

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Chapter 17 rules - BWC's Professional Employer Organization (PEO) Rules

Rule Number(s): 4123-17-15 (AM), 4123-17-15.1 (AM), 4123-17-15.2 (AM), 4123-17-15.4 (AM), 4123-17-15.5 (AM), 4123-17-15.6 (NC), 4123-17-15.7 (AM)

Date: June 26, 2018

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☐ Rescinded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.

Chapter 4125 of the Revised Code governs the regulation of PEOs. BWC is charged with administration and enforcement of this chapter under RC 4125.02. OAC 4123-17-15 through OAC 4123-17-15.7 contains rules relating to PEOs. RC 119.032 requires BWC to conduct a five-year rule review for each of its rules subject to the RC Chapter 119 rulemaking process. These rules became effective on February 17, 2014. OAC 4123-17-15.3, which concerned

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

CSIOhio@governor.ohio.gov

security requirements of PEOs, was rescinded on July 1, 2015. All other rules in this section have not been modified since February 17, 2014.

Proposed changes to OAC 4123-17-15 through OAC 4123-17-15.7 also were necessitated by the passage of Am. Sub. H.B. 27, which became effective on September 29, 2017. Finally, proposed changes to OAC 4123-17-15 address correction of an unintended consequence in the 2014 rules. Specifically, the current version of the rules prohibits a PEO practice known as “all under client reporting” or “full-to-client” reporting. Shortly after the 2014 passage of these rules, stakeholders requested changes to allow all under client reporting, which BWC approved.

BWC is proposing the amendments to six rules and no change to one rule, as follows:

Amend:

4123-17-15 Professional employer organizations.

4123-17-15.1 PEO agreements.

4123-17-15.2 Registration and reporting requirements.

4123-17-15.4 Financial requirements.

4123-17-15.5 Self-insuring PEOs.

4123-17-15.7 Denial or revocation of PEO registration.

No Change:

4123-17-15.6 Client employer information.

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

RC 4125.02.

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?

No.

If yes, please briefly explain the source and substance of the federal requirement.

N/A.

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

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

CSIOhio@governor.ohio.gov

N/A.

- 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)?**

RC 4125.02 requires BWC to adopt rules to administer and enforce Chapter 4125 of the Revised Code. These rules govern the administration and enforcement of PEOs operating in Ohio.

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

BWC will measure the success of this regulation through the initial registration and annual registration of all PEOs operating in Ohio. Additionally, BWC has a designated PEO Unit that conducts random reviews of PEOs for compliance with state law and rules.

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.

BWC shared the proposed rule changes with all registered PEOs in the state of Ohio, the National Association of Professional Employer Organizations (“NAPEO”), and the Employer Services Assurance Corporation (“ESAC”). Requests for stakeholder feedback were sent via electronic mail transmission on January 12, 2018, and May 10, 2018.

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

With exception of wording added at the end of OAC 4123-17-15(D)(7) for clarity, the proposed rules in their present form were distributed to stakeholders on January 10, 2018. One self-insured PEO requested the proposed rules permit optional wage reporting for federal tax purposes under either the PEO’s Federal Employer Identification Number (“FEIN”) or the client employer’s FEIN. BWC redrafted the proposed rules to accommodate the self-insured PEO’s request, which were distributed to the stakeholders on May 10, 2018. NAPEO, ESAC, and three PEOs supported the proposed rules as drafted in January 2018, but opposed the optional wage reporting for federal tax purposes provisions. No stakeholder, except the self-insured PEO, voiced support for the optional wage reporting for federal tax purposes. Consequently, in view of the stakeholder response, BWC withdrew the proposed rules that were issued to stakeholders on May 10, 2018, and replaced the proposed rules with

rules in the form presented with this document. BWC's Board of Directors approved the rules in the form presented with this document on June 22, 2018. Further, on June 22, 2018, the self-insured PEO notified BWC that it is withdrawing its request for optional wage reporting for federal tax purposes.

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?

This process is not subject to scientific data or analysis.

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?

As noted above, BWC did consider optional wage reporting for federal tax purposes at the request of a self-insured PEO. However, in view of strong opposition to this specific proposal from stakeholders, BWC withdrew these provisions.

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.

The rules are not subject to performance-based measurement.

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

Pursuant to RC 4125.02, BWC is the sole agency responsible for enforcement and administration of PEOs. Consequently, these rules are specific to BWC and do not affect other agencies' rules. While some BWC rules may reference statutes or rules of other agencies, those references are for BWC rule purposes, and the references do not impact or conflict with other agencies' statutes or rules.

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 has established a repeatable procedure by which all the processes for obtaining and maintaining coverage, ratemaking, and rating and discount programs are implemented. These procedures include adequate notification to employers and contain reports to ensure consistent and accurate application of the rules.

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 business community is all registered PEOs in Ohio and all PEOs seeking to register in Ohio.

b. The PEO rules require initial registration and annual registration fees. These fees remain unchanged from 2014. Further, Am. Sub. H.B. 27 provided expanded time frames for PEOs to meet certain reporting requirements, which have been incorporated into the rules. BWC has added a fifty dollar and no cents (\$50.00) per instance late processing fee to the rules to ensure timely PEO compliance with certain reporting requirements.

c. There is no change in the adverse impact regarding initial registration and annual registration fees. There is no way to quantify how many late processing fees will occur, but the Administrator expects there will not be many late processing fees. First, Am. Sub. H.B. 27 expanded reporting times for PEOs from 14 days to 30 days in certain instances. Second, the late processing fees are only assessed if a PEO violates state law.

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

Initial registration fees and annual registration fees remain unchanged from 2014. Without late processing fees, the only alternative to ensure a PEO’s compliance with Ohio statutes is for BWC to move for revocation of a PEO’s registration regardless of the significance of the violation. The late processing fees are much less burdensome for PEOs, align Ohio with PEO regulation in other states, and are less costly for both BWC and the PEO than holding a revocation hearing for a minor offense. All stakeholder feedback supported the proposed rules, which included the registration fees and late processing fees.

Regulatory Flexibility

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

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

CSIOhio@governor.ohio.gov

No. All PEOs must register and comply with state law, which has no exemptions or alternative means of compliance for small businesses.

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?

BWC will apply RC 119.14(C)(1) to such offenses on a case-by-case basis.

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

BWC provides employers with a toll-free telephone number and/or via the BWC website access to contact and communicate with customer service representatives. Additionally, BWC has a designated state fund PEO unit available as a resource.