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H.B. 80
133rd General Assembly

Bill Analysis

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Primary Sponsor: Rep. Oelslager

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SUMMARY

BUREAU OF WORKERS' COMPENSATION

Coverage and eligibility

Coverage for post-traumatic stress disorder

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

Voluntary abandonment doctrine

- Provides that, to be eligible to receive temporary total disability (TTD) compensation, a person must be unable to work or must suffer a wage loss as the direct result of a disability arising from an injury or occupational disease.
- Prohibits a person from receiving TTD compensation when the person is not working or has suffered a wage loss as the direct result of reasons unrelated to a disability arising from an injury or occupational disease.
- States that the General Assembly intends to supersede any previous judicial decision that applied the voluntary abandonment doctrine.
- Prohibits a person from receiving permanent total disability (PTD) compensation when the person is not working for reasons unrelated to a disability arising from an injury or occupational disease.
- Applies the rule to claims pending on the provision's effective date and to claims arising after that date.

Post-exposure testing for detention facility employees

- Requires, under specified conditions, the Administrator of Worker's 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.

Compensation and benefits

Temporary total disability compensation

- Requires, unless otherwise provided in a collective bargaining agreement, an employer to either pay an employee or reinstate the employee's sick leave when the employee's temporary total disability compensation is offset by an amount paid to the employee for accrued sick leave.

Funeral expenses

- Increases the funeral expense benefit cap from \$5,500 to \$7,500.

Claimant's immigration status and authorization to work

- Requires, on the form used to initiate a workers' compensation claim, the Administrator to request information about an employee's and, when applicable, a dependent's immigration status and authorization to lawfully work or reside in the United States.
- Prohibits a person who provides false information regarding immigration status or work authorization from receiving compensation and benefits under the Workers' Compensation Law and subjects the person to criminal prosecution for workers' compensation fraud.

Continuing jurisdiction over workers' compensation claims

- 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.

Final settlement agreements

- 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.

Additional award for specific safety violation

- Requires, for claims arising on or after the provision's effective date, a claim for an additional award of compensation for a violation of a specific safety rule to be filed within one year after the injury, death, or diagnosis of disability due to occupational disease, rather than within two years as under current administrative rule.

Appealing Industrial Commission orders

- 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.

Coal-Workers Pneumoconiosis Fund transfer

- Authorizes the Director of Natural Resources to annually request the Administrator to transfer a portion of the net position of the Coal-Workers Pneumoconiosis Fund to the Mining Regulation and Safety Fund created in the Coal Surface Mining Law.
- Requires the Administrator, on receiving a request from the Director, to transfer not more than \$1 million by July 1 or as soon as possible thereafter.
- Requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, to adopt rules governing the transfer to ensure the solvency of the Coal-Workers Pneumoconiosis Fund.

DEPARTMENT OF COMMERCE

Employee misclassification

- Requires the Superintendent of Industrial Compliance to establish a test, consistent with the test used by the U.S. 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.
- 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.
- Permits an individual to file a complaint with the Superintendent against an employer when the individual reasonably believes that the employer has misclassified the individual.
- Requires the Superintendent to investigate a misclassification complaint and hold an administrative hearing to resolve a complaint supported by reasonable evidence.
- Requires the Superintendent to take specific actions, including assessing a civil penalty, when the Superintendent determines, after a hearing, that an employer misclassified an employee.
- Prohibits the Superintendent from assessing a penalty against an employer when the employer voluntarily reclassifies a misclassified employee ten days before the Superintendent holds a hearing.
- Allows an employer to appeal the Superintendent's determination to a court of common pleas in accordance with the Administrative Procedure Act.

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

OTHER AGENCIES

Employee medical examinations

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

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DETAILED ANALYSIS

BUREAU OF WORKERS' COMPENSATION

Coverage and eligibility

Coverage for post-traumatic stress disorder

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

Under the bill, a peace officer, an emergency medical worker, or a firefighter who is diagnosed with post-traumatic stress disorder (PTSD), received in the course of and arising out of the person's employment as a peace officer, firefighter, or emergency medical worker, is eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the PTSD is connected to a compensable physical injury. Currently, an employee is not eligible to receive any compensation or benefits under Ohio Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.

Under continuing law, "peace officer" means all of the following:

- A sheriff or deputy sheriff;
- A marshal or deputy marshal;
- A member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio;
- A member of a police force employed by a metropolitan housing authority;
- A member of a police force employed by a regional transit authority;
- A state university law enforcement officer;
- An enforcement agent of the Department of Public Safety;

- An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
- An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest-fire investigator, a natural resources officer, or a wildlife officer;
- A person designated to perform law enforcement duties in a park district or conservancy district or by a park commission;
- A veterans' home police officer;
- A special police officer employed by a port authority;
- A township police constable;
- A police officer of a township or joint police district;
- A special police officer employed by a municipal corporation at a municipal airport or certain other municipal air navigation facilities;
- The House of Representatives Sergeant at Arms, if the person has arrest authority, or an assistant House of Representatives Sergeant at Arms;
- The Senate Sergeant at Arms or an assistant Senate Sergeant at Arms;
- Certain Bureau of Criminal Identification and Investigation employees or officers;
- A state fire marshal law enforcement officer;
- The Superintendent and troopers of the State Highway Patrol, for specified purposes.

Continuing law defines "emergency medical worker" as any of the following persons, whether the person is paid or a volunteer, so long as the person is certified under Ohio law:

- A first responder;
- An emergency medical technician-basic;
- An emergency medical technician-intermediate;
- An emergency medical technician-paramedic.

Voluntary abandonment doctrine

(R.C. 4123.56 and 4123.58; Section 8)

TTD compensation

The bill provides, for all claims pending on or arising after the provision's effective date, that an employee who is unable to work or suffers a wage loss as the direct result of a disability arising from an injury or occupational disease is entitled to receive temporary total disability (TTD) compensation, provided the employee is otherwise qualified. If the employee is not working or has suffered a wage loss as the direct result of reasons unrelated to a disability

arising from an injury or occupational disease, the employee is not eligible to receive TTD compensation.

The bill states that the General Assembly intends to supersede any previous court opinion that applied the doctrine of voluntary abandonment to a TTD claim. Under the doctrine, to be eligible for TTD 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.¹

PTD compensation

The bill prohibits a person from receiving permanent total disability (PTD) compensation when the person is not working for reasons unrelated to an allowed injury or occupational disease. Current law prohibits a person from receiving PTD compensation when the person voluntarily abandons the workforce for reasons unrelated to an allowed injury or occupational disease. Under continuing law a person also may not receive PTD compensation if the person is unable to engage in sustained remunerative employment for one, or any combination, of the following reasons:

- Retirement unrelated to an allowed injury or occupational disease;
- The person's impairments are not the result of an allowed injury or occupational disease;
- Solely due to the person's age or aging;
- The person has not engaged in educational or rehabilitative efforts to enhance the person's employability, unless such efforts are determined to be in vain.

Post-exposure testing for detention facility employees

(R.C. 4123.026; Section 8)

The bill expands the current post-exposure testing law, which covers diagnostic testing for specified safety officers under certain conditions, to include detention facility employees. Under the bill, the Administrator of Workers' Compensation, or a detention facility that is a self-insuring employer (an employer authorized to directly pay compensation and benefits in a claim), must pay for post-exposure medical diagnostic services to investigate whether a person employed by a detention facility, including a corrections officer, sustained an injury or occupational disease from coming into contact with the blood or other body fluid of another person in the course of and arising out of the employee's employment. Under continuing law, post-exposure diagnostic tests are covered if they are consistent with the standards of medical care existing at the time of exposure and the employee came into contact with the blood or bodily fluid through any of the following means:

¹ See, e.g., *State ex rel. Gross v. Indus. Commission*, 115 Ohio St.3d 249, 253-255 (2007).

- A splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;
- A puncture in the skin;
- A cut in the skin or another opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.

The bill defines “corrections officer” as a person employed by a detention facility as a corrections officer. A “detention facility” is any public or private place used for the confinement of a person charged with or convicted of any state or federal crime or found to be a delinquent child or unruly child under any state or federal law.

Currently, the peace officers, firefighters, and emergency medical workers described under “**Coverage for post-traumatic stress disorder**,” above are covered by the post-exposure testing requirement.

According to the Industrial Commission, the administrative body that adjudicates claims under the Workers’ Compensation Law, “[t]he list of covered individuals and job classifications is extensive, but the classification of a ‘corrections officer’ is not [currently] included.”²

Under continuing law, any employee who is injured or who contracts an occupational disease in the course of employment is entitled to necessary medical, nurse, and hospital services and medicines.³ Thus, if a detention facility employee suffers an injury or contracts an occupational disease in the course of employment, and diagnostic tests are a necessary part of treatment, the costs currently are covered if the claim is otherwise compensable. The bill’s post-exposure medical testing provision applies only to post-exposure medical tests used to investigate whether the employee sustained an injury or occupational disease.⁴

Compensation and benefits

Temporary total disability compensation offsets

(R.C. 4123.56; Section 8)

Except as otherwise provided in a collective bargaining agreement, if an employee’s TTD compensation is offset by an amount paid to the employee for accrued sick leave, the bill requires the employee’s employer to do one of the following:

- Reinstatement of the sick leave that offset the employee’s TTD compensation;
- Payment to the employee of the amount by which the employee’s TTD compensation was offset by the sick leave.

² Ohio Industrial Commission, Record of Proceedings, Claim 06-344388, 2007 WL 9703017.

³ R.C. 4123.66 and R.C. 4123.54, not in the bill.

⁴ See, e.g., Ohio Industrial Commission, Record of Proceedings, Claim 08-351946, 2008 WL 11408637.

Under continuing law, if an employer provides supplemental sick leave benefits in addition to TTD compensation, and if the employer and an employee agree in writing to the payment of the supplemental sick leave benefits, TTD benefits may be paid without an offset for those supplemental sick leave benefits.

Funeral expenses

(R.C. 4123.66)

Under continuing law, the Administrator or a self-insuring employer is required to pay a reasonable amount to cover funeral expenses when an employee dies from a compensable injury or occupational disease. The bill increases the amount the Administrator is authorized to expend from the State Insurance Fund to pay funeral expenses from \$5,500 to \$7,500.

Claimant's immigration status and authorization to work

(R.C. 4123.01, 4123.51, and 4123.513; Section 8)

The bill requires, on the form used to initiate a workers' compensation claim, the Administrator to include all of the following:

- If a claimant is an employee:
 - A place for the claimant to state whether the claimant is a U.S. citizen;
 - A place for the claimant to state whether the claimant is an illegal alien or an unauthorized alien;
 - A place for a claimant who is not a U.S. citizen, illegal alien, or unauthorized alien to provide the claimant's alien registration number or other signifier that the claimant is authorized to work by the U.S. Department of Homeland Security or its successor and the authorization's expiration date.
- If a claimant is a dependent of an individual who was an employee and who died as a result of suffering an injury or contracting an occupational disease:
 - A place for the claimant to state whether the claimant is a U.S. citizen;
 - A place for the claimant to state whether the claimant is an illegal alien or an unauthorized alien;
 - A place for the claimant to state whether the claimant resides in the U.S.;
 - A place for a claimant who resides in the U.S. and is not a U.S. citizen to provide proof that the claimant resides in the U.S. lawfully;
 - A place for the claimant to provide the following information about the deceased employee:
 - ❖ Whether the deceased employee was a U.S. citizen;
 - ❖ Whether the deceased employee was an illegal alien or an unauthorized alien;
 - ❖ For a deceased employee who was not a U.S. citizen, illegal alien, or unauthorized alien, the deceased employee's alien registration number or other

signifier that the deceased employee was authorized to work by the Department or its successor and the expiration date of the deceased employee's authorization to work.

Under the bill, a claimant who provides false information regarding immigration status or work authorization is ineligible to receive compensation or benefits under the claim for which the information was supplied and will be subject to prosecution for workers' compensation fraud.

An "illegal alien," under the bill, is an alien who is deportable if apprehended because of one of the following:

- The alien entered the U.S. illegally without the proper authorization and documents.
- The alien once entered the U.S. legally and has since violated the terms of the status under which the alien entered, making that alien an "out-of-status" alien.
- The alien once entered the U.S. legally but has overstayed the time limits of the original legal status.

An "unauthorized alien" is an alien who is not authorized to be employed as determined in accordance with the federal Immigration Reform and Control Act of 1986.⁵

Continuing law coverage

Continuing law includes "aliens" in the definition of employee, and thus an alien is covered under the Law. The Workers' Compensation Law does not define "alien."

Continuing law prohibits the Bureau of Workers' Compensation (BWC), Industrial Commission, any other body created by state law, or any Ohio court from discriminating against the widows, children, or other dependents who reside in a foreign country when awarding compensation to the dependents of employees or others killed in Ohio.⁶

Continuing jurisdiction over workers' compensation claims

(R.C. 4123.52; Section 8)

The Industrial Commission and the Administrator have continuing jurisdiction over each workers' compensation claim, and the Commission may modify or change its former findings and orders. However, in the absence of statutorily specified events, the Commission cannot modify or change a former finding or order, nor award compensation or benefits in a claim, if more than five years have passed since the date of injury. If a statutorily specified event occurs, the Commission's authority to change or modify a finding or order, or award compensation or benefits in the claim, extends for an additional five years from the date of the event.

⁵ 8 United States Code 1324a.

⁶ R.C. 4123.90, not in the bill.

The bill makes the rendering of medical services, rather than payment for the services as under current law, an event that extends the Commission's authority for an additional five years. This applies to claims arising on or after the provision's effective date. Under continuing law, the following events also extend the Commission's authority for an additional five years:

- A payment of compensation for TTD, wage loss, permanent partial disability, or PTD;
- A payment of wages in lieu of compensation in accordance with continuing law;
- The claimant's death.

Final settlement agreements

(R.C. 4123.65; Section 8)

The Worker's Compensation Law allows a state fund employer (an employer who obtains workers' compensation coverage through the State Insurance Fund), the employer's employee, or the Administrator to file an application for approval of a final settlement against the State Insurance Fund. The Law also allows a self-insuring employer and the employer's employee to enter a settlement agreement. A proposed settlement of a state fund claim takes effect 30 days after the Administrator approves the settlement. A settlement between a self-insuring employer and a claimant takes effect 30 days after the parties sign it. During the 30-day period, a party may withdraw from a proposed settlement by sending written notice to the other interested parties.

The bill prohibits an employer, for claims arising on or after the provision's effective date, from refusing or withdrawing from a proposed settlement agreement if the claim is no longer in the employer's industrial accident or occupational disease experience for premium calculation purposes.

Under continuing law, the Administrator annually revises basic premium rates so they are adequate to maintain the solvency of the State Insurance Fund and a reasonable surplus. When revising basic employer rates, the Administrator examines the oldest four of the last five policy years of combined accident and occupational disease experience.⁷ Thus, the bill prohibits an employer from refusing or withdrawing from a proposed settlement when the claim to be settled is older than five years.

Additional award for specific safety violation

(R.C. 4121.471; Section 8)

In addition to authorizing the creation of the workers' compensation system, the Workers' Compensation Amendment to the Ohio Constitution allows the filing of a claim that a person suffered an injury, contracted an occupational disease, or was killed in the course of employment because the person's employer violated a specific safety rule enacted by the General Assembly or adopted by the Administrator. The Industrial Commission has exclusive

⁷ R.C. 4123.34, not in the bill.

jurisdiction to hear and decide claims alleging violations of specific safety rules. If the Commission finds that the employer's violation of a specific safety rule caused an injury, disease, or death, the Commission must grant an additional award that is between 15% and 50% "of the maximum award established by law."⁸

Under the bill, a claim arising on or after the provision's effective date for an additional award for violation of a specific safety rule (a "VSSR" award) must be filed within one year after the date of the injury, death, or diagnosis of disability due to an occupational disease. Currently, an administrative rule requires claims for these additional awards to be filed within two years of the date of injury, death, or inception of disability due to occupational disease.⁹

Appealing Industrial Commission orders

(Section 9)

Sub. H.B. 27 of the 132nd General Assembly extended the time to appeal an Industrial Commission order to a court of common pleas from 60 days to 150 days, provided a party gives notice of intent to settle and the opposing party does not object.¹⁰ The bill applies the extension to workers' compensation claims pending on or arising after September 29, 2017, the effective date of that change.

Coal-Workers Pneumoconiosis Fund transfer

(R.C. 4131.03)

The bill allows the Director of Natural Resources to annually request that the Administrator transfer a portion of the funds from the net position of the Coal-Workers Pneumoconiosis Fund created under continuing law to the Mining Regulation and Safety Fund created under the Coal Surface Mining Law¹¹ for the purposes specified in that Law. If the Administrator receives a request from the Director, the Administrator must transfer no more than \$1 million on July 1 or as soon as possible after July 1.

The Administrator, with the advice and consent of the BWC Board of Directors, must adopt rules in accordance with the Administrative Procedure Act¹² governing the fund transfers to ensure the solvency of the Coal-Workers Pneumoconiosis Fund. For that purpose, the Administrator may establish tests based on measures of net assets, liabilities, expenses, interest, dividend income, or other factors that the Administrator determines appropriate that may be applied before making a transfer.

⁸ Ohio Const., art. II, sec. 35.

⁹ Ohio Administrative Code 4121-3-20.

¹⁰ R.C. 4123.512, not in the bill.

¹¹ R.C. 1513.30, not in the bill.

¹² R.C. Chapter 119.

Technical correction

(R.C. 4123.038)

The bill 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.

DEPARTMENT OF COMMERCE

Employee misclassification

(R.C. 4177.01 to 4177.06, 4121.01, 4123.01, 4141.01, and 5747.01)

Definition of “employee”

The bill requires the Superintendent of Industrial Compliance to establish a test, consistent with the test used by the U.S. Internal Revenue Service (IRS), to determine whether an individual is an employee or an independent contractor for the purposes of the Workers’ Compensation Law, the Unemployment Compensation Law, and the Income Tax Law. Currently, those laws have a different or no definition of “employee” for purposes of the law and have different tests to determine whether an individual performing services for another is covered by that law (all of the tests generally examine who directs and controls the services performed to determine employee status).

Background – IRS test

The IRS uses what is known as the “common law test” to determine whether an individual is an employee or an independent contractor. This 11-factor test is used for federal income tax and federal unemployment tax purposes.¹³ The test is divided into three categories: (1) behavioral control, (2) financial control, and (3) the type of relationship of the parties.

Behavioral control – this category determines whether the business has a right to direct and control how a worker does the task for which the worker is hired. Two factors are included in this category:

- Instructions that the business gives to the worker – an employee is generally subject to the business’ instructions about when, where, and how to work.
- Training that the business gives to the worker – an employee may be trained to perform services in a particular manner, while an independent contractor ordinarily uses the contractor’s own methods.

Financial control – this category determines whether the business has a right to control the business aspects of the worker’s job. This category contains the following five factors:

¹³ See U.S. Department of Labor, Conformity Requirements for State UC Laws, http://workforcesecurity.doleta.gov/unemploy/pdf/uilaws_coverage.pdf.

- The extent to which the worker has unreimbursed business expenses – an independent contractor is more likely to have unreimbursed expenses.
- The extent of the worker’s investment – an independent contractor often invests in the contractor’s own equipment, facilities, and tools to perform the services, rather than that equipment, facility, or tools being provided by the employer.
- The extent to which the worker makes the worker’s services available to the relevant market – an independent contractor is free to seek out further business opportunities.
- How the business pays the worker – an independent contractor is generally paid a flat fee for the contractor’s services, while an employee is paid a set wage over a period of time (i.e., hourly, monthly, annually).
- The extent to which the worker can realize a profit or loss – an independent contractor can make a profit or loss.

Type of relationship between the worker and employer – this category consists of the following four factors:

- Whether a written contract exists describing the relationship the parties intend to create.
- Whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation pay, or sick pay.
- Whether the relationship is permanent.
- The extent to which services performed by the worker are a key aspect of the company’s regular business.¹⁴

Changes to current law definitions and tests

Workers’ Compensation Law

Unless an exception applies, the bill specifies that an individual who is an employee under the Superintendent’s test is an employee for purposes of the Workers’ Compensation Law, and thus covered by the Law. The bill also eliminates a requirement under which every individual who performs labor or provides services pursuant to a construction contract is an “employee” under that Law if at least ten of 20 specified criteria apply.

Unemployment Compensation Law

“Employee” is not currently statutorily defined for purposes of the Unemployment Compensation Law; however, “employment” is defined for purposes of that Law.

¹⁴ U.S. Internal Revenue Service, Publication 15-A (2019) Employer’s Supplemental Tax Guide, <https://www.irs.gov/pub/irs-pdf/p15a.pdf>.

The bill maintains the current law definition of “employment” but specifies that an employment relationship does not exist when the Director of Job and Family Services (who administers the Unemployment Compensation Law) is satisfied, based on a determination made by the Superintendent, that an individual has been and will continue to be free from direction or control. Under current law, the JFS Director makes the determination regarding direction and control using a test adopted by the Director.

As with the Workers’ Compensation Law, the bill also eliminates a current requirement in the Unemployment Compensation Law under which every individual who performs labor or provides services pursuant to a construction contract is an employee under the Law if at least ten of 20 specified criteria apply.

Income Tax Law

The Income Tax Law does not include a statutorily defined test to determine whether an individual is an employee for purposes of that Law. Rather, the Income Tax Law follows the IRS test to determine whether an individual is an employee or independent contractor.¹⁵

For purposes of the Income Tax Law, the bill defines “employee” as any individual who is an employee under the Superintendent’s test.

Prohibition against misclassifying employees

The bill prohibits an employer from failing to consider an individual an employee for purposes of the Workers’ Compensation Law, the Unemployment Compensation Law, and the Income Tax Law if the individual is an employee under the Superintendent’s test. An employer who violates the prohibition is subject to civil penalties imposed by the Superintendent.

Enforcement and administration

The bill requires the Superintendent to enforce the bill’s employee misclassification prohibition. The Superintendent must adopt reasonable rules in accordance with Ohio’s Administrative Procedure Act to implement and administer the prohibition.

Complaints, investigations, and hearings

The bill allows an individual to file a complaint with the Superintendent against an employer if the individual reasonably believes that the employer is in violation of the employee misclassification prohibition. On receipt of a complaint, the Superintendent must conduct an investigation into whether the employer violated the bill’s prohibition.

If, after an investigation, the Superintendent determines that reasonable evidence exists that an employer has violated the employee misclassification prohibition, the bill requires the Superintendent to send a written notice to the employer who is the subject of the investigation in the same manner as prescribed in the Administrative Procedure Act.

¹⁵ See 1976 Ohio Atty. Gen. Ops. No. 76-040, at 2-140.

If the Superintendent, as a result of a hearing, determines an employer has misclassified an employee as an independent contractor the determination is binding on the Administrator, the JFS Director, and the Tax Commissioner (who administers the Income Tax Law) unless the individual is otherwise not considered an employee under the applicable law. However, nothing in the bill's misclassification provisions limits or otherwise constrains the Administrator's duties and powers under the Workers' Compensation Law, the JFS Director's duties and powers under the Unemployment Compensation Law, or the Tax Commissioner's duties and powers under the Income Tax Law.

An employer may appeal the Superintendent's determination in accordance with the Administrative Procedure Act.

Disciplinary actions

If, after a hearing, the Superintendent determines that an employer has violated the employee misclassification prohibition, the Superintendent must do both of the following:

- Notify the Administrator, the JFS Director, and the Tax Commissioner, each of whom must determine whether the employer's violation results in the employer not complying with the requirements of the Workers' Compensation Law, the Unemployment Compensation Law, or the Income Tax Law, as applicable.
- For each day after the complaint was filed, assess against the employer a penalty of \$500 for each employee the employer misclassified.

The Superintendent may not assess the penalty described above if the employer voluntarily reclassifies a misclassified employee ten days before the Superintendent holds the hearing.

Regardless of the Superintendent's determination, the Superintendent must notify the child support enforcement agency in the county in which the employee or independent contractor resides of each individual who is receiving income.

Employee Classification Fund

The bill creates in the state treasury the Employee Classification Fund. The Superintendent must deposit all moneys the Superintendent receives under the bill into the fund. The Superintendent must use the fund for the administration, investigation, and other expenses incurred in carrying out the Superintendent's powers and duties under the bill.

OTHER AGENCIES

Employee medical examinations

(R.C. 4113.21)

The bill prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act of 1965 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. The federal Act generally applies to any contract with the federal government that has as its

principal purpose the furnishing of services in the U.S. through the use of service employees, regardless of whether the employees are the contractor's employees or those of any subcontractor.¹⁶

Under continuing law, a private employer is prohibited from requiring any prospective employee or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment. A public employer cannot require an employee, prospective employee, or applicant to pay the cost of a medical examination required by the public employer as a condition of employment or continued employment. Any employer who violates these prohibitions must forfeit not more than \$100 for each violation. BWC and the Public Utilities Commission of Ohio enforce the penalty.

HISTORY

Action	Date
Introduced	02-14-19
Reported, H. Insurance	05-21-19
Re-referred to H. Finance	05-22-19
Reported, H. Finance	06-05-19
Passed House (56-38)	06-05-19

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¹⁶ 41 United States Code 6702 and 29 Code of Federal Regulations 4.150.