

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: _____

Rule Number(s): Rule 4123-17-02 of the Administrative Code

Date: 12/09/2015

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 4123-17-02 of the Administrative Code governs the various situations where BWC will combine or transfer an employer's claims experience to another employer who wholly or partially assumes the former employer's business. BWC is proposing a slight change in the rule

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to clarify a misunderstanding of the intent of an amendment to the rule first implemented in 2010. BWC proposes to amend paragraphs (B)(6) and (C)(1) of the rule to clarify that the four circumstances cited in the rule are distinct and different reasons that BWC may find that an employer is a successor employer to the predecessor, independent of the typical analysis under paragraphs (B)(1) to (B)(5) or existing (C)(1). BWC will use these four criteria regardless of whether the transfer is voluntary or involuntary. BWC created these criteria following the Ohio Supreme Court case of *State ex rel. Valley Roofing, L.L.C. v. Ohio Bur. of Workers' Comp.*, 122 Ohio St.3d 275, 2009-Ohio-2684.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

4123.32

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

n/a

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

This rule follows a statutory requirement found in Ohio Revised Code 4123.32 that requires the administrator to adopt rules that it considers necessary to safeguard the state insurance fund in situations where one business is transferred to another.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of this rule will be determined by employers understanding the workers' compensation impacts when they purchase or otherwise acquire another business. To that end, BWC will continue to make every effort to educate employers, employer representatives, and other stakeholders, so the effects of this rule are transparent.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

The BWC has had extensive discussions with various stakeholders, including:

- Council of Smaller Enterprises (COSE)
- National Federation of Independent Business (NFIB)
- Ohio Chamber of Commerce
- Ohio Farm Bureau Federation (OFBF)
- Ohio Manufacturers' Association
- Ohio Restaurant Association
- Ohio Self-Insurers Association (OSIA)

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The BWC and various stakeholders have worked extensively together over the past several months. A consensus has not been reached on what major changes, if any, are appropriate for this rule. However, in order to comply with the five year rule review deadline, BWC is proposing this minor change in the rule at this time. This will allow for the BWC and stakeholders to continue the productive discussions that have already taken place.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

n/a

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The BWC is continuing to receive input from the various stakeholders as to any appropriate change to the rule.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Performance based regulations are not appropriate for the content of this rule.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

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The BWC is the only state agency regulating workers' compensation claims, and thus there is no other agency promulgating rules on this subject.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The BWC has posted the rule on its website, www.ohio.bwc.gov, and will distribute the rule to affected parties.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

- a. The impacted community includes employers in the workers' compensation system.
- b. This rule may create an adverse impact to certain employers who succeed another employer in whole or in part, specifically when the predecessor employer does not have a favorable claims experience.
- c. The adverse impact will differ depending on the situation of the succession, including the specific claims experience of the predecessor, whether the successor expressly or impliedly agrees to assume the predecessor's obligations, and whether the succession is simply a de facto merger or consolidation.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

This rule is meant to serve as a guide to employers who are contemplating purchasing an existing business. It puts the employer on notice that certain mergers and acquisitions can also result in the transfer of experience, rights, and obligations to the successor employer.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable. This rule does not result in a fine or penalty for a paperwork violation.

18. What resources are available to assist small businesses with compliance of the regulation?

BWC rules and policies are available on www.ohio.bwc.gov. Also, BWC personnel are available to assist stakeholders in answering workers' compensation inquiries.