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H.B. 75*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Insurance

Primary Sponsor: Rep. Oelslager

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SUMMARY

- Requires a workers' compensation claim arising on or after the provision's effective date that is based on an employee's occupational disease to be filed within one year after disability due to the occupational disease or death of the employee, instead of two years as under current law.
- Maintains current law with respect to allowing a period longer than one year after disability if that time period does not exceed six months after a licensed physician diagnoses the disease as occupational in origin.
- Prohibits, for a claim pending on or arising on or after the provision's effective date, an individual who receives wages in lieu of temporary total disability compensation from filing an application for permanent partial disability compensation until 26 weeks after payment of the wages ends.
- Requires, for a claim pending on or arising on or after the provision's effective date, if the Industrial Commission has denied an application for permanent total disability compensation, an employee to present evidence of new and changed circumstances before the Commission may consider a subsequent application based on the same injury or occupational disease.
- Eliminates the requirement that the Administrator of Workers' Compensation prohibit a power of attorney allowing an attorney or employee to cash or endorse a check on behalf of a claimant.

* This analysis was prepared before the report of the Senate Insurance Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Suspends the current law prohibition against an alternate employer organization (AEO) holding itself out, advertising, or otherwise identifying itself in any way as a professional employer organization until January 1, 2022.
- Eliminates an AEO's ability to use a bond to satisfy the continuing law security requirement for AEO registration with the Bureau of Workers' Compensation.
- Prohibits the Industrial Commission or the Bureau of Workers' Compensation (BWC) from disclosing the name or names of claimants to a journalist under the continuing law exemption that allows a journalist to obtain claimant information otherwise prohibited from being disclosed.
- Specifies that it is the General Assembly's intent to supersede the amendments made by S.B. 4 of the 134th General Assembly that allowed the release of the name or names of claimants to journalists.
- Retains the change made by S.B. 4 that excludes dependent information from the continuing law journalist exemption.
- Prohibits a person other than an individual who obtains claimant information under the continuing law journalist exemption from recklessly possessing or obtaining claim information that is not a public record.
- Adds to the continuing law journalist exemption that a journalist must include in the written request for the claimant information a statement that the individual acknowledges that the requested claimant information is not a public record and that the individual will not disclose the information to any other person for any reason unrelated to journalism.
- Eliminates the prohibition against a person soliciting a claimant or employer to take charge of or represent the claimant or employer in any claim or appeal which is or may be filed with BWC or the Industrial Commission (the prohibition was declared unconstitutional and is unenforceable).
- Appropriates funds for the Bureau of Workers' Compensation for the biennium ending June 30, 2023.

DETAILED ANALYSIS

Occupational disease claims

(R.C. 4123.85; Section 8)

Under the bill, for a workers' compensation claim that arises on or after the provision's effective date, an employee who is disabled by an occupational disease, or the dependent of an employee who dies from an occupational disease, must file a claim based on the disease within one year after the disability due to the disease began or death. Current law generally requires an occupational disease claim to be filed within two years of disability or death. Under continuing law, if the time for filing expires before the employee is aware that a disease is

occupational in origin, the employee must file the claim no more than six months after a licensed physician identifies the disease as being occupational.

An employee who is disabled by an occupational disease, or the dependent of an employee whose death is caused by the disease, is typically entitled to any compensation and benefits provided by the Workers' Compensation Law. For a disease to be considered an occupational disease, all of the following conditions must be satisfied:

1. The disease is contracted in the course of employment;
2. The employment creates a risk of contracting the disease in greater degree and in a different manner from the general public;
3. Either of the following applies:
 - a. The disease is peculiar to that type of employment by the disease's causes and the characteristics of the disease's manifestations;
 - b. The conditions of the employment results in a hazard that distinguishes the employment in character from employment generally.¹

Application for permanent partial disability compensation

(R.C. 4123.57; Section 8)

Temporary total disability (TTD) compensation partially replaces an employee's lost wages for the period the employee is completely unable to work due to a work place injury or occupational disease. An employer who knows that an employee has a compensable claim may choose to pay an employee the employee's wages in lieu of compensation.² Currently, an employee receiving TTD compensation must wait until 26 weeks after TTD compensation terminates before filing an application for permanent partial disability (PPD) compensation. The bill requires, for a claim pending on or arising on or after the provision's effective date, an employee receiving wages in lieu of TTD compensation to wait 26 weeks after the payments terminate to file an application for PPD.

Permanent total disability

(R.C. 4123.58; Section 8)

Under the bill, if the Industrial Commission has denied an employee's application for permanent total disability (PTD) compensation, the employee must present evidence of new and changed circumstances before the Commission may consider a subsequent PTD application based on the same injury or occupational disease. This applies to a claim pending on or arising on or after the provision's effective date.

¹ R.C. 4123.01(F) and 4123.68, not in the bill, and *State ex rel. Ohio Bell Tel. Co. v. Krise*, 42 Ohio St.2d 247, 253-254 (1975).

² R.C. 4123.56 and 4123.84, not in the bill.

Under continuing law, PTD compensation is payable only when an employee demonstrates that at least one of the following applies to the employee:

- The employee has lost, or lost the use of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof (the loss or loss of use of one limb does not constitute the loss or loss of use of two body parts);
- An impairment resulting from the employee's injury or occupational disease prevents the employee from engaging in sustained remunerative employment utilizing the employment skills that the employee has or may reasonably be expected to develop.

PTD compensation is not payable when the employee is unable to engage in sustained remunerative employment for one or more of the following reasons:

- Impairments that are not the result of an allowed injury or occupational disease;
- Solely because of age or aging;
- Retirement or reasons unrelated to the allowed injury or occupational disease;
- Failure to engage in educational or rehabilitative efforts to enhance the employee's employability, unless such efforts are determined to be in vain.

Power of attorney

(R.C. 4121.43)

The bill eliminates the requirement that the Administrator of Workers' Compensation prohibit any power of attorney allowing an attorney or employee to cash or endorse a check on behalf of a claimant.

Alternate employer organizations

(R.C. 4133.03, 4133.07, and 4133.08)

The bill suspends the current law prohibition against an alternate employer organization (AEO) holding itself out, advertising, or otherwise identifying itself in any way as a professional employer organization (PEO) until January 1, 2022. AEOs are substantially similar to PEOs, which are governed by the PEO Law.³ An AEO or 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. AEOs are regulated in a very similar manner as PEOs, but differ from PEOs with respect to requirements in the way they report federal tax payments and the way they are permitted to provide workers' compensation coverage for shared employees. The law creating AEOs was recently enacted and took effect on March 24, 2021.⁴

³ R.C. Chapter 4125, not in the bill.

⁴ S.B. 201 of the 133rd General Assembly.

The bill eliminates an AEO's ability to use a bond to satisfy the continuing law security requirement for AEO registration with the Bureau of Workers' Compensation. Under current law, an AEO must provide a bond or letter of credit in an amount determined by the Administrator to be adequate to meet the AEO's financial obligations under the Workers' Compensation Law, which must be at least \$1 million. Thus, an AEO must satisfy the requirement using a letter of credit under the bill.

Disclosure of claimant information

(R.C. 4123.88)

The bill prohibits the Industrial Commission or the Bureau of Workers' Compensation (BWC) from disclosing the name or names of claimants to a journalist under the continuing law exemption that allows a journalist to obtain claimant information otherwise prohibited from being disclosed. S.B. 4 of the 134th General Assembly allowed for the release of the name or names of claimants to journalists under the exception. S.B. 4 was enacted by the General Assembly on May 26, 2021. The bill specifies that it is the intent of the General Assembly to supersede the amendments made by S.B. 4 that allowed the release of the name or names of claimants to journalists. The bill retains the change made by S.B. 4 that excludes dependent information from the continuing law journalist exemption.

Under continuing law, claimant files are not a public record as defined under the Public Records Law.⁵ Disclosure of claimant information is generally prohibited under continuing law; however, there is an exception for the disclosure of certain information to journalists. On receiving a written request made and signed by an individual whose primary occupation is as a journalist, the Commission or BWC must disclose to the individual the address or addresses and telephone number or numbers of claimants, regardless of whether their claims are active or closed. The bill adds to the journalist exemption that a journalist must include in the written request for the claimant information a statement that the individual acknowledges that the requested claimant information is not a public record and that the individual will not disclose the information to any other person for any reason unrelated to journalism.

Additionally, the bill generally prohibits a person other than an individual who obtains claimant information under the journalist exemption from recklessly possessing or obtaining claim information that is not a public record, including the address or addresses and telephone number or numbers of claimants obtained by a journalist under the exemption.

Solicitation prohibition

(R.C. 4123.88)

The bill eliminates the prohibition against a person soliciting a claimant or employer to take charge of or represent the claimant or employer in any claim or appeal which is or may be

⁵ R.C. 149.43, not in the bill.

filed with BWC or the Industrial Commission. The prohibition was declared unconstitutional and is unenforceable.⁶

HISTORY

Action	Date
Introduced	02-09-21
Reported, H. Insurance	05-11-21
Re-referred to H. Finance	05-11-21
Reported, H. Finance	05-12-21
Passed House (92-2)	05-12-21
Reported, S. Insurance	---

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⁶ *Bevan & Assocs., LPA v. Yost*, 929 F.3d 366 (6th Cir. 2019).