Safety & Workers' Compensation Committee

Wednesday, May 14, 2014

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2014 Safety & Workers' Compensation Committee Calendar

Wednesday, October 15, 2014

Meetings begin at 10:00 a.m.

OMA Safety & Workers' Compensation Committee Meeting Sponsor:

ROETZEL

OMA Safety & Workers' Compensation Committee

May 14, 2014

AGENDA

Welcome & Self-Introductions	Bob Truex, Lancaster Colony, Chairman
Chairman Transition	Larry Holmes, Fort Recovery Industries Inc.
Member Presentation	Betsey Krause, Corporate Compliance Manager Lake Shore Cryotronics, Inc.
BWC Developments	Scott Weisend and Denny Davis, OMA Staff
Safety / OSHA	Heather Tibbitts, Safex
OMA Counsel's Report	Tom Sant of Bricker & Eckler, LLP
Guest Speaker	Jeremy Jackson, Chief of Public Policy & Strategy Ohio Bureau of Workers' Compensation
Public Policy Report	Rob Brundrett, OMA Staff

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

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

Thanks to Today's Meeting Sponsor:

ROETZEL

Chief of Public Policy & Strategy Jeremy Jackson

Jeremy Jackson was appointed chief of public policy & strategy in May 2011 after serving as BWC's director of business development and analysis for the past three years. The new division is responsible for:

- Stakeholder relations at the macro-level;
- Policy development at the strategic level;
- All the ways BWC communicates.

Jackson began working with BWC in 2000 as a public information officer in the special projects department. He also served as a media relations assistant, press secretary and chief marketing officer

Jackson obtained a bachelor's degree from Youngstown State University and a master's in business administration from the University of Findlay.

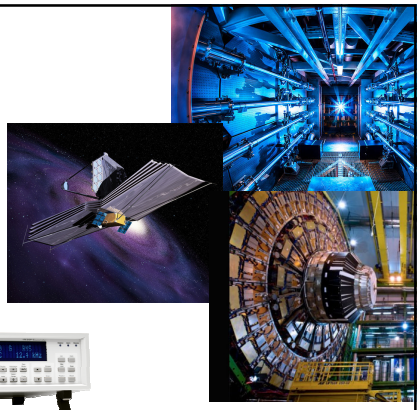
OSC 14
Your pathway to safety

Honorable Mention
Safety Innovation Awards

Advancing Science since 1967

Examples

CERN Large Hadron Collider Particle Accelerator
National Ignition Facility
NASA James Webb Space Telescope



Over 60% of sales are exports
Measurement Device of Choice for International Science Community
Local technical experts in about 40 countries
140 skilled, yet aging, employees in Westerville, OH

Lake Shore CRYOTRONICS

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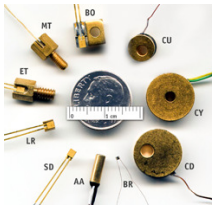
Betsey Krause, Lake Shore Cryotronics, Inc.
575 McCorkle Blvd. Westerville, OH
(614) 212-1537

Safety Grant Interventions

2011- 12 Stereoscopes
For assembly of temperature sensors.

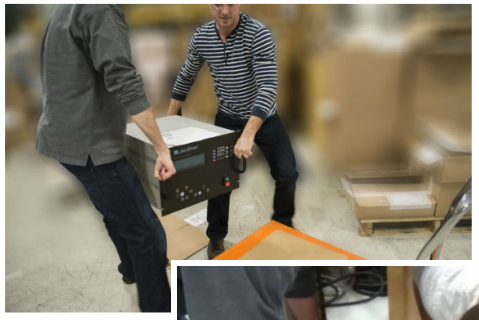


- Teflon Lined Forks
- w/ custom holes
- Splined Arms
- Custom leg span

2012- One Lift-o-Flex ® 19000
for reliable and safe lifting of parts up to 500#.

3

Departmental Challenges



Uneven weight

Average Age ~ 55

Products:
- Heavy awkward power supplies
- Low weight with High:
  - center of gravity
  - value

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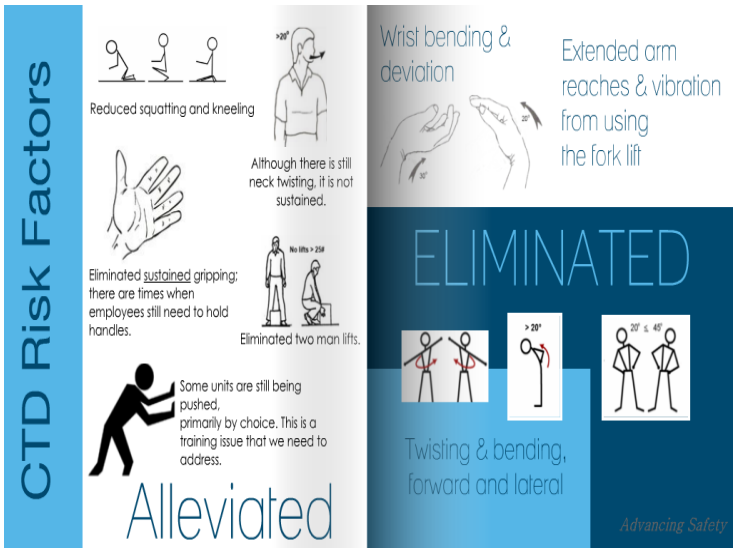
Results



Investment Payback

1. One $10,000 back injury avoided: ~ 2 years
2. One product not dropped: ~ 7 months
3. One Senior Employee Retained because he can still do the job?

PRICELESS

5

Grant Details:

- Eligible Ohio state-fund or public employer
- Equipment must substantially reduce or eliminate injuries and illnesses associated with a particular task or operation. (Must demonstrate need for an intervention.)
- BWC will match every employer dollar with three dollars (maximum of $40,000) (Effective July, 1, 2013)
- BWC restored some safety interventions that they previously would not fund.
- What you have to do:
  - Work with a BWC Ergonomist to apply for a grant and provide substantiation of purchase.
  - Send Quarterly data reports and a case study one year after the date of the intervention.
  - Be willing to allow BWC to determine the effectiveness of the intervention and share successes with other employers. (To date, BWC ergonomists have used each of our interventions in programs and presentations.)

BWC Safety Grant Webpage: https://www.bwc.ohio.gov/employer/programs/safety/empgrants.asp

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Safety Grants

More money, more options
Governor John R. Kasich recently approved an increase in funding for the safety intervention grant program from $5 million to $15 million. This means we're also increasing our match in the program. Effective July, 1, 2013, we will match every employer dollar with three dollars. Finally, we restored some safety interventions previously on our moratorium list (items we would not fund).

The purpose of the Safety Intervention Grant$ Program is to gather information about the effectiveness of safety interventions so that BWC may share the results with Ohio employers. The program is available to any Ohio state-fund or public employer who wishes to purchase equipment to substantially reduce or eliminate injuries and illnesses associated with a particular task or operation. The program is designed to work and partner with Ohio employers to establish safety intervention best practices for accident and injury prevention.

To participate in the program an employer must pay into the Ohio State Insurance Fund, maintain active coverage, be current on all monies owed BWC and demonstrate the need for a safety intervention.

With the safety intervention grant, private and public employers are eligible for a 3-to-1 matching grant, up to a maximum of $40,000, for each eligibilty cycle. The employer will benefit through a substantial reduction or elimination of workplace injuries and illnesses, and their related costs.

In return, the employer will submit to BWC quarterly data reports and a case study one year after the date of the intervention. BWC will use this information to determine the effectiveness of the intervention and share successes with other employers.

To apply, simply download the Safety Grant Application.

Because of the large number of requests we received for particular intervention items, and in keeping within the scope of the SafetyGRANT$ research project, the following interventions will no longer be considered for SafetyGRANT$ funding:

- **Anti-fatigue mats:** floor mats intended to provide better comfort for employees working in an upright position.
- **Automated beverage dispenser:** A device used to deliver uniform ice and beverage volumes.
- **Cordless hand tools:** battery operated tools intended to eliminate cords.
- **Deep fryers:** Equipment designed and used in deep frying processes and designed to reduce the potential for employee injury from burns and material handling operations involved with oil changing and filtering.
- **Earth moving equipment:** all earth moving equipment (i.e. skid steers, front-end loaders, bobcats, etc.) *Exception: Walk behind loaders*.
- **Exercise equipment:** equipment used for the purpose of exercising.
- **Floor cleaning equipment:** floor scrubbers, waxers, buffers, vacuums, dryers or any other manual or powered device whose
- **Personal protective equipment:** any equipment worn by a worker protecting him/her from harm or equipment associated with the equipment worn (e.g. tripod for body harness).
- **Road repair systems:** equipment used to repair potholes, cracks, etc.
- **SawStops:** saws designed to stop immediately when the blades come in contact with a person.
- **Shrink wrap equipment:** any equipment used to wrap film around products to be transferred or shipped.
- **Snow removal equipment:** equipment in which the primary purpose is to remove snow and/or melt ice, i.e. blades, snow blowers, salt spreaders, etc.
- **Standard guardrailing systems:** guardrails for platforms, walkways, process areas, etc.
- **Standard machine guarding devices and equipment:** fixed barrier guards, perimeter guarding, radio frequency guarding, light

purpose is to clean, wax, buff, vacuum or dry a floor or walking surface.
- **Flooring/floor treatments:** flooring or floor treatments that minimize slipping.
- **Forklifts:** passenger industrial vehicles with the ability to lift and move loads.
- **Fry hopper:** A freezer/dispenser designed for the temporary frozen storage and batch processing of french fries at commercial restaurants.
- **Lighting:** improvements in lighting used to make it easier for the employees to see.
- **Pallets:** flat transport structures that support goods in a stable fashion while being lifted by forklifts or other jacking devices.

curtains, pressure sensitive matting, etc.
- **Tables:** any tables that allow for easier material handling (i.e. lighter tables).
- **Tire changers/wheel balancers:**equipment used in the tire industry to change tires and/or balance wheels.
- **Trailers:** equipment designed to be pulled by vehicles to transport materials, goods, etc. Exception: Hydraulic trailers.
- **Vehicle lifts:** 4 post lifts, 2 post lifts, alignment machines, etc. that lift vehicles.
- **Vehicles:** all driven vehicles including cars, trucks, utility vehicles, etc.
- **Weaponry:** all weapons including tasers.

Additional information
As a grant recipient the state considers you a state vendor. This means you must complete the following three forms and send them to Ohio Shared Services.

- Vendor Information Form (OBM-5657) - Verify all fields are complete and the form is signed. We do not accept electronic signatures. Also, verify information contained on the W-9 matches that provided on this form, specifically, legal business name, taxpayer ID # (TIN), and business type/business entity.
- Request for Taxpayer Identification Number & Certification (W-9) - Complete all applicable sections of the document, including taxpayer type, a valid tax identification number and responsible party's signature. We do not accept electronic signatures. The information you provide must match how you're registered with the Internal Revenue Service (IRS). You can find instructions for completing the form on the IRS website. Should you require additional assistance, contact the IRS at 1-800-829-1040.
- Authorization Agreement for Direct Deposit of EFT Payments (OBM-4310) - The preferred method of payment for the State of Ohio is electronic funds transfer (EFT); complete this form and include a current voided check or bank letter. The agreement contains instructions.

Send the completed forms to:
Vendor Maintenance
Ohio Shared Services
Email: vendor@ohio.gov
Fax: 614-485-1052
Mail: P.O. Box 182880, Columbus, Ohio 43218-2880

If you have questions, contact Ohio Shared Services at 1-877-OHIOSS1 (1-877-644-6771) or 614-338-4781.

Reporting
Safety grant reporting is available online! Submit your 90-day data reports through our Web site. Click here to access Safety grant reporting.

Employers are required to provide a one-year case study report on their SafetyGRANT$ intervention item.
Send the case study to:
BWC SafetyGRANT$
c/o SafetyGRANT$ program coordinator
13430 Yarmouth Drive
Pickerington, OH 43147-8310

or send a fax to 614-365-4972 one year after the implementation date.

Annual Reporting Forms

- Case Study
- Cost Benefit Analysis

Safety Grant Best Practices
The BWC SafetyGRANT$ program proudly introduces a new interactive Web page designed to share results of the program.This initial introduction allows users to select an industry and risk factor type or enter a key word search to obtain case studies specific to their interests. Future additions to this page will include Web links, articles and other resources specific to the user's request.

Preliminary results of the CTD grant program
We offer a series of publications that could help prevent CTDs in your workplace. You can download and print the manuals listed below. We developed these best-practice manuals based on the research data gathered through our SafetyGRANT$ program.

- Ergonomics Best Practices for the Construction Industry
- Ergonomics Best Practices for Extended-Care Facilities
- Ergonomics Best Practices for Manufacturing
- Ergonomics Best Practices for the Plastics Industry
- Ergonomics Best Practices for Public Employers

Drug-Free Safety Program (DFSP) grants
DFSP grants are available to assist employers who are implementing the DFSP at the Basic or Advanced level. However, employers operating a comparable program are not eligible for DFSP grant funding.

The new DFSP grants guide is available for services supplied under the DFSP program requirements (services rendered after July 1, 2010). You also can view a chart that summarizes the new DFSP grants policy and covered items.

State required vendor forms
As a grant recipient the state considers you a vendor of the state. This means you must complete the following three forms and send them to Ohio Shared Services.

- Vendor Information Form (OBM-5657)
  Verify all fields are complete and the form is signed. We do not accept electronic signatures. Also, verify information contained on the W-9 matches that provided on the Vendor Information Form - specifically, legal business name, taxpayer ID # (TIN), and business type/business entity.
- IRS Form W-9 Request for Taxpayer Identification Number & Certification
  Complete all applicable sections of the document, including taxpayer type, a valid tax identification number and responsible party's signature. We do not accept electronic signatures. The information you provide must match how you're registered with the IRS. You can find instructions for completing the form on the IRS website. Should you require additional assistance, contact the IRS at 1-800-829-1040.
- Authorization Agreement for Direct Deposit of EFT Payments (OBM-4310)
  The preferred method of payment for the State of Ohio is electronic funds transfer (EFT); complete this form and include a current voided check or bank letter. The agreement contains instructions.

Send the completed forms to:
Vendor Maintenance
Ohio Shared Services
Email: vendor@ohio.gov
Fax: 614-485-1052
Mail: P.O. Box 182880
Columbus, Ohio 43218-2880

If you have questions, contact Ohio Shared Services at 1-877-OHIOSS1 (1-877-644-6771) or 614-338-4781.

Note: Participation in BWC's SafetyGRANT$ DFSP, DFWP and safety intervention programs requires all grant recipients to verify by invoice/receipt and check copy that the grant money was used for the intended purposes. Failure to do so will result in disqualification from the grant program. BWC reserves the right to recover grant monies from disqualified grant recipients by one or more of the following methods:

- **Billing the employer for the grant money received;**
- **Forwarding to the Ohio Attorney General for collection, set-off, recoupment or other legal remedy.**

BWC expressly reserves the right to limit the amount of reimbursements and to set caps on such reimbursements for each and every specific reimbursable drug-free service.

For more information about SafetyGRANT$, call your local BWC customer service office or 1-800-OHIOBWC, and follow the options.

For a list of the most recent grant recipients, visit our recipients' page.

Key OSHA Activities – May 2014

Heather Tibbitts
HRTibbitts@safex.us

Silica Proposed Standard Update

The public hearings closed on April 4, 2014. Those members of the public who filed a timely written notice of intention to appear prior to the hearings are able to submit additional comments. Evidence and data relevant to the proceeding must be submitted by June 3, 2014. Final briefs, arguments, and summations must be submitted by July 18, 2014.

National Emphasis

Ammonium Nitrate Storage – as a result of TX facility explosion/fire.

Columbus Area

Safex has seen an increase in inspection activity; industrial hygiene and safety in manufacturing.

I2P2 – Injury and Illness Prevention Programs

I2P2 is a priority for Dr. Michaels, but nothing new to report.

Process Safety Management

We mentioned in our February meeting that on December 3, 2013, OSHA announced a request for information seeking public comment on potential revisions to is Process Safety Management standard and related standards, as well as other policy options to prevent major chemical incidents. It is in response to the 2013 Texas incident that killed 15 in an ammonium nitrate explosion. The deadline was extended to March 31, 2014. Nothing new to report beyond the March date.

OSHA Proposed Rule on Recordkeeping

In our February meeting we mentioned that OSHA announced on November 7, 2013 a proposal to improve tracking of workplace injuries and illnesses.

- Comments due – March 8, 2014
- Public Meeting to be held – January 9, 2014
- The transcripts of the public meeting are now available.
- Nothing new beyond the transcripts to report.

Monthly OMA Webinars
Continue and the feedback is positive. Good safety education and update for management and can also be used for safety committee meetings.

Might be of General Interest

National Safety Stand-Down June 2 -6, 2014
Emphasis on conducting tool box talks on construction sites during this week to reduce risks associated with falls.

Electric Power Generation, Transmission and Distribution Final Rule Released 4/11/2014; Effective date July 10, 2014

The final rule revises OSHA's 40-year-old construction standard for electric power line work to make it more consistent with the corresponding general industry standard and also makes some revisions to the construction and general industry requirements. In addition, the standards adopt revised approach-distance requirements and add new requirements to protect workers from electric arcs. General industry and construction standards for electrical protective equipment are also revised under the final rule.

COMMENTS

OF THE

NATIONAL ASSOCIATION OF MANUFACTURERS

BEFORE THE

U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Docket No. OSHA 2010-0034

78 Fed Reg. 56274 (September 12, 2013)

Proposed Revisions to Standard For

Occupational Exposure to Respirable Crystalline Silica

I. Preface Language

The National Association of Manufacturers (the NAM) appreciates the opportunity to submit these comments to the U.S. Occupational Safety and Health Administration (OSHA) in response to the Notice of Proposed Rulemaking referenced in 78 Fed Reg. 56274, Docket No. OSHA 2010-0034 (proposed revisions, standard or rule).

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than $1.8 trillion to the U.S. economy annually, provides the largest economic impact of any major sector, and accounts for two-thirds of private sector research and development. The NAM is the powerful voice of the

manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and creates jobs across the United States.

The proposed rule will have wide-reaching effects on a large number of manufacturers both directly and indirectly. The NAM and its members submit these comments to address some of the significant issues raised by this proposed rule. Our comments are focused primarily on policy issues and, though we urge OSHA to withdraw the proposed standard, we have included recommendations for changes to improve the OSHA proposal.

The NAM and its members understand that employees are the key resources in our facilities and all employees deserve a safe and healthful workplace. We support OSHA's efforts to reduce ill effects in employees from exposure to hazardous substances in the workplace, such as respirable crystalline silica (RCS). In adopting the OSH Act, Congress recognized the need to take a balanced approach to the regulation of workplace exposures to hazardous chemicals. This means, in significant part, that OSHA is required to limit the scope of its standards to those activities and employers whose employees are truly at risk and to adopt only those requirements that are necessary to materially and directly reduce the risk in the most cost-effective manner so as to provide a safe workplace while minimizing negative impacts on productivity and manufacturers' competitiveness.

In short, however, the NAM believes the proposed reduction of the permissible exposure limit (PEL) to 50 ug/m^3 with an action level of 25 ug/m^3 is an unnecessary change that will be unachievable for many employers, and will be very costly for almost all affected employers. If adopted as proposed, we believe the standard will lead to businesses having to decide whether to close their doors or move their operations elsewhere. Employers have worked for decades to achieve compliance with the current PEL and, through these efforts, have adopted the best possible and most cost-effective ways to keep all their employees safe. The NAM encourages OSHA to work with employers to address safety and health issues in a far more collaborative manner that will achieve the goals of safer workplaces and a competitive economy.

Due to the number of manufacturers that would be impacted by adoption of the proposed rule, the breadth and diversity of industries and activities, and the sheer volume of material to be analyzed, the NAM faced a huge challenge in preparing comments to be submitted to OSHA in

concrete, refractories, refractory repair, shipyards, and structural clay. Collectively, the NAM has members in each of the 24 manufacturing industry subsectors, and all of them would be affected by the proposed standard.

It should be noted that, in the limited time we had to review the volumes of detailed information related to the proposal, we discovered that several NAM members have NAICS codes that OSHA did not include in the 24 subsectors listed, although these manufacturers know their employees work with RCS. Based on this finding, it is clear that the data and estimates contained in the PEA are incomplete and fundamentally flawed.

In addition, virtually every manufacturing facility, if not directly impacted because it is within these 24 subsectors, has undergone and will continue to undergo maintenance, construction, or equipment or utility installation that would potentially involve exposure to RCS. Many of these tasks will be performed by employees of the manufacturing facility. Even if these tasks are performed by outside contractors, there are several likely scenarios under which employees of the manufacturing facility would be exposed to RCS. First, many contractor activities will be subject to supervision by employees of the manufacturing facility (host employer) in its role as the general contractor. Second, many contractor activities will require the ongoing support of employees of the manufacturing facility. Third, many contractor activities are likely to be performed in the same area where the host employer's employees are working. We have not been able to identify any recognition, much less discussion or analysis, of these activities in the PEA. Again, based on this fundamental flaw, we believe the data and estimates contained in the PEA are wholly inadequate.

Thus, nearly every manufacturing employer will incur costs associated at least with assessing potential exposure from tasks that are nominally covered by the proposed standard, but for which OSHA has not shown that there is a significant risk of material impairment of health or functional capacity. The NAM is not commenting on the risk assessment OSHA has published *per se*, and believes the comments of the American Chemistry Council's (ACC) Silica Panel and of the U.S. Chamber of Commerce clearly state the problems with OSHA's analysis.

Rather, the NAM questions OSHA's assertion that there is a significant risk of material adverse health effects from RCS exposure based on extrapolations from studies of occupations

where substantial exposure has occurred in the past, to those occupations where exposure to RCS occurs infrequently and at low levels. As OSHA states, it is cumulative exposure to RCS that determines the degree of risk. It follows that OSHA must show by scientific evidence that conditions in the manufacturing industries produce RCS exposures of sufficient magnitude and for a sufficiently long period of time to warrant the additional steps OSHA proposes to impose wherever some potential for exposure to RCS occurs. The NAM does not believe OSHA has validated its assertions on this point.

The NAM recommends that OSHA withdraw the proposed rule on the ground that OSHA has failed to establish that there is a significant risk at exposure levels below the current PEL, or that the proposed rule is technically or economically feasible. The NAM believes that this is the standard Congress established for OSHA to show that its proposed regulatory scheme is "reasonably necessary and appropriate." In the alternative, the NAM recommends that OSHA maintain the existing PEL of 100 ug/m^3 and limit the application of the ancillary provisions of the proposed standard to those tasks and activities for which exposures exceed the current PEL. The basis for our conclusions is set forth in more detail below.

I. THE LEGAL CRITERIA REQUIRED TO SUSTAIN AN OCCUPATIONAL SAFETY AND HEALTH STANDARD

OSHA is generally authorized to adopt occupational safety and health standards, as defined in § 3(8) of the Occupational Safety and Health Act (OSH Act), in accordance with the procedures and criteria in § 6(b) of the OSH Act. We say "generally" because the exercise of that authority is also subject to the Administrative Procedure Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, the Federal Register Act, Executive Order 12866, the Small Business Regulatory Enforcement and Fairness Act, and the U.S. Constitution.

Section 3(8) of the OSH Act defines the term "occupational safety and health standard" as follows:

> The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, *reasonably necessary or appropriate* to

- Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

- Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

- Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

- Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

- Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

Further, pursuant to the Data Quality Act,[14] Congress directed the Office of Management and Budget (OMB) to issue government-wide guidelines (and each covered agency to adopt conforming guidelines) for ensuring and maximizing the quality, objectivity, utility and integrity of information distributed by Federal agencies.[15] To ensure accurate, reliable and unbiased information in a scientific, financial or statistical context – as is this case – the original and

[14] to P.L. 106-554, (Dec. 21, 2000) (published at 44 U.S.C. § 3516).

[15] Pub. L. No. 106-554. In that document and the Department of Labor's Data Quality Guidelines, the term "quality" encompasses "objectivity", "utility" and "integrity." The term "utility" refers to the usefulness of the information to its intended users, which in this case would be primarily OSHA, the employer community and the employee community. The term "objectivity" means the information is (a) accurate, reliable and unbiased, and (b) presented in an accurate, clear, complete and unbiased manner with transparent documentation to the source (subject to confidentiality protections that we do not believe are present in this case). The term "integrity" means the information is protected from unauthorized access or revision.

supporting data must be generated and the analytical results developed using sound statistical and research methods. Where the information is "influential scientific, financial or statistical information" – information that will or does have a clear and substantial impact on important public policies or private sector decisions – as would be the case in an OSHA rulemaking, it is subject to stricter quality standards that would facilitate reproducibility by qualified third parties.

Based on the application of the aforementioned legal requirements to OSHA's proposed rule, the NAM concludes the proposed rule fails to meet those requirements and should be withdrawn. Should OSHA elect to adopt some or all of the proposed ancillary provisions, the NAM believes they could only be applied to exposures above the current PEL, and offers suggestions for addressing deficiencies in those provisions.

II. THE SIGNIFICANT RISK AND REDUCTION IN RISK REQUIREMENTS

The NAM supports the basic approach of the comprehensive comments on OSHA's health effects analyses and risk assessments for RCS filed in this proceeding by the U.S. Chamber of Commerce and American Chemistry Council's (ACC) Silica Panel (Silica Panel). Our comments will not be addressing those aspects of the significant risk issue as they relate specifically to RCS in these comments. Rather, the NAM will focus on considerations indicating that OSHA has not adequately evaluated the risk presented by exposure to RCS and has improperly extended coverage of the proposed standard beyond those industries and occupations where exposure to uncontrolled RCS presents a significant risk to health. The current standard provides an effective level of protection.[16]

Importantly, credit for this success goes to the employers who have worked over the last 75 years to control exposures to RCS in their workplaces. Whatever standard OSHA adopts, it is the efforts of employers and especially those responsible for safety and health practices in individual workplaces that deserve recognition for the changes that have resulted in such a dramatic drop in reported cases.

[16] 78 Fed. Reg. 56298 col. 2, stating "many of the deaths in the early part of the study period occurred among persons whose main exposure probably occurred before the introduction of national standards .established by OSHA and (MSHA)."

any of numerous other factors that affect the quality and reliability of scientific data. We believe OSHA's current approach fails to meet this test and, therefore, is not consistent with its statutory mandate. The following summarize some of the additional facts that suggest OSHA's approach is inadequate.

III. Technical Feasibility

A. Feasibility Of Control Measures

As the NAM collects additional data from its members, it expects to have more extensive information to share with OSHA. However, as mentioned earlier in connection with our requests for additional time to develop these comments, the NAM has repeatedly advised OSHA that we have not been given sufficient time to gather information from members to provide a systematic analysis of the economic and technical feasibility issues related to the proposed rule. The NAM is surveying its members about the cost and feasibility of each section of OSHA's proposal. Unfortunately, due to the compressed calendar and holidays, we are still collecting responses. We hope to have more information available to present at the planned hearings in March.

Manufacturers generally may have employees with potential RCS exposures if maintenance and modifications to the physical facilities involve tasks where silica-containing building materials or structures have to be modified to make necessary changes. The tasks involved include drilling with hand-held tools, drywall finishing, and using tools like jackhammers and concrete saws, among others. The NAM endorses the comments of the Construction Industry Safety Coalition (CISC) on the technical feasibility of OSHA's proposed controls. Because manufacturers represented by the NAM will have employees only infrequently and sporadically involved in projects with potential RCS exposure, adopting the controls OSHA proposes will have minimal benefit because of the minimal risk such tasks involve. The NAM believes that the CISC has demonstrated the lack of feasibility for controlling these exposures.

Among the manufacturers who responded to the survey so far are some of our foundry members. These foundries are directly affected by every provision of the proposed standard. The comments filed by the American Foundry Society (AFS) demonstrate the infeasibility of the proposed PEL for the foundry industry and that OSHA has only superficially examined the experience of the industry in attempting to meet the existing PEL. Because the foundry industry

has been a focus of attention when it comes to crystalline silica, the fact that OSHA's technical feasibility conclusions as to the proposed PEL are unfounded and so far off the mark with respect to foundries suggests that OSHA's general conclusions on the feasibility of the proposed PEL are also unfounded. We briefly recount some of the pertinent facts related to this issue.

OSHA's technical feasibility analysis for foundries is purportedly based, in large part, on the outcomes of enforcement investigations of a number of foundries that resulted in citations for alleged violations of the current PEL and settlement agreements. Contrary to OSHA's assertions, those settlement agreements demonstrate OSHA's recognition and acknowledgement that it is infeasible for those foundries to achieve continued compliance with the current PEL, much less the proposed PEL, through the implementation of traditional engineering controls. Rather than acknowledging the substance of those settlements, OSHA relied on a single set of samples taken from one non-representative foundry that apparently had been able to control exposures to a lower level for the tasks that were sampled, and asserted they were representative of all tasks and activities performed by the entire industry. We strongly support the AFS position that a single set of samples from one foundry lacks any statistical significance for that facility, much less the entire industry, and reliance on a single set of samples from one foundry to represent continuing exposures for the entire industry is clearly inadequate under the "best available evidence" standard.

The NAM Believes OSHA has not accurately considered the difficulties in complying with the PEL solely through engineering controls, especially with regard to maintenance activities. We received the following comment from one member:

> "Exceedences of the PEL can and do occur in our facilities especially involving maintenance and/or cleaning activities. There are occasional conditions where maintenance cleaning is performed inside conveyor enclosures where the enclosure is ordinarily a part of the dust control systems. This is just one example of where a control would have to be breached in order to properly maintain it as well as the operating equipment. It is simply not technically feasible to establish engineering controls for all possible maintenance activities. There has to be allowances for upset conditions where maintenance and cleaning of systems is required. Respirators must be allowed for such

Furthermore, OSHA's conclusion that the employer could be confident of complying with the PEL by reducing exposure levels to 43 ug/m^3 ignores the precision error. If the officially stated "overall analytical error" of 26% is applied, the employer would need to control exposures to 37 ug/m^3 rather than 43 ug/m^3 to be confident the PEL would not be exceeded! But, and this bears repeating, OSHA has already acknowledged a PEL of less than 50 ug/m^3 is technically infeasible.

Under the logic of OSHA's preamble analysis, OSHA is not proposing a PEL of 50 ug/m^3, but a PEL of 37 ug/m^3. OSHA acknowledged that a PEL of less than 50 ug/m^3 is technically infeasible, which means the proposed rule is technically infeasible.

OSHA may assert that this shortcoming can be cured by taking a sufficient number of samples to get a statistically reliable average that demonstrates compliance with the PEL, but this approach has problems that have not been considered. First, OSHA has not acknowledged that it would accept that approach to compliance. Second, such an approach would likely be both technically and economically infeasible for employers and infeasible for OSHA to enforce. To demonstrate results meeting the 95 percent confidence limit, we believe it would be necessary to take 20 or more samples under substantially identical conditions. It is infeasible to place more than two samplers on a single worker at the same time – one on each collar, because the samples will not be duplicating the exposure measurements. Even with two, the sample results can differ depending on the activities of the employee. To obtain 20 samples, it would be necessary to place two samplers (one on each collar) on the same employee every day for two (5-day) work weeks. Under this approach, the demand for sampling devices would be 20 times the OSHA estimate, the cost of the lab analyses would be 20 times OSHA's estimate, and the fees of the highly compensated industrial hygienists (who would be performing sample collection at the site 10 times instead of once and analyzing the results of those additional test results) would be 10 times OSHA's estimate (if there were enough industrial hygienists in the US to meet this demand). For infrequently performed maintenance or construction tasks, it would be impossible to obtain the number of samples necessary for the employer to establish a statistical average.

OSHA well knows that occupational exposures are not distributed on a normal bell curve. Leidel and Busch more than 35 years ago showed that the higher the variability of the combined

sampling and analytical method, the greater the difference between the measured exposure that the standard that has to exist to be confident that OSHA's measurements will agree.[21] In those early days, the action level was set at 50 percent of the PEL, in part because of these measurement difficulties. Because employers could not be sure that exposure measurements above those levels were not simply statistical anomalies when the true exposure is about the PEL, OSHA established the action level concept and required employers to begin with the ancillary provisions at the action level. The idea that a residual risk exists below the PEL that warrants the imposition of the ancillary provisions was unproven then, and we believe remains so now. Simply stating that a risk exists below the PEL that OSHA considers it significant, and that OSHA believes the ancillary provisions will significantly reduce that risk does not meet the Supreme Court standard set in the Benzene decision.

Even if it was technically and economically feasible for an employer to obtain the measurements required to establish this average exposure level, it would be impossible for OSHA to duplicate that effort in the course of its enforcement investigations. Furthermore, this incredibly burdensome monitoring procedure would not be required solely for the initial assessment, but for each quarterly or semiannual periodic monitoring measurement. Finally, given the burdens imposed by all of the other ancillary requirements that would be triggered by an exposure level in excess of the PEL, it would be unreasonable to have those requirements triggered by a technically and economically infeasible testing regime. In other words, OSHA has demonstrated that measurement of exposures at the proposed PEL and AL cannot be reliably performed to demonstrate compliance with the proposed PEL and AL, and that compliance with the proposed PEL is technically and economically infeasible. OSHA has not discussed the other methods NIOSH has reviewed and for which NIOSH provided statistical analyses of their performance. OSHA needs to demonstrate that these methods are inferior to the proposed method before requiring laboratories and the regulated community to substitute what appears to be an inadequate technique.

[21] Occupational Expo Sure Sampling Strategy Manual, Leidel, N.A., Busch, K.A., and Lynch, J.R.; U.S. Department Of Health, Education, And Welfare, Public Health Service, Center for Disease Control , National Institute for Occupational Safety and Health, Cincinnati, Ohio 45226, Pub. No. 77-173.
January 1977

costly infrastructure expenses resulted in little or no appreciable gains in controlling silica exposures.

OSHA proposes that: a) wherever feasible, the employer should use engineering and work practice controls; and b) where engineering and work practice controls do not reduce exposures to or below the PEL, the employer shall use them to reduce exposures to the extent feasible and supplement those measures with respiratory protection. [24] This provision is based on a policy adopted as a good industrial hygiene practice before OSHA was created, and while OSHA attempts to justify its continued inclusion in every substance-specific health standard, OSHA's analysis fails for several reasons, which are explained in the next section of these comments.

In addition to engineering controls, OSHA permits work practice controls; however it prohibits the use of job rotation that is implemented strictly for the purposes of reducing exposure to RCS. This is without justification and ignores the wide body of evidence that reducing the cumulative exposure in this manner will concomitantly reduce incidences of silicosis and other silica related diseases.

Finally, OSHA would prohibit reliance on respiratory protection as the primary method of controlling exposure to RCS even when feasible engineering controls and work practices would not achieve compliance with the PEL. OSHA would allow reliance on respiratory protection only in four types of situations: when engineering controls are not feasible, while the employer is developing and installing engineering controls, when engineering or work practice controls are implemented but not sufficient by themselves to achieve an exposure level below the PEL, when the employee is in a regulated area or in an area where respirator use is required under an access control plan.[25]

2. The Proposed Rule Improperly Dismisses Respirator Use As A Suitable And Most Cost-Effective Approach To Managing Exposure

The basis for OSHA's antagonism to respirator use as a primary method of exposure management is outdated and premised upon outdated respirator designs that are no longer in use.

[24] Proposed § 1910.1053(g) at 78 Fed. Reg. 56489.

[25] Proposed standard at § 1926.1053(g), 78 Fed. Reg. 56499-500.

OSHA believes that respirators are not foolproof because they require that employees properly select and continuously use respirators, and that employees properly maintain respirators and timely replace respirator filters. [26]

OSHA asserts, without submitting or relying upon any evidence, that respirators, in order to be effective, must be individually selected, fitted, and periodically refitted, conscientiously and properly worn, and regularly maintained and replaced as necessary.[27] OSHA also opines that in "some difficult or dangerous jobs," respirators "limit vision and communication."

However, these are the same concerns that attend engineering controls and work practice controls. The proper use of ventilation systems requires ongoing, expensive inspection and maintenance in order to be effective. HEPA filtration on ventilation systems or on vacuum assisted tools must be regularly maintained and replaced. Wet- and vacuum-assisted devices must be used conscientiously and properly in order to be effective; they also have to be maintained to achieve optimal performance. Engineering controls also contribute background noise to the work environment, potentially increasing the noise levels in the affected workplace. To prevent these potential noise sources from creating significant hazards, employers would have to purchase and possibly design more expensive systems that would avoid or control that noise. OSHA does not appear to have taken this potential cost into account in its economic analysis.

However, respirators alone enjoy the distinction of being portable, readily available, capable of immediate implementation and a highly cost-effective solution to RCS exposure. While OSHA facially asserts that it "does not believe that respirators provide employees with a level of protection that is equivalent to engineering controls,"[28] the reality is that respirators offer superior protection when ambient concentrations of a contaminant are within expected ranges because they will reduce exposures below the PEL.

[26] See, e.g. 78 Fed. Reg. at 56467. col. 1, "They reflect the Agency's determination...that respirators are inherently less reliable than engineering and work practice controls in reducing employee exposure to respirable crystalline silica."

[27] 78 Fed. Reg. at 56542-543.

[28] 78 Fed. Reg. 56543 col. 1.

duration-limited basis, the NAM recommends that OSHA allow this approach when exposures of less than a specified number of hours per day occurs on less than a specified percentage of assigned work days. For a typical 8-hour, 5-day, 40-hour work week, respirators would be allowed as the primary means of protection if the number days of exposure in a year exceeded the specified number of working days per year, and would lower the cost of compliance.

E. OSHA Should Adopt The Most Cost-Effective Approach For Monitoring

In making these comments on the ancillary provisions, the NAM wishes to be clear that it does not believe OSHA has demonstrated the need for a reduced PEL or that the proposed PEL is technically or economically feasible. Accordingly, the NAM does not believe the following comments should apply except in two scenarios: (1) if and when technical advances reduce the overall analytical error of the testing methods to a nominal level, and OSHA is able to demonstrate the need for a reduced PEL, or (2) if OSHA elects to adopt the proposed auxiliary provisions and tie their application to exposures above the current PEL. Nevertheless, these comments apply to any consideration given by OSHA to adopting any of the proposed ancillary provisions.

1. OSHA's Standard Should Permit Reliance On Any Reliable And Representative Sampling Data To Establish Initial And Continuing Exposure Levels

OSHA proposes that exposure assessments be based on recent monitoring data at the site or "objective data." OSHA proposes to define "objective data" as information such as either air monitoring data from industry-wide surveys or calculations establishing a maximum employee exposure based on the composition and chemical and/or physical properties of the subject chemical. This requirement is apparently designed to provide employers with some flexibility in relying on existing information to make initial exposure assessments rather than performing exposure monitoring to make every initial exposure assessment. While we support the underlying concept of providing flexibility, we believe the options offered by the draft proposal are unnecessarily limited.

We believe that a more flexible approach, which permits the use of any existing or historical data that provides a reasonably accurate estimate of ambient exposures, will achieve the same result in a far more cost-effective manner. Exposure data does not need to derive from

"industry-wide surveys" in order to be reliable. Rather, any data that was developed in a manner that shows it is reliable, regardless of the age of the data, should be sufficient provided that it is adequately representative of the particular environmental conditions, product, process, operation or activity for which it is being used. In short, the reliability and relevance of the data is the critical feature of being "objective data," and "industry-wide surveys or calculations" serve as an unduly burdensome proxy for reliability or relevance to the workplace conditions to which the data is applied. For the same reasons, as discussed below, there is no justification for limiting the use of an employer's survey data or any other data on which it wishes to rely, to that which has been collected within the last year.

OSHA should explicitly acknowledge that there are many reliable sources of objective data. Among them are: published scientific reports in the open scientific literature; NIOSH Health Hazard Evaluations; insurance carriers' loss prevention reports; information that the silica in a process cannot be released because it is bound in a matrix preventing formation of respirable particles; and others. Data collected and collated in a reproducible manner, from identified sources, using methods that are clearly explained should be allowed. The only question is whether the data can reliably predict employee exposures and whether they "reflect workplace conditions closely resembling the processes, types of material, control methods, work practices, and environmental conditions in the employer's current operations." If the employer can show the reliability of the data on which he or she relies and the relationship to the predicted exposures, that should be sufficient. The NAM urges OSHA to modify the language in this provision to establish criteria for reliability by adding the following to the paragraph defining objective data:

> "means information . . . demonstrating employee exposure or other such data as the employer may show reliably predicts employee exposure to RCS . . . ."

2. An Initial Exposure Assessment Need Only Be Reliable And Relevant, And OSHA Should Eliminate Language That Suggests Multiple Employees Must Be Monitored.

OSHA proposes that, in conducting exposure assessment, where several employees perform the same job tasks on the same shift and in the same work area, the employer may sample a "representative fraction" of these employees in order to meet this requirement, but that

Any exposure monitoring that has been performed under the same conditions in years past should be sufficient for the purposes of making an initial exposure assessment. OSHA's insistence upon new exposure monitoring following the effective date of the new rule is arbitrary and inconsistent given that OSHA permits an employer to rely upon industry wide surveys, which it includes within its definition of "objective data."[33] A requirement to perform new exposure monitoring simply because the previous monitoring was performed more than 12 months earlier increases compliance costs and the regulatory burden without benefit.

To permit the most cost-effective approach to compliance, OSHA should instead permit an employer to rely upon any monitoring data collected under conditions that closely resemble those currently prevailing, without regard to the date of the data, since the requirement that the conditions "closely resemble" currently prevailing conditions is in fact the best indicia of reliability.

In contrast to imposing this unnecessary requirement on employers, OSHA is relying on data that is sometimes decades old to establish its risk assessment. If such an assumption is appropriate for determining risk, it certainly makes sense the data would be sufficiently reliable to allow predictions of compliance today. OSHA should remove the time limit on data and require only that the employer be able to demonstrate that the data are reliable and representative in predicting employee exposure levels.

4. OSHA's Proposed Requirement That An Employer Conduct New Monitoring Every Three Months When Exposures Are Above The Proposed PEL Is Unduly Burdensome and Unnecessary

Where employers rely on ventilation or other engineering controls to maintain exposure levels below the PEL, exposure monitoring is not necessarily the most cost effective technique for monitoring performance of those systems. For example, current OSHA standards acknowledge that monitoring pressure drop or air velocities in spray booths can be used to determine if that system is operating within normal limits. Employers should have the flexibility to develop methods to assure that control systems are functioning properly, without the expense of air monitoring where it is not necessary. Furthermore, even if air monitoring is an appropriate

[33] 78 Fed. Reg. 56487 col. 1, at §1053(b).

check on the effectiveness of a control measure, it would not be necessary to perform monitoring on each shift or in each area to check control measures common to multiple shifts and areas.

OSHA has acknowledged that there will be a number of circumstances where it will not be feasible to achieve an exposure level at or below the proposed PEL.[34] For example, in settling a number of citations alleging violations of the PEL for RCS, OSHA has conceded that compliance with the current PEL is infeasible and permitted the employer to rely on respiratory protection in order to manage worker exposures.

OSHA nevertheless proposes that in these types of situations, where compliance with the current PEL is infeasible, the employer will be required to conduct periodic exposure monitoring at least every three months, which will simply confirm what is already known. The mere act of conducting monitoring does not reduce exposure and where environmental factors, practices and process, and operations have not changed; a periodic monitoring requirement would simply increase compliance costs for no apparent benefit. We propose that OSHA adopt a more reasonable and more flexible approach. Where the initial or subsequent exposure monitoring reveals that employee exposures exceed the PEL, an employer should be required to conduct repeat monitoring reasonably soon after an employer has implemented substantial changes in its operations, its engineering or work practice controls, or in its environmental conditions. If, after all feasible measures have been implemented, the exposure levels remain consistent and above the PEL for a year, periodic exposure measurements should no longer be required absent a change in circumstances. In the absence of any changes to any relevant circumstances, where it is infeasible to achieve the PEL, the repeated monitoring requirement would be nothing more than an unnecessary expense imposed on employers with workplace exposures above the PEL.

5. OSHA's Requirement That The Employer Use Laboratories That Are Accredited Under The ANS/ISO/IEC Standard 17025:2005 Is Not Reasonably Necessary Or Appropriate

OSHA proposes that an employer "ensure" that all samples are evaluated using one of six referenced procedures (apparently the most current version) and that its samples are sent to a laboratory that is accredited to ANS/ISO/IEC Standard 17025:2005 and compliant to ISO/IEC

[34] See, e.g. 78 Fed. Reg. 56286 col. 2, stating "OSHA has made a preliminary determination that compliance with the proposed PEL can be achieved *most* of the time through the use of engineering and work practice controls."

where an employee's exposure to airborne concentrations of RCS exceeds, or can reasonably be expected to exceed, the PEL."[40] The PEL, by definition, is a function of exposure levels over a time-weighted-average of eight hours. OSHA's requirements for protective clothing and respirators, without regard to the length of time an employee spends in a regulated area, is operationally cumbersome, creates administrative issues, goes beyond the level of protection required to significantly reduce risk, and is not tied to actual risk. Such a requirement can be based only on the assumption that a significant risk exists when there is *any* exposure to RCS. OSHA admits that this not true. Furthermore, the requirement to have regulated areas in a manner similar to other standards is not practical.

The NAM takes the intent of the provision to limit the number of employees exposed to RCS. There are more cost effective means to do this For example, section (e)(2)(iii)(A) could instead state:

> the employer shall limit access to regulated areas to persons authorized by the employer and required by work duties to be present in the regulated area when such persons' entry into the regulated area will be of such frequency and duration as to constitute a hazard. Exposure at the PEL for more than __ hours on more than __ days per year is presumed to constitute a hazard.

IV. Summary and Conclusions

The NAM and its members understand that employees are the key resources in our facilities and that all employees deserve a safe and healthful workplace. We support OSHA's efforts to reduce significant risks of adverse health effects from workplace exposure to hazardous substances such as RCS. We are also mindful of the competing demands for what are always limited resources. In adopting the OSH Act, Congress recognized the need to take a balanced approach to the regulation of workplace exposures. This means, in significant part, limiting the scope of OSHA standards to those activities and employers whose employees are truly at risk and adopting requirements that materially and directly reduce the risk in the most cost-effective manner so as to provide a safe workplace while minimizing the negative impacts on productivity

[40] Proposed standard at § 1053(b)

and manufacturers' competitiveness. Unfortunately, the proposed rule does not meet these criteria.

OSHA has not employed the best available evidence to determine whether there is a significant risk of harm to employees exposed to RCS at the present PEL and, therefore, has not established whether there is a significant risk of harm to employees exposed to RCS at the present PEL. Furthermore, OSHA has, in effect, acknowledged that the proposed PEL is not technically feasible. Given the wide margins of error associated with the official OSHA sampling and sample analysis, it would be infeasible for an employer to demonstrate compliance with the PEL, much less that it was below the action level, with a single sample unless it operated to achieve an effective PEL of 37 ug/m^3, which OSHA has acknowledged is infeasible. The alternative, assuming it was accepted by OSHA, would be to determine a statistically reliable average exposure limit below the PEL through an adequate number of samples. The cost of that approach could result in a 20-fold increase in exposure monitoring costs, which would be economically infeasible, and that approach would be technically infeasible for infrequently performed tasks.

Accordingly, the NAM submits that the only appropriate recourse is for OSHA to withdraw its proposed rule on occupational exposure to respirable crystalline silica until the Agency can properly address these issues using the best available evidence.

If OSHA chooses to nevertheless proceed in this rulemaking, then the NAM submits that OSHA should substantially revise its proposal to conform to the comments enclosed herein. Specifically, any requirements that OSHA proposes must address an existing significant risk not addressed under the current standard; must be reasonably calculated to significantly reduce that risk; must be both economically and technically feasible; must be premised upon the best available evidence; and must permit the employer to utilize the most cost-effective method for addressing a hazard.

NATIONAL ASSOCIATION OF Manufacturers

Joe Trauger
Vice President
Human Resources Policy

March 10, 2014

The Honorable David Michaels
Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

VIA ELECTRONIC SUBMISSION: http://www.regulations.gov

Re: OSHA Docket No. OSHA-2013-0023
Improve Tracking of Workplace Injuries and Illnesses
78 Federal Register 67254, November 8, 2013

Dr. Michaels:

The National Association of Manufacturers ("NAM") is pleased to provide OSHA with the following comments on the Agency's Proposed Rule, *Improve Tracking of Workplace Injuries and Illnesses* (78 Fed. Reg. 67254, November 8, 2013).

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than $1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for two-thirds of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The NAM's members have expressed concern over this proposed regulation and strongly believe the proposed changes to the existing recordkeeping system will have a negative impact on the traditional no-fault recordkeeping system. The NAM believes the existing recordkeeping system is sufficient to allow employers to identify and address hazards in their work-places. Additionally, the NAM questions OSHA's legal authority for the promulgation of such a regulation and have several policy-related concerns. These issues are addressed below.

For all the reasons stated below, the NAM and its members request OSHA withdraw this proposed regulation.

I. Current Recordkeeping Requirements Are Adequate

In 2001 OSHA revised Part 1904 - Recording and Reporting Occupational Injuries and Illnesses. 66 Fed. Reg. 5916 (January 19, 2001). The reasons OSHA provided at the time of these revisions were "to improve the quality of workplace injury and illness records." OSHA noted that higher quality records would serve important purposes, such as employer awareness of workplace hazards, reduce underreporting and lessen the recordkeeping burden on employers. *Id.* at 5918.

Based on the decline in injury and illness rates since 2001, it is evident that the current recordkeeping system in place is achieving these stated goals. In fact, the incidence rate for injuries and illnesses per 100 full-time employees in 2001 was 5.7 compared to the rate of 6.1 in 2000. In a Bureau of Labor Statistics ("BLS") news release announcing the 2001 injuries and illnesses statistics, BLS noted "[t]he rate for 2001 was the lowest since the Bureau began reporting this information in the early 1970s." (US DL 02-687, December 19, 2002).

BLS statistics establish that for the entire manufacturing sector injury and illness rates have dropped from 12.2 per 100 employees in 1994 to 4.3 per 100 employees in 2012. Similar trends in injury and illness rates are also evident in other industries. This steady rate of improvement across industry sectors is confirmation that the existing recording and reporting rules are working and are adequate. The NAM, therefore, believes the revisions OSHA proposes to Part 1904 in this regulation are unnecessary.

II. The OSH Act Does Not Grant Authority for this Proposed Regulation

Even if the current recordkeeping system was somehow inadequate or in need of revising, OSHA lacks the legal authority to promulgate *this* proposed regulation. Contrary to OSHA's assertions, the Occupational Safety and Health Act of 1970 ("OSH Act" or "Act") does not expressly grant authority through sections 8 and 24 for this proposed rule. Specifically, there is no language in section 8 or section 24 that permits the Secretary to promulgate regulations requiring the public disclosure of an employer's injury and illness records through a searchable webpage.

a. No express grant of authority is found in Sections 8 or 24.

Section 8(c)(2) merely grants the Secretary the authority to promulgate regulations requiring employers to maintain injury and illness records. Nothing in this section expressly grants authority for the public dissemination of such information. 29 U.S.C. § 657(c).

Moreover, had Congress intended to make such information available to the public they know how to do so. In various other sections of the OSH Act Congress explicitly granted authority requiring that other types of records be made available to the public. For example, section 12(g) requires the U.S. Occupational Safety and Health Review Commission records to be made publically available. 29 U.S.C. § 661(g). *U.S. v. Doig*, 950 F.2d 411, 414-15 (1991) ("Where Congress includes particular language in one section of a statute but omits it in another

IV. Confidential Commercial Information is Protected from Disclosure.

Under the Freedom of Information Act ("FOIA"), certain documents are exempt from public disclosure. 5 U.S.C. § 552. Exemption 4 protects "a trade secret or privileged or confidential commercial or financial information obtained from a person." 5 U.S.C. § 552(b)(4). The NAM and its members believe employee hours worked on the OSHA Form 300A is confidential business information, because that information gives insight into the state of a business at any given time and creates a competitive harm. As such, this information is entitled to protection from disclosure to the public under FOIA, which would be consistent with how OSHA has historically treated employee hours worked.[1]

In *New York Times Co. v. U.S. Dep't. of Labor ("New York Times")*, OSHA argued that employee hours worked is confidential commercial information and not subject to disclosure under FOIA. 340 F. Supp. 2d 394 (S.D.N.Y. 2004). In this case, pursuant to FOIA, the New York Times Co. sought the lost work day illness and injury ("LWDII") rates for all establishments that submitted surveys to ODI in 2000. In response, OSHA asserted the LWDII information was:

> tantamount to release of confidential commercial information, specifically the number of employee hours worked, because this number can be easily ascertained from LWDII rate...the LWDII can be "reversed-engineered" to reveal EH, or employee hours.

Id. at 401.

Contrary to earlier positions, and relying solely on the holding in *New York Times*, OSHA now asserts that employee hours are not confidential commercial information. Certainly, OSHA does not base its entire proposition that employee hours worked are no longer confidential commercial information on one case - particularly where a review of more recent case law establishes that employee hours worked is commercial in nature, and would have been confidential but for the fact that the information was previously disclosed to the public. *Plumbers and Gasfitters Local Union No. 1 v. Dep't of Interior*, No. 10-CV-4822, 2011 U.S. Dist. LEXIS 123868 at *6 (E.D.N.Y. Oct. 26, 2011) ("*Plumbers and Gasfitters*").

Moreover, there appears to be an inconsistency in the Court's analysis reaching its conclusion in *New York Times*. The Court concluded that OSHA no longer regarded employee hours as confidential because it began requiring the posting of such information and therefore employers had no expectation of a competitive advantage based on confidentiality of this information. However, this conclusion is in conflict with the Court's acceptance of OSHA's

[1] Similarly, other federal agencies have treated employee hours worked as confidential commercial information. *See, e.g., Torres Consulting and Law Group, LLC, v. Dep't of Energy*, No. CV-13-00858-PHX-NVW, 2013 U.S. Dist. LEXIS 168772 (November 27, 2013) (DOE withholding hours worked from disclosed information pursuant to Exemption 4), *Painters Dist. Council # 6 v. Gen. Services Admin.*, No. C85-2971, 1986 U.S. Dist. LEXIS 31056 (July 23, 1986) (GSA denying FOIA request for payroll reports, which included hours worked pursuant to Exemption 4.)

argument that "the posting of an annual injury and illness summary at the work site itself is a limited disclosure to a limited audience, a disclosure which is surely insufficient to render the data publically available." *New York Times Co.* at 401. Therefore, even a limited disclosure of employee hours worked "does not lessen the likelihood that...[the employer] might suffer competitive harm if it is disclosed again." *Martin Marietta Corp. v. Dalton*, 974 F. Supp. 37, 40 (D.D.C 1997) ("the prior release of information to a limited number of requesters does not necessarily make the information a matter of common public knowledge, or does it lessen the likelihood that [the submitter] might suffer competitive harm if disclosed again...").

Courts have routinely applied a broad scope to the term "commercial" and have found that information that is provided to the government in which the submitter has a commercial interest in them is protected from disclosure. *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). Employee hours worked have been held to be an element of labor costs and therefore commercial information. *Plumbers and Gasfitters*, 2011 U.S. Dist. LEXIS 123868 at *7.

Likewise, such information is confidential because its disclosure creates a substantial competitive harm. Specifically, release of employee hours worked, coupled with other accessible information, such as the prevailing wage, would allow competitors to undercut pricing creating a competitive harm. In *OSHA Data*, the Department of Labor argued that "a competitor could use information about a business's number of employees and employee work-hours to calculate estimates of that company's labor costs and productivity, which would give that competitor valuable inside information to assist its pricing strategies." *OSHA Data/CIH, Inc. v. U.S. Dep't. of Labor*, 220 F.3d 153, 166-67 (3d Cir. 2000).

The Department of Labor, including OSHA, as well as other federal agencies have considered employee hours worked as confidential commercial information not subject to disclosure pursuant to FOIA Exemption 4. Courts, as well as employers, including NAM members, treat employee hours worked as confidential commercial information – information that is entitled to protection from disclosure under FIOA, and information that NAM members fully expect OSHA to protect from disclosure.

In addition, as noted above, merely because such information is disclosed to a limited audience, such as employees and their representatives by being posted for three months a year does not vitiate the confidentiality of the information. *Id.* at n. 25. *See also, Martin Marietta Corp.*, 974 F. Supp. at 40, *New York Times Co.*, 340 F. Supp. 2d at 401-02. The NAM would expect OSHA to protect such confidential commercial information pursuant to its obligations under FOIA and legal precedent.

V. Personally Identifiable Information Must Be Protected from Disclosure.

a. An individual employee's privacy interest outweighs an alleged benefit of public disclosure.

In 1996, OSHA proposed various revisions to Part 1904 – Recordkeeping and Reporting Occupational Injuries and Illnesses. One proposed revision was to expand the right of access of

"In the proposal, OSHA noted that the access requirements were intended as a tool for employees and their representatives to affect safety and health conditions at the workplace, *not as a mechanism for broad public disclosure of injury and illness information.*" 66 Fed. Reg. at 6057 (emphasis added).

In addressing commenters' concerns about the public release of such information, OSHA stated, *OSHA agrees that confidentiality of injury and illness records should be maintained except for those persons with a legitimate need to know the information. Id.* (emphasis added). More importantly, OSHA clearly determined that "[t]he record does not demonstrate that routine access by the general public to personally identifiable injury and illness data is necessary or useful." *Id.* In this proposed regulation, OSHA fails to even acknowledge its previously held position or attempt in any manner to explain what dramatically altered this determination so that there is now a need to provide broad public disclosure of injury and illness information.

The NAM believes this change in agency position is unwarranted, particularly in light of the lack of information and evidence supporting the need for, or benefit of, the proposed regulation.

c. The Proposed Regulation is in Conflict with Section 1904.29.

This proposed regulation appears to conflict with OSHA's requirement that employers must protect employee privacy where access to the OSHA Form is provided to those other than employees, former employees or employee representatives. 29 C.F.R. § 1904.29.

Section 1904.29(b)(10) specifically states:

> **What must I do to protect employee privacy if I wish to provide access to the OSHA Forms 300 and 301 to persons other than government representatives, employees, former employees or authorized representatives?** If you decide to voluntarily disclose the Forms to persons other than government representatives, employees, former employees or authorized representatives (as required by §§ 1904.35 and 1904.40), ***you must remove or hide the employees' names and other personally identifying information,*** except for the following cases. You may disclose the Forms with personally identifying information only:
>
> to an auditor or consultant hired by the employer to evaluate the safety and health program;
>
> to the extent necessary for processing a claim for workers' compensation or other insurance benefits; or
>
> to a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.512.

29 C.F.R. § 1904.29(b)(10) (second emphasis added).

OSHA has failed to address how § 1904.29 is impacted by this proposed regulation. There is a very real possibility that what an employer redacts as "personally identifying information" under this requirement would dramatically differ from what OSHA considers personally identifying information for purposes of public disclosure on its webpage.

Assume that an employer voluntarily provides its OSHA Forms 300 and 301 to an outside safety and health organization. In choosing to do so, the employer is required to redact the employees' names and "other personally identifying information." Depending on a variety of factors, the employer chooses to redact certain information, including job titles and dates of injuries. Yet, months later when OSHA receives this employer's injury and illness records *it* decides to only redact the employees' names. The safety and health organization could put both sets of data together – something OSHA seems to want to encourage – and the safety and health organization could conceivably identify various individuals. Using this information, the safety and health organization contacts the employee. In many instances, the employee may not want to be contacted or have their information used and disseminated any further, constituting an unwarranted and ongoing invasion of the employee's privacy.

Under OSHA's revision to § 1904.41, this provision becomes obsolete. OSHA cannot require employers to remove employees' names and other personally identifying information and then hold itself to another standard. OSHA's failure to address the interplay of the proposed regulation with the existing requirements is troubling. For § 1904.29 to work in harmony with these proposed revisions there must be uniformity as to what is considered personally identifiable information.

Again, it appears that the agency has not thoroughly considered the consequences of this proposed regulation and the negative implications that are likely to flow from it.

d. While HIPPA may not be directly implicated, the principles underlying the protection of individually identifiable health information should be considered.

At the core of the Health Insurance Portability and Accountability Act of 1996 ("HIPPA") is a privacy rule that protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate. 45 C.F.R Part 160. Such individually identifiable health information is protected and considered "protected health information (PHI)."

"Individually identifiable health information" in part, is information, including demographic data that relates to the past, present or future physical or mental health or condition of an individual and identifies the individual (or establishes a reasonable basis to believe it can be used to identify the individual). 45 C.F.R. § 160.103. Examples of individually identifiable health information include name, address, birth date, social security number.

Under HIPPA, if information is "de-identified" then it is no longer individually identifiable health information and there may no longer be privacy concerns. Health information can be de-identified either by a formal determination of a qualified statistician or removing specified identifiers, including for example, names, geographic subdivisions (street address, city,

purpose is to mine data - that is perform analysis on computerized data to gather certain information and discern trends. Data mining in conjunction with aggregating data from other sources has the potential not only to disclose an employee's identity, but to target employers and/or employees for harassment, intimidation or threats. The NAM is aware of instances in which OSHA's enforcement actions have been used solely and precisely for those purposes.

b. Reversal of OSHA's No-Fault Recordkeeping System.

As a means to encourage employers to record injuries and illnesses and employees to report such injuries and illnesses, OSHA revised the recordkeeping provisions in Part 1904 in 2001. 66 Fed. Reg. at 5918. As part of these revisions, OSHA adopted the geographic presumption to work-relatedness. *Id.* at 5929. OSHA viewed this approach to determining work-relatedness as the most effective in fulfilling its statutory mandate. However, at the same time, OSHA recognized that many injuries and/or illnesses that would fall within this geographic presumption would not necessarily be within an employer's control. *Id.* at 5934. In fact, OSHA recognized that "many circumstances that lead to a recordable work-related injury are 'beyond the employer's control'...." *Id.*

To balance this approach of work-relatedness and encouraging employers to record injuries and illnesses, OSHA made explicitly clear to employers that the recordkeeping requirements in no way established an employer's fault – that recording an injury or illness was not an admission that the employer was at fault or that it violated an OSHA standard. *Id.*

Contained in the purpose section of the final rule there is a Note to § 1904.0 that specifically states:

> Note to 1904.0: Recordkeeping or reporting a work-related injury, illness or fatality **does not mean that the employer or employee was at fault, that an OSHA rule has been violated**, or that the employee is eligible for workers' compensation or other benefits.

29 C.F.R. § 1904.0 (emphasis added).

OSHA now wants to take this same system, the one it assured employers did not establish fault or non-compliance and revise it to collect employers' injury and illness records and make them publically available, using this information against employers. The purported benefits of these revisions are better agency targeting and enforcement and compliance efforts, allowing employees to compare their workplaces or impact potential decisions for future employment, and allowing the public to determine companies with which to do business. 78 Fed. Reg. at 67256. These benefits are completely contrary to the no-fault system, and in fact, they actually suggest that OSHA believes a high injury and illness rate correlates to non-compliance of OSHA standards – placing the fault for injuries and illnesses squarely at the feet of employers.

The NAM is troubled that the assurances provided to the regulated community during the last recordkeeping revisions are now apparently not applicable and rather than encouraging

employers to record injuries and illnesses OSHA is developing a system designed and focused on attempting to cudgel employers into compliance or submission.

b. Unfair Portrayal of an Employer's Safety & Health Program.

As if the above reasons were not enough to consider withdrawing this proposed regulation, OSHA is fully aware that the raw data from an employer's injury and illness records is not a reliable measure of an employer's safety record. These records and the injury and illness rate that is computed from these records cannot be viewed in isolation. This information is limited in value without proper context and as noted above, many injuries and illnesses that are beyond an employer's control are captured in this information. Moreover, such information is in no way indicative of an employer's present or future performance in safety and health.

For example, OSHA acknowledges that an increase in recorded musculoskeletal disorders ("MSDs") can be due to an increased awareness of these hazards by industries, employers, labor, and government, and the reporting of these disorders. So an employer who implements an ergonomics program will likely see an increase in the number of reported and recorded MSD injuries – this is because of proper training, awareness of what constitutes a MSDs and the encouragement to report such injuries. In fact, this example illustrates that an initial increase in rates is a proactive step towards the reduction of work-place injuries and illnesses and not as OSHA claims an illustration of "...the workplaces where workers are at greatest risk." In such a scenario, if OSHA were to target this employer for enforcement or compliance purposes based on an overall injury and illness rate increase, it would be futile and a waste of such scare federal resources on an employer who is or already has taken the initiative to implement a program and is proactively addressing safety and health issues in the workplace according to best practices.

Even BLS acknowledges that there are many factors influencing injury and illness rates. In the *BLS Handbook of Methods*, Chapter 9 focuses on Occupational Safety & Health statistics. https://www.bls.gov/opub/hom/pdf/homch9.pdf (last visited March 5, 2014). In this chapter BLS recognizes that injury and illness rates are influenced initially by an employer's understanding of what is considered a recordable event. BLS goes on to state, "[t]he number of injuries and illnesses reported in any given year also can be influenced by the level of economic activity, working conditions and work practices, worker experience and training, and the number of hours worked." *Id.* at 15. This holds true for individual employers and these factors are not and could not be accounted for in the raw data OSHA anticipates disseminating to the general public.

The NAM has also heard from its members that this winter's weather may be increasing the number of slips and falls due to ice and snow. Even with aggressive snow removal and clean up efforts there are likely to be recordable incidents due to the geographic presumption mentioned earlier. This is but one example illustrating the many factors outside an employer's control that are captured in these numbers, numbers which alone do not provide enough data for others to draw objective and fair conclusions and make business-related decisions.

The NAM, as well as many other commenters, including the American Society of Safety Engineers ("ASSE"), believes the publication of an employer's injury and illness data moves

Again, OSHA suggests these benefits will result from this proposed regulation, but there is nothing in the record supporting the assertion that such benefits are actual or even potential. They are nothing more than mere conjecture and assumptions.

IX. No Actual Benefits Calculated and Underestimated Costs.

Using BLS time estimates, OSHA estimated the cost of compliance with this proposed regulation for each employer with establishments of 250 or more employees would be $183 a year, and $9 per year for establishments with 20 or more employees in designated industries.

OSHA believes these costs are offset because the purported benefits will be equal to or greater than these costs. Not only does OSHA underestimate the costs associated with compliance with this proposed regulation, OSHA has not adequately quantified the benefits of this rule. Despite a lack of reviewable analysis, OSHA concludes that annual benefits will "significantly exceed the annual costs." *Id.* at 67256.

More importantly, all the benefits alleged are based on mere speculation. There are no scientific analyses, data, reports, or studies to support any of the benefits claimed by the Agency. The NAM absolutely supports fewer workplace injuries and fatalities, but OSHA provides a flawed means to determine whether the rule will actually result in altering the trend line for the future. Further, it should be noted that employers are already required to report certain injuries and fatalities within specified time frames and the rule would have no impact on those requirements.

a. Rule Fails to Calculate Benefits.

Nothing in OSHA's analysis suggests that any benefits will in fact result if the proposed rule is adopted. Strikingly, there is *no* data or evidence cited in the proposal to suggest that OSHA's alleged benefits will occur – no studies or even anecdotal references are offered to support the assertion of a net benefit. OSHA's benefits analysis is simply speculation stacked on top of assumptions about what *may* occur if the proposed rule is finalized. The NAM respectfully asserts that OSHA is not allowed to justify a rule based purely on speculation, with no data whatsoever. Even if OSHA had the statutory authority to issue this proposed rule, which NAM disagrees with as stated above, OSHA must establish that a particular rule is reasonably necessary and appropriate. The proposed rule, as offered, does not meet this criterion.

b. Rule Does Not Account for Use of Equivalent Forms.

Under the current requirements, employers are permitted to use "equivalent" forms instead of the OSHA 300, 300-A, and 301 forms. 29 C.F.R. § 1904.29(a). This is an option many employers utilize to avoid duplication of efforts, for example with workers compensation requirements. The proposed rule will require reporting of all information currently on the OSHA 300 Log and 301 Form. The preliminary mock-up of the reporting system shows an online OSHA 300 and 301 that can be used for reporting.

Many employers do not actually use the OSHA 301 Form. Instead, they use an equivalent form. Presumably, OSHA would require employers to translate the information into the "301 Form" on the internet. This may not be as straightforward as OSHA makes it seem, and certainly it may be more costly than OSHA anticipates. It also increases the risks of errors occurring in the translation.

c. Other Factors Not Considered in Costs Analysis.

The NAM is concerned that OSHA has not contemplated significant costs of compliance with this proposed regulation. OSHA would like to believe, and would like the regulated community to believe, that this regulation is simple, easy to comply with, and results in no real costs to employers. To this point, OSHA claims that:

> The electronic submission of information to OSHA would be a relatively simple and quick matter. In most cases, submitting information to OSHA would require several basic steps: (1) Logging on to OSHA's web-based submission system; (2) entering basic establishment information into the system; (3) copying the required injury and illness information from the establishment's paper forms into the electronic submissions forms; and (4) hitting a button to submit the information to OSHA. In many cases, especially for large establishments, OSHA data are already kept electronically, so step 3, which is likely the most time-intensive, would not be necessary.

78 Fed. Reg. at 67272.

This proposed regulation is far from being simple and is certainly more time-intensive than OSHA acknowledges. While OSHA does acknowledge the most time-intensive part of the process will be copying the required injury and illness information, it fails to calculate costs associated with the manual entry of each and every recorded injury or illness on an employer's Form 300. Rather, OSHA estimates that it will take an employer 10 minutes for submission of *both* the Form 300 and 300 A. *Id.* This is simply an unrealistic estimate for the manual entry of this information.

Additionally, OSHA has not considered the costs associated with training for employee turnover, or for additional training of staff that may be required to manage state and federal privacy laws that could be impacted by employers knowing the information they submit will be made available to the public through an online searchable database. This is a concern employers do not currently have and therefore does not require any special training to make such determinations. OSHA did not factor costs associated with employers having to extrapolate data from equivalent forms. Additionally, it does not consider that some employers utilize proprietary electronic recordkeeping systems that would require program changes, possibly at a significant cost, so that the information could be electronically submitted to OSHA. Nor did OSHA consider that some employers, who currently use a paper format, will choose to implement an electronic recordkeeping system to comply with this rule.

X. Conclusion

OMA Safety & Workers' Compensation Committee Counsel's Report

Sue A. Wetzel and Thomas R. Sant, Bricker & Eckler LLP
Counsel to the OMA
May 14, 2014

A. San Allen, Inc., et al. v. Bureau of Workers' Compensation, et al., Case No. CA-13-099786, 8th District Court of Appeals

Since our last meeting, no decision has been rendered by the 8th District Court of Appeals after oral argument was heard on January 29, 2014. A number of post-hearing briefs have been filed.

B. State ex rel. Smith v. Ind. Comm., Slip Opinion 2014-Ohio-513

On February 18, 2014, the Ohio Supreme Court handed down its Per Curiam decision in the Smith case, where The Ohio State University appealed a judgment from the 10th District Court of Appeals granting a writ of mandamus ordering the Industrial Commission to conduct a new adjudication of Mr. Smith's application requesting a scheduled loss of his vision and hearing.

In 1995, Mr. Smith suffered an injury while working for The Ohio State University. A claim was initially allowed for a hernia. However, post-operative complications resulted in brain damage, leaving Mr. Smith in a persistent vegetative state. In 1998, the Industrial Commission awarded him benefits for permanent total disability. Subsequently in 2004, it granted additional benefits for the scheduled loss of use of both arms and legs. In March 2009, a doctor found that Smith showed no comprehension of language and did not respond to verbal questions. The doctor concluded that Mr. Smith had bilateral vision and hearing loss caused by the brain malfunction. On December 28, 2009, Mr. Smith was examined at the request of his counsel, and Dr. Robert Hess concluded that his hearing and vision could be tested due to his inability to respond to external stimuli, and opined that he is "not able to process any visual stimulation that is meaningful to him or can be used to improve his life situation." The Industrial Commission concluded that Mr. Smith's request for additional compensation lacked any objective evidence showing loss of vision or hearing.

Deciding an application for writ of mandamus, the 10th District Court of Appeals found that for purposes of RC 4123.57(B), scheduled loss of benefits may be awarded "for total loss of vision or hearing where the medical evidence considers the practical application of clinical or other data showing a loss of 100% or less." On that, the appellate court issued a writ of mandamus. The Ohio State University appealed, arguing that the Industrial Commission properly denied the additional award because Mr. Smith failed to present medical evidence

showing any actual loss of vision or hearing. The Court ultimately concluded that the Industrial Commission properly denied his claim seeking additional compensation for loss of vision or hearing, as the evidence presented to the Industrial Commission did not support the finding that Smith's eyes and ears no longer functioned.

C. State ex rel. Wyrick v. Industrial Commission, Slip Opinion No. 2014-Ohio-541

On February 9, 2014, the Supreme Court decided a case involving loss of use. The Industrial Commission denied the loss of use when it relied on the report of Dr. D. N. Middaugh. The Supreme Court reversed the Court of Appeals decision, which found that the Industrial Commission had not abused its discretion.

Mr. Wyrick was injured on March 7, 2006 and his claim was allowed for a dislocated left shoulder, a superficial injury to his left hand, cellulitis of his left fourth finger, a torn left rotator cuff, and a herniated disk at C5-6. Subsequently in February 2012, Mr. Wyrick filed a motion requesting compensation for the scheduled loss of use of his left upper extremity, which was supported by a report Dr. George D. J. Griffin, III.

An independent medical examination was performed by Dr. Middaugh, who acknowledged Mr. Wyrick had lost use of his left rotator cuff, but opined that he had "significant remaining function of his left upper extremity, including no limitations on the use of the forearm, wrist and hand, so long as the elbow is maintained at the waist level." The Staff Hearing Officer denied his application and relied on the report of Dr. Middaugh as "some evidence" that he had not entirely lost the use of his left arm.

In his application for a writ of mandamus, Mr. Wyrick alleged that Dr. Middaugh's report could not constitute "some evidence" because she had failed to use the proper legal standard in evaluating the loss of use of his arm. The Court of the Appeals denied the writ and stated that Dr. Middaugh had relied on the appropriate legal standard.

The Supreme Court, in its decision, indicated that the loss of use need not be absolute if the claimant has suffered permanent loss of use of the injured body member for all practical purposes and intents. While the Supreme Court indicated that Dr. Middaugh used proper legal standard, it cannot constitute "some evidence" to support the Commission's decision that his arm retained significant remaining function. In so finding, the Court found the report was internally inconsistent and cannot constitute "some evidence" upon which to rely.

D. State ex rel. Honda of Am. Mfg., Inc. v. Industrial Commission, Slip Opinion No. 2014-Ohio-1894

This case was decided by the Ohio Supreme Court on May 7, 2014, and involves yet another decision interpreting the issue of voluntary abandonment. In this case, a former Honda employee, Mr. Corlew, was injured on December 5, 2003, and his claim was initially allowed for contusion and tendonitis of the right wrist and related injuries and anxiety disorder. He received temporary total disability compensation at various times until February 29, 2008, when his benefits were terminated when it was determined that he had achieved maximum medical

improvement. Until December 28, Mr. Corlew participated in a medically inactive transition program and was eligible for long-term disability benefits. After it was determined by Honda's insurance carrier that he was no longer eligible for ongoing benefits, he retired as of December 31, 2008. Subsequently in December of 2009, Mr. Corlew underwent surgery on his wrist. He was awarded temporary total disability benefits, and Honda argued that he was no longer eligible for temporary total disability benefits as he was retired. Mr. Corlew testified that he had not voluntarily retired or abandoned the workforce, but had retired as a result of his industrial injury. It was noted by the Industrial Commission that Honda did not argue voluntary abandonment, refusal of a good faith job offer, but instead argued that he had not sustained an economic loss to be eligible for temporary total disability compensation.

Honda sought a writ of mandamus in the 10th District Court of Appeals and argued that the Commission's Order contained a clear mistake of law and constituted an abuse of discretion. It was concluded that the Industrial Commission had not made a clear mistake of law or abused its discretion and denied the writ of mandamus. The Supreme Court affirmed and indicated that retirement which related to the injury and it is therefore not necessary for the claimant to obtain other employment.

There was a dissent, joined by Justices O'Donnell, Kennedy and French, who stated that the majority failed to address on the proposition of law that Mr. Corlew did not sustain an actual wage loss.

E. State ex rel. Bailey v. Industrial Commission, Slip Opinion No. 2014-Ohio-1909

This decision, which was rendered by the Ohio Supreme Court on May 8, 2014, involved an appeal by Mr. Bailey from a Court of Appeals decision which denied his request for a writ of mandamus requiring that the Industrial Commission award him permanent total disability compensation. He argued that the Industrial Commission has relied incorrectly on the stale medical report in reaching the conclusion that he was not permanently and totally disabled.

Mr. Bailey had filed four workers' compensation claims between August of 1996 and December of 2003. The allowed conditions included an open wound to his right thumb, a contusion to his right knee, carpel tunnel syndrome and an injury to his right shoulder with related psychological conditions of pain disorder and aggravation of pre-existing dysthymia. This particular appeal involves his second application for permanent total disability benefits. The Commission, in May of 2011, denied his application on the basis of a report that was submitted psychologist, Dr. Howard, that stated Mr. Bailey's psychological conditions did not prevent him from returning to work. The Commission did not rely on the opinion of Mary Kay Hill, Ph. D., who stated that Mr. Bailey was unable to work because of his symptoms of depressed state and pain.

Mr. Bailey filed a complaint seeking a writ of mandamus in the 10th District Court of Appeals, which found that the Industrial Commission had not abused its discretion and denied the writ sought by Mr. Bailey.

The Supreme Court of Ohio determined that Dr. Howard's report did support the Commission's denial of permanent total disability benefits and should not have been eliminated from consideration. Mr. Bailey argued that Dr. Howard's report was no longer relevant in light of new and changed circumstances, which the Supreme Court found did not exist. After Dr. Howard's report was rendered, Dr. Drown filed a report increasing the percentage of permanent partial disability, which was issued in 2005, and the Court found that there was no evidence to establish any new or changed circumstances.

Mr. Bailey also argued that the Commission was barred from relying on Dr. Howard's report in order to increase the percentage of permanent partial disability compensation. The Court found that Mr. Bailey failed to raise that issue, and therefore waived it. He finally argued that the Court of Appeals improperly waived the evidence when it compared the opinions of Dr. Howard and Dr. Hill. The Court found that it will not second guess the Commission's credibility to make determinations relative to reports of the record, having found Bailey's credibility was an issue because of his stating different things to different examining psychologists.

House Bill 462: What It Says, And What It Really Means

Representative McGregor and Senator Patton have recently introduced House Bill 462 which would permit Professional Employer Organization's (PEO) to pay and report wages for shared employees under *either* the PEO or client-company's Employer Identification Number (EIN). What does this mean? And, how does it affect your company – even if you don't work with a PEO?

PEOs offer security and great benefits to small businesses. A PEO is a business that enters into an agreement with one or more client employers for the purpose of co-employing all or part of the client-employer's workforce at the client-employer's work site. PEOs assist with health benefits, workers' compensation claims, payroll, tax compliance, and unemployment claims. This allows the client-employer to focus on their core services to maintain and grow their bottom lines.

PEOs are governed by sections 4125 of the Ohio Revised Code and 4123 of the Ohio Administrative Code. Currently, PEO's are required to pay and report wages for shared employees under the EIN of the PEO for federal tax purposes. Reporting under the PEO's EIN provides objective evidence that the PEO employer is taking on the responsibilities and liabilities of being an employer, as well as, guarantees accurate rate calculations ensuring that appropriate premiums are paid. If a PEO is not assuming the responsibilities and liabilities of an employer, the PEO would essentially be insuring the worker's compensation liabilities of other employees operating as an unregulated, private insurer of workers' compensation – which is contradictory and detrimental to the state-funded system in place now.

If House Bill 462 is passes, it opens the door to the unregulated, private insured system mentioned above. Additionally, it thwarts the very purpose of a PEO by shifting the burden of tax compliance back to the small business. Small business will have to take away from their core business resources to deal with tax compliance issues and potentially be liable for the mistakes of the PEO in this area as well. The PEO will still file the taxes, but filing the client-employer's

taxes under the client-employer's EIN relieves the PEO of any liability should there be an accounting error, a missed filing, or any other unforeseen problem; thus, the PEO avoids the responsibilities and liabilities of being an employer – period.

Looking beyond the direct repercussions to small businesses using a PEO, all businesses will be negatively impacted if House Bill 462 passes. If House Bill 462 passes, there is nothing stopping a PEO from manipulating payroll figures to "game the system" by using different policy numbers to ensure low-risk employers are insured by them while high-risk employers would continue being covered by the state workers' compensation program. PEOs could pick and choose the low-risk employers to, essentially, privately insure and pass the high-risk employers onto the state, which translates into higher premiums for non-PEO managed businesses. The PEO would essentially be setting workers' compensation premiums by forcing the state to insure all of the high-risk employers.

Of all of the PEOs in Ohio, only one supports House Bill 462. That PEO argues that reporting under their client-employer's EIN provides transparency to the individual client-employer because each client-employer can track their own individual filings and returns. While transparency should be essential in business transactions, there are other ways to maintain this goal without putting the risk back on the small business' shoulders – a true co-employment relationship would not do this, and thus, why a PEO should not be permitted to report under the client-employer's EIN.

House Bill 462 proposes permitting PEO's to pay and report wages under either the PEO or client-employer's EIN; the Bureau's system of regulating PEOs though the tax compliance requirement prevents abuse in the system and keeps costs down for employers – ask yourself, which is better for your company?

TO: **OMA Safety and Workers' Compensation Committee**
FROM: **Rob Brundrett**
DATE: **May 14, 2014**
SUBJ: **Public Policy Update**

Overview

The General Assembly has been in Columbus working steadily since mid-January minus a two week spring break for the quick primary campaign season. Most of their work has been centered on the governor's mid-biennium review bill that was broken up in to several different bills. One bill (House Bill 493) incorporates all the workers' compensation changes.

Other than the MBR no other major legislation is expected on the workers' compensation front. The legislators will leave in June and are not expected to return until after the November elections.

Legislation and Rules

HB 143 Workers' Compensation Formulas (Dovilla R-Berea and Butler R-Oakwood)
HB 143 would require the BWC to include in the notice of premium rate that is applicable to an employer for an upcoming policy year the mathematical equation used to determine the employer's premium rate. According to the BWC this information is already available on the web for all employers to review. There would be a compliance cost to the BWC to send out repeat information. The sponsors of the bill say it is necessary because not everyone has internet access.

This bill was added to the workers' compensation MBR bill as a committee amendment. It is not expected to have much resistance in the Senate. This change may provide for some initial confusion by companies when they see the formula on their bills.

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

HB 338 Test to Determine if Certain Individuals are an Employee Under BWC and Other Laws (McGregor R-Springfield and Hottinger R-Newark)
HB 338 exempts an individual who provides services for or on behalf of a motor transportation company transporting property from coverage under Ohio's Workers' Compensation Law, Ohio's Unemployment Compensation Law, and Ohio's Overtime Law if specified conditions apply to the individual. The bill was introduced in late November.

Initially the bill was expected to move. However it was pulled from hearings after it was determined that the changes in the bill could increase the unemployment compensation tax in the state of Ohio. Discussions continue on how to avert that result and still pass this bill in some form.

HB 493 Mid-Biennium Review

The Governor introduced his Mid-Biennium Review (MBR) bill this winter. The bill was immediately broken into numerous smaller bills. The BWC portion of the MBR became House Bill 493. It contains two major law provisions. The first is clean up language allowing for the complete transition to prospective payments. The second is a creation of out of state coverage. The bill is having two hearings this week. This morning the Administrator is testifying before the Senate. The OMA has submitted a letter to the House and Senate urging passage.

HB 462 and SB 290

Representative R. McGregor and Senator T. Patton introduced companion legislation that would permit a professional employer organization to file federal taxes in any manner permitted by federal law. This legislation came in response to the controversial rule package submitted by the BWC and supported by the major business which regulated the PEO industry. Please see the counsel's report for impact on manufacturers.

BWC Medical Reform

The legislature has admitted that no new workers' compensation legislation would be introduced this General Assembly. Several of their leaders are now focused on the next session for new legislation.

Self-Insurance Rule Changes

The SI rules that the OMA advocated for in the budget have been approved through the JCARR process. They took effect at the end of April.

Bureau of Workers' Compensation

BWC Staff Proposes 6.3 Percent Rate Cut

The Ohio Bureau of Workers' Compensation (BWC) staff proposed that the Board of Directors approve a 6.3 percent reduction to base rates beginning July 1. If approved, this cut would mark the eighth consecutive year in which private sector rates have either fallen or remained flat.

If approved, the 6.3 percent reduction will result in an overall decrease in collected premiums of $91 million compared to premiums under the current rates.

BWC and its actuarial consultant, Oliver Wyman, attributed the proposed reduction to better than previously expected claims frequency and claims severity.

The actual premium paid by individual private employers depends on a number of factors, including the expected future costs in their industry, their recent claims history, and their participation in various discount and savings programs.

H.B. 338

130th General Assembly
(As Introduced)

Reps. McGregor and Hottinger, Beck, R. Adams, Gonzales, Letson

BILL SUMMARY

- Exempts an individual who provides services for or on behalf of a motor transportation company transporting property from coverage under Ohio's Workers' Compensation Law, Ohio's Unemployment Compensation Law, and Ohio's Overtime Law if specified conditions apply to the individual.

CONTENT AND OPERATION

Exemption from specified labor laws

The bill exempts an individual to whom all of the following conditions apply from coverage under Ohio's Workers' Compensation Law, Ohio's Unemployment Compensation Law, and the portions of the Minimum Fair Wage Standards Law that govern the payment of overtime:

- The individual provides services for or on behalf of a motor transportation company transporting property (see **COMMENT**).
- The individual is an operator of a car, van, truck, tractor, or tractor that is licensed and registered under Ohio's Licensing of Motor Vehicles Law or a similar law of another state.
- All of the following "essential" factors apply to the individual:
  - The individual owns the vehicle used to provide the service or holds it under a bona fide lease arrangement.
  - The individual is responsible for the maintenance of the vehicle used to provide the service.

- The individual is responsible for supplying the necessary personal services to operate the vehicle used to provide the service.

- At least three of the following "nonessential" factors apply to the individual:

  - The compensation paid to the individual is based on factors related to work performed, including a percentage of any schedule of rates, and not on the basis of the hours or time expended.

  - The individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and the shipper's specifications.

  - The individual enters into a written contract that describes the relationship between the individual and the company for whom the individual is performing the service to be that of an independent contractor and not that of an employee.

  - The individual is responsible for the operating costs of the vehicle used to provide the service, including fuel, repairs, supplies, vehicle insurance, and personal expenses, except that the individual may be paid the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees (fees for unloading or handling cargo).[1]

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

  - The individual may realize a profit or suffer a loss in performing services for the motor transportation company.[2]

Prospective application

Currently, an individual who satisfies the requirements for the bill's exemption may be considered an "employee" under Ohio's Workers' Compensation Law, Ohio's Unemployment Compensation Law, or the portions of the Minimum Fair Wage Standards Law that govern the payment of overtime, depending upon the

[1] See definition of "lumper," http://dictionary.reference.com/browse/lumper?s=t (accessed January 10, 2014).

[2] R.C. 4111.03(D) (with a conforming change in R.C. 119.14(C) and (G)), 4121.01(A) (with a conforming change in R.C. 1349.61(E)), 4123.01(A), and 4141.01(B)(2)(e) and (m).

circumstances involved. The bill's exemption does not apply, however, to any claim or cause of action pending under those laws on the bill's effective date.[3]

COMMENT

In what appears to be a drafting error, the bill refers to an individual transporting property for a "motor transportation company" as defined in R.C. 4921.02. That term was repealed by Am. Sub. H.B. 487 of the 129th General Assembly. It appears that the bill is referring to a "for-hire motor carrier," which largely replaced "motor transportation company." Both terms generally refer to a person engaged in the business of transporting persons or property by motor vehicle for hire or compensation. However, the terms differ in the exceptions to their definitions.[4]

HISTORY

ACTION	DATE
Introduced	11-06-13

h0338-i-130.docx/ks

[3] Section 3.

[4] R.C. 4111.03(D), 4121.01(A), 4123.01(L), and 4141.01(EE), by reference to former R.C. 4921.02 and R.C. 4923.01, not in the bill.

Ohio Legislative Service Commission

Bill Analysis Julie A. Rishel

H.B. 493*

130th General Assembly
(As Reported by H. Insurance)

Reps. Sears and Henne

BILL SUMMARY

Prospective payment of premiums

- Requires, rather than permits as under current law, the Administrator of Workers' Compensation (Administrator) to calculate workers' compensation premiums for most employers on a prospective, rather than retrospective, basis, beginning policy year 2015.
- Requires most employers to pay premiums on an annual basis, rather than semiannually as under current law.
- Allows the Administrator to adopt rules to permit periodic premium payments and to set an administrative fee for these periodic payments.
- Adjusts the calculation for employer payments to the Disabled Worker Relief Fund.
- Makes other changes to conform the Workers' Compensation Law to the prospective payment of premiums.

Premium security deposits

- Eliminates the requirement for most employers commencing coverage on or after July 1, 2015, to pay a premium security deposit.
- Makes an employer a "noncomplying employer" immediately upon a transfer from the Premium Payment Security Fund Account to the State Insurance Fund due to the employer's account being uncollectible, rather than extending coverage for eight months as under current law.

Payroll reporting

- Requires, for a policy year commencing on or after July 1, 2015, a private employer other than a professional employer organization (PEO) to submit a payroll report on or before August 15 each year unless otherwise specified by the Administrator in rules.
- Requires private employers to include, for payroll reports submitted on or after July 1, 2015, the number of employees employed during the preceding policy year from July 1 through June 30.
- Eliminates the current law forfeiture penalty for failing to submit a payroll report and allows the Administrator to adopt rules setting forth a penalty, including exclusion from alternative rating plans and discount programs.
- Revises the requirements for public sector payroll reports.

Late payments and reports

- Increases, beginning policy year 2015, the additional amount of premium or assessment due from an employer who fails to timely submit a payroll report from 1% of the amount due to 10% of the amount due and eliminates the current law cap for the penalty amount.
- Requires, beginning policy year 2015, the Administrator to adopt a rule to allow the Administrator to assess a penalty on an employer who fails to pay a premium or assessment when due, at the interest rate established by the State Tax Commissioner for most delinquent taxes and eliminated the current tiered penalty system.

Professional employer organizations (PEOs)

- Requires PEOs to pay premiums and submit payroll reports on a monthly basis beginning July 1, 2015.
- Permits, rather than requires, the Administrator to adopt rules establishing a PEO security requirement for workers' compensation premiums beginning July 1, 2015.
- Requires, if a PEO fails to make timely payment of premiums or assessments, the Administrator to revoke the PEO's registration under the PEO Law.

* This analysis was prepared before the report of the House Insurance Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Eliminates the statutory minimum assessment amount for the Disabled Worker Relief Fund for claims arising before January 1, 1987.

Self-insuring employers

- Eliminates the requirement that most self-insuring public employers annually obtain an actuarial report certifying the sufficiency of reserved funds to cover the costs that the employer may potentially incur under Ohio's Workers' Compensation Law and the reliability of computations and statements made with regard to those funds.

Additional changes

- Requires, rather than permits as under current law, the State Board of Pharmacy to provide information from the drug database relating to a workers' compensation claimant to the Administrator upon request.

- Requires the Board to provide information from the drug database to a managed care organization's medical director if specified conditions are satisfied.

- Places the Chief Ombudsperson and assistant ombudspersons in the unclassified service, and makes changes regarding their appointment and removal.

- Requires all ombudsperson system staff to comply with Ohio's Ethics Laws and the Industrial Commission Nominating Council's human resource and ethics policies.

- Requires the Workers' Compensation Investment Committee to review the Bureau's Chief Investment Officer and any investment consultants retained by the Administrator to assure effective management of the workers' compensation funds, rather than that the best possible return on investment is achieved as required under current law.

- Requires the Administrator to have an actuarial analysis, rather than actuarial audits, of the State Insurance Fund and other funds specified in the Workers' Compensation Law made at least once a year and revises the requirements for that analysis.

- Changes the method by which "good standing" is determined for purposes of qualifying for a group rating program.

- Eliminates a requirement in the BWC budget for the FY 2014-FY 2015 biennium that any unencumbered cash balance in excess of $45 million in the Workers' Compensation Fund on June 30 of each fiscal year be used to reduce the administrative cost rate charged to employers.

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employer who initiates coverage must pay the semiannual premiums from time to time upon the expiration of the respective periods for which payments have been made.[4]

Payroll reports and reconciliation – private employers

For policy years commencing on or after July 1, 2015, the bill requires private employers other than PEOs to submit a report to BWC on August 15 of each year that includes all of the following:

(1) The number of employees employed during the preceding policy year for the period from July 1 through June 30;

(2) The number of such employees localized in Ohio employed at each kind of employment and the aggregate amount of wages paid to these employees (similar to current law);

(3) Additional information if the employer has other-states' coverage (see "**Other-states' coverage**," below) or has employees covered under the federal Longshore and Harbor Workers' Compensation Law (continuing law).

Current law requires this payroll report to be submitted in January of each year and to include the number of employees employed during the preceding calendar year. This will continue to apply to policy years commencing prior to July 1, 2015.[5]

The bill also requires a "reconciliation" of estimated premiums with actual payroll upon the Administrator receiving the payroll report. Upon receiving an employer's payroll report, the Administrator must adjust the premium and assessments charged to the employer to account for the difference between the estimated gross payroll (as calculated under "**Payment of premiums – private employers**," above) and actual gross payroll. Similar to the requirements in rules the Administrator currently must adopt if the Administrator elects to have a prospective payment system (see "**Prospective payment rules**," below), any balance determined to be due to the Administrator must be immediately paid by the employer and any balance due to the employer must be credited to the employer's account.[6]

The bill eliminates the $500 forfeiture that is required under current law for failing to file a payroll report. Instead, the Administrator may adopt rules setting forth penalties for failure to submit the payroll report, including exclusion from alternative

[4] R.C. 4123.35(A), 4123.32(F), and 4123.322(A)(2), renumbered to (A)(1) by the bill.

[5] R.C. 4123.26, with a conforming change in R.C. 4123.27.

[6] R.C. 4123.35(A) and 4123.322(A) and (B).

rating plans and discount programs (the Administrator currently must adopt rules to establish a penalty if the Administrator elects to establish a prospective payment system).

Additionally, the bill assigns to an employer who fails to file a payroll report a modified premium and assessment rate calculated at 110% of the estimated payroll of the employer. Current law requires that the employer's premium be increased by 1%, but by no less than $3 and no more than $15.[7]

The bill eliminates the requirement that the report be mailed to the BWC at its main office in Columbus, and instead requires only that the report be submitted to the BWC. The bill also eliminates requirements for the form on which payroll reporting must be made. Current law, which requires specific procedures for filling out the form, is replaced in the bill by a requirement that the payroll report must be submitted on a form prescribed by BWC. The bill also eliminates the current law authority of BWC to require the information be returned to BWC within the period fixed by BWC.

The bill eliminates the current law requirement that the Administrator must adopt a similar payroll estimate reporting rule and penalties for failure to timely file those estimates if the Administrator elects to adopt rules establishing a prospective pay system.[8]

Elimination of the premium security deposit

The bill eliminates, for policies effective July 1, 2015, and after, the requirement that each employer, upon instituting workers' compensation coverage, must submit a premium security deposit. Under current law and under the bill for policies effective prior to July 1, 2015, the deposit that must be provided is equal to 30% the employer's estimated premium payment for eight months of coverage. The premium security deposit may not be greater than $1,000 or less than $10.[9] Though the bill generally eliminates the premium security deposit, the bill permits the Administrator to require, if the Administrator determines that an employer is an amenable employer (see "**Premiums and assessments for amenable employers**," below) prior to the policy year commencing July 1, 2015, the employer to pay a premium security deposit (currently the employer must pay the deposit if the employer is amenable to the Law).[10]

[7] R.C. 4123.32(D)(1).

[8] R.C. 4123.26, 4123.32(E) (renumbered (D) by the bill), and 4123.322.

[9] R.C. 4123.32, 4123.36, and 4123.37.

[10] R.C. 4123.37.

premium due from the public employer taxing district for the forthcoming policy year. On or before February 15 immediately following the conclusion of a policy year, the fiscal officer must report the amount of money expended by the public employer taxing district during the policy year for the services of employees covered by Ohio's Workers' Compensation Law. BWC must then reconcile the report with the premiums and assessments charged to the public employer taxing district to account for the difference between estimated gross payroll and the actual gross payroll. Similar to the requirements in rules the Administrator currently must adopt if the Administrator elects to have a prospective payment system (see "**Prospective payment rules**," below), the public employer taxing district must immediately pay any balance due to BWC, and any balance found due to the public employer must be credited to the public employer's account.

The bill also allows the Administrator to adopt rules setting forth penalties for failure to submit the payroll report, including exclusion from alternative rating plans and discount programs. The bill eliminates the current law requirement that the Administrator must adopt a similar payroll estimate reporting rule and penalties for failure to timely file those estimates if the Administrator elects to adopt rules establishing a prospective pay system.

Under continuing law, for policy years that begin prior to January 1, 2016, BWC is required to furnish the fiscal officer of each public employer taxing district with a form containing the premium rates applicable to the public employer. The fiscal officer must report on this form the amount of money expended during the previous 12 calendar months for the services of employees covered by the Workers' Compensation Law and must calculate on the form, the premium due. The public employer must pay the amount due according to the schedule outlined in "**Payment of premiums – public employers**," above.[15]

Revising basic rates

Under continuing law, the Administrator, with the BWC Board's advice and consent, must set the rates for each class of occupation or industry in order to maintain the solvency of the State Insurance Fund. These rates are commonly referred to as the basic or base rates.

For policy years commencing prior to July 1, 2016, the bill maintains for private employers the current law requirement that revisions of these rates must be in accordance with the oldest four of the last five calendar years of the combined accident and occupational disease experience of the Administrator in the administration of the

[15] R.C. 4123.41(A) and 4123.322.

Workers' Compensation Law. For policy years commencing on or after July 1, 2016, revisions of basic rates for private employers must be in accordance with the oldest four of the last five policy years.

The bill requires that revisions for base rates of public employers must be in accordance with the oldest four of the last five policy years of the combined accident and occupational disease experience of the Administrator in the administration of the Workers' Compensation Law. For most public employers, then, the method of revision of basic rates does not change, as public employer policy years are the same as calendar years.[16]

Penalties for failure to pay premiums or assessments

Under the bill, similar to current law, whenever an employer fails to pay a premium due, and the Administrator determines the employer's account to be uncollectible, the Administrator must cover the default by transfer from the Premium Payment Security Fund Account to the State Insurance Fund. After that transfer, the employer must be considered a noncomplying employer for purposes of the Workers' Compensation Law. Under current law, the transfer amount is enough to cover the default in excess of the premium security deposit (which is eliminated under the bill), and the transfer establishes coverage of the employer for the period covered by the premium security deposit. Only after the premium security deposit coverage period (eight months) is an employer considered to be a noncomplying employer for purposes of the Workers' Compensation Law. The bill also eliminates current law procedures by which a noncomplying employer may cease being a noncomplying employer, which include reimbursing the amount transferred.[17]

The bill modifies the current law penalty charges levied against an employer who fails to pay premiums when due for a policy year commencing on or after July 1, 2015, and broadens the penalty authority to also apply to unpaid assessments.

For a policy year commencing on or after July 1, 2015, the bill allows the Administrator to assess a penalty at the certified interest rate established by the Tax Commissioner for most overdue taxes. The rate for calendar year 2014 is 3%.[18] The bill maintains the current law penalty cap of 15% of the premium due. For a policy year

[16] R.C. 4123.34.

[17] R.C. 4123.36.

[18] *See* Office of Budget and Management, "Prompt Payment: Calendar Year 2014 Interest Rate for Late Payment to Vendors," October 28, 2013, http://media.obm.ohio.gov/obm/forms-memos-archives/memos/Prompt%20Pay%20Interest%20Rate%20Letter%20for%20CY%202014.pdf (accessed April 8, 2014).

(1) The assessment of a penalty for late payroll reconciliation reports and for late payment of any reconciliation premium, which must allow the Administrator to assess additional penalties if the employer's actual payroll substantially exceeds the estimated payroll;

(2) The establishment of a transition period during which time BWC must determine the adequacy of existing premium security deposits of employers, the establishment of provisions for additional premium payments during the transition, and the provision of credit of premium security deposits toward the first premium due from an employer under the specific prospective payment rules;

(3) The establishment of penalties for late payment or failure to comply with the Administrator's rules.[23]

Payment of premiums for professional employer organizations (PEOs)

Under the bill, beginning August 1, 2015, each PEO must submit a monthly payroll report containing the number of employees employed during the preceding calendar month. The report is to contain the number of those employees employed at each kind of employment and the aggregate amount of wages paid to those employees. The bill allows the Administrator to adopt rules setting forth penalties for failure to submit these payroll reports, including exclusion from alternative rating plans and discount programs.[24]

Under the bill, for each policy year commencing on or after July 1, 2015, a PEO must pay premiums and assessments on a monthly basis. The Administrator fixes the amount of premium for the prior month based on the actual payroll of the employer. The bill also allows, rather than requires as under current law, beginning July 1, 2015, the Administrator to adopt rules under the Administrative Procedure Act to require a PEO to provide security in the form of a bond or letter of credit. Under current law, the Administrator must permit a PEO to make periodic payments of prospective premiums and assessments to BWC as an alternative to providing the security required by the rule.

Under the bill, if a PEO fails to make a timely payment of premiums or assessments as required by the Workers' Compensation Law, the Administrator must revoke the PEO's registration pursuant to the continuing law PEO revocation procedures. Upon revocation, under continuing law each client employer associated with that PEO must file payroll reports and pay premiums directly to the Administrator

[23] R.C. 4123.322.

[24] R.C. 4123.26(C) and (F).

on its own behalf at a rate determined by the Administrator based solely on the claims experience of the client employer.[25]

Estimating the state's contribution

Continuing law requires the Administrator, on or before July 1 of each year, to estimate the gross payroll of all state employers for the succeeding biennium or fiscal year. The Administrator must then determine and certify for the Office of Budget and Management the rates that must be applied to that payroll estimate to produce an amount equal to the estimated cost of awards or payments made during that fiscal period. The resulting rate must be applied and made part of the gross payroll calculation for that period and amounts collected must be remitted to BWC.

Under the bill, if the historical amounts remitted to BWC are greater or less than historical awards or claim payments, the difference must be returned to the state employer or recovered by BWC in a manner determined by the Administrator. This provision appears to require BWC to reconcile amounts paid by the state for workers' compensation coverage with amounts paid by BWC for claims of employees of state employers for the corresponding period. Current law prescribes a reconciliation process, based on whether errors in estimating payroll occurred.[26]

Proof of workers' compensation coverage

Continuing law requires BWC to issue a notice upon receiving an employer's premium stating that the employer is in compliance with the Workers' Compensation Law. The employer must then post this notice (to provide notice to the employer's employees that the employer has coverage or is in compliance with the Law, in the case of a self-insuring employer).

The bill requires BWC to issue the notice at least annually, rather than at the time of payment. To reflect the change to a prospective payment system, the notice must state that it is proof of workers' compensation coverage and that the coverage is contingent on the employer continuing to make payments of premiums and assessments due. Currently, the notice indicates the time period for which the payment is made, since the premium is paid after the coverage period.[27]

[25] R.C. 4123.35(A), 4123.32(D)(4), and 4125.05, and R.C. 4125.06, not in the bill.

[26] R.C. 4123.40.

[27] R.C. 4123.83, with conforming changes in R.C. 1561.31, 4123.35(A), and 4123.54.

any award of compensation or benefits made to the employee or the employee's dependents by BWC.[32]

Continuing law requires an employee or the employee's dependents to sign an election affirming the employee's decision to receive an Ohio award. The bill requires the Administrator or self-insuring employer to dismiss a claim for an Ohio award if the election is not signed within 28 days after the Administrator or self-insuring employer submits the request. Currently, that claim is suspended until the signed election is received.[33]

Claimant election

The bill creates an exception to the prohibition against a claimant filing an Ohio claim after receiving a decision on the merits of the claim in another state. Under the bill, in the event a workers' compensation claim has been filed in another jurisdiction *on behalf of* an employee or the employee's dependents, and the employee or dependents subsequently elect to receive an Ohio award, the employee or dependent must withdraw or refuse acceptance of the workers' compensation claim filed in the other jurisdiction in order to pursue an Ohio award. If the employee or dependents were awarded workers' compensation benefits or had recovered damages under the other state's laws, any compensation and benefits awarded under Ohio law are to be paid only to the extent to which those payments exceed the amounts paid under the other state's laws. If the employee or dependent fails to withdraw or to refuse acceptance of the workers' compensation claim in the other jurisdiction within 28 days after a request made by the Administrator or a self-insuring employer, the Administrator or self-insuring employer must dismiss the employee's or employee's dependents' Ohio claim.[34]

Other-states' coverage

Currently an employer may obtain other-states' coverage from the Administrator, if the Administrator elects to offer it, or from an other-states' insurer. "Other-states' coverage" is currently defined as insurance coverage purchased by an employer for workers' compensation claims that arise in another state or states and that are filed by the employer's employees or those employees' dependents, as applicable, in that other state. An "other-states' insurer" is an insurance company that is authorized to provide workers' compensation insurance coverage in any of the states that permit

[32] R.C. 4123.54(H)(2).

[33] R.C. 4123.54(H)(5), renumbered to (H)(6) by the bill.

[34] R.C. 4123.54(H)(6) and 4123.542.

employers to obtain insurance for workers' compensation claims through insurance companies.

The bill creates two types of other-states' coverage. The first, "other-states' coverage," is similar to the current law type of other-states' coverage, and is limited to covering employees who are in employment relationships localized in another state. The second is "limited other-states' coverage," which is coverage provided by the Administrator to an eligible employer for workers' compensation claims of employees who are in an employment relationship localized in Ohio but are temporarily working in another state, or those employees' dependents. Under the bill, "other-states' coverage" also generally refers to coverage secured by an eligible employer for workers' compensation claims that arise in a state other than Ohio where an employer elects to obtain coverage through either the Administrator or an other-states' insurer.[35]

Similar to current law, under the bill if the Administrator elects to secure a vehicle through which the Administrator will provide other-states' coverage or limited other-states' coverage, the Administrator must go through the state's competitive bidding process to select one or more insurers. The Administrator, with the advice and consent of the BWC Board, must award the contract to provide other-states' or limited other-states' coverage to one or more other-states' insurers that are the lowest and best bidders.[36]

If the Administrator elects to offer other-states' coverage or limited other-states' coverage, under continuing law the Administrator must adopt rules to implement that coverage. Similar to the immunity provided in continuing law for other-states' coverage, under the bill the BWC Board and the individual members thereof, the Administrator, and BWC do not incur any obligation or liability if another state determines that the limited other-states' coverage does not satisfy the requirements specified in that state's workers' compensation law for obtaining workers' compensation coverage in that state.[37]

Similar to current law, if an employer elects to obtain other-states' coverage or limited other-states' coverage, under the bill the employer must submit a written notice to the Administrator stating that election on a form prescribed by the Administrator (current law, with respect to other-states' coverage, does not require a particular form to be used). If the employer elects to obtain that coverage through an other-states' insurer,

[35] R.C. 4123.01(L), (M), and (N) and 4123.82.

[36] R.C. 4123.292(B) and (C).

[37] R.C. 4123.292(D) and (E).

The bill statutorily permits BWC to summarily suspend the certification of a provider to participate in the HPP without a prior hearing. BWC currently has this ability, and may even revoke a certification, under rules adopted by the Administrator for the HPP. Under the bill, BWC may summarily suspend a certification if the BWC determines any of the following apply to the provider:

- The professional license, certification, or registration held by the provider has been revoked or suspended (same as the administrative rule).
- The provider has been convicted of or has pleaded guilty to workers' compensation fraud, engaging in a pattern of corrupt activity, or any other criminal offense related to the delivery of or billing for health care benefits (same as the administrative rule).
- The continued participation by the provider in the HPP presents a danger to the health and safety of claimants (similar to the administrative rule).[45]

Under the bill, BWC must issue a written order of summary suspension by certified mail or in person in accordance with the Administrative Procedure Act. The order is not subject to suspension by the court during pendency of any appeal filed under the Administrative Procedure Act. Currently a court may suspend the order under specified circumstances. If the provider subject to the summary suspension requests an adjudicatory hearing by BWC, the bill requires the date set for the hearing to be not later than 15 days, but not earlier than seven days, after the provider requests the hearing, unless otherwise agreed to by both BWC and the provider.[46]

Any summary suspension imposed under the bill remains in effect, unless reversed on appeal, until a final adjudication order issued by BWC pursuant to the bill and the Administrative Procedure Act takes effect. BWC must issue its final adjudication order within 75 days after completion of its hearing. A failure to issue the order within the 75-day time period results, under the bill, in dissolution of the summary suspension order but does not invalidate any subsequent, final adjudication order.[47]

[45] R.C. 4121.443(A); O.A.C. 4123-6-02.5.

[46] R.C. 4121.443(B), by reference to R.C. 119.07 and R.C. 119.12, not in the bill.

[47] R.C. 4121.443(C).

Peer review committee

Definition

The bill expands the example in the definition of peer review committee to include a peer review committee of BWC or the Industrial Commission that reviews the professional qualifications and performance of providers certified by BWC to participate in the HPP. Continuing law requires the BWC or Commission peer review committee to review the professional qualifications and the performance of providers conducting medical examinations or file reviews for BWC or the Commission.[48]

Confidentiality of proceedings and records

Continuing law prohibits proceedings and records resulting from a peer review committee from being subject to discovery or from being introduced into evidence in any civil action against a health care entity or health care provider. However, under continuing law, this prohibition does not bar the discovery or use in a civil action of information, documents, or records that are available from their original sources so long as the information, document, or record is obtained from the original source and not the committee's records or proceedings.

Similarly, any individual who attends a peer review committee meeting, serves as a member of the committee, works for or on behalf of the committee, or provides information to a committee, is prohibited from testifying in any civil action as to evidence, matters presented during the proceedings of the committee, or the actions of any committee member. However, continuing law permits an individual to testify as to matters within the individual's knowledge, but the individual cannot be asked about the individual's testimony before the committee, information provided to the committee, or any opinion formed as a result of the committee's activities.[49]

The bill makes the peer review committee confidentiality requirements in continuing law, as explained above, applicable to a BWC peer review committee that is responsible for reviewing the professional qualifications and the performance of providers certified by BWC to participate in the HPP. However, the bill provides that the proceedings and records within the scope of the peer review committee are subject to discovery or court subpoena and may be admitted into evidence in a criminal, administrative, or civil action that is initiated, prosecuted or adjudicated by BWC. The bill also permits BWC to share proceedings and records within the scope of the peer review committee, including claimant records and claimant file information, with law

[48] R.C. 2305.25(E)(2)(j).

[49] R.C. 2305.252(A).

Under the bill, if a state fund employer has paid an assessment for a VSSR, and, in a final administrative or judicial action, it is determined that the employer did not violate the specific safety requirement, the Administrator must reimburse the employer from the Surplus Fund Account created in continuing law for the amount of the assessment the employer paid for the violation.[54]

Workers' compensation assessments

Disabled Work Relief Fund

In addition to paying premiums to the State Insurance Fund to cover workers' compensation claims, an employer pays assessments to BWC for other specialized funds and to cover administrative costs. These assessments include assessments to fund the Disabled Worker Relief Fund (DWRF), which is a fund that used to make essentially cost-of-living payments to recipients of permanent and total disability compensation. With respect to the DWRF assessment made for claims that occurred before January 1, 1987, the bill eliminates the requirement that the Administrator annually charge a minimum assessment of 5¢ per $100 of payroll. The bill retains the requirement that the assessment cannot exceed 10¢ per $100 of payroll and retains the current law requirements with respect to DWRF assessments for claims occurring on or after January 1, 1987.[55]

Actuarial reporting requirement

The bill eliminates the current law requirement that a self-insuring public employer, except for a board of county commissioners with respect to the construction of a sports facility, a board of a county hospital, or a publicly owned utility, have prepared an actuarial report certifying whether the employer's reserved funds, which are required under continuing law, meet all of the following requirements:

- The funds are sufficient to cover the costs the public employer may potentially incur to remain in compliance with Ohio's Workers' Compensation Law.
- The funds are computed in accordance with accepted loss reserving standards.

[54] R.C. 4123.512(H).

[55] R.C. 4123.411(A).

- The funds are fairly stated in accordance with sound loss reserving principles.[56]

Access to the drug database maintained by the State Board of Pharmacy

The bill requires, rather than permits as under current law, the State Board of Pharmacy, upon receipt of a request from the Administrator, to provide to the Administrator information from the drug database relating to a workers' compensation claimant. This includes any information in the database related to prescriptions for the claimant that were not covered or reimbursed under the Workers' Compensation Law. Under continuing law, the Board may establish and maintain a drug database. The Board must use the drug database to monitor the misuse and diversion of controlled substances and other dangerous drugs the Board includes in the database pursuant to rules adopted by the Board.

Additionally, under the bill the Board must provide, on receipt of a request from a pharmacist or the pharmacist's Board-approved delegate, to the pharmacist information from the database relating to a current patient of the pharmacist, if the pharmacist certifies in a form specified by the Board that it is for the purpose of the pharmacist's practice of pharmacy involving the patient who is the subject of the request. Currently the Board is permitted, but not required to provide this information.

Except as discussed below, on receipt of a request from the medical director of a managed care organization (MCO), under the bill the Board must provide to the medical director information from the database relating to a workers' compensation claimant assigned to the MCO, including information in the database related to prescriptions for the claimant that were not covered or reimbursed under the Workers' Compensation Law, if both of the following apply:

(1) The MCO has entered into a contract with the Administrator to participate in the HPP;

(2) The MCO has entered into a data security agreement with the Board.

The required data security agreement governs the MCO's use of the Board's drug database.

The bill requires the Administrator, upon request of the Board, to review at least quarterly a list of the individuals about whom information was requested by a MCO medical director and confirm that the individuals are assigned to the MCO. The bill

[56] R.C. 4123.353.

Application of statutory changes

With respect to the changes made by the bill to the portions of the Workers' Compensation Law governing other-states' coverage and interstate claims, the bill applies to all claims filed pursuant to the Law on or after the bill's effective date. With respect to the changes described under "**Notice of appeal in workers' compensation claim cases**" above, the bill applies to appeals filed on or after the bill's effective date.[63]

Severability

The bill includes a severability provision. Under this provision, the items of law contained in the bill, and their applications, are severable. If any item of law contained in the bill, or if any application of these items, is held invalid, the invalidity does not affect other items of law contained in the bill and their applications that can be given effect without the invalid item of law or application.[64]

HISTORY

ACTION	DATE
Introduced	03-18-14
Reported, H. Insurance	---

H0493-RH-130.docx/ks

[63] Sections 6 and 7.

[64] Section 8.

Chairman of the Board
RICK SCHOSTEK
Senior Vice President, Honda of America Manufacturing

President
ERIC L. BURKLAND

The Ohio Manufacturers' ASSOCIATION

April 1, 2014

The Honorable Bob Hackett
Chairman, Insurance Committee
Ohio House of Representatives
77 S. High St., 11th Floor
Columbus, OH 43215

RE: House Bill 493

Dear Chairman Hackett:

The Ohio Manufacturers' Association (OMA) welcomes opportunities to work with its members, the Ohio Bureau of Workers' Compensation (BWC), and the Ohio General Assembly to continually improve the Ohio workers' compensation system for injured workers and employers alike. To that end, House Bill 493 contains two important improvements that are the subjects of this letter.

First, there are provisions in the bill that address the confusing and problematic jurisdictional issues that occur when Ohio employers have employees who temporarily work out of the state. House Bill 493 allows the Administrator to provide limited other-states' coverage to provide workers' compensation coverage for Ohio employees who are temporarily working in another state in addition to other-states' coverage, and proposes to remove the reciprocity provisions and honor extraterritorial coverage of workers only temporarily in Ohio. If an injury occurs, claims should be filed under the workers' compensation laws of the state where the payroll is required to be reported by that state's workers' compensation laws. Interstate jurisdiction issues have been problematic for Ohio employers for years; the provisions of this bill provide a welcome path toward a more comprehensive solution to this complex issue.

Second, House Bill 493 provides the final piece of enabling legislation for the BWC to complete its transition to a prospective premium payment system. The BWC has worked closely with OMA and other stakeholders in its implementation planning and has been responsive to input. This measure modernizes the payment practices of the BWC and aligns it with insurance industry practices. The BWC has planned for flexible installment premium payment plans for employers as well as a mechanism to true-up premium year to year. The OMA supports this legislation.

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WWW.OHIOMFG.COM

The OMA will continue to work with Administrator Buehrer and the General Assembly to ensure that Ohio's workers and employers have a world-class workers' compensation system.

My contact information is (614) 629-6814 or rbrundrett@ohiomfg.com. Kind thanks for your attention.

Sincerely,

Robert A. Brundrett
Director, Public Policy Services

As Introduced

130th General Assembly
Regular Session
2013-2014

H. B. No. 462

Representative McGregor

Cosponsors: Representatives Hayes, Young

A B I L L

To enact section 4125.031 of the Revised Code to permit a professional employer organization to file federal taxes in any manner permitted by federal law.

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

Section 1. That section 4125.031 of the Revised Code be enacted to read as follows:

Sec. 4125.031. A professional employer organization may file federal taxes in any manner permitted by federal law.

H.B. 462
130th General Assembly
(As Introduced)

Reps. McGregor, Hayes, Young

BILL SUMMARY

- Permits a professional employer organization to file federal taxes in any manner permitted by federal law.

CONTENT AND OPERATION

Federal tax filing

Under continuing law, a "professional employer organization" (PEO) is a business entity that enters into an agreement with one or more client employers for the purpose of coemploying (sharing of the responsibilities and liabilities of being an employer) all or part of the client employer's workforce at the client employer's work site. This arrangement is governed by a PEO agreement, which is a written contract to coemploy employees between a PEO and a client employer with a duration of not less than 12 months in accordance with the requirements of the PEO Law.[1]

The bill permits a PEO to file federal taxes in any manner permitted by federal law.[2] Presumably this provision would allow a PEO to file taxes under the client employer's or the PEO's employer identification number for federal tax purposes, depending upon which method is permitted by federal law. Currently, under rules adopted by the Bureau of Workers' Compensation (which administers and enforces the PEO Law), a PEO must pay and report wages for shared employees under the tax identification number of the PEO for federal tax purposes.[3]

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[1] R.C. 4125.01(B) to (E).

[2] R.C. 4125.031.

[3] Ohio Administrative Code 4123-17-15(D)(2).

HISTORY

ACTION	DATE
Introduced	02-26-14

H0462-I-130.docx/emr

Ohio | Bureau of Workers' Compensation

Governor John R. Kasich
Administrator/CEO Stephen Buehrer

NEWS RELEASE

April 22, 2014

BWC staff proposes 6.3 percent cut in workers' comp rates

Proposal to be considered over the next month and possibly approved in May

COLUMBUS – Today the Ohio Bureau of Workers' Compensation (BWC) staff proposed that the Board of Directors approve a 6.3 percent reduction to base rates beginning July 1. If approved, this cut would mark the eighth consecutive year in which private sector rates have either fallen or remained flat. Rates for public employers were also reduced beginning Jan. 1, and are now at their lowest level in at least 30 years.

"BWC has challenged itself to be part of the solution to Ohio's economic recovery by keeping employers' workers' compensation rates affordable so they can prosper," said BWC Administrator/CEO Steve Buehrer. "While we're pleased with this trend of lower and more stable rates for employers, we're also tremendously pleased with our progress in fulfilling our mission to provide the highest quality care and return-to-work services to Ohioans who suffer workplace injuries."

If approved, the 6.3 percent reduction will result in an overall decrease in collected premiums of $91 million compared to premiums under the current rates. In aggregate, the premiums collected over the past four years would be $409 million less than would have been collected without recent reductions. Private employers benefited from a 4 percent rate decrease in 2011, flat rates in 2012 and a reduction of 2.1 percent last year.

BWC and its actuarial consultant, Oliver Wyman, attributed the proposed reduction to better than previously expected claims frequency and claims severity.

The actual premium paid by individual private employers depends on a number of factors, including the expected future costs in their industry, their recent claims history, and their participation in various discount and savings programs. Employers are encouraged to visit bwc.ohio.gov to learn about programs that can assist in lowering their workers' compensation costs by making safety improvements in their workplaces.

"The most successful employers are those that understand safe and healthy employees are instrumental to a strong bottom line," added Buehrer. "Going forward, BWC will be intensely focused on the issue of workplace safety and educating employers about the benefits of investing in injury and illness prevention."

The next meeting of the BWC Board of Directors is scheduled for Thursday, May 22, 2014.

###

The Ohio Manufacturers' Association

Public Policy Priorities
2012-2013

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

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

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

The Ohio Manufacturers' Association

POLICY GOAL:

An Effective, Competitive Ohio Tax System

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

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

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

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

Tax policy priorities include the following:

- **Preserve the integrity of Ohio's 2005 tax reforms,** including a zero-tolerance response to any efforts via legislation or the court system to carve out exemptions or credits to (a) avoid paying the Commercial Activities Tax (CAT) or (b) earmark any portion of CAT revenues for specific government services.

- **Improve Ohio's tax appeals process,** which due to bad economic conditions and subsequent state budget cuts, staffing cutbacks and increased caseloads, has contributed to such a backlog of cases at the Ohio Board of Tax Appeals that it routinely takes two years to advance from the date of filing an appeal to the date of the first hearing.

- **Preserve the repeal of Ohio's estate tax,** which for so long served as a disincentive for business owners to invest in existing businesses and as an impediment to the capital formation that is so vital to Ohio's economy.

- **Streamline and simplify the sales tax,** which over time has become riddled with exemptions, carve-outs and credits that result in some taxpayers subsidizing exempted taxpayers. Exemptions, carve-outs and credits should be reviewed periodically for economic justification.

- **Promote taxpayer uniformity.** Consolidate and streamline the collection of municipal income tax by creating a uniform statewide municipal tax code, with uniform definitions of taxable income, consistent rules and regulations and a generic municipal income tax form.

- **Lower the effective tax rate in Ohio by reducing the number of government entities that are taxing jurisdictions.** This will help address the problem of pancaking state and local state taxes, which puts Ohio at a competitive disadvantage with many other states.

The Ohio Manufacturers' Association

POLICY GOAL:

An Efficient, Effective Workers' Compensation System

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

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

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

Workers' compensation policy priorities include the following:

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

- **Require claimants to show new and/or changed circumstances when filing for permanent total disability (PTD) or permanent partial disability (PPD) benefits more than once.**

- **Require Industrial Commission hearings to be recorded** to improve consistency in outcomes.

- **Allow telephonic hearings for permanent partial disability (PPD) claims to lower transaction costs.**

- **Establish an impairment standard (no consideration of non-medical factors) for permanent partial disability (PPD) cases.**

- **Terminate the compensation paid for temporary total disability (TTD) effective the date determined by the medical evidence establishing maximum medical improvement.**

- **Specify that if a temporary total disability (TTD) claim is suspended due to a claimant's refusal to provide a signed medical release or attend the employer's medical examination, the claimant forfeits his or her right to benefits during the period of the suspension.**

- **Allow employers to pay compensation and medical bills without losing the right to contest a claim (payment without prejudice).**

- **Require permanent partial disability (PPD) claims to be resolved by choosing either the claimant's medical exam determination or the defendant's medical exam determination—explicitly prohibiting an averaging of, or compromise between, the two.**

- **Require MCOs to demonstrate their medical arrangements and agreements with a substantial number of medical, professional and pharmacy providers participating in the BWC's Health Partnership Program.** These providers should be selected on the basis of access, quality of care and cost, rather than solely claimant preference. The focus should be on getting injured workers back to work quickly and safely, benefitting both the employee and the employer.

- **Allow the BWC to require claimants to pay out-of-plan co-payments for selecting medical providers outside the approved MCO panel of providers,** beginning the 46th day after the date of injury or the 46th day after starting treatment. However, employees should be allowed to use a provider outside the approved panel if they are located in certain parts of the state or outside the state where approved MCO providers cannot reasonably be accessed.

- **Allow the BWC to modify existing rules for the Bureau's Health Partnership Program to include administrative and financial incentives that reward high-performing MCOs and other providers.** Possible incentives include bonus payments to providers who greatly exceed quality benchmarks established by the BWC to help reduce costs without sacrificing quality of services or outcomes.

- **Collect and include in the BWC's healthcare data program annual data measuring the outcomes and savings of MCOs and other providers participating in the Health Partnership Program.** This data should be made available to employers and the public. The more performance data that are collected, the more efficient and effective the system will become.

- **Allow the BWC to recoup treatment costs from claims that ultimately are denied under BWC law.** The Bureau should be able to request that an employee's personal insurance or third-party payer reimburse the BWC for treatment amounts the Bureau paid on behalf of the employee. These payments should be deposited in the Surplus Fund Account. This will ensure injured workers will receive the treatments they need in a timely manner, while providing the Bureau a path to recoup payments that ultimately should not have been paid out by the system.

- **Allow the BWC to develop new rules permitting the BWC to pay for certain medical services within the first 45 days of an injury.** This would ensure that injured employees receive treatment regardless of whether their claims are eventually denied in the process. Also allow the Bureau to create rules allowing for immediate payment of prescriptions in certain circumstances. If a claim is ultimately disallowed, the services paid must be charged to the Surplus Fund Account as long as the employer pays its assessments into the Surplus Fund Account in the State Insurance Fund.

- **Require injured workers to participate in the treatment process in a timely manner.** Employees who refuse or unreasonably delay required treatment such as rehabilitation services, counseling, medical exams or vocational evaluations without a valid reason should forfeit their right to have the claim considered or to receive any compensation or benefits during the period of non-cooperation.

The Ohio Manufacturers' Association

POLICY GOAL:

Access to Reliable, Economical Energy

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

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

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

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

Energy policy priorities include the following:

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

- **Ensure rigorous PUCO monitoring and regulation of dealings between electric distribution utilities and their affiliates.**

- **Remove/mitigate barriers electric distribution utilities have created to inhibit/prevent shopping and ensure consumers have the information and tools they need to understand and take full advantage of market opportunities.** For example, utilities should (a) be required to explain how customers' peak load contribution, which is used by suppliers to price competitive generation contracts, is calculated; (b) provide the calculated peak load contribution not just to suppliers but also to customers; and (c) be held accountable for errors that affect the value to customers of competitive supply contracts. The PUCO also should require utilities to develop interactive tools that help demonstrate the "price to compare" and make apples-to-apples comparisons between competitive supply offers.

- **Ensure close coordination among the PUCO, PJM Interconnection, Ohio EPA, the Ohio Power Siting Board and Ohio manufacturers to ensure least-cost and most efficient use of generation and transmission resources.**

- **Adopt a state-level consumer advocacy role with PJM Interconnection regarding critical transmission issues and needs.**

The Ohio Manufacturers' Association

POLICY GOAL:

A Fair, Stable, Predictable Civil Justice System

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

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

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

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

Civil justice reform policy priorities include the following:

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

- **Amend Rule 68 of the Ohio Rules of Civil Procedure to mirror Rule 68 of the Federal Rules of Civil Procedure,** which makes a plaintiff who rejects a defendant's settlement offer liable for the defendant's post-offer costs if the plaintiff does not improve on the offer at trial.

- **Reject any efforts to codify in Ohio statute the *cy pres* doctrine**—an existing tool that permits, but does not require, a judge and the parties to a class action lawsuit to donate all undistributed class action proceeds to a charity or other non-profit organization.

- **Reject legislation to enact a state false claims act.** A bill was introduced in the 129th Ohio General Assembly (SB 143) that would allow individuals with knowledge of possible fraudulent activity to (a) file suit in state courts against companies doing business with public entities and (b) recover a portion of the money recovered by the State. Under this bill, false claims suits could be filed against any business selling services or goods to state government. While fraud against the government is not to be condoned, there are preferable alternatives to creating a whole new category of state-level lawsuit.

The Ohio Manufacturers' Association

POLICY GOAL:

Clear, Consistent, Predictable Environmental Regulations

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

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

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

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

Environmental policy priorities include the following:

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

- **Expand opportunities for industry to reuse non-harmful waste streams.** Beneficial reuse policies can result in less waste and more recycling of industrial byproducts.

- **Review Ohio's solid waste regulations, including procedures for disposing universal waste streams, to ensure safe and uniform disposal practices that are consistent with best practices used in other states.**

- **Reject state-level efforts to implement product composition mandates.** Such standards and requirements are best addressed at the federal level rather than through a patchwork of differing state-level requirements.

- **Reject extended producer responsibility policies that would shift responsibility for recycling certain consumer products from consumers to manufacturers.**

POLICY GOAL:

A Modernized Transportation Infrastructure

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

Transportation infrastructure policy priorities include the following:

- **Modify Ohio's rules and regulations** to allow greater flexibility and efficiency in the truck permitting process and to ensure Ohio's truck permitting standards and processes are competitive with other states with regard to requirements, fees and responsiveness.

- **Enhance shipping flexibility by supporting the federal Safe and Efficient Transportation Act.** This bill would allow states to tailor regulations to meet state-level transportation needs linked to a state's particular economic assets and strengths.

POLICY GOAL:

An Educated, Highly Skilled Workforce

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

Workforce development policy priorities include the following:

- **Expand the use of the National Association of Manufacturers' "Manufacturing Skills Certification System."** This system of nationally portable, industry recognized, "stackable" credentials is applicable to all sectors in the manufacturing industry. The credentials validate foundational skills and competencies needed to be productive and successful in entry-level positions in any manufacturing environment. Credentials can be earned from both secondary and postsecondary educational programs.

- **Expand the use of cooperative education, internships and apprenticeships.** These experiential learning programs enhance talent recruitment and retention because participating students are exposed to company-specific, real-world job expectations and experiences. Students develop strong leadership and management skills by working closely with company staff who serve as their mentors/supervisors, and participating companies benefit from reduced recruitment and training costs.

Safety & Workers' Compensation

New BWC Safety Services Catalog

The Bureau of Workers' Compensation Division of Safety & Hygiene has just published this new 2014/15 Safety Services catalog.

The catalog contains detailed information and schedules for the many safety training classes, programs and resources available from the BWC.

Your workers' compensation premium covers the costs of these excellent services and resources. *5/8/2014*

Your MCO Matters

Every two years The Ohio Bureau of Workers' Compensation (BWC) holds a period of open enrollment during which every state fund employer can choose a different Managed Care Organization. The 2014 open enrollment period is April 28 to May 23.

The role of the MCO is to provide medical management for any of your employees who have an illness or injury that is covered by your workers' compensation insurance.

Health Management Solutions, Inc. (HMS) is the only MCO endorsed by the OMA. Not all MCOs are alike. Read why.

Switching is easier than it sounds. Submit this form and HMS will smoothly handle the transition, which will be effective June 30, 2014 for employers that switch.

To learn more, contact OMA's Scott Weisend. *4/29/2014*

BWC Board Approves $1.2 Billion for Prospective Payment Transition

This week, the Ohio Bureau of Workers' Compensation (BWC) board of directors approved a $1.2 billion credit to employers to facilitate the transition to a prospective billing model. This credit is in addition to the $1 billion in rebates issued in 2013.

The BWC currently bills employers in arrears, meaning businesses receive coverage and are billed at a later date. The new system of prospective billing will bring BWC to the industry standard of collecting premiums before extending coverage.

The conversion is expected to result in an overall rate reduction of two percent for private employers.

The new billing system will also offer employers the option to make up to as many as 12 installment payments. Additionally, employers will have earlier opportunities to sign up for incentive programs. November 24, 2014 is the new enrollment deadline for the 2015-16 group experience rating program; and January 31, 2014 is the new deadline for the group retrospective rating program for the 205-16 policy year.

The transition will be effective July 1, 2015, for private employers. The average private employer will enjoy a credit that will cover its August payroll report (covering the January to June 2015 premium) as well as the first two months of prospective premiums (July and August). This will prevent employers from being "double-billed" while transitioning from paying in arrears to paying in advance. *4/23/2014*

BWC Staff Proposes 6.3 Percent Rate Cut

The Ohio Bureau of Workers' Compensation (BWC) staff proposed that the Board of Directors approve a 6.3 percent reduction to base rates beginning July 1. If approved, this cut would mark the eighth consecutive year in which private sector rates have either fallen or remained flat.

If approved, the 6.3 percent reduction will result in an overall decrease in collected premiums of $91 million compared to premiums under the current rates.

BWC and its actuarial consultant, Oliver Wyman, attributed the proposed reduction to better than previously expected claims frequency and claims severity.

The actual premium paid by individual private employers depends on a number of factors, including the expected future costs in their industry, their recent claims history, and their participation in various discount and savings programs. *4/22/2014*

OMA Guide to Prospective Payment Transition

This year, the Bureau of Workers' Compensation (BWC) begins a landmark transition to a system whereby employers will pay for their workers' compensation coverage prior to the coverage period as opposed to after the period. This modernizes the payment practices of the BWC and aligns it with insurance industry practices.

The new system will take some getting used to. So, we've outlined the timeline and milestones that manufacturers need to know in this piece. The piece is designed to be a handy desk reference for our members.

OMA members who get their workers' compensation services from the OMA will receive copies of the piece in the mail soon. If you'd like to receive copies, contact Lisa Cummings-Dye at the OMA. *4/16/2014*

Snapshot of OMA Claims

Dennis Davis, Managing Director, OMA Workers' Compensation Services, just completed an analysis of the 2012 claims of members participating in OMA Workers' Compensation Services.

The three most frequent injuries were: open wound of finger (235 claims), foreign body to eye (82), and lumbar region sprain (72).

The costliest claims were: sprains of shoulder/arm/neck which collectively drove costs of $787K; sprains of lumbar region had total expenses of $473K; and fractured hands drove $415K in expenses.

This data helps inform the OMA's monthly safety webinar topics, as does OSHA data about most frequently cited violations. OMA members can register for webinars here. *4/11/2014*

Shout Out to Safety Award Winners

Last week in conjunction with the Ohio Safety Congress & Expo, the Ohio Bureau of Workers' Compensation (BWC) recognized two OMA members in its Safety Innovations Award competition. The competition recognizes development of innovative safety solutions in Ohio's businesses. Lake Shore Cryotronics, Inc., Westerville, and National Machine Company, Stow, both received honorable mentions.

Lake Shore Cryotronics Inc. is a privately-held corporation that develops measurement and control technologies. The company assembles scientific equipment from components that are costly and can weigh several hundred pounds. Operators were exposed to back injuries because they were required to manually lift and install components into equipment and racks. The company used a $12,479 BWC safety grant to purchase a material handling lifter. In addition to a safer work environment, the new lift can be operated by one employee instead of two.

National Machine Company provides engineering, manufacturing and logistics solutions for aerospace and industrial markets. Seeking solutions to decrease the risk of musculoskeletal injuries among its workforce, the company used a $25,791 BWC safety grant to reduce hazards associated with machining aircraft landing gear. The company purchased a hoist that allows operators to avoid manual lifting. Since installing the lifting device, the company reports significant reductions in the risk of pinching, back and shoulder injuries. *3/28/2014*

OMA on Record in Support of BWC Proposals

This week, OMA issued a letter to Rep. Bob Hackett (R-London), Chairman, Insurance Committee, in support of two important Bureau of Workers' Compensation (BWC) provisions in House Bill 493.

First, there are provisions in the bill that address the confusing and problematic jurisdictional issues that occur when Ohio employers have employees who temporarily work out of the state. Interstate jurisdiction issues have been problematic for Ohio employers for years.

Second, House Bill 493 provides the final piece of enabling legislation for the BWC to complete its transition to a prospective premium payment system. The BWC has worked closely with OMA and other stakeholders in its implementation planning and has been responsive to input. This measure modernizes the payment practices of the BWC and aligns it with insurance industry practices. *4/3/2014*

Don't Miss Ohio Safety Congress Next Week

The Ohio Safety Congress & Expo 2014 is the largest regional safety and health conference in the nation! This free event will be held March 25 to 27 at the Greater Columbus Convention Center. Here's all the info.

And here's the BWC's March issue of Safety Update, filled with safety tips, news and resources. *3/17/2014*

Supreme Court Upholds "Louisiana Pacific" Test

OMA Connections Partner, Roetzel, reports a recent case (*State ex rel. Robinson v. Indus. Comm.),* in which the Ohio Supreme Court re-affirmed the three-part *Louisiana-Pacific* test used to determine whether an employment discharge constitutes a voluntary abandonment. The importance of this case to employers is that, under Ohio Workers' Compensation law, an employee who voluntarily abandons his or her employment for reasons not related to the industrial injury *cannot* receive temporary total disability compensation.

Although being fired is generally considered an involuntary separation from employment, when the discharge arises from the employee's decision to engage in conduct that he or she knows will result in termination, it may be considered a voluntary abandonment. Employment discharge is a voluntary abandonment only when the discharge arises from a violation of a written work rule that (1) clearly defined the prohibited conduct, (2) identified the misconduct as a dischargeable offense, and (3) was known or should have been known to the employee.

Employers are reminded to have written workplace rules and policies that clearly define prohibited conduct that constitutes a dischargeable offense and to make employees aware of those rules and policies. Read more. *3/6/2014*

April 30 Enrollment Deadline for BWC "Destination: Excellence" Programs (video)

It's a good time to evaluate the cost-saving and risk-reducing benefits of the Bureau of Workers' Compensation (BWC) "Destination: Excellence" programs since some programs have an April 30 enrollment date.

Here's a new video on the topic from the BWC.

OMA has tools to help employers determine their eligibility for and potential benefits of Destination: Excellence programs. Here's the program compatibility tool. And, members who buy their workers' compensation services from OMA can log onto My OMA to see their company's custom cost-saving potential for each of the programs.

We'll produce a cost-saving report for any employer; just make sure we have a current BWC AC3 form so we can access your data.

Questions? Contact OMA's Scott Weisend. *3/3/2014*

Do You Owe BWC 2-Hour Safety Training Compliance?

The Bureau of Workers' Compensation (BWC) requires employers that participate in a group plan, and that sustained a claim in 2012, complete two hours of safety training by June 30, 2014.

OMA makes it easy to comply with this BWC requirement. Every month there is a one-hour no-charge safety webinar. Each webinar counts for one-hour of the compliance requirement.

Check out our safety webinar schedule and register now! *3/6/2014*

BWC Recognizes OMA Member, Rayco Manufacturing, for Safety

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer visited OMA member Rayco Manufacturing, Inc., Wooster, this week to recognize the company's exceptional efforts to maintain a safe workplace. Rayco CEO John Bowling hosted Buehrer to demonstrate the safety improvements the company has made with the assistance of a $21,000 BWC Safety Intervention Grant.

Rayco Manufacturing, established in 1978, serves the tree and landscape industry. The company manufactures and services specialized stump cutters, wood chippers, and forestry mulchers. The company used its 2011 BWC grant to purchase weld tables to reduce the risk of injury related to moving suspended equipment weighing between 200-1300 lbs. while building large forestry chippers.

Before receiving the grant, welders used an overhead crane to lift and then weld parts together. The process often required workers to bend and stretch awkwardly, and crawl underneath objects to ensure parts were welded correctly. The purchase of the specialized weld tables eliminated the use of cranes, and reduced the risk of injuries associated with crawling, lifting, and awkward postures. Production time has also decreased.

Learn more about the BWC's Safety Intervention Grant Program. *2/25/2014*

NAM Provides Opportunity to Comment on Proposed OSHA Tracking Rule

The National Association of Manufacturers (NAM) has had an influx of interest from manufacturers who want to comment on OSHA's rule to "Improve Tracking of Workplace Injuries and Illnesses," which would require larger manufacturers to submit injury and illness reports quarterly, and then allow OSHA to post the data from the reports on the Internet for public consumption.

The NAM believes disclosing this type of information serves little public good, is easily misinterpreted, and can lead to unfair conclusions or judgments about a company or particular industry.

The NAM is preparing comments on behalf of its members, and has also prepared this template letter for companies to submit to OSHA independently. Submit letters here by March 10, 2104. Click on the "Comment Now" box on the right side of the page and download your file.

For more information, please contact NAM's Amanda Wood. *2/26/2014*

New Wage Loss Rule Goes into Effect February 13, 2014

OMA Connections Partner, Roetzel, reports that effective February 13, 2014, the Industrial Commission (IC) and Bureau of Workers' Compensation (BWC) have enacted a new joint rule for the processing and adjudication of requests for wage loss compensation.

In response to the Governor's Common Sense Initiative and with input from stakeholders, the agencies have revamped existing regulations with an emphasis on plain language. The revised Ohio Administrative Code (OAC) Section 4125-1-01 is a "more fluid recitation of the requirements that must be met for an injured worker to receive wage loss benefits – both working and non-working – under Ohio Workers' Compensation law."

Here's the update from the IC. *2/20/2014*

Changes to BWC's Drug Free Safety Program

The Bureau Workers' Compensation (BWC) has provided this program change information that affects employers enrolled in the Drug Free Safety Program.

All employers enrolled in the January 1, 2014 program period will be moved to the July 1, 2014 program period.

Contact Scott Camp from OMA's drug-free workplace partner, Working Partners(R), or OMA's Scott Weisend for more information. *2/19/2014*

BWC Premiums Due February 28

Employers have until February 28, 2014 to file payroll reports and submit workers' compensation premiums for the period covering July 1 to Dec. 31, 2013. BWC offers a number of options for reporting payroll and submitting payments: Pay online, in person, at any BWC location, or call (800) 644-6292. *2/14/2014*

Ohio Workers' Comp Injuries Lower than National Average

Each year, the U.S. Bureau of Labor Statistics (BLS) selects a representative sample of more than 4,000 employers in Ohio to participate in the survey about non-fatal workplace injuries. The 2012 Survey of Occupational Injuries and Illnesses results, now available on BWC's website, show Ohio had 3.2 recordable injuries and/or illnesses per 100 full-time workers, lower than the national average of 3.7.

The survey estimates a total of 129,200 recordable cases of non-fatal occupational injuries and illnesses took place in Ohio in 2012. About 28 percent of the cases involved one or more days off of work; about 18 percent involved one or more days working in job restriction/transfer; and the remaining 53 percent were recordable cases without time off of work.

Among the private sector, transportation and warehousing had the most non-fatal injury and illness incidents. Other industries with high incident rates were health care and social assistance, manufacturing, retail trade, and construction.

For injuries with more than one day away from work:

- More men than women experienced a non-fatal injury or illness that caused them to miss more than one day of work.
- More cases occurred in the age group of 35-44 years old.
- The back was injured more than any other part of the body, followed by injuries to the hands and knees.
- Falls on the same level and overexertion in lifting were the most common events where an injury took place. *2/13/2014*

NAM Files Comments on Proposed OSHA Silica Rule

The National Association of Manufacturers (NAM) filed comments to OSHA's proposed silica rule, which would cut the permissible exposure limit (PEL) in half from 100 micrograms to 50 micrograms over an eight-hour time frame. The rule would also mandate certain engineering controls and restricted work areas, as well as require additional medical monitoring, training and recordkeeping.

In its comments the NAM recommends that: "OSHA withdraw the proposed rule on the ground that OSHA has failed to establish that there is a significant risk at exposure levels below the current PEL, or that the proposed rule is technically or economically feasible."

The NAM will participate in OSHA's public hearing on the rule which begins on March 18 and is scheduled to go for approximately two weeks. *2/12/2014*

BWC Presents Prospective Payment Plan to OMA Committee

OMA Safety and Worker's Compensation committee members braved the elements (or huddled by their phones) this week for their first meeting of the year.

Staff from the Bureau of Workers' Compensation (BWC) tromped through the snow to visit with OMA committee members. Kim Kline, Chief of the Department of Strategic Direction, and Joy Bush, Director of Business Development, presented the BWC's plan to convert to prospective billing of premium.

OMA staff is up to speed on the conversion plan; if you have questions, contact Scott Weisend.

Committee members also heard from Rep. Bob Hackett (R-London), House Insurance Committee Chair, who focused on what the state can do absent legislation to modernize workers' compensation managed care in Ohio. It's an issue he is passionate about and about which he is interested in hearing from employers. *2/6/2014*

BWC Administrator Calls for WC Health Care Transformation

At a recent summit on the health care system operated within the Ohio Bureau of Workers Compensation (BWC), Administrator & CEO Steve Buehrer called for a transformation of a system that is "stuck in the '90's."

Buehrer noted that of the 97,000 claims allowed in FY 2013: There were nearly 17,000 injured workers (or 17%) who missed more than seven days of work. Of all lost-time claims: 50 % missed more than 45 days and nearly 32 % missed more than 100 days. Buehrer called this his "target market" for transformation designed to speed care, improve its quality, and lower the costs that are driven by this population of injured workers. Because of these claims, Ohio has the longest workers' compensation insurance "tail" in the country.

The administrator described the significant impacts on workers of opiates ("nearly 20 percent of all injured workers receiving opiates at the end of FY 2013 are physically dependent"), and of chronic conditions, such as diabetes, hypertension and diagnosable mental health conditions.

He laid out five principles for care transformation: (!) Provide quality care as soon as possible, (2) Help the injured worker navigate the system, (3) Pay for positive outcomes, (4) Coordinate care for the worker holistically, and (5) Manage costs appropriately on behalf of employers. *2/3/2014*

HB33 **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2013, and ending June 30, 2015, and to provide authorization and conditions for the operation of Commission programs.

Current Status: 3/26/2013 - **SIGNED BY GOVERNOR**; Eff. 3/26/2013
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_33

HB34 **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2013, and ending June 30, 2015, and to provide authorization and conditions for the operation of the Bureau's programs.

Current Status: 3/26/2013 - **SIGNED BY GOVERNOR**; Eff. 3/26/2013
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_34

HB59 **BIENNIAL BUDGET** (AMSTUTZ R) To make operating appropriations for the biennium beginning July 1, 2013, and ending June 30, 2015; to provide authorization and conditions for the operation of state programs.

Current Status: 6/30/2013 - **SIGNED BY GOVERNOR**; Eff. 6/30/2013; Some Eff. 9/29/2013; Others Various Dates
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_59

HB143 **WORKERS' COMPENSATION** (DEVITIS A, BUTLER, JR. J) To require the Administrator of Workers' Compensation to include in the notice of premium rate that is applicable to an employer for an upcoming policy year the mathematical equation used by the Administrator to determine the employer's premium rate.

Current Status: 5/14/2013 - House Insurance, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_143

HB338 **WORKERS' COMPENSATION-UNEMPLOYMENT COMPENSATION COVERAGE** (MCGREGOR R, HOTTINGER J) To establish a test to determine whether an individual providing services for or on behalf of certain motor transportation companies is considered an employee under Ohio's Overtime, Workers' Compensation, and Unemployment Compensation Laws.

Current Status: 3/12/2014 - House Commerce, Labor and Technology, (Fifth Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_338

HB431 **WORKERS' COMPENSATION-MEDICAID ELIGIBILITY STUDY COMMITTEE** (SEARS B, HENNE M) To create the Workers' Compensation and Medicaid Eligibility Study Committee.

Current Status: 2/25/2014 - Referred to Committee House Health and Aging
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_431

HB462 **PROFESSIONAL EMPLOYER ORGANIZATION-FEDERAL TAXES** (MCGREGOR R) To permit a professional employer organization to file federal taxes in any manner permitted by federal law.

Current Status: 3/18/2014 - House Insurance, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_462

HB472 **MBR-MID-BIENNIUM BUDGET REVIEW** (MCCLAIN J) To make operating and other

appropriations and to provide authorization and conditions for the operation of state programs.

Current Status: 3/26/2014 - House Ways and Means, (Third Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_472

HB493 **MBR-WORKERS' COMPENSATION** (SEARS B, HENNE M) To make changes to Ohio's Workers' Compensation Law and to make an appropriation.

Current Status: 5/14/2014 - Senate Commerce and Labor, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_493

SB176 **ILLEGAL ALIENS-WORKERS' COMPENSATION** (SEITZ B) To prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law.

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

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

SB290 **PROFESSIONAL EMPLOYER ORGANIZATION-FEDERAL TAXES** (PATTON T) To permit a professional employer organization to file federal taxes in any manner permitted by federal law.

Current Status: 3/25/2014 - Senate Insurance and Financial Institutions, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_290