

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Industrial Commission/ Ohio Bureau of Workers' Compensation

Regulation/Package Title: Wage Loss Compensation

Rule Number(s): 4125-1-01

Date: 02/08/2017

Rule Type:

- New
 Amended

- 5-Year Review
 Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 4125-1-01 is a joint rule of the Ohio Industrial Commission and Bureau of Workers' Compensation. The rule sets forth the requirements for filing applications for wage loss compensation, an award for those injured workers who suffer a wage loss after returning to

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

employment other than their former position of employment or who cannot find employment consistent with the disability resulting from their claim. The rule also provides the criteria that the Commission and Bureau of Workers' Compensation will evaluate when adjudicating wage loss applications and establishes the manner in which wage loss compensation will be calculated. The rule additionally mandates that self-insuring employers adjudicate initial and subsequent requests for wage loss compensation within thirty days after receiving the requests and file copies of their decisions regarding such applications with the Bureau of Workers' Compensation or Commission for placement in the claim file.

The Commission and Bureau of Workers' Compensation are recommending the amendment of the current rule to include specific language clarifying the rule and to delete a confusing reference in the rule. Specifically, the Commission and Bureau of Workers' Compensation are recommending to amend 4125-1-01 in order to include the language "despite a good faith job search" in paragraph (A)(8) in order to better define "non-working wage loss." The Commission and Bureau of Workers' Compensation are also recommending to include the language "claim related" in (E)(1)(c)(iv) in order to encompass all potential limitations on the injured worker's ability to make prospective employer contacts. It is further proposed to remove the internal reference in (D)(1)(c) as it is confusing.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4121.12, 4121.121, 4121.30, 4121.31, 4121.36, 4123.05, 4123.56

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These rules set forth the definitions, procedures and guidelines for processing wage loss compensation claims.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

This rule does not provide a measurable standard. The purpose of the rule is to provide a fair and equitable process for the adjudication of requests for wage loss compensation to injured workers.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Industrial Commission has a Rules Advisory Committee consisting of representatives from the Ohio Manufacturers Association, the Ohio Association of Self-Insuring Employers, the Ohio Chamber of Commerce, the Ohio AFL-CIO, the Injured Worker's Bar, members of the Association of Claimants' Counsel and Bureau of Workers' Compensation attorneys. The Commission e-mailed the proposed changes to the Rules Advisory Committee prior to meeting with the Commission on several occasions. The members of the Rules Advisory Committee met with Commission staff on May 10, 2016 and August 10, 2016 and offered suggestions and comments on the proposed revisions.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

After meeting with the Rules Advisory Committee, the Commission and Bureau of Workers' Compensation determined the changes the agencies are recommending are necessary to the fair adjudication of requests for wage loss compensation.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Commission and Bureau of Workers' Compensation did not consider alternative regulations for the reason that the stakeholder groups that represent both the employers and injured workers agree on the proposed amendments.

11. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Not applicable.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Industrial Commission and the Bureau of Workers' Compensation are the only state agencies that have the responsibility to adjudicate contested workers' compensation claims matters. There are no other state agencies that are tasked with the same functions and duties of the Commission and Bureau of Workers' Compensation. Commission staff members meet with Bureau of Workers' Compensation staff monthly to review both Commission proposed rule actions and Bureau of Workers' Compensation proposed rule actions to ensure that the two agencies' rules do not conflict.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Commission and the Bureau of Workers' Compensation have established a repeatable procedure by which the agencies implement the wage loss rule. This procedure includes training of their staff with on-line materials and ongoing regional training. Additionally, the agencies will provide adequate notification to stakeholders, injured workers, self-insuring employers and their representatives. Additionally, the Commission will present the proposed changes at its Statewide Hearing Officer Meeting in September of 2017. The Commission will post information regarding the rule on its webpage, Facebook, and the Adjudicator. The Bureau of Worker's Compensation will post the rule on its website, www.bwc.ohi.gov and will distribute the rule to affected parties.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

- a. The impacted business community consists of state-fund and self-insuring employers.
- b. There is no adverse impact.
- c. The impact cannot be quantified in dollars, hours to comply or other such factors.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Not applicable.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Not applicable.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

Not applicable.