OVERVIEW OF OHIO WORKERS’ COMPENSATION
AND RELATED AREAS OF LAW
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OHIO WORKERS’ COMPENSATION LAW

Arises out of 1913 Compulsory Compensation Law

   a) O.R.C. 4123.01 et seq.
   b) Strictly a statutory creation
   c) Ohio Supreme Court has interpreted specific statutes through the years

In Exchange for the Workers’ Compensation System

   a) Injured worker fault/negligence is not an issue
   b) Employers are immune to negligence actions
   c) Co-Employee Immunity
   d) Eliminates:
      Assumption of Risk
      Contributory Negligence
   e) Exceptions:
      Non Complying Employers
      Intentional Torts
      Violations of Specific Safety Requirements

Hazards of Non-Compliance

   Loss of immunity
   Lower standard of proof

Who Are The Players?

   The Ohio Bureau of Workers’ Compensation - performs the administrative duties for workers’ compensation claims.

   The Industrial Commission of Ohio - performs adjudicatory functions (hearings) for disputed issues.

   The Ohio Attorney General Office - represents the Ohio Bureau of Workers’ Compensation in all court matters.

An injured worker cannot waive their rights under workers’ compensation.

   Exceptions:

       a) Recreational activities
       b) Interstate claims
Workers’ compensation coverage is mandatory for all employees in the State of Ohio.

Hazards of Non-Compliance

Employee R.C.4123.01 means “Every person in the service of the state, or any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments…whether paid or volunteers and wherever serving within the state or on temporary assignment outside thereof.”

…Every person in the service of any person, firm, or private corporation, including any public service corporation, which employs one or more persons.

Contract of Hire:
- Written
- Oral
- Express
- Implied

Employees Can Be:
- Paid in cash or in a check – temporary workers/part-time/seasonal
- Minors
- Illegal aliens
- Domestic workers
- Police, fire, EMS, teachers
- Ohio National Guard (active duty)
- Volunteers
- Farmers
- Work release prisoners
- Truck drivers, sales people, etc., (involved in interstate commerce)
- Construction, Industrial workers
- Circus employees
- Others

*Person does not need to be on the clock

*Being careless or a negligent employee is no bar to a claim – faultless system

Exceptions:
- Deviation
- Self-inflicted injuries/Intentional injuries
- Horseplay/Fighting
- Voluntary Intoxication/Drugs
- Others
Who Is Not Covered by Ohio Workers’ Compensation

a) Federal employees (postal workers, etc.)
b) Independent contractors
c) Workers’ covered in other states
d) Longshoremen
e) Non-Complying employers

Employers

Who Are They?

a) You
b) Me
c) Corporations
d) Non-Incorporated Entities
e) State, county, city, townships
f) Factories, workshops, construction
g) Residential employers ***

Injuries R.C.4123.01(c)

Injuries include any injury, whether caused by external accidental means or accidental in character and result, received in the course of and arising out of, the injured workers employment.

a) Physical
b) Psychological
c) Rape
d) Exposure to blood borne illnesses
e) Others

Injuries Can Be:

a) Acute
b) From repetitive trauma (e.g., C.T.S.)
c) Occur over a matter of minutes, hours or days (e.g., tendinitis)

Theories of Causation

a) Direct Causation
b) Aggravation/Substantial Aggravation (October 11, 2006)
c) Flow-Through
d) Non-Flow-Through
“Scope of Employment”
- Time and course of “employment related” activities

“Arising Out of Employment”
- Connection between employment and injury

Zone of Employment
- Not necessarily geographical boundaries of business

Location of Injury Occurrence

Fixed, Semi-Fixed, Non-Fixed Situs, (e.g.’s factory worker, construction workers, over the road truck drivers)

Going and Coming rule

Employer’s Premises (bathrooms, cafeterias, stairwells)

Areas under the control of employer (sidewalks, parking lots)

Other considerations: Seminars, Social or Recreational Activities sponsored by the employer, Business trips

**Occupational Diseases**

**27 Scheduled/Non-Scheduled**

A disease contracted in the course of employment which by its causes and characteristics of its manifestations or the condition of employment results in a hazard which distinguishes the employment in character from employment generally (greater risk of contracting a disease and in a different manner from public in general)

e.g. Asbestosis
    Black Lung
    Carpal Tunnel
    Mental Stress
    Silicosis
    Radiation Illness
    Cardiovascular & Pulmonary diseases contracted by firefighters and police from exposure to smoke, toxic fumes, chemical fumes and toxic vapors.
Who Is Responsible For An Occupational Disease?

Last injurious exposure = proximate cause

*Strategies For Dealing with Occupational Disease*

Types of Benefits Available In A Worker’s Compensation Claim

- Medical Expenses
- Temporary Total Compensation/Salary Continuation
- Permanent Partial Disability Award
- Scheduled Losses (Loss of Use/Amputation/Ankylosis)
- Wage Loss/Living Maintenance Wage Loss
- Living Maintenance
- Permanent Total Disability
- Facial Disfigurement
- Lump Sum Settlements
- Death Benefits (Spousal, Children)
- Others (Burial expenses, etc…)

Who Can Initiate A Workers’ Compensation Claim?

- Injured worker
- Employer
- Hospital
- MCO
- Bureau of Workers’ Compensation
- Others

How Can A Workers’ Compensation Claim Be Filed?

- Electronic
- Written
- Oral (phone call)

Length Of Time to File A Claim?

- Two years from the date of injury

Life Expectancy of A Workers’ Compensation Claim

Medical Only Claims:

Prior to 10/12/06 – 6 years from last payment of medical
After 10/11/06 – 5 years from last payment of medical
Indemnity/Lost Time Claim:

Prior to 10/12/06 – 10 years from last payment of indemnity or a medical bill
After 10/11/06 - 5 years from last payment of indemnity or a medical bill

Judicial Remedies

Only “Right To Participate” issues may be appealed into the Court of Common Pleas pursuant to R.C. 4123.512

All other Actions/Causes/Issues:

“Extent of Disability” must be pursued through Mandamus in the 10th District C.O.A. (Columbus).

Other Considerations

a) Liberal Construction of Statutes – R.C.4123.95

b) Bankruptcy of Employer/Employee

- No automatic stay for administrative or court issues

c) Child Support

- Non Support
- Collection
- Jail

d) Wrongful Termination – R.C. 4123.90

- 90/180 day SOL’s
- No public policy action (Collidge)

e) Intentional Tort Actions

- Recognition
- Two year SOL
- Extremely High Standard (Substantial Certainty)
f) Violations of Specific Safety Requirements

- Two years SOL
- Recognition
- O.A.C. Controls
- OSHA violations may help
- Investigation by Bureau (inspection)
- Investigation by OSHA (inspection)
- Timing
- Statements
- Photographs
- Findings/Violations/Reports

g) Personal Injury/Third Party Liability

- Auto Accident
- Premises Liability
- Any Third Party Action

h) Subrogation

- R.C.4123
- Contemplates both past and future claim expenses/indemnity

i) Social Security/Medicare

- Medicare Secondary Payer Act
- SSD/SSI
- Effect on Settlements
- Offset of Compensation

j) Incarceration

- Prison/Jail
- Probation/Work Release
- Filing a claim
- Receipt of Compensation
- Settlement of Claim
Resources

Call me (don’t hesitate)

Ohio Association for Justice/List serve

C.B.A.

R.C. 4123.01 et seq.,