

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

**1-866-362-9768**

**552-970-8972#**



# Safety & Workers' Compensation Committee

Tuesday, June 27, 2017

## Table of Contents

<b>Agenda</b>	<b>2</b>
<b>Guest Bios</b>	<b>3</b>
<b>Safex Safety Report</b>	<b>6</b>
<b>HBAI Materials and Presentation</b>	<b>7</b>
<b>Public Policy Report</b>	<b>41</b>
• OMA letter on BWC and IC budget raid	45
• BWC budget bill analysis	47
• OMA illegal alien letter	67
• PTSD BWC actuarial study	69
• House Bill 268 memo	80
• House Bill 269 memo	82
• Billion Back facts	85
• Health initiatives facts	87
<b>Counsel's Report</b>	<b>88</b>
<b>OMA News &amp; Analysis</b>	<b>96</b>
<b>OMA Legislation Tracker</b>	<b>107</b>

**2017 Safety & Workers' Compensation Committee Calendar**

**Meetings begin at 10:00 a.m.**

**Tuesday, June 27, 2017**

**Wednesday, November 8, 2017**

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





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

June 27, 2017

### **AGENDA**

<b>Welcome &amp; Self-Introductions</b>	Larry Holmes, Fort Recovery Industries Inc.
<b>BWC Update</b>	Brian Jackson, OMA staff
<b>OSHA Ohio Update</b>	Dianne Grote Adams, Safex
<b>Guest Speakers</b>	John Annarino, Chief Medical and Health Officer, Ohio BWC Freddie Johnson, Chief of Medical Services, Ohio BWC
	State Representative Mike Henne
<b>OMA Counsel's Report</b>	Sue Wetzel, Bricker & Eckler LLP
<b>OMA Public Policy Report</b>	Rob Brundrett, OMA Staff

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

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

**Thanks to Today's Meeting Sponsor:**



# *The Ohio House of Representatives*

1 3 2<sup>ND</sup> G E N E R A L A S S E M B L Y

## Representative Michael Henne 40<sup>th</sup> House District



State Representative Mike Henne is currently serving his fourth term in the Ohio House of Representatives. He represents the 40th House District, which includes portions of Montgomery County.

Born and raised in Clayton, Ohio, Representative Henne is a graduate of Northmont High School and Miami University. He currently owns Board-Henne Insurance Agency-the family business-with his brother, Steve. He is also a respected member of the insurance community, having earned the designation of Certified Insurance Counselor.

Representative Henne has been actively involved in many church and community leadership positions, serving on the Education Commission and Precious Blood Parish Counsel. In addition, he has been involved in the local youth soccer program, where he has served in numerous positions, including president, as well as a referee for more than 25 years.

Representative Henne has been married to his wife, Jenny, for 26 years. They live in Clay Township and have four children: Amanda, Rebecca, Matthew and Nicholas.



## **Chief Medical and Health Officer John Annarino**

Annarino returned to BWC in July 2014 as the Chief Medical and Health Officer. In this position, he'll lead the way in our health-care reforms, coordinating with medical staff and senior BWC management to create a cutting-edge health-care delivery system. He'll also work with the chiefs of medical services, medical operations and medical director to lead and handle managed care, provider relations and other everyday operational responsibilities.

Annarino previously served as BWC's chief legal officer from 1995 to 2005 and executive director of the Industrial Commission of Ohio from 1994 to 1995.

Since his first stint with BWC, John has amassed an extensive array of experience, serving as chief operating officer at Acloche, vice president of risk management at Sequent, Inc., and vice president/general counsel at both CareWorks Consultants, Inc. and the CareWorks Family of Companies. He currently also serves as an adjunct faculty member at both Ohio Dominican University and Columbus State Community College.

Annarino received his law degree from Capital University, and his bachelor's in criminal justice (with minors in philosophy and political science) from the University of Dayton.

## **Chief of Medical Services Freddie Johnson**

Freddie Johnson came to BWC to work in the Medical Services Division in June 2008. He became chief of the division in February 2012. He oversees the agency's managed care operations.

Before coming to BWC, Johnson worked as the Chief Financial Officer for a former vocational rehab service company, Parman Group. Following a nine-year stint with the Ohio Department of Health in the Women, Infants and Children (WIC) program and in the research area with health policy, he joined Nationwide Insurance as a manager in the Office of Health Planning and Development. He also held various leadership roles with Nationwide BetterHealth, a disability prevention and management company that included services for workers' comp, absence management, wellness and disease management.

Freddie is a native of Hollandale, Mississippi, a small town in the Delta area about three hours south of Memphis. He earned his master's in public administration from the Ohio State University. Then, he received his law degree from the Capital University Law and Graduate Center. He is a licensed member of the Ohio Bar, The U.S. District Court, Southern District and The U.S. District Court of Appeals, 6th Circuit.

**Key OSHA Activities- June 2017**  
Dianne Grote Adams  
[dgroteadams@safex.us](mailto:dgroteadams@safex.us)  
614.890.0800

❖ **What's New?**

**Recordkeeping Update:**

OSHA is not accepting electronic submissions of the injury and illness logs and intends to propose extending the July 1, 2017 date.

**Beryllium**

An OSHA rule issued Jan. 6 dramatically lowers workplace exposure to beryllium. The new standards, which apply to general industry, construction, and shipyards, will lower the eight-hour permissible exposure limit to beryllium from 2.0 to 0.2 µg/m<sup>3</sup>. Above that level, employers must take steps to reduce the airborne concentration of beryllium. The rule requires additional protections, including personal protective equipment, medical exams, other medical surveillance and training, as well. It also establishes a short-term exposure limit of 2.0 µg/m<sup>3</sup> over a 15-minute sampling period. The rule became effective on March 10, 2017 after which employers have one year to implement.

UPDATES: Effective date extended to May 20. June 23, 2017, OSHA announced opportunity for construction and shipyards to provide additional comments and enforcement for those industries will be delayed.

**Silica**

Enforcement date for construction industry extended from June 23 to September 28, 2017. Manufacturing remains at June 2018 now. There is activity to halt the implementation of the rule through the Fiscal year 2018 funding bills, arguing that stopping this rule they will reduce the regulatory burden on businesses and stimulate economic growth.

**Staffing**

DOL Secretary – R. Alexander Acosta was sworn in April 28, 2017 as the Secretary of Labor. No assistant secretary of labor for OSHA yet. Deputy Assistant Secretary of Labor, Dorothy Dougherty continues. She has 22 years in OSHA. BS in Environmental Health and MS in Safety.

**Anecdotally**

OMA members are seeing OSHA visits and experiencing injuries that require reporting to OSHA.

# Taking Care of Ohio's Workforce

OMA Overview:  
BWC's  
Health and Behavioral Assessment  
Intervention (HBAI) Services  
&  
Health and Wellness Program (HWP)

# Taking Care of Ohio's Workforce

## Health and Behavioral Assessment Intervention (HBAI)

# Taking Care of Ohio's Workforce

## Why Health and Behavioral Assessment Intervention (HBAI)?

A tool designed to address behavioral barriers or poor coping skills early on in a claim.

# Taking Care of Ohio's Workforce

## Background

The American Medical Association (AMA) states that the focus of the HBAI is *NOT* on mental issues but on factors important to physical health problems and treatments.

HBAI procedures and treatment protocols are utilized to appropriately assess and identify cognitive, emotional, social, behavioral, and psychological factors important to physical health problems and treatments.

# Taking Care of Ohio's Workforce

## Potential Risk Factors with an Injury

- Inadequate coping skills
- Fear of movement or re-injury
- Perceptions of injustice
- Catastrophic thinking

# Taking Care of Ohio's Workforce

HBAI is *not* for mental issues, rather it focuses on physical health problems and treatments individually designed for the injured worker.

# Taking Care of Ohio's Workforce

## HBAI Services vs. Psychological Services

### HBAI

- HBAI services do not require a psychological allowance.
- HBAI program services are requested by a physician on a C-9 form.
- The C-9 is submitted to the MCO for review and approval.

### Psychological Allowance

- Psychological services require a psychological allowance.
- Psychological services are requested by a physician on a C-9 form
- The C-9 is submitted to the MCO for review and approval.

# Taking Care of Ohio's Workforce

## Application of Codes in Ohio Workers' Compensation Claims

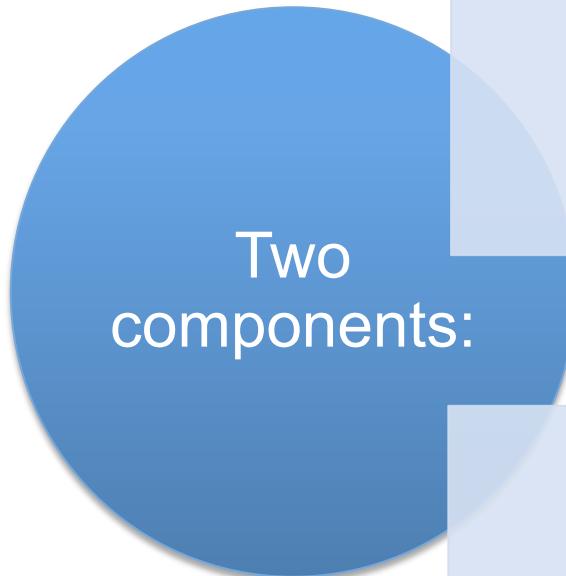
- HBAI services' codes have been included in the BWC reimbursement methodology since 2008.
- Application of HBAI services in the Workers' Compensation system, as in the broader healthcare system, is for individuals who do not meet the criteria for a psychiatric allowance and/or diagnosis.

# Taking Care of Ohio's Workforce

## Application of Codes in Ohio Workers' Compensation Claims continued....

- Historical claims data has shown these services have been rarely used, or in instances these codes were billed, used improperly.
- Thus, the system has failed to properly utilize the HBAI services in addressing behavioral barriers impacting the IW recovery.

# Taking Care of Ohio's Workforce



Two  
components:

Assessment

Intervention  
Services

# Taking Care of Ohio's Workforce

## Health Behavioral Assessment

An assessment can be requested by the Physician of Record (POR) to identify barriers which may be negatively impacting the worker's ability to progress in their recovery from an allowed condition.

# Taking Care of Ohio's Workforce

## Intervention Services

Once the assessment results are reviewed by the POR, services may be requested which may include limited counseling sessions.

# Taking Care of Ohio's Workforce

## CPT Codes Relevant for HBAI Services

**96150** - Health and behavior assessment, each 15 minutes face to face with patient; initial assessment

**96151** - Health and behavior assessment, each 15 minutes face to face with the patient; reassessment

**96152** - Health and behavior intervention; each 15 minutes, face to face; individual

# Taking Care of Ohio's Workforce

## Key implementation steps

- Identify and implement policy changes that appropriately outline the application of codes and services
- Provide clear indicators as to who may perform these services
- Articulate the benefit of these intervention strategies

# Taking Care of Ohio's Workforce

## BWC Health and Wellness Program (HWP)

# Taking Care of Ohio's Workforce

## Why HWP and workers' compensation?

Wellness programs reinforce workplace injury prevention and enhance workers' compensation outcomes.

The future of occupational safety is in integrating employees' protection with health and wellness promotion.

# Taking Care of Ohio's Workforce

## BWC advantages

- Design a HWP that benefits Ohio's workforce prior to and after an injury by:
  - Preventing injuries by improving workforce health;
  - Potentially reducing the severity of an injury;
  - Increasing the speed of recovery;
  - Reducing time away from work due to an injury.
- Ability to study best practices for improved health-care outcomes

# Taking Care of Ohio's Workforce

## Potential services to be offered

- Health and wellness awareness, education and training
- Health-risk assessments (HRA) and biometric screenings
- Financial well-being services
- Personalized health coaching and nurse advice line
- Lifestyle management programs
- Disease management programs

# Taking Care of Ohio's Workforce

## Workforce eligibility criteria

HWP funds: First come, first serve (\$6 million available for the total program)

Employer doesn't offer a health and wellness program.

Ohio employers with 50 employees or less in the following industries:

- Agriculture
- Automotive repair and service
- Construction
- Firefighters
- Health care
- Manufacturing
- Police and public safety
- Public employers
- Restaurant and food service
- Transportation and trucking
- Trash collection
- Wholesale and retail

# Taking Care of Ohio's Workforce

## Injured worker eligibility criteria

HWP funds: First come, first serve (\$6 million available for the total program)

Employer doesn't offer a health and wellness program.

Invitation-only, initiated by BWC in consultation with the employer and the MCO

Additional eligibility criteria could include:

- Comorbid conditions;
- Injury diagnosis (ICD-10);
- Occupation and industry;
- Time away from work.

# Taking Care of Ohio's Workforce

## HWP next steps

- Request for proposal (RFP) issued June 9, 2017.
- Award date to a single vendor August 2017.
- Program begins Jan. 1, 2018.

# Taking Care of Ohio's Workforce

## Questions?

# Taking Care of Ohio's Workforce

## Health and wellness headlines

LOCKTON HEALTH RISK SOLUTIONS® • MAY 2016  
Bridging the Gap Between Wellness and Workers' Compensation

  
**LOCKTON**  
Health Risk Solutions®  
Measuring Health. Reducing Risk. Delivering Solutions.

### Workplace Health & Safety

EHS Today  
March 27, 2017

### Overweight and Unhealthy Americans: The Impact on Business

By Sandy Smith

### Inside the Industry

WorkCompCentral  
April 3, 2017

### Barriers Between Comp, Wellness Slowly Dissolving

By Elaine Goodman

### WorkLife

A National Institute for Occupational Safety and Health Initiative

October 2008

### *Essential Elements of Effective Workplace Programs and Policies for Improving Worker Health and Wellbeing*

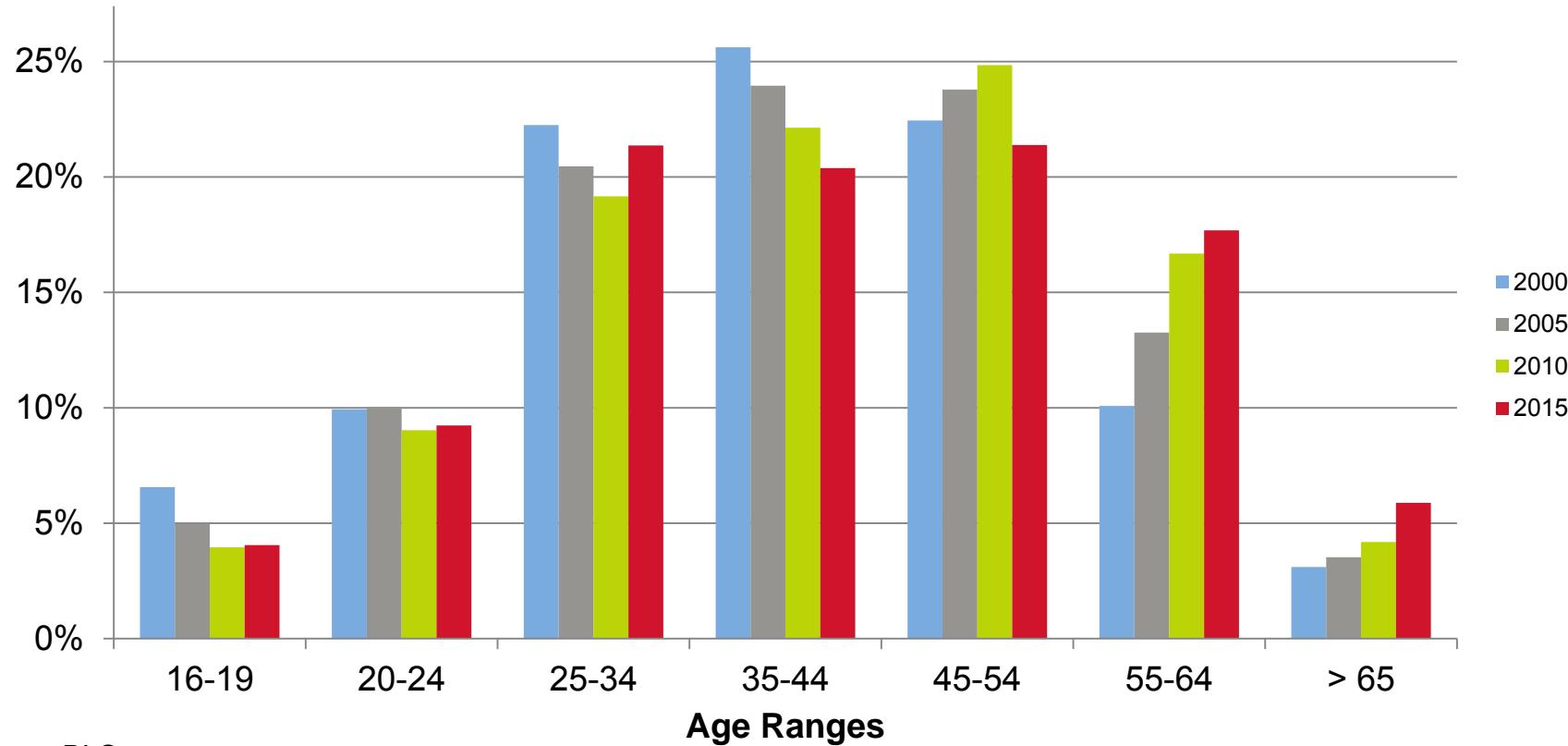
Wearables & Workers Compensation: Improving Care, Preventing On-the-Job Injuries

Published on 09/27/2016

**Workers Compensation industry to improve the care of injured workers after an accident and help in preventing on-the-job injuries.**

# Taking Care of Ohio's Workforce

## Ohio Workforce Aging Trends



Source: BLS

# Taking Care of Ohio's Workforce

- Approximately 92% of older adults have at least one chronic disease. (National Council on Aging)
- Companies that implemented a wellness program experienced a 28% reduction in employees calling in sick. (*Institute for Healthcare Consumerism*)
- Medical costs decreased approximately \$3.27 for each dollar a business spent on wellness programs. (*2013 Aflac Workforces Report*)

# Taking Care of Ohio's Workforce

## 2016 health status of Ohioans

Data point	Rank	Ohio	U.S. avg.
Ohio overall ranking: 40 <sup>th</sup> in 2016, 39 <sup>th</sup> in 2015			
Cardiovascular, heart disease and stroke deaths (per 100,000 population)	40 <sup>th</sup>	278.7	251.7
Diabetes (self-report type 1 or type 2 diabetes)	34 <sup>th</sup>	11%	9.9%
Frequent mental distress (14 or more days per 30 days)	36 <sup>th</sup>	12.0%	11.2%
Frequent physical distress (14 or more days per 30 days)	27 <sup>th</sup>	12.1%	11.4%
High school graduation (within four years of starting ninth grade)	34 <sup>th</sup>	80.7%	83.2%
Obesity (body mass index $\geq$ 30.0)	24 <sup>th</sup>	29.8%	29.8%
Physical inactivity (less than 2.5 hours of activity outside of work per week)	33 <sup>rd</sup>	27%	26.2%

Source: America's Health Rankings - 2016 Annual Report

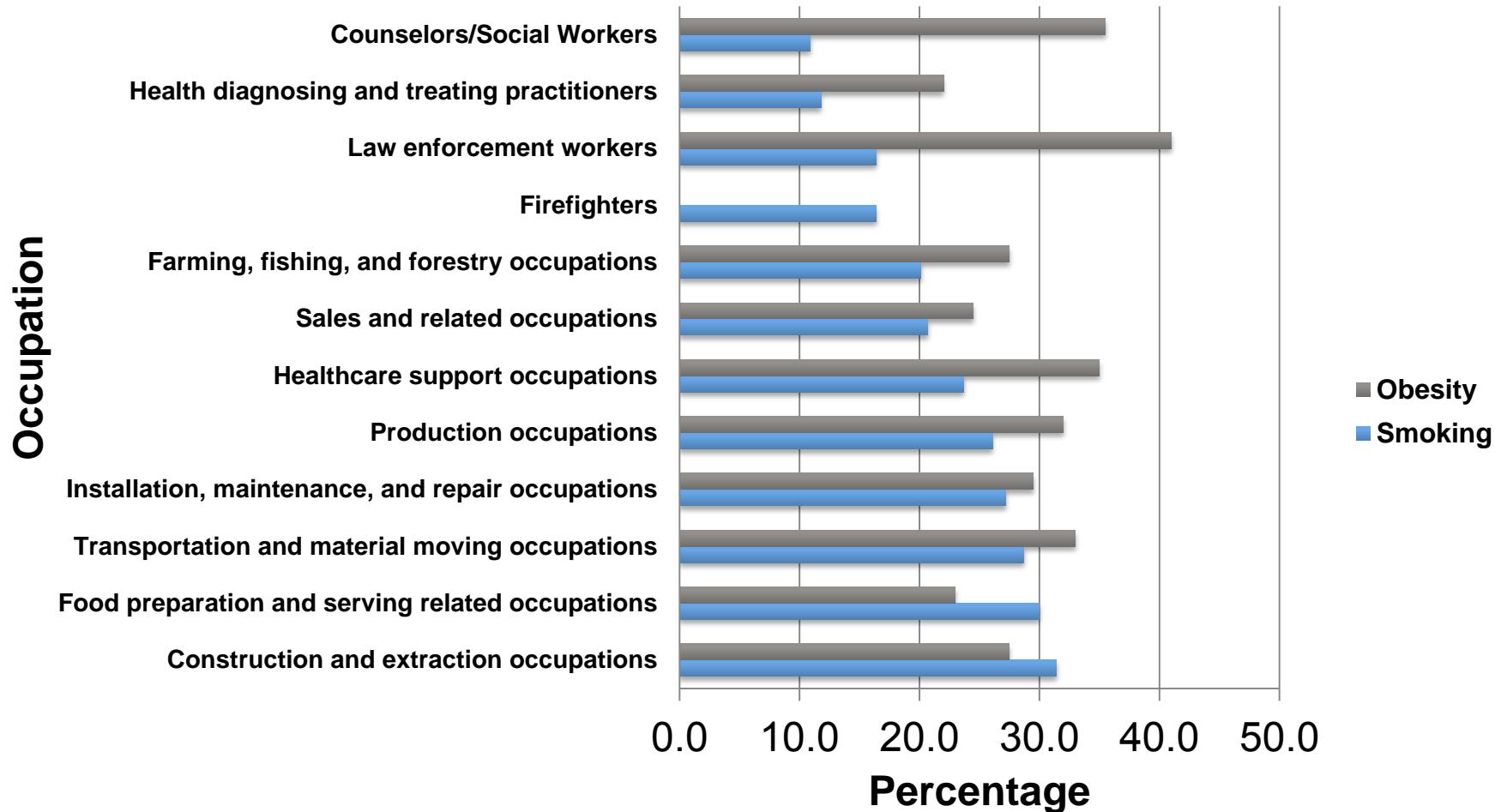
<http://www.americashealthrankings.org/explore/2016-annual-report/measure/Overall/state/OH>

# Taking Care of Ohio's Workforce

- Obese workers file twice as many claims as those who are not obese and they miss 13 more days of work per injury. (Duke University)
- Businesses pay an average of \$2,189 in workers' compensation costs for smokers, compared with \$176 for nonsmokers. (Center for Health Promotion)
- Time away from work increases 30% for a musculoskeletal claim with one co-morbidity. ([workcompcentral.com](http://workcompcentral.com))

# Taking Care of Ohio's Workforce

## Smoking & Obesity Rates by Occupation



## **Addressing Behavioral Barriers in Injured Workers**

Using BWC's Health and Behavioral Assessment Intervention to get injured workers back to work and back to life

### **Challenge**

Each workplace injury is unique and how each injured worker reacts to and heals from that injury is unique. As a result, two people with seemingly similar injuries may experience very different outcomes. One reason may be the behaviors those workers engage in. Certain behaviors can either help them toward returning to work and a fully functioning life, or act as an impediment. Traditionally, the health-care environment has done little to identify, let alone mitigate individual behaviors that negatively impact the healing process. The result has been lost opportunities to improve outcomes.

### **Solution**

The Health and Behavioral Assessment Intervention (HBAI) helps address cognitive, emotional, social, behavioral, and psychological issues in a claim. It has been shown that a number of these issues heighten the risk of prolonged pain and disability. These risk factors include, but are not limited to, catastrophic thinking, inadequate coping skills, fear of movement, fear of re-injury, and perceptions of injustice. HBAI provides physicians tools and services to help them diagnose issues that are interfering with expected healing. Take, for instance, a patient with a lower back injury who may present with muscle tightness. The physician may notice that muscle tightness is persisting, when it should be waning according to standard medical treatment practices outlined in Official Disability Guidelines. So what happens next? In the past, the standard practice may have been to provide additional medication. Under HBAI, the physician would request an evaluation assessment to understand what is actually causing the problem and design a more appropriate treatment regimen that takes patient behaviors into consideration.

### **How does the tool work?**

The Health and Behavioral Assessment Intervention has two component parts, assessment and intervention. In the appropriate situation, the physician can request approval for a Health Behavioral Assessment to identify issues which are negatively impacting the worker's ability to progress in their recovery from an allowed injury. Just as with any type of evaluation, the physician utilizes the information from the assessment to determine proper services in order to address any identified issues. Once the treatment protocols have been defined, the physician submits the request for approval of the relevant HBA Intervention services. This may include taking advantage of existing treatment codes available to providers as they treat a particular injury. Generally, the HBAI services may take the form of limited counseling sessions.

It is important to note that HBAI is **not** for mental health issues. It focuses on physical health problems and treatments individually designed for the injured worker.

# Health and Behavioral Assessment Intervention (HBAI)

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## Executive Summary

The HBAI (Health and Behavioral Assessment Intervention) strategy focuses on the development and implementation of a defined BWC approach to using currently available treatment protocols to address certain injured worker behavior factors important to the prevention, treatment, or management of physical health problems. A goal of this initiative is to provide clarity and focus on HBAI services by:

1. Identifying and implementing policy changes that will appropriately outline the application of the codes and services.
2. Providing clear indicators as to who may or may not be eligible to provide these services
3. Creating an appropriate communication strategy to various stakeholders clarifying the utilization of this benefit
4. Defining the difference between HBAI and psychological services
5. Articulating the benefit of these intervention strategies.

HBAI procedures and treatment protocols are utilized to appropriately assess and identify cognitive, emotional, social, behavioral, and psychological factors important to physical health problems and treatments. The billing and reimbursement codes covering the use of HBAI related procedures and treatment protocols are part of the current BWC reimbursement and benefit schedule; however, the utilization of the codes for HBAI related services have not been utilized primarily due to the absence of an expressed written policy or rule clarifying their use.

## Background

The American Medical Association (AMA) states that the focus of the HBAI assessment is **NOT** on mental health but on the factors important to physical health problems and treatments. Associated HBAI intervention services are to improve the injured workers health and well-being utilizing cognitive, behavioral, social, and/or psychophysiological procedures designed to ameliorate specific disease-related problems.”

Well managed injury claims utilize all available tools to assist in preventing an initial mild injury from becoming more complex due to the failure to recognize and mitigate confounding issues. For example, an injured worker may undergo a Health Behavioral Assessment (HBA) if the POR recognizes the injured worker is not coping well with their injury or healing appears to be delayed due to biopsychosocial factors. Thus, here the HBA will have two (2) primary goals of:

1. Early identification of relevant behavior factors which may be impeding an injured workers (IW) ability to progress in their recovery.
2. Identification of intervention strategies that the POR may employ as treatment to address the identified factors.

Once the goals of the assessment are realized, the POR is able to develop the appropriate Health Behavioral Intervention (HBI) or intervention plan. The intervention strategy can include limited relevant counseling and/or non-clinical workplace ergonomic actions.

# Health and Behavioral Assessment Intervention (HBAI)

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The relevant service codes (CPT) came into practice in 2002 when six (6) CPT codes were added to the CPT coding system addressing HBAI services. The initial HBAI codes were published in the Federal Register in 2001 and put in use by Medicare in 2002. The AMA developed specific definitions and guidelines for the codes and the applications of the codes to clinical practice. The HBAI codes are assigned to the Medicine section of the CPT code book and are not considered mental health intervention services. The placement of the codes in the medicine section reflect the following five points:

1. A clear recognition of the value of cognitive, behavioral, and social procedures beyond the traditional mental health realm.
2. That these are procedures that should only be performed by physicians, psychologists, or other qualified licensed health care professionals.
3. From a federal reimbursement perspective, monies to pay for these services are paid out of the medicine pool rather than the psychiatric pool.
4. The application of these codes are **not** for individuals meeting the criteria for a psychiatric diagnosis, thus allowing patients without mental health problems access to these services.
5. The codes allow for the treatment of the behavior factors important to physical health problems and treatments.

Thus, HBAI services are specifically designed to **NOT** focus on mental health status, but rather a necessity to address behavior factors which are hindering an IW healing process directly associated with a physical injury.

Below are the CPT codes which are relevant for HBAI services:

- 96150 – Health and behavior assessment (eg, health-focused clinical interview, behavioral observations, psychophysiological monitoring, health-oriented questionnaires), each 15 minutes face-to-face with the patient; initial assessment
- 96151 – Health and behavior assessment (eg, health-focused clinical interview, behavioral observations, psychophysiological monitoring, health-oriented questionnaires), each 15 minutes face-to-face with the patient; re-assessment
- 96152 – Health and behavior intervention, each 15 minutes, face to face; individual
- 96153 – Health and behavior intervention, each 15 minutes, face-to-face; group (2 or more patients) **Please note: This specific code will not be a covered service in our system.**
- 96154 – Health and behavior intervention, each 15 minutes, face-to-face; family (with the patient present)

## Application of HBAI in Ohio Workers' Compensation Claims

The HBAI service codes have been included in the BWC reimbursement methodology since 2008. Thus, HBAI services are considered a covered workers' compensation benefit. These procedures can be used to affect the injured workers' physiological functioning and health and well being in a positive manner as it relates to the injury. Application of HBAI services in the

## **Health and Behavioral Assessment Intervention (HBAI)**

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Ohio workers' compensation system, as in the broader healthcare system, is for individuals who do not meet the criteria for a psychiatric allowance and/or diagnosis.

Historical claims data has shown these services have been rarely used, or in instances when these codes were billed, used improperly. Thus, the system has failed to properly utilize the HBAI services in addressing biopsychosocial issues impacting IW healing. The hypothesis for why this underutilization has occurred is that there is a misalignment of HBAI codes and services with standard psychological services.

The medical goals of HBAI services are fundamentally different from the medical goals of standard psychological services. Psychological services are designed primarily and solely to address issues that are otherwise specified as mental illness. On the other hand, HBAI services specifically exclude the focus of primarily addressing solely mental illness issues.

Psychological services are provided to injured workers who have a psychological claim allowance. One must remember that in order to receive a psych claim allowance as part of the claim, the IW must also have an allowed physical injury in the claim. However, HBAI services are designed to allow providers to address issues impacting the healing of an injury without having a psychological claim allowance. While an IW must have a physical injury in order to receive a psychological allowance, the treatment associated with the psychological allowance is for the mental health of the IW, notwithstanding any impact on the healing of the physical condition. The sole purpose of HBAI services is that of providing the POR treatment options with the goal of attaining optimal healing of the allowed physical injury without the primary focus of treatment of a mental illness. In both approaches in depth testing may include personality, intelligence, and skills ability which enables the provider executing the testing to arrive at some hypothesis about an injured worker's behavior, personality, and capabilities. Because of similarity of tools used to assess an individual's issues', such may lead to providers being confused about which service codes HBAI or Psychological should be used and when. Thus, the goal of the BWC HBAI initiative is to provide clarity as to when HBAI services are to be used to address injured workers issues versus the use of psychological allowances and related services. Part of that clarification will be to provide additional information supporting the authorization of HBAI services.

While HBAI services are treated as any other medical treatment requiring prior authorization, BWC recognizes that not everyone can or should provide an HBAI service or other related intervention services. As part of BWC clarification strategy, a provider certification status will be developed which will identify the type of healthcare professional who can perform an HBAI assessment. Designated healthcare professionals will have to meet specific criteria which will ensure that the primary focus of HBAI services is on healing the injury and not a mental illness. BWC will ensure, as we do with other specialty providers, that professionals determined to be appropriate for the provision of HBAI services are identified and made accessible to providers.

The current CPT codes listed on the fee schedule will continue to support proper billing of HBAI services. Thus, another clarification will include an indication on the time frame on the service utilization. For example, BWC may set forth the requirement that intervention services may be limited to two hours for 96150, two hours for 96151, and six hours for 96152 within a 180 day

## **Health and Behavioral Assessment Intervention (HBAI)**

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period. As indicated above, all HBAI services requested will be held to the standards of utilization review and MCO/Employer approval. POR will have to document medical necessity as to why an HBAI assessment is being requested as well as any additional documentation which would support HBAI intervention services.

In conclusion, with the successful completion of BWC strategy to clarify the application of HBAI codes and services, such will facilitate an increase in the effective use of services which assist providers in resolving injured workers' physical injuries. For example, these services will impact the status and performance of an injured workers adherence to treatment, management of their condition, and other health related behaviors.

### **Example scenarios**

On 7/21/07, IW cuts his thumb to near amputation at distal phalanx near nail bed using a band saw. That day, IW receives treatment and set up to see managing physician/OT due to his injury. IW misses 22 days of work from 7/21/07 to 8/13/07. IW sees POR on 8/15/07 where he explains that his thumb is too painful, so POR takes IW off work for 13 days from 8/15/07 to 8/29/07. On 8/30/07, IW explains to POR that his thumb is still painful and unable to work. POR sends IW back with restrictions. On 9/19/07, IW states to POR "he just wants his finger to be fine again". On 10/15/07, IW begins complaining of wrist pain due to working. On 11/19/07, IW is taken off work from 11/10/07 – 12/13/07 for 23 days. On 1/3/08, IW states he still has a lot of pain and feels it is "unstable". OT notes report IW met goals and POR indicates he has done all he can do and refers IW to pain management. On 2/6/08, IW sees Pain Management physician where the physician notes IW has severe depression. Notes trouble sleeping, standing, sitting, and walking for longer than one hour periods. At this point, the POR should have sought out an HBAI and IW may have benefitted from HBAI. So from the above example and with the right policies, we would have expected the POR to make a referral for an HBA prior to the Pain Management. The HBA may have provided the POR insight into the IW depression and allow the POR to create a robust intervention strategy and incorporate other methods rather than just the pain management strategy.

A similar instance, a co-worker sees how another employee is being treated by the employer with a similar injury and has not been following through with the prescribed regimen from their POR. With that, the IW may feel there may be some reprisal from the employer and begins to develop some fear avoidance tendencies. The POR recognizes some of this behavior and orders an HBA to further evaluate this IW.

# BWC Health and Wellness Program

## Taking Care of Ohio's Workforce

BWC's mission is to protect Ohio's workers and employers through the prevention, care and management of workplace injuries and illnesses at fair rates. BWC is ready to lead a sustained, scalable effort to address the quality of life and health challenges for Ohio's workforce. Our unique position enables us to positively impact the quality of life and health for Ohio's workforce and improve the efficiency of Ohio's businesses.

Having a healthy workforce gives employers the ability to focus on their businesses and manage their workers' compensation and health-care costs. A Health and Wellness Program that benefits Ohio's workforce can:

- o Prevent injuries because of improved workforce health;
- o Reduce the severity of an injury;
- o Increase the speed of recovery from an injury;
- o Reduce time away from work due to an injury.

A key element for a successful Health and Wellness Program is offering appropriate services by a qualified, provider network. Once built, our network and available services will offer a one-stop shop for all to find and use health-prevention resources. We believe a vendor could administer this initiative for employers and their employees. A sample of services includes:

- o Health and wellness awareness, education and training;
- o Health-risk assessments and biometric screenings;
- o Personalized health coaching, nurse advice line;
- o Lifestyle management programs;
- o Disease-management programs.

While all Ohioans could benefit from this initiative, BWC will focus initially on a smaller participant group and based on feedback - expand the program. BWC will offer program funding on a first come, first serve basis to Ohio's workforce and injured workers whose employers do not have such a program until the \$6 million are utilized.

Workforce eligibility criteria	Injured worker eligibility criteria
<p>Ohio employers with 50 employees or less in the following industries:</p> <ul style="list-style-type: none"><li>• Agriculture;</li><li>• Automotive repair and service;</li><li>• Construction;</li><li>• Firefighters;</li><li>• Health care;</li><li>• Manufacturing;</li><li>• Police and public safety;</li><li>• Public employers;</li><li>• Restaurant and food service;</li><li>• Transportation and trucking;</li><li>• Trash collection;</li><li>• Wholesale and retail.</li></ul>	<p>BWC will invite the injured worker to participate after consulting with their employer and managed care organization.</p> <p>Additional eligibility criteria could include:</p> <ul style="list-style-type: none"><li>• Comorbid conditions;</li><li>• Injury diagnosis (ICD-10);</li><li>• Occupation and industry;</li><li>• Time away from work.</li></ul>

**TO:** OMA Safety and Workers' Compensation Committee  
**FROM:** Rob Brundrett  
**RE:** Safety and Workers' Compensation Report  
**DATE:** June 27, 2017

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### **Overview**

The 132<sup>nd</sup> General Assembly was seated in January. The most important pieces of legislation continue to be both the BWC and IC budgets. Both must be signed by the Governor at the end of the week. Other bills impacting either agency include companion legislation allowing PTSD for first responders. The agency also approved one billion dollars back in rebates to employers. Checks should begin arriving next month.

### **Legislation and Rules**

#### **House Bill 27 – BWC budget bill**

The Senate recently voted on their version of the Bureau of Workers' Compensation (BWC) budget bill. Unlike past BWC budget bills both the House and Senate made several changes to the bill. Some of the changes generated more controversy than others. The two most talked about provisions were two House amendments. The first would have made it impossible for illegal aliens to receive workers' comp for any injury suffered as a result of work. The second change which was heavily supported by the OMA was to change the amount of time an injured workers has to report an injury from two years to one year.

The Senate removed the illegal aliens amendment from their version of the bill. The Senate is expected to vote on the bill Tuesday. It is expected that the House will concur with the Senate changes. The illegal alien provision will be considered in the operating budget bill.

#### **House Bill 28 – Industrial Commission budget bill**

The IC budget contains no major policy changes and moved quickly through the House and Senate. The bill is awaiting action from the Governor.

#### **House Bill 49 – State operating budget**

To help fill a hole in the state operating budget, the Senate is proposing to raid the budgets of the Bureau of Workers' Compensation and the Industrial Commission, budgets paid for by employer premiums and assessments, not taxes.

"This language sets an extremely dangerous precedent of allowing the state to "raid" the budgets of these exclusively employer-funded agencies. Unlike the main operating budget, appropriations for the BWC and IC operations are funded entirely by employer premiums and assessments. This amendment is asking Ohio's employers to subsidize all state operations in the form of their BWC premium payments," wrote the OMA, Ohio Chamber of Commerce, National Federation of Independent Businesses and Council of Retail Merchants in a letter to legislative leaders, asking that the raid be stopped.

"We are very concerned this language gives this and future administrations the go-ahead to siphon funds when budget shortfalls occur. There could also be a legal issue with directing funds to the GRF (general revenue fund) that are constitutionally set for the treatment of injured workers and promotion of safer workplaces," said the business groups.

### Senate Bill 118 / House Bill 161 – PTSD

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

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

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

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

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

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

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

### House Bill 269 – Workers Compensation changes

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

### **BWC Agency Notes**

#### Another Billion Back

This spring Governor Kasich and the BWC announced another billion dollars back to public and private employers. This is the third such rebate to employers since 2013. If approved by the BWC board checks would begin going to employers as soon as early July.

#### BWC Announce \$44 Million Investment in Workplace Safety & Wellness

Lt. Governor Mary Taylor and Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison announced a \$44 million investment in workplace safety, health and wellness.

The safety initiative is part of the \$1 billion rebate plan proposed by Gov. John Kasich in March and approved by BWC's board of directors.

The new initiative calls for \$44 million over two years to improve wellness and safety for workers across Ohio. This includes a new wellness program, funding for specific programs to help firefighters and those who work with children and adults with disabilities, and an education campaign to address common injuries at work and in the home.

The initiative is expected to launch in January and includes:

- \$6 million annually for a new health and wellness program for Ohioans working for small employers (50 or fewer employees) in specific high-risk industries, as well as injured workers with certain types of injuries. Services include smoking cessation programs, health coaching and chronic disease management.
- An extension of the current annual funding level of \$15 million for Safety Intervention Grants, setting aside \$4 million a year for two high-risk occupations: firefighters and employers that serve disabled children and adults.
- A \$2 million statewide safety awareness and education campaign for slips, trips and falls, overexertion and motor vehicle accidents, which are responsible for more than 60 percent of workplace injuries.

#### BWC Board Holds Rates Steady for Upcoming Policy Year

The Ohio Bureau of Workers' Compensation (BWC) board of directors voted to keep the overall average rate level for Ohio private employers steady for the policy year that begins July 1.

Average rate levels for private employers have been reduced by 28.2% since the end of 2010 and are now at their lowest level in 40 years.

The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history, and their participation in various programs.

#### BWC Telephone Security Changes

Businesses and injured workers who use the Ohio Bureau of Workers' Compensation's automated phone system, 1-800-644-6292, will see security changes intended to better protect their sensitive information.

Now callers will need more than just their policy or claim number. Injured workers will also be asked for the last four digits of their social security number and their date of injury. Businesses will be asked for their federal tax ID number (FEIN or SSN) and the ZIP code for the mailing address on the policy.

#### Safety Issues

##### OSHA Email Reminders Offered

OSHA has established an email notification system to provide recordkeeping reminders as well as updates on a new requirement that employers electronically submit their injury and illness logs to the agency.

OSHA is not accepting electronic submissions at this time, but will notify interested parties when and how to provide electronic submissions. To receive these notifications, sign up online.

### OSHA “Volks Rule” Retraction

By a vote of 50-48, the U.S. Senate this week disapproved the Occupational Safety and Health Administration’s (OSHA) “Clarification of Employer’s Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness” (Volks Rule).

Under the OSH Act, employers are required to record and maintain a log of workplace injuries and illnesses. The law explicitly states employers can be cited for record-keeping violations within six months of the injury or illness occurring.

Two federal courts have rejected OSHA’s attempt to extend this statute of limitations to five years after a report. Yet, OSHA had issued this final regulation anyway extending the threat of penalty up to five years.

A resolution of disapproval passed the House of Representatives on March 1, 2017 and the Senate adopted the resolution under the Congressional Review Act, an indication that Congress believed OSHA had exceed its authority in issuing the final rule.

### What’s Going on with the OSHA Electronic Reporting Rule?

“In a fairly anticipated move, OSHA has announced it intends to delay the July 1, 2017 deadline that would have begun phasing in OSHA’s electronic recordkeeping and reporting rule.

“OSHA’s website states, “OSHA is not accepting electronic submissions of injury and illness logs at this time, and intends to propose extending the July 1, 2017 date by which certain employers are required to submit the information from their completed 2016 Form 300A electronically.”

“OSHA hinted at this delay over the past few months by moving for stays in the cases challenging the rule, . . . , and by failing to make available a means for companies to submit the data.”



June 22, 2017

The Honorable Cliff Rosenberger  
Speaker, Ohio House of Representatives  
77 South High Street, 14<sup>th</sup> Floor  
Columbus, OH 43215

The Honorable Larry Obhof  
President, Ohio Senate  
1 Capitol Square, 2<sup>nd</sup> Floor  
Columbus, OH 43215

Dear Speaker Rosenberger and President Obhof:

We are writing to express our strong opposition to a provision included in the Ohio Senate omnibus amendment (SC5425) to Substitute House Bill 49 allowing the Office of Budget and Management to transfer up to 2% of the Bureau of Workers' Compensation and Industrial Commission budgets (BWC & IC) to the General Revenue Fund (GRF). This language sets an extremely dangerous precedent of allowing the state to "raid" the budgets of these exclusively employer-funded agencies.

Unlike the main operating budget, appropriations for the BWC and IC operations are funded entirely by employer premiums and assessments. This amendment is asking Ohio's employers to subsidize all state operations in the form of their BWC premium payments.

In addition, this bad precedent would likely lead to future rate-making decisions that are beyond the actuarial needs of the Ohio BWC and IC, in order to balance upcoming operating budgets.

We are very concerned this language gives this and future administrations the go-ahead to siphon funds when budget shortfalls occur. There could also be a legal issue with directing funds to the GRF that are constitutionally set for the treatment of injured workers and promotion of safer workplaces.

Given these factors, we respectfully ask you to remove the language that permits the transfer of BWC and IC funds to the GRF from Substitute House Bill 49. Thank you for your consideration. Please feel free to contact us with any questions.

Sincerely,

Roger R. Geiger  
Vice President, Executive Director  
NFIB/Ohio

Andrew E. Doehrel  
President & CEO  
Ohio Chamber of Commerce



Gordon M. Gough  
President & CEO  
Ohio Council of Retail Merchants



Eric Burkland  
President  
Ohio Manufacturers' Association

cc: The Honorable Ryan Smith  
The Honorable Scott Ryan  
The Honorable Jack Cera  
The Honorable Scott Oelslager  
The Honorable Gayle Manning  
The Honorable Michael Skindell  
Merle Madrid, Director of Legislative Affairs, Ohio Governor John Kasich



# OHIO LEGISLATIVE SERVICE COMMISSION

## Bill Analysis

Kelly Bomba

### Sub. H.B. 27\*

132nd General Assembly

(As Reported by S. Insurance & Financial Institutions)  
(Excluding appropriations, fund transfers, and similar provisions)

**Reps.** Brinkman, Brenner, Antani, Blessing, Butler, Conditt, Hambley, Henne, Huffman, Pelanda, Perales, Reineke, Rutherford, Riedel, Roegner, Schaffer, Seitz, R. Smith, Stein

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## BILL SUMMARY

### BUREAU OF WORKERS' COMPENSATION

#### Statute of limitations for injury or death claims

- Decreases the amount of time a person has to initiate a workers' compensation claim based on an employee's injury or death to one year after an employee sustains an injury or dies from two years under current law.

#### Drug testing

- Revises the types and amounts of controlled substances to which the continuing law rebuttable presumption that an employee was under the influence at the time of injury applies.

#### Presumption of cancer incurred while performing official duties

- Adds working wage loss to the compensation a firefighter may currently receive under the presumption in the Workers' Compensation Law that a firefighter who is disabled due to cancer incurred the cancer while performing official duties as a firefighter.

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\* This analysis was prepared before the report of the Senate Insurance and Financial Institutions Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Adds to the circumstances under current law in which the presumption can be rebutted if there is evidence that shows, by a preponderance of competent scientific evidence, that exposure to the type of carcinogen alleged did not or could not have caused the cancer being alleged.
- Provides that the presumption does not apply if it has been more than 15 years (rather than more than 20 years as under current law) since the firefighter was last assigned to hazardous duty as a firefighter.

## **Payments to dependents**

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

## **Temporary total disability**

- Authorizes the Administrator of Workers' Compensation, for good cause, to waive the requirement that an employee receiving temporary total disability (TTD) compensation undergo a medical examination.
- Requires the Administrator to refer an employee receiving TTD compensation for a medical examination if the employee's employer objects to the waiver.
- Requires, if an employee's full weekly wage has not been determined at the time TTD compensation becomes payable, that an employee receive 33½% of the statewide average weekly wage as calculated under continuing law.
- Requires TTD compensation to be adjusted, and overpayments to be recovered, on determination of an employee's full weekly wage.
- Requires, if the employee receives less than the amount the employee is entitled to under continuing law for TTD, on determination of the employee's full weekly wage, the employee to receive the difference.

## **Permanent partial disability**

- Requires, with respect to applications filed on or after the provision's effective date, if an employee fails to schedule a medical examination with the Bureau of Workers' Compensation (BWC) Medical Section or fails to attend a scheduled medical examination, the dismissal of an application for a determination of the employee's permanent partial disability (PPD) under the Workers' Compensation Law.



- Allows, with respect to applications suspended pursuant to continuing law on the provision's effective date, the Administrator to dismiss an application for a determination of the employee's PPD unless the employee schedules a medical examination within a specified time and attends the examination.
- Allows an employee to refile a dismissed application, subject to the continuing jurisdiction of the Industrial Commission.

### **Appeal of Industrial Commission order**

- Extends the time to appeal an Industrial Commission order from 60 days to 150 days if a party provides notice of intent to settle a claim and the opposing party does not object.
- Increases to \$5,000 (from \$4,200 under current law) the amount of attorney's fees a workers' compensation claimant can recover in an appeal to a court of common pleas.

### **Handicap Reimbursement Program**

- Requires the Administrator to adopt a rule allowing an employer who settles a claim to participate in the Handicap Reimbursement Program, which is prohibited under current law.

### **Secondary payers**

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



## **Public Employment Risk Reduction Program**

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

## **Group rating plans**

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

## **Professional employer organizations**

- Extends to 30 days (from 14 days under current law) the time in which a professional employer organization (PEO) must submit a lease termination notice form to the Administrator and to each client employer.
- Extends to 30 days (from 14 days under current law) the time in which a self-insuring PEO must submit to the Administrator information needed to develop an experience modification factor for an employer subject to a PEO lease termination.
- Adds the president or other individual who serves as the controlling person of a PEO to the list of people who can make certain attestations related to the PEO.
- Removes the requirement that a controlling entity of a PEO reporting entity include supplemental combining schedules to guarantee that the registration and renewal requirements related to working capital are satisfied if a PEO reporting entity



submits a combined or consolidated financial statement under certain circumstances.

## **Occupational disease reports**

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

## **Actuarial reporting**

- Makes changes to actuarial reporting requirements under the Workers' Compensation Law.

## **Provider participation standards**

- Requires the Administrator to develop and periodically revise standards for maintaining adequate numbers of certified health care providers for services used by workers' compensation claimants.

## **OTHER AGENCIES**

### **Employee medical examinations**

- Prohibits a public employer from requiring an employee, prospective employee, or applicant for employment to pay the cost of a medical examination required by the public employer as a condition of employment or continued employment.

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## **TABLE OF CONTENTS**

<b>BUREAU OF WORKERS' COMPENSATION .....</b>	6
Statute of limitations for injury or death claims .....	6
Drug testing .....	7
Background – rebuttable presumption .....	8
Presumption of cancer incurred while performing official duties .....	8
Working wage loss .....	9
Rebuttal of the presumption .....	9
Application .....	10
Incarcerated dependents .....	10
Temporary total disability .....	10
Waiver of required medical examinations .....	10
Minimum TTD compensation.....	11
Dismissal of permanent partial disability application.....	11
Applications filed on or after the effective date .....	11
Applications pending on the effective date .....	12



Appeal of Industrial Commission order.....	12
Handicap Reimbursement Program .....	13
Reimbursement of secondary payers.....	13
Public Employment Risk Reduction Program .....	14
Exemptions .....	14
Coverage .....	14
Rules for effective safety partnership program .....	15
Inspections.....	15
Safety violation notices.....	15
Explanation of rate revision in group rating plans .....	15
Professional employer organizations.....	16
Occupational disease reports.....	17
Actuarial reporting .....	17
Annual unpaid liabilities report.....	17
Quinquennial report.....	17
Legislative reports .....	18
Comparisons to other workers' compensation systems .....	19
Provider participation standards .....	19
<b>OTHER AGENCIES</b> .....	19
Employee medical examinations .....	19

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## CONTENT AND OPERATION

### BUREAU OF WORKERS' COMPENSATION

#### Statute of limitations for injury or death claims

(R.C. 4123.84; Section 741.20)

Under the bill, a workers' compensation claim arising on or after the provision's effective date is barred unless one of the following occur within one year, decreased from two years as under current law, after the employee sustains the injury or dies:

- Written or facsimile notice of the specific part the body claimed to have been injured or notice of death has been made to the Industrial Commission or the Bureau of Workers' Compensation (BWC);
- The employer, with knowledge of a claimed compensable injury or occupational disease, has paid wages in lieu of compensation for total disability;
- If the employer is a self-insuring employer, one of the following has occurred:
  - Written or facsimile notice of the specific part the body claimed to have been injured has been given to the Commission or BWC or the



- employer has furnished treatment by a licensed physician in the employ of an employer;
- Compensation or benefits have been paid or furnished equal to or greater than is provided for in the Workers' Compensation Law.

The bill does not change the statute of limitations concerning occupational diseases. Under continuing law, a claim for occupational disease or death resulting from occupational disease must be filed within two years after the disability due to the disease began, or within such longer period as does not exceed six months after diagnosis of the occupational disease by a licensed physician or within two years after death occurs.<sup>1</sup>

## **Drug testing**

(R.C. 4123.54)

The bill revises the list of the controlled substances and the necessary levels of some of the controlled substances specified in the continuing law rebuttable presumption described below to be those used by the federal Department of Transportation drug testing program.<sup>2</sup> However, the bill retains the current law testing requirements regarding barbiturates, benzodiazepines, and methadone, which are not included in the federal regulation. The bill removes the current law testing requirement regarding propoxyphene, and the federal regulation replacing some of the current law drug testing levels does not include testing levels for that substance; thus it appears that positive tests for propoxyphene will not trigger the rebuttable presumption under the bill.

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

The federal regulation includes two cutoff levels, the initial test cutoff concentration level and the confirmatory test cutoff level. The bill does not specify which level is to be used. Thus it is unclear which level is required to be used under the bill or if the bill requires a two-part test of a sample. However, the bill appears to lower

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<sup>1</sup> R.C. 4123.85, not in the bill.

<sup>2</sup> 49 Code of Federal Regulations (C.F.R.) 40.87.



the necessary level of amphetamines and cocaine for purposes of triggering the rebuttable presumption.

### **Background – rebuttable presumption**

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

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

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

### **Presumption of cancer incurred while performing official duties**

(R.C. 742.38 and 4123.68; Sections 707.10, 741.20, and 741.40)

The bill makes several changes to current law's presumption, for purposes of the Workers' Compensation Law and the Ohio Police and Fire Pension Fund (OP&F), that a firefighter who is disabled as a result of cancer incurred the cancer while performing official duties, if the member was exposed to an agent classified by the International Agency for Research on Cancer (IARC) or its successor as a Group 1 or 2A carcinogen.

The bill adds to the types of compensation payable under the presumption in the Workers' Compensation Law, adds to current law's circumstances in which the presumption can be rebutted, and revises when the presumption does not apply.



## **Working wage loss**

The bill adds working wage loss to the compensation or benefits currently payable under the presumption described above in the Workers' Compensation Law. Currently, the presumption is included in the list of occupational diseases that are compensable under the Law, and compensation and benefits are payable under the presumption in the event of temporary total disability (TTD), permanent total disability (PTD), or death. The working wage loss provision applies to workers' compensation claims pending on the provision's effective date and to any claim filed on or after that date.

Under continuing law, working wage loss compensation (paid in lieu of TTD compensation) is paid if the employee returns to work in a position other than the employee's former position due to an injury or occupational disease and receives less pay than in the employee's former position. An employee who is entitled to working wage loss compensation generally receives 66½ of the difference between the employee's average weekly wage (AWW) and the employee's current earnings for a maximum of 200 weeks. Weekly working wage loss compensation cannot be more than the statewide AWW.

### **Rebuttal of the presumption**

The bill adds to the circumstances under current law in which the presumption can be rebutted. Under the bill, the presumption is rebutted if there is evidence that shows, by a preponderance of competent scientific evidence, that exposure to the type of carcinogen alleged did not or could not have caused the cancer being alleged.

Under continuing law, the presumption can be rebutted in any of the following situations:

- There is evidence that the firefighter incurred the type of cancer being alleged before becoming a member of the fire department.
- There is evidence that the firefighter was not exposed to an agent classified by the IARC as a Group 1 or 2A carcinogen.
- The firefighter is age 70 or older.
- There is evidence that the firefighter's exposure, outside the scope of the firefighter's official duties, to cigarettes, tobacco products, or other conditions presenting an extremely high risk for the development of the cancer alleged, was probably a significant factor in the cancer's cause or progression.



## **Application**

The bill provides that the presumption does not apply if it has been more than 15 years since the firefighter was last assigned to hazardous duty as a firefighter. Currently, it does not apply if it has been more than 20 years since the firefighter was last assigned to hazardous duty.

The bill's provisions concerning hazardous duty and competent scientific evidence apply only to applications for disability benefits filed on or after the effective dates of those provisions and to workers' compensation claims arising on or after those dates.

## **Incarcerated dependents**

(R.C. 4123.54; Section 741.20)

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

## **Temporary total disability**

### **Waiver of required medical examinations**

(R.C. 4123.53)

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

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



## **Minimum TTD compensation**

(R.C. 4123.56)

Under continuing law, an employee who is entitled to TTD compensation generally receives 66 $\frac{2}{3}$ % of the employee's AWW for a maximum of 200 weeks or until specified events occur, whichever is earlier. However, during the first 12 weeks of TTD, the employee receives 72% of the employee's full weekly wage, up to a statutory maximum. Weekly TTD compensation cannot be more than the statewide AWW or less than 33 $\frac{1}{3}$ % of the statewide AWW unless an employee's wage is less than the minimum, in which case the employee receives the employee's full wages.

Under the bill, if an employee is eligible for TTD compensation, but the employee's full weekly wage has not been determined at the time payments are to start, the employee is entitled to 33 $\frac{1}{3}$ % of the statewide AWW. On determination of an employee's full weekly wage, the employee's TTD compensation is adjusted using continuing law.

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

## **Dismissal of permanent partial disability application**

(R.C. 4123.57; Sections 741.10 and 741.30)

Under continuing law, an eligible employee may apply to BWC for a determination of the percentage of the employee's permanent partial disability (PPD). When an employee applies for a determination, BWC must schedule the employee for a medical examination by the BWC Medical Section. The bill allows the Administrator to dismiss a PPD application under certain circumstances.

## **Applications filed on or after the effective date**

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



injury or five years from the date of the last payment of benefits or compensation made under continuing law.

The Administrator must adopt rules addressing the manner in which an employee will be notified of possible dismissal and how an employee may refile an application.

### **Applications pending on the effective date**

If, on the provision's effective date, an employee's PPD application has been suspended pursuant to continuing law because the employee refused to submit to or obstructed a medical examination or vocational evaluation, the Administrator must send a notice to the employee's last known address informing the employee that the application may be dismissed unless the employee schedules a medical examination with the BWC Medical Section within 30 days after receiving the notice. If the employee does not schedule a medical examination with the Medical Section within 30 days after receiving the notice or fails to attend an examination scheduled with the Medical Section, the Administrator may dismiss the application. The employee may refile the application, subject to the continuing jurisdiction of the Industrial Commission.

### **Appeal of Industrial Commission order**

(R.C. 4123.512; Section 741.20)

For claims arising on and after the provision's effective date, the bill extends the time to appeal an Industrial Commission order from 60 days to 150 days if a party gives notice of intent to settle and the opposing party does not object. Under continuing law, a claimant or an employer may appeal an Industrial Commission order relating to a claimant's right to receive benefits or continue receiving benefits from the Fund to a court of common pleas. A claimant or employer also may appeal such a decision by a staff hearing officer if the Industrial Commission has issued an order declining to hear the appeal. Current law requires the claimant or employer to file an appeal with the court within 60 days after the date the party receives the Commission's order.

Under the bill, a party may file with the Administrator and serve on an opposing party and the opposing party's representative a notice of intent to settle within 30 days after receiving the Commission's order. Filing the notice of intent to settle extends the time to file an appeal from 60 days to 150 days, unless the opposing party files an objection with the Administrator and serves the objection on the party who served the notice and that party's representative within 14 days after being served with the notice.

Under continuing law, if a claimant establishes a right to receive compensation or benefits under the Workers' Compensation Law (the right to "participate in the State



Insurance Fund") on appeal to a court, the claimant can recover the cost of the appeal, including attorney's fees. A court taxes the costs against either the employer or the Industrial Commission, depending on who contested the claimant's right to participate in the Fund. The bill increases to \$5,000 (from \$4,200 under current law) the cap on attorney's fees that can be taxed against an employer or the Commission.

## **Handicap Reimbursement Program**

(R.C. 4123.343)

Under the Handicap Reimbursement Program, part or all of a claim involving an employee with a qualifying preexisting disease or condition is paid from the Surplus Fund Account under certain circumstances. Payments from the Surplus Fund Account do not directly affect the workers' compensation premium paid by an individual employer.

Under continuing law, the Administrator must adopt rules specifying the grounds upon which payments made to handicapped employees will be charged to the Surplus Fund Account. The bill requires the Administrator to adopt rules allowing an employer who settles a claim to participate in the Program. Currently, the rules must prohibit reliance on any agreement between the employer and the claimant as to the merits of a claim and the amount of the charge.

## **Reimbursement of secondary payers**

(R.C. 4123.66)

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

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

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



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

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

## **Public Employment Risk Reduction Program**

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

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

### **Exemptions**

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

### **Coverage**

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



## **Rules for effective safety partnership program**

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

### **Inspections**

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

Under continuing law, the Administrator or the Administrator's designee may conduct inspections and investigations when a public employee files a complaint with the Administrator regarding unsafe working conditions or when a public employee exercises the employee's right to refuse to work due to unsafe conditions.

### **Safety violation notices**

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

### **Explanation of rate revision in group rating plans**

(R.C. 4123.29)

Under continuing law, the Administrator must offer a plan that groups similar employers together and pools the employers' risk. If the premium rate for an employer



who participates in a group rating plan changes from the rate established for the previous year, the Administrator, in addition to sending an invoice with the rate revision to the employer under current law, must provide an explanation of the rate revision to the third-party that administers the group rating plan for the group. Current law requires the Administrator to send a copy of the invoice to the group administrator.

## **Professional employer organizations**

(R.C. 4125.07, 4125.05, and 4125.051)

A professional employer organization (PEO) is a business entity that enters into an agreement with one or more client employers to share the responsibilities and liabilities of being an employer. A PEO must register with the Administrator to operate in Ohio. One duty of the PEO is to maintain workers' compensation coverage for all of the co-employed employees. After the termination of a PEO agreement, continuing law requires a PEO to provide certain information to both the Administrator and a client employer. The bill extends to 30 days, from 14 days under current law, the time in which both of the following must occur:

- A PEO must submit a lease termination notice form to the Administrator and to each client employer of the PEO;
- A self-insuring PEO must submit to the Administrator information needed to develop an experience modification factor for employers subject to a PEO lease termination.

The bill adds the president or other individual who serves as the controlling person of a PEO to the list of people who can attest to either of the following:

- The accuracy of the required data submissions for registration as a PEO;
- That all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the PEO or members of the PEO reporting entity<sup>3</sup> when a PEO or PEO reporting entity has a deficit in working capital.

Current law allows only the chief executive officer of a PEO to make these attestations.

The bill removes the current law requirement that a controlling entity of a PEO reporting entity include supplemental combining schedules to guarantee that the

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<sup>3</sup> A "PEO reporting entity" means two or more PEOs that are majority owned or commonly controlled by the same entity, parent, or controlling person (R.C. 4125.01, not in the bill).



continuing law registration and renewal requirements related to working capital are satisfied if a PEO reporting entity submits a combined or consolidated financial statement that includes entities that are not PEOs or that are not in the PEO reporting entity.

## **Occupational disease reports**

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

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

## **Actuarial reporting**

(R.C. 4121.125)

### **Annual unpaid liabilities report**

Current law requires the BWC Board of Directors to prepare or have prepared various actuarial reports concerning the funds of the workers' compensation system. The bill revises the content of the annual report that the Board must contract to have prepared. Under the bill, the report must consist of an actuarial estimate of the unpaid liabilities of the State Insurance Fund and other funds created in the Workers' Compensation Law, rather than a valuation of those funds as under current law. The report must include all of the following information:

- A summary of the funds and components evaluated (rather than the compensation and benefit provisions of the Law);
- A description of the actuarial methods (added by the bill) and assumptions used in the analysis of the unpaid liabilities (current law instead requires the actuarial assumptions and cost method used);
- A schedule showing the impact of changes in the estimates of the unpaid liabilities (instead of the compensation and benefit provisions, assumptions, and methods) since the previous annual analysis report was submitted to the Board.

### **Quinquennial report**

The bill modifies a report that continuing law requires the Board to have prepared every five years. Under the bill, the report must contain an analysis of the



mortality experience used in estimating the future costs of survivor benefits and permanent disability benefits. The bill requires the report to be used to experience rate employer premiums and to update the claim level reserves in the annual unpaid liabilities report described above. The person or actuary preparing the report must recommend any changes to the actuarial mortality standards (rather than actuarial standards) in the report.

Currently, the five-year report is used to update the actuarial assumptions used in the annual valuation report required by current law. The report is based on an investigation of employers' experience; the mortality, service, and injury rate of employees; and payments of TTD, PPD, and PTD compensation. The five-year report must include the following information (the bill eliminates this requirement):

- A summary of relevant decrement and economic assumption experience;
- Recommended changes in actuarial assumptions to be used in subsequent annual reports;
- A measurement of the financial effect of any recommended changes in actuarial assumptions.

### **Legislative reports**

Continuing law requires the Board to have an actuary or a person supervised by an actuary prepare an analysis of any introduced legislation expected to have a measurable financial impact on Ohio's workers' compensation system. The bill eliminates the following items from the list of information that the report must contain:

- A description of the participant group or groups included in the report;
- The percent of premium increase that would be required to amortize the increase in actuarial accrued liabilities as a level percent of employer premiums over a period not to exceed 30 years;
- A statement of whether employer premiums paid to BWC after enactment of the legislation are expected to satisfy funding objective established by the Board.

Thus, under the bill, an analysis of introduced legislation must contain the following information:

- A summary of the statutory changes being evaluated (current law);



- A description of or reference to the actuarial assumptions and actuarial cost method used in the report (current law);
- A statement of the financial impact of the legislation, including the resulting increase, if any, in employer premiums, and in current estimates of unpaid liabilities (similar to current law).

## **Comparisons to other workers' compensation systems**

The bill eliminates the Board's authority to contract with an outside actuary or other professional person to compare Ohio's workers' compensation system to other state and private workers' compensation systems.

## **Provider participation standards**

(R.C. 4121.44)

The bill requires the Administrator, in cooperation with the Health Care Quality Assurance Advisory Committee or its successor committee, to develop and periodically revise standards for maintaining adequate numbers of certified health care providers for services used by claimants. The standards must ensure both of the following:

- That claimants have access to a choice of providers for similar services within the geographic area that the claimants reside;
- That the providers within a geographic area are actively accepting new claimants as required in rules adopted by the Administrator.

The Health Partnership Program (HPP) is the medical management portion of Ohio's Workers' Compensation system used by state fund employers. Under continuing law, to participate in the HPP a provider or managed care organization must be certified by BWC. To be certified, a provider or managed care organization must satisfy standards and criteria established in law and adopted by the Administrator with the Board's advice and consent.

## **OTHER AGENCIES**

### **Employee medical examinations**

(R.C. 4113.21)

The bill prohibits a public employer from requiring an employee, prospective employee, or applicant for employment to pay the cost of a medical examination required by the public employer as a condition of employment or continued



employment. Under the bill, "public employer" means the United States, the state, any political subdivision of the state, and any agency of the United States, the state, or a political subdivision of the state.

Current law prohibits a private employer from requiring a prospective employee or an applicant from paying for medical examinations required by the employer as a condition of employment. Under continuing law and the bill, an employer who violates the prohibitions must forfeit not more than \$100 for each violation. BWC and the Public Utilities Commission of Ohio enforce the penalty. It is unclear how this prohibition applies with respect to federal employees. Federal regulations specifically require applicants for certain federal positions and certain federal employees to pay for a medical examination conducted by an applicant's or employee's private physician if the purpose of the examination is for change sought by the applicant, such as new employment, or by the employee, such as a request for change in duty status, reasonable accommodations, or job modifications.<sup>4</sup>

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## HISTORY

ACTION	DATE
Introduced	02-01-17
Reported, H. Insurance	05-16-17
Re-referred, H. Rules & Reference	05-16-17
Reported, H. Finance	05-17-17
Passed House (66-31)	05-17-17
Reported, S. Insurance & Financial Institutions	---

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<sup>4</sup> 5 C.F.R. 339.304.





March 24, 2017

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

**RE House Bill 27 – Illegal Alien Amendment**

Dear Chairman Brinkman:

The Ohio Manufacturers' Association (OMA) believes that Ohio's efficient and effective workers' compensation system benefits workers, employers, and the Ohio economy.

In recent years, the BWC has made tremendous progress in improving all facets of its service delivery: increased investments in employer safety programs, dollars generated by its investments returned to employers in a prudent fashion, reduced base premium rates, medical management model improvements, and projects that continue to modernize the operations.

Regarding House Bill 27, the BWC biennial budget proposal, the agency is proposing a flat budget while continuing to invest in important strategic programs. The OMA applauds the BWC leadership on this.

In addition, OMA supports the sub bill amendment which reduces the statute of limitations for injured workers to file claims from two years to one year after sustaining a workplace injury or illness.

However, OMA is concerned about the potential amendment that would ban illegal aliens from receiving workers' compensation benefits in Ohio.

Workers' compensation laws were created to balance employees' need for safe workplaces and adequate compensation and medical care when warranted versus employers' requirements to be protected from excessive litigation, cost, and immunity from tort actions.

Ohio has made great strides in reforming its civil justice system over the past decades. A primary goal of the General Assembly should be to preserve tort reform gains. It is our understanding that the proposed amendment which would deny workers' compensation benefits to illegal or unauthorized aliens would generate a new civil cause of action against an employer if they knowingly employ an illegal alien or unauthorized alien.

As stated above this goes against the principal tenant of Ohio's workers' compensation system which is paid by employers. It would vacate the no-fault aspect of the system for employers and expose them to litigation risk. It would also erode gains Ohio has made on civil justice.

We hope there will be careful examination of potential unintended consequences to manufacturers, and all employers, as this amendment is carefully considered. We'd welcome the opportunity to be part of this discussion. Thank you for your work on this important bill.

Sincerely,



Robert Brundrett  
Director, Public Policy Services

cc: Representative Bill Seitz



To: Legislative Service Commission  
Senate Transportation, Commerce and Labor Committee  
House Insurance Committee

From: Nicholas W. Zuk, Chairman, BWC Board of Directors

Re: Actuarial Analysis of Legislation – Senate Bill 118

Date: May 23, 2017

Attached you will find an actuarial analysis of Senate Bill 118 and the identical House Bill 161. These bills propose to expand workers' compensation benefits eligibility to safety service workers who suffer from post traumatic stress disorder (PTSD), without the current requirement of an accompanying physical injury. This report fulfills ORC 4121.125 (C)(6) and (7), which require the BWC Board of Directors to have prepared, by or under the supervision of an actuary, an actuarial analysis of any introduced legislation expected to have a measurable financial impact on the workers' compensation system.

Based on the baseline assumptions in the attached report, our Actuarial Committee believes the estimate that these bills may have a potential annual cost of \$98.4 million is reasonable.

This estimate is based on the following assumptions:

- One out of every 28 eligible employees will file a claim, resulting in roughly 2,900 claims per year.
- Each claim will incur \$33,000 in costs, including \$7,000 in medical and \$26,000 in compensation.
- There will be an additional \$2.5 million required to rehabilitate employees for substance abuse

For comparative purposes, currently all public entities in the State Insurance Fund combined pay approximately \$190 million in total annual premium today. Adding the cost of covering PTSD as proposed in SB 118 would likely have an impact on the employer's future premiums.

While data exists to estimate the number of safety service workers, very little data exists to help us determine how many may apply for workers' compensation benefits due to PTSD. Because of this uncertainty, alternative assumptions would likely result in different estimates of annual costs; some estimates that would be higher and some estimates that would be lower. We feel the assumptions and resulting estimated costs are reasonable.

Please feel free to contact our BWC staff if you have further questions.



To: **Christopher S. Carlson**, FCAS, MAAA, Chief Actuarial Officer

From: **Daniel Myers**, FCAS, MAAA, Director of Actuarial Analysis

Date: May 5, 2017

Subject: **Actuarial Report on Senate Bill 118: Safety Service Workers with Post Traumatic Stress Disorder Eligible for Workers' Compensation**

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**Actuarial Findings:**

Senate Bill 118 (SB118) and the identical House Bill 161 propose to expand workers' compensation eligibility to workers in the safety service industry if they suffer from post traumatic stress disorder (PTSD). As required by law for any proposed legislation that has an actuarial impact on the BWC, the Actuarial Division has conducted an actuarial analysis of SB118. As outlined in more detail on Exhibit 1, we estimate that

- One out of every 28 eligible employees will file a claim. With a population of 80,000 eligible employees in Ohio, there will be approximately 2,900 claims per year.
- Each claim will incur approximately \$33,000, split between \$7,000 in medical costs and \$26,000 in wage compensation
- There will be an additional \$2.5 million required to rehabilitate employees for substance abuse
- All together, annual losses are expected to be \$98.4 million higher if SB118 were to be signed into law

In order to develop these estimates, a number of assumptions must be made, some of which have a high degree of uncertainty. Other assumptions would result in different estimated annual costs, some that might be higher while others that might be lower.

**Background of SB118:**

Under current law, employees with PTSD symptoms are eligible for workers' compensation coverage only if those PTSD symptoms are brought on by an accompanying physical injury or occupational disease; PTSD symptoms arising from the normal course of employment are not covered as a compensable injury. SB118 would expand that to provide workers' compensation coverage to eligible employees if they are diagnosed with PTSD as a result of their employment. Eligible employees for PTSD coverage are specifically defined within SB118 and contain occupations such as police, firefighters, and emergency medical workers.

PTSD coverage in SB118 is limited to one year of wage compensation and one year of medical benefits. This is in contrast to Senate Bill 5 from the 2015 session of the General Assembly which offered no limitation to the length of time an injured worker could seek coverage. Additionally, SB118 appears to be written so that wage compensation and medical benefits would be tracked independently, allowing an injured worker to continue seeking medical care while returning to work.

### **Analysis of SB118:**

In developing the impact of SB118 shown on Exhibit 1, we sought to identify the following pieces of information:

- Number of employees in covered occupations
- Percentage of employees in those occupations who develop PTSD symptoms who will file claims
- Average wage compensation and medical benefits an injured worker will incur for each claim
- Length of time an injured worker will receive compensation and medical care
- Detoxification costs associated with injured workers suffering from substance abuse

For most of the covered occupations, the number of employees is readily available on public websites such as Ohio Department of Jobs and Family Services or Federal Bureau of Labor & Statistics. The percentage of employees who exhibit PTSD symptoms and the percentage of employees who will file PTSD claims proved to be much more challenging to quantify. Some research has been conducted regarding the likelihood of people developing PTSD in extreme scenarios like soldiers in combat or people involved in crimes or accidents. However, a limited amount of research has been done outside of those extreme scenarios and an even narrower body of research exists when limited to PTSD symptoms arising from work conditions (of any occupation, let alone safety responders). This limited body of research was not consistent enough to allow us to determine a reasonably reliable estimate of percentage of employees with PTSD symptoms. We believe reasonable values could be as low as 10% and as high as 25%. We selected 18% as the percentage of employees with PTSD symptoms. The figures shown on Exhibit 1, column 3 reflect this selection.

We were unable to find any research or documentation that explores the likelihood of people with PTSD symptoms to seek professional treatment but it's reasonable to expect some people with PTSD symptoms to not file claims either because they aren't aware their condition qualifies for workers' compensation coverage, they're unaware of how debilitating their condition is, or they're uninterested in seeking professional help. We judgmentally selected 20% as the percentage of employees who exhibit PTSD symptoms to follow through with filing a claim (as shown on Exhibit 1, column 4) but we readily acknowledge that this number could be significantly different in reality.

The average annual compensation of employees is readily available on public websites such as Ohio Department of Jobs and Family Services or Federal Bureau of Labor & Statistics and is shown on Exhibit 1, column 5. Subject to some minimums and maximums, wage compensation is generally awarded on a weekly basis at 72% of the injured employee's weekly wage for the first 12 weeks and then 67% thereafter. Additionally, SB118 limits the length of time to one year that a PTSD claim will be paid wages. Some claims may experience a shorter timespan than one year but research suggests that claims will often run close to – if not all the way up to – one year of coverage. We selected 39 weeks; we recognize it could be less than that but by statute we know it must be less than 52 weeks. The figures shown on Exhibit 1, column 6 reflect these adjustments.

We know that medical benefits will typically manifest as psychotherapy sessions and pharmaceutical costs but may also include accompanying substance abuse treatment costs. These various medical costs as shown on Exhibit 1, columns 8 and 9 were estimated based on internal BWC costs from existing PTSD claims, reliance on research from Freddie Johnson, Director of Medical Services, and guidance from the Official Disability Guidelines.

### **Comparison to 2015-Senate Bill 5:**

SB118 is similar to Senate Bill 5 (SB5) introduced in the 2015 session of the General Assembly. The primary difference between them is that SB5 placed no limitation on length of coverage while SB118 limits coverage to one year of wage compensation and one year of medical benefits. An actuarial analysis conducted on SB5 arrived at an estimated \$182 million increase in annual losses. This analysis for SB118 closely followed the same methodology, refreshing to more recent data and adjusting for the 1-year coverage limitation. The table below illustrates the

material differences between the actuarial estimates of these two bills. Note that the driving force between the \$182 million for SB5 and the \$98 million for SB118 is the length of time we anticipate making payments. For medical costs, we estimated an 80% reduction in length of medical payments while the estimate in SB118 is reduced by a similar amount of 76%. Likewise, we estimated a 25% reduction in time of wage compensation payments with a similar reduction of 21% with the SB118 estimate.

	# years of Medical Payments	Medical	# weeks of Indemnity Payments	Indemnity	Total
2015 - SB5	5 years	87,302,949	52 weeks	95,442,742	182,745,691
2017 - SB118	1 year	20,664,399	39 weeks	75,213,157	95,877,556
% Difference	-80%	-76%	-25%	-21%	-48%

#### **Uncertainty of Assumptions:**

As outlined in the Analysis section above, there are a number of assumptions built into this analysis where there was either no readily available data or any readily available data were not ideally suited to be used without some material adjustment. Any users of this report should recognize that while the actuarial analysis tries to contemplate reasonably feasible outcomes, the future may vary from these assumptions beyond what was contemplated in this actuarial analysis.

#### **Qualifications:**

This actuarial report is submitted by Daniel Myers, FCAS, MAA, Director of Actuarial Analysis of the Ohio Bureau of Workers' Compensation. Mr. Myers meets the continuing education requirements of the American Academy of Actuaries and the Casualty Actuarial Society to issue this actuarial report.

#### **Reliance:**

This actuarial report relies in part on Teresa Arms of the BWC's Analytics Division for conducting much of the research around methodology and underlying assumptions and on Freddie Johnson of the BWC's Medical Services Division for conducting research and providing guidance on medical costs associated with PTSD treatment. Many thanks to them for making this report much more thorough than it would have otherwise been.

## Senate Bill 118: Safety Service Workers with PTSD

### Actuarial Analysis of Estimated Costs

(1) Occupation	(2) Number of Workers	(3) Estimated Workers w/ PTSD Symptoms	(4) Estimated Workers Who Will File Claims	(5) Average Annual Salary	(6) Average Temp Payment	(7) Estimated Temporary Total Payments	(8) Estimated Average Psychotherapy Costs	(9) Estimated Average Pharmaceutical Costs	(10) Estimated Total Medical Costs	(11) Estimated Total Costs
Ambulance Drivers	800	144	29	\$20,640	\$11,547	334,876	4,616	2,500	206,359	541,235
EMS	10,570	1,903	381	\$31,000	\$15,881	6,050,802	4,616	2,500	2,711,135	8,761,937
Firefighters	32,800	5,904	1,181	\$46,818	\$23,926	28,256,036	4,616	2,500	8,403,807	36,659,843
Police	36,459	6,563	1,313	\$55,076	\$30,900	40,571,443	4,616	2,500	9,343,098	49,914,541
Total	80,629	14,514	2,904		25,900	75,213,157			20,664,399	95,877,556

(12) Estimated Costs for Substance Abuse Rehabilitation 2,558,502

(13) Estimated Total Annual Costs 98,436,058

(1) Firefighters include full-time, volunteer, and supervisors. Police include full-time, part-time, special operations, and supervisors.

(2) Public records

(3) Estimated that 18.0% of all emergency responders have PTSD symptoms

(4) Assumed that 20.0% of emergency responders with PTSD symptoms will file workers' compensation claims

(5) Public records

(6) Statutorily prescribed weekly wage for an assumed 39 weeks

(7) = column (4) \* column (6)

(8) Assumes 20 psychotherapy sessions

(9) Estimated from existing PTSD pharmaceutical costs

(10) = column (4) \* [ column (8) + column (9) ]

(11) = column (7) + column (10)

(12) Exhibit 2, row (12)

(13) = column (11), Total row + row (12)

## Senate Bill 118: Safety Service Workers with PTSD

### Actuarial Analysis of Estimated Costs

(1) % of employees with PTSD symptoms who also have comorbid substance abuse	70%
(2) % of those employees who require detoxification treatment	25%
(3) Proportion of treatment done as Inpatient and Outpatient	
Inpatient treatment:	30%
Outpatient treatment:	70%
(4) Detoxification Cost = (% IP treatment) * (IP Cost) + (% OP treatment) * (OP Cost)	4,296
Inpatient cost:	5,438
Outpatient cost (70% of IP cost):	3,807
(5) Estimated detoxification cost per employee = row (1) * row (2) * row (4)	752
(6) % with comorbid substance abuse that seek additional psychological treatment	40%
(7) Increase in 1st year therapy costs for those that seek additional treatment <sup>†</sup>	10%
(8) Additional psychological treatment costs per employee = row (1) * row (6) * row (7) * Exh 1, column (8)	129

- (9) Number of Injured Workers (Exhibit 1, column (4))
- (10) Total Detoxification Costs = row (5) \* row (9)
- (11) Total Additional Psychological Treatment Costs = row (8) \* row (9)
- (12) Total Substance Abuse Rehabilitation Costs = row (10) + row (11)

Ambulance				
Drivers	EMS	Firefighters	Police	Total
29	381	1,181	1,313	2,904
21,802	286,429	887,856	987,092	2,183,179
3,748	49,242	152,637	169,697	375,323
25,550	335,671	1,040,493	1,156,788	2,558,502

<sup>†</sup> Assumes no mandate to select a provider that can treat both PTSD and substance abuse concurrently. Therefore, we would need to recognize an increase due to coordination between both providers and additional therapy visits

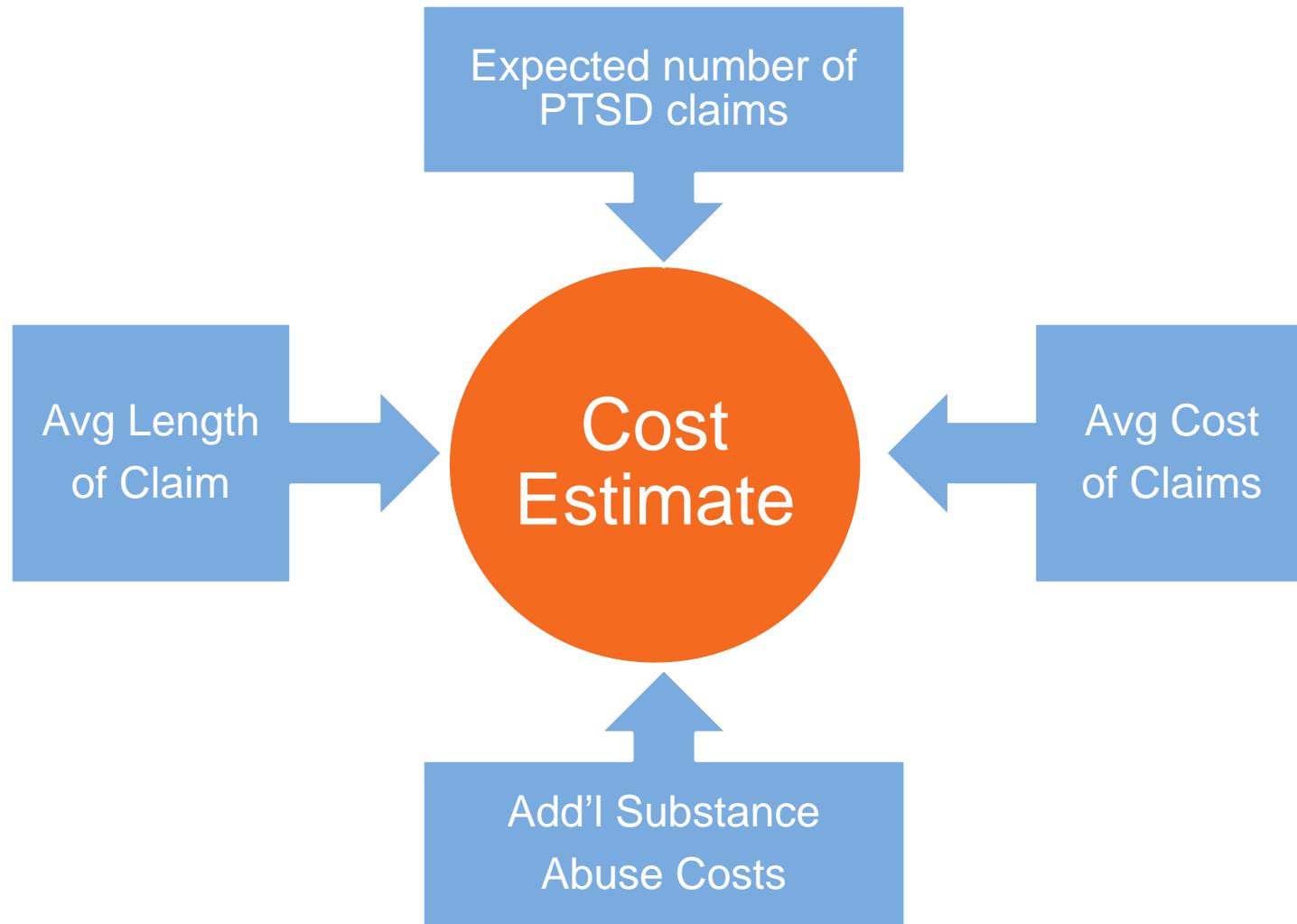
# **PTSD Cost Estimates: Senate Bill 118 and House Bill 161**

5/24/2017

# What Would Be Covered?

- Provide benefits to employees suffering from PTSD symptoms as a result of their employment
- Applicable to emergency responders (fire, police, EMS)
- 1 year of medical benefits and 1 year of wage comp
- Coordination of benefits with public retirement systems for that year of coverage

# Developing the Estimate



# **Estimated Cost:**

**\$98.4 million per year**

# QUESTIONS



COLUMBUS | CLEVELAND  
CINCINNATI | DAYTON  
MARIETTA

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Ohio Manufacturers' Association  
Workers' Compensation Meeting  
June 27, 2017

Sue A. Roudebush, Esq.  
Nicholas W. Lanphear, Esq.  
Bricker & Eckler LLP

**H. B. No. 268: Change Workers' Comp Self-Insuring Employer Law**

To amend sections 4123.35, 4123.351, 4123.352, and 4123.82 and to enact section 4123.354 of the Revised Code to make changes to the Workers' Compensation Law with respect to self-insuring employers.

**Primary Sponsor:** Representative Henne

**Cosponsors:** representatives Butler, Romanchuk, Brenner, McColley, Becker, Hood, Rutherford, Seitz, Scherer, Thompson, Goodman, and Kick.

**Status:** Introduced in the House June 12, 2017 and Referred to the Insurance Committee June 20, 2017

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**Summary:**

H.B. 268 would create the Self-Insuring Employers' Guaranty B Fund ("SI Guaranty B Fund"). The SI Guaranty B Fund is to provide for payment of compensation and benefits to injured workers of a self-insuring employer, should the self-insured employer default in payment to the injured worker. Currently, there is already a Self-Insuring Employers' Guaranty Fund but this bill creates a new fund applicable to employers as described below.

Under this bill, employers that do not have sufficient assets in Ohio to meet the current "assets test"<sup>1</sup> for self-insuring status can waive the assets test, if the employer has a Moody's rating of B3 or above. The employers seeking to waive the assets test via a B3 or above rating would be required to pay into the newly created SI Employers' Guaranty B Fund. All other self-insuring employers would continue to pay into the existing Guaranty Fund.

In other words, if an employer with limited assets in Ohio wants to become self-insured and has a B3 or above rating with Moody's, the employer

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<sup>1</sup> The BWC must consider "[t]he sufficiency of the employer's assets located in this state to insure the employer's solvency in paying compensation directly" when permitting self-insured status. R.C. § 4123.35(B)(1)(c).

Workers' Compensation Counsel Report  
Page 2

will be required to pay into the SI Guaranty B Fund. Presumably, this proposed group of self-insuring employers would be seen as risky by the Bureau of Workers' Compensation considering the limited assets for recovery in the event of default. Moreover, a Moody's rating of B3 is generally considered speculative with high risk.

The bill also contains a provision indicating that the Bureau of Workers' Compensation can require a self-insuring employer that has waived the assets test to obtain security in addition to the SI Guaranty B Fund. The additional security should be sufficient to meet the financial obligations of the self-insuring employer.

And finally, the bill contains a provision for *all* self-insuring employers to purchase private insurance contracts under R.C. § 4123.82. Currently, self-insured employers are permitted to enter into contracts with insurers for coverage of claims in excess of \$50,000 from any one event or disaster. The bill proposes to strike that language and permit indemnification or insurance for *any* loss suffered by a self-insuring employer. This would allow an employer, permitted by the Bureau of Workers' Compensation to operate as a self-insured employer, to avoid the workers' compensation system in Ohio, moving closer to a fully self-insured system. In combination with the assets-test waiver, the bill relaxes the standard for self-insuring status and, in turn, permits all self-insuring employers to purchase private contracts for indemnification.



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Ohio Manufacturers' Association  
Workers' Compensation Meeting  
June 27, 2017

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**H. B. No. 269:** Rename workers' comp entities and revise benefits

To amend sections 9.239, 9.315, 101.532, 102.02, 102.06, 103.143, 109.579, 109.84, 109.981, 119.01, 119.12, 121.03, 121.52, 123.01, 124.11, 124.14, 125.18, 125.30, 126.30, 126.45, 133.03, 149.01, 151.01, 152.091, 152.16, 152.17, 152.242, 152.26, 152.27, 153.02, 153.03, 154.13, 164.09, 165.08, 166.08, 175.10, 191.02, 306.09, 306.85, 307.02, 351.11, 353.16, 715.011, 742.38, 902.10, 1545.27, 1555.08, 1557.03, 1561.04, 1561.24, 1701.86, 1707.01, 1707.164, 1707.165, 1707.17, 1707.19, 1707.22, 1707.23, 1707.25, 1707.261, 1707.431, 1707.44, 1707.46, 1729.55, 2111.03, 2305.24, 2305.25, 2305.252, 2705.05, 2743.521, 2913.48, 3121.01, 3121.0311, 3121.899, 3313.643, 3318.26, 3335.61, 3345.12, 3355.10, 3366.04, 3377.11, 3517.13, 3701.27, 3701.741, 3706.14, 3737.947, 3781.10, 3781.16, 3783.02, 3796.28, 3798.01, 4101.15, 4101.16, 4112.31, 4113.21, 4113.23, 4115.32, 4117.10, 4121.01, 4121.03, 4121.08, 4121.11, 4121.12, 4121.121, 4121.122, 4121.123, 4121.125, 4121.126, 4121.127, 4121.128, 4121.129, 4121.13, 4121.131, 4121.14, 4121.15, 4121.16, 4121.17, 4121.19, 4121.20, 4121.21, 4121.22, 4121.23, 4121.24, 4121.25, 4121.26, 4121.27, 4121.28, 4121.29, 4121.30, 4121.31, 4121.32, 4121.34, 4121.35, 4121.36, 4121.37, 4121.39, 4121.40, 4121.41, 4121.42, 4121.43, 4121.44, 4121.441, 4121.442, 4121.443, 4121.444, 4121.447, 4121.45, 4121.47, 4121.50, 4121.61, 4121.63, 4121.65, 4121.66, 4121.67, 4121.69, 4123.01, 4123.024, 4123.026, 4123.03, 4123.039, 4123.04, 4123.05, 4123.06, 4123.07, 4123.08, 4123.09, 4123.12, 4123.13, 4123.15, 4123.19, 4123.20, 4123.21, 4123.22, 4123.23, 4123.24, 4123.25, 4123.26, 4123.27, 4123.271, 4123.28, 4123.29, 4123.291, 4123.292, 4123.31, 4123.311, 4123.32, 4123.321, 4123.322, 4123.323, 4123.324, 4123.33, 4123.34, 4123.341, 4123.342, 4123.344, 4123.35, 4123.351, 4123.352, 4123.353, 4123.36, 4123.37, 4123.38, 4123.39, 4123.391, 4123.40, 4123.401, 4123.41, 4123.411, 4123.412, 4123.413, 4123.416, 4123.417, 4123.418, 4123.419, 4123.42, 4123.44, 4123.441, 4123.442, 4123.443, 4123.444, 4123.445, 4123.446, 4123.45, 4123.46, 4123.47, 4123.48, 4123.50, 4123.51, 4123.511, 4123.512, 4123.52, 4123.522, 4123.53, 4123.54, 4123.56, 4123.57, 4123.58, 4123.59, 4123.591, 4123.60, 4123.61, 4123.62, 4123.63, 4123.64, 4123.65, 4123.651, 4123.66, 4123.67, 4123.68, 4123.69, 4123.70, 4123.71, 4123.72, 4123.75, 4123.751, 4123.756, 4123.76, 4123.78, 4123.79, 4123.80, 4123.82, 4123.83, 4123.84, 4123.85, 4123.86, 4123.88, 4123.90, 4123.91, 4123.92, 4123.93, 4123.931, 4123.94, 4123.96, 4125.01, 4125.02, 4125.03,

Workers' Compensation Counsel Report  
Page 2

4125.05, 4125.051, 4125.06, 4125.07, 4127.02, 4127.03, 4127.06, 4127.07, 4127.08, 4131.01, 4131.02, 4131.03, 4131.04, 4131.05, 4131.06, 4131.11, 4131.12, 4131.13, 4131.14, 4131.15, 4131.16, 4141.43, 4163.03, 4167.02, 4167.06, 4167.07, 4167.08, 4167.09, 4167.10, 4167.11, 4167.12, 4167.14, 4167.15, 4167.16, 4167.17, 4167.19, 4167.27, 4582.18, 4582.44, 4729.80, 4731.65, 4762.12, 4981.19, 5101.181, 5101.36, 5107.52, 5107.54, 5145.163, 5525.18, 5528.54, 5531.10, 5537.08, 5540.06, 5703.21, 6121.15, and 6123.15 and to enact sections 4121.124 and 4123.561 of the Revised Code to rename the entities who carry out workers' compensation functions in this state, to require the Administrator of Worker Safety and Rehabilitation to develop incentives for employers to participate in safety consultations and loss prevention programs, to require an employee who is receiving temporary total disability compensation to comply with a return to work plan, and to make changes with respect to compensation for permanent total disability and death benefits.

**Primary Sponsor:** Representative Henne

**Cosponsors:** Representatives Brinkman, Schuring, Butler, Lipps, Hambley, Green, Scherer, Brenner, Rutherford, Romanchuk, Riedel, Becker, Dean, Seitz, Rezabek, Ginter, Keller, Patton, McColley, Schaffer, Kick, Huffman, Stein, Thompson, and R. Smith.

**Status:** Introduced in the House June 12, 2017 and Referred to the Insurance Committee June 20, 2017

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**Summary:**

H.B. 269 is intended to overhaul Ohio's workers' compensation system. The bill, if passed, would change the name of the Ohio Bureau of Workers' Compensation to the Office of Worker Safety and Rehabilitation ("OESR"). The renaming of the agency is part of a rebranding effort proposed to make the agency more approachable to businesses. All goals of the OESR will center around five goals:

- 1) Safety;
- 2) Health Care;
- 3) Rehabilitation;
- 4) Extended Benefits; and
- 5) Death Benefits.

The new OESR is intended to create incentives for employers to use the existing state programs to increase safety in high-risk professions such as construction and manufacturing. The legislation includes the following major components:

- Tasks the agency to create workplace safety standards;
- Incentivizes employers to implement safety programs;

Workers' Compensation Counsel Report

Page 3

- Establishes an injured worker plan tailored to each injured employee to help get them back to work full-time, part-time or through retraining or reeducation for a different position; and, how to terminate benefits (TTD) should an injured worker fail to comply with the rehabilitation plan.
- Creates a sliding scale for extended benefits for employers who become permanently totally disabled (PTD) within ten years of retirement;
- Establishes a \$35,000 lump sum payment for the families of employees who are killed on the job;
- Creates a \$5,000 a year scholarship for eligible dependents of deceased employees for up to four years.

# The third **BILLION** back

*Ohio Workers' Comp Rebates*

## Giving Back to Ohio Business

Each year, the Ohio Bureau of Workers' Compensation helps nearly 250,000 employers protect their employees. The premiums paid by Ohio's businesses and public employers help provide safety services to reduce workplace incidents and care to get injured workers back to work and back to life. An improving safety climate, good fiscal management and better than expected investment returns have resulted in the State Insurance Fund having a net position of more than \$9 billion. So, for the third time in four years, BWC will return more than \$1 billion dollars to Ohio's private and public employers. Combined with nearly 30 percent in average rate cuts and \$3 billion in previous rebates and credits, this rebate means BWC will have helped return more than \$6 billion to Ohio's economy.

## What does the plan include?

The one-time rebate for private employers and public-taxing districts will total approximately \$1 billion. This includes an estimated \$967 million to private employers and \$133 million to public employer taxing districts. In total more than 200,000 employers will receive rebates.

BWC will also invest [\\$44 million over two years to improve wellness and safety for workers across Ohio](#). This includes a new wellness program, funding for specific programs to help firefighters and those who work with children and adults with disabilities, and an education campaign to address common injuries at work and in the home.

## How much will employers receive and when?

Most rebates will equal 66% of the employer's premium for the policy year ending June 30, 2016 (calendar year 2015 for public employers). BWC will begin sending checks in early July.

Private employers in the group-retro program will have their rebate amount calculated and paid following the 12-month premium calculation scheduled to occur in October 2017.

## Who is eligible for the rebate?

Both private employers and public employer taxing districts that pay into the State Insurance Fund are eligible for the rebate. Generally the employer must have been billed premium for the policy year ending June 30, 2016 (Dec. 31, 2015 for public employers), and be current in meeting their policy requirements. Employers with an outstanding BWC balance will have their rebate first applied to that balance. Employers that report through a Professional Employer Organization should receive their rebate from their PEO, which is required to pass a portion of the rebate on to their members.

## How is it possible that BWC has \$1 billion to provide rebates?

Despite a nearly 30 percent reduction in rates since 2011, the net position of BWC continues to grow. This is primarily due to strong investment returns. Annualized return of investments was 7 percent over the last three fiscal years, including a total net return of 5.8 percent in FY2016. BWC's expected annual investment return is four percent. Prudent fiscal management and declining claims also factor into BWC's financial strength.

Will this impact BWC's ability to operate as normal and continue to care for injured workers? No. Investments have performed so well, that even with the \$1 billion rebate, BWC's finances will remain strong, so operations will continue as normal and injured workers will continue to receive the care they need to heal and return to work. After the rebate BWC will still have a net position of \$8.5 billion with a simple funding ratio of 1.54.

## What else has BWC done to help Ohio businesses?

Once the latest rebates have been distributed, BWC will have saved Ohio businesses \$6.3 billion through rebates, credits and rate reductions since the beginning of 2011. That includes:

- In addition to the 2017 \$1 billion rebate, previously giving rebates of \$1 billion in 2013 and 2014.
- Providing \$1.2 billion in credits to transition to a modern billing system at no cost to employers.
- Reducing rates for private employers an average of 28.2%. That means BWC collected nearly \$1.7 billion less from employers than had 2010 rates remained steady.
- Reducing rates for public employers an average of 29.6%, or \$334 million less than had 2010 rates remained steady.
- Moving from the third highest rates in the country in 2008 to the 11th lowest.

# Protecting Ohio Workers

## BWC Safety and Health Initiatives

Ohio's workforce powers our state's economy. Safe, healthy workers are able to maintain high productivity and support their employer's bottom line. In turn, we have an obligation to ensure each worker returns safely to their families and communities after every shift.

The Ohio Bureau of Workers' Compensation (BWC) helps protect Ohio workers and their employers with a rich offering of safety and health programs and services to prevent on-the-job injuries and illnesses. BWC, through its Division of Safety & Hygiene, has expanded its efforts to improve workplace safety through consultations, classroom, online and on-site training, grants, and an impressive library of safety and health resources. Since 2010, the number of employers using BWC safety services has increased by 70 percent.

These offerings have made BWC the benchmark for the workers' compensation industry and produced remarkable results:

- Injuries are at record lows, with 88,170 approved claims filed in fiscal year 2016, compared to 104,000 in 2010;
- Injury rates per 100 employees dropped at almost twice the rate observed in the rest of the nation;
- Average base rates for employers are their lowest in decades, due mainly to the reductions in frequency and severity of workplace injuries.

As a leader in the industry, BWC is leading the way once again with an innovative plan that will invest \$44 million over the next two years to create a healthier workforce and a culture of safety in every Ohio workplace.

### **Health and Wellness Program (HWP)**

BWC will invest \$6 million annually in a robust health and wellness program for Ohioans working for small employers (50 or fewer employees) in specific high-risk industries, as well as injured workers with certain types of injuries. BWC will contract with a third-party vendor to provide services such as smoking cessation programs, health coaching and chronic disease management.

### **Expanded safety grant funding to protect firefighters and social and healthcare workers**

BWC will extend the current annual funding level of \$15 million for the next two years for Safety Intervention Grants, setting aside \$4 million a year for two high-risk occupations, including:

1. \$2 million for fire departments to purchase equipment, including personal protective equipment, to minimize exposure to dangerous environmental elements;
2. \$2 million for employers that serve disabled children and adults; funds will support training and equipment aimed at preventing injuries among social and health care workers providing these services.

### **Safety awareness campaigns**

BWC will invest \$2 million to create a statewide safety awareness and educational campaign for slips, trips and falls, overexertion and motor vehicle accidents, which are responsible for more than 60 percent of workplace injuries. The effort will include online and mobile training resources that address safety at home and at work.



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Ohio Manufacturers' Association  
Workers' Compensation Counsel Report  
June 27, 2017

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### Regulatory Actions

Proposed changes as part of the five-year review include changes to the following rules:

- **4123-19-03** Where an employer desires to secure the privilege to pay compensation, etc., directly.
- **4123-19-03.1** Waiver of certain requirements.
- **4123-19-05** Where an employer is a self-insuring risk and desires to become a state risk.
- **4123-19-06** Procedures for revocation of self-insuring status.
- **4123-19-08** Renewal of self-insuring risks.
- **4123-19-09** In regard to complaints filed by employees against self-insuring employers under the provisions of section 4123.35 of the Revised Code.
- **4123-19-10** In regard to audits by the Bureau of Workers' Compensation.
- **4123-19-13** Self-insuring employers' evaluation board.
- **4123-19-14** Self-insured review panel.
- **4123-19-15** Assessment for self-insuring employers' guaranty fund.

Chapter 4123-19 (where all of the above changes are proposed) contains the rules governing self-insurance in Ohio's Workers' Compensation system, including the process of applying for the privilege to self-insure, procedures for renewal or revocation of self-insuring status, and the assessment for the

self-insuring employers' guaranty fund. Generally speaking, the above changes include:

- Record keeping and reporting of lost-time injuries
- Modification to rules in accordance with updates to R.C. § 4123 (e.g., elimination of 500 employee minimum requirement)
- Allowing self-insured employers to request further review to the administrator or the self-insuring employers evaluation board for any complaints of direct compensation to claimants
- Additional reporting requirements for the guaranty fund

## **Legislative Actions**

### **H.B. 27 Bureau of Workers' Compensation Budget Bill**

After passing the House, the Workers' Compensation Budget Bill ("Budget Bill") was introduced in the Senate on May 18, 2017. The Budget Bill has since been referred to the Insurance and Financial Institutions Committee. Below is a synopsis of the proposed changes.

- **Illegal aliens and unauthorized aliens.** The Budget Bill adds a provision prohibiting illegal or unauthorized aliens from being eligible for receiving benefits under Ohio's Workers' Compensation Law. To facilitate this, the Budget Bill requires a claimant to submit an attestation certifying that the subject of the claim is eligible as an "employee" under Ohio Workers' Compensation Law. The employer will not be held liable for any work-related injuries unless the claimant can establish, by clear and convincing evidence, that the employer had knowledge of the claimant's immigration status. In addition, the Budget Bill creates a rebuttable presumption that the employer hired the individual in accordance with relevant immigration rules. However, the Budget Bill does not eliminate the possibility of liability for an employer intentional tort.
- **Presumption of cancer incurred while performing official duties.** Previously, the 131<sup>st</sup> General Assembly passed Senate Bill 27, which added a presumption that firefighters with six years of hazardous duty who contracted cancer are presumed eligible for workers' compensation benefits if they were exposed to a list of recognized carcinogens. In response to this presumption, the Budget Bill permits an employer to introduce evidence that shows, by a preponderance of competent, scientific evidence, exposure to the type of carcinogen alleged did not or could not have caused the cancer being alleged. In addition, the Budget Bill modifies a current law that provides that the presumption does not apply if it has been more than 15 years (rather than more than 20 years as under current law) since the firefighter was last assigned to hazardous duty as a firefighter.

- **Statute of limitations for injury or death claims.** Under current law, a claimant has two years to file a workers' compensation claim. The Budget Bill decreases the amount of time a person has to initiate a workers' compensation claim from two years to one year after an employee sustains an injury or dies.
- **Drug testing.** Ohio's Workers' Compensation Law currently provides for a rebuttable presumption that injuries do not occur as a result of employment if the claimant tests positive for certain substances. The Budget Bill revises the types and amounts of controlled substances to which the rebuttable presumption applies. Specifically, the Budget Bill adds the controlled substances listed under the federal Department of Transportation's regulation, 49 CFR § 40.87.
- **Payments to incarcerated dependents.** The Budget Bill proposes that an employee's dependents be barred from collecting benefits if they are incarcerated as a result of a conviction of any state or federal criminal law.
- **Temporary total disability.** The Bureau of Workers' Compensation ("BWC") requires that claimants receiving temporary total disability ("TTD") benefits undergo mandatory examinations under certain circumstances. The Budget Bill authorizes the BWC, for good cause, to waive the requirement. The employer, however, may object to the waiver, and the BWC must continue with the examination. In addition, the Budget Bill requires that a claimant receive 33 1/3% of their full weekly wages until the wage amounts can be properly determined. After such time, any over/under payments will be assessed.
- **Permanent partial disability.** To alleviate a backlog of permanent partial disability applications, the Budget Bill would permit the BWC to dismiss a claimant's application for a PPD award if the individual fails to attend two scheduled examinations. The employee may refile the application after the dismissal.
- **Appealing an Industrial Commission order.** The Budget Bill extends the time to file an appeal of an Industrial Commission order from 60 days to 150 days if a party provides notice of intent to settle a claim and the opposing party does not object. In addition, the Budget Bill increases the amount of attorney fees a claimant can potentially recover from \$4,200 to \$5,000.
- **Handicap Reimbursement Program.** The Budget Bill would allow an employer to participate in the Handicap Reimbursement Program after settling a claim, which is currently prohibited.
- **Secondary payers.** The Budget Bill would allow the BWC to reimburse the Centers of Medicare and Medicaid Services, the Ohio Department of Medicaid, or

another provider with a right of recovery, up to \$500 from the Surplus Fund Account. Prior to reimbursing, the BWC must make a reasonable determination that the payment is for reimbursement of benefits for an injury or occupational disease that is compensable, or is likely to be compensable, under Ohio Workers' Compensation Law.

- **Group rating plans.** Under the proposed Budget Bill, the BWC would be required to provide an explanation for any changes in the premium rate for group-rated employers.
- **Professional employer organization lease termination.** The Budget Bill increases the amount of time a professional employer organization (PEO) must submit a lease termination notice from 14 days to 30 days. In addition, a self-insuring PEO would have 30 days instead of 14 days to submit to the BWC information needed to develop an experience modification factor for an employer subject to a PEO lease termination.
- **Occupational disease reports.** The Budget Bill eliminates the prohibition against a physician neglecting or refusing to make or transmit an occupational disease report to BWC and the penalty for violating the prohibition.
- **Actuarial reporting.** Briefly stated, the Budget Bill makes changes to actuarial reporting requirements. First, the Budget Bill updates the annual unpaid liabilities report to include an actuarial estimate of the unpaid liabilities instead of a valuation of those funds. Second, the Budget Bill modifies the BWC's five-year report to include an analysis of mortality experience used in estimating the future costs of survivor benefits and permanent disability benefits. This information must then be used to update employer experience rating and reserves.
- **Provider participation standards.** The Budget Bill mandates that the BWC review and update standards for maintaining adequate numbers of certified health care providers for services used by workers' compensation claimants.
- **Retrospective rulemaking and other actions.** The Budget Bill prevents a state agency from modifying or creating rules that have a "substantive" or "procedural" retrospective effect unless the General Assembly expressly authorizes such action.

**H.B. 268 To make changes to the Workers' Compensation Law with respect to self-insuring employers (see handout)**

**H.B. 269 To rename the Bureau of Workers' Compensation to Office of Worker Safety and Rehabilitation, as well as, revise all corresponding statutes that refer to the Bureau of**

**Workers' Compensation; to develop incentives for employers to participate in safety consultations and loss prevention programs; and, to require an injured worker who is receiving temporary total disability compensation to comply with a return to work plan (see handout)**

**Judicial Decisions**

***State ex rel. James v. Wal-Mart Stores, Inc., 2017-Ohio-1426***

In an unanimous opinion (excluding Chief Justice O'Connor, who did not participate in the decision), the Supreme Court found that the Industrial Commission did not abuse its discretion by denying Norman James Jr.'s application for temporary-total disability ("TTD") compensation because he was not working at the time of his alleged disability and had been terminated by his last employer for reasons unrelated to his workplace injury.

James sustained a work-related injury on November 30, 2004 while employed by Wal-Mart Stores, Inc. His workers' compensation claim was allowed for neck spasm and mechanical complication of internal orthopedic device. The claim was later amended to allow the additional condition of aggravation of preexisting cervical canal stenosis. James was cleared by his physician to return to work at Wal-Mart without restrictions and did so in September 2005. James later quit his job at Wal-Mart in April of 2007.

Following his departure from Wal-Mart, James was briefly employed by Petco and then Casper Transport, Inc. ("Casper"). James was employed by Casper until November 16, 2007, when he was fired for excessive absenteeism. After getting terminated by Casper, James remained unemployed.

Beginning in January 2009, James made several requests for TTD benefits. The Industrial Commission denied benefits for the period from November 17, 2007, and continuing, because there was insufficient medical evidence to support a finding of TTD. The Industrial Commission affirmed the Staff Hearing Officer's decision denying benefits for the period in question, on the basis that James voluntarily abandoned his subsequent position with Casper and was not employed when the disability recurred.

James challenged the Industrial Commission's ruling in the Tenth District Court of Appeals, alleging that the Industrial Commission had abused its discretion by determining that he voluntarily abandoned his position with Casper and was ineligible for TTD compensation.. James argued that *State ex rel. Estes Express Lines v. Indus. Comm.* ("Estes"), a case in which the claimant was laid off, should apply to the facts of his case, and, if applied, would entitle him to TTD benefits.

*Estes* involved a claimant who, several days after being laid off by his employer, underwent a medical procedure related to his workplace injury. The Tenth District Court of

Appeals determined that the claimant remained eligible for TTD following his departure from employment for two reasons: 1) his departure was initiated by his employer and was deemed to be involuntary; and 2) his workplace injury existed at the time of his layoff.

The Court of Appeals referred the matter to the Magistrate, who recommended that James' request for Writ of Mandamus be denied and the Industrial Commission's findings be fully upheld. In addition, the Magistrate specifically rejected James' argument that *Estes* should apply. After James filed objections to the Magistrate's report, the court determined in a split decision that the Industrial Commission did not abuse its discretion in finding that James had voluntarily abandoned his employment with Wal-Mart, but sustained James' objection to the Magistrate's conclusion that *Estes* did not apply. The Court of Appeals granted James' request for a writ of mandamus, and remanded the case, with instructions for the Industrial Commission to further address James' departure from employment with Casper. Wal-Mart and the Industrial Commission appealed, and James cross-appealed.

On appeal, the Supreme Court reiterated the principle that a claimant who voluntarily abandons employment but reenters the workforce will be eligible for TTD compensation if, due to the original workplace injury, the claimant becomes temporarily and totally disabled while working at a new job. The Court then compared the holding in *Estes* with the decision in another case, *State ex rel. Ecklerly v. Indus. Comm.* ("*Ecklerly*"), which the Industrial Commission had applied and relied upon in reaching its decision. While *Estes* involved a claimant who was laid off, *Ecklerly* involved a claimant who was fired for excessive absenteeism. The worker in *Ecklerly* was not entitled to TTD benefits because, as a result of his termination, he was no longer employed at the time of his alleged disability.

The Court agreed with the Industrial Commission that *Ecklerly*—and not *Estes*—was applicable to James' case. While a layoff is considered an involuntary departure, which does not bar eligibility for TTD compensation, an employee's termination for excessive absenteeism does serve to bar such eligibility. Because James was fired from his position at Casper, for reasons unrelated to his workplace injury, he was no longer eligible for TTD benefits as of November 16, 2007, the day his employment was terminated. His eligibility could only be resurrected by reentering the workforce, which James never did. As a result, he was not entitled to TTD benefits because he had been terminated by his last employer and was not employed at the time.

***Clendenin v. Girl Scouts of Western Ohio, 2017-Ohio-2830***

In 2008, Audrey Clendenin suffered an injury while working for the Girls Scouts of Western Ohio. Her claim was eventually allowed for multiple injuries, including rotator-cuff tear; biceps-tendon tear; right shoulder tendonitis; acromioclavicular (AC) joint arthritis; right shoulder labral tear; and, substantial aggravation of preexisting condition dermatomyositis.

Approximately five years later, in 2013, the BWC moved to terminate Clendenin's compensation and benefits for the dermatomyositis on the basis that the condition had returned to

Workers' Compensation Counsel Report  
Page 7

pre-injury status. The Industrial Commission agreed with the BWC and relied on an expert medical report submitted by the BWC.

Clendenin appealed the Industrial Commission's final order to the Hamilton County Common Pleas Court ("Hamilton County Court"), arguing the condition had not returned to its pre-injury condition and benefits should continue. In response, the BWC argued for dismissal because the issue involved "extent of disability" and not an issue of "right to participate." To review, a party may only appeal issues of participation into the common pleas courts. This generally includes initial allowances and additional conditions. Issues surrounding "extent of disability" like temporary total compensation must be filed as mandamus actions in the court of appeals.

After reviewing the arguments from both sides, the Hamilton County Court agreed with the BWC and dismissed the appeal. Clendenin appealed to the First District Court of Appeals, which reversed the lower court's opinion. The First District concluded that when the BWC decides the condition is no longer impacted by the workplace injury, then the BWC is terminating a workers' right to participate for that condition. If so, then the appropriate place to appeal is in a common pleas court.

On appeal, the Ohio Supreme Court held the Industrial Commission's decision that a pre-existing condition substantially aggravated by an injury at work which has returned to the status it would have had if the workplace injury had not occurred involves extent of disability, not right to participate, and must be challenged by mandamus action rather than R.C. 4123.512 appeal.

To support its holding, the court explained that, on one hand, an extent-of-disability decision determines the amount of compensation and medical benefits that are to be paid for the allowed condition. On the other hand, right-to-participate issues determine whether a condition is allowed or disallowed. Since Clendin's condition was already allowed in her claim, it was not a right-to-participate issue, and the Hamilton County Court was not permitted to hear the matter. Accordingly, the Ohio Supreme Court reversed the appellate court and dismissed the case.

***State ex rel. Bonnlander v. Hamon, 2017-Ohio-4003***

On October 13, 1992, Timothy Bonnlander was injured in a motor vehicle accident that occurred in the course of, and arising out of, his employment. Since that time, Bonnlander worked various jobs in the construction industry as well as the postal service for nine years. On February 29, 2014, Bonnlander applied for permanent total disability based on a report from his treating psychologist. On behalf of the Industrial Commission, Dr. John J. Brannan, M.D. and Dr. Debjani Sinha, Ph.D. opined that the claimant could work a sedentary job, part-time, up to four hours a day. The Industrial Commission ultimately held that Bonnlander was not permanently and totally disabled due to his ability to work part-time employment.

Bonnlander appealed the Industrial Commission's order to the Tenth District Court of Appeals. A Magistrate first reviewed the Industrial Commission's order and held that the reports

Workers' Compensation Counsel Report

Page 8

completed by Dr. Brannan and Dr. Debjani met the standard for part-time work as set forth in prior case law, which prohibits a claimant from receiving permanent total disability benefits. The Tenth District Court of Appeals then adopted the Magistrate's opinion, to which Bonnlander filed an appeal to the Ohio Supreme Court.

The Supreme Court held whether a claimant can perform sustained remunerative employment is determined on a case-by-case basis, and there is no set hourly amount a claimant must be capable of working to determine that they are capable of sustained remunerative employment. The question for the Industrial Commission to answer is whether the claimant can perform "sustained remunerative employment." To that point, the Supreme Court further held that the reports of Dr. Brannan and Dr. Debjani provide some evidence for the Industrial Commission to support its opinion that permanent total disability benefits should be denied. Thus, the Supreme Court affirmed the Tenth District Court of Appeals' decision.

## Safety & Workers' Compensation

### Senate Raids WC Funds

June 23, 2017

To help fill a hole in the state operating budget, the Senate would raid the budgets of the Bureau of Workers' Compensation and the Industrial Commission, budgets paid for by employer premiums and assessments, not taxes.

"This language sets an extremely dangerous precedent of allowing the state to "raid" the budgets of these exclusively employer-funded agencies. Unlike the main operating budget, appropriations for the BWC and IC operations are funded entirely by employer premiums and assessments. This amendment is asking Ohio's employers to subsidize all state operations in the form of their BWC premium payments," wrote the OMA, Ohio Chamber of Commerce, National Federation of Independent Businesses and Council of Retail Merchants in a letter to legislative leaders, asking that the raid be stopped.

"We are very concerned this language gives this and future administrations the go-ahead to siphon funds when budget shortfalls occur. There could also be a legal issue with directing funds to the GRF (general revenue fund) that are constitutionally set for the treatment of injured workers and promotion of safer workplaces," said the business groups. 6/22/2017

### Senate Panel Sends BWC Budget to Senate Floor

June 23, 2017

During a busy week at the Ohio Senate, the Insurance Committee moved House Bill 27, the Bureau of Workers' Compensation (BWC) budget bill. The committee accepted a substitute version of the bill that made several changes to the House passed version.

Among the more headline grabbing issues, the Senate removed a provision that would have prevented illegal aliens from receiving workers' compensation benefits.

A second high profile provision deals with the time an injured worker has to report an injury; the House passed reduction from two years to one year was retained by the Senate. This change is heavily supported by the OMA and business groups.

The Senate plans to vote the bill out of the chamber next week, leaving precious little time for a possible conference committee. As a budget bill, the bill must be signed by the governor by the end of June. 6/22/2017

### BWC Issues RFPs for Safety, Health And Wellness Programs

June 23, 2017

The Ohio Bureau of Workers' Compensation (BWC) is seeking suppliers to support new health and safety initiatives expected to launch in early 2018.

Last week, BWC issued two requests for proposals, one that seeks a supplier to manage workplace health and wellness programs, and the other for a supplier to create and lead a campaign that educates the public about the importance of health and safety at work and in the home.

Both efforts are part of BWC's Third Billion Back rebate, which was announced earlier this year.

BWC plans to spend up to \$6 million annually on a health and wellness program that targets Ohioans working for employers with 50 or fewer employees in specific high-risk industries, in addition to a segment of injured workers with certain types of injuries.

BWC also plans to launch a \$2 million statewide safety awareness and educational campaign to prevent injuries associated with slips, trips and falls, overexertions and motor vehicle accidents, which account for more than 60 percent of the agency's injury claims.

The Third Billion Back rebate plan also includes \$15 million for each of the next two years for Safety Intervention Grants. 6/16/2017

### Ohio Workers' Compensation: When Are Idiopathic Injuries Compensable?

June 23, 2017

OMA Connections Partner, Dinsmore, posts this: "One of the more complicated categories of workers' compensation claims in Ohio involves "idiopathic" injuries. An idiopathic injury is generally described as one which arose from circumstances peculiar to an individual employee, rather than one caused by a risk related to the employment. A common example of such an injury involves an employee who experiences an epileptic or diabetic seizure while at work. Since the seizure is the result of a personal medical condition particular to the individual employee, the injuries caused by the seizure itself would not be compensable."

"Even when the cause of an injury is idiopathic, however, an injury can nevertheless be compensable if the employment significantly contributes to the injury

by placing the employee in a position which increases the dangerous effects of the idiopathic incident. This fact makes the determination of such claims very fact-specific. For example, if an employee falls as the result of a non-work related seizure, the claim could be compensable if the employee strikes a machine while falling but would not be compensable if the employee simply falls to the ground, even while working on a hard surface such as concrete."

Dinsmore provides this advice: "Because the determination of such claims can be so fact-specific, employers should carefully investigate any injury involving an unexplained fall or appearing to have been caused by a medical condition personal to the employee." [Read more](#). 6/20/2017

#### **OMA Safety & Workers' Comp Committee to Feature Lawmaker with a Plan**

June 16, 2017

The OMA Safety & Workers' Compensation committee will meet on Tuesday, June 27. You can attend in-person or via phone.

The agenda features Rep. [\*\*Mike Henne\*\*](#) (R-Clayton) who will discuss his recently introduced legislation, HB 268 and HB 269, which would make major changes to Ohio's workers' compensation system.

Also, BWC staff will present the agency's Health Behavior Assessment Investment initiative. There will be updates on BWC and Industrial Commission budget impacts to manufacturers; legal, regulatory and BWC program updates; and OSHA & safety updates.

All members are welcome. [\*\*Register at My OMA\*\*](#). 6/15/2017

#### **Hot? There's an App for That.**

June 16, 2017

The National Institute for Occupational Safety and Health and OSHA have collaborated to update OSHA's original Heat Safety Tool. The updated app, available for both Android and iPhone, provides a clearer user interface, while still providing the same information to help keep workers safe when working in hot weather.

Extreme heat causes more deaths than any other weather-related hazard; each year more than 65,000 people seek medical treatment for extreme heat exposure.

Employers should encourage workers exposed to hot and humid conditions to use the app to check the heat index and relevant protective measures. The app displays the heat index in the user's location and

shows the current risk level. The app also forecasts the hourly heat index throughout the entire workday, giving employers information they can use to adjust the work environment as needed to protect workers.

To download the updated app and get more information on OSHA's efforts to help protect workers from the heat, visit its [\*\*heat campaign webpage\*\*](#). 6/1/2017

#### **BWC and IC Defend Budgets in Senate**

June 2, 2017

This week the Industrial Commission (IC) and Bureau of Workers' Compensation (BWC) presented their budgets to the Ohio Senate Insurance and Financial Institutions Committee.

BWC budget sponsor Rep. [\*\*Tom Brinkman\*\*](#) (R-Cincinnati) outlined [\*\*ten substantive changes\*\*](#) the House made to the budget, including changing the statute of limitations for claims from two years to one.

BWC CEO/Administrator [\*\*Sarah Morrison\*\*](#) described the [\*\*operations of the agency\*\*](#) and its financial performance.

Industrial Commission Chairman [\*\*Tom Bainbridge\*\*](#) presented [\*\*the IC's budget\*\*](#).

The agencies have separate budgeting processes from the state operating budget which funds the majority of state agencies. All budgets must be signed by the governor by the end of June. 6/1/2017

#### **Supreme Court Upholds Pre-Existing Condition Compensation Statute**

May 26, 2017

OMA Connections Partner, Dinsmore, updates us on a series of recent workers' compensation legal actions that ultimately leave intact the Ohio workers' compensation statute that limits compensation for pre-existing conditions.

Under current statute, an employee must prove a pre-existing condition was substantially aggravated to obtain workers' compensation benefits for that condition. Further, once the condition has returned to a level that would have existed without the aggravating injury, no further compensation or benefits are payable for the pre-existing condition.

Last week, the Supreme Court of Ohio issued its decision in *Clendenin v. Girl Scouts of Western Ohio*, a case that tested this statute. The court ruled that the Industrial Commission had not denied the claimant participation in the system but had appropriately limited the amount of benefits the

claimant could obtain for the pre-existing condition once the condition had returned to pre-injury status.

Per Dinsmore: "... Ohio employers should carefully review any claim allowed for substantial aggravation of a pre-existing condition to determine whether a motion should be filed requesting a finding that the condition has returned to pre-injury status."

Read [more from Dinsmore here](#). 5/22/2017

#### **PTSD Bill Would Cost \$98 M Annually**

**May 26, 2017**

This week Rep. **Tom Patton** (R-Strongsville) gave [sponsor testimony](#) on **House Bill 161**, a bill that would provide workers' compensation benefits for first responders with post-traumatic stress disorder (PTSD) arising from employment, even without an accompanying physical injury or occupational illness. Benefits could be provided to qualifying claimants for up to one year.

The bill creates a fundamental shift from current workers' compensation law which requires a physical injury before allowing any mental health claims. A similar measure backed by then Senator Patton died in the 132nd General Assembly.

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

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

OMA and its business allies have long opposed opening the workers' compensation system to cover claims with no accompanying physical injury or occupational illness. More testimony is expected prior to summer recess. 5/25/2017

#### **Register for BWC Employer Webinars**

**May 26, 2017**

The Bureau of Workers' Compensation (BWC) has planned a series of webinars on topics of interest to employers, including BWC program participation, true-up, future dating payments, the benefits of light duty, the upcoming distribution of rebates, and much more.

While you can opt to view these 20-25 minute webinars from your facility, you may also attend in

person at any one of **BWC's local service offices** (central Ohio will meet at **OCOSH**). You will have the ability to ask questions on the webinar, but by attending in person, you will also have the opportunity to meet personally with BWC representatives.

Upcoming webinars are scheduled for:

- Tuesday, June 13 at 1:30 p.m. ([register here](#))
  - Thursday, June 29 at 11:30 a.m. ([register here](#))
  - Tuesday, July 11 at 1:30 p.m.
  - Thursday, July 27 at 11:30 a.m.
- Registration is not yet open for the July dates, but we'll keep you up to date here in *Leadership Briefing*. 5/19/2017

#### **House Votes to Reduce Time to File WC Claim**

**May 19, 2017**

The House of Representatives the week passed **HB 27, the workers' compensation budget**, which funds the Bureau of Workers' Compensation.

The bill contained one especially notable amendment for Ohio employers: lowering the time within which a claim must be filed from two years to one year from the date of injury. This would bring Ohio more in line with other states and has been a legislative aim of the OMA for years. 5/18/2017

#### **OSHA Intends to Extend Deadline for Electronic Recordkeeping Rule**

**May 19, 2017**

From OMA Connections Partner, **Dinsmore**: "In a fairly anticipated move, OSHA has announced it intends to delay the July 1, 2017 deadline that would have begun phasing in OSHA's electronic recordkeeping and reporting rule.

"OSHA's [website states](#), "OSHA is not accepting electronic submissions of injury and illness logs at this time, and intends to propose extending the July 1, 2017 date by which certain employers are required to submit the information from their completed 2016 Form 300A electronically."

"OSHA hinted at this delay over the past few months by moving for stays in the cases challenging the rule, ... , and by failing to make available a means for companies to submit the data." 5/18/2017

## **BWC Plans Employer Webinars**

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## **OMA Member Earns OHSA SHARP Designation**

**May 19, 2017**

Congratulations to CMI Industry Americas, Salem, Ohio! CMI has become one of just 26 Ohio worksites recognized as a model of workplace safety by the Occupational Safety and Health Administration (OSHA).

The company recently attained certification through OSHA's Safety and Health Achievement Recognition Program (SHARP) that recognizes small employers operating exemplary safety and health management systems.

CMI designs, installs, upgrades and services equipment for the steel-making industry. The company worked closely with Bureau of Workers' Compensation (BWC) safety experts for approximately four years to earn its SHARP recognition by eliminating safety hazards and making improvements to safety and health programs.

There is an abundance of excellent safety services available from the BWC's Division of Safety & Hygiene available at no charge to Ohio's employers. [Learn more here](#). 5/15/2017

## **BWC Budget Will Wait Another Week; IC Budget Clears House**

**May 12, 2017**

This week the House Insurance Committee accepted a new substitute version of **House Bill 27**, the Bureau of Workers' Compensation (BWC) budget bill, along party lines. A vote on the bill has been delayed for at least for another week. Democrats objected to some of the new provisions including one heavily supported by the OMA which would reduce the time an injured worker has to file a claim from two years to one.

This **document outlines** the entire list of changes included in the sub bill.

While the Insurance Committee ran into a few roadblocks with House Bill 27, the Industrial Commission budget bill (**House Bill 28**) breezed through a House floor vote and now heads to the Senate for its approval. The bill is expected to move quickly through the Senate.

Both bills must be passed and signed by the governor by the end of June. 5/11/2017

## **How Will You Invest Your Safety Grant?**

**May 12, 2017**

The Ohio Bureau of Workers' Compensation (BWC) just released a list of the 26 Ohio employers that will share more than \$474,000 in grants to purchase equipment designed to substantially reduce or eliminate workplace injuries and illnesses.

Here is a **listing of recipients by county**, including descriptions of planned equipment purchases.

The Safety Intervention Grant program provides employers with a 3-to-1 matching amount up to 40,000. Quarterly data reports and follow-up case studies help BWC determine the effectiveness of employers' safety interventions and establish best practices for accident and injury prevention.

Learn more about the **Safety Intervention Grant Program** and view stories about previous grant recipients on **BWC's YouTube channel**. 5/8/2017

## **BWC Board Nominating Committee Selects Candidates for Four Open Seats**

**May 12, 2017**

The Bureau of Workers' Compensation Board of Directors Nominating Committee met this week to develop **slates of candidates for four seats** on the bureau board of directors for submission to the governor.

One of the seats is the position that represents employers with more than 100 employees. This seat is currently held by OMA director Dave Johnson of Summitville Tile. Dave is one of the four candidates on the list submitted by the committee.

This committee is a statutory body charged with selecting candidates for the governor's consideration. The governor must select a candidate from each slate, or ask the committee for more recommendations. The OMA has a seat on the committee. 5/11/2017

**Lt. Governor Taylor, BWC Announce \$44 Million Investment in Workplace Safety & Wellness**  
**May 5, 2017**

Lt. Governor Mary Taylor and Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison last week announced a \$44 million investment in workplace safety, health and wellness.

The safety initiative is part of the \$1 billion rebate plan proposed by Gov. John Kasich in March and approved last week by BWC's board of directors.

The new initiative calls for \$44 million over two years to improve wellness and safety for workers across Ohio. This includes a new wellness program, funding for specific programs to help firefighters and those who work with children and adults with disabilities, and an education campaign to address common injuries at work and in the home.

The initiative is expected to launch in January and includes:

- \$6 million annually for a new health and wellness program for Ohioans working for small employers (50 or fewer employees) in specific high-risk industries, as well as injured workers with certain types of injuries. Services include smoking cessation programs, health coaching and chronic disease management.
- An extension of the current annual funding level of \$15 million for Safety Intervention Grants, setting aside \$4 million a year for two high-risk occupations: firefighters and employers that serve disabled children and adults.

- A \$2 million statewide safety awareness and education campaign for slips, trips and falls, overexertion and motor vehicle accidents, which are responsible for more than 60 percent of workplace injuries.
- A fact sheet is available here. 4/29/2017

**BWC Board Approves Third Billion Back**  
**May 5, 2017**

At its meeting last week, the BWC board of directors gave the green light to move forward with the Third Billion Back rebate plan the agency announced in March.

BWC will prepare to send more than \$1 billion in rebates to more than 200,000 private and public employers. Eligible employers will begin receiving checks in July totaling 66 percent of premiums for the policy year that ended June 30, 2016.

We'll keep you posted on details as we learn them. 4/29/2017

**What's Going on with the OSHA Electronic Reporting Rule?**  
**May 5, 2017**

OMA Connections Partner, Dinsmore, reminds and updates us about this new OSHA recordingkeeping rule: "On May 11, 2016, OSHA finalized the rule to "Improve Tracking of Workplace of Injuries and Illnesses." The final rule amended two provisions of OSHA's recordkeeping standards. As was expected, the rule requires many employers to electronically submit certain injury and illness records to OSHA. More unexpectedly, the rule contains certain anti-retaliation provisions that have been the subject of ongoing litigation.

"The first phase-in deadline requires all covered employers to electronically submit the 300A Summary by July 1, 2017. According to OSHA's website, OSHA "will provide a secure website" for electronic reporting. Despite the looming deadline, OSHA has not yet rolled out the website for these electronic submissions, nor has OSHA issued any formal statement regarding when employers should expect the secure website to be available."

And Dinsmore advises: "Although the future of the electronic reporting rule remains uncertain, covered employers should be prepared to submit 300A information by July 1, 2017 should OSHA move forward with the initial deadline and make the reporting website available."

Read [more from Dinsmore about this](#). 5/2/2017

### **BWC Offers New Video about Claim Process**

April 28, 2017



The Bureau of Workers' Compensation (BWC) created a new video, *What to expect in the next 30 days*, to familiarize workers and employers with the claim process and to alleviate uncertainty about what to anticipate in the weeks following an injury.

View the 2 1/2 minute [video on BWC's YouTube page](#) and share it with your coworkers and employees. 4/19/2017

### **BWC Drug-Free Safety Program Enrollment is May 31**

April 28, 2017

Have you thought about implementing the [Bureau of Workers' Compensation \(BWC\) Drug-Free Safety Program](#), but can't spare the time and effort to work on it?

With the right help, now could be the right time! Here's a [short video that will help you](#) decide.

When you're ready, OMA's drug-free workplace partner, [Working Partners®](#), a consulting and training firm specializing in drug-free workplace products & services, can help you with every aspect of your program, including qualifying for a premium discount.

*Working Partners®* will help you create – and provide ongoing support – for your:

- Drug-free workplace policy
- Drug-free employee education
- Drug-free supervisor training
- Drug testing
- Employee assistance resources

The BWC enrollment deadline is May 31.

Contact [Katie Lemke](#) or [Monica Broadnax](#) of *Working Partners®* at (614) 337-8200 for more information. Mention that you are an

OMA member; members receive discounted services. 4/19/2017

### **Best Kept (Safety) Secret in Ohio?**

April 28, 2017

Ranzy Brown, Safety and Health Consultant, OSHA On-Site Consultation Program at the Bureau of Workers' Compensation (BWC) [recently blogged](#): "Last month, I had the pleasure of teaching a class called The Best Kept Secret in Ohio at the Ohio Safety Congress & Expo. My presentation let the audience in on this secret: BWC's [OSHA On-Site Consultation Program](#). Most of the almost 60 people in the room had never heard of us or what we do."

"Basically, all employers covered by OSHA regulations can request an On-Site consultation. The program gives priority to privately-owned smaller businesses, and those in high-hazard industries. Typically, a grant from OSHA funds 90 percent of the program while BWC covers the other 10 percent ... This means there is never any charge to use our services."

"... Our consultants point out (these) hazards with the understanding that the employer will abate the serious ones. Our services are confidential from OSHA, however, if an employer refuses to abate serious hazards, we can refer them for possible enforcement action. While an employer is actively working with OSHA On-Site Consultation, they have "visit in progress" status, which means OSHA cannot open a programmed enforcement inspection." 4/24/2017

### **Get Ready for Safe + Sound Week June 12-18**

April 28, 2017

To help employers participate and plan events for Safe + Sound week, June 12-18, OSHA has updated its webpage with sample activities, social media resources, and tools.

Employers are encouraged to host events and activities that showcase the core elements of an effective safety and health program – management leadership, worker participation, and finding and fixing workplace hazards. Visit the [Safe + Sound Week page for more information](#). 4/19/2017

### **BWC Free Statewide Seminars Start Next Week**

April 21, 2017

Upcoming free seminars around the state will cover the benefits of participating in the Bureau of Workers' Compensation (BWC) Destination: Excellence program. BWC staff will cover eligibility requirements, implementation, and financial incentives for enrollment.

Come learn about the valuable services and resources BWC offers to help you make your workplace safer and help you reduce your workers' compensation costs.

The seminar focuses primarily on the safety and return-to-work options of Destination: Excellence:

- Drug-Free Safety Program
- Industry-Specific Safety Program
- Safety councils
- Transitional Work Bonus Program
- Vocational rehabilitation

Learn [more and register here](#). 4/17/2017

#### **BWC Pharmacy Director Receives Governor's Employee Excellence Award**

April 21, 2017



Ohio Bureau of Workers' Compensation (BWC) Pharmacy Director Johnnie Hanna [received the Governor's Award for Employee Excellence](#) last week for building a model pharmacy program at BWC and for his efforts to help injured workers avoid opioid addiction.

In introducing Hanna at a private Statehouse ceremony, BWC Administrator/CEO Sarah Morrison credited the veteran pharmacist and his team for initiatives that have lowered BWC drug costs by \$46 million over the last seven years and reduced opioid doses by 18.9 million to nearly half their 2011 levels.

Hanna joined BWC in May 2009 after a career working in the nonprofit health care sector and a four-year term on the State Board of Pharmacy in the 1990s. He is credited with building BWC's modern pharmacy department and crafting measures designed to mitigate the potential for opioid addiction or dependence.

The Governor's Award for Employee Excellence is awarded to individuals and groups of state employees for work-related achievements that have made a significant impact on the general public or in the life, safety or property of others, as well as enhanced the state's image, improved government functions and saved money or increased revenues. 4/17/2017

#### **There's Never a Bad Time to Review LOTO**

April 14, 2017

BWC's Cari Gray, Industrial Safety Consultant Specialist, [recently blogged on the importance](#) of an effective lockout/tagout (LOTO) program: "The importance of locking out can't be shouted loud enough. There are too many examples of workers not using lockout with horrific consequences. The 18-year-old caught in a large shredder. A 50-something accidentally pulled into a washer. The maintenance worker electrocuted while changing a live outlet at a nursing home. Unfortunately, I could go on for hours. Accidents can strike any industry, any age and any employee skill level. If a company's management doesn't take lockout/tagout seriously, neither will workers."

"Don't feel helpless if you don't have a program or you're worried yours isn't up to par. Our [Division of Safety & Hygiene](#) offers classes, videos and expert safety consultants to help you develop or evaluate your program. Just contact them!"

In addition, OMA's safety webinar on May 4 is Reviewing the Lockout/Tagout OSHA Standard. [Register here](#). 4/13/2017

#### **PTSD Workers' Comp. Bill Resurfaces in Both House and Senate**

March 31, 2017

In the past weeks the House and Senate have both introduced new standalone workers' compensation bills ([HB 161](#) and [SB 118](#)) that would provide workers' compensation benefits for first responders who are diagnosed with post traumatic stress disorder (PTSD).

Additionally, the House Insurance Committee is debating including an amendment to [House Bill 27](#), the Bureau of Workers' Compensation budget bill, that would do the same. Similar legislation died in the 131<sup>st</sup> General Assembly.

Under the proposals, first responders who are diagnosed with PTSD under certain eligibility criteria, would qualify for indemnity compensation and medical benefits under Ohio's workers' compensation law, regardless of whether there was an accompanying physical injury.

The standalone bills would limit workers' compensation benefits for PTSD for first responders to one year.

Eliminating the physical injury requirement for benefits would be a major shift in workers' compensation policy. OMA and its business allies continue to oppose eliminating the physical injury requirement and submitted this letter to House Insurance Committee members, saying: "Selecting one mental condition to the exclusion of all others—much like selecting only a few occupations—will undoubtedly provoke fairness arguments and equal protection challenges in future legislative or judicial actions." 3/30/2017

**OMA Works to Improve Workers' Compensation "Illegal Alien" Amendment**  
**March 31, 2017**

The House Insurance Committee is considering an amendment to the Bureau of Workers' Compensation budget bill that would prevent illegal aliens from receiving workers' compensation benefits if the injured employees can prove their employer knew of their illegal status when hiring them.

Last week the OMA issued a letter to Rep. Tom Brinkman (R-Mt. Lookout), Chairman of the House Insurance Committee, urging caution as the amendment creates a new cause of action against employers. OMA wrote: "It would vacate the no-fault aspect of the system for employers and expose them to litigation risk."

In response to employer concerns, House leadership worked with OMA to make changes to the amendment that would offer more protections for employers. 3/30/2017

**OSHA "Volks Rule" Retraction Clears Senate – Headed for Trump's Signature**  
**March 24, 2017**

By a vote of 50-48, the U.S. Senate this week disapproved the Occupational Safety and Health Administration's (OSHA) "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness" (Volks Rule).

Under the OSH Act, employers are required to record and maintain a log of workplace injuries and illnesses. The law explicitly states employers can be cited for record-keeping violations within six months of the injury or illness occurring.

Two federal courts have rejected OSHA's attempt to extend this statute of limitations to five years after a report. Yet, OSHA had issued this final regulation

anyway extending the threat of penalty up to five years.

A resolution of disapproval passed the House of Representatives on March 1, 2017 and this week the Senate adopted the resolution under the Congressional Review Act, an indication that Congress believed OSHA had exceeded its authority in issuing the final rule.

The resolution will now head to President Trump to sign; he has indicated he will sign the resolution. 3/23/2017

**OSHA Email Reminders Offered**  
**March 24, 2017**

OSHA has established an email notification system to provide recordkeeping reminders as well as updates on a new requirement that employers electronically submit their injury and illness logs to the agency.

This year's deadline is July 1, 2017. OSHA is not accepting electronic submissions at this time, but will notify interested parties when and how to provide electronic submissions. To receive these notifications, sign up online. 3/17/2017

**BWC Proposes its Third \$1 Billion Back**  
**March 17, 2017**

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison this week proposed a \$1 billion rebate for Ohio's private and public employers, the third such rebate since 2013.

If approved by the BWC board of directors, more than 200,000 eligible private and public employers would receive a rebate equal to 66% of premiums for the 2015 policy year that ended June 30, 2016 (calendar year 2015 for public employers). The proposal was presented to the board at its meeting this week. If approved at the board's April meeting, BWC could begin issuing checks in early July.

OMA president Eric Burkland released a statement, saying: "Under the leadership of Governor Kasich and Administrator Morrison, the BWC is improving on many fronts and today's announcement is just another example of how the agency continues to be responsive to the economic needs of employers while improving services to injured workers. Money going to back to the employer only happens because of prudent financial management and operational efficiencies. The announcement today is another example of the BWC working to make Ohio's workers' compensation system a competitive advantage for Ohio."

Here is a BWC [fact sheet regarding the rebate](#) proposal, and here is an [overview of the \\$6.3 billion](#) in workers' compensation savings since 2011. 3/14/2017

#### **BWC Board Holds Rates Steady for Upcoming Policy Year**

**March 17, 2017**

The Ohio Bureau of Workers' Compensation (BWC) board of directors voted this week to keep the overall average rate level for Ohio private employers steady for the policy year that begins July 1.

Average rate levels for private employers have been reduced by 28.2% since the end of 2010 and are now at their lowest level in 40 years.

The actual premium paid by individual private employers depends on a number of factors, including the expected future claims costs in their industry, their company's recent claims history, and their participation in various programs. 3/16/2017

#### **House Committee Works with New Version of BWC Budget**

**March 17, 2017**

This week the House Insurance Committee accepted a new version of House Bill 27, the budget bill for the Bureau of Workers' Compensation (BWC).

Among the [multiple changes in the bill](#) is an OMA supported measure that reduces from two years to one year the statute of limitation for a worker to report an injury.

The committee is set to hear additional testimony and possible amendments next week. The committee did report out the Industrial Commission budget bill. 3/16/2017

#### **Thank You for Stopping By! #OSC17**

March 10, 2017



Thank you OMA members for taking the time to stop by our booth at the Ohio Safety Congress & Expo this

week. We were thrilled to see so many of our friends! 3/8/2017

#### **Time Change Effects Your Safety!**

March 10, 2017



The loss of just one hour of sleep effects workplaces more than you may have considered.

- There is a 5.7-percent increase in workplace and occupational accidents and a 68-percent increase in the severity of those accidents on the Monday following DST change in March.
- There is a 17-percent increase in fatal traffic crashes on the Monday following DST change in March.
- There is a 5-percent increase in the heart attack rate in the first three weekdays following DST change in March.
- However, there's no significant increase in accidents or heart attacks during switch back to standard time in the fall. One-hour of additional sleep is a good thing.

Read [more from the BWC social media team](#) and stay safe next week! 3/9/2017

#### **BWC Safety Innovation Awards Announced**

March 10, 2017

The Ohio Bureau of Workers' Compensation (BWC) this week presented individual awards of up to \$6,000 to five Ohio employers who developed innovative solutions to reduce potential workplace injuries.

The BWC's annual Safety Innovation Awards were presented during the 2017 Ohio Safety Congress & Expo, BWC's annual three-day occupational safety, health and workers' compensation conference at the Greater Columbus Convention Center.

The awards for this year's competition include:

- 1st place (\$6,000 award): ICP Adhesives and Sealants, Norton

- 2nd place (\$4,000 award): C&K Industrial Services Inc., Cleveland
- 3rd place (\$3,000 award): Holloway, Henderson & Martin LLC, Pickerington
- Honorable Mention (\$1,500 award): Suburban Steel Supply Company, Gahanna
- Honorable Mention (\$1,500 award): Ames Arboreal Group, Columbus

Holloway, Henderson & Martin LLC was also selected to receive the People's Choice Award by OSC17 attendees and will receive an additional \$1,000.

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

Visit [BWC's YouTube Channel](#) to view videos highlighting each company's innovation, and read more on [BWC's website](#). 3/9/2017

#### [Industrial Commission Chairman Presents Budget](#)

March 3, 2017

This week, Tim Bainbridge, Chairman of the Industrial Commission of Ohio (IC), [defended the agency's 2018-2019 budget request](#) before the House Insurance Committee. The IC adjudicates contested workers' compensation claims.

The budget request is \$103.6MM, a 1.3 % decrease from Fiscal Years 2016-2017.

Bainbridge testified: "As a non-general revenue fund agency, funded by an Administrative Cost Fund (ACF) surcharge to the employers' workers' compensation coverage base rate, the Industrial Commission continues to pass along savings in our daily operations to our customers.

"As an example of our efficiency, the Ohio Industrial Commission District Hearing Officer and Staff Hearing Officer claims were heard on average, at 35 days, with 93% meeting the statutory 52 day time frame. The Ohio Industrial Commission adjudicated more than 127,000 claims in Fiscal Year 2016, of which only 69 were advanced through a writ of mandamus to the Tenth District Court of Appeals.

"In Calendar Year 2016, there were 18 appeals filed with the Supreme Court. The Supreme Court issued 8 decisions, 7 of which affirmed the Industrial

Commission, giving the Commission an 88 % affirmation rate.

"The Ohio Industrial Commission has reduced staff by 44% through attrition and technology upgrades from 643 positions in 1997 to 360 positions at the end of Calendar Year 2016, saving nearly \$46MM in cumulative payroll without sacrificing the quality of service to our customers." 3/2/2017

#### [Last Call for Ohio Safety Congress 2017](#)

March 3, 2017



The Ohio Safety Congress & Expo is a one-stop shop for your safety, human resource and workers' compensation training. Continuing education credit is available for many professional designations.

Ohio Lt. Gov. Mary Taylor will kick off OSC17 during the opening general session Wednesday, March 8 at 9:45 a.m.

[Registration is free](#). The event is March 8-10.

We'll be at booth #434. Enter our drawing for a nice prize and have a [Slim Jim](#) or two from Ohio manufacturer [Conagra Brands!](#) 2/28/2017

#### [Effective Date of Beryllium Rule Pushed Back](#)

March 3, 2017

OSHA is [proposing to delay](#) the effective date of the rule entitled [Occupational Exposure to Beryllium](#), from March 21 to May 20 to allow for further review and consideration.

The extension is in keeping with a Jan. 20 White House memorandum that directed the review of any new or pending regulations. However, per OSHA, it would not affect the compliance dates of the beryllium rule, which begin on March 12, 2018. 3/2/2017

## Sound Levels – There's an App for That

March 3, 2017

The National Institute for Occupational Safety and Health (NIOSH) has developed a new, free mobile application for iOS devices that measures sound levels in workplaces.

The NIOSH Sound Level Meter app displays real-time noise exposure data based on NIOSH and OSHA limits. Visit the [app webpage](#) for more information. 3/2/2017

## BWC Safety Councils Rebated almost \$10 Million Last Year

March 3, 2017

It pays to be an active member of your local safety council – literally.

Employers who are part of the Bureau of Workers' Compensation (BWC) [Safety Council Rebate Program](#) can earn up to a 4-percent annual rebate on their workers' compensation premium by fulfilling certain attendance and performance goals.

For the fiscal year ending June 30, 2016, almost 5,000 Ohio employers fulfilled the eligibility requirements necessary to earn that rebate and received a combined \$9.6 million dollars for their efforts.

Find the [safety council nearest you](#). More from [BWC here](#). 2/28/2017

## Employers Receive \$895,000 in Safety Grants

March 3, 2017

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison announced that 34 employers will share more than \$895,000 in grants to purchase equipment designed to substantially reduce or eliminate workplace injuries and illnesses.

The Safety Intervention Grants were approved in January. Here is a [listing of recipients](#) by county, including descriptions of planned equipment purchases.

The Safety Intervention Grant program provides employers with a 3-to-1 match up to a maximum of \$40,000. Quarterly data reports and follow-up case studies help BWC determine the effectiveness of employers' safety interventions and establish best practices for accident and injury prevention. Learn more about the [Safety Intervention Grant Program](#). View success stories about previous grant recipients on BWC's [YouTube channel](#). 2/28/2017

**Workers' Compensation Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on June 26, 2017

- HB27 WORKERS' COMPENSATION BUDGET** (BRINKMAN T) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of the Bureau's programs.
- Current Status:** 6/20/2017 - **SUBSTITUTE BILL ACCEPTED & REPORTED OUT**, Senate Insurance and Financial Institutions, (Third Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-27>
- HB28 INDUSTRIAL COMMISSION BUDGET** (BRINKMAN T) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of Commission programs.
- Current Status:** 6/15/2017 - **PASSED BY SENATE**; Vote 33-0
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-28>
- HB99 WORKERS COMPENSATION-PNEUMOCONIOSIS** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
- Current Status:** 6/21/2017 - House Insurance, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-99>
- HB133 DISASTER RELIEF ACT** (RYAN S) To create the Disaster Relief Act to exempt out-of-state disaster businesses and qualifying out-of-state employees from certain taxes and laws with respect to disaster work on critical infrastructure performed in this state during a declared disaster.
- Current Status:** 6/20/2017 - **REPORTED OUT**, House Public Utilities, (Third Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-133>
- HB161 WORKERS COMPENSATION-PTSD** (PATTON T) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law for up to one year and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.
- Current Status:** 5/24/2017 - House Insurance, (First Hearing)
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-161>
- HB268 WORKERS COMPENSATION-SELF-INSURERS** (HENNE M) To make changes to the Workers' Compensation Law with respect to self-insuring employers.
- Current Status:** 6/20/2017 - Referred to Committee House Insurance
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-268>

[summary?id=GA132-HB-268](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-268)

- HB269** **WORKERS COMPENSATION OVERHAUL** (HENNE M) To rename the entities who carry out workers' compensation functions in this state, to require the Administrator of Worker Safety and Rehabilitation to develop incentives for employers to participate in safety consultations and loss prevention programs, to require an employee who is receiving temporary total disability compensation to comply with a return to work plan, and to make changes with respect to compensation for permanent total disability and death benefits.  
*Current Status:* 6/20/2017 - Referred to Committee House Insurance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-269>
- SB118** **PTSD TREATMENT-FIRST RESPONDERS** (LAROSE F, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law for up to one year and to prohibit such a person from receiving a disability benefit from a state retirement system for post-traumatic stress disorder arising from employment without an accompanying physical injury during the time period the person receives compensation and benefits under the Workers' Compensation Law for the disorder.  
*Current Status:* 4/26/2017 - Referred to Committee Senate Insurance and Financial Institutions  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-118>
- SB140** **PUBLIC-PRIVATE PARTNERSHIP GRANTS** (SCHIAVONI J) To create the Public-Private Partnership Grant Program for fiscal years 2018 and 2019 to develop, enhance, and promote educational programs to address regional workforce needs; to create the Sector Partnership Grant Program for fiscal years 2018 and 2019 to identify and provide grants to industry partnerships; to support programs that improve access to workforce training opportunities for students; to support economic development and revitalization programs; and to make an appropriation.  
*Current Status:* 5/3/2017 - Referred to Committee Senate Finance  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-140>