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## **BUREAU OF WORKERS COMPENSATION**

### **Workers' compensation coverage for certain prison laborers**

- Eliminates a requirement that inmates participating in the Federal Prison Industries Enhancement Certification Program must be covered by a disability insurance policy to provide benefits for loss of earning capacity due to an injury and for medical treatment of the injury following the inmate's release from prison.
- Requires inmates participating in the program to be covered as employees of the Department of Rehabilitation and Correction (DRC), or a private party participating in the program under certain circumstances, for purposes of the Workers' Compensation Law.
- Prohibits a private party from participating in an employer model enterprise under the program unless the private party meets certain requirements and is approved by the DRC Director.
- Requires an inmate to voluntarily consent to participate in the program before participating.
- Suspends an award of compensation or benefits under Workers' Compensation while a claimant is imprisoned, similar to current law workers' compensation claims.
- Requires an inmate who is injured or who contracts an occupational disease arising out of participation in authorized work activity in the program to receive medical treatment and medical determinations for purposes of Workers' Compensation from DRC's medical providers while in DRC custody.
- Requires DRC to provide and pay for all medical care rendered to an inmate related to an injury or occupational disease arising out of participation in authorized work activity in the program while the inmate is imprisoned.
- Limits medical determinations made by DRC's providers to initial claim allowances and requests for additional conditions.
- Allows the Administrator of Workers' Compensation to adopt rules necessary to implement the bill's provisions related to workers' compensation coverage and the program.
- Requires the DRC Director to make certain notifications and disclosures to implement the bill's provisions related to workers' compensation coverage and the program.

### **Employers providing work-based learning programs**

- Makes permanent a pilot program set to expire March 23, 2024, prohibiting the Administrator from charging an employer's experience for a workers' compensation claim if the employer provides work-based learning experiences for career-technical education program students and the claim is based on a student's injury, occupational disease, or death.

- Exempts the program's rules from review by the Joint Committee on Agency Rule Review, similar to other rules related to ratemaking under continuing law.

## **Workers' compensation coverage for certain prison laborers**

(R.C. 4123.543 and 5145.163)

The bill eliminates the requirement that inmates participating in the Federal Prison Industries Enhancement Certification Program must be covered by a disability insurance policy to provide benefits for loss of earning capacity due to an injury and for medical treatment of the injury following the inmate's release from prison. Instead, these inmates are to be covered as employees under the Workers' Compensation Law. The Federal Prison Industries Enhancement Certification Program is a federal program that allows prison industry enterprises under the program to be exempt from federal restrictions on prisoner-made goods in interstate commerce. Federal law prohibits program participants from denying workers' compensation coverage to inmates who work under the program.<sup>90</sup>

Under continuing law, there are two enterprise models under the program: (1) customer model enterprises and (2) employer model enterprises. In a customer model enterprise, a private party participates in the enterprise only as a purchaser of goods. In an employer model enterprise, a private party participates in the enterprise as an operator of the enterprise.

If an inmate works in a customer model enterprise under the program, the bill requires DRC to be the inmate's employer for workers' compensation purposes. If the inmate works in an employer model enterprise under the program, the bill requires the private participant to be the inmate's employer for workers' compensation purposes. The bill specifies that inmates are not employees of DRC or a private participant in an enterprise under the program for any other purpose.

Under the Workers' Compensation Law, every employee who is injured or who contracts an occupational disease arising out of the employee's employment, and the dependents of each employee who dies as a result of such an injury or occupational disease, is generally entitled to receive compensation for loss sustained on account of the injury, occupational disease, or death, and the medical, nurse, and hospital services and medicines, and funeral expenses in the case of death. Compensation and benefits are paid either directly from the employee's self-insuring employer or from the State Insurance Fund in the case of an employer who pays premiums into the fund.<sup>91</sup>

### **Administration of the program**

Under the bill, to participate in an employer model enterprise under the program a private party must be approved by the DRC Director. The Director may approve a private party

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<sup>90</sup> 18 U.S.C. 1761.

<sup>91</sup> R.C. 4123.54, not in the bill.

to participate in an employer model enterprise only if the private party meets the following requirements:

- The private party provides proof of workers' compensation coverage;
- The private party carries liability insurance in an amount the DRC Director determines to be sufficient;
- The private party does not have an unresolved finding for recovery by the Auditor of State.

The bill requires an inmate to voluntarily consent to participate in the program before participating. This consent disclaims the inmate's ability to choose a medical provider while the inmate is imprisoned and subjects the inmate to the bill's requirements related to workers' compensation coverage and the program.

### **Workers' compensation while imprisoned**

If an inmate is injured or contracts an occupational disease arising out of participation in authorized work activity in the program, the bill allows the inmate to file a workers' compensation claim while the inmate is in DRC custody. Consistent with continuing law prohibiting payment of compensation or benefits while a claimant is confined in correctional institution or county jail in lieu of a correctional institution, compensation or benefits under the Workers' Compensation Law cannot be paid during the period of a claimant's confinement in any correctional institution or county jail.<sup>92</sup> The bill requires any remaining amount of an award of compensation or benefits to be paid to a claimant after the claimant is released from imprisonment. However, compensation and benefits are suspended if a claimant is reimprisoned and resume on the claimant's release.

If an inmate is killed or dies as the result of an occupational disease contracted in the course of participation in authorized work activity in the program, the inmate's dependents may file a claim.

### **Medical treatment and determinations**

If an inmate in DRC custody files a claim, the bill requires the inmate to receive medical treatment and medical determinations for purposes of the Workers' Compensation Law from DRC's medical providers. DRC must provide and pay for all medical care rendered to an inmate related to the injury or occupational disease while the inmate is imprisoned. The bill limits medical determinations made by DRC's providers to initial claim allowances and requests for additional conditions.

An inmate may request a review by DRC's chief medical officer, and in the event of an appeal, a medical evaluation from a medical practitioner affiliated within DRC's network of third-party medical contractors or a medical practitioner in a managed care organization located in

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<sup>92</sup> R.C. 4123.54, not in the bill.

Franklin County. A managed care organization manages the medical portion of a workers' compensation claim for claimants who are not imprisoned under continuing law.<sup>93</sup>

### **Administration of workers' compensation coverage for inmates**

The bill allows the Administrator of Workers' Compensation to adopt rules necessary to implement the bill's provisions related to workers' compensation coverage and the program.

The DRC Director must do all of the following to implement the bill's provisions:

- Notify the Administrator of any injury, occupational disease, or death of an inmate that arises out of participation in the program;
- On request from the Administrator, provide medical records, or other relevant information, related to an injury, occupational disease, or death of an inmate that arises out of participation in the program.
- Notify the Administrator when an inmate who has an award of compensation or benefits that is suspended because of being imprisoned is released from imprisonment or reimprisonment.

### **Employers providing work-based learning program**

(R.C. 111.15 and 119.01; Sections 107.10 and 107.11, codifying Section 3 of S.B. 166 of the 134<sup>th</sup> G.A. as 4123.345)

The bill makes the Employers Providing Work-Based Learning Pilot Program a permanent program. Currently, the two-year pilot program expires March 23, 2024. The program requires the Administrator, subject to the approval of the Bureau of Workers' Compensation Board of Directors, to adopt a rule prohibiting the Administrator from charging any amount with respect to a claim for compensation or benefits under the Workers' Compensation Law to an employer's experience if both of the following apply:

- The employer provides a work-based learning experience for students enrolled in an approved career-technical education program;
- The claim is based on a student's injury, occupational disease, or death sustained in the course of and arising out of the student's participation in the employer's work-based learning experience.

Under continuing law, Ohio's Minor Labor Law requirements (concerning minor work hours and activities in which a minor may engage) does not apply to a student participating in the program.

An employer's experience in being responsible for its employees' workers' compensation claims may be used in calculating the employer's workers' compensation premiums. Thus, not

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<sup>93</sup> R.C. 4121.44, not in the bill.

charging a claim to the employer's experience may result in a mitigation of an increase in the employer's premiums as a result of the claim.<sup>94</sup>

The bill exempts the program's rules from legislative review by the Joint Committee on Agency Rule Review (JCARR). Under continuing law, rules relating to ratemaking are exempt from JCARR review.

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<sup>94</sup> See R.C. 4123.29, 4123.34, and 4123.39, not in the bill, and O.A.C. 4123-17-03.