



Substitute House Bill 80 – 2020-2021 BWC Budget

Opponent Testimony

Ohio Senate Insurance and Financial Institutions Committee

June 19, 2019

Chairman Hackett, Vice-chairman Hottinger, Ranking-Member Craig and members of the Ohio Senate Insurance and Financial Institutions Committee, my name is Charlie Smith and I serve as Special Counsel for the National Federation of Independent Business (NFIB) in Ohio. I am the owner of the law firm of Charles D. Smith & Associates here in Columbus, Ohio, where I focus my practice in the areas of employment law and workers' compensation. I appear before you today on behalf of NFIB's 22,000 small-business owner members in Ohio to express their opposition to substitute HB 80 – the Ohio Bureau of Workers' Compensation's (BWC) 2020-2021 budget.

The State Budget bill and the sections that control individual agencies like the Bureau of Workers' Compensation have a short timeline and require important and complicated funding considerations. Therefore, there is little time to consider and debate language that includes complicated substantive changes to the laws. The BWC budget bill contains several major changes in the workers' compensations and employment laws in Ohio and these important topics should not be discussed or debated under these severe time constraints. It would be better if these substantive changes were submitted in a separate bill for consideration.

Specifically, we are concerned with language included in the BWC Budget bill that would expand Ohio workers' compensation coverage to purely mental claims. We also have serious concerns with the language that removes state fund employers from the claim settlement process. The bill would also create a new bureaucracy to regulate the employment relationship and enact new complicated rules that govern when a worker is an employee or an independent contractor.

There is also a section that tries to dictate when an employer must provide paid time off to injured employees. Without addressing every single change, I want to highlight the items we think need more careful consideration.

MENTAL/MENTAL CLAIMS:

Language included in the substitute bill makes peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder (PTSD) arising from employment, without an accompanying physical injury, eligible for compensation and lost time benefits under Ohio's workers' compensation laws. **This initiative is a drastic departure from over 100 years of Ohio law requiring proof that a mental condition, such as depression or anxiety, arise from a physical injury suffered by the claimant before it can be considered compensable.** For instance, under the current law a person cannot seek workers' compensation benefits for mental or emotional problems they think are associated with their job. This proposed change could change the scope and purpose of our workers' compensation system. If there truly is an important crisis requiring a change in public policy for these select groups, we suggest housing the solution outside of the BWC. For instance, private health insurance and disability policies are already available to address these conditions.

Additionally, selecting a narrow subset of Ohio's workforce for these benefits raises the risk of violating the constitutional requirement of equal protection provided to all employees. We feel it would be impossible to explain why only a favored or protected class of workers deserves a more generous benefit than another person with the identical emotional or mental condition. Eliminating the requirement of a physical injury for a select group of employees would open the door for the eventual allowance of any mental condition as a compensable claim so long as it is tied to a person's work environment.

STATE FUND SETTLEMENTS

The substitute version of the bill would no longer require the employer's consent to a state fund workers' compensation settlement if the claim is outside of the employer's workers' compensation experience. This change could create some major problems for many state fund employers who have a worker with an open workers' compensation claim. Imagine if that claim was hotly disputed or it was not supported or believed by the other employees. The publication of the payment of the settlement can impact morale and productivity within the company. Even if older claims do not directly impact a state fund employer's workers' compensation coverage, the employer should be allowed to deny their consent to the settlement if the claimant is a current employee.

EMPLOYEE MISCLASSIFICATION

The legislation adds a new level of regulation for the employment relationship and places responsibility for enforcement of those regulations within the Department of Commerce and the Division of Industrial Compliance. The regulations would cover the classification of

Independent Contractors in all areas of employment, not just construction. And it would create a new investigative body and administrative hearing process for complaints brought by employees. Not a single major business association has stepped forward to testify in support of this change or to add any credibility to the claims that the current laws need to be fixed. In fact, not a single governmental agency has testified that this new bureaucracy would be helpful. We must have a more complete assessment and debate to determine if there is a real crisis under our current laws that necessitates these new rules.

CONTROLLING THE USE OF PAID TIME OFF

The legislation also talks about limiting an employer's ability to use paid time off in place of some wage benefits. However, the legislation is not clear on the impact of the change or what options the employer may have. This uncertainty could convince employers not to use paid time off to fill in the gaps in the claimant's income while they await approval of their claims.

At this time, NFIB is respectfully asking this committee to revert to the as-introduced version of HB 80 that only included BWC appropriations. Thank you for your time and I am happy to answer any questions the committee members may have.