

Non-At-Fault Motor Vehicle Accident Claims - Surplus Fund Charge

House Bill 207

With the passage of House Bill (HB) 207 in 2016, if the employer can establish that a claim from their employee is a result of a non-at-fault motor vehicle accident involving a third party, BWC may exclude the cost of the claim from the employer's experience. The law requires that either the third party at-fault driver have active insurance coverage or the employer must have active uninsured motorist's insurance coverage to apply for the claim cost exemption. This change in legislation may impact an employer's experience modification in premium development and to the experience used in premium development for an employer participating in a retrospective rating plan. This provision of HB 207 became effective for accidents occurring on or after July 1, 2017.

Eligibility and non-eligibility

To be eligible, the employer must be:

- A private state-fund employer;
- A public taxing district employer.

And all of the following:

- Active coverage on date of injury;
- Current on all payments due to BWC;
- Current on any part-pay agreement.

Non-eligible employers include:

- A self-insuring employer;
- A state agency, including state institutions of higher education and state hospitals;
- An employer without active coverage on the date of injury;
- An employer who is not current on all payments due to BWC;
- An employer who is not current on any part-pay agreement.

Application process

An employer must initiate the process by filing a *Request to Charge the Surplus Fund for Non-At-Fault Motor Vehicle Accident (AC-28)*. This application and other forms may be found on the BWC web at

<https://www.bwc.ohio.gov/bwccommon/forms/bwcforms/nlbwc/employerforms.asp>.

The application must include the following required information:

- Proof that a motor vehicle accident involving a third party caused the claim;
- Proof that a third party involved in the motor vehicle accident was issued a citation;
- Proof that the third party had valid insurance or the employer's policy covers the claim under the uninsured or underinsured motorist coverage.

BWC has 180 days to make a determination on the application. If the application does not contain sufficient evidence, BWC will attempt to obtain the required documentation from the employer.

Timeline

When BWC determines the claim meets the requirements above, appropriate adjustments to move all of the claim's costs from the employer's experience into the surplus fund and recalculate the employer's experience modifier and premium will be made. BWC will adjust prior policy years. However, adjustments will be limited to the periods ending within 24 months immediately prior to the filing date.

Appeals process

An employer may appeal BWC's denial by submission of an appeal application to the adjudicating committee.