

Risky Business

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V&A RISK SERVICES

Workers' Compensation Services

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Private Employers: July True-up is on the horizon

With last year's change to prospective billing, private employers are enjoying a number of benefits of the new billing system but the final step, the payroll true-up, is coming in July.

True-up is a new process that will require employers to report actual payroll for the previous policy year and reconcile any differences in premiums paid. Because premiums are now paid ahead of the insured period, this is an important step that is necessary for BWC to accurately calculate an employer's premium. It's also a critically important step in maintaining the employer's policy and participation in current rating plans or discount programs. Employers must complete the true-up report even if the payroll for the year matches the estimate you receive from the BWC.

The 2015 payroll true-up notice will be sent July 1 and the report will be due by August 15. Reports must be submitted online at bwc.ohio.gov or by phone at 1-800-644-6292.

The BWC is encouraging all employers to create an e-account where you can manage your policy, pay bills and complete the payroll true-up online to avoid expected heavy call volume.

Out of State Coverage now available

The Ohio BWC has recently announced that it has secured the services of United States Insurance Services and Zurich North American to provide an insurance solution for employers with employees working in other states. The law, enacted last year, will bring much needed clarity for employers and allow Ohio employers to expand across the border and still make sure their employees are protected.

To be eligible, the employer must have the majority of their business in Ohio. The optional coverage is now available and interested employers should apply directly to the Ohio BWC. The coverage includes all states except North Dakota, Washington and Wyoming.

To learn more, visit the Ohio BWC website: [Other States Coverage](#).



Important Dates

March 31

Last date to request change in estimated annual payroll

Drug Free Safety Program Annual Report due (private employers)

Last date to request change in installment plan for PY 2015

EM Cap requirement deadlines

Deadline for OCP education



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Joint Employment Under the FLSA

Recently the Department of Labor has been very aggressive in the way it interprets the Fair Labor Standards Act (FLSA). For example, early last year the Department proposed to dramatically increase the salary levels necessary before an employee can qualify under the “white collar” exemptions from overtime eligibility. Last summer the Department attacked the independent contractor/employee question and came down very aggressively on the side of finding most such relationships to be employment relationships. Continuing that trend, on January 20, 2016, the Department issued its “Administrators Interpretation” (AI) giving an expansive interpretation of the joint employment doctrine under the FLSA.

As with its interpretation of the FLSA in the context of independent contractor questions, the Department has announced its intent to look at joint employment through the eyes of the broad definitions contained in the FLSA. Under the FLSA, an entity is the employer of a worker if that entity “suffers or permits an individual to work”. This is a very broad concept, much broader than the concept of a payroll employee, and the AI makes it even broader when applied to joint employment relationships.

According to the AI, there are two types of joint employment relationships. The first is referred to as the “horizontal” relationship, a relationship that exists when two entities are closely related to one another (such as by common ownership or partners in a joint venture) and a person who is admittedly an employee of one entity performs services that benefit the other entity. In these cases, the AI claims that the focus of whether there is joint employment will be upon the relationship between the two entities.

The second and more common relationship is known as the “vertical” relationship, which exists when a worker with an admitted employment relationship with one entity works for or benefits another entity, and is economically dependent upon that second entity. An example of such a relationship described in the AI is that of a staffing agency and its customer, or a general contractor and a building developer. In these “vertical” relationships, the inquiry will focus upon the extent to which the worker is economically dependent upon the user entity, under what is known as the “economic realities” test.

Why is this significant? There are at least two reasons employers who might be in one or the other of these joint employment relationships need to be concerned. The first is that for the purposes of computing how many hours an employee has worked in a week (such that overtime would be required after 40 hours) all of the hours worked by the employee for either of the entities within the given work week must be aggregated and counted. In other words, if the worker provided 30 hours of service to the first entity, and 30 hours of services to the second entity in the same week, (for a total of 60 hours) that worker would be entitled to 20 hours of overtime! The second reason this is important is that under the FLSA, both entities are jointly and severally liable for compliance. Therefore each of the entities in this example would be liable to the worker for 20 hours of overtime!

The Department of Labor is not the only federal agency that has recently focused on the “joint employment” relationship. As reported in earlier issues of The Employer, the National Labor Relations Board has also taken an aggressive stance and found joint employment in the franchisor/franchisee relationship. Therefore, employers that rely on staffing agencies, management companies, independent contractors or other third party entities should no longer assume the mere use of such arrangements will insulate them from employment and labor law obligations to the workers who are providing services to them. Those employers who fail to adapt and adjust to this new reality are likely to find themselves liable for a host of potentially unforeseen employment liabilities.

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March 31 Deadline Reminders

Drug Free Safety Program
Annual Report

EM Cap Requirements

Last Day to request change in installment
plan for PY 2015

One Claim Program
Education Requirements

Last Day to Request Change in estimated
annual payroll

Safety Congress March 9 – 11

The 2016 Ohio Safety Congress and Expo is set to take place March 9-11 at the Greater Columbus Convention Center. Over 6000 participants will attend 200 free educational sessions focused on illness and injury prevention, rehabilitation, return to work and cost savings. This year, more than 200 exhibitors will also be on hand to talk with employers.

The Ohio BWC Safety Congress is the largest and longest running occupational safety, health and workers' compensation event in Ohio.

To register, visit the Ohio BWC website:
[Ohio Safety Congress and Expo.](#)

New BWC Spanish Language Resource

A new resource for Spanish speaking employers and injured workers is now available at the BWC. Daily, from 7:30 am – 5:30 pm, customers can reach a Spanish speaking staff member by calling 1-800-644-6292. The Ohio BWC has also made a Spanish language web page available. The web page contains the information and forms needed to report and manage an injury. Employers can also file an application for coverage and manage their policy. The Spanish language page is available by clicking here: [Spanish Language Information.](#)

Reminder: Group Rating Employers
Safety Education Requirements
Due June 30

Group Rating Safety Education Requirement for July 1, 2015 group members

According to the Ohio Bureau of Workers' Compensation (BWC), any July 1, 2015 group rating/retro member who has had a claim in calendar year 2014 must attend a minimum of two hours of mandated safety training. Employers have until June 30, 2016 to meet this requirement.

As always, V&A Risk Services has got you covered.

Option 1: Webinars - Learn what you can do to positively impact your safety program at the Ohio Commerce & Safety Alliance Workers' Compensation 2-Hour Webinars sponsored by Safety Council of NW Ohio, Toledo Regional Chamber of Commerce and Toledo Trucking Association. Log on to receive the required safety training. **For details see the reverse side of this letter.**

Option 2: Free Seminar – Annual Toledo Regional Chamber of Commerce Workers' Comp Seminar will be held May 3, 2016 at the Toledo Edison Building in Downtown Toledo E-mail marsha.schroeder@toledochamber.com for more information or to register.

Option 3: On-line BWC courses are available to meet the 2 hour requirement. Go to bwc.ohio.gov – click on Safety Services – BWC Learning Center (log in)– Learning Center - Course Catalog – Advanced Search – Category = Division of Safety & Hygiene Training (not onsite) *and* Delivery Method = Online – click Search.

Online courses include:

Avoiding Back Trauma (2 hrs)	OSHA Recordkeeping 101 (2 hrs)
Food Service Safety (2 hrs)	Ladder/Stairway Safety (1 hr)
Health Hazards in Construction (1 hr)	Preventing Cuts and Lacerations (1 hr)
Five Step Process for Preventing Work-Related Musculoskeletal Disorders (1 hr)	Preventing Slips/Trips/Falls (1 hr)
Office Ergonomics: Computer Workstation and Mobile Computing (1.5 hrs)	

Option 4: Other BWC educational opportunities include the Ohio Safety Congress and Expo which will be held March 9-11, 2016. Please forward your certificate if someone attends.

If you or someone from your organization has already completed the training requirement please e-mail a copy of your certificate or test results page (must be dated between 7/1/15 – 6/30/16) to kfinley@variskservices.com or fax to 419.867.1049. Be sure your BWC policy number is on the certificate/results page.

Feel free to contact the V&A Group Rating Department with any questions at 800.493.9662 or e-mail Ken kfinley@variskservices.com or Jim at jweisz@variskservices.com.

Ohio Commerce & Safety Alliance Workers' Compensation Safety Webinar Schedule



WEBINARS

Date	Time	Topic
2/26/2016	9:00 am – 11:00 am	Managing Safety Committees
3/3/2016	9:00 am – 11:00 am	Job Safety Analysis
4/14/2016	9:00 am – 11:00 am	Accident Investigation & Prevention
4/28/2016	9:00 am – 11:00 am	OSHA Inspection Process
5/5/2016	9:00 am – 11:00 am	OSHA's Top Ten Violations & Citations
6/9/2016	9:00 am – 11:00 am	OSHA Emergency Plan Requirements
6/23/2016	9:00 am – 11:00 am	Appreciative Approach to Safety Improvement
6/30/2016	9:00 am – 11:00 am	Improving Employee Participation, A 30 Step Guide

Webinar details –

- To register, please e-mail cgeer@northweststate.edu or call Cheryl Geer 419-267-1493
- After registering you will be sent to a link to the Webinar website. There you will fill out your information and e-mail address to reserve your place.
- Cost is \$25 – mail check payable to Northwest State Community College
- Mailing address:
Northwest State Community College
CTS @ University of Toledo Scott Park
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