

# Risky Business

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**V&A RISK SERVICES**

Workers' Compensation Services

Tradition Square  
2730 Centennial Rd.  
Toledo, OH 43617  
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## *OSHA Recordkeeping Rule Change Finalized*

The Occupational Safety and Health Administration (OSHA) has issued a final rule to modernize data collection for injuries and better inform workers, employers, the public and OSHA about workplace hazards.

The new rule requires all establishments with 250 or more employees in industries covered by the recordkeeping regulation to electronically submit injury and illness information from Form 300, 300A and 301 to OSHA. Information from the 2016 injury and illness recordkeeping Form 300A must be submitted by July 1, 2017. Establishments with 20-249 employees in specified "high risk" industries must electronically submit information from OSHA Form 300A by July 1 in 2017 and 2018 and by March 2 every year thereafter. OSHA may direct other establishments not currently required to submit to also comply with the recordkeeping rule.

The new requirement does not change the obligation of the employer to complete and retain injury and illness records under the Recording and Reporting Occupational Injuries and Illness Regulations.

The rule change also affects the employer obligation to ensure that all employees report work related injuries and illness and without fear of retaliation. By August 10, 2016, employers must establish "a reasonable procedure" for employees to report work related injuries and illness promptly and accurately. As set forth in the new rule, employer procedures cannot discourage a reasonable employee from reporting a workplace injury or illness. Some safety incentive and post accident drug testing programs may be affected by this rule change.

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## *Private Employer True Up Begins July 1*

The final step of BWC's move to the prospective billing model will begin on July 1 when employers are required to true-up their payroll report. The new process requires employers to report their actual payroll for the previous policy year and reconcile any differences in premium paid. It is important that all employers complete the report, even if the year matches the estimate the BWC provided or the employer had a zero payroll.

### **Set up E-Account to avoid Long Phone Delays**

The BWC is anticipating heavy call volume during the true up period of July 1 – August 15 and is encouraging employers to set up an E-Account to complete the process. The BWC has put together a short video explaining how to set up the E-Account: [Payroll True-up](#).



## Important Dates

### June 30

Deadline for Safety  
Council Participation  
Requirements

Premium Year 2016 First  
Installment Due

Industry Specific Safety  
Onsite Consultation  
Survey (SH-29) deadline

### July 1

Private employer policy  
year begins

Private employer True-Up  
Begins



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## Unemployment Compensation Debt Issue Resolved

On May 25, the Ohio House of Representatives and Ohio Senate approved legislation that will pay off the balance of the federal loan related to unemployment compensation. The bill is now awaiting Governor Kasich's signature. This is an issue that has been a high priority in the Toledo Regional Chamber's advocacy efforts on behalf of our members.

As a result of these efforts, employers will see a dramatic decrease in their federal unemployment tax (FUTA) rate starting in 2017. Ohio employers currently pay \$147 on the first \$7000 of every employee. Had the loan to federal government not been repaid by November, that tax would have increased to \$168 per employee. The actions by the legislature will save employers in the Toledo region millions of dollars in additional taxes. In January, the full FUTA credit will be restored, dropping the amount the employer pays to just \$42 per employee.

The loan will be repaid by taking a one-time loan from the state's unclaimed funds account to the Unemployment Compensation Fund. It is expected that this amount will be between \$220M and \$240M. It is required that the loan to the unclaimed funds account be repaid by the end of February 2018, through a one time charge of approximately \$45 per employee in 2017. The reduced FUTA rate and one-time loan repayment will still be almost 50% less than if the federal loan was not repaid by November.

Although the unemployment debt issue has provided relief to businesses in the short term, the Chamber remains committed to working with legislature and the Administration to address the long-term solvency of the state's unemployment compensation system. Work will continue on this issue over the summer and we expect action to be taken by the legislature this fall.

*Brian Dicken is the Vice President of Advocacy and Public Policy for the [Toledo Regional Chamber of Commerce](#). \*Reprinted with permission from [Toledo Regional Chamber of Commerce Blog](#)*

*V&A Risk Services offers comprehensive unemployment services to our clients in any state in which they operate. As a part of our service, V&A Risk becomes the address of record for you, taking the burden off of your staff and assures that all actions are timely. We provide full consultation and hearing representation, for a minimal administration fee and per claim/hearing fee. Contact Ken Finley [kfinley@variskservices.com](mailto:kfinley@variskservices.com) to add this service.*

## ***DOL Finalizes New Overtime Rules***

Last summer the Department of Labor announced a proposed rule that recommended a significant change to criteria by which overtime exempt employees are measured. After receiving voluminous comments to the proposed rule, last month the Department released the final rule.

Under federal law employees must meet two tests before they are considered “exempt” from the overtime requirements. Those tests are known as the “salary basis” test and the “primary duty” test. The new rule announced only affects the salary basis test. The rule increases the minimum salary threshold for overtime exempt employees from the current level of \$455 per week, or \$23,660 per year; to \$913 per week or \$47,476 per year. This means that with certain exceptions, employees who earn less than these minimum thresholds are entitled to be paid overtime rates for hours worked beyond 40 hours per week. The new rule does allow up to 10% of the minimum threshold to be paid in the form of nondiscretionary bonuses and incentive payments, such as commissions, so long as those payments are made at least quarterly.

The new rule establishes “indexes” for the minimum salary wages by tying them to the 40<sup>th</sup> percentile of weekly earnings of full-time salaried employees in the census region with the lowest wage (currently, this is the South region). It also provides a mechanism to update these minimum thresholds every three years to prevent the erosion of wages by inflation.

The new rule also adjusts the minimum salary threshold for “highly compensated employees,” increasing from \$100,000 per year to \$134,004 per year.

While rules from the Department of Labor usually take effect 60 days after announcement, the Department has announced that the new overtime rules will not become effective until December 1, 2016, allowing employers an opportunity to adjust their wages and workforces accordingly.

*Written by Dana Quick, an attorney with [Bugbee & Conkle, LLP](#), practicing in the area of Labor & Employment law.*

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### ***Sarah Morrison named Ohio BWC Administrator***

Governor Kasich has named Sarah Morrison as the new administrator and CEO of the Ohio Bureau of Workers' Compensation. Morrison has been the interim BWC administrator since Steve Buehrer stepped down in April.

“Sarah has been an important part of the BWC leadership team that helped drive our state’s workplace injury rate below the national average and provided Ohio businesses with \$4.3 billion in rate cuts, rebates and credits. I am confident she will build on that record of achievement and continue BWC’s work to strengthen Ohio’s business environment,” Kasich said.

Morrison was the BWC’s chief legal officer since joining the bureau in 2012 after 15 years of private law practice.

## ***BWC Board Approves Opioid Prescribing Rule***

The Ohio BWC has approved an opioid prescribing rule focused on preventing dependence and encouraging physicians to use best medical practices when treating injured workers with opioids. Under the rule, the BWC will not reimburse for opioid prescriptions written by physicians who fail to use best medical practices.

"We must ensure best practices are followed at the onset of an injury and throughout the course of treatment so injured workers receive care that improves their condition," said BWC Administrator/CEO Sarah Morrison. "Ohio's injured workers deserve the best possible treatment that addresses their medical needs without facing the life-changing consequences of opioid dependence or addiction."

Best practices include development of an individualized treatment plan, risk assessment and monitoring of the injured workers' progress, including improvement in the function of the worker. The new rule will address physicians who fail to comply with those practices with corrective action from written warnings to removing the physician from BWC's network of approved providers.

The new rule will also allow the BWC to provide treatment for opioid dependence that arises from the use of medications covered by the BWC.

The BWC began making improvements to their pharmacy program in 2010 to ensure injured workers receive medications necessary for their recovery without endangering their health. Since the creation of the BWC formulary, opiate prescriptions have steadily fallen, dropping by 23.8 million doses. The rule will move to the Ohio General Assembly and, if approved there, will become effective on October 1, 2016.

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### ***On the Road with V&A***

***Ohio Self Insurers Association  
Conference  
June 22-24***

***Ohio Staffing and Search  
Association Annual Conference  
June 22-24***

### ***BWC Announces \$15 million rebate to Ohio Counties***

BWC Administrator /CEO Sarah Morrison announced a one time \$15 million rebate to Ohio's 88 county governments. The BWC board of directors approved the rebate on May 26.

The rebate is from the Public Work-Relief Employee's Fund that provides counties with workers' compensation coverage for their work relief employees. Work relief employees must work for a government entity in exchange for public assistance payments. The PWRE provides compensation and medical benefits to individuals injured in the course of their public works employment. Citing strong investment returns from this fund, the counties will receive rebates ranging from about \$100 to more than \$1 million, with exact amounts to be determined after May 31. The counties can expect the checks at the end of June.