

EMPLOYMENT SERVICES ALERT

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No Citation? No Problem. Employers Can Now Submit a Request to Charge the Surplus Fund Without Proof of a Motor Vehicle Citation

By **Monica Frantz**, Attorney

Since the passage of Ohio House Bill 207 in 2016, the Bureau of Workers' Compensation has excluded the cost of a claim from an employer's experience if the employer could establish that the claim resulted from a non-at-fault motor vehicle accident involving a third party. In order for the BWC to charge such claims to the Surplus Fund, employers have been required to provide proof that the at-fault third party was issued a citation for violation of a motor vehicle law. Due to a recent change in the law, employers are no longer required to submit proof of a citation with an AC-28 application.

As of September 13, 2018, employers can request subrogation for motor vehicle accidents even where the at-fault, third party was not issued a citation. See R.C. § 4123.932. As long as there is other documentation to demonstrate that the third party was primarily liable for the accident, employers can submit a request to charge the Surplus Fund without having to provide a citation. This will greatly benefit employers, especially in catastrophic cases involving fatalities, where the at-fault third party is not issued a citation because he or she died as a result of the accident. Thanks to this new change in the law, employers' AC-28 applications will no longer be denied solely because no citation was issued to the at-fault third party. Moreover, the new law lessens the chances that employers will lose eligibility for group-rating and other discount programs and see large premium increases due to motor vehicle accidents that were not the fault of the employer's employee.

The law applies retroactively to claims occurring on or after July 1, 2017. If you have a claim dating back to July 1, 2017, where your employee was not the at-fault party, you may qualify for subrogation and should submit an AC-28 application. The BWC is also accepting applications from employers where an AC-28 was previously denied.

Please direct questions related to the subject matter of this alert, or workers' compensation in general, to any of the listed Roetzel attorneys.

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