

10:00 a.m. (EST)
1-866-362-9768
552-970-8972#



Safety & Workers' Compensation Committee

Wednesday, March 1, 2017

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**2017 Safety & Workers'
Compensation Committee
Calendar**

Meetings begin at 10:00 a.m.

Wednesday, March 1, 2017
Tuesday, June 27, 2017
Wednesday, November 8, 2017

**OMA Safety & Workers' Compensation Committee
Meeting Sponsor:**





OMA Safety & Workers' Compensation Committee

March 1, 2017

AGENDA

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc.
BWC Update	Brian Jackson, OMA staff
OSHA Ohio Update	Heather Tibbitts, Safex
Guest Speakers	Amanda Wood, Director of Labor and Employment Policy, National Association of Manufacturers Tim Bainbridge, Chairman, Ohio Industrial Commission
OMA Counsel's Report	Sue Wetzel, Bricker & Eckler LLP
OMA Public Policy Report	Rob Brundrett, OMA Staff

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: dlocke@ohiomfg.com or (614) 224-5111 or toll free at (800) 662-4463.

Additional committee meetings or teleconferences, if needed, will be scheduled at the call of the Chair.

Thanks to Today's Meeting Sponsor:



Amanda Wood BIO

Amanda currently serves as the Director of Labor and Employment Policy for the National Association of Manufacturers where she is responsible for a number of high-priority policy issues for the NAM including union organizing legislation, occupational safety, employee leave, civil rights and other key employment and labor-related initiatives that impact manufacturing competitiveness and job-creation. From 2006 to 2011, Amanda served on the Senate Homeland Security and Governmental Affairs Committee for Ranking Member, the Honorable Susan M. Collins (R-ME), where she was the Deputy General Counsel for the Committee, and previously the Director of Governmental Affairs. From 2001 to 2006, Amanda was an Assistant General Counsel for the Real Property Division of the U.S. General Services Administration (GSA) at the GSA headquarters office in Washington, D.C.

Amanda is a 2001 graduate of the University Of Maine School Of Law and is licensed to practice law in the State of Maine and the Commonwealth of Massachusetts. She graduated from the University of New Hampshire, *cum laude*, in 1997 where she earned a Bachelor of Arts degree in political science, with a minor in justice studies.



**Thomas H. Bainbridge, Chairman
Employee Member
Dates of Service: July 2013 - June 2019**

Thomas (Tim) Bainbridge brings over four decades of workers' compensation experience to his role as Chairman of the Industrial Commission of Ohio. As an attorney, Tim has spent a tremendous amount of time protecting the rights of Ohio's workers through his involvement with numerous organizations, which are dedicated to improving Ohio's workers' compensation system.

Tim displayed his knowledge and expertise as the Chairman of the Columbus Bar Association Workers' Compensation Committee, and served as the Chairman of the Workers' Compensation Section of the Ohio Association for Justice. He also served as President of the Ohio Association for Justice.

Later, he served Ohio's injured workers and employers as the Commissioner for the Bureau of Workers' Compensation Oversight Commission from 1995 to 2006. In addition, he has served on the Unemployment Compensation Review Commission and as a Commissioner on the Court of Claims.

Tim's passion for workers' compensation has been evident throughout his career. Before arriving at the IC, Tim served as an attorney and managing partner at Ward, Kaps, Bainbridge, Maurer & Melvin from 1970 until 2009. He later served as a partner at the Bainbridge Firm from 2009 until 2013.

Tim is a member of the Ohio State Bar Association, Columbus Bar Association, Ohio Association for Justice and the American Association for Justice.

Originally from Steubenville, Ohio, Tim earned his bachelor's degree from Washington & Jefferson College in Washington, Pennsylvania, and then received his law degree from The Ohio State University.

Tim was admitted to the Ohio Bar in 1967 and has also been admitted to practice before the US District Court in the Southern District of Ohio.

He resides in Columbus. He and his late wife, Deidre, have three grown sons who also reside in Columbus.

❖ What's New?

Recordkeeping Update:

OSHA's Whistleblower Protection Program issued a Recommended Practices for Anti-Retaliation Program to help employers create workplaces in which workers feel comfortable voicing safety and other concerns without fear of retaliation. The recommendations, which are advisory only and create no new legal obligations, are intended to apply to all public and private sector employers covered by the 22 whistleblower protection laws that OSHA enforces.



Here's a link to the program:

- <https://www.osha.gov/Publications/OSHA3905.pdf>

The **OSHA Job Safety and Health: It's the Law** poster, available for free from OSHA, informs workers of their rights under the Occupational Safety and Health Act. All covered employers are required to display the poster in their workplace. A new version is available. **Employers do not need to replace previous versions of the poster.** Employers must display the poster in a conspicuous place where workers can see it.

- <https://www.osha.gov/Publications/poster.html>

Recordkeeping Reminders!

OSHA 300A Summaries should be posted from February 1 – April 30.

Establishments with 250 or more and establishments with 20-249 employees in certain high-risk industries must submit the 300A by July 1, 2017. The Injury Tracing Application Website is not yet live. It was scheduled for February, 2017, but was not as of February 23, 2017. There are 3 methods to submit information:

- ▶ Option 1: Manually enter data into a webform.
- ▶ Option 2: Upload a CSV file to process single or multiple establishments at the same time.
- ▶ Option 3: Transmit data electronically via an API (application programming interface)

Here is a link to the site with additional information and instructions:

- <https://www.osha.gov/injuryreporting/index.html>

According to ISHN, a resolution was introduced by Rep. Bradley Byrne (R-Ala.) to use the Congressional Review Act (CRA) to eliminate the rule requiring employers to electronically submit injury and illness data.

Beryllium

An OSHA rule issued Jan. 6 dramatically lowers workplace exposure to beryllium. The new standards, which apply to general industry, construction, and shipyards, will lower the eight-hour permissible exposure limit to beryllium from 2.0 to 0.2 $\mu\text{g}/\text{m}^3$. Above that level, employers must take steps to reduce the airborne concentration of beryllium. The rule requires additional protections, including personal protective equipment, medical exams, other medical surveillance and training, as well. It also establishes a short-term exposure limit of 2.0 $\mu\text{g}/\text{m}^3$ over a 15-minute sampling period. The rule becomes effective on March 10, 2017, after which employers have one year to implement most provisions.

Columbus Area Director

Columbus has a new Area Director, Larry Johnson. His philosophy is that the Columbus area OSHA will partner with their stakeholders, focus on corrective measures and increase health hazard assessments.



Dianne Grote Adams:
 "When I was working part-time, I was paid hourly, but there was no professional development, vacation or other benefits - so we provide all of that."

HOW I ...

MADDIE MCGARVEY

Made balance priority for my workers

BEING ABLE TO DO MEANINGFUL, WELL-PAYING WORK PART-TIME REMAINS RARE

BY LIN RICE



When Dianne Grote Adams founded Safex Inc. in 1992, she did so with two goals in mind - to fill a need she saw in the market for industrial hygiene and safety services and to create a work space where personal and professional goals could be reached without sacrificing one for the other. In its 15.5 years in business, Safex has been recognized for success on both fronts.

Based in Westerville, Safex provides training for clients who must keep their employees compliant with industry regulations. Presenting that information isn't enough to improve safety, Grote Adams said - it takes a little creativity for students to retain the knowledge.

"For many people, they look at the training as something they have to do, so they don't start with the right mindset," she said. "It's our job to make sure that training is exciting, engaging, and that they understand how it impacts them."

Maintaining a competitive business that could promote work-life balance for employees took time and trial-and-error. Grote Adams recently spoke with *Columbus Business First* about that experience.

You said you saw a gap in the market between quality and affordable safety services in the early 1990s. What were you seeing? In Central Ohio, we had government services available or what we do in the environmental

IN DETAIL

SAFEX INC.

Industry: Health and safety consultants

President: Dianne Grote Adams

Address: 140 N. Otterbein Ave., Westerville

Founded: 1992

Employees: 20

Reach: Ohio and national clients

Annual sales: \$2.2 million to \$2.4 million

health and safety world through the Occupational Safety and Health Administration and the Ohio Bureau of Workers' Compensation that dominated the market, and I'm not sure anyone else recognized that they could compete with them, other than the really big players. But those players didn't have enough health and safety work to dedicate a department to it, so there were a lot of layers of review and management in the big firms that decreased their ability to keep costs down. We have a very flat organization with a small team, so even though we have peer review on everything that goes out, we don't have those multiple layers of review that inflate cost.

Why was offering a work-life balance to employees important to you? I had been working with a young family and wanted to stay in my profession, but I couldn't find opportunities to do that

without working full-time with lots of travel. It's better now than 25 years ago, but at the time, you dedicated yourself full-time and figured out the family life or took something part-time that wasn't challenging and wouldn't pay relative to what you were making before. I wanted to create that opportunity.

How do you achieve that? We have people who work part-time for us, both men and women, either those early in their careers starting a family or those later in their careers who want to cut back, but we don't want to lose their knowledge. Also, when I was working part-time, I was paid hourly, but there was no professional development, vacation or other benefits - so we provide all of that.

What challenges did that present? The biggest challenge initially was when we started bringing on less-than-full-time people, some of the full-time employees felt they were being taken advantage of - having to answer the phone when the other person's client called, etc. So we made adjustments. Now there is always someone else who knows a part-timer's clients so when the client calls there's always a backup, which has helped minimize some of that friction. The other thing we did for the full-timers was create a work schedule with two three-day weekends a month by working nine-hour days to bring some of that work-life balance to full-timers.

Has your industry changed significantly in the past 25 years? There's certainly more competition now. And while training has always been an important piece of what we do, it's definitely a smaller portion of our revenue now, maybe 20 percent to 25 percent. Consulting is definitely the majority of our business now. When we first started, hazardous waste remediation projects were big - there were a lot of cleanups, brownfield activities, and that was the majority of our training. But as that decreased, we had to find other sources of training revenue. Moving to our current location was part of that, where we can offer very hands-on, activity-based training.

What are some of your goals for the future? One of the things we've recently started working on is technology products, so supporting our work with web-based products. Like everyone else, we need to take advantage of technology, but that's a very small portion of our business right now, and I'd like to see that become a regular part of any support we offer a customer, web-based tools to allow them to do their job more efficiently. There are products out there now that the big companies use, but they are fairly expensive. So again trying to work with the small to mid-sized market, making sure there are products they can use and afford.

Lin Rice is a freelance writer.

Ohio | Industrial Commission ANNUAL REPORT FY 2016





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LETTER FROM THE CHAIRMAN



It is my pleasure to present the Ohio Industrial Commission's Annual Report for Fiscal Year (FY) 2016.

The Ohio Industrial Commission (IC) continues to be at the forefront of enhancing a customer-centered approach to public service, while lessening the financial burden of those who pay into Ohio's workers' compensation system.

Over the past fiscal year, our agency has worked tirelessly to improve the efficiency of the claims process while staying true to our bottom line. In FY 2016, the IC continued to develop new technologies to benefit the customer experience, and worked to give our office locations a modernized feel. We are constantly reviewing and improving rules and procedures to make navigating the workers' compensation appeals process less daunting. Because of these successes, the IC continues to provide impartial and expedient hearings to Ohio's injured workers and employers.

A few of our fiscal year highlights:

- Budget stability continued as one of the agency's central goals as expenditures for the FY 2016 budget totaled \$45.5MM — marking the fourth year in a row that expenses have remained within a narrow range between \$45MM and \$46MM.
- Maintained a consistent Administrative Cost Fund rate environment whereby assessed rates remained unchanged for all risk groups.
- Achieved a new benchmark high by directing 47.3 percent of eligible agency expenditures toward certified Minority Business Enterprise (MBE) businesses.
- Implemented changes to allow medical providers to send and receive medical exam reports through our secure website.
- Enhanced the digital signage in the hearing room lobbies in all offices by redesigning the signage to have three times more information than the previous digital signage.
- Improved the hearing calendar on ICON with an ICS tool, which can be used by representatives to add scheduled hearings to their personal calendars on smartphones or desktops via the mobile or the full site.
- Renovated the Cambridge and Logan district offices.
- Installed new hearing room signs and document holders in 10 satellite offices to improve customer traffic outside the hearing rooms.
- Installed new logos and signage inside offices in Columbus, Cleveland, Cincinnati, Logan, Cambridge, Youngstown and Akron.
- Consolidated the hearing rooms and customer service areas into one location in Columbus and renovated the medical examination rooms.
- Reviewed and revised the entire *Hearing Officer Manual* and changed the title to *Adjudications before the Ohio Industrial Commission* in order to more appropriately include IC commissioners and hearing administrators.

These accomplishments affirm our commitment to providing our customers with top-notch service without sacrificing fiscal responsibility to do so. I am proud to lead an agency that values these important goals.

We look forward to providing the first-rate service our customers have come to expect. While we continue to pursue new technological advances and diligently work to make our processes less complex, injured workers and employers can rest assured that they will continue to receive a quick and fair resolution to their claim. The IC will continue to be a model of efficient, responsive and resourceful public service.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas H. Bainbridge', written over a light blue circular graphic element.

Thomas H. Bainbridge, Chairman
Ohio Industrial Commission



The IC conducts more than 127,000 hearings each fiscal year, and most of these hearings take place within 45 days of the original claim appeal. That means you may expect first-class customer service as the IC provides a forum for appealing BWC and self-insured employer decisions. Since 1912, the IC has resolved issues between parties who have a dispute in a workers' compensation claim. With each claim, the agency is dedicated to offering information and resources to help customers navigate through the appeals process.

The IC conducts hearings on disputed claims at three levels: the District level, the Staff level, and the Commission level. The Governor appoints the three-member Commission, and the Ohio Senate confirms these appointments. By previous vocation, employment or affiliation, one member must represent employees, one must represent employers and one must represent the public.

During this fiscal year, Chairman Thomas H. Bainbridge represented the employees; Jodie M. Taylor represented employers; and Karen L. Gillmor represented the public.

COMMISSIONERS



**Thomas H. Bainbridge, Chairman
Employee Member
Dates of Service: July 2013 - June 2019**

Thomas (Tim) Bainbridge brings over four decades of workers' compensation experience to his role as Chairman of the Ohio Industrial Commission.

As an attorney, Tim has spent a tremendous amount of time protecting the rights of Ohio's workers through his involvement with numerous organizations, which are dedicated to improving Ohio's workers' compensation system.

Tim displayed his knowledge and expertise as the Chairman of the Columbus Bar Association Workers' Compensation Committee, and served as the Chairman of the Workers' Compensation Section of the Ohio Association for Justice. He also served as President of the Ohio Association for Justice.

Later, he served Ohio's injured workers and employers as the Commissioner for the Bureau of Workers' Compensation Oversight Commission from 1995 to 2006. In addition, he has served on the Unemployment Compensation Review Commission and as a Commissioner on the Court of Claims.

Tim's passion for workers' compensation has been evident throughout his career. Before arriving at the IC, Tim served as an attorney and managing partner at Ward, Kaps, Bainbridge, Maurer & Melvin from 1970 until 2009. He later served as a partner at the Bainbridge Firm from 2009 until 2013.

Tim is a member of the Ohio State Bar Association, Columbus Bar Association, Ohio Association for Justice and the American Association for Justice.

Originally from Steubenville, Ohio, Tim earned his bachelor's degree from Washington & Jefferson College in Washington, Pennsylvania, and then received his law degree from The Ohio State University.

Tim was admitted to the Ohio Bar in 1967 and has also been admitted to practice before the US District Court in the Southern District of Ohio.

He resides in Columbus. He and his late wife, Deidre, have three grown sons who also reside in Columbus.



**Jodie M. Taylor
Employer Member
Dates of Service: July 2015 - June 2021**

Jodie Taylor brings years of workers' compensation experience to her role as Commissioner of the Ohio Industrial Commission.

In July 2009, Jodie was appointed as the employer member of the Commission. On January 14, 2011, Governor John Kasich appointed Commissioner Taylor as Chairperson of the Commission. Jodie served in this capacity until July 2011.

On February 13, 2013, Governor Kasich again appointed Jodie as Chairperson of the Commission. Jodie served

in this position until July 2013. In June 2015, Governor Kasich reappointed Jodie to a second term which will end in June 2021.

Her first day on the job was a homecoming for Jodie. From 1997 to 2000, Jodie served as an assistant to an IC Commissioner. In this role, she performed legal and legislative research, assisted during hearings, and gained an extensive understanding of the agency. After leaving the Commission, Jodie served as an attorney for two Columbus law firms, where she represented state-fund and self-insured employers at all levels of IC hearings and in court actions throughout Ohio. She is also a frequent lecturer on workers' compensation issues with extensive legal knowledge in both the private and public sectors.

Jodie earned her bachelor's degree in diplomacy and foreign affairs from Miami University in 1991. While at Miami, Jodie studied overseas in Luxembourg. In 1995, she received her law degree from the University of Akron School of Law. She is an Ohio State Bar Association member and is a board-certified specialist in workers' compensation.

Jodie lives in Dublin with her husband, Michael. In October 2009, they welcomed twins, a boy and a girl, Evan and Elizabeth.



Karen L. Gillmor, Ph.D.

Public Member

Dates of Service: July 2011 - June 2017

With over three decades of dedicated public service, Karen brings a tremendous knowledge of workers' compensation issues to the Ohio Industrial Commission.

A native of Ohio, she earned her diploma from Rocky River High School before earning a bachelor's degree with honors from Michigan State University and a master's degree and Ph.D. from The Ohio State University.

Her career shows a passionate interest in the fields of health care, labor relations and workers' compensation. From 1983 to 1986, Karen served as Chief of Management Planning and Research at the Ohio Industrial Commission. In this position, she authored a study of self-insurance, which was incorporated into Ohio's omnibus workers' compensation reform law. She also served as the employee representative to the Ohio Industrial Commission's Regional Board of Review and the Ohio Bureau of Workers' Compensation Oversight Commission.

Before coming to the IC, Karen was elected to Ohio's 26th Senate District seat in 1992, 1996 and 2008. She chaired the Senate Insurance, Commerce and Labor Committee, was a member of the Unemployment Compensation Advisory Committee, and the Labor-Management-Government Committee. She served as vice chairman of the State Employment Relations Board from 1997 to 2007, and was a consultant to the United States Secretary of Labor.

Nationally, Karen served on the Health Committee of the American Legislative Exchange Council, as well as on the Health and Human Services Committee of the Council of State Governments' Midwestern Region.

Karen was married to United States Congressman Paul Gillmor, who tragically passed away in 2007. They have five children, Linda, Julie, Paul Michael and twins Connor and Adam.

FISCAL YEAR HIGHLIGHTS

In addition to the Commissioners, there are 88 hearing officers — all attorneys — in five regional and seven district offices throughout the state.

In FY 2016, the IC heard 127,144 claims. District hearing officers heard 89,143 claims. Staff hearing officers heard 37,845 claims and the Commission heard 156 claims.

The IC consistently achieved a high success rate in adjudicating claims well within the periods mandated by law throughout this fiscal year. From filing date to hearing date, district level (first level) hearings averaged 31 days. Staff level (second level) hearing appeals averaged 33 days. Both averages are well below the 45 days mandated by law.

The statistics of filing date to mailing date were just as positive. For the district level, filing date to mailing date was 35 days on average. For the staff level, it averaged 36 days.

The Industrial Commission Online Network (ICON) is the primary reason for our continued success because it has made it easy to file appeals online. There were 57,591 first-level motions and appeals filed on ICON this fiscal year. There were also 56,916 second-level (or above) appeals filed on ICON during the fiscal year.

Customer Service received and responded to 921 Ask IC submissions during this fiscal year. The department also scheduled 1,172 interpreters for injured workers hearings. In addition, our toll-free customer service line and two local customer service lines received 11,432 calls this fiscal year. Staff personally assisted 24,413 people at our Columbus office. Customer Service also processed 137,706 documents.



Motion/Appeal Filings

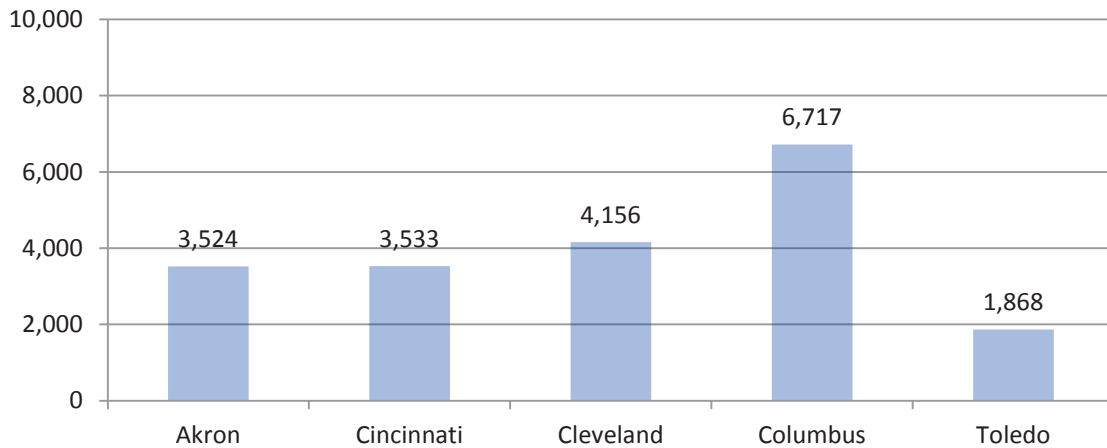
Industrial Commission workloads and performance are initiated by and heavily dependent upon the volume of new claims filed with the Bureau of Workers’ Compensation along with new motion and appeal filings. IC inventory volume is subject to volatile daily swings dependent on appeal filings, claim flows from the BWC, docketing loads, and other factors.

Approximately 129,851 new first level motions and appeals were filed during FY 2016 for 82,250 separate claims. Additional appeals are filed at upper level commission venues.

Hearing Inventory*

Statewide average monthly DHO/SHO inventory was 19,798 claims for FY 2016. Regional breakdown of average inventories for FY 2016 is as follows: Columbus – 34 percent; Cleveland – 21 percent; Akron and Cincinnati – 21 percent each; Toledo – 9 percent.

Average Monthly Inventory | FY 2016



*Hearing inventory inclusive of medical inventory

HEARING ACTIVITY

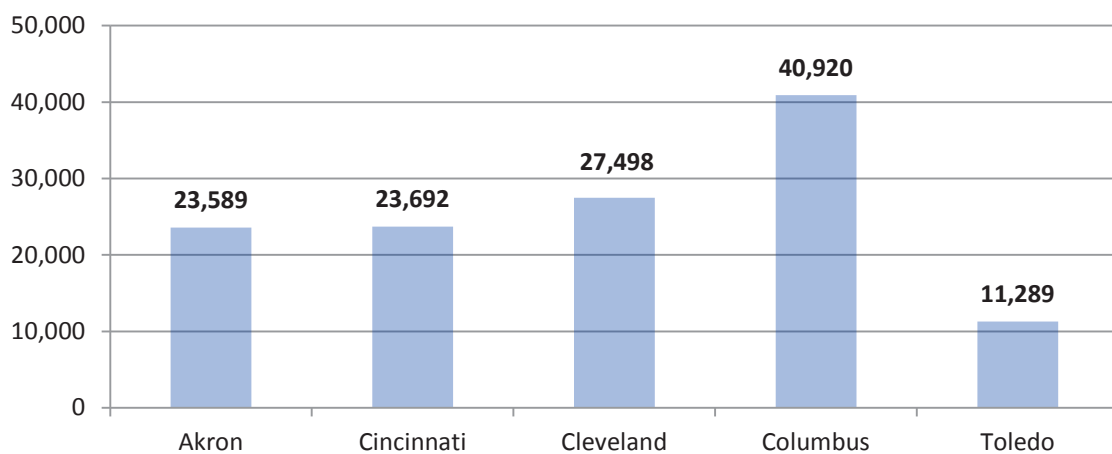
Formal hearings and administrative reviews account for the majority of Industrial Commission activity. In FY 2016, the IC made approximately 209,926 decisions on issues arising from workers' compensation claims.

During FY 2016, the IC performed 82,782 administrative reviews and heard a total of 127,144 claims at all adjudicatory levels. Claims heard is inclusive of hearings at the DHO, SHO, Deputy, and Commission venues. Administrative reviews incorporate issues that do not initially require formal adjudication via hearing (Hearing Administrator issues, Commission requests, cancellation requests, etc.). These issues receive review and processing at the claims examining, word processing, and hearing officer levels but are not typically reflected in routine production reports under DHO or SHO dockets. These issues may subsequently result in a hearing under the normal adjudicatory process and are reflected accordingly under respective hearing venues.

Claims Heard

The total DHO hearing volume accounts for 70 percent of the overall hearings during FY 2016 at 89,143 claims heard, while the SHO volume is recorded at 37,845 claims heard. Deputy venue claims heard totaled 122 in FY 2016 while the Commission venue recorded 188 claims heard. Total claims heard is inclusive of continuances, referrals, dismissals, and other final determinations made as a result of a hearing.

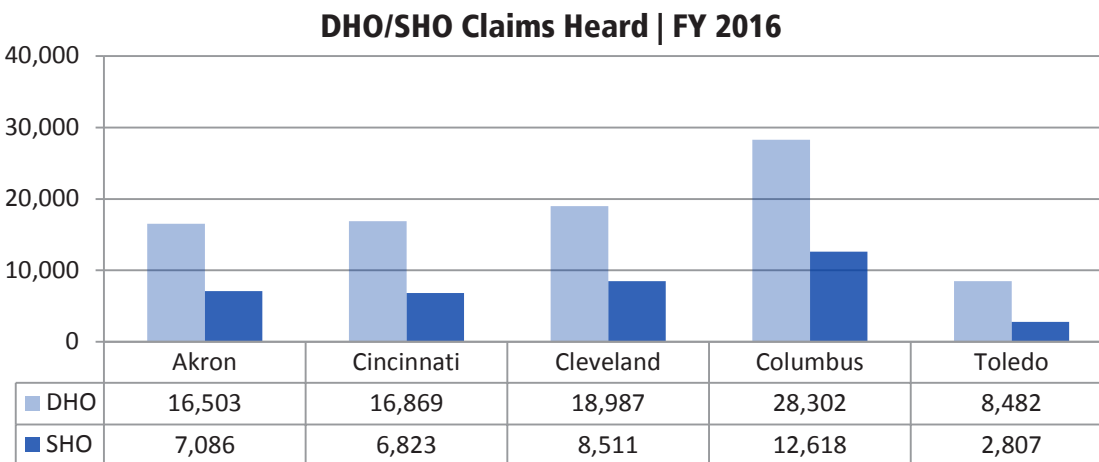
Claims Heard By Region* | FY 2016



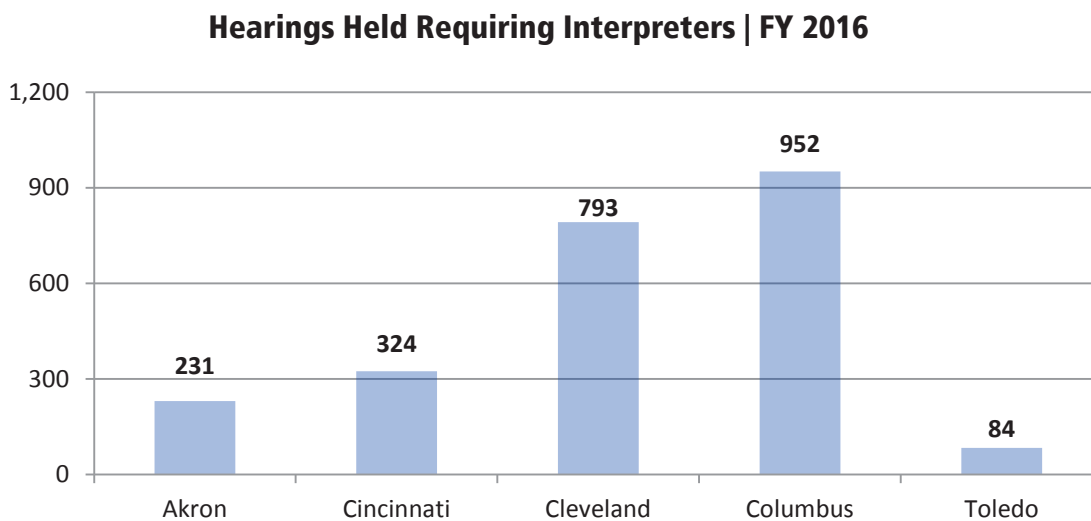
*DHO/SHO ONLY

Regionally, the distribution of FY 2016 claims heard at DHO and SHO hearing levels is as follows: Columbus at 32 percent; Cleveland at 22 percent; Akron and Cincinnati each at 19 percent; and Toledo at 9 percent.

DHO and SHO hearings were conducted on 247 days during FY 2016. An average of 514 claims was heard per hearing day at the DHO and SHO hearing levels. District Hearing Officers averaged 361 claims heard per day while Staff Hearing Officers averaged 153 claims heard per day.



A total of 2,384 hearing records were flagged as requiring interpreter services during FY 2016 accounting for about two percent of total hearings held.



Note: An interpreter may not have been present at each hearing.

HEARING ACTIVITY

Hearings Held by Employer Group

Hearings were conducted for approximately 32,777 different employers in FY 2016. Hearings for claims of private state funded employers accounted for 55 percent of all hearings while self-insuring employers accounted for 28 percent; public county employers accounted for 13 percent; and public state employers' claims accounted for 4 percent.

The volume of *claims heard* reflects actual employee workload production as each claim must be reviewed and processed at multiple levels to perfect the adjudication process. Given that multiple claims may be scheduled for presentation at one hearing, the *hearings held* figure might be slightly lower. For example, one PTD hearing may include three claims to be considered for an injured worker. Reporting would reflect these totals accordingly.

Hearings Held by Employer Group

Employer Type	State Fund	Self-Insured	Pol. Sub (County)	State	Total
Hearings Held	69,159	35,521	16,795	5,405	126,880
Claims Heard*	69,210	35,559	17,046	5,469	127,284

* Claims heard inclusive of PT Heard-With claims

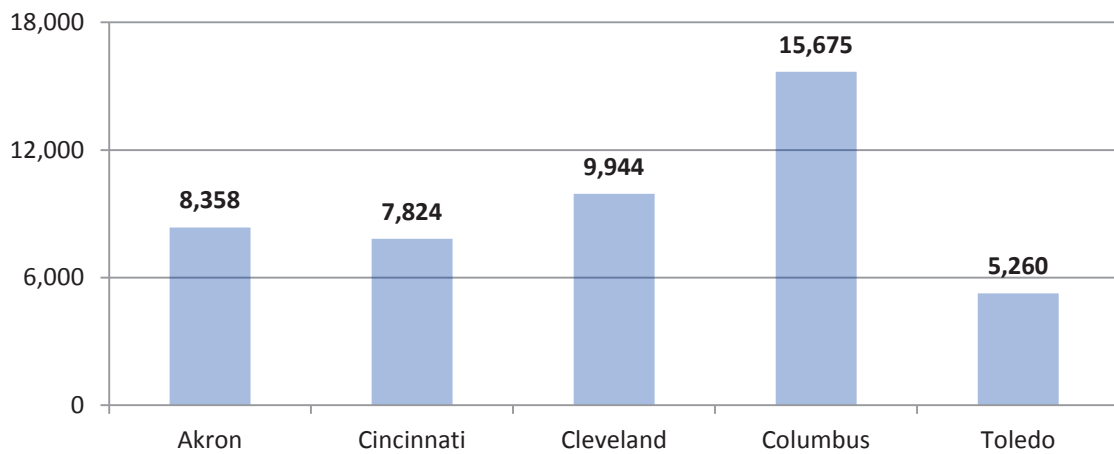
HEARING ACTIVITY

Hearing Administrator

Hearing Administrators perform a variety of functions that facilitate the adjudication process. In addition to processing approximately 25,866 continuance requests during FY 2016, they also processed 15,673 requests to withdraw motions or appeals and cancel scheduled hearings. Additionally, Hearing Administrators processed requests for extensions related to PTD filings and requests regarding other miscellaneous issues.

Statewide, Hearing Administrators made decisions on, or referred to hearing, approximately 47,061 issues during FY 2016. Regional volumes of Hearing Administrator activity are presented in the graph below.

Hearing Administrator Decisions | FY 2016



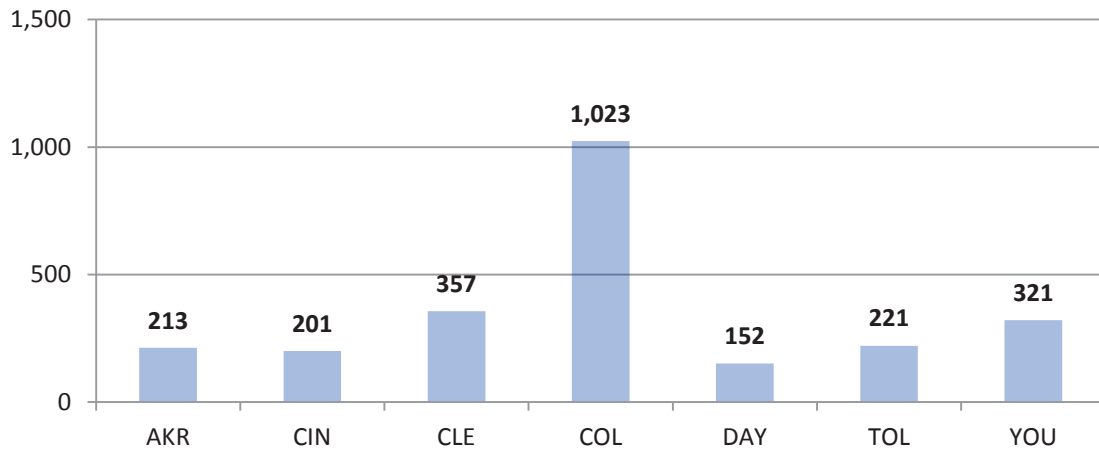
HEARING ACTIVITY

Medical Activity

The Industrial Commission schedules medical exams for injured workers that have filed for permanent total disability benefits related to work injuries. Most of these claims will result in a subsequent hearing. The volume of claims within the IC medical section as of June 30, 2016, was 385 claims.

A total of 2,488 specialist exams and medical reviews were performed on behalf of the Industrial Commission during FY 2016.

Medical Specialist Exams and Reviews | FY 2016



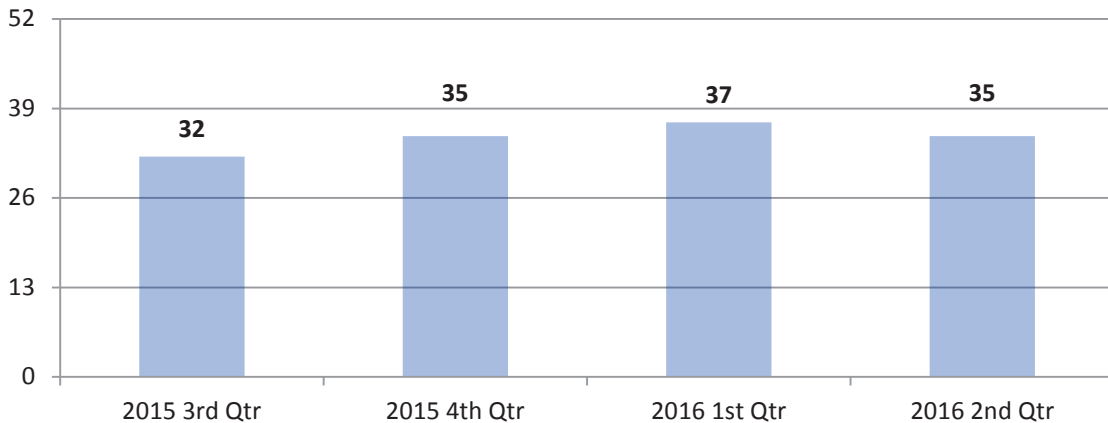


Hearing time frame performance mandates have been set forth in Ohio Revised Code 4123.511 for the DHO, SHO, and Commission hearing venues. On average, all IC offices and venues performed within the statutory limits set forth that require a claim to be heard within 45 days of a motion or appeal filing. The overall IC performance benchmarks for *Filing to Mailing* are set at 52 days for each hearing venue. This performance measure is based on the combination of the two statutory periods *Filing to Hearing* and *Hearing to Mailing* (45 + 7).

DHO Performance

District hearing officers (DHO) conduct hearings on two formal docket types – *Allowance* (primarily injury allowance, compensation, and treatment issues) and *C-92* (permanent partial disability issues). Only allowance docket issues fall under time frame requirements outlined in Ohio Revised Code 4123.511. DHOs heard a total of 70,050 allowance docket claims during FY 2016. Of those, 52,506 qualified for inclusion in time studies. On average, the DHO process (filing of motion/appeal to mailing of DHO order) was completed within 35 days during FY 2016.

DHO Allowance Filing to Mailing Performance | FY 2016



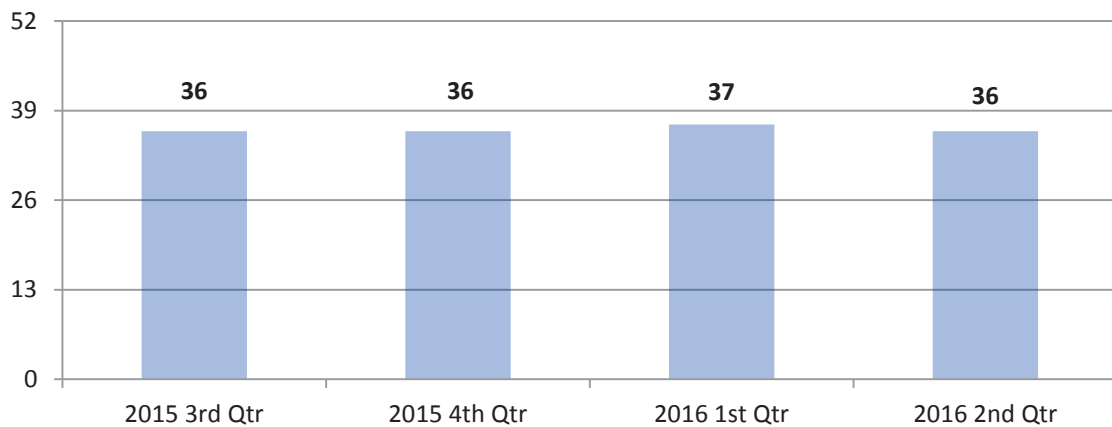
Appeals or motions heard on DHO Allowance dockets must be heard within a 45-day period [R.C. 4123.511(C)]. In FY 2016, DHO Allowance processes averaged 31 days for the statutory filing to hearing period.

PERFORMANCE

SHO Performance

Staff hearing officers (SHO) conduct hearings on five formal docket types – *Appeal* (primarily injury allowance, compensation, and treatment issues), *PTD* (permanent total disability), *Reconsideration* (permanent partial disability issues), *VSSR* (Violations of Specific Safety Requirements), and *MISC* (other issues not designated to a pre-defined docket type). Only appeal docket issues fall under time frame requirements outlined in R.C. 4123.511. SHOs heard 31,815 appeal claims during FY 2016. Of those, 26,731 qualified for inclusion in time studies.

SHO Appeal Filing to Mailing Performance | FY 2016

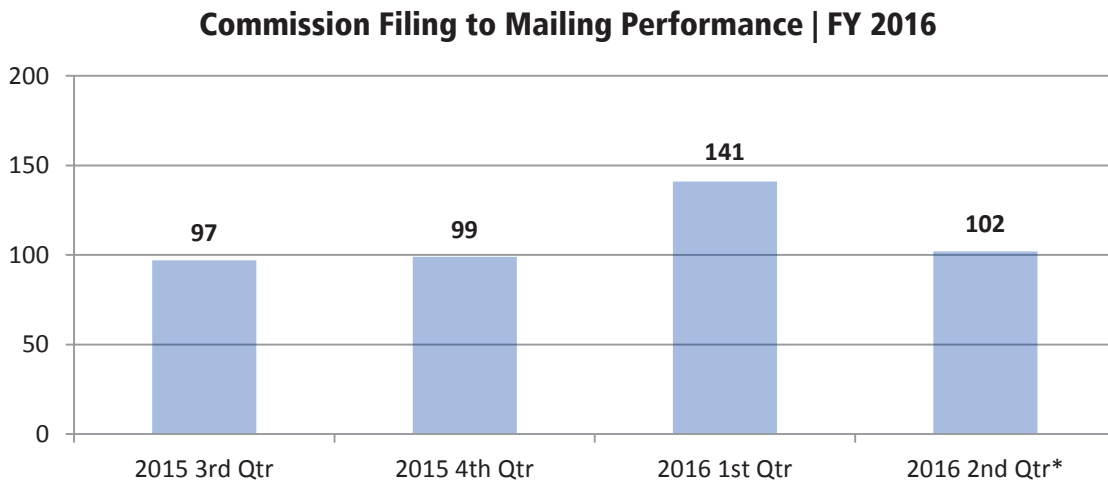


Staff Hearing level appeals must be heard within a 45-day period [RC 4123.511(D)]. In FY 2016, Staff Appeal processes averaged 33 days for the statutory filing to hearing period.

Commission Performance

For hearings conducted during FY 2016, the Commission venue average for the statutory **Filing of Appeal to Hearing Date (F-H)** period is 58 days.

The Commission venue average for the **Filing of Appeal to Mailing of Order** time frame is 110 days.



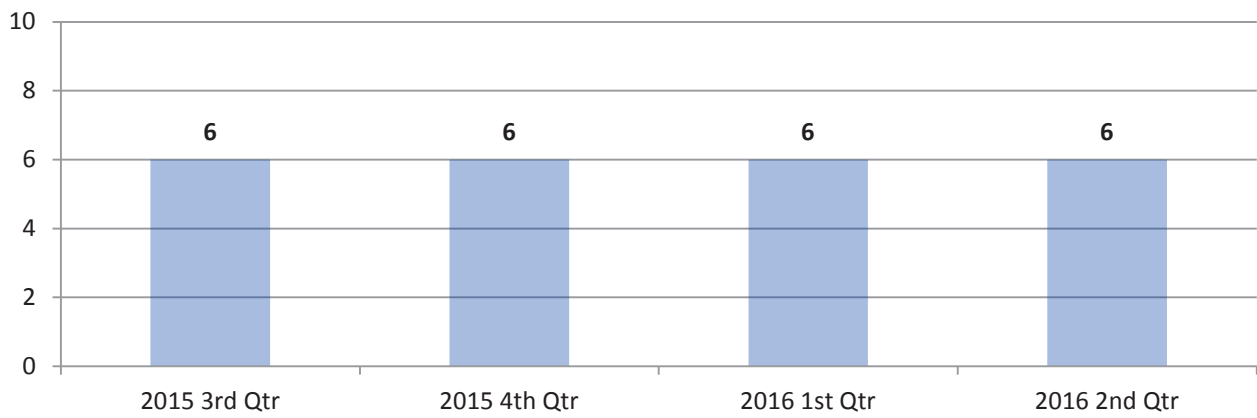
*Eligible commission orders through May 2016

PERFORMANCE

SHO Refusal Order Performance

Appeals to SHO orders are discretionary in nature and processed centrally by the Commission Level Hearing Section in Columbus. Per mandate, if an appeal is refused, it is to receive a refusal order within 14 days of the expiration period in which an appeal may be filed to an SHO order.

SHO Appeal Order Expiration Date to Refusal Order Mailing Date | FY 2016



LOCATIONS & CONTACTS

Customer Service and Interpretive Services

800.521.2691; toll free, nationwide
614.466.6136; Franklin County
800.686.1589; toll free, TDD

Email: askic@ic.ohio.gov
Web: www.ic.ohio.gov

AKRON REGION

Akron

161 S. High St., Suite 301
Akron, Ohio 44308-1602

Tel: 330.643.3550
Fax: 330.643.1468

Mansfield

240 Tappan Drive N., Suite A
Mansfield, Ohio 44906

Tel: 419.529.1360
Fax: 419.529.3084

CINCINNATI REGION

Cincinnati*

125 E. Court St., Suite 600
Cincinnati, Ohio 45202-1211

Tel: 513.357.9750
Fax: 513.723.9811

Dayton*

1242 E. Dayton-Yellow Springs Rd.
Fairborn, OH 45324

Tel: 937.264.5116
Fax: 937.264.5130

CLEVELAND REGION

Cleveland*

615 Superior Ave. NW, 5th Floor
Cleveland, Ohio 44113-1898

Tel: 216.787.3001
Fax: 216.787.3483

Youngstown*

242 Federal Plaza West
Youngstown, Ohio 44503-1206

Tel: 330.792.1063
Fax: 330.792.2473

COLUMBUS REGION

Columbus*

30 W. Spring St., 7th Floor
Columbus, Ohio 43215-2233

Tel: 614.466.4683
Fax: 614.644.8373

Cambridge

2130 E. Wheeling Ave.
Cambridge, Ohio 43725

Tel: 740.435.4000
Fax: 740.435.4010

Logan

12898 Grey St.
Logan, Ohio 43138

Tel: 740.380.9685
Fax: 740.385.2436

Portsmouth

1005 Fourth St.
Portsmouth, Ohio 45662-4315

Tel: 740.354.2334
Fax: 740.353.6975

TOLEDO REGION

Toledo*

One Government Center, Suite 1500
640 Jackson Street
Toledo, Ohio 43604

Tel: 419.245.2740
Fax: 419.245.2652

Lima

2025 E. Fourth St.
Lima, Ohio 45804-0780

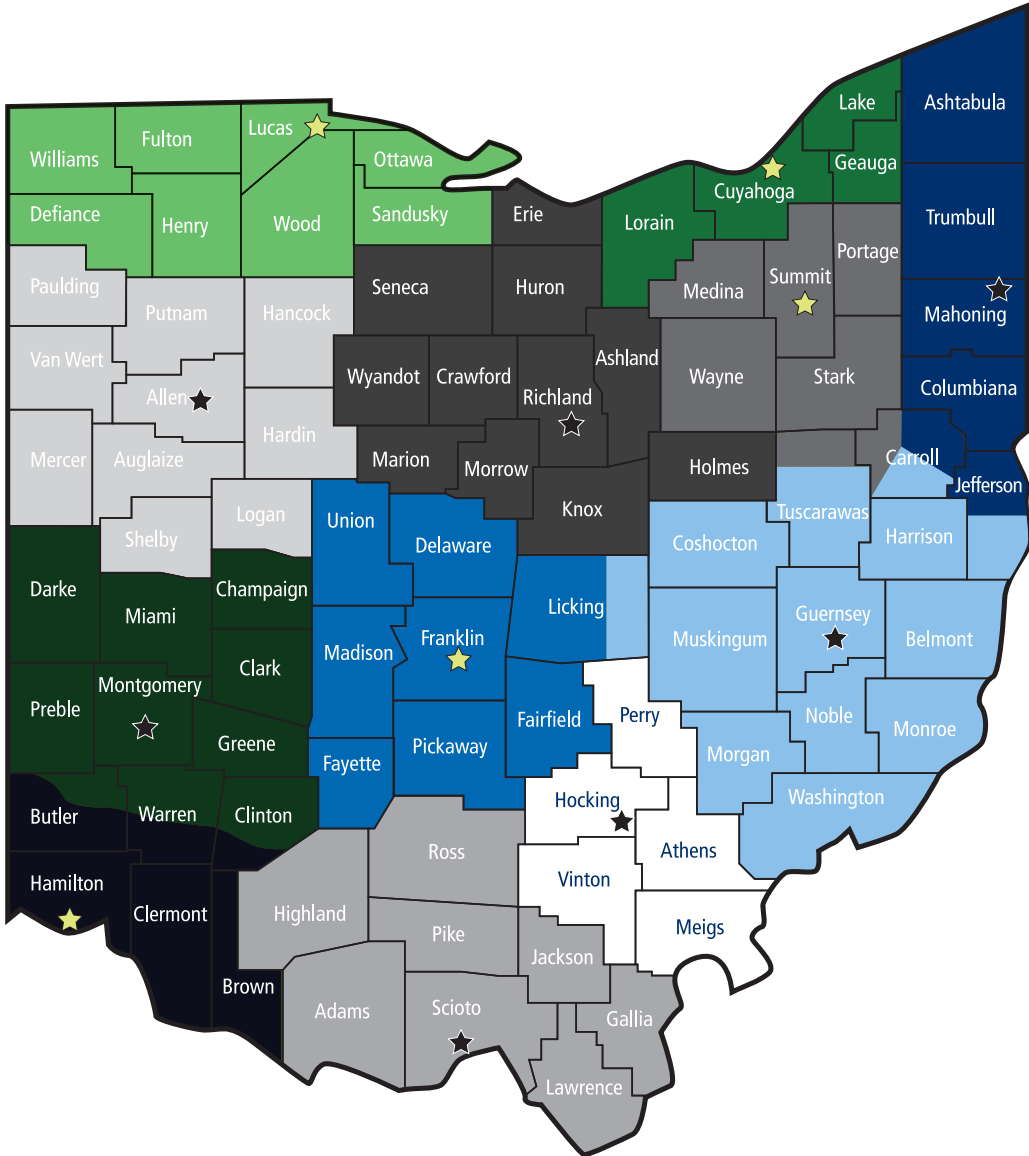
Tel: 419.227.7193
Fax: 419.227.7150

*In-House Medical Examination Locations



DISTRICT OFFICE ASSIGNMENT MAP

Our 12 offices in 5 regions blanket the state. IC office locations are carefully chosen so that most injured workers do not have to drive more than 45 minutes from their home to get to their hearing.



Offices Servicing Each County

- Akron
- Cambridge
- Cincinnati
- Cleveland
- Columbus
- Dayton
- Lima
- Logan
- Mansfield
- Portsmouth
- Toledo
- Youngstown

- ★ IC District Office Location
- ☆ IC Regional Office Location



COLUMBUS | CLEVELAND
CINCINNATI-DAYTON
MARIETTA

BRICKER & ECKLER LLP
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Columbus, OH 43215-4291
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Sue A. Wetzel
Of Counsel
614.227.7744
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Ohio Manufacturers' Association
Workers' Compensation Counsel Report
March 1, 2017

By: Sue A. Wetzel, Esq.
Bricker & Eckler LLP

Regulatory Actions

O.A.C. § 4123-5-18 Medical Proof required for Payment of Compensation

The proposed changes create a new exception to when medical proof not provided by a licensed physician may be considered as sufficient to support payment or non-payment of disability. The amended rule permits a certified nurse practitioner, clinical nurse specialist, or physician assistant (“CNP etc.”) who has examined a claimant to complete a MEDCO-14 within the first six weeks after a date of injury certifying a period of disability for no more than 6 weeks of disability.

Additionally, what medical will be considered sufficient for any subsequent periods of temporary disability beyond the initial 6 weeks is also defined. Medical reports on form MEDCO-14 or equivalent must be either:

- 1) completed and signed by a physician who has examined the claimant; or,
- 2) completed by a certified nurse practitioner, clinical nurse specialist, or physician assistant who has examined the claimant and co-signed by a physician who has reviewed medical documentation of the examination of the claimant by the certified nurse practitioner, clinical nurse specialist, or physician assistant.

This language reconciles the BWC’s intent to provide immediate care to an injured worker following a work-related injury and to be taken off work if necessary, with a manufacturer’s needs to remain productive, profitable and efficient by requiring care with a licensed physician if the extent of disability is expected to go beyond six weeks.

O.A.C. § 4123-17-24 Other States Coverage Policy

OSCP application:

An employer was previously required to submit declaration pages for prior years. Under the proposed change, this is not required, but the BWC may ask for them if they feel they are necessary.

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Eligibility Criteria:

- The employer must be headquartered or, primarily located, *or have a history of predominant business operations* in Ohio;
- The employer's Ohio policy cannot have *cumulative lapses in workers' compensation coverage in excess of forty days within the prior twelve months* (prior language indicated no prior lapses in the twelve months prior to when the application was received).

Policy Renewal:

Proposed language provides BWC discretion regarding how or if coverage will be reinstated if there is a lapse in payment of premiums, including reinstating coverage retroactively. (change from strict guidelines of no retroactive coverage)

O.A.C. § 4125-1-01 Wage loss compensation

Five-Year Review; no significant changes. The rule sets forth the requirements for filing applications for wage loss compensation, an award for those injured workers who suffer a wage loss after returning to employment other than their former position of employment or who cannot find employment consistent with the disability resulting from their claim. The rule also provides the criteria that the Commission and Bureau of Workers' Compensation will evaluate when adjudicating wage loss applications and establishes the manner in which wage loss compensation will be calculated.

Recommendations regarding the amendment of the current rule are merely to include specific language clarifying the rule and to delete a confusing reference in the rule. Specifically,

- include the language “despite a good faith job search” in paragraph (A)(8) in order to better define “non-working wage loss;”
- include the language “claim related” in (E)(1)(c)(iv) in order to encompass all potential limitations on the injured worker’s ability to make prospective employer contacts;
- remove the internal reference in (D)(1)(c) as it is confusing.

Legislative Actions

H.B. 27 Bureau of Workers' Compensation Budget Bill

The Bureau of Workers' Compensation maintains that the budget request is flat from the previous budget at \$566.5 million. The BWC budget is funded by premiums and state

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assessments for 244,000 subscriber employers. The bill proposes several policy changes, all positive for employers, including:

- ***Expediting payments to injured workers*** - The proposed change would allow BWC to provide a minimum payment until an injured workers' full weekly wage is determined.
- ***Waiving unnecessary medical exams*** – Injured workers receiving temporary total disability benefits must undergo a 90-day medical examination. The proposed change would authorize the administrator to waive the 90-day medical examination when all parties are in agreement. This is a change to current law which permitted the BWC to waive the exam without the consent of all parties.
- ***Closing dormant claims*** - The proposed change would enable BWC to dismiss these dormant claims where a worker fails to attend or reschedule the medical examination required to determine eligibility.
- ***Eliminating outdated injury reporting requirements for physicians*** - Physicians are no longer required to contact the BWC by mail regarding occupational diseases.
- ***Reducing injuries in the public sector*** - The Public Employer Risk Reduction Program (PERRP) helps create safe and healthy working conditions for Ohio's 600,000 public employees. The proposed change would expand the program to include firefighters, police officers and corrections officers, thereby giving BWC greater authority to conduct workplace inspections to prevent injuries from occurring.
- ***Changes to Intoxication Thresholds*** - The proposed change to the statute removes the thresholds for intoxication from the workers' compensation statute and directs employers to 49 CFR 40.87 for intoxication levels. This code section is more specific than the one currently in the workers' compensation statutes, as it allows for several means of testing. It also reduces the thresholds for amphetamines and cocaine as well.

H.B. 28 Industrial Commission Budget Bill – no changes proposed

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Judicial Actions

State ex rel. Manpower of Dayton, Inc. v. Indus. Comm., et al.; 2016-Ohio-7741

The Ohio Supreme Court upheld the lower court's decision denying Appellant, Manpower of Dayton, Inc. ("Manpower"), its request for a writ of mandamus that would compel Appellee, Ohio Industrial Commission ("Commission"), to vacate its award of permanent total disability ("PTD") compensation to Appellee, Inge Fox ("Fox").

In 2006, Fox injured her left arm and hand while working for Manpower when she was sandblasting. The sand went through a hole in the glove into her hand. Her worker's compensation claim was allowed for the following conditions: left wrist tendonitis; left wrist contusion; complex regional pain syndrome/reflex sympathetic dystrophy left upper extremity; complex regional pain syndrome/reflex dystrophy right upper extremity; reflex sympathetic dystrophy of the bilateral lower extremities; pain disorder associated with both psychological factors and general medical condition; and, dysthymic disorder.

In 2013, Fox applied for PTD compensation. In support of her application, she submitted two reports from psychologist and vocational expert Dr. Kenneth J. Manges. Dr. Manges reported that Fox "has marked psychological difficulties" that preclude her from performing even simple routine, repetitive tasks. Dr. James T. Lutz and, vocational expert, Dr. Thomas Heitkemper, examined Fox on behalf of the Commission; both determined that Fox had reached maximum medical improvement and was incapable of engaging in sustained remunerative employment. A Staff Hearing Officer for the Commission granted Fox's application based on the reports of Drs. Manges, Lutz, and Heitkemper and did not consider vocational factors in the analysis.

Manpower filed a Mandamus complaint in the Tenth District Court of Appeals ("Tenth District") claiming that the Commission abused its discretion by not entering an order supported by evidence in the record. Specifically, Manpower contended that the impairment report of Dr. Manges focused on nonmedical factors to support his opinions that Fox was disabled; Dr. Lutz's report was equivocal regarding Fox's physical capabilities; and, that Dr. Heitkemper's report did not constitute, at least, some evidence to support the Commission's decision, violating Noll. The Tenth District held that the evidence in the record supported the Commission's decision to award PTD compensation and denied Manpower's request for a writ of mandamus. Manpower appealed the Tenth District's decision to the Ohio Supreme Court ("Supreme Court")

The Supreme Court agreed with the Tenth District's decision and again denied Manpower's request for a writ of mandamus. The Supreme Court concluded that Dr. Lutz's description of Fox's activities of daily living did not contradict his conclusion that she was unable to work. Dr. Lutz acknowledged that while Fox was capable of performing some light

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housework, she had constant pain with frequent episodes of severe flare-ups that rendered her functionless.

Additionally, the Supreme Court disagreed with Manpower regarding Dr. Manges' opinion. The Supreme Court found that his report constituted some evidence that Fox was totally disabled as a direct result of her impairments based on psychological conditions.

And finally, the Supreme Court also rejected Manpower's argument challenging the evidentiary value of Dr. Heitkemper's report. Dr. Heitkemper's use of the word "medical" when rendering his opinion did not invalidate his opinion. Ohio law specifically permits psychologists to consider medical evidence in support of an application for PTD compensation.

Thus, the Supreme Court held that the Commission's order granting PTD compensation specifically set forth the medical reports and evidence relied upon, and explained the reasoning for the decision in compliance with Ohio law. Manpower's request for a writ of mandamus was denied.

***State ex rel. Ohio Presbyterian Retirement Servs., Inc. v Indus. Comm.*; 2016-Ohio-8024**

In a 5-2 opinion, the Supreme Court found that the Ohio Industrial Commission ("Commission") abused its discretion by considering Sherry L. Redwine's application for permanent partial disability ("PPD") compensation in the same claim in which she was receiving permanent total disability ("PTD") compensation, holding specifically that state law does not permit an award of PPD compensation to an injured worker who has already been awarded PTD compensation in the same claim.

Redwine filed a workers' compensation claim after her Aug. 13, 2003 injury. The Commission awarded her PTD benefits based on her psychological condition. Subsequently, Redwine applied for PPD compensation based on the physical conditions allowed in her claim. The Commission concluded Redwine was not barred from concurrent compensation for PPD if the claim was based on conditions that were not the basis for the prior finding of PTD in the same claim. Redwine's employer, the Ohio Presbyterian Retirement Services Inc. ("Ohio Presbyterian"), challenged the ruling in the Tenth District Court of Appeals and asked the court to vacate the Commission's order. The appeals court denied the writ of mandamus and Ohio Presbyterian appealed to the Supreme Court.

The Supreme Court acknowledged that the Ohio General Assembly has allowed the payment of concurrent awards in limited circumstances. However, the Court found that the state statutes involved in this case, specifically O. R.C. §§ 4123.57 and 4123.58, do not "expressly authorize concurrent payment of [PPD] and [PTD] compensation."

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In support of this conclusion, the Supreme Court cited to a 1992 case (*State ex rel. Murray v. Indus. Comm.*) to point out that the express absence of any reference to concurrent payment of benefits in the statute “evinces a legislative intent to prohibit simultaneous receipt of these benefits.” The *Murray* decision also held that a claimant may not currently receive compensation for [PPD] and [PTD] for the same injury within the context of one claim. The Supreme Court further reasoned that “[o]ur conclusion is also reinforced by the purpose of permanent-total disability compensation – to compensate for the impairment of earning capacity. It logically follows that a claimant who is receiving permanent-total disability compensation is ineligible for concurrent permanent-partial disability compensation based on a different condition in the same claim.” The Supreme Court’s decision overturns the Tenth District Court of Appeal’s decision

Also important to note is that Justices Pfeifer and O’Neill dissented from the majority opinion specifically stating, “I acknowledge that the statutory scheme also does not specifically allow concurrent benefits... Unlike the majority, I do not assume that that means concurrent benefits are prohibited. Instead, I read the statutory scheme liberally in favor of the injured claimant, as required by R.C. 4123.95.”

State ex rel. Carroll v. Galion Assisted Living; 2016-Ohio-8117

The Ohio Supreme Court held that an appeal to a court of common pleas under R.C. 4123.512 is an adequate remedy and therefore the court of appeals lacks jurisdiction to issue a writ of mandamus where Appellant is requesting the right to participate in the workers’ compensation fund for a specific condition(s).

Carroll alleged that she injured her knee while working for the employer, Galion Assisted Living, Respondent-Employer (“Employer-Galion”). Carroll’s claim was allowed administratively for a medial meniscus tear of the right knee. Several months later, Joseph Guth, M.D., performed arthroscopic surgery on Carroll’s knee and found no evidence of a meniscus tear. Based on this new evidence, Employer-Galion filed a motion asking the Industrial Commission to exercise its continuing jurisdiction and reconsider the claim allowance. The Commission granted Employer-Galion’s motion and ultimately disallowed Carroll’s claim entirely.

Carroll then appealed the denied claim into the court of common pleas and the court of appeals, requesting a Writ of Mandamus. The Ohio Supreme Court denied Carroll’s request for a Writ of Mandamus specifically holding that Industrial Commission Orders that grant or deny a claimant’s right to participate in the worker’s compensation system are appealable under R.C. 4123.512 only to a court of common pleas. The Supreme Court found that “because Carroll had a plain and adequate remedy at law by way of appeal, the court of appeals lacked jurisdiction to issue a mandamus.”

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State ex rel. BF Goodrich Co. v. Indus. Comm'n of Ohio; 2016-Ohio-7988

On August 12, 2011 Earles was injured in the course and scope of her employment with BF Goodrich. She returned to work on February 13, 2012 with temporary restrictions regarding climbing, heavy pushing, lifting and carrying, and performing overhead work. However, there were no restrictions on the number of hours she could work.

Earles was placed in BF Goodrich's light duty/restricted employee work program. The terms of the program were determined by a 2007 collective-bargaining agreement ("Agreement") between BF Goodrich and United Auto Workers of America, Local 128. A 2012 amendment to the Agreement provides that employees on light duty outside of their own job classification are not eligible for overtime.

Earles filed an application for wage-loss compensation based on a reduction in her earnings attributed to the lack of overtime in her light-duty position for the periods of February 13, 2012 through March 2, 2012 and March 12, 2012 through March 18, 2012. A District Hearing Officer denied the application. On appeal, a Staff Hearing Officer refused the appeal for lack of jurisdiction after finding that the appeal had not been timely filed. Earles appealed to the Commission where it accepted the appeal and awarded wage-loss compensation. The Commission determined that Earles' physical restrictions resulted from the allowed conditions of her claim, that she had worked overtime prior to her work related injury, and that when she returned to light-duty work, she was not eligible for overtime in that position under the 2012 Agreement.

On appeal to the Tenth District, BF Goodrich argued that there was no evidence that Earles' medical restrictions prevented her from working overtime. In addition, for Earles to be entitled to compensation for working-wage loss, her lack of overtime earnings must be directly caused by physical restrictions that specifically limit overtime work. Because Earles had physical restrictions but no restrictions regarding the amount of hours she could work, her wage loss was the result of the 2012 Agreement's prohibition on overtime, not her physical restrictions.

The Supreme Court did not agree with BF Goodrich's arguments. Instead, the Court held that Earles was eligible for wage-loss compensation because 1) she suffered a reduction in wages during the periods of time at issue, and 2) her placement in the light-duty program was causally related to the allowed conditions of her claims. The Court held that the Commission did not abuse its discretion when it concluded that Earles' wage loss was the direct result of her inability to return to her prior position due to the physical restrictions resulting from the allowed conditions. The Court held that even though Earles was not permitted overtime pay under the Agreement, Earles' enrollment in the restricted duty program was a consequence of her injury and the resulting prohibition on overtime pay was causally linked to her injury.

March 1, 2017

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The Commission distinguished a 2007 Tenth District opinion *Daimler Chrysler v. Industrial Commission* in which an injured mechanic transferred to a different position due to injury and consequently received fewer overtime hours because the position had fewer overtime hours to offer. For Earles, the loss of overtime hours was due to injury resulting in placement in a restricted duty program that prohibits overtime. For the injured mechanic, there is no prohibition against overtime hours caused by his injury. Instead, there are simply fewer of overtime hours to be worked than in the prior position.

Justice O'Donnell dissented, and was joined by Justice Kennedy in stating that “the administrative rule mandates that the denial of overtime and resulting loss of wages must directly result from medical restrictions that prevent the employee from working longer hours, and therefore, wage-loss compensation is not available to an employee who is medically able to work overtime but who is prevented from doing so for nonmedical reasons.”

TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: March 1, 2017

Overview

The 132nd General Assembly was seated in January. The first flurry of bills did not include any major BWC or IC initiatives. Both agencies introduced their budget bills. Neither budget contained major changes for either agency. The two budget bills are typically passed quickly through both chambers. There is rumor around the Statehouse that the BWC may be considering the possibility of refunding more money back to employers this spring.

Legislation and Rules

Senate Bill 27 – firefighter cancer

During the final days of the 131st General Assembly Senate Bill 27, the “firefighter cancer bill,” was passed and signed into law, making it possible for firefighters with cancer to receive workers’ compensation benefits.

For workers’ compensation purposes, the bill presumes that firefighters who develop cancer contracted the disease while performing their firefighting duties.

The OMA worked to ensure the bill included protections against potential expansion to other industries.

House Bill 27 – BWC budget bill

The House of Representatives is currently debating the Bureau of Workers’ Compensation (BWC) budget bill. Last week Administrator and CEO Sarah Morrison defended the agency’s proposed budget, in testimony. Administrator Morrison testified that the budget request is flat from the previous budget and highlighted, that over the last six years, private employer rates have dropped an average of 28.2%, saving employers \$755 million. She presented the agency’s strategic priorities and accomplishments.

The bill proposes several policy changes that Morrison explained, including:

- Expediting compensation to employees awarded temporary total disability (TTD) where they don’t have ready access to required wage documentation, which delays their compensation. The BWC proposes to pay minimum calculable TTD payments to an injured worker until the calculation can be completed to determine the proper amount. BWC will subsequently true-up TTD compensation.
- Streamlining operations to dismiss the backlog of more than 20,000 suspended applications for permanent partial disability (PPD), so called “C-92” applications, while preserving injured workers rights to PPD. Currently, there is no mechanism to dismiss the C-92 application other than death of the injured worker.
- Allowing the agency and stakeholders to communicate electronically where appropriate, instead of by mail.

The House is hearing testimony on the bill today.

House Bill 28 – Industrial Commission budget bill

This week the Industrial Commission is outlining its budget request in front of the House Insurance Committee. The bill is non-controversial due to its lack of policy recommendations.

BWC Agency Notes

BWC Telephone Security Changes

Businesses and injured workers who use the Ohio Bureau of Workers' Compensation's automated phone system, 1-800-644-6292, will see security changes intended to better protect their sensitive information.

Now callers will need more than just their policy or claim number. Injured workers will also be asked for the last four digits of their social security number and their date of injury. Businesses will be asked for their federal tax ID number (FEIN or SSN) and the ZIP code for the mailing address on the policy.

BWC Amends Rule about Medical Provider Authority at OMA Request

Previously, under Ohio Administrative Code, certified nurse practitioners, clinical nurse specialists, and physician assistants (CNP, etc.) were not permitted to provide an opinion regarding whether a claimant is temporarily and totally disabled. The BWC recently revised this rule to permit CNP, etc. to offer an opinion regarding temporary total disability for any initial period of disability throughout the length of the claim.

After consideration of OMA comments in direct response to the BWC's proposed changes, a CNP, etc. can only offer an opinion regarding temporary total disability if requested to do so within the first six weeks following the date of injury, and can only write a claimant off work or place them on light-duty for up to six weeks.

This language reconciles the BWC's intent to provide immediate care to an injured worker following a work-related injury and to be taken off work if necessary, with a manufacturer's needs to remain productive, profitable and efficient by requiring care with a licensed physician if the extent of disability is expected to go beyond six weeks.

BWC's Morrison Appoints New Field Operations Chief

Ohio Bureau of Workers' Compensation (BWC) Administrator & CEO Sarah Morrison announced the appointment of the bureau's new chief of field operations. Deborah Dexter, Ph.D., joined Morrison's senior leadership team on October 17.

As field operations chief, Dexter will lead BWC's Customer Services Division, overseeing injury management services, employer risk and safety services and the customer contact center, among other duties.

Dexter most recently worked as vice president of operations support for Dublin-based Cardinal Health, where she spent the last eight years focused largely on improving customer service. She held similar duties at Lucent Technologies from 1995 to 2007.

Dexter holds a bachelor's degree in business administration from The Ohio State University, two master's degrees and a doctorate in organization and management from Capella University. She's also the author of "You're Not too Big to Fail: A Proven Guide to Successful Organizational Change Management."

Ohio Achieves 11th Lowest Workers' Compensation Rates among States

The Bureau of Workers' Compensation (BWC) reports that Ohio's workers' compensation rates continue to improve in rankings among states. Based on a biennial study that compares national workers' compensation rates, the BWC reported: "The state's rates improved from 33rd in 2014 to 40th, making Ohio the 11th lowest among all states."

The "Oregon Study" ranks states from most expensive to least expensive. Ohio has continually improved since its rates were ranked third highest in the nation in 2008.

The Oregon Study, produced by the Oregon Department of Consumer & Business Services, compares each state's base rates across a selection of 50 widely used classification codes that are assigned by occupation to indicate their degree of risk.

Since the study was conducted, BWC reduced average rates for private employers another 8.6 percent. Further, the study does not account for the various money-saving BWC programs. When the base rate reductions and rebate programs are factored in, the actual amount collected by BWC averages \$1.22 per \$100 of payroll compared to the \$1.45 rate reflected in the study. The national median rate is \$1.84.

Registration Open for 2017 Ohio Safety Congress & Expo

Registration is now open for the 2017 Ohio Safety Congress & Expo (OSC17), the largest regional safety and health conference in the U.S. The event, sponsored by the Ohio Bureau of Workers' Compensation (BWC), will run March 8-10 at the Greater Columbus Convention Center.

OSC17 will feature more than 200 educational sessions presented by experts from across the country covering topics related to occupational safety and health, wellness, rehabilitation, controlling claims costs and medical treatment of injured workers.

An expo marketplace will also host more than 200 exhibitors. Come visit OMA at booth #434!

Attendance is free for Ohio employers and their employees.



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Paul Luzzi

Sub. S.B. 27

131st General Assembly
(As Passed by the General Assembly)

Sens. Patton, LaRose, Skindell, Hughes, Schiavoni, Tavares, Hottinger, Beagle, Jones, Brown, Bacon, Balderson, Burke, Cafaro, Eklund, Faber, Gentile, Hite, Lehner, Manning, Obhof, Oelslager, Sawyer, Thomas, Williams, Yuko

Reps. Bishoff, Kuhns, Anielski, Antonio, Ashford, Boccieri, Boggs, Boyd, Celebrezze, Cera, Clyde, Craig, Driehaus, Fedor, Grossman, Hagan, Henne, G. Johnson, Leland, Lepore-Hagan, Manning, M. O'Brien, S. O'Brien, Patterson, Pelanda, Phillips, Rezabek, Rogers, Ruhl, Sheehy, K. Smith, Strahorn, Sweeney, Sykes, Terhar, Rosenberger

Effective date: April 6, 2017

ACT SUMMARY

- Enacts the "Michael Louis Palumbo, Jr. Act."
- Provides that a firefighter who is disabled as a result of cancer under certain circumstances is presumed for purposes of the laws governing workers' compensation and the Ohio Police and Fire Pension Fund (OP&F) to have incurred the cancer while performing official duties.
- Allows for the presumption to be rebutted in specified situations.
- Requires the Administrator of Workers' Compensation to prepare a report regarding presumed cancer claims arising from the presumption created by the act.

CONTENT AND OPERATION

Presumption of illness incurred while performing official duties

The act enacts the "Michael Louis Palumbo, Jr. Act."¹ It creates a presumption that a member of the Ohio Police and Fire Pension Fund (OP&F) who is a member of a

* This version updates the effective date.

¹ Section 5.

fire department (essentially, a full-time firefighter) and is disabled as a result of cancer incurred the cancer while performing official duties, if the member was exposed to an agent classified by the International Agency for Research on Cancer or its successor (IARC) as a Group 1 or 2A carcinogen. According to the IARC, the cancer agency of the World Health Organization, agents classified as Group 1 carcinogens are carcinogenic to humans and agents classified as Group 2A carcinogens are probably carcinogenic to humans.²

Firefighters must have been assigned to at least six years of hazardous duty as a firefighter for the presumption to apply.³ "Hazardous duty" means duty performed under circumstances in which an accident could result in serious injury or death.⁴

The act also creates the same presumption for firefighters in the Workers' Compensation Law. For the Workers' Compensation Law, the presumption is included in the list of occupational diseases that are compensable, and compensation for cancer under the presumption is payable only in the event of temporary total disability, permanent total disability, or death, in accordance with continuing law. The Workers' Compensation Law provision applies to paid and volunteer firefighters.⁵

Rebuttal of the presumption

The act provides that the presumption created by the act can be rebutted in any of the following situations:

- There is evidence that the firefighter incurred the type of cancer being alleged before becoming a member of the fire department.
- There is evidence that the firefighter's exposure, outside of the scope of the firefighter's official duties, to cigarettes, tobacco products, or other conditions presenting an extremely high risk for the development of the cancer alleged, was probably a significant factor in the cause or progression of the cancer.
- There is evidence that the firefighter was not exposed to an agent classified by the IARC as a Group 1 or 2A carcinogen.

² International Agency for Research on Cancer, *Agents Classified by the IARC Monographs*, <http://monographs.iarc.fr/ENG/Classification/>.

³ R.C. 742.38(D)(3)(b).

⁴ R.C. 742.38(D) and 4123.68(X), by reference to 5 Code of Federal Regulations 550.902.

⁵ R.C. 4123.68(X), with a conforming change in R.C. 4123.57(D).



- The firefighter is age 70 or older.⁶

Application

The presumption created by the act does not apply if it has been more than 20 years since the firefighter was last assigned to hazardous duty as a firefighter.⁷ The act applies only to applications for disability benefits filed on or after the act's effective date and to workers' compensation claims arising on or after that date.⁸

Report on presumed cancer claims

The act requires the Administrator of Workers' Compensation to prepare a report regarding presumed cancer claims arising from the presumption created by the act, including the following information:

- The number of approved claims;
- The number of disapproved claims;
- The number of active claims;
- The cost related to the claims.

The Administrator must submit the initial report by April 8, 2019, and an updated report every two years thereafter, to all of the following:

- The Speaker and the Minority Leader of the House;
- The President and Minority Leader of the Senate;
- The Ohio Fire Chiefs' Association or its successor;
- The Ohio Association of Professional Fire Fighters or its successor;
- The Ohio Municipal League or its successor.

The OP&F Board of Trustees must submit to the Administrator any data necessary for the report.⁹

⁶ R.C. 742.38(D)(3)(c) and 4123.68(X)(2).

⁷ R.C. 742.38(D)(3)(d) and 4123.68(X)(3).

⁸ Sections 3 and 4.

⁹ R.C. 742.38(E) and 4123.86.



HISTORY

ACTION	DATE
Introduced	02-09-15
Reported, S. Insurance	04-13-16
Passed Senate (32-1)	04-13-16
Reported, H. Insurance	12-06-16
Passed House (75-21)	12-07-16
Senate concurred in House amendments (31-1)	12-07-16

16-SB27-UPDATED-131.docx/ar



BWC

FY 2018 – 2019 Budget Facts

The Ohio Bureau of Workers' Compensation (BWC) is the largest state-funded workers' compensation insurance system in the nation, insuring more than 244,000 employers and managing care for Ohioans who are injured on the job. Funded through employer premiums and assessments, BWC operates with nearly 1,900 employees in 14 locations throughout Ohio. The agency approved more than 88,000 new claims and paid approximately \$1.6 billion in wage loss and medical benefits last year.

Over the last six years, BWC has become a national industry leader committed to fulfilling its mission to protect Ohio's workers and employers through the prevention, care and management of workplace injuries and illnesses at fair rates. BWC's proposed \$566.5 million Fiscal Year 2018-19 budget seeks to build on this progress by improving service, streamlining and modernizing operations, promoting workplace safety and keeping premiums low and stable so businesses can prosper.

Highlights of the proposed budget include:

Expediting payments to injured workers - Injured workers must sometimes wait for benefit payments to begin as they collect the necessary paperwork for BWC to calculate payment amounts. This delay threatens to put many workers into dire financial straits. BWC proposes an expedited process that allows eligible injured workers to receive their compensation more quickly, without the red tape and bureaucracy. The law change would allow BWC to provide a minimum payment until their full weekly wage is determined.

Waiving unnecessary medical exams - Injured workers receiving temporary total disability benefits must undergo a 90-day medical examination. This can be unnecessary for some injured workers who clearly need more time to recover before they'll be ready to return to work. To better meet the varying needs of injured workers, this proposal would authorize the administrator to waive the 90-day medical examination when all parties are in agreement.

Closing dormant claims - Current law places applications for permanent partial disability on hold indefinitely if a worker fails to attend or reschedule the medical examination required to determine eligibility. The result is 20,000 applications, many more than a decade old, that remain open and incomplete. The requested change would enable BWC to dismiss these dormant claims and give applicants two years to re-file, ensuring no negative repercussion for those who still have viable claims.

Eliminating outdated injury reporting requirements for physicians - Physicians are required by law to contact BWC only by mail if they believe their patient has contracted an occupational disease. Removal of this outdated requirement will eliminate a burden on physicians that prevents them from selecting the communication method that works best for their business.

Reducing injuries in the public sector - The Public Employer Risk Reduction Program helps create safe and healthy working conditions for Ohio's 600,000 public employees. Proposed improvements to the program are designed to decrease injury rates among these workers, which outpace their counterparts in the private sector. We propose expanding the program to include firefighters, police officers and corrections officers, and giving BWC greater authority to conduct workplace inspections to prevent injuries from occurring.



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Paul Luzzi, Kelly Bomba, and Amy J. Rinehart

H.B. 27

132nd General Assembly
(As Introduced)

(Excluding appropriations, fund transfers, and similar provisions)

Rep. Brinkman

BILL SUMMARY

Drug testing

- Requires the types and amounts of controlled substances to which the continuing law rebuttable presumption that an employee was under the influence at the time of injury applies to be those used by the federal Department of Transportation drug testing program instead of those specified in current law (some drugs appear on both lists).

Payments to dependents

- Prohibits, for claims arising on or after the provision's effective date, compensation or benefits from being paid to a deceased employee's dependent while the dependent is incarcerated as a result of a conviction of any state or federal criminal law.

Temporary total disability

- Authorizes the Administrator of Workers' Compensation, for good cause, to waive the requirement that an employee receiving temporary total disability (TTD) compensation undergo a medical examination.
- Requires the Administrator to refer an employee receiving TTD compensation for a medical examination if the employee's employer objects to the waiver.
- Requires, if an employee's average or full weekly wage has not been determined at the time TTD compensation becomes payable, that an employee receive the minimum calculable compensation for TTD under the Workers' Compensation Law.

- Requires TTD compensation to be adjusted, and overpayments to be recovered, on determination of an employee's average or full weekly wage.
- Requires, if the employee receives less than the amount the employee is entitled to under continuing law for TTD, on determination of the employee's average or full weekly wage, the employee to receive the difference.

Permanent partial disability

- Requires, if an employee fails to schedule a medical examination with the Bureau of Workers' Compensation (BWC) Medical Section or fails to attend a scheduled medical examination, the dismissal of an application for a determination of the employee's permanent partial disability under the Workers' Compensation Law.
- Allows an employee to refile a dismissed application, subject to the continuing jurisdiction of the Industrial Commission under the Workers' Compensation Law.
- Applies dismissal requirement to a claim pending on the provision's effective date and to any future claim.
- Allows all applications pending on the provision's effective date that are dismissed to be refiled within two years after the dismissal.

Secondary payers

- Allows the Administrator, based on an assessment of an employee's claim file, to reimburse, up to \$500, the Centers of Medicare and Medicaid Services, the Ohio Department of Medicaid, or a medical assistance provider to whom the Department has assigned a right of recovery.
- Requires the Administrator, before making a payment, to make a reasonable determination that the payment is for reimbursement of benefits for an injury or occupational disease that is compensable, or is likely to be compensable, under the Workers' Compensation Law.
- Requires these payments to be made from the Surplus Fund Account.
- Allows the Administrator, with the advice and consent of the BWC Board of Directors, to adopt rules to implement the provision.

Public Employment Risk Reduction Program

- Eliminates the ability of a public employer to apply to the Administrator for an exemption from the Public Employment Risk Reduction Program (PERRP).



- Provides coverage under PERRP to firefighters, emergency medical technicians, and certain correction officers.
- Requires the Administrator to adopt rules concerning standards and procedures for an effective safety partnership agreement program for public employers and employees that promotes voluntary compliance with PERRP.
- Specifies that the Administrator or Administrator's designee must make scheduled inspections (rather than inspections) and requires inspections and investigations to be conducted in accordance with the Administrator's rules adopted under continuing law.
- Eliminates current law's requirement that a safety violation notice provided to a public employer include the initial notice the Administrator receives of the violation.

Group rating plans

- Requires the Administrator, if the premium rate of an employer who is a member of a group rating plan changes from the previous year, to provide an explanation of a premium rate revision to the group administrator instead of a copy of the invoice as under current law.

Occupational disease reports

- Eliminates the prohibition against a physician neglecting or refusing to make or transmit an occupational disease report to BWC and the penalty for violating the prohibition.
- Removes references related to submitting occupational disease reports by mail only.

CONTENT AND OPERATION

Drug testing

(R.C. 4123.54)

The bill revises the list of the controlled substances and the necessary levels of some of the controlled substances specified in the continuing law rebuttable presumption described below to be those used by the federal Department of Transportation drug testing program.¹ By using the federal Department of Transportation drug testing program list of controlled substances and cut off levels, the

¹ 49 Code of Federal Regulations 40.87.

bill removes the testing requirements regarding barbiturates, benzodiazepines, methadone, or propoxyphene. The federal regulation replacing the current law drug testing levels does not include testing levels for those substances, and thus it appears that positive tests for those drugs will not trigger the rebuttable presumption.

The bill also removes references to the types of screening test used under current law, "enzyme multiplied immunoassay technique" and "gas chromatography mass spectrometry," and that the test is done on a urine sample. The federal regulation does not specify the type of test or sample type required to be used for purposes of the cutoff concentration levels, thus it is not clear as to which types of tests are required.

The federal regulation includes two cut off levels, the initial test cutoff concentration level and the confirmatory test cutoff level. The bill does not specify which level is to be used, thus it is unclear which level is required to be used under the bill or if the bill requires a two-part test of a sample. However, the bill appears to lower the necessary level of amphetamines and cocaine for purposes of triggering the rebuttable presumption.

Background – rebuttable presumption

Under continuing law, an employee or employee's dependent may be eligible for compensation and benefits for an injury, occupational disease, or death occurring in the course of employment. An employee or dependent is ineligible, however, if the injury or disease is purposely self-inflicted or if the injury's proximate cause was the employee being intoxicated or under the influence of marijuana or of a controlled substance not prescribed by a physician.

A rebuttable presumption that being intoxicated or under the influence was the proximate cause of the injury may be established by either a drug test, or the employee's refusal to submit to the test (as long as the employee is notified that refusal may affect eligibility for compensation and benefits), if the drug test is requested after an injury by (1) an employer who has reasonable cause to suspect that the employee may be under the influence, (2) a police officer who has reasonable grounds to believe that the employee was operating a vehicle while under the influence, or (3) a physician.

"Reasonable cause" means evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. These facts and inferences may be based on observation, a pattern of behavior or work performance, the identification of an employee as the focus of a drug-related criminal investigation, a reliable and credible report of use, or repeated or flagrant violations of the employer's safety or work rules.

Incarcerated dependents

(R.C. 4123.54; Section 741.20)

For claims arising on or after the provision's effective date, the bill prohibits compensation or benefits from being paid to a deceased employee's dependent while the dependent is incarcerated as a result of a conviction of any state or federal criminal law. Continuing law prohibits compensation or benefits from being paid to a claimant while the claimant is incarcerated under those circumstances.

Temporary total disability

Waiver of required medical examinations

(R.C. 4123.53)

Under current law, the Administrator of Workers' Compensation must refer an employee who has received 90 consecutive days of temporary total disability (TTD) compensation to the Bureau of Workers' Compensation (BWC) Medical Section for a medical examination. If a medical examiner determines that the employee remains temporarily and totally disabled, the medical examiner must recommend a date when the employee should be reexamined. The Administrator must schedule, and the employee must attend, medical examinations until an examiner determines that the employee is no longer temporarily totally disabled, or the employee is no longer receiving TTD compensation. Continuing law allows the employee's employer to waive the scheduling of a medical examination.

The bill authorizes the Administrator, for good cause, to waive the scheduling of a medical examination during the period an employee is receiving TTD compensation. If the employee's employer objects to the Administrator's waiver, the Administrator must refer the employee to the BWC Medical Section to schedule the examination, or the Administrator must schedule the examination.

Minimum TTD compensation

(R.C. 4123.56)

Under continuing law, an employee who is entitled to TTD compensation generally receives 66⅔% of the employee's average weekly wage (AWW) for a maximum of 200 weeks or until specified events occur, whichever is earlier. However, during the first 12 weeks of TTD, the employee receives 72% of the employee's full weekly wage, up to a statutory maximum. Weekly TTD compensation cannot be more than the statewide AWW or less than 33⅓% of the statewide AWW unless an



employee's wage is less than the minimum, in which case the employee receives the employee's full wages.

Under the bill, if an employee is eligible for TTD compensation, but the employee's average or full weekly wage has not been determined at the time payments are to start, the employee is entitled to the minimum amount of compensation calculable under continuing law. On determination of an employee's average or full weekly wage, the employee's TTD compensation is adjusted using continuing law.

If the amount of compensation an employee receives under the bill is more than the adjusted amount, the overpayment is recovered through deductions from compensation to which the employee becomes entitled in the same claim or in a different claim pursuant to continuing law. If the amount an employee receives is less than the adjusted amount, the employee is entitled to the difference between the two amounts.

Dismissal of permanent partial disability application

(R.C. 4123.57; Section 741.10)

Under continuing law, an eligible employee may apply to BWC for a determination of the percentage of the employee's permanent partial disability (PPD). When an employee applies for a determination, BWC must schedule the employee for a medical examination by the BWC Medical Section.

Under the bill, if an employee fails to respond to an attempt to schedule a medical examination by the BWC Medical Section or fails to attend a scheduled medical examination without notice or explanation, the employee's application for a determination of PPD must be dismissed without prejudice. An employee may refile the claim, subject to the Industrial Commission's continuing jurisdiction, which allows a change in claim to be made until five years from the date of injury or five years from the date of the last payment of benefits or compensation made under continuing law.

The bill's dismissal provision applies to all applications pending on the provision's effective date as well as future applications. If a pending application is dismissed pursuant to the provision, the claim may be refiled within two years after the dismissal.

Reimbursement of secondary payers

(R.C. 4123.66)

The bill allows the Administrator to make a payment of up to \$500 to either of the following:

- The Centers of Medicare and Medicaid Services for reimbursement of conditional payments made pursuant to the Medicare Secondary Payer Act;
- The Ohio Department of Medicaid, or a medical assistance provider to whom the Department has assigned a right of recovery under continuing law, for reimbursement for the cost of medical assistance paid on behalf of a medical assistance recipient.

Before making a payment, the Administrator must reasonably determine that the payment is for reimbursement of benefits for an injury or occupational disease that is compensable, or is likely to be compensable, under the Workers' Compensation Law.

These payments are to be charged to and paid from the Surplus Fund Account maintained under continuing law. Charges to the Surplus Fund Account do not directly affect the workers' compensation premium paid by an individual employer.

Nothing in this provision can be construed as limiting the Centers of Medicare and Medicaid Services, the Department, or any other entity with a lawful right to reimbursement from recovering amounts greater than \$500. The Administrator, with the advice and consent of the BWC Board of Directors, may adopt rules to implement this provision.

Public Employment Risk Reduction Program

(R.C. 4167.01, 4167.02, and 4167.10; repealed R.C. 4167.19)

The Public Employment Risk Reduction Program (PERRP), which is administered by BWC, provides worker safety and health protection to most of Ohio's state and local government employees. PERRP develops and enforces mandatory job safety and health standards, maintains a reporting and recordkeeping system to monitor job-related injuries and illnesses, and provides assistance, training, and other support to help public employers and employees understand their rights and responsibilities.



Exemptions

The bill eliminates the ability of a public employer, other than a state agency, to apply to the Administrator for an exemption from PERRP, except for inspections after specified accidents occur. Currently, a public employer is eligible for an exemption if (1) the employer qualifies for a group rating plan or the employer's premium rate is at least 50% less than the base rate for its workers' compensation premiums and (2) if the employer does not qualify for a group rating plan, the employer establishes and maintains a safety committee. An exemption granted to a public employer is valid for seven years.

Coverage

The bill includes in the definition of "public employee" individuals employed as firefighters, emergency medical technicians, and certain local correction officers. The result is that individuals employed in these professions will now be covered under PERRP. Continuing law excludes certain individuals from coverage under PERRP, including active duty state militia and individuals employed as peace officers, forest-fire investigators, natural resources officers, wildlife officers, or preserve officers.

Rules for effective safety partnership program

The bill requires the Administrator to adopt rules concerning standards and procedures for an effective safety partnership agreement program for public employers and employees that promotes voluntary compliance with PERRP. Continuing law requires the Administrator, with the advice and consent of the BWC Board of Directors, to adopt rules to administer and enforce the Program.

Inspections

Continuing law authorizes the Administrator or the Administrator's designee to inspect and investigate any facility, construction site, or other area where a public employee is working for a public employer. The bill specifies that the Administrator or the Administrator's designee must make scheduled inspections (rather than inspections) and specifies that the Administrator or the designee must conduct inspections and investigations in accordance with rules the Administrator must adopt under continuing law. Further, the bill allows the Administrator or the Administrator's designee to enter a public employer's facility, site, or area without delay during normal working hours and at other reasonable times to conduct inspections and investigations.

Under continuing law the Administrator or the Administrator's designee may conduct inspections and investigations when a public employee files a complaint with



the Administrator regarding unsafe working conditions or when a public employee exercises the employee's right to refuse to work due to unsafe conditions.

Safety violation notices

The bill eliminates the current requirement that a safety violation notice provided to a public employer include the initial notice the Administrator receives of the violation. As discussed above, continuing law permits a public employee to request an inspection by filing a complaint with the Administrator alleging that the employee's employer has unsafe working conditions. If the Administrator determines that reasonable grounds to believe that a violation or danger exists, the Administrator must notify the public employer of the alleged violation or danger. The notice must inform the public employer of the alleged violation or danger and that the Administrator will investigate and inspect the employer's workplace.

Explanation of rate revision in group rating plans

(R.C. 4123.29)

Under continuing law, the Administrator must offer a plan that groups similar employers together and pools the employers' risk. If the premium rate for an employer who participates in a group rating plan changes from the rate established for the previous year, the Administrator, in addition to sending an invoice with the rate revision to the employer under current law, must provide an explanation of the rate revision to the third-party that administers the group rating plan for the group. Current law requires the Administrator to send a copy of the invoice to the group administrator.

Occupational disease reports

(Repealed R.C. 4123.72; R.C. 4123.71)

The bill eliminates the current law prohibition against a physician neglecting or refusing to make or transmit an occupational disease report to BWC and the penalty for violating the prohibition. Additionally, the bill removes references to submitting occupational disease reports by mail only.

HISTORY

ACTION	DATE
Introduced	02-01-17

H0027-I-132.docx/ks





COLUMBUS | CLEVELAND
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Workers Compensation Budget Bills: H.B. 27 and H.B. 28

Expediting Payments:

H.B. 27: O. R.C. § 4213.56(E) The proposed change addresses how payments of compensation will be made during the period that a wage calculation is being processed, and then addresses how the overpayment and underpayment will be handled. Clear direction on this was necessary as employers were being scrutinized, and sometimes penalized, during audits on this issue.

Waiving Unnecessary Medical Exams:

H.B. 27: O. R.C. § 4123.53(B)(2) The proposed change to this statute requiring the BWC to examine an injured worker on an issue where the BWC feels it is not necessary is great for employers. Currently, if the BWC waives the examination, on issues such as extent of disability, etc., the employer's only recourse is to have the claimant examined at their own cost. I have personally taken this issue to hearing in the past year where an extent of disability examination had been waived by the BWC over 10 times over the span of an entire year, and unfortunately, did not prevail because the statute did not require the BWC to examine if it waived the examination. So, this addition is very positive for employers, and especially state-funded employers who count on the BWC to be their advocate on claims.

Closing Dormant Claims:

H.B. 27: O. R.C. § 4123.57 The proposed change here addresses a concern of employers where claimant attorneys file applications for an increase in permanent partial awards to extend the statute of limitations in a claim, but then because claimant's attorneys have likely lost touch with their client, the claimant never attends an examination and the claim remains open due to an active application. The employer cannot close the claim during this time and, if self-insured, it remains an open claim on the books. Under the proposed change, if an application is filed and the claimant fails to attend the examination, the application is dismissed and, importantly, does not extend the statute of limitations.

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I would recommend putting a time limit on how long the BWC has to dismiss the application after claimant's failure to respond and/or attend examinations, so that this remains an expeditious process, as intended.

Eliminating Outdated Injury Reporting Requirements for Physicians:

H.B. 27: O. R.C. § 4123.71 As the Budget Fact sheet notes, this change is merely to permit physician's offices to report occupational diseases in any manor, versus only mail. This does not affect employers.

Reducing Injuries in the Public Sector:

H.B.27: O. R.C. § 4167.01 This change does not apply to the OMA. It is expanding the PERRP program to include firefighters, police officers and corrections officers. The PERRP program has additional safety requirements and reporting requirements.

Important changes not on the "FY 2018-2019 Budget Facts" sheet

H.B. 27: O. R.C. § 4123.54(B)(1)(b) The proposed change to the statute removes the thresholds for intoxication from the workers' compensation statute and directs employers to 49 CFR 40.87 for intoxication levels. This code section is more specific than the one currently in the workers' compensation statutes, as it allows for several means of testing. It also reduces the thresholds for amphetamines and cocaine as well.

The current statute is also a problem as claimant's counsel were aware of an expert at OSU who would opine that the testing now performed by most hospitals and urgent cares was not covered by the current statute, and thus, could not be relied upon to find that the claim was intoxicated. This effectively removes this argument and puts employers back on an even playing field.

The thresholds under 49 CFR 40.87 are as follows:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoyllecgonine	100 ng/mL.
Opiate metabolites			
Codeine/Morphine	2000 ng/mL	Codeine	2000 ng/mL.
		Morphine	2000 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines			
	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine	250 ng/mL.
MDMA	500 ng/mL	MDMA	250 ng/mL.
		MDA	250 ng/mL.
		MDEA	250 ng/mL.



COMPARISON DOCUMENT BASE

House Bills 27 and 28
132nd General Assembly

Budget Bills for the
Bureau of Workers' Compensation and
Ohio Industrial Commission

(FY 2018 – FY 2019)

As Introduced

www.lsc.ohio.gov

February 2, 2017

Executive

BWCCD1 Premium rate revisions**R.C. 4123.29**

Requires the BWC Administrator, when revising premium rates for employers that are part of a group rating plan, to provide an explanation of the rate revision to the group administrator instead of a copy of the invoice as under current law.

Fiscal effect: Minimal additional administrative expense paid from the Workers' Compensation Fund (Fund 7023) for sending explanations of rate revisions, which are longer than invoices.

BWCCD12 Waiver of required medical examinations for certain temporary total disability (TTD) claims**R.C. 4123.53**

Authorizes the BWC Administrator, for good cause, to waive the requirement that an employee receiving temporary total disability (TTD) compensation undergo a medical examination.

Requires the Administrator to refer an employee receiving TTD compensation for a medical examination if the employee's employer objects to the waiver.

Fiscal effect: May reduce the number of individuals required to undergo medical examinations that would be paid for from the State Insurance Fund.

BWCCD2 BWC drug testing - rebuttable presumption**R.C. 4123.54**

Revises the list of the controlled substances and the necessary levels of some of the controlled substances specified in continuing law to be those used by the federal Department of Transportation drug testing program under the continuing law rebuttable presumption that an employee's intoxication with certain controlled substances at specified levels following an injury was the proximate cause of injury, thus making the employee ineligible to receive compensation or benefits under the Workers' Compensation Law under certain circumstances.

Executive

Fiscal effect: Potential reduction in benefits paid from the State Insurance Fund if more claims are rejected because of the rebuttable presumption thresholds for these substances are reached under the U.S. Department of Transportation drug testing rule.

BWCCD13 Prohibition against payment of compensation or benefits to incarcerated dependents

R.C. 4123.54, Section 741.20

Prohibits, for all claims on or after the effective date of this provision, compensation or benefits from being paid to a deceased employee's dependent while the dependent is incarcerated as a result of a conviction of any state or federal criminal law.

Fiscal effect: Potentially reduces some payments made to dependents from the State Insurance Fund; however, the overall magnitude of this reduction would appear to be rather minimal.

BWCCD4 Minimum compensation for temporary total disability claims

R.C. 4123.56

Requires, if an employee's average or full weekly wage has not been determined at the time temporary total disability (TTD) compensation becomes payable, that an employee receive the minimum calculable compensation for TTD under the Workers' Compensation Law.

Requires TTD compensation to be adjusted, and overpayments to be recovered, on determination of an employee's average or full weekly wage.

Requires, if the employee receives less than the amount the employee is entitled to under continuing law for TTD, on determination of the employee's average or full weekly wage, the employee to receive the difference.

Fiscal effect: No net fiscal effect since overpayments are to be recouped and underpayments to be remitted. TTD payments constituted 13.7% of all State Insurance Fund benefit payments in FY 2016.

Executive**BWCCD5 Dismissal of permanent partial disability applications without required medical examination****R.C. 4123.57, Section 741.10**

Requires the dismissal of an application for a determination of an employee's permanent partial disability if the employee fails to schedule a medical examination with the BWC Medical Section or fails to attend a scheduled medical examination. Allows an employee to refile a dismissed application, subject to the continuing jurisdiction of the Industrial Commission. Applies this dismissal requirement to all pending claims, as well as those filed on or after the provision's effective date. Allows all applications pending on the provision's effective date that are dismissed to be refiled within two years after the dismissal.

Fiscal effect: Potential reduction in benefits paid from the State Insurance Fund if claimants fail to attend the required medical examinations or do not appeal the dismissal of their permanent partial disability claims. Permanent partial disability claims account for 5.3% of all benefits paid from the State Insurance Fund in FY 2016.

BWCCD6 Reimbursement of secondary payers for medical services provided**R.C. 4123.66**

Allows the BWC Administrator, based on an assessment of an employee's claim file, authority to pay reimbursements of up to \$500 to the Centers of Medicare and Medicaid Services, the Ohio Department of Medicaid, or a medical assistance provider to whom the Department has assigned a right of recovery.

Requires the Administrator, before making a payment, to make a reasonable determination that the payment is for reimbursement of benefits for an injury or occupational disease and that the injury or occupational disease is compensable, or is likely to be compensable, under the Workers' Compensation Law.

Requires these payments to be made from the surplus fund account (i.e. not charged against an employer policy) and allows the Administrator, with the advice and consent of the BWC Board of Directors, to adopt rules to implement these provisions.

Executive

Fiscal effect: May potentially expedite payments to Medicaid, the Ohio Department of Medicaid, or medical service providers that in all likelihood would eventually be paid by BWC under current law. Therefore, there appears to be no net fiscal effect. As a result of the federal Medicaid Secondary Payer Program passed in 2013, stricter scrutiny of medical claim billing for secondary payer status is required. This provision would allow BWC to process these bills more quickly and make the necessary payments and determine secondary payer status.

BWCCD3 Occupational disease reports to be transmitted by physicians**R.C. 4123.71, 4123.72 (repealed)**

Repeals the prohibition against a physician neglecting or refusing to make or transmit an occupational disease report to the Bureau of Workers' Compensation and the penalty for violating the prohibition.

Fiscal effect: None apparent.

BWCCD14 Public Employment Risk Reduction Program**R.C. 4167.01, 4167.02, and 4167.10; 4167.19
(repealed)**

Eliminates the current ability of a public employer to apply to the BWC Administrator for an exemption from the Public Employment Risk Reduction Program (PERRP).

Includes in the definition of a public employee individuals employed as firefighters, emergency medical technicians, and certain corrections officers, thereby covering these employees in the program.

Requires the BWC Administrator to develop rules concerning standards and procedures for an effective safety partnership agreement program that promotes voluntary compliance.

Specifies that the BWC Administrator or the Administrator's designee may "make scheduled inspections" rather than "make inspections" as under current law, and allows those inspections to be conducted in accordance with rules, in addition to pursuant to a complaint or due to a public employee exercising the employee's right to refuse to work due to unsafe conditions under current law.

Executive

Eliminates a current law requirement that a safety violation notice provided to a public employer include the initial notice the Administrator receives of the violation.

Fiscal effect: This provision does not specifically require BWC to take on any additional duties; however, expanding the number of employment positions that fall under PERRP could increase costs to BWC, specifically the Safety and Hygiene Division. These costs would be paid from the Safety and Hygiene Fund (Fund 8260).

BWCCD7 Workers' Compensation Fraud Unit**Section: 201.10**

Earmarks \$828,200 in each fiscal year from appropriation item 855410, Attorney General Payments, to fund the expenses of the Workers' Compensation Fraud Unit within the Attorney General's Office. Requires these payments to be processed at the beginning of each quarter of each fiscal year and be deposited into the Workers' Compensation Section Fund (Fund 1950) used by the Attorney General.

BWCCD8 Safety and Hygiene**Section: 201.10**

Requires the Treasurer of State to remit \$22,000,000 in cash in each fiscal year from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260), equivalent to the amount appropriated in each fiscal year under appropriation item 855609, Safety and Hygiene Operating, to cover the Division's operating expenses.

BWCCD9 OSHA On-site Consultation Program**Section: 201.10**

Permits a portion of appropriation item 855609, Safety and Hygiene Operating, to be used to provide the state match for federal funding of the Occupational Safety and Health Administration's On-site Consultation Program operated by the Division of Safety and Hygiene.

Executive**BWCCD10 Vocational Rehabilitation****Section: 201.10**

Permits the Bureau of Workers' Compensation and the Opportunities for Ohioans with Disabilities Agency to enter into an interagency agreement for the provision of vocational rehabilitation services and staff to mutually eligible clients, and permits the Bureau to provide funds from the State Insurance Fund to fund vocational rehabilitation services and staff under any such agreement.

BWCCD11 Deputy Inspector General for BWC and OIC**Section: 201.20**

Requires the Director of Budget and Management on July 1 and January 1 of each fiscal year, or as soon as possible thereafter, to transfer \$212,500 in cash from the Workers' Compensation Fund (Fund 7023) to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission Fund (5FT0).

Requires the Inspector General to seek Controlling Board approval for additional transfers of cash and to increase appropriations under appropriation item 965604, Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission.

Executive

OICCD1 Rent - William Green Building**Section: 1**

Requires that appropriation item 845402, Rent - William Green Building, be used to pay for rent and operating expenses for the space occupied by the Industrial Commission in the William Green Building.



November 11, 2016

Mr. Freddie Johnson
Ohio Bureau of Workers' Compensation
30 W. Spring St.
Columbus, Ohio 43216-2256
Via Email (Freddie.J.1@bwc.state.oh.us)

Re: Comments re. OAC 4123-5-18

Dear Mr. Johnson:

Thank you for the opportunity to provide comments on the BWC's proposed rule revision: OAC 4123-5-18 Medical Proof Required for Payment of Compensation.

Proposed Rule:

The new rule proposes that a Certified Nurse Practitioner (CNP), a clinical nurse specialist (CNS), or a physician assistant (PA) (collectively CNP, etc.) are permitted to sign a MEDCO-14 for an initial period of temporary disability up to, but not exceeding six weeks, and subsequent periods thereafter, so long as the subsequent periods of disability are co-signed by a licensed physician.

OMA Comment:

OMA understands that the intent for this rule change is to permit a CNP, etc. to opine on an injured workers' disability, and declare the individual temporarily and totally disabled in some cases, to expedite benefits to injured workers who are unable to be seen or treated by a licensed physician immediately following a work-related injury.

The proposed rule, as written, appears contrary to the intent of the proposal. As written, the rule permits CNP, etc. to rule on the issue of disability regarding an initial request for up to six weeks.

The proposed rule fails to define when "the initial" six weeks begins and could conceivably occur at any time in the two-year statute of limitations period in which an injured worker can bring a claim. If the intent of the rule is to provide immediate care and relief from work directly after the injury occurs, the rule should be rewritten to be tied to a specific timeframe after the date of injury and not just "an initial" period of TTD.

Finally the proposed rule also indicates after six weeks, a CNP, etc. is permitted to re-sign a MEDCO-14 *if* approved by a licensed physician. What this conveys is that a licensed physician still does not have to see or treat the claimant; he or she just needs to sign-off on the MEDCO-14. If the intent is that a physician actually "see" the patient to make a determination with

respect to the individual's extent of disability, we suggest that the rule be revised to reflect this intention, but we are mindful that no bureaucratic process should ever impede prompt, appropriate medical care and appropriate benefits.

As the BWC further develops these rules please include the OMA in these developments. We appreciate the opportunity to provide input and look forward to continuing to work with you on this issue. Please contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,



Rob Brundrett
Director, Public Policy Services

CC: Kim Kline



November 14, 2016

Mr. Rob Brundrett
Director, Public Policy Services
The Ohio Manufacturers' Association
33 N. High Street
Columbus, OH 43215

Re: Comments re. OAC 4123-5-18

Dear Mr. Brundrett:

This letter is to address the point presented to me in your November 11, 2016 letter regarding The Bureau's recommended changes to OAC 4123-5-18.

First, pursuant to your comments, as well as similar comments from other stakeholders we have made the following modification to the rule's language:

(E) Notwithstanding paragraph (A) of this rule:

(1) During the first six weeks after the date of injury, medical reports on form MEDCO-14 or equivalent completed and signed by a physician, certified nurse practitioner, clinical nurse specialist, or physician assistant who has examined the claimant may be considered sufficient medical proof to support payment or non-payment of disability for no more than six weeks of disability.

Explanation:

Change #1

To address employers concern that the original phrase "[f]or an initial period of temporary disability up to but not exceeding six weeks..." did not clearly enough define what constituted an "initial period" we have modified the recommended language to state: "During the first six weeks after the date of injury...."

This change limits the time when medical information solely from a certified nurse practitioner, clinical nurse specialist, or physician assistant can be considered sufficient for temporary total compensation purposes to only the first six weeks after the date of injury.

Change #2

Additionally, to provide further clarity regarding how long temporary total disability payments can be supported with only medical from a certified nurse practitioner, clinical nurse specialist, or physician assistant, the phrase "for no more than six weeks of disability...."

Change number 2, limits the time for which the initial medical can be used to only six weeks.

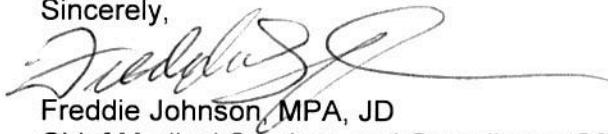
Besides the above, you also presented a recommendation focused on another aspect of the rule as set forth in Paragraph (E)(2). The proposed language in Paragraph (E)(2) indicates that

after six weeks, medical information submitted by a certified nurse practitioner, clinical nurse specialist, or physician assistant who has examined the injured worker would be considered sufficient for subsequent periods of temporary disability, if such medical is co-signed by a physician. Specifically, you indicated that if the intent is that a physician actually "sees" the patient to make a determination with respect to the individual's extent of disability, then your suggestion would be that the rule be revised to reflect this intention. You further indicated that you were mindful that no bureaucratic process should ever impede prompt, appropriate medical care, and appropriate benefits.

The proposed language is a reflection of current practice. Currently, the law has been interpreted that so long as a physician reviews the results of a medical examination, and attest to the agreement of the examination finding by affixing their signature to the medical used for temporary total benefit purposes, such medical is considered sufficient. We believe that the intent to have an appropriate level medical expertise involved in the care and evaluation of an injured worker is important to a quality outcome. While certified nurse practitioners, clinical nurse specialist, and physician assistance will continue to evaluate and treat our injured workers, they are still not allowed to be physicians of records (PORs), or disability evaluator providers.

We very much appreciate your submitted comments. If I have not addressed the points presented in your letter, please do not hesitate to contact me by phone or email.

Sincerely,



Freddie Johnson, MPA, JD
Chief Medical Services and Compliance Officer
614-644-7687 (office phone)
614-725-7559 (cell phone)
Freddie.J.1@bwc.state.oh.us

Cc: Kim Kline

Safety & Workers' Compensation

[BWC Administrator Presents Budget Bill](#)

February 24, 2017

This week Bureau of Workers' Compensation (BWC) Administrator and CEO Sarah Morrison defended the agency's proposed budget, [HB 27](#), in testimony. [Administrator Morrison testified](#) that the budget request is flat from the previous budget and highlighted, that over the last six years, private employer rates have dropped an average of 28.2%, saving employers \$755 million. She presented the agency's strategic priorities and accomplishments.

The bill proposes several policy changes that Morrison explained, including:

- Expediting compensation to employees awarded temporary total disability (TTD) where they don't have ready access to required wage documentation, which delays their compensation. The BWC proposes to pay minimum calculable TTD payments to an injured worker until the calculation can be completed to determine the proper amount. BWC will subsequently true-up TTD compensation.
- Streamlining operations to dismiss the backlog of more than 20,000 suspended applications for permanent partial disability (PPD), so called "C-92" applications, while preserving injured workers rights to PPD. Currently, there is no mechanism to dismiss the C-92 application other than death of the injured worker.
- Allowing the agency and stakeholders to communicate electronically where appropriate, instead of by mail.

The House will continue hearings on the bill. *2/23/2017*

[OMA Tax Committee Hears Briefing on State Budget](#)

February 17, 2017

Businesses and injured workers who use the Ohio Bureau of Workers' Compensation's automated phone system, 1-800-644-6292, will see security changes intended to better protect their sensitive information.

Beginning this week, callers will need more than just their policy or claim number. Injured workers will also

be asked for the last four digits of their social security number and their date of injury. Businesses will be asked for their federal tax ID number (FEIN or SSN) and the ZIP code for the mailing address on the policy. *2/13/2017*

[OSC17 is March 8-10 – Registration is Free](#)

February 10, 2017



The 2017 Ohio Safety Congress & Expo (OSC17), sponsored by the Ohio Bureau of Workers' Compensation, is less than a month away. There is no charge to attend!

By attending the safety congress, you and your team will learn to:

- Prevent workplace injuries and illnesses;
- Achieve better outcomes for injured workers; and
- Reduce workers' compensation claims costs.

There are more than 200 educational sessions.

- 94% of OSC16 attendees believed that there is a potential to impact their organizations after attending this event;
- OSC16 achieved a 93% attendee satisfaction rate; and
- Almost 90% of the attendees claimed they would implement what they learned in their workplaces.

[Register here](#). And don't forget to say hi to [your OMA team](#) at booth #434! *2/6/2017*

[BWC and Industrial Commission Budgets Introduced](#)

February 10, 2017

The General Assembly has introduced both the [Bureau of Workers' Compensation \(BWC\) budget](#) (HB 27) and the [Industrial Commission budget](#) (HB 28). The bills, which are historically filed separately from the State Operating Budget, usually have a swift passage by the General Assembly.

A summary of policy changes in the introduced versions is included in this [comparison document](#), and BWC prepared this [summary of budget facts](#). Hearings are expected to begin shortly in the House. 2/9/2017

[It's February! Post Your OSHA Form 300A](#)

February 3, 2017

Employers are reminded to post their [OSHA Form 300A](#), Summary of Work-Related Injuries and Illnesses, between February 1, 2017 and April 30, 2017. The Form 300A lists the total number of job-related injuries and illnesses that occurred during the previous year and must be posted even if no work-related injuries or illnesses occurred during the year. It should be displayed in a common area where notices to employees are usually posted so that employees are aware of the injuries and illnesses occurring in the workplace.

A company executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes—based on his or her knowledge of the process by which the information was recorded—that the annual summary is correct and complete. 2/1/2017

[Supreme Court Awards TTD, Disregards Violation of Work Rule](#)

February 3, 2017

In a 5-2 opinion of *State ex rel. Cordell v. Pallet Cos., Inc.*, the Supreme Court of Ohio found that the Ohio Industrial Commission abused its discretion by denying the claimant's application for temporary-total disability (TTD) compensation after he was terminated following a workplace injury for violation of a work rule that occurred before the injury and was discovered as a result of the injury.

This case, which involves an employee's violation of his employer's drug-free workplace policy, and subsequent compensable injury, is of interest to virtually all employers.

Justices O'Donnell and Kennedy dissented from the majority opinion.

Read a [summary of the facts and decision](#) from OMA counsel, [Sue Wetzel](#), of Bricker & Eckler. 1/31/2017

[OSHA Issues Recommended Practices for Anti-Retaliation Programs](#)

January 27, 2017

Earlier this month, the Occupational Safety and Health Administration (OSHA) issued [Recommended Practices for Anti-Retaliation Programs](#).

OMA Connections Partner Frantz Ward [highlights some of the key items](#) recommended by OSHA for an effective anti-retaliation program and advises: "To the degree that OSHA applies this Guidance in connection with investigations of alleged retaliation, employers should have a record that they considered and, to the degree applicable to their circumstances, adopted recommendations from it." 1/23/2017

[BWC Approves Safety Grants for 41 Employers](#)

January 27, 2017

Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison this week announced 41 employers will share more than \$942,000 in grants to purchase equipment designed to substantially reduce or eliminate workplace injuries and illnesses.

The BWC commits \$15 million to the safety grant program each year.

Here is a [listing of recipients](#) by county, including descriptions of planned equipment purchases.

The Safety Intervention Grant program provides employers with a 3-to-1 matching amount up to a maximum of \$40,000. Quarterly data reports and follow-up case studies help BWC determine the effectiveness of employers' safety interventions and establish best practices for accident and injury prevention. Learn more about the [Safety Intervention Grant Program](#).

View stories about previous grant recipients on [BWC's YouTube channel](#). 1/25/2017

[OSHA Issues Final Rule on Beryllium Exposure](#)

January 20, 2017

OSHA issued a rule on Jan. 6 that lowers workplace exposure to beryllium, a metal that can be hazardous to workers when particles are inhaled through dust or fumes during processing.

The new standards will lower the eight-hour permissible exposure limit to beryllium from 2.0 to 0.2 micrograms per cubic meter of air. When concentrations exceed those limits, employers will be required to take additional measures to protect workers.

The rule becomes effective on March 10, 2017, after which employers have one year to implement most provisions. For more information, see OSHA's [beryllium final rule webpage](#). 1/18/2017

[Registration Open for 2017 Ohio Safety Congress & Expo](#)

January 13, 2017



Registration is now open for the 2017 Ohio Safety Congress & Expo (OSC17), the largest regional safety and health conference in the U.S. The event, sponsored by the Ohio Bureau of Workers' Compensation (BWC), will run March 8-10 at the Greater Columbus Convention Center.

OSC17 will feature more than 200 educational sessions presented by experts from across the country covering topics related to occupational safety and health, wellness, rehabilitation, controlling claims costs and medical treatment of injured workers.

An expo marketplace will also host more than 200 exhibitors. Come visit OMA at booth #434!

Attendance is free for Ohio employers and their employees. [Registration and course listings are available here](#). 1/7/2017

[Governor Signs Firefighter Cancer Bill into Law](#)

January 13, 2017

Last week, Governor Kasich signed Senate Bill 27, the "firefighter cancer bill," into law, making it possible for firefighters with cancer to receive workers' compensation benefits.

For workers' compensation purposes, the bill presumes that firefighters who develop cancer contracted the disease while performing their firefighting duties.

The OMA worked to ensure the bill included protections against potential expansion to other industries.

OMA workers' compensation counsel Sue Wetzel of Bricker & Eckler provides this [summary of the final bill](#). 1/12/2017

[High Court Decision Overrides Bargained Provision](#)

January 6, 2017

In a recent Supreme Court of Ohio case, *State ex rel. BF Goodrich Co. v. Indus. Commission of Ohio*, the injured worker sought overtime compensation for the time she was in the employer's light duty/restricted employee work program as a result of a workplace injury.

The terms of the program were determined by a collective-bargaining agreement that contained a provision that employees on light duty outside of their own job classification are not eligible for overtime.

Parties escalated the case through the judicial system until the high court eventually held that the claimant was eligible for wage-loss compensation because 1) she suffered a reduction in wages during the periods of time at issue, and 2) her placement in the light-duty program was causally related to the allowed conditions of her claims.

Read [more from OMA counsel](#), Sue Wetzel, of Bricker & Eckler. 12/29/2016

[Give the Gift of Safety](#)

December 22, 2016



The BWC has you covered with gift ideas to keep your adventurers, do-it-yourselfers and loved ones safe and healthy throughout the year.

The safety experts from BWC's Division of Safety & Hygiene have compiled this [Safety & Health Gift Guide](#) to help you give the gift that keeps on giving – safety and wellness.

The guide includes ideas for gifts to keep your friends and family safe at home and on the road. It also includes reminders about creating or reviewing plans in case of home emergencies.

Do you have weekend warriors at home? Check out ideas ranging from proper footwear and hearing protection to task lighting and eye safety.

How about outdoor adventurers? From harnesses and carabineers for rock climbers to gun safety classes for hunters, there are plenty of options to choose from.

Keep the kids safe with tips for buying the safest toys and products, from toddlers to teenagers.

Also read the travel tips to keep you safe when travelling over the river and through the woods to grandmother's house.

BWC and OMA wish you a happy and SAFE holiday season and new year! *12/19/2016*

[New OSHA Posting Requirement](#)

December 22, 2016

OSHA issued a new rule, which takes effect January 1, 2017, requiring employers to notify employees of their right to report work-related injuries and illnesses free of retaliation. However, employers can meet the

new rule requirement by posting the poster already required. [Here's the required poster.](#) *12/16/2016*

[Don't Overlook Coverage for Employees Who Travel Out of State](#)

December 16, 2016

Each state has different laws and requirements for workers' compensation coverage. Consider each state where you send employees, and make sure proper coverage is in place.

The Bureau of Workers' Compensation (BWC) works with a private insurer to offer optional coverage to employers with out-of-state exposures.

Through BWC's Other States Coverage, employers can secure coverage in 46 states to eliminate potential coverage gaps and compliance issues, which may arise when working out of state.

Contact the BWC's Other States Coverage unit at (614) 728-0535 or [via email](#). *12/14/2016*

[Supreme Court Disallows PTD and PPD in Same Claim](#)

December 9, 2016

The Supreme Court of Ohio this week ruled that an injured worker is not entitled to both permanent and total disability (PTD) compensation and permanent partial (PPD) compensation in the same claim.

The Supreme Court specifically found that state law does not permit an award of PPD compensation to an injured worker who has already been awarded PTD compensation in the same claim.

This is a great decision for employers who have been faced with paying both where the Industrial Commission ruled PTD compensation was based on either the physical or psychological conditions in a claim. Read [an analysis of the case](#) from OMA counsel, Sue Wetzel, of Bricker & Eckler. *12/8/2016*

[Hosed Down Firefighter Bill Approved](#)

December 9, 2016

In the midst of an action packed lame duck session the General Assembly passed [Senate Bill 27](#). The bill sponsored by Senator [Tom Patton](#) (R-Strongsville) originally provided that a firefighter who is disabled as a result of specified types of cancer is presumed to have incurred the cancer while performing his or her

job duties, thus creating eligibility for workers' compensation benefits. After opposition from the OMA and local government groups, the bill was improved in the House.

The bill cleared the final hurdles of the legislative process. It now creates the presumption that a firefighter is eligible for workers' compensation benefits if he or she contracts cancer and has been exposed in the line of duty to an agent classified by the International Agency for Research on Cancer as a Group 1 or 2A carcinogen. In order to qualify the firefighter must have been assigned to at least six years of hazardous duty, among other terms.

While the bill ([see analysis](#)) still creates a new allowance in workers' compensation law, OMA and its allies were successful in scaling back the precedent. 12/8/2016

[OSHA Issues New Walking-Working Surface & Fall Protection Rule](#)

December 2, 2016

OSHA [issued a final rule](#) November 17 updating its 44-year old general industry Walking-Working Surfaces standard to protect workers from slip, trip, and fall hazards.

The final rule includes: "... revised and new provisions addressing, for example, fixed ladders; rope descent systems; fall protection systems and criteria, including personal fall protection systems; and training on fall hazards and fall protection systems. In addition, the final rule adds requirements on the design, performance, and use of personal fall protection systems."

OSHA estimates the final rule will prevent more than 5,800 injuries a year. The rule takes effect January 17, 2017. 12/1/2016

[Supreme Court Upholds Industrial Commission, Favors Claimant](#)

December 2, 2016

The Supreme Court of Ohio issued a decision in the *Manpower of Dayton, Inc. v. Indus. Comm., et al.* in favor of the claimant, upholding the Industrial Commission's Order awarding claimant PTD compensation.

Claimant provided medical evidence indicating she was totally disabled as a direct result of her impairments from her industrial injury based on the allowed conditions. The Industrial Commission also

had claimant examined, and it was determined that claimant had reached maximum medical improvement and was incapable of engaging in sustained remunerative employment.

It does not appear from the record that the employer submitted any medical evidence of its own to contradict the medical evidence offered by claimant and the Industrial Commission. Instead, the employer attempted to argue the opinions were legally insufficient.

The Supreme Court of Ohio disagreed, finding the Industrial Commission is the sole evaluator regarding the weight and credibility of the evidence. The employer's request for a writ of mandamus was denied.

Sue Wetzel of OMA counsel, Bricker & Eckler, provides [more about the case](#). 11/29/2016

[BWC Extended True-up Grace Period](#)

December 2, 2016

For employers that failed to true-up and pay their 2015 policy by the original grace period date of September 30, but did true up and pay by November 30, the Bureau of Workers' Compensation (BWC) will add them back to policy year 2016 premium discount programs and restore eligibility for policy year 2015 bonus programs.

Employers that complete the true-up and pay in the 59 days post November 30, 2016 can file an appeal for program cost relief via the BWC Governor's One Time Forgiveness policy. Read the BWC [policy true-up policy here](#).

Direct any questions to [BWC Employer Programs Unit](#) or to OMA's [Brian Jackson](#). 11/29/2016

[BWC Recognizes International Fraud Awareness Week](#)

November 18, 2016

The Ohio Bureau of Workers' Compensation (BWC) and its Special Investigations Department (SID) [are celebrating International Fraud Awareness Week](#), November 13-19.

Created in 1993, SID is staffed with 118 agents, supervisors and support personnel. The department works out of 11 offices across the state and investigates hundreds of fraud cases a year, from workers who fake injuries to physicians running pill mills. Agents are armed with smart phones and

sophisticated investigatory devices they don't talk about publicly.

In 23 years, SID has identified more than \$1.7 billion in savings.

To report workers' comp. fraud in Ohio, [click here](#) or call the fraud hotline at 1-800-644-6292. 11/17/2016

[BWC Amends Rule about Medical Provider Authority at OMA Request](#)

November 18, 2016

Previously, under Ohio Administrative Code, certified nurse practitioners, clinical nurse specialists, and physician assistants (CNP, etc.) were not permitted to provide an opinion regarding whether a claimant is temporarily and totally disabled. The BWC recently revised this rule to permit CNP, etc. to offer an opinion regarding temporary total disability for any initial period of disability throughout the length of the claim.

After consideration of [OMA comments](#) in direct response to the BWC's proposed changes, a CNP, etc. can only offer an opinion regarding temporary total disability if requested to do so within the first six weeks following the date of injury, and can only write a claimant off work or place them on light-duty for up to six weeks.

This language [reconciles the BWC's intent](#) to provide immediate care to an injured worker following a work-related injury and to be taken off work if necessary, with a manufacturer's needs to remain productive, profitable and efficient by requiring care with a licensed physician if the extent of disability is expected to go beyond six weeks. 11/17/2016

[BWC Upgrading Systems this Weekend](#)

November 11, 2016

By the time you are reading this, the Ohio Bureau of Workers' Compensation (BWC) will have already begun a systems upgrade that will impact services to its customers through the Veterans Day weekend. The upgrade will modernize operations and improve customer service with the replacement of BWC's core claims and policy management systems.

Beginning yesterday afternoon, Nov. 10, many BWC systems, including web and call center services, were unavailable. It is anticipated normal operations will resume on Tuesday, Nov. 15. 11/9/2016

[New OSHA Reg. and Post-Accident Drug Testing](#)

November 11, 2016

The Occupational Safety & Health Administration (OSHA) recently released information to explain how its May 2016 ruling, the New Electronic Accident Reporting Rule (29 CFR 1904.35), impacts post-accident drug testing.

As a result, OMA Connections Partner, Working Partners® has posted guidance on how to consider your post-accident drug testing policy and practices. [Read it here.](#) 11/10/2016

[Workers' Comp. Group Experience Rating Deadline is Nov. 14](#)

November 4, 2016

OMA's workers' compensation Group Experience Rating plan deadline for enrollment is Monday, November 14. Be sure to lock in your workers' compensation premium savings!

For members opting for OMA's Group Retrospective Rating program, your deadline for enrollment is January 24, 2017.

All members are invited to contact OMA's [Jeremy Sesco](#) or [Brian Jackson](#) for advice about the best combination of plans and services for your company. 11/2/2016

[BWC's Morrison Appoints New Field Operations Chief](#)

October 28, 2016

Ohio Bureau of Workers' Compensation (BWC) Administrator & CEO Sarah Morrison [announced the appointment](#) of the bureau's new chief of field operations. Deborah Dexter, Ph.D., joined Morrison's senior leadership team on October 17.

As field operations chief, Dexter will lead BWC's Customer Services Division, overseeing injury management services, employer risk and safety services and the customer contact center, among other duties.

Dexter most recently worked as vice president of operations support for Dublin-based Cardinal Health, where she spent the last eight years focused largely on improving customer service. She held similar duties at Lucent Technologies from 1995 to 2007.

Dexter holds a bachelor's degree in business administration from The Ohio State University, two master's degrees and a doctorate in organization and management from Capella University. She's also the author of "You're Not too Big to Fail: A Proven Guide to Successful Organizational Change Management."

A photo of Dexter [can be found here](#). 10/25/2016

[**Major BWC Upgrades Scheduled November 10-14**](#)

October 21, 2016

To modernize operations and improve customer service, the Bureau of Workers' Compensation (BWC) will replace its core claims and policy management systems next month. The transition will occur over Veterans Day weekend, Nov. 10-14.

[Here is a timeline of key dates](#).

BWC anticipates resuming normal operations on Tuesday, Nov. 15.

BWC encourages employers to complete any time-sensitive transactions in advance of the transition. For information throughout the transition, follow BWC on Twitter [@OhioBWC](#). 10/14/2016

[**Ohio Achieves 11th Lowest Workers' Compensation Rates among States**](#)

October 21, 2016

The [Bureau of Workers' Compensation \(BWC\) reports](#) that Ohio's workers' compensation rates continue to improve in rankings among states. Based on a biennial study that compares national workers' compensation rates, the BWC reported: "The state's rates improved from 33rd in 2014 to 40th, making Ohio the 11th lowest among all states."

The "[Oregon Study](#)" ranks states from most expensive to least expensive. Ohio has continually improved since its rates were ranked third highest in the nation in 2008.

The Oregon Study, produced by the Oregon Department of Consumer & Business Services, compares each state's base rates across a selection of 50 widely used classification codes that are assigned by occupation to indicate their degree of risk.

Since the study was conducted, BWC reduced average rates for private employers another 8.6 percent. Further, the study does not account for the

various money-saving BWC programs. When the base rate reductions and rebate programs are factored in, the actual amount collected by BWC averages \$1.22 per \$100 of payroll compared to the \$1.45 rate reflected in the study. The national median rate is \$1.84. 10/20/2016

[**OSHA Publishes New Safety Program Guidelines**](#)

October 21, 2016

OSHA has recently updated its [Guidelines for Safety and Health Programs](#), first released 30 years ago, to "reflect changes in the economy, workplaces, and evolving safety and health issues."

The new [recommended practices](#) present a "step-by-step approach to implementing a safety and health program, built around seven core elements that make up a successful program." 10/19/2016

[**OSHA Delays Anti-Retaliation Provisions Again**](#)

October 21, 2016

OSHA has again delayed enforcement of the anti-retaliation provisions in its [injury and illness tracking rule](#) until Dec. 1, 2016.

The U.S. District Court for the Northern District of Texas requested the delay to allow additional time to consider a motion challenging the new provisions. The anti-retaliation provisions were originally scheduled to begin Aug. 10, 2016, but were previously delayed until Nov. 10 to allow time for outreach to the regulated community.

Per OSHA: "Under the rule, employers are required to inform workers of their right to report work-related injuries and illnesses without fear of retaliation; implement procedures for reporting injuries and illnesses that are reasonable and do not deter workers from reporting; and incorporate the existing statutory prohibition on retaliating against workers for reporting injuries and illnesses." 10/19/2016

[**A Serious Top 10**](#)

October 21, 2016

Every October, OSHA releases a preliminary list of the [10 most frequently cited safety and health violations](#) for the fiscal year, compiled from nearly 32,000 inspections of workplaces by federal OSHA staff.

The list rarely changes; included this year are:

1. Fall protection
2. Hazard communication
3. Scaffolds
4. Respiratory protection
5. Lockout/tagout
6. Powered industrial trucks
7. Ladders
8. Machine guarding
9. Electrical wiring
10. Electrical, general requirements

[OSHA](#) and the [BWC Division of Safety & Hygiene](#) have plentiful, excellent safety resources. Also, see the OMA [2017 schedule of safety webinars](#) and visit the [OMA video Library](#) (login to My OMA to access) for lots of recorded safety content. 10/19/2016

[BWC Safety Grants Going to the Dogs](#)

October 14, 2016



Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Sarah Morrison visited Rosehill Veterinary Hospital, Reynoldsburg, to recognize the company for its commitment to safety of its workers and the family pet. The hospital received a \$40,000 BWC Safety Intervention Grant to protect its employees from injuries associated with x-raying animals; it invested in a digital radiography and x-ray table.

Of course you don't x-ray pets in your manufacturing facility but consider how you could improve safety by investing in equipment that reduces your risks and exposures.

BWC's Safety Intervention Grant Program assists Ohio employers in purchasing equipment to substantially reduce or eliminate injuries and illnesses associated with a particular task or operation. Learn more [about the program here](#) and view stories of previous grant recipients at [BWC's YouTube channel](#). 10/13/2016

Workers' Compensation Legislation

Prepared by: The Ohio Manufacturers' Association

Report created on February 24, 2017

- HB27** **WORKERS' COMPENSATION BUDGET** (BRINKMAN T) To make changes to the Workers' Compensation Law, to make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of the Bureau's programs.
Current Status: 3/1/2017 - House Insurance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-27>
- HB28** **INDUSTRIAL COMMISSION BUDGET** (BRINKMAN T) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2017, and ending June 30, 2019, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 3/1/2017 - House Insurance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-28>