



HANDBOOK

Ohio County Commissioners

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CHAPTER 71

WORKERS' COMPENSATION

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71.01 GENERAL INFORMATION

The Ohio workers' compensation system provides coverage for medical treatment and lost wages for employees who are injured or contract an occupational disease arising out of and within the course of their employment. It also pays death benefits to a worker's dependent survivors when death results from a work-related injury or occupational disease. The system provides reliable benefits to injured workers without requiring proof of fault, while protecting the employer from the uncertainty of negligence actions brought by injured workers.

Ohio is one of four states (along with North Dakota, Washington and Wyoming) in which the state is the sole provider of workers' compensation coverage. The Ohio BWC is the largest exclusive state-fund workers' compensation system in the United States and the second largest underwriter of workers' compensation insurance in the country.

71.02 WORKERS' COMPENSATION COVERAGE - GENERAL

ORC Section 4123.54 provides that every employee who is injured, or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as a result of an occupational disease contracted in the course of employment is entitled to receive workers' compensation benefits. A compensable injury includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of and arising out of, the injured employee's employment (ORC

4123.01(C)). Detailed information on coverage, benefits and all the BWC programs and services mentioned in this Chapter is available at www.OhioBWC.com.

71.03 WORKERS' COMPENSATION – EXCLUSIVE REMEDY FOR INJURED WORKERS

Employers under Ohio's workers' compensation system are afforded certain immunity and protection if an employee is injured on the job and files a workers' comp claim. This immunity is the trade-off for providing workers' comp benefits to the injured employee without the employee having to prove that the employer's negligence caused their injury. A person filing a workers' comp claim waives their right to a negligence action against their employer based on that injury. The sole remedy for the injured worker is, in most instances, the benefits afforded by Ohio workers' compensation.

Two exceptions exist under which an injured employee may have additional recourse against their employer for a workplace injury – “intentional tort” and Violation of a Specific Safety Requirement (VSSR).

Intentional Tort: The theory of “intentional tort” provides that an employee who can demonstrate that the employer's intentional actions caused their workplace injury may sue their employer directly in addition to collecting workers' comp benefits. In 2005, legislation was enacted (125th GA, Am. HB 498, ORC 2745.01) which made it more difficult for employers to be found liable in these types of lawsuits. In order to prevail, an employee would have to prove that either the employer acted with intent to injure or with the belief that injury was substantially certain to occur. Employers may purchase “stop gap” liability coverage from their general liability insurance carrier which will provide a defense for these cases and may provide some financial coverage. Generally, public policy prohibits insuring against an intentional act. However, in the context of Ohio workers' comp intentional tort actions, courts have ruled that limited insurance coverage is permissible. Counties should check with their general liability insurance carrier to determine whether stop gap coverage is provided with their policy. This coverage is included in the general liability coverage provided by CORSA.

Violation of a Specific Safety Requirement (VSSR): VSSRs can, if proven by the injured employee, result in an additional award by the Ohio Industrial Commission of 15 to 50 percent of the maximum compensation awarded in the claim when the injury resulted from the employer's violation of a specific safety requirement. This additional award is paid by the employer directly to the injured worker, and payments will continue for the life of the claim. There is no insurance coverage available which would cover an employer's liability for VSSRs. An additional penalty of up to \$50,000 can be charged to the employer if there are two VSSR awards granted within a two year period. ORC 4121.47(A), OAC 4123-3-20).

71.04 ADMINISTRATION

Two agencies are responsible for the operation of Ohio's workers' compensation

system: the Bureau of Workers' Compensation (BWC) and the Industrial Commission (IC).

The BWC is responsible for administrative and insurance matters. The BWC initiates coverage, determines premium rates, collects premiums, determines the initial allowance or denial on claim applications, manages all lost-time claims and manages the state insurance fund. In addition, the BWC, through its Division of Safety and Hygiene, performs research into the prevention of workplace accidents and diseases, offers safety training and other accident and occupational disease prevention programs.

The IC is responsible for the adjudication of claims. The Governor appoints the three member commission and the Ohio Senate confirms those appointments. One member represents labor, one represents employers and one represents the public.

Three appeal levels within the IC hear and decide contested claims and determine permanent total disability. The first two appeal levels are automatically available to the unsuccessful party. The third level is at the discretion of the IC. An appeal from a final decision of the Industrial Commission on the right to participate in a claim is governed by ORC Section 4123.512(A), which states that the appeal is to the Common Pleas Court of the county in which the injury occurred or, if the injury occurred outside of the state, of the county in which the contract of employment was made.

71.05 STATUTORY AUTHORITY

Workers' compensation was created under Article II, Section 35 of the Ohio Constitution, which states that only the State of Ohio may provide workers' compensation coverage in Ohio. Chapter 4121 of both the Ohio Revised Code and the Ohio Administrative Code sets forth the duties and procedures of the Ohio Industrial Commission. Chapter 4123 of both the Ohio Revised Code and the Ohio Administrative Code sets forth the duties and procedures of the Bureau of Workers' Compensation. In addition, there is a substantial and growing body of case law governing workers' compensation matters.

71.06 COUNTY AS ONE EMPLOYER, COMMISSIONERS' AUTHORITY

The Board of County Commissioners, not the individual appointing authority, is the "employer" for workers' compensation purposes. *Tudor v. Mayfield*, 62 Ohio App. 3d 633, 637, 577 N.E.2d 367, 370 (Greene County 1989), *motion to certify overruled*, 46 Ohio St. 3d 705, 545 N.E.2d 1283 (1989). Only the Commissioners or their designee are authorized to certify workers' compensation claims for county employees, regardless of the appointing authority for whom the injured employee works.

As such, the Commissioners (or their designee) have the exclusive authority to approve or reject a workers' comp claim filed by a county employee. Citing the *Tudor* case, the Ohio Attorney General stated, in OAG-98-012, that "(p)ursuant to 10 Ohio Admin. Code 4123-3-08(B), a board of county commissioners through its designated representative

may certify a county employee's claim for workers' compensation benefits when the board is not the appointing authority of the employee."

The Attorney General went on to state that the "county commissioners may require county appointing authorities to comply with county policies and programs that are designed to ensure the county's eligibility to participate in the premium discount program". These policies and programs included wage continuation, transitional work, accident investigation, safety training and an active safety committee.

The county is also treated as one employer for workers' comp premium purposes, and the same premium rate and rating plan is applied to all county payroll.

71.07 PREMIUMS – HOW DETERMINED

The amount of premium an employer pays is determined by four factors: type and risk of business (as categorized by the manual classification), number and severity of claims, amount of payroll, and the rating program selected by the employer.

Type of Work - Manual Classification: The amount of premium an employer pays is primarily based upon the type of work performed. The BWC uses over 600 NCCI (National Council on Compensation Insurance) categories (known as manual classifications) to identify rates for each type of business. The base rate for each manual category is annually set based upon the statewide cost of claims within that industry classification. Generally, the more hazardous the work, the higher the rate imposed. All employees of county government, regardless of their appointing authority or type of work, are classified by the BWC as manual classification 9430. If the county purchases elective workers' comp coverage for volunteers, inmate workers and/or probationers (U-69 contract coverage), this coverage is classified under manual 9439. See Section 71.22 of this Chapter for a discussion of this elective coverage.

Number and Severity of Claims: Employers who maintain a better than average workplace injury record will receive a reduction from the base premium rate of their manual classification. Those with a poor loss experience will pay a rate higher than the basic rate.

Amount of Payroll: The premium rate is applied to the employer's payroll. Proper reporting of payroll to the BWC is imperative to reduce premiums and protect against penalties for misreporting. Information on reportable payroll is available from the BWC website at www.OhioBWC.com.

Premium Rating Programs: See Sections 71.08 through 71.14 of this Chapter.

71.08 PREMIUM RATING PROGRAMS

The premiums and assessments employers pay to the BWC pay compensation and benefits for injured workers' claims, cover administrative costs and finance the BWC's

Division of Safety and Hygiene. The BWC offers several premium rating plans, including individual experience rating, group experience rating, group retrospective rating, individual retrospective rating, as well as self-insurance. Counties should evaluate these plans, as well as any new rating and discount programs developed by the BWC over time, and determine which best meets their specific needs. An overview of BWC Rating Plans, current as of the date of this revision, is included below. Detailed information on all current BWC rating programs is available from the BWC and on the BWC website www.OhioBWC.com

71.09 INDIVIDUAL EXPERIENCE RATING

Individual experience rating is an incentive system, the goal of which is to provide a financial benefit to employers with fewer than expected workplace injuries, while charging a higher premium to those employers with more on-the-job accidents. The BWC establishes a base premium rate for each employer classification based upon the amount of expected losses for that business or industry. Employers with lower claims costs than other employers in their classification receive credits against the base rate, and are called credit rated. Employers with higher than average claims costs are assessed a penalty in addition to the base premium rate and are called penalty rated. The county is considered to be a single employer for workers comp premium rating purposes.

71.10 SELF-INSURANCE

Counties can receive several benefits from self-insuring their workers' compensation coverage, including the control and flexibility of administering their own claims and the potential for claims cost savings. There can also be an increased risk of financial loss due to unexpected claims. Counties must meet specific BWC financial and administrative criteria in order to initiate and continue a self-insured workers' comp program (ORC 4123.35, OAC 4123-19-03). Self-insuring employers pay benefits directly to their injured employees and service providers, and do not pay workers' compensation premiums into the state fund. Disputes in self-insured claims are referred to the Ohio Industrial Commission for adjudication.

CCAO offers a program for counties interested in self-insuring their workers' comp which combines claims administration services with excess insurance coverage through access to nationally recognized markets. Counties interested in self-insuring workers comp can contact CCAO staff for assistance in obtaining an individualized analysis and feasibility study.

71.11 GROUP EXPERIENCE RATING

Group experience rating allows employers who operate similar businesses to join together to achieve lower premium rates than they could as individual employers. Group experience rating guidelines are outlined in OAC 4123-17-61 to 68. Group members are

all charged the same Group Rating premium rate rather than their individual experience rated premium.

An organization to which all the employers belong, such as a trade association, acts as the group sponsor, and must be certified by the BWC. The group sponsor must provide education and communication to group members on safety and reducing workplace injuries, and must submit a safety plan each year to be approved by the BWC.

The County Commissioners' Association of Ohio sponsors a Group Experience Rating Plan for member counties. This is the only group experience rating plan available to counties. All eligible counties are offered an opportunity to join each year. From its inception in 1992, through 2011, the CCAO Group Experience Rating Plan has saved counties over \$36,000,000 in workers' compensation premiums. During plan year 2012, 22 counties were members of the Group Experience Rating Plan.

To be eligible for the CCAO Group Rating Plan, a county must be a member of the CCAO, be within the Plan's payroll size and experience parameters, and agree to work toward the implementation of the Plan's workplace safety and claims management guidelines entitled the ***10 Step Safety Plan for County Government***. This document is available from CCAO staff.

71.12 GROUP RETROSPECTIVE RATING

Group retrospective rating ("Group Retro") is a performance based incentive program designed to reward a group of similar employers who are effectively managing safety and workers' comp claims. This reward is in the form of premium refunds which are based upon the group achieving lower than average claims experience in a given year. Group Retro guidelines are outlined in OAC 4123-17-73 and 68. Each group is organized through a BWC-certified sponsor who is responsible for screening potential group retro members based upon safety and claims management criteria established by the Group. The group sponsor must provide education and communication to group members on safety and reducing workplace injuries, and must submit a safety plan each year to be approved by the BWC.

Group retrospective rating member employers initially pay their individual experience rated premium to the BWC as if they were not in a retro group. The total of the individual premiums for the group members is the "standard premium" of the group. 12 months after the end of the policy year, the BWC will calculate the group retrospective premium, based upon developed incurred claim losses of the entire group. The BWC will then compare the group retrospective premium to the standard premium. If the retrospective premium is lower than the standard premium, group members will receive a rebate. If the retrospective premium is higher, each group member will be charged an assessment. This calculation is done again at 24 and 36 months, providing a financial incentive for group members to continuously work on safety and claims management.

Since 2010 CCAO has sponsored a Group Retrospective Rating Plan for member counties. Members must meet the group's underwriting guidelines and agree to work toward achieving the Group's written ***Safety and Claims Management Expectations***, which are available from CCAO staff. As of the writing of this chapter, the final results are not yet available for the 2010 Group Retro Program's first year's performance; however premium savings of 21% for each member, for a total of \$977,895 is estimated. 25 counties participated in the Group Retrospective Rating Plan for the 2012 policy year.

71.13 INDIVIDUAL RETROSPECTIVE RATING

Individual retrospective rating is a form of partial self-insurance in which the employer agrees to assume a portion of the risk in return for a reduction in premium. The employer pays a discounted premium initially. Over the next 10 years the employer reimburses the BWC for all payments made on claims occurring during the original policy year. At the end of 10 years, the employer must also pay any remaining reserves on claims which remain open. Individual retrospective rating guidelines are outlined in OAC 4123-17-41 to 54.

71.14 DEDUCTIBLE PROGRAM

The BWC offers a Deductible Program whereby the employer receives a reduction in premium in exchange for taking financial responsibility for claims costs. The employer receives a premium discount based upon the amount of risk (deductible) the employer is willing to assume for each claim. Deductible Program guidelines are outlined in OAC 4123-17-72. Counties considering the Deductible Program should carefully weigh the amount of added risk in comparison to the premium discount received.

The Small Deductible Program offers deductibles of \$500; \$1,000; \$2,500; \$5,000; and \$10,000. The Large Deductible Program offers deductibles of \$25,000, \$50,000, \$100,000 and \$200,000, as well as the option of an annual aggregate stop-loss limit of three times the deductible level chosen.

An employer must apply to the BWC in order to participate in the Deductible Program. To be accepted, the employer must demonstrate their financial strength and ability to make payments as required by the program. Employers in Group Experience Rating may also participate in the Small Deductible Program, however, the combined discounts for both programs cannot exceed the maximum discount that is allowed under the group experience rating plan.

71.15 BWC DISCOUNT PROGRAMS

In November 2011 the BWC announced *Destination: Excellence*, whereby employers could "combine existing and new programs to create a comprehensive discount program that meets their individual needs and provides opportunities to reduce

premiums through adoption of best practices and meeting certain performance requirements.” (BWC Press Release November 18, 2011).

Discount programs included in *Destination: Excellence*:

- Industry Safety: Rewards employers for establishing industry specific safety strategies.
- Safety Council: Provides discounts to employers who participate in local safety council programming. In addition, rebates are awarded for demonstrating actual reductions in workplace injuries.
- Drug Free Safety Program: Provides a discount for employers that promote a work environment free of drugs and alcohol. Drug Free Safety Program guidelines are outlined in OAC 4123-17-58. See also Section 71.16 of this Chapter regarding the Drug Free Safety Program.
- Transitional Work: Rewards employers for demonstrating success in bringing injured workers back in a modified capacity while recovering from their injury.
- Vocational Rehab: Rewards employers who work with medical partners and the BWC to find alternative job opportunities for workers involved in serious accidents.
- Go Green: Report and pay premium online.
- Lapse-free Discount: Encourages employers to keep accounts current.

These discount programs are not all compatible with every BWC rating program. Program compatibility is specified in OAC 4123-17-74 Appendix(C). As of the writing of this Chapter, specific guidelines for all of the *Destination: Excellence* discount programs have yet to be established by the BWC. Counties should seek further information from the BWC website www.OhioBWC.com, their TPA and BWC Employer Services Specialist.

71.16 DRUG FREE SAFETY PROGRAM

The BWC Drug Free Safety Program (DFSP) offers a premium discount to eligible employers for implementing a loss prevention strategy addressing workplace use and misuse of alcohol and drugs, including prescription, over-the-counter, and illegal drug abuse, within the context of a comprehensive safety program. Employers apply for acceptance into the DFSP and must meet ongoing reporting requirements. Specific guidelines for the DFSP are contained in OAC 4123-17-58. The BWC DFSP Guide is available at www.ohiobwc.com/downloads/blankpdf/DFSPGuide.pdf

The elements of the DFSP include a written policy, training for supervisors and employees, information and assistance on avoiding drug and alcohol abuse, integration

with the employer's overall safety program, and employee drug/alcohol testing. The program offers two levels of participation: Basic, with a discount of 7% and Advanced, with a maximum discount of 14%. At each level of participation the training and policy elements of the DFSP must be implemented county-wide in order for a county to receive the premium discount. However, drug testing need only be applied to safety-sensitive positions, in compliance with constitutional constraints.

Many public employers have implemented the BWC's DFSP (or its predecessor, the Drug Free Workplace Program) including employee drug testing. However, since public employers must address the constitutionally protected rights of their employees when implementing any drug-testing program, counties should seek legal advice and guidance in developing a drug free workplace program.

DFSP Grants: The BWC has grant funding available to reimburse some of the costs associated with employers who are starting a drug-free program for the first time. To qualify for a grant, the employer must be in their initial year of DFSP participation or the program year immediately following.

Detailed information on the DFSP is available on the BWC website at the following link:
<http://www.ohiobwc.com/employer/programs/dfspinfo/dfspdescription.asp>

71.17 BWC WELLNESS GRANTS

In December 2011 the BWC Board approved a workplace wellness grant program to help employers control the escalating costs of workers' comp claims associated with chronic health risk factors. Participating employers will be awarded up to \$15,000 over four years to implement wellness programs in their workplaces. BWC Press Release dated December 16, 2011. The BWC Wellness Grant application packet can be found at www.ohiobwc.com/employer/programs/safety/WellnessGrants.asp. Counties can seek further information at www.OhioBWC.com, from their TPA and BWC Employer Services Specialist.

71.18 BWC SAFETY INTERVENTION GRANTS

The BWC Safety Intervention Grant Program is available to Ohio employers for the purchase of equipment which will substantially reduce or eliminate injuries and illnesses associated with a particular task or operation. Upon application and acceptance, an employer can receive a 2-to-1 matching grant, up to a maximum of \$40,000. In return, the employer must submit quarterly data reports and a case study one year after the date of the intervention. The BWC will use this information to determine the effectiveness of the intervention and share this information with other similar employers. A summary of ergonomics best practices for public employers resulting from previously awarded Safety Intervention Grants is available on the BWC website at:
<https://www.ohiobwc.com/downloads/brochureware/publications/PESafeGrant.pdf>

Specific guidelines for Safety Intervention Grants are contained in OAC 4123-17-56. The BWC Safety Grants Procedural Guide is available on the BWC website at:

<https://www.ohiobwc.com/downloads/brochureware/publications/SafetyGrantsPhaseVI.pdf>

71.19 PREMIUM PAYMENT

Public employers, including counties, receive a BWC payroll report in January which is the basis for workers' comp premium calculation. The employer's premium rate, including BWC administrative charges, is reflected as a dollar amount per \$100 of payroll. Premium is based on the county's prior year payroll. All County employees' payroll is reported under Manual 9430. Additional elective coverage for non-emergency volunteers, inmates and/or probationers (U-69 contract coverage), if purchased by the county, is reported under manual 9439. (See Section 71.22 of this Chapter for a detailed discussion of this coverage). The completed payroll report and 45 percent of the premium are due to the BWC by May 15 and the balance by September 1. Public employers can pay the entire amount by May 15 and receive a discount. Failure to pay premium by the deadline may result in a penalty equal to the available early-payment discount percentage.

71.20 PREMIUM CHARGE-BACKS

County Commissioners have the authority to charge back the premium paid for workers' comp coverage to the various non-general funds based upon that office's payroll, their relative exposure to risk of workplace injury and/or their previous experience of workers' comp claims. ORC Section 4123.41(B)(2) provides that, following 60 days notification and an opportunity for consultation, Commissioners may implement a charge-back process that is based upon the above criteria. County Commissioners can use this charge-back process to fairly allocate workers' comp premium between the various county offices, as well as to provide a system of financial incentives for offices actively involved in workplace safety and claim management programs. See CCAO County Advisory Bulletin 2005-01 for a more detailed discussion of this charge-back process. This bulletin is available at the following link: www.ccao.org/newsletter/cab200501.htm.

71.21 WAIVER OF WORKERS' COMP COVERAGE FOR EMPLOYER SPONSORED RECREATIONAL / FITNESS ACTIVITY

Employees who voluntarily participate in employer-sponsored recreational activities or fitness programs can be asked to complete a waiver form before participating in the program. By signing the waiver, employees agree that any injuries they sustain during the activity will not be eligible for workers' comp coverage. This waiver (form C-159) is available on the BWC website. www.OhioBWC.com

71.22 COVERAGE FOR EMERGENCY VOLUNTEERS, NON-EMERGENCY VOLUNTEERS, INMATES AND PROBATIONERS

Volunteers generally do not qualify for workers' compensation coverage because they receive no wages. However, there are some types of volunteers for whom public

employers must provide coverage.

Public employers are required to provide workers' comp coverage for certain emergency volunteers: auxiliary (volunteer) Sheriff's Deputies, volunteer firefighters and volunteer emergency medical technicians who work for emergency services operated by the entity. This coverage is listed as manual 9439 on the public employer's annual BWC payroll report. "Payroll" is reported at a minimum of \$300 per enrolled person per year, and premium must be paid on at least 15 persons per public employer taxing district per year, with a minimum annual premium of \$4,500.

Counties may choose to provide elective workers' comp coverage for non-emergency volunteers, inmates performing work, and individuals assigned volunteer work instead of a fine or jail sentence (probationers). Providing this coverage is discretionary for the county.

The benefit to the county in providing workers' comp coverage for these non-emergency volunteers, inmates and probationers is immunity from negligence claims, should the individual be injured while volunteering for the county. A person filing a workers' comp claim waives their right to a negligence action against their employer based on that injury (except in extreme cases where a willful or intentional act of the employer caused the injury - an "intentional tort" claim discussed previously in Section 71.03 of this Chapter.) A county providing workers' comp coverage for probationers, inmates and non-emergency volunteers is, in effect, providing itself with immunity from a claim by an injured participant that the negligence of the county led to their injury. This "immunity" comes at a cost, however, as claims from these volunteers are included in the County's general claims experience and can increase the premium rate applied to the entire county payroll, which could result in the county becoming ineligible for one of the group rating plans discussed earlier.

Workers' comp coverage for non-emergency volunteers, inmates and/or probationers can be obtained from the BWC by completing a Contract for Coverage of Political Subdivisions (U-69 contract). The county must maintain a roster of covered individuals, as well as all other records necessary to document the work performed by the covered individuals. "Payroll" for non-emergency volunteers, inmates and probationers is included in the county's general payroll (manual 9430) on the annual BWC payroll report.

"Payroll" for non-emergency volunteers is calculated based upon the total number of hours worked times the pay rate of an equivalent position. The federal minimum wage applies if no rate of pay can be determined. There is a minimum reporting requirement of 20 hours per week for each covered volunteer. If the volunteer performs no work in a given week, there is no reporting requirement. "Payroll" for inmates and probationers is based on the total hours worked by each individual multiplied by the federal minimum wage.

The BWC policy “*U 69 Contract Coverage for Political Subdivisions*” is available from the BWC and CCAO staff.

71.23 COVERAGE FOR EMERGENCY MANAGEMENT WORKERS AND VOLUNTEERS

ORC Sections 4123.031 to 4123.037 provides specific access to workers’ compensation benefits for emergency management workers and volunteers. There is no contract required for this coverage. In order to qualify for this coverage, the individual must be registered as provided by law and shall have subscribed to the required loyalty oath. The injury must occur during an authorized emergency or a training exercise under the control and supervision of the county emergency management agency. Eligible emergency management workers have one year from the date of injury to make a claim for workers’ comp benefits. There is no premium charged for this coverage.

71.24 HEALTH PARTNERSHIP PROGRAM (HPP) – MANAGED MEDICAL CARE

In 1997 the BWC introduced the Health Partnership Program (HPP) – their model for managed medical care within the Ohio workers’ compensation system. Under the HPP, private Managed Care Organizations (MCOs) approved by the BWC are responsible for the medical management of all workers’ comp claims. This includes medical treatment and surgery approvals, payment of medical bills and rehabilitation referrals. MCOs are paid by the BWC.

Each employer in Ohio must choose an MCO or the BWC will assign one. The selection of an MCO is critical to the management of the county’s workers comp costs. The decision should be based upon the services provided by the MCO such as: adequate provider network, medical cost containment strategies, utilization review, provider discounts and rehabilitation services, as well as the MCO’s track record for serving public employers and an awareness of the specialized needs of counties. The BWC provides an evaluation of all MCOs on their web site www.OhioBWC.com. Every two years there is a 30 day open enrollment period, during which an employer may change MCOs.

When an employee is hurt on the job, the employee can see any doctor for the first visit. After that, the employee must see a BWC-certified provider for the medical treatment to be covered by the BWC. The employer may suggest a specific doctor, but the employee has the right to visit any BWC-certified provider. BWC-certified providers must meet certain established professional criteria and have agreed to BWC treatment and fee guidelines.

71.25 REBUTTABLE PRESUMPTION

ORC Section 4123.54 provides that an employer can seek to disallow the workers’ compensation claim of an employee who tests positive for one of nine specified drugs or alcohol following a workplace injury. The law creates the presumption that an employee

who tests positive following a workplace accident was impaired and that the impairment caused the accident – thus making the employee ineligible for workers’ compensation benefits. The burden then shifts to the employee to prove that the presence of alcohol or drugs in their system was not the proximate cause of their injury.

The Ohio Supreme Court previously struck down a similar law as unconstitutional. The change in the new version is that, prior to drug testing an employee following a workplace injury, the employer must document objective evidence amounting to “reasonable cause” that the employee was in fact impaired at the time of the accident and that the impairment contributed to the workplace accident. The statute provides specific guidelines for this “reasonable cause” standard.

ORC Section 4123.54 also requires all Ohio employers to post a written notice informing their employees that a positive drug test or the refusal to take a drug test following a workplace accident could jeopardize their eligibility for workers’ compensation benefits. An employer who fails to post this notice or give employees actual notice by some other means cannot object to an employee’s workers’ comp claim based upon a positive drug or alcohol test following a workplace injury. This written notice is available on the BWC website www.OhioBWC.com.

Counties and other public employers must be vigilant in protecting their employees’ constitutional rights when implementing a drug testing program, including the rebuttable presumption in workers’ compensation. To do this, the county should have a written drug testing policy and program, including training for management and employees, which is regularly reviewed by legal counsel.

71.26 MANAGING THE COUNTY’S WORKERS COMP CLAIMS

10 Step Safety Plan: In order to meet the needs of counties in effectively addressing workplace safety and workers’ compensation claims management, CCAO has adapted the BWC’s “10 Step Business Plan” to work within the unique structure of County Government, resulting in the **“CCAO 10 Step Safety Plan for County Government”**, which is available from CCAO staff. This Safety Plan recommends that counties utilize the following strategies to effectively control their workers’ comp costs:

- designate a county-wide Safety Coordinator,
- implement a county-wide written safety policy and safety training program,
- centralized procedures for reporting and investigating workplace injuries,
- implement a county-wide safety committee,
- implement a county-wide transitional work program (including return to work and remain at work) to bring injured employees back to work safely and quickly, and

- implement a county-wide wage continuation program to reduce claim costs.

Members of the CCAO Workers' Comp Group Experience Rating Plan are required to work toward the implementation of the **10 Step Safety Plan for County Government** in order to share in the Group's premium savings. Members of CCAO's Group Retrospective Rating Plan are required to work toward the implementation of the Group's **Claims Management and Safety Expectations**. Both of these documents are available from CCAO staff.

Claims Management Services: Most counties retain the services of a third party administrator (TPA), service company or consulting firm to assist in managing their workers' compensation claims. The TPA acts as an advisor for the county, assisting with claim investigation, certification or rejection; attending workers' compensation hearings; verifying claims costs, reserves, handicap reimbursements and settlements; performing risk analysis and advising on premium rating plan selection. TPAs are not attorneys and cannot represent a county in legal matters. For specific guidance on the role of non-attorneys in workers' comp see Industrial Commission Resolution No. R-04-1-01 and Cleveland Bar Assn. v. CompManagement, Inc., (111 Oh St.3d, 444 2006-Ohio-6108, 2006).

Contact with the BWC: The Ohio BWC has 14 regional service offices. Employed at each service office are Employer Services Specialists who are responsible for providing direct outreach and service to the employers in their region. Counties should establish direct and regular contact with the BWC Employer Services Specialist (ESS) assigned to them. The ESS can provide information on BWC rating plans, BWC premium discount programs and grants, as well as assistance in the management of individual claims. The services provided by the ESS are included in the BWC premium paid by the county.

The county should meet with their ESS regularly, along with representatives from the county's MCO (see Section 71.24 of this Chapter), TPA and the Division of Safety and Hygiene/PERRP (see Section 71.27 of this Chapter) in order to coordinate and manage the county's safety and workers' comp programs.

Transitional Work: Transitional work is a program whereby the injured worker is brought back to productive work as soon as medically possible. Returning an injured worker to productive employment greatly increases their chances for a full recovery and reduces the claim costs, which helps the employer control their workers' comp premium.

To implement a transitional work program, the employer develops several transitional work job descriptions and identifies positions which could be filled by injured workers as they recover. Placing an injured worker into a transitional work position is a team effort between the employer's workers' comp coordinator, the employee's supervisor, treating physician, the TPA, MCO and the BWC. In county government, a successful transitional work program requires participation and cooperation between all elected officials.

The transitional work position is short-term and incorporates rehabilitation, physical therapy and work hardening services through the BWC, all of which are focused upon transitioning the employee back to their prior position. Many counties successfully use transitional work to benefit their injured workers, as well as the county's bottom line. Sample programs and assistance in implementing a transitional work program are available from the BWC as well as from the county's TPA.

Wage Continuation: Wage continuation is a program whereby the county continues to pay an injured worker's salary during the time he/she is off work due to a workplace injury, rather than having the injured worker receive temporary total disability benefits (TTD) from the BWC.

The justification for this program is financial. The payment of TTD in a single claim can cause the county's premium rate to increase. Since the county's premium rate is applied to the entire county payroll, the financial impact can be dramatic. Paying the injured worker's wages for a limited number of weeks (usually six weeks, renewable for an additional six weeks at the county's discretion) can be substantially less costly than the increased premium caused by the award of TTD. Many counties successfully use wage continuation to benefit their injured workers and to control their workers' comp premium.

71.27 SAFETY SERVICES AVAILABLE THROUGH THE OHIO BWC

The Ohio BWC's Division of Safety and Hygiene (DSH) offers an extensive variety of safety services at no additional cost to Ohio employers. These services include technical support, library services, educational services, online safety tools and resources, and publications. A complete listing of DSH resources and services is available at: <http://www.ohiobwc.com/employer/services/safetyhygiene.asp>

- **Technical Support:** Access to expertise in industrial safety, construction safety, industrial hygiene and ergonomics to improve hazard recognition, evaluation and control in the workplace. Call 1-800-OHIOBWC or email safety@bwc.state.oh.us
- **Library Services:** Safety related books, magazines, codes, videos and research services available at two locations: Wm Green Building, 30 W. Spring St., Third Floor, Columbus, OH 43215; and OCOSH, 13430 Yarmouth Dr., Pickerington, OH 43137. Both locations can be reached at (800) 644-6292 or library@bwc.state.oh.us
- **Educational Services:** The DSH Training Center offers extensive safety training courses at regional locations around Ohio as well as web-based training, at no cost to Ohio employers. A full description of classes and registration information is available at: <http://www.ohiobwc.com/employer/programs/safety/SandHEducation.asp>

- **Online Safety Tools and Resources:** Available at:
<http://www.ohiobwc.com/employer/programs/safety/onlinetools.asp>
- **Publications:** BWC and DSH provide resource material such as brochures, fact sheets, posters and manuals. Materials can be viewed on line or ordered at:
<https://www.ohiobwc.com/bwcccommon/forms/publications/nlbwc/default.asp>

Annually, the BWC Division of Safety and Hygiene presents the Ohio Safety Congress and Expo, a conference for Ohio employers to increase their knowledge and discover products and services which will improve workplace safety. There is no fee for attending the Safety Congress. The DSH also sponsors over 80 local Safety Councils around the state which provide their local communities with quality programs addressing occupational safety and health, workers compensation and risk management education.

The BWC provides safety consulting services specifically for public entities through the Public Employer Risk Reduction Program (PERRP). See Chapter 73 of this *Handbook* for a detailed discussion of PERRP.