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Cuyahoga judge orders Ohio Bureau of Workers Compensation to change premium-setting system

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A Cuyahoga County judge has ordered the Ohio Bureau of Workers' Compensation to change its system for setting premiums for workplace injury insurance.

Common Pleas Judge Richard McMonagle issued a restraining order Tuesday against the BWC in answer to a complaint filed last year by several local businesses, including Corky & Lenny's and Linderme Tube Co.

The lawsuit charged that the bureau's group-rating system is unreasonable, unfair and contrary to the state law that created the system in 1989.

Under the system, some companies received huge discounts on premiums while others were hit with inflated premiums because of a claim or two.

The system allows employers, classified into groups, to choose which businesses they allow into their group and then boot out any that file a claim and threaten their low premium.

Until now, the bureau assessed a group's risk at the start of a policy year and set premiums based on the group's claim history. Members of the group were then offered deep discounts on premiums for maintaining clean records, which they achieved by kicking out businesses that filed claims.

Meanwhile, nongroup members and those kicked out of groups bore the cost of claims filed and thus subsidized the group discounts.

Their premiums were easily double or triple what group members paid.

The businesses suing the bureau contended that the state legislation that created the group rating in 1989 required retrospective rating in which a base premium would be set at the beginning of a year and adjusted - and paid - at the end of the year to take into account the group's actual claim experience.

In his ruling, McMonagle agreed that state law requires that the rating plan be retrospective. He ordered the bureau to change the system and set rates for nongroup members in an equitable manner by July.

Stuart Garson, who represented the businesses in the lawsuit, said that once the bureau installs an equitable system, base premiums will decline dramatically - making Ohio a more competitive and attractive place to do business.

"We hope the bureau will take stock of itself and take steps toward redressing this group-rating problem," Garson said. "This is a broken and flawed system, and you can't just fiddle with it on the fringes."

Melissa Vince, a spokeswoman for the BWC, said in an e-mail late Tuesday: "We continue to evaluate the impact of the court's order but are pleased that the court's decision did not disturb rates or premiums for the current policy year, on which businesses have already planned."

BWC lawyers have acknowledged the problems but contended that change could not happen overnight. The bureau had been working on a longer-term plan for reform, they argued.

The BWC board last year cut the maximum group discount off the agency's base rates to 85 percent from 90 percent.

And in June, the board agreed to lower the maximum discount to 77 percent next year.

It capped premium increases caused by the changes at 20 percent and capped increases for businesses who are kicked out of groups at 100 percent.

The board also began plans to move to a new risk-rating system that will take into account the number and frequency of workplace accidents that occur at particular employers. Currently, only the dollar value of claims is considered.

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