

OSC 12
Ohio Safety Congress & Expo

WELL AT HOME. SAFE AT WORK.

385 Workers' Compensation Considerations for Employers Engaged in Interstate Commerce

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Wednesday, March 28, 2:30 to 3:30 p.m.

Ohio Bureau of Workers' Compensation

Out of State Coverage

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Current Law

- ▶ In Ohio companies must provide workers compensation coverage for their employees
- ▶ Companies must comply with the workers compensation laws of every state in which they have employees

Ohio Law

- ▶ Ohio is one of only four states that have a monopolistic workers compensation system
- ▶ This system prohibits the purchase of private policies to cover Ohio exposure
- ▶ Ohio allows for some self insurance for larger companies on stable financial footing

Other states

- ▶ Some states mandate that employers operating in their state have coverage from their state
 - Examples of this include New York and Kentucky
- ▶ Some state's allow for a temporary employee to be covered by the home state
 - Examples of this include Indiana and Michigan

New York

- ▶ **Full NY Workers' Compensation Coverage Required**
 - An out-of-state employer with an individual or individuals working in New York State is required to have a full NYS workers' compensation insurance policy if that employer (as defined in the WCL) meets ANY of the following criteria:
 - The employer (as defined in the WCL) is required to register with the NYS Department of Labor and pay Unemployment Insurance for any period in question.
 - The employer has a permanent physical location in New York or has employees whose primary work location is here.
 - The employer is operating in New York under a permit, contract, or license granted by the State of New York, its counties or any municipality as defined under §57 of the Workers' Compensation Law.
 - The employer is working as a contractor/general contractor/subcontractor on a construction project in New York.
 - In the previous year, the employer had employees physically in New York for:
 - at least 40 hours of every week for a period of longer than 2 consecutive weeks; or
 - had employees present in New York for 25 or more individual days (e.g.- 5 employees working for 5 days in New York equals 25 individual employee days).
 - Employees traveling through the State not stopping for deliveries, pick-ups, or other work are not deemed to have worked a day here. An employer that has reason to know that it will meet these criteria in the current year, even if it has not done so in the prior year, must obtain the required coverage.
 - If an out-of-state employer with an individual or individuals working in New York State meets any of the above requirements, NY MUST be listed on item 3A on the Information Page of an employer's workers' compensation insurance policy. This means that the employer is fully covered under the NY Workers' Compensation Law.

New York

- ▶ **Full NY Workers' Compensation Coverage NOT Required, 3C Coverage Acceptable**
- ▶ When out-of-state employers send employees into New York for work purposes and a full, statutory NYS workers' compensation insurance policy is not required, the employer must have such coverage for workers' compensation as required under the laws of its state, and New York must be listed in item 3C on the Information Page of the employer's workers' compensation insurance policy. If the insurance carrier writing the out-of-state employer's workers' compensation insurance policy is not authorized by the NYS Insurance Department to write workers' compensation and employers' liability coverage in New York, for the 3C coverage to comply with this policy, the insurance carrier must have completed, signed, and filed the Statement of Compliance With Workers' Compensation Law with the Chair, [Form C-105.11](#).
- ▶ An out-of-state employer having a new worker's compensation insurance policy issued after February 1, 2011 by a private insurance carrier not licensed in New York and listing New York under 3C of that policy will not qualify for the specific exemptions set forth in the Out-of-State Employers Policy statement unless the carrier completes, signs, and files the Statement of Compliance With Workers' Compensation Law with the Chair, [Form C-105.11](#).
- ▶ The Board will post on its website a list of all carriers that have filed the Statement of Compliance with Workers' Compensation Law, and will provide periodic updates to such listing.

Indiana

- ▶ Indiana will look at the totality of the circumstances and may assert jurisdiction over a claim, however normally there is a 90 day period that an employee may be in the state before coverage is required.

Other states

- ▶ States can decide to assert jurisdiction over claims for several reasons
- ▶ Ohio BWC will not pay for claims filed in another state, unless that state denies the claim based on jurisdiction and sends the claim back to Ohio
- ▶ The injured worker chooses where to file a claim

Indiana

▶ Which State Worker's Compensation Program Applies?

- ▶ Every State has its own workers' compensation system. When work is performed in more than one state, it may be difficult to determine which state's compensation system applies. A common rule is that a state may apply its worker's compensation system if there is a contract for employment in the state. The employment contract can be written, oral, or implied. However, state worker's compensation laws *may* also be applied in:
 - - the employee's state of residence,
 - - any state in which the employee performs work, and
 - - the state in which the employer insured its workers' compensation liability.
- ▶ The employee may have the right to file a claim for benefits in *all states* in which there might be coverage. However, if a successive award is made, the employee will generally be required to repay the previous award (double compensation is not allowed). Employees should contact an attorney or the relevant state workers' compensation authorities for information on workers' compensation law and procedure in states other than Indiana.
- ▶ Indiana can apply its workers' compensation law when the Board finds a contract of employment made in Indiana or a contract providing for performance (work) in Indiana.
- ▶ Although some states utilize election forms which allow the employee to only bring claims for workers' compensation in that state, Indiana does not recognize such forms as barring the employee from filing a claim in Indiana if our state's requirements for jurisdiction have been met.

Ohio Issues

- ▶ Employers in Ohio who have employees working both in and out of Ohio could face an out of state exposure.
- ▶ Use of C110s and C112s
 - Can only be used when the contract for employment occurs outside of the state of Ohio
 - Is not enforceable in other states

If Other State Asserts Jurisdiction

- ▶ Jurisdiction – Must comply with all statutes, rules and regulations
 - Reporting Deadlines
 - Claims Management
- ▶ Payment – Must pay all claims and premium
 - Uncovered claims
 - Premium
 - Interest and Penalties

Election of Coverage

- ▶ C-110 – Employer/Employee Agreement to Select Ohio as the State of Exclusive Remedy for Workers' Compensation Claims
- ▶ C-112 – Employer/Employee Agreement to Select a State Other Than Ohio as the State of Exclusive Remedy for Workers' Compensation Claims
 - Caveats to using these forms

Language on the C-110 and the C-112

- An employee who enters into an employment contract outside of Ohio may work in another state some or all of the time. This leads to the possibility that Ohio's workers' compensation laws may conflict with those of the other state. In these cases, Ohio law allows employers and employees to choose workers' compensation coverage from Ohio or from the other state.
- ▶ **Important notes:** (1) Neither form C-112 nor C-110 can create jurisdiction where none exists. The forms merely clarify which state's laws will apply in the event of a conflict between states having jurisdiction over an employer and employee. (2) Although BWC honors a valid C-112 in Ohio, the laws of another state might not recognize the terms of the agreement. Consult the workers' compensation agency in the other state or private counsel to verify the validity of this agreement outside Ohio.

SB 334

- ▶ Prior to SB 334 companies faced paying twice for work comp coverage
 - You were required to report 100% of payroll to Ohio BWC and to pay premium on that amount
 - You should have been paying the other states for the time the drivers spent in those other states
- ▶ SB 334 allows employers to bifurcate payroll based on where the service is performed.

Employer Requirements

- ▶ Employers must notify BWC of intent
 - Done by filing a U-131
- ▶ Employers must split payroll using an auditable formula
- ▶ Employers must file a copy of the declarations page with BWC
- ▶ Employers must file a special payroll report showing the split by state
 - Done by filing a U-146 provided by BWC

Options for Coverage

- ▶ Employers can purchase coverage through each state
- ▶ Employers can purchase an all-states plan through a private insurance carrier
 - Great American Insurance
 - Other private options

BWC Programs

- ▶ BWC offers several savings programs for Ohio Employers
 - Group Rating
 - Group Retrospective
 - Safety Council Meetings
 - Drug Free Workplace
- ▶ TPA's are helpful in determining the best program for an individual employer

Impact of Splitting Payroll

- ▶ Rates
 - Private insurance products do not have discounts similar to group rating
 - This could result in overall higher costs
- ▶ Experience Mod
 - Employees determine where worker comp claimed filed
 - Splitting payroll reduces the payroll in the calculations for the EM, however there is no adjustment for the claims history

Questions ???
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