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H.B. 75
134th General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsor: Rep. Oelslager

Effective date: Appropriations effective June 29, 2021; Sections 6 to 8 effective September 28, 2021

Kailey Henry, Research Analyst

SUMMARY

Appropriations

- Appropriates funds for the Bureau of Workers' Compensation for the biennium ending June 30, 2023.

Workers' compensation claims

- Shortens the filing time for workers' compensation claims arising on or after September 28, 2021, that are based on the employee's occupational disease, from two years to one year after disability due to the occupational disease or death of the employee.
- Maintains the law allowing a period longer than one year after disability if that time period does not exceed six months after a licensed physician diagnoses the disease as occupational in origin.
- Prohibits, for a claim pending on or arising on or after September 28, 2021, an individual who receives wages in lieu of temporary total disability compensation from filing an application for permanent partial disability compensation until 26 weeks after payment of the wages ends.
- Requires, for a claim pending on or arising on or after September 28, 2021, if the Industrial Commission has denied an application for permanent total disability compensation, an employee to present evidence of new and changed circumstances before the Commission may consider a subsequent application based on the same injury or occupational disease.

- Eliminates the requirement that the Administrator of Workers' Compensation prohibit a power of attorney allowing an attorney or employee to cash or endorse a check on behalf of a claimant.

Alternate employer organizations

- Suspends the prohibition against an alternate employer organization (AEO) holding itself out, advertising, or otherwise identifying itself in any way as a professional employer organization until January 1, 2022.
- Eliminates an AEO's ability to use a bond to satisfy the security requirement for AEO registration with the Bureau of Workers' Compensation (BWC).

Disclosure of claimant information

- Adds information identifying a claimant's name to the list of continuing law information about a claimant that is not a public record.
- Retains the changes made by S.B. 4 of the 134th General Assembly that (1) allow for the release of claimants' names to journalists, but (2) exclude dependent information from release to journalists under the continuing law exemption that allows a journalist to obtain claimant information otherwise prohibited from being disclosed.
- Adds to the journalist exemption that a journalist must include in the written request for the claimant information a statement that the individual acknowledges that the claimant information is not a public record and that the individual will not disclose it to any other person for any reason unrelated to journalism.
- Prohibits a journalist who obtains claimant information under the journalist exemption from recklessly disclosing the information to any other person for any reason unrelated to journalism.
- Prohibits the Industrial Commission or BWC from disclosing the name, address, or telephone number of a claimant to a journalist if the disclosure would reveal that the claim is for a condition that arose from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.

Solicitation prohibition

- Eliminates the prohibition against a person soliciting a claimant or employer to take charge of or represent the claimant or employer in any claim or appeal which is or may be filed with BWC or the Industrial Commission. (The prohibition was declared unconstitutional and is unenforceable.)
- Prohibits, instead, a person who obtains or receives records in violation of the law from recklessly using that information to solicit a claimant or employer to take charge of or represent the claimant or employer in any claim or appeal which is or may be filed with BWC or the Industrial Commission.

DETAILED ANALYSIS

Occupational disease claims

(R.C. 4123.85; Section 8)

The act shortens, from two years to one year, the time for filing a workers' compensation claim related to occupational disease. Specifically, for a claim that arises on or after September 28, 2021, an employee who is disabled by an occupational disease, or the dependent of an employee who dies from an occupational disease, must file a claim based on the disease within one year after the disability due to the disease began or death. Still, under continuing law, if the time for filing expires before the employee is aware that a disease is occupational in origin, the employee must file the claim no more than six months after a licensed physician identifies the disease as being occupational.

Application for permanent partial disability compensation

(R.C. 4123.57; Section 8)

Temporary total disability (TTD) compensation partially replaces an employee's lost wages for the period the employee is completely unable to work due to a work place injury or occupational disease. An employer who knows that an employee has a compensable claim may choose to pay the employee's wages in lieu of compensation.¹ Under continuing law, an employee receiving TTD compensation must wait until 26 weeks after TTD compensation terminates before filing an application for permanent partial disability (PPD) compensation. The act also requires, for a claim pending on or arising on or after September 28, 2021, an employee receiving wages in lieu of TTD compensation to wait 26 weeks after the payments terminate to file an application for PPD.

Permanent total disability

(R.C. 4123.58; Section 8)

Under the act, if the Industrial Commission has denied an employee's application for permanent total disability (PTD) compensation, the employee must present evidence of new and changed circumstances before the Commission may consider a subsequent PTD application based on the same injury or occupational disease. This applies to a claim pending on or arising on or after September 28, 2021.

Power of attorney

(R.C. 4121.43)

The act eliminates the requirement that the Administrator of Workers' Compensation prohibit any power of attorney allowing an attorney or employee to cash or endorse a check on behalf of a claimant.

¹ R.C. 4123.56 and 4123.84, not in the act.

Alternate employer organizations

(R.C. 4133.03, 4133.07, and 4133.08)

The act suspends the prohibition against an alternate employer organization (AEO) holding itself out, advertising, or otherwise identifying itself in any way as a professional employer organization (PEO) until January 1, 2022. AEOs are substantially similar to PEOs, which are governed by the PEO Law.² An AEO or PEO 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. AEOs are regulated in a very similar manner as PEOs, but differ from PEOs with respect to requirements in the way they report federal tax payments and the way they are permitted to provide workers' compensation coverage for shared employees. The law creating AEOs was recently enacted and took effect on March 24, 2021.³

The act eliminates an AEO's ability to use a bond to satisfy the continuing law security requirement for AEO registration with the Bureau of Workers' Compensation (BWC). Continuing law requires an AEO to provide security in an amount determined by the Administrator as adequate to meet the AEO's financial obligations under the Workers' Compensation Law, which must be at least \$1 million. Under former law, an AEO could provide either a bond or letter of credit to satisfy this requirement. Thus, an AEO must satisfy the requirement using a letter of credit under the act.

Disclosure of claimant information

(R.C. 4123.88)

Under continuing law, claimant files are not a public record under the Public Records Law,⁴ and disclosure of claimant information is generally prohibited. The act adds that information identifying a claimant's name is not a public record. Any information directly or indirectly identifying a claimant's address or telephone number, regardless of whether the claimant's claim is active or closed, is not a public record.

However, the law makes an exception for the disclosure of certain information to journalists. On receiving a written request made and signed by an individual whose primary occupation is as a journalist, the Industrial Commission or BWC must disclose the addresses and telephone numbers of claimants, regardless of whether their claims are active or closed. The act retains the changes made by S.B. 4 of the 134th General Assembly (which take effect September 7, 2021) that allow for the release of the names of claimants, but exclude dependent information, to journalists under the exemption.

The act also adds to the journalist exemption that a journalist must include in the written request for the claimant information a statement that the individual acknowledges that

² R.C. Chapter 4125, not in the act.

³ S.B. 201 of the 133rd General Assembly.

⁴ R.C. 149.43, not in the act.

the requested claimant information is not a public record and that the individual will not disclose the information to any other person for any reason unrelated to journalism. Additionally, the act prohibits the Commission or BWC from disclosing the name, address, or telephone number of a claimant to a journalist if the disclosure would reveal that the claim is for a condition that arose from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.

The act prohibits a journalist who receives information under the journalist exemption from recklessly disclosing that information to any other person for any reason unrelated to journalism. A violation of this prohibition is a second degree misdemeanor.⁵

Solicitation prohibition

(R.C. 4123.88)

The act eliminates the prohibition against a person soliciting a claimant or employer to take charge of or represent the claimant or employer in any claim or appeal which is or may be filed with BWC or the Industrial Commission. The prohibition was declared unconstitutional and is unenforceable.⁶ Instead, the act prohibits a person who obtains or receives records in violation of the law from recklessly using that information to directly or indirectly solicit authority from a claimant or employer to take charge of, or represent the claimant or employer in respect of, any claim or appeal that is or may be filed with BWC or the Commission. A violation of this prohibition is a second degree misdemeanor.⁷

HISTORY

Action	Date
Introduced	02-09-21
Reported, H. Insurance	05-11-21
Re-referred to H. Finance	05-11-21
Reported, H. Finance	05-12-21
Passed House (92-2)	05-12-21
Reported, S. Insurance	06-02-21
Passed Senate (33-0)	06-02-21
House refused to concur in Senate amendments (34-60)	06-10-21
Senate requested conference committee	06-15-21

⁵ R.C. 4123.99, not in the act.

⁶ *Bevan & Assocs., LPA v. Yost*, 929 F.3d 366 (6th Cir. 2019).

⁷ R.C. 4123.99, not in the act.

Action	Date
House acceded to request for conference committee	06-21-21
Senate agreed to conference committee report (32-0)	06-24-21
House agreed to conference committee report (90-4)	06-25-21