



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [S.B. 238 of the 128th G.A.](#)

**Date:** May 28, 2010

**Status:** As Passed by the Senate

**Sponsor:** Sen. Seitz

**Local Impact Statement Procedure Required:** No — No local cost

**Contents:** Prohibits the Bureau of Workers' Compensation from providing benefits to illegal or unauthorized workers

### State Fiscal Highlights

- The bill requires the Bureau of Workers' Compensation (BWC) to verify the work status of every injured worker who files a lost time or medical claim. This would likely increase costs related to claim processing that are paid from the Workers' Compensation Fund (Fund 7023).
- The bill prohibits BWC from providing injury benefits to any claimant working in Ohio illegally. BWC currently provides benefits for all compensable claims, regardless of the claimant's work status. The bill could thus reduce the cost of benefits paid from the State Insurance Fund.

### Local Fiscal Highlights

- The bill permits an undocumented worker who is injured on the job to sue his or her employer for compensation if the employer knew that the worker was undocumented. If this leads to more tort cases, municipal or common pleas courts could incur some additional expense for hearing these cases.

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## Detailed Fiscal Analysis

### Overview

The bill prohibits the Bureau of Workers' Compensation (BWC) from awarding benefits or compensation to claimants who are illegal or unauthorized workers. The bill also specifies what legal rights these workers and their employers have when dealing with workplace injuries sustained by illegal or undocumented workers and under what circumstances these workers and their employers bear liability for on-the-job injuries. Overall, the fiscal impact of these changes on the workers' compensation system is difficult to quantify. On the one hand, the bill will most likely increase costs for BWC to verify the work status of each claimant. On the other hand, the bill could reduce the number and cost of workers' compensation benefits paid out from the State Insurance Fund. These potential effects are described in more detail below.

Under current procedures, BWC provides benefits for any compensable claim, regardless of the claimant's work status. The claimant's work status is not recorded on the Bureau's claims management system. The total amount of benefits paid by BWC during FY 2009 was slightly less than \$2.0 billion. There were approximately 1.2 million open claims during this period. Presumably, some of these benefits were paid to illegal or unauthorized employees. According to an estimate by the Pew Hispanic Center, a nonprofit organization that tracks the impact of the Hispanic population on the country's culture and economy, there were between 75,000 and 150,000 undocumented workers of all nationalities residing in Ohio in calendar year 2005.

### Claimant work status verification

The bill will likely increase the workload for claims management staff at BWC to verify the work status of claimants. Claims management and other related customer services are provided by BWC's Field Operations unit, which employs just over 1,000 people. These operations are paid for out of the Workers' Compensation Fund (Fund 7023). The fund is supported by administrative assessments charged to employers alongside their workers' compensation premium payments. During FY 2009, BWC processed a total of 132,549 claims; of this amount 118,855 were compensable.

Under the bill, within 28 days after BWC receives a claim, each claimant must provide documentation proving that he or she was authorized to work at the time of the injury. BWC must then check the validity of this documentation using a status verification system, such as the E-Verify System. Although this system is provided free of charge by the U.S. Department of Homeland Security, reviewing the documentation required under the bill and cross-checking this information with the E-Verify System would most likely increase the time and cost to process each claim.

The bill will also have an effect on the way non-severe, medical only claims are processed under BWC's automated claim-management system. Under current procedures, the system automatically validates and processes these types of claims. During calendar year 2009, 20,917 (17.6%) of the total 118,855 allowable claims were processed in this manner. The bill requires that the work status of the claimants filing these claims be checked manually. Presumably, this would mean an increase in time and administrative costs to process these claims. These added costs would also be paid from Fund 7023.

### **Additional cause of action**

Under certain conditions, the bill provides a cause of action for an undocumented worker that is injured on the job. This would be the case if an undocumented worker who sustains injuries on the job can prove that his or her employer knew of his or her illegal status but hired the person regardless. However, the bill also limits this right by specifying that an employer, who had attempted to verify an employee's work status and had unwittingly employed an illegal worker, is immune from such injury lawsuits. Overall, this new right of action could lead to a rise in the number of injury cases heard in municipal or common pleas courts, although the number is difficult to project.