



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:**

**Ohio Department of Job & Family Services**

**Rule Contact Name and Contact Information:**

**Michael Lynch, 614 466-4605, Michael.Lynch@jfs.ohio.gov**

**Regulation/Package Title (a general description of the rules' substantive content):**

**Quarterly Payments and Common Paymaster**

**Rule Number(s): 4141-11-02 and 4141-11-13**

**Date of Submission for CSI Review: 3/12/2020**

**Public Comment Period End Date: 3/19/2020**

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change 2 rules (FYR? \_\_\_)

Amended/\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☐ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

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

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

4141-11-02 Quarterly payments, interest and due date. Every contributory employer subject to Chapter 4141 shall pay contributions on its taxable payroll each calendar quarter at the rate determined by the director. Also, if the employer does not pay when due interest will accrue at the annual rate of fourteen percent.

4141-11-13 Prohibition against common paymaster reporting. Each employer shall report and make required payments as provided by Chapter 4141. of the Revised Code with respect to its account as maintained by the director. One legal entity may not report or make payments for another legal entity by what may be known as a common paymaster arrangement or by some other similar arrangement.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

4141.13

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- 4. 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.*

Yes, these rules implement federal guidelines as directed by the Department of Labor (DOL) pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 26 USC 3311.

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

No, both rules do not include provisions exceeding federal requirements.

- 6. 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)?**

Rule 4141-11-02: This rule clarifies due dates for contribution payments and the interest rate charged if payments are not timely made. Employers know when quarterly taxable payroll reports and payments are due under Section 4141.20 of the ORC because of this rule, and what interest rate will be charged for reports and payments made late pursuant to Section 4141.23 of the ORC.

Rule 4141-11-13: This rule helps employers understand that each legal entity is responsible to report and make payments on their own employer account pursuant to Section 4141.24(A) of the ORC. Without this rule employers with common ownership, management, or control, but that are separate and distinct legal entities, would not understand that one legal entity may not report or make payments for the other legal entities as a common paymaster or under a similar arrangement.

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

Rule 4141-11-02: This rule explains contribution payment due dates and the interest rate charged for untimely payments. The success of this rule can be measured by how well employers understand the due dates and interest rate charges for untimely payments. The Agency believes this rule is well understood by employers because the vast majority of the approximately 225,000 liable employers file and pay in a timely manner. Therefore, because the current form of this rule has been in place since September 28, 2010, with the full knowledge and cooperation of employers, the Agency has proposed no changes to the language of this rule.

Rule 4141-11-13: This rule assists employers in understanding that each legal entity must report and make payments on their own employer account. The success of this rule can be measured by the fact that all employers file and pay under their own employer account as separate and distinct legal entities. Thus, because the current form of this rule has been in place since September 28, 2010, with the full knowledge and cooperation of employers, the Agency has proposed no changes to the language of this rule.

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- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

### **Development of the Regulation**

- 9. 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 agency's clearance process allows all employer and claimant/employee stakeholder interests to review and comment on any rule online. The National Federation of Independent Business (NFIB), Policy Matters Ohio, and the Ohio Chamber of Commerce are among those stakeholders that the Agency has identified as receiving clearance notification of these rules.

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

The agency received no comments for the rules through the online clearance process which extended for the period from February 12, 2020 through February 19, 2020.

- 11. 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?**

No scientific data was used to develop these rules or the measurable outcome of this rule.

- 12. 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?**

None, the rules reflect the directives of the DOL pursuant to the Federal Unemployment Tax Act and Chapter 4141 of the Ohio Revised Code.

- 13. 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.***

No, this would not apply because the agency is directed by the DOL and the ORC.

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

The agency's legal and subject matter experts carefully review all rule language to ensure no redundancy or duplication occurs.

**15. 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 agency's plan for implementation is to strictly follow federal guidelines as defined by the DOL and by the Ohio General Assembly through the ORC.

**Adverse Impact to Business**

**16. 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; and**

Rules 4141-11-02 and 4141-11-13: Approximately 225,000 employers are liable to file reports and pay into the Ohio Unemployment Compensation Trust Fund as required by federal and state law.

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

The nature of the adverse impact is the time expended by employers for compliance with these rules.

**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.*

Rules 4141-11-02 and 4141-11-13: Based on consultation with the Contribution Section of the Office of Unemployment Compensation, and their analysis and experience with the employer/business community, it will take an employer approximately 10-60 minutes to file quarterly reports and pay contributions, payment in lieu of contributions, forfeiture and interest. With 80% of all employers having less than 20 employees, the majority of employers will fall closer to the shorter 10 minute range than to the longer 60 minute range.

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

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To the extent that the rules may impose an adverse impact to the regulated business community, the justification points to the agency's statutory requirements as identified in ORC 4141.01, 4141.13, 4141.14, 4141.24, 4141.241; and in the federal guidelines as directed by the Department of Labor pursuant to the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

### **Regulatory Flexibility**

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

No, the intent of the unemployment compensation rules is to treat all Ohio employers equally. The Federal Department of Labor and the Ohio General Assembly structure these rules in such a manner so that the agency does not have discretionary authority to allow different standards, based upon business size, for the various employers paying into the Unemployment Trust Fund.

**19. 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?**

The agency allows for a waiver of fines (interest) and penalties for paperwork violations and first-time offenders by request. The request may be made in writing, online, or by phone. However, this rule does not impose any fine or penalties.

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

The agency provides an online website, telephone assistance, and small businesses may contact the unemployment tax contribution division in Columbus. Small businesses may also contact the unemployment tax compliance division in Columbus or in 13 local compliance divisions throughout Ohio to speak to or meet with a local compliance auditor. Finally, employers may ask questions through the online Employer Resource Information Center (ERIC).

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