Minimum and Maximum Private State Fund Payroll Limitations

Policy Background

- Policy Number: EP-13-01
- The legal references for this policy are Ohio Revised Code (ORC) 4123.01, 4123.34, and 4123.62, and Ohio Administrative Code (OAC) 4123-17-07, 4123-17-15, 4123-17-30, and 4123-17-57.
- Effective Date: July 1, 2024
- Approved By: Rex Blateri, Chief of Employer Services
- Origin: Employer Policy
- Supersedes: Min-Max Private State Fund Payroll Limitations policy effective July 1, 2015.
- History: Revised July 1, 2024; June 30, 2016. New policy issued June 21, 2007.
- Review Date: July 1, 2029

Policy Purpose

The Ohio Bureau of Workers' Compensation (BWC) will apply minimum and maximum payroll reporting limits to active corporate officers and elective coverage persons. BWC will apply weekly maximum payroll reporting limits to the construction industry employees of construction industry employers.

Applicability

The policy applies to private employers (PA employers), authorized representatives, BWC Policy Processing, Underwriting, and Premium Audit.

Definitions

Corporate officer: Corporate officers include the president, vice president, secretary, treasurer, and any other executive officers, which are specified in, and empowered by the charter, bylaws, or minutes of the corporation. Persons who are elected, appointed, or empowered by the directors and perform duties for the corporation must also be covered. A corporate officer may also be referred to as "executive officer of a corporation," "executive officer," or "officer". With exceptions noted in this policy, BWC considers corporate officers employees of the corporation, and they are covered under the workers' compensation policy. If the corporation is nonprofit:

- The executive director will be considered a corporate officer.
- A person who volunteers their services as a corporate officer is not considered an employee for workers' compensation purposes.

Elective coverage persons: A sole proprietor, a member of a partnership, a member of a limited partnership, an individual incorporated as a corporation (ICORP) with no employees or additional shareholders, an officer of a family farm corporation, an individual member of a limited liability company (LLC) filing a federal tax form as a sole proprietor or partnership, or an ordained minister not covered under the church's policy who elects coverage as a sole proprietor.

Individual incorporated as a corporation (ICORP): A corporation that has one corporate officer who is the only shareholder (100% ownership) and has no employees, casual labor, or spot labor.

Statewide Average Weekly Wage (SAWW): The average weekly earnings of all workers in Ohio as determined annually by the Ohio Department of Jobs and Family Services (ODJFS). See ORC 4123.62.

Maximum payroll reporting limit: One hundred fifty percent (150%) of the SAWW.

Minimum payroll reporting limit: Fifty percent (50%) of the SAWW.

Minister: A duly ordained, commissioned, accredited, or licensed minister, member of the clergy, rabbi, priest, or Christian Science practitioner.

Rollback / roll forward: Only applies to policy periods prior to July 1, 2015, to officers who earn less than the maximum payroll reporting limit in a six-month period, report actual payroll and earn more than the maximum payroll reporting limit in the other six-month period. The exemption amount above the maximum payroll reporting limit for the six-month period will be rolled back or forward as applicable to the other six-month period up to the maximum payroll reporting limit. This ensures actual payroll for the calendar year is reported up to the annual maximum payroll reporting limit.

Policy

Every PA employer is required to file an annual payroll true-up with BWC at the conclusion of the policy year.

1. BWC may waive this requirement for certain employers.
2. See the *Payroll True-Up* policy for additional information.

Operation of minimum and maximum payroll reporting limits for active corporate officers and elective coverage persons.

1. The annual minimum and maximum payroll reporting limits are maintained on BWC's website.
2. BWC establishes minimum and maximum payroll reporting limits based upon the SAWW.
   A. Effective July 1, 2015, BWC began enforcing minimum and maximum payroll reporting limits for a PA employer on a policy year basis, from July 1 through June 30. Prior to July 1, 2015, BWC enforced minimum and maximum payroll reporting limits on a calendar year basis.
   B. The minimum and maximum payroll reporting limits for each policy year are based upon the SAWW that was in effect on the first day of the preceding January.
3. Employers are required to report actual payroll if the amount falls between the minimum and maximum payroll reporting limits.
4. Bonus payments paid during the policy year are included in a corporate officer's total payroll for the same policy year.
5. The minimum and maximum payroll reporting limits apply to the following.
   A. Active corporate officers of a corporation. See section IV.C for guidelines on "active" corporate officers.
   B. Elective coverage persons that elect coverage, not including ministers covered under a church's policy. See the *Elective Coverage* policy for guidelines on electing coverage and reporting payroll.
   C. The individual corporate officer of an ICORP, upon the hiring of an employee.
   D. The paid corporate officers/directors of a nonprofit corporation.
   E. A minister electing coverage as a sole proprietor.
6. The minimum and maximum payroll reporting limits do not apply to the following.
   A. Ministers covered by their church policy.
   B. The payroll of worksite employees including ministers and elective coverage persons reported as a client employer under the policy of an alternate employer organization (AEO). See OAC 4123-17-15(D)(8).
   C. The payroll of shared employees including ministers and elective coverage persons reported as a client employer under the policy of a professional employer organization (PEO). See OAC 4123-17-15(E)(7).
   D. Federal workers' compensation programs such as Longshore & Harbor Worker's Jones Act and Federal Employees Liability Act (FELA). See OAC 4123-20-05 and 4123-21-04.
   E. Effective September 29, 2015, the uncompensated volunteer corporate officers of nonprofit corporations.
   F. Employees with titles who are not enumerated as corporate officers in the corporate charter, bylaws, or minutes must be reported as any other employee and are not subject to minimum and maximum payroll reporting limits.

BWC guidelines regarding “active” corporate officers.

1. BWC does not consider any minimum number of hours worked as a threshold to making its determination of what constitutes "active". BWC considers that any amount of work by the corporate officer makes the corporate officer "active" and subject to the minimum and maximum payroll reporting limits regardless of type of pay received. However, if a corporate officer only attends board meetings, the corporate officer is carrying out board duties. Those duties will not be considered in determining an active corporate officer status.
2. "Active" as used by BWC considers any decision making affecting the "day to day operations" of the business regardless of the number of hours or days devoted thereto. As used here, "day to day operations" does not require "daily" or any minimum time requirement.
3. Individuals will be considered employees, not subject to minimum and maximum payroll reporting limits, if they:
   A. Hold positions not enumerated in the corporate charter, bylaws, or minutes; or
   B. Do not meet the BWC guidelines for "active corporate officer".
4. The minimum and maximum payroll reporting limits will apply to officers of both "for profit" and "not for profit" corporate organizations as determined by their filing(s) with the Secretary of State. Examples include paid active officers of nonprofit organizations and clubs such as Elks, Moose, AMVETS, American Legion, Parent Teacher Organization (PTO), Music Parents Organization, Little League, or other school, parent, or social organization. NOTE: A person who volunteers their services as a corporate officer to a nonprofit organization is not considered an employee for workers' compensation purposes.
5. The wages of active corporate officers from outside the state of Ohio are not subject to Ohio workers' compensation rules and laws and will not be included in the reportable payroll.
6. If a corporate officer does not meet the definition of "active" as outlined in this policy, then the corporate officer is not considered an employee and is not subject to the payroll reporting requirement.

Minimum and maximum payroll reporting limits for corporate officers in multiple corporations.

1. If a corporate officer receives payroll under more than one policy, the payroll will be subject to the minimum and maximum payroll reporting limits of each policy.
2. When a corporate officer of multiple corporations is paid under a single policy, the corporate officer is subject to the minimum and maximum payroll reporting limits under the policy for which the person is paid based on the classification rules for all duties performed.

3. When a corporate officer of multiple corporations is not paid under any policy, the corporate officer is subject to the minimum and maximum payroll reporting limits under the policy for which the person is deemed to be active based on the classification rules for all duties performed in all businesses.
   Example: A company files a consolidated tax return under an LLC partnership and the partners did not elect coverage. This partnership provides administrative and managerial functions to a group of fifteen (15) fast food restaurants, all of which are LLCs filing as corporations. Each LLC corporation has its own Federal Employer Identification Number (FEIN) and BWC policy number. Many of the same corporate officers are providing services in more than one of the restaurant policies but none get paid. Each corporate officer is subject to the minimum and maximum payroll reporting limits under ONE policy. If the corporate officer has exposure to the operations, the corporate officer is reportable to 9083 (Restaurant-Fast Food). In deciding which of the fifteen (15) policies the wages would be reportable, consider the location where the corporate officer spends the most time. If the corporate officer has only administrative duties, reportable to 8810 Clerical, 8742 Travelling Salesperson, or 8871 Clerical Telecommuter wages are reported under the policy with the highest rate.
   Under this example, if the partners did elect coverage under the LLC partnership, they would not be subject to the corporate officer reporting requirements under any of the LLC corporation restaurant policies since their wages would be reported under the parent company.
4. If there is no corporate officer pay, and the corporate officer is deemed to be active in the company, the officer will be subject to the minimum payroll reporting limit for that policy based on the definition of active as set forth in OAC 4123-17-30 and BWC's policy and procedures manual.
5. Claims of any of these corporate officers should be filed against the "reporting policy" rather than the policy where the injury occurs unless circumstances warrant a partial or other transfer.

Operation of the weekly maximum state fund payroll limitation for the construction industry employees of construction industry employers. Also referred to as the “construction cap.”

1. The weekly maximum payroll limitation only applies to employees whose payroll is reportable to classification codes in industry group four as defined in OAC 4123-17-05, Appendix A.
2. The employer must deduct section 125 cafeteria plan deductions before calculating the construction cap.
3. Bonuses paid during the policy year are spread out among the weeks the employee worked. The total is subject to the construction cap.

4. The construction cap does not apply to corporate officers. Corporate officer minimum and maximum payroll reporting limits supersede the construction cap.
5. The employer must maintain payroll records by week per employee and classification code. In the absence of weekly payroll records, an employer may only apply the construction cap on a whole year reporting basis.
6. If an employee's wages are reportable to more than one classification code, the employer may allocate the construction cap to each classification code based on the percentage of time worked in the classification code for the week.

Rule change scenarios.

1. Effective July 1, 2015, BWC began enforcing minimum and maximum payroll reporting limits for a PA employer on a policy year basis, from July 1 through June 30. Prior to July 1, 2015, BWC enforced minimum and maximum payroll reporting limits on a calendar year basis. There is no longer a rollback or roll forward.
2. Effective July 1, 2006, BWC changed the minimum and maximum payroll reporting limits. The following information spells out how to handle the split calendar year. For the first half of 2006, the maximum payroll reporting limit is $800 per week, with no minimum payroll reporting limit for corporate officers. For the second half of 2006, the maximum payroll reporting limit is $1,056 per week and the minimum payroll reporting limit is $352 per week. The minimum and maximum payroll reporting limits change annually on July 1 based on the new SAWW set each year by ODJFS. See the following examples for guidance in this area.
    A. Active corporate officer receiving annual bonus applicable to entire year.
        i. An active corporate officer receives $800 per week or $41,600 annually. Additionally, a yearly bonus outside of payroll of $20,000 is indicated on the officer's 2006 tax return for a total of $61,600. For 2006, $20,800 is reportable in the first half and $27,456 is reportable in the second half. In this case, the $10,000 bonus attributable to the second half of 2006 is used to bring the reporting up to the maximum payroll reporting limit (at the highest aggregate level) of $27,456.
        ii. Total 2006 reportable = {($800 Max. x 26) + ($1,056 Max. x 26)} = ($20,800 + $27,456) = $48,256 of $61,600 income.
    B. Active corporate officer receiving pay in one half and rollback applicable to year (2006).
        i. An active corporate officer receives $10,000 pay in the first half of 2006 and no pay in the second half 2006. In 2006, $19,152 is reportable as a result of the minimum and maximum payroll reporting limits effective 7/1/06.
        ii. Total 2006 reportable = {($10,000 in first half) + ($9,152 Min in second half)} = ($10,000 + $9,152) = $19,152 income.
        iii. Then, in 2007, corporate officer receives $20,000 pay the first half of 2007 and no regular pay in the second half of 2007 but does receive $35,000 in K-1 ordinary

income for 2007. In this case, the $35,000 in K-1 income is used to bring the reporting up to the maximum payroll reporting limit in second half 2007 with the excess being rolled back (at the highest aggregate level) of $1,095 per week in each half of 2007.

iv. Total 2007 reportable = {($20,000 in first half) + ($28,470 Max in second half)} = $48,470 for regular earnings.

v. However, $6,530 rolled-back from $35,000 K-1 income in second half less second half Max ($35,000 - $28,470) when added to $20,000 previously reported first half = $26,530 first half adjusted reportable (still less than first half Max) + $28,470 Max in second half = $55,000 total reportable income for 2007.

C. Active corporate officer receiving pay in one half and roll-back applicable to year (2014).

i. In 2014, corporate officer receives $20,000 pay the first half of 2014 and no regular pay in the second half of 2014 but does receive $35,000 in K-1 ordinary income for 2014. In this case, the $35,000 in K-1 income is used to bring the reporting up to the maximum payroll reporting limit in second half 2014 with the excess being rolled back (at the highest aggregate level) of $1,274 per week in each half of 2014.

ii. Total 2014 reportable = {($20,000 in first half) + ($33,124 Max in second half)} = $53,124 for regular earnings.

iii. However, $1,876 rolled-back from $35,000 K-1 income in second half less second half Max ($35,000 - $33,124) when added to $20,000 previously reported first half = $21,876 first half adjusted reportable (still less than first half Max) + $33,124 Max in second half = $55,000 total reportable income for 2014.

Scenario: Outside counsel listed as corporate officer with board duties only.

1. An employer's outside attorney is designated as corporate secretary, a corporate officer position listed in the corporate charter and minutes. The attorney attends Board meetings as corporate secretary. The attorney is on retainer or invoices the employer based on billable hours for legal services and performs no other services relating to the operations of the business. This individual is available to represent and provide legal services to the general public provided there is no conflict of interest. This attorney would not be considered an active corporate officer or employee, and the minimum and maximum payroll reporting limits would not apply.
2. Payments to this non-active corporate officer should be considered professional fees not reportable to BWC unless paid by 1099 and reported by the law firm.