

WORKER'S COMPENSATION LAW CHANGES

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Employers in Ohio are past that stressful period of worrying about claims Ohio Worker's Compensation would not pay. The Ohio Legislature has passed and the Governor has signed legislation which became effective on August 22, 1986. (Am. Sub.S.B. No. 307).

This major revision of the Worker's Compensation law contains several key provisions. Important issues addressed include intentional torts by employers, a safety loan program, reemployment of injured employees, a listing of injuries not covered by worker's compensation and several other administrative matters.

The intentional tort liability was the item of most concern to farm employers. First, a review of the issue. In December 1984, the Ohio Supreme Court decided that several employer actions resulting in employee injuries could be classified as intentional torts. 1/ As a result of previous Supreme Court decisions, employers who became liable for successful intentional tort claims were not covered by the Worker's Compensation insurance. 2/ In fact, the employer may have been left without

1. Jones v. V.I.P. Development, 15 Ohio St. 3d 90 (1984).

2. Blankenship v. Cincinnati Milasron Chemicals, 69 Ohio St. 2d 608.

insurance coverage at all. Employees who were successful in intentional tort suits would recover the normal payments from Worker's Compensation and in addition the court award from the employer. 3/

The Supreme Court decision of December 1984 classified some rather common accidents as being the result of an intentional tort. In brief, here are three such accidents: employees were injured when a crane they were operating came in contact with high power electric lines, an employee was injured when working where a guard was removed, and employees were injured when working with chemicals known by their employer to be potentially dangerous to health. 4/ Several conditions in farm employment can relate to similar situations as these accidents which were specifically addressed by the Supreme Court.

The concept of intentional tort has been left in the law, however, a procedure for dealing with such claims has been established. The new law defined an intentional tort as,

"an act committed with the intent to injure another or committed with the belief that the injury is substantially certain to occur."

Substantially certain is defined as acts which the employer did with a deliberate intent to injure an employee. Acts which the new law specifically identifies as intentional are the

3. Op. Cit.

4. Loc. Cit. (Footnote 1).

deliberate misrepresentation of a toxic or hazardous substance. If an injury results from such acts the law creates a presumption that the act was intended to injure the employee. (ORC 4121.80(G)).

With this definition several unsafe working conditions on the farm still might be interpreted by a court to be intentional. Safety inspections, correction of unsafe conditions, employee training and employee warnings are still very important.

If an employee feels an injury resulted from an intentional tort the question may be taken to court. The court, by a judge not a jury, will decide if the tort was intentional and if damages are to be awarded. The Industrial Commission, not the court, will then decide the amount of damages to be awarded. The damages awarded to the employee are limited to not less than 50 percent of the worker's compensation receivable, and to not more than three times the worker's compensation receivable. In any case the award is not to exceed one million dollars. These damages are in addition to any payments for the injury under the regular worker's compensation coverage. (ORC 4121.80(D)).

An employee or an employee's heirs have a limited time period for bringing intentional tort claims. Such claims must be brought within one year of the date of knowing of an injury or within one year of the date there should have been knowledge of such injury. In no case can an action be brought more than two years after the date of the occurrence causing the injury. (ORC 4121.80(A)).

The law creates an intentional tort fund which is under the control of the Industrial Commission. This fund will pay employees for injuries which are determined to be the result of an intentional tort. The fund will also pay employer attorney fees resulting from defending an intentional tort claim. All employers will pay into the intentional tort fund at rates fixed by the Industrial Commission. (ORC 4121.80(D)(E)).

Any attorney fees encountered by employees and employers for intentional tort actions are subject to the review of the Industrial Commission. The Commission shall fix the fee in the case of a controversy. (ORC 4121.80(F)).

The new law also creates a safety loan program in which some employers may wish to participate. The loan program is to start on August 22, 1987. The program is for the purpose of improving or installing safety equipment that reduces hazards and for improvements which promote the health and safety of workers. The limit on such loans to one employer in one year is \$15,000 and the loan is to be extended at below market interest rates. The source of funds for loans is to be from penalties assessed to employers. (ORC 4121.48).

Any employer who violates a safety rule of the Industrial Commission or an act identified by the legislature as unsafe shall be subject to a penalty. As a claim for an injury is being processed the Commission shall issue an order to the employer to correct any safety law violation. Any violation occurring within twenty-four months of the last violation shall subject the

employer to a penalty. Such penalty may be up to \$50,000. (ORC 4121.47).

One of the concerns of employers and employees has been the willingness of injured employees to return to work and upon doing so have Worker's Compensation benefits discontinued. Sometimes injured employees could not return to the previous job but are very willing to work. This new law encourages such employees to accept a job and if the pay is less than the previous job, worker's compensation benefits would continue for a portion of the differential in wages. (ORC 4121.67(B)).

Another new provision is that if a totally disabled employee is receiving benefits and is also doing work for pay the Worker's Compensation personnel are challenged to be more aggressive in enforcement. Thus there is a provision for injured employees to receive benefits while still being employed plus a provision to disallow receiving full benefits while engaged in work for pay. (ORC 4121.40(B)).

When an injury occurs which results in seven or more days of employee total disability employers are to report such injury to the Industrial Commission within one week of acquiring knowledge of the incident. Each day the employer delays in filing the report adds one day to the period an employee can file the claim. Employee claims are to be made within one year of knowing or within one year of when there should have been knowledge of an injury. Failure of the employer to file the report for total disabilities can increase this period up to two years. (ORC 4123.28).

Some employee injuries are not covered by worker's compensation under the new law even if the injury occurs during employment. The law says that purposely self inflicted injuries and injuries caused by an employee being intoxicated or under the influence of a controlled substance are not covered. An exception is if the injured employee was under the influence of a controlled substance which was prescribed by a physician. (ORC 4123.54).

Employee injuries caused primarily by natural deterioration of a tissue, organ or body part, and psychiatric conditions unless the condition has arisen directly from an employment injury or occupational disease are not covered. Also, injuries caused by voluntary participation in employer sponsored recreation programs are not covered. (ORC 4123.01(C)).

Injured employees under the current law may contact a physician of their choice. The new law allows employers at their expense to also ask for an examination by a doctor of their choice. The Industrial Commission can decide if any additional examinations by an employer's doctor will be permitted. The new law also requires an employee to promptly provide a signed release of medical information when requested by the employer. (ORC 4123.651(B)(C)).

Another new provision relates to benefits being stopped while in a penal institution. If an injured employee is receiving benefits and commits a criminal act which results in confinement in a penal institution the benefits will be stopped during the period of confinement. (ORC 4123.54(B)).

Another change in the new law is a provision for employer rate discounts. If an employer has not had a compensable injury for one or more years it is possible to qualify for the discount. To qualify the employer must maintain an employee safety committee and make periodic safety inspections of the work place. (ORC 4123.34(E)).

Major changes took place as the new Ohio Worker's Compensation law went into effect on August 22, 1986. Both employers and employees are affected by this legislation.

Our thanks need to be extended to the Ohio Legislature and to the Governor for the diligent work in developing the legislation.