

Safety & Workers' Compensation Committee

Thursday, November 7, 2013

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2014 Safety & Workers'
Compensation Committee
Calendar

Wednesday, February 5, 2014

Wednesday, May 14, 2014

Wednesday, October 15, 2014

Meetings begin at 10:00 a.m.

OMA Safety & Workers' Compensation Committee
Meeting Sponsor:





OMA Safety & Workers' Compensation Committee

November 7, 2013

AGENDA

| | |
|---|--|
| Welcome & Self-Introductions | Deborah Ground, Navistar, Inc., Committee Chair |
| BWC Developments | Denny Davis, OMA Staff |
| Guest Speaker | Dianne Grote Adams, Safex |
| Safety / OHSA | Dr. Stephen Woods, Chief Medical Officer, Ohio Bureau of Workers' Compensation |
| Unemployment Compensation | Dan Hilson, Partner, Roetzel & Andress |
| OMA Counsel's Report | Tom Sant of Bricker & Eckler, LLP |
| Public Policy Report | Rob Brundrett, OMA Staff |

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: dlocke@ohiomfg.com or (614) 224-5111 or toll free at (800) 662-4463.

Additional committee meetings or teleconferences, if needed, will be scheduled at the call of the Chair.

Thanks to Today's Meeting Sponsor:





STEPHEN T. WOODS, M.D.

Chief Medical Officer
Ohio Bureau of Workers' Compensation
30 W. Spring St.
Columbus, OH 43215
Stephen.Woods@bwc.state.oh.us
614.644.7458

Clinical Activities

- 2006-present - Interventional Spine Physiatrist, OrthoNeuro Consultants, Inc.
- 2004-present - Clinical Assistant Professor, Dept. of PM&R, OSU Medical Center
- Interventional Spine Care Consultant, OSU Department of Athletics
- 2005-2006 - Co-Medical Director of OSU Comprehensive Spine Center
- 2002-2003 - Physician Consultant, Case Reviews, Bureau of Workers' Compensation, Col., OH

Education & Training

- 2003-2004 - Fellowship, Interventional Spine, Lags Spine and SportsCare, Goleta, CA
- 2000-2003 - Residency, Physical Medicine & Rehabilitation, OSU Medical Center, Columbus, OH
- 1999-2000 - Internship, Internal Medicine, University of Maryland Medical Center, Baltimore, MD
- 1995-1999 - M.D., University of Maryland School of Medicine, Baltimore, MD
- 1994-1995 - Ohio University College of Osteopathic Medicine, Athens, OH
- 1988-1993 - B.S., General Biological Sciences, University of Maryland, College Park, MD

Board Certifications

- 2005 - Pain Medicine Subspecialty
- 2004 - American Board of Physical Medicine and Rehabilitation

Licensures/Certifications

- Current - Advanced Cardiac Life Support Provider
- Current - Basic Life Support Provider
- 2003-present - Medical Board of California (current)
- 2002-present - Ohio State Medical Board (current)

Professional Memberships

- 2009-present - American Society of Interventional Pain Physicians
- 2006-present - International Spinal Intervention Society
- 2002-present - American Academy of Physical Medicine and Rehabilitation
- 2000-present - Ohio State Medical Association
- 2000-present - Columbus Medical Association

Bio/introduction for Dr. Steven T. Woods

Dr. Stephen T. Woods is an interventional spine physiatrist with *OrthoNeuro* Consultants in Columbus, Ohio. He also serves as Chief Medical Officer for the Ohio Bureau of Workers' Compensation, a position he has held since March 2012.

Dr. Woods is also a clinical assistant professor with The Ohio State University (OSU) Medical Center Dept. of PM&R and a spine care consultant for the OSU Dept. of Athletics. He was formerly co-medical director of the OSU Comprehensive Spine Center.

He earned a bachelor's in general biological sciences and his medical degree at the University of Maryland. He completed residency training in PM&R at OSU Medical Center and went on to pursue fellowship training in interventional spine procedures.

Dr. Woods is certified by the American Board of Physical Medicine and Rehabilitation. His professional memberships include the American Society of Interventional Pain Physicians, the international Spinal Intervention Society, the American Academy of PM&R, and the Columbus Medical Assn.

Dr. Woods is our new chief medical officer

Offers physical medicine, rehab, pain-management expertise

When workers get injured their lives can turn upside down in a matter of seconds. That's why BWC's Chief Medical Officer Stephen Woods, M.D., is now leading our medical efforts to help Ohio's injured workers return to work (RTW).

"I want to reach a larger patient base than I see in my office as a physical medicine and rehabilitation (PM&R or physiatry) specialist," says Dr. Woods. "By working here, I can help injured workers RTW as soon as possible with the best care available for them.

"Timely care and return to work can prevent the many social issues that come into play after a work-related injury. Many times workers feel isolated when they aren't able to go to work and no one is advocating for them. BWC can and is making a difference."

Wrestling leads to sports medicine

Dr. Woods' desire to help others began during his childhood in Wellsville, Ohio, a village of about 5,000, located 20 miles north of Steubenville.

During sports participation in high school, he soon learned the nearest sports medicine doctor practiced in Pittsburgh. At the time, his local area only had a family practitioner, general surgeon and two dentists. "We couldn't get the care we needed," he comments.

His determination and tenacity paid off when he walked on University of Maryland's (UMD) wrestling team and earned a full scholarship while he majored in biological sciences. Later he became the team co-captain and the Atlantic Coast Conference (ACC) champion for the 150-pound weight class.

Training

He went on to medical school at the University of Maryland. In the process, he earned honors in human anatomy. "I feel indebted to those who donated their bodies for our anatomy classes," he notes. "Anatomy is a major building block in the study and practice of medicine." During medical school he enjoyed overseas studies with a rotation at the National Hospital of Neurology and Neurosurgery in Queen's Square, London, England.

"I decided to do my residency in physical medicine at Ohio State because the field offers so many opportunities," explains Dr. Woods. "It crosses various wide areas of care and many niches – musculoskeletal care, interventional spine (neck and back pain) occupational and sports medicine – to name a few with the care of strokes, spinal cord and brain injuries, multiple sclerosis and other conditions/injuries included." He adds Ohio State has one of the top ten physical medicine and rehab programs in the country.

Physical medicine rather than surgery

Following Ohio State, he completed a one-year interventional spine and sports medicine fellowship in Santa Barbara, CA. “More than 90 percent of spine care for pain does not require surgery,” explains Dr. Woods. “I learned about spinal injections during my fellowship to complement other conservative treatment options.”

Dr. Woods brings varied medical experience to his position. For example, he is also a clinical assistant professor with OSU’s Wexner Medical Center Department of PM&R and he is a spine care consultant for OSU’s Department of Athletics. He formerly was co-medical director of the OSU Comprehensive Spine Center and a physician consultant conducting case reviews for BWC.

He continues to practice as a partner at OrthoNeuro Consultants, Inc. in Columbus, but to avoid any conflicts of interest, he is no longer taking workers’ comp patients. His professional memberships include the American Society of Interventional Pain Physicians, the International Spinal Intervention Society, the American Academy of PM&R, the Columbus Medical Association and the Ohio State Medical Association.

Life

In his spare time, he is working on his private pilot’s license and he enjoys sports and reading.

By working with accident and trauma victims, he has a different view on life. “I know how vulnerable we are,” he concludes. “Things can unravel very quickly. Take time to help others.”



BWC Plan Emerging on Switch to Prospective Premium Payment System

Summary of BWC preliminary proposal August 21, 2013

The August, 2014 premium payments (for the 1st half of 2014) will be the last after-the-fact payments. Anybody who elects 50/50 installment plan will have to make their second payment by 11-1-14 (the deadline has been December 1st).

The first prospective payment will be due 2-28-15, and employers will be paying for the entire 2014/2015 rating year. However, the BWC will provide a one-time credit equal to (probably) eight months' premium (2/3 of the annual total).

However, four months later, they'll be required to make their entire 2015/2016 premium payment (by July 1st). Therefore, even with the BWC credit, employers will pay 16 months' premium in 2015.

Also on July 1st, BWC will send out "true-up" reports for 2014/2015. Employers will have until August 15th to report actual payroll and pay any additional premiums that might be due. No information was provided about how any 2014/15 overpayments would be handled.

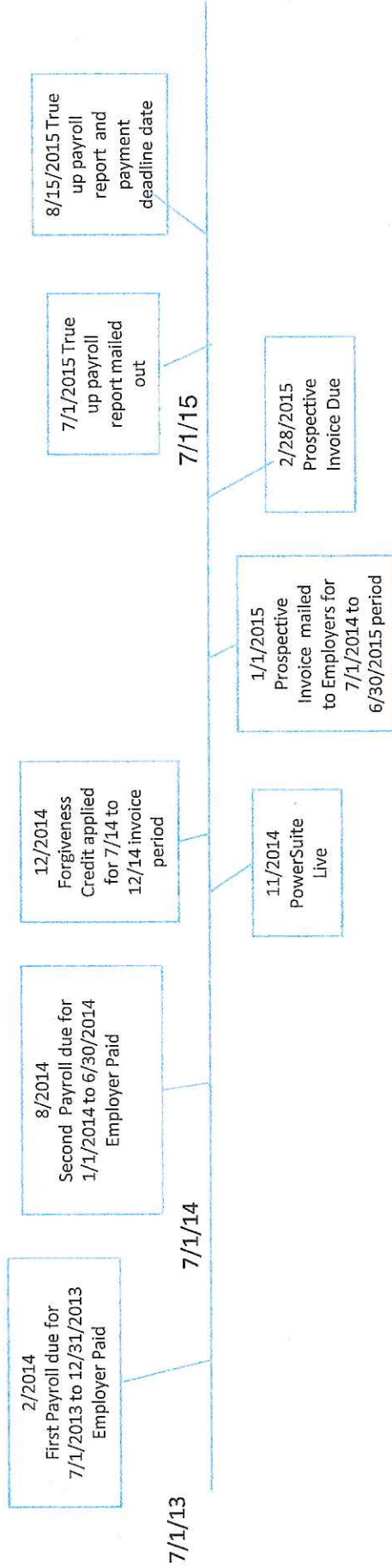
Installment payments will be available, from two payments for small employers up to as many as eight for companies with premiums greater than \$50K. They plan to charge a "nominal" installment fee (e.g. \$5 or \$10 per installment).

For a variety of seemingly valid reasons, the group experience rating enrollment deadline will become November 30th (beginning with groups for 2015/2016 rating year).

The proposed group retrospective enrollment deadline would become December 31st.

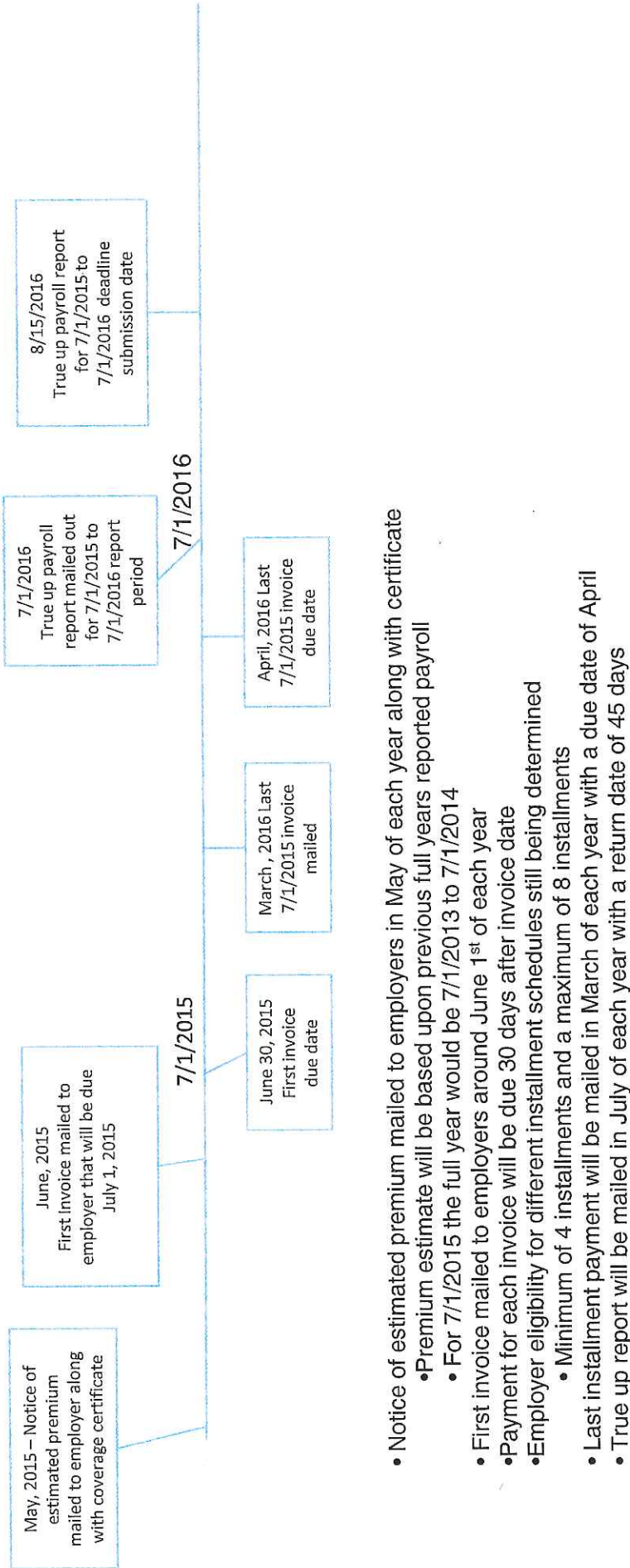
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PA Diagram of ending Retrospective Billing (7/1/2013 to 6/30/2014) and first year of Prospective Billing (7/1/2014 to 6/30/2015)



- Prospective Rating Begins July 1, 2014
- Forgiveness Credit applied for first 8 months of prospective rating
- First (and only) Invoice Mailed January, 2015
- Invoice Payment due February 28, 2015
- July 1, 2015 - First true up payroll report mailed out
- August 15, 2015 - First true up payroll report and payment due date

PA Diagram of Prospective Billing 7/1/2015 to 6/30/2016 and Subsequent Years



**OSHA Updates
November 2013**

Hazard Communication - December 1 Deadline!

GHS updated training is to be completed by December 1, 2013

| Effective Completion Date | Requirement(s) | Who |
|---|--|--|
| December 1, 2013 | Train employees on the new label elements and safety data sheet (SDS) format. | Employers |
| June 1, 2015 December 1, 2015 | Compliance with all modified provisions of this final rule, except: The Distributor shall not ship containers labeled by the chemical manufacturer or importer unless it is a GHS label | Chemical manufacturers, importers, distributors and employers |
| June 1, 2016 | Update alternative workplace labeling and hazard communication program as necessary, and provide additional employee training for newly identified physical or health hazards. | Employers |
| Transition Period to the effective completion dates noted above | May comply with either 29 CFR 1910.1200 (the final standard), or the current standard, or both | Chemical manufacturers, importers, distributors, and employers |

Proposed Silica Standard – 1926.1053 and 1910.1053

1. PEL – $50 \mu\text{g}/\text{m}^3$ 8-hour TWA
2. AL – $25 \mu\text{g}/\text{m}^3$ 8-hour TWA
3. Exposure Assessments
 - a. Every 6 months > AL
 - b. Every 3 months > PEL
4. Sample method and analysis specified
 - a. Aluminum cyclone to obtain 4.0 um cut point*
5. Employee notification of results
6. Establish regulated area or have control plan if >PEL
7. Compliance
 - a. Engineering controls
 - b. Work practice controls (rotation prohibited as control measure)

- c. Reduce to lowest feasible level
- 8. Cleaning
 - a. HEPA and Wet Methods
- 9. Medical Surveillance
 - a. >PEL for 30 days or more

Public Comment period has been extended from November 2013

Public Hearings scheduled for March 2014

Recent Releases – Steps for Transitioning to Safer Chemicals: A toolkit for Employers and Workers https://www.osha.gov/dsg/safer_chemicals/index.html. A tool kit designed to help businesses eliminate or reduce hazardous chemicals, based on California Green Chemistry methodology.

Recent Release – Permissible Exposure Limits – Annotated Tables

<https://www.osha.gov/dsg/annotated-pels/index.html>

OSHA recognizes that many of its permissible exposure limits (PELs) are outdated and inadequate for ensuring protection of worker health. Most of OSHA's PELs were issued shortly after adoption of the Occupational Safety and Health (OSH) Act in 1970, and have not been updated since that time. Section 6(a) of the OSH Act granted the Agency the authority to adopt existing Federal standards or national consensus standards as enforceable OSHA standards. Most of the PELs contained in the Z-Tables of 29 CFR 1910.1000 were adopted from the Walsh-Healy Public Contracts Act as existing Federal standards for general industry. These in turn had been adopted from the 1968 Threshold Limit Values (TLVs[®]) of the American Conference of Governmental Industrial Hygienists (ACGIH[®]). Some consensus standards from the American Standards Association were also adopted at that time, following the 6(a) procedures. Comparable PELs were adopted for shipyards (29 CFR 1915.1000) and construction (29 CFR 1926.55).

Since 1970, OSHA promulgated complete 6(b) standards including new PELs for 16 agents, and standards without PELs for 13 carcinogens.

Industrial experience, new developments in technology, and scientific data clearly indicate that in many instances these adopted limits are not sufficiently protective of worker health. This has been demonstrated by the reduction in allowable exposure limits recommended by many technical, professional, industrial, and government organizations, both inside and outside the United States. Many large industrial organizations have felt obligated to supplement the existing OSHA PELs with their own internal corporate guidelines. OSHA's Hazard Communication standard (1910. 1200 Appendix D) requires that safety data sheets list not only the relevant OSHA PEL but also the ACGIH[®] TLV[®] and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the safety data sheet.

To provide employers, workers, and other interested parties with a list of alternate occupational exposure limits that may serve to better protect workers, OSHA has annotated the existing Z-Tables with other selected occupational exposure limits. OSHA has chosen to present a side-by-side table with the Cal/OSHA PELs, the NIOSH Recommended Exposure Limits (RELs) and the ACGIH® TLVs®s. The tables list air concentration limits, but do not include notations for skin absorption or sensitization.

OSHA's mandatory PELs in the Z-Tables remain in effect. However, OSHA recommends that employers consider using the alternative occupational exposure limits because the Agency believes that exposures above some of these alternative occupational exposure limits may be hazardous to workers, even when the exposure levels are in compliance with the relevant PELs.

OSHA's Proposed Crystalline Silica Rule: General Industry and Maritime

OSHA is proposing two standards to protect workers from exposure to respirable crystalline silica—one for general industry and maritime, and the other for construction—in order to allow employers to tailor solutions to the conditions in their workplaces.

About 320,000 workers are currently exposed to respirable crystalline silica in general industry and maritime workplaces. Some of the affected industries are shown below.

| Number of Workers Exposed to Respirable Crystalline Silica in Selected General Industry/ Maritime Sectors | | |
|---|-------------------------------------|--|
| Industry sector | Number of workers currently exposed | Number of workers currently exposed above proposed PEL |
| Asphalt Roofing Materials | 4,395 | 1,963 |
| Concrete Products | 54,449 | 19,204 |
| Cut Stone | 12,085 | 7,441 |
| Dental Laboratories | 41,194 | 1,329 |
| Foundries | 48,223 | 24,658 |
| Jewelry | 10,508 | 4,600 |
| Porcelain Enameling | 5,545 | 1,932 |
| Pottery | 10,148 | 4,777 |
| Railroads | 16,895 | 5,629 |
| Ready-Mix Concrete | 43,920 | 32,110 |
| Shipyards | 4,550 | 3,250 |
| Structural Clay Products | 8,435 | 4,377 |
| Support Activities for Oil and Gas Operations | 25,440 | 16,056 |

The proposed rule is expected to save nearly 700 lives and prevent 1,600 new cases of silicosis per year once the full effects of the rule are realized. Of these, over 130 lives would be saved and over 540 cases of silicosis would be prevented among general industry and maritime workers.

Major Provisions of the Proposed General Industry/Maritime Standard

The proposed standard for general industry and maritime includes provisions for employers to:

- Measure the amount of silica that workers are exposed to if it may be at or above an **action level of 25 µg/m³** (micrograms of silica per cubic meter of air), averaged over an 8-hour day;
- Protect workers from respirable crystalline silica exposures above the **permissible exposure limit (PEL) of 50 µg/m³**, averaged over an 8-hour day;
- **Limit workers' access** to areas where they could be exposed above the PEL;
- Use **dust controls** to protect workers from silica exposures above the PEL;
- Provide **respirators** to workers when dust controls cannot limit exposures to the PEL;
- Offer **medical exams**—including chest X-rays and lung function tests—every three years for workers exposed above the PEL for 30 or more days per year;
- **Train workers** on work operations that result in silica exposure and ways to limit exposure; and
- **Keep records** of workers' silica exposure and medical exams.

Examples: Dust Control Methods

In most cases, dust controls can be used to limit workers' exposure to silica. Examples of effective dust controls are shown below. These technologies are widely available and already commonly used by many employers.

Wet methods

This worker is using a saw with a built-in system that applies water to the saw blade. Wet methods are a common way to limit the amount of dust that gets into the air.



Ventilation

This worker is grinding castings in a foundry. The work is done in a ventilated



booth that draws air away from the worker so he doesn't breathe the dust created by the grinding. This method can be used in material handling (such as bag dumping), mixing operations, rock crushing, and other dust-producing activities.

Enclosures

This worker is using an enclosure while abrasive blasting dental castings in a dental laboratory. Enclosures create a barrier between the worker and the source of exposure. This can be done by methods such as:

- Enclosing an operation in an airtight housing;
- Covering conveyors and transfer drums used to move silica-containing materials so that silica dust doesn't get in the air; or
- Separating workers from the activity, such as when workers are in enclosed cabs.



Additional Information

You can learn more about OSHA's proposed rule, including opportunities to participate in development of the rule, by visiting OSHA's Silica Rulemaking webpage at www.osha.gov/silica.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



U.S. Department of Labor
www.osha.gov (800) 321-OSHA (6742)



Crystalline Silica Rulemaking

[Home](#) [Rulemaking Information](#) [Public Participation](#) [Resources](#)

Inhalation of very small (respirable) crystalline silica particles puts workers at risk for silicosis, lung cancer, chronic obstructive pulmonary disease (COPD), and kidney disease. OSHA recently released a proposed rule to protect workers exposed to respirable crystalline silica.

This is a proposal, not a final rule. OSHA encourages the public to participate in development of the rule by submitting comments and participating in public hearings. Your input will help OSHA develop a rule that ensures healthy working conditions for employees and is feasible for employers.

"Exposure to silica can be deadly, and limiting that exposure is essential. Every year, many exposed workers not only lose their ability to work, but also to breathe. This proposal is expected to prevent thousands of deaths from silicosis – an incurable and progressive disease – as well as lung cancer, other respiratory diseases, and kidney disease. Workers affected by silica are fathers, mothers, sisters and brothers lost to entirely preventable illnesses. We're looking forward to public comment on the proposal."

— Dr. David Michaels Assistant Secretary of Labor for Occupational Safety and Health

OSHA estimates that the proposed rule will save nearly 700 lives and prevent 1,600 new cases of silicosis per year, once the full effects of the rule are realized.

The proposed rule is the result of extensive review of scientific evidence relating to the health risks of exposure to respirable crystalline silica, analysis of the diverse industries where worker exposure to crystalline silica occurs, and robust outreach efforts to affected stakeholders. OSHA carefully considered current industry consensus standards on crystalline silica exposure, recommendations from small business representatives, and input from other interested parties and partner agencies in developing the proposed rule.

OSHA currently enforces 40-year-old permissible exposure limits (PELs) for crystalline silica in general industry, construction and shipyards that are outdated, inconsistent between industries, and do not adequately protect worker health. The proposed rule brings protections into the 21st century.

Select from the tabs at the top of the page to learn more about the proposed rule and ways you can contribute during the rulemaking process.

OSHA's Notice of Proposed Rulemaking (NPRM) for Occupational Exposure to Respirable Crystalline Silica was published in the Federal Register on September 12, 2013. The NPRM is available from the Federal Register in print (Document number: 2013-20997) or online at <https://federalregister.gov/a/2013-20997>

2013 "Deadly Dust" Silica Video

Video will begin shortly

[Transcript](#)

[YouTube](#)

[Download Low-Resolution Video \(71 MB MP4\)](#)

Many American families have seen first-hand the tragic effects of silicosis. Watch OSHA's new "Deadly Dust" video to learn more about their stories and how dust control methods can help limit workers' exposure to crystalline silica.

1938 "Stop Silicosis" Video

"The National Institute for Occupational Safety and Health (NIOSH) is pleased to join with Dr. Michaels and our partners in labor and industry in OSHA's announcement of the notice of proposed rulemaking on occupational exposure to crystalline silica. NIOSH has a long history of research and recommendations on preventing worker exposure to respirable crystalline silica. Ensuring the health and safety of all workers is an important part of ensuring a strong economy and future economic growth."

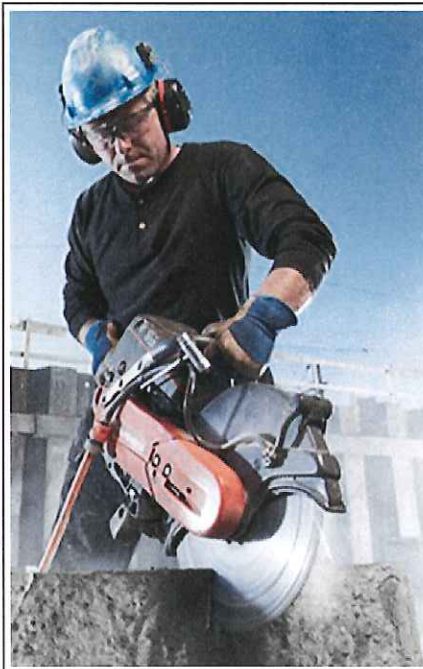
— Dr. John Howard Director of the National Institute for Occupational Safety and Health

Without proper engineering controls, workers can be exposed to harmful levels of respirable crystalline silica that can cause silicosis, lung cancer, and other lung and kidney diseases (below)



Courtesy New Jersey Department of Health

Applying water to a saw blade when cutting materials that contain crystalline silica — such as stone, rock, concrete, brick, and block — substantially reduces the amount of dust created during these operations (right)



Courtesy Husqvarna AB

This 1938 video features former Secretary of Labor, Frances Perkins (1933-1945), and describes both the hazards associated with silica exposure and the U.S. Department of Labor's early efforts to ensure safe and healthful working conditions for America's working men and women. Although tremendous progress has been made since this video was produced, evidence indicates that a substantial number of workers still suffer from silica-related diseases. This video is available for download at <http://archive.org/details/StopSilicosis>

What is Crystalline Silica?

Respirable crystalline silica — very small particles at least 100 times smaller than ordinary sand you might encounter on beaches and playgrounds — is created during work operations involving stone, rock, concrete, brick, block, mortar, and industrial sand. Exposures to respirable crystalline silica can occur when cutting, sawing, grinding, drilling, and crushing these materials. These exposures are common in brick, concrete, and pottery manufacturing operations, as well as during operations using industrial sand products, such as in foundries, sand blasting, and hydraulic fracturing (fracking) operations in the oil and gas industry.

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News Release

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U.S. Department of Labor
Office of Public Affairs
Washington, D.C.
Release Number: 13-2081-NAT

For Immediate Release

Oct. 25, 2013

Contact: Jesse Lawder

Phone: 202-693-4659

Email: lawder.jesse@dol.gov

OSHA extends comment period on proposed silica rule to provide additional time for public input

WASHINGTON – The U.S. Department of Labor’s Occupational Safety and Health Administration is extending the public comment period for an additional 47 days on the Notice of Proposed Rulemaking on Occupational Exposure to Crystalline Silica.

In response to requests for an extension, the deadline to submit written comments and testimony is being extended from Dec. 11, 2013, to Jan. 27, 2014, to allow stakeholders additional time to comment on the proposed rule and supporting analyses.

OSHA is also extending the deadline to submit notices of intention to appear at its informal public hearings by an additional 30 days, from Nov. 12, 2013, to Dec. 12, 2013. Public hearings are scheduled to begin on March 18, 2014. The duration of the hearings will be determined by the number of parties who request to appear. The hearings are expected to continue for several weeks.

The notice of proposed rulemaking was published in the Federal Register on Sept. 12, 2013. The proposed rule was made available to the public on OSHA’s website Aug. 23, 2013.

“We strongly encourage the public to assist in the process of developing a final rule by submitting written comments and participating in public hearings,” said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. “We especially hope to hear from employers, workers and public health professionals who have experience in successfully protecting workers from silica-related diseases. We are extending the comment period to ensure we hear from all stakeholders who wish to participate.”

The extended comment period and public hearings will be followed with a post-hearing comment period. Members of the public who filed a timely written notice of intention to appear will be able to submit post-hearing comments to the docket.

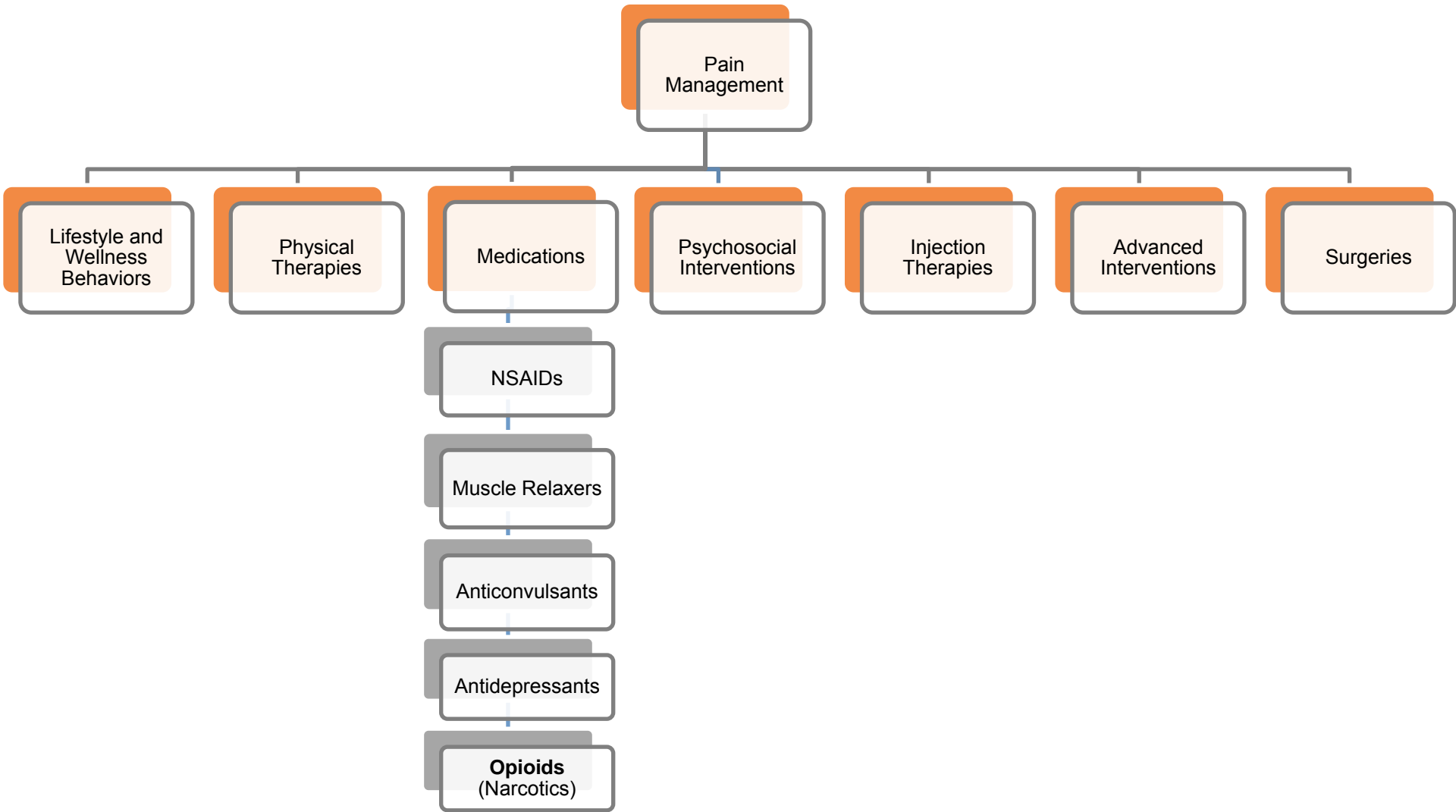
Additional information on the proposed rule, including five fact sheets and procedures for submitting written comments and participating in public hearings, is available at <http://www.osha.gov/silica/>. Members of the public may comment on the proposal by visiting <http://www.regulations.gov>.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

###

Pain Management Update

Stephen T. Woods M.D.



OPIOID MANAGEMENT TOOLS

Pharmacy Benefits Program

- Monitoring utilization

Providers

- Appropriate prescribing

Opioid Utilization Management Tools

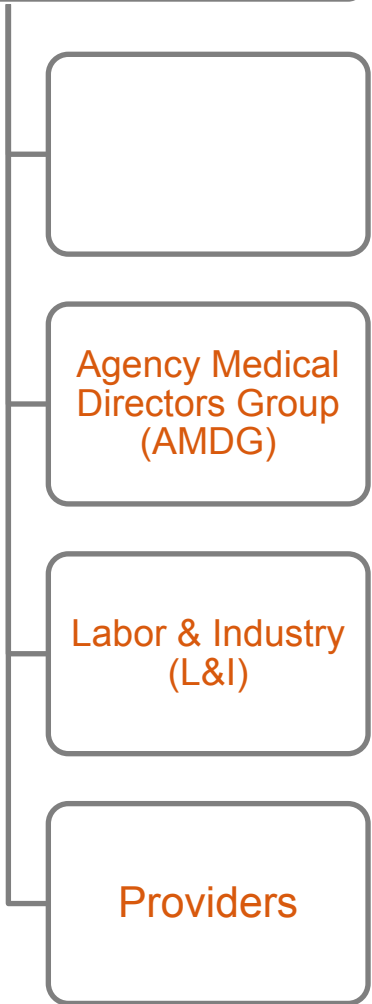
Pharmacy Benefits Program

- Closed Formulary
- Opioid Trending Report
- Controlled Substance Monitoring Program
- Point of Service Edits
- Drug Utilization Review
- Ohio Automated Rx Reporting System (OARRS) monitoring
- Medication Therapy Management (MTM)

Opioid Prescribing Management Tools

- Risk assessment tool
- OARRS
- Urine Drug Screen (UDS)
- Patient Pain Treatment Agreement (Pain Contract)
- 4 “A”s of Pain Management
 - Activities of Daily Living (ADLs)
 - Adverse effects
 - Analgesia
 - Aberrant behavior

Washington



Ohio



State debt a drag for businesses

By Catherine Candisky

The Columbus Dispatch Sunday July 7, 2013 10:11 AM

Ohio employers have been shelling out millions in higher taxes for the state's failure to repay a massive federal loan to cover unemployment benefits during the recession.

While legislators just handed small businesses an annual income-tax break of roughly \$550 million a year in the budget, the state's failure to repay the \$1.5 billion federal debt has saddled all Ohio employers with a \$272 million tax increase over the past 18 months.

Ohio taxpayers have paid an additional \$136.5 million in interest since 2011. Another interest payment of \$48.5 million is due in September.

"Why give money back (to businesses) in one pocket and take it out of the other? It doesn't make sense," said Sen. Joe Schiavoni, D-Boardman.

So what's the plan for paying off the debt?

Ohio doesn't have one.

In fact, the Unemployment Compensation Advisory Council, a panel of business, labor and legislative leaders tasked with overseeing the state's unemployment trust fund, hasn't met in more than three years.

If the council were to gather, it's unclear whether anyone would show up because it has no members. Donald E. Blatt, of the United Steel Workers, was the lone member, but his four-year term expires today.

The 12-member board is supposed to include six representatives of business and labor appointed by the governor and six lawmakers named by House and Senate leaders, but there hasn't been an appointment made in at least two years.

During that time, Ohio's federal employment tax rate has been bumped up twice, with a third increase set to kick in Jan. 1. Those increases equate to an additional cost of \$63 per employee, according to the Ohio Department of Job and Family Services, which oversees the state's unemployment-compensation program.

"This is painful because it starts adding up," said Andrew Doehrel, president of the Ohio Chamber of Commerce and a former member of the council.

"What a lot of other states have done is passed bonding to pay off the debt so employers are not paying as much."

In addition, several states, Doehrel noted, have shored up their unemployment funds by raising taxes on employers and cutting benefits by reducing the amounts paid or the length of time benefits are paid.

Employers pay state and federal payroll taxes to fund jobless benefits. But without sufficient reserves when the recession hit, 36 states were forced to borrow from the federal government to keep paying jobless benefits.

According to the U.S. Department of Labor, Ohio is among 22 owing a combined \$21 billion. While Ohio has repaid about \$1 billion in principle the past two years, its \$1.5 billion debt is bigger than every state but three: California, New York and North Carolina.

Under an automatic repayment system, states that fail to pay back their loans within a certain time will have a reduction in their tax credit on federal unemployment taxes paid by employers, with the revenue used to pay off their debts. As a result, Ohio's federal tax credit has been reduced twice with a third reduction coming Jan. 1. In all, tax rates have been bumped up in 18 states and the Virgin Islands, according to the Department of Labor.

"The biggest thing the governor can do is create jobs," said Gov. John Kasich's spokesman Rob Nichols. "We've been able to drive down the debt by \$1 billion and will continue to look for ways to pay it down."

Businesses also got a \$1 billion workers' compensation rebate under Kasich. Stressing that Ohio began borrowing two years before Kasich took office, Nichols said the governor plans to make appointments to the council soon, "but we're seeking assurances from whoever we appoint that they work (for) a common sense and reasonable plan."

Former board members agree, but say reaching agreement on a plan to ensure that Ohio's unemployment trust fund doesn't pay more in benefits than it collects in tax revenue and getting lawmakers to approve it, is a heavy lift.

"We're still kind of stuck in the mud," Doehrel said.

The advisory council submitted its most-recent recommendations to legislators in 2006. At that time, Ohio's fund had been paying out more than was coming in for six years. Business and labor interests agreed to increase taxes on employers, freeze worker benefits at about \$300 a week, and eliminate extra compensation for dependents. But, under pressure by business groups, GOP Senate leaders rejected the plan and the issue has been ignored since.

Sen. Capri Cafaro, a Youngstown Democrat and former advisory-council member, said proposed tax increases have been met with resistance because policymakers worry

about the impact on businesses. “ It’s a very delicate balance, but the time might be right for us to really engage and get this resolved,” she said.

Schiavoni proposed tapping some of the state’s rainy-day fund. “It’s like having a high-interest credit card and money in the checking account. Let’s use some of it to pay down the debt,” he said.

Vermont officials last week announced a plan to pay off the state’s \$53 million debt, three years after the state cut benefits to unemployed workers. The maximum weekly benefit was capped at \$425 and workers had to wait a week with no income before benefits were available. Other states have: structured their systems to trigger an increase in employer taxes when their trust fund reaches a certain level, enacted special assessments to repay loans, and scaled back benefits. Texas, Pennsylvania, Michigan and others sold bonds to pay off loans.

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SUTA

An Overview and Status Update of Unemployment Compensation in Ohio

Presented by:
Dan Hilson

November 6, 2013

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FUTA VS. SUTA

FUTA

- **Federal Unemployment Tax Act (1939)**
 - Federal law that imposes a federal employer tax to assist in funding state workforce agencies
 - Filed with the IRS
- **Through June 30, 2011, the FUTA imposed a tax of 6.2%**
 - Permanent rate of 6.0% and temporary rate of 0.2%, passed by Congress in 1976
 - Futa imposed a 6.2% tax on first \$7,000 of gross earnings per year, per employee.
- **After July 1, 2011, the rate decreased to 6.0%.**
 - Law provides a credit against federal liability of up to 5.4% for employers who pay state taxes on time under an approved state UI (Unemployment Insurance) program, effectively lowering the FUTA tax to 0.6%.

DELINQUENT STATE TRUST FUND BALANCES

- Federal government requires a state with a negative fund balance to increase the FUTA rate by 3/10th or 0.3 percent each year that the state fund has a negative balance.
- Employers operating in Ohio have seen their FUTA rate increase in the last three years from 0.6 to 1.5 in 2013.
- It will increase to 1.8% in 2014.

Title XII Advance Activities Schedule

As of: October 16, 2013

| State | Outstanding Advance Balance | Advance Authorization Current Month | Interest for FY2014 |
|----------------|-----------------------------|-------------------------------------|---------------------|
| Arizona | 0 | 60,000,000.00 | 0 |
| Arkansas | 157,661,538.71 | 0 | 178,066.68 |
| California | 9,416,564,145.28 | 600,000,000.00 | 10,490,320.66 |
| Connecticut | 573,722,119.43 | 0 | 647,975.51 |
| Delaware | 71,464,685.87 | 0 | 80,713.95 |
| Georgia | 296,329,684.02 | 0 | 334,681.85 |
| Indiana | 1,367,663,367.56 | 50,000,000.00 | 1,534,718.80 |
| Kentucky | 622,414,590.73 | 45,000,000.00 | 699,344.67 |
| Missouri | 322,163,410.75 | 0 | 363,859.08 |
| Nevada | 531,852,957.19 | 50,000,000.00 | 595,059.89 |
| New Jersey | 188,029,065.65 | 220,000,000.00 | 165,471.48 |
| New York | 2,891,064,770.85 | 300,000,000.00 | 3,222,841.54 |
| North Carolina | 2,088,948,929.01 | 150,000,000.00 | 2,279,662.96 |
| Ohio | 1,553,203,254.29 | 0 | 1,754,225.00 |
| Rhode Island | 162,966,680.78 | 18,000,000.00 | 184,058.46 |
| South Carolina | 456,528,966.84 | 0 | 563,262.35 |
| Virgin Islands | 78,405,572.54 | 5,000,000.00 | 87,988.42 |
| Wisconsin | 422,422,333.08 | 200,000,000.00 | 466,451.97 |
| Totals | 21,201,406,072.58 | 1,698,000,000.00 | 23,648,703.27 |

FUTA VS. SUTA

SUTA

- **State Unemployment Tax Authority**
 - State unemployment tax (form of payroll tax)
 - Part of the nation's unemployment insurance program
 - Paid by an employer and is added to a fund that can be used by a qualifying employee for a set time if they become unemployed (26 weeks unless extended. During the recession, the benefits were extended to 99 weeks).
 - Each state has different requirements, but all require employers to pay a SUTA tax based upon some formula of payroll and experience for all employees, unless exempt.
- **Paid by employer, deposited in state trust fund, used by qualifying employees if they become unemployed**

OVERVIEW OF SUTA IN OHIO

- **Current taxable wage base: SUTA tax is paid on the first \$9,000 in reportable wages**
- **Current minimum tax rate based upon experience: 0.3%**
- **Current maximum tax rate based upon experience: 8.4%**
- **New Employer starts at 2.7%**
- **Average Employer rate is 2.9%**

OHIO'S UNEMPLOYMENT TAX

- **Trust Fund has a negative balance**
- **The goal is to reduce the negative balance by increasing SUTA revenues.**
 - **What are the options?**
 - **Should Ohio raise its base wage from, \$9,000 in wages?**
 - **Should Ohio add surtaxes?**
 - **Should Ohio raise the experience rate structure?**
 - **Current rate ranges 0.3% to 8.4%**

OHIO'S UNEMPLOYMENT TAX

- Arguably raising rates or the wage base can actually lower revenue.
- States with the best tax systems are actually the most competitive at attracting new businesses.
 - New businesses increase employment which generates more revenue

*Table 1
2014 State Business Tax Climate Index Ranks and Component Tax Ranks*

| State | Overall Rank | Corporate Tax Rank | Individual Income Tax Rank | Sales Tax Rank | Unemployment Insurance Tax Rank | Property Tax Rank |
|-------------------|--------------|--------------------|----------------------------|----------------|---------------------------------|-------------------|
| Alabama | 21 | 19 | 22 | 37 | 15 | 10 |
| Alaska | 4 | 28 | 1 | 5 | 29 | 25 |
| Arizona | 22 | 26 | 18 | 49 | 1 | 6 |
| Arkansas | 35 | 39 | 26 | 42 | 11 | 19 |
| California | 48 | 31 | 50 | 41 | 16 | 14 |
| Colorado | 19 | 21 | 15 | 44 | 28 | 22 |
| Connecticut | 42 | 35 | 33 | 32 | 23 | 49 |
| Delaware | 13 | 50 | 28 | 2 | 2 | 13 |
| Florida | 5 | 13 | 1 | 18 | 6 | 16 |
| Georgia | 32 | 8 | 41 | 12 | 24 | 31 |
| Hawaii | 30 | 4 | 35 | 16 | 38 | 12 |
| Idaho | 18 | 18 | 23 | 23 | 47 | 3 |
| Illinois | 31 | 47 | 11 | 33 | 43 | 44 |
| Indiana | 10 | 24 | 10 | 11 | 13 | 5 |
| Iowa | 40 | 49 | 32 | 24 | 36 | 38 |
| Kansas | 20 | 37 | 17 | 31 | 12 | 29 |
| Kentucky | 27 | 27 | 29 | 10 | 48 | 17 |
| Louisiana | 33 | 17 | 25 | 50 | 4 | 24 |
| Maine | 29 | 45 | 21 | 9 | 33 | 40 |
| Maryland | 41 | 15 | 46 | 8 | 40 | 41 |
| Massachusetts | 25 | 34 | 13 | 17 | 49 | 47 |
| Michigan | 14 | 9 | 14 | 7 | 44 | 28 |
| Minnesota | 47 | 44 | 47 | 35 | 41 | 33 |
| Mississippi | 17 | 11 | 20 | 28 | 5 | 32 |
| Missouri | 16 | 7 | 27 | 26 | 9 | 7 |
| Montana | 7 | 16 | 19 | 3 | 21 | 8 |
| Nebraska | 34 | 36 | 30 | 29 | 8 | 39 |
| Nevada | 3 | 1 | 1 | 40 | 42 | 9 |
| New Hampshire | 8 | 48 | 9 | 1 | 46 | 42 |
| New Jersey | 49 | 41 | 48 | 46 | 32 | 50 |
| New Mexico | 38 | 40 | 34 | 45 | 17 | 1 |
| New York | 50 | 25 | 49 | 38 | 45 | 45 |
| North Carolina | 44 | 29 | 42 | 47 | 7 | 30 |
| Ohio | 39 | 23 | 44 | 30 | 10 | 20 |
| Oklahoma | 23 | 22 | 24 | 36 | 3 | 35 |
| Oregon | 12 | 32 | 31 | 4 | 34 | 15 |
| Pennsylvania | 24 | 46 | 16 | 19 | 39 | 43 |
| Rhode Island | 46 | 43 | 36 | 27 | 50 | 46 |
| South Carolina | 37 | 10 | 40 | 22 | 30 | 21 |
| South Dakota | 2 | 1 | 1 | 34 | 37 | 18 |
| Tennessee | 15 | 14 | 8 | 43 | 27 | 37 |
| Texas | 11 | 38 | 7 | 36 | 14 | 35 |
| Utah | 9 | 5 | 12 | 20 | 18 | 4 |
| Vermont | 45 | 42 | 45 | 13 | 22 | 48 |
| Virginia | 26 | 6 | 37 | 6 | 35 | 26 |
| Washington | 6 | 30 | 1 | 48 | 20 | 23 |
| West Virginia | 23 | 20 | 24 | 25 | 26 | 27 |
| Wisconsin | 43 | 33 | 43 | 15 | 25 | 36 |
| Wyoming | 1 | 1 | 1 | 14 | 31 | 34 |
| Dist. of Columbia | 44 | 35 | 34 | 41 | 26 | 44 |

HISTORICAL PERSPECTIVE

- **Ohio suffered from the global recession in the early 1980s, the last major recession before 2007.**
 - As a result, Ohio's trust fund had a negative balance from 1983-1992
 - Ohio utilized several strategies beginning in 1990
 - Lowered minimum tax rate from 0.5 to 0.3
 - Raised maximum tax rate from 5.5 to 8.4
 - Moved taxable wage rate from \$7,000, to \$8,000, to \$9,000 over 4 years
 - Eliminated mutualized account write-offs
- **Ohio's trust fund returned to a negative balance in 2009.**
 - Trust fund had a peak negative balance of 2.6 billion, it is currently at 1.5 billion

HOW DOES OHIO TAKE ACTION?

- **The Unemployment Compensation Advisory Council is a 12-member panel of business, labor, and legislative leaders tasked with overseeing Ohio's unemployment trust fund – How is it doing?**
 - **Hasn't met in over three years**
 - **No valid members. Appointments are supposed to be made by the Governor and House and Senate Leadership**
 - **Has not submitted recommendations to the General Assembly since 2006**
 - **Ohio's trust fund has a negative balance of 1.5 billion**
 - **Interest on the 2014 debt is 1.75 million annually**
 - **What happens when interest rates increase?**

WHAT OTHER STATES ARE DOING

- **Some states are:**
 1. Using general funds or issue bonds to pay down the debt (results in employers paying less)
 2. Shoring up unemployment funds by raising taxes on employers
 3. Cutting benefits by reducing the amounts paid or length of time benefits are paid
 4. Structuring their systems to trigger an increase in employer taxes when their trust fund reaches a certain level
 5. Enacted special assessments or surtaxes to repay loans
- **Vermont capped maximum weekly benefit at \$425 and made workers wait a week with no income before making benefits available**
- **Texas, Pennsylvania, and Michigan sold bonds to pay off loans**

PROJECTION FOR THE FUTURE

- Without state changes, of which the state has none authorized, it will take Ohio 4-6 more years before the trust fund has a positive balance.
- There will continue to be a 0.3% increase in the FUTA tax rate until Ohio's fund balance is no longer negative.

POSSIBLE FIXES

1. Explore some options used in other states

- Issue bonds to lock in lower interest rates
- Cut benefits
- Cap the number of weekly benefits
- Raise employer taxes
- Raise the wage base

2. Reconvene Unemployment Compensation Advisory Council

3. Look at solutions from past:

- Raise Taxable Wage Base (above \$9,000)
- Increase Minimum Tax Rate (0.3%)
- Extend Maximum Tax Rate (8.4%)
- Enact a surtax

QUESTIONS?



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OMA Safety & Workers' Compensation Committee Counsel's Report

Thomas R. Sant, Bricker & Eckler LLP
Counsel to the OMA
November 5, 2013

A. San Allen, Inc., et al. v. Bureau of Workers' Compensation, et al., Case No. CA-13-099786, 8th District Court of Appeals

As all are aware, the Bureau of Workers' Compensation's appeal of the trial court's class certification was denied by the 8th District Court of Appeals in the forepart of the year. The record was filed on May 16, 2013, and Appellate Briefs have been filed. The Bureau of Workers' Compensation's first brief was filed on July 19, 2013. Following that filing, the Court granted several motions for leave to file briefs amicus curiae. Those filing briefs amicus curiae included the Council for Economic Opportunities of Greater Cleveland, The Cleveland Teachers' Union, ANT Local 279, AFL-CIO Teamsters Local Union 416, The Ornamental and Reinforcing Iron Workers Local 217, and The City of Cleveland. On September 13, 2013, the brief of San Allen was filed. On October 7, 2013, the reply brief of the Bureau of Workers' Compensation was filed. No date has been set for oral argument. We will continue to monitor the case as it proceeds through the Court of Appeals and report on any new developments.

Since our last meeting, the Supreme Court has handed down several cases dealing with workers' compensation issues.

B. Armstrong v. John L Jurgensen Co., Slip Opinion 2013-Ohio-2237

On June 4, 2013, The Ohio Supreme Court decided the above-captioned cause and stated that a psychiatric condition is not a workers' compensation injury except when the condition has "arisen from an injury or occupational disease sustained by the claimant."

In this case, Mr. Armstrong was driving a truck when he observed another vehicle approaching him at a high rate of speed. He braced himself for the collision and was injured as a result of the collision. Mr. Armstrong noticed at the scene that the other driver was not moving and blood was coming from his nose. Mr. Armstrong was taken to an emergency room and after receiving treatment, learned that the other driver had died.

Mr. Armstrong filed a workers' compensation claim which was allowed for cervical thoracic and lumbar strain. Later, he requested an additional allowance of post-traumatic stress disorder (PTSD). The Staff Hearing Officer allowed Mr. Armstrong's additional claim finding that it was compensable because it was related to his industrial injury in his previously

recognized conditions. The employer then appealed to the Clark County Court of Common Pleas where the parties stipulated that Mr. Armstrong did suffer from PTSD. While there was conflicting expert testimony, the trial court held that his PTSD was not compensable because it did not arise from his physical injuries. The 2nd District Court of Appeals affirmed.

As indicated above, the Court found that the condition did not arise from the allowed conditions in Mr. Armstrong's claim. The conclusion of the Court was that the PTSD did not arise from his conditions, but arose from his learning of the death the other driver.

C. State ex rel. Black v. Industrial Commission, Slip Opinion No. 2013-Ohio-4550

The Supreme Court of Ohio decided the captioned case on October 17, 2013. The employer, Park Ohio Industries, Inc., appealed a judgment from the 10th District Court of Appeals which granted a limited writ of mandamus that ordered the Industrial Commission to vacate its order denying permanent total disability to the Appellee, Billy Black. Exercising, as it has done many times before, its finding that the record contained some evidence to support the Commission's decision that Mr. Black had retired voluntarily and not because of his injury, the Supreme Court found that the Industrial Commission did not abuse its discretion in determining that Mr. Black was ineligible for permanent total disability compensation. \

Mr. Black was injured in October 2000. After being examined by a doctor, he returned to work two days later and was assigned to clean bathrooms. After a few hours, he returned to his physician who indicated that he should not engage in any activity. Subsequently, in November 2000, his doctor authorized Mr. Black to return to work with restrictions. He was referred to another physician who authorized him to return to work on December 13, 2000, with certain restrictions. Later in January 2001, Mr. Black saw the referral physician for back pain and the doctor increased his weight restrictions based upon complaints of pain.

Mr. Black continued to work until February 9, 2001. He retired on February 28 at the age of 55, with 38 years of service. He did not pursue any subsequent vocational training or seek other employment. Later in that year, he began receiving social security benefits. Eight years later, on August 14, 2009, Mr. Black applied for permanent total disability compensation. His application was denied. The Court of Appeals, through its magistrate, found that Mr. Black's decision to retire could have been induced by his industrial injury.

Although the evidence is somewhat conflicted, the Supreme Court once again relied on the "some evidence" rule in support of the Industrial Commission's decision that because of his voluntary retirement, Mr. Black was not eligible for permanent total disability benefits.

D. State ex rel. Coleman v Industrial Commission, Slip Opinion No. 2013-Ohio-2406

This case, decided on June 11, 2013 by the Ohio Supreme Court, dealt with the issue of whether the loss of a body part would ultimately translate into permanent total disability benefits. The Industrial Commission maintained that it did not abuse its discretion when it denied Mr. Coleman's request for compensation for statutory permanent total disability. Mr. Coleman was injured in January 1994 when he fell and fractured his vertebrae, herniated disks and sustained

various shoulder injuries. He was awarded loss of use of his right hand and arm and subsequently applied for statutory permanent total disability for the loss of those two limbs.

His initial application was denied by a hearing officer who concluded that there had to be an independent evaluation of the facts for the application under former § 4123.58(C) even if there had been a prior loss of use award. The Court of Appeals, citing State ex rel. Thomas v. Industrial Commission, 97 Ohio St.3d 37, concluded that the condition was bound by the doctrine of collateral estoppel from issuing an award and granted a Writ of Mandamus. Under § 4123.58(C), one may be deemed permanently and totally disabled due to the loss of two enumerated body parts.

The Supreme Court found that even though Mr. Coleman had received scheduled benefits for loss of use of his right arm and hand, the evidence did not show a total loss of both body parts.

E. Pixley v. Pro-Pak Industries, Inc., et al. Supreme Court of Ohio Case No. 13-0797

This case is currently pending before the Ohio Supreme Court, which granted a discretionary appeal to the employer, Pro-Pak Industries, Inc. This is another intentional tort case that has been accepted by the Ohio Supreme Court after its rulings in Kaminski and Hewitt. Here, Mr. Pixley was working in a closed area when a machine with a collapsible bumper hit him and injured him. The Court of Appeals for the 6th District found that the employer's deliberate removal of a safety guard creates a rebuttable presumption of an intent to injure. In closing, the Court of Appeals overruled the trial court which had entered a summary judgment in the employer's favor. There appeared to be no proof of alteration of the bumper on this particular piece of equipment prior to Mr. Pixley's injury. After only several months, the Supreme Court agreed to take this case, hopefully which will give rise to its affirmation of Kaminski and Hewitt. We will continue to follow this case and report on its outcome at a later meeting.

Thomas R. Sant
Counsel to the Safety and Workers'
Compensation Committee

BWC files opening brief in San Allen appeal

Business, labor support BWC efforts to fight litigation on group rating

The Ohio Bureau of Workers' Compensation filed on Friday the opening brief in its appeal of the Cuyahoga County Court of Common Pleas' decision in San Allen, Inc. et al vs. Stephen Buehrer, Administrator, BWC. Separately, a broad coalition of business and labor associations has filed an Amicus brief, saying they believe the bureau acted within its legal authority in establishing rates for Ohio's group rating program.

"We continue to believe BWC acted within its authority in establishing rates and that the plaintiffs' claims are without merit," said Steve Buehrer, administrator/CEO of BWC. "The support we have received from business and labor is appreciated and shows us that we are right in fighting these allegations on behalf of Ohio's employers and injured workers."

Friday, the Ohio Chamber of Commerce, NFIB and the AFL/CIO filed an Amicus brief in the 8th District Court of Appeals supporting the BWC's appeal of the San Allen case. The brief defends BWC's right to establish rates and calls subjecting rate-setting to judicial review a dangerous precedent. In addition, others in the business community commented today on whether those in the class were truly harmed, pointing out that class members received more in benefits than they paid and that many benefitted from group rating for at least part of the class period.

"While we not only believe the BWC had appropriate authority to set rates as it did, it is specious at best to somehow suggest that the class was overcharged when they had \$1.26 in claims costs for every dollar of premium they paid," said George Haenszel, CEO of the Professional Independent Agents Association of Ohio, Inc.

"For employers to claim they were victims when many of them benefited from participating in that program is unfortunate and misleading," said Geoff Hetrick, President of The Ohio Restaurant Association.

Buehrer questioned the true intent of the class action suit. "BWC has worked diligently and successfully over the last few years to provide better care and service for all Ohio workers and employers," said Buehrer. "Yet we are forced to continue to defend against litigation that selectively benefits a subset of employers and their attorneys who are more interested in helping themselves to the State Insurance Fund than the stability of a system that protects Ohio's employers and injured workers."

Buehrer pointed out several recent benefits made possible by BWC's stability.

- More than 200,000 employers are sharing \$1 billion in rebates, each receiving 56 percent of their annual premium.
- Rate reductions, including a recently approved 2.1-percent cut, are saving private employers an estimated \$224 million since July 2011.
- A series of 5-percent rate reductions have brought public-employer rates to their lowest point in more than 30 years.
- Steps have been taken to make workplaces safer, including tripling annual safety grant funding to \$15 million and increasing funding for Ohio's 80 safety councils.

He contrasted these benefits with the few benefits that would result if the plaintiffs succeed.

- More than half of the 300,000 class members do not have an active workers' compensation policy, leaving an open question as to what will be done with their share of the monies.
- Approximately 47,000 members of the class would receive less than \$5 if the original decision stands.
- Half of all class members would receive less than \$200.
- 44 percent of money would go to 1 percent of the class members.
- While it is impossible to tell because no mention of fees has been made, it's likely that the largest recipient of money, by tens of millions of dollars, would be the plaintiffs' attorneys.

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previous

TO: OMA Government Affairs Committee
FROM: Rob Brundrett
DATE: November 7, 2013
SUBJ: Safety and Workers' Compensation Policy Update

Overview

The General Assembly went on summer break shortly after putting the finishing touches on the House Bill 59, the state budget bill. They returned to work in late September and got back into the full swing of things in October. There continue to be rumors of new workers' compensation legislation in the fall, but the reality of any of these bills moving fades with each passing week. The BWC continues to be active on the regulatory front but the opportunity for substantive legislative action appears to have past.

Legislation and Rules

HB 59 State Operating Budget (Amstutz R-Wooster)

HB 59 was introduced with a very limited number of BWC provisions. The General Assembly did include the changes announced by the Governor with the billion back campaign. The follow changes were made to the budget bill:

- Makes changes to the Managed Care Organizations (MCO) contracts
- Permits the Administrator to decertify an MCO if the MCO fails to do certain things
- Rules for Waiver of Self-Insurance Eligibility Factors
- Prospective Payment of Workers' Compensation Premiums
- Safety and Hygiene Fund Increase and Safety Grant Expansion

HB 143 Workers' Compensation Formulas (Dovilla R-Berea and Butler R-Oakwood)

HB 143 would require the Administrator of Workers' Compensation to include in the notice of premium rate that is applicable to an employer for an upcoming policy year the mathematical equation used by the Administrator to determine the employer's premium rate. According to the BWC this information is already available on the web for all employers to review. There would be a compliance cost to the BWC to send out repeat information. The sponsors of the bill say it is necessary because not everyone has internet access.

SB 176 Worker's Compensation Benefits (Seitz R-Green Township)

SB 176 would prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law. Senator Seitz has introduced this bill in previous General Assemblies.

BWC Medical Reform

Representative Barbara Sears (R-Sylvania) and Senator Bob Peterson (R-Sabina) were planning to reintroduce the BWC reform package as companion bills this spring. Key to the package is a provision that requires an injured worker to visit a doctor within the MCO's network if they have not returned to work within 45 days of the injury.

However, neither the House or Senate have moved to introduce the bills this fall and the flurry of interested party activity has dried up over the last few months. Both Peterson and Sears have become their caucuses point person on different issues, Medicaid

reform and tax reform. The BWC has told the OMA they are operating as if the bills will not be introduced.

Self-Insurance Rule Changes

The biennial budget for the State of Ohio (H.B. 59) requires two changes to the SI rules:

1. The Administrator must establish a rule with provisions for waiver of the requirement that SI applicants have 500 employees in Ohio.
2. The Administrator must establish a rule with provision for waiver of the requirement that SI applicants operate in Ohio for a minimum of two years.

Waiver of Requirement that Applicants Have 500 Employees in Ohio:

1. The employer demonstrates sufficient financial strength and administrative ability to manage workers' compensation claims when considering following items set forth in ORC §4123.35:
 - a. Whether the employer previously contributed to the State Insurance Fund or is a successor employer (ORC §4123.35(B)(1)(c));
 - b. The sufficiency of the employer's assets located in Ohio (ORC §4123.35(B)(1)(d));
 - c. Financial records documents and data necessary to provide full financial disclosure (ORC §4123.35(B)(1)(e));
 - d. The applicant's organizational plan for administration of a workers' compensation program (ORC §4123.35(B)(1)(f));
 - e. The applicant's proposed plan to educate employees about the change to SI, the applicant's procedures for workers' compensation claims, and the employee's rights to compensation and benefits (ORC §4123.35(B)(1)(g)); and
 - f. The applicant's accounts with financial institutions (ORC §4123.35(B)(1)(h)).
2. The employer provides audited financial statements for the current year and four previous years.
3. The employer meets at least one of the following requirements:
 - a. The employer has a substantial employee count outside of Ohio, as determined by the Bureau, or
 - b. The employer has obtained excess insurance in an amount and with a retention level determined by the bureau to be appropriate.

Waiver of Requirement that Applicants Operate in Ohio for Two Years

The bureau may waive the requirement that an SI applicant operate for at least two years in Ohio if a review of the applicant's request indicates such waiver is appropriate.

Bureau of Workers' Compensation

Rebates and Dividends

Earlier this year the BWC and the Governor made an announcement authorizing a one-time payment of \$1 billion for private employers and public taxing districts.

They also announced they were expanding the agency's successful Safety Grant Program to support expanded statewide efforts to promote workplace safety and encourage further investment in protecting Ohio's workers. Finally they asked the

legislature to allow the BWC to move toward a prospective-payment system and asking board approval for \$900 million to mitigate transition costs. This switch will result in a rate reduction of 2% for private employers. The prospective request and the safety grant change were included in passed version of the state budget bill. The BWC Board of Directors approved the rebate/dividend concept in May at their monthly board meeting. The last of the checks were issues early last month.

Rate Reductions

This spring the BWC proposed a 2.1% base-rate reduction for private employers at the BWC Board of Directors' Actuarial Committee. The recommendation reduces employer premiums by \$29 million for the July 1, 2014 policy year. The BWC's Board of Directors approved the proposal at their May board meeting. This is the third year in a row that workers' compensation insurance rates have remained steady or dropped.

Industrial Commission

New Chairman

Governor Kasich appointed Tim H. Bainbridge as an Industrial Commission Commissioner, effective July 1, 2013. Eight days later Mr. Bainbridge was appointed Chairman of the Industrial Commission by Governor Kasich. Mr. Bainbridge replaced Jodie Taylor who was serving as interim Chairman.

Chairman Bainbridge, who will serve a six-year term that expires in June 2019, brings over four decades of workers' compensation experience to his role as the Chairman and Employee Member of the Commission.

Before arriving at the IC, he served as an attorney and managing partner at Ward, Kaps, Bainbridge, Maurer & Melvin from 1968 until 2009. He later served as a partner at the Bainbridge Firm from 2009 until 2013.

Originally from Steubenville, Ohio, Bainbridge earned his bachelor's degree from Washington & Jefferson College in Washington, Pennsylvania, and then received his law degree from The Ohio State University. He was admitted to the Ohio Bar in 1967 and has also been admitted to practice before the US District Court in the Southern District of Ohio. Bainbridge resides in Columbus with his wife, Deidre. The couple has three grown sons.

BUREAU OF WORKERS' COMPENSATION

- Allows the Administrator of Workers' Compensation, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, to adopt rules to provide for a system of prospective payment of workers' compensation premiums.
- Requires, if the Administrator establishes a prospective payment system, all private sector employers and all public employers other than state agencies and state universities and colleges to pay premiums in accordance with the requirements for that system.
- Requires, if the Administrator adopts rules to establish a prospective payment system, the rules to include requirements to convert to that system; requirements for payroll reports and payment due dates; penalties for late payroll reconciliation payments, payroll estimates, and payroll reconciliation reports; and penalties for inaccurate payroll estimates.
- Statutorily allows BWC to enter into a contract with a managed care organization (MCO) to provide medical management and cost containment services in the Health Partnership Program.
- Requires a contract with an MCO to include incentives that may be awarded based on the MCO's compliance and performance and penalties, including contract termination, that may be imposed based on the MCO's failure to reasonably comply with or perform terms of the contract.
- Permits a contract entered into with an MCO to include provisions limiting, restricting, or regulating any marketing or advertising by the MCO, or by any individual or entity that is affiliated with or acting on behalf of the MCO, under the Health Partnership Program.
- Lists reasons for which an MCO may be decertified.
- Requires the Administrator to adopt rules establishing the criteria a private sector employer must satisfy to have specified requirements, which the Administrator may waive under continuing law, potentially enabling the employer to self-insure workers' compensation claims.
- Allows the Administrator to include in the waiver rules a requirement that the employer must pay a security in accordance with continuing law requirements in addition to the employer's contribution to the Self-Insuring Employers' Guaranty Fund.



Prospective payment of workers' compensation premiums

(R.C. 4123.322, 4123.35, and 4123.41)

Continuing law requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, to adopt specific rules with respect to the collection, maintenance, and disbursement of the State Insurance Fund. Among the rules the Administrator must adopt is a rule providing for premium payments by each employer that are due on or before the end of the employer's coverage period.²²⁹ Because these payments are made at the end of the period for which corresponding workers' compensation coverage is granted, they are often referred to as "retrospective payments" or "payments in arrears."

The act allows the Administrator, with the Board's advice and consent, to adopt rules to provide for a system of prospective payment of workers' compensation premiums notwithstanding the continuing law requirements described above. If the Administrator elects to establish a prospective payment system, the act requires the Administrator to include in those rules several specific provisions. If the Administrator adopts rules to implement the system, private sector employers, publicly owned utilities, and public employers other than state agencies or state universities or colleges, must pay premiums fixed for the employment or occupation of the employer, determined by the classifications, rules, and rates made and published by the Administrator and based upon estimates and reconciliations required by rules the Administrator adopts.

Rules – payroll estimates

Under the rules adopted under the act, a private sector employer must file payroll estimates with BWC on or before June 30 of each year for the upcoming year (under continuing law, every employer must file a payroll report with BWC each January). A public employer, other than a state agency or a public university or college, under the rules must file payroll estimates with BWC on or before January 1 of each year for the upcoming year. The Administrator may establish alternative due dates for these payroll estimates.

The rules must also provide that upon initial application for coverage, a private sector employer must file with the application an estimate of the employer's payroll for the unexpired period from the date of the application to the period ending on the following June 30. A public employer, other than a state agency or state university or college, must file the estimate from the date of the application to the period ending on

²²⁹ R.C. 4123.32, amended by the act for other purposes.



the following December 31. Alternative dates may be established by the Administrator. Employers must then pay an amount that the Administrator determines by rule in order to establish coverage under a written binder (temporary coverage while the application is being processed) for the employer.

Reconciliation

The rules also must require that every employer complete periodic payroll reports of actual expenditures for previous coverage periods for reconciliation with the estimated payroll reports.

The act requires, for purposes of reconciliation, an employer to make timely payment of any premium owed when the employer's actual payroll expenditures exceed estimated payroll. If estimated payroll exceeds actual payroll, the employer will receive a premium credit.

Penalties

The rules adopted by the Administrator must establish the assessment of penalties for payroll estimates, payroll reconciliation reports, and reconciliation premium payments that are not timely filed or paid. Additionally, the act allows the Administrator to assess additional penalties on a reconciliation premium if the employer's actual payroll substantially exceeds the employer's estimated payroll.

Transition

The rules adopted by the Administrator must also establish a transition period, during which time BWC must determine all of the following:

- The adequacy of employers' existing premium security deposits;
- The establishment of provisions for additional premium payments during the transition;
- The provision of a credit of employers' existing premium security deposits toward the first premium due from an employer under the prospective payment rules;
- The establishment of penalties for late payment or failure to comply with the rules.



Health Partnership Program

(R.C. 4121.44 and 4121.441, with a conforming change in R.C. 4123.93)

Managed care organization contracts

(R.C. 4121.44 and 4121.441)

The Health Partnership Program (HPP) is the medical management portion of Ohio's workers' compensation system. Under continuing law, BWC certifies managed care organizations (MCO; also referred to as vendors and external vendors in the Workers' Compensation Law) to provide medical management and cost containment services in the HPP. The act statutorily permits BWC, to implement the HPP, as under continuing law, and to ensure the efficiency and effectiveness of the public services provided through the HPP, as added by the act, to enter into a contract with any MCO that is certified by the BWC, pursuant to continuing law, to provide medical management and cost containment services in the HPP. The act expands the Administrator's rule-making authority with respect to implementing the HPP to include regulating contracts with MCOs pursuant to the Workers' Compensation Law.

A contract entered into pursuant to the act must include both of the following:

(1) Incentives that may be awarded by the Administrator, at the Administrator's discretion, based on the MCO's compliance and performance;

(2) Penalties that may be imposed by the Administrator, at the Administrator's discretion, based on the MCO's failure to reasonably comply with or perform terms of the contract, which may include termination of the contract.

Under the act, notwithstanding a prohibition contained in Ohio's Administrative Procedure Act, a contract entered into pursuant to the act, and rules adopted to implement the HPP, may include provisions limiting, restricting, or regulating any marketing or advertising by the MCO, or by any individual or entity that is affiliated with or acting on behalf of the MCO, under the HPP. Under Ohio's Administrative Procedure Act an agency is prohibited from making rules that would limit or restrict the right of any person to advertise in compliance with law.

The act prohibits an MCO from receiving compensation under the HPP unless the MCO has entered into a contract with the BWC pursuant to the act.

The act also makes consistent the terminology used to refer to MCOs under the Workers' Compensation Law, eliminating references to "vendor" or "external vendor."



MCO decertification

(R.C. 4121.44(G) and 4121.441(A))

The act statutorily permits the Administrator to decertify a MCO if the MCO does any of the following:

- Fails to maintain any of the requirements set forth continuing law to obtain certification;
- Fails to reasonably comply with or to perform in accordance with the terms of a contract entered into under the act;
- Violates a rule adopted under continuing law with respect to HPP implementation.

The Administrator must provide each MCO that is being decertified with written notice of the pending decertification and an opportunity for a hearing pursuant to rules adopted by the Administrator. Under rules adopted by the Administrator, the Administrator already provides a notice and conducts a hearing in accordance with the Administrative Procedure Act.

The act eliminates the requirement that the Administrator adopt rules to establish criteria for BWC to utilize in penalizing or decertifying a health care provider from participating in the HPP and rules establishing standards and criteria for BWC to utilize in penalizing or decertifying an MCO.

Self-insurance eligibility

(R.C. 4123.35(B))

In Ohio, an employer may cover the employer's workers' compensation obligations in one of two ways: (1) by paying premiums into the State Insurance Fund (see "**Prospective payment of workers' compensation premiums**," above), or (2) by being granted the privilege to pay claims directly, referred to as self-insurance. Continuing law lists requirements that a private sector employer must satisfy to be allowed to self-insure. Under continuing law, the following requirements may be waived by the Administrator:

(1) The employer employs a minimum of 500 employees in Ohio;

(2) The employer has operated in Ohio for a minimum of two years or has purchased, acquired, or otherwise succeeded to the operation of a business, or any part thereof, situated in Ohio that has operated for at least two years in Ohio;





Ohio Legislative Service Commission

Bill Analysis

Nicholas A. Keller

S.B. 176

130th General Assembly
(As Introduced)

Sens. Seitz, Burke, Schaffer

BILL SUMMARY

- Prohibits an illegal or unauthorized alien from receiving compensation or benefits under Ohio's Workers' Compensation Law.
- Prohibits an employer from electing to cover an illegal or unauthorized alien under the Workers' Compensation Law.
- Requires a claimant for workers' compensation benefits to submit an attestation certifying that the claimant or the deceased employee who is the subject of the claim was an eligible "employee" under Workers' Compensation Law.
- Prohibits a person from making a false statement in an attestation with purpose to defraud or knowing that the person is facilitating a fraud.
- Grants an employer immunity from liability for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect unless the employer employed the individual knowing that the individual was not authorized to work under federal law.
- Maintains employer liability for intentional torts.
- Creates an irrebuttable presumption that an illegal or unauthorized alien assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for an employer.
- Eliminates the potential jurisdiction of Ohio courts to hear any claim for damages suffered by an illegal or unauthorized alien by reason of personal injury sustained or

occupational disease contracted in the course of employment and caused by the employer's wrongful act or omission or neglect unless the employer employed the individual knowing that the individual was not authorized to work under federal law.

CONTENT AND OPERATION

Overview of workers' compensation liability

Ohio's workers' compensation system compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the employee's employment. The Ohio Constitution authorizes the General Assembly to enact legislation that creates a system of workers' compensation payments to injured employees or their families in lieu of all other rights to compensation or damages as a result of death, injuries, or occupational disease. According to the constitutional provision, an employer who pays the premium or compensation as required by the Workers' Compensation Law will not be held liable in damages at common law or by statute for the death, injury, or occupational disease of an employee.¹

On the other hand, an employer may be liable at common law or under a statute outside of the Workers' Compensation Law for an injury sustained by an individual if that individual is not an "employee" under the Workers' Compensation Law. For example, worker's compensation immunity does not apply, and an employer may be liable under common law, for an injury sustained by an independent contractor.²

Exclusion of illegal aliens and unauthorized aliens from the Workers' Compensation Law

Current law defines "employee" for purposes of Ohio's Workers' Compensation Law³ to include every person in the service of any person, firm, or private corporation, including any public service corporation, that employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens.⁴ The Workers' Compensation Law does not define "alien."

¹ Section 35, Article II, Ohio Constitution and R.C. 4123.74 and 4123.77, not in the bill.

² *Fuhrman v. Garrison Feist Constr. Co.*, Hamilton App. Nos. C-000063, C-000080 2000 Ohio App. LEXIS 5851 (December 15, 2000).

³ R.C. Chapters 4121., 4123., 4127., and 4131.

⁴ R.C. 4123.01(A)(1)(b).



The bill limits the definition of employee with respect to aliens to include only aliens authorized to work by the U.S. Department of Homeland Security or its successor. The bill excludes illegal aliens and unauthorized aliens from the definition of employee. Under the bill, "illegal alien" means an alien who is deportable if apprehended because of one of the following:

(1) The alien entered the United States illegally without the proper authorization and documents.

(2) The alien once entered the U.S. legally and has since violated the terms of the status under which the alien entered the U.S., making that alien an "out of status" alien.

(3) The alien once entered the U.S. legally but has overstayed the time limits of the original legal status.

The bill defines "unauthorized alien" as an alien who is not authorized to be employed as determined in accordance with the Immigration Reform and Control Act (IRCA).⁵

Current law allows any employer to elect to include as an "employee" within the Workers' Compensation Law any person expressly excluded from the definition of "employee." The bill does not extend this authority to employers with respect to illegal or unauthorized aliens; thus, under the bill, an employer may not elect to obtain coverage under the Workers' Compensation Law for an illegal alien or unauthorized alien.⁶

Liability for injuries incurred or occupational diseases contracted by illegal or unauthorized aliens

General employer immunity from liability under the bill

Except as otherwise provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, under the bill if a claim is denied under "**Attestation of eligibility**" or "**Administrator review of attestation**" below, the claimant's employer, or, if the claimant is a dependent of an employee who died as a result of suffering an injury or contracting an occupational disease, the deceased employee's employer, is not liable to that claimant for damages suffered by reason of personal injury sustained or occupational disease contracted in

⁵ R.C. 4123.01(A)(1)(b), (A)(2)(e), (L), and (M) and Section 101(a) of the "Immigration Reform and Control Act of 1986," 100 Stat. 3360, 8 U.S.C. 1324a.

⁶ R.C. 4123.01(A).



the course of employment caused by the wrongful act or omission or neglect of the employer. For such a claimant, filing a claim under Ohio's Workers' Compensation Law is the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the claimant's or deceased employee's employment. Notwithstanding the continuing law provision stating that noncomplying employers are not entitled to the benefits of the Workers' Compensation Law⁷ and except as provided below, the bill creates an irrebuttable presumption that the individual assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for that employer.⁸

State and political subdivision immunity under the bill

Under the bill, the state or a political subdivision is not liable in any civil action brought by or on behalf of an illegal alien or an unauthorized alien for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the wrongful act or omission or neglect of the state or political subdivision acting as an employer unless the state or political subdivision employed that illegal alien or unauthorized alien knowing that the illegal alien or unauthorized alien was not authorized to work under the IRCA (see "**Liability for knowingly employing an employee not authorized to work**" below).⁹

Elimination of jurisdiction

Except as provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, the bill also eliminates the jurisdiction of Ohio courts to hear a potential claim for damages suffered by an illegal alien or an unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal alien or unauthorized alien in the course of employment caused by the wrongful act or omission or neglect of the employer. Under the bill, an illegal alien or unauthorized alien assumes the risk of incurring such an injury or contracting an occupational disease, and that assumption is a complete bar to a recovery of damages for such an injury or occupational disease.¹⁰

⁷ R.C. 4127.77, not in the bill.

⁸ R.C. 4123.513(A).

⁹ R.C. 2743.02(I) and 2744.02(A)(1).

¹⁰ R.C. 2307.82(B).



Liability for knowingly employing an employee not authorized to work

An employer is liable under the bill, however, to a claimant whose claim is denied under "**Attestation of eligibility**" or "**Review by Administrator**" below for such damages if the claimant establishes, by clear and convincing evidence:

(1) That the employer employed the claimant or the deceased employee who is the subject of the claim knowing that the claimant or deceased employee was not authorized to work under the IRCA on the date the claimant or deceased employee suffered the injury or contracted the occupational disease;

(2) That the employer's knowledge was not solely the result of communications made by the claimant or the deceased individual to the employer.

An employer may not assert the fellow servant rule, assumption of risk, or contributory negligence to defend against such a claim. As discussed above, under the bill the state or a political subdivision is liable in such a claim if the state or political subdivision employed an illegal or unauthorized alien knowing that the illegal or unauthorized alien was not authorized to work. Additionally, the bill grants a court jurisdiction over such a claim.¹¹

Liability for intentional torts

The bill prohibits anything in "**General employer immunity from liability under the bill**" above from being construed to prevent an illegal alien, unauthorized alien, or a claimant whose claim is denied because the claimant is or the deceased individual was an unauthorized alien from bringing a claim against an employer in a court of competent jurisdiction for an intentional tort allegedly committed by the employer against the illegal or unauthorized alien.¹²

Change in claim procedure to include attestation and review

Under continuing law, within seven days after receipt of any claim under the Workers' Compensation Law, the Bureau of Workers' Compensation (BWC) must notify the claimant and the employer of the claimant of the receipt of the claim and of the facts alleged therein. Generally, in claims other than those in which the employer is a self-insuring employer, if the Administrator of Workers' Compensation determines that a claimant is or is not entitled to an award of compensation or benefits, the Administrator must issue an order no later than 28 days after the sending of the notice of the receipt of

¹¹ R.C. 4123.513(B), 2307.82(C), 2743.02(I), and 2744.02(A)(1), by reference to R.C. 4123.77, not in the bill.

¹² R.C. 2307.82(C) and 4123.513(C).



the claim, granting or denying the payment of the compensation, benefits, or both as is appropriate to the claimant.¹³

Attestation of eligibility

Under the bill, to be considered eligible for compensation or benefits paid under the Workers' Compensation Law other than for medical benefits, a claimant must submit to the Administrator a signed attestation that the claimant, or if the claimant is a dependent of an individual who died as a result of suffering an injury or contracting an occupational disease, the deceased employee was an eligible "employee" as defined in "**Exclusion of illegal aliens and unauthorized aliens from the Workers' Compensation Law**" above. The Administrator may not pay compensation or benefits, other than medical benefits, unless the Administrator receives the signed attestation.¹⁴

Review by Administrator

If the Administrator has reason to believe that a submitted attestation is not valid, the Administrator may request that the claimant submit proof of the attestation's validity. The bill requires the Administrator to make the request in writing and to state in the request the type of proof necessary to determine validity and the date by which the claimant must submit the proof. The bill requires the Administrator to deny any claim for compensation or benefits other than medical benefits if a claimant fails to comply with a written request to provide proof of the attestation's validity. A claimant who fails to comply with that written request is barred from refiling the claim for compensation or benefits for which the proof was requested, but the claimant may appeal according to the current law appeals process.¹⁵

Criminal liability for fraud

The bill prohibits a claimant from making a false statement in an attestation submitted to the Administrator under "**Attestation of eligibility**" above with purpose to defraud or knowing that the person is facilitating a fraud. A person who violates this prohibition is guilty of workers' compensation fraud, a first degree misdemeanor.¹⁶

¹³ R.C. 4123.511(A) and (B)(1).

¹⁴ R.C. 4123.511(A) and 4123.01(A).

¹⁵ R.C. 4123.511(A).

¹⁶ R.C. 2913.48.



Applicability of the bill

The bill applies to claims arising on or after the bill's effective date.¹⁷

HISTORY

| ACTION | DATE |
|------------|----------|
| Introduced | 08-12-13 |

S0176-I-130.docx/ks

¹⁷ Section 3.



Board of Directors Executive Summary

Self-Insuring Employers
OAC §§ 4123-19-03
and 4123-19-03.1

Background

Ohio Revised Code (“ORC”) § 4123.35 permits an employer demonstrating sufficient financial strength to become a self-insuring (“SI”) entity in Ohio for workers’ compensation purposes. SI employers must provide its injured workers benefits equal to or greater than those provided by BWC under the Revised Code and Administrative Code. Over 1,200 active employers are currently self-insuring employers, covering nearly 2 million (40%) Ohio employees. Ohio Administrative Code (“OAC”) Chapter 4123-19 sets forth rules governing the process by which an employer can become a self-insuring entity in Ohio.

Recommendations

The biennial budget for the State of Ohio (H.B. 59) requires two changes to the SI rules:

1. The Administrator must establish a rule with provisions for waiver of the requirement that SI applicants have 500 employees in Ohio.
2. The Administrator must establish a rule with provisions for waiver of the requirement that SI applicants operate in Ohio for a minimum of two years.

BWC developed the criteria for doing so in conjunction with stakeholders, including the Ohio Manufacturers’ Association.

Waiver of Requirement that Applicants Have 500 Employees in Ohio

The proposed rule requires the Bureau to waive the 500 employee requirement if the employer meets the following requirements:

1. The employer demonstrates sufficient financial strength and administrative ability to manage workers’ compensation claims when considering following items set forth in ORC §4123.35:
 - Whether the employer previously contributed to the State Insurance Fund or is a successor employer (ORC §4123.35(B)(1)(c));
 - The sufficiency of the employer’s assets located in Ohio (ORC §4123.35(B)(1)(d));
 - Financial records documents and data necessary to provide full financial disclosure (ORC §4123.35(B)(1)(e));
 - The applicant’s organizational plan for administration of a workers’ compensation program (ORC §4123.35(B)(1)(f));
 - The applicant’s proposed plan to educate employees about the change to SI, the applicant’s procedures for workers’ compensation claims, and the employee’s rights to compensation and benefits (ORC §4123.35(B)(1)(g)); and
 - The applicant’s accounts with financial institutions (ORC §4123.35(B)(1)(h));
2. The employer provides audited financial statements for the current year and four previous years.

3. The employer meets at least one of the following requirements:
 - The employer has a substantial employee count outside of Ohio, as determined by the Bureau, or
 - The employer has obtained excess insurance in an amount and with a retention level determined by the bureau to be appropriate.

Waiver of Requirement that Applicants Operate in Ohio for Two Years

The bureau may waive the requirement that an SI applicant operate for at least two years in Ohio if a review of the applicant's request indicates such waiver is appropriate.

Other Recommended Changes

In reviewing the rule, staff is also recommending elimination of language indicating that the cost of any commercial credit reporting bureau services used by BWC to assist in the evaluation of an applicant's financial strength must be paid by the applicant. Such requirement is not consistent with BWC's current practice.

This recommendation consists of shifting existing criteria for waiver of SI requirements in OAC 4123-19-03 to new rule OAC 4123-19-03.1, with the provisions required by H.B. 59 included in the new rule.

Effective Date

Recommended changes will be effective 10 days after final filing of the rules.

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

- (A) All employers granted the privilege to pay compensation directly shall demonstrate sufficient financial strength and administrative ability to assure that all obligations under section 4123.35 of the Revised Code will be met promptly. The administrator of workers' compensation shall deny the privilege to pay compensation, etc., directly, where the employer is unable to demonstrate its ability to promptly meet all the obligations under the rules of the commission and bureau and section 4123.35 of the Revised Code. The administrator shall consider, but shall not be limited to the factors in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code where they are applicable in determining the employer's ability to meet all obligations under section 4123.35 of the Revised Code.

The administrator shall review all financial records, documents, and data necessary to provide a full financial disclosure of the employer, ~~certified by a certified public accountant,~~ including but not limited to, the balance sheets and a profit and loss history for the current year and the previous four years. Unless an applicant obtains waiver under paragraph (E) of rule 4123-19-03.1 of the Administrative Code, financial records submitted to the bureau must be ~~For purposes of this rule, certified financial statements shall be construed by the administrator as~~ audited by a certified public accountant, in accordance with generally accepted accounting principles, and shall include the certified public accountant's audit opinion.

- (1) The administrator may waive certain requirements of division (B)(1) and (B)(2) of section 4123.35 of the Revised Code pursuant to rule 4123-19-03.1 of the Administrative Code.

~~In determining whether to grant a waiver of the requirement of division (B)(1)(e) of section 4123.35 of the Revised Code for certified financial records, the administrator shall consider the following criteria and conditions:~~

~~(a) The administrator shall require reviewed financial statements, including full footnote disclosure, to be prepared and submitted in accordance with generally accepted accounting principles. For the purposes of this rule, "reviewed financial statements" shall mean financial statements that have been subject to procedures performed by a certified public accountant in accordance with AICPA Professional Standards, specifically, Statements on Standards for Accounting and Review Services, Section 100, Paragraph .24 through .38, December 1978.~~

~~(b) The administrator may utilize the services of a commercial credit reporting bureau to assist in the evaluation of an applicant's ability to meet its workers' compensation obligations. The cost of this commercial reporting service shall be assumed by the applicant employer.~~

~~(c) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant employer to provide additional security to ensure meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and paid prior to the granting of self insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self-insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code.~~

- (2) ~~In determining whether to grant a waiver of the requirement of division (B)(2)(b) of section 4123.35 of the Revised Code for financial statements reflecting the unreserved and undesignated year-end fund balance in the public employer's general fund, the administrator shall consider the following criteria and conditions.~~

~~(a) The administrator may require a supplemental schedule reflecting the public employer's unreserved and undesignated year-end fund balance in the public employer's general fund.~~

~~(b) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant public employer to provide additional security to ensure meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and provided prior to the granting of self insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self insuring employers' guaranty fund under section 4123.351 of the Revised Code.~~

~~(3) In determining whether to grant a waiver of the requirement of division (B)(2)(f) of section 4123.35 of the Revised Code for an annual financial audit released by the auditor of state within seven months after the end of the public employer's fiscal year, the administrator shall consider the following criteria and conditions:~~

~~(a) The administrator may accept an annual financial audit released by the auditor of state within nine months after the end of the public employer's fiscal year.~~

~~(b) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant public employer to provide additional security to ensure meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and provided prior to the granting of self insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self insuring employers' guaranty fund under section 4123.351 of the Revised Code.~~

~~(4) The administrator shall not grant the status of self-insuring employer to the state, except that the administrator may grant the status of self-insuring employer to a state institution of higher education, including its hospitals.~~

(B) The employer shall secure from the bureau of workers' compensation proper application form(s) for completion. The completed application shall be filed with the bureau at least ninety days prior to the effective date of the employer's requested status as a self-insurer. The administrator may require that the application be accompanied by an application fee as established by bureau resolution to cover the cost of processing the application in accordance with section 4123.35 of the Revised Code. The application shall not be deemed complete until all required information is attached thereto. Prior to presentation to the administrator, applicable items listed in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code shall be made available to the bureau and shall be reviewed by the bureau of workers' compensation. The bureau shall only accept applications which contain the required information.

(C) The bureau shall recognize only such application forms which provide answers to all questions asked and furnish such information as may be required.

(D) Return of the completed forms required by this rule and any additional information required by the bureau to process the employer's application should be submitted at least ninety days prior to the effective date of the employer's requested status as a self-insurer.

(1) If the administrator determines to grant the privilege of self-insurance, the bureau shall issue a "Finding of Facts" statement which has been prepared by the bureau, signed by the administrator, subject to all conditions outlined in paragraph (L)(3) of this rule.

(2) If the administrator determines not to grant the privilege of self-insurance, the bureau shall so notify the employer, whereupon the employer shall be required to continue to pay its full premium into the state insurance fund.

(E) All employers that have secured the privilege to pay compensation, etc., directly, will be required to make

contributions as determined by the administrator to the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code, and, if an additional security is required by the bureau, in the amount or form that may be specified by the bureau. If the additional security is in the form of a surety bond, the bond shall be from a company approved by the bureau and authorized to do business in the state of Ohio by the Ohio department of insurance. The surety bond shall be in the form prescribed by the bureau. The penal amount of such additional security is to be fixed by the administrator.

- (F) The surety bond or additional security furnished by the employer shall be for an amount and period as established by the bureau and may be periodically reviewed and reevaluated by the bureau. The surety bond or additional security shall provide on its face that the surety shall be responsible for the payment of all claims where the cause of action, as determined by the date of injury or date of occupational disease, arose during the liability of the surety bond or additional security. The liability under the surety bond or additional security and the rights and obligations of the surety shall be limited to reimbursement for the amounts paid from the surplus accounts of the state insurance fund by reason of the default of the self-insuring employer in accordance with division (B) of section 4123.82 of the Revised Code; however, in the event of such self-insuring employer's default, the bureau shall first seek reimbursement from the surety bond or additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code. Upon default of the self-insuring employer, it shall be the responsibility of the administrator of the bureau of workers' compensation to represent the interests of the state insurance fund and the self-insuring employers' guaranty fund. The administrator, on behalf of the self-insuring employers' guaranty fund, has the rights of reimbursement and subrogation and shall collect from a defaulting self-insuring employer or other liable person all amounts the bureau has paid or reasonably expects to pay from the guaranty fund on account of the defaulting self-insuring employer.
- (G) The security herein required to be given by the employer shall be given to the state of Ohio, for the benefit of the disabled or the dependents of killed employees of the employer filing the same, and shall be conditioned for the payment by the employer of such compensation to disabled employees or the dependents of killed employees of such employer, and the furnishing to them of medical, surgical, nursing and hospital attention and services, medicines and funeral expenses equal to or greater than is provided by the Ohio workers' compensation law and for the full compliance with the rules and regulations of the commission and bureau and rules of procedure.
- (H) If another or parent corporation or entity owns fifty per cent or more of the stock of an employer, the bureau may, in its discretion, require the employer to furnish a contract of guaranty executed by the ultimate domestic parent corporation or entity. The bureau shall require an alternative form of security if it does not require a contract of guaranty executed by the ultimate domestic parent corporation or entity.
- (I) From the effective date of this rule, employees having one or more years of experience as a workers' compensation administrator for a self-insuring employer in Ohio shall be deemed sufficiently competent and knowledgeable to administer a program of self-insurance. Those self-insuring employers that employ workers' compensation administrators who have less than one year of experience as a workers' compensation administrator in Ohio shall not have its status as a self-insuring employer affected pending notification by bureau of workers' compensation as to whether mandatory attendance of the administrator at a bureau of workers' compensation training program is required. If the bureau determines that the administrator is not able to administer a self-insuring program, the bureau may direct mandatory attendance of the administrator at a bureau of workers' compensation training program until such time as the bureau determines that the administrator is sufficiently competent and knowledgeable to run such a workers' compensation program. The cost of the bureau's training of the administrator(s) under this rule will be borne by the self-insuring employer or self-insuring employer applicant. By accepting the privilege of self-insurance, an employer acknowledges that the ultimate responsibility for the administration of workers' compensation claims in accordance with the law and rules of the bureau of workers' compensation and the commission rests with that employer. The self-insuring employer's records and compliance with the bureau of workers' compensation and commission rules shall be subject to periodic audit by the bureau of workers' compensation.

A self-insuring employer or applicant shall designate one of its Ohio employees who is knowledgeable and experienced with the requirements of the Ohio Workers' Compensation Act and rules and regulations therein, as administrator of its self-insuring program. The requirement for an Ohio administrator may be waived at the discretion of the bureau. The name and telephone number of the Ohio administrator, or non-Ohio administrator where the Ohio requisite has been waived, shall be posted by the employer in a prominent place at all the employer's locations. The administrator's duties shall include, but not be limited to:

- (1) Acting as liaison between the employer, the bureau of workers' compensation and the commission, and providing information to the agency upon request;
- (2) Providing assistance to claimants in the filing of claims and applications for benefits;
- (3) Providing information to claimants regarding the processing of claims and the benefits to which claimants may be entitled;
- (4) Providing the various forms to be used in seeking compensation or benefits;
- (5) Accepting or rejecting claims for benefits;
- (6) Approving the payment of compensation and benefits to, or on behalf of, claimants, pursuant to paragraph (K) of this rule.

This rule is not intended to prevent the hiring of an attorney or representative to assist the employer in the handling and processing of workers' compensation claims.

- (J) Employers that are granted the privilege of paying compensation, etc., directly, in accordance with these rules and regulations shall file with the bureau a report of paid compensation annually, shall keep a record of all injuries and occupational diseases resulting in more than seven days of temporary total disability or death occurring to its employees and report the same to the bureau upon forms to be furnished by it, and shall observe all the rules and regulations of the commission and bureau and their rules of procedure with reference to determining the amount of compensation, etc., due to the disabled employee or the dependents of killed employees, and payment of the same. All employers granted the privilege of paying compensation, etc., directly shall annually report paid compensation electronically via the bureau's website.

If a self-insured employer fails to timely file its annual report of paid compensation, the bureau may estimate the amount of paid compensation and assess the employer based on this estimate pursuant to rule 4123-17-32 of the Administrative Code. If the employer subsequently provides the bureau with actual paid compensation figures, the bureau shall adjust the paid compensation and any assessment accordingly. A self-insured employer that is no longer a self-insured employer in Ohio and has failed to timely file a report of paid compensation shall be subject to this rule.

- (K) Minimal level of performance as a criterion for granting and maintaining the privilege to pay compensation directly.

- (1) The employer must be able to furnish or make arrangements for reasonable medical services during all working hours. A written explanation of what arrangements have been made or will be made to provide medical treatment shall be supplied with the application for self-insurance.

For an employer desiring to be first granted the privilege of self-insured status on or after the effective date of this rule, the employer shall provide to the bureau for the bureau's approval the employer's plan for the following:

- (a) Criteria for the selective contracting of health care providers;

- (b) Plan structure and financial stability for the medical management of claims;
 - (c) Procedures for the resolution of medical disputes between an employee and the employer, an employee and a provider, or the employer and a provider, prior to an appeal under section 4123.511 of the Revised Code;
 - (d) Upon the request of the bureau, provide a timely and accurate method of reporting to the administrator necessary information regarding medical and health care service and supply costs, quality, and utilization; and,
 - (e) Provide an employee the right to change health care providers.
- (2) The employer shall promptly pay the fees of outside medical specialists to whom the commission or bureau shall refer claimants for examination or where the commission or bureau refers the claim file for review and opinion by such specialist except as provided by law in cases where the claim was subsequently disallowed. Such fees shall be paid within the time limits provided for payment of medical bills under paragraph (K)(5) of this rule.
- (3) Every employer shall keep a record of all injuries and occupational diseases resulting in more than seven days of total disability or death as well as all contested or denied claims and shall report them to the bureau, and to the employee or the claimant's surviving dependents in accordance with rule 4123-3-03 of the Administrative Code.
- (4) The employer shall provide to the claimant and upon request, shall file with the bureau or the commission, medical reports relating thereto and received by it from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease, or any injury or occupational disease for which a claim has been filed. The claimant shall provide to the employer and, upon request, shall file with the bureau or the commission, medical reports relating thereto and received from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease or any injury or occupational disease for which a claim has been filed. The claimant shall honor the employer's request for appropriate written authorization to obtain medical reports to the extent that such reports pertain to the claim.
- (5) Within thirty days after receipt of a hospital, medical, nursing or medication bill duly incurred by the claimant, the employer shall either pay such bill, or if the employer contests any of such matters, shall notify the provider, the employee, and, only upon request, the bureau or commission in writing. Such written notice shall specifically state the reason for nonpayment. The employer's notification to the employee shall indicate that the employee has the right to request a hearing before the industrial commission. If the matter is heard by the industrial commission, the employer shall pay compensation and benefits due and payable under an order as provided by section 4123.511 of the Revised Code. If the self-insuring employer allows a claim for benefits or compensation without a hearing, the employer shall pay such benefits or compensation no later than twenty-one days from acquiring knowledge of the claim or the claimant's filing of the C-84 form, whichever is later. The employer shall approve a written request for a change of physicians within seven days of receipt of such request that includes the name of the physician and proposed treatment. The employer shall approve or deny a written request for treatment within ten days of the receipt of the request. If the employer fails to respond to the request, the authorization for treatment shall be deemed granted and payment shall be made within thirty days of receipt of the bill.
- (6) The employer shall make its records and facilities available to the employees of the bureau at all reasonable times during regular business hours. A public employer shall make the reports required by section 4123.353 of the Revised Code available for inspection by the administrator of workers' compensation and any other person at all reasonable times during regular business hours.

- (7) The employer shall pay all compensation as required by the workers' compensation laws of the state of Ohio. By becoming self-insuring, the employer agrees to abide by the rules and regulations of the bureau and commission and further agrees to pay compensation and benefits subject to the provisions of these rules. The self-insuring employer shall proceed to make payment of compensation or medical benefits without any previous order from the bureau or commission and shall start such payments as required under the Workers' Compensation Act, unless it contests the claim.
- (8) The employer may notify the medical section and the claimant at least sixty days prior to the completion of the payment of two hundred weeks of compensation for temporary total disability with the request that the claimant be scheduled for examination by the medical section. Payment of temporary total disability compensation after two hundred weeks shall continue uninterrupted until further order of the commission up to the maximum required by law, unless the claimant has returned to work, or the treating physician has made a written statement that the claimant is capable of returning to his former position of employment or has reached maximum medical improvement or that the disability has become permanent, or, after hearing, an order is issued approving the termination of temporary total disability compensation.
- (9) Upon written request by the claimant or claimant's representative, the employer shall make available for review all the employer's records pertaining to the claim. Such review is to be made at a reasonable time (not to exceed seventy-two hours) and place. The claimant, upon written request, shall provide the employer or its representative with an appropriate written authorization to obtain medical reports and records pertaining to the claim.

Except as provided for in this rule, an employer may not assess a fee or charge the claimant or the claimant's representative for the cost of providing a copy of the employer's records pertaining to the claim. Where the employer has previously provided a copy of the record or records pertaining to the claim to the claimant or the claimant's representative, the employer may charge a fee for the copies. The employer's fee shall be based upon the actual cost of furnishing such copies, not to exceed twenty-five cents per page.

- (10) The employer shall inform a claimant, and the bureau of workers' compensation, in writing, within thirty days from the filing of the claim, as to what conditions it has recognized as related to the injury or occupational disease and what, if any, it has denied. The same timeframe shall apply when the employer rejects a medical only claim.
 - (11) The employer shall post notices of its self-insuring status indicating the location in the plant(s) for the filing of a claim and the job title and department of the employees designated by the employer to be the person or persons responsible for the processing of workers' compensation claims.
 - (12) A public employer, except for a board of county commissioners described in division (G) of section 4123.01 of the Revised Code, a board of a county hospital, or a publicly owned utility, who is granted the status of self-insuring employer pursuant to section 4123.35 of the Revised Code shall comply with the section 4123.353 of the Revised Code.
- (L) If a state insurance fund employer or a succeeding employer, as described in rule 4123-17-02 of the Administrative Code, applies for the privilege of paying compensation, etc., directly, by transferring from state fund to self-insurance, the actuary of the bureau shall determine the amount of the liability of such employer to the bureau for its proportionate share of any deficit in the fund. To determine an employer's liability under this rule, the actuary of the bureau shall develop a set of factors to be applied to the pure premium paid by an employer on payroll for a seven year period, as described below. The factors shall be based on the full past experience of the commission and bureau as reflected in the most recent calendar year end audited combined financial statement of the commission and bureau, and shall also accommodate any projected change in the financial condition of the fund for the current calendar year, or any additional period for which an audited combined financial statement is unavailable. The factors shall be revised annually effective July first based on

the most recent calendar year audited combined financial statement and the projected change in the financial condition of the fund in the current calendar year or any additional period for which an audited combined financial statement is unavailable. The annually revised factors shall be adopted by rule 4123-17-40 of the Administrative Code, and filed with the secretary of state and the legislative service commission at least ten days prior to July first of each year. Factors effective July first of each year shall apply to all applications for self-insurance filed on or after July first of that year through June thirtieth of the following year. The revised factors shall be applied to the pure premium paid by the employer on payroll for the seven calendar accident years ending December thirty-first of the year preceding the year in which the factors are adopted under rule 4123-17-40 of the Administrative Code. In the event the audited combined financial statement of the commission and bureau reveals that no deficit exists, or in the event the application of the factors adopted by rule 4123-17-40 of the Administrative Code yields a negative number, the employer will incur no liability under this paragraph, but will not receive any refund for prior premiums paid except for those matters specifically addressed in paragraph (L)(2) of this rule. As used in this rule, "pure premium paid" means premiums actually paid under a base rating plan or an experience rating plan and minimum premium paid under a retrospective rating plan. It does not include premiums billed for actual claims costs, including reserves at the end of ten years, under a retrospective rating plan. Obligations under a retrospective rating plan remain the responsibility of the employer regardless of the employer's status. The same principles shall apply to cases of a merger by a self-insuring employer and a state fund employer under the self-insurer's status. In addition, the provisions listed below shall apply:

- (1) Within thirty days of the receipt from the employer of the necessary forms and of a separate statement of assets and liabilities, the bureau will forward to the employer a letter stating the amount of liability (if any) due the state fund as outlined above and a copy of the computation of such liability (if any).
- (2) Within thirty days of the date of mailing of the letter by the bureau as outlined in paragraph (L)(1) of this rule, the employer shall reply by a letter, signed in handwriting, acknowledging that the employer agrees with the amount of liability specified in the letter and that there are no protests or claims hearings pending which could affect the amount of the liability. If any such matters are pending and would affect the liability, they must be detailed and set forth in the letter from the employer. This letter must also acknowledge that any protest letters, applications for handicap reimbursement or other requests affecting the risk's state fund experience filed subsequent to the date of this letter shall be considered invalid for both rebate of premium on state fund experience and the calculation of liability cited above. This letter must also specify the suggested effective date of the transfer to self-insurance which the employer requests, subject to paragraph (B) of this rule which requires that the effective date must be at least ninety days after the date the application forms are received by the bureau. Failure to comply with the requirements set forth herein shall terminate further consideration of the application.
- (3) Subsequent to the approval of the employer's self-insurance status and the effective date thereof by the administrator, the bureau shall issue a settlement sheet statement containing the adjustment required above and billing for an advance deposit as required by other rules of the commission. The employer shall pay the amounts required by this paragraph, pay the contribution to the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code, submit a performance surety bond or additional security, if required by the bureau, and estimated final payroll report as a state fund risk, all within thirty days of the date of the mailing of the self-insured certificate.
- (4) The final adjustments of all premiums due the state fund for the final payroll reports and final bureau audit (if any), as well as the pending protests, etc., as specified in paragraph (L)(2) of this rule, shall all be settled and paid within six months from the date of transfer from state fund to self-insuring status. Employer's records must be made available promptly for final audit which must also be completed within six months from the date of the transfer from state risk to self-insurance.

(M) If there is any change involving additions, mergers, or deletions of entities or ownership changes of a

self-insuring employer, which would materially affect the administration of the employer's self-insuring employer program or the number of employees included in such program, the employer shall notify the bureau self-insuring employer's section within thirty days after the change occurs. Based upon the information provided or additional information requested by the bureau, the bureau will determine the effect of the change on the employer's self-insuring employer status, the adequacy of the employer's contribution to the self-insuring employers' guaranty fund, and the need for additional security.

- (N) If a public employer granted the privilege of self-insurance elects to provide coverage for volunteers and probationers performing services for the political subdivision, the employer shall include such volunteers and probationers as employees to be covered under the self-insurance policy. A public employer's coverage of a "work-relief employee" under Chapter 4127 of the Revised Code shall be included in the public employer's self-insurance policy.

4123-19-03.1 Waiver of Certain Requirements.

(A) Definitions.

As used in this rule:

- (1) "Applicant" means an employer who is applying for the privilege to pay compensation directly pursuant to section 4123.35 of the Revised Code.
- (2) "Certified financial statements" means financial statements that have been audited by a certified public accountant, in accordance with generally accepted accounting principles, and include the certified public accountant's audit opinion.
- (3) "Reviewed financial statements" means financial statements that have been subject to procedures performed by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services as contained in the professional standards promulgated by the American Institute of Certified Public Accountants and in effect on the date of the applicant's application for the privilege to pay compensation directly. Such statements must include full footnote disclosure, prepared and submitted in accordance with generally accepted accounting principles.

(B) When the bureau grants a waiver of requirements under this rule, the bureau may require the applicant to furnish security in addition to the security required under rule 4123-19-03 of the Administrative Code. The amount of such additional security shall be in the form and amount as determined by the administrator and paid prior to the granting of self-insurance. In the event of the default of the self-insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code.

(C) The bureau shall waive the requirement set forth in division (B)(1)(a) of section 4123.35 of the Revised Code that an applicant have five hundred employees in the state of Ohio if:

- (1) The applicant meets, without waiver, all of the bureau's requirements with respect to divisions (B)(1)(c) through (B)(1)(h) of section 4123.35 of the Revised Code;
- (2) The applicant submits to the bureau audited financial records for the current year and previous four years; and
- (3) The applicant meets at least one of the following requirements:
 - (a) The applicant has a substantial employee count outside the state of Ohio, as determined by the bureau; or
 - (b) The applicant has obtained and agrees to maintain excess insurance as set forth in section 4123.82 of the Revised Code in an amount and with a retention level determined by the bureau to be appropriate.

(D) The bureau may waive the requirement set forth in division (B)(1)(b) of section 4123.35 of the Revised Code that an applicant operate for at least two years in Ohio if, upon review of the applicant's request for waiver and application, the bureau determines such waiver is appropriate.

(E) The bureau may waive the requirement of division (B)(1)(e) of section 4123.35 of the Revised Code that an applicant submit certified financial statements if the applicant submits reviewed financial statements and the bureau determines such waiver is appropriate. The bureau may use the services of a commercial credit reporting bureau to assist in the evaluation of an applicant's ability to meet its workers' compensation obligations.

- (F) The bureau may waive the requirement of division (B)(2)(b) of section 4123.35 of the Revised Code that an applicant that is a public employer submit financial statements reflecting the unreserved and undesignated year-end fund balance in the applicant's general fund if the bureau determines such waiver is appropriate. The administrator may require a supplemental schedule reflecting the public employer's unreserved and undesignated year-end fund balance in the public employer's general fund.
- (G) The bureau may waive the requirement of division (B)(2)(f) of section 4123.35 of the Revised Code that an applicant that is a public employer submit an annual financial audit released by the auditor of state within seven months after the end of the public employer's fiscal year if the employer submits an annual financial audit released by the auditor of state within nine months after the end of the public employer's fiscal year.

A BILLION Back

Enclosed you'll find **your rebate check** from BWC. Made possible by safer workplaces and strong investments, we are providing this rebate to help Ohio's economic resurgence and make workplaces safer throughout the state.

We strongly encourage you to invest at least a portion of this rebate into your workplace safety and health programs. Doing so protects your workers and can save you money for years to come.

This rebate is just one portion of our three-part **A Billion Back** proposal, which will help strengthen Ohio's economy, modernize our operations and protect Ohio's most important asset – its workforce. To learn more, visit ohiobwc.com, and follow us on Twitter @OhioBWC.

Questions? Visit ohiobwc.com, and click on the **A Billion Back** banner.

QUESTIONS? Call 1-800-OHIOBWC, and listen to the options.

BWC Fact Sheet on \$1 Billion Back

We would like to take this opportunity to share some more information with you regarding the process of issuing the rebate to Ohio employers. If you have any questions, please send them to EmployerProgramUnit@bwc.state.oh.us.

What is the timeline for issuing rebates?

Rebate checks will begin going out the week of June 24. The checks will be printed, stuffed and mailed by the Department of Administrative Services (DAS) state printing. The checks will be processed in batches of 40,000. It is anticipated that all checks will be processed and mailed by July 12th.

Mailing schedule is as follows:

1. Wednesday, June 26th
2. Friday, June 28th
- *3. Wednesday, July 3rd
- *4. Monday, July 8th
- *5. Wednesday, July 10th
- *6. Friday, July 12th

* Batches 3 – 6 will be printed sequentially by policy number.

Those seeking assistance regarding the rebate, can –

- Check www.ohiobwc.com
 - Click “Employers” from the top menu
 - Scroll over “Payroll/Premium” left side of the page
 - Select Accounts Receivable Transaction History
 - Enter Policy number, click next
 - Select “Miscellaneous” transactions from the drop down box
 - Enter dates (06-01-2013 to current date), click search
 - *444 – is the rebate credit*
 - Click search again
 - Select Payment/Refund from the drop down box
 - Enter dates (06-01-2013 to current date), click search
 - *470 – is the rebate refund*

Note: Variances in the amount of the rebate credit and the rebate refund are likely the result of an outstanding balance.

- In the case of predecessor/successor relationships, all or a portion of the rebate credit maybe transferred to satisfy debt on either the successor policy if the rebate transaction occurs on the predecessor policy or debt on the predecessor policy if the rebate transaction occurs on the successor policy.
- Employers that have the rebate applied to an outstanding balance will see the detail on their monthly invoice.
- All eligible employers should have their rebate checks mailed by July 12th.
- If rebate check is not received by the **end of July**, please contact BWC so that we can look into the situation.

Wednesday, July 10, 2013

Thomas H. Bainbridge Named Chairman of the Ohio Industrial Commission

COLUMBUS, OH – The Ohio Industrial Commission (IC) announced today that Governor John Kasich appointed Thomas (Tim) H. Bainbridge as the Industrial Commission Chairman, effective July 9, 2013.

“I am privileged to be named Chairman at the Industrial Commission of Ohio,” Bainbridge said. “As chairman, I am looking forward to working with our customers and staff to simplify agency processes and continue to provide productive and well-organized hearings for employers and injured workers.”

Chairman Bainbridge, who will serve a six-year term that expires in June 2019, brings over four decades of workers’ compensation experience to his role as the Chairman and Employee Member of the Commission.

As an attorney, Bainbridge has spent a tremendous amount of time protecting the rights of Ohio’s workers and employers through his involvement with numerous organizations, which are dedicated to improving Ohio’s workers’ compensation system. He displayed his knowledge and expertise as the Chairman of the Columbus Bar Association Workers’ Compensation Committee from 1982 to 1983, and served as the Chairman of the Workers’ Compensation Section of the Ohio Association for Justice from 1991 to 1993. He also served as President of the Ohio Association for Justice. Later, he served Ohio’s injured workers and employers as the Commissioner for the Bureau of Workers’ Compensation Oversight Commission from 1995 to 2006.

Bainbridge’s passion for workers’ compensation has been evident throughout his career. Before arriving at the IC, he served as an attorney and managing partner at Ward, Kaps, Bainbridge, Maurer & Melvin from 1968 until 2009. He later served as a partner at the Bainbridge Firm from 2009 until 2013.

Bainbridge is a member of the Ohio State Bar Association, Columbus Bar Association, Ohio Association for Justice and the American Association for Justice.

Originally from Steubenville, Ohio, Bainbridge earned his bachelor’s degree from Washington & Jefferson College in Washington, Pennsylvania, and then received his law degree from The Ohio State University. He was admitted to the Ohio Bar in 1967 and has also been admitted to practice before the US District Court in the Southern District of Ohio. Bainbridge resides in Columbus with his wife, Deidre. The couple has three grown sons.

Monday, July 1, 2013

Thomas H. Bainbridge Named Commissioner of the Ohio Industrial Commission

COLUMBUS, OH – The Ohio Industrial Commission (IC) announced today that Governor John Kasich appointed Thomas (Tim) H. Bainbridge as an Industrial Commission Commissioner, effective July 1, 2013.

“I am honored to be named Commissioner at the Industrial Commission of Ohio,” Bainbridge said. “I am looking forward to working with the talented staff at this agency to improve the workers’ compensation appeals process while continuing to provide efficient and fair hearings for employers and injured workers.”

Bainbridge, who will serve a six-year term that expires in June 2019, brings over four decades of workers’ compensation experience to his role as the Employee Member of the Commission.

As an attorney, Bainbridge has spent a tremendous amount of time protecting the rights of Ohio’s workers and employers through his involvement with numerous organizations, which are dedicated to improving Ohio’s workers’ compensation system.

He displayed his knowledge and expertise as the Chairman of the Columbus Bar Association Workers' Compensation Committee from 1982 to 1983, and served as the Chairman of the Workers' Compensation Section of the Ohio Association for Justice from 1991 to 1993. He also served as President of the Ohio Association for Justice. Later, he served Ohio's injured workers and employers as the Commissioner for the Bureau of Workers' Compensation Oversight Commission from 1996 to 2007.

Bainbridge's passion for workers' compensation has been evident throughout his career. Before arriving at the IC, he served as an attorney and managing partner at Ward, Kaps, Bainbridge, Maurer & Melvin from 1968 until 2009. He later served as a partner at the Bainbridge Firm from 2009 until 2013.

Bainbridge is a member of the Ohio State Bar Association, Columbus Bar Association, Ohio Association for Justice and the American Association for Justice.

Originally from Mingo Junction, Ohio, Bainbridge earned his bachelor's degree from Washington & Jefferson College in Washington, Pennsylvania, and then received his law degree from The Ohio State University. He was admitted to the Ohio Bar in 1967 and has also been admitted to practice before the US District Court in the Southern District of Ohio. Bainbridge resides in Columbus with his wife, Deidre. The couple has three grown sons.

Safety & Workers' Compensation

Upcoming HazComm Training Compliance Due Date

Any business that must comply with the OSHA Hazard Communication standard must retrain all employees by December 1, 2013. The training must include the changes to the standard that were implemented in May 2012.

The changes include new pictograms, new label requirements and new Safety Data Sheet format.

There are two recorded webinars covering this requirement in the [OMA video library](#). Look under Safety Management by OMA Connections Partner, Safex. (My OMA login is required.)

Additionally, OMA Connections Partner, Safex, is offering a train-the-trainer [class](#) on November 5 in Columbus. Attendees will receive an electronic copy of the materials for use in presenting the training in their facilities. The class maximum is 24 attendees; a few seats remain. OMA members get a 10% discount off the \$250 fee. 10/31/2013

New OMA Video on Appealed Claims & the Industrial Commission (video)

Learn a lot in 15 minutes about how appealed workers' compensation claims are managed in Ohio in this new OMA [video](#).

The video features expert, Mike Squillace, Partner, at Dinsmore & Shohl, an OMA Connections Partner. Mike reviews all claims that are scheduled for an Industrial Commission hearing for OMA members who purchase their workers' compensation services through the OMA. 10/22/2013

State Support for Slips, Trips & Falls in Aging Workforce

The Bureau of Workers' Compensation (BWC) BWC has teamed up with the Ohio Department of Aging to create [Steady U](#), a statewide collaborative aimed at preventing slips, trips and falls in older Ohioans. Employees age 45 and up are more likely to fall in the workplace than other workers. Work-related slips, trips and falls often result in workers' compensation claims. In fact, the average BWC claim for lost time related to slips, trips and falls is more than \$31,000.

Ten ways to reduce falls in your workplace: Keep a written housekeeping program; Ensure that floors are clean and dry; Employ proper floor cleaning

procedures; Wear slip-resistant shoes; Block entry into areas with wet floors; Maintain adequate lighting; Encourage employees to take their time and watch where they're going; Maintain a written removal plan for snow and ice; Place additional mats in entrances during inclement weather; Ask employees to use stepstools instead of standing on furniture. More information at [Steady U](#). 10/25/2013

SBA Asks OSHA for Extension on Silica Rule Comment Period

The U.S. Small Business Administration's Office of Advocacy sent a [letter](#) to OSHA requesting a 90-day extension to the comment period for its proposed silica rule, which is currently scheduled to close on December 11. The letter also requests the public hearing date be extended by 90 days. The National Association of Manufacturers requested a similar extension earlier this month.

The proposed rule will be a topic of discussion at the upcoming OMA Safety & Workers' Compensation Committee meeting on [Thursday, November 7](#). Committee meetings are open to all OMA members. 10/22/2013

BWC Board of Directors to Host Public Forum in Toledo

The Ohio Bureau of Workers' Compensation (BWC) Board of Directors will host a public forum Wednesday, October 16 in Toledo for area business owners, medical providers, stakeholders, injured workers and other interested parties.

This is an opportunity for the directors to learn which issues are most important to stakeholders in the Toledo area, and the suggestions they may have for improvement. Here are the [details](#). 10/10/2013

NAM Asks OSHA for Extended Comment Period on Silica Rule

Last week the National Association of Manufacturers (NAM) sent a [letter](#) to the Occupational Safety and Health Administration (OSHA) requesting an additional 90 days to file public comments on the [proposed crystalline silica rule](#), which would cut the permissible exposure limit and require engineering controls to reduce exposures. If no extension is granted, comments are due in early December.

The NAM is working to draft comments and welcomes manufacturers to pass along information about the

impact this rule would have on operations, particularly with regard to economic impact. Contact NAM's [Joe Trauger](#) or [Amanda Wood](#). 10/1/2013

BWC NE Ohio Safety Conference & Expo on October 18

The Bureau of Workers' Compensation (BWC) announces its sixth annual [safety conference](#) for employers and their employees in Northeast Ohio on Friday, October 18 from 8:00 a.m. – 3:30 p.m. at the Trumbull Career & Technical Center in Champion, Ohio.

Thirty-five courses to choose from to help you make your workplaces safer. Earn credit for the Industry Specific Safety Program (ISSP) and other BWC discount programs as well as human resource certification institute credit hours. Networking and vendor fair, too. 10/1/2013

BWC Distributing Final \$81.7 Million in "Billion Back" Rebates

The "Billion Back" checks for employers that participate in the BWC'S group-retrospective rating program are scheduled to mail today, Oct. 4. Those with outstanding BWC balances will have their rebates first applied to satisfying those balances.

The final piece of the BWC's Billion Back plan includes the modernization of BWC's premium collection model toward a prospective-payment system. The prospective plan switch, which begins in early 2015, will result in a \$900 million credit to employers to avoid double billing. The switch will likely also result in rate reductions of two percent for private employers and four percent for public employers. 10/3/2013

OMA Member Awarded BWC Safety Grant

This week, the Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer announced nine [safety intervention grants](#) were awarded to employers in August.

"We have more money available for safety-minded businesses this year, thanks to Governor Kasich's support of increased statewide efforts to promote workplace safety and encourage further investment in protecting Ohio's workers," said Buehrer. "With triple the dollars previously available, expanded eligibility, and a \$3 BWC match for every \$1 an employer contributes, the safety grant program is a common sense solution for employers looking to keep their workers safe and reduce workers' comp costs."

Congratulations to OMA member, Whitacre-Greer Company, Alliance, which was granted \$40,000 to purchase seven air cannons and a compressor to reduce the risk of injury to the upper and lower extremities related to slips, trips and falls, awkward positions and manual material handling. Whitacre-Greer is a century old, family owned manufacturer of clay pavers and fire brick.

You can learn more about BWC grants in this [recorded webinar](#). 9/26/2013

BWC Soon to be Found at New URL

Effective September 25, the Bureau of Workers' Compensation (BWC) uniform resource locator (URL) is changing from [www.ohiobwc.com](#) to [www.bwc.ohio.gov](#). This change is part of a statewide initiative to make state agency web sites and online services more consistent.

BWC online services will remain the same.

The .com address will continue to work after September 25; however you'll be redirected to the new address, and you'll want to bookmark the new address. 9/16/2013

BWC Board to Vote DFSP Benefit Timing Change

The Bureau of Workers' Compensation (BWC) board of directors at its August meeting voted a [rule change](#) in the Drug Free Safety Program (DFSP) to provide an after-the-fact program rebate instead of the current upfront premium discount. Directors will vote a second and final time this month.

Today, a participating employer gets a discount off of their rates when they submit their premium payment. And, an employer that fails to meet DFSP reporting, education, or testing requirements is retroactively removed from the program and is billed additional premium based upon the non-discounted rates.

The BWC Destination: Excellence programs are all designed to offer the employer a rebate based off of premium paid upon successful completion of program requirements. The DFSP is the only program under the Destination: Excellence package which does not offer the premium benefit as a rebate after successful completion of all of the requirements.

Approved changes will be effective July 1, 2014. 9/12/2013

OSHA Proposes New Silica Exposure Rule

Late last month, the Occupational Safety and Health Administration (OSHA) announced a proposal to lower worker exposure to crystalline silica, which is linked to lung cancer, silicosis, chronic obstructive pulmonary disease, and kidney disease. Here's OSHA's [fact sheet](#).

The agency currently enforces 40-year-old permissible exposure limits for crystalline silica. The proposed rule includes a new exposure limit for respirable crystalline silica and details widely used methods for controlling worker exposure, conducting medical surveillance, training workers about silica-related hazards and record keeping measures.

OSHA will accept public comments on the proposed rule for 90 days following publication in the Federal Register, followed by public hearings. OSHA has put up this related [web page](#). 9/3/2013

Considering the BWC Drug-Free Safety Program?

The next enrollment deadline for the Bureau of Workers' Compensation (BWC) Drug-Free Safety Program (DFSP) is October 31.

OMA Connection Partner, [Working Partners®](#), is offering [free webinars](#) in October to help you learn more.

Check our BWC program compatibility [tool](#) to see if your company can qualify for the program discounts. 9/4/2013

BWC Plan Emerging for Switch to Prospective Premium Payment System

This week, the Bureau of Workers' Compensation (BWC) held a meeting for third party administrators (TPAs) to describe staff thinking on how the system will changeover from retrospective premium payments to prospective premium payments.

The August 2014 premium payments (for the 1st half of 2014) will be the last after-the-fact payments. The first prospective payment will be due February 28, 2015, and employers will be paying for the entire 2014/2015 rating year. They will, however, be granted a one-time credit equal to (probably) eight months' premium (2/3 of the annual total).

Here is a [summary](#) of some of the BWC's early considerations documented by Dennis Davis, OMA's Managing Director, Workers' Compensation Services. This is the preliminary proposal

[presentation](#) used by the BWC (PA refers to private employers; PEC refers to public employers).

The OMA will assess the BWC's proposal and submit comments to the BWC. We'll keep members posted as BWC decisions are made and the implementation timeline unfolds, and we'll help members analyze the resulting management decisions. 8/21/2013

Reminder: BWC Premiums Due September 3rd

Ohio private employers have until September 3, 2013 to file payroll reports and submit workers' compensation premiums for the period starting January 1 and ending June 30, 2013.

BWC offers a number of options for reporting payroll and submitting payments. Pay [online](#), in person at any BWC location, or call 1-800-OHIOBWC.

The legislature approved BWC plans to switch to a prospective-payment system in late 2014. We'll keep you posted. 8/15/2013

Get Up to Date on BWC Grants and Programs (video)

If you weren't able to join this week's OMA webinar with Bureau of Workers' Compensation (BWC) staff to learn about enhanced BWC grant opportunities and the BWC's Destination Excellence discount and risk management services, you can watch the recorded webinar at the [OMA Video Library](#). Use your My OMA log in to access this and all previously recorded OMA webinars. 8/8/2013

Thompson Steps In as Interim Workers' Comp Ombuds

Michael Travis, the chief ombudsperson of the workers' compensation ombudsperson system, has resigned. Travis was the subject of an investigation of the state Inspector General. The Inspector General concluded that Travis had committed "wrongful acts and omissions."

At the request of the Industrial Commission Nominating Council (ICNC) (which hires the chief ombudsperson), Bill Thompson, the former chairman of the Industrial Commission and a former legislator from Northwest Ohio, stepped in as the interim ombudsperson. Thompson is highly regarded as a man of experience and integrity.

The ombuds office assists employees and employers with problems experienced with the Ohio workers' compensation system. A search committee has been

charged with finding a permanent chief ombudsperson. OMA's president, Eric Burkland, is the chairman of the ICNC. 8/8/2013

OMA Member Discounts on Drug-free Services from Working Partners^(R)

As an OMA member you qualify for discounts on products and services to support your drug-free workplace program from Working Partners®, a full-service drug-free workplace consultation and training firm.

These products and services meet the requirements of the BWC'S Drug-Free Safety Program and the U.S. Department of Transportation and help you manage your drug-free program (even if you are not in the BWC discount program).

Accessing your 15-23% discount off all products and services is easy. Visit the Working Partners® website through this exclusive [OMA portal](#) to automatically get OMA discounts. Questions? Contact Working Partners' [Scott Camp](#). 8/1/2013

BWC Hires Investigations Leader

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer [announced](#) the selection of Rick Gregory as Director of BWC's Special Investigations Department (SID).

As Director of SID, Gregory will oversee 123 employees who work to deter, detect, investigate and prosecute workers' compensation fraud. The department pursues cases of claimant, medical provider and employer fraud by identifying savings, recovering dollars, disallowing claims, and pursuing prosecutions. 7/30/2013

BWC Files Brief in Appeal of *San Allen*

The Ohio Bureau of Workers' Compensation (BWC) [filed the opening brief](#) in its appeal of the Cuyahoga County Court of Common Pleas' decision in *San Allen, Inc. et al vs. Stephen Buehrer, Administrator, BWC*.

Here are issues the BWC cites with respect to the class action:

- More than half of the 300,000 class members do not have an active workers' compensation policy, leaving an open question as to what will be done with their share of the monies.
- Approximately 47,000 members of the class would receive less than \$5 if the original decision stands.
- Half of all class members would receive less than

\$200.

- 44 percent of money would go to 1 percent of the class members.
- While it is impossible to tell because no mention of fees has been made, it's likely that the largest recipient of money, by tens of millions of dollars, would be the plaintiffs' attorneys. 7/23/2013

BWC to Set New Criteria for Self-Insurance for Employers with Fewer than 500 Employees

The OMA was successful with an [amendment](#) to the state budget that will establish new criteria for companies to meet to become eligible for workers' compensation self-insurance.

Under the amendment, the bill requires the Administrator of the Bureau of Workers' Compensation to adopt rules to establish criteria that an employer must meet to have the Administrator waive the requirement that the employer have 500 employees. Currently, the Administrator can waive that requirement, but clear criteria for waiver don't exist. This makes for uncertainty, both for employers and for the bureau.

By establishing rule criteria, self-insurance would be potentially available and beneficial to larger, financially strong employers that are sophisticated in risk management practices, but that have fewer than 500 employees. This modification recognizes the realities of modern manufacturing, in which innovation- and technology-driven productivity gains have reduced requisite numbers of employees.

Contact [Rob Brundrett](#) to see if your company might save money under self-insurance. 6/27/2013

BWC Gives Details about "\$1 Billion Back" Checks

Rebate checks start to be processed this week.

To help state fund employers anticipate when they will receive their rebate check, and to know for certain that the check is their rebate, the Bureau of Workers' Compensation released [these facts](#) and this [insert](#) which will accompany all rebate checks. 6/25/2013

Another Intentional Tort Test of Equipment Safety Guards

OMA Connections Partner, Roetzel, [tells](#) us about a recent Sixth District Court of Appeals case, *Pixley v. Pro-Pak Indus., Inc.* that flies in the face of the Ohio Supreme Court's recent ruling that restricts employers' liability for intentional tort claims.

The Sixth District ignored the language of the high court's *Hewitt* opinion, which defined an equipment safety guard as "a device designed to shield the employee from exposure to or injury by a dangerous aspect of the equipment" and rewrote a definition of an equipment safety guard.

The Supreme Court has not yet decided whether it will review *Pixley v. Pro-Pak Indus., Inc.* According to Roetzel, if the Court decides to hear the case, it will almost certainly reverse. We'll keep you posted. 6/14/2013

Psych Claim Must Attach to Physical Injury

Writes Justice Judith French in a [ruling](#) this week in the case of *Armstrong v. John R. Jurgensen Co.*: "In this appeal, we consider whether, for a mental condition to be compensable under the Ohio workers' compensation system, a compensable physical injury sustained by the claimant must cause the mental condition. We hold that it must."

In the case, appellant Shaun Armstrong, a dump truck driver, was rear-ended in a terrible accident. He suffered physical injuries and post-traumatic stress disorder (PTSD).

The court majority found: "Armstrong undisputedly suffered compensable physical injuries as a result of the accident, and his PTSD undisputedly arose contemporaneously as a result of the accident. For Armstrong's PTSD to qualify as a compensable injury under R.C. 4123.01(C)(1), however, more is required; he must establish that his PTSD was causally related to his compensable physical injuries and not simply to his involvement in the accident."

Justices Pfeiffer and O'Neill dissented from the ruling that upheld the trial court finding that "physical injuries did not cause his PTSD and that Armstrong's PTSD is, therefore, not a compensable injury." 6/5/2013

BWC Administrator Writes on Rebates

Read a [note](#) from Bureau of Workers' Compensation (BWC) Administrator Steve Buehrer about the plan recently approved by the BWC board to return \$1 billion in rebates to the states' employers. And, about his proposal to the legislature to approve a prospective, rather than the current retrospective, billing system; if approved by the legislature, the BWC will finance the switch with another \$900 million from excess reserves, thus preventing the need for double premium billing. 6/4/2013

Check's in the Mail (Soon)

The Bureau of Workers' Compensation (BWC) reminds employers to make sure their mailing address is up-to-date with the agency as premium rebate checks are expected to be mailed late June or early July.

You can check your company's information on the BWC [website](#). Login with your BWC user name and password. 06/05/2012

Big Day for Ohio Business, Indeed

This week, the Bureau of Workers' Compensation (BWC) board of directors [voted to approve](#) a package of good news items for Ohio's state fund employers and public employer taxing districts. The agency will return \$1 billion to 210,000 Ohio employers, reduce private employers' average base rates by 2.1 percent for the policy year beginning July 1, 2013, and expand its Safety Grant program from \$5 million to \$15 million.

The cash rebate is made possible by larger-than-expected fund balances at BWC generated by strong investment management.

Legislation has also been introduced which would enable a prospective premium-payment system in Ohio. If passed, the BWC board is expected to issue an additional \$900 million premium credit to mitigate transition costs. This switch would result in additional rate reductions of 2 percent for private employers and 4 percent for public employers. 5/30/2013

Senate Provides Clarity on Workers' Compensation Self-Insurance Qualification

This week the Senate added an OMA-backed [amendment](#) to the state budget bill ([House Bill 59](#)) that would provide clarity for a workers' compensation self-insurance option for financially strong companies with fewer than 500 employees.

Ohio is currently the only state in the Midwest region and among larger states with which it competes that uses number of employees as a criterion for self-insured workers' compensation status.

While the Bureau of Workers' Compensation (BWC) has the ability it to waive that requirement today, there has been a lack of clarity about how the waiver is applied.

The Senate amendment would enjoin the BWC to waive the 500-employee requirement for any company that otherwise meets BWC self-insurance

criteria. If the legislation passes, implementing rules would need to be written by the BWC.

OMA's Director, Public Policy Services, Rob Brundrett, said, "The OMA has pushed hard for this measure as it would benefit member companies that fall just short of the 500 employee mark. In modern manufacturing, there are many financially strong companies with fewer than 500 employees." Contact [Rob](#) to help get this pushed through the General Assembly and learn how OMA can help your company become self-insured. 5/30/2013

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on November 5, 2013

- HB33** **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2013, and ending June 30, 2015, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 3/26/2013 - **SIGNED BY GOVERNOR**; Eff. 3/26/2013
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_33
- HB34** **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2013, and ending June 30, 2015, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 3/26/2013 - **SIGNED BY GOVERNOR**; Eff. 3/26/2013
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_34
- HB59** **BIENNIAL BUDGET** (AMSTUTZ R) To make operating appropriations for the biennium beginning July 1, 2013, and ending June 30, 2015; to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2013 - **SIGNED BY GOVERNOR**; Eff. 6/30/2013; Some Eff. 9/29/2013; Others Various Dates
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_59
- HB143** **WORKERS' COMPENSATION** (DEVITIS A, BUTLER, JR. J) To require the Administrator of Workers' Compensation to include in the notice of premium rate that is applicable to an employer for an upcoming policy year the mathematical equation used by the Administrator to determine the employer's premium rate.
Current Status: 5/14/2013 - House Insurance, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_143
- SB176** **ILLEGAL ALIENS-WORKERS' COMPENSATION** (SEITZ B) To prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law.
Current Status: 11/6/2013 - Senate Commerce and Labor, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_176