disease is not one of the 29 specified in Section 3(2), then the worker is already precluded from filing a claim. I am hard pressed to defend a solution that helps workers engaged in the clean-up operation from the World Trade Center tragedy, but not the workers actually in the WTC on September 11, 2001.

Indeed, it is hard to defend the New York Workers' Compensation Law for all workers in the state when that law provides a favorable statute of limitations for workers disabled by an obsolete list of occupational diseases and a restrictive statute of limitations for workers disabled by other work-related diseases.

## What Should be Done in New York for Work-Related Diseases?

The solution to the basic problem of the lack of adequate coverage of work-related diseases in New York does not involve tweaking and twisting the statutes of limitations, as was done in the 2006 legislation. Rather, there are two meaningful solutions to the inequitable treatment provided to many New York workers disabled by work-related diseases. First, the list of scheduled diseases in Section 3(2) should be brought up to date in order to reflect the advances in occupational medicine in recent decades. Second, the definition of "occupational disease" in Section 2(15) should be dropped; the definition of "injury" in Section 2(7) should be rewritten and extended to occupational diseases; and the catch-all category for "any and all occupational diseases" in Section 3(2) should incorporate the new definition of occupational disease in Section 2(7). These changes would eliminate any distinction in the tests for work-related injuries and diseases and would eliminate any use of the accident test. Section 2(7) would then read:

Injury means any injury arising out of and in the course of employment. Occupational disease means any disease arising out of and in the course of employment.

As startling as this proposal may sound, it reflects two recommendations in the 1972 *Report of the National Commission on State Workmen's Compensation Laws*:

Recommendation 2.12. We recommend that the "accident" requirement be dropped as a test for compensability.

Recommendation 2.14. We recommend that the "arising out of and in the course of the employment" test be used to determine coverage of injuries and diseases.

Perhaps enactment of these proposed changes to the New York Workers' Compensation Law would be a fitting way to celebrate the 35<sup>th</sup> anniversary of the completion of *The Report of the National Commission on State Workmen's Compensation Laws*.

## ACKNOWLEDGEMENT

I appreciate the comments of Robert R. Snashall, former Chair of the New York State Workers' Compensation Board and now with Snashall Associates, on an earlier draft of this article. He is absolved of any remaining errors.

## ENDNOTES

1. Leigh and Robbins (2002) used a three-stage process to estimate the coverage of occupational diseases by workers' compensation programs. First they used epidemiological data from the medical literature to estimate the deaths and medical costs associated with occupational diseases. Second, they used data from state workers' compensation agencies to estimate the number of cases and deaths attributed to occupational diseases covered by the program and the costs of those diseases. Third, the results of the first two stages were compared to estimate the amount of under compensation of occupational diseases by workers' compensation and the extent of cost shifting from workers' compensation to other sources of support.

The comparison indicated that workers' compensation programs did not compensate 98.9 percent of the deaths due to occupational diseases in 1999, with a range of estimates from 91.9 percent to 99.9 percent. They also concluded that workers and their families probably bear the greatest share of the direct costs of occupational diseases. Other bearers of the medical costs not paid for by workers' compensation include private health insurance, Medicaid, and Medicare.

2. The four legal tests are examined in Willborn et al 2007a: 894-937.

3. Section 3(2) of the New York Workers' Compensation Law is reprinted in Willborn et al 2007b: 368-372.

4. Barth (1980, 93-99 and 102-04) discusses other New York cases using a restrictive definition of Occupational Diseases.

5. Section 28 of the New York Workers' Compensation Law is reprinted in Willborn et al., 2005b, 406-07.

6. Article 8-A of the New York Workers' Compensation Law is reprinted in Willborn et al. 2007b, 414-415.

7. Jonathan Bennett, spokesman for the New York Committee for Occupational Safety and Health, said (Bates 2006): "I think that there are upward of 100,000 people who are eligible under this program."

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