

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Industrial Commission

Regulation/Package Title: Permanent total disability

Rule Number(s): 4121-3-34

Date: April 23, 2014

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Rescinded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.

Rule 4121-3-34 sets forth the procedures by which the Commission will process applications for permanent total disability compensation as well as the manner that the Commission will adjudicate such applications.

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The Commission is recommending that the rule be amended to provide procedures for objecting to the start date and/or allocation in a tentative order granting an award of permanent total disability compensation.

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

R.C. 4121.30, 4121.32, 4123.58

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)?

This rule establishes the procedures for the processing and adjudication of requests for permanent total disability compensation. While R.C. 4123.58 provides for the payment of permanent total disability compensation, the statute does not indicate how applications for this compensation will be processed and adjudicated. The rule notifies injured workers and employers of the manner in which the Commission will process and adjudicate applications for permanent total disability compensation.

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 applications for permanent total disability compensation.

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

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the Association of Claimants' Counsel and BWC 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 December 19, 2013 and February 19, 2014 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?

The Commission received input from the Rules Advisory Committee and revised the rule based on a majority consensus.

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 did not consider alternative regulations because the stakeholder groups that represent injured workers and employers agree that the Commission should amend the permanent total disability rule. These groups agree that the rule should provide a process by which a party can object to the start date or allocation of an award of permanent total disability compensation granted via a tentative order without disturbing the granting of that award.

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 is the only state agency that has the responsibility to adjudicate contested workers' compensation claims matters. There is no other state agency that is tasked with the same functions and duties of the Commission. Commission staff meets with the 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 will provide training to their staff regarding the changes in the processing and adjudication of objections to tentative orders awarding permanent total disability compensation. The Commission will provide specialized regional training to its Staff Hearing Officers and statewide training to all Hearing Officers in Columbus in the fall of 2014. The Commission will publicize the rule change on its web page, Facebook and the Adjudicator as well as on its digital signage in each of its offices.

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. This rule change permits parties to limit the scope of their objection to a tentative order granting permanent total disability. This limitation will reduce the impact on employers by reducing the transactional costs associated in defending against applications for permanent total disability.
- c. The impact cannot be quantified in dollars, hours to comply or other such factors. The proposed rule will reduce transactional costs associated with the hearing process.

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.

The proposed rule does not provide exemptions specifically addressed to small business. The focus of the proposed rule is on providing an alternative hearing procedure for injured workers and employers to resolve tangential issues associated with the processing of permanent total disability claims. This proposed rule amendment will reduce costs to employers, as the transactional costs will be less in these less contested hearing matters.

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.