



*LEGISLATIVE CHANGES TO OHIO
WORKERS' COMPENSATION*

Workers' Compensation Webinar Series

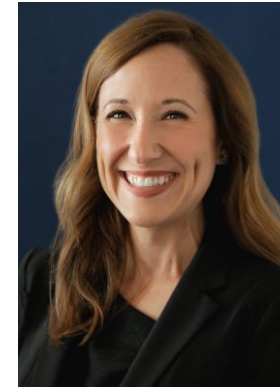
**Reminger's
Workers' Compensation
Webinar Series**

**Presented By:
Reminger Co., LPA
Workers' Compensation
Practice Group
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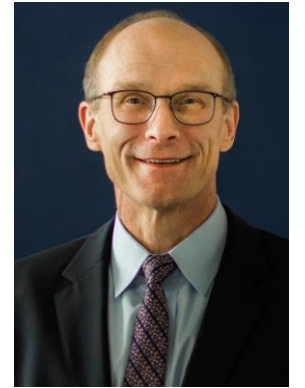
Legislative Changes to Ohio Workers' Compensation



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Disclaimer:

These materials were prepared by the law firm of Reminger Co. LPA for attendees' reference during this seminar. This presentation, these materials, and related discussions are informational and educational in nature and are not intended to provide legal advice for any specific situation. Professional advice should be obtained before attempting to address any particular legal situation or problem. Furthermore, because requirements at the federal, state, and local levels are continually changing during this COVID-19 pandemic and some rules/regulations are industry-specific, please consult counsel prior to relying on the information contained herein.

- Changes in VSSR Statute of Limitations
- Period a Claim Remains Active
- Changes to State Fund Settlements

REMINER!

Change to VSSR Statute of Limitations

R.C. 4121.471

- Requires a claim for an additional award of compensation for a Violation of a Specific Safety Requirement to be filed **within 1 year** after the date of the injury, death, or diagnosis of disability due to occupational disease.
- The “old” version allowed an injured worker 2 years in which to file an application for a Violation of a Specific Safety Requirement.
- **This change will take effect on ALL claims arising on or after 9/15/2020.**

Period a Claim Remains Active

R.C. 4123.52

- New provision provides that a claim will remain statutorily active FOR 5 YEARS from the date of the last medical service being rendered OR the date of the last payment of compensation in the claim.
- The language changes from “Medical benefits paid” to “Medical services being rendered.” The “new language” does not change the fact that the medical service must have a causal connection to the allowed conditions in the claim. **This change will effect ALL new claims arising on or after 7/1/2020.**
- **The “old” version of 4123.52** allowed claims with a **DOI on or after 8/25/2006** to remain active for 5 years from the DOI, date of last payment of compensation, payment of wages in lieu of compensation or medical bill payment whichever is *later*.
- For **lost time** claims with a **DOI of 12/11/1967 through 8/24/2006**: the claim would remain active **10 years** from the last date of payment of compensation, payment of wages in lieu of compensation, or medical bill payment.
- For **medical only** claims with a **DOI 10/20/1987 to 8/24/2006**: the claim would remain active for **6 years** from the DOI or last medical bill payment.

Changes to State Fund Settlements

R.C. 4123.65

- Now prohibits a State Fund Employer from **refusing or withdrawing from a proposed claim settlement agreement when both circumstances below are met:**

The claim is no longer within the State Fund Employer's experience

AND

The injured worker in the claim is no longer employed by the State Fund Employer

- **Change takes effect on 9/15/2020 AND applies to ALL claims currently pending regardless of the DOI or date of occupational disease.**

Changes to 4123.56(F)

Temporary Total Disability and Wage Loss

REMINER.

TTD and Wage Loss

New section added to R.C. 4123.56:

(F) If an employee is unable to work or suffers a wage loss as the direct result of an impairment arising from an injury or occupational disease, the employee is entitled to receive compensation under this section, provided the employee is otherwise qualified. If an employee is not working or has suffered a wage loss as the direct result of reasons unrelated to the allowed injury or occupational disease, the employee is not eligible to receive compensation under this section. It is the intent of the general assembly to supersede any previous judicial decision that applied the doctrine of voluntary abandonment to a claim brought under this section.

TTD and Wage Loss

Effective Date:

- September 15, 2020

Applies to:

- All claims regardless of the date of injury

TTD and Wage Loss

- Statutory strengthening of the voluntary abandonment defense?
- Statutory destruction of the voluntary abandonment defense?

TTD and Wage Loss

Current law:

- Temporary Total Disability 4123.56(A)
 - Prior version of R.C.4123.56 does not specifically indicate criteria for when TTD benefits are payable or that they must be directly related to the disability resulting from the claim.
 - Version until today discusses only when benefits are no longer payable:
 - Claimant returns to work (with or without restrictions)
 - Claimant is at maximum medical improvement
 - Treating physician indicates claimant can return to former position of employment
- Wage Loss 4123.56(B)
 - Prior version of statute does specify that the wage loss must be “due to” or “resulting from” the injury or occupational disease, but does not specifically indicate that it must be the direct result of an impairment arising from an injury or occupational disease.

TTD and Wage Loss

Voluntary Abandonment Defense:

- When injured workers remove themselves from the workforce for reasons unrelated to their injury, they have voluntarily abandoned their employment and are not entitled to TTD or wage loss as a result of their abandonment.
 - Violation of a written work rule resulting in their termination.
 - Voluntarily quit, retirement, or incarceration.
- Limited over the years by contradictory case law:
 - Pre-injury conduct could not be considered voluntary abandonment.
 - An injured workers' ongoing disability at the time of termination precluded applicability of the defense because an injured worker "could not voluntarily abandon a job from which he was already disabled."
 - If the conduct contemporaneous to the injury also resulted in termination, there could be no voluntary abandonment.

TTD and Wage Loss

Claimants' Bar's approach to the new statutory section:

Voluntary abandonment no longer exists as a defense!

TTD and Wage Loss

Employers' Bar Approach:

The voluntary abandonment defense created by *Louisiana Pacific* is still alive and stronger than ever because the contradictory and often nonsensical case law that applied the doctrine of voluntary abandonment, i.e. creating special carve-outs and exceptions to the defense, is no longer an issue.

TTD and Wage Loss

Employers' Bar's Approach to the new statutory section explained:

- We finally have codification of the requirements that in order to be eligible for TTD or wage loss:
 - The inability to work must be the direct result of an impairment arising from an injury or occupational disease.
 - If the reason the person is not working or has a wage loss is unrelated to the allowed injury or disease they are not eligible for TTD or wage loss benefits.
 - The language does not indicate that the case law that created the doctrine of voluntary abandonment no longer applies, only that case law that subsequently applied the doctrine is now superseded.

TTD and Wage Loss

So what does this mean exactly for employers?

1. Pre-injury behavior discovered post-injury that leads to termination (positive drug screens, "points" accumulated pre-injury) can serve as the basis to deny benefits.
2. Employees working with restrictions can have benefits terminated if their employment ends because of their behavior resulting in termination (voluntary abandonment of employment).
3. Conduct contemporaneous to the injury resulting in termination can serve as the basis to deny benefits.

TTD and Wage Loss

What does this mean for everyone?

- Most likely, a whole lot of litigation.
- The statute is vague and can be interpreted many ways.
- We will likely have a period of uncertainty and contradictory rulings until there is more direction on application of this new statutory section.
- Concern that employers will be more apt to terminate injured workers to avoid paying benefits will result in some protections being added either statutorily or through new case law.

TTD and Wage Loss

In the meantime, continue with best practices:

- Clear, well written light duty job offers sent by regular and certified mail
- Obtain verification of employees' receipt of all workplace policies/company handbook
- Document disciplinary infractions
- Treat individuals with workers' compensation claims similarly to those who are out of work or working with restrictions for reasons unrelated to workers' compensation claims

- Claims for Exposure to Drugs/Chemical Substances
- Changes in PTD Eligibility
- Increased Funeral Expense Amount

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Exposure to Drug/Chemical Substance

ORC 4123.026

- This section was amended to now include coverage for detention facility employees, including correction officials.
- Payment of the cost of conducting post-exposure medical diagnostic services will now be made if an employee is exposed to a drug or other chemical substance and the post-exposure diagnostic services are consistent with the standards of medical care existing at the time of the exposure to the drug or chemical substance.
- This protection already existed for police, fire and emergency medical workers.
- This change will probably have a slightly negative impact on the employer's claim costs or premiums.
- The coverage will be extended to detention facility employees with all new claims arising on or after July 1, 2020.

Permanent Total Disability

ORC 4123.58(A)

- Under this change in the law, an injured worker is now not eligible for PTD compensation if the injured worker is retired or otherwise is not working for reasons unrelated to the allowed injury or occupational disease.
- This change is consistent with the TTD and wage loss law changes.
- Able to get more medical records now, i.e. broader releases? We anticipate pushback from claimant's attorneys. One tactic we should consider is to request a Pre-Hearing Conference with the Hearing Administrator for a ruling when these disputes arise.
- If the Industrial Commission (and the courts) interpret this change as intended, this change will help reduce employer's claim expenses and/or premiums.
- This change goes into effect on September 15, 2020 and will apply to all pending claims.

Funeral Expenses

ORC 4123.66(A)

- The legislative change increases the amount payable for reasonable funeral expenses in death claims from \$5,500.00 to \$7,500.00.
- This change will take effect on claims with a date of death on or after September 19, 2020.
- The impact on employers of this change is that for self-insurers the claim cost will increase by \$2,000.00 and for state fund employers the premium impact of the claim will worsen (although a death claim will probably result in a maximum value premium impact).

New Legislative Changes



QUESTIONS?