Workers' comp law – basic principles

A legal overview of Ohio's workers' compensation laws

This material provides a brief history of major legal changes in Ohio since the creation of the workers' compensation system in 1911. It analyzes landmark legal decisions involving Ohio's workers' compensation system to provide a better understanding of how the system works today.

Prior to 1911, for an employee to receive compensation for a workplace injury, he/she had to file a tort claim in court against the employer, alleging the employer was somehow negligent. The injured worker then had the burden of proving this negligence was the actual cause of the 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 he/she was not legally liable for the injury because the employee assumed the risk of harm when he/she started working;

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

Contributory negligence – The employer asserted it was his/her negligence that led to the workplace injury, but instead the employee's own misconduct.

These three defenses, when raised by an employer in a workplace injury tort lawsuit, proved very effective. Most injured workers – unable to return to the workplace – received no 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 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.

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 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 and 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 known as an **exclusive remedy system**, based on how disputes proceed, both initially and on appeal. Injured workers must initially file workers' compensation claims 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.

There is no such thing as common law workers' compensation. Therefore, guidance for how to handle disputes involving Ohio workplace injuries comes primarily from the three sources listed below.

Ohio Revised Code (ORC) – These are the laws, passed by the Ohio General Assembly, related to the Ohio workers' compensation system that was first established in 1911. Almost all of the Ohio laws related to workers' compensation are found in ORC Sections 4121 through 4123.

Ohio Administrative Code (OAC) – These are administrative rules, created by BWC and the IC, establishing a framework through which both agencies carry out their duties and responsibilities to Ohio's employers and injured workers. OAC Sections 4121 through Sections 4125 contain almost all of the Ohio administrative rules related to workers' compensation.

You can find the ORC and OAC online from many sources, including **http://codes.ohio.gov/**.

Judicial decisions – Decisions handed down from Ohio's courts are the third primary source of guidance when legal disputes related to workers' compensation arise. These decisions are the prime source of material in the following outline. Some of the cases described and analyzed come from Ohio's District Courts of Appeals, but the Ohio Supreme Court has generated the majority of the decisions reviewed. You can find past decisions from the Ohio Supreme Court and Ohio's 12 District Courts of Appeals at **www.sconet.state.oh.us**.

Listed below are some of these landmark decisions from the Ohio Supreme Court and Ohio appeals courts, ranging in date from 1914 to 2005. These rulings have helped to formulate the workers' compensation system that Ohio employers and employees operate within today.

Employer/employee relationship

Ohio workers' compensation law clearly requires that an employer/employee relationship must legally exist before BWC can allow a workers' compensation claim. This area of the law is usually only contested if labor leasing, independent contractors, 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;

McDowell v. Larson, (1914) 3 OhioApp. 150 – A prospective employee who has accepted an offer of employment and is injured while reporting to work, but prior to clocking in, is an employee for workers' compensation purposes;

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;

Johnson v. Louisville Auto Body, 2006-Ohio-2726 (District 5) – Trial court did not err in determining plaintiff was an independent contractor and not entitled to participate in the state workers' compensation fund for injuries he sustained while working as an auto mechanic for a body shop. The plaintiff had the right to control the manner and means of doing the work; he was paid a flat rate rather than an hourly rate; and the employer told him when hired he would not receive any insurance or vacation, and would not be carried by workers' compensation. He also received a 1099 rather than a W-2 and the owner did not tell him how to perform the work but that he was only responsible to the owner for the end result.

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.

In the course of employment

Ohio law states that for BWC to allow a workers' compensation claim, the injury must have occurred "in the course of employment." The claim clearly meets this element if the employee was "on the clock" when the accident happened. However, many fact patterns are not so clear-cut, and many exceptions to this legal requirement arise. The following are 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.

Arising out of the employment

Ohio law states that for BWC to allow a workers' compensation claim, the injury must have occurred "arising out of the employment." The courts have generally interpreted this legal requirement 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;

- Repetitive motion trauma, such as rotator cuff syndrome 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 killed by a tornado-related building collapse. The collapse of the building, and not an act of God or the wind from the tornado caused his death;

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 the heart attack was either caused by or accelerated by physical or mental stresses brought on by his employment.

Flow-through conditions and incidental injuries

Flow-through conditions arise when medical problems related to an allowed condition in a workers' compensation claim may give rise to a new medical problem. Parties to a claim often contest whether the workers' compensation system is liable for cost related to this new or "flow-through" condition. Incidental injuries arise when the claimant somehow re-injures him or herself through activities related to the original workers' compensation claim. The following are Ohio judicial rulings on whether such new injuries are compensable as workers' compensation claims:

Dent v. AT&T Technologies Inc., (1988) 38 OhioSt.3d 187 – A flow-through condition is defined as a new injury that subsequently develops in a body part not originally alleged under the original workers' compensation action;

Williams v. Corporate Support Inc., (1994) 80 Ohio App.3d 477 – An injured worker's neck injury, which was caused by the collapse of a hospital bed while being treated for a workers' compensation back injury, was not a compensable claim, as a flow through, because such an injury was not a reasonably foreseeable result of the original injury;

Woodrum v. Premier Auto Glass, (1995) 103 Ohio App.3d 530 – Injuries received by a claimant while traveling from a BWC-ordered medical exam to home were compensable as being directly and proximately caused by a circumstances arising out of employment;

Schell v. Globe Trucking Inc., (1990) 48 Ohio St.3d 1 – An injured worker does not need to show a work-related aggravation of a previous injury must be substantial; instead, even a slight aggravation will suffice.

Suicide as a workers' compensation death claim

Although rare in occurrence, widow-claimants seeking death benefits following a work-related suicide are not without history in Ohio. The following are Ohio judicial rulings on whether such self-inflicted acts are compensable within Ohio's workers' compensation system:

Burnett v. Industrial Commission, (1949) 87 Ohio-App. 441 – When an employee has a valid workers' compensation claim, which causes a deranged state of mind, directly leading to a self-inflicted gunshot wound, such a death is compensable under the Ohio Workers' Compensation Act;

Borbely v. Prestole Everlock Inc., (1991) 57 OhioSt.3d 67 – When an injured worker commits suicide, the dependent seeking recovery must show: (1) the employee had a valid workers' compensation claim prior to the suicide (2) the work-related injury caused the employee to become dominated by a disturbance of the mind of such severity as to override rational judgment and (3) the disturbance directly resulted in the employee's suicide;

Osborn v. BWC, (1999) 134 Ohio App.3d 645 – A workers' compensation death claim can arise out of an injured worker's death, which resulted from a purposely self-inflicted fatal overdose of pain medications.

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 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 the employer sponsored and supervised was in the course of employment.

Beck v. Young, (1962) 119 OhioApp.109 – Claimant did sustain a compensable claim while on a reward trip resulting from an employer-sponsored sales contest, which included employer-sponsored and planned entertainment and recreational activities.

But see …

Miller v. Young, (1961) – Employee was not in the course of his employment while injured playing on a softball team named after the employer but which the employer's only connection was donation of funds to purchase uniforms.

Horseplay

A long unsettled area of Ohio law involves whether BWC should allow a workers' compensation claim for a workplace injury arising 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 sustaining injuries after instigating horseplay and quarrels.

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 and 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 BWC can legally consider a workers' compensation claim an Ohio claim. The following is a judicial ruling that addresses 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.

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 a very hot 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 …

Wood v. Ohio Highway Patrol, (2004) 156 Ohio App.3d 725 – The Ohio General Assembly has clearly excluded purely psychiatric conditions from the definition of a workers' compensation injury, whether or not such a distinction makes good public policy.

But see …

McCrone v. Bank One Corp., (2004) - 204 OhioApp.3d 2358 – A bank teller who was subject to multiple armed robberies was eligible for a psychiatric-only workers' compensation claim.

But finally see …

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

In the case involving a mental-health industrial claim by a bank employee arising from two bank robberies, the Supreme Court of Ohio determines the denial of benefits for psychological or psychiatric condition absent physical injury or occupational disease does not violate equal protection and rationally relates 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;

Lewis v. TNT Holland Motor Express, (1998) 29 Ohio App.3d 131 – A truck driver injured in a hotel bathroom slip and fall was not in the course and scope of his employment.

But see …

Knox v. BWC, (1998) 125 Ohio App.3d 313 – Claimant's injury while out of town in a hotel bathroom after the traditional workday had ended was compensable.

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 and 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 employer may not discharge an employee receiving temporary total disability 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

Intentional torts are one notable and rare exception to Ohio's no-fault and exclusive remedy system for workplace injuries, where negligence is not a factor and tort claims are prohibited. The employer, not the state insurance fund, covers directly damages arising out of a successful intentional tort action. Such claims, while infrequent, can financially devastate 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 will occur;

Hinton v. YMCA of Cent. Stark Cty., 2006-Ohio-3278 (District 5) – In estate's wrongful death intentional tort action against residence facility arising from boarder's shooting facility's employee, summary judgment for facility was proper; facility had no reason to know that its procedure for asking boarder to leave was dangerous process or procedure that would result in injury with substantial degree of certainty.

Idiopathic injuries

This is a legal term, which means there is no clearly defined cause of the injury – it just happened. The following are judicial rulings where Ohio courts have examined whether such mystery injuries are valid workers' compensation claims:

Harris v. BWC, (1996) 117 Ohio App.3d 103 – Claimant's injury did not arise out of his employment, where employee suffered injury as a result of his unimpeded fall to a concrete floor, precipitated by a seizure;

Grimes v. Mayfield, (1989) 56 Ohio App.3d 4 – Where claimant dislocated his shoulder while sneezing at work, the injury was not idiopathic but caused by airborne contaminants in the workplace, and is, therefore, compensable.

Permanent and total disability

Disputes involving an injured worker's attempt to reach permanent and total disability are among the most hotly contested matters in the entire workers' compensation system. The following are key Ohio judicial rulings 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;

Thomas v. Industrial Commission, (2002) 97 OhioSt.3d 37 – A claimant is entitled to statutory permanent and total disability based on the Ohio provisions of losing any two limbs if he loses his arm because the arm and the hand attached to it are two separate body parts;

Lawson v. Mondie Forge, (2004) 104 Ohio St.3d 39 – Evidence that a claimant had engaged in varied moderate physical activities and minimal employment between 1993 and 2001 did not support a termination of permanent and total disability benefits, based on fraud;

Jerdo v. Pride Cast Metals Inc., (2002) 95 Ohio St.3d 18 – Termination of permanent and total disability benefits based on fraud was proper when a claimant was collecting a salary as a part-time minister. Claimant's occupation as a minister does not entitle him to any special consideration under Ohio law.

Key Ohio workers' compensation system acronyms and abbreviations

The following are common acronyms and 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 - Ohio 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 - 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 an Injury, Occupational Disease or Death
FT - Full time
FWW - Full weekly wage
HPP - Health Partnership Plan
IC - Industrial Commission of Ohio
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 Reserving Analysis
MMI - Maximum medical improvement
NCCI - National Council on Compensation Insurance
OAC - Ohio Administrative Code
OAG - Ohio Attorney General
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 and 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's Division of Safety & Hygiene

SF - State fund
SHO - 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
WL - Wage loss
WWL - Working wage loss