



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Job and Family Services

Rule Contact Name and Contact Information:

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

Wage and remuneration expanded definitions

Rule Number(s): 4141-9-01, 4141-9-02, 4141-9-04, 4141-9-09, 4141-9-12

Date of Submission for CSI Review: 1/18/23

Public Comment Period End Date: 1/25/23

Rule Type/Number of Rules:

New: 1 rules

No Change rules FYR?

Amended : rules FYR?

Rescinded: 5 rules FYR - Yes

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.

Five rules are proposed to be rescinded as a result of the five year review process, and to eliminate redundancy by creating a new combined rule.

4141-9-01 Wages reported and paid. The rule specifies that wages are to be reported in the calendar quarter in which a payday occurs.

4141-9-01 Wage and remuneration expanded definitions.

The rule specifies that wages are to be reported in the calendar quarter in which a payday occurs and explains that the exemption on remuneration paid is earned by each contributory employer based upon wages paid to each employee and cannot be shared among employers of the same employee but may be shared with an employer determined to be a successor-in-interest. The rule also clarifies the term "remuneration" and specifies the types of cash and no cash payments that may be determined to be remuneration explaining the definitions of holiday pay, valuation of meals and lodging, and travel expenses for the purposes of Chapter 4141 of the Revised Code.

4141-9-02 Tax base. This rule explains the requirements of the amount of tax due if an employer is found liable for unemployment compensation tax.

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4141-9-04 Remuneration. This rule clarifies the term "remuneration" and specifies the types of cash and no cash payments that may be determined to be remuneration for the purposes of Chapter 4141 of the Revised Code.

4141-9-09 Valuation of meals and lodging. This rule provides guidelines for establishing the cash value of meals and lodging under Chapter 4141 of the Revised Code.

4141-9-12 Travel expenses. This rule clarifies when travel expenses and vehicles provided by the employer will be considered remuneration.

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.

4141-9-01 Wages reported and paid. Sections 4141.13, 4141.41 of the ORC are the statutes authorizing the Agency to adopt this rule. Sections 4141.13, 4141.241, 4141.23, 4141.20 are the statutes that amplify that authority.

4141-9-02 Tax base. Sections 4141.13, 4141.14 of the ORC are the statutes authorizing the Agency to adopt this rule. Sections 4141.01, 4141.13 are the statutes that amplify that authority.

4141-9-04 Remuneration. Sections 4141.13(A), 4141.14 of the ORC are the statutes authorizing the Agency to adopt this rule. Sections 4141.01(H) is the statute that amplify that authority.

4141-9-09 Valuation of meals and lodging. Section 4141.13 of the ORC is the statute authorizing the Agency to adopt this rule. Section 4141.01 is the statute that amplify that authority.

4141-9-12 Travel expenses. Sections 4141.13(A), 4141.14 of the ORC are the statutes authorizing the Agency to adopt this rule. Section 4141.01(G) is the statute that amplify that authority.

**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.***

Yes, all of the rules implement federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act. 26 USC 3301 through 26 USC 3311.

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

No, none of the rules include provisions exceeding federal requirements.

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)?

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Rule 4141-9-01. The intent of rule 4141-9-01 is to clarify that for purposes of the quarterly filings and contribution payments, wages must be reported for the calendar quarter in which the payday occurs. A payday occurs when the payment is credited to or set apart for the employee and is available to such employee on demand. Rule clarity encourages employers to report payroll and pay unemployment insurance tax through the tax structure permitted by law, which helps fund the payment of unemployment benefits.

Rule 4141-9-02. The intent of rule 4141-9-02 is to clarify that contributions shall be paid on the wages defined in Division (G)(1) of ORC Section 4141.01 and explains the payment of contributions shall not be prorated over the entire calendar year or any part thereof. The limit on taxable wages applies only to the remuneration paid by each employer to each individual. The limit is an exemption earned by each contributory employer, and the individual's other such employers cannot share in the exemption. In case it is determined that there has been a successorship within the calendar year, the wages of any employee upon which the predecessor has paid contributions shall be included in computing the taxable wages.

Rule 4141-9-04. The intent of rule 4141-9-04 is to further explain and clarify the definition of the term "remuneration". For example, remuneration includes such things as payment on the basis of piecework, or a percentage of profits, and it may be paid hourly, daily, weekly, monthly, annually, or based on any other measurement of time. Remuneration may be paid in cash and may be denominated by terms such as vacation pay or allowance, separation pay, holiday pay, paid absence allowance, downtime paid absence allowance, or short workweek pay.

Rule 4141-9-09. The intent of rule 4141-9-09 is to provide guidelines for establishing the cash value of meals and lodging under Chapter 4141 of the Revised Code.

Rule 4141-9-12. The intent of rule 4141-9-12 is to define "travel expenses" as amounts paid by an employer as allowances or reimbursements for traveling in the course of the employer's trade or business. Travel expenses must be considered remuneration if such amounts exceed costs actually incurred by the individual.

Travel expenses must be detailed in current documentation maintained by the employer and employees and such documentation shall be available for inspection by the director as a basis upon which to exclude from or include amounts paid as remuneration.

Rule 4141-9-01 Wage and remuneration expanded definitions. The intent of rule 4141-9-01 is clarify that wages are to be reported in the calendar quarter in which a payday occurs and explains that the exemption on remuneration paid is earned by each contributory employer based upon wages paid to each employee and cannot be shared among employers of the same employee but may be shared with an employer determined to be a successor-in-interest. The rule further explains the term "remuneration" and specifies the types of cash and no cash payments that may be determined to be remuneration explaining the definitions of holiday pay, valuation of meals and lodging, and travel expenses for the purposes of Chapter 4141 of the Revised Code. To eliminate redundancy, this rule combines 4141-9-01, 4141-9-02, 4141-9-04, 4141-9-05, 4141-9-09 and 4141-9-12.

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

All of these rules are clarifying in nature therefore the success can be measured by how well the regulated community understands the underlying process. The Department believes these particular provisions are helpful to and well understood by the regulated community, as there has been substantial compliance. Since these rules have been in place for at least five years, and in some cases decades, with the full knowledge and cooperation of employers, the Department has proposed no changes to these rules. The Agency will measure the success of these rules through continued compliance with ORC 119.03, 4141.01, 4141.13, 4141.20, 4141.23, 4141.241, 4141.28, 4141.29, 4141.31, 4141.33 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.

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.

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. The clearance period was 12-21-22 through 12-28-22.

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

There were no comments received during the clearance period.

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?

No scientific data was used to develop the rules or the measurable outcomes of the rules.

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? *Alternative regulations may include performance-based regulations, which define the*

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required outcome, but do not dictate the process the regulated stakeholders must use to comply.

None. These rules reflect the directives of the Federal Department of Labor (DOL) pursuant to the Federal Unemployment Tax Act and Chapter 4141 of the Ohio Revised Code (ORC) under the purview of the Ohio General Assembly.

13. 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.

14. 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 the ORC.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following: *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. Identify the scope of the impacted business community;

Approximately 227,000 employers file reports and pay into the Ohio Unemployment Compensation Trust Fund as required by federal and state law.

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

Time expended by employers to comply and the amount of the unemployment insurance tax contribution. Specifically, each employer that pays into the Ohio Unemployment Trust Fund is required to pay tax on up to \$9,500 in wages per employee annually per ORC Section 4141.01(G).

Rule 4141-9-01

ORC Section 4141.20 states that every contributory employer shall file a quarterly contribution and wage report by a certain date. The statute explains what information needs to be provided including the total and taxable remuneration paid to all employees during the quarter, the name and social security number of each individual employed

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during the calendar quarter, the total remuneration paid the individual, the number of weeks during the quarter for which the individual was paid remuneration, and any other information required by section 1137 of the Social Security Act. ORC Section 4141.20 also provides for the due dates of these quarterly filings and explains the amount of the forfeiture penalties if the quarterly filings are not made by the due dates. The Department expects no adverse impact to the regulated community as a result of the adoption of rule 4141-9-01. While rule 4141-9-01 makes reference to certain reporting requirements imposed throughout chapter 4141 of the Revised Code, and the regulated community will be affected by the statutory requirements, the rule itself only serves to aid the regulated community by clarifying the process and does not impose additional requirements beyond those found in Revised Code section 4141.20.

Rule 4141-9-02

ORC Section 4141.01(G)(1) defines the term "wages" to mean remuneration paid to an employee by each of the employee's employers with respect to employment; except that wages shall not include that part of remuneration paid during any calendar year to an individual by an employer or such employer's predecessor in interest in the same business or enterprise, which in any calendar year is in excess of nine thousand five hundred dollars.

Remuneration in excess of such amount shall be deemed wages subject to contribution to the same extent that such remuneration is defined as wages under the "Federal Unemployment Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The remuneration paid an employee by an employer with respect to employment in another state, upon which contributions were required and paid by such employer under the unemployment compensation act of such other state, shall be included as a part of remuneration in computing the amount specified in this division. The wages threshold has been in excess of nine thousand five hundred dollars since January 1, 2018.

Rule 4141-9-02 clarifies that contributions shall be paid on the wages defined in Division (G)(1) of ORC Section 4141.01 and explains the payment of contributions shall not be prorated over the entire calendar year or any part thereof. The limit on taxable wages applies only to the remuneration paid by each employer to each individual. The limit is an exemption earned by each contributory employer, and the individual's other such employers cannot share in the exemption. In case it is determined that there has been a successorship within the calendar year, the wages of any employee upon which the predecessor has paid contributions shall be included in computing the taxable wages.

An example of what Rule 4141-9-02 means is that if an employee receives wages from an employer in the amount of \$15,000.00 in the first quarter of a year, then the employer shall pay contributions into the unemployment compensation fund on only the first

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\$9,500.00 of the \$15,000.00 in wages. No wages in excess of \$9,500.00 are taxable. Therefore, wages earned in subsequent quarters of that year will not require contribution payments because the \$9,500.00 threshold was already reached in the first quarter. However, if the employee receives wages from a different employer in that same year the \$9,500.00 threshold applies separately, and contributions must be paid by that different employer until that threshold is reached. In contrast, if the employer is a successor to a previous employer, such as when an entire business is sold, the successor employer will be credited for any of the \$9,500.00 taxable wages threshold upon which the previous employer paid contributions.

There is no adverse impact to the regulated business community relating to Rule 4141-9-02 because there is no license, permit, or any other prior authorization required to engage in or operate a line of business. This rule does not impose a criminal penalty, a civil penalty, or another sanction, and does not create a cause of action for failure to comply. This rule does not require specific expenditures or the report of information as a condition of compliance. This rule is included in this Business Impact Analysis due to the potential appearance of an adverse impact to the regulated business community found in other rules in Chapter 4141-9 of the Ohio Administrative Code.

Rule 4141-9-04

ORC Section 4141.01(H)(1) and (H)(2) define the terms "remuneration" and "cash remuneration." Remuneration means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash, except that in the case of agricultural or domestic service, "remuneration" includes only cash remuneration. Gratuities customarily received by an individual in the course of the individual's employment from persons other than the individual's employer and which are accounted for by such individual to the individual's employer are taxable wages.

The reasonable cash value of compensation paid in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director, provided that "remuneration" does not include:

- (a) Payments as provided in divisions (b)(2) to (b)(16) of section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, as amended;
- (b) The payment by an employer, without deduction from the remuneration of the individual in the employer's employ, of the tax imposed upon an individual in the employer's employ under section 3101 of the "Internal Revenue Code of 1954," with respect to services performed after October 1, 1941.

"Cash remuneration" means all remuneration paid in cash, including commissions and bonuses, but not including the cash value of all compensation in any medium other than

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cash. Rule 4141-9-04 further explains and clarifies the definition of the term "remuneration." For example, remuneration includes such things as payment on the basis of piecework, or a percentage of profits, and it may be paid hourly, daily, weekly, monthly, annually, or based on any other measurement of time. Remuneration may be paid in cash and may be denominated by terms such as vacation pay or allowance, separation pay, holiday pay, paid absence allowance, downtime paid absence allowance, or short workweek pay.

There is no adverse impact to the regulated business community relating to Rule 4141-9-04 because there is no license, permit, or any other prior authorization required to engage in or operate a line of business. This rule does not impose a criminal penalty, a civil penalty, or another sanction, and does not create a cause of action for failure to comply. This rule does not require specific expenditures or the report of information as a condition of compliance. This rule is included in this Business Impact Analysis due to the potential appearance of an adverse impact to the regulated business community found in other rules in Chapter 4141-9 of the Ohio Administrative Code.

Rule 4141-9-09

The Agency's Unemployment Compensation Contribution Section's historical experience is that there is a small and limited number of employers that have employees receiving remuneration in the form of paid for meals and/or lodging as part of their jobs. The Agency's Unemployment Compensation Compliance Section may find unreported remuneration for meals and/or lodging while conducting an audit of an employer. However, the Agency does not require documentation pertaining to employer paid for meals and/or lodging and an employer has a right to appeal audit finds by statute and rule. Consequently, because documentation is not required from employers, it is difficult for the Agency to provide specific information or raw statistical data on this rule.

Rule 4141-9-12

The potential adverse impact of this rule to the regulated business community relates to the need for the travel expenses to be detailed in current documentation maintained by the employer and employees, so that such documentation is available for inspection, to determine if there was a reasonable basis upon which to exclude from or include amounts paid as remuneration. However, such documentation would still need to be kept for other purposes such as for federal tax return purposes. This rule is necessary to facilitate the proper administration of Ohio Unemployment Compensation Law under Chapter 4141, and the federal regulatory requirements of the Department of Labor. The reason for this rule is to determine whether to include or exclude amounts paid as remuneration for unemployment tax or unemployment benefits purposes.

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16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No.

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

Rule 4141-9-01: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.13, 4141.20, 4141.23, 4141.241, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-02: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01, 4141.13, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-04: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01, 4141.13, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-09:

To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01 and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Rule 4141-9-12: To the extent that this rule may impose an adverse impact to the regulated business community, the justification points to the Agency's statutory requirements as identified in ORC 119.03, 4141.01, 4141.13, and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

Regulatory Flexibility

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

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No, the intent of the unemployment compensation rules is to treat all Ohio employers equally. The Federal Department of Labor and the Ohio General Assembly structured these rules 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.

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?

The Agency allows for a waiver of fines (interest) and penalties for paperwork violations and first-time offenders by request. The request may be made in writing, online, or by phone.

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

The agency provides an online website, telephone assistance, and small businesses may contact the unemployment tax contributions division in Columbus. Small businesses may also contact the unemployment tax compliance division in Columbus or in 10 local compliance divisions throughout Ohio to speak to or meet with a local compliance auditor. Finally, employers may ask questions through the online State of Ohio Unemployment Resource for Claimants and Employers (SOURCE).