

Risky Business



Important Dates

May 25

End of MCO Open Enrollment

Industry Specific Safety and Transitional Work Bonus Program Applications due

May 31

Public employers 45% BWC premium due

Unemployment tax contribution due

June 2

2nd 50/50 payment due

July 1

New fiscal year begins



V&A RISK SERVICES

Workers' Compensation Services

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BWC announces targeted reform

Three workers' compensation bills introduced in April will address quality of care, underperforming providers and focus on returning injured workers to their job sooner. The details of the bills are:

Creating superior outcomes for injured workers

The longer an injured worker remains off the job, the less likely the worker is to have a positive outcome and a successful return to work. The bill ensures care sought in the first 45 days following an injury is paid for regardless of whether the claim is eventually allowed or denied. Focusing on the quality of care and return to work, the bill also requires MCOs to create provider networks and requires that an injured worker use the network after 45 days from the date of injury. The bill encourages workers to follow treatment protocol and move through the treatment plan in a timely manner. High performing providers are rewarded by easing the payment process and offering bonuses.

Under Performing Providers

Providers are a critical part of creating positive outcomes for injured workers. The bill protects injured workers by decertifying providers who present a clear danger to public health and safety. All provider decertification appeals will be made in the Franklin County Court of Common Pleas. The integrity of BWC investigations will be protected by keeping investigation records confidential until the close of an investigation.

Streamlining BWC processes

Reducing bureaucracy and providing incentives that contain costs for employers while also helping the business focus on safety and a quick return to work will be a priority of the bills that were introduced. Employers will save money when their access to rating and discount programs that focus on safety and return to work is codified. It will provide greater flexibility for state universities by allowing the college to participate in self insurance. The BWC will also remove some requirements related to printed materials and certified mail and eliminates the additional premium assessment for older claims.

MCO Open Enrollment Ends May 25th

Employers that want to change their Managed Care Organization can do so until the close of business on May 25th. MCOs medically manage workers' compensation claims and choosing a MCO that fits your needs as an employer may mean the difference between saving or spending tens of thousands of dollars in workers' compensation costs. If you are thinking of changing your MCO and need assistance, please call our offices.

Unemployment News

New work search requirements have been implemented for current unemployed workers claiming unemployment benefits. Unemployed workers who are required to make at least two employer job contacts each week must keep a written record of the employer job contacts. The record will include the employer's name and address, how they applied, the type of work sought, the dates they made contact with the employer and the outcome of each contact. The unemployed worker is now required to report this information when they file for their weekly claim.

Previously this information only had to be provided at the request of the Office of Unemployment Compensation.



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Safety Training Requirement Due for Group Rated Employers

Group rated employers that had at least 1 claim in 2009 or 2010 are required to attend two hours of safety training annually. Employers can meet this requirement by attending a BWC sponsored training or training provided by your group rating sponsor. Training done by a qualified safety professional is also acceptable. If you have not yet completed this training, we have provided a few options below:

Option 1: Watch a webinar sponsored by Safety Council of Northwest Ohio and V & A Risk Services. Participation in one webinar will meet your 2-hour requirement. Time is 9:00 - 11:00 am. Cost is \$25 per attendee. E-mail tnorris@northweststate.edu or call Tami Norris at 419.267.1497 to register.

- **May 22: Lockout/Tagout & Electrical Safety, Are you compliant?**
- **June 7: Required OSHA Safety Training, Are You Compliant?**
- **June 14: Emergency Evacuation Plans, What is your readiness level?**

Option 2: Take a BWC on-line class and pass the test at your speed from the comfort of your office. Classes must add up to a combined 2 hours (at least). Classes include **Avoiding Back Trauma (2 hrs)**, **Getting Started with Safety (4 hrs)**, **Industrial Hygiene Overview (1 hr)**, **Ladder/Stairway Safety (45 min)**, **Preventing Cuts & Lacerations (35 min)**, **Preventing Slips/Trips/Falls (1 hr)**.

In order to access these classes log on to ohiobwc.com, click on Safety Services - BWC Learning Center - Log In (or create a new account - this is different than your website log in) - Course Catalog - enter the name of the class you want to take. Be sure to send the test results to us with your company name & policy number on it.

Option 3: If you attended the Ohio Safety Congress in March 2012, please e-mail or fax your certificate of attendance to us and it will meet your requirement.

Deadlines Extended

Employers applying for two components of the Destination: Excellence have a little more time to submit their applications. The BWC has extended the application deadline for the [Industry Specific Safety](#) and [Transitional Work Performance Bonus](#) to the close of business on May 25th.

For more information about Destination: Excellence, visit the [Ohio BWC website](#) or call our offices.

Enforcing Safe Practices May be Discriminatory according to OSHA

Enforcing workplace safety policies just became more complicated and possibly illegal in light of a March 12, 2012 OSHA memorandum. In that memo, OSHA identified several common workplace safety policies it considers discriminatory and therefore unlawful. Those policies include:

- Disciplining an employee for violating a company safety policy. Many workplace accidents result from reckless and irresponsible behavior, and disciplining a known offender for repeated safety violations is a "stick" workplaces frequently use to punish such offenders. OSHA considers such policies potentially discriminatory and impermissible. The key, OSHA explains in its memorandum, is consistent application of the safety policy even in the absence of an injury. That is, OSHA explains, does the company monitor compliance with the safety policy even where no injury occurs, and, if so, is discipline imposed against such employees absent an injury? If so, disciplinary action against the offending employee appears to pass muster with OSHA. If not, and the safety policy is directed solely against employees who are injured as a result of a violation of a company safety policy, the policy may violate federal law, OSHA warns.
- Similarly, policies that punish an employee's failure to timely report an injury, or punish the employee's failure to complete the necessary paperwork for documenting an injury, may also run afoul of OSHA regulations. OSHA's memorandum explicitly states that companies may not discipline an employee who does not immediately realize the injury is significant enough to report it. Again, such policies are relatively common, and companies often implement such rules in response to employees who deliberately fail to report an injury in order to avoid a post-accident drug test. According to OSHA, these policies may also be illegal.
- OSHA reinforced its dislike of incentive programs that indirectly encourage employees not to report injuries, or cause fellow co-workers to discourage an injured employee from reporting an injury in order to maintain a perfect record of injury-free days. Such incentives often take the form of prizes or bonuses to employees for maintaining a given number of injury-free days. In such companies, posters on the plant floor that proudly publicize the current count of injury-free days serve as a daily reminder of the company's success at reducing workplace injuries. Again, because these efforts--while well-intentioned--may discourage the reporting of such injuries, OSHA has historically disapproved of this practice. Instead, OSHA suggests, companies should offer rewards for suggesting ways to strengthen safety practices, or have a "recognition party" following the completion of safety training (yes, that is actually in the memorandum).

Companies which have any or all of the above policies may find OSHA's recent pronouncements very disconcerting. It is precisely because a select few aberrant employees simply cannot seem to follow simple safety rules that many companies feel compelled to implement such zero-tolerance policies. Nevertheless, OSHA considers such policies either directly discriminatory or, at a minimum, potentially discriminatory, and therefore, in many cases, unlawful. Consulting with counsel is one way to ensure existing safety policies comply with OSHA's regulations and may also help to avoid an OSHA investigation based on such potentially discriminatory policies.

Reprinted with permission. Steven P. Dlott is a Certified Specialist in Workers' Compensation Law and heads the Workers' Compensation Department at Meyers, Roman, Friedberg & Lewis. Steve is also a member of the Labor and Employment practice group which has extensive experience in defending employers in workplace investigations including OSHA inspections, informal conferences, consultation on OSHA laws and regulations, and litigating matters before the Occupational Safety & Health Review Commission.