



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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(As Introduced)

Reps. Henne, Brinkman, Schuring, Butler, Lipps, Hambley, Green, Scherer, Brenner, Retherford, Romanchuk, Riedel, Becker, Dean, Seitz, Rezabek, Ginter, Keller, Patton, McColley, Schaffer, Kick, Huffman, Stein, Thompson, R. Smith

BILL SUMMARY

Office of Worker Safety and Rehabilitation

- Renames the Bureau of Workers' Compensation the Office of Worker Safety and Rehabilitation and the Administrator of Workers' Compensation the Administrator of Worker Safety and Rehabilitation, and renames other entities that oversee the workers' compensation system in a similar manner.

Extended benefit compensation

- Replaces permanent total disability (PTD) compensation with extended benefit (EB) compensation when an employee attains full retirement age for the position in which the employee was employed at the time the employee suffered the injury or contracted the occupational disease that led to PTD.
- Sets the "full retirement age" at either (1) the age at which an employee is eligible for an unreduced retirement allowance or benefit from an existing state pension system or any municipal pension system, or (2) the age at which the employee reaches full retirement age under the Social Security Act.
- Calculates the amount of EB compensation that an employee receives by multiplying the PTD compensation the employee received by a percentage that varies based on the number of years the employee received PTD compensation.
- Requires the Administrator to increase the amount of EB compensation payable to an employee by 2% each year.

- Prohibits an employee who is receiving EB compensation from participating in the Disabled Workers' Relief Fund.

Dependent benefits

- Adds a lump sum payment and a scholarship for higher education to the death benefits available to a deceased employee's dependents under continuing law.

Temporary total disability compensation

- Requires the Administrator to develop a written return to work plan for an employee who is receiving temporary total disability compensation that includes an objective of returning the employee to gainful employment and the methods by which to achieve the objective.

Loss prevention

- Requires the Administrator to incentivize employers to participate in loss prevention programs developed by the Superintendent of the Division of Safety and Hygiene.

CONTENT AND OPERATION

Office of Worker Safety and Rehabilitation

The bill renames the entities that carry out workers' compensation functions in Ohio. The following table lists the entities' titles under current law and under the bill:

Title under current law	Title under the bill
Bureau of Workers' Compensation	Office of Worker Safety and Rehabilitation
Administrator of Workers' Compensation	Administrator of Worker Safety and Rehabilitation
Bureau of Workers' Compensation Board of Directors	Office of Worker Safety and Rehabilitation Board of Directors
Bureau of Workers' Compensation Chief Investment Officer	Worker Safety and Rehabilitation Chief Investment Officer
Deputy Inspector General of the Bureau of Workers' Compensation and Industrial Commission	Deputy Inspector General for the Office of Worker Safety and Rehabilitation
Workers' Compensation Actuarial Committee	Actuarial Committee of the Office of Worker Safety and Rehabilitation

Title under current law	Title under the bill
Workers' Compensation Audit Committee	Audit Committee of the Office of Worker Safety and Rehabilitation
Workers' Compensation Investment Committee	Investment Committee of the Office of Worker Safety and Rehabilitation

Under the bill, any reference to the current titles in a statute, rule, contract, or other document will be construed to mean the title used in the bill. The Administrator must implement the name changes within five years after the bill's effective date.¹

Extended benefit compensation

Under the bill, permanent total disability (PTD) compensation generally terminates and is replaced with extended benefit (EB) compensation when the employee reaches full retirement age for the position held by the employee at the time the employee sustained the injury or contracted the occupational disease that led to PTD compensation (see "**Full retirement age**," below). However, if an employee has reached full retirement age or is within one year of reaching that age when the employee's injury occurred or the occupational disease was contracted, PTD compensation terminates after two years, and then the employee receives EB compensation.²

Under current law, an eligible employee receives PTD compensation until the employee's death, provided one of the following applies:

- (1) The employee cannot engage in any form of sustained remunerative employment using the employment skills that the employee has or may reasonably be expected to develop;
- (2) The employee has lost or has lost the use of multiple body parts.³

Full retirement age

The bill establishes an employee's "full retirement age" as one of the following:

- (1) The age at which an employee is eligible for an unreduced retirement allowance or benefit from the Public Employees Retirement System, the State Teachers

¹ R.C. 4121.124, with conforming changes throughout the bill.

² R.C. 4123.58(C).

³ R.C. 4123.58(B) and (E).

Retirement System, the School Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Highway Patrol Retirement System, or any municipal retirement system in Ohio;

(2) The age at which the employee reaches full retirement age under the old age, survivor, and disability insurance program established by the Social Security Act,⁴ regardless of whether the employee is eligible for a benefit.⁵

Extended benefit calculation

Under the bill, the amount of EB compensation that an employee receives is a percentage of the PTD compensation the employee received. As shown in the following table, the percentage is based on the number of years the employee received PTD compensation:⁶

Number of years of PTD compensation	EB Compensation
At least one year but less than two years	10% of PTD compensation
At least two years but less than three years	20% of PTD compensation
At least three years but less than four years	30% of PTD compensation
At least four years but less than five years	40% of PTD compensation
At least five years but less than six years	50% of PTD compensation
At least six years but less than seven years	60% of PTD compensation
At least seven years but less than eight years	70% of PTD compensation
At least eight years but less than nine years	80% of PTD compensation
At least nine years but less than ten years	90% of PTD compensation
Ten years or more	100% of PTD compensation

Under continuing law, PTD compensation is 66 $\frac{2}{3}$ % of the employee's average weekly wage, not to exceed a maximum amount of weekly compensation equal to 66 $\frac{2}{3}$ % of the statewide AWW (\$902 for 2017) and not to fall below 50% of the statewide AWW (\$451 for 2017) on the date of injury or on the date the disability due to the occupational disease began. An employee whose AWW is less than 50% of the statewide AWW at the time of the injury or disability due to occupational disease receives the employee's AWW. If an employee receives disability benefits under the

⁴ 42 U.S.C. 401, *et seq.*

⁵ R.C. 4123.58(A).

⁶ R.C. 4123.58(D)(1).



Social Security Act in addition to PTD compensation, the total benefit may not exceed the statewide AWW.⁷

Annual adjustments

The bill requires the Administrator to increase the amount of EB compensation payable to an employee by 2% each year. The first increase is payable to the employee when the employee has received EB compensation for 12 months. The increased amount is payable for the following 12-month period or until the next increase is granted, whichever is later. Subsequent increases are determined from the date of the first increase paid to the employee. The date of the first increase becomes the anniversary date for any future increases. The amount of compensation used by the Administrator in calculating the initial increase is the base for all future increases, unless a new base is established.⁸

An employee receiving EB compensation under the bill is not eligible to participate in the Disabled Workers' Relief Fund. Under continuing law, the Fund provides eligible people with an additional payment that is essentially a cost-of-living adjustment for PTD compensation.

To be eligible for a payment from the Fund under current law, a person must be permanently and totally disabled and be receiving workers' compensation payments, the total of which, when combined with disability benefits received pursuant to the Social Security Act is less than \$342 per month adjusted annually based on the consumer price index (\$1,618.72 for 2017).⁹

Effective dates

The bill's provisions governing PTD compensation and EB compensation apply to awards of PTD compensation made on or after the following dates:

(1) For an employee whose injury or occupational disease arises from employment with a private employer, July 1, 2018;

⁷ R.C. 4123.58(B) and Ohio Bureau of Workers' Compensation, Compensation Rates 2010 to 2017, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf> (accessed September 12, 2017).

⁸ R.C. 4123.58(D)(2).

⁹ R.C. 4123.412 and 4123.413, with conforming changes in R.C. 4121.125, and Ohio Bureau of Workers' Compensation, Compensation Rates 2010 to 2017, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf> (accessed September 12, 2017).

(2) For an employee whose injury or occupational disease arises from employment with a public employer, January 1, 2019.¹⁰

Death benefits

Lump sum payment and scholarship

The bill adds a lump sum payment and a scholarship for higher education to the death benefits available to a deceased employee's dependents. Under the bill, wholly or partly dependent individuals receive a \$35,000 lump sum payment in addition to the current law benefits described in "**Death benefits**," below. If there is more than one dependent at the time of the employee's death, the Administrator must apportion the lump sum payment in the same manner as required under current law.¹¹

The bill also grants each dependent a scholarship in the amount of \$5,000 per year for up to four years. The scholarship can be used to pay the expenses of attending college, university, technical school, vocational school, or other post-secondary education. A dependent cannot receive the scholarship until the dependent graduates from high school or is awarded a certificate of high school equivalence. Additionally, a dependent who ceases being a dependent as discussed under "**Death benefits – current law**," below, or who stops attending an educational institution without enrolling in another institution forfeits any remaining scholarship amount.¹²

The Administrator must adopt rules for the purpose of administering the scholarships, which must include provisions for the forfeiture of scholarships due to loss of dependent status or withdrawal from enrollment.¹³

Death benefits – current law

Currently, death benefits may be paid to a deceased employee's dependents based on the degree of dependency and according to statutory qualifications. A spouse receives death benefits until the spouse dies or remarries. If the spouse remarries, the spouse is eligible for a final lump sum payment equal to two years of dependent spouse benefits. An individual who is wholly dependent on an employee at the time of the employee's death and who is not the deceased employee's spouse receives death benefits until that individual either turns 18, turns 25 if attending school, or, if mentally

¹⁰ Section 4.

¹¹ R.C. 4123.59(A)(5).

¹² R.C. 4123.59(A)(6).

¹³ R.C. 4123.59(C).



or physically incapacitated, ceases being mentally or physically incapacitated. Partially dependent individuals receive death benefits until the Administrator determines that benefits should stop.

Death benefits for wholly dependent individuals are equal to 66⅔% of the employee's AWW and can be no greater than the statewide AWW (\$902 in 2017). Death benefits for partly dependent individuals are equal to 66⅔% of the employee's AWW and can be no greater than 66⅔% of the statewide AWW (approximately \$601 in 2017). The Administrator apportions benefit amounts among the deceased employee's eligible dependents.¹⁴

Temporary total disability – return to work plan

Under the bill, when an employee receives temporary total disability (TTD) compensation, the Administrator must develop a written return to work plan for the employee. The Administrator must include in the plan an objective of returning the employee to gainful employment and the methods by which to achieve the objective. The Administrator may include any of the following objectives in the plan:

- (1) Returning the employee to full-time employment in the same position;
- (2) Returning the employee to part-time employment in the same position or full-time employment in the same position with modified duties;
- (3) Retraining the employee for employment in a different position.¹⁵

Beginning 90 days after the date an employee is determined to be TTD, and at the end of each consecutive 90-day period during which the employee receives TTD compensation, the Administrator must review the employee's return to work plan to determine whether the employee is complying with the plan and whether the plan needs to be revised.¹⁶

If the Administrator determines that the plan does not need to be revised and that the employee is in compliance, the Administrator continues paying TTD compensation to the employee until an event that causes payments to cease under continuing law occurs. If the Administrator determines that the plan does not need to be revised and that the employee is not in compliance with the plan, the Administrator

¹⁴ R.C. 4123.59(A) through (C) and Ohio Bureau of Workers' Compensation, Compensation Rates 2010 to 2017, <https://www.bwc.ohio.gov/downloads/blankpdf/CompRates.pdf> (accessed September 12, 2017).

¹⁵ R.C. 4123.561(A).

¹⁶ R.C. 4123.561(B).



must suspend TTD compensation until the employee complies with the plan. Failure to comply with a return to work plan cannot result in dismissal of the employee's claim.

If an employee's return to work plan needs to be revised, the Administrator must revise the plan and provide notice of the revision to the employee and any person necessary to achieving the revised plan's objective. An employee who complies with the revised plan continues receiving TTD compensation until an event that causes payments to cease under continuing law occurs.¹⁷

The bill also requires the Administrator to adopt rules under the Administrative Procedure Act that are necessary to implement and administer the provision.¹⁸

Currently, managed care organizations (MCOs) and healthcare providers are responsible for promoting an employee's safe and timely return to work. A healthcare provider or MCO that fails to promote safe and timely returns to work can be decertified.¹⁹

Loss prevention programs

The bill requires the Administrator to develop and make available incentives for employers to participate in loss prevention programs, including safety consultations, prescribed by the Superintendent of the Division of Safety and Hygiene. The Superintendent must establish goals for participation in programs for protecting the workforce and reducing occupational injury and illness frequency and severity, with a focus on high risk employers and industry sectors.²⁰

Continuing law requires the Superintendent to offer loss prevention programs and courses to employers. Participation in the programs is voluntary, but the Administrator may grant a discounted premium rate to an employer who successfully completes a program or course.²¹

¹⁷ R.C. 4123.561(C).

¹⁸ R.C. 4123.561(D).

¹⁹ Ohio Administrative Code 4123-6-02.3, 4123-6-03.7, and 4123-6-04.3.

²⁰ R.C. 4123.29(A)(7).

²¹ R.C. 4121.37 and 4123.34(E).



HISTORY

ACTION

DATE

Introduced

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