

Risky Business

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V&A RISK SERVICES

Workers' Compensation Services

Tradition Square
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Toledo, OH 43617
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Proposed Self-Insured Rule Changes

The BWC Board of Directors has introduced proposed rule changes for self-insured and is seeking feedback. The proposed changes are:

Securitization Requirements: The BWC has recommended that it be allowed to determine whether it will require a contract of guaranty from the parent of a subsidiary seeking SI status when the parent company owns 50% or more of the subsidiary's stock. Currently, the subsidiary must produce a contract of guaranty from its parent company. The rule change would allow the BWC the flexibility in determining the appropriate securitization requirements.

Elimination of Guaranty Fund Assessments: The BWC recommends that the 6% assessment currently charged to self-insured employers with the addition of each new subsidiary to an existing self-insured policy be eliminated.

Phase Out Assessments: The BWC is recommending that an employer have the option to pay a one time assessment when the employer ceases to operate as an SI employer. Currently, employers pay on a 10 year phase out schedule.

Self-Insured Experience Transfer: The BWC has recommended that, when an employer returns to the state fund from self-insured status, the employer will be required to provide the BWC with its payroll and a list of all claims incurred while the employer was self-insured along with the losses associated with the claims. This would allow the BWC to include the self-insured experience in the rating of a group. The goal of this rule change is to prevent employers from moving into self-insurance as a means to "clean" its experience so that it can return to the state fund and receive the highest group rating discounts allowed.

Retrospective Rating and Deductible Program Applications due April 19th

Employers applying for the Individual or Group Retrospective Rating Program or the Small or Large Deductible Programs must have their packets returned to our offices no later than April 19th.
If you have questions or need assistance, please contact
Jim Weisz at 419-867-1044.



Important Dates

April 19

**Individual and Group
Retrospective Rating
applications due**

**Large and Small
Deductible applications
due**

April 30th

**Drug Free Safety
Program application due
(7/1 start date)**

**Transitional Work Bonus
Application due (7/1 start
date)**

**Industry Specific Safety
Program Application due
(7/1 start date)**

**One Claim Program
application due**



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BWC Lawsuit Update

By Vincent S. Mezinko

Recently, a Judge from the Cuyahoga County, Ohio, Common Pleas Court ruled that the Ohio Bureau of Workers' Compensation (BWC) overcharged as many as 270,000 Ohio employers who either did not qualify for membership in group rating or, alternatively, were removed from group rating due to claim activity. The decision involves Ohio employers who did not participate in group rating from 2001 through 2008. Initially, plaintiff's felt their damages could exceed \$1.3 billion in premium returns and interest, although more recent estimates indicate that damages may be approximately \$800 million dollars. The case was filed in 2007 by San Allen, Inc., better known as Corky & Lenny's. The case was established as a class action and contended that employers who did not participate in groups paid excessive premiums to the BWC state insurance fund which, in turn, subsidized significant discounts offered to employers who did qualify for a group. Judge Richard McMonagle had issued an order in 2009 demanding that BWC change its system for setting premiums for injury insurance. BWC, who often offered up to a 90% discount for group membership, has modified group criteria significantly since 2009. However, Judge McMonagle, relying on testimony from former and current BWC employees, as well as the outside consulting actuaries retained by BWC, determined that BWC had a faulty group rating plan. Judge McMonagle felt that BWC violated statutes that called for BWC to develop an equitable and fair rating system for employers, and also noting that current statutes required a reasonable way of charging workers' compensation premiums. The Judge's decision requires BWC to return any excessive premiums charged to non-group Ohio employers. Plaintiffs in the case had until January 28, 2013 to file a detailed account of their damages.

BWC does not believe that non-group members who paid higher premiums are entitled to restitution. Attorney Robert Hager, representing BWC, stated that Bureau Administrators "acted, in fact, within their discretion" and that "class members were treated fairly." BWC has insisted that much of the group discount was based upon safety-related initiatives. The BWC has appealed the decision.

Any Ohio employers who did not participate in group rating or who were removed from group rating from 2001 through 2008 should follow this case closely.

Mr. Mezinko is a partner in the law offices of Margelefsky and Mezinko, LLC and specializes in workers' compensation and employment related counsel. Mr. Mezinko works with both sole proprietors and large, self-insured employers in the private and public sector. You can connect with Mr. Mezinko on [LinkedIn](#).

Ohio Court Rules the BWC Overcharged Thousands of Small Employers

In December, a Cuyahoga Common Pleas Court judge ruled that the Ohio BWC overcharged thousands of Ohio employers that did not qualify for membership in group rating programs from 2001-2008 for workers' compensation premiums. The 2007 lawsuit alleged that, from 2001 to 2009, the BWC gave up to a 90 percent discount to employers eligible to join a group workers' compensation program while charging ineligible companies charged excessive rates to pay for the discounts.

The judge has determined that the employers are due \$860 million. The Ohio BWC plans to appeal the decision.

BWC Expands Options for Required Safety Training

Employers participating in Group Experience and Group Retrospective Rating programs now have more options for meeting the annual required safety training.

Currently, group employers who experience a claim must attend two hours of safety training. The BWC has given employers the option to instead complete an online accident analysis form and BWC's associated online safety class.

The accident analysis and class help employers identify injury trends and determine the cause of the accident, allowing the employer to address safety issues and prevent future injuries.

The BWC also has modified training requirements for employers who sustain claims outside of the green year. These employers are no longer subject to the safety training requirement. The green year is the period in which a claim exists prior to entering the employer's experience.

Claims Triage Rolled out Statewide

After a pilot program in Dayton, Governor's Hill and Toledo produced positive results, the Claims Triage model has now been rolled out statewide. Claims Triage handles claims based on the claim's level of complexity. Moving from a generalist concept to a specialist concept, BWC employees will apply their specialized skill sets to claims at certain points in time. The roles of the claims service specialists will be:

- Intake specialist – Investigates, evaluates and determines all initial benefits eligibility.
- Return to work (RTW) specialist – Manages all claims receiving ongoing wage replacement compensation with a focus on return to work strategies and claim resolution.
- Remain at work (RAW) specialist – Manages claims not currently receiving ongoing wage replacement compensation by focusing on RAW strategies and claim resolutions.

As a part of the claims triage process, the BWC will work closely with Managed Care Organizations, employers and injured workers focusing on returning injured workers back to work.

V&A Risk Services & Working Partners® Webinar

Does the BWC's Drug-Free Safety Program make "CENT\$" ?

Is it worth it for you to apply for the BWC's Drug-Free Safety Program (DFSP)? Find out how this program could benefit your company during a free, practical, no-nonsense webinar.

DFSP enrollment deadline is April 30th.

Dates & Times

- Tuesday, March 26, 9 - 10 a.m.
- Wednesday, April 10, 9 - 10 a.m.
- Tuesday, April 23, 9 - 10 a.m.

Click to register or visit
www.WorkingPartners.com and click
"FREE Webinar"

Key Topics

- Who can apply
- Premium discounts and other savings
- Program deadlines and your responsibilities
- How much time & money you can expect to invest
- How to apply for grants to help pay for your DFSP
- Resources to make the process hassle-free

About Working Partners®

Working Partners® is the "turn-to" DFWP/DFSP resource. They facilitated the BWC process for the original DFWP premium discount program in Ohio and are acknowledged by the Ohio Department of Alcohol and Drug Addiction Services as the strongest DFWP/DFSP educational resource in the state. For more information, contact Working Partners® at 614.337.8200/866.354.3397 or Mail@WorkingPartners.com.

