

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: BWC Claims Procedure rules

Rule Number(s): 4123-3-15, 4123-3-37

Date: February 11, 2013

Rule Type:

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 4123-3-15 describes the BWC claims procedures subsequent to the allowance of a claim. In particular, paragraph (C) describes how BWC pays scheduled loss awards, which

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BWC pays to an injured worker for an amputation or loss of use of a body part listed in the statute. Rule 4123-3-37 describes the BWC procedures for commuting a workers' compensation benefit to a lump sum advancement.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4121.12, 4121.121, 4121.30, 4121.31, 4123.05, 4123.57, 4123.64, 4123.65

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These rules describe the BWC policy and procedures for the payment of certain statutory workers' compensation benefits. While the statutes provide the basic law on what benefits are payable, these BWC rules inform workers and employers on the process for the payment of these benefits. BWC had amended these rules in October 2010, and had a contested hearing before J.C.A.R.R. In 2012, the Legislature amended the governing statutory authority for the rules, thus requiring these proposed amendments.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

These rules do not provide measurable standards or criteria. The "success" of the regulation is in the efficient and informed payment of proper benefits to injured workers.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Ohio Association for Justice

Ohio Chamber of Commerce

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Ohio Manufacturers Association

Ohio Self-Insured Association

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

In 2010, when BWC amended this rule to establish the method for paying scheduled loss awards in a lump sum, employers challenged the rule at public hearing and J.C.A.R.R. The rule survived the J.C.A.R.R. challenge by a 5-5 vote. Subsequently, employers have challenged the retroactive application of the rule to a date of injury prior to the effective date of the rule. In *State ex rel. A.J. Rose Mfg. Co. v. Indus. Comm.*, 2012-Ohio-4367 (Tenth District Court of Appeals 9-25-12), the Court held that the rule cannot be applied retroactively. Since that ruling disposed of the case, the Court did not adopt the portion of the Magistrate's decision that the rule was invalid, or that the rule conflicted with R.C. 4123.57(B). In 2012, employer groups lobbied to amend R.C. 4123.57. Am. Sub. H.B. 487 of the 129th General Assembly amended R.C. 4123.57(B) to negate the 2010 BWC rule changes. The effective date of the change was September 10, 2012. This amended rule conforms to the statutory changes.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

BWC did not consider alternative regulations. BWC is amending these rules to comply with the amendments to R.C. 4123.57(B) mandating these rule changes in Am. Sub. H.B. 487 of the 129th General Assembly.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Not applicable.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

There are no other BWC rules on this subject. BWC rules are specific to BWC, and there are no other Ohio rules on this subject.

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13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

BWC will develop policy and will train the BWC Claims Service Specialists to utilize in applying these rules to workers’ compensation claims applications. BWC will inform the workers’ compensation community about the changes.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

- a. The impacted community consists of injured workers, injured worker representatives (attorneys and law firms), employers, and employer representatives.
- b. The adverse impact of this rule is upon injured workers, not employers. In fact, small business will benefit slightly from the rule change in that scheduled loss compensation will not be paid in one payment, but will be paid over the weeks provided in the schedule for such payments in R.C. 4123.57(B). This change will have a small impact on the employer’s workers’ compensation experience, and will particularly benefit self-insured employers.
- c. There is no significant adverse impact, other than injured workers will receive scheduled loss payments over time, rather than at once. The impact is in the time value of those payments.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The regulation is required to comply with the amendments to R.C. 4123.57(B) in Am. Sub. H.B. 487 of the 129th General Assembly.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Not applicable.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

BWC publicizes its rules and regulations on line at Ohiobwc.com. BWC also has customer service assistants to help employers and injured workers in the workers' compensation system.