



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers' Compensation

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

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 (AM), 4123-17-15.7 (AM)

Date of Submission for CSI Review: July 30, 2021

Public Comment Period End Date: August 20, 2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 7 rules (FYR? No_)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Proposed changes to OAC 4123-17-15 through OAC 4123-17-15.7 were necessitated by the passage of Am. Sub. S.B. 201 and the creation of Chapter 4133 of the Revised Code, which became effective on March 24, 2021. Chapter 4133 of the Revised Code governs the regulation of a new entity called alternate employer organizations (AEOs). BWC is charged with administration and enforcement of this chapter under R.C. 4133.02. The intent of these rule changes is to incorporate AEO regulations into the existing professional employer organization (PEO) rules. AEOs will operate, and be regulated by BWC, in a similar manner as PEOs.

BWC is proposing the amendments to seven rules as follows, with proposed title changes to OAC 4123-17-15, 4123-17-15.1, 4123-17-15.5, and 4123-17-15.7:

4123-17-15 Alternate employer organizations and professional employer organizations.

4123-17-15.1 AEO agreements and PEO agreements.

4123-17-15.2 Registration and reporting requirements.

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4123-17-15.4 Financial requirements.

4123-17-15.5 Self-insured AEOs and PEOs.

4123-17-15.6 Client employer information.

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

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 4125.02 and R.C. 4133.02

- 4. 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

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

N/A

- 6. 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. 4133.02 requires BWC to adopt rules to administer and enforce Chapter 4133 of the Revised Code. These rules govern the administration and enforcement of AEOs and PEOs operating in Ohio.

- 7. 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 AEOs and PEOs operating in Ohio. Additionally, BWC has a designated AEO and PEO Unit that conducts annual reviews of AEOs and PEOs for compliance with state law and rules.

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- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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 March 11, 2021.

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

Stakeholders proposed several changes to these rules. First, stakeholders raised issues concerning OAC 4123-17-15.2(F), which prohibits an AEO or PEO from ownership or co-ownership by another AEO or PEO. This rule clarifies R.C. 4133.03(J). Stakeholders were concerned that a national PEO would not be able to operate as an AEO in Ohio. BWC accommodated this concern by adding “registered in Ohio” to several provisions in OAC 4123-17-15.2(F). Additionally, stakeholders notified the BWC of an issue of double taxation by the Internal Revenue Service to their client employers if a PEO were to switch to an AEO mid-calendar year. As a result, the pending BWC budget bill modifies R.C. 4133.03(J) to become effective on or after January 1, 2022, and proposed OAC 4123-17-15.2(F) mirrors that legislative change. Next, NAPEO notified the BWC that “shared employees” should only be a term used for PEOs. However, Chapter 4125 of the Revised Code indicates that shared employees are coemployed by a PEO, whereas Chapter 4133 of the Revised Code indicates that worksite employees are shared by an AEO. While NAPEO withdrew its objection, BWC eliminated surplus wording in OAC 4123-17-15.6 and OAC 4123-17-15.7 without modifying the intent or purpose of these rules. Next, multiple stakeholders provided feedback requesting clarification that an AEO be required to process and pay all wages and state and federal taxes and that the rules specifically clarify this function not be contracted out directly to the client employer. The BWC accommodated the request with modification to OAC 4123-17-15(D) and (E). BWC’s Board of Directors approved the proposed rules in the form presented with this document on June 25, 2021.

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11. 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.

12. 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 consider the creation of individual rules for application exclusively for AEOs, but AEOs and PEOs are so similar in their operation and regulation, the bureau opted to combine them within the existing PEO regulations.

13. 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.

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

Pursuant to R.C. 4125.02 and R.C. 4133.02, BWC is the sole agency responsible for enforcement and administration of PEOs and AEOs. 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. Moreover, the BWC combined regulation of AEOs and PEOs into the existing PEO rules, rather than creating a separate chapter of AEO rules to avoid redundancy of existing Ohio regulation.

15. 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. Moreover, the BWC made the necessary informational technology updates to accommodate AEO registration and regulation.

Adverse Impact to Business

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16. 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; and

The impacted business community is any PEO in Ohio who desires to change operations to the AEO model or any new AEO employer seeking to register in Ohio.

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

The PEO rules require initial registration, annual registration, and per-instance late processing fees. These fees remain unchanged from 2018 and are the same for AEOs and PEOs. R.C. 4133.07(D)(1) requires AEOs provide additional security in an amount of not less than \$1 million.

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 change in the adverse impact regarding initial registration, annual registration, and per-instance late processing fees.

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

Initial registration, annual registration, and per-instance late processing fees remain unchanged from 2014. The \$1 million security requirement for AEOs is mandated through R.C. 4133.07(D)(1) All stakeholder feedback supported the proposed rules, which included the initial registration, annual registration, and per-instance late processing fees and the additional AEO security requirement.

Regulatory Flexibility

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

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

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

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

BWC provides employers with a toll-free telephone number, or via the BWC website, access to contact and communicate with customer service representatives. Additionally, BWC has a designated state fund AEO and PEO Unit. The Self-Insured Department also has dedicated AEO and PEO staff available as a resource for self-insured AEOs and PEOs, or AEOs or PEOs that are interested in becoming self-insured.