10:00 a.m. (EST)
1-866-362-9768
552-970-8972#

Safety & Workers' Compensation Committee

Wednesday, February 17, 2016

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2016 Safety & Workers' Compensation Committee Calendar

Meetings begin at 10:00 a.m.

Wednesday, February 17, 2016
Thursday, May 19, 2016
Wednesday, October 12, 2016

OMA Safety & Workers' Compensation Committee Meeting Sponsor:

HMS
HEALTH MANAGEMENT SOLUTIONS, INC.
A Paramount Preferred Options Company

OMA Safety & Workers' Compensation Committee

February 17, 2016

AGENDA

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc.
BWC Board Update	Tracie Sanchez, President/Owner, Lima Pallet Company, Inc. BWC Board Member
BWC Update	Brian Jackson, OMA staff
Safety Update	Heather Tibbitts, Safex
Guest Speakers	Sarah Morrison, Chief Legal Counsel and Ethics Officer, Ohio BWC Kelly Carey, Chief of Legislation and Communications, Ohio BWC
Public Policy Report	Rob Brundrett, OMA staff
OMA Counsel's Report	Sue Wetzel, Bricker & Eckler LLP

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:

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Chief Legal Counsel and Ethics Officer
Sarah Morrison

Sarah Morrison joined BWC in November 2012 with more than 15 years of diverse legal experience. Morrison was most recently a partner at Taft Stettinius & Hollister, LLP in Columbus. She has specialized in various types of civil and commercial litigation, including complex litigation and class actions.

Her trial practice involved appearances in federal and state courts, and she has argued before the Ohio Supreme Court. Morrison also has experience representing clients before the Ohio Elections Commission and General Assembly.

Morrison began her career as a law clerk with the Chester Wilcox & Saxbe law firm, which merged earlier this year with the Taft firm. She also served one year as a judicial law clerk for Judge John D. Holschuh of the U.S. District Court for the Southern District of Ohio.

She earned a bachelor's degree in political science from Ohio State University and a law degree from the Capital University Law School. She was named an Ohio Rising Star by Law & Politics magazine and was a recipient of Columbus Business First's "40 Under 40 Award" in 2005.

Chief of Legislation and Communications Kelly Carey

Kelly Carey became Chief of Legislation and Communications in April 2015. This new division is responsible for:

- Representing BWC at the Statehouse as it pertains to workers' comp legislation;
- Responding to constituent/customer questions and concerns;
- Communicating to customers, stakeholders and industry peers;
- Overseeing internal communications of the agency.

She came to BWC as the legislative liaison in 2011 after serving seven years in the state legislature under two senators and a representative. In 2014, Carey served as BWC Interim Communications Director while maintaining the legislative responsibilities for the agency.

A native of Springfield, Carey now lives in Gahanna with her husband, son and two dogs.

Key OSHA Activities – February 2016

Dianne Grote Adams
dgroteadams@safex.us

What's New

Recordkeeping – Online method to report injuries and fatalities is now available.

https://www.osha.gov/report.html

Remainder of 2016

OSHA is looking to increase maximum penalties by up to 82% by August, 2016. Would bring penalties in line with where they would have been if they had been allowed to increase each year based on inflation. Additionally beginning in 2017, penalties would increase automatically at the rate of inflation. Most believe the increase will not be the full 82%.

Additionally an agreement was signed between the Departments of Labor and Justice that would allow criminal prosecution for safety and health violations to be prosecuted by using laws aimed at fraud and environmental hazards. This agreement definitely adds teeth to prosecution. As an example, the maximum criminal penalty for violating the OSHA Act is a six-month prison term and a misdemeanor conviction. Breaking fraud or environmental laws can produce felony convictions and multi-year prison sentences.

Silica – Final rule went to Office of Information and Regulatory Affairs (OIRA) in December. OIRA has 90 – 120 days to review and send back to the agency. Expected to be issued by OSHA in the next few months, prior to the end of the Obama administration.

Beryllium – OSHA holding a public hearing in late February. Unlikely to be finalized prior to the end of the Obama administration.

Safety and Health Management Guidelines – Comment period extended to February 22. OSHA hopes to update these guidelines by the end of the Obama administration that were first published in 1989.

Recordkeeping – OSHA is still working to finalize the rule that would require reporting to OSHA injuries on a regular basis depending on the number of employees.

TO: **OMA Safety and Workers' Compensation Committee**
FROM: **Rob Brundrett**
RE: **Safety and Workers' Compensation Report**
DATE: **February 17, 2016**

Overview

The General Assembly began holding hearings in late January after it returned from its holiday break. With this being an election year, they will only be in session for a brief period in February and March. After the March primary there will be a fairly heavy session schedule for April and May before the members leave for the summer to campaign. The Governor continues his presidential campaign which indirectly has an impact on the legislature. There continues to be action on the legislative front regarding bills impacting the Bureau of Workers' Compensation.

Legislation and Rules

Senate Bill 5 – mental / mental

State Senators Tom Patton (R-Strongsville) and Edna Brown (D-Toledo) introduced Senate Bill 5. The bill would allow emergency first responders to receive workers' compensation benefits for PTSD even if they do not have an accompanying physical work injury. This would go against how Ohio's workers' comp system has historically operated.

"Mental/mental," as the provision is called, would go against the workers' compensation principle that benefits must be tied to a compensable physical illness or injury. The measure would increase complexity and cost for public employers and allow certain employees to receive benefits not available to others. It also would be a terrible precedent facing private sector employers.

This would be a major change for public employers and possibly private employers in the future. The Senate passed a similar measure three times last year, only to be rebuffed by the House on each occasion.

The Senate heard powerful testimony from Administrator Buehrer but nonetheless passed the bill out of committee with only one no vote (Uecker). The bill was referred and passed unanimously from the Senate Finance Committee. However the bill has been re-referred to Senate Finance for further consideration. There have been two contentious interested party meetings with both sides entrenched with their positions.

Senator Patton remains focused on passing the bill.

Senate Bill 27 / House Bill 292 – firefighter cancer

Senator Tom Patton (R-Strongsville) and Representative Christina Hagan introduced companion bills that would assume a firefighter with certain types of defined cancers contracted those cancers within their working conditions. The bills are limited strictly to firefighters.

Senator Patton's bill, SB 27 had a second hearing in the Senate Insurance committee in November.

HB 292 had its sponsor testimony in October.

Senate Bill 149 – Loss of use
To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law. The minority sponsored bill has not had a hearing and is not expected to move.

House Bill 205 – Private Insurance
Rep. Mike Henne introduced HB 205 which would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators to purchase workers' compensation coverage in the private market.

In the fall Rep. Henne introduced a sub bill. The sub bill deletes all the language of the original bill and replaces it with a provision that would totally eliminate the employee threshold for self-insurance. Currently the BWC can already waive this provision for companies with strong financials due to an OMA budget amendment several years ago. The provision is unneeded.

House Bill 206 – Industrial Commission Statistics
Rep. Henne introduced HB 206 which requires the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers. The IC is adamant this is problematic and is searching for allies to fight Rep. Henne on the bill.

House Bill 207 – Subrogation
Reps. Henne and Robert McColley introduced HB 207 which would insulate employers from the cost of a claim during litigation when there is third party involvement. The bill was voted out of the House last fall and has been assigned to the Senate Insurance committee where it awaits hearings. The OMA supports the bill and has testified in support.

House Bill 355 – employee misclassification
Rep. Wes Retherford (R – Hamilton) has introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

The OMA participated in an interested party meeting and reiterated its position that the bill is a bad idea and should be shelved.

House Bill 394 – Unemployment Compensation

Finally a long anticipated unemployment reform bill was introduced by Rep. Barbara Sears (R – Maumee) late last year as HB 394. As every Ohio manufacturer knows, unemployment taxes are high and have been increasing.

The Ohio unemployment trust fund is insolvent and still owes the federal government $775 million. This circumstance has for years triggered penalties that employers must pay, and the fund is in a dangerous position in light of any future recession.

In testimony before the House Insurance Committee Rep. Sears said: "It is important that we insure a structural sound unemployment insurance compensation program to lend consistency to our businesses, to allow us to move our unemployment system to an employment system."

The bill contains an impressive number of overdue reforms to address the system's solvency.

BWC Agency Notes

Other States Coverage

The BWC is issuing rules for out of state coverage. The program is expected to come on line in 2016.

Ballot Issues

Marijuana Ballot Issues

Issue 2 passed at the ballot box in November. Issue 2 prevents monopoly interests from amending the state constitution for self serving interests.

Issue 3 – the ResponsibleOhio ballot issue that would have legalized medical and recreational marijuana was soundly defeated by Ohioans. The OMA was against Issue 3. Thank you to all the members who gave to the OMA advocacy fund to help defeat the Issue.

The House has put together a taskforce to study the medical marijuana issue. OMA Board Chairman Bill Sopko sits on the taskforce for the OMA.

Several new ballot issues have been designed to hit the ballot in November 2016. This will continue to be an issue in Ohio until legislation is put forward to deal with this issue one way or the other.

Sub. H.B. 205

131st General Assembly

(H. Insurance)

The most recent substitute version of H.B. 205 of the 131st General Assembly, LSC 131 0846-3, eliminates the minimum number of employees required under the current law for a private sector employer or a board of county commissioners with respect to the construction of a sports facility to obtain self-insuring status under the Workers' Compensation Law.[1] The As Introduced version proposes to reduce the current law threshold from 500 employees to 300 employees.[2]

The As Introduced version also proposes the following changes to the Workers' Compensation Law, which LSC 131 0846-3 removes:

- Allow very large employers and certain employer groups to obtain Workers' Compensation coverage from a private workers' compensation insurer and prescribe requirements for securing coverage in that manner.[3]

- Allow certain self-insuring employers to indemnify against all or part of the employer's loss arising out of liability under the Workers' Compensation Law.[4]

- Transfer oversight of self-insuring employers and the corresponding administrative duties from the Administrator of Workers' Compensation to the Superintendent of Insurance.[5]

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[1] R.C. 4123.35.

[2] R.C. 3971.03 and 3971.04.

[3] R.C. 4123.35(B) and 4123.351, with conforming changes in R.C. 1561.04, 1561.34, 1701.86, 1729.55, 2705.05, 2913.48, 3121.01, 3121.0311, 3701.741, 3702.51, 3955.05, 3964.02, 4121.121, 4121.31, 4121.50, 4123.026, 4123.25, 4123.292, 4123.38, 4123.411, 4123.412, 4123.46, 4123.50, 4123.51, 4123.511, 4123.512, 4123.54, 4123.65, 4123.75, 4123.79, 4123.80, 4123.81, 4123.83, 4123.84, 4123.85, 4123.93, 4123.931, and 5119.332.

[4] R.C. 4123.35(B).

- Transfer administration and oversight of the Self-Insuring Employers' Guaranty Fund from the Administrator to the Superintendent.[6]

- Make the Self-Insuring Employers Evaluation Board, for administrative purposes, a part of the Department of Insurance rather than the Bureau of Workers' Compensation as under current law.[7]

- Require the Superintendent, in consultation with the Administrator, rather than the Administrator as under current law, to calculate and collect the administrative assessment paid by self-insuring employers under continuing law.

- Revise the requirements an employer must satisfy to be granted the status of self-insuring employer.[8]

H0205 (L0846-3)-131.docx/emr

[5] R.C. 3971.01 to 3971.15 and Sections 3 and 4, with conforming changes in R.C. 9.315, 4121.44, 4121.61, 4121.65, 4121.66, 4123.01, 4123.25, 4123.38, 4123.411, 4123.412, 4123.416, 4123.50, 4123.51, 4123.512, 4123.63, 4123.83, 4123.931, and 4125.05.

[6] R.C. 3971.09.

[7] R.C. 3971.12.

[8] R.C. 3971.03(B), 3971.04(D), and 3971.05(E).

February 9, 2016

Thank you for the opportunity to speak with you today. My name is Doug Barry, I own BarryStaff, Inc. a full service staffing company headquartered in Dayton, Ohio. We have serviced the Miami Valley since 1980. I am here in support of HB205 not because I need the support of our government to grow my business but just the opposite. I need government to remove a barrier so I can compete on the same playing field as my larger competitors who are headquartered not just out of the great state of Ohio but some outside of the USA. My 4 largest competitors are all self-insured for worker's compensation. One of them is headquartered in Tokyo, Japan one in Zurich, Switzerland one in Troy, Michigan and the other in Wisconsin.

BarryStaff, Inc takes our workers safety as a high priority. My motto, "I will never have an employee perform a job that I myself have not done or would not do." You can see by exhibit 1 that the medical costs paid out by the Bureau for BarryStaff, since 2009 are extremely low, especially for a company whose mostly 3000 employees work in an industrial environment. Conversely, you can see the amount paid to the BWC in premiums over the same period is very high.

In the last 6 months I have had to close 2 locations due to the fact I cannot compete on price with my much larger national competition. HB205 if passed, would provide me the ability to take the savings on my premiums and be more competitive. Additionally, it would give me the ability to expand back into markets we could not compete in previously. The last 2 years BarryStaff, Inc. has lost out on bids worth over $25,000,000 that went to my out of state/country competitors. These are funds that will not be reinvested into our great state.

Since 2002 BarryStaff has applied twice to become self-insured, both times we have been denied. We are a service business whose biggest asset is our accounts receivable. Exhibit 2 shows reasons given by the BWC in 2014 for our latest denial for self-insurance. As you will read, a number of the suggestions the BWC makes are just not sound business practices.

I am sure many people look to our legislature to help them fund and pass bills to take some of the burden off themselves and their businesses. I am asking for my government to simply give me a choice to better position my company to compete in Ohio. We need to champion our Ohio businesses and make sure they can compete evenly against companies with no Ohio ties or loyalties. My family has been and will continue to be good corporate citizens. Giving back to the communities we serve and helping make our communities strong places to work, live and play.

Thank you for your time and service.

Doug Barry
President, BarryStaff, Inc.
dbarry@barrystaff.com
(937)461-9732
230 Webster St.
Dayton, OH 45402

Exhibit 1

BARRYSTAFF WORKERS' COMPENSATION

Claim Year	$ Billed by BWC	$ Paid For Medical Bills
2009	$130,807.14	$ 24,186.05
2010	$291,523.91	$ 65,290.16
2011	$322,136.49	$ 90,356.19
2012	$405,668.65	$ 48,548.17
2013	$478,601.86	$141,208.35
2014	$414,867.92	$ 77,847.46
2015	$335,887.01	$ 26,926.63
TOTALS	**$2,398,336.07**	**$474,363.01**

Exhibit 2

To: Ohio Bureau of Worker's Compensation, Self-Insured Review Panel

From: Doug Barry, BarryStaff Inc. and Herb Lemaster, Clark, Schaefer, Hackett & Co.

Re: Appeal #1059748 of BarryStaff Inc. application for self-insurance

Date: September 19, 2014

The purpose of this document is to address the specific concerns as outlined in the attached statement of facts drafted by the Self-Insured Department. We have addressed each of the concerns in the same order as presented to BarryStaff Inc. In support of each of the items noted below, we have attached various documents supporting the actual operations of the entity.

1. **The financial statements are presented on a combined basis with two related entities included. The financial performance of the applicant alone and the financial impact of these other entities cannot be determined as the financial statements do not reflect this information.**

   Response: We have restated the balance sheet and income statement to eliminate the other operating entities included in the reviewed financial statements. Generally accepted accounting principles require the consolidation of related entities in reporting operations.

2. **Approximately two-thirds of the applicants' total assets are receivables and there are little long term assets.**

   Response: The nature of this specific business is a personal service business, not as a seller of inventory or manufacturer. In those types of businesses, the investment in fixed assets or inventory comprises a major commitment on behalf of ownership. BarryStaff Inc. operates as a staffing agency. As with most professional service businesses, BarryStaff Inc. has to invest heavily in office equipment, software, hardware and communication. Over the past five years, the company has doubled its investments in this type of equipment.

   In addition, the owners of Barry Staff, Inc. have purchased the building premises and made significant improvements to the property to support the growth of the Company for the past five years as well. The Building, which was purchased in 2002 for approximately $301,000 in downtown Dayton, has had an additional $52,000 in improvements since that time as well as annual upkeep. The building is titled in a separate LLC under the name of 22 South Jefferson Street, LLC, owned equally between Pam Barry and Douglas Barry.

In the staffing agency industry, the primary assets under consideration for the value of the business are (1) the available pool of part-time employees who can become available for short and long term assignments in various potential temporary employee situations, and (2) the goodwill created by BarryStaff Inc. with potential clients based on the company's ability to quickly respond to customer needs with qualified workers.

In support of creating the pool of part-time employees, BarryStaff Inc. has worked very hard in creating a responsible company that attracts the unemployed or underemployed individuals who are looking for opportunities. This has been accomplished by driving quality standards in identifying, testing, training and retaining high qualify candidates. Just as these employees become engaged with BarryStaff Inc., they will also tend to attract other acquaintances who also become valuable employees. This "construction" of the employee model,through active and "word-of-mouth" processes, has become the cornerstone of the organization.

Since BarryStaff, Inc. has been in existence, the organization has had to weather both good and bad economic cycles. Even with good economic cycles, the organization has been challenged in the past due to the necessity of financing working capital through the growth of accounts receivable. In tougher times, the company has worked hard to keep the best employees utilized while customers have cut back on their requirements. The strength that has kept the organization going through both of these cycles has been the creation of client loyalty and goodwill. Much of this has occurred through the conscious decision to work with longstanding client relationships by extending payment terms, even at the cost of BarryStaff Inc. in the short term. The critical growth that has occurred over the past five years is due to the consistent delivery of high quality employees to high quality customers.

3 The applicant has advances to shareholders, which totaled 21% of total assets in 2012 and 19% in 2013, and there appears to be no plans for repayment.

The actual percentages of advances to shareholders are 25.5% and 27.2% for 2013 and 2012, respectively. These percentages continue to decrease as the company has improved its cash position and distribution policy. Going back to 2009, BarryStaff Inc. has managed its income tax liabilities at the corporate and individual levels by minimizing the corporate officer and owner salaries. From 2009 to 2011 the corporate officer salaries (two positions) averaged $15,000 per year. Due to their successful business planning, the corporate officer salaries increased to $60,000 each in 2012 and $160,000 in 2013. For a $12,000,000 annual revenue business, this salary level is still slightly below average. Since December 31,2011 the loans to shareholders have not increased by actual distributions but have increased only by imputed interest cost of $2,562.

During 2014, the loans to shareholders are projected to decrease by $190,000 to take into account the recorded increase in shareholder equity as measured for tax purposes. If the same

operations occur during 2015 and 2016, the shareholder loan amount should be reduced to less than $50,000.

4 **Concerns with several financial ratios including: Sales growth, change in return on assets and cash to assets.**

Sales Growth: From 2009 through 2013, the sales for the company increased from $3,338,170 to $12,139,825. This is a substantial growth rate (364%) for any company and could become an issue in terms of financing accounts receivable as well as creating a bigger need for an outside line of credit to finance.

However, in the case of BarryStaff Inc., the accounts receivable has grown from $821,519 as of December 31,2009 to $1,494,492 as of December 31,2013. This is a growth rate of 81.9%. Likewise, the Line of credit has increased from $425,759 as of December 31,2009 to $765,759 as of December 31, 2013. This is an increase of 79.9%. In both cases, the change in financing from the accounts receivable management and the utilization of the line of credit reflects the efforts of BarryStaff Inc. to manage the liquid working capital of the business to shorten the revenue cycle, speed up cash flow and reduce the reliance on the line of credit. Days in accounts receivable have been reduced from 89 days (2009) to 45 days (2013). The line of credit will always be necessary due to seasonal fluctuations in the business, but as the business continues to grow, the goal is to continue to reduce financing risk due to a potential change in interest rates.

Change in return on Assets: Starting in 2009, the net income of BarryStaff Inc. was $42,650, a return of 9.4% on the year-end asset values. As of 2013, the net income of the company was $1,019,933, a return of 81.9%. As the company has grown and continues to grow, the actual investment in assets becomes a smaller and smaller amount relative to gross sales and net income. BarryStaff, Inc. hit its "critical mass" when sales of $8 million were achieved. At this level of sales, the gross margin produces income that is greater than required by the fixed expenses of operating the business. Although there will be marginal increases in the fixed costs of operating the business, this growth in overhead will be small compared to the growth in gross margin.

Cash to Assets: The goal of any business is to minimize the need and availability of cash within the organization. First, the existence of cash on the balance sheet provides no rate of return, other than minimal savings accounts. Cash on the balance sheet does not reduce debt and therefore, doesn't reduce interest expense. Second, the existence of cash on the balance sheet subjects the organization to risk from potential unknown litigation. This is the purpose of operating as a Subchapter S corporation or an LLC in protecting the interests of the owners. Assets within the balance sheet of the organization are subject to forfeiture and risk, including the loans to shareholders. Since this risk still exists, the underlying owners are still at risk for the amount of the outstanding loans.

H.B. 355

131st General Assembly
(As Introduced)

Reps. Retherford, Maag, Young, Blessing, Henne, Cera, S. O'Brien

BILL SUMMARY

- Requires the Administrator of Workers' Compensation to adopt rules, consistent with the common law rules used by the Internal Revenue Service, to establish a test for determining who is an "employee" for purposes of the Workers' Compensation Law, the Unemployment Compensation Law, and the Income Tax Law.
- Prohibits an employer from negligently failing to consider an individual who is an employee under the rules adopted by the Administrator under the bill to be an employee for purposes of those laws.
- Creates civil penalties for an employer who violates the bill's employee misclassification prohibition and criminal penalties if the employer violates the prohibition again within a five-year period.
- Requires the Administrator to administer and enforce the bill's provisions.
- Requires the Administrator to issue a stop work order, requiring cessation of all business operations, against an employer if, after an investigation, the Administrator determines that reasonable evidence exists that the employer violated the employee misclassification prohibition.
- Creates civil penalties for an employer who violates a stop work order.
- Makes a determination by the Administrator that an employer has misclassified an employee as an independent contractor binding on the Director of Job and Family Services and the Tax Commissioner unless the individual is otherwise not considered an employee under the applicable law.

- Creates the Employee Classification Fund, and requires the Administrator to use the Fund to administer and enforce the bill.

CONTENT AND OPERATION

Definition of "employee"

Currently, the Workers' Compensation Law, the Unemployment Compensation Law, and the Income Tax Law have a different or no definition of "employee" for purposes of the law and have different tests to determine whether an individual performing services for another is covered by that law (all of the tests generally examine who directs and controls the services performed to determine employee status). The bill requires the Administrator of Workers' Compensation to adopt rules, consistent with the common law rules for determining an employer-employee relationship used by the Internal Revenue Service (IRS), to establish a test for determining whether an individual is an employee or independent contractor for purposes of those laws.[1]

IRS test

The IRS uses what is known as the "common law test" to determine independent contractor status (this test was formerly known as the 20-factor test, but the IRS consolidated some of the factors). This 11-factor test is used for federal income tax and federal unemployment tax purposes.[2] The test is divided into three categories: behavioral control, financial control, and the type of relationship of the parties.

Behavioral control – this category determines whether the business has a right to direct and control how a worker does the task for which the worker is hired. Two factors are included in this category:

(1) Instructions that the business gives to the worker – an employee is generally subject to the business' instructions about when, where, and how to work.

(2) Training that the business gives to the worker – an employee may be trained to perform services in a particular manner, while an independent contractor ordinarily uses the contractor's own methods.

[1] R.C. 4175.01.

[2] *See* U.S. Department of Labor, Conformity Requirements for State UC Laws, http://workforcesecurity.doleta.gov/unemploy/pdf/uilaws_coverage.pdf (November 1, 2015).

Financial control – this category determines whether the business has a right to control the business aspects of the worker's job. This category contains the following five factors:

(1) The extent to which the worker has unreimbursed business expenses – an independent contractor is more likely to have unreimbursed expenses.

(2) The extent of the worker's investment – an independent contractor often invests in the contractor's own equipment, facilities, and tools to perform the services, rather than that equipment, facility, or tools being provided by the employer.

(3) The extent to which the worker makes the worker's services available to the relevant market – an independent contractor is free to seek out further business opportunities.

(4) How the business pays the worker – an independent contractor is generally paid a flat fee for the contractor's services, while an employee is paid a set wage over a period of time (i.e., hourly, monthly, annually).

(5) The extent to which the worker can realize a profit or loss – an independent contractor can make a profit or loss.

Type of relationship between the worker and employer – this category consists of the following four factors:

(1) A written contract exists describing the relationship the parties intend to create.

(2) Whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation pay, or sick pay.

(3) Whether the relationship is permanent.

(4) The extent to which services performed by the worker are a key aspect of the company's regular business.[3]

Current law tests

Currently, the following tests are used to determine whether an individual is an employee or independent contractor for purposes of the following laws:

[3] U.S. Internal Revenue Service, Publication 15-A (2015) Employer's Supplemental Tax Guide, www.irs.gov/pub/irs-pdf/p15a.pdf (November 1, 2015).

(1) For the Income Tax Law and the Unemployment Compensation Law, variations of the common law test;[4]

(2) For the Workers' Compensation Law, whether the employer reserves the right to control the means and manner of doing the work.[5]

All of the tests used largely base the determination of independent contractor status on how much direction and control the "employer" has over the individual performing the services.

Changes to the definition of "employee" under specified labor laws

Unemployment Compensation Law

Under the bill, for purposes of the Unemployment Compensation Law, "employee" has the same meaning as described above, unless the services performed by the individual do not constitute "employment" as defined in the Unemployment Compensation Law.[6] "Employee" is not currently statutorily defined for purposes of the Unemployment Compensation Law. The Unemployment Compensation Law, however, does define "employment" for purposes of that law. Continuing law generally defines "employment" as service performed by an individual for remuneration under any contract of hire including service performed by a corporate officer, without regard to whether the service is executive, managerial, or manual in nature, and without regard to whether the officer is a stockholder or a member of the board of directors of the corporation, unless it is shown to the satisfaction of the Director of Job and Family Services (the JFS Director administers the Unemployment Compensation Law) that the individual has been and will continue to be free from direction or control over the performance of the service, both under a contract of service and in fact. The bill removes a provision that requires the JFS Director to adopt rules to define "direction or control" and instead requires the JFS Director to base any determination that an individual is free from direction or control upon a determination made by the Administrator pursuant to the bill.[7]

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[4] *See* U.S. Department of Labor, Conformity Requirements for State UC Laws, http://workforcesecurity.doleta.gov/unemploy/pdf/uilaws_coverage.pdf (accessed November 1, 2015); Ohio Department of Taxation, Frequently Asked Questions, http://www.tax.ohio.gov/faq.aspx (accessed November 1, 2015); R.C. 4141.01; and Ohio Administrative Code 4141-3-05.

[5] *Gillum v. Industrial Comm.*, 141 Ohio St. 373, 374 (1943). *See also Bostic v. Connor*, 37 Ohio St.3d 144 (1988).

[6] R.C. 4141.01(EE).

[7] R.C. 4141.01(B)(1).

Under continuing law, the Unemployment Compensation Law lists specific services that are included and excluded in the definition of "employment." The bill removes the current law test to determine whether construction services provided by an individual are considered employment, under which the services are employment if ten out of 20 criteria are satisfied.[8]

Workers' Compensation Law

Ohio's Workers' Compensation Law covers most employees in the public and private sector. Volunteer police officers and firefighters are currently covered (generally volunteers are not covered), and off-duty police, fire, and first responders are covered under certain circumstances. The bill largely replaces the definition of employee under the Workers' Compensation Law with the bill's definition but maintains coverage for the off-duty police, fire, and other first responders. However, because the bill requires factors related to financial control in the test for whether an individual is an employee, it appears that the bill removes coverage for volunteer police officers and firefighters.[9] Under continuing law, the state or a political subdivision may contract with the Bureau of Workers' Compensation for coverage of volunteer police officers and firefighters who would not otherwise be covered.[10]

The bill retains the current law exceptions to the definition of "employee." However, because of the bill's new definition of "employee," it is unclear whether the continuing law exceptions are necessary to exclude certain individuals from the definition of "employee" for workers' compensation purposes, such as an individual incorporated as a corporation. But by retaining the exceptions, the bill retains the ability of such an individual to elect to obtain coverage under the Workers' Compensation Law if the individual is otherwise able to do so.

Similar to the Unemployment Compensation Law, the bill also eliminates the current law requirement that every individual who performs labor or provides services pursuant to a construction contract is an "employee" if at least ten of 20 specified criteria apply.[11]

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[8] R.C. 4141.01(B)(2)(k).

[9] R.C. 4121.01 and 4123.01(A), with conforming changes in R.C. 1349.61 and 4123.026.

[10] R.C. 4123.03, not in the bill.

[11] R.C. 4123.01(A).

Income Tax Law

"Employee" is not currently statutorily defined for purposes of the Income Tax Law. The Income Tax Law currently follows the IRS test.[12] The bill specifies that "employee" means an individual who is an employee under the rules adopted by the Administrator pursuant to the bill.[13]

Prohibition regarding misclassifying employees

The bill prohibits an employer from negligently failing to consider an individual who is an employee under the rules adopted by the Administrator to be an employee for purposes of the Workers' Compensation Law, the Unemployment Compensation Law, and the Income Tax Law.[14]

An employer who violates the prohibition is subject to civil penalties from the Administrator (see "**Disciplinary actions**," below). For any subsequent violation of the prohibition within five years after the date the employer previously was assessed a civil penalty for a violation or five years after the date the employer was convicted of or pleaded guilty to a violation, the employer is guilty of specified criminal penalties (see "**Criminal penalties**," below).

Enforcement and administration of the misclassification prohibition

The bill requires the Administrator to enforce the bill's employee misclassification prohibition. The Administrator must adopt reasonable rules in accordance with Ohio's Administrative Procedure Act to implement and administer the bill, including rules to establish an expedited hearing process for an employer against whom a stop work order is issued (see "**Stop work orders**," below).[15]

Complaints, investigations, hearings

The bill allows an individual to file a complaint with the Administrator against an employer if the individual reasonably believes that the employer is in violation of the bill's employee misclassification prohibition. The bill requires the Administrator to conduct an investigation into whether the employer violated the bill's prohibition upon receipt of a complaint.

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[12] Ohio Department of Taxation, Frequently Asked Questions, http://www.tax.ohio.gov/faq.aspx (November 1, 2015).

[13] R.C. 5747.01(HH).

[14] R.C. 4175.02.

[15] R.C. 4175.03.

The Administrator may do all of the following in investigating a complaint:

(1) Enter and inspect, at all reasonable times, all of the offices and job sites maintained by the employer who is the subject of the complaint;

(2) Examine and copy business records;

(3) Compel, by subpoena, the attendance and testimony of witnesses and the production of books, payroll, records, papers, and other evidence;

(4) Administer oaths to witnesses.[16]

If, after an investigation, the Administrator determines that reasonable evidence exists that an employer has violated the bill's employee misclassification prohibition, the bill requires the Administrator to do both of the following:

(1) Within 72 hours after the determination, issue a stop work order against the employer (see "**Stop work orders**," below);

(2) Within seven days after the determination, send a written notice to the employer who is the subject of the investigation in the same manner as prescribed in the Administrative Procedure Act for licensees, except that the notice must specify that a hearing will be held and must specify the date, time, and place of the hearing.

The bill requires the Administrator to hold a hearing regarding an alleged violation in the same manner prescribed for an adjudication hearing under the Administrative Procedure Act. The bill specifies that, if an employer who allegedly committed a violation of the bill's employee misclassification prohibition fails to appear for a hearing, the Administrator may make a determination without the employer's appearance or request the court of common pleas of the county where the alleged violation occurred to compel the employer to appear before the Administrator for a hearing.

If the Administrator, after a hearing, determines a violation has occurred, the Administrator must discipline the employer in accordance with the bill (see "**Disciplinary actions**," below). An employer may appeal the Administrator's determination in accordance with the Administrative Procedure Act, but the bill specifies that a stop work order issued under the bill is not subject to suspension by the court during the pendency of that appeal.

[16] R.C. 4175.04.

The Administrator's determination that an employer has misclassified an employee as an independent contractor is binding on the JFS Director and the Tax Commissioner unless the individual is otherwise not considered to be an employee under the applicable law. However, nothing in the bill limits or otherwise constrains the Administrator's duties and powers under the Workers' Compensation Law, the JFS Director's duties and powers under the Unemployment Compensation Law, or the Tax Commissioner's duties and powers under the Income Tax Law.[17]

Disciplinary actions

If, after a hearing, the Administrator determines that an employer has violated the bill's employee misclassification prohibition, the Administrator is required to do all of the following:

(1) Notify the JFS Director and the Tax Commissioner, each of whom must determine whether the employer's violation results in the employer not complying with the requirements of the Unemployment Compensation Law or the Income Tax Law, as applicable;

(2) Continue to enforce the stop work order issued against the employer in accordance with the bill (see "**Stop work orders**," below);

(3) Assess against the employer a penalty of $5,000 for each employee the employer misclassified as an independent contractor in violation of the bill's prohibition.

Additionally, the bill allows the Administrator to assess an additional amount against an employer who has previously violated the bill's employee misclassification prohibition.[18]

Stop work orders

The bill requires the Administrator to issue a stop work order, requiring the cessation of all business operations, against an employer if after an investigation the Administrator determines that reasonable evidence exists that an employer has violated the bill's employee misclassification prohibition. A stop work order applies to all worksites in Ohio for which the Administrator determined that reasonable evidence exists that the employer has violated that prohibition. The stop work order takes effect when the order is served upon the employer. However, if the Administrator's

[17] R.C. 4175.05.

[18] R.C. 4175.06.

determination applies to only one of the employer's worksites, the bill allows the Administrator to serve a stop work order on the particular worksite by posting a copy of the order in a conspicuous location at the worksite. In that case, the stop work order takes effect for the particular worksite upon service at the worksite.

The Administrator must assess a penalty of $5,000 against an employer for each day that the employer conducts business operations in violation of a stop work order.

The bill limits a stop work order to the work of the employer for whom the Administrator makes a determination as described above, except a stop work order or penalty issued for violating a stop work order applies to any successor corporation or business entity that has one or more of the same principles or officers as the employer against whom the stop work order was issued and is engaged in the same or similar trade or activity as that employer. The bill specifies that it cannot be construed to require any work performed by someone other than the employer or the employer's employees to cease.

A stop work order remains in effect until the Administrator issues an order to release the stop work order. The bill requires the Administrator to issue an order of release upon either of the following events:

(1) The Administrator determines that the employer did not violate the employee misclassification prohibition after a hearing held in accordance with the bill;

(2) If the Administrator determined that the employer did violate the employee misclassification prohibition after such a hearing, the Administrator determines that the employer is no longer in violation and has paid any penalty assessed under the bill.

The bill allows the Administrator to issue an order of conditional release from a stop work order upon a finding that the employer is no longer in violation of the bill's employee misclassification prohibition and has agreed to remit period payments of any penalty assessed under the bill pursuant to a payment agreement schedule with the Administrator. A payment agreement schedule must require an initial payment of at least $1,000. If an employer fails to meet any term or condition of a penalty payment agreement, the bill requires the Administrator to immediately reinstate a stop work order and requires the entire unpaid balance of the penalty to immediately become due.

The bill allows the Administrator to require an employer, as a condition of release from a stop work order, to file periodic reports with the Administrator to demonstrate the employer's continued compliance with the bill for a probationary

period that cannot exceed two years from the date the Administrator issues the release order.[19]

Criminal penalties

For any subsequent violation of the employee misclassification prohibition within five years after the date the employer previously was assessed a civil penalty for violating that prohibition or five years after the date the employer was convicted of or pleaded guilty to violating that prohibition, the employer is guilty of the following:

(1) If the amount the employer is liable for due to the violation is less than $20,000, a third degree felony;

(2) If the amount the employer is liable for due to the violation is $20,000 or more, but less than $100,000, a second degree felony;

(3) If the amount is $100,000 or more, a first degree felony.[20]

Employee Classification Fund

The bill creates in the state treasury the Employee Classification Fund. The Administrator must deposit all moneys the Administrator receives under the bill, including civil penalties, into the Fund. The Administrator must use the Fund for the administration, investigation, and other expenses incurred in carrying out the Administrator's powers and duties under the bill.[21]

HISTORY

ACTION	DATE
Introduced	10-06-15

H0355-I-131.docx/ks

[19] R.C. 4175.061.

[20] R.C. 4175.99.

[21] R.C. 4175.07.

Wes Retherford
State Representative

Sponsor Testimony of Representative Wes Retherford
Regarding House Bill 355
Before the House State Government Committee
Wednesday, November 4, 2015

Chairman Maag, Ranking Member Curtin and members of the House State Government Committee, thank you for the opportunity to offer sponsor testimony on behalf of House Bill 355. I introduced this legislation in order to streamline, clarify, and enforce our tax code with regard to employees and independent contractors in the construction industry. Similar to HB 5 in the last G.A., this bill establishes more uniform rules and clarifies the distinction between employees and independent contractors. It also sets up an enforcement mechanism for those who commit payroll fraud, allowing the state to recoup back taxes, as well as penalties.

Payroll fraud, also known as employee misclassification, is the practice of labeling workers as independent contractors rather than employees to artificially lower project costs by illegally evading tax requirements. For example, a sub-contractor that installs plumbing for a general contractor may hire plumbers to work under supervision and instruction of the sub-contractor and during the sub-contractor's expected hours. These are employees of the subcontractor because they do not work independently at their own instruction or hours. Yet, the sub-contractor labels these employees as "independent contractors" in order to evade expenses such as Workers' Compensation and Unemployment Insurance.

Ohio loses annually up to half a billion dollars in uncollected Workers' Compensation premiums. In addition, businesses committing payroll fraud skip out on $100 million in Unemployment Insurance payments, $258 million in income taxes, and untold payments on the local level. Losing this amount of tax revenue from existing law forces tax hikes at all levels of government to make up the difference. By committing this fraud, unscrupulous contractors have an illegal advantage over honest businesses in the competitive bidding process by allowing them to quote artificially low bids, thereby edging out the honest job creators and damaging our economy.

An employee is anyone working under the supervision, instruction, and expected hours of an employer. It also sets up a process for the Bureau of Workers' Compensation (BWC) to receive reports of fraud and conduct investigations. This is completely funded by fines paid by violators and requires no new tax dollars. The process also allows work to continue on projects during the investigation and hearing process, with work being stopped only for the sub-contractor suspected of fraud.

The Departments of Job & Family Services and Taxation are also given the power to act on a BWC determination of fraud in order to recoup losses. These measures give state agencies tools to collect back taxes, a function already carried out form

This will also serve as a tool to counter illegal immigration in Ohio. We can stand here and discuss the issues involved in immigration reform, amnesty, etc. However, those issues are ultimately a federal issue. What we can do as a state is make it harder for employers to hire individuals who are here illegally. One of the bigger problems, in my opinion, with employee misclassification is the way it is used by some to be able to hire illegal immigrants, pay them under the table, take advantage of their situation and skirt the law. By making stronger enforcement measures, and streamlining our process, we can make it harder for employers to hire those who do not have the proper documentation or authority to be working here in Ohio. As I already stated, there is a lot of work to be done on reforming our immigration code, and that all belongs in the hands of Congress, however, what we must do is start going after the employers who disobey the law. By doing so, we can put them in positions where the risk is not worth the profit of hiring somebody under the table, both documented and/or undocumented. This will, in and of itself, slow the rate of illegal immigrants working and even coming to Ohio. We can then ensure that more Ohioans are being hired, and hired fairly by these contractors and employers. We can promote legal immigration and a system that is not only fair, but easily enforceable, and easily complied with.

I believe we have a bill that will make it more complicated to take advantage of our broken immigration system, clarify our tax code, ease the process for businesses while giving state agencies the tools they need to collect back taxes and punish those who willfully and blatantly commit payroll fraud. I ask you for your favorable support of this legislation. Thank you and I will be happy to answer any questions.

Wes Retherford
State Representative
Ohio House District 51

December 4, 2015

The Honorable Wes Retherford
Ohio House of Representatives
77 S. High St., 13th floor
Columbus, OH 43215

Re: House Bill 355

Dear Representative Retherford:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to comment on House Bill 355. The OMA and its legal counsel have recently completed a review of the bill.

As currently drafted, the bill authorizes the Bureau of Workers' Compensation (BWC) to enter and inspect all offices and job sites maintained by an employer that is the subject of a complaint of misclassifying an employee. The bill further allows the BWC to issue stop work orders and fines.

Through the years, the OMA has steadfastly opposed bills that inappropriately broaden the authority and scope of various agencies. This bill contains multiple problematic provisions. We urge you and the committee to shelve House Bill 355 and work with interested parties to craft a bill that narrowly addresses whatever real issues may be at hand.

Thank you for considering our perspective. I would be happy to discuss this further at your convenience.

Respectfully,

Rob Brundrett
Director, Public Policy Services
rbrundrett@ohiomfg.com
Direct: (614) 629-6814

cc: The Honorable Ron Maag

The Case for Unemployment Insurance Reform in Ohio

A POLICY PRIMER

Introduction

Ohio's unemployment insurance (UI) system is in a state of crisis. The Ohio Unemployment Insurance Trust Fund, which is funded by employers and pays out benefits to qualifying jobless workers, is insolvent. The benefits the system pays out are substantially out of balance with the tax receipts it takes in to fund it. The system is nearly $775 million in debt to the federal government – money it borrowed to keep paying benefits during and after the Great Recession of 2008. As a result, Ohio's system is dangerously unstable and a deterrent to economic development. Reforms are urgently needed to update and strengthen Ohio's UI program for the benefit of Ohio's employers, employees and economy. Most specifically, Ohio's Unemployment Insurance Trust Fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal unemployment compensation loan balance and better aligns benefits with contributions to build a balance.

How the System Works[1]

The Social Security Act of 1935 (SSA) created a federal-state unemployment insurance program to (a) provide temporary, partial wage replacement to individuals out of work, generally through no fault of their own, and (2) promote economic stability by maintaining a steady flow of dollars throughout the economy even when there is widespread unemployment.[2] The UI system historically has been forward funded – i.e., a sufficient positive balance is needed in the state unemployment trust fund to avoid having to borrow to pay benefits resulting from a reasonably foreseeable economic downturn.

To be eligible for unemployment benefits, jobless workers must demonstrate "workforce attachment," usually measured by a work requirement (e.g., number of weeks of work) and/or a wage requirement (e.g., dollar amount of wages earned). Individuals also must be able, available and actively seeking work. Each state has a different formula for determining the amount of workforce attachment needed to obtain UI benefits from the state.

The UI program is a federal-state partnership conforming to federal requirements and administered by state agencies under state law:

- Federal law – i.e., SSA and the Federal Unemployment Tax Act (FUTA) – establishes broad coverage provisions, some benefit provisions, the federal tax base and rate, and administrative requirements.

[1] This section of the document borrows heavily from a U.S. Department of Labor publication, *Unemployment Compensation: Federal-State Partnership,* April 2015.
[2] http://www.bizfilings.com/toolkit/sbg/office-hr/managing-the-workplace/unemployment-benefits-system-info.aspx

- Each state designs its own UI program within the framework of the federal requirements. State statute establishes eligibility and disqualification provisions, benefit amounts, and state taxable wage base and tax rates.

The Office of Unemployment Insurance Operations at the Ohio Department of Job and Family Services (ODJFS) administers Ohio's UI program. Administrative funds for ODJFS are allocated by the federal government from federal payroll taxes employers pay to the Internal Revenue Service.

Financing the Program

Unemployment compensation paid to unemployed workers is financed largely through both federal and state unemployment taxes paid by employers. Just three states – Alaska, New Jersey and Pennsylvania – collect UI taxes from employees.

UI taxes are based on various factors, including the wages employers pay their employees, the type and size of the business, and the number and amount of unemployment claims filed against the business.

- At the federal level, the FUTA imposes a single flat rate payroll tax on the first $7,000 of wages employers pay each employee in a year. The current FUTA tax rate is 6.0 percent. However, employers can earn credits against their FUTA tax to reflect the state employment taxes they pay. Employers who pay their State Unemployment Tax Act (SUTA) taxes in a timely manner under an approved state unemployment compensation program can earn a credit of up to 5.4 percent against the 6.0 percent, resulting in an effective tax rate of 0.6 percent. These states also are eligible to receive federal grants to cover the costs of administering the program through federal appropriations. Additionally, funds from the FUTA-funded Federal Unemployment Account reimburse the state unemployment trust fund for 50 percent of charges for "extended" unemployment benefits when extended benefits are triggered by periods of high unemployment.
- At the state level, each state determines its own SUTA tax rates. Some states apply various formulas to determine the taxable wage base; others use a percentage of the state's average annual wage; and a few simply follow the FUTA wage base of $7,000. In 2014, SUTA tax rates ranged from 0.0 percent to 2.6 percent for minimum rates, and from 5.4 percent to 10.89 percent for maximum rates. All but a handful of states' wage bases exceeded the FUTA minimum requirement of $7,000. In 2014, Ohio's SUTA base was $9,000, with a minimum contribution rate of 0.3 percent and a maximum contribution rate of 8.60 percent.

The state assigns or computes a specific individually determined UI tax rate for each employer annually. Every state uses some kind of "experience rating" system to determine the rate. Generally, the fewer the claims, the lower the rate the business pays in state UI taxes.

States lacking sufficient funds to pay their required unemployment benefits are authorized by Title XII of the SSA to request advances (i.e., loans) from the FUTA's federal loan fund account, the Federal Unemployment Account. If not repaid, these loans carry interest that must be paid from sources other than the state UI trust fund.

Impact of the Great Recession

The Great Recession of 2008 was the nation's longest and deepest since the Great Depression of the 1930s. A majority of states did not have sufficient balances in their state unemployment trust funds to pay benefits without requesting advances (i.e., loans) from the federal government to assure that unemployment compensation benefits were paid. Ohio was among the states hardest hit by the recession. The timing of the recession contributed to a slow solvency response in adjustments to state unemployment contribution rates to bolster the trust fund.

There were significant increases in unemployment claims at the end of 2008 and beginning of 2009. At the same time, the automatically triggered contribution increases to pay increasing benefits were insufficient and additional revenue was not realized until after the end of the first quarter of 2009. As claims continued to increase through 2009 and 2010, the response in state UI tax rate adjustments to pay for the increases was too slow and too little to keep up.

The impact in Ohio has been severe. Ohio's unemployment trust fund balance has been a negative number as of the end of the second quarter every year since 2009. ***Today, Ohio's UI trust fund is among the least solvent in the country.*** The only state with a larger outstanding federal loan balance is California, and Ohio's current outstanding balance of approximately $775 million is nearly equal to the cost of benefit payments for an entire year.[3]

General Responses to the Threat of Insolvency

In response to the threat of insolvency, states have taken various actions to bolster tax revenue and reduce benefit outlay, including the following:

- Eliminating outstanding loan debt to the federal government by obtaining bank loans and/or using bonds to finance the debt through the private sector
- Enacting solvency legislation with a combination of benefit cuts and tax increases to eliminate Title XII debt and better align benefit costs with revenue over the long term
- Reducing the number of potential weeks of unemployment compensation
- Increasing tax bases
- Revising contribution rate schedules
- Reducing maximum weekly benefit amounts
- Enacting more aggressive integrity measures to identify and collect additional revenue through benefit overpayment recovery and contribution collection improvements

Ohio is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures, instead allowing automatic FUTA penalties to continue to increase to provide the revenue needed to reduce the state's outstanding debt.

This is a dangerous path to follow. Failure to pay off a state's outstanding FUTA debt has costly consequences. Under federal law, if a state has an outstanding Title XII loan balance on

[3] A number of states that show positive balances in their unemployment trust funds and are not borrowing federal funds to pay unemployment compensation are relying on private bonds and/or loan financing to pay off outstanding federal loans to avoid automatic FUTA increases. In some case, Ohio's outstanding total debt may be less than a number of these states that have private financing.

January 1 for two consecutive years, and the full amount of the loan is not repaid by November 10 of the second year, the 5.4 percent FUTA tax credit for employers in that state will be reduced annually by 0.3 percent for each succeeding year until the loan is repaid. From the third year onward, additional reductions in the FUTA offset credit may be imposed. States that continue to have outstanding loan balances over five years in a row are subject to an even greater FUTA tax increase as a penalty for not having addressed solvency through increases in taxes and/or cuts in benefits. This additional penalty is the Benefit Cost Rate (BCR) Add On.

Ohio is one of just four states currently subject to the increased FUTA penalty rates and potentially subject to a BCR Add On for 2015.

Based on its loan status as of November 10, 2014, Ohio was one of eight states whose FUTA credit for taxable year 2014 was reduced, meaning that employers in Ohio paid extra FUTA taxes retroactive to January 1, 2014. Because Ohio is four years in arrears on repayment of its UI loan from the federal government, the credit reduction in 2014 was 1.2 percent, resulting in Ohio employers paying an additional $84 per employee in FUTA taxes for 2014. Ohio also failed to pay off the state's outstanding FUTA debt before November 10, 2015, triggering an additional reduction in the FUTA offset credit for employers in Ohio. This will result in Ohio employers paying even higher FUTA taxes for 2015, retroactive to January 1 – at least an additional $105 per employee, on top of the normal $42 per employee.

Title XII loans repaid before November 10 of 2016 or 2017 would result in the FUTA tax for either year dropping back down to the normal 0.6 percent for that year. Loans repaid before January 1, 2017, or January 1, 2018, would break the continuation of the FUTA increases under federal law and result in the FUTA tax returning to 0.6 percent for calendar year 2017 or 2018. As revenue from the increased FUTA taxes is credited to the Ohio Trust Fund in early 2016 and 2017, the state may be able to pay off the remaining federal debt before November 10, 2017, eliminating the continued imposition of the FUTA increase for 2017.

Another impact of not paying off Title XII loans is that state loans that remain due and unpaid as of January 1 of a calendar year accrue interest at the federal funds rate. For 2015, the interest rate is 2.3385 percent. Failure to pay the interest by the required date in a given year will result in a state losing its full FUTA credit of 5.4 percent for that year. The state also could lose the federal grant for the cost of administering the state's UI system.

Under federal law, the loan interest must be paid from a source other than the state unemployment benefit trust fund account. States with outstanding Title XII loans have chosen a number of ways to pay this interest, including allocations from state general revenue, special assessments to be paid by employers, as part of bond proceeds, and from state account loans. Ohio has paid the interest from state general revenue.

Federal law contains provisions allowing states with outstanding loans to seek relief from the automatic repayment provisions if certain requirements are met. For a state to qualify for a BCR Add On waiver, for example, the state must show that no action has been taken legislatively, administratively or judicially that reduces the net solvency of the state's trust fund. Ohio requested a waiver for 2015 and will need to closely monitor any legislation, administration and judicial decisions to avoid the potential BCR Add On for 2016 and 2017. Legislation enacted to improve solvency effective between October 1, 2015, and September 30, 2016, would ensure that Ohio was able to qualify for the waiver of the BCR Add On tax for 2016.

Careful management of Ohio's unemployment trust fund balance and loan repayment in 2016 and 2017 is needed to avoid a BCR Add On tax and to take advantage of opportunities to pay off the state's outstanding debt. ***Solvency efforts are needed not only to manage the repayment of the federal loan, but also to align UI tax revenue and benefit pay out over the long term*** – to build a significant balance in the Ohio Unemployment Insurance Trust Fund to avoid having to borrow during a reasonably foreseeable recession and to avoid the imposition of future automatic FUTA tax increases.

Solvency Comparisons: Tax Burden

The UI tax burden in Ohio generally increased as a result of the Great Recession as claims experience increased, the payroll against which experience was determined was reduced, and Ohio became subject to the FUTA offset credit reductions under federal law. As the economy slowly recovered with increased payrolls and reduced claims experience, experience rates improved and the average state unemployment insurance contribution was reduced. ***However, the FUTA tax has continued to increase as Ohio's Title XII loan has not been repaid.***

Experience rate reductions were restrained due to tax increases automatically triggered by the state's failure to meet Ohio's Minimum State Level (MSL) standard for UI trust fund solvency levels. This solvency provision results in the maximum contribution rate for Ohio employers being increased to 8.60 percent, although the maximum rate on the base rate schedule is just 6.70 percent.

For 2015, Ohio's maximum rate of 8.60 percent compared to Michigan's 12.70 percent, Pennsylvania's 10.89 percent, West Virginia's 8.50 percent, Kentucky's 10.21 percent and Indiana's 7.54 percent[4]. It should be noted, however, that the effect of the flat FUTA tax increase in Ohio further increased the overall unemployment-related tax burden for maximum rated employers as well as other contributing employers.

Ohio's unemployment tax base at $9,000 is currently lower than most states in the country. In 2015, tax bases ranged from $7,000 (the minimum required to match with FUTA) up to $42,100 in the state of Washington. California, Texas, Florida and Puerto Rico have UI tax bases of $7,000. Only 8 states (including Puerto Rico) have tax bases lower than $9,000. DC, Nebraska, Ohio, Pennsylvania, Tennessee, and Texas have $9,000 tax bases.[5] Contribution rates are typically lower in states with higher tax bases; however, the per-employee tax ranges significantly. For 2014, per-employee costs ranged from $0 at the minimum rates up to $3,279 at maximum rates. Ohio contributions per employee ranged from $27 at the minimum up to $774 at maximum.[6]

It should be noted that for 2015, although Ohio's state UI tax on total wages is comparatively low, the total cost associated with financing unemployment compensation includes the increased FUTA tax. ***If Ohio's Title XII debt was paid off so as to eliminate the FUTA offset credit reduction, the total amount being paid by Ohio employers would be cut significantly with the reduction in the FUTA tax rate.*** State UI tax rates and wage base would be at or below the rates and base of surrounding states.

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[4] Highlights of State Unemployment Compensation Laws 2015 published by the National Foundation for Unemployment Compensation and Workers' Compensation

[5] Highlights of State Unemployment Compensation Laws 2015 published by the National Foundation for Unemployment Compensation and Workers' Compensation

[6] Significant Measures of State Unemployment Insurance Tax Systems published by the US DOL Office of Unemployment Insurance, Division of Fiscal and Actuarial Services

Solvency Comparisons: State Trust Fund Levels

Each state has the responsibility to design a system of unemployment contributions and benefits that assures unemployment compensation is paid to unemployed individuals who meet requirements "when due." There are a number of policy points to consider in determining what a state solvency standard should be, including the following:

- Current balance and projected revenue
- Projected benefit outlays
- Amount needed to avoid borrowing to pay benefits during recessionary periods
    - Funds needed to withstand any recession
    - Funds needed to withstand the most common recent recessionary period
    - Funds needed to avoid borrowing from federal accounts or private financing
    - Funds needed to avoid triggering an additional FUTA tax

The higher the solvency standard, the larger the tax increases and/or benefit cuts needed to reach the solvency balance.

The primary U.S. Department of Labor (US DOL) solvency guidelines recommend that a state maintain a UI trust fund balance equal to or exceeding one and one-half times the **High Cost Model (HCM)** determined by taking the historically highest claims activity in the state for a year and multiplying by 1.5. The actuarial justification for this is that it provides a sufficient balance to withstand any recessionary period without borrowing from the federal government.

US DOL ultimately determined that the required trust fund balances for the 1.5 HCM standard were not realistically reachable by most states, including Ohio, because the size of tax increases and/or benefit cuts to reach the guideline would be too great.

US DOL developed a more reachable alternative called the 1.0 times **Average High Cost Model (AHCM)** that reviews claims over the most recent 20 years or last three recessionary periods and sets the solvency goal at the average of the three highest years of claims. This standard seeks to set a balance that is likely to withstand a reasonable foreseeable recession, but not an historic outlier recession. It results in a lower required balance but still is difficult for many states, particularly industrialized states, to reach within a short period.

A third option, **Ohio's Minimum Safe Level (MSL),** was developed in response to the recession of the early 1980s. The MSL sets the minimal solvency at an amount to cover a reasonably foreseeable recession without building up a trust fund balance that would only be needed for the historically deepest recession. When enacted, the MSL required a smaller trust fund balance than US DOL guidelines recommended, but results over time approach the AHCM balance requirements. The Ohio MSL also is more sensitive to short-term changes in benefit payout increases and contribution payments.

The Recession of 2008 was much greater than expected, wiping out positive unemployment trust fund balances across the country and in Ohio. Automatic tax trigger provisions in Ohio law designed to address a milder recession were insufficient to meet the increased benefit payout. The size of the deficit after the 2008 recession was too great to make up with benefit cuts or tax increases alone and even years after the recession, benefit payments each year continue to be nearly as high as unemployment contribution revenue.

Clearly there is a need for improved solvency before the next recession – not only to manage the repayment of Ohio's remaining Title XII loan balance but also to align benefit and contributions to build an adequate unemployment trust fund balance. The best solvency plan is one that also includes a focus on job creation because increased employment not only increases contributions but also reduces benefit payout. For that reason, rates also should be in line with surrounding states and states with which Ohio competes to attract and retain new business.

Issue to Consider: Benefit Provisions

Benefit payment amounts in Ohio are higher than the national average due to a number of factors, including the following:

- Automatic increases in maximum weekly benefit amount tied to the Statewide Average Weekly Wage
- Dependency provision that adds a significant additional amount, particularly for higher wage workers
- Potential number of weeks of unemployment compensation up to 26 weeks

Ohio's average weekly benefit amount, maximum weekly benefit amount, and potential number of weeks compared to surrounding and competing states demonstrate the differences that contributed to Ohio's high-benefit payments.[7]

	Avg. Weekly Benefit Amount	Max. Weekly Benefit Amount	Max. Number of Weeks
Ohio	339.55	572	26
Michigan	277.93	362	20
Pennsylvania	377.11	581	26
West Virginia	300.26	424	26
Kentucky	306.57	415	26
Indiana	256.25	390	26
North Carolina	233.69	350	12-20
South Carolina	255.19	326	20
Georgia	277.91	330	14-20

Additionally, specific benefit provisions that merit consideration as options for addressing UI solvency and better aligning benefit payments with contributions include the following:

- **Dependency.** Ohio is one of just 14 states that include dependency allowance as part of the determination of a claimant's weekly benefit amount. The provision is somewhat unique in that it provides an additional amount for claimants with dependents who have sufficient wages in relation to the statewide average weekly wage – but no additional benefit to the lowest-wage workers. Ohio's dependency provision has significantly increased benefit payout and increased the average weekly benefit amount compared to most of the surrounding and competing states.

  The unemployment insurance program is designed as a short-term partial wage replacement for the individual as the individual actively searches for work, is able to work and is available for work. ***It is not designed as a public assistance program providing household support.***

[7] U.S. Department of Labor UI Quarterly Data Summary

- **Maximum weekly benefit amount.** The formula used in Ohio to determine the maximum weekly benefit amount increases each year with the statewide average weekly wage. This automatic increase contributes significantly to insolvency. Thirty-three states provide for an increase in the maximum weekly benefit amount tied in some way to the average weekly wage; however, many of them modify the application of the increase when the state UI trust fund is below a certain level or when there are outstanding Title XII loans or other solvency concerns.

- **Number of potential weeks of unemployment compensation.** Since the Great Recession of 2008, a number of states have taken steps to reduce the maximum number of weeks of unemployment compensation provided under state law. Most states, including Ohio, currently pay benefits for a maximum of 26 weeks. Massachusetts pays up to 30 weeks and Montana provides for up to 28 weeks. Eight states have fewer than 26 maximum weeks of benefits.

  A new policy direction was developed in Florida and adopted in Georgia and North Carolina to set the maximum of number of weeks of benefits in relation to the state's unemployment rate. This is based on the premise that individuals who become unemployed when unemployment rates are down are most likely to find employment in a shorter period of time than when unemployment rates are high.

  The average duration of unemployment compensation in Ohio as of the first quarter of 2015 was 14.9 weeks, even though the maximum number potentially available was 26 weeks. ***For most claimants in Ohio, a reduction in the potential number of weeks below 26 would not impact the availability of benefits during the period of unemployment between jobs.***

- **Workforce attachment.** Current Ohio law requires employers to report employee wages with respect to a quarter and the number of weeks during the quarter for which the individual earned or was paid wages. This requirement can inadvertently result in situations where short-term "cyclical" employment results in higher weekly benefit amounts and/or more weeks of benefits than the individual actually worked. Adding a requirement that base period wages be paid with respect to three quarters within the base period would reduce the number of claimants affected as they would have a longer period of time during which to demonstrate workforce attachment in at least three calendar quarters.

- **Waiting week.** One of the common features of state unemployment insurance law is the "waiting week" at the beginning of a benefit year before an individual may be paid unemployment compensation for a week claimed. The first week of unemployment compensation claimed that is compensable generally serves as the waiting week.

  The policy behind the waiting week is that unemployment insurance is designed as a ***temporary partial wage replacement***. As individuals become unemployed, they typically receive their last payroll check and accrued sick leave, vacation leave and separation pay for the weeks after leaving employment. Unemployment compensation payments are not needed to replace wages until after the last payment of wages is received.

  Forty-four states require a waiting week, and North Carolina has imposed an administrative waiting week any time there is a break in the claims series within the benefit year. The North Carolina Department of Commerce reports that this provision has been shown to be effective in battling identity theft and avoiding the overpayment of multiple weeks of benefits.

- **Labor dispute disqualifications.** All states and jurisdictions have provisions that provide for disqualification from unemployment compensation if an individual becomes unemployed due to a labor dispute in which the individual participates and the dispute is in progress. Some states have provisions such that if the employer takes the initiative to physically lock out employees so that they are not permitted to work even though they make themselves available, there may be an ongoing labor dispute but it may not be the cause of the unemployment.

  A small number of states, including Ohio, have statutory provisions and/or case law requiring that individuals who are "constructively" locked out may not be denied unemployment compensation due to the labor dispute. The determination of whether individual claimants (often represented by unions) are willing to return to work pending the results of contract negotiations and/or whether the employer has or has not permanently replaced workers due to the labor dispute can be difficult. An amendment removing the specific lock out exception in the current statute would bring Ohio into line with the majority of states on this issue.

- **Deductible income.** Because unemployment compensation is a temporary partial wage replacement program, if the claimant receives other income or wage replacement payments with respect to the same week or weeks claimed, most states provide for the reduction or denial of unemployment compensation taking those other payments into consideration. For example, an individual who is laid off for lack of work, becomes unemployed and files a claim for benefits may receive accumulated separation pay, vacation pay, holiday pay or other sources of payments in the week or weeks after becoming unemployed. States typically reduce unemployment compensation for such payments that are attributable to a week claimed.

  States have adopted more rigorous requirements that such payments must be allocated to ensuing weeks of unemployment compensation. This policy approach reduces benefit payout without jeopardizing the purpose of the UI program to provide temporary partial wage replacement as the individual searches for work. It also increases the incentive to actively seek work immediately after becoming unemployed.

- **Social security and workers' compensation disability and cash payments.** Federal law enacted effective in 1980 required the amount of unemployment compensation payable to an individual based on a specific period of time also used to determine social security or other similar periodic retirement benefits paid to the same individual must be reduced by the amount of those payments. The law was later amended in such a way that virtually no state today reduces unemployment compensation dollar for dollar for social security retirement payments.

  The reduction of unemployment compensation in light of social security benefit payments is consistent with the UI program goal to provide temporary partial wage replacement for individuals who become unemployed. Individuals who receive unemployment compensation and social security and potentially other sources of wage replacement payments are less likely to return to work and more likely to exhaust unemployment compensation, increasing costs to the trust fund.

  Similarly, cash payments from workers' compensation awards for the same week that unemployment compensation is claimed result in individuals receiving nearly as much, if not more, in combined cash payments when they are not working as when they are working. Individuals who are totally disabled under Social Security Disability Insurance or Workers' Compensation generally are by definition not able to work and should not be eligible for unemployment compensation as it requires that a claimant be able to work.

Program Integrity Measures

The following "able, available and actively seeking work requirement" issues merit consideration as options for strengthening UI program integrity:

- **Overpayments and collections.** Erroneous payment rates for unemployment compensation benefits in recent years have exceeded 10 percent nationally. One of the primary reasons for the increased overpayment rate is the US DOL performance measure that states are expected on average to make 87 percent of benefit payments within 14 days after a compensable week. This measure drives states to make payments within this time frame even when there may be a need for additional fact finding. It also causes employers to rush to respond to requests for information in a short time frame and provide what they can but choose to appeal more negative decisions to the next level. In other instances, states are forced to write off uncollected amounts prematurely.

  Many states, including Ohio, have statutory provisions that automatically write off overpayments after specified periods and limit fraud prosecutions. Ohio law currently automatically writes off as uncollectable any non-fraud overpayment amounts after three years. This is among the group of states with the shortest period of time for write off. Ohio law also currently requires prosecution of unemployment compensation fraud within six years after an administrative determination of fraud.

  A better approach is to repeal artificial statutory time frames in favor of best collection and prosecution practices and not to automatically write off amounts that have not yet been collected. If an individual has an outstanding overpayment amount due and can be located for collection, the outstanding overpayment amount should not be written off. Likewise, prosecutions should not be limited in proceeding within an artificial time frame.

- **Disqualifications.** Once a claimant has established benefit rights by meeting the monetary and workforce attachment provisions the claimant must also be determined to have become unemployed through no fault of his her own in connection with the work. The definition of "fault" or "misconduct" varies in each state but generally falls within the broad description of misconduct in connection with work. States typically refer to these determinations as nonmonetary disqualifications. An individual who quit work without just or good cause or was discharged for just or good cause by an employer is disqualified from eligibility to be paid unemployment compensation. However, if the individual subsequently works in covered employment for a period determined by the state and becomes unemployed through no fault of his or her own, the initial disqualification may be removed so the individual may claim and be paid benefits.

  The period required and/or the amount of subsequent wages in these so called "duration" suspensions varies from state to state. In 2015, requirements ranged generally from 3 to 10 weeks of wages and/or work subsequent to the non-disqualifying separation for the individual to once again become eligible to claim benefits if the individual became unemployed.

  Ohio currently requires that an individual work at least six weeks and have earnings equal to or greater than six times 27.5 percent of the statewide average weekly wage. This formula was determined as a way to assure that the employment was sufficient to establish a meaningful workforce attachment before the individual may become eligible after a disqualification to be paid benefits. Ohio may consider increasing the duration suspension removal requirements as a solvency and integrity measure.

- **Work search requirement.** Individuals must be actively searching for work as a condition of being eligible to be paid unemployment compensation. States set minimum work search requirements for claimants based on their individual circumstances if they have a specified return-to-work date, are referred to work through a hiring hall, or are indefinitely unemployed and required to conduct a broader search.

  Individuals with return-to-work dates from an employer are typically required to be available to return to work to that employer while they are unemployed. Likewise, unemployed workers required by agreement to be available to work through a hiring hall are required to meet the terms of referral through the hall. Others are required to seek work more broadly and to make a number of contacts with employers ranging from 2 to 5 contacts per week at a minimum. Individuals also may not refuse offers of suitable work, and refusal of a bona fide offer of work is grounds for disqualification.

  There are two policy points of significance in administering work search requirements: (1) the work for which the individual must search and be available to accept, and (2) the terms and conditions of the work, including pay, distance to travel to work, etc. Reemployment of claimants improves when work-search requirements are clearly stated, enforced and meet the needs of the claimants in effectively seeking work. The requirements also should be verifiable for purposes of proper claims administration.

- **Drug testing.** Individuals are required to be able to work and available for work as a condition of being paid unemployment compensation and may not be eligible to be paid if they are using illegal drugs so as to render themselves unavailable or unable to work. In the Middle Class Tax Relief and Job Creation Act of 2012, Congress recognized that under certain circumstances state unemployment insurance agencies may require drug tests and disqualify individuals who test positive for the presence of controlled substances. The authority is limited, however, to circumstances in which the individual was separated from employment due to a drug test or the only job for which the individual is suitable is one which requires that the individual must pass a specified drug test (e.g., truck drivers required to have commercial drivers' licenses).

  It is permissible for a state to inquire of an individual if the individual became unemployed due to failing to pass a drug test, and there is some value in having such a provision to encourage unemployed workers to choose not to use drugs and to disqualify them from benefits if they continue to do so. There is also value in the development of reemployment plans for claimants to be aware that there may be a barrier to employment to be addressed and to assist the claimant through referral to other programs that may provide treatment for drug dependency.

  In evaluating drug testing programs, it should be noted that no additional federal administrative funds were provided along with the authority to test under certain circumstances. A review of the benefits and costs should be conducted in determining the scale and scope of such a program. In administration of drug tests, the agency should be careful not to interfere with drug testing on behalf of the employer.

Contributions and Tax Provisions

Employers in Ohio are currently paying more than employers in most states in total costs associated with unemployment compensation. Because Ohio to date has chosen not to address insolvency through benefit cuts and/or increases in state unemployment contributions, the cost driver has been the automatic increases in the FUTA tax rates.

For 2015, employers in Ohio are likely to pay the second-highest FUTA tax rate in the country, second only to Connecticut. Assuming Ohio qualifies for a waiver of the Benefit Cost Rate Add-on, the 2015 FUTA tax rate is likely to be 2.1 percent on the FUTA $7,000 tax base, for a per-employee cost of approximately $147. The normal FUTA cost per employee is only $42.

This increased FUTA tax puts Ohio at a disadvantage with other states that have paid off their federal loan debt and adopted solvency measures to keep state unemployment contributions down as well.

A vital first step for Ohio should be to pay off of the remaining Title XII loan to eliminate the FUTA tax increase as soon as possible. The fact that additional revenue from the FUTA tax increase will be deposited into the unemployment trust fund should enable the state to pay off the remaining balance in 2017, assuming that the country does not slip back into an economic downturn.

Ohio's state unemployment tax burden in 2015 is slightly below the national average and surrounding states. Although the combination of the FUTA tax and the state unemployment tax results in high total costs in 2015 and 2016, as the additional FUTA tax burden is removed with the repayment of the Title XII loan in 2017, there will be an opportunity to address additional state UI tax revenue along with a package of benefit cuts and reforms designed to improve the positive balance and align benefit payout with state unemployment tax revenue.

Through carefully crafted legislation and fund management, Ohio can make the transition over the next three years from a high-benefit, high-cost state to one with competitive tax rates while maintaining benefits at appropriate levels.

Other tax and contribution provisions that merit consideration for change include the following:

- **Tax base.** Ohio's state unemployment tax base of $9,000 in 2015 is below the national average and below or equal to the base in surrounding states. A tax base increase could be part of a long-term solvency package for Ohio without significantly increasing total costs if it were increased the year after the FUTA tax returned to the normal rate.
- **Contribution rate schedule.** Ohio's contribution rate schedule is fairly sensitive to changes in its experience rating. Although there continue to be a number of maximum-rated employers, due to legislation enacted after the Great Recession the amount of benefits effectively non-charged has been reduced and compares favorably with other states.
- **Mutualized tax and account.** Decades ago, Ohio enacted a mutualized tax and established a mutualized account. The purpose of the account was to keep track of the list of items that are not chargeable to individual employer accounts but are nonetheless obligations of the unemployment benefit account for the state. The tax is set at 0.0 percent to 0.5 percent on the tax base as necessary to generate revenue to cover these charges to the account.

  In recent years, because FUTA tax revenue has been credited to the account and benefit charges have reduced claims, the account has accumulated a significant positive balance so that the mutualized tax is now 0.0 percent.

  As a matter of policy, it is more consistent with experience rating to charge and credit individual employer accounts with benefit charges and contributions. Consideration should be given to modifying the crediting of MSL tax revenue currently credited in part to the mutualized account to instead be credited to individual employer accounts. This

will provide a greater benefit to employers with positive experience rates without jeopardizing the continuation of the 0.0 percent mutualized tax.

- **Minimum Safe Level surtaxes and reductions.** Current law in Ohio provides for a series of triggered additional taxes when the state unemployment trust fund is below the minimum safe level and reductions when it exceeds the minimum safe level. Because Ohio's unemployment trust fund balance has been negative for many years, the Minimum Safe Level (MSL) surtax has been computed each year based on the trust fund being 60 percent or more below the MSL. As the trust fund balance becomes positive and increases to a level above this mark, state unemployment contributions will be reduced.

  The US DOL recommended solvency guidelines would require Ohio to dramatically increase contributions and/or slash benefits. Contribution increases to achieve these levels would place Ohio at a disadvantage with other states in keeping and attracting new business. A realistically reachable MSL would enable the state to better manage the trust fund within an environment that recognizes the need for a significant balance in the trust fund and includes solvency measures that may reach the goals being set.

  Projections of the effect of changes in the MSL, the MSL surtax, and the Mutualized Tax would be helpful in evaluating the appropriate solvency measures. As part of the review, attention also should be given to whether solvency measures may be enacted on a temporary basis until the MSL is reached and/or whether some measures should be permanent features to improve long-term solvency.

- **New employer rate.** One of the items considered by states in reforming their state unemployment tax provisions is the contribution rate assigned to new employers who have not had sufficient time to qualify for a computed experience rate .

  Many states, including Ohio, have a different new employer rate for employers in the construction industry and others. The reasoning for the difference is that employers in the construction industry typically have higher rates due to the cyclical nature of the business and there is concern that out-of-state construction companies would be given an advantage over in-state businesses if they were assigned a new employer rate lower than the average of construction industry employers in the state.

  Other than contribution rates for the construction industry, new employer rates vary by state depending on state policy and the contribution rates being paid by existing employers as some guidance. In Ohio, new employers, excluding construction, are assigned a rate of 2.7 percent.

  Federal law recognizes the need for new employer rates and permits states to adopt new employer rate as low as 1.0 percent. States seeking to more aggressively attract new employers have adopted rates as low as 1.0 percent.

  A lower new employer rate may be helpful in attracting new business, which grows the economy and increases the state tax base and state tax revenues. Reducing Ohio's new employer rate from 2.7 percent to 1.0 percent could result in a minor reduction in revenue if a new business would have located in Ohio anyway, or if it ceases operation shortly after starting up.

- **Employee contributions.** The Federal/State Unemployment Insurance system was established as a system which depended on employer contributions as the source of funding for unemployment compensation to be paid by the states. A federal/state system was chosen over a national system because some states already had systems in place

and there was opposition to an additional federally mandated requirement. Instead, the unemployment insurance system was devised to impose a federal unemployment tax but to provide for a significant offset credit against the federal tax to be paid by employers in states meeting minimum federal requirements. Experience rating was added to the system as a way to encourage management of state unemployment claims and to distribute the cost of unemployment compensation to employers based on claims experience.

As unemployment trust fund accounts have been impacted by swings in claims load and recessions, states have chosen to add other sources of revenue to bolster state unemployment trust fund account balances and improve solvency on a permanent or temporary basis. Employee contribution provisions have been adopted in New Jersey, Pennsylvania and Alaska. In each state the amount of the employee contributions differs based on the individual state trust fund solvency and/or ongoing support for benefit levels. Employee contributions can add significantly to revenue for UI trust funds. Employee contributions reduce the net wages provided to all employees but are typically cited as justification for higher weekly benefit amounts for those who file for unemployment compensation. They are not included as contributions in the calculation of employer unemployment experience rates because they are not based on unemployment compensation claims experience.

Conclusion

Ohio faces an urgent need to explore options for reforming the state's unemployment insurance system so that it better meets the needs of employers, unemployed workers and the state's economic development and job creation and retention efforts. Currently, Ohio ranks poorly on many important unemployment insurance program metrics. For example:

- Ohio's Unemployment Insurance Trust Fund is insolvent.
- Ohio's outstanding Title XII debt is approximately $775 million – nearly equal to the cost of unemployment insurance benefit payments for an entire year. Only California has a larger unpaid Title XII loan debt balance.
- Ohio is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures.
- Employers in Ohio currently pay higher total costs associated with unemployment compensation than employers in most other states, while benefit payment amounts in Ohio are higher than the national average. This makes Ohio a high-cost, high-benefit state.
- The FUTA tax paid by Ohio employers has continued to increase as Ohio's Title XII loan has not been repaid.
- Ohio is one of just four states currently subject to higher FUTA penalty rates and potentially subject to an additional Benefit Cost Rate (BCR) penalty in 2015 for having outstanding loan balances five years in a row and failing to address insolvency.
- Ohio failed to pay off the state's outstanding FUTA debt before November 10, 2015, triggering an additional reduction in the FUTA offset credit for employers in Ohio. This will result in Ohio employers paying higher FUTA taxes for 2015 – at least an additional $105 per employee, on top of the normal $42 per employee.

- Ohio's Unemployment Insurance Trust Fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal loan balance and better align benefits with contributions to build a balance in anticipation of the next recession.

UI policy reform priorities should focus on eliminating the state's current unemployment trust fund debt, aligning benefit payout with contribution revenue, and building a balance in the unemployment trust fund sufficient to avoid triggering automatic FUTA tax increases that have significantly increased unemployment taxes for Ohio employers since the Great Recession of 2008. A vital first step for Ohio should be to pay off of the remaining Title XII loan balance to eliminate the FUTA tax increase as soon as possible.

# # #

See Appendix on next page.

APPENDIX

Ohio UI Trust Fund Balance –Twelve Months Ending 4th Quarter

The following chart of end-of-year Ohio Unemployment Insurance Trust Fund balances illustrates the impact of the Great Recession on the fund's solvency:

Year	Trust Fund Balance (thousands)	Contributions (thousands)	Benefits (thousands)
2006	499,580	1,115,312	1,177,610
2007	444,530	1,096,249	1,206,524
2008	63,121	1,093,657	1,586,561
2009	35,395 Loan Balance: 1,727,938	1,106,204	3,164,940
2010	104,059 Loan Balance: 2,314,187	1,254,698	2,167,459
2011	39,981 Loan Balance: 2,078,387	1,535,736	1,725,694
2012	21,477 Loan Balance: 1,739,094	1,451,064	1,417,137
2013	51,016 Loan Balance: 1,552,346	1,197,653	1,194,420
2014	345,479 Loan Balance: 1,378,734	1,183,458	1,037,075
2015	590,517 Loan Balance: 978,459	1,161,293	983,430

Source: United States Department of Labor Quarterly Data Summary for the 4th quarter of 2014 and 2nd quarter of 2015

Outstanding Loans from the Federal Unemployment Account

Balances as of November 3, 2015

As of November 3, 2015, the only states with remaining Title XII loan debt, which triggers higher unemployment tax rates and possible additional penalties, included the following:

California $6,128,378,020.63

Ohio $774,834,855.39

Connecticut $101,716,619.13

Virgin Islands $72,190,452.23

These states are not likely to recover solvency until they pay off their outstanding federal loan balances.

Source: United States Department of Labor UI Trust Fund Loan Status

The Case for Unemployment Insurance Reform in Ohio

EXECUTIVE SUMMARY

Introduction

Ohio's unemployment insurance (UI) system is in a state of crisis. The Ohio Unemployment Insurance Trust Fund, which is funded by employers and pays out benefits to qualifying jobless workers, is insolvent. The benefits the system pays out are substantially out of balance with the tax receipts it takes in to fund it. The system is nearly $775 million in debt to the federal government – money it borrowed to keep paying benefits during and after the Great Recession of 2008. As a result, Ohio's system is dangerously unstable and a deterrent to economic development. Reforms are urgently needed to update and strengthen Ohio's UI program for the benefit of Ohio's employers, employees and economy. Most specifically, Ohio's Unemployment Insurance Trust Fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal unemployment compensation loan balance and better aligns benefits with contributions to build a balance.

How the System Works[1]

The Social Security Act of 1935 (SSA) created a federal-state unemployment insurance program to (a) provide temporary, partial wage replacement to individuals out of work, generally through no fault of their own, and (2) promote economic stability by maintaining a steady flow of dollars throughout the economy even when there is widespread unemployment.[2] The UI system historically has been forward funded – i.e., a sufficient positive balance is needed in the state unemployment trust fund to avoid having to borrow to pay benefits resulting from a reasonably foreseeable economic downturn.

To be eligible for unemployment benefits, jobless workers must demonstrate "workforce attachment," usually measured by a work requirement (e.g., number of weeks of work) and/or a wage requirement (e.g., dollar amount of wages earned). Individuals also must be able, available and actively seeking work. Each state has a different formula for determining the amount of workforce attachment needed to obtain UI benefits from the state.

The UI program is a federal-state partnership conforming to federal requirements and administered by state agencies under state law. The Office of Unemployment Insurance Operations at the Ohio Department of Job and Family Services (ODJFS) administers Ohio's UI program. Administrative funds for ODJFS are allocated by the federal government from federal payroll taxes employers pay to the Internal Revenue Service.

[1] This section of the document borrows heavily from a U.S. Department of Labor publication, *Unemployment Compensation: Federal-State Partnership,* April 2015.
[2] http://www.bizfilings.com/toolkit/sbg/office-hr/managing-the-workplace/unemployment-benefits-system-info.aspx

Financing the Program

Unemployment compensation paid to unemployed workers is financed largely through both federal and state unemployment taxes paid by employers. Just three states – Alaska, New Jersey and Pennsylvania – collect UI taxes from employees.

UI taxes are based on various factors, including the wages employers pay their employees, the type and size of the business, and the number and amount of unemployment claims filed against the business.

- At the federal level, the Federal Unemployment Tax Act (FUTA) imposes a single flat rate payroll tax on the first $7,000 of wages employers pay each employee in a year. The current FUTA tax rate is 6.0 percent. However, employers can earn credits against their FUTA tax to reflect the state employment taxes they pay. Employers who pay their State Unemployment Tax Act (SUTA) taxes in a timely manner under an approved state unemployment compensation program can earn a credit of up to 5.4 percent against the 6.0 percent, resulting in an effective tax rate of 0.6 percent. These states are also eligible to receive federal grants to cover the costs of administering the program through federal appropriations. Additionally, funds from the FUTA-funded Federal Unemployment Account reimburse the state unemployment trust fund for 50 percent of charges for "extended" unemployment benefits when extended benefits are triggered by periods of high unemployment.

- At the state level, each state determines its own SUTA tax rates. Some states apply various formulas to determine the taxable wage base; others use a percentage of the state's average annual wage; and a few simply follow the FUTA wage base of $7,000. In 2014, SUTA tax rates ranged from 0.0 percent to 2.6 percent for minimum rates, and from 5.4 percent to 10.89 percent for maximum rates. All but a handful of states' wage bases exceeded the FUTA minimum requirement of $7,000. In 2014, Ohio's SUTA base was $9,000, with a minimum contribution rate of 0.3 percent and a maximum contribution rate of 8.60 percent.

The state assigns or computes a specific individually determined UI tax rate for each employer annually. Every state uses some kind of "experience rating" system to determine the rate. Generally, the fewer the claims, the lower the rate the business pays in state UI taxes.

States lacking sufficient funds to pay their required unemployment benefits are authorized by Title XII of the SSA to request advances (i.e., loans) from the FUTA's federal loan fund account, the Federal Unemployment Account. If not repaid, these loans carry interest that must be paid from sources other than the state UI trust fund.

Impact of the Great Recession

The Great Recession of 2008 was the nation's longest and deepest since the Great Depression of the 1930s. A majority of states did not have sufficient balances in their state unemployment trust funds to pay benefits without requesting advances (i.e., loans) from the federal government to assure that unemployment compensation benefits were paid. Ohio was among the states hardest hit by the recession.

The Recession was much greater than expected, wiping out positive unemployment trust fund balances across the country and in Ohio. Automatic tax trigger provisions in Ohio law designed

to address a milder recession were insufficient to meet the increased benefit payout. The size of the deficit after the Recession was too great to make up with benefit cuts or tax increases alone and even years after the Recession, benefit payments each year continue to be nearly as high as unemployment contribution revenue.

The unemployment insurance tax burden in Ohio generally increased as a result of the Recession as claims experience increased, the payroll against which experience was determined was reduced, and Ohio became subject to the FUTA offset credit reductions under federal law. As the economy slowly recovered with increased payrolls and reduced claims experience, experience rates improved and the average state unemployment insurance contribution was reduced. ***However, the FUTA tax has continued to increase as Ohio's Title XII loan has not been repaid.***

The impact in Ohio has been severe. Ohio's unemployment trust fund balance has been a negative number as of the end of the second quarter every year since 2009. ***Today, the Ohio Unemployment Insurance Trust Fund is insolvent.***

Responses to Insolvency

In response to the threat of insolvency, states have taken various actions to bolster tax revenue and reduce benefit outlay, including the following:

- Eliminating outstanding loan debt to the federal government by obtaining bank loans and/or using bonds to finance the debt through the private sector
- Enacting solvency legislation with a combination of benefit cuts and tax increases to eliminate Title XII debt and better align benefit costs with revenue over the long term
- Reducing the number of potential weeks of unemployment compensation
- Increasing tax bases
- Revising contribution rate schedules
- Reducing maximum weekly benefit amounts
- Enacting more aggressive integrity measures to identify and collect additional revenue through benefit overpayment recovery and contribution collection improvements

Ohio, however, is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures, instead allowing automatic FUTA penalties to continue to increase to provide the revenue needed to reduce the state's outstanding debt.

This is a dangerous path to follow. Failure to pay off a state's outstanding FUTA debt has costly consequences. Under federal law, if a state has an outstanding Title XII loan balance on January 1 for two consecutive years, and the full amount of the loan is not repaid by November 10 of the second year, the 5.4 percent FUTA tax credit for employers in that state will be reduced annually by 0.3 percent for each succeeding year until the loan is repaid. From the third year onward, additional reductions in the FUTA offset credit may be imposed. States that continue to have outstanding loan balances over five years in a row are subject to an even greater FUTA tax increase as a penalty for not having addressed solvency through increases in taxes and/or cuts in benefits.

Why Ohio Needs Unemployment Insurance Reform

Currently, Ohio ranks poorly on many important unemployment insurance program metrics. For example:

- Ohio's Unemployment Insurance Trust Fund is insolvent.
- Ohio's outstanding Title XII debt is approximately $775 million – nearly equal to the cost of unemployment insurance benefit payments for an entire year. Only California has a larger unpaid Title XII loan debt balance.
- Ohio is one of a small number of states with significant outstanding federal debt that have chosen not to enact solvency measures.
- Employers in Ohio currently pay higher total costs associated with unemployment compensation than employers in most other states, while benefit payment amounts in Ohio are higher than the national average. This makes Ohio a high-cost, high-benefit state.
- The FUTA tax paid by Ohio employers has continued to increase as Ohio's Title XII loan has not been repaid.
- Ohio is one of just four states currently subject to higher FUTA penalty rates and potentially subject to an additional Benefit Cost Rate (BCR) penalty in 2015 for having outstanding loan balances five years in a row and failing to address insolvency.
- Ohio failed to pay off the state's outstanding FUTA debt before November 10, 2015, triggering an additional reduction in the FUTA offset credit for employers in Ohio. This will result in Ohio employers paying higher FUTA taxes for 2015 – at least an additional $105 per employee, on top of the normal $42 per employee.

Ohio's UI trust fund is not likely to recover solvency before the next recession unless the state takes action to pay off its outstanding federal loan balance and better align benefits with contributions to build a balance in anticipation of the next recession.

Conclusion

Ohio's Unemployment Insurance Trust Fund must be made solvent before the next recession – not only to manage the repayment of Ohio's remaining Title XII loan balance but also to align benefit and contributions to build an adequate unemployment trust fund balance. The best solvency plan is one that also includes a focus on job creation because increased employment not only increases contributions but also reduces benefit payout. For that reason, rates also should be in line with surrounding states and states with which Ohio competes to attract and retain new business.

Unemployment insurance policy reform priorities should focus on eliminating the state's current unemployment trust fund debt, aligning benefit payout with contribution revenue, and building a balance in the unemployment trust fund sufficient to avoid triggering automatic FUTA tax increases that have significantly increased unemployment taxes for Ohio employers since the Great Recession of 2008. A vital first step for Ohio should be to pay off of the remaining Title XII loan balance to eliminate the FUTA tax increase as soon as possible.

# # #

Ohio Unemployment Insurance Reform Bill (H.B. 394)
As Introduced by Rep. Barbara Sears

ANALYSIS OF PRIMARY PROVISIONS

Introduction[1]

Representative Barbara Sears recently introduced legislation, House Bill 394 (HB 394), to reform Ohio's Unemployment Insurance (UI) law and address the solvency of the Ohio Unemployment Insurance Trust Fund. The bill includes a number of unemployment tax, benefit and integrity provisions that taken together will improve the solvency of the fund and build a significant positive balance, over time, sufficient to avoid the state being subject to increased federal provisions, taxes and penalties.

The following analysis refers to primary provisions of the bill as introduced on Nov. 9, 2015.

ISSUE: Relationship Between Workers' Compensation, Social Security Disability and Unemployment Compensation

In many states, individuals determined to be disabled for purposes of workers' compensation and/or social security disability (SSDI) are also deemed not able to work for purposes of unemployment compensation. This may result in a denial of unemployment compensation and/or a reduction of the amount of unemployment compensation based on workers' compensation or SSDI payments received for the duration of unemployment compensation.

Current Ohio law provides that when an employee is awarded compensation of temporary total disability for a period for which he or she has received unemployment compensation, the Ohio Bureau of Workers' Compensation shall pay an amount equal to the amount received from the award to the Director of the Ohio Department of Job and Family Services to the credit of the employers whose accounts the unemployment compensation benefits were charged or are chargeable. This provision is intended to make employers whole for amounts paid in unemployment compensation for which the individual also received a temporary total disability award.

Administration of this provision, however, is difficult – specifically, matching award time frames with weeks of unemployment compensation paid and also in allocating award amounts to multiple base-period employers.

[1] In this document, FUTA = Federal Unemployment Tax Act; SUTA = State Unemployment Tax Act; and UI Trust Fund = Ohio Unemployment Insurance Trust Fund.

Current law also provides that unemployment compensation is to be reduced for any week for compensation for wage loss under workers' compensation law when an individual returns to work, after an injury, to a job that pays less than he or she was paid prior to injury.

- **PROVISION:** Under HB 394, no individual would be paid unemployment compensation for any week for which he or she received workers' compensation benefits under specific sections of Ohio law other than compensation for permanent partial disability for a work-related injury or illness. Additionally, the bill would delete the existing reduction in unemployment compensation for workers' compensation payments received for wage loss for individuals who return to work, after injury, to a job that pays less than he or she was paid prior to injury. HB 394 also would provide that unemployment compensation not be paid for a week for which the individual also receives SSDI benefit payment.

- **IMPACT:** HB 394 will eliminate double payment of wage replacement to individuals who have been determined not able to work, thereby reducing cost for the Trust Fund.

ISSUE: Requirement That Individuals Have Some Employment in Three Quarters to Qualify

Current law requires an individual to have had employment that includes at least 20 qualifying weeks and a minimum dollar amount in base period earnings to establish unemployment compensation benefit rights. The required base period earnings increase in relation to the statewide average weekly wage; however, there is no requirement that the individual have worked in multiple quarters during the base period, and the definition of "qualifying week" includes any week for which an individual earned or was paid any amount. This definition minimizes the period of employment needed to qualify for benefits.

Many states combine an earnings or base period wage requirement with a requirement that individuals have a significant attachment to the workforce with employment in multiple quarters of the base period.

- **PROVISION:** HB 394 would add a requirement that an individual earned remuneration in at least three calendar quarters in his or her base period.

- **IMPACT:** This additional requirement will ensure a meaningful workforce attachment as part of the determination of whether an individual qualifies to establish a benefit year, thereby helping to improve the solvency of the UI Trust Fund.

ISSUE: New Employer Tax Rate

Current law provides that an employer with insufficient experience shall be assigned a new employer rate of 2.7 percent or, if an employer in the construction industry, a rate of 2.7 percent or the average rate for employers in the construction industry, whichever is greater. This differential for the construction industry is common among states as a way to protect state-based construction companies that may be placed at a disadvantage with out-of-state companies seeking work in the state.

Federal law permits states to enact a new employer rate of as low as 1.0 percent, and some states have adopted the 1.0 percent rate as a way to attract new business to the state.

- **PROVISION:** HB 394 provides for a 1.0 percent new employer rate for employers other than those in the construction industry – but only once the state has reached the Minimum Safe Level (MSL) balance for the UI Trust Fund. The purpose of this limitation is to ensure that the UI Trust Fund does not lose the additional revenue from new employers until it is at or above the MSL.

- **IMPACT:** A lower 1.0 percent new employer rate will attract more business to Ohio and over the long term may increase revenue through increased taxable payroll.

ISSUE: Trust Fund Solvency – Minimum Safe Level

The U.S. Department of Labor recommends but does not require that states maintain a positive UI trust fund balance of 1.0 Average High Cost Model (AHCM), which is based on a review of claims over the most recent 20 years or last three recessionary periods and sets the solvency goal at the average of the three highest years of claims. This standard seeks to withstand a reasonable recession but not an historic deep recession.

Ohio and many other industrialized states are not able to compile a positive balance of 1.0 AHCM without significant increases in taxes and/or reductions in benefits. States adjoining Ohio and with which Ohio competes for business typically do not maintain such a high balance and are not likely to take measures that will achieve this level of funding.

State unemployment trust funds are maintained as part of the federal unified budget and may be relied upon as the basis for new spending unrelated to state unemployment compensation. Although there is a need to build a significant balance in preparation for the next recession, building excessive balances through state UI tax increases takes money away from investment by employers to create jobs.

- **PROVISION:** HB 394 would modify the definition of the MSL using the U.S. Department of Labor guideline that recommends a positive UI Trust Fund balance of 1.0 AHCM. HB 394 recognizes the need to avoid excess UI Trust Fund balances and provides for the automatic reduction in the tax base once the Minimum Safe Level (MSL) is reached.

- **IMPACT:** Adoption of the 1.0 AHCM sets a financing goal that will be recognized as sound by the U.S. Department of Labor and position Ohio to potentially qualify for interest-free federal cash-flow loans if Ohio's UI Trust Fund balance dips and there is a need for short-term financing.

ISSUE: State Unemployment Tax Base Increase Effective After the FUTA Tax Reduction

Ohio's current $9,000 UI tax base is lower than the national average and slightly lower than most surrounding states and states with which Ohio competes. A temporary increase to $11,000 would increase the state unemployment tax burden for Ohio employers but remain comparable to other states, some of which are relying on bonds financed with employer debt service payments or have recently increased tax bases themselves to address solvency. As long as the effective date of the temporary tax base increase is coordinated with the reduction in the FUTA rate, Ohio employers will not be placed at a competitive disadvantage with employers in other states, and the state unemployment tax burden on average will gradually increase until the UI Trust Fund reaches the Minimum Safe Level (MSL).

Ohio Department of Job and Family Services projections indicate that the additional FUTA revenue in 2016 and 2017, along with an improved economy, should be sufficient to retire Ohio's outstanding loan amount.

- **PROVISION:** HB 394 would increase the state unemployment insurance tax base from $9,000 to $11,000 to be effective when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model (AHCM) solvency level and continues the increase until the UI Trust Fund reaches 1.0 AHCM. The first year for the tax increase is projected to begin January 1, 2018. The proposed state tax base increase would be reduced back to $9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the $11,000 level.

- **IMPACT:** The timing of the proposed temporary increase should avoid employers from paying the significantly higher FUTA taxes for the same period that higher SUTA taxes are imposed, thereby reducing the bottom-line cost increase related to unemployment compensation. This bill's "automatic solvency feature" will increase revenue earlier in the economic cycle when there are signs of recession and before the UI Trust Fund dips below zero balance.

ISSUE: Waiting Week

Individuals who otherwise qualify to establish a benefit year within which to claim unemployment compensation are required under current law to serve the first week claimed as a non-compensable "waiting week." This is common among nearly all states. There also is a waiting week requirement as a condition of receiving a 50 percent reimbursement from federal accounts for regular extended benefits that may be triggered during an economic downturn.

States have begun to consider the imposition of a waiting week not only for the first week claimed but also later in the benefit year when there may be a break in the continued claim series. Individuals typically continue to claim weeks of unemployment compensation, and a break in the claims series is often indicative of the individual going back to school, returning to work or choosing to discontinue claiming because of offsets from other sources.

- **PROVISION:** HB 394 would require a waiting week after employment during a week in the benefit year for which the individual was paid more than the amount that would be paid for total unemployment compensation. Individuals who take part time work for which they are paid amounts less than the total weekly benefit amount would not be affected in continuing to file partial unemployment claims.

- **IMPACT:** The bill would improve UI Trust Fund solvency and ensure that individuals who return to work and subsequently become unemployed serve an additional waiting week before being paid unemployment compensation.

ISSUE: Labor Disputes

Individuals who participate in labor disputes in which they withhold their labor pending the outcome of a dispute with their employer are generally disqualified from unemployment compensation because they have voluntarily made themselves unavailable for work. The labor

dispute disqualification typically is applied for any weeks for which the unemployment of the individual is due to the labor dispute.

Ohio is among a small number of states in which statute and case law provide a constructive "lock out" exception. Case law in Ohio has created the theory of constructive lockout in which courts review the negotiations between employers and unions to determine which party took steps to effectively cause the unemployment. For example: Did the employer insist on its final proposal and notify employees that they were permanently replaced? Did the union bargain in good faith and assure that bargaining unit members were at all times willing to return to work under the terms of employment pending final agreement?

- **PROVISION:** HB 394 would remove the specific "lock out" exception and special limitation language.

- **IMPACT:** This change would retain the general labor dispute provision that is common throughout the nation, bringing Ohio in line with the majority of other states.

ISSUE: Standard to Determine Just Cause for Termination and Quits Without Just Cause

Ohio Supreme Court case law has established the precedent that if (a) an individual is not suitable for a position because the individual did not perform the work required, (b) the employer made known the employer's expectations at the time of hiring, and (c) the expectations were reasonable and did not change since hiring, the individual is at fault and may be discharged for just cause and disqualified from benefits. This standard is not well known, resulting in inconsistent application of the law.

- **PROVISION:** HB 394 seeks to codify case law to provide a clear statement of this standard. Additionally, the bill would codify the generally accepted policy that individuals who violate the terms of an employee handbook provided to the individual may be terminated for just cause. The bill also provides that an individual who is absent from work for a period of three consecutive workdays without notifying the employer is considered to have quit work without just cause. This is consistent with general policy concerning job abandonment that in such circumstances, the individual is not available for work as required.

- **IMPACT:** Codification of all of these provisions will be helpful in providing notice to employers and employees about the standards to be applied to determine just cause for termination and quits without just cause.

ISSUE: Unreasonable Distance to Search for Work

Claimants are required to be actively seeking work as a condition of being eligible for unemployment compensation and they must accept work offered – except that federal law prohibits an individual from being disqualified for refusal to accept new work if it is an unreasonable distance from the individual's residence. The administration of this provision is difficult given the different travel expectations for jobs that are available to claimants.

- **PROVISION:** HB 394 provides direction to the Ohio Department of Job and Family Services to adopt rules to define "unreasonable distance."

- **IMPACT:** Reemployment of claimants improves when work-search requirements, such as pay and distance to travel to work, are clearly stated, enforced and meet the needs of the claimants in effectively seeking work. The requirements also should be verifiable for purposes of proper claims administration.

ISSUE: Drug Testing

Under current law, employers may discharge employees for failing required drug tests. In 2012, Congress enacted narrow authority under which state agencies administering unemployment insurance may (a) request information from claimants about the results of past tests for controlled substances, (b) conduct tests for controlled substances and (c) disqualify individuals who fail drug tests.

- **PROVISION:** HB 394 provides language under which the Ohio Department of Job and Family Services may request information of applicants for unemployment compensation, conduct drug tests for controlled substances, and disqualify individuals within the narrow limitations of federal law.

- **IMPACT:** This provision is designed to meet federal requirements and will assist in encouraging applicants not to use illegal controlled substances and to be drug-free when applying for unemployment compensation and seeking work.

ISSUE: Dependency

Ohio is one of only 14 states that have some form of dependency provision that increases the weekly benefit amount provided to claimants with dependents. Unlike most of the 14 states, however, Ohio law only provides for higher maximum benefit amounts for those who have higher wages and dependents. A dependency provision is not required by federal law. No additional administrative funding is provided for the staff needed to determine the various classifications of dependency, and the time taken for dependency determinations makes it more difficult to determine eligibility within the expedited time frame expected for UI claims.

- **PROVISION:** HB 394 would repeal Ohio's current dependency provision.

- **IMPACT:** The repeal of this provision will save benefit payout, simplify administration and will not impact low-wage claimants.

ISSUE: Maximum Weekly Benefit Amount Temporary Freeze

Limitations on increases in the Maximum Weekly Benefit Amount to be provided are commonly imposed as one of many possible solvency measures. Ohio enacted limitations as part of solvency measures in response to the recession of the late 1970s and early 1980s. Many states have automatic increases in maximum weekly benefit amounts tied to the statewide average weekly wage. Eighteen states, however, have specific dollar maximums that do not automatically go up with the state average weekly wage. The automatic increase in maximum weekly benefit amounts is a significant cost driver for the UI system and has contributed to Ohio's current insolvency.

- **PROVISION:** HB 394 would effectively freeze maximum weekly benefit dollar amounts at not to exceed 50 percent of the statewide average weekly wage for the first year that the UI Trust Fund was less than the Minimum Safe Level (MSL) and continue those maximums until the year after the UI Trust Fund was at or above the MSL. The maximum weekly benefit amount likely would increase the year after the fund reached MSL and then be automatically frozen at the increased levels if the MSL was not met the following year.

- **IMPACT:** Under HB 394, the maximum weekly benefit amount increases with the statewide weekly wage as long as the UI Trust Fund is healthy, but is automatically frozen when it is not. The automatic restraint on the maximum weekly benefit amount will assist in reducing benefit costs in a timely way and reduce the risk of insolvency during an economic downturn.

ISSUE: Reductions in Benefits for Governmental or Other Pensions or Retirement Plans

Federal law and current state law require that there be a reduction in the weekly benefit amount of unemployment compensation payable to an individual based on a specific period of time also used to determine social security or other similar periodic retirement benefits (pension, retirement pay, annuity, etc.) paid to the same individual. The reduction of unemployment compensation in light of social security benefit payments is consistent with the UI program goal to provide temporary partial wage replacement for individuals who become unemployed. Individuals who receive unemployment compensation and social security and potentially other sources of wage replacement payments are less likely to return to work and more likely to exhaust unemployment compensation, increasing costs to the UI Trust Fund.

Current law also, however, provides that if a claimant made a contribution to social security and is receiving a retirement payment, the claimant's weekly benefit shall not be reduced by the amount of that retirement payment because the claimant contributed to social security. This limitation on reductions for social security retirement is permitted by federal law but not required. The cost to Ohio's UI Trust Fund of not reducing unemployment compensation for social security payments is significant. The current law results in some individuals receiving nearly as much or more in combined UI wage replacement and Social Security retirement benefits than their average weekly wage during the base period.

- **PROVISION:** HB 394 would remove Ohio's special limitation on reductions for Social Security retirement benefits.

- **IMPACT:** The cost to Ohio's UI Trust Fund of not reducing unemployment compensation for social security payments is significant. Removal of Ohio's special added limitation will improve solvency of the UI Trust Fund.

ISSUE: Reduction of Number of Potential Weeks of Unemployment Compensation

In response to the Great Recession, many states enacted changes to the number of potential weeks of unemployment compensation that would be available to individuals filing for unemployment compensation. A number of states tied the number of potential weeks of benefits to the state unemployment rate.

Current Ohio law uses a sliding scale of the number of weeks based on the number of base period qualifying weeks from 20 to 26.

- **PROVISION:** HB 394 would change the determination of the total number of weeks potentially available twice a year based on Ohio's seasonally adjusted three-month total unemployment rate before January and July. The sliding scale sets the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or higher.

- **IMPACT:** Experience in other states adopting sliding scales has been a significant reduction in benefit payout and a reduction in the average duration of unemployment. Such a provision would more quickly align benefit payments with contribution revenue and assist in building a positive balance in the UI Trust Fund.

ISSUE: Enhanced Fraud Penalties and Collection

Current law requires that if an applicant for unemployment compensation is determined by the Ohio Department of Job and Family Services to have made fraudulent misrepresentation for the purpose of obtaining benefits to which he or she is not entitled, the applicant's entire weekly claim for benefits – or the entire benefit rights, if the fraud was in connection with the individual's application for determination of benefit rights – shall be rejected or canceled. The authority to make such determinations, however, is limited to four years after the end of the benefit year in which the fraudulent misrepresentation was made.

Current law also requires that if there is a determination of fraudulent misrepresentation in the determination of benefit rights, the applicant shall be penalized by having two weeks of unemployment compensation payment cancelled for each week of fraud. The penalty applies for six years after the discovery of the misrepresentation.

- **PROVISION:** HB 394 would remove the following provisions from current law:
    - The specific period within which the fraudulent determination may be made, while also giving broader discretion to the Ohio Department of Job and Family Services in making such determinations
    - The specific time limitation for the imposition of the penalty weeks
    - The six-year limitation on the period of time for administrative or legal proceedings for the collection of fraudulently claimed benefits or interest due on such benefits
    - The existing provision requiring that such amounts not be filed as liens and be canceled as uncollectible

- **IMPACT:** These integrity provisions will enable a more active and sustained collection effort, including greater coordination with the Internal Revenue Service through the Treasury Offset Program under which uncollected benefit amounts may be collected through offset against federal income tax refunds. These provisions also will enable the Ohio Department of Job and Family Services to be more aggressive in prosecution of fraud.

ISSUE: Improved Non-Fraud Overpayment Collection

Current law requires that non-fraud overpayment determinations must be made within three years after the end of the benefit year in which benefits were claimed – and that if non-fraud overpayment amounts are not repaid or recovered within three years from the date of the overpayment order becoming final, the agency shall initiate no further action to collect the overpaid benefits and cancel the amounts not recovered.

This three-year limitation unduly restricts overpayment collection, particularly when the Ohio Department of Job and Family Services is able to locate the individual and finds that he or she is once again claiming unemployment compensation and/or has significant resources with which to make repayment.

- **PROVISION:** HB 394 extends the period within which non-fraud overpayment determinations must be made from three years to six years after the end of the benefit year in which benefits were claimed. The bill also removes the artificial time frame for collection in favor of discretion by the Ohio Department of Job and Family Services to use best practices in collection.

- **IMPACT:** These propose changes will reduce the amount of overpayments that should not be written off and improve the solvency of the UI Trust Fund.

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Responses to Testimony Opposing House Bill 394

Recent legislative testimony from opponents of House Bill 394 (HB 394) has, through a combination of overgeneralizations, omissions and factual inaccuracies, badly mischaracterized certain key provisions of the bill. This document has been prepared to set the record straight by shedding light on what exactly HB 394 does – and does not – do.

1. **Opponent Assertion:** Ohio's unemployment insurance system should serve as a state "safety net" designed to support "vulnerable working families" seemingly for as long as necessary.

   Response: Unemployment compensation is not a family support welfare program. It is a partial wage replacement insurance program for individual workers that requires that individuals become unemployed through no fault of their own in connection with work and are able to work, available to work and actively seeking work as a condition of receiving unemployment compensation.

2. **Opponent Assertion:** According to a 2007 study by economist Dr. Wayne Vroman of the Urban Institute, Ohio's taxable wage base is insufficiently low and should be permanently raised and indexed to inflation.

   Response: Dr. Vroman is well known nationally as an advocate for indexed state unemployment insurance taxable wage bases in every state. The recommendations of the Urban Institute in 2007 were made before Ohio's trust fund had a negative balance exceeding $2.6 billion, and before the 2008 recession. **The recommendations nonetheless included both a freeze in the maximum benefit amount for 2009 to 2011 and the elimination of the dependency provision.**

   Opponent testimony also **misstates Dr. Vroman's conclusion about the taxable wage base and fails to mention the benefit-reduction provisions he proposes.** His conclusion in 2007 was that the tax base should be raised and indexed to the state average weekly wage, not inflation.

3. **Opponent Assertion:** Employer tax rates have not changed since Ohio last raised the taxable wage base.

   Response: Although the state unemployment tax base has not changed for many years, **employer tax payments have increased and decreased with increasing and decreasing benefit claims.** State unemployment contributions (i.e., taxes) are paid as a rate against the first $9,000 of wages paid (not earned). Although the taxable wage base has been $9,000 for many years, the contributions paid by employers fluctuate with claims experience. **So it is not true to suggest that employer taxes paid have not changed for 20 years. In fact, they change every year with benefit claims experience.**

4. **Opponent Assertion:** Ohio's current taxable wage base of $9,000 is much lower than the national average.

   Response: Using a "mean" average to estimate the average state taxable wage is not appropriate because there are a few smaller states that have outlier tax bases: Alaska ($38,000), Hawaii ($40,000) and Washington ($42,100). A review of state tax bases in 2015 shows that **19 states are below $11,000, including Indiana ($9,500), Kentucky ($9,900), Michigan ($9,500), Pennsylvania ($9,000).** Of surrounding states, only West Virginia was higher ($12,000).

5. **Opponent Assertion:** HB 394 enables employers to pay less into the state unemployment insurance system.

   Response: HB 394 does not enable businesses to pay less into the system overall. There is nothing in the bill that reduces unemployment taxes. The bill actually raises the tax base by 22 percent in one year (2018), from $9,000 to $11,000, and keeps it at $11,000 for an extended period until the Ohio Unemployment Insurance Trust Fund reaches the "Minimum Safe Level." State unemployment contributions (i.e., taxes on employers) are experience-rated so that rates go up in response to increasing benefit payout and go down in response to reduced benefit experience.

   Ohio is projected to pay off its outstanding Title XII debt in 2017 to eliminate the short-term Federal Unemployment Tax Act (FUTA) penalty tax imposed under federal law. **This reduction in the net FUTA rate will occur under current law whether HB 394 is enacted or not.**

   If benefit charges continue to go down, the combined effect of higher tax revenue, higher payroll (over the last three years), and lower benefit costs may have the effect of reducing the taxes to be paid by some employers. **This is how insurance works – when claims experience is low, rates go down.** If there were no increase in the tax base, the effect of lower claims would still have the effect to lower experience rates. If a recession begins in 2017 or 2018, benefit payout will increase, payroll will go down and tax rates over the three years post-recession will increase. This is the pattern after every recession.

6. **Opponent Assertion:** There is no justification for freezing Ohio's maximum weekly benefit amount.

   Response: Ohio's maximum weekly benefit amount is too high to sustain. It is higher than the national average and higher than every surrounding state except Pennsylvania.

   HB 394's proposed freeze on the maximum weekly benefit is justified given the insolvency of the state's Unemployment Insurance Trust Fund. **The automatic increase in the maximum weekly benefit amount has been one of the significant contributors to the state's insolvency,** and the additional benefit amount permitted for high-wage workers with dependents has been an insolvency driver for decades. **The proposed temporary freeze until the fund returns to solvency is an appropriate and measured response.**

   Maximum weekly benefit amount freezes are common as solvency provisions and are needed to make significant progress in eliminating the deficit and increasing the state trust fund balance. Repealing the freeze upon reaching the Minimum Safe Level also is appropriate, whether it takes two years or twenty years to reach solvency.

Many states do not have automatic increases in the maximum weekly benefit amount. Even in states with maximum benefit amounts that do not increase, the weekly benefit amounts of most claimants do increase because the base period wages of individuals filing for unemployment compensation increase. **Under HB 394, claimants in Ohio will see no reduction in their weekly benefit amount if their base period wages were below the statewide average weekly wage in 2015.**

Finally, some have claimed that HB 394 permanently freezes the maximum weekly benefit a laid-off worker may receive. This is not true. **The bill automatically ends the temporary freeze in maximum weekly benefit amount when the trust fund reaches the Minimum Safe Level.**

7. **Opponent Assertion:** Only 23 percent of Ohio's unemployed workers receive benefits under Ohio's current system, and HB 394 will make that number drop even lower.

   Response: It is misleading to claim that "only" 23 percent of unemployed persons in Ohio receive unemployment benefits because such a claim measures actual unemployment compensation payments against a small sample survey of households **that includes many individuals who by definition are not eligible to be paid.**

   This percentage always goes down after recessions because fewer and fewer claimants are laid off due to lack of work, and a higher percentage of the remaining number of claimants are not eligible. Ineligible claimants should not be paid. For many reasons, not everyone who considers himself or herself to be unemployed should be paid unemployment compensation. Individuals who should not be paid include:

   - Individuals incarcerated
   - Individuals who were discharged from employment for just cause
   - Individuals who quit work without just cause
   - Individuals who only recently began working
   - Individuals who are not citizens or aliens in employment with work permits
   - Individuals who work as independent contractors
   - Individuals who are not able to work, available to work or actively seeking work
   - Individuals who have chosen not to claim unemployment

   A lower percentage is consistent with fewer lack-of-work layoffs and more jobs being available in the Ohio economy. It is also consistent with tighter claims administration designed to assure that only individuals who are eligible to be paid are paid, and those who are not eligible are not paid.

8. **Opponent Assertion:** HB 394's provision for creating an additional waiting week reduces the total number of weeks a claimant is paid during a benefit year.

   Response: With few exceptions, the additional waiting week proposed in HB 394 does not reduce the total number of weeks a claimant is paid during a benefit year. An individual who serves a waiting week after working fulltime in his or her benefit year does not lose eligibility to be paid for subsequent weeks of unemployment in the benefit year. **The additional waiting week assists in avoiding fraud and multiple weeks of overpayments.** Difficulty in discovering individuals working fulltime while claiming unemployment compensation has been identified by the U.S. Department of Labor and states as resulting in higher erroneous payment rates.

9. **Opponent Assertion:** HB 394 denies benefits for any worker who is subject to a labor "lockout" by management.

   Response: The bill's provision amending the labor dispute disqualification is consistent with the law in many other states. It does not mean that individuals who want to work but are "kicked off the job by the employer during a contract dispute" will automatically be disqualified from benefits. It simply provides for a disqualification during the period of a labor dispute when the individual's unemployment is caused by the dispute.

   In contract disputes, the state agency administering unemployment compensation should remain objective and neither automatically pay benefits nor automatically deny benefits to individuals who are unemployed during the course of a labor dispute. The question should be whether the unemployment of the individual was caused by the labor dispute.

   The question of causation is not eliminated by the proposed statutory change. HB 394 simply deletes reference to "lockout" as a reason for a presumption that the unemployment was not due to the labor dispute.

   Unlike other disqualification provisions, the labor dispute disqualification is only for the duration of time that the labor dispute caused unemployment. Each week the circumstances of the dispute may change, and causation should not be presumed.

10. **Opponent Assertion:** Reversing the repeal of the Social Security offset penalizes older workers and is an inappropriate step for the state to consider when addressing the solvency of the state's Unemployment Insurance Trust Fund.

    Response: The offset for Social Security retirement benefits against unemployment compensation was in place in Ohio for 27 years through the recessions of the early 1980s, 1990s, and 2002. The repeal of the offset in 2007 was enacted at a time when the state's Unemployment Insurance Trust Fund had a positive balance of more than $400 million, before the recession of 2008 and before Ohio became one of the most insolvent states in the country. Restoring the offset is both logical and reasonable as part of Ohio's solvency efforts.

    The fact is, the elimination of the offset in 2007 added significantly to the deficit in Ohio's trust fund; if the offset had not been repealed, the size of Ohio's current remaining federal debt would be smaller.

    With Ohio's continuing trust fund deficit of approximately $775 million, every dollar of unemployment compensation paid extends the period before trust fund solvency may be reached. Because the state has borrowed to pay benefits, **the effect of continuing the repeal of the offset is to impose additional interest charges, reduce funds available to pay benefits to other claimants, and/or prolong the period of high federal and state unemployment insurance taxes.** The fact that other states that do not have outstanding federal debts have chosen to repeal the offset ignores the fact that Ohio is among the most insolvent states in the country.

    Offsets of partial wage replacement programs are common. For example:

    - Social Security Disability offsets for state workers' compensation.
    - Private short-time and long-term disability insurance commonly offsets for government wage replacement benefits.

- The Obama administration, in its recent budget proposal, included language to offset unemployment compensation against Social Security Disability benefits.

The policy underpinning of unemployment compensation is that it provides short-time partial wage replacement to individuals who rely on their wages as the primary source of income as they search for work. **Unemployment compensation was not intended and is not financed to serve as a wage-supplement program.**

Individuals who receive unemployment compensation without an offset for periodic Social Security retirement payments may be provided with more in the combination of wages and Social Security benefits on a weekly basis than they earned during the year prior to becoming unemployed. Use of the unemployment trust fund as a wage supplement for Social Security instead of a short-term wage replacement increases insolvency and was recognized by the enactment of the federal provision in 26 USC 3304 (a) (15), which became effective in 1980. It was only in response to intense lobbying that the federal offset has been undercut by proponents of increased spending.

Bottom line: It is not sound fiscal policy to ignore circumstances in which an individual is receiving multiple sources of wage replacement and place the full burden on the employer-financed unemployment insurance system.

11. **Opponent Assertion:** Repealing Ohio's current dependency provision will drastically hurt claimants and goes against what other states do with regard to dependents.

Response: Ohio's unusual dependency provision should be repealed for a host of reasons. First and foremost, the unemployment insurance program is not a family support program. In determining whether an individual is eligible to receive unemployment compensation, there is no review of the wages of other members of the individual's household or family. Unemployment insurance is not means-tested. It is not public assistance. **Additionally, the dependency allowance provision imposes significant unnecessary additional cost to a program that is insolvent.**

Ohio is among only 14 states with some form of dependency allowance. Most states in this group simply add some number of dollars on top of the unemployment compensation otherwise to be paid for each dependent of the claimant up to statutorily determined caps. Ohio's provision is unusual in that it provides no additional dollar amount per dependent but increases the maximum weekly benefit amount for individuals with dependents if they have sufficient base-period wages to qualify for the higher weekly benefit amount. The result of this provision is that only claimants with average weekly wages above the statewide average receive any additional amounts due to dependents. However, the additional amounts provided are substantial.

In 2015, Michigan provided $6 per dependent, with a maximum of 5 dependents, with no increase in the maximum weekly benefit amount of $362. Pennsylvania provided $5 for the first dependent and $3 for a second dependent, which is added to the weekly benefit amount otherwise determined. **Ohio provides no per-dependent allowance but increases the weekly benefit amount for higher wage workers by up to $148 in addition to the weekly benefit amount they would otherwise receive.**

There is no federal requirement to include a dependency provision. No federal administrative funds are provided for the additional cost of determining dependency, which can be difficult in households with multiple wage earners and change over time with child

support and custody decisions and as dependents become independent. **The complexity of these determinations results in delays in determinations of unemployment applications and results in erroneous payment amounts.**

Treating all individuals the same in determining weekly benefit amounts is more streamlined administratively, less costly and more consistent with insurance principles in determining wage replacement amounts upon which the unemployment insurance program is based.

12. **Opponent Assertion:** Reducing the maximum number of weeks qualifying workers are eligible to claim unemployment benefits will only make Ohio's unemployment insurance program worse and will have a direct negative impact on workers.

    Response: Reducing the maximum number of weeks of benefits is an appropriate response to the solvency of the Ohio Unemployment Insurance Trust Fund. **The national trend among insolvent states seeking to regain solvency in their unemployment insurance trust funds has been to reduce the maximum number of weeks an individual may be eligible to claim benefits during the benefit year.** States reducing the maximum number of weeks include Michigan, Missouri, Kansas, Florida, Georgia, South Carolina, North Carolina, Arkansas and Illinois (for one year).

    Ohio currently uses a range of 20 to 26 weeks for maximum number of weeks to claim benefits, depending on the number of qualifying weeks during the base period for which an individual earns or is paid benefits. Most applicants qualify for a maximum of 26 weeks with a small number qualifying for 20, 21, 22, 23, 24 or 25 weeks.

    Most claimants in Ohio and other states do not claim all of the weeks for which they are potentially eligible because they return to work sooner, begin school full-time or for other reasons. **The average duration of unemployment compensation in Ohio as of the second quarter of 2015 was only 14.9 weeks, even though the maximum number of weeks to claim benefits in most cases was 26 weeks.**

    Historically, the maximum number of weeks set by states at the beginning of the unemployment insurance program was lower than 26 weeks. In the 1930s, it was thought that the financing of the program would only be sufficient to provide a maximum of approximately 15 weeks of benefits. Trust fund balances grew through the end of the 1930s and during the Second World War as wartime employment was high, a large portion of the labor force was employed in the military, and the number of unemployment applications was small.

    After World War II, states opted to increase the maximum number of weeks of benefits because trust funds were solvent, job growth was booming and there was an increase in individuals entering the labor force. We are in a much different position today with an insolvent trust fund, historically low labor-force participation rates, and growth in employment that is only marginally sufficient to keep unemployment rates low.

    Failure to adjust the program's maximum number of weeks with the current and projected realities will result in long-term embedded insolvency.

    HB 394 effectively mirrors the sliding scale provisions in North Carolina, providing a maximum of 12 to 20 weeks of benefits. **While this is a significant reduction in the number of potential weeks of benefits, it has been very effective in North Carolina**

in eliminating that state's federal unemployment insurance debt and putting North Carolina on a path to solvency. A comparison of Ohio and North Carolina using the quarterly data summaries from the U.S. Department of Labor for the second quarter each year since 2011 demonstrates the differences:

	NORTH CAROLINA	OHIO
Trust Fund Balance (000)		
2011	Loan 2,536,169	Loan 2,611,387
2012	Loan 2,567,222	Loan 1,791,716
2013	Loan 2,155,595	Loan 1,554,537
2014	Loan 980,986	Loan 1,381,022
2015	**Positive 689,630**	**Loan 979,499**
Average Duration of Benefits (weeks)		
2011	17.1	18.8
2012	16.3	17.3
2013	15.9	16.3
2014	17.3	16.1
2015	12.0	14.9
Exhaustion Rate (percentage)		
2011	52.9	43.9
2012	54.2	37.8
2013	50.9	37.5
2014	48.0	32.8
2015	46.7	27.9
Covered Employment Growth (000)		
2011	3,769	4,890
2012	3,815	4,951
2013	3,891	5,026
2014	3,973	5,101
2015	4,066	5,181

The comparison with North Carolina shows that although North Carolina actually had a higher negative trust fund balance than Ohio and was more deeply insolvent in 2012, the steps North Carolina has taken in solvency legislation, including the reduction in potential weeks of benefits, has effectively transformed the state from insolvency to a growing positive balance in just three years.

As would be expected during the post-recession recovery, the average duration of unemployment compensation declined and the most dramatic reduction came from 2014 to 2015 as the policy changes became fully effective. Somewhat surprisingly, despite the reduction in the number of potential weeks of benefits, the exhaustion rate in North Carolina continued to decline, but not as fast as in Ohio.

The economic recovery in North Carolina accelerated faster than in Ohio as measured by the increased number of individuals in employment covered for unemployment insurance. Employment growth from 2014 to 2015 in North Carolina was 2.34 percent compared to 1.67 percent in Ohio.

Moving forward, North Carolina's unemployment trust fund is improving in solvency, the FUTA offset credit penalty for 2015 has been lifted and the state has added another incentive for businesses to locate in North Carolina.

13. **Opponent Assertion:** The drug-testing provision of HB 394 is unconstitutional and will lead to more Ohioans locked up for minor crimes in an already overcrowded prison system.

    Response: There is no question about the constitutionality of the drug-testing provision in HB 394. The provision is limited by federal statute enacted as part of the Middle Class Tax Relief and Jobs Creation Act of 2012. The language is very narrowly drawn; federal regulations and administrative interpretation of the Act have been distributed to all states and the public. No case law exists with respect to this provision.

    The U.S. Department of Labor published rules to implement the statutory provisions in the Federal Register on October 9, 2014, along with Unemployment Insurance Program Letter No. 1-15. **Since the Ohio Legislative Service Commission last inquired with the U.S. Department of Labor, the agency has concluded that there are no federal conformity or compliance issues with the language in HB 394.**

    Individuals who may have been terminated from their most recent position as a result of unlawful drug use may or may not file an application for unemployment compensation. **HB 394's drug-testing provision is not only reasonable in light of the earlier drug use by an applicant, but assures as a matter of policy that individuals who are unlawfully using controlled substances should not be eligible to establish a benefit year.** It is a condition of unemployment compensation under federal law 42 USC 503 (a) (12) that an individual must be able to work, available to work and actively seeking work as a condition of being paid unemployment compensation. An individual who fails a drug test by an employer or by the state's unemployment insurance agency in the limited circumstances in HB 394 is not available to work if the only work the applicant can perform is a job that requires a drug test.

    Early identification of illegal drug use enables the agency to make effective referral to other agencies providing assistance and treatment. It also avoids mismatches of unemployed workers with employers that have drug testing requirements as conditions of employment.

    Contrary to what some opponents of HB 394 claim, a determination to disqualify that is based on an individual failing a drug test is appealable. If there are issues with how the drug test was administered or the interpretation of results, such issues could be raised on appeal just as they are now when an individual is terminated by a private employer for failure of a drug test.

    Opponents imply that enactment of the drug-testing provision of HB 394 would somehow perpetuate ongoing misguided responses by the Ohio General Assembly to legitimate drug problems and lead to overcrowded prisons. **There is nothing in HB 394 that provides for punishment or imprisonment of individuals.** The bill only provides for a disqualification of individuals who fail drug tests under very narrow circumstances.

    Additionally, contrary to what some opponents believe, **the drug-testing provision of HB 394 does not permanently disqualify an individual from unemployment**

compensation. Each application for unemployment compensation is determined on its own merits. An individual may file an application for benefits without limitation.

The drug-testing provision of HB 394 will not yank a safety net from underneath Ohio's struggling and vulnerable families. Individuals who have already been terminated for illegal drug use clearly have an issue to resolve. This provision encourages individuals to change behavior so they are better able to effectively seek and obtain work.

14. **Opponent Assertion:** HB 394 is an unbalanced approach to restore solvency, the burden of which is shouldered largely by workers.

    Response: HB 394 both increases the state unemployment tax base and makes benefit cuts to enable the state to become solvent. It is a balanced approach that does not disproportionately harm low-income Ohioans.

    It is not the role of the unemployment insurance system to ensure that workers fall within or outside a definition of poverty created for public assistance programs. **Unemployment insurance is not a public assistance program. It is only a partial wage replacement insurance program.** The purpose of the program is not to pay benefits to everyone who is unemployed on a permanent basis. It is a short-term, temporary, partial wage-replacement response to unemployment and not a basis upon which unemployed individuals should rely for long-term support.

    Ohio compares favorably to other states in providing benefits. **As of the second quarter of 2015, both the maximum weekly benefit amount and the average weekly benefit amount were above the national average and higher than all surrounding states except Pennsylvania.** HB 394 increases the state unemployment tax base by 22 percent to $11,000 in 2018 and leaves it at that level until the state's Unemployment Insurance Trust Fund reaches the Minimum Safe Level.

    The benefit cuts in HB 394 are consistent with the trend among states that have seriously addressed solvency since the Great Recession of 2008. Obviously, most states in the country did not have large deficits to overcome, but those that did took significant action to reduce benefits as part of solvency legislation.

# # #

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Ohio Manufacturers' Association
Workers' Compensation Counsel Report
February 17, 2016

By: Sue A. Wetzel, Esq.
Bricker & Eckler LLP

Regulatory Actions

O.A. C. § 4123-17-24 Other States Coverage
(Effective: February 14, 2016)

The rule implements a new *optional* policy which will benefit employers by ensuring there are no gaps in their workers' comp coverage when employees work in another state.

Since Ohio is only licensed to provide workers' compensation coverage in Ohio, employers would occasionally run into jurisdictional and compliance issues in other states if they had employees that occasionally crossed state lines; and, this often led to large fines, penalties and stop-work orders. Employers often avoided coverage in other states with minimal contacts, simply taking their risks, because it is difficult and costly to secure coverage through private markets or other state fund coverages.

In an effort to help employers, HB 493 was passed by the 130th General Assembly, and the BWC now has the authority to contract with an insurer licensed in other states to provide optional coverage to eligible Ohio employers for out-of-state exposures. And, the purpose of the rule O.A.C. 4123-17-24 is to implement the optional policy offering for Ohio employers.

O.R.C. § 4123.29

The proposed change to the statute is to prevent a self-insured employer from avoiding the recognition of its past history with the creation of the employer's new state fund policy. The change is specifically targeted towards self-insured employers participating in a PEO who wish to be covered by the state-fund.

The proposed legislation allows the BWC to establish the experience of the self-insured employer that wants to become state-funded based upon claims that arose while it was in a PEO's program. The BWC would be able to look back at the last five years, regardless of what program the employer was in, to determine what its workers' compensation experience has been.

Legislative Actions

H.B. 355

This bill would create a generally uniform definition of employee for specified labor laws and prohibit employee misclassification under those laws. Additionally, it seeks to mandate the BWC to stop work for any complaint filed for an indefinite amount of time.

S.B. 27

This bill would create presumptive eligibility for workers compensation for firefighters with cancer. The current version of SB 27 would provide that a firefighter who is disabled, as a result of specific types of cancer, is presumed to have incurred the cancer while performing the required duties of a firefighter, at least for the purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund. Currently, firefighters must prove that their line of work resulted in their diagnosis in order to receive benefits.

In order for the presumption to apply, firefighters must have been assigned to at least three years of "hazardous duty" (defined as duty performed under the circumstances in which an accident could result in serious injury or death).

The specific types of cancer which would be included in the expanded coverage include:

- cancer of the lung,
- brain,
- kidney,
- bladder,
- rectum,
- stomach,
- skin, prostate;
- Non-Hodgkin's lymphoma;
- Leukemia;
- multiple myeloma;
- testicular; or
- colorectal cancer.

Judicial Actions

State ex rel. Armstrong Steel Erectors, Inc. v. Indus. Comm. Case No. 2015-Ohio-4525.

The Supreme Court of Ohio handed down this per curiam decision on November 3, 2015, finding that the Industrial Commission did not abuse its discretion when it granted an injured worker a Violation of a Specific Safety Requirement ("VSSR") award. The Court found that, although the claimant had failed to wear the safety gear specifically provided to him by his employer, the employer was required under the Ohio Administrative Code to provide proper safety netting when, as here, the use of personal protective equipment was impractical. Because the employer failed to do so, the Court found that the VSSR award was proper.

Frank Seidita was working as a subcontractor for Armstrong Steel Erectors, Inc. ("Armstrong") on a bridge project above a road in Youngstown, Ohio. While he was working beneath the bridge decking on April 23, 2009, Mr. Seidita lost his balance and fell to the ground. Although Armstrong had provided Mr. Seidita with fall-prevention gear, he had not been wearing this equipment. Instead, he had relied on a makeshift safety net made from chain-link fencing that another subcontractor had erected. Unfortunately, this improvised safety net was not compliant with the regulations under the Ohio Administrative Code, and a gap existed through which Mr. Seidita had fallen.

In addition to allowing his claim for numerous injuries, the Commission allowed Mr. Seidita's request for a VSSR award. Thereafter, Armstrong filed a complaint in mandamus, seeking a writ to compel the Commission to vacate its order granting the VSSR award.

O.AC. § 4123:1-3-03(J)(1) and (N) mandate that employers are required to provide, and it is the responsibility of the employee to wear, personal fall-prevention equipment when work is being performed more than six feet off the ground. However, when the use of such safety gear is impractical, the employer must provide appropriate safety nets under O.A.C. § 4123:1-3-03-(J)(7).

Here, Armstrong argued that it should not be liable for violating a specific safety regulation given that Mr. Seidita had failed to wear the safety equipment it had provided to him, as per O.A.C. § 4123:1-3-03(J)(1) and (N). However, the Commission relied on Mr. Seidita's testimony that he had been working in a "crawl space" and that he had to "roll out onto the safety netting" while working to find that the use of a safety harness was impractical here. The Court found that this constituted evidence to support the Commission's conclusion. Based on this conclusion, then, Armstrong would have been required to provide compliant safety netting under O.A.C § 4123:1-3-03(J)(7). However, Armstrong failed to do so.

Accordingly, the Ohio Supreme Court found that Armstrong failed to demonstrate that the Commission had abused when issuing the VSSR award. As such, the writ of mandamus was properly denied.

State ex rel. Ritzie v. Reece-Campbell, Inc.
Case No. 2015-Ohio-5224

On December 16, 2015, the Supreme Court of Ohio handed down this per curiam decision, finding that the Industrial Commission had relied on the claimant's medical record to determine that he was not temporarily and totally disabled for the period beginning December 8, 2011. As such, the Commission did not abuse its discretion by declining to award the claimant's requested TTD compensation, and the claimant's writ of mandamus was properly denied.

Fred Ritzie sustained an industrial injury in November 1994. His workers compensation claim was allowed for lower back injuries (the "1994 Claim"), and he was released to light-duty work in September 1995. Later, in 2007, Mr. Ritzie started treating with Dr. Brian Nobbs, a chiropractor, for the conditions allowed in the 1994 Claim.

Mr. Ritzie began working for a new employer as a truck driver in September 2009. However, in January 2010, he suffered a second workplace injury. His workers compensation claim was allowed for neck, upper back, and shoulder injuries (the "2010 Claim"). Mr. Ritzie was paid TTD compensation until he settled the 2010 Claim on December 7, 2011. He did not return to work.

In July 2011, the BWC additionally allowed three lumbar conditions in Mr. Ritzie's 1994 Claim. Thereafter, he requested TTD compensation for the period beginning December 8, 2011—the day after the 2010 Claim settled—based on the newly allowed conditions. The Commission denied this request administratively, finding that Mr. Ritzie had not presented persuasive medical evidence establishing that he was temporarily and totally disabled as of December 8, 2011. Mr. Ritzie then sought a writ of mandamus requiring the Commission to award him the requested TTD compensation.

In order to qualify for TTD compensation, a claimant must demonstrate that he is medically unable to work as a result of the allowed conditions of the claim. However, the Commission found that Dr. Nobbs's office notes did not indicate that Mr. Ritzie was disabled. In fact, the office notes indicated that the conditions allowed in the 1994 Claim had improved. Dr. Nobbs even opined that Mr. Ritzie's chiropractic treatments had *enabled* him to work until his 2010 accident.

The Ohio Supreme Court determined that the Commission—the exclusive evaluator of the weight and credibility of the evidence—relied upon the available medical evidence to find

that Mr. Ritzie was not temporarily and totally disabled for the period beginning on December 8, 2011. As such, the Commission did not abuse its discretion when it denied Mr. Ritzie's request for TTD compensation. The requested writ was therefore denied.

State ex rel. Old Dominion Freight Line v. Indus. Comm.
Case No. 2016-Ohio-343

Majority Opinion

On February 2, 2016, the Supreme Court of Ohio held that the Industrial Commission's failure to timely send an employer's medical reports to the Commission's independent examining physicians was not prejudicial to the employer. Specifically, the Court found that the Commission had cured its error by requesting addendum opinions from the independent examining physicians after they had reviewed the employer's medical reports. As such, the Commission did not abuse its discretion, and the award of PTD compensation stands.

Robert Mason sustained an injury while working as a truck driver for Old Dominion Freight Lines, Inc. in January 2005. After he applied for PTD compensation in July 2009, Old Dominion notified the Commission that it intended to submit medical evidence opposing the application in accordance with O.A.C. § 4121-3-34(C). The employer filed its medical reports on September 22, 2009. The Commission then scheduled independent medical examinations for Mr. Mason with Drs. William Fitz and John Malinky. However, when the Commission mailed these doctors copies of Mr. Mason's medical records, it failed to include the reports that had been filed by Old Dominion.

Upon learning of this error, Old Dominion sought to depose Drs. Fitz and Malinky. The Commission denied the request, however, and instead sent copies of the employer's doctors' reports to Drs. Fitz and Malinky for review. Both doctors submitted addendum opinions, stating that the supplemental information did not change their opinion. Thereafter, the Commission granted Mr. Mason's application for PTD compensation.

The employer brought suit, arguing that the Commission abused its discretion when it awarded Mr. Mason PTD compensation. Old Dominion alleged that the reports of Drs. Fitz and Malinky were flawed because the doctors had not reviewed the employer's medical reports prior to examining the claimant. As such, the only way to cure this failure was to permit Old Dominion to depose each doctor to determine whether his determination that Mr. Mason was permanently and totally disabled could have differed if he had reviewed the additional medical first.

The Commission admits that (a) it failed to submit the employer's medical to Drs. Fitz and Malinky prior to their examinations of Mr. Mason; and (b) that it *should have* sent this medical prior to their examinations. Nevertheless, the Supreme Court here noted that Drs. Fitz

and Malinky both personally examined Mr. Mason and, presumably based on these examinations and not the findings of other physicians, determined that he was permanently and totally disabled. Additionally, Old Dominion had provided no evidence that its medical reports would have changed these doctors' opinions had they received the reports in advance.

Moreover, the Supreme Court held that the Commission cured any potential problems from its failure to send the employer's reports prior to the examinations when it subsequently sent the employer's records to the doctor and requested addendum opinions. Accordingly, the Supreme Court found that Old Dominion suffered no prejudice. The Supreme Court also found that, because the hearing officer had concluded that any potential defect could be remedied by other means, the request to depose each doctor was unreasonable and, thus, properly denied.

In conclusion, the Supreme Court determined that the Commission did not abuse its discretion when it awarded Mr. Mason PTD compensation because the reports of Drs. Fitz and Malinky constituted some evidence to support a finding that he was permanently and totally disabled.

Dissenting Opinions

Justice Lanzinger dissented, arguing that Old Dominion was prejudiced when the Commission failed to timely provide the employer's medical reports to Drs. Fitz and Malinky. This error was compounded when the Commission denied Old Dominion's request to depose the doctors, thereby precluding the employer from obtaining evidence that it was prejudiced.

Justice Kennedy also dissented, arguing that the Commission did not follow its own rule when it failed to submit the employer's medical evidence to Drs. Fitz and Malinky after the employer had timely filed notice of its intent to submit such medical. *See* O.A.C. § 4121-3-34(C)(4)(b). The Commission's failure to "follow its own rules" prejudiced Old Dominion.

Safety & Workers' Compensation

Proponent Testimony Heard on Self-Insurance Bill

February 12, 2016

Substitute House Bill 205 had its first proponent testimony hearing this week in the House Insurance Committee. The bill would remove the minimum number of employees an employer must have in order to apply to become self-insured for workers' compensation in Ohio.

The BWC already has the authority to waive the minimum employee requirement as long as the company's financial position meets the agency's requirements. That change was the result of an OMA-driven amendment to the state budget bill.

House Bill 205, therefore, is not essential for financially strong companies with fewer than 500 employees to apply for self-insurance. Contact OMA's Jeremy Sesco to discuss a self-insured analysis for your company.

Ohio Safety Congress is March 9-11

February 12, 2016

BWC's Ohio Safety Congress & Expo is the largest and longest-running occupational safety, health and workers' compensation event in Ohio. More than 6,000 attendees are expected to attend to learn techniques for injury and illness prevention, rehabilitation, and return-to-work. Safety services, industrial supplies, safety equipment and gear will be on display in the Expo Marketplace. Check it all out here.

BWC Offers Online Streaming Safety Video Service

February 12, 2016

BWC has partnered with several safety video vendors to offer access to a selection of online streaming videos covering a range of popular safety topics. Ohio employers have access 24 hours a day seven days a week, giving them the freedom and flexibility to view videos at their convenience.

Support your safety program with this resource. Here are the details.

BWC Premium Due March 2

February 12, 2016

State fund employers: If you are paying your BWC workers' compensation premium on a bi-monthly basis and haven't already paid it, your payment is due March 2. Questions? Ask OMA's Brian Jackson.

BWC Tweaks Premium Billing Lead Time

February 5, 2016

Last week the Bureau of Workers' Compensation (BWC) board of directors approved a change to its timing of sending premium invoices.

The BWC will send invoices at least 23 days prior to the due date, which is down from at least 29 days.

The BWC had originally proposed a minimum 18-day lead time; however, OMA objected to this on behalf of members as too short.

Here's the amended rule and billing chart (see page 8) which shows the new invoicing schedule which starts June 1.

Employers Must Post OSHA 300A Starting Feb. 1

January 22, 2016

OSHA is reminds employers to post OSHA's Form 300A which summarizes the total number of job-related injuries and illnesses logged during 2015. The summary must be posted between Feb. 1 and April 30, 2016, and should be displayed in a common area where notices to employees are usually posted.

Employers with 10 or fewer employees and employers in specific low-hazard industries are normally exempt from federal OSHA injury and illness recordkeeping and posting requirements.

Due to changes in OSHA's recordkeeping requirements that went into effect Jan. 1, 2015, certain previously exempt industries are now covered. Here are exempt and newly covered industries. Visit OSHA's Recordkeeping Rule webpage for more information on recordkeeping requirements.

Registration Open for Ohio Safety Congress & Expo 2016

January 15, 2016

Registration is now open for the Ohio Bureau of Workers' Compensation (BWC) 2016 Safety Congress and Expo (OSC16), March 9-11 at the Greater Columbus Convention Center.

BWC annually hosts the largest regional safety and health conference in the U.S. to help Ohio employers prevent workplace injuries and achieve better outcomes for injured workers. There is no cost for Ohio employers and their employees to attend the event.

OSC16 offers more than 200 educational sessions, 225 exhibitors and free continuing education credits. Those attending Safety Congress can learn to prevent workplace injuries and illnesses, achieve better outcomes for injured workers, reduce workers' compensation claims costs and keep Ohio's work force healthy and productive.

A Reminder about Mandatory OSHA Notification of Serious Injury

January 15, 2016

All employers are required to notify OSHA when an employee is killed on the job or suffers a work-related hospitalization, amputation, or loss of an eye.

A fatality must be reported within 8 hours. An in-patient hospitalization, amputation, or eye loss must be reported within 24 hours.

To make a report, call the nearest OSHA office or the OSHA 24-hour hotline at 1-800-321-6742, or report online.

Be prepared to supply: Business name; names of employee(s) affected; location and time of the incident; brief description of the incident; contact person and phone number.

¿Tiene preguntas? ¿Necesita ayuda? ¡Estamos aquí para ayudarle!

January 15, 2016

The Ohio Bureau of Workers' Compensation this week announced a new resource for Spanish speaking employers and injured workers at this web page.

Customers seeking assistance can reach Spanish speaking staff daily from 7:30 a.m. to 5:30 p.m. through BWC's contact center at 1-800-644-6292.

The page also links to Spanish language forms needed to establish and maintain workers' compensation insurance coverage, report a workplace injury and manage a claim.

"Vastly Improved and Better Prepared"

January 8, 2016

Before the holiday break, the Ohio Bureau of Workers' Compensation (BWC) board of directors reached a milestone. On December 18, 2015, it conducted its 100th meeting since it was established in 2007.

The 11-member board is an independent body comprised of members who represent the interests of Ohio workers, employers and the public at large, and lend their professional expertise to overseeing the agency's operations.

The BWC is noticeably better managed, and has become a competitive Ohio advantage. Read more from the BWC.

BWC CEO Reflects on Agency Improvements

January 8, 2016

"… I've focused during my last five years as the leader of the Ohio Bureau of Workers' Compensation (BWC) on forming partnerships with all of our customers, who at times have contrasting views but all strive to maintain a system that is financially strong, does not impose a barrier to economic growth and is dedicated to caring for Ohio's workers," said Steve Buehrer, Administrator & CEO, Ohio Bureau of Workers' Compensation, in this guest column.

BWC Premium Due Date is Dec. 31

December 11, 2015

State fund employers: If you are paying premium on a bi-monthly basis and you haven't already paid it – your BWC premium payment is due soon:

Premium bill dates	Payment due dates
December 1, 2015	December 31, 2015
February 1, 2016	March 2, 2016
April 1, 2016	May 2, 2016

Please note: There are significant consequences for payment lapses of 40 days or more, including lack of coverage and disqualification from group discount programs.

If you have any questions about this, please contact OMA's Brian Jackson.

BWC to Offer "Other States" Coverage Policy

December 4, 2015

A new coverage option recently approved by the Ohio Bureau of Workers' Compensation (BWC) board of directors will simplify workers' compensation for businesses with employees who work in other states.

Workers' compensation laws vary by state and the new Other States' Coverage will help ensure that Ohioans injured on the job will be covered regardless of where they are injured.

While BWC generally provides coverage for employees working temporarily outside of Ohio, complications can arise when the injured worker files a claim in another state. Treatment can be delayed and businesses can be subject to penalties by the other state. By contracting with an insurer licensed in other states, BWC will be able to offer an option that ensures proper coverage regardless of jurisdiction.

A law enacted last year granted BWC the authority to contract with an insurer to provide this coverage, and the board approved the rules governing the optional policy offering designed by BWC. The policy offering is expected to be in place in the first half of 2016.

Interested employers will apply directly to BWC, which will determine eligibility and the premium cost for the optional coverage. The vendor will issue a policy to cover out-of-state exposures and respond to any claims filed out of state.

OMA-Supported Subrogation Bill Moves Out of House

December 4, 2015

This week the House of Representatives unanimously approved House Bill 207, sponsored by Reps. Mike Henne (R-Clayton) and Robert McColley (R-Napoleon). The bill would enable claims costs to be charged to the Bureau Workers' Compensation (BWC) surplus fund, rather than a state fund employer's experience, in the event of a motor vehicle accident-related workers' compensation claim that is likely to be subrogated by a third party.

OMA Safety and Workers' Compensation Chairman Larry Holmes, Sr. V.P., Finance, Fort Recovery Industries, Inc., provided proponent testimony on behalf of the OMA earlier this fall during committee hearings. The bill now goes to the Senate.

BWC Ties Claim Reduction to Safety Awareness

December 4, 2015

The Bureau of Workers' Compensation (BWC) recently reported out reductions in claims and employer costs: "In FY 15, BWC approved 81,348 medical-only claims and 11,870 lost time claims compared to 89,505 medical-only and 13,296 lost-time claims in FY 11. This drop in claims has helped BWC reduce employer rates. Since 2011 private business rates have been reduced 21.4 percent overall, while public employers have seen a reduction of 26.5 percent.

"Ohio's safety record is echoed in recent figures released by the Bureau of Labor and Statistics, which continue to show Ohio's injury rate is below the national average. Those statistics, from 2014, show Ohio's injury rate is 2.9 injuries per 100 workers, compared to a national average of 3.4 injuries per 100 workers. Ohio's rate is lower than all its neighboring states including Michigan (3.7), Indiana (4.0), Kentucky (3.8), West Virginia (4.1) and Pennsylvania (3.6)."

BWC credits, in part, its safety grant program: "More than 570 Ohio employers have received, or are in the process of receiving, nearly $15 million in safety grants … BWC expects to finish awarding its Fiscal Year 2016 grants in the next few weeks to applications already in hand. This will be the quickest the money has been awarded since the amount of available dollars was tripled by Governor John R. Kasich three years ago."

BWC is no longer accepting applications for this year; however, employers can begin applying for $15 million in FY 2017 funds in April 2016.

OMA Sets 2016 Safety Webinar Calendar

December 4, 2015

Each month the OMA holds a one-hour safety webinar, typically the first Thursday at 10:00 a.m.

The 2016 calendar of safety webinars is set. The topics were selected based on member input to a recent survey.

Register at My OMA or call us at (800) 662-4463. To receive webinar announcements, subscribe to Safety & Workers' Compensation under My Communities at My OMA.

The Bureau of Workers' Compensation (BWC) requires employers that participate in a group experience rating or group retrospective rating plan, and that sustain a claim, to complete two hours of

safety training or complete BWC's online accident analysis form and associated accident analysis course. Each of these webinars qualifies for one-hour of BWC-mandated training.

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on February 15, 2016

HB51 **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of Commission programs.

Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/2015; certain provisions effective 9/29/2015

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-51

HB52 **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of the Bureau's programs.

Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/2015; certain provisions effective 9/29/2015, other dates

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-52

HB64 **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.

Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64

HB205 **SELF-INSURING EMPLOYERS** (HENNE M, RETHERFORD W) To modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.

Current Status: 2/9/2016 - House Insurance, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-205

HB206 **INDUSTRIAL COMMISSION-CLAIM STATISTICS** (HENNE M) To require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.

Current Status: 6/9/2015 - House Insurance, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-206

HB207 **WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.

Current Status: 1/20/2016 - Referred to Committee Senate Insurance

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-207

HB292 **FIREFIGHTER COMPENSATION** (HAGAN C) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.

Current Status: 10/6/2015 - House Insurance, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-292

HB355 **EMPLOYEE DEFINITION** (RETHERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.

Current Status: 11/4/2015 - House State Government, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355

SB5 **WORKERS' COMPENSATION-PTSD** (PATTON T, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law.

Current Status: 10/13/2015 - **REPORTED OUT AS AMENDED**, Senate Finance, (Sixth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-5

SB27 **WORKERS' COMPENSATION-FIREFIGHTER CANCER** (PATTON T) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.

Current Status: 11/10/2015 - Senate Insurance, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-27

SB149 **WORKERS' COMPENSATION-BRAIN-SPINAL CORD INJURY** (SCHIAVONI J) To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law.

Current Status: 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-149