



Bureau of Workers' Compensation

30W. Spring St.
Columbus, OH 43215-2256

Governor **John R. Kasich**
Administrator/CEO **Sarah D. Morrison**

www.bwc.ohio.gov
1-800-644-6292

Bureau of Workers' Compensation: Proposed change to OAC 4123-19-05 Where an employer is a self-insuring risk and desires to become a state risk.		
Bureau of Workers' Compensation: Proposed change to OAC 4123-17-15.5 Self-Insuring PEOs		
Stakeholder feedback and recommendations		
Ohio Administrative Code	Suggestion/Concerns	BWC Response
4123-17-15.5	Is there a specific date that the PEO's must supply this information to the BWC by so that the proper snapshot may take place to determine the new EM? Example: 9-30 for PA and 3-31 for PEC.	The BWC will need the initial information as soon as possible and the subsequent updated information at least a month prior to the release of the initial estimated premium letters – By April 1 st for PA and October 1 st for PEC.
4123-17-15.5	Will BWC be doing a data review of the information coming from the SI PEO, or will the information that is supplied to the BWC be loaded and used with no questions asked?	BWC will accept the information as submitted. Further information may be required if questions arise at a later point in time.
4123-17-15.5	With respect to OAC 4123-17-15.5, section E)(1) Add a requirement that an SI PEO notify all current clients of the new rule requiring the creation of experience based on the SI PEO's claims (not just prior to entering into a PEO agreement) OR will BWC take care of the communication on this part?	BWC will not add language to the rule but will remand notification requirements to the individual PEO. The current clients of an SI PEO should be notified by their current provider of this new rule of the State Insurance Fund
4123-17-15.5	Stakeholder requested that the proposed revision requiring a self-insuring PEO to provide the required information within fourteen calendar day from the lease termination date, be extended to 30 days.	BWC reviewed this request but will not make any changes to the rule since the rule amplifies the statute R.C. 4125.07 that clearly mandates information to be submitted to BWC within 14 days.
4123-19-05	If a self-insured employer sold only a portion of its risk to a state fund entity OR split off a portion to form a new state fund risk, would BWC develop a state fund experience based on the self-insured claims for the portion being split out into a state fund entity? If so, could/should language to this effect be added to the rule?	Yes, BWC added language to the rule for the 2 nd reading that outlines that subsidiaries or portions of a self-insured employer will have state fund experience developed by BWC.



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4123-19-05	<p>There should be some sort of mandate that the PEO has to give accurate information or have some sort of consequence if don't.</p> <p>Will the PEO be mandated to provide copies of all information to terminated lease clients for the experience information?</p> <p>The clients will need to check they are getting accurate information attributed to their policy.</p>	<p>BWC will not add language to the rule at this time to "mandate" the release of information by a PEO to a client employer.</p> <p>BWC believes that the information requirement is adequately covered in the rule.</p> <p>BWC agrees that client employers or their representative are responsible for the review and validation of claim information.</p>
4123-19-05	Does the client employer have rights in regards to settlements, handicap filings or any other claim controls or access to claim information that are affecting their rates?	The self-insured PEO remains as the employer of record and is responsible for claim cost management. BWC will honor any authorized representative agreements that are active.
4123-19-05	<p>Please confirm the effective date of the rule and the date BWC will use for experience calculations.</p> <p>Does that mean that any rate calculated as a result of this change will be effective as of 7/1/17 or will the BWC retro the EM calculation back to 7/1/16 and is it possible if made effective 1/1/17, could any claims transferred back from an SI PEO to a state funded employer impact a 7/1/17 group EM?</p> <p>Also, will reserves be established? If so, how</p>	<p>The change is effective 1/1/17; any employer returning to the state fund after 1/1/17 will need to provide their information back to July 1, 2010 to receive the proper experience.</p> <p>Employers experience is effective the date of return to State Insurance Fund.</p> <p>Actuarial will apply a factor to the reported paid losses to estimate reserves.</p>



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4123-19-05	In regards to section (B) should there be additional language that provides the Administrator discretion in the application experience modification factor of <u>up to</u> 2.00 instead of just a flat 2.00?	BWC believes this provision will ensure compliance with the requirement to provide information.
4123-19-05	Our only request is that during this process, BWC would create a formal document that my members, and businesses across the state, can use to prove the new experience medication factor and make it available as soon as possible after the PEO relationship ends.	The BWC will develop the experience modification factor promptly as complete information is available. The employer will be provided a document that displays the EM and the components used in its calculation. The calculated EM will also be shown on the initial billing that the employer receives
4123-19-05	Should the rule outline specifically the information required by BWC to develop experience? If additional information is needed, that too should be delineated, so any ambiguity is removed. The BWC also requires that the information be submitted for "as many years as required by the administrator." Again with the BWC's experience in developing EM factors the amount of information required should already be known thus eliminating the need for this discretionary language.	BWC believes the proposed language adequately outlines the information required to develop an appropriate experience. BWC will further develop policy to outline this process.
4123-19-05	It is understandable that the BWC would include a penalty if an employer fails to report information needed to create a true and accurate experience modification factor. However an EM factor of two is punitive and as proposed by the rule this EM factor is permanent.	The EM of 2 will be given to any employer who does not provide their information needed to calculate an experience. BWC added additional language to the rule that states the EM will be adjusted either when the employer provides the information or when the employer has been in the state fund for a period long enough to have established a full set of years with experience in the state



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	<p>A lifetime ban from participating in any employer program is overly punitive. Instead of the infinite ban, the OMA would suggest a time limit for the ban, for example, no more than two years.</p> <p>Because of the severe penalties included in the language we would also suggest allowing the employer to request an extension of time to provide the information or petition the BWC for an appeal in scenarios which they may not have the requested information at their disposal.</p>	<p>fund.</p> <p>The program ban would also be in effect until the employer has provided their prior experience as SI employer or SI PEO client or when they have established its own full set of years of experience in the State Insurance Fund.</p> <p>Employers maintain the right of appeal on BWC decisions.</p>
4123-19-05	<p>How will the BWC deal with reserves or incurred losses after receiving indemnity and medical payment information from the Self-insured employer?</p> <p>What happens when the information originally provided and relied upon for programs, is then amended at a later date by the SI PEO or employer that returns to the state fund.</p> <p>How will the experience for a client returning to the state fund impact group rating or group re-rates? Will the losses be considered when re-rating a group's EM or calculating the group's initial EM?</p>	<p>Actuarial will apply a factor to the reported paid losses to estimate reserves.</p> <p>The loss information as calculated will not be adjusted individually or as part of any group rating plan, unless the employer of record would prevail in appeal action.</p> <p>Production EM for the group (without the clients SI or SI PEO experience) will be calculated and then the client EM will be factored in after the initial run to develop the group EM.</p>



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4123-19-05	Will information that is relied upon by a sponsoring organization for group rating or group retro inclusion that is later found to be inaccurate be rolled up into the gross misrepresentation rules for removing an employer from a group rating or group retro program? Will the experience that comes out of a Self-Insured PEO be used for prior year group re-rates.	BWC does not plan any changes to the gross misrepresentation rules. Not for prior years, but once a group participants experience is part of the group it will be used in future re-calculation process.
4123-19-05	An employer that terminates a lease prior to the end of 2016 will NEVER have their experience follow them? So if they have a death claim this past year, even in 2018 and beyond it will never be factored into their rates? How will they be rated in 2018 and beyond?	An employer that returns prior to January 1, 2017 will never have their Self-Insured Experience follow them back into the State Insurance Fund. For these employers, BWC will begin to capture and use their State Insurance Fund experience beginning with the July 1, 2016-June 30, 2017 policy period forward and use that experience beginning in their premium development 2019/2020 policy period.
4123-19-05	While the statutory language only applies to client-employer lease terminations on or after 1/1/17, we understood from our legislative discussions the Bureau would still use that client-employer's experience – developed prior to 1/1/17 – to manually calculate its EM for 2018 and beyond. For example, if an employer has a death claim on 1/1/15 and decides to leave self-insurance and enter the state system, we understand that for 2017 this claim will not be used to calculate their premium. But come 2018, we would hope the look back period would encompass their previous years of self-insured	Thus, they will be base rated for: July 1 2016-June 30,2017 July 1 2017- June 30, 2018 and July 1 2018 – June 30, 2019 policy periods The opinion of the BWC is that the new law is applicable to returning employers on or after January 1, 2017. BWC will not apply the law to employers that have returned prior to that date



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	experience.	
4123-19-05	Would an employer that is evaluated as "base rated" for '16, '17, and '18 have an opportunity to join a group and be "group rated" and thus get a 53% premium discount? Or will the Bureau require them to be truly "base rated."	BWC will not "require" an employer to remain base rated. The request for participation in group rating is a decision for a sponsoring organization. BWC will evaluate eligibility based on the criteria outlined in rule.
4123-19-05	What is BWC's plan to supply this information to the TPA community?	There are no current plans to make this data available to the TPA community as the manual calculation process will be handled outside of our systems that currently provide State Insurance Fund information. If the process is later mechanized, then this information would be included in the normal information flow.
4123-19-05	What are the guidelines for an SI PEO to become a stated funded PEO? What would happen with the SI experience should this occur?	The same as SI rules.
4123-19-05	If an SI PEO goes out of business, what happens with the experience?	BWC will request the paid loss data and will develop the experience or rely on reported information.
4123-19-05	What are the guidelines for SI PEO's that have SF clients that are reporting on their own? Will there be any changes with this process moving forward?	State fund clients participating with an SI PEO cannot be client reporting.
4123-19-05	What is the timeframe from the date the termination is processed, that the new EM for the state fund policy will be determined?	BWC will process all requests in a timely manner.
4123-19-05	If an SI PEO and a state fund policy submit a lease term, is there a period of time that policy must remain under the state fund before going back to another SI PEO? Are there any guidelines set for this situation?	Not at this time.



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4123-19-05	Policies that are currently with an SI PEO, if the termination takes place after 1-1-2017, the PEO will be required to supply BWC with all historical experience period payroll/claims, including prior to termination date, correct?	Yes.
4123-19-05	If a client leaves the PEO prior to the change effective 1-1-2017, the PEO will not be required to report anything annually, since the experience will be back with the state fund, correct?	Yes, if it is an SI PEO, the State Fund PEO is already transferring experience.



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4123-19-05	Concerns that the proposed rules do not provide sufficient protection for the interests of the state insurance fund and employers considering returning to the state fund from a Self Insured status or as a client of an SI PEO returning to the state fund	BWC believes that the requirements and the process of calculating Experience Modification outlined in the proposed rules will provide protection to the state insurance fund.
4123-19-05	Suggestion to impose a financial penalty to any SI PEO that does not provide required information in a timely manner. BWC should also have a specified right to audit the self-insuring employer or SI PEO to verify and validate any information provided.	BWC believes that additional financial penalties are not warranted at this time. BWC's Self Insured department has an established audit schedule for all SI employers and retains the right to inspect the records of SI employers as needed.
4123-19-05.5	Concern with information being made available for an employer that is a client of multiple SI PEOs An employer coming back into the state fund should have a right of appeal if they disagree with the data or manner in which the BWC has calculated their experience modification In order to protect the state insurance fund in the event of a bankruptcy, business interruption or closure of an SI PEO, BWC should require, at a minimum annually, for each SI PEO to provide to BWC, in a manner and format determined by the BWC, all necessary claim and payroll information needed for BWC to calculate an experience modification if / when needed.	See rule 4123-17-15.5 (E) (1) adequately addresses the issue of information being available for the client employer. Employers have the right to appeal BWC decisions through the Adjudication process. Currently handled through the SI department with BWC. SI PEOs are required to provide quarterly reports to BWC that includes claims information as well as reserves. BWC requires a minimum of 100% security based on the reported information.



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4123-19-05	Recommendation for BWC to develop a form to be used to capture required information to develop experience.	The Actuarial Division of the BWC has developed a policy and process that outlines the file layout for the data and the electronic format that will be required to be used to communicate the information to the BWC.
4123-19-05	BWC should provide to all client employers of an SI PEO, on an annual basis, an estimate of what their experience modification would be for the upcoming policy year, so that employers have information in which to make decisions regarding their workers' compensation financing options	BWC does not plan to develop experience calculations for clients of SI PEO or SI employer until they have applied for and have been granted coverage through the State Insurance Fund.
4123-19-05	Recommendation to form a working group of stakeholders and interested parties to further review the process of obtaining information.	BWC has developed a process to obtain the requisite information in order to perform the experience calculations internally and does not believe another work group is warranted at this time.