



INSTITUTE FOR CIVIL JUSTICE

***Research Informing Public Policy:
Workers' Compensation in California***

2011 Nachemson Lecture

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RAND

Politics and Research-Informed Public Policy

- **Politics involves compromise between divergent interests**
- **Politicians are skilled at staking out extreme positions and then splitting the difference**
- **In the absence of facts, the scope for extreme differences is larger**
- **Policy analysis reduces the range over which compromise is needed**

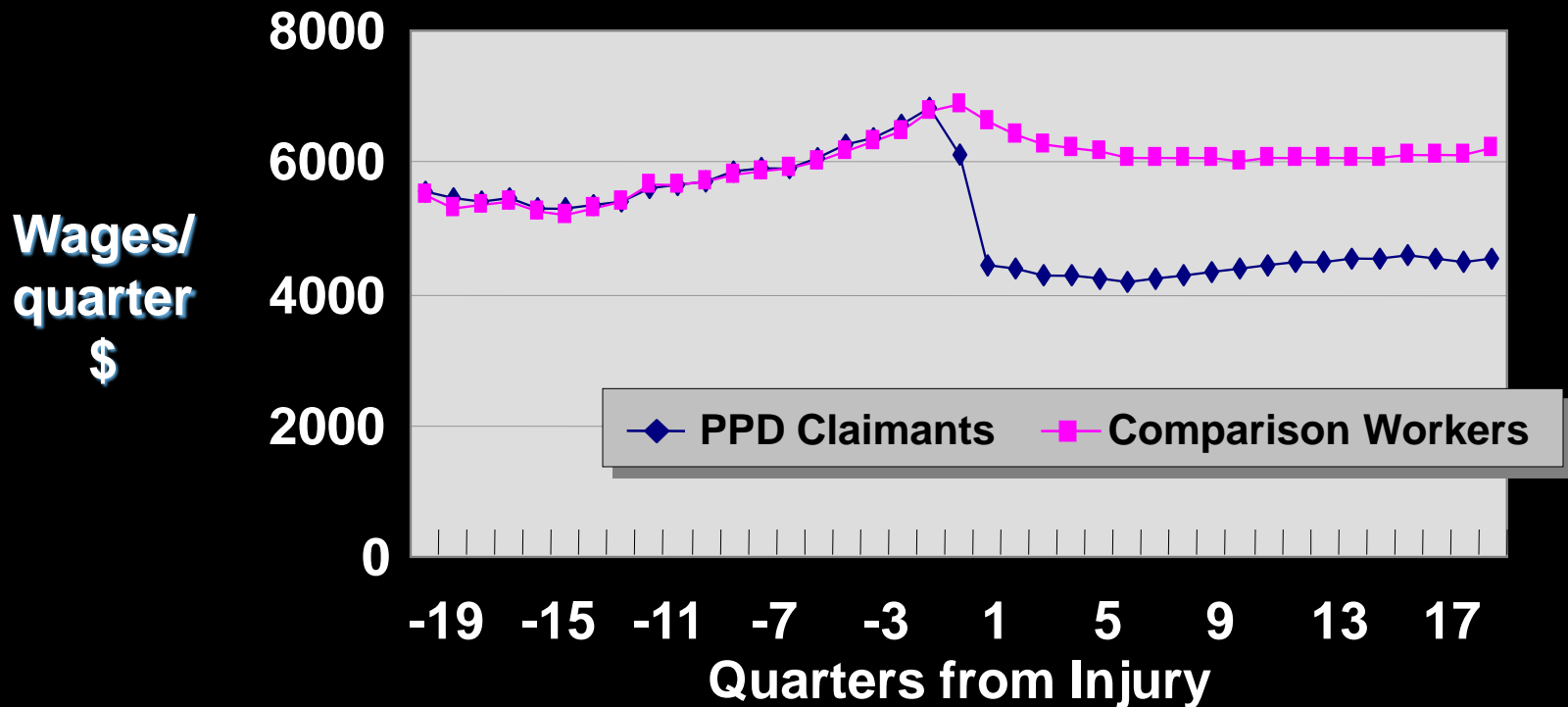
Four Examples in Workers' Compensation Permanent Disability

- **Earnings Losses for Permanent Disabling Occupational Injuries**
- **The Value of Return to Work**
- **The Targeting of Benefits**
- **Substitutability of Return to Work and Benefits**

What Happens After a Permanently Disabling Injury?

- **Permanent partial disability (PPD) is an ongoing source of policy disagreement within workers' compensation**
- **In California, in the mid-1990s, two contradictory positions were often stated as fact:**
 - **Injured workers frequently return to work at their previous jobs and then receive their permanent disability awards**
 - **Injured workers are inadequately compensated for the chronic losses that they experience**
- **The State of California (CHSWC) sponsored research to examine the long-term consequences of permanently disabling injuries**

Injured Workers Suffer Significant and Sustained Losses



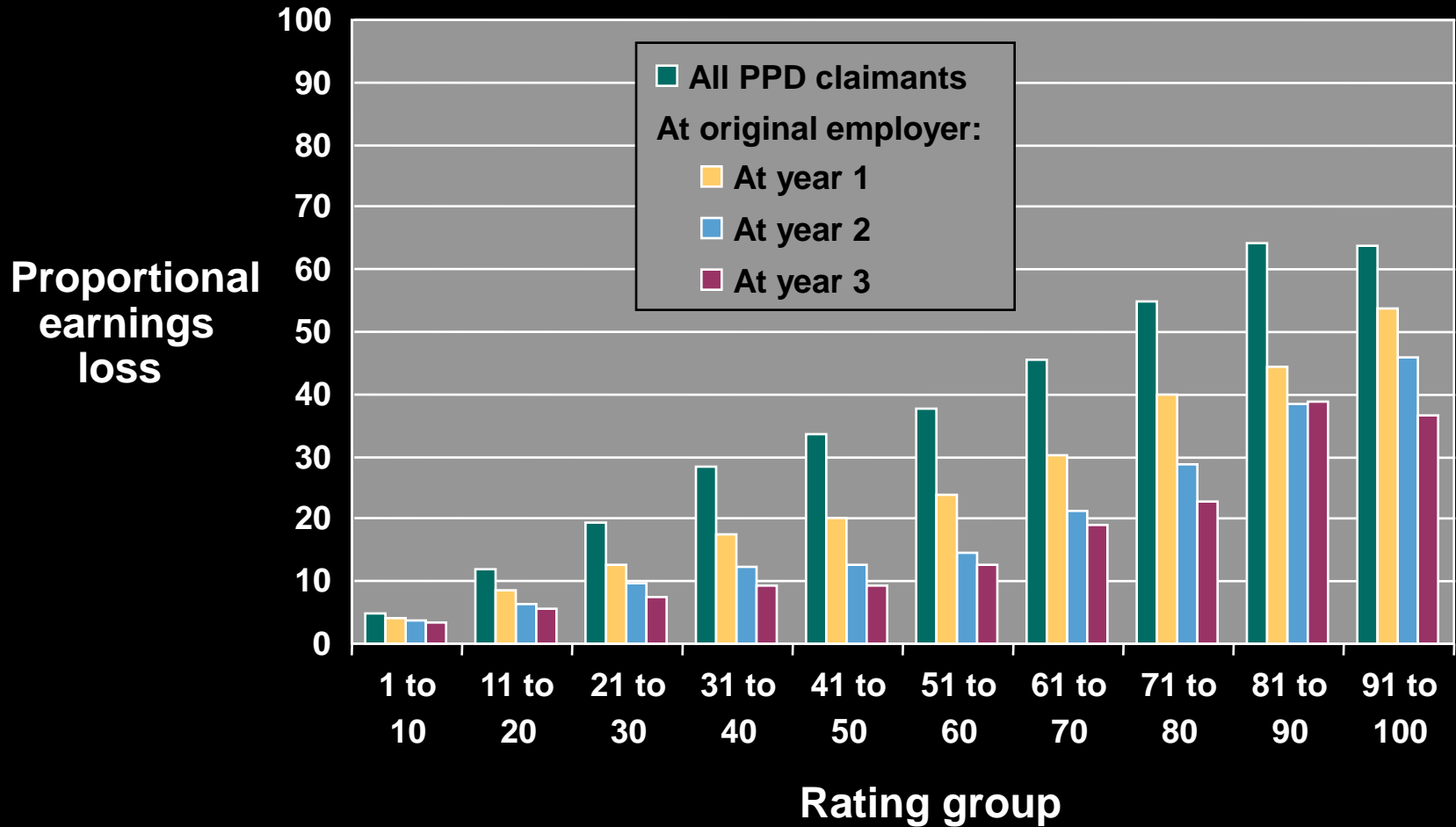
Source: MG-258-ICJ

Quarterly earnings before and after injury, PPD claimants with 1994 injuries and comparison workers

Benefits Were High But Inadequate

- **While California historically paid high benefits (relative to other jurisdictions), benefits did not replace losses**
 - **Low return to work was driving results**
- **California proposed various incentives to improve return to work**
- **A new factual dispute arose:**
 - **Return to work programs are better than benefit increases because return to work benefits both employers and workers**
 - **Early return to work hurts workers in the long run by forcing them to work injured, aggravating their disability**
- **CHSWC sponsored a research program on return to work**

Losses Are Lower When Workers Return to the At-injury Employer



Source: MG-258-ICJ

A Clear Opportunity for Policy Consensus

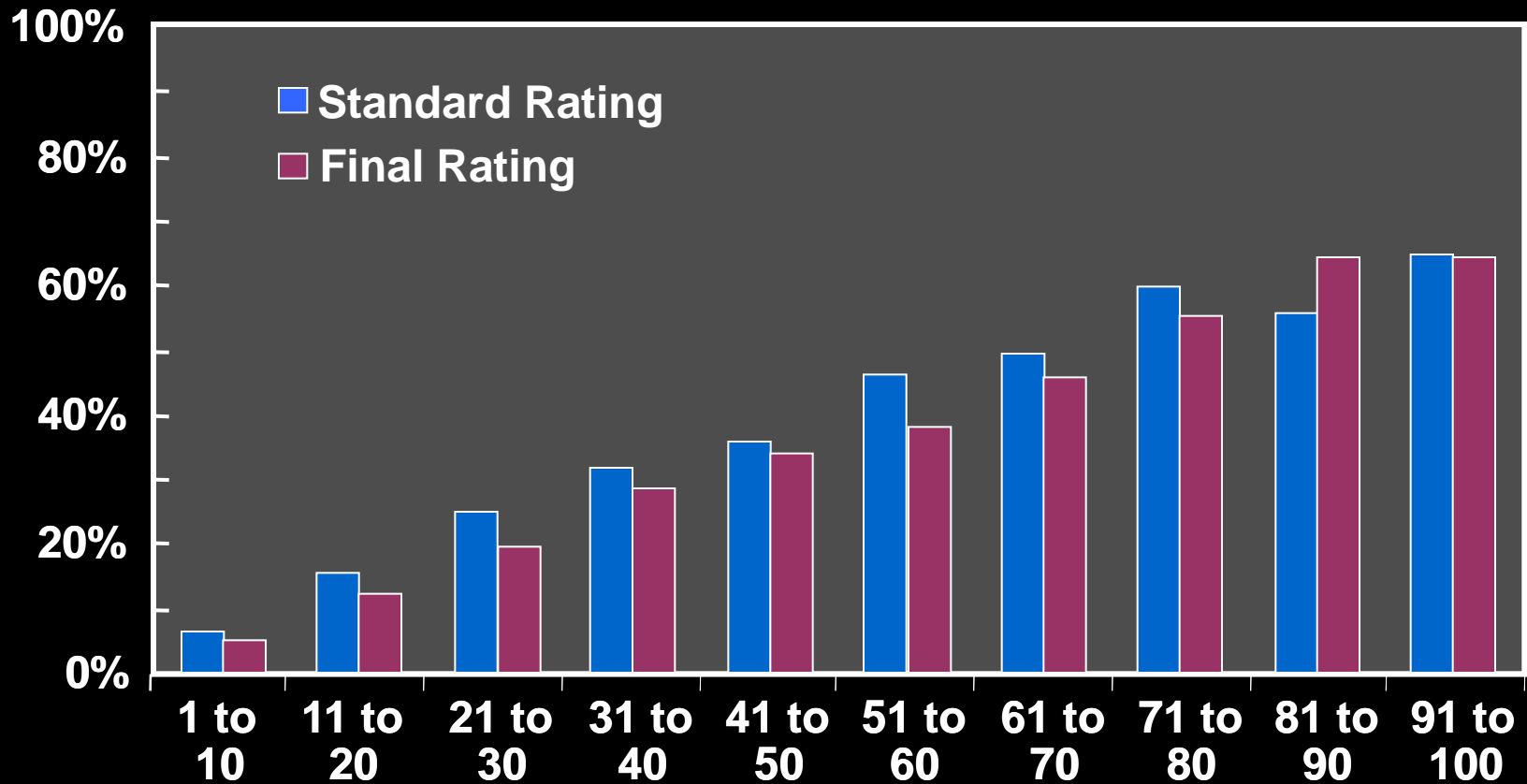
- **RAND analyzed “sustained” return-to-work (RTW) outcomes comparing large firms with RTW programs to those without programs**
- **Comparing PPD claimants with RTW programs to those without**
 - **The median time to sustained work was reduced by 47% (18.8 weeks)**
 - **Ten percent lower probability of subsequent injury**
 - **No difference in employment at five years**
- **The reduction in Temporary Disability (TD) benefit costs exceed the cost of the program on average.**
- **Results suggest that RTW benefits both injured workers and employers**

We Agree On Return to Work, But How Do We Set Benefits?

- **There are two ways to set indemnity benefits for permanent disability**
 - ***Wage loss approach:*** Pay benefits as losses are experienced
 - ***Disability rating approach:*** Predict losses using characteristics of the injury and other information
- **Wage loss systems are considered more equitable**
- **Rating systems are believed to encourage return to work**
- **California used a rating system that was intended to capture the “loss of ability to compete in the labor market,” incorporating**
 - **Information on occupation and age in addition to injury to improve targeting**
 - **“Subjective” elements such as pain and work restrictions**
- **Question: How did it work?**

Reasonable Vertical Equity

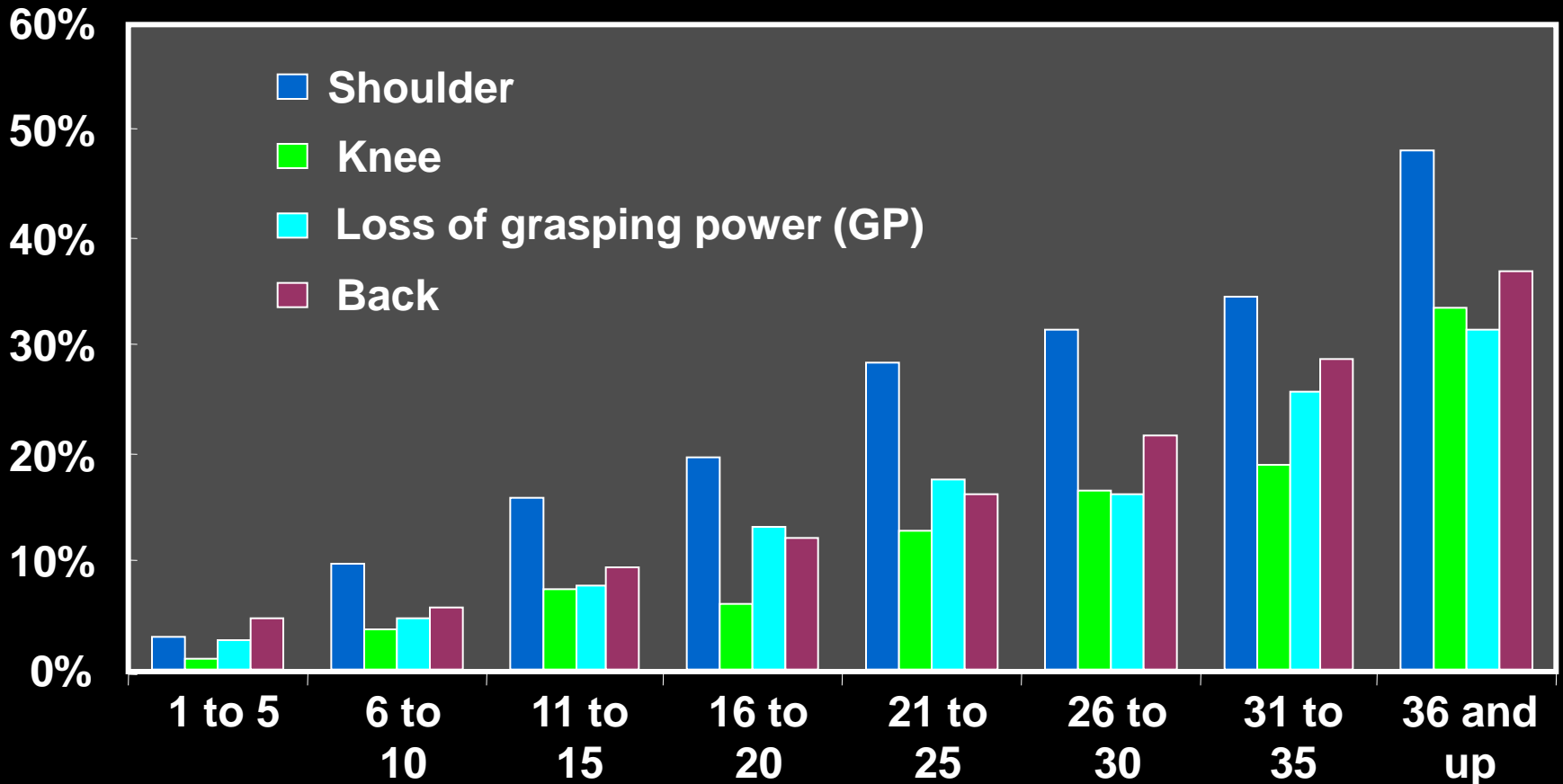
Proportional earnings loss



Source: MG-258-ICJ

Troubling Horizontal Equity

Proportional earnings loss



Source: MG-258-ICJ
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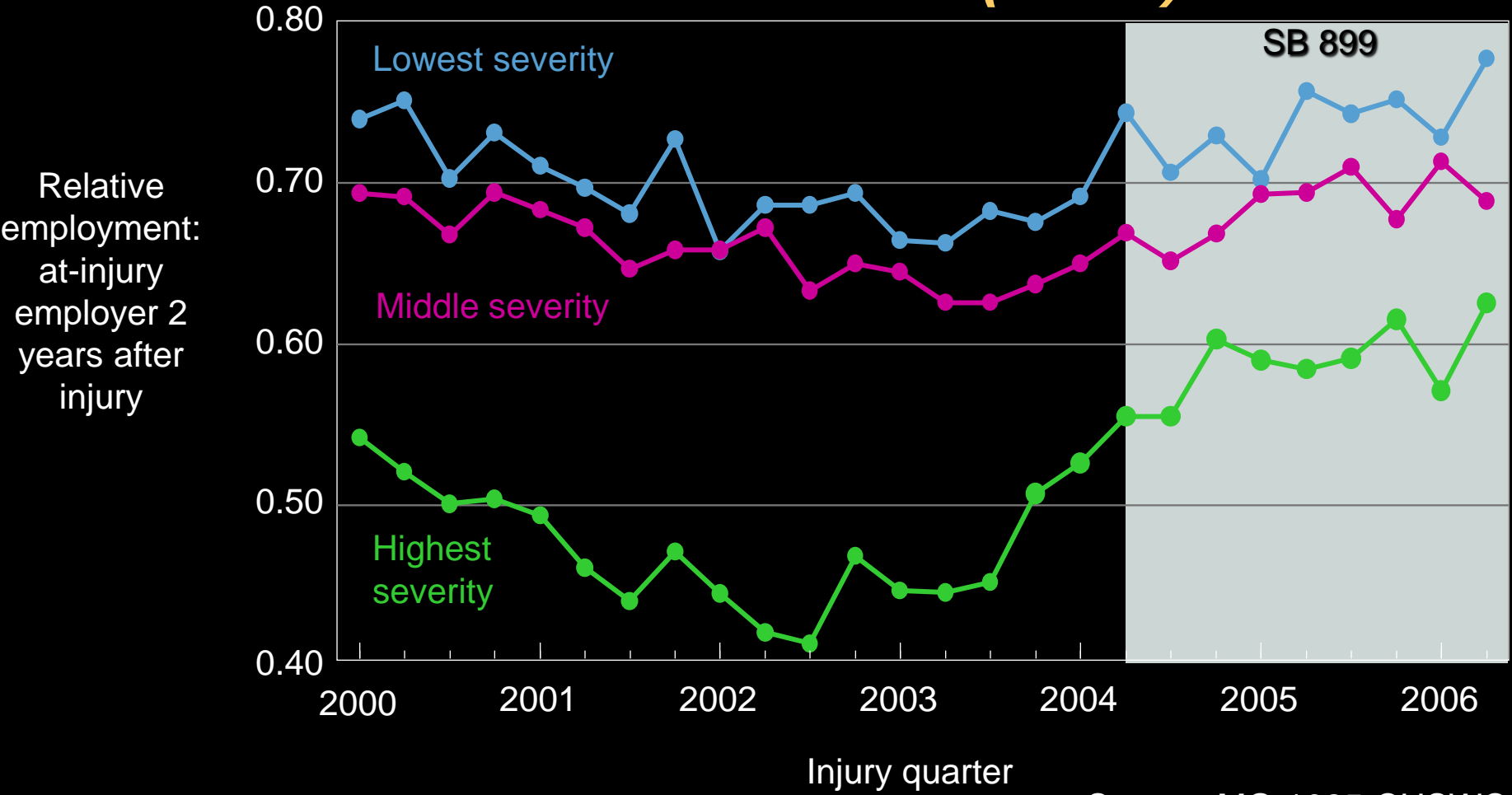
Taking Steps Toward a 21st Century Disability Rating System

- **RAND recommended an empirically-based rating system as the best of both worlds**
 - **Improved targeting using estimates of wage loss drawn from empirical analysis**
 - **Avoiding the employment disincentive effects of a true wage loss approach**
- **Our recommendation was (partially) adopted in 2004**
 - **“Future Earnings Capacity” adjustment**
 - **Five-year updates**
- **The FEC adjustment with updating incorporates data analysis directly into policy parameters**

2004 Reform Legislation Encouraged Return to Work and Significantly Cut Benefits

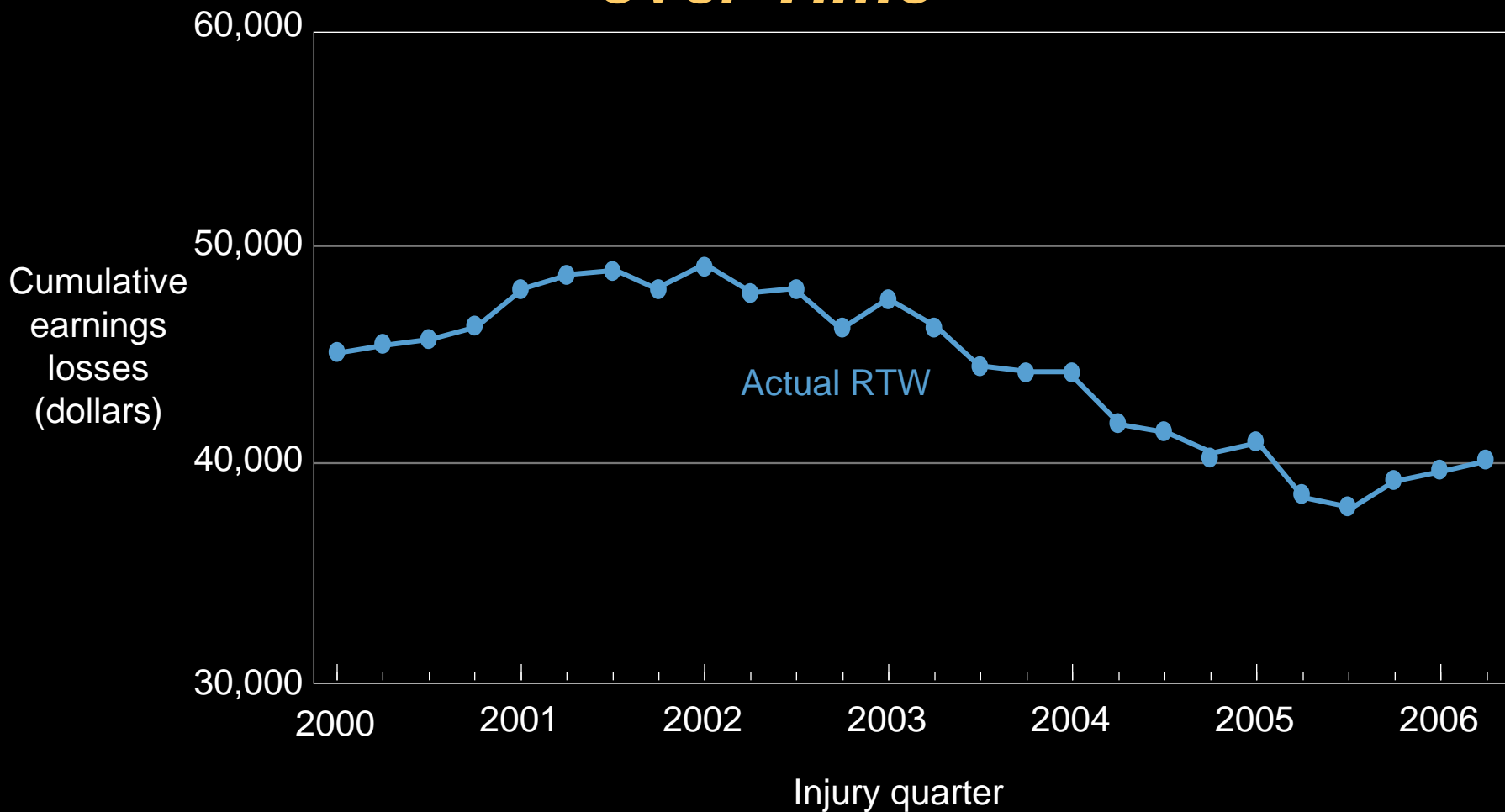
- **In response to the highest workers' compensation costs to employers in the United States, California adopted significant reforms in 2004**
- **Adoption of AMA Guides led to dramatic benefit reductions**
- **Permanent disability rating system was also modified to improve equity and return to work**
 - **FEC Adjustments**
 - **Two-tier rating system**
- **A new factual dispute arose**
 - **Benefit reductions made workers worse off**
 - **RTW incentives offset benefit reductions**

We Found Significant Improvements in Return to Work (RTW)



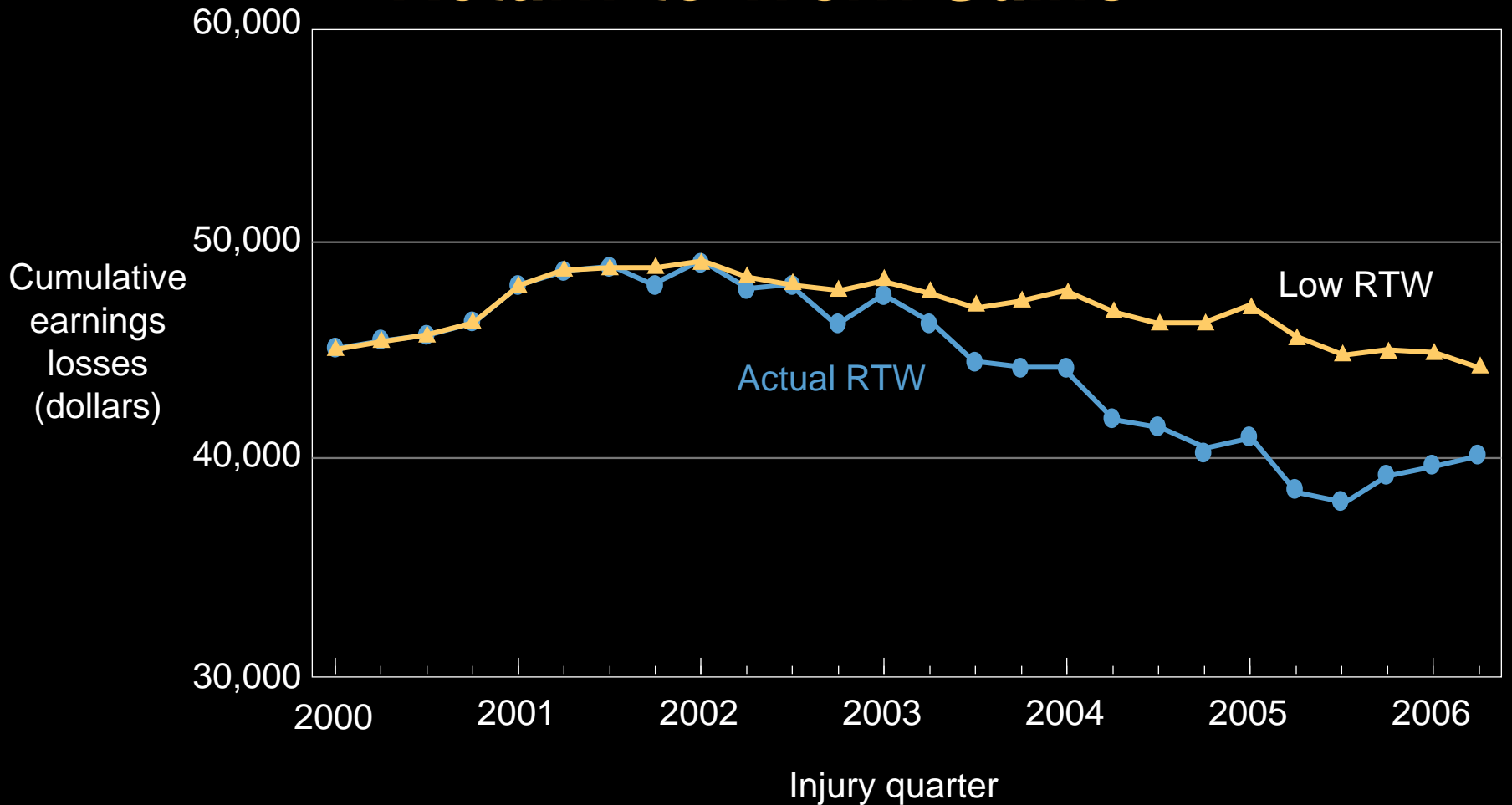
Source: MG-1025-CHSWC

Cumulative Earnings Losses Declined over Time



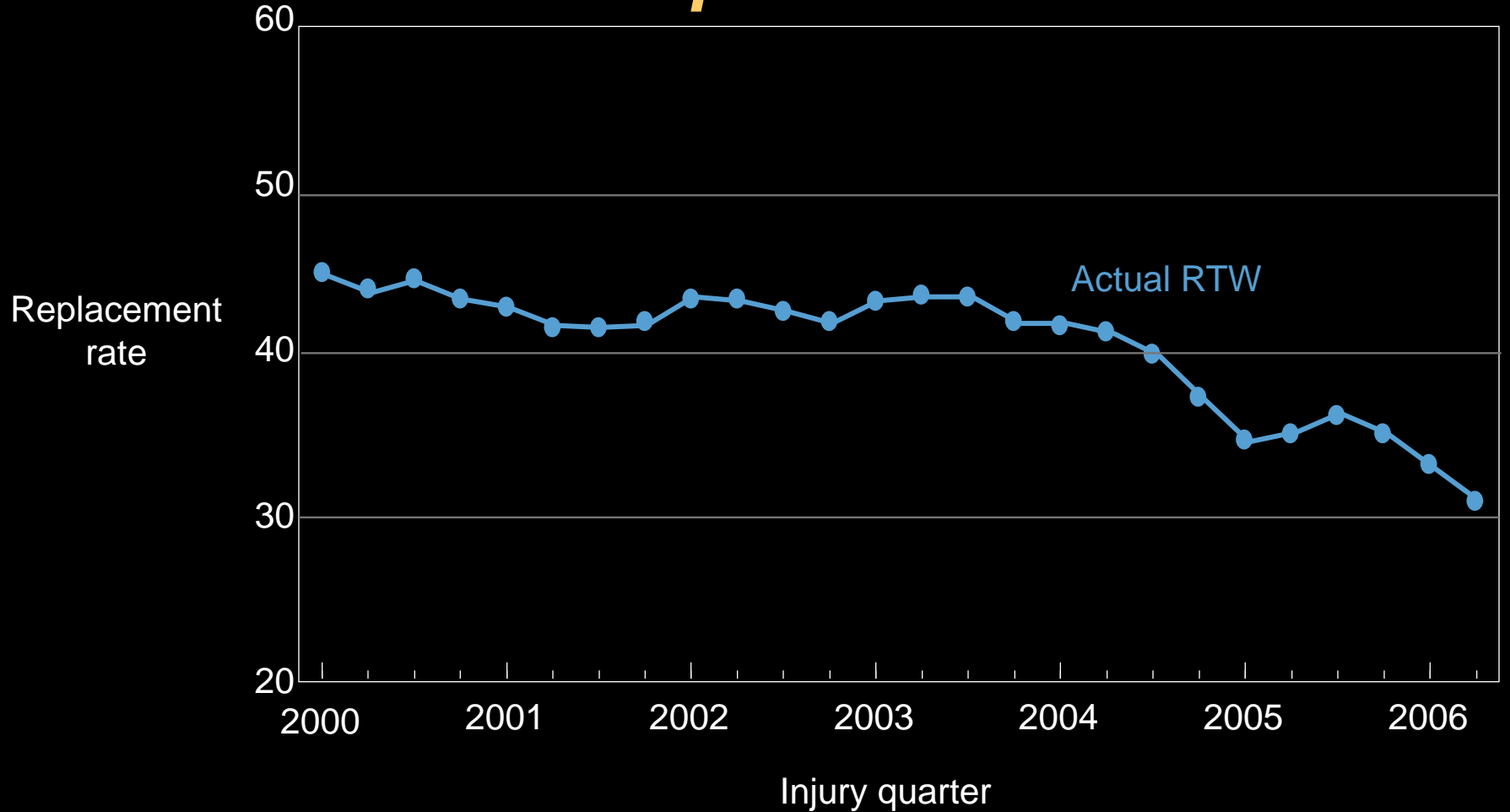
Source: MG-1025-CHSWC

Drop in Losses was Driven by Return-to-Work Gains



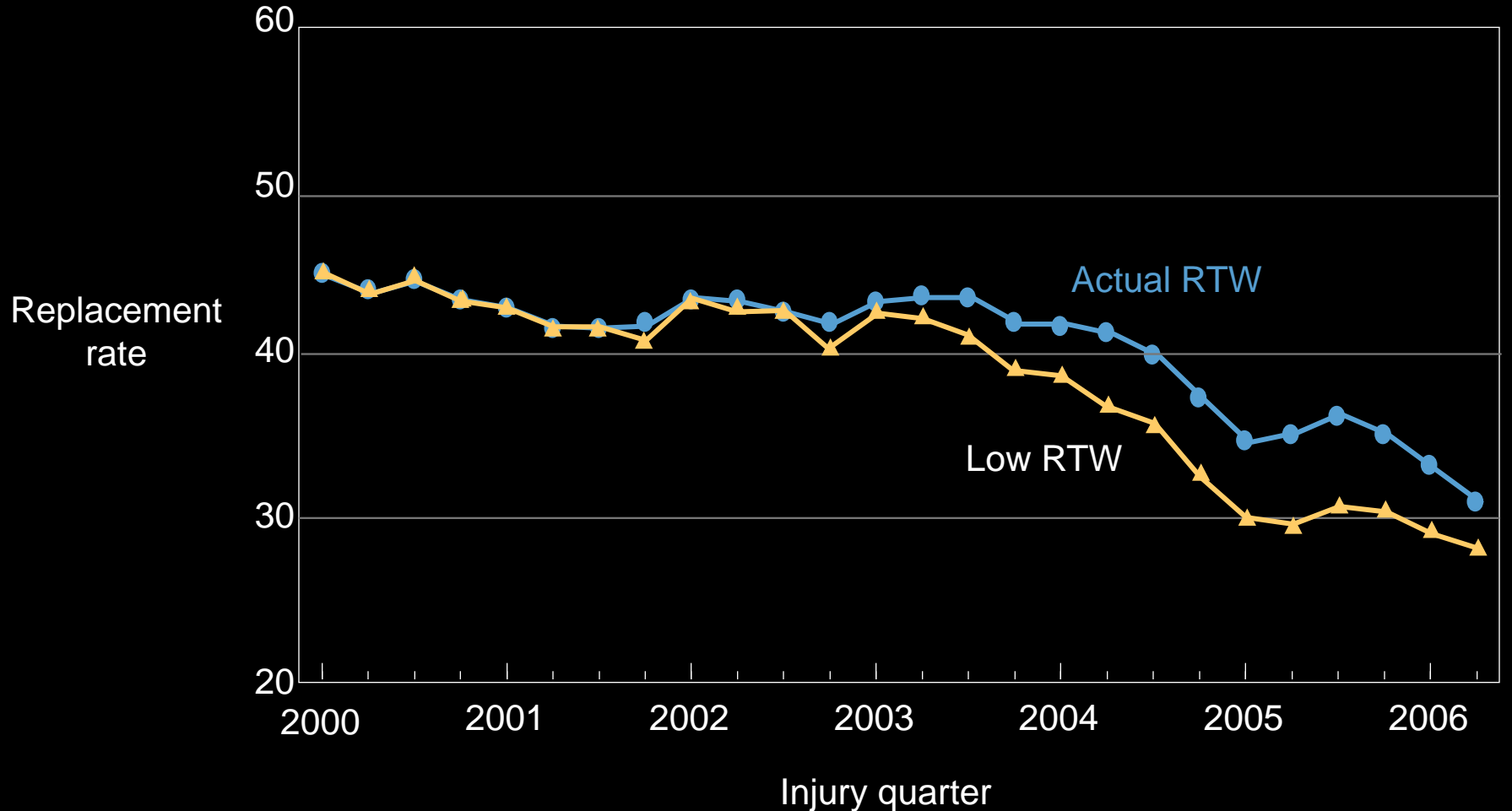
Source: MG-1025-CHSWC

Benefit Cuts Still Led to a Substantial Decline in Replacement Rates



Source: MG-1025-CHSWC

Decline Would Have Been Worse Without Return-to-Work Gains



Source: MG-1025-CHSWC

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Does Improved Return to Work Substitute for Benefits?

- **The 2004 changes lowered employer costs**
- **Injured workers experienced important gains in post-injury employment**
- **Benefits in California, inadequate prior to the reforms, were less adequate after the reforms**
- **The challenge today is to improve benefit adequacy without sacrificing the gains in post-injury employment**

The Future of Public Policy Analysis

- **Policy analysis can improve workers' compensation public policy in many ways**
 - **Reducing the range over which compromise is needed**
 - **Identifying problems**
 - **Debunking myths**
 - **Evaluating reforms**
- **Providing public policy research to policymakers is only the beginning**
- **In the future, there are promising opportunities in the convergence of public policy and policy research analytics**
 - **Data-driven updates in policy parameters**
 - **Constant evaluation of changes**
 - **More frequent and smaller data-driven policy adjustments**



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