

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: Wage and Hour, Employment of a Worker with a Disability

Rule Number(s): 4101:9-1-01 through 4101:9-1-13

Date: 6/9/2014

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The draft regulations establish the process for the employment of individuals with a disability for less than the Ohio minimum wage rate. The rules permit employment of individuals whose earning capacity is impaired by physical or mental deficiencies or injuries at wages

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lower than the minimum wage rate under sections R.C. 4111.01 through R.C. 4111.17. See the Overview of Changes, Ex. A.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4111.06.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

There are no federal requirements mandating these rules.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Pursuant to Ohio Revised Code 4111.06, the purpose of this regulation is to provide employment opportunities for individuals with disabilities. By providing an avenue for those disabled to gain meaningful employment, not only is the State's employment base spread over a more diverse workforce, but the individuals are assured equality and opportunity for a more fulfilling life and career. Likewise, by providing this opportunity, the State is able to eliminate workforce policies of discrimination on the basis of disability and afford businesses with the desire to offer employment to the worker with a disability a process to reach that goal.

By maintaining the current process of issuing sheltered workshop and individual sub-minimum wage certification, the State is able to provide support and opportunities to many workers who may otherwise not have the chance to obtain gainful employment. This opportunity for employment may be viewed not only as a means to gain a modicum of financial freedom, but allows for those individuals with a disability to take steps to become more self-sufficient. These greater opportunities will help create a stronger, more-inclusive workforce for Ohio businesses.

These rules assist in promoting the programs, practices and procedures that help to ensure equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability. Consistent with recently enacted R.C. 5123.022, the rules also empower

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individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success of these rules will be measured by the overall efficiency and effectiveness of the sub-minimum wage permitting system and the increased employment of individuals with a disability.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholders were contacted via e-mail on August 1, 2012, September 12, 2012, November 30, 2013, and June 6, 2014. In addition, the Division had two telephone conference calls in April and May of 2014 with stakeholders. A list of stakeholders that were contacted may be found in Ex. B of this document.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Two stakeholders commented and suggested changing the language to incorporate the modern, people-first language and to reference the recent legislative change in R.C. 5123.022 regarding the state policy presuming every individual with a developmental disability is presumed capable of community employment. The stakeholder comments were helpful and the Division incorporated their suggestions into this draft. On June 9, 2014, the two stakeholders who commented on the rules indicated they were satisfied with this draft of the rules.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

N/A

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Stakeholders are supportive of this entire rule package, so there were no alternatives necessary.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

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Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No. These rules are not appropriate for performance based regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

These rules are authorized by R.C. 4111.06. The Division conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure there are no other regulations in place pertaining to these specific rules. The Division consulted with two stakeholders, Disability Rights Ohio and the Ohio Department of Developmental Disabilities, to ensure no duplication of rules.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Commerce will notify the industry about the rule package. Because of the few changes to the existing rules and extensive contact with stakeholders during the rulemaking process, little outreach to the industry will be required. The Division is easily accessible for questions via internet, phone and e-mail.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Employers who wish to obtain a sub-minimum wage license for individual employees with disabilities or any employer who wishes to obtain a "sheltered workshop" license that allows for the overall payment of sub-minimum wage.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

There is no adverse impact beyond the required application for a sub-minimum wage license.

c. Quantify the expected adverse impact from the regulation.

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The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Any employer found to violate these rules is subject to the penalties described in R.C. 4111.99 which include a minor, third degree or fourth degree misdemeanor.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

These rules are required to implement section 4111.06 of the Ohio Revised Code by establishing processes and procedures to ensure the proper employment of individuals with a disability. All potential adverse impacts are mandated by R.C. Chapter 4111.99.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

To ensure the proper employment of individuals with a disability, there are no exemptions given to any type of for-profit business within these rules.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The compliance and enforcement actions established by these rules do not apply fines or penalties for paperwork violations. The penalties for noncompliance are criminal in nature and determined by statute.

18. What resources are available to assist small businesses with compliance of the regulation?

The Division is easily accessible for questions via internet, phone and e-mail. The Division strives to assist small businesses that wish to employ individuals with a disability with achieving and maintaining compliance with requirements of R.C. 4111.06 and O.A.C. Chapter 4101:9-1.

ATTACHMENT A

List of Stakeholders

Autism Society of Ohio

Ohio Legal Rights Services

People First of Ohio

American Council of the Blind Ohio

Ohio Valley Ctr. for Brain Injury Prevention and Rehabilitation

Ohio Association of the Deaf

Ohio Developmental Disabilities Council

The Arc of Ohio

Buckeye Chapter Paralyzed Veterans of America

Goodwill Columbus

Down Syndrome Association of Central Ohio

Governor's Council on People with Disabilities

National Employers Network Alliance

National Federal for the Blind of Ohio

Ohio Association of County Boards of Developmental Disabilities

Disability Rights Ohio

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