Ohio Legislative Service Commission

Final Analysis

Paul Luzzi

Am. Sub. H.B. 207

131st General Assembly
(As Passed by the General Assembly)

Reps. Henne and McColley, Boose, Romanchuk, Hambley, Burkley, Hood, Sprague, Terhar, Maag, Reineke, Hackett, DeVitis, Retherford, Sears, Amstutz, Anielski, Antani, Antonio, Arndt, Barnes, Bishoff, Blessing, Brenner, Buchy, Butler, Conditt, Cupp, Derickson, Dever, Dovilla, Duffey, Ginter, Green, Grossman, Hall, Hayes, Hill, Huffman, Koehler, LaTourette, Manning, McClain, M. O'Brien, S. O'Brien, Patterson, Pelanda, Perales, Phillips, Rezabek, Rogers, Ruhl, Ryan, Schaffer, Scherer, Schuring, Slesnick, R. Smith, Stinziano, Sweeney, Thompson, Young, Zeltwanger, Rosenberger

Sens. Hottinger, Beagle, Bacon, Brown, Balderson, Burke, Coley, Eklund, Faber, Gardner, Hite, Jones, Obhof, Oelslager, Peterson, Schiavoni, Seitz, Yuko

Effective date: August 31, 2016

ACT SUMMARY

Workers' compensation claims involving motor vehicle accidents

- Requires workers' compensation claims to be charged to the Surplus Fund Account in lieu of to a state fund employer's experience in certain circumstances when a claim is based on a motor vehicle accident involving a third party.

- Allows a state fund employer who believes that a claim may qualify to be charged to the Surplus Fund Account under the act to file a request with the Administrator of Workers' Compensation for a determination.

- Requires the Administrator to make the determination within 180 days after the Administrator receives the request.

- Requires any amount collected by the Administrator through the subrogation process for compensation or benefits that were charged to the Surplus Fund Account to be credited to the Surplus Fund Account and not applied to an individual employer's account.

Workers' compensation – self-insuring employers

- Eliminates the minimum number of employees required for a private sector employer or board of county commissioners to obtain self-insuring status under the Workers' Compensation Law.

- Requires a self-insuring employer who resumes paying premiums to the state insurance fund to provide the Administrator with any information that the Administrator may require to develop a state fund experience modification factor.

- Requires, if a professional employer organization agreement is terminated, a self-insuring professional employer to provide the Administrator with information that the Administrator must use to develop a state fund experience modification factor for each client employer formerly subject to the agreement.

CONTENT AND OPERATION

Workers' compensation claims involving motor vehicle accidents

Charging experience for certain claims to the Surplus Fund Account

The act requires the Administrator of Workers' Compensation, for workers' compensation claims arising on or after July 1, 2017, to charge a state fund employer's experience to the Surplus Fund Account created under continuing law within the State Insurance Fund and not to the employer's experience for payments made in a workers' compensation claim, if all of the following apply:

- The claim is based on a motor vehicle accident involving a third party;

- The third party is issued a citation for a violation of any law or ordinance regulating the motor vehicle's operation arising from the accident on which the claim is based;

- Either of the following circumstances apply to the claim:

    - Any form of insurance maintained by the third party covers the claim;

    - Uninsured or underinsured motorist coverage covers the claim.

- The employer of the employee who is the subject of the claim is not the state or a state institution of higher education, including its hospitals.[1]

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. Thus, charging a claim 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.

Procedure for charging the experience to the Surplus Fund Account

The act allows an employer who believes that a claim may qualify to be charged to the Surplus Fund Account under the act to file a request with the Administrator for a determination. The Administrator must make the determination within 180 days after the Administrator receives the employer's request.

Upon the Administrator's determination that a claim qualifies to be charged to the Surplus Fund Account, or if the Administrator fails to make a determination within 180 days after receiving the request, the Administrator must charge the experience of an employer for any compensation or benefits paid in relation to that claim to the Surplus Fund Account and not to the individual employer's experience.[2]

Deposit of subrogated funds

Continuing law prescribes procedures that the Administrator (or any other statutory subrogee) and a claimant must follow with respect to the distribution of funds that are subrogated in a third-party claim. With respect to any money collected by the Administrator under that process, continuing law generally requires the Administrator to deposit the money into the appropriate account within the State Insurance Fund. The act requires any amount collected for compensation or benefits that were charged to the Surplus Fund Account under the act and not charged to an employer's experience to be deposited in the Surplus Fund Account and not applied to an individual employer's account.[3]

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[1] R.C. 4123.932; Section 3.

[2] R.C. 4123.932(B), (C), and (D).

[3] R.C. 4123.931(K).

Workers' compensation self-insuring employers

Eliminating minimum number of employees to obtain self-insuring status

The act eliminates the requirement that a private sector employer employ at least 500 employees to be approved to pay directly for compensation and benefits under the Workers' Compensation Law (to "self-insure"). The act also eliminates the requirement that a board of county commissioners employ at least 500 employees to be approved to self-insure with respect to the construction of a sports facility. Formerly, with respect to private employers, the Administrator was required to waive this employee threshold requirement if the employer satisfied requirements specified in rules adopted by the Administrator. Under those rules, the employer must either have had a substantial employee count outside Ohio, as determined by BWC, or obtained and agreed to maintain insurance in amounts exceeding statutory requirements and with a retention level determined by BWC to be appropriate.[4]

Under continuing law, when approving an employer to self-insure, the Administrator must consider a number of factors to determine the ability of a private sector employer or a board of county commissioners to meet the obligations of being a self-insuring employer.[5]

Self-insuring employers returning to the State Insurance Fund

The act requires a self-insuring employer who returns to the status of a state fund employer on or after January 1, 2017, to provide the Administrator with the following information in a format and by a date determined by the Administrator:

- Medical costs and indemnity costs by claim;
- Payroll by manual classification and year;
- Any other information the Administrator may require.

The Administrator must develop a state fund experience modification factor based, in whole or in part, on the submitted information and the formerly self-insuring employer's experience.[6]

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[4] Ohio Administrative Code 4123-19-03.1.

[5] R.C. 4123.35(B) and (C).

[6] R.C. 4123.35(I); Section 3.

Former law permitted the Administrator to allow a self-insuring employer to resume payment of premiums to the State Insurance Fund with appropriate credit modifications to the employer's basic premium rate as determined under continuing law.

Self-insuring professional employer organizations

Effective January 1, 2017, the act requires a professional employer organization (PEO) that is a self-insuring employer to provide the following information to the Administrator not more than 14 days after a PEO lease agreement termination:

- The payroll of each client employer involved in the lease termination, organized by manual classification and year;
- The medical and indemnity costs of each client employer involved in the lease termination, organized by claim;
- Any other information the Administrator may require.[7]

The Administrator uses the submitted information to develop a state fund experience modification factor to determine the premium to be paid by each client employer subject to the lease termination. The Administrator may require multiple submissions of the information if necessary. The Administrator may revoke or refuse to renew a PEO's status as a self-insuring employer if the PEO fails to provide the required information.[8]

Under the act, a PEO must disclose the following information in writing to a potential client employer before entering into a PEO agreement:

- The reporting requirements of the act;
- The Administrator's duty to develop a state fund experience modification factor for each client employer involved in a lease termination with a self-insuring professional employer organization.[9]

A 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.[10] One duty

[7] R.C. 4125.07(C)(1); Section 3.

[8] R.C. 4125.07(C) and (D).

[9] R.C. 4125.07(F).

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

of the PEO is to maintain workers' compensation coverage for all of the coemployed employees.[11]

Continuing law requires a PEO to provide written notice to both the Administrator and a client employer of the termination of a professional employer organization agreement. Continuing law also requires that the notice include client payroll and claim information.[12]

HISTORY

ACTION	DATE
Introduced	05-12-15
Reported, H. Insurance	10-19-15
Passed House (94-0)	12-01-15
Reported, S. Insurance	04-26-16
Passed Senate (33-0)	05-04-16
House concurred in Senate amendments (96-0)	05-11-16

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[11] R.C. 4125.03, not in the act.

[12] R.C. 4125.07.