

BWC Proposes New Rule Excluding COVID-19 Claims From an Employer's Experience Rating

By Corey Kleinhenz

The Bureau of Workers' Compensation (BWC) is proposing a new rule which will exclude COVID-19 claims from an employer's experience rating.

In proposing the new rule, the BWC noted that pandemics are generally considered catastrophes and the presence or absence of a pandemic is not believed to be a reliable predictor of whether one will return in the future. The BWC additionally noted that pandemics share this aspect with other catastrophic perils such as terrorism and earthquakes and that generally when catastrophes arise they are excluded in the experience rating process.

An employer's experience rating is intended to measure an individual employer's success in maintaining a safe workplace by factoring the employer's payroll and loss history into a formula designed to project that employer's propensity for future losses. Since COVID-19 claims are not a reliable predictor of future losses, the BWC has proposed COVID-19 claims be excluded from an employer's experience rating.

The proposed new rule will be codified, under Ohio Administrative Code 4123-17-03(G)(4), which will include the following language:

Actual losses where COVID-19 was contracted by an employee arising during the emergency declared by Executive Order 2020-01D issued March 9, 2020 and the 14-day period after the emergency ends shall be excluded from the employer's experience for purposes of experience rating calculations.

Roetzel is actively tracking BWC developments in response to the COVID-19 pandemic and will continue to provide updates on relevant BWC action. If you have any questions regarding BWC claims and/or experience ratings, please reach out to any of the listed attorneys.

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