Safety & Workers' Compensation Committee

Thursday, February 23, 2012

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2012 Safety & Workers' Compensation Committee Calendar

Thursday, February 23
Thursday, June 21
BWC Administrator, Steve Buehrer - Confirmed
Thursday, November 8

OMA Safety & Workers' Compensation Committee Meeting Sponsor:

HMS
HEALTH MANAGEMENT SOLUTIONS, INC.
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OMA Safety & Workers' Compensation Committee

February 23, 2012

AGENDA

Welcome & Self-Introductions	Cathy Duhigg Gannon of Eaton Corp. (for Robert Truex of Lancaster Colony)
OMA Counsel's Report	Tom Sant of Bricker & Eckler, LLP Cavett Kreps of Bricker & Eckler, LLP
Safety / OSHA Report	Dianne Grote Adams of Safex, Inc.
BWC Developments Report	Jay Kemo, OMA Staff
Statehouse / Public Policy Report	Ryan Augsburger, OMA Staff Charles Smith of Charles D. Smith & Assoc.
Guest Speakers	Jason Rafeld, BWC Chief Legal Counsel Kevin Abrams, BWC Chief of Employer Services

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Judy: jthompson@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.

OhioBWC - Kevin Abrams

Chief of Employer Services Kevin Abrams

As Chief of Employer Services, Kevin Abrams manages policy coverage initiation and maintenance, delivery of programs and compliance for all state-fund and self-insuring employers. Abrams oversees several departments, including underwriting & premium audit, employer compliance, self-insured, and the professional employer organizations and employer programs units.

Abrams most recently served as commissioner for the Industrial Commission of Ohio, which conducts hearings on disputed workers' compensation claims. He was one of three commissioners responsible for establishing overall adjudicatory policy of the agency, including review of administrative rules, resolutions and policies.

As assistant law director for BWC from 1988 to 2005, Abrams was responsible for oversight of administrative and court settlements of BWC claims, self-insurance legal issues, bankruptcy and collection matters and special projects involving claims issues. Abrams is also a frequent lecturer on workers' compensation issues.

Abrams earned his bachelor's in psychology from Amherst College in Massachusetts and a law degree from The Ohio State University College of Law.

previous

Biography
Jason M. Rafeld

Jason M. Rafeld is currently the Chief Legal Officer for the Ohio Bureau of Workers' Compensation where he leads a staff of 42 lawyers in the legal department. In addition to the BWC Legal Department there are approximately 45 lawyers dedicated to BWC in the Ohio Attorney General's office and numerous private outside counsel. BWC currently maintains $26 billion dollars in assets insures over 200,000 employers and processes approximately 1.25 million claims per year.

Mr. Rafeld started working at BWC on January 10, 2010 with the Kasich Administration. Prior to joining BWC Mr. Rafeld was in private law practice handling criminal defense, contracts, civil litigation and employment law. Mr. Rafeld previously served as a United States Naval Officer where he was responsible for the creation of a command designed to train foreign allied forces in riverine combat. He also held the position of General Counsel and Vice President of Public Affairs for the firm of Van Meter, Ashbrook & Associates as well as the position of Director of Investigations for the BWC.

Mr. Rafeld received his bachelor's degree from the University of Kentucky and his juris doctor degree from Capital University Law School. He has also studied in Scotland, Austria and Greece. Currently he lives in Upper Arlington, Ohio with his wife, two dogs and a cat.

OMA Safety & Workers' Compensation Committee Counsel's Report

Thomas R. Sant, Bricker & Eckler LLP
Counsel to the OMA
February 21, 2012

Since our last meeting in November 2012, the Supreme Court has issued several opinions dealing with workers' compensation issues. Those opinions have been summarized below.

1. State ex rel. Sears Roebuck & Co. v. Indus. Comm., Slip Opinion No. 2011-Ohio-6525

In its per curium decision issued on December 20, 2011, the Supreme Court decided that the Industrial Commission of Ohio had abused its discretion when it ordered the employer, Sears, Roebuck & Co., to pay a medical bill submitted by the injured worker, Timothy Mathews, for a 1998 doctor's visit.

Mr. Mathews was injured in October 1987. His claim was allowed for a series of injuries. For a period of approximately five years, Mr. Mathews received extensive medical treatment. However, after 1993, he had approximately 10 medical treatments over the next four years. The last injury-related bill prior to 1998 was paid on March 26, 1997. In March of 1999, Sears' third party administrator received a letter from Mr. Mathews' attorney requesting that a bill from Greater Ohio Ortho Surgeons be paid. The invoice accompanying the lawyer's letter listed an amount of $50 due for an unspecified office examination, and did not indicate what medical conditions or complaints prompted the visit.

The third party administrator responded saying it would consider the outstanding bill once office notes were provided to prove the relationship between the 1998 visit and the October 13, 1987 claim. There was no response to the third party administrator's letter.

In early 2008, the employer was once again requested to approve further treatment, The request was denied because the claim had been inactive in excess of 10 years.

Mr. Mathews' new counsel tried to revive the issue of the 1998 doctor's visit and requested a Commission hearing on the new bill. After the Industrial Commission decision, the employer, Sears, filed a complaint in mandamus alleging the Commission abused its discretion

in ordering the bill be paid because the visit related to a condition that was not allowed in Mr. Mathews' claim. The Court of Appeals agreed and issued a Writ of Mandamus vacating the Commission's decision and directing the Commission to issue a new order denying payment of the bill.

The claimant alleged in his brief that two cases from the Ohio Supreme Court authorized treatment for a condition that had not been formally allowed in the claim. The Court found those two cases, *State ex. rel. Miller v. Indus. Comm.* (1994), 71 Ohio St.3d 229, and *State ex rel. Jackson Tube Servs., Inc. v. Indus. Comm.* 99 Ohio St.3d 1, 2003-Ohio -2259 were distinguishable and dismissed those arguments. The Court found that in both those cases the injured worker was not being treated for a condition arising from a part of the body that was not previously alleged to be injured. It points out that Mr. Mathews' office visit in 1998 was related to a part of the body he never before alleged had been injured. The office notes of treating physician indicated that his back symptoms began just two days before his office visit. No records in the 11 years between the industrial injury and the October 1998 office visit contained record of any low back pain.

The Court affirmed the 10th district Court of Appeals.

2. State ex rel. Bilaver v. Indus. Comm., Slip Opinion No. 2012-Ohio-26

The Supreme Court in an per curium decision issued on January 10, 2012, decided that the Industrial Commission of Ohio had not abused its discretion in denying Mr. Bilaver's application for temporary total disability benefits. Mr. Bilaver had been injured with the employer, after which, in December 2007, he left his employ with Fluid Line Products after it had denied him an extended leave of absence. The Industrial Commission subsequently found that his decision to leave constituted voluntary abandonment of employment and barred compensation. Mr. Bilaver filed a complaint in mandamus in the Court of Appeals which denied the writ.

The Court citing *State ex rel. Baker v. Indus. Comm*. (2000), 89 Ohio St.3d 376, stated that any claimant who relinquishes his or her employment cannot receive temporary total disability compensation unless the claimant has secured other employment and is prevented from doing that job by a fallout of the original industrial injury. Mr. Bilaver countered by claiming he was terminated from his employment in a manner that did not comply with *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.* (1995), 72 Ohio St.3d 401. The Supreme Court agreed with the Court of Appeals and found that he was not fired but that he had quit his employment. He gave two weeks notice after his leave request was denied. He claimed that he had rescinded that notice in a letter that was largely incomprehensible and was not sufficient to indicate that he was improperly terminated.

3. State ex rel. Akron Paint & Varnish, Inc. v. Gullotta, Slip Opinion 2012-Ohio-542

In this case, which was handed down by the Supreme Court on February 15, 2012, the Court was asked to determine if the Plaintiff, Mr. Gullotta, presented evidence to sufficiently give rise to the Commission's exercise of continuing jurisdiction and whether he was eligible to receive temporary total disability for a period requested.

Mr. Gullotta injured his back while working for Akron Paint & Varnish, Inc. in January 2007. His claim was allowed for lumbar sprain and he received temporary total disability benefits for several weeks prior to returning to light duty work consistent with his doctor's instructions.

In March 2007, his doctor found that he had improved and reduced his work restrictions. As a result of the doctor's reduction in work restrictions, the employer began to increase his job duties. Mr. Gullotta complained about his job duties and met with an executive to see whether his job duties could be reduced. He was offered a position within his restrictions, at which time Mr. Gullotta stated he did not want that job, resigned and left the premises. Four months later, he submitted another request for temporary total disability benefits. That request was denied by a District Hearing Officer whose order was vacated by a Staff Hearing Officer, who also denied benefits but for a different reason. The Staff Hearing Officer determined that his request for temporary total disability benefits was not causally related to his industrial injury, but was related to his refusal to return to the light duty job. He also determined that because he could not perform the duties of his original position, his resignation could not be termed a voluntary abandonment.

Subsequently in March of 2008, Mr. Gullotta's claim was additionally allowed for aggravation of a preexisting hypertrophy. A new motion for temporary total disability benefits was filed. The District Hearing Officer denied the application. However, a Staff Hearing Officer reversed and found Mr. Gullotta's newly allowed medical condition was sufficient evidence of new and changed circumstances and that temporary total disability benefits should be paid. The Staff Hearing Officer also emphasized in his order that his resignation in April 2007 was not voluntary abandonment.

The employer filed a Complaint in Mandamus in the Court of Appeals alleging that the Commission had abused it's discretion. The Magistrate found that Mr. Gullotta had not submitted evidence that would justify an award of temporary total disability benefits in light of his previous refusal of light duty work offered within his physical capabilities. The Court of Appeals adopted the Magistrate's finding and a Writ was issued.

The Supreme Court agreed with the Court of Appeals analysis that even if new and changed circumstances had been shown in order to find continuing jurisdiction, Mr. Gullotta's refusal to accept light duty work offered by the employer was unjustified. Here, it stated that the temporary total disability benefits were not denied on the basis of medical evidence, but rather "on the statutory bar of compensation when a claimant unjustifiably refuses light duty work made available by the employer."

TO: **OMA Safety & Workers' Compensation Committee**
FROM: **Ryan Augsburger**
DATE: **February 23, 2012**
SUBJ: **Public Policy Update**

Overview
Following the defeat of state issue 2, a victory for labor groups, state leaders have made statements backtracking from legislative reform efforts. Policymakers are wary of enacting reform legislation that could be overturned by opponents in a referendum. Opportunities for administrative actions to change the rules and operating procedures of the BWC seem to be more likely than legislation in the current environment.

2012 is a presidential campaign year. As such, the opportunity for meaningful policy reforms may be short term, before partisanship gets into high gear. The BWC like other state agencies have submitted possible law changes as part of a mid-biennium review (MBR). Inclusions are reported to be technical clarifications.

Legislation
In late January, Ohio Speaker of the House William Batchelder announced his priorities included "plans to reform the BWC, building upon existing reforms to go further in assisting injured workers while identifying other cost-saving possibilities." It remains to be seen what the Speaker has in mind.

Before the end of the year, the Ohio Senate concluded work on SB 139 to enact financial safeguards against PEOs, sending the measure to the Ohio House where the bill sits today. The Senate privatization review (see below) seems to have run its course.

Bureau of Workers' Compensation
Among administrative reforms already enacted is the premium discount program, *GrowOhio* created earlier this year for new employers to the state. More recently, a rule package known as the *Destination: Excellence Program* will streamline existing premium discount programs such as discounts for instituting drug-free safety programs, utilizing vocational rehab services, and clarifying limitations on stacked discounts, and deductible programs.

The package is intended to simplify these and other existing programs while instituting new discount programs for making electronic payments and awarding new grant funds for employers and employees in returning injured workers to work.

A discount to promote wellness programs was also instituted earlier this year. See attached news and analysis. Also see article detailing BWC program to restrict pharmacy formularies.

Unemployment Compensation
Like many states, Ohio's fund to pay unemployment compensation claims was depleted in early 2010. The state has borrowed federal funds ($2.3 billion). Minimum repayments were required beginning September 2011 (nearly $300 in interest alone in the 2012/13 biennial budget). Eventually Ohio employers could see a premium increase to repay the

federal loans and restore the state fund, probably coupled with cost cuts. That will require law change and is unlikely until after the election.

In the short term, the state budget appropriated funds to meet interest payments that came due on Sept 30. This is a positive development for employers, but some employers with high experience ratings will see FUTA tax increases as long as the state is in arrears. This topic is being monitored principally by the OMA Tax Policy Committee.

Privatization / Competition: The House proposal originally drafted by former Representative Todd Snitchler has not moved beyond discussion. Representatives Peterson and Sears appear to be likely sponsors.

A Senate created taskforce completed work on June 30. The study committee concluded that more study was needed. Governor Kasich in comments over the summer was asked about privatizing the workers compensation system, the Governor said, “I’m not afraid to privatize anything that would make sense, but I’m not convinced at this point that’s the way we ought to go.” Similar statements have been recorded since the defeat of state issue 2.

The business community has been slow to embrace the change, potentially because there is *no good data* available to model the effects.

Safety and Workers' Compensation Management

BWC Accepts Wellness Grant Applications

The Ohio Bureau of Workers' Compensation (BWC) is accepting applications for its new Workplace Wellness Grant Program, created to help employers improve the overall health of their workforces, which the BWC asserts will reduce workplace injuries and illnesses.

Participating employers receive up to $15,000 over four years to implement wellness programs that address, among other risk factors, obesity and chronic disease. The BWC intends to measure the effectiveness of the program in reducing claims frequency and costs, improving return-to-work rates and reducing employer health care costs.

OMA Connections Partner, Roetzel & Andress, provides this guidance to employers who might consider participating.

Applications for the BWC wellness grant program are available at www.ohiobwc.com. Employers are encouraged to call 1-800-OHIOBWC to verify eligibility before submitting an application.

02/17/2012

OMA Group Rating Deadline; BWC Program Compatibility Changes

Employers who plan to enroll in the OMA workers' compensation group rating program are reminded that today is the deadline to enroll, and anyone not yet enrolled should contact us so we know to hold your spot.

Employers planning to participate in the OMA group retrospective rating program have until April to enroll. Please contact Denny Davis with your questions.

According to program compatibility changes enacted by the Bureau of Workers' Compensation (BWC), beginning July 1, 2012, employers can no longer participate in any form of deductible program if they also participate in group experience rating.

BWC program compatibility can be confusing; contact your OMA account manager, Georgia Booth, Jay Kemo or Barb Raduege with your questions.

02/17/2012

Recent Ohio Appellate Decision Allows Employer's Post Claim Certification Dispute

OMA Connections Partner, Roetzel & Andress, reports a mechanism exists for Ohio self-insured employers to dispute a claim post-certification where certain grounds exist. A Roetzel blog post does a good job of describing the implications to employers of the recent Ohio appellate decision, Lane v. Bur. of Workers' Comp, which establishes the grounds for "continuing jurisdiction."

02/03/2012

BWC Introduces Pharmacy Provisions Intended to Limit Abuse

The Bureau of Workers' Compensation (BWC) announced the introduction of a program that allows it, under certain circumstances, to restrict an injured worker to the use of a single pharmacy for non-emergent prescriptions. The injured worker selects the pharmacy from a list of eligible pharmacies. BWC can also restrict an injured worker convicted of a drug offense to the use of a single prescribing physician, selected by the injured worker from BWC certified physicians, in order to receive reimbursement for non-emergent prescriptions.

The BWC has established a Pharmacy and Therapeutics Committee comprised of practicing pharmacists and physicians to advise BWC leadership on issues related to the use of medications prescribed to treat injured workers.

Long observed by OMA's team of workers' compensation account managers as a cost issue for employers, the committee is reported to be conducting "relatedness editing" to ensure injured workers are receiving medications relevant to their conditions.

02/03/2012

New OSHA Videos Provide Training on Proper Use of Respirators

The Occupational Safety and Health Administration (OSHA) has posted a series of 17 videos, in English and Spanish, to help workers learn about the proper use of respirators on the job.

Topics include OSHA's respiratory standard, respirator use, training, fit-testing and detecting counterfeit respirators, and are available with closed captioning for streaming or download.

02/03/2012

Class Action Suit Proceeds Against Ohio BWC for Alleged Overcharging of Nongroup-rated Employers

Employment Services Alert - January 2012: A class action lawsuit currently pending in the Cuyahoga County Court of Common Pleas alleges that the Ohio Bureau of Workers' Compensation (BWC) charged excessive workers' compensation premium rates to employers who were not able to participate in Ohio's group rating program. See San Allen, Inc., et al. vs. Stephen Buehrer, Administrator of the Ohio BWC, Case No. CV-07-644950. *From OMA Connections Partner, Roetzel & Andress.*

02/03/2012

BWC Publishes Report on Program Participation Trends

The Bureau of Workers' Compensation (BWC) shared this report of its program participation trends during its monthly board of directors meeting this week. The report shows employer participation trends in the BWC's group rating, group retrospective rating, deductible, experience modifier (EM) capped, one claim and paid loss retrospective rating programs over the policy years 2009 through 2011.

Some observations: $1,000 is the most popular deductible level selected by employers participating in the program; group retrospective rating is gaining in employer participation since its introduction in 2009 and the initial participants shared in premium rebates; significantly fewer employers are leaving one group rating sponsor for another as 27,000 switched sponsors in policy year 2010 as compared to 10,000 in policy year 2011.

As a workers' compensation third-party administrator, the OMA manages all of these programs on behalf of its members, focusing exclusively on manufacturers' requirements. If you have questions about which BWC programs are right for your company, contact Georgia Booth, Dennis Davis, Jay Kemo or Barb Raduege. OMA has created analyses for most BWC programs that can be run specifically for your company to show you how to maximize savings and minimize risk.

01/27/2012

BWC Says Employers Who Paid Premium Electronically Won't Get Paper Payroll Report

If you've paid premium electronically one or more times in the past couple years, the Bureau of Workers' Compensation indicates that it intends to send you a post card reminder but not a hard copy payroll report.

Whether or not you receive a post card reminder, premiums for the second half of 2011 are due February 29, 2012.

The BWC encourages all employers to file their payroll reports electronically to save resources. Questions can be directed to (800) OHIOBWC.

01/20/2012

Class Action Suit Active in Cuyahoga County

Employers have reported receiving notice of a workers' compensation class action law suit filed in Cuyahoga County. The case known as San Allen vs. Stephen Buehrer alleges that the BWC charged excessive workers' compensation premium rates to non-group rated employers for the policy years 2001 to 2008.

According to OMA counsel, Tom Sant of Bricker & Eckler LLP, "The suit has lain dormant for several years while the Courts determined whether it should be granted class action status. Having received that status the case is

moving forward with the letter being the first indicator of that."

01/06/2012

Industrial Commission Reports Activities and Regulatory Changes

Since 1912, the Industrial Commission (IC) has been Ohio's forum for appealing Bureau of Workers' Compensation and self-insured employer decisions. The IC conducts more than 150,000 hearings each fiscal year.

Annually, the IC publishes a fiscal report and a newsletter recapping its activities, undertakings, and regulatory changes. The newsletter contains relevant Supreme Court decisions. Workers' compensation managers will want to review these reports.

01/06/2012

BWC Continues to Prepare for New Employer Programs

The Bureau of Workers' Compensation (BWC) released general information about new employer programs in the works. Here is information about a new workplace wellness grant program and a fact sheet about the seven components of a new program that the BWC is calling "Destination: Excellence."

01/06/2012

OSHA Issues National Emphasis Program for Chemical Facilities

The Occupational Safety and Health Administration (OSHA) issued a new National Emphasis Program (NEP) for chemical facilities to protect workers from catastrophic releases of highly hazardous chemicals.

The intent of the NEP is to conduct focused inspections at facilities randomly selected from a list of worksites likely to have highly hazardous chemicals in quantities covered by the standard.

OSHA's Safety and Health Topics Web page on Process Safety Management contains guidance on how to develop a process hazard analysis and OSHA requirements for preventing the release of hazardous chemicals.

12/16/2011

Picture It Safe

In celebration of its 40th anniversary, Occupational Health & Safety Administration held the Picture It!: Safe Workplaces for Everyone photo contest. The contest challenged anyone with a passion for photography to capture an image of workplace safety and health and share it with OSHA. More than 300 submissions were received portraying a wide range of industries and activities.

Winners were selected by an expert panel of judges that included Earl Dotter, photojournalist; Carl Fillichio, the Department of Labor's Senior Advisor for Communications and Public Affairs; Kathleen Klech, photography director for Condé Nast Traveler magazine; and Shawn Moore, the chief photographer for the Department of Labor.

Check out the winning pictures and additional entries.

12/16/2011

BWC Receives Clean Audit from State of Ohio

State Auditor Dave Yost's office turned in a clean audit report on the Ohio Bureau of Workers' Compensation (BWC,) which earned the BWC an Auditor of State Award. The audit was completed by Schneider Downs and accepted by Auditor Yost. The Auditor of State Award is presented to public entities that meet the criteria of a "clean" audit report.

12/16/2011

Workers' Compensation Trends for 2012

As 2011 rapidly draws to a close, businesses looking ahead to 2012 should be mindful of the following workers' compensation trends as they may increase a company's operating costs: Click here for full article. *From OMA Connections Partner, Roetzel & Andress*

12/12/2011

BWC Gears Up for Employer Product Focus

This week the Bureau of Workers' Compensation (BWC) held a meeting for stakeholders to describe its Destination: Excellence program, a set of programs and incentives for employers that are intended to prevent injuries and return workers to work more quickly. There are also incentives for employers that interact with the BWC exclusively online.

The BWC board of directors will vote the proposal this month; if the board approves the proposal, the new programs and program changes will be effective July 1, 2012.

As the program is finalized, OMA will advise members of potential opportunities. The OMA will also look for the BWC to provide actuarial analyses of the various program changes.

While some of the new programs have premium rebates and discounts, BWC administrator Steve Buehrer, has prohibited workers' compensation third party administrators and sponsors from advertising these discounts as adders to group rating discounts. If you receive a group rating proposal with greater than a 53% discount, the newly approved maximum, you should contact the BWC.

12/02/2011

Workers' Compensation Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on February 21, 2012

HB123 **WORKERS' COMPENSATION BUDGET** (HOTTINGER J) To allow the administrator of Workers' Compensation to waive criteria certain public employers must satisfy to become self-insuring employers; to require bills for medical and vocational rehabilitation services in claims that are ultimately denied to be paid from the Surplus Fund Account under specified circumstances; to make appropriations for the Bureau of Workers' Compensation and for the Workers' Compensation Council for the biennium beginning July 1, 2011, and ending June 30, 2013; and to provide authorization and conditions for the operation of the Bureau's and the Council's programs.

Current Status: 4/25/2011 - **SIGNED BY GOVERNOR**; Some provisions eff. 4/25/11; others 7/29/11

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_123

HB124 **INDUSTRIAL COMMISSION BUDGET** (HOTTINGER J) To set appropriations for the Industrial Commission for the biennium beginning July 1, 2011, and ending June 30, 2013, and to provide authorization and conditions for the operation of Commission programs.

Current Status: 4/25/2011 - **SIGNED BY GOVERNOR**; Eff. 4/25/11

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_124

HB186 **PROFESSIONAL EMPLOYER ORGANIZATION LAW** (ADAMS R) To establish certain financial capacity requirements for professional employer organizations, clarify rights and liabilities of professional employer organizations and client employers, and to make other changes to the professional employer organization law.

Current Status: 6/1/2011 - **BILL AMENDED**, House Commerce & Labor, (Third Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_186

HB252 **IMMIGRATION STATUS-CONVICTED FELON** (YOUNG R) To require a prosecuting attorney to ask the Immigration and Naturalization Service of the United States to verify or ascertain the immigration status of an offender who has been convicted of or pleaded guilty to a felony, to require a prosecuting attorney if the INS informs the prosecutor that the offender is an illegal alien to notify the alleged felon's employer, the Department of Job and Family Services, the Registrar of Motor Vehicles, and the Secretary of State, to make illegal aliens ineligible for certain state public benefits, and to prohibit the Registrar of Motor Vehicles from issuing a driver's license to an alleged felon with respect to whom a prosecuting attorney has given the Registrar the above notice and require the Registrar to cancel any driver's licenses issued to such an alleged felon.

Current Status: 6/8/2011 - Referred to Committee House Transportation, Public Safety and Homeland Security

More Information: tp://www.legislature.state.oh.us/bills.cfm?ID=129_HB_252

SB139 **PROFESSIONAL EMPLOYER ORGANIZATION LAW** (HUGHES J) To establish certain financial capacity requirements for professional employer organizations, clarify rights and liabilities of professional employer organizations and client employers, and make other changes to the professional employer organization law.

Current Status: 2/8/2012 - House Commerce & Labor, (First Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_139

As Passed by the Senate

129th General Assembly
Regular Session **Sub. S. B. No. 139**
2011-2012

Senator Hughes

Cosponsors: Senators Schaffer, Seitz, Patton, Bacon, Beagle, Daniels, Faber, Hite, Jones, Niehaus, Obhof, Tavares

A B I L L

To amend sections 4123.291, 4125.01, 4125.02, 4125.03, 4125.05, 4125.07, 4125.08, 4141.24, and 5747.07 and to enact sections 4125.041, 4125.042, 4125.051, 4125.10, and 4125.11 of the Revised Code to establish certain financial capacity requirements for professional employer organizations, clarify rights and liabilities of professional employer organizations and client employers, and make other changes to the professional employer organization law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4123.291, 4125.01, 4125.02, 4125.03, 4125.05, 4125.07, 4125.08, 4141.24, and 5747.07 be amended and sections 4125.041, 4125.042, 4125.051, 4125.10, and 4125.11 of the Revised Code be enacted to read as follows:

Sec. 4123.291. (A) An adjudicating committee appointed by the administrator of workers' compensation to hear any matter specified in divisions (B)(1) to (7) of this section shall hear the matter within sixty days of the date on which an employer

files the request, protest, or petition. An employer desiring to file a request, protest, or petition regarding any matter specified in divisions (B)(1) to (7) of this section shall file the request, protest, or petition to the adjudicating committee on or before twenty-four months after the administrator sends notice of the determination about which the employer is filing the request, protest, or petition.

(B) An employer who is adversely affected by a decision of an adjudicating committee appointed by the administrator may appeal the decision of the committee to the administrator or the administrator's designee. The employer shall file the appeal in writing within thirty days after the employer receives the decision of the adjudicating committee. The administrator or the designee shall hear the appeal and hold a hearing, provided that the decision of the adjudicating committee relates to one of the following:

(1) An employer request for a waiver of a default in the payment of premiums pursuant to section 4123.37 of the Revised Code;

(2) An employer request for the settlement of liability as a noncomplying employer under section 4123.75 of the Revised Code;

(3) An employer petition objecting to the assessment of a premium pursuant to section 4123.37 of the Revised Code and the rules adopted pursuant to that section;

(4) An employer request for the abatement of penalties assessed pursuant to section 4123.32 of the Revised Code and the rules adopted pursuant to that section;

(5) An employer protest relating to an audit finding or a determination of a manual classification, experience rating, or transfer or combination of risk experience;

(6) Any decision relating to any other risk premium matter

under Chapters 4121., 4123., and 4131. of the Revised Code;

(7) An employer petition objecting to the amount of security required under division ~~(C)~~(D) of section 4125.05 of the Revised Code and the rules adopted pursuant to that section.

(C) The bureau of workers' compensation board of directors, based upon recommendations of the workers' compensation actuarial committee, shall establish the policy for all adjudicating committee procedures, including, but not limited to, specific criteria for manual premium rate adjustment.

Sec. 4125.01. As used in this chapter:

(A) "Assurance organization" means an independent and qualified entity approved by the administrator of workers' compensation to certify the qualifications of a professional employer organization or professional employer organization reporting entity.

(B) "Client employer" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into a professional employer organization agreement and is assigned shared employees by the professional employer organization.

~~(B)~~(C) "Coemploy" means the sharing of the responsibilities and liabilities of being an employer.

~~(C)~~(D) "Professional employer organization" means 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.

~~(D)~~(E) "Professional employer organization agreement" means a written contract to coemploy 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.

~~(E)~~(F) "Professional employer organization reporting entity" means two or more professional employer organizations that are majority owned or commonly controlled by the same entity, parent, or controlling person and that satisfy reporting entity control rules as defined by the financial accounting standards board and under generally accepted accounting principles.

(G) "Shared employee" means an individual intended to be assigned to a client employer on a permanent basis, not as a temporary supplement to the client employer's workforce, who is coemployed by a professional employer organization and a client employer pursuant to a professional employer organization agreement.

~~(F)~~(H) "Trade secret" has the same meaning as in section 1333.61 of the Revised Code.

(I) "Working capital" means the excess of current assets over current liabilities as determined by generally accepted accounting principles.

Sec. 4125.02. The administrator of ~~the bureau of~~ workers' compensation shall adopt rules in accordance with Chapter 119. of the Revised Code to administer and enforce this chapter, including rules to administer and enforce divisions (B) and (G) of section 4125.03 of the Revised Code.

The administrator may adopt rules for the acceptance of electronic filings in accordance with Chapter 1306. of the Revised Code for applications, documents, reports, and other filings required by this chapter.

The administrator may allow an independent assurance organization to act on behalf of a professional employer

organization or professional employer organization reporting entity in complying with this chapter and any rules adopted under it. The assurance organization shall be approved by the administrator before acting on behalf of the professional employer organization or the professional employer organization reporting entity and shall abide by all standards and procedures established by the administrator for that approval. The administrator may permit a professional employer organization or professional employer organization reporting entity to authorize an assurance organization approved by the administrator to act on behalf of the professional employer organization or professional employer organization reporting entity, and the administrator shall specify certain provisions of this chapter that may be satisfied by an assurance organization acting with that authority. The rules shall also stipulate that the use of an assurance organization by a professional employer organization to comply with this chapter is not required and is strictly voluntary.

Sec. 4125.03. (A) The professional employer organization with whom a shared employee is coemployed shall do all of the following:

(1) Pay wages associated with a shared employee pursuant to the terms and conditions of compensation in the professional employer organization agreement between the professional employer organization and the client employer;

(2) Pay all related payroll taxes associated with a shared employee independent of the terms and conditions contained in the professional employer organization agreement between the professional employer organization and the client employer;

(3) Maintain workers' compensation coverage, pay all workers' compensation premiums and manage all workers' compensation claims, filings, and related procedures associated with a shared employee

in compliance with Chapters 4121. and 4123. of the Revised Code, except that when shared employees include family farm officers, ordained ministers, or corporate officers of the client employer, payroll reports shall include the entire amount of payroll associated with those persons;

(4) Provide written notice to each shared employee it assigns to perform services to a client employer of the relationship between and the responsibilities of the professional employer organization and the client employer;

(5) Maintain complete records separately listing the manual classifications of each client employer and the payroll reported to each manual classification for each client employer for each payroll reporting period during the time period covered in the professional employer organization agreement;

(6) Maintain a record of workers' compensation claims for each client employer;

(7) Make periodic reports, as determined by the administrator of workers' compensation, of client employers and total workforce to the administrator;

(8) Report individual client employer payroll, claims, and classification data under a separate and unique subaccount to the administrator;

(9) Within fourteen days after receiving notice from the bureau of workers' compensation that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant.

(B) The professional employer organization with whom a shared employee is coemployed shall provide a list of all of the following information to the client employer upon the written request of the client employer:

(1) All workers' compensation claims, premiums, and payroll associated with that client employer;

(2) Compensation and benefits paid and reserves established for each claim listed under division (B)(1) of this section;

(3) Any other information available to the professional employer organization from the bureau of workers' compensation regarding that client employer.

(C)(1) A professional employer organization shall provide the information required under division (B) of this section in writing to the requesting client employer within forty-five days after receiving a written request from the client employer.

(2) For purposes of division (C) of this section, a professional employer organization has provided the required information to the client employer when the information is received by the United States postal service or when the information is personally delivered, in writing, directly to the client employer.

(D) Except as provided in section 4125.08 of the Revised Code and unless otherwise agreed to in the professional employer organization agreement, the professional employer organization with whom a shared employee is coemployed has a right of direction and control over each shared employee assigned to a client employer's location. However, a client employer shall retain sufficient direction and control over a shared employee as is necessary to do any of the following:

(1) Conduct the client employer's business, including training and supervising shared employees;

(2) Ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business;

(3) Discharge any fiduciary responsibility that the client

employer may have;

(4) Comply with any applicable licensure, regulatory, or statutory requirement of the client employer.

~~(C) Notwithstanding division (B) of this section, a client employer may retain sufficient direction and control over a shared employee as is necessary to conduct the client employer's business and to discharge any fiduciary responsibility that it may have, or to comply with any applicable licensure, regulatory, or statutory requirement of the client employer~~

(E) Unless otherwise agreed to in the professional employer organization agreement, liability for acts, errors, and omissions shall be determined as follows:

(1) A professional employer organization shall not be liable for the acts, errors, and omissions of a client employer or a shared employee when those acts, errors, and omissions occur under the direction and control of the client employer.

(2) A client employer shall not be liable for the acts, errors, and omissions of a professional employer organization or a shared employee when those acts, errors, and omissions occur under the direction and control of the professional employer organization.

(F) Nothing in divisions (D) and (E) of this section shall be construed to limit any liability or obligation specifically agreed to in the professional employer organization agreement.

Sec. 4125.041. A shared employee under a professional employer organization agreement shall not, solely as a result of being a shared employee, be considered an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer liability not otherwise covered by Chapters 4121. and 4123. of the

Revised Code, or liquor liability insurance carried by the professional employer organization, unless the professional employer organization agreement and applicable prearranged employment contract, insurance contract, or bond specifically states otherwise.

Sec. 4125.042. (A) For purposes of determining tax credits and other economic incentives that are provided by this state or any political subdivision and based on employment, shared employees under a professional employer organization agreement shall be considered employees solely of the client employer.

(1) A client employer shall be entitled to the benefit of any tax credit, economic incentive, or similar benefit arising as the result of the client employer's employment of shared employees. If the grant or amount of any tax credit, economic incentive, or other benefit is based on number of employees, each client employer shall be treated as employing only those shared employees coemployed by the client employer. Shared employees working for other client employers of the professional employer organization shall not be counted as employees for that purpose.

(2) Upon request by a client employer or an agency or department of this state, a professional employer organization shall provide employment information reasonably required by the agency or department responsible for administration of the tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client employer seeking the tax credit or economic incentive.

(B) Shared employees whose services are subject to sales tax shall be considered the employees of the client employer for purposes of collecting and levying sales tax on the services performed by the shared employee. Nothing contained in this chapter shall relieve a client employer or professional employer

organization of any sales tax liability with respect to its goods or services.

(C) Any tax assessed on a per capita or per employee basis shall be assessed against the client employer for shared employees and against the professional employer organization for employees of the professional employer organization who are not shared employees coemployed with a client employer.

(D) For purposes of computing any tax that is imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to use any small business allowance or exemption that is available to the client employer for the shared employees.

Sec. 4125.05. (A) Not later than thirty days after November 5, 2004, or not later than thirty days after the formation of a professional employer organization, whichever date occurs later, a professional employer organization operating in this state shall register with the administrator of ~~the bureau of~~ workers' compensation on forms provided by the administrator. Following initial registration, each professional employer organization shall register with the administrator annually on or before the thirty-first day of December. Commonly owned or controlled applicants may register as a professional employer organization reporting entity or register individually. Registration as a part of a professional employer organization reporting entity shall not disqualify an individual professional employer organization from participating in a group-rated plan under division (A)(4) of section 4123.29 of the Revised Code.

(B) Initial registration and each annual registration renewal shall include all of the following:

(1) A list of each of the professional employer organization's client employers current as of the date of

registration for purposes of initial registration or current as of the date of annual registration renewal, or within fourteen days of adding or releasing a client, that includes the client employer's name, address, federal tax identification number, and bureau of workers' compensation risk number;

(2) A fee as determined by the administrator;

(3) The name or names under which the professional employer organization conducts business;

(4) The address of the professional employer organization's principal place of business and the address of each office it maintains in this state;

(5) The professional employer organization's taxpayer or employer identification number;

(6) A list of each state in which the professional employer organization has operated in the preceding five years, and the name, corresponding with each state, under which the professional employer organization operated in each state, including any alternative names, names of predecessors, and if known, successor business entities;

(7) The most recent financial statement prepared and audited pursuant to division (B) of section 4125.051 of the Revised Code;

(8) If there is any deficit in the working capital required under division (A) of section 4125.051 of the Revised Code, a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit in accordance with the requirements of that section;

(9) An attestation of the accuracy of the data submissions from the chief executive officer of the professional employer organization.

(C) Upon terms and for periods that the administrator

considers appropriate, the administrator may issue a limited registration to a professional employer organization or professional employer organization reporting entity that provides all of the following items:

(1) A properly executed request for limited registration on a form provided by the administrator;

(2) All information and materials required for registration in divisions (B)(1) to (6) of this section;

(3) Information and documentation necessary to show that the professional employer organization or professional employer organization reporting entity satisfies all of the following criteria:

(a) It is domiciled outside of this state.

(b) It is licensed or registered as a professional employer organization in another state.

(c) It does not maintain an office in this state.

(d) It does not participate in direct solicitations for client employers located or domiciled in this state.

(e) It has fifty or fewer shared employees employed or domiciled in this state on any given day.

(D)(1) The administrator, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules in accordance with Chapter 119. of the Revised Code to require, in addition to the requirement under division (B)(8) of this section and except as otherwise specified in division ~~(C)~~(D)(2) of this section, a professional employer organization to provide security in the form of a bond or letter of credit assignable to the Ohio bureau of workers' compensation not to exceed an amount equal to the premiums and assessments incurred for the two most recent payroll periods, prior to any discounts or

dividends, to meet the financial obligations of the professional employer organization pursuant to this chapter and Chapters 4121. and 4123. of the Revised Code.

(2) As an alternative to providing security in the form of a bond or letter of credit under division (D)(1) of this section, the administrator shall permit a professional employer organization to make periodic payments of prospective premiums and assessments to the bureau ~~or to submit proof of being certified by either a nationally recognized organization that certifies professional employer organizations or by a government entity approved by the administrator~~.

(3) A professional employer organization may appeal the amount of the security required pursuant to rules adopted under division ~~(C)~~(D)(1) of this section in accordance with section 4123.291 of the Revised Code.

~~(D)~~(E) Notwithstanding division ~~(C)~~(D) of this section, a professional employer organization that qualifies for self-insurance or retrospective rating under section 4123.29 or 4123.35 of the Revised Code shall abide by the financial disclosure and security requirements pursuant to those sections and the rules adopted under those sections in place of the requirements specified in division ~~(C)~~(D) of this section or specified in rules adopted pursuant to that division.

~~(E)~~(F) Except to the extent necessary for the administrator to administer the statutory duties of the administrator and for employees of the state to perform their official duties, all records, reports, client lists, and other information obtained from a professional employer organization and professional employer organization reporting entity under divisions (A), (B), and ~~(B)~~(C) of this section are confidential and shall be considered trade secrets and shall not be published or open to public inspection.

~~(F)~~(G) The list described in division (B)(1) of this section shall be considered a trade secret.

~~(G)~~(H) The administrator shall establish the fee described in division (B)(2) of this section in an amount that does not exceed the cost of the administration of the initial and renewal registration process.

(I) A financial statement required under division (B)(7) of this section for initial registration shall be the most recent financial statement of the professional employer organization or professional employer organization reporting entity of which the professional employer organization is a member and shall not be older than thirteen months. For each registration renewal, the professional employer organization shall file the required financial statement within one hundred eighty days after the end of the professional employer organization's or professional employer organization reporting entity's fiscal year. A professional employer organization may apply to the administrator for an extension beyond that time if the professional employer organization provides the administrator with a letter from the professional employer organization's auditor stating the reason for delay and the anticipated completion date.

(J) Multiple, unrelated professional employer organizations shall not combine together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under this chapter. Multiple, unrelated professional employer organization reporting entities shall not combine together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under this chapter.

(K) The administrator shall maintain a list of professional employer organizations and professional employer organization reporting entities registered under this section that is readily

available to the public by electronic or other means.

Sec. 4125.051. (A) A professional employer organization, or a professional employer organization reporting entity of which the professional employer organization is a member, shall maintain positive working capital at initial or annual registration, as reflected in the financial statements submitted to the bureau. If a deficit in working capital is reflected in the financial statements submitted to the bureau, the professional employer organization or the professional employer organization reporting entity shall do both of the following for that registration period:

(1) Obtain a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit in working capital;

(2) Submit to the administrator of workers' compensation a quarterly financial statement for each calendar quarter during which there is a deficit in working capital, accompanied by an attestation of the chief executive officer of the professional employer organization that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the professional employer organization or members of the professional employer organization reporting entity.

The bond, letter of credit, or securities required under division (A)(1) of this section shall be held by a depository designated by the administrator and shall secure payment by the professional employer organization of all taxes, wages, benefits, or other entitlements due or otherwise pertaining to shared employees, if the professional employer organization does not make those payments when due.

(B) A professional employer organization, or a professional employer organization reporting entity of which the professional

employer organization is a member, shall prepare financial statements in accordance with generally accepted accounting principles and submit them for registration and registration renewal under section 4125.05 of the Revised Code.

The financial statements shall be audited by an independent certified public accountant authorized to practice in the jurisdiction in which that accountant is located.

(1) The resulting report of the auditor shall not include either of the following:

(a) A qualification or disclaimer of opinion as to adherence to generally accepted accounting principles;

(b) A statement expressing substantial doubt about the ability of the professional employer organization or professional employer organization reporting entity to continue as a going concern.

(2) However, if a professional employer organization does not have at least twelve months of operating history on which to base financial statements, the financial statements shall be reviewed by a certified public accountant.

(3) Notwithstanding division (B)(1)(a) of this section, if a professional employer organization or professional employer organization reporting entity is a subsidiary or is related to a variable interest entity, the professional employer organization or professional employer organization entity may submit financial statements of the professional employer organization or professional employer organization reporting entity.

(C) The bureau shall deny initial or annual registration to an applicant or professional employer organization reporting entity that does not meet the requirements of this section.

(D) Professional employer organizations in a professional

employer organization reporting entity may satisfy the requirements of this section on a combined or consolidated basis provided that each member of the professional employer organization reporting entity guarantees each other members' satisfaction of the requirements under division (A) of this section.

For purposes of satisfying the registration and registration renewal requirements described in division (B)(7) of section 4125.05 of the Revised Code, a professional employer organization reporting entity may submit a combined or consolidated financial statement that satisfies the requirements of this section. If the combined or consolidated financial statement includes entities that are not professional employer organizations or that are not in the professional employer organization reporting entity, the controlling entity of the professional employer organization reporting entity that is submitting the consolidated or combined financial statement shall guarantee that the professional employer organizations of the professional employer organization reporting entity have satisfied the requirements under division (A) of this section and shall include supplemental combining schedules to guarantee that the requirements under division (A) of this section are satisfied by the professional employer organization or professional employer organization reporting entity.

Sec. 4125.07. Not later than fourteen calendar days after the date on which a professional employer organization agreement is terminated, the professional employer organization is adjudged bankrupt, the professional employer organization ceases operations within the state of Ohio, or the registration of the professional employer organization is revoked, the professional employer organization shall submit to the administrator ~~of the bureau~~ of workers' compensation and each client employer associated with that professional employer organization a completed workers'

compensation lease termination notice form provided by the administrator. The completed form shall include all client payroll and claim information listed in a format specified by the administrator and notice of all workers' compensation claims that have been reported to the professional employer organization in accordance with its internal reporting policies.

A professional employer organization shall report any transfer of employees between related professional employer organization entities or professional employer organization reporting entities to the administrator within fourteen calendar days after the date of the transfer on a form prescribed by the administrator. The professional employer organization or professional employer organization reporting entity shall include in the form all client payroll and claim information regarding the transferred employees listed in a format specified by the administrator and a notice of all workers' compensation claims that have been reported to the professional employer organization or professional employer organization reporting entity in accordance with the internal reporting policies of the professional employer organization or professional employer organization reporting entity.

Sec. 4125.08. Nothing in this chapter exempts a professional employer organization, client employer, or shared employee from any applicable federal, state, or local licensing, registration, or certification statutes or regulations. An individual required to obtain and maintain a license, registration, or certification under law and who is a shared employee of a professional employer organization and a client employer is an employee of the client employer for purposes of obtaining and maintaining the appropriate license, registration, or certification as required by law. A professional employer organization does not engage in any

occupation, trade, or profession that requires a license, certification, or registration solely by entering into a professional employer agreement with a client employer or coemploying a shared employee.

A client employer shall have the sole right of direction and control of the professional or licensed activities of shared employees and of the client employer's business. The shared employees and client employers shall remain subject to regulation by the board, commission, or agency responsible for licensing, registration, or certification of the shared employees or client employers.

Sec. 4125.10. Nothing contained in this chapter or in any professional employer organization agreement shall do any of the following:

(A) Diminish, abolish, or remove the rights and obligations of client employers and shared employees existing prior to the effective date of the professional employer organization agreement;

(B) Affect, modify, or amend any contractual relationship or restrictive covenant between a shared employee and any client employer in effect at the time a professional employer organization agreement becomes effective;

(C) Prohibit or amend any contractual relationship or restrictive covenant between a client employer and a shared employee that is entered into after the professional employer organization agreement becomes effective;

(D) Create any new or additional enforcement right of a shared employee against a professional employer organization that is not specifically provided by the professional employer organization agreement or this chapter.

A professional employer organization shall have no responsibility or liability in connection with, or arising out of, any contractual relationship or restrictive covenant between a client employer and a shared employee unless the professional employer organization has specifically agreed otherwise in writing.

Sec. 4125.11. For purposes of a bid, contract, purchase order, or agreement entered into with the state or any political subdivision, a client employer's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business shall not be affected as a result of the client employer entering into a professional employer organization agreement or using the services of a professional employer organization.

Sec. 4141.24. (A)(1) The director of job and family services shall maintain a separate account for each employer and, except as otherwise provided in division (B) of section 4141.25 of the Revised Code respecting mutualized contributions, shall credit such employer's account with all the contributions, or payments in lieu of contributions, which the employer has paid on the employer's own behalf.

(2) If, as of the computation date, a contributory employer's account shows a negative balance computed as provided in division (A)(3) of section 4141.25 of the Revised Code, less any contributions due and unpaid on such date, which negative balance is in excess of the limitations imposed by divisions (A)(2)(a), (b), and (c) of this section and if the employer's account is otherwise eligible for the transfer, then before the employer's contribution rate is computed for the next succeeding contribution period, an amount equal to the amount of the excess eligible for transfer shall be permanently transferred from the account of such

employer and charged to the mutualized account provided in division (B) of section 4141.25 of the Revised Code.

(a) If as of any computation date, a contributory employer's account shows a negative balance in excess of ten per cent of the employer's average annual payroll, then before the employer's contribution rate is computed for the next succeeding contribution period, an amount equal to the amount of the excess shall be transferred from the account as provided in this division. No contributory employer's account may have any excess transferred pursuant to division (A)(2)(a) of this section, unless the employer's account has shown a positive balance for at least two consecutive computation dates prior to the computation date with respect to which the transfer is proposed. Each time a transfer is made pursuant to division (A)(2)(a) of this section, the employer's account is ineligible for any additional transfers under that division, until the account shows a positive balance for at least two consecutive computation dates subsequent to the computation date of which the most recent transfer occurs pursuant to division (A)(2)(a), (b), or (c) of this section.

(b) If at the next computation date after the computation date at which a transfer from the account occurs pursuant to division (A)(2)(a) of this section, a contributory employer's account shows a negative balance in excess of fifteen per cent of the employer's average annual payroll, then before the employer's contribution rate is computed for the next succeeding contribution period an amount equal to the amount of the excess shall be permanently transferred from the account as provided in this division.

(c) If at the next computation date subsequent to the computation date at which a transfer from a contributory employer's account occurs pursuant to division (A)(2)(b) of this section, the employer's account shows a negative balance in excess

of twenty per cent of the employer's average annual payroll, then before the employer's contribution rate is computed for the next succeeding contribution period, an amount equal to the amount of the excess shall be permanently transferred from the account as provided in this division.

(d) If no transfer occurs pursuant to division (A)(2)(b) or (c) of this section, the employer's account is ineligible for any additional transfers under division (A)(2) of this section until the account requalifies for a transfer pursuant to division (A)(2)(a) of this section.

(B) Any employer may make voluntary payments in addition to the contributions required under this chapter, in accordance with rules established by the director. Such payments shall be included in the employer's account as of the computation date, provided they are received by the director by the thirty-first day of December following such computation date. Such voluntary payment, when accepted from an employer, will not be refunded in whole or in part. In determining whether an employer's account has a positive balance on two consecutive computation dates and is eligible for transfers under division (A)(2) of this section, the director shall exclude any voluntary payments made subsequent to the last transfer made under division (A)(2) of this section.

(C) All contributions to the fund shall be pooled and available to pay benefits to any individual entitled to benefits irrespective of the source of such contributions.

(D)(1) For the purposes of this section and sections 4141.241 and 4141.242 of the Revised Code, an employer's account shall be charged only for benefits based on remuneration paid by such employer. Benefits paid to an eligible individual shall be charged against the account of each employer within the claimant's base period in the proportion to which wages attributable to each employer of the claimant bears to the claimant's total base period

wages. Charges to the account of a base period employer with whom the claimant is employed part-time at the time the claimant's application for a determination of benefits rights is filed shall be charged to the mutualized account when all of the following conditions are met:

(a) The claimant also worked part-time for the employer during the base period of the claim.

(b) The claimant is unemployed due to loss of other employment.

(c) The employer is not a reimbursing employer under section 4141.241 or 4141.242 of the Revised Code.

(2) Notwithstanding division (D)(1) of this section, charges to the account of any employer, including any reimbursing employer, shall be charged to the mutualized account if it finally is determined by a court on appeal that the employer's account is not chargeable for the benefits.

(3) Any benefits paid to a claimant under section 4141.28 of the Revised Code prior to a final determination of the claimant's right to the benefits shall be charged to the employer's account as provided in division (D)(1) of this section, provided that if there is no final determination of the claim by the subsequent thirtieth day of June, the employer's account shall be credited with the total amount of benefits that has been paid prior to that date, based on the determination that has not become final. The total amount credited to the employer's account shall be charged to a suspense account, which shall be maintained as a separate bookkeeping account and administered as a part of this section, and shall not be used in determining the account balance of the employer for the purpose of computing the employer's contribution rate under section 4141.25 of the Revised Code.

If it is finally determined that the claimant is entitled to

all or a part of the benefits in dispute, the suspense account shall be credited and the appropriate employer's account charged with the benefits. If it is finally determined that the claimant is not entitled to all or any portion of the benefits in dispute, the benefits shall be credited to the suspense account and a corresponding charge made to the mutualized account established in division (B) of section 4141.25 of the Revised Code, provided that, except as otherwise provided in this section, if benefits are chargeable to an employer or group of employers who is required or elects to make payments to the fund in lieu of contributions under section 4141.241 of the Revised Code, the benefits shall be charged to the employer's account in the manner provided in division (D)(1) of this section and division (B) of section 4141.241 of the Revised Code, and no part of the benefits may be charged to the suspense account provided in this division.

To the extent that benefits that have been paid to a claimant and charged to the employer's account are found not to be due the claimant and are recovered by the director as provided in section 4141.35 of the Revised Code, they shall be credited to the employer's account.

(4) The director shall notify each employer at least once each month of the benefits charged to the employer's account since the last preceding notice; except that for the purposes of sections 4141.241 and 4141.242 of the Revised Code which provides the billing of employers on a payment in lieu of a contribution basis, the director may prescribe a quarterly or less frequent notice of benefits charged to the employer's account. Such notice will show a summary of the amount of benefits paid which were charged to the employer's account. This notice shall not be deemed a determination of the claimant's eligibility for benefits. Any employer so notified, however, may file within fifteen days after the mailing date of the notice, an exception to charges appearing

on the notice on the grounds that such charges are not in accordance with this section. The director shall promptly examine the exception to such charges and shall notify the employer of the director's decision thereon, which decision shall become final unless appealed to the unemployment compensation review commission in the manner provided in section 4141.26 of the Revised Code. For the purposes of this division, an exception is considered timely filed when it has been received as provided in division (D)(1) of section 4141.281 of the Revised Code.

(E) The director shall terminate and close the account of any contributory employer who has been subject to this chapter if the enterprise for which the account was established is no longer in operation and it has had no payroll and its account has not been chargeable with benefits for a period of five consecutive years. The amount of any positive balance, computed as provided in division (A)(3) of section 4141.25 of the Revised Code, in an account closed and terminated as provided in this section shall be credited to the mutualized account as provided in division (B)(2)(b) of section 4141.25 of the Revised Code. The amount of any negative balance, computed as provided in division (A)(3) of section 4141.25 of the Revised Code, in an account closed and terminated as provided in this section shall be charged to the mutualized account as provided in division (B)(1)(b) of section 4141.25 of the Revised Code. The amount of any positive balance or negative balance, credited or charged to the mutualized account after the termination and closing of an employer's account, shall not thereafter be considered in determining the contribution rate of such employer. The closing of an employer's account as provided in this division shall not relieve such employer from liability for any unpaid contributions or payment in lieu of contributions which are due for periods prior to such closing.

If the director finds that a contributory employer's business

is closed solely because of the entrance of one or more of the owners, officers, or partners, or the majority stockholder, into the armed forces of the United States, or any of its allies, or of the United Nations after July 1, 1950, such employer's account shall not be terminated and if the business is resumed within two years after the discharge or release of such persons from active duty in the armed forces, the employer's experience shall be deemed to have been continuous throughout such period. The reserve ratio of any such employer shall be the total contributions paid by such employer minus all benefits, including benefits paid to any individual during the period such employer was in the armed forces, based upon wages paid by the employer prior to the employer's entrance into the armed forces divided by the average of the employer's annual payrolls for the three most recent years during the whole of which the employer has been in business.

(F) If an employer transfers all of its trade or business to another employer or person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of such transferring employer's account, and continue the payment of all contributions, or payments in lieu of contributions, due under this chapter.

If an employer or person acquires substantially all, or a clearly segregable and identifiable portion of an employer's trade or business, then upon the director's approval of a properly completed application for successorship, the employer or person acquiring the trade or business, or portion thereof, shall be the successor in interest. The director by rule may prescribe procedures for effecting transfers of experience as provided for in this section.

(G) Notwithstanding sections 4141.09, 4141.23, 4141.24, 4141.241, 4141.242, 4141.25, 4141.26, and 4141.27 of the Revised Code, both of the following apply regarding assignment of rates

and transfers of experience:

(1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, both employers are under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred trade or business, or portion thereof, shall be transferred to the employer to whom the business is so transferred. The director shall recalculate the rates of both employers and those rates shall be effective immediately upon the date of the transfer of the trade or business.

(2) Whenever a person is not an employer under this chapter at the time the person acquires the trade or business of an employer, the unemployment experience of the acquired trade or business shall not be transferred to the person if the director finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, that person shall be assigned the applicable new employer rate under division (A)(1) of section 4141.25 of the Revised Code.

(H) The director shall establish procedures to identify the transfer or acquisition of a trade or business for purposes of this section and shall adopt rules prescribing procedures for effecting transfers of experience as described in this section.

(I) No rate of contribution less than two and seven-tenths per cent shall be permitted a contributory employer succeeding to the experience of another contributory employer pursuant to this section for any period subsequent to such succession, except in accordance with rules prescribed by the director, which rules shall be consistent with federal requirements for additional credit allowance in section 3303 of the "Internal Revenue Code of 1954" and consistent with this chapter, except that such rules may establish a computation date for any such period different from

the computation date generally prescribed by this chapter, and may define "calendar year" as meaning a twelve-consecutive-month period ending on the same day of the year as that on which such computation date occurs.

(J) The director may prescribe rules for the establishment, maintenance, and dissolution of common contribution rates for two or more contributory employers, and in accordance with such rules and upon application by two or more employers shall establish such common rate to be computed by merging the several contribution rate factors of such employers for the purpose of establishing a common contribution rate applicable to all such employers.

(K) The director shall adopt rules applicable to professional employer organizations and professional employer organization reporting entities to address the method in which a professional employer organization or professional employer organization reporting entity reports quarterly wages and contributions to the director for shared employees.

(1) The rules shall recognize a professional employer organization or professional employer organization reporting entity as the employer of record of the shared employees of the professional employer organization or professional employer organization reporting entity for reporting purposes; however, the rules shall require that each shared employee of a single client employer be reported under a separate and unique subaccount of the professional employer organization or professional employer organization reporting entity to reflect the experience of the shared employees of that client employer.

(2) The director shall use a subaccount solely to determine experience rates for that individual subaccount on an annual basis and shall recognize a professional employer organization or professional employer organization reporting entity as the employer of record associated with each subaccount. The director

shall combine the rate experience that existed on a client employer's account prior to entering into a professional employer organization agreement with the experience accumulated as a subaccount of the professional employer organization or professional employer organization reporting entity. The combined experience shall remain with the client account upon termination of the professional employer organization agreement.

(3) A professional employer organization or professional employer organization reporting entity shall provide a power of attorney or other evidence, which evidence may be included as part of a professional employer organization agreement, completed by each client employer of the professional employer organization or professional employer organization reporting entity, authorizing the professional employer organization or professional employer organization reporting entity to act on behalf of the client employer in accordance with the requirements of this chapter.

(4) Any rule adopted pursuant to division (K) of this section also shall include administrative requirements that permit a professional employer organization or a professional employer organization reporting entity to transmit any reporting and payment data required under division (K)(1) of this section collectively as a single filing with the director.

(5) As used in division (K) of this section, "client employer," "professional employer organization," "professional employer organization agreement," "professional employer organization reporting entity," and "shared employee" have the same meanings as in section 4125.01 of the Revised Code.

Sec. 5747.07. (A) As used in this section:

(1) "Partial weekly withholding period" means a period during which an employer directly, indirectly, or constructively pays compensation to, or credits compensation to the benefit of, an

employee, and that consists of a consecutive Saturday, Sunday, Monday, and Tuesday or a consecutive Wednesday, Thursday, and Friday. There are two partial weekly withholding periods each week, except that a partial weekly withholding period cannot extend from one calendar year into the next calendar year; if the first day of January falls on a day other than Saturday or Wednesday, the partial weekly withholding period ends on the thirty-first day of December and there are three partial weekly withholding periods during that week.

(2) "Undeposited taxes" means the taxes an employer is required to deduct and withhold from an employee's compensation pursuant to section 5747.06 of the Revised Code that have not been remitted to the tax commissioner pursuant to this section or to the treasurer of state pursuant to section 5747.072 of the Revised Code.

(3) A "week" begins on Saturday and concludes at the end of the following Friday.

(4) "Client employer," "professional employer organization," "professional employer organization agreement," and "professional employer organization reporting entity" have the same meanings as in section 4125.01 of the Revised Code.

(B) Except as provided in divisions (C) and (D) of this section and in division (A) of section 5747.072 of the Revised Code, every employer required to deduct and withhold any amount under section 5747.06 of the Revised Code shall file a return and shall pay the amount required by law as follows:

(1) An employer who accumulates or is required to accumulate undeposited taxes of one hundred thousand dollars or more during a partial weekly withholding period shall make the payment of the undeposited taxes by the close of the first banking day after the day on which the accumulation reaches one hundred thousand

dollars. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code.

(2)(a) Except as required by division (B)(1) of this section, an employer described in division (B)(2)(b) of this section shall make the payment of undeposited taxes within three banking days after the close of a partial weekly withholding period during which the employer was required to deduct and withhold any amount under this chapter. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code.

(b) For amounts required to be deducted and withheld during 1994, an employer described in division (B)(2)(b) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending June 30, 1993. For amounts required to be deducted and withheld during 1995 and each year thereafter, an employer described in division (B)(2)(b) of this section is one whose actual or required payments under this section were at least eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.

(3) Except as required by divisions (B)(1) and (2) of this section, if an employer's actual or required payments were more than two thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year, the employer shall make the payment of undeposited taxes for each month during which they were required to be withheld no later than fifteen days following the last day of that month. The employer shall file the return prescribed by the tax commissioner with the payment.

(4) Except as required by divisions (B)(1), (2), and (3) of this section, an employer shall make the payment of undeposited

taxes for each calendar quarter during which they were required to be withheld no later than the last day of the month following the last day of March, June, September, and December each year. The employer shall file the return prescribed by the tax commissioner with the payment.

(C) The return and payment schedules prescribed by divisions (B)(1) and (2) of this section do not apply to the return and payment of undeposited school district income taxes arising from taxes levied pursuant to Chapter 5748. of the Revised Code. Undeposited school district income taxes shall be returned and paid pursuant to divisions (B)(3) and (4) of this section, as applicable.

(D)(1) The requirements of division (B) of this section are met if the amount paid is not less than ninety-five per cent of the actual tax withheld or required to be withheld for the prior quarterly, monthly, or partial weekly withholding period, and the underpayment is not due to willful neglect. Any underpayment of withheld tax shall be paid within thirty days of the date on which the withheld tax was due without regard to division (D)(1) of this section. An employer described in division (B)(1) or (2) of this section shall make the payment by electronic funds transfer under section 5747.072 of the Revised Code.

(2) If the tax commissioner believes that quarterly or monthly payments would result in a delay that might jeopardize the remittance of withholding payments, the commissioner may order that the payments be made weekly, or more frequently if necessary, and the payments shall be made no later than three banking days following the close of the period for which the jeopardy order is made. An order requiring weekly or more frequent payments shall be delivered to the employer personally or by certified mail and remains in effect until the commissioner notifies the employer to the contrary.

(3) If compelling circumstances exist concerning the remittance of undeposited taxes, the commissioner may order the employer to make payments under any of the payment schedules under division (B) of this section. The order shall be delivered to the employer personally or by certified mail and shall remain in effect until the commissioner notifies the employer to the contrary. For purposes of division (D)(3) of this section, "compelling circumstances" exist if either or both of the following are true:

(a) Based upon annualization of payments made or required to be made during the preceding calendar year and during the current calendar year, the employer would be required for the next calendar year to make payments under division (B)(2) of this section.

(b) Based upon annualization of payments made or required to be made during the current calendar year, the employer would be required for the next calendar year to make payments under division (B)(2) of this section.

(E)(1) An employer described in division (B)(1) or (2) of this section shall file, not later than the last day of the month following the end of each calendar quarter, a return covering, but not limited to, both the actual amount deducted and withheld and the amount required to be deducted and withheld for the tax imposed under section 5747.02 of the Revised Code during each partial weekly withholding period or portion of a partial weekly withholding period during that quarter. The employer shall file the quarterly return even if the aggregate amount required to be deducted and withheld for the quarter is zero dollars. At the time of filing the return, the employer shall pay any amounts of undeposited taxes for the quarter, whether actually deducted and withheld or required to be deducted and withheld, that have not been previously paid. If required under division (I) of this

section, the payment shall be made by electronic funds transfer. The tax commissioner shall prescribe the form and other requirements of the quarterly return.

(2) In addition to other returns required to be filed and payments required to be made under this section, every employer required to deduct and withhold taxes shall file, not later than the thirty-first day of January of each year, an annual return covering, but not limited to, both the aggregate amount deducted and withheld and the aggregate amount required to be deducted and withheld during the entire preceding year for the tax imposed under section 5747.02 of the Revised Code and for each tax imposed under Chapter 5748. of the Revised Code. At the time of filing that return, the employer shall pay over any amounts of undeposited taxes for the preceding year, whether actually deducted and withheld or required to be deducted and withheld, that have not been previously paid. The employer shall make the annual report, to each employee and to the tax commissioner, of the compensation paid and each tax withheld, as the commissioner by rule may prescribe.

Each employer required to deduct and withhold any tax is liable for the payment of that amount required to be deducted and withheld, whether or not the tax has in fact been withheld, unless the failure to withhold was based upon the employer's good faith in reliance upon the statement of the employee as to liability, and the amount shall be deemed to be a special fund in trust for the general revenue fund.

(F) Each employer shall file with the employer's annual return the following items of information on employees for whom withholding is required under section 5747.06 of the Revised Code:

(1) The full name of each employee, the employee's address, the employee's school district of residence, and in the case of a nonresident employee, the employee's principal county of

employment;

(2) The social security number of each employee;

(3) The total amount of compensation paid before any deductions to each employee for the period for which the annual return is made;

(4) The amount of the tax imposed by section 5747.02 of the Revised Code and the amount of each tax imposed under Chapter 5748. of the Revised Code withheld from the compensation of the employee for the period for which the annual return is made. The commissioner may extend upon good cause the period for filing any notice or return required to be filed under this section and may adopt rules relating to extensions of time. If the extension results in an extension of time for the payment of the amounts withheld with respect to which the return is filed, the employer shall pay, at the time the amount withheld is paid, an amount of interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that amount withheld, from the day that amount was originally required to be paid to the day of actual payment or to the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

(5) In addition to all other interest charges and penalties imposed, all amounts of taxes withheld or required to be withheld and remaining unpaid after the day the amounts are required to be paid shall bear interest from the date prescribed for payment at the rate per annum prescribed by section 5703.47 of the Revised Code on the amount unpaid, in addition to the amount withheld, until paid or until the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

(G) An employee of a corporation, limited liability company, or business trust having control or supervision of or charged with the responsibility of filing the report and making payment, or an

officer, member, manager, or trustee of a corporation, limited liability company, or business trust who is responsible for the execution of the corporation's, limited liability company's, or business trust's fiscal responsibilities, shall be personally liable for failure to file the report or pay the tax due as required by this section. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge a responsible officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay tax due.

(H) If an employer required to deduct and withhold income tax from compensation and to pay that tax to the state under sections 5747.06 and 5747.07 of the Revised Code sells the employer's business or stock of merchandise or quits the employer's business, the taxes required to be deducted and withheld and paid to the state pursuant to those sections prior to that time, together with any interest and penalties imposed on those taxes, become due and payable immediately, and that person shall make a final return within fifteen days after the date of selling or quitting business. The employer's successor shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid, until the former owner produces a receipt from the tax commissioner showing that the taxes, interest, and penalties have been paid or a certificate indicating that no such taxes are due. If the purchaser of the business or stock of merchandise fails to withhold purchase money, the purchaser shall be personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the former owner. If the amount of taxes, interest, and penalties outstanding at the time of the purchase exceeds the total purchase money, the tax commissioner in the commissioner's discretion may adjust the liability of the

seller or the responsibility of the purchaser to pay that liability to maximize the collection of withholding tax revenue.

(I)(1) An employer described in division (I)(2) of this section shall make all payments required by this section for the year by electronic funds transfer under section 5747.072 of the Revised Code.

(2)(a) For 1994, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1993.

(b) For 1995, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1994.

(c) For 1996, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded three hundred thousand dollars during the twelve-month period ending June 30, 1995.

(d) For 1997 through 2000, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.

(e) For 2001 and thereafter, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.

(J)(1) Every professional employer organization and every professional employer organization reporting entity shall file a report with the tax commissioner within thirty days after

commencing business in this state or within thirty days after the effective date of this amendment, whichever is later, that includes all of the following information:

(a) The name, address, number the employer receives from the secretary of state to do business in this state, if applicable, and federal employer identification number of each client employer of the professional employer organization or professional employer organization reporting entity;

(b) The date that each client employer became a client of the professional employer organization or professional employer organization reporting entity;

(c) The names and mailing addresses of the chief executive officer and the chief financial officer of each client employer for taxation of the client employer.

(2) Beginning with the calendar quarter ending after a professional employer organization or professional employer organization reporting entity files the report required under division (J)(1) of this section, and every calendar quarter thereafter, the professional employer organization or the professional employer organization reporting entity shall file an updated report with the tax commissioner. The professional employer organization or professional employer organization reporting entity shall file the updated report not later than the last day of the month following the end of the calendar quarter and shall include all of the following information in the report:

(a) If an entity became a client employer of the professional employer organization or professional employer organization reporting entity at any time during the calendar quarter, all of the information required under division (J)(1) of this section for each new client employer;

(b) If an entity terminated the professional employer

organization agreement between the professional employer organization or professional employer organization reporting entity and the entity at any time during the calendar quarter, the information described in division (J)(1)(a) of this section for that entity, the date during the calendar quarter that the entity ceased being a client of the professional employer organization or professional employer organization reporting entity, if applicable, or the date the entity ceased business operations in this state, if applicable;

(c) If the name or mailing address of the chief executive officer or the chief financial officer of a client employer has changed since the professional employer organization or professional employer organization reporting entity previously submitted a report under division (J)(1) or (2) of this section, the updated name or mailing address, or both, of the chief executive officer or the chief financial officer, as applicable;

(d) If none of the events described in divisions (J)(2)(a) to (c) of this section occurred during the calendar quarter, a statement of that fact.

Section 2. That existing sections 4123.291, 4125.01, 4125.02, 4125.03, 4125.05, 4125.07, 4125.08, 4141.24, and 5747.07 of the Revised Code are hereby repealed.

Section 3. Section 4125.05 of the Revised Code as amended by this act and section 4125.051 of the Revised Code as enacted by this act take effect January 1, 2012.

Senate Bill 139: Professional Employer Organizations

Professional Employer Organizations (PEOs) are service companies that partner with small to medium-sized business to assume management of human resource functions. The 125th Ohio General Assembly passed House Bill 183 which enacted statutes (ORC 4125) governing the licensing and regulation of PEOs. This allows the PEO client company to concentrate on the operational and revenue-producing side of its operations. House Bill 183 was passed unanimously by both chambers of the Ohio legislature. Regulatory oversight of PEOs in Ohio is provided by the Ohio Bureau of Workers Compensation.

Proposed Modernization of Ohio's PEO Statutes

Since the Ohio legislature enacted PEO legislation seven years ago, 17 other states have passed similar PEO licensing statutes. In total, 37 States currently provide licensing and regulation of PEOs. The proposed legislation seeks to more closely align Ohio's PEO law to that of other states including Ohio's neighbors Michigan, West Virginia and Indiana. Outlined below are the major components of the proposed legislation.

Strengthens financial solvency requirements to protect employers and employees

- Requires annual audited financial statements from PEOs to provide transparency as to the financial health of PEOs.
- Requires PEOs to maintain minimum working capital to protect client business from unexpected PEO failures.

Clarifies statutes to assist competitiveness of businesses serviced by PEOs

- Makes clear that businesses using PEOs are afforded the same economic development incentives afforded to other businesses of similar standing: tax credits, small business financing, MBE designation, etc.
- Ensures that small businesses in a PEO relationship whose services are subject to taxation are neither advantaged or disadvantaged by virtue of their relationship

Clarifies duties and obligations in the PEO-Client relationship.

- Clarifies that the client is responsible for the direction and control of the licensed or professional activities of the client and the professional work product and business activities of the client
- Ensures that a PEO relationship shall not interfere with contractual relationships or covenants between the client and employee existing prior to or during the relationship or the client and an outside entity

For more information, please contact: Adam Peer, director, NAPEO, apeer@napeo.org or 703-739-8179.

Ohio | Bureau of Workers' Compensation
30 W. Spring St.
Columbus, OH 43215-2256

Governor John R. Kasich
Administrator/CEO Stephen Buehrer
ohiobwc.com
1-800-OHIOBWC

September 20, 2011

Senator Kevin Bacon
Chair, Senate Insurance, Commerce and Labor Committee
Statehouse
Columbus, OH 43215

Re: Ohio Bureau of Workers' Compensation Support of Amendment/Senate Bill 139

Dear Chairman Bacon and Members of the Senate Insurance, Commerce and Labor Committee:

Please accept this letter as the Bureau of Workers' Compensation's (BWC) support of amendment 129SB139-2138 and SB 139 as amended. As stated last week, BWC has worked with the National Association of Professional Employer Organizations (NAPEO) on Senate Bill 139 and appreciates the opportunity to share support of enhancing the professional employer organization (PEO) law.

As many of you are aware, BWC was tasked in 2004, with the passage of House Bill 183, as the state regulator of the PEO industry. Since then, BWC has witnessed issues such as potential data manipulation, claim shifting and inaccurate classification coding that the 2004 legislation failed to fully address. Under current law, due to the insufficient reporting requirements, BWC lacks the information or tools to assess the total risk PEOs bring to the system and ensure the proper protection for Ohio employers and employees. As such, BWC supports SB 139 as amended, and believes this legislation is a step in the right direction.

Understanding the PEO industry is growing, BWC supports the provisions of SB 139 that enhance financial standards, mandatory reporting and requires PEOs to provide workers' compensation data to their client employers. BWC believes these provisions help uphold the PEOs fiduciary responsibility and provides business owners the needed information to control costs efficiently. When given the opportunity, BWC provided recommendations to address the previously mentioned issues and allow more effective monitoring of this fast growing industry. As a result, BWC supports amendment 129SB139-2138, which includes these recommendations.

As amended, this legislation will require PEOs to report individual client employer payroll, claims and classification data. As a result, BWC is able to track data at the individual client employer level. Under this recordkeeping, the ability to misrepresent data is reduced and BWC is able to more efficiently monitor potential growth of both State Fund and Self Insured PEO's to ensure the needed financial resources to cover the risk exposures reflected in the PEOs' changing client base. As a result of the importance of PEOs understanding the risk exposure the PEO is assuming and to knowingly comply with the PEO reporting requirements, BWC recommended an attestation of the data submissions from the chief executive officer of the PEO be required.

Again, BWC appreciates the opportunity to work on this legislation and believes SB 139, as amended, allows PEOs to provide valuable, cost effective services to business owners while ensuring transparency and financial solvency.

Thank you for your time and consideration.

Sincerely,

Kelly Carey
Legislative Liaison
Ohio Bureau of Workers' Compensation

Board of Directors

Executive Summary

Destination: Excellence Program

(Rule 4123-17-75 and associated rules)

Background

R.C. 4123.29(A)(3) provides that the Administrator shall develop and make available to employers who are paying premiums to the state insurance fund alternative premium plans. Additionally, R.C. 4123.34(E) allows the Administrator to grant a discount to employers that do not incur a compensable claim (subject to certain conditions) or successfully complete a loss prevention program prescribed by the Superintendent of the Division of Safety and Hygiene.

Chapter 4123-17 of the Ohio Administrative Code contains BWC rules for alternative rating and discount programs. The Destination: Excellence Program will be created by new rule 4123-17-75 and additional program rules as specified below.

Executive Summary

The Destination: Excellence Program combines existing programs and new programs to create a comprehensive discount program that focuses on return-to-work for injured workers, fosters efficient management of accounts and cost control efforts for employers, and streamlines BWC processes and requirements to encourage an employer's focus on safety. New discounts and discount program changes created under this program will be effective for the policy year beginning July 1, 2012 for private employers, and January 1, 2013 for public employer taxing districts, unless otherwise noted. Education efforts regarding existing programs will begin in January 2012. The Administrator is proposing:

Education and Emphasis on Existing Programs that Encourage Safety and Return to Work

- Safety Council Rebate Incentive Program – establish new rule 4123-17-56.2 to formalize the Safety Council Rebate Incentive Program, which allows employers to obtain a 2% premium rebate for attending a specific number of safety council programs (10 in FY12), as well as an additional 2% premium rebate for reducing frequency or severity by 10% or more below the previous year's frequency or severity.
- Drug-Free Safety Program – existing rule 4123-17-58 establishes the Drug-Free Safety Program, which is designed to help employers prevent on-the-job injuries and illness by integrating drug-free efforts into their overall workplace safety program. No substantive changes are proposed to this rule.
- Vocational Rehabilitation – existing rules provide incentives to encourage employers to use vocational rehabilitation services offered by the bureau, including:
    - Remain at Work Program – existing rule 4123-6-19 establishes the Remain at Work Program, which allows employers to utilize certain vocational rehabilitation programs, such as job retention, for injured workers who have medical-only claims. Small procedural changes are suggested to this rule, but none are substantive in nature.
    - Incentive Payments – existing rule 4123-18-11 establishes incentive payments up to a maximum of 50% of the injured workers' salary for 13 weeks for employers who hire or retain injured workers who have completed a vocational rehab program. Some of BWC's incentive programs include Gradual Return to Work, Job Modifications, On the Job Training, Tools and Equipment, and Work Trial. No changes are proposed to this rule.
    - Payment of Vocational Rehabilitation Services from Surplus Fund – existing rule 4123-18-08 provides that an employer's vocational rehabilitation services are not charged to the employer's experience, but rather, to the Surplus Fund. No changes are proposed to this rule.

Simplification of Existing Programs to Ease the Administrative Burden on Employers

- Program Compatibility Rules – modify the Employer Program Compatibility Table (Appendix C of existing rule 4123-17-74) to align program compatibility with three guiding principles:
    - Programs that provide an artificial discount are generally not compatible with other programs.
    - Programs that are "cost-based" and focus on an employer's performance are generally not compatible with other programs.
    - Programs that reward certain employer behaviors should be generally compatible.
- 100-Percent EM Cap – modify the portion of existing rule 4123-17-03 establishing the 100-Percent EM Cap Program to:
    - remove the 1.01 EM provision for eligibility, allowing base- and credit-rated employers who lose their group discount to become cap-eligible,
    - replace the 10-Step Business Safety Plan requirement with an industry-specific half-day training in the first year of the program and an online training class in subsequent years, and
    - eliminate duplicative language in the rule.
- Small Deductible Program – modify existing rule 4123-17-72 to provide that the deductible payments made by employers in the Small Deductible Program are excluded from the employer's experience. Changes are not proposed to the Large Deductible Program.
- Group Retrospective Rating Program – modify existing rule 4123-17-73 to:
    - remove ambiguity regarding "expected" aggregate premiums for a group,
    - enhance consistency within the rule,
    - clarify that an employer who has elected to participate in group experience rating for the upcoming policy year may not elect to participate in group retrospective rating after the last business day of February, if the employer is listed on a roster for group experience rating,
    - eliminate rules relating to a "roll-over" process that does not exist for the program, and
    - clarify the rule as it relates to a bankrupt employer.
- One-Claim Program – modify existing rule 4123-17-71 to:
    - reduce the discount from 40% of base premium for four years to 20% in the first year, 15% in the second, 10% in the third, and 5% in the final year (employers already in the program will continue to receive a 40% discount through the duration of the program),
    - replace the all-day class requirement with an industry-specific half-day training in the first year of the program and an online training class in subsequent years, and
    - eliminate the most recent calendar year when determining eligibility.
- Retrospective Rating Program – modify existing rule 4123-17-42 to eliminate duplicative requirement that employers maintain a safety program approved by the bureau's division of safety and hygiene to maintain eligibility for the program and, within 12 months of joining the program, participate in the ten-step business safety program or establish and maintain a program approved by the bureau's division of safety & hygiene.
- Ten-Step Business Safety Program – rescind existing rule 4123-17-70 in favor of tailoring safety program requirements in BWC discount programs to the participating employer's industry, accident history, and size.

New Programs

- Industry Safety Discount – establish new rule 4123-17-56.3 creating a discount for employers who:
    - complete a safety risk assessment,
    - provide employer-specific safety data to the Bureau, if requested, and
    - participate in the following (depending on employers' payroll, one, two, or three activities will be required):
        - industry-specific safety classes offered by the Division of Safety & Hygiene,
        - on-site safety consulting with Bureau staff, and
        - BWC Safety Congress
- Transitional Work Grant Program and Bonus – reestablish rule 4123-17-55 creating the Transitional Work Grant Program and Bonus. The program will provide a grant for employers to establish a transitional work plan and a bonus for employers who use the plan in returning an injured worker to work through use of the plan.
    - Employers who received a Transitional Work Grant through BWC's prior program will not be eligible for new grant funds, but will be offered assistance in reviewing and updating the plan, and will be eligible for the performance bonus.
    - BWC will review grant applications to determine if BWC can provide consulting assistance prior to approving new grant monies; if BWC is able to provide assistance in developing a transitional work plan, a grant will not be issued.
    - The performance bonus will be based on the employer's use of the transitional work plan in assisting injured workers return to work. Medical Services, Employer Services, and the Legal division are working to determine the appropriate measure by which employers should be rewarded. The criteria for the performance bonus will be set forth in Bureau policy to be established no later than March 1, 2012. Employer education regarding the criteria for the bonus will be rolled out prior to start of the policy year.
- Administrative Discounts – establish new rules 4123-17-14.3 (Go Green Discount) and 4123-17-14.4 (Lapse-Free Discount) to reward employers that save the agency administrative costs by paying premiums online and on time.
    - The Go Green Discount will provide a discount equal to 1% of blended premium, up to a maximum of $1,000, for employers who elect to receive their payroll report, report payroll, and pay their premiums through ohiobwc.com. Participating employers must also make the first report of injury on line, if they are the party filing the claim. As the agency expands online account management and communication capabilities, employers who participate in this program will be required to engage in those transactions online to continue receiving the discount. The discount will not be available to employers who participate in the FlexPay Program or the 50/50 program, or employers reporting zero payroll.
    - The Lapse-Free Discount will provide a discount equal to 1% of blended premium, up to a maximum of $1,000, for employers who have not lapsed for the preceding 60 months. This discount will not be available to employers reporting zero payroll.

Future Steps

The following initiative is part of the Destination: Excellence Program but will not be effective until policy year 2013 for private employers and policy year 2014 for public employers:

- Claim-Free Discount – existing rule 4123-17-18 allows a discount for employers who have not incurred a compensable injury for one calendar year or more and maintains a safety committee. Prior to July 1, 2013, the Actuarial Division will examine appropriate pricing and Employer Services and the Division of Safety and Hygiene will determine the appropriate program requirements.

Harmonizing Changes

To accommodate the creation of the Destination: Excellence Program within the Ohio Administrative Code, the following additional changes were required:

- Rule 4123-17-18.1 – Early payment discount program: the provisions providing for an early payment discount for public employer taxing districts was shifted from rule 4123-17-18 (now the Claim-Free Discount) to this rule. The rule is restructured and extraneous language was removed from the rule, but no substantive changes to the requirements of the early payment discount program are proposed.
- Rule 4123-17-68 – Group experience and retrospective safety program requirements: the requirement that sponsoring organizations communicate, educate, and verify the bureau's ten step business plan for safety to group members was removed.

OSHA Update – February 2012

Local Emphasis Program – Region V

http://www.osha.gov/dep/leps/leps.html#R5

1. **PIV** – referrals, complaints and programmed inspections will include PIV and LO/TO. Directive includes draft Dock Safety Program designed for outreach activities, but would be worth reviewing.
2. **Grain Handing-** engulfment, falls, auger entanglement, struck by, combustible dust explosions and electrocution. (i.e., lock-out/tag-out program, fork lift operation, grain entry program and procedures, housekeeping programs, fall protection program, personal protective equipment, confined space entry, machine guarding, and Safety Related Work Practices).
3. **Primary Metals** NAICS (331) - The inspections will address at a minimum the following safety and health issues:

    - Material handling and storage, including, but not limited to, the use of cranes, forklifts, conveyors and rail yards;
    - Control of hazardous energy (such as lockout/tagout);
    - Machine guarding;
    - Pouring, molding, smelting, drawing and rolling operations;
    - Operations involving equipment, such as furnaces, ovens, kettles and ladles;
    - Fall hazards;
    - Hazard assessments, including the selection and use of personal protective equipment (PPE), how the employer is addressing potential fire and/or explosion hazards associated with molten metal operations, and emergency action plans;
    - Air contaminants (list of contaminants included as Appendix A);
    - Hazards created by excessive noise;
    - Review of all safety and health programs; and
    - Ergonomic hazards.

National Emphasis Program

1. Diacetyl mfg.
2. Combustible dust
3. Hexavalent chromium
4. PSM 1910.119, flammables, gases, ammonia
5. PPE
6. LO/TO

http://www.osha.gov/dep/index.html

Items of Note

1. **GHS** – may get released from OMB in spring
2. **Proposed Silica Standard –** delayed
3. **PEL Update** – of interest
4. **I2P2 – Injury and Illness Prevention Program –** Management program with similarities to other programs such as BWC 10 step, VPP, prior OSHA recommendations.

http://www.osha.gov/dsg/topics/safetyhealth/index.html

IF YOU PAY THE FEDERAL UNEMPLOYMENT TAX (FUTA)
BE READY FOR THE JANUARY SURPRISE!!

(Must Reading)

Let me make this as simple as possible. Ohio borrowed money from the special federal loan account because the states account was broke. The State had until November 10, 2011 to repay the loans. It did not.

Employers in states that do not repay the loans or take other actions (not identified) lose .3% of the credit they receive when paying their own unemployment taxes to Ohio. In effect, this raised the FUTA rate in effect at the end of 2011 from .6% to .9% of the first $7000 of an employee's wages.

The real kick in the pants here is that this lost credit is retroactive to the beginning of 2011. You will pay this added tax when you file your 2011 IRS Form 940. The credit reduction continues to increase .3% for every year Ohio fails to repay this debt. This means you should plan to pay an additional .6% on your FUTA tax in 2012 or 1.2% total.

The impact is not small and will continue to get worse as long as our elected officials continue to ignore the problem. Consider this:

- In 2012 you will pay $42 more per employee that makes $7000 or more.
- You will pay $6000 more for every $1,000,000 of FUTA wages paid.

Ohio is one of 20 states in this pickle....which means 30 states have managed to avoid this penalty on their employers. Michigan will be entering its fourth year of credit reductions which will add 1.2% to their FUTA rate or $84 more per employee and $12,000 more for every $1,000,000 of FUTA wages paid.

We are headed down the same path. And why has this been swept under the rug and out of the public's eye? Good questions to ask your elected officials especially the ones that claim to be against tax increases.

At least you now know what to expect...Good Luck!

RYAN
Alternative Staffing, Inc.

Unemployment Insurance Update

Ohio Manufacturers' Association

November 3, 2011

Federal – State Partnership

- Federal Role
  - Establish national standards
  - Provide adequate administrative funding
- State Role
  - Enact state law congruent with federal standards
  - Collect taxes and remit to federal trust funds
  - Timely determinations of eligibility and benefit payment
  - Collect overpayments

How is UI Funded

1) FUTA – Federal Unemployment Tax Act

- Primarily fund states' administrative costs for their UI program;
- Employers are taxed 6.2% of the first $7,000 of wages paid to each covered employee on their payroll;
- State conforms to federal standards → 5.4% offsetting tax credit; Net Cost to Employers = 0.8 %
- The annual value of the offset credit to Ohio's employers is around **$1.7 billion.**

How is UI Funded

2) SUTA – State Unemployment Tax Act

- Paid by employers to ODJFS' Office of Unemployment Compensation (OUC); deposited in UC Trust Fund.
- Funds in this state trust fund may only be used to finance Ohio unemployment benefits.
- The taxable wage base for the SUTA is the first $9,000 of an employee's annual wages. ODJFS calculates each employer's contribution (tax) rate annually.

Ohio Tax Rates

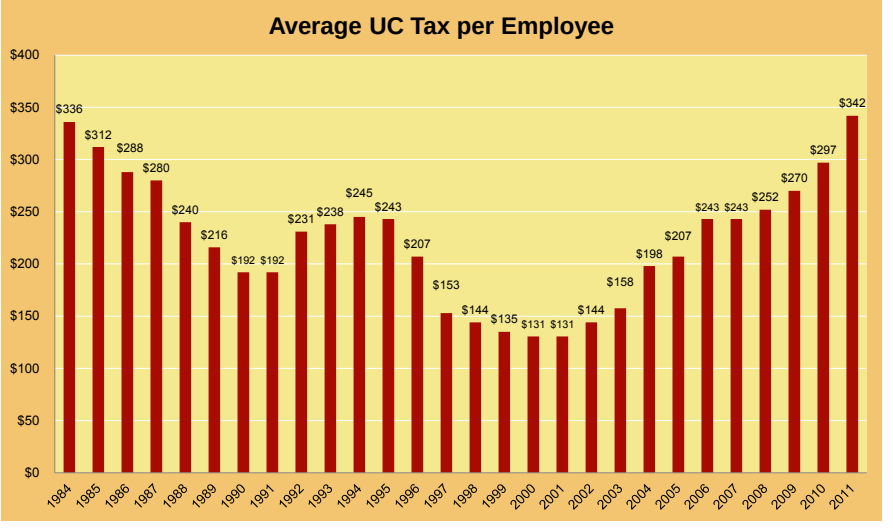
Components of State Unemployment Tax

- Base Rate – based upon size of payroll, total employer contributions and benefits charged to account - 2011 range.1% to 6.5%
- Minimum Safe Level (MSL) Tax – positive or negative adjustment based upon trust fund balance – 2011 range .2% to 2.7%
- Mutualized Tax – 2011 rate .4%

Tax Rates Changes from 2010

- Total employer rates range from 0.7% to 9.6% compared to 2010 when they ranged from 0.5% to 9.4%.
- Mutualized tax of 0.4% increased from .2% in 2010
- Average tax rate is 3.8% compared to 3.3% in 2010
- Average tax per employee will increase to $342 from $297

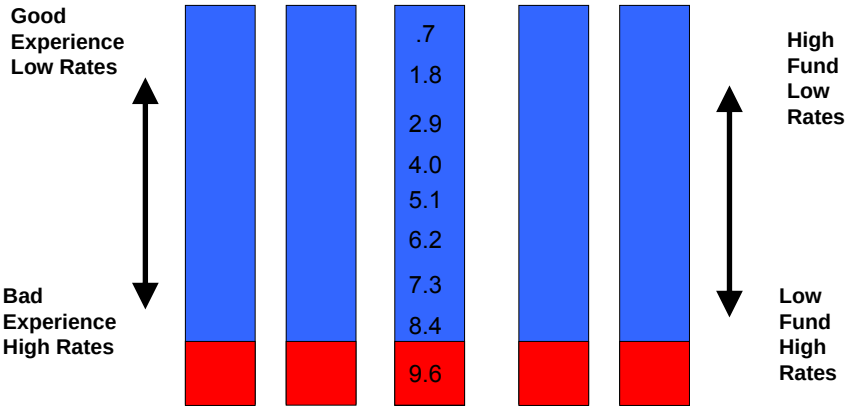
Ohio U.C. Tax Per Employee 1984-2011



Experience Rated Tax System

Two Primary Factors

Employer Claim History **Trust Fund Balance**



Comparison with Other States

- Ohio's Average UI Tax rate on total wages (.77%)is slightly lower than the US average (.80%) Rank 30th
- Average Weekly benefit of $292 is slightly lower than the average Rank 27th
- Average Weekly wage is close to National average Rank 24th
- Recipiency rate is low Rank 40th

Tax Rate Distribution

- Minimum rate for 2011 increased from .5% to .7%
- 25% of experience rated employers are at minimum rate and pay less than 1.6% of the total taxes
- Over 40% of employers have rates lower than 2%
- 7% are at the maximum rate and pay around 17% of the total taxes

Individual Rate Variations from 2010 to 2011

- 7.5% of employers will experience 2011 rate increases > 100%
- 4.3% of employers will experience 2011 rate increases > 200%
- .8% of employers will experience 2011 rate increases > 900%

Scenario

- Employer A has 46 employees and had a low experience rate of 1% for 2010
- They were forced to lay off 10 employees in October 2009
- Each claimant collected the average weekly benefit for 26 wks
- The 2011 rate increases to 8.3%
- With no further layoffs, the rate would gradually return to 1.1% over the next 5 years

Negative Balance Adjustment Relief

- Employers who experience large tax increases may qualify for some relief when certain criteria are met
- Must have had a positive account balance for two consecutive years
- Account must have a negative balance >10% of the average annual payroll
- Excess over 10% is charged to Mutual Account
- Can increase to 15% in year 2 and 20% year 3
- For 2010, 4,850 employers received adjustments totaling $116 million
- For 2011, 3,725 employers received adjustments
- Only four states provide this relief

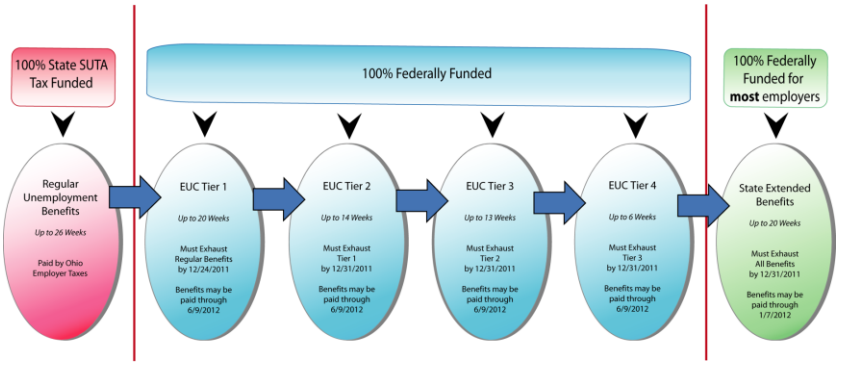
Ohio Benefits

Regular Benefits

- Indexed to Average Weekly Wage
- 2011 maximums
  - $387/wk no dependents
  - $470/wk one or two dependents
  - $524/wk three or more dependents
- Average benefit $296/wk

Extended Benefits

Weeks of Unemployment Benefits Available in Ohio

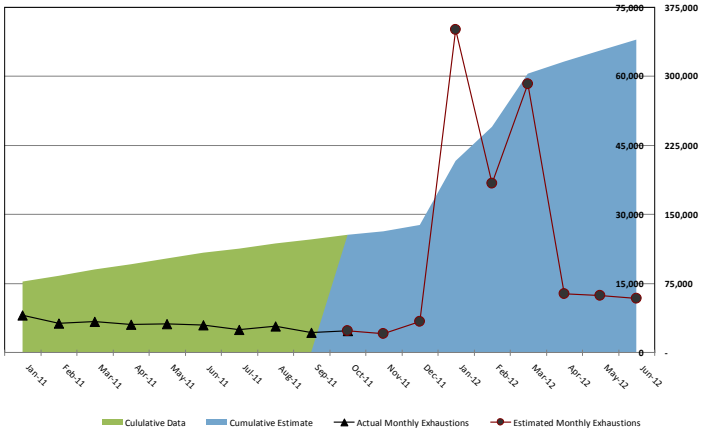


Maximum of 99 weeks of benefits, including Regular UI, Tiers 1, 2, 3, 4, and EB

Rev. 1/21/2011

The Exodus from Extended Benefits

UC Program Exhaustions, Ohio
July 2011 - June 2012 Est.

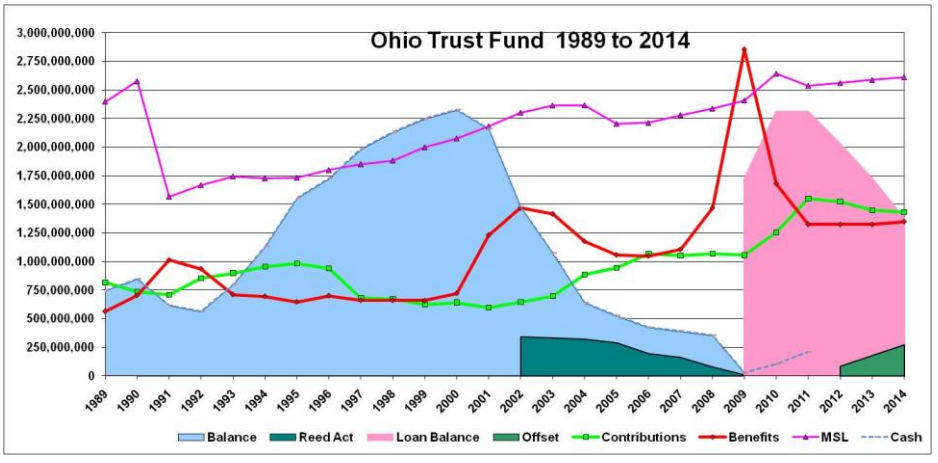


Trust Fund Status

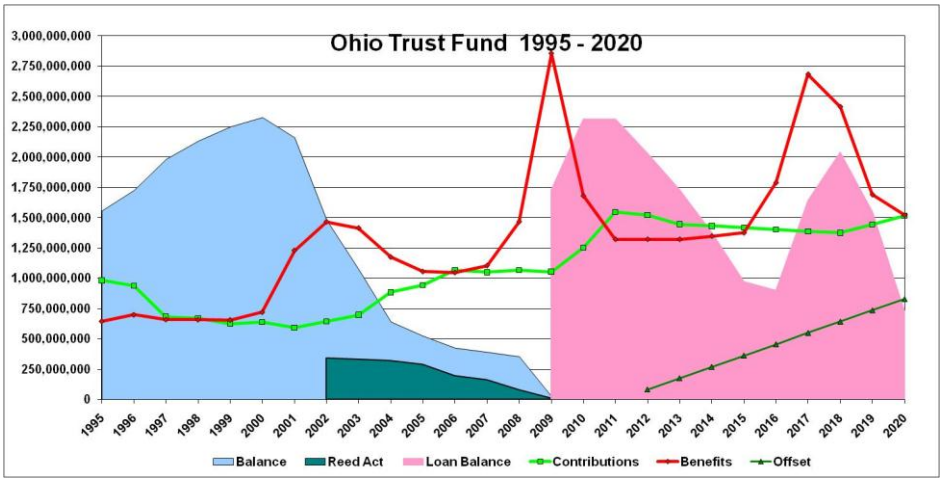
Current Federal Borrowing

- Trust fund became insolvent Jan 12, 2009
- Since that time we have borrowed a total of $2.61 billion
- Ohio has a current loan balance of $2.31 billion
- We do not expect to borrow for the remainder of 2011
- We made an interest payment of $70.7 million and a principal payment of $298 million in Sept., 2011
- Since October 1, we have accumulated $ 8 million in additional interest charges
- As of October 31, 27 States have federal borrowing balance of $38.8 billion

Trust Fund Dynamics



Trust Fund Dynamics –with Typical Recession



Impact of Federal Borrowing

- Without state action, between 2011 and 2016, Ohio would be required to pay between $400-500 million in interest charges from a state revenue source.
- During that same period, Ohio's employers would lose their FUTA offset credit at an total cost of $1.4 billion.

FUTA Offset Credit Reduction

	Years After First Advance	Aggregate Cost to Ohio Employers	Total per Employee	Additional Cost per Employee
Effective FUTA Tax 0.8%			$56	
Minimum Reduction				
0.3%	2	$94,898,260	$77	$21
0.6%	3	$189,796,519	$98	$42
0.9%	4	$284,694,779	$119	$63
1.2%	5	$379,593,038	$140	$84
1.5%	6	$474,491,298	$161	$105

The 2011 FUTA rate is 6.2%*. The full FUTA credit is 5.4% in 2011.

*Not adjusted for July 1, 2011 repeal of .2% FUTA surtax

FUTA Offset Credit Reduction Example

	Current UI Liability	FUTA Offset (0.3%)	Total UI Liability	Pct. Growth
Large Employer: 1,500 employees				
High State Rate (6.6%), Federal Rate (0.8%)	$975,000	$31,500	$1,006,500	3.23%
Low State Rate (0.7%), Federal Rate (0.8%)	$178,500	$31,500	$210,000	17.65%
Small Employer: 5 employees				
High State Rate (6.6%), Federal Rate (0.8%)	$3,250	$105	$3,355	3.23%
Low State Rate (0.7%), Federal Rate (0.8%)	$595	$105	$ 700	17.65%

Critical Financial Sustainability Issues for the Unemployment System

- Maintain balance between benefits paid and taxes received
- Trust fund must have adequate reserves to sustain typical recession
- System must provide for rebuilding trust fund during times of relative prosperity

The Ohio Manufacturers' Association
Economic Competitiveness
2009 Volume 6
Retooling OHIO
A bulletin for leaders on policy issues critical to Ohio manufacturers

THE POLICY POINT: *Workers' Comp Rate Reform*

On October 30, 2009, the Ohio Bureau of Workers' Compensation (BWC) Board of Directors approved rate reforms for the 2010–11 plan year designed to continue progress toward increasing the fairness of premiums paid by Ohio's employers.

These most recent reforms include (a) lowering the maximum group-rating discount from 77 percent to 65 percent and (b) modifying the "break even" factor so it applies to group-rated employers on a graduated scale that better aligns each employer's premium with the risk the company brings to the system.

As important as these changes are to the restructuring of Ohio's workers' compensation rate structure, additional improvements are needed. The OMA both applauds the BWC for the significant progress that has been achieved in recent years and challenges Bureau leadership to stay the course with continued reforms needed to enhance benefits for all participants.

An Imperative to Restore Ohioans' in the BWC

When the Ohio General Assembly passed House Bill 100 in May 2007, with bipartisan support, the message from lawmakers was crystal clear: No longer would "business as usual" be tolerated at Ohio's Bureau of Workers' Compensation. It was a new day with new expectations for how the BWC would go about serving the needs of Ohio's injured workers and their employers.

Among the changes provided for by House Bill 100 were the following:

- Abolishing the Workers' Compensation Oversight Commission and replacing it with a newly created Workers' Compensation Board of Directors
- Directing the Board to "safeguard and maintain" the solvency of the State Insurance Fund
- Directing the Board and the BWC Administrator to "fix and maintain" the lowest possible rate and premium consistent with maintaining a solvent fund and a reasonable surplus

House Bill 100 also required a thorough examination of the Bureau's governance, processes, programs and rates. In response to that directive, Deloitte Consulting Inc. was engaged in January 2008 to conduct a comprehensive review of BWC operations.

The Deloitte study, which was released in April 2009, identified fairness, equity and solvency problems with the BWC's group-rating program as priorities for reform. In particular, the report noted the following:

- A significant disparity existed in workers' compensation rates paid by group-rated employers and non-group-rated employers.
- Non-group-rated employers were subsidizing a portion of group-rated employers' premiums.
- Group-rated employers' large premium discounts (up to a maximum of 95 percent) had no actuarial justification.

The findings—and recommendations that the Bureau take action to address inequities in its experience-rating methodology—were consistent with those in a report issued by the Office the Inspector General of Ohio in August 2007 (which noted, among other things that the "staggering" savings enjoyed by group-rated employers had long been

continued inside

"unfairly subsidized" by non-group-rated employers), as well as a number of other third-party studies. **At least nine actuarial analyses during the past 20 years concluded that group-rating discounts have not generated adequate premiums to cover claims costs for group-rated employers and that non-group-rated employers have been paying higher rates than warranted in order to close that shortfall.**

It was within this context that the BWC developed a master plan in June 2008 that outlined a number of significant reforms designed to bring fairness and equity to group-rated and non-group-rated employers alike. The Deloitte Report, along with comprehensive actuarial data, has served as the blueprint for these reforms.

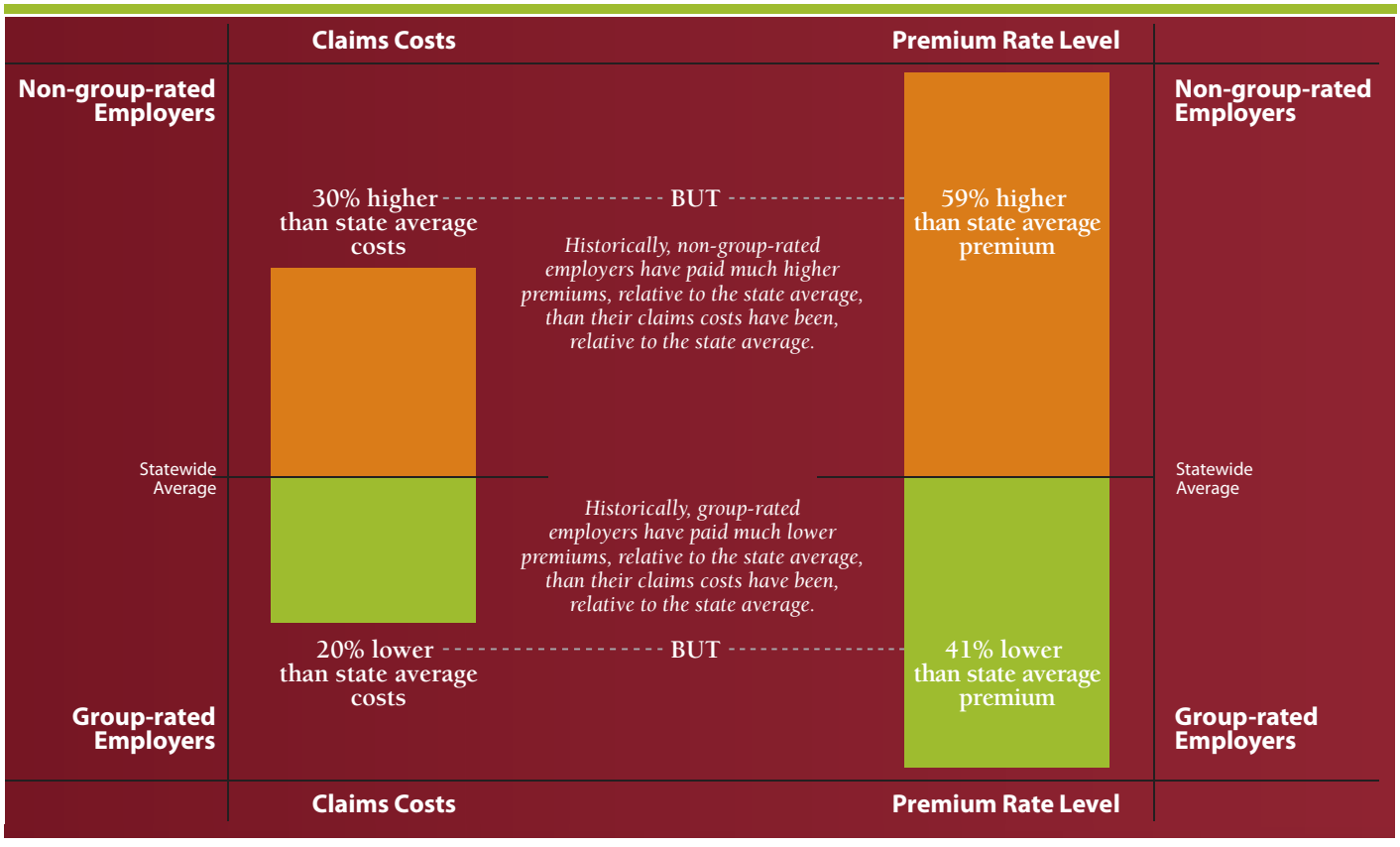
A Closer Look at the Rationale for Rate Reform

Group rating was introduced in 1991. It allows employers in similar industries to pool together for experience rating, a method of predicting an employer's potential for incurring claims losses, used to set its workers' compensation rates. Group rating has served a useful purpose in helping to improve workplace safety and in getting employers more actively involved in keeping their workers' compensation costs down. Currently, Ohio has about 90,000 group-rated employers and about 115,000 to 120,000 non- group-rated employers statewide.

The problem with group rating as it has functioned over the past 20 years is pretty straightforward: There has been a lack of alignment between the premiums individual employers pay for workers' compensation coverage and the cost of the claims they bring to the system. That problem has manifested itself in a number of ways, including a significant "gap" between the premiums paid by group-rated employers and the premiums paid by non-group-related employers. While it was never the intent or design of group rating to produce rate-making practices that would be unfair to any class of employers, that is exactly what evolved over time.

The disparity is clearly apparent, for example, when you look at loss ratio, which is a measure of the relationship between the cost of claims and the premium meant to cover those claims. Group-rated employers' loss ratios historically have been more than twice as high as those generated by non-group-

Lack of Alignment of Claims Costs with Premium Rate Level



Historically, employers' workers' compensation premiums have not aligned with the risk and costs they bring to the system.

rated employers. This tells us that group-rated employers have not been paying sufficient premium to cover the cost of their claims losses. And that has been due largely to the high discounts on premium the group-rating program historically has offered to employers—as high as 95 percent just four years ago before the BWC began to reduce the maximum allowable discount.

In the past, to offset the group-rating discounts, the BWC simply increased the base rate for all employers. Because the Bureau is a revenue neutral entity, the premium shortfall was made up by collecting additional premium from non-group-rated employers. The result was that group-rated employers' discounts essentially were being subsidized by non-group-rated employers—a subsidy that totaled nearly $300 million dollars in 2008.

The solution was clear and simple: The BWC needed to collect its premium in an equitable manner. And the Bureau needed to set rates for both group-rated and non-group-rated employers at levels that are actuarially sound—i.e., at levels commensurate with the risk these employers present to the system.

The problem with group rating as it has functioned over the past 20 years is that there has been a lack of alignment between the premiums individual employers pay for workers' compensation coverage and the cost of the claims they bring to the system.

Saying goodbye to politically driven rate-setting

Unfortunately, politics have had a hand in workers' compensation rates. Despite clear actuarial evidence that reducing group-rating's maximum discount was needed to ensure fairness and equity, certain groups have been resisting these and other reforms. The historical group-rating methodology and experience-rating system have created substantial income and political influence for "third-party administrators" (TPAs) and group-rating sponsors. Not surprisingly, those constituencies have been reluctant to give up either in the interest of moving Ohio forward.

And yet, despite strong opposition and vigorous lobbying by some TPAs and group-rating sponsors, progress is being made.

Over the past two years, the BWC has approved and implemented a number of welcome reforms to the policies and formulas used to set employers' workers' compensation rates. The desired outcomes of these reforms have been to (a) treat all employers fairly and equitably by ensuring that every employer pays a premium based on the risk it brings to the system, (b) protect the stability and solvency of the State Insurance Fund to ensure that the needs of injured workers' are met, and (c) position Ohio with a competitively priced workers' compensation system that will support the state's continuing ability to attract economic development.

Two major focal points for the BWC's reform efforts have been (a) gradual reductions in the maximum group-rating discount and (b) closing the gap between what group-rated employers and non-group-rated employers pay for workers' compensation premiums.

The historical group-rating methodology and experience-rating system have created substantial income and political influence for "third-party administrators" and group-rating sponsors. Not surprisingly, those constituencies have been reluctant to give up either in the interest of moving Ohio forward.

Reducing group-rating's maximum discount

Multiple actuarial studies have shown that reducing group-rating's maximum discount would better align premium with claims costs of individual employers—and improve pricing equity among employers. The BWC began phasing in a reduction of group rating's maximum discount in the 2006-07 plan year, gradually cutting it from 95 percent to the current maximum of 77 percent (for plan year 2009–10). On October 30, 2009, the BWC Board approved an additional reduction, from 77 percent to 65 percent, effective in the 2010–11 plan year.

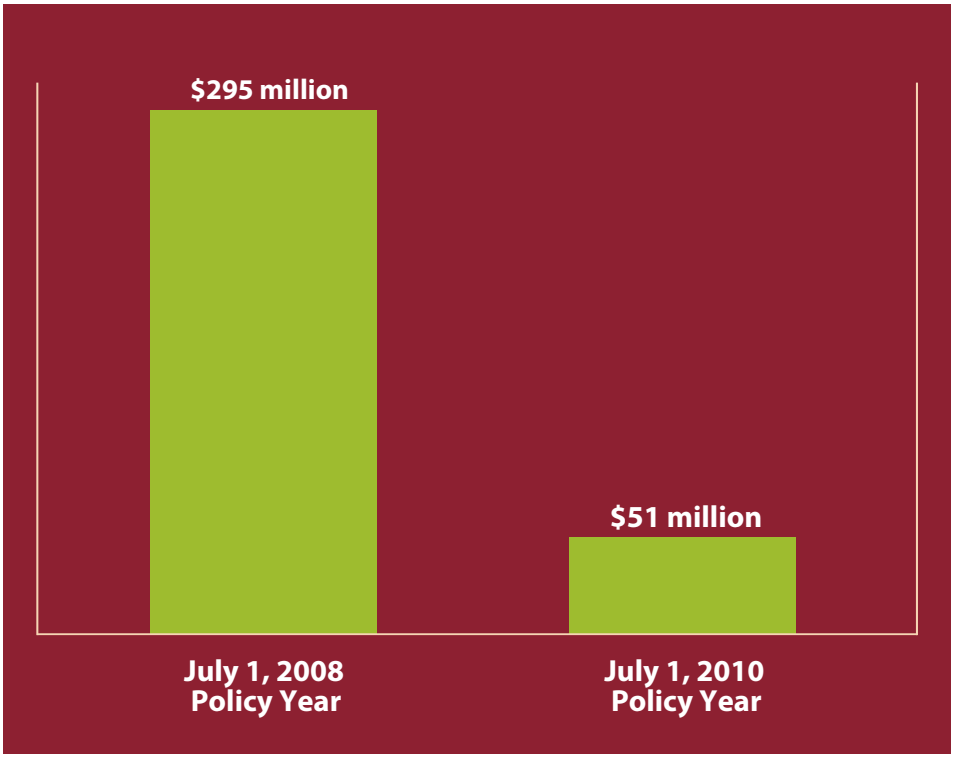
As a result of these reductions—spread out over a number of years to soften the impact on group-rated employers—the historical cost shifting among employers has been reduced (though not totally eliminated).

Phased-in Reductions in Group Rating's Maximum Discount

Plan Year	Maximum Group Discount
2005-06	95%
2006-07	93%
2007-08	90%
2008-09	85%
2009-10	77%
2010-11	65%

As a result of these reductions in the maximum group-rating discount—spread out over a number of years to soften the impact on group-rated employers—the historical cost shifting among employers has been reduced.

Estimated Subsidization of Group-Rated Employers by Non-Group-Rated Employers



Rate reforms implemented by the BWC have helped reduce, but not totally eliminate, the unfair subsidization of group-rated employers by non-group-rated employers.

Applying a "break-even factor" to further narrow the premium gap

Lowering group rating's maximum discount has helped to restore a large measure of balance and fairness to worker's compensation rates, but it has not been enough to completely close the gap between group-rated employers' premiums and non-group-rated employers' premiums. Nor has it produced premium rates that are completely aligned with the risk each employer brings to the system.

To better understand the gap, consider that historical claims costs for group-rated employers are about 20 percent lower than the statewide average, and claims costs for non-group-rated employers are about 30 percent higher than the statewide average. In a properly aligned and actuarially sound system, you would expect to see premium rates that reflect the two groups' respective impact on system costs.

However, that is not the case in Ohio. In 2008, group-rated employers' rate level was 41 percent lower than the statewide average rate level (compared to claims costs that were just 20 percent lower than average). Non-group-rated employers' rate level was 59 percent higher than the average statewide rate level (compared to claims costs that were just 30 percent higher than average). These discrepancies clearly illustrate the problem of group-rated employers being subsidized by non-group-related employers.

To help close this gap and achieve better alignment of premium with risk, the BWC created a so-called "break-even factor"—a mechanism for applying an assessment to every group-rated employer to ensure that adequate premium is collected from those employers and to further reduce the unfair subsidization of group-rated employers by non-group-rated employers.

To better align premium with risk, the BWC created a so-called "break-even factor"—a mechanism for applying an assessment to group-rated employers to ensure adequate premium is collected from them and to further reduce the unfair subsidization of group-rated employers by non-group-rated employers.

For the 2009–10 plan year, the BWC applied a flat break-even factor across the board on premium rates for all group-rated employers. This, in combination with the reduction of the group-rating maximum discount from 85 percent to 77 percent and other adjustments to the rate-setting methodology, resulted in the following changes:

- Nearly a 25 percent reduction in premium for non-group-rated employers
- A 9.6 percent increase in premium for group-rated employers
- An overall, system-wide reduction in base rates of about 12 percent

For the 2010–11 plan year, the BWC Board approved an important modification to the break-even factor. Instead of a flat assessment applied evenly across the board to all group-related employers regardless of an individual employer's premium discounts or claims experience, in 2010 the break-even factor will be assessed in a graduated fashion. Employer groups with higher discounts (i.e., those contributing more to the off balance) will be assessed a higher break-even factor, and groups with lower discounts will be assessed a lower break-even factor.

Overall, the break-even factor for 2010 will be slightly lower, on average, than it is for 2009. More importantly, it will be applied more fairly and equitably. Some TPAs and group sponsors lobbied hard to have the break-even factor abolished, but actuarial analysis indicated that base rates likely would have increased for all employers under such a scenario.

While it's too early to know for certain the precise impact on rates that the BWC Board's October 2009 actions will have, overall the change will be revenue neutral.

Restoring fairness and equity to rate-setting

With these latest rate reforms, the BWC has achieved a number of important objectives:

- A rate structure in which premium costs are applied more fairly and equitably among all employers in the system
- A rate structure in which employers pay premiums more closely aligned with the risk and costs they bring to the system
- A system that fully pays for itself
- A system that is more stable and solvent
- Lower base rates that enhance Ohio's competitive position in the Midwest

Just as critically, Ohio now has a workers' compensation rate structure that will serve as a solid foundation for additional reforms that will further strengthen the system, better serve injured workers and employers, and make Ohio even more attractive for economic expansion and development.

Rate Reform Just One Dimension of Effort to Build Operational Excellence Into the BWC

The OMA has long believed that a professionally and efficiently operating Bureau of Workers' Compensation is critical to retaining and creating jobs in Ohio. That's why the OMA was an advocate for House Bill 100, legislation passed in 2007 establishing new models for governance, transparency and accountability at the BWC and also requiring the use of sound actuarial science in the Bureau's rate-setting. Among other things, HB 100 created a new Board of Directors to serve as the BWC's governing body and, along with the BWC Administrator, to share fiduciary responsibility for Ohio's workers' compensation system.

Under the leadership of the new Board and Administrator, rate reform has been a major focus of work at the Bureau during the last two-plus years, and the number-one accomplishment at the BWC during this time has been bringing greater parity to both group-rated and non-group-rated employer premium rates (the primary focus of this edition of *Retooling Ohio*). However, the BWC and the Industrial Commission of Ohio (the claims adjudication arm of Ohio's workers' compensation system) have been working on multiple additional reforms. Following are selected improvements since 2008.

Selected BWC Improvements

- Launching of MIRA II reserving system that provides more responsive, accurate claims reserves
- Back-to-back rate decreases for private employers (5 percent in 2008, 12 percent in 2009—the first average decreases since 2001)

- An average 25.3 percent rate decrease for non-group-rated private employers
- Two rate decreases for state agencies, universities and university hospitals (10 percent in 2008, 3.75 percent in 2009—their first average decreases since 1999)
- A 5 percent premium rate decrease for public employers
- A 100 percent cap option on premium increases due to an employer's claims history, to limit extreme cost swings for affected employers
- Beginning a transition to a multi-split experience-rating plan that will take into account the frequency as well as the severity of an employer's claims, thus improving experience rating accuracy
- Two new insurance options—deductible and group retrospective—designed to lower out-of-pocket costs for employers and improve safety for workers
- Updated inpatient hospital fee schedules for physicians and other medical professionals who provide care for injured workers
- Elimination of redundancies in the alternative dispute resolution process to ensure timely, quality care for injured workers
- Monthly Enterprise Report to provide a transparent record of agency-wide financial and operational performance metrics
- New investment policy statement to strengthen investment returns
- New implementation strategy for diversifying State Insurance Fund fixed-income and equity investments

Selected Industrial Commission (IC) Improvements

- Continued IC's long history of minimal budget increases that have averaged just six-tenths of one percent annually
- Decreased IC workforce by more than 150 employees (over the last several years) while continuing to meet and exceed statutory requirements for timely service
  - For example, from the date an appeal was filed to the date of the hearing, first-level hearings averaged 29.5 days, and second-level hearings averaged 27.5 days, both well within the statutorily mandated 45-day time frame.
- Implemented a variety of cost-saving measures that are expected to save IC more than $15 million over the next five years
  - Consolidated several district offices (Springfield/Dayton, Canton/Akron, Bridgeport/Zanesville/Cambridge, Hamilton/Cincinnati)
  - Consolidated office space in IC's Columbus office, which will save $800,000 annually
  - Converted standard telephone service to Voice-Over Internet Protocol telephone service, which is expected to save $865,000 over five years
  - Reduced employee overtime and overnight delivery, saving more than $58,000 annually
  - Consolidated and streamlined IC's supply ordering process, which has reduced supply purchases by more than $60,000 annually
- Launched a new Web site that enhances and accelerates customer service
- Implemented technological advances that have made it easier to file appeals on the Web and to submit questions to IC's Customer Service Department
- Implemented a new automated tracking system for customer service
- Implemented new Customer Service and Word Processing Pools to provide a more flexible, efficient way of doing business and managing changing workloads

There is much more to be done, but these many improvements to Ohio's workers' compensation system are helping to ensure more equitable and accurate rates and improved services, which in turn will aid Ohio's efforts to retain existing jobs and attract new investment and additional jobs.

Why The OMA Supports Rate Reform

The OMA is a provider of workers' compensation group-rating services. Yet, unlike many other group-rating sponsors, we fully support the BWC's recent rate reforms. Many have asked why this is so.

The OMA's mission is to protect and grow manufacturing in Ohio, and we support public policy that improves Ohio's manufacturing competitiveness.

We are fundamentally opposed to government policies in any area that pick winners and losers, or that punish one class of manufacturers to benefit another. Unfortunately, however unintentional, that has been the case with workers' compensation group rating in our state.

The OMA believes workers' compensation rates should be driven by actuarial data. And we agree with the many actuarial studies that have concluded that historical group-rating discounts are too high and cause non-group-rated employers to pay too much premium. That's why the OMA has supported the BWC's reengineering of its rate structure—in particular the continued, phased-in reduction of the maximum group-rating discount and the application of a graduated break-even factor to eliminate the continued subsidizing of group-rated employers by non-group-rated employers.

These changes will help ensure that each Ohio employer will pay the right premium

for the risk the company brings to the system. They will lower base rates across the whole workers' compensation system and distribute them more fairly among employers based on actuarial experience. Employers with low claims will enjoy lower rates, while employers will higher claims (and thus greater costs to the system) will pay higher rates. This will bring not just fairness but also stability to the system.

Our bottom line? The OMA is committed to helping to ensure that all businesses pay fair workers' compensation rates commensurate with the risk they bring to the system, that injured workers receive fair and timely benefits and the support they need for getting back to productive work quickly and safely, and that the state's workers' compensation insurance fund remains actuarially sound. Those are good outcomes for Ohio manufacturers,—and good outcomes for Ohio's overall economy.

These changes will help ensure that each Ohio employer will pay the right premium for the risk the company brings to the system. This will bring not just fairness but also stability to the system.

Next Steps in Workers' Compensation Reform

Rate reform was the necessary prelude to additional structural reforms at the BWC that are needed to eliminate unnecessary costs within the system and provide enhanced benefits to all Ohio employers and injured workers. We know additional reforms are needed, and there is no reason to delay action on other critical fronts.

The Deloitte study released in January 2009 included a large inventory of recommended system improvements, including a number that will require statutory changes that the Ohio General Assembly will need to take up. The OMA intends to work with its member companies, the BWC and the legislature to enact those reforms that will improve processes for injured workers and employers and continue to drive system costs down. Among the next-phase reform concepts for consideration are the following:

The OMA intends to work with its member companies, the BWC and the legislature to enact reforms that will improve processes for injured workers and employers and continue to drive system costs down.

- Rebuttable presumption drug statute: Eliminate the "reasonable suspicion" standard and incorporate the Louisiana Pacific standard of "voluntary abandonment" for benefits.
- Self-Insured Employers' Guaranty Fund: Solve securitization, claims management and accountability problems.
- Industrial Commission hearing inconsistencies: Require hearings to be recorded for improved consistency in outcomes.
- BWC claims management problems: Improve consistency in delivery against claims management performance standards.
- Rate-making transparency: Develop data and reporting on component costs within premium rates.
- Permanent total disability as retirement benefit: Establish retirement benefit offsets and/or age or number-of-weeks capping.
- Permanent total disability (PTD) multiple applications: Require claimants to show new and changed circumstances when filing for PTD benefits more than once.
- Permanent partial disability transaction costs: Lower transaction costs by allowing telephonic hearings.
- Permanent partial disability impairment standard: Establish impairment standard (no consideration of non-medical factors).
- Permanent partial disability (PPD) multiple applications: Require claimants to show new and changed circumstances when filing for PPD benefits more than once.
- Temporary total disability (TTD): Terminate the compensation paid for TTD as of the date established by the medical evidence establishing maximum medical improvement.
- Temporary total disability: If a claim for workers' compensation 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 suspension.
- Payment without prejudice: Allow employers to pay compensation and medical bills without losing the right to contest a claim.
- Actuarial integrity: Eliminate BWC programs that have no actuarial foundation.
- Managed Care Organization reforms: Study the effectiveness of the Managed Care Organization system in Ohio, including possibly requiring MCOs to unbundle their services and compete on price.

The mission of The Ohio Manufacturers' Association is to protect and grow Ohio manufacturing. Through the OMA, manufacturers and manufacturing stakeholders work directly with the members of the Ohio General Assembly, state regulatory agencies, the judiciary community and statewide media with the sole focus of improving business conditions for manufacturers in Ohio.

The Ohio Manufacturers' Association
WWW.OHIOMFG.COM

BUILT BY MANUFACTURERS
FOR MANUFACTURERS

33 N. High Street
Columbus, OH
43215-3005

800-662-4463
fax: 614-224-1012

www.ohiomfg.com

Additional Policy Considerations / Options

Claims Management to Meet Private Insurance Industry Standards

- Improved Claim Assessment - disposition through objective and thorough claims processing standards.
- Claims management commensurate to private insurance

Introduce Medical Management of Claims Not Claims Management

- Allow employers to get claims history as part of the pre-employment screening process.
- BWC "Certified" Medical Providers
- BWC "Certified" Medical Facilities

Address Hearing Officer Inconsistencies or Medical Professionals to Determine Medical Hearings

- Qualified Hearing Officers

OMA to Help Employers through the Complicated BWC and IC Process (Phone, E-mail, Online Educational Videos)

- More clarity for business owners on the process and the steps available to manage claims.
- Simplified process that is clear to claimant and employer.

Introduce Medical Fraud, Not Just Compensation Fraud

Streamline Subrogation Process at the BWC

- Allow Subrogation