

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** Ohio Department of Job and Family Services

**Regulation/Package Title:** Professional employer organizations

**Rule Number(s):** 4141-3-07

**Date:** October 4, 2018

**Rule Type:** Five 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.

Amended Substitute Senate Bill 3 of the 130<sup>th</sup> General Assembly changed the promulgating statute for the adoption, amendment or rescission of Unemployment Compensation Rules from Ohio Revised Code (ORC) Section 4141.14 to ORC Section 119.03. This rule is being amended to reflect the statutory change.

There are also minor format and language content changes being made to this rule. Specifically, paragraph A of the rule is being deleted because the effective date doesn't need to be in the body of the rule going forward and the remaining paragraphs of the rule have been re-lettered accordingly. The re-lettered paragraph (A)(7) of the rule defining the term "subaccount" now more clearly explains that a "subaccount" must be a separate account for each client employer as required by ORC 4141.24(A)(1).

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Rule 4141-3-07: This rule clarifies and explains the obligations of Professional Employer Organizations (PEOs) and Professional Employer Organization Reporting Entities (PEO Reporting Entities) pursuant to ORC section 4141.24(K) and ORC section 4125.01.

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

Sections 4141.13 and 4141.24(K) of the ORC are the statutes authorizing the Agency to adopt this rule.

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, this rule implements 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.

This rule does not include provisions exceeding federal requirements. This rule was implemented as required by ORC 4141.24(K) as amended by Senate Bill 139, 129<sup>th</sup> General Assembly.

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)?

The intent of the rule is for employers to report and pay unemployment compensation tax in accordance with Senate Bill 139 and ORC section 4141.24(K).

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

The Agency will measure the success of this rule through continued compliance with ORC sections 119.03, 4141.13, 4141.24, and through compliance with federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311. This rule is clarifying in nature therefore the success can be measured by how well the regulated community understands the underlying process. The Department believes this rule has been helpful and is well understood by the regulated community.

### **Development of the Regulation**

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

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The Agency's clearance process allows all employer and claimant/employee stakeholder interests to review and comment on any rule online. The Ohio Chamber of Commerce, Policy Matters Ohio, and the National Federation of Independent Business (NFIB) are among those stakeholders that the Agency has identified as receiving clearance notification of this rule. In addition to the online clearance process, the National Association of Professional Employer Organizations (NAPEO) was involved with the original vetting of this rule prior to the rule becoming effective on January 1, 2014.

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 on this rule through the online clearance process. The NAPEO was involved with the legislation that led to the enactment of ORC 4141.24(K) and they provided advice and comment on this rule. Also, Senate Bill 139 mandated the legislation that led to this rule and the legislation was widely supported by the impacted business community.

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 this rule or the measurable outcome of this rule. The rule requirements were mandated by the ORC.

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. This rule reflects the directives of the DOL pursuant to the Federal Unemployment Tax Act and Chapter 4141 of the ORC.

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. The rule was developed in accordance with ORC 4141.24(K).

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.

This includes a review of Rule 4141-3-07 by attorneys and subject matter experts in the Agency's Office of Unemployment Insurance Operations, a separate review done by the Agency's Office of Legal and Acquisition Services, and a separate review done by the Agency's Office of Legislation.

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 ORC section 4141.24(K).

### **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 4141-3-07: Approximately 222,000 Ohio employers file quarterly reports and pay a contribution tax into the Ohio Unemployment Compensation Trust Fund each year as required by Federal and State Law. There are about 200 registered PEOs in Ohio serving an estimated 4,000 client employers.

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

Rule 4141-3-07: Time expended by PEOs to comply with the reporting requirements. Specifically, each PEO files quarterly reports and pays contribution taxes into the Ohio Unemployment Compensation Trust Fund under separate employer accounts on behalf of each of their client employers rather than under a single PEO account.

- 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 4141-3-07: The actual time requirements will vary depending on each PEO's business model and the number of employees with each of the PEO's client employers. However, the Agency's Unemployment Compensation Tax Contribution Section estimates it typically takes a PEO, on average, about 15 to 20 minutes to file reports for and pay on each PEO's client employer account.

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

Rule 4141-3-07: The Agency believes this rule imposes a relatively minor adverse impact to the regulated business community because of the time it takes to file quarterly reports and to pay on each PEO's client employer account. Furthermore, to the extent that this rule may impose an adverse impact to any of the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.13, 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.

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### **Regulatory Flexibility**

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

No, the intent of the rule is to treat all Ohio employers equally. The Federal Department of Labor and the Ohio General Assembly have structured Unemployment Compensation Law in such a manner so that the Agency does not have discretionary authority to allow different standards, based upon size, 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 quarterly filing and payment violations for 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 has an online website at <http://jfs.ohio.gov/ouc/uctax/index.stm> and telephone assistance at (614) 466-2319 where small businesses may contact the unemployment tax contribution division or, if they have audit related questions, the unemployment compliance division. Small businesses may also refer to the Employer's Guide to Ohio Unemployment Insurance online at <http://www.odjfs.state.oh.us/forms/num/JFS08201/pdf/>. Finally, employers may ask questions at the Employer Resource Information Center (ERIC) online at: <https://eric.ohio.gov/>.