

## EMPLOYMENT SERVICES ALERT

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### Ohio Makes Significant Changes to Workers' Compensation Laws

*New provisions effective September 29, 2017*

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Ohio Governor John Kasich recently signed House Bill 27 into law, starting the clock running on several significant changes to Ohio's Workers' Compensation statutes. The amendments are effective **September 29, 2017**.

The changes most likely to be of importance to Ohio's employers include:

#### **Statute of Limitations for Filing a Claim**

As the law currently stands, an injured worker must file a workers' compensation claim within two years from the date of injury or the claim is forever barred. Effective September 29, 2017, the law will limit filing to one year following the date of injury. The one-year limitation will decrease the burden on employers, who often encounter significant difficulties in locating evidence, witnesses, and medical records when claims are filed beyond the 12-month mark following a workplace injury.

#### **Time to File Appeals can be Extended**

Currently, claimants and employers alike are required to file a notice of appeal to the appropriate Ohio court of common pleas within 60 days from the final decision of the Industrial Commission. The amended law extends that time period to 150 days, but only if either the claimant or employer files a notice of intent to settle the claim and the opposing party does not object or otherwise consents to the filing.

#### **Drug Testing**

Ohio's laws have been revised to comply with the Code of Federal Regulations (CFR) for controlled substances. All controlled substances are now indicated and the threshold levels are also reflective of the CFR. While this area of law has seen its share of changes recently, this represents a relatively minor alteration. The rules and procedures to obtain a rebuttable presumption of intoxication have not changed, though the types and amounts of controlled substances have.

#### **Permanent Partial Disability Applications**

Under the current statute, the Bureau of Workers' Compensation (BWC) suspends the application of any injured worker who fails to attend a permanent partial examination scheduled by BWC until the worker makes him or herself available for the exam. The revised statute will now extend the power of the BWC to dismiss such applications entirely, without prejudice. It is believed that approximately 20,000 applications are currently in suspended status. The BWC's enlarged power to dismiss, rather than suspend, is expected to allow the BWC to operate more efficiently.

#### **Incarcerated Dependents Cannot Receive Compensation**

While it has long been the case that injured workers cannot collect workers' compensation benefits while incarcerated, the law will now extend to the incarcerated dependents of a worker as well. Benefits will not be

paid to any dependent during a period of confinement in any state or federal correctional institution. An example of this new policy includes death benefits awarded to a deceased worker's dependent. Under the revised statute, the dependent receiving death benefits would have those benefits suspended for the period during which he or she is incarcerated.

### **Waiver of 90-Day Exam**

Ohio Revised Code Section 4123.53 is changed to allow the BWC to waive the 90-day exam for good cause. However, if an employer objects to the waiver, the BWC shall schedule the exam.

### **Calculations of Full Weekly Wage**

If an employee's full weekly wage cannot be determined, the BWC may set the full weekly wage at 33 1/3% of the statewide average weekly wage. If the correct wage information is received at a later date, the BWC will adjust the employee's full weekly wage accordingly.

If you have any questions about the changes to Ohio's Workers' Compensation laws and their potential impact on your business, please contact any one of the listed Roetzel attorneys.

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