

**10:00 a.m. (EST)**

**1-866-362-9768**

**552-970-8972#**



# **Safety & Workers' Compensation Committee**

**Wednesday October 2, 2019**

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**2019 Safety & Workers' Compensation Committee Calendar**

**Meetings begin at 10:00 a.m.  
2020 Meeting Dates Coming Soon!**

**OMA Safety & Workers' Compensation Committee  
Meeting Sponsor:**





## **OMA Safety & Workers' Compensation Committee**

**October 2, 2019**

### **AGENDA**

<b>Welcome &amp; Self-Introductions</b>	Larry Holmes, Fort Recovery Industries Inc.
<b>BWC Update</b>	Brian Jackson, OMA Staff
<b>Safety Update</b>	Dianne Grote Adams, Safex
<b>Guest Speaker</b>	Dave Sievert, Interim Director, Self-Insured, Ohio BWC
<b>Guest Speaker</b>	Karen Gillmor, PhD, Commissioner, Ohio Industrial Commission
<b>Public Policy Report</b>	Rob Brundrett, OMA Staff
<b>OMA Counsel's Report</b>	Sue Roudebush, Bricker & Eckler LLP

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: [dlocke@ohiomfg.com](mailto: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:**



## Dave Sievert Interim Director—Self Insured Department

Dave is currently the Interim Director of BWC's Self-Insured Department and has been with BWC for six and a half years, also serving as the SI Auditing Supervisor. He is responsible for overseeing all aspects of self-insurance including new applications, renewals, securitization and employer's compliance through the Self-Insured Complaint and Audit process. Previously, Dave worked at national and local third-party administrators with responsibilities including claims adjusting, IC hearings, supervision, claims operations management, account management and quality control. Earned Associate in Risk Management and Enterprise Risk Management designations. Dave served as an Infantry Officer in the US Army prior to entering the worker's compensation world.



**Karen L. Gillmor, Ph.D.**

**Public Member**

**Dates of Service: July 2017 - June 2023**

With over three decades of dedicated public service, Karen brings a tremendous knowledge of workers' compensation issues to the Industrial Commission of Ohio. A native of Ohio, she earned her diploma from Rocky River High School before earning a bachelor's degree with honors from Michigan State University and a master's degree and Ph.D. from The Ohio State University.

Her career shows a passionate interest in the fields of health care, labor relations and workers' compensation.

From 1983 to 1986, Karen served as Chief of Management Planning and Research at the Industrial Commission of Ohio. In this position, she authored a study of self-insurance, which was incorporated into Ohio's omnibus workers' compensation reform law. She also served as the employee representative to the Industrial Commission of Ohio's Regional Board of Review and the Ohio Bureau of Workers' Compensation Oversight Commission. Karen was first appointed to the IC by Governor John Kasich in July 2011 and was appointed to a second term in July 2017.

Before coming to the IC, Karen was elected to Ohio's 26th Senate District seat in 1992, 1996 and 2008. She chaired the Senate Insurance, Commerce and Labor Committee, was a member of the Unemployment Compensation Advisory Committee, and the Labor-Management-Government Committee. She served as vice chair of the State Employment Relations Board from 1997 to 2007 and was a consultant to the United States Secretary of Labor. Nationally, Karen served on the Health Committee of the American Legislative Exchange Council, as well as on the Health and Human Services Committee of the Council of State Governments' Midwestern Region.

Karen was married to United States Congressman Paul Gillmor, who tragically passed away in 2007. They have five children, Linda, Julie, Paul Michael and twins Connor and Adam.



## What's New?

### **Respirator Fit Testing Revision**

<https://www.osha.gov/news/newsreleases/trade/09252019>

Two shortened protocols for the TSI Portacount were approved. The specific exercises were reduced for dust masks as well as half and full-face respirators. Some industrial hygienists have concern for using these protocols for first time fit tests.

### The Top 10 Cited OSHA Standards for FY 2019

1. Fall Protection - General Requirements (6,010 violations) -9<sup>th</sup> year in a row
2. Hazard Communication (3,671 violations)
3. Scaffolding (2,813 violations)
4. Lockout/Tagout (2,606 violations)
5. Respiratory Protection (2,450 violations)
6. Ladders (2,345 violations)
7. Powered Industrial Trucks (2,093 violations)
8. Fall Protection - Training Requirements (1,773 violations)
9. Machine Guarding (1,743 violations)
10. Eye & Face Protection (1,411 violations) – new to list in 2018

## Keeping UP

Quick takes <https://www.osha.gov/quicktakes/>



A circular graphic with a dark blue gradient background. In the center, the words "TIP OF THE WEEK" are written in white, with "TIP" on top and "OF THE WEEK" stacked below it. The letters are bold and sans-serif.

Schedule an on-site consultation for help finding and fixing hazards.

[Subscribe](#)      [More Tips](#)

[www.safex.us](http://www.safex.us)

614.890.0800

info@safex.us

**TO:** OMA Safety and Workers' Compensation Committee  
**FROM:** Rob Brundrett  
**RE:** Safety and Workers' Compensation Report  
**DATE:** October 2, 2019

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### **Overview**

Eight months into the new Administration and the BWC has already passed a 20% private employer rate cut starting this summer and announced \$1.5 billion back to employers.

The BWC budget became a political football and its passage was delayed until well after the June 30 deadline.

### **Legislation and Rules**

#### **House Bill 79 – Industrial Commission Budget**

The often non-controversial Industrial Commission budget was the only budget to be passed and signed by the June 30<sup>th</sup> deadline. The bill due to its non controversial nature was signed by the Governor on June 27<sup>th</sup>, and contained only IC appropriations.

#### **House Bill 80 – Bureau of Workers' Compensation Budget**

Administrator McCloud provided her initial testimony on the BWC budget to the House Insurance Committee in February. The budget bill included a 7% increase in funding due to the extra pay period in 2019. The Insurance Committee passed the bill out of committee with no changes. The bill was rereferred to the Finance Committee for more debate since it contains appropriations.

The House Finance Committee provided a substitute version which was accepted. Included in that version was PTSD coverage for first responders. The business community has long opposed the so-called mental/mental provision because it challenges the longstanding precedent that physical injuries are required to receive workers' compensation. Also included was severe employee misclassification penalties and settlement changes. The OMA opposed the House revisions.

The Senate removed all the House added policy changes to the bill. The two chambers eventually agreed to changes and accepted a bill that did not include the policy changes.

Both the House and Senate have publicly stated they would like to approve PTSD in the fall. The OMA and other business groups have shopped a proposal that would provide benefits outside of the BWC system.

#### **House Bill 308 – PTSD First Responders**

The bill would provide workers' compensation and disability retirement for peace officers, firefighters, and emergency medical workers diagnosed with posttraumatic stress disorder arising from employment without an accompanying physical injury.

### **BWC Agency Notes**

#### **Yet Another Billion Back**

This summer the BWC announced another billion back at OMA member Dynalab. The money is Ohio's fifth investment return to private and public employers of at least \$1 billion since 2013 and sixth overall during that time. Manufacturers can start expecting checks at any time.

### Jim Hughes to Chair Ohio's Industrial Commission

Gov. Mike DeWine appointed Jim Hughes of Upper Arlington (Franklin Co.) to the Industrial Commission of Ohio, which adjudicates workers' compensation disputes. Hughes' term begins July 1, 2019 and will end June 30, 2025. He will serve as chair of the commission when his term commences.

A Republican, Hughes was a member of the Ohio State Senate from 2008 to 2016, as well as a member of the Ohio House from 2000 to 2008. He has worked an assistant prosecutor for Franklin County.

### BWC Rebranding?

Administrator McCloud sent a letter to stakeholders asking for Ohio BWC rebranding suggestions and opinions.

### BWC Board Approves Largest Private Employer Rate Decrease in 60 Years

Earlier this year the Ohio Bureau of Workers' Compensation (BWC) Board of Directors approved a 20% reduction in the average premium rate it charges private employers, which is the largest rate cut in nearly 60 years.

Fewer workplace injuries and falling estimates of future medical costs are driving the recommendation.

The rate reduction is effective July 1 and is projected to save private employers \$244 million over premiums for fiscal year 2019.

Premiums paid to BWC not only cover health care and wages for injured workers, they support BWC's Safety & Hygiene Division, which offers grants, training, consultations and other services to help employers improve workplace safety.

The 20% rate cut represents an average statewide change. The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history and their participation in various BWC rebate programs.

### BWC Board Releases MCO Study

The board of directors recently heard a presentation on a second phase of a study of managed care organization (MCO) performance in the Ohio system.

Unlike 20 years ago when Governor Voinovich called the Ohio workers' compensation system the "silent killer of jobs," the Ohio system today is a national leader on any number of metrics, including medical.

However, that success comes at a cost. The study indicates that MCOs are paid 27% of total medical costs; meanwhile, benchmarks in from other programs are 15% of total costs for administrative costs.

That suggests a possible overpayment of \$70 to \$80 million for MCO services. Those costs, of course, are born by employers.

The BWC has established work groups to study this matter in detail.

**Safety Issues**

N / A

# Legislative Budget Office of the Legislative Service Commission

## BWC & OIC Budgets in Brief

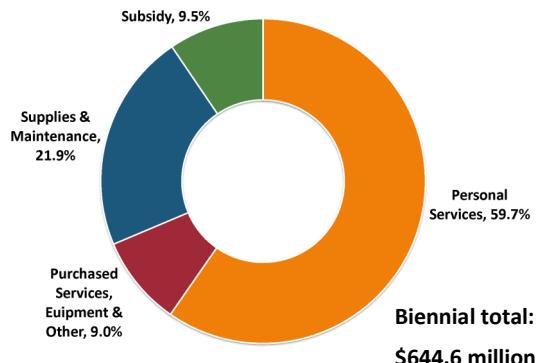
### House Bills 79 & 80 – As Enacted

[www.lsc.ohio.gov/Budget Central](http://www.lsc.ohio.gov/Budget Central)

- ◊ R.C. 101.532 requires the Bureau of Worker's Compensation (BWC) and the Ohio Industrial Commission (OIC) each have its own budget bill, separate from the main operating budget bill.
- ◊ BWC and OIC budgets receive no GRF funding. They are primarily funded by administrative assessments charged to employers. A small portion of the BWC budget is supported by federal grants.
- ◊ BWC administers the largest *exclusive workers' compensation system* in the country. Under such a system, the state, not private insurers, provides workers' compensation insurance to all public and private employers except for those that qualify for self-insurance.
  - \* Insuring approximately 240,600 Ohio employers, BWC policies cover about 60% of the state's workforce.
  - \* The bulk of medical and lost-time benefits paid to injured workers are made from the State Insurance Fund, a trust fund that is not subject to appropriations by the General Assembly.
  - \* BWC is governed by an 11-member Board of Directors who are appointed by the Governor.
- ◊ OIC hears appeals of workers' compensation claim decisions made by BWC and self-insured employers.
  - \* OIC is governed by a panel of three commissioners who are appointed by the Governor.

#### BWC Budget by Expense Category

FY 2020-FY 2021 Biennium



- ◊ As of May 2019, BWC employed 1,722 full-time permanent staffers. Personal services or payroll comprises the largest share of its budget, accounting for 59.7% of the FY 2020-FY 2021 biennial budget.

- ◊ In FY 2018, BWC paid \$1.46 billion in total benefits, consisting of \$0.53 billion in medical and \$0.94 billion in lost time benefits.
- ◊ At the end of FY 2018, BWC had about 672,000 pending claims, including about 85,000 claims that were filed in that year.

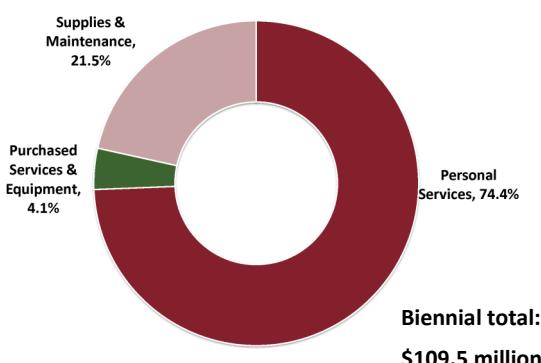
**Workplace health and safety grant (subsidy) funding totals**  
**\$28.1 million in FY 2020 and \$33.1 million in FY 2021, including the following:**

- ◊ Substance Use Recovery and Workplace Safety Program (ALI 855618): Funding for this grant program is increased from \$2.5 million in FY 2019 to \$5.0 million in FY 2020 and \$10.0 million in FY 2021.
- ◊ Safety Grants (ALI 855610): This appropriation item is flat funded at \$20.0 million per year.

**BWC's 30-day interim budget (S.B. 172) was superseded by H.B. 80 on July 22 when the Governor signed that bill into law.**

#### OIC Budget by Expense Category

FY 2020-FY 2021 Biennium



- ◊ As of May 2019, OIC employed 332 full-time permanent staffers. Personal services or payroll is the largest area of its budget, accounting for 74.4% of the FY 2020-FY 2021 biennial budget.

- ◊ OIC operates five regional and seven district offices across the state to adjudicate disputed claims through three levels of hearings: district hearing officers, staff hearing officers, and the Commission.
- ◊ In FY 2018, OIC heard 112,250 claim appeals, of which 79,055 were heard by district hearing officers (first level), 32,936 by staff hearing officers (second level), and 259 by the Commission. The majority of appeal claims were filed through the Industrial Commission Online Network (ICON).

- ◊ In FY 2018, on average, it took 38 days for a first-level hearing to occur and 35 days for a second-level hearing to occur while the statutory requirement is 45 days to adjudicate the first- and second-level appeals.

**Legislative Budget Office of the Legislative Service Commission**  
**BWC & OIC Budgets in Brief**  
**House Bills 79 & 80 – As Enacted**  
[www.lsc.ohio.gov/Budget Central](http://www.lsc.ohio.gov/Budget Central)

Fund	ALI	ALI Title	FY 2018 Actual	FY 2019 Estimate	FY 2020 As Enacted	FY 2021 As Enacted
<b>H.B. 80, As Enacted - BWC budget</b>						
<b>Dedicated Purpose Fund Group</b>						
7023	855407	Claims, Risk and Medical Management	\$107,957,594	\$119,353,057	\$120,939,816	\$124,329,031
7023	855408	Fraud Prevention	\$12,802,628	\$12,945,330	\$14,095,916	\$14,231,413
7023	855409	Administrative Services	\$104,133,380	\$110,241,072	\$117,250,236	\$116,025,396
7023	855410	Attorney General Payments	\$4,621,850	\$4,621,850	\$4,621,850	\$4,621,850
8220	855606	Coal Workers' Fund	\$150,931	\$162,931	\$186,632	\$188,487
8230	855608	Marine Industry	\$48,396	\$65,140	\$78,188	\$78,698
8250	855605	Disabled Workers Relief Fund	\$49,097	\$174,332	\$193,419	\$195,709
8260	855609	Safety and Hygiene Operating	\$21,080,114	\$22,317,031	\$24,079,350	\$23,745,661
8260	855610	Safety Grants	\$9,127,504	\$20,000,000	\$20,000,000	\$20,000,000
8260	855611	Health and Safety Initiative	\$1,245,189	\$6,000,000	\$6,000,000	\$6,000,000
8260	855612	Safety Campaign	\$843,000	\$1,624,355	\$1,500,000	\$1,500,000
8260	855613	Research Grants	\$0	\$2,000,000	\$2,000,000	\$2,000,000
8260	855618	Substance Use Recovery and Workplace Safety Program	\$0	\$2,500,000	\$5,000,000	\$10,000,000
8260	855619	Safety and Health Center of Excellence	\$0	\$0	\$2,000,000	0
<b>Dedicated Purpose Fund Group subtotal</b>			<b>\$262,059,683</b>	<b>\$302,005,098</b>	<b>\$317,945,407</b>	<b>\$322,916,245</b>
<b>% change</b>			--	<b>15.2%</b>	<b>5.3%</b>	<b>1.6%</b>
<b>Federal Fund Group</b>						
3490	855601	OSHA Enforcement	\$1,630,654	\$1,676,000	\$1,676,000	\$1,676,000
3FW0	855614	BLS SOII Grant	\$132,393	\$195,104	\$195,104	\$195,104
3FW0	855615	NIOSH Grant	\$150,347	\$200,000	\$24,995	\$0
<b>Federal Fund Group sub-total</b>			<b>\$1,913,394</b>	<b>\$2,071,104</b>	<b>\$1,896,099</b>	<b>\$1,871,104</b>
<b>% change</b>			--	<b>8.2%</b>	<b>-8.4%</b>	<b>-1.3%</b>
<b>BWC all-funds budget total</b>			<b>\$263,973,077</b>	<b>\$304,076,202</b>	<b>\$319,841,506</b>	<b>\$324,787,349</b>
<b>% change</b>			--	<b>15.2%</b>	<b>5.2%</b>	<b>1.5%</b>
<b>H.B. 79, As Enacted - OIC budget</b>						
<b>Dedicated Purpose Fund Group</b>						
5W30	845321	Operating Expenses	\$41,276,260	\$47,223,650	\$49,697,274	\$49,885,128
5W30	845402	Rent - William Green Building	\$1,017,838	\$1,150,000	\$1,150,000	\$1,150,000
5W30	845410	Attorney General Payments	\$3,793,650	\$3,793,650	\$3,793,650	\$3,793,650
<b>OIC budget total</b>			<b>\$46,087,747</b>	<b>\$52,167,300</b>	<b>\$54,640,924</b>	<b>\$54,828,778</b>
<b>% change</b>			--	<b>13.2%</b>	<b>4.7%</b>	<b>0.3%</b>
<b>H.B. 79 &amp; H.B. 80, As Enacted</b>						
<b>BWC &amp; OIC budget grand total</b>			<b>\$310,060,824</b>	<b>\$356,243,502</b>	<b>\$374,482,430</b>	<b>\$379,616,127</b>
<b>% change</b>			--	<b>14.9%</b>	<b>5.1%</b>	<b>1.4%</b>



**BEFORE THE FINANCE COMMITTEE  
OF THE OHIO HOUSE OF REPRESENTATIVES  
REPRESENTATIVE SCOTT OELSLAGER, CHAIRMAN**

**TESTIMONY  
OF  
ROB BRUNDRETT  
DIRECTOR, PUBLIC POLICY SERVICES  
THE OHIO MANUFACTURERS' ASSOCIATION**

**JUNE 4, 2019**

Mr. Chairman and members of the Committee, my name is Rob Brundrett. I am the Director of Public Policy Services for The Ohio Manufacturers' Association (OMA). Thank you for the opportunity to provide testimony today on House Bill 80. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Manufacturing is the largest of the Ohio's primary 20 industry sectors and contributes more than \$108 billion annually in GDP, according to the most recent federal data. This comprises nearly 18% of the state's economic output. More than 700,000 Ohioans work in manufacturing. In 2017, Ohio manufacturing employees earned, on average, more than \$74,000 in compensation, according to newly released figures.

Throughout the years, the OMA has consistently advocated for an efficient and effective workers' compensation system that benefits workers, employers, and the economy of the state.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of such physical injuries/illnesses. The OMA has a history of opposing proposals that would permit PTSD compensation in cases in which there is no associated physical injury or illness. The adoption of a mental-only diagnosis would mark a significant change to the Ohio workers' compensation system.

Additionally, we are concerned about the potential expansion of workers' compensation beyond this provision's narrow target of first responders. We recognize that peace officers, firefighters, and emergency medical workers experience traumatic events. However, they are not alone in their willingness to undertake dangerous and essential jobs for the good of us all. If we erode the physical injury requirement for peace officers, firefighters, and emergency medical workers, it may be difficult to justify not doing the same for other professionals who seek equal treatment.

Once a fundamental parameter of the workers' compensation system – like the physical injury requirement – is compromised, the potential inroads into the program are endless. The result will be increased workers' compensation costs for public and private employers alike. The implications of those cost increases will be felt across the board and will impact Ohio's business climate. The increased costs could also affect our public employers' abilities to provide essential public safety functions.

In addition, given that mental health benefits have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about

where PTSD arising apart from a workplace physical injury/illness is most effectively and appropriately financed – private health insurance, a special workers' compensation insurance PTSD fund outside of the current system, or a completely different model.

The bill also contains several changes restricting an employer's right to negotiate settlement terms. Settlements have proven to be useful tools in the workers' compensation system. Infringing on the rights of the employer to negotiate settlement terms will have the unintended effect of eliminating the entire process. The purpose of settlement is to fully resolve an issue for all parties. Limiting an employer's ability to negotiate a settlement will only create more work, uncertainty and cost in the system.

Finally, the bill proposes creating an entirely new section of the Ohio Revised Code directing the superintendent of industrial compliance to establish the definition of employee and independent contractor for purposes of not only workers' compensation, but also unemployment and tax purposes. While unemployment and tax are certainly outside the scope of a workers' compensation bill, the proposed language unnecessarily creates an additional hearing process for employees to contest misclassifications before a tribunal that historically does not have the experience across these industries. If the superintendent finds a misclassification has occurred, its decision is not only binding on other administrative agencies, the superintendent "shall" assess a \$500 per day penalty on employers – even in the case of an honest mistake.

Thank you for the opportunity to testify. I am joined by OMA workers' compensation counsel Sue Roudebush, we would be happy to answer any questions from the committee.



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 80  
133<sup>rd</sup> General Assembly

## Bill Analysis

[Click here for H.B. 80's Fiscal Analysis](#)

**Version:** As Passed by the House

**Primary Sponsor:** Rep. Oelslager

Kelly Bomba

## SUMMARY

### BUREAU OF WORKERS' COMPENSATION

#### Coverage and eligibility

##### Coverage for post-traumatic stress disorder

- Makes a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the person suffers an accompanying physical injury.

##### Voluntary abandonment doctrine

- Provides that, to be eligible to receive temporary total disability (TTD) compensation, a person must be unable to work or must suffer a wage loss as the direct result of a disability arising from an injury or occupational disease.
- Prohibits a person from receiving TTD compensation when the person is not working or has suffered a wage loss as the direct result of reasons unrelated to a disability arising from an injury or occupational disease.
- States that the General Assembly intends to supersede any previous judicial decision that applied the voluntary abandonment doctrine.
- Prohibits a person from receiving permanent total disability (PTD) compensation when the person is not working for reasons unrelated to a disability arising from an injury or occupational disease.
- Applies the rule to claims pending on the provision's effective date and to claims arising after that date.

## **Post-exposure testing for detention facility employees**

- Requires, under specified conditions, the Administrator of Worker's Compensation or a self-insuring employer to pay for services used to determine whether a detention facility employee sustained an injury or occupational disease after exposure to another person's blood or bodily fluids.

## **Compensation and benefits**

### **Temporary total disability compensation**

- Requires, unless otherwise provided in a collective bargaining agreement, an employer to either pay an employee or reinstate the employee's sick leave when the employee's temporary total disability compensation is offset by an amount paid to the employee for accrued sick leave.

### **Funeral expenses**

- Increases the funeral expense benefit cap from \$5,500 to \$7,500.

## **Claimant's immigration status and authorization to work**

- Requires, on the form used to initiate a workers' compensation claim, the Administrator to request information about an employee's and, when applicable, a dependent's immigration status and authorization to lawfully work or reside in the United States.
- Prohibits a person who provides false information regarding immigration status or work authorization from receiving compensation and benefits under the Workers' Compensation Law and subjects the person to criminal prosecution for workers' compensation fraud.

## **Continuing jurisdiction over workers' compensation claims**

- Makes the rendering of medical services, rather than payment for the services as under current law, an event that continues the Industrial Commission's jurisdiction to modify or change a claim or to make a finding or award under a claim.

## **Final settlement agreements**

- Prohibits an employer from refusing or withdrawing from a proposed claim settlement agreement if the claim is no longer in an employer's industrial accident or occupational disease experience for premium calculation purposes.

## **Additional award for specific safety violation**

- Requires, for claims arising on or after the provision's effective date, a claim for an additional award of compensation for a violation of a specific safety rule to be filed within one year after the injury, death, or diagnosis of disability due to occupational disease, rather than within two years as under current administrative rule.

## Appealing Industrial Commission orders

- Applies to claims pending on and arising after September 29, 2017, a provision in Sub. H.B. 27 of the 132<sup>nd</sup> General Assembly extending the time to appeal an Industrial Commission order from 60 days to 150 days when certain conditions are satisfied.

## Coal-Workers Pneumoconiosis Fund transfer

- Authorizes the Director of Natural Resources to annually request the Administrator to transfer a portion of the net position of the Coal-Workers Pneumoconiosis Fund to the Mining Regulation and Safety Fund created in the Coal Surface Mining Law.
- Requires the Administrator, on receiving a request from the Director, to transfer not more than \$1 million by July 1 or as soon as possible thereafter.
- Requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, to adopt rules governing the transfer to ensure the solvency of the Coal-Workers Pneumoconiosis Fund.

## DEPARTMENT OF COMMERCE

### Employee misclassification

- Requires the Superintendent of Industrial Compliance to establish a test, consistent with the test used by the U.S. Internal Revenue Service, to determine whether an individual is an employee or an independent contractor under the Workers' Compensation Law, the Unemployment Compensation Law, and the Ohio Income Tax Law.
- Prohibits an employer from classifying an individual as an independent contractor for purposes of the laws listed above when the individual is an employee under the Superintendent's test and the applicable law does not contain an exception.
- Permits an individual to file a complaint with the Superintendent against an employer when the individual reasonably believes that the employer has misclassified the individual.
- Requires the Superintendent to investigate a misclassification complaint and hold an administrative hearing to resolve a complaint supported by reasonable evidence.
- Requires the Superintendent to take specific actions, including assessing a civil penalty, when the Superintendent determines, after a hearing, that an employer misclassified an employee.
- Prohibits the Superintendent from assessing a penalty against an employer when the employer voluntarily reclassifies a misclassified employee ten days before the Superintendent holds a hearing.
- Allows an employer to appeal the Superintendent's determination to a court of common pleas in accordance with the Administrative Procedure Act.

- Requires the Superintendent, regardless of the determination, to notify the appropriate child support enforcement agency of an individual who is receiving income.
- Creates the Employee Classification Fund in the state treasury and requires the Superintendent to deposit collected penalties into the fund to pay expenses the Superintendent incurs in carrying out the Superintendent's duties.

## OTHER AGENCIES

### Employee medical examinations

- Prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act from generally requiring an applicant or employee to pay for medical examinations that are required as a condition of employment or continued employment.

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## **DETAILED ANALYSIS**

### **BUREAU OF WORKERS' COMPENSATION**

#### **Coverage and eligibility**

##### **Coverage for post-traumatic stress disorder**

(R.C. 4123.01, 4123.026, and 4123.46; Section 8)

Under the bill, a peace officer, an emergency medical worker, or a firefighter who is diagnosed with post-traumatic stress disorder (PTSD), received in the course of and arising out of the person's employment as a peace officer, firefighter, or emergency medical worker, is eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the PTSD is connected to a compensable physical injury. Currently, an employee is not eligible to receive any compensation or benefits under Ohio Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.

Under continuing law, "peace officer" means all of the following:

- A sheriff or deputy sheriff;
- A marshal or deputy marshal;
- A member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio;
- A member of a police force employed by a metropolitan housing authority;
- A member of a police force employed by a regional transit authority;
- A state university law enforcement officer;
- An enforcement agent of the Department of Public Safety;

- An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
- An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest-fire investigator, a natural resources officer, or a wildlife officer;
- A person designated to perform law enforcement duties in a park district or conservancy district or by a park commission;
- A veterans' home police officer;
- A special police officer employed by a port authority;
- A township police constable;
- A police officer of a township or joint police district;
- A special police officer employed by a municipal corporation at a municipal airport or certain other municipal air navigation facilities;
- The House of Representatives Sergeant at Arms, if the person has arrest authority, or an assistant House of Representatives Sergeant at Arms;
- The Senate Sergeant at Arms or an assistant Senate Sergeant at Arms;
- Certain Bureau of Criminal Identification and Investigation employees or officers;
- A state fire marshal law enforcement officer;
- The Superintendent and troopers of the State Highway Patrol, for specified purposes.

Continuing law defines “emergency medical worker” as any of the following persons, whether the person is paid or a volunteer, so long as the person is certified under Ohio law:

- A first responder;
- An emergency medical technician-basic;
- An emergency medical technician-intermediate;
- An emergency medical technician-paramedic.

## **Voluntary abandonment doctrine**

(R.C. 4123.56 and 4123.58; Section 8)

### **TTD compensation**

The bill provides, for all claims pending on or arising after the provision’s effective date, that an employee who is unable to work or suffers a wage loss as the direct result of a disability arising from an injury or occupational disease is entitled to receive temporary total disability (TTD) compensation, provided the employee is otherwise qualified. If the employee is not working or has suffered a wage loss as the direct result of reasons unrelated to a disability

arising from an injury or occupational disease, the employee is not eligible to receive TTD compensation.

The bill states that the General Assembly intends to supersede any previous court opinion that applied the doctrine of voluntary abandonment to a TTD claim. Under the doctrine, to be eligible for TTD compensation, a claimant must be medically incapable of returning to the claimant's former position and the claimant's injury or occupational disease must be the cause of the claimant's lost earnings.<sup>1</sup>

### **PTD compensation**

The bill prohibits a person from receiving permanent total disability (PTD) compensation when the person is not working for reasons unrelated to an allowed injury or occupational disease. Current law prohibits a person from receiving PTD compensation when the person voluntarily abandons the workforce for reasons unrelated to an allowed injury or occupational disease. Under continuing law a person also may not receive PTD compensation if the person is unable to engage in sustained remunerative employment for one, or any combination, of the following reasons:

- Retirement unrelated to an allowed injury or occupational disease;
- The person's impairments are not the result of an allowed injury or occupational disease;
- Solely due to the person's age or aging;
- The person has not engaged in educational or rehabilitative efforts to enhance the person's employability, unless such efforts are determined to be in vain.

### **Post-exposure testing for detention facility employees**

(R.C. 4123.026; Section 8)

The bill expands the current post-exposure testing law, which covers diagnostic testing for specified safety officers under certain conditions, to include detention facility employees. Under the bill, the Administrator of Workers' Compensation, or a detention facility that is a self-insuring employer (an employer authorized to directly pay compensation and benefits in a claim), must pay for post-exposure medical diagnostic services to investigate whether a person employed by a detention facility, including a corrections officer, sustained an injury or occupational disease from coming into contact with the blood or other body fluid of another person in the course of and arising out of the employee's employment. Under continuing law, post-exposure diagnostic tests are covered if they are consistent with the standards of medical care existing at the time of exposure and the employee came into contact with the blood or bodily fluid through any of the following means:

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<sup>1</sup> See, e.g., *State ex rel. Gross v. Indus. Commission*, 115 Ohio St.3d 249, 253-255 (2007).

- A splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;
- A puncture in the skin;
- A cut in the skin or another opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.

The bill defines “corrections officer” as a person employed by a detention facility as a corrections officer. A “detention facility” is any public or private place used for the confinement of a person charged with or convicted of any state or federal crime or found to be a delinquent child or unruly child under any state or federal law.

Currently, the peace officers, firefighters, and emergency medical workers described under **“Coverage for post-traumatic stress disorder,”** above are covered by the post-exposure testing requirement.

According to the Industrial Commission, the administrative body that adjudicates claims under the Workers’ Compensation Law, “[t]he list of covered individuals and job classifications is extensive, but the classification of a ‘corrections officer’ is not [currently] included.”<sup>2</sup>

Under continuing law, any employee who is injured or who contracts an occupational disease in the course of employment is entitled to necessary medical, nurse, and hospital services and medicines.<sup>3</sup> Thus, if a detention facility employee suffers an injury or contracts an occupational disease in the course of employment, and diagnostic tests are a necessary part of treatment, the costs currently are covered if the claim is otherwise compensable. The bill’s post-exposure medical testing provision applies only to post-exposure medical tests used to investigate whether the employee sustained an injury or occupational disease.<sup>4</sup>

## Compensation and benefits

### Temporary total disability compensation offsets

(R.C. 4123.56; Section 8)

Except as otherwise provided in a collective bargaining agreement, if an employee’s TTD compensation is offset by an amount paid to the employee for accrued sick leave, the bill requires the employee’s employer to do one of the following:

- Reinstate the sick leave that offset the employee’s TTD compensation;
- Pay the employee the amount by which the employee’s TTD compensation was offset by the sick leave.

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<sup>2</sup> Ohio Industrial Commission, Record of Proceedings, Claim 06-344388, 2007 WL 9703017.

<sup>3</sup> R.C. 4123.66 and R.C. 4123.54, not in the bill.

<sup>4</sup> See, e.g., Ohio Industrial Commission, Record of Proceedings, Claim 08-351946, 2008 WL 11408637.

Under continuing law, if an employer provides supplemental sick leave benefits in addition to TTD compensation, and if the employer and an employee agree in writing to the payment of the supplemental sick leave benefits, TTD benefits may be paid without an offset for those supplemental sick leave benefits.

## **Funeral expenses**

(R.C. 4123.66)

Under continuing law, the Administrator or a self-insuring employer is required to pay a reasonable amount to cover funeral expenses when an employee dies from a compensable injury or occupational disease. The bill increases the amount the Administrator is authorized to expend from the State Insurance Fund to pay funeral expenses from \$5,500 to \$7,500.

## **Claimant's immigration status and authorization to work**

(R.C. 4123.01, 4123.51, and 4123.513; Section 8)

The bill requires, on the form used to initiate a workers' compensation claim, the Administrator to include all of the following:

- If a claimant is an employee:
  - A place for the claimant to state whether the claimant is a U.S. citizen;
  - A place for the claimant to state whether the claimant is an illegal alien or an unauthorized alien;
  - A place for a claimant who is not a U.S. citizen, illegal alien, or unauthorized alien to provide the claimant's alien registration number or other signifier that the claimant is authorized to work by the U.S. Department of Homeland Security or its successor and the authorization's expiration date.
- If a claimant is a dependent of an individual who was an employee and who died as a result of suffering an injury or contracting an occupational disease:
  - A place for the claimant to state whether the claimant is a U.S. citizen;
  - A place for the claimant to state whether the claimant is an illegal alien or an unauthorized alien;
  - A place for the claimant to state whether the claimant resides in the U.S.;
  - A place for a claimant who resides in the U.S. and is not a U.S. citizen to provide proof that the claimant resides in the U.S. lawfully;
  - A place for the claimant to provide the following information about the deceased employee:
    - ❖ Whether the deceased employee was a U.S. citizen;
    - ❖ Whether the deceased employee was an illegal alien or an unauthorized alien;
    - ❖ For a deceased employee who was not a U.S. citizen, illegal alien, or unauthorized alien, the deceased employee's alien registration number or other

signifier that the deceased employee was authorized to work by the Department or its successor and the expiration date of the deceased employee's authorization to work.

Under the bill, a claimant who provides false information regarding immigration status or work authorization is ineligible to receive compensation or benefits under the claim for which the information was supplied and will be subject to prosecution for workers' compensation fraud.

An "illegal alien," under the bill, is an alien who is deportable if apprehended because of one of the following:

- The alien entered the U.S. illegally without the proper authorization and documents.
- The alien once entered the U.S. legally and has since violated the terms of the status under which the alien entered, making that alien an "out-of-status" alien.
- The alien once entered the U.S. legally but has overstayed the time limits of the original legal status.

An "unauthorized alien" is an alien who is not authorized to be employed as determined in accordance with the federal Immigration Reform and Control Act of 1986.<sup>5</sup>

## **Continuing law coverage**

Continuing law includes "aliens" in the definition of employee, and thus an alien is covered under the Law. The Workers' Compensation Law does not define "alien."

Continuing law prohibits the Bureau of Workers' Compensation (BWC), Industrial Commission, any other body created by state law, or any Ohio court from discriminating against the widows, children, or other dependents who reside in a foreign country when awarding compensation to the dependents of employees or others killed in Ohio.<sup>6</sup>

## **Continuing jurisdiction over workers' compensation claims**

(R.C. 4123.52; Section 8)

The Industrial Commission and the Administrator have continuing jurisdiction over each workers' compensation claim, and the Commission may modify or change its former findings and orders. However, in the absence of statutorily specified events, the Commission cannot modify or change a former finding or order, nor award compensation or benefits in a claim, if more than five years have passed since the date of injury. If a statutorily specified event occurs, the Commission's authority to change or modify a finding or order, or award compensation or benefits in the claim, extends for an additional five years from the date of the event.

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<sup>5</sup> 8 United States Code 1324a.

<sup>6</sup> R.C. 4123.90, not in the bill.

The bill makes the rendering of medical services, rather than payment for the services as under current law, an event that extends the Commission's authority for an additional five years. This applies to claims arising on or after the provision's effective date. Under continuing law, the following events also extend the Commission's authority for an additional five years:

- A payment of compensation for TTD, wage loss, permanent partial disability, or PTD;
- A payment of wages in lieu of compensation in accordance with continuing law;
- The claimant's death.

## **Final settlement agreements**

(R.C. 4123.65; Section 8)

The Worker's Compensation Law allows a state fund employer (an employer who obtains workers' compensation coverage through the State Insurance Fund), the employer's employee, or the Administrator to file an application for approval of a final settlement against the State Insurance Fund. The Law also allows a self-insuring employer and the employer's employee to enter a settlement agreement. A proposed settlement of a state fund claim takes effect 30 days after the Administrator approves the settlement. A settlement between a self-insuring employer and a claimant takes effect 30 days after the parties sign it. During the 30-day period, a party may withdraw from a proposed settlement by sending written notice to the other interested parties.

The bill prohibits an employer, for claims arising on or after the provision's effective date, from refusing or withdrawing from a proposed settlement agreement if the claim is no longer in the employer's industrial accident or occupational disease experience for premium calculation purposes.

Under continuing law, the Administrator annually revises basic premium rates so they are adequate to maintain the solvency of the State Insurance Fund and a reasonable surplus. When revising basic employer rates, the Administrator examines the oldest four of the last five policy years of combined accident and occupational disease experience.<sup>7</sup> Thus, the bill prohibits an employer from refusing or withdrawing from a proposed settlement when the claim to be settled is older than five years.

## **Additional award for specific safety violation**

(R.C. 4121.471; Section 8)

In addition to authorizing the creation of the workers' compensation system, the Workers' Compensation Amendment to the Ohio Constitution allows the filing of a claim that a person suffered an injury, contracted an occupational disease, or was killed in the course of employment because the person's employer violated a specific safety rule enacted by the General Assembly or adopted by the Administrator. The Industrial Commission has exclusive

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<sup>7</sup> R.C. 4123.34, not in the bill.

jurisdiction to hear and decide claims alleging violations of specific safety rules. If the Commission finds that the employer's violation of a specific safety rule caused an injury, disease, or death, the Commission must grant an additional award that is between 15% and 50% "of the maximum award established by law."<sup>8</sup>

Under the bill, a claim arising on or after the provision's effective date for an additional award for violation of a specific safety rule (a "VSSR" award) must be filed within one year after the date of the injury, death, or diagnosis of disability due to an occupational disease. Currently, an administrative rule requires claims for these additional awards to be filed within two years of the date of injury, death, or inception of disability due to occupational disease.<sup>9</sup>

## **Appealing Industrial Commission orders**

(Section 9)

Sub. H.B. 27 of the 132<sup>nd</sup> General Assembly extended the time to appeal an Industrial Commission order to a court of common pleas from 60 days to 150 days, provided a party gives notice of intent to settle and the opposing party does not object.<sup>10</sup> The bill applies the extension to workers' compensation claims pending on or arising after September 29, 2017, the effective date of that change.

## **Coal-Workers Pneumoconiosis Fund transfer**

(R.C. 4131.03)

The bill allows the Director of Natural Resources to annually request that the Administrator transfer a portion of the funds from the net position of the Coal-Workers Pneumoconiosis Fund created under continuing law to the Mining Regulation and Safety Fund created under the Coal Surface Mining Law<sup>11</sup> for the purposes specified in that Law. If the Administrator receives a request from the Director, the Administrator must transfer no more than \$1 million on July 1 or as soon as possible after July 1.

The Administrator, with the advice and consent of the BWC Board of Directors, must adopt rules in accordance with the Administrative Procedure Act<sup>12</sup> governing the fund transfers to ensure the solvency of the Coal-Workers Pneumoconiosis Fund. For that purpose, the Administrator may establish tests based on measures of net assets, liabilities, expenses, interest, dividend income, or other factors that the Administrator determines appropriate that may be applied before making a transfer.

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<sup>8</sup> Ohio Const., art. II, sec. 35.

<sup>9</sup> Ohio Administrative Code 4121-3-20.

<sup>10</sup> R.C. 4123.512, not in the bill.

<sup>11</sup> R.C. 1513.30, not in the bill.

<sup>12</sup> R.C. Chapter 119.

## Technical correction

(R.C. 4123.038)

The bill makes a technical correction to replace an obsolete cross reference with the correct cross reference for the purposes of defining “apprentice” and “apprenticeship agreement” in the Workers’ Compensation Law.

## DEPARTMENT OF COMMERCE

### Employee misclassification

(R.C. 4177.01 to 4177.06, 4121.01, 4123.01, 4141.01, and 5747.01)

#### Definition of “employee”

The bill requires the Superintendent of Industrial Compliance to establish a test, consistent with the test used by the U.S. Internal Revenue Service (IRS), to determine whether an individual is an employee or an independent contractor for the purposes of the Workers’ Compensation Law, the Unemployment Compensation Law, and the Income Tax Law. Currently, those laws have a different or no definition of “employee” for purposes of the law and have different tests to determine whether an individual performing services for another is covered by that law (all of the tests generally examine who directs and controls the services performed to determine employee status).

#### Background – IRS test

The IRS uses what is known as the “common law test” to determine whether an individual is an employee or an independent contractor. This 11-factor test is used for federal income tax and federal unemployment tax purposes.<sup>13</sup> The test is divided into three categories: (1) behavioral control, (2) financial control, and (3) the type of relationship of the parties.

**Behavioral control** – this category determines whether the business has a right to direct and control how a worker does the task for which the worker is hired. Two factors are included in this category:

- Instructions that the business gives to the worker – an employee is generally subject to the business’ instructions about when, where, and how to work.
- Training that the business gives to the worker – an employee may be trained to perform services in a particular manner, while an independent contractor ordinarily uses the contractor’s own methods.

**Financial control** – this category determines whether the business has a right to control the business aspects of the worker’s job. This category contains the following five factors:

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<sup>13</sup> See U.S. Department of Labor, Conformity Requirements for State UC Laws, [http://workforcesecurity.dol.gov/unemploy/pdf/UILaws\\_Coverage.pdf](http://workforcesecurity.dol.gov/unemploy/pdf/UILaws_Coverage.pdf).

- The extent to which the worker has unreimbursed business expenses – an independent contractor is more likely to have unreimbursed expenses.
- The extent of the worker’s investment – an independent contractor often invests in the contractor’s own equipment, facilities, and tools to perform the services, rather than that equipment, facility, or tools being provided by the employer.
- The extent to which the worker makes the worker’s services available to the relevant market – an independent contractor is free to seek out further business opportunities.
- How the business pays the worker – an independent contractor is generally paid a flat fee for the contractor’s services, while an employee is paid a set wage over a period of time (i.e., hourly, monthly, annually).
- The extent to which the worker can realize a profit or loss – an independent contractor can make a profit or loss.

**Type of relationship between the worker and employer** – this category consists of the following four factors:

- Whether a written contract exists describing the relationship the parties intend to create.
- Whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation pay, or sick pay.
- Whether the relationship is permanent.
- The extent to which services performed by the worker are a key aspect of the company’s regular business.<sup>14</sup>

## **Changes to current law definitions and tests**

### **Workers’ Compensation Law**

Unless an exception applies, the bill specifies that an individual who is an employee under the Superintendent’s test is an employee for purposes of the Workers’ Compensation Law, and thus covered by the Law. The bill also eliminates a requirement under which every individual who performs labor or provides services pursuant to a construction contract is an “employee” under that Law if at least ten of 20 specified criteria apply.

### **Unemployment Compensation Law**

“Employee” is not currently statutorily defined for purposes of the Unemployment Compensation Law; however, “employment” is defined for purposes of that Law.

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<sup>14</sup> U.S. Internal Revenue Service, Publication 15-A (2019) Employer’s Supplemental Tax Guide, <https://www.irs.gov/pub/irs-pdf/p15a.pdf>.

The bill maintains the current law definition of “employment” but specifies that an employment relationship does not exist when the Director of Job and Family Services (who administers the Unemployment Compensation Law) is satisfied, based on a determination made by the Superintendent, that an individual has been and will continue to be free from direction or control. Under current law, the JFS Director makes the determination regarding direction and control using a test adopted by the Director.

As with the Workers’ Compensation Law, the bill also eliminates a current requirement in the Unemployment Compensation Law under which every individual who performs labor or provides services pursuant to a construction contract is an employee under the Law if at least ten of 20 specified criteria apply.

### **Income Tax Law**

The Income Tax Law does not include a statutorily defined test to determine whether an individual is an employee for purposes of that Law. Rather, the Income Tax Law follows the IRS test to determine whether an individual is an employee or independent contractor.<sup>15</sup>

For purposes of the Income Tax Law, the bill defines “employee” as any individual who is an employee under the Superintendent’s test.

### **Prohibition against misclassifying employees**

The bill prohibits an employer from failing to consider an individual an employee for purposes of the Workers’ Compensation Law, the Unemployment Compensation Law, and the Income Tax Law if the individual is an employee under the Superintendent’s test. An employer who violates the prohibition is subject to civil penalties imposed by the Superintendent.

### **Enforcement and administration**

The bill requires the Superintendent to enforce the bill’s employee misclassification prohibition. The Superintendent must adopt reasonable rules in accordance with Ohio’s Administrative Procedure Act to implement and administer the prohibition.

### **Complaints, investigations, and hearings**

The bill allows an individual to file a complaint with the Superintendent against an employer if the individual reasonably believes that the employer is in violation of the employee misclassification prohibition. On receipt of a complaint, the Superintendent must conduct an investigation into whether the employer violated the bill’s prohibition.

If, after an investigation, the Superintendent determines that reasonable evidence exists that an employer has violated the employee misclassification prohibition, the bill requires the Superintendent to send a written notice to the employer who is the subject of the investigation in the same manner as prescribed in the Administrative Procedure Act.

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<sup>15</sup> See 1976 Ohio Atty. Gen. Ops. No. 76-040, at 2-140.

If the Superintendent, as a result of a hearing, determines an employer has misclassified an employee as an independent contractor the determination is binding on the Administrator, the JFS Director, and the Tax Commissioner (who administers the Income Tax Law) unless the individual is otherwise not considered an employee under the applicable law. However, nothing in the bill's misclassification provisions limits or otherwise constrains the Administrator's duties and powers under the Workers' Compensation Law, the JFS Director's duties and powers under the Unemployment Compensation Law, or the Tax Commissioner's duties and powers under the Income Tax Law.

An employer may appeal the Superintendent's determination in accordance with the Administrative Procedure Act.

### **Disciplinary actions**

If, after a hearing, the Superintendent determines that an employer has violated the employee misclassification prohibition, the Superintendent must do both of the following:

- Notify the Administrator, the JFS Director, and the Tax Commissioner, each of whom must determine whether the employer's violation results in the employer not complying with the requirements of the Workers' Compensation Law, the Unemployment Compensation Law, or the Income Tax Law, as applicable.
- For each day after the complaint was filed, assess against the employer a penalty of \$500 for each employee the employer misclassified.

The Superintendent may not assess the penalty described above if the employer voluntarily reclassifies a misclassified employee ten days before the Superintendent holds the hearing.

Regardless of the Superintendent's determination, the Superintendent must notify the child support enforcement agency in the county in which the employee or independent contractor resides of each individual who is receiving income.

### **Employee Classification Fund**

The bill creates in the state treasury the Employee Classification Fund. The Superintendent must deposit all moneys the Superintendent receives under the bill into the fund. The Superintendent must use the fund for the administration, investigation, and other expenses incurred in carrying out the Superintendent's powers and duties under the bill.

## **OTHER AGENCIES**

### **Employee medical examinations**

(R.C. 4113.21)

The bill prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act of 1965 from requiring an applicant, prospective employee, or employee to pay for an initial or any subsequent medical examinations that are required as a condition of employment or continued employment. The federal Act generally applies to any contract with the federal government that has as its

principal purpose the furnishing of services in the U.S. through the use of service employees, regardless of whether the employees are the contractor's employees or those of any subcontractor.<sup>16</sup>

Under continuing law, a private employer is prohibited from requiring any prospective employee or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment. A public employer cannot require an employee, prospective employee, or applicant to pay the cost of a medical examination required by the public employer as a condition of employment or continued employment. Any employer who violates these prohibitions must forfeit not more than \$100 for each violation. BWC and the Public Utilities Commission of Ohio enforce the penalty.

## HISTORY

Action	Date
Introduced	02-14-19
Reported, H. Insurance	05-21-19
Re-referred to H. Finance	05-22-19
Reported, H. Finance	06-05-19
Passed House (56-38)	06-05-19

H0080-PH-133/ec

<sup>16</sup> 41 United States Code 6702 and 29 Code of Federal Regulations 4.150.



THE OHIO COUNCIL OF  
*Retail Merchants*  
The voice of retail since 1922



May 20, 2019

The Honorable Larry Householder  
Speaker  
Ohio House of Representatives  
77 S. High St., 14<sup>th</sup> floor  
Columbus, Ohio 43215

The Honorable Tom Brinkman  
Chairman, House Insurance Committee  
Ohio House of Representatives  
77 S. High St., 11<sup>th</sup> floor  
Columbus, Ohio 43215

Dear Speaker Householder and Chairman Brinkman:

Our organizations, on behalf of our members, are strongly opposed to amending House Bill 80, the BWC operating budget, with respect to PTSD compensation where the PTSD is not also accompanied by a physical injury or illness.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of such physical injuries/illnesses. Our organizations have a history of opposing proposals that would permit PTSD compensation where there is no associated physical injury or illness. The adoption of a mental-only diagnosis would create such a significant change to the Ohio workers' compensation system that the concept deserves standalone legislative consideration.

Expanding PTSD coverage in the workers' compensation will lead to cost increases to Ohio's public and private employers and deserves a full impact analysis. In addition, given that mental health benefits have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about where PTSD arising apart from a workplace physical injury/illness is most effectively and appropriately financed -- health insurance, workers' compensation insurance, or a completely different model.

Therefore, we would respectfully ask that the House of Representatives reject any amendments to the BWC budget bill related to workers' compensation coverage for PTSD at this time.

cc: Niraj Antani, Vice Chair, House Insurance Committee  
Scott Oelslager, Chairman, House Finance Committee



June 4, 2019

## KEY VOTE ALERT

### Vote No on House Bill 80 – BWC Budget

The Ohio Manufacturers' Association (OMA) is requesting your “No” vote in opposition to House Bill 80, the budget bill for the Ohio Bureau of Workers’ Compensation.

House Bill 80 was amended in Finance Committee making mental or emotional impairment caused by post-traumatic stress disorder (PTSD) a compensable condition, even if there is no physical injury.

The Ohio workers’ compensation system was designed to compensate injured workers’ physical injuries/illnesses and any mental conditions that arise as a result of on the job physical injuries/illnesses.

The OMA opposes proposals that would permit PTSD compensation in cases in which there is no associated physical injury or illness. The adoption of a mental-only diagnosis would mark a significant change to the Ohio workers’ compensation system.

This provision, if enacted, will inevitably result in increased workers’ compensation costs for both public and private employers. The consequences of those cost increases will be felt across the Ohio economy and will negatively impact Ohio’s business climate.

**For these reasons, the OMA deems House Bill 80 to be a KEY VOTE.**

Thank you.

A handwritten signature in blue ink that appears to read "Ryan Augsburger".

Ryan Augsburger  
Managing Director of Public Policy  
614-629-6817

A handwritten signature in blue ink that appears to read "Rob Brundrett".

Rob Brundrett  
Director of Public Policy  
614-629-6814



**BEFORE THE INSURANCE AND FINANCIAL INSTITUTIONS COMMITTEE  
OF THE OHIO SENATE  
SENATOR BOB HACKETT, CHAIRMAN**

**TESTIMONY  
OF  
ROB BRUNDRETT  
DIRECTOR, PUBLIC POLICY SERVICES  
THE OHIO MANUFACTURERS' ASSOCIATION**

**JUNE 19, 2019**

Mr. Chairman and members of the Committee, my name is Rob Brundrett. I am the Director of Public Policy Services for The Ohio Manufacturers' Association (OMA). Thank you for the opportunity to provide testimony today on House Bill 80. The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Manufacturing is the largest of the Ohio's primary 20 industry sectors and contributes more than \$108 billion annually in GDP, according to the most recent federal data. This comprises nearly 18% of the state's economic output. More than 700,000 Ohioans work in manufacturing. In 2017, Ohio manufacturing employees earned, on average, more than \$74,000 in compensation, according to newly released figures.

Throughout the years, the OMA has consistently advocated for an efficient and effective workers' compensation system that benefits workers, employers, and the economy of the state.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of such physical injuries/illnesses. The OMA has a history of opposing proposals that would permit PTSD compensation in cases in which there is no associated physical injury or illness. The adoption of a mental-only diagnosis would mark a significant change to the Ohio workers' compensation system.

Additionally, we are concerned about the potential expansion of workers' compensation beyond this provision's narrow target of first responders. We recognize that peace officers, firefighters, and emergency medical workers experience traumatic events. However, they are not alone in their willingness to undertake dangerous and essential jobs for the good of us all. If we erode the physical injury requirement for peace officers, firefighters, and emergency medical workers, it may be difficult to justify not doing the same for other professionals who seek equal treatment.

Once a fundamental parameter of the workers' compensation system – like the physical injury requirement – is compromised, the potential inroads into the program are endless. The result will be increased workers' compensation costs for public and private employers alike. The implications of those cost increases will be felt across the board and will impact Ohio's business climate. The increased costs could also affect our public employers' abilities to provide essential public safety functions.

In addition, given that mental health benefits have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about

where PTSD arising out of employment would be most effectively and appropriately financed – private health insurance, a special workers' compensation insurance PTSD fund outside of the current system, or a completely different model.

The bill also contains a provision prohibiting an employer's right to negotiate settlement after the workers' compensation claim is out of the employer's experience. The purpose of settlement is to fully resolve an issue for all parties. The employer is still a party even if the claim is out of its experience. As pending the bill denies the employer this right in these circumstances.

Finally, the bill proposes creating an entirely new section of the Ohio Revised Code directing the superintendent of industrial compliance to establish the definition of employee and independent contractor for purposes of not only workers' compensation, but also unemployment and tax purposes. While unemployment and tax are certainly outside the scope of a workers' compensation bill, the proposed language unnecessarily creates an additional hearing process for employees to contest misclassifications before a tribunal that historically does not have the experience across these industries. If the superintendent finds a misclassification has occurred, its decision is not only binding on other administrative agencies, the superintendent "shall" assess a \$500 per day penalty on employers – even in the case of an honest mistake.

Thank you for the opportunity to testify. I am joined by OMA workers' compensation counsel Sue Roudebush, we would be happy to answer any questions from the committee.



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 80  
**133<sup>rd</sup> General Assembly**

## Final Analysis

[Click here for H.B. 80's Fiscal Analysis](#)

**Version:** As Passed by the General Assembly

**Primary Sponsor:** Rep. Oelslager

**Effective date:** Appropriations effective July 22, 2019; other provisions effective October 21, 2019

Christopher Edwards, Attorney

## SUMMARY

- Authorizes the Director of Natural Resources to annually request the Administrator of Workers' Compensation to transfer a portion of the net position of the Coal-Workers Pneumoconiosis Fund to the Mining Regulation and Safety Fund.
- Allows the Administrator, on receiving a request from the Director, to transfer not more than \$1 million by July 1 or as soon as possible after July 1.
- Requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, to adopt rules governing the transfer to ensure the solvency of the Coal-Workers Pneumoconiosis Fund.
- Appropriates funds for the Bureau of Workers' Compensation for the biennium ending June 30, 2021.

## DETAILED ANALYSIS

### Coal-Workers Pneumoconiosis Fund transfer

(R.C. 4131.03)

The act allows the Director of Natural Resources to annually request that the Administrator of Workers' Compensation transfer a portion of the funds from the net position of the Coal-Workers Pneumoconiosis Fund to the Mining Regulation and Safety Fund, for the purposes specified in the Coal Surface Mining Law.<sup>1</sup> (Money from the Mining Regulation and Safety Fund is used generally for reclaiming public or private land affected by mining or

<sup>1</sup> R.C. 1513.30, not in the act.

controlling mine drainage.) If the Administrator receives a request from the Director, the Administrator may transfer up to \$1 million on July 1 or as soon as possible after July 1.

The Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, must adopt rules in accordance with the Administrative Procedure Act<sup>2</sup> governing the fund transfers to ensure the solvency of the Coal-Workers Pneumoconiosis Fund. For that purpose, the Administrator may establish tests based on measures of net assets, liabilities, expenses, interest, dividend income, or other factors that the Administrator determines appropriate that may be applied before making a transfer.

## Technical correction

(R.C. 4123.038)

The act makes a technical correction to replace an obsolete cross reference with the correct cross reference for the purposes of defining "apprentice" and "apprenticeship agreement" in the Workers' Compensation Law.

## HISTORY

Action	Date
Introduced	02-14-19
Reported, H. Insurance	05-21-19
Re-referred to H. Finance	05-22-19
Reported, H. Finance	06-05-19
Passed House (56-38)	06-05-19
Reported, S. Insurance and Financial Institutions	06-27-19
Passed Senate (33-0)	06-27-19
House refused to concur in Senate amendments (4-88)	06-30-19
Senate requested conference committee	07-01-19
House acceded to request for conference committee	07-16-19
House agreed to conference committee report (78-13)	07-17-19
Senate agreed to conference committee report (22-9)	07-17-19

19-HB80-133/ec

<sup>2</sup> R.C. Chapter 119.

## **As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 308**

**Representative Patton**

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## **A BILL**

To amend sections 4123.01, 4123.026, and 4123.46  
and to enact sections 145.364, 742.391,  
3309.402, 4123.87, and 5505.182 of the Revised  
Code concerning workers' compensation and  
disability retirement for peace officers,  
firefighters, and emergency medical workers  
diagnosed with post-traumatic stress disorder  
arising from employment without an accompanying  
physical injury.

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## **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4123.01, 4123.026, and 4123.46 be  
amended and sections 145.364, 742.391, 3309.402, 4123.87, and  
5505.182 of the Revised Code be enacted to read as follows:

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**Sec. 145.364.** Upon determining that a member's post-  
traumatic stress disorder, without an accompanying physical  
injury, qualifies that member for a disability benefit under  
section 145.36 or 145.361 of the Revised Code, the public  
employees retirement board, notwithstanding the exceptions to  
public inspection in division (A) (2) of section 145.27 of the  
Revised Code or the privileges contained in division (B) of that

<u>section, shall notify the administrator of workers' compensation</u>	20
<u>of all of the following:</u>	21
(A) <u>The name of the member;</u>	22
(B) <u>That the member's post-traumatic stress disorder,</u>	23
<u>without an accompanying physical injury, qualifies that member</u>	24
<u>for a disability benefit under section 145.36 or 145.361 of the</u>	25
<u>Revised Code;</u>	26
(C) <u>The effective date of the member's disability benefit;</u>	27
(D) <u>The date that payments for the member's disability</u>	28
<u>benefit commence.</u>	29
 <b>Sec. 742.391. Upon determining that a member's post-</b>	30
<u>traumatic stress disorder, without an accompanying physical</u>	31
<u>injury, qualifies that member for a disability benefit under</u>	32
<u>section 742.38 or 742.39 of the Revised Code, the board of</u>	33
<u>trustees of the Ohio police and fire pension fund,</u>	34
<u>notwithstanding the exceptions to public inspection in division</u>	35
<u>(B) of section 742.41 of the Revised Code or the privileges</u>	36
<u>contained in division (C) of that section, shall notify the</u>	37
<u>administrator of workers' compensation of all of the following:</u>	38
(A) <u>The name of the member;</u>	39
(B) <u>That the member's post-traumatic stress disorder,</u>	40
<u>without an accompanying physical injury, qualifies that member</u>	41
<u>for a disability benefit under section 742.38 or 742.39 of the</u>	42
<u>Revised Code;</u>	43
(C) <u>The effective date of the member's disability benefit;</u>	44
(D) <u>The date that payments for the member's disability</u>	45
<u>benefit commence.</u>	46

<u><b>Sec. 3309.402.</b> Upon determining that a member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 3309.35, 3309.40, or 3309.401 of the Revised Code, the school employees retirement board, notwithstanding the exceptions to public inspection in division (A) (2) of section 3309.22 of the Revised Code or the privileges contained in division (B) of that section, shall notify the administrator of workers' compensation of all of the following:</u>	47 48 49 50 51 52 53 54 55
<u>(A) The name of the member;</u>	56
<u>(B) That the member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 3309.35, 3309.40, or 3309.401 of the Revised Code;</u>	57 58 59 60
<u>(C) The effective date of the member's disability benefit;</u>	61
<u>(D) The date that payments for the member's disability benefit commence.</u>	62 63
<b>Sec. 4123.01.</b> As used in this chapter:	64
<u>(A) (1) "Employee" means:</u>	65
<u>(a) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of</u>	66 67 68 69 70 71 72 73 74 75

education. 76

As used in division (A)(1)(a) of this section, the term 77  
"employee" includes the following persons when responding to an 78  
inherently dangerous situation that calls for an immediate 79  
response on the part of the person, regardless of whether the 80  
person is within the limits of the jurisdiction of the person's 81  
regular employment or voluntary service when responding, on the 82  
condition that the person responds to the situation as the 83  
person otherwise would if the person were on duty in the 84  
person's jurisdiction: 85

(i) Off-duty peace officers. ~~As used in division (A)(1)(a)~~ 86  
~~(i) of this section, "peace officer" has the same meaning as in~~ 87  
~~section 2935.01 of the Revised Code.;~~ 88

(ii) Off-duty firefighters, ~~whether paid or volunteer, of~~ 89  
~~a lawfully constituted fire department.;~~ 90

(iii) Off-duty ~~first responders, emergency medical~~ 91  
~~technicians basic, emergency medical technicians intermediate,~~ 92  
~~or emergency medical technicians paramedic, whether paid or~~ 93  
~~volunteer, emergency medical workers~~ of an ambulance service 94  
organization or emergency medical service organization ~~pursuant~~ 95  
~~to Chapter 4765. of the Revised Code.~~ 96

(b) Every person in the service of any person, firm, or 97  
private corporation, including any public service corporation, 98  
that (i) employs one or more persons regularly in the same 99  
business or in or about the same establishment under any 100  
contract of hire, express or implied, oral or written, including 101  
aliens and minors, household workers who earn one hundred sixty 102  
dollars or more in cash in any calendar quarter from a single 103  
household and casual workers who earn one hundred sixty dollars 104

or more in cash in any calendar quarter from a single employer,	105
or (ii) is bound by any such contract of hire or by any other	106
written contract, to pay into the state insurance fund the	107
premiums provided by this chapter.	108
(c) Every person who performs labor or provides services	109
pursuant to a construction contract, as defined in section	110
4123.79 of the Revised Code, if at least ten of the following	111
criteria apply:	112
(i) The person is required to comply with instructions	113
from the other contracting party regarding the manner or method	114
of performing services;	115
(ii) The person is required by the other contracting party	116
to have particular training;	117
(iii) The person's services are integrated into the	118
regular functioning of the other contracting party;	119
(iv) The person is required to perform the work	120
personally;	121
(v) The person is hired, supervised, or paid by the other	122
contracting party;	123
(vi) A continuing relationship exists between the person	124
and the other contracting party that contemplates continuing or	125
recurring work even if the work is not full time;	126
(vii) The person's hours of work are established by the	127
other contracting party;	128
(viii) The person is required to devote full time to the	129
business of the other contracting party;	130
(ix) The person is required to perform the work on the	131

premises of the other contracting party;	132
(x) The person is required to follow the order of work set by the other contracting party;	133 134
(xi) The person is required to make oral or written reports of progress to the other contracting party;	135 136
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	137 138
(xiii) The person's expenses are paid for by the other contracting party;	139 140
(xiv) The person's tools and materials are furnished by the other contracting party;	141 142
(xv) The person is provided with the facilities used to perform services;	143 144
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	145 146
(xvii) The person is not performing services for a number of employers at the same time;	147 148
(xviii) The person does not make the same services available to the general public;	149 150
(xix) The other contracting party has a right to discharge the person;	151 152
(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.	153 154 155
Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the	156 157 158

administrator of workers' compensation for the person's 159  
employment or occupation or who is a self-insuring employer and 160  
who has failed to pay compensation and benefits directly to the 161  
employer's injured and to the dependents of the employer's 162  
killed employees as required by section 4123.35 of the Revised 163  
Code, shall be considered as the employee of the person who has 164  
entered into a contract, whether written or verbal, with such 165  
independent contractor unless such employees or their legal 166  
representatives or beneficiaries elect, after injury or death, 167  
to regard such independent contractor as the employer. 168

(2) "Employee" does not mean any of the following: 169

    (a) A duly ordained, commissioned, or licensed minister or 170  
    assistant or associate minister of a church in the exercise of 171  
    ministry; 172

    (b) Any officer of a family farm corporation; 173

    (c) An individual incorporated as a corporation; 174

    (d) An officer of a nonprofit corporation, as defined in 175  
    section 1702.01 of the Revised Code, who volunteers the person's 176  
    services as an officer; 177

    (e) An individual who otherwise is an employee of an 178  
    employer but who signs the waiver and affidavit specified in 179  
    section 4123.15 of the Revised Code on the condition that the 180  
    administrator has granted a waiver and exception to the 181  
    individual's employer under section 4123.15 of the Revised Code; 182

    (f) (i) A qualifying employee described in division (A) (14) 183  
    (a) of section 5703.94 of the Revised Code when the qualifying 184  
    employee is performing disaster work in this state during a 185  
    disaster response period pursuant to a qualifying solicitation 186  
    received by the employee's employer; 187

(ii) A qualifying employee described in division (A) (14) 188  
(b) of section 5703.94 of the Revised Code when the qualifying 189  
employee is performing disaster work in this state during a 190  
disaster response period on critical infrastructure owned or 191  
used by the employee's employer; 192

(iii) As used in division (A) (2) (f) of this section, 193  
"critical infrastructure," "disaster response period," "disaster 194  
work," and "qualifying employee" have the same meanings as in 195  
section 5703.94 of the Revised Code. 196

Any employer may elect to include as an "employee" within 197  
this chapter, any person excluded from the definition of 198  
"employee" pursuant to division (A) (2) (a), (b), (c), or (e) of 199  
this section in accordance with rules adopted by the 200  
administrator, with the advice and consent of the bureau of 201  
workers' compensation board of directors. If an employer is a 202  
partnership, sole proprietorship, individual incorporated as a 203  
corporation, or family farm corporation, such employer may elect 204  
to include as an "employee" within this chapter, any member of 205  
such partnership, the owner of the sole proprietorship, the 206  
individual incorporated as a corporation, or the officers of the 207  
family farm corporation. Nothing in this section shall prohibit 208  
a partner, sole proprietor, or any person excluded from the 209  
definition of "employee" pursuant to division (A) (2) (a), (b), 210  
(c), or (e) of this section from electing to be included as an 211  
"employee" under this chapter in accordance with rules adopted 212  
by the administrator, with the advice and consent of the board. 213

In the event of an election, the employer or person 214  
electing coverage shall serve upon the bureau of workers' 215  
compensation written notice naming the person to be covered and 216  
include the person's remuneration for premium purposes in all 217

future payroll reports. No partner, sole proprietor, or person excluded from the definition of "employee" pursuant to division (A) (2) (a), (b), (c), or (e) of this section, shall receive benefits or compensation under this chapter until the bureau receives written notice of the election permitted by this section. 218  
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For informational purposes only, the bureau shall prescribe such language as it considers appropriate, on such of its forms as it considers appropriate, to advise employers of their right to elect to include as an "employee" within this chapter a sole proprietor, any member of a partnership, or a person excluded from the definition of "employee" under division (A) (2) (a), (b), (c), or (e) of this section, that they should check any health and disability insurance policy, or other form of health and disability plan or contract, presently covering them, or the purchase of which they may be considering, to determine whether such policy, plan, or contract excludes benefits for illness or injury that they might have elected to have covered by workers' compensation. 224  
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(B) (1) "Employer" means: 237

(a) The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political subdivision or subdivisions other than the state; 238  
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(b) Every person, firm, professional employer organization, and private corporation, including any public service corporation, that (i) has in service one or more employees or shared employees regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, or (ii) is bound by any 242  
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such contract of hire or by any other written contract, to pay 248  
into the insurance fund the premiums provided by this chapter. 249

All such employers are subject to this chapter. Any member 250  
of a firm or association, who regularly performs manual labor in 251  
or about a mine, factory, or other establishment, including a 252  
household establishment, shall be considered an employee in 253  
determining whether such person, firm, or private corporation, 254  
or public service corporation, has in its service, one or more 255  
employees and the employer shall report the income derived from 256  
such labor to the bureau as part of the payroll of such 257  
employer, and such member shall thereupon be entitled to all the 258  
benefits of an employee. 259

(2) "Employer" does not include a franchisor with respect 260  
to the franchisor's relationship with a franchisee or an 261  
employee of a franchisee, unless the franchisor agrees to assume 262  
that role in writing or a court of competent jurisdiction 263  
determines that the franchisor exercises a type or degree of 264  
control over the franchisee or the franchisee's employees that 265  
is not customarily exercised by a franchisor for the purpose of 266  
protecting the franchisor's trademark, brand, or both. For 267  
purposes of this division, "franchisor" and "franchisee" have 268  
the same meanings as in 16 C.F.R. 436.1. 269

(C) "Injury" includes any injury, whether caused by 270  
external accidental means or accidental in character and result, 271  
received in the course of, and arising out of, the injured 272  
employee's employment. "Injury" does not include: 273

(1) Psychiatric conditions except where as follows: 274

(a) Where the claimant's psychiatric conditions have 275  
arisen from an injury or occupational disease sustained by that 276

claimant or where;	277
(b) Where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate;	278 279 280
(c) Where the claimant is a peace officer, firefighter, or emergency medical worker and is diagnosed with post-traumatic stress disorder that has been received in the course of, and has arisen out of, the claimant's employment as a peace officer, firefighter, or emergency medical worker.	281 282 283 284 285
(2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;	286 287
(3) Injury or disability incurred in voluntary participation in an employer-sponsored recreation or fitness activity if the employee signs a waiver of the employee's right to compensation or benefits under this chapter prior to engaging in the recreation or fitness activity;	288 289 290 291 292
(4) A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation.	293 294 295 296 297 298 299 300 301
(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.	302 303
(E) "Family farm corporation" means a corporation founded for the purpose of farming agricultural land in which the	304 305

majority of the voting stock is held by and the majority of the  
stockholders are persons or the spouse of persons related to  
each other within the fourth degree of kinship, according to the  
rules of the civil law, and at least one of the related persons  
is residing on or actively operating the farm, and none of whose  
stockholders are a corporation. A family farm corporation does  
not cease to qualify under this division where, by reason of any  
devise, bequest, or the operation of the laws of descent or  
distribution, the ownership of shares of voting stock is  
transferred to another person, as long as that person is within  
the degree of kinship stipulated in this division.

(F) "Occupational disease" means a disease contracted in  
the course of employment, which by its causes and the  
characteristics of its manifestation or the condition of the  
employment results in a hazard which distinguishes the  
employment in character from employment generally, and the  
employment creates a risk of contracting the disease in greater  
degree and in a different manner from the public in general.

(G) "Self-insuring employer" means an employer who is  
granted the privilege of paying compensation and benefits  
directly under section 4123.35 of the Revised Code, including a  
board of county commissioners for the sole purpose of  
constructing a sports facility as defined in section 307.696 of  
the Revised Code, provided that the electors of the county in  
which the sports facility is to be built have approved  
construction of a sports facility by ballot election no later  
than November 6, 1997.

(H) "Private employer" means an employer as defined in  
division (B) (1)(b) of this section.

(I) "Professional employer organization" has the same

meaning as in section 4125.01 of the Revised Code. 336

(J) "Public employer" means an employer as defined in 337  
division (B) (1) (a) of this section. 338

(K) "Sexual conduct" means vaginal intercourse between a 339  
male and female; anal intercourse, fellatio, and cunnilingus 340  
between persons regardless of gender; and, without privilege to 341  
do so, the insertion, however slight, of any part of the body or 342  
any instrument, apparatus, or other object into the vaginal or 343  
anal cavity of another. Penetration, however slight, is 344  
sufficient to complete vaginal or anal intercourse. 345

(L) "Other-states' insurer" means an insurance company 346  
that is authorized to provide workers' compensation insurance 347  
coverage in any of the states that permit employers to obtain 348  
insurance for workers' compensation claims through insurance 349  
companies. 350

(M) "Other-states' coverage" means both of the following: 351

(1) Insurance coverage secured by an eligible employer for 352  
workers' compensation claims of employees who are in employment 353  
relationships localized in a state other than this state or 354  
those employees' dependents; 355

(2) Insurance coverage secured by an eligible employer for 356  
workers' compensation claims that arise in a state other than 357  
this state where an employer elects to obtain coverage through 358  
either the administrator or an other-states' insurer. 359

(N) "Limited other-states coverage" means insurance 360  
coverage provided by the administrator to an eligible employer 361  
for workers' compensation claims of employees who are in an 362  
employment relationship localized in this state but are 363  
temporarily working in a state other than this state, or those 364

employees' dependents.	365
<u>(O) "Peace officer"</u> has the same meaning as in section <u>2935.01 of the Revised Code.</u>	366 367
<u>(P) "Firefighter"</u> means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.	368 369
<u>(Q) "Emergency medical worker"</u> means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician- paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.	370 371 372 373 374
<b>Sec. 4123.026. (A)</b> —The administrator of workers' compensation, or a self-insuring public employer for the peace officers, firefighters, and emergency medical workers employed by or volunteering for that self-insuring public employer, shall pay the costs of conducting post-exposure medical diagnostic services, consistent with the standards of medical care existing at the time of the exposure, to investigate whether an injury or occupational disease was sustained by a peace officer, firefighter, or emergency medical worker when coming into contact with the blood or other body fluid of another person in the course of and arising out of the peace officer's, firefighter's, or emergency medical worker's employment, or when responding to an inherently dangerous situation in the manner described in, and in accordance with the conditions specified under, division (A)(1)(a) of section 4123.01 of the Revised Code, through any of the following means:	375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390
(1)— <u>(A)</u> Splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;	391 392 393

(2) <u>(B)</u> A puncture in the skin;	394
(3) <u>(C)</u> A cut in the skin or another opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.	395 396
<u>(B) As used in this section:</u>	397
(1) <u>"Peace officer"</u> has the same meaning as in section 2935.01 of the Revised Code.	398 399
(2) <u>"Firefighter"</u> means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.	400 401
(3) <u>"Emergency medical worker"</u> means a first responder, emergency medical technician basic, emergency medical technician intermediate, or emergency medical technician paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.	402 403 404 405 406
<b>Sec. 4123.46.</b> (A) (1) Except as provided in division (A) (2) of this section, the bureau of workers' compensation shall disburse the state insurance fund to employees of employers who have paid into the fund the premiums applicable to the classes to which they belong when the employees have been injured in the course of their employment, wherever the injuries have occurred, and provided the injuries have not been purposely self-inflicted, or to the dependents of the employees in case death has ensued.	407 408 409 410 411 412 413 414 415
(2) As long as injuries have not been purposely self-inflicted, the bureau shall disburse the surplus fund created under section 4123.34 of the Revised Code to off-duty peace officers, firefighters, <u>and</u> emergency medical technicians, <u>and</u> <del>first responders</del> <u>workers</u> , or to their dependents if death ensues, who are injured while responding to inherently dangerous situations that call for an immediate response on the part of	416 417 418 419 420 421 422

the person, regardless of whether the person was within the  
limits of the person's jurisdiction when responding, on the  
condition that the person responds to the situation as the  
person otherwise would if the person were on duty in the  
person's jurisdiction. 423  
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~~As used in division (A)(2) of this section, "peace  
officer," "firefighter," "emergency medical technician," "first  
responder," and "jurisdiction" have the same meanings as in  
section 4123.01 of the Revised Code.~~ 428  
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(B) All self-insuring employers, in compliance with this  
chapter, shall pay the compensation to injured employees, or to  
the dependents of employees who have been killed in the course  
of their employment, unless the injury or death of the employee  
was purposely self-inflicted, and shall furnish the medical,  
surgical, nurse, and hospital care and attention or funeral  
expenses as would have been paid and furnished by virtue of this  
chapter under a similar state of facts by the bureau out of the  
state insurance fund if the employer had paid the premium into  
the fund. 432  
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If any rule or regulation of a self-insuring employer  
provides for or authorizes the payment of greater compensation  
or more complete or extended medical care, nursing, surgical,  
and hospital attention, or funeral expenses to the injured  
employees, or to the dependents of the employees as may be  
killed, the employer shall pay to the employees, or to the  
dependents of employees killed, the amount of compensation and  
furnish the medical care, nursing, surgical, and hospital  
attention or funeral expenses provided by the self-insuring  
employer's rules and regulations. 442  
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(C) Payment to injured employees, or to their dependents 452

in case death has ensued, is in lieu of any and all rights of 453  
action against the employer of the injured or killed employees. 454

**Sec. 4123.87.** (A) Notwithstanding any provision in section 455  
4123.52, 4123.54, 4123.55, 4123.56, 4123.57, 4123.58, 4123.59, 456  
4123.60, or 4123.66 of the Revised Code to the contrary, in the 457  
case of disability due to an injury described in division (C) (1) 458  
(c) of section 4123.01 of the Revised Code: 459

(1) Any entitlement of a claimant to compensation as a 460  
result of any order issued under this chapter or Chapter 4121., 461  
4127., or 4131. of the Revised Code regarding that injury shall 462  
cease not later than one year after the date those payments 463  
commence under division (H) of section 4123.511 of the Revised 464  
Code. 465

(2) Any entitlement of a claimant to medical benefits 466  
under this chapter or Chapter 4121., 4127., or 4131. of the 467  
Revised Code regarding that injury shall cease not later than 468  
one year after those payments commence under division (I) of 469  
section 4123.511 of the Revised Code. 470

(B) No claimant shall be entitled to compensation or 471  
benefits under this chapter for an injury described in division 472  
(C) (1) (c) of section 4123.01 of the Revised Code for any period 473  
of time during which the claimant received a disability benefit 474  
or disability retirement from the public employees retirement 475  
system, the Ohio police and fire pension fund, the school 476  
employees retirement system, or the state highway patrol 477  
retirement system. 478

(C) If a claimant receives an award of compensation or 479  
benefits under this chapter or Chapter 4121., 4127., or 4131. of 480  
the Revised Code for an injury described in division (C) (1) (c) 481

<u>of section 4123.01 of the Revised Code for the same time period</u>	482
<u>for which the claimant received a disability benefit or</u>	483
<u>disability retirement from the public employees retirement</u>	484
<u>system, the Ohio police and fire pension fund, the school</u>	485
<u>employees retirement system, or the state highway patrol</u>	486
<u>retirement system, the administrator or any self-insuring</u>	487
<u>employer, by any lawful means, may collect from the employee or</u>	488
<u>the employee's dependents any of the following:</u>	489
<u>(1) The amount of compensation or benefits paid to the</u>	490
<u>claimant by the administrator or a self-insuring employer</u>	491
<u>pursuant to this chapter or Chapter 4121., 4127., or 4131. of</u>	492
<u>the Revised Code for that time period;</u>	493
<u>(2) Any interest, attorney's fees, and costs the</u>	494
<u>administrator or the self-insuring employer incurs in collecting</u>	495
<u>that payment.</u>	496
<u><b>Sec. 5505.182.</b> Upon determining that a member's post-</u>	497
<u>traumatic stress disorder, without an accompanying physical</u>	498
<u>injury, qualifies that member for disability retirement under</u>	499
<u>section 5505.18 of the Revised Code, the state highway patrol</u>	500
<u>retirement board, notwithstanding the exceptions to public</u>	501
<u>inspection in division (C)(2) of section 5505.04 of the Revised</u>	502
<u>Code or the privileges contained in division (D) of that</u>	503
<u>section, shall notify the administrator of workers' compensation</u>	504
<u>of all of the following:</u>	505
<u>(A) The name of the member;</u>	506
<u>(B) That the member's post-traumatic stress disorder,</u>	507
<u>without an accompanying physical injury, qualifies that member</u>	508
<u>for disability retirement under section 5505.18 of the Revised</u>	509
<u>Code;</u>	510

<u>(C) The effective date of the member's disability retirement;</u>	511
<u>(D) The date that payments for the member's disability retirement commence.</u>	512
<b>Section 2.</b> That existing sections 4123.01, 4123.026, and 4123.46 of the Revised Code are hereby repealed.	513
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Ohio Manufacturers' Association  
Workers' Compensation Counsel Report  
October 2, 2019

Sue A. Roudebush, Esq.  
Bricker & Eckler LLP

**Regulatory Actions:** Changes to the Ohio Administrative Code

**Effective July 1, 2019:**

- 4123-3-01 Office locations; scope of rules. (if an application, form or document to be filed with the BWC is filed with the Industrial Commission or the MCO, the application, form or document is considered “filed with the BWC” on the date it is date-stamped with the MOC or Industrial Commission)
- 4123-3-03 Employers' reports of injuries and occupational diseases.
- 4123-3-07 Applications for death benefits.
- 4123-3-08 Preparation and filing of applications for compensation and/or benefits.
- 4123-3-09 Procedures in the processing of applications for benefits.
- 4123-3-10 Awards.
- 4123-3-15 Claim procedures subsequent to allowance.
- 4123-3-16 Motions. (no longer need to cite to legal authority on the face of a motion)
- 4123-3-18 Appellate procedure. (provides guidelines regarding the intent to settle letters) (“C-512”)
- 4123-3-20 Additional awards by reason of violations of specific safety requirements. (removal of statute of limitations for filing a VSSR application)
- 4123-3-22 Inspection of claim files.
- 4123-3-31 Disabled workers' relief fund: claimant's payments.

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- 4123-3-34 Settlement of state fund claims. (permits employer authorized representatives to sign C-240; provides timelines for filing Notice of Intent to Settle)
- 4123-3-36 Immediate allowance and payment of medical bills in claims.
- 4123-3-37 Lump sum advancements.
- 4123-3-38 Surplus fund charge of qualified motor vehicle accident claims. (provides guidelines for employer when third-party not issued a citation)
- 4123-17-19 Employer contribution to the marine industry fund.

**Effective July 8, 2019:**

- 4123-17-03.3 Employer premium size factors. (new rule regarding how a new employer's premium will be calculated)

**Effective August 1, 2019:**

- 4123-19-01 Definition: state risks, self-insuring risks. (title change to "Definitions," statutory updates, and addition of the definition for "benefits")
- 4123-19-03 Where an employer desires to secure the privilege to pay compensation, etc. directly. (adds "and benefits" to clean up rule; prohibits self-insured employer from entering into a PEO Agreement; provides for guidelines regarding excess-carrier coverage)
- 4123-19-05 Where an employer is a self-insuring risk and desires to become a state risk.
- 4123-19-08 Renewal of self-insuring risks. (clarifies how to handle excess loss coverage for renewing self-insured employers)
- 4123-19-09 In regard to complaints filed by employees against self-insuring employers under the provisions of section 4123.35 of the Revised Code. (provides for an appeal process regarding self-insured complaints. Appeals must be filed within 14 days of the receipt of the BWC's decision, or shall be dismissed)
- 4123-19-13 Self-insuring employers evaluation board. (removes the provision permitting claimants to request the board to review a complaint dismissed by the bureau)
- 4123-19-14 Self-insured review panel.
- 4123-19-15 Assessment for self-insuring employers' guaranty fund.

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4123-19-16 Self-insured construction projects.

**Effective October 1, 2019:**

4123-3-32 Temporary total examinations.

**Effective October 5, 2019:**

4123-17-72 Deductible Rule.

**Effective October 7 2019:**

4123-18-03 Guidelines for referral to and acceptance into vocational rehabilitation. (removes MCO contact with the injured worker when determining feasibility – consistent with recommendations made by a joint BWC/MCO workgroup)

4123-18-04 Living maintenance allowance. (updates rule to be consistent with O.A.C. 4123-18-03; additional duties for MCOs regarding a request for medical holds; additional guidelines regarding when to pay and close voc rehab – consistent with recommendations made by a joint BWC/MCO workgroup)

4123-18-14 Injured workers suffering compensable injuries, occupational diseases or death while in an approved vocational rehabilitation plan. (adds language requiring self-insured employer to pay these benefits through the claim – consistent with recommendations made by a joint BWC/MCO workgroup)

**Effective January 1, 2020:**

4123-36-34 Payment for treatment of concussion injuries (new rule to provide guidelines for allowances and payment of medically necessary and appropriate services for the treatment of work-related concussion injuries, to avoid prolonged disability) (see attached)

**Legislative Actions**

**H.B. 80 Creates FY 2020-2021 Industrial Commission budget** (Effective July 22, 2019 with certain provisions effective October 19, 2019)

**H.B. 80 Creates FY 2020-2021 Workers' Compensation budget** (Effective July 22, 2019 with certain provisions effective October 19, 2019)

**H.B. 81 Regards post-diagnostics-prison guard exposed to bodily fluids**

Pursuant to R.C. § 4123.026, specific types of employers are required to pay the costs of post-exposure medical diagnostic services for employees exposure to another person's blood or bodily fluids to investigate whether an injury or occupational disease was sustained. The proposed language would add detention facility employees to the list of specified employers. (reintroduction from last session, HB733, 132nd General Assembly; referred to Committee 3/5/19)

**H.B. 167 Modify certain workers' compensation benefits and claim processes**

Proposed language to modify worker's compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims. (referred to Committee 4/2/19)

**Judicial Decisions**

**Supreme Court:**

**State ex rel. Beyer v. Autoneum N. Am., Slip Opinion No. 2019-Ohio-3714**

The Industrial Commission of Ohio ("Commission") appealed the judgment of the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to reverse its decision granting the Claimant's request for permanent partial loss of sight in his right eye.

The Claimant developed cataracts in both eyes from his long-term use of corticosteroids to treat an industrial injury. The Commission approved Claimant's request to add bilateral-cataract syndrome and the Claimant requested an award for a 35% loss of vision in his right eye under R.C. 4123.57. A District Hearing Officer ("DHO") granted the request finding that the record contained medical evidence that the Claimant's cataracts were causally related to his industrial injury. The DHO additionally noted evidence in the record that the Claimant's right eye visual acuity was 20/20 and his post-injury right eye visual acuity was 20/100. To determine the degree of vision loss, the DHO relied on Table 12-2 of the AMA Guides and found that uncorrected vision of 20/100 represented a 35% loss in visual acuity. The DHO equated the loss of visual acuity with the loss of vision and found that Claimant suffered a 35% loss of vision in the right eye. However, vision acuity is only one component of total vision, which also can be affected by losses in visual field and ocular motility. The Claimant's employer appealed the DHO's order, and the staff hearing officer ("SHO") vacated the DHO's order and denied the Claimant's request finding that the record did not contain sufficient medical evidence to substantiate it. Specifically, the SHO found that the record lacked an explanation by a qualified physician that would support the 35% vision loss that Claimant alleged.

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The Claimant filed a complaint with the Tenth District asking it to vacate the SHO's order and reinstate the DHO's order. The Tenth District agreed with the Claimant and found that the DHO had properly applied Table 12-2 of the AMA Guides to the medical evidence showing the Claimant's pre- and post-injury visual acuity and the SHO erred by finding that Claimant failed to submit medical evidence establishing the percentage of vision loss. The Commission appealed the Tenth District's judgment awarding 35% loss for Claimant's uncorrected vision.

On appeal, the Supreme Court of Ohio (the "Court") found that in order to establish a claim for an award under R.C. 4123.57(B), the Claimant was required to submit medical evidence from a medical provider showing the degree of visual impairment. The Court reasoned that the Claimant's evidence of his pre- and post-injury visual acuity in the form of 20/20 and 20/100 was not evidence reflecting a physician's determination of his degree of impairment. Instead, it was evidence from which the Claimant claimed the Commission could determine his degree of impairment. Accordingly, the Court held that the Commission correctly refused to step into the role reserved for medical experts and the Tenth District erred by finding that the Commission abused its discretion. Therefore, the Court reversed the Tenth District's judgment.

**State ex rel. Seibert v. Richard Cyr, Inc., S.Ct. No. 2017-0185, 2019-Ohio-3341, August 22, 2019**

Claimant appealed the judgment of the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate its order that: (1) terminated his permanent total disability ("PTD"); (2) determined that he overpaid PTD compensation; and (3) found that he had committed fraud while receiving PTD compensation.

In 2013, the Special Investigations Department of the Bureau of Workers' Compensation ("BWC") initiated an investigation into the Claimant after determining that he had an active groomer/owner license with the Ohio State Racing Commission while receiving PTD compensation. The investigation found that the Claimant had been taking care of other peoples' horses in exchange for horse stall rentals and horse feed for his own horses. Accordingly, the BWC filed a motion with the Industrial Commission of Ohio ("IC") requesting: (1) termination of Claimant's PTD compensation effective March 26, 2009; (2) declaration of an overpayment of PTD compensation; and (3) declaration that Claimant committed fraud.

The Staff Hearing Officer ("SHO") found that the bartering system engaged in by Claimant to get a reduced fee was sustained remunerative employment precluding reception of PTD compensation, and that the Claimant engaged in fraud by concealing his work at the raceway while receiving PTD compensation. Accordingly, the SHO granted the BWC's motion.

The Claimant appealed the administrative decision to the Tenth District which referred the case to a magistrate. The magistrate concluded that the IC did not abuse its discretion in finding that the Claimant had engaged in sustained remunerative employment since March 26, 2009, but the record did not support the IC's finding of fraud. The Tenth District agreed with the magistrate's finding that there was some evidence supporting the determination that the Claimant engaged in

sustained-remunerative employment as of March 26, 2009, but disagreed with the magistrate on the fraud issue by finding that there was also some evidence supporting the finding of fraud.

On appeal, the Supreme Court of Ohio (the “Court”) found that even though the Claimant engaged in a bartering system without cash payments, his work still qualified as sustained remunerative employment because the reduction of fees provided cash-like benefits. The Court further found the Claimant to be engaged in sustained remunerative employment because the Claimant typically worked at the raceway Monday to Saturday. However, the Court concluded that the IC abused its discretion in using March 26, 2009 as the date of termination of the Claimant’s PTD compensation because there was simply insufficient evidence in the record to show that the Claimant engaged in sustained remunerative employment at or around that date. Lastly, the Court found that there was some evidence supporting the IC’s finding that the Claimant committed fraud. The Court reasoned the Claimant testified at the hearing that he was aware his activities at the raceway were ordinarily compensable and he knew he was not permitted to work while receiving PTD compensation. Yet, he continuously represented to the BWC that he was not working. Accordingly, the Court reversed the Tenth District’s decision to calculate PTD compensation starting from March 26, 2009, but affirmed the Tenth District’s judgment in all other respects.

### **Tenth District Court of Appeals:**

#### **State ex rel. Wal-Mart Stores, Inc., Relator v. Indus. Comm., 10th Dist. Franklin No. 18AP-195, 2019-Ohio-2523, June 25, 2019**

Wal-Mart Store, Inc., (“Wal-Mart”) appealed to the Tenth District Court of Appeals of Ohio (“Tenth District”) seeking to: (1) vacate the Industrial Commission’s order denying Wal-Mart’s request to suspend the Claimant’s claim; (2) vacate the Industrial Commission’s order refusing to exercise its continuing jurisdiction over the above order; and (3) order the Industrial Commission to suspend the Claimant’s request.

After the Claimant’s work-related injury, Wal-Mart sent a letter to the Claimant requesting that he sign an enclosed medical authorization form, but the Claimant did not respond. Accordingly, Wal-Mart sent a second request for the same information to the Claimant. When Wal-Mart did not receive a reply from the Claimant, it filed a request for suspension of the Claimant’s claim pursuant to R.C. 4123.651, which provides for the suspension of a claim if a claimant, without good cause, refuses to execute a release for medical information. However, Wal-Mart’s request was denied administratively as the language of its medical release of information was not substantially similar to the Ohio Bureau of Workers’ Compensation’s (“BWC”) medical release and was overly-broad in its request. For instance, the Claimant’s claim was for an injury to the left eye only, but Wal-Mart’s medical release was for all medical records and did not limit itself to the relevant injury.

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The Claimant ultimately appealed this administrative decision to the Tenth District which referred the case to a magistrate. The magistrate determined that Wal-Mart's release was significantly different from the medical release provided by the BWC which specifically limits the information to the workers' compensation claim. The magistrate reasoned that while the BWC's medical release is not a perfect gatekeeper of information, it is still an attempt to limit the release of information that is relevant to the claimant's workers' compensation claim. Therefore, the magistrate found that the Industrial Commission did not abuse its discretion when it denied Wal-Mart's request to suspend the Claimant's claim, when it refused to exercise continuing jurisdiction over the claim, and when it failed to suspend Claimant's claim.

The Tenth District agreed with the magistrate's decision and adopted the decision as its own. Accordingly, employers should ensure that the language of their release for medical information is substantially similar to the language of the BWC's medical release and is not overly broad.

**State ex rel. Christina Neitzelt v. Indus. Comm., 10th Dist. Franklin No. 18AP-152, 2019-Ohio-2579, June 27, 2019**

The Claimant filed an appeal to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's order by arguing that the Industrial Commission abused its discretion when it exercised its continuing jurisdiction and denied Claimant's claim for L4-L5 disc herniation.

The Commission allowed Claimant's claim for L4-L5 disc herniation administratively and this allowance became final on June 29, 2016 when the Industrial Commission refused to hear the employer's appeal from the Staff Hearing Officer's order. The employer had 60 days to file an appeal from the Industrial Commission's final order granting Claimant's claim, but failed to do so. Subsequently, the Claimant had back surgery in December 2016, and, in October 2017, the employer moved the Industrial Commission to exercise its continuing jurisdiction to vacate the allowance of L4-L5 disc herniation citing the December 2016 surgery. The Industrial Commission granted the motion based on its finding that there were new and changed circumstances and a clear mistake of fact regarding the presence of an L4-L5 disc herniation. The Claimant appealed to the Tenth District which referred the case to a magistrate. The magistrate determined that the Claimant had not demonstrated that the Industrial Commission abused its discretion when it exercised its continuing jurisdiction and denied her claim.

The Tenth District addressed the issue of whether the Industrial Commission properly exercised continuing jurisdiction over the order. The Court reasoned that the continuing jurisdiction is not unlimited and may only be invoked when there is: (1) new and changed circumstances; (2) fraud; (3) clear mistake of fact; (4) clear mistake of law; or (5) error by inferior tribunal. The Court further stated that the Industrial Commission has jurisdiction over appealable orders only until that order is appealed or the appeal time has elapsed.

Accordingly, the Court disagreed with the magistrate's conclusion and held that since Claimant's additional allowance for L4-L5 disc herniation was a final and appealable right-to-participate

order, the Industrial Commission's continuing jurisdiction over that order ceased once the 60-day appeal period lapsed in 2016. Therefore, the Court ordered the Industrial Commission to vacate its order exercising its continuing jurisdiction and any resulting orders based on it.

**State ex rel. Omni Manor, Inc., v. Indus. Comm., 10th Dist. Franklin No. 17AP-725, 2019-Ohio-2521**

Omni Manor, Inc. ("Omni Manor") filed an appeal to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's order authorizing the Claimant's request for shoulder surgery, and ordering the Industrial Commission to deny the request for the surgery.

Claimant's initial claim for her right shoulder rotator cuff tear was allowed administratively. Subsequently, the Claimant filed a C-9 request for medical services reimbursement asking the Industrial Commission to authorize the Claimant's treating physician to perform shoulder surgery and the Claimant provided a report from the treating physician to support her request. Ultimately, the Claimant's request for authorization of shoulder surgery was allowed and found to be reasonably related to and necessary to treat the allowed conditions in the claim. Omni Manor appealed to the Tenth District which referred the case to a magistrate. The magistrate reasoned that when the record contains "some evidence" to support the Industrial Commission's finding, then there is no abuse of discretion and the request to vacate is not appropriate. The magistrate reviewed the report of the Claimant's treating physician and found that the physician opined that because of the extent of the Claimant's tear, the recommended surgery would be the best option to successfully repair the tear. The magistrate determined that the treating physician's report did constitute "some evidence" supporting the Industrial Commission's authorization of the surgery and therefore Omni Manor had not appropriately shown an abuse of discretion.

The Tenth District reviewed the magistrate's decision and addressed the issue of whether there was "some evidence" in the record to support the Industrial Commission's authorization of the Claimant's shoulder surgery. The Court reviewed the arguments from Omni Manor and the magistrate's recommendation. Upon review, the Tenth District reasoned that the Industrial Commission was not required to fully explain why the requested shoulder surgery is necessary to treat the Claimant's rotator cuff tear. Instead, the Industrial Commission is only required to "specifically state which evidence and only that evidence which has been relied upon to reach their conclusion, and a brief explanation stating why the claimant is or is not entitled to the benefits requested."

The Court concluded that the Industrial Commission satisfied this burden by relying on the report of the Claimant's treating physician. Therefore it agreed with the magistrate that the Industrial Commission did not abuse its discretion in concluding that the treating physician's report constituted "some evidence" in support of authorization of Claimant's requested surgical procedure.

**State ex rel. Spriggs v. Indus. Comm., 10th Dist. Franklin No. 17AP-519, 2019-Ohio-2015, May 23, 2019**

The Claimant filed an appeal to the Tenth District Court of Appeals of Ohio seeking to vacate the Industrial Commission's order denying his motion for total loss of use. Claimant suffered injuries to his right hand and fingers when they were caught in a machine he was operating. He subsequently filed a motion asking for a total loss of use of his right fourth finger. His motion was supported by a report from his treating physician. However, an independent medical examination ("IME") was performed by another physician who opined that his fourth finger had a range of motion allowing for "some functional although impaired use" of the finger in assisting in hand-grasping activities.

Claimant's motion was denied administratively and he appealed to the Tenth District Court of Appeals of Ohio who referred the case to a magistrate. The magistrate found that the IME report showed that he could independently move his fourth finger to make a fist and grasp objects. Therefore, his fourth finger did not suffer from a total loss of use. Claimant objected to the magistrate's findings arguing that there was no competent medical evidence supporting the denial of his motion for loss of use because the IME allegedly did not state a practical purpose served by his limited range of motion.

The Tenth District Court of Appeals of Ohio addressed the issue of whether there was some evidence in the record to support the Industrial Commission's denial of Claimant's motion for a total loss of use. The Court examined Supreme Court of Ohio precedent on this matter and found that in order to qualify for a total loss of use, Claimant must demonstrate with medical evidence a total loss of use of the body part at issue "for all practical purposes." The Court rejected Claimant's objections by holding that his ability to move his fourth finger, and thereby make a fist and grasp objects, is a significant factor and a practical purpose, undercutting Claimant's total loss of use argument. Therefore, the Court adopted the magistrate's decision and denied Claimant's request to vacate the Industrial Commission's Order.

**State of Ohio ex rel. Brady C. Cribbs v. Indus. Comm., 10th Dist. Franklin No. 17AP-661, 2019-Ohio-2883, July 16, 2019**

Claimant appealed to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's order suspending further consideration of his claim under R.C. 4123.651.

After the Claimant's work-related injury, Claimant submitted a request that his claim be additionally allowed for certain psychological conditions. In response, his employer's managed care organization scheduled him for an independent psychological examination for which the Claimant attended but refused to participate. While the District Hearing Officer ("DHO") allowed the psychological conditions requested, the Staff Hearing Officer ("SHO") later vacated the DHO's order and suspended the claim from further consideration due to the Claimant's refusal to participate in the examination. The SHO based such decision to suspend on R.C.

4123.651(C) which provides that a claim be suspended if “an employee refuses to any examination” without “good cause.”

The Claimant ultimately appealed the administrative decision to suspend his claim to the Tenth District which referred the case to a magistrate. On appeal, the Claimant made a singular argument that he had “good cause” because the Industrial Commission’s Medical Examination Manual (“Manual”) gave him the right to refuse/behavioral testing by his employer’s examining doctor. The magistrate disagreed with this argument by reasoning that the Manual specifically pertained to medical and psychological examinations made at the request of the Industrial Commission. However, the medical examination at question was requested by the employer. Accordingly, the Manual did not present Claimant with “good cause” under R.C. 4123.651 and the magistrate found that the Industrial Commission did not abuse its discretion when it suspended further consideration of Claimant’s claim. The Tenth District agreed with the magistrate’s decision and adopted the decision as its own.

**State ex rel. Patricia Denton v. Indus. Comm., 10th Dist. Franklin No. 18AP-100, 2019-Ohio-3173, August 8, 2019**

Claimant appealed to the Tenth District Court of Appeals of Ohio (“Tenth District”) seeking to vacate the Industrial Commission’s order denying her application for permanent total disability (“PTD”) compensation.

Claimant sustained two previous work-related injuries: the first in 1993; and the second in 2007 with a different employer. Claimant’s workers’ compensation claims were allowed following both injuries. In 2015, Claimant, at 73 years of age, filed an application for PTD compensation. However, the Staff Hearing Officer (“SHO”) denied her PTD application. The SHO found that Claimant was not permanently and totally disabled based on the conclusions that: she retained the residual physical and psychological capacity to perform work; her age was not a barrier to re-employment; her level of education and work history were assets to re-employment; and there was no persuasive evidence in the file to show she was incapable of obtaining new job skills.

Claimant ultimately appealed the administrative decision to deny her application for PTD to the Tenth District which referred the case to a magistrate. The magistrate determined that the Industrial Commission did not abuse its discretion in finding that Claimant was not entitled to PTD compensation. Claimant objected to the magistrate’s decision by arguing that the record did not show that the Industrial Commission failed to consider vocational evidence from the Bureau of Vocational Rehabilitation (“BVR”). Claimant also objected to the magistrate’s finding that the Industrial Commission did not abuse its discretion because the BVR assumed Claimant was only capable of sedentary work whereas the Industrial Commission examiner found she was capable of light work.

The Tenth District disagreed with Claimant’s objections by reasoning the record reflected that the Industrial Commission wholly failed to consider the vocational evidence from the BVR in

reaching its determination. The Tenth District reasoned that there was no dispute that the SHO had the BVR report, submitted it as part of the PTD application file, and that it was specifically referenced in the PTD application. The Tenth District found that the Industrial Commission was allowed to find certain evidence more persuasive than other evidence as long as it did not turn away any evidence "out of hand." Further, the Tenth District found that there was nothing in the record to suggest that the SHO did not consider the BVR report as part of its analysis. Instead, the BVR report failed to consider whether Claimant was capable of performing light duty work, and in failing to do so, the BVR report's relevancy was decreased in analyzing Claimant's ability to obtain sustained remunerative employment. Accordingly, the SHO's failure to rely on the report as persuasive evidence was not an abuse of discretion. Therefore, the Tenth District agreed with the magistrate and held that the Industrial Commission did not abuse its discretion.

**State ex rel. Stallion Oilfield Construction, LLC v. Indus. Comm., 10th Dist. Franklin No. 18AP-350, 2019-Ohio-3174, August 8, 2019**

The Employer appealed to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's order granting the claimant's request for temporary total disability ("TTD").

The Claimant applied for and received workers' compensation benefits for a back strain, but shortly after, he tested positive for morphine, codeine, and opiates with no concentrations of each being provided in the test results. After his termination, the Claimant requested that his claim be additionally allowed for intervertebral disc disorder and he subsequently filed an application for TTD. At the District Hearing Officer ("DHO") level, the Employer argued that TTD should not be awarded because the Claimant voluntarily abandoned his employment when he tested positive for opiates. The DHO agreed and denied his application for TTD, but allowed his claim for the disc disorder. Both parties appealed and the Staff Hearing Officer ("SHO") overruled the DHO by granting the award of TTD. The SHO reasoned that TTD was proper because the Claimant could not return to work in his former position at the time he was fired. The SHO affirmed the DHO's allowance of the disc disorder claim.

The Employer appealed the SHO order to the Industrial Commission. However, the Industrial Commission found that the Employer failed to establish the first requirement for voluntary abandonment – showing that the Claimant was terminated for violating a rule that "clearly" defined the prohibited conduct. The Industrial Commission found that the Employer's handbook defined "positive drug test" to require the requisite drug concentration amounts necessary to equate to a positive drug result. However, since the Employer's results did not include the concentration of each opiate, the results did not confirm that the test was positive. The Industrial Commission also held that the Claimant had presented sufficient medical evidence to support the additional allowance of disc disorder.

The Employer ultimately appealed the administrative decision to award TTD to the Tenth District which referred the case to a magistrate. The Employer chose not to further appeal the allowance of the disc disorder claim. On appeal, the magistrate determined that the Industrial

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Commission did not abuse its discretion when awarding TTD to the Claimant because the Employer failed to produce proof of the Claimant's drug concentration results as the Employer's handbook required. The Tenth District agreed with the magistrate's decision and adopted the decision as its own.

4123-6-34Payment for treatment of concussion injuries.

This rule governs the bureau's reimbursement for services in an allowed claim related to concussion. It is not meant to preclude, or substitute for, the health care provider's responsibility to exercise sound clinical judgment in light of current best medical practices when treating injured workers.

(A) As used in this rule, "concussion" means a type of traumatic brain injury induced by external force, which might include a bump or blow to the head, or a jolt or hit to the body, which causes the brain to bounce around or twist in the skull, causing chemical changes in the brain and sometimes stretching and damaging brain cells.

(1) Concussion is manifest by at least one of the following:

- (a) Any alteration in mental state at the time of the accident (feeling dazed, disoriented, or confused);
- (b) Any period of loss of consciousness;
- (c) Any loss of memory for events immediately before or after the accident; or
- (d) Focal neurological deficit that may or may not be transient, but where the severity of the injury does not exceed the following:
  - (i) A loss of consciousness for approximately thirty minutes or less;
  - (ii) After thirty minutes, an initial Glasgow Coma Score of 13-15; or
  - (iii) Post-traumatic amnesia not greater than twenty-four hours.

(2) A concussion may involve different symptoms, clinical profiles and subtypes, and different recovery trajectories, which may be influenced by a variety of risk factors. Kontos, Anthony P. and Michael W. Collins. Concussion: a clinical profile approach to assessment and treatment. Washington, DC: American Psychological Association (2018), p.5. Adapted with permission.

(3) In concussion, even though by definition brain injury has occurred, standard imaging studies such as CT scan and MRI will commonly be normal.

(B) As used in this rule, "clinical domains" related to concussion means the following group of signs or symptoms related to a specific body part or system:

(1) Anxiety and mood: including ruminating thoughts, difficulty concentrating, hypervigilance, or fastidiousness.

- (2) Vestibular: including impaired balance and equilibrium, dizziness, nausea, or environmental sensitivity,
  - (3) Ocular: including impaired vision and visual tracking, impaired comprehension, trouble focusing, or distractibility.
  - (4) Sleep: including trouble falling asleep or sleeping more or less than usual.
  - (5) Cervical: including neck pain, stiffness, or reduced range of motion.
  - (6) Cognitive fatigue: including impaired thinking abilities, feeling slow or "one step behind", physical and mental fatigue, general headache, or sleep disturbance.
  - (7) Headache (migraine, cervicogenic, and tension headache): including variable and intermittent severe headache, nausea, photosensitivity, or vestibular migraine.
  - (8) Cognitive impairment: including impairment in attention, memory, executive function, language processing, or visual perception and processing.
- (C) Notwithstanding any provision to the contrary in any other rule of the bureau, medical treatment reimbursement requests relating to the clinical domains set forth in paragraph (B) of this rule, submitted within six months from the date of injury, for treatment not to exceed six months from the date of injury, may be authorized in an allowed claim, without disclaimer, when:
- (1) The documented mechanism of injury in the claim included a bump or blow to the head, or a jolt or hit to the body; and
  - (2) Signs or symptoms related to the clinical domains have manifested within six weeks of the date of injury; and
  - (3) The requested medical treatment is determined to be medically necessary and appropriate, and reasonably related to treatment of concussion, based on the medical evidence.
- (D) When concussion or other conditions relating to the clinical domains set forth in paragraph (B) of this rule and treated pursuant to paragraph (C) above are determined to require ongoing treatment beyond six months, the physician of record or treating provider may request these conditions be additionally allowed in the claim.

Effective: 1/1/2020  
Five Year Review (FYR) Dates: 01/01/2025

**CERTIFIED ELECTRONICALLY**

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Certification

09/17/2019

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Date

Promulgated Under: 119.03  
Statutory Authority: 4121.12, 4121.121, 4121.30, 4121.31, 4121.44,  
4121.441, 4123.05, 4123.66  
Rule Amplifies: 4121.12, 4121.121, 4121.44, 4121.441, 4123.66

## Safety & Workers' Compensation

### Check's in the Mail: BWC Rebates Start Going Out

September 27, 2019



In late June, the Bureau of Workers' Compensation (BWC) board of directors approved a \$1.5 billion rebate to Ohio employers covered by the BWC system. BWC started sending checks via the U.S. Postal Service yesterday, Sept. 26 — and the rebates will continue to go out through Thursday, Oct. 24. Be on the lookout for your check! In the meantime, [here's an FAQ](#) list regarding this year's rebate. 9/25/2019

### OSHA Approves New Respirator Fit Testing Protocols

September 27, 2019

OSHA has issued a final rule that provides employers with two new fit testing protocols for ensuring that employees' respirators fit properly. See the agency's [news release](#) for more details. 9/25/2019

### Sorting Out the Confusion Surrounding CBD

September 20, 2019

Confused about Ohio's legalization of products containing hemp-derived cannabidiol (CBD) and what it means for your workplace? Join OMA Connections Partner *Working Partners®* on Tuesday, Sept. 24, from 9:00 – 9:30 a.m. (EDT), for a [30-minute webinar](#), *Sorting Out the Confusion Around CBD*. Participants will learn about what CBD is and get answers to questions such as: Is CBD legal? Is it safe? Will CBD show up on a drug test? 9/18/2019

### Recorded BWC Webinars Now Available

September 13, 2019

Every month, the Ohio Bureau of Workers' Compensation (BWC) offers employers brief, informative webinars on topics of interest — with subjects ranging from drug testing, to workplace safety tips, to Workers' Compensation deadlines

and notices. If you've missed a recent webinar, they have been recorded and are available for playback online. Each lasts approximately 20 minutes. [See them here](#). 9/9/2019

### Northeast Ohio Safety Expo is Oct. 11

September 13, 2019

The 12<sup>th</sup> annual Northeast Ohio Safety Expo will be held Oct. 11 at the Mahoning County Career and Technical Center. There will be 40 sessions covering a wide variety of workplace safety topics. Also, the event will offer free and confidential biometric health screenings to eligible attendees as part of the BWC's Better You, Better Ohio!® program. [More details here](#). 9/11/2019



### BWC's Cleveland Office Has Moved

September 6, 2019

The Bureau of Workers' Compensation (BWC) is reporting that its Cleveland Service Office, located at 615 W. Superior Avenue (Lausche State Office Building), has temporarily moved from the 6th floor to the 7th floor of the Lausche Building. This move is the initial phase of an office consolidation with the Garfield Heights Service office, which will take place in this fall and/or winter. 8/30/2019

### BWC Extends Policy Activity Rebate Program

September 6, 2019

The Bureau of Workers' Compensation (BWC) has extended its Policy Activity Rebate (PAR) pilot program for a second year. PAR is an activity-based incentive program that allows employers to choose from among 33 activities to earn a premium rebate. Employers can earn a 50% premium rebate, up to \$2,000, by

completing 11 credits during the enrolled policy year.

Private employers can enroll now through Jan. 31, 2020. Visit the BWC's **Policy Activity Rebate web page** for additional information. 8/30/2019

### **Ohio Courts Address Light-Duty Assignments for Injured Workers**

August 30, 2019

The "good faith" requirement of a light-duty offer was just examined by the 10th District Court of Appeals and the Supreme Court of Ohio — with a somewhat surprising result. In its **new analysis**, OMA Connections Partner Dinsmore writes that employers must remember that "providing employees with menial tasks or requiring them to watch training videos for the majority of their shifts could fail the 'good faith' requirement of a light-duty job offer." 8/28/2019

### **BWC Increases Cash Awards for Safety Innovation Contest**

August 30, 2019

The Ohio Bureau of Workers' Compensation (BWC) has increased the prize amounts for its 2020 Safety Innovation Awards to encourage participation and creative solutions to enhance workplace safety. BWC has bumped the top award to \$10,000, while second place will receive \$6,000 and third place \$4,000. There's also a new \$1,500 honorable mention prize.

### **New Details on OSHA's On-Site Consultation Program**

August 16, 2019



A new **brochure** from OSHA explains how the agency's no-cost and confidential **On-Site**

If your business has developed advanced technologies, creative use of existing equipment, or unique processes and practices to reduce workplace risks, **apply by Sept. 30** for your chance at a cash award. 8/26/2019

### **At a Glance: 25 Years of Worker Injury & Fatality Data**

August 30, 2019

The Bureau of Labor Statistics (BLS) has published a **slideshow** analyzing a quarter century of data on work-related injuries and illnesses in America. The findings include:

- From 1992 to 2016, U.S. fatal occupational injuries declined by about 17%.
- Heavy tractor-trailer truck drivers had the most fatal occupational injuries within the manufacturing sector.
- Fatal injuries declined for workers in the 25-34 and 35-44 age groups from 1992 to 2016, but there was an increase for workers in the 55-64 and 65-and-older age groups. (Workers 55-plus made up around 20% of injuries in 1992 and 36% in 2016.)

A BLS **report released earlier this year** said Ohio's manufacturing sector has seen "a significant decline" in workplace injuries and illnesses. 8/29/2019

**Consultation Program** can help businesses reduce the likelihood of worker injuries or illnesses, and help save on workers' compensation costs. In Ohio, the **BWC administers this program**. The consultation is confidential. According to OSHA, no citations or penalties will be issued — and your only obligation is to correct serious job safety and health hazards. 8/12/2019

### **Hiring Security for Your Workplace? Read This First**

August 16, 2019

This month's tragedies in Dayton and El Paso — which mirrored events that have become far too common since the late 1990s — have more employers looking at hiring their own private

security. In Ohio, security services are required to be licensed through the Ohio Department of Public Safety's (ODPS) and its Ohio Homeland Security division.

If you are considering hiring contract security for your business, or currently use such services, the ODPS encourages you to use its Private Investigator and Security Guard Services (PISGS) as an informal resource. This will help ensure that a company is operating legally in Ohio, and that security guards are properly trained and registered. See more [here](#) or call (614) 466-4130. 8/12/2019

### BWC Taking Applications for Safety Innovation Awards

August 9, 2019

The Ohio Bureau of Workers' Compensation (BWC) is taking applications from Ohio employers for its annual Safety Innovation Awards, which recognize employers for innovative and creative solutions to reduce the risk of injuries and illnesses in the workplace. Applications are due Sept. 30, 2019. Innovations can include advanced technologies, creative use of existing equipment, or unique processes and practices. Cash awards range from \$6,000 for first place to \$1,500 for honorable mention. Here is [more information](#). 8/5/2019

### Responding to an Active Violence Situation in the Workplace

August 9, 2019

It has been a tough week in Ohio and the rest of the nation following the acts of evil in Dayton and El Paso. If you would like to help the families impacted by this tragedy, consider donating to [The Dayton Foundation](#).

While no employer wants to think about such acts of violence occurring at the workplace, preparing employees can save lives through increased awareness, emergency action plans, and trained response protocols. Last fall, the OMA — in partnership with its safety consultant, Safex — hosted a webinar featuring Lt. Paul Ohl, SWAT platoon commander with the Columbus Division of Police, who discussed effective planning considerations for an active violence situation in the workplace. This recorded webinar is [available now](#), free to all OMA members. 8/5/2019

### Workers' Comp Rates Drop 20% on Average

August 2, 2019

The Ohio Bureau of Workers' Compensation (**BWC**) reports that a 20% reduction in the average premium rate collected from private employers went into effect July 1. This is the BWC's largest rate reduction in nearly 60 years, and is estimated to save private employers \$244 million in FY 2020. The rate relief is attributed to safer workplaces, as well as the continued lower inflation of medical costs. 7/31/2019

### General Assembly Passes a 'Clean' BWC Budget; PTSD Language is Removed

July 19, 2019

This week, the House and Senate finalized [House Bill 80](#), the Bureau of Workers' Compensation (BWC) budget. Last month, the General Assembly failed to pass the bill and instead approved a short-term funding solution, while the two chambers continued to negotiate on key differences.

Approved in early June, the House version of HB 80 was loaded with major policy changes that would have had detrimental impacts on the manufacturing community — including provisions to allow expanded PTSD coverage and benefits; changes to the settlement process; and new employee misclassification definitions.

The Senate eliminated the harmful House provisions in their version of HB 80. In the [conference committee](#), the House and Senate agreed to the Senate version, while an amendment to include PTSD was defeated. The OMA worked to remove the harmful provisions to protect Ohio manufacturing. 7/17/2019

### PTSD Remains a Sticking Point in Delayed BWC Budget

July 2, 2019

The legislature failed to meet Sunday's deadline for passing a final budget measure ([House Bill 80](#)) for the Ohio Bureau of Workers' Compensation (BWC). As a result, lawmakers extended the BWC's current funding for 30 days, after the House voted to not concur with the Senate amendments to the budget legislation.

The Senate-passed version of HB 80 contained none of the [controversial provisions](#) included by the House, such as employee misclassification language, expanded workers'

comp coverage for PTSD for first responders without a qualifying physical injury, and settlement provisions that would be harmful to manufacturers. House leadership has insisted on keeping the PTSD and misclassification provisions in the bill.

OMA members should **contact their state senator and state representative** — urging him/her to accept the Senate version of HB 80. Including the controversial PTSD language in the bill would create a fundamental shift in Ohio's workers' compensation law, which currently requires a physical injury before allowing any mental health claims. Most troubling, it would establish a precedent for future PTSD expansion to include private employers. If this happened, workers' compensation premiums for Ohio manufacturers would increase dramatically. 7/1/2019

#### **Workers' Comp Board OKs \$1.5B in Rebates for Employers**

July 2, 2019



On Friday, the **board of directors** for the Ohio Bureau of Workers' Compensation (BWC) approved \$1.5 billion in rebates for approximately 180,000 private and public employers across the state. Employers should receive their rebate checks sometime this fall.

This latest rebate, proposed by Gov. Mike DeWine in May, represents roughly 88% of the premiums employers paid for the policy year that ended June 30, 2018. It marks the fifth time in the last six years that the system has returned at least \$1 billion to employers due to favorable investment returns, fewer injury claims, and operational efficiencies.

"In total, BWC has saved employers nearly \$10 billion in workers' comp costs through dividends, credits, rate reductions and greater efficiencies since 2011," according to the agency's **news release**. 7/1/2019

#### **Senate Passes Clean Workers' Comp Budget Bill**

June 28, 2019

This week, the Ohio Senate unanimously passed a stripped-down version of **House Bill 80**, the Bureau of Workers' Compensation (BWC) budget bill. During the committee process, the Senate removed all **controversial provisions** added by the House, returning the bill to its appropriation roots. Among the items the Senate removed were an employee misclassification provision, expanded Workers' Comp coverage for PTSD, and settlement provisions that were harmful to Ohio's manufacturers.

The House has yet to vote on concurrence of the Senate amendments. If the House does not concur with the changes, a conference committee will be appointed and would face an extremely tight deadline to reach final approval by 11:59 p.m. Sunday, June 30.

Late Thursday, Speaker **Larry Householder** (R-Glenford) said the House would prepare a continuing budget resolution — a temporary funding measure — in case House and Senate conferees failed to reach a timely agreement on HB 80 and the mainline state budget (House Bill 166). 6/27/2019

#### **OMA Testifies Against BWC Budget Bill**

June 21, 2019

This week, the **OMA testified** as an opponent to the Ohio Bureau of Workers' Compensation (BWC) budget bill (**House Bill 80**), appearing before the Senate Finance and Financial Institutions Committee. The bill, as passed by the House, contains a variety of anti-business provisions, including the expansion of workers' compensation benefits for mental or emotional impairment caused by PTSD for first responders — even in the absence of a physical injury. The Senate has indicated that a new substitute version of the bill will be adopted next week. HB 80 needs to be passed no later than June 30 to ensure continued funding for the BWC. 6/20/2019

#### **Industrial Commission Budget Clears General Assembly**

June 21, 2019

On Wednesday, the Senate unanimously passed **House Bill 79**, the Industrial Commission budget. Typically, the Industrial Commission budget is the least controversial of the state's four budget bills — which also include the transportation, BWC, and main operating bills. This year was no exception as the bill moved through the House and Senate with zero opposition. HB 79 provides the operating funds for the **Ohio Industrial Commission**, which serves as the adjudicating body for employers and employees on disputed workers' compensation claims. 6/20/2019

### Questions Linger About PTSD Expansion as Senate Takes Up Workers' Comp Budget

June 14, 2019



This week, the Senate Insurance and Financial Institutions Committee began its work on **House Bill 80**, the Ohio Bureau of Workers' Compensation (BWC) budget.

As we **reported** last week, the House-passed version of HB 80 contains a variety of provisions that would be detrimental to Ohio's business climate. This includes the expansion of workers' comp benefits for mental or emotional impairment caused by post-traumatic stress disorder (PTSD) for first responders — even when there is no physical injury. Other harmful provisions include restricting an employer's right to negotiate settlement terms; eliminating the current definition of an employee; and penalizing employers for accidentally misclassifying employees.

At this week's Senate hearing, bill sponsor **Rep. Scott Oelslager** provided sponsor **testimony** and BWC Administrator Stephanie McCloud provided **testimony** on behalf of the BWC. The bill is expected to have multiple hearings over the next week. The OMA and other business allies continue to oppose the bill based on the House's harmful changes. 6/13/2019

### Analysis: Citizenship Provision in Workers' Comp Budget Could Result in 'Unintended Consequences'

June 14, 2019

As previously **reported**, the Ohio House last week passed its version (**House Bill 80**) of the state's workers' compensation budget, but not before a controversial, immigration-related amendment was added at the last minute. The bill is now before the Senate for consideration.

The OMA's Connections Partner **Franz Ward** has **analyzed** the citizenship provision in HB 80, which would "require injured workers to identify themselves as either a U.S. citizen, non-citizen authorized worker, or an illegal or unauthorized alien when filing a workers' compensation claim in Ohio."

According to the firm, "while the amendment does not go so far as to expressly prohibit illegal aliens from receiving workers' compensation benefits, it does state that claimants who provide false information, including regarding their citizenship status, will be ineligible to receive such benefits and may be prosecuted for workers' compensation fraud under Ohio law."

Supporters say "the collected data will be useful in making future law and policy decisions going forward," while critics worry the language will discourage injury claims by undocumented immigrants, thereby resulting "unintended consequences." For example, one fear is that undocumented injured workers could "seek out medical treatment in emergency rooms without either health insurance or, due to this amendment, workers' compensation coverage, resulting in unpaid medical bills and costs getting passed along to Ohio taxpayers and people with health insurance." 6/11/2019

### Free Safety Awareness Materials Now Available

June 14, 2019



June is National Safety Month — 30 days that have been designed to raise awareness about the leading causes of injury and death at work and elsewhere. To help raise awareness among your employees, the National Safety Council is offering free materials, including posters, tip sheets, articles, special offers, social graphics, and more. Visit the [NSC website](#) to receive these free safety-related items. 6/10/2019

### [House Passes Workers' Comp Budget with PTSD Expansion](#)

June 7, 2019

Despite objections raised by business organizations – including the OMA – the House on June 5 passed its version of the Ohio Bureau of Workers' Compensation (BWC) budget under [House Bill 80](#). As [passed by the House](#), the measure would make several changes to Ohio's BWC law that would negatively affect the business climate, including expanding workers' comp benefits for mental or emotional impairment caused by post-traumatic stress disorder (PTSD) for first responders, even when there is no physical injury.

HB 80 would create a fundamental shift in Ohio's workers' compensation law, which currently requires a physical injury before allowing any mental health claims. Most troubling, it would establish a precedent for future workers' comp expansion that affects private employers. If this happened, workers' compensation premiums for Ohio manufacturers would increase dramatically.

Among HB 80's other changes that would be detrimental to the business community are:

- Restricting an employer's right to negotiate settlement terms;
- Eliminating the definition of employee for the purposes of workers' comp, unemployment comp, and tax; and
- Authorizing the bureaucracy to develop its own definition and punitive powers to penalize employers for even mistakenly misclassifying an employee.

Earlier this week, the OMA provided [opponent testimony](#) on the bill, and sent a [key vote alert](#) to all House members, urging a "no" vote. Now, following its [passage in the House](#), HB 80 will be considered in the Senate. The bill is required to be passed and signed by the governor prior to July 1.

The OMA will continue to advocate for the removal of these harmful provisions in the upper chamber. Members should reach out to [their state senator](#), urging him/her to oppose HB 80 as passed by the House. 6/6/2019

### [OMA Publishes OSHA Response Guide](#)

June 7, 2019



To help members understand and react to a variety of OSHA situations, the OMA has created this [OSHA Response FAQ publication](#), authored by OMA Connections Partners [Safex](#) and [Bricker & Eckler](#). Members who buy OMA Workers' Compensation Services (WCS) will find the guide – and all OMA's workers' comp resources – on their WCS Dashboard. Learn more about OMA WCS [here](#). 6/3/2019

### [BWC Publishes 2019 MCO Report Card](#)

June 7, 2019

The Ohio Bureau of Workers' Compensation has created the [MCO Report Card](#) so employers can evaluate their managed care organizations (MCO) performance. MCOs manage the medical portion of a workers' compensation claim to ensure that injured workers receive quality medical care.

The annual report card provides information on MCOs' key performance indicators (KPIs) — intended to measure medical management quality, safe return-to-work strategies, and service timeliness. This year's report card is based on assessments between Jan. 1 and Dec. 31, 2018. Every two years, during an open enrollment period, employers can choose any MCO that best suits their company's needs. The next open enrollment period will be in 2020. If you don't know your MCO, use this [BWC Employer/MCO look-up](#). 6/4/2019

**Workers' Compensation Legislation**  
**Prepared by: The Ohio Manufacturers' Association**  
**Report created on September 30, 2019**

- HB79 INDUSTRIAL COMMISSION BUDGET** (OELSLAGER S) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of Commission programs.
- Current Status:** 6/27/2019 - **SIGNED BY GOVERNOR**; eff. 6/27/19  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-79>
- HB80 BWC BUDGET** (OELSLAGER S) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of the bureau's programs.
- Current Status:** 7/22/2019 - **SIGNED BY GOVERNOR**; Eff. Immediately  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-80>
- HB167 OCCUPATIONAL LUNG CONDITIONS** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
- Current Status:** 4/2/2019 - Referred to Committee House Commerce and Labor  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-167>
- HB308 PTSD COVERAGE - FIRST RESPONDERS** (PATTON T) Concerning workers' compensation and disability retirement for peace officers, firefighters, and emergency medical workers diagnosed with posttraumatic stress disorder arising from employment without an accompanying physical injury.
- Current Status:** 9/24/2019 - Referred to Committee House Insurance  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-308>
- HB330 FIREFIGHTER CANCER CLAIMS** (PATTON T) Regarding charging workers' compensation experience in firefighter cancer claims.
- Current Status:** 9/24/2019 - Referred to Committee House Insurance  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-330>