

Who Is At Fault: The Erosion of Workers' Compensation Benefits in Ohio and Across the Country

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The transformation of the workforce through automation, the gig economy, and employment away from blue collar work may help to explain how and why the Ohio Bureau of Workers' Compensation has returned more than \$1 billion dollars to Ohio's employers for the third time in four years. However, changes in Ohio's workers' compensation laws have also made it more difficult to qualify for benefits than ever before, and many of these changes have not originated in the chambers of the General Assembly. Unfortunately, the courts are behind many of the tightening restrictions that deny entitled workers to compensation. For example, courts continue to broaden the voluntary abandonment doctrine, an ever-evolving judicial construct that threatens to eclipse the no-fault nature of the workers compensation system, the Ohio Supreme Court is responsible for the erroneous interpretation of "arising," which has left many injured workers unable to get treatment or compensation for PTSD, and the Ohio Supreme Court has refused to permit injured workers to recover compensation for disabilities occurring after an award of permanent total disability compensation.

Ohio is not the only state where injured workers are being unfairly denied benefits. "Since 2003, legislators in 33 states have passed workers' comp laws that reduce benefits or make it more difficult for those with certain injuries and diseases to qualify for them."ⁱ An unintended consequence of denying compensation to individuals injured on the job is that it is taxpayers who end up footing the bill: "American taxpayers . . . shell out tens of billions of dollars a year through Social Security Disability Insurance, Medicare and Medicaid for lost wages and medical costs not

covered by workers' comp."ⁱⁱ This phenomenon is occurring all over the country and is transferring corporate responsibility for workplace injuries to taxpayers.

Workers' compensation systems were created as no-fault arrangements where every employee, regardless of negligence, was entitled to participate if they were injured in the course and scope of their employment. The impetus for these statewide administrative schemes was the Industrial Revolution and the failure of the common law tort system to fairly and efficiently compensate injured workers. The lynchpin of workers' compensation is the mutual compromise between the interests of the employer and the employee:

The no-fault nature of our workers' compensation scheme is a statutory mandate. Ohio R.C. 4123.01(C) defines "injury" without qualification so long as it arises out of the course of employment. Except as expressly set out in the statute, workers' compensation benefits may not be denied on the basis of fault to a claimant who was injured in the course and scope of employment. R.C. 4123.54(A).ⁱⁱⁱ

Unfortunately, courts continue to chip away at deserving injured workers' eligibility for benefits through the voluntary abandonment doctrine. They also continue to ignore Ohio R.C. 4123.95, which commands them to liberally construe the Ohio Workers' Compensation Act in favor of employees. This injection of fault, and arbitrary moral judgment of injured workers' actions, breaks the compensation bargain and ignores the intent of the Workers' Compensation Act. It leaves little incentive for claimants not to sue in tort.

In Ohio, like most of America, legislators have taken proactive steps to reduce workers' compensation benefits for injured workers. But it is the courts that have done most of the dirty work for them. These measures do nothing to serve the public or injured workers, and do everything to serve corporate America's pocketbooks. This reality runs afoul of the very purpose behind workers' compensation:

It became undeniable that the tort system had failed as a regulatory device for distributing economic losses borne by injured Ohio workers and their families and

that it should be replaced by a workers' compensation system in which those losses would be charged, without regard to fault or wrongdoing, to the industry rather than to the individual or society as a whole.^{iv}

ⁱ Grabell and Berkes, *The Demolition of Workers Comp.*, propublica.org and NPR (March 4, 2015), <https://www.propublica.org/article/the-demolition-of-workers-compensation>.

ⁱⁱ *Id.*

ⁱⁱⁱ *State ex rel. Gross v. Indus. Comm.*, 115 Ohio St.3d 249, 254, 2007-Ohio-4916, 874 N.E.2d 1162 (“*Gross II*”).

^{iv} *Holeton v. Crouse Cartage Co.*, 92 Ohio St.3d 115, 119 (2001) (citations omitted).