

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Miscellaneous Rules

Rule Number(s): Chapter 4123-14 of the Administrative Code (6 rules)

Date: 7/9/2014

Rule Type:

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 Rescinded |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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

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Chapter 4123-14 of the Administrative Code contains rules governing non-complying employers and the BWC Adjudicating Committee. The rules of Chapter 4123-14 are due for five-year rule review under Section 119.032 of the Revised Code. The rule review date for the rules is October 1, 2014. BWC performed a five-year rule review of the rules in 2009, at which time BWC amended most of the rules. Legal Operations reviewed the content of the rules with BWC Policy, and have identified the changes to the rules indicated below.

Amended rules:

4123-14-01 Non-complying employers within the meaning of the law.

4123-14-02 Procedures for the collection of premiums from non-complying employers.

4123-14-03 Requests for waiver of a default in the payment of premium, for approval of the original workers' compensation coverage retroactively, and for abatement of penalties.

4123-14-04 Procedure to recover from a non-complying employer the amount of money paid out of the state insurance fund for an industrial injury, occupational disease and/or death.

4123-14-05 Settlement of liability of a non-complying employer.

4123-14-06 Bureau of workers' compensation adjudicating committee.

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

4121.12 , 4121.121 , 4121.13 , 4121.30, 4121.31

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)?

These rules define areas of the workers' compensation law that support and explain Bureau policies and procedures in regards to non-complying employers.

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

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These rules do not lend themselves to measurement. The success of these rules is measured in the ability of workers' compensation stakeholders understanding and following the rules.

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.

The Bureau has distributed these rules for comments to:

- BWC's Employer Services Division's Third Party Administrator (TPA) distribution list
- The Bureau's rules distribution list, and
- The general public via the E-Notification System

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

The Bureau will forward all input from the stakeholders and the general public as soon as it is received.

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?

These rules generally follow statutory mandates. For example, rule 4123-14-02, "Procedures for the collection of premiums from non-complying employers," is based upon statutory regulations related to the procedures the Bureau must use when collecting premiums from non-complying employers. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the Bureau will use to implement these regulations.

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 these rules.

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

The Bureau is the only state agency regulating workers' compensation claims, and thus there is not another agency promulgating rules on these subjects.

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 Bureau will post the rules on its website, www.bwc.ohio.gov, and will distribute the rules 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. These rules govern the Bureau's policies and procedures in regards to non-complying employers, including the process to collect premiums and the process by which an employer may appeal a Bureau decision. As such, any adverse impact is primarily governed by statute and other regulations. These rules do outline the period of time an employer has to appeal a Bureau decision, but this is a statutory mandate and has not changed with this review.
- c. Any adverse impact from these rules is hard to quantify since they govern the process the Bureau utilizes when an employer fails to comply with other statutes and rules.

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

These rules generally follow statutory mandates. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the Bureau will use to implement these regulations. Therefore, the regulatory intent of these rules is justified by the need for the Bureau to comply with statutory mandates.

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. None of these rules have provisions that would result in fines or penalties to employers.

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

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