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# Ohio Workers Compensation System

- Today's Purpose:
  - Valuable Insights
  - Compliance
  - Mitigating Risk

# 1. Insights

- What are we seeing?
  - 1. The Impact of *Autozone*
  - 2. The “Never-Ending Claim”
  - 3. Concussions
  - 4. Recreational Marijuana

## *State ex. rel. AutoZone, Inc. v. Indus. Comm'n, 2024-Ohio-5519*

- One of the more significant cases in some time
- Issue: Interpretation of R.C. 4123.56(F)
  - “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.”
- Holding: Because the injured worker’s inability to work was a direct result of his termination following an altercation with a coworker, the Staff Hearing Officer’s order granting him temporary total disability must be vacated.

# Autozone, Continued:

- **Key Takeaways:**

- The Court clarified the meaning of the statute in favor of employers. It specified:
  - If employee is not working as the direct result of reasons unrelated to the allowed injury, there is no compensable loss of earnings even if the allowed injury gives rise to a later disability.
- In general, an injured worker must be **employed** to be eligible to receive compensation for loss of earnings.
- R.C. 4123.56(F) contains new language added to the statute in 2020, which was meant to supersede the doctrine of Voluntary Abandonment.

## *State ex rel. Camp v. Ferrellgas Inc., 2025-Ohio-464*

- **Issue**: How to apply the new Ohio Supreme Court ruling in Autozone to the injured worker's request for temporary total compensation ("TT") when his previous period of TT ended in 2019 ?
- **Outcome**: Applying Autozone, the Tenth District Court of Appeals held that the injured worker suffered no compensable loss of earnings when his psychological conditions rendered him unable to work in November 2020.

# Ferrallgas, Continued

- Key Takeaways:
  - This is another opinion applying *Autozone* in a way that is favorable to the employer.
  - The Autozone case is requiring courts to look at the reasons why the injured worker was not working prior to the alleged disability for which he or she seeks TT.
- Here, the Industrial Commission found that the injured worker was not working prior to November 2020 due to his own failure to return to the workforce or to attempt to return to the workforce after being found to be at maximum medical improvement.

# What is a never-ending claim ??

- Typical Injury Claim Statute of Limitations
  - The Key is the date of last payment of compensation or last date of medical services/bills
  - For injuries occurring before 2006, the claim survives for 10 years
  - For injuries occurring from 2006 – 2020, the claim survives for 5 years
  - After 2020, the claim also survives for 5 years but changes the language from “medical bill” to “medical services.”



# Never-Ending Claim, Continued

- Common Claimant Tactics to extend claims:
  - Treatment requests:
    - Imaging for diagnostic purposes
    - Injections
    - Physical Therapy
  - Increase of PPD, even if already have it
    - Have seen claims for 1% increase just to keep claim open

# Never-Ending Claim, Continued

- Defenses
  - “Nothing new to warrant,” particularly PPD
  - OAC 4123.6.31(F)(3)
    - Requests for duplicative diagnostic, emg, ncs or medical imaging will not be reimbursed absent evidence of new or changed circumstances seen the last imaging.
  - Finding other conditions or alternative sources causing the issues
    - Medical History and records are key

# Concussions

- What is a concussion?
  - Multiple definitions from the AMA, the Association of Neurological Surgeons, and others.
  - All agree: A concussion is a mild traumatic brain injury.
  - Should resolve in 7-10 days.

# Inclusionary Diagnostic Criteria:

1. Immediate loss or alteration in one's level of consciousness lasting less than thirty minutes, and/or
2. Immediate onset of post-traumatic amnesia, usually lasting from minutes to a few hours but not over 24 hours.

# Exclusionary Diagnostic Criteria:

1. Abnormal results on structural brain imaging studies, *i.e.*, CT or MRI.
2. A focal neurological examination that looks at a specific location, *i.e.*, the left side of the face, right arm, vs. general movement or sensation changes.

## Most common complaints following a concussion:

- Headache
- Reduced concentration
- Dizziness
- Irritability
- Fatigue

## Key Issue:

- These complaints are also encountered among patients who have not had a concussion
  - Accordingly, a concussion symptom checklist is not a diagnostic tool.
  - A thorough neurologic examination is required.

# What is post-concussion syndrome?

- Requires persistent symptoms such as headaches, dizziness, and thinking difficulties lasting longer than three months.
- Has no unique complaints.
- New favorite among the claimant's bar—an easy on-ramp to further treatment and additional conditions.



State ex rel. Jerreals v. Indus. Comm., 10th Dist. Franklin County (2007)

- In its reasoning, this Court described post-concussion syndrome as “a condition characterized by the **mild, chronic symptoms** that persist after a closed head injury (where there hasn't been penetration or fracture of the skull) such as headache, giddiness, and a subjective feeling of impaired intellectual ability, as well as personality changes and depression.”

# Key Take-Aways:

- Question a diagnosis of concussion made in the Emergency Room where there was no loss of consciousness or amnesia. Keep diligent records of claimant's complaints shortly after the accident!
- Be skeptical of requests to add post-concussion syndrome to a head injury claim where symptoms resolved within three months.
- Seek an expert opinion from a neurologist.
- Document the circumstances that led to the concussion and the mechanism of injury.

# Recreational Marijuana

- Legal for recreation since 2023
- Application of Workers Compensation laws very similarly to alcohol/medical marijuana
- BWC has the Drug-Free Safety Program
  - Normally requires drug and alcohol policies to be posting in writing
  - Also requires posting of R.C. 4123.54

# Recreational Marijuana, Continued

- Under O.R.C. 4123.54 – if proximate cause of injury is intoxication or under the influence of drugs/marijuana, no workers' compensation benefits.
- There is a “**rebuttable presumption**” that being intoxicated or under the influence is the proximate cause if a qualifying chemical test is obtained (as explained in O.R.C. 4123.54 (B)) or if the employee refuses to submit to a requested chemical test.
- However, employer needs: (1) posted written notice and (2) a qualifying chemical test (reasonable cause, police, or licensed doctor – not an employee).

# Recreational Marijuana, Continued

- Once Employer presumes the employee is impaired by controlled substance, the burden of proof shifts to the employee that the controlled substance was not the cause of the work-related injury.
- If an employee is tested and it comes back positive, this may preclude their right to benefits under the system.
  - Testing: 8 hours for alcohol / 32 hours for drugs
- Remember: Employer must have a reasonable cause to believe the employee was under the influence.

# Recreational Marijuana, Final

- Considerations for Employers
  - Hiring (Do you even prescreen for marijuana?)
  - Off-the-clock usage (Marijuana may stay in body for 30 days)
  - On-the-clock usage
  - Positive drug test
  - Discipline (Be consistent !!!!!)

## 2. Compliance

- All workers in Ohio are covered by the system
- Either by “state funded” insurance or “self-insurance”
  - State fund: exactly how it sounds
    - Employers pay an insurance premium to the BWC
    - Totals about 2/3's of all employers
  - Self-Insured: usually only bigger companies
    - Employers can self-insure, which means benefits come directly from them
    - Minimum # of employees
- **Ohio is 1 of 5 states that does not allow private insurance to sell worker's compensation insurance**

# So What is an Injury ?

- As stated, the definition is pretty straightforward
- The key is in the examination details
- Common Sense Guide to Examining Injury Claims
  - 1. Does an employment relationship exist?
  - 2. Is there a causal connection between the work and the alleged harm



# Common Sense Guide to Injuries, Cont.

- 3. Negligence on either side is irrelevant
  - Remember, no fault system
- 4. Unusual Circumstances are not Required
- 5. Gradually developing conditions can be compensable
  - Think Carpal Tunnel
- 6. Did the injury arise out of the employment
  - “Going and Coming” rule, not compensable

# Common Sense Guide to Injuries, Cont.

- 7. Emotional/Mental disorders are not compensable absent a physical injury
  - PTSD after a concussion
- 8. Substantial aggravation of a pre-existing condition
  - Did the work injury “aggravate the condition” or is it “natural degeneration?”
- 9. Additional conditions can be added
- 10. Must file the claim within two years of the injury

# The Hearing Process

- Claim filed at BWC (or directly to self insured)
  - Creates a “claim file”
  - Can have multiple claim file Nos. and all will relate to the “injured worker”
- Employee notified whether state fund or self-insured
- Regardless of state fund or self-insured can contest the request
- Starts the Administrative Process
- District Level, Staff Level, Full Commission (discretionary) and Court Appeal (Common Pleas)

# Costs to Employers

- Nearly every Ohio Workers' Compensation claim has two main categories of costs
  - Medical Expenses
  - Compensation (Indemnity)
    - Temporary Total Disability Compensation
    - Wage Loss
    - Permanent Partial Disability

### 3. Mitigating Risks

- Make sure to allocate proper resources to your safety department
  - Video Evidence (does your video equipment cover your entire facility?)
  - Training
  - Records with regard to training

# Mitigation, Continued

- Common Sense Items:
  - Documenting protocols
  - Corrective behavior – what are you doing to ensure compliance
  - PPE
    - Where is it?
    - Are employees properly trained?
    - Are they using it?
  - Familiarity with surroundings (inside/outside) and different statutory requirements involved
- Remember: Studies show that the safest work environments are the most productive



**Attorney Name (click here to edit)**

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