

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: Rules For Voluntary Election, Quarterly Payments, No Common Paymaster, and Exception To Charges

Rule Number(s): 4141-7-04; 4141-11-02; 4141-11-13; 4141-35-03

Date: December 12, 2014

Rule Type:

5-Year Review, Amended

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 4141-7-04: Voluntary election applying to successor-in-interest in whole or in part

Voluntarily elected coverage will remain in effect for a minimum of two years from the effective date of the coverage, regardless of the ownership of the business. The voluntary election may be discontinued by the successor-in-interest after the two year period has elapsed, and the successor has notified the director in writing of the desire to terminate the voluntary election.

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#### **Rule 4141-11-02: Quarterly payments, interest and due date**

Quarterly contribution payments are due no later than the last day of the first month following the close of the calendar quarter for which contributions are payable. The due date for an employer who becomes liable in a calendar quarter and thereby incurs liability for prior quarters in the same year is the last day of the first month following the close of the calendar quarter in which the employer became liable. If not paid when due, any contribution, payment in lieu of contribution, interest, forfeiture, or fine bears interest at the annual rate of 14% compounded monthly on the total balance due.

#### **Rule 4141-11-13: Prohibition against common paymaster reporting**

Each employer must report and make required payments with respect to their own account. One legal entity may not report or make payments for another legal entity.

#### **Rule 4141-35-03: Exception to benefit charges**

An exception to benefit charges must be made in writing and filed within 15 days after the notice of benefit charges is mailed or delivered to the employer. The exception must be signed by a the employer or authorized representative, and include the employer's name, unemployment account number, mailing date of the benefit charge statement at issue, claimant's name and social security number, the reason for the exception, and sufficient information to show why the charges are improper.

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

Section 4141.13 of the Ohio Revised Code (ORC) is the statute authorizing the Agency to adopt these rules. These rules are amended by being promulgated under Section 119.03 of the ORC, pursuant to Senate Bill 3, effective September 17, 2014. Previous to this statutory change these rules were promulgated under Section 4141.14 of the ORC.

#### **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?**

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Yes, 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, these rules do not 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)?

**Rule 4141-7-04:** This rule helps employers that are successors-in-interest understand the process for discontinuing a voluntary election as provided for in Section 4141.01(A)(4) or (A)(5) of the ORC. Without this rule employers that are successors-in-interest that want to terminate a voluntary election would not know how to discontinue it.

**Rule 4141-11-02:** This rule clarifies due dates for contribution payments and the interest rate charged if payments are not timely made. Employers know when quarterly taxable payroll reports and payments are due under Section 4141.20 of the ORC because of this rule, and what interest rate will be charged for reports and payments made late pursuant to Section 4141.23 of the ORC.

**Rule 4141-11-13:** This rule helps employers understand that each legal entity is responsible to report and make payments on their own employer account pursuant to Section 4141.24(A) of the ORC. Without this rule employers with common ownership, management, or control, but that are separate and distinct legal entities, would not understand that one legal entity may not report or make payments for the other legal entities as a common paymaster or under a similar arrangement.

**Rule 4141-35-03:** This rule clarifies Section 4141.24(D) of the ORC and explains the process for employers to file an exception to benefit charges and details the information to be included in the filing. Without this rule employers that believe unemployment benefit payments were improperly charged to their accounts would lack a method to have the charges reviewed.

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

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**Rule 4141-7-04:** This rule clarifies the method for discontinuing a voluntary election. The success of this rule can be measured by how well employers understand this process. The Agency believes this rule is helpful and is understood by employers because they do follow the process explained in the rule. Accordingly, because the current form of this rule has been in place since September 28, 2010, with the full knowledge and cooperation of employers, the Agency has proposed no changes to the language of this rule.

**Rule 4141-11-02:** This rule explains contribution payment due dates and the interest rate charged for untimely payments. The success of this rule can be measured by how well employers understand the due dates and interest rate charges for untimely payments. The Agency believes this rule is well understood by employers because the vast majority of the approximately 225,000 liable employers file and pay in a timely manner. Therefore, because the current form of this rule has been in place since September 28, 2010, with the full knowledge and cooperation of employers, the Agency has proposed no changes to the language of this rule.

**Rule 4141-11-13:** This rule assists employers in understanding that each legal entity must report and make payments on their own employer account. The success of this rule can be measured by the fact that all employers file and pay under their own employer account as separate and distinct legal entities. Thus, because the current form of this rule has been in place since September 28, 2010, with the full knowledge and cooperation of employers, the Agency has proposed no changes to the language of this rule.

**Rule 4141-35-03:** This rule helps to explain the process for employers to file an exception to benefit charges and details the information to be included in the filing. The success of this rule can be measured by the approximately 34,000 employers that received a monthly notice of benefits paid and charged to employer statements, during the past year, that have a method to request charges be corrected when they believe unemployment benefit payments were improperly charged to their accounts. Consequently, because the current form of this rule has been in place since September 28, 2010, with the full knowledge and cooperation of employers, the Agency has proposed no changes to the language of this rule.

### **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 any rule online. The National Federation of

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**Independent Business (NFIB), the Ohio Chamber of Commerce, and Policy Matters Ohio are among those stakeholders that the Agency has identified as receiving clearance notification of these rules.**

- 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 for these rules through the online clearance process which extended for the period from December 2, 2014 through December 9, 2014.**

- 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 Chapter 4141 of the Ohio Revised Code.**

- 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 –

**Rule 4141-7-04:** The Agency processes approximately 4,000-5,000 successorships annually. There are fewer than 10 requests made annually to voluntarily elect coverage. For this reason, it is rare for a successor employer to obtain a predecessor employer's experience that had voluntarily elected coverage. However, once the minimum timeframe of the voluntary election has passed, the successor employer may terminate the voluntary election made by the predecessor employer.

**Rules 4141-11-02 and 4141-11-13:** Approximately 225,000 employers are liable to file reports and pay into the Ohio Unemployment Compensation Trust Fund as required by federal and state law.

**Rule 4141-35-03:** During the last twelve months, approximately 34,000 employers have received monthly notice of benefits paid and charged to employer statements.

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance) –

The nature of the adverse impact is the time expended by employers for compliance with these rules.

- 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.



**Rule 4141-7-04:** 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 10-15 minutes to notify the Agency of their desire to terminate the voluntary election.

**Rules 4141-11-02 and 4141-11-13:** 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 10-60 minutes to file quarterly reports and pay contributions, payment in lieu of contributions, forfeiture and interest. With 80% of all employers having less than 20 employees, the majority of employers will fall closer to the shorter 10 minute range than to the longer 60 minute range.

**Rule 4141-35-03:** Based on consultation with the Bureau of Benefits and Technology of the Office of Unemployment Compensation, and their analysis and experience with the employer/business community, it will take an employer approximately 30 minutes to request an exception to benefit charges.

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

**Rule 4141-7-04:** To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01(A)(4), 4141.01(A)(5), 4141.13(A), 4141.14, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

**Rule 4141-11-02:** To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.13, 4141.14, 4141.23 and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

**Rule 4141-11-13:** To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.13(A), 4141.14, 4141.24, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

**Rule 4141-35-03:** To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.13, 4141.14, 4141.24, 4141.28(I) and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

### **Regulatory Flexibility**

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

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

**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?**

**Rules 4141-11-02 and 4141-11-13:** The Agency allows for a waiver of fines (interest) and penalties (forfeiture) for paperwork violations and first-time offenders by request. The request may be made in writing, online, or by phone.

**Rules 4141-7-04 and 4141-35-03:** These rules do not impose any fine or penalties.

**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).

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