

Risky Business

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Senate Bill 7, Workers' Compensation Reform



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On March 8, 2006, both Houses of the Ohio Legislature passed the BWC's proposed workers' compensation reforms detailed in the amended Senate Bill 7 (SB 7).

The following summarizes the major changes to Ohio's workers' compensation system:

1. Requires a "substantial" aggravation of a pre-existing injury, rather than merely a "symptomatic" aggravation for a claim to be compensable.
2. Reduces the "life" of all claims to five years rather than the current six (medical only) and ten (lost time).
3. Reduces the 40 week waiting period for the filing of a permanent partial application to 26 weeks.
4. Reduces the number of available weeks of non-working wage loss compensation from 200 weeks to 52 weeks.
5. Increases the BWC's medical only deductible claim program from \$1,000 to \$5,000.
6. Expands anti-fraud provisions, primarily against employers and medical providers.
7. Permits penalties against self-insuring employers for failure to timely pay assessments.
8. Makes sexual assault a compensable claim whether or not the victim suffers any physical injuries.
9. Clarifies and limits entitlement to statutory permanent total disability compensation.
10. Eliminates a claimant's right to dismiss an employer's court appeal.

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Did You Know?

- MCO Open Enrollment commences on May 1, 2006. Contact your claims manager for additional information.
- The Premium Discount Plus program enrollment deadline is July 31, 2006.

Psychiatric Claims and Ohio Law

The Ohio Supreme Court made a decision back in February of 2000 that many feared would open a "Pandora's box" for psychiatric claims in Ohio.

The previous standard has always been that an "Injury" does not include psychiatric conditions except where the conditions have arisen from an injury or occupational disease (Ohio Revised Code 4123.01 C.1).

However, in the case of Bailey, the claimant accidentally ran over and killed a co-worker with a tow motor. The claimant alleged severe depression and filed a claim with the BWC. The claim was denied and appealed to court.

The Court of Appeals also denied the claim based on the lack of physical injury. The Supreme Court, in a shocking decision, reversed the decision and granted the claim.

The Bailey decision caused great concern amongst the employer community, however, the anticipated landslide of psychiatric claims never materialized.



Recently, the new Supreme court has reversed its stance on the Bailey interpretation,

"in an atypical holding the Bailey court held that, ...a psychiatric condition of an employee arising from a compensable injury ...by a third party is compensation...*We now question that holding.*"

Essentially, the Bailey case law is no longer the standard for psychiatric claims in Ohio. The previous interpretation regarding the definition of an injury is clear that only physical injuries or psychiatric injuries resulting from physical injuries are compensable under Ohio workers' compensation.

Today with the recently passed SB 7, the only exception to this rule involves sexual assault.



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- Second half of 50/50 premium payment is due on May 1, 2006.
- William Mabe, Administrator/CEO of the Bureau of Workers' Compensation will be speaking on May 11, 2006 in Toledo, Ohio. The event is sponsored by V&A and the Toledo Regional Chamber of Commerce. Contact V&A for details.

Senate Bill 7 Continued

Of the aforementioned reforms, the greatest victories for Ohio employers relate to the reduction in non-working wage loss and the requirement of a "substantial" aggravation of a pre-existing injury.

In addition to strengthening the injury definition, this provision also requires objective medical evidence to support a finding of substantial aggravation.



Of course, with all good law comes a compromise. In SB 7, the compromise comes in the form of a reduction in the waiting period for permanent partial awards from 40 to 26 weeks.

Additionally, claimants for state funded employers can now file an application for settlement without the employers signature.

The employer will receive one notification from the BWC that an application was filed and must respond within thirty days to block the agreement. This may create some initial chaos, with several claimants and their representation submitting applications on claims that are not in the employers' best interests to settle.

Our clients should notify our office whenever a notification

is received and we will review the settlement application.

It remains to be seen how labor and trial attorneys will respond to this latest reform bill. Some believe they will attempt to get a referendum to block the new law, while others feel there are enough compromises in the legislation to offset any dispute.

If the bill's opposition is successful in its petition efforts, the law would require a public vote in order to be enacted. If the referendum is not successful, the new rules will take effect June 30, 2006. All claims on and after the effective date will utilize the new rules of interpretation.

Subrogation Statute withstands high court's scrutiny

Most employers can still remember the period of time when the subrogation of workers' compensation claims was ruled unconstitutional by the Ohio Supreme Court.

After a period of years, a new statute was created by the BWC on April 9, 2003, which once again provided subrogation relief to Ohio employers on all claims involving third parties.

Recently, Labor issued a challenge to the new Subrogation rules, again insinuating the unconstitutional aspect of such law.



The Supreme Court recently ruled to dismiss the challenge and uphold statute 4123.931, which allows subrogation to remedy claims caused by a third party.

Special thanks to the following for their insight into the murky depths of workers' compensation law:

- David McCarty of Kegler, Brown, Hill & Ritter
- John Barno of Lane, Alton & Horst
- Vince Mezinko of Michael Margelef-sky LLC