



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Emily Groseclose, Deputy Director

DATE: October 1, 2021

RE: **CSI Review – Chapter 17 Rules – BWC's Professional Employer Organization (PEO) Rules (OAC 4123-17-15, 4123-17-15.1, 4123-17-15.2, 4123-17-15.4, 4123-17-15.5, 4123-17-15.6, and 4123-17-15.7)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) office under Ohio Revised Code (ORC) section 107.54, the CSI office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI office's comments to the Bureau as provided for in ORC 107.54.

Analysis

This rule package contains seven amended rules submitted by the Ohio Bureau of Workers' Compensation (Bureau). The package was submitted on July 30, 2021, and the public comment period was held open through August 20, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on July 30, 2021.

These rules regulate professional employer organizations (PEOs), including initial and annual registration with the Bureau, agreements with client employers, filing of financial statements with the Bureau, security requirements, self-insuring employers, and denial and revocation of registration. Proposed amendments are intended to comply with ORC Chapter 4133 (Am. Sub. S.B. 201 (133rd General Assembly)) creating alternate employer organizations (AEO). The changes incorporate AEOs into the existing PEO rules because the Bureau will regulate them in a similar manner.

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While drafting the proposed rules, the Bureau worked with all registered Ohio PEOs, the National Association of Professional Employer Organizations (NAPEO), and the Employer Services Assurance Corporation. Several stakeholder suggestions were incorporated into the rules, including clarification to ensure that a national PEO can operate as an AEO as long as it is not currently registered as the other in Ohio. Additionally, a concern raised during early stakeholder outreach regarded whether or not an AEO or PEO must do payroll processing. After hearing from stakeholders while drafting the rules, the Bureau changed the rule to clearly provide that PEOs and AEOs cannot contract payroll processing out to the client employer. One stakeholder reiterated their position to CSI that the rule should not allow PEOs or AEOs to contract that duty out to a third-party vendor.

The rules impact all AEOs seeking to register in Ohio, including PEOs who wish to switch to an AEO model. The Bureau stated that adverse impacts to business include application time and costs for initial and annual registration, per-instance late processing fees, and an additional security of at least \$1 million required of AEOs per ORC 4133.07. The initial registration fee for an AEO or PEO is \$1,000 and the annual renewal is \$250. CSI notes that other adverse impacts include the potential denial or revocation of registration and additional requirements for self-insuring AEOs and PEOs in OAC 4123-17-15.5. The Bureau asserted that ORC 4133.02 requires it to adopt rules to regulate the operation of AEOs in Ohio.

Recommendations

For the reasons described above, the CSI office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI office recommends that the Bureau of Workers' Compensation proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.