

NCCI study

U.S. Workplace Safer Than Ever

Workers' compensation frequency has fallen almost every year for over two decades, and by nearly one-third just in the last 10 years, according to a recent report from the National Council on Compensation Insurance (NCCI). A slightly different metric used by the U.S. Bureau of Labor Statistics documents a 30% decrease since 2006.

NCCI says recent declines in workplace injuries have coincided with a period of significant change in the U.S. labor force. Specifically, the number of workers who are at least 55 years old has doubled since 2000, women now make up nearly 50% of the labor force, and the share of service sector employment is at near record.

Although each of these changes has historically been associated with lower rates of injury, NCCI reaches a different conclusion. "Workforce demographics do matter to injury frequency, but demographic change does not explain declining injury frequency during the past decade," the agency says. It notes incidence rates have declined 1% to 4% annually (usually 2%–3%) across-the board for all worker demographic categories and for all three of the most -common causes of injury.

In sum: frequency decline is mainly the result of lower incidence rates for all workers, and not the result of changing workplace demographics. NCCI says the aging workforce has had almost no net effect on frequency decline. The agency also reports younger prime-age workers have lower rates of injuries than older workers, a reversal from a decade ago.

In another challenge to conventional thinking, NCCI says it remains true that men have higher rates of injuries than women, but the gap is shrinking as women move into jobs that have higher rates of contact-injuries, such as construction and manufacturing.

In its comprehensive report on the nature and state of the U.S. workplace, NCCI documents that nearly 85% of workplace injuries are caused by overexertion, contact with objects or equipment, and falls, slips and trips. Among these three major causes of injury, only falls, slips and trips make up a higher share in 2017 than in 2006, - meaning the incidence rates for falls, slips, and trips has declined less than the overall incidence rate

The most prominent trend in the U.S. labor force over the past two decades is the increasing share of workers aged 55 and older— from about 12% of the labor force in 1996 to 17% in 2006, and 22% in 2016. The U.S. Bureau of Labor Statistics projects this trend will continue over the next decade. Another trend, often observed and lamented, is the decline in the share of jobs from goods-producing sectors to service sectors; from Manufacturing, Construction, Natural Resources and Mining, to service sectors. Jobs in Manufacturing declined nearly 20% over the past decade and are expected to drop another 15% in the next 10 years.

But perhaps the most remarkable change in recent years has been the steady decline in workplace injury rates. NCCI reports that as recently as 1994, workers under age 35 suffered about 280 workplace injuries and illnesses per 10,000 FTE workers, while workers aged 45–64 suffered about 200 injuries and illnesses per 10,000 FTE.

By the late 2000s, both incidence rates had declined to slightly over 100 – a reduction of almost 50% for older workers, and an even larger reduction of nearly 65% for younger workers.

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CASE LAW UPDATE

By Lindsay Underwood



New Guidelines for the Coming and Going Rule

The North Carolina Court of Appeals recently issued a new opinion concerning the coming and going rule. In the case of *Wright v. Alltech Wiring & Controls*, the Court provided some guidance concerning the contractual duty and traveling salesperson exceptions to the rule.

The deceased worked as an estimator, which required him to visit various job sites. Defendants provided the deceased with a company-owned work vehicle. On most days, the deceased would stop at the office either prior to, or after leaving, a job site. On February 1, 2016, the deceased left the office and began driving home in the company vehicle. On his way, he stopped at a store for a quick personal errand, and then returned to the route. The deceased was involved in a motor vehicle accident that occurred on his route and died as a result of his injuries. The collision took place on a road the deceased typically used during his commute.

Plaintiff, the deceased's wife, filed a Form 18 claiming entitlement to death benefits. Plaintiff argued that the deceased was in the course and scope of his employment since he was driving a company vehicle. The claim was denied. The Deputy Commissioner upheld the denial of benefits and Plaintiff appealed. The Full Commission affirmed the Deputy Commissioner's holding.

Ultimately, the Court of Appeals also upheld the denial, finding that the contractual duty and traveling salesman exceptions to the coming and going rule did not apply. Under the contractual duty exception, an injury is compensable where the employer furnishes the means of transportation as an incident to the employment contract, or where the cost of transporting the employees to and from their work is made an incident to the employment contract.

The Court found that the deceased's use of the company work truck was permissive, not required, and that the usage was revocable at will by Defendants. The Court held that, because use of the work vehicle was simply a gratuitous accommodation

that benefited both parties, it did not rise to an implied contract, and the exception did not apply.

Under the traveling salesperson exception, it is typically held that if travel is contemplated as part of the job, an accident sustained while in travel is compensable. However, because traveling to and from work is common to most every job, an injured employee who has fixed hours and a fixed place of work does not fall within the traveling salesperson exception.

The Court stressed that the standard requires that the injury must arise during travel which is connected to the employment. Since deceased had a fixed work location with fixed hours, and typically started and ended his work day at an office, he had concluded work when the accident occurred on his drive home. Further, the Court pointed to the stop at a store to show that the deceased was not participating in work-related activities at the time of the collision.

This case is a reminder that, simply because an accident occurs in a company vehicle, it is not necessarily compensable. Cases involving a company vehicle are fact specific, and the compensability of the case could depend on the usage of the vehicle, availability of a fixed location for job activities, and an employee's activities immediately preceding an accident.

Interestingly, the Court of Appeals did not mention the *Hollin v. Johnson County Council on Aging* case. In that case, the employee was using a personal vehicle for the job, and his injury was found to be in the course of his employment. The question remains as to why an employee using a personal vehicle may be covered, but an employee in a company vehicle may not.

Lindsay Underwood, an attorney in Teague Campbell's Raleigh office, is a graduate of Cleveland State University and Wake Forest University School of Law.

Our 30th Anniversary

Since the North Carolina Association of Self-Insurers was incorporated in May 1991, we are coming up on our 30th anniversary and have started planning on how best to mark the event. The most appropriate time and occasion to celebrate the milestone would be at our 2021 annual conference. Two years from now may seem like a long way off, but we want to give careful thought to how we should acknowledge and thank our supporters and to how we should proceed in the future.

To paraphrase the well-known Buick ad, self-insurer associations of today are not what they were in your dad's or older sibling's time. For one, fewer employers today are attracted to self-insurance for the simple reason they can buy commercial insurance coverage at very competitive rates, thanks to the long, sustained soft market. Another factor is the much-noted loss of manufacturing jobs which have been replaced by less-risky service jobs which, in turn, diminishes the spotlight on workers' compensation.

The net effect – some would say the devastating effect – is that all over the country fewer and fewer employers are joining state associations or attending annual conferences. The absence of employers makes the conferences less attractive to exhibitors. One need not be a financial wizard to quickly see that dwindling

registration fees from employers and diminishing fees from vendors add up to financial trouble for state associations.

Although NCASI has been spared the difficulties besetting other state associations, we are not immune and, indeed, can already see the writing on the wall. Our association is in the best financial shape of its nearly 30-year history but we are attracting fewer employers than we did in our heyday. It is imperative we draw more employers to the conference. Over the next several months I will be calling on you for your ideas and suggestions.

Finally, let me avail this opportunity to thank two of our former presidents who steered us through our initial years and into prosperous times. Jay Norris of Duke Energy and Don Carter of Columbia Forest Products always supplied a steady hand, always contributed what was needed. We wish them a joyous retirement..

With very best wishes,
Stephanie Gay



Liberty Mutual

Top Causes of Disabling Injuries

According to Liberty Mutual, the top 10 causes of workplace injuries and their subsequent cost to U.S. companies include:

1. Overexertion involving outside sources. This includes injuries related to lifting, pushing, pulling, holding or carrying. Cost: *\$13.1 billion*
2. Falls on the same floor level. This may include slipping on a wet floor. Cost: *\$10.4 billion*
3. Struck by object or equipment including falling objects from above. Cost: *\$5.2 billion*
4. Falls to lower level from a ladder or platform. Cost: *\$4.9 billion*
5. Other exertions or bodily reactions from activities. These may include crawling, reaching, bending, twisting, climbing, kneeling, or walking. Cost: *\$3.7 billion*
6. Roadway incidents involving motorized land vehicle. Cost: *\$2.7 billion*
7. Slip or trip without fall. This may include tripping over an object but not falling to the ground. Cost: *\$2.2 billion*
8. Caught in or compressed by equipment or object. This may include becoming caught in rollers or gears. Cost: *\$1.9 billion*
9. Repetitive motions involving microtasks. Working on an assembly line is often a cause of this injury. Cost: *\$1.63 billion*
10. Struck against object or equipment. This may include walking into a door or drawer. Cost: *\$1.2 billion*

Risk & Insurance quotes James Merendino, vice president and general manager of GRS Risk Control at Liberty Mutual, as saying almost all employers would benefit from adopting the following approach:

- Establish a strategic safety plan. This document identifies the top safety challenges facing the company and the ways these will be mitigated and managed. The plan should focus on reducing existing risk, as well as those from any

Continued on next page

coming up

March 25-27, 2020

NCASI Annual Conference

Holiday Inn Resort, Wrightsville Beach

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The employers' voice in workers' comp

Top Causes of Disabling Injuries Continued from page 3

new operations or technologies.

- Set expectations. Senior management must take every opportunity to underscore and reinforce their total commitment to a safe working environment. Safety must be seen as a strategic priority and an enabler of company success.
- Directly involve front line employees in the strategic safety program. These are the people who do the work, and who understand how it can be done safely, and why shortcuts are sometimes taken.

The annual Liberty Mutual Workplace Safety Index is based on information from Liberty Mutual, U.S. Bureau of Labor Statistics and the National Academy of Social Insurance. The 2019 index is based on non-fatal 2016 injury data, with more than five days away from work. To allow for cost development, every index has been based on claims data three years prior to publication.

Update from The Commission

Former state representative Ken Goodman has been confirmed as a Commissioner at the Industrial Commission by unanimous vote in the House and Senate of the General Assembly on April 18, 2019. He previously served as a Democratic member of the General Assembly representing the 66th district in Montgomery, Richmond, and Stanly Counties.

James Gillen has also been confirmed by the General Assembly to serve as a Commissioner. He started working at the Industrial Commission in 1994, first as an agency legal specialist and then a special deputy commissioner, and was previously appointed as a Deputy Commissioner in 2005. He continued working as a Deputy Commissioner until his confirmation as a Commissioner in April 2019.

Former Commissioner Yolanda Stith's term ended in April 2019 and she no longer serves at the Industrial Commission. She has been replaced by Commissioner Myra Griffin, who also serves as Vice Chair of the Industrial Commission.