

# SOGGDA NEWS

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PERMIT #43

Southwestern Ohio Garage & Gasoline Dealers Association, Inc.



237 South Dixie Drive  
Vandalia, OH 45377  
937/890-9670  
Fax 937/890-9673



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## 2011 Employee Rights Act

First, the NLRB has issued a new mandate requiring most private-sector employers to notify employees of their rights under the 194 page National Labor Relations Act by posting a written notice in the workplace (“Notice”). Employers should begin posting the Notice on November 14, 2011. Copies of the Notice poster will be available on the NLRB website ([www.nlr.gov](http://www.nlr.gov)) and from NLRB regional offices by November 1. Posters and the 194 page law are also available from the SOGGDA board office or can be downloaded at [www.soggda.com](http://www.soggda.com). Similar postings of workplace rights are required under other federal workplace laws. The new 11-by-17-inch Notice is similar in content and design to a notice of NLRA rights that must be posted by federal contractors under a Department of Labor rule. The new requirement is quite controversial, given that many feel the proposed language is overtly pro-union and that there is no demonstrated need for the new requirement.

Translated versions will be available and must be posted at workplaces where at least 20% of employees are not proficient in English.

Employers must also post the Notice on an intranet or an internet site if personnel rules and policies are customarily posted there. *continued on page 8.*

### HAVE YOU REDUCED YOUR ELECTRICAL RATES YET?

SOGGDA is currently working with members who use DP&L, Duke, Ohio Edison and AEP for their electrical needs. SOGGDA can assist you in cutting your electrical bills by 30% or more. Several members who have already signed up stated the savings are over \$200 a month. Call the office for more details. *continued on Page 7.*

# THE SOGGDA NEWS

Official publication of Southwestern Ohio Garage Gasoline Dealers Association is published 12 times yearly and dedicated to the betterment of the position of independents in the automotive and petroleum industry.

**Jerry Arndts** Executive Director  
Accountant

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237 South Dixie Dr.  
Vandalia, Ohio 45377  
(937) 890-9670

**Jerry Arndts** Editor

Views expressed in editorials and text are not always the opinion of SOGGDA. Furthermore, SOGGDA is not liable for any claims or promises made by advertisers.

## FYI...

Dozens of training courses are available through BWC's Division of Safety & Hygiene. These courses are offered through the training center in Pickerington at the Ohio Center for Occupational Safety and Health (OCOSH) and at branch sites and BWC service offices across the state, including Dayton, Toledo, Cincinnati, Canton, Cambridge, Portsmouth, Youngstown and Cleveland. Employers may enroll any number of employees at no additional cost.

To enroll or learn more about the courses available July 2011 - July 2012, visit the BWC Learning Center at [bwclearningcenter.com](http://bwclearningcenter.com). See Page 9 to sign up now.

## COMING NEXT MONTH:

Refer-A-Friend and earn a free annual membership. SOGGDA is growing and you can be a part of our success. It is as easy as A-B-C. Become a member of the SOGGDA Honor Roll.

### Are you online?

SOGGDA is able to send you this newsletter via e-mail for those who wish to receive it electronically rather than US Mail.

If you would like to be added to the list, call today at 937/890-9670 or send an email request to [soggda@aol.com](mailto:soggda@aol.com)

# Happy Halloween

## SOGGDA 2011 Safety Meeting

Dayton Wyndham Garden Hotel  
October 18, 2011 6:15PM

Featured Safety Speaker  
**James Lopez, OSHA**

Share an evening with other  
members and vendors that support  
SOGGDA



## WADE Insurance, Inc.

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Area Wide Door & Window Systems	Don Reynolds/Bill Armacost	937-433-0552
Cartridge World of Huber Heights	Gary E. Goodwin	937-233-4655
Clean City Janitor Service	Gary Peck	937-223-3663
Enterprise Oil	Charles Alexander	800-875-3860
Genuine Auto Parts	Bruce Charles	937-223-5296
Ham Signs	Larry Miller	937-890-6770
Health Management Solutions	Tod Phillips	888-202-3515
Diversified Computers	Debbie Chaney	937-454-1984
NWZ Worx	George Zabrecky	800-743-0202
Planned Equity	Ernie Franz	800-871-0670
ProComp	John Daney/Matt Ulrich	866-302-2667
Ralph E. Wade Insurance Agency	John Wade	800-860-2651
Ralph E. Wade Insurance Agency	Jim Hough	800-860-2651
RJN Solutions	Bob Nonte	866-511-4756
Royal Buying Group	Angela Angelilli	888-728-3724
Secure Check	Prissy Hamilton	937-853-2710
David Shawhan, CPA	Annette Sweigart	937-426-4530
Englewood Insurance Agency	Walt Harrison	937-836-9681
West Milton Optical	Terry Hassell/ John Stuckey	937-698-4456
Wright-Patt Credit Union	Terry Miller	937-912-7311



## General Counsel Corner

*By: Peter H. Gunst, Esq.*

### Liquidated Damages - How Solid?

Liquidated damage provisions are all too familiar to service station operators. Supply contracts commonly contain a provision that requires a dealer to pay between two cents and five cents per gallon of the minimum volume established by the supply contract, if the dealer terminates prematurely or otherwise fails to satisfy his or her purchase requirements. Such provisions appear to have real teeth. A claim for liquidated damages arising from a multi-year supply contract may amount to well over a hundred thousand dollars. Are liquidated damages provisions likely to be enforced or are they only paper tigers?

The answer, like all things legal, is it depends. As a general matter, courts will uphold liquidated damages provisions where three conditions are met:

- The potential damages to the supplier must be difficult or impossible to estimate accurately.
- The provision must be intended to guard against a real potential for damages, and not simply a penalty for nonperformance.
- The amount of liquidated damages must constitute a reasonable pre-breach estimate of probable loss.

Finally, a liquidated damages provision is more likely to be upheld where the obligated party is a sophisticated business person and not an ordinary consumer. Whether a provision will satisfy these standards depends on the facts of the given case. Three recent decisions are illustrative. In *B.A. Construction & Management v. Knight Enterprises, Inc.*, 2011 WL 1598966 (E.D.Mich. 2011), a federal magistrate considered a claim brought by a distributor under a liquidated damages provision, which purported to require the dealer to pay three cents per gallon multiplied by the minimum gallon requirement set forth in the supply contract. The problem for the distributor was that the duration of the contract was uncertain and the contract provision was unclear as to whether the three cent per gallon provision was to be applied to the total gallonage set forth in the contract, or to the shortfall between total gallonage and actual gallons purchased. Because of these uncertainties, the magistrate held that the liquidated damages provision was unenforceable. She wrote: Determining the minimum number of gallons [the dealer] was required to purchase and whether to subtract the number of gallons [the dealer] actually purchased are essential to computing the liquidated damages in this case. However, given the conflicting contractual provisions and testimony, it is impossible to make those essential determinations or construe the intent of the parties. Consequently, the liquidated damages provisions cannot be enforced. In *Kapunakea Partners v. Equilon Enterprises, LLC*, 679 F.Supp. 2d 1203 (D. Haw.2009), a dispute arose as to whether the dealer was obligated to pay its supplier five cents per gallon for the shortfall of the minimum gallons that the dealer was required to purchase.

*continued on Page 5*

### ENTERPRISE WASTE OIL

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**Main Office: 800/875-3860**

continued from Page 4

Taking the offensive, the dealer sued in federal court arguing that the supplier's threat to impose liquidated damages violated Hawaii's unfair competition statute because the provision was being used to restrain competition in the local market. In addition, the dealer charged the supplier with tortious interference with the dealer's attempt to negotiate a more favorable relationship with an alternative supplier.

Finally, the dealer argued that the liquidated damages provision was unenforceable because it bore no relation to the supplier's actual damages, which the dealer contended were not difficult to estimate.

In denying the supplier's motion to dismiss, the federal judge held that the dealer's assertions "sufficiently stated an unfair competition claim" against the supplier, and also satisfied "the improper interference element of the tort of tortious interference with a prospective business advantage."

## **SOGGDA 2011 Annual Scholarships Awarded**

SOGGDA awarded two annual scholarships in August to two children of SOGGDA members.

The recipients wrote an essay about "What America means to me".

The 2011 Winners are:

Adam Cox - Midletown

Dylan Burton - Cincinnati

Congratulations from SOGGDA!

## **Director Notes:**

After 25 years of outstanding service as Executive Director, Patti Booker has stepped down. The Association celebrated 25 years of dedicated service with Patti and her family. We wish Patti and her family all the best.

The new Executive Director is Jerry Arndts. Jerry has been serving the automotive industry and the association for well over 10 years while working on computers and websites. Future Plans include membership growth, better vendor discounts, better member communication thru Facebook, Twitter, the website (WWW.SOGGDA.COM) and the newsletter. Be sure to give him a call and introduce yourself. Feel free to give him ideas of how SOGGDA can serve you better. We can do better Together.



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**620 N. Main Street  
Springboro, OH 45066**

- \* Garage Keepers**
- \* Property**
- \* Liability**

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# SOGGDA SAFETY

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## Hand and Finger Safety

The hand is one of the most complex parts of the human body. An intricate network of muscles, tendons, nerves, bones and tissues provides us with an incredible range of dexterity and feel unmatched by any machine. Whether buttoning our shirt or tying our shoes, we take for granted the tremendous utility of hands and fingers. Try eating breakfast tomorrow without using your thumbs and then think how tough it would be without any hands at all!

### Reasons hand injuries occur:

- Improper use of tools/wrong tool used;
- Lack of training to operate equipment properly;
- Inadequate hand protection — no gloves/wrong gloves;
- Pinch points not recognized or guarded;
- Distractions/inattention to work being done;
- Guards disabled/removed;
- Lockout procedure not followed correctly;
- Hands placed where they could be cut or crushed.

### You can prevent hand and finger injuries in your facility. Some specific things to do to prevent injuries include:

- Don't wear rings, jewelry or loose clothing when working around moving/rotating machinery;
- Wear leather or cut-resistant gloves when handling sharp objects like sheet metal;
- Make sure screwdrivers and chisels are properly ground;
- Use push-sticks, clamps or guards to keep hands away from table saw blades;
- Choose the correct type of rubber gloves for chemical protection — check the MSDS;
- Keep knives sharp to reduce force needed to cut, and store them in the closed position or in knife sheath;
- Unplug or lock out powered equipment before starting to work on it;
- Use barrier creams to help protect skin from chemical contamination or natural hazards like poison ivy.

### First-aid treatment for hand and finger injuries:

- Avoid contact with any other person's blood or body fluids when offering first aid;
  - Get first aid/medical attention for all injuries;
  - Apply direct pressure to cuts and lacerations with a bandage or clean cloth;
  - For thermal burns, immediately flush the affected area under cold running water for five minutes;
  - For chemical contamination, immediately wash the affected area with soap and water. Consult the MSDS;
  - In the event of an amputation, apply pressure to stop bleeding. Place severed part in a clean bag and submerge bag in ice.
- Quiz

## True or False

1. It is okay to use a mushroom-headed chisel if you are in a hurry. T or F
2. Pinch point injuries don't need first aid.  
T or F
3. There are many different kinds of chemical-resistant gloves. T or F
4. Leather gloves are okay for handling sheet metal. T or F
5. Powered equipment should always be locked out before starting to work on it.  
T or F
6. You don't need to worry about getting any diseases from co-workers' blood because they are your friends. T or F
7. Rings and watches can be caught on machinery and cause serious injury. T or F
8. It is okay to remove safety guards from machinery if it helps you work faster. T or F
9. It is better to use a dull knife because there is less chance of cutting yourself.  
T or F
10. Cold running water is the best first aid treatment for a thermal burn. T or F

1F,2F,3T,4T,5T,6F,7T,8F,9F,10T

When was the last time your insurance agent showed you how to **SAVE** Money

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Email: [englewoodins@yahoo.com](mailto:englewoodins@yahoo.com)

continued from page 1

## Electric Group Discount Program Avg. 31% savings

### SOGGDA APPROVED! (DP&L, Duke, Ohio Edison and AEP)

Members Rejoice! SOGGDA has approved and negotiated an exclusive bulk discount rate offer for our members in the electric utility areas of DP&L, Duke, Ohio Edison, and AEP, to drastically lower the cost of your electricity usage.

The program is entirely free for all SOGGDA members, including a free energy analysis and consultation for both electric and natural gas for all members. This exclusive deal has already been tested within SOGGDA and proved an average savings of 31% for enrollees, along with a guarantee that pricing will not change for 3 years.

You may request your discount by sending all pages of a reasonably current electric bill by fax to 937-890-9673 or by email to [soggda@aol.com](mailto:soggda@aol.com). As a proactive organization, SOGGDA has identified the “deregulation of utilities” as one of the most effective areas for cutting costs to run your business.

#### Key components of the SOGGDA electric discount:

- Average savings of 31% off of the actual electric usage
- Guaranteed low rate for 2 years
- Demand no longer affects your price per KWH
- Large reduction in “Transmission Related Charges”
- Choice of the lowest price from multiple different utilities
- Your bill will still come from the same utility company
- You still call your current utility company for any emergencies or breakdowns

#### Key components of the SOGGDA natural gas discount:

- Guaranteed savings without any expiration on the agreement time period
- Never have to re-sign as the program stays in place until you change
- Guaranteed savings between 5%-45% depending on your current bills
- No cancellation penalties whatsoever.
- Your bill will still come from the same utility company
- You still call your current utility company for any emergencies or breakdowns

How do I see how the SOGGDA discount affects me? You may request your discount by sending all pages of a reasonably current electric bill by fax to 937-890-9673 or by email to [soggda@aol.com](mailto:soggda@aol.com). Each bill will be individually analyzed, and then applied with the best available SOGGDA discount after reviewing your usage, demand, current charges, and utility company. Your bills will be returned and discussed so that you can start saving \$100's of dollars a month, and \$1,000's a year.

For any direct questions regarding this program please email [soggda@aol.com](mailto:soggda@aol.com)

#### To apply, members will need to:

- Send in all pages of a reasonably current electric bill.
- Review the individual proposal over the phone with an SOGGDA.
- Sign, date, and return the proposal and agreement for the chosen supplier.

#### **NO PAYMENT IS EVER REQUIRED FOR THIS PROGRAM.**

Although there are many types of discount programs, SOGGDA focuses on reducing costs for services that members use and for which they almost always pay too much. SOGGDA is offering products and services designed to lower costs, provide access to capital, enhance profitability and most importantly, **add more value and benefits to your SOGGDA membership.**

## We can do better together!

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*continued from page 1*

## NLRB Attack On Restrictive Social Media Policies

Many companies have fairly broad policies prohibiting employees from doing anything online or on any of the numerous social media sites (Facebook, etc.) which might cause embarrassment to the company. The NLRB has begun to take a very hard line against such policies in both unionized and union-free companies on the grounds that the policies improperly interfere with an employee's rights.

On August 18, 2011, the NLRB's general counsel issued a report detailing the agency's efforts to pursue legal action against employers which have arguably overly broad social media policies. The report also details unfair labor practice allegations where employees engaged in what the NLRB deems to be "protected concerted activities" in online social media forums.

Some examples of these provisions that were found to be unlawful by the NLRB include prohibitions on:

- "disparaging remarks when discussing the company or supervisors"
- "offensive conduct"
- "rude or discourteous behavior"
- "inappropriate discussions"
- "using any social media that may violate, compromise or disregard the rights and reasonable expectations as to privacy or confidentiality of any person or entity"
- "communication or post that constitutes embarrassment, harassment, or defamation"
- "statements that lack truthfulness or that might damage the reputation or goodwill of the company"
- "posting anything that [the employees] would not want their supervisor to see or would put their job in jeopardy"
- "use of the employer's logos and photographs of the employer's store, brand or product without written authorization"

The report also details cases where the NLRB has pursued unfair labor practice cases against employers who have terminated employees for engaging in protected, concerted activity online. The online commentary that the NLRB has sought to protect includes examples that many employers would find to be disparaging, profane and disloyal.

Given the NLRB's position, we suggest that you carefully craft your social media policies and, most importantly, seek legal advice before you discipline or terminate anyone for violating the policies.

C. Mark Kingseed

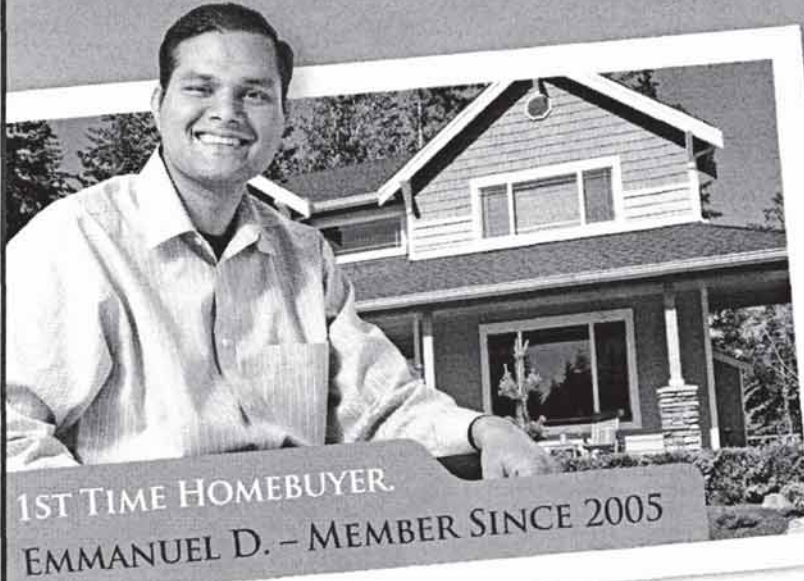
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July 2011 to June 2012 **Classes for Ohio Workers**

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Attend one of the more than 60 occupational safety, health and ergonomic courses offered by the Ohio Bureau of Workers' Compensation Division of Safety & Hygiene. Classes are held throughout the state as well as online.

The division offers courses at no extra cost to Ohio employers with active workers' compensation policies.

For more information, call 1.800.OHIOBWC.

To register for a class online, follow directions on the next page.

**Online Courses**

Accident Analysis Ladder/Stairway Safety  
Avoiding Back Trauma Musculoskeletal Disorders in the Workplace  
Getting Started with Safety Preventing Cuts and Lacerations  
Health Hazards in Construction Preventing Slips/Trips/Falls

**2011 Course Day (s)**

8/30 Accident Analysis Half-day workshop 0.5 AM  
8/30 OSHA Recordkeeping Half-day workshop 0.5 PM  
9/21 Powered Industrial Trucks: Developing a Training Program Half-day workshop 0.5 AM  
9/21 Temporary Traffic Management 0.5 PM  
10/20 First Aid in the Workplace 1.0  
10/25 NFPA 70E and You: Insight and Implementation 1.0  
11/8-9 Fall Hazards in Construction and Maintenance 2.0  
12/13-14 Construction Safety Elements (OSHA 10) 2.0

**2012 Course Day (s)**

1/19 Emergency Preparedness Planning Half-day workshop 0.5 AM  
1/19 Violence in the Workplace 0.5 PM  
2/8-9 Confined space Assessment and Work 1.5  
2/21 Respirators - Do we need them? 0.5 PM  
2/28 Ergonomics: Basic Principles 1.0  
3/7 Hazard Communication Half-day workshop 0.5 AM  
3/7 Bloodborne Pathogens 0.5 PM  
3/13 Accident Analysis Half-day workshop 0.5 AM  
3/13 OSHA Recordkeeping Half-day workshop 0.5 PM  
3/22 Train the Trainer One-day workshop 1.0  
4/12 First Aid in the Workplace 1.0  
4/17 Lockout/Tagout and Safety-related Work Practices 0.5 AM  
4/17 Machine Guarding Basics 0.5 PM  
4/25 Ergonomics: Developing an Effective Process 1.0  
5/15 Personal Protective Equipment Selection Criteria 0.5 AM  
5/15 Job Safety Analysis Half-day workshop 0.5 PM  
6/5 Wellness in the Workplace Workshop 0.5 AM  
6/5 Effective Safety Teams Half-day workshop 0.5 PM  
2/21 Restaurant and Food Service Safety Workshop 0.5 AM

# Ohio BWC Online Class Registration Details

## How to enroll in a class

1. Go to [www.bwclearningcenter.com](http://www.bwclearningcenter.com);
2. If this is your first visit, please click on First Visit and complete the requested information. If you do not know your BWC policy number, please ask your company's Human Resource person;
3. On the home page, click on Learning Center;
4. Click on Course Information & Enrollment;
5. Search by keyword, entering a word(s) that is closely related to the desired course. Click Search. The results will appear in the lower left corner of the screen. If it is difficult to see, consider changing the size of your screen display (directions below for "maximum visibility");
6. Locate the desired course and click on the information icon;
7. In the lower right section of the screen, locate the date/location of your choice. Click Enroll;
8. If you have given an e-mail address, you will receive an e-mail confirming your enrollment. If you have no e-mail address, you will receive a fax or letter.
9. Once you are enrolled, you can view your list of selected classes (and cancel, if needed) in the Personal Learning Center, which is located on the left side of the home page;
10. For assistance, please call 1-800-OHIOBWC.

## How to update a profile

1. Go to [www.bwclearningcenter.com](http://www.bwclearningcenter.com);
2. Click on User Information Center;
3. Click on Student Records;
4. Click on Update Profile;
5. Edit as needed. Click Submit.

## To change your screen display size:

1. From the START icon, select Settings;
2. Select Control Panel;
3. Select Display, then the Settings tab;
4. In the Screen Area, move the gauge to 1024 x 768 pixels.

## How to cancel a class

1. Go to [www.bwclearningcenter.com](http://www.bwclearningcenter.com);
2. On the left side of the home page, select Personal Learning Center;
3. Locate the class;
4. Click on Cancel.

## How to find directions

1. Go to [www.bwclearningcenter.com](http://www.bwclearningcenter.com);
2. Click on User Information Center;
3. Click on Facilities & Training Locations;
4. Locate the desired facility. Click on the information icon;
5. Directions are displayed in the lower right section of the screen.

## How to print certificates

1. Go to [www.bwclearningcenter.com](http://www.bwclearningcenter.com);
2. On the left side of the home page, click on Personal Learning Center;
3. Click on the Transcript tab;
4. Locate the course you have completed, click on certificate;
5. Print it.

## Group-Rating Safety Accountability

Dear Employer:

Each year Ohio employers have the opportunity to participate in BWC's Group-Experience-Rating Program or Group-Retrospective-Rating Program. While these programs are not required, they do provide you with an opportunity to significantly reduce your workers' compensation premiums, while increasing your awareness of safety and risk-management strategies.

Workplace safety is an important component of these programs. To succeed in accident prevention, we encourage you to use the many resources available to you. We believe a group-rating program is a partnership that includes you and your employees, your sponsoring organization or third-party administrator (TPA) and BWC. Each has specific roles and responsibilities, all designed to assist in preventing workplace accidents. This letter outlines the safety services expectations you should have as an employer enrolled in a group-rating program.

### The employer will:

- Maintain a safe workplace;
- Attend safety training to enhance workplace safety;
- Implement BWC's 10-Step Business Plan for Safety and use available safety services as needed;
- Attend the required two-hour training and provide proof of attendance to sponsor for claim(s) occurring within the last two years.

### Southwest Garage and Gasoline Dealers Association will:

- Communicate, educate and verify BWC's 10-Step Business Plan for Safety to group members;
- Sponsor eight hours of safety training (this may be done at one time or may be provided incrementally as long as the total is at least eight hours);
- Provide information regarding safety resources to group members;
- Possibly assist an employer in achieving its safety needs;
- Manage employer fulfillment of the two-hour training requirement, where applicable;
- Publish this letter to group members.

### The TPA, ProComp may:

- Assist sponsoring organizations with fulfilling the group-rating safety requirements;
- Assist an employer with its safety needs;
- Work in conjunction with sponsors to develop safety training and deliver safety resources;
- Provide resources for claims handling.

### BWC will:

- Monitor all group-rating safety activities to confirm requirements are met;
- Meet at least annually with sponsoring organizations to provide recommendations for fulfilling safety requirements;
- Provide safety training through Ohio's Center for Occupational Safety & Health;
- Offer on-site safety consultation (hazard assessments, air and noise monitoring, ergonomics evaluation, training) by a BWC safety professional;
- Offer publications and videos for safety program support;
- Conduct employer visits to confirm the employer is meeting group-rating requirements, when appropriate.

The goal of this collaborative effort is to make sure all your safety needs are met. Using these resources will assist you in preventing accidents, reducing claims costs and achieving the highest discounts possible. Below you'll find contact information for various resources.

BWC: <http://www.ohiobwc.com/employer/services/safetyhygiene.asp>, [groupratingsafety@bwc.state.oh.us](mailto:groupratingsafety@bwc.state.oh.us)



Instructions

You can complete this form and:

- 1. Fax it to 614-621-1405; or
2. Mail to: Attention: Employer Programs, Ohio Bureau of Workers' Compensation, 30 W. Spring St., 22nd Floor, Columbus, OH 43215-2256

Employer information form with fields for Name of employer and DBA, Federal Tax ID number, BWC policy number, Address, City, State, ZIP code, Internet access, FAX number, E-mail address, Telephone number, and Employer contact person.

Note

Employers may participate in the DFSP and another BWC rate program but are not eligible to receive a DFSP discount if concurrently participating in the following programs: EM cap; \$15,000 medical only; group-retrospective rating; individual/paid-loss/ retrospective rating; large deductible (choosing a deductible amount of \$25,000 or higher); one claim; and group-experience rating in conjunction with DFSP basic level.

Check the program/level for which you are requesting approval.

Advanced level Basic level Comparable program Number of employees

Do you want BWC to place you in the State of Ohio construction contractor/subcontractor database, thereby making you eligible to bid and/or work on state construction projects? (Employer wants to be listed as "approved" in state construction database.) Yes No

I hereby certify my organization is applying to implement a DFSP pursuant to Rule 4123-17-58 of the Ohio Administrative Code. I also certify my organization is willing to meet, at minimum, the requirements associated with the level of program for which I have applied (Advanced, Basic or Comparable).

Name of designated employer representative certifying intent to comply and willingness to pay back discounts for non-compliance.

X Signature Date signed

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