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## Workplace Injuries Drop, but Claims of Employer Retaliation Rise

By JAMES R. HAGERTY

The number of workplace injuries recorded by the federal government has dropped by 31% over the past decade.

But that improvement may not be what it seems, according to a growing group of workers who say companies are retaliating against them for reporting injuries in the first place.

About 100 federal and state court cases involving retaliation for workers' compensation claims were decided last year, roughly double the number a decade before, estimates Lex Larson, president of Employment Law Research Inc. Some lawyers attribute the increase to growing awareness among workers that they can seek redress in court.



Josh Ritchie for The Wall Street Journal

Rudolf Amaya says his employer harassed him after he reported a back injury he got on the job.

While employers say the decline in injuries shows that safety programs are paying off, unions and plaintiffs' lawyers counter that companies sometimes discourage workers from speaking up.

The U.S. Occupational Safety and Health Administration is taking a tougher line with employers and says too many injuries go unreported. The agency last year reminded employers that federal law bars them from retaliating against employees for reporting injuries. It also warned employers against offering bonuses or prizes for meeting safety goals if those incentives deter workers from reporting injuries.

"We don't believe most accidents happen because workers are careless," says Jordan Barab, a deputy assistant secretary at OSHA. "They happen because there are unsafe conditions in the workplace."

For private-sector employers, the number of injuries involving missed work days, job restrictions or transfers to different chores dropped to 1.8 per 100 full-time workers in 2011 from 2.6 in 2003, according to federal data. Safety experts say OSHA crackdowns and more

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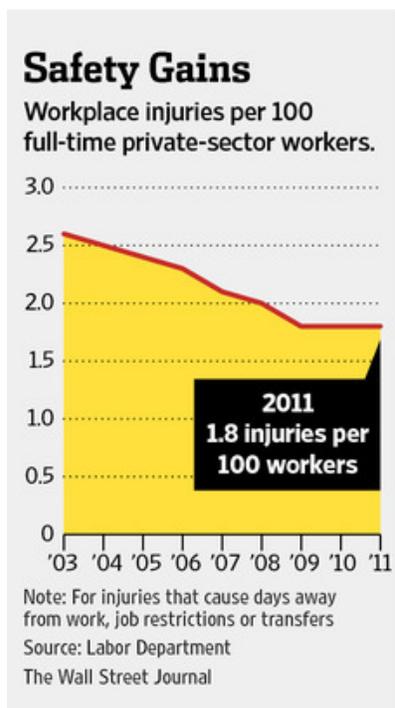
corporate focus on reducing hazards helped cut the injury rate. Also, legislation in many states has made it harder to qualify for workers' compensation, which has reduced the number of claims.

A benefit of the decline is that the average cost of workers' compensation per \$100 of payroll fell to \$1.79 last year from \$2.67 in 1994, according to John Burton, an economist and emeritus professor at Rutgers University.

The administration of President [George W. Bush](#) sought a cooperative approach between OSHA and employers.

But Democrats and unions pushed back with demands for a tougher line and pointed to academic studies finding that federal statistics understated the number of injuries, partly because the government relied on employers to keep track of injuries and because some, such as exposure to harmful chemicals, weren't immediately apparent.

OSHA has filed administrative cases against several railroads recently for alleged violations of federal safety laws.



The agency accused Union Pacific Railroad Co. of firing a conductor after he reported that an engineer had "banged his elbow against a steel armrest that was missing padding." OSHA ordered the railroad to pay more than \$390,000 to the conductor. Union Pacific is appealing the agency's findings.

Some employers respond to injuries by saying "it's your fault and you will be penalized," says Margaret Seminario, safety director at the AFL-CIO labor group. At a time of high unemployment and diminished union power, she says, some workers "are totally afraid to report injuries."

The U.S. Chamber of Commerce disagrees. "There are always going to be some small number of employers who may not do the right thing," says Marc Freedman, the business group's head of labor policy, but there is no evidence of a widespread effort to suppress reports. If anything, he says, companies may overreport injuries to avoid running afoul of complex regulations.

Employers say safety is a top priority. At a Guardian Industries Corp. glass plant in Carleton, Mich., a giant mirror mounted near the workers' main entrance is inscribed, "You are now looking at the person most responsible for safety."

HEI Hospitality LLC last year held a "Super Safety Bingo" program in which employees of the U.S. hotel operator could vie for prizes, including a Ford Mustang.

"If someone is injured, that hotel's associates are no longer eligible" for the bingo game, the rules stated. Many safety experts say such incentives create peer pressure that discourages employees from reporting injuries.

An HEI spokesman says the bingo program had ended and there was no specific reason for dropping it.

A 2011 study found signs that injuries were going unrecorded at some construction sites. Hester Lipscomb, a medical professor at Duke University, and colleagues surveyed 1,020 apprentice carpenters in the St. Louis and Chicago areas. Only about 47% said work-related injuries were reported all or most of the time in their work places.

The U.S. Government Accountability Office in 2009 said that more than a third of health practitioners surveyed were asked by company managers to provide treatment that wouldn't necessarily require a formal injury or illness report. The government doesn't require that a minor injury, such as a burn treated with a bandage, be recorded but does require recording for, say, a burn treated with prescription cream.

Though workers' compensation costs have fallen, legal disputes can be expensive.

Workers' comp programs are intended to avert costly legal battles over accidents, says Emily Spieler, a law professor at Northeastern University and former head of the West Virginia workers' comp program.

Instead, she says, "it's become incredibly contentious, to nobody's benefit."

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