

Ratemaking

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Rate making

- How does BWC determine what an employer pays in premium?
 - BWC must collect enough money in premium to pay claims costs.
 - Costs must be equitably divided among all employers.

Ohio State Insurance Fund

- The purpose of the Ohio State Insurance Fund is to pay compensation and medical costs to victims of industrial accidents and occupational diseases.
- The employers of the State of Ohio are essentially involved in a mutual insurance fund.
- All premiums collected and all money earned from the investment of these premiums is added to a common “state” fund from which all claims are paid.
- Other states providing Workers’ Compensation insurance exclusively through state funds are Washington, Wyoming and North Dakota.

Ohio State Insurance Fund (cont.)

- The Ohio State Insurance Fund is a self-supporting, non-profit organization established by the Ohio legislature.
- All money collected as premium is utilized to pay claims with two exceptions:
 - An amount, not to exceed 1%, is set aside for the operating expenses of the Division of Safety & Hygiene.
 - An amount, not to exceed 1%, is set aside for the Premium Payment Security Fund (PPSF) used to pay premiums for defaulting employers.
- Money in the state funds can be invested by BWC until it is required to pay benefits.

Insurance Principles

- Like any insurance entity, premiums are charged to employers in return for coverage. The rates charged for coverage are determined by actuarial predictions.
- Ratemaking is accomplished by examining the experience of the past and projecting it into the future; making predictions of needs for future years.
- Base rates for state fund employers are determined by examining the claims history of all employers for the experience period.
- All state fund employers pay this average or base rate or a modification of that rate.
- Employers with sound risk management programs are able to exert some control over the rates that they pay.

Ratemaking Predictions

- BWC calculates employer rates annually with the assistance of an outside actuarial firm.
- The actuaries project the ultimate cost of claims that will occur in the next year.
- Ratemaking predictions change based upon BWC's analysis of economic trends, medical inflation, employment figures, statistics reflecting past accident experiences and other factors that impact claim costs.
- By making projections of the long range cost of claims, rates can be set to collect the money needed to ensure that the State Fund maintains an adequate balance to pay for claims over their lifetime.
- BWC collects premium from State Fund employers each year to pay the eventual cost of all work-related injuries occurring that year.
- For example, a 2006 injury might require payment of benefits until 2020 or in some cases even longer; therefore, the rates must take into account the total predicted cost of claims.

Rate Concepts

1. Past experience is one of the best predictors of future costs.

2. Payroll is BWC's measure of exposure

3. Industry classification by degree of hazard

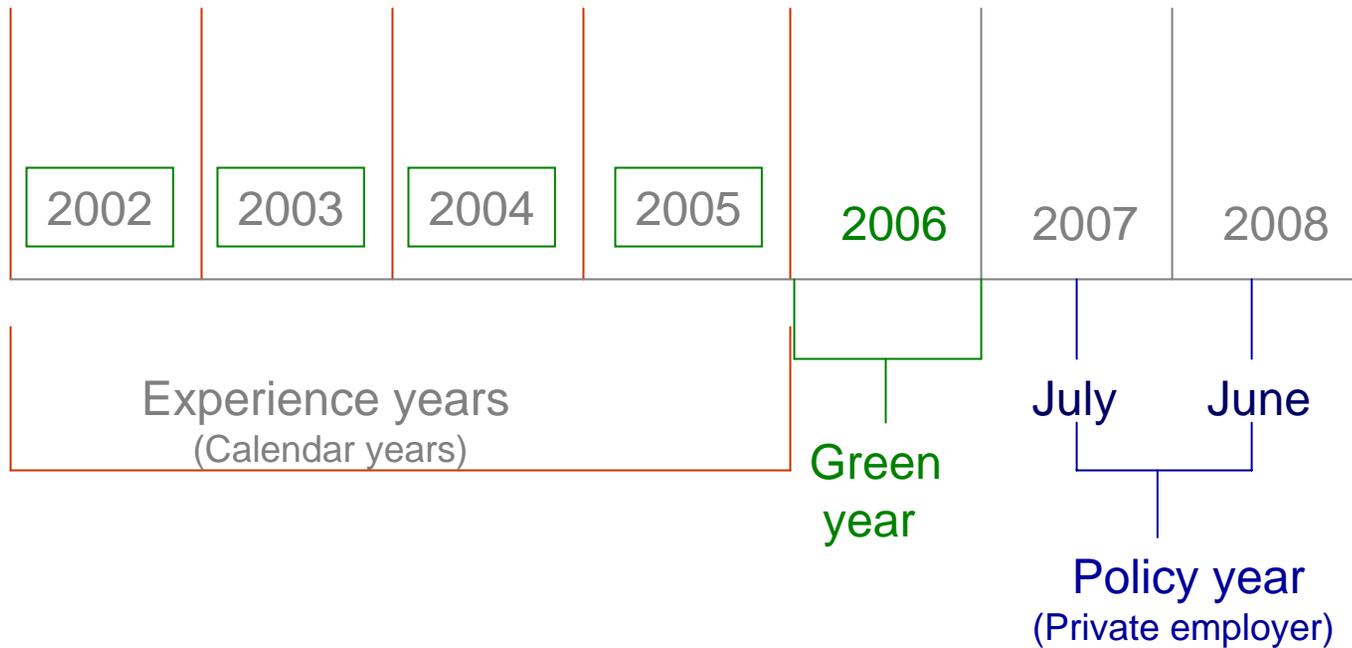
4. Expected losses as determinant of base rates for a manual classification

Past experience is one of the best predictors of future costs

- Experience Period
- Four oldest of past five years

Experience rating

Rates as of July 1, 2007, for private employers



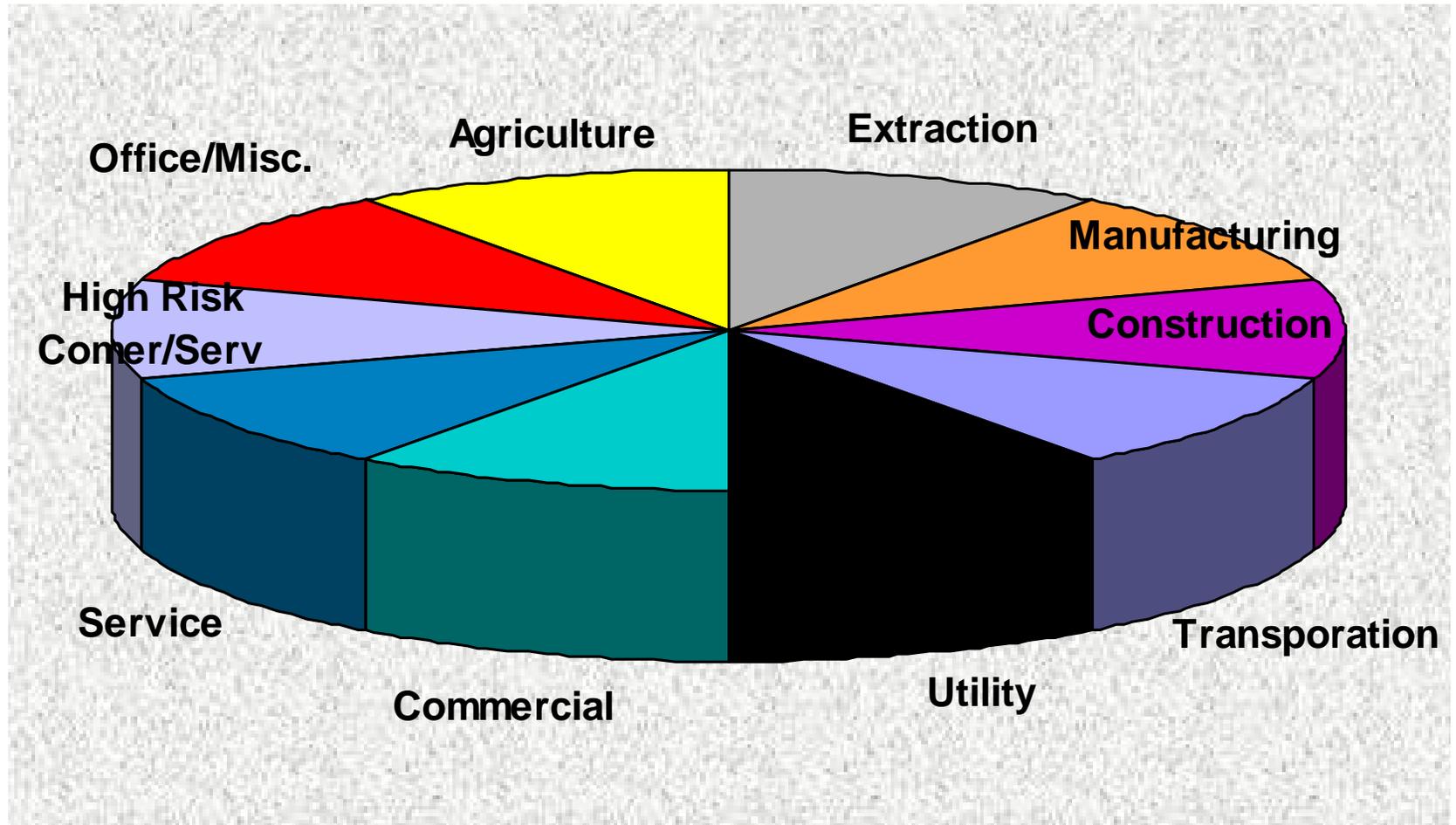
Payroll is BWC's measure of exposure

- Payroll is BWC's measure of exposure to a hazard. The larger the payroll, the greater the exposure to loss.
- $\text{Claims cost/payroll} = \text{Loss Cost}$

Industry classification by degree of hazard

- BWC uses the manual classification system produced by the National Council on Compensation Insurance, a private entity providing classifications for 43 states.
- Each manual classification represents a degree of hazard.
- Ohio uses more than 535 manual classifications.

10 industry groups



Industry group	NCCI manual classifications
1 Agriculture	0005, 0008, 0016, 0034, 0035, 0036, 0037, 0079, 0083, 0113, 0170, 0251, 2702
2 Extraction	1005, 1016, 1164, 1165, 1320, 1430, 1438, 1452, 1624, 1654, 1655, 1710, 4000
3 Manufacturing	1463, 1472, 1642, 1699, 1701, 1741, 1747, 1748, 1803, 1852, 1853, 1860, 1924, 1925, 2001, 2002, 2003, 2014, 2016, 2021, 2039, 2041, 2065, 2070, 2081, 2089, 2095, 2110, 2111, 2112, 2114, 2121, 2130, 2143, 2150, 2172, 2174, 2211, 2220, 2286, 2288, 2300, 2302, 2305, 2361, 2362, 2380, 2386, 2388, 2402, 2413, 2416, 2417, 2501, 2503, 2534, 2570, 2576, 2578, 2600, 2623, 2651, 2660, 2670, 2683, 2688, 2710, 2714, 2731, 2735, 2759, 2790, 2802, 2812, 2835, 2836, 2841, 2881, 2883, 2913, 2915, 2916, 2923, 2942, 2960, 3004, 3018, 3022, 3027, 3028, 3030, 3040, 3041, 3042, 3064, 3066, 3076, 3081, 3082, 3085, 3110, 3111, 3113, 3114, 3118, 3119, 3122, 3126, 3131, 3132, 3145, 3146, 3169, 3175, 3179, 3180, 3188, 3220, 3223, 3224, 3227, 3240, 3241, 3255, 3257, 3270, 3300, 3303, 3307, 3315, 3334, 3336, 3372, 3373, 3383, 3385, 3400, 3507, 3515, 3548, 3559, 3574, 3581, 3612, 3620, 3629, 3632, 3634, 3635, 3638, 3642, 3643, 3647, 3648, 3681, 3685, 3803, 3807, 3808, 3821, 3822, 3824, 3826, 3827, 3830, 3851, 3865, 3881, 4021, 4024, 4034, 4036, 4038, 4053, 4061, 4062, 4101, 4111, 4112, 4113, 4114, 4130, 4131, 4133, 4150, 4206, 4207, 4239, 4240, 4243, 4244, 4250, 4251, 4263, 4273, 4279, 4282, 4283, 4299, 4304, 4307, 4308, 4351, 4352, 4360, 4410, 4420, 4431, 4432, 4439, 4452, 4459, 4470, 4484, 4493, 4557, 4558, 4561, 4568, 4581, 4583, 4611, 4635, 4653, 4665, 4670, 4683, 4686, 4692, 4693, 4703, 4717, 4720, 4740, 4741, 4751, 4771, 4825, 4828, 4829, 4902, 4923, 5951, 6504, 6811, 6834, 6854, 6882, 6884, 9501, 9505, 9522
4 Construction	0042, 0050, 0106, 1322, 3365, 3719, 3724, 3726, 5020, 5022, 5037, 5040, 5057, 5059, 5069, 5102, 5146, 5160, 5183, 5188, 5190, 5213, 5215, 5221, 5222, 5223, 5348, 5402, 5403, 5437, 5443, 5445, 5462, 5472, 5473, 5474, 5478, 5479, 5480, 5491, 5506, 5507, 5508, 5536, 5537, 5538, 5551, 5605, 5606, 5610, 5645, 5651, 5703, 5705, 6003, 6005, 6017, 6018, 6045, 6204, 6206, 6213, 6214, 6216, 6217, 6229, 6233, 6235, 6236, 6237, 6251, 6252, 6260, 6306, 6319, 6325, 6400, 7538, 7601, 7605, 7611, 7612, 7613, 7855, 8227, 9534, 9554
5 Utility	6704, 7133, 7222, 7228, 7229, 7230, 7231, 7232, 7370, 7380, 7382, 7403, 7405, 7409, 7420, 7421, 7422, 7423, 7425, 7431, 8385
6 Transportation	7502, 7515, 7520, 7539, 7540, 7580, 7600, 8901
7 Commercial	0400, 0401, 2105, 2131, 2156, 2157, 4361, 7390, 8001, 8002, 8006, 8008, 8010, 8013, 8015, 8017, 8018, 8021, 8031, 8032, 8033, 8039, 8044, 8045, 8046, 8047, 8050, 8058, 8072, 8102, 8103, 8105, 8106, 8107, 8111, 8116, 8203, 8204, 8209, 8215, 8232, 8233, 8235, 8263, 8264, 8265, 8288, 8304, 8350, 8380, 8381, 8393, 8500, 8745
8 Service	0917, 2585, 2586, 2587, 2589, 4362, 5191, 5192, 6836, 7360, 7610, 8279, 8291, 8292, 8293, 8392, 8601, 8720, 8800, 8824, 8825, 8826, 8829, 8831, 8832, 8833, 8835, 8861, 8868, 8869, 8989, 9012, 9014, 9015, 9016, 9019, 9033, 9040, 9044, 9052, 9058, 9059, 9060, 9061, 9062, 9063, 9082, 9083, 9084, 9089, 9093, 9101, 9102, 9110, 9154, 9156, 9178, 9179, 9180, 9182, 9186, 9220, 9516, 9519, 9521, 9586, 9600, 9620
9 High risk	4511, 4777, 7590, 7704, 7720, 7772, 8606, 9088, 9402, 9403, 9984, 9985
10 Office	8721, 8742, 8748, 8755, 8803, 8810, 8820, 8871

Expected loss rate

**Claim costs / payroll =
expected loss rate**

- **You are compared to your industry.**
- **A component of experience rating**

Base rating

- When an employer **has less than \$ 8,000** in expected claims costs, they are base rated.
- The employer pays the base rate established for its manual classification.
- About 70% of Ohio employers are base rated.

Experience rating

- When an employer has expected losses **in excess of \$ 8,000**, it is experience rated.
- Premium costs are driven by the level of claims costs.
- An employer can be credit rated or debit rated.
- 30% of employers are experience rated.

Experience Rating Results

- ***Credit rated***

an employer has less claims cost than is average for the industry

- ***Debit rated***

an employer has more claims cost than is average for the industry

Experience exhibit snapshot

Dec. 31 for PRIVATE employers

TML = your business
Total modified losses
Total claim losses for
experience period

TLL = Rest of
businesses like you (in
your industry)
Total limited losses
Average of industry and
payroll size

Claims costs

- Indemnity paid
 - Compensation for lost wages
 - Compensation for permanent damages
- Medical costs paid
- Reserve: Anticipated ultimate future costs (determined by present value)

Credibility %

- **A measurement that separates random occurrences vs. true expectations**
- **In manuals with large amounts of payroll and losses, total future losses can be predicted from the past with a high degree of accuracy.**
- **Statistical measure that identifies the reliance we can put on employers' data**

EM % calculation

$$\mathbf{((TML - TLL) / TLL) \times C \% = TM + 1 = EM\%}$$

$$\mathbf{((41,118 - 26,993) / 26,993) \times .20 = .10 + 1 = 1.10}$$

Step 1: Actual losses minus expected losses = Difference

Step 2: Difference divided by expected losses = % Difference from expected

Step 3: % Difference times Credibility % = Total Modifier

Step 4: Total Modifier plus 1 = Experience Modifier

EMPLOYER EXPERIENCE EXHIBIT

Policy Year: 2005

Payroll and Losses as 12/31/2004

Policy Number:

Employer Name:
DBA:

Federal ID#:

Service: 000000-00 Group: 00000

Maximum Claim Value

Address:

City: CAMBRIDGE State OH Zip Code: 43725-0396

\$37,500

<u>Total Modified Losses:</u>	<u>Total Limited Losses:</u>	<u>Difference:</u>	<u>Difference / TLL:</u>	<u>Credibility:</u>	<u>Equals</u>	<u>Total Modifier:</u>	<u>Experience Modifier:</u>
\$41,118	\$26,993	\$14,125	0.5233	0.20	0.1047	0.10	1.10

Claim Losses with MIRA Reserves

Claim Number	Manual Number	Sub Manual Number	Injury Date	Indemnity Paid	Indemnity MIRA Reserve	NCCI Medical Paid	Injury Type	Total Modified Losses	Handicap Percentage
03-000000	8017	96	2002/12/18	\$1,416	\$29,318	\$6,766	09	\$37,500	0
02-000001	2003	96	2002/07/01	\$0	\$0	\$229	MO	\$229	0
02-000000	2003	96	2001/03/14	\$0	\$0	\$1,381	MO	\$1,381	0
02-000001	2003	96	2001/10/03	\$0	\$0	\$158	MO	\$158	0
01-000000	2003	96	2000/05/22	\$0	\$0	\$1,330	MO	\$1,330	0
01-000001	2003	96	2000/08/25	\$0	\$0	\$290	MO	\$291	0
00-000000	2003	96	1999/08/25	\$0	\$0	\$0	MO	\$0	0
00-000001	2003	96	1999/05/04	\$0	\$0	\$229	MO	\$229	0

Manuals & Payroll

Totals: \$1,416 \$29,318 \$10,383 \$41,118

Manual Number	Manual Number	Sub Manual Type	Experience Period Payroll	Expected Loss Rate	Expected Losses	Limited Loss Ratio	Limited Losses	Base Rate	EM	Experience Rate
8810	96	NCCI	\$30,248	0.0012	\$36	0.5487	\$20	0.0038	1.10	0.0042
8017	96	NCCI	\$459,505	0.0119	\$5,468	0.5530	\$3,024	0.0352	1.10	0.0387
2003	96	NCCI	<u>\$1,262,703</u>	0.0326	<u>\$41,164</u>	0.5818	<u>\$23,949</u>	0.0946	1.10	0.1041

Totals: \$1,752,456 \$46,668 \$26,993

Summary

- Rates are intended to equitably collect the right premium for the right risk.
- Base rates are the starting point rates that employers pay.
- Experience rating uses an employers own personal experience to either add to the base rate if they have more losses than expected or take away from the pay rate if they have fewer losses.

Claims Law Overview

Ohio Bureau of Workers' Compensation Board of Directors

**Michael Travis, Esq.,
Chief Ombudsman
Ohio Workers' Compensation System
October 25th, 2007**

Basic Claims Law

A Legal overview of Ohio's workers' compensation laws

This material provides a brief overview of claims law, within the Ohio workers' compensation system. Several different subjects will be discussed, including *first*, a brief history of major legal changes in Ohio since the creation of the workers' compensation system in 1911, presented to provide a better understanding of how the system works today; *second*, an overview of the legal elements necessary for a workplace injury to be considered a valid workers' compensation claim; *third*, a high level overview of the most common areas of legal dispute within Ohio's system; *fourth*, an overview of recent key decisions from the Ohio's courts related to workers' compensation; and *fifth*, a brief introduction to the Industrial Commission administrative hearing process.

Prior to 1911, for an employee to receive compensation for a workplace injury, they had to file a tort claim in court against the employer, alleging that the employer was somehow negligent. The injured worker then had the burden of proving this negligence was the actual cause of their injury. In defense of the tort lawsuit, the employer could raise several very effective affirmative defenses against their employee's tort claim.

These employer affirmative defenses included:

Assumption of the risk – The employer asserted it was not legally liable for the injury because the employee assumed the risk of harm when they started working for the employer;

Fellow servant doctrine – The employer maintained that the injury was actually caused by the actions of a co-worker, and not the employer directly. Therefore, any tort lawsuit must be brought directly against the co-worker, and not against the employer;

Contributory negligence – The employer asserted it was not negligence on the part of the employer that led to the workplace injury, but instead, the injury was legally caused by the employee's own misconduct.

These three defenses, when raised by an employer in a workplace injury tort lawsuit, were very effective, and most injured workers – unable to return to the workplace – were left without any wage replacement or coverage for medical expenses. In the few rare instances when injured workers did prevail in their tort lawsuits, they received large punitive damages awards that sometimes bankrupted their employer. By the early 1900s, society realized that this all-or-nothing lottery approach to on-the-job injuries did not really benefit either labor or management, and an alternative system was developed. These courtroom battles between employees and employers – including allegations of negligence and counterclaims of contributory negligence – ended in Ohio in 1911 with the creation of a statutorily based workers' compensation system, one that is both no-fault and exclusive remedy. Ohio's alternative dispute system for resolving workplace injuries is a **no-fault system**, which involves some fundamental tradeoffs between employers and their Ohio employees.

This no-fault tradeoff, which has conceptually been in place for almost 100 years, means injured workers give up the right to sue their employer for negligence and cannot receive awards for pain & suffering and other punitive damages. In exchange, employers can no longer raise the affirmative defenses of assumption of the risk, fellow servant doctrine, and contributory negligence.

The system for handling workplace injuries in Ohio is also referred to as an **exclusive remedy system**, based on how disputes proceed, both initially and on subsequent appeal. All workers' compensation claims must initially be filed with the Ohio Bureau of Workers' Compensation (BWC), not directly into court. Only after a workers' compensation dispute has totally worked its way through the administrative system of BWC and the Industrial Commission of Ohio (IC) can a party appeal a disputed legal matter into Ohio's court system.

Regarding sources of law for Ohio's workers' compensation system, it is important to note that there is no such thing as common law workers' compensation. Therefore, guidance for how to handle disputes involving Ohio workplace injuries comes primarily from three sources: Ohio Revised Code (ORC), primarily in ORC 4121 & 4123; Ohio Administrative Code (OAC), primarily in OAC 4121 through 4125; and judicial decision handed down from the Ohio Supreme Court and Ohio's 12 appellate courts.

Elements of Compensability

Ohio law, specifically ORC 4123.01, states that when a workers' compensation claim is filed, the injured worker has the initial burden of proof, and must prove four legal elements for the claim to be valid. The order of these elements is of no importance, because the injured worker must prove all four. Conversely, in a contested claim, if the employer is successful in disproving any one of these four elements, the claim should be legally denied. Disagreements about these four elements comprise a large share of the legal disputes within both the Industrial Commission, and the Ohio court system.

1. Employer/employee relationship

Ohio workers' compensation law clearly requires that an employer/employee relationship must legally exist before a workers' compensation claim can be allowed. While not often under dispute, the issue becomes contested if labor leasing, consultants, professional employer organizations or independent contractors enter the equation. The following are key Ohio judicial decisions related to this topic:

Papadopolous v. Industrial Commission, (1935) 130 Ohio St. 77 – No legal distinction can be made between the rights of U.S. citizens and aliens, related to Ohio's workers' compensation statutes.

Rajeh v. Steel City Corp., (2004) 157 OhioApp.3d. 722 – An illegal alien subject to deportation is still an "employee," within the meaning of Ohio Workers' Comp Act.

Celina Insurance v. Hinkle, (1991) 75 OhioApp.3d 121 – A person may be an independent contractor when: (1) income is reported on a Schedule C or 1099, (2) no taxes are withheld, (3) the person controls his own hours of work and (4) the contractor sincerely believes all of the individuals performing services are independent contractors, and not employees.

Conover v. Lake City Metro Parks, (1996) 114 OhioApp. 3d 570 – Claimant, who was a member of a volunteer equestrian group that assisted park rangers, was not a covered employee, even though the individual assisted in criminal investigations and provided crowd control.

2. Accidental in character and result

Ohio law states that for a workers' compensation claim to be compensable, the injury must be "*accidental in character and result.*" Ohio courts have struggled for decades to

provide a clear definition of this phrase. The following are key Ohio judicial decisions related to this topic.

Hickman v. Ford Motor Company, (1977) 52 OhioApp.2d 327 – An employee who was beaten up by a co-worker must establish that his injury was related to his work duties, and a proximate cause existed between the injury and services to the employer.

Baughman v. Eaton Corp., (1980) 62 OhioSt.2d 62 – No causal connection exists between a gunshot wound and employment, when a handgun was brought to work and the employee became subject to a danger of his own creation.

Carrick v. Riser Foods, Inc., (1996) 115 OhioApp.3d 573 – Claimant was not eligible to participate in the workers' compensation system after injuring himself while shaking a vending machine at work that had failed to deliver product.

3. In the course of employment

Ohio law states that for a workers' compensation claim to be allowed, the injury must have occurred "*in the course of employment.*" If the employee was "on the clock" when the accident happened, then this element has clearly been met. The most common disputes arising in this legal element involve the *coming & going rule*, which states that "*routine commuting to and from a fixed location employer is never in the course of employment*". However, many fact patterns are not so clear cut, and many exceptions to this legal requirement arise. Key Ohio judicial decisions related to this topic:

Marlow v. Goodyear Tire & Rubber Corp., (1967) 10 OhioSt.2d 18 – A fixed-situs employee who was injured after the close of the workday in a parking lot owned and controlled by the employer for the exclusive use of employees was in the course of his employment.

Blair v. Daugherty, (1978) 60 OhioApp.2d 165 – Claimant was in the course of his employment when injured while crossing a public street between his employer's parking lot and the employer's plant.

4. Arising out of the employment

Ohio law states that for a workers' compensation claim to be allowed, the injury must have occurred "*arising out of the employment.*" This legal requirement has generally been interpreted to mean that a risk or hazard directly related to the employment was

the actual cause of the workplace injury. This disputed area of workers' compensation law generally arises in one of three areas:

- Toxic exposure, such as silicosis or asbestosis, that often have very long latency periods, multiple employers, and non-employment contributing factors;
- Repetitive motion trauma, such as rotator cuff syndrome, epicondylitis, or carpal tunnel syndrome;
- Heart attacks and strokes that occur while on the workplace premises.

The following are key Ohio judicial decisions related to this topic:

Industrial Commission v. Hampton, (1931) 123 Ohio St. 500 – A yard foreman sustained a compensable injury when he was killed by a tornado-related building collapse. His death was not caused by an act of God, the wind from the tornado, but instead by the collapse of the building.

Industrial Commission v. Nelson, (1933) 127 Ohio St. 41 – When an employee suffered an epileptic seizure at work, fell into a machine and suffered a fatal brain concussion, this injury did arise out of his employment.

Childers v. Whirlpool Corp., (1995) 106 Ohio App.3d 52 – When an employee suffered a fatal heart attack at work, his widow failed to show that the heart attack was either caused by or accelerated by physical or mental stresses brought on by his employment.

Other Common Areas of Legal Dispute

Listed below are some of these landmark decisions from the Ohio Supreme Court and Ohio appeals courts, ranging in date from 1914 to 2007. These rulings have helped to formulate the workers' compensation system that Ohio employers and employees operate within today.

Worker intoxication

Mixing drugs, alcohol and the workplace can be a bad combination. Ohio courts have struggled with how an employee's impairment should impact his eligibility for workers' compensation benefits. The following are some key Ohio judicial rulings on this topic:

Phelps v. Positive Action Tool, (1986) 26 Ohio St.3d 142 – An employee who becomes intoxicated to the extent that he can no longer engage in his work duties abandons his employment, and when injured in this condition, does not give rise to a valid workers' compensation claim. *But see ...*

Chester Scaffolding Inc. v. Hanley, (1997) 39 OhioApp.3d 119 – When an employee consumed alcohol during lunch, but was then able to climb 200 feet up scaffolding, in accordance with his work duties, and shortly, thereafter, fell to his death, the evidence is insufficient to show that his death resulted from the intoxication. Unless an employee's intoxication incapacitates him from performing his job duties, it cannot be used in defense against a claim.

AFL-CIO v. BWC, (2002) 97 OhioSt.3d 504 – An Ohio statute that permits the warrantless drug and alcohol testing of injured workers, without any probable cause or individualized suspicion, is an unconstitutional search and seizure.

Recreational activities

Your star center fielder on the company-sponsored softball team breaks his wrist diving for a fly ball. Is this a workers' compensation claim? The following are Ohio court rulings that address injuries that occur when work and play collide:

Pilar v. BWC, (1992) 82 Ohio App.3d 819 – An injury that occurs in a touch football game during a rest break on a parking lot next to the employer's facility was compensable. *But see ...*

Henderson v. Gould Inc., (1994) – Claimant did not sustain a compensable injury while bowling with her company team after work, not her employer's premises. The employer had no control over the scene of the *injury, and derived no benefit from the claimant's participation in the league.* *But see ...*

Kohlmayer v. Keller, (1970) 24 Ohio2d.10 – An injury at a company picnic that was sponsored and supervised by the employer was in the course of employment.

Horseplay

A long unsettled area of Ohio law involves whether a workplace injury should be allowed as a workers' compensation claim, if the injury arose out of horseplay. The following are Ohio judicial rulings that have addressed this issue:

Brown v. Industrial Commission, (1948) 86 Ohio App.256 – Employees are not entitled to compensation when injuries are sustained during horseplay and quarrels that are instigated by the injured employee. *But see ...*

East Ohio Gas Co. v. Coe, (1932) 42 Ohio App.334 – An employee who is injured while engaged in a friendly scuffle with a co-worker may be considered in the course of his employment, provided his activities did not cause him to engage in some actions entirely foreign to his employment.

Extraterritorial & non-Ohio based claims

Contract of hire in Kentucky, employee lives in Indiana, corporate headquarters in Ohio, employee's direct supervisor works in Pennsylvania, and injury occurs in Michigan.

Who's on first? Ohio courts have long wrestled with how much contact with Ohio is required before a workers' compensation claim can be legally considered an *Ohio* claim.

The following is a judicial ruling that address what happens when multiple jurisdictions are involved in a workplace injury:

Lynch v. Mayfield, (1990) 69 OhioApp.3d. – To determine whether employment is located in Ohio, for purposes of workers' compensation coverage, the following should be considered: (1) the location of the contract for hire, (2) the location of the employee's supervisor, (3) the physical location of the work-related injury, (4) the state in which workers' compensation premiums were paid, (5) the location of the employee's home, and (6) any language in contracts or other documents that indicate the intent of the employer and employee.

Note that BWC Legal Operations has recently drafted a detailed summary of the current status of interstate jurisdiction, and this reference material is available to all workers' compensation stakeholders on-line.

Mental injuries

Ohio's workers' compensation system is liable for psychiatric injuries, if related to a physical injury. But what if the claim is for a psychiatric injury only with no related physical injury? This is currently a very contested area of workers' compensation law; the following are Ohio court rulings on this topic:

Bailey v. Republic Steel, (2001) 91 OhioSt.3d 38 – A purely psychiatric condition of an employee may be compensable, if such conditions arise out of a death claim from a co-worker. *But see ...*

McCrone v. Bank One Corp., 107 Ohio St.3d 272, 2005-Ohio-6505

In case involving a PTSD mental health claim by bank employee arising from multiple bank robberies, the Supreme Court of Ohio held that the denial of benefits for psychological or psychiatric condition, absent physical injury or occupational disease, does not violate equal protection and is rationally related to legitimate state interests.

Employee travel

Many employees don't work 40 hours per week at one location, and accidents that occur while traveling or while at alternate locations are not uncommon. The following are key Ohio rulings on the allowance of workers' compensation claims that involve travel:

Ruckman v. Cubby Drilling, (1998) 81 OhioSt.3d 117 – An employee participating in a carpool, driving to a remote work site, was entitled to workers' compensation.

Marbury v. Industrial Commission, (1989) 62 Ohio App.3d 786 – An employee attending an overnight conference did not suffer a work-related injury when she slipped and fell in the hotel gift shop while buying gifts for her family.

Durbin v. BWC, (1987) 112 Ohio App.3d 62 – When a claimant is injured in a motor vehicle accident while answering an employer's late-night page while on-call, the injury is compensable.

Employer retaliation

Ohio law clearly prohibits an employer from discriminating against an employee who has filed a workers' compensation claim. The Ohio Supreme Court recently released a key decision on this topic:

Coolidge v. Riverdale School District, (2003) 100 Ohio St.3d 141 – An employee receiving temporary total disability may not be discharged from employment solely on the basis of absenteeism or inability to work, if directly related to allowed conditions in her workers' compensation claim.

Union employees

Injuries can occur to employees when performing union tasks. Is the employer liable for such accidents if they occur on company premises? The following is an Ohio judicial ruling on this topic:

Kroger v. Greyhound Lines Inc., (1993) 90 Ohio App.3d 387 – An employee who was injured while walking a picket line on company premises was not in the course of his

employment because he was receiving union strike pay, not company wages, and his actions were controlled by the union, not his employer.

Intentional torts

While Ohio has a no-fault and exclusive remedy system for workplace injuries, where negligence is not a factor and tort claims are prohibited, one notable and rare exception is intentional torts. Damages arising out of a successful intentional tort action are covered directly by the employer, not BWC's State Insurance Fund. Such claims, while infrequent, can be financially devastating to an employer. The following are key Ohio judicial rulings on this topic:

Fyffe v. Jenos' Inc., (1991) 59 Ohio St.3d 115 – To establish an intentional tort, the employee must show (1) knowledge by the employer of the risk, (2) knowledge by the employer that the employee is subject to this known risk, (3) that the employer, with such knowledge, required the employee to continue to perform this dangerous task.

Van Fossen v. Babcock & Wilcox Inc., (1988) 36 OhioSt.3d 100 – For an employee to recover in an intentional tort action, the employee must prove the employer acted beyond mere negligence. The employer's mere knowledge of a risk is not sufficient – there must exist “*substantial certainty that an injury is likely to occur*”.

Permanent and total disability

Disputes involving an injured worker's attempt to reach permanent and total disability are among the most contested matters in the entire workers' compensation system. The following is a key Ohio judicial ruling related to permanent and total disability:

Stephenson v. Industrial Commission, (1987) 31 Ohio St.3 167 – When evaluating an injured worker's application for permanent and total disability, the IC must consider and evaluate such non-medical disability factors as age, education level, prior work history and the claimant's ability for vocation retraining. Note that these PTD provisions were arguably overturned by provisions in the recently enacted SB 7.

Basics of the Industrial Commission Hearing Process

The Ohio Industrial Commission was created by the Ohio General Assembly to provide an alternative dispute resolution forum to the traditional court system, for resolving disputes within the workers' compensation system. The IC utilizes a three level structured hearing process to resolve disputed workers' compensation claims. The IC is responsible for providing an impartial forum to hear disputed workers' compensation claims, and IC hearings offer both the injured worker and employer the opportunity to present their positions and reach a resolution through a quasi-judicial hearing process.

After receiving workplace injury claim, BWC issues an order regarding allowance of the claim. An injured worker or employer who disagrees with the BWC order may appeal the decision to the Industrial Commission, seeking a hearing to further evaluate the merits of the claim. Appeals can be filed either in person, at a local service office, or through the Industrial Commission's on-line system, I.C.O.N.

Hearings before the Industrial Commission are informal in nature and legal representation is not required. However, parties may choose to be represented by an attorney or other authorized person. District and Staff hearings are generally held at the local office closest to the injured worker's home. Industrial Commission hearings are conducted by hearing officers who are attorneys, experienced in workers' compensation law and rules.

IC guidelines require that a hearing notice be mailed to the concerned parties at least 14 days prior to the hearing, stating the date, time, and location of the hearing, and the specific issues to be argued. If the IC rules on a case without a party having received a notice of hearing in a timely manner, they may submit a request for relief, as set forth in ORC 4123.522, asking for a new hearing.

IC Hearing Officers review evidence prior to hearing, consider testimony and evidence presented at the hearing, and issue a written decision soon afterward, generally within seven days. The Hearing Officer is limited to considering only the issues listed on the hearing notice. Parties who disagree with a Hearing Officer's decision may ask for another hearing. Appeals must be in writing or filed electronically within 14 days of the receipt of the order. Regarding appeal rights, the Industrial Commission hearing process offers injured workers and employers the opportunity to appeal claims decisions at three levels: District, Staff, and Commission.

To ensure due process, all parties are guaranteed hearings at both the DHO and SHO level, but appeals to the three member Industrial Commission are granted on a discretionary basis. The Commissioners may refuse to hear the appeal or

accept it for a hearing. If the injured worker or employer is not satisfied with the decision of the IC, or if the IC refuses to hear an appeal filed from a Staff Hearing Officer determination, then the injured worker or employer may file an appeal in the appropriate state court.

The Industrial Commission also has five Hearing Administrators, across the state, who help to ensure a smooth and timely hearing process. Hearing Administrators main roles are to review and process requests to continue or cancel hearings and issue subpoenas, depositions, and interrogatories.

2006 – 07 Key Ohio Workers’ Compensation Court Rulings

Listed below are some recent key decisions from the Ohio Supreme Court and Ohio appeals courts, as summarized in the on-line OSBA Reporter. These court rulings help guide all parties, including injured workers, employers, and various stakeholder groups, as well as the Bureau and Industrial Commission, on how to properly interpret Ohio statutes and administrative rules.

Unauthorized practice of law

Ohio State Bar Assn. v. Chiofalo, 112 Ohio St.3d 113, 2006-Ohio-6512

Chiropractor is enjoined from violating Indus. Comm. Res. R04-1-01(B)(2), (3) and(4) while testifying before the Industrial Commission or bureau of workers compensation and from engaging in any other unauthorized practice of law where he argued statutory provisions and case law while testifying on behalf of a patient before the industrial commission.

Temporary total disability, voluntary abandonment of employment

Gross v. Industrial Commission, 2007-Ohio-4916.

Supreme Court reconsidered and revised a December 2006 ruling in which it approved the termination of state workers' compensation benefits for a Columbus fast-food worker after he was fired for committing the workplace safety violation that resulted in his injuries. In a new decision, the Court upheld a decision of the 10th District Court of Appeals reinstating the injured worker's state benefits. At issue was when an employee repeatedly and knowingly violates a workplace safety rule for which he had previously been warned that the penalty could be immediate firing, whether such actions constitute “voluntarily abandonment of employment”, which would terminate eligibility to receive workers' compensation benefits.

Employer intentional tort

Spurlock v. Buckeye Boxes, Inc., 2006-Ohio-6784 (District 10)

In employer intentional tort action arising from machine accident that crushed employee's arm, trial court properly granted summary judgment for employer where no other injuries had occurred with the machine in 15 years, employee had previously worked with and cleaned machine without incident, he understood warnings and safety devices on machine and knew reason for warnings and he removed part of machine during cleaning.

Statute of limitations

Gordon v. Marco's Pizza, Inc., 2006-Ohio-6955 (District 9)

Claim for workers' compensation was properly denied as untimely filed where employee failed to inform employer of any alleged injury sustained in accident; if employer did not know that employee missed work as a result of alleged injury, it had no obligation under R.C. 4123.28 to advise the Bureau of Workers' Compensation, and its failure to do so did not toll the statute of limitations.

PTD, sustained remunerative work and criminal enterprise

State ex rel. Lynch v. Indus. Comm., 2007-Ohio-292 (District 10)

In claimant's mandamus action to compel Industrial Commission to vacate its order terminating his permanent total disability, writ is denied where commission had continuing jurisdiction, claimant entered a guilty plea to a conspiracy to possess a drug with intent to distribute, and commission reasoned he was engaged in a continuing criminal enterprise for profit and therefore was engaged in sustained remunerative employment; there was evidence that the claimant sold drugs to an individual weekly for several years and was involved in other aspects of drug trade.

Employer premium, manual reclassification,

State ex rel. Cafaro Mgt. Co. v. Kielmeyer, 113 Ohio St.3d 1, 2007-Ohio-968

In action challenging reclassification of personnel for workers' compensation premium purposes, writ is denied; real estate management firm that is engaged in building operation is not entitled to certain NCCI manual classifications; upholding the prior ruling of the Adjudicating Committee.

TT, return to work, remunerative compensation, own business

State ex rel. Honda Mfg. Co. v. Indus. Comm., 113 Ohio St.3d 5, 2007-Ohio-969

Former employer's request that temporary total disability benefits be terminated for claimant, who started scrapbooking hobby shop while receiving benefits and who was observed in shop five times, was properly denied; claimant's activities of using phone, working cash register and showing merchandise to customers were not found by employer's physician to be inconsistent with claim that she could not return to former auto assembly line position, she had not been paid for any work and mere presence at shop was not disqualifying.

Commuting, coming & going rule

Smith v. Carnegie Auto Parts, Inc., 2007-Ohio-992 (District 8)

In claim by employee for workers' compensation benefits arising from her auto accident that occurred after she mailed envelopes she had stuffed at home for a work-related promotional campaign, trial court properly affirmed administrative finding that she was commuting to work and that she was not covered by workers' compensation; employee did not show she did substantial employment duties at home, she was not on a special mission for employer since she also dropped her child off at school, there was no question that she was a fixed situs employee and under totality of circumstances she was not entitled to compensation.

Temporary total disability, termination, industrial injury

State ex rel. Luther v. Ford Motor Co., Batavia Transmission Plant, 113 Ohio St.3d 144, 2007-Ohio-1250

In claimant's mandamus action arising from denial of temporary total disability benefits due to termination from employment allegedly because of absenteeism and failure to document continuing medical cause, claimant was not ineligible for benefits where he was already disabled when fired and reason for dismissal from employment was infraction caused by the industrial injury;

Negligence, course of employment, immunity, zone of employment

Pursley v. MBNA Corp., 2007-Ohio-1445 (District 8)

In negligence action arising from plaintiff-employee's vehicle accident in company parking lot after company picnic, where she was struck by co-worker in course and scope of his employment, summary judgment for employer was proper on workers' compensation immunity grounds; both parties worked for employer, co-worker was transporting company executives to airport from picnic at the time and plaintiff was on company property and within zone of employment where she was parked in company lot.

Subrogation, R.C. 4123.93, R.C. 4123.931, constitutionality

McKinley v. Ohio Bur. of Workers' Comp., 170 Ohio App.3d 161, 2006-Ohio-5271

In action by injured worker challenging the constitutionality of the workers' compensation subrogation statute, current form of subrogation statutes corrects Holeton problem by allowing for a trust account and periodic payments to bureau that prevents a windfall for the Bureau, avoids the risk of overestimating liability by claimant and provides a clear definition of the claimant's and BWC's interests in the damages, there is due process in determining distribution of amount recovered by worker's compensation claimant against a third-party tortfeasor and the current statute is a valid response to a legitimate state concern and does not violate equal protection.

Zone of employment, return from smoke break

Fitch v. Ameritech Corp., 2007-Ohio-2725 (District 10)

In workers' compensation appeal, trial court properly found, on summary judgment, that claimant who was injured by revolving door while returning to employer's leased office premises after smoke break, was within zone of employment and entitled to participate in workers' compensation fund; employer control of area was not necessary, claimant was attempting to gain access to employer's building after paid break by normal and customary employee entrance, his activities were thus "hampered and controlled" by job requirements, Berry, and injuries during break arose in course of employment.

Key Ohio Workers' Compensation System Acronyms & Abbreviations

Listed below are some of the common acronyms & abbreviations frequently used in worker's compensation reports, e-mails, IC orders, and other legal correspondence:

AAG = Assistant Attorney General
ACF = administrative cost fund
ADR = Alternative Dispute Resolution
ADA = Americans with Disabilities Act
AG = Attorney General
AOE = Arising out of Employment
AOR = Attorney of Record
AWW = average weekly wage
BWC = Bureau of Workers' Compensation
BLF = black lung fund
C-92 = permanent partial award
COA = change of address
COEMP = claims filed by BWC employee or family member
CSS = Claims Service Specialist
CST = Customer Service Team
DHO = Industrial Commission District Hearing Officer
DOD = Date of Death or Date of Disability
DOI = Date of Injury
DWRF = **Disabled Worker's Relief Fund**
EBT = Electronic Benefits Transfer
EE = employee
EFT = Electronic Funds Transfer
ER = employer
FMLA = Family Medical Leave Act
FROI = First Report of Injury
FT = full time
FWW = full weekly wage
HPP = Health Partnership Plan
IC = Industrial Commission
ICD9 = standardized medical billing codes
IME = Independent Medical Exam
IW = injured worker

LSA = lump sum advancement
LSS = lump sum settlement
LM = living maintenance compensation
MCO = managed care organization
MIF = marine industry fund
MIRA = micro insurance reserve analysis
M MI = maximum medical improvement
NCCI = National Council on Compensation Insurance
OAC = Ohio Administrative Code
OAG = Ohio Attorney General
OC = Oversight Commission
OD = Occupational Disease
ORC = Ohio Revised Code
OSC = Ohio Supreme Court
OSHA = Occupational Safety & Health Administration
OT = overtime or occupational therapy
QHP = Qualified Health Plan
PT = part time or physical therapy
PTD = permanent & total disability
POR = physician of record
PP = permanent partial disability payment
PPD = permanent partial disability payment
PWRE = public workers relief
RTW = return to work
S&H = BWC Safety & Hygiene
SF = State Fund
SHO = Industrial Commission Staff Hearing Officer
SI = Self Insured
SIEEB = Self Insuring Employer's Evaluation Board
SIF = State Insurance Fund
SIRP = Self Insured Review Panel
SOM = BWC service officer manager
TPA = Third Party Administrator
UC = Unemployment Compensation
V-3 = BWC's real-time claims processing system
VSSR = violation of specific safety requirement
WCIS = BWC's Risk processing system
WCOC = Workers' Compensation Oversight Commission
WL = Wage Loss
WWL = Working Wage Loss

