



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 27

132nd General Assembly
(As Introduced)

(Excluding appropriations, fund transfers, and similar provisions)

Rep. Brinkman

BILL SUMMARY

Drug testing

- Requires the types and amounts of controlled substances to which the continuing law rebuttable presumption that an employee was under the influence at the time of injury applies to be those used by the federal Department of Transportation drug testing program instead of those specified in current law (some drugs appear on both lists).

Payments to dependents

- Prohibits, for claims arising on or after the provision's effective date, compensation or benefits from being paid to a deceased employee's dependent while the dependent is incarcerated as a result of a conviction of any state or federal criminal law.

Temporary total disability

- Authorizes the Administrator of Workers' Compensation, for good cause, to waive the requirement that an employee receiving temporary total disability (TTD) compensation undergo a medical examination.
- Requires the Administrator to refer an employee receiving TTD compensation for a medical examination if the employee's employer objects to the waiver.
- Requires, if an employee's average or full weekly wage has not been determined at the time TTD compensation becomes payable, that an employee receive the minimum calculable compensation for TTD under the Workers' Compensation Law.

- Requires TTD compensation to be adjusted, and overpayments to be recovered, on determination of an employee's average or full weekly wage.
- Requires, if the employee receives less than the amount the employee is entitled to under continuing law for TTD, on determination of the employee's average or full weekly wage, the employee to receive the difference.

Permanent partial disability

- Requires, if an employee fails to schedule a medical examination with the Bureau of Workers' Compensation (BWC) Medical Section or fails to attend a scheduled medical examination, the dismissal of an application for a determination of the employee's permanent partial disability under the Workers' Compensation Law.
- Allows an employee to refile a dismissed application, subject to the continuing jurisdiction of the Industrial Commission under the Workers' Compensation Law.
- Applies dismissal requirement to a claim pending on the provision's effective date and to any future claim.
- Allows all applications pending on the provision's effective date that are dismissed to be refiled within two years after the dismissal.

Secondary payers

- Allows the Administrator, based on an assessment of an employee's claim file, to reimburse, up to \$500, the Centers of Medicare and Medicaid Services, the Ohio Department of Medicaid, or a medical assistance provider to whom the Department has assigned a right of recovery.
- Requires the Administrator, before making a payment, to make a reasonable determination that the payment is for reimbursement of benefits for an injury or occupational disease that is compensable, or is likely to be compensable, under the Workers' Compensation Law.
- Requires these payments to be made from the Surplus Fund Account.
- Allows the Administrator, with the advice and consent of the BWC Board of Directors, to adopt rules to implement the provision.

Public Employment Risk Reduction Program

- Eliminates the ability of a public employer to apply to the Administrator for an exemption from the Public Employment Risk Reduction Program (PERRP).



- Provides coverage under PERRP to firefighters, emergency medical technicians, and certain correction officers.
- Requires the Administrator to adopt rules concerning standards and procedures for an effective safety partnership agreement program for public employers and employees that promotes voluntary compliance with PERRP.
- Specifies that the Administrator or Administrator's designee must make scheduled inspections (rather than inspections) and requires inspections and investigations to be conducted in accordance with the Administrator's rules adopted under continuing law.
- Eliminates current law's requirement that a safety violation notice provided to a public employer include the initial notice the Administrator receives of the violation.

Group rating plans

- Requires the Administrator, if the premium rate of an employer who is a member of a group rating plan changes from the previous year, to provide an explanation of a premium rate revision to the group administrator instead of a copy of the invoice as under current law.

Occupational disease reports

- Eliminates the prohibition against a physician neglecting or refusing to make or transmit an occupational disease report to BWC and the penalty for violating the prohibition.
- Removes references related to submitting occupational disease reports by mail only.

CONTENT AND OPERATION

Drug testing

(R.C. 4123.54)

The bill revises the list of the controlled substances and the necessary levels of some of the controlled substances specified in the continuing law rebuttable presumption described below to be those used by the federal Department of Transportation drug testing program.¹ By using the federal Department of Transportation drug testing program list of controlled substances and cut off levels, the

¹ 49 Code of Federal Regulations 40.87.



bill removes the testing requirements regarding barbiturates, benzodiazepines, methadone, or propoxyphene. The federal regulation replacing the current law drug testing levels does not include testing levels for those substances, and thus it appears that positive tests for those drugs will not trigger the rebuttable presumption.

The bill also removes references to the types of screening test used under current law, "enzyme multiplied immunoassay technique" and "gas chromatography mass spectrometry," and that the test is done on a urine sample. The federal regulation does not specify the type of test or sample type required to be used for purposes of the cutoff concentration levels, thus it is not clear as to which types of tests are required.

The federal regulation includes two cut off levels, the initial test cutoff concentration level and the confirmatory test cutoff level. The bill does not specify which level is to be used, thus it is unclear which level is required to be used under the bill or if the bill requires a two-part test of a sample. However, the bill appears to lower the necessary level of amphetamines and cocaine for purposes of triggering the rebuttable presumption.

Background – rebuttable presumption

Under continuing law, an employee or employee's dependent may be eligible for compensation and benefits for an injury, occupational disease, or death occurring in the course of employment. An employee or dependent is ineligible, however, if the injury or disease is purposely self-inflicted or if the injury's proximate cause was the employee being intoxicated or under the influence of marijuana or of a controlled substance not prescribed by a physician.

A rebuttable presumption that being intoxicated or under the influence was the proximate cause of the injury may be established by either a drug test, or the employee's refusal to submit to the test (as long as the employee is notified that refusal may affect eligibility for compensation and benefits), if the drug test is requested after an injury by (1) an employer who has reasonable cause to suspect that the employee may be under the influence, (2) a police officer who has reasonable grounds to believe that the employee was operating a vehicle while under the influence, or (3) a physician.

"Reasonable cause" means evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. These facts and inferences may be based on observation, a pattern of behavior or work performance, the identification of an employee as the focus of a drug-related criminal investigation, a reliable and credible report of use, or repeated or flagrant violations of the employer's safety or work rules.

Incarcerated dependents

(R.C. 4123.54; Section 741.20)

For claims arising on or after the provision's effective date, the bill prohibits compensation or benefits from being paid to a deceased employee's dependent while the dependent is incarcerated as a result of a conviction of any state or federal criminal law. Continuing law prohibits compensation or benefits from being paid to a claimant while the claimant is incarcerated under those circumstances.

Temporary total disability

Waiver of required medical examinations

(R.C. 4123.53)

Under current law, the Administrator of Workers' Compensation must refer an employee who has received 90 consecutive days of temporary total disability (TTD) compensation to the Bureau of Workers' Compensation (BWC) Medical Section for a medical examination. If a medical examiner determines that the employee remains temporarily and totally disabled, the medical examiner must recommend a date when the employee should be reexamined. The Administrator must schedule, and the employee must attend, medical examinations until an examiner determines that the employee is no longer temporarily totally disabled, or the employee is no longer receiving TTD compensation. Continuing law allows the employee's employer to waive the scheduling of a medical examination.

The bill authorizes the Administrator, for good cause, to waive the scheduling of a medical examination during the period an employee is receiving TTD compensation. If the employee's employer objects to the Administrator's waiver, the Administrator must refer the employee to the BWC Medical Section to schedule the examination, or the Administrator must schedule the examination.

Minimum TTD compensation

(R.C. 4123.56)

Under continuing law, an employee who is entitled to TTD compensation generally receives 66⅔% of the employee's average weekly wage (AWW) for a maximum of 200 weeks or until specified events occur, whichever is earlier. However, during the first 12 weeks of TTD, the employee receives 72% of the employee's full weekly wage, up to a statutory maximum. Weekly TTD compensation cannot be more than the statewide AWW or less than 33⅓% of the statewide AWW unless an



employee's wage is less than the minimum, in which case the employee receives the employee's full wages.

Under the bill, if an employee is eligible for TTD compensation, but the employee's average or full weekly wage has not been determined at the time payments are to start, the employee is entitled to the minimum amount of compensation calculable under continuing law. On determination of an employee's average or full weekly wage, the employee's TTD compensation is adjusted using continuing law.

If the amount of compensation an employee receives under the bill is more than the adjusted amount, the overpayment is recovered through deductions from compensation to which the employee becomes entitled in the same claim or in a different claim pursuant to continuing law. If the amount an employee receives is less than the adjusted amount, the employee is entitled to the difference between the two amounts.

Dismissal of permanent partial disability application

(R.C. 4123.57; Section 741.10)

Under continuing law, an eligible employee may apply to BWC for a determination of the percentage of the employee's permanent partial disability (PPD). When an employee applies for a determination, BWC must schedule the employee for a medical examination by the BWC Medical Section.

Under the bill, if an employee fails to respond to an attempt to schedule a medical examination by the BWC Medical Section or fails to attend a scheduled medical examination without notice or explanation, the employee's application for a determination of PPD must be dismissed without prejudice. An employee may refile the claim, subject to the Industrial Commission's continuing jurisdiction, which allows a change in claim to be made until five years from the date of injury or five years from the date of the last payment of benefits or compensation made under continuing law.

The bill's dismissal provision applies to all applications pending on the provision's effective date as well as future applications. If a pending application is dismissed pursuant to the provision, the claim may be refiled within two years after the dismissal.



Reimbursement of secondary payers

(R.C. 4123.66)

The bill allows the Administrator to make a payment of up to \$500 to either of the following:

- The Centers of Medicare and Medicaid Services for reimbursement of conditional payments made pursuant to the Medicare Secondary Payer Act;
- The Ohio Department of Medicaid, or a medical assistance provider to whom the Department has assigned a right of recovery under continuing law, for reimbursement for the cost of medical assistance paid on behalf of a medical assistance recipient.

Before making a payment, the Administrator must reasonably determine that the payment is for reimbursement of benefits for an injury or occupational disease that is compensable, or is likely to be compensable, under the Workers' Compensation Law.

These payments are to be charged to and paid from the Surplus Fund Account maintained under continuing law. Charges to the Surplus Fund Account do not directly affect the workers' compensation premium paid by an individual employer.

Nothing in this provision can be construed as limiting the Centers of Medicare and Medicaid Services, the Department, or any other entity with a lawful right to reimbursement from recovering amounts greater than \$500. The Administrator, with the advice and consent of the BWC Board of Directors, may adopt rules to implement this provision.

Public Employment Risk Reduction Program

(R.C. 4167.01, 4167.02, and 4167.10; repealed R.C. 4167.19)

The Public Employment Risk Reduction Program (PERRP), which is administered by BWC, provides worker safety and health protection to most of Ohio's state and local government employees. PERRP develops and enforces mandatory job safety and health standards, maintains a reporting and recordkeeping system to monitor job-related injuries and illnesses, and provides assistance, training, and other support to help public employers and employees understand their rights and responsibilities.



Exemptions

The bill eliminates the ability of a public employer, other than a state agency, to apply to the Administrator for an exemption from PERRP, except for inspections after specified accidents occur. Currently, a public employer is eligible for an exemption if (1) the employer qualifies for a group rating plan or the employer's premium rate is at least 50% less than the base rate for its workers' compensation premiums and (2) if the employer does not qualify for a group rating plan, the employer establishes and maintains a safety committee. An exemption granted to a public employer is valid for seven years.

Coverage

The bill includes in the definition of "public employee" individuals employed as firefighters, emergency medical technicians, and certain local correction officers. The result is that individuals employed in these professions will now be covered under PERRP. Continuing law excludes certain individuals from coverage under PERRP, including active duty state militia and individuals employed as peace officers, forest-fire investigators, natural resources officers, wildlife officers, or preserve officers.

Rules for effective safety partnership program

The bill requires the Administrator to adopt rules concerning standards and procedures for an effective safety partnership agreement program for public employers and employees that promotes voluntary compliance with PERRP. Continuing law requires the Administrator, with the advice and consent of the BWC Board of Directors, to adopt rules to administer and enforce the Program.

Inspections

Continuing law authorizes the Administrator or the Administrator's designee to inspect and investigate any facility, construction site, or other area where a public employee is working for a public employer. The bill specifies that the Administrator or the Administrator's designee must make scheduled inspections (rather than inspections) and specifies that the Administrator or the designee must conduct inspections and investigations in accordance with rules the Administrator must adopt under continuing law. Further, the bill allows the Administrator or the Administrator's designee to enter a public employer's facility, site, or area without delay during normal working hours and at other reasonable times to conduct inspections and investigations.

Under continuing law the Administrator or the Administrator's designee may conduct inspections and investigations when a public employee files a complaint with



the Administrator regarding unsafe working conditions or when a public employee exercises the employee's right to refuse to work due to unsafe conditions.

Safety violation notices

The bill eliminates the current requirement that a safety violation notice provided to a public employer include the initial notice the Administrator receives of the violation. As discussed above, continuing law permits a public employee to request an inspection by filing a complaint with the Administrator alleging that the employee's employer has unsafe working conditions. If the Administrator determines that reasonable grounds to believe that a violation or danger exists, the Administrator must notify the public employer of the alleged violation or danger. The notice must inform the public employer of the alleged violation or danger and that the Administrator will investigate and inspect the employer's workplace.

Explanation of rate revision in group rating plans

(R.C. 4123.29)

Under continuing law, the Administrator must offer a plan that groups similar employers together and pools the employers' risk. If the premium rate for an employer who participates in a group rating plan changes from the rate established for the previous year, the Administrator, in addition to sending an invoice with the rate revision to the employer under current law, must provide an explanation of the rate revision to the third-party that administers the group rating plan for the group. Current law requires the Administrator to send a copy of the invoice to the group administrator.

Occupational disease reports

(Repealed R.C. 4123.72; R.C. 4123.71)

The bill eliminates the current law prohibition against a physician neglecting or refusing to make or transmit an occupational disease report to BWC and the penalty for violating the prohibition. Additionally, the bill removes references to submitting occupational disease reports by mail only.

HISTORY

ACTION	DATE
Introduced	02-01-17

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