



Ohio Administrative Code

Rule 4123-3-38 Surplus fund charge of qualified motor vehicle accident claims.

Effective: July 1, 2019

(A) Pursuant to section 4123.932 of the Revised Code and when an employer satisfies all of the requirements of this rule, the bureau shall charge to the surplus fund created under division (B) of section 4123.34 of the Revised Code any compensation and benefits related to a compensable workers' compensation claim based on a motor vehicle accident involving a third party. This rule applies only to claims arising on or after July 1, 2017.

(B) Eligibility requirements.

(1) This rule does not apply to self-insuring employers, state agencies, or a state institution of higher education, including its hospitals.

(2) This rule applies to private state fund employers and public employer taxing district employers that pay premiums into the state insurance fund.

(a) The employer must have had active workers' compensation coverage on the date of injury of the claim.

(b) The employer must be current with respect to all payments due the bureau, as defined in paragraph (A)(1)(b) of rule 4123-17-14 of the Administrative Code.

(c) The employer must be current on the payment schedule of any part-pay agreement into which it has entered for payment of premiums or assessment obligations.

(C) If an employer believes the bureau should charge a claim to the surplus fund under this rule, the employer may file an application with the bureau requesting the bureau determine whether the claim is to be charged to the surplus fund. The bureau will not review or consider charging a claim to the surplus fund under this rule unless the employer files an application in accordance with this rule.



(D) The employer's application to charge a claim to the surplus fund shall include all of the following:

(1) Evidence that the claim is based on a motor vehicle accident involving a third party. "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(2) Evidence that either of the following circumstances apply to the claim:

(a) The third party involved in the motor vehicle accident was issued a citation for violation of any law or ordinance regulating the operation of a motor vehicle arising from the accident on which the claim is based and that any form of insurance maintained by the third party or uninsured or underinsured motorist coverage as described in section 3937.18 of the Revised Code covers damages caused by the motor vehicle accident which gave rise to the claim.

(i) The employer does not need to prove that the third party was convicted of the citation.

(ii) The employer does not need to prove that the insurance accepts complete liability for the motor vehicle accident, but only that the insurance accepts liability for some portion of the accident and pays costs associated therewith.

(b) If there is evidence that the third party was not issued a citation arising from the accident, the employer shall provide evidence that the third party involved in the motor vehicle accident was primarily liable for the accident on which the claim was based and that any form of insurance maintained by the third party or uninsured or underinsured motorist coverage as described in section 3937.18 of the Revised Code covers damages caused by the motor vehicle accident which gave rise to the claim.

(i) "Primarily liable" means that the third party involved in the motor vehicle accident is more than fifty per cent liable for purposes of section 2315.33 of the Revised Code.

(ii) The employer does not need to prove that the insurance accepts complete liability for the motor vehicle accident, but only that the insurance accepts primary liability for the accident and pays costs



associated therewith.

(E) Within one hundred eighty days after the bureau receives the employer's application, the bureau shall determine whether the claim shall be charged to the surplus fund under this rule.

(1) If the bureau believes the employer has not provided all of the information necessary for the bureau to make the determination, the bureau shall contact the employer for the employer to provide the additional evidence required prior to denying an application.

(2) If the bureau determines that the employer failed to establish that the bureau should charge the claim to the surplus fund under this rule, the bureau shall deny the application with an explanation of the reasons for the denial.

(3) If the bureau fails to make a determination within the time required, the application shall be deemed approved and the bureau shall charge the claim to the surplus fund.

(F) If the bureau determines that the employer's claim shall be charged to the surplus fund created under division (B) of section 4123.34 of the Revised Code or if the application is deemed approved because the bureau failed to make a determination within the time provided for in paragraph (E) of this rule, the bureau shall charge all of the costs of the claim to the surplus fund.

(1) If the bureau previously included the costs of the claim in the calculation of the employer's experience in a prior policy year, the bureau shall adjust the employer's experience in the prior policy year, subject to the limitation provided in paragraph (F)(2) of this rule.

(2) In accordance with paragraph (C)(2) of rule 4123-17-17 of the Administrative Code, the bureau shall limit any adjustments in an employer's account which result in changes to the amount of premium due from an employer for a policy year to the annual or adjustment periods ending within twenty-four months immediately prior to the date the employer filed its application under this rule.

(G) The bureau's denial of an employer's application to charge a claim to the surplus fund under this rule is appealable to the adjudicating committee under section 4123.291 of the Revised Code.