



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):

Self-Insuring Employer Rules

Rule Number(s): 4123-19-01, 4123-19-03, 4123-19-03.1, 4123-19-05, 4123-19-06, 4123-19-08, 4123-19-09, 4123-19-10, 4123-19-11, 4123-19-12, 4123-19-13, 4123-19-14, 4123-19-15, and 4123-19-16.

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/____ rules

No Change/ 1 rules (FYR? YES)

Amended/ 13 rules (FYR? YES)

Rescinded/____ rules (FYR?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.

Chapter 4123-19 of the Administrative Code contains the rules governing self-insurance in Ohio's workers' compensation system, including the process of applying for the privilege to self-insure, procedures for renewal or revocation of self-insuring status, and the assessment for the self-insuring employers' guaranty fund. Some of the rules have been updated since the last five-year rule review, including a request by the Common Sense Initiative Office to remove some outdated terminology from the rules.

There were several minor changes regarding syntax, grammar, and organization. The proposed syntax, grammatical, and organizational changes improve the consistency and clarity of the proposed rules, and these proposed changes are not intended to provide substantive change to any proposed rule. There were also revisions to cross references that have changed, whether through legislative action, previous rule revisions, or renumbering through these proposed rule changes. In addition to these changes, the following substantive changes are proposed:

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Ohio Adm.Code 4123-19-03

Paragraph (E) clarifies security in the form of a letter of credit must be provided by a federally insured financial institution.

Paragraph (L)(3) requires that self-insuring employers update and report allowed conditions on the Bureau's website within fourteen days of acceptance of a condition.

Paragraph (L)(5) clarifies that compensation payments must be made within fourteen days of receipt of an order granting compensation to comply with R.C. 4123.511.

Paragraph (L)(6) clarifies that a self-insuring employer may advise an injured worker that a change of physician request is impractical but cannot impede the injured worker's freedom of choice of physician.

Paragraph (L)(7) clarifies that a self-insuring employer cannot deny a treatment request, or contest a bill for the treatment, if the self-insuring employer did not respond within ten days of receipt of a request for treatment.

Paragraph (L)(9) clarifies that a self-insuring employer may use debit cards, electronic funds transfer, or direct deposit for compensation payments to injured workers with the injured worker's authorization.

Paragraphs (L)(11) and (L)(12) clarify the self-insuring employer's required response time is three business days, not three calendar days. Paragraph (L)(12) updates and clarifies distinctions between this paragraph, which addresses requests for copies of the employer's records, and paragraph (L)(10), which addresses requests for review of the employer's records. While there is a three business day requirement to comply, extensions may be provided by the injured worker or injured worker's representative, not to exceed a total of fourteen days. Moreover, a self-insuring employer may comply with the request through electronic means with agreement of the requesting party.

Paragraph (L)(13) clarifies self-insuring employers must notify injured workers of allowed conditions within thirty days of receipt of a medical-only claim which is not filed with BWC.

Paragraph (L)(15) updates that a self-insuring employer may not enter into an alternate employer organization agreement where the self-insuring employer is the client employer.

Ohio

Adm. Code 4123-19-05

Paragraph (C) clarifies the provisions do not apply to client employers of a self-insured alternate employer organization (AEO) or professional employer organization (PEO)

Ohio Adm.Code 4123-19-06

Paragraph (A)(6) reduces time to pay compensation from three weeks to two weeks to match BWC practice in evaluating self-insuring employer complaints regarding timeliness of compensation payments.

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Paragraph (A)(9) created to address proposed changes to 4123-19-03(L)(12).

Ohio Adm.Code 4123-19-09

Paragraph (A) and the rule title are clarified to comply with Ohio law requiring BWC to investigate all complaints against a self-insuring employer, regardless of the source, which BWC has done for many years.

Paragraph (A) is updated to reflect that failure of a self-insuring employer to respond to the initial complaint within fourteen days may result in the finding of a valid complaint.

Paragraph (B) clarifies that the self-insured department may address any violations discovered during the investigation of a complaint, which the BWC has done for many years.

- 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.**

Authorized by: 4121.12, 4121.121, 4121.13, 4121.30, and 4123.05.

Amplifies: 4123.01, 4123.29, 4123.30, 4123.32, 4123.35, 4123.351, 4123.352, and 4123.58.

- 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?**
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)?**

These rules govern self-insurance in Ohio's workers' compensation system and are required by Rev. Code Sec. 4123.35. They are intended to inform Ohio employers of the requirements of self-insurance.

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

These rules do not lend themselves to measurement. The success of these rules is measured by the ability of workers' compensation stakeholders to understand and follow the 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 distributed these rules for comments to: Ohio Manufacturer's Association ("OMA"); Ohio Chamber of Commerce; BWC's Self-Insured Division's employer distribution list; Ohio Self-Insurers Association ("OSIA") workgroup; and Ohio Association for Justice.

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

The only feedback received came from one self-insuring employer requesting clarification regarding two areas of proposed Ohio Adm.Code 4123-19-03, which led to no changes to the proposed rules. A Board member inquired regarding proposed Ohio Adm.Code 4123-19-03 between the first and second reading of the proposed rules before the BWC Board of Directors. Following discussion and clarification with the Board member, BWC incorporated several changes into this rule, which are included in the response to Question #2 above, along with an associated cross-reference change in proposed Ohio Adm.Code 4123-19-06.

- 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?**

N/A.

- 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?**

These rules generally follow statutory mandates. For example, Ohio Adm.Code 4123-19-13, "Self-insuring employers evaluation board," is based on requirements in Rev. Code Sec. 4123.352. The statute provides the basic parameters of the regulation; these rules inform stakeholders of the procedures and policies the BWC will use to implement these regulations.

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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.

Performance based regulations are not appropriate for the content of these rules.

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

The BWC is the only state agency regulating self-insuring employers for workers' compensation, and thus there is not another agency promulgating rules on these subjects.

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.

The BWC will post the rules on its website, www.bwc.ohio.gov, and will distribute the rules to affected parties through existing outreach methods.

Adverse Impact to Business

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**
- b. Identify the nature of all adverse impact (e.g., 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 includes employers in the workers' compensation system. Specifically, the proposed rules impact employers that desire to self-insure and employers that are currently self-insured.

b. Generally, these rules are an alternative option for employers who do not wish to participate in the state insurance fund. An employer that becomes self-insured is responsible for paying an assessment to the self-insuring employers' guaranty fund and must pay claims costs dollar for dollar. An employer that desires to become self-insured must meet certain requirements,

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most of which are outlined in Ohio Adm.Code 4123-19-03. Many of the requirements are based on statutory requirements. These proposed rules clarify requirements for self-insuring employers regarding: paying compensation to injured workers; providing claims information when requested; ensuring injured workers have access to treatment and have free choice of physician; detailing methods to provide financial security when required; and the BWC Self-Insured Department's investigation of allegations against self-insuring employers.

c. Any adverse impact is difficult to quantify and is mitigated somewhat by the elective nature of the self-insurance program. Generally, an employer that chooses to become self-insured performs a risk analysis and determines that self-insurance is better for the employer financially.

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

These rules generally follow statutory mandates. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the BWC will use to implement these regulations. The rule changes will help clarify expectations for all stakeholders and provide a baseline for communicating decisions and determinations regarding the claims.

Regulatory Flexibility

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

No. Self-insuring employers are typically larger employers who have the financial ability and administrative resources to self-administer their workers' compensation claims.

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?

N/A. The only proposed rule that provides for a civil penalty is rule 4123-19-13, which may call for sanctions against a self-insuring employer by the self-insuring employers evaluation board for violating rules of self-insurance when administering workers' compensation claims. The civil penalty provision remains unchanged from the previous version of this rule.

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

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BWC rules and policies are available on www.bwc.ohio.gov. The BWC has also dedicated Self-Insured Department personnel available to assist stakeholders in answering workers' compensation inquiries concerning self-insurance.

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