

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Labor and Economic Opportunity

Bureau name:

Workers' Compensation Agency

Name of person filling out RIS:

Dave Campbell

Phone number of person filling out RIS:

517-284-8891

E-mail of person filling out RIS:

campbelld5@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2020-31 LE

Title of proposed rule set:

Workers' Disability Compensation General Rules

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

Each state develops its own set of rules & standards, and Federal employees are covered under their own set of rules. The rules for the Federal Office of Workers' Compensation Programs are much more onerous providing for, by way of example, injured workers to be compelled to attend physical examinations at the request of OWCP in different states than where the injured worker resides even though the travel can be unduly burdensome. Many other states have much more strict rules including such features as significant fines and sanctions for late document filing or improper termination of benefits.

A. Are these rules required by state law or federal mandate?

MCL 418.205 requires the agency director to make rules to carry out the provisions of the Workers' Disability Compensation Act (MCL 418.101 et sec). The existing rules in areas such as use of electronic filing; virtual hearings; vocational rehabilitation procedures that are out of date with significant court and statute based changes in the job search and wage earning capacity assessment in the determination of weekly benefit payments. The rules are outdated as evidenced by repeated references to "bureau" when the agency has not used that name in decades.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

There are no applicable federal standards.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The Michigan rules, along with our statute, have resulted in Michigan WC costs being among the lowest in the nation. These rule changes and updates do not exceed standards in those states.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

These rules do not exceed standards in those states or federal standards.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are none identified.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

This is not applicable.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

These rules apply to the day to day operation of the WDCA including routine filing; insurance and self-insurance programs; facilitation of electronic document filing; significant language updates throughout the rules; vocational rehabilitation practices and procedures.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The change in the frequency of the behavior change should be immediate to comply with various statutory and regulatory filing requirements, and enhanced utilization of vocational rehabilitation of injured workers.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The updated rule set provides better control over agency procedures for handling contested case filings as well as more extensive explanation of Vocational Rehabilitation processes. Procedures are also established to facilitate electronic signature and filing of documents. This should result in more expedient and cost efficient resolution of contested cases.

C. What is the desired outcome?

The desired outcome is modernized and expedient delivery of statutory and regulatory mandated filings, and enhanced return to work possibilities for injured workers.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Without these updated rules in place, all participants in WC programs will continue to be required to fulfill many statutory and regulatory requirements using outdated paper document production, handling, and mailing. Disabled workers will not be quickly returned to productive employment.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The WDCA general rules are being overhauled to modernize and provide language that expedites delivery of statutory and regulatory mandated filings; and enhances return to work possibilities for injured workers.

An example of modernization of the rules is the establishment of an electronic document filing process and these updated proposed hearing rules need to accommodate and take advantage of that system. The proposed draft rules also address application of video technology to the hearing process which is being adopted by other jurisdictions throughout the judicial and administrative law world.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Facilitating streamlined and cost-effective compliance with statutory and regulatory requirements should enhance compliance with the WDCA resulting in improved health, safety, and welfare for Michigan citizens will minimizing regulatory compliance costs.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

Rather than simply purging obsolete rules, the WDCA General Rules are being overhauled to modernize and provide language that expedites delivery of statutory and regulatory mandated filings; and enhances return to work possibilities for injured workers. An example of modernization of the rules is the establishment of an electronic document filing process and these updated proposed hearing rules need to accommodate and take advantage of that system. The proposed draft rules also address application of video technology to the hearing process which is being adopted by other jurisdictions throughout the judicial and administrative law world. The rules are also being reorganized to better correspond to the flow of claims and cases through the system. The small claims resolution option is being enhanced to promote its use by limitation in the res judicata impact of a narrow issue dispute resolution. Addition of the use of electronic means for service of documents between the parties as well as the use of electronic signatures will facilitate resolution of disputes and reduce costs to the parties.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

In addition to updating outdated language such as “bureau” being replaced by proper designation “agency,” the proposed general rule changes will accommodate electronic filing, document handling, and video technology. These are expected to result in administrative savings in terms of enhanced handling of case filings, reduction in travel expenses, and better use of staff. Existing staff is sufficient to handle the changes.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

There are no expenditures specifically associated with these proposed rules. Existing staff is sufficient to handle the changes.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

There are no identified burdens.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

There are no identified burdens.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The rules do not increase operational costs for any of the involved entities. Reduction in mailing costs through use of electronic filing should reduce postal and paper processing costs for routine statutory and regulator filings.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

There are no anticipated additional program, service, or duty responsibilities imposed upon these types of entities other than what is expected from any carrier or self-insured employer when managing workers’ compensation claims.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

There are no anticipated changes to existing program, service, or duty responsibilities imposed upon governmental units.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

There is no appropriation needed for additional expenditures for this rule set.

Rural Impact

16. In general, what impact will the rules have on rural areas?

This rule set does not specifically impact or target rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

No anticipated impact on public or private interests in rural areas.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules do not have any impact on the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

Since the size and type of business is not a factor in the handling of WDCA claims, small business is not specifically targeted with these rule changes. The agency did not consider exempting small businesses from these rules.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

Business size is not an element in the handling of WDCA claims. Employer costs for mandated WC insurance coverage already takes into account the number of employees, their wages and benefits, and the types of jobs performed.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

There are over 230,000 businesses in Michigan privately covered by workers' compensation insurance. An additional 10,000 employers are classified as self-insured. Also affected are 200 plus insurance carriers, 400 individual and group self-insured carriers, and 26 service companies. The rules will also impact attorney firms and facilities which impact small businesses as a result of these rule updates.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The agency did not and cannot establish differing compliance or reporting requirements for small businesses. There is neither statutory authority, nor any practical way, to make such a distinction.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not and cannot establish differing compliance or reporting requirements for small businesses. There is neither statutory authority, nor any practical way, to make such a distinction.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The agency did not and cannot establish differing compliance or reporting requirements for small businesses. There is neither statutory authority, nor any practical way, to make such a distinction.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

There is no disproportionate impact on small businesses identified.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

Reporting is done by carriers and costs cannot be identified. There are no filing or processing fees for statutory or regulatory filing requirements.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There are no additional costs for compliance including costs for equipment, supplies labor, and increased administrative costs for small businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no additional costs for compliance including costs for equipment, supplies labor, and increased administrative costs for small businesses.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no additional costs small businesses have to absorb thereby causing economic harm to them as a result of these rule changes.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There are no additional costs to the agency because the agency did not and cannot establish differing compliance or enforcement requirements for small businesses. There is neither statutory authority, nor any practical way, to make such a distinction.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The agency did not and cannot establish differing compliance or reporting requirements for small businesses. There is neither statutory authority, nor any practical way, to make such a distinction.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

A special committee of the State Bar, Workers' Compensation Section, with counsel representing all stakeholders, provided bi-partisan input in the drafting of rules.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No specific businesses were identified. Rather, counsel representing various businesses participated in the committee.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

No additional estimated compliance costs due to the amendments are anticipated.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Attorneys and claimants.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs anticipated.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

No additional compliance costs are expected with the new rules.

A. How many and what category of individuals will be affected by the rules?

As of this writing, there are some 7,000 cases pending before the Board of Magistrates. Each case typically has one plaintiff and one employer. There may, however, in any given case, multiple dependents on the employee side of the case and, in some instances, multiple employers on the other. Law firms representing both sides, typically handle numerous cases so it is impossible to identify how many total individuals will be involved.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

These rules are meant to provide simplified case preparation and more efficient resolution of disputes thereby benefiting all parties in the hearings process.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There should be significant cost reductions to businesses or government units as a result of these proposed rules including reduced number of in person appearances, enhanced exchange of information, and electronic filing of documents.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

Process efficiency and effectiveness for all parties.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

These rules do not have any direct impact on business growth and job creation.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There will be no individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The director relied upon a multi-faceted workgroup consisting of a sub-committee of the State Bar Workers' Compensation Section, the Chief Magistrate, and the WDCAC Chairperson along with other internal agency experts (SME's).

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The WDCA general rules are being overhauled to modernize and provide language that expedites delivery of statutory and regulatory mandated filings, and enhances return to work possibilities for injured workers. An example of modernization of the rules is the establishment of an electronic document filing process and these updated proposed hearing rules need to accommodate and take advantage of that system. The proposed draft rules also address application of video technology to the hearing process which is being adopted by other jurisdictions throughout the judicial and administrative law world. The agency is in constant contact with stakeholder groups.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There are no other reasonable alternatives to this proposed rule set.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

No amendments needed as of this time.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

This is not necessary. The agency is bound by statute to provide operating rules for the parties relating to the hearings process. There are already private market-based providers that are used by stakeholders for claims handling with related document filing as well as vendors who provide insurance coverage filings.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

There are no significant alternatives.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

Detailed instructions are found on the Agency website as necessary: www.michigan.gov/wdca.

Any required forms have detailed instructions provided.