

Ohio Legislative Service Commission

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Comparison Document

House Bill 80 —133rd General Assembly

Bureau of Workers' Compensation Budget
(FY 2020-FY 2021)

As Introduced
In House Finance (LSC 133 0003-3)

May 29, 2019

Executive

In House Finance

BWCCD15 Charging employees for medical examinations

No provision.

R.C. 4113.21

Prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act from requiring an applicant, prospective employee, or employee to pay for an initial or any subsequent medical examinations that are required as a condition of employment or continued employment.

Fiscal effect: None.**BWCCD16 Additional award for specific safety violation**

No provision.

R.C. 4121.471, Section 8

Requires a claim for an additional award of compensation for a violation of a specific safety rule to be filed within one year of the injury, death, or diagnosis of disability due to occupational disease, rather than within two years as under current administrative rule.

No provision.

Applies to claims arising on or after the provision's effective date.

Fiscal effect: Potential decrease in benefits paid from the State Insurance Fund.

Executive

In House Finance

BWCCD20

Post-traumatic stress disorder

No provision.

R.C. 4123.01, 4123.026, and 4123.46; Section 8

Makes a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD) eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the person suffers an accompanying physical injury.

Fiscal effect: Increase in benefits paid from the State Insurance Fund.

BWCCD19

Post-exposure testing for detention facility employees

No provision.

R.C. 4123.026

Requires, under specified conditions, the Administrator of Workers' Compensation or a self-insuring employer to pay for services used to determine whether a detention facility employee sustained an injury or occupational disease after exposure to another person's blood or bodily fluids.

Fiscal effect: Increase in benefits paid from the State Insurance Fund.

BWCCD17

Definitions of "apprentice" and "apprenticeship agreement"

No provision.

R.C. 4123.038

Makes a technical correction to replace an obsolete cross reference with the correct cross reference for the purposes of defining "apprentice" and "apprenticeship agreement" in the Workers' Compensation Law.

Fiscal effect: None.

Executive

In House Finance

BWCCD13 **Continuing jurisdiction – medical benefits**

No provision.

R.C. 4123.52, Section 8

Makes the rendering of medical services, rather than payment for the services as under current law, an event that continues the Industrial Commission's jurisdiction to modify or change a claim or to make a finding or award under a claim. (Retains the payment of compensation as an event that continues the Commission's jurisdiction over a claim.)

No provision.

Applies to claims arising on or after the provision's effective date.

Fiscal effect: Uncertain. Retaining jurisdiction by the Commission could result in reductions in claims paid as well as increases in claims paid, depending of circumstances in each case.

BWCCD21 **Temporary total disability compensation**

No provision.

R.C. 4123.56, Section 8

Requires, for claim's arising on or after the bill's effective date and unless otherwise provided in a collective bargaining agreement, an employer to do either of the following when an employee's temporary total disability (TTD) compensation is offset by an amount paid to the employee for accrued sick leave: (1) reinstate the sick leave that offset the employee's TTD compensation; or (2) pay the employee the amount by which the employee's TTD compensation was offset by the sick leave.

Fiscal effect: Potential increase in benefits paid from the State Insurance Fund.

Executive

In House Finance

BWCCD24

Voluntary abandonment doctrine

No provision.

R.C. 4123.56, 4123.58; Section 8

Appears to codify the common law voluntary abandonment doctrine, which states that, to be eligible for temporary total disability compensation, a claimant must be medically incapable of returning to the claimant's former position and the claimant's injury or occupational disease must be the cause of the claimant's lost earnings (see, e.g., State ex rel. Gross v. Indus. Commission, 115 Ohio St.3d 249, 253 (2007)).

No provision.

States that the General Assembly intends to supersede any previous judicial decision that applied the voluntary abandonment doctrine in a manner that is inconsistent with the amendment.

No provision.

Prohibits a person from receiving permanent total disability (PTD) compensation when the person is unable to engage in sustained remunerative employment as the direct result of something other than a disability arising from an injury or occupational disease rather than when the person voluntarily abandons the workforce for reasons unrelated to the allowed injury or occupational disease.

No provision.

Applies the rule to claims pending on the provision's effective date and to claims arising after that date.

Fiscal effect: Uncertain.

Executive

In House Finance

BWCCD22 **Final settlement agreements**

No provision.

R.C. 4123.65, Section 8

Prohibits an employer from refusing or withdrawing from a proposed claim settlement agreement if the claim is no longer in an employer's industrial accident or occupational disease experience for premium calculation purposes. Prohibits an employer from requiring an employee to terminate the employment relationship as a condition of settling a claim.

No provision.

Applies to claims arising on or after the provision's effective date.

Fiscal effect: Uncertain.

BWCCD26 **Employee misclassification**

No provision.

R.C. 4177.01, 4177.02, 4177.03, 4177.04, 4177.05, 4177.06, 4121.01, 4123.01, 4141.01, and 5747.01

Requires the Superintendent of Industrial Compliance to establish a test, consistent with the test used by the US Internal Revenue Service, to determine whether an individual is an employee or an independent contractor under the Workers' Compensation Law, the Unemployment Compensation Law, and the Ohio Income Tax Law.

No provision.

Prohibits an employer from classifying an individual as an independent contractor for purposes of the laws listed above when the individual is an employee under the Superintendent's test and the applicable law does not contain an exception.

No provision.

Permits an individual to file a complaint with the Superintendent against an employer when the individual reasonably believes that the employer has misclassified the

Executive

In House Finance

No provision.

individual.

Requires the Superintendent to investigate a misclassification complaint and hold an administrative hearing to resolve a complaint supported by reasonable evidence.

No provision.

Requires the Superintendent to do both of the following when the Superintendent determines, after a hearing, that an employer misclassified an employee: (1) notify the Administrator of Workers' Compensation, the Director of Job and Family Services, and the Tax Commissioner, each of whom must determine whether the misclassification caused the employer to violate the applicable law; (2) assess against the employer, for each day after a complaint was filed, a penalty of \$500 for each employee the employer misclassified.

No provision.

Allows an employer to appeal the Superintendent's determination to a court of common pleas in accordance with the Administrative Procedure Act.

No provision.

Requires the Superintendent, regardless of the determination, to notify the appropriate child support enforcement agency of an individual who is receiving income.

No provision.

Prohibits the Superintendent from assessing a penalty against an employer when the employer voluntarily reclassifies a misclassified employee before the Superintendent holds a hearing.

No provision.

Creates the Employee Classification Fund in the State Treasury and requires the Superintendent to deposit collected penalties into the Fund to pay expenses the Superintendent incurs in carrying out the Superintendent's duties.

No provision.

Requires the Superintendent to adopt administrative rules to implement and administer the requirements and prohibitions.

Executive

In House Finance

Fiscal effect: The requirement related to employee misclassification would increase administrative costs for the Superintendent of Industrial Commission, a division of the Ohio Department of Commerce, by an uncertain amount. Any increase in such costs would be paid from a newly created fund, the Employee Classification Fund. Any penalties collected by the Superintendent will also be deposited into the Fund. To the extent the requirement related to employee misclassification results in higher employer compliance with the employee misclassification provision, it would result in undetermined revenue gains to the General Revenue Fund (GRF), the State Insurance Fund (which receives workers' compensation premium payments), the Unemployment Insurance Trust Fund, the state's local government funds, and the funds of municipalities and school districts. The magnitude of the revenue gain is undetermined.

BWCCD1

Workers' Compensation Fraud Unit

Section: 1

Earmarks \$828,200 in each fiscal year from appropriation item 855410, Attorney General Payments, for the expenses of the Workers' Compensation Fraud Unit within the Attorney General's Office. Specifies that these payments must be processed at the beginning of each quarter of each fiscal year and deposited into the Workers' Compensation Section Fund (Fund 1950).

Section: 1

Same as the Executive.

Executive

In House Finance

BWCCD2 **Safety and Hygiene****Section: 1**

Requires the Treasurer of State to remit \$24.08 million cash in FY 2020 and \$23.74 million cash in FY 2021 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260) to cover the Division of Safety and Hygiene's operating expenses.

Section: 1

Same as the Executive.

BWCCD3 **Safety Grants****Section: 1**

Requires the Treasurer of State to remit \$20.0 million cash each in FY 2020 and in FY 2021 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260) to be used for Safety Grants.

Section: 1

Same as the Executive.

BWCCD4 **Health and Safety Initiative****Section: 1**

Requires the Treasurer of State to remit \$6.0 million cash in each fiscal year of the biennium from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). Specifies that these amounts must be used under appropriation item 855611, Health and Safety Initiative, for the purpose of creating and operating a health and wellness program.

Section: 1

Same as the Executive.

Executive

In House Finance

BWCCD5 Safety Campaign

Section: 1

Requires the Treasurer of State to remit \$1.5 million cash in each fiscal year of the biennium from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). Specifies that these amounts must be used under appropriation item 855612, Safety Campaign, for the purpose of creating and operating a statewide safety awareness and education campaign.

Section: 1

Same as the Executive.

BWCCD6 Federal Grant Programs

Section: 1

Specifies that appropriation item 855609, Safety and Hygiene Operating, may be used to provide the state match for federal grant funding received by the Division of Safety and Hygiene.

Section: 1

Same as the Executive.

BWCCD7 Vocational Rehabilitation

Section: 1

Allows the Bureau of Workers' Compensation and the Opportunities for Ohioans with Disabilities Agency to enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients. Allows the Bureau to provide funds from the State Insurance Fund to fund vocational rehabilitation services and staff in accordance with the interagency agreement.

Section: 1

Same as the Executive.

Executive

In House Finance

BWCCD8

Research Grants

Section: 1

Requires the Treasurer of State to remit \$2.0 million cash in FY 2020 and \$2.0 million cash in FY 2021 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). Specifies that these amounts must be used under appropriation item 855613, Research Grants, for the purpose of creating and operating the occupational safety and health research program.

Section: 1

Same as the Executive.

BWCCD9

Substance Use Recovery and Workplace Safety Program

Section: 1

Requires the Treasurer of State to remit \$5.0 million cash in FY 2020 and \$10.0 million cash in FY 2021 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). Specifies that these amounts must be used under appropriation item 855618, Substance Use Recovery and Workplace Safety Program, for the purpose of creating and operating the opioid workplace safety program.

Section: 1

Same as the Executive, but makes a technical correction to the line item name reference.

Executive

In House Finance

BWCCD10 Safety and Health Center of Excellence

Section: 1

Requires the Treasurer of State to remit \$2.0 million cash in FY 2020 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). Specifies that these amounts must be used under appropriation item 855619, Safety and Health Center of Excellence, for the purpose of creating a center of excellence at the Ohio Center of Occupational Safety and Health.

Section: 1

Same as the Executive.

BWCCD23 Administrative Cost Fund

No provision.

Section: 1

Requires the Treasurer of State to remit up to \$25 million cash each in FY 2020 and FY 2021 from the State Insurance Fund to the Workers' Compensation Fund (Fund 7023).

Fiscal effect: The transfers are made to minimize the impact BWC administrative cost rate increases needed due to declines in the premium rate base.

Executive

In House Finance

BWCCD11 Deputy Inspector General for BWC and OIC Funding

Section: 2

Requires the Director of Budget and Management (OBM), on July 1, 2019 and January 1, 2020, or as soon as possible thereafter, to transfer \$212,500 cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (Fund 5FT0) to pay for the FY 2020 costs related to the Deputy Inspector General for the Bureau of Workers' Compensation (BWC) and Industrial Commission (OIC). Requires the Director of OBM, on July 1, 2020 and January 1, 2021, or as soon as possible thereafter, to transfer the same amounts from Fund 7023 to Fund 5FT0, to pay for the corresponding costs in FY 2021. Specifies that if additional amounts are needed, the Inspector General may seek Controlling Board approval for additional transfers of cash and to increase the amount appropriated in appropriation item 965604, Deputy Inspector General for the BWC and OIC.

Section: 2

Same as the Executive.

BWCCD25 Appeals of Industrial Commission orders

No provision.

Section: 9

Applies to claims pending on and arising after September 29, 2017, a provision in Sub. H.B. 27 of the 132nd General Assembly extending the time to appeal an Industrial Commission order from 60 days to 150 days when certain conditions are satisfied.