

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Miscellaneous Rules

Rule Number(s): 4123-17-07; 4123-17-14; 4123-17-15.3; 4123-17-16; 4123-19-02; and
4123-19-07 (6 rules).

Date: 9/30/2014

Rule Type:

New

5-Year Review

Amended

Rescinded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.

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On June 16, 2014, Governor Kasich signed substitute House Bill 493 (“HB 493”) into law, which updated several provisions of Ohio Revised Code Chapter 4123 to allow for the transition to prospective billing. These rule changes incorporate the changes from HB 493 and include other required updates to fully enable the transition to prospective billing.

Amended rules:

4123-17-07: Officers of corporations, elective coverage entities, and ministers.

Rescinded rules:

4123-17-14: Rule controlling the completing of payroll reports.

4123-17-15.3: Security Requirements.

4123-17-16: Premium Security Deposit

4123-19-02: General Procedures in the Processing of Applications for Industrial Coverage.

4123-19-07: Rules controlling renewals and discontinuances of employer coverage.

New rules:

4123-17-14: Reporting of Payroll and Reconciliation of Premium Due.

4123-17-16: Penalties: late payment and reporting.

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

4121.12 , 4121.121 , 4121.13 , 4121.30, 4121.31

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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These rules govern the process and procedures required of employers for reporting estimated payroll, paying estimated premium payments, reporting actual payroll, and reconciling premium due to the Bureau or owed to them by the Bureau. These regulations are intended as notice and a guide to employers as the Bureau transitions to a prospective billing system.

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

These rules do not lend themselves to measurement. The success of these rules is measured in the ability of workers' compensation stakeholders understanding and following the rules.

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 distributed these rules for comments to:

- BWC's Employer Services Division's Third Party Administrator (TPA) distribution list; and
- The Bureau's rules distribution list.

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

The Bureau received several comments from the stakeholders, which were included in the development and review of these rules. The Bureau agreed with most of the comments, and answered additional questions posed by the stakeholders. The feedback the Bureau received is included at the end of this packet.

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?

These rules generally follow statutory mandates. For example, rule 4123-17-14 is amended to implement changes to Chapter 4123.35 of the Ohio Revised Code. Pursuant to those changes, the Bureau will transition to a prospective billing system, which requires payment of

estimated premium based on estimated payroll and a reconciliation of premiums at the end of a payroll period based on actual payroll.

- 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?**

The Bureau is the only state agency regulating workers' compensation claims, and thus there is not another agency promulgating rules on these subjects. Two of the rule rescissions are the result of duplicative language in current 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 Bureau will post the rules on its website, www.bwc.ohio.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.
- b. These rules govern the process and procedures required of employers for reporting estimated payroll, paying estimated premium payments, reporting actual payroll, and reconciling premium due to the Bureau or owed to them by the Bureau. The most significant adverse impact to employers is penalties for late payment and reporting, laid out in Rule 4123-17-16.

- c. Any adverse impact from these rules will vary for each employer depending on the amount of premium and assessments due, which is based on the employer's payroll. The method for calculating the penalties is provided for in Rule 4123-17-16, pursuant to Section 4123.32 of the Revised Code.

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

These rules generally follow statutory mandates. For example, Section 4123.32 of the Revised Code gives the Bureau the authority to assess a penalty of ten percent of premiums owed on employers who fail to file a payroll report. Additionally, if an employer fails to pay premium or assessment when due, the Bureau has the authority to assess a penalty at the interest rate established by the state tax commissioner pursuant to Section 5703.47 of the Revised Code. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the Bureau will use to implement these regulations. Therefore, the regulatory intent of these rules is justified by the need for the Bureau to comply with statutory mandates.

Regulatory Flexibility

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

No.

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?

Not applicable. None of these rules have provisions that would result in fines or penalties to employer for paperwork violations.

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

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

Prospective Billing: Finance & Coverage Maintenance Rules			
Stakeholder feedback and recommendations			
Chapter 17 Rule#	Program	Suggestion/Concerns	BWC Response
4123-17-14	Reporting Payroll & Payment Reconciliation	4123-17-14 (C)(2)(b) Clarify whether last day of June means LBD or June 30th / 4123-17-14 (G)(2)(b) Clarify whether last day of Dec means LBD or Dec 31st.	Operation of Ohio law next business day whenever due date falls on non-business day.
4123-17-16	Penalties: late payment and reporting	4123-17-16 (D) (1) Request to Update language to: "If an employer fails to file the annual payroll report and pay any additional premium due within the grace period..."	Failure to file is the trigger to initiate action.
4123-17-16	Penalties: late payment and reporting	4123-14-16 (C)(2) and 4123-17-14 (E)(3) regarding revoking PEO's registration are duplicative. Eliminate one of them	BWC agrees but wants the language in both rules.
4123-17-14	Reporting of Payroll and Reconciliation of Premium Due	Employers must make the payroll report electronically (This concerns me. The rule itself states: "An employer may elect to provide payment other than through the electronic process, provided payment is received by the fifteenth day of August immediately following the conclusion of the policy year.") BWC will assist employers that do not have access to file electronically in making such report. We want to know if this is something that an employer must elect, or if the option will be given to them. What will the process be?	BWC is moving to all electronic reporting to increase efficiency, reduce non-compliance & fraud to potentially impact rates. BWC will be able to receive information over the telephone from employers that do not have the capability to file on-line.
4123-17-16	Penalties: late payment and reporting	If an employer fails to true-up for a policy year, the employer shall be removed from all rating plans and discount program for the policy year immediately following the policy year to which the annual payroll report pertains. Please verify that they will not be removed from current discount programs, but will not be allowed to join the following year? True up process August 15, 2016	Employers that fail to true up will be removed from all programs for the current year.
4123-17-16	Penalties late payment and reporting	a.) Will there be a forgiveness period the 1st time around so as to not kick employers out of group or discount programs while becoming familiar with new reporting b.)For subsequent years after 2016 will there be a grace period or notices before being knocked out of groups or discount programs? (just like electric bill, you get a notice before they shut off electric)	A grace period will be established for installment payments as well as the required annual true-up. BWC will notify all employers 45 days in advance of the true up deadline. BWC will have a process to notify employers & their representatives that do not meet the deadline

4123-17-07	Officers of corporations, elective coverage entities, and ministers	Do small elective coverage entities really use more services than are covered by the minimum administrative fee?	Small elective coverage entities are subject to 4123-17-07, the rule does not distinguish between small and large elective coverage.
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