



# Is The Recovery Of The Workers' Compensation System An Illusion?

Workers' Compensation

The present economic downturn has been compared to the Great Depression of the 1930s or the recession of the 1980s. The factors that existed during those financial cycles need to be compared to the present political and economic dynamic to determine whether or not history is repeating itself. Analysis of those two periods provides insight as to whether or not there will be a rebound or surge of claims in the future.

## THE GREAT DEPRESSION

The depression of the 1930s occurred when the workers' compensation program in the United States was in its infancy. The benefits delivered were minimal. Occupational diseases were not included in most acts, the population had a lower life expectancy, early retirement plans did not exist, social security was not yet enacted, and Medicare was only an idea. The federal government poured dollars into the economy to construct public works [\[WPA\]](#) projects while limiting private debt. A consumer-based economy didn't exist at the time of the Great Depression.

## RECESSION OF THE 1980S

Likewise, the recession of the 1980s had its characteristics. During the 1980s, the populations most affected by layoffs were the labor force of post-World War II. The workers of that generation suffered from occupational exposure to many deleterious and carcinogenic substances. The occupational diseases were latent in manifestation and epidemic in proportion. Laid-off workers who became victims of the recession of the 1980s participated in a surge of litigation, both workers' compensation claims and third-party actions against the manufacturers of toxic substances. Litigation snowballed against, including [asbestos](#) manufacturers, suppliers, and distributors because of the minimal money recovered in the ordinary workers' compensation claim. Asbestos litigation became "[the longest mass tort in history](#)." In the years following the 1980s, many workers separated from their jobs and did not return to employment. Instead, they collected both workers' compensation benefits and Social Security disability.

## MEDICAL COSTS

The medical costs incurred due to their occupational illnesses were intentionally [shifted from the workers' compensation program to the Social Security Medicare program](#). The Medicare Secondary Payer Act was enacted by Congress in 1980 for cost-shifting by employers and their workers' compensation insurance companies programs, [Medicare](#) and health group coverage, and pension offsets.

## LABOR FORCE

The current workforce, [now being laid-off](#), is composed of an entirely different demographic than what existed in the 1930s and the 1980s. The social and political factors are far different from what was facing the workforce of the prior recession/depression years. The [US Bureau of Labor Statistics](#) reported, "In January 2009, the unemployment rate of persons with a [disability](#) was 13.2 percent, compared with 8.3 percent for persons with no disability, not seasonally adjusted. The employment-population ratio for persons with a [disability](#) was 20.0 percent, compared with 65.0 percent for persons with no disability." The elderly have now been designated as a "[new class of workers](#)" as they return to the labor market out of economic desperation. The number of unemployed workers who are 65 years old and older now in the workforce, compared to a decade ago, has increased to 7.3% from 4.7%.

## AGING WORKFORCE

The census of workers [without employment opportunities](#) includes significant numbers of aging baby boomers who were about to seek retirement while looking forward to the "golden years." The erosion of planned

retirement savings requires that many older workers return to work. There is a reluctance to file claims. Therefore, fewer injured workers seek total disability payments under workers' compensation. [The stagnation of the administration of the workers' compensation system](#) makes it even more difficult for the elderly who are injured to navigate the system. This only adds to the claimant's frustration and encourages a greater reluctance to file a formal claim for benefits.

### **FEDERALIZED WORKERS' COMPENSATION SYSTEM**

Some workers' compensation insurance companies now involved in the compensation system have been nationalized by the federal government to the various stimulus and bailout programs. They lack funds to remain economically viable without further insurgence of capital from the federal government. The federal government is now a stakeholder in the process. Self-insured employers are becoming financially weaker. Corporate assets have been minimized by a lack of credit and the massive economic stock value decline. Municipal entities and others involved in joint insurance funds (JIFs) are now having difficulty maintaining economic viability. Because of the lack of tax revenues and federal support, State and local communities are on the verge of bankruptcy.

### **THE PRESENT SYSTEM BOGGED DOWN IN MEDICAL DEBT**

The present [ills of the American workers' compensation system](#) mirror the economic woes of the national economy. The last decade has demonstrated an accelerated decline in the system's functioning. It reflects what Paul Krugman, Professor of Economics and International Affairs at Princeton University, commented in the NY Times, that Americans have financial "illusions." "The bottom line is that there has been no wealth creation at all since the turn of the millennium: the net worth of the average American household, adjusted for inflation, is lower now than it was in 2001." The workers' compensation system is so bogged down in increasing medical debt that it cannot deliver benefits efficiently. The present compensation system can't be relied upon to rebound.

### **SAFER WORKPLACES**

Compounding this downturn in the financial sector is that [workplaces have become safer](#). Over the years, fatalities have declined, as reported by the [Bureau of Labor Statistics National Census of Fatal Occupational Injuries](#). As the United States becomes more of a service-based economy with a dwindling manufacturing sector, less injury risk exists in the occupational sector. The workplace has become safer, with fewer serious injuries and occupational illnesses.

### **ATTORNEY LAYOFFS**

The [corporate downturn has been reflected by the implosion of many defense law firms](#) that have reduced their staff. Over a thousand lawyers were laid-off in a single day by major defense firms. The legal market restructuring is the result of a domino effect of the downsizing of corporate America. Representing injured workers and defending compensation claims on behalf of corporate America has taken a dramatic downturn. The trend is toward less attorney participation in the present system. [Even attorney layoffs](#) have become epidemic as the economic downturn intensifies.

### **REDUCED ADMINISTRATIVE STAFF**

Additionally, workers' compensation programs have been subject to insurance industry targeted reform. The number of claims eligible for benefits requiring legal representation has [declined substantially](#) as the California wave of reform swept toward the east coast. As the economies of the States shrink, so do the dollars available to operate the administrative programs for injured workers. California's workers' Compensation hearing offices will be closed twice a month. New Jersey, a state that has already imposed a hiring freeze, is about to similarly close State offices.

### **NATIONAL UNIVERSAL MEDICAL PROGRAM**

The workers' compensation system, based upon new national social and economic characteristics, is already being re-crafted into a [new program](#) requiring less need for litigation support. Unlike the Great Depression of the 1930s and the recession of the 1980s, the present downturn in workers' compensation claims activity is not

anti-cyclical. It is an illusion of grandeur to believe that the present workers' compensation system will recover or rebound in its present format. A national universal medical program will ultimately embrace the compensation delivery system and determine the future destiny of workers' compensation.

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