

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package BWC Claims Procedure rules.

Rule Number(s): 4123-3-15(AM), 4123-3-15.1(N), 4123-3-32(AM)

Date: February 2, 2018

Rule Type:

☒ New

☐ 5-Year Review

☒ Amended

☐ Rescinded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.

The Bureau is amending OAC rules 4123-3-15 and 4123-3-32 and adopting rule 4123-3-15.1 to implement the provisions of H.B. 27, effective September 29, 2017, which amended R.C. 4123.57 and Section 741.30 of the Act, to provide BWC with the authority to dismiss rather than suspend a C-92 application where the injured worker fails to schedule or attend the independent medical examination, to address the backlog of suspended C-92 applications, and to permit BWC to waive the TT 90 day exam under R.C. 4123.53. The new rules addresses how the Bureau will notify an injured worker of a possible dismissal of a C-92 application and the injured worker's right to refile a C-92 application, and provide that an employer can object to BWC's waiver of the TT 90 day exam.

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

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

CSIOhio@governor.ohio.gov

4121.12, 4121.121, 4123.05, 4123.57 and 4123.65 of the Ohio Revised Code.

- 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.

The rules do not implement a federal requirement.

- 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.

- 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 work.

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.
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?**

BWC is still seeking stakeholder feedback on the rules. Thus far, BWC has received one comment on changes to rules 4123-3-15 and 4123-3-15.1. That comment requested that

BWC include in the rule the right of the injured worker to appeal a dismissal of a C-92 application to the Industrial Commission. BWC will incorporate that suggestion in the rule.

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?

Scientific data is not applicable to the language 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?

BWC did not consider alternative regulations. BWC is amending these rules to comply with the amendments to R.C. 4123.53 and R.C. 4123.57 mandating these rule changes in Am. Sub. H.B. 27 of the 132nd 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.

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;

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

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

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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 an employee's application for a finding a C-92 award will be dismissed if an employee fails to attend and/or respond to an attempt to schedule a medical examination by BWC's medical section.

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.

There is no significant adverse impact, other than an injured worker spending time on re-submitting the C-92 application when and if it was dismissed by the Bureau.

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 in Am. Sub. H.B. 27 of the 132nd 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.