



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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(As Reported by H. Finance)

(Excluding appropriations, fund transfers, and similar provisions)

Reps. Brinkman, Brenner

BILL SUMMARY

BUREAU OF WORKERS' COMPENSATION

Statute of limitations for injury or death claims

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

Drug testing

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

Presumption of cancer incurred while performing official duties

- Adds working wage loss to the compensation a firefighter may currently receive under the presumption in the Workers' Compensation Law that a firefighter who is disabled due to cancer incurred the cancer while performing official duties as a firefighter.
- Adds to the circumstances under current law in which the presumption can be rebutted if there is evidence that shows, by a preponderance of competent scientific

* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history and the list of co-sponsors may be incomplete.

evidence, that exposure to the type of carcinogen alleged did not or could not have caused the cancer being alleged.

- Provides that the presumption does not apply if it has been more than 15 years (rather than more than 20 years as under current law) since the firefighter was last assigned to hazardous duty as a firefighter.

Illegal aliens and unauthorized aliens

- Prohibits an illegal or unauthorized alien from receiving compensation or benefits under Ohio's Workers' Compensation Law.
- Prohibits an employer from electing to cover an illegal or unauthorized alien under the Workers' Compensation Law.
- Requires a claimant to submit an attestation certifying that the claimant or the deceased employee who is the subject of the claim was an eligible "employee" under Workers' Compensation Law.
- Grants an employer immunity from liability for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect unless the claimant establishes, by clear and convincing evidence, that the employer hired the individual knowing that the individual was not authorized to work under federal law.
- Creates a rebuttable presumption that an employer did not hire an individual knowing that the individual was an illegal or unauthorized alien if the employer complied with the requirements of the federal Immigration Reform and Control Act.
- Maintains employer liability for intentional torts.
- Creates an irrebuttable presumption that an illegal or unauthorized alien assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for an employer.
- States that, unless an individual establishes by clear and convincing evidence that an employer hired the individual knowing that the individual was not authorized to work under federal law, no court has jurisdiction over a claim for damages suffered by an illegal or unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal or unauthorized alien in the course of employment caused by the employer's wrongful act or omission or neglect.



Payments to dependents

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

Temporary total disability

- Authorizes the Administrator of Workers' Compensation, for good cause, to waive the requirement that an employee receiving temporary total disability (TTD) compensation undergo a medical examination.
- Requires the Administrator to refer an employee receiving TTD compensation for a medical examination if the employee's employer objects to the waiver.
- Requires, if an employee's full weekly wage has not been determined at the time TTD compensation becomes payable, that an employee receive 33⅓% of the statewide average weekly wage as calculated under continuing law.
- Requires TTD compensation to be adjusted, and overpayments to be recovered, on determination of an employee's full weekly wage.
- Requires, if the employee receives less than the amount the employee is entitled to under continuing law for TTD, on determination of the employee's full weekly wage, the employee to receive the difference.

Permanent partial disability

- Requires, with respect to applications filed on or after the provision's effective date, if an employee fails to schedule a medical examination with the Bureau of Workers' Compensation (BWC) Medical Section or fails to attend a scheduled medical examination, the dismissal of an application for a determination of the employee's permanent partial disability (PPD) under the Workers' Compensation Law.
- Allows, with respect to applications suspended pursuant to continuing law on the provision's effective date, the Administrator to dismiss an application for a determination of the employee's PPD unless the employee schedules a medical examination within a specified time and attends the examination.
- Allows an employee to refile a dismissed application, subject to the continuing jurisdiction of the Industrial Commission.

Appeal of Industrial Commission order

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

Handicap Reimbursement Program

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

Secondary payers

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

Public Employment Risk Reduction Program

- Eliminates the ability of a public employer to apply to the Administrator for an exemption from the Public Employment Risk Reduction Program (PERRP).
- Provides coverage under PERRP to firefighters, emergency medical technicians, and certain correction officers.
- Requires the Administrator to adopt rules concerning standards and procedures for an effective safety partnership agreement program for public employers and employees that promotes voluntary compliance with PERRP.



- Specifies that the Administrator or Administrator's designee must make scheduled inspections (rather than inspections) and requires inspections and investigations to be conducted in accordance with the Administrator's rules adopted under continuing law.
- Eliminates current law's requirement that a safety violation notice provided to a public employer include the initial notice the Administrator receives of the violation.

Group rating plans

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

Professional employer organization lease termination

- Extends to 30 days (from 14 days under current law) the time in which a professional employer organization (PEO) must submit a lease termination notice form to the Administrator and to each client employer.
- Extends to 30 days (from 14 days under current law) the time in which a self-insuring PEO must submit to the Administrator information needed to develop an experience modification factor for an employer subject to a PEO lease termination.

Occupational disease reports

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

Actuarial reporting

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

Provider participation standards

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



OTHER AGENCIES

Employee medical examinations

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

Retrospective rulemaking and other actions

- Prohibits a state agency from adopting, amending, or rescinding rules, or from taking other actions, that have a substantive or procedural retrospective effect unless the General Assembly expressly has authorized rulemaking or other actions that have such an effect.

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CONTENT AND OPERATION

BUREAU OF WORKERS' COMPENSATION

Statute of limitations for injury or death claims

(R.C. 4123.84)

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

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



- Compensation or benefits have been paid or furnished equal to or greater than is provided for in the Workers' Compensation Law.

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

Drug testing

(R.C. 4123.54)

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

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

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

¹ R.C. 4123.85.

² 49 Code of Federal Regulations 40.87.



Background – rebuttable presumption

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

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

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

Presumption of cancer incurred while performing official duties

(R.C. 742.38 and 4123.68; Sections 707.10, 741.20, and 741.50)

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

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

Working wage loss

The bill adds working wage loss to the compensation or benefits currently payable under the presumption described above in the Workers' Compensation Law.



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

Under continuing law, working wage loss compensation (paid in lieu of TTD compensation) is paid if the employee returns to work in a position other than the employee's former position due to an injury or occupational disease and receives less pay than in the employee's former position. An employee who is entitled to working wage loss compensation generally receives 66⅔% of the difference between the employee's average weekly wage (AWW) and the employee's current earnings for a maximum of 200 weeks. Weekly working wage loss compensation cannot be more than the statewide AWW.

Rebuttal of the presumption

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

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

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

Application

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



Currently, it does not apply if it has been more than 20 years since the firefighter was last assigned to hazardous duty.

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

Illegal aliens and unauthorized aliens

(R.C. 2307.82, 2743.02, 2744.02, 4123.01, 4123.511, and 4123.513; Section 741.40)

Current law defines "employee" for purposes of Ohio's Workers' Compensation Law to include every person in the service of any person, firm, or private corporation, including any public service corporation, that employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens. The Workers' Compensation Law does not define "alien."

The bill limits the definition of employee with respect to aliens to include only aliens authorized to work by the U.S. Department of Homeland Security or its successor. The bill excludes an illegal alien and an unauthorized alien from the definition of employee. Under the bill, "illegal alien" means an alien who is deportable if apprehended because of one of the following:

(1) The alien entered the U.S. illegally without the proper authorization and documents.

(2) The alien once entered the U.S. legally and has since violated the terms of the status under which the alien entered the U.S., making that alien an "out of status" alien.

(3) The alien once entered the U.S. legally but has overstayed the time limits of the original legal status.

The bill defines "unauthorized alien" as an alien who is not authorized to be employed as determined in accordance with the Immigration Reform and Control Act (IRCA).³

Current law allows any employer to elect to include as an "employee" within the Workers' Compensation Law certain individuals expressly excluded from the definition of "employee." The bill does not extend this authority to employers with respect to

³ Section 101(a) of the "Immigration Reform and Control Act of 1986," 100 Stat. 3360, 8 U.S.C. 1324a.



illegal or unauthorized aliens; thus, under the bill, an employer may not elect to obtain coverage under the Workers' Compensation Law for an illegal or unauthorized alien.

Liability for injuries incurred or occupational diseases contracted by illegal or unauthorized aliens

Background

Ohio's workers' compensation system compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the worker's employment. The Ohio Constitution authorizes the General Assembly to enact legislation that creates a system of workers' compensation payments to injured employees or their families in lieu of all other rights to compensation or damages as a result of death, injuries, or occupational disease. According to the constitutional provision, an employer who pays the premium or compensation as required by the Workers' Compensation Law will not be held liable in damages at common law or by statute for the death, injury, or occupational disease of an employee.⁴

General employer immunity from liability under the bill

Except as otherwise provided under "**Liability for knowingly hiring an employee not authorized to work**" and "**Liability for intentional torts**" below, under the bill if a claim is denied under "**Attestation of eligibility**" or "**Administrator review of attestation**" below, the claimant's employer, or, if the claimant is a dependent of an employee who died as a result of suffering an injury or contracting an occupational disease, the deceased employee's employer, is not liable to that claimant for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect. For such a claimant, filing a claim under Ohio's Workers' Compensation Law is the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the claimant's or deceased employee's employment. Notwithstanding the continuing law provision stating that noncomplying employers are not entitled to the benefits of the Workers' Compensation Law⁵ and except as provided below, the bill creates an irrebuttable presumption that the individual assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for that employer.

⁴ Ohio Const., art. II, sec. 35 and R.C. 4123.74 and 4123.77, not in the bill.

⁵ R.C. 4127.77, not in the bill.



Except as provided below, the bill also denies any Ohio court from having jurisdiction over a claim for damages suffered by an illegal or an unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal alien or unauthorized alien in the course of employment caused by the wrongful act or omission or neglect of the employer. The bill states that an illegal or unauthorized alien assumes the risk of incurring such injury or contracting an occupational disease, and that assumption is a complete bar to a recovery of damages for that injury or occupational disease.

Liability for knowingly hiring an employee not authorized to work

However, under the bill, an employer, including the state or a political subdivision, is liable to a claimant whose claim is denied under "**Attestation of eligibility**" or "**Review by Administrator**" below for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the wrongful act or omission or neglect of the employer if the claimant establishes, by clear and convincing evidence, that the employer hired the claimant or the deceased employee who is the subject of the claim knowing that the claimant or deceased employee was not authorized to work under the IRCA. The bill grants a court jurisdiction over such a claim. In such an action, an employer cannot assert the common law defenses of assumption of the risk, contributory negligence, or the fellow servant rule.

Presumption that employer did not knowingly hire unauthorized worker

The bill creates a rebuttable presumption that a public or private employer did not hire an individual knowing that the individual was an illegal or unauthorized alien if the employer complied with the requirements of IRCA.

Liability for intentional torts

Nothing in the bill must be construed to prevent an illegal alien, unauthorized alien, or a claimant whose claim is denied because the claimant is or the deceased individual was an unauthorized alien from bringing a claim against an employer in a court of competent jurisdiction for an intentional tort allegedly committed by the employer against the illegal or unauthorized alien.

Attestation of eligibility

Under the bill, to be considered eligible for compensation or benefits paid under the Workers' Compensation Law, other than for medical benefits, a claimant must submit to the Administrator a signed attestation that the claimant, or if the claimant is a dependent of an individual who died as a result of suffering an injury or contracting an

occupational disease, the deceased employee was an eligible "employee" as defined in "**Illegal aliens and unauthorized aliens**" above. The Administrator may not pay compensation or benefits, other than medical benefits, unless the Administrator receives the signed attestation.

Review by Administrator

If the Administrator has reason to believe that a submitted attestation is not valid, the Administrator may request that the claimant submit proof of the attestation's validity. The bill requires the Administrator to make the request in writing and to state in the request the type of proof necessary to determine validity and the date by which the claimant must submit the proof. The Administrator must deny any claim for compensation or benefits other than medical benefits if a claimant fails to comply with a written request to provide proof of the attestation's validity. A claimant who fails to comply with that written request is then barred from refileing that claim for compensation or benefits but may appeal according to the current law appeals process.

Prosecution for fraud

Under the bill, if a claimant provides a signed attestation and it is later determined that the claimant or deceased individual who is the subject of the claim was an illegal or unauthorized alien, the claimant will be prosecuted for workers' compensation fraud.

Applicability

The provisions regarding illegal or unauthorized aliens apply to claims arising on or after the provision's effective date.

Incarcerated dependents

(R.C. 4123.54; Section 741.20)

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

Temporary total disability

Waiver of required medical examinations

(R.C. 4123.53)

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

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

Minimum TTD compensation

(R.C. 4123.56)

Under continuing law, an employee who is entitled to TTD compensation generally receives 66⅔% of the employee's AWW for a maximum of 200 weeks or until specified events occur, whichever is earlier. However, during the first 12 weeks of TTD, the employee receives 72% of the employee's full weekly wage, up to a statutory maximum. Weekly TTD compensation cannot be more than the statewide AWW or less than 33⅓% of the statewide AWW unless an employee's wage is less than the minimum, in which case the employee receives the employee's full wages.

Under the bill, if an employee is eligible for TTD compensation, but the employee's full weekly wage has not been determined at the time payments are to start, the employee is entitled to 33⅓% of the statewide AWW. On determination of an employee's full weekly wage, the employee's TTD compensation is adjusted using continuing law.

If the amount of compensation an employee receives under the bill is more than the adjusted amount, the overpayment is recovered through deductions from compensation to which the employee becomes entitled in the same claim or in a



different claim pursuant to continuing law. If the amount an employee receives is less than the adjusted amount, the employee is entitled to the difference between the two amounts.

Dismissal of permanent partial disability application

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

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

Applications filed on or after the effective date

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

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

Applications pending on the effective date

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



Appeal of Industrial Commission order

(R.C. 4123.512)

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

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

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

Handicap Reimbursement Program

(R.C. 4123.343)

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

Under continuing law, the Administrator must adopt rules specifying the grounds upon which payments made to handicapped employees will be charged to the Surplus Fund Account. The bill requires the Administrator to adopt rules allowing an employer who settles a claim to participate in the Program. Currently, the rules must



prohibit reliance on any agreement between the employer and the claimant as to the merits of a claim and the amount of the charge.

Reimbursement of secondary payers

(R.C. 4123.66)

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

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

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

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

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

Public Employment Risk Reduction Program

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

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



Exemptions

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

Coverage

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

Rules for effective safety partnership program

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

Inspections

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

Under continuing law, the Administrator or the Administrator's designee may conduct inspections and investigations when a public employee files a complaint with



the Administrator regarding unsafe working conditions or when a public employee exercises the employee's right to refuse to work due to unsafe conditions.

Safety violation notices

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

Explanation of rate revision in group rating plans

(R.C. 4123.29)

Under continuing law, the Administrator must offer a plan that groups similar employers together and pools the employers' risk. If the premium rate for an employer who participates in a group rating plan changes from the rate established for the previous year, the Administrator, in addition to sending an invoice with the rate revision to the employer under current law, must provide an explanation of the rate revision to the third-party that administers the group rating plan for the group. Current law requires the Administrator to send a copy of the invoice to the group administrator.

Professional employer organization lease termination

(R.C. 4125.07)

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

- A PEO must submit a lease termination notice form to the Administrator and to each client employer of the PEO;

- A self-insuring PEO must submit to the Administrator information needed to develop an experience modification factor for employers subject to a PEO lease termination.

Occupational disease reports

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

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

Actuarial reporting

(R.C. 4121.125)

Annual unpaid liabilities report

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

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

Quinquennial report

The bill modifies a report that continuing law requires the Board to have prepared every five years. Under the bill, the report must contain an analysis of the mortality experience used in estimating the future costs of survivor benefits and



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

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

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

Legislative reports

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

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

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

- A summary of the statutory changes being evaluated (current law);
- A description of or reference to the actuarial assumptions and actuarial cost method used in the report (current law);



- A statement of the financial impact of the legislation, including the resulting increase, if any, in employer premiums, and in current estimates of unpaid liabilities (similar to current law).

Comparisons to other workers' compensation systems

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

Provider participation standards

(R.C. 4121.44)

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

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

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

OTHER AGENCIES

Employee medical examinations

(R.C. 4113.21)

The bill prohibits a public employer from requiring an employee, prospective employee, or applicant for employment to pay the cost of a medical examination required by the public employer as a condition of employment or continued employment. Under the bill, "public employer" means the United States, the state, any political subdivision of the state, and any agency of the United States, the state, or a political subdivision of the state.



Current law prohibits a private employer from requiring a prospective employee or an applicant from paying for medical examinations required by the employer as a condition of employment. Under continuing law and the bill, an employer who violates the prohibitions must forfeit not more than \$100 for each violation. BWC and the Public Utilities Commission of Ohio enforce the penalty. It is unclear how this prohibition applies with respect to federal employees. Federal regulations specifically require applicants for certain federal positions and certain federal employees to pay for a medical examination conducted by an applicant's or employee's private physician if the purpose of the examination is for change sought by the applicant, such as new employment, or by the employee, such as a request for change in duty status, reasonable accommodations, or job modifications.⁶

Retrospective rulemaking and other actions

(R.C. 1.481)

The bill prohibits a state agency from adopting, amending, or rescinding a rule, or from taking any other quasi-legislative or quasi-judicial action, that has a substantive or procedural retrospective effect unless the General Assembly expressly has authorized rulemaking or other action that has such an effect. Under the Ohio Constitution, the General Assembly is prohibited from passing laws that have a retrospective effect unless the effect is procedural or remedial.⁷

HISTORY

ACTION	DATE
Introduced	02-01-17
Reported, H. Insurance	05-16-17
Re-referred, H. Rules & Reference	05-16-17
Reported, H. Finance	---

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⁶ 5 Code of Federal Regulations 339.304.

⁷ Ohio Const., art. II, sec. 28; *Bielat v. Bielat*, 87 Ohio St.3d 350, 354 (2000).

