



Human Resources Client Bulletin



Employment Law Developments No. 08-22

November 2008

Court Invalidates BWC Group Rating

On Tuesday, November 18, 2008, the Cuyahoga County Court of Common Pleas granted plaintiffs' request to prohibit the Ohio Bureau of Workers' Compensation from continuing the Group Rating Program beginning with the next rating year on July 1, 2009. This decision has been widely reported by Ohio media as being one which attempts to correct the inequities of the premium rating system itself. Although the judge's decision does refer to the perceived inequities in the rating system, that is, the claim that non-group rating employers have underwritten the premiums of group rated employers for a number of years, the decision actually rests upon the language of the statute. The statute, itself, does create a group rating plan, but states that the plan must be "a retrospective rating plan." The plaintiffs, employers that were removed from group rating plans by the sponsors of those plans, argued that the program, as implemented, is prospective and not retrospective. Counsel for the Bureau argued that the legislature actually meant to make the program prospective rather than retrospective; however, the judge indicated that he had no choice but to enforce the statute as written. With this de-

cision, the judge has invalidated the Bureau of Workers' Compensation group rating program, which has the potential of adversely affecting over 90,000 Ohio employers.

On Friday, November 21, 2008, the Ohio Bureau of Workers' Compensation Board of Directors met, but gave no indication either during or after its meeting as to whether it planned to appeal the decision. Those familiar with the case feel that the Bureau ought to file an appeal and request that the appellate court stay the lower court's decision and simultaneously approach the legislature to amend the language in the statute so that it states the program is prospective, not retrospective, in nature.

Bricker & Eckler LLP will continue to follow this case and report as soon as new developments arise.

If you have any questions about this issue or any other employment matter, please contact Thomas R. Sant at 614.227.2331 or tsant@bricker.com.

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