

Law Trends

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Ohio Workers' Compensation Reform

By James B. Yates and Sarah E. Pawlicki

In March 2006, significant Ohio workers' compensation reform legislation was passed by the General Assembly and signed by Governor Taft. Portions of the new law went into effect on June 30, 2006. However, the changes most beneficial to Ohio employers have been blocked by several petitions filed on June 29. The Secretary of State's office has until September 8, 2006, to determine if there are enough valid signatures on the petitions to place the challenged provisions on the ballot. If the challenging groups obtained enough valid signatures, the challenged provisions will be placed on the November ballot for approval by Ohio voters. Those portions of the law that are the subject of the challenge have been stayed. However, the petitions did not challenge the entire law. The following changes were not stayed and became law on June 30, 2006. Senate Bill 7:

- allows employers to pay the first \$5,000 of a medical only claim (formerly \$1,000).
- shortens the waiting period from 40 weeks to 26 weeks for filing permanent partial disability applications.
- permits the Bureau of Workers' Compensation to require electronic funds transfer for payment of all benefits.
- increases penalties imposed on employers who do not pay premiums or assessments on time.
- provides procedures to pay claimants' attorneys before child support is deducted from a lump sum settlement.
- increases Ohio's state minimum wage to the same rate as the federal minimum wage.
- increases penalties for fraud by medical providers and employers.

On the other hand, the following significant changes to Ohio workers' compensation law have been stayed.

"Substantial Aggravation"

Under current Ohio law, claimants are often permitted to recover workers' compensation benefits for pre-existing conditions based upon the mere assertion that their conditions became symptomatic while at work. Furthermore, claimants may be rewarded for these "symptomatic aggravations" with ongoing compensation and medical bills long after the aggravation resolves. The new legislation requires claimants to provide "objective medical evidence" establishing a "substantial aggravation" of pre-existing conditions. This objective medical evidence could take the form of diagnostic tests (i.e. MRIs or x-rays) before and after the alleged aggravation to demonstrate that a condition worsened. The new law also requires that compensation and benefits cease after the aggravated condition returns to its pre-existing state. That is, compensation and benefits should only be paid for the duration of the aggravation, not the duration of the pre-existing condition.

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Main Office:

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

Columbus Office:

100 East Broad St., Ste. 1300
Columbus, Ohio 43215
Telephone: 614-280-1770
Fax: 614-280-1777

Findlay Office:

725 South Main St.
Findlay, Ohio 45840
Telephone: 419-424-5847
Fax: 419-424-9860

Web Site:

www.eastmansmith.com

Statutory Elimination of Bailey Claims

In 2001, an Ohio Supreme Court decision held that an employee's psychiatric condition is compensable under Ohio's workers' compensation law without any physical injury to the employee when an underlying physical injury is suffered by a bystander. This decision changed long-standing law that held compensation for psychiatric conditions was only allowed if the claimant (not bystanders) suffered a compensable physical injury. Some members of the Ohio Supreme Court recently questioned this decision. The new legislation specifically overturns the *Bailey* decision and permits compensation for psychiatric conditions only when the claimant suffers a compensable physical injury.

Closure of Inactive Claims

Currently, medical only claims remain "open" for six years and lost time claims remain open for up to ten years after the last payment of compensation or medical bills. The new legislation reduces the life of all claims to five years from the date of the last payment of compensation or medical bills. This closure of inactive claims provides much-needed relief for self-insured employers whose employees with very old claims suddenly request treatment, an additional allowance or temporary total disability compensation many years after the last payment was made in the claim.

"Rule 41(A)" Dismissals

A claimant or an employer may file an appeal from some Industrial Commission decisions to the local court of common pleas. Regardless of which party appeals, the claimant always bears the burden to prove that the injury and resulting conditions occurred and must file a complaint to begin this evidentiary process. Thus, even if an employer appeals a claim into court, the claimant thereafter prepares and files a complaint. Ohio law currently permits a claimant to dismiss an employer appeal and recommence the case within one year. Unfortunately, during that intervening one year, compensation and benefits continue to be paid to the claimant by the Bureau or by self-insured employers. The new law does not permit a claimant to dismiss an employer's court appeal without consent of the employer or order of the court.

Permanent Total Disability

A claimant is permanently and totally disabled if he or she is unable to engage in "sustained remunerative employment" due to the allowed conditions in a claim. Even when medical information confirms a claimant's ability to perform some type of remunerative employment, the Industrial Commission frequently cites other factors to justify an award of permanent and total disability. The new law restricts the Industrial Commission's discretion and should make awards of permanent and total disability more difficult to obtain. Specifically, the new law requires a hearing officer to deny permanent and total disability compensation when the reasons the employee cannot work include:

1. impairments unrelated to the allowed condition,
2. age or aging,
3. retirement or abandonment of the workforce for reasons unrelated to the compensable injury and/or
4. failure to attempt to enhance his or her employability.

Further, the new law instructs hearing officers to consider not only employment skills that an employee *has*, but also those skills which a claimant "may reasonably be expected to develop." The new law also overturns a controversial 2002 Ohio Supreme Court decision holding that a loss of one arm constitutes a loss of the arm *and* the hand which automatically qualifies a claimant for permanent total disability compensation. The new law establishes that the loss of a limb does not equate to the loss of two body parts.

Wage Loss Compensation

Ohio workers' compensation law allows employees to receive "non-working wage loss compensation" for 200 weeks (four years.) The new law, among many changes to the wage loss award section, reduces the maximum eligibility for non-working wage loss compensation from 200 weeks to 52 weeks.

Stay tuned for the results of the Secretary of State's verification of the petition signatures and the potential for a heated issue on the statewide ballot in November.

James B. Yates, a member of the Firm, and associate Sarah E. Pawlicki are practicing lawyers in the Employment Section.

