OFFICE OF INSPECTOR GENERAL
UNITED STATES POSTAL SERVICE

Federal Employees' Compensation Act Reform

White Paper

Report Number HR-WP-14-003-R

August 20, 2014

OFFICE OF INSPECTOR GENERAL
UNITED STATES POSTAL SERVICE

Executive Summary

The Postal Service paid about $1.3 billion in workers' compensation claims and $67 million in administrative fees in chargeback year 2013.

Enacted in 1916, the Federal Employees' Compensation Act (FECA) provides medical, compensation, death, and vocational rehabilitation benefits to civilian federal employees who sustain injuries — including occupational disease — because of their employment with the federal government. The U.S. Congress amended FECA in 1974 to provide continuation of pay[1] (COP), authorize employees to select their own physicians, and eliminate reduced benefits after age 70. Since then, Congress has not significantly reformed FECA.

The U.S. Department of Labor (DOL) Office of Workers' Compensation Programs has the exclusive authority to administer, implement, and enforce FECA. The DOL compensates providers, claimants, and beneficiaries. The U.S. Postal Service later reimburses the DOL for all workers' compensation claims, including administrative fees, through a process known as "chargeback billings."

The U.S. Bureau of Labor Statistics calculates private industry workers' compensation costs per employee workhour as 73 cents[2] for the production, transportation, and material moving occupational group, which is the occupational category most aligned with postal workers.

Postal Service management calculated workers' compensation expenses to be significantly higher at about $1.16[3] per employee hour for FY 2013.

The Postal Service paid about $1.3 billion in workers' compensation claims and $67 million in administrative fees in chargeback[4] year 2013. In addition, as of June 30, 2014, the estimated workers' compensation liability was about $17.8 billion; and as of June 2013, the Postal Service had about 16,380 disabled employees on the periodic roll.[5] To address declining revenue and mail volume, the Postal Service has successfully decreased its number of employees from 765,088 in 2008 to 617,714 in 2013 through attrition and retirement incentives. Despite the Postal Service's efforts to decrease the number of employees, its workers' compensation costs have increased 35 percent.

The higher workers' compensation expense could be attributed to a number of factors, including: (1) the reduced number of light/limited duty positions available because of automation and lower mail volume; (2) an older workforce, which experience greater impairments from injuries and take longer time to recover; and (3) increased costs due to cost of living adjustments. In addition, workers' compensation fraud is

1 COP provides claimants with a continuation of their regular pay for up to 45 calendar days of wage loss due to disability and/or medical treatment after a job-related injury or illness.
2 U.S. Bureau of Labor Statistics: Employer Costs For Employee Compensation News Release, September 2013.
3 Workers' compensation cost per workhour calculated using fiscal year (FY) 2013 expenses and total workhours.
4 Claims the DOL pays on behalf of Postal Service employees and the assessed adminisrative fee for the period July 2012 through June 2013.
5 Employees who are receiving workers' compensation benefits and have disabilities that are expected to be permanent or prolonged (60-90 days).

In FYs 2012 and 2013, OIG special agents obtained $51.9 million in medical and disability judgments and halted future workers' compensation losses of $289.7 million.

costly to the Postal Service. In FYs 2012 and 2013, U.S. Postal Service Office of Inspector General special agents obtained $51.9 million in medical and disability judgments and halted future workers' compensation losses of $289.7 million.

The Postal Service has limited cost containment options without legislative changes to FECA. To control workers' compensation costs, FECA reform should include practices used in state government and the private sector, such as:

- Limits on the duration and amount of benefits.
- Settlements and buyouts.
- Employer-selected physicians.
- Return to work and rehabilitation programs.
- Generic drug requirements.

In addition, reform should include collection of COP in cases involving third-party liabilities, changes to the assessment of administrative fees, and the use of predictive modeling and nurse case managers. However, there are political, employee, and union considerations that could make it challenging to amend FECA to include these reforms. If these changes could be adopted, these significant workers' compensation costs would become much more in line with those of state governments and the private sector.

Hover over the letter carrier…

Transmittal Letter

OFFICE OF INSPECTOR GENERAL
UNITED STATES POSTAL SERVICE

August 20, 2014

MEMORANDUM FOR: ROSEMARIE FERNANDEZ
VICE PRESIDENT, EMPLOYEE RESOURCE MANAGEMENT

E-Signed by Janet Sorensen
ERIFY authenticity with eSign Deskto

FROM: Janet M. Sorensen
Deputy Assistant Inspector General
for Revenue and Resources

SUBJECT: White Paper – Federal Employees' Compensation Act Reform (Report Number HR-WP-14-003-R)

Attached are the results of our review of the U.S. Postal Service's Workers' Compensation Program Follow-Up: Federal Employees' Compensation Act (FECA) Reform (Project Number 14YG009HR000). Workers' compensation is a significant component of the Postal Service's personnel costs. This white paper provides a summary of FECA reform proposals and an update on Workers' Compensation Program costs and liabilities.

If you have any questions or need additional information, please contact Monique P. Colter, director, Human Resources and Support, or me at 703-248-2100.

Attachment

cc: Corporate Audit and Response Management

Executive Summary

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Observations

As of June 30, 2014, the estimated present value of workers' compensation liability is about $17.8 billion.

Introduction

This white paper presents the results of our review of the U.S. Postal Service's Workers' Compensation Program Follow-Up: Federal Employees' Compensation Act (FECA) Reform (Project Number 14YG009HR000). We conducted this review to summarize FECA reform proposals presented in multiple U.S. Postal Service Office of Inspector General (OIG) reports[6] and to provide updated Postal Service Office of Workers' Compensation Program (OWCP) costs and liabilities.

FECA, state governments, and the private sector all provide medical, compensation, death, and vocational rehabilitation benefits; however, state governments and the private sector have implemented practices to control the costs of these benefits. For example, state governments and the private sector limit the duration and amount of benefits, and allow settlements and buyouts as well as employer-selected physicians. In addition, they use nurse case managers and predictive modeling to help return employees to work faster, can negotiate administrative fees with third-party providers, and require the use of generic drugs.

Currently, the Postal Service pays an administrative fee and annual reimbursements[7] to the U.S. Department of Labor (DOL) for all workers' compensation benefits paid to or on behalf of Postal Service employees. As of June 2013, the Postal Service had about 16,380 disabled employees on the periodic roll. The Postal Service paid $67 million in administrative fees[8] and about $1.3 billion in workers' compensation claims[9] during chargeback year 2013.

To align the workforce with declining mail volume, the Postal Service has decreased the number of Postal Service employees by about 19 percent; however, workers' compensation outlays have increased by 35 percent since fiscal year (FY) 2008. See Appendix A for detailed information on workers' compensation costs. As of June 30, 2014, the estimated present value of the workers' compensation liability is about $17.8 billion.

The Postal Service's workers' compensation expense has been impacted by:

- FECA not including:
    - Limits on duration and amount of benefits.
    - Settlements and buyouts of claims.
    - A requirement to use generic drugs.
    - Utilization of other cost containment practices.
- The reduced number of light/limited duty positions available due to automation and lower mail volume.
- An older workforce, which studies have shown experiences greater impairment from injuries and takes longer to recover.
- Increased costs due to annual cost of living adjustments.

6 Retirement for U.S. Postal Service Employees on Workers' Compensation (Report Number HR-MA-11-001, dated April 22, 2011); Postal Service Workers' Compensation Program (Report Number HR-AR-11-007, dated September 30, 2011); and Postal Service Injury Compensation Program (Report Number HR-AR-13-004, dated July 25, 2013).
7 The Postal Service pays claims of employees and an administrative fee through a process known as "chargeback billings."
8 The assessed administrative fee amount represents the period July 2013 through June 2014.
9 The chargeback year is the period from July 2012 through June 2013.

- Incidents of health care fraud: From October 2011 through September 2013, OIG special agents identified and facilitated terminating benefits for 536 claimants and some health care providers who were committing workers' compensation fraud.

Over the past few years, the Postal Service has reduced the number of new claims; however, the number of fraud cases has increased. OIG special agents opened 592 health care fraud cases in FY 2012 and 693 in FY 2013. They obtained $51.9 million in medical and disability judgments and halted future losses of $289.7 million.

Recent examples of workers' compensation fraud include:

- A Postal Service mail carrier alleged his workplace injury induced stress, and a fear of crowds and public places, which severely affected his lifestyle. Surveillance and undercover operations revealed the carrier regularly participated in bowling tournaments and frequently traveled to casinos in Las Vegas, NV.

- Ten Postal Service claimants arrested,[10] in a recent OIG operation with DOL, for workers' compensation fraud in the New York area. One employee claimed she could not handle 10 pounds of weight and needed assistance with such activities as bathing, driving, laundry, and going to the store. However, the employee was observed at the gym participating in an exercise class, which involved the use of weight training exercises with a barbell; exercising on a treadmill and a stair machine. Another employee claimed he used a motorized wheelchair while at home and a cane for ambulatory assistance in the community; however, he was observed hanging holiday decorations at his home, pushing a loaded shopping cart at a home improvement store without the aid of a wheelchair or cane, and using a snow blower to clear his driveway of snow. In addition, the employee did not report his outside employment, as required.

- A health care provider, who treated Postal Service employees in four states, violated the Civil False Claims Act in connection with claims submitted to the DOL-OWCP. The presiding judge fined and barred the provider from participation in any federal healthcare related programs for at least 10 years. Another provider submitted billings to federal healthcare programs for medical treatment not actually provided to more than 40 Postal Service employees. In this case, the presiding judge sentenced the provider to 5 years probation and 12 months of home confinement with electronic monitoring and ordered the provider to pay restitution to the Postal Service.

10 One employee arrested on April 17, 2014, and nine employees arrested on May 6, 2014, for workers' compensation fraud.

Federal Employees' Compensation Act

Enacted in 1916, FECA provides medical, compensation, death, and vocational rehabilitation benefits to civilian federal employees who sustain injuries — including occupational disease — because of their employment with the federal government. The 1974 amendments provided continuation of pay[11] (COP), authorized employees to select their own physicians, and eliminated reduced medical benefits after age 70.

FECA benefits include payment for all reasonable and necessary medical treatment for work-related injury or disease. Paid compensation for wage loss is tax-free at 66 and two-thirds percent of the employee's salary if there are no dependents, or 75 percent if there is at least one dependent. FECA also provides monetary awards to injured workers for permanent impairment of limbs and other parts of the body, and qualified survivors receive monetary benefits if a work-related injury or disease causes an employee's death. In addition, FECA provides training and job placement assistance to help injured workers return to gainful employment.

The DOL OWCP has the exclusive authority, except as otherwise provided by law, to administer, implement, and enforce FECA. Its main responsibility is to determine whether the claimant is entitled to benefits under FECA. The DOL provides direct compensation to providers, claimants, and beneficiaries; however, the Postal Service later reimburses the DOL for all workers' compensation claims, including paying an administrative fee.

Federal Employees' Compensation Act Reform

Congress has amended FECA on several occasions since its enactment in 1916; however, it has not made significant changes in 40 years.

State governments and the private sector have adopted the following best practices to control workers' compensation costs:

- Maximum duration and amount of benefits.
- Settlement and buyouts.
- Employer-selected physicians.
- Return-to-work and rehabilitation programs.
- Generic drugs requirements.

11 COP provides claimants with a continuation of their regular pay for up to 45 calendar days of wage loss due to disability and/or medical treatment after a job-related injury or illness.

The Postal Service's average workers' compensation cost per employee workhour in FY 2013 was $1.16 compared to the private sector rate of 73 cents.

FECA reform to include these practices, along with collection of COP in cases involving third-party liabilities, changes to the assessment of administrative fees, and the use of predictive modeling and nurse case managers to bring workers' compensation, would better align costs with the private sector and reduce the burden on the Postal Service. The Postal Service's average workers' compensation cost per employee workhour in FY 2013 was $1.16[12] compared to the private sector rate of 73 cents.[13] If FECA was modified to include these best practices, the Postal Service could reduce its workers' compensation expense per hour worked from $1.16 to 73 cents, saving more than $477 million annually.

Maximum Time and Benefit Limits

FECA does not have age or time limits for benefits. FECA provides tax-free compensation for wage loss at 66 and two-thirds percent of the employee's salary if there are no dependents or a maximum of 75 percent if there are dependents. Benefits are paid as long as a physician certifies the condition or disability continues. Without age and compensation limits, employees lack incentives to return to work, which lowers productivity and increases costs. Some employees have come to rely on workers' compensation as a retirement benefit, and many receive more from FECA after they reach retirement age, than they would have if they had earned retirement benefits on the job. For example, the Postal Service had 10,240 FECA participants age 55 and older and 1,892 participants age 70 and older on the periodic roll as of June 2013. Included in the 1,892 participants were two Postal Service workers who were more than 100 years old.

Our research has shown that some state statutes, which govern private sector workers' compensation, regulate the duration and amount of compensation claims. For example, three of the five most populous states have maximum time limits for receipt of workers' compensation benefits. Four of the five most populous states have maximum compensation rates of 66 and two-thirds percent tax-free and do not provide additional compensation to dependents. If the Postal Service limited the duration and amount of workers' compensation benefits, employees may be motivated to return to work sooner, obtain vocational rehabilitation and training, or retire, thereby reducing costs.

Settlements and Buyouts

Benchmarking research has shown an increase in workers' compensation case settlements in lieu of periodic payments. A benchmarking report the OIG contracted for in 2011 revealed that one company settled 906 of 5,400 active workers' compensation cases. Another study found that settlements paid in workers' compensation cases appear to encourage people to return to work, because they bring closure to the incidents. However, the Postal Service is constrained by FECA, which does not allow settlement of workers' compensation cases unless they involve third-party liability. If it were allowed to settle or buy out cases, the Postal Service could decrease its workers' compensation expenses, thus reducing its overall workers' compensation liability.

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12 Workers' compensation cost per workhour calculated using FY 2013 expenses and total workhours.

13 U.S. Bureau of Labor Statistics: *Employer Costs For Employee Compensation News Release*, September 2013. The Bureau of Labor Statistics' grouping of production, transportation, and material moving occupations is similar to Postal Service's work function.

Employer-Selected Physicians

A majority of third-party administrators and private companies require use of their networks of selected physicians. Mandatory use of employer-selected physicians streamlines management of workers' compensation cases, reduces the potential for fraud, and provides services that focus on returning employees to work sooner. Organizations that select the physicians that claimants use can monitor performance and avoid doctors who perform poorly. In addition, physicians can develop a better understanding of the workplace and collaborate with the patient and the employer to identify suitable return-to-work opportunities. Furthermore, employer-selected physicians can provide timely medical treatment, which research has shown helps employees recuperate and return to work sooner. FECA allows claimants to choose their own physicians, but the Postal Service could reduce its workers' compensation costs and its vulnerability to fraud if the law were changed to allow employer-selected physicians.

Return to Work and Rehabilitation

We found that both the Postal Service and the private sector use return-to-work programs to reduce the time claimants are out of work due to employment-related injuries. FECA only allows permanently disabled employees to participate in vocational rehabilitation programs. However, the DOL is proposing changes to FECA that would allow all injured workers to participate in vocational rehabilitation services as early as 6 months after their injury, where appropriate.

Research has shown that most employees want to return to productive employment as soon as possible. A leading best practice is the use of a database that identifies all limited and light-duty positions and positions that accommodate employees' work limits or restrictions. Using such a database can get employees back to work sooner by finding them positions that accommodate their work restrictions. In another, albeit emerging, best practice, employers loan their injured workers to charitable, volunteer, and nonprofit organizations when restrictions prohibit productive work with the employers. These employee loaner programs allow injured workers to remain productive, retain the discipline of going to work every day, and provide the organizations with needed resources. When given these opportunities, employees often recuperate faster and return to work sooner.

Generic Drugs

In the private sector, benchmarking results have identified the mandatory use of generic drugs as an effective way to control workers' compensation costs. The U.S. Food and Drug Administration require generic drugs to have the same active ingredient(s), strength, dosage form, and route of administration as the brand name drugs. Generic drugs generally cost less than brand name drugs. Today, nearly eight in 10 prescriptions filled in the U.S. are for generic drugs. FECA currently allows Postal Service employees with approved workers' compensation claims to choose brand name or generic drugs. Postal Service management estimates it would save about $10 million annually if FECA required prescription of generic drugs, when available, for claimants.

Third-Party Liability

The 1974 COP provision of FECA prohibits recovery of COP benefits in third-party liability cases. A third-party case exists when a person or organization other than the Postal Service or another federal agency is responsible for a job-related injury or illness. The intent of COP pay is to avoid interruption of benefits while the DOL adjudicates claims. It also provides claimants with a continuation of their regular pay for up to 45 calendar days of wage loss due to disability and medical treatment after a traumatic injury.

Both the Government Accountability Office and the DOL have proposed FECA reform to allow recovery of COP benefits in third-party cases. In FY 2013, the Postal Service paid about $42 million in COP costs, about $6 million of which represent third-party case payments. Allowing the Postal Service to recover COP benefits from liable third parties would help reduce its workers' compensation costs.

Administrative Fees

FECA requires the Postal Service and other agencies not funded by appropriations to pay the DOL their "fair share" of OWCP administrative expenses. The Secretary of Labor has the authority to set the "fair share" methodology, which is currently a percentage of total workers' compensation benefits paid. These administrative fees are not negotiable and the percentage fee payment method provides no incentive to negotiate the fee. However, in the private sector, companies can negotiate administrative fees with third-party providers.

We believe the cost of initiating new claims is higher than the cost of administrating old claims since it requires more procedures. For example, managing a new claim is more in-depth and includes reviewing all relevant documentation, confirming workplace injury, determining the level of disability, calculating compensation, and assessing return-to-work opportunities. However, the administration of old claims is less comprehensive because in most cases, it only includes reviewing new medical evidence and deciding whether to continue benefits.

Currently, there is no direct correlation between the administrative fees and actual costs to manage claims. For example, the Postal Service decreased its new claims from 53,604 in 2008 to 43,650 in 2013, about a 19 percent decrease; however, during the same period administrative fees increased by more than 27 percent (see Table 1).

Table 1: Number of Claims and Administrative Fees by Chargeback Year

Chargeback Year	Number of Claims	"Fair Share" Administrative Fees
2008	53,604	$52,879,796
2009	43,989	$55,512,946
2010	44,762	$61,457,854
2011	44,698	$66,690,103
2012	43,268	$68,388,156
2013	43,650	$67,292,304

Source: Postal Service.

The increased administrative fees are due to the increased amount of workers' compensation benefits paid over the past few years, and do not take into account the difference in administrative costs associated with managing old claims and initiating new ones. See Appendix A for workers' compensation costs.

Further, the President recommended in his FYs 2012, 2013, and 2014 budget requests that all agencies pay their "fair share" of OWCP administrative costs. This recommendation would hold agencies accountable for all costs associated with their workers' compensation programs, but Congress has not adopted it. If all agencies paid, their full workers' compensation expenses it could help ensure that current "fair share" agencies are not subsidizing the administrative costs of other agencies. If Congress required all agencies to pay their "fair share" and revised the methodology used to calculate administrative fees to better reflect the actual

FECA reform could help control workers' compensation costs; however, the Postal Service must overcome political, employee, and union challenges to adopt practices that are common in state governments and the private sector.

administrative costs of managing benefits, the Postal Service could reduce workers' compensation costs and ensure that fees reflect the services the DOL provides.

Predictive Modeling

Predictive modeling is a well-established technology in the insurance industry and is becoming a best practice for identifying and acting on high-severity and high-cost claims. A predictive model uses sophisticated algorithms to effectively project claim outcomes by level of exposure and frequency and measures the correlation of variables to claim outcomes. This type of modeling could help the Postal Service classify cases so claims that are more complex are assigned to more experienced specialists, which could result in better allocation of resources. In addition, a recent study[14] indicated that the number of workers' compensation claims is decreasing but the number of questionable claims is increasing. Management can use predictive modeling to identify and reduce the number of fraudulent claims, which could help the Postal Service avoid costs.

Nurse Case Managers

Nurse case managers are often instrumental in helping employees return to work. They can help employees navigate paperwork, medical examinations, and rehabilitation. Private sector organizations usually acquire nurse case managers through outsourcing arrangements with vendors who employ nurses with strong occupational health backgrounds and expertise. Employers have also seen efficiencies from using nurse case managers early in the process and giving them the same first notice of injury as the OWCP receives. For example, one benchmarked federal agency hires nurses who are only responsible for workers' compensation claims. This agency, which instituted early intervention by contracted nurse case managers, reported a reduction of about 30 percent in its OWCP chargeback costs.

Challenges

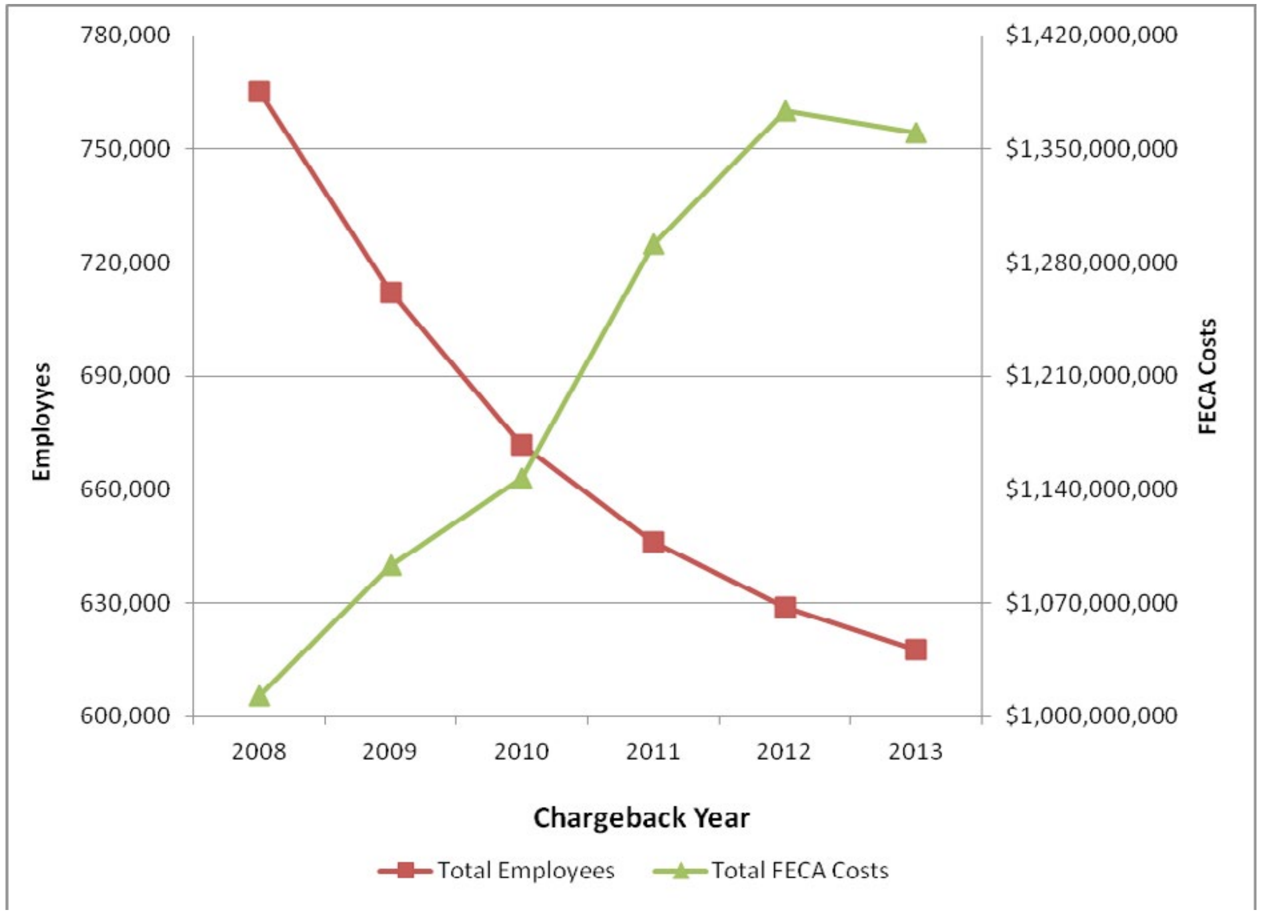
FECA reform could help control workers' compensation costs; however, the Postal Service must overcome political, employee, and union challenges to adopt practices that are common in state governments and the private sector. FECA reform legislation has been proposed in each congressional session since 2011; however, to date, these reforms have not passed. Management should continue to work towards overcoming these challenges by educating lawmakers on the need for change and by addressing the questions and concerns of employees and unions.

14 National Insurance Crime Bureau: *Questionable Workers' Comp Claims Report*, September 24, 2013.

Appendix A: Workers' Compensation Costs

Although the Postal Service has successfully decreased its number of employees through attrition and retirement incentives, the cost of workers' compensation has increased (see Figure 1).

Figure 1: Comparison of Number of Employees to Workers' Compensation Costs



Source: Postal Service.

The number of employees decreased by 19 percent, from 765,088 in 2008 to 617,714 in 2013; however, the cost of workers' compensation increased by 35 percent, from about $1 billion to more than $1.3 billion.

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