

# Employer Summary

## WC Coverage in Ohio and Other States



### BACKGROUND

#### Addressing the “Double Premium Problem”

Recent changes to Ohio workers’ compensation law were adopted to address the problem of employers paying double premiums in order to insure their employees who required out-of-state coverage. Prior to the enactment of the new law, Senate Bill 334, effective September 11, 2008, Ohio employers were required to report all payroll to the Ohio Bureau of Workers’ Compensation (BWC) and pay Ohio workers’ compensation premiums based upon that total payroll figure. This rule applied whether or not the employer had separate workers’ compensation coverage in other states. Since some states require that all out-of-state workers (even those who are simply traveling through the state) obtain coverage through the local workers’ compensation system, many employers were effectively paying double premiums for their workers who are subject to such policies.

The new law permits employers to segregate their reported payroll into two categories, one for labor performed in Ohio and another for labor performed outside of Ohio. When payroll is segregated in this manner, the workers’ compensation premiums payable to the BWC are based only on the payroll reported for labor performed in Ohio. Any employer who elects to segregate payroll is required to demonstrate to the BWC that it has workers’ compensation coverage in effect for employees working out-of-state.

#### Prohibiting recovery in multiple states

The new law also seeks to prevent workers injured outside of Ohio from receiving benefits in more than one state for the same injury or occupational disease. Once an injured employee’s workers’ compensation claim is allowed or denied in another state, the worker is prohibited from filing a claim for the same injury in Ohio, regardless of whether the employer has elected to report its full or partial payroll to the BWC. Similarly, an employee who receives a decision on the merits of a claim under Ohio’s workers’ compensation system is prohibited from filing a claim for the same injury in another state. The new law allows the BWC to recover benefits paid to an injured worker, plus costs and attorney fees, if the worker receives benefits or compensation in another state for the same injury.

This aspect of the new law presents potential problems for Ohio employers. Consider the hypothetical example of an Ohio-based employer that sends a worker into Kentucky on business. Further assume that the worker is injured in Kentucky, and files for benefits in Kentucky, a state which requires coverage for all those working in Kentucky for any period of time, whether or not the employer has coverage with the Ohio



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BWC. Prior to the enactment of SB 334, if the employee collected benefits in Kentucky, the Ohio BWC would typically work with the Kentucky workers' compensation administrator to reimburse it for benefits paid to the injured worker. Although in-state coverage was not in effect, the employer was not likely to be found to be out of compliance with Kentucky's local coverage requirements, because the administrator had recourse to the Ohio BWC. Furthermore, any benefits paid by Kentucky's administrator would be credited toward any benefits due on claims filed with the Ohio BWC.

Compare this to how the same scenario might unfold after the enactment of SB 334. Kentucky would be likely to assert jurisdiction over any claim submitted by a worker injured in Kentucky, regardless of the existence of local coverage. The Ohio worker would collect benefits from Kentucky, but since the Ohio BWC closes the door to any claim which is decided on the merits in another state, the Kentucky administrator has no recourse to the Ohio BWC with respect to benefits paid the worker. Therefore the employer would be likely to face a noncompliance citation issued by Kentucky's administrator and an action to recover any applicable fines and penalties.

### **Highlighting the need for out-of-state coverage**

These changes highlight the need for employers whose workers travel into or through states requiring local coverage to obtain cost-effective out-of-state workers' compensation coverage, a challenge in the current marketplace where such coverage is hard to find. Agents, carriers, and industry groups are currently working together to develop a product to fill this need and hope to have a solution available in the months ahead. In the meantime, local coverage may be obtained through each state's workers' compensation fund.



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