

Out-of-State Employers

Temporary exposures: 90-Day Rule

Effective Sept. 17, 2014, the coverage requirement changed for out-of-state employers who have employees who are non-Ohio residents that only work in Ohio on a temporary basis. Ohio's workers' compensation laws now recognize the extraterritorial coverage of an out-of-state employer for 90 consecutive days. The 90-Day Rule is applicable to all industries, including the construction industry. For payroll reporting purposes, employers only pay premiums to BWC for work performed in Ohio if a temporary period exceeds 90 consecutive days. See Ohio Administrative Code (OAC) 4123-17-23(C).

Prior to Sept. 17, 2014, BWC only recognized the extraterritorial right of the workers' compensation insurance coverage from other states on a reciprocal basis. Thus, Ohio recognized an out-of-state employer's workers' compensation insurance coverage only to the extent the other state recognized BWC's extraterritorial coverage for Ohio employers with Ohio employees working temporarily in that state. Many employers were required to obtain coverage from BWC on the first day working in Ohio. House Bill 493 changed the law to end this practice.

Please refer to the FAQs portion of this fact sheet for answers to questions on how BWC applies the 90-Day Rule to common scenarios of out-of-state employers.

Ohio's claim exclusion

If an employee is a resident of a state other than Ohio the workers' compensation law or similar laws of a state other than Ohio cover(s) him or her, he or she cannot receive compensation and benefits from BWC for claims arising out of or in the course of employment during a temporary period not exceeding 90 consecutive days. The rights of the employee and his or her dependents under the laws of the other state are the exclusive remedy. This exclusion only applies to non-Ohio residents. See Ohio Revised Code 4123.54(H)(5) and OAC 4123-17-23(C).

Employing Ohio residents

Out-of-state employers with workers who are Ohio residents but work temporarily in Ohio have liability for claims that arise in Ohio. For payroll reporting purposes, employers must report wages and pay premiums to BWC for any work performed in Ohio.

It is not uncommon for an out-of-state employer to hire a sales person covering a geographical region, computer programmer or other skilled worker to work remotely from their home in Ohio. This type of employee is an Ohio employee under the workers' compensation laws of Ohio with the wages for the employee reportable to BWC.

Foreign country employers

The 90-Day Rule is not applicable to residents of a foreign country. Out-of-state employers who have foreign employees working temporarily in Ohio must obtain Ohio workers' compensation coverage, report wages, and pay premiums to BWC for any work performed in Ohio.

Hired to work in Ohio

Employers who specifically hire employees to work in Ohio must obtain coverage from BWC regardless of where they hire the workers. See OAC 4123-17-23(D).

Payroll True-Up Reports

Any employer with a BWC policy must file a true-up report at the end of the policy year to report actual payroll for employees. The purpose of the true-up report is to ensure the premium for the policy is correct, since we used estimated payroll when creating or renewing the policy. An employer must submit a payroll true-up report even if it has zero payroll. See BWC's website for more information on payroll true-up.

Scenario 1

An out-of-state employer has workers' compensation insurance for its employees and one or more of the employees come to Ohio for a 14-day job.

Q1. Is workers' compensation insurance from BWC required for the temporary exposure?

A1. No. Ohio law recognizes the out-of-state workers' compensation coverage of the out-of-state employer for its regular employees who are non-Ohio residents performing work in Ohio for a temporary period not exceeding 90 consecutive days. [\[See Scenario 3 below for exceptions to the 90-Day rule for West Virginia, Florida, Tennessee and Maine employers.\]](#)

Q2. How does BWC calculate the 90 days?

A2. BWC calculates the temporary period per employee starting on the first day the employee performs work in Ohio and runs consecutively for 90 calendar days.

Q3. What happens if an employee files a claim in Ohio?

A3. BWC will deny the claim. The exclusive workers' compensation remedy is under the laws of the other state while performing work in Ohio during the 90-day temporary period.

Q4. Can I open an account/policy with BWC if I only have temporary exposures in Ohio?

A4. Yes. A third party may require employers to obtain a BWC Certificate of Premium Payment to work on a job site. However, if all the exposures in Ohio are temporary in nature the out-of-state employer reports \$0 in payroll and only pays a \$120 administrative fee to maintain an active account. An employer only reports payroll starting on day 91 of the temporary period.

Q5. Can I report the payroll for work performed during a temporary period so BWC will respond to a claim occurring in Ohio?

A5. No. BWC will deny the claim if the injury occurs during a temporary period. The 90-Day Rule provides that remuneration shall not be included in the payroll report during a temporary period.

Q6. What if my employees enter Ohio numerous times throughout the year?

A6. BWC applies the 90-Day Rule on a consecutive basis for each temporary period. Each trip into Ohio is a distinct temporary period.

Q7. My workers' compensation agent/carrier told me my policy excludes Ohio?

A7. This only means the private carrier is not licensed to write workers' compensation insurance in monopolistic states and cannot pay benefits under Ohio's workers' compensation laws. This does not mean claims arising in Ohio are excluded. The extraterritorial provision in the workers' compensation laws of the other state apply when the claim is filed under the laws of the other state to cover injuries occurring outside that state.

Scenario 2

An out-of-state employer has workers' compensation insurance for its employees and one or more of the employees come to Ohio to work on a job expected to last longer than 90 days.

Q8. When must I establish coverage through BWC and report payroll?

A8. Coverage from BWC is required starting on day 91. You must report payroll to BWC for work an employee performs in Ohio beyond 90 days.

Q9. What happens if a claim arises on day 80 when the employer expected the employee to be in Ohio longer than 90 days?

A9. The exclusive workers' compensation remedy is under the laws of the other state for the first 90 days of the job.

Q10. What if the employees return home for day(s) off during the temporary period?

A10. Personal time off during a temporary period does not affect the calculation of the temporary period. It common for employees performing work on longer projects in Ohio to have days off or even leave Ohio while not working. BWC does not view personal time off during a temporary period as disrupting the temporary nature of the work in Ohio. The temporary period is still calculated starting on the first day the employee performs work in Ohio and continues to run consecutively for 90 calendar days.

Scenario 3

An employer from West Virginia, Florida, Tennessee or Maine sends employees into Ohio to work on a project or job throughout a calendar year for a total of 50 days on either a cumulative or a consecutive basis.

Q9. Does the 90-Day Rule apply in the same manner?

A9. No. Ohio recognizes the extraterritorial right of the workers' compensation insurance coverage. Therefore, the extraterritorial coverage must exist under the workers' compensation laws of the other state. West Virginia, Florida, Tennessee and Maine have limitations in the extraterritorial application of their respective workers' compensation laws. For example, the West Virginia rule for Extraterritorial Coverage and Related Issues §85-8-7, para. 7.3, states:

Employment by a West Virginia employer outside of the State of West Virginia. Pursuant to West Virginia Code §23-2-1(b) (3) and subdivision c., subsection 4.3. of this rule, an employer that is otherwise subject to the provisions of chapter twenty-three of the West Virginia Code does not have to provide West Virginia workers' compensation coverage for employees who perform work for the employer in a state other than the State of West Virginia on a non-temporary basis (i.e., for a period exceeding thirty (30) calendar days in any three hundred and sixty-five (365) day period):

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Employers from these states may need to secure Ohio workers' compensation coverage for employees that perform work in Ohio for a period exceeding 30 calendar days in any 365-day period.

Scenario 4

A border state employer hires an Ohio resident as a regular employee at a location outside Ohio and the employee sometimes works temporarily in Ohio on a job?

Q10. Does the 90-Day Rule apply this situation?

A10. No. Ohio's workers' compensation law only respects the extraterritorial right of the workers' compensation insurance coverage of an out-of-state employer if the employee is a resident of a state other than Ohio. In this situation, the employer must secure Ohio workers' compensation coverage and report remuneration for work the employee performs in Ohio.