

Supreme Court Issues Decision Finding TTD Compensation Can Be Terminated Based on MMI Prior to the Date of Industrial Commission Hearing

By **Corey L. Kleinhenz**

On March 5, 2024, the Ohio Supreme Court announced its decision in *State ex rel. Dillon v Industrial Commission* ([Slip Opinion No. 2024-Ohio-744](#)). In so doing, the Court overruled 25-year precedent from its prior authority in [State ex rel. Russell v. Industrial Commission](#) (1998), 82 Ohio St. 3d 516.

Prior to *Dillon*, employers could not argue that a claimant's ongoing temporary total disability (TTD) compensation could be terminated due to maximum medical improvement (MMI) for a date *prior* to Industrial Commission Hearing.

Now, after *Dillon*, employers are permitted to request termination of a claimant's ongoing TTD compensation from the date of the independent medical examination report finding MMI. This is true even if the date of the independent medical examination report precedes the date of the Industrial Commission Hearing on the issue.

Typically, an employer or BWC independent medical examination report opines that the claimant has reached MMI on a date approximately 30 to 60 days prior to the date of the Industrial Commission Hearing on the issue.

Additionally, the Court found that claimants are ineligible to receive ongoing TTD compensation upon the finding of MMI, pursuant to R.C. 4123.56. Therefore, self-insuring employers and the BWC have the authority to recover TTD compensation overpayments after the date of the independent medical examination report finding MMI, pursuant to R.C. 4123.511(K).

It is anticipated that this reversal of the holding in *Russell* will create an influx of future TTD compensation overpayments in claims.

Should you have any questions about workers' compensation claims in general, or specifically about the termination of ongoing TTD compensation, please do not hesitate to contact one of the listed Roetzel attorneys.

Aretta Bernard
Practice Group Manager
Employment Services
330.849.6630 | abernard@ralaw.com

Bob Blackham
216.615.4839 | bblackham@ralaw.com

Morris Hawk
216.615.4841 | mhawk@ralaw.com

Phil Heebsh
419.708.5390 | pheebsh@ralaw.com

Corey Kleinhenz
513.361.8285 | ckleinhenz@ralaw.com

Nancy Noall216.820.4207 | nnoall@ralaw.com**Doug Spiker**216.696.7125 | dspiker@ralaw.com**Ildiko Szucs**216.488.1948 | iszucs@ralaw.com**Brian Tarian**614.723.2028 | btarian@ralaw.com**Danielle Young**216.293.5017 | dyoung@ralaw.com