



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Michael Lynch, Ohio Department of Job and Family Services

FROM: Michael Bender, Business Advocate

DATE: April 15, 2024

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

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of two new rules and four rescinded rules proposed by the Ohio Department of Job and Family Services (ODJFS) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on March 13, 2024, and the public comment period was held open through March 20, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 13, 2024.

Ohio Administrative Code (OAC) 4141-17-02, 4141-17-03, 4141-17-04, and 4141-17-05 are rescinded, with their contents moved to new rules OAC 4141-17-02 and 4141-17-03. OAC 4141-17-02, the new rule, provides for the mandatory transfer of a trade or business located in the state of Ohio where the transferee becomes the successor in interest by operation of law. If both the transferor and transferee are under substantially common ownership, management, or control, then the unemployment experience and outstanding debt attributable to the transferred portion of the trade or business are transferred to the transferee. The rule consolidates the content of rescinded rules OAC 4141-17-04 and 4141-17-05. OAC 4141-17-03, the new rule, provides for the voluntary transfer of a

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portion or all of a trade or business located in the state of Ohio that will result in the transferee becoming a successor in interest. The rule consolidates the content of rescinded rules OAC 4141-17-02 and 4141-17-03.

During early stakeholder outreach, ODJFS notified stakeholders about the opportunity to submit comments on the rules via its online clearance process from February 21, 2024, through February 28, 2024. Among the stakeholders that were notified were the Ohio Chamber of Commerce, Policy Matters Ohio, and the National Federation of Independent Business. ODJFS did not receive any comments during this time or during the CSI public comment period but did revise the rules to update citations and make technical corrections.

The business community impacted by the rules includes approximately 265,000 Ohio employers who have active accounts with ODJFS, file quarterly reports, and pay a contribution tax into the Ohio Unemployment Compensation Trust Fund each year. According to ODJFS, there were 2,864 successorships processed during the twelve-month period ending September 30, 2023. The adverse impact created by the rules includes the time necessary to file the necessary successorship documentation. ODJFS estimates that it could take an employer five to sixty minutes to complete all necessary documentation and paperwork depending on the complexity of the successorship. ODJFS states that the adverse impact to business is justified to implement statutory requirements and administer the unemployment tax rate in a fair manner.

Recommendations

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

Conclusion

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