



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Michael Bender, Business Advocate

DATE: April 14, 2023

RE: CSI Review – State Insurance Fund (OAC 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, 4123-17-15.4, 4123-17-15.5, 4123-17-15.6, 4123-17-15.7, 4123-17-16, 4123-17-24, 4123-17-27, and 4123-17-28)

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 consists of eighteen amended rules proposed by the Ohio Bureau of Workers' Compensation (BWC) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on March 22, 2023, and the public comment period was held open through April 12, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on March 22, 2023.

Ohio Administrative Code (OAC) 4123-17-01 provides for the annual revision of premium rates and changes in classification of occupations or industries with respect to their degree of hazard for private employers, public employers, and taxing districts, in addition to providing for the annual revision of contribution rates for the agencies and instrumentalities of State of Ohio. The rule is amended to update language, add clarifying language, and incorporate changes by BWC in classification of occupations or industries with respect to their degree of hazard for public employers and taxing districts. OAC 4123-17-02 describes the responsibilities of an employer that succeeds another in the operation of a business in whole or in part with respect to workers' compensation and provides for

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the transfer of experience as well as rights and obligations. The rule is amended to update language, add clarifying language, remove language regarding a successor or predecessor employer having a merit rating experience, require BWC to consider language in a purchase agreement between parties regarding non-assumed liabilities when determining transfers of experience or rights and obligations, and remove a requirement for a legal entity to only be assigned one risk when succeeding one or more risks. OAC 4123-17-07 provides for the coverage or lack thereof of officers of corporations, elective coverage entities, ministers, and household workers. The rule is amended to update language, add clarifying language, and incorporate associate ministers. OAC 4123-17-10 authorizes BWC's board of directors to determine whether there is an excess surplus of premium and to take certain actions in the event of such a surplus, such as issuing cash refunds to employers. The rule is amended to update language, add clarifying language, and remove unnecessary language.

OAC 4123-17-13 provides for an employer's application to establish workers' compensation coverage. The rule is amended to update language and citations, require the names and information of officers of a family farm corporation be included, allow BWC to deny or rescind an application and maintain prior or existing policy if the application is from the same employer, and state that an employer's coverage will lapse back to the effective date of the policy if the first estimated premium payment is not made. OAC 4123-17-14 sets forth the processes for the reporting of payroll to BWC by employers and the reconciliation of premium to address the difference between estimated and actual gross payrolls. The rule is amended to update language and citations, add clarifying language, remove unnecessary language, incorporate alternate employer organizations (AEOs), allow the Administrator of BWC (Administrator) to waive the requirement to submit a payroll report for certain private employers, and extend the deadlines for the submission of payroll reports and the remitting of payments to BWC. OAC 4123-17-14.1 authorizes the Administrator to impose penalties on employers who misrepresent their payroll, classification of payroll, or paid compensation. The rule is amended to update language and typography, add clarifying language, and remove unnecessary language.

OAC 4123-17-15 specifies the obligations of AEOs and professional employer organizations (PEOs) with respect to workers' compensation and payroll when they establish agreements with client employers. The rule is amended to update language, add clarifying language, and remove unnecessary language. OAC 4123-17-15.1 specifies required and prohibited actions for AEOs and PEOs with respect to AEO or PEO agreements. The rule is amended to update language, add clarifying language, and clarify the effective dates of certain AEO agreements. OAC 4123-17-15.2 requires AEOs, PEOs, and PEO reporting entities to register annually with BWC. The rule is amended to update language, add clarifying language, only require AEOs and PEOs to submit reports of their client employers and total workforce annually rather than semi-annually, clarify the information that should be included in such reports, and give BWC flexibility in determining when such reports are due. An appendix to the rule containing registration and renewal fees is provided

and amended to update language, raise the initial limited registration fee from \$100 to \$250, and establish a limited registration renewal fee of \$100. OAC 4123-17-15.4 requires AEOs, PEOs, and PEO reporting entities to both submit financial statements to BWC and maintain positive working capital for registration and registration renewal. The rule is amended to update language and the rule title, add clarifying language, and remove unnecessary language. OAC 4123-17-15.5 sets forth the criteria and requirements for AEOs and PEOs to be self-insuring employers. The rule is amended to update language, add clarifying language, and give BWC flexibility regarding the requirement for an AEO or PEO to furnish security. OAC 4123-17-15.6 requires AEOs and PEOs to provide certain information to client employers upon request. The rule is amended to update language and add clarifying language. OAC 4123-17-15.7 authorizes the Administrator to deny or revoke the registration of an AEO, PEO, or PEO reporting entity under certain circumstances. The rule is amended to update language, add clarifying language, and authorize BWC to notify client employers of a denial or revocation and of the right of an AEO or PEO to appeal the decision.

OAC 4123-17-16 authorizes BWC to assess penalties on employers for failure to make timely payments. The rule is amended to update language and a citation, add clarifying language, remove unnecessary language, and incorporate AEOs. OAC 4123-17-24 provides for the obtainment of an “other states coverage policy” by an employer through BWC. The rule is amended to update language, add clarifying language, and remove unnecessary language. OAC 4123-17-27 allows protests of an employer’s experience to be submitted to BWC by the employer or a representative with a permanent authorization from that employer. The rule is amended to update language and remove faxing as a method of submitting the protest. OAC 4123-17-28 provides for the correction of inaccuracies in the recording or processing of data, records, payroll, claims, or other pertinent items affecting an employer’s status, experience modification, or premium. The rule is amended to update language.

During early stakeholder outreach, BWC shared the proposed rules on January 27, 2023, via email with the Ohio Manufacturers’ Association (OMA), the Ohio Chamber of Commerce, the Ohio Insurance Agents Association, the Ohio National Federation of Independent Business, the Ohio Self-Insured Association, the National Association of Professional Employer Organizations, the Employer Services Assurance Corporation, over 200 third-party administrators, self-insuring employers, and all registered AEOs and PEOs in Ohio, with a response due date of February 10, 2023. BWC also presented information about the rules at a third-party administrators’ forum on February 8, 2023. Six stakeholders provided input during this period. The OMA provided general support for many of the proposed rules but noted that certain changes were overly broad and suggested alternative language which BWC incorporated into the rules. Another stakeholder noticed an oversight regarding the payroll report due date. BWC revised the rules to address this. The other stakeholders requested clarification or proposed formatting corrections. BWC answered all questions and adopted all requested grammatical corrections with one exception, stating that this particular proposal was

unnecessary. No comments were received during the CSI public comment period, although BWC did make some technical corrections.

The business community impacted by the rules includes all private and public employers in Ohio who subscribe to the BWC State Insurance Fund. The adverse impacts created by the rule include payroll reporting, payment of premiums, registration and renewal with accompanying fees, furnishing security, and penalties for misrepresentation of payroll or failure to make timely payments such as fines, revocation of registration, and removal from rating plans and discount programs. BWC states that the adverse impacts to business are justified to implement statutory requirements and ensure the solvency of the State Insurance Fund.

Recommendations

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

Conclusion

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