

**MEMORANDUM**

TO: Trudy Rammon, Ohio Department of Job and Family Services

FROM: Christopher Smyke, Regulatory Policy Advocate

DATE: December 10, 2018

RE: **CSI Review – Successorship Rules (OAC 4141-17-02, -03, -04, and -05)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in ORC 107.54.

Analysis

On November 15, 2018 the Ohio Department of Job and Family Services (ODJFS) submitted a draft rule package consisting of four amended rules to the CSI Office for its statutorily-required five-year review. The official public comment period closed on November 21, 2018 with no comments submitted.

The rules in this package establish the requirements and process for a successor employer to obtain the unemployment experience tax rate history from a predecessor employer. Specifically, the rules outline voluntary successorship for a portion of a business, voluntary successorship for substantially all assets of a business, automatic successorship, and mandatory partial experience transfer. The rules are amended with an update to the statute, which was changed by Senate Bill 3 of the 130th General Assembly from ORC 4141.14 to 119.03. In addition, the rules include non-substantive language updates for grammar, clarity, and to conform to Legislative Service Commission guidelines.

ODJFS conducted its early clearance process from October 25, 2018 through November 1, 2018 and afforded the chance for stakeholders like employers and employees/claimants to comment on the draft rules. The BIA identifies the Ohio Chamber of Commerce, Policy Matters Ohio, and the

National Federation of Independent Businesses among the stakeholders contacted. No comments were received during the clearance process or during the CSI public comment period.

The impacted business community includes the 222,725 Ohio employers who file quarterly reports and pay into the Ohio Unemployment Compensation Trust Fund (Trust Fund) per state and federal law. The BIA notes that 3,919 successorships were processed by ODJFS in the twelve month period ending on September 30, 2018. The administrative time to prepare the required documentation for a successorship can vary between five and sixty minutes, depending on how simple or complex the successorship would be. In addition, the BIA estimates that two-thirds of successorships benefit the successor company with a lower unemployment compensation tax rate. The other third of successorships yield a less favorable unemployment tax rate for successor employers; however, the BIA justifies this impact, indicating that the erasure of an unfavorable experience history would ultimately impact all other employers that pay into the Trust Fund. The rules reflect the directives under state law in ORC 4141, as well as federal law pursuant to the Federal Unemployment Tax Act.

Following review of the draft rules and BIA, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impact of the draft rules is justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Job and Family Services should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

CC: Emily Kaylor, Lt. Governor's Office