

# Ohio Workers' Compensation: What's New in 2023



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# The Purpose of Temporary Total

- Compensation is payable when an injured worker is unable to return to former position of employment as a result of an occupational disease or industrial injury.
- Must be a cause and effect relationship between the injury or disease and the loss of wages

# Defenses to Temporary Total

- When an employee's own action, and not the workplace injury, precludes a return to the former position of employment
- In that instance, the purpose for which temporary total disability was created no longer exists, *i.e.*, to replace lost wages due to injury.

# Other Disqualifications for TTD

## **R.C. 4123.54**

- Purposely self-inflicted injury
- Injury caused by intoxication or being under the influence of a controlled substance
- Incarceration

# Voluntary Abandonment - A Judge-Made Defense

May bar Temporary Total compensation where:

- An injured worker retires
- An injured worker is terminated for violation of a written work rule or policy
- An injured worker abandons the work force

*State ex rel. Louisiana Pacific Corp. v. Indus. Comm.*, 72 Ohio St. 401 (1995); *State ex rel. Klein v. Precision Excavating & Grading Co.*, 155 Ohio St. 3d 78 (2018).

# *State ex rel. Louisiana Pacific Corp. v. Indus. Comm., 72 Ohio St. 401 (1995)*

- Claimant is off work collecting TTD. His doctor releases him to return to work on a date certain. He does not return to work, and is no call no show for three days. The employer fires the claimant for violation of attendance policy. Claimant changes his POR and files for a new period of TTD.
- Claimant is not entitled to resumption of TTD under these circumstances where (1) there is a clearly defined prohibited conduct, (2) the conduct had been previously identified as a dischargeable offense, and (3) was know or should have been known to the employee.

# Temporary Total Disability Compensation

RC 4123.56 Eff. 9-15-2020

“(F) If an employee is unable to work or suffers a wage loss as the direct result of an impairment arising from an injury or occupational disease, the employee is entitled to receive compensation under this section, **provided the employee is otherwise qualified**. If an employee is not working or has suffered a wage loss as the direct result of reasons **unrelated to the allowed injury or occupational disease**, the employee is not eligible to receive compensation under this section. It is the intent of the general assembly to supersede any previous judicial decision that applied the doctrine of voluntary abandonment to a claim brought under this section.”

R.C. 4123.56(F)

# R.C. 4123.56(F)

- The Eligibility Clause
  - “If an employee is unable to work or suffers a wage loss as the direct result of an impairment arising from an injury or occupational disease, the employee is entitled to receive compensation under this section, **provided the employee is otherwise qualified.**”
- The Defense Clause
  - “If an employee is not working or has suffered a wage loss as the direct result of reasons **unrelated to the allowed injury** or occupational disease, the employee is not eligible to receive compensation under this section.”
- The Intent to Supersede Clause
  - “It is the intent of the general assembly to supersede any previous judicial decision that applied the doctrine of voluntary abandonment to a claim brought under this section.”



# Recent Industrial Commission Decisions

Termination for violation of a written work rule – not eligible for TTD

Claim No. 20-128127, hearing date 7/20/21

- “The Commission finds the Employer terminated the injured worker for *attendance infraction* unrelated to the industrial injury . . . . The injured worker is ineligible to receive temporary total disability compensation.”

# Industrial Commission Decisions

Abandonment of a light duty job within claimant's restrictions  
– not eligible for TTD

Claim No. 21-139298, hearing date 10/11/2022

- “The Commission finds that the injured worker *left a light duty position* that was within his restrictions.... The Commission concludes that the injured worker is ineligible to receive temporary total disability compensation.”

# Industrial Commission Decisions

Termination for disciplinary infraction – not eligible for TTD

Claim No. 16-101501, hearing date 4/12/2022

- *“Due to the accident or a possible altercation, the injured worker was terminated from his job.... The injured worker is not working as a direct result of reasons unrelated to the injury... payment of temporary total disability compensation must be denied.”*

# Staff Hearing Officer's Order

Injured worker voluntarily retired – not eligible for TTD

Claim No. 16-830778, SHO Order date 6/6/23

- “The injured worker was not working as the direct result of ... her own *voluntary retirement* . . . . The injured worker is not eligible to receive temporary total disability compensation” (following surgery for an allowed condition).

# AutoZone Stores, Inc. v. Industrial Comm.

- Claimant worked as an assistant store manager for Autozone.
- Claimant sustained a workplace injury on June 15, 2020.
- Claimant was involved in an argument with another employee, and was terminated on September 16, 2020.
- On November 16, 2020, the claimant underwent an approved shoulder surgery, and a physician issued MEDCO-14s indicating that the claimant could not return to work.

# AutoZone Stores, Inc. v. Industrial Comm.

- The matter proceeded to the Industrial Commission.
- The DHO denied the claimant's request for TTD compensation.
- The claimant appealed and the SHO reversed and granted TTD.
- The SHO pointed to the fact that the Claimant had an allowed condition at the time of termination and that the Claimant was completely removed from the workforce as a result of the approved surgery.
- The SHO based its decision on the new version of R.C. 4123.56(F).

# AutoZone Stores, Inc. v. Industrial Comm.

- The Employer filed a writ of mandamus with the Tenth District Court of Appeals. The case centered on the interpretation of R.C. 4123.56(F).
- The Employer argued that the Claimant was not entitled to TTD because he was fired based on his argument with an employee, as opposed to his workplace injury.
- The Court disagreed by pointing to the plain text of R.C. 4123.56(F).

# AutoZone Stores, Inc. v. Industrial Comm.

- The new statute contains three parts. Each part was analyzed by the Court:
  - If an employee is **unable to work** or suffers a wage loss **as the direct result of an impairment arising from an injury** or occupational disease, the employee is entitled to receive compensation under this section, provided the employee is **otherwise qualified**.
  - If an employee is not working or has suffered a wage loss **as the direct result of reasons unrelated to the allowed injury** or occupational disease, the employee is not eligible to receive compensation under this section.
  - It is the intent of the general assembly to **supersede** any previous judicial decision that applied **the doctrine of voluntary abandonment** to a claim brought under this section.”



# AutoZone Stores, Inc. v. Industrial Comm.

- What *Autozone* means:
  - If an employee cannot work based upon an allowed condition, he is entitled to TTD as a general rule.
  - “Voluntary abandonment” no longer prohibits TTD.
- Defenses to *Autozone*:
  - Claimant is not “otherwise qualified” (e.g., has reached maximum medical improvement).
  - The reason the employee is not working is “the direct result of reasons unrelated to the allowed injury or occupational disease.”

# AutoZone Stores, Inc. v. Industrial Comm.

- Hypothetical *Autozone* issue:
  - Claimant is injured at work
  - Claimant has surgery and does not return to work
  - Granted TTD, but is eventually found to be MMI
  - Has a second surgery years later, and requests TTD again
  - Does the Claimant receive TTD?
  - The answer is ***maybe***

# Best Practices for Employers regarding TTD

- Document an employee's employment status
- Document any notice of retirement or planned move
- If the employee is injured, make a *written offer* of employment in a temporary position within the employee's restrictions

# Thank You



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