

BWC Board of Directors
Executive Summary
Employer Handicap Reimbursement
OAC 4123-3-35

Introduction

BWC is proposing to change the time periods set forth in Ohio Administrative Code 4123-3-35 under which a private state fund employer or public employer taxing district employer may file an application for handicap reimbursement with BWC.

The time periods are determined by the employer's experience period for rating purposes, and these experience periods are changing as a result of BWC's move to prospective billing. The proposed changes to OAC 4123-3-23 are to conform the timeframes for filing handicap reimbursement applications to the new prospective billing experience periods.

In addition, to comply with recent legislation BWC is proposing to eliminate references to self insuring employers participating in the handicap reimbursement program.

Background Law

The handicap reimbursement program, established by Ohio Revised Code 4123.343, offers employers an opportunity to file an application for relief with BWC if they have a handicapped employee who suffers an industrial injury/disease or death. If the employer can demonstrate that a handicap condition listed in the statute pre-existed the date of injury, and either caused the claim or contributed to increased costs or a delay in recovery, BWC may order that a percentage of the claim's costs be charged to the statutory surplus fund instead of the employer's experience, and make the appropriate adjustment to the employer's experience calculation. The grant or denial of handicap reimbursement relief to the employer does not affect the benefits paid to the injured worker.

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. The Board of Directors subsequently approved rule changes implementing these statutory changes, to take effect July 1, 2015.

On June 30, 2015, Governor Kasich signed Amended Substitute House Bill 52 ("HB 52") into law, which modified several provisions of the Ohio Revised Code affecting BWC, including revisions to Ohio Revised Code 4123.343 eliminating the ability of self insuring employers to participate in the handicap reimbursement program.

Proposed Changes

OAC 4123-3-35(B)(1)(b) states that an employer must file an application for handicap reimbursement "while the claim is within the employer's claim experience period, as referred to in division (B) of section 4123.34 of the Revised Code." To conform to the new prospective billing experience periods, BWC is proposing to change the timeframes for handicap reimbursement applications set forth in OAC 4123-3-35(B)(1)(b)(i) through (B)(1)(b)(iv) as follows:

- For a claim involving a private state fund employer with a date of injury on or before December 31, 2009, the application must be filed by June 30th of the year no more than 6 years from the year of the date of the injury or occupational disease.

- For a claim involving a private state fund employer with a date of injury on or after January 1, 2010:
 - If the date of injury is between January 1st and June 30th, the application shall be filed by June 30th of the year no more than 6 years from the year of the date of the injury or occupational disease.
 - If the date of injury is between July 1st and December 31st, the application shall be filed by June 30th of the year no more than 7 years from the year of the date of the injury or occupational disease.
- For a claim involving a public employer taxing district employer with a date of injury on or before December 31, 2009, the application shall be filed by December 31st of the year no more than 5 years from the year of the date of the injury or occupational disease.
- For a claim involving a public employer taxing district employer with a date of injury on or after January 1, 2010, the application shall be filed by December 31st of the year no more than 6 years from the year of the date of the injury or occupational disease.

BWC is also proposing to eliminate the references to self insuring employers participating in the handicap reimbursement program in OAC 4123-3-35(B)(1)(b)(iv), OAC 4123-3-35(F), and OAC 4123-3-35(G), to conform to the HB 52 changes to Ohio Revised Code 4123.343.

Under prior law, self insuring employers were eligible to participate in the handicap reimbursement program. However, if they did, they were subject to an additional assessment to recoup payments made to self insuring employers for handicap reimbursement from the surplus fund account. Self insuring employers were given the ability to “opt-out” of the handicap reimbursement program in 1987, and there are no self insuring employers currently participating in the program.

Stakeholder Involvement

BWC’s proposed changes to rule OAC 4123-3-35 Employer handicap reimbursement will be e-mailed to the following lists of stakeholders:

- Ohio Attorney General’s Office, Workers Compensation Section
- Ohio Association for Justice
- Employer Organizations:
 - Council of Smaller Enterprises (COSE)
 - Ohio Manufacturer’s Association (OMA)
 - National Federation of Independent Business (NFIB)
 - Ohio Chamber of Commerce
- BWC’s Self-Insured Division’s employer distribution list
- BWC’s Employer Services Division’s Third Party Administrator (TPA) distribution list
- BWC’s Legal Division’s Handicap Reimbursement distribution list

Stakeholder Feedback and BWC Response

BWC received two e-mails commenting on the rule.

1. From: Doug Maag, ARM, July 17, 2015

“As long as reviewing the rule, I would like to propose that the rule be amended to state that Handicaps can also apply to individual retro claims for the entire 10 year period they are in retro, but after 5 years it is on claim costs and not rate change basis.

“Years ago went to adjudication on this and committee at time said it makes sense to allow HC on older claims for retro claim costs adjustments only even though the rule did state so; so why not amend the rule to extend the time period for this purpose only?”

BWC response: No change in the rule

“BWC currently applies the rule the way you suggest.

“The rule provides a time limit for filing for handicap reimbursement based upon the language in R.C. 4123.343(B). The time limit for filing a handicap reimbursement application is the time that the claim is in the employer’s experience. BWC calculates an experience rating for a retrospective rated employer each year, and a claim for a retrospective rated employer is still used for experience rating for the normal experience period. That period is different than the employer’s ten year claims cost obligation.

“Separately, the claims costs are used for the employer’s retrospective billing purposes for ten years. If the employer has a handicap reimbursement in a claim for which the employer still has retrospective obligations, BWC applies the handicap reduction to the billing for each of the ten years.”

2. Art Stehlik, KKSG & Associates, July 24, 2015

“Regarding modifications to the proposed changes to the above rule: Employer Handicap Reimbursement #4123-3-35, I would propose the following changes:

“1. Allow employers to file handicaps going back 10 years from date of injury as companies with Individual Retrospective Coverage have the claim liability for 10 years. On occasion, a claim can be dormant and become active latter in the claim life, which could lead to handicap reimbursement potential. It obviously would not impact the Experience Mod, but would provide due relief to the employer in the claim charges. This 6 year rule was initiated prior to the inception of the retrospective plan in 1988. Since the employer has liability on these claims for 10 years, it only seems fair to give handicap relief when warranted.

“2. Handicap relief should be available to all state fund employers as they are paying into this fund thru their premium payments. The BWC should allow employers with the “Deductible Coverage” to participate in the handicap reimbursement program. If Retrospective Coverage companies can participate, so Deductible should also be able to participate.”

BWC response: No change in the rule

“BWC proposed minor amendments to the rule for the sole purpose of complying with two recent Acts. HB 493 updated several provisions of Ohio Revised Code to allow for the transition to prospective billing, and HB 52 amended R.C. 4123.343 to eliminate the ability of self-insuring employers to participate in the handicap reimbursement program.

“With respect to your suggestions, the rule provides a time limit for filing for handicap reimbursement based upon the language in R.C. 4123.343(B). The intent of the statute is to address impact of a handicap claim on the experience rating of the employer:

(B) Under the circumstances set forth in this section all or such portion as the administrator determines of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.34 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the accident or occupational disease experience of the employer.

“The time limit for filing a handicap reimbursement application is the time that the claim is in the employer’s experience. BWC calculates an experience rating for a retrospective rated employer each year, and a claim for a retrospective rated employer is still used for experience rating for the normal experience period. That period is different than the employer’s ten year claims cost obligation. Thus, for a 2008 claim for a retrospective rated employer plan beginning that year, the claims costs are used until roughly 2013 for the employer’s experience rating each year. Separately, the costs are used for the employer’s retrospective billing purposes for ten years, until 2018. If the employer has a handicap reimbursement in a claim for which the employer still has retrospective obligations, BWC applies the handicap reduction to the billing for each of the ten years. For example, if a 2008 claim had a handicap of 50%, and the claims costs for 2015 are \$1,000 in reducible compensation and medical, BWC will apply the handicap reimbursement and bill only \$500.

“As for employers participating in a BWC deductible program, such employers are eligible for a handicap reimbursement. Any handicap percentage, however, is applied only to payments listed in the statute and rule. See R.C. 4123.343(B):

The provisions of this section apply only in cases of death, total disability, whether temporary or permanent, and all disabilities compensated under division (B) of section 4123.57 of the Revised Code.

“BWC cannot apply the handicap reimbursement to the employer’s deductible payments, but can apply the handicap to all eligible payments after the deductible has been satisfied.”