



ZASHIN & RICH

**Salary Benefits Strategies for
Employers in Inflationary Market
GFOA 10-12-2023**

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Jonathan J. Downes

- More than thirty years representing public and private employers
- Adjunct Prof OSU Fisher College of Business Graduate Program
- Fellow in the College of Labor and Employment Lawyers
- AV Preeminent rated by Martindale Hubbell.
- Negotiated over 500 labor contracts including State-wide, State Elected Officials, Counties, Cities, Townships, etc.
- Over 250 mediations, arbitrations, Factfinding, & Conciliation hearings; frequent speaker on negotiations and impasse
- Represents employers in arbitrations, organizing campaigns, and administrative hearings in trial and appellate courts, State courts, Ohio Supreme Court, federal district courts, and U. S. Court of Appeals for the Sixth Circuit.
- Ohio State Bar Association Certified Specialist in Labor and Employment Law
- Selected as: Best Lawyers in America; America's Most Honored Lawyers; Top Attorneys in Ohio; Top 50 Central Ohio Lawyers; and an Ohio "Super Lawyer".



Employment and Labor Law Group

Zashin & Rich's Employment Group has extensive experience representing public sector entities, large and small businesses, and non-profit organizations. Zashin & Rich's Employment Group's expertise extends into many areas including:

- **Litigation and EPLI Defense**
- **Discrimination and Retaliation**
- **General Employment Counseling**
- **Labor Law**
- **Collective Bargaining**
- **FLSA, Wage and Hour Issues**
- **Worker's Compensation**
- **Restrictive Covenants**
- **Employee Handbooks**
- **Unemployment Compensation**
- **Civil Service Law**
- **Public Records/Sunshine Laws**

Discrimination and Retaliation Laws Representation

- **Title VII**
- **ADA**
- **ADEA**
- **FMLA**
- **PDA**
- **FLSA**
- **§1983**



AGENDA

1. Case Law Update
2. Status of Unions
3. Union Organizing
4. Settlement Trends
5. Health Insurance
6. Inflation and Unemployment
7. Developing issues for Employers



Discrimination

Sexual Orientation and Identification

- In each of three cases consolidated before the Court, an employer allegedly fired a long-time employee simply for being homosexual or transgender.
- The United States Court held that employers violated Title VII of the Civil Rights Act of 1964 when they fired a long-time employee shortly after the employee revealed that he or she was homosexual or transgender
- Court found that it was impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.

Altitude Express, Inc. v. Melissa Zarda and William Moore, as Co-Executors of the Estate of Donald Zarda (Sexual Orientation)

R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC and Aimee Stephens (Transgender/Transitioning)

Bostock v. Clayton County, GA, 140 S. Ct. 1731 (2020) (Sexual Orientation)



Hils v. Davis

52 F.4th 997 (6th Cir. 2022)



- The Sixth Circuit upheld a policy which prohibited police officers from recording internal investigating meetings.
- First Amendment argument failed because “a prohibition on recording speech is not a prohibition on speaking”
- Fourteenth Amendment argument failed because the policy related to the legitimate government interest of keeping the investigations free from outside influence
- This rationale can be expanded to apply to grievance meetings



Portage Cnty. Educator's Ass'n for Development Disabilities – Unit B v. SERB 2022 Ohio SERB 4-19, 2022 WL19036712

- The Ohio Supreme Court ruled that RC 4117.11(B)(7) was content-based regulation of speech regarding picketing, so strict scrutiny applied in determining whether it was unconstitutional in violation of the First Amendment.
- Under strict scrutiny, state interest of protecting privacy rights of public officials to encourage citizens to run for or serve in public office was **not** a compelling interest.

HELD - RC 4177.11(B)(7) violated the First Amendment



Freedom of Speech Challenges

Do Laws Against Workplace Harassment Violate Free Speech?

“There’s little difference between the Civil Rights Act of 1964 and Florida’s Stop WOKE Act “

[Do Laws Against Workplace Harassment Violate Free Speech? – WSJ](#)

Shawnee State to pay professor \$400,000 in settlement over student's preferred pronouns



ADA & Remote Work Policies

Inflexible Remote Work Policies Can Put Employers In A Bind

Pennsylvania federal court in ***Oross v. Kutztown University*** (civil action 21-5032 7-25-2023) held that employers need to engage in individualized assessments of all requests for exemptions or accommodations to return-to-work policies to avoid potentially violating the ADA.

Heart/lung transplant professor with immunosuppressive medications challenged general policy that remote classes would create an undue hardship on the University.

Mosby-Meachem v. Memphis Light, Gas & Water Division, 883 F.3d 595 (6th Cir. 2018) Allowing an employment lawyer to work from home was a possible accommodation where physical presence was not deemed to be an essential function of her job.



- Right to organize a union and bargain collectively
- Necessity for Workers To Gain Leverage With The Employer To Improve Wages and Working

Exclusive Representation

Collective Action as U.S. labor policy

The Duty of Fair Representation & Collection of Dues



Negotiations

Preparation

Process

Participation



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Where Have all the Unions Gone?



**“THE REPORTS OF MY DEATH HAVE BEEN
GREATLY EXAGGERATED.”**

MARK TWAIN

© Lifehack Quotes



Union Efforts in Organizing

UNIONS ARE STRESSING ISSUES FOR ORGANIZING AND MAINTAINING UNION MEMBERSHIP THAT HAVE BEEN USED FOR OVER 100 YEARS:

VOICE
EQUITY
EQUALITY
POLITICAL INFLUENCE

POINTS RAISED BY UNIONS IN CAMPAIGNS:

HEALTH INSURANCE
JOB OPPORTUNITIES
EDUCATION OPPORTUNITIES
ADEQUATE COMPENSATION
WORK ENVIRONMENT

THESE ISSUES ARE ON THE MINDS OF MANY EMPLOYEES.

MANAGEMENT CONTINUES TO STRESS EFFICIENCY.



Virtual Organizing

The Latest Strategy for Employees

Today, virtual union organizing is enabling workers to connect through websites, social media, and union organizing-focused apps.

The approaches may vary but the goal is the same: giving unions the ability to organize online with ease.

For private sector employers the company Unit of Work is now taking virtual union organizing to the next level, enabling the formation of an NLRB-sanctioned labor union.



Ohio Negotiations – Current and Trends

What are the current and trending wage and benefit settlements?

What are the issues being advanced by unions?

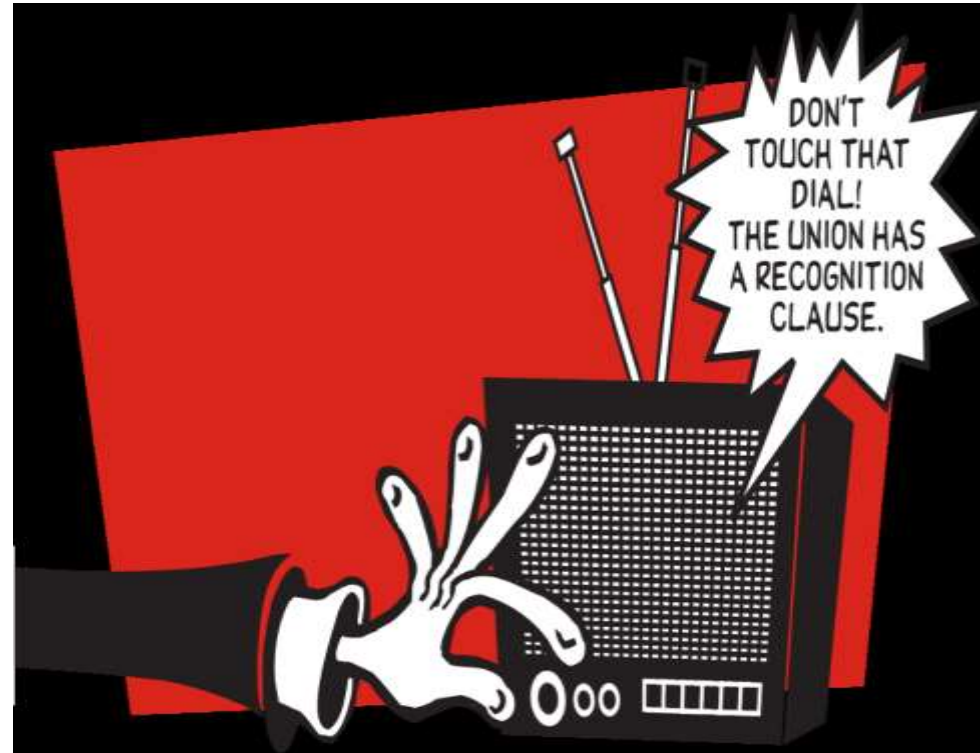


Negotiations – What to Change

What CBA provisions need to/can be changed?

What do you have the authority to change now?

- Management Rights
 - Shifts/Schedules
 - Reduced staffing
- Insurance
- Compensatory Time
- Short or long term



Wage Settlements - SERB

- [2022 Wage Settlement Report \(ohio.gov\)](https://www.ohio.gov)



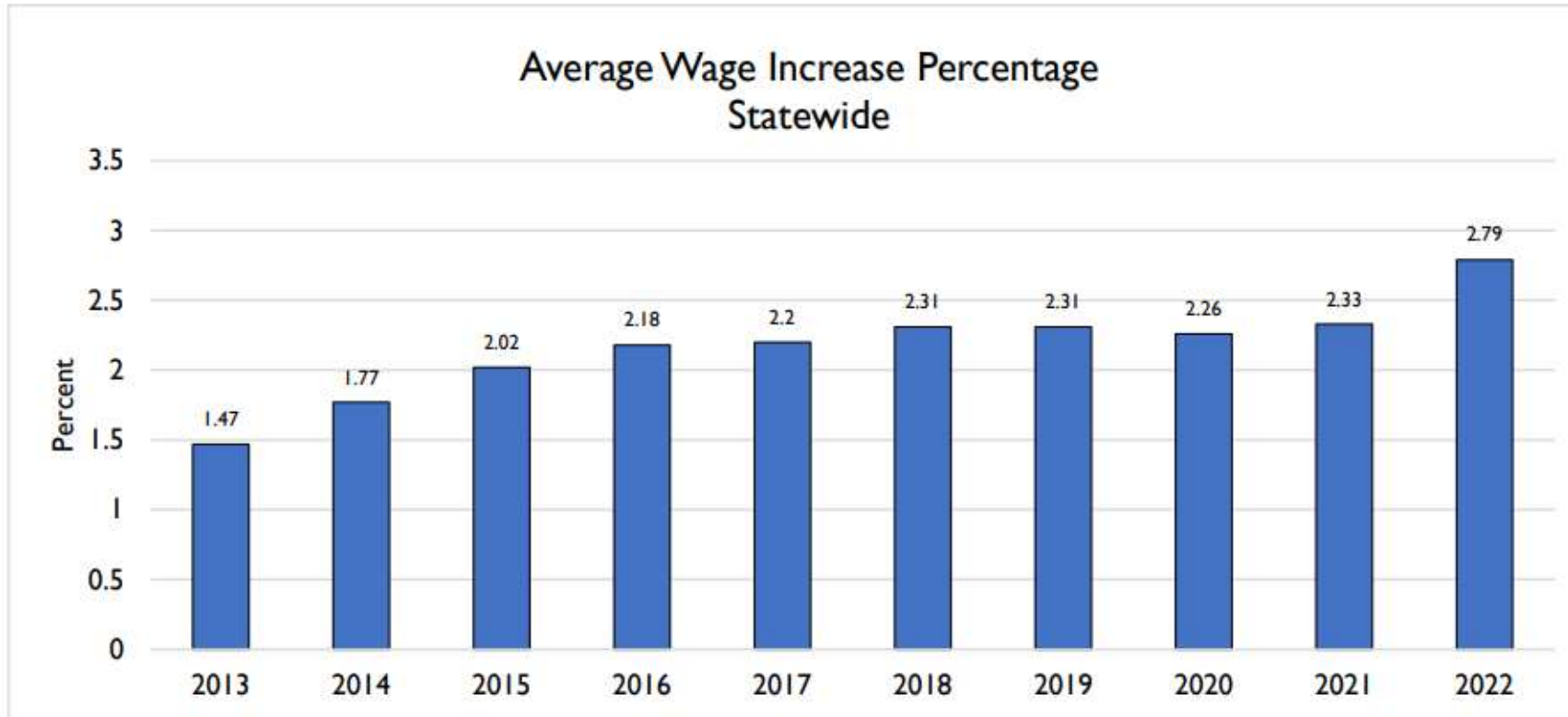
2022 Wage Settlement Report
For Labor Contracts with a start date between January 1, 2022 – December 31, 2022



10 Year Statewide Average Wage Increases

Chart 5 displays the historical trend of the statewide average wage increase percentages in Table 2 over the last ten years. These averages include years 1, 2, and 3 of each contract (if available).

Chart 5



Average Wage Increases Statewide

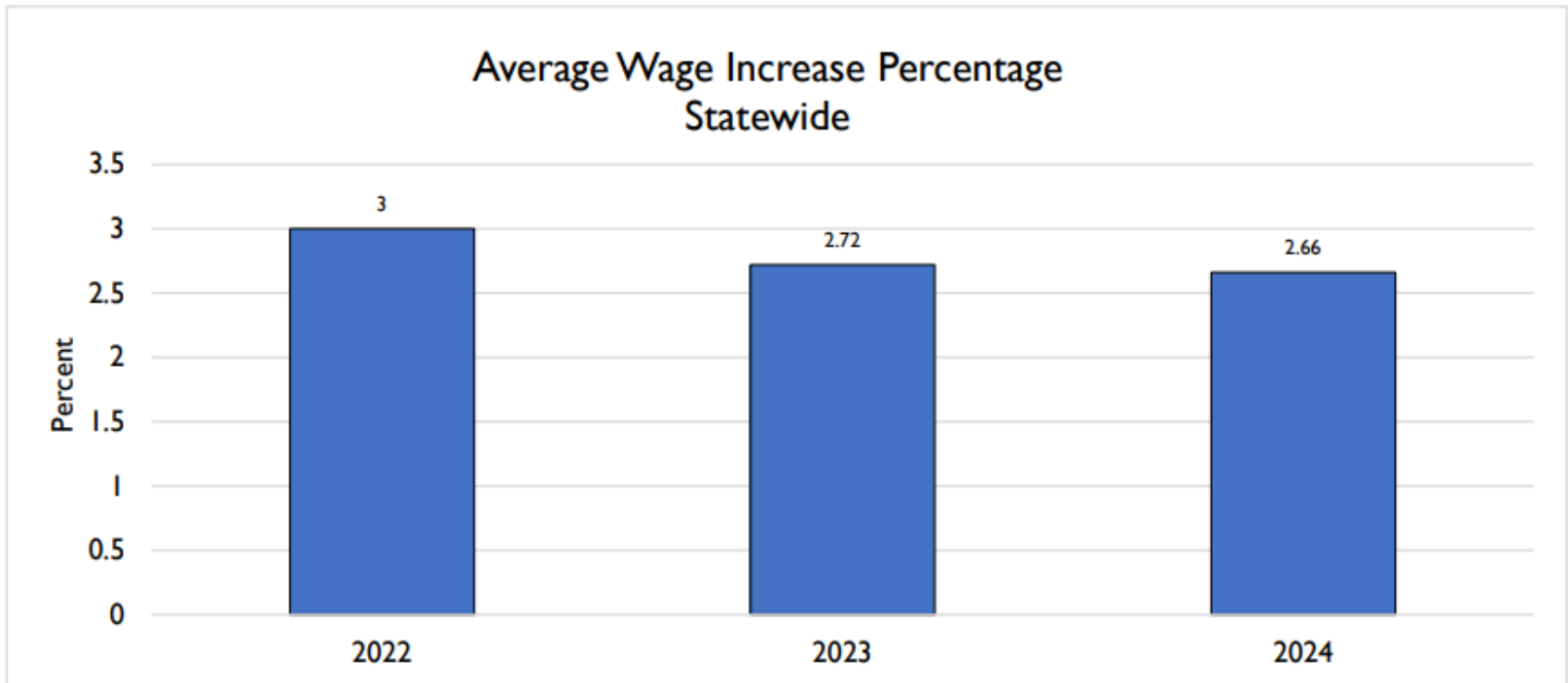
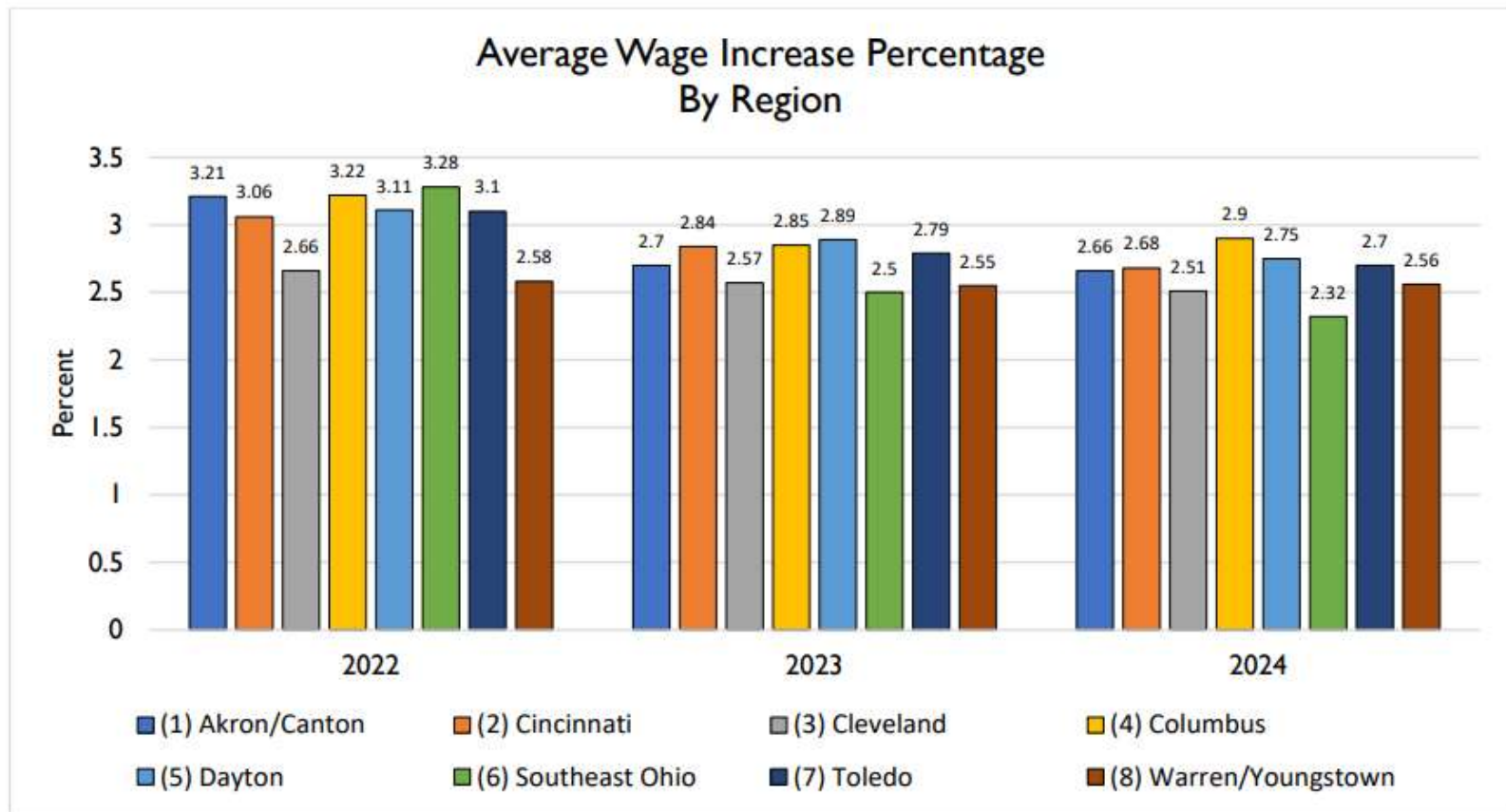


Chart 2 is a visual representation of the region section of the data found in Table 1. Each region consists of several geographically proximate counties. A list of the counties included in each region is on page 9.

Chart 2



Settlement Trends – SERB Data

Before the Pandemic

Fewer factfinding and conciliation reports but higher awards

❖ Conciliation awards @ 2.6 % in 4th quarter **2019**

❖ Unions emphasizing turnover

❖ Unions proposing

❖ Lateral transfers

❖ Higher payouts

❖ Larger comp time banks and leave balances



Settlement Trends – Ohio SERB Data

After the Pandemic

Factfinding and Conciliation awards @ 3.82% in 2nd quarter **2023**

- ❖ Unions proposing
 - ❖ Lateral transfers
 - ❖ Higher payouts
 - ❖ Larger comp time banks and leave balances



SERB Factfinding & Conciliation Report

State Employment Relations Board Fact-Finding/Conciliation Report Statistics

[SERB Fact-Finding / Conciliation Report Statistics \(ohio.gov\)](https://www.ohio.gov/serb/fact-finding-conciliation-report-statistics)

For use by all employers. Data is collected in benchmark classifications, by region, and by employer type.



Negotiations - Health Insurance

Comparable coverage language

vs.

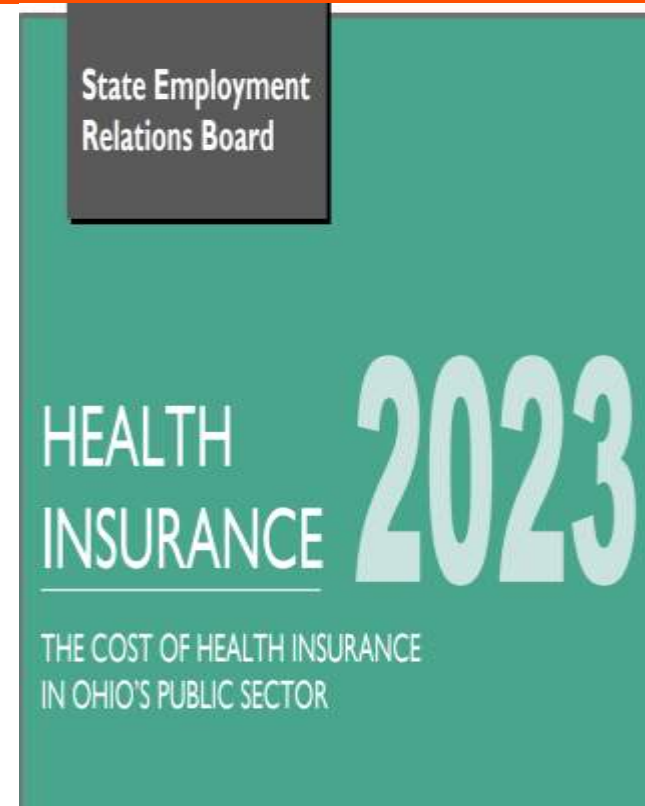
What other Employees receive

Chart total cost – and benefits - comparisons

- Employer and employee share in \$ and %
- Out of Pocket costs
- Deductibles, Co-pays

SERB Health Insurance report

[The Cost of Health Insurance in Ohio's Public Sector](#)



Health Insurance

Table 4

Annual Percent Change in Medical Care Costs, Inflation, and Medical Care Inflation Rates

Year	Statewide Public Sector			National	
	Single Premium	Family Premium	n	Inflation Rate	Medical Care
2013	2.8%	2.3%	1,552	1.7%	3.2%
2014	5.0%	4.5%	1,598	1.5%	2.0%
2015	4.4%	4.3%	1,694	0.8%	3.0%
2016	1.6%	2.3%	1,753	0.7%	2.6%
2017	4.7%	4.6%	1,809	2.1%	4.1%
2018	4.6%	4.2%	1,863	2.1%	1.8%
2019	7.4%	5.9%	2,009	1.9%	2.0%
2020	4.8%	6.7%	1,952	2.3%	4.6%
2021	4.6%	3.9%	2,067	1.4%	1.8%
2022	3.1%	3.7%	2,046	7.0%	2.2%
2023	6.7%	7.0%	1,993	6.5%	4.0%

Note: National; includes both public and private sector employers nationwide.

Note: United States Bureau of Labor Statistics, Consumer Price Index, December 2022

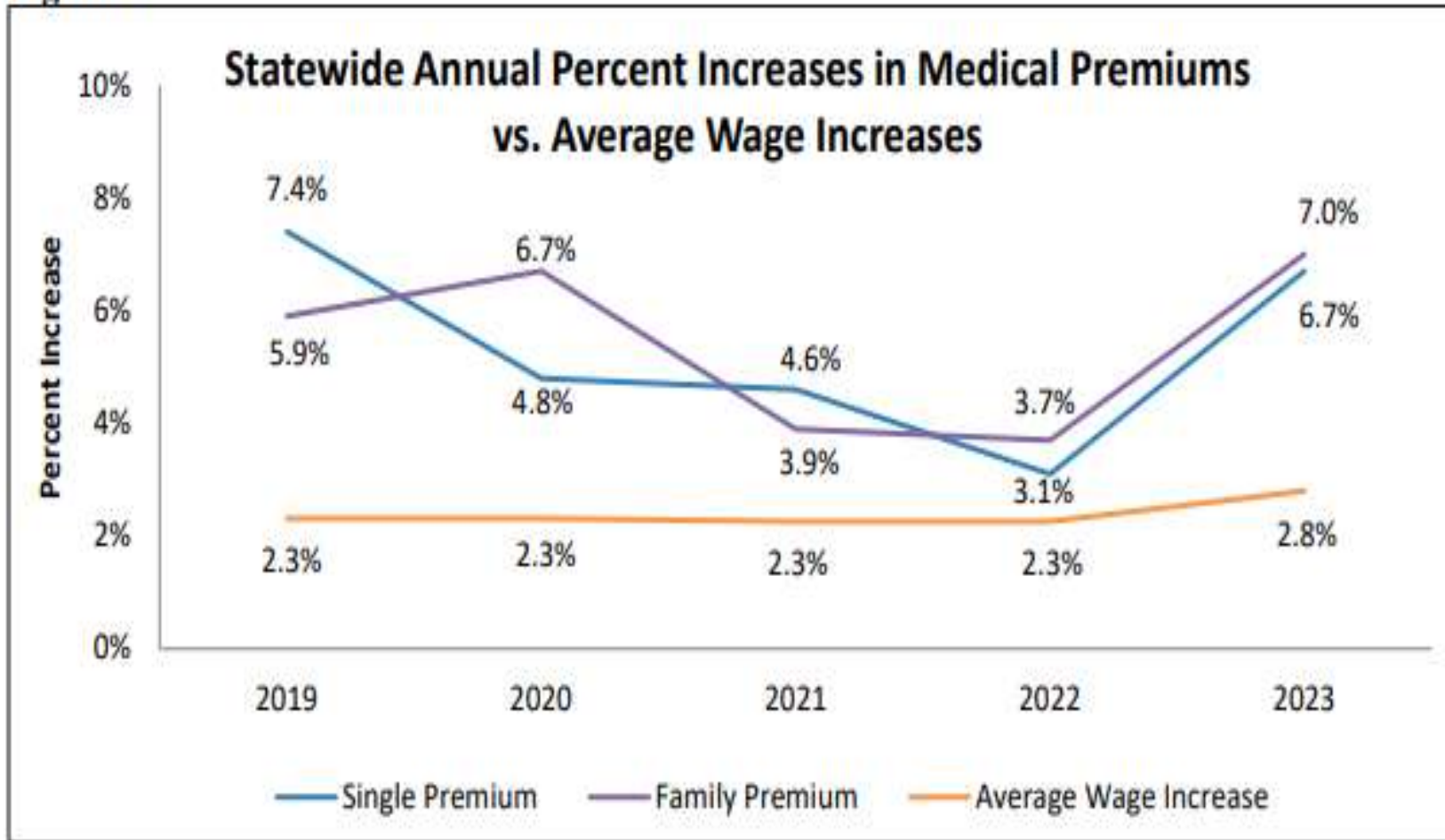
https://www.bls.gov/news.release/archives/cpi_01122023.pdf

Note: n: number of plans.

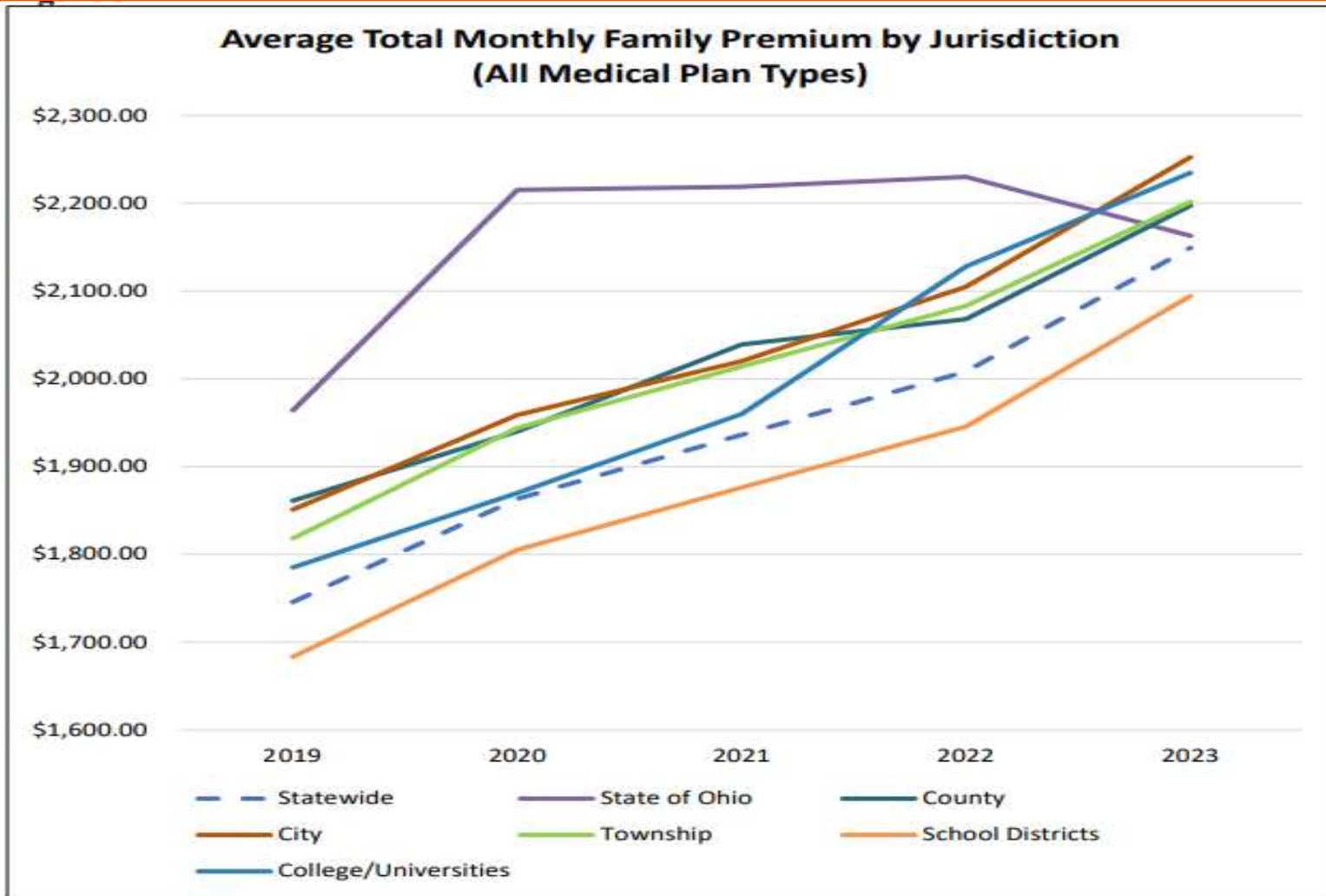


Health Insurance & Wage Increases

Figure 1



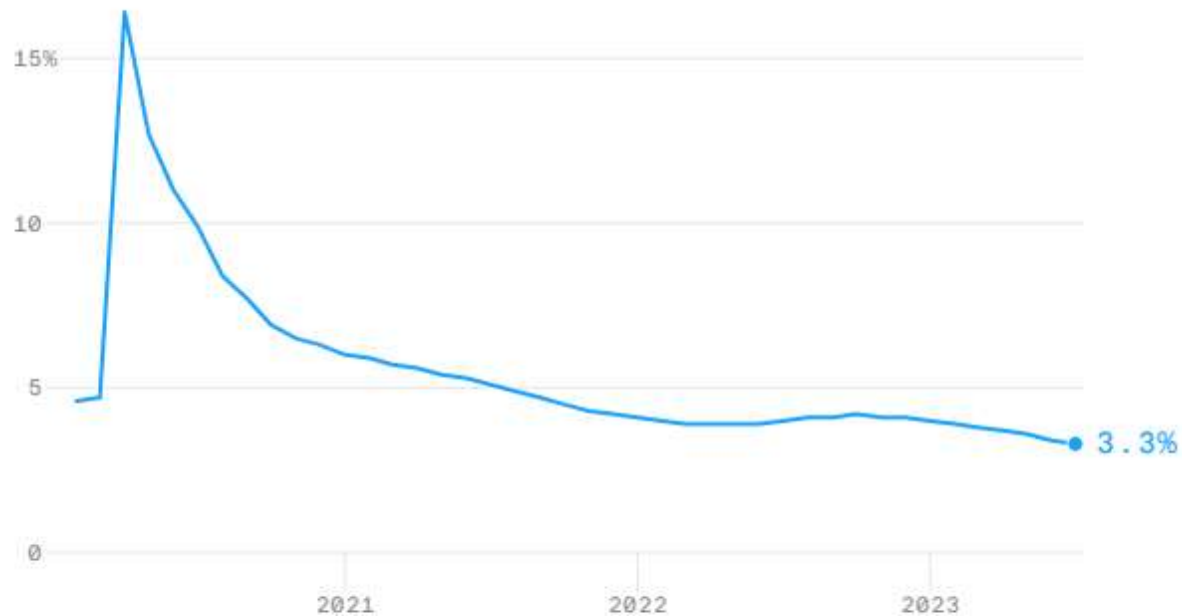
Health Insurance – Family Plan Costs



Ohio Unemployment Rate

Unemployment rate in Ohio

Share in civilian labor force ages 16+; Monthly, January 2020 to July 2023

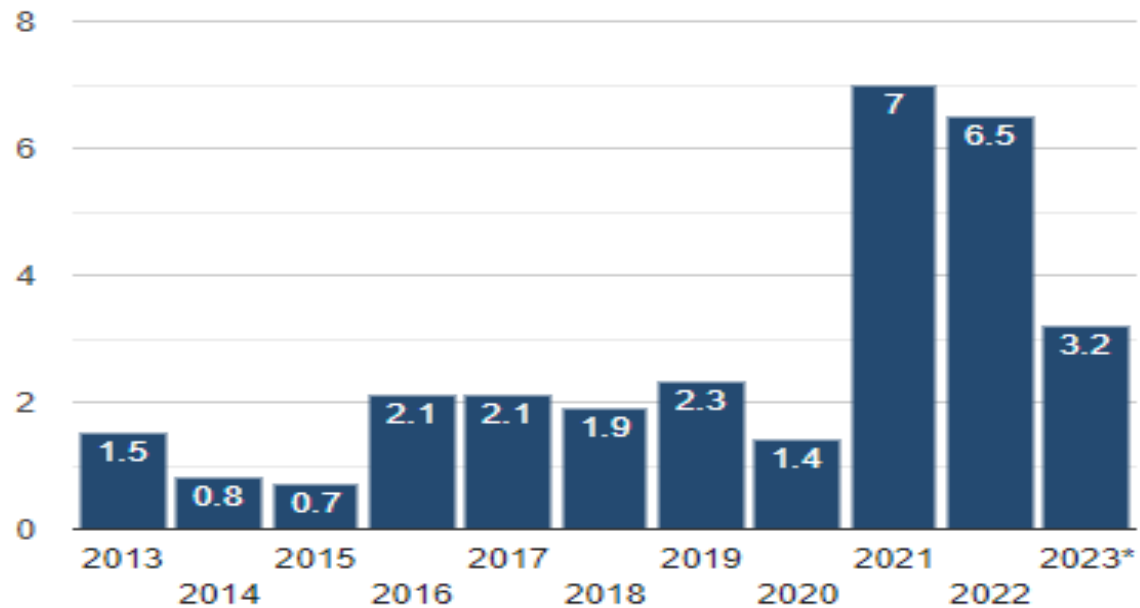


Note: Rate is seasonally adjusted. Data: U.S. Bureau of Labor Statistics; Chart: Axios Visuals



Inflation

Chart: United States Annual Inflation Rates (2013 to 2023)



Inflation

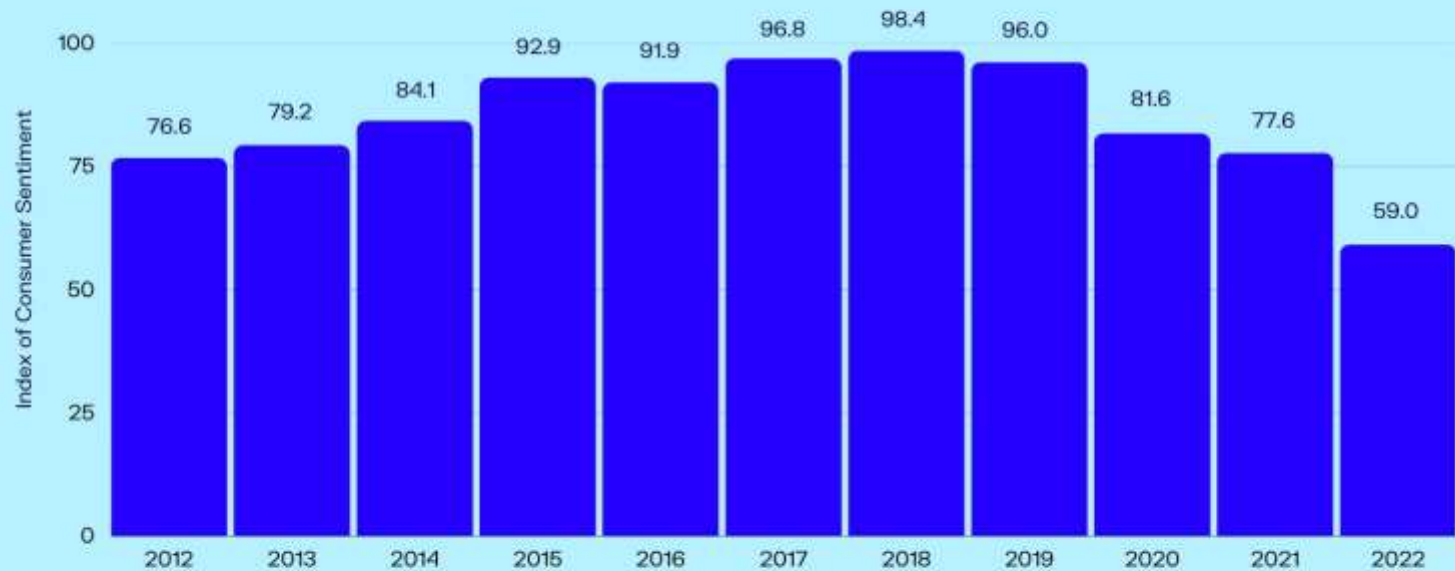
The annual inflation rate for the United States was 3.2% for the 12 months ended July, according to U.S. Labor Department data published on Aug. 10, 2023.

This follows a rise of 3.0% in the previous period.



U.S. Consumer Confidence Index

US Consumer Confidence Index (2012 to 2022)



Source: data.sca.isr.umich.edu

OBERLO

State of Ohio Paid Parental Leave

Section 124.136 | Parental leave and benefits.

1. Paid leave of
 1. six weeks after 14 days wait
 2. paid at 70%
2. **or** \$5,000 for adoption expenses
3. Taken within one year of the birth of the child, delivery of the stillborn child, or placement of the child for adoption



State of Ohio – Miscellaneous Leaves

- Section 124.132 | Disaster service leave
- Section 124.135 | Jury or trial participation leave - charitable advisory panel leave.
- Section 124.139 | Organ donor leave
- Section 124.1312 | Caregiver leave



UPS & Teamsters Contract

- New contract between UPS and the Teamsters sets pay and work standards at UPS for the next five years and includes major gains for workers from the creation of thousands of new full-time positions to the end of forced overtime on scheduled days off.
- The deal also includes big raises for all 340,000 UPS employees represented by the union, including part-timers, including an across-the-board \$7.50 an hour increase over the next five years



UPS & Teamsters Contract

- 1. Big raises**
- 2. Air conditioning and heat safety**
- 3. Ending of a lower-paid class of worker**
- 4. Thousands of new full-time jobs**
- 5. Ban on driver-facing cameras**



THANK YOU AND GOOD LUCK!

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