

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



Safety & Workers' Compensation Committee

Wednesday February 26, 2020

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**2020 Safety & Workers'
Compensation Committee
Calendar
Meetings begin at 10 a.m.**

June 11
November 4

Our Meeting Sponsor:





Safety & Workers' Compensation Committee Agenda

February 26, 2020

Welcome & Self-Introductions	Larry Holmes, Fort Recovery Industries Inc.
BWC Update	Brian Jackson, OMA Staff Mike Pulsfort, HMS Rob Brundrett, OMA Staff
Safety Update	Dianne Grote Adams, Safex
Guest Speaker	Dave Boyd, Director of Self-Insured Operations, Ohio BWC
House Bill 308	Member Discussion
Guest Speakers	Scott Lape, Special Agent in Charge, Ohio Bureau of Workers' Compensation, Special Investigations Department Tamela Dixon, Assistant Special Agent in Charge: Ohio Bureau of Workers' Compensation, Special Investigations Department
Public Policy Report	Rob Brundrett, OMA Staff
OMA Counsel's Report	Sue Roudebush, Bricker & Eckler LLP

Our Meeting Sponsor:



David E. Boyd

Dave has nearly 25 years experience in the insurance industry serving for 13 years at Ohio BWC and 10-plus years working for a third-party administrator as a senior account executive and risk consultant.

Dave is currently the Director of Self-Insured Operations at BWC, a position he held from 2005-2008. In his role as Director, Dave oversees 1,140 self-insuring employers that he and his staff ensure are adhering to underwriting, financial and claim administration requirements, among other duties.

Dave holds a bachelor's degree in business administration with a focus in finance from The Ohio State University.

**Scott Lape: Special Agent in Charge, Ohio Bureau of Workers' Compensation,
Special Investigations Department**

Scott Lape has been with the Ohio Bureau of Workers' Compensation's Special Investigations Department for the past 21 years. Scott has spent the last 12 years in a supervisory position with prior experience as a Special Agent within the same department. Currently, Scott is the Supervisory Agent in Charge of the Southeastern region claimant fraud team who is tasked with detecting, investigating, and prosecuting fraud committed by claimants in the 36 counties surrounding the Columbus, Cambridge and Portsmouth area. Scott holds a Bachelor of Arts degree in Criminology from The Ohio State University.

Bio

Tamela Dixon, Assistant Special Agent in Charge: Ohio Bureau of Workers' Compensation, Special Investigations Department

Tamela is nearing her 28th year as a member of the Ohio Bureau of Workers' Compensation (BWC) Special Investigations Department. Tamela began her career with BWC in 1993 in the Human Resources Department. In 1998, she was promoted to the position of Special Agent, and in 2008 Tamela was promoted to the management team as an Assistant Special Agent in Charge. As an agent, Tamela was consistently one of the top performers in the department.

Tamela is a proud graduate of Columbus Public Schools. She holds a Bachelor of Arts degree in Criminology from the Ohio State University. While working as an agent, she earned a master's degree in Criminal Justice, with a concentration in Forensic Psychology, from Tiffin University. Tamela is currently working towards a doctoral degree in Education Administration, with a concentration on Critical Cultural Studies in Educational Foundations, at Ohio University in Athens, Ohio.

Tamela is active in her community and church. She is passionate about issues involving empowerment, equality and social justice. Tamela Dixon is founder and president of Strong Women in Action (SWA); an organization established in 2005 for the purpose of providing a variety of support and enrichment services to women within and throughout the Columbus community.

In addition to the aforementioned commitments to work, church, community and school, Tamela is an adjunct instructor for Ohio University and Columbus State Community College where she teaches courses in diversity studies, critical cultural studies, multiculturalism, law enforcement, criminal justice and more.



What's New?

March 2 Deadline to upload OSHA 300A information. *New this year you must include your EIN Employer Identification Number.*

Those that are exempt include

- The establishment's peak employment during the previous calendar year was 19 or fewer, regardless of the establishment's industry.
- The establishment's industry **is on *the Appendix A to Subpart B***, regardless of the size of the establishment. (manufacturers are NOT exempt)

<https://www.osha.gov/injuryreporting/>

Keeping UP

Coronavirus or COVID-19

You should have a policy re: international travel if you didn't create one during the last few international concerns about illnesses and/or pandemics. Currently, this virus and the spread of the disease have not been classified as a pandemic. The last pandemic was the 2009 H1N1 pandemic.

There is OSHA guidance as well as interim CDC guidance.

CDC Recommends (as of 2/23/2020)

- While the immediate risk of this new virus to the American public is believed to be low at this time, everyone can do their part to help us respond to this emerging public health threat:
 - It's currently flu and respiratory disease season and CDC recommends getting a flu vaccine, taking everyday preventive actions to help stop the spread of germs, and taking flu antivirals if prescribed.
 - If you are a healthcare provider, be on the look-out for people who recently traveled from China and have fever and respiratory symptoms.
 - If you are a healthcare provider caring for a COVID-19 patient or a public health responder, please take care of yourself and follow recommended infection control procedures.
 - If you have been in China or have been exposed to someone sick with COVID-19 in the last 14 days, you will face some limitations on your

movement and activity. Please follow instructions during this time. Your cooperation is integral to the ongoing public health response to try to slow spread of this virus. If you develop COVID-19 symptoms, contact your healthcare provider, and tell them about your symptoms and your travel or exposure to a COVID-19 patient.

- For people who are ill with COVID-19, please follow [CDC guidance on how to reduce the risk of spreading your illness to others](#).

The following resources are available with information on COVID-19

- [U.S. Department of State China Travel Advisory](#)external icon
- [World Health Organization, Coronavirus](#)external icon

What to expect during an OSHA inspection – A You Tube video that is less than five minutes in duration. This video is worth including in all supervisor/manager training and education. <https://www.youtube.com/watch?v=HA6bixDzeLY&feature=youtu.be>

2020 is the 50th anniversary of OSHA.

www.safex.us

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Partner

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Coronavirus and influenza: Key issues for employers

February 11, 2020

While the coronavirus warrants and continues to receive careful attention, experts warn that the flu may be far more deadly in 2020. February marks the peak of flu season. In fact, according to the Centers for Disease Control and Prevention (CDC), influenza this year is at a record high with an estimate of at least 19 million Americans infected and approximately 180,000 hospitalizations. Whether it's the flu or coronavirus, employers managing increased workplace illness should be aware of potential employment law issues and develop strategies for maintaining a healthy workplace.

What illness-related questions can I ask my employees?

The Americans with Disabilities Act (ADA) prohibits employers from making disability-related inquiries (e.g., asking questions likely to elicit information about a disability) or requiring medical examinations of employees, except under limited circumstances. Typically, the flu is not a covered disability under the ADA, because it usually does not last long enough to substantially limit a major life activity. However, someone with the flu may claim an employer "regarded" them as having a disability based upon the employer's inquiries, which is also prohibited under the ADA.

With regards to the flu and other contagious illnesses, the following applies:



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Associate

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- Employers may ask employees whether they are experiencing flu-like symptoms, such as fever, chills or a sore throat.
- Employers may ask employees who recently traveled to locations with high rates of the flu illness or other highly contagious illnesses whether they are experiencing symptoms, even if the travel was personal.
- Employers may not ask employees whether they have medical conditions that would make them more vulnerable to the flu or other illnesses.
- Before denying an employee's request for a leave of absence or other accommodation due to any illness, including the flu, employers should consider whether there are other underlying conditions that could be ADA qualifying or whether the illness itself is "sufficiently severe" enough to be considered a disability under the ADA.

Can I send sick employees home? What leave coverage are they entitled to?

The CDC advises that employees who are experiencing the flu or other highly contagious illnesses should stay home to minimize the spread of illness. While it may be legally permissible to send a sick employee home, an employer should do so with caution and have an established policy that it follows consistently. Employers should also keep in mind that some severe cases of flu, particularly those requiring hospitalization, may be covered under the Family Medical Leave Act (FMLA). Additionally, for employers in states with paid state or local sick leave laws, many of those laws allow workers to use paid leave to recover from the flu or other extended illness.

Can I require employees to get vaccinated?

Generally, employers are free to implement mandatory flu vaccination programs for their employees, and a few states have passed laws requiring flu vaccines for health care workers. For health care employers, the goal is to stop the spread of illness not only to other workers but to patients, many of whom may have compromised immune systems. For non-health care employers, the more common practice is to encourage, rather than to require, vaccinations. For employers that do require vaccinations, it is important to keep in mind that an employer must provide reasonable accommodation for employees with a disability or medical condition for which vaccination is contraindicated or who have a sincerely held religious belief or practice that prohibits the employee from getting vaccinated.

Other considerations

Employers can take basic precautions to maintain a healthy workforce during flu season and throughout the year:

- Encourage employees to get vaccinated and make vaccination clinics available onsite when possible.
- Ask sick employees to stay home and provide a leave policy that supports employees staying at home when ill.
- Promote hand hygiene and cough etiquette.

- Keep the workplace clean, paying special attention to commonly touched surfaces and equipment.
- Educate employees about the flu and risks for flu complications.
- Reconsider business travel to areas with high illness rates.

Finally, employers should review their leave and accommodation policies and practices to ensure compliance with all applicable employment laws.



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 308*
133rd General Assembly

Bill Analysis

[Click here for H.B. 308's Fiscal Note](#)

Version: As Reported by House Insurance

Primary Sponsor: Rep. Patton

Paul Luzzi, Attorney

SUMMARY

- Makes a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD) eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the person suffers an accompanying physical injury.
- Prohibits a claimant from receiving compensation or benefits under the Workers' Compensation Law for PTSD with no accompanying physical injury at the same time as the claimant is receiving a disability benefit from a state retirement system.

DETAILED ANALYSIS

Workers' compensation coverage for PTSD

Under the bill, a peace officer, firefighter, or emergency medical worker who is diagnosed with post-traumatic stress disorder (PTSD), received in the course of and arising out of the person's employment as a peace officer, firefighter, or emergency medical worker, may be eligible to receive compensation and benefits under Ohio's Workers' Compensation Law, regardless of whether the PTSD is connected to a compensable physical injury.¹ Currently, an employee is not eligible to receive any compensation or benefits under Ohio Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.

* This analysis was prepared before the report of the House Insurance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

¹ R.C. 4123.01(C), with conforming changes in R.C. 4123.01(A), 4123.026, and 4123.46.

Under the bill, a claimant is not entitled to compensation or benefits under the Workers' Compensation Law for PTSD as provided under the bill while the claimant receives a disability benefit or disability retirement, as appropriate, from the Public Employees Retirement System (PERS), the Ohio Police and Fire Pension Fund (OP&F), the School Employees Retirement System (SERS), or the State Highway Patrol Retirement System (SHPRS).²

If a claimant receives compensation or benefits under the Workers' Compensation Law for PTSD without an accompanying physical injury while the claimant receives a disability benefit or disability retirement from a retirement system, the bill allows the Administrator of Workers' Compensation or a self-insuring employer to collect both of the following from the claimant:

1. The amount of compensation or benefits paid to the claimant by the Administrator or the self-insuring employer pursuant to Workers' Compensation Law for the time period the claimant received disability benefits or a disability retirement from the retirement system;
2. Any interest, attorney's fees, and costs the Administrator or the self-insuring employer incurs in collecting that payment.³

On determining that a PERS, OP&F, SERS, or SHPRS member's PTSD without an accompanying physical injury qualifies the member for a disability benefit or disability retirement, the bill requires the appropriate retirement system to notify the Administrator of all of the following: the member's name, that the member's PTSD without accompanying physical injury qualifies the member for a disability benefit or disability retirement, the effective date of the member's disability benefit or disability retirement, and the date on which payments for the disability benefit or disability retirement commence. The bill exempts these reports from current law confidentiality requirements applicable to certain PERS, OP&F, SERS, or SHPRS records.⁴

Background – psychiatric conditions as “injuries”

Other than injuries falling under specific exceptions (self-inflicted injuries or injuries caused by the employee's intoxication), Ohio's Workers' Compensation Law entitles every employee who is injured or contracts an occupational disease to receive compensation, benefits, or both on account of the injury or occupational disease.⁵ Continuing law defines “injury” as any injury received in the course of, and arising out of, the injured employee's employment. Currently, psychiatric conditions generally are excluded from the definition of injury, except where:

² R.C. 4123.87(A).

³ R.C. 4123.87(B).

⁴ R.C. 145.364, 742.391, 3309.402, and 5505.182.

⁵ R.C. 4123.54, not in the bill.

1. The employee's psychiatric conditions have arisen from an injury or occupational disease sustained by that employee; or
2. The employee's psychiatric conditions have arisen from sexual conduct in which the employee was forced to engage or participate by threat of physical harm.⁶

Thus, under current law, an employee is not eligible to receive compensation or benefits under Ohio's Workers' Compensation Law for PTSD unless the PTSD arose from a compensable physical injury incurred by the employee.⁷

Background – PTSD

PTSD is an illness caused by living through or seeing a traumatic event, such as war, a violent crime, or a bad accident. PTSD can cause flashbacks, trouble sleeping, thoughts of hurting oneself or others, angry outbursts, and feelings of worry, guilt, sadness, or loneliness. Signs of PTSD may start soon after a traumatic event or may start or intensify years after the event.⁸

Definitions

Under continuing law, a "peace officer" means any of the following:

1. A sheriff or deputy sheriff;
2. A marshal or deputy marshal;
3. A member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio;
4. A member of a police force employed by a metropolitan housing authority;
5. A member of a police force employed by a regional transit authority;
6. A state university law enforcement officer;
7. An enforcement agent of the Department of Public Safety;
8. An employee of the Department of Taxation to whom investigation powers have been delegated under the Cigarette Tax Law;
9. An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest-fire investigator, a natural resources officer, or a wildlife officer;

⁶ R.C. 4123.01(C).

⁷ *Armstrong v. Jurgensen Co.*, 136 Ohio St.3d 58, 2013-Ohio-2237.

⁸ National Institute of Mental Health, *Post-Traumatic Stress Disorder*, <https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml>.

10. A person designated to perform law enforcement duties in a park district or conservancy district or by a park commission;
11. A veterans' home police officer;
12. A special police officer employed by a port authority;
13. A township police constable;
14. A police officer of a township or joint police district;
15. A special police officer employed by a municipal corporation at a municipal airport or certain other municipal air navigation facilities;
16. The House of Representatives Sergeant at Arms, if the person has arrest authority, or an assistant House of Representatives Sergeant at Arms;
17. The Senate Sergeant at Arms or an assistant Senate Sergeant at Arms;
18. Certain Bureau of Criminal Identification and Investigation employees or officers;
19. A state fire marshal law enforcement officer;
20. The Superintendent and troopers of the State Highway Patrol, for specified purposes.⁹

Under continuing law, an "emergency medical worker" means any of the following persons, whether the person is paid or a volunteer, so long as the person is certified under Ohio law:

- A first responder;
- An emergency medical technician-basic;
- An emergency medical technician-intermediate;
- An emergency medical technician-paramedic.¹⁰

HISTORY

Action	Date
Introduced	06-28-19
Reported, H. Insurance	---

H0308-RH-133/ts

⁹ R.C. 4123.01(P), by reference to R.C. 2935.01, not in the bill.

¹⁰ R.C. 4123.01(A) and (R).



January 28, 2020

The Honorable Tom Brinkman
Chairman, House Insurance Committee
Ohio House of Representatives
77 S. High St., 11th floor
Columbus, Ohio 43215

RE: House Bill 308 – OMA Opponent Written Testimony

Dear Chairman Brinkman:

Throughout the years, the OMA has consistently advocated for an efficient and effective workers' compensation system that benefits workers, employers, and the economy of the state.

House Bill 308 would allow police, fire, and emergency medical workers to receive workers' compensation if that worker has been diagnosed with post-traumatic stress disorder (PTSD) regardless if there is an accompanying physical injury.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of such physical injuries/illnesses. The OMA has a history of opposing proposals that would permit PTSD compensation in cases in which there is no associated physical injury or illness. The adoption of a mental-only diagnosis would mark a significant change to the Ohio workers' compensation system.

Additionally, we are concerned about the potential expansion of workers' compensation beyond this provision's narrow target of first responders. We recognize that peace officers, firefighters, and emergency medical workers experience traumatic events. However, they are not alone in their willingness to undertake dangerous and essential jobs. If we erode the physical injury requirement for peace officers, firefighters, and emergency medical workers, it may be difficult to justify not doing the same for other professionals who seek equal treatment.

Once a fundamental parameter of the workers' compensation system – like the physical injury requirement – is compromised, the potential inroads into the program are endless. The result will be increased workers' compensation costs for public and private employers alike. The implications of those cost increases will be felt across the board and will impact Ohio's business climate. The increased costs could also affect our public employers' abilities to provide essential public safety functions.

In addition, given that mental health benefits have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about where PTSD arising apart from a workplace physical injury/illness is most effectively and appropriately financed –

private health insurance, a special workers' compensation insurance PTSD fund outside of the current system, or a completely different model. Recently there have been many conversations amongst interested parties about how to provide first responders appropriate and comprehensive PTSD treatment without eroding the fundamental parameter of workers' compensation – the physical injury requirement.

The OMA would urge the committee to not pass House Bill 308.

Sincerely,



Rob Brundrett
Director, Public Policy Services



February 12, 2020

The Honorable Tom Brinkman
Chairman, House Insurance Committee
Ohio House of Representatives
77 S. High St., 11th floor
Columbus, Ohio 43215

Dear Chairman Brinkman:

Our organizations, on behalf of our members, write to you today to encourage the House Insurance Committee to vote no on Amended House Bill 308.

Collectively we have long advocated for a workers' compensation system in Ohio that benefits workers, employers, and the economy of the state. Over the past decade the Ohio Bureau of Workers' Compensation has continued to make strides in medical outcomes and actuarial soundness.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of such physical injuries/illnesses. Our organizations have a history of opposing proposals that would permit PTSD compensation where there is no associated physical injury or illness. The adoption of a mental-only diagnosis would create a significant departure to longstanding and clear precedent in Ohio workers' compensation system law.

Expanding PTSD coverage in the workers' compensation will lead to cost increases to Ohio's public and private employers. In addition, given that mental health benefits have parity with physical health benefits under health insurance plans, it is important to have a broader conversation about where PTSD arising apart from a workplace physical injury/illness is most effectively and appropriately financed -- health insurance, an emergency responder fund, or a separate PTSD benefits system as advocated by our collective organizations.

Therefore, we would respectfully ask that the House Insurance Committee delay voting on House Bill 308 or in the alternative vote no on House Bill 308 in order to find a solution that all interested parties can support.



February 12, 2020

KEY VOTE ALERT

Vote No on House Bill 308 – Workers' Compensation PTSD

The Ohio Manufacturers' Association (OMA) is requesting your "No" vote in opposition to House Bill 308.

House Bill 308 makes mental or emotional impairment caused by post-traumatic stress disorder (PTSD) a compensable condition, even if there is no physical injury.

The Ohio workers' compensation system was designed to compensate injured workers' physical injuries/illnesses and any mental conditions that arise as a result of on the job physical injuries/illnesses.

The OMA opposes proposals that would permit PTSD compensation in cases in which there is no associated physical injury or illness. The adoption of a mental-only diagnosis would mark a significant change to the Ohio workers' compensation system.

This provision, if enacted, will inevitably result in increased workers' compensation costs for both public and private employers. The consequences of those cost increases will be felt across the Ohio economy and will negatively impact Ohio's business climate.

For these reasons, the OMA deems House Bill 308 to be a KEY VOTE.

Thank you.

A handwritten signature in blue ink, appearing to read "Ryan Augsburger".

Ryan Augsburger
Managing Director of Public Policy
614-629-6817

A handwritten signature in blue ink, appearing to read "Rob Brundrett".

Rob Brundrett
Director of Public Policy
614-629-6814



February 19, 2020

Dear Select Members of the Ohio House of Representatives:

Our six business organizations, on behalf of employers across Ohio, would like to express our sincere gratitude for your tough vote against House Bill 308. We know your vote, at face value, can make it look like you are against the heroic men and women who serve as first responders, but we know nothing could be further from the truth! As Paul Harvey would say, "and now for the rest of the story."

We know your no vote on HB 308 was really a reflection of the significant unintended consequences of reversing 100 years of precedent could have on Ohio workers' compensation system, and due to your belief that there is a better way to solve the needs of first responders facing Post Traumatic Stress Disorder (PTSD).

As you know, this legislation is concerning to the business community because, if passed, it will erode the physical injury requirement for compensating mental conditions in Ohio's workers' compensation system. We believe our opposition to this issue has not been properly portrayed by some, so we hope this letter can provide you with more context and information about why we urged you to vote no on HB 308. Below you will find key points and misconceptions surrounding the PTSD issue:

- This legislation proposes a drastic departure from over 100 years of Ohio law requiring proof that a mental condition, such as depression or anxiety, arose from a physical injury suffered by the claimant before it can be considered compensable. Under this bill, an injured worker could become eligible for lifetime benefits for just witnessing something. Seeing something traumatic during the course of work which the individual believes caused a mental condition, could now make them eligible to receive treatment, paid time off, and even lifetime disability payments under the workers' compensation system – an insurance system paid for exclusively by Ohio employers.
- One of the biggest fears of this new mental-only allowance is that it opens the door to a costly expansion of this type of coverage to all workers. The day this bill is signed into law, workers' compensation trial lawyers will rush to courthouses across Ohio to claim, under the equal protection provisions of the Ohio Constitution, what's good for first responders is good for all Ohio workers. They will argue a truck driver who only witnessed a traffic

accident, a bank teller who witnessed a robbery, or an employee who witnessed an injury of a fellow worker should also be entitled to mental-only compensation. It is not hard to see how this would lead to a massive and potentially abusive expansion of workers' compensation coverage.

- We heard proponents of the bill claim they would not entertain other groups who want to make their employees eligible for mental-only benefits. The reality is the expansion of this coverage will likely not be left up to the state legislature, but rather will be determined by the court system as they are asked to apply an "equal protection" standard to all workers.
- Our organizations recognize the unique and stressful work environments of first responders. We have been working, in good faith, with representatives of the police and firefighters associations, to move forward with a bill that would provide the exact same coverages they were seeking in House Bill 308, but through a uniquely tailored insurance product for first responders outside the workers' compensation system. We supported a product that would provide comprehensive PTSD medical treatment and wage loss. This coverage would be as robust as any offered in the workers' compensation system but would be housed in the Ohio Department of Public Safety. The benefit of having this insurance product administered by this department is threefold:
 - The Ohio Department of Public Safety is an agency much better equipped to understand the unique needs of first responders and is headed by individuals who often were once first responders themselves.
 - It would be providing a streamlined and less bureaucratic process than the Ohio Bureau of Workers' Compensation, bypassing the adjudicatory processes of the Ohio Industrial Commission, allowing claims to be processed faster, have less opportunity for denial, and require appeals to be filed in the court of common pleas.
 - Finally, it would provide the critical legal "walled-off" protection so it could not easily be expanded into other private sector professions.
- Unfortunately, our attempts to work with proponents on an alternative PTSD coverage plan failed.
- Oftentimes during the discussions on PTSD, the issue is confused with military service. Please be aware PTSD benefits are provided for active military and veterans through the federal government, and this bill does not change those coverages.
- Finally, we cannot overlook the potential cost of this legislation. There have been varying cost assumptions over the years ranging from \$70 to \$100 million per year to cover public first responders, a cost counties, cities, villages, and townships would have to immediately cover in their workers' compensation premiums. The taxpayers of those communities will ultimately pay for this increase in benefits. The cost of this coverage would rise exponentially if all workers were eligible, and that enormous cost would fall on the backs of every Ohio employer.

Thank you again for your support of Ohio's business community with your tough vote on House Bill 308 last week.

PTSD legislation increasing costs, not care

Angela Childers

October 09, 2019 [REPRINTS](#)

States across the country continue to propose and pass laws purported to provide first responders diagnosed with post-traumatic stress disorder with workers compensation coverage. However, these laws aren't necessarily working as intended, and can leave first responders without care and municipalities struggling to cover the costs, experts say.

"If you're listening to the first responders ... they're convinced that presumption is exactly what they've earned" but municipal workers comp pool managers will "tell you that presumption actually fails" in many ways, said John Hanson, an Atlanta-based senior consultant with Willis Towers Watson PLC.

"The cost is extraordinary," he added. "The reality is that a large number of these claims ... are all heavily litigated or arbitrated, and a really high percentage of these claims are not readily paid."

On Oct. 1, California became the latest state creating a rebuttable presumption of a compensable mental health injury when Gov. Gavin Newsom signed S.B. 542, intended to provide workers compensation for firefighters and law enforcement personnel who sustain occupational PTSD. The law will apply to injuries on or after Jan. 1, 2020.

Maine, Minnesota, Oregon and Vermont have passed occupational presumption legislation for PTSD. Colorado, Connecticut, Florida, New Mexico, New Hampshire, New York, Nevada and Texas have passed legislation that makes PTSD diagnosis compensable for certain first responders. Some bills, like those in Florida and Connecticut, define exactly what types of traumatic events must be witnessed for the PTSD to be compensable.

Hawaii, Michigan, North Carolina, Tennessee, Virginia and West Virginia all introduced some form of first responder PTSD legislation at the beginning of the 2019 legislative session but none have become law.

Ohio had considered the addition of PTSD presumption for first responders, but the language was stripped from the 2019 budget by the state's Senate until further study into the cost of the presumption can be conducted.

South Carolina created a fund to help first responders with out-of-pocket medical costs related to PTSD treatment.

According to the Substance Abuse and Mental Health Services Administration, an estimated 30% of first responders develop behavioral health conditions such as depression and PTSD, and firefighters and law enforcement officers have higher suicide rates than the general population.

This is where presumption laws aimed at providing care and paid leave under workers comp to first responders grappling with PTSD come in, but not all PTSD claims are viable and not all PTSD is caused by the first responder's work, according to legal experts.

Rebuttable presumption legislation is driving up the cost of litigation by placing the burden on the employers and insurers to rebut cases, said Bert Randall, president of Baltimore law firm Franklin & Prokopik P.C.

That can include paying for independent medical examinations, detailed investigations into the claimant's medical history and their exposures and more, which are "really costing employers and their insurers a lot of money."

Minnesota's PTSD presumption legislation, which took effect Jan. 1, applies to traumatic events that occurred after Jan. 1, 2013, so long as the first responder is diagnosed with PTSD according to the American Psychology Association's 5th Edition Diagnostic and Statistical Manual of Mental Disorders.

"(The legislation) has flipped the burden of proof, and there are more cases being filed," said Mark Kleinschmidt, partner at Mendota Heights, Minnesota-based law firm Cousineau, Waldhauser & Kieselbach PA. "It's very difficult to figure out ... objective measurements by which to say the person was exposed to a traumatic incident. You're looking at a treatment cost that's difficult to manage, and along with the treatment cost comes the period of disability ... that might be longer than a physical injury."

In California, state workers comp groups, as well as county, city and insurance associations, requested that the governor veto S.B. 542 due to a lack of information on the need of PTSD coverage and the financial impact it could have on the state's compensation system.

"Without evidence that a problem exists or an analysis of the potential costs to local entities, especially considering the retroactivity, we don't believe this legislation should be enacted," the entities said in a letter sent to the governor in September.

The Boca Raton, Florida-based National Council for Compensation Insurance has also expressed its concern with presumption bills, noting the uncertainty of future losses given the

potential latency of a presumptive claim, according to research briefs published by the ratings agency.

Although most of these PTSD laws limit coverage to firefighters, police officers and emergency medical technicians, other public workers and even some groups in the private sector are fighting for PTSD presumption coverage, said Desiree Tolbert-Render, Orlando, Florida-based assistant vice president, national technology compliance for workers compensation at Sedgwick Claims Management Services Inc.

“What you are seeing more are attempts to expand (coverage), she said. “For instance, in some states where they started out with firefighters and police, it’s expanded to include other state employees, correctional officers.”

That includes the private sector. California nurses and Connecticut private ambulance drivers have been lobbying to have PTSD preemptively compensable, said Ms. Tolbert-Render, and teachers have also argued why they may witness a tragic event — such as the school shooting in Sandy Hook in 2012 — but don’t have the same benefits as a first responder on the scene.

“If it keeps expanding, it’s probably going to end up being cost prohibitive,” she said.

Because the workers comp system “hinges on diagnosis,” it makes more sense to implement a suite of preventive resources for first responders exhibiting symptoms of PTSD vs. claiming through the comp system, which “wasn’t built” for addressing these issues, said Mr. Hanson.

“Some states that have the presumption have discovered that the volume of PTSD claims is far greater than they imagined,” he said. “There is a lot to PTSD that has yet to be revealed. If we create a presumption, have we opened the floodgates to potential catastrophic damage to municipal comp pools?”

SPECIAL INVESTIGATIONS OVERVIEW



Presented by:

Scott Lape, Special Agent in Charge

Tamela Dixon, Assistant Special Agent in Charge

BWC Statistics

Total offices statewide: 11

BWC Personnel: 1774

Total open claims: 646,379

Total Lost time claims: 207,594

Active employers: 249,472

Total medical paid: \$490,034

Total compensation paid: \$960,735

Total benefits paid: \$1,406,769.686



Why Focus on Fraud?

Industry studies estimate that fraud represents **5 to 20%** of all workers' compensation benefits. If this is correct at BWC, it would equate to **\$100 to \$400 million** of BWC's medical and compensation payments.

BWC SID mission

To effectively and proactively prevent losses to the workers' compensation system and to deter, detect, investigate and prosecute workers' compensation fraud.



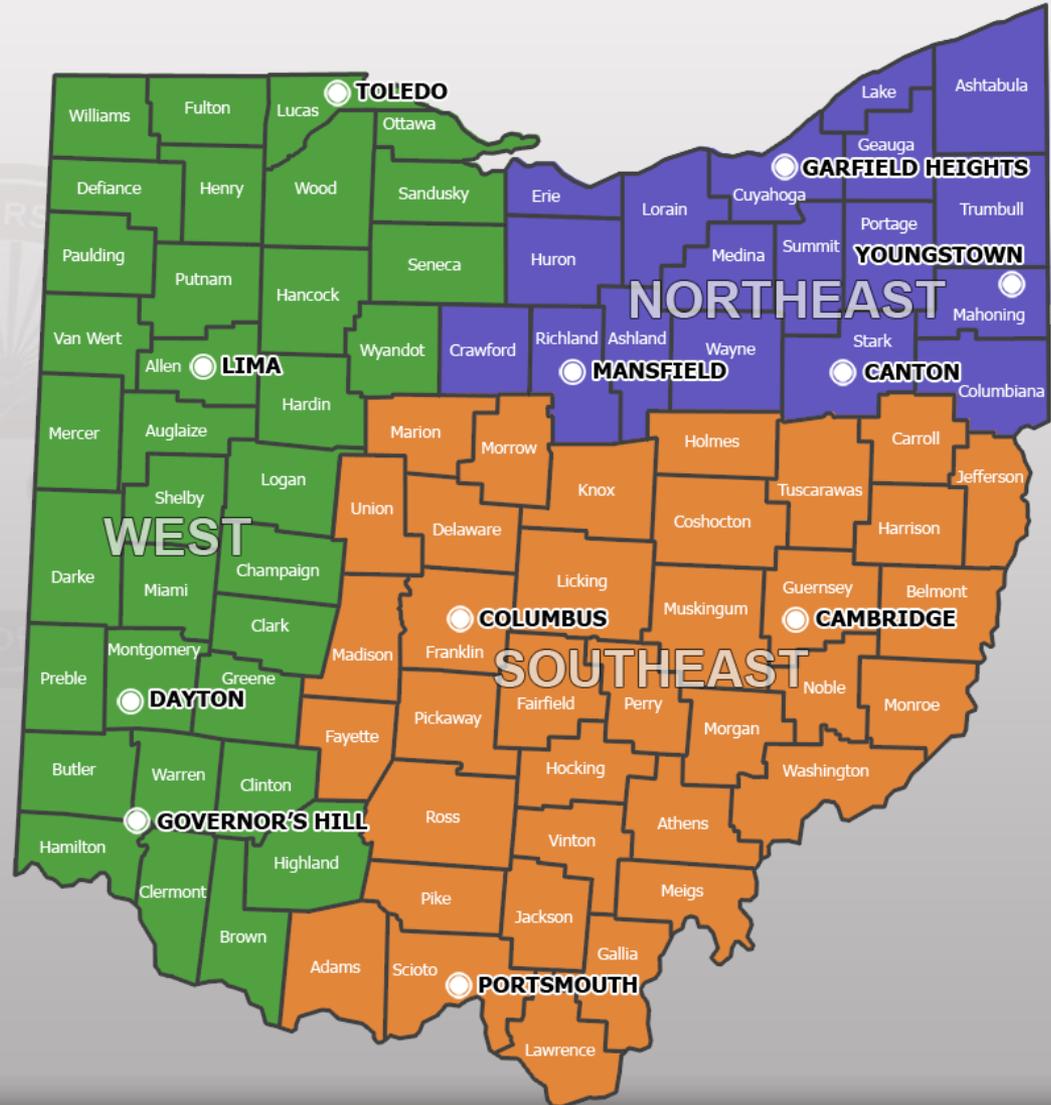
SPECIAL INVESTIGATIONS OVERVIEW



SPECIAL INVESTIGATIONS OVERVIEW

Claimant Teams:

- Southeast Region
- Northeast Region
- West Region



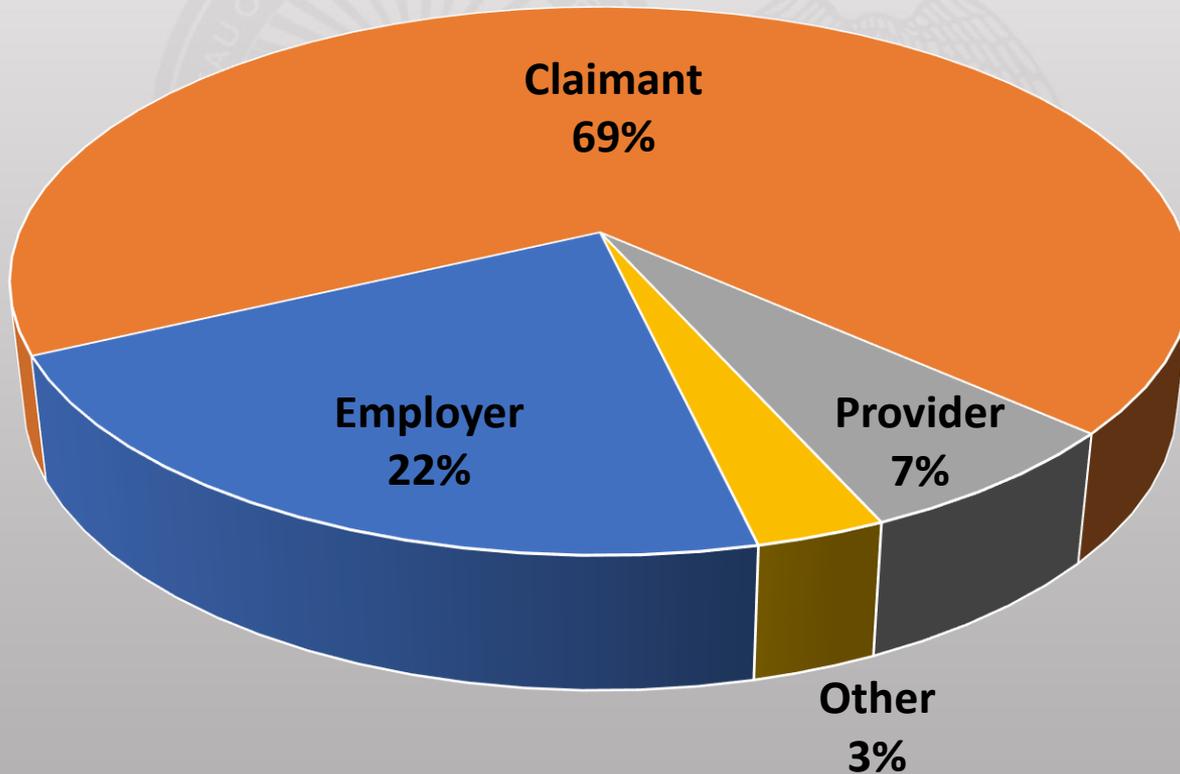
SID Statistics

FY 2019

<i>STATISTICS</i>	
Allegations Received	2,925
Cases Investigated	1,732
Founded Cases	832
Convictions	101
Total Savings	\$65,144,322
Average Identified Savings	\$37,612

FY2019 Stats

Closed Cases by Subject Type FY 2019



Ohio Revised Code (ORC) 2913.48 Workers' Compensation Fraud

No person, with **purpose** to defraud or **knowing** that the person is facilitating a fraud, shall:

1. Receive workers' compensation benefits to which the person is not entitled;
2. Make or present a false or misleading statement with the purpose to secure payment;
3. Alter, falsify, destroy, conceal, or remove any record or document necessary to validate a claim.
4. Misrepresent manual codes, classification of employees, payroll, etc.
5. Alter or forge a BWC certificate or fail to maintain BWC coverage.

Fraud vs. Abuse

Fraud

Punishable by law

Requires "knowledge and intent"

Overt act
(misrepresentation)

Intentional omission

Abuse

Excessive use or misuse of workers' compensation benefits.

Abuse cannot be criminally prosecuted under the law.

Dealt with by effective case/claims management and civil/administrative remedies.

Claimant Fraud

Types of cases

- Working while receiving benefits
- Physical activity: Activity that is inconsistent with medical reports. Using deceptive behavior during medical appointments to deceive physicians
- False Claims: No real injury, mechanism of injury inconsistent
- Drug Deception: Selling narcotics, using deceptive means to obtain narcotics from various providers



Healthcare Fraud

Types of cases

- **Services not rendered** – Billing for a service that was never provided
- **Upcoding** – Billing for a higher level of service than provided
- **Unbundling** – Billing for two CPT codes instead of one inclusive code resulting in a higher payment
- **Double billing** – Billing BWC and another insurance agency for the same service



Employer Fraud

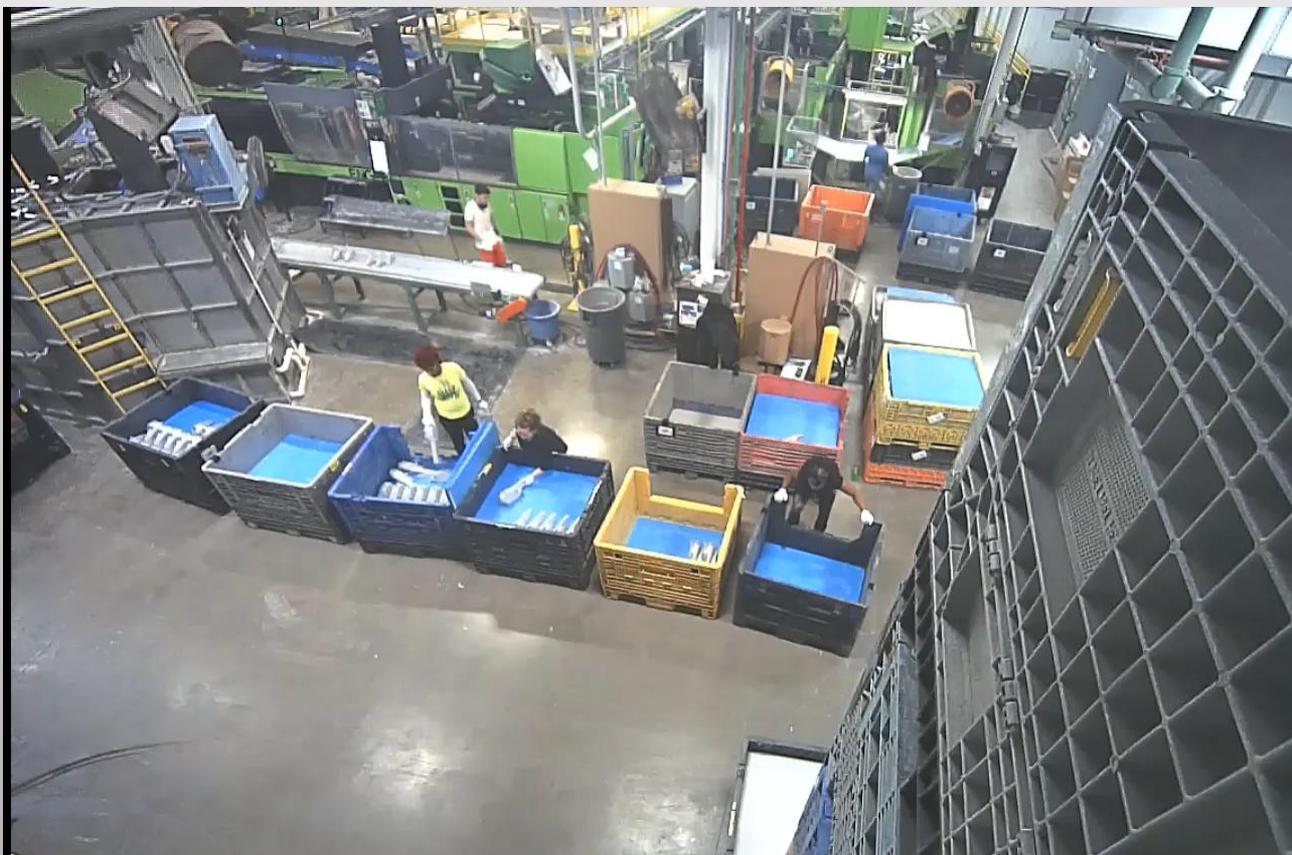
Types of cases

- False Certificates
- Incorrectly Classifying Employees
- Non-Payment of Premiums
- Writing bad checks
- Under Reporting



Case Study

“Light fell out of ceiling and hit me in the head”



Case Study

“While working the drive thru I slipped and fell in water”

“Water on the floor went to get mop hit the water fell on right side”

“I was standing in drive thru and I fell on some water”



Case Study

“Fell over crack in the floor”



Case Study

Jason Dross

- Source alleged Dross was involved in heavy weightlifting at YMCA and bragging that he was on disability and getting free money
- Review claim / review medical reports
- Review social media
- Undercover operation
- Submit case to Attorney General's Office

SPECIAL INVESTIGATIONS DEPARTMENT

Claim / Medical Reports

Physical Capacity – Identify the injured worker's physical restrictions caused by any impairments resulting from the allowed conditions in the claim. For psychiatric/psychological condition(s) please attach a narrative report explaining restrictions.	
Total hours during an eight-hour day injured worker can: 0 1 2 3 4 5 6 7 8 Sit <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Stand <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Walk <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Injured worker can: (% of eight-hour day) Never 0% <input type="checkbox"/> Occasionally 1%-33% <input checked="" type="checkbox"/> Frequently 34%-66% <input type="checkbox"/> Continuously 67%-100% <input type="checkbox"/> Bend <input type="checkbox"/> Squat <input type="checkbox"/> Crawl <input type="checkbox"/> Climb <input type="checkbox"/> Reach <input type="checkbox"/>
Injured worker can lift: (% of eight-hour day) Never 0% <input type="checkbox"/> Occasionally 1%-33% <input type="checkbox"/> Frequently 34%-66% <input type="checkbox"/> Continuously 67%-100% <input checked="" type="checkbox"/> Up to 5 lbs <input type="checkbox"/> 6-10 lbs <input type="checkbox"/> 11-20 lbs <input type="checkbox"/> 21-25 lbs <input checked="" type="checkbox"/> 26-50 lbs <input checked="" type="checkbox"/> 51-100 lbs <input type="checkbox"/>	Injured worker can carry: (% of eight-hour day) Never 0% <input type="checkbox"/> Occasionally 1%-33% <input type="checkbox"/> Frequently 34%-66% <input type="checkbox"/> Continuously 67%-100% <input checked="" type="checkbox"/> Up to 5 lbs <input type="checkbox"/> 6-10 lbs <input type="checkbox"/> 11-20 lbs <input type="checkbox"/> 21-25 lbs <input checked="" type="checkbox"/> 26-50 lbs <input checked="" type="checkbox"/> 51-100 lbs <input type="checkbox"/>
Use of hands in repetitive action such as: Simple grasping Pushing and pulling arm controls Fine manipulation Right <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Left <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Use of feet in repetitive movements of leg controls Right <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Left <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Both <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Based on the allowed conditions of this claim, please list any additional restrictions not specified in the physical capacity section.	Are the restrictions <input checked="" type="checkbox"/> temporary <input type="checkbox"/> permanent If temporary give an opinion as to the expected duration of the restrictions: from <u>11/18/10</u> to <u>01/01/2011</u> Due to the restrictions noted above, how many total hours per day and per week is the injured worker able to work? _____ Hours _____ Days

Physician Signature (Mandatory)

I certify that the above information is correct to the best of my knowledge. I am aware that any person who knowingly makes a false statement, misrepresentation, concealment of fact or any other act of fraud to obtain payment as provided by BWC or who knowingly accepts payment to which that person is not entitled is subject to felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

Physician Signature (Mandatory) [Signature] Date 11/19/10 BWC p (Mandatory)

BWC-1267 (Rev. 6/27/2006)
C-140 Pg. 2

Is Mr. Dross able to benefit from rehabilitation or other intervention at this time?
 Mr. Dross is demonstrating losses in range of motion of the shoulders and flexibility of the lower back and hamstrings. These losses are likely attributable to his thoracic spine injury/pain limiting upper extremity use. Additional progression of range of motion restrictions and related functional decline is expected without some intervention to restore normal mobility. Mr. Dross denies currently participating with any type of home exercise program.

Patient Instruction

We discussed the functional capacity report issued, we will attempt to decide what the next logical step. To discuss with Scott Uhlenhake and see what recommendations he has. Still having persistent tenderness in the parathoracic muscle region, some tenderness, To sign a 12 month Handicap parking sticker.

Musculoskeletal: no muscle weakness laying in bed, if goes to move, "more tense in the back" in the mid thoracic lumbar area, no shoulder pain

Visit Date: 09/02/2011
Patient: Dross, Jason J

DOB:
Phones:
CC / HPI:
Pt presents for recheck of back pain-BWC

He presented with back pain. It is located thoracic spine. It is described as chronic. The symptom is ongoing. Pertinent findings include radicular pain - left leg, radicular pain - right leg, denies extremity numbness, denies extremity weakness and denies headache.

ROS:

Claim / Medical Reports

Physical Capacity – Identify the injured worker's physical restrictions claim. For psychiatric/psychological condition(s)

ns caused by any impairments resulting from the allowed conditions in the (s) please attach a narrative report explaining restrictions.

Injured worker can lift: (% of eight-hour day)

Never Occasionally Frequently Continuously
0% 1% - 33% 34% - 66% 67% - 100%

Injured worker can carry: (% of eight-hour day)

Never Occasionally Frequently Continuously
0% 1%-33% 34%-66% 67%-100%

- Up to 5 lbs
- 6-10 lbs
- 11-20 lbs
- 21-25 lbs
- 26-50 lbs
- 51-100 lbs

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Review Social Media



11/22/10 – “wow, what a night.. worked on the bench tonight and decided to use the purple band for additional tension. it went like this, 315 hit rack, 320 smoked, 330 smoked, 340 smoked, 350 smoked. all Raw and like I said with the purple band for additional tension. Need to come down off the “Rush”..lol”

11/26/10 – “great day at the gym. Benching was the game, hitting a 10# PR for a total of 360 raw was totally insane.....45 more #'s to go.....”

12/1/10 – “well the legs can withstand 580#'s for 6 reps. now I cant walk.....would it be less painful if i just cut them off???”

1/23/11 – “405 raw is around the corner.....”

Undercover Operation



Case Study – Criminal Conviction

Jason Dross

Plead guilty

Workers' compensation fraud and

Theft - Felonies of the 5th degree



Sentenced to 9 months in jail; suspended for three (3) years of community control; conditions are to maintain employment and restitution payable to the BWC in the amount of **\$31,736.98**.

Something to Remember

- One of four Americans say its OK to defraud Insurers
- One of ten would commit insurance fraud if they could get away with it
- One of three Americans say it's ok for employees to stay off work and get WC benefits because they feel pain, even if doctor says it's ok to return to work
- Two out of five people are “not very likely” to report someone for insurance fraud

*Source - Coalition Against Insurance Fraud

Stay updated on the SID

facebook Search for people, places and things

Ohio Bureau of Workers' Compensation
SPECIAL INVESTIGATIONS

Report Fraud

Call 1-800-644-6292 or visit bwc.ohio.gov.

BWC Special Investigations
@ohiobwcfraud

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- Safety Violations Investigation Unit
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BWC Special Investigations
August 26 at 10:41am · 🌐
<http://ow.ly/fSVG303C8gm> ✓

INVESTIGATIONS DEPARTMENT
FISCAL YEAR 2016 ANNUAL REPORT

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Tamela Dixon, Assistant Special Agent in Charge

Office Phone.....614.728.9333

Tamela.D.1@bwc.state.oh.us



TO: OMA Safety and Workers' Compensation Committee
FROM: Rob Brundrett
RE: Safety and Workers' Compensation Report
DATE: February 26, 2019

Overview

Workers' compensation issues have been at the forefront of several legislative battles over the past 14 months. Speaker Householder has made several workers' compensation issues a priority in the House's agenda. Among these issues are expanding workers' compensation coverage to mental only claims and changing Ohio's misclassification employment laws.

The OMA has been working with allies to fight back against these unprecedented changes in workers' compensation law. However, the House once again passed first responder PTSD legislation this winter. Senate President Larry Obhof is quoted saying that he too is in favor of the coverage. More workers' compensation legislation is expected this year and lame duck session could be a tenuous time for the system.

Legislation and Rules

House Bill 79 – Industrial Commission Budget

The often non-controversial Industrial Commission budget was the only budget to be passed and signed by the June 30th deadline. The bill due to its non-controversial nature was signed by the Governor on June 27th, and contained only IC appropriations.

House Bill 80 – Bureau of Workers' Compensation Budget

Administrator McCloud provided her initial testimony on the BWC budget to the House Insurance Committee in February. The budget bill included a 7% increase in funding due to the extra pay period in 2019. The Insurance Committee passed the bill out of committee with no changes. The bill was rereferred to the Finance Committee for more debate since it contains appropriations.

The House Finance Committee provided a substitute version which was accepted. Included in that version was PTSD coverage for first responders. The business community has long opposed the so-called mental/mental provision because it challenges the longstanding precedent that physical injuries are required to receive workers' compensation. Also included was severe employee misclassification penalties and settlement changes. The OMA opposed the House revisions.

The Senate removed all the House added policy changes to the bill. The two chambers eventually agreed to changes and accepted a bill that did not include the policy changes.

Both the House and Senate have publicly stated they would like to approve PTSD in the fall. The OMA and other business groups shopped a proposal that would provide benefits outside of the BWC system.

House Bill 81 – Workers' Comp for Bodily Fluid Exposure

The Senate is expected to vote HB 81 out of committee this morning. Originally the bill provided workers' compensation coverage of post-exposure medical diagnostic services for a detention facility employee's exposure to blood or bodily fluids.

The House expanded the bill to include several additional workers' compensation provisions that were in its version of the workers' comp budget bill before the Senate striped the bill to budget provisions only. Included in HB 81 by the House were:

- reducing the statute of limitations for violations of a specific safety rule (VSSR) from two years to one year;
- increasing the funeral expense benefit cap for inflation;
- changing rules for final claim settlement agreements;
- continuing jurisdiction changes; and
- clarifying the voluntary abandonment doctrine.

The OMA provided proponent testimony for these changes in both the House and Senate.

House Bill 308 – PTSD First Responders

Earlier this month, on a 74-22 vote, the Ohio House passed House Bill 308, legislation that would provide first responders with workers' compensation benefits to treat post-traumatic stress disorder (PTSD) even when there's no physical injury. Under current Ohio law, only mental conditions stemming from on-the-job physical injuries/illnesses are eligible for workers' compensation benefits.

Due to the risk of substantial premium increases for employers, the OMA has long opposed any legislation that would permit PTSD compensation or other mental claims when there is no associated physical injury or illness. As the OMA noted in its "key vote alert" to House members, HB 308, if enacted, "will inevitably result in increased workers' compensation costs for both public and private employers. The consequences of those cost increases will be felt across the Ohio economy and will negatively impact Ohio's business climate."

The OMA and other business allies crafted a competing plan that would have provided first responders with the same coverages they would receive under workers' compensation that was more streamlined.

The bill now moves to the Senate, where Senate President Larry Obhof (R-Medina) has already been quoted saying he supports the legislation. Members who are concerned with this precedent setting legislation should reach out to their Senators and urge them to vote no on the bill.

BWC Agency Notes

Ohio Safety Congress Set for March 11-13 in Columbus

The Ohio Safety Congress and Expo is currently accepting registrations. This is the second-largest occupational safety, health, and workers' compensation event in the U.S. — and last year it attracted more than 8,000 attendees and 300 exhibitors.

This year's event will be March 11-13 at the Greater Columbus Convention Center. Safety Congress and registration are free — and there's even an online attendance option.

The OMA will have its workers' comp team on site — at booth #1024 — to discuss our unique, manufacturer-specific approach to workers' comp management. We will have a made-in-Ohio gift as a “thank you” for stopping by.

Billion Back Again?

This summer the BWC announced another billion back at OMA member Dynalab. The money is Ohio's fifth investment return to private and public employers of at least \$1 billion since 2013 and sixth overall during that time. Manufacturers can start expecting checks at any time.

BWC Rebranding?

Administrator McCloud sent a letter to stakeholders asking for Ohio BWC rebranding suggestions and opinions.

BWC Board Releases MCO Study

The board of directors recently heard a presentation on a second phase of a study of managed care organization (MCO) performance in the Ohio system.

Unlike 20 years ago when Governor Voinovich called the Ohio workers' compensation system the “silent killer of jobs,” the Ohio system today is a national leader on any number of metrics, including medical.

However, that success comes at a cost. The study indicates that MCOs are paid 27% of total medical costs; meanwhile, benchmarks in from other programs are 15% of total costs for administrative costs.

That suggests a possible overpayment of \$70 to \$80 million for MCO services. Those costs, of course, are born by employers.

The BWC has established work groups to study this matter in detail.

Safety Issues

BWC Safety Grants Expanded to \$70 Million

This week, the BWC was given approval by its board to spend \$70 million in fiscal years 2020 and 2021 on grants for Ohio employers to improve workplace safety. Funded by employer premiums, the Safety Grants program has already reached its 2020 appropriation of \$20 million.

Coronavirus and Influenza: Key Issues for Employers

February marks the peak of flu season. This year, flu concerns have been compounded with worries about the coronavirus. OMA Connections Partner Bricker & Eckler has published this guidance for employers seeking to maintain a healthy workforce during flu season and throughout the year.

Ohio's Latest Injuries and Illness Report Now Available

Ohio's 2018 Survey of Occupational Injuries and Illnesses report is now available. The report shows the number of cases involving days away from work in the private sector decreased 5% compared to the previous year. Sprains, strains, tears comprised more than 35% of reported injuries, followed by fractures (11.7%), cuts and lacerations (9%), and bruises and contusions (8.8%).

The rate of workplace injuries and illnesses for Ohio continues to be lower than the national average. Manufacturing reported a slight increase in the rate of injuries and illnesses, up from 3.1 to 3.2 cases per 100 full-time workers — but that's still less than the U.S. rate for manufacturing (3.4).

Overall in Ohio, agriculture — at 8.2 — had the highest total recordable case rate per 100 full-time workers.



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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 81
133rd General Assembly

Bill Analysis

[Click here for H.B. 81's Fiscal Note](#)

Version: As Passed by the House

Primary Sponsor: Rep. Perales

Kelly Bomba, Attorney

SUMMARY

Post-exposure testing for detention facility employees

- Requires, under specified conditions, the Administrator of Workers' Compensation or a self-insuring employer to pay for services used to determine whether a detention facility employee sustained an injury or occupational disease after exposure to another person's blood or bodily fluids.

Voluntary abandonment doctrine

- Provides that, to be eligible to receive temporary total disability (TTD) compensation, a person must be unable to work or must suffer a wage loss as the direct result of an impairment arising from an injury or occupational disease.
- Prohibits a person from receiving TTD compensation when the person is not working or has suffered a wage loss as the direct result of reasons unrelated to an allowed injury or occupational disease.
- States that the General Assembly intends to supersede any previous judicial decision that applied the voluntary abandonment doctrine to TTD or wage loss claims.
- Prohibits a person from receiving permanent total disability compensation when the person is not working for reasons unrelated to an allowed injury or occupational disease, rather than if the person voluntarily abandoned the workforce as under current law.
- Applies the rule to claims pending on the bill's effective date and to claims arising after that date.

Additional award for specific safety violation

- Requires, for claims arising on or after the bill's effective date, a claim for an additional award of compensation for a violation of a specific safety rule to be filed within one year

after the injury or death or within one year after a disability due to occupational disease begins, rather than within two years as currently required.

Final settlement agreements

- Prohibits an employer from refusing or withdrawing from a proposed claim settlement agreement if the employee who is the subject of the claim is no longer employed by the employer and the claim is no longer within the date of impact pursuant to the employer's industrial accident or occupational disease experience for premium calculation purposes.

Continuing jurisdiction over workers' compensation claims

- Makes the rendering of medical services, rather than payment for the services as under current law, an event that continues the Industrial Commission's jurisdiction to modify or change a claim or to make a finding or award under a claim.

Funeral expenses

- Increases the funeral expense benefit cap from \$5,500 to \$7,500.

Appealing Industrial Commission orders

- Applies to claims pending on and arising after September 29, 2017, a provision in Sub. H.B. 27 of the 132nd General Assembly extending the time to appeal an Industrial Commission order from 60 days to 150 days when certain conditions are satisfied.

Employee medical examinations

- Prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act from generally requiring an applicant or employee to pay for medical examinations that are required as a condition of employment or continued employment.

DETAILED ANALYSIS

Post-exposure testing for detention facility employees

The bill expands the current post-exposure testing law, which covers diagnostic testing for specified safety officers under certain conditions, to include detention facility employees. Under the bill, the Administrator of Workers' Compensation, or a detention facility that is a self-insuring employer (an employer authorized to directly pay compensation and benefits in a claim), must pay for post-exposure medical diagnostic services to investigate whether a person employed by a detention facility, including a corrections officer, sustained an injury or occupational disease from coming into contact with the blood or other body fluid of another person in the course of and arising out of the employee's employment. Under continuing law, post-exposure diagnostic tests are covered if they are consistent with the standards of medical care existing at the time of exposure and the employee came into contact with the blood or bodily fluid through any of the following means:

- A splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;
- A puncture in the skin;
- A cut in the skin or another opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.¹

The bill defines “corrections officer” as a person employed by a detention facility as a corrections officer. A “detention facility” is any public or private place used for the confinement of a person charged with or convicted of any state or federal crime or found to be a delinquent child or unruly child under any state or federal law.²

Currently, all of the following employees are covered by the post-exposure testing requirement:

- A peace officer who has arrest powers under the Arrest, Citation, and Disposition Alternatives Law (a correction officer is not considered a peace officer for this law);
- A paid or volunteer firefighter of a lawfully constituted fire department;
- A paid or volunteer emergency medical worker, which is a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic certified under the Emergency Medical Services Law.³

According to the Industrial Commission, the administrative body that adjudicates claims under the Workers’ Compensation Law,⁴ “[t]he list of covered individuals and job classifications is extensive, but the classification of a ‘corrections officer’ is not [currently] included.”⁵

Under continuing law, any employee who is injured or who contracts an occupational disease in the course of employment is entitled to necessary medical, nurse, and hospital services and medicines.⁶ Thus, if a detention facility employee suffers an injury or contracts an occupational disease in the course of employment, and diagnostic tests are a necessary part of treatment, the costs currently are covered if the claim is otherwise compensable. The bill applies only to post-exposure medical tests used to investigate whether the employee sustained an injury or occupational disease.⁷

¹ R.C. 4123.026(A).

² R.C. 4123.026(B).

³ R.C. 4123.026, by reference to R.C. 2935.01, not in the bill, and R.C. Chapter 4765.

⁴ R.C. Chapters 4121, 4123, 4127, and 4131.

⁵ Ohio Industrial Commission, Record of Proceedings, Claim 06-344388, 2007 WL 9703017.

⁶ R.C. 4123.54, not in the bill, and R.C. 4123.66.

⁷ See, e.g., Ohio Industrial Commission, Record of Proceedings, Claim 08-351946, 2008 WL 11408637.

Voluntary abandonment doctrine

TTD compensation

The bill provides, for all claims pending on or arising after the bill's effective date, that an employee who is unable to work or suffers a wage loss as the direct result of an impairment arising from an injury or occupational disease is entitled to receive temporary total disability (TTD) compensation, provided the employee is otherwise qualified. If the employee is not working or has suffered a wage loss as the direct result of reasons unrelated to an allowed injury or occupational disease, the employee is not eligible to receive TTD compensation. Continuing law governing TTD compensation refers to an employee's "disability." It is unclear how the bill's reference to "impairment" will be interpreted.⁸

The bill states that the General Assembly intends to supersede any previous court opinion that applied the doctrine of voluntary abandonment to a TTD claim. Under the doctrine, to be eligible for TTD compensation, a claimant must be medically incapable of returning to the claimant's former position and the claimant's injury or occupational disease must be the cause of the claimant's lost earnings.⁹

PTD compensation

The bill prohibits, for all claims pending on or arising after the bill's effective date, a person from receiving permanent total disability (PTD) compensation when the person is not working for reasons unrelated to an allowed injury or occupational disease. Current law prohibits a person from receiving PTD compensation when the person voluntarily abandons the workforce for reasons unrelated to an allowed injury or occupational disease. Under continuing law a person also may not receive PTD compensation if the person is unable to engage in sustained remunerative employment for one, or any combination, of the following reasons:

- Retirement unrelated to an allowed injury or occupational disease;
- The person's impairments are not the result of an allowed injury or occupational disease;
- Solely due to the person's age or aging;
- The person has not engaged in educational or rehabilitative efforts to enhance the person's employability, unless such efforts are determined to be in vain.¹⁰

Additional award for specific safety violation

In addition to authorizing the creation of the workers' compensation system, the Workers' Compensation Amendment to the Ohio Constitution allows the filing of a claim that a

⁸ R.C. 4123.56 and Section 3.

⁹ See, e.g., *State ex rel. Gross v. Indus. Commission*, 115 Ohio St.3d 249, 253-255 (2007).

¹⁰ R.C. 4123.58 and Section 3.

person suffered an injury, contracted an occupational disease, or was killed in the course of employment because the person's employer violated a specific safety rule enacted by the General Assembly or adopted by the Administrator. The Industrial Commission has exclusive jurisdiction to hear and decide claims alleging violations of specific safety rules. If the Commission finds that the employer's violation of a specific safety rule caused an injury, disease, or death, the Commission must grant an additional award that is between 15% and 50% "of the maximum award established by law."¹¹

Under the bill, a claim arising on or after the bill's effective date for an additional award for violation of a specific safety rule (a "VSSR" award) must be filed within one year after the date of the injury or death or within one year after the disability due to an occupational disease began.¹² Currently, an administrative rule requires claims for these additional awards to be filed within two years of the date of injury, death, or inception of disability due to occupational disease.¹³

Final settlement agreements

The Worker's Compensation Law allows a state fund employer (an employer who obtains workers' compensation coverage through the State Insurance Fund), the employer's employee, or the Administrator to file an application for approval of a final settlement against the State Insurance Fund. The Law also allows a self-insuring employer and the employer's employee to enter a settlement agreement. A proposed settlement of a state fund claim takes effect 30 days after the Administrator approves the settlement. A settlement between a self-insuring employer and a claimant takes effect 30 days after the parties sign it. During the 30-day period, a party may withdraw from a proposed settlement by sending written notice to the other interested parties.

The bill prohibits an employer, for claims arising on or after the bill's effective date, from refusing or withdrawing from a proposed settlement agreement if both of the following apply:

- The employee named in the claim is no longer employed by the employer;
- The claim is no longer within the date of impact pursuant to the employer's industrial accident or occupational disease experience for premium calculation purposes.¹⁴

Under continuing law, the Administrator annually revises basic premium rates so they are adequate to maintain the solvency of the State Insurance Fund and a reasonable surplus. When revising basic employer rates, the Administrator examines the oldest four of the last five

¹¹ Ohio Constitution, Article II, Section 35.

¹² R.C. 4121.471 and Section 3.

¹³ Ohio Administrative Code 4121-3-20.

¹⁴ R.C. 4123.65 and Section 3.

policy years of combined accident and occupational disease experience.¹⁵ Continuing law governing basic premium rate calculations does not appear to define the phrase “date of impact.”

Continuing jurisdiction over workers’ compensation claims

The Industrial Commission and the Administrator have continuing jurisdiction over each workers’ compensation claim, and the Commission may modify or change its former findings and orders. However, in the absence of statutorily specified events, the Commission cannot modify or change a former finding or order, nor award compensation or benefits in a claim, if more than five years have passed since the date of injury. If a statutorily specified event occurs, the Commission’s authority to change or modify a finding or order, or award compensation or benefits in the claim, extends for an additional five years from the date of the event.

The bill makes the rendering of medical services, rather than payment for the services as under current law, an event that extends the Commission’s authority for an additional five years. This applies to claims arising on or after the provision’s effective date. Under continuing law, the following events also extend the Commission’s authority for an additional five years:

- A payment of compensation for TTD, wage loss, permanent partial disability, or PTD;
- A payment of wages in lieu of compensation in accordance with continuing law;
- The claimant’s death.¹⁶

Funeral expenses

Under continuing law, the Administrator or a self-insuring employer is required to pay a reasonable amount to cover funeral expenses when an employee dies from a compensable injury or occupational disease. The bill increases the amount the Administrator is authorized to expend from the State Insurance Fund to pay funeral expenses from \$5,500 to \$7,500. The increase applies to claims arising on or after the bill’s effective date.¹⁷

Appealing Industrial Commission orders

Sub. H.B. 27 of the 132nd General Assembly extended the time to appeal an Industrial Commission order to a court of common pleas from 60 days to 150 days, provided a party gives notice of intent to settle and the opposing party does not object.¹⁸ The bill applies the extension to workers’ compensation claims pending on or arising after September 29, 2017, the effective date of that change.¹⁹

¹⁵ R.C. 4123.34, not in the bill.

¹⁶ R.C. 4123.52 and Section 3.

¹⁷ R.C. 4123.66 and Section 3.

¹⁸ R.C. 4123.512, not in the bill.

¹⁹ Section 4.

Employee medical examinations

The bill prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act of 1965 from requiring an applicant, prospective employee, or employee to pay for an initial or any subsequent medical examination that is required as a condition of employment or continued employment.²⁰ The federal Act generally applies to any contract with the federal government that has as its principal purpose the furnishing of services in the U.S. through the use of service employees, regardless of whether the employees are the contractor's employees or those of any subcontractor.²¹

Under continuing law, a private employer is prohibited from requiring any prospective employee or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment. A public employer cannot require an employee, prospective employee, or applicant to pay the cost of a medical examination required by the public employer as a condition of employment or continued employment. Any employer who violates these prohibitions must forfeit not more than \$100 for each violation. BWC and the Public Utilities Commission of Ohio enforce the penalty.²²

HISTORY

Action	Date
Introduced	02-19-19
Reported, H. Insurance	11-19-19
Passed House (94-0)	11-20-19

H0081-PH-133/ts

²⁰ R.C. 4113.21.

²¹ 41 United States Code 6702 and 29 Code of Federal Regulations 4.150.

²² R.C. 4113.21.



February 5, 2020

The Honorable Bob Hackett
Chairman, Senate Insurance and Financial Institutions Committee
Ohio Senate
1 Capitol Square
Columbus, Ohio 43215

RE: House Bill 81 – OMA Proponent Written Testimony

Dear Chairman Hackett:

The OMA is pleased to offer proponent written testimony on House Bill 81. Throughout the years, the OMA has consistently advocated for an efficient and effective workers' compensation system that benefits workers, employers, and the economy of the state. House Bill 81 helps achieve these attributes of a well-run bureau of workers' compensation system.

House Bill 81 was amended in the House and includes several provisions that will improve the BWC. These provisions include:

- Amending the commencement of the continuing jurisdiction for the BWC and Industrial Commission;
- Revising the statute of limitations for filing a Violation of Specific Safety Rule (VSSR);
- Modifying the procedures for final settlement agreements; and
- Codifying of common law's voluntary abandonment doctrine.

We would like to thank Rep. Perales for his work on the original bill and the amended version and would urge the committee to quickly pass House Bill 81.

Sincerely,

Rob Brundrett
Director, Public Policy Services

BWC considers another rate cut for private employers

13% rate reduction proposed to Board of Directors

NEWS RELEASE

Jan. 30, 2020

COLUMBUS — Ohio's private employers would pay nearly \$132 million less in premiums to the Ohio Bureau of Workers' Compensation next fiscal year under a 13% rate reduction proposed to the agency's Board of Directors today.

If approved, the reduction would mark the third rate cut in three years for private employers and the 11th since 2008. It is also the third largest cut in 60 years, following the largest (20%) last year.

"We feel it's appropriate to significantly reduce rates this year because our covered employees continue to experience fewer and less costly claims, and the recent medical inflation rate has been relatively low," said BWC Administrator/CEO Stephanie McCloud.

If approved by the board at its Feb. 28 meeting, the rate reduction would be effective July 1, saving private employers \$131.6 million over this year's premiums. It also would follow a 10% rate reduction for public employers — counties, cities, schools and others — that went into effect Jan. 1. Overall, the average rate levels for the 249,000 private and public Ohio employers in the BWC system are at their lowest in at least 40 years.

Premiums paid to BWC not only cover health care and lost wages for injured workers, they also support BWC's Safety & Hygiene Division, which offers training, consultations and other services to help employers improve workplace safety. Employer participation in these services has grown by more than 70% since 2010. Total annual claims, meanwhile, have fallen 19% over that time to 84,364 in 2019.

The proposed 13% rate cut represents an average statewide change and does not include the costs related to the administrative cost fund or other funds BWC administers. The actual premium paid by individual private employers depends on several factors, including the expected future claims costs in their industry, their company's recent claims history, and their participation in various BWC programs.

###

We've got you covered!

BWC SAFETY GRANTS 2020-2021

We're offering \$35 million a year to help Ohio employers improve workplace safety. From equipment that reduces risks for on-the-job injuries to life-saving body armor and other protective devices for Ohio's first responders, we've got you covered.

Click [here](#) to learn more or visit www.bwc.ohio.gov and search for Safety Grants.

Safety Intervention Grants

- For equipment to reduce workplace injuries and illnesses
- Open to most private and public employers covered by BWC
- 3-to-1 matching grant up to \$40,000



Firefighter Exposure to Environmental Elements Grants

- For equipment to minimize firefighters' exposure to carcinogens and other toxic elements
- Open to Ohio firefighter employers only
- Up to \$15,000 per grant

Ohio Law Enforcement Body Armor Grant Program*

- For body armor to protect law enforcement officers
- Open to eligible law enforcement organizations only
- 3-to-1 matching grant up to \$40,000



School Safety and Security Grants

- For equipment to improve school safety and security
- Licensed preschool to 12th grade facilities
- 3-to-1 matching grant up to \$40,000

Employers Working with Persons with Developmental Disabilities Grants

- For training/equipment to improve staff safety
- Employers serving persons with developmental disabilities
- Up to \$20,000 per grant



Trench Safety Grants

- For equipment to improve safety in trenching and excavation work
- For private and public employers who perform work in trenches
- 4-to-1 matching grant up to \$12,000

Workplace Wellness Grants

- For training/programs to reduce employees' health risk factors
- State-fund employers with no existing workplace wellness program
- Up to \$15,000 per grant



2018 Survey of Occupational Injuries and Illnesses (SOII) Data for Ohio

Summary Report

Private and Public-Sector Industries combined

- The incidence rate of non-fatal occupational injuries and illnesses total recordable cases (TRC) for all establishments in Ohio, combining private and public establishments, was estimated to be 2.6 cases per 100 full time equivalent (FTE) workers.
- Ohio combined total recordable cases (TRC) incidence rate was lower than the national rate of 3.1 cases per 100 FTE workers.
- There were an estimated 114,000 total recordable cases reported in 2018 for all industries; 35,500 (31%) cases involved one or more days away from work (DAFW), 20,800 (18%) cases involved one or more days of job restriction/transfer only and 57,700 (50.6%) were recordable cases with no loss time.
- Estimated number of total recordable cases in decreased in 2018 by, approximately, two (2) percent in comparison to the previous year; driven mostly by a decrease in the number of cases in private establishments.
- The combined incidence rate of cases with days away from work (DAFW) for both private and public establishments was 0.8 cases per 100 FTE workers, 0.2 cases lower than the national rate.

Private Industry - Incidence rates

- The TRC incidence rate for private industry in 2018 was 2.4 cases per 100 FTE workers; an eight (8) percent decrease from the previous year. This rate is below national private industry TRC incidence rate which was 2.8 cases per 100 FTE workers. Incidence rate of DAFW cases in Ohio private industry was 0.7 while national rate was 0.9 cases per 100 full time employees.
- The total recordable cases (TRC) incidence rate fell by 0.2 cases per 100 full-time workers in 2018 from 2.6 cases per 100 FTE reported the previous year.
- There were an estimated 93,100 total recordable cases reported for private sector industries; 27,500 cases involved one or more days away from work; 19,100 cases involved one or more days of job restriction/transfer only and remaining 46,500 cases were recordable cases with no loss time.
- Private industry employers reported a decrease of 8,400 cases in nonfatal injury and illness cases in 2018 compared to a year earlier.
- There was, approximately, a five (5) percent decrease in the number of cases involving days away from work (DAFW) in comparison to the previous year.

Industry

Private industry sectors with the highest total recordable cases incidence rates per 100 FTE workers in Ohio were:

- Agriculture – 8.2
- Art, entertainment and recreation – 3.6
- Transportation and warehousing – 3.3
- Healthcare and social assistance – 3.3
- Manufacturing – 3.2
- Construction – 3.1

Six private industry sectors reported a decline in the rate of injuries and illnesses in 2018: transportation; retail; healthcare and social assistance; education services; arts, entertainment and recreation; and accommodation and food services. Contrastingly, four private sector industries; construction; manufacturing; wholesale; and information industry reported an increase in the rate of injuries and illnesses in 2018 compared to a year earlier.

Table 1: Table shows private sector industries with increase and decrease in TRC rates for 2018 in comparison to previous year.

Decrease in rates (2017 – 2018)	Increase in rates
Transportation (4.1 – 3.3)	Construction (2.4 – 3.1)
Retail Trade (3.1 – 2.9)	Manufacturing (3.1 – 3.2)
Health care and social assistance (3.6 – 3.3)	Wholesale Trade (2.4 – 2.7)
Education services (1.6 – 0.7)	Information (1.2 – 1.8)
Art, entertainment and recreation (4.9 – 3.6)	
Accommodation and food services (2.7 – 2.0)	

- Rates show number of cases per 100 FTE. Three industries not listed here could not be compared because rates were unavailable for 2017.

Injuries

- Of the total nonfatal occupational injuries and illnesses reported by private industry employers in 2018, 88,600 (95 percent) were injury cases.
- An estimated 61,000 cases occurred in service-providing industries. The remaining 27,700 injuries (31 percent) occurred in goods-producing industries.

Illnesses

- Workplace illnesses accounted for 4,400 cases (4.7 percent) of the estimated total number of injury and illness cases reported by private industry employers in 2018 and occurred at a rate of 11.6 cases per 10,000 full-time workers.
- Service-providing industries accounted for 61 percent of private industry illness cases and had a rate of 9.4 cases per 10,000 full-time workers.
- Goods-producing industries accounted for 39 percent of all occupational illness cases in 2018, resulting in an incidence rate of 18.5 cases per 10,000 full-time workers—an increase from the previous year when rate was 16.1 cases. (Note: Long-term latent illnesses are believed to be understated in SOII estimates)

Establishment size

- The rate of injuries and illnesses was highest among mid-size private industry establishments (employing 50 to 249 workers) and lowest among small establishments.
- TRC incidence rate per 100 FTE workers for all private sector industries by size classes:
 - Class size 2 (11-49 employees) – 2.2
 - Class size 3 (50 – 249 employees) – 3.0
 - Class size 4 (250 – 999 employees) – 2.5
 - Class size 5 (1000+ employees) – 2.6
- Ohio TRC rates are lower than national rates in all selected industry sectors except in the Agriculture, Construction and Information industries.

Table 2 compares Ohio TRC incident rates per 100 FTE workers with national rates in selected private industry sectors for which data is available for Ohio.

Table 2

Industry	NAICS code	OH	U.S.
Private industry		2.4	2.8
Agriculture	11	8.2	5.3
Construction	23	3.1	3.0
Manufacturing	31-33	3.2	3.4
Wholesale trade	42	2.7	2.9
Retail trade	44-45	2.9	3.5
Transportation and warehousing	48-49	3.3	4.5
Information	51	1.8	1.3
Management of companies and enterprises	55	0.7	0.8
Educational services	61	0.7	1.9
Health care and social assistance	62	3.3	3.9
Arts, entertainment and recreation	71	3.6	4.1
Accommodation and food services	72	2.0	3.1

Table 3 compares Ohio TRC incident rates per 100 FTE workers and number of cases for the last two years.

	Ohio				
	Incidence rates (cases per 100 full time workers)		Number of cases in thousands		
	2017	2018	2017	2018	Difference - highlighted cases indicate increase
All industries	2.7	2.6	116.8	114.0	2.8
Private industry	2.6	2.4	101.5	93.1	8.4
Construction	2.4	3.1	5.0	6.3	-1.3
Manufacturing	3.1	3.2	21.0	21.9	-0.9
Wholesale	2.4	2.7	5.5	6.2	-0.7
Retail	3.1	2.9	13.2	11.9	1.3
Transportation	4.1	3.3	7.7	6.4	1.3
Information	1.2	1.8	0.7	1.1	-0.4
Healthcare	3.6	3.3	22.2	20.0	2.2
Educational services	1.6	0.7	0.9	0.4	0.5

- Ohio private industry non-fatal occupational injuries and illnesses TRC incident rate (2.4 cases per 100 FTE workers) compared with some states:
 - Michigan – 3.0
 - Pennsylvania – 3.2
 - Indiana – 3.2
 - California – 3.3
 - Illinois - 2.7
 - Kentucky – 3.2
 - West Virginia – 3.0

Worker and Injury Characteristics (Private industry only)

The estimated total number of cases involving days away from work in private sector decreased by five (5) percent from the previous year to 27,490 cases in 2018. SOII provides case and demographic information on injuries and illnesses involving one or more days away from work. The survey also gathers information on occupations of the injured workers. Overall incidence rate for DAFW cases in Ohio private industry was 71.7 cases per 10,000 full time workers, a slight increase from the 75.4 cases in 2017. Other important data points on case and demographic distribution in private sector industries are provided below.

DEMOGRAPHICS

Gender:

- Men accounted for 60.5% of cases involving one or more days away from work; a decrease from 61.2% in 2017.
- Incidence rate for DAFW cases in men decreased from 81.2 in 2017 to 76.9 cases per 10,000 fulltime workers in 2018.
- Incidence rate of DAFW cases in women decreased from 67.8 in 2017 to 64.8 cases per 10,000 full time workers in 2018.
- Incidence rate for DAFW cases involving fall on same level in women was significantly higher than the reported rate for men. Incidence rate in women was 16.3 compared to 9.8 cases per 10,000 full time workers in men.

Age

- Distribution of DAFW cases by age group
 - 16-19 –3.8 %
 - 20-24 – 10.4%
 - 25-34 – 20.4%
 - 35-44 – 16.8%
 - 45-54 – 22.6%
 - 55-64 – 20.4%
 - 65 and over – 4.3%
- Incidence rate of cases per 10,000 full time workers of DAFW cases by age group
 - 16-19 – 95.8
 - 20-24 – 78.3
 - 25-34 – 64.6

- 35-44 – 58.9
- 45-54 – 76.0
- 55-64 – 82.0
- 65 and over – 73.5
- SOII results for 2018 indicate that in comparison to the previous year, incidence rate of DAFW cases decreased in all age groups except in age groups 45-54 and 25-34 where rates were higher in 2017.
- Similar to what was reported the previous year, workers within the 16-19-year age group had the highest incidence rate of DAFW cases across the age groups in 2018.

Tenure

- Distribution of DAFW cases by employee length of service/employment:
 - Less than 3 months – 13.2%
 - 3 months to 1 year – 24.8%
 - 1-5 years – 33.6%
 - 5 years or more – 27.2%
- Workers with >5 years tenure had the highest median days away from work of all tenure groups with 21 days

Occupation

- Occupation groups with highest incidence rates for DAFW cases per 10,000 full time workers:
 - Farming, fishing, and forestry occupations – 191.6
 - Transportation and material moving occupations – 168.1
 - Construction and extraction occupations – 154.3
 - Healthcare support occupation – 118.1
 - Production occupations – 116.8
 - Installation, maintenance, and repair occupations – 105.9
 - Building and grounds cleaning and maintenance occupations – 103.7
- Occupations with highest median days away from work for DAFW cases
 - Team assemblers – 54
 - Heavy and tractor-trailer truck drivers – 33
 - Light truck or delivery services drivers – 33
 - Construction laborers – 20
 - Shipping, receiving and traffic clerks – 20
 - Carpenters – 18
 - Office clerks, general – 14
 - Operating engineers and other construction equipment operators - 11

CASE CHARACTERISTICS

Nature of injuries

- Distribution of DAFW cases by type of injury
 - Sprains, strains, tears – 35.1%
 - Fractures – 11.7%
 - Cuts, lacerations – 9.0%
 - Bruises and contusions – 8.8%
 - Soreness and pain – 7.1%
- Workers in transportation and material moving occupations had significantly higher incidence rate of DAFW cases involving sprains strains and tears than any other occupation group.

Body parts

- Distribution of DAFW cases by body part injured
 - Back – 14.7%
 - Hands – 14.6%
 - Head – 9.2%
 - Ankle – 7.9%
 - Knee – 6.8%
- Incidence rate statistics indicated that men injured their hands more often than any other body part while women injured their back more often than any other body part in 2018.
- Transportation and material moving occupations were more likely to injure their hand than any other body part.
- Farming, fishing and forestry occupations had the highest incidence rate of DAFW cases involving injuries to the hand in comparison to other occupation groups.

Source of injury

- Distribution of DAFW cases by source of injury
 - Floors, walkways, ground surfaces – 17.4%
 - Containers – 11.3%
 - Worker's motion or position 11.2%
 - Parts and materials – 11.1%
 - Vehicles – 10.3%
- Transportation and material moving occupations had the highest incidence rate for DAFW cases involving containers.

Events/Causation

- Distribution of DAFW cases by event
 - Contact with objects – 29.0%
 - Overexertion – 28.5%
 - Falls, slips, trips – 26.5%
 - Violence – 5.4%
 - Transportation incidents – 5.2%
- Workers in age group ≥65 years had the highest incidence rate for falls, slips and trips of all the age categories.
- Workers in 16-19-year age group had the highest incidence rate of overexertion related injuries of all the age groups.
- Farming, fishing and forestry occupations had the highest incidence rate DAFW cases related to violence of all occupations groups.

PUBLIC SECTOR INDUSTRY – Incident Rates (State and Local government combined)

Survey result for 2018 includes combined public employer statistics and local and state government establishments separately. An estimated 20,900 nonfatal injury and illness cases were reported in 2018 among public employers, combining both state and local government establishments—for example, elementary and secondary schools, hospitals, and police or fire protection—resulting in a rate of 3.8 cases per 100 full-time workers. It is estimated that 8,100 cases (39%) involved one or more days away from work, 1,700 cases (8%) involved one or more days of job restriction/transfer only and the remaining 11,100 cases (53%) were other recordable cases with no loss time. The TRC incidence rate for combined public sector in Ohio was significantly lower than that of the nation which was 4.8 cases per 100 full time workers. Public employers are further divided by ownership and the summary of the result is presented below.

State government only

- In 2018, TRC incidence rate for state government establishments in Ohio was 2.4 cases per 100 FTE workers while corresponding national rate was 3.6 cases per 100 FTE workers. There were an estimated 3,300 total recordable cases of workplace injuries and illnesses in the same year.
- Summary of state government industry sector/subsector total recordable cases incidence rates per 100 FTE worker:
 - Education services – 1.0
 - State government colleges, universities and professional schools – 1.0
 - Hospitals – 5.0
 - Nursing and residential care facilities – 23.5
 - Justice, public order and safety activities – 3.5
 - Correctional institutions – 2.8

PUBLIC SECTOR INDUSTRY – Incidence rates (Local government only)

- TRC incidence rate for local government in Ohio was 4.3 cases per 100 FTE workers while corresponding national rate was 5.3 cases per 100 FTE workers. The reported rate for 2018 indicates an increase in comparison to previous year's rate which was 3.5 cases per 100 FTE workers.
- There were an estimated 17,600 total recordable cases of workplace injuries and illnesses in the same year. This represents a 40% increase in the estimated number of TRC cases in comparison to the previous year.
- Summary of local government industry sector total recordable incident rates per 100 FTE worker:
 - Healthcare and social assistance services – 4.3
 - Utilities – 2.1
 - Public administration – 5.3
- Industry subsectors with the highest total recordable cases incidence rates per 100 FTE workers in Ohio were:
 - Hospital – 5.0
 - Nursing and residential care facilities – 6.6
 - Water, sewage and other systems – 1.8
- There were an estimated 6,500 cases of injuries and illnesses involving one or more days away from work. This represents a 14% increase in the number of cases involving one or more days away from work in local government from the previous year estimate.

Worker and injury characteristics – Local government establishments only.

Overall incidence rate for DAFW cases in Ohio local government establishments increased from 157.8 cases in 2017 to 160.7 cases per 10,000 full time workers in 2018. Important data points on case and demographic distribution in local government establishments are provided below.

DEMOGRAPHICS

Gender:

- Men accounted for 65.1% of cases involving one or more days away from work. Incidence rate of DAFW cases was significantly higher in men. Survey results indicate that rate of DAFW cases in men and women were 224.0 and 105.2 cases per 10,000 full time workers, respectively.

Age

- Distribution of DAFW cases by age group
 - 20-24 – 9.9%
 - 25-34 – 11.8%
 - 35-44 – 18.0%
 - 45-54 – 22.3%
 - 55-64 – 31.7%
 - 65 and over – 5.8%
- Incidence rate of cases per 10,000 full time workers of DAFW cases by age group
 - 20-24 – 315.3
 - 25-34 – 71.6
 - 35-44 – 129.6
 - 45-54 – 145.2
 - 55-64 – 288.2
 - 65 and over – 272.7
- Incidence rates of DAFW cases for worker in the age groups provided above were significantly higher in local government than private industry.

Tenure

- Distribution of DAFW cases by employee length of service/employment:
 - < 3 months – 6.9%
 - 3 months to 1 year – 4.1%
 - 1-5 years – 35.0%
 - 5 years or more – 53.7%

CASE CHARACTERISTICS

Nature of injuries

- Distribution of DAFW cases by type of injury
 - Sprains, strains, tears – 41.6%
 - Soreness and pain – 17.3%

- Fractures – 13.1%
- Cuts and laceration – 9.9%
- Bruises and contusions – 3.5%
- Incidence rate of sprain, strains & tears was significantly higher in men than in women.
- Workers in age group 65 years and older had the highest incidence rate of DAFW cases involving sprains, strains and tears.

Body parts

- Distribution of DAFW cases by body part injured
 - Back – 15.1%
 - Arm – 14.1
 - Knee – 9.3%
 - Ankle – 8.6
 - Hand – 7.5%
 - Head – 5.5%
- Incidence rate statistics indicated rate of back injuries in men was almost equal to the estimated rate in women.

Source of injury

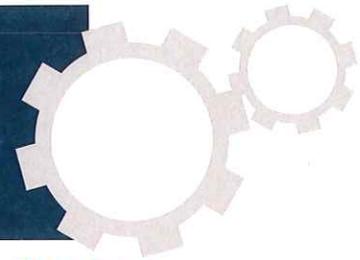
- Distribution of DAFW cases by source of injury
 - Floors, walkways, ground surfaces – 27.4%
 - Person, other than injured worker – 19.3%
 - Vehicles - 16.4%
 - Worker’s motion or position – 11.0%
 - Parts and material – 8.0%

Events/Causation

- Distribution of DAFW cases by event
 - Falls, slips, trips – 31.5%
 - Overexertion – 24.9%
 - Contact with objects – 17.9%
 - Violence – 14.7%
 - Transportation incidents – 10.1%
- Incidence rate of cases involving overexertion was significantly higher in men than women.
- Incidence rate of DAFW cases resulting from violence in local government establishments was more than 6 times the rate in private sector industry.

For more information on data and statistics from the 2018 Survey of Occupational Injuries and Illnesses for the State of Ohio, please contact the Division of Safety and Hygiene’s Research and Statistics Department staff at 614-995-8608.

PolicyGoal:



A Lean, Productive Workers' Compensation System

An efficient and effective workers' compensation system benefits workers, employers, and the economy of the state and is built on the following principles:

- Safety is the number one priority for Ohio's manufacturers.
- Injured workers receive prompt benefits that are adequate for returning to work quickly and safely.
- Rates are established by sound actuarial principles, so that employers pay workers' compensation rates commensurate with the risk they bring to the system.
- The system is financed with well-functioning insurance mechanisms, including reserving and investment practices that assure fund solvency and stability.
- The benefit delivery system deploys best-in-class disability management practices that drive down costs for employers and improve service and outcomes for injured parties.
- The system consistently roots out fraud, whether by employers, workers or providers.

FUNDAMENTAL PRIORITIES FOR FUTURE ACTION:

The Bureau of Workers' Compensation (BWC) should continue to reform its medical management system to lower cost and improve medical quality through better coordination of care and development of a payment system that creates incentives for best clinical practices. In doing this, the BWC should build on emerging best practices in the private sector health care system.

The Ohio General Assembly should enact statutory reforms of benefit definitions, so that the claims adjudication process is more predictable, less susceptible to fraud and manipulation, and less costly, both for workers and employers.

The Industrial Commission should record hearings, so that the hearing process is more transparent and any appeals have a record on which to build.

A WORD ABOUT WORKPLACE GUN POLICY

Manufacturers remain concerned with weapons violence and the erosion of private property laws at the expense of more relaxed gun rights. Ohio needs to ensure that business is in the driver's seat and can make decisions about whether or not an individual can bring a concealed weapon onto their private property.





Ohio Manufacturers' Association
Workers' Compensation Counsel Report
February 26, 2020

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Legislative Actions:

HB 308: Concerns workers' compensation and disability retirement for PTSD (Sponsor Rep. Tom Patton)

Proposed legislation would provide first responders with workers' compensation benefits to treat post-traumatic stress disorder (PTSD) even when there's no physical injury. (Passed by the House 74-22; moves to the Senate)

H.B. 81: Regards post-diagnostics-prison guard exposed to bodily fluids (Sponsor Rep. Rick Perales)

Pursuant to R.C. § 4123.026, specific types of employers are required to pay the costs of post-exposure medical diagnostic services for employees exposure to another person's blood or bodily fluids to investigate whether an injury or occupational disease was sustained. The proposed language would add detention facility employees to the list of specified employers.

Pursuant to R.C. § 4121.471, the statute of limitations for filing an application for a violation of a specific safety award (VSSR) was two years. The proposed legislation changes the statute of limitations for filing an application for a VSSR to one year.

Pursuant to R.C. § 4123.52, the Industrial Commission had continuing jurisdiction to make changes to prior awards for five years from the last date of payment of a medical bill. The proposed legislation changes limits the Industrial Commission's period of continuing jurisdiction to five years from the last date of *treatment*, instead of when the bill is paid.

R.C. § 4123.56 authorizes the payment of temporary total compensation. The proposed legislation adds section (F) to R.C. § 4123.56, codifying voluntary abandonment. Adding this language supersedes any prior case law on the doctrine of voluntary abandonment.

R.C. § 4123.65 sets forth the settlement process for state-funded employers. The proposed legislation adds section (G) to R.C. § 4123.65, prohibiting a state-funded employer from denying or withdrawing consent to a settlement application if 1) the claim is no longer in the employer's experience, and 2) the employee is no longer employed by the employer.

Pursuant to R.C. § 4123.66, funeral expenses paid by the BWC were capped at \$5,500.00 dollars. The proposed legislation raises the cap to \$7,500.00 dollars.

H.B. 167 Modify certain workers' compensation benefits and claim processes (Primary Rep. Jack Cera)

Proposed language to modify worker's compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.

Regulatory Actions:

RULE NUMBER	RULE TITLE (CHANGES)	STATUS / EFFECTIVE DATE
4123:1 (SAFETY AND HYGIENE DIVISION)		
4123:1-1-01	Scope and definitions (5 year review; no changes)	
4123:1-1-02	Certification of operation (5 year review; no changes)	
4123:1-1-03	Maintenance (updates maintenance requirements for elevators to comply with OSHA requirements)	Effective: 1/16/20
4123:1-1-04	Operating characteristics of the elevator (5 year review; no changes)	
4123:1-1-05	Operating characteristics of the elevator (5 year review; no changes)	
4123:1-3-01	Scope and definitions (this rule provides scope and definitions for Chapter 4123:1-3 rules; changes made to the definitions to match OSHA definitions)	Effective: 1/16/20
4123:1-3-02	Temporary storage and disposal (5 year review; no changes)	
4123:1-3-03	Personal protective equipment (clarifies the instructions for what, how, and under what circumstances employers must provide protective equipment to employees; amended to match OSHA definitions)	Effective: 1/16/20
4123:1-3-04	Floors, stairways, railing, overhead protection and guarding of open-sided floors, platforms and runways (ensures definitions in this rule are the same as OSHA definitions)	Effective: 1/16/20
4123:1-3-05	Mechanical power transmission apparatus (clarifies	Effective: 1/16/20

	requirements for the protection of employees from motion hazards of equipment used in mechanical transmission of power on construction sites)	
4123:1-3-06	Motor vehicles, mechanized equipment and marine operations (updates safety guidelines for motor vehicles, mechanized equipment and marine operations to match OSHA requirements)	Effective: 1/16/20
4123:1-3-07	Cranes, hoists, and derricks (ensures definitions to various cranes, hoists, and derricks used in the construction industry match OSHA definitions)	Effective: 1/16/20
4123:1-3-08	Ropes, chain, and slings (5 year review: no changes)	
4123:1-3-09	Roofing devices (5 year review; no changes)	
4123:1-3-10	Scaffolding (updates safety regulations for scaffolding to match OSHA requirements)	Effective: 1/16/20
4123:1-3-11	Ladders (updates safety regulations for ladders in the construction industry to match OSHA requirements)	Effective: 1/16/20
4123:1-3-12	Portable explosive-actuated fastening tools (5 year review; no changes)	
4123:1-3-13	Trenches and excavations (updates safety requirements to match OSHA requirements)	Effective: 1/16/20
4123:1-3-14	Electrical conductors, wires and equipment (5 year review; no changes)	
4123:1-3-15	Explosives and blasting (5 year review; no changes)	
4123:1-3-16	Tunnels and shafts, caissons, cofferdams, and compressed air (updates safety requirements to match OSHA requirements)	Effective: 1/16/20
4123:1-3-17	Cutting and welding (5 year review; no changes)	
4123:1-3-18	Heating, ventilating and exhaust equipment (updates safety requirements to match OSHA requirements)	Effective: 1/16/20
4123:1-3-19	Demolition (5 year review; no changes)	
4123:1-3-20	Steel erection (updates safety requirements to match OSHA requirements)	Effective: 1/16/20
4123:1-3-21	Diving operations (updates safety requirements for diving operations to match OSHA definitions and to comply with OSHA requirements)	Effective: 1/16/20
4123:1-3-22	Woodworking machines, power saws, and other tools and equipment (updates safety requirements to comply with OSHA requirements)	Effective: 1/16/20
4123:1-3-23	Helicopters (one minor phrasing / language change)	Effective: 1/16/20
4123:1-3-24	Roof car suspended platforms – construction (clarifies safety requirements for roof car suspended platforms for construction purposes)	Effective: 1/16/20
4123:1-5-28	Helicopters (adds an illustration of hand signals to be used for helicopters and a small phrasing change to	Effective: 1/16/20

	clarify hand signals)	
4123:1-7-01	Scope and definitions (5 year review: no changes)	
4123:1-7-02	Floors and pits (5 year review: no changes)	
4123:1-7-03	Galleries (5 year review: no changes)	
4123:1-7-04	Passageways (5 year review: no changes)	
4123:1-7-05	Ladles (5 year review: no changes)	
4123:1-7-06	Trunnions (5 year review: no changes)	
4123:1-7-07	Scrap breakers (5 year review: no changes)	
4123:1-7-08	Cupolas (5 year review: no changes)	
4123:1-7-09	Crucibles (5 year review: no changes)	
4123:1-7-10	Sand mullers and mixers (5 year review: no changes)	
4123:1-7-11	Molds and cores (clarifies that employees shall not work under a suspended load under any circumstances)	Effective: 1/16/20
4123:1-7-12	Sand lasting (5 year review: no changes)	
4123:1-7-13	Tumbling mills (5 year review: no changes)	
4123:1-7-14	Chipping and grinding (5 year review: no changes)	
4123:1-9-01	Scope and definitions (5 year review; no changes)	
4123:1-9-02	Coke plants (5 year review; no changes)	
4123:1-9-03	Blast furnaces (5 year review; no changes)	
4123:1-9-04	Steel making (adds a paragraph to further define "mixers")	Effective: 1/16/20
4123:1-9-05	Rolling operations (5 year review; no changes)	
4123:1-11-01	Scope and definitions (5 year review: no changes)	
4123:1-11-02	General requirements (5 year review: no changes)	
4123:1-11-03	Laundering (5 year review: no changes)	
4123:1-11-04	Drycleaning (5 year review: no changes)	
4123:1-13-01	Scope and definitions (broadens definition of "approved" for purposes of rubber and plastics industries)	Effective: 1/16/20
4123:1-13-02	Mills (changes made to comply with various sections of ANSI B28.1-2017 Par for purposes of the operation of mills)	Effective: 1/16/20
4123:1-13-03	Calendars (changes made to comply with ANSI B28.1-2017 for purposes of safety controls of calendars)	Effective: 1/16/20
4123:1-13-03	Other rubber and plastic processing machines (5 year review; no changes)	
4123:1-17-01	Scope and definitions (5 year review: no changes)	
4123:1-17-02	Ladders (5 year review: no changes)	
4123:1-17-	Swinging scaffolds (5 year review: no changes)	

03		
4123:1-17-04	Roof car suspended platforms - window cleaning (5 year review: no changes)	
4123:1-17-05	Boatswain's chairs (5 year review: no changes)	
4123:1-17-06	Safety belts, safety harnesses, lifelines and lanyards (5 year review: no changes)	
4123:1-17-07	Miscellaneous requirements (5 year review: no changes)	
4123-5 (RESOLUTIONS, RULES, ORDERS, AND INSTRUCTIONS)		
4123-5-01	Assignment of duties to the bureau's operational units (advises the public about organization of the bureau; minor language changes for uniformity)	Effective: 12/12/19
4123-5-11	Employer's reports must be signed by officer or person in employ of employer (minor language changes for uniformity)	Effective: 12/12/19
4123-5-13	Expenses related to the death of an injured worker ("changes title to Expenses related to the work-related death of an injured employee" and minor language change to clarify that rule applies to deaths from allowed work-related claims)	Effective: 12/12/19
4123-5-18	Medical proof required for payment of compensation (minor language changes to remove an outdated rule reference)	Effective: 12/12/19
4123-5-20	Payment of compensation when advancements are made during period of disability (adds permission for supplemental sick leave benefits to be paid in addition to temporary total when the employer and claimant agree in writing to do so)	Effective: 12/12/19
4123-5-21	Abatement of claims (minor language clarification)	Effective: 12/12/19
4123-6 (HEALTH PARTNERSHIP PROGRAM)		
4123-6-08	Bureau Fee Schedule (2020 Professional Provider Medical Services Fee Schedule)	Effective: 12/31/19
4123-6-37.1	Payment of hospital inpatient services (establishing the fees to be paid by BWC to providers of inpatient hospital services for injured workers)	Effective: 2/1/20
4123-14 (NONCOMPLYING EMPLOYERS)		
4123-14-03	Requests for waiver of a default in the payment of premium, for approval of the original workers' compensation coverage retroactively, and for abatement of penalties (clarifies that the term "good cause" in paragraph (B) applies to paragraph (A) in its entirety; incorporates a one-time forgiveness for late payment of	Effective: 12/12/19

	premium or filing of the annual payroll report which is currently BWC policy through former Governor's Executive Order)	
4123-14-04	Procedures to recover from a non-complying employer the amount of money paid out of the state insurance fund for an industrial injury, occupational disease and/or death (deletes "by certified mail" in paragraph (A) as it is not a procedure required by law and has not been in practice by the BWC)	Effective: 12/12/19
4123-14-06	Bureau of workers' compensation adjudicating committee (deletes "by certified mail" in paragraph (A) as it is not a procedure required by law and has not been in practice by the BWC; allows adjudicating committee more flexibility to issue notices and orders by mail or email to the parties involved)	Effective: 12/12/19
4123-17 (GENERAL RATING FOR THE STATE INSURANCE FUND)		
4123-17-03	Employer's experience rating plan (add section (F) to provide for further adjustment of estimated premium (EM) by multiplying EM adjustment factor as provided in Appendix B)	Effective: 1/1/21
4123-17-33.1	Public employer taxing districts credibility table (rename rule "Public employer taxing districts experience rating table; rename "credibility rating table" in Part A as "public employer taxing district experience table")	Effective: 1/1/21
4123-17-53	Private employer retrospective rating plan minimum premium percentages	Effective: 1/1/21
4123-17-54	Public employer retrospective rating plan minimum premium percentages	Effective: 1/1/21
4123-17-64.2	Public employer taxing district group rating break even factor (add "public employer taxing district" to describe the eligible employer group)	Effective: 1/1/21
4123-18 (REHABILITATION DIVISION)		
4123-18-01	Provision of vocational rehabilitation services (language changes for clarification regarding managed care organizations being responsible for vocational rehabilitation; removes reference to self-insuring employer rehabilitation surplus fund, which was eliminated by HB 52, effective 9/29/15)	Effective: 3/1/20
4123-18-02	Goals of vocational rehabilitation (reformatting and rephrasing the hierarchy of return to work objectives for clarity and removes paragraph (D) which discusses expenditures from the surplus fund)	Effective: 3/1/20

4123-18-05	Individualized written vocational rehabilitation plan (several language changes for clarity and consistency, and deletions in place of cross-referencing rule 4123-18-02)	Effective: 3/1/20
4123-18-08	Payment for rehabilitation services and related expenses from the surplus fund (language changes for clarity and consistency; increases reimbursable relocation expenses from \$2000 to \$3000; removes criteria that relocation expenses are only payable if the injured worker must sell their last place of residence)	Effective: 3/1/20
4123-18-11	Incentive payments to employers who hire or retain injured workers who have completed a rehabilitation program (removes language indicating that payments are made pursuant to an administrative order; removes redundant language)	Effective: 3/1/20
4123-18-16	Self-insuring employer's obligation to provide vocational rehabilitation services (removes a pinpoint reference to paragraph (A) of rule 4123-18-04 and refers only to the rule number)	Effective: 3/1/20
4123-18-21	Wage loss payments to injured workers who complete rehabilitation plans (language changes for clarity and consistency; add language to clarify if limitations are temporary, medical documentation must be submitted with any subsequent application for living maintenance wage loss, but if the limitations are permanent, the documentation may be requested by the BWC, but is not mandatory)	Effective: 3/1/20

Judicial Decisions

Supreme Court:

(none)

10th District Court of Appeals:

State ex rel. Parraz v. Indus. Comm., 10th Dist. Franklin No. 11AP-806, 2013-Ohio-764

Claimant appealed to the Tenth District Court of Appeals of Ohio (“Tenth District”) seeking to vacate the Industrial Commission’s (“Commission”) order declaring that she voluntarily abandoned her employment thereby denying her claim for temporary total disability.

Claimant sustained a work-related injury on July 18, 2010 and as of that date, she had accumulated 10.5 attendance points (out of a possible 14 points before termination occurred) and was given a written warning of which she acknowledged. She was subsequently absent from work on February 3, 2011, and tardy on February 4, 2011. However, she did not submit any evidence to her employer indicating that either the tardy or absence were related to her injury. Instead, she later testified that her absence on February 3, 2011 was due to general illness and not the injury, and her tardiness on February 4, 2011 was because she had a flat tire.

Claimant subsequently filed a motion for temporary total disability compensation which was denied by the District Hearing Officer ("DHO") on the basis that the claimant voluntarily abandoned her employment. The DHO applied the facts of this case to an Ohio Supreme Court case, *Louisiana-Pacific Corp. v. Indus. Comm. of Ohio*, 72 Ohio St.3d 401, 403 (1995), which held that a termination is voluntary when it is "generated by the claimant's violation of a written work rule or policy that (1) clearly defined the prohibited conduct, (2) had been previously identified by the employer as a dischargeable offense, and (3) was known or should have been known to the employee"). Claimant appealed this determination to a Staff Hearing Officer ("SHO") who affirmed the decision of the DHO.

Claimant ultimately appealed the administrative decision to deny her claim for temporary total disability to the Tenth District which referred the case to a magistrate. The magistrate concluded that the Commission did not abuse its discretion in determining Claimant's termination due to the violation of a written work rule constituted a voluntary abandonment of her employment and that she failed to provide sufficient medical evidence demonstrating that the absences were related to the industrial injury.

Claimant filed objections to the magistrate's decision for the Tenth District's review arguing: (1) that her attendance problems were not willful, but instead negligent and therefore she did not voluntarily abandon her job; (2) the magistrate improperly faulted her for failing to show that specific absences were beyond her control; and (3) she submitted medical evidence as well as her own affidavit showing that some of her absences were related to her work injury.

The Tenth District disagreed with Claimant's objections. First, the court pointed to a previous case, *State ex rel. Feick v. Wesley Community Servs.*, 10th Dist. No., 04AP-166, 2005-Ohio-3986, which recognized that there may be situations in which conduct is not willful, but the nature or degree of the conduct rises to such a level of indifference or disregard for workplace rules and policies so as to support a finding of voluntary abandonment. Therefore, although not willful, the Tenth District found Claimant's conduct to rise to a level of indifference or disregard to support a finding of voluntary abandonment. Second, the Tenth District reasoned that Claimant did not present evidence showing her termination was pretextual or that her absences were related to her allowed conditions. Accordingly, it overruled her second objection. Third, the Tenth District again overruled Claimant's third objection because her work excuse was dated several days after she had already missed work and her affidavit averring that she was unable to work because of her allowed conditions was contrary to testimony she provided at the

administrative level stating that her absences/tardiness were related to illness and a flat tire, respectively.

Accordingly, the Tenth District agreed with the magistrate's decision and denied Claimant's request to vacate it.

State ex rel. Linda M. Koepf v. Indus. Comm., 10th Dist. Franklin No. 18AP-753, 2019-Ohio-3789

Claimant appealed to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's ("Commission") order denying her motion for accrued benefits for her husband's total loss of use of his arms, legs, vision in both eyes, and hearing in both ears.

Claimant's husband (the "Decedent") developed mesothelioma as a result of his employment with the Respondent. After Decedent's death, Claimant filed a motion requesting payment for loss of use compensation and submitted an independent medical review from a doctor, Dr. Borrillo, who opined that Decedent had developed a functional loss of use of both eyes, both ears/hearing, and bilateral upper and lower extremities. Another physician, Dr. Lieser, was asked to review all the medical records and concluded that the medical evidence did not support the findings of Dr. Borrillo. Claimant's motion was heard before a District Hearing Officer ("DHO") who denied the request in its entirety reasoning that there was no evidence of actual permanent loss of use. On appeal, the Staff Hearing Officer ("SHO") affirmed the DHO's order and denied the request in its entirety. The SHO found Dr. Borrillo's report to be unpersuasive.

Claimant ultimately appealed the administrative decision to deny her motion to the Tenth District which referred the case to a magistrate. The magistrate determined that the mesothelioma did not cause Decedent to suffer the loss of use of his extremities. The medical evidence showed that as Decedent neared the hour of his death, he became less and less responsive to stimuli. However, the medical evidence did not establish that, had he been able to survive the mesothelioma, he would have suffered these losses. In other words, it was the process of dying that caused the loss. Accordingly, the magistrate found that the Commission did not abuse its discretion when it denied Claimant's request for loss of use. The Tenth District agreed with the Magistrate's decision and adopted the decision as its own.

State ex rel. Tina M. Koch v. Indus. Comm., 10th Dist. Franklin No. 18AP-396, 2019-Ohio-4438

Claimant appealed to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's ("Commission") order declaring that she voluntarily abandoned her employment therefore denying her claim for temporary total disability.

Claimant was employed as a payroll clerk and slipped and fell on a wet floor, injuring her shoulder. She subsequently had shoulder surgery and received temporary total disability compensation from the date of surgery until she returned to work. However, during her absence, her employer's accountants noticed that she had recorded work hours on her time sheets for certain days, but the company's electronic system for recording employee badge swipes had no record of Claimant working on those dates. According to her employer, this was in direct violation of the employee handbook which prohibited employees from falsifying time keeping records and stated that such offense could lead to termination. The District Hearing Officer ("DHO") concluded that the Claimant had not voluntarily abandoned her employment and awarded temporary total disability. The employer appealed this determination to the Staff Hearing Officer ("SHO") who, after hearing additional testimony, vacated the DHO order and denied Claimant's claim. The SHO applied the facts of this case to an Ohio Supreme Court case, *Louisiana-Pacific Corp. v. Indus. Comm. of Ohio*, 72 Ohio St.3d 401, 403 (1995), which held that a termination is voluntary when it is "generated by the claimant's violation of a written work rule or policy that (1) clearly defined the prohibited conduct, (2) had been previously identified by the employer as a dischargeable offense, and (3) was known or should have been known to the employee").

Claimant ultimately appealed the administrative decision to deny her claim for temporary total disability to the Tenth District which referred the case to a magistrate. The magistrate's task was to determine whether there was "some evidence" in the record to support the SHO's determination that the employer terminated Claimant's employment for violating a written work rule. The magistrate reviewed the record and found that there was such evidence because the SHO relied on the testimony of Claimant's supervisors concerning the termination and further found that the Claimant's failure to correct her time sheets resulted in her providing false information and the benefit of pay she did not earn. Accordingly, the magistrate found that the Commission did not abuse its discretion when it denied Claimant's request for temporary total disability. The Tenth District agreed with the magistrate's decision and adopted the decision as its own.

State ex rel. Heinen's Inc. v. Indus. Comm., 10th Dist. Franklin No. 18AP-635, 2019-Ohio-4690

The employer appealed to the Tenth District Court of Appeals ("Tenth District") seeking to vacate the Industrial Commission's ("Commission") order granting Claimant's application for permanent total disability benefits.

Claimant sustained work-related injuries at the employer's grocery store where he had been working part-time to supplement the social security disability income he received in connection with his rheumatoid arthritis. His workers' compensation claim was allowed for various conditions and Claimant was eventually referred to vocational rehabilitation, but declined. When Claimant applied for permanent total disability compensation, he submitted evidence from a physician who declared that his injuries precluded any sustained remunerative employment.

Claimant's application was heard by a Staff Hearing Officer ("SHO") who denied his permanent total disability claim finding that his lack of participation in vocational rehabilitation for reasons unrelated to the allowed conditions in the claim constituted a voluntary abandonment of the workforce, and therefore the Claimant could not be eligible for permanent total disability. On Claimant's request for reconsideration, the Commission reversed and found that the SHO made a clear mistake of law by equating the Claimant's failure to participate in a vocational rehabilitation program to an automatic voluntary abandonment of the workforce. The Commission concluded, by examining the medical evidence, that Claimant was permanently and totally disabled from a physical impairment standpoint alone, thus obviating the need for a vocational analysis.

The employer ultimately appealed the administrative decision to grant Claimant's application for permanent total disability benefits to the Tenth District which referred the case to a magistrate. The magistrate's responsibility was to analyze whether there was "some evidence" in the record to support the SHO's determination. The magistrate found that there was some medical evidence upon which the Commission relied which provided that Claimant's physical state caused him to be permanently totally disabled and that he could not obtain gainful employment. Accordingly, the magistrate found that the Commission did not abuse its discretion when it relied upon this evidence to hold that there was no need for Claimant to undergo a vocational analysis. The Tenth District agreed with the magistrate's decision and adopted the decision as its own.

State ex rel. McCormick v. McDonald's, 10th Dist. Franklin No. 11AP-902, 2013 WL 816483

Claimant appealed to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's ("Commission") order terminating her application for temporary total disability ("TTD") and issue a new order reinstating TTD compensation.

Claimant sustained a work injury when she slipped on a wet surface and fell. She filed a claim for TTD compensation which was awarded. Subsequently, at the Bureau of Workers' Compensation's ("BWC") request, Claimant was examined by Amardeep Chauhan, D.O., who opined that Claimant had reached maximum medical improvement ("MMI") following years of therapy and chiropractic treatment. Citing Dr. Chauhan's report, the BWC moved for termination of TTD compensation on the grounds that the industrial injury had reached MMI. Following a hearing before a District Hearing Officer ("DHO"), the BWC's motion to terminate TTD was granted on or about October 8, 2010, and the Claimant appealed this order on or about the same date. Shortly after, on or about October 19, 2010, one of Claimant's treating providers provided a report opining that Claimant had not reached MMI. On or about October 27, 2010, another of Claimant's treating physicians opined that Claimant would benefit from further treatment and recommended further treatment.

However, a Staff Hearing Officer ("SHO") on appeal affirmed the DHO's order terminating TTD based on the report of Dr. Chauhan. Claimant appealed the administrative decision terminating TTD to the Tenth District which referred the case to a magistrate. Claimant argued

that the Commission erred by relying on Dr. Chauhan's opinion that she reached MMI because Dr. Chauhan was unaware of and did not consider a contemporaneously approved medical treatment plan from her medical provider. In making this argument, Claimant relied on another case, *State ex rel. Sellards v. Indus. Comm.*, 108 Ohio St.3d 306, 2006-Ohio-1058, for the proposition that a doctor's opinion regarding MMI is automatically rendered premature by another doctor's subsequent request and approval of a treatment plan. However, the magistrate disagreed and distinguished the facts from *Sellards* with the case present case. In *Sellards*, a psychiatrist submitted a treatment plan that was approved by the commission and on the same date of that approval, another psychiatrist concluded the claimant had reached MMI. However, the second psychiatrist was unaware of the newly approved treatment plan. The *Sellers* court found the second psychiatrist's opinion to be premature based upon the commission's contemporaneous approval of the first psychiatrist's treatment program and consequently, it could not serve as evidence to support the denial of TTD compensation.

However, in the instant case, there was a different time frame involved because the record showed that the Commission was aware that approximately two weeks after Dr. Chauhan's examination of Claimant, Claimant's treating physician completed a request for authorization of further treatment. More than two weeks after that, the request was approved by a managed care organization (rather than by the Commission, as in *Sellards*). Therefore, while the approval of the treatment plan and the examination of the second psychiatrist in *Sellards* was very contemporaneous, the same could not be said in this case. In the present case, the approval of the managed care organization occurred more than one month after Dr. Chauhan's examination. Therefore, according to the magistrate, *Sellards* did not apply and the Commission did not err in terminating TTD. The Tenth District agreed with the magistrate's decision and adopted the decision as its own.

State ex rel. Hoffman v. Indus. Comm., 10th Dist. Franklin No. 12AP-456, 2013 WL 749486

Claimant appealed to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's ("Commission") order denying temporary total disability ("TTD") compensation and to enter an order granting said compensation.

While at work, Claimant had a seizure causing him to lose consciousness and fall. As he fell, he struck his head on a countertop. Claimant filed a workers' compensation claim which was ultimately allowed by a District Hearing Officer ("DHO") for subarachnoid hemorrhage, intracerebral hemorrhage, skull fracture, and encephalomalacia. After his claim was allowed, Claimant filed a request seeking consultation with a headache clinic, consultation to psychiatry, an EEG, and a brain MRI. In response, a medical provider referred by the Bureau of Workers' Compensation ("BWC") recommended the headache clinic, psychiatric consultation, and the requested EEG, but indicated that the MRI was not necessary. Subsequently, Claimant filed a motion seeking to have his claim additionally allowed for generalized and focal seizure activity and migraine type headaches. A DHO ordered that the claim should be allowed for these additional conditions and no appeal was taken from the DHO's order. Following the DHO order,

Claimant filed a motion requesting TTD compensation be paid, and supported his motion with numerous medical records detailing both the treatment and difficulties encountered relating to his reoccurring headaches and seizures.

In response, Claimant's employer had Claimant examined by a physician, Dr. Lisa Kurtz, M.D. In her initial report, she listed the allowed conditions in his claim, but failed to list the newly allowed conditions of generalized and focal seizure activity and migraine headaches. Dr. Kurtz concluded that based upon her findings, Claimant had reached maximum medical improvement ("MMI"). However, because she failed to consider all of the allowed conditions, she subsequently completed an addendum stating that Claimant had reached MMI on the newly allowed conditions as well.

Claimant's motion for TTD was denied before a DHO based on the report of Dr. Kurtz. Claimant appealed the denial to a Staff Hearing Officer ("SHO") who affirmed the DHO's decision. Claimant ultimately appealed the administrative decision denying her TTD to the Tenth District which referred the case to a magistrate. Claimant argued that the Commission erred by relying on the report of Dr. Kurtz because it did not constitute some evidence upon which the Commission could rely and because Dr. Kurtz' addendum failed to explain the reason as to why she found MMI for the newly allowed conditions. The magistrate disagreed reasoning that Dr. Kurtz' report examined Claimant and Claimant's records, and in such review, Dr. Kurtz concluded that Claimant had been receiving treatment for the newly allowed conditions long before Claimant even asked that those conditions be allowed. Further, Dr. Kurtz' addendum did not need to go into great detail as to why the newly allowed conditions reached MMI because she her addendum was just in addition to her initial report which explained the reasons for MMI. Therefore, Dr. Kurtz' report did constitute some evidence upon which the Commission could rely and its decision to deny TTD was not made in error. The Tenth District agreed with the magistrate's decision and adopted the decision as its own.

State ex rel. Old Dominion Freight Line, Inc. v. Indus. Comm., 10th Dist. Franklin No. 18AP-73, 2019-Ohio-4948

The employer appealed to the Tenth District Court of Appeals of Ohio ("Tenth District") seeking to vacate the Industrial Commission's ("Commission") order denying its request that the Commission exercise continuing jurisdiction based on new and changed circumstances and seeking to order the Commission to find that the employer presented evidence of new changed circumstances warranting vacation of the Commission's grant of the Claimant's request for permanent total disability ("PTD") compensation.

On or about January 18, 2005, Claimant sustained a work-related injury when he slipped and fell on ice, landing on his left hip. Initially, Claimant was diagnosed with left femoral neck fracture and left intertrochanteric femur fracture, which were allowed conditions. On or about February 28, 2007, Claimant filed an initial PTD application which was ultimately denied by a Staff Hearing Officer ("SHO"). Following a hearing before a district hearing officer ("DHO") on

August 6, 2018, Claimant's claim was additionally allowed for post-traumatic stress disorder ("PTSD"). Claimant filed a second application for PTD on July 22, 2009, and submitted a number of medical reports from physicians opining that Claimant would not be able to return to previous employment on a permanent basis as a direct and proximate result of the allowed physical conditions. Claimant also submitted separate medical reports from a medical provider who opined that he was permanently and totally disabled as a result of his allowed psychological conditions. Ultimately, an SHO granted Claimant's request for PTD compensation.

After the award of the PTD compensation, the employer separately appealed the award of PTSD before an SHO who disallowed the PTSD claim. After the PTSD condition was disallowed, the employer filed a motion asking the Commission to invoke its jurisdiction to vacate the SHO order granting Claimant's application for PTD compensation based on new and changed circumstances – the disallowance of the PTSD claim. However, the Commission denied the employer's motion and instead found that disallowance of the PTSD claim had no impact on the allowance of the PTD claim because the allowed physical conditions were independently disabling based on the medical reports relating to the physical conditions.

The employer ultimately appealed the administrative decision denying the request to invoke its continuing jurisdiction to the Tenth District, which referred the case to a magistrate. The magistrate examined the issue of whether the Commission abused its discretion when it denied the request to invoke its continuing jurisdiction and whether the reason given for that decision was supported by some evidence. The magistrate found that even if the Commission should have found that the employer presented evidence of new and changed circumstances, Claimant presented medical evidence from physicians who considered only his allowed physical conditions and opined that he was unable to return to employment. Therefore, the subsequent disallowance of the psychological PTSD condition would not change that fact, and the Commission, accordingly, did not abuse its discretion. The Tenth District agreed with the magistrate's decision and adopted the decision as its own.

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Ohio's Latest Injuries and Illness Report Now Available

February 21, 2020

Ohio's 2018 Survey of Occupational Injuries and Illnesses report is **now available**. The report shows the number of cases involving days away from work in the private sector decreased 5% compared to the previous year. Sprains, strains, tears comprised more than 35% of reported injuries, followed by fractures (11.7%), cuts and lacerations (9%), and bruises and contusions (8.8%).

The rate of workplace injuries and illnesses for Ohio continues to be lower than the national average. Manufacturing reported a slight increase in the rate of injuries and illnesses, up from 3.1 to 3.2 cases per 100 full-time workers — but that's still less than the U.S. rate for manufacturing (3.4).

Overall in Ohio, agriculture — at 8.2 — had the highest total recordable case rate per 100 full-time workers. *2/18/2020*

OSHA Publications Available for Free Download

February 21, 2020

Did you know OSHA provides all of its popular publications on its website, ready for free download? Many of the agency's publications are available in languages other than English. **Click here** to see the most downloaded OSHA publications. *2/18/2020*

BWC Employer Webinar is February 27

February 21, 2020

The BWC's next employer webinar will be Thursday, Feb. 27, at 11:30 a.m. This free, 25-minute webinar will cover the role of the Ohio Industrial Commission, the \$15,000 Medical-Only Program, One-Time Forgiveness, eNews, important dates, and the BWC's monthly safety tip. Register to **attend online** — or sign up to **attend in person** at your nearest BWC service office. *2/17/2020*

House Passes Workers' Comp Expansion for PTSD Benefits

February 14, 2020

This week, on a 74-22 vote, the Ohio House passed **House Bill 308**, legislation that would provide first responders with workers' compensation benefits to treat post-traumatic stress disorder (PTSD) even when there's no physical injury. Under current Ohio law, only mental conditions stemming from on-the-job physical injuries/illnesses are eligible for workers' compensation benefits. Due to the risk of substantial premium increases for employers, the OMA has long opposed any legislation that would permit PTSD compensation or other mental claims when there is no associated physical injury or illness. As the OMA noted in its "**key vote alert**" to House members, HB 308, if enacted, "will inevitably result in increased workers' compensation costs for both public and private employers. The consequences of those cost increases will be felt across the Ohio economy and will negatively impact Ohio's business climate."

The bill now moves to the Senate, where Senate President **Larry Obhof** (R-Medina) has already been quoted saying he supports the legislation. *2/13/2020*

Report: PTSD Legislation is Increasing Costs, Not Care

February 14, 2020

In state legislatures across the U.S., there's growing support to provide workers' compensation benefits to first responders who are diagnosed with post-traumatic stress disorder (PTSD), even if there's no physical injury. But according to an insurance publication, in states where benefits have been expanded, things aren't going as intended as the changes are leaving some first responders without care — and municipalities "struggling to cover the costs."

In its story, **Business Insurance** quotes several experts, including one who said: "The cost is extraordinary. The reality is that a large number of these claims ... are all heavily litigated or arbitrated, and a really high percentage of these claims are not readily paid." *2/11/2020*

Coronavirus and Influenza: Key Issues for Employers

February 14, 2020

February marks the peak of flu season. This year, flu concerns have been compounded with worries about the **coronavirus**. OMA Connections Partner Bricker & Eckler has published **this guidance** for employers seeking to maintain a healthy workforce during flu season and throughout the year. *2/12/2020*

BWC Safety Grants Expanded to \$70 Million

February 14, 2020

This week, the BWC was **given approval** by its board to spend \$70 million in fiscal years 2020 and 2021 on grants for Ohio employers to improve workplace safety. Funded by employer premiums, the Safety Grants program has already reached its 2020 appropriation of \$20 million. *2/12/2020*

Senate Continues Hearings on Workers' Comp Bill

February 7, 2020

This week, the Senate continued to hold hearings on **House Bill 81**, legislation that would make several changes to Ohio's workers' compensation laws. Some of the changes HB 81 would make include:

- reducing the statute of limitations for violations of a specific safety rule (VSSR) from two years to one year;
- increasing the funeral expense benefit cap for inflation;
- changing rules for final claim settlement agreements;
- continuing jurisdiction changes; and
- clarifying the voluntary abandonment doctrine.

The Senate Insurance and Financial Institutions Committee heard from a variety of witnesses, including the OMA, which provided **proponent testimony**. The bill is expected to receive further Senate consideration. *2/6/2020*

OSHA Website Addresses Coronavirus Protection

February 7, 2020

The U.S. Department of Labor has produced **this webpage** to provide information to employers regarding the evolving coronavirus outbreak first identified in China.

The agency notes that there is no evidence of widespread transmission of the virus in the U.S. at this time. Still, it's worthwhile for employers to review the site, including its information on hazard recognition, control and prevention, and OSHA standards as they apply to the virus. *2/6/2020*

Another Workers' Comp Premium Cut for Ohio Employers?

February 7, 2020

The Ohio Bureau of Workers' Compensation (BWC) has **announced** it's proposing another rate cut to premiums paid by private employers. This one would be worth about \$132 million — if OK'd by the BWC board on Feb. 28. It would reduce private employers' rates by an average of 13% and take effect July 1. It would also mark the third cut in three years for private employers and the 11th since 2008.

This is a good thing for Ohio employers, as the drive toward actuarial principles has resulted in a competitive advantage for Ohio's state-run monopoly workers' comp system. *2/3/2020*

BWC Seeks to Increase Safety Grants to \$70 Million

February 7, 2020

The BWC has **announced** it wants to increase funding for its Safety Grants program for employers by \$30 million over 2020 and 2021, bringing the total to \$70 million. The grants — worth as much as \$40,000 per employer — provide funds for training, wellness programs, and equipment intended to reduce the risk of workplace injuries and illness.

The application deadline for **safety grants** awarded this fiscal year is March 31. Applications for FY2021 grants will be accepted starting July 1. *2/3/2020*

New BWC Rule for Concussion-Related Injuries

February 7, 2020

Last month, a new Ohio workers' compensation rule became effective with respect to the payment for treatment of concussion-related injuries. OMA Connections Partner

Roetzel **reports** the BWC's new rule means "medical treatment for head related injuries that are suspect or minimal in nature — and which would have likely not been approved for medical treatment related to a concussion diagnosis prior to the enactment of the new rule — will now most likely be treated with less scrutiny by the BWC and be authorized for medical treatment." *2/3/2020*

Ohio House Poised to Approve Mental-Only Claims under Workers' Comp

January 31, 2020

This week, **House Bill 308** — legislation to allow first responders to receive Ohio workers' compensation benefits if diagnosed with post-traumatic stress disorder (PTSD) — took one step closer to becoming law. If the bill is passed and signed, it would mark the first time Ohio would allow a mental claim without an accompanying physical injury. Currently, the Ohio workers' compensation system prohibits so-called mental/mental claims.

The OMA, along with other business and local government groups, has long been opposed to any move towards mental/mental claims. In addition, the OMA has worked with numerous stakeholders to find alternative solutions to ensure that Ohio's first responders receive treatment for PTSD. The House Ways and Means Committee pushed aside those alternative solutions during opponent testimony this week. It is expected that the committee and the full House will approve the bill yet this winter. *1/30/2020*

First Senate Hearing Held on BWC Bill

January 31, 2020

On Wednesday, Jan. 29, the Ohio Senate held sponsor testimony on **House Bill 81**. As originally introduced, the bill would have provided corrections officers with workers' compensation coverage when exposed to bodily fluids on the job. The House **amended** the bill to allow for several other new workers' compensation provisions including: reducing the statute of limitations for violations of a specific safety rule (VSSR) from two years to one year; increasing funeral expenses; settlement changes; continuing jurisdiction changes; and clarifying the voluntary abandonment doctrine. Overall, the bill is a positive for manufacturers. *1/30/2020*

OMA Members are Finalists for BWC's Safety Awards

January 31, 2020

The Ohio Bureau of Workers' Compensation (BWC) has **announced** its five finalists for this year's Safety Innovation Awards. Among the finalists are OMA members Fort Amanda Specialties (Lima) and TFO Tech Co., LTD (Jeffersonville). The finalists are competing for cash awards — including a \$10,000 first place prize. They will be featured at the **Ohio Safety Congress and Expo** in mid-March.

The BWC established the Safety Innovation Awards to encourage and recognize innovative solutions that reduce the risk of workplace injuries and illness. *1/28/2020*

Reminder: BWC Grants Available to Ohio Employers

January 24, 2020

The Ohio Bureau of Workers' Compensation (BWC) offers several grant options for Ohio employers, including the Safety Intervention Grant, Workplace Wellness Grant, and the Drug-Free Safety Program Grant. This is a reminder to OMA members to **take a look** at all available grant options and details about these programs. *1/21/2020*

Local Marijuana Laws Don't Change Employers' Drug-Free Workplace Rights

January 24, 2020

The Cleveland City Council recently proposed an ordinance to decriminalize marijuana possession. If Cleveland's proposed ordinance passes, it would join other Ohio cities such as Cincinnati, Columbus, Toledo, and Dayton in decriminalizing possession of small amounts of marijuana.

OMA Connections Partner Frantz Ward **reminds employers** that despite the trend, Ohio law allows employers to discipline, terminate, refuse to hire, or take other adverse action against individuals based on use, possession, or distribution of marijuana. Changes in local law are "not likely to impact Ohio employers who wish to maintain drug-free workplaces." *1/22/2020*

OSHA Announces New Maximum Penalties

January 17, 2020

OSHA has announced the maximum penalty amounts (adjusted for inflation) that it can assess after Jan. 15, 2020. See the penalty amounts **here**. *1/16/2020*

Deadline to File OSHA Injury Form is March 2

January 17, 2020

Most employers with 10 or more employees are required by OSHA to track and report all work-related injuries and illnesses via Forms 300 and 300A.

OMA Connections Partner Bricker & Eckler **notes** that the deadline to file Form 300A is March 2 — and employers must post the form in the workplace from Feb. 1 to April 30. *1/15/2020*

OMA Webinar Will Address OSHA Reporting Obligations

January 17, 2020

If you are new to OSHA records management — or you have employees who need an introductory course or refresher — the OMA is offering a **helpful webinar** on Feb. 6, from 10-11 a.m. EST.

Presented by experts at Safex, an OMA Connections Partner, this webinar will review OSHA recordkeeping requirements, including your obligations when reporting injuries. *1/14/2020*

Free OSHA Certification Courses Available

January 17, 2020

Ohio BWC offers free OSHA certification courses to employers. According to its update, the bureau has several OSHA-10 and OSHA-30 workshops scheduled at various sites across Ohio. **Click here** to view the specific dates and locations, or to sign up for one of these free courses. *1/15/2020*

Protect Your Workers' Comp Premium Savings

January 10, 2020

If you haven't already done so, activate your OMA Group Retrospective Rating offer — or complete your payment — no later than Friday, Jan. 24. Renewing members, as well as new applicants, can find their 2020/21 Group Retrospective Rating offer on their **WCS dashboard**. Enrollment can be executed online via the dashboard; however, you will need to process your payment by check or credit card. If you have any questions, contact the OMA's **Brian Jackson** or your OMA workers' comp account manager — **Karen James, Melissa Ross** or **Juliet Walker**.

Note: If your company hasn't requested an OMA workers' comp premium savings proposal for the 2020/21 policy year, the OMA is accepting applications through Jan. 22. **Apply here**. *1/9/2020*

Ohio Safety Congress Set for March 11-13 in Columbus

January 10, 2020

The **Ohio Safety Congress and Expo** is currently accepting registrations. This is the second-largest occupational safety, health, and workers' compensation event in the U.S. — and last year it attracted more than 8,000 attendees and 300 exhibitors.

This year's event will be March 11-13 at the Greater Columbus Convention Center. Safety Congress and **registration** are free — and there's even an **online attendance option**.

The OMA will have its workers' comp team on site — at booth #1024 — to discuss our unique, manufacturer-specific approach to workers' comp management. We will have a made-in-Ohio gift as a "thank you" for stopping by. *1/8/2020*

BWC's 'Better You' Program Gets Makeover

January 10, 2020

The new year has brought some changes to *Better You, Better Ohio*[®] — the free health-and-wellness program for workers of businesses with 150 or fewer employees engaged in higher-risk industries, including manufacturing. Administered by the Ohio Bureau of Workers' Compensation (BWC), the program gives employers a chance to start a wellness program with no cost or paperwork hassle.

The program's **new-and-improved homepage** includes timely information and helpful tools for users. A new **Wellness Champion Guide** can help employers jump-start their health and wellness programs by empowering workers to take on a more active role in the program. *1/8/2020*

Latest Data Show Slight Uptick in Workplace Fatalities

January 3, 2020

The U.S. Bureau of Labor Statistics reports that there were 5,250 fatal workplace injuries across all U.S. industries and ownerships in 2018, according to **updated data**. That's an increase of 103 from 2017. The fatality rate was unchanged from 2017 at 3.5 fatalities per 100,000 full-time workers.

In 2018, there were 96 fewer fatal falls, slips, and trips than in 2017. But this decrease was more than offset by an increase of 91 cases in fatal contact with objects and equipment — and an increase of 90 cases in exposure to harmful substances or environments. *1/2/2020*

Year-End Updates from OSHA

December 20, 2019

Recent updates from OSHA include:

- Employers who electronically submit OSHA injury and illness recordkeeping **Form 300A** must provide an Employer Identification Number as of Jan. 2, 2020.
- OSHA has issued an updated National Emphasis Program to focus agency inspections on **amputation hazards in manufacturing** industries.
- New federal data show the rate of **fatal work injuries** remained unchanged in 2018. However, unintentional overdoses at work increased by 12% — the sixth

consecutive annual increase — while suicide at work jumped by 11%.

As part of your year-end housekeeping, be sure your facility has OSHA's "Job Safety and Health: It's the Law" poster (**available for free**) prominently displayed. *12/18/2019*

No Medical Marijuana in Ohio's BWC Drug-Free Workplaces

December 13, 2019

For Ohio employers who pay into the state fund for their workers' compensation coverage, enrollment in the Bureau of Workers' Compensation's Drug-Free Safety Program (DFSP) can provide significant savings by way of premium rebates. In a **recent update**, OMA Connections Partner Frantz Ward writes that with the legalization of medical marijuana in Ohio, some employers may be questioning whether they are still required to test for marijuana to maintain their rebates under the DFSP. With respect to the DFSP, nothing has changed.

According to the firm's experts, "Ohio employers should practice caution in any efforts to accommodate the use of medical marijuana, as they risk losing their DSFP premium rebates if they stop testing for marijuana and may even be missing out on a viable defense to workers' compensation claims when marijuana is involved." *12/10/2019*

OSHA Inspections Were Up in FY 2019

December 6, 2019

The U.S. Department of Labor's Occupational Safety and Health Administration's (OSHA) reports "a significant increase in the number of inspections" in FY 2019. According to an **OSHA release**, the federal agency conducted 33,401 inspections — more inspections than the previous three years — to address violations related to trenching, falls, chemical exposure, silica and other hazards. *12/5/2019*

Workers' Compensation Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on February 24, 2020

- HB79** **INDUSTRIAL COMMISSION BUDGET** (OELSLAGER S) To make appropriations for the Industrial Commission for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of Commission programs.
Current Status: 6/27/2019 - **SIGNED BY GOVERNOR**; eff. 6/27/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-79>
- HB80** **BWC BUDGET** (OELSLAGER S) To make appropriations for the Bureau of Workers' Compensation for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of the bureau's programs.
Current Status: 7/22/2019 - **SIGNED BY GOVERNOR**; Eff. Immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-80>
- HB81** **WORKERS COMP-BODILY FLUID EXPOSURE** (PERALES R) Regarding Workers' Compensation coverage of post-exposure medical diagnostic services for a detention facility employee's exposure to another person's blood or bodily fluids.
Current Status: 2/26/2020 - Senate Insurance and Financial Institutions, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-81>
- HB167** **OCCUPATIONAL LUNG CONDITIONS** (CERA J) To modify workers' compensation benefit amounts for occupational pneumoconiosis claims and to create the Occupational Pneumoconiosis Board to determine medical findings for such claims.
Current Status: 2/12/2020 - House Commerce and Labor, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-167>
- HB308** **PTSD COVERAGE - FIRST RESPONDERS** (PATTON T) Concerning workers' compensation and disability retirement for peace officers, firefighters, and emergency medical workers diagnosed with posttraumatic stress disorder arising from employment without an accompanying physical injury.
Current Status: 2/12/2020 - **PASSED BY HOUSE**; Vote 74-22
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-308>
- HB330** **FIREFIGHTER CANCER CLAIMS** (PATTON T) Regarding charging workers' compensation experience in firefighter cancer claims.
Current Status: 2/26/2020 - House Insurance, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-330>