

Safety & Workers' Compensation Committee

Wednesday, February 5, 2014

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2014 Safety & Workers'
Compensation Committee
Calendar

Wednesday, February 5, 2014
Wednesday, May 14, 2014
Wednesday, October 15, 2014

Meetings begin at 10:00 a.m.

OMA Safety & Workers' Compensation Committee
Meeting Sponsor:





OMA Safety & Workers' Compensation Committee February 5, 2014

AGENDA

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc., Chairman
Guest Speaker	State Representative Bob Hackett, Chairman, House Insurance Committee
Guest Speaker	Kim Kline, Chief, Department of Strategic Direction and Joy Bush, Director of Business Relations, Ohio Bureau of Workers' Compensation
BWC Developments	Scott Weisend and Denny Davis, OMA Staff
Safety / OSHA	Dianne Grote Adams, Safex
OMA Counsel's Report	Tom Sant of Bricker & Eckler, LLP
Public Policy Report	Rob Brundrett, OMA Staff

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: dlocke@ohiomfg.com or (614) 224-5111 or toll free at (800) 662-4463.

Additional committee meetings or teleconferences, if needed, will be scheduled at the call of the Chair.

Thanks to Today's Meeting Sponsor:



Representative Bob D. Hackett

74th House District



State Representative Bob Hackett is serving his third term in the Ohio House of Representatives. He represents the 74th House District, which includes Madison County and portions of Clark and Greene counties.

Representative Hackett comes to the Ohio Legislature after serving as Madison County commissioner. He is the founder and former managing partner of Central Ohio Financial Mgt. Group, LLC, a past board member of Madison County Hospital, and past president and board member of Choctaw Lake Property Owners Association.

A lifelong resident of the district, Representative Hackett dedicates his time to his community through involvement with the Ohio Farm Bureau, Madison County Historical Society and Mercator Business Club, among many other organizations. He holds a bachelor's degree in economics from Columbia University, where he earned All-Ivy Honors in football.

Representative Hackett and his wife, Sue, reside in London and are members of St. Patrick's Parish.



Kim Kline
Chief, Department of Strategic Direction
Biography

Kim Kline came to BWC in 2011 with the Appointment of Administrator Buehrer. She currently serves as the Chief of the Department of Strategic Direction. In her role she oversees the day to day employer outreach, marketing efforts, and overall agency goals and measures. She is also the Executive sponsor of the Prospective Implementation project.

Prior to her time at BWC she spent 5 years at the Ohio Senate working a range of jobs varying from a page, while still in college, to Legislative Aide. While in her role as a Legislative Aide to then Senator Steve Buehrer, Kim staffed the Insurance Committee, which heard all issues regarding BWC.

Kim earned a Bachelor's of Science in History with a minor in Political Science from The Ohio State University.

Joy Bush - bio

Ohio Bureau of Workers' Compensation

Joy is an experienced workers' compensation insurance professional with over 25 years of experience at the BWC/IC. After graduating with a Bachelor in Business and Finance from Franklin University, she went on to earn her CPCU (Chartered Property and Casualty Underwriter) and her PMP (Project Management Professional) designations. She has been instrumental in crafting alternate rating plans and discount programs that have saved Ohio employers millions of dollars in premiums. She has held leadership positions in Actuarial, Safety & Hygiene, Employer Services, Collections and most recently Business Development. She is currently the Director of Business Development, coordinating the Regional Business Development Managers and Business Consultants.

Overview of Prospective Payment Billing OMIA 2/5/14

DRAFT

Private Employer (PA) Proposal Overview

- Implement PA Prospective Payment effective 7/1/2015
- Will move to annual policy period
- To avoid employers needing to make a double payment, BWC will be providing an 8 month transition credit
- With the 8 month transition credit, employers will make their first prospective payment at the time they normally make their retrospective payment, on or before September 1, 2015

PA Ending Retrospective Payment (2014-2015)

- Employers will pay in August 2014 and February 2015 as normal
 - Final 50/50 payment will be due May 2015 (for 7/1-12/31/14 period)
- Although transition credit will be applied to cover the 1/1/2015 to 6/30/2015 premium due, employers will still be required to file the payroll report in August 2015.

Implementing PA Prospective Payment

7/1/2015 Policy Year Only

- BWC will use 7/1/13-6/30/14 payroll to estimate individual employers' premium obligations
- Employers will receive first prospective invoice in June 2015
- Every employer will be set up on a 6 installment cycle for the first year,
- The first installment (2 months) will be paid with transition credit

Implementing PA Prospective Payment

7/1/2015 Policy Year Only

- Employers will receive invoice for second installment (minimum 2 months) in late July/early August
- This invoice will be due on or before September 1st
- At the conclusion of each policy year, the employer will be required to report their actual payroll, since BWC estimated, and that report will calculate either additional premium owed or a credit to be returned to the employer. This is called the true-up
- First True-up for 7/1/15-6/30/16 period will be due by August 2016

PA True-up Payroll Reporting

- Employers will receive their first true-up notice by 7/1/2016
- The employer must report actual payroll for the previous year (ex: 7/1/15-6/30/16) by 08/15/2016
 - Online or over the phone only
 - If additional premium is calculated, it is also due by August 15th
 - If credit calculated, it will be released in normal process
- 30 day cure period
- This information is critical for rate setting, for that reason, any outstanding true-ups will result in immediate disqualification from rating plans and programs for that current policy year

Installment Options

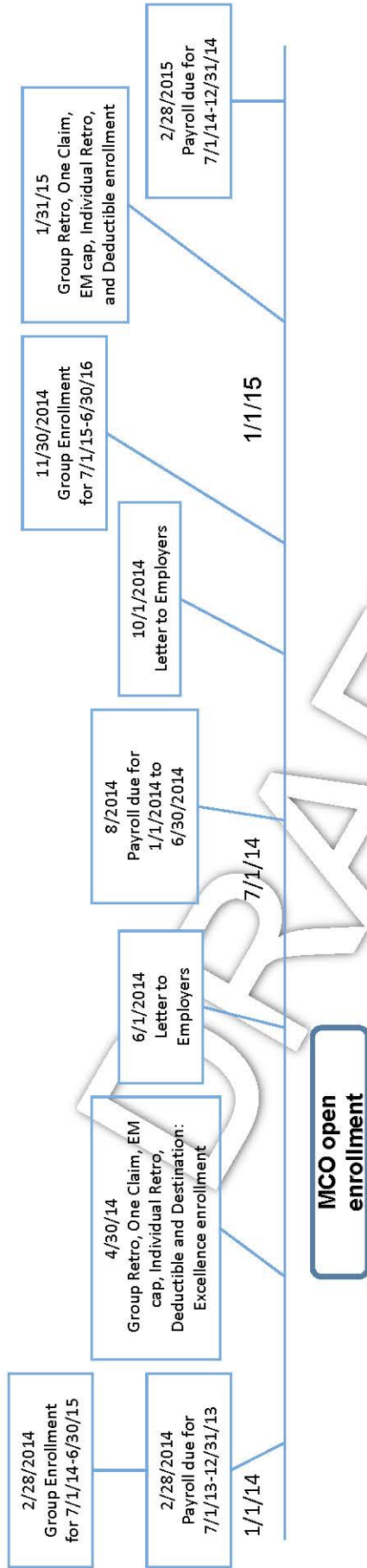
- Employers can choose between the following installment options:
 - » Annual
 - » Semi-annual
 - » Quarterly
 - » Bi-monthly
 - » Monthly

- Minimum payers will not receive installment options

PA Rating Plans and Destination:Excellence Impacts

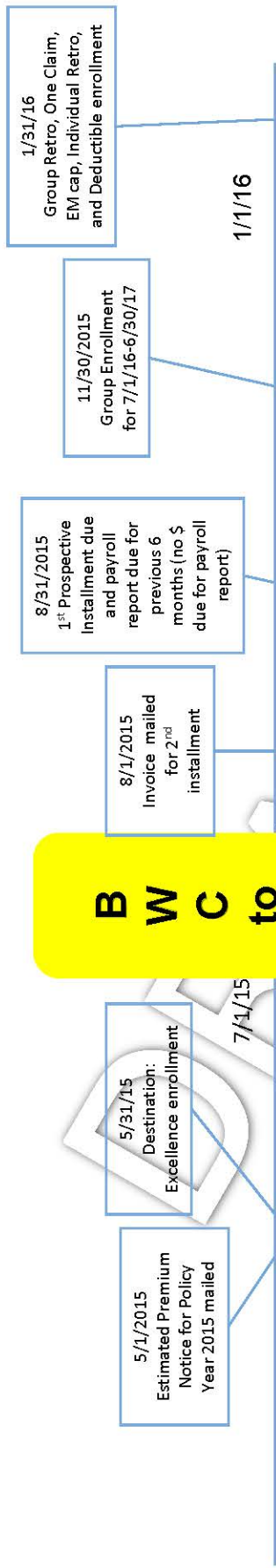
- Group Experienced Rating- 4th Monday in November
- Group Retrospective/One Claim /100 Percent EM Cap/
Deductible/ Individual Retro -01/31
- Destination:Excellence Programs – 5/31

Private Employer Timeline 1/1/2014-2/28/15



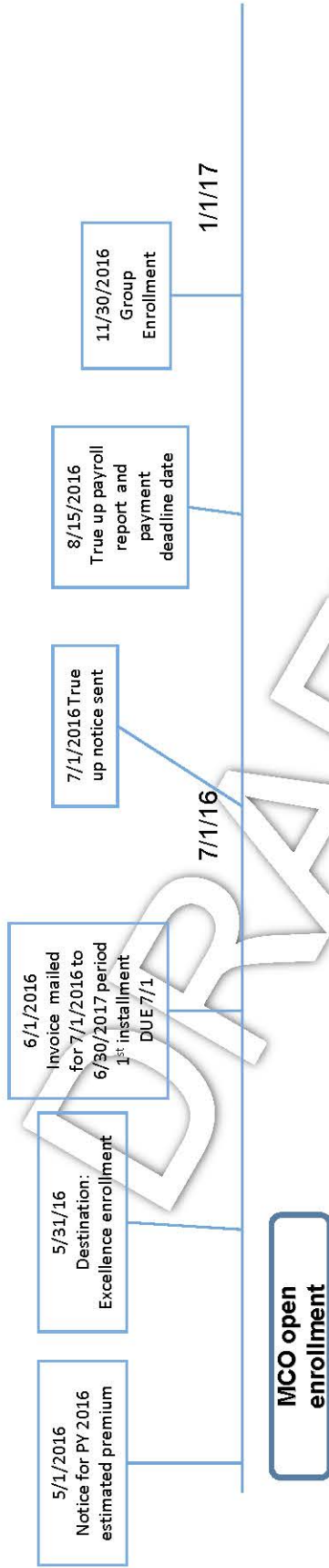
- Employer pays in February and August of 2014 and February of 2015 as normal
- Two letters will be sent. First one will be sent in June to indicate the change in Rating plan sign-up deadlines. A second letter will be mailed to Employers in October explaining the upcoming changes and reminding them not forget that rating plan deadlines
- Group Rosters due 2/28/14 for policy year 2014 and 11/30/14 for policy year 2015
- Rating Plan deadlines are the end of April for 2014, end of January for 2015

Private Employer timeline first Prospective year 1/1/2015 to 1/31/2016



- Notice for Estimated Premium Mailed in May
- Policy Year begins 7/1 with BWC paying first 2 months
- Invoice on 8/1 installment due 8/31
- Payroll report due/no money due

Private Employer Policy Year 5/1/16 and beyond



- Invoice mailed 6/1 -1st installment due 7/1
- True-up sent 7/1 due 8/15
 **First True-up 7/1/16

PA Prospective Payment 7/1/2015 and beyond

- BWC will use payroll from most recently completed policy year to estimate individual employer's premium obligations.
- Employers will receive a notice of estimated premium in May, 2015
- Employers will receive invoice in June, first installment due by July 1

Lapsing Coverage

- Installments will be equal payments, so an employer who does not pay their installment will be lapsed at the end of the 15 day cure period
- An employer who does not true up - will not be lapsed, but BWC will follow normal process of estimating and billing the employer- if no true-up or payment is received it will then be certified to the AGs office

Elective Coverage

- Employer will receive invoice with elective coverage included
- Elective coverage will cancel if the policy is lapsed more than 59 days. (Prior to the 59 day mark, the policy will be treated as a whole)
 - Employer will be required to reapply for elective coverage
 - System will adjust estimated payroll and premium based upon no elective coverage
- Minimum and Maximums will still apply

Timeline for Legislation/Rules

- Legislation:
 - Targeting the MBR (see handout)
- First rules will go to the Board next month:
 - Max credibility
 - Program Deadlines and compatibility chart
- All other rules to the Board in the July/August/September timeframe

Broad Marketing Efforts-

- The June 1st letter will be the “kick-off” to the marketing campaign
- BWC staff will be giving presentations across the state
- Workshops and Webinars in January, 2015 to demonstrate “real time” invoice payments
- Video tutorials on bwc.ohio.gov
- Safety Congress 2015 and 2016

QUESTIONS?

DRAFT

How will the BWC switch to prospective-payment of premium benefit your company?



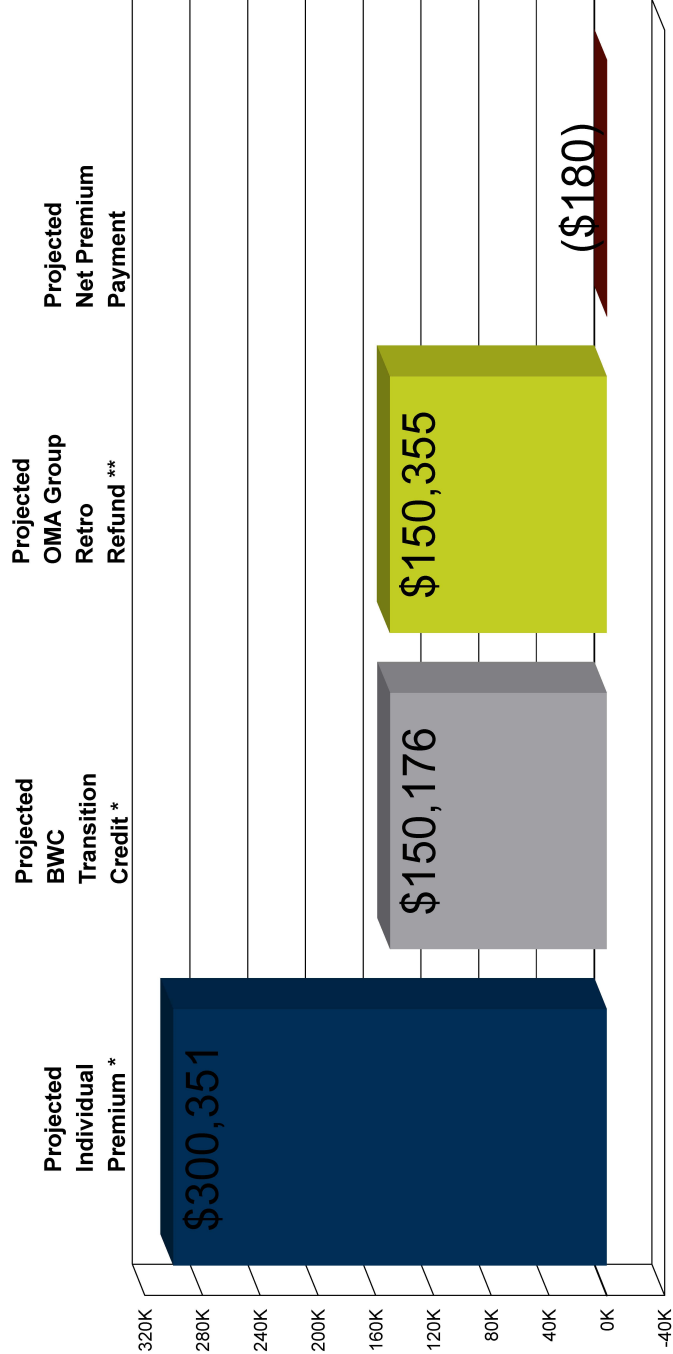
The Bureau of Workers' Compensation board of directors approved a plan and a timeframe to convert to a prospective premium payment practice. This aligns BWC with insurance industry premium payment practices.

In August 2015, employers will make their prospective premium payments. That August, employers will be invoiced for the policy year of July 1, 2015 to June 30, 2016. Multiple installment payment options will become available. To ease the transition, the **BWC will issue a credit for the entire first half of 2015 as well as fund the first two months of the 2015/16 premium year** - a total of eight months of premium relief.

This switch creates a unique one-time opportunity for employers that participate in a Group Retrospective Rating program for the 2014/15 and a 2015/16 policy years: That is: **The BWC will pay a rebate** - to the degree that the group earns one - **on the portion of your premium that the BWC pays or credits your company.**

This report uses your company's data to model the potential premium payment scenario for your company for the critical prospective payment switch time horizon.

Sample Company for policy year 2014/15



* Individual premium includes standard premium and assessments
 ** To be refunded by BWC in three installments in October 2016, 2017, 2018

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Key OSHA Activities - February 2014

Dianne Grote Adams
dgroteadams@safex.us

OSHA 300A

OSHA 300A – Reminder it should be posted 2/1 through 4/30.

OSHA Proposed Silica Rule

OSHA announced on September 12 a proposal to amend the silica rule, lowering the existing worker exposure level as well as several other sections to provide more adequate worker protection.

- Comment Period Extended to February 11, 2014.
- Hearing Begin March 18, 2014

OSHA Proposed Rule on Recordkeeping

OSHA announced on November 7, 2013 a proposal to improve tracking of workplace injuries and illnesses.

- Comments due – March 8, 2014
- Public Meeting to be held – January 9, 2014

>250 employees submit Quarterly

≥20 employees submit annually

Process Safety Management

On December 3, 2013, OSHA announced a request for information seeking public comment on potential revisions to its Process Safety Management standard and related standards, as well as other policy options to prevent major chemical incidents. It is in response to the 2013 Texas incident that killed 15 in an ammonium nitrate explosion.

Top 10 Cited Standards

1. Fall Protection
2. Hazard Communication
3. Scaffolding
4. Respiratory Protection
5. Electrical: wiring
6. Powered Industrial Trucks
7. Ladders
8. Lockout/tagout
9. Electrical: Systems design
10. Machine Guarding

Applicable Active National and Special Emphasis Program

1. Combustible dust
2. Hazardous Machinery-Amputations
3. Hexavalent chromium
4. Isocyanates
5. Lead
6. Primary Metals
7. Process Safety Management
8. Silica

Applicable Region V Emphasis Programs

1. Powered Industrial Trucks
2. Fall Hazards
3. Dairy Farm Operations
4. Grain Handling Facilities
5. Primary Metal

0 Receive Updates 

U.S. Department of Labor E-mail Subscription Service

OSHA extends comment period on proposed silica rule to February 11

United States Department of Labor sent this bulletin at 01/24/2014 02:33 PM EST

Having trouble viewing this email? [View it as a Web page.](#)

Trade Release



U.S. Department of Labor
Occupational Safety and Health Administration
Office of Communications
Washington, D.C.
www.osha.gov

For Immediate Release
Jan. 24, 2014
Contact: Office of Communications
Phone: 202-693-1999

OSHA extends comment period on proposed silica rule to February 11

WASHINGTON – The U.S. Department of Labor's Occupational Safety and Health Administration is extending the public comment period for the Notice of Proposed Rulemaking on Occupational Exposure to Crystalline Silica for an additional 15 days to Feb. 11, 2014.

In response to concerns raised about possible public confusion due to an error on www.regulations.gov, the federal government's online portal for submitting rulemaking comments, the deadline has been extended from Jan. 27 to Feb. 11 to allow stakeholders additional time to comment on the proposed rule. To submit comments using www.regulations.gov, stakeholders may click on the "COMMENT NOW!" box next to the title "Occupational Exposure to Crystalline Silica; Extension of Comment Period" and follow the instructions on-line for making electronic submissions.

Public hearings on the proposed rule are scheduled to begin on March 18, 2014. Information on the proposed rule is available at www.osha.gov/silica.

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OSHA Injury and Illness Public Meeting Statement

Joe

My name is Joe Trauger and I am the Vice President of Human Resources Policy for the National Association of Manufacturers, and together with Amanda Wood, the Director of Labor and Employment Policy at the NAM, we are here to speak on behalf of our members concerning the proposed rule: “Improve Tracking of Workplace Injuries and Illnesses.” We appreciate you holding this public meeting today and thank you for extending the comment period for the proposed rule to March 8, 2014.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturers employ nearly 12 million men and women, contribute more than \$1.8 trillion to the U.S. economy annually, have the largest economic impact of any major sector and account for two-thirds of private-sector research and development. Since 1895, the NAM has been advocating for policies that help manufacturers compete in the global economy and create jobs here the United States.

The proposed rule being discussed today would affect all of our members. It changes how and when employers will have to report injuries and illnesses, and the publication of these records in raw form will expose our members to mischaracterizations about their workplace safety records and worse.

The NAM believes OSHA already has the tools necessary to improve workplace safety. Current regulations require employers to keep injury and illness records and report them to OSHA. Employers, based on what works best for their business, have developed efficient ways to log what is required and submit the information in a particular format and in a timely manner that works well. Requiring more frequent reporting will force employers to shift valuable resources to develop new processes ensuring the reports are received on time and in the correct format. This could not only

be costly for employers, but it may disadvantage many businesses that do not have resources or may not have access to the internet on a regular basis.

Furthermore, OSHA states in the proposal “The Agency believes that public access to timely, establishment-specific injury and illness data will improve workplace safety and health.” Our belief is this view misses its mark. Publicly disclosing specific injury and illness data serves little public good, because it is easily misinterpreted, misunderstood and misused. It will almost certainly lead people to arrive at unfair conclusions or judgments about a company or particular industry. For a business this can be damaging at best and devastating at worst. Numbers on a page do not present an accurate picture, much less provide context and this new regulation will inevitably lead to mischaracterizations. Most importantly, it will not make workplaces safer.

At this time, I would like to give my colleague Amanda Wood, a chance to relay some specific information we’ve received from our members.

Amanda

Thanks Joe. We have a few examples of legitimate concerns submitted to us from our members. First, the information in the 300A forms regarding facility worker hours is considered proprietary information since the information in the reports highlight the state of a business at any given time. OSHA states in the proposal, “employers could compare their injury rates and hazards at their establishments to those at comparable establishments.” The reason employers may not choose to compare this information now is that it is proprietary. Companies will not just be disclosing their injury and illness rates, rather the reports will reveal a company’s flow of orders and likely provide an employee head count. Surely, any competitor could take this information and use it to their advantage. If a company wants to disclose this type of information to his/her competitors or others in industry, they should do so voluntarily, not because they are mandated to do so by the government, which has no fiduciary obligation to the company or its employees.

Second, there is no assurance the government will be able to protect private employee information. This is especially true of smaller establishments. While names and specifics would allegedly be redacted, by process of elimination, communities, press and others would be able to determine who is injured at each of these companies, which raises questions about whether the rule potentially hinders an individual's privacy rights under the Health Insurance Portability and Accountability Act. It could also lead to gross mischaracterizations about a company to which the company may not be able to recover, particularly smaller businesses. Overall, it appears there will be a disparity in the impact of the rule depending on the size of a business. Rather than embarrass employers and employees alike, OSHA should keep the current reporting requirements in place, which will keep private and proprietary information confidential.

Finally, it is likely through this proposal, companies would be held accountable for recordable incidents where either the actual cause was not under the employer's control or part of an employee's work or it is later discovered the injury was due to other causes. Examples were previously discussed by Ms. Cordaro in her statement. Based on the proposal, once these incidents are recorded and submitted to OSHA, we understand the reports cannot be amended. Both OSHA and the public would therefore have an inaccurate depiction of a company's safety record. OSHA admits as much in its preamble to the rule and a false record can only, lead to false assumptions and faulty conclusions.

I will turn it back to Joe to wrap up our comments.

Joe

As I close our statement, I would like to take a moment to remind the agency that manufacturers do not and cannot view regulations singularly as we so often do here in Washington. Manufacturers don't have the luxury of focusing on or complying with one regulation at a time – they must comply with them all. This proposed regulation, on the heels of the recent Letter of Interpretation with respect to unions and or community

organizations accompanying an OSHA inspector in non-unionized facilities, is alarming and viewed with great skepticism within the employer community.

To conclude, this rule will subject companies to misguided analysis and unfair heightened scrutiny from OSHA. The regulations in place are working and provide OSHA with the information it needs to properly evaluate a company's health and safety record. The potential for a rule like this to be misused and abused cannot be understated. We are aware of instances in which OSHA enforcement has been used by third parties to threaten and intimidate employers and their employees. Make no mistake, public disclosure of this kind of raw data will surely increase the likelihood and frequency of this behavior.

On behalf of the NAM, and its members we ask that OSHA withdraw this proposed regulation. Thank you for your time.

Instructions:

1. Please fill in blanks where you see red ink placeholders.
2. Please select the paragraphs that describe the position that your organization holds with respect to this proposed rulemaking – you may delete the other paragraphs that you believe don't apply to your organization.
3. For each paragraph that you decide to incorporate into your letter, please re-word it and tailor to your organization as much as possible. Letters that are uniquely worded are more impactful than letters that are copied and identical to several others. Therefore, please treat this as a model letter that you should personalize as much as you are able.
4. Comments may be filed in the following ways:
 - a. Comments may be uploaded at <http://www.regulations.gov>
 - b. Comments can be faxed to the OSHA Docket Office at (202) 693-1648
 - c. Comments may be mailed, express mailed, hand delivered, or couriered to the address provided in the address block in the sample letter below. For deliveries, the docket office's normal hours are 8:15 a.m. to 4:45 p.m.

<<< **Company Letterhead** >>>

January 27, 2014

OSHA Docket Office
Docket No. OSHA-2010-0034
Occupational Safety and Health Administration
U.S. Department of Labor
Room N-2625
200 Constitution Avenue NW
Washington, DC 20210

Re: Comments of **(Company Name)** on Proposed Revisions to Standard for Occupational Exposure to Respirable Crystalline Silica
Docket No. OSHA 2010-0034 (78 Fed. Reg. 56274, Sept. 12, 2013)

Dear Sir or Madam:

Thank you for the opportunity to comment on the Occupational Safety and Health Administration's (OSHA) Proposed Revisions to Standard for Occupational Exposure to Respirable Silica (RCS), Docket No. 2010-0034.

(Company Name) employs X people, and a substantial number of those employees are involved in activities that are likely to be covered by the proposed standard. While we believe that our organization complies with the current permissible exposure limit (PEL) of 100 ug/m³, it would be exponentially **more difficult** or impossible (*select one*) to meet the proposed PEL of 50 ug/m³.

In addition, our organization has the following comments on specific parts of the proposal.

(Select any combination of the following numbered paragraphs).

1. Measurability. Our organization notes that OSHA is proposing a PEL that is below the level where exposure can reliably be measured. The proposed rule would set a single PEL at 50 ug/m³ and an action level (AL) at 25 ug/m³. It is universally recognized that the current methods for

sampling, measuring, and analyzing respirable crystalline silica are not exact, but are subject to variation or error. When the margin for error for each of these steps is added up, it is not feasible to expect our organization to achieve the AL or PEL with any degree of reliability. Indeed, no laboratories that we are aware of are able to demonstrate that they can even take measurements reliably, given the margin of error, at the AL and PEL as proposed. **We have contacted _____, an AIHA accredited laboratory, who have told us that they cannot assure accurate results at the PEL proposal in the rule.**

2. Hierarchy of Controls. The proposed standard requires employers to employ engineering controls and work practice controls; respiratory protection is only permitted in four circumstances, essentially when the engineering and work practice controls are insufficient to bring exposures levels to or below the PEL. In instances where engineering and work practices will not achieve compliance with the PEL, employers are required to use them nonetheless. Our organization could spend unduly burdensome portions of its revenue implementing measures that are well established to be insufficient. OSHA should restrict its rulemaking of RCS to the most cost-effective methods of achieving compliance and should withdraw any requirement that an employer engage in activities such as these that are known to be ineffective. The advances in respiratory protection have been such in the last 50 years that OSHA should re-examine its adherence to the hierarchy of controls, and recognize that respirators can be more effective and cost-efficient than many largely ineffective and expensive engineering controls.
3. Periodic Exposure Assessment. The proposed standard calls for taking exposure measurements every three months if the exposure levels exceed the PEL. In instances where the employer will not be able to feasibly achieve the PEL, this requirement forces employers to devote resources to an unnecessary and redundant exercise instead of to measures that can meaningfully reduce an employee's actual exposure. Our organization therefore proposes that an employer only engage in exposure assessments where the exercise will assist the employer in making decisions about control measures; employers should be able to rely upon initial exposure assessments in instances where conditions and practices have not changed.
4. Job Rotation. The proposed standard prohibits the use of job rotation in order to reduce employee exposure to RCS. The conventional industrial hygiene approach is that, where risk is a function of the cumulative quantity and duration of exposure, the employer should be empowered to take action to reduce an employee's exposure to that hazard by any reasonable means. We believe job rotation is an effective way to mitigate all potential health risks associated with silica. We therefore recommend that OSHA permit job rotation as a common sense method of reducing the duration of an employee's exposure to RCS along with practical engineering controls and respiratory controls as a common sense method of reducing or eliminating employee's exposure.
5. Training. The proposed rule is premised upon OSHA's assertion that the per employee cost to train employees on the requirements of this standard is \$2.00. In our experience, the fixed cost of implementing a training program is a minimum of \$ x. The incremental cost per employee of training in time only, fully burdened is ranges from \$ to \$ y. The minimum time for a training session of the complexity of the silica standard will be at least y hours per person. We do not believe that OSHA has undertaken a fair or realistic assessment of the costs of complying with the training provision and that the training costs are drastically underestimated.
6. Cost of Compliance. OSHA has issued a preliminary economic assessment in support of this proposed rule. In that assessment, OSHA has grossly underestimated the costs for equipment, for training, for monitoring, and the amount of staff necessary for implementing the requirements

of its proposed rule. OSHA has further made assumptions that are without foundation, such as its assumption that training or medical monitoring are performed by an organization's own staff or that a fixed cost for these activities can be applied to small and large organizations alike. The costs of compliance with this rule are substantially higher than OSHA has estimated and will have a destructive effect upon manufacturing jobs and upon the viability and competitiveness of manufacturers.

7. Compliance Creates Other Hazards. OSHA requires the implementation of ventilation and wet assisted tools in order to manage exposure. OSHA has neglected the conflicts this will create with our organization's efforts to manage other hazards. For example, air permitting will need to be changed in order to account for increases in ventilation. Ventilation systems will need to be substantially reconfigured to rebalance air distribution patterns. Water used in wet assisted equipment will need to be managed properly and could create unnecessary hazards. Employees will need to be provided with overtime pursuant to the Fair Labor Standards Act in order to meet a number of requirements like exposure assessments that continue for greater than an employee's scheduled shift.
8. Necessity. The scientific evidence suggests there is a threshold effect exposure level for RCS and real world experience indicates that the overwhelming number of employers who would be affected by this proposal are already controlling exposures below that level.

Our organization is a member of The National Association of Manufacturers (The NAM). The NAM has also filed comments to this docket. Our organization supports The NAM's position and adopts its comments by reference.

We therefore recommend that OSHA withdraw its proposal until it can conduct a proper economic assessment of the costs associated with compliance and be reasonably certain the adoption of the new PEL is necessary and will not result in the creation of other hazards not related to RCS, but nevertheless arising from adoption of the new standard. OSHA additionally should limit its rulemaking to requiring employers to undertake the most cost effective measures that will directly result in a reduction in exposure to the hazards associated with RCS.

Sincerely,

Company

By: ____ (Name)

____ (Title)

____ (Address and Phone Number)



OMA Safety & Workers' Compensation Committee Counsel's Report

Sue A. Wetzel and Thomas R. Sant, Bricker & Eckler LLP
Counsel to the OMA
February 5, 2014

A. Update on *San Allen, Inc., et al. v. Bureau of Workers' Compensation, et al.*, Cuyahoga County Court of Appeals, Eighth District, Case No. CA-13-09786

Since the last meeting of this Committee, the San Allen case, dealing with the validity of group rating, has been argued before the Eighth District Court of Appeals on Wednesday, January 29, 2014. We will continue to monitor the Court's docket to determine when the decision is rendered.

B. State ex rel. *Kelsey Hayes Co. v. Grashel*, Slip Opinion No. 2013-Ohio-4959

The Supreme Court, on November 14, 2013, handed down another decision concerning the issue of voluntary abandonment. In this case, Mr. Grashel filed a claim with the date of injury of June 13, 2001. The claim was allowed for hypersensitivity numenitis and hypersensitivity-induced reactive upper airway disease. For those conditions, he was granted temporary total disability for a period of time, and then returned to work in May 2003. Eventually, his symptoms returned. He stopped working for the company on September 20, 2004 on the advice of his treating physician. He thereafter filed an application for temporary total disability benefits. Based on an independent medical examination performed by David M. Rosenberg, M.D., the temporary total disability benefits were denied because of the doctor's finding that the problems he had were not due to the allowed conditions, but a continued smoking history. Subsequently, on February 22, 2005, a Staff Hearing Officer denied Mr. Grashel's request for temporary total disability benefits. The Commission relied on Dr. Rosenberg's opinion that Mr. Grashel's smoking related obstructive pulmonary disease caused his symptoms.

On May 5, 2005, Mr. Grashel filed his first application for permanent total disability compensation. The Staff Hearing Officer found that he retained some capacity to work and denied the application. Thereafter, on July 18, 2007, Mr. Grashel filed another application for permanent total disability benefits, which was supported by a June 11, 2007 report from his treating physician, Dr. Pue. A Staff Hearing Officer awarded Grashel compensation as of that date and did not mention his retirement in 2004.

The employer filed a complaint mandamus in the Tenth District Court of Appeals issued a limited writ ordering the Commission to rehear the matter and consider whether he had

voluntarily abandoned the work force in 2004. Subsequently, a Staff Hearing Officer again awarded him permanent total disability benefits, concluding that he had left the work force due to the allowed conditions in his claim. Kelsey Hayes filed another complaint for mandamus, alleging the Commission had abused its discretion. The Court of Appeals denied that writ.

The Supreme Court reversed finding that the Commission did not consider all of his medical conditions at the time Mr. Grashel left the work force. The Commission did not consider Dr. Rosenberg's 2004 opinion, nor the Commission's 2005 Order, that conclusively concluded that Mr. Grashel's increased symptoms were caused by a non-allowed condition. Relying upon the case of State ex rel. Zamora v. Ind. Comm., 45 Ohio St.3d 17 (1989), the Court felt it was inconsistent for the Commission to reject Dr. Pue's 2005 opinion, then rely on it in 2009.

The employer maintained that not only did Mr. Grashel voluntarily retire in 2004, but that he failed to seek other employment or vocational training, therefore abandoning the entire job market and making himself ineligible for compensation for temporary total disability.

The decision was a split one, with the majority of four and the dissenters of three.

C. State ex rel. Cline v. Abke Trucking, Inc., Slip Opinion No. 2013-Ohio-5159

In this case, which was decided on November 27, 2013, again deals with the issue of voluntary abandonment. In this case, Mr. Cline was injured on August 27, 2008. He was placed on medical restrictions and assigned modified duty off site for a period of time, and was subsequently released to return to work on March 25, 2009 with no restrictions. It came to the employer, Abke's attention, that Mr. Cline was taking a form of insulin for diabetes and pursuant to federal regulations, could not operate a commercial vehicle. Therefore, he was terminated on March 25, 2009.

The Bureau of Workers' Compensation granted temporary total disability benefits beginning July 1, 2009, and a District Hearing Officer affirmed. In December of that year, a Staff Hearing Officer vacated that decision, having determined that Cline's termination from Abke for violating written work rules was voluntary. Mr. Cline then filed an action in mandamus and the Court of Appeals determined that he could not be ineligible for the temporary total disability benefits and found that the Commission had abused its discretion.

On appeal to the Supreme Court, the Court issued a partial writ of mandamus returning the matter to the Commission, because the Commission had not specifically relied on evidence in its rulings but merely concluded that as a result of Mr. Cline's termination, he had voluntarily abandoned his employment and was therefore barred from receiving compensation of temporary total disability benefits. The Court concluded that under the case of State ex rel. Noll v. Ind. Comm., 57 Ohio St.3d 2003(1991), the Industrial Commission was required to explain its reasoning and conclusions in reaching its decisions.

D. State ex rel. Roxbury v. Ind. Comm., Slip Opinion No. 2014-Ohio-84

The Supreme Court decided this matter on January 15, 2014. In this case, Ms. Roxbury was injured while working on September 21, 2004. After the claim was allowed, she collected temporary total disability benefits until July of 2006, when it was found that she had reached maximum medical improvement. A year later, Ms. Roxbury filed a motion to add an additional condition, a psychological matter and obtain temporary total disability benefits.

The condition of dysthymic disorder late onset was approved by the District Hearing Officer, who denied temporary total disability benefits. After the temporary total disability benefits were denied for the psychological condition, Ms. Roxbury filed for permanent total disability compensation. In April 2009, the Commission denied her request, finding that none of her allowed conditions rendered her permanently and totally disabled.

Later, based on another opinion, a Staff Hearing Officer awarded temporary total disability benefits, which was later denied by the full Commission, which concluded that there was insufficient evidence that Ms. Roxbury was disabled as a result of a psychological condition. Further, the Commission determined that Ms. Roxbury had voluntarily abandoned the entire work force. On appeal to the Supreme Court after the Court of Appeals refused to issue a writ of mandamus, the Supreme Court found that Ms. Roxbury had abandoned her employment due to the evidence before the Commission, which demonstrated that she was physically capable of performing sedentary work and that her psychological condition was not disabled.

Tom Sant
Counsel to the Safety and Workers'
Compensation Committee

Professional Employer Organizations (“PEO”)

Applicable Statute/Code Sections:

- Ohio Revised Code, Chapter 4125
- Ohio Administrative Code section 4123-17-15 (to be rescinded and replaced with Proposed Rules 4123-17-15 – 4123-17-15.7 as a result of S.B. 139)
 - JCARR is meeting on February 3, 2014
 - If no action is taken, the anticipated effective date is February 17, 2014

A. What is a PEO?

O.R.C. § 4125.01(D) “a sole proprietor, partnership, association, limited liability company, or corporation that enters into an agreement with one or more client employers for the purpose of coemploying all or part of the client employer's workforce at the client employer's work site.”

PEOs can assist with health benefits, workers’ compensation claims, payroll, tax compliance, and unemployment claims. PEOs offer small businesses the opportunity to focus on their business or service while outsourcing the human resources and compliance.

For purposes of workers’ compensation, PEOs assume the responsibility of reporting payroll, claims, and paying premiums for employees pursuant to the PEO agreement. Additionally, PEOs are recognized as the Employer of Record for shared employees.

B. PEO Agreements/Employer of Record

O.R.C. § 4123.01(E) “a written contract to co-employ employees between a professional employer organization and a client employer with a duration of not less than twelve months in accordance with the requirements of this chapter”

Types of Agreements (OAC §§ 4123-17-15 & 4123 -17-15.1):

- *Full lease* – PEO co-employs *all* of client employer’s workforce and wages are paid by and reported under the EIN of the PEO for federal tax purposes
 - PEO is employer of record for workers’ compensation purposes
- *Partial Lease* – PEO co-employs *part* of a client employer’s workforce only to the extent that wages are paid by and reported under the EIN of the PEO for federal tax purposes
 - employer of record is determined by contractual agreement

C. Senate Bill 139

SB 139 provides confidence to small business owners that only reputable PEOs will be permitted to operate in Ohio. By clarifying the duties and obligations of a PEO, there will be less confusion so that businesses can focus on their product or services, instead of getting caught up in compliance issues.

While some PEOs are concerned about over-regulation and increased costs, most have backed the bill indicating higher standards will help prevent questionable PEOs from hurting the reputation of the co-employment business in general.

Main points of SB 139:

- Stricter registration and reporting requirements (O.A.C. § 4123-17-15.2)
 - Registration fees are changing; need to check the appendix when the rules come out
 - Additional materials required when registering
 - Semi-annual reports
 - Limited registration (generally out-of-state employers, but this could be changing)
- Stricter security requirements (O.A.C. § 4123-17-15.3)
 - Bond, irrevocable letter of credit, assurance organization approved by the administrator
 - Rules for assurance organizations and BWC approval
- Stricter Financial Requirements (O.A.C. § 4123-17-15.4)
 - O.R.C. §§ 4123.05 and 4123.051 in more detail
- Rules for Self-Insuring PEOs ((O.A.C. § 4123-17-15.5)
 - Five years of financial records
 - All of the client-employer's wages shall be paid and reported under the EIN of the PEO for federal tax reporting purposes

D. Minute Men Select, Inc. issue:

Minute Men, Inc. takes issue with Proposed Rules 4123-17-15 and 4123-17-15.5 requiring self-insured PEOs to file federal taxes under the EIN of the PEO as opposed to the EIN of the client company.

While most PEOs already file under the client-employer's EIN, Minute Men asserts that filing taxes under individual client-employer's own EIN allows for more transparency, specifically citing the example that the client-employer would be notified directly if for some reason the PEO underpaid or paid the taxes late. Further, they indicate that their clients prefer to report under their own EIN, and thus, goes against their business model.

In response to Minute Men's complaints, the BWC has granted Minute Men a grace period until July 1, 2015 to comply with the Proposed Rules, anticipating there will be no action by JCARR and the rules will become effective soon thereafter. Ultimately, the BWC decided that to permit reporting under the client-employer's EIN is inconsistent with a true co-employment relationship, and the rules should be adopted as proposed.

Sue A. Wetzel
Counsel to the Safety and Workers'
Compensation Committee

TO: OMA Government Affairs Committee
FROM: Rob Brundrett
DATE: February 5, 2014
SUBJ: Safety and Workers' Compensation Policy Update

Overview

The General Assembly returned from their winter holiday break in mid-January. While rumors of possible workers' compensation legislation persisted through the fall, a bill was never introduced. Governor Kasich is expected to introduce his mid-biennium review in late February. The Bureau indicated they are planning to include the prospective billing enabling legislation within the package.

No other transformative BWC legislation appears possible this late into the General Assembly. Campaign season will take priority and members will work with eye toward the fall.

Legislation and Rules

HB 143 Workers' Compensation Formulas (Dovilla R-Berea and Butler R-Oakwood)

HB 143 would require the Administrator of Workers' Compensation to include in the notice of premium rate that is applicable to an employer for an upcoming policy year the mathematical equation used by the Administrator to determine the employer's premium rate. According to the BWC this information is already available on the web for all employers to review. There would be a compliance cost to the BWC to send out repeat information. The sponsors of the bill say it is necessary because not everyone has internet access. The bill has had one hearing and is not expected to move.

SB 176 Worker's Compensation Benefits (Seitz R-Green Township)

SB 176 would prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law. Senator Seitz has introduced this bill in previous General Assemblies. The bill has had two hearings. It most recently had a proponent testimony hearing in January.

HB 338 Test to Determine if Certain Individuals are an Employee Under BWC and Other Laws (McGregor R-Springfield and Hottinger R-Newark)

HB 338 exempts an individual who provides services for or on behalf of a motor transportation company transporting property from coverage under Ohio's Workers' Compensation Law, Ohio's Unemployment Compensation Law, and Ohio's Overtime Law if specified conditions apply to the individual. The bill was introduced in late November and had two hearings in January.

BWC Medical Reform

Representative Barbara Sears (R-Sylvania) and Senator Bob Peterson (R-Sabina) were planning to reintroduce the BWC medical reform package as companion bills last year. Key to the package is a provision that requires an injured worker to visit a doctor within the MCO's network if they have not returned to work within 45 days of the injury.

However, neither the House or Senate moved to introduce the bills last year and the flurry of interested party activity has dried up in the late summer. Both Peterson and

Sears became their caucus point person on different priority issues which pulled them away from the BWC debate.

The Bureau is operating as if the bills will not be introduced.

Mid-Biennium Review

The Governor will be introducing another comprehensive legislative package in February. The Mid-Biennium Review (MBR) will contain policy shifts for many agencies. The BWC will be no different. They are planning on using the MBR as the vehicle to move the prospective billing enabling legislation. The BWC is also weighing the possibility of including legislation to address the problems companies have with other states' workers' compensation laws.

Self-Insurance Rule Changes

The SI rules that the OMA advocated for in the budget have been submitted to the Common Sense Initiative (CSI). This agency will determine if there are any adverse impacts on the state's businesses. After approval from CSI the rules will be submitted to JCARR for final approval.

PEO Rules

Last fall the BWC performed its five year rule review on PEOs. After the review, the BWC updated several rules including adding a rule requiring PEO's to file under their EIN for reporting purposes. The rules were pulled from JCARR due to one Ohio PEO who reported in an inconsistent way than by what the rule was going to require. The rules have since gone to JCARR. However legislation might be introduced to address this issue.

Bureau of Workers' Compensation

Prescription Drugs

The BWC Pharmacy Programs Director, John Hanna, has been highlighting the results of changes made to its pharmacy management program, which have driven total drug cost savings of more than \$20 million since 2011.

Opiate doses have dropped by 10.9 million since 2010.

This report comes on the heels of a new rule requiring medical providers caring for chronically injured workers to use the Ohio Automated Rx Reporting System (OARRS). BWC's newest pharmacy rule became effective Jan 1. Ohio providers who write controlled substance prescriptions for chronic care must now enroll in OARRS in order for BWC to cover these prescriptions.

Improving Workers' Compensation Medical Care in Ohio

In January the BWC in conjunction with Ohio State's Center for Health Outcomes, Policy and Evaluation Studies put on a half day seminar focused on improving workers' compensation medical treatment in Ohio. Attendees heard from Administrator Buehrer, Allard Dembe and Tom Wickizer from Ohio State, Greg Moody, Director at Ohio's Office of Health Transformation and two panels made up of various stakeholders including the OMA.

The goals of the seminar were to:

- Reaffirm key principles for what a high performing system should achieve;

- Identify key improvements needed;
- Educate on how health care is evolving;
- Create an ongoing forum where stakeholders can continue to pursue goals in a positive way; and
- Affirm support for the proposed process and solicit ideas for consideration.

Industrial Commission

New Ombudsman

Beryl Brown Piccolantonio, formerly a district hearing officer at the Ohio Industrial Commission, is the new Chief Ombuds Officer for the Ohio workers' compensation system.

Beryl's experience includes: Supervisor, Legal Research Legal Assistant to General Counsel at Ohio Industrial Commission; Assistant Director, Office of Human Resources at State of Ohio; Legal Assistant to Chairman Patrick Gannon at Ohio Industrial Commission; and, Project Assistant at Vorys, Sater, Seymour and Pease LLP.

She is a graduate of The Ohio State University Moritz College of Law and Kent State University.



SB 176 Sponsor Testimony
Senator Bill Seitz
Senate Commerce & Labor Committee
November 6th, 2013

Thank you, Mr. Chairman, and members of the committee, for the opportunity to present Senate Bill 176 today.

This piece of legislation requires every injured worker to certify to the Ohio Bureau of Workers' Compensation (BWC) that he is authorized to work in this country. Under my legislation, illegal aliens will not receive workers' compensation benefits. I introduced similar legislation in the two previous General Assemblies (SB 238 and SB 323). SB 238 passed the Senate on May 27th, 2010 but did not receive House hearings; SB 323 ran out of time last year.

During the fall of 2009, oversight hearings on BWC rates, Insurance Committee members learned that BWC does not currently check employment authorization status and, in fact, views current state law as prohibiting it from doing so. BWC admitted, however, that no federal law requires payment of illegal aliens' workers' comp. claims and that the General Assembly is free to change state law to require proof of authorized employment status, as several states have already done. Because BWC is mainly funded by charges to Ohio employers, and because employers constantly complain to us about the price of payments, every dollar paid out by BWC to illegal alien workers is money that would otherwise go to reduce employer charges and make Ohio more competitive.

Under my legislation, every injured worker must certify to BWC that he or she is authorized to work in the USA. They will make this certification on their claim form under penalty of criminal violation if the certification is false. This will be the same certification process currently used to process unemployment comp. claims in Ohio. If the injured claimant does not certify proper work authorization, or falsely does so, then his claim will not be paid and the incident will not count against the employer's claims experience (this is a principal variable in employer BWC rates).

Under the legislation, illegal aliens whose claims are denied by BWC will be able to sue their employer for their injuries, if the employer committed an intentional tort against the employee (current law allows this) or if the illegal alien can prove by clear and convincing evidence that the employer hired the injured worker knowing that the employee was not authorized to work in the US (this is the same standard of liability as federal immigration law establishes for all US employers).

Legal workers have every reason to be concerned that our workers' compensation system will have enough money to pay their injury claims and law abiding employers have every reason to pay their BWC premiums only on the workers who are legally authorized to work in Ohio.

I have been working closely with BWC to refine my proposal over the two previous General Assemblies to ensure that it is workable and as least burdensome as possible. We are confident that this has been achieved. The legislation to be introduced also incorporates changes requested by the NFIB and Farm Bureau to the bill from last session.

I urge your favorable consideration of the bill. At this time I would be happy to entertain questions from the committee. Thank you, Mr. Chairman.



Ohio Legislative Service Commission

Bill Analysis

Nicholas A. Keller

S.B. 176

130th General Assembly
(As Introduced)

Sens. Seitz, Burke, Schaffer

BILL SUMMARY

- Prohibits an illegal or unauthorized alien from receiving compensation or benefits under Ohio's Workers' Compensation Law.
- Prohibits an employer from electing to cover an illegal or unauthorized alien under the Workers' Compensation Law.
- Requires a claimant for workers' compensation benefits to submit an attestation certifying that the claimant or the deceased employee who is the subject of the claim was an eligible "employee" under Workers' Compensation Law.
- Prohibits a person from making a false statement in an attestation with purpose to defraud or knowing that the person is facilitating a fraud.
- Grants an employer immunity from liability for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect unless the employer employed the individual knowing that the individual was not authorized to work under federal law.
- Maintains employer liability for intentional torts.
- Creates an irrebuttable presumption that an illegal or unauthorized alien assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for an employer.
- Eliminates the potential jurisdiction of Ohio courts to hear any claim for damages suffered by an illegal or unauthorized alien by reason of personal injury sustained or

occupational disease contracted in the course of employment and caused by the employer's wrongful act or omission or neglect unless the employer employed the individual knowing that the individual was not authorized to work under federal law.

CONTENT AND OPERATION

Overview of workers' compensation liability

Ohio's workers' compensation system compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the employee's employment. The Ohio Constitution authorizes the General Assembly to enact legislation that creates a system of workers' compensation payments to injured employees or their families in lieu of all other rights to compensation or damages as a result of death, injuries, or occupational disease. According to the constitutional provision, an employer who pays the premium or compensation as required by the Workers' Compensation Law will not be held liable in damages at common law or by statute for the death, injury, or occupational disease of an employee.¹

On the other hand, an employer may be liable at common law or under a statute outside of the Workers' Compensation Law for an injury sustained by an individual if that individual is not an "employee" under the Workers' Compensation Law. For example, worker's compensation immunity does not apply, and an employer may be liable under common law, for an injury sustained by an independent contractor.²

Exclusion of illegal aliens and unauthorized aliens from the Workers' Compensation Law

Current law defines "employee" for purposes of Ohio's Workers' Compensation Law³ to include every person in the service of any person, firm, or private corporation, including any public service corporation, that employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens.⁴ The Workers' Compensation Law does not define "alien."

¹ Section 35, Article II, Ohio Constitution and R.C. 4123.74 and 4123.77, not in the bill.

² *Fuhrman v. Garrison Feist Constr. Co.*, Hamilton App. Nos. C-000063, C-000080 2000 Ohio App. LEXIS 5851 (December 15, 2000).

³ R.C. Chapters 4121., 4123., 4127., and 4131.

⁴ R.C. 4123.01(A)(1)(b).



The bill limits the definition of employee with respect to aliens to include only aliens authorized to work by the U.S. Department of Homeland Security or its successor. The bill excludes illegal aliens and unauthorized aliens from the definition of employee. Under the bill, "illegal alien" means an alien who is deportable if apprehended because of one of the following:

(1) The alien entered the United States illegally without the proper authorization and documents.

(2) The alien once entered the U.S. legally and has since violated the terms of the status under which the alien entered the U.S., making that alien an "out of status" alien.

(3) The alien once entered the U.S. legally but has overstayed the time limits of the original legal status.

The bill defines "unauthorized alien" as an alien who is not authorized to be employed as determined in accordance with the Immigration Reform and Control Act (IRCA).⁵

Current law allows any employer to elect to include as an "employee" within the Workers' Compensation Law any person expressly excluded from the definition of "employee." The bill does not extend this authority to employers with respect to illegal or unauthorized aliens; thus, under the bill, an employer may not elect to obtain coverage under the Workers' Compensation Law for an illegal alien or unauthorized alien.⁶

Liability for injuries incurred or occupational diseases contracted by illegal or unauthorized aliens

General employer immunity from liability under the bill

Except as otherwise provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, under the bill if a claim is denied under "**Attestation of eligibility**" or "**Administrator review of attestation**" below, the claimant's employer, or, if the claimant is a dependent of an employee who died as a result of suffering an injury or contracting an occupational disease, the deceased employee's employer, is not liable to that claimant for damages suffered by reason of personal injury sustained or occupational disease contracted in

⁵ R.C. 4123.01(A)(1)(b), (A)(2)(e), (L), and (M) and Section 101(a) of the "Immigration Reform and Control Act of 1986," 100 Stat. 3360, 8 U.S.C. 1324a.

⁶ R.C. 4123.01(A).



the course of employment caused by the wrongful act or omission or neglect of the employer. For such a claimant, filing a claim under Ohio's Workers' Compensation Law is the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the claimant's or deceased employee's employment. Notwithstanding the continuing law provision stating that noncomplying employers are not entitled to the benefits of the Workers' Compensation Law⁷ and except as provided below, the bill creates an irrebuttable presumption that the individual assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for that employer.⁸

State and political subdivision immunity under the bill

Under the bill, the state or a political subdivision is not liable in any civil action brought by or on behalf of an illegal alien or an unauthorized alien for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the wrongful act or omission or neglect of the state or political subdivision acting as an employer unless the state or political subdivision employed that illegal alien or unauthorized alien knowing that the illegal alien or unauthorized alien was not authorized to work under the IRCA (see "**Liability for knowingly employing an employee not authorized to work**" below).⁹

Elimination of jurisdiction

Except as provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, the bill also eliminates the jurisdiction of Ohio courts to hear a potential claim for damages suffered by an illegal alien or an unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal alien or unauthorized alien in the course of employment caused by the wrongful act or omission or neglect of the employer. Under the bill, an illegal alien or unauthorized alien assumes the risk of incurring such an injury or contracting an occupational disease, and that assumption is a complete bar to a recovery of damages for such an injury or occupational disease.¹⁰

⁷ R.C. 4127.77, not in the bill.

⁸ R.C. 4123.513(A).

⁹ R.C. 2743.02(I) and 2744.02(A)(1).

¹⁰ R.C. 2307.82(B).



Liability for knowingly employing an employee not authorized to work

An employer is liable under the bill, however, to a claimant whose claim is denied under "**Attestation of eligibility**" or "**Review by Administrator**" below for such damages if the claimant establishes, by clear and convincing evidence:

(1) That the employer employed the claimant or the deceased employee who is the subject of the claim knowing that the claimant or deceased employee was not authorized to work under the IRCA on the date the claimant or deceased employee suffered the injury or contracted the occupational disease;

(2) That the employer's knowledge was not solely the result of communications made by the claimant or the deceased individual to the employer.

An employer may not assert the fellow servant rule, assumption of risk, or contributory negligence to defend against such a claim. As discussed above, under the bill the state or a political subdivision is liable in such a claim if the state or political subdivision employed an illegal or unauthorized alien knowing that the illegal or unauthorized alien was not authorized to work. Additionally, the bill grants a court jurisdiction over such a claim.¹¹

Liability for intentional torts

The bill prohibits anything in "**General employer immunity from liability under the bill**" above from being construed to prevent an illegal alien, unauthorized alien, or a claimant whose claim is denied because the claimant is or the deceased individual was an unauthorized alien from bringing a claim against an employer in a court of competent jurisdiction for an intentional tort allegedly committed by the employer against the illegal or unauthorized alien.¹²

Change in claim procedure to include attestation and review

Under continuing law, within seven days after receipt of any claim under the Workers' Compensation Law, the Bureau of Workers' Compensation (BWC) must notify the claimant and the employer of the claimant of the receipt of the claim and of the facts alleged therein. Generally, in claims other than those in which the employer is a self-insuring employer, if the Administrator of Workers' Compensation determines that a claimant is or is not entitled to an award of compensation or benefits, the Administrator must issue an order no later than 28 days after the sending of the notice of the receipt of

¹¹ R.C. 4123.513(B), 2307.82(C), 2743.02(I), and 2744.02(A)(1), by reference to R.C. 4123.77, not in the bill.

¹² R.C. 2307.82(C) and 4123.513(C).



the claim, granting or denying the payment of the compensation, benefits, or both as is appropriate to the claimant.¹³

Attestation of eligibility

Under the bill, to be considered eligible for compensation or benefits paid under the Workers' Compensation Law other than for medical benefits, a claimant must submit to the Administrator a signed attestation that the claimant, or if the claimant is a dependent of an individual who died as a result of suffering an injury or contracting an occupational disease, the deceased employee was an eligible "employee" as defined in "**Exclusion of illegal aliens and unauthorized aliens from the Workers' Compensation Law**" above. The Administrator may not pay compensation or benefits, other than medical benefits, unless the Administrator receives the signed attestation.¹⁴

Review by Administrator

If the Administrator has reason to believe that a submitted attestation is not valid, the Administrator may request that the claimant submit proof of the attestation's validity. The bill requires the Administrator to make the request in writing and to state in the request the type of proof necessary to determine validity and the date by which the claimant must submit the proof. The bill requires the Administrator to deny any claim for compensation or benefits other than medical benefits if a claimant fails to comply with a written request to provide proof of the attestation's validity. A claimant who fails to comply with that written request is barred from refileing the claim for compensation or benefits for which the proof was requested, but the claimant may appeal according to the current law appeals process.¹⁵

Criminal liability for fraud

The bill prohibits a claimant from making a false statement in an attestation submitted to the Administrator under "**Attestation of eligibility**" above with purpose to defraud or knowing that the person is facilitating a fraud. A person who violates this prohibition is guilty of workers' compensation fraud, a first degree misdemeanor.¹⁶

¹³ R.C. 4123.511(A) and (B)(1).

¹⁴ R.C. 4123.511(A) and 4123.01(A).

¹⁵ R.C. 4123.511(A).

¹⁶ R.C. 2913.48.



Applicability of the bill

The bill applies to claims arising on or after the bill's effective date.¹⁷

HISTORY

ACTION	DATE
Introduced	08-12-13

S0176-I-130.docx/ks

¹⁷ Section 3.



Sponsor Testimony
House Bill 338
Representative Ross McGregor (Joint Sponsor)

Chairman Young, Ranking Member Hagan, and Members of the House Commerce, Labor, and Technology Committee, thank you for allowing me to join my colleague Representative Hottinger in offering sponsor testimony in support of House Bill 338, which when enacted, will define and clarify employees versus independent contractors for motor transportation companies.

There are hundreds of intrastate motor carriers licensed by the Public Utilities Commission of Ohio (PUCO) who engage thousands of independent contractors. These motor carriers service the transportation needs of tens of thousands of businesses across the state, but struggle with properly classifying their drivers as a result of different rules and tests put forth in the Ohio Revised Code and the Ohio Administrative Code. The current system is confusing, lacks clarity, and may lead to the innocent misclassification of drivers.

HB338 will define an individual's status as an employee or an independent contractor on behalf of certain motor transportation companies. This legislation establishes a test which will determine the employee or nonemployee status for Ohio's Overtime, Workers Compensation and Unemployment Compensation. This test requires that three essential factors and at least three non-essential factors be met for an individual to be considered an independent contractor for motor transportation companies.

The essential factors include:

1. An individual owns the vehicle used to provide the service or holds it under a bona fide lease arrangement.
2. The individual is responsible for the maintenance of the vehicle used to provide the service.
3. The individual is responsible for supplying the necessary personal services to operate the vehicle used to provide the service.

The non-essential factors include:

vt,tAko-i  wu+

1. The compensation paid to the individual is based on factors related to work performed, including a percentage of any schedule of rates, and not on the basis of the hours or time expended.
2. The individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper.
3. The individual enters into a written contract that describes the relationship between the individual and the company for whom the individual is performing the service to be that of an independent contractor and not that of an employee.
4. The individual is responsible for the operating costs of the vehicle used to provide the service, including fuel, repairs, supplies, vehicle insurance, and personal

expenses, except that the individual may be paid the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.

S. The individual makes the individual's services available to the general public or to the business community on a continuing basis.

6. The individual may realize a profit or suffer a loss in performing services for the motor transportation company.

While concentrated in the State's larger cities, the courier industry services businesses in all parts of Ohio and in all parts of the State's economy. The industry's main focus is in the same day, rapid movement of raw materials, finished goods, just-in-time inventory, paperwork, plans, medical records, lab samples, pharmaceuticals, intercompany mail, and critical supplies, to name just a few. As such, it is imperative that the industry be able to gear up immediately on days and times which are difficult, if not impossible, to predict. The independent contractor is ideal for meeting this irregular demand, and this bill brings clarity to the question of proper classification of drivers in motor transportation industry. On addition to keeping the thousands of drivers engaged in their own businesses, passage of this bill will keep hundreds of support staff employed by the industry.

Mr. Chairman, Ranking Member Hagan, and members of the House Commerce, Labor, and Technology Committee, I thank you for the opportunity to present sponsor testimony on House Bill 338 and I welcome any questions that the committee may have.

OHIO BWC OTHER STATES COVERAGE PROPOSAL

January 16, 2014

Problem: Currently, most states do not recognize Ohio's workers' compensation coverage for Ohio employees temporarily working outside of the state. In most of these cases, Ohio employers are required to obtain a separate policy to provide out-of-state coverage to their workforce. In addition to Ohio companies having to purchase coverage at an additional cost, there can also be significant financial penalties enforced by other states for failing to obtain out-of-state coverage. Furthermore, if an employer secures coverage in another state and splits payroll to avoid paying double, the employer's Ohio premiums can increase because there is less payroll against which claim costs are charged, which can result in a higher experience modifier.

To further complicate the issue, there is not uniformity with respect to when coverage in Ohio is needed for employers temporarily in Ohio due to provisions in law on reciprocity agreements. Currently, Ohio will honor the extraterritorial coverage of another state for employees temporarily in Ohio only to the extent the other state recognizes Ohio's extraterritorial coverage for Ohio employers sending employees temporarily within that state. The reciprocity provisions create a complex and difficult environment for all employers – and one that varies from state to state.

Proposed Solution: For Ohio employers with employees temporarily working in other states, BWC proposes to allow the Administrator the ability to enter into a fronting arrangement with an insurance carrier to provide “limited other-states coverage” through a competitive-bid process. The carrier will provide a policy for coverage outside of Ohio upon request from Ohio employers, but will cede all losses from that policy back to BWC, who will reimburse the insurance carrier dollar-for-dollar as required by the contract and may subsequently charge those costs to employer whose policy the claim was filed against.

Additionally, to streamline operations for Ohio-domiciled employers wishing to expand their business into other states, the proposal enables the Administrator to develop an “other-states coverage” program. This program would be competitively bid, with BWC selecting at least one insurance carrier. The insurance carrier would provide coverage to employers based on rates filed and approved for use by the preferred carrier in the other states. This will allow BWC to facilitate an Ohio employer obtaining coverage for permanent operations in other states through a relationship with the contracting carrier. As with the “limited other-states’ coverage,” BWC will insure the risk and reimburse the insurance carrier for any claims costs they incur as required by the contract. BWC may also subsequently charge these costs to the employer whose policy the claim was filed against. For simplicity, BWC will have the ability to provide one bill to Ohio employers containing all mandatory and elected coverage.

Finally, BWC proposes to remove the reciprocity provisions and honor extraterritorial coverage of workers only temporarily in Ohio. If an injury occurs, BWC believes the claim should be filed under the workers' compensation laws of the state where the payroll is required to be reported by that state's workers' compensation laws.

Other States Coverage; Payroll Segregation Repeal; Reciprocity Repeal

4123.01 Workers' compensation definitions.

As used in this chapter:

(A)

(1) "Employee" means:

* * *

~~(d) Every person to whom all of the following apply:~~

~~(i) The person is a resident of a state other than this state and is covered by that other state's workers' compensation law;~~

~~(ii) The person performs labor or provides services for that person's employer while temporarily within this state;~~

~~(iii) The laws of that other state do not include the provisions described in division (H)(4) of section [4123.54](#) of the Revised Code.~~

* * *

J) "Other-states' insurer" means an insurance company that is authorized to provide workers' compensation insurance coverage in any of the states that permit employers to obtain insurance for workers' compensation claims through insurance companies.

(K) "Other-states' coverage" means insurance coverage ~~secured~~ secured by an eligible employer for workers' compensation claims of employees that are in employment relationships localized in a state other than this state ~~that arise in a state or states other than this state and that are filed by the employees of the employer or those employee's dependents, as applicable, in that other state or those other states.~~

(L) "Limited other-states coverage" means insurance coverage provided by BWC to an eligible employer for workers' compensation claims of employees that are in an employment relationship localized in Ohio but are temporarily working in a state other than Ohio.

4123.26 Annual statement by employer - forfeiture.

Every employer shall keep records of, and furnish to the bureau of workers' compensation upon request, all information required by the administrator of workers' compensation to carry out this chapter. In January of each year, every employer of the state employing one or more employees regularly in the same business, or in or about the same establishment, shall prepare and mail to the bureau at its main office in Columbus a statement containing the following information, as applicable:

(A) The number of employees employed during the preceding year from the first day of January through the thirty-first day of December and localized in Ohio;

(B) The number of such employees localized in Ohio employed at each kind of employment and the aggregate amount of wages paid to such employees;

(C) If an employer elects to ~~obtain~~secure other-states' coverage or limited other-states' coverage pursuant to section [4123.292](#) of the Revised Code, through either the administrator, if the administrator elects to offer such coverage, or an other-states' insurer ~~for claims arising in a state or states other than this state~~, all of the following information: the information required by (A) and (B) and any such additional information as may be required by rule adopted by the administrator, with the advice and consent of the bureau of workers' compensation board of directors, to obtain other-states coverage.

~~(1) The amount of wages the employer paid to the employer's employees for performing labor or providing services for the employer in this state;~~

~~(2) The amount of wages the employer paid to the employer's employees for performing labor or providing services for the employer in a state or states other than this state.~~

~~The allocation of wages identified by the employer pursuant to divisions (C) (1) and (2) of this section shall not be presumed to be an indication of the law under which an employee is eligible to receive compensation and benefits.~~

(D) In accordance with the rules adopted by the administrator pursuant to division (D) of section [4123.32](#) of the Revised Code, if the employer employs employees who are covered under the federal "Longshore and Harbor Workers' Compensation Act," 98 Stat. 1639, 33 U.S.C. 901 et seq., and under this chapter and Chapter 4121. of the Revised Code, both of the following amounts:

* * *

4123.29 Duties of administrator.

(A) The administrator of workers' compensation, subject to the approval of the bureau of workers' compensation board of directors, shall do all of the following:

(1) Classify occupations or industries with respect to their degree of hazard and determine the risks of the different classes according to the categories the national council on compensation insurance establishes that are applicable to employers in this state;

(2)

(a) Fix the rates of premium of the risks of the classes based upon the total payroll in each of the classes of occupation or industry sufficiently large to provide a fund for the compensation provided for in this chapter and to maintain a state insurance fund from year to year. The administrator shall set the rates at a level that assures the solvency of the fund. Where the payroll cannot be obtained or, in the opinion of the administrator, is not an adequate measure for determining the premium to be paid for the degree of hazard, the administrator may determine the rates of premium upon such other basis, consistent with insurance principles, as is equitable in view of the degree of hazard, and whenever in this chapter reference is made to payroll or expenditure of wages with reference to fixing premiums, the reference shall be construed to have been made also to such other basis for fixing the rates of premium as the administrator may determine under this section.

(b) If an employer elects to obtain other-states' coverage, including limited other-states' coverage, pursuant to section 4123.292 of the Revised Code through either the administrator, if the administrator elects to offer such coverage, or an other-states' insurer, calculate the employer's premium for the state insurance fund in the same manner as otherwise required under division (A) of this section and section 4123.34 of the Revised Code, ~~except that when the administrator determines the expenditure of wages, payroll, or both upon which to base the employer's premium, the administrator shall use only the expenditure of wages, payroll, or both attributable to the labor performed and services provided by that employer's employees when those employees performed labor and provided services in this state only and to which the other-states' coverage does not apply.~~

~~(e)~~ (b) The administrator in setting or revising rates shall furnish to employers an adequate explanation of the basis for the rates set.

* * *

4123.292 Election to obtain other-states' coverage or limited other-states coverage.

(A) Notwithstanding sections [4123.35](#) and [4123.82](#) of the Revised Code, an employer may elect to obtain other-states' coverage through an other-states' insurer or, if the administrator of workers' compensation elects to offer such coverage, through the administrator pursuant to division (B) of this section. An employer who elects to obtain other-states' coverage through the administrator shall submit a written notice to the administrator stating that election on a form prescribed by the bureau. ~~and, if the employer elects to obtain that coverage through an other-states' insurer, the name of the other-states' insurer through whom the employer has obtained that coverage. If an employer fails to pay the employer's premium for other-states' coverage, the administrator shall consider the employer to be noncompliant for the purposes of having other states' coverage but shall not consider the employer to be a noncomplying employer for purposes of this chapter or Chapter 4121., 4127., or 4131. of the Revised Code unless the employer otherwise fails to comply with section [4123.35](#) of the Revised Code.~~

(B) The administrator may ~~secure~~ offer other-states' coverage to allow an employer who wishes to obtain other-states' coverage pursuant to this section and who elects to ~~obtain~~ secure that coverage through the administrator for workers' compensation claims. If the administrator elects to ~~secure~~ a vehicle through which to provide other-states' coverage, the administrator shall follow the competitive bidding requirements specified in Chapter 125. of the Revised Code to select one or more other-states' insurer(s), and the administrator, with the advice and consent of the bureau of workers' compensation board of directors, shall award the contract to provide other-states' coverage for employers located in this state to the other-states' insurer(s) that is the lowest and best bidder.

(C) Notwithstanding sections [4123.35](#) and [4123.82](#) of the Revised Code, the administrator may offer limited other-states' coverage to allow an employer who wishes to obtain limited other states' coverage pursuant to this section. An employer who elects to obtain limited other-states' coverage shall submit a written notice to the administrator stating that election on a form prescribed by the bureau.

If the administrator elects to secure a vehicle through which to provide limited other-states' coverage, the administrator shall follow the competitive bidding requirements specified in Chapter 125. of the Revised Code to select one or more other-states insurer(s), and the administrator, with the advice and consent of the bureau of workers' compensation board of directors, shall award the contract to provide limited other-states' coverage to the lowest and best bidder(s).

~~(C) If the administrator elects to secure other-states' coverage pursuant to division (B) of this section, the administrator shall calculate an employer's premium for other states' coverage provided through the administrator separately from calculating any other premiums or assessments charged under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code. The administrator shall calculate the employer's other-states' coverage premium in the same manner the administrator calculates an employer's premium for the state insurance fund pursuant to division (A) of section [4123.29](#) and section [4123.34](#) of the Revised Code, except that, when calculating the employer's premium for other states' coverage under this division, the administrator shall do all of the following:~~

~~(1) Base the employer's other states' coverage premium on the terms specified in the contract the administrator enters into with an insurance company pursuant to division (B) of this section;~~

~~(2) When determining the expenditure of wages, payroll, or both upon which to base the employer's other states' coverage premium, use only the amount of wages, payroll, or both the employer paid to the employer's employees for performing labor or providing services for the employer in a state or states other than this state;~~

~~(3) Not take into account the amount of wages, payroll, or both the employer paid to the employer's employees for performing labor or providing services for the employer in this state or any compensation or benefits paid for claims covered by the state insurance fund.~~

(D) If the administrator elects to ~~secure~~ offer other states' coverage or to offer limited other-states' coverage, the administrator, with the advice and consent of the board, shall adopt rules to implement the applicable divisions (B) and (C) of this section.

(E) The administrator may establish by rule a transition period for payroll reporting requirements for employers that elected to segregate payroll for other states coverage under the former provisions of this section.

~~An other states' insurer that provides other states' coverage to an employer pursuant to this section shall do all of the following when calculating the employer's premium for that coverage:~~

~~(1) When determining the amount of wages, payroll, or both upon which to base the employer's premium, use only the amount of wages, payroll, or both the employer paid to the employer's employees for performing labor or providing services for the employer in a state or states other than this state;~~

~~(2) Not take into account the amount of wages, payroll, or both the employer paid to the employer's employees for performing labor or providing services for the employer in this state or any compensation or benefits paid for claims otherwise covered by this chapter or Chapter 4121., 4127., or 4131. of the Revised Code;~~

~~(3) Take into account any other factors the other states' insurer uses to calculate premiums for workers' compensation insurance.~~

(F) The board and the individual members thereof, the administrator, and the bureau of workers' compensation shall not incur any obligation or liability if another state determines that the other-states' coverage or limited other-states' coverage provided under this section does not satisfy the requirements specified in that state's workers' compensation law for obtaining workers' compensation coverage in that state.

4123.54 Compensation in case of injury or death - agreement if work performed in another state.

(H)

(1) Whenever, with respect to an employee of an employer who is subject to and has complied with this chapter, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. The agreement shall be in writing and shall be filed with the bureau of workers' compensation within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with this chapter, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and the employee's dependents under the laws of this state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and the employee's dependents under the laws of that state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment without regard to the place where the injury was sustained or the disease contracted. If an employer and an employee enter into an agreement under this division, the fact that the employer and the employee entered into that agreement shall not be construed to change the status of an employee whose continued employment is subject to the will of the employer or the employee, unless the agreement contains a provision that expressly changes that status.

~~(2) If any employee or the employee's dependents pursue workers' compensation benefits or recover damages from the employer under the laws of another state, the amount awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employee or the employee's dependents by the bureau. If an employee or the employee's dependents pursue or receives an award of compensation or benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for the same injury, occupational disease, or death for which the employee or the employee's dependents pursued workers' compensation benefits and received a decision on the merits as defined in section [4123.542](#) of the Revised Code under the laws of another state or recovered damages under the laws of another state, the claim under this chapter or Chapter 4121., 4127., or 4131 shall be disallowed and the administrator or ~~any self-insuring~~ employer, by any lawful means, may collect from the employee or the employee's dependents the amount of compensation or benefits paid to or on behalf of the employee or the employee's dependents by the administrator or a self-insuring employer pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for that award. The administrator or any employer also and may collect from the employee or the employee's dependents any interest, attorney's fees and costs the administrator or the self-insuring employer incurs in collecting that payment.~~

~~(3) Except as otherwise stipulated in division (H)(4) of this section, if an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, the employee and the employee's dependents are not entitled to receive compensation or benefits under this chapter, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state, and the rights of the employee and the employee's dependents under the laws of the other state are the~~

~~exclusive remedy against the employer on account of the injury, disease, or death. If an employee or the employee's dependents receives an award of compensation or benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code and receives workers' compensation benefits or damages under the laws of another state for the same injury, occupational disease, or death the claim under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code may be suspended. If the employee or the employee's dependents receives a decision on the merits as defined in section 4123.542 of the Revised Code under the laws of another state or recovers workers' compensation benefits or other damages under the laws of another state, the claim under this chapter or Chapter 4121., 4127., or 4131 shall be disallowed and the administrator or any self-insuring employer, by any lawful means, may collect from the employee or the employee's dependents or other-states insurer the amount of compensation or benefits paid to or on behalf of the employee or the employee's dependents by the administrator or a self-insuring employer pursuant to this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for that award, The administrator or any employer also and may collect from the employee or the employee's dependents or other-states insurer any interest, attorney's fees and costs the administrator or self-insuring employer incurs in collecting that payment, and may collect costs incurred by an employer in contesting or responding to any claim filed by the employee or the employee's dependents for the same injury, occupational disease, or death that was filed after the original claim for which the employee or the employee's dependents received a decision on the merits as described in section 4123.542 of the Revised Code.~~

~~(4) Division (H)(3) of this section does not apply to an employee described in that division, or the employee's dependents, unless both of the following apply:—If the employee's employer pays premiums into the state insurance fund, the administrator shall not charge the amount of compensation or benefits the administrator collects pursuant to this divisions (2) or (3) of this section to the employer's experience. If the administrator collects any costs incurred by an employer in contesting or responding to any claim pursuant to divisions (2) or (3) of this section, penalties, interest, awards, or attorney's fees incurred by a state fund employer, the administrator shall forward the amount collected to that employer. If the employee's employer is a self-insuring employer, the self-insuring employer shall deduct the amount of compensation or benefits the self-insuring employer collects pursuant to this division from the paid compensation the self-insuring employer reports to the administrator under division (L) of section 4123.35 of the Revised Code.~~

~~(a) The laws of the other state limit the ability of an employee who is a resident of this state and is covered by this chapter and Chapter 4123. of the Revised Code, or the employee's dependents, to receive compensation or benefits under the other state's workers' compensation law on account of injury, disease, or death incurred by the employee that arises out of or in the course of the employee's employment while temporarily within that state in the same manner as specified in division (H)(3) of this section for an employee who is a resident of a state other than this state, or the employee's dependents;~~

~~(b) The laws of the other state limit the liability of the employer of the employee who is a resident of this state and who is described in division (H)(4)(a) of this section for that injury, disease, or death, in the same manner specified in division (H)(3) of this section for the employer of an employee who is a resident of the other state.~~

~~(5) An employee, or the dependent of an employee, who elects to receive compensation and benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for a claim may not receive compensation and benefits under the workers' compensation laws of any state other than this state for that same claim. For each claim submitted by or on behalf of an employee, the administrator or, if the employee is employed by a self insuring employer, the self insuring employer shall request the employee or the employee's dependent to sign an~~

~~election that affirms the employee's or employee's dependent's acceptance of electing to receive compensation and benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for that claim that also affirmatively waives and releases the employee's or the employee's dependent's right to file for and receive compensation and benefits under the laws of any state other than this state for that claim. The employee or employee's dependent shall sign the election form within twenty-eight days after the administrator or self-insuring employer submits the request or the administrator or self-insuring employer shall suspend that claim until the administrator or self-insuring employer receives the signed election form. If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, the employee and the employee's dependents are not entitled to receive compensation or benefits under this chapter, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state, and the rights of the employee and the employee's dependents under the laws of the other state are the exclusive remedy against the employer on account of the injury, disease, or death.~~

(6) An employee, or the dependent of an employee, who elects to receive compensation and benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for a claim may not receive compensation and benefits under the workers' compensation laws of any state other than this state for that same claim. For each claim submitted by or on behalf of an employee, the administrator or, if the employee is employed by a self-insuring employer, the self-insuring employer, shall request the employee or the employee's dependent to sign an election that affirms the employee's or employee's dependent's acceptance of electing to receive compensation and benefits under this chapter or Chapter 4121., 4127., or 4131. of the Revised Code for that claim that also affirmatively waives and releases the employee's or the employee's dependent's right to file for and receive compensation and benefits under the laws of any state other than this state for that claim. The employee or employee's dependent shall sign the election form within twenty-eight days after the administrator or self-insuring employer submits the request or the administrator or self-insuring employer shall dismiss that claim.

4123.82 Contracts indemnifying or insuring employer void.

* * *

(C) Nothing in this section shall be construed to prohibit the administrator or an other-states' insurer from providing to employers in this state other-states' coverage or limited other-states' coverage in accordance with section [4123.292](#) of the Revised Code.

* * *

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Self-Insured Rules

Rule Number(s): 4123-19-03 & 4123-19-03.1

Date: December 2, 2013

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.

Chapter 4123 of the Administrative Code contains rules related to Self-Insuring Employers. BWC is proposing to develop a new rule 4123-19-03.1 that would establish criteria for a waiver of self-insured requirements established in 4123-19-03.

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In Paragraph (C) of rule 4123-19-03.1, the Administrator would establish provisions for waiver of the requirement that SI applicants have 500 employees in Ohio.

In Paragraph (D) of rule 4123-19-03.1, the Administrator would establish provisions for waiver of the requirement that SI applicants operate in Ohio for a minimum of two years.

Existing language in Paragraph (A)(1)(a) of rule 4123-19-03 would be eliminated indicating that the cost of a commercial credit reporting bureau service used by BWC to assist in the evaluation of an applicant's financial strength must be paid by the applicant.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** The background law for these rules is in Ohio Revised Code 4123.35. Additionally, these rule changes were required by the State of Ohio biennial budget (H.B. 59)

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.**

Not applicable.

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)?** These changes are in response to the State of Ohio biennial budget (H.B. 59) which required the BWC to establish provisions for waiver of certain self-insured requirements.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** Success is measured in the number of entities participating in self-insurance, the number and impact of self-insured defaults, the solvency of the self-insured guaranty fund, and the rate of assessments charged to self-insured employers.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.** The BWC developed the rule changes with stakeholders, including the Ohio Manufacturers' Association. The criteria were also shared with the Ohio Self-Insured Association, other individual self-insured employers, and Third Party Administrators.

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8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** The BWC included stakeholder recommendations related to the waiver criteria as part of the final rule proposal.
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?** None.
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?**
None.
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.* Not applicable.
12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** These rule changes are specific to BWC.
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 BWC developed the rule changes with stakeholders in the self-insured community. The BWC will continue to communicate the changes and impacts to existing and prospective members of the self-insured community.

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.

The impacted community is current and potential self-insured employers in the state of Ohio. There are approximately 1,200 self-insured employers consisting of both public and private employers. Self-Insured employers employ nearly 2 million Ohio employees.

The impact of these changes should be primarily positive to prospective self-insuring employers as it permits BWC greater flexibility and eases some requirements for eligibility.

On the other hand, easing these requirements for an applicant could increase the number of entities participating in self-insurance, thereby potentially increasing the number of defaults, the solvency of the self-insured guaranty fund, and the amount of assessments charged to employers in the future.

- 15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** The BWC has a fiduciary responsibility to ensure each employer continues to meet the self-insured requirements outlined in the Revised Code and Administrative Code. The impact of these changes should be primarily positive to prospective self-insuring employers.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** The rule changes would grant applicants for self-insurance with less than 500 employees, the ability to obtain self-insured status if certain criteria are met. This additional criterion includes an applicant providing five years of audited financial statements in accordance with Generally Accepted Accounting Principles and obtaining excess insurance at a level established by ORC 4123.82.
- 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.
- 18. What resources are available to assist small businesses with compliance of the regulation?** BWC communicates through its website and through the BWC self-insured department to any employer that desires to become self-insured the requirements and waivers of those requirements.

Improving Workers' Compensation Medical Care in Ohio

Discussing the impacts and opportunities for Ohio's workers' compensation system

January 29, 2014
140 Pfahl Hall, The Ohio State University

*Sponsored by Ohio State's Center for Health Outcomes, Policy and Evaluation Studies
in partnership with the Ohio Bureau of Workers' Compensation*

Background

Workers, employers, and the Ohio Bureau of Workers' Compensation (BWC) have a common interest in making sure that the medical care delivered to injured workers is appropriate, timely, high quality, and cost effective. Across the United States, initiatives are being undertaken to strengthen workers' compensation medical care. Results of studies performed in different locales have shown that progress can be made in a way that benefits all affected stakeholders. The recent enactment and ongoing roll-out of the Affordable Care Act may provide other opportunities for creating care models that meet the goals of a high performing workers' compensation system.

Ideas proposed range from:

- *Establishing new models of care coordination;*
- *Implementing approaches for measuring the quality of care provided;*
- *Ensuring that medical providers are giving the best care possible; and,*
- *Finding ways of facilitating more successful return to work following an injury.*

As BWC contemplates transforming its health care delivery model, the agency wants to set up a process whereby business and labor stakeholders agree on the guiding principles of the system and have early, active, and continuous input into the study, design, and implementation of any and all strategies.

This conference is designed to begin that conversation by providing a point-in-time look at the current performance of the system; considering a variety of ideas and concepts that might help drive better outcomes; and ultimately creating a road map that will lead to the ongoing success and sustainability of Ohio's workers' compensation system.

Goals for the Conference

1. Reaffirm key principles for what a high-performing workers' compensation system should achieve on behalf of its key customers – workers and employers.
2. Identify the key improvements needed in Ohio's workers' compensation system, and consider ideas for addressing those needs.
3. Educate attendees on how health care is evolving and how those developments might be applied to derive optimal results in workers' compensation cases.
4. Create an ongoing forum through which workers, employers, providers, and other stakeholders can continue to pursue these goals in a positive way.
5. Affirm support for the proposed process and solicit ideas for additional consideration that may further enhance health care delivery in BWC's system.

Public Policy Priorities

2012-2013

Manufacturing is the engine that drives Ohio's economy, and the mission of the Ohio Manufacturers' Association is to protect and grow Ohio manufacturing. In a fiercely competitive global economy—where the need for continuous quality improvement, enhanced efficiency and productivity, and constant innovation is relentless—every public policy decision that affects Ohio's business climate affects Ohio's manufacturing competitiveness.

Ohio manufacturers need public policies that help create global competitive advantage, attract investment and promote growth. These policies span a broad spectrum of conditions that shape the business environment within which manufacturers operate. Major policy goals include the following:

- An Effective, Competitive Ohio Tax System
- An Efficient, Effective Workers' Compensation System
- Access to Reliable, Economical Energy
- A Fair, Stable, Predictable Civil Justice System
- Clear, Consistent, Predictable Environmental Regulations
- A Modernized Transportation Infrastructure
- An Educated, Highly Skilled Workforce

POLICY GOAL:

An Effective, Competitive Ohio Tax System

For Ohio to be successful in a global economy, the state's tax structure must encourage investment and growth and be competitive nationally and internationally. A globally competitive tax system is characterized by (a) certainty, (b) equity, (c) simplicity and (d) transparency. Economy of collections and convenience of payment also are important considerations.

Generally, manufacturers support efforts to broaden the tax base, which enables lower rates. To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged. Where needed, government incentives are best structured as grants rather than as tax credits. And, in general, earmarking and dedicating tax revenues should be discouraged.

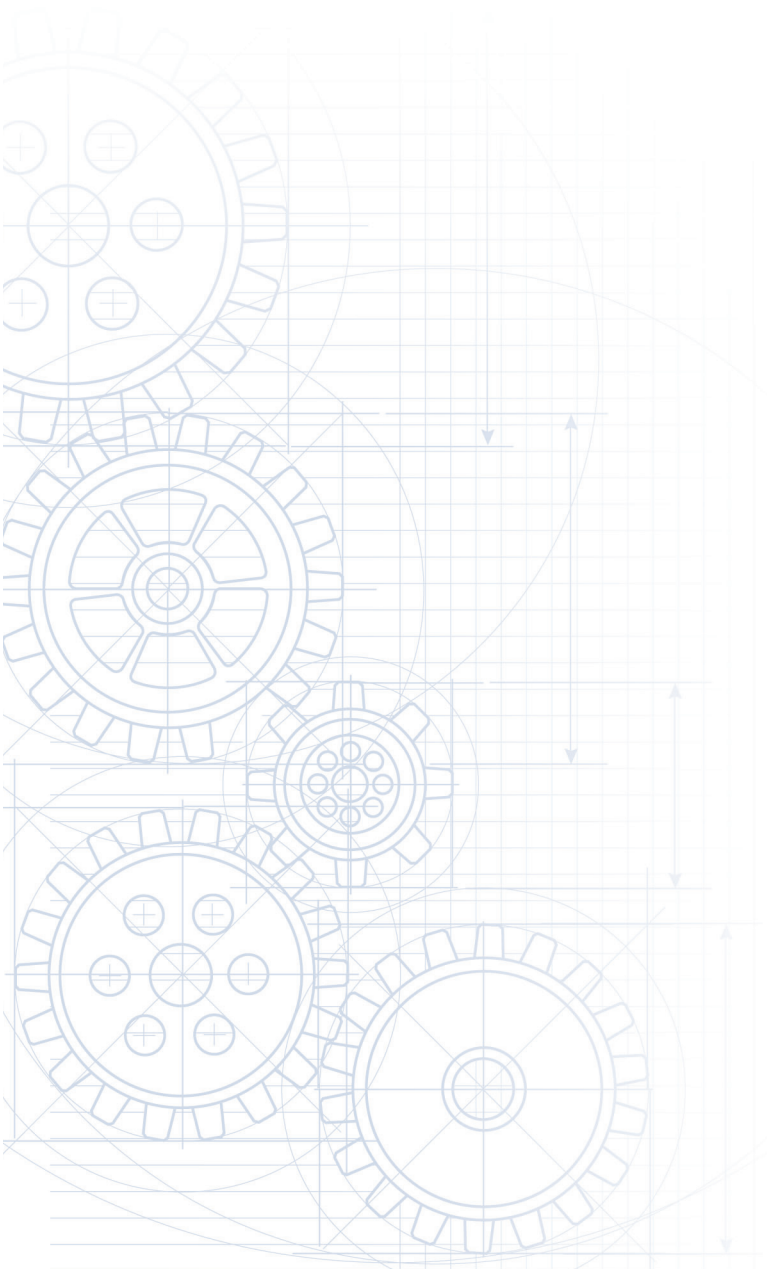
Good tax policy also generates necessary revenues to support the essential functions of government. To ensure transparency regarding the true cost of government and the rate of its growth, however, funding government programs with fee revenue instead of general fund revenue should be discouraged. Good budgeting and spending restraint at all levels of government are vital to ensure a competitive tax environment.

Major tax reforms approved by the Ohio General Assembly in 2005 have led to significant improvements to a tax system that was for many years widely regarded as outdated. Reforms included reducing overall tax rates, eliminating tax on investment, broadening the tax base, providing more stable and predictable revenues, and simplifying compliance. While progress has been made, additional policy reforms are needed to support manufacturing competitiveness, economic growth and prosperity in Ohio.

Tax policy priorities include the following:

- **Preserve the integrity of Ohio's 2005 tax reforms**, including a zero-tolerance response to any efforts via legislation or the court system to carve out exemptions or credits to (a) avoid paying the Commercial Activities Tax (CAT) or (b) earmark any portion of CAT revenues for specific government services.
- **Improve Ohio's tax appeals process**, which due to bad economic conditions and subsequent state budget cuts, staffing cutbacks and increased caseloads, has contributed to such a backlog of cases at the Ohio Board of Tax Appeals that it routinely takes two years to advance from the date of filing an appeal to the date of the first hearing.
- **Preserve the repeal of Ohio's estate tax**, which for so long served as a disincentive for business owners to invest in existing businesses and as an impediment to the capital formation that is so vital to Ohio's economy.
- **Streamline and simplify the sales tax**, which over time has become riddled with exemptions, carve-outs and credits that result in some taxpayers subsidizing exempted taxpayers. Exemptions, carve-outs and credits should be reviewed periodically for economic justification.

- **Promote taxpayer uniformity.** Consolidate and streamline the collection of municipal income tax by creating a uniform statewide municipal tax code, with uniform definitions of taxable income, consistent rules and regulations and a generic municipal income tax form.
- **Lower the effective tax rate in Ohio by reducing the number of government entities that are taxing jurisdictions.** This will help address the problem of pancaking state and local state taxes, which puts Ohio at a competitive disadvantage with many other states.



POLICY GOAL:

An Efficient, Effective Workers' Compensation System

The Ohio Manufacturers' Association works with its member companies, the Ohio Bureau of Workers' Compensation (BWC or Bureau), and the Ohio General Assembly to continually improve processes for injured workers and employers and to drive system costs down. An efficient and effective workers' compensation system is built on the following principles:

- Injured workers will receive fair and timely benefits they need for getting back to work quickly and safely.
- All businesses will pay fair workers' compensation rates commensurate with the risk they bring to the system.
- Workers' compensation rates will be driven by actuarial data, and the state's workers' compensation insurance system will remain stable, solvent and actuarially sound.
- Workers' compensation rates will not be structured in a way that punishes one class of employers to benefit another (such as the historical subsidization of group-rated employers by non-group-rated employers).
- The Ohio Bureau of Workers' Compensation will deploy best-in-class disability management practices to drive down costs for employers and improve service for injured parties.

These outcomes would be good for manufacturers and good for Ohio's overall economy.

Workers' compensation policy priorities include the following:

- **Design and deploy a competitive process that requires Managed Care Organizations (MCOs) to (a) meet rigorous performance standards established by the BWC and (b) compete on price for contracts with the BWC.**
- **Eliminate the "reasonable suspicion" standard from Ohio's rebuttable presumption drug statute.**
- **Incorporate the Louisiana Pacific standards of "voluntary abandonment" for benefits.**
- **Improve claims management processes, transparency and accountability associated with Ohio's Self-Insured Employers' Guaranty Fund.**
- **Require credentialing/certification of all claims management personnel based on accepted private insurance industry standards.**
- **Establish retirement benefit offsets and/or age or number-of-weeks caps for permanent total disability (PTD) awards.**

- **Require claimants to show new and/or changed circumstances when filing for permanent total disability (PTD) or permanent partial disability (PPD) benefits more than once.**
- **Require Industrial Commission hearings to be recorded** to improve consistency in outcomes.
- **Allow telephonic hearings for permanent partial disability (PPD) claims to lower transaction costs.**
- **Establish an impairment standard (no consideration of non-medical factors) for permanent partial disability (PPD) cases.**
- **Terminate the compensation paid for temporary total disability (TTD) effective the date determined by the medical evidence establishing maximum medical improvement.**
- **Specify that if a temporary total disability (TTD) claim is suspended due to a claimant's refusal to provide a signed medical release or attend the employer's medical examination, the claimant forfeits his or her right to benefits during the period of the suspension.**
- **Allow employers to pay compensation and medical bills without losing the right to contest a claim (payment without prejudice).**
- **Require permanent partial disability (PPD) claims to be resolved by choosing either the claimant's medical exam determination or the defendant's medical exam determination—explicitly prohibiting an averaging of, or compromise between, the two.**
- **Require MCOs to demonstrate their medical arrangements and agreements with a substantial number of medical, professional and pharmacy providers participating in the BWC's Health Partnership Program.** These providers should be selected on the basis of access, quality of care and cost, rather than solely claimant preference. The focus should be on getting injured workers back to work quickly and safely, benefitting both the employee and the employer.
- **Allow the BWC to require claimants to pay out-of-plan co-payments for selecting medical providers outside the approved MCO panel of providers,** beginning the 46th day after the date of injury or the 46th day after starting treatment. However, employees should be allowed to use a provider outside the approved panel if they are located in certain parts of the state or outside the state where approved MCO providers cannot reasonably be accessed.
- **Allow the BWC to modify existing rules for the Bureau's Health Partnership Program to include administrative and financial incentives that reward high-performing MCOs and other providers.** Possible incentives include bonus payments to providers who greatly exceed quality benchmarks established by the BWC to help reduce costs without sacrificing quality of services or outcomes.

- **Collect and include in the BWC's healthcare data program annual data measuring the outcomes and savings of MCOs and other providers participating in the Health Partnership Program.** This data should be made available to employers and the public. The more performance data that are collected, the more efficient and effective the system will become.
- **Allow the BWC to recoup treatment costs from claims that ultimately are denied under BWC law.** The Bureau should be able to request that an employee's personal insurance or third-party payer reimburse the BWC for treatment amounts the Bureau paid on behalf of the employee. These payments should be deposited in the Surplus Fund Account. This will ensure injured workers will receive the treatments they need in a timely manner, while providing the Bureau a path to recoup payments that ultimately should not have been paid out by the system.
- **Allow the BWC to develop new rules permitting the BWC to pay for certain medical services within the first 45 days of an injury.** This would ensure that injured employees receive treatment regardless of whether their claims are eventually denied in the process. Also allow the Bureau to create rules allowing for immediate payment of prescriptions in certain circumstances. If a claim is ultimately disallowed, the services paid must be charged to the Surplus Fund Account as long as the employer pays its assessments into the Surplus Fund Account in the State Insurance Fund.
- **Require injured workers to participate in the treatment process in a timely manner.** Employees who refuse or unreasonably delay required treatment such as rehabilitation services, counseling, medical exams or vocational evaluations without a valid reason should forfeit their right to have the claim considered or to receive any compensation or benefits during the period of non-cooperation.

POLICY GOAL:

Access to Reliable, Economical Energy

Energy policy can enhance—or hinder—Ohio’s ability to attract business investment, stimulate economic growth and spur job creation, especially in manufacturing. State and federal energy policies must strike an effective balance between (a) ensuring access to reliable, economical sources of energy and (b) conserving energy to protect and preserve our natural resources.

The Ohio Manufacturers’ Association’s energy policy advocacy efforts are guided by these principles:

- Predictable, stable energy pricing achieved through effective energy rate design attracts job-creating capital investments.
- A modernized energy infrastructure will help maximize energy supplies and stabilize energy pricing and reliability.
- Strategic and operational collaboration among utilities, government and manufacturers and their supply chains produces better economic outcomes than do confrontational and adversarial regulatory proceedings.
- Ohio’s traditional industrial capabilities enable global leadership in energy technology innovation and manufacturing.
- Sustainability requirements can create profitable new market opportunities but must be economically feasible.
- Effective government regulation recognizes technical and economic realities.

Shaping energy policy in Ohio that aligns with these principles will support manufacturing competitiveness, stimulate economic expansion and job creation, and foster environmental stewardship.

Energy policy priorities include the following:

- **Design an economic development discount rate for energy-intensive manufacturers that makes Ohio competitive with other states.** This refers to a discount off an electric utility’s tariff rate to incentivize capital investment and job creation.
- **Revise PUCO rules to remove barriers to the use of self-help strategies and to enhance reliability.**
- **Revise PUCO rules governing energy efficiency – including cogeneration and demand-side management – to achieve least-cost implementation and to incentivize interested parties to undertake innovative and least-cost efficiency projects.**
- **Ensure that electric distribution utilities comply with Ohio’s three percent cost cap for renewable energy in a least-cost manner** so customers are not forced to pay above-market prices for renewable energy.

- **Ensure rigorous PUCO monitoring and regulation of dealings between electric distribution utilities and their affiliates.**
- **Remove/mitigate barriers electric distribution utilities have created to inhibit/prevent shopping and ensure consumers have the information and tools they need to understand and take full advantage of market opportunities.**
For example, utilities should (a) be required to explain how customers' peak load contribution, which is used by suppliers to price competitive generation contracts, is calculated; (b) provide the calculated peak load contribution not just to suppliers but also to customers; and (c) be held accountable for errors that affect the value to customers of competitive supply contracts. The PUCO also should require utilities to develop interactive tools that help demonstrate the "price to compare" and make apples-to-apples comparisons between competitive supply offers.
- **Ensure close coordination among the PUCO, PJM Interconnection, Ohio EPA, the Ohio Power Siting Board and Ohio manufacturers to ensure least-cost and most efficient use of generation and transmission resources.**
- **Adopt a state-level consumer advocacy role with PJM Interconnection regarding critical transmission issues and needs.**

POLICY GOAL:

A Fair, Stable, Predictable Civil Justice System

A state's legal climate can be a major inducement or a major deterrent to business investment, growth and job creation. For manufacturers to invest and grow in Ohio, and to compete globally, Ohio's civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

The OMA supports policy reforms that strike a reasonable balance between protecting consumers without overly burdening businesses that provide needed jobs, while also positioning Ohio advantageously relative to other states. We encourage policymakers to evaluate all proposed civil justice reforms by considering these questions:

- Will the policy fairly and appropriately protect and compensate injured parties without creating a "lottery mentality"?
- Will the policy increase—or decrease—litigation burdens and costs?
- Will the policy promote—or reduce—innovation?
- Will the policy attract—or discourage—investment?
- Will the policy stimulate—or stifle—growth and job creation?

Most importantly, we encourage our public-sector partners to ask themselves: "Will my position on critical tort reform issues enhance—or undermine—Ohio's competitiveness in the global economy?"

Civil justice reform policy priorities include the following:

- **Preserve Ohio's tort reform gains of the last decade**, in areas such as punitive damages, successor liability, collateral sources and statute of repose, which have helped strike a reasonable balance between protecting consumers without unduly burdening businesses that provide needed jobs, while positioning Ohio as an attractive state for business investment.
- **Require asbestos claimants to make certain disclosures pertaining to claims that have been submitted to asbestos bankruptcy trusts** to prevent "double dipping" without limiting or delaying the ability of asbestos claimants to seek recovery for their injuries.
- **Enact TIPAC legislation (Transparency in Private Attorney Contracting) that requires public disclosure of most large contingency-fee contracts between government and personal injury attorneys** to address concerns about the propriety of contingency-fee arrangements for the prosecution of public claims.
- **Require consistent language when statutes intend to explicitly create a private right of action** (i.e., a right to file suit) to curtail court rulings that result in unexpected liability for companies.

- **Amend Rule 68 of the Ohio Rules of Civil Procedure to mirror Rule 68 of the Federal Rules of Civil Procedure**, which makes a plaintiff who rejects a defendant's settlement offer liable for the defendant's post-offer costs if the plaintiff does not improve on the offer at trial.
- **Reject any efforts to codify in Ohio statute the *cy pres* doctrine**—an existing tool that permits, but does not require, a judge and the parties to a class action lawsuit to donate all undistributed class action proceeds to a charity or other non-profit organization.
- **Reject legislation to enact a state false claims act.** A bill was introduced in the 129th Ohio General Assembly (SB 143) that would allow individuals with knowledge of possible fraudulent activity to (a) file suit in state courts against companies doing business with public entities and (b) recover a portion of the money recovered by the State. Under this bill, false claims suits could be filed against any business selling services or goods to state government. While fraud against the government is not to be condoned, there are preferable alternatives to creating a whole new category of state-level lawsuit.

POLICY GOAL:

Clear, Consistent, Predictable Environmental Regulations

Where environmental standards and regulations are concerned, manufacturers have a critical need for the following:

- Clarity, predictability and consistency
- Policies that reflect scientific consensus
- Commonsense enforcement
- Careful cost-benefit analysis as part of the policymaking process

Manufacturers also urge policymakers to exercise restraint in establishing state environmental standards and regulations that exceed federal standards and regulations, and to avoid doing so altogether without clear and convincing evidence that more stringent standards or regulations are necessary. At the same time, manufacturers understand that fair and reasonable regulations must be balanced with responsible stewardship of our natural resources.

Industry leads the way in solid waste reduction and recycling. Reduction and recycling include source reduction activities, reuse, recycling, composting and incineration. Industry is an enormous consumer of recycled materials, such as metals, glass, paper and plastics; manufacturers thus are strong advocates for improving recycling systems in Ohio and the nation.

Environmental policy priorities include the following:

- **Expand the focus of Ohio's state implementation plan for attaining National Ambient Air Quality Standards (NAAQS) and for reducing releases of substances regulated by EPA to the environment (air, water and land) beyond industrial sources to also include controls for non-industrial and mobile sources of releases.**
- **Revise existing statute to allow companies to appeal Ohio EPA Notices of Violation (NOVs) to Ohio's Environmental Review and Appeal Commission.**
- **Require Ohio EPA to evaluate and use best practices for implementation of federal environmental regulations** to avoid putting Ohio manufacturers at a competitive disadvantage because they face greater regulatory burdens than competitors from other states do based on Ohio EPA's stricter interpretation of federal regulations.
- **Give companies whose environmental permits are appealed by third parties the option, for a fee, of a "fast track" process and expedited resolution of the appeal,** which otherwise can discourage investors because Ohio's appeals process can go on for years.

- **Expand opportunities for industry to reuse non-harmful waste streams.** Beneficial reuse policies can result in less waste and more recycling of industrial byproducts.
- **Review Ohio's solid waste regulations, including procedures for disposing universal waste streams, to ensure safe and uniform disposal practices that are consistent with best practices used in other states.**
- **Reject state-level efforts to implement product composition mandates.** Such standards and requirements are best addressed at the federal level rather than through a patchwork of differing state-level requirements.
- **Reject extended producer responsibility policies that would shift responsibility for recycling certain consumer products from consumers to manufacturers.**

POLICY GOAL:

A Modernized Transportation Infrastructure

To remain competitive and maximize the economic benefits of Ohio's manufacturing strength, the State must continue to invest in updating and expanding Ohio's multi-modal transportation infrastructure, including roads, bridges, rails and ports. Continued investment in these resources will be critical to providing Ohio businesses with flexible, efficient, cost-effective shipping options.

Transportation infrastructure policy priorities include the following:

- **Modify Ohio's rules and regulations** to allow greater flexibility and efficiency in the truck permitting process and to ensure Ohio's truck permitting standards and processes are competitive with other states with regard to requirements, fees and responsiveness.
- **Enhance shipping flexibility by supporting the federal Safe and Efficient Transportation Act.** This bill would allow states to tailor regulations to meet state-level transportation needs linked to a state's particular economic assets and strengths.

POLICY GOAL:

An Educated, Highly Skilled Workforce

A robust economy requires an adequate, reliable supply of skilled workers who have the technical knowledge and skills required to meet global standards for quality and productivity, and who are able to think critically, work collaboratively and drive innovation. Sustained growth in manufacturing productivity will require not only a new generation of globally competent workers interested in the variety of roles within manufacturing careers but also incumbent workers willing to embrace lifelong learning so they can continuously upgrade their competencies to keep pace with technological advancements and global competition.

Workforce development policy priorities include the following:

- **Expand the use of the National Association of Manufacturers' "Manufacturing Skills Certification System."** This system of nationally portable, industry recognized, "stackable" credentials is applicable to all sectors in the manufacturing industry. The credentials validate foundational skills and competencies needed to be productive and successful in entry-level positions in any manufacturing environment. Credentials can be earned from both secondary and postsecondary educational programs.
- **Expand the use of cooperative education, internships and apprenticeships.** These experiential learning programs enhance talent recruitment and retention because participating students are exposed to company-specific, real-world job expectations and experiences. Students develop strong leadership and management skills by working closely with company staff who serve as their mentors/supervisors, and participating companies benefit from reduced recruitment and training costs.

Safety & Workers' Compensation

OSHA Extends Silica Comment Deadline to February 11

Last week, OSHA [announced](#) it will further extend the filing deadline for comments regarding the proposed rule changes for occupational exposure to crystalline silica to February 11, 11:59 p.m. ET.

In its press release OSHA states, "In response to concerns raised about possible public confusion due to an error on www.regulations.gov, the federal government's online portal for submitting rulemaking comments, the deadline has been extended from Jan. 27 to Feb. 11 to allow stakeholders additional time to comment on the proposed rule."

The public hearing for the proposed rule is still scheduled to begin on March 18. *1/27/2014*

OSU & BWC Host Conference on Improving Medical Care for Ohio's Injured Workers

This week, the Bureau of Workers' Compensation (BWC), together with The Ohio State University Center for Health Outcomes, Policy and Education Studies, held a [conference](#) to bring together business, medical, and labor stakeholders to focus on improving the quality of medical care delivered to Ohio's injured workers.

The BWC has launched an initiative to transform its health care delivery model. The conference was designed to start to gather stakeholder input.

Subject matter experts on health care delivery systems spoke about Ohio's current system, potential new concepts to drive better outcomes, and how other states have been able to improve outcomes through the delivery of appropriate, timely, high quality, and cost effective care.

OMA President, Eric Burkland, participated on a stakeholder panel. *1/30/2014*

BWC Making Headway Against Prescription Drug Abuse, Saves \$20M

The Ohio Bureau of Workers' Compensation (BWC) Board of Directors last week heard a presentation from BWC Pharmacy Programs Director, John Hanna, [highlighting](#) the results of changes made to its pharmacy management program, which have driven total drug cost savings of more than \$20 million since 2011.

Opiate doses have dropped by 10.9 million since 2010.

This report comes on the heels of a new rule requiring medical providers caring for chronically injured workers to use the Ohio Automated Rx Reporting System (OARRS). BWC's newest pharmacy rule became effective Jan 1. Ohio providers who write controlled substance prescriptions for chronic care must now enroll in OARRS in order for BWC to cover these prescriptions.

Other pharmacy program controls BWC implemented to support prescription drug safety for injured workers include:

- A lock-in program limits the practice of doctor and pharmacy shopping.
- Standardized Drug Utilization Reviews objectively evaluate the necessity and appropriateness of prescription drug treatment and identify overuse or danger.
- Generic medications are required when available.
- Point of service edits allow for prescriptions that aren't related to injured worker claims to be screened out to ensure injured workers receive medications relevant to their injuries. *1/27/2014*

BWC Publishes Annual Program Report

The Bureau of Workers' Compensation (BWC) is required to report annually on the aggregate performance of all group experience and group retrospective groups. In addition, the BWC elects to report information regarding other BWC discount and incentive programs. [Here](#) is the 2013 report.

Fewer employers are participating in group experience rating (93,000 in 2013, down from 95,000 in 2012) while the population of employers participating in group retrospective programs is growing (5,000 in 2013, up from 4,000 in 2012).

A sure way to get automatic BWC discounts is to be lapse-free on premium payments for a continuous 60 months and to report payroll and pay premiums online; the BWC credited employers more than \$9,000,000 in 2013 for these actions. Questions? Ask [us!](#) *1/27/2014*

Submit Comments re. Proposed OSHA Silica Rule - but Hurry

Many manufacturers have expressed concern about OSHA's proposed crystalline silica rule, which would cut the permissible exposure limit from 100 to 50 micrograms. While the National Association of Manufacturers (NAM) will be submitting comments to the agency on behalf of manufacturing, NAM has also created tools for manufacturers to directly submit comments.

[Here](#) is a template letter NAM has prepared for your use. And [here](#) is where to upload your comments (click the Comment Now button). Submit your comments no later than Monday, January 27 at 11:59 p.m. Questions? Email NAM's [Amanda Wood](#). 01/23/2014

Tax Forms Related to BWC's "Billion Back"

The Bureau of Workers' Compensation (BWC) will soon mail Internal Revenue Service (IRS) 2013 1099 MISC forms to employers that received rebates in 2013 as part of "A Billion Back." BWC is required to send 1099 MISC forms to all employers that received payment of more than \$600.

The rebate amount listed on your 1099 MISC form may be different from the rebate check amount you received last year. This difference is due to BWC withholding from the rebate check any outstanding balance owed.

Details for the 1099 MISC can be viewed and printed by logging in to your [BWC e-account](#) starting January 31. You can [email BWC](#) for more information about your IRS 1099 MISC form. Rebate recipients are encouraged to consult with their tax professionals regarding tax reporting requirements. 1/15/2014

BWC Offers Free "Destination: Excellence" Seminars

The Bureau of Workers' Compensation (BWC) has planned 11 free, two-hour [seminars](#) around the state to help employers learn about BWC "Destination: Excellence" programs. Destination: Excellence is a bundle of programs that help employers increase workplace safety, enhance injured worker care, and lower workers' compensation costs.

Seminars start February 25 and run through March 13. They will be led by BWC's regional business development managers.

Topics covered include: Safety councils; Drug-Free Safety Program; Industry-Specific Safety Program; Transitional Work Bonus Program; and Vocational Rehabilitation.

Register [here](#). 1/15/2014

Safety Toe Shoe Recall & More

Read BWC's [January 2014 Safety Update](#), a three-page newsletter, for a variety of safety news items, including these and more:

[Redwing Shoes recalls work boots](#)
[Revisions to OSHA's power press standard](#)
[OSHA fact sheet on abrasive blasting hazards](#)
[OSHA interpretation for the new HAZCOM law](#) 1/15/2014

Ohio Safety Congress & Expo Registration Now Open

Registration is now open for the Ohio Bureau of Workers' Compensation (BWC) 2014 Safety Congress and Expo (OSC14). Safety Congress, the longest-running occupational safety, health and workers' compensation conference in Ohio, is free and takes place March 25 - 27 at the Greater Columbus Convention Center.

All sessions offer free continuing education credits. Registration is available [online](#). 1/10/2014

BWC Administrator Looks Back and Ahead

Steve Buehrer, Administrator/CEO of the Bureau of Workers' Compensation (BWC) submitted this [op-ed](#) and these [clips](#) from 2013 media placements to spotlight progress the agency made last year and to outline priorities for 2014.

Looking ahead, Buehrer says, "The next year is shaping up to be an even busier one for BWC. Instituting a new policy and claims management computer system, preparing for our new billing process, transitioning to the new ICD-10 medical coding requirements, more aggressively promoting safety and improving medical delivery are all major initiatives that will positively impact employers, injured workers and providers." 1/7/2014

NAM Still Collecting Employer Input on Proposed OSHA Silica Rule

The Occupational Safety and Health Administration (OSHA) has proposed a complete overhaul of its regulation of respirable crystalline silica (RCS). The

proposal would reduce the permissible exposure level (PEL) in the workplace by about half, to 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and would establish an action level of $25\mu\text{g}/\text{m}^3$.

The National Association of Manufacturers (NAM) has extended to January 14 its deadline for manufacturers to participate in its survey to gather employer impacts. NAM will use the data (anonymously) to develop public comments it will file.

[Click here](#) to begin the survey. (Please note: You can exit the survey at any time and resume at the page you made your last entry as long as you have hit the "Next" button to save the information on that page.) More info? Contact NAM's [Amanda Wood](#). 1/9/2014

NAM Asks OSHA to Withdraw Proposed Reporting Rule

On November 8, 2013, OSHA published a proposed rule to revise its regulation on Occupational Injury and Illness Recording and Reporting that would add requirements for employers to electronically submit injury and illness information they are already required to keep. The proposal set a February 6, 2014 deadline for submitting written comments.

OSHA has extended the deadline for submitting comments to March 8, 2014, an additional 30 days.

The National Association of Manufacturers (NAM) made this [statement](#) at the January 9 public forum on the rule asking OSHA to withdraw the proposal. NAM is also drafting OSHA comments to file. To express your concerns, contact NAM's [Amanda Wood](#) or [Joe Trauger](#).

Also note: On January 16, the OMA will present a webinar on [OSHA Recordkeeping](#). This webinar will include a briefing on recently proposed OSHA rules, including this electronic reporting proposal as well as proposed crystalline silica rules. 1/9/2014

NAM Collecting Employer Input on OSHA Silica Rule

The Occupational Safety and Health Administration (OSHA) issued a Federal Register notice on September 12, 2013 proposing a complete overhaul of its regulation of respirable crystalline silica (RCS). The proposal would reduce the permissible exposure level (PEL) in the workplace by about half, to 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and would establish an action level of $25\mu\text{g}/\text{m}^3$.

The National Association of Manufacturers (NAM) invites manufacturers to participate in a survey to gather employer impacts to incorporate into the public comments it will file.

The survey contains 33 questions, but it is important for affected companies to provide as much detail as possible about how the proposal would affect their businesses, including potential measures that would be necessary to comply with the proposed PEL and other requirements. Your information will remain confidential. The survey deadline is January 7, 2014.

[Click here](#) to begin the survey. (Please note: You can exit the survey at any time and resume at the page you made your last entry as long as you have hit the "Next" button to save the information on that page.)

[Read more](#) from NAM regarding the rule and its preparation to make public comments. 12/18/2013

Beryl Brown Piccolantonio is New Workers' Comp Chief Ombuds Officer

[Beryl Brown Piccolantonio](#), formerly a district hearing officer at the Ohio Industrial Commission, is the new Chief Ombuds Officer for the Ohio workers' compensation system.

Beryl's experience includes: Supervisor, Legal Research Legal Assistant to General Counsel at Ohio Industrial Commission; Assistant Director, Office of Human Resources at State of Ohio; Legal Assistant to Chairman Patrick Gannon at Ohio Industrial Commission; and, Project Assistant at Vorys, Sater, Seymour and Pease LLP.

She is a graduate of The Ohio State University Moritz College of Law and Kent State University.

The Ombuds office is a "problem-solving service, independent of BWC and the Industrial Commission of Ohio (IC), which answers complaints and general inquiries about Ohio's workers' compensation system." Beryl can be reached at -- Phone: 1-800-335-0996; Fax: 877-321-9481; or, [E-mail](#). 12/19/2013

Do Your Employees Hold CDLs?

The Bureau of Motor Vehicles (BMV) reminds businesses that all Commercial Driver License (CDL) holders must self-certify their type of commercial driving to the BMV, and submit a medical examiner's certificate by January 30, 2014. Failure to take these steps will put holders at risk of losing their CDL.

privileges. More information can be found on the BMV [website](#). 12/18/2013

BWC Settles on Prospective Payment Conversion Timeline

The Bureau of Workers' Compensation board of directors has Ok'd a staff-proposed [timeline](#) for the conversion from its current after-the-fact premium payment practice to a prospective premium payment mode. This aligns BWC with insurance industry premium payment practices.

In August 2015, employers will make their first prospective premium payments. That August, employers will be invoiced for the policy year of July 1, 2015 to June 30, 2016. Multiple installment payment options will be available. And, the BWC will issue a credit for the entire first half of 2015 as well as fund the first two months of the 2015/16 premium year - a total of eight months of premium relief - to ease the transition.

The change in premium payment timing has additional consequences that affect employers. For example, there will be two group experience rating enrollment deadlines in 2014, one on February 28, 2014 for the 2014/15 policy year, and another on November 30, 2014 for the 2015/16 policy year.

Most BWC product and service deadlines will change. January 31, 2015 will become the enrollment deadline for group retrospective rating, one claim program, EM capped program, individual retrospective rating and both small and large deductible programs. May 31, 2015 will become the enrollment deadline for Destination Excellence programs.

Here is a [fact sheet](#) from the BWC.

We'll continue to communicate changes to help members through the transition. Contact OMA's [Scott Weisend](#) or [Denny Davis](#) with your immediate questions. 12/2/2013

Weisend Joins OMA Staff

Scott Weisend has joined the OMA staff to lead the organization's Workers' Compensation Services. Most recently, Scott was Client Services Manager at CompManagement.

OMA President, Eric Burkland, said, "Workers' compensation is a significant issue for manufacturers. We are pleased to have Scott join the OMA workers' compensation team, which includes Denny Davis, Barb Bender, and Georgia Booth, to

lead in service innovation and improvement. Scott brings substantial experience in Ohio workers' compensation and customer service."

Members can reach Scott, Managing Director, OMA Workers' Compensation Services, at (614) 629-6832 or by [email](#). 11/28/2013

BWC Safety Intervention Grants - Get Yours

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer visited OMA member, [Steere Enterprises](#), Tallmadge, this week to promote the availability of safety grants. Last week the Administrator presented a \$40,000 check to [American Fan Company](#), Fairfield, to invest in safety equipment.

Steere Enterprises is a leading international plastics supplier that produces a variety of products, including blow molding and its patented Dual Process overmolding technology. A 2007 Safety Intervention Grant allowed the company to purchase three deflash presses to automate the deflashing of a variety of parts.

American Fan Company manufactures industrial fans and roof ventilators. The company will invest in a press brake work support that will lift and hold sheet metal in position, eliminating the need for manual support; a vacuum lift that will transfer and position sheets; and a magnetic coupling attachment that will transfer scrap, in addition to picking up multiple sheets at one time.

Ohio employers are eligible for [safety intervention grants](#), which include a 3-to-1 matching amount up to a maximum of \$40,000. Quarterly data reports and follow-up case studies help BWC determine the effectiveness of employers' safety interventions and establish best practices. BWC's Safety Intervention Grant Program received \$15 million in funding this year as part of the BWC's Billion Back plan. 12/5/2013

BWC Makes Self-Insurance More Accessible

This week the Bureau of Worker's Compensation board of directors audit committee took up rules necessary to implement a law change that makes self-insurance more accessible to financially strong Ohio employers.

An OMA-led amendment included in the state budget will allow employers with fewer than 500 employees, a long-standing BWC standard, to receive a waiver to apply for self-insurance.

The [new rule](#) states that an employer with fewer than 500 employees can apply for self-insurance if it meets the normal criteria to qualify for self-insurance and present five years of audited financial statements. In addition, applicants must be able to obtain excess insurance at a level deemed appropriate by the BWC or have a substantial number of employees located outside the state.

The rule was approved by the committee and is expected to pass a full board vote today. The rule change will next go through the state's Common Sense Initiative analysis and Joint Committee on Agency Rule Review in early 2014.

The OMA Workers' Compensation Services team stands ready to help interested manufacturers consider the cost-benefit of self-insurance. Contact OMA's [Dan Noreen](#). 11/21/2013

NAM to Hold Webinar on OSHA's Proposed Silica Rule

On November 21 at 1:00 p.m. the National Association of Manufacturers (NAM) is holding a webinar on OSHA's proposed Silica Rule. [David Sarvadi](#), Partner, Keller & Heckman, LLP will be the presenter. David and his team are drafting public comments on behalf of the NAM; the comment period has been [extended to January 27, 2014](#) based on community action. [More](#). 11/9/2013

OSHA Proposes New Rule to Electronically Submit Records

Last week, the Occupational Safety and Health Administration (OSHA) [proposed](#) a new [rule](#) which would require more frequent reporting of injury and illness data, and would make that data publicly available through the web on a company-by-company basis.

The proposal does not add any new requirement to keep records; it modifies an employer's obligation to transmit these records to OSHA.

OSHA is proposing to amend its current recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are required to keep under existing standards. The first proposed new requirement is for establishments with more than 250 employees (and who are already required to keep records) to electronically submit the records on a quarterly basis to OSHA.

OSHA is also proposing that establishments with 20 or more employees, in certain industries with high

injury and illness rates, be required to submit electronically their summary of work-related injuries and illnesses to OSHA once a year.

OSHA plans to eventually post the data online.

There will be a public meeting in Washington about the rule on January 9, 2014 and public comments are due on February 6, 2014. We'll keep you posted. 11/9/2013

OSHA Offers New Resources for Managing Hazardous Chemicals

OSHA has created a [toolkit to identify safer chemicals](#) that can be used in place of more hazardous ones. This toolkit walks employers step-by-step through information, methods, tools and guidance to either eliminate hazardous chemicals or make informed substitution decisions by finding a safer chemical, material, product or process.

OSHA also created another new web resource: the [Annotated Permissible Exposure Limits](#), or annotated PEL tables, which will enable employers to voluntarily adopt newer, more protective workplace exposure limits. OSHA's PELs set mandatory limits on the amount or concentration of a substance in the air to protect workers against the health effects of certain hazardous chemicals. 11/12/2013

Ohio Workers' Compensation in the Courts

Here is a [summary](#) prepared by OMA workers' compensation counsel, [Tom Sant](#), of Bricker & Eckler, of workers' compensation cases that have been decided or heard in recent months by the Ohio Supreme Court.

None of the cases reverse established precedents.

The Supreme Court has agreed to hear yet another intentional tort case, *Pixley v. Pro-Pak Industries, Inc., et al*, after its rulings which affirmed employers' positions in *Kaminski* and *Hewitt*. We'll keep you posted. 11/7/2013

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on February 3, 2014

- HB33** **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2013, and ending June 30, 2015, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 3/26/2013 - **SIGNED BY GOVERNOR**; Eff. 3/26/2013
Recent Status: 3/21/2013 - Sent to Governor for Signature
3/13/2013 - **PASSED BY SENATE**; Vote 33-0
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_33
- HB34** **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2013, and ending June 30, 2015, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 3/26/2013 - **SIGNED BY GOVERNOR**; Eff. 3/26/2013
Recent Status: 3/21/2013 - Sent to Governor for Signature
3/13/2013 - **PASSED BY SENATE**; Vote 33-0
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_34
- HB59** **BIENNIAL BUDGET** (AMSTUTZ R) To make operating appropriations for the biennium beginning July 1, 2013, and ending June 30, 2015; to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2013 - **SIGNED BY GOVERNOR**; Eff. 6/30/2013; Some Eff. 9/29/2013; Others Various Dates
Recent Status: 6/27/2013 - Consideration of Conference Committee Report; Vote 53-44
6/27/2013 - Consideration of Conference Committee Report; Approved Vote 21-11
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_59
- HB143** **WORKERS' COMPENSATION** (DEVITIS A, BUTLER, JR. J) To require the Administrator of Workers' Compensation to include in the notice of premium rate that is applicable to an employer for an upcoming policy year the mathematical equation used by the Administrator to determine the employer's premium rate.
Current Status: 5/14/2013 - House Insurance, (First Hearing)
Recent Status: 5/7/2013 - Referred to Committee House Insurance
4/30/2013 - Introduced
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_143
- HB338** **WORKERS' COMPENSATION-UNEMPLOYMENT COMPENSATION COVERAGE** (MCGREGOR R, HOTTINGER J) To establish a test to determine whether an individual providing services for or on behalf of certain motor transportation companies is considered an employee under Ohio's Overtime, Workers' Compensation, and Unemployment Compensation Laws.
Current Status: 1/22/2014 - House Commerce, Labor and Technology, (Second Hearing)
Recent Status: 1/15/2014 - House Commerce, Labor and Technology, (First Hearing)
11/12/2013 - Referred to Committee House Commerce, Labor and Technology
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_338

SB176

ILLEGAL ALIENS-WORKERS' COMPENSATION (SEITZ B) To prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law.

Current Status: 1/29/2014 - Senate Commerce and Labor, (Second Hearing)

Recent Status: 11/6/2013 - Senate Commerce and Labor, (First Hearing)

9/26/2013 - Referred to Committee Senate Commerce and Labor

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_176