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# OHIO LEGISLATIVE SERVICE COMMISSION

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134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Patton

Paul Luzzi, Attorney

### SUMMARY

- Requires the Administrator of Workers' Compensation to charge compensation and benefits paid from the State Insurance Fund on account of a firefighter disabled by cancer contracted in the course of and arising out of the firefighter's employment to the Surplus Fund Account.
- Requires a self-insuring employer to deduct compensation and benefits payable on account of a firefighter disabled by cancer contracted in the course of and arising out of the firefighter's employment from the paid compensation the self-insuring employer reports to the Administrator.

### DETAILED ANALYSIS

#### Treatment of firefighter cancer workers' compensation claims

Under the Workers' Compensation Law,<sup>1</sup> a firefighter disabled by cancer who has been assigned to at least six years of hazardous duty and who has been exposed to an agent classified by the International Agency for Research on Cancer as a group 1 or 2A carcinogen is presumptively entitled to medical benefits, temporary total disability compensation, working wage loss, and permanent total disability compensation, as applicable. Additionally, the firefighter's dependents are presumptively entitled to death benefits. The firefighter's employer can rebut the presumption by presenting certain types of affirmative evidence specified in the law.

Under the bill, the Administrator of Workers' Compensation must charge all compensation and benefits paid from the State Insurance Fund on account of a firefighter's

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<sup>1</sup> R.C. Chapters 4121, 4123, 4127, and 4131.

cancer to the Surplus Fund Account created under continuing law within the State Insurance Fund, rather than to a state fund employer's experience. The bill also requires a self-insuring employer to deduct compensation and benefits payable on account of the firefighter's cancer from the paid compensation the self-insuring employer reports to the Administrator under continuing law.<sup>2</sup>

A state fund employer is an employer who pays premiums into the State Insurance Fund to secure workers' compensation coverage. The employer's experience in being responsible for its employees' workers' compensation claims may be used in calculating the employer's premium (see "**Background – calculation of state fund employer premium rates,**" below). Thus, charging compensation and benefits to the Surplus Fund Account in lieu of the employer's experience may result in a mitigation of an increase in the employer's workers' compensation premiums as a result of the claim.

A self-insuring employer is an employer who has demonstrated to the Administrator that the employer has adequate financial and administrative ability to pay compensation and benefits directly to an employee or the employee's dependents. A self-insuring employer does not pay premiums, but remains responsible for the employer's share of administrative costs and other assessments for specialized funds. The assessments are calculated using paid compensation reports annually submitted to the Administrator (see "**Background – self-insuring employer assessments,**" below). Deducting compensation and benefits from the paid compensation a self-insuring employer reports to the Administrator may result in lowering the assessments paid by the employer.

## **Background**

### **Calculation of state fund employer premium rates**

Ohio law requires the Administrator to fix premiums "sufficiently large" to provide a fund for the benefits authorized in the Workers' Compensation Law and "to maintain a state insurance fund from year to year." Subject to the approval of the Bureau of Workers' Compensation Board of Directors, the Administrator classifies occupations or industries with respect to their degree of hazard, determines the risks of different classes according to the categories the National Council on Compensation Insurance establishes, and fixes the premium rates for coverage of the risks based on the total payroll in each classification.<sup>3</sup>

Premium rates are fixed for each classification based on total payroll. The Administrator must establish a rate for each classification. To do so, the Administrator compares the total losses experienced by employers within a classification with the total payroll of that classification to establish the rate of contribution for employers within that classification. The system includes two primary categories of premium rates – the basic rate and the experience, or merit, rate (employers qualify for one or the other). The Administrator calculates the basic

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<sup>2</sup> R.C. 4123.68(X).

<sup>3</sup> R.C. 4123.29(A), not in the bill, and Ohio Administrative Code (O.A.C.) 4123-17-04.

rate for each of the classifications of occupations, and the Administrator does not include any individual employer's experience when calculating basic rates. If an employer is experienced-rated, the employer's rate is determined by modifying the basic rate applicable to the employer by the employer's experience of losses incurred and premiums paid.<sup>4</sup> A premium is expressed as an amount for each \$100 of payroll. Rates are revised annually on July 1, and employers pay premiums in accordance with the schedule specified in the Workers' Compensation Law and in rules adopted by the Administrator.<sup>5</sup>

### Self-insuring employer assessments

The Administrator separately calculates each self-insuring employer's assessment for administrative costs, the Safety and Hygiene Fund, and the Surplus Fund Account. Each assessment is calculated on the basis of the paid compensation reported by the self-insuring employer according to the following process:

- The Administrator determines the total amounts needed from self-insuring employers as a class for administrative costs and each specialized fund.
- The Administrator divides the amounts needed from self-insuring employers as a class by the total amount of paid compensation reported by all self-insuring employers in the previous year;
- The Administrator multiplies the quotient from the calculation above by the amount of paid compensation for the previous calendar year attributable to the individual self-insuring employer for whom the assessment is being determined.

A self-insuring employer must pay the assessments derived from the above process, unless the assessment falls below a minimum amount determined by the Administrator. If the self-insuring employer's assessment falls below the minimum amount, the employer must pay the minimum amount.<sup>6</sup>

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## HISTORY

Action	Date
Introduced	02-03-21

H0017-I-134/ts

<sup>4</sup> Fulton, Philip J., *Ohio's Workers' Compensation Law*, § 14.4, 14.6, and 14.7 (5<sup>th</sup> Ed. 2018).

<sup>5</sup> R.C. 4123.34, 4123.35, 4123.39, and 4123.41, not in the bill, and O.A.C. 4123-17-01 to 4123-17-04, 4123-17-06, and 4123-17-35.

<sup>6</sup> R.C. 4123.35, not in the bill.