

**OSC 10**  
Ohio Safety Congress & Expo

**Leveling the playing field –  
the impact of non-compliance  
in workers' compensation**  
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John Sledd and Joseph Chapman

Wednesday, March 31, 2010, 4 to 5 p.m.

Ohio | Bureau of Workers' Compensation

**What is non-compliance?**

- o Simply put, it's operating without coverage.

Ohio | Bureau of Workers' Compensation

**What is non-compliance?**

- o Defined in Ohio Administrative Code 4123-14-01 as failing to establish industrial coverage or make payments of premiums to the State Insurance Fund or failing to comply with requirements for self insurance

Ohio | Bureau of Workers' Compensation

**Who needs coverage?**

- o Employers are required to carry workers' compensation coverage when you have one or more employees.

Ohio | Bureau of Workers' Compensation

**What is the impact?**

- o 43 percent of the accounts on the books are not paying premiums.

Ohio | Bureau of Workers' Compensation

**What is the impact?**

- o Accounts that have **no** coverage
  - o Canceled, uncollectable — 91,453
  - o Lapsed — 91,354
  - o No coverage due to a claim— 6,513
  - o No coverage, operating employer – 5,486
    - o Active — 117,758
    - o Reinstated — 141,800
- o Total – 45, 4364

### What is the impact?

- Some national studies suggest that if every employer simply paid his/share fair share, then everyone's rates would be approximately 40 percent less.
- It creates competitive disadvantages.
- Mutualized costs are distributed among complying employers.

### What is the impact?

- Claims filed since 2000  
23,150 No coverage/unconfirmed employer
- Costs (May 2009)
 

Medical:	\$63,219,725
Indemnity:	\$78,118,746

### Who is paying for these costs?

- **Every** active and reinstated employer through increased premiums!

### How can employers avoid being non-compliant?

- Premiums due by March 1 and Sept. 1
- Payment in full
- 50/50 (online only)
- Partial payment plan
- Flex pay (online only)

### How can employers avoid being non-compliant?

Account can be lapsed for outstanding balances including:

- Audit findings;
- Rate adjustments;
- Greater than \$1,000 regardless of the reason – (i.e., premiums, penalties, fees, interest, adjustments and claims costs).

### What happens if the employer lapses?

- Penalties
- Cost of claim during lapse period
- Proof of coverage when bidding on jobs

## What happens if the employer lapses?

- If not addressed:
  - Payroll estimated and billed;
  - Turned over to Office of the Ohio Attorney General (AG);
    - Interest accrues;
    - AG's collection fees;
    - Liens filed.

## What happens if the employer lapses?

- Work with BWC collections to obtain active coverage
- AG
  - Billing for past periods
  - Does **NOT** include current periods
  - Coverage will **NOT** be current

## What can the employer do?

- Subcontractors
- Competitors
- Vendors
- Your personal home
  - Windows installed in your home
  - Roof put on home
  - Landscaping work

## What can the employer do?

- Contact BWC's customer contact center at 1-800-644-6292. Be prepared to provide as much information as possible about the suspected employer.
- Call a non-compliance supervisor.
  - Shane Blair, Hamilton Customer Service Office: 513-785-4580
  - Mike Vernon, Canton Customer Service Office: 330-417-0324

## Employer compliance department

- In 2008, BWC formed a new team to address employer non-compliance issues.
- The goal is to:
  - Identify;
  - Notify;
  - Assist;
  - Enforce provisions of workers' compensation laws.

## Employer compliance department

### Focus

- Employer is operating without coverage and never had coverage.
- Employer has coverage, but is not reporting the correct payroll and/or correct manual classifications.
- Employer had coverage, but lapsed coverage and continues to operate.

## Employer compliance department

- Still growing
- Refining techniques
- Increasing and improving coordination and cooperation with other affected agencies
  - Ohio's AG
  - Ohio Department of Job & Family Services;
  - Ohio Department of Taxation
  - Ohio Liquor Control Board
  - Ohio Department of Commerce

## Employer compliance department

- Achieve compliance through cooperation and assistance
- Develop clear understanding of workers' compensation obligations
- Build a documented case to support other extraordinary remedies such as those below
  - Denial of coverage
  - Criminal prosecution
  - Injunction to cease operations or receivership

## Employer compliance department

- More than 3,300 cases resolved
  - More than 2,800 in full compliance or payment plans
  - Remaining resolutions referred to:
    - Special investigations department;
    - Collections — no longer operating.
- Collected more than \$63 million to date

## AG's Role

Joseph T. Chapman  
Senior Assistant Attorney General  
Collections Enforcement  
614-466-6594

## Important provisions under the law

- Ohio Revised Code (ORC) § 4123.37: Amenable employer; assessment hearing
- ORC § 4123.75: Remedy of employee against non-complying employer
- ORC § 4123.76: Claim against non-complying employer a lien
- ORC § 4123.77: Common law defenses denied to non-complying employers
- ORC § 4123.78: Recording of certificate of non-compliance
- ORC § 4123.79: Injunction against operation of non-complying employer

## ORC § 4123.37. Amenable employer; assessment; hearing

- If BWC determines an amenable employer has not reported or paid, BWC provides a notice that gives the employer 20 days to remedy the default.
- If the employer still fails to remedy his/her default, BWC may assess the employer and may estimate the assessment, if the employer failed to report, based on information in BWC's possession.

### **ORC § 4123.37. Amenable employer; assessment; hearing**

- BWC will issue a written notice of the assessment.
- If the employer does not protest the assessment within 20 days, BWC may file a judgment lien against the employer.
- If the employer protests the assessment, BWC may still file a judgment lien against the employer for the assessment, as modified or affirmed, after a hearing on the protest.

### **ORC § 4123.75. Remedy of employee against non-complying employer**

- The injured worker's right to participate in the workers' compensation system is unaffected by the employer's non-compliance.
- The non-complying employer must pay the entire amount of the non-compliance claim.
- Catastrophic claims can be expensive.

### **ORC § 4123.76. Claim against non-complying employer a lien**

- BWC may file an affidavit of non-compliance in the county recorder's office.
- The affidavit of non-compliance operates as a valid lien against any real estate owned by the employer in the county and against any tangible personal property.

### **ORC § 4123.77. Common law defenses denied to non-complying employer**

- If the injured worker sues the employer in tort, the non-complying employer may not assert certain defenses.
- Fellow servant rule
- Assumption of the risk
- Contributory negligence

### **ORC § 4123.78. Recording of certificate of non-compliance**

- BWC may file a certificate for the amount of premiums due from a non-complying employer with the county recorder.
- The certificate operates as a lien against any real property owned by the employer as well as any personal property in the county.

### **ORC § 4123.79. Injunction against operation of non-complying employer**

- Any interested party may seek an injunction prohibiting further operation of a non-complying employer.
- An interested party includes the AG, the administrator and any complying employer who is not a self-insuring employer.

### Summary of important provisions under the law

An employer who fails to comply by reporting and paying premiums exposes him or herself to, among other things:

- o Adverse judgments, with all of the post-judgment remedies available to enforce a judgment;
- o Liability for the full costs of injured workers' claims;

### Summary of important provisions under the law

- o Liability in tort, without otherwise potentially available defenses
- o Liens in the recorder's office
- o Injunctions against further operations
- o And more

## Questions

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Manager, Employer  
Compliance Department

Identify    Notify    Assist    Enforce    330-797-6368