

EMPLOYMENT SERVICES ALERT

7/24/14

Group Rating Class Action Lawsuit

The Ohio Bureau of Workers' Compensation (BWC) reports they have reached an agreement to settle for \$420 million a class action lawsuit filed seven years ago.

The lawsuit, known as the *San Allen* case, was against the state over the Bureau's group rating pricing between 2001 and 2008. The Eighth District Court of Appeals agreed the BWC violated its ratemaking authority when it knowingly maintained an inequitable rating system that resulted in excessive premium payments by non-group-rated employers. The court noted that the BWC admitted, both publicly and privately, that rates paid by non-group-rated employers were inflated and resulted in premium inequities. The court also agreed the BWC was unjustly enriched by the premium overcharges it received from class members who were non-group-rated during the class period from 2001-2008 and that the class members were entitled to restitution.

Earlier this year, the Court of Appeals remanded the case to the trial court to recalculate the restitution due class members who were group-rated during part of the class period by including an offset for the subsidies those class members received during the years that they were group-rated.

BWC Administrator and CEO Steve Buehrer said Ohio has made major changes to its workers' compensation system over the past several years which, he said, resulted in \$1 billion in rebates to customers last year.

"The policies that were at issue in this litigation in 2007 are not the same ones in place today, and we're pleased that we have reached a settlement so we can move forward," Buehrer stated in a release issued Wednesday night. "All of these improvements are paying off for workers and businesses, and we're going to keep building on them."

As part of the agreement, a \$420 million fund will be created to pay for claims to employers participating in the lawsuit, the attorney fees, court costs and the costs of administering the fund. In the Roetzel Employment Services Alert of May 14, 2014 (["Appellate Court Agrees Bureau of Workers' Compensation's Group-Rating Plan was Unlawful, But Remands to Lower Court to Review Damages"](#)), we predicted the ultimate outcome would be far less than the original \$860 million awarded by the Court of Common Pleas.

The next step, once the court gives preliminary approval of the settlement, is for class members to receive instructions for submitting claims. Any unclaimed funds will be returned to the Bureau of Workers' Compensation State Insurance Fund to pay claims of injured workers, according to the release.

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