

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Self-Insuring PEOs and Self-Ensuring Employers

Rule Number(s): Rule 4123-17-15.5 and Rule 4123-19-05 of the Administrative Code

Date: 10-19-2016

Rule Type:

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 Rescinded |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

Rule 4123-17-15.5 of the Administrative Code contains provisions governing self-insuring Professional Employer Organizations (“PEOs”). Language is added to address situations where a PEO terminates a lease agreement with a client-employer. Specifically, the new language requires that the PEO submit certain client-employer information, including payroll, medical costs, and indemnity costs, following a lease termination in order for the Administrator to develop a state fund experience modification factor for the client-employers involved in the lease termination. In addition, language is added that requires the PEO, prior to entering into the PEO agreement, to provide notice to a client-employer that the PEO is required to submit this information to the Administrator following a lease termination.

Rule 4123-19-05 of the Administrative Code contains provisions governing situations where a self-insuring employer returns to the state insurance fund as a state fund employer. Language is added that requires the self-insuring employer to provide the Administrator with certain information, including payroll, medical costs, and indemnity costs, in order for the Administrator to develop a state fund experience modification factor.

Amended rules:

4123-17-15.5 Self-insuring PEOs

4123-19-05 Where an employer is self-insuring risk and desires to become a state risk.

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

4123.35; 4125.07

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)?

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The changes to these rules are necessary in order to comply with statutory changes to ORC 4123.35 and 4125.07. These statutes are designed to develop accurate experience modification factors for self-insuring employers who return to the state insurance fund. The corresponding rules assist the Bureau in creating fair and equitable rates for all state fund employers. Without this additional data, it is difficult to establish accurate rates for these employers.

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

The success is measured by the ability of the employers to understand and follow the new reporting requirements in the rule.

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 this rule for comments to multiple stakeholders, including:

- BWC's Employer Services Division's Third Party Administrator (TPA) distribution list;
- National Federation of Independent Business;
- Ohio Manufacturers' Association; and
- Ohio Chamber of Commerce.

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

BWC received a number of responses from stakeholders and has compiled a feedback document with each comment and BWC's response to that comment. The document has been attached for your reference.

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?

BWC did not consider alternative provisions as the changes to these rules generally mirror the changes to ORC 4123.35 and ORC 4125.07. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies BWC 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?

BWC 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.ohio.bwc.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, and specifically those self-insuring employers that desire to return to the state insurance fund and self-insuring PEOs that terminate a lease agreement with a client-employer.
- b. Rule 4123-17-15.5 creates an adverse impact to self-insuring PEOs that terminate a lease agreement with a client-employer by requiring the submission of additional information to the Administrator when the PEO terminates the lease agreement. In addition, if the PEO fails to comply with the reporting requirements of Rule 4123-17-15.5, the administrator may revoke or refuse to renew the PEO's self-insured status. Rule 4123-19-05 creates an adverse impact to self-insuring employers that desire to return to the state insurance fund by requiring those employers to provide the Administrator with certain information, including payroll, medical costs, and indemnity costs, in order for the Administrator to develop a state fund experience modification factor. In addition, if an employer fails to comply with the reporting requirements of Rule 4123-19-05, that employer will be assigned an experience modification factor of 2 and will be ineligible for employer discount programs.
- c. The adverse impact is difficult to quantify and will depend on the size of the particular employer, but in general these changes will require the employer to spend the time collecting and submitting the necessary information. These employers should already have this information available in their business records, but there will be additional time spent submitting the information to the Administrator.

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

The changes to these rules generally mirror the changes to ORC 4123.35 and ORC 4125.07. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies BWC will use to implement these regulations. Therefore, the regulatory intent of these rules is justified by the need for BWC to comply with the statutory changes.

Regulatory Flexibility

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

No. These proposed rules pertain to regulation of self-insuring employers under ORC 4123.35. These employers are not small businesses, but instead are generally larger companies.

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?

Neither 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?

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