From John Burton's Workers' Compensation Resources

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Featured Topics

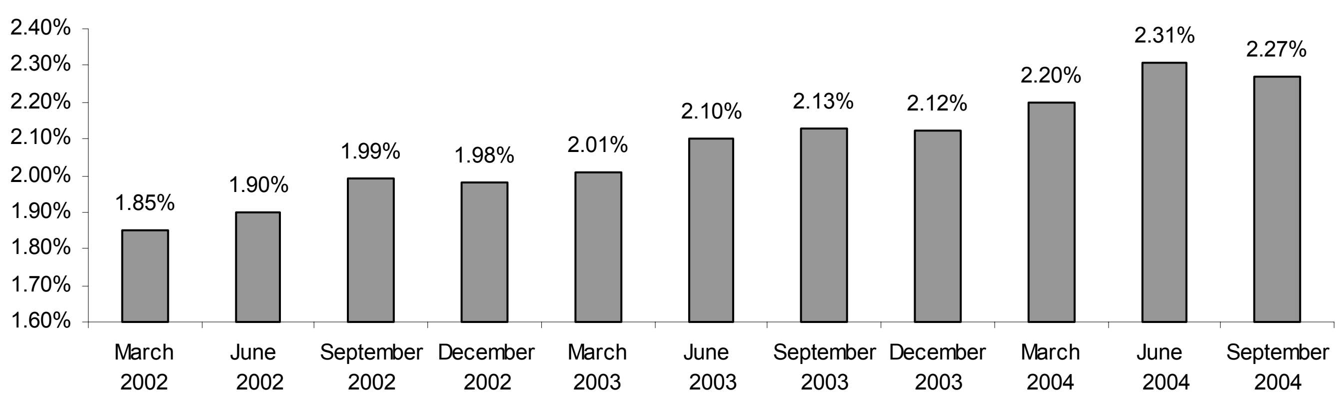
Summary of the Contents

Workers' compensation costs to employers declined slightly in the third quarter of 2004, reversing a general trend of rising costs that began in the first quarter of 2002. The employers' costs of workers' compensation as a percent of payroll for all non-federal employees declined to 2.27 percent of payroll in September 2004 from a recent peak of 2.31 percent of payroll in June 2004 (Figure I). The third article also indicates that the cumulative increase in workers' compensation costs as a percent of payroll for all non-federal employees was 22.7 percent in the eleven quarters between March 2002 and September 2004 (Table 4).

The lead article by John Burton provides a primer on workers' compensation that ideally will be of value to both neophytes and aficionados in the area. The article places particular emphasis on the developments in workers' compensation insurance arrangements. Since the 1980s, several states have established competitive state workers' compensation funds, while two states have abolished their funds. Meanwhile, the workers' compensation markets for private carriers have been deregulated in most states. These changes in insurance arrangements produced some expected and some surprising results for the employers' costs of workers' compensation insurance.

Alan Kuker and Donald Elisburg report on an important development in the Florida workers' compensation program. The state adopted an innovative program that recovers arrearages in child support payments from workers' compensation settlements. While several other states have similar programs, the Florida experience should provide a model for all remaining states lacking such protection for children.

Figure I
Workers' Compensation Costs as a Percentage of Gross Earnings, All Non-Federal Employees, March 2002 - September 2004



Source: Table 3

A Primer on Workers' Compensation

by John F. Burton, Jr.

Workers' compensation programs provide cash benefits, medical care, and rehabilitation services to workers who experience work-related injuries.[1] Each state has a workers' compensation statute and there are several federal programs. There are some common features of these programs, including the use of several legal tests to determine which injuries are work-related and therefore entitle workers to benefits. There are also differences among the jurisdictions, including the weekly amounts and durations of cash benefits. I summarize the salient similarities and differences, with particular emphasis on the insurance arrangements used to provide the benefits.

History

Workers' compensation is the oldest social insurance program in the U.S., and many of the current features of the program can only be understood if the context in which the program emerged in the early decades of the 20th century is understood.[2] At that time, a negligence suit (a form of tort or civil remedy) was the only remedy an employee injured at work had against the employer. If the employee could win the suit, the recovery could be substantial, since the damages could include replacement of lost wages, reimbursement of all medical expenses, and payments for nonpecuniary consequences, such as pain and suffering. An injured worker faced substantial obstacles to winning the suit, however, not only because of the necessity to prove that the employer was negligent, but because the courts had established several legal doctrines that a negligent employer could use to avoid liability. An example was contributory negligence, which precluded the employee from any recovery if he or she were negligent, even if the employer was primarily the negligent party. The conventional view is that few employees were successful in these suits, although occasionally employers were found liable and paid large awards, a combination that neither party liked. The approach was also criticized because recovery depended on the worker bringing a law suit, and the litigation was costly and time consuming.

Workers' compensation was designed to overcome some of the deficiencies of the negligence suit approach. All of the workers' compensation statutes incorporate the "workers' compensation principle," which has two elements. Workers' compensation is a no-fault system, which means that in order to receive benefits, a worker does not need to demonstrate the employer is negligent and the employer cannot use the special defenses, such as contributory negligence. The employee only has to prove the injury is "work-related" (although there are legal tests that are obstacles to meeting the work-related requirement in some cases, as discussed below). The other side of the workers' compensation principle is that the statutory benefits provided by the program are the employer's only liability to the employee for the workplace injury. The exclusive remedy aspect of workers' compensation means that employees cannot bring tort suits against their employers (subject to some limited exceptions discussed later). Workers' compensation laws also prescribe cash benefits by formulas, which are intended to reduce the litigation, delays, and uncertainty associated with tort suits (although in practice, many jurisdictions still have considerable litigation in their programs).

The legal context of the early 20th century also affected the design of the workers' compensation program in a feature that persists. At that time, the U.S. Supreme Court interpreted the commerce clause of the Constitution in a narrow fashion, which limited the ability of Congress to regulate matters that were not directly involved in interstate commerce. The federal government was able to enact a workers' compensation program for its own employees and for workers who were clearly engaged in interstate commerce, such as railroad workers. However, most workers in the private sector, as well as state and local government employees, could not be regulated by the federal government, and therefore, out of necessity, the initial workers' compensation laws were enacted by the states.

The Wisconsin workers' compensation law of 1911 is the oldest state workers' compensation law in continuous existence. By 1920, most states had enacted workers' compensation laws. Although the Supreme Court changed its interpretation of the commerce clause in the 1930s so that a federal workers' compensation statute covering all private sector workers would be constitutional, the pattern of states controlling workers' compensation established almost 100 years ago persists today. The most serious challenge to state dominance of workers' compensation occurred in the 1970s, when the National Commission on State Workmen's Compensation Laws proposed federal standards for state programs if they did not significantly improve their laws.[3] Although legislation to implement the National Commission's proposal was introduced in Congress in the 1970s, the initiative failed and similar efforts seem unlikely in the near term.

Coverage of Employees and Employers

Most employees and employers are covered by workers' compensation.[4] Recent estimates indicate that nationally about 96 percent of all wage and salary workers are covered, not counting self-employed persons. Some states cover virtually all employees, while only about 84 percent of the workers are covered in Texas, which is the only state in which workers' compensation coverage is elective for employers. The other gaps in coverage occur because some states exempt: (1) employers with a limited number of employees (e.g. three or less); (2) certain industries, such as state and local government, and agriculture; and (3) certain occupations, such as household workers.

In addition, the laws are designed to cover employees, which means that workers who are independent contractors normally are not covered. Moreover, certain employees — those who are casual workers or workers not engaged in the normal trade or business of the employer — may not be protected by the act even when their employers are within the scope of the act.

Coverage of Injuries and Diseases

Even workers who are covered by workers' compensation statutes must meet certain legal tests in order to receive benefits.[5] There is a four-step test found in most state workers' compensation laws: (1) there must be a personal injury, which in some jurisdictions is interpreted to exclude mental illness; (2) that results from an accident, which is interpreted in some states to exclude injuries that develop over a long period of time, as opposed to those injuries resulting from a traumatic incident; (3) that must arise out of employment, which means that the source of the injury must be related to the job; and (4) that must occur during the course of employment, which normally requires that the injury occur on the employer's premises and during working hours. Most work-related injuries can meet these four tests, although there are thousands of cases testing the exact meaning of each of these four steps.

The coverage of diseases is a problem in workers' compensation.[6] Many diseases could not meet the accident test because they developed over a prolonged period. In addition the statutes used to contain limited lists of diseases that were compensable. Fortunately, the restricted lists of diseases have now been abandoned in all jurisdictions. Now, typically, there is a list of specified occupational diseases followed by a general category permitting the compensation of other occupational diseases. Nonetheless, there are restrictions in language pertaining to work-related diseases still found in many laws, such as statutes of limitations that require the claim to be filed within a limited period after the last exposure to the substance causing the disease, even if the disease did not manifest itself for a prolonged period. Also, some state courts have interpreted the general category of occupational diseases to only cover those diseases that are peculiar to or characteristic of the occupation of the employee seeking coverage.

Many states have amended their laws in recent decades to exclude certain types of injuries and diseases from workers' compensation coverage. These developments are discussed in the final section.

Medical Care and Rehabilitation Services

Most state workers' compensation laws require the employer to provide full medical benefits to the worker with a work-related injury.[7] This portion of the workers' compensation program has become increasingly expensive in the last decade, with medical benefits now accounting for about 40 percent of all benefit payments, up from one-third in the early 1980s. Unlike most health care plans (with minor exceptions) employees pay no portion of the premium for workers' compensation insurance, and there are no deductibles or co-insurance provisions that require employees to share the expense of medical care.

Fee schedules have been issued by many state workers' compensation agencies that limit medical charges, which have made some medical care providers reluctant or unwilling to provide services to injured workers. Other providers appear to react to fee schedules by increasing the quantity of health care services provided. There is disagreement about whether the fee schedules are effective in reducing expenditures on medical care.

Another approach to reducing workers' compensation health care expenditures used in a number of states is to allow the insurance carrier or employer (rather than the employee) to choose the treating physician. Again, there is disagreement about the effect of such limits on employee choice on the quality and cost of health care. In recent years, there has also been a rapid increase in the use of managed health care in the workers' compensation programs in a number of states, including such techniques as Health Maintenance Organizations (HMOs), Preferred Provider Organizations (PPOs), and utilization review. There is limited evidence about the effect of these cost containment efforts on medical costs and quality in the workers' compensation system.

Medical rehabilitation, such as physical therapy, is likely to be provided by the workers' compensation laws. However, many states do not require employers to provide vocational rehabilitation services that may be necessary to equip the injured worker to handle a new job.

Cash Benefits

Cash benefits vary substantially among the states, with wide variations in maximum weekly benefits and maximum durations of benefits.[8] Each state also provides a variety of types of cash benefits. A general characteristic of the cash benefits is that they are not subject to state or federal income taxes.

Temporary Total Disability Benefits. These benefits are paid to someone who is completely unable to work but whose injury is of a temporary nature. The weekly benefit in most jurisdictions is two-thirds of the worker's preinjury wage, subject to maximum and minimum amounts as prescribed by state law. There is also a waiting period during which the worker receives no benefits. However, if the worker is still disabled beyond a specified date, known as the retroactive date, then the benefits for the waiting period are paid on a retroactive basis.

Temporary Partial Disability Benefits. These benefits are paid to someone who is still recovering from a workplace injury or disease and who is able to return to work but has limitations on the amount or intensity of work that can be performed during the healing period. The weekly benefit in most jurisdictions is two-thirds of the difference between the worker's preinjury wage and the worker's current earnings, subject to a maximum amount as prescribed by state law.

Permanent Partial Disability (PPD) Benefits. PPD benefits are the most complicated, controversial, and expensive type of workers' compensation benefit.[9] They are paid to a worker who has a permanent consequence of his or her work-related injury or disease that is not totally disabling. An example would be someone who has lost a hand in an accident.

There are two general approaches to permanent partial disability benefits. Scheduled PPD benefits are paid for those injuries that are included in a list found in the workers' compensation statute. In New York, for example, 100 percent loss of an arm entitles the worker to 312 weeks of benefits. The schedules are also applied to partial loss of the arm, so that a 50 percent loss of an arm in New York is worth 156 weeks of benefit. The schedules in most jurisdictions provide benefits whether the injury results in amputation or a loss of use of the body part. Normally the schedule is limited to the body extremities such as arms, legs, hand and feet, plus eyes and ears.

Nonscheduled PPD benefits are paid for those permanent injuries that are not on the schedule, such as back cases. The basis for these benefits depends on the jurisdiction. In states like New Jersey that use the "impairment approach," the back injury is rated in terms of the seriousness of the medical consequences. (In New Jersey, 25 percent of loss of the whole person in a medical sense translates into 25 percent of 600 weeks, or 150 weeks of benefits). In states like Wisconsin that use the "loss of earning capacity approach," the back injury is rated considering the medical consequences as well as factors, such as age, education, and job experience, that affect the worker's earning capacity. (In Wisconsin, 25 percent of loss of earning capacity translates into 25 percent of 1,000 weeks or 250 weeks of benefits).

These benefit durations for scheduled PPD benefits and for nonscheduled permanent partial benefits in those jurisdictions relying on the impairment approach or on the loss of earning capacity approach are fixed in the sense that the worker receives that duration of benefits whether or not she has actual wage loss for that period. During the period these types of permanent partial benefits are being paid, the weekly benefit is normally calculated as 66 2/3 percent of preinjury wages, subject to maximum and minimum weekly benefit amounts.

The nonscheduled permanent partial disability benefits in New York rely on a fundamentally different approach, usually referred to as the "wage-loss approach." The worker only receives benefits if, in addition to having an injury with permanent consequences, the worker also has actual wage loss due to the work injury. The weekly nonscheduled permanent partial disability benefit in New York is 66 2/3 percent of the difference between the worker's earnings prior to the injury minus the worker's earnings after the healing period is over, subject to a maximum weekly amount. In New York, these nonscheduled permanent partial disability benefits can continue for as long as the worker has earnings losses due to the work-related injury, which can be for the rest of the worker's life.

Permanent Total Disability Benefits. Permanent total disability benefits are paid to someone who is completely unable to work for an indefinite period. Permanent total status is assigned if the worker has specified types of injuries, such as the loss of two arms, or more generally if the facts in the case warrant an evaluation as a permanent total disability. This is a relatively uncommon type of case in workers' compensation. The weekly benefit for a permanent total disability is normally two-thirds of the preinjury wage, subject to maximum and minimum amounts as prescribed by state law. In most states, the permanent total disability benefits are paid for the duration of total disability or for life. In a number of states, however, there are arbitrary limits on total dollar amounts or duration of these benefits.

Death Benefits. Death benefits are paid to the survivors of a worker who was killed on the job. In many jurisdictions the weekly benefit depends on the number of survivors. For example, a widow or widower might receive a benefit that is 50 percent of the deceased worker's wage, while a widow or widower with a child might receive a weekly benefit that is 66 2/3 percent of the deceased worker's wage. These benefits are subject to minimum and maximum weekly amounts. Most states provide the benefits for the duration of the survivor's lifetime if the survivor is a widow or widower and for children's benefits at least until age twenty-one, but there are a number of states that have limits on the dollar amounts or on the durations of survivors' benefits.

Financing of Benefits

Insurance Arrangements. Workers' compensation benefits are prescribed by state laws, but these laws assign the responsibility for the provision of the benefits to the employer. The employer in turn provides the benefits by one of three mechanisms: (i) by purchasing insurance from a private insurance carrier; (ii) by purchasing insurance from a state workers' compensation fund; or (iii) by qualifying as a self-insurer and paying its own employees directly.[10] Nineteen states, such as California and New York, have all three options available. (This is known as the three-way system or competitive state fund approach.) Five states, such as Ohio and Washington, prohibit private carriers and operate state funds (known as an exclusive or monopolistic state fund); three of these states also allow self-insurance. The other 26 states, including New Jersey and Wisconsin, permit employers to purchase insurance from private carriers or to self-insure. Federal government employees are covered by a government fund. Nationally, about 55 percent of all benefits are paid by private insurance carriers, about 25 percent by state and federal funds, and about 20 percent by self-insuring employers.

Calculating Insurance Premiums. Workers' compensation insurance premiums are determined by a multi-step process. Table 1 shows the "traditional" process used in states that rely on the National Council on Compensation Insurance (NCCI) for actuarial assistance.[11] Each employer who purchases insurance is assigned to a particular insurance classification (e.g. a bakery is assigned to class 2003). The next step is to determine the initial insurance rate by looking in an insurance manual that specifies the "manual rate" for each insurance classification.

Manual rates have two components: pure premiums and an expense loading. The pure premiums cover expected payments for cash benefits, medical care, and (in most jurisdictions) loss-adjustment expenses. The expense-loading factor provides an allowance for other insurance carrier expenses, such as general administrative expenses, commissions, profits, and contingencies. In most states using manual rates, the loading factor is usually 35-40 percent of the manual rates.

Manual rates are specified as dollars per hundred dollars of payroll. The manual rates vary substantially within each state, reflecting the previous experience with benefit payments for all the employers in that classification. Manual rates in a particular state might range from $40 per $100 of payroll for logging to $.75 per $100 of payroll for clerical workers.

Manual rates (line 1) multiplied by the employer's total *payroll* (line 2) equals *manual premium without constants* (line 3). In practice, few employers pay such a premium because of several modifications. The first modification arises from the firm-level experience rating that is permitted for medium and large employers. Experience rating uses the employer's own past

Table 1
Calculation of Net Workers' Compensation Costs to Policyholders

1.		Manual rates (MR)
2.	X	Payroll
3.	=	Manual premium without constants
4.	X	Experience-rating modification
5.	=	Standard earned premium excluding constants
6.	÷	Adjustment for expense constants (and loss constants)
7.	=	Standard earned premium at bureau rates (DSR)
8.	X	Adjustment for deviations
9.	=	Standard earned premium at company level
10.	X	Adjustment for premium discounts, retrospective rating, and schedule rating
11.	=	Net earned premium
12.	X	Dividends adjustment
13.	=	Net cost to policyholders

Source: Based on Thomason, Schmidle, and Burton (2001, Table C.5) record of benefit payments to modify the manual rates that would otherwise apply. If, for example, the employer's record is worse than the experience of the average employer in its classification, then its actual premium for the current policy period is larger than its manual premium. The product of the manual premium without constants (line 3) and the *experience-rating modification* (line 4) is line 5, *the standard earned premium excluding constants.*

The standard earned premium excluding constants also is modified for most employers, although the form of this modification depends on the size of the employer's premium. Employers in almost every state are assessed a flat charge, termed an "expense constant," to cover the minimum costs of issuing and servicing a policy. In addition, employers in some states are assessed another flat charge, termed a "loss constant," because of the generally inferior safety record of small businesses. When the standard earned premium excluding constants (line 5) is divided by line 6, the *adjustment for the expense constants (and loss constants)*, the result is the *standard earned premium at bureau rates (DSR)* (line 7), also termed the "standard earned premium at the designated statistical reporting (DSR) level."

The standard earned premium at bureau rates is further adjusted for many employers. Deviations are a competitive pricing device that has been in active use in many jurisdictions since the 1980s. In a state allowing deviations, individual carriers may use the manual rates promulgated by the rating organization or may deviate from those rates. The carrier might, for example, use manual rates that are 10 percent less than those issued by the rating organization. The deviations offered by a particular carrier must be uniform for all policyholders in the state in a particular insurance class (although different deviations for different classes are sometimes possible). If the standard earned premium at bureau rates (line 7) is multiplied by the *adjustment for deviations* (line 8), the result is the *standard earned premium at company level* (line 9).

There are several additional factors that may reduce workers' compensation insurance premiums. Premium discounts apply to employers with annual premiums in excess of a specified amount ($5,000, for example), which basically reflect reductions in carrier expenses for larger policies because of economies of scale. The discounts based on a specified schedule are compulsory in the NCCI states, unless both the insurance carrier and the employer agree to substitute "retrospective rating" for the premium discounts. Though these retrospective rating plans vary among the NCCI states, they are basically similar in that they allow the employer to increase the effect of its own claims experience on the published manual rates.

The main difference between experience rating and retrospective rating is that the former uses the employer's experience from previous periods to modify the premium for the current policy period rate, whereas the retrospective plan uses experience from the current policy period to determine the current premium on an *ex post facto* basis. The same expense retention (reduction in premiums for the employer) provided by the premium discounts is built into the retrospective rating plans.

Schedule-rating plans have also been actively used in many jurisdictions since the 1980s. Under these plans, insurers can change (usually decrease) the insurance rate the employer would otherwise pay through debits or credits based on a subjective evaluation of factors such as the employer's loss-control program. There are two types of schedule rating. In states with uniform schedule-rating plans, regulators authorize all carriers to use identical schedule-rating plans. If all carriers are not given this permission, then individual carriers can apply for approval of their own schedule-rating plans.

The result of multiplying the standard earned premium at company level (line 9) by the *adjustment for premium discounts, retrospective rating, and schedule rating* (line 10) is the *net earned premium* (line 11). One final adjustment factor, a *dividends adjustment* (line 12), needs to be used to compute the premiums actually paid by employers. Mutual companies or stock companies with participating policies write a substantial portion of the workers' compensation insurance. While these companies normally use a quantity discount schedule less steeply graded than that of the nonparticipating stock companies, they pay dividends that usually decrease policyholders' net costs to levels below that charged by nonparticipating stock companies, especially for large employers. The product of the net earned premium (line 11) and the dividends adjustment is the *net cost to policyholders* (line 13), which is the premium actually paid by employers purchasing workers' compensation insurance.

The multi-step process summarized in Table 1 is inapplicable under several circumstances. First, in a number of states, the starting point for calculating the employer's premium is pure premium rates (or loss costs), rather than adjusted manual rates.[12] In these states, carriers add their own expense loadings to cover expenses, such as administrative expenses and commissions, rather than relying on the expense loadings built into manual rates. Second, most workers' compensation insurance is provided in the voluntary insurance market. However, because the employers who cannot purchase policies in the voluntary market still must have insurance, all states that do not have state funds have established assigned-risk plans.[13] The national average for the assigned-risk (or residual) market share in NCCI states ranged between 3.2 percent and 28.5 percent between 1975 and 2002.[14]

There are several types of residual market pricing plans used in various states, including those that use different manual rates (or loss costs) in the voluntary and residual markets and those that eliminate or modify premium discounts for large policyholders. Third, the five states with exclusive state funds determine premiums using state-specific procedures. For example, each fund has a unique set of insurance classifications and experience rating formulas, and Washington bases premiums on hours worked rather than payroll (as in all states with private carriers).

Employers that self-insure — that is, pay benefits to their own employees without use of an insurance carrier — represent a "pure" form of experience rating in which an employer's costs are solely determined by the benefits to that firm's employees. This characterization needs to be qualified to some degree because self-insuring employers generally purchase excess risk policies that protect them against unusually adverse experience; have administrative expenses that may not vary in proportion to benefit payments; and may be subject to assessments to support state workers' agencies or other purposes that are not solely based on benefit payments.

Administration of Workers' Compensation

There are wide variations among the states in how the workers' compensation programs are administered. There are several dimensions of the differences among states.

The Initial Responsibility for Payment. Most states use what is known as the direct payment system, in which employers are obligated to begin payment as soon as the worker is injured and the employer accepts liability. Other states use the agreement system, where the employers have no obligation to begin payments until an agreement is reached with the employee concerning the amount

DOES WORKERS' COMPENSATION INSURANCE IMPROVE WORKPLACE SAFETY AND HEALTH?

The workers' compensation program in each state relies on two levels of experience rating to promote safety. Industry-level experience rating establishes a pure premium (or manual) rate for each industry that is largely based on prior benefit payments by the industry. Firm-level experience rating determines the workers' compensation premium for each firm above a minimum size by comparing its prior benefit payments to those of other firms in the industry. The effects of the workers' compensation program in general, and firm-level experience rating in particular, have been debated by scholars representing various theories.[15]

The essence of the "pure" neoclassical economics approach is that the introduction of workers' compensation will lead to reduced incentives for workers to avoid injuries, assuming that they did not purchase private disability insurance plans prior to the introduction of workers' compensation, since the adverse economic effects of the injuries are reduced by workers' compensation benefits. The disincentive to avoid injuries is an example of the "moral hazard" problem. This economic approach also argues that the introduction of workers' compensation will also lead to reduced incentives for employers to prevent accidents unless perfect experience rating is used to finance the program.

In contrast, the OIE ("old" institutional economics) approach argues that the introduction of workers' compensation with experience rating should improve safety because the limitations of knowledge and mobility and the unequal bargaining power for employees mean that the risk premiums generated in the labor market are inadequate to provide employers the safety incentives postulated by the pure neoclassical economics approach. The modified neoclassical economics approach would also accept the idea that experience rating should help improve safety by providing stronger incentives to employers to avoid accidents. Where the OIE theorists would probably disassociate themselves from the modified neoclassical economics theorists would be the latter contingent's emphasis on the moral hazard problem aspect of workers' compensation, which could result in more injuries.

A number of recent studies of the workers' compensation program provide evidence that should help us evaluate the virtues of the pure neoclassical economics, the modified neoclassical economics, and the OIE approaches. However, the evidence is inconclusive. A survey of the literature by Boden (1995, 285) concluded that: "research on the safety impacts has not provided a clear answer to whether workers' compensation improves workplace safety." In contrast, Thomason (2003, 196) asserted that most (11 of 14) studies he surveyed found that experience rating improves workplace safety and health and that the studies failing to detect the relationship were methodologically weaker than the other studies. Thomason concluded (2003, 196): "Taken as a whole, the evidence is quite compelling: experience rating works."

Some estimates of the magnitude of the safety effect from industry-level and firm-level experience ratings are substantial: Durbin and Butler (1998, 78-79) suggest that a 10 percent increase in workers' compensation costs countrywide between 1947 and 1990 was associated with a 12.9 percent decline in workplace fatalities. This evidence on experience rating is consistent with the positive impact on safety postulated by the OIE approach and the modified neoclassical economists, and inconsistent with the pure neoclassical view that the use of experience rating should be irrelevant or may even lead to reduced incentives for employers to improve workplace safety.[16]

In addition to the evidence that experience rating affects employer behavior, there is also evidence that the presence of workers' compensation benefits leads to changes in worker behavior that arguably reduce workplace safety. Thomason (2003) summarizes a number of studies that found the reported frequency and severity of workers' compensation claims increase in response to higher benefits, which may suggest that a moral hazard problem exists. Caution is needed in interpreting these studies, however, since the increased frequency or severity reported in the claims can result from a "true injury effect" (workers take more risks as a result of higher benefits and as a result actually experience more injuries) or from the "reporting effect" (workers report claims that would not have been reported as a result of the higher benefits, and/or extend their period of reported disability because of the higher benefits). Most studies of the relationship between workers' compensation benefits and the frequency and severity of claims have not distinguished between the true injury and reporting effects. Durbin and Butler (1998, 67) conclude that the latter effect dominates, which implies that the concerns of modified neoclassical economists that the use of workers' compensation benefits to provide *ex post* compensation for injured workers will lead to more injuries is exaggerated.

due. The agreement system is likely to involve delays in many cases.

The Functions of the Administrative Agency. Most states have a workers' compensation agency that is responsible for administering the program. One function of the agency is adjudication of disputes between workers and employers or insurance carriers. In most agencies, the initial level of decision is made by an administrative law judge (ALJ) or an official with similar duties, such as a hearing examiner. The decisions of the ALJ normally can be appealed to an appeals board (or commission) within the workers' compensation agency. Then, appeals from the workers' compensation board typically enter the state court system at the appellate court level.

The state workers' compensation agencies vary considerably in their administrative styles. At one extreme are agencies, such as those in Illinois and New Jersey, which are passive. They essentially wait for problems to arise and then perform the adjudication function. The other extreme is Wisconsin, where the agency can be characterized as active because it performs three functions in addition to adjudication. The Wisconsin agency engages in extensive record keeping, in monitoring of the performance of carriers and employers, and in providing evaluations (e.g., of the extent of permanent disability) that help the parties reach decisions without resorting to litigation.

Closing of Cases. In many states, cases are closed by private agreements of the parties (subject to approval of the workers' compensation agency in some states). These are generally known as compromise and release agreements, because a compromise is reached on the amount of benefits paid and the employer is released from any further obligations. Normally the benefits are paid in a lump sum. These compromise and release agreements are often criticized, because they mean that workers who subsequently have additional need for medical care or income benefits cannot obtain them from the employer.[17]

Litigation. States vary widely in the extent of litigation (defined here as the use of an attorney by the worker to help receive benefits). The worker's attorney's fee is almost always deducted from the cash benefit. Wisconsin is an extreme example of a state where lawyers are involved in only a small minority of cases. At the other extreme, states such as California and Illinois have lawyers involved in the majority of cases, especially those that involve anything other than a relatively short period of temporary total benefits.

Recent Developments and Continuing Challenges

Developments Between 1985 and 1991. The workers' compensation program has experienced significant changes in recent decades, many of which were stimulated by developments between 1985 and 1991.[18] There was a rapid escalation in the employers' costs of workers' compensation, increasing from $25.1 billion in 1984 to $55.2 billion in 1991, or an average of 11.9 percent a year, which far outpaced payroll growth. As a result, workers' compensation costs as a percent of payroll increased rapidly, rising from 1.66 percent in 1984 to 2.16 percent in 1991.

Workers' compensation benefits also increased during the period, from $18.0 billion in 1984 to $40.8 billion in 1991, for an average annual increase of 12.4 percent. Benefits increased from 1.21 percent of payroll in 1984 to 1.64 percent in 1991. Medical benefits increased by 14.6 percent per year between 1995 and 1991, more rapidly than both the annual increase of 11.0 percent in cash benefits and the high inflation rate for general heath care costs. The sources of the relatively high inflation in medical costs in the workers' compensation program included the rapid spread of managed care through the health care system used for non-occupational medical conditions.

Throughout the late 1980s and early 1990s, many employers became concerned about the increasing costs of workers' compensation. In addition to cost increases resulting from higher statutory cash benefits and escalating medical benefits, employers were also concerned about what they perceived to be wide-spread fraud and rampant litigation, especially involving conditions, such as workplace stress, that employers felt were outside the proper domain of the program.

The workers' compensation insurance industry was particularly agitated during this period. Several factors contributed to the industry's problems. Benefit payments accelerated during this period. Nonetheless, carriers were unable to gain approval from regulators for the significant premium increases the industry believed were actuarially justified. Even though investment income was relatively high from 1984 to 1991 (always exceeding 12 percent of premium), underwriting losses were so substantial that the overall operating ratio was 103.8 or higher in every year between 1984 and 1991.[19] In other words, the workers' compensation insurance industry lost money in every year during this period, even after taking into account the returns on investments.

Developments Since 1991. The major legacy of the period from 1985 to 1991 was the planting of the seeds for reform that bloomed in the 1990s and that have had lasting effects on the program. Over half of the state legislatures passed major amendments to workers' compensation laws between 1989 and 1996, generally with the purpose of reducing the cost of the program. Spieler and Burton (1998) identified five significant developments related to these efforts to reduce costs.

First, the statutory level of cash benefits was reduced in a number of jurisdictions, particularly with regard to benefits paid for permanent disabilities. Second, eligibility for workers' compensation benefits was narrowed due to changes in compensability rules. These included requiring workers to provide objective medical evidence to support their claims, the tightening of procedural rules (such as placing the burden of proof on workers to establish their claims), and the restriction on eligibility when the extent of a worker's disability was due in part to a prior injury.

Third, the health care delivery system in workers' compensation was transformed in many states, most notably by the introduction of managed care, by limitations on the worker's choice of the treating physician, and by the promulgation of fee schedules. The fourth development was the increasing use of disability management by employers and carriers, largely due to unilateral action by these parties, but also in part as a result of inducements provided by state legislation. Finally, in a development discussed later in more detail, the exclusive remedy doctrine, which precludes workers from bringing tort suits against their employers as a result of workplace injuries, was challenged in several court decisions. In addition to these five factors related to workers' compensation reform efforts, another factor that helps explain the decline in employee benefits and employer costs in the 1990s was the significant drop in the work-related injury rate in the decade (from 8.8 cases per 100 workers per year in the private sector in 1990 to 6.1 cases per 100 workers in 2000).

As a result of these various factors, workers' compensation benefits increased modestly or even declined in the 1990s, depending on the measure used.[20] Benefits paid to workers increased from $42.2 billion in 1991 to $47.6 billion in 2000, which represented less than a 1.5 percent annual rate of increase. Benefits as a percent of payroll peaked at 1.68 percent of payroll in 1991, and then declined to 1.06 of payroll in 2000. The multi-year decline in benefits relative to payroll is unprecedented in duration and magnitude since at least 1948, when the annual data for successive years were first published.

Largely as a result of these benefit developments, the employers' costs of workers' compensation only increased from $55.2 billion in 1991 to $59.7 billion in 2000, which is less than 1.0 percent a year. Costs as a percent of payroll peaked at 2.18 percent of payroll in 1990, dropped slightly to 2.16 percent of payroll in 1991, and then slid to 1.33 percent of payroll in 2000. Also, as benefits and costs relative to payroll declined in the 1990s, the profitability of private carriers quickly improved. The overall operating ratio (which includes net investment income) fell from a peak of 108.7 in 1991 to a low of 81.8 in 1995 and 1997, and was below 100 from 1993 to 2000. The four years from 1994 to 1997, when the operating ratio was below 90 in every year, represents the most profitable stretch of years in at least 20 years for workers' compensation insurance.

Benefits increased to $53.4 billion in 2002 and, because of the slow growth of wages resulting from the recession that began in 2001 and the decline in employment that continued through 2002, benefits increased to 1.16 of payroll in 2002. The employers' costs of workers' compensation increased more rapidly than benefits after 2000, and reached $72.9 billion in 2002, which was 1.58 of payroll. Despite these recent increases, both benefits and costs as a percent of payroll remain well below their peaks of the 1990s. The workers' compensation insurance industry was unprofitable in 2001 and 2002, but achieved marginal profitability in 2003 (with an operating ratio of 97.8).

Changing Insurance Arrangements. Workers' compensation has relied on a mixture of state funds, private carriers, and self-insurance from its origins in most states between 1910 and 1920.[21] From the beginning, there were arguments concerning the merits of the various insurance arrangements. State funds were lauded because of lower overhead (notably the absence of a broker's fee) and because proponents thought that profits were inappropriate in a mandatory social insurance program. Private carriers were praised because they promoted efficiency and were considered more compatible with our capitalistic society. The arguments that prevailed varied from state to state: some jurisdictions created exclusive state funds; some authorized only private carriers to provide insurance; and some permitted private carriers to compete with state funds.

The initial choices of insurance arrangements by the states prevailed for an extended period. As of 1960, there were seven exclusive state funds, the youngest of which was the North Dakota fund established in 1919. There were also 11 competitive state funds as of 1960; the youngest was the Oklahoma fund established in 1933. Oregon converted its exclusive state fund into a competitive state fund in 1966; this represented the only change in state funds between the early 1930s and the early 1980s.

One of the significant developments in the workers' compensation insurance market in the last two decades was the emergence of several new competitive state funds. The "pioneer" of the modern movement was Minnesota, which established a competitive state fund in 1984. Then, in the 1990s, seven new competitive state funds began operation. However, in contrarian moves, the long-existing Michigan competitive state fund was privatized in 1994 and the Nevada exclusive state fund was privatized in 1999.

The state legislators' motives for establishing the new state funds were (1) to reduce the costs of workers' compensation and/or (2) to provide an alternative source of insurance for employers who could not purchase policies in the voluntary market or who did not like the surcharges or other conditions imposed on policies purchased in the residual or assigned-risk markets. And, presumably, part of the rationale for privatizing the Michigan and Nevada state funds was to reduce the costs of workers' compensation insurance.

The cost-savings motives for these changes in insurance arrangements do not appear to be evidence-based. Thomason, Schmidle, and Burton (2001) found there were no differences in insurance costs between states with exclusive state funds and states with private carriers, after controlling for other factors that influence interstate differences in costs, such as injury rates and benefit levels. Among states with private carriers, they found that states with competitive state funds have insurance costs that are nearly 18 percent higher than the costs in states that only have private carriers.

Another significant development in workers' compensation insurance arrangements in recent decades has been the deregulation of the markets in which private carriers operate. In contrast to the deregulation that generally occurred in property and casualty insurance in the 1970s, rate setting in workers' compensation insurance continued to be highly regulated until the 1980s. The deregulation of workers' compensation insurance was resisted on several grounds: the distinctive characteristic of workers' compensation as a mandated social insurance program (and the resultant concerns with both rates for employers and solvency for carriers); the existence of competitive measures other than price competition for workers' compensation insurance (primarily through dividends); and the need for a comprehensive data base (with uniform rate classes and information on the experience of a large number of insurers). These arguments helped delay even partial deregulation of workers' compensation insurance in most states until the 1980s and 1990s, and still operate to preserve "pure" administered pricing in a few states and vestiges of regulation in most states.

The multiple steps that are involved in moving from a manual rate applicable to an employer to the premium paid by that employer were discussed in connection with Table 1. The essence of administered pricing is that all carriers were required to start with the same manual rates, and the various modifications to those rates involved either 1) formulas or constants to which all carriers had to adhere and which modified the manual rates at the beginning of the policy period, or 2) dividends that were paid only after the policy period ended. In short, there was virtually no chance for carriers to compete in terms of price at the beginning of the policy period.

Administered pricing is no longer the dominant approach to workers' compensation insurance pricing in the United States. A fundamental result of the deregulation of the workers' compensation insurance market that has taken place in the last 25 years is that private carriers can now compete for business by varying the insurance rates at the beginning of the policy period. Most jurisdictions now allow deviations and scheduled rating,[22] and a number of jurisdictions have moved to more comprehensive forms of deregulation, which generally fall under the rubric "open competition" or "competitive rating." These reforms involve various combinations of three different changes to the regulatory environment. First, some states have dropped the requirement that insurers become members of the rating organization or adhere to bureau rates. Second, other jurisdictions no longer require insurers to obtain regulatory approval prior to using rates. Third, some states prohibit the rating organization from filing fully developed rates; instead, these organizations file loss costs or pure premiums. Each carrier has to decide what loading factor should be used in conjunction with pure premiums to produce the equivalent of manual rates.

The initial phase of deregulation began in the early 1980s, and nine states adopted competitive rating between 1981 and 1985. Several factors help explain the onset of deregulation. First, the overall political climate become more hostile to the notion that "big government" could do a better job than competitive forces in determining prices and allocating resources, and one consequence was a general move towards deregulation involving industries such as airlines and trucking, as well as the insurance industry. Another factor was a perception among some legislators, unions, and employers that profits in the workers' compensation insurance line were excessive. The hope was that deregulation would help reduce costs by squeezing out excess profits. Not surprisingly, most workers' compensation insurers resisted deregulation during this period.

After the initial spurt of deregulation in the early 1980s, there was a slow down in the introduction of deregulation in the balance of the 1980s, with only seven additional states enacting open competition statutes. However, one consequence of the unprofitability of workers' compensation insurance in the late 1980s and early 1990s was a change in attitude towards deregulation by many in the insurance industry. Deregulation was now seen as a way to escape from the "onerous" decisions of insurance regulators and to establish rates that would allow carrier profitability. Deregulation re-emerged with vigor during the 1990s: open competition statutes became effective in 18 states between 1991 and 1995 and in an additional three states by the end of the decade. Deregulation in some of these states – especially those that adopted open competition in the early 1990s when the industry was still experiencing losses – reflected support from the insurance industry, while deregulation in other states, most notably California in 1995, where rate filings had generally been approved by the insurance commissioner, was generally resisted by the industry.

The effect of deregulation on the costs of workers' compensation insurance depends on several factors, such as the stringency of rate regulation in a state prior to deregulation and the particular form of deregulation. Thomason, Schmidle, and Burton (2001) found that comprehensive deregulation – the use of loss costs (instead of manual rates) that were not subject to prior approval by the state before carriers could establish the rates they would charge – reduced the costs of workers' compensation insurance by about 11 percent below the rates that would have been charged if states had continued to rely on administered pricing. They also found that partial deregulation – for example, states that continued to rely on manual rates but allowed carriers to deviate from those rates – resulted in higher workers' compensation rates than would have been paid by employers under administered pricing.

Another noteworthy development in workers' compensation insurance in recent decades was the rise and fall of the share of premiums accounted for by the residual market. The traditional reasons why an employer was unable to obtain workers' compensation insurance policies in the voluntary market were that the applicant was engaged in some activity that was unusually hazardous relative to the experience of other firms in the appropriate insurance classification, or had a poor loss record, or was so small that the premium did not adequately compensate the insurer for its expenses (Williams 1969:48). Prior to the mid-1980s, the residual market share generally accounted for five percent or less of all premiums nationally.[23]

The fiscal stress that the workers' compensation insurance market was under the years from the mid-1980s to the early 1990s is clearly evident in the explosion of the residual market share from 5.5 percent of all premiums in 1984 to a peak of 28.5 percent in 1992. In addition to the traditional reasons for the applicants being forced to purchase in the residual market, which were basically due to the unattractiveness of individual risks, the dominant factor contributing to the residual market growth in the 1985-92 period was the general inadequacy of workers' compensation insurance rates because of the reluctance of insurance regulators in many states to approve rate filings with substantial rate increases for the voluntary market. Carriers in such jurisdictions became unwilling to write policies in the voluntary market because they could not make an adequate (or, in many cases, any) profit.

The share of workers' compensation insurance provided through the residual market was 80 percent or more in several states (Louisiana, Rhode Island, and Maine) in one or more years between 1989 and 1991. A vicious cycle ensued in some states: rates were held down in the voluntary market by regulators; carriers were unwilling to write policies in the voluntary market, which forced some employers into the residual market; in addition, regulators sometimes responded to political pressures and held insurance rates in the residual market well below the levels that were warranted, which induced some employers who were able to purchase policies in the voluntary market to obtain policies in the residual market because the rates were so low; the residual markets ran substantial deficits because of inadequate rates; the carriers in the voluntary market were assessed substantial sums to cover the assigned risk markets deficits; and when the carriers tried to pass on these assessments to policyholders still in the voluntary market, many employers shifted to the residual market in order to obtain coverage at the suppressed rates, which only increased the size of the residual market and increased assessments in the voluntary market.

The national share of total premiums accounted for by the residual market rapidly declined after 1994 (to less than five percent by 1998) due to three major factors already discussed. First, the overall profitability of the workers' compensation insurance line quickly improved after 1992, which made carriers more willing to provide policies in the voluntary market. Second, several jurisdictions established competitive state funds or other special public or quasi-public funds to provide insurance to employers who could not find policies in the voluntary market. The third factor was a series of changes in assigned risk policies that made these policies more expensive and reduced the subsidy from the voluntary market to the residual market, including the introduction of special experience-rating plans in the residual markets that tied premiums more closely to each firm's own benefit payments.

The assessments on insurance policies in the voluntary market to underwrite losses in the residual markets had two other significant consequences for workers' compensation insurance.[24] Employers received an incentive to self-insure since such employers were usually not assessed to cover losses in the residual markets. Benefits paid by self-insuring employers increased from 19.0 percent of all benefits in 1990 to 25.9 percent in 1995. Subsequently, as assessments for residual markets declined, the share of benefits provided by self-insuring employers has declined (to 22.2 percent of all benefits in 2002).

The second effect of basing assessments for the residual market on insurance premiums was the rapid growth of policies with large deductibles. Under deductible policies written by private carriers or state funds, the insurer pays all of the workers' compensation benefits, but the employer is responsible for reimbursing the insurer for the benefits up to the specified deductible amount (such as the first $100,000 per injury). The amount reimbursed by the employer is not considered insurance for purposes of assessments for the residual market or other special funds in most states. The amount of benefits paid by employers under deductible provisions increased rapidly from $1.3 billion in 1992 to $7.8 billion in 2002, which represented almost 15 percent of the $53.4 billion total benefit payments in 2002. One consequence of the expanded use of deductibles should be added encouragement to workplace safety, since employers are essentially perfectly experience rated for the benefit payments up to the deductible.[25]

The Exclusive Remedy Principle. Workers' compensation programs since their origins in the U.S. have incorporated the exclusive remedy principle, which has two elements: workers benefit from a no-fault system and employers benefit from limited liability, which means that workers' compensation is the exclusive remedy of employees against their employers for workplace injuries and diseases.[26] There have always been some exceptions to the exclusive remedy doctrine, however, and in recent decades there have been several developments that represent significant challenges to the doctrine.[27]

One traditional exception is that the employer is not protected from a tort suit when there is an intentional injury of the employee by the employer. There are at least five legal approaches that states can take when the employer engages in activity that at least arguably represents an intentional injury to the employee. First, some states do not recognize the intentional injury exception under any circumstances. Second, some states require a conscious and deliberate intent to inflict an injury. Larson and Larson (2004, §103.03) indicate this exception to the exclusive remedy doctrine requires "deliberate infliction of harm comparable to an intentional left jab to the chin." Third, some states allow an exception when the employer's conduct is "substantially certain" to cause injury or death. Fourth, the New Mexico Supreme Court has recently created an exception to the exclusive remedy doctrine when the employer's conduct is willful. Fifth, no state (except perhaps New Mexico) upholds the intentional injury exceptions merely because the employer's conduct is negligent, wanton, reckless, or even grossly negligent. The third and fourth exceptions require explication.

The exception when the employer's conduce is "substantially certain" to cause injury or death has been established by the courts in several states. In most of these states, including Michigan, Ohio, and West Virginia, the exception was eliminated or narrowed by subsequent legislation. However, a series of recent New Jersey Supreme Court decisions, beginning with *Laidlow v. Hariton Machinery Co.*, 170 N.J. 602, 790 A.2d 884 (2002), endorsed the substantially certain test as one element of the intentional injury exception, and efforts by employers and carriers to eliminate the exception by statutory enactment have been unsuccessful. The New Mexico decision, *Delgado v. Phelps Dodge Chino*, Inc., 131 N.M. 272, 34 P. 3d 1148 (2001), includes as part of the definition of "willful conduct" that the employer's act is "reasonably expected to result in the injury suffered by the employee," and to date that decision has not been overturned by the legislature. Whether the New Jersey – New Mexico axis of exception will spread to other jurisdictions is of concern to employers and insurers.

Another area in which the exclusive remedy provision is being challenged involves situations when an employee alleges sexual harassment at the workplace. The New Mexico Supreme Court held in *Coates v. Wal-Mart Stores, Inc.*, 976 P.2d 999 (1999) that a tort suit alleging negligent supervision and intentional infliction of emotional distress was not precluded by the exclusive remedy doctrine. However, courts interpreting the workers' compensation statutes in Delaware and Maine have precluded tort claims for negligent or intentional infliction of emotional distress resulting from sexual conduct by fellow employees. Where tort suits for sexual harassment are precluded by the workers' compensation exclusivity principle, recovery against the employer may be possible under a state's fair employment statute or Title VII of the Civil Rights Act of 1964, which was amended in 1991 to permit compensatory or punitive damages for sexual harassment.

A decision by the Supreme Court of Oregon, *Smothers v. Gresham Transfer, Inc.*, 23 P.3d 333 (2001), provides another challenge to the exclusive remedy doctrine. The Oregon legislature passed legislation in 1993 denying workers' compensation benefits unless the worker could prove that work exposure was the major contributing cause of an occupational disease. In 1995, the Oregon legislature amended the workers' compensation statute to provide that workers' compensation was the exclusive remedy for work-related injuries and diseases, even if the condition was not compensable under workers' compensation because the work exposure was not the major contributing cause. In *Smothers*, the court said that the Oregon constitution did not allow the legislature to eliminate both the workers' compensation remedy and a tort remedy when the employment is not the major contributing cause of the condition. While this case established a clear limitation on the exclusive remedy provision in Oregon, similar constitutional challenges in other states have not been successful. Nonetheless, similar challenges to statutes that remove any remedy for workplace injuries and diseases may be successful under state statutes and constitutions, and arguably also under the U.S. Constitution.

The Viability of Workers' Compensation. The workers' compensation system in the U.S. is experiencing stress along several dimensions. One is the conflict between affordability of the program for employers and adequacy of benefits for workers. Although economists argue that most of the costs of workers' compensation are paid for by workers in the form of lower wages,[28] employers nonetheless act as if they bear all of the costs and generally seek to reduce costs. The quest for affordability is encouraged in part by the decentralized nature of the programs, in which states compete for employers in part by offering low workers' compensation costs. The increased competition in the U.S. economy in recent decades as a result of deregulation of many domestic industries and of globalization has added to the pressures for states to reduce costs.

The pressures on states to reduce costs can have salutary effects to the extent the result is increased efficiency in the delivery system for workers' compensation benefits, which, for example, might result from reduced litigation. However, the cost savings achieved by states in recent years often resulted from limiting eligibility for benefits or from maintaining or further curtailing benefits that were already inadequate. An example of the effects of restricting eligibility on workers is provided by Oregon, where Thomason and Burton (2001) estimate that a series of legislative provisions resulted in benefits (and costs) being about 25 percent below the amounts they would have been in the absence of the more restrictive eligibility standards.

The adequacy of the benefits provided to those workers who qualify for benefits has been examined in important recent studies. Hunt (2004) provides a comprehensive survey of the meaning of adequacy of benefits in the workers' compensation program. The generally accepted standard is that workers' compensation benefits should replace two-thirds of the wages lost because of the work injuries. However, Boden, Reville, and Biddle (2005) found that in the five jurisdictions they examined (California, New Mexico, Oregon, Washington, and Wisconsin) permanent partial disability benefits replaced between 16 and 26 percent of earnings losses in the ten years after the workers were injured, which meant the "replacement rates do not approach the 2/3 benchmark for adequacy."

The consequences of the tightening eligibility standards in workers' compensation may have another consequence that is troublesome for the future of the program. As the number of workers' compensation cases and costs of the program dropped in the 1990s, due in part to tighter eligibility standards for qualifying for benefits, the number of former workers qualifying for Disability Insurance (DI) under the Social Security program increased. Some commentators, such as Williams, Reno, and Burton (2004, 37) have raised the possibility that some disabled persons are being shifted from workers' compensation to the DI program. This perception is reinforced because according to Burton and Spieler (2001) the changes in eligibility rules for workers' compensation benefits that took place in the 1990s had a particularly adverse effect on older workers, who are the predominant source of applicants for DI benefits.

A final challenge to workers' compensation worth noting is the medical benefits provided by the program. These benefits now account for 46.0 percent of all benefit payments, up from 36.4 percent in 1985 (Williams, Reno, and Burton 2004, Table 7). Medical benefits in workers' compensation are also important because in many ways they are more generous than other medical benefits provided by employers. With rare exceptions, medical care through workers' compensation is provided without deductibles, co-insurance, or premiums paid for by workers, while these attributes are lacking in health care benefits for non-occupational conditions paid for by employers. Indeed, many employers do not provide any health care benefits for their workers – other than the medical care mandated for work-related injuries. This provides a glaring contrast between two health care systems for workers, and provides incentives for workers (and often providers and sometimes even employers) to shift conditions that are arguably work-related, such as back injuries, into workers' compensation. The disparity between these two systems has led many employers who do provide non-occupational health insurance to integrate the administration of all their programs for disabled workers, regardless of the origins of the disability. Some commentators have even suggested that the medical benefits (and perhaps even the cash benefits) provided for work-related and non-work-related injuries and diseases should be combined into a 24-hour coverage program.[29]

This final section has identified some tensions and challenges for the workers' compensation program that may suggest the program may not survive far into the 21st century. It is thus worth remembering that the premier study of workers' compensation published a half-century ago (Somers and Somers 1954) concluded with a chapter entitled "Workmen's Compensation at the Crossroads." The thrust of the chapter was that the problems of the program threatened its future unless fundamental changes were made. The program's name may have changed and the problems may be somewhat different than in 1954. But the experience of the intervening years suggests that the fundamental attributes of workers' compensation – a system confined to work-related injuries that provides limited benefits on a no-fault basis – are hard to successfully challenge and may be immutable.

ENDNOTES

1. Unless otherwise indicated, "injuries" includes injuries and diseases.

2. Burton and Mitchell (2003) provide a brief history of workers' compensation, as well as other social insurance and employee benefit programs.

3. Burton (2004) discusses the legacy of The National Commission on State Workmen's Compensation Laws. The program was generally known as "workmen's compensation" until the 1970s, when most jurisdictions adopted "workers' compensation" as a more appropriate term.

4. Hallmark (2004) and U.S. Chamber of Commerce (2004) include tables summarizing state coverage provisions. Williams, Reno, and Burton (2004) provide data on national and state coverage of workers.

5. The legal tests are examined in Larson and Larson (2004) and Willborn, Schwab, and Burton (2002, 908-967).

6. Barth and Hunt (1980) is the best examination of the handling of diseases by workers' compensation programs.

7. Burton (1997) examines the medical care component of workers' compensation in more detail. Current data on medical benefits are provided by Williams, Reno, and Burton (2004).

8. Hallmark (2004) and U.S. Chamber of Commerce (2004) provide information on the statutory provisions for cash benefits. Williams, Reno, and Burton (2004) provide data on benefit payments.

9. Burton (2005) examines permanent partial disability benefits in more detail.

10. Hallmark (2004, Table 1) and Williams, Reno, and Burton (2004, 9-14) provide information on workers' compensation insurance arrangements.

11. Table 1 and the description of the procedure used to determine premium are based on Thomason, Schmidle, and Burton (2001, 326-331).

12. The calculation of premiums when the starting point is pure premiums is discussed by Thomason, Schmidle, and Burton (2001, 331-333).

13. The calculation of premiums for employers who purchase insurance in the assigned risk market is discussed by Thomason, Schmidle, and Burton (2001, 333-339).

14. Recent data on the national and state shares of premiums in residual markets are included in National Council on Compensation Insurance (2004, Exhibit XIII).

15. This section is largely based on Burton and Chelius (1997).

16. Thomason (2003, 196) cautions that experience rating may, in addition to encouraging employers to improve workplace safety and health, also lead to increased claims management by employers, including the denial of legitimate compensation claims. While Thomason discusses several studies suggesting that such employer activity occurs, the evidence indicates that experience rating is associated with accident prevention activities by employers.

17. Thomason and Burton (1993) summarize the studies of the determinants and consequences of compromise and release agreements. They also report (1993, S27-S28) that in New York, "retention of legal counsel increases the probability of settlement and decreases settlement size, indicating that claimant attorneys are acting contrary to their clients' interests" in the settlement of nonscheduled permanent partial disability claims.

18. The discussion of developments in the 1980s and 1990s is largely based on Thomason, Schmidle, and Burton (2001, Chapter 2).

19. The combined ratio after dividends is the sum of losses, loss adjustment expenses, underwriting expenses, and dividends. The overall operating ratio is the combined ratio after dividends minus net investment gain/loss and other income. The ratios are expressed as a percent of net premiums. Thus, an overall operating ratio of 103.8 means carriers were losing $3.80 for every $100 of net premiums, while an overall operating ratio of 80 means carriers were earning $20 of profit for every $100 of net premiums.

20. The data on benefits and costs in the next three paragraphs are from Williams, Reno, and Burton (2004). The underwriting results are from Yates and Burton (2004).

21. The discussion of changes in insurance arrangements in this subsection is largely based on Thomason, Schmidle, and Burton (2001, 32-47).

22. If a state allows deviations, individual carriers may deviate from the published manual rates and charge lower (or higher) rates than those promulgated by the rating organization. The discounts offered by a carrier are uniform for all policyholders in an insurance classification (although the discounts may differ among classes). Under schedule rating plans, insurers can change (usually decrease) the workers' compensation insurance rates an individual employer would otherwise pay.

23. Thomason, Schmidle, and Burton (2001, 43-46) provide more details on the pre-1985 experience in the residual market, and note that in 1978-79 the assigned risk market accounted for 12.7 percent of all premiums nationally as the cost of workers' compensation increased after 1975. However, the share dropped back to 5.5 percent in 1984, reflecting the generally profitable conditions in the workers' compensation insurance market and the declining costs of workers' compensation insurance.

24. The data in the next two paragraphs are from Williams, Reno, and Burton (2004).

25. However, some states permit employers to purchase insurance for their benefit payments up to the deductible, which reduces the degree of experience rating for these benefits.

26. The exclusive remedy provision means that the only recovery by the injured worker against his or her employer is workers' compensation benefits, unless the worker can take advantage of one of the exceptions to the exclusivity, such as the intentional injury exception discussed in this section. The injured worker may, however, be able to bring a tort suit against a third party who was at least partially responsible for the worker's injury. Examples of third parties that may be sued are manufacturers of defective machinery that was sold to the employer and producers of asbestos sold to firms whose workers contracted diseases because they were exposed to the substances. The suits against third parties and related issues are discussed in Willborn, Schwab, and Burton (2002, 985-990).

27. This subsection is largely based on Willborn, Schwab, and Burton (2002, 976-990), Burton (2002), and Aurbach (2003).

28. Leigh, Markowitz, Fahs, and Landrigan (2000, 175-79) provide a useful discussion of who pays for workers' compensation.

29. Several variants of twenty-four hour coverage are examined by Burton (1997).

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Workers' Compensation Settlements and Child Support Arrearages

by Alan Kuker and Donald Elisburg

The Problem

It was a usual workers' compensation settlement hearing. The Judge had reviewed the paperwork and determined the legal requirements had been met. The Judge had completed his inquiry of the claimant and was satisfied that the claimant understood and agreed to the terms and finality of the settlement. There was no objection by the employer.

All of a sudden a woman and three young children burst through the doors of the hearing room. "Judge," she said, "that man (indicating the claimant) is my ex-husband, and he owes us $15,000 in past due child support. I can't buy our children clothes and shoes for school. Many nights dinner is beans and potatoes. This afternoon he and his girlfriend are going to Mexico and my children will never see a dime from the settlement. Can't you please help us?"

Florida's Solution

In January 1998, the Workers' Compensation Judges in Miami, Dade County, Florida, began an innovative program to recover child support arrearages from workers' compensation settlements.

The case law basis was *Bryant v. Bryant*, 621 So.2nd 574 (Fla. 2nd D.C.A. 1993):

> "Exemption of worker's compensation claims from claims of creditors does not extend to claim based on award of child support; child support and alimony have special status, Worker's Compensation Act is intended to protect-worker and his family..."

The Judges required a child support status letter be submitted with settlements. The letter was issued by the Central Depository Unit of the Clerk of the County and Circuits Courts. Using their computer data base, the letter would state no account existed or, if an account existed, the amount owed by the deadbeat parent, 18 percent of whom were women. The Department of Revenue, Child Support Enforcement Unit, also could issue a letter from its separate data base. The claimant's permanent county of residence would provide the letter.

If child support was owed, the Judges would require the allocation of up to 50 percent of the settlement (after deducting attorney fees) for the payment of the arrearage. The payment would come directly from the employer/carrier, or the attorney for the claimant would deposit the proceeds of the settlement in his/her trust account and write a check to the Central Depository Unit.

The first year of the program resulted in the recovery of in excess of $900,000 in child support arrearages. The program then spread across the state with all of the workers' compensation Judges and all 67 Florida counties issuing the child support status letters.

In 1999, an inter-agency task force was formed to promote the recovery of child support arrearages. It was comprised of five Judges of Compensations Claims from around the state; the manager of the Central Depository, Circuit and County Courts Clerks office (11th Judicial Circuit); an attorney for the Department of Revenue, child support enforcement unit; an attorney from the Workers' Compensation Section of the Florida Bar; and an attorney from the State Attorneys child support enforcement unit division. This task force was responsible for the draft bills which ultimately led to Florida legislative action.

On July 1st, 2001, the Florida Legislature provided a statutory basis for the program in F.S. 61.14 (8)(a) and (b), F.S. 61.30 (2) (a) 5, F.S. 440.20(11)(d) and F.S. 440.22) .

F.S. 61.14 (8)(a) & (b), "When reviewing any settlement of lump sum payment pursuant to F.S. 440.20 (11)(a) and (b) judges of Compensation Claims shall consider the interests of the worker and the worker's family when approving the settlement, which must consider and provide for appropriate recovery of past due support."

F.S. 61.30 (2)(a) 5, "Gross income shall include all workers compensation benefits and settlements."

F.S. 440.20 (11)(d) and 440.22 are exactly as above in F.S. 61.

In 2002, the Division of Administrative Hearings adopted rules of procedure for workers' compensation adjudication Chapter 60 Q-6. 60 Q-6.123 concerns settlements under F.S. 440.20 (11). 60 Q-6.123.(1) (a) 7 & 8 as well as (2) (a) 2 require "a status letter from the Department of Revenue or the Clerk of the Circuit Court, Central Depository, as to whether the claimant has an arrearage or owes past due support and, if so, the amount thereof, and a letter from counsel stating that the carrier will issue a check in the amount of the arrearage and/or past due support or such other amount to be approved by the judge or the claimant's counsel will deposit the settlement proceeds in a trust account and will issue a check in the amount of the arrearage and/or past due support or such other amount to be approved by the judge and that the check will be sent to the Department of Revenue or the Clerk of the Circuit Court, Central Depository."

In 2003, child support arrearages recovered statewide exceeded $16 million, and out-of-state recovery exceeded $4 million.

Programs in Other States

Historically, the surviving spouse and dependent children of an injured employee held no greater rights than any other creditor. See 2 *Larson's Workers' Compensation, Desk Edition*, (2004, Sec. 89.08). However, Larson has recognized a "decided trend toward allowing compensation to be reached for the benefit of persons, such as spouse, children or even former spouses..." (2 *Larson*, Sec. 89.08). Among the states recognizing some form of lien for child support are New Jersey, Oregon, and New York (2 Larson, Sec. 89.08).

Conclusion

These state programs have all recognized that the needs of the children, and in some instances, the spouse of an injured worker, are different than the normal claims of creditors that would otherwise be protected. Whether this trend will expand to other areas of the country is still an open question.

ABOUT THE AUTHORS

Alan M. Kuker was appointed as Florida workers' compensation Judge on Valentines Day 1973, a position he continues to hold. He is the administrative Judge of the Miami-Dade and Monroe Counties Office of Judges of Compensation Claims, and he chaired the child support arrearage recovery inter-agency taskforce. He has been chair of the child support arrearage recovery committee since 1998.

From 1975 to 1993 he was a member of the Florida Bar Workers' Compensation Rules of Procedures Committee. In 1976 he served as a drafting committee member of the Florida Workers' Compensation Rules of Procedure, producing the first written workers' compensation rules adopted by the Florida Supreme Court. He has numerous publications to his credit and lectures widely on the topic of workers' compensation law.

Alan earned his undergraduate degree from Rutgers University and his law degree from the Boston University School of Law.

Donald Elisburg has spent the last forty years working on various aspects of labor law. Since 1981 he has been in private practice in Washington, DC representing a number of organizations on environmental, occupational health, training, worker disability, and labor standards issues, as well as legislative and regulatory matters. Prior to that, he held a wide variety of positions within the U.S. government. He continues to serve as a consultant to several government agencies on these matters.

From 1986 to 1991 he was the executive director of the Occupational Health Foundation, and from 1990 to 1992 he was the principal investigator and project director for the Center to Protect Workers' Rights. During the Carter administration he served as Assistant Secretary of Labor for Employment Standards. For seven years prior to that he was on the staff of the U.S. Senate Committee on Labor and Human Resources, including three years as the committee's general counsel and staff director. Before that Don served in the Department of Labor's solicitor's office as a trial attorney protecting workers' rights and assuring them a safe workplace.

Don received his undergraduate degree in economics from the Illinois Institute of Technology and his law degree from the University of Chicago Law School.

A Book of Possible Interest to Subscribers

Adequacy of Earnings Replacement in Workers' Compensation Program, edited by H. Allan Hunt, has recently been published by the W.E. Upjohn Institute. The book is a report of the Study Panel on Benefit Adequacy of the Workers' Compensation Steering Committee of the National Academy of Social Insurance.

The back cover of the book contains several "Testimonials from the Experts!" including this pithy analysis by Professor John F. Burton, Jr. of Rutgers University: "Workers' compensation programs provide benefits to workers disabled by workplace injuries and diseases. This study examines several tests of 'adequacy' of cash benefits and concludes that most states' workers' compensation programs do not meet these tests." Other testimonials are offered *inter alia* by James N. Ellenberger, Deputy Commissioner, Virginia Employment Commission, and Robert Steggert, Vice President Casualty Claims, Marriott International, Inc., both members of the Advisory Board for the *Workers' Compensation Policy Review*.

177 pp. $16 paper. ISBN 0-88099-314-6/2004. Published 2004. Available from the W. E. Upjohn Institute for Employment Research, Kalamazoo, Michigan. Website: www.upjohninst.org.

Workers' Compensation Costs for Employers: Quarterly Data for 2002 to 2004

by John F. Burton, Jr.

The Bureau of Labor Statistics (BLS) recently released information on the employers' costs of workers' compensation in September 2004. Information on costs for private sector employers is available for one survey a year between 1986 and 2002. Similar data are available on the employers' costs of workers' compensation for one survey a year between 1991 and 2002 for state and local government employers and for all non-federal employees. These one-survey-per-year data were analyzed in Burton (2004), which also contains an appendix that explains in more detail the source of the information and the methodology used to prepare the tables and figures in the current and earlier articles.

The BLS has also 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 based on quarterly surveys since March 2002, as shown in Table 3. (The tables and figures in this article retain the designations used in Burton (2004) for the convenience of readers.) Table 3 presents 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).

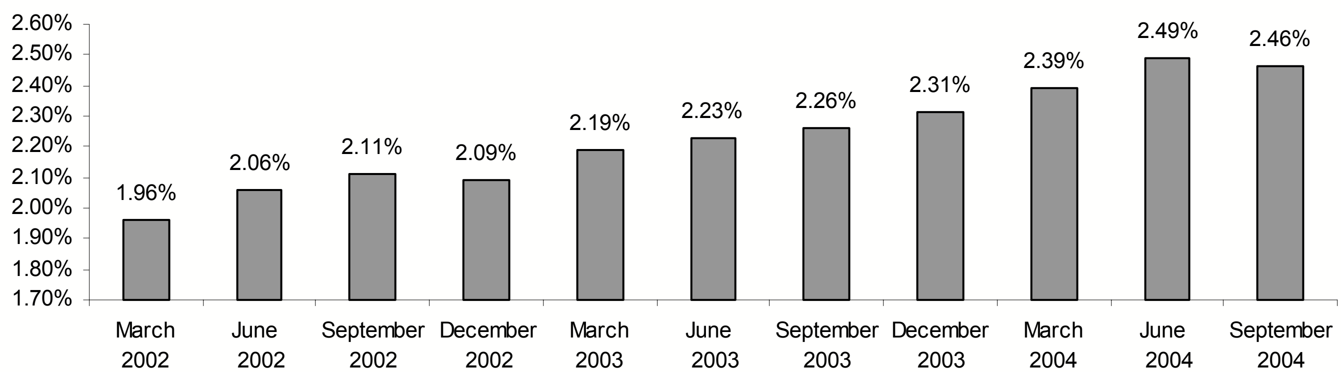
QUARTERLY DATA

Workers' Compensation Costs as Percent of Payroll

Private sector employees. The general trend towards higher workers' compensation costs in the private sector that began after March 2002 is documented in Figure G and Panel A of Table 3, which present information on the eleven 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 subsequent quarter until June 2004, when the costs peaked at 2.49 percent of payroll. This was the highest cost since 1997, when private sector employers expended 2.65 percent of payroll on workers' compensation (Burton 2004, Figure A). However, costs dropped in the most recent quarter, when private sector employers' expenditures on workers' compensation represented 2.46 percent of payroll.

State and Local Government Employees. The fluctuations in workers' compensation costs in the state and local sector in recent years are evident in the eleven quarters of data available included in Figure H and Panel B of Table 3. The employers' costs increased from 1.37 percent of payroll in March 2002 to a peak of 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. The employers' costs of workers' compensation for state and local government employers then increased for three quarters and reached 1.53 percent of payroll in September 2004, the highest

Figure G
Workers' Compensation Costs as a Percentage of Gross Earnings, Private Industry Employees, March 2002 - September 2004



Source: Table 3

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

Panel A: Private Industry Employees		March 2002	June 2002	Sept. 2002	Dec. 2002	March 2003	June 2003	Sept. 2003	Dec. 2003	March 2004	June 2004	Sept. 2004
(1)	Total Remuneration	21.71	21.83	22.01	22.14	22.37	22.61	22.84	22.92	23.29	23.41	23.76
(2)	Gross Earnings	17.86	17.94	18.05	18.16	18.26	18.41	18.59	18.61	18.80	18.84	19.13
(3)	Wages and Salaries	15.80	15.90	16.00	16.08	16.15	16.31	16.46	16.49	16.64	16.71	16.96
(4)	Paid Leave	1.44	1.44	1.45	1.47	1.47	1.46	1.48	1.48	1.50	1.49	1.52
(5)	Supplemental Pay	0.62	0.60	0.60	0.61	0.64	0.64	0.65	0.64	0.66	0.64	0.65
(6)	Benefits Other Than Pay	3.86	3.89	3.95	3.98	4.11	4.20	4.25	4.31	4.50	4.56	4.64
(7)	Insurance	1.40	1.42	1.45	1.46	1.52	1.57	1.59	1.62	1.65	1.66	1.68
(8)	Retirement Benefits	0.63	0.62	0.63	0.64	0.67	0.67	0.68	0.70	0.80	0.82	0.85
(9)	Legally Required Benefits	1.80	1.82	1.84	1.85	1.89	1.93	1.95	1.96	2.01	2.04	2.07
(9A)	Workers' Compensation	(0.35)	(0.37)	(0.38)	(0.38)	(0.40)	(0.41)	(0.42)	(0.43)	(0.45)	(0.47)	(0.47)
(10)	Other Benefits	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.04	0.04	0.04
(11)	Workers' Compensation as Percent of Remuneration	1.61%	1.69%	1.73%	1.72%	1.79%	1.81%	1.84%	1.88%	1.93%	2.01%	1.98%
(12)	Workers' Compensation as Percent of Gross Earnings	1.96%	2.06%	2.11%	2.09%	2.19%	2.23%	2.26%	2.31%	2.39%	2.49%	2.46%

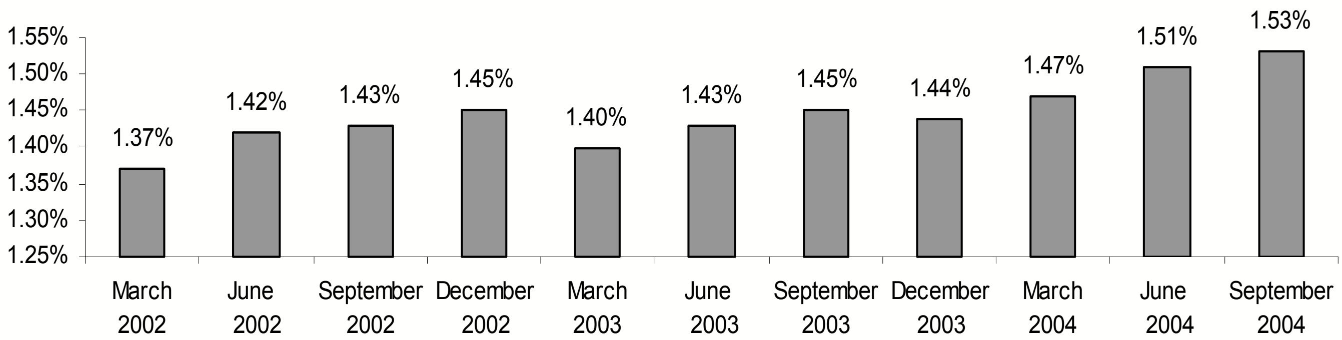
Panel B: State and Local Employees		March 2002	June 2002	Sept. 2002	Dec. 2002	March 2003	June 2003	Sept. 2003	Dec. 2003	March 2004	June 2004	Sept. 2004
(1)	Total Remuneration	31.29	31.20	31.89	32.32	32.62	32.99	33.62	33.91	34.21	34.13	34.72
(2)	Gross Earnings	24.83	24.72	25.17	25.46	25.66	25.96	26.26	26.43	26.59	26.44	26.78
(3)	Wages and Salaries	22.14	22.00	22.40	22.68	22.85	23.14	23.42	23.56	23.69	23.52	23.83
(4)	Paid Leave	2.43	2.45	2.49	2.49	2.51	2.52	2.55	2.58	2.60	2.61	2.64
(5)	Supplemental Pay	0.26	0.27	0.28	0.29	0.30	0.30	0.29	0.29	0.30	0.31	0.31
(6)	Benefits Other Than Pay	6.46	6.47	6.72	6.85	6.96	7.02	7.36	7.48	7.62	7.68	7.94
(7)	Insurance	2.82	2.85	2.96	3.02	3.12	3.16	3.32	3.39	3.48	3.51	3.62
(8)	Retirement Benefits	1.74	1.72	1.81	1.84	1.85	1.86	1.99	2.03	2.07	2.12	2.23
(9)	Legally Required Benefits	1.84	1.84	1.89	1.92	1.93	1.94	1.98	1.99	2.02	2.00	2.04
(9A)	Workers' Compensation	(0.34)	(0.35)	(0.36)	(0.37)	(0.36)	(0.37)	(0.38)	(0.38)	(0.39)	(0.40)	(0.41)
(10)	Other Benefits	0.06	0.06	0.06	0.07	0.06	0.06	0.07	0.07	0.05	0.05	0.05
(11)	Workers' Compensation as Percent of Remuneration	1.09%	1.12%	1.13%	1.14%	1.10%	1.12%	1.13%	1.12%	1.14%	1.17%	1.18%
(12)	Workers' Compensation as Percent of Gross Earnings	1.37%	1.42%	1.43%	1.45%	1.40%	1.43%	1.45%	1.44%	1.47%	1.51%	1.53%

Panel C: All Non-Federal Employees		March 2002	June 2002	Sept. 2002	Dec. 2002	March 2003	June 2003	Sept. 2003	Dec. 2003	March 2004	June 2004	Sept. 2004
(1)	Total Remuneration	23.15	23.20	23.44	23.66	23.93	24.19	24.48	24.59	24.95	24.96	25.36
(2)	Gross Earnings	18.91	18.92	19.09	19.24	19.39	19.57	19.76	19.80	19.97	19.95	20.24
(3)	Wages and Salaries	16.76	16.78	16.93	17.06	17.17	17.35	17.52	17.56	17.71	17.70	17.96
(4)	Paid Leave	1.59	1.59	1.60	1.62	1.63	1.63	1.64	1.65	1.66	1.66	1.68
(5)	Supplemental Pay	0.56	0.55	0.56	0.56	0.59	0.59	0.60	0.59	0.60	0.59	0.60
(6)	Benefits Other Than Pay	4.24	4.26	4.35	4.41	4.54	4.64	4.73	4.78	4.97	5.01	5.11
(7)	Insurance	1.61	1.63	1.67	1.69	1.77	1.81	1.86	1.88	1.93	1.93	1.96
(8)	Retirement Benefits	0.80	0.78	0.80	0.82	0.85	0.86	0.88	0.90	0.99	1.01	1.05
(9)	Legally Required Benefits	1.80	1.82	1.85	1.86	1.89	1.93	1.95	1.96	2.01	2.03	2.06
(9A)	Workers' Compensation	(0.35)	(0.36)	(0.38)	(0.38)	(0.39)	(0.41)	(0.42)	(0.42)	(0.44)	(0.46)	(0.46)
(10)	Other Benefits	0.03	0.03	0.03	0.04	0.03	0.04	0.04	0.04	0.04	0.04	0.04
(11)	Workers' Compensation as Percent of Remuneration	1.51%	1.55%	1.62%	1.61%	1.63%	1.69%	1.72%	1.71%	1.76%	1.84%	1.81%
(12)	Workers' Compensation as Percent of Gross Earnings	1.85%	1.90%	1.99%	1.98%	2.01%	2.10%	2.13%	2.12%	2.20%	2.31%	2.27%

Notes: See table on page 23.

Sources: 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. Department of Labor, 2002b, Tables 1, 3, and 5.
September 2002: U.S. Department of Labor, 2002c, Tables 1, 3, and 5.
December 2002: U.S. Department of Labor, 2003a, Tables 1, 3, and 5.
March 2003: U.S. Department of Labor, 2003b, Tables 1, 3, and 5.
June 2003: U.S. Department of Labor, 2003c, Tables 1, 3, and 5.
September 2003: U.S. Department of Labor, 2003d, Tables 1, 3, and 5.
December 2003: U.S. Department of Labor, 2004a, Tables 1, 3, and 5.
March 2004: U.S. Department of Labor, 2004b, Tables 1, 3, and 5.
June and Sept. 2004: U.S. Department of Labor, 2004c, Tables 1, 5, and 9.

Figure H
Workers' Compensation Costs as a Percentage of Gross Earnings, State and Local Employees, March 2002 - September 2004



Source: Table 3

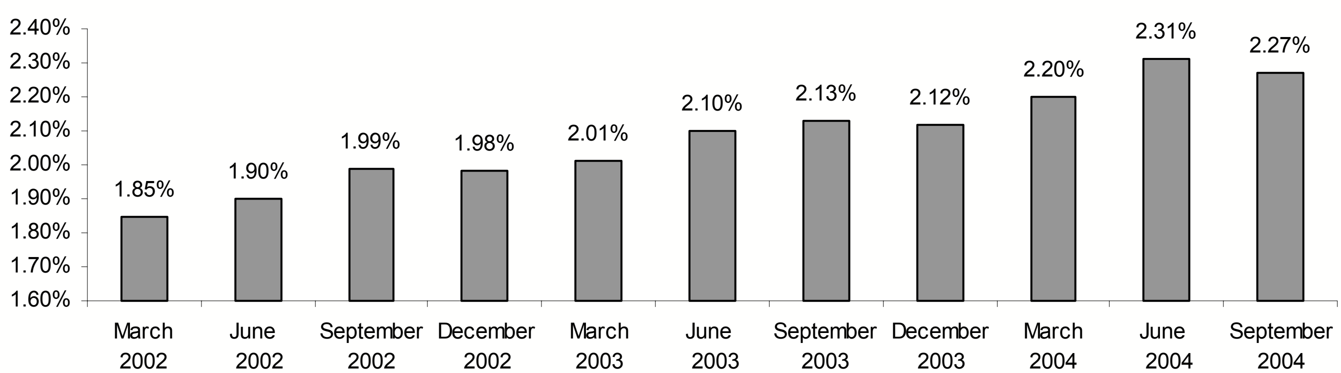
figure since the 1.54 percent of payroll in 1996 (Burton 2004, Figure B).

All Non-federal Employees. A general trend towards higher workers' compensation costs for all non-federal employers since 2002 is shown in the eleven quarters of data in Figure I and in Panel C of Table 3. The employers' costs of 1.85 percent of payroll in March 2002, increased to 1.99 percent of payroll in September 2002, dropped slightly to 1.98 percent of payroll in December 2002, and then increased during the first three quarters of 2003, reaching 2.13 percent of payroll in September 2003, before dropping to 2.12 percent of payroll in December 2003. The employers' costs of workers' compensation then increased for two quarters and reached 2.31 percent of payroll for all non-federal employers in June 2004, the highest figure since the 2.44 percent of payroll in 1997 (Burton 2004, Figure C). As in the private sector, the employers' costs of workers' compensation for all non-federal employees dropped in the most recent quarter to 2.27 percent of payroll in September 2004.

Workers' Compensation Costs per Hour Worked

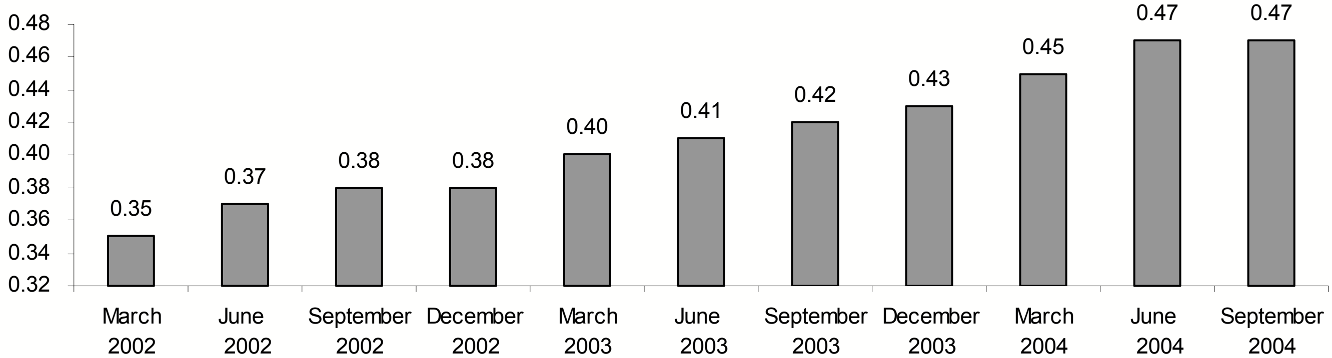
Private Sector Employees. The quarterly data indicate that private sector employers expended $0.35 per hour on workers' compensation in March 2002 and that these expenditures increased almost every quarter until reaching $0.47 per hour in September 2004 (Figure J and Panel A of Table 3). Using this measure of costs, since September 2003, private sector workers' compensation costs have exceeded the previous high of $0.41 per hour reached in 1994 (Burton 2004, Figure D).

Figure I
Workers' Compensation Costs as a Percentage of Gross Earnings, All Non-Federal Employees, March 2002 - September 2004



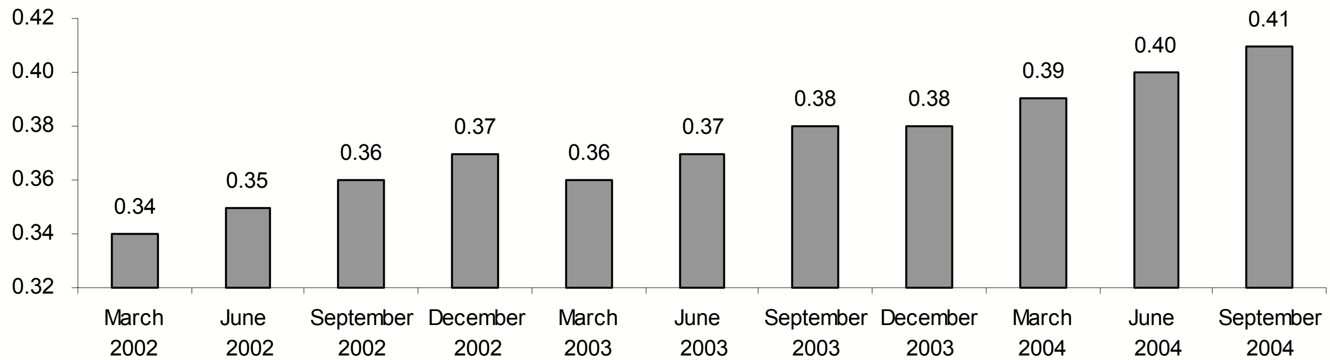
Source: Table 3

Figure J
Workers' Compensation Costs for Private Industry Employees, March 2002 - September 2004 (in Dollars per Hour Worked)



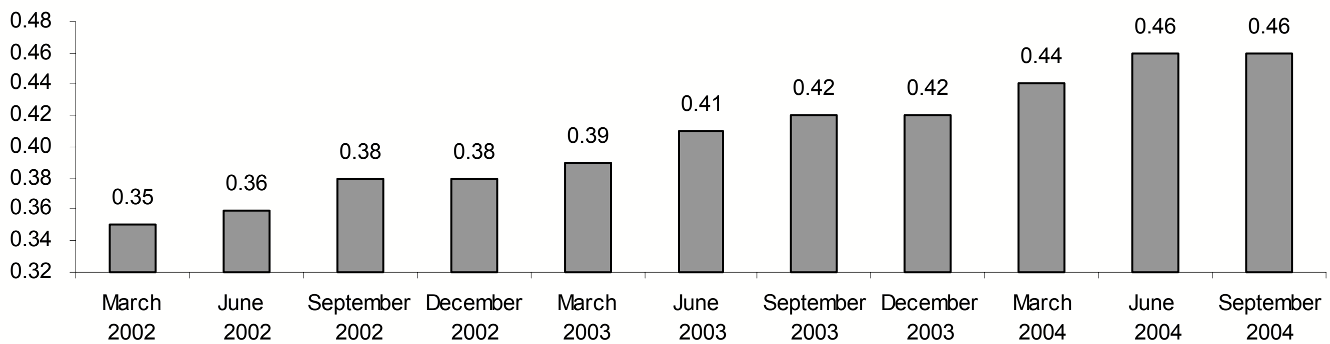
Source: Table 3

Figure K
Workers' Compensation Costs for State and Local Employees, March 2002 - September 2004 (in Dollars per Hour Worked)



Source: Table 3

Figure L
Workers' Compensation Costs for All Non-Federal Employees, March 2002 - September 2004 (in Dollars per Hour Worked)



Source: Table 3

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, that these expenditures fluctuated between $0.36 and $0.38 per hour between September 2002 and December 2003, and that costs increased for three quarters and reached $0.41 per hour in September 2004 (Figure K and Panel B of Table 3). Using this measure of costs, since September 2003, workers' compensation costs for state and local government employers have been at their highest level since the series began in 1991 (Burton 2004, Figure E).

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 $0.46 per hour worked in September 2004 (Figure L and Panel C of Table 3). Using this measure of costs, since September 2003, workers' compensation costs for all non-federal employees have been at their highest level since the series began in 1991 (Burton 2004, Figure F).

RECENT INCREASES 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 4 and 5 indicate the increases 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 2.46 percent of payroll in September 2004 (Figure G and Panel A, Column (1) of Table 4). This represents a cumulative increase of costs of 25.5 percent over the eleven quarters (Table 4, 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, 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 4, Panel A, Column (3)). The data indicate that the annual rate of increase in the employers' costs of workers' compensation in the private sector fluctuated during 2003 and 2004 between 7.1 percent and 11.7 percent. There is no obvious trend in the private sector during the last two years towards faster or slower rates of increase in workers' compensation costs measured as a percent of payroll.

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 1.53 percent of payroll in September 2004 (Figure H and Table 4, Panel B, Column (1)). This represents a cumulative increase in costs of 11.7 percent over eleven quarters (Table 4, 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 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 M and Table 4, Panel B, Column (3)). The data indicate that the annual rate of change in the employers' costs of workers' compensation in the state and local government sector fluctuated during 2003, ranging from a 2.2 percent increase from March 2002 to March 2003 to a 0.7 percent decrease

Notes for Table 3

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 12).
(8) Results in rows (2), (6), (11), and (12) were calculated by Florence Blum and John F. Burton, Jr.

Table 4 - Employers' Cost of Workers' Compensation as Percent of Gross Earnings (Payroll): Increases Since March 2002

Panel A: Private Industry Employees

	Employers' Costs as % of Payroll (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
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%

Panel B: State and Local Employees

	Employers' Costs as % of Payroll (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
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%

Panel C: All Non-Federal Employees

	Employers' Costs as % of Payroll (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
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%

Source: Column (1) from Table 3, Row (12) of Panels A, B, and C.

from December 2002 to December 2003. The annual rate of increase in the employers' costs of workers' compensation in the state and local government sector then accelerated to 5.0 percent or more in the first three quarters of 2004.

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 2.27 percent of payroll in September 2004 (Figure I and Table 4, Panel C, Column (1)). This represents a cumulative increase of costs of 22.7 percent over the eleven quarters (Table 4, Panel C, Column (3)). 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 M and Table 4, Panel C, Column (3)). The annual rate of increase in the employers' costs of workers' compensation for all non-federal employees fluctuated during 2003, although the rate of increase was lower in the last two quarters than in the first half of the year. The annual rate of increase in the employers' costs of workers' compensation for all non-federal employees then accelerated for two quarters and reached 10.0 percent in June 2004. However, the annual rate of increase for all non-federal employees then dropped to 6.6 percent in the four quarters ending in September 2004, the lowest rate of increase in two years.

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 \$0.47 in September 2004 (Figure J and Panel A, Column (1) of Table 5). This represents a cumulative increase of costs of

Table 5 - Employers' Cost of Workers' Compensation in Dollars Per Hours Worked: Increases Since March 2002

Panel A: Private Industry Employees

	Employers' Costs in Dollars (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
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%

Panel B: State and Local Employees

	Employers' Costs in Dollars (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
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%

Panel C: All Non-Federal Employees

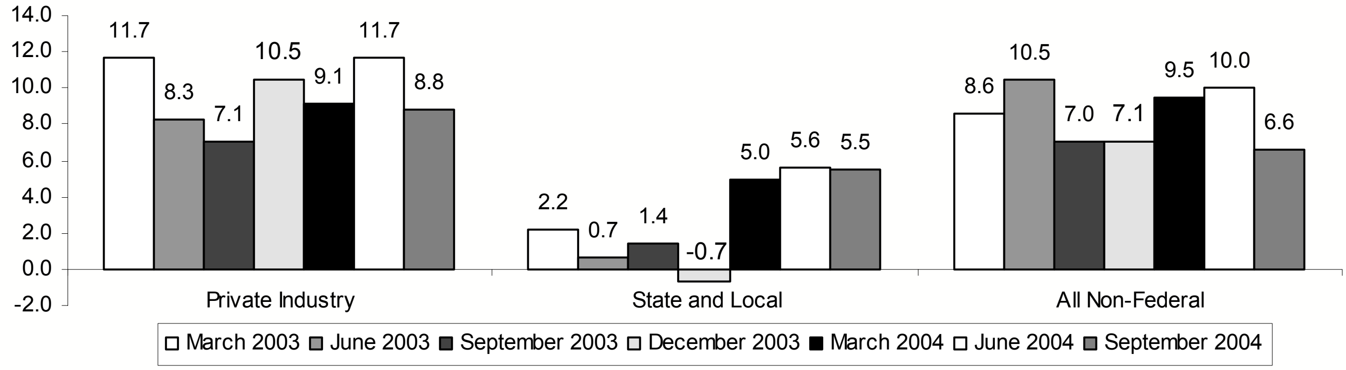
	Employers' Costs in Dollars (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
March 2002	0.35		
June 2002	0.36	2.9%	
September 2002	0.38	8.6%	
December 2002	0.38	8.6%	
March 2003	0.39	11.4%	11.4%
June 2003	0.41	17.1%	13.9%
September 2003	0.42	20.0%	10.5%
December 2003	0.42	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%

Source: Column (1) from Table 3, Row (9A) of Panels A, B, and C.

34.3 percent over the eleven quarters (Table 5, 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, 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 N and Table 5, Panel A, Column (3)). The data indicate that the annual rate of increase in the employers' costs of workers' compensation in the private sector fluctuated during 2003 and 2004, ranging from 10.5 percent to 14.6 percent. There is no obvious trend in the private sector during the last two years towards faster or slower rates of increase in workers' compensation costs measured as dollars per hour worked.

State and Local Employees. The employers' costs of workers' compensation per hour worked increased from $0.34 in March 2002 to $0.41 in September 2004 (Figure K and Table 5, Panel B, Column (1)). This represents a cumulative increase of costs of 20.6 percent over eleven quarters (Table 5, 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 N and Table 5, Panel B, Column (3)). The data indicate that the annual rate of change in the employers' costs of workers' compensation in the state and local government sector decelerated throughout 2003, starting with a 5.9 percent increase from March 2002 to March 2003 until slowing to a 2.7 percent increase from December 2002 to December 2003. The annual rate of increase in the employers' costs of workers' compensation in the state and local government sector measured in dollars per hour worked in-

Figure M
Workers' Compensation Costs as Percent of Payroll:
Annual Percentage Rates of Increase



Source: Table 4.

creased by 7.9 to 8.3 percent in the first three quarters of 2004, which means this sector is experiencing generally higher rates of increase this year (unlike the private sector).

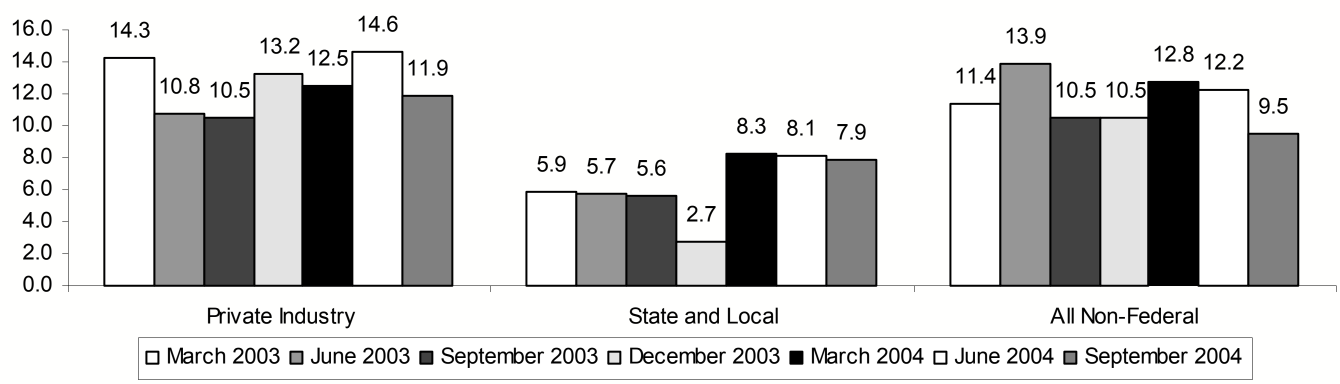
All Non-Federal Employees. The employers' costs of workers' compensation per hour worked increased from $0.35 in March 2002 to $0.46 in September 2004 (Figure L and Table 5, Panel C, Column (1)). This represents a cumulative increase of costs of 31.4 percent over the eleven quarters (Table 5, Panel C, 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 N and Table 5, Panel C, Column (3)). The annual rate of increase in the employers' costs of workers' compensation for all non-federal employees fluctuated during 2003 and 2004 between 9.5 percent and 13.9 percent. There is no obvious trend during the last two years towards faster or slower rates of increase in workers' compensation costs measured as dollars per hour worked for all non-federal employees.

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 March 1991 and March 2004, all non-federal employers' expendi-

Figure N
Workers' Compensation Costs in Dollars Per Hour Worked:
Annual Percentage Rates of Increase



Source: Table 5.

tures for workers' compensation increased from $0.32 to $0.44 per hour worked, which represents a 38 percent increase (Table 3 and Burton 2004, Table 1). In isolation, a 38 percent increase in workers' compensation costs per hour worked may sound like a substantial increase. However, over that same period – between March 1991 and March 2004 – the gross earnings (payroll) paid by employers for all non-federal employees increased from $13.30 to $19.97 per hour worked (Table 3 and Burton 2004, Table 1), which is a 50 percent increase. Obviously, workers' compensation costs per hour worked have increased much 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 represented 2.41 percent of payroll in March 1991 for employers of all non-federal employees and 2.20 percent of payroll in March 2004 provides information more useful than simply stating that workers' compensation costs per hour increased by 38 percent over those 14 years.

The current article plus the earlier article (Burton 2004) 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, increased from 2001 to June 2004, and then declined by September 2004. For state and local government employees, where the data are only available since 1991, the pattern is roughly similar: employers' costs increased through 1995, declined until 2000, and then increased in an irregular pattern through September 2004. Finally, for all non-federal employees (which primarily consists of private sector employees), the data series shows an increase in employers' costs between 1991 and 1994, then a decline from 1994 to 2002, followed by an increase through June 2004 and a decline in September 2004. While the patterns differ slightly among sectors in recent years, the experience for the most inclusive category of employers – namely, all non-federal employees – indicates that the employers' costs of workers' compensation have been increasing in the last few years in the range of 7 to 14 percent annually (Figures M and N).

While these recent increases in costs are noteworthy, the run-up in costs for private sector employers nonetheless meant that workers' compensation costs as a percent of payroll in September 2004 (2.46 percent) were lower than in any year between 1990 and 1997. Likewise, the employers' costs of workers' compensation as a percent of payroll in the state and local sector (1.53 percent) were lower in September 2004 than in any of the years between 1993 and 1996, while the employers' costs as a percent of payroll for all non-federal employers (2.27 percent) were lower in September 2004 than in all the years between 1991 and 1997.

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