

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Chapter 17 rules - BWC's coverage; ratemaking; and rating and discount programs

Rule Number(s): 4123-17-01 (NC) 4123-17-03(R/N), 4123-17-03.1(R), 4123-17-03.2 (N), 4123-17-07 (R/N), 4123-17-10 (NC), 4123-17-14 (AM), 4123-17-14.1 (AM), 4123-17-16 (AM), 4123-17-27 (AM) and 4123-17-28 (AM)

Date: 4/1/2013

Rule Type:

New

5-Year Review

Amended

Rescinded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.

Chapter 4123-17 of the Administrative Code Contains rules relating to the State Insurance Fund. R.C. 119.032 requires BWC to conduct a five-year rule review for each of its rules subject to the R.C. Chapter 119 rulemaking process. Chapter 4123-17 contains the rules

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governing the administrative process for obtaining and maintaining coverage; ratemaking; and BWC's rating and discount programs. While rules pertaining to ratemaking and BWC rating programs are not subject to rule review, the rules regarding administrative process are subject to the rulemaking process of R.C. Chapter 119. BWC is proposing two rules without changes and 11 rules with changes to:

4123-17-01 Annual rate revision, method of adoption, effective date, publication .

4123-17-03 - Employer's classification rates.

4123-17-03.1 - Experience modification for out of state employer.

4123-17-03.2 - Experience Modifier Cap.

4123-17-07 - Officers of corporations, partnerships and sole proprietorships, an individual incorporated as a corporation with no employees, family farm corporations, and ordained ministers.

4123-17-10 Excess premiums.

4123-17-14 - Rule controlling the completing of payroll reports.

4123-17-14.1 - Misrepresentation of payroll.

4123-17-16 (Premium security deposit.

4123-17-27 - Protest of an employer's experience.

4123-17-28 - Correction of inaccuracies affecting employer's premium rates.

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

Ohio Revised Code 4121.12, 4121.121, 4121.13, 4121.30, 4123.05

3. Does the regulation implement a federal requirement? No 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? No
If yes, please briefly explain the source and substance of the federal requirement.

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

Not applicable.

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)?

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The Ohio Revised Code requires that BWC adopt rules to classify occupations or industries with respect to their degree of hazard and determine the risks of the different classes according to the categories under the National Council on Compensation Insurance (NCCI) that are applicable to employers in this state; to fix the rates of premium of the risks of the classes based upon the total payroll and losses in each of the classes of occupation; and to set the rates at a level that assures the solvency of the fund.

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

Success is measured in part by the Premium Audit process to ensure accurate reporting of payroll. Statistics are also compiled for each reporting period reflecting the number of employers failing to report payroll and pay premiums timely.

Development of the Regulation

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

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

BWC shared the rules changes with Third Party Administrators. The rules were distributed via email in March 2013, and BWC requested feedback.

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

The stakeholders did not provide any feedback to BWC, nor did they express any concern regarding the proposed changes.

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?

This process is not subject to scientific data or analysis.

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?

There were no other alternative regulations considered because these rules involve best ways to classify occupations or industries, to fix the rates of premium, and to set the rates at a level that assures the solvency of the fund.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

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Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules are not subject to performance-based measurement.

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

These rules are specific to the BWC and do not affect other agency rules.

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.

BWC has established a repeatable procedure by which all of the processes for obtaining and maintaining coverage, ratemaking, and rating and discount programs are implemented. These procedures include adequate notification to employers and it contains reports to ensure consistent and accurate application of the rule.

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 business community are all Ohio private and public employers who subscribe to the BWC State Insurance Fund.
- b. There may be an adverse impact for a limited number of employers that purposely or intentionally misrepresent payroll reporting as covered in 4123-17-14.1, which identifies criteria BWC will use to determine if the misreporting deserves a penalty and places a limit on the penalty. Also, there may be some additional reporting and monitoring requirements that will require additional time and effort for employers.
- c. The adverse impact could be either \$500 or 25% of the amount of the difference between the premium the employer paid and the amount the employer should have paid, whichever is higher. And, for a second offense, up to ten times the amount of the difference between the

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premium the employer paid and the amount the employer should have paid. However, it is not possible to predict how many employers may be knowingly misrepresenting their payroll in the future.

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

BWC has a fiduciary responsibility to ensure each employer report payroll accurately and within the established reporting guidelines. Permitting inaccurate reporting of wages and premium provides employers with an unfair advantage over fellow business competitors.

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?

BWC will apply R.C. 119.14(C)(1) to such offenses.

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

BWC provides employers with a toll free telephone number and/or via the BWC website access to contact and communicate with customer service representatives.