

10:00 a.m. (EST)
1-866-362-9768
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Safety & Workers' Compensation Committee

Wednesday, October 12, 2016

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

Meetings begin at 10:00 a.m.

Wednesday, October 12, 2016

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





OMA Safety & Workers' Compensation Committee

October 12, 2016

AGENDA

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc.
BWC Update	Brian Jackson, OMA staff
OSHA Presentation	Dianne Grote Adams, Safex
Guest Panelists	Dee Mason, Working Partners Dr. Abe Al-Tarawneh, Ohio Bureau of Workers' Compensation Missy Craddock, Governor Kasich Administration
OMA Counsel's Report	Sue Wetzel, Bricker & Eckler LLP
OMA Public Policy Report	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 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:



Meet Dianne Grote Adams, MS, CIH, CSP, CPEA



Favorite Book: Voracious reader, don't have a favorite.

Cedar Point or Kings Island? Cedar Point

If someone made a movie of your life, who would you want to portray you? Meryl Streep

Day Job: Since 1992, Dianne has been the President of Safex. Prior to Safex, Dianne worked with Abbott/Ross Laboratories, ChemLawn Services Corporation and with the Ohio OSHA Consultation Program. She brings innovative ideas to improve our clients' health and safety programs.

Why She's Awesome: Dianne is a Board-Certified Industrial Hygienist, Board-Certified Safety Professional and Certified Professional Environmental Auditor in Health and Safety with more than 30 years of experience. Dianne received the Central Ohio Local Section of the AIHA "Outstanding Industrial Hygiene Award" in 1992 and the "Industrial Hygiene Award of Excellence" in 2003. In 2002, she was a finalist for the Ernst and Young "Entrepreneur of the Year" and in 2005, she was one of five "Change Makers" to premiere in the June Columbus Business First "Women in Business" supplement. In 2007, Dianne was the proud recipient of the Builder's Exchange "Meg DeWerth Industry Impact Safety Award." In 2010, Dianne received the Ohio Keys to Success Award sponsored by the Ohio Department of Development's Entrepreneurship and Small Business Division.

Alma Mater: Dianne received a B.A. in Life Science from Otterbein University and an M.S. in Environmental Health/Occupational Safety from the University of Cincinnati. Dianne was an adjunct professor at Columbus State Community College from 2008 to 2010.

Membership: Dianne is a member of the American Industrial Hygiene Association (AIHA), American Academy of Industrial Hygiene (AAIH) and the American Society of Safety Engineers (ASSE) and is on the advisory committee for both the Ohio University Industrial Hygiene Program and The Ohio State University Environmental Health Science Advisory Board. Prior to her current volunteer activities, Dianne has been involved with the AIHA Local Section Council, the AIHA PSTFII Task Force, the All-Ohio Safety Congress and the Central Ohio AIHA.

Dee Mason, Founder/ Chief Executive Officer

Dee Mason is founder and CEO of *Working Partners*□, a consulting and training firm with over 26 years' experience working with end-user employers (over 1700 per year) as well as systems to develop and maintain drug-free workplaces. They are relied upon for their ability to operationalize legally-sound drug-free workplace programs and practices.

Dee's large-scale projects include operationalizing the Ohio's Bureau of Workers' Compensation drug-free workplace premium discount program which offered the nation's deepest discounts for over 13 years and Nationwide Enterprise's two year, 1.5 million man-hour arena construction project where the drug-free operations is credited for keeping workers' compensation payouts under \$400,000.

The state of Ohio has now contracted with her and her team to implement the *Drug-Free Workforce Community Initiative* in up to 20 communities. This initiative has several objectives including the mining of solid data regarding Ohio employers' experience with substance abusing employees and, convening and facilitating stakeholders to develop strong local drug-free workforces by employing a variety of DFWP best practices.

MISSY CRADDOCK

Missy Craddock came to the Governor's office to work on implementation of medical marijuana in July 2016. She is on loan from the Department of Mental Health and Addiction Services, where she leads the Office of Public Affairs, which promotes the state's public presence with stakeholders, customers, media and the legislature.

Craddock's previous experience includes nearly ten years at the Ohio House of Representatives, including almost eight as policy advisor for the House Speaker on health and human services issues, including Medicaid. She also has experience in the developmental disabilities field as director of government relations for a trade association representing developmental disability providers. A native of Akron, Craddock earned a Bachelor of Arts in political science from the University of Akron with a certificate in Applied Politics from the Ray C. Bliss Institute. She received her master's degree in public administration from Ohio University in Athens.

Dr. Ibraheem "Abe" Al-Tarawneh

Dr. Tarawneh joined BWC as Superintendent of the Division of Safety & Hygiene in March 2009. Abe has over 17 years experience in research and consulting in the areas of human factors and ergonomics, occupational safety and health, industrial and management systems engineering, and transportation and traffic safety.

Before joining BWC, Abe led several large consulting projects in the Kingdom of Saudi Arabia for a Cincinnati-based engineering consulting firm, TEC Engineering, Inc. Between 2002 and 2006, Abe worked as an engineer/senior engineer at Exponent, Failure Analysis Associates, Inc. in Alexandria, Va. and Philadelphia, Pa. His work at Exponent included the investigation and analysis of industrial, construction, consumer product and vehicular accidents. He also worked on the application of U.S., European and international regulations and standards (i.e. OSHA, OHSAS, ISO, ANSI) for the design and evaluation of products; machinery; handling of chemicals and hazardous materials; and manufacturing and construction operations.

While working on his post-graduate studies, Abe worked as a graduate research/teaching assistant and as an instructor at the University of Nebraska-Lincoln (UNL). His work at UNL covered wide ranging aspects of research and consulting in the areas of industrial and civil engineering, including occupational safety and health, human factors and ergonomics, and transportation and traffic safety.

Abe holds a doctorate and a master's in industrial and management systems engineering; another master's in civil engineering from UNL; and a bachelor's degree in civil engineering from the University of Jordan.

Key OSHA Activities- October 2016

Dianne Grote Adams
daroteadams@safex.us

❖ What's New?

Keeping up with Recordkeeping!

In May, we reported that in an effort to promote an employee's right to report injuries and illnesses without fear of retaliation, that an employer must have a reasonable procedure for reporting work-related injuries that does not discourage employees from reporting.

This rule targets employer programs and policies, such as **post-accident drug testing, and safety incentive programs** which have the effect of discouraging workers from reporting injuries and, in turn leading to incomplete or inaccurate records of workplace hazards. Originally set to begin August 10th, 2016, this date has been pushed to **November 1, 2016**.

As such, this has raised many questions: Can we as the employer, still perform post-accident drug testing and encourage safety through incentives?

- **OSHA is NOT banning post-accident drug testing:**

The Final Rule only prohibits employers from using drug testing, or the threat of drug testing, as a form of retaliation against employees who report injuries or illnesses. If an employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the employer's motive would not be retaliatory and this rule would not prohibit such testing.

- **Incentives- Turn lagging indicators into leading indicators:**

Lagging indicators are the bottom-line numbers that evaluate the overall effectiveness of safety at your facility. The major drawback to only using lagging indicators of safety performance, is that they tell you how many people got hurt and how badly, but not how well your company is doing at preventing incidents and accidents.

Rather than providing financial incentives to reduce the number of reportable injuries or illnesses, OSHA recommends safety incentive programs based on leading indicators, such as:

- A program that incentivizes compliance with safety rules,
- Completion of voluntary additional safety training
- Participation in voluntary safety committees or meetings

Recordkeeping Reminders!

The final rule takes effect **Jan. 1, 2017**, and reporting requirements will be phased in over two years, as follows:

Establishments with 250 or more employees must begin submitting information from Form 300A by July 1, 2017, and must submit information from all forms (300A, 300, and 301) by July 1, 2018.

Establishments with 20-249 employees in certain high-risk industries (including manufacturing) must begin submitting information from Form 300A by July 1, 2017, and again by July 1, 2018.

Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

❖ **What's New?**

Penalty Adjustments

As of August 1, 2016, OSHA's maximum penalties, which were last adjusted for inflation in 1990, have increased by 78%. Going forward, OSHA will continue to adjust its penalties for inflation each year based on the Consumer Price Index.

Type of Violation	Current Maximum Penalty	New Maximum Penalty
Serious Other-Than-Serious Posting Requirements	\$7,000 per violation	\$12,471 per violation
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date
Willful or Repeated	\$70,000 per violation	\$124,709 per violation

❖ **What's New?**

Silica Standard Updates!

Since our last update, the Silica Rule became effective on June, 23 2016. The rule has reduced the permissible exposure limit (PEL) to **50 micrograms** per cubic meter and has reduced the action level to **25 micrograms** per cubic meter, averaged over an 8-hour shift. Industries now have one to five years to comply with most requirements, based on the following schedule:

Construction - June 23, 2017, one year after the effective date.

General Industry and Maritime - June 23, 2018, two years after the effective date.

Hydraulic Fracturing - June 23, 2018, two years after the effective date for all provisions except Engineering Controls, which have a compliance date of June 23, 2021.

The Importance of Root Cause Analysis During Incident Investigation

The Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) urge employers (owners and operators) to conduct a root cause analysis following an incident or near miss at a facility.¹ A root cause is a fundamental, underlying, system-related reason why an incident occurred that identifies one or more correctable system failures.² By conducting a root cause analysis and addressing root causes, an employer may be able to substantially or completely prevent the same or a similar incident from recurring.

OSHA Process Safety Management and EPA Risk Management Program Requirements

Employers covered by OSHA's Process Safety Management (PSM) standard are required to investigate incidents that resulted in, or could reasonably have resulted in, catastrophic releases of highly hazardous chemicals.³ Similarly, owners or operators of facilities regulated under EPA's Risk Management Program (RMP) regulations must conduct incident investigations.⁴

During an incident investigation, an employer must determine which factors contributed to the incident, and both OSHA and the EPA encourage employers to go beyond the minimum investigation required and conduct a root cause analysis. A root cause analysis allows an employer to discover the *underlying* or *systemic*, rather than the *generalized* or *immediate*, causes of an incident. Correcting only an immediate cause may eliminate a symptom of a problem, but not the problem itself.

How to Conduct a Root Cause Analysis

A successful root cause analysis identifies all root causes—there are often more than one.

Consider the following example: A worker slips on a puddle of oil on the plant floor and falls. A traditional investigation may find the cause to be "oil spilled on the floor" with the remedy limited to cleaning up the spill and instructing the worker to be more careful.⁵ A root cause analysis would reveal that the oil on the floor was merely a symptom of a more basic, or fundamental problem in the workplace.

An employer conducting a root cause analysis to determine whether there are systemic reasons for an incident should ask:

- Why was the oil on the floor in the first place?
- Were there changes in conditions, processes, or the environment?
- What is the source of the oil?
- What tasks were underway when the oil was spilled?
- Why did the oil remain on the floor?
- Why was it not cleaned up?
- How long had it been there?
- Was the spill reported?⁶

It is important to consider all possible "what," "why," and "how" questions to discover the root cause(s) of an incident.

In this case, a root cause analysis may have revealed that the root cause of the spill was a failure to have an effective mechanical integrity program—that includes inspection and repair—that would prevent or detect oil leaks. In contrast, an analysis that focused only on the immediate cause (failure to clean up the spill) would not have prevented future incidents because there was no system to prevent, identify, and correct leaks.

Properly framing and conducting a root cause investigation is important for a PSM or RMP-related incident. Take, for example, an incident involving an overfill and subsequent leak of hydrocarbons from a relief valve system that ignites and kills multiple workers. Prior to this fatal incident, there were multiple flammable releases from the relief valve system, but none ignited. The employer previously performed

incident investigations on the non-lethal incidents and determined that operator error was the cause of the overfills and subsequent leaks. However, a proper root cause investigation would have looked deeper into the incident, and determined that funding cuts—which resulted in a deficient mechanical integrity program and malfunctioning instrumentation—led to a dangerous situation that operators could not have prevented. Had these root causes been previously identified, the employer could have taken action to improve the mechanical integrity program and repair the instrumentation system, preventing the fatal incident.

Benefits of Root Cause Analysis for Employers

Conducting a thorough investigation that identifies root causes will help to prevent similar events from happening again. In this way, employers will reduce the risk of death and/or injury to workers or the community or environmental damage.

By using root cause analysis to prevent similar events, employers can avoid unnecessary costs resulting from business interruption, emergency response and clean-up, increased regulation, audits, inspections, and OSHA or EPA fines. Regulatory fines can become costly, but litigation costs can often substantially exceed OSHA and EPA fines. Employers may find that they are spending money to correct immediate causes of incidents that could have been prevented, or reduced in severity or frequency, by identifying and correcting the underlying system management failure.

Finally, when an employer focuses on prevention by using root cause analysis, public trust can be earned. Employers with an incident free record may be more likely to attract and retain high performing staff. A robust process safety program, which includes root cause analysis, can also result in more effective control of hazards, improved process reliability, increased revenues, decreased production costs, lower maintenance costs, and lower insurance premiums.

Root Cause Analysis Tools

Below is a list of tools that may be used by employers to conduct a root cause analysis. The tools are not meant to be used exclusively. Ideally, a combination of tools will be used.

- Brainstorming
- Checklists
- Logic/Event Trees
- Timelines
- Sequence Diagrams
- Causal Factor Determination

For simpler incidents, brainstorming and checklists may be sufficient to identify root causes. For more complicated incidents, logic/event trees should also be considered. Timelines, sequence diagrams, and causal factor identification are often used to support the logic/event tree tool.

Regardless of the combination of tools chosen, employers should use these tools to answer four important questions:

- **What** happened;
- **How** did it happen;
- **Why** it happened; and
- **What** needs to be corrected.

Interviews and review of documents, such as maintenance logs, can be used to help answer these questions. Involving employees in the root cause investigative process, and sharing the results of those investigations, will also go a long way toward preventing future similar incidents.

OSHA and EPA encourage employers to consult the resources below for more information about how to use these tools.

Resources

- *The Guidelines for Investigating Chemical Process Incidents*, Center for Chemical Process Safety, 2nd Edition, 2003.
- *DOE Guideline-Root Cause Analysis Guidance Document*, U.S. Department of Energy, Washington, DC, February 1992. <http://energy.gov/sites/prod/files/2013/07/f2/nst1004.pdf>
- *DOE Handbook-Accident and Operational Safety Analysis*, Volume I: Accident Analysis Techniques, July 2012, pp. 2-40–2-86. http://energy.gov/sites/prod/files/2013/09/f2/DOE-HDBK-1208-2012_VOL1_update_1.pdf

- *Quality Basics-Root Cause Analysis for Beginners*, James L. Rooney and Lee N. Vanden Heuvel, Quality Progress, July 2004, pp. 45–53. https://www.env.nm.gov/aqb/Proposed_Regs/Part_7_Excess_Emissions/NMED_Exhibit_18-Root_Cause_Analysis_for_Beginners.pdf
- *Incident [Accident] Investigations, A Guide for Employers, A Systems Approach to Help Prevent Injuries and Illnesses*, U.S. Department of Labor, Occupational Health and Safety Administration (OSHA), December 2015. www.osha.gov/dte/InclnvGuide4Empl_Dec2015.pdf
- OSHA's Incident Investigation Topics Page. www.osha.gov/dcsp/products/topics/incidentinvestigation
- OSHA's On-site Consultation Program offers free and confidential occupational safety and health services to small and medium-sized businesses in all states and several territories, with priority given to high-hazard worksites. On-site consultation services are separate from enforcement and do not result in penalties or citations. To locate the OSHA On-Site Consultation Program nearest you, call 1-800-321-6742 (OSHA) or visit www.osha.gov/dcsp/smallbusiness/index.html
- *The Business Case for Process Safety*, 2nd ed., Center for Chemical Process Safety, 2006. www.aiche.org/ccps/documents/business-case-process-safety. This resource describes how a strong PSM program has helped businesses succeed.
- *Mini Guide to Root Cause Analysis*, Geoff Vorley, Quality Management and Training Limited, Guilford, Surrey, UK, 2008. www.root-cause-analysis.co.uk/images/Green%20RCA%20mini%20guide%20v5%20small.pdf
- *Root Cause Analysis*, Washington State Department of Enterprise Services, Olympia, WA, 2016. www.des.wa.gov/services/Risk/AboutRM/enterpriseRiskManagement/Pages/rootCauseAnalysis.aspx. This resource describes additional root cause tools and training opportunities.
- *How to Conduct an Incident Investigation*, National Safety Council, 2014. <http://www.nsc.org/JSEWorkplaceDocuments/How-To-Conduct-An-Incident-Investigation.pdf>
- *Accident Investigation Basics*, Washington State Department of Labor & Industries, 2009. http://www.lni.wa.gov/safety/trainingprevention/online/courseinfo.asp?P_ID=145
- NFPA 921: *Guide for Fire and Explosion Investigations*. <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards?mode=code&code=921>

¹ The statements in this document are intended as guidance only. This document does not substitute for EPA and OSHA statutes or regulations, nor is it a regulation itself. It cannot and does not impose legally binding requirements on the agencies, states, or the regulated community, and the measures it describes may not apply to a given situation based upon the specific circumstances involved. This guidance does not represent final agency action and may change in the future.

² *Guidelines for Investigating Chemical Process Incidents*, Center for Chemical Process Safety, 2nd ed., p. 179.

³ 29 CFR 1910.119.

⁴ 40 CFR 68.

⁵ *Guidelines for Investigating Chemical Process Incidents*, Center for Chemical Process Safety, 2nd ed., p. 180.

⁶ Id.

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



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The Use of Metrics in Process Safety Management (PSM) Facilities

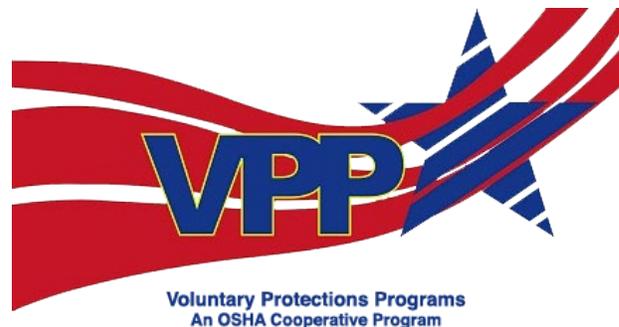
Metrics are measures that are used to evaluate and track the performance of a facility's process safety management program. For facilities that handle highly hazardous chemicals, metrics can be used to quantify how a process has performed historically, how it might perform in the future, and where improvements can be made to keep workers safe.

This document provides employers with examples of metrics that are tracked by facilities that are enrolled in OSHA's Voluntary Protection Program (VPP). Because VPP sites have achieved a high standard of safety excellence, tracking these metrics can make a positive contribution to the effectiveness of an employer's process safety management program.

Two types of metrics—lagging metrics and leading metrics—are often used to track safety performance in process safety management:

- **Lagging Metrics:** Lagging metrics are a retrospective set of metrics that are gathered after the occurrence of an incident that has met an established threshold of severity.¹ Lagging metrics evaluate the causes of an incident and whether the factors that led to the incident indicate potential recurring problems. Metrics for relatively minor or "near miss" incidents are often included in the evaluation of process safety performance.
- **Leading Metrics:** Leading metrics are a preventive set of metrics that reveal the performance of key work processes, operating discipline, and layers of protection that prevent incidents.² Leading metrics can provide an early indication of problems that can be corrected before a major process safety incident occurs.

Whether using leading or lagging metrics, the metrics should be specific to a facility's operations and culture so that they have the best chance at driving effective results.



How Metrics are Tracked by VPP Facilities

A majority of VPP facilities track at least one metric electronically on at least a monthly basis. The metrics are being tracked in a variety of ways. One way is by identifying areas in a PSM program where improvements can be made. For example, during a monthly meeting, the PSM department of one facility identified a problem with tracking the expiration dates for their temporary management of change (MOC) process. The dates were not at the same place, and could not be located. This made it difficult to search databases for the dates. As a solution, the PSM department added a searchable data designation that would enable each MOC change requestor to enter a duration of no longer than 180 days for any temporary MOC. This not only enabled the PSM department to identify expiration dates for temporary MOCs, but made it easier for the change requestor to establish durations or time limits for temporary MOCs.

Another facility tracked the number of overdue items in an effort to reduce the number of tasks that had not been completed in a timely manner.

By holding monthly meetings to review the overdue items, the management team was able to prioritize the completion of those items and identify outstanding projects that were in need of additional resources.

What Metrics are Tracked by VPP Facilities

Based on the responses received from VPP facilities, OSHA compiled a list of areas within the PSM program and the metrics that were used by VPP facilities to track performance in those areas.

Lagging Metrics

- **Injury and/or Incident Reports Related to Process Safety:** Incident reports are created after an incident investigation has been completed. Incident reports typically describe the causes of an incident that were identified by the investigation, and the corrective measures that should be taken to address those causes.³ VPP sites have used metrics to track a number of process safety incidents and injuries including:
 - Near miss incidents reported that did or could have led to a loss of containment;
 - Recordable injuries and first-aid incidents due to loss of primary containment;
 - Number of incidents vs. number of incidents with formal reports; and
 - Status of incident investigations.
- **Loss of Containment:** A Loss of Containment is an unplanned or uncontrolled release of materials. For incidents related to loss of containment, VPP facilities have tracked:
 - The number of incidents;
 - Whether there was primary or secondary containment; and
 - The cause and location of the incident.

Leading Metrics

- **Management of Change (MOC):** An MOC is a system that identifies, reviews, and approves all modifications to equipment, procedures, raw materials, and processing conditions,

other than “replacements in kind,” prior to implementation.⁴ There are various types of changes that occur in the workplace where a facility may want to track management of change to reduce the likelihood of system failures or catastrophic events. For MOC, VPP facilities have tracked:

- Overdue MOCs;
- Approved MOCs;
- Open MOCs; and
- MOCs performed each month.
- **Preventive Maintenance (PM):** Preventive maintenance is maintenance that is regularly performed on a piece of equipment to decrease the likelihood of it failing. In their maintenance efforts, VPP facilities have tracked:
 - Completion rates;
 - Open items;
 - Overdue safety critical PMs; and
 - Number of inspections.
- **Process Hazard Analysis (PHA):** A process hazard analysis is a systematic effort to identify and analyze the significance of potential hazards associated with the processing and handling of highly hazardous chemicals.⁵ A PHA analyzes potential causes and consequences of fires, explosions, releases of toxic or flammable chemicals, and major spills of hazardous chemicals. It monitors equipment, instrumentation, utilities, human actions, and external factors that might affect the process.⁶ VPP facilities have monitored the PHA process by tracking:
 - PHA actions open;
 - PHAs overdue;
 - PHAs completed;
 - Scheduled vs. completed PHAs;
 - Status of PHA/incident recommendations; and
 - Status of scheduled PHA revalidations.

Lagging Metrics

Injury Reports • Near Misses
Recurring Events • Days Away (DART)

“The Rear-View Mirror”
(cannot be influenced or changed)

INCIDENT

Leading Metrics

Preventive Maintenance • Management of Change
Process Hazard Analysis • Training

“The Road Ahead”



- **Mechanical Integrity (MI):** Mechanical integrity is a program that ensures that equipment is properly designed, installed in accordance with specifications, and remains fit for its purpose.⁷ As part of the MI program, facilities will collect data on planned inspection work for safety critical equipment and any data that can provide solutions to correct weak performance. VPP facilities have been tracking the following leading metrics as part of their MI program:
 - Number of inspections scheduled (relief valve, piping, pressure vessel, storage tank);
 - Status of variance requests;
 - Routine inspections; and
 - Number of overdue work orders.
- **Training:** Training is the practical instruction of job task requirements and methods. VPP facilities have tracked:
 - Safety/refresher training completed;
 - Training planned vs. completed;
 - Training exceptions; and
 - Contractor training.
- **Safety Action Item:** A safety action item is a document, event, task, activity, or action that needs to take place, such as a follow-up on PHA, Incident Investigation, MOC, or Compliance Audit recommendations. It may also include planned inspections, tests, maintenance activities, training, or other safety-related activities. VPP facilities have tracked:
 - Past action items;
 - Initiated vs. completed items; and
 - Open action items.

Contractor Metrics

Some contractors also track their own metrics while working on a VPP host site. Some of these metrics include:

- Types of near miss incidents reported;
- Types of first-aid cases;
- Incidents involving property damage at host site;
- Job hazard analysis completed; and
- Number of audits and corrections.

Conclusion

Metrics can play a valuable role in revealing the strengths and weaknesses of a facility's performance. However, the habit of tracking metrics will not alone improve process safety. Metrics should be used along with a variety of other methods to work towards achieving and maintaining outstanding process safety performance.

For more information on process safety management, see: www.osha.gov/SLTC/processsafetymanagement.

For additional guidance on developing process safety metrics, please refer to:

- ANSI/API RP 754, *Process Safety Performance Indicators for the Refining and Petrochemical Industries*, Second Edition.
- Center for Chemical Process Safety (CCPS), *Guidelines for Process Safety Metrics*
- CCPS "Process Safety Leading Indicators Industry Survey" http://www.aiche.org/sites/default/files/docs/pages/leading-indicator-survey_0.pdf

¹ *Guidelines for Process Safety Metrics*, Center for Chemical Process Safety, 2010, p. 20.

² Id. at p.23.

³ *Process Safety Management Guidelines for Compliance*, DOL, OSHA, 1994. www.osha.gov/Publications/osh3133.html

⁴ *Guidelines for Process Safety Metrics*, Center for Chemical Process Safety, 2010, p. xvi.

⁵ *Process Safety Management Guidelines for Compliance*, DOL, OSHA, 1994. www.osha.gov/Publications/osh3133.html

⁶ Id.

⁷ *Guidelines for Process Safety Metrics*, Center for Chemical Process Safety, 2010, p. xvi.

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U.S. Department of Labor

SAFETY WEBINARS HELP MEMBERS OPERATE SAFELY—2017 Calendar

OMA safety webinars are FREE for members who purchase their workers' compensation services from the OMA. (All other members - \$29/webinar; non-members - \$39/webinar.)

Our subject matter expert is the president of Safex, Dianne Grote Adams, MS, CIH, CSP, CPEA.

Register at **My OMA** or call us at **(800) 662-4463** so we can send you everything you need to participate. We email webinar announcements each month. To receive webinar announcements, subscribe to Safety & Workers' Compensation under the My Communities tab in your **My OMA profile**.

These 60-minute webinars begin at 10:00 a.m. on the scheduled dates.

Thursday, January 12	OSHA recordkeeping – OSHA requirements, including completing logs, recordable vs. non-recordable incidents, how to handle reporting regarding temporary workers, & 2016 changes
Thursday, February 2	Preparing for and managing an OSHA Inspection
Thursday, March 2	OSHA Agency Updates – Penalties, emphasis programs, and other areas of current agency focus
Thursday, April 6	Machine Guarding – Minimum requirements
Thursday, May 4	Lockout/Tag out – Equipment specific procedures; conducting an audit
Thursday, June 1	Making Safety Fun – Employee engagement, safety training that sticks, effective safety meetings
Thursday, July 13	About EPCRA – Emergency Planning and Community Right-to-Know Act
Thursday, August 3	Complying with HazCom Globally Harmonized System 2012
Thursday, September 7	Emergency Action Plans – First aid; fire drills; weather emergencies; workplace violence
Thursday, October 5	Material Handling – Manual to automated; conveyors; pallets; powered industrial vehicles
Thursday, November 2	Welding Safety – Controlling health & safety risks
Thursday, December 7	Office Safety – Ergonomics, emergency management, and mitigating risks associated with electrical, storage, and more

Note: The Bureau of Workers' Compensation (BWC) requires employers that participate in a group experience rating or group retrospective rating plan, and that sustain a claim, to complete two hours of safety training or complete BWC's online accident analysis form and associated accident analysis course. Each of these webinars qualifies for one-hour of BWC-mandated training.

Subject matter expertise by





What OSHA's New Rule Means for Drug Testing

(Summer 2016) On May 12, 2016, the Occupational Safety & Health Administration (OSHA) announced a new ruling that may impact your company's post-accident drug testing requirements. The rule establishes new regulations for the electronic reporting of employee injury and illness. In the future, the results from employers' reports will be posted on a public website established by OSHA and accessible to the general public – confidential information will not be available. The rule, "Improve Tracking of Workplace Injuries and Illnesses" becomes effective November 1, 2016.

One objective of the new rule is to ensure that employees understand their right to report work-related injuries and illnesses free from discouragement, retaliation or perception of punishment. Specifically, employers must

- inform employees of their right to report work-related injuries and illnesses,
- inform employees about the company's "reasonable procedures" for prompt and accurate reporting, and
- take appropriate measures to prevent actions or the perception that there can be adverse action or discrimination against employees for making these reports.

All this toward improving the rate and accuracy of injury and illness reporting.

Employers found violating the new rule could face penalties of up to \$7,000 per violation or up to \$70,000 for willful violations. These penalties will increase substantially in November 2016, when they are expected to be as high as \$12,471 per violation and \$124,712 for willful violations.

OSHA's commentary foreshadows how it intends to enforce the rule on several issues. The regulation language does not specifically address post-accident drug testing but does address it in this commentary. The agency is concerned that broad-based post-accident drug testing may be seen as retaliatory and deter proper reporting.

OSHA's commentary goes on to say that employers' post-accident testing should only occur when "employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use." Examples given that lack the likelihood drug abuse was the cause included allergic reactions, animal or insect bites, back or muscle strains caused by over exertion, carpal tunnel syndrome, injury caused by the lack of machine guarding or a machine or tool malfunction, and diabetic episodes.

Intersection with Other Authorities

It is important to note, the concerns of this commentary have no impact on post-accident testing mandated by federal regulations (e.g., Department of Transportation) or directed by state workers' compensation laws (e.g., premium reduction laws such as Ohio's Drug-Free Safety Program or HB 80 requirements).

The Ohio Bureau of Workers' Compensation reached out to OSHA for clarification and received confirmation that "employers complying with state or local requirements to drug test would not be in violation of the new requirements." Further, OSHA expressly stated, "If an employer has the program in place to meet the [Ohio] Drug-Free Safety Plan requirements and earn the premium reduction, the program would not be in violation of 1904.35."

Remaining Confusion

The rule's commentary raises other confounding concerns pertaining to post-accident testing which OSHA will hopefully address in forthcoming compliance directives:

- The commentary states that reasonable suspicion is not required for post-accident testing, but it is unclear what they mean when they use the phrase, "reasonable possibility" that drugs were a contributing factor to the incident or accident. Providing examples of injuries or illness with no plausible connection to drug and alcohol abuse is helpful and makes sense that drug testing not occur. But what about injuries that clearly could have been caused by an employee if he or she was under the influence of a prohibited substance?
- OSHA's comment that the post-accident test should, "... accurately identify impairment caused by drug use" is confusing. Urine testing, long considered the gold standard in scientific analysis and for legal defensibility, only detects use, not impairment. In fact, one of the challenging conundrums about all drug testing is the lack of evidence-based, scientific, standardized levels which unilaterally constitute impairment. These standards have only been established for alcohol testing.
- OSHA is concerned that an employer's broad application of post-accident testing may be perceived by some employees as punitive. Yet, if it is a universally and objectively applied method of operation against written practices at a company and, therefore, non-discretionary, couldn't the new rule open the door to a cry from employees about discrimination? What's stopping an employee who knows he or she will test positive from crying, "punitive" when asked to take a test following an incident or accident?

OSHA's anticipated directives may clarify some of these questions, however, this ruling will surely be challenged.

But as we await guidance from issued directives, given OSHA's commentary, we suggest it is prudent for employers who do not have an exemption from this issue of the rule (that is, federal or state post-accident compliance requirements) to confirm the status of their drug testing policies following an accident. Such policies should be narrowly tailored so that post-accident drug testing is tied to situations in which an employee likely caused or contributed to the accident. Furthermore, post-accident testing needs to be operationally designed and implemented in a way not considered retaliatory, punitive or discouraging for workplace illness or injury reporting. It is also prudent to consider testing methodology that affirms recent illegal drug use (such as oral fluids testing).

Working Partners® is working closely with its law firm Littler, Mendelson, P.C., the largest employment law firm in the world. We will be supporting our readership and provide resources to our clients as the dust settles and directives from OSHA are received and interpreted. If you have questions in the meantime, be sure to call our offices at 614-337-8200.

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Medical Marijuana and its IMPACT ON BWC

What does OHIO'S medical marijuana LAW SAY?

House Bill 523, effective Sept. 8, 2016, legalizes medical marijuana in Ohio for certain medical conditions, including pain that is either chronic and severe or intractable, PTSD, and traumatic brain injuries. At this time, the only legal forms of medical marijuana will be edibles, oils, patches, plant material and tinctures. Vaporization is permitted. It cannot be smoked or combusted. Home growth is prohibited.

The Ohio Department of Commerce is tasked with regulating the licensure of medical marijuana cultivators and processors, as well as the laboratories that test medical marijuana. The state of Ohio Board of Pharmacy will license retail dispensaries and register patients and their caregivers. Additionally, the State Medical Board of Ohio will regulate physicians' requirements and procedures for applying for and maintaining certificates to recommend medical marijuana and maintain the list of conditions for which medical marijuana can be recommended.

What is the IMPACT of the new law ON BWC?

The impact of the new law on BWC and its programs is limited. It does not adversely affect the Drug-free Safety Program, will not require BWC to pay for patient access to marijuana, and expressly states that an employee under the influence of marijuana is not covered by workers' compensation.

Specifically:

- 1 Nothing in the law requires an employer to accommodate an employee's use of medical marijuana;
- 2 The law does NOT prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana;
- 3 The law specifies that marijuana is covered under "rebuttable presumption." In general, this means that an employee whose injury was the result of being intoxicated or under the influence of marijuana is not eligible for workers' compensation. This is the case regardless of whether the marijuana use is recommended by a physician;
- 4 While the law does not specifically address reimbursement for medical marijuana recommended for injured workers, Ohio law already has rules and statutes in place that limit what medications are reimbursable by BWC.
 - Administrative code provides that drugs covered by BWC are limited to those that are approved by the United States Food and Drug Administration. Marijuana has not been approved by the FDA and remains a Schedule I illegal drug under federal law.
 - BWC-funded prescriptions must be dispensed by a registered pharmacist from an enrolled provider. Medical marijuana will be dispensed from retail marijuana dispensaries, not from enrolled pharmacies.
 - BWC only reimburses drugs that are on its pharmaceutical formulary, which is a complete list of medications approved for reimbursement by BWC. Drugs not on the list are not eligible for reimbursement, and under BWC's current rules, it cannot be included in the formulary, nor is it otherwise eligible for reimbursement.

What can EMPLOYERS DO?

The best way employers can protect their workers and themselves is to establish a **drug-free workplace**, or, if they already have one, to review and update it if necessary. This is important because certain sections of the new law reference the use of medical marijuana in violation of an employer's drug-free workplace policy, zero-tolerance policy or other formal program or policy regulating the use of medical marijuana. For what this means to your specific workplace, consult your human resources or legal department.



OHIO MEDICAL MARIJUANA LEGALIZATION– SUB. H.B. 523

On June 8, 2016, Ohio Gov. John Kasich signed a medical marijuana bill, Sub. H.B. 523, into law, making Ohio the 25th state to adopt some form of approval and regulation of medical marijuana.

Sub. H.B. 523, which underwent robust discussion and numerous amendments, attempts to balance a perceived acceptance by Ohioans to approve medical marijuana while getting ahead of various groups' efforts to permanently incorporate medical marijuana measures into the Ohio Constitution.

Following extensive House committee review, the House version introduced in April 2016 passed by a 70 to 25 vote. It incorporated many concepts discussed during a series of public meetings convened by the House's Medical Marijuana Task Force earlier this year. Although the Senate version passed by a much narrower version, the Senate amendments also incorporated public input. The highlights of the final version include the following components:

Legislative intent

Sub. H.B. 523 is intended to tax and regulate medical marijuana use and distribution, to recommend to Congress that marijuana be reclassified as a schedule II controlled substance, and to establish incentives for academic and medical research relating to medical marijuana.

Definition of medical marijuana

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

Who will regulate medical marijuana in Ohio?

The governor will appoint a Medical Marijuana Advisory Commission within the state Board of Pharmacy to make recommendations to the Department of Commerce, the Pharmacy Board, and the Medical Board for a medical marijuana control program.

Within one year of the effective date of this law, the Department of Commerce will make rules, set standards, and establish best practices for this program. The program shall, in part:

- Establish application procedures, fees, disqualifying factors, and number of licenses for cultivators, processors, and retail dispensaries, based on population, number of patients, and geographic distribution, within 240 days of the effective date. Further, 15% of cultivators, processors, or labs are to be owned or controlled by residents who are members of economically disadvantaged groups;
- Determine how licenses will be renewed, suspended, or revoked, and how a suspension may be lifted;
- Regulate activities from taking place within 500 feet of schools, churches, libraries, playgrounds, parks;
- Create confidential databases to monitor medical marijuana from seed source through dispensing.

The state's existing Automated Rx Reporting System will be used to track the movement of dispensed medical marijuana.

The Pharmacy Board will regulate testing laboratories, and will also require licensed dispensaries to have a pharmacist on staff.

The Medical Board will regulate physicians who may recommend use.

Who may use medical marijuana?

The State Medical Board may determine additional conditions, but those who suffer from the following conditions may apply to become registered users: AIDS; amyotrophic lateral sclerosis; Alzheimer's disease; cancer; chronic traumatic encephalopathy; Crohn's disease; epilepsy or another seizure disorder; fibromyalgia; glaucoma; hepatitis C; inflammatory bowel disease; multiple sclerosis; pain that is chronic, severe, and intractable; Parkinson's disease; positive status for HIV; post-traumatic stress disorder; sickle cell anemia; spinal cord disease or injury; Tourette's syndrome; traumatic brain injury; and ulcerative colitis.

Before the implementation of sales of Ohio-grown product (*i.e.*, between September 2016 and sometime in late 2017 or early 2018), the Pharmacy Board may negotiate reciprocity agreements with other states where medical marijuana is legal to enable registered users and caregivers to purchase medical marijuana and transport it back into Ohio for use.

Registered users and caregivers are immune from arrest and prosecution for consuming medical marijuana in the form of edibles, oils, tinctures, patches, and vaporization (vaping will be limited to extracts from plants by approved sources with THC content of less than 70%). However, driving or using a vehicle while under the influence is not authorized.

Medical Recommendations

A qualifying physician may recommend – *not prescribe* -- that a patient consider medical marijuana to patients with whom a documented physician-patient relationship exists. Qualifying physicians may not personally furnish/dispense medical marijuana, or have any involvement in a medical-marijuana cultivating or retailing enterprise.

Physicians who wish to recommend medical marijuana will be registered and controlled through the Ohio State Medical Board, which will issue and may revoke certificates to recommend. They will be required to confidentially track the use and outcomes of medical marijuana recommendations. They will also be required to participate in continuing education courses.

A patient recommendation cannot be renewed more than three times for 90 days each, absent a physical examination. The physician must conform to confidential reporting requirements that track the effectiveness of use during the year covered by the recommendation and renewals.

Dispensing, Content Limits, Labeling, and Safety

The law permits dispensation of up to 90-day supplies of medical marijuana from licensed dispensaries, but prohibits cultivation for personal use.

Labeling must specify the tetrahydrocannabinol (THC) and cannabidiol ratios. The law imposes prohibitions on making products attractive to minors, and requires that dispensed product be inaccessible to minors.

Labs regulated by the Board of Pharmacy will test for potency, homogeneity, and contamination, and must report results.

The Pharmacy Board shall establish a toll-free line to respond to patients and medical providers about adverse reactions to medical marijuana.

Employment Considerations

Employers may test and take disciplinary action against employees who test positive for use of marijuana.

There is no requirement to accommodate an employee's use of medical marijuana, or to prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana. Moreover, there is no provision for suing an employer who takes such actions.

A termination based on using medical marijuana is a discharge for just cause for unemployment purposes if it violates a written policy of the employer (i.e., a zero-tolerance substance abuse policy, or comparable policy against use of drugs), and would render the applicant for benefits ineligible.

The workers' compensation rebuttable presumption, allowing an employer to initially deny a claim in the event of a positive drug test and allowing the employee to dispute that denial at a hearing, could render an employee ineligible if being under the influence of marijuana was the proximate cause of the injury, regardless of whether its use is recommended by a physician.

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

Zoning

Municipalities and townships may regulate or prohibit licensed retail dispensaries. Counties and townships may apply agricultural-use zoning limitations to regulate retail dispensaries in unincorporated territory.

Banking Services

The bill authorizes financial institutions to conduct business with licensed cultivators, processors, retail dispensaries, or labs.

Post-script

One day after the General Assembly passed Sub. H.B. 523, Ohioans for Medical Marijuana, the group seeking to place the medical marijuana issue before voters in November as a proposed constitutional amendment, suspended its effort to collect petition signatures. The group, backed by the national Marijuana Policy Project, said the changes made to the legislation were acceptable, despite not permitting smoking or home growing of medical marijuana.



Hurdles to Legalizing Marijuana as Medicine

(Fall 2016) After several years of waiting, the Drug Enforcement Administration (DEA) ruled that it will not downgrade marijuana from a Schedule I drug to a Schedule II drug. The classification change would have opened the door for marijuana to become an FDA-approved (Food and Drug Administration) medicine. As a Schedule I drug, marijuana remains classified as having no currently accepted medical use and a high potential for abuse. The challenge with down scheduling marijuana is that rigorous, scientific research, which meets specific criteria, is needed to identify marijuana's medical uses.

However, changing marijuana's schedule is a catch-22. Controlled, large-scale clinical trials proving marijuana has medicinal value are needed, but because the DEA restricts how much of a Schedule I drug (in this case marijuana) can be available, even for research purposes, we come full-circle with the limitations that bind the situation. This means researching marijuana's merit as medicine is sorely lacking. So now, with 25 states having varying degrees of medical marijuana legalization, millions of people using a drug for which we don't have established safety or efficacy data.

Substance Accessibility

In its recent ruling, the DEA did make an announcement to ease this situation. It will oversee and allow additional entities to apply to become registered with DEA so that they may grow and distribute marijuana for FDA-authorized research. Currently, the University of Mississippi is the only facility allowed, under federal law, to grow and supply marijuana to all FDA-authorized research projects.

So one hurdle down - the DEA's ruling should increase the availability of marijuana for research.

Medication Approval Process

But accessibility is only part of the issue. The process for approving a substance as medicine and being released to the marketplace is complicated and involves three principal federal agencies:

- The FDA which is responsible for and coordinates the scientific and medical evaluation of a drug.
- The National Institute of Health researches the potential therapeutic value of the drug.
- The DEA schedules the drug into one of five categories based on medicinal value and potential for abuse.

To qualify as medicine a drug must satisfy five requirements:

1. The drug's chemistry must be known and reproducible.
2. There must be adequate safety studies.
3. There must be adequate and well-controlled studies proving efficacy.
4. The drug must be accepted by qualified experts.
5. The scientific evidence must be widely available.

This entire process accomplishes protection and reassurance for patients that a medication has undergone thorough research to

- Identify health benefits and risks associated with taking the medication, including possible side effects
- Determine if and how the drug will interact with other substances, including medication and food.

- Standardize all elements, e.g., chemical components and amounts, present in a drug to establish consistency amongst all distributors of the medication
- Determine the protocols - dosage amounts, frequency, way to take the drug, etc. – to treat the conditions the drug be being prescribed for.

Qualifying to do Research

Besides having marijuana available for research, another hurdle in the process is having a registered facility and approved research protocols to carry out medical marijuana studies. Limiting the number of facilities that can qualify is the fact that research sponsors must go through a lengthy application process to get a Schedule I license which involves an evaluation for safety and security.

Not only do researchers and facilities need to be approved, to satisfy FDA standards as medicine, the scientific research plan on any substance must be prolific, elaborate and controlled. Accomplishing the overall necessary registrations and approvals to execute qualifying research is very time intensive. For example, it took Johns Hopkins University School of Medicine's Ryan Vandrey a year and a half to get all of the necessary regulatory approvals for a recent medical marijuana study involving only 76 people at two research facilities. To be adequate for scientific justification as medicine, more and larger studies will need to follow and each study will have to go through the same registration and approval process. Think of the time this represents.

To address this issue the Marijuana Effective Drug Studies (MEDS) Act was recently introduced by a bipartisan group in the U.S. Senate with a similar bill introduced in the House. The objectives of each are centered around enabling better quality and a smoother road to research on the medical effectiveness and safety of marijuana. Senator Orrin Hatch said, "While many patients have high hopes for the medical benefits of marijuana, further clinical research is needed to inform the decisions of policymakers regarding access to marijuana."

These bills target barriers that impede researchers such as making it easier to gain federal approval to conduct research. They also propose details to eliminate redundancies in the regulatory process so that when researchers need to amend or supplement research proposals they will not have to go through the long process of reapplying for approval.

that conducts research related to marijuana as part of a research protocol approved by an institutional review board or equivalent entity.

Employment laws

Employment – generally

The bill provides that nothing in the bill concerning medical marijuana does any of the following:

(1) Requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana;

(2) Prohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana;

(3) Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;

(4) Interferes with any federal restrictions on employment, including U.S. Department of Transportation regulations;

(5) Permits a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana;

(6) Affects the authority of the Administrator of Workers' Compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the Administrator.¹⁰¹

Under continuing law, the Bureau of Workers' Compensation's Drug-Free Safety Program offers eligible employers a premium rebate for implementing a loss-prevention strategy addressing workplace use and misuse of alcohol and drugs. In addition to satisfying other requirements, the employer's program must include alcohol and drug testing, including (1) pre-employment and new-hire drug testing, (2) post-

¹⁰¹ R.C. 3796.28.



accident alcohol and drug testing, (3) reasonable suspicion alcohol and drug testing, and (4) return-to-duty and follow-up alcohol and other drug testing.¹⁰²

Unemployment eligibility

Under the bill, a person who is discharged from employment because of that person's use of medical marijuana is considered to have been discharged for just cause under the Unemployment Compensation Law if the person's use of medical marijuana violated an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.¹⁰³ If a person has been discharged for just cause in connection with the person's work, for purposes of that Law that person is ineligible to serve a waiting week or receive unemployment benefits for the duration of the person's unemployment. Under current law, failure of a drug test could be "just cause" for purposes of this provision.¹⁰⁴

Workers' compensation – rebuttable presumption

Eligibility

The Workers' Compensation Law compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the employee's employment. Under continuing law, an employee or dependent is ineligible if the employee's injury or occupational disease is purposely self-inflicted or is caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance was the proximate cause of the injury.¹⁰⁵

The bill maintains an employee's or dependent's ineligibility for compensation and benefits if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury. This applies regardless of whether the marijuana use is recommended by a physician.¹⁰⁶

Rebuttable presumption – current law

Under continuing law, a rebuttable presumption is established if an employee is intoxicated or under the influence of a controlled substance not prescribed by a

¹⁰² Ohio Administrative Code 4123-17-58.

¹⁰³ R.C. 3796.28.

¹⁰⁴ R.C. 4141.29, not in the bill.

¹⁰⁵ R.C. 4123.54.

¹⁰⁶ R.C. 4123.54.



physician and being intoxicated or under the influence of that controlled substance proximately caused an injury if either of the following applies:

--A qualifying chemical test is administered and the employee tests above certain levels for alcohol or certain controlled substances, including cannabinoids.

--The employee refuses to submit to a chemical test on the condition that the employee is given notice that refusal to submit to a qualifying chemical test may affect the employee's eligibility for compensation and benefits.¹⁰⁷

Under current law, a chemical test is considered a "qualifying chemical test" if it is administered to an employee after an injury under at least one of the following conditions: (1) when the employee's employer has reasonable cause to suspect that the employee may be intoxicated or under the influence of a controlled substance not prescribed by the employee's physician, (2) at a police officer's request because the officer has reasonable grounds to believe that the employee was operating a vehicle while intoxicated or under the influence of a controlled substance, or (3) at a physician's request.¹⁰⁸

"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, but are not limited to, any of the following:

--Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance;

--A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance that appears to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors;

--The identification of an employee as the focus of a criminal investigation into unauthorized possession, use, or trafficking of a controlled substance;

--A report of use of alcohol or a controlled substance provided by a reliable and credible source;

¹⁰⁷ R.C. 4123.54.

¹⁰⁸ R.C. 4123.54.

The research has been done and we are providing you with **fourteen valuable reference resources** to help you understand specific aspects of medical marijuana. This up-to-date, go-to cache provides deeper information and will also help you think through the stance your organization will take concerning medical marijuana.

1. HB 523 Summary
Description: Ohio Legislative Service Commission Analysis of HB523, the legalization of medical marijuana.
2. *Ohio Medical Marijuana Control Program*
Description: The state of Ohio website designed to provide transparency during the development of Ohio's medical marijuana industry.
3. Ohio Bureau of Worker's Compensation Memo
Description: A memo outlining the impact of medical marijuana on Ohio's workers' compensation.
4. NIDA DrugFacts: Marijuana
Description: The National Institute on Drug Abuse factsheet about marijuana.
5. Patient Guidance from the Ohio Patient Network
Description: Guidance for the person who is interested in qualifying for a medical marijuana recommendation.
6. Legalizing Marijuana as Medicine
Description: A *Working Partners®* article outlining the considerations for marijuana to be a medicine on par with other American medications.
7. Ohio Patients Network
Description: Coalition website for those with a mission of legalizing cannabis for medical use.
8. Meta-analysis Finds Mixed Results for Medical Marijuana Use
Description: AAFP article about Journal of American Medical Association (JAMA) study examining available research on medicinal value of marijuana.
9. Legalization of Marijuana in Colorado –The Impact
Description: Fourth Annual report by the Office of National Drug Control Policy's Rocky Mountain HIDTA Investigative Support Center Strategic Intelligence Unit considering the impact of legalized marijuana in Colorado.
10. *"The Cole Memo"*
Description: Guidance from the U.S. Department of Justice to states' attorney generals about the diversion of marijuana from a legalized state to another state.
11. Medical Boards Expectations for Physicians Recommending Marijuana
Description: Federation of State Medical Boards position statement outlining the responsibilities of physicians who want to recommend medical marijuana.
12. *Marijuana in the Workplace: Guidance for Occupational Health Professionals and Employers*
Description: Joint position statement from *American Association of Occupational Health Nurses and the American College of Occupational and Environmental Medicine* outlining best-practice for the occupational health nurses field.
13. Ohio Supreme Court Board of Professional Conduct Advisory
Description: The non-binding advisory addressing what Ohio attorneys are permitted to do regarding legalized medical marijuana industry. (August 5, 2016)
14. Proposed Amendment to Ohio Rules of Professional Conduct
Description: UPDATED Proposed amendment opening the door for Ohio attorneys to counsel or assist a client regarding conduct specifically permitted under HB 523. (August 31, 2016)



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Ohio Manufacturers' Association
Workers' Compensation Counsel Report
October 12, 2016

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

Regulatory Actions

O.A.C. § 4123-6-21.7

Utilization of opioids in the substance or chronic phases of pain treatment for a work-related injury or occupational disease.

Effective Oct. 1, 2016

The rule is the latest change to the bureau's pharmacy program designed to protect the health of injured workers. This bill applies to all BWC-certified prescribers and is designed to help prevent opioid dependence for Ohio's injured workers through three primary goals:

- Encourage prescribers to incorporate best clinical practices when prescribing opioids for treating Ohio's injured workers.
- Establish provisions and criteria for treating opioid dependence that arises secondary to treatment with opioid medications covered by BWC.
- Provide and strengthen BWC's peer review processes for opioid prescribing that address noncompliance with opioid prescribing and other quality of care issues in our system.

Prescribers will be required to develop an individualized treatment plan and risk assessment for the worker, and monitor the worker's progress and function. The BWC will not reimburse for opioid prescriptions written by prescribers who fail to comply with Ohio's best prescribing practices as outlined by the Ohio State Medical Board and reinforced by the Ohio Administrative Code.

The BWC has instituted a drug formulary in recent years, and said opiate prescriptions have fallen by 23.8 million doses, or 41%, since 2010. Statewide, the number of opiate painkillers prescribed fell 11% from 2012 to 2015, according to a report from the State Board of Pharmacy released earlier this year. (Gongwer Ohio Report, February 8, 2016)

The BWC's new policy is similar to guidelines issued at the state and federal levels designed to limit the spread of opioid painkillers that lead to addiction and, potentially, heroin abuse.

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Legislative Actions

H.B. 523 Medical Marijuana

Effective September 9, 2016

Governor Kasich signed Ohio H.B. 523 into law, legalizing medical marijuana. While medical marijuana is legal, the state still needs to complete the infrastructure and specifications to grow, sell and regulate the use of marijuana. This is likely to take up to two years.

It is important for you to know there are SEVERAL elements in law that protect employers and your drug-free workplace (DFWP) program:

- Employers do NOT have to permit or accommodate an employee's use, possession, or distribution of "medical" marijuana.
- Employers are NOT prohibited from refusing to hire, discharging, disciplining or otherwise taking adverse action against a person who uses "medical" marijuana.
- Employers CAN drug test and have a drug-free workplace program, even if it is a zero tolerance policy.
- The law will NOT interfere with or change: alcohol/drug testing requirements mandated by the Department of Transportation (DOT); the BWC Drug-Free Safety Program, including H.B. 80; Ohio HB 223 (rebuttable presumption for workers' compensation).
- Nothing in the law permits a person to sue an employer for refusing to hire, discharge, disciplining, retaliating or otherwise taking an adverse employment action related to "medical" marijuana.
- A person who is discharged from employment because of their medical use of marijuana is considered to have been discharged "for cause" if their use violated an employer's policy.

H.B. 207 Workers' Comp-subrogated claims

Effective August 31, 2016

This rule eliminates the minimum number of employees required for a private sector employer, or a board of county commissioners with respect to the construction of a sports facility, to obtain self-insuring status under the workers' compensation law.

The rule also allows a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience in the following circumstances:

- The employer of the employee who is the subject of the claim pays premiums into the state insurance fund.
- The claim is based on a motor vehicle accident involving a third party.

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- The third party is issued a citation for violation of any law or ordinance regulating the operation of a motor vehicle arising from the accident on which the claim is based.
- Either of the following circumstances apply to the claim:
 - Any form of insurance maintained by the third party covers the claim.
 - Uninsured or underinsured motorist coverage as described in section 3937.18 of the Revised Code, covers the claim.

Judicial Actions

Onderko v. Sierra Lobo, Inc., 2016-Ohio-5027

In this 5-1 decision, the Supreme Court of Ohio held that a prima facie case of retaliatory discharge filed pursuant to R.C. § 4123.90 does not require proof that plaintiff actually suffered a workplace injury.

Michael Onderko (“Claimant”), was working for Sierra Lobo, Inc. (“Employer”) when he felt pain in his right knee while moving office furniture with two other employees on August 9, 2012. As a result, he left work early. On his way home, he stopped for gas and his right knee gave out while stepping off the curb. When he sought medical treatment that evening, he did not tell the emergency room doctor that his knee started hurting at work because he alleged that knew the Employer was concerned about their safety record and he was concerned about losing his job. The record also demonstrates that Claimant provided several dates of injury for his knee complaints and further denied the injury occurred at work when questioned by his Employer and an orthopedic specialist, although Claimant denies this.

Four days after the alleged accident at work, Claimant decided to pursue the knee injury as a workers’ compensation claim. His claim was denied administratively on October 31, 2012, and on December 12, 2012, the Employer terminated Claimant for deceptive attempts to obtain workers’ compensation benefits for a non-work-related injury. On March 8, 2013, Claimant filed a complaint asserting Employer violated R.C. § 4123.90. In his complaint, Claimant alleged that on August 9, 2012, he sustained a work-related injury while working for the Employer; that as a result of that injury he filed a workers’ compensation claim; and, that because he filed the claim, his Employer retaliated against him when it terminated his employment.

Employer filed for summary judgment asserting Claimant’s retaliation claim must fail as a matter of law because Claimant failed to establish a prima facie case of retaliation under R.C. § 4123.90 and the Supreme Court of Ohio’s decision in *Wilson v. Riverside Hosp.*, 18 Ohio St3d 8 (1985). The Court in *Wilson* held that a Claimant must demonstrate that a compensable, work-related injury occurred to be able to move forward with a retaliation action under R.C. § 4123.90. In opposition to Employer’s motion for summary judgment, Claimant argued that it is the filing

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of the workers' compensation claim, not the allowance of the claim, that triggers the statutory protection from a retaliatory discharge. The trial Court granted summary judgment in favor of the Employer.

Claimant appealed, and the Sixth District Court of Appeals reversed. The Court held that the crux of the retaliation statute is to enable employees to freely exercise their rights without fear of retribution from their employers, and that requiring Claimant to successfully prove a compensable, work-related injury would restrict an employee's exercise of his or her rights because they would have to choose between continued employment and submission of a workers' compensation claim. Thus, the Court of Appeals held Claimant was not required to prove that the injury occurred at the workplace and arose out of the scope of his employment to proceed with a retaliation claim under R.C. §4123.90.

Employer appealed, and the Supreme Court of Ohio accepted the discretionary appeal to due to a conflict between the Sixth District's decision in this case and the Fifth District's decision in *Kilbarger v. Anchor Hocking Glass Co.*, 120 Ohio App.3d 332 (5th Dist. 1997). The Supreme Court of Ohio certified the following question: "Whether, as an element of establishing a prima facie claim for retaliatory discharge under R.C. 4123.90, plaintiff must prove that he or she suffered a workplace injury" and the two cases were consolidated for decision. (*Onderko v. Sierra Lobo, Inc.* 2016-Ohio-5027, citing 141 Ohio St.3d 1451, 2015-Ohio-239, 23 N.E.3d 1194). The Court answered the question in the negative, and held that the plain language of R.C. § 4123.90 does not require Claimant to prove a compensable, work-related injury in order to meet the elements of a prima facie retaliation claim because the language of the statute hinges on the employer's response to claimant's pursuit of benefits, not the award of benefits.

The Court clearly indicated that the only relevant question for a trial court to consider in retaliatory action claims brought pursuant to R.C. § 4123.90 is whether a claim was pursued and whether the employee was fired or otherwise punished for doing so. However, it was quick to note that the holding in this case by no means suggests that a fraudulent or false claim for workers' compensation may be pursued without penalty, noting that filing a false claim or making misleading statements in order to secure workers' compensation benefits is a crime in Ohio under R.C. § 2913.48.

State ex rel. Aaron's, Inc. v. Ohio Bureau of Workers' Comp., 2016-Ohio-5011

In this 4-3 decision, the Supreme Court of Ohio held that where substantial misclassifications occurred over a significant period of time and resulted in considerable underpayment of premiums to state funds, the Bureau of Workers' Compensation did not abuse its discretion when it applied an audit adjustment retroactively to the 24 months prior to the current payroll.

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Aaron's Inc. ("Claimant") had been doing business in Ohio since 1992, primarily as a furniture-rental business. When Claimant applied for worker's compensation coverage, it was assigned two classification numbers by the bureau. Upon receiving such classifications, Claimant placed its employees into one of the two categories.

In 2006, the bureau conducted a routine audit and concluded that Claimant had incorrectly placed many of its employees under the wrong classification category. However, the audit report was not finalized and as a result Claimant was never notified of the results. In 2008, the bureau conducted a new audit and issued its report. The results showed that Claimant had misclassified approximately 70% of its employees, which resulted in Claimant paying substantially less in premiums than it should have. Additionally, the report revealed that Claimant was reporting a drastically different distribution of employees in other states even though the same classification system was being used. The bureau subsequently added several classifications to Claimant's payroll, applied them retroactively to July 1, 2004, and billed Claimant for more than \$2 million in back premiums.

Claimant challenged both the report findings and the retroactive application. Following a hearing, the bureau's adjudicating committee upheld the new classifications but limited the retroactive application to a period of 24 months.

Claimant then filed a complaint in the District Court of Appeals alleging the bureau had abused its discretion. Specifically, Claimant argued that the bureau failed to adequately explain why it refused to apply the reclassifications solely prospectively as Claimant had requested. The Court of Appeals found no abuse of discretion. On appeal, the Supreme Court instructed the bureau to issue an amended order explaining its decision to apply the reclassifications retroactively.

In the amended order, the administrator's designee concluded that because of both the breadth of the classification discrepancy and the substantial underpayment of premiums, solely prospective application would have been inappropriate. To do so would have allowed Claimant to benefit from its inaccurate reporting. As a result, the designee found that the bureau had properly exercised its discretion under Ohio Adm. Code 4123-17-17(C).

Following this amended order, Claimant again filed a complaint in the District Court of Appeals challenging the designee's decision. Claimant alleged that the billing of back premiums by the bureau was an abuse of discretion and violated Ohio law. The case was referred to a magistrate who concluded that, despite the fact that there was no finding Claimant was at fault or had intentionally misreported, the designee properly exercised his discretion. The magistrate found the magnitude of the misreporting to be a sufficient basis for applying the reclassifications retroactively.

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Claimant challenged the magistrate's decision on appeal as not supported by the record. Claimant further alleged that the bureau's internal policy was to apply the reclassifications prospectively unless there was intentional wrongdoing or disregard. The court of appeals rejected Claimant's arguments and adopted the magistrate's decision. Claimant subsequently appealed as of right to the Supreme Court, alleging that it was entitled to relief from the decision because the bureau's explanation was arbitrary and again contrary to bureau policy. Additionally, Claimant argued that the misclassification occurred as a result of the bureau's failure to notify it following the 2006 audit. Whereas the bureau maintained that under Ohio Adm.Code 4123-17-17(C) it was permitted to apply adjustments up to 24 months preceding the current payroll period and was not required to show intentional wrongdoing by the employer.

The Supreme Court found the evidence supported the bureau's decision to apply the reclassifications retroactively and the bureau was under no legal duty to apply them solely prospectively. The Court agreed that Ohio Adm.Code 4123-17-17(C) permitted the bureau to apply the adjustments up to 24 months preceding the current payroll and as such the retroactive application was a proper exercise of the bureau's discretion. The Court also noted Claimant failed to identify any policy that required the bureau to apply the reclassifications solely prospectively; but even if it had, policy alone would not create a legal duty so Claimant's argument would have failed.

The Court's decision indicates that even where there is no evidence of wrongdoing, an employer may be subject to back payments if the failure to do so would result in a windfall gain. This retroactive application however, is limited to a period of 24 months preceding the current payroll.

State ex rel. Perez v. Indus. Comm., Slip Opinion No. 2016-Ohio-5084

On July 26, 2016, the Supreme Court of Ohio handed down this per curiam decision finding that the Industrial Commission ("Commission") did not abuse its discretion when it found that Manuel Perez ("Perez") had been overpaid temporary total disability compensation for the period of time at issue. On the fraud aspect of the temporary total disability ("TTD") compensation, the court found that the court of appeals abused its discretion when it granted a writ of mandamus to compel the Commission to vacate its finding of fraud.

Perez sustained an injury while working in the construction industry on December 30, 2002. He filed a workers compensation claim that was allowed for neck and back injuries, major depression and cognitive disorder. He was awarded TTD compensation on several occasions; this appeal involves the order for disability payments beginning July 28, 2007 based on only the psychological condition.

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Prior to his 2002 injury, Perez owned and operated an auto repair business in the garage of the structure where he lived. On March 18, 2011, the Bureau of Workers' Compensation ("BWC") received information that Perez was operating his auto repair business while receiving TTD benefits. An investigation was started and it was determined through surveillance that Perez was again working. However, the BWC's investigation it was closed in January 2012 since it could not be shown that Perez was being paid for the work. In November 2012 the investigation was re-opened based on a new tip. The BWC filed a motion alleging Perez continued to operate his business and receive TTD from September 1, 2017 through October 13, 2011. The Commission concluded Perez had committed fraud when he was working while receiving TTD compensation and was overpaid TTD compensation as a result. Perez appealed and the Court of Appeals granted the Writ of Mandamus in his favor.

On appeal to the Supreme Court, the Commission argued that Perez provided customer services that directly generated business; produced revenue; and, engaged in activities that were more than passive, such as ordering and picking up parts, scheduling appointments, talking with customers. The court held that the evidence supported the Commission's decision that Perez was engaged in more than minimal activities which were income-producing, and the Commission did not abuse its discretion when it found that Perez had been overpaid TTD compensation for the period of time at issue. The Supreme Court of Ohio reversed the Court of Appeals Decision and denied Perez' request for a writ of mandamus.

TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: October 12, 2016

Overview

The BWC continues a smooth transition from former Administrator Buehrer to current Administrator Morrison. At this time the Bureau is not planning any major legislative actions this fall. However they continue review and propose changes to the state fund group rating programs. The OMA remains involved in ensuring that any changes made to the system are actuarially sound.

Legislation and Rules

Senate Bill 5 – mental / mental

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

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

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

Senator Patton remains focused on passing the bill. There is concern with this bill being used as a bargaining chip in lame duck session.

Senate Bill 27 / House Bill 292 – firefighter cancer

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

Senate Bill 27 passed unanimously through the Senate Insurance Committee and off the Senate floor 32-1. The bill provides that a firefighter who is disabled as a result of specified types of cancer is presumed to have incurred the cancer while performing his or her job duties, thus creating eligibility for workers' compensation benefits.

The bill allows that the presumption can be rebutted if it can be proven that the cancer was directly caused by working conditions. This is the opposite of Ohio's asbestos statute which has become a national model. Originally the cancers covered under the bill include: cancers of the lung, brain, kidney, bladder, rectum, stomach, skin, or

prostate; Non-Hodgkin's lymphoma; leukemia; multiple myeloma; and testicular or colorectal cancer. In committee, an amendment was added to include, breast, cervical, and uterine cancers to the bill.

BWC estimated an additional 568 claims annually at an approximate cost of \$75 million. Much like Senate Bill 5, this bill would create a major shift in Ohio's workers' compensation laws. The House has indicated that they might pass the bill in lame duck.

Senate Bill 149 – Loss of use

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

House Bill 205 – Private Insurance

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

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

House Bill 206 – Industrial Commission Statistics

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

House Bill 207 – Subrogation

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

House Bill 207 cleared both the Senate floor and House concurrence. The OMA was a supporter of the legislation. OMA Safety and Workers' Compensation Chairman Larry Holmes, Sr. V.P., Finance, Fort Recovery Industries, Inc., provided proponent testimony on behalf of the OMA last fall during committee hearings.

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

House Bill 355 – employee misclassification

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

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

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

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

House Bill 390 – Unemployment Compensation Payment

The General Assembly used HB 390 as the vehicle to address the state's unemployment compensation debt. The General Assembly agreed to a deal with the intention to eliminate the state's recession-era unemployment compensation debt to the federal government. The move supported by the OMA and other business allies will potentially save Ohio's businesses more than \$400 million in FUTA penalties. Without this fix employers were staring at a possible \$168 per employee penalty to be paid in 2017.

The new plan will borrow from the state's unclaimed funds to pay off the debt in November 2016. Then employers will repay the state-backed loan by paying a per employee surcharge in 2017.

While the General Assembly addressed the short term debt issue, the new plan does not address the long term solvency of the system due to the structural imbalance that contributed to the heavy borrowing.

House Bill 394 - Unemployment Compensation Tax Changes

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

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

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

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

Temporary Increase in State Unemployment Tax Base. HB 394 would increase the state unemployment tax base from \$9,000 to \$11,000 when the UI Trust Fund balance is below 50 percent of the 1.0 Average High Cost Model solvency level and continue the increase until the UI Trust Fund reaches 1.0 Average High Cost Model. The state tax

base will be reduced back to \$9,000 when the UI Trust Fund equals or exceeds the 1.0 AHCM solvency level. If the balance dips below 50 percent of the solvency level in future years, the tax base will automatically return to the \$11,000 level.

Reduction of Number of Potential Weeks of Unemployment Insurance. HB 394 would change the determination of the total number of weeks of unemployment compensation potentially available to twice a year, based on Ohio's seasonally adjusted three-month total unemployment rate, before January and June. A sliding scale would set the number as low as 12 weeks when the rate is 5.5 percent or below, and up to 20 weeks if the rate is 9 percent or above. Ohio currently uses a sliding scale ranging from 20 to 26 weeks.

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

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

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

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

House Bill 523

On May 10, 2016, the Ohio House of Representatives voted 71 to 26 to legalize medical marijuana in Ohio. This vote follows a series of public meetings held by the House's Medical Marijuana Task Force earlier this year, the bill's introduction on April 14, 2016, and vigorous committee debate and amendments.

The Senate passed the bill in late May 18-15, needing bipartisan support to push the bill over the finish line. The measure seeks to address Ohioan's apparent support for the concept of medical marijuana, but builds in regulatory controls that are missing citizen-initiated measures that hope to gain enough signatures be on the November ballot.

While not the best scenario for manufacturers, the legislations is a much more responsible step with the opportunity to improve the law compared to the irresponsible actions of getting marijuana enshrined in the Ohio constitution. Passage of the bill which is much more business friendly than the ballot options convinced the greatest ballot threat (MPP) to suspend their campaign.

BWC Agency Notes

New Chief Legal Counsel

Ohio Bureau of Workers' Compensation announced the appointment of Kevin Cogan as the bureau's Chief Legal Counsel.

Cogan will be a member of BWC's executive staff, responsible for coordinating all legal activities for BWC, providing legal advice and assistance, and acting as chief ethics officer for the agency.

Cogan has been an attorney with the Jones Day law firm in Columbus and has served as special counsel to Ohio Attorney General Mike DeWine, a role he also served under former Attorney General Jim Petro. His litigation experience includes corporate control contests and shareholder disputes, securities fraud, insurance coverage disputes, environmental litigation, real estate controversies and disputes relating to asset and stock purchase agreements.

Governor John Kasich appointed Cogan to the Ohio Lake Erie Commission in 2013. He is a trustee and past president of the Board of Trustees of the Franklin Park Conservatory and Botanical Gardens. He was named an Ohio Super Lawyer, a 2016 Lawyer of the Year by Best Lawyers in America and one of America's leading lawyers for business by Chambers USA.

BWC Names New Legislative Director

Ohio Bureau of Workers' Compensation (BWC) Administrator & CEO Sarah Morrison announced that Elle Decot has joined the agency as its legislative director.

Decot will be charged with representing BWC at the Statehouse, working with lawmakers on legislation effecting Ohio's workers' compensation system and responding to constituent and customer questions and concerns.

She joined BWC on June 13, filling a role vacated by Kelly Carey, who left the bureau in April for a job in the private sector.

BWC Reports Decline in Workplace Injuries

Dr. Abe Al-Tarawneh, Superintendent of the Bureau of Workers' Compensation (BWC) Division of Safety and Hygiene, reported a 16.7 percent decrease in the rate of private sector injuries in the BWC system between calendar years 2010 and 2014.

The Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses shows the rest of the nation experienced an 8.6 percent drop over the same time period. During that period, total injuries in Ohio's BWC system dropped from 105,568 to 95,802, a decrease made more significant considering a 7.5 percent growth in employment during the same time period.

Dr. Al-Tarawneh's report highlights the effectiveness of Ohio's occupational health and safety programs and services in preventing injuries. The Division of Safety and Hygiene increased the number of employers utilizing one or more of its services by 70 percent between 2009 and 2015.

BWC has Scheduled Major System Upgrade

To modernize operations and improve customer service, the Bureau of Worker' Compensation (BWC) will replace its core claims and policy management systems this November. The transition to this new system will occur over Veterans' Day weekend, Nov. 10 – 14. Beginning the afternoon of Nov. 10, many BWC systems, including web and phone services, will be unavailable. In addition, some employer-related systems will

have limited functionality beginning at 5 p.m. Nov. 9. Normal operations resume on Tuesday, Nov. 15.

Specific information on outages will be forthcoming as the transition date approaches.

BWC's goal is to make this transition as seamless as possible for its customers. This includes ensuring the transition does not disrupt compensation for injured workers. Steps BWC has taken to minimize disruption include thorough system testing, extensive employee training and practice, and timing the transition with a three-day holiday weekend.



Ohio Legislative Service Commission

Final Analysis

Paul Luzzi

Am. Sub. H.B. 207 131st General Assembly (As Passed by the General Assembly)

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

Effective date: August 31, 2016

ACT SUMMARY

Workers' compensation claims involving motor vehicle accidents

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

Workers' compensation – self-insuring employers

- Eliminates the minimum number of employees required for a private sector employer or board of county commissioners to obtain self-insuring status under the Workers' Compensation Law.
- Requires a self-insuring employer who resumes paying premiums to the state insurance fund to provide the Administrator with any information that the Administrator may require to develop a state fund experience modification factor.
- Requires, if a professional employer organization agreement is terminated, a self-insuring professional employer to provide the Administrator with information that the Administrator must use to develop a state fund experience modification factor for each client employer formerly subject to the agreement.

CONTENT AND OPERATION

Workers' compensation claims involving motor vehicle accidents

Charging experience for certain claims to the Surplus Fund Account

The act requires the Administrator of Workers' Compensation, for workers' compensation claims arising on or after July 1, 2017, to charge a state fund employer's experience to the Surplus Fund Account created under continuing law within the State Insurance Fund and not to the employer's experience for payments made in a workers' compensation claim, if all of the following apply:

- The claim is based on a motor vehicle accident involving a third party;
- The third party is issued a citation for a violation of any law or ordinance regulating the motor vehicle's operation arising from the accident on which the claim is based;
- Either of the following circumstances apply to the claim:
 - Any form of insurance maintained by the third party covers the claim;
 - Uninsured or underinsured motorist coverage covers the claim.



- The employer of the employee who is the subject of the claim is not the state or a state institution of higher education, including its hospitals.¹

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

Procedure for charging the experience to the Surplus Fund Account

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

Upon the Administrator's determination that a claim qualifies to be charged to the Surplus Fund Account, or if the Administrator fails to make a determination within 180 days after receiving the request, the Administrator must charge the experience of an employer for any compensation or benefits paid in relation to that claim to the Surplus Fund Account and not to the individual employer's experience.²

Deposit of subrogated funds

Continuing law prescribes procedures that the Administrator (or any other statutory subrogee) and a claimant must follow with respect to the distribution of funds that are subrogated in a third-party claim. With respect to any money collected by the Administrator under that process, continuing law generally requires the Administrator to deposit the money into the appropriate account within the State Insurance Fund. The act requires any amount collected for compensation or benefits that were charged to the Surplus Fund Account under the act and not charged to an employer's experience to be deposited in the Surplus Fund Account and not applied to an individual employer's account.³

¹ R.C. 4123.932; Section 3.

² R.C. 4123.932(B), (C), and (D).

³ R.C. 4123.931(K).

Workers' compensation self-insuring employers

Eliminating minimum number of employees to obtain self-insuring status

The act eliminates the requirement that a private sector employer employ at least 500 employees to be approved to pay directly for compensation and benefits under the Workers' Compensation Law (to "self-insure"). The act also eliminates the requirement that a board of county commissioners employ at least 500 employees to be approved to self-insure with respect to the construction of a sports facility. Formerly, with respect to private employers, the Administrator was required to waive this employee threshold requirement if the employer satisfied requirements specified in rules adopted by the Administrator. Under those rules, the employer must either have had a substantial employee count outside Ohio, as determined by BWC, or obtained and agreed to maintain insurance in amounts exceeding statutory requirements and with a retention level determined by BWC to be appropriate.⁴

Under continuing law, when approving an employer to self-insure, the Administrator must consider a number of factors to determine the ability of a private sector employer or a board of county commissioners to meet the obligations of being a self-insuring employer.⁵

Self-insuring employers returning to the State Insurance Fund

The act requires a self-insuring employer who returns to the status of a state fund employer on or after January 1, 2017, to provide the Administrator with the following information in a format and by a date determined by the Administrator:

- Medical costs and indemnity costs by claim;
- Payroll by manual classification and year;
- Any other information the Administrator may require.

The Administrator must develop a state fund experience modification factor based, in whole or in part, on the submitted information and the formerly self-insuring employer's experience.⁶

⁴ Ohio Administrative Code 4123-19-03.1.

⁵ R.C. 4123.35(B) and (C).

⁶ R.C. 4123.35(I); Section 3.



Former law permitted the Administrator to allow a self-insuring employer to resume payment of premiums to the State Insurance Fund with appropriate credit modifications to the employer's basic premium rate as determined under continuing law.

Self-insuring professional employer organizations

Effective January 1, 2017, the act requires a professional employer organization (PEO) that is a self-insuring employer to provide the following information to the Administrator not more than 14 days after a PEO lease agreement termination:

- The payroll of each client employer involved in the lease termination, organized by manual classification and year;
- The medical and indemnity costs of each client employer involved in the lease termination, organized by claim;
- Any other information the Administrator may require.⁷

The Administrator uses the submitted information to develop a state fund experience modification factor to determine the premium to be paid by each client employer subject to the lease termination. The Administrator may require multiple submissions of the information if necessary. The Administrator may revoke or refuse to renew a PEO's status as a self-insuring employer if the PEO fails to provide the required information.⁸

Under the act, a PEO must disclose the following information in writing to a potential client employer before entering into a PEO agreement:

- The reporting requirements of the act;
- The Administrator's duty to develop a state fund experience modification factor for each client employer involved in a lease termination with a self-insuring professional employer organization.⁹

A 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.¹⁰ One duty

⁷ R.C. 4125.07(C)(1); Section 3.

⁸ R.C. 4125.07(C) and (D).

⁹ R.C. 4125.07(F).

¹⁰ R.C. 4125.01, not in the act.

of the PEO is to maintain workers' compensation coverage for all of the coemployed employees.¹¹

Continuing law requires a PEO to provide written notice to both the Administrator and a client employer of the termination of a professional employer organization agreement. Continuing law also requires that the notice include client payroll and claim information.¹²

HISTORY

ACTION	DATE
Introduced	05-12-15
Reported, H. Insurance	10-19-15
Passed House (94-0)	12-01-15
Reported, S. Insurance	04-26-16
Passed Senate (33-0)	05-04-16
House concurred in Senate amendments (96-0)	05-11-16

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¹¹ R.C. 4125.03, not in the act.

¹² R.C. 4125.07.





Ohio Legislative Service Commission

Final Analysis

Megan Cummiskey

Sub. H.B. 390*

131st General Assembly
(As Passed by the General Assembly)

Reps. Schaffer, Retherford, Amstutz, Cera, Rogers, Anielski, Antonio, Baker, Boccieri, Brenner, Brown, Buchy, Burkley, Celebrezze, Duffey, Ginter, Green, Hagan, Hall, Hambley, Huffman, Lepore-Hagan, Maag, Manning, McClain, McColley, M. O'Brien, Perales, Rezabek, Romanchuk, Ryan, Scherer, Schuring, Sears, Slaby, Slesnick, K. Smith, Sprague, Strahorn, Thompson, Young

Sens. Williams, Beagle, Bacon, Balderson, Cafaro, Coley, Eklund, Faber, Hackett, Hite, Hughes, Jordan, LaRose, Lehner, Obhof, Oelslager, Patton, Seitz

Effective date: September 28, 2016; sections related to repaying unemployment benefits debt, operating appropriations, and certain other matters effective June 28, 2016; other sections effective July 1, 2017

ACT SUMMARY

Repayment of current federal unemployment debt

- Requires a one-time loan to be made from unclaimed funds to the Unemployment Compensation Fund to pay unemployment benefits.
- Requires the Director of Job and Family Services to use the amount transferred from unclaimed funds to eliminate the balance of amounts advanced to the state from the federal government.
- Requires each experience-rated contributory employer to pay an increased contribution rate for contributions due in 2017 to repay the loan from unclaimed funds.

* This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for H.B. 390, As Enacted, which is available at <https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-HB-390>.

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CONTENT AND OPERATION

Repayment of current federal unemployment debt

(Section 741.10)

Loan from unclaimed funds

The act requires, by September 15, 2016, the Director of Job and Family Services (JFS Director), who administers Ohio's unemployment compensation system, to certify to the Director of Budget and Management (OBM Director) the balance of advances (essentially, loans) from the federal government for the payment of unemployment benefits. The OBM Director, by September 20, 2016, must request the Director of Commerce to transfer cash from unclaimed funds to the Unemployment Compensation Fund in the amount certified by the JFS Director as a one-time loan for the purpose of paying unemployment benefits. The Director of Commerce must make that transfer upon receiving the request. The amount transferred must be credited to the Mutualized Account in the Unemployment Compensation Fund.

The OBM Director, in consultation with the JFS Director, must establish a schedule for the loan repayment. The loan must be repaid by February 28, 2018.

The JFS Director, by September 30, 2016, must deposit the amount transferred into the Unemployment Compensation Fund from unclaimed funds with the U.S. Secretary of the Treasury to eliminate the balance of amounts advanced.

Temporary contribution rate increase to repay the loan

The act requires each experience-rated contributory employer (an employer with four or more consecutive calendar quarters of unemployment benefits charged against the employer) to pay an increased contribution rate for contributions due in 2017. The



If the act's rate increase is imposed, it must remain in effect for each calendar year thereafter until the earlier of the following:

(1) The principal on the outstanding advance balance has been eliminated.

(2) The JFS Director determines that the maximum Federal Unemployment Tax Act (FUTA) tax credit an employer may receive pursuant to federal law will be reduced for that calendar year.

The act specifies that it is the intent of the General Assembly to repeal this increase in contribution rates in future legislation adopting long-term reforms to the Unemployment Compensation System.

Surcharge to pay interest on federal advances

(R.C. 4141.251)

Beginning October 1, 2016, if the JFS Director pays interest charged pursuant to federal law on federal unemployment advances from the Unemployment Compensation Interest Contingency Fund (see "**Unemployment Compensation Interest Contingency Fund**," below), the act requires the Director to require each contributory employer to pay a surcharge. The Director must determine the amount of a surcharge to assess against each contributory employer that generates an amount not greater in the aggregate than the amount sufficient to repay the Fund for the interest paid. The Director must determine the surcharge amount on a flat rate basis.

The Director must collect the surcharge at the same time and in the same manner as contributions due under continuing law. If a surcharge is assessed, the Director must provide notice to each employer subject to the surcharge, either upon the quarterly contribution report due from each employer under continuing law or by other appropriate notice, a separate listing of the surcharge amount due. The act prohibits surcharge payments from being used to satisfy an employer's contribution obligations under continuing law.

If an employer payment is insufficient to pay the amount of contributions due under continuing law and the amount of the surcharge, the payment first must be applied against the surcharge due. The Director then must apply the remaining amounts from a partial payment in the following order:

(1) Against any mutualized contributions due;

(2) To the credit of the employer's individual account;

(3) Against any interest, forfeiture, and fines due.



Oct. 3, 2016

Morrison appoints Kevin Cogan BWC's chief legal counsel

COLUMBUS – Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison announced today the appointment of Kevin Cogan as the bureau's Chief Legal Counsel.

Cogan will be a member of BWC's executive staff, responsible for coordinating all legal activities for BWC, providing legal advice and assistance, and acting as chief ethics officer for the agency. He succeeds Morrison, who served in that role from 2012 until her appointment in April to Administrator/CEO.

"Kevin is an experienced trial lawyer," said Morrison. "He has represented clients in complex civil litigation in state, federal, and bankruptcy courts throughout the United States. We are pleased to have him at BWC to help manage the challenges of complex workers' compensation law."

Cogan has been an attorney with the Jones Day law firm in Columbus and has served as special counsel to Ohio Attorney General Mike DeWine, a role he also served under former Attorney General Jim Petro. His litigation experience includes corporate control contests and shareholder disputes, securities fraud, insurance coverage disputes, environmental litigation, real estate controversies and disputes relating to asset and stock purchase agreements.

Governor John Kasich appointed Cogan to the Ohio Lake Erie Commission in 2013. He is a trustee and past president of the Board of Trustees of the Franklin Park Conservatory and Botanical Gardens. He was named an Ohio Super Lawyer, a 2016 Lawyer of the Year by Best Lawyers in America and one of America's leading lawyers for business by Chambers USA.

Cogan began his duties at BWC today.

###

 **@OhioBWC**

For immediate release: June 28, 2016

Decot appointed BWC legislative director

COLUMBUS - Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison today announced Elle Decot has joined the agency as its legislative director.

Decot, who joined the administration of Gov. John Kasich in 2011, will be charged with representing BWC at the Statehouse, working with lawmakers on legislation effecting Ohio's workers' compensation system and responding to constituent/customer questions and concerns.

"We are thrilled to have Elle join our executive team and serve in this important role," said Morrison. "She brings the kind of skills and experience we need to be our point person at the Statehouse, working with lawmakers and the Governor's office to craft legislation that best serves injured workers and public and private employers across this state."

Born and raised in nearby Marysville, Ohio, Decot (pronounced DECK-O) attended The Ohio State University, where she majored in political science with a focus in Arabic. After graduation, Decot joined the Kasich administration as a constituent aide and rose through the years to the role of legislative liaison in March 2014. In that role, she collaborated with policy heads on high-profile pieces of legislation, such as The Youngstown Educational Plan, the privatization of several state prisons and the overhaul of Ohio's concealed carry firearm laws.

Decot worked with the General Assembly to ensure passage of the Governor's policy initiatives, including the State Budget and Mid-Biennium Review. She cultivated ongoing relationships with elected officials, trade associations, interest groups and key stakeholders as a representative of the Governor.

Decot also recently served as deputy political director of New Day for America. She joined BWC on June 13, filling a role vacated by Kelly Carey, who left the bureau in April for a job in the private sector.

A photo of Decot can be found [here](#).

Follow BWC on [Twitter](#).

###

Self-Insuring Assessments

Frequently Asked Questions

What funds do self-insuring employer assessments cover?

Self-Insured Surplus Fund (SIS) – This fund covers claim costs charged to the Surplus Fund of the State Insurance Fund. These costs are primarily for claims with injury dates prior to 1987 of defaulted self-insured employers and for specific medical exams and prostheses.

Self-Insured Employers Guaranty Fund (SIEGF) – This fund covers the costs of defaulted self-insuring employers' claims with injury dates after 1986. It also includes managed care organization (MCO) fees and the costs of Disabled Workers' Relief Fund (or cost-of-living increases) on eligible bankrupt self-insuring employers' permanent total disability claims with any injury date.

BWC and Industrial Commission of Ohio (IC) Administrative Cost Funds – These funds cover the administrative costs of BWC and IC activities that support self-insuring employers.

Division of Safety & Hygiene Fund – This fund covers BWC's Division of Safety & Hygiene's activities on behalf of self-insuring employers.

Optional Disallowed Claim Reimbursement Program – This assessment funds the program to reimburse participating self-insuring employers for claim costs awarded by the IC that were ultimately overturned. Currently, 405 self-insuring employers participate in this program.

Guaranty fund assessments for new self-insuring employers – We assess new self-insuring employers 6 percent of the most-current complete year of payroll premium at the effective date of self-insurance and the next two renewals.

How does BWC determine assessment rates?

BWC maintains a minimum balance of funds in the SIEGF at rates as low as possible to assure sufficient moneys to guarantee the payment of any claims against the fund. Additionally, Ohio Administrative Code 4123-19-15 (B) requires the SIEGF to maintain a minimum balance of 1.25 times the prior year's annual claims disbursements. When BWC determines the SIEGF has insufficient funds, an assessment is necessary to ensure the minimum balance in the fund. BWC will then assess all self-insuring employers an annual contribution.

BWC determines SIS and SIEGF year-end fund balances and identifies adjustments needed in the upcoming year. BWC determines new rates based on projected income from assessments and other third-party sources, and the amount needed to meet the statutorily required levels.

What are the revenue sources for the SIS and SIEGF?

The primary source of revenue is the assessment payments from self-insuring employers. Additional revenue can come from collection on security for defaulted employers and recoveries from excess liability insurance previously held by defaulted employers.

What is the minimum assessment rate?

Each year, BWC determines the minimum amount of assessment due, regardless of the amount of compensation paid and reported. For a canceled self-insuring employer, BWC reduces the minimum assessment by 10 percent each year the employer reports paid compensation below the amount required to reach the minimum rate.

How did BWC determine the current assessment rates?

Please see the current-year assessment rate documentation.

How does BWC invoice the assessments?

BWC levies assessments based on the prior year's reported paid compensation for all active self-insuring employers. BWC uses reported compensation for the calendar year 2015 for the January and July 2017 billings. Payments are due the last day of February and August, respectively.

Where should employers send payments?

Employers can send payments by regular mail to the Ohio Bureau of Workers' Compensation, P.O. box 89492, Cleveland, OH 44101-6492.

Employers can send payments by overnight mail to Ohio Bureau of Workers' Compensation Attn: Lockbox 89492 4910 Tiedeman Road Cleveland, OH 44144.

Can employers pay invoices online?

Employers can make online payments with a credit card or routing number through their BWC e-account.

What if my payment is late?

BWC must receive assessment payments prior to the end of February and August. BWC will charge \$500 late-payment penalty if payment is not received on time. BWC may add additional penalties if payments are not received within 60 days of the payment due date.



OMA PUBLIC POLICY FRAMEWORK FOR ACTION

The Ohio Manufacturers' Association



ohiomfg.com

Page 54 of 73

Public Policy Framework for Action

Manufacturing is responsible for 17% - \$99 billion - of Ohio's Gross Domestic Product; this is greater than the contribution of any other Ohio industry sector. Manufacturing is the engine that drives Ohio's economy.

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

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

MAJOR POLICY GOALS INCLUDE THE FOLLOWING:

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

PolicyGoal:

An Efficient, Competitive Ohio Tax System

For Ohio to be successful in a global economy, the state's tax system must encourage investment and growth. It must be competitive nationally and internationally. A globally competitive tax system is characterized by (a) certainty, (b) equity, (c) simplicity and (d) transparency. Economy of collections and convenience of payment also are important attributes.

Generally, manufacturers support efforts to broaden the tax base, which enables lower rates. To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged. Where needed, government incentives are best structured as grants rather than as tax credits. And, in general, earmarking and dedicating tax revenues should be discouraged.

Good tax policy also generates necessary revenues to support the essential functions of government. Good budgeting and spending restraint at all levels of government are vital to a competitive tax environment.

Major tax reforms approved by the Ohio General Assembly in 2005 and additional reforms in 2011 through 2015 have led to significant improvements to a tax system that was for many years widely regarded as uncompetitive and obsolete. These reforms reduced overall tax rates, eliminated tax on investment, and broadened the tax base, all of which provide more stable and predictable revenues, and simplify compliance.

The elimination of the tangible personal property tax, the corporate franchise tax, and the estate tax has strengthened the competitiveness of Ohio's tax system. So has the reduction of the personal income tax rate, as well as the creation of a broad-based, low-rate commercial activity tax.

Going forward, these tax policy gains must be protected. Tax bases should be protected against erosion caused by granting credits and carve-outs to narrow special interests, in order to protect the productivity of the taxes. Where possible and reasonable, tax bases should be expanded, and tax rates reduced.

In addition, the state should continue work with Ohio municipalities to continue to streamline the collection of municipal income taxes making it administratively simpler and less costly to conduct business in Ohio.

The state's tax system would also benefit from a reduction of the number and type of taxing jurisdictions. Because of its complex layering of local and state taxes, Ohio's tax system is at a competitive disadvantage compared to other states.

PolicyGoal:

A Lean, Productive Workers' Compensation System

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

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

Fundamental priorities for future action are three:

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

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

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

PolicyGoal:

Access to Reliable, Economical, Diverse Energy Resources

Energy policy can enhance—or hinder—Ohio’s ability to attract business investment, stimulate economic growth and spur job creation, especially in manufacturing. State and federal energy policies must (a) ensure access to reliable, economical sources of energy, (b) support the development of a diverse energy resource mix, and (c) conserve energy to preserve our natural resources, while lowering cost.

The Ohio Manufacturers’ Association’s energy policy advocacy efforts are guided by these principles:

- Energy markets free from market manipulation allow consumers to access the cost and innovation benefits of competition.
- Ohio’s traditional industrial capabilities enable global leadership in energy product innovation and manufacturing.
- Sustainable energy systems support the long-term viability of Ohio manufacturing.
- Effective government regulation recognizes technical and economic realities.

Shaping energy policy in Ohio that aligns with these principles will support manufacturing competitiveness, stimulate economic expansion and job creation, and foster environmental stewardship.

Energy policy priorities are:

Assure an open and fair electricity generation marketplace, in which competition enables consumer choice, which in turn drives innovation.

Design an economically sound policy framework for discounted rates for energy-intensive manufacturers that makes Ohio competitive with other states.

Protect energy consumers from above-market generation charges.

Support deployment of customer-sited generation technologies, such as cogeneration, energy efficiency and demand-side management, in order to achieve least-cost and sustainable energy resources.

PolicyGoal:

A Fair, Stable, Predictable Civil Justice System

For manufacturers to invest and grow in Ohio, and to compete globally, Ohio's civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

The Ohio Manufacturers' Association supports policy reforms that protect consumers without overly burdening businesses, while also positioning Ohio advantageously relative to other states. The association encourages policymakers to evaluate all proposed civil justice reforms by considering these questions:

- Will the policy fairly and appropriately protect and compensate injured parties without creating a "lottery mentality"?
- Will the policy increase—or decrease—litigation burdens and costs?
- Will the policy promote—or reduce—innovation?
- Will the policy attract—or discourage—investment?
- Will the policy stimulate—or stifle—growth and job creation?

Ohio has made great strides in reforming its civil justice system over the past decade, and longer. The primary aim of the state should be to preserve those tort reform gains, in areas such as punitive damages, successor liability, collateral sources and statute of repose, which are protecting consumers without unduly burdening businesses, while positioning Ohio as an attractive state for business investment.

PolicyGoal:

Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations

Effective environmental standards and regulations:

- Provide clarity, predictability and consistency
- Are based on scientific consensus
- Provide for common sense enforcement
- Incorporate careful cost-benefit analysis as part of the policymaking process

Manufacturers urge policymakers to exercise restraint in establishing state environmental regulations that exceed federal standards, and to avoid doing so altogether without clear and convincing evidence that more stringent regulations are necessary. At the same time, manufacturers understand that fair and reasonable regulations must be balanced with responsible stewardship of our natural resources.

Manufacturing leads the way in innovation in solid waste reduction and recycling. Industry is an enormous consumer of recycled materials, such as metals, glass, paper and plastics; manufacturers thus are strong advocates for improving recycling systems in Ohio and the nation.

The state should expand opportunities for industry to reuse non-harmful waste streams. Beneficial reuse policies can result in less waste and more recycling of industrial byproducts. Likewise, Ohio should continue to expand recycling programs that provide feedstock for the state's industrial processes.

The Ohio Environment Protection Agency, in designing state implementation plans for new federal regulations (such as Clean Power Plan, Ozone regulation and Waters of the U.S.), should use a transparent process of stakeholder involvement, supplemented by investment in independent research to determine least cost, scientifically sound and technologically feasible implementation plans.

Policy Goal:

A Modern, Job-Supporting Infrastructure

Modern infrastructure is critical for today's advanced manufacturing economy. To remain competitive and maximize the economic benefits of Ohio's manufacturing strength, the state must invest in updating and expanding Ohio's multi-modal transportation infrastructure, including roads, bridges, rails and ports. Continued investment in these resources is critical to providing Ohio manufacturers with flexible, efficient, cost-effective shipping options.

The state also must support the development of a pipeline infrastructure that delivers the abundant energy resources from the Utica and Marcellus shale formations to Ohio manufacturers in all parts of the state. This infrastructure produces a job-creating competitive advantage for Ohio.

Infrastructure policy priorities include the following:

Modify Ohio's rules and regulations to allow greater flexibility and efficiency in the truck permitting process and to ensure Ohio's truck permitting standards and processes are competitive with other states with regard to requirements, fees and responsiveness.

Enhance shipping flexibility by supporting the federal Safe and Efficient Transportation Act. This legislation would allow states to tailor regulations to meet state-level transportation needs linked to a state's particular economic assets and strengths.

Ensure Ohio's freshwater ports remain competitive and state of the art in functionality. Advocate for appropriate facility maintenance including dredging to ensure navigability.

Preserve access to and provide responsible management of Ohio's sources of water.

Protect cyber infrastructure to safeguard data used by manufacturers and their customers and suppliers.

PolicyGoal:

An Educated, Highly Skilled Workforce

A robust economy requires a reliable supply of workers who have the technical knowledge and skills required to meet global standards for quality and productivity, and who are able to think critically and work collaboratively. Sustained growth in manufacturing productivity will require not only a new generation of globally competent workers, but also workers willing to embrace lifelong learning to keep pace with technological advancements and global competition.

Workforce development policy priorities include the following:

Expand the use of the National Association of Manufacturers' "Manufacturing Skills Certification System." This system of nationally portable, industry recognized, "stackable" credentials is applicable to all sectors in the manufacturing industry. The credentials validate foundational skills and competencies needed to be productive and successful in entry-level positions in any manufacturing environment. Credentials can be earned from both secondary and postsecondary educational programs.

Expand the use of cooperative education, internships and apprenticeships. These experiential learning programs enhance talent recruitment and retention because participating students are exposed to company-specific, real-world job expectations and experiences. Students develop strong leadership and management skills by working closely with company staff who serve as their mentors/supervisors, and participating companies benefit from reduced recruitment and training costs.

Continue the work of the Governor's Office of Workforce Transformation in reforming the workforce development system. The system has been fragmented (over multiple programs and agencies) and misaligned with employer knowledge and skill needs. Common goals, measures, and talent pipeline development through industry workforce alliances will benefit both job-seekers and talent seeking businesses.

The mission of
The Ohio Manufacturers' Association
is to protect and grow
Ohio manufacturing

For more information about the services and activities of the OMA, contact us at (800) 662-4463 or oma@ohiomfg.com or visit ohiomfg.com.



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Safety & Workers' Compensation

[New Workers' Comp. Opioid Prescribing Rule Effective](#)

October 7, 2016

The Bureau of Workers' Compensation's (BWC) new [rule governing the prescribing of opioids](#) to treat Ohioans injured on the job took effect last week.

The changes target the prevention of opioid dependence by encouraging appropriate prescribing by physicians certified by the BWC.

Reimbursement for opioid prescriptions will now be limited to claims in which current best medical practices are followed. Those practices include the development of an individualized treatment plan, risk assessment and close monitoring of the progress and improvement in function of the worker.

BWC will also now provide treatment for opioid dependence that arises from the use of opioid medications covered by BWC. Finally, a new peer-review process addresses a prescriber's failure to comply with best practices. Corrective action steps range from warning letters to decertifying physicians from BWC's network of approved providers.

Through BWC pharmacy improvements, total opioid doses have decreased by 18.9 million, or 44 percent, since 2010. *9/30/2016*

[BWC Administrator Appoints Chief Legal Counsel](#)

October 7, 2016

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison announced the appointment of Kevin Cogan as the bureau's Chief Legal Counsel.

Cogan will be a member of BWC's executive staff, responsible for coordinating all legal activities for BWC, providing legal advice and assistance, and acting as chief ethics officer for the agency. He succeeds Morrison, who served in that role from 2012 until her appointment in April to Administrator/CEO.

[Read more](#) from the BWC. *10/3/2016*

[OMA Safety & Workers' Comp Meeting: Pot, Safety, and a Good Lunch](#)

October 7, 2016

Please consider attending or calling in to the last scheduled OMA Safety & Workers' Compensation Committee meeting of 2016. We'll meet on Wednesday, October 12 from 10:00 a.m. until 1:00 p.m. at the OMA offices and there will be a nice networking lunch.

We will cover the latest updates on legislation and regulatory actions impacting Ohio's manufacturers, including:

- An expert panel will discuss the legalization of medical marijuana and effects on employers' operations
- OSHA update: Increased OSHA penalties and OSHA reporting rule changes presented by Dianne Grote Adams, president of OMA Connections Partner, Safex

 Register Now

[New Safety Fact Sheets from OSHA](#)

October 7, 2016

OSHA has released two fact sheets that stress the importance of tracking metrics and investigating potential hazards to prevent workplace injuries, illnesses and fatalities.

The [Importance of Root Cause Analysis During Incident Investigation](#) urges employers to investigate incidents that nearly led to a worker injury and find ways to prevent similar incidents.

The [Use of Metrics in Process Safety Management Facilities](#) provides employers with a list metrics, or measurements, tracked by facilities in OSHA's Voluntary Protection Programs that handle highly hazardous chemicals. *10/3/2016*

[BWC Reports Decline in Workplace Injuries, Increase in Safety Service Utilization](#)

September 30, 2016

Dr. Abe Al-Tarawneh, Superintendent of the Bureau of Workers' Compensation (BWC) Division of Safety and Hygiene, [reported a 16.7 percent decrease](#) in the rate of private sector injuries in the BWC system between calendar years 2010 and 2014.

The Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses shows the rest of the nation experienced an 8.6 percent drop over the same time period. During that period, total injuries in Ohio's BWC system dropped from 105,568 to 95,802, a decrease made more significant considering a 7.5 percent growth in employment during the same time period.

Dr. Al-Tarawneh's report highlights the effectiveness of Ohio's occupational health and safety programs and services in preventing injuries. The Division of Safety and Hygiene increased the number of employers utilizing one or more of its services by 70 percent between 2009 and 2015. *9/23/2016*

[No Valid Injury Needed for Workers' Compensation Retaliation Claim](#)

September 30, 2016

OMA Connections Partner, Frantz Ward, posted that the Ohio Supreme Court recently held that employees need not prove they were actually injured on the job to prevail in a retaliation claim.

Franz Ward writes: "Employers should already be aware that, under Ohio law, they may not discharge or take punitive action against an employee for filing a workers' compensation claim after sustaining an injury at work. The Ohio Supreme Court recently issued a decision that will deter employers from disciplining even employees who file bogus workers' compensation claims. In *Onderko v. Sierra Lobo, Inc.*, ... the Court held that a Plaintiff in a retaliatory discharge claim is not required to prove that he or she was injured on the job, but only that he or she was discharged for filing a workers' compensation claim."

And advises that: "*Onderko* is one of a series of cases that have broadened the strike zone for retaliation plaintiffs. The case instructs employers to use caution when disciplining or discharging an employee who has filed an unsuccessful workers' compensation claim, even where the claim appears to be bogus. To take such adverse action, the employer must have a legitimate non-retaliatory reason unrelated to the

employee's exercise of his or her rights under the workers' compensation statutes."

[Read more about the case from Frantz Ward. 9/23/2016](#)

[BWC has Scheduled Major System Upgrade](#)

September 16, 2016

To modernize operations and improve customer service, the Bureau of Worker' Compensation (BWC) will replace its core claims and policy management systems this November. The transition to this new system will occur over Veterans' Day weekend, Nov. 10 – 14. Beginning the afternoon of Nov. 10, many BWC systems, including web and phone services, will be unavailable. In addition, some employer-related systems will have limited functionality beginning at 5 p.m. Nov. 9. Normal operations resume on Tuesday, Nov. 15.

Specific information on outages will be forthcoming as the transition date approaches.

BWC's goal is to make this transition as seamless as possible for its customers. This includes ensuring the transition does not disrupt compensation for injured workers. Steps BWC has taken to minimize disruption include thorough system testing, extensive employee training and practice, and timing the transition with a three-day holiday weekend. *9/15/2016*

[Last Call for BWC True Up. Seriously.](#)

September 16, 2016

August 15 marked the close of the true-up period for private employers to report their actual payroll for the last year. However, because this is a new process associated with the transition to prospective billing, BWC has established a grace period until Sept. 29 to ensure all employers are able to complete this requirement.

Employers that do not complete payroll reports will be removed from all BWC programs in which they currently participate and become ineligible for future program participation. In addition, they will have their estimated annual premium increased by 10% and certified to the Ohio Attorney General's office.

Visit BWC's website to [learn how to create an e-account](#). For true-up instructions, [please visit this link](#). The payroll true-up may also be completed through the call center at 1-800-644-6292.

[OSHA Increases Maximum Penalties](#)

September 9, 2016

OSHA Increases Maximum Penalties

OMA Connections Partner, Safex, advises that OSHA recently raised its penalties. The new penalties took effect August 2, 2016. Any citations issued by OSHA on or after this date will be subject to the new penalties if the related violations occurred after November 2, 2015. *9/7/2016*

Type of Violation	Former Maximum Penalty	New Maximum Penalty
Serious (Other-Than-Serious Posting Requirements)	\$7,000 per violation	\$12,471 per violation
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date
Willful or Repeated	\$70,000 per violation	\$124,709 per violation

[NE Ohio Safety Expo is October 14](#)

September 9, 2016

The 2016 NE Ohio Safety Expo offers educational opportunities for safety and health programs, continuing education and discount program credits, and a variety of local and regional exhibitors.

The conference is Friday, October 14, 2016 at the Trumbull Career & Technical Center, 528 Educational Highway, Warren OH 44483. [Learn more here.](#) *9/7/2016*

[BWC Provides True-up Grace Period](#)

September 2, 2016

The deadline for private employers to submit their payroll true-up report to the Bureau of Workers' Compensation (BWC) was August 15. However, because this is a new process, the BWC has

extended a grace period until September 29 to ensure all private employers are able to complete this requirement.

If you haven't yet submitted your BWC true-up, [learn more here.](#) *8/30/2016*

[BWC on Medical Marijuana as Treatment for Workplace Injury](#)

September 2, 2016

With the passage of medical marijuana legislation in Ohio, the Bureau of Workers' Compensation (BWC) has received many questions about whether medical marijuana can be used in the medical treatment of an injured worker.

Per the BWC: "For purposes of medical treatment in a workers' compensation claim, we cannot include the use of medical marijuana as part of an injured worker's treatment plan.

There are several legal barriers to using medical marijuana in the management of the medical portion of a workers' compensation claim in Ohio. First, Ohio law prohibits us from reimbursing for medications that are not FDA-approved. At this time, no form of medical marijuana is FDA-approved.

"Second, Ohio law prohibits us from reimbursing for medications that we do not include in our drug formulary. Our formulary does not include medical marijuana as a prescribed medication eligible for reimbursement.

"While the Ohio Legislature has legalized medical marijuana in Ohio for some purposes, these specific provisions of Ohio law prevent the State Insurance Fund from reimbursing for medical marijuana in a workers' compensation claim." *8/30/2016*

[Ohio Lays Groundwork for Medical Marijuana Control Program](#)

September 2, 2016

House Bill 523, effective on September 8, 2016, legalizes medical marijuana in Ohio. The Ohio Medical Marijuana Control Program will allow people with certain medical conditions, upon the recommendation of an Ohio-licensed physician certified by the State Medical Board, to purchase and use medical marijuana.

While the legislation set a basic framework for the program, it left the task of establishing specific rules and guidelines for the cultivation, processing, testing, dispensing and medical use of marijuana to different

state agencies. This [website](#) is designed to keep Ohioans informed about the development of Ohio's Medical Marijuana Control Program, including important timelines in the rule-making process and the announcement of opportunities for public input. 8/30/2016

[BWC Board to Consider Premium Discount for Full Payment of Annual Premium](#)

August 26, 2016

A [draft rule](#) that introduces a premium savings opportunity for Ohio employers will be considered by the Bureau of Workers' Compensation (BWC) board of directors audit committee this month and in September.

The proposal would grant an early payment discount of 2% to an employer that pays the full twelve month estimated annual premium by the due date for the first installment for each policy year. If approved, the discount would be available to private employers for policy years commencing on July 1, 2017. 8/25/2016

[BWC on Medical Marijuana Law](#)

August 12, 2016

The Bureau of Workers' Compensation (BWC) has prepared [this factsheet](#) about the impact on employers of Ohio's medical marijuana law, which takes effect September 8, 2016.

BWC says: "The best way employers can protect their workers and themselves is to establish a [drug-free workplace](#), or, if they already have one, to review and update it if necessary. This is important because certain sections of the new law reference the use of medical marijuana in violation of an employer's drug-free workplace policy, zero-tolerance policy or other formal program or policy regulating the use of medical marijuana. For what this means to your specific workplace, consult your human resources or legal department."

OMA members are also encouraged to consult with OMA Connections Partner, [Working Partners®](#), on drug-free workplace matters.

[BWC Safety Innovation Awards – Enter by September 30](#)

August 12, 2016

The Ohio Bureau of Workers' Compensation (BWC) is accepting applications from Ohio employers for the 2017 Safety Innovation Awards.

Submit your innovation that demonstrates reduction in safety or ergonomic risk factors, or occupational health exposures.

Cash awards up to \$6,000. Apply by September 30, 2016.

Eligibility [requirements and application instructions](#) are available [here](#).

[New BWC FAQ on SI Assessments](#)

August 12, 2016

The Bureau of Workers' Compensation (BWC) has released [this new FAQ](#) about assessments it charges to Ohio's self-insured employers.

[In a Workers' Compensation Group Program? True-up by August 15 or Else!](#)

August 5, 2016

The Bureau of Workers' Compensation (BWC) "true-up" window ends at close of business Monday, August 15.

According to the BWC, many state fund companies have not yet completed the true-up.

Employers are required to report their actual payroll for the policy year ended June 30, 2016 and reconcile any differences in premium paid. Employers must complete the true-up report even if their payroll for the year matches the estimate received from BWC.

Failing to true up will disqualify your company for rebates/refunds due in policy year 2015 and render your company ineligible for any BWC discount programs in policy year 2016 as well as policy year 2017.

The quickest and easiest way to true-up is online with a BWC e-account. [Learn how to create an e-account here](#). For true-up instructions, [please visit this link](#). The payroll true-up may also be completed through the BWC call center at (800) 644-6292.

Questions? Contact OMA's [Brian Jackson](#) at (614) 629-6819.

[BWC Offers Transitional Work Grants and Bonuses](#)

July 22, 2016

BWC's Transitional Work Grants helps employers create a customized plan to return an injured worker to duty with restrictions. Transitional work uses real job duties for a specified period to gradually return the injured worker to his/her original job.

Now is a good time to consider a transitional work grant; a recent change to the program means employers are no longer required to have a claim to receive a grant.

Once implemented, employers can also [receive a bonus](#) for using the plan to return injured workers to work.

Read more about the program [here](#) and [here](#), and contact [BWC's transitional work unit](#) or OMA's [Brian Jackson](#) with questions.

[Have a Safety Innovation? Enter to Win BWC Competition!](#)

July 22, 2016

BWC's annual Safety Innovation Awards competition recognizes innovations that have reduced safety risks for employees. The deadline to apply for the next round of Safety Innovation Awards is September 30.

The final round of the competition will be held at the 2017 Ohio Safety Congress & Expo next March. Cash prizes range from \$1,000 to \$6,000.

[Learn about the BWC Safety Innovations Award here.](#)

[Time to "True-up"](#)

July 15, 2016

With the state's new fiscal year now underway, the Bureau of Workers' Compensation (BWC) [is calling on employers](#) to participate in the final step of the agency's transition to prospective billing.

The "True-up" window opened July 1 and closes at the close of business Aug. 15. Employers are required to report their actual payroll for the policy year ended June 30, 2016 and reconcile any differences in premium paid.

BWC began its switch to a prospective billing last year and now collects premiums upfront, an insurance industry standard practice.

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

The quickest and easiest way to true-up is online with a BWC e-account. Online true-up and payment also qualifies eligible employers for a 1% rebate up to \$2,000.

Learn how to [create an e-account here](#). For true-up instructions, [please visit this link](#). The payroll true-up may also be completed through the BWC call center at (800) 644-6292.

[100 Ohio Employers Now Have Other States Coverage Policies](#)

July 15, 2016

The Ohio Bureau of Workers' Compensation (BWC) has [issued its 100th policy](#) under the Other States Coverage program, a new option that protects Ohio businesses with employees who work in other states. The coverage ensures these employees are protected regardless of where they are injured without the need to manage policies in multiple states with varying laws.

BWC generally provides coverage for employees working temporarily outside of Ohio. However, complications could arise when the injured worker files a claim in another state. Treatment can be delayed and businesses can be subject to penalties by the other state.

A law enacted last year granted BWC the authority to contract with an insurer to provide this coverage. BWC is working with United States Insurance Services (USIS) and Zurich Insurance to provide that coverage.

[Go here to learn more and to apply.](#) A brief video overview of the new program [can be found here](#).

[BWC Names New Legislative Director](#)

July 1, 2016

Ohio Bureau of Workers' Compensation (BWC) Administrator & CEO Sarah Morrison [announced](#) that Elle Decot has joined the agency as its legislative director.

Decot will be charged with representing BWC at the Statehouse, working with lawmakers on legislation effecting Ohio's workers' compensation system and responding to constituent and customer questions and concerns.

She joined BWC on June 13, filling a role vacated by Kelly Carey, who left the bureau in April for a job in the private sector. A photo of Decot [can be found here](#).

[BWC Board to Host Toledo Public Forum](#)

June 24, 2016

The Ohio Bureau of Workers' Compensation (BWC) board of directors will host a public forum Wednesday, June 29 at 9:00 a.m. in Toledo for area business owners, medical providers, stakeholders, injured workers and other interested parties.

Members of the board will conduct a roundtable discussion about BWC and how policy decisions are made by the board. This is also an opportunity for the directors to learn which issues are most important to stakeholders in the area, and the suggestions they may have for improvement.

The meeting will take place at 1 Government Center, Suite 1136, Toledo, Ohio 43604-0794.

[BWC True-Up Reminder!](#)

June 17, 2016

Prospective billing payroll true-up begins July 1! Visit the [BWC website](#) for more information. This [2-minute video](#) explains the true-up process.

[A Guide for Safety Sustainability Reporting](#)

June 17, 2016

The Center for Safety and Health Sustainability has released a [Best Practice Guide for Occupational Health and Safety in Sustainability Reports](#), which outlines a framework that can be used to incorporate

occupational health and safety metrics into sustainability reporting practices.

The eight-page guide was developed through a collaborative process that included some of the world's largest OSH professional organizations and represents standards of performance which are already accepted, understood, and operationalized by those managing safety and health at work.

[How Does Ohio's Medical Marijuana Law Impact Your Drug-free Policy?](#)

June 10, 2016

Here's a post from OMA Connections Partner, [Working Partners](#)®: "... Governor Kasich signed Ohio H.B. 523 into law, legalizing marijuana as "medicine under certain circumstances." The law will officially go into effect in 90 days, but the bill allows two years for the state to complete the infrastructure and specifications to grow, sell and regulate the use of marijuana.

"It is important for you to know there are SEVERAL elements in law that protect you, the employer, and your drug-free workplace (DFWP) program:

1. Employers do NOT have to permit or accommodate an employee's use, possession, or distribution of "medical" marijuana.
2. Employers are NOT prohibited from refusing to hire, discharging, disciplining or otherwise taking adverse action against a person who uses "medical" marijuana.
3. Employers CAN drug test and have a drug-free workplace program, even if it is a zero tolerance policy.
4. The law will NOT interfere with or change: alcohol/drug testing requirements mandated by the Department of Transportation (DOT); the BWC Drug-Free Safety Program, including H.B. 80; Ohio HB 223 (rebuttable presumption for workers' compensation
5. Nothing in the law permits a person to sue an employer for refusing to hire, discharge, disciplining, retaliating or otherwise taking an adverse employment action related to "medical" marijuana.

A person who is discharged from employment because of their medical use of marijuana is considered to have been discharged "for cause" if their use violated an employer's policy."

[What Employers Should Know about Drug Tests \(video\)](#)

June 10, 2016

Here's a good [3 minute video](#) from OMA Connections Partner, Working Partners®, that explains the various drug tests employers might consider. Good to know!

[BWC Offers Occupational Safety & Hygiene Fellowship](#)

June 10, 2016

The Ohio Bureau of Workers' Compensation (BWC) is [taking applications](#) for a new fellowship program. The fellowship is an opportunity for college graduates in the fields of occupational safety and health, engineering, industrial hygiene, and/or physical/natural sciences to receive on-the-job training in the fields of occupational safety and health, ergonomics, industrial hygiene and risk management.

The positions last two years and are fulltime with pay and benefits. During the two years, the fellows will be working alongside BWC safety, ergonomics and industrial hygiene consultants.

Interested individuals with an undergraduate degree in occupational safety & health, industrial hygiene, engineering, environmental health or closely related field of study (i.e. physical/natural science) can complete an employment application by searching for "Occupational Safety & Hygiene Fellow" [at this website](#).

[BWC Develops Opioid Prescribing Rule](#)

June 3, 2016

The Ohio Bureau of Workers' Compensation (BWC) board of directors [approved a new opioid prescribing rule](#) aimed at preventing opioid dependence and encouraging physicians to employ current best medical practices when treating injured workers with opioids.

Under the rule, BWC will not reimburse for opioid prescriptions written by physicians who fail to use best medical practices. Best practices include the development of an individualized treatment plan, risk assessment and monitoring of the progress and improvement in function of the worker.

The new rule also allows BWC to provide treatment for opioid dependence that arises from the use of opioid medications covered by BWC.

BWC began making improvements to its pharmacy program in 2010 to ensure injured workers receive medications necessary for their recovery without endangering their health. Since the creation of BWC's first-ever formulary, opiate prescriptions have steadily fallen, dropping by 23.8 million doses, or 41 percent, since 2010.

The rule now moves to the Ohio General Assembly's Joint Committee on Agency Rule Review. If approved there, it becomes effective October 1 this year.

[Is it Hot in Here?](#)

June 3, 2016

Forecasters are calling for above-average temperatures across much of the country this summer. Are you prepared to beat the heat?

Every year, thousands of workers become ill from working in the heat, and some even die.

Heat-related illnesses and deaths can be prevented. Employers and supervisors can save the lives of workers in hot environments by following these [eight simple steps](#).

[BWC Offers Machine Safety for Maintenance and Production, Chillicothe](#)

May 27, 2016

The Bureau of Workers' Compensation (BWC) is offering a no-charge full day class on machine safety, Thursday, June 16, 8:30 a.m. – 4:30 p.m. in Chillicothe at the Adena PACCAR Center. Those who attend will receive Industry Specific Safety Program (ISSP) credit and this will count as External Safety Council Meeting attendance.

Up to four participants from any one employer can attend and there are 70 spots available.

Go to the BWC Learning Center ([see flyer](#)) to register (use "Special Topic 2" as the keyword search) or call Phyllis Jenkins at (740) 353-3419.

Who should attend? Individuals responsible for performing maintenance and or production operation(s). Also, supervisors responsible for employees conducting these activities and other safety and management staff who need the skill and knowledge necessary to understand, recognize, and mitigate the risks. Topics include: machine guarding; lock out tag out; and electrical safety for machine service and maintenance.

[House Hears Firefighter Cancer Bill](#)

May 27, 2016

The House held its first hearing this week on [Senate Bill 27](#) which would create a presumption that a firefighter who is disabled as a result of specified types of cancer incurred the cancer while performing his or her job duties, thus creating eligibility for workers' compensation benefits.

Senator [Tom Patton](#) (R-Strongsville) provided [proponent testimony](#). The OMA previously [submitted this letter](#) containing cautions about the precedent setting nature of this bill to the Senate committee, which affirmed the bill.

[BWC Announces \\$15M Rebate to Ohio Counties](#)

May 27, 2016

This week, citing strong investment returns, Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison [announced](#) a one-time \$15 million rebate to Ohio's 88 county governments. The rebate was approved by BWC's board of directors.

All Ohio counties will receive rebates ranging from around \$100 to more than \$1 million, with exact amounts to be determined after May 31.

[New BWC Administrator Visits OMA Safety & Workers' Comp Meeting](#)

May 20, 2016



Pictured – Committee chairman, Larry Holmes, VP – Finance, Ft. Recovery Industries, Inc. and Sarah Morrison, BWC Administrator & CEO

Governor Kasich this week [named](#) Sarah Morrison as administrator and CEO of the Ohio Bureau of Workers' Compensation (BWC). She'll lead the agency that has more than 1,800 employees and serves more than 250,000 Ohio employers. She has served in the position in an interim capacity since the BWC's former administrator and CEO, Steve Buehrer, stepped down last month.

Sarah and Dave Sievert, Interim Director – Self Insured Department, Ohio BWC, updated members on agency developments at this week's OMA Safety & Workers' Compensation meeting.

To receive meeting notices and related information, go to [My OMA](#) and subscribe to the Safety & Workers' Comp. community.

[BWC Gets Employers Ready to "True Up"](#)

May 20, 2016

BWC's first-ever payroll true-up period is coming July 1 for Ohio private employers. This new process is part of BWC's change to prospective billing and requires employers to report their actual payroll for the previous policy year and reconcile any differences in premiums paid.

This important step is necessary for BWC to accurately calculate your premium. It's also important to maintaining your policy and protecting your participation in your current rating plan or discount programs. You must complete the true-up report even if your payroll for the year matches the estimate you receive from BWC.

[View this video tutorial](#) to learn more about the true-up process.

The most convenient way to true-up will be online with a BWC e-account. To create an e-account, go to [BWC's website](#) and click on the "create e-account" link on the home page (under the login area). This [video tutorial](#) explains the process for creating an e-account.

Visit the [BWC website](#) if you already have an e-account but don't remember your password. If you are otherwise unable to access your account, contact the BWC at (800) 644-6292.

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on October 10, 2016

- HB51** **INDUSTRIAL COMMISSION BUDGET** (HACKETT R) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-51>
- HB52** **WORKERS' COMPENSATION BUDGET** (HACKETT R) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-52>
- HB64** **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB205** **SELF-INSURING EMPLOYERS** (HENNE M, RETHERFORD W) To modify the requirements for an employer to become a self-insuring employer for purposes of the Workers' Compensation Law, to transfer authority over the workers' compensation self-insurance program to the Superintendent of Insurance, and to allow certain employers and groups of employers to obtain workers' compensation coverage from a private workers' compensation insurer.
Current Status: 2/9/2016 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-205>
- HB206** **INDUSTRIAL COMMISSION-CLAIM STATISTICS** (HENNE M) To require the Industrial Commission to keep statistics on individual hearing decisions of contested workers' compensation claims.
Current Status: 6/9/2015 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-206>
- HB207** **WORKERS' COMPENSATION-SURPLUS FUND** (HENNE M, MCCOLLEY R) To allow a state fund employer to have a workers' compensation claim that is likely to be subrogated by a third party paid from the surplus fund account in the state insurance fund rather than charged to the employer's experience.
Current Status: 5/31/2016 - **SIGNED BY GOVERNOR**; eff. 8/31/16

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-207>

HB292 **FIREFIGHTER COMPENSATION** (HAGAN C) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.

Current Status: 10/6/2015 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-292>

HB355 **EMPLOYEE DEFINITION** (RETFERFORD W) To create a generally uniform definition of employee for specified labor laws and to prohibit employee misclassification under those laws.

Current Status: 11/4/2015 - House State Government, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-355>

HB510 **PNEUMOCONIOSIS-WORKERS' COMPENSATION** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.

Current Status: 4/13/2016 - Referred to Committee House Insurance

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-510>

SB5 **WORKERS' COMPENSATION-PTSD** (PATTON T, BROWN E) To make peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury eligible for compensation and benefits under Ohio's Workers' Compensation Law.

Current Status: 10/13/2015 - **REPORTED OUT AS AMENDED**, Senate Finance, (Sixth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-5>

SB27 **WORKERS' COMPENSATION-FIREFIGHTER CANCER** (PATTON T) To provide that a firefighter who is disabled as a result of specified types of cancer is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund to have incurred the cancer while performing official duties as a firefighter.

Current Status: 5/24/2016 - House Insurance, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-27>

SB149 **WORKERS' COMPENSATION-BRAIN-SPINAL CORD INJURY** (SCHIAVONI J) To make an individual who has lost the use of a body part due to a brain injury or spinal cord injury eligible for partial disability and permanent total disability compensation under the Workers' Compensation Law.

Current Status: 4/22/2015 - Referred to Committee Senate Transportation, Commerce and Labor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-149>