

EMPLOYMENT SERVICES ALERT

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Ohio Supreme Court Yet Again Limits Employers' Liability for Intentional Torts

On December 18, 2014, the Ohio Supreme Court issued another opinion limiting employers' liability for intentional torts in the workplace. This decision is the latest in a series of cases that narrowly interpret Ohio's intentional tort statute, R.C. 2745.01, and make it very difficult for employees to bring these claims.

In *Pixley v. Pro-Pak Indus., Inc.*, the plaintiff worked in the maintenance department of a company that manufactured containers, boxes and packaging materials. On the day of his injury, the plaintiff was examining a malfunctioning motor on a conveyer line. Meanwhile, his coworker was operating a transfer car, which is a vehicle that transports materials between areas in the facility. Unfortunately, the coworker failed to notice the plaintiff kneeling in his path and accidentally drove the transfer car into him, severely injuring the plaintiff's leg.

The plaintiff brought an intentional tort suit against his employer under R.C. 2745.01, which limits claims against employers to circumstances demonstrating a deliberate intent to cause injury to an employee. The plaintiff relied on part (C) of the statute, which provides for a rebuttable presumption of intent to injure if the employer deliberately removes an equipment safety guard. The plaintiff argued that the employer deliberately bypassed the transfer car's safety bumper. This bumper was designed to compress when force was applied and shut off power to the transfer car's motor.

The Supreme Court held that summary judgment for the employer was proper because the plaintiff failed to establish an intentional tort claim. The Court noted that the "deliberate removal" of an equipment safety guard occurs when an employer makes a "deliberate decision to lift, push aside, take off, or otherwise eliminate that guard from the machine." The mere failure of an equipment safety guard is insufficient to raise the presumption that the employer intended to injure the employee. Rather, the employee must show a "careful and thorough decision to get rid of or eliminate an equipment safety guard."

Here, there was some evidence that the safety bumper failed to operate on the day of the accident. However, the plaintiff failed to present any evidence showing that the employer deliberately removed it or otherwise caused it to fail. The plaintiff did not offer any evidence of tampering or evidence that the employer disabled or eliminated the safety bumper. To the contrary, employees were required to routinely inspect the safety bumper and make repairs as necessary. Therefore, the plaintiff could not establish the existence of an intentional tort.

The Court declined to address the other issue for submitted review: whether the definition of equipment safety guard is limited to protecting "operators" only. Regardless, the Court's decision is another victory for employers in the ongoing battle over Ohio's intentional tort statute. At least for now, a majority of the justices are determined to recognize the General Assembly's decision to restrict liability for intentional tort claims.

For additional guidance on this case and its effect on your business, please contact one of the attorneys below.

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