



Safety & Workers' Compensation Committee

Wednesday November 4, 2020

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2020 Committee Meeting Calendar

Meetings begin at 10 a.m.
2021 Meeting Dates Coming Soon!

Our Meeting Sponsor:



OMA Safety & Workers' Comp. Committee

Name	Company	Location
Anna Anderson	Knott Brake Company	Lodi, OH United States
Ryan R. Augsburg	The Ohio Manufacturers' Association	Columbus, OH United States
Christina Balint	Universal Metal Products	Wickliffe, OH United States
Brenda Barker, R.N.	Scotts Miracle-Gro Company	Marysville, OH United States
Lissa Barry	Delta Systems, Inc.	Streetsboro, OH United States
James T. Batchelder	The M K Morse Company	Canton, OH United States
Michele Blaney	Safex, Inc.	Westerville, OH United States
Rob Brundrett	The Ohio Manufacturers' Association	Columbus, OH United States
Logan Brucher	Norwalk Concrete Industries	Norwalk, OH United States
Nate Butzer	Summitville Tiles, Inc.	Summitville, OH United States
Eva Canales	Arps Dairy, Inc.	Defiance, OH United States
Niki Chapin	PPG	Cleveland, OH United States
Cecilia Cruickshank	Sorbster, Inc.	Cleveland, OH United States
Anne Csaszar	Health Management Solutions, Inc.	Columbus, OH United States
Brian DeLucenay	Fort Recovery Industries, Inc.	Fort Recovery, OH United States
Ryan Dominak	H C Starck, Inc.	Euclid, OH United States
Joseph F. Dutt	Summitville Laboratories	Minerva, OH United States
Brad Ekin	Elliott Machine Works, Inc.	Galion, OH United States
Jennifer Gilliland	Identity Systems Inc	Columbus, OH United States
Carol Gracy	Bully Tools, Inc.	Steubenville, OH United States
Susan Grom	American Honda Motor Company	Marysville, OH United States
Curt Gross	Parker Hannifin Corporation	Mayfield Heights, OH United States
Dianne Grote Adams	Safex, Inc.	Westerville, OH United States
Lisa Haggart	Middletown Tube Works Inc	Middletown, OH United States
Marilyn A. Hansen	Hudson Extrusions, Inc.	Hudson, OH United States
Sandy L. Harper	ROKI AMERICA Co., Ltd.	Findlay, OH United States
Chris Hassmann	Warren Rupp, Inc.	Mansfield, OH United States
Lisa Hutchison, HRA	Brewster Cheese Company	Brewster, OH United States
Brian Jackson	The Ohio Manufacturers' Association	Columbus, OH United States
Karen James	The Ohio Manufacturers' Association	Columbus, OH United States
Jeff Johnson	Windsor Mold - Precision Automotive Plastics	Detroit, MI United States
Matthew F. Johnston	Worthington Industries, Inc.	Columbus, OH United States
Jamie Karl	The Ohio Manufacturers' Association	Columbus, OH United States
Carla Kimberlin	Nemco Food Equipment Limited	Hicksville, OH United States
Amanda LaCombe	Sur-Seal Inc.	Cincinnati, OH United States
Jill Lifer	Johnson Bros.-West Salem, Inc.	West Salem, OH United States
Denise Locke	The Ohio Manufacturers' Association	Columbus, OH United States
Joseph A. Matthews, MOD, PMP, COSS	Principle Business Enterprises, Inc.	Dunbridge, OH United States
Sara A. Monhollen	Hirzel Canning Co., Inc.	Northwood, OH United States
Ray Navarro	North Coast Container LLC	Cleveland, OH United States
Tom R. Nelson	Yoder Lumber Company, Inc.	Millersburg, OH United States
Terry Nichols	Stillwater Technologies, LLC	Troy, OH United States
Christina Plant	Wright Tool Company	Barberton, OH United States
Linda Pockock	International Metal Hose Company	Bellevue, OH United States
Dave Podmeyer	Continental Mineral Processing	Cincinnati, OH United States
Jeff Porter	Central Coated Products, Inc.	Alliance, OH United States
Laurie Poston	Health Management Solutions, Inc.	Columbus, OH United States
Michael Pulsfort	Health Management Solutions, Inc.	Columbus, OH United States
Daryll Rardon	Climax Packaging Machinery	Hamilton, OH United States
Crissy Roach	The Ohio Manufacturers' Association	Columbus, OH United States
Robert M. Robenalt, Esq.	Fisher & Phillips LLP	Columbus, OH United States
Melissa Ross	The Ohio Manufacturers' Association	Columbus, OH United States
Sue A. Roudebush	Bricker & Eckler LLP	Columbus, OH United States
Brittany Schneider	E P C - Columbia LLC	Bellevue, OH United States
Scott R. Sharp	A & B Printing	Fort Loramie, OH United States
Lisa Shaver	Health Management Solutions, Inc.	Columbus, OH United States
Matthew Shurte	Lancaster Colony Corporation	Westerville, OH United States
Werner Sopon	Panelmatic Cincinnati, Inc.	Fairfield, OH United States

OMA Safety & Workers' Comp. Committee

Name	Company	Location
Michael L. Squillace	Dinsmore & Shohl	Columbus, OH United States
Duane Steelman	Zaclon LLC	Cleveland, OH United States
Susan Stephen	Everhard Products, Inc.	Canton, OH United States
Ronald Stupka	Calfee, Halter & Griswold LLP	Cleveland, OH United States
Heidi Suhoski	Miba Bearings USA, LLC	McConnelsville, OH United States
Shana Sullivan	Barnes International	Rockford, IL United States
Brian Tarian	Roetzel & Andress	Columbus, OH United States
Andy Tharp	American Honda Motor Company	Marysville, OH United States
Juliet Walker	The Ohio Manufacturers' Association	Columbus, OH United States
Christopher Ward	Calfee, Halter & Griswold LLP	Columbus, OH United States
Tyler Whicker	Morris Bean & Company	Yellow Springs, OH United States

Total Participants 69

Safety & Workers' Compensation Committee Agenda November 4, 2020

Welcome & Self-Introductions	Matt Shurte, Lancaster Colony Corporation
BWC COVID-19 Update	Brian Jackson, OMA Staff
Safety Update and OSHA Inspection Information	Dianne Grote Adams, Safex
Guest Speaker	BWC Administrator Stephanie McCloud
Vaccine Presentation	Robert M. Robenalt, Partner Fisher & Phillips LLP
Public Policy Report	Rob Brundrett / Ryan Augsburger, OMA Staff
OMA Counsel's Report	Sue Roudebush, Bricker & Eckler LLP
Member Roundtable	Discussion on employee safety and compensation changes due to COVID-19

Our Meeting Sponsor:



Stephanie McCloud



Ohio Governor Mike DeWine appointed Stephanie McCloud Administrator/CEO of the Ohio Bureau of Workers' Compensation in January 2019. She leads the largest state-run insurance system in the United States with a staff of 1,800 who serve 244,000 employers and manage nearly 700,000 open claims.

McCloud is a veteran executive with a diverse background that includes 20 years of experience in public administration and workers' compensation. She most recently served as senior vice president at Sedgwick Claims Management Services while managing her private Columbus law firm, McCloud Law LLC.

She began her career as a staff attorney at BWC before serving as legal counsel to both former Governor George Voinovich and the Ohio Department of Transportation. She later joined the office of former Attorney General Jim Petro, first as senior deputy attorney general before advancing to chief counsel.

McCloud is also a former Truro Township Trustee and active community leader. She served six years on the Counselors, Social Workers, Marriage & Family Therapists Board and was on the board of the Maryhaven behavioral health and addiction treatment center for more than a decade.

McCloud earned a bachelor's degree in journalism from Ohio University and a law degree from the Capital University Law School.

The Administrator was a recipient of Columbus Business First's "40 Under 40 Award" in 2010, and in 2019 she was selected as a "Women to Watch" honoree by the international publication, Business Insurance. This award recognizes individuals who contribute to their own organizations' performance but also advance the industry and foster the careers of other women.



COVID-19 Continues to Dominate

In June we talked about other resources besides CDC, State to include <https://www.backtoworksafely.org/>, face coverings vs respirators, OSHA recordkeeping requirements, and Infectious disease Control Plan and Hazard Assessments.

CDC changed their definition of in close contact, which puts more emphasis on us maintaining social distancing and wearing our face coverings.

In the past few months, states have passed emergency standards, and focus has increased on ventilation as one of the controls. As we approach the winter months, ventilation becomes more important.

Ventilation Considerations

1. Evaluation % fresh air. More is better.
2. Evaluate MERV rating of filters 11 is good, 17 is better.

Other Considerations

1. Distracted work behaviors due to employee concerns for personal or family health or financial concerns.
2. Mental health issues resulting from isolation.
3. Team member interactions have changed.
4. Setbacks in other safety and health activities/emphasis.
5. Safety risks of face coverings.

OSHA Enforcement for COVID-19

At the end of May, OSHA indicated they were returning to normal enforcement. If you look at the news releases, they are predominantly COVID 19 related. However, there was a large settlement for exits and storage hazards in a retail chain.

Citations related to COVID-19 are on the OSHA website. They are respiratory protection (1910.134), personal protection equipment (1910.132) and recordkeeping (1904) primarily. The industries most impacted are healthcare, retail, grocery, construction, warehousing and storage, restaurants and automotive repair. Complaints and referrals seem to have decreased since the summer.

In Ohio, we have received feedback that OSHA Onsite has done some inspections virtually using Microsoft Teams®. Being prepared to do some of this interaction virtually would be beneficial.

HSE Program and Training

Many things have been put on 'hold' in 2020. But as you look at 2021, we want to bring life back to the rest of our HSE program and training. So, plan for changes but identify how safety committee, training, etc. can be done, whether that's face-to-face, virtually or in a hybrid version. Our program and training elements are the foundation to keeping our employees safe and on the job!

www.safex.us

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Sticking Points: What Employers Need to Know About Flu Shots and COVID-19 Vaccines



Bob Robenalt

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Vaccines and the Workplace

- These general comments are based upon current guidance and circumstances.
- Decisions regarding these issues are very fact-specific.
- Always take state and local law into account.
- This situation is very fluid and could change rapidly due to a variety of factors.
- No approved COVID-19 vaccine is currently available in the U.S.

Vaccine Issues – An Overview

- Flu Shots
 - CDC guidance
- CDC comments regarding the flu
- Possible Exemptions?
 - Medical
 - Sincerely-held religious beliefs
 - Other?
- COVID-19 vaccinations



Legal Landscape

- Employer must keep workplace free of recognized hazards while respecting employees' individual rights
- Generally, with some critical limitations, employers can enforce mandatory vaccine policies
- Always consider state and local law
- *Contrast* vaccinations with employee screenings (medical examinations)



Legal Landscape - *Screening vs. Vaccinations*

- Employers' right to screen is generally more limited than the right to require vaccinations.
 - Current permissible practices of temperature checks, symptom screening, and COVID-19 testing are based on the severity of the pandemic – the significant risk of substantial harm that someone with the virus or symptoms of it would present in the workplace.



OSHA General Duty Clause

- Describes the employer's duty to maintain a workplace free of recognized hazards



ADA – American with Disabilities Act

- Prohibits discrimination
- Requires “reasonable accommodation”
- Limits employer’s rights to inquire/conduct medical exams
 - Must be job related, consistent with business necessity
 - Significant risk of substantial harm
 - Reliable, objective information must support employers’ concern
- Protects privacy of each employee’s medical information

- Similarly, **Title VII** may require accommodation of an employee’s sincerely-held religious beliefs or practices.

What Does the EEOC Have to Say?

Pandemic Preparedness in the Workplace and the Americans with Disabilities Act (Issued in 2009, *updated* in response to the COVID-19 pandemic – March 21, 2020)

Excerpt from response to Question No. 13, regarding whether employers covered by the ADA and Title VII may require flu shots:

“Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it. ***As of the date this document is being issued, there is no vaccine available for COVID-19.**”

Policy Addressing Vaccine Expectations

- Consider *required* v. *strongly encouraged*
- Any requirement should be based on objective facts; tied to employee's job duties/job descriptions; and consistently administered.
 - Clearly describe expectations and rationale
 - Explain how to seek an exemption as an accommodation
 - Follow the *individualized* accommodation process diligently
 - Ensure no retaliation (or appearance of retaliation)
 - Safeguard all medical information - separate from general personnel files

Mandatory *Flu Shots*

- Subject to some limitations, employers *may* require employees to get the flu vaccine.
- Some jurisdictions *require* flu shots for employees in certain positions, e.g., healthcare workers with patient contact. Others prohibit mandatory vaccines.
- CBA (collective bargaining agreements) may limit vaccine requirements; employer must communicate with the union

MANDATORY

Limitations

- EEOC (Equal Employment Opportunity Commission):
 - An employee may be entitled to an exemption from mandatory flu shots due to an ADA-covered disability or other medical circumstance
 - An employee may be exempted from a flu shot requirement based on sincerely-held religious beliefs, practices, or observances
 - In either case – engage in and document communication with employee to determine whether a reasonable accommodation is needed and feasible
 - The *process* may be as important as the final decision
- Consider potential reasonable accommodations

Anti-Vaxxers, Other Considerations?

- Some state laws expressly protect employees' rights to engage in legal outside activity, including political activity.
- Other state laws may affect employer's vaccination policies.
 - i.e., Oregon – some vaccines must be *offered*, but generally may not be *required*
- Remain mindful of employees' Section 7 rights to band together regarding terms and conditions



May Employers require a *COVID-19 Vaccine*?

- *Probably* – subject to the same exceptions as the flu vaccine.
- Policy should explain expectations, rationale, job-relatedness and availability of exemptions as a *reasonable* accommodation.
- Always consider state laws.
- Safeguard employee medical information.



Should an Employer Require Vaccinations?

- Good employee relations are vital for many reasons:
 - Clients, customers and the public notice
 - Critical to maintaining focus, productivity and community relations
 - Consider possible susceptibility to union organizing efforts
- Validate approvals and appropriate delivery of the vaccine.
- Employer pays for mandatory vaccines.
- Evaluate the likely response of your employees.
- Think through logistics (i.e., on-site?)
- Do not underestimate the importance of effective communications.

Summary

- CDC: Vaccinating now is important, to protect the workplace *and* reduce strain on nation's healthcare system.
- Flu shots should, ideally, be administered soon.
- Formalize vaccination policies now.
- Over 80% of employees get flu vaccines when *required* – almost twice the rate as when vaccines are *strongly encouraged*.
- Anticipate issues, questions and level of pushback, if and when an approved COVID-19 vaccine becomes available.

Visit **FISHER PHILLIPS** **VACCINE RESOURCE CENTER** for **Employers**

Fisher Phillips has a number of resources to aid employers with the upcoming COVID-19 vaccine that can also be used during flu season. We encourage you to check back often.

- COVID-19 Vaccine FAQs
- Sample policies and procedures
- Data Bank of templates and forms
- 50-state issues
- COVID-19 Vaccine and Flu insights
- ... and more

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Final Questions



Bob Robenalt

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TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett
RE: Safety and Workers' Compensation Public Policy Report
DATE: November 4, 2020

Overview

Workers' compensation law continues to be a legislative hotspot even amid COVID-19. Under the Householder regime the House made workers' compensation expansion a priority. PTSD was recently passed from the House and is now being heard in the Senate.

The long awaited COVID-19 immunity bill was bogged down due to an unwanted and bad workers' compensation amendment. The OMA was able to work with allies to remove the amendment but only after the dust settled on the Householder scandal.

A plethora of new workers' compensation legislation was introduced because of the pandemic. The OMA continues to work with allies to fight back against these attacks on workers' compensation law.

The Governor announced yet another billion back for state fund employers for the 2019 premium year.

Legislation and Rules

House Bill 81 – Workers' Comp for Bodily Fluid Exposure

Originally the bill provided workers' compensation coverage of post-exposure medical diagnostic services for a detention facility employee's exposure to blood or bodily fluids.

The House expanded the bill to include several additional workers' compensation provisions that were in its version of the workers' comp budget bill before the Senate striped the bill to budget provisions only. Included in HB 81 by the House were:

- reducing the statute of limitations for violations of a specific safety rule (VSSR) from two years to one year;
- increasing the funeral expense benefit cap for inflation;
- changing rules for final claim settlement agreements;
- continuing jurisdiction changes; and
- clarifying the voluntary abandonment doctrine.

The OMA provided proponent testimony for these changes in both the House and Senate. The bill passed both chambers and was signed by the Governor back in June.

House Bill 197 – Pandemic Emergency Legislation

Earlier this year, Gov. DeWine signed into law House Bill 197 in response to the COVID-19 pandemic. Among the legislation's many provisions is one that tolls the statute of limitations for any administrative action or proceeding set to expire between March 9, 2020, and July 30, 2020. This included workers' compensation timelines.

House Bill 308 – PTSD First Responders

Earlier this year, on a 74-22 vote, the Ohio House passed House Bill 308, legislation that would provide first responders with workers' compensation benefits to treat post-traumatic stress disorder (PTSD) even when there's no physical injury. Under current Ohio law, only mental conditions stemming from on-the-job physical injuries/illnesses are eligible for workers' compensation benefits.

Due to the risk of substantial premium increases for employers, the OMA has long opposed any legislation that would permit PTSD compensation or other mental claims when there is no associated physical injury or illness. As the OMA noted in its "key vote alert" to House members, HB 308, if enacted, "will inevitably result in increased workers' compensation costs for both public and private employers. The consequences of those cost increases will be felt across the Ohio economy and will negatively impact Ohio's business climate."

The OMA and other business allies crafted a competing plan that would have provided first responders with the same coverages they would receive under workers' compensation that was more streamlined (See HB 556 below).

The bill now pending in the Senate, where Senate President Larry Obhof (R-Medina) has already been quoted saying he supports the legislation. Members who are concerned with this precedent setting legislation should reach out to their Senators and urge them to vote no on the bill. The OMA and like-minded groups sent a letter to the committee chairman reiterating our opposition to the bill. The OMA provided opponent testimony in the Senate committee over the summer.

House Bill 556 – PTSD-Emergency First Responders

The provides for a business supported alternative to ensure that Ohio first responders receive treatment for PTSD. Treatment would occur outside the Ohio workers' compensation system. This would protect both workers and the system. OMA is supportive of the bill and worked to help create this solution.

House Bill 571 – COVID-19 Occupational Disease First Responders

The bill makes COVID-19 contracted by a peace officer, firefighter, or emergency medical worker an occupational disease under the Workers' Compensation Law under certain circumstances and declares an emergency. The bill has had one hearing.

House Bill 573 – COVID-19 Occupational Disease Workers

The bill makes COVID-19 contracted by any worker required to work during the pandemic an occupational disease under Ohio's workers' compensation laws. The bill has had one hearing.

House Bill 605 – COVID-19 Occupational Disease Food Workers

The bill makes COVID-19 contracted by a food worker including a food manufacturer during the pandemic and occupational disease. The bill has had one hearing. The bill in amendment form was included in the House passed COVID-19 liability bill. This was a major concern for food manufacturers as it changed current Ohio workers' comp law and put the burden of proof on the employer. The OMA and its members were able to kill the amendment.

BWC Agency Notes

Governor Asks BWC to Send \$1.5B in Dividend Payments to Ohio Employers This Fall
To provide economic relief to employers amid the ongoing pandemic, Gov. Mike DeWine asked the Ohio Bureau of Workers' Compensation (BWC) board of directors to send up to \$1.5 billion in dividend payments to Ohio employers this fall. This dividend would equal approximately 100% of the premiums paid in policy year 2019. Checks started going out in late October. If you are a state fund employer be on the lookout.

This is the second dividend of \$1 billion or more since April and the third dividend since 2019.

Additionally, Gov. DeWine asked the BWC board to approve a second distribution of face coverings to Ohio employers and their employees. In the first distribution, BWC shipped 20.6 masks to 197,000 employers.

Senate Confirms Harris as BWC COO

A Cincinnati native and longtime veteran of the Ohio Bureau of Workers' Compensation (BWC) assumed the role of chief operating officer following her confirmation by the Ohio Senate.

Patricia "Trish" Harris, who joined BWC as an intern in 1991, succeeds Kevin Abrams, who retired Monday after nearly four decades with the agency.

BWC Names New Claims Chief

The Ohio Bureau of Workers' Compensation (BWC) named Shawn Crosby as its new chief of claims services. A Cincinnati resident who joined the BWC as a front-line clerk in 1993, Crosby most recently served as Cincinnati claims director. She replaces former claims chief Patricia Harris, who was recently promoted to chief operating officer.

Ohio Safety Congress Will Be Virtual in 2021

The Ohio Bureau of Workers' Compensation has announced that the 2021 Ohio Safety Congress and Expo will be online only. Set for March 10-11, the event will feature dozens of learning sessions and a digital expo, allowing participants to chat virtually with vendors about new and existing products and services.

As always, the event will be free for Ohio employers. Registration will open in January.

BWC Extends PAR Program for Small Employers

The Bureau of Workers' Compensation (BWC) has extended the Policy Activity Rebate (PAR) program for another year. PAR provides eligible employers an opportunity to earn a 50% premium rebate, up to \$2,000. The program promotes a safe work environment and raises awareness about the most important aspects of workers' compensation.

Workers' Comp Implications of COVID-19 for Employers

OMA legal counsel Bricker & Eckler notes that the BWC has not provided a specific stance regarding compensability of COVID-19. The firm notes that claims of exposure to viruses or other potentially dangerous substances are generally not covered by workers' compensation unless an injury or occupational disease results from such exposure. Therefore, a claim of exposure to COVID-19 at work is not, in itself, a compensable injury or disease. Each claim will need to be evaluated on a case-by-case basis.

Safety Issues

OSHA Revises Enforcement Policies

As states begin reopening their economies, OSHA has issued two revised enforcement policies to “ensure employers are taking action to protect their employees.”

First, OSHA is increasing in-person inspections at all types of workplaces. Second, OSHA is revising its previous enforcement policy for recording cases of coronavirus. Under OSHA’s recordkeeping requirements, coronavirus is a recordable illness, and employers are responsible for recording cases of the coronavirus, if the case:

- Is confirmed as a coronavirus illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.



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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 308
133rd General Assembly

Bill Analysis

[Click here for H.B. 308's Fiscal Note](#)

Version: As Passed by the House

Primary Sponsor: Rep. Patton

Kailey Henry, Research Analyst

SUMMARY

- Makes a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD) eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the person suffers an accompanying physical injury.
- Prohibits a claimant from receiving compensation or benefits under the Workers' Compensation Law for PTSD with no accompanying physical injury at the same time as the claimant is receiving a disability benefit from a state retirement system.

DETAILED ANALYSIS

Workers' compensation coverage for PTSD

Under the bill, a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD), received in the course of and arising out of the person's employment as a peace officer, firefighter, or emergency medical worker, may be eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the PTSD is connected to a compensable physical injury.¹ Currently, an employee is not eligible to receive any compensation or benefits under Ohio Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.

Under the bill, a claimant is not entitled to compensation or benefits under the Workers' Compensation Law for PTSD as provided under the bill while the claimant receives a disability benefit or disability retirement, as appropriate, from the Public Employees Retirement

¹ R.C. 4123.01(C), with conforming changes in R.C. 4123.01(A), 4123.026, and 4123.46.

System (PERS), the Ohio Police and Fire Pension Fund (OP&F), the School Employees Retirement System (SERS), or the State Highway Patrol Retirement System (SHPRS).²

If a claimant receives compensation or benefits under the Workers' Compensation Law for PTSD without an accompanying physical injury while the claimant receives a disability benefit or disability retirement from a retirement system, the bill allows the Administrator of Workers' Compensation or a self-insuring employer to collect both of the following from the claimant:

1. The amount of compensation or benefits paid to the claimant by the Administrator or the self-insuring employer pursuant to Workers' Compensation Law for the time period the claimant received disability benefits or a disability retirement from the retirement system;
2. Any interest, attorney's fees, and costs the Administrator or the self-insuring employer incurs in collecting that payment.³

On determining that a PERS, OP&F, SERS, or SHPRS member's PTSD without an accompanying physical injury qualifies the member for a disability benefit or disability retirement, the bill requires the appropriate retirement system to notify the Administrator of all of the following: the member's name, that the member's PTSD without accompanying physical injury qualifies the member for a disability benefit or disability retirement, the effective date of the member's disability benefit or disability retirement, and the date on which payments for the disability benefit or disability retirement commence. The bill exempts these reports from current law confidentiality requirements applicable to certain PERS, OP&F, SERS, or SHPRS records.⁴

Background – psychiatric conditions as “injuries”

Other than injuries falling under specific exceptions (self-inflicted injuries or injuries caused by the employee's intoxication), Ohio's Workers' Compensation Law entitles every employee who is injured or contracts an occupational disease to receive compensation, benefits, or both on account of the injury or occupational disease.⁵ Continuing law defines “injury” as any injury received in the course of, and arising out of, the injured employee's employment. Currently, psychiatric conditions generally are excluded from the definition of injury, except where:

1. The employee's psychiatric conditions have arisen from an injury or occupational disease sustained by that employee; or

² R.C. 4123.87(A).

³ R.C. 4123.87(B).

⁴ R.C. 145.364, 742.391, 3309.402, and 5505.182.

⁵ R.C. 4123.54, not in the bill.

2. The employee's psychiatric conditions have arisen from sexual conduct in which the employee was forced to engage or participate by threat of physical harm.⁶

Thus, under current law, an employee is not eligible to receive compensation or benefits under Ohio's Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.⁷

Background – PTSD

PTSD is an illness caused by living through or seeing a traumatic event, such as war, a violent crime, or a bad accident. PTSD can cause flashbacks, trouble sleeping, thoughts of hurting oneself or others, angry outbursts, and feelings of worry, guilt, sadness, or loneliness. Signs of PTSD may start soon after a traumatic event or may start or intensify years after the event.⁸

Definitions

Under continuing law, a "peace officer" means any of the following:

1. A sheriff or deputy sheriff;
2. A marshal or deputy marshal;
3. A member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio;
4. A member of a police force employed by a metropolitan housing authority;
5. A member of a police force employed by a regional transit authority;
6. A state university law enforcement officer;
7. An enforcement agent of the Department of Public Safety;
8. An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
9. An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest-fire investigator, a natural resources officer, or a wildlife officer;
10. A person designated to perform law enforcement duties in a park district or conservancy district or by a park commission;
11. A veterans' home police officer;

⁶ R.C. 4123.01(C).

⁷ *Armstrong v. Jurgensen Co.*, 136 Ohio St.3d 58, 2013-Ohio-2237.

⁸ National Institute of Mental Health, *Post-Traumatic Stress Disorder*, <https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml>.

12. A special police officer employed by a port authority;
13. A township police constable;
14. A police officer of a township or joint police district;
15. A special police officer employed by a municipal corporation at a municipal airport or certain other municipal air navigation facilities;
16. The House of Representatives Sergeant at Arms, if the person has arrest authority, or an assistant House of Representatives Sergeant at Arms;
17. The Senate Sergeant at Arms or an assistant Senate Sergeant at Arms;
18. Certain Bureau of Criminal Identification and Investigation employees or officers;
19. A state fire marshal law enforcement officer;
20. The Superintendent and troopers of the State Highway Patrol, for specified purposes.⁹

Under continuing law, an “emergency medical worker” means any of the following persons, whether the person is paid or a volunteer, so long as the person is certified under Ohio law:

- A first responder;
- An emergency medical technician-basic;
- An emergency medical technician-intermediate;
- An emergency medical technician-paramedic.¹⁰

HISTORY

Action	Date
Introduced	06-28-19
Reported, H. Insurance	02-12-20
Passed House (74-22)	02-12-20

H0308-PH-133/ts

⁹ R.C. 4123.01(P), by reference to R.C. 2935.01, not in the bill.

¹⁰ R.C. 4123.01(A) and (R).

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 556

Representatives Lang, Antani

**Cosponsors: Representatives Becker, Koehler, Wiggam, Romanchuk, Kick,
Riedel, Reineke, Vitale, McClain, Lipps, Carruthers**

A BILL

To amend section 5502.01 and to enact sections 1
145.364, 742.391, 3309.402, 4168.01, 4168.02, 2
4168.09, 4168.10, 4168.11, 4168.12, 4168.20, 3
4168.21, 4168.45, 4168.46, 4168.47, 4168.48, 4
4168.60, 4168.75, 4168.76, 4168.77, 4168.78, 5
4168.80, and 5505.182 of the Revised Code 6
concerning compensation, medical benefits, and 7
disability retirement for peace officers, 8
firefighters, and emergency medical workers 9
diagnosed with post-traumatic stress disorder 10
arising from employment without an accompanying 11
physical injury. 12

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

Section 1. That section 5502.01 be amended and sections 13
145.364, 742.391, 3309.402, 4168.01, 4168.02, 4168.09, 4168.10, 14
4168.11, 4168.12, 4168.20, 4168.21, 4168.45, 4168.46, 4168.47, 15
4168.48, 4168.60, 4168.75, 4168.76, 4168.77, 4168.78, 4168.80, 16
and 5505.182 of the Revised Code be enacted to read as follows: 17

Sec. 145.364. On determining that a member's post- 18

traumatic stress disorder, without an accompanying physical 19
injury, qualifies that member for a disability benefit under 20
section 145.36 or 145.361 of the Revised Code, the public 21
employees retirement board, notwithstanding the exceptions to 22
public inspection in division (A) (2) of section 145.27 of the 23
Revised Code or the privileges contained in division (B) of that 24
section, shall notify the director of public safety of all of 25
the following: 26

(A) The name of the member; 27

(B) That the member's post-traumatic stress disorder, 28
without an accompanying physical injury, qualifies that member 29
for a disability benefit under section 145.36 or 145.361 of the 30
Revised Code; 31

(C) The effective date of the member's disability benefit; 32

(D) The date that payments for the member's disability 33
benefit commence. 34

Sec. 742.391. On determining that a member's post- 35
traumatic stress disorder, without an accompanying physical 36
injury, qualifies that member for a disability benefit under 37
section 742.38 or 742.39 of the Revised Code, the board of 38
trustees of the Ohio police and fire pension fund, 39
notwithstanding the exceptions to public inspection in division 40
(B) of section 742.41 of the Revised Code or the privileges 41
contained in division (C) of that section, shall notify the 42
director of public safety of all of the following: 43

(A) The name of the member; 44

(B) That the member's post-traumatic stress disorder, 45
without an accompanying physical injury, qualifies that member 46
for a disability benefit under section 742.38 or 742.39 of the 47

Revised Code; 48

(C) The effective date of the member's disability benefit; 49

(D) The date that payments for the member's disability benefit commence. 50
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Sec. 3309.402. On determining that a member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 3309.35, 3309.40, or 3309.401 of the Revised Code, the school employees retirement board, notwithstanding the exceptions to public inspection in division (A) (2) of section 3309.22 of the Revised Code or the privileges contained in division (B) of that section, shall notify the director of public safety of all of the following: 52
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(A) The name of the member; 61

(B) That the member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 3309.35, 3309.40, or 3309.401 of the Revised Code; 62
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(C) The effective date of the member's disability benefit; 66

(D) The date that payments for the member's disability benefit commence. 67
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Sec. 4168.01. As used in this chapter: 69

(A) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code and includes an off-duty peace officer when responding to an inherently dangerous situation that calls for an immediate response on the part of the off-duty peace officer, regardless of whether the peace officer is within the limits of the jurisdiction of the peace officer's regular 70
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employment or voluntary service when responding, on the 76
condition that the peace officer responds to the situation as 77
the peace officer otherwise would if the peace officer were on 78
duty in the peace officer's jurisdiction. 79

(B) "Firefighter" means a firefighter, whether paid or 80
volunteer, of a lawfully constituted fire department and 81
includes an off-duty firefighter when responding to an 82
inherently dangerous situation that calls for an immediate 83
response on the part of the firefighter, regardless of whether 84
the firefighter is within the limits of the jurisdiction of the 85
firefighter's regular employment or voluntary service when 86
responding, on the condition that the firefighter responds to 87
the situation as the firefighter otherwise would if the 88
firefighter were on duty in the firefighter's jurisdiction. 89

(C) "Emergency medical worker" means a first responder, 90
emergency medical technician-basic, emergency medical 91
technician-intermediate, or emergency medical technician- 92
paramedic, certified under Chapter 4765. of the Revised Code, 93
whether paid or volunteer, and includes an off-duty emergency 94
medical worker when responding to an inherently dangerous 95
situation that calls for an immediate response on the part of 96
the emergency medical worker, regardless of whether the 97
emergency medical worker is within the limits of the 98
jurisdiction of the emergency medical worker's regular 99
employment or voluntary service when responding, on the 100
condition that the emergency medical worker responds to the 101
situation as the emergency medical worker otherwise would if the 102
emergency medical worker were on duty in the emergency medical 103
worker's jurisdiction. 104

(D) "Public employer" means the state, including state 105

hospitals, each county, municipal corporation, township, school 106
district, and hospital owned by a political subdivision or 107
subdivisions other than the state. 108

(E) "Psychiatrist" and "licensed clinical psychologist" 109
have the same meanings as in section 5122.01 of the Revised 110
Code. 111

(F) "Physician" means an individual authorized under 112
Chapter 4731. of the Revised Code to practice medicine and 113
surgery or osteopathic medicine and surgery. 114

(G) "Nurse" means a person who is licensed to practice as 115
a registered nurse or licensed practical nurse under Chapter 116
4723. of the Revised Code. 117

(H) "Licensed professional clinical counselor" means a 118
person holding a licensed professional clinical counselor 119
license issued under Chapter 4757. of the Revised Code. 120

(I) "Licensed professional counselor" means a person 121
holding a licensed professional counselor license issued under 122
Chapter 4757. of the Revised Code. 123

(J) "Medicare" means the program established by Title 124
XVIII of the "Social Security Act," 42 U.S.C. 301. 125

(K) "Post-traumatic stress disorder" means post-traumatic 126
stress disorder received in the course of, and arising out of, 127
employment with a public employer as a peace officer, 128
firefighter, or emergency medical worker but without an 129
accompanying physical injury. 130

(L) "State post-traumatic stress disorder coverage fund" 131
means the fund created by section 4168.09 of the Revised Code. 132

(M) "Medical provider" means a psychiatrist, licensed 133

clinical psychologist, physician, nurse, licensed professional 134
clinical counselor, or licensed professional counselor. 135

Sec. 4168.02. (A) Subject to division (B) of this section, 136
a peace officer, firefighter, or emergency medical worker 137
diagnosed by a psychiatrist or licensed clinical psychologist as 138
having post-traumatic stress disorder is entitled to receive the 139
compensation described in section 4168.45 of the Revised Code 140
and the medical, nurse, and hospital services and medicines 141
provided under section 4168.46 of the Revised Code. If a 142
political subdivision of the state enters into an agreement to 143
secure the services of an organization, association, or group of 144
volunteer peace officers, firefighters, or emergency medical 145
workers, the peace officers, firefighters, or emergency medical 146
workers who volunteer for the organization are employed by the 147
political subdivision for purposes of this chapter. 148

(B) (1) Except as provided in division (B) (3) of this 149
section, any entitlement of an individual to compensation paid 150
under this chapter ceases one year after the date those payments 151
commence under section 4168.47 of the Revised Code. 152

(2) Except as provided in division (B) (3) of this section, 153
any entitlement of an individual to medical benefits under this 154
chapter ceases one year after those payments commence under 155
section 4168.47 of the Revised Code. 156

(3) The director of public safety shall extend an 157
individual's entitlement to compensation and medical benefits 158
under this chapter for up to one additional year on receiving a 159
recommendation from a psychiatrist or licensed clinical 160
psychologist. 161

(C) (1) No individual is entitled to compensation or 162

benefits under this chapter for any period of time during which 163
the individual receives either of the following: 164

(a) A disability benefit or disability retirement from the 165
public employees retirement system, the Ohio police and fire 166
pension fund, the school employees retirement system, or the 167
state highway patrol retirement system; 168

(b) A retirement or disability benefit pursuant to the 169
"Social Security Act," 42 U.S.C. 301, et seq. 170

(2) If an individual receives an award of compensation or 171
benefits under this chapter for the same time period for which 172
the individual receives a retirement or disability benefit or 173
disability benefit or disability retirement described in 174
division (C)(1) of this section, the director of public safety, 175
by any lawful means, may collect both of the following from the 176
individual: 177

(a) The amount of compensation or benefits paid to the 178
individual by the director pursuant to this chapter for that 179
time period; 180

(b) Any interest, attorney's fees, and costs the director 181
incurs in collecting that payment. 182

(D) A peace officer, firefighter, or emergency medical 183
worker is not required to apply for or receive compensation as 184
described in section 4168.45 of the Revised Code to receive the 185
medical, nurse, and hospital services and medicines provided 186
under section 4168.46 of the Revised Code. 187

Sec. 4168.09. There is hereby created the state post- 188
traumatic stress disorder coverage fund, which shall be in the 189
custody of the treasurer of state but shall not be part of the 190
state treasury. Investment earnings of the fund shall be 191

credited to the fund. The director of public safety shall 192
deposit to the fund all money paid under this chapter. The 193
director shall make disbursements from the fund in accordance 194
with this chapter. 195

The state post-traumatic stress disorder coverage fund 196
shall be used only for the following purposes: 197

(A) Payment of compensation described in section 4168.45 198
of the Revised Code; 199

(B) Payment of medical, nurse, and hospital services and 200
medicines described in section 4168.46 of the Revised Code; 201

(C) Payment of administrative costs incurred by the 202
director in administering and enforcing this chapter. 203

Sec. 4168.10. (A) The director of public safety shall do 204
all of the following: 205

(1) Classify different types of peace officers, 206
firefighters, and emergency medical workers according to the 207
categories the national council on compensation insurance 208
establishes that are applicable to employers in this state and 209
determine the risks of the different classes with respect to 210
suffering from post-traumatic stress disorder; 211

(2) Fix a premium rate for each class identified under 212
division (A)(1) of this section, based on the total payroll in 213
each of the classes, sufficiently large to maintain the state 214
post-traumatic stress disorder coverage fund; 215

(3) Use the fund to pay the compensation and benefits 216
provided for in this chapter and to administer the fund; 217

(4) Keep an accurate account of all of the following: 218

<u>(a) The money paid in premiums by each of the public</u>	219
<u>employers employing the classes of peace officers, firefighters,</u>	220
<u>and emergency medical workers identified under division (A) of</u>	221
<u>this section;</u>	222
<u>(b) The total losses attributable to post-traumatic stress</u>	223
<u>disorder suffered by the classes of peace officers,</u>	224
<u>firefighters, and emergency medical workers identified under</u>	225
<u>division (A) of this section;</u>	226
<u>(c) The losses incurred against the fund on account of</u>	227
<u>claims for post-traumatic stress disorder suffered by the</u>	228
<u>classes of peace officers, firefighters, and emergency medical</u>	229
<u>workers identified under division (A) of this section;</u>	230
<u>(d) The losses incurred against the fund to cover the</u>	231
<u>costs of administering this chapter.</u>	232
<u>(B) The director shall establish the premium rates under</u>	233
<u>division (A) (2) of this section for the purpose of maintaining</u>	234
<u>the fund at the lowest possible level that is consistent with</u>	235
<u>paying legitimate claims, administering the chapter, and</u>	236
<u>maintaining the solvency of the fund.</u>	237
<u>(C) Where the payroll cannot be obtained or, in the</u>	238
<u>opinion of the director, is not an adequate measure for</u>	239
<u>determining the premium rates the director establishes under</u>	240
<u>division (A) (2) of this section, the director may determine the</u>	241
<u>premium rates using any other basis, consistent with insurance</u>	242
<u>principles, as is equitable in view of the degree of risk with</u>	243
<u>respect to post-traumatic stress disorder. Whenever this chapter</u>	244
<u>makes reference to payroll or expenditure of wages with</u>	245
<u>reference to fixing premiums, the reference shall be construed</u>	246
<u>to also have been made to any other basis for fixing the rates</u>	247

of premium as the director may determine under this section. 248

Sec. 4168.11. (A) Every public employer who employs peace 249
officers, firefighters, or emergency medical workers shall keep 250
records of, and furnish to the director of public safety, all 251
information required by the director to carry out this chapter. 252

(B) Every public employer employing one or more peace 253
officers, firefighters, or emergency medical workers shall 254
submit a payroll report to the director of public safety. The 255
public employer shall submit the payroll report on or before the 256
fifteenth day of February of each year. The public employer 257
shall include both of the following in the payroll report: 258

(1) The number of peace officers, firefighters, or 259
emergency medical workers employed by the public employer in 260
this state during the preceding year from the first day of 261
January through the last day of December; 262

(2) The number of peace officers, firefighters, or 263
emergency medical workers employed in each of the classes 264
identified by the director in accordance with division (A) (1) of 265
section 4168.10 of the Revised Code and the aggregate amount of 266
wages paid to the peace officers, firefighters, or emergency 267
medical workers. 268

(C) A public employer described in division (B) of this 269
section shall submit the payroll report required under this 270
section to the director on a form prescribed by the director. 271

(D) (1) Except as otherwise provided in division (D) (2) of 272
this section, information contained in the payroll report 273
provided for in this section is for the exclusive use and 274
information of the director in the discharge of the director's 275
duties under this chapter. The information shall not be open to 276

the public or used in any court in any action or proceeding 277
unless the director is a party to the action or proceeding. 278

(2) The information contained in the payroll report 279
required under this section may be tabulated and published by 280
the director in statistical form for the use and information of 281
other state departments and the public. 282

Sec. 4168.12. Every public employer employing one or more 283
peace officers, firefighters, or emergency medical workers shall 284
pay annually on or before the thirty-first day of December into 285
the state post-traumatic stress disorder coverage fund the 286
amount of estimated annual premium the director of public safety 287
fixes for the public employer in accordance with division (A) (2) 288
of section 4168.10 of the Revised Code. Except as otherwise 289
provided in this section, the director shall estimate each 290
public employer's premium using the most recent payroll report 291
filed by the public employer under division (B) of section 292
4168.11 of the Revised Code and provide notice of the estimate 293
to the public employer by the first day of November. On receipt 294
of the next payroll report required by division (B) of section 295
4168.11 of the Revised Code, the director shall adjust the 296
premium charged to each public employer for the difference 297
between estimated gross payrolls and actual gross payrolls, and 298
any balance due to the director shall be immediately paid by the 299
public employer. Any balance due the public employer shall be 300
credited to the public employer's account. 301

The director shall provide each public employer that pays 302
premiums in accordance with this section a receipt certifying 303
that payment has been made for the year during which the payment 304
was made. The receipt is prima facie evidence of the payment of 305
the premium. 306

The director shall adopt rules for establishing premiums 307
for new public employers and public employers who have not 308
employed peace officers, firefighters, or emergency medical 309
workers for enough time to have been required to file a payroll 310
report required under division (B) of section 4168.11 of the 311
Revised Code. The public employer shall pay premiums according 312
to the rules adopted by the director until the public employer 313
has submitted the public employer's first payroll report. 314

Sec. 4168.20. (A) The director of public safety shall 315
review applications for the compensation described in section 316
4168.45 of the Revised Code and for the medical, nurse, and 317
hospital services and medicines provided under section 4168.46 318
of the Revised Code that are submitted to the director. The 319
director shall order payment from the state post-traumatic 320
stress disorder coverage fund of that compensation to an 321
individual who the director determines to be eligible under 322
division (A) of section 4168.02 of the Revised Code. The 323
director shall pay the costs of medical, nurse, and hospital 324
services and medicines to a medical provider in accordance with 325
the procedures established in rules adopted under division (C) 326
of section 4168.80 of the Revised Code. 327

(C) The director, in accordance with rules adopted under 328
section 4168.80 of the Revised Code, may disqualify any medical 329
provider from further reimbursement from the fund for violating 330
any requirement set forth in rules adopted under that section. 331
The disqualification shall not take effect until a written 332
notice, specifying the requirement violated and describing the 333
nature of the violation, has been delivered to the medical 334
provider. 335

Sec. 4168.21. Information collected and kept by the 336

director of public safety for purposes of carrying out the 337
director's duties under section 4168.20 of the Revised Code is 338
for the exclusive use and information of the director and shall 339
not be open to the public nor be used in any court in any action 340
or proceeding other than an appeal under section 4168.60 of the 341
Revised Code. The information, however, may be tabulated and 342
published by the director in statistical form for the use and 343
information of other state agencies and the public. 344

Sec. 4168.45. As used in this section, "statewide average 345
weekly wage" has the same meaning as in section 4123.62 of the 346
Revised Code. 347

No compensation shall be allowed for the first week of 348
total disability due to a diagnosis of post-traumatic stress 349
disorder, whenever it may occur, unless and until the peace 350
officer, firefighter, or emergency medical worker is totally 351
disabled for a continuous period of two weeks or more, in which 352
event compensation for the first week of total disability, 353
whenever it has occurred, shall be paid, in addition to any 354
other weekly benefits that are due, immediately following the 355
second week of total disability. There shall be no waiting 356
period in connection with the disbursements provided by section 357
4168.46 of the Revised Code. 358

An individual with post-traumatic stress disorder shall 359
receive sixty-six and two-thirds per cent of the individual's 360
average weekly wage so long as the individual's disability is 361
total. The maximum amount of weekly compensation an individual 362
may receive is an amount equal to the statewide average weekly 363
wage. The minimum amount of weekly compensation an individual 364
may receive is an amount equal to thirty-three and one-third per 365
cent of the statewide average weekly wage, unless the 366

individual's wage is less than thirty-three and one-third per 367
cent of the minimum statewide average weekly wage, in which 368
event the individual shall receive compensation equal to the 369
individual's full wages. 370

If an individual in a claim allowed under this chapter 371
suffers a wage loss as a result of returning to employment other 372
than the individual's former position as a peace officer, 373
firefighter, or emergency medical worker due to a diagnosis of 374
post-traumatic stress disorder, the individual shall receive 375
compensation at sixty-six and two-thirds per cent of the 376
difference between the individual's average weekly wage and the 377
individual's present earnings, not to exceed the statewide 378
average weekly wage. 379

If an individual in a claim allowed under this chapter 380
suffers a wage loss as a result of being unable to find 381
employment consistent with the disability resulting from post- 382
traumatic stress disorder, the individual shall receive 383
compensation at sixty-six and two-thirds per cent of the 384
difference between the individual's average weekly wage and the 385
individual's present earnings, not to exceed the statewide 386
average weekly wage. 387

Sec. 4168.46. The director of public safety shall disburse 388
and pay from the state post-traumatic stress disorder coverage 389
fund the amounts for medical, nurse, and hospital services and 390
medicines as the director deems proper to treat a peace officer, 391
firefighter, or emergency medical worker diagnosed by a 392
psychiatrist or licensed clinical psychologist as having post- 393
traumatic stress disorder. A medical provider may provide 394
medical, nurse, hospital services, or medicines to treat a peace 395
officer, firefighter, or emergency medical worker diagnosed with 396

post-traumatic stress disorder and receive reimbursement from 397
the fund in accordance with the procedures the director adopts 398
under division (C) of section 4168.80 of the Revised Code. No 399
medical provider shall charge, assess, or otherwise attempt to 400
collect from an individual or employer any amount for covered 401
services or supplies that is in excess of the allowed amount 402
paid by the director from the fund. 403

Sec. 4168.47. (A) Payments of compensation under section 404
4168.45 of the Revised Code and payments of medical benefits 405
under section 4168.46 of the Revised Code shall commence in 406
accordance with the following: 407

(1) If the director of public safety orders payment of 408
compensation, medical benefits, or both, payment shall begin at 409
the time the director orders the payment. 410

(2) If the director denies payment of compensation, 411
medical benefits, or both, but a court orders payment in an 412
appeal under section 4168.60 of the Revised Code, payment shall 413
commence on the date the court orders the payment. 414

(B) For purposes of division (A)(1) of this section, if 415
the director's order to make a payment is reversed in an appeal 416
under section 4168.60 of the Revised Code, payment shall 417
immediately cease and any money previously paid from the fund 418
pursuant to the order shall not be included in the public 419
employer's experience for purposes of calculating premiums under 420
section 4168.10 of the Revised Code. 421

(C) For purposes of division (A)(2) of this section, an 422
individual who receives payment in accordance with that division 423
is entitled to a lump sum payment representing any amounts the 424
individual would have received if the director had not denied 425

payment. 426

Sec. 4168.48. Claims for compensation or benefits under 427
this chapter are forever barred unless, within two years after 428
the disability due to post-traumatic stress disorder, or within 429
such longer period as does not exceed six months after diagnosis 430
of post-traumatic stress disorder by a psychiatrist or licensed 431
clinical psychologist, application is made to the director of 432
public safety. 433

Sec. 4168.60. An order made by the director under this 434
chapter granting payment, denying payment, or granting and 435
denying payment from the state post-traumatic stress disorder 436
coverage fund may be appealed by an individual, a public 437
employer, or a medical provider affected by the order. The 438
appeal shall be to the court of common pleas of the county in 439
which the individual resides or in which the medical provider 440
conducts business. The appellant shall file the notice of appeal 441
with a court of common pleas within sixty days after the date of 442
the receipt of the order. 443

Sec. 4168.75. A public employer who employs a peace 444
officer, firefighter, or emergency medical worker and who 445
complies with section 4168.12 of the Revised Code is not liable 446
to respond in damages at common law or by statute for any 447
diagnosis of post-traumatic stress disorder occurring during the 448
period covered by the premiums paid into the state post- 449
traumatic stress disorder coverage fund, whether or not the 450
post-traumatic stress disorder is compensable under this 451
chapter. 452

Sec. 4168.76. An employee of any public employer who 453
employs a peace officer, firefighter, or emergency medical 454
worker is not liable to respond in damages at common law or by 455

statute for any diagnosis of post-traumatic stress disorder 456
received by a public employer's employee who is employed as a 457
peace officer, firefighter, or emergency medical worker by the 458
public employer, provided that the post-traumatic stress 459
disorder is found to be compensable under this chapter. 460

Sec. 4168.77. Any individual who has suffered post- 461
traumatic stress disorder and who is employed by a public 462
employer who has failed to comply with section 4168.12 of the 463
Revised Code may file an application with the director of public 464
safety for compensation, benefits, or both under this chapter. 465
The director shall review the application in accordance with 466
section 4168.20 of the Revised Code and shall make an award to 467
the individual as the individual would be entitled to receive if 468
the public employer had complied with section 4168.12 of the 469
Revised Code. Payment shall not bar any action under section 470
4168.78 of the Revised Code. If a recovery is made in an action 471
under section 4168.78 of the Revised Code, the individual shall 472
repay any funds paid from the state post-traumatic stress 473
disorder coverage fund under this section. The director shall 474
institute proceedings to recover from the public employer any 475
moneys paid from the fund and to secure the public employer's 476
payment of the award. The public employer shall pay the award in 477
the manner and amount fixed by the award. 478

Sec. 4168.78. A public employer who employs peace 479
officers, firefighters, or emergency medical workers and who 480
fails to comply with section 4168.12 of the Revised Code is 481
liable to the public employer's employees who are peace 482
officers, firefighters, or emergency medical workers for damages 483
proximately caused by the wrongful act, neglect, or default of 484
the public employer and that result in a diagnosis of post- 485
traumatic stress disorder. In any action for damages described 486

<u>in this section, an employer may not raise any of the following</u>	487
<u>defenses:</u>	488
<u>(A) The fellow servant rule;</u>	489
<u>(B) Assumption of risk;</u>	490
<u>(C) Contributory negligence.</u>	491
<u>Sec. 4168.80.</u> <u>The director of public safety shall adopt,</u>	492
<u>in accordance with Chapter 119. of the Revised Code, any rules</u>	493
<u>that are necessary to carry out this chapter, including rules to</u>	494
<u>establish all of the following:</u>	495
<u>(A) Procedures for a peace officer, firefighter, or</u>	496
<u>emergency medical worker employed by a public employer and</u>	497
<u>diagnosed by a psychiatrist or licensed clinical psychologist as</u>	498
<u>having post-traumatic stress disorder to apply for the</u>	499
<u>compensation described in section 4168.45 of the Revised Code;</u>	500
<u>(B) A list of approved medical, nurse, and hospital</u>	501
<u>services and medicines for which reimbursement is available from</u>	502
<u>the state post-traumatic stress disorder coverage fund and the</u>	503
<u>amount of reimbursement, which shall not be greater than the</u>	504
<u>reimbursement rate paid for comparable services and medicines in</u>	505
<u>this state under the medicare program;</u>	506
<u>(C) Procedures for reimbursing a medical provider from the</u>	507
<u>fund for providing treatments approved under division (B) of</u>	508
<u>this section;</u>	509
<u>(D) Procedures to be followed by the director in</u>	510
<u>disqualifying a medical provider from receiving reimbursements</u>	511
<u>from the fund;</u>	512
<u>(E) Procedures for reimbursing a psychiatrist or licensed</u>	513
<u>clinical psychologist from the fund for time and effort spent</u>	514

diagnosing a peace officer, firefighter, or emergency medical 515
worker employed by a public employer who has been found to be 516
eligible for compensation, benefits, or both under this chapter; 517

(F) Blank applications for benefits or compensation from 518
the fund, notices to public employers and employees, proofs of 519
medical attendance and hospital and nursing care, proofs of 520
employment and wage earnings, and other necessary blank 521
applications. 522

Sec. 5502.01. (A) The department of public safety shall 523
administer and enforce the laws relating to the registration, 524
licensing, sale, and operation of motor vehicles and the laws 525
pertaining to the licensing of drivers of motor vehicles. 526

The department shall compile, analyze, and publish 527
statistics relative to motor vehicle accidents and the causes of 528
them, prepare and conduct educational programs for the purpose 529
of promoting safety in the operation of motor vehicles on the 530
highways, and conduct research and studies for the purpose of 531
promoting safety on the highways of this state. 532

(B) The department shall administer the laws and rules 533
relative to trauma and emergency medical services specified in 534
Chapter 4765. of the Revised Code and any laws and rules 535
relative to medical transportation services specified in Chapter 536
4766. of the Revised Code. 537

(C) The department shall administer and enforce the laws 538
contained in Chapters 4301. and 4303. of the Revised Code and 539
enforce the rules and orders of the liquor control commission 540
pertaining to retail liquor permit holders. 541

(D) The department shall administer the laws governing the 542
state emergency management agency and shall enforce all 543

additional duties and responsibilities as prescribed in the 544
Revised Code related to emergency management services. 545

(E) The department shall conduct investigations pursuant 546
to Chapter 5101. of the Revised Code in support of the duty of 547
the department of job and family services to administer the 548
supplemental nutrition assistance program throughout this state. 549
The department of public safety shall conduct investigations 550
necessary to protect the state's property rights and interests 551
in the supplemental nutrition assistance program. 552

(F) The department of public safety shall enforce 553
compliance with orders and rules of the public utilities 554
commission and applicable laws in accordance with Chapters 555
4905., 4921., and 4923. of the Revised Code regarding commercial 556
motor vehicle transportation safety, economic, and hazardous 557
materials requirements. 558

(G) Notwithstanding Chapter 4117. of the Revised Code, the 559
department of public safety may establish requirements for its 560
enforcement personnel, including its enforcement agents 561
described in section 5502.14 of the Revised Code, that include 562
standards of conduct, work rules and procedures, and criteria 563
for eligibility as law enforcement personnel. 564

(H) The department shall administer, maintain, and operate 565
the Ohio criminal justice network. The Ohio criminal justice 566
network shall be a computer network that supports state and 567
local criminal justice activities. The network shall be an 568
electronic repository for various data, which may include arrest 569
warrants, notices of persons wanted by law enforcement agencies, 570
criminal records, prison inmate records, stolen vehicle records, 571
vehicle operator's licenses, and vehicle registrations and 572
titles. 573

(I) The department shall coordinate all homeland security activities of all state agencies and shall be a liaison between state agencies and local entities for those activities and related purposes.

(J) Beginning July 1, 2004, the department shall administer and enforce the laws relative to private investigators and security service providers specified in Chapter 4749. of the Revised Code.

(K) The department shall administer criminal justice services in accordance with sections 5502.61 to 5502.66 of the Revised Code.

(L) The department shall coordinate security measures and operations, and may direct the department of administrative services to implement any security measures and operations the department of public safety requires, at the Vern Riffe Center and the James A. Rhodes state office tower.

Notwithstanding section 125.28 of the Revised Code, the director of public safety may recover the costs of directing security measures and operations under this division by either issuing intrastate transfer voucher billings to the department of administrative services, which the department shall process to pay for the costs, or, upon the request of the director of administrative services, the director of budget and management may transfer cash in the requested amount from the building management fund created under section 125.28 of the Revised Code. Payments received or cash transfers made under this division for the costs of directing security measures and operations shall be deposited into the state treasury to the credit of the security, investigations, and policing fund created under section 4501.11 of the Revised Code.

(M) The department shall administer the laws and rules 604
relative to compensation and benefits for peace officers, 605
firefighters, and emergency medical workers diagnosed with post- 606
traumatic stress disorder received in the course of, and arising 607
out of, employment with public employers as peace officers, 608
firefighters, or emergency medical workers without an 609
accompanying physical injury specified in Chapter 4168. of the 610
Revised Code. 611

Sec. 5505.182. On determining that a member's post- 612
traumatic stress disorder, without an accompanying physical 613
injury, qualifies that member for disability retirement under 614
section 5505.18 of the Revised Code, the state highway patrol 615
retirement board, notwithstanding the exceptions to public 616
inspection in division (C) (2) of section 5505.04 of the Revised 617
Code or the privileges contained in division (D) of that 618
section, shall notify the director of public safety of all of 619
the following: 620

(A) The name of the member; 621

(B) That the member's post-traumatic stress disorder, 622
without an accompanying physical injury, qualifies that member 623
for disability retirement under section 5505.18 of the Revised 624
Code; 625

(C) The effective date of the member's disability 626
retirement; 627

(D) The date that payments for the member's disability 628
retirement commence. 629

Section 2. That existing section 5502.01 of the Revised 630
Code is hereby repealed. 631

Section 3. Notwithstanding division (A) of section 169.05 632

of the Revised Code, as soon as possible after the effective 633
date of this section, the Director of Budget and Management 634
shall request the Director of Commerce to transfer to the State 635
Post-Traumatic Stress Disorder Coverage Fund up to \$44,000,000 636
of unclaimed funds that have been reported by the holders of 637
unclaimed funds under section 169.05 of the Revised Code, 638
irrespective of the allocation of the unclaimed funds under that 639
section. Upon receipt of the request, the Director of Commerce 640
shall make the transfer. 641



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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 605
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Kelly and Patton

Paul Luzzi, Attorney

SUMMARY

- Creates a presumption that COVID-19 is an occupational disease under the Workers' Compensation Law for a retail food establishment employee or a food processing establishment employee who contracts COVID-19 during the emergency declared by Executive Order 2020-01D, issued March 9, 2020.
- Allows the presumption to be rebutted by affirmative evidence.
- Applies the presumption to claims arising only during the period of the emergency declared by the Order.
- Declares an emergency.

DETAILED ANALYSIS

Presumption that COVID-19 was contracted during employment

For purposes of the Workers' Compensation Law,¹ the bill creates a presumption that a retail food establishment employee or a food processing establishment employee who contracts COVID-19 contracted the disease in the course of and arising out of the employee's employment during the emergency declared by Executive Order 2020-01D, issued March 9, 2020. The presumption applies to claims arising only during the period of the emergency declared by the Order. The presumption may be refuted with affirmative evidence.²

Under continuing law, a retail food establishment is a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale (for example, a

¹ R.C. Chapters 4121, 4123, 4127, and 4131.

² R.C. 4123.68(CC), by reference to R.C. 3715.021 and 3717.01, not in the bill.

grocery store).³ A food processing establishment is a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale at wholesale. An individual who produces nonhazardous food items in the individual's home is not a food processing establishment. Additionally, a processor of syrup, apple syrup, apple butter, sorghum juice, or honey is not a food processing establishment if 75% or more of the sap, apples, sorghum, or honey is produced or harvested directly from the processor's own trees, plants, or hives.⁴

The bill includes the presumption in the schedule of occupational diseases that are compensable under continuing law. An employee who is disabled by a scheduled occupational disease, or the dependent of an employee whose death is caused by the disease, is typically entitled to any compensation and benefits provided by the Law. The schedule, however, is not exclusive; any disease that satisfies the continuing law definition of occupational disease is compensable. For a disease to be considered an occupational disease under the Law, all of the following conditions must be satisfied:

1. The disease is contracted in the course of employment;
2. The employment creates a risk of contracting the disease in greater degree and in a different manner from the general public;
3. Either of the following applies:
 - a. The disease is peculiar to that type of employment by the disease's causes and the characteristics of the disease's manifestations;
 - b. The conditions of the employment results in a hazard that distinguishes the employment in character from employment generally.⁵

Emergency

The bill declares it to be an emergency law, meaning that it will take immediate effect once signed by the Governor.⁶

HISTORY

Action	Date
Introduced	04-10-20

H0605-I-133/ec

³ R.C. 3717.01, not in the bill.

⁴ R.C. 3715.01 and 3715.021, not in the bill.

⁵ R.C. 4123.68; R.C. 4123.01(F), not in the bill, and *State ex rel. Ohio Bell Tel. Co. v. Krise*, 42 Ohio St.2d 247, 253-254 (1975).

⁶ Section 3.



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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 573
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Sobecki and Boggs

Paul Luzzi, Attorney

SUMMARY

- Creates a presumption that COVID-19 is an occupational disease under the Workers' Compensation Law if an employee's employer required the employee to work outside of the employee's home during the emergency declared by Executive Order 2020-01D, issued March 9, 2020.
- Allows the presumption to be rebutted by affirmative evidence.
- Applies the presumption to claims arising only during the period of the emergency declared by the Order and to claims arising during the 14-day period after the emergency ends.
- Declares an emergency.

DETAILED ANALYSIS

Presumption that COVID-19 was contracted during employment

For purposes of the Workers' Compensation Law,¹ the bill creates a presumption that an employee who contracts COVID-19 contracted the disease in the course of and arising out of the employee's employment if the employee's employer required the employee to work outside of the employee's home during the emergency declared by Executive Order 2020-01D, issued March 9, 2020. The presumption applies to claims arising only during the period of the emergency declared by the Order and claims arising during the 14-day period after the emergency ends. The presumption may be refuted with affirmative evidence.²

¹ R.C. Chapters 4121, 4123, 4127, and 4131.

² R.C. 4123.68(CC).

The bill includes the presumption in the schedule of occupational diseases that are compensable under continuing law. An employee who is disabled by a scheduled occupational disease, or the dependent of an employee whose death is caused by the disease, is typically entitled to any compensation and benefits provided by the Law. The schedule, however, is not exclusive; any disease that satisfies the continuing law definition of occupational disease is compensable. For a disease to be considered an occupational disease under the Law, all of the following conditions must be satisfied:

1. The disease is contracted in the course of employment;
2. The employment creates a risk of contracting the disease in greater degree and in a different manner from the general public;
3. Either of the following applies:
 - a. The disease is peculiar to that type of employment by the disease's causes and the characteristics of the disease's manifestations;
 - b. The conditions of the employment results in a hazard that distinguishes the employment in character from employment generally.³

Emergency

The bill declares it to be an emergency law, meaning that it will take immediate effect once signed by the Governor.⁴

HISTORY

Action	Date
Introduced	03-23-20

H0573-I-133/ks

³ R.C. 4123.68; R.C. 4123.01(F), not in the bill, and *State ex rel. Ohio Bell Tel. Co. v. Krise*, 42 Ohio St.2d 247, 253-254 (1975).

⁴ Section 3.



The OMA's mission is to protect and grow Ohio manufacturing. We created this page to share content that we believe is relevant to your challenges related to the coronavirus (COVID-19) pandemic. The OMA is in regular contact with state officials, as well as our counterparts at the National Association of Manufacturers, regarding the response to COVID-19.

We will keep OMA members updated regularly through electronic communications from OMA President Eric Burkland, as well as via our normal communication tools, such as the OMA's weekly Leadership Briefing.

If you have health-related questions about COVID-19, contact the Ohio Department of Health's call center at 1-833-4ASKODH (1-833-427-5634).

Federal

- [Latest updates from the CDC.](#)
- CDC's updated [guidance for manufacturing workers and employers](#) (includes [this infographic on workstations](#)).
- CDC's [resources for businesses and employers](#).
- CDC's [reopening guidance](#) for workplaces and businesses.
- [FFCRA Paid Leave Q&A.](#)
- [FFCRA Poster on Employee Rights.](#)
- OSHA's safety tips for manufacturers to protect employees from exposure to coronavirus – in both [English](#) and [Spanish](#).
- U.S. EPA's list of [disinfectants for use against the coronavirus](#).
- OSHA's [new poster on steps to reduce the risk of exposure in workplaces](#).
- OSHA's [video](#) and [poster](#) on how to properly wear and remove a mask/respirator.
- CDC [recommendation's regarding the use of cloth face coverings](#).
- U.S. Department of Labor [guidance on the WARN Act](#) (regarding plant closings and mass layoffs).
- [Families First Coronavirus Response Act \(FFCRA\) paid leave requirements – for employers.](#)
- [COVID-19 Screening Tool.](#)
- [OSHA guidance on preparing workplaces for COVID-19.](#)
- U.S. Small Business Administration [resources for employers](#) regarding the coronavirus pandemic, including information on its [disaster loan program](#).
- [SBA coronavirus relief options.](#)
- [SBA Guidance on the CARES Act's Paycheck Protection Program Loan Guarantee.](#)
- [The Federal Reserve's Main Street Lending Program.](#)
- [Summaries and FAQs on all phases \(I, II, and III\) of the federal COVID-19 emergency packages.](#)

Ohio

- [Ohio Public Health Advisory Alert System](#), which provides a county-by-county assessment of COVID-19 trends.
- Here's the [web page for Ohio's travel advisory](#). The Ohio Department of Health has published [this FAQ document](#) regarding the advisory.
- [July 23, 2020 public health order](#) (statewide mask requirement).
- The DeWine administration's [May 29, 2020 public health order](#). Section 13 is specific to manufacturing.
- [Safety guidance for manufacturers](#), as well as the [five safety protocols](#) for all businesses, under the DeWine administration's [Responsible RestartOhio](#) plan.
- Ohio Department of Health [FAQs on the use of face coverings in the workplace](#).
- Ohio Department of Health's updated [checklist for employers regarding potentially exposed essential workers](#).
- [Ohio's Office of Small Business Relief](#).
- [Ohio Department of Health information and checklist for employers](#).
- [Ohio COVID-19 Dashboard](#).
- [Latest updates and resources from the Ohio Department of Health \(ODH\)](#).
- [JobsOhio 'Ohio Working. Ohio Safe' website](#).
- [Governor DeWine's briefings](#).
- [Governor DeWine's website](#).
- [SharedWork Ohio](#) – an OMA-supported program that provides employers with an alternative to layoffs.
- [State of Ohio's job search engine](#) for employers to post job openings during the COVID-19 emergency.
- [Information for employers regarding unemployment issues](#).

Industry

- The Ohio State University Wexner Medical Center's [COVID-19 web page for employers](#).
- University Hospitals [web page for employers](#) called, "Keeping Your Employees and Customers Safe."
- The Cleveland Clinic's [COVID-19 workplace safety guide for manufacturers](#). (The Clinic also published [this guide](#) on disinfecting businesses.)
- The Manufacturing Leadership Council's [collection](#) of emerging strategies and operational practices that manufacturers are utilizing to keep employees safe.
- [National Association of Manufacturers: New Operational Practices to Consider in the Time of COVID-19-May 2020](#).
- [Ohio Manufacturing Alliance to Fight COVID-19](#) (to help ensure that health care workers have the protective equipment they need).
- The Ohio Manufacturing Alliance's [Ohio Emergency PPE Makers' Exchange](#). (This online marketplace is a resource for organizations, including essential employers, that need PPE and related equipment to find a selection offered by Ohio manufacturers and makers.)
- [National Association of Manufacturers COVID-19 Resources](#).
- CDC [letter](#) to NAM and [additional guidance](#) to give manufacturers clearer guidance on how to operate safely during the COVID-19 outbreak.

- The National Association of Manufacturers [state tracker](#) to provide the latest re-opening information for all states.
 - The U.S. Chamber's [interactive map](#) comparing state-by-state re-opening guidelines for businesses.
 - [MAGNET \(Northeast Ohio's MEP\) Best Practices](#).
 - [Video](#) with Dr. Bill Gegas, medical director at Worthington Industries, explaining the differences between various masks and face coverings.
-

OMA Connections Partners

- [Huntington National Bank's summary of financial support programs for businesses](#)
 - [Clark Schaefer Hackett COVID-19 Resource Center](#)
 - [RSM COVID-19 Resource Center and COVID-19 Tax Relief Center](#)
 - [Bricker & Eckler Resource Center](#)
 - [Calfee COVID-19 Resource Center](#)
 - [Dinsmore COVID-19 Business Strategies Hub](#)
 - [Frantz Ward Coronavirus Updates](#)
 - [GBQ Partners COVID-19 Insights](#)
 - [Roetzel COVID-19 Resources](#)
 - [Benesch COVID-19 Resource Center](#)
 - [Jones Day COVID-19 Insights](#)
 - [Plante Moran's COVID-19 Resource Center for Manufacturers](#)
 - [Thompson Hine COVID-19 Task Force](#)
 - [CliftonLarsonAllen COVID-19 Resources](#)
 - [Crowe COVID-19 Resource Center](#)
 - [Fisher Phillips COVID-19 Resource Center](#)
 - [MCM COVID-19 Resource Center](#)
 - [Pharmaceutical Research and Manufacturers of America](#)
 - [Schneider Downs](#)
 - [Squire Patton Boggs](#)
 - [Gilmore Jason Mahler](#)
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OMA Information

- OMA communications on COVID-19:
 - [October 15, 2020 OMA COVID-19 Update](#).
 - [October 13, 2020 OMA COVID-19 Update](#).
 - [OMA COVID-19 Manufacturers' Information Exchange](#) (via LinkedIn) to share information and best practices with other manufacturers.
 - [Recording of OMA's COVID-19 Briefing for Manufacturers – March 23, 2020](#). (Includes information regarding Ohio's stay-at-home order and actions to keep the workplace safe.)
 - [Recording of OMA's Second COVID-19 Briefing for Manufacturers – March 25, 2020](#). (Includes discussion from Lt. Gov. Jon Husted, as well as a panel of experts addressing key concerns.)

- [Recording of OMA's Third COVID-19 Briefing for Manufacturers – April 29, 2020.](#) (Includes subject-matter expertise on Ohio's re-opening plan, workplace safety, use of PPE by employees, unemployment provisions, federal loan programs, and other manufacturing-related topics.)
- [Recording of OMA's Infectious Disease Preparedness and Response webinar – May 12, 2020.](#)
- [Bricker & Eckler's Analysis of Ohio's May 29, 2020 Public Health Order.](#)
- [Bricker & Eckler's Analysis of Ohio's July 8, 2020 Public Health Order.](#)
- [OMA's updated resources document to address general workplace safety concerns](#) during COVID-19. (Includes guidance on the use of face coverings/masks, cleaning and disinfecting, employee health checks, and reporting confirmed or suspected COVID-19 cases.)
- [OMA's FAQs document](#), which addresses questions raised by several members.
- [OMA's updated "Guidance on the Use of Face Coverings & Masks."](#)
- ["Ohio Manufacturers in the News: Helping Lead the Fight Against COVID-19."](#)

Coronavirus (COVID-19) Frequently Asked Questions

To minimize the spread of coronavirus (COVID-19) and continue business operations, our BWC staff is teleworking. While we may be operating from a different physical location, we do not currently anticipate major issues with continuing to provide our employers, injured workers, and the many others we serve, with service. Phone numbers and email addresses for our customer service representatives remain the same.

We are monitoring the situation closely and will provide updates as necessary. We know you may have questions that we are just not able to immediately answer. We promise to keep you updated and share information as we have it. In the meantime, thank you for your patience as we all work through COVID-19 together.

For the latest information on coronavirus (COVID-19) visit coronavirus.ohio.gov. For questions about COVID-19's effect on BWC not listed here, you can email BWCCOVID19@bwc.state.oh.us.

Last updated at 9/22/2020 4:01 PM

New! See Q 2 about COVID-19 claims and experience rating.

Note to Medical Providers: BWC has developed an FAQ document specifically for medical providers that addresses COVID-19 issues. To download, click [here](#).

Face Coverings for Employers and Workforce: For FAQs related to our [Protecting Ohio's Workforce — We've Got You Covered](#) plan, [visit this link](#).

Frequently Asked Questions

Note: This is a "living" document. The following is updated routinely to reflect our most recent policy changes and initiatives, with new Q&As at the end.

Claims and Policy Processing

Q 1: What is BWC doing to help employers during this unprecedented time?

A: At the request of Ohio Governor Mike DeWine, in late April we sent up to \$1.6 billion to Ohio employers to ease the economic impact of the coronavirus (COVID-19) on Ohio's economy and business community. This dividend equals approximately 100% of the premiums employers paid in policy year 2018. BWC applied the dividend to an employer's outstanding balances first, including the recent installment deferrals. Any amounts exceeding outstanding balances were sent to the employer. For those employers, it means one less bill to worry about. As in previous years, the dividend is possible due to strong investment returns on employer premiums, a declining number of claims each year, and prudent fiscal management. It's also due to employers who work hard to improve workplace safety and reduce injury claims. Even with the downturn in the market, BWC is able to provide this important dividend to employers while maintaining funds to take care of injured workers for years to come. All checks were issued by the end of April. **Employers: For frequently asked questions about the dividend, [visit this link](#).**

Q 2: Will BWC exclude the cost of claims related to COVID-19 from experience rating?

A: As of Aug. 10, 2020, BWC has not decided whether to exclude the cost of allowed COVID-19 claims from an employer's experience calculation. BWC is still evaluating the impact, costs, and longevity of COVID-19. With these unknowns, BWC is not prepared to make a decision at this point.

Since the Public Employer – State Agencies program operates on a pay-as-you-go basis, BWC will include any costs related to COVID-19 claims in the development of their contribution rates.

Q 3: Will BWC allow employers to delay installment payments due to COVID-19's hardship?

A: To ease the continuing financial impact on Ohio businesses due to the COVID-19 pandemic, BWC is deferring installment payments for Policy Year 2020 for June, July, and August to Sept. 1, 2020. If employers are able to follow the normal installment payment scheduled due date, such payments may still be submitted. BWC will not lapse coverage or assess penalties for unpaid installments during this deferral period.

We previously deferred installments for March, April, and May until June 1, 2020. Following that decision, we gave Ohio employers nearly \$1.6 billion in dividends, but for most employers, we first applied the dividends to the unpaid balance for March, April, and May.

Q 4: How does BWC's deferral of premium installment payments apply to state fund employers that are Professional Employer Organizations (PEOs)?

A: PEO employers are required to report actual payroll and pay premiums on a monthly basis, but as state fund employers operating under the COVID-19 climate, they may defer reporting and payments for March through July until Sept. 1, 2020. As for the August payroll report and premium payment, it will be due as normally scheduled, on or before Sept. 15, 2020. The deferral is automatic, there is no "opt in" requirement to take advantage of this option.

Q 5: How does this impact state fund clients of PEO employers?

A: A client of a PEO employer must maintain active workers' compensation coverage throughout the duration of any type of PEO agreement. Client employers will be treated the same as all other state fund employers and will have the option to defer payments until Sept. 1 without a lapse in coverage.

Q 6: If I contract COVID-19, is it a compensable workers' compensation claim?

A: It depends on how you contract it and the nature of your occupation. Generally, communicable diseases like COVID-19 are not workers' compensation claims because people are exposed in a variety of ways, and few jobs have a hazard or risk of getting the diseases in a greater degree or a different manner than the general public. However, if you work in a job that poses a special hazard or risk and contract COVID-19 from the work exposure, BWC could allow your claim.

Q 7: If I am quarantined due to COVID-19 can I receive workers' compensation wage replacement benefits?

A: BWC can only pay compensation in an allowed claim for disability resulting from the allowed conditions. An executive order issued by Governor DeWine, however, expands flexibility for Ohioans to receive unemployment benefits during Ohio's emergency declaration period. For more information on unemployment benefits go to the [Ohio Department of Job and Family Services](#).

Q 8: Are you making determinations on new claims?

A: Yes. Our staff is teleworking and has access to our systems.

Q 9: How will my benefits be extended when my doctor's office is closed, and they haven't completed my Medco-14?

A: BWC and the Managed Care Organizations are working with your physicians to ensure medical care and any necessary paperwork are completed so that benefits can continue uninterrupted. You may want to check with your treating provider to determine if telemedicine is available. Telemedicine can be an effective treatment tool and can be used when a new MEDCO-14 is needed.

Q 10: Will my benefits be extended if I am participating in a rehab program?

A: BWC is working with the vocational rehabilitation providers to ensure that those injured workers who are participating in a rehab program have the necessary documentation submitted to continue benefits.

Q 11: Will my wage-loss benefits be discontinued if I'm unable to complete the job searches?

A: BWC is working with injured workers to complete online job searches. Information about job postings is also available on the JobSearch.Ohio.Gov website. We encourage individuals who have been affected by COVID-19 to visit the website and apply for a position. Job search activities could also include the injured worker submitting resumes, taking online interviewing or resume tutorials, or working on sharpening their interview skills.

Q 12: I have an Independent Medical Exam (IME) scheduled and it has been cancelled, will my benefits be suspended?

A: If the examining physician has cancelled your examination, your benefits will not be suspended. Another examination will be scheduled at a later date.

Q 13: How will BWC be handling 90-day and extent of disability IMEs?

A: BWC has resumed scheduling examinations. We are asking injured workers and examining physicians to follow protocols outlined by the Ohio Department of Health to ensure the health and well-being of all who enter the facilities.

Q 14: Will I be able to speak with my claim representative?

A: If you are represented by an attorney, call your attorney first. Staff will be monitoring voice mail on a limited basis, but the most efficient method of communication will be via email messaging. The email address for your claims service specialist (CSS) can be found on the bottom of any correspondence you have previously received or look up your claim [here](#). For general questions, you may also call our call center at 1-800-OHIOBWC.

Q 15: What happens if my claim is denied or my employer does not agree with my claim?

A: Parties to the claim can still file an appeal if they disagree with the decision on a claim. The Ohio Industrial Commission (IC) will continue to have hearings. For the latest information visit the IC website at www.ic.ohio.gov.

Q 16: Will my Ohio Industrial Commission hearing be cancelled?

A: Please feel free to visit the IC website at www.ic.ohio.gov to view updated information and press releases.

Q 17: Will I be able to pick up a check for a compensation payment in a local service office?

A: After March 18, 2020, you will no longer be able to pick up your check from a local service office. We will address requests for overnight delivery on a case by case basis.

Q. 18: I have questions about the electronic delivery of my benefits, but I can't reach Key Bank.

Where do I turn?

A. Key Bank is BWC's vendor that provides electronic delivery of funds through electronic fund transfers (EFT) and electronic benefit transfer (EBT) cards to our workers' compensation claimants. Key Bank's call center is currently experiencing an extremely high call volume that has resulted in difficulty reaching a Key Bank agent. Key Bank has notified BWC of this issue and has assured BWC they are taking corrective steps. Meanwhile, if you continue having difficulty reaching Key Bank, try calling Key Bank's call center during off hours. Their call center is currently open 24/7, and call volume is much lower outside normal business hours.

Q 19: How will BWC handle additional allowance and Temporary Total (TT) entitlement requests that would ordinarily require an IME?

A: BWC continues to process additional allowance and TT entitlement requests but is using physician file reviews instead of in-person examinations whenever possible. In some cases, BWC will schedule an in-person examination. We are asking injured workers and examining physicians to follow protocols outlined by the Ohio Department of Health to ensure the health and well-being of all who enter the facilities.

Q 20: How is BWC addressing C-92 applications?

A: BWC has resumed scheduling examinations. We are asking injured workers and examining physicians to follow protocols outlined by the Ohio Department of Health to ensure the health and well-being of all who enter the facilities. However, if injured workers prefer to schedule their examination at a later date due to COVID-19 concerns, no penalties will be assessed.

Q 21: Will BWC be extending program reporting/requirement completion deadlines?

A: BWC waived all safety education and training requirements for the July 1, 2019 - June 30, 2020 private employers policy year for participants in the following programs:

- Drug Free Safety Program.
- EM Cap Program.
- Grow Ohio.
- Industry Specific Safety Program.
- One Claim Program.
- Policy Activity Rebate Program.

Discounts offered through these programs will be applied automatically.

Public Employers (PEC) participating in the Drug-Free Safety Program, One Claim or EM Cap programs for the Jan. 1, 2020 policy year will be permitted to complete online safety training to satisfy in-person training.

Private Employers (PA) participating in the Drug-Free Safety Program, One Claim or EM Cap programs for the July 1, 2020 policy year will be permitted to complete online safety training to satisfy in-person training.

More on these programs can be found at bwc.ohio.gov.

Q 22: Will BWC be suspending audits of self-insuring (SI) and state fund (SF) employers?

A: Yes, BWC has suspended face-to-face audits for both SI and SF employers. Paper and virtual audits will continue. We will be issuing temporary certificates to SI employers.

Q 23: What are employers supposed to do about the classes that were cancelled? What about the ½ day classroom training?

A: We have waived several requirements for many of our programs (see Q 21), but we encourage employers to take advantage of online classes while we continue to assess other training options.

Q 24: Will BWC extend the public employer taxing district (PEC) true-up grace period that ended March 16?

A: We extended the grace period to June 1, 2020.

Q 25: Is emergency sick leave and expanded FMLA paid to employees under the Families First Coronavirus Response Act reportable when submitting true-up payroll?

A: No. Emergency sick leave and expanded FMLA paid to employees under the Families First Coronavirus Response Act are not reportable to BWC for premium purposes. While regular paid sick leave (including third-party sick pay) is reportable to BWC, emergency sick leave and expanded FMLA paid under this act are not reportable.

Effective April 1, 2020, through Dec. 31, 2020, wages companies pay under the act for sick leave related to COVID-19 are not reportable to BWC. Also, leave time to care for a child whose school or childcare provider is closed or unavailable for COVID-19-related reasons is not reportable to BWC. Employers must follow the federal government’s eligibility and documentation guidelines to exclude these wages from their reportable payroll and premium calculation at true-up. Wages reported to BWC for premium calculation purposes are subject to verification by a premium audit.

Q 26: How will employers report wages at true-up for operational employees who are teleworking as a result of Governor Mike DeWine’s State of Emergency order (Executive Order 2020-01D) while receiving wages from the employer?

A: To ease the economic impact of the COVID-19 crisis on businesses, private employers may report operational staff currently teleworking to class code **8871 – Clerical Telecommuter** during a declared state of emergency. For public employer taxing districts, we created a new class code, **9444 - Public Employee Clerical Telecommuter**, to report staff currently teleworking.

- The employer must contact BWC to request the addition of classification code 8871 – Clerical Telecommuter for private policies and 9444 - Public Employee Clerical Telecommuter for public employer taxing districts to their policy. This will allow the employer to report teleworking wages to class code 8871 or 9444 during the true-up period.
- Sole Proprietors and Partners who have elected to cover themselves will continue to report their wages to the assigned operating class code.
- Private employer staff currently reported under class code 8810-Clerical will continue to be reported under class code 8810, not 8871.
- The employer is responsible for recording, tracking, and documenting the wages associated with the operational employees now teleworking for premium audit purposes.
 - If the worker performs their regular duties on an intermittent basis, such as working at the employer location Monday, Wednesday and Friday and is paid to stay home Tuesday and Thursday, all wages are to be reported to the operating class code and not to class code 8871 or 9444.
- If a worker continues to perform the same duties from home while teleworking, the employer will continue reporting that worker’s wages to the appropriate operational classification code, not to the class code for teleworking.

- For example: the private employer manufactures surgical masks. The employer has sent workers home with the equipment and materials to continue making masks. These workers are not 8871 Clerical Telecommuter employees. They would remain under classification **2501 – Cloth, canvas and related products manufacturing**. The exposures for them do not change.

Examples relating to public employer taxing districts

- Any public employees performing clerical duties while working from home are reportable to 9444 during the emergency period.
 - Public employee teachers who conduct classes on-line working from home are reportable to classification 9444 during the emergency period. If tutoring is done by the teacher away from the teacher's home, then their entire payroll is reported to the operational classification.
 - Public employee teachers who ended the previous school year working from home are reportable to 9444 during the emergency period, including summer break, and as long as the schools remain closed.
 - After a public school has students return to in-school classes, all payroll for teachers will be reportable to the operational classification code again.
- This temporary revision to the class code assignment rule only applies during the time of Governor DeWine's State of Emergency order, which he initiated March 9, 2020.
 - The employer is to cease reporting operational employees' wages to teleworking class code 8871 or 9444 once the State of Emergency order has ended or if the operational employee(s) return to performing their previous job duties.

To request the addition of class code 8871 - Clerical Telecommuter or 9444 for public employer taxing districts to your policy, please call 1-800-644-6292 or send an email to RTSclass@ohiobwc.com. Remember to include your policy number in your email request.

Q 27: How will BWC address late payments for Self-Insured employer assessments?

A: As you are aware, assessment payments for the July 1, 2019, to Dec. 31, 2019, period were due by Feb. 28, 2020. Normally, payments not received by the due date are subject to additional late payment penalty fees.

However, to provide financial relief to employers amid the coronavirus (COVID-19) pandemic, we are waiving the late payment penalty fees applicable to the semi-annual assessments that were due Feb. 28, 2020. We also are reimbursing employers who had submitted late payment penalty fees levied for the assessment period.

This waiver does not apply to future semi-annual assessment invoice payments. **It is only for the assessment period of July 1, 2019, to Dec. 31, 2019.**

Q 28: Will BWC continue to assess increases in security and require Letters of Credit as a result of annual reviews?

A: BWC is continuing its annual review of Self-Insured employers' workers compensation policies. A satisfactory review permits renewal for the next policy year. BWC will perform its annual financial analysis in accordance with its normal procedures and financial analysis parameters. BWC has a responsibility to protect the Self-Insuring Employers Guaranty Fund (SIEGF) and is continuing to require Letters of Credit for Self-Insuring employers that are deemed to pose risk to the SIEGF.

Q 29: I am a self-insuring (SI) employer or a client of a self-insuring Professional Employer Organization (PEO). Why don't I receive a dividend payment like the state fund employers?

A: The recent dividend announcement was made possible for state insurance fund employers because of strong investment returns on the premiums BWC collects and lower than expected claims costs in recent policy periods. Self-insuring employers and self-insuring Professional Employer Organization(s) (PEO) do not pay premiums to the state insurance fund. Thus, the SI community has not provided the premium dollars that through the strong investment returns allow the payment of dividend dollars back to the state insurance fund premium payers.

SI assessments are used to cover the cost of the annual involvement of the BWC and the Industrial Commission in self-insured employer and claim issues as well as the cost related to previous SI employers that have defaulted on their workers' compensation claim obligations. These assessments are used within the year of collection with very little money available for investment. Any investment on SI provided money is used to lower the annual assessment rates.

Q 30: Will employers who have suspended operations due to the COVID-19 who are paying employees while they are idle at home need to report the payments as payroll?

A: No. Employers are not required to report to BWC the wages paid to employees who are idle at home because of the COVID-19 pandemic. We encourage employers to keep track of such payments, however, for purposes that might surface during potential audits.

Q 31: Has BWC modified its delivery of care for injured workers through telemedicine and telephone services?

A: Yes. BWC released three policy alerts to date to address the expanded use of telemedicine and telephone services.

- Policy alert [2020-01](#) announces a more flexible use of telemedicine and expands the site of care delivery to the injured worker's home, as well as relaxing the requirements for using a secure platform of communication. It also reduces some administrative burden to notify or request additional authorization from the managed care organization (MCO) to change the care-delivery method.
- Policy alert [2020-02](#) permits telephonic communication as a temporary substitute for some vocational rehabilitation services.
- Policy alert [2020-03](#) expands the service providers eligible to provide and bill for virtual check in and/or telephone services (audio only).

Q32: Will BWC reimburse for COVID-19 testing prior to an elective surgery?

A: Yes. Generally, COVID-related testing would not be covered or reimbursable unless COVID-19 was allowed in the claim. However, BWC recognizes that an injured worker who is positive for COVID-19 may be at greater risk for negative surgical complications, such as deep vein thrombosis (DVT), secondary pulmonary infections, unexpected progression to acute respiratory distress syndrome, cardiac injury, kidney failure and even death following the scheduled surgery. Therefore, to enable the Managed Care Organization, surgeon and injured worker to determine if surgery postponement is appropriate and to prevent greater risk for negative health consequences during or following surgery, **one pre-surgical COVID-19 test may be authorized when the injured worker is scheduled for an inpatient or outpatient surgery to be performed at a hospital or Ambulatory Surgical Center (ASC).** For additional information regarding reimbursement for this testing, providers can refer to Policy Alert #2020-04.

Q33: Will BWC extend the Public Employer Group-Experience Rating program roster filing deadline?

A: Yes. Normally, PEC employers would need to apply for a group rating plan by the last business day of May (May 29th this year). We have approved an extension of this deadline to June 12, 2020, with consideration that many PEC may not have had the opportunity to perform normal work duties that would require attention to such applications and deadline dates.

Q34: Will BWC extend the Private Employer (PA) Industry-Specific Safety Program (ISSP), Drug-Free Safety Program (DFSP) and Transitional Work Bonus (TWB) program enrollment deadlines?

A: Yes. Normally, the deadline for PA employers to apply for ISSP, DFSP, and TWB would be the last business day of May (May 29th this year). We have approved an extension of this deadline to June 30, 2020, for new employers, as well as those employers who withdrew from the program previously, to apply for these programs with consideration that many employers may not have been working and able to submit applications timely.

Q35: Is COVID-19 bonus pay to workers reportable when submitting true-up payroll?

A: Yes, any form of bonus pay is considered reportable wages and therefore must be included in the true-up payroll. This includes bonus pay to essential workers' who are required or mandated to work during the COVID-19 pandemic and any increase in pay to working employees as an incentive to work during COVID-19.

Please continue to monitor bwc.ohio.gov for updated information.

COVID-19 Claims

Below is a summary of claims filed by Ohio workers believing they contracted the coronavirus disease (COVID-19) on the job.

Total claims filed March 11 to October 19, 2020 = 1,307

Claims filed with Ohio BWC

Initial decision	Private employers	Public employers	Total
Accepted	217	115	332
Denied*	44	70	114
Dismissed**	262	84	346
Pending	63	23	86
Total	586	292	878

Claims filed with self-insured employers

BWC is not involved in these claim decisions.

Initial decision	Total
Certified	184
Rejected	177
Pending	68
Total	429

* **Denied claims:** In most cases, the claim did not include a diagnosis of COVID-19. In other cases, the evidence did not satisfy the definition of "occupational disease."

** **Dismissed claims:** Worker voluntarily withdrew claim (some filed in error, thinking they were applying for unemployment benefits, for example) or claim did not include a signed First Report of Injury.

Claims by occupation

Healthcare/First Responders	933
All Other	374
Total	1307

Note: Generally, communicable diseases like COVID-19 are not workers' compensation claims because people are exposed in a variety of ways, and few jobs have a hazard or risk of getting the diseases in a greater degree or a different manner than the general public. However, if you work in a job that poses a special hazard or risk and contract COVID-19 from the work exposure, we could allow your claim. We have created a **special team** to handle COVID-19 claims to provide them with careful attention.

For more on BWC as it relates to COVID-19, please visit bwc.ohio.gov or email us at BWCCOVID19@bwc.state.oh.us.

For more on COVID-19, including prevention guidelines and its impact on Ohio, visit the Ohio Department of Health website coronavirus.ohio.gov.

Claims are not public record.

Another \$1.5 billion for Ohio employers

BWC delivers second dividend this year to ease COVID-19 impact

Frequently Asked Questions for Employers

Why is BWC giving a dividend?

We are issuing a dividend of up to \$1.5 billion to ease the financial pressures your organization may be experiencing amid the coronavirus (COVID-19) pandemic. This is our second dividend of this magnitude this year, following Gov. DeWine's order that his agencies do everything they can to mitigate COVID-19's impact on Ohioans. Even after the dividend, the net position of the State Insurance Fund for injured workers remains strong due to investment returns, declining injuries and decreasing reserves.

Please note: *Because BWC is providing two dividends in the same year, we are not expecting to issue a dividend in 2021.*

How much will an employer receive?

BWC defines the private employer dividend as 100% of billed premium for eligible employers for the policy period of July 1, 2019, through June 30, 2020. BWC will apply the percentage to the blended premium amount. BWC defines the public employer dividend as 100% of billed premium for eligible employers for the policy period of Jan. 1, 2019, through Dec. 31, 2019. BWC will apply the percentage to the blended premium amount.

When will I receive my dividend?

BWC will mail dividend checks to eligible employers in late October and early November.

I have an outstanding balance on my account. How will this impact my dividend?

An employer who has an outstanding balance — including but not limited to deferred installments, balances in an appeal status and balances owed resulting from a transfer of experience or liability from a predecessor entity — will have its dividend payment reduced by the amount of the outstanding balance. If an employer's outstanding balance exceeds the dividend amount, BWC will offset the employer's account by the amount of the dividend.

An employer whose dividend is applied to an outstanding balance will receive detail regarding how the dividend was applied on their next scheduled invoice. Employers will be able to see their updated account information at any time on bwc.ohio.gov.

Is BWC issuing a check like they have done in the past or providing a credit on employers' policies?

We will issue paper checks as we have done in the past.

Where will my check be sent?

We will send dividend checks to the current address we have on file. Please review your information on bwc.ohio.gov to ensure we have the most current operating name of your business, tax identification number, physical location, mailing address, telephone number, e-mail and/or web site.

Can I receive my dividend electronically?

No. We are sending paper checks by mail only. In the event you lose your check and fail to cash one we re-issue, we will credit your BWC account.

Who is eligible for the dividend?

BWC defines eligibility as follows.

1. State Insurance Fund employers (private employers or public employer taxing districts only).
2. The employer must have reported payroll greater than zero for the applicable policy period.
3. The employer must have been billed premium for the applicable policy period.
4. Employers must have completed their payroll true-up for policy year 2019 as of Oct. 2, 2020.
5. The employer must be in an active, reinstated, combined, cancelled – business sold, or debtor-in-possession status or, in a lapsed status with a lapse date of Jan. 1, 2020 or later as of Oct. 2, 2020.

Employers who do not meet all the criteria listed above will not be eligible to receive a dividend.

When will BWC determine eligibility?

Eligibility was based on an employer's status (active, lapsed) with us as of Oct. 2. BWC will not make changes to eligibility after this date.

How will this impact BWC's finances and the State Insurance Fund?

BWC and the State Insurance Fund will remain in a strong financial position after payment of this dividend.

I am in an individual-retrospective-rating program. How will BWC calculate my dividend?

BWC defines premium for private, individual-retrospective-rated employers as minimum premium, plus the impact of retrospective claim-loss premium billed for policy year July 1, 2019, through June 30, 2020, as of Oct. 2, 2020.

BWC defines premium for public, individual-retrospective-rated employers as minimum premium, plus the impact of retrospective claim-loss premium billed for policy year Jan. 1, 2019, through Dec. 31, 2019, as of Oct. 2, 2020.

I paid retrospective claim-loss premium for other policy periods during the eligible policy period. Will BWC consider these payments in my dividend calculation?

No. Payments received from private employers from July 1, 2019, through June 30, 2020, that are not applicable to that policy year will not be considered in the dividend calculation. Payments received from public taxing districts from Jan. 1, 2019, through Dec. 31, 2019, that are not applicable to that policy year will not be considered in the dividend calculation.

I am in a group-retrospective-rating program. How will BWC calculate my dividend?

BWC defines premium for private and public group-retrospective-rated employers as individual, experience-rated premium.

I am in a Deductible Program. How will BWC calculate my dividend?

BWC defines premium for private employers participating in a Deductible Program as discounted, blended premium.

I received a discount on my premium for Go-green, Lapse-free or Safety Council. Will this reduce my dividend?

Yes. BWC will reduce the dividend amount by premium-based discounts already earned, including, but not limited to Go-green, Lapse-free, and Safety Council.

I reported zero payroll but paid the minimum administrative charge. Will I receive a dividend?

No. Employers reporting zero payroll are not eligible.

I had a no-coverage penalty during the period upon which the dividend is being calculated, but formally took out coverage after the conclusion of the applicable period. Will I receive a dividend?

No. BWC will not include no-coverage penalties in the premium base it uses to calculate the dividend.

I canceled my coverage but paid premium during July 1, 2019, to June 30, 2020. Will I be eligible for a dividend?

No. A private or public employer that cancels coverage prior to Oct. 2, 2020, is not eligible for the dividend. BWC will not make account adjustments to give these employers the dividend.

I purchased a company that was billed premium for the July 1, 2019, through June 30, 2020, policy year. How will this impact my dividend?

BWC will determine eligibility based on the status of the predecessor policy. If the predecessor policy would have been eligible for the dividend, the successor will receive the applicable dividend. If the predecessor policy was canceled, the successor will not be eligible for the dividend. If the predecessor policy was in a lapsed status prior to the combination, the successor will not be eligible for a dividend. If there is existing debt on the predecessor policy, BWC will reduce the successor dividend by the amount of the outstanding balance.

I just went self-insured. Will I receive a dividend?

Private employers that paid premium for the policy reporting period of July 1, 2019, through June 30, 2020, but were granted the privilege of self-insurance before Oct. 2, 2020, are eligible for the dividend based upon the billed premiums during the July 1, 2019, through June 30, 2020, policy period.

Public employer taxing districts that paid premium for the policy reporting period of Jan. 1, 2019, through Dec. 31, 2019, but were granted the privilege of self-insurance before Oct. 2, 2020, are eligible for the dividend based upon the billed premiums during the Jan. 1, 2019, through Dec. 31, 2019, policy period.

I used a Professional Employer Organization (PEO) during the July 1, 2019, through June 30, 2020, policy period. Will I receive a dividend?

PEOs that receive a dividend must provide notice of the dividend to their client employers of record for the July 1, 2019, through June 30, 2020, policy period. BWC will also notify PEO client employers that it sent a dividend to their PEO. The amount PEOs pay to their client employers must be equal to 100% of the blended premium paid by the PEO to BWC on behalf of the client employer for the July 1, 2019, to June 30, 2020, policy period less the permissible administrative fee discussed herein.

The PEO shall calculate the client employers' share of the dividend based on the full amount of the dividend BWC issued it. The PEO shall not reduce the employers' share of the dividend by any credit applied to the PEO policy as a result of non-pending, outstanding balances. The PEO may retain up to 6% of the client employers' dividend as an administrative fee. PEOs must issue dividends to clients within 30 days of BWC's issuance of the dividends.

The PEO may not withhold or offset payment of the dividend based on any contractual obligation and must issue the dividend regardless of whether the client employer continues as a client employer of the PEO.

I now use a Professional Employer Organization. Will I receive a dividend?

Private employers that paid premium for the policy period of July 1, 2019, through June 30, 2020, but entered into a PEO relationship before Oct. 2, 2020, will be eligible for the dividend based upon the billed premiums during the July 1, 2019, through June 30, 2020, policy period. BWC will send these dividends directly to the employer, not to the current PEO.

I made payments from July 1, 2019, through June 30, 2020, for other coverage periods. Will BWC consider these payments in the dividend calculation?

No. BWC will not consider payments it received from private employers from July 1, 2019, through June 30, 2020, that are not applicable to that policy year in the dividend calculation. Payments received by BWC from public employer taxing districts from Jan. 1, 2019, through Dec. 31, 2019, that are not applicable to that policy year will not be considered in the dividend calculation.

I am on a payment plan. How will this impact my dividend?

BWC will reduce the dividend payment to an employer that has a non-pending, outstanding balance including, but not limited to, balances in an appeal status and balances owed resulting from a transfer of experience or liability from a predecessor entity, by the amount of the outstanding balance. If an employer's non-pending, outstanding balance exceeds the dividend amount, BWC will offset the employer's account by the amount of the dividend.

An employer whose dividend is applied to an outstanding balance will receive detail regarding how the dividend was applied on their next scheduled invoice. Employers will be able to see their updated account information at any time on bwc.ohio.gov.

Will BWC adjust the dividend if it audits me in the future or if it adjusts my rate?

The dividend is a one-time payment. BWC will not adjust the dividend amount for any reason, including, but not limited to, audits, rate adjustments, appealed balances, changes in lapse status retrospective claim billings, etc. after Oct. 2, 2020.



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Ohio Manufacturers' Association
Workers' Compensation Counsel Report
November 4, 2020
Sue A. Roudebush, Esq.
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Legislative Actions:

HB 80. FY 2020-2021 Workers' Compensation Budget

In addition to appropriating funds for the Bureau of Workers' Compensations' upcoming two-year term, HB 80 authorizes the Director of Natural Resources to annually request the Administrator of Workers' Compensation to transfer a portion (up to \$1M) of the Coal-Workers' Pneumoconiosis Fund to the Mining Regulation and Safety Fund, by July 1 or as soon as possible thereafter. The legislation also proposes the adoption of rules to govern the transfer to ensure the solvency of the Coal-Workers Pneumoconiosis Fund. HB 80 went into effect July 22, 2019.

HB 81. Post-Diagnostics – Prison Guard Exposed to Bodily Fluids

HB 81 was primarily intended for workers' compensation coverage of post-exposure medical diagnostic services for corrections officers, detention facility employees, and other safety officers, if they are exposed to another's blood or other bodily fluids in the course of their employment. The legislation expands existing coverage for bodily fluids exposure, which is afforded to peace officers, firefighters, and emergency medical workers. HB 81 was signed by Gov. DeWine on June 16, 2020 and became effective September 15, 2020.

In addition, HB 81 also includes a number of other workers' compensation updates, some of which were addressed during the House and Senate's review of HB 80. Those changes includes:

- Establishment of the voluntary abandonment doctrine with respect to temporary total disability claims, which supersedes pre-existing judicial decisions on the issue;
- Reduces the two-year filing period for VSSR applications to one year post date of injury (this does not to a two-year period);
- Prohibits employers from refusing or withdrawing a proposed settlement agreement, if (i) the employee is no longer employed *and* (ii) the claim is no longer within the date of impact for the employer's experience/premium calculation;

- Changes the date in which the Industrial Commission can invoke its continuing jurisdiction to the date the medical services were rendered, rather than the date the bill for the medical services was paid;
- Increases the funeral expenses benefit cap from \$5,500 to \$7,500;
- Expands the appeal period under R.C. § 4123.512 from 60 to 150 days.

Regulatory Actions:

RULE NUMBER	RULE TITLE (CHANGES)	STATUS / EFFECTIVE DATE
4123-6 (HEALTH PARTNERSHIP PROGRAM)		
4123-6-05.2	Employer access to the HPP - employer enrollment and selection of MCO (amended the rule to give the BWC Administrator the ability to waive the HPP open enrollment period during a state of emergency or disaster declared by the Governor of Ohio or the President)	Effective Date: 8/6/20
4123-6-21.3	Outpatient medication formulary (provided an amended formulary for 2020, and language changes for clarity)	Effective Date: 9/01/2020
4123-6-21.6	First fill of outpatient medications (added that approval for reimbursement of medications under the 'first fill' program will be limited to quantity limits, found in the appendix, for each medication; also excludes antivirals and antibiotics from the limit of one fill under the program)	Effective Date: 9/01/2020
4123-6-21.7	Reimbursement of opioids in the treatment of pain for a work related injury or occupational disease (enacted rule governing the reimbursement of opioid prescriptions used to treat acute, subacute, and chronic pain in work related injury or occupation disease; includes a requirement that providers must use "best medical practices" to qualify for reimbursement)	Effective Date: 9/01/2020
4123-6-21.8	Reimbursement for Services to Assist in the Discontinuation of Medications (added a rule governing the bureau's reimbursement for services to aid injured workers in discontinuing medication which may not be necessary and appropriate in the treatment of work related injuries, but which may increase risk of dependency and abuse; allows for reimbursement of up to forty-two (42) days of inpatient care, and up to eighteen (18) total months of outpatient care)	Effective Date: 9/01/2020
4123-6-54	Employer participation in the QHP system - QHP certification application (provided reference to R.C. 1333.61(D) to establish the standard of vendor "trade	Effective Date: 8/1/20

	secrets” that the Bureau shall be required to hold confidential and proprietary)	
4123-6-59	Provider access to the QHP system - QHP provider selection (added reference to R.C. 4112.01 to establish the state-recognized categories of discrimination)	Effective Date: 8/1/20
4123-6-69	QHP dispute resolution process (made the following adjustments to the required dispute resolution process: (i) only requires a QHP have “one independent level of professional review”; (ii) adds a requirement that the process be completed within 21 days of the initial notice, which is tolled if the QHP schedules an independent medical examination; and (iii) adds sub-provisions regarding the independent level of professional review to be utilized depending upon whether the reviewer is “eligible to be the physician of record”)	Effective Date: 8/1/20
4123-17 (GENERAL RATING FOR THE STATE INSURANCE FUND)		
4123-17-04	Classification of occupations or industries (updated for 2020-2021 fiscal year; enacts updated appendix of classifications)	Effective Date: 7/20/20
4123-17-05	Private employer industry group and limited loss ratio tables (updated for 2020-2021 fiscal year)	Effective Date: 7/1/20
4123-17-06	Private employer contributions to the state insurance fund (updated for 2020-2021 fiscal year)	Effective Date: 7/1/20
4123-17-19	Employer contribution to the marine industry fund (updated for 2020 calendar year)	Effective Date: 7/1/20
4123-17-20	Employer contribution to the coal-workers pneumoconiosis fund (updated for 2020-2021 fiscal year)	Effective Date: 7/1/20
4123-17-32	Self-insuring employer assessment based upon paid compensation (updated for 2020-2021 fiscal year; revisions made to employer assessment rates)	Effective Date: 7/1/20
4123-17-34	Public employer taxing districts contribution to the state insurance fund (provided that the administrator of workers’ compensation has the authority to approve contributions made to the state insurance fund by employers)	Effective Date: 7/20/20
4123-17-35	Public employer state agency contribution to the state insurance fund (updated for 2020-2021 fiscal year; provides new NCCI Classifications and Rates appendix for 2020 calendar year)	Effective Date: 7/1/20
4123-17-36	Administrative cost contribution (updated for 2020-2021 fiscal year; revisions to the administrative cost rates for the BWC and BWC Board of Directors and the Industrial Commission)	Effective Date: 7/1/20

4123-18 (REHABILITATION OF INJURED AND DISABLED WORKERS)		
4123-18-04	Living maintenance allowance (corrected cross-reference to another rule in subsection (D))	Effective Date: 9/1/20
4123-18-09	Vocational rehabilitation provider fee schedule (added language that states the BWC will only pay for one time-based unit of service for a specific time period unless the service is listed for more than one participant; clarifies that authorization is required to exceed a service code limit; simplifies the vocational rehabilitation case management codes; modified the service definitions of career counseling, vocational screening, work conditioning, child/dependent care, occupational rehabilitation, short term training, and plan writing by the vocational rehabilitation case manager)	Effective Date: 10/1/20
4123-21 (COAL-WORKERS' PNEUMOCONIOSIS FUND)		
4123-21-09	Rule to transfer funds from coal-workers pneumoconiosis fund to mining regulation and safety fund (created a new rule allowing the administrator of workers' compensation to transfer funds, up to one-million dollars, from the coal-workers' pneumoconiosis fund to the mining regulation and safety fund at the request of the director of natural resources)	Effective Date: 7/16/20

Judicial Decisions

Supreme Court:

State ex rel. Bonnlander v. Hamon et al., Slip Opinion No. 2020-Ohio-4269.

Claimant appealed to the Supreme Court of Ohio ("Supreme Court") seeking to overturn a Tenth District Court of Appeals of Ohio ("Tenth District") decision that denied Claimant's request for a writ of mandamus ordering the Industrial Commission ("Commission") to vacate its decision finding Claimant had voluntarily abandoned the workforce. The Tenth District denied the writ because it found that the Commission's decision was supported by some evidence in the record.

Claimant sustained injuries while in a work-related motor vehicle accident in 1992. Claimant worked various subsequent jobs up until 2009. Since then, Claimant has not worked. In February 2014, Claimant applied for permanent-total-disability ("PTD") compensation. The Commission denied the request, finding that Claimant could perform sedentary work for up to four (4) hours a day. The order further noted that Claimant's failure to pursue vocational rehabilitation reflected negatively on his application.

Claimant sought a writ of mandamus from the Tenth District vacating the Commission's order, in October 2014. In the interim, Claimant requested, and was granted, vocational rehabilitation. The vocational rehabilitation case manager ("VRCM") faced difficulty getting further neurological, psychological, and physical evaluation for Claimant, resulting in a lack of progress in his rehabilitation. Therefore, in March 2015, the VRCM opined that Claimant was not feasible for vocational rehabilitation or return work and his file was closed. In September 2015, the Tenth District denied Claimant's request for a writ of mandamus. Although Claimant appealed, the Supreme Court unanimously affirmed the Tenth District's decision, holding that it was within the Commission's discretion to rely on the medical report of Dr. Sinha as evidence that Claimant was capable of up to four (4) hours of sedentary work a day.

Claimant submitted a new application for PTD compensation on October 12, 2017. A Staff Hearing Officer ("SHO") issued a tentative order finding Claimant's psychological and orthopedic conditions both independently rendered him incapable of working and awarded Claimant compensation, based upon medical opinions rendered in late 2017. The Bureau of Workers' Compensation ("Bureau") objected, and a different SHO vacated the order, finding it was inappropriate given there was a legal dispute over the issue of PTD. In May 2018, a third SHO denied Claimant's request for PTD compensation. This time, however, the SHO relied on a finding that Claimant had voluntarily abandoned the workforce. The SHO found that Claimant had not looked for work for several years, at least since 2014, that the VRCM was without an accurate assessment of Claimant's cognitive function, and Claimant's pursuit of vocational rehabilitation over a three (3) week period was not sufficient to establish "a meaningful effort in pursuing all reasonable avenues of accomplishing a return to sustained remunerative employment albeit on a part-time basis."

Claimant appealed the Commission's decision to the Tenth District, and sought a writ of mandamus ordering the Commission to grant his application for PTD compensation. A magistrate found the Commission's determination was an abuse of discretion and recommended the Tenth District grant the writ. However, the Commission objected and the Tenth District sustained the objections and denied the writ. The Tenth District explained that the SHO's finding, as to Claimant's effort at vocational rehabilitation, was only one consideration among many used to support the decision to deny PTD compensation, and that other evidence in the record supported the finding of voluntary abandonment. Specifically, the Tenth District found Claimant's testimony and inaction constituted some evidence that he voluntarily abandoned the workforce, so the existence of contrary evidence is immaterial.

Claimant appealed the Tenth District's decision to the Supreme Court, again seeking a writ of mandamus. The Supreme Court held, in a similar fashion to the Tenth District, that the Commission's decision to deny PTD compensation was supported by "some evidence", the threshold under the abuse of discretion standard of review. Specifically, the Supreme Court held that the issue of Claimant's voluntary abandonment was a question of fact, and the "court must uphold a factual determination by the commission so long as it is supported by some evidence in the record, regardless of the whether evidence supporting a contrary conclusion also exists, even if greater in quality or quantity."

Before the Supreme Court, Claimant argued that the Commission abused its discretion by considering his failure to participate in vocational rehabilitation, for two reasons: (i) his medical conditions had deteriorated to a point of reaching permanent and total disability by March 2015 and (ii) the Commission is not required to consider failure to participate in vocation rehabilitation when finding PTD compensation based solely on medical factors. The Supreme Court rejected the first argument, as the evidence available for the Commission's review at the time of the determination was from 2014 at the latest. Further, the Supreme Court noted that Claimant voluntarily abandoned the workforce prior to becoming eligible for PTD compensation. Turning to the second argument, the Supreme Court agreed with Claimant but clarified the Commission is not required to consider such evidence of failure to participate in vocational rehabilitation, but is permitted to do so. Finally, Claimant challenged the Commission's determination that he voluntarily abandoned the workforce and, instead, asserted that he was found to not be a feasible candidate. The Supreme Court cited to the Tenth District in disregarding this assertion, as some evidence in the record supports the Commission's determination. In affirming the Tenth District's decision, the Supreme Court summarized that "the mere existence of conflicting evidence does not render the commission's determination of a factual question an abuse of discretion."

State ex rel. Christopher T. Merritt v. Indus. Comm., 10th Dist. Franklin No. 18AP-234, 2020-Ohio-682.

Claimant appealed to the Supreme Court of Ohio ("Supreme Court") seeking to overturn a Tenth District Court of Appeals of Ohio ("Tenth District") decision that denied Claimant's request for a writ of mandamus ordering the Industrial Commission ("Commission") to vacate its decision finding Claimant had voluntarily abandoned the workforce. The Tenth District denied the writ.

Claimant sustained a work-related injury on February 1, 2015 and was prescribed opioid medications for the allowed conditions of lumbar strain, substantial aggravation of pre-existing L4-5 disc bulge/tear, and substantial aggravation of pre-existing L5-S1 disc bulge/tear. On June 23, 2015, Claimant submitted to a drug screen and tested positive for marijuana. Further, the employer had a drug-free workplace policy of which Claimant was aware. Claimant was terminated effective August 24, 2015, per an employee status change form; however, the form does not indicate a reason for the discharge.

Claimant filed a request for TTD compensation beginning August 19, 2015 and ongoing. On September 20, 2016, a District Hearing Officer ("DHO") granted Claimant's TTD compensation based upon the medical evidence. However, Claimant failed to inform the DHO that he had been terminated for a positive drug test in violation of a written work rule. On December 1, 2016, a Staff Hearing Officer ("SHO") vacated the DHO order and denied Claimant's request for TTD compensation finding he had been terminated for his violation of a written work rule of which he had knowledge. Further, the SHO noted the Claimant had not returned to work in any capacity since his termination. The Commission denied Claimant's appeal of the SHO order.

Claimant appealed the Commission's decision to the Tenth District which referred the case to a magistrate. The magistrate found that the Claimant was given a copy of the drug-free workplace policy and, therefore, knew or should have known testing positive to certain substances would result in discipline up to, and including, termination. Further, the magistrate found it undisputed that Claimant tested positive for marijuana, despite the objection that the termination form indicated no reason for termination (including a failed drug test). Accordingly, the magistrate found that the Commission did not abuse its discretion in denying Claimant's TTD compensation, based upon his voluntary abandonment of his former position of employment due to his termination for violating a written drug-free workplace policy and the absence of any evidence that Claimant returned to the workforce after his termination. The Tenth District agreed with the magistrate's decision and adopted the decision as its own.

Claimant appealed the Tenth District's decision to the Supreme Court, again seeking a writ of mandamus. The Supreme Court held, in a similar fashion as the Tenth District, that the Commission's decision to deny PTD compensation was supported by some evidence, the threshold under the abuse of discretion standard of review. The Supreme Court held that the issue of Claimant's voluntary abandonment was a question of fact, and the "court must uphold a factual determination by the commission so long as it is supported by some evidence in the record, regardless of the whether evidence supporting a contrary conclusion also exists, even if greater in quality or quantity."

Before the Supreme Court, Claimant argued that the Commission failed to set forth "the evidence that the Commission relied upon to conclude Claimant failed his drug test was the reason for his termination." The Supreme Court agreed with Claimant, based upon precedent set forth in *State ex rel. Noll v. Indus. Comm.* and *State ex rel. Cline v. Abke Trucking, Inc.*¹, which established the requirement that the Commission's order needs to specifically state what evidence the Staff Hearing Officer relied upon to reach the conclusion that Claimant was terminated for violating his employer's drug-free workplace policy, and thus voluntarily abandoned his employment. Based upon its finding that the Commission's order does not comply with *Noll* and *Cline*, the Supreme Court reversed the Tenth District's judgment and granted a limited writ of mandamus ordering the Commission to (i) vacate its prior orders, (ii) further consider Claimant's claim, and (iii) enter a new order that specifically identifies the evidence relied upon to reach its conclusion and explains the reason for the decision.

State ex rel. Omni Manor, Inc. v. Indus. Comm., Slip Opinion No. 2020-Ohio-4422.

Employer appealed to the Supreme Court of Ohio ("Supreme Court") seeking to overturn a Tenth District Court of Appeals of Ohio ("Tenth District") decision that denied Claimant's request for a writ of mandamus ordering the Industrial Commission ("Commission") to vacate its decision awarding Claimant medical services reimbursements for a right reverse total-shoulder arthroplasty. The Supreme Court also denied the writ.

¹ Full citations: *State ex rel. Noll v. Indus. Comm.*, 57 Ohio St.3d 203, 567 N.E.2d 245 (1991); *State ex rel. Cline v. Abke Trucking, Inc.*, 137 Ohio St.3d 557, 2013-Ohio-5159, 1 N.E.3d 409.

Claimant sustained a right shoulder injury while working as a housekeeper for employer. The claim was initially allowed for right shoulder sprain, and Claimant later moved to add right shoulder rotator cuff tear as an allowed condition. The employer asserted that the condition was the result of a degenerative condition and predated the work-related injury. The Commission disagreed and granted the request to add the requested condition. The employer failed to appeal that decision to the court of common pleas under R.C. 4123.512(A). Subsequently, Claimant filed a C-9 request for a right shoulder reverse arthroscopy, with two medical reports on file in support of the need for this treatment based upon evidence of a retracted rotator cuff tear. Then, the employer had Claimant undergo an independent medical examination, which found the tears to be the result of a degenerative condition. In August 2017, the Commission granted Claimant's request for reimbursement, concluding that the medical reports submitted in support showed that the arthroplasty was a reasonably related to and necessary for the treatment of the allowed condition.

The employer then sought a writ of mandamus from the Tenth District vacating the Commission's order granting the request. A magistrate recommended the Tenth District deny the writ. The employer objected to the magistrate's recommendation, arguing that (i) the medical report relied upon and the C-9 request do not constitute some evidence supporting the authorization of the treatment, and (ii) failed to analyze whether the treatment "was independently required for an allowed condition." The employer relied upon precedent in *State ex rel. Griffith v. Indus. Comm.* and *State ex rel. Jackson Tube Serv., Inc. v. Indus. Comm.*² The Tenth District overruled the employer's objections and found the requested treatment was independently required for the condition of rotator cuff tear, and denied the writ.

Claimant appealed the Tenth District's decision to the Supreme Court, again seeking a writ of mandamus. The Supreme Court unanimously held, in conformity with the Tenth District, that the Commission's decision to grant medical treatment reimbursement was supported by some evidence, the threshold under the abuse of discretion standard of review. Specifically, the Supreme Court held that Claimant's request for reimbursement of the right shoulder arthroplasty is reasonably related and necessary for the treatment of the allowed condition of right shoulder rotator cuff tear, and that the cost of the service is reasonable. The Supreme Court rejected the employer's argument that satisfaction of the *Miller* criteria above is alone insufficient for establishing medical service reimbursement, and that the Claimant must also establish the treatment is "independently required for an allowed condition." The Supreme Court refuted the employer's argument, and reestablished that the *Miller* test is the appropriate test for the determination of medical service reimbursement, as was underscored in the *Jackson Tube* case. The Supreme Court explained that *Griffith* was not a medical service reimbursement case, did not involve the *Miller* criteria, and thus was inapplicable to the case at hand. In considering the medical report in support of Claimant's surgery, along with the C-9 request, the Supreme Court found no ambiguity, contradiction or uncertainty in the evidence—the doctor's report stated that

² Full citations: *State ex rel. Jackson Tube Serv., Inc. v. Indus. Comm.*, 99 Ohio St.3d 1, 2003-Ohio-2259, 788 N.E.2d 625; *State ex rel. Griffith v. Indus. Comm.*, 87 Ohio St.3d 154, 156, 718 N.E.2d 423 (1999).

he believed the requested surgery was the best option for treatment of the allowed condition. Thus, the Supreme Court affirmed the Tenth District's decision and held that the Commission did not abuse its discretion in relying on this evidence to grant the treatment request.

10th District Court of Appeals:

State ex rel. US Tubular Products, Inc. d.b.a. Benmit Hydro-Testers Division v. Indus. Comm., 10th Dist. Franklin No. 18AP-795, 2020-Ohio-3427.

The employer appealed to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking a writ of mandamus ordering the Industrial Commission ("Commission") to vacate its order finding the employer had violated a specific safety requirement ("VSSR"), and that the violation was a proximate cause of the injuries to Claimant. The Tenth District referred the case to a magistrate who found that the court should grant the employer's request for a writ.

The Claimant sustained a work-related injury on December 10, 2014, when he and another worker were attempting to operate a hydro-tester, which checks pipes for pressure leaks. In operating the hydro-tester, Claimant mistakenly believed the co-worker communicated it was safe to approach the pipe and remove the swage, or cap. Claimant unsafely approached a pressurized pipe and attempted to remove the swage, causing him to suffer extensive injuries when the pipe exploded. On May 23, 2017, a Staff Hearing Officer ("SHO") determined the employer failed to comply with Ohio Administrative Code ("OAC") 4123:1-5-05(D)(1), finding the argument that Claimant was a "test-hand", and not the operator of the hydro-tester, unpersuasive. Instead, the SHO focused on Claimant's job duties, and determined he was the second test operator of the pipe under the OAC's definition of operator in 4123:1-5-01(B)(92). Based upon the fact that Claimant was an operator under the OAC, and that the controls of the machine were located twelve (12) feet from the Claimant at the time of operation, the SHO found the employer violated OAC 4123:1-5-05(D)(1). Finally, the SHO found the employer's VSSR was the proximate cause of Claimant's injuries. The Commission granted the employer's request for reconsideration of the SHO's order, and determined it did not have authority to exercise continuing jurisdiction.

The employer ultimately appealed to the Tenth District, which referred the case to a magistrate. The magistrate recommended the Tenth District grant Claimant's requested writ concluding the Commission abused its discretion in (i) determining Claimant to be an operator of the hydro-tester and (ii) finding Claimant's lack of means of turning the pipes' power off was the proximate cause of his injuries. In considering whether the Claimant was an operator of the hydro-tester, the magistrate took issue with the Commission's ignoring *State ex rel. Platt v. Diamond Internat'l Corp.* and *State ex rel. Owens-Corning Fiberglass Corp.*³ The magistrate relied on this case law in holding that the determining factor in the inquiry is not the Claimant's

³ Full citations: *State ex rel. Platt v. Diamond Internat'l Corp. v. Indus. Comm.*, 10th Dist. No. 85AP-979 (Jan. 29, 1987) and *State ex rel. Owens-Corning Fiberglass Corp. v. Indus. Comm.*, 62 Ohio St.2d 145 (1980).

job duties but whether he was authorized to operate the machine. The magistrate then addressed the Commission's finding that Claimant's inability to turn off the hydro-tester's power was the proximate cause of the Claimant's injuries.

The Commission objected to both conclusions of the magistrate, asserting the following: (i) the magistrate went beyond the standard of review, to only ask whether some evidence supports the Commission's decision, in determining that Claimant was an operator of the hydro-tester; and (ii) the magistrate erred in finding the Commission abused its discretion in granting an additional award for the VSSR. The Tenth District again considered all the issues presented and the magistrate's findings, granted the Commission's objections, and declined to adopt the magistrate's decision. Specifically, the Tenth District determined that the line of cases, upon which the magistrate relied, were decided under a previous definition of "operator." Instead, the Tenth District found that the Commission relied upon some evidence in determining that the Claimant was an operator of the hydro-tester per OAC 4123:1-5-01(B)(92), as well as in declining to exercise continuing jurisdiction based upon Claimant's status as an operator. Furthermore, the Tenth District reviewed the magistrate's determination that the Commission abused its discretion in finding the VSSR proximately caused Claimant's injuries and granting him an additional award. The Tenth District determined that the magistrate improperly focused on Claimant's knowledge of the potential safety risk and his actions on the date of injury. Instead, the Tenth District held that the proper inquiry is whether the employer complied with the specific safety requirement at issue. Finally, the Tenth District concluded that because a VSSR was found to have occurred at the SHO hearing, the employer's unilateral negligence arguments were not relevant, and the Commission did not abuse its discretion in finding the VSSR was the proximate cause of Claimant's injuries.



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OMA Public Policy
COMPETITIVENESS
AGENDA

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Competitiveness Agenda

Manufacturing drives Ohio's economy. It is responsible for approximately \$112 billion (17%) of Ohio's Gross Domestic Product – greater than the contribution of any other Ohio industry sector.

In the competitive domestic and global economies, every public policy decision that affects Ohio's business climate affects Ohio's manufacturing competitiveness. In turn, Ohio's manufacturing competitiveness determines the state's economic growth and job creation.

Ohio manufacturers need public policies that attract investment and protect the state's manufacturing legacy and advantage. These policies apply to a variety of issues that shape the business environment in which manufacturers operate.

THE OMA'S MAJOR POLICY GOALS INCLUDE THE FOLLOWING:

- **An Efficient, Competitive Ohio Tax System**
- **A Lean, Productive Workers' Compensation System**
- **Access to Reliable, Economical, Competitive Energy Resources**
- **A Fair, Stable, Predictable Civil Justice System**
- **Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations**
- **A Modern, Job-Supporting Infrastructure**
- **An Adequate, Educated, Highly Skilled Workforce**

PolicyGoal:

An Efficient, Competitive Ohio Tax System

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

Generally, manufacturers support efforts to broaden the tax base, which enables lower rates. To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged. Moreover, earmarking and dedicating tax revenues should be discouraged as well.

Government should instead build on initiatives such as the recently revised Jobs Retention Tax Credit and continue creating incentives for capital investment in Ohio. Productivity gains, which keep Ohio manufacturers competitive, are driven by capital investments in technology and equipment. Therefore, tax policies that encourage investment should be a priority.

As Ohio's number one industry and wealth producing sector of the economy, Ohio's tax structure should be maintained to leverage manufacturing. The state should continue to improve its manufacturing climate by removing the sales tax from temporary labor and manufacturing janitorial supplies and services.

Good tax policy also generates necessary revenue to support the essential functions of government. Good budgeting and spending restraint at all levels of government are vital to a competitive tax environment, especially in challenging times.

Major tax reforms approved by the Ohio General Assembly in 2005 – and additional reforms in 2011 through 2015 – significantly improved a tax system that was for many years widely regarded as uncompetitive and obsolete. These reforms reduced overall tax rates, eliminated tax on investment, and broadened the tax base, all of which provide more stable and predictable revenues and simplify compliance.

The elimination of the tangible personal property tax, the corporate franchise tax, and the estate tax has strengthened the competitiveness of Ohio's tax system. So has the reduction of the personal income tax rate, as well as the creation of a broad-based, low-rate commercial activity tax (CAT).

Going forward, these tax policy improvements must be protected. The tax bases should be protected against erosion caused by new credits and carve-outs to narrow special interests. Where possible and reasonable, tax bases should be expanded and tax rates reduced. Ohio has seen an increase in potential CAT exemptions and carveouts. While most of these have not come to fruition, leaders must ignore the siren song and maintain the broad base.

Finally, reducing the number and type of taxing jurisdictions would be beneficial. Because of its complex layering of local and state taxes, Ohio's tax system is at a competitive disadvantage.

ABOUT OHIO'S UNEMPLOYMENT INSURANCE TRUST FUND

The COVID-19 pandemic thrust the Ohio Unemployment Insurance Trust Fund into default. Coming out of the pandemic, state leaders must work toward aligning benefits with contributions to build a sustainable unemployment trust fund balance. The best solvency plan is one that includes a focus on job creation – because increased employment not only increases fund contributions, but also reduces benefit payouts.

To encourage job growth, unemployment compensation tax rates should be in line with surrounding states, as well as states Ohio competes with to attract and retain new business. Ohio should pause any substantive employer payment increases until sufficient economic recovery has occurred.

PolicyGoal:

A Lean, Productive Workers' Compensation System

An efficient and effective workers' compensation system benefits workers, employers, and the economy of the state. It is built on the following principles:

- Safety is the number one priority for Ohio's manufacturers.
- Injured workers receive prompt benefits that are adequate for returning to work quickly and safely.
- Rates are established by sound actuarial principles, so that employers pay workers' compensation rates commensurate with the risk they bring to the system.
- The system is financed with well-functioning insurance mechanisms, including reserving and investment practices that ensure fund solvency and stability.
- The benefit delivery system deploys best-in-class disability management practices that drive down costs for employers and improve service and outcomes for injured parties.
- The system consistently roots out fraud, whether by employers, workers or providers.

FUNDAMENTAL PRIORITIES FOR FUTURE ACTION INCLUDE:

- The Bureau of Workers' Compensation (BWC) should continue to reform its medical management system to lower costs and improve medical quality through better coordination of care and development of a payment system that creates incentives for best clinical practices. In doing this, the BWC should build on emerging best practices in the private health care system.
- The Ohio General Assembly should enact statutory reforms of benefit definitions so the claims adjudication process is more predictable, less susceptible to fraud and manipulation, and less costly for employers and employees.
- The Industrial Commission should record hearings so the hearing process is more transparent and any appeals have a record on which to build.
- The Industrial Commission should create a mechanism whereby employers can file complaints related to the hearings process without the risk of adverse consequences.

A WORD ABOUT WORKPLACE GUN POLICY

Manufacturers remain concerned with weapons violence and the erosion of private property laws at the expense of more relaxed gun rights. Ohio needs to ensure that businesses are in the driver's seat and can make decisions about whether an individual can bring a weapon, concealed or otherwise, onto their private property.

PolicyGoal:

Access to Reliable, Economical, Competitive Energy Resources

Energy policy can either enhance or hinder Ohio's ability to attract business investment, stimulate economic growth, and spur job creation – especially in manufacturing. State and federal energy policies must 1.) ensure access to reliable, economical, competitive sources of energy, and 2.) promote policies, regulations, and tariff designs that encourage and allow for manufacturers to lower costs through energy management, including efficiency, load management, and behind-the-meter generation.

The OMA's energy policy advocacy efforts are guided by these principles:

- Energy markets free from market manipulation allow consumers to access the cost and innovation benefits of competition.
- Ohio's traditional industrial capabilities enable global leadership in energy product innovation and manufacturing.
- Sustainable energy systems support the long-term viability of Ohio manufacturing.
- Effective government regulation recognizes technical and economic realities.

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

ENERGY POLICY PRIORITIES ARE:

- To protect customers and markets, repeal and reform House Bill 6 (Ohio's nuclear bailout law) and related legislation.
- Ensure an open and fair electricity generation marketplace in which competition enables consumer choice, which drives innovation.
- Reforming Public Utilities Commission of Ohio (PUCO) rate-making processes by eliminating electric security plans (ESPs) to protect manufacturers from above-market generation charges.
- Correct Ohio case law that denies electric customers refunds from electric utilities for charges that are later determined to be improper by the Supreme Court of Ohio.
- Design an economically sound policy framework for discounted rates for energy-intensive manufacturers.
- Oppose legislation and regulation that force customers to subsidize uneconomical generation, including nuclear and certain coal power plants.
- Encourage electric tariff and rate designs that encourage and allow for manufacturers to lower costs through energy management, including efficiency, load management, and behind-the-meter generation.
- Encourage fair and reasonable power siting regulations that allow new generation facilities in Ohio.
- Support deployment of customer-sited generation technologies, such as co-generation, energy efficiency and demand-side management, to achieve least-cost and sustainable energy resources.

PolicyGoal:

A Fair, Stable, Predictable Civil Justice System

For manufacturers to invest and grow in Ohio – and compete globally – Ohio’s civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

The OMA supports policy reforms that protect consumers without overly burdening businesses, while also positioning Ohio advantageously relative to other states. The association encourages policymakers to evaluate all proposed civil justice reforms by considering these questions:

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

Ohio has made great strides in reforming its civil justice system over the past decade, and longer. The primary aim of the state should be to preserve those tort reform improvements in areas such as punitive damages, successor liability, collateral sources, statute of repose, and public nuisance. This will protect consumers without unduly burdening businesses, while also positioning Ohio as an attractive state for business investment.

PolicyGoal:

Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations

EFFECTIVE ENVIRONMENTAL STANDARDS AND REGULATIONS ARE BASED ON THE FOLLOWING PRINCIPLES:

- Provide clarity, predictability and consistency;
- Are based on scientific consensus;
- Provide for common-sense enforcement; and
- Incorporate careful cost-benefit analysis as part of the policymaking process.

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

Manufacturing leads the way in innovation in solid waste reduction and recycling. Industry is an enormous consumer of recycled materials, such as metals, glass, paper, and plastics; manufacturers therefore are strong advocates for improving recycling systems in Ohio and nationwide.

The state should expand opportunities for industry to reuse non-harmful waste streams. Beneficial reuse policies can result in less waste and more recycling of industrial byproducts. Likewise, Ohio should continue to expand recycling programs that provide feedstock for the state's industrial processes.

With respect to Ohio's waterways, the state should continue to engage with the manufacturing community for solutions to nutrient loading issues and develop non-point source solutions as stringent as manufacturing-point source solutions.

In designing state implementation plans for new federal regulations, the Ohio Environmental Protection Agency should use a transparent process of stakeholder involvement, supplemented by investment in independent research to determine the least costly and most scientifically sound and technologically feasible implementation plans.

PolicyGoal:

A Modern, Job-Supporting Infrastructure

Modern infrastructure is critical for today's advanced manufacturing economy. To remain competitive and maximize the economic benefits of Ohio's manufacturing strength, the state must update and expand Ohio's multi-modal transportation infrastructure, including roads, bridges, rails, and ports. Continued investment in these resources is critical to providing Ohio manufacturers with flexible, efficient, cost-effective shipping options.

The state also must continue to support the development of natural gas pipeline infrastructure that delivers the abundant energy resources from the Utica and Marcellus shale formations to Ohio manufacturers in all parts of the state and other markets. This infrastructure produces a job-creating competitive advantage for Ohio.

INFRASTRUCTURE POLICY PRIORITIES INCLUDE THE FOLLOWING:

- Support the creation of an Ohio Division of Freight to focus regulatory attention on the logistics needs of manufacturers.
- Support state and federal legislation, as well as rules and regulations, that safely provides greater flexibility and efficiency in truck movements.
- Support technology and workforce solutions that address the shortage of truck drivers.
- Ensure Ohio's freshwater ports remain competitive and state-of-the-art in functionality. Advocate for appropriate facility maintenance, including dredging to ensure navigability.
- Preserve access to, and provide responsible management of, Ohio's sources of water.
- Protect cyber infrastructure to safeguard data used by manufacturers and their customers and suppliers.

PolicyGoal:

An Adequate, Educated, Highly Skilled Workforce

A robust economy requires a reliable population of workers with technical knowledge and skills required to meet global standards for quality – and who can think critically and work collaboratively. Sustained growth in manufacturing productivity will require not only a new generation of globally competent workers, but also workers who are willing to embrace lifelong learning to keep pace with technological advancements and global competition.

WORKFORCE DEVELOPMENT POLICY PRIORITIES INCLUDE:

- Focusing state government and industry efforts on industry-led regional sector partnerships, guided by the statewide, OMA-led Workforce Leadership Committee. The committee’s mission is to identify industry-specific workforce priorities, set standards for collaboration, align funding streams to minimize duplication of workforce programs and services, and evaluate program and service efficacy.
- Creating statewide strategies with clear funding sources supported by state agencies. Provide financial support for sector partnerships that have 1.) demonstrated industry leadership in their organizational structure, and 2.) gained meaningful commitments by way of financial and volunteer contributions to ensure they are truly demand-driven.
- Expanding the use of innovative earn-and-learn programs, including cooperative education, internships, pre-apprenticeships, and apprenticeships. Earn-and-learn programs enhance talent recruitment and retention because participants are exposed to company-specific, real-world job expectations and experiences. Students and employees develop job-specific and management skills by working closely with company mentors; participating companies benefit from reduced recruitment and training costs, while ensuring knowledge- and skill-transfer from their senior employees.
- Expanding the use of nationally portable, industry-recognized, “stackable” credentials in all sectors of manufacturing. Credentials validate foundational and technical competencies needed to be productive and successful in manufacturing career pathways.
- Incentivizing K-12 schools, as well as two- and four-year higher education institutions, to coordinate outcomes-based education and training programs along industry-driven career pathways. Multiple on- and off-ramps for entry-to leadership-level careers have been mapped to real industry needs and jobs. Industry-recognized credentials and certificate programs are being adopted across institutions to increase stackable and transferable credentials from classroom to workplace. Investment in demand-driven training programs that offer pathways to retain incumbent workers allow them to acquire new skills as job requirements shift.

- Supporting “Making Ohio” – a statewide manufacturing image campaign that is managed by the OMA to create a consistent, positive perception of Ohio manufacturing career opportunities and pathways.
- Urging state agency administrators to accurately measure and communicate the outcomes of recruitment and training efforts – including the number of industry-recognized credentials earned, as well as participation in earn-and-learn programs – while protecting individual privacy concerns. Having systems in place to produce these data will allow policymakers and industry leaders to better understand outcomes and create more informed policies and programs.
- Addressing the school funding disincentive for school districts to refer students to career and technical centers – a vital source of the skills training needed to fill the manufacturing workforce pipeline.
- Ensuring schools have career counselors whose sole focus is career planning – not just college planning – and equip them with an understanding of manufacturing career pathways and the various options for acquiring the skills necessary for success. Task them with sharing this information in meaningful ways with students, parents, teachers, and other influencers to better inform and align student career path choices.
- Providing meaningful professional development opportunities for educators to have exposure to industry so they can incorporate real-life exercises into lesson plans and classroom activities.
- Ensuring that career counselors within the network of OhioMeansJobs centers have a modern and accurate understanding of manufacturing career pathways to be able to share with adult job seekers and career switchers.



**The mission of
The Ohio Manufacturers'
Association is to protect and
grow Ohio manufacturing**

For more information about the services and activities of the OMA, contact us at (800) 662-4463 or OMA@OHIOMFG.COM or visit OHIOMFG.COM.

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Safety & Workers' Compensation

Governor Requests \$5 Billion BWC Dividend for Employers

October 30, 2020

Gov. Mike DeWine **this week announced** he would ask the Ohio Bureau of Workers' Compensation (BWC) board to approve a \$5 billion dividend — the largest in the state's history. The BWC board **must first approve** the request before checks are sent to employers.

The dividend request comes **just one week** after the BWC began sending checks from an earlier \$1.34 billion payout. The newly proposed dividend **would be the third** issued in 2020, and would bring this year's dividend total to nearly \$8 billion. If approved, the new round of checks would be distributed in December. "This isn't deficit spending," Lt. Gov. Jon Husted said. "This is money the businesses paid in and the BWC managed well. There's no stimulus right now and this is a way to inject a lifeline for people during a difficult time." 10/28/2020

List of Approved COVID-19 Disinfectants Grows to More Than 500

October 30, 2020

The U.S. EPA has approved more than 500 surface disinfectant products for use against SARS-CoV-2, the coronavirus that causes COVID-19. **The list** of approved disinfectants continues to be updated on a weekly basis. It includes **helpful tips** on how to use disinfectants properly, as well as **FAQs** to ensure correct product usage.

The EPA notes that if an approved disinfectant is not available, diluted household bleach can be used to disinfect surfaces. Users should closely follow the bleach **dilution directions** from the CDC. Alcohol solutions with at least 70% alcohol may also be used. 10/28/2020

Analysis: Policies Must Be in Place to Protect Workers Despite Ohio's COVID-19 Liability Law

October 30, 2020

Last month, Gov. Mike DeWine **signed House Bill 606**, OMA-supported legislation that provides legal liability protections to businesses and others during COVID-19.

In **this updated insight**, Connections Partner Roetzel writes that "the caveat to HB 606 is that

it will still allow plaintiffs' lawsuits to go forward if they allege that an 'intentional, willful, or reckless' action or inaction by the defendant business led to the COVID-19 transmission(s) on which the plaintiff bases its claim." The firm urges businesses to consult "with legal counsel and experts to put reasonable policies and procedures in place to limit the risks of COVID-19 exposure and spread at your business locations." 10/27/2020

Here Are the BWC's Safety Webinars for November

October 30, 2020

The Ohio Bureau of Workers' Compensation (BWC) provides weekly webinars to address different safety and health topics. In these webinars, subject matter experts share their knowledge and provide an opportunity for participants to ask questions. Here's the **BWC safety webinar lineup for November**, complete with details on how to register. 10/29/2020

BWC Dividend Payment: Check Is in the Mail

October 23, 2020

Approximately \$1.3 billion in dividend checks from the Ohio Bureau of Workers' Compensation (BWC) **will be mailed** to employers statewide beginning today (Friday, Oct. 23). Look for the white BWC envelope in your mail since the payments will not be electronically deposited. See **this FAQ document** for more information.

Also, the BWC will soon be sending 23 million additional face masks to employers. Virtually all these masks are made in Ohio, the BWC says. 10/23/2020

Deadline Nears for Group Experience Rating Program

October 23, 2020

The enrollment deadline to participate in the OMA's Workers' Compensation Group Experience Rating program for the 2021/22 policy year is Nov. 16. The OMA has posted 2020/21 Workers' Compensation Services offers to members' workers' comp dashboards. Contact OMA's **Brian Jackson** or your **account manager** with questions. 10/21/2020

When Choosing Who Takes Drug Tests, Random Is Random

October 23, 2020

How does your company decide who takes a random drug test? Drawing a name out of a fishbowl until you get someone you can afford to send isn't the answer. **In this video** by OMA Connections

Partner *Working Partners*[®], you'll learn how to keep random drug tests random. 10/22/2020

OSHA Publishes Daily COVID-19 Safety Tips

October 23, 2020

OSHA has published approximately **200 COVID-19 tips** on its homepage. Tips cover issues such as use of PPE, training employees on safety protocols, and assigning work shifts. OSHA has also published a **set of FAQs** on how N95 respirators protect wearers from coronavirus exposure. 10/21/2020

Campaign Focuses on Fighting COVID-19 Outside the Workplace

October 23, 2020

With the uptick in COVID-19 cases, let your employees know about the National Association of Manufacturers' "Creators Respond Commitment." This campaign encourages employees to follow safety practices *outside* the workplace since experts indicate that community spread is happening largely as the result of social gatherings, including family get-togethers. **Learn more.** 10/20/2020

Two-Day Virtual Safety Symposium, Nov. 17-18

October 16, 2020

OMA Connections Partner Fisher Phillips is conducting a two-day virtual safety symposium Nov. 17-18. Topics include COVID-19 wrongful death lawsuits, best practices in workplace safety, and a post-pandemic outlook. **Learn more.** 10/13/2020

Learn About BWC's Better You' Program on Oct. 27

October 16, 2020

On Tuesday, Oct. 27, at 1 p.m. (ET), the Ohio Bureau of Workers' Compensation will conduct a **free 25-minute webinar** to learn more about the Better You, Better Ohio! Program. This free health-and-wellness program is for workers of businesses with 150 or fewer employees who are engaged in higher-risk industries, including manufacturing. **Learn more here.** 10/15/2020

Air Filtration, Ventilation Get More Attention After CDC's Revised Guidance

October 9, 2020

Earlier this week, the CDC revised its **guidance** on how the coronavirus spreads to include airborne transmission. As **reported** by EHS Today, the updated guidance notes that "poorly ventilated and enclosed spaces" may contribute to the buildup of virus-carrying particles. Air filtration and ventilation systems could be an important piece of the puzzle as social distancing and limiting interactions isn't always possible at work sites, the article notes. 10/7/2020

BWC Employer Update Webinar Will Spotlight Dividend Payment, Face Masks

October 9, 2020

The Ohio Bureau of Workers' Compensation (BWC) will conduct its 25-minute monthly Employer Update Webinar on the following days:

- **Tuesday, Oct. 13** (1:30 p.m.); and
- **Thursday, Oct. 29** (11:30 a.m.).

Among the topics covered will be the recently approved premium dividend, additional face masks for employers, payment plans, and tips for identifying fraud. If you're unable to watch the event live, a recording of the webinar will be **available here.** 10/5/2020

BWC Names New Claims Chief

October 9, 2020

The Ohio Bureau of Workers' Compensation (BWC) has named **Shawn Crosby** as its new chief of claims services today. A Cincinnati resident who joined the BWC as a front-line clerk in 1993, Crosby most recently served as Cincinnati claims director. She replaces former

claims chief Patricia Harris, who was recently promoted to chief operating officer. *10/7/2020*

\$1.5 Billion to Be Sent to Ohio Employers This Month

October 2, 2020

Up to \$1.5 billion in premium rebate checks are scheduled to be mailed to eligible employers in late October and early November after the Ohio Bureau of Workers' Compensation (BWC) board voted last Friday, Sept. 25 to approve the latest dividend payout. The dividend equals the full premium that employers paid in policy year 2019.

Here is the BWC's FAQ document regarding the new payout. This rebate and the \$1.6 billion rebate issued earlier this year are the seventh and eighth dividends worth \$1 billion-plus since 2013. *9/28/2020*

Webinar: Workplace Safety During (and After) COVID-19

October 2, 2020

OMA Connections Partner Frantz Ward will host a **free webinar** at noon (ET) Wednesday, Oct. 7 to address workplace safety during and after the pandemic. This one-hour webinar will provide a review of new Ohio, OSHA, and other regulatory requirements and guidance, while also covering best practices for staying compliant, dealing with difficult employees, and striving to keep employees safe. *10/1/2020*

To Fight COVID-19, This Campaign is Focused on Employee Practices Outside the Workplace

October 2, 2020

As the nation prepares for a potential uptick in COVID-19 cases, the National Association of Manufacturers recently launched the "**Creators Respond Commitment**" to help employers encourage wider outside-of-work compliance with safety practices. You can access **email templates** to share this campaign with your employees. *10/1/2020*

BWC Board to Vote on \$1.5B in Dividends for Employers

September 25, 2020

The Ohio Bureau of Workers' Compensation board is expected to vote today, Sept. 25, to provide Ohio employers up to **\$1.5 billion in dividends**. (To be eligible for the dividend, make sure you have performed your true-up for the 2019 policy year by Friday, Oct. 2.)

The dividend would equal the full premium that employers paid in policy year 2019. If approved, checks could be mailed as soon as late October. *9/25/2020*

Ohio Safety Congress Will Be Virtual in 2021

September 25, 2020

The Ohio Bureau of Workers' Compensation has announced that the **2021 Ohio Safety Congress and Expo** will be online only. Set for March 10-11, the event will feature dozens of learning sessions and a digital expo, allowing participants to chat virtually with vendors about new and existing products and services. As always, the event will be free for Ohio employers. Registration will open in January. *9/23/2020*

Analysis: Safety Incentive Programs Can Backfire

September 25, 2020

In the wake of a workplace incident, an incentive program sounds like an appealing solution to improve worker safety. Unfortunately, you can't buy a good safety culture.

OMA Connections Partner Safex has published **this insight** to help you achieve a culture you want with actions that reinforce your company's commitment to improvement. *9/21/2020*

Airflow Considerations During COVID-19

September 18, 2020

Public health experts have indicated that airborne transmission of the coronavirus may be possible in certain settings. McKinsey & Company has published **this infographic** to provide guidance on HVAC and ventilation — based on input from public health agencies and industry groups — in the context of three settings: manufacturing, offices, and retail stores. *9/17/2020*

OMA Uses Technology to Find Handicap Reimbursement Opportunities

September 18, 2020

The OMA Workers' Compensation Services team will soon present arguments to the Ohio Bureau of Workers' Compensation (BWC) legal department in support of employer applications for reimbursement of claims costs under the **BWC Handicap Reimbursement policy**. Handicap reimbursement is a BWC provision designed to allow employers to gain claim-cost relief when certain pre-existing medical conditions among injured workers add recovery time and cost to a claim.

In 2020, OMA account managers reviewed more than 1,000 claim files for handicap reimbursement potential using a new, technology-driven process that monitors claims for potential triggers. This new process allows for more efficient claims management, as well as full transparency to the employer.

If you have questions, please **contact your OMA account manager** or see the "Company Claims" tab on your WCS Dashboard. To see how OMA Workers' Compensation Services can lighten your load when it comes to claims management, **click here** — or contact **Crissy Roach**. 9/17/2020

Summary of BWC Assistance for Employers During COVID-19

September 18, 2020

The pandemic has presented unique issues in the workforce and to employers. Fortunately, the Ohio Bureau of Workers' Compensation (BWC) has implemented policies and programs over the last several months to reduce employer hardships. OMA Connections Partner Dinsmore has compiled a **summary of pandemic-related BWC policies** and how they apply to your business. 9/16/2020

Ohio Workers' Comp Changes Go Into Effect

September 18, 2020

A new, comprehensive workers' compensation law went into effect this week. Ohio's **House Bill 81**, OMA-supported legislation that was passed and signed earlier this year, contains several

significant changes. For details on the new law, read **this analysis** from OMA Connections Partner Frantz Ward. 9/15/2020

1988 Bengals: Beat COVID-19! Wear a Mask in Public

September 11, 2020

The **1988 Cincinnati Bengals** — AFC Champions, Super Bowl XXIII participants, and one of the most memorable teams in NFL history. Members of that standout squad have teamed up again in a new public service announcement from the National Association of Manufacturers and the OMA. The video, which can be seen on **Twitter** and **LinkedIn**, serves as a timely reminder that beating COVID-19 will require continued teamwork — including wearing a face covering in public. 9/10/2020

OSU's Wexner Medical Center to Host Free COVID-19 Employer Webinar, Sept. 16

September 11, 2020

The Ohio State University's Wexner Medical Center will host a **free COVID-19 employer webinar** on Wednesday, Sept. 16, from 1:30 to 2:30 p.m. (ET). The webinar will include a vaccine development update, as well as real-time pandemic data and advice to help protect your employees and customers. 9/10/2020

OSHA Releases Work-Related Injury, Illness Data

September 11, 2020

OSHA recently released work-related **injury and illness data** that was electronically submitted by employers for 2016, 2017 and 2018. According to the agency, the release follows two rulings in Freedom of Information Act cases. 9/8/2020

Senate Confirms Harris as BWC COO

September 4, 2020

A Cincinnati native and longtime veteran of the Ohio Bureau of Workers' Compensation (BWC) **assumes the role of chief operating officer** this week following her confirmation by the Ohio Senate today. **Patricia "Trish" Harris**, who joined BWC as an intern in 1991, succeeds Kevin Abrams, who

retired Monday after nearly four decades with the agency. *9/3/2020*

BWC Sets Sept. Employer Update Webinar Dates

September 4, 2020

In its September Employer Update Webinar, the BWC will cover COVID-19, the proposed premium dividend, non-compliance claim resolution, transitional work bonus program and grant, important dates, and the monthly safety tip. The webinar will last about 25 minutes. Click these links to register:

- 1:30 p.m. on **Tuesday, Sept. 8**
- 11:30 a.m. on **Thursday, Sept. 24**

The recorded webinar will be available for **future viewing here**. *9/2/2020*

BWC Extends PAR Program for Small Employers

September 4, 2020

The Bureau of Workers' Compensation (BWC) has extended the **Policy Activity Rebate (PAR) program** for another year. PAR provides eligible employers an opportunity to earn a 50% premium rebate, up to \$2,000. The program promotes a safe work environment and raises awareness about the most important aspects of workers' compensation.

BWC is conducting a free 15-minute **educational webinar on October 7** at 1:30 for employers to learn more about the PAR program. *8/28/2020*

House Bill 81 Updates Ohio Workers' Compensation Law

September 4, 2020

As Ohio House Bill 81 goes into effect on September 15, 2020, OMA Connections Partner Calfee **summarizes four substantial changes** the bill makes to Ohio workers' compensation law. This bill had the support of OMA. *9/2/2020*

OSHA Responds to Enforcement Question Re. Training Requirements

September 4, 2020

Q. Will employers have additional time to complete annual training requirements because of mandated social distancing and other restrictions enacted during the coronavirus pandemic?

A. OSHA issued interim guidance on using discretion in enforcement when employers make good faith efforts to comply with OSHA standards during the pandemic. *9/1/2020*

BWC Board Will Consider \$1.5B Dividend Proposal on Sept. 25

August 28, 2020

The Ohio Bureau of Workers' Compensation (BWC) board will vote Sept. 25 on Gov. Mike DeWine's proposal to send Ohio employers up to \$1.5 billion in dividends to ease the impact of COVID-19. If approved, the dividend would be the second payment of that magnitude this year — and the third since 2019.

This proposed dividend equals approximately 100% of the premiums that employers paid in policy year 2019. Checks could start going out in late October. (To be eligible for the dividend, make sure you have performed your true-up for the 2019 policy year by Oct. 2.)

Click here for BWC's fact sheet on the dividend and masks initiative. *8/26/2020*

BWC Announces September's Safety Webinars

August 28, 2020

The Ohio Bureau of Workers' Compensation will conduct **multiple free webinars** for employers in September. Among these will be webinars on managing contractors' safety performance in your facility (Sept. 8) and recognizing fire hazards (Sept. 22). *8/26/2020*

Ohio BWC Reimburses Employers in Select Counties for Drug-Free Operations

August 28, 2020

OMA Connections Partner *Working Partners*® reports that the Ohio Bureau of

Workers' Compensation (BWC) — in its efforts to respond to substance use in the workplace — has \$15 million to help employers hire, manage and retain employees in recovery. **Learn about** the BWC's Substance Use Recovery and Workplace Safety Program. *8/25/2020*

Governor Asks BWC to Send \$1.5B in Dividend Payments to Ohio Employers This Fall

August 21, 2020

To provide economic relief to employers amid the ongoing pandemic, Gov. Mike DeWine this week asked the Ohio Bureau of Workers' Compensation (BWC) board of directors to send **up to \$1.5 billion in dividend payments** to Ohio employers this fall. This dividend would equal approximately 100% of the premiums paid in policy year 2019. Checks are expected to go out by late October. If approved by the Board, this would be the second dividend of \$1 billion or more since April and the third dividend since 2019.

Additionally, Gov. DeWine asked the BWC board to approve a second distribution of face coverings to Ohio employers and their employees. In the first distribution, BWC shipped 20.6 masks to 197,000 employers. *8/20/2020*

BWC Webinar on Inspections of Personal Fall Protection Equipment

August 21, 2020

Lack of proper fall protection is a major driver in workplace injuries and fatalities. The Ohio Bureau of Workers' Compensation (BWC) will host a **free webinar** Tuesday, Aug. 25, at 11:00 a.m. (ET) to walk businesses through the inspection of fall protection systems. *8/20/2020*

At a Glance: OSHA's Revision of Beryllium Standard

August 21, 2020

OSHA recently passed a revised final rule of the beryllium standard for general industry, set to be enforced beginning Sept. 14, 2020. OMA Connections Partner Safex has published **this analysis** of the rule, highlighting what has changed from the previous rule. *8/20/2020*

BWC Redesigns Its Website

August 21, 2020

The Ohio Bureau of Workers' Compensation (BWC) has **redesigned its website**. The BWC has made available **this tool** to spotlight the site's 50 most-visited pages. *8/20/2020*

BWC Updates COVID-19 FAQs

August 14, 2020

The Ohio Bureau of Workers' Compensation has updated its **COVID-19 frequently asked questions document**.

Question 2 on the document addresses COVID-19 claims and experience ratings. As of Aug. 10, BWC had not decided whether to exclude the cost of allowed COVID-19 claims from an employer's experience calculation. *8/13/2020*

Best Practices for 3D Printing Safety

August 14, 2020

Dr. Marilyn Black, vice president and senior technical advisor for Underwriters Laboratories, recently provided a list of best practices for 3D printing safety. In an **IndustryWeek article**, Dr. Black wrote that many desktop 3D printers, while in operation, generate ultra-fine particles and numerous volatile organic compounds that may affect human health. *8/10/2020*

Take Your OSHA Recordkeeping Skills to the Next Level

August 14, 2020

Earlier this year, the OMA hosted a webinar addressing the **basics of OSHA recordkeeping**. Now it's time to review more challenging OSHA recordkeeping and recording situations in our follow-up webinar set for 11 a.m. (ET) on Thursday, Sept. 3. Presented by OMA Connections Partner Safex, this session will be interactive. Using the webinar polling feature, participants will determine if the cases are recordable and whether the cases result in lost time or restricted-work days. A variety of complicated cases will be presented for evaluation, including some COVID-19 scenarios. **Learn more or register here.** *8/11/2020*

BWC-Sponsored Safety Councils Modified Due to COVID-19 Pandemic

August 14, 2020

Due to the pandemic, the Bureau of Workers' Compensation has made changes to how it will manage the **safety council program**.

Most of the more than 80 safety councils are now conducting virtual meetings.

The Safety Council Rebate Program is suspended for the July 1, 2020 – June 30, 2021 fiscal year. Safety councils are not collecting semi-annual accident reports. Subsequently, there will be no awards presented for the 2020 calendar year. *8/11/2020*

Important BWC Deadlines Approaching Quickly

August 14, 2020

The following deadlines are quickly approaching for key Ohio Bureau of Workers' Compensation (BWC) programs:

- Aug. 15 – Private employer payroll **true-up deadline**.
- Aug. 30 – Drug-Free Safety Program Action Plan due from advanced-level private employer participants.
- Aug. 31 – Self-insuring employer assessments due.

Meanwhile, a **new BWC website** is expected to be unveiled in late August. *8/12/2020*

Cleveland Clinic Publishes COVID-19 Safety Guidance for Manufacturers

August 7, 2020

The Cleveland Clinic has published **this COVID-19 workplace safety guide for manufacturers**. The guide is part of a series of documents the clinic has produced to help employers protect employees in the workplace. To see all the guidance, visit the Cleveland Clinic's **COVID-19 workplace safety page**. *8/5/2020*

Can HVAC Systems Help Prevent Transmission of COVID-19?

July 31, 2020

Modifications to heating, ventilation, and air-conditioning systems might help reduce the spread of the novel coronavirus by purifying air, improving ventilation, and managing airflows. McKinsey & Company has published **this**

insight on steps to optimize ventilation and airflow indoors and limit viral spread. *7/27/2020*

Survey: Many Americans Believe COVID-19 Is More Widespread, Deadlier Than Data Show

July 31, 2020

According to **new global research** from strategic communications firm Kekst CNC, some people think the coronavirus is more widespread and deadlier than official figures show.

The research shows that 20% of Americans believe the number of COVID-19 cases is 20 times greater than the **CDC's figures**, and 9% of Americans believe the number of COVID-19 deaths is 225 times greater than the **CDC's data** (which would mean more than 33 million U.S. deaths).

The firm's research also found that returning to work has been a good experience for many employees, and that large majorities agree mask wearing should be required in indoor public spaces. *7/30/2020*

Statewide Mask Mandate Now in Effect

July 24, 2020

Early last night, July 23, the DeWine administration issued its **latest public health order**. Per **Section 2** of this order, individuals ages 10 and older in all 88 Ohio counties must wear facial coverings in public at all times when:

- At any indoor location that is not a residence;
- Outdoors and unable to consistently maintain a distance of six feet or more from people who are not members of their family or household; and
- Waiting for, riding, driving, or operating public transportation, a taxi, car service, or ridesharing vehicle.

The administration's action comes after **more counties** were moved this week to Level 3 (red alert) status. For manufacturers, the mask exceptions in the new order mirror those of the

previous order. For members' convenience, **the OMA has again updated its guidance document for use of masks and face coverings.** 7/24/2020

Travel Advisory Issued for States With COVID-19 Surges

July 24, 2020

The DeWine administration this week issued **COVID-19 travel advisory** for states with above a 15% or greater test-positivity rate to protect against spread of the coronavirus. When issued on Wednesday, July 22, states on Ohio's advisory list were Alabama, Arizona, Florida, Georgia, Idaho, Mississippi, Nevada, Puerto Rico, South Carolina, and Texas. All travelers entering Ohio from these states are asked, but not required, to self-quarantine for at least two weeks.

The Ohio Department of Health has published **this FAQ document** regarding the travel advisory, which will be updated weekly. 7/23/2020

Upcoming Deadline for BWC Employer Programs

July 24, 2020

Friday, July 31 marks the deadline for several Bureau of Workers' Compensation (BWC) employer programs. By this deadline:

- Employers that are interested in participating in the Safety Council Rebate Program must enroll in a local safety council.
- Businesses participating in the Drug-Free Safety Program (DFSP) or Industry-Specific Safety Program (ISSP) must submit a Safety Management Self-Assessment (SH-26).
- Employers in their initial program year of DFSP must complete online the accident-analysis training. New supervisors must

complete the training within 60 days of becoming a supervisor.

Learn more here. 7/24/2020

PSAs Encourage Mask Use to Slow Spread of COVID-19

July 24, 2020

The Ohio BWC is sponsoring two new public service announcements encouraging the use of masks and facial coverings to slow the spread of the coronavirus.

The **first PSA** features real Ohioans explaining why all Ohioans should all wear a mask. The **second PSA** features Dr. Steve Markovich, a former Air National Guardsman and fighter pilot, who is CEO of OhioHealth. Meanwhile, the National Association of Manufacturers has produced **this PSA** to dispel common myths about the use of facial coverings. 7/22/2020

COVID-19 Signs, Posters for Ohio Employers

July 17, 2020

Ohioans will be required to wear facial coverings in public in **19 of the state's 88 counties** beginning 6 p.m. Friday (July 17) based on the latest data from the **state's coronavirus warning system.**

To help communicate with employees and customers, the Ohio Department of Health has made available numerous posters and signs for businesses to download and print. This includes **signs encouraging the use of face coverings**, as well as **"face coverings are mandatory" signs** for businesses in counties that are at levels 3 or 4 under the Ohio Public Health Advisory System.

See the full offering of signs. 7/15/2020

When Can a COVID-Infected Employee Return to Work?

July 17, 2020

With cases of COVID-19 on the rise again, more employers are asking: When can employees who have had COVID-19 — or may have had the virus — return to work?

The CDC has **provided guidance** regarding when home isolation can end for infected

people. OSHA, **in its FAQs**, has simplified the guidance as follows:

- If an employee has been isolating at home, a health care provider or **local health department** can provide the best information about when the employee can discontinue isolation and return to essential activities, such as going to work.
- If an employee has been hospitalized with COVID-19, he/she should follow the health care provider's discharge and follow-up instructions, which should include information about when he/she can return to work.

Also, the Ohio Department of Health has **published this guidance** for businesses, noting that employers should immediately report employee or customer infections to their local health district — and then **take these actions**. *7/16/2020*

Safe + Sound Week is Set For Aug. 10-16

July 17, 2020

OSHA is encouraging workplaces to commit to workplace safety and health by participating in Safe + Sound Week, Aug. 10-16. This nationwide event recognizes the successes of workplace safety and health programs, and offers information and ideas on how to keep workers safe. **Learn more here**. *7/15/2020*

On-Demand Webinar: Reducing Electrical Hazards

July 17, 2020

Electrical safety violations continue to be among the top standards cited by OSHA for manufacturers. The OMA has made available **this recorded, one-hour webinar** to help you avoid common electrical citations. The subject matter expert is Safex's **Brian Basagill**,

who has more than 20 years of construction and manufacturing safety experience. *7/14/2020*

BWC Announces Safety Innovation Award Winners

July 10, 2020

The Bureau of Workers' Compensation (BWC) recently awarded \$3,500 cash prizes to **five Ohio employers** as part of its annual Safety Innovation Awards. The award winners are typically announced at the Ohio Safety Congress & Expo, which did not take place due to the COVID-19 pandemic.

Four of the five winners were manufacturers including OMA members BASF Fort Amanda Specialties LLC and TFO Tech Co., LTD. Read about their innovations **here**.

The BWC has placed the award program on hiatus for 2021 and will review the program and prepare to return in 2022. *7/6/2020*

BWC Plans New Website with July 28 Go-Live Date

July 10, 2020

The Bureau of Workers' Compensation (BWC) is redesigning its website "to better serve our injured workers and employer customers." The new site is expected to be implemented on July 28. The website's address will remain **bwc.ohio.gov**.

To facilitate a smooth transition to the new site, BWC will temporarily "freeze" updates to the current site's content, not updating the existing site with news releases, policy updates, or any other new content until July 28, unless the updates are deemed critical. *7/6/2020*

Reminder: True Up Your Payroll with BWC

July 10, 2020

All private employers have until August 15 to true up payroll for the 7/1/19 through 6/30/20 policy year with the Bureau of Workers' Compensation (BWC).

Although BWC has deferred premium payments until Sept. 1, employers still must true up for this past policy year by the August 15 deadline.

For additional information, view the **Payroll true up reports overview page**. **General guidelines** for reporting payroll to BWC may be

found on the **What payroll is reportable page** (note the changes associated with the COVID-19 pandemic).

As you true up, it's a good time to take advantage of the Go-Green Rebate Program; employers can receive a 1-percent premium rebate, up to \$2,000 each policy year. Visit the **Go-Green web page** to review program requirements. 7/6/2020

BWC's Next Employer Updates Webinar is July 14

July 10, 2020

The BWC's July 14 employer webinar (1:30 – 1:55 p.m.) will cover COVID-19 updates, policy year 2020 estimated annual premium, private employer annual true up, important dates, and the monthly safety tip.

Visit the **Employer webinars** page to attend or view recorded presentations from past webinars. 7/8/2020

Guidance for Holiday Travel During COVID-19

July 2, 2020

With Independence Day weekend nearly here, members have raised questions about guidance for employees who are traveling, especially to areas experiencing a surge in COVID-19 cases.

The CDC recently revised its considerations for travelers within the U.S. The page contains:

- **COVID Data Tracker**, which includes **this map** showing the number of COVID-19 cases and deaths in every U.S. county.
- **Tips to protect yourself and others** during your trip;
- **Tips for overnight travel**; and
- **Frequently asked questions**.

For more, see the **CDC's page for domestic travelers**. For international travel health notices, **click here**. 7/2/2020

Recap of HB 81: Important Changes to Ohio Workers' Compensation Law

July 2, 2020

OMA Connections Partner Roetzel has published **this recap of House Bill 81**, recently signed by Gov. Mike DeWine to implement several important changes to the Ohio workers' compensation system. The new law, which takes effect Sept. 14, includes a reduction in the statute of limitations for filing a violation of specific safety requirement (VSSR) application — reducing the threshold from two years to one. Roetzel's experts advise employers: "If an employee waits more than one year from the date of their injury or occupational disease to file their VSSR claim, such claim should be summarily rejected by the employer based upon a statute of limitations defense." 6/30/2020

Important Deadlines for These BWC Programs

July 2, 2020

The end of July will bring **deadlines** for key programs under the Ohio Bureau of Workers' Compensation. By July 31, private employers:

- interested in participating in the **Safety Council Rebate Program** must enroll in a local safety council;
- participating in the **Drug-Free Safety Program (DFSP)** or **Industry-Specific Safety Program (ISSP)** must submit a Safety Management Self-Assessment (SH-26); and
- in their first program year of DFSP must complete online the accident-analysis training (new supervisors must complete the training within 60 days of becoming a supervisor).

In the meantime, employers should be receiving their 2019 true-up notice and can **start reporting payroll online**. 7/2/2020

Nearly 650 COVID-19 Workers' Comp Claims Filed in Ohio

June 26, 2020

This **new report** from the Ohio Bureau of Workers' Compensation (BWC) shows that from March 11 to June 16, a total of 642 Ohio workers filed claims alleging they contracted COVID-19 on the job. More than 500 of those claimants wor in health care or as first responders, while the 123 remaining cases were filed by employees in other sectors of the economy. According to the report, 109 of the claims have already been rejected.

According to the BWC's FAQ document (**Question 5**), whether a COVID-related workers' compensation claim is compensable depends on how an employee contracts the virus and the nature of his/her occupation. "Generally, communicable diseases like COVID-19 are not workers' compensation claims because people are exposed in a variety of ways, and few jobs have a hazard or risk of getting the diseases in a greater degree or a different manner than the general public," the BWC notes. 6/24/2020

How Workers' Comp Addresses COVID-19 in All 50 States

June 26, 2020

How cases of COVID-19 are covered by workers' compensation depends on state law. OMA Connections Partner Fisher Phillips has updated its **50-state COVID-19 Workers' Compensation chart** that compares how states define an occupational disease, as well as legislative actions related to the pandemic. Also, the firm is **tracking lawsuits** across the country that are a direct result of the pandemic and are traditional employee vs. employer cases — both individual plaintiff and class actions. 6/22/2020

NAM Calls for Widespread Use of Face Coverings

June 26, 2020

The National Association of Manufacturers (NAM) has **released a new ad** that urges all Americans to help get our economy roaring, protect jobs, and stop the spread of COVID-19 by wearing a face covering in public spaces. NAM President and CEO Jay Timmons said, "Today, we know that the best and most certain way to stop the spread is for everyone to wear a facial covering. It isn't fun. It isn't pleasant. But through shared responsibility, we can get this

pandemic under control and save small businesses and jobs." 6/25/2020

Employers Can Begin Annual True-Up on July 1

June 19, 2020

Here's a reminder that the Ohio BWC's annual employer **payroll true-process** for the July 1, 2019 to June 30, 2020 policy year begins July 1. BWC premiums are based on payroll and each employer must reconcile actual payroll after each policy year. The process must be completed by August 15, since there has been no extension due to COVID-19. General guidelines for reporting payroll — as well as some special payroll reporting changes due to the pandemic — **can be found here**. If you have questions about these reporting changes, **email the Underwriting Classification Unit**. 6/18/2020

Court Won't Force OSHA to Issue Emergency Workplace COVID-19 Standards

June 19, 2020

HR Dive has published **this summary** of a recent decision by a federal appeals court that declined to force OSHA to issue temporary emergency workplace standards during COVID-19. The AFL-CIO had requested an emergency standard on infectious diseases, while the U.S. Chamber sided with OSHA, supporting the agency's approach of coupling existing safety standards with flexible, industry-specific guidance. 6/17/2020

Study: Ohio Has Second-Lowest Workers' Comp Costs

June 12, 2020

Over the years, the OMA has worked hard to advocate for more competitive workers' compensation costs. So it is encouraging to see **this new infographic** by HowMuch.net showing that when compared to other states, Ohio has the nation's second-lowest workers' compensation costs. Based on the most recent data from the National Academy of Social Insurance, the infographic shows that Ohio's average workers' compensation costs (as of 2017) were 67 cents per \$100 of payroll, compared to the national average of \$1.21. Texas was the only state with

a lower cost than Ohio's, according to the comparison. *6/9/2020*

OMA Safety & Workers' Comp Committee Hears From OSHA, Ohio BWC

June 12, 2020

On June 11, the OMA Safety and Workers' Compensation Committee met virtually for its second meeting of 2020. Members were briefed on recent legislative activity and actions by the DeWine administration that could impact Ohio's workers' compensation system. In addition, members received updates from experts from Ohio BWC and OMA Connections Partner **Safex**. The keynote speaker was Howie Eberts, area director for OSHA, who provided **Ohio-specific updates** from the agency. This week's meeting marked the last for longtime committee Chairman Larry Holmes, vice-president of finance and treasurer for Fort Recovery Industries, Inc. Holmes is currently a candidate for the Darke County Board of Commissioners. We thank Larry for his many years of committed leadership and service to the OMA. Matt Shurte, general counsel and secretary at Lancaster Colony Corporation, will follow Holmes as committee chair.

The committee — which is open to all OMA members — is **scheduled to meet again Nov. 4. 6/11/2020**

OSHA Provides Guidance on Masks in the Workplace

June 12, 2020

Earlier this week, OSHA released **new guidance**, in the form of **frequently asked questions and answers**, regarding the use of masks and cloth face coverings in the workplace. The new guidance serves to help employers inform employees on how to properly wear masks and face coverings — and know what is appropriate under different circumstances. Also, the CDC this week updated its **guidance on how to wear cloth face coverings. 6/11/2020**

OMA Updates Workplace Safety Resources Document

June 12, 2020

In case you missed it, the OMA has updated its **collection of resources to address general workplace safety concerns** during COVID-19. This document includes updated guidance on the use of face coverings/masks, cleaning and disinfecting, employee health checks, and reporting confirmed or suspected COVID-19 cases. *6/9/2020*

Update: Ohio BWC's Frequently Asked Questions During COVID-19

June 12, 2020

The Ohio Bureau of Workers' Compensation (BWC) has updated its **COVID-19 FAQ document**. This list of questions and answers includes information on the BWC's recently announced premium deferral for June, July and August. *6/9/2020*

Thermal Imaging Systems in the Workplace: Panacea or Problem?

June 12, 2020

Employers are looking for better ways to monitor whether individuals entering their workplaces have been exposed to or are infected with COVID-19. The use of more sophisticated thermal scanning cameras or similar systems that can process many people quickly has emerged as a possible solution. OMA Connections Partner Fisher Phillips has published **this insight** to examine the advantages and disadvantages of using this technology. *6/8/2020*

Cleaning Tips for Frequently Touched Electronic Devices

June 5, 2020

The COVID-19 pandemic has made us acutely aware that electronic devices are among the most frequently touched surfaces by employees — and an easy way to spread the coronavirus. *USA Today* recently published **this handy list** of cleaning tips for phones, tablets and other electronic devices with surfaces on which the coronavirus can survive for up to 72 hours. *6/3/2020*

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on November 2, 2020

- HB79** **INDUSTRIAL COMMISSION BUDGET** (OELSLAGER S) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/27/2019 - **SIGNED BY GOVERNOR**; eff. 6/27/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-79>
- HB80** **BWC BUDGET** (OELSLAGER S) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of the bureau's programs.
Current Status: 7/22/2019 - **SIGNED BY GOVERNOR**; Eff. 7/22/19. Certain provisions effective 10/21/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-80>
- HB81** **WORKERS COMP-BODILY FLUID EXPOSURE** (PERALES R) Regarding Workers' Compensation coverage of post-exposure medical diagnostic services for a detention facility employee's exposure to another person's blood or bodily fluids.
Current Status: 6/16/2020 - **SIGNED BY GOVERNOR**; eff. 9/15/20
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-81>
- HB167** **OCCUPATIONAL LUNG CONDITIONS** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
Current Status: 2/12/2020 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-167>
- HB308** **PTSD COVERAGE - FIRST RESPONDERS** (PATTON T) Concerning workers' compensation and disability retirement for peace officers, firefighters, and emergency medical workers diagnosed with posttraumatic stress disorder arising from employment without an accompanying physical injury.
Current Status: 6/3/2020 - Senate General Government and Agency Review , (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-308>
- HB330** **FIREFIGHTER CANCER CLAIMS** (PATTON T) Regarding charging workers' compensation experience in firefighter cancer claims.
Current Status: 6/3/2020 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-330>
- HB571** **COVID-19 - OCCUPATIONAL DISEASE** (BOGGS K) To make COVID-19 contracted by a peace officer, firefighter, or emergency medical worker an occupational disease under the Workers' Compensation Law under certain circumstances and to declare an emergency.

Current Status: 5/19/2020 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-571>

HB573 COVID-19 - OCCUPATIONAL DISEASE (SOBECKI L, BOGGS K) To make COVID-19 an occupational disease under the Workers' Compensation Law under certain circumstances and to declare an emergency.

Current Status: 5/12/2020 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-573>

HB605 COVID-19 - OCCUPATIONAL DISEASE (KELLY B, PATTON T) To make COVID-19 contracted by an employee of a retail food establishment or food processing establishment an occupational disease under the Workers' Compensation Law under certain circumstances and to declare an emergency.

Current Status: 5/28/2020 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-605>

HB633 COVID-19 - OCCUPATIONAL DISEASE (BOGGS K) To make COVID-19 contracted by specified types of employees an occupational disease under the Workers' Compensation Law under certain circumstances and to declare an emergency.

Current Status: 5/19/2020 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-633>

HB667 COVID-19 OCCUPATIONAL DISEASE - CORRECTIONS OFFICER (BALDRIDGE B) To make COVID-19 contracted by a corrections officer an occupational disease under the Workers' Compensation Law and to declare an emergency.

Current Status: 5/27/2020 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-667>

HB668 COVID-19 OCCUPATIONAL DISEASE - EMERGENCY WORKER (BALDRIDGE B) To make COVID-19 contracted by a peace officer, firefighter, or emergency medical worker an occupational disease under the Workers' Compensation Law and to declare an emergency.

Current Status: 5/27/2020 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-668>