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Ohio Workers' Compensation Changes: Medical Marijuana and Charging Car Accident Claim Costs to the Surplus Fund

This past week, two laws concerning Ohio Workers' Compensation went into effect. First, medical marijuana is now legal in Ohio and has the potential to affect many employment-related issues, particularly workers' compensation. Second, effective September 13, 2018, state-fund employers can now apply to have certain claim costs charged to the surplus fund.

BWC and Medical Marijuana

Effective September 8, 2018, medical marijuana is now legal in the state of Ohio. The Bureau of Workers' Compensation (BWC) released this helpful [info-sheet](#) on how the legalization of medical marijuana will impact BWC.

Charging Claim Costs to the Surplus Fund: What Should an Employer Do When a Third Party Causes a Motor Vehicle Accident but No Citation is Issued?

In Ohio, where a third party causes a motor vehicle accident, thereby injuring an employee, state-fund employers can file an application to have the claim charged to the surplus account rather than to the employer's experience. [ORC 4123.932](#). Previously, applications were only granted when a citation was issued to the at-fault third party. However, citations are not given when the at-fault driver dies in the accident. This presented a significant problem for employers who wished to file an application to have the surplus fund charged.

The General Assembly recently enacted House Bill 292 in part to address this problem. The revised statute no longer requires a

citation in order to prove a third party was at fault. A citation can still be used in support of the application. Now, in situations where no citation is given (including when the accident occurs on private property where citations are rarely issued), employers can provide proof that the accident is covered by any form of insurance maintained by the third party or is covered by underinsured motorist coverage.

This change will make it easier for employers to receive approval of their application and have the accident applied to the surplus fund instead of to that employer's experience. This is extremely beneficial to state-fund employers because it allows the claim to be charged to the surplus fund at the outset of the claim. Accordingly, it should prevent the employer from potentially losing eligibility for group rating and other discount programs. Prior to this change, if the claim was initially charged to its experience, an employer's premiums could increase significantly. This was seen as unfair since the accident was not the fault of the employee and could not have been prevented by the employer.

The amendment goes into effect on September 13, 2018, but it will have retroactive effect, applying to any claim arising on or after July 1, 2017.

If you have questions about this or any workers' compensation matter, please contact [Elise Elam](#) or any other attorney on Frost Brown Todd's [Workers' Compensation Service Team](#), including [Julie Bruns](#), [Joanne Glass](#), and [Noel Shepard](#).

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