



## Ohio Administrative Code Rule 4123-3-35 Employer disability relief.

Effective: April 1, 2024

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(A) For the purposes of disability relief under section 4123.343 of the Revised Code, an "employee with a disability" means an employee who is defined as having one or more of the conditions listed in division (A) of section 4123.343 of the Revised Code.

(1) With respect to the condition defined in division (A)(4) of section 4123.343 of the Revised Code, degenerative disc disease, spondylosis, spondylolysis, and spondylolistheses do not constitute evidence of arthritis for purposes of satisfying the statute.

(2) With respect to the condition defined in division (A)(14) of section 4123.343 of the Revised Code, the employee must have inpatient treatment and admission for the psycho-neurotic disability in a recognized medical or mental institution. Outpatient treatment does not satisfy the statutory definition.

(3) With respect to the condition defined in division (A)(25) of section 4123.343 of the Revised Code, an employer is not eligible for disability relief in the same claim in which the employee participated in a rehabilitation program. The employee must suffer a subsequent compensable injury or occupational disease claim, and any rights to disability relief would be in the subsequent claim.

(B) Under division (B) of section 4123.343 of the Revised Code, the administrator specifies the following grounds upon which the administrator may charge claims costs to the statutory surplus fund.

(1) The administrator will consider disability relief under section 4123.343 of the Revised Code only in claims satisfying all of the following prerequisites:

(a) The claimant is an employee with a disability as defined in division (A) of section 4123.343 of the Revised Code and paragraph (A) of this rule.



(b) The employer has filed an application for disability relief while the claim is within the employer's claim experience period, as referred to in division (B) of section 4123.34 of the Revised Code.

(i) For a claim involving a private state fund employer:

(a) If the date of injury is between January first and June thirtieth, the application shall be filed by June thirtieth of the year no more than six years from the year of the date of the injury or occupational disease.

(b) If the date of injury is between July first and December thirty-first, the application shall be filed by June thirtieth of the year no more than seven years from the year of the date of the injury or occupational disease.

(ii) For a claim involving a public employer taxing district employer, the application shall be filed by December thirty-first of the year no more than six years from the year of the date of the injury or occupational disease.

(iii) For a claim involving a private state fund employer or a public employer taxing district employer participating in a retrospective rating plan, the application shall be filed within the time provided in paragraph (B)(1)(b)(i) or (B)(1)(b)(ii) of this rule, as applicable.

(c) The bureau has awarded compensation to the claimant for temporary total disability, disabilities described under division (B) of section 4123.57 of the Revised Code, permanent total disability, or death benefits, or the claimant has received wages from the employer in lieu of compensation.

(2) For an employer granted relief, all or such portion as the administrator determines of the amount that otherwise would be charged to the employer's experience will be deducted from each claim arising from injury or occupational disease to an employee with a disability for the purpose of premium or assessment adjustment, in accordance with the following principles and paragraphs (E), (F), and (G) of this rule:

(a) All amounts deducted from the experience of the employer will be charged to the statutory surplus fund.



- (b) The bureau will calculate the amount of the cost of the claim to remain in the employer's experience by applying the complement of the disability relief percentage to the reducible costs contained within the claim cost as limited by the maximum value of a claim chargeable to the employer's experience, as determined by the employer's credibility group under rule 4123-17-05.1 of the Administrative Code.
- (c) The bureau will apply disability relief in a claim to only the following claims awards and reserves:
- (i) Temporary total disability;
  - (ii) Disabilities described under division (B) of section 4123.57 of the Revised Code;
  - (iii) Permanent total disability;
  - (iv) Death benefits;
  - (v) Lump sum settlements under section 4123.65 of the Revised Code or a settlement agreement approved by a court of competent jurisdiction in this state;
  - (vi) Medical payments; and
  - (vii) Claims reserves.
- (d) If the actual cost of a claim exceeds the maximum value of the claim chargeable to a particular employer's experience, the ratio of the nonreducible costs of the claim to the total cost of the claim will be maintained in the maximum value chargeable to the particular employer's experience, so that when the disability relief percentage is applied, it will be applied only to that portion of the maximum value that is reducible in accordance with division (B) of section 4123.343 of the Revised Code.
- (e) The bureau will apply the disability relief in a claim for lump sum settlements as provided in paragraph (B)(2)(c)(v) of this rule as follows:



(i) Where the disability relief determination is made on or after September 29, 2017, the bureau will apply disability relief to a lump sum settlement effective before, on or after September 29, 2017;

(ii) Where the lump sum settlement is effective on or after September 29, 2017, the bureau will apply the disability relief to a disability relief determination made before, on or after September 29, 2017;

(iii) Where both the disability relief determination was made and the lump sum settlement was effective prior to September 29, 2017, the provisions in paragraph (B)(2)(c)(v) of this rule do not apply and the bureau will not apply the disability relief to the lump sum settlement.

(C) The administrator of workers' compensation may delegate the authority granted to the administrator under Chapters 4121. and 4123. of the Revised Code for determining the amount to be charged to the statutory surplus fund in connection with an employer's employees with disabilities. The decision of the administrator's designee is the decision of the administrator.

(1) An employer which seeks a disability relief award must file a complete and timely application and attach copies of all relevant medical evidence which the employer believes the administrator should consider when determining the appropriate award.

(a) The administrator may dismiss without prejudice an incomplete application. The administrator may dismiss without prejudice an application at the employer's request. Within the time limits and provisions of this rule the employer may refile an application that was dismissed without prejudice.

(b) The administrator may deny an application not filed within the employer's experience as provided in division (B) of section 4123.34 of the Revised Code and paragraph (B)(1)(b) of this rule.

(c) The administrator may dismiss an application which fails to meet the provisions of paragraphs (A) and (B) of this rule.

(d) The administrator may dismiss an application if the initial allowance of the claim is being contested before the bureau, industrial commission, or a court of competent jurisdiction at the time the application is filed. Upon a final administrative or judicial determination allowing the claim, the



employer may refile an application dismissed under this provision.

(2) The administrator may issue a disability relief order based on a review of the application and any information contained in any relevant claim file or any other relevant bureau or industrial commission records.

(3) The administrator will afford an employer the opportunity for an informal conference if the application meets the provisions of this rule.

(a) If the administrator conducts an informal conference, the administrator will send a notice of conference to the employer and its representative by regular mail or email, setting forth the date, time, and place of the conference.

(b) The administrator will notify the employer by mail or email not less than fourteen days before the date of such conference, unless the employer waives this notice.

(c) At the request of the employer or another party, the administrator may conduct an expedited or an informal telephone conference.

(4) The administrator's decision will be reduced to writing and mailed to all interested parties. The order will state the evidence upon which the administrator based the decision.

(5) The administrator will keep a record of disability relief applications received, conferences scheduled, orders issued with publication dates and any waiver of appeals, and appeals to the industrial commission.

(D) The burden of proof is upon the employer to establish entitlement to the relief under section 4123.343 of the Revised Code by appropriate medical evidence or other evidence as may be indicated

(1) With respect to any credit under division (D)(1) of section 4123.343 of the Revised Code, the administrator will grant full disability relief credit if the employer establishes that the injury or occupational disease would not have occurred but for the employee's pre-existing qualifying



condition.

(2) With respect to any credit under division (D)(2) of section 4123.343 of the Revised Code, the administrator will determine the degree of relief to be granted based upon the following:

(a) The degree to which medical evidence or other evidence indicates the pre-existing condition has affected the cost of the claim.

(b) The employer shall establish the relationship between the pre-existing condition and subsequent injury by way of aggravation or delayed recovery by proof on file but the condition need not be recognized by an order of allowance for such condition or aggravation of the condition.

(c) In determining the appropriate per cent of relief in the claim, the administrator will consider the effect of the pre-existing condition on the past claims costs, and also account for the effect of the condition on the anticipated future costs of the claim.

(E) A non-complying employer is not entitled to relief under section 4123.343 of the Revised Code. If the employer had active coverage on the date of the injury but was a non-complying employer on the date of the application for disability relief, the administrator may dismiss the application.

(F) No employer in any rating year may receive credit under section 4123.343 of the Revised Code in an amount greater than the premium it paid.

(G) An order issued by the administrator is appealable under section 4123.511 of the Revised Code.

(1) If the administrator holds an informal conference, the employer and the administrator may agree upon the amount of disability relief in a claim, and the employer may waive its right to appeal.

(2) Upon waiver of the employer's right to an appeal or the expiration of the appeal period, the administrator's order is final, and the bureau will immediately process the award.

(3) If no agreement is reached at the informal conference and the employer files a written appeal within fourteen days of the employer's receipt of the administrator's decision, the administrator will



forward the claim file to the industrial commission within seven days of the administrator's receipt of the notice of appeal for a hearing before a district hearing officer.

(4) The employer and the administrator are parties at any hearing conducted by the industrial commission or its hearing officers.

(5) Upon a final industrial commission order which grants disability relief, the bureau will immediately process the award.

(H) Since pursuant to paragraph (D)(2)(c) of this rule the administrator is to consider the effect of the qualifying condition on the past and future costs of the claim in determining disability relief, the employer is not entitled to consideration of a subsequent application for disability relief for a condition in a claim in which the administrator has made a previous determination on the condition, regardless of whether there has been a change in circumstances such as allowance of the condition or payment of compensation. A subsequent application cannot substitute for an appeal of the administrator's order. The administrator will dismiss or deny any subsequent application for an increase in disability relief in a previously determined claim.