



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Bureau of Workers' Compensation.

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Chapter 4123-14 of the Administrative Code.

Rule Number(s): 4123-14-03, 4123-14-05, and 4123-14-06

Date of Submission for CSI Review: August 9, 2021

Public Comment Period End Date: August 27, 2021

Rule Type/Number of Rules:

New/ ___ rules

No Change/ ___ rules (FYR? ___)

Amended/ 3 rules (FYR? No)

Rescinded/ ___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

BWC has identified and is proposing several changes to Chapter 4123-14 rules in response to the Common Sense Initiative Office (CSI) initiative encouraging state agencies to remove references to outmoded means of communication and in-person interaction from their rules where appropriate.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

4121.12, 4121.121, 4121.13, 4121.30, 4121.31

4. 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.

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5. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

N/A

6. **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)?**

These rules define areas of the workers' compensation law that support and explain Bureau policies and procedures in regard to non-complying employers. They are intended to give employers notice of the procedures the Bureau will use to collect unpaid premiums and other assessments, as well as the avenues and procedures for an employer to appeal. Any amount owed by non-complying employers can undermine the solvency of the State Insurance Fund, resulting in potential harm to employers and injured workers in the state of Ohio.

7. **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.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. **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 proposed rules were not distributed for stakeholders' feedback since the changes to these rules do not have significant substantive changes.

In addition, these rule changes are in response to the CSI initiative encouraging state agencies to remove references to outmoded means of communication and in-person interaction from their rules where appropriate, and CSI has waived early stakeholder outreach on these rules. Once filed with CSI, stakeholders will still have the opportunity to comment on these rules through the comment period.

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

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N/A

11. 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?

Under the direction of Lieutenant Governor Jon Husted, CSI has established an initiative called RegExplorer. CSI has consulted with Deloitte to examine rules in the Ohio Administrative Code to provide agencies with tools to undertake regulatory reform. The goal is to review regulations to filter out unjustified, bureaucratic barriers to business and job creation, and to reduce the regulatory burden citizens and businesses face while placing due importance on the health and safety of Ohioans.

RegExplorer uses artificial intelligence to analyze regulations to discover opportunities to accelerate and streamline rules to identify and eliminate outdated modes of communication and unnecessary in person interactions from agency rules. Overall, the changes to the rules should not cause significant pushback by stakeholders, since the changes generally consist of additional ways for stakeholders to accomplish their business. Moreover, specific issues in these rules include notice and manner of delivery (e.g. US mail, certified mail, email, methods as agreed to by the parties), time deadlines, and signature requirements.

12. 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. 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.

13. 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.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The BWC is the only state agency regulating workers' compensation claims, and thus there is not another agency promulgating rules on these subjects.

15. 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.

These rules will be posted on <https://codes.ohio.gov/ohio-administrative-code>.

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Adverse Impact to Business

16. 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; and

The impacted community includes employers in the workers' compensation system.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance); and

These rules govern the Bureau's policies and procedures in regard to non-complying employers, including the process to collect premiums and the process by which an employer may appeal a Bureau decision. These rules do outline the period of time an employer has to appeal a Bureau decision, but this is a statutory mandate and has not changed with this review. These rules do add language allowing for the collection of a penalty assessed on the employer and the process by which an employer may appeal that penalty, which is also governed by statute and other regulations

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.

Any adverse impact from these rules is hard to quantify since they govern the process the Bureau utilizes when an employer fails to comply with other statutes and rules. The amount of any assessment subject to collection and adjudication varies depending on certain factors, including the amount of premium owed by the employer and the length of time the premium has been outstanding.

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

These rules generally follow statutory mandates. 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

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

N/A

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19. 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?

N/A

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

Bureau rules and policies are available on <https://info.bwc.ohio.gov/wps/portal/gov/bwc/>. Also, BWC personnel are available to assist stakeholders in answering workers' compensation inquiries.

Requests for waiver of a default in the payment of premium, for approval of the original workers' compensation coverage retroactively, and for abatement of penalties.

- (A) The administrator of the bureau of workers' compensation, for good cause shown, may do any of the following:
- (1) Waive a default in the payment of premium by an employer where workers' compensation coverage has lapsed, if such a default is of less than sixty days duration; ~~if~~ If such a waiver is granted, workers' compensation coverage shall be reinstated retroactively;.
 - (2) Approve the original workers' compensation coverage to take effect retroactively;.
 - (3) Abate penalties imposed on employers for failure to comply with the state of Ohio's workers' compensation statutes.
 - (4) Waive penalties for failure to file or pay amounts due under the annual payroll report.
- (B) The term "good cause," as used in paragraph (A) of this rule, means a substantial reason, one that affords a legal justification or a legal excuse. If the employer is unable to establish "good cause" under this definition, the employer may also show "good cause" if the default is a one-time violation of the payment of premium or the filing of the annual payroll report.
- (C) Such requests shall be ~~in writing. They shall be properly signed in handwriting~~ submitted to the bureau by the employer concerned or by its duly authorized representative. The reason for the relief sought shall be fully explained. ~~Unsigned requests shall be held~~ The bureau may hold a request in abeyance until ~~they are~~ the request is properly completed, and the applicant shall be notified accordingly.
- (D) The administrator may refer such requests to the bureau of workers' compensation adjudicating committee for further consideration and for the determination of the issue raised.

Settlement of liability of a non-complying employer.

- (A) A non-complying employer may apply to the administrator of the bureau of workers' compensation for settlement of its liability to the state insurance fund. The request shall:
- (1) Be ~~in writing and properly signed in handwriting~~ submitted to the bureau by the employer concerned or by its duly authorized representative. ~~Unsigned requests shall be held~~ The bureau may hold a request in abeyance until it is properly completed, and the applicant shall be notified accordingly;
 - (2) Clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable;
 - (3) Include, but not be limited to, the following information:
 - (a) The size of employer's business, including the number of employees;
 - (b) The location of the business, including each state in which the business is located;
 - (c) The length of time the employer has been in business;
 - (d) The nature and type of the employer's business for the past five years;
 - (e) A copy of the employer's federal and state income tax return for the past three years;
 - (f) A notarized financial statement of current assets and liabilities;
 - (g) A sworn statement to explain the reason for noncompliance with the "Ohio Workers' Compensation Act";
 - (h) The amount of the requested settlement; and
 - (i) Whether the employer is in business at the present time and complying with the "Ohio Workers' Compensation Act."
- (B) The administrator may refer the request to the legal division of the bureau of workers' compensation for review, preparation of memorandum, and presentation to the adjudicating committee for approval or disapproval of the offer of settlement. The employer's past history with the bureau, if any, as reflected by the records of the

bureau or industrial commission, ~~shall~~ may be verified. If additional information is needed for proper disposition of the case, the matter may be referred for investigation. In justifiable situations, an independent financial statement and the employer's credit rating may be obtained.

- (C) The adjudicating committee may accept the offer of settlement if it finds by a preponderance of the evidence that such a settlement:
- (1) Is in the best interest of the state insurance fund;
 - (2) Is in the best interest of the employees of the employer concerned;
 - (3) Will be beneficial to the general welfare of the community; or
 - (4) Will best serve any other public purpose.

The decision of the adjudicating committee shall be reduced to writing and shall be mailed ~~forthwith~~ to all interested parties. An alternative delivery method may be used if agreed upon by the parties. The bureau may structure the payment of settlement with the employer for a period not exceeding twenty four months. Interest charges for the structured settlement shall be determined in accordance with section 131.02 of the Revised Code.

- (D) The administrator shall process an application to settle a liability for violation of a specific safety requirement in the same manner as set forth in this rule.

- (A) The administrator of the bureau of workers' compensation may delegate the authority granted to the administrator under Chapters 4121., 4123., and 4131. of the Revised Code and the rules adopted by the bureau of workers' compensation for determining employer premium, assessment, or penalty obligations or liabilities, eligibility for alternative premium plans or discount programs, or other employer-related disputes or issues as may be authorized under the workers' compensation statutes and rules. For this purpose, the administrator may appoint an adjudicating committee to provide employers with hearings on such matters referred by the administrator.
- (1) An employer ~~shall~~ may file with the bureau a request for a hearing with the adjudicating committee ~~only on a bureau approved form. The form may be filed with the adjudicating committee~~ only after the employer's request, protest, petition, or application has been reviewed by the appropriate bureau business unit and only after that business unit has ~~conveyed to~~ notified the employer ~~in writing~~ of the bureau's initial decision regarding the employer's request, protest, petition, or application.
 - (2) Unless a different time is provided by the Revised Code or the Administrative Code for such matter, an employer shall file a protest or appeal of the bureau's decision on the request, protest, petition, or application within two years of receipt of the bureau's determination.
 - (3) The employer shall state the specific grounds or reasons for the protest or appeal of the bureau's determination, and ~~shall~~ include supporting documentation. The bureau may refuse to grant a hearing to the employer where the employer has failed to state the specific grounds or reasons for the protest or appeal or has failed to provide supporting documentation as required by this rule.
- (B) The adjudicating committee shall consist of three members appointed by the administrator. The members shall have expertise or experience in matters relating to employers.
- (C) The adjudicating committee shall hold meetings and hearings to determine matters referred to it by the administrator. With the approval of the administrator, the adjudicating committee members may delegate alternate bureau employees to act on their behalf. The adjudicating committee may issue decisions without formal hearing, but shall afford an employer the opportunity for a formal hearing upon request. A prompt, efficient, and expeditious determination of matters shall be ensured to protect the interests of employers and the state insurance fund.
- (D) If an employer requests a hearing before the adjudicating committee, and has

complied with paragraph (A)(1) of this rule ~~by filing a protest form with the bureau,~~ or the adjudicating committee determines that a hearing is in the best interests of the employer or the state insurance fund, the adjudicating committee shall ~~mail a notice of hearing to~~ notify the employer and its representatives not less than fourteen days before the date of such hearing, setting forth the date, time, and place of the hearing. ~~The notice shall be mailed not less than fourteen days before the date of such hearing.~~ In justifiable cases, an emergency hearing may be arranged with the adjudicating committee and the fourteen day time period for notice may be waived.

- (E) The adjudicating committee shall keep a record of its dockets and proceedings. The adjudicating committee's decisions shall be reduced to writing and mailed to all interested parties and shall state the reason for the adjudicating committee's decision, including the evidence upon which the decision was based. The decision of the adjudicating committee shall be the decision of the administrator. If the employer files a written appeal within thirty days of the employer's receipt of the decision, the administrator or the administrator's designee shall hear the appeal of the decision and shall conduct a hearing for such purpose. Mail service may be waived by any party where e-mail or alternative means of delivery is agreed upon.
- (F) The administrator may authorize the adjudicating committee to consider the following matters:
- (1) Requests for waiver of a default in the payment of a premium under section 4123.37 of the Revised Code;
 - (2) Requests for settlement of liability of a non-complying employer under section 4123.75 of the Revised Code;
 - (3) Petitions objecting to assessment of premium under rule 4123-14-02 of the Administrative Code and section 4123.37 of the Revised Code;
 - (4) Employer's request for abatement of penalties under rule 4123-14-03 of the Administrative Code and section 4123.32 of the Revised Code;
 - (5) Protests of audit findings, manual classifications, experience ratings, retrospective ratings, or transfers or combinations of risk experience;
 - (6) Any other risk or premium matter under Chapters 4121., 4123., and 4131. of the Revised Code; and
 - (7) Petitions objecting to the amount of security required under rule 4123-17-15.3 of the Administrative Code and division (D) of section 4125.05 of the Revised Code.