

Risky Business

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V&A RISK SERVICES

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Did You Know?

- Group Rating Renewals are being processed and mailed for the policy year July 1, 2007 — June 30, 2008. Look for your savings analysis soon.
- The Ohio BWC recently announced that there will be no non-group discount factor for policy year 2007.

Senate Bill 7, Supreme Court Decision

The on-going saga of Senate Bill 7 reached its conclusion on Friday, October 20th.

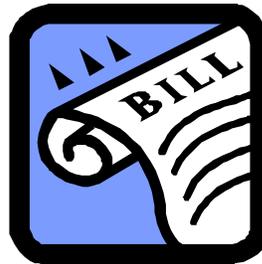
The Bill's opposition filed a referendum against certain (employer friendly) provisions involved in Senate Bill 7 and hoped to have these issues clarified by the voting public on November 7, 2006.

Fortunately, for the Bill's proponents, the opposition was unable to generate enough signatures in the required counties that would enable the issue to make the November ballot.

The Secretary of State's rejection of the signature's validity led the opposition to file an appeal, which was granted by the Franklin

County Common Pleas Court.

This decision was then reversed by the Court of Appeals and then on October 20, 2006 the Supreme Court of Ohio, in a 5 to 1 decision, declined to accept jurisdiction on the matter and thus ended the referendum effort.



The provisions of S.B. 7 that were stayed by the referendum will now become effective retroactively to the June 30, 2006 effective date. How these issues

are handled administratively must still be determined by the Industrial Commission.

The 3 major provisions now in effect are listed below:

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 number of available weeks of non-working wage loss compensation from 200 weeks to 52 weeks.

Best Practices — Rebuttable Presumption

Under specified circumstances (noted below), effective for claims with dates of injury on or after Oct. 13, 2004, House Bill 223 – the rebuttable presumption law – places the burden of proof on an employee to prove that alcohol or drugs in his or her system was not the proximate cause of an injury at work. To maximize the likelihood of a successful challenge in relationship to a workers' compensation claim, an employer should:

Have in place a written drug-free policy that

addresses consequences of substance use in violation of the employer's policy, including, but not limited to, the employer's intent to seek disallowance of a workers' compensation claim documented by a positive drug or alcohol test or a refusal to test. Have the policy reviewed by legal counsel that has a background in employment law and drug-free case law;

Use the Ohio Bureau of Workers' Compensation's (BWC's) drug-free program design as a model or participate in a BWC



drug-free program to have testing in place that will allow consideration of rebuttable presumption. Clearly explain in policy that rebuttable presumption means a positive test for alcohol or any of nine specified controlled substances (drugs) or a refusal to be tested can

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- The Northwest Ohio Self-Insured Association's annual Medical / Legal Seminar is scheduled for November 16th at the French Quarter in Perrysburg, Ohio.

V&A Book Review

Excellent Reads—Enjoy!!

- **The Kite Runner** (Khaled Hosseini)
- **The Historian** (Elizabeth Kostova)



Rebuttable Presumption—Continued

create a presumption that the presence of alcohol/drugs in an employee's system is the proximate cause of a work-related injury, which may make the injured workers' claim non-compensable;

Conspicuously post the required written notice, which BWC provided, to inform employees that the bureau may disallow workers' compensation benefits if they use drugs or alcohol and cause an injury to themselves. Then, educate all employees about this beyond simply posting the notice in the interest of compliance and prevention;

If you have collective bargaining agreements, ensure you bargain this with all of your unions;

Train all supervisors and managers to do a thorough post-

accident investigation, especially when an injury occurs. They should be prepared to obtain documentation of a reasonable cause for testing to have occurred or to have been requested;

Ensure you obtain eye-witness co-worker affidavits to confirm a reasonable cause for testing and provide clear documentation of reasonable cause for testing;

Ensure all aspects of substance testing follow federal testing guidelines to obtain accurate test results, buffer the employer from legal liability and have in place maximum protections for employee rights;

Ensure that specimen collection for an alcohol test occurs as

close to the time of the injury as possible but no later than eight hours after this event and that specimen collection for a drug test occurs no later than 32 hours after the accident/injury;

Arrange with a collection site or sites to do alcohol and drug testing in compliance with the federal testing model, and identify the drugs you want tested. Ensure the collection site uses the services of a certified medical review officer, and a laboratory certified by the Substance Abuse and Mental Health Services Administration for urine drug analysis. **Submitted by:**

Jeff Redman, Chief of Employer Operations, BWC

Issue 2, what is it really about?

On November 7th, Ohioans will have the right to vote on State Issue 2, a constitutional amendment to raise the minimum wage from \$5.15 to \$6.85 an hour with annual increases pegged to the Consumer Price Index. But voters need to read the fine print and realize that they are not just voting on a simple wage hike.

A vote to raise the minimum wage in Ohio is a vote for the invasion of employees' right of privacy. Issue 2 gives third parties broad power to demand the pay records of any employee in Ohio, including non-minimum wage employees. Record requests will

be supplied -- without charge -- to any employee or employee representative who requests information. And there are no limits on the number of requests that may be made. That means labor unions; special interest groups or even a neighbor could, on behalf of any employee, gain access to your private information which could then become public. Disclosure of personal data will put you more at risk of identity theft.

Issue 2 is a double edge sword because raising the minimum wage would slow job growth and authorize the invasion of employees' privacy. Small businesses will have to cut jobs and raise prices to stay competitive.

This amendment, which is hostile to employers and employees, will damage Ohio's job climate. As a constitutional amendment, it is difficult to make changes to correct unintended consequences and the Ohio legislature would be powerless to fix it.

Submitted by:

**R. Timothy Small
President
Defiance Area Chamber**

