Wyoming Workers' Compensation

Presented to Joint Appropriations Committee

July 2023

The Workers' Compensation Act

The governing statutes: Title 27, Chapter 14 Articles 1-8; and Chapter 15, Article 1.

Articles most pertinent to our discussion:

- Article 1: General short title, intent, definitions, immunity, extrahazardous industries
- Article 2: Premiums & Rates
- Article 4: Benefits
- Article 7: Fiscal Provisions
- Article 8: Administration

Required vs. Optional Coverage

Industrial Accident Fund (Workers' Comp.)

Wyoming Workers' Compensation is created under Article 10, § 4 of the Wyoming Constitution and Wyo. Stat. § 27-14-108 dictates coverage.

- Wyoming utilizes the North American Industry Classification System (NAICS).
- Coverage for "extrahazardous" industries is mandated under this fund.
- Allows for "optional" coverage for those in an industry **not** deemed extrahazardous. Optional employers may also seek coverage in the private insurance market. *(For example, NAICS Sectors 44 & 45-Retail. Many portions of these sectors are optional, in particular big box retail stores.)*
- "Exclusive Remedy" is the right of each employee to be compensated from the fund in lieu of any and all rights of action against an employer who is contributing to the fund. Wyo. Stat. § 27-14-104.

Wyoming Employers Coverage

FY 2022 Employers by the Numbers		
	Required Employers	**Optional** Employers
Total Employers Covered	11,744	5,645
Total Premium	$160.6M	$44.0M
Average Annual Premium Paid	$13,644	$7,803

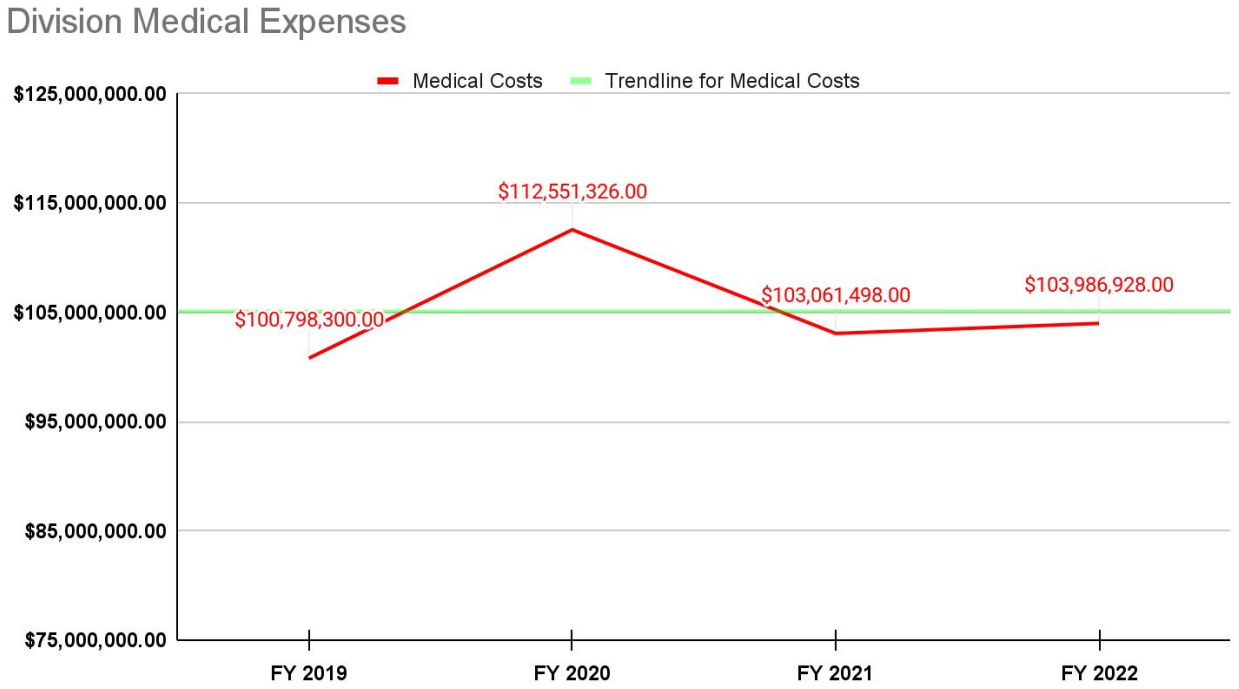
Source: CoreSuite CMS report EMPS055 2022

Benefits & Claims Overview

Injuries & Medical Benefits

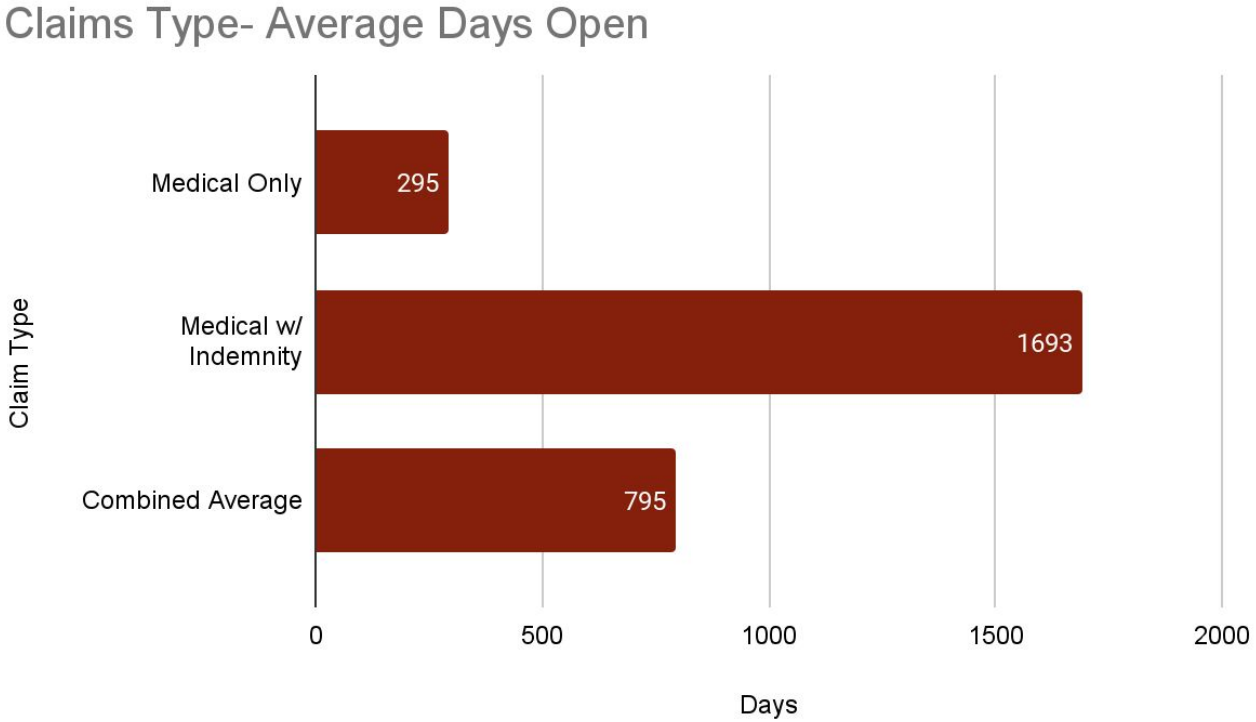
- What is or is not an injury is defined in Wyo. Stat. § 27-14-102(a)(xi)(A)-(H).
- Injuries vary from minor cuts and contusions to severe catastrophic and even fatalities.
- From 2018-2022 the Division averaged **10,795 injuries annually.**
- Generally speaking, injuries typically follow a 70/30 pattern. 70% being medical only cases and 30% entail some type of indemnity and complex medical; i.e. surgery or longer methods of treatment and time away from work.
- Once a claim is deemed compensable we cover that injury/treatment for the life of the claim. Treatment must be considered “reasonable & related.”
- Division averages about 20K open/active claims at any one time.

Medical Costs Five Year Comparison



Source: Internal Actuary Report_FY2019 to FY2022 Comparison.

Average Claim Lifespan



Indemnity Benefits

- In addition to medical benefits for compensable injuries, the Division also covers lost wages, other permanent disability benefits, and survivor death benefits.
- All benefit calculations are defined in Wyo. Stat. § 27-14-403.
- Many benefit calculations are tied to the Statewide Average Monthly Wage.

Wyoming Statewide Average Monthly Wage				
Year	**Quarter**	**Average Monthly Wage**	**2/3 Average Monthly Wage**	**30% Statewide Average Wage**
2023	Q2	$4,541.33	$3,027.70	$1,362.40
2023	Q1	$4,597.67	$3,065.11	$1,379.30
2022	Q4	$4,953.00	$3,302.17	$1,486.90

Temporary Total Disability

- Temporary Total Disability (TTD) is paid at 30% of the statewide average monthly wage or **two-thirds*** of the employee's actual gross monthly earnings, whichever is greater. Capped at the lesser of 100% of the employee's wages or the statewide average wage.
- Payment at two-thirds of gross monthly earnings is in line with the nationwide trend for TTD. WY limits to 24 months with some exceptions.
- Five year annual average of TTD is $30,565,484.35.

**Wyoming does provide a 3% TTD incentive if the employee seeks treatment in Wyoming.*

Permanent Partial Impairment

- Permanent Partial Impairment (PPI) is to compensate the injured party for loss of function to part of the body.
- PPI is paid at two-thirds of the statewide average monthly wage times the percentage of impairment times 60 (months). Wyo. Stat. § 27-14-405(g).
- Example: An individual with a lumbar spine injury is rated by the physician as having a 7% *whole body* impairment relative to the lumbar spine. Per statute, WY utilizes the most recent edition of the *American Medical Association's Guide to the Evaluation of Permanent Impairment.** Compensation based on two-thirds Q2/23 wage: $3,027.70 x 60(months) x 7% = **$12,716.34**
- Five year annual average of total PPI payments: $8,144,520.54

*The most recent AMA Guides to Impairment is the sixth edition originally published 2008, recent 2023 update. The 2024 changes will reportedly contain major changes for spine, upper and lower extremities, etc.

Permanent Partial Disability

- An injured employee awarded PPI may apply for Permanent Partial Disability (PPD) benefits. **PPD is to compensate an injured employee who, because of the work injury, is unable to return to employment at a wage that is at least 95% of their gross monthly wage.**

- The PPD award is calculated using a number of factors, including the injured employee's age at time of injury, years of education beyond twelfth grade, any education or training the employee was engaged in at the time of injury, and the number of different occupations held for at least 18 months in the 8 years preceding the injury. Each factor is assigned a certain number of months. The monthly amount of the award is based on a percentage of the injured employee's actual monthly earnings or the statewide average wage and cannot exceed the statewide average wage. Wyo. Stat. §§ 27-14-403(c) and 27-14-405(h). The total PPD amount is found by multiplying the total number of months by the monthly award amount.

- **Example:** An injured employee with a lumbar spine injury is unable to return to work at 95% of their pre-injury wage. The pre-injury wage is $5,730.98. Because ⅔ of the pre-injury wage is more than the statewide average wage, the monthly payment is capped at $3,683.33 which is the statewide average wage. The employee's age on the date of injury (DOI) = 34 (9.6 months), number of years of education beyond high school = 2 (4.3 months), number of different occupations = 2 (3.0 months), employee was not enrolled in in formal education or training on the DOI (0 months), age on date of injury is not greater than 45 (0 months). $3,683.33 x 19.6 months = **$62,248.28**.

- Five year annual average of total PPD payments is $2,852,513.32.

Vocational Rehabilitation

- An injured employee awarded PPI or expected to receive a PPI award, whose compensable injury prevents them from returning to any occupation for which they have training or experience in the last three years prior to the injury, and who has not received a PPD or prior vocational award, may elect to participate in a vocational rehabilitation program. The injured employee must elect in writing to accept vocational rehabilitation instead of PPD. Wyo. Stat. § 27-14-408(a).

- Once a determination of eligibility has been made, the injured employee will work with the Division of Vocational Rehabilitation to develop an Individual Plan for Employment (IPE). The plan shall not exceed five **(5) years** or a total cost of thirty thousand dollars **($30,000)** unless extended for extenuating circumstances. The award may be used for formal education, certifications, vocational training, or job accommodations. Depending on the cost of the plan, a portion of the funds may be used for living expenses. Workers' Compensation *may* pay a monthly stipend to the injured employee for living expenses. The stipend shall not exceed the established monthly TTD rate.

- Five year annual average of total Vocational Rehabilitation payments is $196,049.84.

Permanent Total Disability

- Permanent Total Disability (PTD) is awarded to an employee who is permanently incapacitated from performing work at any gainful occupation for which they are reasonably suited by experience or training. Wyo. Stat. § 27-14-102(a)(xviii).

- Upon certification by a physician licensed to practice surgery or medicine that an injury results in permanent total disability, the injured employee shall receive for **80 months a monthly payment.** The 80 month period shall be reduced by the number of months of previous disability awards. Wyo. Stat. § 27-14-406(a).

- The monthly amount of the award is based on a percentage of the injured employee's actual monthly earnings or the statewide average monthly wage at time of the PTD application and cannot exceed the statewide average monthly wage. Wyo. Stat. § 27-14-403(c). The total PTD award is found by subtracting the prior months of PPI and PPD from 80 months and multiplying the remaining months by the monthly amount.

- **Example:** An injured employee is unable to return any gainful occupation reasonably suited by experience or training. The pre-injury wage is $5,730.98. The statewide average monthly wage at time of PTD application is $4,541.33. The monthly payment is $3,820.84, which is ⅔ of the injured employee's gross wage on the date of injury. **The injured employee received 34 months of PPI and PPD. When subtracted from 80 months, that leaves 46 months remaining.** $3,820.84 x 46 = $175,758.84.

- Five year annual average of total PTD payments is $8,585,367.37

Fatality Survivor Benefits

- Fatality benefits are payable to a surviving spouse and dependent children when the injured employee's cause of death is work related. The monthly amount of the award will be 80% of the statewide average monthly wage or 75% of the injured employee's actual monthly earning at the time of injury, whichever is greater. The award cannot exceed two times the statewide average monthly wage.

- The **surviving spouse will receive a monthly payment for 100 months**. In addition, **each dependent shall be paid $250.00*** per month until they are 21 years of age (or 25 years of age if enrolled in post-secondary education), or until they die, whichever occurs first.

- Burial expenses and other related expenses cannot exceed at total of $10,000.

- **Example:** An injured employee with a spouse and two dependents dies as a result of a work-related injury. The actual monthly earnings on the date of death is $12,799.58. The statewide average monthly wage is $4,953.00. The monthly payment amount is $9,599.69, which is 75% of the injured employee's actual monthly earnings. The total amount of the fatality award is found by multiplying the monthly payment by 100 months. In this case $9,599.69 x 100 = $959,969.00. Each dependent will receive a monthly payment of $309.89 until they reach the age of 21, or 25 if enrolled in post-secondary education.

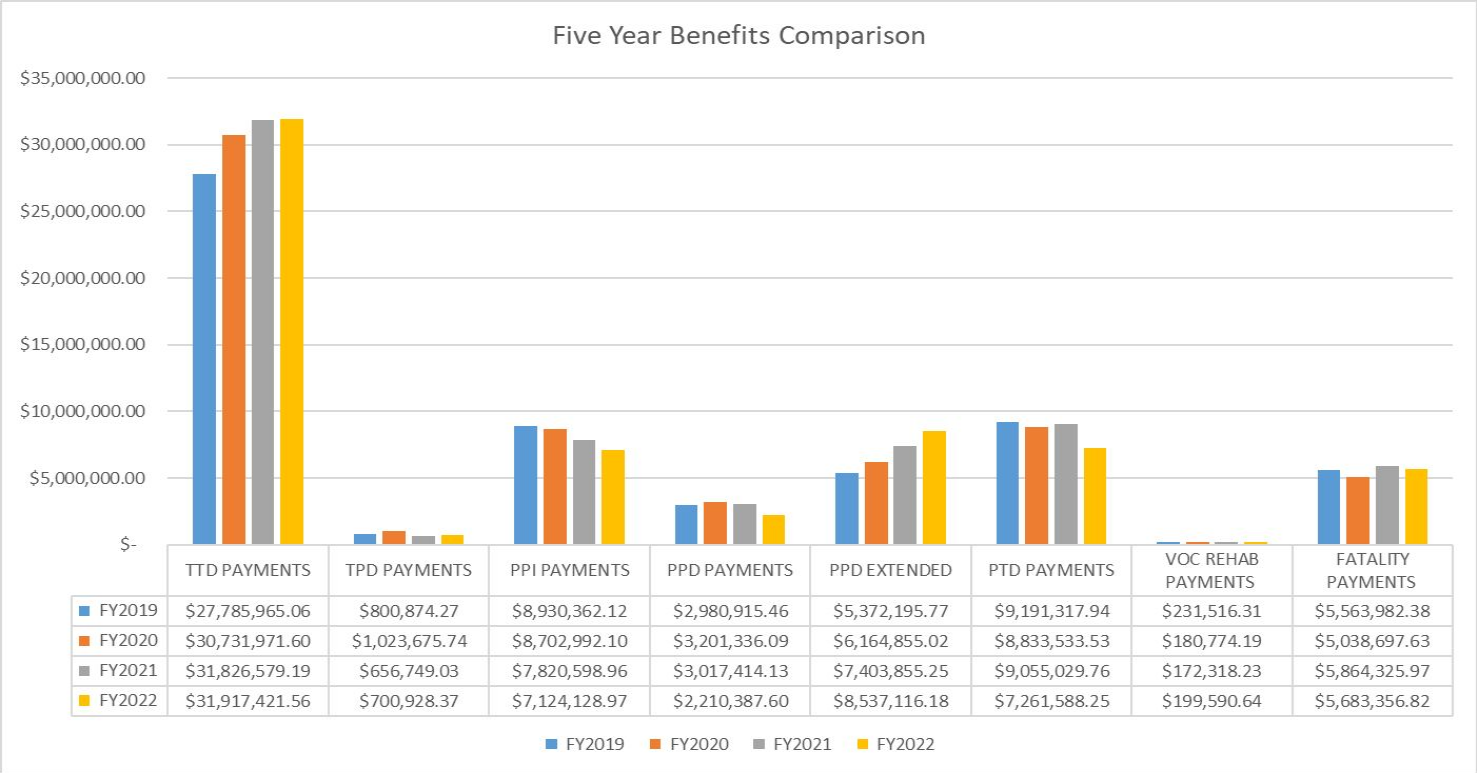
- Five-year annual average of total Fatality benefits is $5,537,590.70.

**The current dependent monthly payment is $309.89. A Cost of Living Adjustment (COLA) is added each year on July 1st to PTD, fatality, and dependent benefits.*

Extended Benefits

- Following payment in full of any award for **PTD benefits or Fatality benefits**, an additional award for **Extended Benefits** may be granted. Wyo. Stat. § 27-14-403(g).
- Extended PTD benefits are payable at the same rate as the PTD award. Extended spouse benefits are payable at ⅓ of the statewide average monthly wage.
- For extended PTD benefits, the injured employee must establish a reasonable effort has been made to return to part-time or full-time employment including retraining and educational programs.
- For extended fatality benefits, the surviving spouse must show financial necessity and proof that they have not remarried.
- Extended benefits are **granted for 12 months and can be renewed annually.**
- Five year annual average of total extended benefits is $6,869,505.55.

Indemnity Costs Five Year Comparison



	TTD PAYMENTS	TPD PAYMENTS	PPI PAYMENTS	PPD PAYMENTS	PPD EXTENDED	PTD PAYMENTS	VOC REHAB PAYMENTS	FATALITY PAYMENTS
FY2019	$27,785,965.06	$800,874.27	$8,930,362.12	$2,980,915.46	$5,372,195.77	$9,191,317.94	$231,516.31	$5,563,982.38
FY2020	$30,731,971.60	$1,023,675.74	$8,702,992.10	$3,201,336.09	$6,164,855.02	$8,833,533.53	$180,774.19	$5,038,697.63
FY2021	$31,826,579.19	$656,749.03	$7,820,598.96	$3,017,414.13	$7,403,855.25	$9,055,029.76	$172,318.23	$5,864,325.97
FY2022	$31,917,421.56	$700,928.37	$7,124,128.97	$2,210,387.60	$8,537,116.18	$7,261,588.25	$199,590.64	$5,683,356.82

Source: Internal Actuary Report_FY2019 to FY2022 Comparison.

Workers' Compensation Fund, Actuarial Statistics, and Rates

Workers' Compensation Fund Statistics

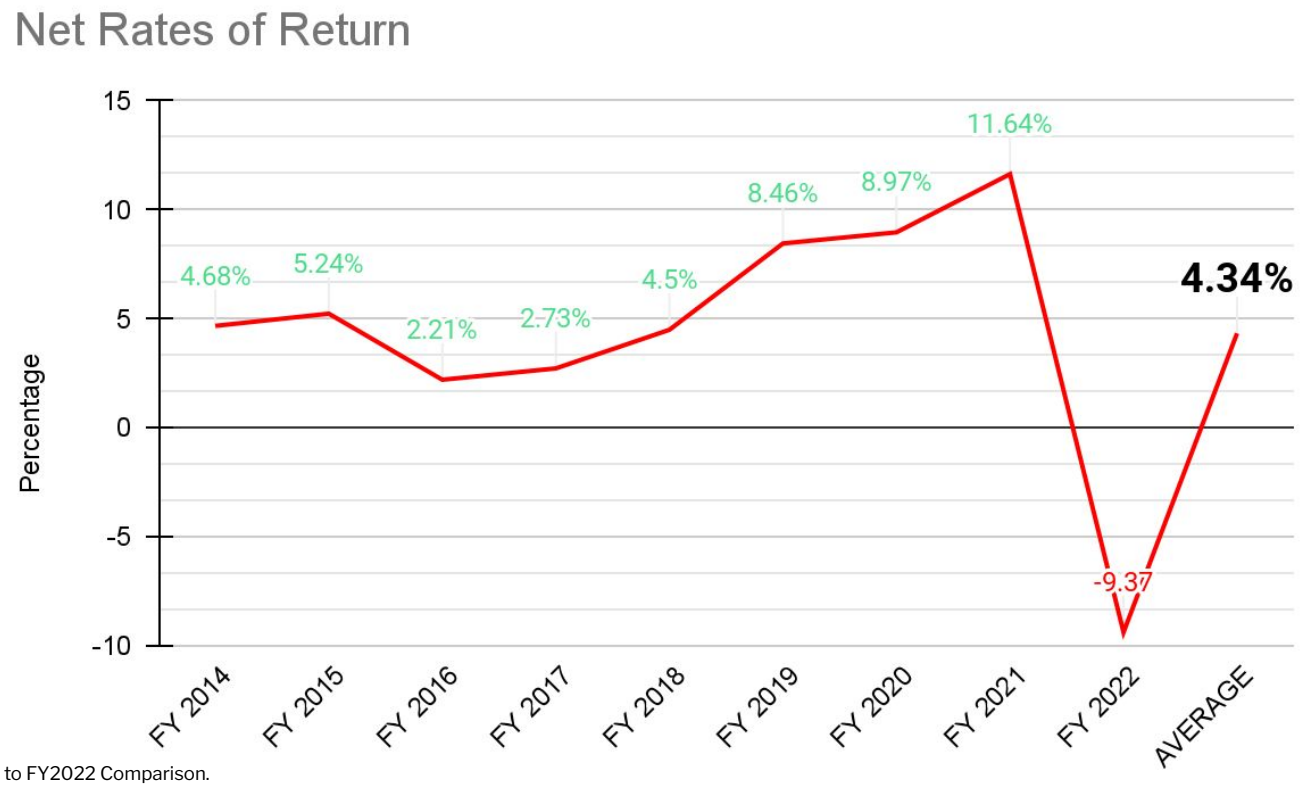
- Fund balance as of June 30, 2022: **$2,564,779,966.86.**

- This table summarizes the Division funding position as of June 30, 2022. On a nominal basis, funding is approximately $413M above the estimated liability, while on a discount basis (3.5%) the funding position is $1.16B.

	Undiscounted ($000s)	Discounted (3.5%) ($000s)
Total Unpaid Loss and ALAE	2,151,465	1,404,758
Available Funding	2,564,780	2,564,780
Funding Position	413,315	1,160,022
PFAD	19.2%	82.6%

Table Source: Oliver Wyman Actuarial Consulting, Inc. 2022

Historical Rates of Return



Source: Internal Actuary Report_FY2019 to FY2022 Comparison.

Discounting Loss Reserves (Future Liabilities)

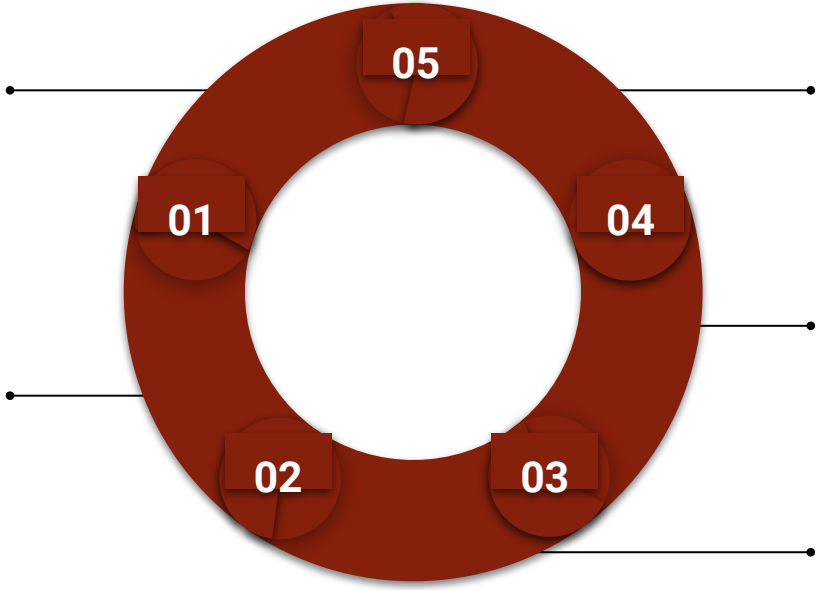
- Wyo. Stat. § 27-14-201(e)(v) allows the Division to discount future liabilities to a present value to account for future income from investments. i.e., the time value of money.

- The Division discounts our liabilities by 3.5%, which is approximately equal to an average rate of return over a period of years.

Rate Setting Process

Actuarial analysis begins March of each year through August. Data updated to actuary after SFY end on June 30.

September-select the base rate change and publish public notice of base rate hearing.



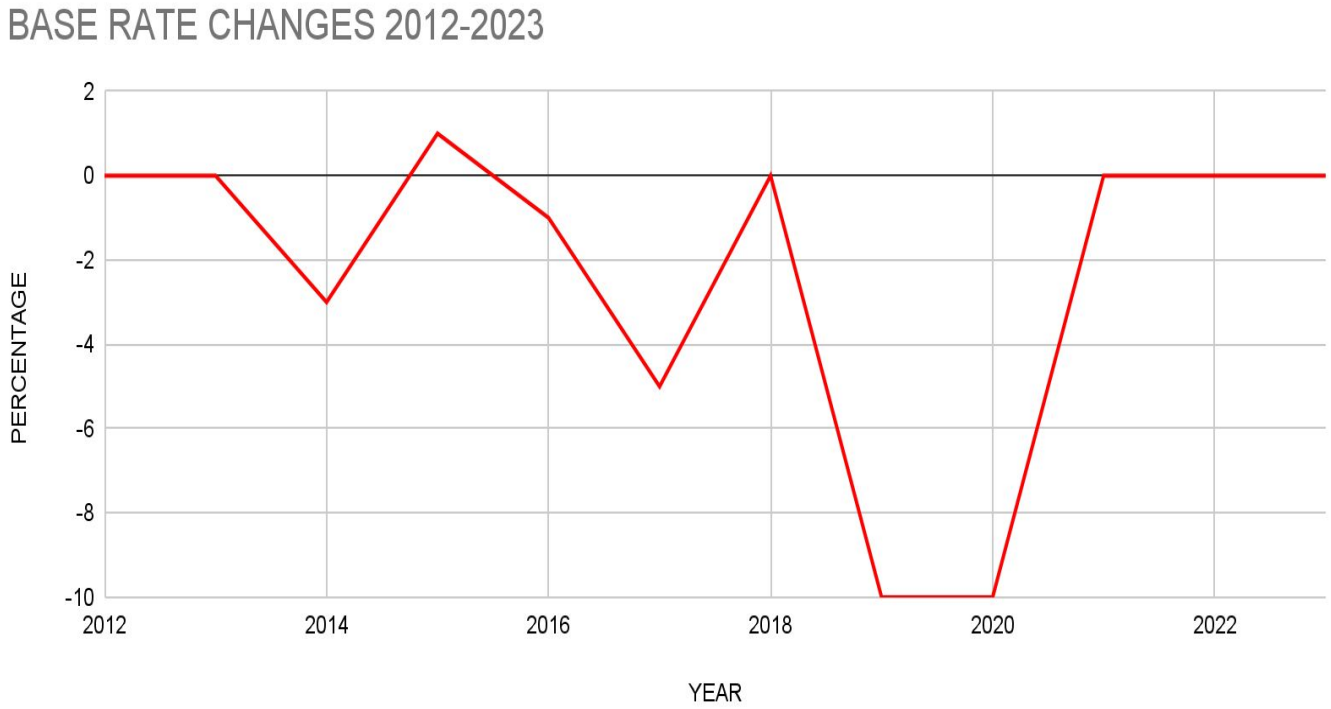
December- Division issues final rate notices to each employer for the upcoming rate year.

November- Hearing officer issues recommended decision to Division. Director and Governor give approval & sign final order.

October- Public hearing on base rates following WAPA.

October- Approximate rate notices to employers with notice of public hearing.

Base Rate Adjustments



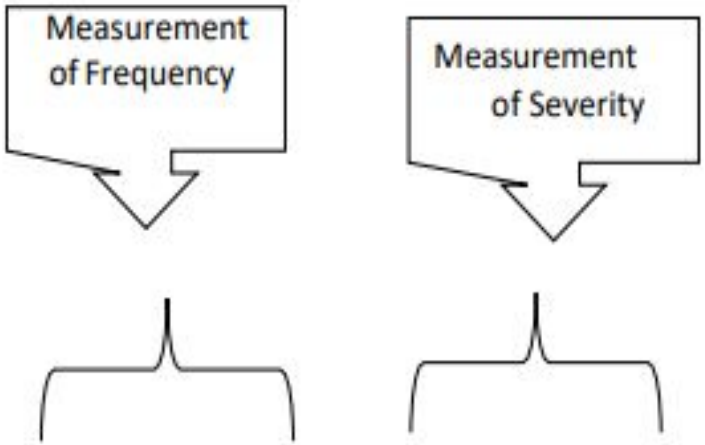
Data Source: Wyoming State Treasurer's Office

Experience Modification Rating

- The Experience Modification Rate (EMR), or the “experience” of the employer will adjust the employer’s premium base rate up or down based on the claims experience. Maximum adjustment is +/- 85%, based on five premium group sizes. Wyo. Stat. § 27-14-201(d). This tailors the employer’s premium rate to their risk characteristics, or “experience.”

- The Division utilizes a “split-plan” rating formula, promulgated in Chapter 2 of the Workers’ Compensation Rules, Regulations and Fee Schedules. The split plan measures the frequency and severity of claims.

Employer Modification Rating (EMR) Formula



$$1 + (Z_p)\frac{A_p - E_p}{E} + (Z_e)\frac{A_e - E_e}{E} = Modification\ (EMR)$$

Where:

Zp = Credibility Primary Value
Ap = Actual Primary Losses
Ep = Expected Primary Losses
Ze = Credibility Excess Value
Ae = Actual Excess Losses
Ee = Expected Excess Losses
E = Expected Losses

Source: Ch. 2, Sec. 3 Wyoming Workers' Compensation Rules, Regulations and Fee Schedules, June 2022

2023 EMR Split Plan Parameters

Key Split Plan Parameters and Values

Primary Loss Split Point:	$11,800
Maximum Single Loss:	$293,000
Med-Only Ratable Loss Threshold:	$890
Minimum 3-Year Premium to Qualify for Full Split Plan:	$8,000

Experience Rating Plan Modification Caps		
Premium Size Group		Max Credit/Debit
Not Exp Rated	7,999	20%
8,000	14,999	25%
15,000	49,999	45%
50,000	99,999	65%
100,000		85%

Source: Oliver Wyman Actuarial Consulting, Inc. 2022

Premium Examples

Employer's premiums are calculated using the EMR adjusted rate times payroll.

Examples:

Wyoming Great Roofing Company: NAICS 238161

Base Rate: $3.40, **EMR 1.00** Final Rate: (3.40* 1.000) $3.40 per $100 of payroll or 3.40% premium rate

Q1 total payroll of $10,000 .

Calculation: ($10,000/$100 = 100, 100 * $3.40) = **$340.00 Q1 premium**

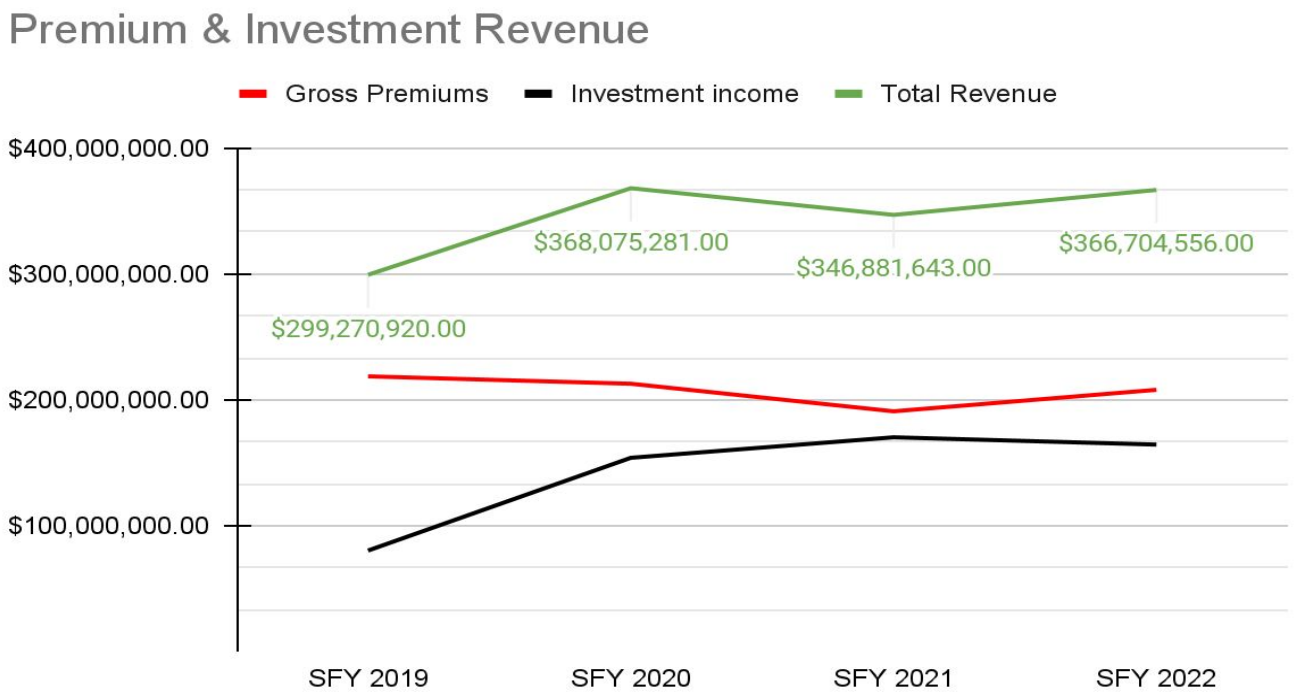
Wyoming Great Roofing Company: NAICS 238161

Base Rate: $3.40, **EMR 0.800** Final Rate: (3.40* 0.800) $2.78 per $100 of payroll or 2.78% premium rate

Q1 total payroll of $10,000.

Calculation: ($10,000/ $100 = 100, 100 * $2.78) = **$278.00 Q1 premium**

Five Year Premium & Investment Comparison



Source: Internal Actuary Report_FY2019 to FY2022 Comparison.

Potential Option to Lower Rates

- Consideration of investment income on the Provision For Adverse Deviation (PFAD). Reference June 16, 2023 Oliver Wyman analysis of the 2023 rates.
- Currently, statute only allows for consideration of investment income on the “loss reserves,” or the discounted liabilities. Wyo. Stat. § 27-14-201 (e)(v).
- Employing this method could allow for substantial rate reductions. Ref. Pg.2 Table:

Rate of Return					
0.5%	1.5%	2.5%	**3.0%**	3.5%	4.5%
Rate Indication					
-2.7%	-7.2%	-11.6%	**-13.9%**	-16.1%	-20.6%
Estimated Change in Collected Premiums (in $000’s)					
-$5,497	-$14,639	-$23,781	**-$28,352**	-$32,923	-$42,065

Table Source: Oliver Wyman Actuarial Consulting, Inc. June, 2023

PFAD Income continued

If the PFAD method is employed, the Division would recommend some statutory limits for future consistency.

Statute changes are likely to fit in Wyo. Stat. § 27-14-201(e)(v):

- Consider upper & lower limits on the percentage allowed; i.e, if rate of return is negative we may not consider income on PFAD. Also an upper limit to embed a conservative approach.

Possible Other Considerations

While the Division's preference is to first implement the PFAD income approach, below are some other items that may lower rates in the long term. We would urge caution on implementing too many changes at one time; in particular with the below "trigger" mechanism.

- Provide a statutory mechanism to "trigger" dividends to employers. Example: Some states, including North Dakota (ND), have a "reserve trigger." Whereby dividends will trigger once the PFAD is a certain percentage above the discounted liabilities. Example: ND Century Code 65-04-02. This sets a floor for the reserves at 120% above the discounted liability and a maximum of 140% above the discounted liability. Dividends are issued in a "fiscally prudent manner" when the PFAD is between 130%-140% above the discounted liability.

- Over the years some states have sought to narrow the definition of injury; thereby limiting what is covered (longer term solution).

- Some states cap benefits by amount or age. Example: PTD Benefits in ND expire when one reaches retirement age and qualifies for Social Security retirement benefits (longer term solution). ND Century Code 65-05-09.