

# AN ACT

To amend sections 4121.43, 4123.57, 4123.58, 4123.85, 4123.88, 4133.03, 4133.07, and 4133.08 of the Revised Code to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2021, and ending June 30, 2023, to provide authorization and conditions for the operation of the Bureau's programs, and to make changes to the Workers' Compensation Law.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. All items in this act are hereby appropriated out of any moneys in the state treasury to the credit of the designated fund. For all appropriations made in this act, those in the first column are for fiscal year 2022, and those in the second column are for fiscal year 2023. The appropriations made in this act are in addition to any other appropriations made for the biennium beginning July 1, 2021, and ending June 30, 2023.

	1	2	3	4	5
A			BWC BUREAU OF WORKERS' COMPENSATION		
B			Dedicated Purpose Fund Group		
C	7023	855407	Claims, Risk and Medical Management	\$118,006,090	\$121,583,115
D	7023	855408	Fraud Prevention	\$15,936,735	\$18,011,577
E	7023	855409	Administrative Services	\$124,325,665	\$129,108,432
F	7023	855410	Attorney General Payments	\$6,080,080	\$6,080,080
G	8220	855606	Coal Workers' Fund	\$190,090	\$190,100
H	8230	855608	Marine Industry	\$79,273	\$79,276
I	8250	855605	Disabled Workers Relief Fund	\$197,612	\$197,621

J	8260	855609	Safety and Hygiene Operating	\$25,343,000	\$25,085,000
K	8260	855610	Safety Grants	\$35,000,000	\$35,000,000
L	8260	855611	Health and Safety Initiative	\$3,000,000	\$3,000,000
M	8260	855612	Safety Campaign	\$1,500,000	\$1,500,000
N	8260	855613	Research Grants	\$3,000,000	\$1,000,000
O	8260	855618	Substance Use Recovery and Workplace Safety Program	\$3,500,000	\$4,000,000
P	8260	855619	Safety and Health Center of Excellence	\$15,000,000	\$15,000,000
Q	TOTAL DPF Dedicated Purpose Fund Group			\$351,158,545	\$359,835,201
R	Federal Fund Group				
S	3490	855601	OSHA Enforcement	\$1,869,212	\$1,876,338
T	3FW0	855614	BLS SOII Grant	\$195,104	\$195,104
U	TOTAL FED Federal Fund Group			\$2,064,316	\$2,071,442
V	TOTAL ALL BUDGET FUND GROUPS			\$353,222,861	\$361,906,643

#### WORKERS' COMPENSATION FRAUD UNIT

Of the foregoing appropriation item 855410, Attorney General Payments, \$828,200 in each fiscal year shall be used to fund the expenses of the Workers' Compensation Fraud Unit within the Attorney General's Office. These payments shall be processed at the beginning of each quarter of each fiscal year and deposited into the Workers' Compensation Section Fund (Fund 1950) used by the Attorney General.

#### SAFETY AND HYGIENE

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$25,343,000 cash in fiscal year 2022 and \$25,085,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260).

#### SAFETY GRANTS

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$35,000,000 cash in fiscal year 2022 and \$35,000,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260) to be used for Safety Grants.

**HEALTH AND SAFETY INITIATIVE**

Notwithstanding section 4121.37 of Revised Code, the Treasurer of State shall remit \$3,000,000 cash in fiscal year 2022 and \$3,000,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855611, Health and Safety Initiative, for the purpose of creating and operating a health and wellness program.

**SAFETY CAMPAIGN**

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$1,500,000 cash in fiscal year 2022 and \$1,500,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855612, Safety Campaign, for the purpose of creating and operating a statewide safety awareness and education campaign.

**FEDERAL GRANT PROGRAMS**

The foregoing appropriation item 855609, Safety and Hygiene Operating, may be used to provide the state match for federal grant funding received by the Division of Safety and Hygiene.

**VOCATIONAL REHABILITATION**

The Bureau of Workers' Compensation and the Opportunities for Ohioans with Disabilities Agency may enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients. The Bureau may provide funds from the State Insurance Fund to fund vocational rehabilitation services and staff in accordance with the interagency agreement.

**RESEARCH GRANTS**

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$3,000,000 cash in fiscal year 2022 and \$1,000,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855613, Research Grants, for the purpose of creating and operating the occupational safety and health research program.

**SUBSTANCE USE RECOVERY AND WORKPLACE SAFETY PROGRAM**

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$3,500,000 cash in fiscal year 2022 and \$4,000,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855618, Substance Use Recovery and Workplace Safety Program, for the purpose of creating and operating the opioid workplace safety program.

**SAFETY AND HEALTH CENTER OF EXCELLENCE**

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$15,000,000 cash in fiscal year 2022 and \$15,000,000 cash in fiscal year 2023 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855619, Safety and Health Center of Excellence, for the purpose of creating a center of excellence at the Ohio Center of Occupational Safety and Health.

**ADMINISTRATIVE COST FUND**

Notwithstanding section 4123.341 of the Revised Code, the Treasurer of State shall remit up to \$25,000,000 cash in fiscal year 2022 and \$25,000,000 cash in fiscal year 2023 from the State

Insurance Fund to the state treasury to the credit of the Workers' Compensation Fund (Fund 7023).

SECTION 2. DEPUTY INSPECTOR GENERAL FOR BWC AND OIC FUNDING

To pay for the FY 2022 costs related to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission, on July 1, 2021, and January 1, 2022, or as soon as possible thereafter, the Director of Budget and Management shall transfer \$212,500 cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (Fund 5FT0).

To pay for the FY 2023 costs related to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission, on July 1, 2022, and January 1, 2023, or as soon as possible thereafter, the Director of Budget and Management shall transfer \$212,500 cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (Fund 5FT0).

If additional amounts are needed, the Inspector General may seek Controlling Board approval for additional transfers of cash and to increase the amount appropriated in appropriation item 965604, Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission.

SECTION 3. Law contained in the Main Operating Appropriations Act of the 134th General Assembly that applies generally to the appropriations made in that act also applies generally to the appropriations made in this act.

SECTION 4. The provisions of law contained in this act, and their applications, are severable. If any provision of law contained in this act, or if any application of any provision of law contained in this act, is held invalid, the invalidity does not affect other provisions of law contained in this act and their applications that can be given effect without the invalid provision or application.

SECTION 5. Sections 1 to 5 of this act are exempt from the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore take effect immediately when this act becomes law.

SECTION 6. That sections 4121.43, 4123.57, 4123.58, 4123.85, 4123.88, 4133.03, 4133.07, and 4133.08 of the Revised Code be amended to read as follows:

Sec. 4121.43. The administrator of workers' compensation shall:

(A) Adopt rules to ensure that all compensation payments are accompanied by information which clearly indicates the source of payment, type of payment, method of computation, inclusive days of payment, reason for changes in payment, and telephone number or address for inquiries;

(B) Adopt rules to govern the method of issuing and delivering checks, including time limits for issuance of checks;

(C) Set standards and inform claimant of procedure for attorney or other representative pick-up of compensation payment check, and ensure that claimant has recently executed a proper

authorization to pick up the check;

(D) ~~Prohibit any power of attorney allowing an attorney or employee to cash or endorse a check on behalf of claimant;~~

(E) ~~Implement a written procedure for effectively obtaining notices of death of claimant and terminating compensation payments;~~

(F) ~~(E)~~ Adopt rules to require that a claimant of whom medical examinations have been requested by ~~his~~the claimant's employer shall submit to such examinations and shall be reimbursed by ~~his~~the employer for reasonable expenses incurred in submitting to the examination and provide that the claimant shall be reimbursed by ~~his~~the employer in an amount equal to the wages lost during the time required to attend any such examination, in the event said claimant sustains lost wages as a result of any such examination.

Sec. 4123.57. Partial disability compensation shall be paid as follows.

Except as provided in this section, not earlier than twenty-six weeks after the date of termination of the latest period of payments under section 4123.56 of the Revised Code or twenty-six weeks after the termination of wages in lieu of those payments, or not earlier than twenty-six weeks after the date of the injury or contraction of an occupational disease in the absence of payments under section 4123.56 of the Revised Code or wages in lieu of those payments, the employee may file an application with the bureau of workers' compensation for the determination of the percentage of the employee's permanent partial disability resulting from an injury or occupational disease.

Whenever the application is filed, the bureau shall send a copy of the application to the employee's employer or the employer's representative and shall schedule the employee for a medical examination by the bureau medical section. The bureau shall send a copy of the report of the medical examination to the employee, the employer, and their representatives. Thereafter, the administrator of workers' compensation shall review the employee's claim file and make a tentative order as the evidence before the administrator at the time of the making of the order warrants. If the administrator determines that there is a conflict of evidence, the administrator shall send the application, along with the claimant's file, to the district hearing officer who shall set the application for a hearing.

If an employee fails to respond to an attempt to schedule a medical examination by the bureau medical section, or fails to attend a medical examination scheduled under this section without notice or explanation, the employee's application for a finding shall be dismissed without prejudice. The employee may refile the application. A dismissed application does not toll the continuing jurisdiction of the industrial commission under section 4123.52 of the Revised Code. The administrator shall adopt rules addressing the manner in which an employee will be notified of a possible dismissal and how an employee may refile an application for a determination.

The administrator shall notify the employee, the employer, and their representatives, in writing, of the tentative order and of the parties' right to request a hearing. Unless the employee, the employer, or their representative notifies the administrator, in writing, of an objection to the tentative order within twenty days after receipt of the notice thereof, the tentative order shall go into effect and the employee shall receive the compensation provided in the order. In no event shall there be a reconsideration of a tentative order issued under this division.

If the employee, the employer, or their representatives timely notify the administrator of an objection to the tentative order, the matter shall be referred to a district hearing officer who shall set

the application for hearing with written notices to all interested persons. Upon referral to a district hearing officer, the employer may obtain a medical examination of the employee, pursuant to rules of the industrial commission.

(A) The district hearing officer, upon the application, shall determine the percentage of the employee's permanent disability, except as is subject to division (B) of this section, based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment evidenced by medical or clinical findings reasonably demonstrable. The employee shall receive sixty-six and two-thirds per cent of the employee's average weekly wage, but not more than a maximum of thirty-three and one-third per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, per week regardless of the average weekly wage, for the number of weeks which equals the percentage of two hundred weeks. Except on application for reconsideration, review, or modification, which is filed within ten days after the date of receipt of the decision of the district hearing officer, in no instance shall the former award be modified unless it is found from medical or clinical findings that the condition of the claimant resulting from the injury has so progressed as to have increased the percentage of permanent partial disability. A staff hearing officer shall hear an application for reconsideration filed and the staff hearing officer's decision is final. An employee may file an application for a subsequent determination of the percentage of the employee's permanent disability. If such an application is filed, the bureau shall send a copy of the application to the employer or the employer's representative. No sooner than sixty days from the date of the mailing of the application to the employer or the employer's representative, the administrator shall review the application. The administrator may require a medical examination or medical review of the employee. The administrator shall issue a tentative order based upon the evidence before the administrator, provided that if the administrator requires a medical examination or medical review, the administrator shall not issue the tentative order until the completion of the examination or review.

The employer may obtain a medical examination of the employee and may submit medical evidence at any stage of the process up to a hearing before the district hearing officer, pursuant to rules of the commission. The administrator shall notify the employee, the employer, and their representatives, in writing, of the nature and amount of any tentative order issued on an application requesting a subsequent determination of the percentage of an employee's permanent disability. An employee, employer, or their representatives may object to the tentative order within twenty days after the receipt of the notice thereof. If no timely objection is made, the tentative order shall go into effect. In no event shall there be a reconsideration of a tentative order issued under this division. If an objection is timely made, the application for a subsequent determination shall be referred to a district hearing officer who shall set the application for a hearing with written notice to all interested persons. No application for subsequent percentage determinations on the same claim for injury or occupational disease shall be accepted for review by the district hearing officer unless supported by substantial evidence of new and changed circumstances developing since the time of the hearing on the original or last determination.

No award shall be made under this division based upon a percentage of disability which, when taken with all other percentages of permanent disability, exceeds one hundred per cent. If the percentage of the permanent disability of the employee equals or exceeds ninety per cent,

compensation for permanent partial disability shall be paid for two hundred weeks.

Compensation payable under this division accrues and is payable to the employee from the date of last payment of compensation, or, in cases where no previous compensation has been paid, from the date of the injury or the date of the diagnosis of the occupational disease.

When an award under this division has been made prior to the death of an employee, all unpaid installments accrued or to accrue under the provisions of the award are payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee, and if there are no children surviving, then to other dependents as the administrator determines.

(B) For purposes of this division, "payable per week" means the seven-consecutive-day period in which compensation is paid in installments according to the schedule associated with the applicable injury as set forth in this division.

Compensation paid in weekly installments according to the schedule described in this division may only be commuted to one or more lump sum payments pursuant to the procedure set forth in section 4123.64 of the Revised Code.

In cases included in the following schedule the compensation payable per week to the employee is the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code per week and shall be paid in installments according to the following schedule:

For the loss of a first finger, commonly known as a thumb, sixty weeks.

For the loss of a second finger, commonly called index finger, thirty-five weeks.

For the loss of a third finger, thirty weeks.

For the loss of a fourth finger, twenty weeks.

For the loss of a fifth finger, commonly known as the little finger, fifteen weeks.

The loss of a second, or distal, phalange of the thumb is considered equal to the loss of one half of such thumb; the loss of more than one half of such thumb is considered equal to the loss of the whole thumb.

The loss of the third, or distal, phalange of any finger is considered equal to the loss of one-third of the finger.

The loss of the middle, or second, phalange of any finger is considered equal to the loss of two-thirds of the finger.

The loss of more than the middle and distal phalanges of any finger is considered equal to the loss of the whole finger. In no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of the palm) for the corresponding thumb, or fingers, add ten weeks to the number of weeks under this division.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes any of the fingers, thumbs, or parts of either useless, the same number of weeks apply to the members or parts thereof as given for the loss thereof.

If the claimant has suffered the loss of two or more fingers by amputation or ankylosis and the nature of the claimant's employment in the course of which the claimant was working at the time of the injury or occupational disease is such that the handicap or disability resulting from the loss of fingers, or loss of use of fingers, exceeds the normal handicap or disability resulting from the loss of fingers, or loss of use of fingers, the administrator may take that fact into consideration and increase

the award of compensation accordingly, but the award made shall not exceed the amount of compensation for loss of a hand.

For the loss of a hand, one hundred seventy-five weeks.

For the loss of an arm, two hundred twenty-five weeks.

For the loss of a great toe, thirty weeks.

For the loss of one of the toes other than the great toe, ten weeks.

The loss of more than two-thirds of any toe is considered equal to the loss of the whole toe.

The loss of less than two-thirds of any toe is considered no loss, except as to the great toe; the loss of the great toe up to the interphalangeal joint is co-equal to the loss of one-half of the great toe; the loss of the great toe beyond the interphalangeal joint is considered equal to the loss of the whole great toe.

For the loss of a foot, one hundred fifty weeks.

For the loss of a leg, two hundred weeks.

For the loss of the sight of an eye, one hundred twenty-five weeks.

For the permanent partial loss of sight of an eye, the portion of one hundred twenty-five weeks as the administrator in each case determines, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but, in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.

For the permanent and total loss of hearing of one ear, twenty-five weeks; but in no case shall an award of compensation be made for less than permanent and total loss of hearing of one ear.

For the permanent and total loss of hearing, one hundred twenty-five weeks; but, except pursuant to the next preceding paragraph, in no case shall an award of compensation be made for less than permanent and total loss of hearing.

In case an injury or occupational disease results in serious facial or head disfigurement which either impairs or may in the future impair the opportunities to secure or retain employment, the administrator shall make an award of compensation as it deems proper and equitable, in view of the nature of the disfigurement, and not to exceed the sum of ten thousand dollars. For the purpose of making the award, it is not material whether the employee is gainfully employed in any occupation or trade at the time of the administrator's determination.

When an award under this division has been made prior to the death of an employee all unpaid installments accrued or to accrue under the provisions of the award shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee and if there are no such children, then to such dependents as the administrator determines.

When an employee has sustained the loss of a member by severance, but no award has been made on account thereof prior to the employee's death, the administrator shall make an award in accordance with this division for the loss which shall be payable to the surviving spouse, or if there is no surviving spouse, to the dependent children of the employee and if there are no such children, then to such dependents as the administrator determines.

(C) Compensation for partial impairment under divisions (A) and (B) of this section is in addition to the compensation paid the employee pursuant to section 4123.56 of the Revised Code. A claimant may receive compensation under divisions (A) and (B) of this section.



In all cases arising under division (B) of this section, if it is determined by any one of the following: (1) the amputee clinic at University hospital, Ohio state university; (2) the opportunities for Ohioans with disabilities agency; (3) an amputee clinic or prescribing physician approved by the administrator or the administrator's designee, that an injured or disabled employee is in need of an artificial appliance, or in need of a repair thereof, regardless of whether the appliance or its repair will be serviceable in the vocational rehabilitation of the injured employee, and regardless of whether the employee has returned to or can ever again return to any gainful employment, the bureau shall pay the cost of the artificial appliance or its repair out of the surplus created by division (B) of section 4123.34 of the Revised Code.

In those cases where an opportunities for Ohioans with disabilities agency's recommendation that an injured or disabled employee is in need of an artificial appliance would conflict with their state plan, adopted pursuant to the "Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 701, the administrator or the administrator's designee or the bureau may obtain a recommendation from an amputee clinic or prescribing physician that they determine appropriate.

(D) If an employee of a state fund employer makes application for a finding and the administrator finds that the employee has contracted silicosis as defined in division (Y), or coal miners' pneumoconiosis as defined in division (Z), or asbestosis as defined in division (BB) of section 4123.68 of the Revised Code, and that a change of such employee's occupation is medically advisable in order to decrease substantially further exposure to silica dust, asbestos, or coal dust and if the employee, after the finding, has changed or shall change the employee's occupation to an occupation in which the exposure to silica dust, asbestos, or coal dust is substantially decreased, the administrator shall allow to the employee an amount equal to fifty per cent of the statewide average weekly wage per week for a period of thirty weeks, commencing as of the date of the discontinuance or change, and for a period of one hundred weeks immediately following the expiration of the period of thirty weeks, the employee shall receive sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from the change of occupation but not to exceed a maximum of an amount equal to fifty per cent of the statewide average weekly wage per week. No such employee is entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which the employee is employed in an occupation in which the exposure to silica dust, asbestos, or coal dust is not substantially less than the exposure in the occupation in which the employee was formerly employed or for any period during which the employee may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from silicosis, asbestosis, or coal miners' pneumoconiosis. An award for change of occupation for a coal miner who has contracted coal miners' pneumoconiosis may be granted under this division even though the coal miner continues employment with the same employer, so long as the coal miner's employment subsequent to the change is such that the coal miner's exposure to coal dust is substantially decreased and a change of occupation is certified by the claimant as permanent. The administrator may accord to the employee medical and other benefits in accordance with section 4123.66 of the Revised Code.

(E) If a firefighter or police officer makes application for a finding and the administrator finds that the firefighter or police officer has contracted a cardiovascular and pulmonary disease as defined in division (W) of section 4123.68 of the Revised Code, and that a change of the firefighter's

or police officer's occupation is medically advisable in order to decrease substantially further exposure to smoke, toxic gases, chemical fumes, and other toxic vapors, and if the firefighter, or police officer, after the finding, has changed or changes occupation to an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is substantially decreased, the administrator shall allow to the firefighter or police officer an amount equal to fifty per cent of the statewide average weekly wage per week for a period of thirty weeks, commencing as of the date of the discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of the period of thirty weeks the administrator shall allow the firefighter or police officer sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from the change of occupation but not to exceed a maximum of an amount equal to fifty per cent of the statewide average weekly wage per week. No such firefighter or police officer is entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which the firefighter or police officer is employed in an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is not substantially less than the exposure in the occupation in which the firefighter or police officer was formerly employed or for any period during which the firefighter or police officer may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from a cardiovascular and pulmonary disease. The administrator may accord to the firefighter or police officer medical and other benefits in accordance with section 4123.66 of the Revised Code.

(F) An order issued under this section is appealable pursuant to section 4123.511 of the Revised Code but is not appealable to court under section 4123.512 of the Revised Code.

Sec. 4123.58. (A) In cases of permanent total disability, the employee shall receive an award to continue until the employee's death in the amount of sixty-six and two-thirds per cent of the employee's average weekly wage, but, except as otherwise provided in division (B) of this section, not more than a maximum amount of weekly compensation which is equal to sixty-six and two-thirds per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code in effect on the date of injury or on the date the disability due to the occupational disease begins, nor not less than a minimum amount of weekly compensation which is equal to fifty per cent of the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code in effect on the date of injury or on the date the disability due to the occupational disease begins, unless the employee's average weekly wage is less than fifty per cent of the statewide average weekly wage at the time of the injury, in which event the employee shall receive compensation in an amount equal to the employee's average weekly wage.

(B) In the event the weekly workers' compensation amount when combined with disability benefits received pursuant to the Social Security Act is less than the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code, then the maximum amount of weekly compensation shall be the statewide average weekly wage as defined in division (C) of section 4123.62 of the Revised Code. At any time that social security disability benefits terminate or are reduced, the workers' compensation award shall be recomputed to pay the maximum amount permitted under this division.

(C) Permanent total disability shall be compensated according to this section only when at least one of the following applies to the claimant:

(1) The claimant has lost, or lost the use of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof; however, the loss or loss of use of one limb does not constitute the loss or loss of use of two body parts;

(2) The impairment resulting from the employee's injury or occupational disease prevents the employee from engaging in sustained remunerative employment utilizing the employment skills that the employee has or may reasonably be expected to develop.

(D) Permanent total disability shall not be compensated when the reason the employee is unable to engage in sustained remunerative employment is due to any of the following reasons, whether individually or in combination:

(1) Impairments of the employee that are not the result of an allowed injury or occupational disease;

(2) Solely the employee's age or aging;

(3) The employee retired or otherwise is not working for reasons unrelated to the allowed injury or occupational disease.

(4) The employee has not engaged in educational or rehabilitative efforts to enhance the employee's employability, unless such efforts are determined to be in vain.

(E) Compensation payable under this section for permanent total disability is in addition to benefits payable under division (B) of section 4123.57 of the Revised Code.

(F) If an employee is awarded compensation for permanent total disability under this section because the employee sustained a traumatic brain injury, the employee is entitled to that compensation regardless of the employee's employment in a sheltered workshop subsequent to the award, on the condition that the employee does not receive income, compensation, or remuneration from that employment in excess of two thousand dollars in any calendar quarter. As used in this division, "sheltered workshop" means a state agency or nonprofit organization established to carry out a program of rehabilitation for handicapped individuals or to provide these individuals with remunerative employment or other occupational rehabilitating activity.

(G) If the industrial commission has adjudicated a claimant's application for compensation payable under this section for permanent total disability and issued a final order denying compensation for that application, the claimant shall present evidence of new and changed circumstances before the industrial commission may consider a subsequent application filed by the claimant for compensation under this section for the same injury or occupational disease identified in the previous application.

Sec. 4123.85. In all cases of occupational disease, or death resulting from occupational disease, claims for compensation or benefits are forever barred unless, within ~~two years~~ one year after the disability due to the disease began, or within such longer period as does not exceed six months after diagnosis of the occupational disease by a licensed physician or within ~~two years~~ one year after death occurs, application is made to the industrial commission or the bureau of workers' compensation or to the employer if ~~he~~ the employer is a self-insuring employer.

Sec. 4123.88. (A) No person shall orally or in writing, directly or indirectly, or through any agent or other person fraudulently hold the person's self out or represent the person's self or any of the person's partners or associates as authorized by a claimant or employer to take charge of, or represent the claimant or employer in respect of, any claim or matter in connection therewith before

the bureau of workers' compensation or the industrial commission or its district or staff hearing officers. ~~No person shall directly or indirectly solicit authority, or pay or give anything of value to another person to solicit authority, or accept or receive pay or anything of value from another person for soliciting authority, from a claimant or employer to take charge of, or represent the claimant or employer in respect of, any claim or appeal which is or may be filed with the bureau or commission.~~ No person shall, without prior authority from the bureau, a member of the commission, the claimant, or the employer, examine or directly or indirectly cause or employ another person to examine any claim file or any other file pertaining thereto. No person shall forge an authorization for the purpose of examining or cause another person to examine any such file. No district or staff hearing officer or other employee of the bureau or commission, notwithstanding the provisions of section 4123.27 of the Revised Code, shall divulge any information in respect of any claim or appeal which is or may be filed with a district or staff hearing officer, the bureau, or commission to any person other than members of the commission or to the superior of the employee except upon authorization of the administrator of workers' compensation or a member of the commission or upon authorization of the claimant or employer.

(B) The records described or referred to in division (A) of this section are not public records as defined in division (A)(1) of section 149.43 of the Revised Code. Any information directly or indirectly identifying the name, address, or telephone number of a claimant, regardless of whether the claimant's claim is active or closed, is not a public record. No person shall solicit or obtain any such information from any such employee without first having obtained an authorization therefor as provided in this section.

(C) Except as otherwise specified in division (D) of this section, information kept by the commission or the bureau pursuant to this section is for the exclusive use and information of the commission and the bureau in the discharge of their official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein, unless the commission or the bureau is a party to the action or proceeding. The information, however, may be tabulated and published by the commission or the bureau in statistical form for the use and information of other state agencies and the public.

(D)(1) ~~Upon~~ Except as provided in division (G) of this section, upon receiving a written request made and signed by an individual whose primary occupation is as a journalist, the commission or the bureau shall disclose to the individual the name or names, address or addresses, and telephone number or numbers of claimants, regardless of whether their claims are active or closed.

(2) An individual described in division (D)(1) of this section is permitted to request the information described in that division for multiple claimants in one written request.

(3) An individual described in division (D)(1) of this section shall include all of the following in the written request:

- (a) The individual's name, title, and signature;
- (b) The name and title of the individual's employer;
- (c) A statement that the disclosure of the information sought is in the public interest;

(d) A statement that the individual acknowledges that the information is not a public record and that the individual will not disclose the information to any other person for any reason unrelated

to journalism.

(4) Neither the commission nor the bureau may inquire as to the specific public interest served by the disclosure of information requested by an individual under division (D) of this section.

(E) No person who receives information under division (D) of this section shall recklessly disclose the information to any other person for any reason unrelated to journalism.

(F) No person who obtains or receives records in violation of this section shall recklessly use that information to solicit, directly or indirectly, authority from a claimant or employer to take charge of, or represent the claimant or employer in respect of, any claim or appeal that is or may be filed with the bureau or commission.

(G) Neither the commission nor the bureau shall disclose to an individual described in division (D)(1) of this section the name, address, or telephone number of a claimant if the disclosure would reveal that the claim is for a condition that arose from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.

(H) As used in this section, "journalist" has the same meaning as in division (B)(9) of section 149.43 of the Revised Code.

Sec. 4133.03. (A) The alternate employer organization with whom a worksite employee is employed shall do all of the following:

(1) Process and pay all wages and applicable state and federal payroll taxes associated with the worksite employee, irrespective of payments made by the client employer, pursuant to the terms and conditions of compensation in the alternate employer organization agreement between the alternate employer organization and the client employer;

(2) Pay all related payroll taxes associated with a worksite employee independent of the terms and conditions contained in the alternate employer organization agreement between the alternate employer organization and the client employer;

(3) Maintain workers' compensation coverage, pay all workers' compensation premiums, and manage all workers' compensation claims, filings, and related procedures associated with a worksite employee in compliance with Chapters 4121. and 4123. of the Revised Code, except that when worksite employees include family farm officers, ordained ministers, or corporate officers of the client employer, payroll reports shall include the entire amount of payroll associated with those persons;

(4) Annually provide written notice to each worksite employee it assigns to perform services to a client employer of the relationship between and the responsibilities of the alternate employer organization and the client employer;

(5) Maintain complete records separately listing the manual classifications of each client employer and the payroll reported to each manual classification for each client employer for each payroll reporting period during the time period covered in the alternate employer organization agreement;

(6) Maintain a record of workers' compensation claims for each client employer;

(7) Make periodic reports, as determined by the administrator of workers' compensation, of client employers and total workforce to the administrator;

(8) Report individual client employer payroll, claims, and classification data under a separate and unique subaccount to the administrator;

(9) Within fourteen days after receiving notice from the bureau of workers' compensation that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant;

(10) Annually certify to the administrator that all client employer federal payroll taxes have been timely and appropriately paid, and on request of the administrator, provide proof of payment.

(B) In any alternate employer organization agreement between an alternate employer organization and a client employer, the client employer shall be listed as the employer on the W-2 forms of the worksite employees, but the alternate employer organization remains jointly and severally liable for all applicable local, state, and federal withholding and employer-paid taxes with respect to the worksite employees.

(C) An alternate employer organization shall file federal payroll taxes entirely under the tax identification number of the client employer, but shall remain jointly and severally liable for all wages and payroll taxes associated with worksite employees. In addition, if any of the alternate employer organization's clients fail to transmit payment to the alternate employer organization sufficient to cover payment of all wages and employer-paid taxes, the alternate employer organization shall keep a record of the nonpayment or underpayment and a record that the alternate employer organization nonetheless paid the wages and taxes owed.

(D) An alternate employer organization may not provide partial or split workers' compensation coverage for worksite employees in which the client employer provides that coverage for some, but not all, of the client employer's worksite employees. On entering into an alternate employer organization agreement, all worksite employees shall be covered under the workers' compensation policy of the alternate employer organization.

(E) The alternate employer organization with whom a worksite employee is employed shall provide a list of all of the following information to the client employer on the written request of the client employer:

(1) All workers' compensation claims, premiums, and payroll associated with that client employer;

(2) Compensation and benefits paid and reserves established for each claim listed under division (E)(1) of this section;

(3) Any other information available to the alternate employer organization from the bureau of workers' compensation regarding that client employer.

(F)(1) An alternate employer organization shall provide the information required under division (E) of this section in writing to the requesting client employer within forty-five days after receiving a written request from the client employer.

(2) For purposes of division (F) of this section, an alternate employer organization has provided the required information to the client employer when the information is received by the United States postal service or when the information is personally delivered, in writing, directly to the client employer.

(G) Except as provided in section 4133.11 of the Revised Code and unless otherwise agreed to in the alternate employer organization agreement, the alternate employer organization with whom a worksite employee is employed has a right of direction and control over each worksite employee assigned to a client employer's location. However, a client employer shall retain sufficient direction

and control over a worksite employee as is necessary to do any of the following:

(1) Conduct the client employer's business, including training and supervising worksite employees;

(2) Ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business;

(3) Discharge any fiduciary responsibility that the client employer may have;

(4) Comply with any applicable licensure, regulatory, or statutory requirement of the client employer.

(H) Unless otherwise agreed to in the alternate employer organization agreement, liability for acts, errors, and omissions shall be determined as follows:

(1) An alternate employer organization shall not be liable for the acts, errors, and omissions of a client employer or a worksite employee when those acts, errors, and omissions occur under the direction and control of the client employer.

(2) A client employer shall not be liable for the acts, errors, and omissions of an alternate employer organization or a worksite employee when those acts, errors, and omissions occur under the direction and control of the alternate employer organization.

(I) Nothing in divisions (G) and (H) of this section shall be construed to limit any liability or obligation specifically agreed to in the alternate employer organization agreement.

(J) An alternate employer organization is not, and shall not be considered, a professional employer organization, as defined in section 4125.01 of the Revised Code. ~~An Beginning on and after January 1, 2022, an~~ alternate employer organization may not hold itself out, advertise, or otherwise identify itself in any way as a professional employer organization.

(K) In an alternate employer organization agreement, both the client employer and alternate employer organization are jointly and severally liable for the payment of employee wages and taxes. The alternate employer organization and client employer share in the employer responsibilities and liabilities with respect to a worksite employee, pursuant to the alternate employer organization agreement.

(L) The use of a client employer's tax identification number for federal payroll tax purposes as required under division (C) of this section shall not be construed to absolve the alternate employer organization of any responsibilities or liabilities applicable to an ~~alternative~~-alternate employer organization, including those under federal law.

Sec. 4133.07. (A) Not later than thirty days after its formation, an alternate employer organization operating in this state shall register with the administrator of workers' compensation on forms provided by the administrator. Following initial registration, each alternate employer organization shall register with the administrator annually on or before the thirty-first day of December.

(B) Initial registration and each annual registration renewal shall include all of the following:

(1) A list of each of the alternate employer organization's client employers current as of the date of registration for purposes of initial registration or current as of the date of annual registration renewal, or within fourteen days of adding or releasing a client, that includes the client employer's name, address, federal tax identification number, and bureau of workers' compensation risk number;

(2) A fee as determined by the administrator;

- (3) The name or names under which the alternate employer organization conducts business;
  - (4) The address of the alternate employer organization's principal place of business and the address of each office it maintains in this state;
  - (5) The alternate employer organization's taxpayer or employer identification number;
  - (6) A list of each state in which the alternate employer organization has operated in the preceding five years, and the name, corresponding with each state, under which the alternate employer organization operated in each state, including any alternative names, names of predecessors, and if known, successor business entities;
  - (7) The most recent financial statement prepared and audited pursuant to division (B) of section 4133.08 of the Revised Code;
  - (8) A ~~bond or~~ letter of credit in accordance with division (D)(1) of this section;
  - (9) An attestation of the accuracy of the data submissions from the chief executive officer, president, or other individual who serves as the controlling person of the alternate employer organization.
- (C) Upon terms and for periods that the administrator considers appropriate, the administrator may issue a limited registration to an alternate employer organization that provides all of the following items:
- (1) A properly executed request for limited registration on a form provided by the administrator;
  - (2) All information and materials required for registration in divisions (B)(1) to (6) of this section;
  - (3) Information and documentation necessary to show that the alternate employer organization satisfies all of the following criteria:
    - (a) It is domiciled outside of this state.
    - (b) It is licensed or registered as an alternate employer organization in another state.
    - (c) It does not maintain an office in this state.
    - (d) It does not participate in direct solicitations for client employers located or domiciled in this state.
    - (e) It has fifty or fewer worksite employees employed or domiciled in this state on any given day.
- (D)(1) An alternate employer organization shall provide security in the form of a ~~bond or~~ letter of credit assignable to the Ohio bureau of workers' compensation in an amount necessary to meet the financial obligations of the alternate employer organization pursuant to this chapter and Chapters 4121. and 4123. of the Revised Code. The administrator shall determine the amount of the ~~bond letter of credit~~ required under this division for each registrant, which shall be at least one million dollars.
- (2) An alternate employer organization may appeal the amount of the security required pursuant to rules adopted under division (D)(1) of this section in accordance with section 4123.291 of the Revised Code.
  - (3) An alternate employer organization shall pay premiums and assessments for purposes of Chapters 4121. and 4123. of the Revised Code on a monthly basis pursuant to division (A) of section 4123.35 of the Revised Code.



(E) Notwithstanding division (D) of this section, an alternate employer organization that qualifies for self-insurance or retrospective rating under section 4123.29 or 4123.35 of the Revised Code shall abide by the financial disclosure and security requirements pursuant to those sections and the rules adopted under those sections in place of the requirements specified in division (D) of this section or specified in rules adopted pursuant to that division.

(F) Except to the extent necessary for the administrator to administer the statutory duties of the administrator and for employees of the state to perform their official duties, all records, reports, client lists, and other information obtained from an alternate employer organization under divisions (A), (B), and (C) of this section are confidential and shall be considered trade secrets and shall not be published or open to public inspection.

(G) The list described in division (B)(1) of this section shall be considered a trade secret.

(H) The administrator shall establish the fee described in division (B)(2) of this section in an amount that does not exceed the cost of the administration of the initial and renewal registration process.

(I) A financial statement required under division (B)(7) of this section for initial registration shall be the most recent financial statement of the alternate employer organization and shall not be older than thirteen months. For each registration renewal, the alternate employer organization shall file the required financial statement within one hundred eighty days after the end of the alternate employer organization's entity's fiscal year. An alternate employer organization may apply to the administrator for an extension beyond that time if the alternate employer organization provides the administrator with a letter from the alternate employer organization's auditor stating the reason for delay and the anticipated completion date.

(J) Multiple, unrelated alternate employer organizations shall not combine together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under this chapter.

(K) An alternate employer organization may not own or co-own an affiliated professional employer organization or alternate employer organization.

(L) The administrator shall maintain a list of alternate employer organizations registered under this section that is readily available to the public by electronic or other means.

(M)(1) An alternate employer organization may assist a client employer in procuring a health benefit plan as a broker or otherwise, but shall not act as the employer or sponsor of a health benefit plan.

(2) As used in this division:

(a) "Health benefit plan" means a policy, contract, certificate, agreement, or other program offered to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including benefit plans marketed in the individual or group market by all associations, whether bona fide or non-bona fide. "Health benefit plan" also means a limited benefit plan.

(b) "Health care services" has the same meaning as in section 3922.01 of the Revised Code.

Sec. 4133.08. (A) An alternate employer organization shall maintain positive working capital at initial or annual registration, as reflected in the financial statements submitted to the bureau of workers' compensation. If a deficit in working capital is reflected in the financial statements submitted to the bureau, the alternate employer organization shall submit to the administrator of

workers' compensation a quarterly financial statement for each calendar quarter during which there is a deficit in working capital, accompanied by an attestation of the chief executive officer, president, or other individual who serves as the controlling person of the alternate employer organization that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the alternate employer organization. The ~~bond or~~ letter of credit required under division (D)(1) of section 4133.07 of the Revised Code shall be held by a depository designated by the administrator and shall secure payment by the alternate employer organization of all taxes, wages, benefits, or other entitlements due or otherwise pertaining to worksite employees, if the alternate employer organization does not make those payments when due.

(B) An alternate employer organization shall prepare financial statements in accordance with generally accepted accounting principles and submit them for registration and registration renewal under section 4133.07 of the Revised Code. The financial statements shall be audited by an independent alternate public accountant authorized to practice in the jurisdiction in which that accountant is located.

(1) The resulting report of the auditor shall not include either of the following:

(a) A qualification or disclaimer of opinion as to adherence to generally accepted accounting principles;

(b) A statement expressing substantial doubt about the ability of the alternate employer organization to continue as a going concern.

(2) However, if an alternate employer organization does not have at least twelve months of operating history on which to base financial statements, the financial statements shall be reviewed by a certified public accountant.

(3) Notwithstanding division (B)(1)(a) of this section, if an alternate employer organization is a subsidiary or is related to a variable interest entity, the alternate employer organization or alternate employer organization entity may submit financial statements of the alternate employer organization.

(C) The bureau shall deny initial or annual registration to an applicant that does not meet the requirements of this section.

SECTION 7. That existing sections 4121.43, 4123.57, 4123.58, 4123.85, 4123.88, 4133.03, 4133.07, and 4133.08 of the Revised Code are hereby repealed.

SECTION 8. Section 4123.85 of the Revised Code, as amended by this act, applies to all claims pursuant to Chapters 4121., 4123., 4127., and 4131. of the Revised Code arising on or after the effective date of this section.

Sections 4123.57 and 4123.58 of the Revised Code, as amended by this act, apply to claims pending on or arising on or after the effective date of this section.

---

*Speaker* \_\_\_\_\_ *of the House of Representatives.*

---

*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

---

*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

---

*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

---

*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_