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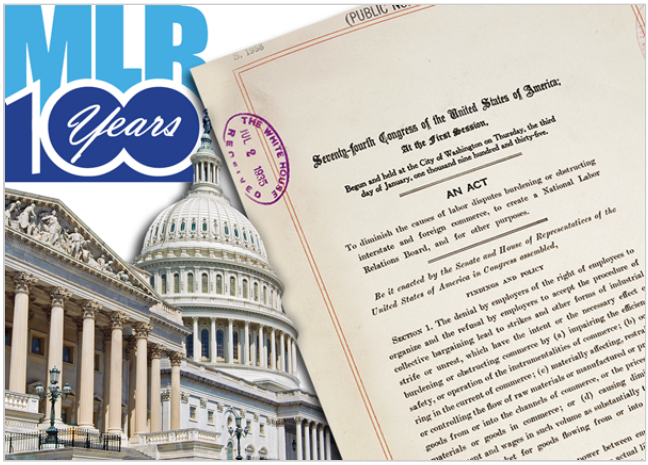
Labor law highlights, 1915–2015

To help mark the Monthly Labor Review's centennial, the Review invited several producers and users of BLS data to take a look back at the last 100 years. This article highlights important U.S. labor legislation since 1915. Areas of focus are child labor laws, gender equality, racial equality, working conditions, and union membership.



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"Democracy cannot work unless it is honored in the factory as well as the polling booth; men cannot truly be free in body and spirit unless their freedom extends into places where they earn their daily bread." This declaration, uttered by Senator Robert Wagner as he introduced the National Labor Relations Act (NLRA) of 1935, offers a fair summation of the reasoning underlying many of the labor laws enacted during the past century. Equality and the rule of law are considered among the most important principles of democracy—principles that Wagner articulated. This article highlights some of the more important labor laws that have been passed in the hundred years that the *Monthly Labor Review* has been in publication. All the legislation discussed in this article has, in some way, advanced principles of democracy within the U.S. workforce.

Throughout the early 1900s, working conditions for the average American worker were fairly grim. Child labor was well entrenched. Discrimination of all types was common and acceptable. Lax safety regulations allowed hazardous working conditions to persist. And a lack of federal protection for unions made bargaining for better conditions very difficult for workers. In the years since, a number of changes have made life for the American worker more tolerable. The convergence of a variety of social and legal shifts created the environment necessary for such change.

The evolution of the nation has been met by an evolution of the law:

- As society has placed more value on education and child welfare, child labor laws have ensured that more children take advantage of education and the leisure currently associated with childhood.
- As society has become less concerned with traditional gender roles, laws promoting equality have increased opportunities for women in the workplace.

- As society has become less tolerant of prejudice, legislation prohibiting discrimination in the workplace has improved employment opportunities for minority workers.
- As society has become more concerned about the safety of workers, laws have been enacted that have contributed to a decline in the number of workers lost to grievous workplace injuries.

- And with the advent of federal protections for organized labor, access to union membership has given all workers more opportunity to bargain collectively for improved working conditions.

These changes have combined to produce a labor force that is better educated, more diverse, safer, and working under better conditions today than in 1915.

Child labor

The early-American view of child labor was largely inherited from colonial England. At least as far back as the 17th century, many people believed that idle children were a source of crime and poverty.[1] To combat such idleness, apprenticeships were common for children of working-class families.[2] Child labor, rather than being viewed as exploitive, was often considered an act of charity.[3]

Children remained an active part of the American workforce well into the 20th century. The 1900 U.S. Census revealed that the 1.75 million children ages 10–15 who were employed composed about 6 percent of the nation's labor force.[4] With the rise of the Industrial Revolution, more children were being exposed to the workplace hazards of factory jobs. In 1904, the National Child Labor Committee (NCLC) was established to examine the impact of child labor.[5] The NCLC initially promoted state reforms, but because of vast differences in the implementation and enforcement of such reforms state to state, the committee began in 1912 to push for national legislation.[6] However, reform at the national level would prove challenging as well.

In 1916, Congress passed the Keating–Owen Child Labor Act, the first national child labor bill. This legislation banned the sale of products manufactured with the labor of any child under age 14 and heavily restricted labor for children under age 16.[7] Keating–Owen was challenged and, in 1918, was overturned by the Supreme Court.[8] A year later, child labor protections were passed as part of the Revenue Act of 1919 (also called the Child Labor Tax Law).[9] Like Keating–Owen, this legislation was held unconstitutional.[10] Legislators would wrangle with the child labor issue for the next couple of decades before establishing a more permanent solution.

It was not until 1938, with the passage of the Fair Labor Standards Act (FLSA), that permanent federal protections for children in the workplace were instituted. The FLSA child labor provisions were nearly identical to those in the Keating–Owen bill—restricting industries for children under age 18, limiting working hours for children under 16, and banning children under 14 from most kinds of work.[11] (See table 1 for a complete list of minimum age requirements under the FLSA.) The law also requires employers to document the age of child workers and empowers the Secretary of Labor to investigate possible violations.[12] Like Keating–Owen and the Child Labor Tax Law, the FLSA was challenged and ultimately argued before the Supreme Court.[13] However, reversing earlier precedent, the Court upheld the FLSA, and it remains in force today.[14]

Table 1. Age requirements under the federal Fair Labor Standards Act

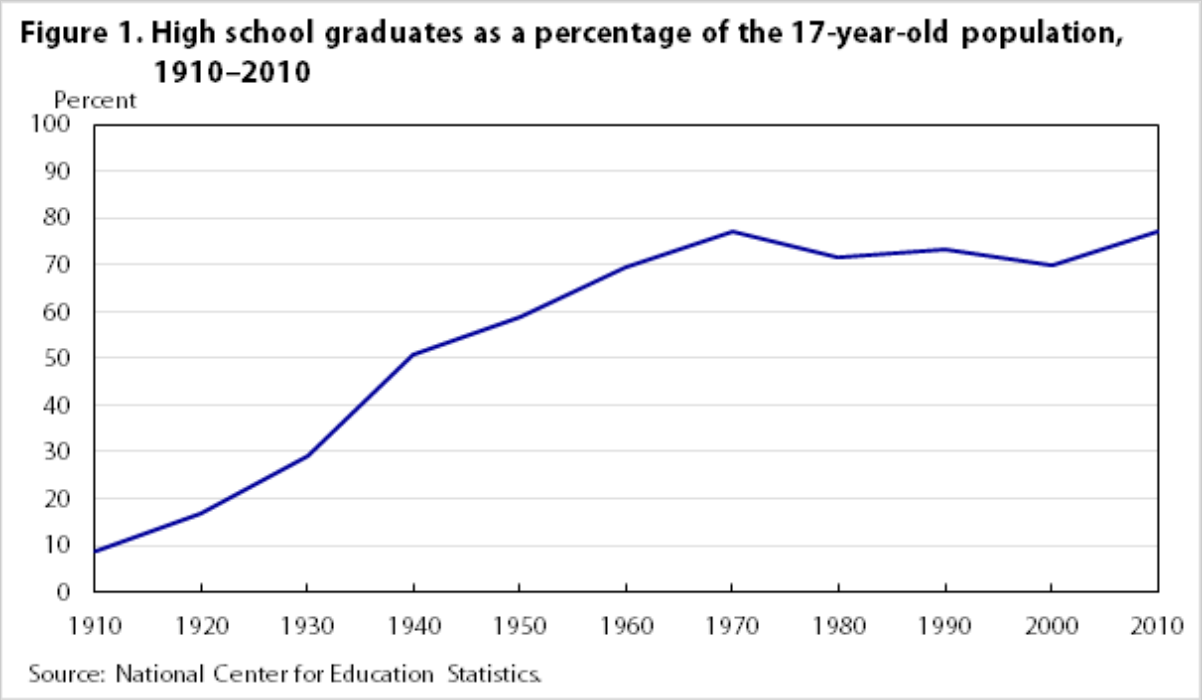
Category	Nonagricultural employment	Agricultural employment
Minimum age for nonhazardous employment	• 14 years old (with some exceptions including newspaper delivery, babysitting, radio/television/movie/theater performing, and work for parents in family business)	• 10 and 11 years old, with parental consent, on farms not covered by minimum wage requirements

See footnotes at end of table.

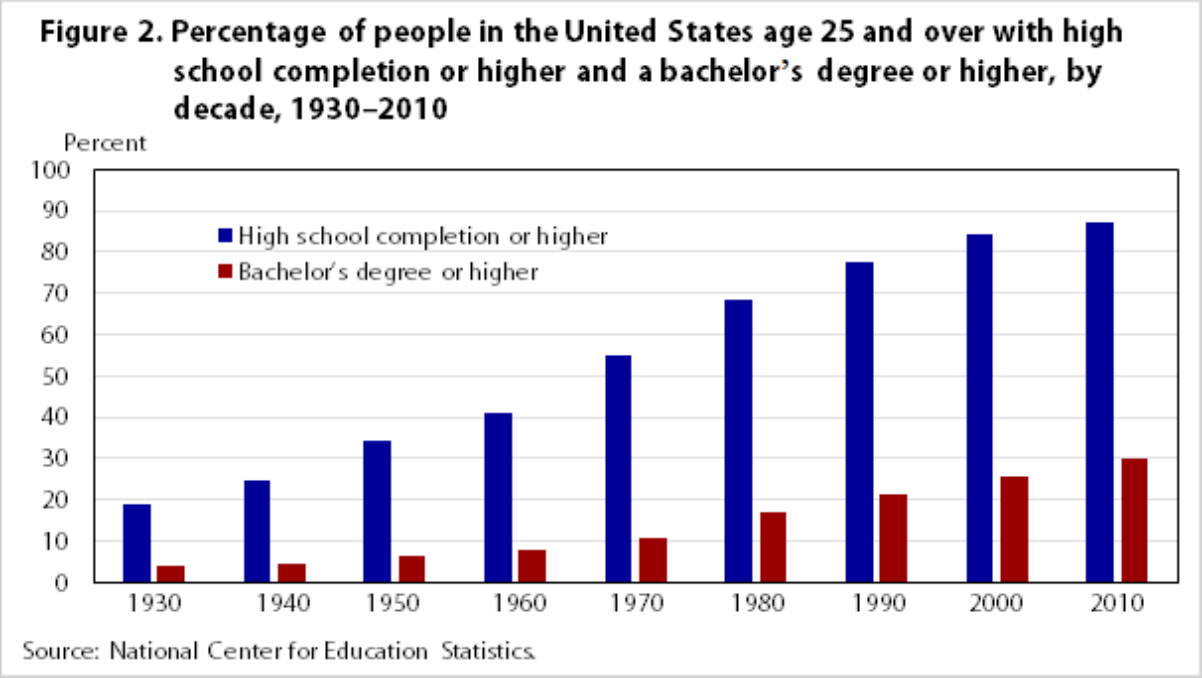
Table 1. Age requirements under the federal Fair Labor Standards Act

Category	Nonagricultural employment	Agricultural employment
		• 12 and 13 years old, with parental consent; 14 and 15 years old, no restrictions on nonhazardous work
Minimum age for hazardous employment	• No work during school hours • On school days: 3 hours/day, 18 hours/week maximum • When school is out of session: 8 hours/day, 40 hours/week • Labor Day–May 31: all work must occur 7 a.m. to 7 p.m. • June 1–Labor Day: all work must occur 7 a.m. to 9 p.m.	• No work during school hours
Federal minimum wage and overtime	• Federal minimum wage is $7.25 per hour • Youth minimum wage is $4.25 per hour for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer • Overtime must be paid after 40 hours/week	• Many agricultural employers are exempt from federal minimum wage requirements • For agricultural employers who are not exempt from minimum wage laws, the same federal and youth minimum wages for nonagricultural employment apply • Agricultural employees are exempt from overtime requirements under federal law

Source: Fair Labor Standards Act.



Passage of the FLSA, in conjunction with local compulsory school attendance laws, has had a significant impact on the U.S. education system. Because more children were required to attend school, more children completed high school, thus creating a better educated workforce. Since the FLSA became law, school enrollment and high school completion rates have all increased steadily. Figure 1 shows U.S. high school completion rates by decade.

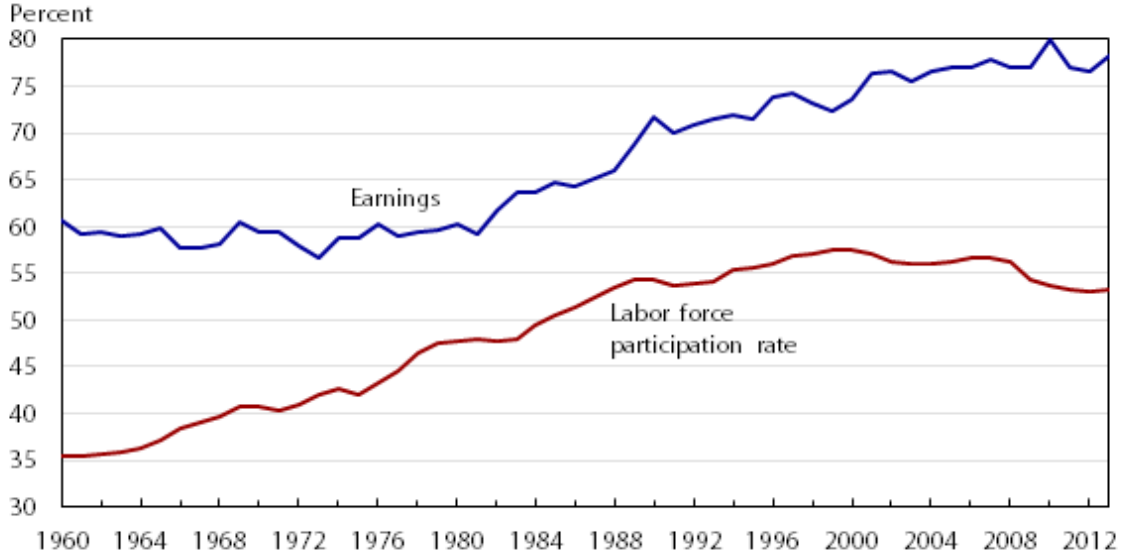


As enrollment and graduation rates have risen, so too has overall educational attainment in the United States. In 1930, prior to the FLSA, fewer than 1 in 5 people over the age of 25 possessed a high school diploma; by 2011, nearly 88 percent of people in this age group held diplomas.[15] As more people completed high school, the pool of potential college applicants increased. This, in part, has contributed to the steady rise in bachelor's degree holders. Figure 2 shows the decade-by-decade increase in the percentage of adults who have graduated high school and college.

The benefits of child labor laws extend beyond the classroom. Removing children from the workforce has had several positive results: workplace accidents have decreased, especially as young children often were particularly susceptible to environmental hazards;[16] children were no longer filling job openings that might otherwise have gone to adults;[17] and children have more time for nonschool activities that have a positive impact on quality of life. Additionally, other changes would occur to ensure that when these children reached adulthood, they entered a more tolerant, more equitable work environment.

Gender equality

Figure 3. Women's earnings as a percentage of men's earnings, and civilian labor force participation rate of women ages 16 and over, annual averages, 1960–2013



Note: Percentages are calculated from annual averages of median usual weekly earnings for full-time wage and salary workers.
Source: Current Population Survey, U.S. Bureau of Labor Statistics.

One of the most dramatic changes to the American workplace in the past 100 years is the role of women. In much of early-American society, relatively few women entered the labor force. In 1950, about one-third of women ages 16 and over were in the labor force; the proportion rose to 60 percent by 2000 and is now just over 58 percent. (See figure 3.) Women often experienced pervasive inequality in opportunity and status, even as more women sought work outside of the home. Another area in which women have been routinely subject to inequitable treatment is pay.

The concept of "equal pay for equal work" was promoted at the federal level as early as 1898 but would not be codified in federal law until passage of the Equal Pay Act (EPA) of 1963.[18] The EPA was the first U.S. legislation targeted to eliminate gender-based pay inequities, thereby ushering in a new norm of gender equality in the workplace.[19] Mandating that men and women engaged in the same work earn the same, the law covers all forms of pay, including salaries, incentives, and benefits.[20]

The ultimate goal of "equal pay for equal work" has not yet been achieved. However, the gender wage gap has decreased substantially. In 1960, 3 years before the EPA, women earned 60.7 percent of what men earned; in 2013, women earned 78.3 percent of what men earned. Figure 3 shows the increase of women's earnings as a percentage of men's, as well as the increase of women in the workforce.

Racial equality

Like women, racial-minority workers in the United States have had to battle discrimination. The passage of legislation targeting gender discrimination opened the door for similar action on racial discrimination. A year after passing the EPA, Congress passed sweeping legislation designed to target racial discrimination in the workplace.

Racial equality has long been a growing concern in the United States. African-Americans, in particular, have struggled to gain equality in a variety of areas, including employment. During the Civil Rights Movement of the 1960s, protestors engaged in a prolonged campaign of demonstrations, including marches, sit-ins, and freedom rides.[21] These activities drew national attention to the fact that racial discrimination was prevalent in a variety of areas, including the American workplace. Unemployment rate tables available at the time showed that Blacks were twice as likely as Whites to be unemployed and that Blacks who were employed were far more likely to occupy low-skill, low-wage positions.[22]

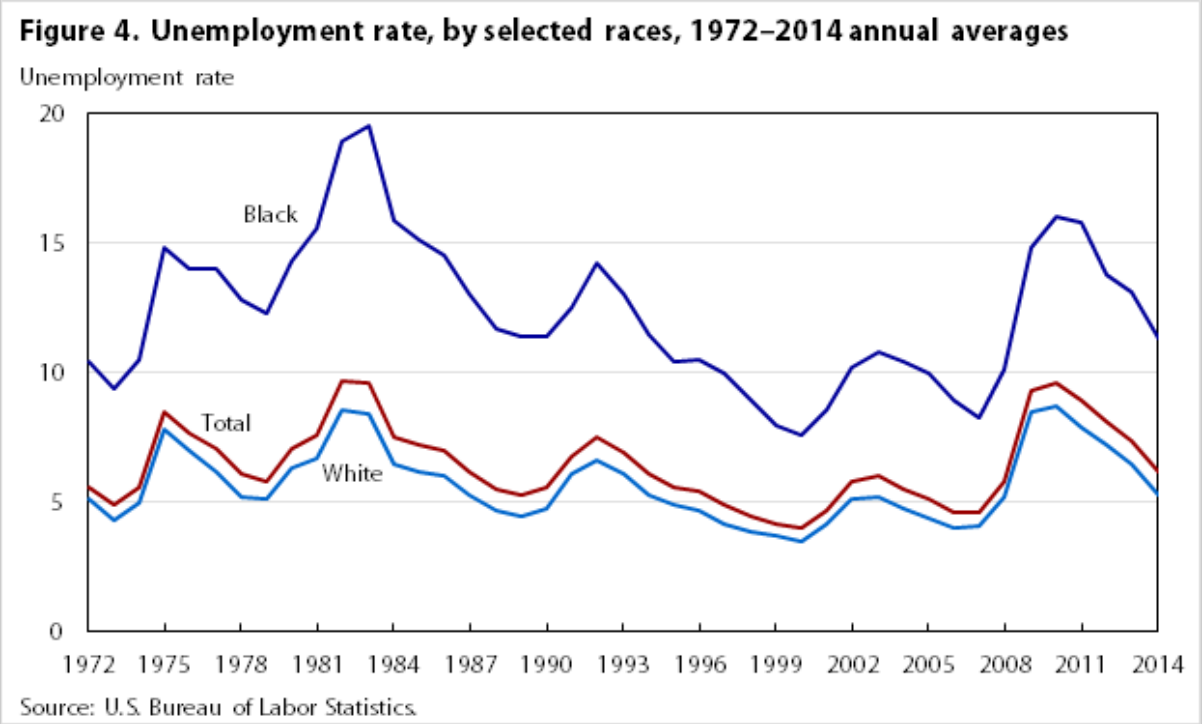
For nearly a century after the Civil War, the controlling federal law designed to prohibit employers from discriminating along racial lines was the Civil Rights Act of 1866. This act, while not specific to employment, was designed to guarantee all citizens, including newly freed former slaves, “full and equal benefit of all laws and proceedings for the security of person and property.”[23] While the plain language of the act suggested equality, its lack of enforcement mechanisms rendered the law ineffective in practical terms. Similarly, the 14th Amendment, which says, “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws,”[24] proved a toothless deterrent to employment discrimination. Employers could discriminate openly with little fear of consequence and would be able to do so for nearly a century.

In 1964, Congress passed the Civil Rights Act, making it illegal for employers to discriminate on the basis of race. Title VII states, “It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire . . . or otherwise to discriminate against any individual . . . because of such individual’s race.”[25] From its enactment, the constitutionality of the Civil Rights Act was heavily litigated, but the act was ultimately upheld and cited by the Supreme Court as the basis for the legality of affirmative action policies.[26]

The Civil Rights Act is enforced by the Equal Employment Opportunity Commission (EEOC), which began operations in 1965. The EEOC is tasked with investigating and adjudicating workplace discrimination claims. While the Supreme Court has never overturned the Civil Rights Act, a number of decisions early on made the act more difficult for the EEOC to enforce.

In 1989, the Court held that an employee could not sue for damages stemming from racial harassment that occurred after the employment contract was formed.[27] That same year, the Court placed the burden of proof in discrimination suits on claimants; in essence, a victim of workplace discrimination had to prove that a particular policy produced inequality in the workplace.[28] Soon after these rulings, Congress passed the Civil Rights Act of 1991.

This updated civil rights act is mostly procedural, laying out the means by which claimants can pursue relief and specifying the remedies available. Notably, the bill is intended “to respond to recent decisions of the Supreme Court . . . in order to provide adequate protection to victims of discrimination.”[29] Under the 1991 Act, claimants need only prove that a policy has a disparate impact (a more negative effect on one group than another) for relief to be available.[30]



While prohibiting overt discrimination has undoubtedly improved the working environment for most black workers, the various civil rights acts have not substantially reduced the unemployment rate for Blacks. Black workers were twice as likely as white workers to be unemployed in the 1960s. That trend continued through the 1970s and persists today. (See figure 4.)

As figure 4 shows, the unemployment rate for black workers follows the same cyclical pattern as the rate for white workers but consistently remains about twice as high. Despite the disparity in unemployment rates, conditions for black workers have continued to improve, in large part because of the passage of laws designed to improve conditions for all American workers.

Working conditions

Legislative initiatives have created safer work environments, benefiting all workers. In the early 1900s, few standards targeted health and safety in the workplace. Lack of federal regulation, combined with an often unresponsive legal system, left workers with little recourse when injured on the job. Workers' compensation laws at the state level together with the Occupational Safety and Health Act at the federal level have contributed to make working conditions much safer for U.S. workers.

Theodore Roosevelt, arguing in favor of workers' compensation (then known as workmen's compensation) laws in 1913, offered the story of an injured worker that summed up the legal recourse available for workplace injuries at the time. A woman's arm was ripped off by the uncovered gears of a grinding machine. She had complained earlier to her employer that state law required the gears be covered. Her employer responded that she could either do her job or leave. Under the prevailing common-law rules of negligence, because she continued working she had assumed the risk of the dangerous condition and was not entitled to compensation for her injury.[31]

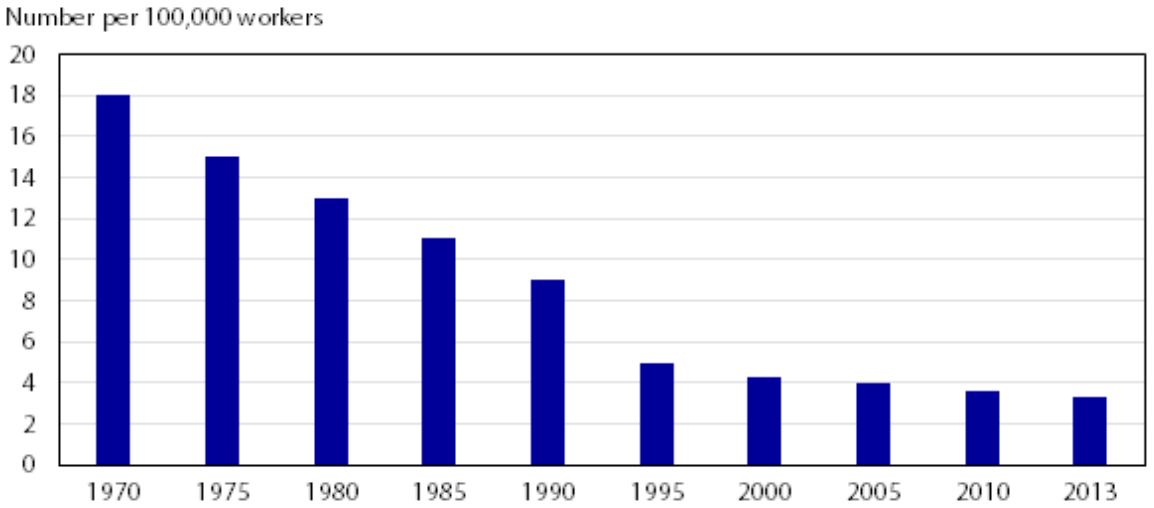
As the example illustrates, common-law negligence was not ideal for handling workplace injuries. Workers who noticed hazards could either "assume the risk" and continue working, or leave work; they were powerless to change the condition. Employers were at risk as well: they were vulnerable to negligence suits that could yield large, unanticipated awards for injured workers. Workers' compensation, where employers insure against the cost of workplace injuries and workers have defined benefits in the case of injury, significantly reduced the risk for both parties.[32]

Despite Roosevelt's efforts, the path to nationwide adoption of workers' compensation would prove a long one. In 1910, New York became the first state to adopt comprehensive workers' compensation; by 1929, all but four states had enacted the legislation. But the law would not reach all states until 1948, with its passage in Mississippi.[33]

Arguably more important overall than providing benefits for injured workers is preventing workplace injuries from occurring in the first place. Early efforts at improving safety focused on those workers in the most hazardous industries—railroad workers, coal miners, harbor workers, and the like. Not until 1970 was the most expansive federal legislation regulating workplace safety passed, the Occupational Safety and Health Act.

The act, which went into effect April 1971, defines an employer to be any "person engaged in a business affecting commerce who has employees."[34] The act empowers the Occupational Safety and Health Administration (OSHA) to enforce workplace standards. The Occupational Safety and Health Act's general duty clause requires employers to keep workplaces "free from recognized hazards likely to cause death or serious physical injury."[35] Since its enactment, conditions have become much safer for American workers.

Figure 5. Workplace fatalities per 100,000 workers, 1970–2013



Note: Data for the earlier years are National Safety Council (NSC) estimates; data for the later years are from the U.S. Bureau of Labor Statistics (BLS) and are based on a census. In 1994, the NSC adopted the BLS counts.
Source: 1970–90 National Safety Council; 1995–2013, Census of Fatal Occupational Injuries, U.S. Bureau of Labor Statistics.

One indication that the American workplace has become safer is the decline of the worker fatality rate. The worker fatality rate measures the number of workers killed on the job out of every 100,000 workers. In 1970, the worker

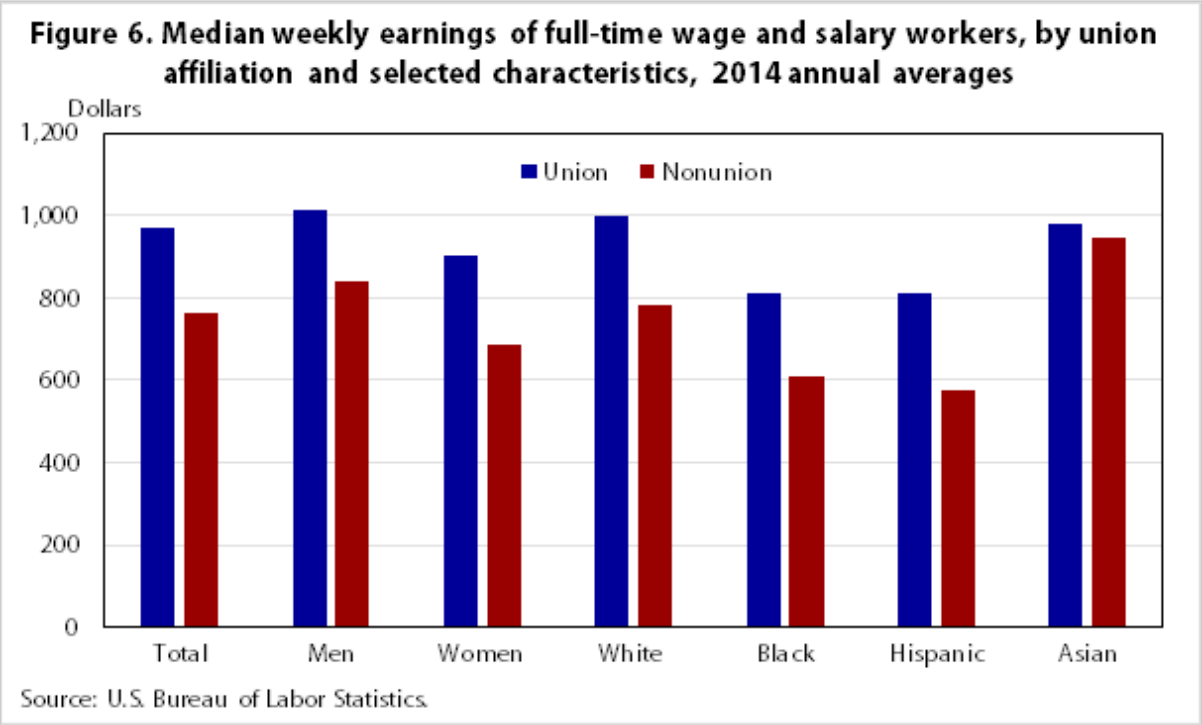
fatality rate was 18. Twenty years later, nineteen years after the Occupational Safety and Health Act became law, that rate was cut in half. In 2013, the worker fatality rate was 3.3. (See figure 5.)

Union membership

The labor union movement in this country has a long history that is rife with struggle. Workers who wanted to join unions did so in the absence of federal protections, so workers were susceptible to mistreatment by antiunion employers. The Ludlow Massacre, where at least 66 were killed, is arguably the most violent conflict between striking workers and their corporate employer in U.S. history.[36] It occurred in 1914, the year before the *Monthly Labor Review* was first published, and demonstrated a need for federal protections of striking workers. Nevertheless, the first successful efforts to enact federal protections for worker unions would not come for nearly two decades.

In March 1933, Congress passed the National Industrial Recovery Act (NIRA). This legislation articulated the specific rights of unions to exist and to negotiate with employers. Although it lacked true enforcement powers, the law did require that employers recognize the right of labor to organize.[37] The NIRA lasted only 2 years before being held unconstitutional by the Supreme Court in 1935.[38] This setback for the labor movement was short lived; little more than a month later, Congress passed a law granting even stronger protections for labor unions.

Under the leadership of Senator Robert F. Wagner, Congress passed the National Labor Relations Act in July 1935. The NLRA went beyond the NIRA by guaranteeing private-sector workers the right to unionize, allowing workers to engage in collective bargaining as a matter of national policy, providing for secret ballot elections as the means for choosing unions, and protecting workers from employer intimidation, coercion, and reprisal.[39] The NLRA, as amended in 1947 by the Taft-Hartley Act and in 1959 by the Landrum–Griffin Act, is still in force today.



Perhaps the benefit of union membership that has the greatest impact on workers is higher compensation—those represented by unions routinely earn more than nonunion members. As figure 6 shows, higher earnings among union members is a pattern that holds among a broad range of demographic groups.

Despite the fact that union membership gives workers more influence in the workplace and yields higher earnings, union membership is on the decline. Union membership rose steadily after the passage of the NLRA but has been declining steadily since the 1960s.[40] In 2014, 11.1 percent of all workers were union members.[41] Many factors likely contribute to the decline. Some people attribute it to changes in the composition of the labor force.[42] Others note a concerted effort by employers to combat unionization, including an uptick in employers' threats that a workplace will close or move if a union is formed.[43] Regardless of the decline in membership, the fact that most workers have the opportunity to unionize and can choose whether or not to do so by popular vote has expanded democracy in the workplace.

Conclusion

The past century has seen pronounced change in the structure of the American workplace. Much of that change can be attributed to legislation affecting working conditions and access to jobs. Young children, once active participants in the labor force, are now, for the most part, prohibited from working. Because children are at school, not work, the U.S. workforce is much better educated than in the past. Despite the fact that it's not entirely reflected in pay, women have played a more prominent role in the workplace, and legislation has been put in place to address gender inequities. By law, racial discrimination is no longer tolerated. The U.S. workplace is much safer today than in the past. And unions continue to provide an opportunity for workers to bargain for higher pay and better conditions. Because individuals and society will continue to transform, such transformations undoubtedly will be reflected in future labor legislation. And 100 years from now, our descendants will likely deem the employment legislation of today as antiquated as we view the laws that governed when the *Monthly Labor Review* was first published.

SUGGESTED CITATION

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NOTES

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