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Everything you Wanted to Know About the BWC Settlement But Were Afraid to Ask

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Crain's Cleveland Business

Margaret Everett, of counsel in the Vorys Cleveland office and member of the litigation group, authored an article for *Crain's Cleveland Business* titled "Everything you Wanted to Know About the BWC Settlement But Were Afraid to Ask." In the article, Everett states that an estimated 200,000 Ohio employers might be eligible for premium refunds from the Ohio Bureau of Workers' Compensation (BWC) following a settlement in litigation between state-funded employers and the BWC. The settlement stems from a lawsuit filed by employers who alleged that the BWC's Group Rating Program resulted in excessive premium discounts being given to group-rated employers at the expense of non-group rated employers.

The article states:

"Group rating, for purposes of Ohio Workers' Compensation, is a program where a number of state-funded employers can combine or pool their workers' compensation coverage. Normally, it involves companies that are engaged in similar businesses. If a group of employers meet the BWC criteria for group rating, the BWC is authorized to discount the workers' compensation premiums charged to the group members. Employers who are NOT in a group rating program are NOT eligible for any discounts on their premiums.

Accordingly, an employer who was NOT in a group might have been charged significantly more for workers' compensation premiums than an identical employer, with an identical work force, claim history and safety program. The plaintiff-employers also alleged the Group Rating Program, as it was implemented during policy years 2001 through 2008, was inconsistent with the administrator's statutory authority and in violation of the Ohio Constitution. The Group Rating Program has since been modified and the premium savings to group-rated employers has been substantially reduced.

In March 2013, Cuyahoga County Common Pleas Court Judge, Richard McMonagle ruled in favor of the plaintiff-employers, awarding the class more than \$850 million in damages for the excessive workers' compensation premiums. The BWC appealed the case, and last month, Judge McMonagle tentatively approved a \$420 million settlement agreement reached between the BWC and the plaintiffs in the class action."

In the article, Everett also outlines which Ohio businesses may be eligible for a refund.

"The preliminary proposed settlement notice indicates the class of employers may be eligible to receive part of the \$420 million settlement if for one or more of the policy years from 2001 through 2008 they (1) subscribed to the State Workers' Compensation Fund, (2) were not group rated and (3) reported payroll and paid premiums in a manual classification for which the non-group rated base rate was inflated."

To read the entire article, visit the *Crain's Cleveland Business* [website](#). (Subscription may be required).