

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Other states coverage policy rule.

Rule Number(s): Rule 4123-17-24 of the Administrative Code

Date: 11/22/2016

Rule Type:

- | | |
|---------------------------------------------|----------------------------------------|
| <input type="checkbox"/> New | <input 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 Rescinded |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.

For years, BWC has been hearing from private employers about the difficulties they run into when they send their employees out of state. Because Ohio is only licensed to provide workers' compensation in Ohio, employers occasionally face jurisdictional issues around

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compliance and claims being filed in other states. In some cases, employers have faced large fines, penalties and stop work orders from regulators in other states.

Under ORC 4123.292, BWC was granted the authority to contract with an insurer licensed in other states to provide optional coverage to eligible Ohio employers for out-of-state exposures.

The purpose of the rule 4123-17-24 of the Administrative Code is to implement the optional policy offering for Ohio employers. It became effective in February 2016.

The first policy was issued in March 2016 and since then almost 200 Ohio employers have taken advantage of the coverage offering. As with any new initiative, we learn something new every day and believe that making some revisions to the rules would allow us to better serve Ohio employers.

The rule revisions are mostly clean-up items or edits that provide BWC more flexibility to serve Ohio employers.

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

ORC 4123.292

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.

N/A

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)?

The rule is implementing an optional policy which will benefit employers by ensuring that there are no gaps in workers' compensation coverage when employees work in another state.

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

It is BWC's goal to operate an Other State Coverage Policy offering which essentially pays for itself. The ultimate measure of success for the program is to have the premiums taken in cover the full cost of running the program.

From an employer prospective, if BWC can prevent even one employer from being fined for non-compliance in another state, we would consider that a positive outcome. Since implementation in March 2016, we have assisted almost 200 Ohio employers with securing coverage for workers compensation exposures outside the state of Ohio.

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.

An email asking for feedback was sent out to 228 recipients on November 7, 2016. Two comments were received.

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

The stakeholder feedback was taken into consideration and edits to the rule were made to address stakeholders' concerns.

Please see attached feedback grid.

8. 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?

Although scientific data was not specifically used, BWC studied what other states have done in this arena and utilized a consultant with 30 years of experience in workers' compensation to assist in drafting the rule.

9. 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?

N/A

10. 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.*

N/A

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

Given that BWC's Other States Coverage Policy offering is optional, employers can choose whether or not to take part in it. Thus, the rule, and related regulations, would only apply to

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them if they choose to be part of the program. We do not believe the rule would duplicate any existing Ohio regulation.

12. 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.

If the revisions to the rule are approved, communication documents will be updated to incorporate the changes. We will also update internal policies and procedures to ensure the rules are being applied consistently. Given that the rule revisions are relatively minor, we do not foresee operational challenges in how the regulation is applied.

Adverse Impact to Business

13. 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.

N/A – Again, this is an optional policy offering. Employers only have to comply with the rule if they elect to obtain other states coverage through BWC.

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

N/A

Regulatory Flexibility

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

The purpose of this program is to specifically assist small business owners who may not be able to find coverage through a private insurer.

16. 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?

In the original version of the bill, an employer was able to use the Governors' One-Time Forgiveness to forgive applicable lapses of the Ohio policy to become eligible under (B)(4)(c). The rule revision allows for 40 days of lapses in the prior twelve month period, making the eligibility requirement less restriction for employers seeking coverage.

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

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