CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: **Ohio Industrial Commission/ Ohio Bureau of Workers' Compensation**

Regulation/Package Title: **Wage Loss Compensation**

Rule Number(s): **4125-1-01**

Date: _____

Rule Type:

- ☐ **New**
- ☐ **Amended**
- √ **5-Year Review**
- ☐ **Rescinded**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.

   Rule 4125-1-01 is a joint rule of the Industrial Commission and Bureau of Workers' Compensation. The rule sets forth the requirements for filing applications for wage loss compensation, an award for those injured workers who suffer a wage loss after returning to

employment other than their former position of employment or who cannot find employment consistent with the disability resulting from their claim. The rule also provides the criteria that the Commission and BWC will evaluate when adjudicating wage loss applications and establishes the manner in which wage loss compensation will be calculated. The rule additionally mandates that self-insuring employers adjudicate initial and subsequent requests for wage loss compensation within thirty days after receiving the requests and file copies of their decisions regarding such applications with the BWC or Commission for placement in the claim file.

The Commission and BWC are recommending the rescission of the existing rule and the enactment of a new rule, bearing the same rule number, because the proposed amendments to the existing rule result in the replacement of more than half of the existing text.

The major proposed changes to Rule 4125-1-01 involve the rearranging of the definitions to be in alphabetical order and the addition of separate paragraphs discussing the prerequisites for receiving working and non-working wage loss compensation.

The proposed rule specifically provides exceptions to the requirement of a supplemental job search for those injured workers applying for or receiving working wage loss compensation. These exceptions are applicable when the injured worker returns to work in an alternative position with the same employer or another employer at the direction of the employer of record and when the injured worker must obtain medical treatment for the allowances in the claim and the treatment cannot be obtained outside of work hours.

The proposed rule also provides criteria for the consideration of on-line job searches.

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

   R.C. 4121.12, 4121.121, 4121.30, 4121.31, 4121.36, 4123.05, 4123.56

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.**

   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)?**

   This rule explains the procedures for the processing and payment of requests for wage loss compensation. While R.C. 4123.56 provides for the payment of working and non-working

wage loss compensation, the statute does not indicate the criteria to be considered in determining eligibility for this compensation. The rule notifies injured workers and employers of the eligibility criteria and the factors considered in the adjudication of requests for wage loss compensation.

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

   This rule does not provide a measurable standard. The purpose of the rule is to provide a fair and equitable process for the adjudication of requests for wage loss compensation to injured workers.

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 Industrial Commission has a Rules Advisory Committee consisting of representatives from the Ohio Manufacturers Association, the Ohio Association of Self-Insuring Employers, the Ohio Chamber of Commerce, the Ohio AFL-CIO, the Injured Worker's Bar, members of the Association of Claimants' Counsel and BWC attorneys. The Commission e-mailed the proposed changes to the Rules Advisory Committee and met with the committee over the span of a year before meeting with the Members of the Industrial Commission.

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

   The Commission received input from the Rules Advisory Committee and revised the rule based on a majority consensus.

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?**

   Not applicable.

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?**

    The Commission and BWC did not consider alternative regulations because the stakeholder groups that represent injured workers and employers agree that the agencies should amend the wage loss rule. These groups agree that the rule needs to be updated to address on-line job searches, to clarify the different standards for receipt of working and non-working wage

loss compensation as well as to provide exceptions to the requirement of a job search in limited situations.

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.***

    Not applicable.

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

    The Commission and BWC are the only state agencies responsible for the adjudication of workers' compensation claims. The agencies filed the rule as a joint rule to avoid duplicative or conflicting regulations.

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 Commission and BWC will provide training to their staff regarding the changes in the processing and adjudication of applications for wage loss compensation. The agencies will publicize the proposed rule on their web pages. Additionally, the Commission will announce the proposed wage loss rule at its Statewide Hearing Officer Meeting in September 2013.

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 consists of self-insuring employers.

    b. The adverse impact of the proposed new rule is the 30-day time limit in which self-insuring employers must respond to applications for wage loss compensation and the requirement that employers provide a copy of the decisions regarding wage loss applications to either the BWC or Commission.

c. The Commission and BWC estimate that the cost of compliance with the timeline in the proposed new rule will be minimal because self-insuring employers are already required to adjudicate applications for compensation and benefits to retain that status, a privilege for which they applied due to its financial benefits. Moreover, the Commission and BWC estimate that the cost to provide copies of decisions will be minimal since the employers can send the decisions electronically to the agencies.

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

The Commission and BWC must have access to the decisions of self-insuring employers in the event that an injured worker contests the employer's decision and the matter must be set for hearing before the Commission.

Regulatory Flexibility

15. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** No. However, self-insuring status is not available to small businesses. To qualify to be a self-insuring employer, the employer must employ a minimum of five hundred (500) employees.

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?**

    Not applicable.

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

    Not applicable.