

SMALL BUSINESS

How competition can help lower worker's compensation costs

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Introduction

Workers' compensation is defined by the United States Centers for Disease Control as, “systems [that] were established to provide partial medical care and income protection to employees who are injured or become ill from their job.”

Workers' compensation was established to incentivize employers to reduce injury and illness to their employees. While the federal government has established this overarching definition of workers' compensation and its purpose, each state government is responsible for creating its own system and regulation for workers' compensation. This has led to some stark differences in the workers' compensation systems of varying states.

Washington and Wyoming, for example, are two of just four states (North Dakota and Ohio are the others) with a monopoly worker's comp system. This top-down control without any competition has led to increasing rates and questionable customer service. Meanwhile, in Idaho and Montana, employers can choose to purchase their worker's compensation from the state, from private companies, or can self-insure, leading to declining rates.

While there is some debate about which system – private or state-controlled – works best, there is ample research to suggest the private model uses the free market to improve coverage, lower costs and protect workers.

KEY INFORMATION COLUMN

Washington's small businesses are mostly required to get their worker's comp coverage through the state.

Washington's worker's comp rate has increased 29.5% in the past 10 years

Monopolies – Washington & Wyoming

All Washington businesses with one or more part or full-time employees are required to provide worker's compensation. Additionally, Washington state is one of four states which takes a monopolistic approach to worker's compensation - that is, a state in which worker's compensation must be purchased from the state and cannot be purchased from private companies. In other words, worker's compensation in Washington must come either from Washington state's Department of Labor and Industries or companies must become self-insured employers.¹ But very few companies are even allowed the privilege of being self-insured.

Since worker's compensation is provided by the state, it is entirely funded by the state and its employers via a payroll tax. This year, Washington State's Department of Labor and Industries announced another 4.8% increase in the average price employers and workers will pay for worker's compensation this year, meaning employers can expect to pay an average of \$61 per year per employee.² The state's Department of Labor and Industries also announced they would be tapping into its contingency reserves, to keep these rate increases lower than they otherwise would be. This move has been met with some criticism from Washington business leaders.

Lobbyist Tom Kwieciak testified against the increase at a virtual public hearing on October 27 on behalf of the Washington Farm Bureau and the Building Industry Association of Washington. He said, "The proposed average 4.8% rate increase will mean additional labor costs of over \$10 million for these small farms in 2023... Builders and subcontractors face the same challenges as they see continual increases in labor costs, as well as labor shortages."³

Rate increases are not unusual in Washington. Since 2010, Washington state government officials have raised worker's comp rates ten times for a cumulative increase of 29.5%.⁴

At a time when inflation and the cost of living in Washington remain high, this year's unexpected increase in costs for business owners has proven to be unpopular.

This high cost of state-provided insurance could be a driving force behind the rise of self-insurance in Washington. While self-insurance is an option for Washington companies, acquiring the right to self-insure is a process that

¹ Washington State Department of Labor & Industries. "Do I Need a Workers' Comp Account?" *Washington State Department of Labor & Industries*

² Washington State Department of Labor & Industries. "Moderate Increase in Workers' Compensation Rates for 2023." *Washington State Department of Labor & Industries*

³ Davis, Brett. "Business Leaders Protest L&I's 4.8% Workers' Comp Rate Hike Plan." *The Center Square*, 27 Oct. 2022,

⁴ Washington State Department of Labor & Industries, rate data, available at <https://lni.wa.gov/insurance/rates-risk-classes/rates-for-workers-compensation/>

KEY INFORMATION COLUMN

Wyoming has the highest worker's comp rates in the country.

Wyoming does not allow self-insurance.

requires companies to jump through a number of hoops, including the provision of three years of audited financial statements.⁵ This makes it very difficult for a small business to self-insure, while larger businesses and corporations can more easily take advantage. Data shows roughly 350 Washington companies were certified to self-insure, and those companies employed a quarter of all Washington employees in 2020.⁶

Worker's comp cost comparison

By state (2020)

Highest

Wyoming
Alaska
Hawaii
Montana
South Carolina
Idaho

Lowest

District of Columbia
Texas
Michigan
Virginia
Arkansas
Indiana

Source: National Academy of Social Insurance, 2020

Like Washington, Wyoming is also one of the four states in the U.S. to take a monopolistic approach to worker's compensation, meaning worker's compensation is publicly funded and there is no private sale of worker's compensation. However, one major difference between Washington and Wyoming's monopolistic approaches to worker's compensation is the fact that Wyoming does not allow self-insurance. Wyoming also differs from Washington in the sense that Wyoming enumerates specific industries which must carry worker's compensation coverage.⁷ These include all hazardous sectors and subsectors as well as a wide variety of other industries from retail to real estate. There are many industries not defined by this statute, and for those industries, the purchase of worker's compensation is entirely optional. For instance, school districts are not mentioned and therefore, school districts have the right to choose whether to purchase state-funded worker's compensation in Wyoming.

⁵ Washington State Department of Labor & Industries. "How to Self-Insure." *Washington State Department of Labor & Industries*,

⁶ Egeland, Donna, et al. "Office of the Ombuds for Self-Insured Injured Workers 2020 Annual ..." *Washington State Department of Labor and Industries*, Office of the Ombuds, Sept. 2020

⁷ "2011 Wyoming Statutes :: Title 27 - Labor and Employment :: Chapter 14 - Worker's Compensation :: 27-14-108. Extrahazardous Industries, Employments, Occupations; Enumeration; Definitions; Optional Coverage." *Justia Law*, 2011, <https://law.justia.com/codes/wyoming/2011/title27/chapter14/section27-14-108>.

KEY INFORMATION COLUMN

Idaho allows competition in its worker's compensation system.

Idaho's rates have decreased another 11.5% this year.

Another way in which Washington and Wyoming differ in their monopolistic approaches to worker's compensation is in cost - Wyoming's estimated employer rates for worker's compensation is \$1.98 per \$100 in covered payroll – the highest rate in the country.⁸ This rate is determined based on a number of factors including payroll, number of employees, industry and risk factor, and claims history. In Washington, worker's compensation costs are calculated using the same factors, but the estimated cost is lower - \$1.49 per \$100 in covered payroll.⁹

A different approach in Idaho

Idaho takes an entirely different approach to workers' compensation. There, all companies with one or more employees are required to have workers' compensation, but it is important to note that Idaho's approach is not monopolistic and therefore does not require the purchase of state-funded workers' compensation. Instead, employers can purchase workers' compensation from the State Insurance Fund (SIF), which is the insurance carrier for Idaho's workers' compensation and currently insure 33,000 Idaho businesses.¹⁰

However, since Idaho is not a monopolistic state, many large employers can also elect to self-insure thanks to the Idaho Workers' Compensation Law. To self-insure, companies must be approved by the state Industrial Commission.¹¹ Unlike Washington and Wyoming, Idaho also allows the purchase of workers' compensation from private insurance companies, of which there are over 300 authorized to provide insurance to Idaho employers.¹²

The National Council on Compensation Insurance, based on 2020 data, concluded Idaho had the sixth-highest rates.¹³ But since that data was released, Idaho saw an 11.5% decrease in workers' compensation rates, effective January 1, 2023. This change was approved by the Idaho Department of Insurance.¹⁴

⁸ "Wyoming Workers' Compensation Insurance for Small Business." *Insureon*, Oct. 2022, available at <https://www.insureon.com/small-business-insurance/workers-compensation/wyoming#:~:text=How%20much%20does%20workers'%20compensation,Payroll>

⁹ Washington State Department of Labor and Industries, available at <https://lni.wa.gov/insurance/rates-risk-classes/rates-for-workers-compensation/rates-notice>

¹⁰ "Home." *SIF*, <https://www.idahosif.org>

¹¹ IDIndustComm. "Employer Information." *Industrial Commission*, Industrial Commission, 7 Dec. 2022, available at <https://iic.idaho.gov/employer-compliance-division/employer-information/#:~:text=Self%2DInsurance%20Eligibility,deposits%20can%20be%20found%20here>

¹² IDIndustComm. "Employers Faqs." *Industrial Commission*, Industrial Commission, 16 Sept. 2019, available at <https://iic.idaho.gov/employer-compliance-division/employer-information/employers-faqs>

¹³ National Academy of Social Insurance, November 2022, available at <https://www.nasi.org/wp-content/uploads/2022/11/2022-Workers-Compensation-Report-2020-Data.pdf>

¹⁴ "Idaho's Workers' Compensation Rates Decreasing 11.5% for 2023 • Press Release • Idaho Department of Insurance." *Department of Insurance*, State of Idaho, 12 Oct. 2022, <https://doi.idaho.gov/pressrelease/idahos-workers-compensation-rates-decreasing-11-5-for-2023>

KEY INFORMATION COLUMN

Montana has a hybrid system that allows coverage to be purchased privately or with the state.

West Virginia changed its monopoly to a hybrid model and saw immediate success with lower rates, less fraud and shorter recovery times for workers.

Montana's approach

Montana's approach to worker's compensation is very similar to that of Idaho. Like Idaho, Montana requires all businesses with one or more employees to purchase workers' compensation. This workers' compensation can be provided either through private companies, self-insurance, or the Montana State Fund.¹⁵

There are currently 108,000 Montanans employed by self-ensured companies in Montana. To qualify for self-insurance in Montana, companies must apply and prove their financial ability to cover all necessary workers' compensation costs.¹⁶ In terms of cost, Montana's current estimated rate of state-funded workers' compensation is \$1.77 per \$100 in covered payroll, but this cost is once again reliant upon factors such as payroll, number of employees, industry, and risk factor.¹⁷

It is worth noting that Montana state representative Nelly Nicol (R) has recently introduced HB 506, which aims to promote freedom of competition in Montana's workers' compensation system. If passed, this bill would allow the department of administration to "elect workers' compensation insurance coverage on behalf of all state agencies and manage the workers' compensation insurance coverage under the terms, conditions, and provisions of compensation plan No. 1, plan No. 2, or plan No. 3. The department shall elect a compensation plan that insures all state agencies."¹⁸ Essentially, this bill would empower the department of administration to select workers' compensation for state agencies from a variety of providers. Currently, state agencies in Montana receive their workers' compensation from the state fund.

Shifting to competition

As we compare the public and private provisions of workers' compensation, we should consider the results of states who have shifted from entirely public to private systems. West Virginia is an excellent example of this. In 2004, then-Governor Joe Manchin and the Legislature approved legislation that privatized workers' compensation. In the years since, workers' compensation rates for businesses have steadily declined thanks to the competition offered by dozens of private insurance companies.

Prior to 2004 when the state oversaw workers' compensation in West Virginia, the system was losing \$1 million dollars per day and had an unfunded \$3 billion in liability. There were also loopholes that allowed individuals to take advantage

¹⁵ "Workers' Comp in Montana | Montana Workers' Compensation - the Hartford." *The Hartford*, <https://www.thehartford.com/workers-compensation/montana>

¹⁶ "About Us." *Montana Self Insurers*, <https://mtselfinsurers.org/about-us/?viewport=true>

¹⁷ "Montana Workers' Compensation Insurance for Small Business." *Insureon*, <https://www.insureon.com/small-business-insurance/workers-compensation/montana#:~:text=Estimated%20employer%20rates%20for%20workers,Location>

¹⁸ "MT HB506 | 2023 | Regular Session." *LegiScan*. LegiScan LLC, 23 Feb. 2023. Web. 19 Feb. 2023. <https://legiscan.com/MT/bill/HB506/2023>

KEY INFORMATION COLUMN

Nevada has also revamped its worker's comp system via private competition.

Allowing more choices will help lower costs and improve outcomes for all workers.

Nothing in this publication shall be construed as an attempt to aid or hinder the passage of any legislation.

of the system at taxpayers' expenses - one could be declared permanently disabled at one job and collect lifetime benefits all while working at a new job.¹⁹ However, since privatization in 2004, scams such as this have halted, as private companies compete to offer injured workers the best and timeliest coverage to get them back to work as soon as possible. This has provided major savings for both employers and taxpayers, and the consistent decline in rates since 2004 is proof that free markets and the competition they provide are essential.

West Virginia isn't the only state to switch from public to private workers' compensation systems - in 2000, Nevada also made the switch to workers' compensation provided by private companies and self-insurance. As with West Virginia, privatization had immediate positive effects on Nevada employers and taxpayers. In the 90s, the state's workers' compensation system was at risk of being insolvent due to a large deficit, and the state's fund had a projected unfunded liability of \$3 billion.²⁰ However, in the years since privatization, Nevada's workers' compensation rates have declined steadily in the years since privatization and will be declining this year by another 3.6%.²¹

Conclusion

Worker's compensation is important for employees and their employers. While nearly all states require businesses to purchase some form of workers' compensation to protect their employees and themselves, each state takes a different approach and presents a unique set of requirements.

Some states, such as Washington and Wyoming, take a monopolistic approach and require the purchase of state-funded insurance - but in Washington especially, this approach has faced criticism. Others, like Idaho and Montana, offer their constituents more choices in the form of self-insurance and insurance from private companies. This private provision of workers' compensation appears to be gaining traction nationwide, with other states such as Nevada and West Virginia seeing significant privatization efforts. As we move forward, we are likely to see continued privatization of workers' compensation - a free market solution which will promote competition and can only benefit businesses and employees alike.

¹⁹ Kercheval, Hoppy. "How Privatization Saved Workers' Comp." *WV MetroNews*, 14 Nov. 2022, <https://wvmetronews.com/2017/08/28/how-privatization-saved-workers-comp/>

²⁰ Ozbek, Mehmet, and Scott Glick. "Impacts of Legislation on Construction Companies: A Study of Workers' Compensation." *2015 ASEE Annual Conference and Exposition Proceedings*, 17 June 2017, pp. 7-8., <https://doi.org/10.18260/p.24232>

²¹ "Workers' Compensation." Nevada Division of Insurance, <https://doi.nv.gov/Insurers/Property-Casualty/Filing-Information/Workers-Compensation/>



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