



NICOLA
GUDBRANSON
COOPER LEGAL EXCELLENCE
SINCE 1933

Ohio Workers' Compensation Law – Things to Watch in 2025

by Donald Drinko

2024 Was certainly an eventful year for Ohio employers as well as for Ohio workers compensation lawyers. After a lull in activity due to Covid-19 and the resulting expansion of work-from-home culture, many employers saw injury claims increase in 2024. At the same time, many experienced administrators, claims handlers and attorneys retired in 2024, including a very large number of District and Staff Hearing officers. 2024 also saw the continued slowing of Covid-19 workers' compensation claims, as the Industrial Commission seemed to generally settle on a standard of "direct" exposure in order to succeed. Allegations that employers violated specific safety requirements (VSSR) were also front and center in 2024 with several new cases impacting these quasi-punitive workers compensation proceedings. Perhaps most significantly, both the Tenth Appellate District and the Ohio Supreme Court saw fit to overrule long-standing case law (farewell *State ex rel. AutoZone* and *State ex rel. Russell*) and by doing so imposed new rules concerning when a claimant can be deemed to have reached "maximum medical improvement" (MMI) and whether the defense of "abandonment" (or something like it) could still be applied to bar temporary total disability compensation (TTD). While many of these issues are still working themselves out and with a new (and nearly entirely Republican) Ohio Supreme Court waiting to weigh in, any organization with employees in Ohio should be interested in one or more of these issues in 2025:



- *State ex rel. Dillon v. Industrial Comm*: It is certainly not hyperbole to state that *Dillon* caused the most consternation among attorneys representing injured workers in 2024. Prior to this decision, employees receiving wage replacement benefits (TTD) could have that benefits terminated by a finding that the allowed conditions had

reached "maximum medical improvement," (MMI) but that determination could only be made at a hearing. This often created a "gap" between the date a physician deemed the claimant to be MMI and the date TTD benefits were actually terminated, which claimants would often try to extend. Dillon, which overruled State ex rel. Russell v. Industrial Comm., held that such a determination should be effective as of the date of the medical report declaring it to be so and that any TTD paid after that date was overpaid and could be recouped. This decision outraged the claimant's bar, primarily because money paid to the injured worker was gone, and the overpayments would be deducted from future benefits such as PPD. Claimant's attorneys argued that Dillon upended a quarter century of precedent, conflicted with OAC 4121-3-32(B) which requires a hearing for termination of TTD, and that MMI was not a medical determination but a legal one. (Some also argued that, notwithstanding the declaration of an overpayment, the BWC had no authority to actually recoup the funds.) As of this writing, the position of the BWC and Industrial Commission is that Dillon is the law of the land, and will be vigorously enforced.

- State ex rel. AutoZone v. Industrial Comm: Prior to 2020, it was common practice for employers to allege that an employee who quit or was terminated for cause for actions unrelated to his work-related injury was ineligible to receive wage replacement benefits (TTD) because he had "voluntarily abandoned" his position, and therefore there were no wages to replace. In 2020, the Ohio Legislature amended R.C. §4123.56, adding a paragraph (F) that read, in pertinent part: "It is the intent of the General Assembly to supercede any previous judicial decision that applied the doctrine of voluntary abandonment to a claim brought under this section." Thus, it was argued that employees who had quit their jobs or been fired for misconduct could still receive TTD benefits months, or even years later, and the defense of "voluntary abandonment" was rendered a dead letter. This position was affirmed in 2023 by the Tenth Appellate District in State ex rel. AutoZone v. Industrial Comm. which involved an employee who was fired for an altercation with a co-worker, then sought TTD while he recovered from surgery performed months later. However, on November 26, 2024, the Ohio Supreme Court reversed AutoZone, finding that an employee's inability to work was either the direct result of his injury, or a direct result of other reasons. In AutoZone the direct, causal relationship between the claimant's lost wages and his injury was broken by his termination, as there were no wages to replace. This decision is very new, but its impact will likely be extensive. It will also challenge the new General Assembly (again, overwhelmingly Republican) to re-evaluate whether to again alter R.C. §4123.56.

- State ex rel. McLain v. Industrial Comm/State ex rel. Heilman v. Industrial Comm/State ex rel. Byk v. Industrial Comm: One aspect of Ohio workers' compensation that is both heartbreaking and divisive is the continued pursuit of "loss of use" benefits – single payments intended to compensate claimants who lose the use of a limb or sense such as hearing or sight - in claims involving catastrophic injuries often resulting in death days or even hours later. "Loss of Use" awards in these claims relate back to the Ohio Supreme Court's 2006 decision in State ex rel. Moorehead v. Indus.Comm., and since that time employers expect a motion of this type in nearly every catastrophic claim. McLain, decided by the Tenth District on December 10, 2024, considered a death claim, a motion for "loss of use" benefits, and whether a decedent's estate has standing to pursue those benefits (It does not.) Heilman, decided by the Ohio Supreme Court in 2024, discussed the role of a reviewing physician and whether that physician can offer medical opinions based on anything other than an examining physician's objective findings (She cannot.) Byk, also decided in 2024, considered whether such an award could be pursued when the alleged loss of use resulted solely from a brain injury and not a direct trauma to the affected body parts (In some cases, potentially.) In reality, these claims are often not contested by state fund employers because of the seriousness of the underlying claim, but this area of workers' compensation law continues to work itself out.
- Wilhelm v. Advanced Drainage Sys, Inc.: This Third District case considered a workers' compensation claim for Covid-19 allegedly contracted from a co-worker. While the early extremes of the pandemic (and the resulting period wherein such claims did not count against an employer's risk) have subsided, we still see an occasional Covid-19 claim, mostly arising from first responders, health care professionals, and nursing home workers, and it is likely we will continue to see these claims on a limited basis in 2025. Wilhelm stands for the proposition that it is necessary to prove not just that the non-scheduled occupational disease was contracted in the course of employment and is peculiar to employment (extremely difficult – see Yeager v. Arconic, 2022-Ohio-1997) but also that the claimant's job creates a risk of contracting the disease that is greater in degree and different in manner than the public at large.
- State ex rel. Cassens v. Industrial Comm: In some cases, a workers' compensation claim is accompanied by allegations that the employer violated one or more specific safety requirements, and these claims (VSSRs) can lead to additional awards of between 15 percent and 50 percent of the total compensation paid, amounts that are assessed directly against the employer. Multiple awards within a two year period can also result in significant fines. In defending these claims, employers often allege that the specific safety requirements (which must be provisions of the Ohio Administrative Code) do not apply to their industry or the activity taking place at the

time of the injury. In particular, many claimant's attorneys will cite provisions regulating "workshops and factories" for claims that involve neither a workshop nor a factory. Cassens concerned a claimant who was struck by a co-worker driving a car with a windshield obscured by snow and ice in a fenced-in parking lot that the claimant alleged was a "workshop or factory." In vacating a VSSR award made by an SHO, the Tenth District granted a writ of mandamus, finding that the yard was neither a workshop ("a room or space where power-driven machinery is employed and manual labor is exercised") or a factory (used for "some type of building, construction, assembly, or demolition.") I expect that in 2025, claimants will attempt to further expand the definition of "workshop or factory," to include other non-industrial enclosed spaces.

- *Caldwell v. Whirlpool*: This case provided further clarity on the Industrial Commission's continuing jurisdiction over workers' compensation claims under R.C. §4123.52(A). In *Caldwell*, the Ohio Supreme Court held that unequivocally, "R.C. §4123.52(A) provides the commission with five years of continuing jurisdiction over cases." Further, the Court noted that "R.C. §4123.52 does not have any impact on workers' compensation appeals in courts. That statute is concerned solely with the commission's continuing jurisdiction over workers' compensation cases." The exception to the five year limitation period pronounced in *Caldwell* only pertains to pending workers' compensation court appeals.

These are just some of the areas where we expect to see further litigation in 2025. Please feel free to reach out to our Workers' Compensation team with any other questions or concerns.

Since March 9, 2007, I have published a semi-weekly survey of case law and current issues in Ohio workers' compensation law for a select group of clients, colleagues, and friends. After a brief pause, I have decided to resume this newsletter, which is titled "Shop Talk," and will briefly examine relevant issues, defense strategies, and case law from the perspective of the Ohio employer in a (hopefully) interesting format. If you or any member of your organization are interested in receiving this newsletter via e-mail, or have colleagues, clients, or other interested parties who may appreciate a brief semi-weekly discussion of Ohio workers' compensation issues, contact me at drinko@nicola.com.