

EMPLOYMENT SERVICES ALERT

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Ohio Supreme Court Finds Ohio's "Consent Provision" Constitutional

By **Marcus Pringle**, Associate

The Ohio Supreme Court has issued a ruling upholding the so called "consent provision" of Ohio Revised Code Section 4123.512(D), providing added protections to Ohio employers involved in workers' compensation litigation.

In 2006, the Ohio Legislature enacted a provision that allowed dismissal of an employer initiated workers' compensation appeal by the employee only with the employer's consent. Shannon Ferguson, an employee of Ford Motor Company, was awarded workers' compensation benefits that were appealed into court by his employer. Prior to trial, Ferguson sought to dismiss the case, and Ford refused. After being denied his dismissal, along with a further appeal to the Eighth District Court of Appeals, Ferguson filed a declaratory judgment action against the state, arguing that the consent provision violated the Ohio Constitution.

Specifically, he asserted that the provision conflicted with the Ohio Rules of Civil Procedure (thereby violating the Separation of Powers Doctrine), that it violated the Equal Protection Clause in that it treated similarly situated plaintiff-claimants unequally based on who initiated the appeal, and that it violated the Due Course of Law Clause in that it prevented a plaintiff-claimant from adequately presenting their case.

The Cuyahoga County Court of Common Pleas held the provision was unconstitutional under both the Ohio Constitution and the United States Constitution, despite the fact that Ferguson alleged a violation of the Ohio Constitution only. This decision was affirmed by the Eighth District Court of Appeals, and the matter was appealed to the Ohio Supreme Court.

In their recent holding, the Supreme Court reversed the judgment of the Eighth District. As it related to the separation of powers issue, the Court held there was no conflict between the statute and the Civil Rules. As it related to the Equal Protection Clause argument, the Court noted that the classification alleged by Ferguson served a legitimate state interest, and therefore did not violate either the Ohio or United States Constitutions. The legitimate state interests cited by the Court included the financial health of the state workers' compensation fund, the financial impact on employers, and avoidance of unnecessary delays in the appeals process. Finally, as it related to the Due Course of Law argument, the Court reiterated that the provision was rationally related to the aforementioned legitimate state interests, and as such, there was no due process or due course of law violation.

This decision is a positive one for employers statewide, as it prevents the claimant from being able to dismiss an employer initiated court appeal without the consent of the employer. In many situations prior to the enactment of the statute upheld by the Supreme Court, claimants would dismiss a court appeal and continue to receive medical treatment and compensation for an entire year until the court appeal had to be re-filed.

Please direct questions related to the Ohio Supreme Court's decision to any of the listed Roetzel attorneys.

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