



**Bureau of Workers'
Compensation**

30 W. Spring St.
Columbus, OH 43215-2256

Governor **Ted Strickland**
Administrator **Marsha P. Ryan**

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Senator Bill Seitz
Statehouse-Senate Annex
1st Floor
Columbus, OH 43215

Dear Senator Seitz

Thank you for your recent inquiry regarding the Smoke Free Workplace Act as it relates to BWC premiums, claims allowance, and duties and functions of the BWC's Division of Safety and Hygiene. You asked the following questions:

Question #1: Have there ever been any OD claims or death claims filed alleging harm from secondhand smoke in the workplace? If so, how many were allowed and why were others not allowed? If none have been filed, would this type of claim be allowed?

Answer: Only one (1) claim has been filed alleging exposure to second hand smoke resulted in an occupational disease. This claim was disallowed by BWC because the claimant failed to meet the standard of proof necessary to determine a causal relationship between the alleged injury/disease and workplace exposure.

Under Ohio law, "occupational disease" is defined as: *A disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general.*

Question #2: Were premiums lowered when Ohio employers became smoke free? If so, by how much? If not, do you know why?

Answer: BWC has consistently lowered base rates for all Ohio employers since 2006 and; correspondingly, premiums have decreased since that time for a majority of employers. Because only one disallowed claim has been filed alleging an occupational disease due to exposure to second hand smoke, it is obvious there exists no correlation, direct or indirect, between lower employer premiums and smoke-free workplaces. In short, Ohio employers are enjoying lower workers' compensation premiums for reasons other than smoke-free workplaces.

The remainder of your questions regarding BWC's Division of Safety and Hygiene were answered in consultation with Ibraheem (Abe) Tarawneh, Ph.D., Superintendent, Division of Safety and Hygiene, Ohio BWC.

Since its inception in 1912, BWC has worked diligently to provide employers and injured workers with high quality safety services. BWC's Division of Safety and Hygiene (DSH) has been on the forefront in providing Ohio's employers and employees with a wide variety of accident and injury prevention services including occupational safety and health, industrial hygiene, ergonomics consulting and safety training. BWC safety efforts are focused on preventing accidents and creating safe workplaces. To meet the demand, our safety efforts and activities have followed compliance monitoring techniques to characterize occupational exposure to hazards present at the workplace. Accordingly, our services are not geared toward handling requests to perform comprehensive and continuous exposure assessments, which emphasize characterization of all exposures for all workers on all days, such as monitoring the effect of second-hand smoke, or environmental tobacco smoke (ETS).

One of the primary activities of the National Institute for Occupational Safety and Health (NIOSH) is conducting research on occupational exposure to many substances in the workplace, including ETS. Over the years, NIOSH has produced research reports addressing the effect of ETS in the work environment. Of particular interest are two publications you may find of value:

1. Current Intelligence Bulletin 54: Environmental Tobacco Smoke in the Workplace: Lung Cancer and Other Health Effects; and
2. Environmental and Biological Assessment of Environmental Tobacco Smoke Exposure Among Casino Dealers.

Question #3: Did the Secretary of State, to validate claims made in the certified ballot language, utilize BWC's Division of Safety and Hygiene to independently do air monitor sampling of any smoking bars or restaurants?

Answer: No, the Secretary of State did not utilize DSH to perform air monitor sampling of any bars or restaurants that permitted smoking prior to the statewide referendum. DSH services are not geared toward providing such service.

Question #4: Has BWC ever done any air monitor sampling where there were unacceptable PELs from smoking?

Answer: DSH has not conducted any evaluations for ETS.

Question #5: If all employers pay premiums to BWC based on payroll, and 1% of those premiums fund the Division of Safety and Hygiene, why can't the issue of supposed exposures be provided as a service to the employer who pays premiums?

Answer: Ohio employers are always encouraged to use DSH's services at no additional charge including certain levels of air quality sampling in the workplace. However, there are certain circumstances where DSH has recommended not performing air quality sampling. Those circumstances include: 1) when other data can be used to identify possible exposures; and 2) when DSH does not have the needed tools and/or technical expertise to carry out the monitoring.

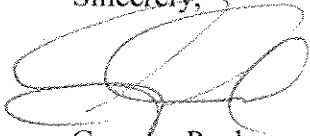
In the case of ETS, both of the above mentioned circumstances apply. Hazardous exposures to ETS are recognized in the public health literature. Also, studying such exposures in bar and restaurant settings requires continuous sampling and is more of a research activity than it is a single measurement activity. For example, the exposure intensity and length are influenced, in

part, by the number and distribution of patrons who are smoking at any point of time during the hours of operation, as well as the size, and ventilation system of the premises.

Quantifying such exposure and translating the collected data into reliable recommendations requires continuous air quality sampling, which is beyond the services provided by DSH.

I hope the information above is useful to you. As always, please feel free to contact our office if you have any questions or need further information on this or any other BWC-related issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory Paul', written over a horizontal line.

Gregory Paul
Legislative Liaison
Ohio BWC