# EMPLOYMENT SERVICES ALERT

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## Cuyahoga County Judge Strikes Down Workers' Comp Statute as Unconstitutional, Hinders Employers Challenging Claims in Court

The Cuyahoga County Court of Common Pleas recently made it more difficult for Ohio employers to challenge workers' compensation claims in court. In *Shannon Ferguson v. State of Ohio*, the court ruled the Ohio statute prohibiting a claimant from voluntarily dismissing his or her complaint without the employer's consent when the employer filed the appeal was unconstitutional.

Generally, Revised Code 4123.512 permits an employer or claimant to appeal the allowance or disallowance of a workers' compensation claim to a court of common pleas. Either party may initiate the appeal by filing a notice within 60 days of an order of the Industrial Commission. The claimant must then file his or her complaint within 30 days of the notice, and the court will conduct a trial under the Ohio Rules of Civil Procedure.

Following the enactment of R.C. 4123.512 and in keeping with the Civil Rules, courts held that a claimant had the right to voluntarily dismiss his or her complaint under Rule 41(A) and refile the complaint within Ohio's one-year savings statute. Employers subsequently challenged the right of a claimant to dismiss the complaint when the employer filed the appeal, arguing they suffered prejudice because they were required to pay benefits while the appeal was pending. As a result, in 2006, R.C. 4123.512 was amended to provide that a claimant may only dismiss his or her complaint in an employer-initiated appeal with the employer's consent. The purpose of the amendment was to prevent the ability of claimants to continue receiving benefits during the one-year hiatus from litigation available through the savings statute.

In *Shannon Ferguson v. State of Ohio*, the plaintiff brought a declaratory judgment action asking the court to declare this portion of R.C. 4123.512 unconstitutional. Judge McClelland agreed with the plaintiff and held that Rule 41(A) takes precedence over the language contained in R.C. 4123.512. Because the Civil Rules apply to workers' compensation court appeals, a claimant may voluntarily dismiss his or her complaint under Rule 41(A), regardless of which party appealed the claim to court.

The court further held that R.C. 4123.512 violates a claimant's due process rights because it restricts the rights of only one party to the litigation. It noted that the employer could challenge benefits during the pendency of the appeal through the Industrial Commission or by filing a writ of mandamus in Franklin County. And in the event the employer is ultimately successful in having the claim denied at trial, recovery of the benefits paid is available. Finally, the court also struck down R.C. 4123.512 on the grounds of equal protection and separation of powers. It held that the statute arbitrarily treats the employer and claimant as two different classes and usurps judicial powers in violation of the authority and jurisdiction of the court regarding civil matters.

The court's decision will place a significant burden on employers challenging workers' compensation claims in court. If an employer appeals to court, there can be up to one year before a trial is held. If the claimant dismisses the complaint before trial, there can be another year before the case is re-filed and yet another year before the trial arrives. A claimant can thus extend benefits for up three years before being forced to litigate a case that could result in a complete disallowance of the claim. Even if the employer is ultimately successful, in reality it may be difficult to recover the payment of all those benefits. The net result is either a significant direct cost to self-insured employers or increased premiums to state-funded employers.

In the case of a state funded employer, while they can receive "credit" from the Bureau for the impact to their previous experience, and ultimately a credit/refund of increased premiums, there is no credit paid if the employer was removed from a Group Rating program other than a credit to their experience modifier.

With self-insured employers, they too can recoup what was paid out from the claimant pursuant to the Revised Code as well as deducting payments from their SI 40 annual reports. Pursuant to the *Sysco* decision, they can also receive reimbursement from the Surplus Fund if they have not opted out of the Sysco Fund for which they must pay assessments.

So, while the Court has stated that reimbursement options exist for employers it is, technically, correct, however, it is doubtful an employer will receive dollar for dollar reimbursement and/or reimbursement for premiums paid when a state fund employer is removed from a group program.

The State of Ohio has already appealed the court's decision in *Ferguson* to the Eighth District Court of Appeals. We will continue to monitor this important case and provide updates as developments occur. For questions or additional information, please contact one of the following attorneys:

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