

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



Safety & Workers' Compensation Committee

Thursday, May 19, 2016

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**2016 Safety & Workers'
Compensation Committee
Calendar**

Meetings begin at 10:00 a.m.

Thursday, May 19, 2016
Wednesday, October 12, 2016

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





OMA Safety & Workers' Compensation Committee May 19, 2016

AGENDA

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc.
BWC Update	Brian Jackson, OMA staff
Safety Update	Dianne Grote Adams, Safex
Guest Speakers	Sarah Morrison, Administrator/CEO, Ohio BWC Dave Sievert, Interim Director – Self Insured Department, Ohio BWC
Public Policy Report	Rob Brundrett, OMA staff
OMA Counsel's Report	Sue Wetzel, 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:





Administrator/CEO Sarah Morrison

Ohio Governor John Kasich appointed Sarah Morrison as Administrator/CEO of the Ohio Bureau of Workers' Compensation in May 2016. She leads an agency of more than 1,900 employees that serves more than 250,000 employers and administers nearly 1 million open claims.

Morrison joined BWC in November 2012 with more than 15 years of diverse legal experience. Prior to joining BWC, she was a partner at Taft Stettinius & Hollister, LLP in Columbus. She has specialized in various types of civil and commercial litigation, including complex litigation and class actions. Her trial practice involved appearances in federal and state courts, and she has argued before the Ohio Supreme Court.

Morrison began her career as a law clerk with the Chester Wilcox & Saxbe law firm. She also served one year as a judicial law clerk for Judge John D. Holschuh of the U.S. District Court for the Southern District of Ohio.

She earned a bachelor's degree in political science from Ohio State University and a law degree from the Capital University Law School. She was named an Ohio Rising Star by Law & Politics magazine and was a recipient of Columbus Business First's "40 Under 40 Award" in 2005.

Dave Sievert Interim Director–Self Insured Department

Twenty Four years in Worker's Compensation. The past three and a half years with BWC in the Self-Insured department as Supervisor Self Insured Auditing and currently serving as Interim Director. Dave is responsible for overseeing the Self Insured department, including new applications, renewals, securitization and employer's compliance through the Self Insured Complaint and Audit process.

Previously, Dave worked in national and local third party administrators with responsibilities including claims adjusting, IC hearings, supervision, claims operations management, account management and quality control. Primarily managed Ohio self insured workers compensation claims but well versed in several other jurisdictions and Liability claims.

Earned Associate in Risk Management and Enterprise Risk Management designations.

Dave served as an Infantry Officer in the US Army prior to entering the worker's compensation world.

Key OSHA Activities – May 2016



Dianne Grote Adams
dgrotheadams@safex.us

What's New

Recordkeeping continues to be a hot topic!

1. Reporting criteria changes in 2015
2. February 2016 the online method to report injuries and fatalities became available. <https://www.osha.gov/report.html>
3. OSHA 300, 301 and 300A must be submitted beginning January 2017.

Silica

We reported in February the final rule went to Office of Information and Regulatory Affairs (OIRA) in December. OIRA has 90 – 120 days to review and send back to the agency. Expected to be issued by OSHA in the next few months, prior to the end of the Obama administration. And 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.

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.
- 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; limit worker access to high exposure areas; develop a written exposure control plan, offer medical exams to highly exposed workers, and train workers on silica risks and how to limit exposures.
- Provides medical exams to monitor highly exposed workers and gives them information about their lung health.
- Provides flexibility to help employers — especially small businesses — protect workers from silica exposure.

May 11, 2016 - OSHA issues final rule to make employers, public better informed about workplace injuries, illnesses

OSHA today issued a [final rule](#) to modernize injury data collection to better inform workers, employers, the public, and OSHA about workplace hazards. With this new rule, OSHA is applying the insights of behavioral economics to improve workplace safety and prevent injuries and illnesses.

OSHA requires many employers to keep a [record*](#) of injuries and illnesses to help these employers and their employees identify hazards, fix problems and prevent additional injuries and illnesses. The Bureau of Labor Statistics reports more than three million workers suffer a workplace injury or illness every year. Currently, little or no information about worker injuries and illnesses at individual employers is made public or available to OSHA. Under the new rule, employers in high-hazard industries will send OSHA injury and illness data that the employers are already [required to collect](#), for posting on the agency's website.

The availability of these data will enable prospective employees to identify workplaces where their risk of injury is lowest; as a result, employers competing to hire the best workers will make injury prevention a higher priority. Access to these data will also enable employers to benchmark their safety and health performance against industry leaders, to improve their own safety programs.

"Since high injury rates are a sign of poor management, no employer wants to be seen publicly as operating a dangerous workplace," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "Our new reporting requirements will 'nudge' employers to prevent worker injuries and illnesses to demonstrate to investors, job seekers, customers and the public that they operate safe and well-managed facilities. Access to injury data will also help OSHA better target our compliance assistance and enforcement resources at establishments where workers are at greatest risk, and enable 'big data' researchers to apply their skills to making workplaces safer."

Under the new rule, all establishments with 250 or more employees in industries covered by the recordkeeping regulation must electronically submit to OSHA injury and illness information from OSHA Forms 300, 300A, and 301. Establishments with 20-249 employees in [certain industries*](#) (NAIC 31 -33 manufacturing is included) must electronically submit information from OSHA Form 300A only.

To ensure that the injury data on OSHA logs are accurate and complete, the final rule also promotes an employee's right to report injuries and illnesses without fear of retaliation, and clarifies that an employer must have a reasonable procedure for reporting work-related injuries that does not discourage employees from reporting.

This aspect of the rule targets employer programs and policies that, while nominally promoting safety, have the effect of discouraging workers from reporting injuries and, in turn leading to incomplete or inaccurate records of workplace hazards.

The new requirements take effect August 10, 2016, with phased in data submissions beginning in 2017.

Workers' Exposure to Respirable Crystalline Silica: Final Rule Overview

More than 2 million workers gain protections from deadly dust

Background

Workplace illness takes the lives of thousands of workers each year. Those workers and their families rely on the U.S. Department of Labor's Occupational Safety and Health Administration to set and enforce standards that reduce the risk to those workers of contracting illnesses or suffering injuries on the job, so that no worker is forced to sacrifice their life or health for their livelihood. Respirable crystalline silica is particularly hazardous for the nation's workers.

Workers who inhale very small crystalline silica particles are at increased risk of developing serious — and often deadly — silica-related diseases. These tiny particles (known as “respirable” particles) can penetrate deep into workers' lungs and cause silicosis, an incurable and sometimes fatal lung disease. Crystalline silica exposure also puts workers at risk for developing lung cancer, other potentially debilitating respiratory diseases such as chronic obstructive pulmonary disease, and kidney disease. Approximately 2.3 million people in the U.S. are exposed to silica at work.

To better protect workers from dangerous crystalline silica, OSHA has finalized two new silica standards: one for general industry and maritime, and the other for construction. These rules are based on extensive review of peer-reviewed scientific evidence, current industry consensus standards, an extensive public outreach effort, and nearly a year of public comment, including several weeks of public hearings. They provide commonsense, affordable and flexible strategies for employers to protect workers in their workplaces from the serious risks posed by silica exposure.

OSHA estimates these standards will save the lives of more than 600 workers each year and prevent more than 900 cases of silicosis each year once the full effects of the rule are realized.

What is crystalline silica?

Crystalline silica is a common mineral that is found in materials that we see every day in roads, buildings, and sidewalks. It is a common component of sand, stone, rock, concrete, brick, block, and mortar.

- Exposures to crystalline silica dust occur in common workplace operations involving cutting, sawing, drilling, and crushing of concrete, brick, block, rock, and stone products (such as construction tasks), and operations using sand products (such as in glass manufacturing, foundries, sand blasting, and hydraulic fracturing).

Why do we need new silica standards?

- We have known about the dangers of silica for decades. More than 80 years ago, U.S. Secretary of Labor Frances Perkins first brought experts and stakeholders together to determine the best ways to protect workers from silica.
- OSHA's current permissible exposure limits for silica are more than 40 years old. They are based on research from the 1960s and earlier that do not reflect more recent scientific evidence.
- Strong evidence shows that the current exposure limits do not adequately protect worker health. For example, since the current exposure limits were adopted, respirable crystalline silica exposure has been found to cause lung cancer and kidney disease at the levels currently permitted.
- Many employers are already implementing the necessary measures to protect their workers from silica exposure. The technology for most employers to meet the new standards is widely available and affordable.

How will the rule protect workers?

- The rule significantly reduces the amount of silica dust that workers can be exposed to on the job. That means that employers will have

to implement controls and work practices that reduce workers' exposure to silica dust. For most activities, that means that employers will have to ensure that silica dust is wetted down or vacuumed up before workers can breathe it in.

- Employers are required under the rule to limit access to high exposure areas, provide training, provide respiratory protection when controls are not enough to limit exposure, provide written exposure control plans, and measure exposures in some cases. Employers are also required to offer medical examinations to highly exposed workers. Workers who find out they have an illness, such as lung disease, can use that information to make employment or lifestyle decisions to protect their health.

How will OSHA help employers comply with the rule to protect their workers?

- The rule provides flexibility to help employers — especially small businesses — protect workers from silica exposure, with staggered compliance dates to ensure sufficient time to meet the requirements. Employers have from one to five years to get the right protections in place.
- The rule includes special flexibility for the construction industry. For the most common tasks in construction, OSHA has spelled out exactly how to best protect workers. If employers follow those specifications, they can be sure that they are providing their workers with the required level of protection. If they have better ideas about how to provide protection, they can do that too — as long as they make sure that their methods effectively reduce their workers' exposure to silica dust.

What industries are affected?

Affected industries include:

- Construction
- Glass manufacturing
- Pottery products
- Structural clay products

- Concrete products
- Foundries
- Dental laboratories
- Paintings and coatings
- Jewelry production
- Refractory products
- Ready-mix concrete
- Cut stone and stone products
- Abrasive blasting in maritime, construction, and general industry
- Refractory furnace installation and repair
- Railroad transportation
- Oil and gas operations

Additional information

Additional information on OSHA's silica rule can be found at www.osha.gov/silica.

OSHA can provide extensive help through a variety of programs, including technical assistance about effective safety and health programs, workplace consultations, and training and education.

OSHA's On-site Consultation Program offers free and confidential occupational safety and health services to small and medium-sized businesses in all states and several territories across the country, with priority given to high-hazard worksites. On-site consultation services are separate from enforcement and do not result in penalties or citations. Consultants from state agencies or universities work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing and improving safety and health management systems. To locate the OSHA On-site Consultation Program nearest you, call 1-800-321-OSHA (6742) or visit www.osha.gov/dcsp/smallbusiness.

For more information on this and other health-related issues impacting workers, to report an emergency, fatality, inpatient hospitalization, or to file a confidential complaint, contact your nearest OSHA office, visit www.osha.gov, or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

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

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



www.osha.gov (800) 321-OSHA (6742)



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OSHA's Crystalline Silica Rule: General Industry and Maritime

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

Who is affected by the general industry and maritime standard?

About 295,000 workers are exposed to respirable crystalline silica in over 75,000 general industry and maritime workplaces. Exposure to respirable crystalline silica can cause silicosis, lung cancer, other respiratory diseases, and kidney disease.

Some of the affected industries are shown below.

Number of Workers Exposed to Respirable Crystalline Silica in Selected General Industry/ Maritime Sectors		
Industry sector	Workers currently exposed	Workers currently exposed above the new PEL
Asphalt Roofing Materials	3,158	1,410
Concrete Products	32,981	9,391
Cut Stone	9,429	5,243
Dental Laboratories	31,105	864
Foundries	34,591	12,173
Jewelry	6,772	2,434
Porcelain Enameling	4,113	1,654
Pottery	6,269	2,496
Railroads	16,895	5,340
Ready-Mix Concrete	27,123	19,941
Shipyards	3,038	2,228
Structural Clay Products	7,893	3,198
Support Activities for Oil and Gas Operations	16,960	11,207

Source: OSHA Directorate of Standards and Guidance

OSHA estimates that over 100,000 workers in general industry and maritime are exposed to silica levels that exceed the new permissible exposure limit (PEL).

What does the standard require?

The standard for general industry and maritime requires employers to:

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

Examples — Dust control methods

In most cases, dust controls such as wet methods and ventilation can be used to limit workers' exposure to silica. These technologies are widely available, affordable and already commonly used by many employers.



A worker cutting granite using a saw that applies water to the blade. The water reduces the amount of silica-containing dust that gets into the air.



Photo: Alliance — OSHA Cooperative Program

A worker grinding castings in a foundry. The work is performed in a ventilated booth to reduce the worker's exposure to silica.

When are employers required to comply with the standard?

General industry and maritime employers must comply with all requirements of the standard by **June 23, 2018**, except for the following:

- **Medical surveillance** must be offered to employees who will be exposed **at or above the action level** for 30 or more days a year starting on June 23, 2020. (Medical surveillance must be offered to employees who will be exposed **above the PEL** for 30 or more days a year starting on June 23, 2018.)
- **Hydraulic fracturing** operations in the oil and gas industry must implement engineering controls to limit exposures to the new PEL by June 23, 2021.

Additional information

Additional information on OSHA's silica rule can be found at www.osha.gov/silica.

OSHA can provide extensive help through a variety of programs, including technical assistance about effective safety and health programs, workplace consultations, and training and education.

OSHA's On-site Consultation Program offers free and confidential occupational safety and health services to small and medium-sized businesses in all states and several territories across the country, with priority given to high-hazard worksites. On-site consultation services are separate from enforcement and do not result in penalties or citations. Consultants from state agencies or universities work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing and improving safety and health management systems. To locate the OSHA On-site Consultation Program nearest you, call 1-800-321-OSHA (6742) or visit www.osha.gov/dcsp/smallbusiness.

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Manufacturers to Fight Fundamentally Flawed Silica Rule

Regulation Threatens Entire Manufacturing Economy

by [Mallory Micetich](#) [[email](#)]

April 4, 2016

Washington, D.C., April 4, 2016 – National Association of Manufacturers Senior Vice President and General Counsel Linda Kelly issued the following statement after the Manufacturers’ Center for Legal Action (MCLA) announced its challenge to the Occupational Safety and Health Administration’s final silica rule. The MCLA joins the American Foundry Society and filed a petition through our local Texas chapters to fight the newly announced rule that will severely stunt the economy and burden manufacturers:

“In the span of less than a week, manufacturers have been saddled with two federal regulations that threaten the manufacturing economy and will fundamentally change the workplace.

“This regulation raises serious and significant legal questions, lacks economic and technical feasibility and justification and will cost billions. Relying on incredibly out-of-date data, this rule places undue burdens and irreparable harm on manufacturers, especially small and medium-sized businesses, some of which could be forced to shut their doors. Manufacturers are and have always been committed to safe workplaces, and we take pride in continuing to find ways to improve the work environment, but this unnecessary regulation is not the solution.”

The MCLA serves as the leading voice of manufacturers in the courts, representing the more than 12 million men and women who make things in the United States. The MCLA strategically engages in litigation as a direct party, intervenes in litigation important to our manufacturers and weighs in as *amicus curiae* on important cases. To learn more about the MCLA, visit our [website](#).

-NAM-

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.17 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. For more information about the Manufacturers or to follow us on Shopfloor, Twitter and Facebook, please visit www.nam.org.

New Recordkeeping Regulation Could Lead to Public Shaming

Manufacturers Burdened by More Than Paperwork with New OSHA Rule

by [Mallory Micetich](#) [[email](#)]

May 11, 2016

Washington, D.C., May 11, 2016 – National Association of Manufacturers Vice President of Labor, Legal and Regulatory Policy Rosario Palmieri issued the following statement after the Occupational Safety and Health Administration (OSHA) released the final injury and illness recordkeeping regulation:

“Today, this administration put a target on nearly every company and manufacturer in the United States. Manufacturers are supportive of regulations aimed at increasing transparency, and we pride ourselves on creating safe workplaces for the men and women who make things in America. However, this regulation will lead to the unfair and unnecessary public shaming of these businesses. This is a misguided attempt at transparency that sacrifices employee and employer privacy, allows for distribution of proprietary information and creates burdens for all manufacturers. We will look at all options to protect manufacturers from this certain threat to the modern shop floor.”

Manufacturers and their employees share a mutual goal of a safe, communicative and productive workplace, and good policy from Washington is part of the solution. To learn more, visit our [website](#).

-NAM-

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.17 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. For more information about the Manufacturers or to follow us on Shopfloor, Twitter and Facebook, please visit www.nam.org.

TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: May 19, 2016

Overview

The General Assembly is scheduled to wrap up session for the first half of 2016 later this month. The legislature will go on a campaigning hiatus until November. The "lame duck" session held after the elections is expected to be one of the most action packed in recent history. There is a lot of pending legislation that has been put on hold due to the campaign season.

Administrator Buehrer stepped down in early April, taking a job at a law firm in Columbus. Chief Legal Officer Sarah Morrison was promoted to acting Administrator. She, several legislators and others are in consideration for the top job on a permanent basis.

Legislation and Rules

Senate Bill 5 – mental / mental

State Senators Tom Patton (R-Strongsville) and Edna Brown (D-Toledo) introduced Senate Bill 5. The bill would allow emergency first responders to receive workers' compensation benefits for PTSD even if they do not have an accompanying physical work injury. This would go against how Ohio's workers' comp system has historically operated.

"Mental/mental," as the provision is called, would go against the workers' compensation principle that benefits must be tied to a compensable physical illness or injury. The measure would increase complexity and cost for public employers and allow certain employees to receive benefits not available to others. It also would be a terrible precedent facing private sector employers.

This would be a major change for public employers and possibly private employers in the future. The Senate passed a similar measure three times last year, only to be rebuffed by the House on each occasion.

The Senate heard powerful testimony from Administrator Buehrer but nonetheless passed the bill out of committee with only one no vote (Uecker). The bill was referred and passed unanimously from the Senate Finance Committee. However the bill has been re-referred to Senate Finance for further consideration. There have been two contentious interested party meetings with both sides entrenched with their positions.

Senator Patton remains focused on passing the bill.

Senate Bill 27 / House Bill 292 – firefighter cancer

Senator Tom Patton (R-Strongsville) and Representative Christina Hagan introduced companion bills that would assume a firefighter with certain types of defined cancers contracted those cancers within their working conditions.

Last month Senate Bill 27, passed unanimously through the Senate Insurance Committee and off the Senate floor 32-1. The bill provides that a firefighter who is

disabled as a result of specified types of cancer is presumed to have incurred the cancer while performing his or her job duties, thus creating eligibility for workers' compensation benefits.

The bill allows that the presumption can be rebutted if it can be proven that the cancer was directly caused by working conditions. This is the opposite of Ohio's asbestos statute which has become a national model. Originally the cancers covered under the bill include: cancers of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate; Non-Hodgkin's lymphoma; leukemia; multiple myeloma; and testicular or colorectal cancer. In committee, an amendment was added to include, breast, cervical, and uterine cancers to the bill.

BWC estimated an additional 568 claims annually at an approximate cost of \$75 million. Much like Senate Bill 5, this bill would create a major shift in Ohio's workers' compensation laws.

Senate Bill 149 – Loss of use

To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law. The minority sponsored bill has not had a hearing and is not expected to move.

House Bill 205 – Private Insurance

Rep. Mike Henne introduced HB 205 which would allow employers with more than 1,000 employees, as well as workers' compensation groups managed by third party administrators to purchase workers' compensation coverage in the private market.

In the fall Rep. Henne introduced a sub bill. The sub bill deletes all the language of the original bill and replaces it with a provision that would totally eliminate the employee threshold for self-insurance. Currently the BWC can already waive this provision for companies with strong financials due to an OMA budget amendment several years ago. The provision is unneeded. This was amended into House Bill 207.

House Bill 206 – Industrial Commission Statistics

Rep. Henne introduced HB 206 which requires the Industrial Commission to compile and maintain statistics on workers' compensation hearing decisions and hearing officers. The IC is adamant this is problematic and is searching for allies to fight Rep. Henne on the bill.

House Bill 207 – Subrogation

Reps. Henne and Robert McColley introduced HB 207. The bill enables claims costs to be charged to the Bureau of Workers' Compensation (BWC) surplus fund rather than a state fund employer's experience when a motor vehicle accident-related workers' compensation claim is likely to be subrogated by a third party.

Last week House Bill 207 cleared both the Senate floor and House concurrence. The OMA was a supporter of the legislation. OMA Safety and Workers' Compensation Chairman Larry Holmes, Sr. V.P., Finance, Fort Recovery Industries, Inc., provided proponent testimony on behalf of the OMA last fall during committee hearings. The bill now goes to the desk of Governor Kasich for his signature.

The Senate added an amendment which would assign a true experience rating to companies who leave a self-insured PEO or self-insured status and are returning to the state fund. A second amendment was added that eliminate the 500 person threshold for self-insured status.

House Bill 355 – employee misclassification

Rep. Wes Retherford (R – Hamilton) has introduced a bill, HB 355, that would turn the Bureau of Workers' Compensation (BWC) into an agency that would police businesses in their classifications of employees and independent contractors.

Under the bill, the BWC would be authorized to enter and inspect all of the offices and job sites maintained by an employer who is the subject of a complaint that an employer is misclassifying an employee. The BWC would be authorized to issue stop work orders and fines.

For many many years, organized labor has attempted to create a de facto Department of Labor at the state level. That's what this one is after. It is a really bad idea.

The OMA participated in an interested party meeting and reiterated its position that the bill is a bad idea and should be shelved.

House Bill 394 - Unemployment Compensation Tax Changes

Finally a long anticipated unemployment reform bill was introduced by Rep. Barbara Sears (R – Maumee) as HB 394. As every Ohio manufacturer knows, unemployment taxes are high and have been increasing.

The Ohio unemployment trust fund is insolvent and still owes the federal government \$775 million. This circumstance has for years triggered penalties that employers must pay, and the fund is in a dangerous position in light of any future recession.

House Bill 394 offers a reasonable, balanced package of unemployment insurance law reforms designed to address the current insolvency of Ohio's Unemployment Insurance Trust Fund (UI Trust Fund). The bill contains a combination of unemployment tax, benefit and integrity provisions that in the aggregate will improve solvency by tightening alignment of benefit costs and contribution revenues while building a significant fund balance, over time, that will be sufficient to avoid subjecting Ohio to increased federal taxes and penalties related to unemployment insurance.

Among the major reforms proposed in the legislation are the following:

Temporary Increase in State Unemployment Tax Base. HB 394 would increase the state unemployment tax base from \$9,000 to \$11,000 when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model solvency level and continue the increase until the UI Trust Fund reaches 1.0 Average High Cost Model. The state tax base will be reduced back to \$9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the \$11,000 level.

Reduction of Number of Potential Weeks of Unemployment Insurance. HB 394 would change the determination of the total number of weeks of unemployment compensation potentially available to twice a year, based on Ohio's seasonally adjusted three-month

total unemployment rate, before January and June. A sliding scale would set the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or above. Ohio currently uses a sliding scale ranging from 20 to 26 weeks.

Temporary Freeze on the Maximum Weekly Benefit Amount. HB 394 would effectively freeze maximum weekly benefit dollar amounts at a level not to exceed 50 percent of the statewide average weekly wage for the first year that the UI Trust Fund was less than the Minimum Safe Level (MSL), and would continue those maximums until the year after the UI Trust Fund was at or above the MSL.

Dependency. To align with the majority of states, HB 394 would repeal Ohio's current dependency provision that increases the weekly benefit amount provided to claimants who have higher wages and dependents.

Drug Testing. HB 394 provides language under which the Ohio Department of Job and Family Services may (a) request information of applicants for unemployment compensation about the results of past drug tests, (b) conduct drug tests for controlled substances, and (c) disqualify individuals within the narrow limitations of federal law.

Collectively, the HB 394 reforms position Ohio in line with surrounding states and states with whom we compete for investment and jobs.

House Republicans initially indicated they would pass the bill prior to 2016. The bill's passage has been delayed several times. The House and Senate have formed a six person working group to hammer out the bill's final details this summer, with lame duck passage expected. The legislature is currently discussing the possibility of a payment mechanism to eliminate the federal debt one year early.

House Bill 523

On May 10, 2016, the Ohio House of Representatives voted 71 to 26 to legalize medical marijuana in Ohio. This vote follows a series of public meetings held by the House's Medical Marijuana Task Force earlier this year, the bill's introduction on April 14, 2016, and vigorous committee debate and amendments. It now proceeds to the Senate for review. The measure seeks to address Ohioan's apparent support for the concept of medical marijuana, but builds in regulatory controls that are missing from two citizen-initiated measures that hope to gain enough signatures to be on the November ballot. The bill also includes a number of employer safeguards that the OMA's expert from Bricker & Eckler highlighted to the Task Force in its testimony in March.

See attached memo.

BWC Agency Notes

BWC CEO Stepping Down

BWC Administrator and CEO Steve Buehrer stepped down from his position on April 15 after more than five years of leading the agency.

In the announcement the governor cited Buehrer's achievements at the BWC as \$4.3 billion in rate cuts, rebates and credits since 2011, tripling of safety grants and additional investments in safety research, and reducing Ohio's workplace injury rate below the national average, among others.

Gov. Kasich appointed Steve Buehrer as Administrator/CEO of the BWC in January 2011.

Sarah Morrison, the bureau's chief legal officer, will serve as interim administrator and CEO.

OMA highly respects Buehrer's leadership and accomplishments, which have positioned the Ohio workers' compensation system for the future. We wish him well.

BWC Board Approves 8.6% Average Premium Reduction

The Ohio Bureau of Workers' Compensation (BWC) board of directors approved an 8.6% reduction in overall average rates for the state's private employers. The move will decrease projected annual premiums by \$113 million next year.

Over the past five years, Ohio's private and public sector employers have benefited from \$4.3 billion in rate cuts, rebates and credits.

The latest cuts for private employers will begin July 1. The reduction is an overall statewide average. The actual premium paid by individual private employers depends on a number of factors, including the expected future costs in their industry, their recent claims history, and their participation in various programs.

Ballot Issues

Marijuana Ballot Issues

Several marijuana ballot issues continue to threaten Ohio's employers. The Marijuana Policy Project which is a professional group with backing from Washington D.C. is currently collecting signatures to gain access to the November ballot. A recent Ohio poll showed that Ohioans were in favor of medical marijuana 90% - 10%. The group continues to state it will go to the ballot regardless of legislative action in the meantime.



Ohio Legislative Service Commission

Bill Analysis

Nick Thomas

Sub. S.B. 27*

131st General Assembly
(As Reported by S. Insurance)

Sens. Patton, LaRose, Skindell, Hughes, Schiavoni, Tavares

BILL SUMMARY

- Provides that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund (OP&F) to have incurred the cancer while performing his or her official duties.
- Allows for the presumption created in the bill to be rebutted upon the presentation of competent or affirmative evidence to the contrary.
- Allows, for the purposes of OP&F disability, for the bill's presumption to be rebutted if the cancer was revealed during the firefighter's entrance physical examination.
- Allows the presumption created by the bill to be rebutted upon the presentation of competent evidence that the firefighter was a substantial tobacco user in the ten years prior to the cancer diagnosis.
- Allows the presumption to be rebutted if the individual is 75 years of age or older.

CONTENT AND OPERATION

Presumption of illness incurred while performing official duties

The bill creates a presumption that a member of the Ohio Police and Fire Pension Fund (OP&F) who is a member of a fire department and who incurs and is disabled by

* This analysis was prepared before the report of the Senate Insurance Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may not be complete.

the following types of cancer incurred the cancer while performing the member's official duties:

- Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, prostate, breast, cervix, or uterus;
- Non-Hodgkin's lymphoma;
- Leukemia;
- Multiple myeloma;
- Testicular or colorectal cancer.

Firefighters must have been assigned to at least three years of hazardous duty for the presumption to apply.¹ "Hazardous duty" means duty performed under circumstances in which an accident could result in serious injury or death.²

The bill also creates the same presumption for firefighters in the Workers' Compensation Law. The cancers listed above are included in the list of occupational diseases that are compensable under current Law.³

Rebuttal of the presumption

The bill provides that the presumption created by the bill can be rebutted in any of the following situations:

- The presentation of competent, in the case of the OP&F, or affirmative evidence, in the case of workers' compensation, evidence to the contrary of the presumption.⁴
- For OP&F, the presentation of any evidence of the cancer appeared on the physical examination passed by the member upon entry to the fire department.⁵

¹ R.C. 742.38(D)(3)(b).

² R.C. 742.38(D) and 4123.68(X), by reference to 5 C.F.R. 550.902.

³ R.C. 4123.68(X), with a conforming change in R.C. 4123.57(D).

⁴ R.C. 742.38(D)(3)(c)(i) and 4123.68(X)(1).

⁵ R.C. 742.38(D)(3)(c)(i).



- The presentation of competent evidence that the firefighter was a substantial and consistent user of cigarettes or other tobacco products within ten years immediately preceding the date of diagnosis of the cancer, and that this use was a significant factor in the cause, aggravation, or progression of the cancer.⁶
- The firefighter is 75 years of age or older.⁷

Application

The bill applies only to applications for disability benefits filed on or after the bill's effective date and to workers' compensation claims arising on or after the bill's effective date.⁸

HISTORY

ACTION	DATE
Introduced Reported, S. Insurance	02-09-15 ---

S0027-RS-131.docx/emr

⁶ R.C. 742.38(D)(3)(c)(ii) and 4123.68(X)(2)(a).

⁷ R.C. 742.38(D)(3)(c)(iii) and 4123.68(X)(2)(b).

⁸ Sections 3 and 4 of the bill.





Ohio Legislative Service Commission

Bill Analysis

Nicholas A. Keller

Sub. H.B. 207

131st General Assembly
(As Reported by S. Insurance)

- Reps.** Henne and McColley, Boose, Romanchuk, Hambley, Burkley, Hood, Sprague, Terhar, Maag, Reineke, Hackett, DeVitis, Retherford, Sears, Amstutz, Anielski, Antani, Antonio, Arndt, Barnes, Bishoff, Blessing, Brenner, Buchy, Butler, Conditt, Cupp, Derickson, Dever, Dovilla, Duffey, Ginter, Green, Grossman, Hall, Hayes, Hill, Huffman, Koehler, LaTourette, Manning, McClain, M. O'Brien, S. O'Brien, Patterson, Pelanda, Perales, Phillips, Rezabek, Rogers, Ruhl, Ryan, Schaffer, Scherer, Schuring, Slesnick, R. Smith, Stinziano, Sweeney, Thompson, Young, Zeltwanger, Rosenberger
- Sens.** Hottinger, Beagle, Bacon, Brown

BILL SUMMARY

Workers' compensation claims involving motor vehicle accidents

- Requires workers' compensation claims to be charged to the Surplus Fund Account in lieu of to a state fund employer's experience in certain circumstances when a claim is based on a motor vehicle accident involving a third party.
- Allows a state fund employer who believes that a claim may qualify to be charged to the Surplus Fund Account under the bill to file a request with the Administrator of Workers' Compensation for a determination.
- Requires the Administrator to make the determination within 180 days after the Administrator receives the request.
- Requires any amount collected by the Administrator through the subrogation process for compensation or benefits that were charged to the Surplus Fund Account to be credited to the Surplus Fund Account and not applied to an individual employer's account.

Workers' compensation self-insuring employers

- Eliminates the minimum number of employees required for a private sector employer or board of county commissioners to obtain self-insuring status under the Workers' Compensation Law.

CONTENT AND OPERATION

Workers' compensation claims involving motor vehicle accidents

Charging experience for certain claims to the Surplus Fund Account

The bill requires the Administrator of Workers' Compensation, for workers' compensation claims arising on or after July 1, 2016, to charge a state fund employer's experience to the Surplus Fund Account created under continuing law within the State Insurance Fund and not to the employer's experience for payments made in a workers' compensation claim if all of the following apply:

- The claim is based on a motor vehicle accident involving a third party;
- The third party is issued a citation for violation of any law or ordinance regulating the motor vehicle's operation arising from the accident on which the claim is based;
- Either of the following circumstances apply to the claim:
 - Any form of insurance maintained by the third party covers the claim;
 - Uninsured or underinsured motorist coverage covers the claim.
- The employer of the employee who is the subject of the claim is not the state or a state institution of higher education, including its hospitals.¹

A state fund employer is an employer who pays premiums into the State Insurance Fund to secure workers' compensation coverage. The employer's experience in being responsible for its employees' workers' compensation claims may be used in calculating the employer's premium (see "**Background – calculation of premium rates,**" below). Thus, charging a claim to the Surplus Fund Account in lieu of the employer's experience may result in a mitigation of an increase in the employer's workers' compensation premiums as a result of the claim.

¹ R.C. 4123.932; Section 3.

Procedure for charging the experience to the Surplus Fund Account

The bill allows an employer who believes that a claim may qualify to be charged to the Surplus Fund Account under the bill to file a request with the Administrator for a determination. The bill requires the Administrator to make the determination within 180 days after the Administrator receives the employer's request.²

Upon the Administrator's determination that a claim qualifies to be charged to the Surplus Fund Account under the bill, or if the Administrator fails to make a determination on a claim within 180 days after receiving the request, the bill requires the Administrator to charge the experience of an employer for any compensation, benefits, or both paid in relation to that claim to the Surplus Fund Account and not to the individual employer's experience.³

Deposit of subrogated funds

Continuing law prescribes procedures that the Administrator (or any other statutory subrogee) and a claimant must follow with respect to the distribution of funds that are subrogated in a third-party claim. With respect to any money collected by the Administrator under that process, current law requires the Administrator to deposit the money collected into the appropriate account within the State Insurance Fund. The bill requires any amount collected for compensation or benefits that were charged to the Surplus Fund Account pursuant to the bill and not charged to an employer's experience to be deposited in the Surplus Fund Account and not applied to an individual employer's account.⁴

The Workers' Compensation Law⁵ creates a right of subrogation in favor of the Administrator or other statutory subrogees against a third party. A statutory subrogee is the entity responsible to pay workers' compensation claims. Essentially a statutory subrogee may recoup money from a third party against whom a claimant has a cause of action so that the statutory subrogee is reimbursed for money it pays out on a workers' compensation claim.

Stated simply, if Mr. Smith, in the course of his employment, is injured when Mr. Jones collides with his vehicle, Mr. Smith may receive workers' compensation benefits and also may sue Mr. Jones. If Mr. Smith sues Mr. Jones, then Mr. Smith's employer, or

² R.C. 4123.932(B), (C), and (D)(1).

³ R.C. 4123.932(B) and (D)(2).

⁴ R.C. 4123.931(K).

⁵ R.C. Chapters 4121., 4123., 4127., and 4131.



the Administrator, as appropriate, may seek reimbursement from the amount Mr. Smith recovers in the third-party suit.

The Workers' Compensation Law contains procedures to follow regarding subrogation claims. Under continuing law, the Administrator's right of subrogation is automatic, regardless of whether the Administrator is joined as a party in an action by a workers' compensation claimant against a third party. The Administrator may pursue an action against a third party as well.⁶

Background – calculation of premium rates

Ohio law requires the Administrator to fix premiums "sufficiently large" to provide a fund for the benefits authorized in the Workers' Compensation Law and "to maintain a state insurance fund from year to year." Subject to the approval of the Bureau of Workers' Compensation (BWC) Board of Directors, the Administrator classifies occupations or industries with respect to their degree of hazard, determines the risks of different classes according to the categories the National Council on Compensation Insurance establishes, and fixes the premium rates for coverage of the risks based upon the total payroll in each classification.⁷

Premium rates are fixed for each classification based upon total payroll. The Administrator must establish a rate for each classification. To do so, the Administrator compares the total losses experienced by employers within a classification with the total payroll of that classification to establish the rate of contribution for employers within that classification. The system includes two primary categories of premium rates – the basic rate and the experience, or merit, rate (employers qualify for one or the other). The Administrator calculates the basic rate for each of the classifications of occupations, and the Administrator does not include any individual employer's experience when calculating basic rates. If an employer is experience-rated, the employer's rate is determined by modifying the basic rate applicable to the employer by the employer's experience of losses incurred and premiums paid.⁸ A premium is expressed as an amount for each \$100 of payroll. Rates are revised annually on July 1, and employers pay premiums in accordance with the schedule specified in the Workers' Compensation Law and in rules adopted by the Administrator.⁹

⁶ R.C. 4123.93 and 4123.931.

⁷ R.C. 4123.29(A), not in the bill, and Ohio Administrative Code (O.A.C.) 4123-17-04.

⁸ Fulton, Philip J., *Ohio's Workers' Compensation Law*, § 14.4 (4th Ed. 2011).

⁹ R.C. 4123.34, not in the bill, R.C. 4123.35, and O.A.C. 4123-17-01 to 4123-17-04.

Workers' compensation self-insuring employers

The bill eliminates the current law requirement that a private sector employer employ at least 500 employees to be eligible to pay directly for compensation and benefits under the Workers' Compensation Law. The bill also eliminates the requirement that a board of county commissioners employ at least 500 employees to be eligible to pay directly for compensation and benefits under the Workers' Compensation Law with respect to the construction of a sports facility. Currently, with respect to private employers, the Administrator must waive this requirement if the employer satisfies requirements specified in rules adopted by the Administrator. Under those rules, the employer must either have a substantial employee count outside Ohio, as determined by BWC, or obtained and agree to maintain insurance in amounts exceeding current law requirements and with a retention level determined by BWC to be appropriate.¹⁰

Under continuing law, the Administrator must consider a number of factors to determine the ability of a private sector employer or a board of county commissioners to meet the obligations of paying directly for compensation and benefits.¹¹

HISTORY

ACTION	DATE
Introduced	05-12-15
Reported, H. Insurance	10-19-15
Passed House (94-0)	12-01-15
Reported, S. Insurance	04-26-16

H0207-RS-131.docx/ks

¹⁰ O.A.C. 4123-19-03.1.

¹¹ R.C. 4123.35(B) and (C).





MEMORANDUM

TO: OMA members
FROM: Joëlle Khouzam
DATE: May 10, 2016
RE: Medical Marijuana Legalization Efforts – H.B. 523

On May 10, 2016, the Ohio House of Representatives voted 70 to 25 to legalize medical marijuana in Ohio. This vote follows a series of public meetings held by the House's Medical Marijuana Task Force earlier this year, the bill's introduction on April 14, 2016, and vigorous committee debate and amendments. It now proceeds to the Senate for review.

The measure seeks to address Ohioan's apparent support for the concept of medical marijuana, but builds in regulatory controls that are missing from two citizen-initiated measures that hope to gain enough signatures to be on the November ballot. The bill also includes a number of employer safeguards that Bricker & Eckler highlighted to the Task Force in its testimony in March.

The following summary focuses on employment-related implications of this measure but does not detail the regulatory and licensing requirements for cultivators, processors, or retailers.

Background

Federal law currently classifies marijuana as a Schedule I controlled substance under the Controlled Substances Act, meaning it has no acceptable medical uses and has a high potential for abuse. Twenty-four states and the District of Columbia have legalized medical marijuana in some degree, with some states – and even some local jurisdictions -- imposing stricter controls on patients and dispensaries than others.

One interesting change between the introduced version of this bill and the substitute version voted on by the House is that the General Assembly will advocate for marijuana to become a Schedule II controlled substance, meaning that although it still has a high potential for abuse, it also has currently accepted medical uses under medical supervision.

Definition of medical marijuana

"Medical marijuana" is marijuana (as currently defined by Ohio law) cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.

Legislative intent

Sub. H.B. 523 states the intent to tax and regulate medical marijuana use and distribution, to recommend to Congress that marijuana be reclassified as a schedule II controlled substance, and to establish incentives for academic and medical research relating to medical marijuana. More specifically, it would:

- Protect registered users and caregivers from arrest and prosecution;
- Permit use of marijuana for medical purposes but prohibit cultivation for personal use;
- License and regulate cultivators, processors, retail dispensaries, and testing laboratories;

- Register physicians recommending medical marijuana, and patients and caregivers;
- Authorize municipalities/townships to regulate or prohibit licensed retail dispensaries;
- Permit counties/townships to apply agricultural-use zoning limitations to regulate retail dispensaries in unincorporated territory;
- Prohibit cultivators, processors, retail dispensaries, or laboratories from being within 1,000 feet of a school, church, public library, public playground, or public park.

Creation of Medical Marijuana Commission

The Medical Marijuana Control Commission would consist of: (1) a practicing physician; (2) a representative of local law enforcement; (3) a representative of employers; (4) a representative of labor; (5) a representative of persons involved in the treatment of alcohol and drug addiction; (6) a representative of persons involved in mental health treatment; (7) a pharmacist; (8) a representative of persons supporting the legalization of marijuana use for medical purposes; and (9) a representative of patients.

No more than 4 members may be of the same political party. The Governor will appoint members within 30 days of the bill's effective date. Initially, the Governor shall appoint members from the first three categories to 5-year terms; the Senate President appoints the pharmacist and the member representing patients to 3-year terms; the Senate Minority Leader appoints the member representing labor to a 3-year term; the Speaker of the House appoints the mental health professional and the pro-legalization representative to 4-year terms; and the House Minority leader appoints the addiction treatment professional to a 4-year term. After these initial terms, all terms shall be 3 years. The Governor appoints the Commission chair. The appointees receive an established *per diem* and travel expenses to attend meetings. The Commission must meet within 30 days of the last appointment to adopt rules.

Medical Marijuana Control Program

Within one year of its initial meeting, the Commission must develop and submit to the Department of Commerce standards, procedures, and best practices, to include:

- Establishing application procedures, fees, disqualifying factors, and conditions for licensure of medical marijuana cultivators, processors, and retail dispensaries (in consultation with State Board of Pharmacy);
- Determining the number of licenses to issue, based on population, number of patients, and geographic distribution; and determining how licenses will be renewed, suspended, or revoked, and how a suspension may be lifted;
- regulating and registering physicians that recommend treatment with medical marijuana, in consultation with the State Medical Board;
- limiting the permissible forms to oils, tinctures, plant material, edibles, and patches;
- creating labeling requirements for packaging;
- establishing training requirements for retail dispensary personnel;
- licensing testing laboratories, and specifying when testing must be conducted;
- regulating activities within 1,000 ft. of schools, churches, libraries, playgrounds, parks;
- creating a program to assist veterans or indigents in obtaining medical marijuana;
- creating a confidential database to monitor medical marijuana from seed source through dispensing, and one to track physicians' treatment of patients, as described below;
- creating a toll-free hotline to respond to medical and public inquiries about adverse reactions to medical marijuana;
- establishing a drug abuse prevention program, to be funded by an annual set-aside of excise taxes and license application/renewal fees;
- creating research incentives.

All actions to implement this program must be taken within 2 years of the bill's effective date.

Medical Recommendations / Dispensing Medical Marijuana

A qualifying physician may recommend – *not prescribe* -- that a patient be treated with medical marijuana if a physician-patient relationship exists (*i.e.*, has been established through a physical, a review of the patient's medical history, and an expectation of ongoing care).

The substitute version of the bill has added “qualifying medical conditions” that would permit a recommendation. The list, which can be modified by the Department of Commerce, consists of: AIDS; amyotrophic lateral sclerosis; cancer; chronic traumatic encephalopathy; Crohn's disease; epilepsy or another seizure disorder; glaucoma; hepatitis C; inflammatory bowel disease; multiple sclerosis; pain that is severe, chronic or intractable; Parkinson's disease; positive status for HIV; post-traumatic stress disorder; sickle cell anemia; spinal cord disease or injury; Tourette's syndrome; traumatic brain injury; and ulcerative colitis. Parents or guardians must provide consent for minors before obtaining such recommendations.

Qualifying physicians may not personally furnish/dispense medical marijuana. Further, they may not advertise the services they provide in this vein on radio or television. Qualifying physicians must participate in continuing medical-marijuana education.

When giving a patient recommendation, the physician must specify the form(s) of medical marijuana that may be dispensed and the method(s) by which the patient may use medical marijuana. The physician's recommendation is valid for up to 90 days, and may be renewed for an additional 90 days upon an examination or follow-up consultation.

A patient or caregiver seeking to acquire medical marijuana must apply to the Commission for registration and include a copy of the physician's recommendation. If the application is complete, the patient or caregiver is given an identification card.

The Commission must undertake efforts to secure reciprocity agreements with other medical-marijuana states so registered users can be recognized elsewhere under similar conditions.

Physician Reporting

At least every 90 days, a qualifying physician must report (1) the number of patients for whom medical marijuana was recommended; (2) the disease/condition for which medical marijuana has been recommended; (3) the reason(s) it was recommended over other treatment; and (4) the form(s)/method(s) recommended. Annually, each qualifying physician must submit a report describing his/her observations regarding the effectiveness of medical marijuana on patients.

Prohibited Conduct

The substitute version of the bill has banned the smoking of medical marijuana; however, vaporization (“vaping”) is permitted. The citizen initiatives propose to permit the smoking of plant materials.

Driving or using other vehicles while under the influence of medical marijuana is not authorized.

Content Limits, Labeling

The substitute bill limits the proportion of dispensed material that can contain tetrahydrocannabinol (THC), the compound that causes the “high”, to 3-35%, while plant

extracts can have a THC content of up to 70%. A licensed processor must safely package medical marijuana and identify the processor, dispensary, physician, uses, and potency.

Lab Testing

Licensed labs will test for potency, homogeneity, and contamination, and must report results.

Employment Issues

There is no requirement to accommodate an employee's use of medical marijuana, or to prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana. Moreover, there is no provision for suing an employer who takes such actions. There is no restriction on employer drug-free workplace policies or drug testing policies. By contrast, the citizen initiatives would provide special protections for medical-marijuana users who test positive at work.

A termination based on using medical marijuana is a discharge for just cause for unemployment purposes, and would render the applicant for benefits ineligible.

The workers' compensation rebuttable presumption, allowing an employer to initially deny a claim upon a positive drug test and allowing the employee to dispute a denial or the evidence at hearing, would render an employee ineligible if s/he was under the influence of marijuana and this was the proximate cause of the injury, regardless of whether the marijuana use is recommended by a physician.

The Ohio BWC can continue to grant premium rebates/discounts to employers that participate in the drug-free workplace program.

Banking Services

The bill creates a safe harbor for financial institutions that provide services to licensed cultivators, processors, retail dispensaries, or labs from criminal prosecution if the facilities are in compliance with this bill and the applicable Ohio tax laws, if the organizations are in compliance with the bill and the state's tax laws.

Pharmaceutical Reporting

The bill requires that a retail dispensary report to the Ohio Automated Rx Reporting System when dispensing medical marijuana to a patient.

Taxing Medical Marijuana

The General Assembly would establish an excise (consumer) tax on each medical marijuana sale, and would tax Ohio businesses, their gross or net revenues, their operations, their owners, and their property as otherwise provided by law. Annually, a portion would fund marijuana drug abuse prevention programs.

Other

The General Assembly will recommend that branches of the federal government Congress reclassify marijuana as a Schedule II controlled substance and ease the regulatory burdens on researching the potential medical benefits of marijuana. In addition, the General Assembly would support incentives or otherwise encourage institutions of higher education and medical facilities within Ohio to conduct academic and medical research relating to medical marijuana.

Ohio medical marijuana amendment moves forward

COLUMBUS, Ohio -- Backers of a medical marijuana legalization measure cleared the initial hurdle in the process of placing an issue on the statewide ballot.

National group Marijuana Policy Project and its Ohio political action committee Ohioans for Medical Marijuana want to legalize marijuana use for certain medical conditions, with approval from a physician, through a proposed constitutional amendment on the November ballot.

Ohio Attorney General Mike DeWine on Friday certified the group's petition summary as a "fair and truthful" summary of the proposed law. DeWine rejected the group's initial petition language, and revised language included additional medical conditions that would qualify a person to use marijuana.

Next, the Ohio Ballot Board will decide within the next 10 days whether the proposal contains one or multiple amendments.

Then the petitioners need to collect at least 305,591 signatures of registered Ohio voters -- meeting a minimum number in 44 of Ohio's 88 counties -- to qualify for the ballot. The deadline for the November ballot is July 6.

Here's what the group is proposing:

Adults could grow, buy, and use marijuana if a physician recommends marijuana for a qualifying medical condition such as cancer, seizure disorders, or post-traumatic stress disorder. Minors could use marijuana with written permission of a parent or guardian.

Approved patients could buy and possess up to 2.5 ounces of marijuana and grow up to six plants or designate another adult to grow for them.

The first 15 commercial growing licenses would be for large-scale growers who pay a \$500,000 application fee, but then there would be an unlimited number of licenses available for small- and medium-scale growers.

Marijuana Policy Project Mason Tvert said the group appreciated DeWine's guidance in revising the amendment and they look forward to getting their petition drive started as soon as possible.

Marijuana Policy Project, founded in 1995 and has been a major advocate for decriminalizing marijuana and advocating its legalization.

"Ohio is one step closer to adopting a sensible medical marijuana law that ensures seriously ill people have safe and legal access to their medicine," Tvert said in a statement.

DeWine rejected medical marijuana language from two other groups earlier this month: Ohio Medical Cannabis Care and Grassroots Ohioans.

Ohioans for Medical Marijuana ballot initiative set for November election

Last update: March 23, 2016

[Ohioans for Medical Marijuana](#) (OMM), which is supported MPP, is working to pass a medical marijuana ballot initiative through a simple majority of the vote in Ohio on November 8, 2016. The statewide signature drive will span from April to June 2016, with the goal of submitting at least 305,591 valid signatures (approximately 550,000 gross signatures) to the Ohio government during the first week of July.

Specifically, the Ohio initiative allows patients with serious medical conditions to purchase medical marijuana from retail outlets — and/or grow their own medical marijuana at home — if they have the approval of their physicians. In the furtherance of this, the Ohio government would issue licenses for businesses to grow, process, test, and sell marijuana to patients with state-issued identification cards. You can read an initiative summary [here](#).

In November 2015, a controversial measure to legalize and regulate marijuana — but to allow only 10 specific parcels to grow commercial marijuana — was defeated at the ballot box. However, poll after poll showed overwhelming voter support for medical marijuana and some reform. The 2016 campaign is focusing only on medical marijuana, which enjoys a high level of support among Ohio voters. If passed, Ohio would become the 25th medical marijuana state in the country.

WHO DOES WHAT IN THE OHIO WORKERS' COMPENSATION SYSTEM?

A QUICK TUTORIAL FOR EMPLOYERS

Entity	Role
The Ohio Bureau of Workers' Compensation (BWC)	<p>The BWC is the workers' compensation insurance provider for Ohio's employers. Private employers pay a premium for the July 1 to June 30 rating year based on their workers' compensation experience and payroll characteristics. Employers choose from a number of installment payment plans.</p> <p>When a claim occurs, the BWC Claim Service Specialist (CSS) assigned to your policy number facilitates the claim process. The CSS is the first person to rule on the compensability of a claim. The CSS communicates with all parties to a claim: injured worker, employer, medical provider, MCO, and TPA.</p>
BWC Division of Safety & Hygiene (DSH)	From training to on-site consulting services and safety programs to grants, the Division of Safety & Hygiene (DSH) provides safety services at no cost to Ohio's employers.
Managed Care Organizations (MCO)	An MCO manages the medical portion of a claim to ensure injured workers receive quality medical care. Every employer must select one of Ohio's MCOs. The BWC compensates the MCO directly from a portion of employer premiums. The MCO also pays medical providers ensuring billed fees are reasonable and customary, as well as appropriate to the claim.
Health care providers	Health-care providers who treat workers' compensation injuries & illnesses must report a workers' compensation injury to the employer's MCO within 24 hours of treatment.
Industrial Commission of Ohio (IC)	When employers and injured workers disagree on a BWC claim decision, either party may file an appeal with the Industrial Commission of Ohio (IC), the adjudicative branch of the workers' compensation system.
Courts of Common Pleas, Courts of Appeals	Parties who are not satisfied through the Industrial Commission process may file most matters (but not extent of disability grievances) into Ohio's court system.
Ombuds Office	When employers have concerns they can't resolve through BWC or the Industrial Commission of Ohio, the independent Ombuds Office is available between 8:30 a.m. and 4 p.m. EST. Call toll-free 1-800-335-0996, or email ombudsperson@bwc.state.oh.us .
Third Party Administrators (TPA)	<p>Employers can retain a TPA as a workers' compensation management service supplier. A key role of Ohio TPAs is to provide access to and manage BWC group discount programs, including Group Experience Rating and Group Retrospective Rating. Employers can purchase services such as these—and/or other services—from TPAs:</p> <ul style="list-style-type: none"> • Claim investigation • Claim management strategy • Premium-reducing BWC program consulting • Rate consulting • Legal strategy & representation for contested claims • Management reporting • Account reviews • News & information about the BWC and Ohio workers' compensation • Safety services • Self-insured workers' compensation management services

OMA PUBLIC POLICY FRAMEWORK FOR ACTION

The Ohio Manufacturers' Association

ohiomfg.com



Public Policy Framework for Action

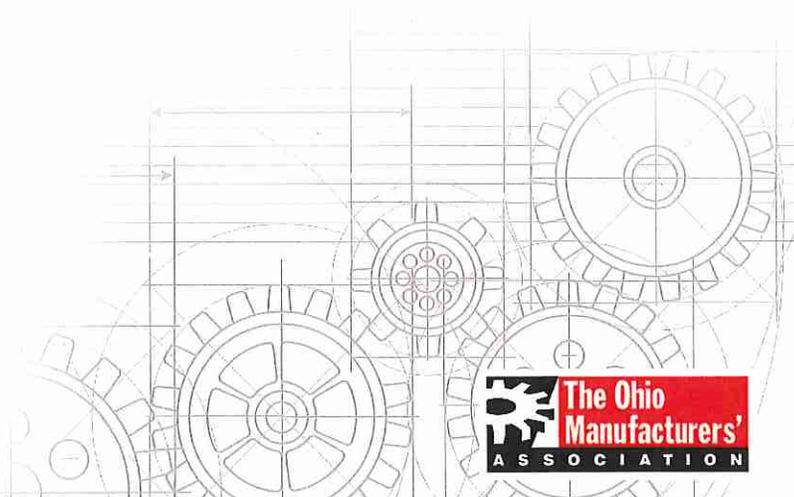
Manufacturing is responsible for 17% of Ohio's Gross Domestic Product; this is greater than the contribution of any other Ohio industry sector. Manufacturing is the engine that drives Ohio's economy.

In the competitive domestic and global economies, every public policy decision that affects Ohio's business climate affects Ohio's manufacturing competitiveness. In turn, Ohio's manufacturing competitiveness determines the ability of the state to grow its economy and create jobs.

Ohio manufacturers require public policies that attract investment and protect the state's manufacturing legacy and advantage. These policies apply to a wide variety of issues that shape the business environment within which manufacturers operate.

MAJOR POLICY GOALS INCLUDE THE FOLLOWING:

- **An Efficient, Competitive Tax System**
- **A Lean, Productive Workers' Compensation System**
- **Access to Reliable, Economical, Diverse Energy Resources**
- **A Fair, Stable, Predictable Civil Justice System**
- **Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations**
- **A Modern Public Resource Infrastructure**
- **An Educated, Highly Skilled Workforce**



Policy Goal:

A Lean, Productive Workers' Compensation System

An efficient and effective workers' compensation system benefits workers, employers, and the economy of the state and is built on the following principles:

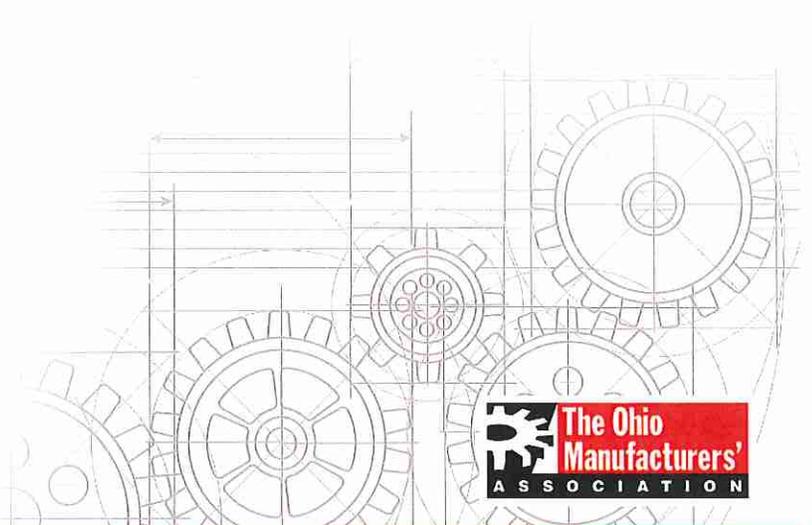
- Injured workers receive benefits that are prompt and adequate for getting back to work quickly and safely.
- Rates are established by sound actuarial principles, so that employers pay workers' compensation rates commensurate with the risk they bring to the system.
- The system is financed with well-functioning insurance mechanisms, including reserving and investment practices that assure fund solvency and stability.
- The benefit delivery system deploys best-in-class disability management practices that drive down costs for employers and improve service and outcomes for injured parties.
- The system consistently roots out fraud, whether by employers, workers or providers.

Fundamental priorities for future action are three:

The Bureau of Workers' Compensation (BWC) should reform its medical management system to lower cost and improve medical quality through better coordination of care and development of a payment system that creates incentives for best clinical practices. In doing this, the BWC should build on emerging best practices in the private sector health care system, such as patient-centered medical homes.

The Ohio General Assembly should seek statutory reforms of benefit definitions, so that the claims adjudication process is more predictable, less susceptible to fraud and manipulation, and less costly, both for workers and employers.

The Industrial Commission should record hearings, so that the hearing process is more transparent and any appeals have a record on which to build.





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Ohio Manufacturers' Association
Workers' Compensation Counsel Report
May 19, 2016

By: Sue A. Wetzel, Esq.
Bricker & Eckler LLP

Legislative Actions

SB. 27 – passed unanimously through the Senate Insurance Committee and off the Senate floor 32-1

This bill would create presumptive eligibility for workers compensation for firefighters with cancer. The current version of SB 27 would provide that a firefighter who is disabled, as a result of specific types of cancer, is presumed to have incurred the cancer while performing the required duties of a firefighter, at least for the purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund. Currently, firefighters must prove that their line of work resulted in their diagnosis in order to receive benefits.

In order for the presumption to apply, firefighters must have been assigned to at least three years of "hazardous duty" (defined as duty performed under the circumstances in which an accident could result in serious injury or death).

The specific types of cancer which would be included in the expanded coverage include:

- cancer of the lung,
- brain,
- kidney,
- bladder,
- rectum,
- stomach,
- skin, prostate;
- Non-Hodgkin's lymphoma;
- Leukemia;
- multiple myeloma;
- breast cancer*;
- cervical cancer*;
- uterine cancer*;
- testicular; or
- colorectal cancer.

* In committee, an amendment was added to include these additional types of cancer

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Judicial Actions

Stolz v. J & B Steel Erectors, Inc., slip op. No. 2016-Ohio-1567

In this 4-2 decision, the Supreme Court of Ohio held that subcontractors who are enrolled in a self-insured construction project plan are immune from tort claims brought by the employees of other enrolled subcontractors who are injured or killed while working on the project and whose injury is compensable under Ohio's workers' compensation law.

Here, Messer Construction Company ("Messer") was the general contractor for the Horseshoe Casino construction project in Cincinnati. Messer hired numerous subcontractors to complete the project. Prior to the accident at issue in this case, Messer had applied for and obtained authority to act as the self-insuring employer on this project under R.C. 4123.35(O). In this role, Messer was responsible for providing workers' compensation coverage for its own employees as well as the employees of the subcontractors working on the project.

The injured worker, Daniel Stolz, worked as a concrete finisher for one of the several subcontractors hired by Messer. After Stolz was injured, he brought negligence claims against Messer as well as a number of subcontractors. All moved for summary judgment, arguing that they were immune from the negligence claims under R.C. 4123.35 and 4123.74. After the district court granted summary judgment as to Messer but denied summary judgment as to the subcontractors, the subcontractors moved the federal court to certify the following question of state law:

"Whether Ohio Rev. Code §§ 4123.35 and 4123.74 provide immunity to subcontractors enrolled in a Workers' Compensation self-insurance plan from tort claims made by employees of [other] enrolled subcontractors injured while working on the self-insured project."

Upon review, the Supreme Court noted that the parties do not dispute that (1) Messer, as a self-insuring employer, received immunity from suits from its own employees as well as the employees of enrolled subcontractors arising from injuries occurring in the course of work on the project; or (2) the subcontractor who actually employs the injured worker was protected from that worker's claim. However, at issue here is whether a subcontractor is subject to claims by an employee of a different subcontractor working on the same construction project.

The Supreme Court then found that, when interpreting the plain meaning of R.C. §§ 4123.35 and 4123.74 together, the statutes provide a legal fiction through which Messer was considered the only employer on the project. Therefore, Messer could not be liable in damages at common law or by statute for injuries Stolz received in the course of his work on the construction project. The legal fiction also establishes that, for purposes of workers' compensation, subcontractors do not have employees working on the project. As such, those subcontractors cannot be liable for the

May 19, 2016

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workplace injuries of their employees because Messer, the general contractor, is the responsible party under the legal fiction. Finally, a worker who may be compensated with workers' compensation benefits is prevented from suing a co-employee on the job site, and thus the worker cannot seek to hold the employee's actual employer vicariously liable in order to recover damages in tot.

In sum, the Supreme Court concluded that the two statutes create a legal fiction wherein the self-insuring employer on the self-insured construction project is the sole employer of all employees working for enrolled subcontractors on that project, for workers' compensation purposes. As such, enrolled subcontractors have immunity from the claims of the employees of other subcontractors who are injured while working on the project (provided that the injury is compensable under workers' compensation law).

Dissent

Justice French dissented. While she agrees that the Court should look to the plain meaning of the statute, she disagreed with the majority opinion's interpretation. Instead, Justice French argued that, based on a comprehensive reading of the relevant provisions, an injured employee of one enrolled contractor or subcontractor could sue an employee of another enrolled contractor or subcontractor who caused the injury.

Safety & Workers' Compensation

[OMA Supported Subrogation Bill Clears General Assembly](#)

May 13, 2016

This week [House Bill 207](#) cleared both the Senate floor and House concurrence. The bill enables claims costs to be charged to the Bureau of Workers' Compensation (BWC) surplus fund rather than a state fund employer's experience when a motor vehicle accident-related workers' compensation claim is likely to be subrogated by a third party.

OMA Safety and Workers' Compensation Chairman Larry Holmes, Sr. V.P., Finance, Fort Recovery Industries, Inc., provided proponent testimony on behalf of the OMA last fall during committee hearings. The bill now goes to the desk of Governor Kasich for his signature.

We'll discuss this and many BWC updates at the [May 19 OMA Workers' Compensation committee meeting](#). [Register here](#).

[BWC Drug-Free Safety Program Enrollment Deadline is May 31](#)

May 13, 2016

Once a year, employers are able to enroll in the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP). Qualifying enrollees can receive a premium rebate of 4% or 7% and subsidize the majority of start-up and operational costs (e.g., policy development, employee education and supervisor training) with BWC SafetyGRANT\$ funding.

This year's enrollment deadline is May 31, 2016.

When program development is facilitated by knowledgeable consultants, an efficient and well thought-out program benefits your employees, your business and your community. Employees who think it is okay to use substances can be deterred; employees with problems are encouraged or required to get help; non-abusing employees are protected; and customers can feel confident in the services they receive from your company.

Visit OMA Connections Partner, [Working Partners® DFSP Help Zone](#), for information about the BWC Drug-Free Safety Program and how to enroll. Or call Working Partners at (866) 354-3397.

[OSHA Releases New Reporting Rule](#)

May 13, 2016

This week, the Occupational Safety and Health Administration (OSHA) [released its anticipated "Improve Tracking of Workplace Injuries and Illnesses" final rule](#), which will require businesses with 250 or more employees, per facility, to electronically report to the agency annually all of the company's injury and illness logs for that year starting in 2017.

Companies with 20-249 employees, per facility, in "designated industries," including manufacturing, will also have to report annually.

While the agency states it will not report any specific employee information, "OSHA intends to post the establishment-specific injury and illness data it collects under this final rule on its public Web site," which means company's records will be available for public consumption.

The National Association of Manufacturers issued this statement on the rule: "... this administration put a target on nearly every company and manufacturer in the United States. Manufacturers are supportive of regulations aimed at increasing transparency, and we pride ourselves on creating safe workplaces for the men and women who make things in America. However, this regulation will lead to the unfair and unnecessary public shaming of these businesses. This is a misguided attempt at transparency that sacrifices employee and employer privacy, allows for distribution of proprietary information and creates burdens for all manufacturers. We will look at all options to protect manufacturers from this certain threat to the modern shop floor."

[Workers' Compensation MCO Open Enrollment Underway](#)

May 6, 2016

The open enrollment period for Ohio state-fund employers to select a different workers' compensation Managed Care Organization (MCO) started this week and runs through Friday, May 27. The BWC offers an open enrollment period every two years to allow employers to evaluate the services of their current MCO and determine if they would like to make a change.

The role of the MCO is to manage medical treatment for workers injured on the job.

MCOs are contracted suppliers to the Bureau of Workers' Compensation (BWC) who are paid by the BWC with a portion of employer premiums. Ohio's 15 MCOs are the primary link between injured workers, medical providers, employers and BWC. MCOs manage claim filing and medical treatment and assist employers with the implementation of recovery and return-to-work programs.

Employers who are satisfied with their MCO do not need to do anything. However, those considering a change must complete the MCO Selection Form. For employers who select a new MCO, the change will be effective July 4.

OMA's sole endorsed MCO is [Health Management Solutions, Inc. \(HMS\)](#). [Read why](#). To switch, go to [HMS](#) or [use this form](#).

BWC produces the MCO Selection Guide that provides instructions, and an MCO Report Card that provides limited MCO performance information. The guide and report card are [available here](#).

[BWC, IC, MCO, TPA ...](#)

May 6, 2016

It can be confusing for employers to keep straight the various acronyms and entities that play a role in the Ohio workers' compensation system.

We created this [one-page tutorial](#) that summarizes each entity's specific function.

Questions? Please contact OMA's [Jeremy Sesco](#) or [Brian Jackson](#).

[Look for your BWC Notice of Estimated Annual Premium](#)

April 22, 2016

On May 1, the Bureau of Workers' Compensation (BWC) will mail Notices of Estimated Annual Premium for the policy year that begins July 1, 2016.

Employers can also view policy year 2016 information by accessing the installment schedule through the [My Policy page](#). Once there, you can also view or change your payment installment schedule for the upcoming policy year. For more information on how to change your installment schedule, view this 40-sec. [video tutorial](#).

The BWC bases estimated premium on payroll amounts that your company previously provided. If

you believe the payroll amount is incorrect, or if you anticipate a change in operations that will affect your payroll for the policy period beginning July 1, 2016, notify BWC at (800) 644-6292.

The first-ever payroll true-up period is coming July 1. This new process requires employers to report their actual payroll for the previous policy year and reconcile any differences in premium paid. Even if your payroll for the year matches the estimate BWC provided or you had zero payroll, you must complete a true-up report.

The quickest and easiest way to true-up will be online with a BWC e-account. To create an e-account, go to [BWC's website](#) and click on the Create e-account link in the top right corner of the home page.

OMA is holding a [BWC Hot Topics webinar](#) on Tuesday, May 10 to cover billing issues and more. [Register here](#).

[April is Distracted Driving Awareness Month](#)

April 22, 2016

The National Safety Council (NSC) designates April as Distracted Driving Awareness Month, a time to draw attention to the hazards of using cell phones while driving. As the NSC notes, phone use while driving, including texting and reading social media, has contributed to thousands of highway deaths.

Employers can play a big role in protecting workers who drive for their jobs. Download the free NSC employer [cell phone policy toolkit](#). Also, OSHA reminds employers that it is a violation of the OSH Act for employers to require workers to text while driving, create incentives that encourage or condone it, or structure work so that texting while driving is a practical necessity for workers to carry out their job. For more information, see OSHA's [Distracted Driving brochure](#).

[Firefighter Cancer Bill Passes Senate](#)

April 15, 2016

This week [Senate Bill 27](#), sponsored by [Senator Tom Patton](#) (R-Strongsville), passed unanimously through the Senate Insurance Committee and off the Senate floor 32-1. The bill provides that a firefighter who is disabled as a result of specified types of cancer is presumed to have incurred the cancer while performing his or her job duties, thus creating eligibility for workers' compensation benefits.

The bill allows that the presumption can be rebutted if it can be proven that the cancer was directly caused by working conditions. This is the opposite of Ohio's asbestos statute which has become a national model. Originally the cancers covered under the bill include: cancers of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate; Non-Hodgkin's lymphoma; leukemia; multiple myeloma; and testicular or colorectal cancer. In committee, an amendment was added to include, breast, cervical, and uterine cancers to the bill.

BWC estimated an additional 568 claims annually at an approximate cost of \$75 million. Much like [Senate Bill 5](#), a pending bill that would provide workers' compensation benefits for psychiatric claims of first responders where there is not also a corresponding physical injury/illness, this bill would create a major shift in Ohio's workers' compensation laws.

[BWC CEO Stepping Down](#)

April 8, 2016

Last week Governor Kasich [announced](#) that Ohio Bureau of Workers Compensation (BWC) Administrator and CEO [Steve Buehrer](#) will be leaving state government on April 15 after more than five years of leading the agency.

The governor cited Buehrer's achievements at the BWC as \$4.3 billion in rate cuts, rebates and credits since 2011, tripling of safety grants and additional investments in safety research, and reducing Ohio's workplace injury rate below the national average, among others.

Gov. Kasich appointed Steve Buehrer as Administrator/CEO of the BWC in January 2011.

[Sarah Morrison](#), the bureau's chief legal officer, will serve as interim administrator and CEO.

OMA highly respects Buehrer's leadership and accomplishments, which have positioned the Ohio workers' compensation system for the future. We wish him well.

[BWC on the Road with Destination:Excellence Seminars](#)

April 8, 2016

The Bureau of Workers' Compensation (BWC) has several more free regional seminars in which employers can learn the details of its Destination: Excellence program, including the benefits, eligibility requirements, implementation and financial incentives

for enrollment in: Drug-Free Safety Program; Industry-Specific Safety Program; Safety councils; Transitional Work Bonus Program; and Vocational rehabilitation.

See the [remaining schedule here](#). Can't make it? Contact your BWC service office or OMA's [Brian Jackson](#) for information.

[BWC Board Nominee List Sent to Governor](#)

April 1, 2016

The Bureau of Workers' Compensation Board of Directors Nominating Committee has sent to Governor Kasich a [list of nominees](#) for appointment to the board.

By law, the nominating committee sends the governor a list of four names for open seats. The governor is required to choose a nominee from the list, or request a new list.

The nominating committee sent names for these board seats: actuary, investment & securities, employer representative, and self-insuring employer representative.

OMA president Eric Burkland serves on the nominating committee.

[OSHA Releases Final Silica Rule](#)

March 25, 2016

This week, the Occupational Safety and Health Administration (OSHA) released the long-anticipated Occupational Crystalline Silica Rule. Among other provisions, the final rule:

- Reduces the permissible exposure limit (PEL) for respirable crystalline silica to 50 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; limit worker access to high exposure areas; develop a written exposure control plan, offer medical exams to highly exposed workers, and train workers on silica risks and how to limit exposures.
- Provides medical exams to monitor highly exposed workers and gives them information about their lung health.

- Provides flexibility to help employers — especially small businesses — protect workers from silica exposure.
- Allows for use of compressed air, dry sweeping, and dry brushing where other cleaning methods are not feasible.

The rule is effective June 23, 2016; however, companies have anywhere from one to five years to comply based on their category. Manufacturers are considered in the “General Industry and Maritime” category and will have until June 23, 2018 to comply with most provisions.

[Here is OSHA’s webpage on the final rule.](#)

[BWC Board Approves 8.6% Average Premium Reduction](#)

March 18, 2016

The Ohio Bureau of Workers’ Compensation (BWC) board of directors this week [approved](#) an 8.6% reduction in overall average rates for the state’s private employers. The move will decrease projected annual premiums by \$113 million next year.

Over the past five years, Ohio’s private and public sector employers have benefited from \$4.3 billion in rate cuts, rebates and credits. An accounting of the \$4.3 billion [can be found here](#).

The latest cuts for private employers will begin July 1. The reduction is an overall statewide average. The actual premium paid by individual private employers depends on a number of factors, including the expected future costs in their industry, their recent claims history, and their participation in various programs.

[OSHA Reports on First Year Results of ‘Severe Injury Reporting Program’](#)

March 18, 2016

Since Jan. 1, 2015, employers [have been required](#) by the Occupational Health & Safety Administration (OSHA) to report any severe work-related injury – defined as a hospitalization, amputation or loss of an eye – within 24 hours. (The requirement to report a fatality within 8 hours was unchanged.)

OSHA reports: “During the first full year of a new reporting requirement, employers reported 10,388 severe injuries, including 7,636 hospitalizations and 2,644 amputations. ... In the majority of cases, OSHA asked employers to conduct their own incident investigations and propose remedies to prevent future

injuries. OSHA provided employers with guidance materials to assist them in this process. ... At other times, the agency determined that the hazards described warranted a worksite inspection.”

For program statistics and an evaluation of the impact of the new requirements, [see the full report](#).

[BWC Support for Acquiring Another Business](#)

March 18, 2016

If your company is considering purchasing another business, the Bureau of Workers’ Compensation (BWC) can help you assess how the transaction might affect your workers’ compensation costs.

BWC will provide a limited release of information about the business that may be transferred. A new form, [Request for Business Transfer Information \(AC-4\)](#), which both parties must sign, allows BWC to release information about the entity that may be purchased, including accounts receivable, payroll and experience modification history, and most-recent quarterly claims costs.

Also, effective Jan. 1, 2016, BWC implemented a new method to determine successorship. This [fact sheet](#) provides a detailed description of the new decision-making process and the factors BWC uses to determine if the purchase, acquisition or merger will result in a successorship.

Questions? Contact OMA’s [Brian Jackson](#) or your BWC service office.

[All Safety All the Time at Safety Congress ‘16!](#)

March 11, 2016



OMA Connections Partner, Safex, staffs a booth at BWC’s Safety Congress, held this week, Wednesday through today, in Columbus.

Many OMA members are familiar with Dianne Grote Adams, the president of Safex, from her popular presentations in the [OMA’s monthly safety webinars](#).

OMA's Rob Brundrett, Director, Public Policy Services, stopped by to snap a pic of the Safex team on his way to snagging some free CLE credits at the Congress.

[OMA Member Midmark Corp. Wins Safety Innovation Award](#)

March 11, 2016

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steve Buehrer this week presented five employers with awards in the Safety Innovations Competition. This annual competition recognizes Ohio employers that have developed innovative solutions to reduce workplace injuries and illnesses. The awards were presented during the Ohio Safety Congress & Expo 2016, BWC's annual three-day occupational safety, health and workers' compensation conference.

The five finalists are showcasing their innovations at Safety Congress this week. A panel of independent judges evaluated and scored the innovations based on a number of criteria, including risk reduction, innovation, return on investment, potential for the innovation to be utilized by other employers, and presentation quality.

The third place winner is OMA member, Midmark Corporation (Versailles, Darke County), earning a cash award of \$3,000.

Visit [BWC's YouTube Channel](#) to view videos highlighting each company's innovation, and [read more on BWC's website](#).

[Workers' Comp Option Now Available for Ohio Employers Operating In Other States](#)

March 4, 2016

A new workers' compensation coverage insurance option is now available to eligible Ohio businesses for their employees who work in other states. The new offering will simplify workers' comp for these employers, ensuring their employees are protected without the need to manage policies in multiple states with varying laws.

Employers can now apply for this coverage through policies issued by the Ohio Bureau of Workers' Compensation (BWC) through a program with United States Insurance Services (USIS) and Zurich Insurance.

BWC does generally provide coverage for employees working temporarily outside of Ohio; however,

complications can arise when an injured worker files a claim in another state. Treatment can be delayed and businesses can be subject to penalties by the other state.

A law enacted last year granted BWC the authority to contract with an insurer to provide this coverage. USIS and Zurich submitted a program proposal and were selected through a request for proposal process.

Employers must have the majority of their business in Ohio to be eligible for the coverage option. Interested employers will apply directly to BWC, which will determine eligibility and the premium cost for the optional coverage. BWC will issue a Zurich policy to cover out-of-state exposures and Zurich will respond to any claims filed out of state. [Read more from BWC here](#).

[BWC Outlines Upcoming Key Dates](#)

March 4, 2016

As the Bureau of Workers' Compensation (BWC) completes its transition to prospective billing of premium, here are some [key dates and milestones](#) to mark on your calendar:

May 1 – Policy year 2016 notice of estimated annual premium mailed
May 31 – [Destination: Excellence](#) enrollment deadline for July 1, 2016, program year
June 1 – Policy year 2016 premium invoice mailed
July 1 – Policy year 2016 first installment due
July 1 – Policy year 2015 payroll true-up notice sent
Aug. 15 – Policy year 2015 payroll true-up report due

True-up is a new process that requires employers to report their actual payroll for the previous policy year and reconcile any differences in premium paid. This is an important step that is necessary for BWC to accurately calculate your premium. It's also critical to maintaining your policy and your participation in your current rating plan or discount programs. You must complete the true-up report even if your payroll for the year matches the estimate you receive from BWC.

[What Ohio Employers Should Know About Light Duty Job Offers](#)

March 4, 2016

OMA Connections Partner, Dinsmore & Shohl, says, "A light duty job offer can be an effective way of returning an employee to work while he or she recovers from work-related injuries and, at the same time, can save employers significantly in terms of management and claims costs."

However, "Mistakes that often occur include having no proof that the injured worker actually received the written light duty offer, waiting too long to provide the offer, making an offer that does not comply with the injured worker's restrictions, and failing to update an offer to comply with restrictions that may have been updated or changed."

OMA Workers' Compensation Services members should consult with their OMA workers' compensation account manager when considering using light duty. [Read more from Dinsmore.](#)

[It's Not Too Late to Register for Safety Congress](#)

March 4, 2016

BWC's Ohio Safety Congress & Expo, Ohio's largest and longest-running occupational safety, health and workers' compensation event, is March 9-11. Here's [everything you need to know.](#)

[BWC Plans Maintenance for Saturday, April 9](#)

March 4, 2016

The Bureau of Workers' Compensation (BWC) wants to give employers advance notice that it will be conducting routine maintenance that will affect phone, email and Internet services on Saturday, April 9. Due to this scheduled shutdown, BWC's [website](#) will not be accessible, nor will its automated phone service via 1-800-644-6292. This outage also applies to all other BWC phone and email service.

Callers to all BWC phone lines will receive a busy signal. Website users will see a static page of information explaining the outage but will not be able to access any of the site's functionality. All systems will be up and running by start of business Monday, April 11. Information about the shutdown will be posted on the BWC [website](#) in the next week or two.

[BWC Considers 8.6% Overall Rate Reduction](#)

February 26, 2016

Actuaries of the Ohio Bureau of Workers' Compensation (BWC) are recommending to the BWC Board of Directors an [8.6% reduction](#) in total private sector premium.

If approved, this will continue nearly a decade of annual reductions in premiums: A great success story for Ohio!

The actual premium paid by individual employers depends on a number of factors, including the expected future costs in their industry, their recent claims history, and their participation in various programs. Look to the OMA Workers' Compensation Services team for more information as this process unfolds.

[BWC Billing "True-Up" Comes in July](#)

February 19, 2016

The last step in the Bureau of Workers' Compensation transition to prospective billing of premium is the payroll true-up coming in July.

True-up is a new process that requires employers to report their actual payroll for the previous policy year and reconcile any differences in premium paid. This is an important step that is necessary for BWC to accurately calculate your premium. It's also critical to maintaining your policy and your participation in your current rating plan or discount programs.

BWC will remove employers from their current rating plan or discount program if it does not receive a payroll true-up by the due date. Any outstanding payroll true-ups will render the employer ineligible for participation in future rating plans or discount programs until the all outstanding payroll true-ups are complete.

Employers must complete the true-up report even if their payroll for the year matches the estimate received from BWC.

Your policy year 2015 payroll true-up notice will be sent July 1 and your report will be due by August 15. Reports must be submitted online or by phone at 1-800-644-6292.

The BWC encourages you to create an e-account that allows you to manage your policy, pay bills and complete the payroll true-up. [Learn how to create an e-account here.](#)

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on May 17, 2016

- HB51** **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/2015; certain provisions effective 9/29/2015
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-51>
- HB52** **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/2015; certain provisions effective 9/29/2015, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-52>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB205** **SELF-INSURING EMPLOYERS** (HENNE M, RETHERFORD W) To modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.
Current Status: 2/9/2016 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-205>
- HB206** **INDUSTRIAL COMMISSION-CLAIM STATISTICS** (HENNE M) To require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.
Current Status: 6/9/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-206>
- HB207** **WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.
Current Status: 5/11/2016 - Consideration of Senate Amendments; House Does Concur, Vote 96-0
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-HB-207](#)

- HB292** **FIREFIGHTER COMPENSATION (HAGAN C)** To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.
Current Status: 10/6/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-292>
- HB355** **EMPLOYEE DEFINITION (RETFERFORD W)** To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.
Current Status: 11/4/2015 - House State Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>
- HB510** **PNEUMOCONIOSIS-WORKERS' COMPENSATION (CERA J)** To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
Current Status: 4/13/2016 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-510>
- SB5** **WORKERS' COMPENSATION-PTSD (PATTON T, 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.
Current Status: 10/13/2015 - **REPORTED OUT AS AMENDED**, Senate Finance, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-5>
- SB27** **WORKERS' COMPENSATION-FIREFIGHTER CANCER (PATTON T)** To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.
Current Status: 4/26/2016 - Referred to Committee House Insurance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-27>
- SB149** **WORKERS' COMPENSATION-BRAIN-SPINAL CORD INJURY (SCHIAVONI J)** To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law.
Current Status: 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-149>