



## Ohio Employers' Bill of Workers' Compensation Rights

by James B. Yates and Sarah E. Pawlicki

Although Ohio's workers' compensation statute is to be "liberally construed in favor of claimants," Ohio employers have the legal ability to challenge and manage workers' compensation claims and significantly reduce claim costs and, for state-fund employers, workers' compensation premiums. These are some of the ways.

1. Employers have the right to require that employees immediately report claims and to thoroughly investigate those claims. So just how does an employer spot questionable claims? Ask the following questions:
  - Was the incident/injury reported in a timely manner?
  - Did the claimant follow company rules/policies in reporting the incident?
  - Does this claimant have other claims?
  - Was there a delay in seeking medical treatment?
  - What time did the incident/injury occur?
  - What day did the incident/injury occur?
  - Are there witnesses to the incident/injury?
  - Are there inconsistent records or statements regarding the incident/injury?
  - Does the mechanism of injury make sense to you?
  - Is the mechanism of injury likely to result in the alleged condition?

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- Where did the injury occur? [onsite or off site?]
  - Was the claimant injured while commuting to or from a fixed work site?
  - Was horseplay or fighting involved?
  - Was alcohol or drugs involved?
  - Does the claimant have pre-existing conditions?
2. Employers have the right to challenge: 1) initial claim allowances; 2) continued compensation; and 3) treatment. First and foremost, employers should not certify claims unless they are absolutely certain that the injury occurred and is compensable and, even then, employers should only certify claims for specific conditions. Often, employers do not have enough information to certify a claim. Employers should not be intimidated by employees, unions, attorneys or the BWC. Employers have a right and a responsibility to insist that the claimant prove that the injury occurred in the course of and arising out of employment.
  3. Employers have the right to obtain all medical evidence necessary to evaluate the claim. An employer does not interfere with the “physician/patient privilege” by obtaining the records of the treating doctor. The employee waives that privilege by filing a workers’ compensation claim. Also, under ORC 4123.651(B) the claimant must promptly provide a current signed release of the information, records and reports when requested by the employer or the claim may be suspended. The coordination of workers’ compensation issues with other state (i.e. state disability discrimination statutes) and federal laws (such as ADA and FMLA) should be discussed with an experienced labor and employment attorney.
  4. Employers have the right to have the claimant examined by a physician of its own choosing (even if the BWC also has obtained an examination). The employer usually is limited to one employer exam on “any issue” asserted by a claimant. To get the maximum benefit from an employer exam, employers must ask the appropriate questions about the appropriate issues (and the appropriate body parts), and not ask irrelevant or inconsistent questions that may lead to confusion or reduce the credibility of the medical opinion.
  5. Employers have the right to continue to enforce rules governing employee workplace conduct such as call-in procedures, medical documentation procedures, company doctor check-ups (i.e. every 30 days if in transitional duty program), maximum leave provisions and disciplinary rules. Obviously, an employer cannot discharge an employee because a claim was filed. Also, employees still may be eligible for post-discharge benefits such as temporary total disability compensation.
  6. Employers have the right to terminate temporary total disability by: 1) obtaining a medical opinion that the claimant has reached maximum medical improvement (a treatment plateau at which no fundamental functional or physiological change can be expected in spite of continued medical or rehabilitative procedures); 2) showing that the claimant is engaging in activities inconsistent with temporary total disability (i.e. the claimant is able to perform previous job duties; 3) offering the claimant work within his or her restrictions in writing with the duties specifically described; or 4) receiving a release permitting the claimant to return to his or her former position of employment.
  7. Employers have the right to (and should) implement drug-free workplace programs which include post-accident and random drug and alcohol testing. Employers also have the right to use a positive test after “for cause” testing to deny a claim by arguing that there is a statutory rebuttable presumption that drug or alcohol intoxication caused the injury. The rebuttable presumption requires: 1) a positive drug or alcohol test (or refusal to submit), conducted within an appropriate time frame (8 hours if alcohol, 32 hours if drugs); 2) a notice posted next to the workers’ compensation certificate that a drug test will take place and rights to benefits may

be effected by a positive test; 3) documented reasonable cause or testing ordered by the police or a physician. Even if the claim is allowed, employers may still argue that temporary total disability compensation should be denied. (For more information regarding this legal issue, please refer to “Keeping Employees Safe: Drug and Alcohol Testing in the Workplace” in *LawTrends*, November 2009, Workers’ Compensation Special Issue.)

8. State-fund employers have the right to aggressively seek handicap reimbursements, a program designed to encourage employers to hire and retain employees with specific “handicaps.” Handicap reimbursements reduce the amount of the indemnity charged to the employer by the percentage the handicap contributed to the cause of the injury or the delay in recovery.
9. Employers have the right to reject BWC proposed settlements that increase employer premiums and proactively pursue settlements that dramatically reduce premiums. Employers should consult with experienced workers’ compensation counsel to determine the financial and legal benefits/pitfalls to settling a particular claim.
10. Employers have the right to appeal allowance issues into common pleas court and appeal extent-of-disability issues in a mandamus action. Employers should consult with experienced workers’ compensation counsel in deciding if court action is appropriate.

Appropriate challenges to initial claim allowances and effectively managing claims will significantly reduce claim costs and increase worker productivity.



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