

10:00 a.m. (EST)
1-866-362-9768
552-970-8972#



Safety & Workers' Compensation Committee

Wednesday, May 2, 2018

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**2018 Safety & Workers'
Compensation Committee
Calendar**

Meetings begin at 10:00 a.m.

Wednesday, May 2, 2018
Wednesday, October 17, 2018

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





OMA Safety & Workers' Compensation Committee May 2, 2018

AGENDA

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc.
BWC Update	Brian Jackson, OMA staff
MCO Update	Mike Pulsfort, Health Management Solutions
Safety Update	Nate Burgei, Safex
OMA Public Policy Report	Rob Brundrett, OMA Staff
Guest Speakers	Katie Lemke, Working Partners Ian James, Green Light Acquisitions
OMA Counsel's Report	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 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:





Katie Lemke

Katie Lemke is a full-time member of the *Working Partners*[®] team as a Senior Consultant assisting in problem-solving issues with our clients to insure they handle situations in an objective, policy-driven manner. Katie is also an active facilitator in the *Working Partners*[®] community workforce development projects, incorporating her passion for education and extensive alcohol and other drug knowledge and experience.

She served as the Coordinator of the *Working Partners*[®] Drug-Free Workforce Community Initiative, a public-private partnership between the Ohio Department of Mental Health and Addiction Services (OhioMHAS) and *Working Partners*[®] to address the economic threat of substance abuse by employees and job seekers in our state.

Katie graduated from The Ohio State University with a bachelor's degree in psychology and master's degree from the University of Dayton in counselor education. She previously held professional licensure in chemical dependency (LICDC) and mental health (LPC) and anticipates meeting requirements for the Ohio Certified Prevention Specialist certification this year. Katie's professional experience includes therapy and psychoeducation in residential and outpatient chemical dependency treatment centers, including medication assisted treatment, as well as providing similar services within the mental health community. Additionally, Ms. Lemke collaborated with the criminal justice system to provide chemical dependency and mental health assessment services to the Franklin County Common Pleas Court.

Ian James Bio

Ian James founded Green Light Acquisitions, LLC (GLA) and handles strategic development, acquisitions, marketing, branding and analysis for the company. Mr. James founded the 2015 ResponsibleOhio marijuana legalization effort calling upon more than 30 years of strategic marketing and branding, public and governmental affairs, finance and acquisitions. Mr. James utilizes his expertise in branding, marketing, employment and environmental, healthcare, rezoning and land use issues, telecommunications, as well as transportation and logistics.

In 2016, Politico Magazine named Mr. James one of the most influential political thought leaders in the nation. Joining a diverse group of about 100 power brokers across the country, including top operatives, key activists and major donors from both parties.

Before Green Light Acquisitions, Mr. James found and ran a thriving community and governmental affairs firm that oversaw the collection of more than 6 million signatures to place issues before Ohio voters. His firm developed the blueprint to change the Ohio Constitution for casino gaming and worked on a variety of high profile social justice and ballot issues including protection of voting rights, employment rights, and civil rights issues. Mr. James also served in numerous governmental offices, senior campaign staff and lobbying positions in addition to serving as a corporate executive for Merv Griffin's Players International, Inc. His knowledge of industrial, corporate and public relations, as well as strategic guidance through partisan and non-partisan efforts led The Ohio Magazine to acknowledge him as one of Ohio's "brightest political strategists." Mr. James' extensive experience in branding and media relations have been showcased on CBS and NBC Evening News, the Today Show, Rolling Stone Magazine, New York Times, LA Times, US News and World Reports, The Guardian, Time Magazine, Politico Magazine, and hundreds of other publications around the globe.



What's New?

Recordkeeping Update:

Reminder, your 2017 OSHA Form 300A Information is due to OSHA by July 1, 2018. If you have not submitted, a webinar was recorded that can be accessed through your My OMA site for instructions on how to submit the information and who is required to submit. Below is a link to the OSHA website for the Injury Tracking Application, Instructions, and ITA Job Aids. When you get to the site, click the Launch ITA button in the top right-hand corner.

<https://www.osha.gov/injuryreporting/>

Beryllium

The final rule on Occupational Exposure to Beryllium, published on January 9, 2017, established new Permissible Exposure Limits (PELs) and contained several other ancillary provisions that apply to general industry, construction, and shipyards. 29 CFR §1910.1024 became effective on May 20, 2017. Under the general industry standard, all obligations were to commence on March 12, 2018, except for requirements for change rooms and showers in paragraphs (i)(2) and (i)(3), which commence on March 11, 2019, and requirements for engineering controls in paragraph (f), which commence on March 10, 2020. OSHA has been in extensive settlement discussions with several parties who have filed legal actions challenging the general industry standard. To provide additional time to conclude those negotiations, OSHA decided to delay enforcement of the general industry standard by 60 days until May 11, 2018.

Silica

March 25, 2016 the new Silica standard was published. It has an effective date of June 23, 2016 with compliance for manufacturers of June 23, 2018. OSHA has put out an **Small Entity Compliance** Document.

<https://www.osha.gov/Publications/OSHA3911.pdf>

There is also a silica webinar that can be accessed at My OMA.

The Key Provisions are:

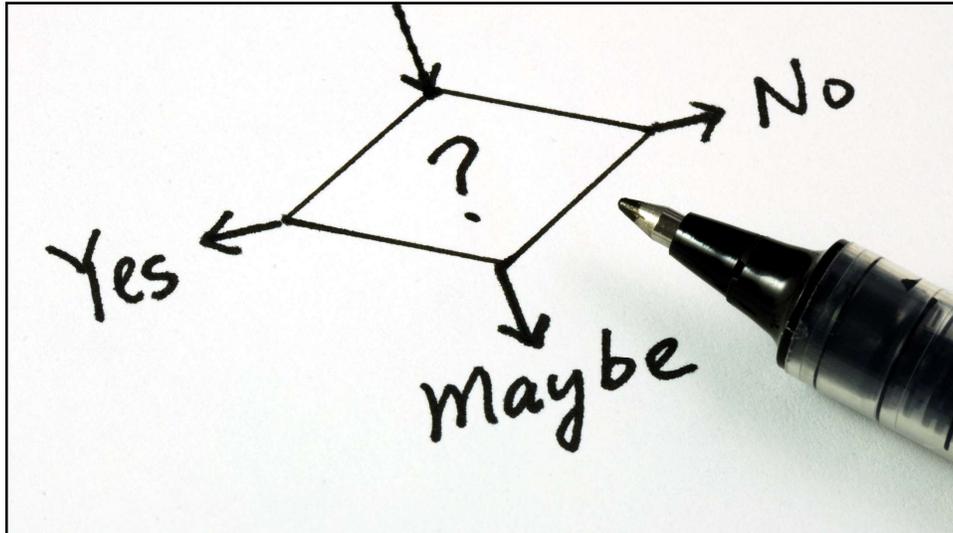
- Reduces the permissible exposure limit (PEL) for respirable crystalline silica to 50 micrograms per cubic meter of air, averaged over an 8-hour shift.
- Establishes action level of 25 micrograms per cubic meter of air, averaged over an 8-hour shift.

- Requires employers to: use engineering controls (such as water or ventilation) to limit worker exposure to the PEL; provide respirators when engineering controls cannot adequately limit exposure; provide medical surveillance, and limit worker access to high exposure areas. There are quarterly remonitoring requirements as well.
- If there are exposures at the action level, employers must develop a written exposure control plan, provide medical exams in 2020, train workers on silica risks and how to limit exposures. There are semi-annual remonitoring requirements as well.
- If respirators are worn, respiratory protection program must be implemented per 1910.134.

www.safex.us

614.890.0800

info@safex.us



OMA Safety and Workers' Compensation Meeting

Medical Marijuana & Your Drug-Free Workplace Program



INTRODUCTION



- Consulting & Training
- Community projects
- Risks related to the harmful use of substances
- Operations vs. Legal
- Legal Partner: Littler



DISCLAIMER

- The content is meant for informational purposes only and not for the purpose of providing legal advice.
- Should not be used as a substitute for consultation with a legal professional or other competent advisor.
- Contact a licensed attorney to obtain advice with respect to any legal issue discussed in this presentation or regarding a situation specific to your business.



BOTTOM LINE:

Employers are not required, but are not prohibited from allowing the lawful use of marijuana as medicine
(unless prohibited by an authority).



HOW WILLING ARE YOU TO ALLOW USE?

	1	2	3	4	5	6	7	8	9	10
	NO				MAYBE					YES
Derrick:	___	___	___	___	___	___	___	___	___	___
Cliff:	___	___	___	___	___	___	___	___	___	___
Ramona:	___	___	___	___	___	___	___	___	___	___
Noah:	___	___	___	___	___	___	___	___	___	___
Bethany:	___	___	___	___	___	___	___	___	___	___



BASIS OF DECISION MAKING

- Get the right players at the table
- Proactive vs. Reactive
- Rational vs. Emotional



5 CONSIDERATIONS

1. Laws & Authorities
2. Safety, Security & Public Image
3. Attitudes & Knowledge about the Drug
4. Ease of Operations
5. Workforce



HIERARCHY OF AUTHORITIES

- Federal
 - DFWP Act 1988
 - DOT

- State
 - Marijuana Law (Ohio HB 523)
 - Workers Compensation/Ohio BWC DFSP
 - Professional Licenses/Credentials
 - Other DFWP-related laws

Check with legal counsel

- Company-Specific
 - Attorney
 - Union
 - Insurance
 - Landlord
 - Clients
 - And more ...



Ohio H. B. 523 –THE BASICS



Oversight & Operation of the Law



Cultivators, processors
& testing labs



Dispensaries,
patient/caregiver
registration, new
forms of marijuana,
coordinating advisory
committee



Certifying physicians,
qualifying conditions



LEARN MORE!
INFORMATION & UPDATES

www.MedicalMarijuana.Ohio.gov



WHAT WE DO KNOW: RECOMMENDING

- Must be a bona fide relationship between patient and doctor
- Expectation that they will provide care on an ongoing basis.
- Dr. must complete 2 hours CE in a qualifying course and apply for a certificate
- Have in-person visit with patient
- Can recommend for 1 of 21 “qualifying conditions”

SOURCE: OHIO HB 523 

21 QUALIFYING CONDITIONS

1. AIDS
2. Amyotrophic lateral sclerosis
3. Alzheimer’s disease
4. Cancer
5. Chronic traumatic encephalopathy
6. Crohn’s disease
7. Epilepsy or another seizure disorder
8. Fibromyalgia
9. Glaucoma
10. Hepatitis C
11. Inflammatory bowel disease
12. Multiple sclerosis
13. Pain (chronic and severe or intractable)
14. Parkinson’s disease
15. Positive status for HIV
16. Post-traumatic stress disorder
17. Sickle cell anemia
18. Spinal cord disease or injury
19. Tourette’s syndrome
20. Traumatic brain injury
21. Ulcerative colitis



WHAT WE DO KNOW: RECOMMENDING

- Patient must provide proof of Ohio residence
- Pay \$50 registration fee & renew annually (can be discounted)
- Can't operate a "vehicle under the influence"


SOURCE: OHIO HB 523

WHAT WE DO KNOW: FORMS

- ORAL: Oil, tinctures, capsules, edible (not attractive to children)
- VAPORIZATION: oil or plant material
- TOPICAL: lotions, creams, ointments
- TRANSDERMAL: Patches


SMOKING

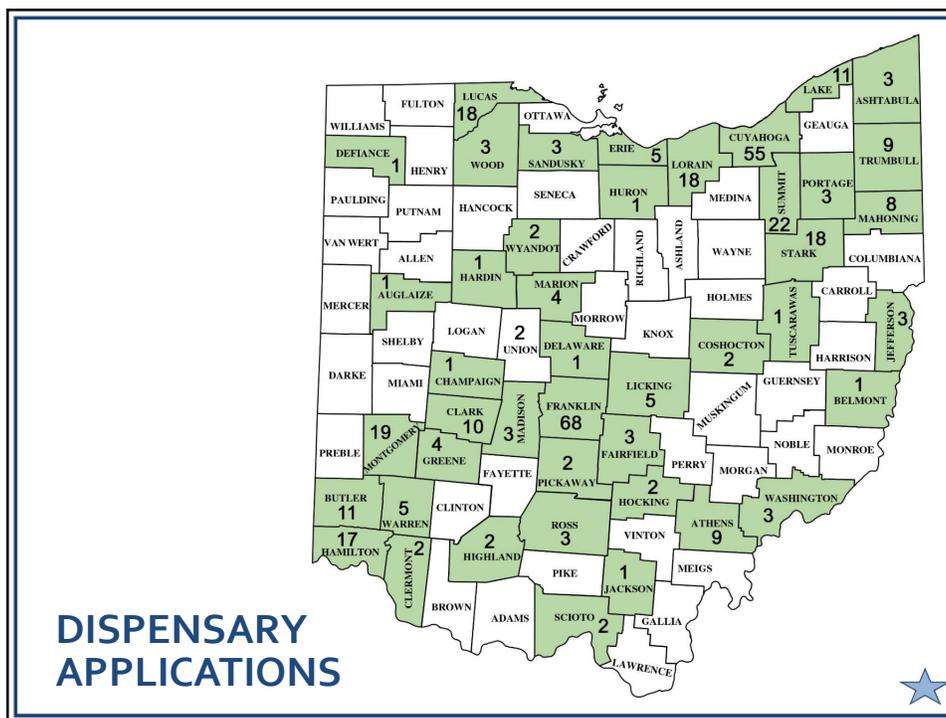

HOME
GROWN

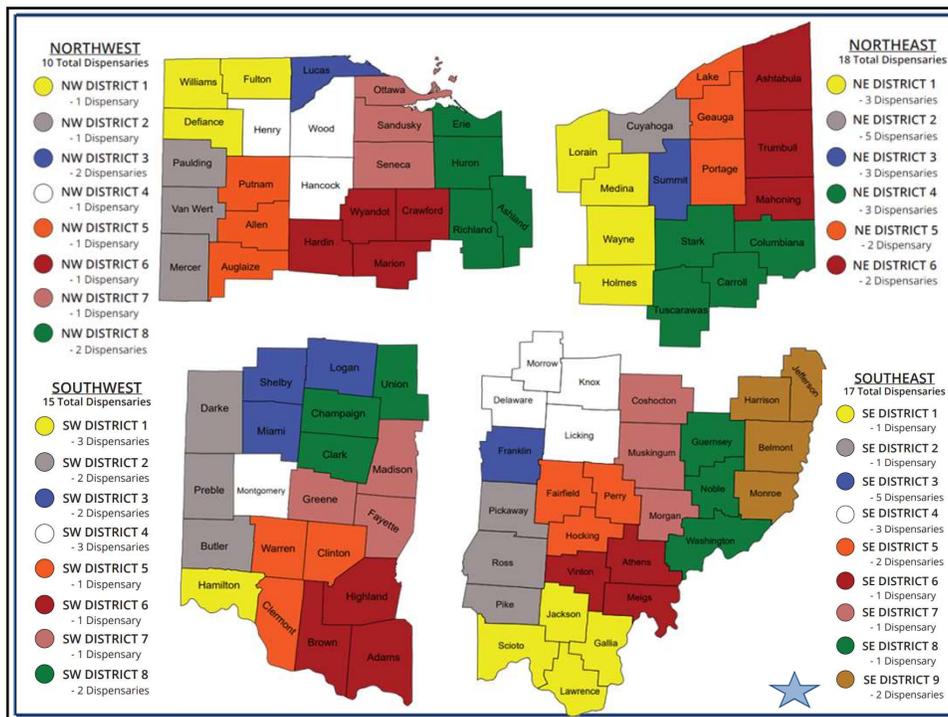

SOURCE: OHIO HB 523

WHAT WE DO KNOW: DISPENSING

- Must be registered business with state
- Must obtain certificate (renewed biannually)
- Employees have to be licensed
- Must be 18+ years to purchase (with ID)
- Can get a single dose or up to a go-day supply
- Must be reported to OARRS
- Up to 60 Dispensaries

SOURCE: OHIO HB 523 





WHAT WE KNOW: EMPLOYERS

- Nothing in the bill requires employer to accommodate use, possession or distribution of MM
- Nothing in the bill prohibits an employer from taking any adverse employment action ... because of person's use, possession or distribution of MM
- Nothing in the bill permits a person to sue an employer for taking an adverse employment action related to medical marijuana. *(But check with your legal counsel!)*

SOURCE: OHIO HB 523

WHAT WE KNOW: EMPLOYERS

- Nothing in the bill prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy
- Nothing in the bill interferes with federal restrictions on employment (e.g., DOT)
- BWC

SOURCE: OHIO HB 523 

SAFETY-SENSITIVE

- Safety Sensitive "Function"
 - Operating vehicle/Motorized equipment
 - Handling combustible/hazardous material
 - Working in a S.S. environment
- Safety Sensitive "Position"
 - Laborer
 - Carpenter
 - Outside sales
 - Mechanic
 - Warehouse Worker



SECURITY-SENSITIVE

- Payroll, finances
- Classified information
- Intellectual property
- Security
- Child/Adult Care
- Professionals -- Architects, Structural Engineers



PUBLIC IMAGE

- Child & adult care providers
- Retail
- Alcohol/Drug Professionals
- Other forward-facing positions



THE DRUG

- Over 400 naturally occurring chemicals
- Unique to marijuana: cannabinoids
 - Fat soluble
 - Half-life
 - Accumulates
- 2 chemicals of interest for medical
 - THC
 - CBD

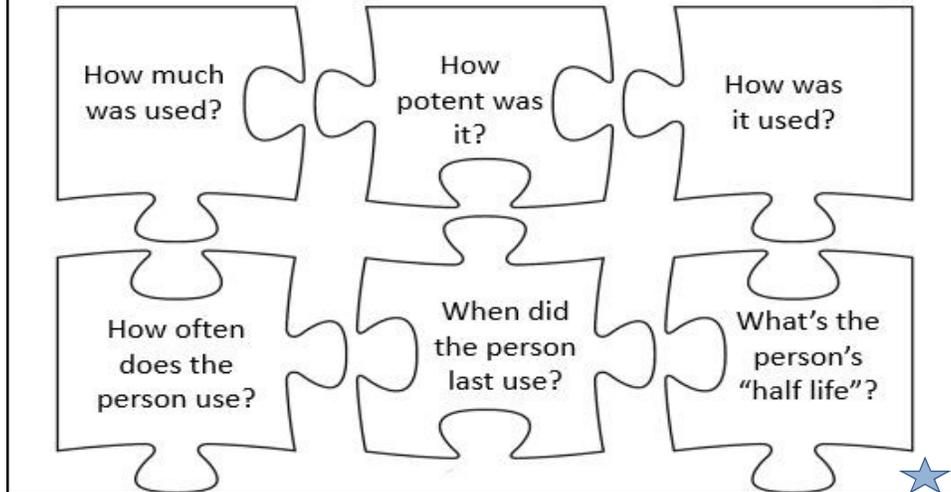


- THC
 - Increase appetite
 - Reduce nausea
 - Decrease pain and inflammation
- CBD
 - Decrease pain and inflammation
 - Control epileptic seizures

NEED MORE RESEARCH



HOW LONG DOES THC STAY IN THE SYSTEM? (It depends!)



MARIJUANA IMPAIRMENT

- Cognitive vs. motor
- Impairments linger even after the "high" is gone
- Need more research!!

WHAT AREAS OF THE BRAIN ARE AFFECTED?

- Memory & thought
- Concentration
- Sensory and time perception
- Coordinated movement



COMMON IMPAIRMENT EFFECTS

- Memory
- Vision
- Depth perception
- Perception of time



COMMON IMPAIRMENT EFFECTS

- Attention
- Judgment
- Reflexes
- Perception of performance



Currently there is no objective standardized measurement for marijuana impairment.



THERE'S NO SUCH THING AS A RX FOR MARIJUANA.



WHAT'S MISSING?

- Dosage & administration
- Drugs interactions
- Storage directives
- Adverse reactions
- Warnings



TESTING PROCESS

- Collection
- Adulteration Testing
- Screen
- Confirmation
- **MRO Review**
- Result Reported



In every state, the responsibility for verifying the validity of a “recommendation” falls on the employer.



THINGS TO VERIFY ...

- Is the card legit?
- It is being used according to doctor's recommendation?
- When is the employee going to use?
- Is he/she safe to work or do I need to adjust job duties?
- If so, for how long?
- Is there anything else they can use?



NATIONAL RATES (%) PAST MO. USE

	12+ yrs.	18+	18 - 25	26 - 34	35+
2015	10.1	10.2	22.3	15.4	6.6
2016	10.6	10.9	23.2	16.8	7.1



DRUG TESTING TRENDS

- 2012 to 2013
 - U.S. workforce: 5%
 - Colorado: 20%
 - Washington: 23%
- 2013 – 2014
 - U.S. workforce: 14.3%
 - Colorado: 14%
 - Washington: 16%
- 2015 – 2016
 - U.S. workforce: 4%
 - Colorado: 11%
 - Washington: 9%



OTHER WORKFORCE ISSUES

- Age
- Employee Relations & Morals
- Blended Workforce
- Multi-State

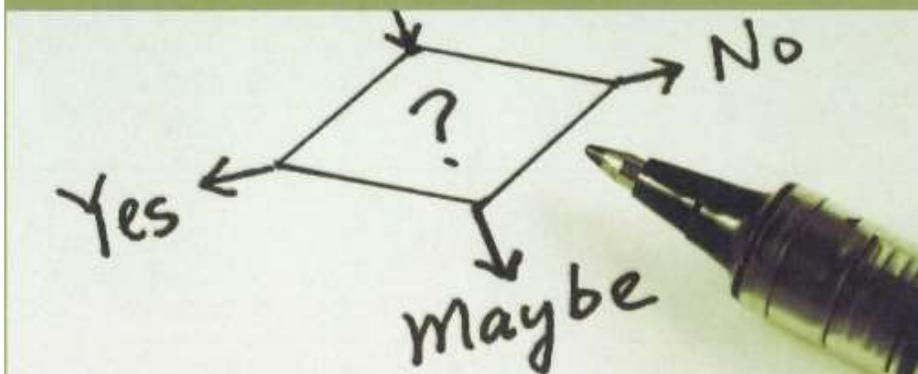


TAKE ACTION

1. Prepare to explain
2. Update Policy
3. Research & Refine Operations
4. Educate Employees
5. Train Supervisors



Medical Marijuana & Your Drug-Free Workplace Program



Need more?
OMA Webinar: June, 2018



We Help You Develop and Maintain a Drug-Free Workplace

Home

Training of Trainers (TOT)

Employee & Supervisor Webinars

OnDemand 24/7 Internet Courses

Comprehensive and Easy-to-Implement Drug-Free Workplace (DFWP) Policies and Programs

- Safely compliance and contract requirements
- Receive insurance discounts
- Decrease accidents and workers' compensation claims
- Protect your workforce
- Save money

Quick Links

- Buy Now
- Trainers
- Ohio DFSP Help Zone
- Calendar

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www.WorkingPartners.com

MENU

OHIO CHAMBER of COMMERCE

OPIOID TOOLKIT

Ohio's employers are asking what they should do about the opioid problem in their own workplaces. The Ohio Chamber of Commerce convened a task force to explore the options. One recommendation coming out of the task force was for employers to be armed with a toolkit of resources to be better prepared to prevent and respond to the problem. With the help and expertise of a member company, *Working Partners(R)*, and financial support from member company, Anthem, we have developed the *Opioid Toolkit* containing several resources free of charge to any company that is doing business in Ohio.

Contents of the Toolkit include:

For Employers:

- Online Course: Dose of Reality for EMPLOYERS

For Employees:

- Online Course: Dose of Reality for EMPLOYEES

Additional Resources:

- Awareness Campaign Materials
- 4-Minute Video about the Opioid Epidemic
- Informational Materials and Resources

Again, thank you to our member companies who helped make this project happen:

Anthem Blue Cross BlueShield

WORKING PARTNERS

QUICK LINKS

- ABOUT US
- STAFF
- JOIN THE CHAMBER
- CURRENT MEMBERS
- BLOG

www.OhioChamber.com/Opioid-Toolkit

CONTACT INFORMATION



614.337.8200

mail@WorkingPartners.com

www.WorkingPartners.com



Ohio Fair Market Amendment

At Green Light Acquisitions (GLA), we've spent the last five years working with Ohio community, business, elected, faith and opinion leaders and the voters on the legalization of marijuana. Through that work, we have come to a greater awareness that the end of Prohibition is inevitable as the public support for Marijuana Legalization has grown to a point where over 6 in 10 Ohio voters favor Legalization that provides Ohioans a Fair Market. We are developing a Constitutional Amendment for Ohio voters to consider on the November 2020 Presidential Election Ballot.

Goals of Our Fair Market Amendment:

- 1) Legalize the possession and consumption of marijuana by those who are 21 years of age and older;
- 2) Create a legal regulated commercial system that gives Ohioans 21 years of age and older the right to own and operate MJ businesses;
- 3) Provide a legal system in which communities maintain local control whether or not a Commercial Marijuana Operation be allowed to be licensed and work within their community;
- 4) Guarantee Ohio employers the right to maintain their workforce drug policies and the right to test, suspend and terminate those who violate an employer's workforce drug policies;
- 5) Guarantee landlords the right to limit smoking in their buildings;
- 6) Forbid public smoking of Marijuana;
- 7) Provide Ohio General Assembly the ability to tax and craft laws to regulate the industry.

Our History of Success

Of the 8 petitions that have been certified by the Attorney General and Ballot Board for circulation over the last seven years, GLA's 2015 petition became the first and only petition for marijuana legalization to ever successfully reach the ballot. That effort required that we raise, invest and spend \$28.5M, and it was done at a time when at least three other petitions were being circulated. We learned a great deal what not to do, and spent the next two-plus years continuing to work for Medical Marijuana legalization and Personal Use of marijuana for those 21 years of age and older.

We believe there is no question that Marijuana Prohibition will end. We further think it is essential to know before it does, what Ohioans want Post Prohibition. With 30 states, the District of Columbia, and Puerto Rico have legalized medical marijuana, and eight states having legalized Personal Use (Michigan will be on the ballot this year and almost certainly will pass), we believe it is imperative to lay the foundation of good public policy for a Post-Prohibition Ohio.

We realize a significant concern is marijuana consumption by the prospective and existing workforce. Again, under our proposed Amendment, Ohio employers maintain the right to their workforce drug policies and the right to test, suspend and terminate those who violate an employer's workforce drug policies. We also should note that while Alcohol and other drugs will not be detectable in the body within hours or days of consumption, marijuana leaves residual traces in the body for as long as 30 days post-consumption, though the intoxication of marijuana will diminish two or so hours depending upon the amount consumed. Therefore, someone could test positive for marijuana four weeks after they have consumed marijuana, and have no intoxication at that time. While an opiate or a narcotic user may test negative within days of consuming those drugs. It is becoming more likely in the coming years, that science will catch-up to test for the active chemicals of marijuana in the body to determine intoxication versus residual trace elements of non-intoxicating chemical compounds in the body, just as science did with Alcohol and the development of the Breathalyzer over a half-century ago.

We'd very much like to have everyone supporting the Amendment. But we are realists who know that not all elements of the Amendment will satisfy every single person. And that's OK. If this were easy, it would have already happened. Winning requires listening and balancing what is wanted by some with what will be accepted by the many.

TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: May 2, 2018

Overview

2018 brings an election year, and with that a little bit less legislative activity than 2017. Several workers' compensation bills remain in play at the General Assembly. BWC Administrator Morrison was nominated by President Trump to serve as U.S. Federal District Court Judge for the Southern District of Ohio. The big news continues to be the rebates that the BWC has once again announced. Employers are expected to split \$1.5 billion in rebates.

Legislation and Rules

Senate Bill 118 / House Bill 161 – PTSD

New first responder PTSD bills were introduced last year in the General Assembly. The bills would provide workers' compensation benefits for first responders with post-traumatic stress disorder (PTSD) arising from employment, even without an accompanying physical injury or occupational illness. Benefits could be provided to qualifying claimants for up to one year.

The bills would create a fundamental shift from current workers' compensation law which requires a physical injury before allowing any mental health claims.

The Bureau of Workers' Compensation (BWC) board reviewed a report from the BWC actuarial staff quantifying the financial impact this bill and its companion, Senate Bill 118, would have on the local governments which would pay the claims.

It is estimated that the bill would cost up to an additional \$98.4 million annually in claims. For comparative purposes, currently all public entities in the State Insurance Fund combined pay approximately \$190 million in total annual premium today.

OMA and its business allies have long opposed opening the workers' compensation system to cover claims with no accompanying physical injury or occupational illness.

House Bill 161 had sponsor testimony last May. Senate Bill 118 has now had two hearings, including proponent testimony from Police and Firefighter groups. The OMA and its business community allies have been meeting with Senators reiterating opposition to the proposal.

House Bill 268 – Makes changes to Ohio's self-insurance workers comp laws

The bill would create a second self-insured guaranty fund for employers who currently cannot meet the financial metrics to go self-insured under today's laws. The bill also allows self-insured companies to purchase private insurance.

During the bill's third hearing the OMA testified in opposition of the bill. OMA Workers' Compensation Committee member Cathy Duhigg Gannon from Eaton provided OMA's opponent testimony.

House Bill 269 – Workers Compensation changes

The bill would rename the BWC to the Worker Safety and Rehabilitation Agency. It would require the agency to develop incentives for employers to participate in safety consultations and loss prevention programs. The bill requires an employee who is receiving temporary total disability compensation to comply with a return to work plan, and it makes changes with respect to compensation for permanent total disability and death benefits. The bill has had three hearings.

House Bill 380 – Illegal Aliens

The bill prohibits illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law. The bill is based off of the amendment that was eventually removed from the workers' compensation budget bill.

The House passed the bill in early December. The Senate had a first hearing on the bill in March. The subject was controversial in the Senate when this issue was debated during the BWC budget bill.

House Bill 459 – Group Self Insurance

The bill would allow groups of employers to be granted status as a self-insuring employer for purposes of the Workers' Compensation Law. The bill would leave it up to the BWC on how to structure and operate any such program. The bill has had two hearings and is supported by the Construction Employers Association.

BWC Agency Notes

Morrison Nominated for Judgeship

President Trump nominated BWC Administrator Sarah Morrison to serve as U.S. Federal District Court Judge for the Southern District of Ohio. Both U.S. Senators Rob Portman and Sherrod Brown recommended the President nominate Administrator Morrison for the vacancy in Columbus, Ohio, which was created upon the retirement of the Honorable Gregory L. Frost. The nomination will now be vetted by the Senate Judiciary Committee before being considered for confirmation by the full U.S. Senate. The Southern District has court locations in Cincinnati, Columbus, and Dayton and serves more than five million Ohioans in 48 counties.

\$1.5 Billion Back

The BWC proposed giving Ohio employers \$1.5 billion in premium rebates this summer, expanding workers' comp savings for employers to \$8 billion since 2011. The rebate, BWC's largest in 20 years, was proposed to BWC's Board of Directors Wednesday, April 25. The Board will vote on the proposal at its May 24 meeting. If approved, rebate checks would likely be mailed in July and August.

The proposed rebate equals 85 percent of the premiums paid for the policy year that ended June 30, 2017 (calendar year 2016 for public employers). It would follow \$1 billion rebates issued in 2013, 2014 and 2017, as well as a \$15 million rebate in 2016 for counties, cities and other public employers.

BWC Proposes 12% Premium Reduction

The Ohio Bureau of Workers' Compensation (BWC) asked its board of directors to reduce private employer premium rates by 12 percent beginning July 1.

The BWC reports that, if approved, the reduction would save private employers \$163.5 million over this year's premiums.

What enables the proposed reduction is fewer workplace injury claims and slow-to-moderate growth in medical inflation according to BWC Administrator/CEO Sarah Morrison.

BWC reported 86,290 allowed claims in 2017, a near 18% drop from 2011. This is the lowest number of claims dating back to at least 1997.

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 discount programs.

The board approved the recommendation at its February board of directors meeting.

BWC Hires Inclusion & Diversity Director

The Bureau of Workers' Compensation (BWC) announced: "A diversity expert with the state of Ohio joined the Ohio Bureau of Workers' Compensation (BWC) Monday as its first director of Inclusion & Diversity.

"Carolina Thatcher assumes the role following a similar stint with the Ohio Department of Job and Family Services, where she designed and implemented an inclusion and diversity strategic plan to recruit and retain top talent and better serve the agency's customers.

"At Job and Family Services, Thatcher's duties included curriculum development, training and implementation, and serving on several multi-agency inclusion and diversity committees across the state. Prior to that she worked as an insurance underwriter for State Farm Insurance in Newark and as an assistant program director for East End Community Services Corp. in Dayton, where she established the nonprofit as a leading agency on immigrant issues.

"A native of the Republic of Chile in South America, Thatcher speaks Spanish and English and holds a master's degree in public administration from Wright State University. She and her family live in Hillard."

Safety Issues

OSHA Will Enforce Beryllium Standard Starting in May

According to the agency, OSHA will start enforcement of the final rule on occupational exposure to beryllium in construction, shipyard, and general industries on May 11, 2018.

The start of enforcement had previously been set for March 12, 2018. In response to feedback from stakeholders, the agency is considering technical updates to clarify and simplify compliance. In the interim, if an employer fails to meet the new exposure limits, OSHA will inform the employer and offer assistance to ensure compliance.

BWC Administrator Outlines 2018 Focus: Wellness and Workplace Safety

Earlier this year Bureau of Workers' Compensation (BWC) Administrator Sarah Morrison, described the agency's push for wellness and safety in 2018.

She wrote: “An overwhelming amount of research shows us that a healthy lifestyle leads to wellness in virtually every facet of our lives, including the workplace. BWC’s new wellness program will offer Ohio workers in small businesses a variety of services. Details are being finalized, but the program will offer services such as health risk assessments, biometric screenings, personalized health plans and coaching, chronic disease management and more. This is geared to help workers live a healthy, balanced life – factors that can prevent injury, or recover more quickly if they are hurt on the job.”

And, “Safety will continue to take center stage in 2018. ... To increase the awareness of the importance of safety, we will introduce a public health and safety campaign focused on preventing slips, trips and falls, overexertions and motor vehicle accidents (all of which make up about 60 percent of our injured worker claims each year).”

OSHA Raises Penalty Amounts for 2018

From OSHA: “On Jan. 2, civil penalty amounts for violations of workplace safety and health standards increased by two percent from last year. In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Department of Labor is required to adjust penalties for inflation each year. New penalties for willful and repeat violations are \$129,336 per violation; serious, other-than-serious, and posting requirements are \$12,934 per violation; and failure to correct violations is \$12,934 for each day the condition continues.”



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Kelly Bomba

S.B. 118

132nd General Assembly
(As Introduced)

Sens. LaRose and Brown, Bacon, Eklund, Skindell, Thomas, Yuko, Schiavoni

BILL SUMMARY

- Makes a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD) eligible to receive compensation and benefits under Ohio's Workers' Compensation Law for up to one year, regardless of whether the person suffers an accompanying physical injury.
 - Prohibits a claimant from receiving compensation or benefits under the Workers' Compensation Law for PTSD with no accompanying physical injury at the same time as the claimant is receiving a disability benefit from a state retirement system for that injury.
-

CONTENT AND OPERATION

Workers' compensation coverage for PTSD

Under the bill, a peace officer, firefighter, or emergency medical worker 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, may be eligible to receive compensation and benefits under Ohio's Workers' Compensation Law for up to a year beginning on the date the compensation or benefit payments start, regardless of whether the PTSD is connected to a compensable physical injury.¹ 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.

¹ R.C. 4123.01(C) and 4123.87(A), with conforming changes in R.C. 4123.01(A), 4123.026, and 4123.46.

Under the bill, a claimant is not entitled to compensation or benefits under the Workers' Compensation Law for PTSD as provided under the bill while the claimant receives a disability benefit or disability retirement, as appropriate, from the Public Employees Retirement System (PERS), the Ohio Police and Fire Pension Fund (OP&F), the School Employees Retirement System (SERS), or the State Highway Patrol Retirement System (SHPRS).²

If a claimant receives compensation or benefits under the Workers' Compensation Law for PTSD without an accompanying physical injury while the claimant receives a disability benefit or disability retirement from a retirement system, the bill allows the Administrator of Workers' Compensation, or a self-insuring employer, to collect both of the following from the claimant:

(1) The amount of compensation or benefits paid to the claimant by the Administrator or the self-insuring employer pursuant to Workers' Compensation Law for the time period the claimant received disability benefits or a disability retirement from the retirement system;

(2) Any interest, attorney's fees, and costs the Administrator or the self-insuring employer incurs in collecting that payment.³

Upon determining that a PERS, OP&F, SERS, or SHPRS member's PTSD without an accompanying physical injury qualifies the member for a disability benefit or disability retirement, the bill requires the appropriate retirement system to notify the Administrator of all of the following: the member's name, that the member's PTSD without accompanying physical injury qualifies the member for a disability benefit or disability retirement, the effective date of the member's disability benefit or disability retirement, and the date on which payments for the disability benefit or disability retirement commence. The bill exempts these reports from current law confidentiality requirements applicable to certain PERS, OP&F, SERS, or SHPRS records.⁴

Background – psychiatric conditions as "injuries"

Other than injuries falling under specific exceptions (self-inflicted injuries or injuries caused by the employee's intoxication), Ohio's Workers' Compensation Law entitles every employee who is injured or contracts an occupational disease to receive

² R.C. 4123.87(B).

³ R.C. 4123.87(C).

⁴ R.C. 145.364, 742.391, 3309.402, and 5505.182.

compensation, benefits, or both on account of the injury or occupational disease.⁵ Continuing law defines "injury" as any injury received in the course of, and arising out of, the injured employee's employment. Currently, psychiatric conditions generally are excluded from the definition of injury, except where:

(1) The employee's psychiatric conditions have arisen from an injury or occupational disease sustained by that employee; or

(2) The employee's psychiatric conditions have arisen from sexual conduct in which the employee was forced to engage or participate by threat of physical harm.⁶

Thus, under current law, an employee is not eligible to receive compensation or benefits under Ohio's Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.⁷

Background – PTSD

PTSD is an illness caused by living through or seeing a traumatic event, such as war, a violent crime, or a bad accident. PTSD can cause flashbacks, trouble sleeping, thoughts of hurting oneself or others, angry outbursts, and feelings of worry, guilt, sadness, or loneliness. Signs of PTSD may start soon after a traumatic event or may start or intensify years after the event.⁸

Definitions

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

(1) A sheriff or deputy sheriff;

(2) A marshal or deputy marshal;

(3) 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;

(4) A member of a police force employed by a metropolitan housing authority;

⁵ R.C. 4123.54, not in the bill.

⁶ R.C. 4123.01(C).

⁷ *Armstrong v. Jurgensen Co.*, 136 Ohio St.3d 58, 2013-Ohio-2237.

⁸ National Institute of Mental Health, *Post-Traumatic Stress Disorder*, <http://www.nimh.nih.gov/health/publications/post-traumatic-stress-disorder-easy-to-read/index.shtml>.

- (5) A member of a police force employed by a regional transit authority;
- (6) A state university law enforcement officer;
- (7) An enforcement agent of the Department of Public Safety;
- (8) An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
- (9) 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;
- (10) A person designated to perform law enforcement duties in a park district or conservancy district or by a park commission;
- (11) A veterans' home police officer;
- (12) A special police officer employed by a port authority;
- (13) A township police constable;
- (14) A police officer of a township or joint police district;
- (15) A special police officer employed by a municipal corporation at a municipal airport or certain other municipal air navigation facilities;
- (16) The House of Representatives Sergeant at Arms, if the person has arrest authority, or an assistant House of Representatives Sergeant at Arms;
- (17) The Senate Sergeant at Arms or an assistant Senate Sergeant at Arms;
- (18) Certain Bureau of Criminal Identification and Investigation employees or officers;
- (19) A state fire marshal law enforcement officer;
- (20) The Superintendent and troopers of the State Highway Patrol, for specified purposes.⁹

⁹ R.C. 4123.01(O), by reference to R.C. 2935.01, not in the bill.



Under continuing law, an "emergency medical worker" means 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.¹⁰

HISTORY

ACTION	DATE
Introduced	03-23-17

S0118-I-132.docx/ks

¹⁰ R.C. 4123.01(A) and (Q).





NEWS RELEASE

April 24, 2018

Kasich and BWC propose \$1.5 billion rebate for Ohio employers

Agency's fourth rebate would bring work comp savings to \$8 billion since 2011

COLUMBUS – Gov. John R. Kasich and the top executive for the Ohio Bureau of Workers' Compensation (BWC) on Tuesday proposed giving Ohio employers \$1.5 billion in premium rebates this summer, expanding workers' comp savings for employers to \$8 billion since 2011.

"We've had healthy income and returns on our investment portfolio, and it's only right to share that success with our private and public employers," said BWC Administrator/CEO Sarah Morrison, standing with Kasich at the Land-Grant Brewing Co. in downtown Columbus. "We know that the more money we leave with employers, the more they can invest in their employees and grow their business."

Added Kasich: "This is another example of how Ohio is using every tool in the box to make our environment for job creation one of the best in the nation, and our workers' compensation system has been a great partner in our efforts. We're up 500,000 private sector jobs and these additional savings in workers' compensation costs will continue to help our businesses grow and succeed."

The rebate, BWC's largest in 20 years, will be proposed to BWC's Board of Directors Wednesday, April 25, and voted on at the board's May 24 meeting. If approved, rebate checks would likely be mailed in July and August.

The proposed rebate equals 85 percent of the premiums paid for the policy year that ended June 30, 2017 (calendar year 2016 for public employers). It would follow \$1 billion rebates issued in 2013, 2014 and 2017, as well as a \$15 million rebate in 2016 for counties, cities and other public employers.

Of the \$1.5 billion, an estimated \$48 million would go to schools and \$111 million would go to local government entities. That's on top of \$402 million in rebates those public

taxing districts have received since 2013 (\$125 million for schools, \$277 million for others).

As with previous rebates, BWC is also exploring a significant investment in health and safety services, the details of which will be announced in the coming weeks.

Adam Benner, president of Land-Grant Brewery, said his company expects a rebate of around \$8,500.

“We’re a young company and our business is steadily growing,” said Benner. “This rebate helps us invest in our future.”

Morrison cautioned that despite recent history, strong investment returns and rebates are a goal, not a guarantee. “Our investments are still growing, but we’re seeing the rate of that growth moderate in 2018,” she said. “There are lots of variables that influence the market.”

With this rebate, BWC will have saved employers \$8 billion in workers’ compensation costs since 2011 after considering other rebates, credits, greater efficiencies and several rate reductions, including two this year.

More details on the rebate can be found [here](#). An overview of the \$8 billion in workers’ comp savings since 2011 can be found [here](#).

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NEWS RELEASE

April 24, 2018

What they're saying: Ohio workers' comp \$1.5 billion rebate proposal

Gov. John R. Kasich and Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison [today proposed giving Ohio employers \\$1.5 billion in premium rebates](#) this summer, expanding workers' comp savings for employers to \$8 billion since 2011. The rebate would be BWC's largest in 20 years.

Here's what Ohio's business community is saying:

"The ongoing prudent management of the BWC is resulting in significant savings for Ohio's employers. The BWC leadership team and board have correctly placed their focus on safety and incident prevention as well as expeditious and effective medical treatment. Its funds management practices are to be commended as well. All of these activities result in a competitive advantage for Ohio's employers. This is good economic news for our state."

-Eric Burkland, President, Ohio Manufacturers' Association

"The \$1.5 billion in rebates announced earlier today by the Ohio Bureau of Workers' Compensation is welcomed news to small-business owners, who make up the majority of state fund employers. On behalf of our 23,000 members, NFIB/Ohio concurs with the BWC's position that the more money they can put in the hands of employers, the better the opportunities to grow their businesses, hire additional employees, and support health and safety programs in their companies. Small business owners are the engine that drives Ohio's economy and will utilize these rebates to reinvest back into their businesses. The \$8 billion that the BWC has returned since 2011 is a sure sign of strong fiscal management and stewardship by Governor Kasich and Administrator Morrison, who continue to make Ohio's workers' compensation system even more efficient."

- Roger Geiger, Vice President and Executive Director, National Federation of Independent Business/Ohio

“This 1.5 billion dollars back will help employers invest in their most important asset: their businesses and their employees. Make no mistake that this rebate will not only benefit Ohio employers, but also all Ohioans by helping employers further invest in training, workplace safety, and ultimately Ohio’s economy.”

-Carolyn Mangas, Government Affairs Manager, Ohio Insurance Agents Association, Inc.

“Many of our members are smaller enterprises operating on Main Street, and will greatly benefit from this rebate. We appreciate the steady leadership at BWC, and their dedication to helping Ohio businesses grow and succeed.”

-Gordon M. Gough, President and Chief Executive Officer, The Ohio Council of Retail Merchants

“This latest rebate is great news for Ohio businesses. It is a continuation of the Bureau’s commitment to increasing safety while making Ohio more competitive through rate reductions, safety grants, and rebates. Reducing workers’ compensation costs allows employers to invest more in their businesses.”

-Don Boyd, Director, Labor & Legal Affairs, Ohio Chamber of Commerce

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More than **A** **BILLION** back again

Building a culture of safety across the state is at the heart of our work at the Ohio Bureau of Workers' Compensation. Reducing workplace accidents while returning injured workers back to the job and back to life helps both employers and workers thrive.

Safer workplaces and fewer injuries have helped us reduce rates to 30 year lows and deliver more than \$4 billion in rebates and credits to Ohio employers since 2011. That leaves more money in employers' hands to invest in their business.

Another factor supporting a robust workers' comp system in Ohio is wise management of the premium dollars BWC collects from 240,000 employers. BWC's financial position is solid with strong investment income and returns.

The result of prudent fiscal management, strong investments and falling claim numbers: We're poised to deliver our largest rebate in 20 years. That would bring the total returned to the economy to more than \$8 billion since 2011.

What does BWC's plan include?

A one-time rebate for private employers and public-taxing districts will total approximately \$1.5 billion.

How much would employers receive and when?

Most rebates would equal 85% of the employer's premium for the policy year ending June 30, 2017 (calendar year 2016 for public employers). BWC would begin sending checks in early July.

Private employers in the Group-Retrospective Rating Program would receive checks in the Fall.

Who will be eligible for the rebate?

Both private employers and public employer taxing districts that pay into the State Insurance Fund are eligible for the rebate. Generally, the employer must have been billed premium for the policy year ending June 30, 2017 (Dec. 31, 2016 for public employers), and be current in meeting their policy requirements. Employers with an outstanding BWC balance will have their rebate first applied to that balance. Employers that report through a Professional Employer Organization should receive their rebate from their PEO, which is required to pass a portion of the rebate on to their members.

How will the plan impact local governments and schools?

Local governments and schools have benefitted from three \$1 billion rebates since 2013 and a \$15 million rebate for Public Work Relief Employees' Fund. During that time, BWC has returned \$402 million — \$125 million to schools and \$277 million to local government entities. This rebate will add an estimated \$48 million to schools and \$111 million to local governments. As an example, a school district with \$12 million in payroll would have been paying \$96,000 in premium in 2011, and \$73,200 in 2018. That's \$124,000 in premium savings. That district would have also received \$288,000 in rebates and credits during that time, making for almost \$413,000 in savings.

How is it possible that BWC has \$1.5 billion to provide rebates?

Despite rate reductions and rebates and credits already totaling \$4 billion since 2011, our net position has continued to grow. The State Insurance Fund's net position stands at nearly \$11 billion, primarily due to strong investment income and returns. Investments earned a 7.8 percent return in 2017 and an average of 6.6 percent over the last five fiscal years. Prudent fiscal management and declining claims also factor into our financial strength.

Will this impact BWC's ability to operate as normal and continue to care for injured workers?

No. Even with a \$1.5 billion rebate, BWC's finances will remain strong, allowing us to continue providing injured workers with the care they need to heal and return to work. In fact, we are developing a proposal to invest a significant amount into worker safety and wellness, which should benefit Ohio workers by further reducing workplace injuries.

What else has BWC done to help Ohio businesses?

Once the latest rebates have been distributed, BWC will have saved Ohio businesses \$8 billion through rebates, credits and rate reductions since the beginning of 2011. That includes:

- \$1 billion rebates in 2013, 2014 and 2017;
- \$1.2 billion in credits to transition to a modern billing system at no cost to employers;
- Rate reductions for private employers of an average of 28.2 percent*. That means BWC collected \$1.7 billion less from employers than if 2010 rates had remained unchanged;
- Rate reductions for public employers of an average of 33.9 percent, or \$434 million less than had 2010 rates remained steady;
- Moving from the third highest rates in the country in 2008 to the 11th lowest.

**This rate will increase to 35% on July 1, 2018*

BWC: A Partner for Economic Growth in Ohio

Initiatives since 2011 mean \$8 billion more for Ohio employers

A grand bargain

Referred to as the Grand Bargain, workers' compensation systems were created to ensure injured workers received care and businesses were protected from lawsuits. During the last seven years, Ohio's workers' compensation has proven to be a grand bargain for businesses and workers. Since 2011, BWC has saved employers \$8 billion in workers' comp costs and seen injury rates and claims drop dramatically.

A force for economic growth

Ohio's employers need simplicity and savings. From a one-time-forgiveness program that erases penalties for simple mistakes to a new billing system that offers greater flexibility in making payments, BWC is making life simpler for employers. And, with overall rate decreases averaging more than 28 percent for private employers and more than 33 percent for public employers, along with \$4.5 billion in rebates, Ohio business are seeing tremendous savings.

A champion of safety

Safe workplaces mean lower premiums and, more importantly, more Ohioans returning to home safely each night. BWC has invested millions of additional dollars to make workplaces safer, and injury claims have dropped by 16.8 percent since 2010. Ohio's injury rates are currently below the national average and lower than all its surrounding states.

By the numbers

Premium reductions, rebates, safety grants and credits to modernize BWC's billing system have resulted in Ohio employers saving \$8 billion.

Employer rate levels	Rate cuts
Private employers	Average rate 28.2% lower than in place on Dec. 31, 2010* Cumulative difference in premiums collected - \$1,697,000,000
Taxing districts	Average rate 33.9% lower than in place on Dec. 31, 2010 Cumulative difference in premiums collected - \$434,000,000
Combined total	Cumulative difference in premiums collected \$2,131,000,000

Rebates	Rebates
Fiscal year 2013	\$965,635,975
Fiscal year 2015	\$1,013,171,352
Fiscal year 2016 (counties)	\$15,172,667
Fiscal year 2017	\$1,014,363,197
Fiscal year 2018 (proposed)	\$1,500,000,000
Rebate total	\$4,508,343,191

Safety grants							
Year	2011	2012	2013	2014	2015	2016	2017
Amount	\$3,718,122	\$2,929,124	\$3,993,469	\$14,841,235	\$14,956,903	\$14,999,977	\$12,650,128
Total							\$68,088,958

Transition to prospective billing premium credits	Credits
Private employers	\$1,064,000,000
Public taxing district employers	\$196,000,000
Transition total	\$1,260,000,000
Total amount BWC has returned or saved Ohio employers (since 2011)	
\$7,967,432,149**	

*This rate will increase to 35% on July 1, 2018

**Assuming approval of 2018 rebate



Ohio Manufacturers' Association
Workers' Compensation Counsel Report
May 2, 2018

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Regulatory Actions

The Ohio Bureau of Workers' Compensation filed the following rules on April 20, 2018 to be effective May 1, 2018:

4123-6-08 Bureau fee schedule. Fee schedules for providers and Managed Care Organizations (MCO).**

4123-6-21.3 Outpatient medication formulary. Provides a complete list of medications to reimbursed by the BWC and rates of reimbursement.**

4123-6-37.2 Payment of hospital outpatient services. Unless an MCO has contracted a different rate with a hospital, reimbursement for hospital outpatient services will be equal to the applicable Medicare reimbursement rate for the services under the Medicare outpatient prospective payment system.** The rule also provides the processing requirements for hospitals to be reimbursed.

4123-6-37.3 Payment of ambulatory surgical center services. Unless an MCO has contracted a different rate with an ambulatory surgical center, reimbursement for services after May 1, 2018 will be equal to the lesser of the ambulatory surgical center's allowable billed charges or fee schedule.**

** *appendix not attached due to size – can be found at: <http://www.registerofohio.state.oh.us/jsp/publicdisplayrules/searchRuleNumber.jsp>*

Legislative Actions

S.B. 118 Make safety service workers with PTSD eligible for workers' comp (LaRose; Brown, E.) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law for up to one year, and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time

period the person receives compensation and benefits under the Workers' Compensation Law for the disorder. (*Referred to Insurance and Financial Institutions Committee*)

HB 207 Revises payment of subrogated workers' compensation claims. Legislative fix being worked on by Rep. Henne and the BWC to include claims involving motor vehicle accidents where the at-fault party dies at the scene and cannot be cited.

Judicial Decisions

Bur. of Workers' Comp. v. Verlinger, 2018-Ohio-1481

The Ohio Supreme Court recently ruled that the Ohio Bureau of Workers' Compensation (BWC) must be notified of potential third-party settlements that would compensate an injured worker for an injury, even when an application for workers' compensation benefits has been denied and is under appeal.

Verlinger was involved in a motorcycle accident while working for her employer. She applied for worker's compensation benefits, but the BWC initially denied her claim. While her appeal was pending, she reached a settlement with the relevant insurance companies. Verlinger incorrectly believed she did not have to inform the BWC or the Ohio Attorney General's Office (AGO) about her insurance settlement because it had been reached during the period when her claim was denied by the BWC. However, the Court held that she remained a claimant eligible to receive workers' compensation benefits during the appeal period, and therefore, was required to notify the BWC and AGO of their rights under R.C. § 4123.931. (Her claim was eventually allowed by the Industrial Commission of Ohio.)

Three things were made clear by the Court:

1. A claimant, for subrogation purposes, is any party who is eligible for compensation, medical benefits, or death benefits from the BWC; and,
2. A claimant is "eligible" for BWC benefits unless and until a final determination has been made indicating a claimant is not eligible for such; and,
3. Employers can be penalized if the BWC and/or AGO are not notified of third-party payments made to a claimant in their employ.

This case is a good reminder to employers that if you have an employee who has been involved in a motor-vehicle accident, or other claim where there is a potential right to subrogation, you need to notify the BWC and AGO of their rights as a subrogee. Otherwise, you could be required to pay the BWC and AGO back for the money spent on the claim.

4123-6-08

Bureau fee schedule.

- (A) Pursuant to division (A)(1)(h) of section 4121.441 of the Revised Code, the administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall develop, maintain, and publish a provider fee schedule for the various types of billing codes. The administrator hereby adopts the fee schedule indicated in the appendix to this rule, developed with provider and employer input, effective January 1, ~~2017~~ 2018.
- (B) Whether the MCO has elected to retain a provider panel or not, an MCO may contract with providers. Every provider contract shall describe the method of payment to the providers. The MCO shall provide an MCO fee schedule to each provider that contracts with the MCO. The MCO fee schedule may be at different rates than the bureau fee schedule. The MCO shall make the MCO fee schedule available to the bureau as part of its application for certification. The bureau shall maintain the MCO fee schedule as proprietary information.

Effective: 5/1/2018

Five Year Review (FYR) Dates: 2/1/2020

CERTIFIED ELECTRONICALLY

Certification

04/20/2018

Date

Promulgated Under: 119.03
Statutory Authority: 4121.12, 4121.121, 4121.30, 4121.31, 4123.05
Rule Amplifies: 4121.12, 4121.44, 4121.441, 4123.66
Prior Effective Dates: 02/16/1996, 01/01/2001, 02/19/2009, 11/08/2009,
10/25/2010, 12/30/2010 (Emer.), 03/21/2011,
12/30/2011 (Emer.), 03/24/2012, 12/27/2012 (Emer.),
03/24/2013, 12/30/2013 (Emer.), 03/28/2014,
12/30/2014 (Emer.), 01/15/2015 (Emer.), 05/01/2015,
12/31/2015 (Emer.), 05/01/2016, 12/30/2016 (Emer.),
05/01/2017, 01/01/2018 (Emer.)

4123-6-21.3

Outpatient medication formulary.

- (A) The administrator hereby adopts the formulary indicated in appendix A to this rule, developed with the recommendation of the bureau's pharmacy and therapeutics committee, effective ~~October~~ May 1, 2017 2018.
- (B) The formulary indicated in appendix A to this rule shall constitute the complete list of medications that are approved for reimbursement by the bureau for the treatment of an occupational injury or disease in an allowed claim. Except as otherwise provided in paragraph (F) of this rule, drugs not listed in the formulary are not eligible for reimbursement by the bureau.
- (C) The formulary indicated in appendix A to this rule also contains specific reimbursement, prescribing or dispensing restrictions that have been placed on the use of listed drugs. The formulary will be reviewed annually and updated as necessary. The most current version will be electronically published by the bureau.
- (D) Based upon current medical literature and generally accepted best clinical practices the bureau's pharmacy and therapeutics committee shall evaluate and make recommendations to the administrator regarding the addition, deletion, or modification of coverage of medications listed in the formulary. Requests for pharmacy and therapeutics committee action on a specific drug may be initiated by the bureau's administrator, chief of medical services, chief medical officer, or pharmacy director.
- (E) The bureau shall develop policies to perform an expedited review process for clinically or therapeutically unique medications. The bureau shall also develop policies to address the timely review of new drug products.
- (F) Notwithstanding paragraph (B) of this rule, in cases of medical necessity supported by clinical documentation and evidence of need the bureau may, with prior authorization, reimburse for new drugs approved for use in the United States by the food and drug administration (FDA) on or after the effective date of the formulary, and for new indications approved by the FDA on or after the effective date of the formulary for existing drugs that are not on the formulary, for a period not to exceed one hundred eighty days from the adjudication date of the first prescription for the requested drug.
- (G) Notwithstanding appendix A to this rule, in cases of medical necessity supported by clinical documentation and evidence of need the bureau may, with prior authorization, reimburse for new dosage forms or strengths approved by the FDA on or after the effective date of the formulary for existing drugs that are on the formulary, for a period not to exceed one hundred eighty days from the adjudication date of the first prescription for the requested drug.

Effective: 5/1/2018

Five Year Review (FYR) Dates: 2/1/2020

CERTIFIED ELECTRONICALLY

Certification

04/20/2018

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
Prior Effective Dates: 09/01/2011, 02/01/2012, 09/01/2012, 04/01/2013, 01/02/2014, 09/01/2014, 05/01/2015, 12/01/2015, 01/01/2017, 10/01/2017

4123-6-37.2

Payment of hospital outpatient services.**(A) HPP:**

Unless an MCO has negotiated a different payment rate with a hospital pursuant to rule 4123-6-10 of the Administrative Code, reimbursement for hospital outpatient services with a date of service of May 1, ~~2017-2018~~ or after shall be the applicable rate set forth in paragraphs (A)(1) to (A)~~(6)~~(7) of this rule as follows:

- (1) Except as otherwise provided in this rule, reimbursement for hospital outpatient services shall be equal to the applicable medicare reimbursement rate for the hospital outpatient service under the medicare outpatient prospective payment system as implemented by the materials specified in paragraph (A)~~(7)~~(8) of this rule, multiplied by a bureau-specific payment adjustment factor, which shall be ~~2.6692.664~~ for children's hospitals and ~~1.5291.447~~ for all hospitals other than children's hospitals.

The medicare integrated outpatient code editor and medicare medically unlikely edits in effect as implemented by the materials specified in paragraph (A)~~(7)~~(8) of this rule shall be utilized to process bills for hospital outpatient services under this rule; however, the outpatient code edits identified in table 1 of the appendix to this rule shall not be applied.

The annual medicare outpatient prospective payment system outlier, hold harmless, and exempt cancer hospital reconciliation processes shall not be applied to payments for hospital outpatient services under this rule.

For purposes of this rule, hospitals shall be identified as critical access hospitals, rural sole community hospitals, essential access community hospitals and exempt cancer hospitals based on the hospitals' designation in the medicare outpatient provider specific file in effect implemented by the materials specified in paragraph (A)~~(7)~~(8) of this rule.

For purposes of this rule, the following hospitals shall be recognized as "children's hospitals": nationwide children's hospital (Columbus), Cincinnati children's hospital medical center, shriners hospital for children (Cincinnati), university hospitals rainbow babies and children's hospital (Cleveland), Toledo children's hospital, children's hospital medical center of Akron, and children's medical center of Dayton.

~~The medicare site-neutral payment provisions of Section 603 of the Bipartisan Budget Act of 2015, 129 Stat. 584, 42 U.S.C. 42 U.S.C. 13951(t)(1)(B)(v) and (t)(21) as amended as of the effective date of this rule, shall not be applied to payments to non-accepted provider-based departments for hospital outpatient~~

~~services under this rule. Provider-based and non-excepted provider-based departments shall follow medicare outpatient prospective payment system billing guidelines as implemented by the materials specified in paragraph (A)(7) of this rule, including the use of modifier -PN. However, bills submitted to the bureau by a non-excepted provider-based department shall not be subject to the medicare site-neutral reimbursement reduction.~~

Reimbursement for hospital outpatient services identified in table 6 of the appendix to this rule shall be determined using the medicare outpatient prospective payment system methodology as set forth in this paragraph, applying the status indicator, ambulatory payment classification, relative weight, and medicare base payment amount specified for the service in table 6 of the appendix to this rule.

In the event the centers for medicare and medicaid services makes subsequent adjustments to the medicare reimbursement rates under the medicare outpatient prospective payment system as implemented by the materials specified in paragraph (A)~~(7)~~(8) of this rule, other than technical corrections, including but not limited to adjustments related to federal budget sequestration pursuant to the Budget Control Act of 2011, 125 Stat. 239, 2 U.S.C. 900 to 907(d) as amended as of the effective date of this rule, the "applicable medicare reimbursement rate for the hospital outpatient service under the medicare outpatient prospective payment system" as specified in this paragraph shall be determined by the bureau without regard to such subsequent adjustments.

(2) Services reimbursed via fee schedule. These services shall not be wage index adjusted.

(a) Services reimbursed via fee schedule to which the bureau-specific payment adjustment factor shall be applied.

Except as otherwise provided in paragraphs (A)(2)(b)(ii) and (A)(2)(b)(iii) of this rule, hospital outpatient services reimbursed via fee schedule under the medicare outpatient prospective payment system shall be reimbursed under the applicable medicare fee schedule in effect as implemented by the materials specified in paragraph (A)~~(7)~~(8) of this rule.

(b) Services reimbursed via fee schedule to which the bureau-specific payment adjustment factor shall not be applied.

- (i) Hospital outpatient vocational rehabilitation services for which the bureau has established a fee, which shall be reimbursed in accordance with table 2 of the appendix to this rule.
 - (ii) Hospital outpatient services reimbursed via fee schedule under the medicare outpatient prospective payment system that the bureau has determined shall be reimbursed at a rate other than the applicable medicare fee schedule in effect as implemented by the materials specified in paragraph (A)~~(7)~~(8) of this rule, which shall be reimbursed in accordance with table 3 of the appendix to this rule.
 - (iii) Hospital outpatient services not reimbursed under the medicare outpatient prospective payment system that the bureau has determined are necessary for treatment of injured workers, which shall be reimbursed in accordance with tables 4 and 5 of the appendix to this rule.
- (3) Services reimbursed at reasonable cost. To calculate reasonable cost, the line item charge shall be multiplied by the hospital's outpatient cost to charge ratio from the medicare outpatient provider specific file in effect as implemented by the materials specified in paragraph (A)~~(7)~~(8) of this rule. These services shall not be wage index adjusted.
- (a) Services reimbursed at reasonable cost to which the bureau-specific payment adjustment factor shall be applied.

Critical access hospitals shall be reimbursed at one hundred one per cent of reasonable cost for all payable line items.
 - (b) Services reimbursed at reasonable cost to which the bureau-specific payment adjustment factor shall not be applied.
 - (i) Services designated as inpatient only under the medicare outpatient prospective payment system.
 - (ii) Hospital outpatient services reimbursed at reasonable cost as identified in tables 3 and 4 of the appendix to this rule.
- (4) Add-on payments calculated using the applicable medicare outpatient prospective payment system methodology and formula in effect as implemented by the materials specified in paragraph (A)~~(7)~~(8) of this rule. These add-on payments shall be calculated prior to application of the bureau-specific payment adjustment factor.

- (a) Outlier add-on payment. An outlier add-on payment shall be provided on a line item basis for partial hospitalization services and for ambulatory payment classification reimbursed services for all hospitals other than critical access hospitals.
- (b) Rural hospital add-on payment. A rural hospital add-on payment shall be provided on a line item basis for rural sole community hospitals, including essential access community hospitals; however, drugs, biological, devices reimbursed via pass-through and reasonable cost items shall be excluded. The rural add-on payment shall be calculated prior to the outlier add-on payment calculation.
- (c) Hold harmless add-on payment. A hold harmless add-on payment shall be provided on a line item basis to exempt cancer centers and children's hospitals. The hold harmless add-on payment shall be calculated after the outlier add-on payment calculation.

(5) Providers not participating in the medicare program.

Reimbursement for outpatient services provided by hospitals and distinct-part units of hospitals that do not participate in the medicare program shall be calculated in accordance with the methodologies set forth in this rule, using ~~a default hospital outpatient cost-to-charge ratio of forty-seven per cent where applicable~~ the applicable FY18 urban or rural statewide average outpatient cost-to-charge ratio set forth in table 9 of the federal rule referenced in paragraph (A)(8)(b) of this rule (the Ohio average cost-to-charge ratio shall be used for hospitals outside the United States).

- (6) Reimbursement for outpatient services provided by "new hospitals" as defined in 42 C.F.R. 412.300(b) as published in the October 1, ~~2016~~ 2017 Code of Federal Regulations shall be calculated in the same manner as provided under paragraph (A)(5) of this rule.

(7) For purposes of this rule, hospitals must report the applicable outpatient revenue codes for accommodation and ancillary services set forth in Table 7 of the appendix to this rule.

- ~~(7)~~(8) For purposes of this rule, the "applicable medicare reimbursement rate for the hospital outpatient service under the medicare outpatient prospective payment system " and the "medicare outpatient prospective payment system " shall be determined in accordance with the medicare program established under Title XVIII of the Social Security Act, 79 Stat. 286 (1965), 42 U.S.C. 1395 to 1395III as amended, as of the effective date of this rule, ~~excluding 42 U.S.C. 1395I(+)~~

~~(1)(B)(v) and 13951(t)(21)~~ as implemented by the following materials, which are incorporated by reference:

(a) 42 C.F.R. Part 419 as published in the October 1, ~~2016~~ 2017 Code of Federal Regulations;

(b) Department of health and human services, centers for medicare and medicaid services' "42 CFR Parts 414, 416, and 419, ~~482, 486, 488, and 495~~ Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; ~~Organ Procurement Organization Reporting and Communication; Transplant Outcome Measures and Documentation Requirements; Electronic Health Record (EHR) Incentive Programs; Payment to Nonexcepted Off-Campus Provider-Based Department of a Provider; Hospital Value-Based Purchasing (VBP) Program; Establishment of Payment Rates Under the Medicare Physician Fee Schedule for Nonexcepted Items and Services Furnished by an Off-Campus Provider-Based Department of a Hospital; Final Rule", 8182 Fed. Reg. ~~79562 - 79892 (2016)~~ 59216 - 59497 (2017).~~

(c) The department of health and human services, centers for medicare and medicaid services' hospital-specific cost-to-charge ratio information as of the July 2017 update to the department of health and human services, centers for medicare and medicaid services' outpatient-provider specific file (OPSF).

(B) QHP or self-insuring employer (non-QHP):

A QHP or self-insuring employer may reimburse hospital outpatient services at:

(1) The applicable rate under the methodology set forth in paragraph (A) of this rule; or

(a) For hospitals the department of health and human services, centers for medicare and medicaid services ~~maintained~~ maintains hospital-specific cost-to-charge ratio information on ~~as of January 1, 2017, based on the hospitals' submitted cost report (CMS-2552-10), the hospital's allowable billed charges multiplied by the hospital's reported~~ information referenced in paragraph (A)(8)(c) of this rule ~~(from the outpatient provider specific file in use by medicare on January 1, 2017)~~ multiplied by a payment adjustment factor of 1.16, not to exceed sixty per cent of the hospital's allowed billed charges.

- (b) For hospitals the department of health and human services, centers for medicare and medicaid services ~~did~~ does not maintain hospital-specific cost-to-charge ratio information on ~~as of January 1, 2017,~~ the hospital's allowable billed charges multiplied by the applicable ~~FY17~~ FY18 urban or rural statewide average outpatient cost-to-charge ratio set forth in table ~~4-9~~ of the federal rule referenced in paragraph (A)~~(7)~~(8)(b) of this rule (the Ohio average cost-to-charge ratio shall be used for hospitals outside the United States) multiplied by a payment adjustment factor of 1.16, not to exceed sixty per cent of the hospital's allowed billed charges; or
- (2) The rate negotiated between the hospital and the QHP or self-insuring employer in accordance with rule 4123-6-46 of the Administrative Code.

Effective: 5/1/2018

Five Year Review (FYR) Dates: 2/1/2020

CERTIFIED ELECTRONICALLY

Certification

04/20/2018

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: 4123.66, 4121.12, 4121.121, 4121.44, 4121.441
Prior Effective Dates: 09/01/2007, 01/01/2011, 04/01/2011, 04/01/2012,
04/01/2013, 05/05/2014, 05/01/2015, 05/01/2016,
05/01/2017

4123-6-37.3

Payment of ambulatory surgical center services.

Unless an MCO has negotiated a different payment rate with an ambulatory surgical center pursuant to rule 4123-6-08 of the Administrative Code, reimbursement for ambulatory surgical center services with a date of service of May 1, ~~2017~~2018 or after shall be equal to the lesser of the ambulatory surgical center's allowable billed charges or the fee schedule amount indicated in appendix A to this rule, developed with provider and employer input and effective May 1, ~~2017~~2018.

Effective: 5/1/2018

Five Year Review (FYR) Dates: 2/1/2020

CERTIFIED ELECTRONICALLY

Certification

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Prior Effective Dates: 04/01/2009, 04/01/2010, 04/01/2011, 04/01/2012, 04/01/2013, 05/05/2014, 05/01/2015, 05/01/2016, 05/01/2017

Safety & Workers' Compensation

\$1.5 Billion BWC Premium Rebate Proposed April 27, 2018

On Tuesday of this week Gov. John R. Kasich and Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison proposed giving Ohio employers \$1.5 billion in premium rebates this summer.

The rebate was proposed to BWC's board of directors on Wednesday and the board will take up a vote at its May 24 meeting. If approved, rebate checks would likely be mailed in July and August.

The proposed rebate equals 85% of the premiums paid for the policy year that ended June 30, 2017 (calendar year 2016 for public employers).

With this rebate, BWC will have saved employers \$8 billion in workers' compensation costs since 2011 after considering other rebates, credits, greater efficiencies and several rate reductions, including two this year.

OMA president Eric Burkland commented, "The ongoing prudent management of the BWC is resulting in significant savings for Ohio's employers. The BWC leadership team and board have correctly placed their focus on safety and incident prevention as well as expeditious and effective medical treatment. Its funds management practices are to be commended as well. All of these activities result in a competitive advantage for Ohio's employers. This is good economic news for our state."

More details on the rebate can be **found here**. An overview of the \$8 billion in workers' comp savings since 2011 can be **found here**. 4/24/2018

Ohio Supreme Court Rules that BWC Must be Notified of Potential Third-party Settlements April 27, 2018

Here's a **recent post** from OMA Connections Partner, Bricker & Eckler: "The Ohio Supreme Court recently ruled that the Ohio Bureau of Workers' Compensation (BWC) must be notified of potential third-party settlements that would

compensate an injured worker for an injury, even when an application for workers' compensation benefits has been denied and is under appeal. ...

"Three things were made clear by the Court:

1. A claimant, for subrogation purposes, is any party who is eligible for compensation, medical benefits, or death benefits from the BWC; and,
2. A claimant is "eligible" for BWC benefits unless and until a final determination has been made indicating a claimant is not eligible for such; and,
3. Employers can be penalized if the BWC and/or Ohio Attorney General's Office (AGO) are not notified of third-party payments made to a claimant in their employ.

"This case is a good reminder to employers that if you have an employee who has been involved in a motor-vehicle accident, or other claim where there is a potential right to subrogation, you need to notify the BWC and AGO of their rights as a subrogee. Otherwise, you could be required to pay the BWC and AGO back for the money spent on the claim." 4/25/2018

New! BWC 2018-19 Safety Services Catalog April 27, 2018

The extensive and free safety courses, services and programs of the Bureau of Workers' Compensation Division of Safety & Hygiene are captured in the new 2018-19 Safety Services Catalog. **Check it out!** 4/26/2018

Considering New Safety Equipment? April 27, 2018

The Bureau of Workers' Compensation (BWC) Safety Intervention Grant program offers employers a 3-to-1 matching grant, up to \$40,000, to purchase equipment that will reduce or eliminate injuries and illnesses. That's \$3 for every \$1 you contribute.

To learn more or schedule an appointment to discuss your idea, call 1-800-644-6292 or visit this **BWC web page**. Hurry! Funds are limited! *4/25/2018*

PTSD Hearings Continue in Senate **April 23, 2018**

This week the Ohio Senate Insurance and Financial Institutions Committee had its **second hearing** on Senate Bill 118. The bill, sponsored by Senators Frank LaRose (R-Copley) and Edna Brown (D-Toledo), would allow peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder (PTSD) without an accompanying physical injury eligible to receive workers' compensation benefits.

Ohio law currently requires that an individual is only eligible for PTSD benefits if the diagnosis arises from an accompanying physical injury. The OMA and other business groups have long opposed the expansion of workers' compensation benefits to non-physical injury.

Over the past several years the OMA has offered the General Assembly a variety of solutions to ensure that Ohio's first responders receive the necessary care without expanding the Ohio's workers' compensation laws. *4/19/2018*

State Fund Employers on Bi-Monthly Payment Schedule: Premium Due May 1 **April 23, 2018**

Employers that are on the BWC's bi-monthly premium payment schedule have a premium installment due May 1, 2018.

The quickest and easiest way to make a payment is online with a BWC e-account.

To create an e-account, **click here** and then the e-account link in the top right, just under the orange navigation bar. You will be able to make payments and view important information about your policy, including installment schedule and claims activity.

If you have any questions, please contact OMA's **Brian Jackson**. Brian says it's possible that employers might receive a duplicate invoice for the May 1 payment with a due date beyond May 1; however, the premium is still due May 1 to avoid a lapse. *4/19/2018*

Sarah Morrison Nominated for Federal Judgeship **April 13, 2018**

OMA Connections Partner Bricker & Eckler **posted**: "On April 10, 2018, in his 12th wave of judicial nominees, President Trump nominated Ohio's Administrator and Chief Executive Officer of the Bureau of Workers' Compensation (BWC) Sarah Daggett Morrison. "Appointed by Governor Kasich, Administrator Morrison oversees the \$25 billion and an agency staff of 1,800. Prior to her appointment, she served for four years as the general counsel and chief ethics officer of the BWC. Before entering state service, Morrison was a partner in the Columbus office of Taft Stettinius & Hollister LLP, where she practiced complex civil and commercial litigation.

"If confirmed, Administrator Morrison will serve as a district judge on the U.S. District Court for the Southern District of Ohio."

Congratulations, Sarah! *4/11/2018*

Guidance on Costly VSSRs **April 6, 2018**

OMA Connections Partner, Bricker & Eckler, posted an important caution to employers about Violations of Specific Safety Requirements: "Unfortunately, most employers don't know a lot about a Violation of Specific Safety Requirement (VSSR) until one is filed against them by an injured employee.

"And most employers think that because they are OSHA compliant, they are covered – not true. The specific safety requirements of the Bureau of Workers' Compensation (BWC) are set forth in the Ohio Administrative Code and, are many times, stricter than OSHA.

"So, what is a VSSR anyway? In addition to "regular" workers' compensation benefits, an injured employee may be eligible for a VSSR award if the injury, illness or death was caused by the employer's failure to comply with specific safety requirements."

Read on. *4/3/2018*

BWC Hires Inclusion & Diversity Director
April 6, 2018

The Bureau of Workers' Compensation (BWC) announced: "A diversity expert with the state of Ohio joined the Ohio Bureau of Workers' Compensation (BWC) Monday as its first director of Inclusion & Diversity.

"Carolina Thatcher assumes the role following a similar stint with the Ohio Department of Job and Family Services, where she designed and implemented an inclusion and diversity strategic plan to recruit and retain top talent and better serve the agency's customers.

"At Job and Family Services, Thatcher's duties included curriculum development, training and implementation, and serving on several multi-agency inclusion and diversity committees across the state. Prior to that she worked as an insurance underwriter for State Farm Insurance in Newark and as an assistant program director for East End Community Services Corp. in Dayton, where she established the nonprofit as a leading agency on immigrant issues.

"A native of the Republic of Chile in South America, Thatcher speaks Spanish and English and holds a master's degree in public administration from Wright State University. She and her family live in Hillard." 4/5/2018

Webinar: OSHA Crystalline Silica Standard for General Industry
March 30, 2018

OSHA's respirable crystalline silica standard requires employers to take steps to protect workers from exposure to respirable crystalline silica dust, which can cause serious silica-related diseases.

General industry employers must comply with all requirements of the standard by June 23, 2018.

Workers can be exposed to the dust during these and other activities:

- Manufacture of glass, pottery, ceramic, brick, concrete, asphalt roofing, jewelry, artificial stone, porcelain, or structural clay products
- Use of industrial sand in operations such as foundry work

OMA is holding a webinar on the standard on Tuesday, April 3, 2018 from 10:00 – 11:00 a.m. **Register here.** 3/24/2018

April is Distracted Driving Awareness Month
March 30, 2018

The Bureau of Workers' Compensation (BWC) **posts:** "With smartphones, busy schedules and multitasking, it's easier than ever to be distracted while driving. In fact, it's now the No. 1 cause of crashes in the U.S., with nearly 3,500 Americans killed by distracted driving in 2015.

"April is Distracted Driving Awareness Month, and the perfect time to discuss the dangers of this growing problem with family, friends and co-workers. At BWC, we're doing our part to raise awareness about distracted driving as part of our newest safety campaign."

Here are **safe driving resources** from the BWC. 3/27/2018

OSHA Will Enforce Beryllium Standard Starting in May
March 23, 2018

According to the agency, OSHA will start enforcement of the final rule on occupational exposure to beryllium in construction, shipyard, and general industries on May 11, 2018.

The start of enforcement had previously been set for March 12, 2018. In response to feedback from stakeholders, the agency is considering technical updates to clarify and simplify compliance. In the interim, if an employer fails to meet the new exposure limits, OSHA will inform the employer and offer assistance to ensure compliance.

Here is **more information.** 3/19/2018

Upcoming BWC Employer Webinar
March 23, 2018

The March 29 BWC webinar provides information about preparing for an audit, review of estimated annual premium, outstanding balances certified to the Ohio Attorney General, the Better You, Better Ohio!™ program, upcoming important dates, and the monthly safety tip.

Read [more and register here](#). 3/18/2018

Managing Reasonable Suspicion in Your Workplace
March 16, 2018

Here's a [short video](#) from OMA Connections Partner, *Working Partners*^(R), with a few tips about managing reasonable suspicion in your workplace. 3/12/2018

Federal Court Finds OSHA has Unlimited "Look-Back" Period to Search for Repeat Violations
March 9, 2018

From OMA Connections Partner, Frantz Ward: "Thanks to a recent federal appellate court decision, OSHA now has even more leeway to issue costly repeat citations to employers. As many employers know, there are different classifications for civil violations of OSHA regulations, including other-than-serious, serious, repeat, and willful. Penalties, both monetary and non-monetary, increase with higher classification levels. OSHA recently increased the maximum penalty for repeat violations to \$129,336, and additional increases to the maximum penalty are expected."

And: "... on February 14, 2018, a federal appellate court gave OSHA unlimited latitude to search employer citation histories as far back as necessary to establish repeat violations."

Read [more about this from Frantz Ward here](#). 3/2/2018



Here's part of the OMA Workers' Compensation Services team at the BWC Safety Congress & Expo this week: Karen James, Jeremy SESCO, Georgia Booth and Dan Noreen.

Navistar Wins 1st Place in BWC's Safety Innovation Competition
March 9, 2018

The Ohio Bureau of Workers' Compensation (BWC) awarded four Ohio employers with Safety Innovation Awards for innovations that addressed safety concerns in their workplaces.

The awards were presented during BWC's Safety Congress & Expo, the agency's annual occupational health and safety conference at the Greater Columbus Convention Center.

The winners and cash awards include:

- 1st place (\$6,000 award): Navistar, Springfield
- 2nd place (\$4,000 award): MPW Industrial Services, Hebron
- 3rd place (\$3,000 award): Terracon Consultants Inc., Cincinnati
- 4th place (\$1,500 award): Ramco Electric Motors, Inc., Greenville

MPW Industrial Services also was selected to receive the People's Choice Award by OSC18 attendees and will receive an additional \$1,000.

The four finalists, selected from dozens of applicants, showcased their innovations at the

Safety Congress Expo Marketplace this week. A panel of independent judges evaluated and scored the innovations based on a number of criteria, including risk reduction, innovation and cost savings, presentation quality and potential for the innovation to be used by other employers.

Read [more about the winning innovations here](#). 3/8/2018

OSHA Delays Enforcement of New Beryllium Standards **March 9, 2018**

OMA Connections Partner, Dinsmore, posted this: "OSHA was scheduled to begin enforcing its new beryllium rule for General Industry March 12, 2018. That enforcement date has been delayed 60 days. In a March 2, 2018, memorandum from Tom Galassi (Director, Directorate of Enforcement Programs) to OSHA's regional administrators, Galassi instructed, "[n]o provisions of the beryllium final rule may be enforced until May 11, 2018."

Galassi explained the reason for the delay:

"OSHA has been in extensive settlement discussions with several parties who have filed legal actions challenging the general industry standard. In order to provide additional time to conclude those negotiations, we have decided to delay enforcement of the general industry standard by 60 days until May 11, 2018. ..."

The full memorandum can be [accessed here](#). 3/7/2018

Private Employer Workers' Comp Rates Fall 12 Percent **March 2, 2018**

Last week, the Ohio Bureau of Workers' Compensation (BWC) Board of Directors approved the proposed 12% cut in rates that will save private employers in the BWC system \$163.5 million over this year's premiums.

BWC Administrator/CEO Sarah Morrison attributes the agency's ability to reduce rates to many factors, including slow growth in medical inflation, fewer claims, a changing workforce and safer workplaces.

The actual premium paid by individual private employers depends on multiple factors that include expected future claims costs in their industry, their company's recent claims history, and their participation in various BWC discount programs. 2/26/2018

Safety Congress Starts March 7 – Not Too Late to Register! **March 2, 2018**



The **2018 Ohio Safety Congress & Expo** (OSC18), sponsored by the Ohio Bureau of Workers' Compensation, helps businesses keep their workforce safe, healthy and productive.

More than 200 educational sessions, guest presenters from various states and more than 250 exhibitors share their knowledge and resources at this free event.

Visit the OMA team at booth #644 in the expo area! 3/1/2018

BWC's Cincinnati Office has Moved **March 2, 2018**

Effective Jan. 16, 2018, the Bureau of Workers' Compensation Cincinnati office location is:

Cincinnati Claims Office
135 Merchant St.
Springdale, OH 45246

The phone numbers remain the same:
Claims – (800) 644-6292
Employer Services – (513) 583-4403
2/28/2018

BWC Board Expected to Vote on Premium Rate Reduction **February 23, 2018**

The Ohio Bureau of Workers' Compensation (BWC) board of directors is expected to approve

a 12% reduction in private employer premium rates when it meets today. The rates would be effective beginning July 1.

If approved, the reduction would save private employers \$163.5 million over this year's premiums, which the BWC says are at their lowest rates in at least 40 years.

The BWC cites a number of reasons for the reduction of rates including, reduction in claims, slow-to-moderate growth in medical inflation, and more employers using its safety education and resources. From 2010 through 2015, BWC's Division of Safety & Hygiene saw a 71% increase in the number of employers using its safety programs and services.

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 discount programs. 2/23/2018

OSHA has New Fact Sheet on Respirable Silica Standard for General Industry **February 23, 2018**

OSHA has recently published this **revised fact sheet** that summarizes the major requirements of the respirable crystalline silica standard for general industry and maritime. Workers can be exposed to respirable crystalline silica during the:

- Manufacture of glass, pottery, ceramic, brick, concrete, asphalt roofing, jewelry, artificial stone, dental, porcelain, or structural clay products
- Use of industrial sand in operations such as foundry work
- Use of sand for abrasive blasting

Generally, general industry employers must comply with all requirements of the standard by June 23, 2018. 2/16/2018

BWC CEO/Administrator Visits OMA Committee **February 16, 2018**



This week BWC CEO/Administrator Sarah Morrison visited with the OMA Safety & Workers' Compensation Committee to discuss the bureau's 2018 agenda, which includes a focus on wellness and workplace safety. BWC has launched **Better You, Better Ohio™**, a program offering Ohio workers in small businesses a variety of wellness services. BWC is also planning a public relations campaign to help educate Ohioans how to be more safety conscious at work and at home.

In addition, A.J. Groeber, Executive Director of the State Medical Board of Ohio **provided an overview** of how Ohio's medical marijuana program was going to work and how it might impact employers. Starting September 8, 2018 medical marijuana will be sold in Ohio. 2/15/2018

Pictured: Larry Holmes, VP-Finance, Ft. Recovery Inds., Inc. and committee chairman with Sarah Morrison, BWC CEO/Administrator.

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on May 1, 2018

- HB27** **WORKERS' COMPENSATION BUDGET** (BRINKMAN T) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 6/30/2017 - **SIGNED BY GOVERNOR**; eff. 6/30/2017
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-27>
- HB28** **INDUSTRIAL COMMISSION BUDGET** (BRINKMAN T) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/28/2017 - **SIGNED BY GOVERNOR**; eff. 6/28/17
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-28>
- HB99** **WORKERS COMPENSATION-PNEUMOCONIOSIS** (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: 3/21/2018 - House Insurance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-99>
- HB133** **DISASTER RELIEF ACT** (RYAN S) To create the Disaster Relief Act to exempt out-of-state disaster businesses and qualifying out-of-state employees from certain taxes and laws with respect to disaster work on critical infrastructure performed in this state during a declared disaster.
Current Status: 4/18/2018 - Senate Ways and Means, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-133>
- HB161** **WORKERS COMPENSATION-PTSD** (PATTON T) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law for up to one year and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.
Current Status: 5/24/2017 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-161>
- HB268** **WORKERS COMPENSATION-SELF-INSURERS** (HENNE M) To make changes to the Workers' Compensation Law with respect to self-insuring employers.
Current Status: 12/13/2017 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-268>
- HB269** **WORKERS COMPENSATION OVERHAUL** (HENNE M) To rename the entities who carry

out workers' compensation functions in this state, to require the Administrator of Worker Safety and Rehabilitation to develop incentives for employers to participate in safety consultations and loss prevention programs, to require an employee who is receiving temporary total disability compensation to comply with a return to work plan, and to make changes with respect to compensation for permanent total disability and death benefits.

Current Status: 12/13/2017 - House Insurance, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-269>

HB380 **WORKERS COMP-ILLEGAL ALIENS** (SEITZ B, HOUSEHOLDER L) To prohibit illegal and unauthorized aliens from receiving compensation and certain benefits under Ohio's Workers' Compensation Law.

Current Status: 3/13/2018 - Senate Insurance and Financial Institutions, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-380>

HB459 **WORKERS COMP-SELF-INSURING EMPLOYERS** (HENNE M) To allow groups of employers to be granted status as a self-insuring employer for purposes of the Workers' Compensation Law.

Current Status: 4/11/2018 - House Insurance, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-459>

SB118 **PTSD TREATMENT-FIRST RESPONDERS** (LAROSE F, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law for up to one year and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.

Current Status: 4/17/2018 - Senate Insurance and Financial Institutions, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-118>

SB140 **PUBLIC-PRIVATE PARTNERSHIP GRANTS** (SCHIAVONI J) To create the Public-Private Partnership Grant Program for fiscal years 2018 and 2019 to develop, enhance, and promote educational programs to address regional workforce needs; to create the Sector Partnership Grant Program for fiscal years 2018 and 2019 to identify and provide grants to industry partnerships; to support programs that improve access to workforce training opportunities for students; to support economic development and revitalization programs; and to make an appropriation.

Current Status: 5/3/2017 - Referred to Committee Senate Finance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-140>