

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: 4141-17 Successorship Rule Package

Rule Number(s): 4141-17-02, 4141-17-03, 4141-17-04, 4141-17-05

Date: July 26, 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☐ Rescinded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.

Rule 4141-17-02 Voluntary successorship: clearly segregable and identifiable portion. This rule explains and clarifies that the transfer of a portion of a trade or business results in the transferee becoming a successor in interest should several requirements be met.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Rule 4141-17-03 Voluntary successorship: substantially all of the assets. This rule explains and clarifies that the transfer of substantially all of a trade or business results in the transferee becoming a successor in interest should several requirements be met.

Rule 4141-17-04 Automatic successorship. This rule explains that the transferee shall become a successor in interest by law where (1) there is a transfer of all of the transferor's trade or business located in Ohio; and (2) at the time of transfer the transferor is liable under Chapter 4141. of the Revised Code.

Rule 4141-17-05 Mandatory partial transfer of experience. This rule clarifies that if an employer has transferred a portion of its trade or business to another employer and, at the time of the transfer, both employers are under substantially common ownership, management, or control, then the unemployment experience and outstanding debt attributable to the transferred portion of the trade or business shall be transferred to the transferee.

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

4141.13, 4141.14, 4141.24

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?

Yes, all four of these rules implement federal guidelines as directed by the Department of Labor (DOL) pursuant to the Federal Unemployment Tax Act. 26 USC 3301 through 26 USC 3311.

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

No, none of these rules include provisions exceeding federal requirements.

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 provide the way for a successor employer to obtain the experience

unemployment tax rate history from a predecessor employer. This is typically done as part of a purchase from a selling employer to a buyer employer. The important backdrop to the entire successorship issue to keep in mind is that approximately two of every three successorships benefit the successor employer because they are obtaining a good experience history and a lower tax rate. In approximately one of every three successorships the successor employer obtains an experience history resulting in a higher tax rate. If the successor employer were allowed to be considered a new business, the negative effect would be absorbed by all employers paying into the unemployment trust fund. It is appropriate, fair, and equitable for the employer that made the decision to obtain all the trade or business essential to the operation of the trade or business to absorb the experience history, whether positive or negative. Proper due diligence to investigate the unemployment experience history of an employer is of paramount importance to any potential buyer of a trade or business.

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

All of these rules are clarifying in nature therefore the success can be measured by how well the regulated community understands the underlying process. The Department believes these particular provisions are helpful to and well understood by the regulated community, as there has been substantial compliance. Since these rules have been in place for at least five years, and in some cases decades, with the full knowledge and cooperation of employers, the Department has proposed no changes to these rules.

Development of the Regulation

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

The Agency's clearance process allows all employer and claimant/employee stakeholder interests to review and comment on each of these rules online. In addition to the online clearance process, each of these "no change" rules was previously vetted through the Unemployment Compensation Advisory Council (UCAC). The UCAC is the representative body for all employer and claimant/employee stakeholder interests.

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

The Agency received no comments through the online clearance process.

- 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?**

No scientific data was used to develop these rules or the measurable outcome of these rules.

- 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?**

None. These rules reflect the directives of the DOL pursuant to the Federal Unemployment Tax Act and/or Chapter 4141 of the Ohio Revised Code (ORC) which is under the purview of the Ohio General Assembly. Specifically, these rules further explain the directives of ORC 4141.24.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**

No, this would not apply because the Agency is directed by the DOL and the ORC.

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

The Agency's legal and subject matter experts carefully review all rule language to ensure no redundancy or duplication occurs.

- 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.**

The Agency's plan for implementation is to strictly follow federal guidelines as defined by the DOL and by the Ohio General Assembly through the ORC.

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 -- Approximately 224,000 employers file reports and pay into the Ohio Unemployment Compensation Trust Fund as required by federal and state law. There were 4,070 successorships processed during the most recent 12 month period ending July 22, 2013.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance) -- The time expended by employers to comply by filing the necessary successorship documentation.
- 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.*

The time requirements will vary depending on the employer and the details involved in the successorship. Based on consultation with the contribution section of the Office of Unemployment Compensation, and their analysis and experience with the employer/business community, it will take an employer approximately up to sixty minutes to complete all the necessary documentation for a successorship. The actual time expended will vary depending on how simple or complex the successorship is. The more straight forward successorships will take as little as five minutes while the more complicated successorships will take as long as 60 minutes.

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

Generally, the rules in Chapter 4141 of the Ohio Administrative Code help to support an Unemployment Insurance (UI) system that has been found to have a net positive impact on the economy, with substantial benefits to the business community as a whole.

Evidence from a study commissioned by the Labor Department during the Bush Administration reaffirms the value of UI as an automatic economic stabilizer during the latest recession. This study was conducted by the research firm IMPAQ International in conjunction with the Urban Institute, using the macroeconomic model from Moody's Economy.com, and additional data and details of the study can be found at the following website link: <http://www.dol.gov/opa/media/press/eta/eta20101615fs.htm>

The study found that the UI system helps to maintain American families' purchasing power and keeping the economy on track during an economic downturn. Unemployment creates a snowball effect where people who have lost their job reduce their spending causing businesses to lose money and others to lose their jobs. Unemployment insurance acts to reduce this effect by helping the unemployed to continue to purchase vital goods and services for their family.

UI benefits have a multiplier effect of 2.0: for every dollar spent on unemployment insurance, this report finds an increase in economic activity of two dollars. UI benefits allow the unemployed to maintain more of their previous consumption than they would otherwise be able to. When the unemployed cut back on spending, the business owners that serve them lose. By cushioning the fall in these families' incomes, unemployment insurance not only helps the families that receive it, but also prevents further production cuts and layoffs.

Once again, the important backdrop to the entire successorship issue to keep in mind is that approximately two of every three successorships benefit the successor employer because they are obtaining a good experience history and a lower tax rate. In approximately one of every three successorships the successor employer obtains an experience history resulting in a higher tax rate. If the successor employer were allowed to be considered a new business, the negative effect would be absorbed by all employers paying into the unemployment trust fund. It is appropriate, fair, and equitable for the employer that made the decision to obtain all the trade or business essential to the operation of the trade or business to absorb the experience history, whether positive or negative. Proper due diligence to investigate the unemployment experience history of an employer is of paramount importance to any potential buyer of a trade or business.

These four rules reflect the directives of Chapter 4141 of the ORC as well as the Federal Unemployment Tax Act and/or the Social Security Act.

Regulatory Flexibility

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

No, the intent of these rules is to treat all Ohio employers equally. The Federal Department of Labor and the Ohio General Assembly structure our rules in such a manner so that the Department does not have discretionary authority to allow different standards for the various employers paying into the Unemployment Trust Fund.

- 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?**

The Agency allows for a waiver of fines (interest) and penalties for paperwork violations and first-time offenders by request. The request may be made in writing, online or by phone.

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

The Agency provides an online website, telephone assistance, and small businesses may contact the unemployment tax contribution division in Columbus. Small businesses may also contact the unemployment tax compliance division in Columbus or in 13 local compliance divisions throughout Ohio to speak to or meet with a local compliance auditor. Finally, employers may ask questions through the online Employer Resource Information Center (ERIC).