



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Joseph Baker, Business Advocate

DATE: May 16, 2022

RE: **CSI Review – Marine Industry Fund Rules (4123-20-01, 4123-20-02, 4123-20-03, 4123-20-04, 4123-20-05, 4123-20-06, and 4123-20-07)**

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 Ohio Bureau of Workers' Compensation (BWC) rule package consists of one amended rule and six no-change rules. The rule was submitted to the CSI Office on March 17, 2022, and the public comment period was open through April 7, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 17, 2022.

Ohio Administrative Code (OAC) 4123-20-01 specifies that all employers in Ohio exposed to liability under the United States Longshoremen's and Harbor Workers' Compensation Act may apply to the marine industry fund, sets forth the application process, and describes the criteria the BWC must use in determining whether to reject or accept an application. OAC 4123-20-02 requires the BWC to issue a marine industry fund insurance policy after an application has been approved and the initial premium has been paid, sets forth the expiration timeline for policies, and requires employers to pay renewal premiums in order to avoid the policy lapsing. OAC 4123-20-03 sets forth the method for calculating the semiannual premiums for employers and provides for a credit applied to a renewal premium or a refund in the event of an overpayment.

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OAC 4123-20-04 requires employers to submit payroll reports to the BWC regarding the number of individuals covered by a policy, instructs the marine industry fund to mail the insured employer a reporting form twice annually, and authorizes the assessment of a penalty in the event that the actual payroll of an insured employer exceeds 90% of the estimated payroll amount reported to the marine industry fund. OAC 4123-20-05 requires insured employers to report all compensation provided to covered employees and provides guidance regarding determining which employees may be covered. The rule is amended to specify that fund coverage is limited to employees that are assigned to work in Ohio and who do not leave the state for work purposes for more than ninety-day periods.

OAC 4123-20-06 authorizes the marine industry fund to make reasonable inspections of an insured's place of business, records, payrolls, and others and to adjust fund premiums in the event that a discrepancy is identified. Finally, OAC 4123-20-07 states that the marine industry fund must review all notices of injury or claims from the United States Department of Labor promptly and may file dispute notices if such action is warranted.

During the early stakeholder outreach period, the BWC shared the proposed rules with the 150 current subscribers to the marine industry fund. No comments were received in response to the request for early stakeholder feedback or during the CSI public comment period.

The business community impacted by the rules includes employers who participate in Ohio's marine industry fund as well as other employers who engage employees who are required to be covered under federal statute. The adverse impact to business includes the costs and time associated with applying for the fund, submitting required information, filing biannual renewals and reports, and complying with inspections and audits. The BWC states that the adverse impact to business created by the rules is justified as participation in the program is voluntary, and that the fund offers a cost-effective and competitive option for Ohio employers who require certain marine-related liability coverage under federal statute.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the BWC should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.