

# Understanding Experience Modification Rating

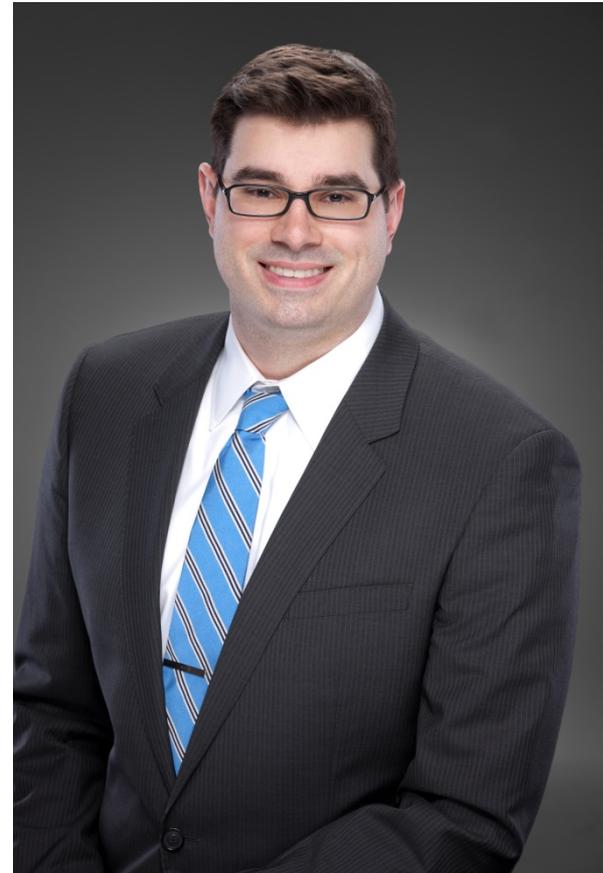


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LEED AP BD+C**

# Speaker

- Client Executive and Professional Services Risk Consultant
- University of Virginia (2002) and Emory University School of Law (2005)
- 9 years in private practice at Sutherland LLP focused on construction law
- 4+ years with Greyling
- Licensed attorney in New York, Georgia, and Florida (Board Certified in Construction Law)
- LEED AP BD+C
- IRMI Construction Risk & Insurance Specialist
- From Atlanta but now residing in Portland, Maine



# Agenda

- Overview of Workers' Compensation Generally
- Explaining the Experience Modification Rating and How EMR is Calculated
- Predicting EMR
- State-by-State Distinctions
- Separate Entities and Applicability of EMR
- Limitations of EMR/Responding to Client Concerns

# Why Does Workers' Compensation Exist?

- Rooted in Industrial Revolution
- Employer defenses to employee injury suits:
  - Contributory negligence
  - “Fellow Servant” rule
  - Assumption of risk
- *The Jungle*, Upton Sinclair (1906)
- First comprehensive state work comp statute: Wisconsin (1911)
- Generally, exclusive remedy against employer

# How Does Workers' Compensation Work?

- Employer pays premium to insurer
  - Rates established by classification
  - Rates filed with state insurance regulators
- Insurer pays unlimited benefits for:
  - Medical costs
  - Lost wages
  - Statutory benefits connected to specific injuries
- U.S. Longshore & Harbor Workers' Compensation Act
- Jones Act

# Workers' Compensation Classifications

Code	Description	Mass Rate
<b>8601</b> - Architectural or Engineering Firm - Including Salespersons & Drivers	Code 8601 is applicable to insureds engaged in the architectural or engineering profession as a separate and distinct business. Operations conducted by these firms usually include consultations with clients; research on behalf of clients; site inspections; and the compilation of information to enable these firms to make recommendations to their clients. These recommendations may be in the form of written or electronic media and include plans, maps, charts, and specifications. Code 8601 includes, but is not limited to, the following type of engineering firms: mechanical, civil, electrical, chemical, mining, metallurgical, marine, and industrial.	<b>\$0.21</b>
<b>8810</b> - Clerical Office Employees	Code 8810 is applied to clerical office employees provided they are not otherwise classified. The duties of a clerical office employee include creation or maintenance of financial or other employer records, handling correspondence, computer composition, technical drafting, and telephone duties, including sales by phone. The clerical office classification continues to apply to a qualified clerical office employee who performs a duty outside of a qualified clerical office area when that duty does not involve direct supervision or physical labor and is directly related to that employee's duties in the office. These duties do not exclude depositing funds at the bank, purchasing office supplies, and pickup or delivery of mail, provided they are incidental and directly related to that employee's duties in the office. However, for purposes of this rule, the definition of clerical duties excludes outside sales or outside representatives; any work exposed to the operative hazards of the business; and any work, such as a stock or tally clerk, which is necessary, incidental or related to any operations of the business other than a clerical office. A clerical office is a work area separated and distinguishable from all other work areas and hazards of the employer by floors, walls, partitions, counters, or other physical barriers.	<b>\$0.07</b>

# Reading Work Comp Policies

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01 (CONT'D)				
BLANKET WAIVER SEE ENDT. WC 00 03 13 (00)-001 WAIVER CALCULATION IS BASED ON CLASS CODE(S) PREMIUM X RATE.				
	0930	70715	.03	2121
ARCHITECTURAL OR ENGINEERING FIRM-INCLUDING SALESPERSONS & DRIVERS				
	8601	9429802	.69	65066
ARCHITECTURAL OR ENGINEERING FIRM-CLERICAL STAFF				
	8603	2973411	.19	5649

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.80% EMPL. LIAB. INCREASED LIMITS(9807)	\$	566
4.20% DEDUCTIBLE CREDIT(9664)		2970
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION		70432
EXPERIENCE MODIFICATION: .75 MODIFIED PREMIUM		52824
15.00% SCHEDULE DEBIT(9889)		7924
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM		60748
4.60% PREMIUM DISCOUNT(0064)		2794
TERRORISM (9740)		2481
CAT(OTHER THAN CERT ACTS OF TERRORISM) 9741		1240
TOTAL ESTIMATED PREMIUM		61675
DEPOSIT AMOUNT DUE		61675

# Overview of EMR

- EMR = Experience Modification Rating
- Administered by the National Council on Compensation Insurance (NCCI)
- Compares experience of individual employer with the “average” employer in the same classification
- Promotes health, safety, and return to work by providing an incentive to employers with lower-than-average losses
- Places emphasis on *frequency* rather than *severity*
  - State accident limitation caps on individual claims
- Intrastate versus interstate EMR factors

# Calculating EMR

- Calculations vary by state filings
- Uses past 3 years of complete data
- Experience Rating Adjustment: limits amount of medical-only claims to 30%
- Severe losses are capped
- Primary losses (\$17,000 in most states) are given more weight

Loss Amount	State Per Claim Accident Limitation	Primary Loss (Frequency)	Excess Loss (Severity)
\$500,000	\$250,000	\$17,000	\$233,000
\$100,000	\$250,000	\$17,000	\$ 83,000
\$ 5,000	\$250,000	\$ 5,000	\$ 0

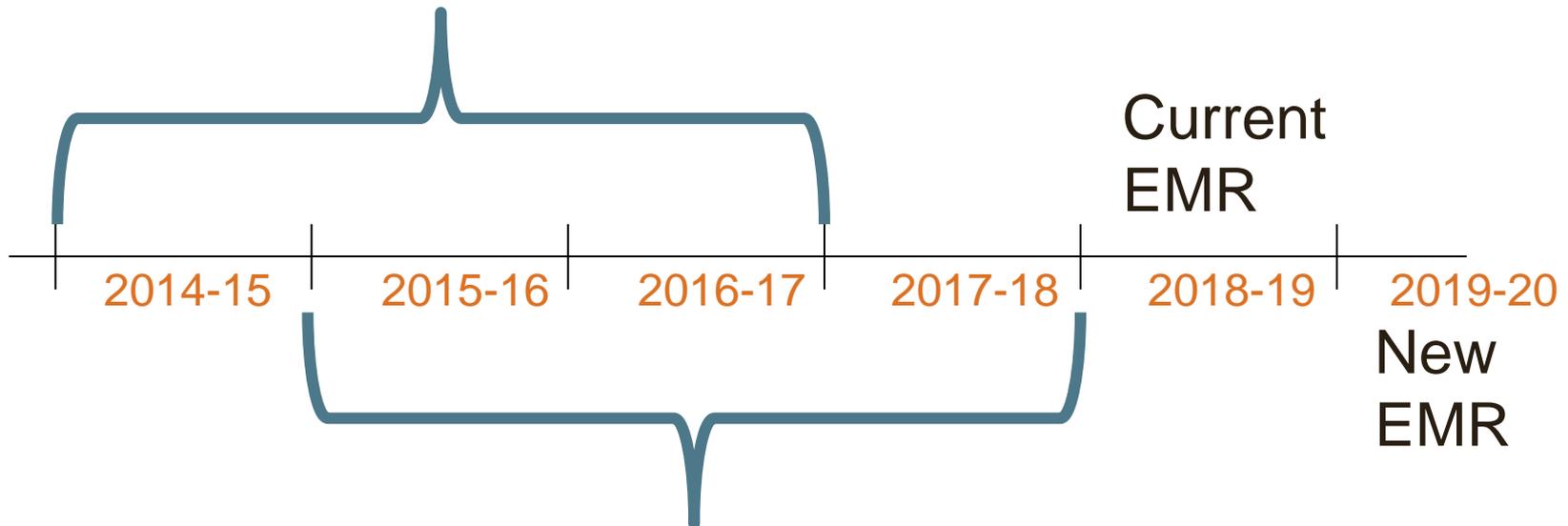
# More Detail on EMR Calculations

 <b>WORKERS COMPENSATION EXPERIENCE RATING</b>								
Risk Name:				Risk ID:				
Rating Effective Date: 04/01/2019			Production Date: 11/28/2018		State: INTERSTATE			
(A) Wt	(B)	(C) Exp Excess Losses (D - E)	(D) Expected Losses	(E) Exp Prim Losses	(F) Act Exc Losses (H - I)	(G) Ballast	(H) Act Inc Losses	(I) Act Prim Losses
.20		212,580	316,112	103,532	0	59,868	21,852	21,852
		Primary Losses	Stabilizing Value		Ratable Excess		Totals	
Actual	(I)	21,852	C * (1 - A) + G 229,932		(A) * (F) 0		(J) 251,784	
Expected	(E)	103,532	C * (1 - A) + G 229,932		(A) * (C) 42,516		(K) 375,980	
		ARAP	FLARAP	SARAP		MAARAP	Exp Mod	
Factors		1.00	1.00			1.00	(J) / (K) .67	
<p>REVISED RATING            NOTICE - THIS IS A PRELIMINARY MODIFICATION            COMPLETE PAYROLL AND LOSS DATA HAVE BEEN APPLIED TO CURRENT RATING VALUES            BUT A FINAL MODIFICATION CANNOT BE PROMULGATED UNTIL PENDING RATE            FILING HAS BEEN APPROVED FOR THE STATES IDENTIFIED WITH AN * ABOVE.            NOTICE - THIS EXPERIENCE MODIFICATION IS CALCULATED TO REFLECT            THE WEIGHTED FORMULA IN COMPLIANCE WITH MAINE LAW H.P. 1397.            RATING REFLECTS A DECREASE OF 70% MEDICAL ONLY PRIMARY AND EXCESS LOSS            DOLLARS WHERE ERA IS APPLIED.            THE ARAP FACTOR SHOWN IS FOR THOSE STATES CONTAINED ON THIS            RATING THAT HAVE APPROVED THE ARAP PROGRAM AND IS CALCULATED            BASED ON THE STATE WITH THE HIGHEST APPROVED MAXIMUM ARAP            SURCHARGE. THE MAXIMUM ARAP SURCHARGE MAY VARY BY STATE.            PLEASE REFER TO EACH STATE'S APPROVED RULES FOR THE            APPLICABLE MAXIMUM ARAP SURCHARGE.            THE TENNESSEE CODE ANNOTATED SECTION 50-6-501 REQUIRES EVERY PUBLIC OR            PRIVATE EMPLOYER THAT IS SUBJECT TO THE WORKERS COMPENSATION            STATUTE TO *ESTABLISH AND ADMINISTER A SAFETY COMMITTEE IN            ACCORDANCE WITH RULES ADOPTED PURSUANT TO T.C.A. SECTION 50-6-502            IF THE EMPLOYER HAS AN EXPERIENCE MODIFICATION RATE EQUAL            TO OR GREATER THAN 1.2.*            REVISED RATING TO INCLUDE UPDATED DATA FOR: NY, POL. #: WC015893709, EFF.: 04/01/2017</p>								

# Predicting & Mitigating EMR

- Changes in payroll and classifications
- Reporting losses “net of deductible”
  - Alabama, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Missouri, New Mexico, Oklahoma, Oregon

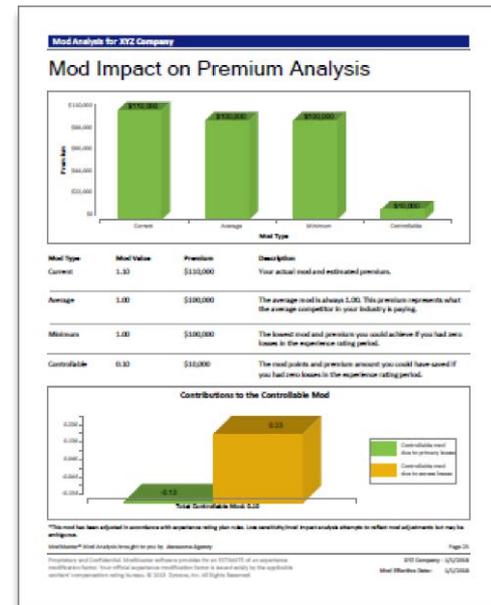
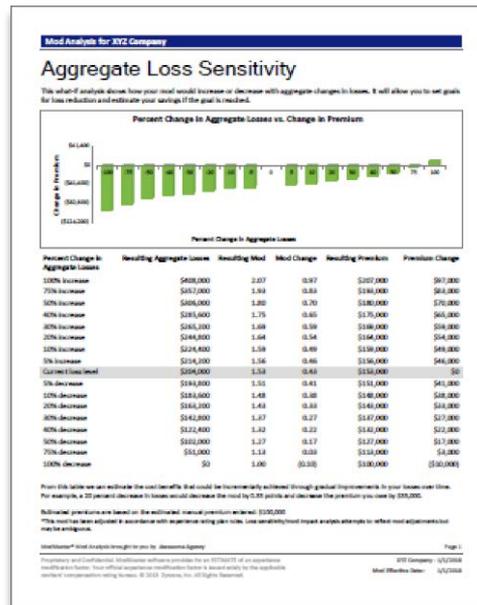
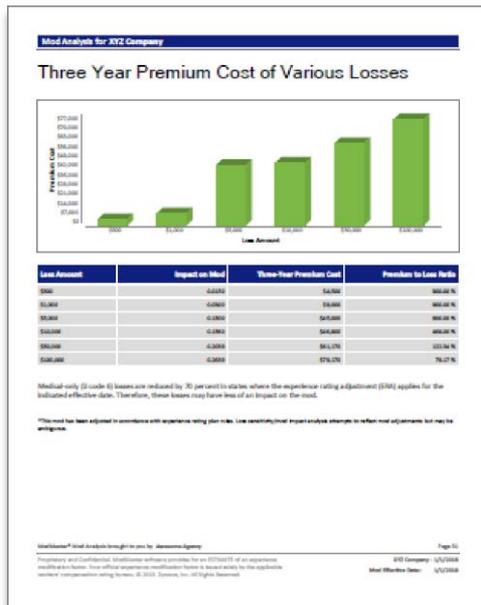
Used to calculate the current EMR



Used to calculate the EMR for next fiscal year

# Predicting & Managing EMR

- When the audited payroll comes through
- Some point during the year as losses develop
- To anticipate the mod released by NCCI and then to confirm it



# Applicability by State

- 39 states use NCCI EMR Plan calculations
- 3 states produce independent intrastate ratings, but NCCI Plan still applies
  - Massachusetts, Indiana, and North Carolina
- 3 states create their own but allow combination with NCCI
  - New York, Minnesota, and Wisconsin
- 5 states do not use NCCI calculations
  - New Jersey, California, Delaware, Michigan, and Pennsylvania
- 4 monopolistic states
  - Washington, Ohio, North Dakota, and Wyoming



# Combination of Entities

- Entities with 50% common ownership are combined
- Changes in ownership must be reported within 90 days (Form ERM-14)

## Company A

51%

40%

Various – 9%

## Company B

40%

40%

Various – 20%

## Company C

20%

20%

10%

10%

10%

10%

Various – 20%

# Limitations of EMR

- Not a valid predictor of future losses
- Thus, not an indicator of safety or risk management practices
- Does not account for the facts and circumstances of a claim
- State differences in rates and factors
- Subrogation recovery often lags
- Calculations impacted somewhat randomly by timing
- Can be influenced by payroll, classification, and risk decisions

# Risk Management

- Employee training and selection, including safety
- Invest in employee well-being and healthcare
- Identify and address common themes in worker injuries
  - Focus on lost time claims
- Actively monitor and manage open claims
- Have a return-to-work or transitional duty program
- Understand and pursue subrogation

# 1.0 EMRs

- EMR calculations = 1
- Employer is not eligible for EMR
- Employer does not have minimum data requirements
- New business with insufficient data
- Significant ownership change

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