

Workers' Compensation Happenings:

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I am pleased to serve as the Workers' Compensation Chair this year. We have had a busy year to date legislatively. If you have not followed the listserv of late, this article will provide you with updates on recent activity in the "world of comp."

RAID ON BWC/IC FUNDS:

The Kasich Administration executed a Memorandum of Understanding "MOU" with the business community to ratify their agreement that the Office of Budget and Management would not raid the Bureau of Workers' Compensation ("BWC") or Industrial Commission ("IC") funds.

The state budget bill, House Bill 49, allowed for the transfer of funds from the operating budgets of both the BWC and the IC to the General Revenue Fund. The amount was small, 2% of the BWC and IC budgets, but could have set a dangerous precedent for the possibility of workers' compensation funds to be taken in the future. During the legislative process, OAJ partnered with the Ohio AFL-CIO to express our opposition in the legislature. Despite not being successful in having the language removed from the budget bill, the Ohio Business Community also opposed the transfer and ultimately, we prevailed to stop the transfer. Additionally, we anticipate that there will be legislation this Fall, likely an amendment to another bill, to delete the reference in the bill that allowed for the funds transfer. OAJ will further support passage of the repeal legislation, and the Kasich Administration will not oppose these efforts per the MOU.

Workers' Compensation Claims Involving Motor Vehicle Accidents:

House Bill 207

With the passage of House Bill ("HB") 207 in 2016, if an employer can establish that a claim from its employee is a result of a motor vehicle accident involving a third party, the BWC may exclude the cost of the claim from the employer's experience and instead charge it against the BWC Surplus Fund.

The law requires that (i) the employee is the not-at-fault driver, and (ii) either (a) the third party at-fault driver have active insurance coverage or (b) the employer must have active uninsured motorist's insurance coverage in order to apply for the "Request to Charge the Surplus Fund for Non-At-Fault Motor Vehicle Accident." One benefit employers are likely to receive from this law is allowing them to maintain eligibility for group-rating and other discount programs despite a motor vehicle accident. Furthermore, this will preclude premium increases where a third party is at fault. Because these claims will be charged to the Surplus Fund, there

will be a strong incentive for the BWC to aggressively pursue subrogation for these claims from the third party.

This provision of HB 207 became effective for accidents occurring *on or after July 1, 2017*.

House Bill 27

On June 30, 2017, the Governor signed Sub. House Bill 27, the biennial workers' compensation budget bill for the BWC. There are a number of substantive changes including amendments to the following provisions of the Ohio Revised Code:

- **R.C. §4123.343(B):** provides that settlement agreements are treated as awards for purposes of handicap reimbursement;
- **R.C. §4123.512(A):** permits filing of a “notice of intent to settle” within 30 days of receipt of the order being appealed (or the IC’s refusal of an appeal) which extends the time for filing an appeal to court to 150 days, unless the other party objects within 14 days;
- **R.C. §4123.512(F):** raises the maximum attorney fee for a successful appeal to \$5,000;
- **R.C. §4123.53(B):** permits the BWC to waive scheduling a required medical exam, unless the employer objects;
- **R.C. §4123.56(E):** provides that an injured worker who is awarded temporary total before her full weekly wage is determined is paid at the statewide average weekly wage, and also provides how to adjust the amount paid when the full weekly wage is finally calculated;
- **R.C. §4123.57:** provides for dismissing a permanent partial application, without prejudice, if the employee misses or refuses to schedule a BWC medical exam without “notice or explanation”;
- **R.C. §4123.68(X):** amends the fire fighter cancer presumption to permit rebutting the presumption by demonstrating that exposure to the carcinogen could not have caused the type of cancer; limits the presumption to situations where the fire fighter has not worked in “hazardous duty” for over 15 years (reduced from 20); and permits a fire fighter with a scheduled claim for “cancer contracted by a fire fighter” to receive working wage loss;
- **R.C. §4123.84:** reduces the time limit for filing a claim from two years to one year.

The official effective date for the substantive amendments included in HB 27 is *September 29, 2017*.