



The Ohio Workers' Compensation Act:

Intraterritorial and Extraterritorial Jurisdiction

Derrick Knapp
BWC Staff Counsel
November 2016

Table of Contents ¹

Introduction 3

Intraterritorial Jurisdiction..... 3

 Employment activities within Ohio.....3

 Employees hired to work specifically in Ohio3

 Supervising office of the employer located in Ohio4

 90-Day Rule for out-of-state employers6

Extraterritorial Jurisdiction..... 8

 Employee working temporarily outside Ohio.....8

 Employees hired to work outside Ohio9

Supreme Court of Decision in 1940 and 1941: statutory changes of 1941..... 9

Spohn v. Industrial Commission9

Prendergast v. Industrial Commission 11

 Statutory Changes of 1941 12

 Coverage agreements (C-110 and C-112 forms) 12

 Limited applicability of the “sufficient contacts” test 13

Claims in Multiple States..... 18

 Claim initiated in another state then a claim filed in Ohio 18

 Claim allowed in Ohio then claim initiated in another state..... 19

 Problems applying portions of R.C. 4123.54(H)(6) 19

Other States Coverage Policy through the Administrator 20

Federal Jurisdiction..... 21

 Longshore and Harbor Workers Compensation Act (Coverage available through BWC).....21

 Jones Act (Admiralty jurisdiction) 22

 Federal Coal Mine Health and Safety Act (Black Lung Coverage available through BWC)22

 Railroad employees 23

 Defense Base Act..... 23

APPENDICES

A. Model Act Language..... 25

¹ With hyperlinked Table of Contents

Introduction

This memorandum is a replacement of the Legal Division's March 5, 2009, memorandum on interstate jurisdiction and contains significant changes. This memorandum discusses the general issues surrounding and the bases of intraterritorial and extraterritorial jurisdiction. The term "interstate jurisdiction" as used in the title of the previous memorandum is a term that is often used to describe varying situations that can arise when an employer has exposures in multiple states. In order to be precise, the use of the term "interstate jurisdiction" should not be used as a "catch-all" term for the various issues that can arise when a more specific term may be used.

I. Intraterritorial Jurisdiction

(1) Employment activities within Ohio

Ohio has "jurisdiction" over every injury of an employee of an employer that arises within the territorial boundaries of Ohio. However, Ohio law exempts coverage to certain employees of out-of-state employers performing work temporarily in Ohio. This is known as the 90-Day Rule and is discussed below.

Certain types of employers operating in Ohio have employees subject to both the Ohio Act and federal acts such as the Longshore and Harbor Workers' Compensation Act and the Federal Coal Mine Health and Safety Act. The federal acts and their interplay with the Ohio Act are discussed in a separate section.

(2) Employee hired to work specifically in Ohio: Ohio coverage applies

(a) Ohio and Non-Ohio residents hired to work in Ohio

"Employees hired to work specifically in Ohio must be reported for workers' compensation insurance under the Ohio fund, regardless of where the contracts of hire were entered."¹ This rule is often relevant to residents of a different state working in the construction industry, or the oil and gas industry, where the employee is hired specifically for a project in Ohio. Coverage is required from BWC regardless of the length of time the employee will be working in Ohio.

(b) Ohio residents that work from home

The Ohio Act applies to an employer that employs one or more persons.² It is not uncommon for an out-of-state employer to hire employees, such as a regional sales person, to work remotely from their home in Ohio. This type of employee is covered under the Ohio Act with the entire remuneration of this employee included in the payroll report to BWC.

¹ Ohio Adm.Code 4123-17-23(D)

² R.C. 4123.01(A)(1)(b)

(3) Supervising office of the employer located in Ohio

(a) Employee working both in Ohio and other states where the place of employment is located in Ohio: Ohio coverage applies.

“The entire remuneration of employees whose employment involves activities both within and outside the borders of Ohio, and where the supervising office of the employer is located in Ohio, shall be included in the payroll report.”³ When the employment relationship is rooted at a place of employment in Ohio with employment activities both within and outside the borders of Ohio, this rule provides the authority to collect premiums for this employment relationship and the authority to exert jurisdiction over extraterritorial injuries.

It is not enough that an employee working outside the territorial boundaries of Ohio is “supervised” from an office located in Ohio. It is not uncommon for an out-of-state employee to receive work instructions from, send reports to, and be paid from an employer’s facility in Ohio, but still not be an Ohio employee for workers’ compensation purposes. The employment must involve activities both within and outside the borders of Ohio for the employee to be an Ohio employee for workers’ compensation purposes. To illustrate:

Scenario 1: An Ohio domiciled natural gas utility servicer with its place of business (supervising office) located in the greater Cincinnati metropolitan area employs Ohio, Indiana and Kentucky residents to perform jobs in all three states. Are they Ohio employees?

Explanation: Yes. The employees are Ohio employees for workers’ compensation purposes because the employment involves activities both within and outside Ohio and employees are based out of an Ohio location.

Scenario 2: The employer in Scenario 1 hires a salesperson in Louisville, Kentucky, whose sales region is in Kentucky. The salesperson works from home, sends reports to, is paid from the Ohio headquarters, is “supervised” by an employee in the Ohio location, and travels to the Ohio location once a month for a meeting. Is the salesperson an Ohio employee for workers’ compensation purposes?

Explanation: No. While there is some employment activity in Ohio, the rule contemplates the type of activities of the employees in Scenario 1, not the temporary exposure in Ohio of the Kentucky salesperson. The Ohio business is a Kentucky employer for workers’ compensation purposes with regard to the salesperson and should comply with Kentucky law for this employee. The 90-Day Rule applies for the employment activity inside Ohio.⁴

³ Ohio Adm.Code 4123-17-23(A)

⁴ Kentucky workers’ compensation law requires all Kentucky employers to carry workers’ compensation insurance even if the employer only has one part-time employee. The Kentucky salesperson is an employee under Kentucky workers’ compensation law due to being domiciled in Kentucky and spending a substantial

Scenario 3: An Ohio domiciled LLC opens a branch office with two employees in Florida. Are the Florida residents working in Florida Ohio employees for workers' compensation?

Explanation: No. The employment does not involve activities both within and outside the borders of Ohio. Florida law would govern this employment relationship and whether to cover an employee under Florida workers' compensation law is a business decision of the Ohio employer.⁵

Scenario 4: An Ohio domiciled construction company has its place of employment, or supervising office, in Ohio with employees who meet the requirements of Ohio Adm.Code 4123-17-23(A), but also spend a lot of time outside Ohio of a temporary nature. Is this type of employee an Ohio employee?

Explanation: Yes. The jurisdiction rooted in Ohio through the supervising office being located in Ohio is not lost merely on the strength of the relative amount of time spent in Ohio as against other states. This scenario is also applicable to other kinds of employment of a transitory nature like selling, trucking, and travelling amusement carnivals.

(c) Segregating payroll

If an Ohio employer is required or chooses to obtain coverage under the laws of another state for Ohio employees working temporarily there, the employer may submit form U-131 "Notice of Election to Obtain Coverage from Other States for Employees Working Outside of Ohio," along with a copy of the other policy to avoid paying premiums to more than one state on the same payroll.⁶ A U-131 is completed only if the employer elects to obtain coverage from a private insurer or state fund in another state. However, Ohio still retains jurisdiction over the employment relationship through the extraterritorial coverage provision of R.C. 4123.54(A). The Ohio employee may still pursue a claim in Ohio and often does for injuries arising outside Ohio while on a temporary assignment. Many Ohio employees prefer to pursue claims in their home state when they are injured out of state.

Whether segregating payroll is a good option for an individual employer is a business decision of the employer. For some employers, segregating payroll may initially lower the employer's premium payment to BWC; but over time, rates may increase due to the nature of the rate making process if claims are pursued in Ohio. Generally, less Ohio payroll means there should be fewer claims in Ohio because the exposure to loss is lower. With Ohio BWC still responding to out-of-state injuries, the rate and premium the employer pays increases due to a higher experience modifier, thus negating any savings from segregating payroll.

part of his or her working time in the service of his or her employer in Kentucky. See Kentucky Revised Statutes § 342.670.

⁵ Florida law does not mandate workers' compensation insurance coverage unless the employer has four or more employees. The workers' compensation laws of 13 states have a numerical exemption before workers' compensation insurance coverage is mandated; MI, WI and the Southern states in particular.

⁶ R.C. 4123.292(A); Ohio Adm.Code 4123-17-23(A) and Ohio Adm.Code 4123-17-14(I).

(4) 90-Day Rule: Out-of-State Employers with regular employees who are residents of a state other than Ohio working temporarily in Ohio

(a) Reciprocity exemption statute repealed

Effective September 17, 2014, the coverage requirement changed for out-of-state employers bringing regular employees who are non-Ohio residents into Ohio to perform work for a temporary period. Until September 17, 2014, the Ohio Act recognized the extraterritorial right of the workers' compensation insurance coverage from another state on a reciprocal basis. Thus, Ohio exempted an out-of-state employer from obtaining Ohio workers' compensation insurance coverage only to the extent the other state recognized BWC's extraterritorial coverage for Ohio employers with Ohio employees working temporarily in that state. House Bill 493 removed the reciprocity provisions in Ohio law, ending this practice.

(b) 90-Day Rule⁷

On and after September 17, 2014, Ohio's workers' compensation laws recognize the extraterritorial coverage of an out-of-state employer for a temporary period not to exceed 90 consecutive days. For payroll reporting purposes, employers must report wages and pay premiums to BWC for any work performed in Ohio for a temporary period beyond 90 consecutive days. The rule now provides:

The bureau of workers' compensation respects the extraterritorial right of the workers' compensation insurance coverage of an out-of-state employer for its regular employees who are residents of a state other than Ohio while performing work in the state of Ohio for a temporary period not to exceed ninety days. While temporarily within this state the rights of the employee and the employee's dependents under the laws of the other state are the exclusive remedy against the employer on account of injury, disease or death pursuant to division (H)(5) of section 4123.54 of the Revised Code and remuneration for such employees shall not be included in the payroll report. However, if a temporary period exceeds ninety consecutive days the out-of-state employer shall include in the payroll report the remuneration for work the employees perform in Ohio beyond that ninety day period.

The agency's interpretation of this rule is described in more detail in a [published fact sheet](#) titled "Out-of-State Employers" that includes answers to frequently asked questions for common scenarios.

(c) 90-Day Rule does not apply to foreign country employers

Currently, neither the revised code, nor administrative code, recognizes workers' compensation insurance that may be provided through workers' compensation laws of foreign countries. R.C. 4123.54(H)(5) provides that residents of a "state" other than Ohio are excluded from coverage while temporarily in this state. R.C. 1.59 defines "state" as

⁷ Ohio Adm.Code 4123-17-23(C)

“any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States....” The Legal Division does not view the exemption from Ohio workers’ compensation coverage contained in R.C. 4123.54(H)(5) as applying to residents of a foreign nation who temporarily work in Ohio.

(d) Employers with employees temporarily working in Ohio from an “Opt out” State

In Texas and Oklahoma, employers can choose to “opt out” from subscribing to workers’ compensation. Employers in Texas who choose not to have workers’ compensation insurance, called “nonsubscribers,” must file an annual notice with the Texas Department of Insurance, display notices of non-coverage in the workplace, and give a written statement of non-coverage to each new employee. Many employers that “opt out” provide occupational accident insurance that provides coverage for medical costs and disability payments. R.C. 4123.54(H)(5) provides that the laws of the other state are the exclusive remedy for an employee temporarily working in Ohio if the employee “is insured under the workers’ compensation law” of a state other than Ohio. An occupational accident policy is not workers’ compensation insurance; therefore, a “nonsubscriber” is required to have an Ohio BWC policy for any work performed in Ohio by an employee working temporarily in Ohio.

(e) Ohio resident working for an out-of-state employer

R.C. 4123.54(H)(5) and Rule 4123-17-23(C) only apply to regular employees who are non-Ohio residents. There are Ohio residents who commute outside the territorial boundaries of Ohio for their employment, but then work temporarily in Ohio as part of their duties of the out-of-state employment relationship. The statute provides a remedy under the Ohio Act for an Ohio resident who is injured in Ohio. The statutory provision creates a complicated scenario for the out-of-state employer because a similarly situated co-worker who is a resident of the other state would not have the option of pursuing a claim in Ohio.

For payroll reporting purposes, the employer must report wages and pay premiums to BWC for any work the Ohio resident performs in Ohio, even though the employer otherwise may not have employees subject to the Ohio Act. In this situation, the employer and employee may agree to be bound by the workers’ compensation laws of the state of Ohio by executing form C-110, or mutually agree to be bound by the workers’ compensation laws of some other state by executing form C-112.

II. Extraterritorial Jurisdiction

(1) Employee working temporarily outside of this state: Ohio's extraterritorial coverage applies

The Ohio Act has had the following extraterritorial coverage provision since the inception of the General Code enacting the Ohio workers' compensation system:

* * *every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted * * *

R.C. 4123.54(A)

The language "wherever such injury has occurred" means an Ohio employee who is required to perform temporary duties outside the state has the full protection of the Ohio workers' compensation system without regard to where those duties are performed. There is no prescribed time limit on the length of time Ohio coverage applies to employees working temporarily outside the state and applies to injuries arising outside the United States, but the claims must be filed with Ohio BWC. The extraterritorial coverage will apply as long as the employee's absence from Ohio continues to be temporary and incidental to the Ohio employment. Even though Ohio employees working temporarily outside of Ohio are covered by Ohio BWC, the other state may require these same workers to be covered under the laws of the state where they are working.

(a) An employer should check coverage requirements of other states

Whenever an Ohio employer has employees working in another jurisdiction, the employer has the responsibility to know the workers' compensation requirements of those jurisdictions. Each state has its own coverage requirements. Some states provide an exemption period during which Ohio coverage is recognized as exclusive for Ohio employees working temporarily there, and some states require Ohio employers to obtain workers' compensation coverage under their laws for any work performed there, regardless of the duration. If a jurisdiction does not recognize Ohio's extraterritorial coverage, the employer must comply with that jurisdiction's requirements to avoid fines, stop-work orders, and other penalties, including the actual cost of the claim brought under the laws of another state. An employer should consult an insurance professional, private counsel or the workers' compensation agency in the other state to verify requirements of another state. Insurance professionals typically advise their clients that: "An employer must arrange for coverage in all states they have an exposure in, no matter how small."⁸ To comply with the workers' compensation laws of the other state, an employer may secure a policy from a

⁸ Gallagher, Maureen, *States of Confusion: Workers Compensation Extraterritorial Issues*, Insurance Partners Academy, 2014, 3-14 Edition. PDF.

private insurer or from a state fund, if one exists in the other state. An employer may also be eligible to obtain coverage through an [Other States Coverage Policy](#) offered through BWC.⁹

(2) Applicability of the Ohio Act to employees hired to work outside Ohio

(a) The Ohio Act does not apply where an Ohio employer hires an employee to do work solely in another state.

“The Ohio workmen’s compensation fund is not available to an employee injured while engaged in the performance of a contract to do specified work in another state, no part whereof is to be performed in Ohio.” *Indus. Comm. v. Gardinio*, 119 Ohio St. 539, 545 (1929). Gardinio was a resident of Cleveland and was hired by a Cleveland company to work on the erection of a bridge in Pennsylvania. The employer complied with the workers’ compensation law of Pennsylvania covering him as an employee. Gardinio recovered compensation in accordance with the laws of Pennsylvania, but attempted to secure double, or at least, additional compensation through the Ohio Act. In denying the extraterritorial operation of the Ohio Act, the Court held “it is clear that the place of residence of the employer and employee is not determinative of the question presented.” In *Spohn v. Indus. Comm.*, 138 Ohio St. 42, 49 (1941), the Court discussed *Gardinio* reiterating “a citizen of Ohio is not protected by the workmen’s compensation law when injured while performing work of a purely local character in another state.”

III. Supreme Court of Ohio Decisions in 1940 and 1941: statutory changes of 1941

Problems were present in 1941 when an employment relationship involved employment activities in multiple states and are still difficult to navigate today. Prior to September 4, 1941, the extraterritorial coverage provision now found in R.C. 4123.54(A) was the only provision that addressed the jurisdiction of the Ohio Act beyond the territorial borders of Ohio. In March of 1940 and May of 1941, the Supreme Court of Ohio issued two opinions that likely spurred legislation to address conflict with respect to the application of workers’ compensation laws.

(1) *Spohn v. Industrial Commission*¹⁰

Spohn, an Ohio resident, was an over-the-road truck driver employed by a Michigan corporation with its principal place of business in Michigan and other terminals in Ohio and Pennsylvania. The employment contract was signed in Michigan. Spohn’s duties included relieving a truck driver at Fremont, Ohio, who was operating a truck from Detroit bound for Pittsburgh, or from Pittsburgh to Detroit. The employer contributed to the Ohio and Pennsylvania workers’ compensation funds for its employees that worked at terminals in those states and to Michigan for all its over-the-road drivers. Spohn was injured in Fremont, Ohio, and the employer reported the injury in Michigan, but Spohn filed a claim in Ohio.

⁹ As a governmental insurance provider, BWC personnel do not advise an employer in terms of its risk management and workers’ compensation needs. The employer has the obligation and responsibility to assess its exposures in other states and to make business decisions regarding insuring that exposure.

¹⁰ *Spohn v. Indus. Comm.* (1941), 138 Ohio St. 42

The Supreme Court of Ohio held that an employee could not recover Ohio workers' compensation benefits when the employee was exclusively involved in interstate commerce, despite the fact that the employee was a resident of Ohio. The court held that when the employee works entirely in interstate commerce, the place of contracting should govern. The court found that this holding did not conflict with the *Gardinio* case because interstate commerce was not involved in that case.

The *Spohn* Court opined that *lex loci contractus*¹¹ was an important consideration where the work to be done is not confined to a single state, but is to be performed in interstate commerce. There was some dispute whether the contract of hire was made in Ohio or Michigan. The Court found the contract was made in the state of Michigan. The Court did not “consider a workman employed in interstate commerce only, under a contract made outside the state of Ohio with a nonresident employer, an Ohio workman within the contemplation of the Ohio Workmen’s Compensation Act.” The *Spohn* Court also “believe[d] that the interpretation of the Workmen’s Compensation Law contended for by [Spohn], which in effect would require employers engaged in interstate commerce to comply with the workmen’s compensation law of each state through which they operate, would result in an undue burden upon interstate commerce and would therefore be in violation of the commerce clause of the federal Constitution.”

The passage of time has shown employers engaged in transitory services in interstate commerce are required to comply with the workers’ compensation law of each state.¹² Today, a contract of hire in a state only provides a nexus to the state in certain circumstances to bring an extraterritorial exposure under the purview of a state’s workers’ compensation act rather than being an act that controls jurisdiction.¹³

Today, the standard used by insurance carriers to decide on the primary jurisdiction to assign payroll for a driver is the location of the “base terminal” or “principal garaging.” “Base Terminal” means a permanent location with central loading docks and/or storage facilities where the operations of the trucking company are conducted on a regular basis. When a base terminal is not utilized, principal garaging means a permanent maintenance garage where vehicles are serviced or stored on a regular basis. When a permanent maintenance garage is not utilized, principal garaging means the residence of the employee.

¹¹ Generally, “[*lex loci contractus* is the Latin term for ‘law of the place where the contract is made.’ *Lex loci contractus* is often the proper law to decide contractual disputes. This principle is applicable when there arise a conflict of laws with regard to a contract and when the validity of a contract is in question. It provides the rule that if a contract is valid according to the law of the place where it is formed, it is generally valid everywhere, and vice versa. This rule is not applicable if the contract violates the law of a forum country and law of nature. When a contract is made in one state and it is to be carried out in another state, the law of the place where it is signed is applicable in the construction of the contract, interpretation of the terms and in deciding the validity of the contract. But with regard to the execution of the contract, the law of the state where it is to be carried out applies.” See <http://definitions.uslegal.com/l/lex-loci-contractus/>

¹² *Cridler v. Zurich Ins.Co.*, 380 U.S. 39 (1965)

¹³ See Appendix A for Model Act language used by approximately twelve states.

(2) *Prendergast v. Industrial Commission*¹⁴

In 1926, an Ohio employer entered into a contract of employment with Prendergast in Ohio. He became a sales engineer, transferred to the Boston office and then became manager and service engineer of the St. Louis district comprising Missouri, southern Indiana and southern Illinois. Prendergast and his wife moved to St. Louis in 1930. The Ohio employer obtained workers' compensation insurance for him in Missouri by reporting payroll to the Industrial Commission of Missouri. Prendergast worked from his home and suffered fatal injuries while performing transitory work in Indiana. His widow filed a claim for compensation with the Industrial Commission of Missouri, which denied the claim because the contract of employment was not made in Missouri and the accident occurred outside Missouri. The widow then filed a claim with the Industrial Commission of Ohio, which also denied the claim. The resulting Supreme Court decision discussed the jurisdictional conundrum that existed around the country in the 1930s.

The *Prendergast* Court observed that “[T]here appears to be hopeless confusion in the cases upon the subject of extraterritorial operation and application of the workmen’s compensation laws.” *Prendergast* at 538. Some of the confusion of the time stemmed from early versions of workers’ compensation acts only applying to injuries occurring within that state.¹⁵ The court observed the “confusion also results from the variety of conceptions as to the ultimate purpose” of what at the time were relatively new workers’ compensation laws. In 1931, at the time of the fatal injury to Prendergast, the first workers’ compensation system had only been in existence for twenty years. It took until around 1940 for all the states to pass workers’ compensation laws.

The *Prendergast* Court also observed that “Prendergast was not covered as to this accident either by the compensation laws of Missouri where he resided, or by those of Indiana, where the accident occurred.” *Id.* at 542. Based on the facts of the case, the court asked the question: “Why should his dependent be denied compensation in Ohio?” The court held that “an employee injured outside the state may recover under the Ohio Act if the employing industry and his relationship thereto are localized in Ohio.” *Id.*

¹⁴ *Prendergast v. Indus. Comm.*, 136 Ohio St. 535 (1940)

¹⁵ According to Larson:

The earliest theory on applicability of compensation statutes, in the absence of any express statutory conflict-of-laws provision, was the “tort theory.” Under this view, compensation liability was regarded as a sort of substitute for tort liability, which meant that the *lex loci delicti* should govern.... To the extent that [this theory] thus restricted coverage of out-of-state injuries, this holding quickly lost importance in the United States as the affected states expressly amended their statutes to cover injuries occurring outside of their boundaries.

Larson, *Workers’ Compensation*, § 143.02[2] (2000).

(3) Statutory Changes of 1941

In 1941, the Ohio General Assembly added provisions to what was then General Code §1465-68 that are now located in the following paragraphs of the Revised Code:

R.C. 4123.54(H)(1): the authority to enter into coverage agreements when “there is possibility of conflict with respect to the application of workers’ compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio.”

This is the statutory authority for the use of BWC Form C-110 and C-112 implemented through Ohio Adm.Code 4123-17-23(E).

R.C. 4123.54(H)(5): the authority to recognize the extraterritorial coverage of an out-of-state employer for its regular employees who are residents of a state other than Ohio while temporarily within this state.

This is known as the 90-Day Rule implemented through Ohio Adm.Code 4123-17-23(C).

R.C. 4123.54(H)(6): the authority to credit an Ohio claim the amount awarded under the laws of another state.

Language from the original provision was amended by SB 334 in 2008 and by HB 493 in 2014. The current statutory framework addressing claims in multiple states is discussed in on pages 18-20.

(4) Coverage Agreements (C-110 and C-112 forms)

The 1941 statutory change provided authority for an employer and employee to agree upfront to be bound by the laws of this state or by the laws of some other state as the exclusive workers’ compensation remedy in certain circumstances. However, the passage of time has shown that a C-110 agreement does not affect the workers’ compensation insurance requirements of a state other than Ohio. The majority of states will take jurisdiction over claims for accidents in their state if the employee pursues a claim in that state, regardless of the C-110 agreement.

The execution of C-110 also cannot guarantee that an injured worker will not pursue a claim in another state. The U.S. Supreme Court, in *Crider v. Zurich Ins.Co.*, 380 U.S. 39 (1965), held that the Full Faith and Credit Clause does not require a state to subordinate its own compensation policies to those of another state. *Crider* was followed by a Pennsylvania case that held that although the employee injured in Pennsylvania had a contractual right to claim benefits in Ohio, the employee was entitled to all Pennsylvania compensation and medical benefits to which he would otherwise be entitled. *Robert M. Neff, Inc. v. Workmens Compensation Appeal Board* (Burr), 155 Pa. Commw. (1993).

Agreements between an employer and employee on which state will provide workers' compensation coverage are generally ineffective either to enlarge the applicability of a state's statute or to diminish the applicability of another state's statute. This topic is discussed in Larson's Treatise on Workers Compensation Law:

Express agreement between employer and employee that the statute of a named state shall apply is ineffective either to enlarge the applicability of that state's statute or to diminish the applicability of the statutes of other states. Whatever the rule may be as to questions involving commercial paper, interest, usury and the like, the rule in workers' compensation is dictated by the overriding consideration that compensation is not a private matter to be arranged between two parties; the public has a profound interest in the matter which cannot be altered by any individual agreements. This is most obvious when such an agreement purports to destroy jurisdiction where it otherwise exists; practically every statute has emphatic prohibitions against cutting down rights or benefits by contract.

Currently, some Ohio employers execute C-110s for an Ohio employee temporarily working outside Ohio when the employer should be complying with the coverage requirements of another jurisdiction. See Section II(1)(a) above. C-112 agreements validly resolve upfront which state will be the exclusive remedy when an Ohio resident works for an out-of-state employer but may work temporarily in Ohio, or when out-of-state residents work temporarily in Ohio longer than 90 consecutive days.

(5) The limited applicability of what is known as the “sufficient contacts” test

The “sufficient contacts” test originates from *Prendergast v. Indus. Comm.*, 136 Ohio St. 535 (1940), and was the judicial approach to address the peculiarity of a non-covered jurisdictional scenario that existed at the time. The holding only applies to similar factual scenarios and may have no applicability in today's environment. Syllabus 3 of the *Prendergast* decision provides that Ohio has jurisdiction over the employment relationship when the other state's workers' compensation laws do not provide coverage for extraterritorial injuries:

Where an employee entered into a contract of employment in Ohio with an Ohio employer to perform transitory work and service outside of this state, such as that of a traveling salesman residing in a foreign state but reporting to and receiving instructions and payment monthly salary from his employer's office in Ohio, and while in the course of such employment outside the state under the direction and supervision of such employer met accidental death, and *because of the transitory character of such employment he was not covered as to the accident which caused his death by the compensation laws of the state of his residence or of the state where his accidental death occurred*, the dependent of such killed employee is entitled to participate in the State Insurance Fund of this state. (emphasis added)

Due to narrow statutes in the early era of workers' compensation, a state statute might provide jurisdiction only if the contract employment was entered in the state or the injury occurred in that state. Early versions of workers' compensation acts did not address the extraterritorial reach of their workers' compensation laws. This created jurisdiction scenarios where a worker could face a non-covered situation if performing transitory work such as that of a travelling salesperson. Today, virtually all states have answered the conflict question of when out-of-state injuries are covered by providing an extraterritorial provision.

(a) Extraterritorial statute language around the country: Council of State Governments' Model Act

In the early 1970s, a number of states adopted language of the Council of State Governments (CSG) model law to (1) broaden the circumstances under which an extraterritorial injury could be covered; (2) to ensure a worker whose employment had a substantial link with the state could be covered.¹⁶ The below is an excerpt of an article written by a Pennsylvania attorney¹⁷ that contains an excellent discussion on the extraterritorial problems and Commentary of the CSG:

The CSG committee authoring the proposed law published a valuable commentary to explain Section 7's design. According to John Burton, Chairman of the National Commission, "The Model Act was revised in 1973 after the National Commission on State Workmen's Compensation Laws submitted its report [1972], although the coverage section was not changed, as I recall. The original version of the Model Act was prepared by a committee chaired by Arthur Larson¹⁸ who also prepared commentary on the Act."

* * *The Commentary addresses not only the four criteria of coverage (subsection (a)), and the idea of principal localization of employment, but the coordination of benefits (subsection (b)) and registration provisions (subsection (c)) as well.

The authors of the Commentary characterized the law in this area as being in a state of "chaos." Many states maintained highly restrictive laws, typically limiting extraterritorial coverage by requiring short time limits for a worker being out of the state or, more problematically, by demanding that the worker and/or employer have a series of significant contacts in a state before jurisdiction would apply. In practice, these limitations resulted in some workers with bona fide work-related injuries being left without any remedy, as all possible states denied jurisdiction.

The authors explained that they so designed the law that this non-coverage situation would simply become an impossibility. The strategy was to list all four of the possible permutations of a worker's employment out of state, and then separating these tests "by the word 'or.'" This means that the employee needs to demonstrate only one of the four circumstances in order to come under the

¹⁶ For pertinent excerpts of model language, see Appendix A.

¹⁷ Section 305.2 of the Pennsylvania Workers' Compensation Act and Extraterritorial Jurisdiction: Background, Statute, and Interpretation by David B. Torrey

¹⁸ Arthur Larson is the author of the widely cited treatise *Larson's Workers' Compensation Law*.

act....” In addition, the Model Act sets forth two definitions of the pivotal criterion of the “principal localization” of employment. This test, importantly, “can be satisfied by either of [the] two circumstances. The authors also offered the politico-philosophical basis for recommending this “broad coverage,” in contradistinction to the preexisting parochial idea that favored only in-state injuries: “The justification for adopting this broad coverage of out-of-state injuries is that if any one of the four test applies, it can be said that the state has a sufficient interest in the industrial injury to bring it within its own act.”

The Model Act does allow, in the case where an employee’s employment is not principally localized in any state, for a pre-injury agreement to designate the state of principal localization. This provision “is applicable only to cases in which an employee’s duties require him to travel regularly in more than one state. It would therefore not cover the many other situations in which extraterritoriality problems arise, such as questions involving out-of-state representatives who do not travel, large individual out-of-state construction projects, and the like.” Such agreements, in addition, “only act upon the first two of the four tests of out-of-state coverage,” that is, cases where employment is indeed principally localized in a state, or claimant is working under a contract of hire “made in this state in employment not principally localized in any state.”

The authors of the Model Act considered the criticism that allowing such agreements “provides an opportunity for an employer to force or maneuver employees into designating a less desirable statute.” Still, “On balance, the committee felt that, in view of the class of employees involved and their presumed ability to resist any attempt to agree to inferior coverage, and in view of the desirability of rapid identification of the responsible state for purposes of provision of prompt medical care and other benefits, the suggested provision could be justified within the narrow limits to which it has been applied.”

(b) Limited reason to apply the “sufficient contacts” test to bring an extraterritorial injury under the jurisdiction of the Ohio Act

A situation where an employee of an Ohio employer is domiciled outside Ohio and is hired to perform transitory work with no remedy in any state due to a state’s lack of an extraterritorial provision is not nearly as common as it was in 1941. The states amended their laws over the years to provide a remedy for employees in the jurisdictional conundrum the widow of Prendergast faced:

Most of the states have statutes that deal in one way or another with the question [of] whether the workers’ compensation law is to be applicable to out-of-state injuries. The provisions of these laws may differ widely, but a modicum of uniformity was achieved following the publication of the recommendations of the 1972 National Commission on State Workmen’s Compensation Laws.... The promulgation of the “model act” by the Council of State Governments ... further facilitated uniformity among the dozen or so states that adopted it wholly or in a modified form.

[O]ver a dozen states have patterned their statutes on the Workmen’s Compensation and Rehabilitation Law as promulgated by the Council on State Governments....¹⁹

¹⁹ Little, Eaton, & Smith, *Cases and Materials on Workers’ Compensation*, p. 583 (5th ed. 2004).

Workers' compensation laws around the nation now provide several options regarding which state's worker's compensation benefits an employee is allowed to claim. Larson makes similar remarks:

Almost all states now have express statutory authority provisions on the conflicts question. Thanks to the 1972 recommendation on this point by the National Commission on State Workmen's Compensation Laws, a much greater degree of uniformity and compatibility has been introduced into this formerly ragged area of law.²⁰

The options now available to an injured worker can include benefits in the state in which the employee primarily works, the state in which the injury occurred, and sometimes even merely their state of residence.²¹

(c) Common misapplications of the "sufficient contacts" test

At hearings before the Industrial Commission of Ohio, it is sometimes asserted there are "sufficient contacts" with Ohio in an attempt to bring a claim under the Ohio Act. This simplistic assertion ignores that the "sufficient contacts" test originates in case law and is only legal precedent to address the non-covered jurisdictional scenario such as what the *Prendergast* widow faced.

Invariably, the employment relationship does not involve employment activities both within and outside Ohio as contemplated by Ohio Adm.Code 4123-17-23(A). The disputes sometimes involve an Ohio domiciled employer that is either an uninsured employer²² (non-complying) in another state, or a claimant seeking better benefits available through the Ohio Act to which there is no entitlement. To illustrate:

Scenario 1: Ohio domiciled company hires a Kansas resident to work in Kansas. The employer did not obtain a policy providing coverage under Kansas' workers' compensation laws as required by Kansas law. A claim was filed in Ohio asserting there were "sufficient contacts" with Ohio because it was an Ohio company, the worker was "supervised" from the Ohio location, was paid from the Ohio location, and there was not a workers' compensation insurance policy in place in Kansas. Is the Kansas resident hired to work solely in Kansas an Ohio employee for workers' compensation purposes?

Explanation: No. The Ohio employer has the obligation to comply with Kansas law. In this situation, the employer is simply an uninsured employer in Kansas. The Ohio business is a Kansas employer for workers' compensation purposes with regard to this employee because the employee was hired to work in Kansas, lives in Kansas and was hurt in Kansas.

²⁰ Larson, Workers' Compensation, § 143.01[1] (2000).

²¹ Boggs, Christopher. *The Insurance Professional's Practical Guide to Workers' Comp*, Wells Media Group, Inc., 2009. Print.

²² "There are a number of reasons why an employer may fall into the category of an uninsured employer. However, in the majority of instances, it is an intentional act on the part of the employer whereby certain economic or business advantages are realized through the non-purchase of insurance." The American Society of Workers Comp Professional, Inc., *Extraterritorial Coverage in Workers Compensation*, p.1, March 2012.

In some states, the injured worker may have a remedy through an uninsured employer guarantee fund (e.g., Pennsylvania, Tennessee). In other states, the only available remedy may be through a personal injury cause of action with common law defenses such as assumption of the risk, fellow servant rule, and contributory negligence statutorily unavailable to the employer.

Scenario 2: An Ohio domiciled construction company headquartered in Columbus that also has a satellite location in Pennsylvania. The employees of the Pennsylvania location work on projects primarily in Pennsylvania, New York and Kentucky. The employer reported payroll and paid a premium on a separate policy to comply with the law in those states. An Ohio resident was employed out of the Pennsylvania location. The employee died while working on a project in Kentucky. The widow filed a death claim in Ohio before filing a claim against the other workers' compensation policy. An argument was made that Ohio had "sufficient contacts" because the out-of-state employee's paychecks were issued from Ohio, the business enterprise was ultimately controlled from Columbus, and profits from the business enterprise flowed back to Ohio. Was the Ohio resident an Ohio employee for workers' compensation purposes?

Explanation: No. The decedent was not an Ohio employee for workers' compensation purposes because the employment did not involve activities both within and outside the borders of Ohio with the supervising office located in Ohio. The widow here is entitled to a claim in Pennsylvania because the decedent's employment was principally localized in Pennsylvania, or in Kentucky, as the place of injury. The holding in *Prendergast* is not applicable and does not provide Ohio as a third jurisdiction the widow is entitled to bring a claim.

(d) Sources of Confusion

One sentence from the *Prendergast* decision has been misapplied over the years by Courts attempting to navigate complicated jurisdictional scenarios: "an employee injured outside the state may recover under the Ohio Act if the employing industry and his relationship thereto are localized in Ohio." A careful review of the case law, however, shows no subsequent court decision analyzing if an employment relationship is "localized" in Ohio has actually applied *stare decisis*, the doctrine of precedent, to the same scenario the *Prendergast* court addressed. Instead, courts have reviewed other court decisions and incorrectly boiled a jurisdictional analysis down to the following:

These cases indicate that the following factors should be considered by the court in determining whether sufficient contacts exist: (1) where the injury occurred, (2) where the employment contract was entered into, (3) where the employer's principal place of business is located or where the employee's supervisor is located, (4) the work to be performed in Ohio and its relation to the employment as a whole, (5) whether the work is to be performed solely in another state or exclusively in interstate commerce. See *Nackley, Ohio Workers' Compensation Claims* (1991) 59-60, Section 5:2, and the cases cited therein.

Dotson v. Com Trans, Inc. (1991), 76 Ohio App.3d 98, 102.

The Ohio Jurisprudence treatise also makes the sweeping conclusion that the courts look to contact factors “to determine whether employment that has elements occurring both inside and outside the state of Ohio is ‘localized’ in Ohio so as to fall within the ambit of Ohio’s workers’ compensation statutes...”²³ The authors of these treatises misstate the *Prendergast* holding and fail to take into consideration that it is the Administrative Code discussed herein that governs when an employer is required to report payroll to BWC for an employee. As a rule of thumb, payroll is required to be reported only when an employee is entitled to bring a claim under the Ohio Act due to having “jurisdiction” over the employment activities for workers’ compensation purposes.

VI. Claims in Multiple States

For claims with a date of injury on or after Sept. 11, 2008, an injured worker no longer has the right to receive benefits under the workers’ compensation laws of two different states for the same injury. Some states allow for an offset of benefits if the injured worker has already received compensation or benefits under the laws of another state. However, Ohio is no longer a concurrent jurisdiction state and Ohio law does not allow an injured worker who has received a decision on the merits under the workers’ compensation laws of another state to also pursue a claim in Ohio.

(1) Claim initiated in another state then a claim filed in Ohio

An employee or dependents of an employee who receive a decision on the merits of a claim for compensation or benefits under the workers’ compensation laws of another state shall not file a claim for compensation or benefits under the Ohio Act. A “decision on the merits” is defined by R.C. 4123.542 as “a decision determined or adjudicated for compensability of a claim and not on jurisdictional grounds.” One must understand that many workers’ compensation systems around the country do not process claims in the same manner as BWC. In other states, a private insurance carrier typically makes the initial determination. When a private insurance carrier accepts a claim and is making indemnity payments, or paying medical bills, the insurance carrier has made a decision determining the claim has merit.²⁴

(a) Claim filed on behalf of an IW in another state

Sometimes a claim is filed on behalf of an IW in another state (e.g., by a medical provider or the employer) when the employee is covered through the Ohio Act by extraterritorial jurisdiction. When claims are pending in two states, the employee or dependents are required by R.C. 4123.54(H)(6) to withdraw or refuse acceptance of the workers’ compensation claim initiated in the other jurisdiction in order to pursue compensation or benefits under the Ohio Act. If the employee or dependent fails to withdraw or refuse

²³ 94 Oh Jur Workers' Compensation § 16 (3rd 2014)

²⁴ See *Smiley v. Professional Staff Mgt. Inc.*, 2013-Ohio-139

acceptance of the workers' compensation claim in the other jurisdiction within twenty-eight days after a request is made by the administrator, the Ohio claim must be dismissed.

There is no prescribed time limit in the applicable statutory scheme.²⁵ Instead, there is a fact dependent analysis that must be made if benefits were awarded in the other state to determine if the employee or dependents "otherwise elected to accept workers' compensation benefits and received a decision on the merits."²⁶

The further the time from the industrial incident, the higher the likelihood that the employee otherwise elected to accept benefits in another state. This could occur when so much time has run that the claim is past the point where an employer could contest the claim under the laws of the other state (such as ninety days) or where the IW only looks to Ohio to pursue a claim after benefits or compensation are denied in another state. In the rare situation where an injured worker fraudulently collected benefits in another state and in Ohio, the statute provides the claim in Ohio shall be disallowed and the amount of compensation or benefits paid by BWC may be collected by any lawful means, including interest, as well as attorney's fees incurred in collecting that payment.

(b) Benefits awarded in the other state: offset

If an IW was awarded workers' compensation benefits in another jurisdiction when a claim was filed on behalf of the IW, any compensation and benefits awarded under the Ohio Act are paid only to the extent to which those payments exceed the amounts paid under the laws of the other state.²⁷

(2) Claim allowed in Ohio then claim initiated in another state

An employee or the dependents of an employee who have an allowed claim under the Ohio Act shall not also file a claim in another state under the workers' compensation laws of that state.²⁸ If an employee or the employee's dependents pursue or otherwise elect to accept workers' compensation benefits or damages under the laws of another state for the same injury, occupational disease, or death, the claim in Ohio shall be disallowed and the amount of compensation or benefits paid by BWC may be collected by any lawful means, including interest, as well as attorney's fees incurred in collecting that payment.²⁹

(3) For injuries occurring before September 11, 2008

Before SB 334 took effect on Sept. 11, 2008, what is now R.C. 4123.54(H)(2) provided: "If any employee or his dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state, the amount awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount

²⁵ R.C. 4123.54(H)(6); R.C. 4123.542; R.C. 4123.54(H)(2).

²⁶ R.C. 4123.54(H)(2).

²⁷ R.C. 4123.54(H)(6).

²⁸ R.C. 4123.542.

²⁹ R.C. 4123.54(H)(2).

of any award of compensation or benefits made to the employee or his dependents by the bureau.” Thus, for claims arising before the effective date of SB 334, the fact that a claimant received workers’ compensation benefits in another state did not preclude the Ohio workers’ compensation laws from applying to the same injury. The normal jurisdictional analysis had to be conducted for those claims in order to determine whether Ohio workers’ compensation coverage also applied to the injury. The amount awarded in the other state was credited against any award in Ohio. For claims arising before Sept. 22, 2008, the credit also applied to benefits an injured worker received under the federal Longshore and Harbor Workers’ Compensation Act.

(4) Problems applying portions of R.C. 4123.54(H)(6)

R.C. 4123.54(H)(6) provides that for each claim submitted by or on behalf of an employee, the employee, or dependents of an employee, are required to “sign an election that affirms the employee’s or employee’s dependents acceptance of electing to receive compensation and benefits... that also affirmatively waives and releases the employee's or the employee's dependent's right to file for and receive compensation and benefits under the laws of any state other than this state for that claim.” This statutory requirement is accomplished by signing a “first report of injury” (FROI) with a revision date of at least 2009 or by signing an “Interstate Jurisdiction Waiver” (IJ Waiver). If a revised FROI or IJ Waiver is not signed within twenty-eight days after BWC submits the request, the claim shall be dismissed.

To prevent “forum shopping” or policy manipulation, claims are properly denied when the injured worker was only temporarily working in Ohio. Submitting a revised FROI or an IJ Waiver does not affect the applicability of R.C. 4123.54(H)(5) and Ohio Adm.Code 4123-17-23(C), and only triggers a review to determine if Ohio has jurisdiction and, if so, the merits of the claim. This “election” does not entitle an injured worker to a claim in Ohio if the 90-Day Rule applies or Ohio otherwise does not have jurisdiction. When a claim is denied by BWC for this reason, the execution of a form that “affirmatively waives and releases the employee's or the employee's dependent's right to file for and receive compensation and benefits under the laws of any state other than this state for that claim” should have no operative effect in the other state. The U.S. Supreme Court, in *Crider v. Zurich Ins.Co.*, 380 U.S. 39 (1965), held that the Full Faith and Credit Clause does not require a state to subordinate its own compensation policies to those of another state.

VI. Other States Coverage Policy through the Administrator

Historically, Ohio’s workers’ compensation law did not have any provisions to extend coverage for workers in other states under the workers’ compensation laws of other states. In 2014, HB 493 granted BWC the authority to contract with an insurer licensed in other states to provide coverage to eligible Ohio employers for out-of-state exposures. An “Other States Coverage Policy” through BWC is optional coverage that an Ohio employer may elect to purchase to insure extraterritorial exposures if eligible. [Contact BWC's Other States Coverage Unit](#) for details.

VII. Federal Jurisdiction

(1) Longshore and Harbor Workers Compensation Act

For work-related injuries sustained by land-based maritime workers, Congress provides a remedy under the Longshore and Harbor Workers' Compensation Act.³⁰ A maritime employee is defined by that Act as “any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker...”³¹ In construing this definition, the U.S. Supreme Court in *Herb's Welding, Inc. v. Gray* (1985), 470 U.S. 414, 423-424 said that although the term “maritime employment” is not limited to the occupations specifically mentioned in the statute, an occupation must have a connection with the loading, construction, or repair of ships in order to come within the definition. Federal jurisdiction applies to such employees “if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).”³²

This coverage is in addition to the employer's regular Ohio workers compensation insurance and is available through BWC or private insurance carriers, or the employer may self-insure with the U. S. Department of Labor.

(a) For claims arising on or after September 22, 2008, BWC coverage does not apply to work covered by the federal Longshore and Harbor Workers' Act.

Effective Sept. 22, 2008, House Bill 562 provides that if an injury, occupational disease, or death is subject to the jurisdiction of the Longshore and Harbor Workers' Act, the employee or dependents are not entitled to benefits under the Ohio workers' compensation laws. The federal law provides the exclusive remedy against the employer.³³ HB 562 also states that if an Ohio employer has employees who are covered by the Longshore and Harbor Workers' Act, the employer shall be assessed premiums on only the payroll attributable to services the employees perform while not covered by the federal law.³⁴ For information purposes only and not for purposes of paying premiums, the employer shall provide BWC with written notice of the identity of the insurer providing coverage under the federal law and report to BWC the amount of payroll that was reported to the insurer for work covered by the federal law.³⁵ The segregation of payroll shall not be presumed to indicate the law under which an employee is entitled to benefits.³⁶

³⁰ 33 U.S.C.A. §901 et seq.

³¹ 33 U.S.C.A. §902(3).

³² 33 U.S.C.A. §903(a).

³³ R.C. 4123.54(I).

³⁴ R.C. 4123.32(D); Ohio Adm.Code 4123-17-14(A).

³⁵ R.C. 4123.26(C)(1); Ohio Adm.Code 4123-17-14(A),(F).

³⁶ R.C. 4123.26(C)(2).

(b) *Concurrent federal and state jurisdiction can apply to claims arising before September 22, 2008.*

For claims arising before Sept. 22, 2008, the Longshore and Harbor Workers' Compensation Act and the Ohio workers' compensation system may have concurrent jurisdiction. In *Hahn v. Ross Island Sand & Gravel Co.* (1958), 358 U.S. 272, 273, the U.S. Supreme Court recognized that certain employment relationships, although maritime in nature, are so "local" that state workers' compensation laws may apply to them. Also, in *Sun Ship, Inc. v. Pennsylvania* (1980), 447 U.S. 715, 716, the U.S. Supreme Court held that state workers' compensation programs may exercise concurrent jurisdiction over "land-based" injuries sustained by maritime employees. In such cases, amounts paid under the federal law are credited to amounts awarded under the Ohio workers' compensation system. Further, in regard to a work-related death that occurred on navigable waters but was not covered by federal admiralty or maritime jurisdiction, an Ohio court ruled that Ohio workers' compensation coverage applied.³⁷

2) Jones Act (Admiralty jurisdiction): Ohio jurisdiction does not apply

The Merchant Marine Act of 1920, popularly known as the Jones Act, provides seamen with a right of action against their employers for negligence.³⁸ In *Chandis, Inc. v. Latsis* (1995), 115 S. Ct. 2172, 2190, the U.S. Supreme Court said an employee qualifies as a "seaman" when two elements are met: (1) the worker's duties must contribute to the function of a vessel or to the accomplishment of its mission; and (2) the worker must have a connection to a vessel in navigation (or an identifiable group of such vessels) that is substantial in terms of both its duration and nature. The court said the purpose of the second element is to "separate the sea-based maritime employees who are entitled to Jones Act protection from those land-based workers who have only a transitory or sporadic connection with a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea." The Court also noted that seamen "do not lose ... protection automatically when on shore and may recover under the Jones Act whenever they are injured in the service of a vessel regardless of whether the injury occurs on or off the ship."

It has been held that a seaman who suffers injury on the navigable waters of the U.S. cannot constitutionally be provided a remedy under state workers' compensation laws.³⁹ Moreover, an "agreement between [an] employer and employee to submit themselves to the provisions of the Workmen's Compensation Act cannot confer jurisdiction upon the Industrial Commission in case of injury occurring in a purely maritime employment, the admiralty courts having in such case exclusive jurisdiction."⁴⁰ Thus, an Ohio workers' compensation claim cannot be allowed for an injury covered by the Jones Act.

³⁷ *Edwards v. Stringer* (1978), 56 Ohio App.2d 283, 286.

³⁸ 46 U.S.C.A. §30104 (formerly at 46 U.S.C.A. §688).

³⁹ *Bearden v. Leon C. Breau Towing Co., Inc.* (3rd Cir. 1978), 365 So.2d 1192, 1195.

⁴⁰ *Faulhaber v. Indus. Comm.* (1940), 64 Ohio App. 405, 406.

(3) Federal Coal Mine Health and Safety Act: Black Lung Coverage

Coal Mine Operators and certain other employers engaged in coal mine construction, maintenance, and coal transportation may be required to carry Black Lung Coverage in order to comply with the standards of the Federal Coal Mine Health and Safety Act.

This coverage is in addition to the employer's regular Ohio workers compensation insurance. Black Lung coverage is available through BWC or private insurance carriers, or the employer may self-insure with the U. S. Department of Labor.

(4) Railroad employees: Ohio jurisdiction generally does not apply

The Federal Employers' Liability Act (FELA) imposes liability on interstate railroads for negligence resulting in the injury or death of their employees.⁴¹ This law provides an exclusive source of recovery for railroad employees injured or killed while working in interstate commerce.⁴²

Nonetheless, R.C. 4123.04 provides that if employees are engaged in intrastate commerce and also in interstate or foreign commerce, and Congress has established a rule of liability or method of compensation for them, Ohio workers' compensation coverage can apply if certain conditions are met. The conditions are: (1) the intrastate work must be "clearly separable and distinguishable" from interstate or foreign commerce; (2) the "separable" work, for its duration, must be exclusively in Ohio; (3) the employer and the worker must voluntarily accept Ohio coverage in a writing filed with BWC; (4) BWC must approve the coverage; and (5) no act of Congress forbids the coverage. The statute also provides that BWC's approval of the filing "irrevocably" subjects the parties to Ohio's coverage during the period for which premiums were paid.

(5) Defense Base Act: Coverage exception for federal contractors and subcontractors working outside the U.S.

For employees of employers working outside the U.S. as contractors or subcontractors for the federal government, coverage for work-related injuries usually must be obtained under the federal Defense Base Act.⁴³ This coverage is exclusive and in place of all liability under the workers' compensation laws of any state.⁴⁴ A few categories of employees are exempt from the coverage, such as casual workers, employees working in agriculture or domestic service, and employees working for contractors that are engaged exclusively in furnishing materials or supplies for a public work.⁴⁵ The Defense Base Act is administered by the U.S. Department of Labor, Office of Workers' Compensation Programs. Employees of these contractors and subcontractors may also be covered by the War Hazards Compensation Act for injuries arising from a hazard of war, regardless of whether the injury occurred in the

⁴¹ 45 U.S.C.A. §51 et seq.

⁴² *New York Central Railroad Company v. Winfield* (1917), 244 U.S. 147, 153-154.

⁴³ 42 U.S.C.A. §§1651-54.

⁴⁴ 42 U.S.C.A. §1651(c).

⁴⁵ 42 U.S.C.A. §1654; 1651(a)(3).

course of employment.⁴⁶ If an injury is not covered by the Defense Base Act, but is covered by both the War Hazards Compensation Act and state workers' compensation laws, benefits will not be paid under the War Hazards Compensation Act if benefits are paid under the state laws.⁴⁷ But if a hazard of war causes an injury to an employee while outside the course of employment, and the employee is therefore not entitled to benefits under the Defense Base Act and state workers' compensation laws, the employee may be entitled to benefits under the War Hazards Compensation Act.

⁴⁶ 42 U.S.C.A. §§1701-1717.

⁴⁷ 42 U.S.C.A. §1705.

APPENDIX A

Key to Model Act Provisions

Subsection (a): The four criteria of extraterritorial coverage

Subsection (b): (omitted here)

Subsection (c): (omitted here)

Subsection (d): Definitions, including “principally localized”; provision for pre-injury agreement by traveling employees as to their state of principal localization

(a) If an employee, while working outside the territorial limits of this State, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this act had such injury occurred within this State, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by this act, provided that at the time of such injury:

(1) His or her employment is principally localized in this State, or

(2) He or she is working under a contract of hire with an employer in this State in employment not principally localized in any state, or

(3) He is working under a contract of hire with an employer in this State in employment principally localized in another state whose workmen's compensation law is not applicable to his employer, or

(4) He is working under a contract of hire with an employer in this State for employment outside the United States and Canada.

* * *

(d) As used in this section:

(1) "United States" includes only the states of the United States and the District of Columbia.

(2) "State" includes any state of the United States, the District of Columbia, or any Province of Canada.

(3) "Carrier" includes any insurance company licensed to write workmen's compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workmen's compensation law.

(4) A person's employment is principally localized in this or another state when (i) his or her employer has a place of business in this or such other state and he or she regularly works at or from such place of business, or (ii) if (a)(i) of this subsection is not applicable, he or she is domiciled in and spends a substantial part of his or her working time in the service of his or her employer in this or the other state.

(5) An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this act.

(6) “Workers’ compensation law” includes “occupational disease law” for the purposes of this section.