



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers Compensation

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Lump sum advancements

Rule Number(s): 4123-3-37

Date of Submission for CSI Review: December 21, 2022

Public Comment Period End Date: January 11, 2023

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? No)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

Chapter 4123-3 of the Administrative Code contains BWC rules relating to claims procedures. OAC 4123-3-37, which governs lump sum advancements, is adopted by BWC pursuant to R.C. 4123.64, paragraph (B) of which states in part “The administrator shall adopt rules which set forth the policy for awarding lump sum payments. . . .”

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.

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.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

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Authorize: R.C. 4121.12, 4121.121, 4121.30, 4121.31, 4123.05

Amplify: R.C. 4123.57, 4123.64, 4123.65

- 4. 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.

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A

- 6. 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)?**

This rule describes the BWC policies and procedures for processing and payment of lump sum advancements in injured worker claims under the workers' compensation statutes. While the statutes provide the basic law on claims procedures and what benefits are payable, these BWC rules inform workers and employers on the procedures for processing and payment of benefits.

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

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

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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.

Stakeholder responses received by BWC are summarized on the Stakeholder Feedback Summary Spreadsheet.

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

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Please see the stakeholder feedback grid.

11. 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.

12. 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

BWC did not consider alternative regulations. BWC is amending this rule to comply with the Revised Code.

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

The Industrial Commission has some rules similar to the BWC rules of Chapter 4123-3. The Industrial Commission rules are in Chapter 4121-3. Many of the rules cover different aspects of the same subjects from the different perspective and role of BWC and the Industrial Commission on workers' compensation claims procedures. For example, there are some areas that are exclusively within the jurisdiction of the Industrial Commission, like attorney fee disputes. Therefore, BWC rule 4123-3-24 simply states that if there is a fee dispute, the Industrial Commission will handle the dispute. The Industrial Commission rule then provides the detail of how the Industrial Commission processes and handles the fee dispute. BWC reviewed the rule to coordinate with and complement the Industrial Commission rules.

Also, R.C. 4123.64(B) directs the BWC administrator specifically to adopt rules which set forth the policy for awarding lump sum payments in workers' compensation claims.

14. 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 and/or amend policy and will train the BWC field staff to apply these rules to workers' compensation claim decisions. BWC will inform the workers' compensation community about the changes.

Adverse Impact to Business

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15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The impacted community consists of injured workers, injured worker representatives (attorneys and law firms), employers, employer representatives, providers, and Managed Care Organizations.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

The adverse impact of this rule is upon all of the parties mentioned in response to question 14a. The impact consists of compliance with processes and procedures for the BWC to adjudicate lump sum advancement applications and make lump sum payments to injured workers for compensation. The rules describe certain forms or procedures to follow and provide some limitations.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The proposed rule amendment eliminates the requirement that applications for lump sum advancement be notarized.

17. 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 Chapters 4121 and 4123 of the Revised Code as established in statute by the Ohio General Assembly.

Regulatory Flexibility

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

Not applicable.

19. 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.

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

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



Stakeholder Feedback
Ohio Administrative Code 4123-3-37
Lump sum advancements

Line #	<u>Rule #/ Subject Matter</u>	<u>Stakeholder</u>	<u>Draft Rule Suggestions</u>	<u>Stakeholder Rationale</u>	<u>BWC Response</u>	<u>Resolution</u>
1	4123-3-37/ Lump Sum Advancements	Ohio Chamber of Commerce	None.			
2	4123-3-37/ Lump Sum Advancements	Ohio Association for Justice	None.			
3	4123-3-37/ Lump Sum Advancements	Ohio Manufacturers' Association	Requested clarification to the technical language changes.	OMA questioned whether the changes increased BWC discretion in decision making by amending the use of “shall” to “will” within the rule.	Clarified changes due to statutory requirements, and the intentional use of “will” as a command.	OMA approved of the changes upon BWC’s response.
4	4123-3-37/ Lump Sum Advancements	National Federation of Independent Business Ohio Chapter	None.			
5	4123-3-37/ Lump Sum Advancements	Philip J. Fulton Law Office	None.			