

WORKERS' COMPENSATION 1900-2016

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IN THE BEGINNING ...

The original workers' compensation law
bargains were a truce ... not a victory for labor

The National Commission Report -

“The protection furnished by workmen's compensation to American workers presently is, in general, inadequate and inequitable”

In 2010, looking back,

Peter Barth concluded -

“Taking account of the fact that workers had lost the right to sue their employers for death or disability due to employer negligence, it appeared that workers had struck a bad bargain when evaluated against the indemnity benefits that were provided under the state laws.”

National Commission's 5 Objectives -

- broad coverage of employees and work-related injuries and diseases;
- substantial protection against interruption of income;
- provision of sufficient medical care and rehabilitation services;
- encouragement of safety; and
- an effective system for delivery of the benefits and services.

Essential Recommendations -

- compulsory coverage - no exemptions
- broadening of employee choice for filing interstate claims
- full coverage for work-related diseases
- **adequate** weekly benefits for temporary total, permanent total and death benefits
- no arbitrary limits on the duration of benefits for permanent total disability or death
- full medical and rehabilitation benefits without limits on amount or duration.

Compliance with 19 essential recommendations

1972	6.79	the starting point		
1980	12.1			

AND AFTER 1990...

Year	Average compliance	Range of compliance
1972	6.79	1 (KS)-11.5 (NH)
1980	12.1	7 (MS)-16 (CO)
2004	12.85	7.25 (MS) -15.75 (NH & OR)

The ProPublica/NPR analysis of state compliance in 2015 showed that only seven states now follow at least 15 of the recommendations, and four states comply with less than half of them.

**INJURIES, DEATHS , CLAIMS, BENEFITS,
EMPLOYERS' COSTS & PREMIUMS HAVE
ALL DECLINED**

Reported deaths per 100,000 workers, 1910-2000

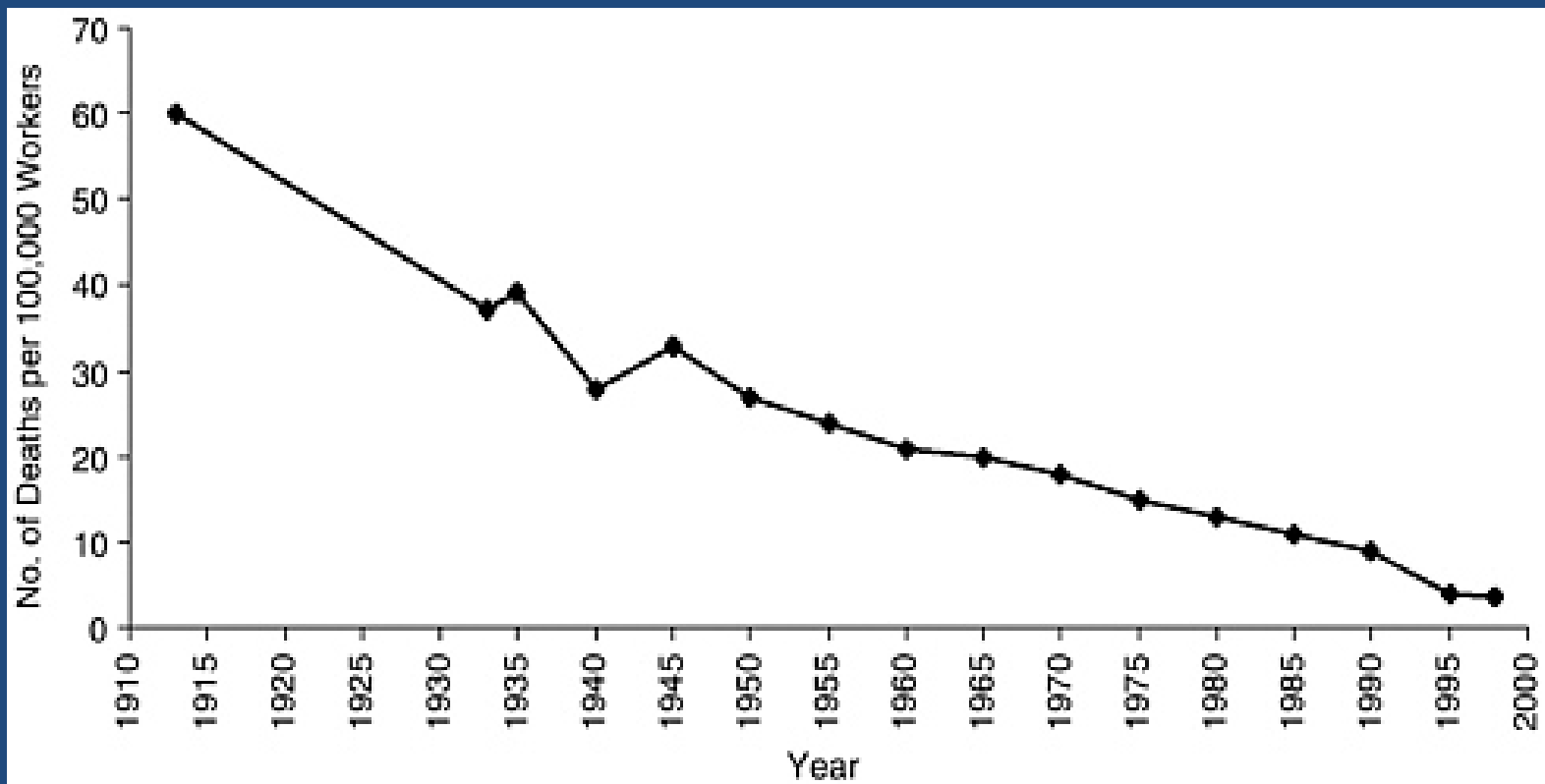
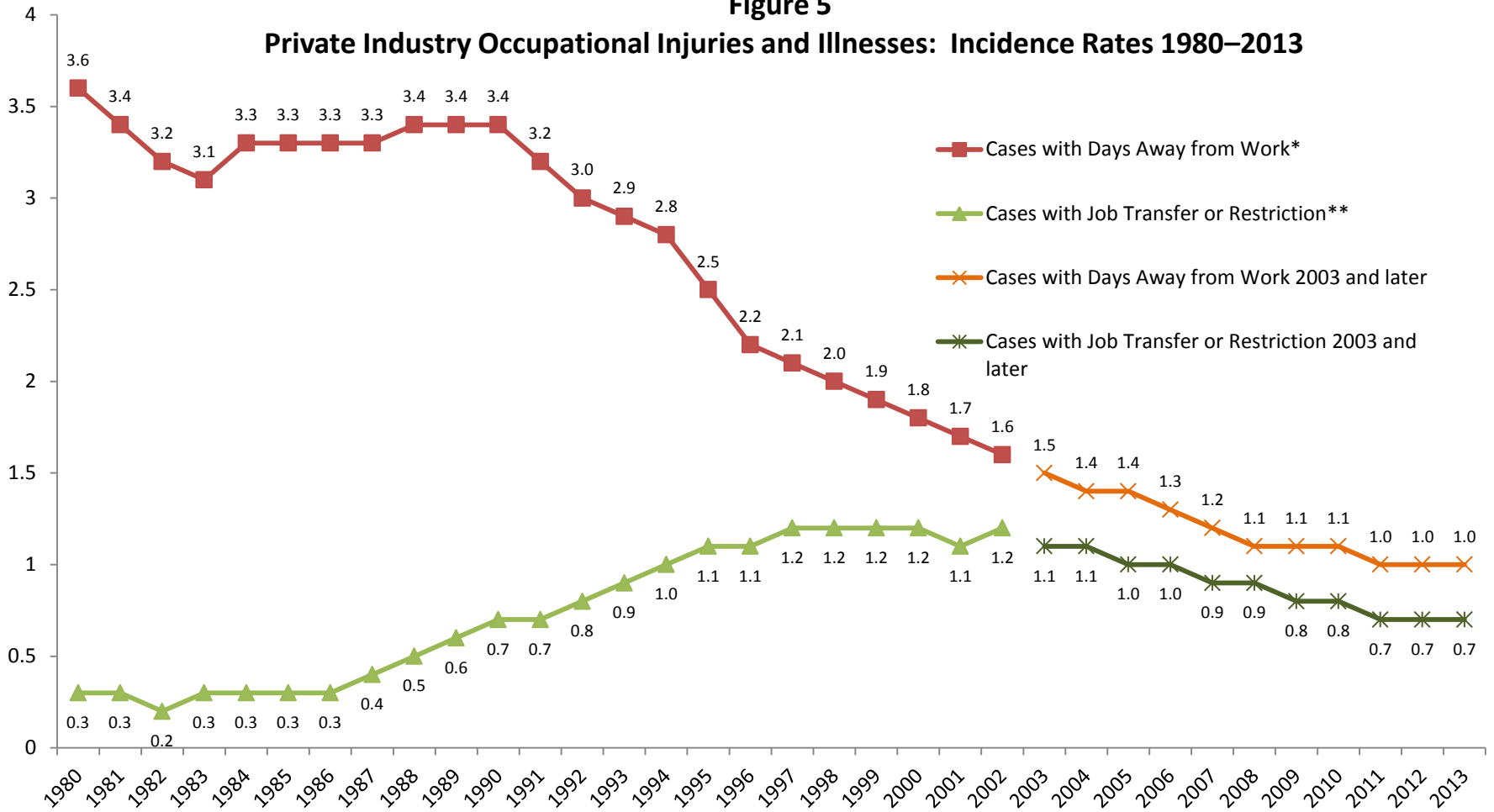


Figure 5

Private Industry Occupational Injuries and Illnesses: Incidence Rates 1980–2013



Note: The break in the graph indicates that the data for 2002 and beyond are not strictly comparable to prior year data due to changes in Occupational Safety & Health Administration recordkeeping requirements.

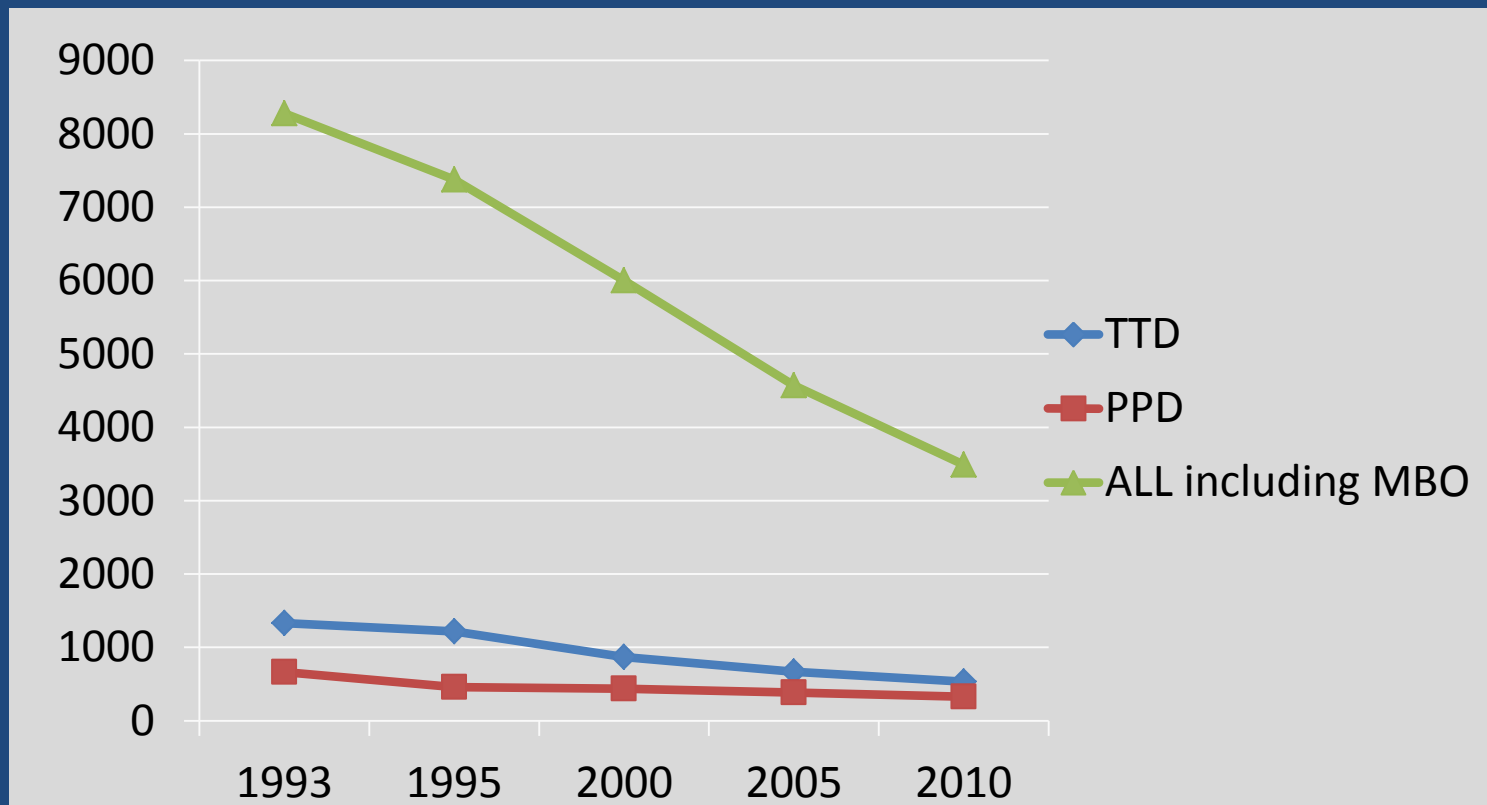
*Cases involving days away from work are cases requiring at least one day away from work with or without days of job transfer or restriction.

**Job transfer or restriction cases occur when, as a result of a work-related injury or illness, an employer or health care professional keeps, or recommends keeping an employee from doing the routine functions of his or her job or from working the full workday that the employee would have been scheduled to work before the injury or illness occurred.

Source: U.S. Department of Labor, 2014e

(NASI 2016 report)

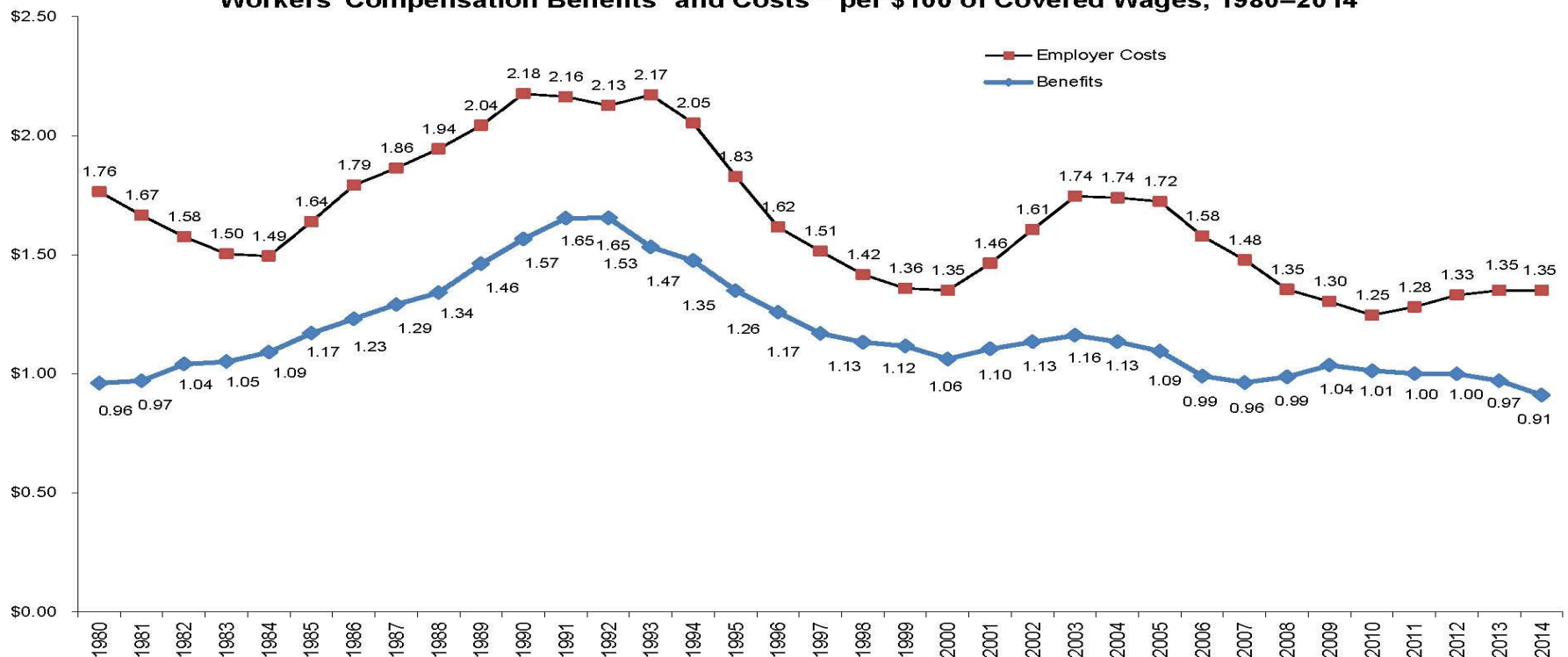
Claims per 100,000 insured workers declined steadily as well (Private Carriers, 1993-2010, 37 jurisdictions)



Percent decline 1993-2010: TTD 40% (1331 to 532); PPD 50% (664 to 339); ALL 42% (8279 to 3491)

Benefits per \$100 of wages peaked in 1992

Figure 1
Workers' Compensation Benefits* and Costs per \$100 of Covered Wages, 1980–2014**



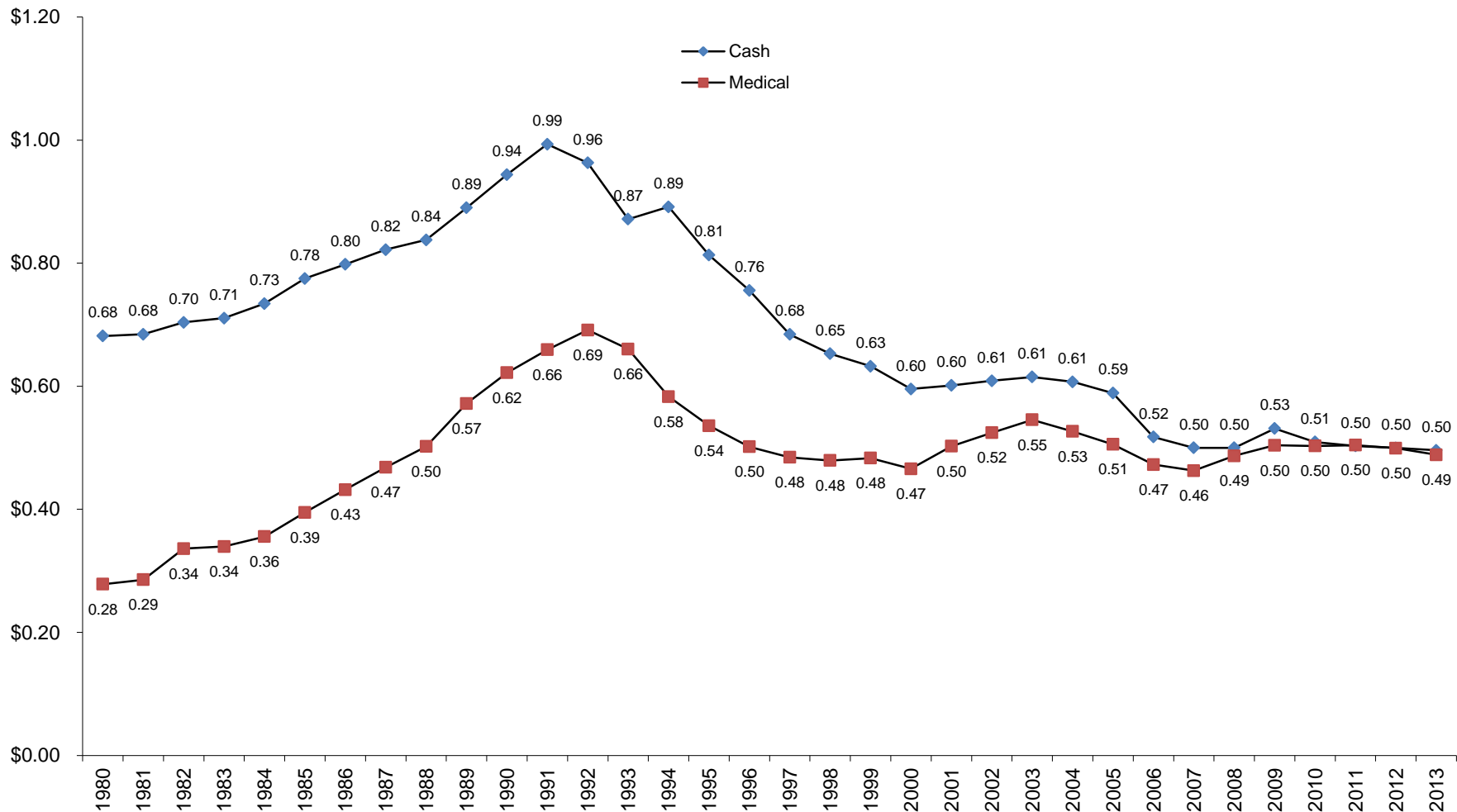
* Benefits are calendar-year payments to injured workers and to providers of their medical care.

**Costs for employers who purchase workers' compensation insurance include calendar-year insurance premiums paid plus benefits paid by the employer to meet the annual deductible, if any. Costs for self-insuring employers are calendar-year benefits paid plus the administrative costs associated with providing those benefits.

Source: National Academy of Social Insurance estimates.

Workers' Compensation Medical and Cash Benefits Per \$100 of Wages, 1980–2013 (NASI 2016)

Figure 2
Workers' Compensation Medical and Cash Benefits per \$100 of Covered Wages, 1980-2013

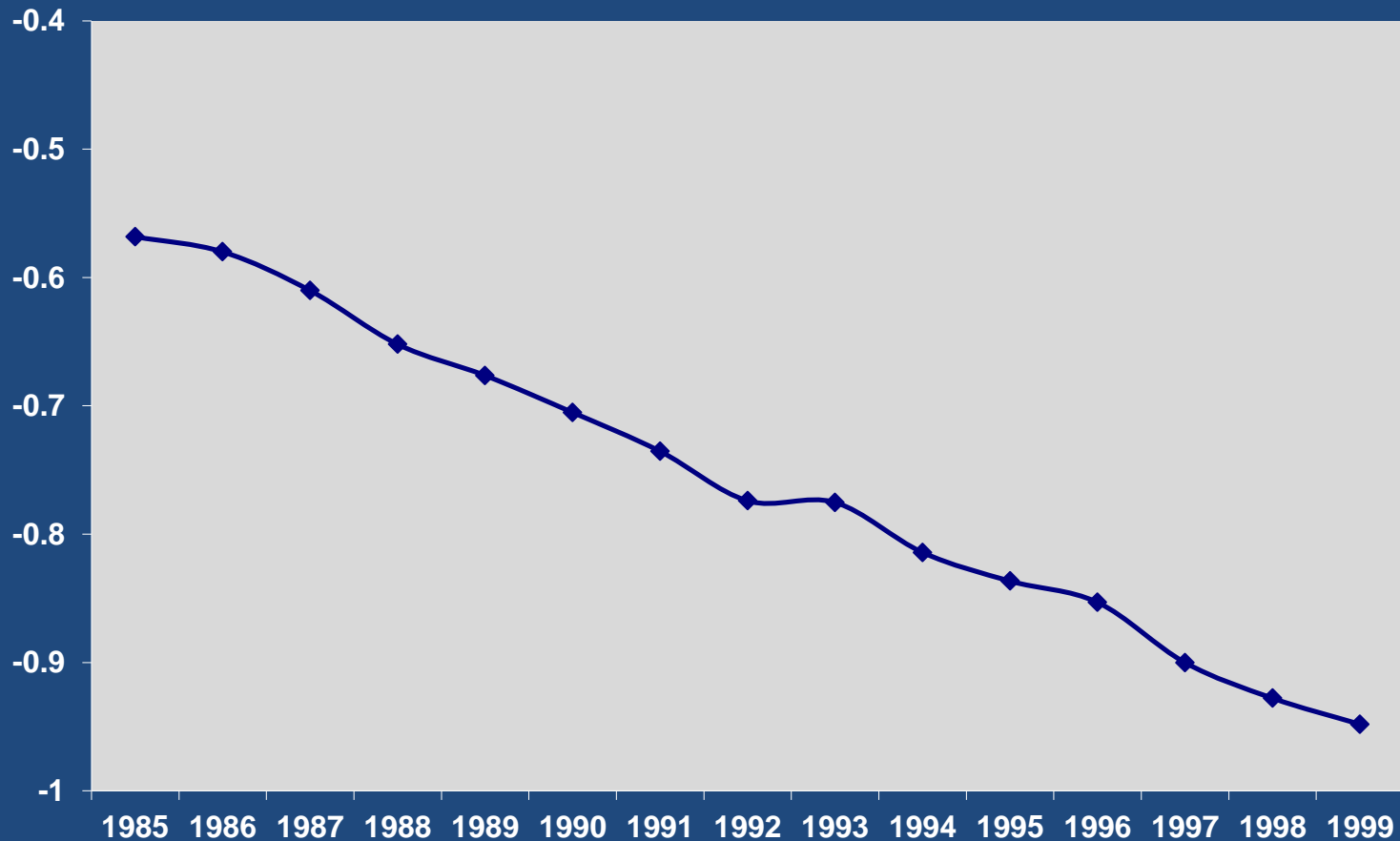


Source: National Academy of Social Insurance estimates.

The rules also changed...

- Higher burdens or nature of proof required
- Rising barriers to proof of causation and dual denial
- Safety rule & drug testing defenses
- Elimination of compensation for specific conditions
- Changes in standards for medical and expert proof
- Increasing reliance on the AMA Guides to the Evaluation of Permanent Impairment
- Increasing oversight of medical treatment and evaluation
- And then... Opt-Out in OK

Effects of changes on compensability: Guo & Burton's Workers' Compensation Compensability Index, 1985-1999 (2010)



Beginning in the 1980s, studies have shown that many diagnosed work-related conditions do not result in compensation:

“[I]rrespective of the methodology or data source, studies consistently demonstrate that workers’ compensation claims actually filed are substantially lower than the number of legitimate claims that would have been expected based on other data sources. They also indicate that other reporting systems, including OSHA logs, significantly underreport the incidence of workplace injuries.”

Spieler & Burton, The Lack of Correspondence Between Work-Related Disability and Receipt of Workers’ Compensation Benefits, AJIM 2011

Why would workers fail to file?

- Ignorance of the system
- Complexity of the system
- Ignorance of work-relatedness
- Stigma
- Intentional avoidance of the system
- Fear of retaliation from employer for at-will employees
- Pressure from co-workers or employer to underreport
- Refusal (ignorance) of health provider to document work-relatedness

**A REMINDER : WORK IS STILL
DANGEROUS FOR MANY WORKERS**











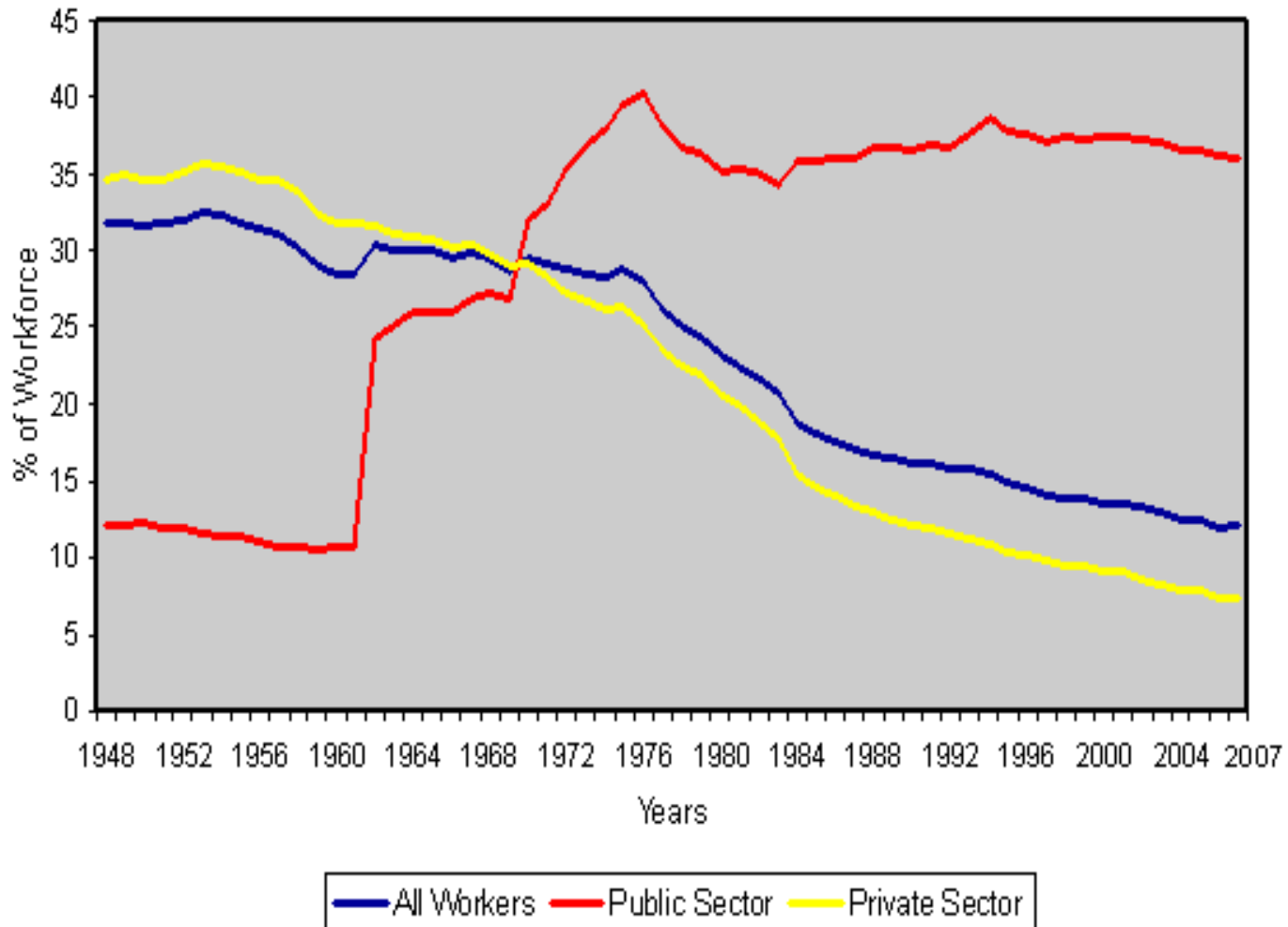
AND
HEAT THIS SIDE DOWN
REMOVE PLASTIC COVER
PICK UP HERE

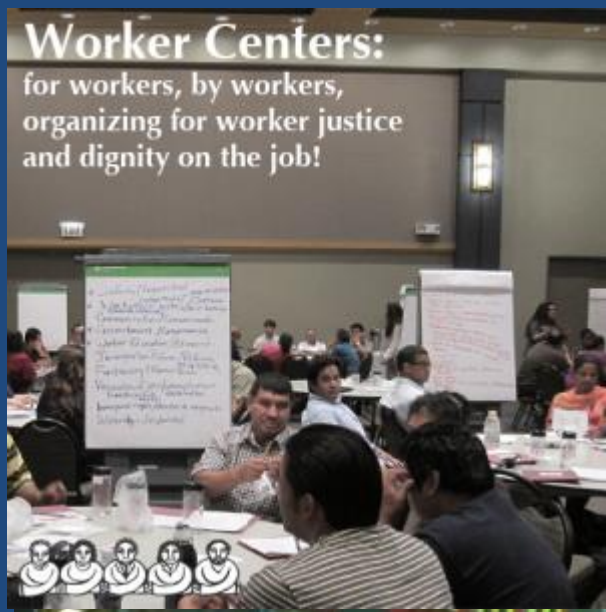
PICK UP HERE
HANDLE CAREFULLY:
CONTAINS HOT OIL AND STEAM



**WORKERS' ALLIES HAVE GROWN
WEAKER, DESPITE THE GROWTH OF
ALT-LABOR**

% of Workforce in Unions 1948-2007





**AND THE CURRENT POLITICS ARE
ARRAYED AGAINST WORKING PEOPLE -**

SO... WHAT IS TO BE DONE?