



issue paper

American Staffing Association

277 South Washington Street, Suite 200 • Alexandria, VA 22314-3675 • 703.253.2020 • 703.253.2053 fax • americanstaffing.net

June 20, 2011

By Edward A. Lenz
Senior Vice President, Legal and
Public Affairs
703-253-2035
elenz@americanstaffing.net

Pennsylvania Workers' Compensation Rates

Issue

The current Pennsylvania Workers' Compensation rating system imposes unreasonable costs on staffing firms, which is making them uncompetitive and adversely affecting their ability to create jobs in the Commonwealth.

Staffing Industry Policy Goal

To adopt a workers' compensation rating system similar to that used in 48 other states in which temporary employees supplied by staffing firms are allowed to use the same individual class (occupation) codes used by their clients for their full-time permanent employees engaged in the same task.

Background

Workers' compensation insurance was established early in the 20th century to ensure that injured employees are adequately compensated for medical care, rehabilitation, and lost wages through a no-fault system that does not require lengthy and costly legal disputes to settle claims. The goal of workers' compensation is to return injured employees to productive employment as soon as and whenever possible. Pennsylvania's workers' compensation law applies to all employees—full-time and part-time; permanent and temporary. Workers' compensation insurance is purchased by an employer to cover the firm's work force.

The premiums charged employers are required by law to reflect the nature of the work, the exposure to risk inherent in certain occupations, and the probability (as established by actuaries) of an injury. Experience modifications are used to increase or decrease premiums to a specific employer based on that employer's safety training, culture, and actual losses.

In 48 states—including 33 states in which rates are developed by the National Council on Compensation Insurance—staffing firms pay workers' compensation premiums based on the class codes applicable to the work performed at the client firm's work site. Staffing firm premiums are subsequently adjusted based on the experience modification factor ("mod factor") calculated for each staffing firm.

Only Pennsylvania and Delaware use a different methodology.¹ In those states, staffing firm rates, with few exceptions, are based on codes specifically applicable to the staffing industry. Apart from a handful of individual class codes, most of the codes applicable to staffing firms are grouped, which has grossly distorted the rating system as it applies to the industry.

¹ Pennsylvania and Delaware share professional staff for their rating bureaus, so operationally the two bureaus are essentially one.

The result of the grouping of disparate class codes is that staffing firm premiums can be twice to four times higher than would be the case if the premium were based on the class code applicable to the direct employees of a client firm engaged in the same work. This differential can mean premiums that are \$20, \$36, even \$64 more per \$100 of payroll. There is no claims data that justifies such disparities.

The 24 individual class codes (out of more than 300) that the PCRB approved in 1995 for use by staffing firms do not represent the wide range of staffing services actually being provided in the state. This resulted in artificial "clustering" of staffing firm services into the handful of approved individual codes, thereby distorting the entire rating system as it applies to staffing.

Economic and Jobs Impact

The large workers' compensation insurance premium differential applied to staffing firms in Pennsylvania is costing the state short-term and long-term jobs, and millions of dollars of tax revenue.

Firms in cyclical industries such as commodities (steel, chemicals, and plastics), food stuffs, seasonal goods, and many business services use staffing firms to adjust to their work force requirements as client demands rise and fall. Similarly, many of Pennsylvania's food and beverage processors manufacture seasonal products that call for adjustments of the work force. Other firms use staffing agencies to supply employees for new startup and expansion projects in which time to market is critical. Staffing firms can quickly supply skilled employees to meet such demands on an as-needed basis. Through temporary-to-permanent arrangements, many of these employees also have an opportunity to transition into permanent employment with the client firm.

Staffing firms also play an important role in Pennsylvania's work force development, by providing entry-level employment to help individuals establish a work record of steady, dependable attendance and satisfactory performance crucial for gaining later employment. Staffing firms also are an important source of supplemental income for students, working parents, and seniors.

Argument in Favor of Staffing Industry Policy Goal

Temporary employee workers' compensation claims are a function of the nature of the work they perform, their working conditions, their training, and the culture of safety in the client facility. Hence, the class code of the client is the best, primary indicator of potential losses and insurance claims. Premiums should then be adjusted based on the staffing firm's mod factor to reflect the staffing firm's actual experience. Such a method would provide both fairness and proper accountability.

Most important, however, is to ensure that Pennsylvania's workers' compensation system conforms to nationally accepted practices. This will not only facilitate compliance and enforcement but also will ensure that the state's regulatory costs do not put Pennsylvania firms at a competitive disadvantage. Businesses can choose

where to operate and will naturally shy away from states with regulatory burdens that differ significantly from the norm.

Pennsylvania already has a “black eye” because the costs of doing business in the state—including corporate tax rates, tort liability exposure, environmental regulation, unemployment compensation, and other regulations—are higher than the norm. Charging staffing firms higher workers' compensation premiums is yet another reason for businesses to choose not to do business in Pennsylvania.

The Corbett administration has an expressed goal of reducing the cost of doing business in Pennsylvania by 10% in the next four years. Reducing the cost of workers' compensation insurance for the staffing firms operating in the commonwealth would be an important step in this process.

Plan of Action

The American Staffing Association, in conjunction with its affiliated chapter in Pennsylvania, have formed a coalition of staffing firms doing business in Pennsylvania and have engaged the consulting services of the Pennsylvania Business Council to provide local political and government affairs knowledge and guidance.

PBC senior staff and coalition members recently met with policy staff of the Pennsylvania Department of Labor and Industry to educate them on the issue. The team also met with Pennsylvania House and Senate Labor and Industry Committee directors. Both were helpful, but the House representatives were particularly encouraging.

Subsequently, senior ASA staff, PBC senior staff, and a coalition member met with Pennsylvania executive deputy insurance commissioner Randy Rohrbaugh, office of insurance product regulation director Michael McKenney, actuarial supervisor Kenneth Creighton, and policy director Matthew O'Donnell. The Insurance Department representatives acknowledged the appropriateness of the desired policy goal from the staffing industry's perspective. They also offered their views on the probable response of the PCRB and made several suggestions as to a course of action that could result in the desired change.

Meanwhile, the Pennsylvania General Assembly is finishing the budget and other legislative priorities in anticipation of a summer recess beginning no later than June 30. After that time, committee chairs and staff will be very approachable for discussion of fall agenda items. PBC will conduct meetings with the labor and industry committees and the insurance committee in both chambers seeking the introduction of legislation to achieve the coalition's aims through statutory remedy. Ultimate passage of a legislative solution would be an arduous process with no sure outcome, but the threat of legislative action will likely impel executive branch interest and commitment.

At the same time, the coalition, with guidance from PBC, will meet with senior Corbett administration officials to educate them on the issue and elicit their support

for executive or legislative action that implements the desired change. The coalition would share with the Corbett administration the decision of the Ohio Supreme Court, which (in *Minuteman*) found favor of the staffing industry with a fact pattern virtually identical to Pennsylvania. The case is significant because it resulted not only in the Ohio system being overturned, but also in a significant award of damages to staffing firms that overpaid their premiums.

To pave the way for relief, either through legislation or administrative action by the Corbett administration, ASA will be launching an effort this summer to seek accommodation with the Insurance Federation of Pennsylvania and other stakeholders that may have concerns with the association's efforts to change the system. In addition, to demonstrate to state policy makers that the industry has exhausted its efforts to seek relief from the PCRB, ASA will need to file an official appeal of the PCRB rate program urging the insurance commissioner and Corbett administration to grant the appeal and implement the industry's policy recommendations. ASA will be asking one or more staffing firms to lend their names to the appeal.