

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 4123-3-37

Rule Type: Amendment

Rule Title/Tagline: Lump sum advancements.

Agency Name: Bureau of Workers' Compensation

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?** 7/1/2024
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 447 - 134
- Lampton
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 4121.12, 4121.121, 4121.30, 4121.31, 4123.05
5. **What statute(s) does the rule implement or amplify?** 4123.57, 4123.64, 4123.65
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

On June 24, 2022, Governor Mike DeWine signed into law Amended House Bill 447 of the 134th General Assembly. The Act contained several substantive workers'

compensation provisions effective September 23, 2022, including amendments to R.C. 4123.64. These amendments impact rule OAC 4123-3-37 and are the reason for BWC's proposed rule revision.

8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This rule authorizes the administrator of the bureau of workers' compensation to award compensation to a lump sum payment to a claimant or the surviving spouse. In response to the statutory changes to R.C. 4121.64 contained in Am. H.B. 447, BWC proposes to delete language requiring the application for lump sum advancement be notarized. BWC is also making technical changes to the rule to remove and reword verbiage in accordance with the regulatory restriction reduction mandate found in R.C. 121.95 and R.C. 121.951.

9. Does the rule incorporate material by reference? No

10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.

Not Applicable

11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

Not Applicable

II. Fiscal Analysis

12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will have no impact on revenues or expenditures.

0.00

Not Applicable.

13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

The impacted community consists of injured workers, injured worker representatives (attorneys), employers, and employer representatives. There is no cost of compliance

with this rule; an injured worker who applies for lump sum advancement receives compensation payments in a lump sum rather than over time. The impact is in the time value of those payments.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**
16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable.

III. Common Sense Initiative (CSI) Questions

17. **Was this rule filed with the Common Sense Initiative Office? Yes**
18. **Does this rule have an adverse impact on business? Yes**
 - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**
 - B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**
 - C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

A claimant or surviving spouse who wishes to receive compensation as a lump sum advancement must file an application with the Bureau providing proof of special circumstances and that the lump sum advancement is advisable for the purpose of providing financial relief or furthering the claimant's rehabilitation.

- D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding to this rule? 0

B. How many existing regulatory restrictions do you propose removing from this rule? 22

4123-3-37(A)(2) "...However, the advancement shall not exceed the amount of death benefits payable to the surviving spouse..."

4123-3-37(A)(3) "The bureau shall not grant a lump sum advancement to a surviving dependent from an award of compensation..."

4123-3-37(A)(4) "The bureau shall not grant a lump sum advancement in a claim where the allowance of the award of compensation..."

4123-3-37(A)(5) "...The bureau shall refer such applications to the industrial commission to adjudicate."

4123-3-37(B) "A claimant or the surviving spouse shall file an application requesting a lump sum advancement..."

4123-3-37(B)(1) "The application shall be fully completed and notarized."

4123-3-37(B)(1)(a) "The claimant or surviving spouse shall provide proof that there are special circumstances for the lump sum advancement..."

4123-3-37(B)(2) "The bureau shall review the application and utilize whatever methods the bureau determines to be appropriate..."

4123-3-37(B)(3) "...the bureau shall calculate the net present value of the lump sum advancement on the remaining compensation payable to the claimant..."

4123-3-37(B)(3) "...The bureau shall determine the amount of the biweekly rate reduction..."

4123-3-37(B)(3) "...The administrator shall fix a specific time for the reduction of the biweekly rate of compensation..."

4123-3-37(B)(3) "...the claimant or surviving spouse may not change the time period..."

4123-3-37(B)(3) "...The bureau shall include the net present value of the lump sum advancement..."

4123-3-37(B)(4) "...lump sum advancement is advisable, the bureau shall calculate the net present value of the lump sum advancement..."

4123-3-37(B)(5) "...the bureau shall use the discount factor as periodically established by the bureau."

4123-3-37(B)(6) "The bureau shall issue an order approving or disapproving the application..."

4123-3-37(B)(6) "...If the bureau approves the application, the order shall advise the claimant or surviving spouse of the amount of reduction..."

4123-3-37(C)(1) "No lump sum advancement shall be approved that will result in a rate reduction..."

4123-3-37(C)(1) "...The bureau shall not include an advancement for attorney's fees..."

4123-3-37(C)(3) "the bureau shall remove the rate reduction due to the lump sum advancement..."

4123-3-37(D) "The lump sum advancement warrant shall include the claimant or the surviving spouse as a payee..."

4123-3-37(D) "...in which case the attorney shall be named as the only payee on the warrant."

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable