

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Preparation and filing of applications for compensation and/or benefits.

Rule Number(s): 4123-3-08

Date: November 20, 2017

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Rescinded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.

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The Bureau is amending rule 4123-3-08 to implement the provisions of H.B. 27, effective September 29, 2017, which amended R.C. 4123.84 to reduce from two-years to one-year the time limit for an injured worker to file an injury or death claim. The rule amendments provide guidance to parties on the dates of injury for which the two-year or one-year statute of limitations applies.

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

R.C. 4121.12, 4121.121, 4121.30, 4121.31

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)?

R.C. 4123.84 establishes the time limit by which an injured worker must file an injury claim or a death claim. This concept is referred to as a statute of limitations. If the injured worker or dependent of a deceased injured worker does not file the claim within the time established by the statute, the claim is barred. The Bureau and Industrial Commission would be without jurisdiction to consider the claim.

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

The rule does not provide measurable standards or criteria.

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 Attorney General's Office, Workers Compensation Section
- Ohio Association for Justice
- Employer Organizations:

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- Council of Smaller Enterprises (COSE)
- Ohio Manufacturer's Association (OMA)
- National Federation of Independent Business (NFIB)
- Ohio Chamber of Commerce
- BWC's Self-Insured Division's employer distribution list
- BWC's Employer Services Division's Third Party Administrator (TPA) distribution list

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

The Bureau did not receive any stakeholder response.

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?

The Bureau did not consider alternative regulations. The Bureau is amending the rule to conform to statutory mandates in R.C. 4123.84 in H.B. 27.

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 Bureau rules on this subject. Bureau rules are specific to the Bureau, and there are no other Ohio rules on this subject.

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 Bureau will develop policy and will train the appropriate Bureau staff to provide guidance to parties on aspects of the changes to the rule that are not expressly detailed in the

statute. The Bureau will program its claims systems to conform to the one-year statute of limitations for all injuries or deaths arising on or after September 29, 2017.

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 employers and employer representatives (attorneys/law firms, third party administrators) and injured workers.
- b. The changes to this rule do not require any license fees nor fines. This rule however requires the injured worker which seeks award of compensation to file a complete and timely application.
- c. There will be a shorter period of time for injured workers to file an injury claim or for dependents to file a death claim. This change will not impact the business community. Regardless, the change is mandated by statute, and thus the rule is required to follow the statute.

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

The Bureau is amending this rule because it must conform its rule to the Legislative changes made to R.C. 4123.84 in H.B. 27.

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?

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Not applicable.

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

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