Karen L. Gillmor
Commissioner, Ohio Industrial Commission
Chairman, Self-Insuring Employers Evaluation Board
(614)466-3010

Getaway C.L.E.
Advanced Ohio Workers' Compensation Seminar

August 4, 2021

Industrial Commission Update

- Hearings: *An overview of hearing procedures given the constraints of COVID-19.*

- Personnel Changes: *An update of retirements as well as new and promoted hearing officers.*

- Legislation: *A synopsis of 2020 and 2021 workers' compensation legislation.*

- Policies and Rules: *A synposis of policies and rules amended or adopted in 2020 and 2021.*

- Court Case Statistics: *A review of workers' compensation mandamus statistics.*

- Security Services: *A reminder of the importance of diligence in identifying potential security issues.*

- Self-Insuring Employers Evaluation Board: *An overview of the self-insured complaint process.*

Hearings

Waiver Guidance

The right to attend a hearing in person belongs to the parties, not the representatives. Therefore, the need to obtain and document in an order a waiver of that right will depend on the circumstances as discussed below:

If neither a party nor their/its representative appear at all, waiver is not an issue.

If a party is represented by an attorney, and that attorney appears in person, no waiver is necessary. If the attorney appears remotely, that attorney can verbally affirm that their client has waived the right to appear in person if the party is not present to confirm the waiver. That waiver must then be documented in the order.

If a party is represented by a non-attorney and that non-attorney appears in person and the party does not appear, no waiver is required. If the party appears remotely, that party must waive the right to appear in person and that waiver must be documented in the order. If a non-attorney representative appears remotely and the party is not present, there must be some written waiver of the right to appear in person contained in the claim file. That document must then be referenced in the order.

Ohio Industrial Commission

NOTICE OF HEARING

Claims to be heard: 21-116551
LT-ACC-PE-COV

IC - CUSTOMER SERVICE
30 W SPRING ST FL 1
COLUMBUS OH 43215-2241

This notice is sent to you for your information. **YOU ARE URGED TO INTRODUCE ALL TESTIMONY AND EVIDENCE PERTINENT TO YOUR POSITION ON THIS MATTER.** NO CONTINUANCE TO BE GRANTED UNLESS REQUESTS ARE MADE IN COMPLIANCE WITH OHIO ADMINISTRATIVE RULE 4121-03-09.

ALL PARTIES HAVE THE RIGHT TO APPEAR IN PERSON. Participation in hearings via Webex shall be knowing and voluntary. Parties will be asked by the Hearing Officer to affirm that the party knowingly and voluntarily waives the right to appear in person. Representatives will be asked by the Hearing Officer to affirm they have the express authority from their client to appear via Webex. The orders shall indicate the parties response.

Hearing Date and Time
Tuesday, 7/06/2021, at 1:00PM Eastern Time DURATION: 40 Minutes

*** * YOU MAY ATTEND THE HEARING IN PERSON OR VIA WEBEX WITH A DIAL-IN OPTION * ***

To attend the hearing in person, please report to:
STREET: **Frank J. Lausche/State Office Bldg.**
ROOM: **3**
FLOOR: **5th**
CITY: **Cleveland, OH 44113-1898**

YOU SHOULD BRING PHOTO IDENTIFICATION AS IT MAY BE REQUIRED FOR SECURITY PURPOSES. You will not be reimbursed for expenses incurred in coming to this hearing unless a subpoena has been issued for your attendance.

To attend the hearing via Webex, please use one of the following options:
Join the hearing using web address:
ohio.webex.com/meet/oichr33
OR
Join the hearing via telephone using:
Phone number: **855-477-8485**, Meeting ID: **129 371 3844**

You will be on hold in the waiting area until the hearing officer admits you to the hearing. Hearing officers conduct multiple hearings in an hour, and you should be aware that you may be in the lobby for up to 30 minutes before your hearing is called. Additional information for Webex hearings can be found at: www.ic.ohio.gov/webex

For general questions, call 216-575-6205 during normal business hours.

**** Directions and parking information on the reverse side of this notice ****

THIS HEARING HAS BEEN SCHEDULED ON THIS DATE IN ORDER TO COMPLY WITH STATUTORY TIME FRAMES PER ORC 4123.511.

ISSUES TO BE HEARD:
1) Injury Or Occupational Disease Allowance

Hearing to be held before a District Hearing Officer.

Legislation

OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

H.B. 81
133rd General Assembly

Final Analysis

Click here for H.B. 81's Fiscal Note

Version: As Passed by the General Assembly

Primary Sponsor: Rep. Perales

Effective date: September 15, 2020

Kailey Henry, Research Analyst

SUMMARY

Post-exposure testing

- Requires, under specified conditions, the Administrator of Workers' Compensation or a self-insuring employer to pay for services used to determine whether a detention facility employee sustained an injury or occupational disease after exposure to another person's blood or bodily fluids.
- Requires, under specified conditions, the Administrator or a self-insuring employer to pay for services used to determine whether specified safety officers sustained an injury or occupational disease after exposure to a drug or other chemical substance.

Voluntary abandonment doctrine

- Provides that, to be eligible to receive temporary total disability (TTD) compensation, a person must be unable to work or must suffer a wage loss as the direct result of an impairment arising from an injury or occupational disease.
- Prohibits a person from receiving TTD compensation when the person is not working or has suffered a wage loss as the direct result of reasons unrelated to an allowed injury or occupational disease.
- States that the General Assembly intends to supersede any previous judicial decision that applied the voluntary abandonment doctrine to TTD or wage loss claims.
- Prohibits a person from receiving permanent total disability compensation when the person is not working for reasons unrelated to an allowed injury or occupational disease.
- Applies the rule to claims pending on the act's effective date and to claims arising after that date.

Additional award for specific safety violation

- Requires, for claims arising on or after the act's effective date, a claim for an additional award of compensation for a violation of a specific safety rule to be filed within one year after the injury or death or within one year after a disability due to occupational disease begins, rather than within two years as previously required.

Final settlement agreements

- Prohibits an employer from refusing or withdrawing from a proposed claim settlement agreement if the employee who is the subject of the claim is no longer employed by the employer and the claim is no longer within the date of impact pursuant to the employer's industrial accident or occupational disease experience for premium calculation purposes.

Continuing jurisdiction over workers' compensation claims

- Makes the rendering of medical services, instead of payment for the services, an event that continues the Industrial Commission's jurisdiction to modify or change a claim or to make a finding or award under a claim.

Funeral expenses

- Increases the funeral expense benefit cap from $5,500 to $7,500.

Appealing Industrial Commission orders

- Applies to claims pending on and arising after September 29, 2017, a provision in H.B. 27 of the 132nd General Assembly extending the time to appeal an Industrial Commission order from 60 days to 150 days when certain conditions are satisfied.

Employee medical examinations

- Prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act from generally requiring an applicant or employee to pay for medical examinations that are required as a condition of employment or continued employment.

DETAILED ANALYSIS

Post-exposure testing

Blood and bodily fluid exposure

The act expands the post-exposure testing law, which covers diagnostic testing for specified safety officers under certain conditions, to include detention facility employees. Under the act, the Administrator of Workers' Compensation, or a detention facility that is a self-insuring employer (an employer authorized to directly pay compensation and benefits in a claim), must pay for post-exposure medical diagnostic services to investigate whether a person employed by a detention facility, including a corrections officer, sustained an injury or occupational disease from coming into contact with the blood or other body fluid of another

person in the course of and arising out of the employee's employment. Under continuing law, post-exposure diagnostic tests are covered if they are consistent with the standards of medical care existing at the time of exposure and the employee came into contact with the blood or bodily fluid through any of the following means:

- A splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;
- A puncture in the skin; or
- A cut or other opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.[1]

The act defines a "corrections officer" as a person employed by a detention facility as a corrections officer. A "detention facility" is any public or private place used for the confinement of a person charged with or convicted of any state or federal crime or found to be a delinquent child or unruly child under any state or federal law.[2]

Under continuing law, all of the following employees are also covered by the post-exposure testing requirement:

- A peace officer who has arrest powers;
- A paid or volunteer firefighter of a lawfully constituted fire department;
- A paid or volunteer first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic certified under the Emergency Medical Services Law.[3]

Drug or chemical substance exposure

The act also requires the Administrator or a self-insuring employer to pay for the costs of conducting post-exposure medical diagnostic services to investigate whether an employee covered by the post-exposure testing requirement discussed above sustained an injury or occupational disease after exposure to a drug or other chemical substance in the course of the employee's employment.[4]

Voluntary abandonment doctrine

TTD compensation

The act provides, for all claims pending on or arising after its effective date, that an employee who is unable to work or suffers a wage loss as the direct result of an impairment arising from an injury or occupational disease is entitled to receive temporary total disability

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[1] R.C. 4123.026(A).

[2] R.C. 4123.026(C).

[3] R.C. 4123.026, by reference to R.C. 2935.01, not in the act, and R.C. Chapter 4765.

[4] R.C. 4123.026(B).

(TTD) compensation, provided the employee is otherwise qualified. If the employee is not working or has suffered a wage loss as the direct result of reasons unrelated to an allowed injury or occupational disease, the employee is not eligible to receive TTD compensation. Continuing law governing TTD refers to an employee's "disability." It is unclear how the act's reference to "impairment" will be interpreted.[5]

The act states that the General Assembly intends to supersede any previous court opinion that applied the doctrine of voluntary abandonment to a TTD claim. Under the doctrine, to be eligible for TTD compensation, a claimant must be medically incapable of returning to the claimant's former position and the claimant's injury or occupational disease must be the cause of the claimant's lost earnings.[6]

PTD compensation

The act prohibits, for all claims pending on or arising after its effective date, a person from receiving permanent total disability (PTD) compensation when the person is not working for reasons unrelated to an allowed injury or occupational disease. Former law prohibited a person from receiving PTD compensation when the person voluntarily abandoned the workforce for reasons unrelated to an allowed injury or occupational disease. Under continuing law, a person also may not receive PTD compensation if the person is unable to engage in sustained remunerative employment for one, or any combination, of the following reasons:

- Retirement unrelated to an allowed injury or occupational disease;
- The person's impairments are not the result of an allowed injury or occupational disease;
- Solely due to the person's age or aging;
- The person has not engaged in educational or rehabilitative efforts to enhance the person's employability, unless such efforts are determined to be in vain.[7]

Additional award for specific safety violation

In addition to authorizing the creation of the workers' compensation system, the Workers' Compensation Amendment to the Ohio Constitution allows the filing of a claim that a person suffered an injury, contracted an occupational disease, or was killed in the course of employment because the person's employer violated a specific safety rule enacted by the General Assembly or adopted by the Administrator. The Industrial Commission has exclusive jurisdiction to hear and decide claims alleging violations of specific safety rules. If the Commission finds that the employer's violation of a specific safety rule caused an injury,

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[5] R.C. 4123.56 and Section 3.

[6] See, e.g., *State ex rel. Gross v. Indus. Commission*, 115 Ohio St.3d 249, 253-255 (2007).

[7] R.C. 4123.58 and Section 3.

disease, or death, the Commission must grant an additional award that is between 15% and 50% "of the maximum award established by law."[8]

Under the act, a claim arising on or after the act's effective date for an additional award for violation of a specific safety rule (a "VSSR" award) must be filed within one year after the date of the injury or death or within one year after the disability due to an occupational disease began.[9] Previously, an administrative rule required a person to file a claim for a VSSR award within two years of the date of injury, death, or inception of disability due to occupational disease.[10]

Final settlement agreements

The Worker's Compensation Law allows for settlements of claims. A proposed settlement against the State Insurance Fund takes effect 30 days after the Administrator approves it. A settlement between a self-insuring employer and a claimant takes effect 30 days after the parties sign it. During the 30-day period, a party may withdraw from a proposed settlement by sending written notice to the other interested parties.

The act prohibits an employer, for claims pending on or arising after the act's effective date, from refusing or withdrawing from a proposed settlement agreement if both of the following apply:

- The employee named in the claim is no longer employed by the employer; and
- The claim is no longer within the date of impact (not defined in the act) pursuant to the employer's industrial accident or occupational disease experience for premium calculation purposes.[11]

Under continuing law, the Administrator annually revises basic premium rates so they are adequate to maintain the State Insurance Fund's solvency and a reasonable surplus. When revising basic employer rates, the Administrator examines the oldest four of the last five policy years of combined accident and occupational disease experience.[12]

Continuing jurisdiction over claims

The Industrial Commission and the Administrator have continuing jurisdiction over each workers' compensation claim, and the Commission may modify or change its former findings and orders for a period of five years after the date of injury unless a statutorily specified event occurs. If a statutorily specified event occurs, the Commission's authority to change or modify a

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[8] Ohio Constitution, Article II, Section 35.

[9] R.C. 4121.471 and Section 3.

[10] Ohio Administrative Code 4121-3-20.

[11] R.C. 4123.65 and Section 3.

[12] R.C. 4123.34, not in the act.

finding or order, or award compensation or benefits in the claim, extends for an additional five years from the event date.

The act makes the rendering of medical services, rather than payment for the services as under former law, an event that extends the Commission's authority for an additional five years. This applies to claims arising on or after July 1, 2020. Under continuing law, the following events also extend the Commission's authority for an additional five years:

- A payment of compensation for TTD, wage loss, permanent partial disability, or PTD;
- A payment of wages in lieu of compensation in accordance with continuing law;
- The claimant's death.[13]

Funeral expenses

Under continuing law, the Administrator or a self-insuring employer must pay a reasonable amount to cover funeral expenses when an employee dies from a compensable injury or occupational disease. The act increases the amount the Administrator is authorized to spend from the State Insurance Fund for funeral expenses from $5,500 to $7,500. The increase applies to claims arising on or after the act's effective date.[14]

Appealing Industrial Commission orders

H.B. 27 of the 132nd General Assembly extended the time to appeal an Industrial Commission order to a court of common pleas from 60 days to 150 days, provided a party gives notice of intent to settle and the opposing party does not object.[15] The act applies the extension to workers' compensation claims pending on or arising after September 29, 2017, the effective date of that change.[16]

Employee medical examinations

Similar to public employers under continuing law, the act prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act of 1965 from requiring an applicant, prospective employee, or employee to pay for an initial or any subsequent medical examination that is required as a condition of employment or continued employment.[17] The federal Act generally applies to any contract with the federal government that has as its principal purpose the furnishing of services in the U.S. through the

[13] R.C. 4123.52 and Section 3.

[14] R.C. 4123.66 and Section 3.

[15] R.C. 4123.512, not in the act.

[16] Section 4.

[17] R.C. 4113.21.

use of service employees, regardless of whether the employees are the contractor's employees or those of any subcontractor.[18]

Under continuing law, all other private employers are prohibited from requiring any prospective employee or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment. Any employer who violates these prohibitions must forfeit not more than $100 for each violation. BWC and the Public Utilities Commission of Ohio enforce the penalty.[19]

HISTORY

Action	Date
Introduced	02-19-19
Reported, H. Insurance	11-19-19
Passed House (94-0)	11-20-19
Reported, S. Insurance & Financial Institutions	02-26-20
Passed Senate (32-0)	05-20-20
House concurred in Senate amendments (93-0)	05-28-20

20-HB81-133/ks

[18] 41 United States Code 6702 and 29 Code of Federal Regulations 4.150.

[19] R.C. 4113.21.

OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 201
133rd General Assembly

Final Analysis

Click here for S.B. 201's Fiscal Note

Version: As Passed by the General Assembly

Primary Sponsor: Sen. Dolan

Effective date: March 24, 2021

Paul Luzzi, Attorney

SUMMARY

- Creates alternate employer organizations (AEOs), which are substantially similar to professional employer organizations (PEOs), and regulates AEOs in a very similar manner as PEOs.
- 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).
- 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).
- 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.
- 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.
- Creates criminal penalties for failing to register.
- 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 under continuing law.
- 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).

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DETAILED ANALYSIS

Alternative employer organizations

The act creates alternate employer organizations (AEOs). AEOs are substantially similar to professional employer organizations (PEOs), which are governed by the PEO Law.[1] 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). A "client employer" is the business entity

[1] R.C. Chapter 4125.

that enters into the agreement with an AEO or PEO to share employer responsibility and liability with the AEO or PEO.[2]

Differences between a PEO and an AEO

Under the act, an AEO is not, and cannot be considered, a PEO, and cannot hold itself out as a PEO.[3] AEOs are regulated in a very similar manner as PEOs, but, under the act, 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. Additionally, the manner in which the entities register with the Administrator of Workers' Compensation, and the requirements for registration, vary slightly. The following table summarizes how PEOs created under the PEO Law and AEOs created under the act differ.

Professional employer organization (R.C. Chapter 4125)	Alternate employer organization (R.C. Chapter 4133)
Taxes and workers' compensation coverage	
The PEO Law requires a PEO to pay wages and taxes associated with a shared employee and report federal taxes under the PEO's tax identification number *(R.C. 4125.03(A) and O.A.C. 4123-17-15(D)(2))*.	The act requires an AEO to process and pay wages and state and federal taxes associated with a worksite employee, irrespective of payments made by the client employer, and to report federal taxes under the client employer's tax identification number. The act requires the client employer to be listed as the employer on a worksite employee's W-2, but both the AEO and client employer remain jointly and severally liable for payment of the wages and taxes. *(R.C. 4133.03(A), (B), (C), and (K))*.
No provision.	If a client employer fails to transmit payment sufficient to cover payment of all wages and employer-paid taxes to the AEO, the act requires the AEO to keep a record of the nonpayment or under payment and a record that the AEO nonetheless paid the wages and taxes owed *(R.C. 4133.03(C))*.
The PEO Law requires a PEO to maintain workers' compensation coverage for all employees reported under the PEO's tax identification number, except that a PEO may enter into an agreement in which a	On entering an AEO agreement with a client employer, the act requires an AEO to maintain workers' compensation coverage under its workers' compensation policy for all worksite

[2] R.C. 4133.01 and R.C. 4125.01, not in the act.

[3] R.C. 4133.03(J).

Professional employer organization (R.C. Chapter 4125)	Alternate employer organization (R.C. Chapter 4133)
client employer insures shared employees under the client employer's policy if both of the following apply: ▪ The client employer's payroll is wholly reported under the PEO's tax identification number for federal tax purposes; ▪ The client employer's payroll is wholly reported under the client employer's policy number for worker's compensation purposes *(O.A.C. 4123-17-15(D)(2) and (7)).*	employees associated with the client employer *(R.C. 4133.03(D)).*
No provision.	The act requires an AEO to annually certify to the Administrator that all client employer federal payroll taxes have been timely and appropriately paid, and on request of the Administrator, provide proof of payment *(R.C. 4133.03(A)(10)).*
No provision.	The act specifies that the use of a client employer's tax identification number for federal payroll tax purposes as required under the act cannot be construed to absolve the AEO of any responsibilities or liabilities applicable to an AEO, including those under federal law *(R.C. 4133.03(L)).*
Registration with the Administrator of Workers' Compensation	
As a condition of registering or renewing a registration, the PEO Law requires a PEO with a deficit in its working capital to provide a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit. Additionally, the Administrator, with advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, may adopt rules to require a PEO to provide security in the form of a bond or letter of credit assignable to BWC not to exceed an amount equal to the premiums and assessments incurred for the most recent policy year, before any discounts or dividends, to meet the PEO's financial obligations under the Workers' Compensation Law. *(R.C. 4125.05(B)(8) and (D)(1) and 4125.051.)*	The act requires an AEO to maintain positive working capital at initial or annual registration, as reflected in the required financial statements submitted to BWC. As a condition of registering or renewing a registration, the act requires an AEO to provide a bond or letter of credit in an amount determined by the Administrator to be adequate to meet the AEO's financial obligations under the Workers' Compensation Law, which must be at least $1 million (regardless of whether a deficit in working capital exists). *(R.C. 4133.07(B)(8) and (D)(1) and 4133.08.)*

Professional employer organization (R.C. Chapter 4125)	Alternate employer organization (R.C. Chapter 4133)
The PEO Law allows two or more PEOs that are majority owned or commonly controlled by the same entity to register and operate as a single entity referred to as a professional employer organization reporting entity, provided the PEOs satisfy rules defined by the Financial Accounting Standards Board and generally accepted accounting principles *(R.C. 4125.01(F), 4125.02, and 4125.05(A))*.	The act does not appear to allow AEOs to register multiple entities and operate them together *(R.C. 4133.07(A))*.
The PEO Law allows a PEO or PEO reporting entity to have an assurance organization act on its behalf in complying with the law *(R.C. 4125.01(A) and 4125.02))*.	The act is silent as to whether an assurance organization may act on behalf of an AEO.
The PEO Law specifies that a PEO agreement must have a duration of not less than 12 months *(R.C. 4125.01(E))*.	No provision.
No provision.	The act prohibits an AEO from owning or co-owning an affiliated professional employer organization or AEO *(R.C. 4133.07(K))*.
No provision.	The act prohibits an AEO from sponsoring or acting as the employer of a health benefit plan, but allows an AEO to assist a client employer in procuring a health benefit plan as a broker or otherwise *(R.C. 4133.07(M))*.

Tax filing and liability

As noted above, the PEO Law requires a PEO to report federal taxes under the PEO's tax identification number. By contrast, the act requires an AEO to report federal taxes under the client employer's tax identification number. Both the AEO and client employer remain jointly and severally liable for payment of the taxes under the act.

Federal payroll taxes are governed solely by federal law. Therefore, the act's tax requirement with respect to filing of and liability for federal payroll taxes may not be enforceable.

Additionally, there are three circumstances under federal law where a third party may file employment taxes for a client employer and share in the liability for those taxes.[4] The act does not require an AEO to file in accordance with those circumstances. Thus, the AEO may not be liable for the taxes under federal law. However, the act creates AEO liability for a client employer's federal payroll taxes under state law.[5] That liability would be enforceable in state courts.

Similarities between a PEO and an AEO

As discussed above, AEOs under the act are substantially the same as PEOs. The following analysis, as applicable to AEOs under the act, is the same as continuing law governing PEOs unless otherwise noted.

Enforcement

The act requires the Administrator to adopt rules in accordance with Ohio's Administrative Procedure Act[6] to administer and enforce the AEO Law. It allows the Administrator to adopt rules for the acceptance of electronic filings in accordance with the Uniform Electronic Transactions Act[7] for applications, documents, reports, and other filings required by the AEO Law.[8]

Additionally, the act requires the Administrator to maintain a list of registered AEOs that is readily available to the public by electronic or other means.[9]

Duties of an AEO

The act requires an AEO with whom a worksite employee is employed to perform specified duties. A "worksite employee" is an individual assigned to a client employer on a permanent basis, not as a temporary supplement to the client employer's workforce, and who is employed by both an AEO and a client employer pursuant to an AEO agreement (the written agreement between a client employer and an AEO to provide human resource management services and to share employer responsibilities and liabilities).[10] The PEO Law refers to these employees as "shared employees."[11]

The act requires an AEO to:

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[4] See 26 United States Code (U.S.C.) 3511 and 7705; and 26 Code of Federal Regulations 31.3504-1 and 31.3504-2.

[5] R.C. 4133.03(B).

[6] R.C. Chapter 119.

[7] R.C. Chapter 1306.

[8] R.C. 4133.02, with conforming changes in R.C. 4121.12, 4121.121, and 4123.341.

[9] R.C. 4133.07(L).

[10] R.C. 4133.01.

[11] R.C. 4125.01, not in the act.

1. Process and pay all wages and state and federal payroll taxes associated with the worksite employee, irrespective of payments made by the client employer, pursuant to the terms and conditions of compensation in the AEO agreement;
2. Pay all related payroll taxes associated with a worksite employee independent of the terms and conditions contained in the AEO agreement;
3. Maintain workers' compensation coverage, pay all workers' compensation premiums, and manage all workers' compensation claims, filings, and related procedures associated with a worksite employee in compliance with the Workers' Compensation Law,[12] except that when worksite employees include family farm officers, ordained ministers, or corporate officers of the client employer, payroll reports must include the entire amount of payroll associated with those persons;
4. Annually provide written notice to each worksite employee it assigns to perform services to a client employer of the relationship between and the responsibilities of the AEO and the client employer (the PEO Law requires this, but not on an annual basis[13]);
5. Maintain complete records separately listing the manual classifications of each client employer and the payroll reported to each manual classification for each client employer for each payroll reporting period during the time period covered in the AEO agreement;
6. Maintain a record of workers' compensation claims for each client employer;
7. Make periodic reports, as determined by the Administrator, of client employers and total workforce to the Administrator;
8. Report individual client employer payroll, claims, and classification data under a separate and unique subaccount to the Administrator; and
9. Within 14 days after receiving notice from BWC that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant.[14]

An AEO with whom a worksite employee is employed must provide a list of the following information to the client employer on the client employer's written request:

1. All workers' compensation claims, premiums, and payroll associated with that client employer;
2. Compensation and benefits paid and reserves established for each workers' compensation claim; and
3. Any other information available to the AEO from BWC regarding that client employer.

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[12] R.C. Chapters 4121 and 4123.

[13] R.C. 4125.03(A)(4), not in the act.

[14] R.C. 4133.03(A) and 4133.07(D)(3), with conforming changes in R.C. 4123.26 and 4123.35.

An AEO must provide the information in writing to the requesting client employer within 45 days after receiving the client employer's request. For purposes of this requirement, an AEO is considered to have provided the required information to the client employer when the information is received by the U.S. Postal Service or when the information is personally delivered, in writing, directly to the client employer.[15]

Direction and control over worksite employees

Unless otherwise agreed to in the AEO agreement, the AEO with whom a worksite employee is employed has a right of direction and control over each worksite employee assigned to a client employer's location. However, a client employer retains sufficient direction and control over a worksite employee as is necessary to do any of the following:

1. Conduct the client employer's business, including training and supervising worksite employees;
2. Ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business;
3. Discharge any fiduciary responsibility that the client employer may have;
4. Comply with any applicable licensure, regulatory, or statutory requirement of the client employer.

Unless otherwise agreed to in the AEO agreement, liability for acts, errors, and omissions are determined as follows:

1. An AEO is not liable for the acts, errors, and omissions of a client employer or a worksite employee when those acts, errors, and omissions occur under the client employer's direction and control;
2. A client employer is not liable for the acts, errors, and omissions of an AEO or a worksite employee when those acts, errors, and omissions occur under the AEO's direction and control.

The requirements regarding direction and control do not limit any liability or obligation specifically agreed to in the AEO agreement.[16]

Under the act, a worksite employee under an AEO agreement is not, solely as a result of being a worksite employee, an employee of the AEO for purposes of general liability insurance, fidelity bonds, surety bonds, employer liability not otherwise covered by the Workers' Compensation Law, or liquor liability insurance carried by the AEO, unless the AEO agreement and applicable prearranged employment contract, insurance contract, or bond specifically states otherwise.[17]

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[15] R.C. 4133.03(E) and (F).

[16] R.C. 4133.03(G), (H), and (I).

[17] R.C. 4133.05.

Employer status under the Workers' Compensation Law

When a client employer enters into an AEO agreement, the AEO is the employer of record and the succeeding employer for the purposes of determining a workers' compensation experience rating. Under the act, the exclusive remedy for a worksite employee to recover for injuries, diseases, or death incurred in the course of and arising out of the employment relationship against either the AEO or the client employer are those benefits provided under the Workers' Compensation Law.[18]

The act prohibits multiple, unrelated AEOs from combining together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under the AEO Law.[19]

AEOs and Ohio's Unemployment Compensation Law

The act requires the Director of Job and Family Services (who administers Unemployment Compensation) to adopt rules applicable to AEOs that are consistent with the requirements the Director adopted for PEO reporting of quarterly wages and contributions for shared employees.

The rules applicable to PEOs must recognize the PEO as the employer of record of shared employees; however, each shared employee of a single client employer must be reported under a separate and unique subaccount of the PEO to reflect the experience of the shared employees of that client employer. The Director is required to use a subaccount solely to determine experience rates for that individual subaccount on an annual basis and must recognize a PEO as the employer of record associated with each subaccount. The Director must combine the rate experience that existed on a client employer's account before entering into a PEO agreement with the experience accumulated as a PEO subaccount. The combined experience remains with the client account on termination of the PEO agreement. A PEO must provide a power of attorney or other evidence, which may be included as part of a PEO agreement, completed by each client employer of the PEO, authorizing the PEO to act on behalf of the client employer in accordance with the requirements of the Unemployment Compensation Law.[20]

Determining tax credits and other economic incentives

For purposes of determining tax credits and other economic incentives that are provided by Ohio or any political subdivision and based on employment, worksite employees under an AEO agreement are considered employees solely of the client employer.

A client employer is entitled to the benefit of any tax credit, economic incentive, or similar benefit arising as the result of the client employer's employment of worksite employees.

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[18] R.C. 4133.04, with a conforming change in R.C. 4123.01.

[19] R.C. 4133.07(J).

[20] R.C. 4141.24 (K) and (L).

If the grant or amount of any tax credit, economic incentive, or other benefit is based on number of employees, each client employer is treated as employing only those worksite employees employed by the client employer. Worksite employees working for other client employers of the AEO are not counted as employees for that purpose.

On request by a client employer or a state agency or department, an AEO must provide employment information reasonably required by the agency or department responsible for administration of the tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client employer seeking the tax credit or economic incentive.

Worksite employees whose services are subject to sales tax are considered the employees of the client employer for purposes of collecting and levying sales tax on the services performed by the worksite employee. The act specifies that it does not relieve a client employer or AEO of any sales tax liability with respect to its goods or services.

Any tax assessed on a per capita or per employee basis is assessed against the client employer for worksite employees and against the AEO for AEO employees who are not worksite employees. For purposes of computing any tax that is imposed or calculated on the basis of total payroll, the AEO is eligible to use any small business allowance or exemption based solely on AEO employees who are not worksite employees with any client employer. A client employer's eligibility for the allowance or exemption is based solely on the client employer's employee payroll, including any worksite employees employed by the client employer.[21]

For purposes of a bid, contract, purchase order, or agreement entered into with the state or any political subdivision, a client employer's status or certification as a small, minority-owned, disadvantaged, or women-owned business enterprise or as a historically underutilized business is not affected as a result of the client employer entering into an AEO agreement or using the services of an AEO.[22]

Registration as an AEO

The act requires an AEO operating in Ohio to register with the Administrator not later than 30 days after its formation on forms provided by the Administrator. The act requires an AEO to register annually following initial registration on or before December 31.[23]

Whoever recklessly violates the registration requirement is guilty of a minor misdemeanor. Whoever knowingly violates the registration requirement is guilty of a second degree misdemeanor.[24]

Initial registration and each annual registration renewal must include the following:

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[21] R.C. 4133.06.

[22] R.C. 4133.14.

[23] R.C. 4133.07(A).

[24] R.C. 4133.99.

1. A list of each of the AEO's client employers current as of the registration date for purposes of initial registration or current as of the annual renewal date, or within 14 days of adding or releasing a client, that includes the client employer's name, address, federal tax identification number, and BWC risk number;
2. A fee as determined by the Administrator that may not exceed the cost of administration of the initial or renewal registration process;
3. The name or names under which the AEO conducts business;
4. The address of the AEO's principal place of business and the address of each office it maintains in Ohio;
5. The AEO's taxpayer or employer identification number;
6. A list of each state in which the AEO has operated in the preceding five years, and the name, corresponding with each state, under which the AEO operated in each state, including any alternative names, names of predecessors, and if known, successor business entities;
7. The most recent financial statement prepared and audited as required by the act (see "**Financial statement**" below);
8. A bond or letter of credit as required by the act (see "**Security requirement**," below);
9. An attestation of the accuracy of the data submissions from the chief executive officer, president, or other individual who serves as the AEO's controlling person.[25]

The act allows the Administrator to issue a limited registration to an AEO under terms and for periods that the Administrator considers appropriate if the AEO provides the following items:

1. A properly executed request for limited registration on a form provided by the Administrator;
2. All information and materials required for registration as discussed in (1) to (6) above;
3. Information and documentation necessary to show that the AEO satisfies all of the following criteria:
   a. It is domiciled outside of Ohio.
   b. It is licensed or registered as an AEO in another state.
   c. It does not maintain an office in Ohio.
   d. It does not participate in direct solicitations for client employers located or domiciled in Ohio.

[25] R.C. 4133.07(B) and (H).

e. It has 50 or fewer worksite employees employed or domiciled in Ohio on any given day.[26]

Financial statement

The financial statement required for initial registration must be the AEO's most recent financial statement and must not be older than 13 months. For each registration renewal, the AEO must file the required financial statement within 180 days after the end of the AEO's fiscal year. An AEO may apply to the Administrator for an extension beyond that time if the AEO provides the Administrator with a letter from the AEO's auditor stating the reason for delay and the anticipated completion date.[27]

Security requirement

As noted above, an AEO differs from a PEO with respect to the duty to provide proof of financial security. The act requires an AEO to provide security in the form of a bond or letter of credit assignable to BWC in an amount necessary to meet its financial obligations under the act and under the Workers' Compensation Law. The Administrator must determine the security amount for each registrant and it must be at least $1 million. An AEO may appeal the amount of the security determined by the Administrator in accordance with the Workers' Compensation Law appeals process for determinations made by an adjudicating committee appointed by the Administrator.

Notwithstanding the security requirement, the act specifies that an AEO that qualifies for self-insurance or retrospective rating for purposes of the Workers' Compensation Law must abide by the financial disclosure and security requirements pursuant to the Workers' Compensation Law in place of the AEO Law security requirements.[28]

Trade secrets

Except to the extent necessary for the Administrator to comply with the Administrator's statutory duties, all records, reports, client lists, and other information obtained from an AEO for registration purposes are considered confidential trade secrets. The act prohibits the information from being published or open to public inspection. Additionally, it specifies that the list of each of the AEO's client employers is a trade secret as that term is defined under Ohio's Uniform Trade Secrets Act.[29]

Working capital requirement and financial statement audits

As noted above, an AEO differs from a PEO with respect to the required financial security not being contingent on a deficit in working capital. The act requires an AEO to maintain positive working capital at initial or annual registration, as reflected in the financial

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[26] R.C. 4133.07(C).

[27] R.C. 4133.07(I).

[28] R.C. 4133.07(D) and (E), with a conforming change in R.C. 4123.291.

[29] R.C. 4133.07(F) and (G) and 4133.01(D), by reference to R.C. 1333.61, not in the act.

statements submitted to BWC. "Working capital" means the excess of current assets over current liabilities as determined by generally accepted accounting principles.[30]

Like a PEO, if an AEO has a deficit in working capital as reflected in the financial statements submitted to BWC, the AEO must submit to the Administrator a quarterly financial statement for each calendar quarter during which the deficit exists, accompanied by an attestation of the chief executive officer, president, or other individual who serves as the controlling person of the AEO that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the AEO. The bond or letter of credit required by the act (discussed under "**Security requirement**," above) to be held by a depository designated by the Administrator for the purpose of securing payment by the AEO of all taxes, wages, benefits, or other entitlements due or otherwise pertaining to worksite employees, if the AEO does not make those payments when due.[31]

The act requires the financial statements as discussed under "**Financial statement**," above to be prepared in accordance with generally accepted accounting principles. Additionally, it requires the financial statements to be audited by an independent alternate public accountant[32] authorized to practice in the jurisdiction in which that accountant is located. The auditor report cannot contain either:

1. A qualification or disclaimer of opinion as to adherence to generally accepted accounting principles; or
2. A statement expressing substantial doubt about the ability of the AEO to continue as a going concern.

However, if an AEO does not have at least 12 months of operating history on which to base financial statements, the financial statements must be reviewed by a certified public accountant.

Notwithstanding the act's requirement that the report of the auditor adhere to generally accepted accounting principles, if an AEO is a subsidiary or is related to a variable interest entity, the act allows the AEO or AEO entity (it is unclear what an AEO entity is under the act) to submit the AEO's required financial statements.[33]

The Administrator must deny initial or annual registration to an applicant that does not meet the act's working capital or financial statement requirements.[34]

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[30] R.C. 4133.01(E).

[31] R.C. 4133.08(A).

[32] In an apparent drafting error, the act refers to an "independent alternate public accountant" where it should refer to an "independent certified public accountant" (R.C. 4133.08(B)).

[33] R.C. 4133.08(B).

[34] R.C. 4133.08(C).

Denial or revocation of registration

The act allows the Administrator, in accordance with Ohio's Administrative Procedure Act, to deny or revoke the registration of an AEO and rescind its status as an employer on a finding that the AEO has done any of the following:

1. Obtained or attempted to obtain registration through misrepresentation, misstatement of a material fact, or fraud;
2. Misappropriated any client employer funds;
3. Used fraudulent or coercive practices to obtain or retain business or demonstrated financial irresponsibility;
4. Failed to appear, without reasonable cause or excuse, in response to a subpoena lawfully issued by the Administrator;
5. Failed to comply with AEO Law requirements.[35]

The Administrator must revoke an AEO's registration for failure to pay workers' compensation premiums.[36]

The Administrator's decision is stayed pending the exhaustion of all administrative appeals by the AEO. The Administrator must adopt rules that require that when an employer contacts BWC to determine whether a particular AEO is registered, if the Administrator has denied or revoked that AEO's registration or rescinded its status as an employer, and if all administrative appeals are not yet exhausted when the employer inquires, the appropriate BWC personnel must inform the inquiring employer of the denial, revocation, or rescission and the fact that the AEO has the right to appeal the decision.

On revocation of an AEO's registration, each client employer associated with that AEO must both:

1. File payroll reports and pay workers' compensation premiums directly to the Administrator on its own behalf at a rate determined by the Administrator based solely on the client employer's claims experience; and
2. File on its own behalf the appropriate documents or data with all state and federal agencies as required by law with respect to any worksite employee the client employer and the AEO shared.[37]

Lease termination notice

Not later than 30 days after an AEO agreement is terminated, the AEO is adjudged bankrupt, the AEO ceases operations in Ohio, or its registration is revoked, the AEO must

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[35] R.C. 4133.09(A).

[36] R.C. 4123.32.

[37] R.C. 4133.09.

submit to the Administrator and each associated client employer a completed workers' compensation lease termination notice form provided by the Administrator. The completed form must include all client payroll and claim information listed in a format specified by the Administrator and notice of all workers' compensation claims that have been reported to the AEO in accordance with its internal reporting policies.

If an AEO that is a self-insuring employer for purposes of the Workers' Compensation Law must submit a lease termination notice form, not later than 30 calendar days after the lease termination the act requires the AEO to submit all of the following to the Administrator for any years necessary for the Administrator to develop a state fund experience modification factor for each client employer involved in the lease termination:

1. The payroll of each client employer involved in the lease termination, organized by manual classification and year;
2. The medical and indemnity costs of each client employer involved in the lease termination, organized by claim; and
3. Any other information the Administrator may require to develop a state fund experience modification factor for each client employer involved.

The Administrator may require an AEO to submit the information at additional times after the initial submission if the Administrator determines it necessary to developing a state fund experience modification factor. The Administrator may revoke or refuse to renew an AEO's self-insuring employer status if the AEO fails to provide the requested information. The Administrator must use this information to develop a state fund experience modification factor for each client employer involved. Before entering into an AEO agreement with a client employer, an AEO must disclose in writing to the client employer these reporting requirements that apply to the AEO and that the Administrator must develop a state fund experience modification factor for each client employer involved in a lease termination with an AEO that is a self-insuring employer.

The act requires an AEO to report any transfer of employees between related AEO entities to the Administrator within 14 calendar days after the transfer date on a form prescribed by the Administrator. The AEO must include in the form all client payroll and claim information regarding the transferred employees, listed in a format specified by the Administrator, and a notice of all workers' compensation claims that have been reported to the AEO in accordance with the AEO's internal reporting policies.[38]

Occupational licensing laws

The act specifies that nothing in the AEO Law exempts an AEO, client employer, or worksite employee from any federal, state, or local licensing, registration, or certification statutes or regulations. An individual who must obtain and maintain a license, registration, or certification under law and who is a worksite employee is an employee of the client employer

[38] R.C. 4133.10.

for purposes of obtaining and maintaining the appropriate license, registration, or certification required by law. The act specifies that an AEO does not engage in any occupation, trade, or profession that requires a license, certification, or registration solely by entering into an AEO agreement with a client employer or employing a worksite employee.

Under the act, a client employer has the sole right of direction and control of the professional or licensed activities of worksite employees and of the client employer's business. The worksite employees and client employers remain subject to regulation by the board, commission, or agency responsible for licensing, registration, or certification of the worksite employees or client employers.[39]

Collective bargaining agreements

Nothing contained in the AEO Law or in the AEO agreement may affect, modify, or amend any collective bargaining agreement that exists on the act's March 24, 2021, effective date. Additionally, nothing in the AEO Law alters the rights or obligations of any client employer, AEO, or worksite employee under the National Labor Relations Act, the Railway Labor Act, or any other federal or state law.[40]

Other limitations on the AEO Law and AEO agreements

The act specifies that nothing in the AEO Law or any AEO agreement may do any of the following:

1. Diminish, abolish, or remove the rights and obligations of client employers and worksite employees existing before the AEO agreement effective date;
2. Affect, modify, or amend any contractual relationship or restrictive covenant between a worksite employee and any client employer in effect at the time an AEO agreement becomes effective;
3. Prohibit or amend any contractual relationship or restrictive covenant between a client employer and a worksite employee that is entered into after the AEO agreement becomes effective;
4. Create any new or additional enforcement right of a worksite employee against an AEO that is not specifically provided by the AEO agreement or the AEO Law.

Under the act, an AEO has no responsibility or liability in connection with, or arising out of, any contractual relationship or restrictive covenant between a client employer and a worksite employee unless the AEO has specifically agreed otherwise in writing.[41]

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[39] R.C. 4133.11, with a conforming change in R.C. 4740.131.

[40] R.C. 4133.12.

[41] R.C. 4133.13.

Reports to the Tax Commissioner

Additionally, the act requires every AEO to file a report with the Tax Commissioner within 30 days after commencing business in Ohio that includes:

1. The name, address, number the employer receives from the Secretary of State to do business in Ohio, if applicable, and federal employer identification number of each client employer of the AEO;
2. The date that each client employer became a client of the AEO; and
3. The names and mailing addresses of the chief executive officer and the chief financial officer of each client employer for taxation of the client employer.

Beginning with the calendar quarter ending after an AEO files the initial report, and every calendar quarter thereafter, the AEO must file an updated report with the Tax Commissioner. The AEO must file the updated report not later than the last day of the month following the end of the calendar quarter and must include the following information in it:

- If an entity became a client employer of an AEO at any time during the calendar quarter, the information required under (1), (2), and (3) above for each new client employer;
- If an entity terminated the agreement with the AEO during the calendar quarter, the information described in (1) above for that entity, the date the entity ceased being a client of the AEO, if applicable, or the date the entity ceased business operations in Ohio, if applicable;
- If the name or mailing address of the chief executive officer or the chief financial officer of a client employer has changed since the AEO previously submitted the initial or a quarterly report, the updated name or mailing address;
- If none of these events occurred during the calendar quarter, a statement of that fact.[42]

Similar to failing to file a report under the Income Tax Law[43] pursuant to continuing law, under the act an AEO is prohibited from knowingly failing to file any required return or report, or filing or knowingly causing to be filed any incomplete, false, or fraudulent return, report, or statement, or aiding or abetting another in the filing of any false or fraudulent return, report, or statement. Whoever violates this prohibition is guilty of a fifth degree felony.[44]

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[42] R.C. 5747.07(J).

[43] R.C. Chapter 5747.

[44] R.C. 5747.19 and 5747.99(A), not in the act.

Other tax provisions

The act excludes from the definition of "gross receipts" for purpose of the commercial activity tax,[45] property, money, and other amounts received by an AEO from a client employer in excess of the administrative fee charged by the AEO to the client employer.[46]

The act provides that the compensation, including guaranteed payments, paid to a pass-through entity investor by an AEO hired by the pass-through entity is considered business income, and therefore is eligible for the business income deduction and 3% flat tax on business income, provided that the investor holds at least a 20% interest in the pass-through entity.[47]

HISTORY

Action	Date
Introduced	09-18-19
Reported, S. Transportation, Commerce & Workforce	09-23-20
Passed Senate (33-0)	09-23-20
Reported, H. Commerce & Labor	12-02-20
Passed House (70-25)	12-03-20

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[45] R.C. Chapter 5751.

[46] R.C. 5751.01(F)(2)(x).

[47] R.C. 5733.40.

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Legislative Budget Office

H.B. 308
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Final Analysis

Click here for H.B. 308's Fiscal Note

Version: As Passed by the General Assembly

Primary Sponsor: Rep. Patton

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Kailey Henry, Research Analyst

SUMMARY

- Creates the State Post-Traumatic Stress Fund in the state treasury and designates the Director of Budget and Management as the fund's trustee.
- Requires the fund to be used to pay lost wage compensation, medical benefits, and administrative costs associated with public safety officers who are diagnosed with post-traumatic stress disorder without an accompanying physical injury received in the course of, and arising out of, their employment.
- States that no payments will be made from the fund and no person is eligible for any claims and no liability accrues to any state party under the act.
- Prohibits an employer from discharging, demoting, reassigning, or taking any other punitive action against a public safety officer because the officer files a claim or institutes, pursues, or testifies in any proceedings related to compensation or benefits paid from the fund.
- Requires the Board of Trustees of the Ohio Police and Fire Pension Fund, in consultation with specified entities, to have prepared an actuarial valuation and report that answers specific questions about funding and administrative requirements associated with paying claims from the fund.

DETAILED ANALYSIS

State Post-Traumatic Stress Fund

The act creates the State Post-Traumatic Stress Fund in the state treasury and designates the Director of Budget and Management as the fund's trustee. The fund is to be used for the following purposes:

- Paying compensation for lost wages to a public safety officer who is disabled by post-traumatic stress disorder (PTSD) without an accompanying physical injury received in the course of, and arising out of, employment as a public safety officer;
- Paying for medical, nurse, therapy, and hospital services and medicines required to treat the public safety officer's PTSD without an accompanying physical injury; and
- Paying administrative costs associated with providing the lost wage compensation and medical benefits listed above.

The act states that no payments will be made from the fund and no person is eligible for any claims and no liability accrues to any state party under the act.

Under the act, an employer is prohibited from discharging, demoting, reassigning, or taking any other punitive action against a public safety officer because the officer files a claim or institutes, pursues, or testifies in any proceedings related to compensation or benefits paid from the fund. Any officer who believes the officer's employer has violated the prohibition may sue in the court of common pleas for the county where the officer is employed. In the lawsuit, if the officer was discharged, the officer may seek reinstatement with back pay. If the officer was demoted, reassigned, or subject to other punitive action, the officer may recover lost wages. The officer's award of back pay or lost wages is offset by any income earned by the officer after the discharge, demotion, reassignment, or punitive action. The officer also may recover reasonable attorney fees.

An officer is barred from suing if the officer fails to file the suit within 180 days immediately following the discharge, demotion, reassignment, or punitive action. An officer is also prohibited from suing when the employer has not received written notice of a claimed violation within the 90 days immediately following the discharge, demotion, reassignment, or punitive action.[1]

Actuarial study and report

Report requirements

The act requires the Board of Trustees of the Ohio Police and Fire Pension Fund (OP&F), in consultation with the entities listed below, to have an actuarial valuation of the funding requirements of the State Post-Traumatic Stress Fund prepared by a disinterested third-party actuary. The actuary must complete the valuation in accordance with actuarial standards of practice promulgated by the actuarial standards board of the American Academy of Actuaries. The Office of Budget and Management must reimburse the OP&F Board for the cost of the valuation, up to $500,000. The actuary must prepare a report of the actuarial analysis that includes only the following:

- A description of lost wage compensation and medical benefit amounts evaluated;

[1] R.C. 126.65.

- A description of the participant group or groups included in the report;
- A projection of the number of participants eligible for lost wage compensation and medical benefits from the fund;
- A projection of the potential claims per year;
- A projection of the average benefit amount based on weekly wages;
- A projection of the cost of health care and pharmacy benefits;
- A cost comparison showing the projected administrative costs differentials based on the OP&F Board creating a program versus contracting with other private and public entities;
- A cost comparison as to which, if any, state retirement system or other administrator is best suited to administer the fund;
- A review of how other states administer funds that are similar to the fund;
- An analysis of whether an administrative appeals process is necessary or useful to the resolution of claims for compensation, benefits, or both from the fund;
- 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;
- An analysis of any other issue identified by the consulting entities.[2]

The actuarial study and report must be completed by October 1, 2021. Immediately on completion, copies of the report must be sent to the OP&F Board, the Director of Budget and Management, the Speaker of the House, the House Minority Leader, the Senate President, and the Senate Minority Leader.[3]

Consulting entities

With respect to the study and report required by the act, the OP&F Board must consult with all of the following entities:

- The Ohio Chamber of Commerce;
- The National Federation of Independent Business;
- The Ohio Manufacturers' Association;
- The County Commissioners Association of Ohio;
- The Ohio Township Association;

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[2] Section 2(A).

[3] Section 2(C).