

PEO: Revisions to Statute and Rule

Frequently Asked Questions

BWC final-filed its PEO rules (Ohio Administrative Code §§4123-17-15 et. seq.) on February 7, 2014, with an effective date of February 17, 2014. This document responds to frequently asked questions about the PEO Implementation Guidance issued in March 2014 and the PEO Forum on March 21, 2014.

Background:

In May 2013, BWC introduced a comprehensive set of rule changes related to its authority to regulate the PEO industry. BWC's rule changes incorporated required changes from Senate Bill 139 and changes from BWC's five-year-rule review of rule OAC 4123-17-15. BWC attempted to:

- Provide clarity and consistency around when a PEO must pay and report wages;
- Specify under what criteria PEOs can maintain a partial-lease agreement;
- Clarify rules governing the existence and operation of self-insured PEOs; and,
- Track federal tax reporting to achieve clarity, consistency and overall fairness in BWC's regulation of PEOs.

BWC held numerous interested-party meetings to get feedback and input on the changes as those changes were being contemplated. The rules then went through an eight-month process, during which time they were officially reviewed by three bodies responsible for oversight of either BWC's operation or changes to the Ohio Administrative Code, or both. First, the rules were reviewed and approved by the BWC Board of Directors in May 2013. Next, by letter dated October 3, 2013, the Governors' Common Sense Initiative Office determined the rule package met the standards espoused by that office and that the purpose of the rules justified any adverse impact. Finally, the Joint Committee on Agency Rule Review allowed the rules to go forward without revision in February 2014, and the rules became effective on February 17, 2014.

In March 2014, BWC hosted a PEO Forum to provide guidance regarding its interpretation of the rules, and when the various rules would take effect.

During and after the March, 2014 Forum, the PEO industry raised a concern with the operational impact of the rule changes for state fund PEOS relative to health care coverage and unemployment issues. Specifically, the concern raised by the PEO industry was that the rules eliminating the practice of so-called "all under client reporting" could have unintended negative consequences for its client employers. The Forum was the first time BWC was made aware of these issues, and these concerns were not raised during the rule-review process.

BWC does not believe its application of the rules will impact these areas. Nevertheless, BWC is willing to delay elimination of the "all under client" reporting practice, so as to allow BWC and PEOs to jointly explore the concerns that have now been raised and to minimize confusion and disruption.

Registration and reporting

Will BWC continue to permit “all under client” reporting for state fund PEO employers?

Yes. State fund PEOs may continue to engage in agreements in which all employees of the client employer are shared and reported under the PEO’s FEIN for federal tax purposes, but reported under the client employer’s BWC policy for workers’ compensation purposes (“all under client” agreements). State fund PEOs engaged in these relationships should continue to register as PEOs in Ohio. All under client reporting is not permitted for self-insured PEOs.

Are part lease agreements still permitted for state fund PEO employers?

Yes, but shared employees will be determined by tracking FEIN reporting. Only that portion of a client’s employees’ wages NOT reported under the PEO’s FEIN for federal tax purposes may be reported under the client employer’s workers’ compensation policy. Employees in the same manual class cannot be split between a PEO and a client employer. As discussed below, partial lease agreements are prohibited for self-insured PEOs.

How will BWC be implementing the FEIN requirements in the new rules?

Current agreements for both state fund and self- insured PEOs must be brought into compliance by June 30, 2015.

When will the new registration fees be applied?

The new registration fees will be applied to all registrations received on and after February 17, 2014.

When are new State Fund PEOs required to submit audited financial statements to BWC?

A PEO completing initial registration after February 17, 2014 must submit Generally Accepted Accounting Principles (GAAP)-audited financial statements that are no older than 13 months at the time of submission.

After initial registration, when must a State Fund PEO submit GAAP-audited financial statements to BWC?

State fund PEOs must submit GAAP-audited financial statements within 180 days of the close of the PEO’s fiscal year. Please refer to the chart below. A PEO may apply to the administrator for an extension beyond that time if the PEO provides the administrator with a letter from the PEO’s auditor stating the reason for delay and the anticipated completion date.

End of Fiscal Year	Deadline to Submit Financials
Jan. 31, 2014	July 31, 2014
Feb. 28, 2014	Aug. 31, 2014
March 31, 2014	Sept. 30, 2014
April 30, 2014	Oct. 31, 2014
May 31, 2014	Nov. 30, 2014
June 30, 2014	Dec. 31, 2014
July 31, 2014	Jan. 31, 2015
Aug. 31, 2014	Feb. 28, 2015
Sept. 30, 2014	March 31, 2015
Oct. 31, 2014	April 30, 2015
Nov. 30, 2014	May 31, 2015
Dec. 31, 2014	June 30, 2015

Who should be contacted regarding a request for an extension of time to submit GAAP audited financial statements?

For state fund PEOs: Rex Blateri at Rex.Blateri@bwc.state.oh.us

Prospective billing

How will PEOs’ premium reporting schedule be impacted by the implementation of the prospective billing process?

State fund PEOs will be required to report premiums on a monthly basis once BWC moves to the prospective billing process. PEOs will have until the 15th of the month to report the actual payroll and pay premiums associated with the previous month.

- PEOs will be required to report monthly payroll beginning in August 2015 (reporting for July).
- As a result of the transition credit, (see below), the first premium payment under this model will be due by Oct. 15 for the September payroll.
- PEOs that fail to timely make their monthly payment will incur a lapse in coverage.

Will the security requirements for PEOs be changing under the prospective billing process?

Because state fund PEOs will be reporting and paying monthly under the prospective billing process, they will not be required to provide BWC a form of security after the transition unless a review of the financial statements shows the PEO does not meet the requirement for positive working capital set forth in ORC 4125.051. BWC will be releasing state fund PEOs from the general security requirement effective July 1, 2015.

If a review of financial statements shows that the PEO does not meet the requirement for positive working capital, the PEO must provide security for the deficit, as set forth in ORC 4125.051.

I am a PEO currently using FlexPay to report payroll and pay premiums. Will this be available when the prospective billing process is implemented?

The FlexPay option will end with the payroll report due in February 2015. PEOs currently on FlexPay will be transitioned to the six-month reporting cycle for the payroll period from January 1, 2015, to June 30, 2015; PEOs will be required to report payroll for this period no later than August 31, 2015. The transition credit will cover the payment due for this period. PEOs currently on FlexPay will not be expected to obtain security for this period.

It is BWC's intention to have an online function available for PEOs to report the monthly payroll and pay premiums required under the prospective billing process. All PEOs will be required to use this function beginning August 2015.

How will the transition credit work for PEOs?

All state fund PEOs will receive the transition credit (eight months of premium). The credit will cover the following:

- Premium due for the payroll period from January 1 through June 30, 2015 (payment otherwise due August 31, 2015)
- Monthly premium due for July and August 2015 (payments otherwise due August 15 and September 15, 2015)

PEOs must file the payroll report for the applicable periods to receive the transition credit. For more information, see the transition resolution found on the Board Effect section of www.bwc.ohio.gov.

When will BWC provide us with additional information regarding the prospective billing transition?

House Bill 493 is currently pending before the Senate. Rules are also expected to go before the BWC Board of Directors in the July, August and September timeframes. BWC will be issuing regular transition updates to all employers, as well as updates specific to PEOs and their client employers.

Self-insured PEOs

Will self-insured PEOs be allowed to report wages of shared employees on the client-employer policy ("all under client reporting")?

No. A self-insured PEO must provide workers' compensation coverage for all of its shared employees. A self-insuring employer may not partially self-insure its employees.

Can a self-insured PEO also have a state fund PEO policy?

No. An SI entity cannot have any portion of its corporate structure insured in the state fund. A related corporate entity is permitted to have a State-Fund PEO policy only if the corporate entity is not a subsidiary of an SI entity.

What is the deadline for self-insured PEOs to comply with eliminating "all under client" lease agreements?

Agreements must be brought into compliance by June 30, 2015. New "all under client" lease agreements will not be accepted after June 30, 2015.

When must a self-insured PEO submit GAAP audited financial statements?

A self-insured PEO must submit GAAP audited financial statements as required by the renewal requirements for self-insurance.