



Coolidge Meets Bickers

by James B. Yates and Nicole A. Flynn

In a decision certain to spark outrage among Ohio's labor community and relief among Ohio employers, the Ohio Supreme Court recently brought an end to the judicial debate over the interpretation of its 2003 decision, *Coolidge vs. Riverdale Local School District*.

In *Coolidge*, a public school teacher was discharged by her school district after an extended absence from work while receiving temporary total disability compensation due to injuries sustained in a work-related event. The Ohio Supreme Court, in 2003, ruled that penalizing the teacher for her absence from work while on temporary total disability benefits was unlawful.

Expansive interpretations of the *Coolidge* decision over the last four years by courts, some attorneys, third-party administrators and the labor community have, in many situations, paralyzed employers. Frequently, employees who were absent and receiving temporary total disability compensation with no reasonable expectation of a return to work were "carried" and their jobs preserved out of fear of litigation and/or liability. Similarly, employees with work-related disabilities who refused modified duty were allowed to continue employment indefinitely based upon the work-related nature of the disability.

In *Bickers vs. Western & Southern Life Insurance Company*, the Ohio Supreme Court announced that any expansive interpretation of *Coolidge* was incorrect. In fact, the Court specifically ruled:

- *Coolidge* stands for the proposition that terminating a public school teacher for absences due to a work-related injury while the teacher is receiving workers' compensation benefits is a termination without "good and just cause" under laws that protect public school teachers.

Locations

Toledo Office

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032
Telephone: 419-241-6000
Fax: 419-247-1777

Columbus Office

100 E. Broad Street Ste. 600
Columbus, Ohio 43215
Telephone: 614-280-1770
Fax: 614-280-1777

Findlay Office

725 S. Main Street
Findlay, Ohio 45840
Telephone: 419-424-5847
Fax: 419-424-9860

Novi Office

28175 Haggerty Rd
Novi, Michigan 48377
Telephone: 248-994-7757
Fax: 248-994-7758

Web Site

www.eastmansmith.com

- *Coolidge* does not create a cause of action for an at-will employee who is terminated for non-retaliatory reasons while receiving workers' compensation.
- An at-will employee who is terminated from employment while receiving workers' compensation has no common-law cause of action for wrongful discharge in violation of public policy.

In other words, employees with workers' compensation claims who are absent and receiving temporary total disability compensation may be terminated from employment in appropriate circumstances. Such circumstances might include:

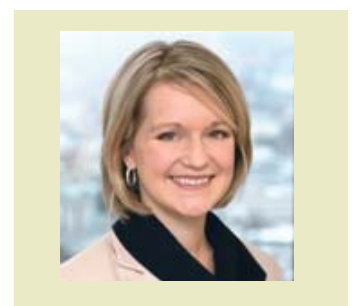
- an application of a non-discriminatory limitation on the length of leaves of absence (a "wooden" termination policy).
- an absence that is indefinite in length with no reasonable expectation of a return to work in the foreseeable future.
- a refusal by an allegedly disabled employee to return to modified duty.

Bottom line: employees cannot be discriminated against or retaliated against for having filed or pursued a workers' compensation claim. Similarly, all eligible employees enjoy protections afforded by the Family and Medical Leave Act, the Americans with Disabilities Act and other similar laws. Employees on workers' compensation leave, however, do not enjoy protections greater than those enjoyed by other employees.

The Ohio Supreme Court's clarification of *Coolidge* is a victory for reason and practicality. But while the Court has answered the question of what it intended by *Coolidge*, the battle may have just begun. Watch for the decision to spur cries for legislative action to amend Ohio's law on retaliatory discharges. While the battle in the Ohio Supreme Court has been won, the battle in the legislature may just be beginning.



For more information on how these cases may affect you, Mr. Yates and Ms. Flynn may be reached at our Toledo office (419-241-6000). Mr. Yates is a member of the Firm while Ms. Flynn is an associate. Both are part of the Labor and Employment Practice Group.



Disclaimer

The articles in this newsletter have been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.