

Policy and Procedure Name	Interstate Jurisdiction
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Ohio Administrative Code (OAC) Reference	OAC 4123-17-23
Other Law/Rule References	None
Ohio Industrial Commission (IC) Resolution/Memo Reference	None
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Approved by	Ann M. Shannon, Chief of Claims Policy and Support
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I. POLICY PURPOSE

This policy ensures that BWC staff recognize, effectively investigate, and accurately determine the application of Ohio workers' compensation coverage when employment activities involve multiple states.

II. APPLICABILITY

This policy applies to Claims Services staff.

III. DEFINITIONS

Claimant

One who asserts a right, demand, or claim for workers' compensation benefits.

Decision on the Merits

A decision from an administrative or judicial body or an insurance carrier determining the compensability of a workers' compensation claim for reasons other than jurisdiction.

Extraterritorial Coverage

Workers' compensation coverage for an Ohio employee who is injured while temporarily performing duties outside the state, or the recognition of another state's coverage for a non-Ohio employee temporarily working in Ohio. Also referred to as "Extraterritorial Jurisdiction."

Interstate Jurisdiction

Determination of which state bears legal responsibility and authority for a claim when employment activities occur in multiple states.

Jurisdiction

The legal responsibility and authority to make a decision in a claim. For purposes of this policy, the determination of whether the claimant is an Ohio employee.

Ohio Employee

An employee who is covered by Ohio workers' compensation due to the employer's responsibility to report for that employee pursuant to OAC 4123-17-23(A), (C), or (D).

Uninsured Employer Fund

A fund in another state that responds when an employer does not have workers' compensation insurance in effect in that state to respond to a claim.

IV. POLICY

A. Coverage

1. Ohio workers' compensation coverage applies to employees who are hired to work specifically in Ohio, regardless of where the contract of hire was entered.
2. BWC will also provide workers' compensation coverage to employees working inside and outside of Ohio when the employer's supervising office is in Ohio.

B. Ohio Employees Injured Outside of Ohio

1. BWC's extraterritorial coverage applies to Ohio employees injured:
 - a. While temporarily working outside the state; or
 - b. Outside of Ohio, when the employee meets the coverage requirements.
2. BWC will evaluate if an employee is temporarily working outside the state on a case-by-case basis.
3. There is no prescribed period that defines when an employee is considered "temporarily" working outside the state.

C. Out-of-State Employees Working Temporarily in Ohio: 90-Day Rule

1. BWC will recognize the extraterritorial coverage of an out-of-state employer when all the following apply:
 - a. The employee is not a resident of Ohio;
 - b. The employee has worked in Ohio for 90 consecutive days or less; and
 - c. The date of injury is on or after September 17, 2014.
2. Multiple periods of an employee working 90 consecutive days or less in Ohio are calculated as distinct temporary periods.

D. Signature Requirements in Interstate Jurisdiction Claims

1. In general, a claimant must sign and submit to BWC:

- a. A *First Report of an Injury, Occupational Disease, or Death* (FROI) having a revision date of 12/18/08 or later;
 - b. An “Interstate Jurisdiction Waiver;” or
 - c. An equivalent document.
 2. If BWC determines that the 90-Day Rule applies, submission of the aforementioned documents is not required.
- E. Claims Filed on Behalf of a Claimant
 1. If a claim has been filed on behalf of a claimant in another state (e.g., by a medical provider or the employer), but Ohio is determined to have jurisdiction, the claimant may be eligible to receive Ohio benefits when:
 - a. The claimant elects to pursue the claim in Ohio;
 - b. Benefits were paid in the out-of-state claim, and the claimant has not otherwise elected to accept workers’ compensation benefits; and
 - c. The claimant provides BWC with proof of withdrawal or refusal of acceptance of benefits in the other claim.
 2. A claimant is not entitled to receive continuing benefits under the workers’ compensation laws of two different states.
 3. Compensation and benefits awarded by BWC are paid only to the extent those payments exceed any amounts paid in the out-of-state claim.
- F. Failure to Disclose Receipt of Out-of-State Benefits
 1. A claimant who receives benefits or compensation from BWC must disclose receipt of benefits, compensation, or damages from another state, whether pursued before or after receiving benefits or compensation from Ohio.
 2. If the claimant fails to disclose the receipt of such out-of-state benefits, BWC will:
 - a. Disallow the claim; and
 - b. Pursue collection of:
 - i. The amount of compensation or benefits paid to the claimant by BWC; and
 - ii. Any interest, attorney fees, and costs BWC incurs in the collection process.

V. PROCEDURE

- A. General Claim Note and Documentation Requirements
 1. BWC staff will refer to the [Claim File Contents and Documentation](#) policy and procedure for claim note and documentation requirements; and
 2. Must follow any other specific instructions for claim notes and documentation included in this procedure.

B. Interstate Jurisdiction Investigation

1. Upon receipt of a new claim, Claims Services staff will review the claim to determine:
 - a. If BWC's extraterritorial jurisdiction coverage applies. This coverage applies if the employee:
 - i. Was hired to work out-of-state and is not an Ohio employee; or
 - ii. Is an Ohio employee working temporarily in another state covered by BWC's extraterritorial coverage.
 - b. Whether the 90-Day Rule applies to an out-of-state employee working temporarily in Ohio. Claims Services staff will:
 - i. Obtain the date the employee began working temporarily in Ohio from the employer or employee; and
 - ii. Calculate the total number of consecutive days worked in Ohio.
2. If the total consecutive days worked in Ohio are 90 or less:
 - a. The 90-Day Rule applies. Ohio does not have jurisdiction;
 - b. The out-of-state employer's extraterritorial coverage applies; and
 - c. Claims Services staff will deny the claim.
3. If the total consecutive days worked in Ohio are more than 90 days, Ohio has jurisdiction in the claim, and Claims Services staff will continue considering the claim.
4. If an *Employer/Employee Agreement to Select Ohio as the State of Exclusive Remedy for Workers' Compensation Claims* (C-110) or an *Employer/Employee Agreement to Select a State Other Than Ohio as the State of Exclusive Remedy for Workers' Compensation Claims* (C-112) has been filed with BWC, Claims Services staff will determine appropriate jurisdiction by consulting with:
 - a. Their supervisor;
 - b. An Employer Service Specialist (ESS); or
 - c. BWC Legal.

C. Sending the Interstate Jurisdiction Waiver

1. If the claim does not have a FROI with a revision date of 12/18/08 or later signed by the claimant, Claims Services staff will send the claimant the *Interstate Jurisdiction Waiver* (waiver).
2. If BWC does not receive the signed waiver, or equivalent form, within 28 days of the time it is requested, Claims Services staff will dismiss the claim.

D. Claims Filed on Behalf of a Claimant

1. When a claim has been filed in another state on a claimant's behalf, but Claims Services staff determine that Ohio has jurisdiction and the claimant chooses to pursue the claim in Ohio:

- a. Claims Services staff will:
 - i. Consult with BWC Legal to determine if the claimant elected to accept any benefits that were paid in the out-of-state claim; and
 - ii. Contact the claimant to request proof of withdrawal or refusal of acceptance of benefits in the out-of-state claim.
- b. If the claimant fails to provide proof of withdrawal or refusal of acceptance of benefits paid in the out-of-state claim within 28 days from the time it is requested by BWC, Claims Services staff will dismiss the Ohio claim.
- 2. If Claims Services staff allow the claim and later become aware of a claim being pursued in another state against an uninsured employer fund, Claim Services staff:
 - a. Will consult with BWC Legal; and
 - b. May issue a *Reminder of an Ohio Claim* letter.

E. Final Actions

- 1. Upon determination of jurisdiction, Claims Services staff will indicate in the claims management system:
 - a. The status of Ohio jurisdiction;
 - b. Which state could have jurisdiction of the claim; and
 - c. The final decision on interstate jurisdiction.
- 2. Claims Services staff may review BWC Employer Services' *Multistate Jurisdiction Payroll and Coverage* policy for more information.