

Legislative Changes to Workers' Compensation: House Bill 75 and other BWC issues

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H.B. 75: BWC Budget Bill

H.B. 75

(of the 134th General Assembly)

Effective Date: September 28, 2021

H.B. 75: BWC Budget

To make appropriations for
BWC for the biennium
beginning July 1, 2021, and
ending June 30, 2023.

H.B. 75: BWC Budget

R.C. 101.532:

The main operating appropriations bill shall not contain appropriations for the industrial commission or the bureau of workers' compensation. Appropriations for the bureau shall be enacted in one bill, and appropriations for the industrial commission shall be enacted in a separate bill.

H.B. 75: BWC Budget

R.C. 4121.03(D)

R.C. 4121.121(B)(9)

The IC and BWC prepare budgets for each agency's expenses for each budget biennium, and submit the budgets to the Director of Budget and Management.

H.B. 75: BWC Budget

- BWC and IC Budget Bills in each General Assembly
- Two year G.A. begins every odd numbered year
- Bill needs to be signed by July 1

H.B. 75: BWC Budget

Overall funding levels for BWC:
Total of all budget fund groups:

- FY 20: \$ 319,841,506 (H.B. 80)
- FY 21: \$ 324,787,349 (H.B. 80)
- FY 22: \$ 353,222,861 (H.B. 75)
- FY 23: \$ 361,906,643 (H.B. 75)

H.B. 76: IC Budget

Overall funding levels for IC:
Total of all budget fund groups:

- FY 20: \$ 54,640,924 (H.B. 79)
- FY 21: \$ 54,828,778 (H.B. 79)
- FY 22: \$ 54,070,048 (H.B. 76)
- FY 23: \$ 54,070,048 (H.B. 76)

H.B. 75: BWC Budget

H.B. 75 also funds over the two years:

- Safety Grants: \$70,000,000
- Substance Use Recovery and Workplace Safety Program: \$7,500,000
- Research Grants: \$4,000,000

H.B. 75: BWC Budget

- Health and Safety Initiative: \$6,000,000
- Safety Campaign: \$3,000,000
- Safety and Health Center of Excellence:
\$30,000,000

H.B. 75: BWC Budget

Difference Between State Insurance Fund and the Administrative Cost Fund.

Premiums versus Assessments

H.B. 75: BWC Budget

State Insurance Fund:

Ohio Constitution, Article II, Section 35

R.C. 4123.30: SIF constitutes “a trust fund for the benefit of employers and employees” to be used for the payment of ...

H.B. 75: BWC Budget

“compensation, medical services, examinations, recommendations and determinations, nursing and hospital services, medicine, rehabilitation, death benefits, funeral expenses, and like benefits for loss sustained on account of injury, disease, or death provided for by this chapter, and for no other purpose.”

H.B. 75: BWC Budget

State Insurance Fund: Net Position

(April 30, 2021)

Assets: \$20.33 billion (market value)

Liabilities: \$12.37 billion (estimated)

Net Position: \$7.96 billion

H.B. 75: BWC Budget

Simple Funding Ratio

Total Assets divided by Total Liabilities

Board determined a safe ratio is in a range between 1.3 and 1.5

April 2020, the ratio was 1.8

April 2021, the ratio was 1.64

H.B. 75: BWC Budget

Dividends to employers is a tool to reduce the simple funding ratio to an acceptable safe range.

- April 2020: \$1.54 billion
- September 2020: \$1.34 billion
- December 2020: \$5.0 billion

H.B. 75: BWC Budget

R.C. 4123.31 establishes the Administrative Cost Fund:

“The moneys in the state treasury for the use of the bureau of workers' compensation and the industrial commission shall be known as the workers' compensation fund group. The moneys from each fund shall be disbursed respectively pursuant to vouchers approved by the administrator of workers' compensation or the administrator's designee, or by the chairperson of the commission or the chairperson's designee.”

H.B. 75: BWC Budget

Administrative costs for BWC and the IC are collected from employers pursuant to the statutory authority contained in R.C. 4123.341 and 4123.342.

Rule 4123-17-36 annually provides the administrative cost fund rates calculated as a percentage of premiums paid by employers.

H.B. 75: BWC Budget

R.C. 4123.342:

The administrator shall separately calculate each employer's assessment in the class, ... on the basis of the following three factors: payroll, paid compensation, and paid medical costs of the employer for those costs solely attributable to the activities of the board and the bureau (and the industrial commission).

(H.B. 107, effective October 20 1993)

H.B. 75: BWC Budget

Rule 4123-17-36 annually provides the administrative cost fund rates calculated as a percentage of premiums paid by employers.

Overall premium rates have been declining.

Overall premiums for 7/1/21 decreased 15%.

H.B. 75: BWC Budget

7-1-2014	6.3% decrease
7-1-2015	10.8% decrease
7-1-2016	8.6% decrease
7-1-2017	No Change
7-1-2018	12.0% decrease
7-1-2019	20% decrease
7-1-2020	13% decrease

H.B. 75: BWC Budget

The net effect of the annual aggregate premium reductions is that the average collectible premium in 2021 is approximately 40% of the average collectible premium of 8 years ago.

H.B. 75: BWC Budget

As premium rates decline, BWC needs to raise the per cent for the Administrative Cost Fund assessments just to collect the same amount.

Example:

\$1 billion premium X 20% ACF = \$200 million ACF

If premiums are reduced 20%:

\$800 million premium x 25% = \$200 million ACF

H.B. 75: BWC Budget

Rule 4123-17-36(D): Administrative cost rates for the bureau and board of directors.

(1) Private employers: ~~17.75~~ 28.48 per cent of premium effective July 1, 2021.

(2) Public employer taxing districts: ~~15.10~~ 21.21 per cent of premium effective January 1, 2022.

(3) Public employer state agencies: ~~17.10~~ 17.85 per cent of premium effective July 1, 2021.

H.B. 75: BWC Budget

ADMINISTRATIVE COST FUND

Notwithstanding section 4123.341 of the Revised Code, the Treasurer of State shall remit up to \$25,000,000 cash in fiscal year 2022 and \$25,000,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Workers' Compensation Fund (Fund 7023).

H.B. 75: BWC Budget

SAFETY AND HYGIENE

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$25,343,000 cash in fiscal year 2022 and \$25,085,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260).

H.B. 75: BWC Budget

SAFETY GRANTS

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$35,000,000 cash in fiscal year 2022 and \$35,000,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260) to be used for Safety Grants.

H.B. 75

Substantive provisions of H.B. 75.

H.B. 75: R.C. 4121.43

R.C. 4121.43

The administrator of workers' compensation shall: ...

(C) Set standards and inform claimant of procedure for attorney or other representative pickup of compensation payment check, and ensure that claimant has recently executed a proper authorization to pick up the check;

H.B. 75: R.C. 4121.43

(D) ~~Prohibit any power of attorney allowing an attorney or employee to cash or endorse a check on behalf of claimant;~~

H.B. 75: R.C. 4121.43



H.B. 75: R.C. 4121.43

Workers' Compensation 1970s scandal

- Phony companies.
- Fake claims.
- A PTD in every claim.

H.B. 75: R.C. 4121.43

COLUMBUS, Ohio (AP) - The firing of Industrial Commissioner Gregory J. Stebbins may be the tip of a scandal that threatens to engulf the entire workmen's compensation program. That was the view of lawmakers from both sides of the aisle and Gov. James A. Rhodes In the wake of the unprecedented action by the Senate Monday night removing Stebbins.
...

H.B. 75: R.C. 4121.43

... Rhodes has suggested it will "turn out to be **the greatest scandal in the history of Ohio.**" ...

H.B. 75: R.C. 4121.43

... Industrial Commission Chairman William Johnston estimates it may involve as many as 2,000 phony companies and \$3.47 million in false injury claims. **Eighty-eight individuals have been Indicted in Cuyahoga County alone.**

The Piqua Daily Call, October 20, 1976

H.B. 75: R.C. 4121.43

The scandals led to the adoption of a comprehensive reform Act:

Am. Sub. S.B. 545

111th General Assembly

Effective January 17, 1977

H.B. 75: R.C. 4121.43

S.B. 545 included new R.C. 4121.43

- Rationale for change in H.B. 75
- Various drafts of proposed language
- No BWC role in POAs (no form)
- BWC Form C-230 remains
- IC resolutions remain

H.B. 75: R.C. 4123.57

R.C. 4123.57

Partial disability shall be paid as follows:

Except as provided in this section, not earlier than twenty-six weeks after the date of termination of the latest period of payments under section 4123.56 of the Revised Code or twenty-six weeks after the termination of wages in lieu of those payments, ...

H.B. 75: R.C. 4123.57

... or not earlier than twenty-six weeks after the date of the injury or contraction of an occupational disease in the absence of payments under section 4123.56 of the Revised Code or wages in lieu of those payments, ...

H.B. 75: R.C. 4123.57

... the employee may file an application with the bureau of workers' compensation for the determination of the percentage of the employee's permanent partial disability resulting from an injury or occupational disease.

H.B. 75: R.C. 4123.57

“Wages in lieu of compensation” is not a new idea.

R.C. 4123.52, amended in the late 1970s:

The jurisdiction of the industrial commission and the authority of the administrator of workers’ compensation over each case is continuing ...

H.B. 75: R.C. 4123.57

No modification or change nor any finding or award in respect of any claim shall be made ..., after five years from the date of injury in the absence of medical benefits being provided ... or in the absence of payment of compensation under section 4123.57, 4123.58, or division (A) or (B) of section 4123.56 of the Revised Code **or wages in lieu of compensation** in a manner so as to satisfy the requirements of section 4123.84 of the Revised Code ...

H.B. 75: R.C. 4123.57

R.C. 4123.84:

In all cases of injury or death, claims ... shall be forever barred unless, within one year after the injury or death: (1) Written or facsimile notice of the specific part or parts of the body claimed to have been injured has been made ...; [or] (2) The employer, with knowledge of a claimed compensable injury or occupational disease, **has paid wages in lieu of compensation for total disability; ...**

H.B. 75: R.C. 4123.57

Issue: retroactivity of the “wages in lieu of TT” provision to claims pending on or after the effective date of H.B. 75.

Effective June 30, 2006, S.B. 7 changed the 40 week waiting period to 26 weeks, but not retroactively.

H.B. 75: Section 8

Section 8 of H.B. 75:

Sections 4123.57 and 4123.58 of the Revised Code, as amended by this act, apply to claims pending on or arising on or after the effective date of this section.

H.B. 75: Section 8

Section 3 of S.B. 7 (S.B. 7 effective June 30, 2006):

SECTION 3. This act applies to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code **arising on and after the effective date of this act**, except that division (H) of section 4123.512 as amended by this act also applies to claims that are pending on the effective date of this act.

H.B. 75: R.C. 4123.58

R.C. 4123.58

(G) If the industrial commission has adjudicated a claimant's application for compensation payable under this section for permanent total disability and issued a final order denying compensation for that application, ...

H.B. 75: R.C. 4123.58

... the claimant shall present evidence of new and changed circumstances before the industrial commission may consider a subsequent application filed by the claimant for compensation under this section for the same injury or occupational disease identified in the previous application.

H.B. 75: R.C. 4123.85

R.C. 4123.85

In all cases of occupational disease, or death resulting from occupational disease, claims for compensation or benefits are forever barred unless, within ~~two years~~ one year after the disability due to the disease began,

H.B. 75: R.C. 4123.85

... 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~~ one year after death occurs, application is made to the industrial commission or the bureau of workers' compensation or to the employer if ~~he~~ the employer is a self-insuring employer.

H.B. 75: R.C. 4123.85

Matches filing limit changes from two years to one year for injury claims and VSSR applications enacted in prior Acts.

- R.C. 4123.84 (H.B. 27, eff. 9/29/17)
- R.C. 4121.471 (H.B. 81, eff. 9/15/20)

H.B. 75: R.C. 4123.85

Survey of OD time limits in other states:

1 year: 13

2 years: 28

3 years: 6 (CT, IL, KY, LA, MN, WV)

4 years: (MA); 6 Years: (UT); 90 Days: (NV)

H.B. 75: R.C. 4123.88

Background:

- Original statute
- AG Opinion
- Change in statute w Journalist exception
- Problems with misuse

H.B. 75: R.C. 4123.88

- Primary Occupation language
- BWC fraud investigations
- *Bevan* case
- S.B. 4 amendment (134th G.A.)

H.B. 75: R.C. 4123.88

Holding from *Bevan* case:

“We are willing to allow that Ohio has a substantial interest in protecting claimant privacy, and that its current policy directly advances that interest. However, a total ban on written solicitation is not “designed carefully to achieve the State’s goal.”
Central Hudson, 447 U.S. at 564.

H.B. 75: R.C. 4123.88

“Ohio is free to pursue other means to protect claimant information, including a tailored ban on in-person solicitation of workers’ compensation claimants, by attorneys, that is consistent with the constitutional principles explained in *Ohralik*.”

H.B. 75: R.C. 4123.88

“Ohio is also free to prohibit solicitation based on illegally obtained information. See Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 514 (1972) (“First Amendment Rights are not immunized from regulation when they are used as an integral part of conduct which violates a valid statute.”).

H.B. 75: R.C. 4123.88

“But such a narrow prohibition is not contained in the expansive wording of the statute at issue here. Section 4123.88(A), as it is currently written, works a complete ban on all in-person as well as written solicitation, conducted by any person, of workers’ compensation claimants and thus is incompatible with the First Amendment.”

H.B. 75: R.C. 4123.88

S.B. 4 amendment to R.C. 4123.88:

(D)(1) Upon receiving a written request made and signed by an individual whose primary occupation is as a journalist, the commission or the bureau shall disclose to the individual the name or names, address or addresses, and telephone number or numbers of claimants, regardless of whether their claims are active or closed, ~~and the dependents of those claimants.~~

H.B. 75: R.C. 4123.88

R.C. 4123.88(A)

~~... No person shall directly or indirectly solicit authority, or pay or give anything of value to another person to solicit authority, or accept or receive pay or anything of value from another person for soliciting authority, from a claimant or employer to take charge of, or represent the claimant or employer in respect of, any claim or appeal which is or may be filed with the bureau or commission. ...~~

H.B. 75: R.C. 4123.88

... No person shall, without prior authority from the bureau, a member of the commission, the claimant, or the employer, examine or directly or indirectly cause or employ another person to examine any claim file or any other file pertaining thereto. ...

H.B. 75: R.C. 4123.88

(B) The records described or referred to in division (A) of this section are not public records as defined in division (A)(1) of section 149.43 of the Revised Code. Any information directly or indirectly identifying the [name](#), address, or telephone number of a claimant, regardless of whether the claimant's claim is active or closed, is not a public record. ...

H.B. 75: R.C. 4123.88

(D)(1) ~~Upon~~ Except as provided in division (G) of this section, upon receiving a written request made and signed by an individual whose primary occupation is as a journalist, the commission or the bureau shall disclose to the individual the name or names, address or addresses, and telephone number or numbers of claimants, regardless of whether their claims are active or closed.

H.B. 75: R.C. 4123.88

(3) An individual described in division (D)(1) of this section shall include all of the following in the written request: ...

(d) A statement that the individual acknowledges that the information is not a public record and that the individual will not disclose the information to any other person for any reason unrelated to journalism.

H.B. 75: R.C. 4123.88

(E) No person who receives information under division (D) of this section shall recklessly disclose the information to any other person for any reason unrelated to journalism.

H.B. 75: R.C. 4123.88

(F) No person who obtains or receives records in violation of this section shall recklessly use that information to solicit, directly or indirectly, authority from a claimant or employer to take charge of, or represent the claimant or employer in respect of, any claim or appeal that is or may be filed with the bureau or commission.

H.B. 75: R.C. 4123.88

(G) Neither the commission nor the bureau shall disclose to an individual described in division (D)(1) of this section the name, address, or telephone number of a claimant if the disclosure would reveal that the claim is for a condition that arose from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.

H.B. 75: R.C. 4123.88

(H) As used in this section, "journalist" has the same meaning as in division (B)(9) of section 149.43 of the Revised Code.

H.B. 75: R.C. 4133.03

R.C. 4133.03(J)

... (J) An alternate employer organization is not, and shall not be considered, a professional employer organization, as defined in section 4125.01 of the Revised Code. ~~An~~ Beginning on and after January 1, 2022, an alternate employer organization may not hold itself out, advertise, or otherwise identify itself in any way as a professional employer organization. ...

H.B. 75: R.C. 4133.07, 4133.08

R.C. 4133.07(B)(8)

R.C. 4133.07(D)(1)

R.C. 4133.08(A)

“bond or letter of credit” is changed to “~~bond~~ or letter of credit.”

S.B. 201

What is an Alternate Employer Organization?

Sub. S.B. 201, 133rd G.A.

Effective: March 24, 2021

Sponsor: Sen. Matt Dolan

S.B. 201



S.B. 201

- Temporary Agencies
- Labor Leasing Agencies
- Professional Employer Organizations (R.C. Chapter 4125; BWC rules 4123-17-15+)
- Alternate Employer Organizations (R.C. Chapter 4133; BWC rules 4123-17-15+)

S.B. 201

- S.B. 201 creates alternate employer organizations (AEOs), which are substantially similar to professional employer organizations (PEOs), and regulates AEOs in a very similar manner as PEOs.

S.B. 201

- Requires an AEO to report federal taxes under the client employer's tax identification number (the PEO Law requires the use of the PEO's tax identification number).

S.B. 201

- Requires an AEO to maintain workers' compensation coverage under its workers' compensation policy for all worksite employees associated with the client employer (the PEO Law allows a client employer to cover some worksite employees under its policy under certain circumstances).

S.B. 201

- Specifies requirements for an AEO to satisfy to register with the Administrator of Workers' Compensation that are similar to the requirements a PEO must satisfy, except an AEO must maintain positive working capital at initial or annual registration.

S.B. 201

- Requires an AEO to provide a ~~bond or~~ letter of credit in an amount the Administrator determines to be adequate to meet the AEO's financial obligations under the Workers' Compensation Law, which must be at least \$1 million, regardless of whether a deficit in working capital exists.

S.B. 201

- Specifies duties of AEOs and their client employers and specifies which one is the employer of record for certain tax incentives and other programs, similar to PEOs.

S.B. 201

- Does not allow AEOs to register multiple entities and operate them together (the PEO Law specifically allows this for PEOs under certain circumstances).
- Does not allow an assurance organization to act on behalf of an AEO (the PEO Law specifically allows this for PEOs).

S.B. 201

AEOs are substantially similar to PEOs. A PEO or AEO 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 (including, with respect to an AEO, providing human resource management services).

S.B. 201

An AEO is not, and cannot be considered, a PEO, and cannot hold itself out as a PEO. AEOs are regulated in a very similar manner as PEOs, but differ from PEOs with respect to requirements in the way they report federal tax payments and the way they are permitted to provide workers' compensation coverage for shared employees.

S.B. 201

Bottom line:

For workers' compensation claims, the PEO or the AEO is the employer of record for the client employer's workers (except where a PEO has a partial lease with the client employer or all under client reporting).

H.B. 75: Section 8

Section 8

Section 4123.85 of the Revised Code, as amended by this act, applies to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code arising on or after the effective date of this section.

H.B. 75: Section 8

Section 8

Sections 4123.57 and 4123.58 of the Revised Code, as amended by this act, apply to claims pending on or arising on or after the effective date of this section.

H.B. 308

Am. Sub. H.B. 308

(of the 133rd General Assembly)

Effective Date: April 12, 2021

Sponsor: Rep. Thomas Patton

H.B. 308



H.B. 308

Post Traumatic Stress Disorder (PTSD)

- R.C. 4123.01(C)(1)
- PTSD compensable if it arises from a physical injury sustained by that IW.
- PTSD not compensable without a physical injury to the IW or for injuries to others.
- Nature of occupation irrelevant.

H.B. 308

Prior **failed attempts** at PTSD Legislation:

- H.B. 80 (as passed by House) (133rd G.A.)
- S.B. 118, H.B. 161 (132nd G.A.)
- S.B. 5 , H.B. 64 (131st G.A.)
- S.B. 252 (130th G.A.)

H.B. 308

H.B. 308: To enact section 126.65 of the Revised Code to establish a fund to provide compensation and benefits to first responders with post-traumatic stress disorder and to study the financial and administrative requirements for that fund.

H.B. 308

Sec. 126.65. (A) The state post-traumatic stress fund is created in the state treasury. The director of budget and management shall be the trustee of the fund.

H.B. 308

(B) The fund shall be used to pay for compensation for lost wages that result from a public safety officer being disabled by PTSD received in the course of, and arising out of, employment as a public safety officer but without an accompanying physical injury; medical, nurse, therapy, and hospital services and medicines required to treat the PTSD; and administrative costs.

H.B. 308

(C) No employer shall discharge, demote, reassign, or take any punitive action against any public safety officer because the officer filed a claim or instituted, pursued, or testified in any proceedings related to compensation or benefits paid from the fund ...

(mimics R.C. 4123.90)

H.B. 308

But:

(D) There shall be no payments made from the state post-traumatic stress fund pursuant to division (B) of this section and no person is eligible for any claims and no liability shall accrue to any state party under this section.

H.B. 308

H.B. 308 DOES **NOT** ESTABLISH ALLOWANCE OF PTSD WITHOUT A PHYSICAL INJURY FOR WORKERS' COMPENSATION OR FOR ANY PENSION SYSTEM.

INSTEAD, THE BILL SAYS, "LET'S STUDY THE IDEA SOME MORE."

H.B. 308

SECTION 2. (A) The Board of Trustees of the Ohio Police and Fire Pension Fund, in consultation with the entities listed in division (B) of this section, shall have prepared by a disinterested third-party actuary an actuarial valuation of the funding requirements of the state posttraumatic stress fund established by section 126.65 of the Revised Code, as enacted by Section 1 of this act. ...

H.B. 308

The actuary shall prepare a report of the actuarial analysis, to include **only** the following:

- (1) A description of lost wage compensation and medical benefit amounts evaluated;
- (2) A description of the participant group or groups included in the report;
- (3) A projection of the number of participants eligible for compensation and benefits from the fund; ...

H.B. 308

- (4) A projection of the potential claims per year;
- (5) A projection of the average benefit amount based on weekly wage;
- (6) A projection of the cost of health care and pharmacy benefits; ...

H.B. 308

(7) A cost comparison showing the projected administrative costs differentials based on the Board of Trustees of the Ohio Police and Fire Pension Fund creating a program versus contracting with other private and public entities; ...

H.B. 308

(8) A cost comparison as to which, if any, state retirement system or other administrator is best suited to administer the state post-traumatic stress fund;

(9) A review of how other states administer funds that are similar to the state post-traumatic stress fund; ...

H.B. 308

(10) An analysis of whether an administrative appeals process is necessary or useful to the resolution of claims for compensation, benefits, or both from the state post-traumatic stress fund;

(11) If it is determined that an administrative appeals process is necessary or useful to the resolution of claims, an analysis of which entity is best suited to administer the process;

(12) An analysis of any other issue identified by the entities listed in division (B) of this section.

H.B. 308

(B) With respect to the study and report required under division (A) of this section, the Board shall consult with all of the following entities: ...

H.B. 308

(1) The Ohio Chamber of Commerce; (2) The National Federation of Independent Business; (3) The Ohio Manufacturers' Association; (4) The County Commissioners Association of Ohio; (5) The Ohio Township Association; (6) The Ohio Municipal League; (7) The Fraternal Order of Police of Ohio; (8) The Ohio Association of Professional Firefighters; (9) The Public Employees Retirement Board; (10) The State Teachers Retirement Board; (11) The School Employees Retirement Board; (12) The State Highway Patrol Retirement Board.

H.B. 308

(C) The study and report required under division (A) of this section shall be completed not later than October 1, 2021.

Note: H.B. 110, the Main Operating Appropriations Bill, extends the due date for the actuarial study and report from October 1, 2021, to December 15, 2021.

H.B. 308

Survey of other states:

- 9 states: mental only claims (MI, IL, MN)
- 28 states: mental/mental claims for sudden incident or for first responders (KY, IN, PA)
- 13 states: no mental only claims (OH, WV)

H.B. 308

In 2019, at least 26 states heard legislation addressing workers compensation coverage for mental-only injuries or PTSD for first responders. Eight states (CT, ID, LA, NV, NH, NM, OR, TX) enacted benefits for first responders with PTSD. Also, UT passed legislation establishing a working group to study the compensability of mental stress claims for first responders. *(NCCI Reg. and Leg. Trends Report 2019)*

H.B. 17

H.B. 17

(of the 134th General Assembly)

Introduced: February 3, 2021

Sponsor: Rep. Thomas Patton

H.B. 17

To amend section 4123.68 of the Revised Code regarding charging workers' compensation experience in firefighter cancer claims.

H.B. 17

R.C. 4123.68(X):

(5)(a) The administrator shall charge all compensation and benefits paid from the state insurance fund on account of cancer contracted by a firefighter in the course of hazardous duty as described in division (X) of this section to the surplus fund account created under section 4123.34 of the Revised Code;

H.B. 17

(b) A self-insuring employer shall deduct all compensation and benefits payable on account of cancer contracted by a firefighter in the course of hazardous duty as described in division (X) of this section from the paid compensation the self-insuring employer reports to the administrator under division (L) of section 4123.35 of the Revised Code.

H.B. 281

Sub. H.B. 281

(of the 134th General Assembly)

Passed in House: June 16, 2021

To Senate Health Committee: June 23, 2021

Sponsors: Reps. Dontavius Jarrells, Tom Young

H.B. 281

820 page bill

To modify terminology in the Revised Code regarding people with mental illnesses and people with disabilities and to name this act the Mental Health and Disability Terminology Act.

(see bill analysis for list of terminology changes)

H.B. 281

Examples of terms changed in the bill:

“addicted” to “has an addiction”

“alcoholic” to “person with alcoholism”

“the blind” to “persons who are blind”

“criminally insane” to no provision

H.B. 281

“deaf and dumb” to “deaf”

“derangement” to “lacks the relevant mental capacity”

“handicap parking” to “accessible parking”

“handicap person” to “person with a disability”

“lunatics” to “incompetent individuals”

H.B. 281

R.C. 4123.343

This section shall be construed liberally to the end that employers shall be encouraged to employ and retain in their employment ~~handicapped~~ employees with disabilities as defined in this section.

H.B. 281

R.C. 4123.57

If the claimant has **suffered** the loss of two or more fingers by amputation or ankylosis and the nature of the claimant's employment in the course of which the claimant was working at the time of the injury or occupational disease is such that the **handicap impairment** or disability resulting from the loss of fingers, or loss of use of fingers,

H.B. 281

R.C. 4123.57

... exceeds the normal ~~handicap~~ impairment or disability resulting from the loss of fingers, or loss of use of fingers, the administrator may take that fact into consideration and increase the award of compensation accordingly, but the award made shall not exceed the amount of compensation for loss of a hand.

H.B. 281

R.C. 4123.68; 4123.70; 4123.71

In multiple places, “suffering” from an occupational disease replaced with “having” or “experiencing” an occupational disease.

RegExplorer

Common Sense Initiative Office has established an initiative called RegExplorer.

Project to replace outdated modes of communication or in person interactions in agency rules.

RegExplorer

CSI consulted with Deloitte to examine rules in the Ohio Administrative Code to provide agencies with tools to undertake regulatory reform.

The project will also look for opportunities to reform statutes in the Ohio Revised Code.

RegExplorer

Examples of words identified for reform:

- In person personally
- registered mail certified mail
- stenographer submit
- examination facsimile
- inspector microfilm

H.B. 379

H.B. 379

(of the 134th General Assembly)

Introduced: July 21, 2021

Sponsor: Rep. Phillip Robinson, Jr.

H.B. 379

To amend section 4501.21 and to enact section 4503.943 of the Revised Code to create the "Weirdo Cat Lovers of Cleveland" license plate.

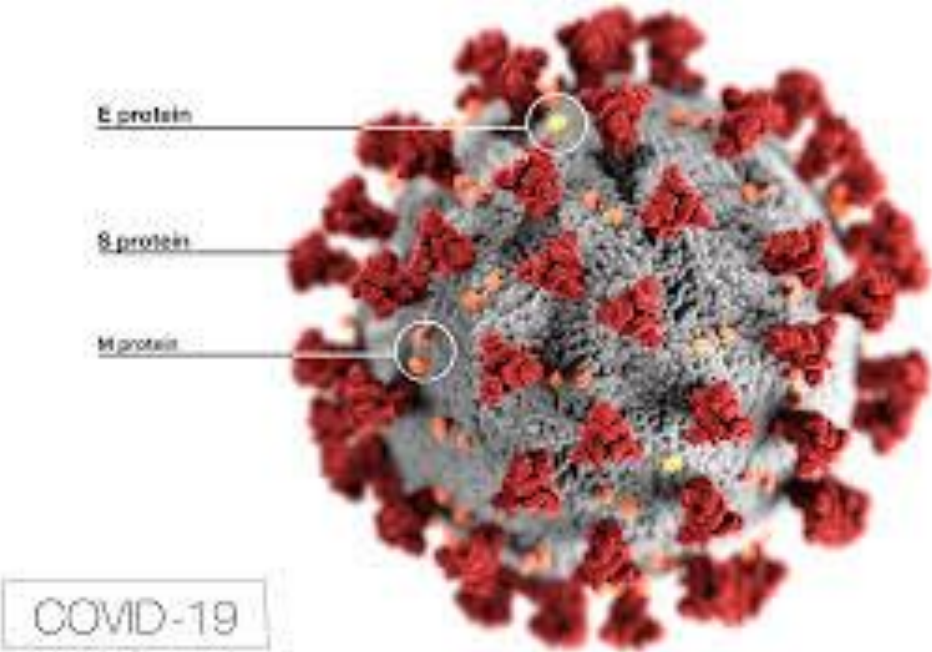
H.B. 379



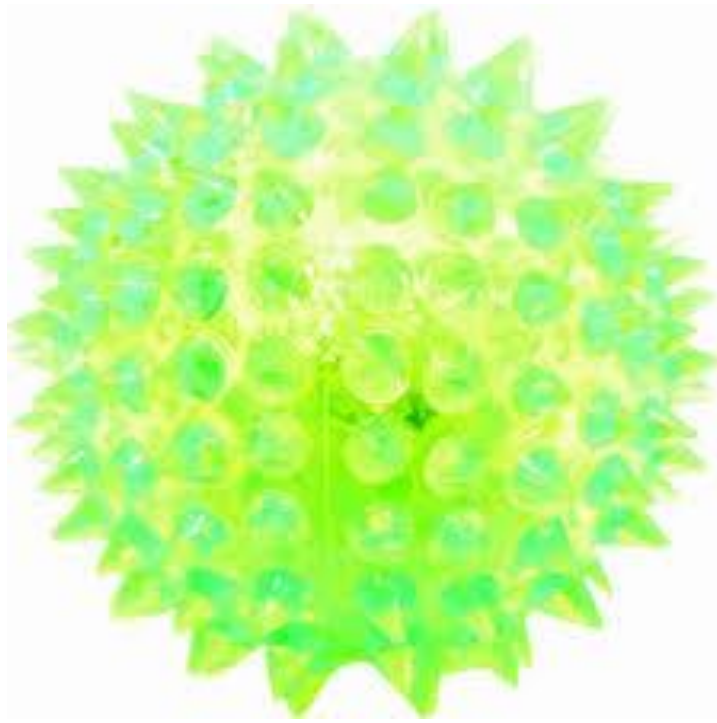
COVID-19 Bills

VARIOUS COVID-19 BILLS (of the 133rd General Assembly)

COVID-19 Bills



COVID-19 Bills



COVID-19 Bills

H.B. 197

(of the 133rd General Assembly)

Effective Date

March 27, 2020

COVID-19 Bills

Sec. 12: Establishes a policy for public meetings and hearings for use during the period of emergency declared by Executive Order 2020-01D only, but not beyond December 1, 2020.

COVID-19 Claims

Generally, ordinary communicable diseases of life are not compensable as workers' compensation claims.

COVID-19 Claims

Kellogg v. Mayfield (1991), 72 Ohio App.3d 490, 595 N.E.2d 465: Court rejected the argument that pneumonia was an OD. The employee, a typist who had a history of chronic pulmonary conditions, claimed she contracted pneumonia from cold drafts and cigarette smoke in her workplace. The court stated that “the medical evidence indicates that appellant's condition was just as likely to result from conditions outside the workplace.”

COVID-19 Claims

Ingram v. Conrad, 4th Dist. Athens No. 01CA36, 2001 WL 1674105, (Dec. 20, 2001): Court held that pneumonia is not an occupational disease since it “is a common illness to which the general public is exposed.” The court said “to conclude that ordinary illnesses and colds constitute occupational diseases would extend the workers' compensation laws beyond their intended purpose.”

Mackell v. Armco, Inc., 5th Dist. Coshocton No. 01CA017, 2002 WL 1467775

COVID-19 Bills

H.B. 571: a rebuttable presumption for COVID-19 contracted by a peace officer, firefighter, or emergency medical worker.

COVID-19 Bills

H.B. 573: a rebuttable presumption for COVID-19 contracted by an employee who was required to work outside of the employee's home.

COVID-19 Bills

H.B. 605: to create a rebuttable presumption for COVID-19 contracted by:

An employee of a retail food establishment as defined in R.C. 3717.01;

An employee of a food processing establishment as defined in R.C. 3715.021

COVID-19 Bills

H.B. 633: a rebuttable presumption for COVID-19 contracted by an employee of:

A nursing home or residential care facility, as those terms are defined in R.C. 3721.01;

(b) A health care facility or location, as that term is defined in R.C. 2305.234.

COVID-19 Bills

H.B. 667: a rebuttable presumption for COVID-19 contracted by a corrections officer.

H.B. 668: contracted by a peace officer, firefighter, or emergency medical worker.

COVID-19 Claims

BWC is allowing claims for COVID-19 work exposure based on the definition of an occupational disease in R.C. 4123.01(F):

COVID-19 Claims

R.C. 4123.01(F) "Occupational disease" means a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general.

COVID-19 Claim Statistics

3,842 - Total Claims (as of July 29, 2021)

- 2,547 - Healthcare/EMW
- 905 – BWC Accepted
- 239 – BWC Denied
- 977 – SI Certified
- 366 – SI Rejected
- 219 – Appealed 112 PA; 98 PEC; 9 PES

COVID-19 Claims

Other issues:

- Claims for vaccine reactions.
- Impact of claims for COVID-19 on employer's experience.

COVID-19 Claims

The World Health Organization categorized the COVID-19 outbreak as a pandemic on March 11, 2020, when the rates of infection continued to rise in many locations around the world and across the United States. Governor DeWine issued a State of Emergency order in March as well related to this pandemic situation.

COVID-19 Claims

Pandemics have been rare and are generally considered catastrophes because of their scope and severity. The presence or absence of a pandemic in a recent historical period is not believed to be a reliable predictor of whether one will return in a given future year, after the current one runs its course.

COVID-19 Claims

Pandemics share this aspect with other catastrophic perils in the workers' compensation line, such as terrorism and earthquakes. When catastrophes arise, they generally have been excluded in the experience rating process.

COVID-19 Claims

For example, see BWC rule 4123-17-12

(A) A "catastrophe" is defined as an occurrence in which two or more employees of one employer are killed or receive injuries resulting in permanent and total disability. ...

COVID-19 Claims

... (C) Catastrophe cost in excess of two hundred fifty thousand dollars shall not be included in the experience of a classification or of an employer. ...

COVID-19 Claims

Experience rating is intended to measure an individual employer's success in maintaining a safe workplace by factoring the employer's payroll and loss history into a formula designed to project that employer's propensity for future losses.

COVID-19 Claims

See R.C. 4123.34 and BWC rule 4123-17-03

For private and public employers, revisions of basic rates shall be in accordance with the oldest four of the last five policy years combined accident and occupational disease experience.

COVID-19 Claims

BWC determined that it is appropriate to exclude claims attributable to the COVID-19 pandemic from experience rating calculations for the following reasons:

COVID-19 Claims

COVID-19 Pandemic Claims as a Predictor of Safety Practices—The primary purpose of the Experience Rating Plan is to encourage safety practices by giving employers an incentive to keep a safe workplace as compared to other similar businesses. Employers with a higher number of COVID-19 claims may not be a good indicator of that employer's safety program as compared to similar businesses.

COVID-19 Claims

COVID-19 Pandemic Claims as a Predictor of Future Claims—The occurrence of COVID-19 pandemic claims is unlikely to be a reliable predictor of an employer's future claims costs or whether there will be a pandemic in the future.

COVID-19 Claims

BWC Rule 4123-17-03,

“Employer's experience rating plan.”

Effective July 5, 2021

(G) An employers' EM shall be subject to the following conditions and limitations:

COVID-19 Claims

BWC Rule 4123-17-03(G) ...

(4) Actual losses where COVID-19 was contracted by an employee arising during the period between the emergency declared by Executive Order 2020-01D, issued March 9, 2020 and July 2, 2021 which is fourteen days after the Executive Order was repealed, shall be excluded from employer's experience for the purpose of experience rating calculations.

COVID-19 Claims

BWC Rule 4123-17-73

“Group retrospective rating program.”

Effective July 5, 2021

COVID-19 Claims

BWC Rule 4123-17-73(A)(5)

Definitions. As used in the rule:

(5) "Incurred losses" means compensation payments and medical payments paid to date as well as open case reserves. The total incurred losses will not include surplus costs or COVID 19 cost as defined in 4123-17-03(G)(4) and will be limited on a per claim basis.

COVID-19 Claims

Self-Insured employers and COVID-19 claims costs?

SI Employers pay assessments based on “paid compensation.”

R.C. 4123.35(M) and rule 4123-17-32(B) for definition of “paid compensation.”

R.C. 4123.57(B): Loss of use

- R.C. 41234.57(B)
- *Swallow* case
- BWC rules 4123-3-15, 4123-3-37
- Am. Sub. H.B. 487 (129th G.A.)
- *Kljun* case

R.C. 4123.57(B): Loss of use

Pre H.B. 487 version of 4123.57(B):

In cases included in the following schedule the compensation payable per week to the employee is the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week and shall continue during the periods provided in the following schedule: ...

R.C. 4123.57(B): Loss of use

Swallow case:

“Appellant has not shown that the commission abused its discretion by awarding benefits pursuant to R.C. 4123.57(C) on a consecutive weekly basis rather than concurrently ...”

Swallow v. Indus. Comm. (1988) 36 Ohio St.3d 55

R.C. 4123.57(B): Loss of use

Rule 4123-3-15(C), eff. October 12, 2010:

(C) Payment of permanent partial disability pursuant to division (B) of section 4123.57 of the Revised Code in state fund and self-insured employer claims. ...

R.C. 4123.57(B): Loss of use

(3) Upon an order for the payment of permanent partial disability pursuant to division (B) of section 4123.57... for a loss by amputation or for a loss of use, the bureau or self-insuring employer shall calculate such award pursuant to the statutory schedule of division (B) of section 4123.57... . The bureau shall pay the award to the injured worker as follows:

R.C. 4123.57(B): Loss of use

(a) Where the order to pay the award is an order from which there is a timely appeal pending pursuant to division (H)(4) of section 4123.511 of the Revised Code, the bureau or self-insuring employer shall pay the award in weekly payments until a final administrative or judicial decision on the appeal.

R.C. 4123.57(B): Loss of use

(b) Where the order to pay the award is a final order from which there is no further appeal pursuant to division (H)(1), (H)(2), or (H)(3) of section 4123.511 of the Revised Code, the bureau or self-insuring employer shall pay the award or the balance remaining on the award in one payment for the entire award or the balance remaining on the award.

R.C. 4123.57(B): Loss of use

**H.B. 487 amendments to R.C. 4123.57(B),
eff. September 10, 2012:**

(B) ~~In~~ For purposes of this division, "payable per week" means the seven consecutive day period in which compensation is paid in installments according to the schedule associated with the applicable injury as set forth in this division.

R.C. 4123.57(B): Loss of use

Compensation paid in weekly installments according to the schedule described in this division may only be commuted to one or more lump-sum payments pursuant to the procedure set forth in section 4123.64 of the Revised Code.

R.C. 4123.57(B): Loss of use

In cases included in the following schedule the compensation payable per week to the employee is the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week and shall ~~continue during the periods provided in~~ be paid in installments according to the following schedule: ...

R.C. 4123.57(B): Loss of use

**Post H.B. 487 amendment to rule 4123-3-15,
eff. July 11, 2013:**

...The bureau or self-insuring employer shall pay the award to the injured worker ~~as follows:~~ in weekly payments as provided in division (B) of section 4123.57 of the Revised Code.

R.C. 4123.57(B): Loss of use

~~(a) Where the order to pay the award is an order from which there is a timely appeal pending pursuant to division (H)(4) of section 4123.511 of the Revised Code, the bureau or self-insuring employer shall pay the award in weekly payments until a final administrative or judicial decision on the appeal.~~

R.C. 4123.57(B): Loss of use

~~(b) Where the order to pay the award is a final order from which there is no further appeal pursuant to division (H)(1), (H)(2), or (H)(3) of section 4123.511 of the Revised Code, the bureau or self-insuring employer shall pay the award or the balance remaining on the award in one payment for the entire award or the balance remaining on the award.~~

R.C. 4123.57(B): Loss of use

Kljun case: Kljun v. BWC, 2016-Ohio-2939

Successful challenge of the amendments in H.B. 487 as violating the one subject rule of the Ohio Constitution.

R.C. 4123.57(B): Loss of use

R.C. 4123.57 as amended in H.B. 75:

(B) For purposes of this division, "payable per week" means the seven-consecutive-day period in which compensation is paid in installments according to the schedule associated with the applicable injury as set forth in this division.

R.C. 4123.57(B): Loss of use

Compensation paid in weekly installments according to the schedule described in this division may only be commuted to one or more lump sum payments pursuant to the procedure set forth in section 4123.64 of the Revised Code.

R.C. 4123.57(B): Loss of use

In cases included in the following schedule the compensation payable per week to the employee is the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week and shall be paid in installments according to the following schedule: ...

R.C. 4123.57(B): Loss of use

In **H.B. 27 (132nd G.A.)**, a previous BWC Budget Bill, the Act amended R.C. 4123.57 to permit BWC to dismiss a %PP application if the IW failed to attend the exam. The language in Division (B) retained the H.B. 487 amendments as existing law.

R.C. 4123.57(B): Loss of use

H.B. 27:

SECTION 741.10. The amendment by this act to section 4123.57 of the Revised Code applies to any application for a determination of the percentage of permanent partial disability filed on or after the effective date of this section.

R.C. 4123.57(B): Loss of use

But note the different language in H.B. 75:

Section 8. Sections 4123.57 and 4123.58 of the Revised Code, as amended by this act, apply to claims pending on or arising on or after the effective date of this section.

R.C. 4123.57(B): Loss of use

But note the different language in H.B. 75:

Section 8. Sections 4123.57 and 4123.58 of the Revised Code, as amended by this act, apply to claims pending on or arising on or after the effective date of this section.

R.C. 4123.57(B): Loss of use

