



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Aniko Nagy, Ohio Bureau of Workers' Compensation

FROM: Joseph Baker, Business Advocate

DATE: August 26, 2022

RE: **CSI Review – Self-Insuring Employer Rules (OAC 4123-19-01, 4123-19-03, 4123-19-03.1, 4123-19-05, 4123-19-06, 4123-19-08, 4123-19-09, 4123-19-10, 4123-19-11, 4123-19-12, 4123-19-13, 4123-19-14, 4123-19-15, and 4123-19-16)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Bureau as provided for in ORC 107.54.

Analysis

This Ohio Bureau of Workers' Compensation (BWC) rule package consists of thirteen amended rules and one no-change rule. The rule package was submitted to the CSI Office on June 27, 2022, and the public comment period was held open through July 15, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 27, 2022.

Ohio Administrative Code (OAC) 4123-19-01 through 4123-19-15 set forth rules governing employers who self-insure for purposes of providing Ohio workers' compensation coverage. OAC 4123-19-01 sets forth definitions for the chapter and has been amended to clarify language and update terms. OAC 4123-19-03 requires that employers seeking to self-insure with respect to workers' compensation coverage provide financial records and data to the Administrator of the BWC (Administrator) demonstrating the employer's capacity to meet all related obligations. The rule also sets forth the application process, authorizes the BWC to require additional security in the form of a surety bond at its discretion, requires the employer to employ an administrator with experience in managing workers' compensation claims, and requires the employer to file an annual report of paid compensation annually and to maintain records addressing disabilities and death occurring to employers, among others.

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Amendments to the rule require self-insuring employers to update allowed conditions within fourteen days of accepting a condition, clarify the timeline for providing compensation, and address the timeline for responding to claims, among others.

OAC 4123-19-03.1 authorizes the BWC to waive various requirements related to the employer's capacity to self-insure and sets forth alternative standards that may be met in certain situations. OAC 4123-19-05 addresses the transfer process for an employer that previously provided self-insured workers' compensation coverage prior to transferring to the state insurance fund, including the information that must be provided by the employer and the management of claims filed prior to the date of transfer. The rule is amended to clarify language. OAC 4123-19-06 authorizes BWC to require a public hearing regarding the revocation of an employer's privilege of self-insurance for various reasons, such as the failure to file medical reports, pay compensation, provide reasonable medical facilities, or otherwise meet its obligations as a self-insuring employer. The rule is also amended to clarify language.

OAC 4123-19-08 requires self-insuring employers to renew their privilege of self-insurance annually. Prior to renewing a self-insurance privilege, a business is required under the rule to meet minimum performance standards and resolve all outstanding complaints, achieve a satisfactory rating, and meet other requirements specific to businesses who secure excess loss coverage. The rule is amended to reorganize and clarify language. OAC 4123-19-09 requires the BWC to investigate and process all complaints against self-insuring employers and authorizes the department to address any violations discovered during the investigation. The rule also requires complaints to be maintained in an employer's file for four years from the date of resolution and prohibits employers from adversely engaging with an employee due to a complaint. The rule is amended to state that failure of an employer to respond within fourteen days may result in a valid complaint determination and to permit the self-insured department at BWC to address any violations that are discovered in an investigation.

OAC 4123-19-10 sets forth BWC's obligation to audit self-insuring employers on a random basis and when the BWC has grounds for believing the employer is not in compliance with relevant laws and rules, or upon the request of the self-insured review panel or self-insuring employers evaluation board. The rule also specifies the scope of such audits and requires the BWC to report its findings to the employer, among others. OAC 4123-19-11 requires self-insuring employers to promptly notify the Industrial Commission if it has provided for certain types of medical examinations or evaluations and states that the failure to schedule such an examination within fifteen days of the notification will not result in a claim delay. OAC 4123-19-12 requires the Administrator to hold a public hearing to evaluate the self-insuring employer program in certain instances. OAC 4123-10, 4123-19-11, and 4123-19-12 have each been amended for clarity.

OAC 4123-19-13 and 4123-19-14 specify the makeup, responsibilities, and authority of the self-insuring employers' evaluation board and the self-insured review panel. OAC 4123-19-15 requires self-insuring employers to pay an assessment to the self-insuring employers' guaranty fund as well as the minimum balance for the fund. The rule also authorizes an additional assessment for new self-insuring employers and high-risk employers as well as a minimum assessment amount of \$5,000. Finally, OAC 4123-19-16 sets forth separate responsibilities of employers seeking to self-insure with respect to construction projects. OAC 4123-19-13, -14, -15, and -16 have each been amended for clarity.

During the early stakeholder outreach period, the BWC shared the proposed rules with stakeholders including the Ohio Chamber of Commerce, Ohio Manufacturing Association, Ohio Association for Justice, Ohio Self-Insurers Association, and businesses on the BWC self-insured Division's employer distribution list. The Board received one comment addressing a clarification issue, but the BWC did not determine any changes were necessary. Based on feedback from the BWC Board of Directors, BWC amended the rules prior to submitting for CSI review. No comments were received during the CSI public comment period.

The business community impacted by the rules includes employers in Ohio seeking to self-insure or who are currently insured for purposes of providing workers' compensation coverage. The adverse impacts to business consist of the costs of paying an assessment to the self-insuring employers' guaranty fund (at least \$5,000 annually), paying injured worker claim costs, providing claims information when required, providing access to care to injured workers, obtaining financial security to establish solvency when necessary, and complying with BWC investigations where appropriate. BWC notes that participation in the self-insured program is optional for employers and that employers usually opt to participate in the program when it results in savings for the business. BWC states that the adverse impacts to business are justified to comply with statutory mandates, inform stakeholders of BWC policies and procedures, and to inform Ohio employers of requirements to self-insure with respect to workers' compensation coverage.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the BWC should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.