

# THE OHIO COMPENSATION SYSTEM

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The first workmen's compensation law in the State of Ohio,<sup>1</sup> enacted in 1911, was without benefit of specific constitutional authorization. The first enactment provided for voluntary participation by both employees and employers on a ten per cent and ninety per cent contribution rate and was held to be constitutional with emphasis placed upon the fact that participation was voluntary.<sup>2</sup> Summarizing a study commission's report the court had the following to say concerning the motivation for the enactment:

[T]he system which has been followed in this country, of dealing with accidents in industrial pursuits, is wholly unsound, that there is an intelligent and widespread public sentiment which calls for its modification or improvement, and that the general welfare requires it. That there has been enormous waste under the present system, and that the action for personal injuries by employee against employer no longer furnishes a real and practical remedy, annoys and harasses both, and does not meet the economic and social problem which has resulted from modern industrialism.<sup>3</sup>

Subsequently, in 1912, section 35, article II of the Ohio Constitution was adopted providing for compulsory contribution to the state insurance fund by employers. The amendatory enactment<sup>4</sup> passed pursuant to the constitutional authority was challenged with regard to the method of establishing public contribution and its constitutionality was upheld.<sup>5</sup> The court reviewed the development of workman's compensation in Ohio and said:

After the enactment and the decision just referred to, Section 35, Article II, was adopted by the people as an amendment to the Constitution. The obvious purpose of the amendment was to empower the legislature to enlarge the scope of, and to fortify the purpose intended to be accomplished in the original act. The section enables the legislature to pass laws "establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payments may be made there-

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<sup>1</sup> 102 Ohio Laws 524 (1911).

<sup>2</sup> State *ex rel.* Yaple v. Creamer, 85 Ohio St. 349, 97 N.E. 602 (1912).

<sup>3</sup> *Id.* at 389, 97 N.E. at 604.

<sup>4</sup> 103 Ohio Laws 72 (1913).

<sup>5</sup> Porter v. Hopkins, 91 Ohio St. 74, 109 N.E. 629 (1914).

from." It is manifest that the purpose was to leave no doubt as to the power of the legislature to pass a compulsory act providing for an insurance fund which should be contributed to by employers only.<sup>6</sup>

It is apparent, therefore, that the authorization for legislative enactment in the field of workmen's compensation has a two-fold course. It flows from article II, section 35 of the Constitution and also from the inherent police power. The adoption of article II, section 35, did not, through specific grant of power, alter the fundamental source of authority. Rather, the constitutional grant is an implementation of the general power and the validity of compensation legislation rests upon the authorization of the police power as well as the specific grant.<sup>7</sup>

#### THE EMPLOYER'S OBLIGATION UNDER THE ACT

In specific terms the constitutional amendment provides that amenable employers are required to pay into a state fund for the purpose of providing compensation for injured employees and that compliance shall relieve the employer from responding in damages at common law.<sup>8</sup> The employee has given up his right of action for negligence in return for a specified remuneration unrelated to fault and the employer has given up his common law defenses and obtained immunity from suit for damages in return for his contribution to the fund.

The employer's first obligation is to make his contributions to the state insurance fund. All private employers who have three or more persons under contract of hire in the regular course of business are amenable to the act.<sup>9</sup>

The compensation act extends to all such employers engaged in intrastate commerce and also all those engaged in interstate and foreign commerce except where the Congress of the United States has established another rule of liability or method of compensation. Where both situations exist, the provisions of the compensation law extend only to the area of intrastate activity clearly separable and distinguishable from interstate and foreign commerce upon written acceptance by employer and employee subject to the approval of the Industrial Commission.<sup>10</sup>

All occupations or industries are classified by the Industrial Commission according to their degree of hazard and a rate of premium commensurate with the hazard is fixed in order to create a solvent fund for

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<sup>6</sup> *Id.* at 80; 109 N.E. at 631.

<sup>7</sup> State *ex rel.* De Torio v. Industrial Comm'n, 135 Ohio St. 214, 20 N.E.2d 248 (1939); Fassig v. State *ex rel.* Turner, 95 Ohio St. 232, 116 N.E. 104 (1917); Porter v. Hopkins, *supra* note 5; State *ex rel.* Yapple v. Creamer, *supra* note 2.

<sup>8</sup> OHIO CONST. art. II, § 35.

<sup>9</sup> OHIO REV. CODE § 4123.01(B)(2) (1953).

<sup>10</sup> OHIO REV. CODE § 4123.04 (1953).

the purpose of paying compensation.<sup>11</sup> Similar provision is made for the public fund and the occupational disease fund.<sup>12</sup> Private employers are required to make their premium payments semi-annually in January and July of each year.<sup>13</sup>

Coverage to an employer is effective on the weekday, not a holiday, following actual receipt of premium remittance by the Treasurer of State who is the custodian of the state insurance fund. This effective date is by rule adopted by the administrative agencies.<sup>14</sup> The constitutionality of the rule was upheld in the case of *State ex rel. Herbert v. Saunders*.<sup>15</sup>

An employer is liable for premium during periods of amenability even though non-compliance may prevent him from receiving the benefits of the compensation law. Default in premium payment of less than sixty days duration may be waived at the discretion of the Industrial Commission for good cause shown and protection of benefits and immunities may be thereby extended to such an employer and his employees.<sup>16</sup>

Pursuant to statutory authority<sup>17</sup> the administrative agencies have adopted rules to merit rate employers for the purpose of encouraging accident prevention. Merit rating may result in a modification of up to eighty-five per cent as a credit or a penalty depending upon the comparison of that employer's experience with that of all others in his classification. An employer with at least six months experience and paying at least \$1,000 in premium in the maximum five year experience is automatically eligible for merit rating.<sup>18</sup>

No agreement by an employee to waive benefits under the workmen's compensation act is valid and no agreement by an employee to pay any portion of the premium assessed against his employer is valid.<sup>19</sup> Under penalty of fine<sup>20</sup> an employer is prohibited from deducting any portion of the premium which he is required to pay from the salary of any employee.<sup>21</sup>

Auxiliary to this basic obligation are the requirements to maintain records and to forward all information, as requested, for the administrative agencies to carry out the provisions of the act.<sup>22</sup> The employer

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<sup>11</sup> OHIO CONST. art. II, § 35; OHIO REV. CODE, §§ 4123.29, .30, .34 (1953).

<sup>12</sup> OHIO REV. CODE §§ 4123.30 (1953), 4123.31 (Baldwin Supp. 1958).

<sup>13</sup> OHIO REV. CODE § 4123.35 (1953).

<sup>14</sup> Rule 5, *General Procedure Rules*, OHIO STATE WORKMEN'S COMPENSATION INSURANCE FUND MANUAL (No. 46, 1958).

<sup>15</sup> 72 Ohio App. 413, 52 N.E.2d 675 (1943).

<sup>16</sup> OHIO REV. CODE § 4123.37 (1953).

<sup>17</sup> OHIO REV. CODE § 4123.34 (1953).

<sup>18</sup> Rule III, *General Rating Rules*, OHIO STATE WORKMEN'S COMPENSATION INSURANCE FUND MANUAL (No. 46, 1958).

<sup>19</sup> OHIO REV. CODE § 4123.80 (1953).

<sup>20</sup> OHIO REV. CODE § 4123.99(E) (Baldwin Supp. 1958).

<sup>21</sup> OHIO REV. CODE § 4123.81 (1953).

<sup>22</sup> OHIO REV. CODE § 4123.26 (1953).

is required to maintain complete pay roll records for at least five years<sup>23</sup> and all such records relating to expenditures for wages are always to be open for audit by the administrative agencies.<sup>24</sup>

The second basic obligation of the employer is in relation to claims for compensation and their processing. Insured employers are required to maintain a sufficient supply of blank forms of applications for benefits.<sup>25</sup> Every employer is required to keep a record of all injuries sustained by his employees and resulting in seven days or more of total disability. Within a week of the accident the employer is to make a written report of such an injury.<sup>26</sup> The forms used in applying for benefits contain space for the report of injury required in the section referred to.

By the amendment effective October 5, 1955, the employer was granted a right of appeal from an adverse decision both within the administrative framework and to the court of common pleas.<sup>27</sup> The amendment obligates the employer to assume the active presentation of his interest in the controversy.

Prior to 1953, the State of Ohio assumed the cost of administering the workmen's compensation law. In that year legislation was enacted to collect two-thirds of the administrative cost attributable to the private fund from the employers participating in the fund.<sup>28</sup> These collections are made semi-annually with the collection of premium.

#### SELF-INSURANCE

Employers of sufficient financial ability may, subject to the rules and permission of the Industrial Commission, elect to pay compensation and benefits directly to their injured employees in amounts not less than those specified for disbursements from the state insurance fund. Such employers are required to post security for the payments and are required to contribute to the surplus fund under the rules of the Industrial Commission.<sup>29</sup>

Even though an employer has elected to furnish medical services, he is required to pay for other medical services furnished in an emergency or in situations where the Industrial Commission finds that the medical services offered by the employer are inadequate.<sup>30</sup>

By statutory provision there is a ban on all contracts to indemnify or insure an employer against loss or liability under the workmen's com-

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<sup>23</sup> OHIO REV. CODE § 4123.24 (1953).

<sup>24</sup> OHIO REV. CODE § 4123.23 (1953).

<sup>25</sup> OHIO REV. CODE § 4123.07 (Baldwin Supp. 1958).

<sup>26</sup> OHIO REV. CODE § 4123.28 (1953).

<sup>27</sup> OHIO REV. CODE §§ 4123.512, .519 (Baldwin Supp. 1958).

<sup>28</sup> OHIO REV. CODE §§ 4123.341, .342 (Baldwin Supp. 1958).

<sup>29</sup> OHIO REV. CODE § 4123.35 (1953).

<sup>30</sup> OHIO REV. CODE § 4123.651 (Baldwin Supp. 1958).

pensation law<sup>31</sup> The constitutionality of this provision was upheld in the case of *Thornton v. Duffy*.<sup>32</sup>

As an exception to the ban on indemnification agreements the self-insuring employer is permitted to reinsure all or part of his loss in excess of fifty thousand dollars from any one disaster or event provided, however, that the carrier may not participate in the processing of such claims upon penalty of revocation of the right of self-insurance.<sup>33</sup>

Each self-insuring employer is required to post notices of his compliance with the law permitting election to pay compensation direct<sup>34</sup> and to post notices supplied by the Industrial Commission quoting the two-year statute of limitations pertaining to the filing of claims.<sup>35</sup>

In an action against a self-insuring employer who had gratuitously offered to file the employee's claim for compensation and failed to file such claim before the expiration of the two-year period specified in the statute of limitations, the Supreme Court of Ohio held that no right of action against the employer accrued to the employee.<sup>36</sup>

#### NON-COMPLYING EMPLOYERS

An employee of an amenable but non-complying employer may elect to bring an action in damages based upon an employer's wrongful act, neglect or default and the employer is denied the common law defenses of the fellow-servant rule, assumption of risk and contributory negligence.<sup>37</sup> In lieu of such proceedings, the employee of a non-complying employer may file an application for compensation with the administrative agencies.<sup>38</sup> Wrongful act, neglect or default on the part of the employee is not a factor in the adjudication of such claim. The administrative agency processes a non-complying claim in the same manner as is provided for other claims. When an award is made, the employer is given ten days to pay the award directly to the claimant or to post bond with the administrative agency securing the payment in the amount and manner provided in the award. Should the employer fail to comply with the order, the administrative agency is required to certify the amount of the award, which then constitutes a claim for liquidated damages, to the Attorney General. The Attorney General files a civil action against the employer in the name of the state to collect the award. The certified proceedings of the administrative agency constitute prima facie evidence of the facts stated. In a trial of such cause, the employer may raise any

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<sup>31</sup> OHIO REV. CODE § 4123.82(A) (1953).

<sup>32</sup> 99 Ohio St. 120, 124 N.E. 54 (1918).

<sup>33</sup> OHIO REV. CODE § 4123.82(B) (1953).

<sup>34</sup> OHIO REV. CODE § 4123.83 (1953).

<sup>35</sup> OHIO REV. CODE § 4123.84 (1953).

<sup>36</sup> *Greenwalt v. Goodyear Tire and Rubber*, 164 Ohio St. 1, 128 N.E.2d 116 (1955).

<sup>37</sup> OHIO REV. CODE § 4123.77 (1953).

<sup>38</sup> OHIO REV. CODE § 4123.74 (1953).

of the defenses which he did or could have raised at the time of the administrative adjudication. A final judgment against the employer entitles the claimant to be paid his compensation in full from the surplus fund of the state insurance fund.<sup>39</sup> The constitutionality of proceedings against non-complying employers was established in the case of *Fassig v. State ex rel. Turner*.<sup>40</sup>

The Workmen's Compensation Act provides that an employee of a subcontractor or an independent contractor who is amenable to the act but does not comply therewith shall be considered the employee of the person who entered into the contract with the subcontractor or the independent contractor unless the claimant elects to regard the independent contractor or subcontractor as the employer.<sup>41</sup> The statutory provision makes it imperative that every prime contractor ascertain the status of his subcontractors with regard to compliance with the Workmen's Compensation Act. A complying employer is permitted by statute to enjoin further operation by a non-complying employer.<sup>42</sup>

#### SPECIFIC SAFETY REQUIREMENTS

By virtue of constitutional authority, the Industrial Commission of Ohio is empowered to adopt specific requirements for the protection of the lives, health and safety of the employees.<sup>43</sup> If an employee is injured, the Commission is empowered to determine whether or not the injury was the result of the failure of the employer to comply with such specific requirements as adopted by the Commission or as enacted by the General Assembly. If the injury did result from such a failure, the Commission is empowered to make an additional award of not less than fifteen per cent or more than fifty per cent of the maximum award provided in the act. Such awards are paid from the state insurance fund and the premium of the employer is increased in an amount which will repay to the state insurance fund the amount of that additional award.<sup>44</sup>

#### HANDICAPPED EMPLOYEES

In 1955, the Legislature of Ohio added provisions covering the method of charging losses where injuries are received by handicapped persons. This law is designed to encourage the hiring of handicapped persons. The enactment enumerates the diseases or conditions for which the handicap may be claimed. The employer must supply a list of handicapped persons specifying the statutory condition that is applicable. He must, in the event of a claim, be able to establish the existence of the

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<sup>39</sup> *Ibid.*

<sup>40</sup> *Supra* note 7.

<sup>41</sup> OHIO REV. CODE § 4123.01 (1953).

<sup>42</sup> OHIO REV. CODE § 4123.79 (1953).

<sup>43</sup> OHIO CONST. art. II, § 35.

<sup>44</sup> *Ibid.*

handicap prior to the injury. Upon adjudication of such claims that portion of the disability which is medically attributable to the pre-existing handicap is charged to the surplus fund and the employer's risk is only charged with that portion of the disability attributable to the injury apart from the pre-existing handicap. Benefits of the section are denied non-complying employers.<sup>45</sup>

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<sup>45</sup> OHIO REV. CODE § 4123.343 (Baldwin Supp. 1958).