

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Bureau of Workers' Compensation

Regulation/Package Title: Self-Insuring Employer Rules

Rule Number(s): Chapter 4123-19 of the Administrative Code

Date: 03/05/2019

Rule Type:

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 4123-19 of the Administrative Code contains the rules governing self-insurance in Ohio's workers' compensation system, including the process of applying for the privilege to self-insure, procedures for renewal or revocation of self-insuring status, and the assessment for the self-insuring employers' guaranty fund. These rules are not subject to a five-year rule review, having been updated on August 18, 2017. The BWC Legal Division reviewed the content of the rules with the Self-Insured Department, and have identified the changes to the rules indicated below.

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Amended rules:

4123-19-01 Definition: state risks, self-insuring risks.

4123-19-03 Where an employer desires to secure the privilege to pay compensation, etc., directly.

4123-19-05 Where an employer is a self-insuring risk and desires to become a state risk.

4123-19-08 Renewal of self-insuring risks.

4123-19-09 In regard to complaints filed by employees against self-insuring employers under the provisions of section 4123.35 of the Revised Code.

4123-19-13 Self-insuring employers evaluation board.

4123-19-14 Self-insured review panel.

4123-19-15 Assessment for self-insuring employers' guaranty fund.

4123-19-16 Self-insured construction projects.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

4123.35, 4123.351, 4123.352.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

n/a

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These rules govern self-insurance in Ohio's workers' compensation system and are required by ORC 4123.35. They are intended to inform Ohio employers of the requirements of self-insurance.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

These rules do not lend themselves to measurement. The success of these rules is measured by the ability of workers' compensation stakeholders to understand and follow the rules.

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Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Bureau distributed these rules for comments to:

- Ohio Manufacturer's Association ("OMA");
- BWC's Self-Insured Division's employer distribution list; and
- Ohio Self-Insurance Association ("OSIA") workgroup.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

BWC received no stakeholder feedback on the proposed rules.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

n/a

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

These rules generally follow statutory mandates. For example, rule 4123-19-13, "Self-insuring employers evaluation board," is based on requirements in ORC 4123.352. The statute provides the basic parameters of the regulation; these rules inform stakeholders of the procedures and policies the BWC will use to implement these regulations.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Performance based regulations are not appropriate for the content of these rules.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The BWC is the only state agency regulating workers' compensation claims, and thus there is not another agency promulgating rules on these subjects.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The BWC will post the rules on its website, www.bwc.ohio.gov, and will distribute the rules to affected parties.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

a. The impacted community includes employers in the workers' compensation system. Specifically, the proposed rules impact employers that desire to self-insure and employers that are currently self-insured.

b. Generally, these rules are an alternative option for employers who do not wish to participate in the state insurance fund. An employer that becomes self-insured is responsible for paying an assessment to the self-insuring employers' guaranty fund and must pay claims costs dollar for dollar. An employer that desires to become self-insured must meet certain requirements, most of which are outlined in 4123-19-03. Many of the requirements are statutorily based. These proposed rules clarify requirements for self-insuring employers who utilize excess insurance, as permitted under R.C. 4123.82(B). Beyond providing a copy of the excess insurance policy and/or declaration page to the BWC when filing for annual renewal of self-insurance, the only other requirement is that the excess insurance policy name the BWC as a beneficiary in the event the self-insuring employer defaults on its obligations.

c. Any adverse impact is difficult to quantify and is mitigated somewhat by the elective nature of the self-insurance program, and the elective nature of excess insurance for self-insuring employers. Generally, an employer that chooses to become self-insured performs a risk analysis and determines that self-insurance is better for the employer financially.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

These rules generally follow statutory mandates. The statutes provide the basic parameters of the regulation; these rules simply inform stakeholders of the procedures and policies the BWC will use to implement these regulations. Excess insurance, when elected by a self-insuring employer, should be available to the BWC in the event the self-insuring employer defaults on its obligations. Therefore, the regulatory intent of these rules is justified by the need for the BWC to comply with statutory mandates.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. Self-insuring employers are typically larger employers who have the financial ability and administrative resources to self-administer their workers' compensation claims.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable. The only proposed rule that provides for a civil penalty is rule 4123-19-13, which may call for sanctions against a self-insuring employer by the self-insuring employers evaluation board for violating rules of self-insurance when administering workers' compensation claims. The civil penalty provision remains unchanged from the previous version of this rule.

18. What resources are available to assist small businesses with compliance of the regulation?

BWC rules and policies are available on www.bwc.ohio.gov. Also, BWC has dedicated Self-Insured Department personnel available to assist stakeholders in answering workers' compensation inquiries concerning self-insurance.