Executive	As Passed By House	As Passed By Senate	As Enacted
BWCCD12 Deputy Inspector General for BWC and OIC Funding			
Section: 2 Requires the Director of Budget and Management (OBM), on July 1, 2021, and January 1, 2022, or as soon as possible thereafter, to transfer $212,500 cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (Fund 5FT0) for the FY 2022 costs related to the Deputy Inspector General for the Bureau of Workers' Compensation (BWC) and Ohio Industrial Commission (OIC). Requires the OBM Director, on July 1, 2022, and January 1, 2023, or as soon as possible thereafter, to transfer the same amount from Fund 7023 to Fund 5FT0 to pay for the corresponding costs in FY 2023. Specifies that if additional amounts are needed, the Inspector General may seek Controlling Board approval for additional transfers of cash and to increase the amount appropriated in appropriation item 965604, Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission.	**Section: 2** Same as the Executive.	**Section: 2** Same as the Executive.	**Section: 2** Same as the Executive.

Executive	As Passed By House	As Passed By Senate	As Enacted
OICCD1 Rent – William Green Building			
Section: 1	**Section: 1**	**Section: 1**	**Section: 1**
Requires that appropriation item 845402, Rent - William Green Building be used for rent and operating expenses for the space occupied by the Industrial Commission in the William Green Building.	Same as the Executive.	Same as the Executive.	Same as the Executive.

Policies and Rules

Memo A1 | Post-Exposure Medical Diagnostic Services

Peace officers, firefighters, emergency medical workers, and on or after September 15, 2020, detention facility employees, including corrections officers, are the only employees eligible for post- exposure medical diagnostic services, consistent with the standards of medical care existing at the time of the exposure, following exposure to blood or other body fluid of another person.

On and after September 15, 2020, peace officers, firefighters, emergency medical workers, and detention facility employees, including corrections officers, are the only employees eligible for post- exposure medical diagnostic services, consistent with the standards of medical care existing at the time of the exposure, following exposure to a drug or other chemical substance.

For the purposes of R.C. 4123.026, a peace officer is defined in R.C. 2935.01.

An emergency medical worker is defined as a first responder or an emergency medical technician (basic, intermediate, or paramedic) certified under R.C. Chapter 4765, whether as a paid worker or serving as a volunteer.

A firefighter is defined as a firefighter of a lawfully constituted fire department, whether as a paid member of a fire department under section R.C. 742.01 or serving as a volunteer as defined in R.C. 146.01.

A corrections officer means a person employed by a detention facility as a corrections officer as defined
in R.C. 4123.026.

A detention facility means any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws
of the United States as defined in R.C. 4123.026.

NOTE: *Adjudications before the Ohio Industrial Commission* Memo M3.

Memo A2 | Professional Employer Organizations and Alternate Employer Organizations

For the purposes of providing notice to the proper employer, professional employer organization, or alternate employer organizations, the Industrial Commission shall provide notice to all employers, professional employer organizations, and alternate employer organizations identified in the claim file. The Industrial Commission will not remove an employer, professional employer organization, or alternate employer organization from the parties identified to receive notice due to a change in risk status. It is not necessary to investigate or determine at hearing which risk will be affected by the order.

Memo I1 | Continuing Jurisdiction – Ten Years and Five Years

When the date of injury or disability is prior to August 25, 2006, and there has been a payment of compensation under R.C. 4123.56, 4123.57, or 4123.58, the claim is active for ten years from the date of the last payment of compensation, or ten years from the last payment of a medical bill, whichever is later.

When the date of injury or disability is on or after August 25, 2006 and on or before June 30, 2020, the claim is active for five years from the date of the last payment of compensation or five years from the last payment of a medical bill, whichever is later.

When the date of injury or disability is on or after July 1, 2020, the claim is active for five years from the date of the last payment of compensation or five years from the last date of medical services rendered, whichever is later.

When determining the date of last payment of compensation for purposes of R. C. 4123.52, use the date that appears on the face of the last warrant issued in payment of compensation, or the date of the last transfer made by electronic funds transfer or electronic benefits transfer in payment of compensation.

When determining the date of the last payment of a medical bill for purposes of R.C. 4123.52, use the date on the face of the warrant issued in payment of the bill, or the date of the transfer made by electronic funds transfer or electronic benefit transfer in payment of the bill.

NOTE: Cocherl v. Ohio Dept. of Transp., 10th Dist. Franklin No. 06AP-1100, 2007-Ohio-3225.

Memo M3 | Adjudication of Claims with the Issue of Exposure to Blood, Other Body Fluids, Drug, or Other Chemical Substances as Delineated by R.C. 4123.026

When an issue involving an exposure to blood, other body fluid, drug, or other chemical substances, as delineated in R.C. 4123.026, is set for hearing before a hearing officer, that hearing officer shall apply the statutory criteria to the issue(s) before him or her.

The hearing officer shall describe, in detail, in his or her order the issue(s) before him or her. The hearing officer's decision shall set forth the reasons for granting or denying payment for the post-exposure medical diagnostic services and/or medical care that is before him or her, including a discussion of the circumstances surrounding the exposure. Medical reports, bills, and other documents specifying post-exposure medical diagnostic and treatment services and supporting payment or non-payment shall be identified.

The following language shall be used when granting payment for post-exposure medical diagnostic services and/or medical care:

> This claim is allowed for exposure to blood, other body fluid, drug, or other chemical substances for the limited purpose provided by R.C. 4123.026, which provides for the payment of appropriate post-exposure diagnostic services, consistent with the standard of medical care existing at the time of the exposure, in the absence of an injury, occupational disease, or death. No other form of compensation or benefits is payable in this claim unless it is found that the injured worker has sustained an injury, occupational disease, or death as a result of employment.

This policy is applicable to all exposures to blood, other body fluid, for peace officers, firefighters, emergency medical workers, occurring on or after March 14, 2003, as described and delineated in R.C. 4123.026. This policy is applicable to all exposures to blood, other body fluid, drug, or other chemical substances for peace officers, firefighters, emergency medical workers, detention facility employees, including corrections officers, occurring on or after September 15, 2020, as described and delineated in R.C. 4123.026.

NOTE: R.C. 4123.01, *Adjudications before the Ohio Industrial Commission* Memo A1.

Memo R11 | Use of Cellular Phones, Telephonic Pagers, Personal Computers, and Other Audible Devices in the Hearing Area

Cellular phones, telephonic pagers, personal computers, and other electronic devices must be placed in a silent/mute activation or vibrating mode while in the hearing room. Any electronic device that cannot be placed in a silent/mute activation or vibrating mode shall be turned off, out of courtesy to the parties involved in the hearing process and to ensure that all hearings go forward without distractions.

Personal computers may be used in the hearing room for the limited purpose of facilitating participation in the hearing process. Personal computers with wireless connectivity will enable parties to access claim information that resides in the Industrial Commission's computer system. Personal computers and other electronic devices brought into the hearing room shall not be employed to photograph, record (audio or video), broadcast, transmit, or televise any proceeding, scene, discussion, or event in the hearing room without first obtaining Industrial Commission permission pursuant to Adjudications before the Ohio Industrial Commission Memo R7 and Industrial Commission Resolution R18-1-04.

Audible use of personal computers, cellular phones, telephonic pagers, and any other electronic device may occur in the public area/section of an Industrial Commission office where hearing functions will not be disrupted. Should the facility at which the individual is working not have an area within the building where the audible use of an electronic device would not be disruptive, he or she shall exit the building to use that device.

Ohio Administrative Code

Rule 4121-3-13 Disputed self-insuring employers' claims.

Effective: February 1, 2021

(A) In the event there is a dispute or disagreement between the injured worker or an eligible applicant and the self-insuring employer that concerns a contested claims matter, the claim shall be referred to the commission for hearing.

(B) Upon receipt of a notice of a dispute or disagreement that concerns a contested claims matter, the bureau of workers' compensation shall immediately notify the parties of the existence of the dispute or disagreement, and shall within seven days refer the matter to the commission as a disputed claims matter.

(C) In the event that the self-insuring employer fails to respond to a request for compensation or benefits made by an injured worker within thirty days of such a request, or pursuant to paragraph (B) of this rule the self-insuring employer disputes an application for compensation or benefits, the commission shall schedule the contested claims matter for hearing.

(D) Prior to the hearing in a contested claims matter the parties or their authorized representatives shall file the information necessary to comply with the provisions of paragraph (A)(1) and (A)(2) of rule 4121-3-09 of the Administrative Code. Such information shall include, but not be limited to, medical reports received by the parties or their authorized representatives from the treating physician and physicians who have seen the injured worker in consultation for the injury, occupational disease, or death for which the claim has been filed.

(E) Notwithstanding paragraph (D) of this rule, a self-insuring employer, or its authorized representative, shall provide to the commission and to the injured worker, or the injured worker's representative in claims where the injured worker is represented, the following information in writing, prior to the date of hearing of a contested claims matter:

(1) A copy of the first report of injury, occupational disease, or death, or an equivalent document; and

(2) A statement listing the specific conditions that are recognized in the claim by the self-insuring employer, including conditions that were originally recognized as related to the injury or occupational disease for which the claim has been filed, as well as any conditions that are subsequently recognized by the self-insuring employer as being related to the injury or occupational disease; and

(3) Where the contested claims matter concerns a dispute as to the full weekly wage or average weekly wage, the information used to calculate the full weekly wage or average weekly wage, depending on which is at issue, shall be submitted unless the full weekly wage or average weekly wage had been previously established by a final order of the commission; and

(4) Where the employer intends to raise the issue of the statute of limitations pursuant to section 4123.52 of the Revised Code, the employer must provide a statement setting forth the date of last payment of compensation and also must provide, for claims arising prior to July 1, 2020, the last payment of a medical bill or, for claims arising on or after July 1, 2020, the date of last medical service rendered.

(5) A statement setting forth the date of last payment of a medical bill where the contested claims matter concerns a dispute over entitlement to, or extent of, medical benefits.

(6) A statement setting forth the date of last payment of compensation where the contested claims matter concerns entitlement to compensation.

(F) The information in paragraphs (D) and (E) of this rule is not to be provided if the information was previously filed with the commission or the bureau of workers' compensation, and the information is part of the claim file within the possession of the bureau of workers' compensation.

(G) Except as herein provided, the processing of contested claims matters where the employer is a self-insuring employer shall be in conformity with rule 4121-3-09 of the Administrative Code.

(H) Nothing in this rule shall inhibit or diminish the authority, and attendant powers, as provided in Chapters 4121. and 4123. of the Revised Code and agencies 4121 and 4125 of the Administrative

Code, of the commission and its hearing officers to fully adjudicate contested claims matters.

Ohio Administrative Code

Rule 4121-3-20 Additional awards by reason of violations of specific safety requirements.

Effective: February 1, 2021

(A) For claims arising before September 15, 2020, an application for an additional award of compensation founded upon the claim that the injury, occupational disease, or death resulted from the failure of the employer to comply with the specific requirement for the protection of health, lives, or safety of employees, must be filed, in duplicate, with the commission, within two years of the injury, death, or inception of disability due to occupational disease. For claims arising on or after September 15, 2020, an application for an additional award of compensation founded upon the claim that the injury, occupational disease or death resulted from the failure of the employer to comply with the specific requirement for the protection of health, lives, or safety of employees, must be filed, in duplicate, with the commission, within one year of the injury, death or inception of disability due to occupational disease. The commission shall make available a form with which an application for an additional award by reason of a violation of a specific safety requirement may be made. Such application should set forth the facts which are the basis of the alleged violation and shall cite the section or sections of the law or code or codes of specific safety requirements which it is claimed have been violated. Such application shall contain the claim number assigned by the bureau to the claim for compensation or benefits under Chapters 4123. and 4131. of the Revised Code. The settlement of the underlying claim from which an application for additional award by reason of a violation of a specific safety requirement has been or may be filed abates any action on that application.

(B) For the purpose of this rule, "employer" shall be defined to include the customer employer of a temporary service agency or the client employer of a professional employer organization where the customer employer or client employer has the right of control as to the manner or means of performing the work.

(a) The claimant or the claimant's representative may amend the application to include any additional or alternative violation, provided the amendment is filed within two years following the date of injury, disability or death for claims arising before September 15, 2020 or within one year following the date of injury, disability or death for claims arising on or after September 15, 2020.

(b) The claimant or the claimant's representative may submit an amendment of the application for additional award for violation of a specific safety requirement beyond the expiration of two years following the date of injury, disability or death for claims arising before September 15, 2020 or within one year following the date of injury, disability or death for claims arising on or after September 15, 2020. Any such amendment must be submitted within thirty days of the receipt by the claimant or the claimant's counsel of the report of the investigation by the bureau into the alleged specific safety requirement violation. The claimant or the claimant's counsel may request an extension of this period for an additional thirty days. Such request must be submitted in writing within the original thirty-day period. If properly submitted, the commission shall notify both parties and their representatives of the granting of such request by mail. Such amendment shall set forth all specific safety requirements omitted from the application made prior to the expiration of the two-year period for claims arising before September 15, 2020 or within one year following the date of injury, disability or death for claims arising on or after September 15, 2020, which the claimant alleges were the cause of the injury, disease or death, but which were omitted by reason of mistake or incompleteness. Copies of any such amendments shall be forwarded to the employer and its representatives as required by paragraph (D) of this rule. Any such amendment shall not raise any unstated claim, but shall merely clarify a previously alleged violation.

(a) All amendments to an application for additional award for violation of a specific safety requirement filed after the investigation by the bureau shall be reviewed to determine if the amendment requires further investigation.

(b) The employer or its representative may object to an amendment to the application for additional award for violation of a specific safety requirement, which was filed beyond the two-year period for claims arising before September 15, 2020 or within one year following the date of injury, disability or death for claims arising on or after September 15, 2020 on the grounds that the amendment raises a previously unstated claim. If such objection is filed within thirty days of the employer's receipt of the amendment, a staff hearing officer shall review the amendment, to determine the need for a re-investigation if the original investigation was conducted prior to the amendment.

(3) Whenever further investigation is performed by the bureau regarding an alleged safety violation, the receipt by the claimant or the claimant's counsel of such report shall commence the running of a

further period for submission of amendment or new evidence as if the re-investigation were the first investigation subject to the aforementioned provisions.

(D) Processing of applications for an additional award.

(1) Upon the filing of an application for an additional award with the commission, the commission shall send a copy of the application to the employer, customer employer of a temporary service agency or client employer of a professional employer organization and to its authorized representatives by mail.

(2) The commission shall notify the employer that this application, if granted, will result in the employer being billed directly for the amount of the award. The commission shall also notify the appropriate section of the bureau of the filing of the application. The employer has thirty days in which to file an answer unless the time is extended, for good cause shown, by a staff hearing officer for a period not to exceed an additional thirty days.

(3) The commission may assign an application for such award for investigation or for hearing without investigation. In the event that the application or answer raises legal issues the decision of which would dispose of the application (e.g., did the application cite a specific safety requirement, or was the application timely filed) the commission will assign the application for hearing without investigation. In the event that the claim is referred for investigation, after the investigation report is completed, the commission shall mail a copy of such report to each of the parties and their authorized representatives. At that time, the commission shall advise the parties that they have a designated period of time, not to exceed thirty days, in which to furnish additional proof that they may desire to offer. Within this period, either party may request in writing an extension of the time within which the party may submit additional proof. Such requests shall be considered by a staff hearing officer and, if granted, written notice of the extension, not to exceed an additional thirty days, shall be sent to both parties and their representatives. Any such extension shall extend the time available for submission of additional proof equally to both parties, but there can only be one such extension.

(4) Unless otherwise directed by a staff hearing officer, at the end of the thirty day period after the mailing of the investigation report, or the sixty day period if an extension had been granted, all

applications for an additional award shall be scheduled for a pre-hearing conference, with written notice provided to all parties of record and their representatives no less than fourteen days prior to the pre-hearing conference. Items the parties should be prepared to discuss at the pre-hearing conference include, but are not limited to:

(a) Have the names and addresses for all parties and their representatives been listed correctly;

(b) Have all parties received copies of the relevant documentary evidence on file;

(c) Has either party requested a record hearing;

(d) Has either party previously requested the issuance of a subpoena, and are there pending subpoena requests;

(e) Are the parties considering or engaged in settlement negotiations;

(f) Is an intentional tort court case pending; and

(g) Any other procedural matter which needs to be addressed.

The pre-hearing conference will conclude with the parties agreeing to the date and time for the scheduling of the merit hearing within the time frame specified by the staff hearing officer conducting the pre-hearing conference.

(5) Either party may request a record hearing but the request shall only be made from the date of filing of the application through the date of the pre-hearing conference. If a record hearing is held, the requesting party is responsible for securing the attendance of a court reporter. A stenographic transcript of any testimony offered shall be taken at the record hearing. The party requesting a record hearing shall pay for the stenographic services and shall submit a copy of the transcript to the commission, as well as to the opposing party, within thirty days of the date of the hearing. Failure to file a copy of the transcript of the proceedings within the thirty-day period, or within such an extended period as may be granted by the staff hearing officer for good cause shown, shall not delay the rendering of the decision. If the party that requests a record hearing decides not to proceed with

the record hearing, subsequent to the date that the request for record hearing was granted, that party shall promptly notify the opposing party and their representative, to avoid unfair surprise. If desired, the opposing party may then secure its own court reporter, so that the hearing may proceed as a record hearing. If a record hearing is held, both parties will be permitted to introduce new evidence at the hearing on the application. If no request is made for a record hearing, no new documentary evidence or testimony will be accepted at the hearing on the merits.

(6) Subpoena requests should be filed no later than the date of the pre-hearing conference. If a request for subpoena to obtain documents or information has been granted, copies of all the information obtained by the subpoena are to be submitted immediately to the commission upon its receipt by the party requesting the subpoena.

(7) Except for the initial processing, investigation and prehearing conference of the claim as described in paragraphs (D)(1) to (D)(4) of this rule, if an intentional tort or other court action is pending in court, and if all parties agree and make a request, the commission may hold further processing of the application for an additional award in abeyance, until one of the parties requests that processing be reinstated. If both parties do not agree, processing of the application will continue.

(8) Subsequent to the prehearing conference, or in cases where no prehearing conference is held, the claim shall be set for hearing with notices to the parties, their representatives and the bureau, at which time the arguments in favor of and opposed to granting the application will be heard.

(9) If, at any time, the staff hearing officer determines further investigation is necessary, the staff hearing officer will refer the claim for investigation requesting the specific data needed and notify the parties of the further investigation. When the supplemental investigation report is in the file, copies are to be mailed to each of the parties and their authorized representatives.

(10) Following the hearing, the staff hearing officer shall issue an order in conformity with rule 4121-3-09 of the Administrative Code.

(E) Within thirty days of the receipt of the order of the staff hearing officer deciding the issues presented by the application, either party has the right to file a motion requesting a rehearing. The party requesting a rehearing shall provide a copy of the motion for rehearing to the opposing party

and its representative. The opposing party has thirty days in which to file an answer. A motion for rehearing is not to be adjudicated until the answer has been received or the expiration of the thirty-day period.

(1) If the motion for rehearing is filed, a staff hearing officer, after the expiration of the answer time, shall review the motion for rehearing under the following criteria:

(a) In order to justify a rehearing of the staff hearing officer's order, the motion shall be accompanied by new and additional proof not previously considered and which by due diligence could not be obtained prior to the prehearing conference, or prior to the merit hearing if a record hearing was held and relevant to the specific safety requirement violation.

(b) A rehearing may also be indicated in exceptional cases where the order was based on an obvious mistake of fact or clear mistake of law.

(2) If the motion for rehearing does not meet the criteria as outlined in paragraph (E)(1)(a) or (E)(1)(b) of this rule, the motion shall be denied without further hearing.

(3) If the motion for rehearing is granted, the staff hearing officer shall either:

(a) Set the claim for a hearing with notices on the merits of the application; or

(b) Refer the claim for investigation and after the report of investigation is filed then set the claim for a hearing on the merits of the application.

(4) Following the hearing the staff hearing officer shall follow the same procedure pertaining to the order as outlined in paragraph (D)(9) of this rule. Such order, shall be final. In no case shall a rehearing be granted from an order adjudicating a rehearing.

(5) The payment of the additional award shall be stayed during the pendency of the motion for rehearing.

(1) Joint application of the claimant and the employer, or the administrator in a case where the

settlement proceeds are to be paid from the state insurance fund, on an agreed settlement shall be considered by a staff hearing officer without hearing. Such an application to settle a violation application shall be considered by a staff hearing officer either prior to the determination of the application for an additional award for violation of a specific safety requirement, or after such an application has been adjudicated, and such agreed settlements shall be processed in the same manner. If the staff hearing officer finds that the settlement is appropriate, the staff hearing officer shall issue an order approving it. If the staff hearing officer does not find the settlement to be appropriate in its present form, the staff hearing officer shall schedule a hearing with notices to all parties and their representatives where the matter of the proposed settlement is to be considered. Following the hearing, the staff hearing officer shall issue an order either approving or disapproving the settlement, and the order shall be final.

(2) When a state fund employer desires to settle its liability, which may include its future liability, for the violation of a specific safety requirement, the employer shall file an application for settlement with the adjudicating committee of the bureau of workers' compensation. The bureau shall process the application in the same manner as if an application to settle the liability of a noncomplying employer pursuant to rule 4123-14-05 of the Administrative Code had been filed.

(G) Every order adjudicating an application for additional award for violation of a specific safety requirement which finds such a violation against an employer still in business in Ohio, shall direct that the violation be corrected within a time period which the order shall specify. An employer which fails to comply with such a corrective order within the specified time shall be deemed to have violated a specific safety requirement for the purposes of section 4121.47 of the Revised Code.

(H) The commission shall maintain a list of additional awards granted, including findings of failure to comply with a corrective order. In the event of two such findings of violations of specific safety requirements during the same twenty-four month period, the staff hearing officer shall assess a civil penalty appropriate in light of the circumstances of the individual case in an amount not to exceed fifty thousand dollars. Among the factors the staff hearing officer shall consider in determining the amount of any such civil penalty are the size of the employer as measured by the number of employees, assets and earnings of the employer.

(1) If the two violations of specific safety requirements occur at the same workplace, the violations

need not be of the same type or kind for a penalty to be assessed. However, if the two violations of specific safety requirements occur at two different workplaces owned, operated, managed, leased or otherwise controlled by the same individual, company or corporation, the violations must be for the same specific safety requirements.

(2) A penalty shall not be assessed solely for multiple violations which caused the same incident, nor for incidents where more than one employee was injured or killed, nor for a finding of a violation of a specific safety requirement which was settled before the order became final because of the granting of a rehearing or during the pendency of a motion for rehearing.

(3) For the purpose of paragraph (H) of this rule, "workplace" shall mean all of a single contiguous fixed situs under the control of the employer where work is performed; or, if the violation took place at or en route to or from a work site to which the employer sent employees to perform work but which was not expected to remain indefinitely under the control of the employer, any work site or travel route to or along which employees based or supervised from the same site have been sent to perform work, including such base site.

(4) For purpose of paragraphs (G) and (H) of this rule, "specific safety requirement" shall mean the identical requirement, but this exception shall not prevent a penalty where the employer is found to have violated the provisions of two requirements in effect for different periods of time which cover the same matters, even though one of the requirements is stricter than the other.

Ohio Administrative Code

Rule 4121-3-34 Permanent total disability.

Effective: February 1, 2021

(A) Purpose

The purpose of this rule is to ensure that applications for compensation for permanent total disability are processed and adjudicated in a fair and timely manner. This rule applies to the adjudication of all applications for compensation for permanent total disability filed on or after the effective date of this rule.

(B) Definitions

The following definitions shall apply to the adjudication of all applications for compensation for permanent total disability:

(1) "Permanent total disability" means the inability to perform sustained remunerative employment due to the allowed condition(s) in the claim(s).

The purpose of permanent total disability benefits is to compensate an injured worker for impairment of earning capacity.

The term "permanent" as applied to disability under the workers' compensation law does not mean that such disability must necessarily continue for the life of the injured worker but that it will, within reasonable probability, continue for an indefinite period of time without any present indication of recovery therefrom.

(2) Classification of physical demands of work:

(a) "Sedentary work" means exerting up to ten pounds of force occasionally (occasionally: activity or condition exists up to one-third of the time) and/or a negligible amount of force frequently (frequently: activity or condition exists from one-third to two-thirds of the time) to lift, carry, push,

pull, or otherwise move objects. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

(b) "Light work" means exerting up to twenty pounds of force occasionally, and/or up to ten pounds of force frequently, and/or a negligible amount of force constantly (constantly: activity or condition exists two-thirds or more of the time) to move objects. Physical demand may be only a negligible amount, a job should be rated light work: (i) when it requires walking or standing to a significant degree; or (ii) when it requires sitting most of the time but entails pushing and/or pulling or arm or leg controls; and/or (iii) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible.

(c) "Medium work" means exerting twenty to fifty pounds of force occasionally, and/or ten to twenty-five pounds of force frequently, and/or greater than negligible up to ten pounds of force constantly to move objects. Physical demand requirements are in excess of those for light work.

(d) "Heavy work" means exerting fifty to one hundred pounds of force occasionally, and/or twenty to fifty pounds of force frequently and/or ten to twenty pounds of force constantly to move objects. Physical demand requirements are in excess of those for medium work.

(e) "Very heavy work" means exerting in excess of one hundred pounds of force occasionally, and/or in excess of fifty pounds of force frequently, and/or in excess of twenty pounds of force constantly to move objects. Physical demand requirements are in excess of those for heavy work.

(3) Vocational factors:

(a) "Age" shall be determined at time of the adjudication of the application for permanent total disability. In general, age refers to one's chronological age and the extent to which one's age affects the ability to adapt to a new work situation and to do work in competition with others.

(b) "Education" is primarily used to mean formal schooling or other training which contributes to the ability to meet vocational requirements. The numerical grade level may not represent one's actual educational abilities. If there is no other evidence to contradict it, the numerical grade level will be

used to determine educational abilities.

(i) "Illiteracy" is the inability to read or write. An injured worker is considered illiterate if the injured worker cannot read or write a simple message, such as instructions or an inventory list, even though the person can sign his or her name.

(ii) "Marginal education" means sixth grade level or less. An injured worker will have ability in reasoning, arithmetic, and language skills which are needed to do simple unskilled types of work. Generally, formal schooling at sixth grade level or less is marginal education.

(iii) "Limited education" means seventh grade level through eleventh grade level. Limited education means ability in reasoning, arithmetic and language skills but not enough to allow an injured worker with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. Generally, seventh grade through eleventh grade formal education is limited education.

(iv) "High school education or above" means twelfth grade level or above. The G.E.D. is equivalent to high school education. High school education or above means ability in reasoning, arithmetic, and language skills acquired through formal schooling at twelfth grade education or above. Generally an individual with these educational abilities can perform semi-skilled through skilled work.

(c) "Work experience":

(i) "Unskilled work" is work that needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. Jobs are unskilled if the primary work duties are handling, feeding, and off bearing (placing or removing materials from machines which are automatic or operated by others), or machine tending and a person can usually learn to do the job in thirty days and little specific vocational preparation and judgment are needed.

(ii) "Semi-skilled work" is work that needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require close attention to watching machine processes or inspecting, testing, or otherwise looking for irregularities or tending or guarding equipment,

property, material, or persons against loss, damage, or injury and other types of activities which are similarly less complex than skilled work but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly in a repetitive task.

(iii) "Skilled work" is work that requires qualifications in which a person uses judgment or involves dealing with people, factors or figures or substantial ideas at a high level of complexity. Skilled work may require qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity to be produced. Skilled work may require laying out work, estimating quality, determine the suitability and needed quantities of materials, making precise measurements, reading blue prints or other specifications, or making necessary computations or mechanical adjustments or control or regulate the work.

(iv) "Transferability of skills" are skills that can be used in other work activities. Transferability will depend upon the similarity of occupational work activities that have been performed by the injured worker. Skills which an individual has obtained through working at past relevant work may qualify individuals for some other type of employment.

(v) "Previous work experience" is to include the injured worker's usual occupation, other past occupations, and the skills and abilities acquired through past employment which demonstrate the type of work the injured worker may be able to perform. Evidence may show that an injured worker has the training or past work experience which enables the injured worker to engage in sustained remunerative employment in another occupation. The relevance and transferability of previous work skills are to be addressed by the adjudicator.

(4) "Residual functional capacity" means the maximum degree to which the injured worker has the capacity for sustained performance of the physical-mental requirements of jobs as these relate to the allowed conditions in the claim(s).

(5) "Maximum medical improvement" is a treatment plateau (static or well-stabilized) at which no fundamental functional or physiological change can be expected within reasonable medical probability in spite of continuing medical or rehabilitative procedures. An injured worker may need

supportive treatment to maintain this level of function.

(C) Processing of applications for compensation for permanent total disability

The following procedures shall apply to applications for compensation for permanent total disability that are filed on or after the effective date of this rule.

(1) Each application for compensation for permanent total disability shall identify, if already on file, or be accompanied by medical evidence from a physician, or a psychologist or a psychiatric specialist in a claim that has been allowed for a psychiatric or psychological condition(s), that supports an application for compensation for permanent total disability. The medical examination upon which the report is based must be performed within twenty-four months prior to the date of filing of the application for compensation for permanent total disability. The medical evidence used to support an application for compensation for permanent total disability is to provide an opinion that addresses the injured worker's physical and/or mental limitations resulting from the allowed conditions in the claim(s). Medical evidence which provides an opinion addressing such limitations, but which also contains a conclusion as to whether an injured worker is permanently and totally disabled, may be considered by a hearing officer. A vocational expert's opinion, by itself, is insufficient to support an application for compensation for permanent total disability. If an application for compensation for permanent total disability is filed that does not meet the filing requirements of this rule, or if proper medical evidence is not identified within the claim file, the application shall be dismissed without hearing. Where it is determined at the time the application for compensation for permanent total disability is filed that the claim file contains the required medical evidence, the application for compensation for permanent total disability shall be adjudicated on its merits as provided in this rule absent withdrawal of the application for compensation for permanent total disability.

(2) At the time the application for compensation for permanent total disability is filed with the industrial commission, the industrial commission shall serve a copy of the application together with copies of supporting documents to the employer's representative (if the employer is represented), or to the employer (if the employer is not represented) along with a letter acknowledging the receipt of the application for compensation for permanent total disability.

(3) A claims examiner shall initially review the application for compensation for permanent total disability.

(a) If it is determined there is a written agreement to award permanent total disability compensation entered into between the injured worker, the employer, and the administrator in claims involving state fund employers, the application shall be adjudicated, and an order issued, without a hearing.

(b) If it is determined that the injured worker is requesting an award of permanent total disability compensation under division (C) of section 4123.58 of the Revised Code (statutory permanent total disability), the application shall be adjudicated in accordance with paragraph (E) of this rule.

(c) If a motion requesting recognition of additional conditions is filed on or prior to the date of filing of the application for compensation for permanent total disability, such motion(s) shall be processed prior to the processing of the application for compensation for permanent total disability. However, if a motion for recognition of an additional condition is filed subsequent to the date of filing of the application for compensation for permanent total disability, the motion(s) shall be processed subsequent to the determination of the application for compensation for permanent total disability.

(a) The injured worker shall ensure that copies of medical records, information, and reports that the injured worker intends to introduce and rely on that are relevant to the adjudication of the application for compensation for permanent total disability from physicians who treated or consulted the injured worker that may or may not have been previously filed in the workers' compensation claim files, are contained within the file(s) at the time of filing an application for compensation for permanent total disability.

(b) The employer shall be provided fourteen days after the date of the industrial commission acknowledgment letter provided for in paragraph (C)(2) of this rule to notify the industrial commission if the employer intends to submit to the industrial commission medical evidence relating to the issue of permanent total disability compensation. Should the employer make such written notification the employer shall submit such medical evidence to the industrial commission within sixty days after the date of the industrial commission acknowledgment letter unless relief is provided to the employer under paragraph (C)(4)(d) of this rule. Should the employer fail to make such written notification within fourteen days after the date of the industrial commission acknowledgment letter,

the employer shall be provided sixty days after the date of the industrial commission acknowledgment letter to submit medical evidence relating to the issue of permanent total disability compensation to the industrial commission, but the scheduling of the injured worker for appropriate medical examinations by physicians selected by the industrial commission under paragraph (C)(5)(a)(iii) of this rule will proceed without delay.

(c) If the injured worker or the employer has made a good faith effort to obtain medical evidence described in paragraph (C)(4)(a) or (C)(4)(b) of this rule and has been unable to obtain such evidence, the injured worker or the employer may request that the hearing administrator issue a subpoena to obtain such evidence. Prior to the issuance of a subpoena, the hearing administrator shall review the evidence submitted by the injured worker or the employer that demonstrates the good faith effort to obtain medical evidence. Should a subpoena be issued, it shall be served by the party requesting the issuance of a subpoena.

(d) Upon the request of either the injured worker or the employer and upon good cause shown, the hearing administrator may provide an extension of time, to obtain the medical evidence described in paragraphs (C)(4)(a) and (C)(4)(b) of this rule. Thereafter, no further medical evidence will be admissible other than additional medical evidence approved by a hearing administrator that is found to be newly discovered medical evidence that is relevant to the issue of permanent total disability compensation and which, by due diligence, could not have been obtained under paragraph (C)(4)(a) or (C)(4)(b) of this rule.

(a) Following the date of filing of the application for compensation for permanent total disability, the claims examiner shall perform the following activities:

(i) Obtain all the claim files identified by the injured worker on the application for compensation for permanent total disability and any additional claim files involving the same body part(s) as those claims identified on the application.

(ii) Copy all relevant documents as deemed pertinent by the industrial commission including evidence provided under paragraphs (C)(1) and (C)(4) of this rule and submit the same to an examining physician(s) to be selected by the claims examiner.

(iii) Schedule appropriate medical examination(s) by physician(s) to be selected by the industrial commission provided that the scheduling of said examination(s) shall not be delayed where the employer fails to notify the industrial commission within fourteen days after the date of the industrial commission acknowledgment letter that it intends to submit medical evidence to the industrial commission relating to the issue of permanent total disability compensation.

(iv) Prepare a statement of facts. A copy of the statement of facts shall be mailed to the parties and their representatives by the industrial commission.

(a) After the reports of the commission medical examinations have been received, the hearing administrator may refer the claim to an adjudicator to consider the issuance of a tentative order, without a hearing.

(i) Within fourteen days of the receipt of the tentative order adjudicating the merits of an application for compensation for permanent total disability, a party may file a written objection to the order. Unless the party notifies the commission in writing of the objection to the tentative order within fourteen days after the date of receipt of the tentative order, the tentative order shall become final with regard to the award of permanent total disability compensation. A party may file a written request to change the start date or allocation of permanent total disability compensation within thirty days of the receipt of the tentative order adjudicating the merits of an application for compensation for permanent total disability.

(ii) In the event a party makes written notification to the industrial commission of an objection within fourteen days of the date of the receipt of the tentative order, the application for compensation for permanent total disability shall be set for hearing.

(b) If the hearing administrator determines that the case should not be referred for consideration of issuance of a tentative order by an adjudicator, the hearing administrator shall notify the parties to the claim that a party has fourteen days from the date that copies of reports of the industrial commission medical examinations are submitted to the parties within which to make written notification to the industrial commission of a party's intent to submit additional vocational information to the industrial commission that is relevant to the adjudication of the application for compensation for permanent total disability.

(i) Unless a party notifies the commission within the aforementioned fourteen-day period of the party's intent to submit additional vocational information to the commission, a party will be deemed to have waived its ability to submit additional vocational information to the industrial commission that is relevant to the adjudication of the application for compensation for permanent total.

(ii) Should a party provide timely notification to the industrial commission of its intent to submit additional vocational information, the additional vocational information shall be submitted to the industrial commission within forty-five days from the date the copies of the reports of industrial commission medical examinations are submitted to the parties. Upon expiration of the forty-five day period no further vocational information will be accepted without prior approval from the hearing administrator.

(7) If the employer or the injured worker request, for good cause shown, that a pre-hearing conference be scheduled, a pre-hearing conference shall be set. The request for a pre-hearing conference shall include the identification of the issues that the requesting party desires to be considered at the pre-hearing conference. The hearing administrator may also schedule a pre-hearing conference when deemed necessary on any matter concerning the processing of an application for compensation for permanent total disability, including but not limited to, motions that are filed subsequent to the filing of the application for compensation for permanent total disability.

Notice of a pre-hearing conference is to be provided to the parties and their representatives no less than fourteen days prior to the pre-hearing conference. The pre-hearing conference may be by telephone conference call, or in-person at the discretion of the hearing administrator and is to be conducted by a hearing administrator.

The failure of a party to request a pre-hearing conference or to raise an issue at a pre-hearing conference held under paragraph (C)(8) of this rule, does not act to waive any assertion, argument, or defense that may be raised at a hearing held under paragraphs (D) and (E) of this rule.

(8) Should a pre-hearing conference be held, the hearing administrator is not limited to the consideration of the issues set forth in paragraphs (C)(8)(a) to (C)(8)(i) of this rule, but may also address any other matter concerning the processing of an application for compensation for permanent

total disability. At a pre-hearing conference the parties should be prepared to discuss the following issues:

(a) Evidence of retirement issues.

(b) Evidence of refusal to work or evidence of refusal or failure to respond to written job offers of sustained remunerative employment.

(c) Evidence of job description.

(d) Evidence of rehabilitation efforts.

(e) Exchange of accurate medical history, including surgical history.

(f) Agreement as to allowed condition(s) in the claim.

(g) Scheduling of additional medical examinations, if necessary.

(h) Ensure that deposition requests that have been granted pursuant to industrial commission rules are completed and transcripts submitted.

(i) Settlement status.

(9) At the conclusion of the pre-hearing conference, a date for hearing before a staff hearing officer shall be scheduled no earlier than fourteen days subsequent to the date of the pre-hearing conference. After the pre-hearing conference, unless authorized by the hearing administrator, no additional evidence on the issue of permanent total disability compensation shall be submitted to the claim file. If the parties attempt to submit additional evidence on the issue of permanent total disability compensation, the evidence will not be admissible on the adjudication the application for compensation for permanent total disability.

(10) The time frames established herein in paragraph (C) of this rule can be waived by mutual agreement of the parties by motion to a hearing administrator, except where otherwise specified.

(11) The applicant may dismiss the application for compensation for permanent total disability any time up to the determination of the hearing on the merits of the application. Should a party dismiss an for compensation for permanent total disability application prior to its adjudication, the industrial commission's medical evidence obtained will be valid twenty-four months from the date of dismissal.

(D) Guidelines for adjudication of compensation for applications for permanent total disability

The following guidelines shall be followed by the adjudicator in the sequential evaluation of applications for compensation for permanent total disability:

(a) If the adjudicator finds that the injured worker meets the definition of statutory permanent total disability pursuant to division (C) of section 4123.58 of the Revised Code, due to the loss or loss of use of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, the injured worker shall be found permanently and totally disabled, and a tentative order shall be issued.

Should an objection be filed from a tentative order, a hearing shall be scheduled. (Reference paragraph (E) of this rule).

(b) If, after hearing, the adjudicator finds that the injured worker is engaged in sustained remunerative employment, the injured worker's application for compensation for permanent total disability shall be denied, unless the injured worker qualifies for an award under division (C) of section 4123.58 of the Revised Code.

(c) If, after hearing, the adjudicator finds that the injured worker is medically able to return to the former position of employment, the injured worker shall be found not to be permanently and totally disabled.

(d) If, after hearing, the adjudicator finds that the injured worker is not working for reasons unrelated to the allowed injury or occupational disease, the injured worker shall be found not to be permanently and totally disabled.

(e) If, after hearing, the adjudicator finds that the injured worker was offered and refused and/or failed to accept a good-faith offer of sustained remunerative employment that was made prior to the pre-hearing conference described in paragraph (C)(9) of this rule where there is a written job offer detailing the specific physical/mental requirements and the duties of the job are within the physical/mental capabilities of the injured worker, the injured worker shall be found not to be permanently and totally disabled.

(f) If, after hearing, the adjudicator finds that the injured worker's allowed medical condition(s) is temporary and has not reached maximum medical improvement, the injured worker shall be found not to be permanently and totally disabled because the condition(s) remains temporary. In claims involving state fund employers, the claim shall be referred to the administrator to consider the issuance of an order on the question of entitlement to temporary total disability compensation. In claims involving self-insuring employers, the self-insuring employer shall be notified to consider the question of the injured worker's entitlement to temporary total disability compensation.

(g) If, after hearing, the adjudicator determines that there is appropriate evidence which indicates the injured worker's age is the sole cause or primary obstacle which serves as a significant impediment to reemployment, permanent total disability compensation shall be denied. However, a decision based upon age must always involve a case-by-case analysis. The injured worker's age should also be considered in conjunction with other relevant and appropriate aspects of the injured worker's nonmedical profile.

(h) If, after hearing, the adjudicator finds that the allowed condition(s) is the proximate cause of the injured worker's inability to perform sustained remunerative employment, the adjudicator is to proceed in the sequential evaluation of the application for compensation for permanent total disability in accordance with the provisions of paragraph (D) of this rule. However, should the adjudicator finds that non-allowed conditions are the proximate cause of the injured worker's inability to perform sustained remunerative employment, the injured worker shall be found not to be permanently and totally disabled.

(i) If, after hearing, the adjudicator finds that injured worker's inability to perform sustained remunerative employment is the result of a pre-existing condition(s) allowed by aggravation, the adjudicator is to continue in the sequential evaluation of the application for compensation for

permanent total disability in accordance with the provisions of paragraph (D) of this rule. However, should the adjudicator find that a non-allowed pre-existing condition(s) is the proximate cause of the injured worker's inability to perform sustained remunerative employment, the injured worker shall be found not to be permanently and totally disabled.

(a) If, after hearing, the adjudicator finds that the medical impairment resulting from the allowed condition(s) in the claim(s) prohibits the injured worker's return to the former position of employment as well as prohibits the injured worker from performing any sustained remunerative employment, the injured worker shall be found to be permanently and totally disabled, without reference to the vocational factors listed in paragraph (B)(3) of this rule.

(b) If, after hearing, the adjudicator finds that the injured worker, based on the medical impairment resulting from the allowed condition(s) in the claim(s) is unable to return to the former position of employment but may be able to engage in sustained remunerative employment, the non-medical factors shall be considered by the adjudicator.

The non-medical factors that are to be reviewed are the injured worker's age, education, work record, and all other factors, such as physical, psychological, and sociological, that are contained within the record that might be important to the determination as to whether the injured worker may return to the job market by using past employment skills or those skills which may be reasonably developed. (Vocational factors are defined in paragraph (B) of this rule).

(c) If, after hearing and review of relevant vocational evidence and non-medical disability factors, as described in paragraph (D)(2)(b) of this rule the adjudicator finds that the injured worker can return to sustained remunerative employment by using past employment skills or those skills which may be reasonably developed through retraining or through rehabilitation, the injured worker shall be found not to be permanently and totally disabled.

(3) Factors considered in the adjudication of all applications for compensation for permanent total disability:

(a) The burden of proof shall be on the injured worker to establish a case of permanent total disability. The burden of proof is by preponderance of the evidence. The injured worker must

establish that the disability is permanent and that the inability to work is causally related to the allowed condition(s) in the claim(s).

(b) In adjudicating an application for compensation for permanent total disability, the adjudicator must determine whether the disability is permanent, the inability to work is due to the allowed condition(s) in the claim(s), and the injured worker is not capable of sustained remunerative employment.

(c) The industrial commission has the exclusive authority to determine disputed facts, the weight of the evidence, and credibility.

(d) All medical evidence of impairment shall be based on objective findings reasonably demonstrable and medical reports that are submitted shall be in conformity with the industrial commission medical examination manual.

(e) If the adjudicator concludes from evidence that there is no proximate causal relationship between the industrial injury and the inability to work, the order shall clearly explain the reasoning and basis for the decision.

(f) The adjudicator shall not consider the injured worker's percentage of permanent partial impairment as the sole basis for adjudicating an application for compensation for permanent total disability.

(g) The adjudicator is to review all relevant factors in the record that may affect the injured worker's ability to work.

(h) The adjudicator shall prepare orders on a case by case basis which are fact specific and which contain the reasons explaining the decision. The orders must specifically state what evidence has been relied upon in reaching the conclusion and explain the basis for the decision. In orders that are issued under paragraphs (D)(2)(b) and (D)(2)(c) of this rule the adjudicator is to specifically list the non-medical disability factors within the order and state how such factors interact with the medical impairment resulting from the allowed condition(s) in the claim(s) in reaching the decision.

(i) In claims in which a psychiatric condition(s) has been allowed and the injured worker retains the physical ability to engage in some sustained remunerative employment, the adjudicator shall consider whether the allowed psychiatric condition(s) in combination with the allowed physical condition(s) prevents the injured worker from engaging in sustained remunerative employment.

(E) Statutory permanent total disability

Division (C) of section 4123.58 of the Revised Code provides that the loss or loss of use of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, constitutes total and permanent disability.

(1) In all claims where the evidence on file clearly demonstrates actual physical loss, or the permanent and total loss of use occurring at the time of injury secondary to a traumatic spinal cord injury or head injury, of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, the claim shall be referred to be reviewed by a staff hearing officer of the commission. Subsequent to review, the staff hearing officer shall, without hearing, enter a tentative order finding the injured worker to be entitled to compensation for permanent total disability under division (C) of section 4123.58 of the Revised Code. If an objection is made, the claim shall be scheduled for hearing.

(a) Within thirty days of the receipt of the tentative order adjudicating the merits of an application for compensation for permanent total disability, a party may file a written objection to the order. Unless the party notifies the industrial commission in writing of the objection to the tentative order within thirty days after the date of receipt of the tentative order, the tentative order shall become final.

(b) In the event a party makes written notification to the industrial commission of an objection within thirty days of the date of the receipt of the tentative order, the application for compensation for permanent total disability shall be set for hearing and adjudicated on its merits.

(2) In all other cases filed under division (C) of section 4123.58 of the Revised Code, if the staff hearing officer finds that the injured worker meets the definition of statutory permanent and total disability pursuant to division (C) of section 4123.58 of the Revised Code, due to the loss of use of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, the staff hearing

officer, without a hearing, is to issue a tentative order finding the injured worker to be permanently and totally disabled under division (C) of section 4123.58 of the Revised Code. An objection to the tentative order may be made pursuant to paragraphs (E)(1)(a) and (E)(1)(b) of this rule.

2020 and 2021
Workers' Compensation Mandamus Statistics
Courtesy of the Industrial Commission
Office of the Chief Legal Counsel

2020:

New Mandamus Filings

31 Appellate Complaints

4 Supreme Court Appeals

New Mandamus Decisions

8 Appellate Decisions (6 Writs Denied and 2 Writs Granted)

6 Supreme Court Decisions (5 Writs Denied and 1 Writ Granted)

2021:

New Mandamus Filings

23 Appellate Complaints

6 Supreme Court Appeals

New Mandamus Decisions

13 Appellate Decisions (11 Writs Denied, 1 Writ Granted, and 1 Writ Dismissed)

3 Supreme Court Decisions (2 Writs Denied and 1 Writ Granted)

Security Services
Contact Information

(614)387-4495

security-all@ic.state.oh.us

Self-Insured Complaints

Self-insured complaints may be sent to the BWC Self-Insured Department in the following manner:

Mail: Bureau of Workers' Compensation
Attn: Self-Insured Department
30 West Spring Street
Columbus, Ohio 43215-2256

Email: BWCSelfInsuredComplaints@bwc.state.oh.us

Fax: 614-621-1081

The Self-Insured Department can also be reached at (614)466-6773 or (800)644-6292.

Prior SIEEB decisions can be found by searching BWC's website for "Self-Insuring Employers Evaluation Board" or located at:

https://info.bwc.ohio.gov/wps/portal/gov/bwc/for-employers/self-insurance/sieeb-decision-synopses