



Common Sense Initiative

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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 4123-17 of the Ohio Administrative Code

Rule Number(s): 4123-17-01, 4123-17-02, 4123-17-07, 4123-17-10, 4123-17-13, 4123-17-14, 4123-17-14.1, 4123-17-15, 4123-17-15.1, 4123-17-15.2, 4123-17-15.2 Appendix, 4123-17-15.4, 4123-17-15.5, 4123-17-15.6, 4123-17-15.7, 4123-17-16, 4123-17-24, 4123-17-27, 4123-17-28

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 18 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Rescinded/___ rules (FYR?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.

R.C. 119.032 requires BWC to conduct a five-year rule review for each of its rules subject to the R.C. Chapter 119 rulemaking process. Chapter 4123-17 of the Administrative Code contains rules relating to the State Insurance Fund, specifically the rules governing the administrative process for obtaining and maintaining coverage; ratemaking; and BWC's rating and discount programs. While rules pertaining to ratemaking and BWC discount programs are not subject to rule review, the rules regarding administrative process are subject to the rulemaking process of R.C. Chapter 119. Finally, Chapter 4123-17 contains the rules that regulate alternate employer organizations ("AEOs") and professional employer organizations ("PEOs"), and these particular rules are the basis for box 1.a. checked above.

BWC is proposing to amend the following rules:

4123-17-01 Annual rate revision, method of adoption, effective date, publication.
4123-17-02 Successorship.
4123-17-07 Officers of corporations, elective coverage entities, and ministers.
4123-17-10 Excess premiums.
4123-17-13 Employer application for workers' compensation coverage.
4123-17-14 Reporting of payroll and reconciliation of premium due.
4123-17-14.1 Misrepresentation of payroll.

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4123-17-15 Alternate employer organizations and professional employer organizations.
4123-17-15.1 PEO agreements, replaced with “AEO agreements and PEO agreements.”
4123-17-15.2 Registration and reporting requirements.
4123-17-15.2 Appendix.
4123-17-15.4 Financial requirements, replaced with “Financial mandates.”
4123-17-15.5 Self-insuring PEOs, replaced with “Self-insured AEOs and PEOs.”
4123-17-15.6 Client employer information.
4123-17-15.7 Denial or revocation of PEO registration, replaced with “Denial or revocation of AEO or PEO registration.”
4123-17-16 Penalties: late payment and reporting.
4123-17-24 Other states coverage policy.
4123-17-27 Protest of an employer's experience.
4123-17-28 Correction of inaccuracies affecting employer's premium rates.

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: R.C. 4121.12, 4121.121, 4121.13, 4121.30, 4123.05, 4123.291, 4123.35, 4125.02, 4125.05, 4133.02, and 4133.07.

Amplifies: R.C. 4123.01, 4123.24, 4123.25, 4123.26, 4123.29, 4123.292, 4123.32, 4123.34, 4123.35, 4123.36, 4123.38, 4123.39, 4123.40, 4123.411, 4123.54, 4125.01, 4125.02, 4125.03, 4125.04, 4125.05, 4125.051, 4125.06, 4125.07, 4133.01, 4133.02, 4133.03, 4133.04, 4133.07, 4133.08, 4133.09, and 4133.10.

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.

No.

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.

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)?

The Ohio Revised Code requires that BWC adopt rules to classify occupations or industries with respect to their degree of hazard and determine the risks of the different classes that are applicable to employers in this state; to fix the rates of premium of the risks of the classes based upon the total payroll and losses in each of the classes of occupation; and to set the rates at a level that assures the solvency of the fund. These rules govern the administration of this process. Moreover, R.C. 4125.02 and R.C. 4133.02 requires BWC to adopt rules to administer

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and enforce Chapters 4125 and 4133 of the Revised Code. These rules govern the administration and enforcement of PEOs and AEOs, respectively, operating in Ohio.

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

Success is measured in part by the premium audit process to ensure accurate reporting of payroll. Statistics are also compiled for each reporting period reflecting the number of employers failing to report payroll and pay premiums timely. BWC will also measure the success of this regulation through the initial registration and annual registration of all AEOs and PEOs operating in Ohio. Finally, BWC has a designated AEO and PEO Unit that conducts annual reviews of AEOs and PEOs for compliance with state law and rules.

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:

- over 200 third-party administrators;
- the Ohio Manufacturers' Association;
- the Ohio Chamber of Commerce;
- the Ohio Insurance Agents Association;
- the Ohio National Federation for Independent Business;
- self-insuring employers;
- the Ohio Self-Insured Association;
- all registered AEOs and 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 27, 2023, with a response due date of February 10, 2023. Information about the rules was also presented at a third-party administrators' forum on February 8, 2023.

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

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BWC received input from six stakeholders. The input from stakeholders included request for clarification or formatting questions, such as proposing to remove a comma from a section of the rule, but there were also more substantive comments. Clarifications were provided to the satisfaction of the stakeholders, and except one suggestion that would create surplusage to a rule, all grammatical corrections were adopted.

One stakeholder did notify BWC of an oversight in Ohio Adm.Code 4123-17-14 (D)(4). BWC had updated the rule in paragraph (D)(3) to read that effective the policy year beginning July 1, 2024, the final payroll report would be due August 31st, instead of August 15th. However, the language was not added to paragraph (D)(4) to clarify that the payment requirement would also be extended to August 31st. The rule was updated to incorporate this feedback.

The Ohio Manufacturers' Association provided general support for many of the proposed rules but noted the changes contained in Ohio Adm.Code 4123-17-02(B)(9) and (C)(5) were overly broad. BWC incorporated the suggested language from the stakeholder in these two paragraphs.

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

These rules were examined for removal of regulatory terms in compliance with Am. Sub. S.B. 9, which became effective June 9, 2022. Moreover, there were significant changes to Ohio Adm.Code 4123-17-14 that eases regulatory compliance to stakeholders.

Other substantive comments from stakeholders were considered by BWC but not adopted in these proposed rules. Although BWC did not incorporate these proposed changes, each stakeholder was contacted to describe BWC's rationale for making that decision. One request from a self-insured AEO suggested BWC regulate payroll reported from client employers to the self-insured AEO in Ohio Adm.Code 4123-17-14.1. The BWC believed this issue should remain between the AEO and its client employers; moreover, the mechanism for enforcement proposed, the Self-Insuring Employers Evaluation Board, did not have jurisdiction for this issue pursuant to R.C. 4123.352. Other self-insured PEO stakeholders inquired about security levels required for self-insured PEOs. BWC confirmed the security level was the same for self-insured PEOs as was the case for all self-insuring employers. Moreover, self-insuring employers, including self-insured AEOs and PEOs, have the right to appeal the security required by BWC to the Self-Insured Review Panel. Finally, a self-insured PEO raised the issue with the proposed changes to Ohio Adm.Code 4123-17-15.2(B) and whether the provisions were overly burdensome. BWC has been provided the information during state

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fund audits of PEOs for the past several years, and the information requested in the proposed rule should be readily available by a PEO.

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

These rules are specific to the BWC and do not affect other agency rules. Ohio Adm.Code 4123-17-15 through 4123-17-15.7 pertain specifically to AEOs and PEOs. BWC is charged with rulemaking authority for these entities pursuant to R.C. 4125.02 and R.C. 4133.02. The other rules generally pertain the BWC's specific ratemaking procedures. While some of the BWC rules reference statutes or rules of other agencies, such as the Ohio Department of Job and Family Services, those references are for BWC rule purposes and do not impact or conflict with the other agencies' statutes or rules.

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.

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

For AEOs and PEOs, the BWC has a dedicated AEO and PEO Unit that monitors and audits for compliance with all rules and laws for the state fund AEO and PEO stakeholders. The BWC's Self-Insured Department also has dedicated staff for the same purpose for self-insured AEOs and self-insured PEOs.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The impacted business community is all Ohio private and public employers who subscribe to the BWC State Insurance Fund, including any AEO or PEO desiring to do business in Ohio.

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

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.

The BWC statutes, and thus these rules, require employers to report payroll semi-annually so that BWC can collect the appropriate premium for the employer's workers' compensation coverage. While such reporting is an adverse impact, it is mandated by

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statute and a necessary requirement to establish insurance coverage. The Administrator is authorized by R.C. 4123.25 to adopt rules to establish criteria and penalty for employers, both state fund and self-insuring, when and if employers knowingly misrepresent the amount or classification of payroll. The AEO and PEO rules require initial registration, annual registration, and per-instance late processing fees. These fees are the same for AEOs and PEOs. R.C. 4133.07(D)(1) requires AEOs provide additional security from a federally insured financial institution in an amount of not less than \$1 million, and additional security may be required if the AEO or PEO desires to be self-insured.

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*).

Yes, particularly with proposed Ohio Adm.Code 4123-17-14. Effective the policy year beginning July 1, 2024, for private employers, the deadline for submitting a payroll report contained in paragraph (D) is extended from August 15th to August 31st. Effective the policy year beginning January 1, 2025, for public employers, the deadline for submitting a payroll report contained in paragraph (H) is extended from February 15th to the last day in February. Finally, paragraph (D) eliminates the requirement for private employers meeting certain criteria from providing a payroll report. See answer to question 18 for more information.

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

The BWC has fiduciary and regulatory responsibility to protect and ensure the solvency of the State Insurance Fund. Moreover, the BWC has been given the regulatory responsibility by the Ohio Legislature to ensure AEOs and PEOs comply with Ohio law. Ratemaking, premium payments by employers, and payroll reporting are fundamental to the first obligation. Registration fees, renewal fees, security requirements, and late processing fees on a per-instance basis are necessary for the second obligation.

Regulatory Flexibility

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

Yes. Ohio Adm.Code 4123-17-14(D) is proposed to eliminate the need to file a payroll report for private employers that: are not an AEO or a PEO; did not have any employees the previous policy year; did not elect coverage of any person; and have reported no payroll for three consecutive years. These businesses are primarily small companies that are not required to have a workers' compensation policy because they have no employees pursuant to R.C. 4123.01, but they obtain the policy in order to comply with private contractual obligations or other reasons.

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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?

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 a toll-free telephone number, or via the BWC website, for access to customer service representatives. The BWC also has Employer Service Specialists available to assist employers in every service office. The 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, and the Self-Insured Department has available staff to assist any employer interested in becoming self-insured.



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Five-Year Rule Review Ohio Administrative Code 4123-17				
Stakeholder feedback and recommendations				
	Stakeholder	Section	Suggestion/Concerns	BWC Response
1.	Matthew Matussek, Spooner Incorporated	4123-17-14 (D)(3) & (H)(2)	With the true-up deadlines being pushed slightly back, will BWC still provide grace periods to both public and private employers when these new deadlines become effective?	Since the new deadlines provide employers additional time to complete the true-up, BWC will no longer provide a grace period.
2.	Bonnie R. Fraser, ActuComp Ohio LLC	4123-17-14 (D)(4), 4123-17-01 (B)(3), and 4123-17-07 (E)(3)	Assuming this means a check mailed for any true up balance due, should this also include the August 31, 2024 date as in (D)(3)? If you don't have to report until August 31, how do you know how much to write the check by August 15? "shall" was stricken but "will" was not added in 4123-17-01 (B)(3). A comma following the word "or" is not necessary in 4123-17-07(E)(3).	BWC updated 4123-17-14(D)(4) to include the language that beginning policy year 2024, the payment will be due by August 31 st . BWC did not accept the proposed change to 4123-17-01(B)(3) as the "will" was intentionally left out; adding the word only creates surplusage to the rule. BWC accepted the proposed change to 4123-17-07(E)(3) and struck the comma in question.

3.	Nathan Kenney, Spooner Incorporated	4123-17-15.5 (B)(1)(a)	Changes required security from no less than 100% of the outstanding claim liabilities to “the amount of security deemed necessary will be determined by the bureau”. We believe this gives the BWC an uncomfortable amount of discretion in determining securitization requirements.	<p>BWC uses the same financial matrix for PEOs that it currently uses for all self-insuring employers.</p> <p>BWC has had the financial matrix for 10 years, which has been modified a few times. Our experience is that flexibility is needed over time. In addition, self-insuring employers have the right to appeal the amount of security required to the Self-Insured Review Panel (SIRP).</p>
4.	Lindsey Short, The Ohio Manufacturers’ Association (OMA)	4123-17 General Comments	<p>The comments from the OMA were mostly supportive of the proposed changes.</p> <p>In 4123-17-02 (B)(9) and (C)(5), BWC had added language to clarify that BWC does not rely on language in purchase agreements when determining the transfer of experience or obligations for a succeeding employer.</p> <p>The OMA had concerns that this language is overly broad and suggested to change the language to read that BWC will consider, but is not bound by, language in the purchase agreement.</p>	<p>BWC is supportive of this suggestion and has updated the language in 4123-17-02(B)(9) and (C)(5) accordingly to reflect this change.</p>
5.	Terrence O’ Donnell, Dickinson Wright PLLC, on behalf of Minute Men	4123-17-14.1	The suggested change was regarding misrepresentation of payroll rule. The commenter would like the rule changed to protect self-insured Alternate Employer Organizations (AEOs) and Professional Employer Organizations (PEOs) when their client-employer misrepresents payroll or manual classification codes. The commenter proposed that the Self-Insuring Employers Evaluation Board (“SIEEB”) investigate these matters.	<p>As defined in Ch. 4123-17, AEOs and PEOs share or co-employ a client employer’s workforce. As such, it is their responsibility to ensure the client employer is not misrepresenting payroll or manual classifications. BWC believes this issue should be addressed between the AEO or PEO and their client employers, without BWC involvement.</p> <p>Additionally, SIEEB’s jurisdiction, pursuant to R.C. 4123.352, involves allegations of misconduct or failure to meet minimum performance standards</p>

				that are filed against self-insuring employers.
6.	Nick A. Nykulak, Ross, Brittain & Schonberg, on behalf of Group Management Services (GMS)	4123-17-15.2 (B)	Requiring a Professional Employer Organization (PEO) to produce a list of individual employees, their identification information, quarterly payroll, classification code, title, position, and department is unduly burdensome and time consuming. For some PEOs, this listing could exceed 30,000 employees.	BWC requests this specific information as part of an annual audit for the PEO. This process has been done for several years and is just now being incorporated into rule. The PEO should have this information readily available, and we do not believe this requirement is overly burdensome.
7.	Nick A. Nykulak, Ross, Brittain & Schonberg, on behalf of Group Management Services (GMS)	4123-17-15.5	Over the last several years, GMS and other PEOs have discussed security requirements for PEOs and had come to a workable resolution. Security for certain self-insured employers is necessary to protect the Self-Insured Employers Guaranty Fund (SIEGF). It was agreed that PEOs would follow the same risk and credit matrix the Bureau currently uses for other self-insured Ohio employers. The Bureau's proposed changes to 4123.17-15.5(B) do not reflect this understanding and agreement regarding security.	BWC is in agreement to use the same financial matrix for PEOs that it currently uses for other self-insuring employers. BWC has had the financial matrix for 10 years, which has been modified a few times. Our experience is that flexibility is needed over time. In addition, self-insuring employers have the right to appeal the amount of security required to the Self-Insured Review Panel (SIRP).