

BAYLOR BULLETIN

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ENROLL in GROUP RATING for 2008 before January 31, 2008

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GROUP RATING DISCOUNTS REDUCED

On November 21, the Ohio Bureau of Workers' Compensation Board of Directors voted to reduce the maximum group-rating discount to 85 percent for 2008. This reduction will take effect in the policy year beginning July 1, 2008.

The BWC feels the reduction will create greater equity between the premiums paid by group-sponsored employers and non-group employers and reduce Ohio's overall workers' compensation base rates. Marsha Ryan said "This

reduction in Ohio's group discount is expected to close the gap on the subsidies paid by non group-rated employers by approximately \$50 million and will reduce Ohio's premium base rate by approximately 2.5 percent."

PAYROLL REPORTING PROCEDURES

You should have received your BWC Payroll Report for the period July 1, 2007 to December 31, 2007. The completed report and premium payment must be received at the BWC no later than February 29, 2008. Postmarks do not suffice. You also can complete the report and pay premium on line at www.ohiobwc.com.

Failure to provide the BWC the completed report

and premium payment by February 29, 2008 can lead to lapsed coverage, penalties and interest. Additionally you will become responsible to reimburse the BWC for any payments they must make because of claims for injuries incurred during the period of lapsed coverage.

If you complete the report and pay the premium on

time and online, you can take advantage of the BWC's 50/50 Payment Plan. You would only have to pay 50% of the premium before February 29, 2008 and the other 50% by May 1, 2008. You must follow the hyperlinks beginning in the lower right corner of the BWC's Home page to use this method of payment.

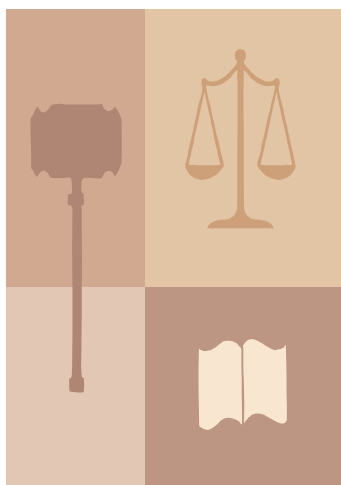
OSHA REPORTING REQUIREMENTS

Operations with more than 10 employees must post their Summary of Work-Related Injuries and Illnesses (OSHA Form 300A), for 2007 by February 1, and keep it posted until April 30, 2008. Business

establishments in certain industry classifications such as SIC Code 81, Legal Services, or SIC Code 592, Hardware Stores, are exempt from this requirement. Do not post your log (OSHA Form 300) or incident reports

(OSHA Forms 301). You must keep OSHA records for at least five years. Go to www.osha.gov for complete instructions, exemption list, forms and regulations.

EMPLOYERS REGAIN ABILITY TO TERMINATE EMPLOYEES RECEIVING WORKERS' COMPENSATION BENEFITS



“The Court specifically upheld Western & Southern’s right to terminate an at-will employee collecting temporary total disability compensation such as Ms. Bickers as long as the termination was not in retaliation for filing the workers’ compensation claim.”

In its now infamous *Coolidge v. Riverdale Local School District* decision in 2003, the Supreme Court of Ohio ruled that an employer could not terminate an employee while she is receiving temporary total disability compensation from a work-related injury. In that case, Riverdale fired Ms. Coolidge after she had exhausted her available leave of absence allowance but remained disabled from work. The Court rejected Riverdale’s argument that the maximum leave policy as applied to Ms. Coolidge’s situation also applied to all leaves of absence without regard to whether the leave was for a work-related medical purpose, personal medical reason or a non-medical purpose.

In so ruling, the Court endorsed special treatment for work-related injuries under an employer’s absence policies, and opined that enabling termination in such instances would be inconsistent with underlying healing and rehabilitative purpose of the workers’ compensation system. Following the *Coolidge* decision, injured employees were essentially “fireproof” and enjoyed unlimited job protection as long as they continued to receive temporary total disability

compensation. Employers that terminated these “protected” workers quickly found themselves defendants in wrongful termination actions.

Four years after the *Coolidge* decision, the Supreme Court agreed to hear the employer’s appeal in a wrongful termination action brought by Shelley Bickers against Western & Southern Life Insurance Co. Ms. Bickers sustained a work injury in 1994, and was terminated in 2002 while collecting temporary total disability compensation. The appellate court determined that the matter was sufficiently similar to *Coolidge* and allowed the case to proceed. On appeal, the Supreme Court determined that reliance on its *Coolidge* ruling had been improperly expanded beyond the teacher-school district employment contract scenario that was the subject of that decision. The Court specifically upheld Western & Southern’s right to terminate an at-will employee collecting temporary total disability compensation such as Ms. Bickers as long as the termination was not in retaliation for filing the workers’ compensation claim. At-will workers terminated while collecting compensation can successfully challenge

their discharge only if they can establish workers’ compensation retaliation already prohibited by a specific statute.

The Bickers decision provides substantial relief to employers who have been saddled with the employment status uncertainties created by *Coolidge*. Injured workers are no longer cloaked with the special protection from an employer’s evenhanded employment policies simply because they collect workers’ compensation benefits. Unfortunately, a myriad of federal, state and local laws can impact an employer’s ability to apply its policies to particular situations. Thus, employers are advised to review termination plans involving workers’ compensation recipients with counsel prior to making a final determination.

Editor’s Note: The foregoing is not intended as a substitute for legal advice on this topic. Additional questions may be directed to Kelly E. Drushel, Esq. at (440) 546-7616 or (800)478-6499.

PAYROLL REPORTING LIMITS INCREASED

Effective January 1, 2008, the minimum and maximum reportable payroll limits have increased. The Ohio Department of Jobs and Family Services determine the State Average Weekly Wage (SAWW) effective January 1, 2008. The minimum is set at 50% of the SAWW and the maximum is 150%.

Corporate officers who perform services for the corporation are subject to the minimum and maximum reporting. Corporate officers of a subchapter S corporation, whom perform services for the corporation, must

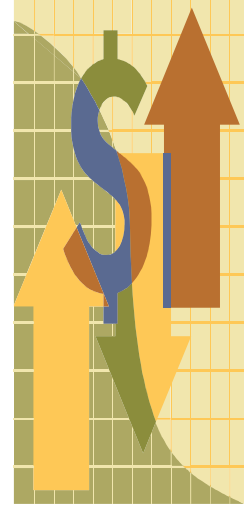
include their portion of ordinary income to their regular earnings up to the maximum.

The following employers who choose elective coverage are subject to the minimum and maximum reporting.

- Sole proprietors
 - Partnership
 - Family farm corporate officers
 - Limited liability company acting as partnership
 - Limited liability company acting as sole proprietorship
 - Individual incorporated as a corporation
- Ministers covered under a

religious organization's policy are not subject to the minimum and maximum reporting requirement. The 2008 minimum is \$376 per week up from the \$365 per week in 2007. The 2008 maximum is \$1,127 per week up from \$1,095 per week in 2007.

The construction industry payroll limitation is applied on a weekly by employee basis. Bonus and other payments are spread over the period they are earned. The construction cap for 2008 is \$1,127 per week up from \$1,095 in 2007.



April 1 to 3, 2008 at the Columbus Convention Center

Registration is free and open to the public.

See the latest tools and techniques to improve workplace safety while reducing workers' compensation costs.

The 78th Ohio Safety Congress & Expo includes:

- More than 150 education sessions;
- Live demonstrations of trenching/excavation rescue, masonry wall-bracing, grain engulfment rescue and more;
- Nearly 250 exhibitors in the Expo;
- CEUs and credits for BWC discount programs available for all educational and some general sessions;
- Professional-level full-day programming for safety specialists, industrial hygienists and ergonomists.

Featured speaker:

Scott Geller, PhD., a leader in people-based safety training, will help you improve your company's safety program through research-based principles and industry-proven tools. Geller is a senior partner at Safety Performance Solutions, Inc., who has been published in numerous safety journals and textbooks.



Visit ohiobwc.com for more information.

KEY SAFETY PROGRAM PARAMETERS

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We're on the Web!

See us at:

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Ohio Division of Safety & Hygiene Training Center

Safety & Health
Classes for Ohio Workers

The Ohio Bureau of Workers' Compensation Division of Safety & Hygiene Training Center offers 64 occupational safety, health, and ergonomic courses in twelve locations statewide and seven online courses. All courses are offered at no additional cost to Ohio employers who pay into the Ohio workers' compensation insurance fund. Courses are designed to emphasize practical application of safety principles, to help develop a safety culture, and to provide current and proposed standards for regulatory compliance.

For more information, including location and class schedules, or to register online, log on to www.bwclearningcenter.com, and click on:

- Learning Center;
- Course Enrollment & Information.

Assigning an individual the role of coordinating safety efforts for the company.

Designate an individual as the accident prevention coordinator, give that person responsibility and authority for facilitating organizational safety systems and processes and help that individual develop the knowledge and skills necessary for success. The accident prevention coordinator does not assume operational responsibility for safety and health, but supports line management, supervision and employees to develop effective safety systems and processes. The accident prevention coordinator is responsible for helping management and employees identify accident prevention, safety, and health training needs. They should assist management develop strategies that improve the safety system and communicate safety and health requirements. In smaller companies, the accident prevention coordinator is the owner or chief executive officer. Medium size employers designate a staff manager such as human resource managers, engineers or financial services managers as the accident prevention coordinator. Larger companies may employ a full-time accident prevention coordinator depending on their accident history, costs of accidents and degree of hazard. The accident prevention coordinator must sincerely care about employee well being and have a high degree of credibility with employees.

Early return-to-work strategies to help injured or ill workers return to work.

Quality medical care provided in a timely manner helps employees who are involved in an accident and promotes cost containment for those injuries. Build a working relationship with the medical provider by creating open lines of communication and by educating the medical provider about your business. Establish a return-to-work plan that returns employees as soon as they are able to work in a productive capacity. The return-to-work plan will minimize costs and enhance the employer/employee relationship by accelerating the recovery process and promoting employee security. A worksite job analysis will be a valuable tool to develop a return-to-work plan. Include in each job analysis a job description, tools and equipment used, work schedule and physical demands for the required tasks. You can compare the employee's functional capabilities to the job requirement and decide how you can modify the job to return the individual back to work.

Internal program verification to assess the success of company safety efforts, to include audits, surveys, and record analysis. Accurate injury and illness records are an essential component of successful safety and health systems. Assess why accidents are occurring, what specific systems or processes are in need of change and how changes

will be made, are the goals of this step. Compare injury and illness experience with preceding periods and with the experience of similar companies. Results oriented data may indicate trends but these numbers do not show a system weakness, poor decision or inappropriate behavior. Performance oriented measures provide information for the identification of system weaknesses and shows where improvements are needed. You must measure and assess the process by which results are obtained. Techniques for measuring the process include perception surveys, assessing the accountability system, an observation system that develops information on safe behaviors or measuring the effectiveness of communication and training. An effective way to use performance related data is to track and post successful performance information. Chart and track by month the number of safe behaviors observed by management and employees, number of safety discussions, number of near misses reported, number of dangerous operations completed safely, number of safety suggestions and problems solved or number of miles driven or units completed without incident. From this information, you can identify unsafe behaviors and develop improvements to the organization's safety systems.