



COUNTY ADVISORY BULLETIN

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Bulletin 2020-16

September 2020

Legislative Changes to Workers' Compensation Law

APPLICABLE LEGISLATION: Am. Sub. H. B. No. 81 (133rd General Assembly)

Revised Code Sections: Amends ORC Sections 4113.21, 4123.026, 4123.52, 4123.56, 4123.58, 4123.65, and 4123.66 and **Enacts** ORC Section 4121.471

LEAD SPONSOR: Rep. Rick Perales

HOUSE COSPONSORS: Miller, A., O'Brien, Riedel, Romanchuk, Scherer, Seitz, Weinstein, Abrams, Baldrige, Blair, Boggs, Brent, Brown, Callender, Carruthers, Cera, Clites, Crawley, Cross, Crossman, Dean, Edwards, Fraizer, Ghanbari, Ginter, Green, Grendell, Hambley, Hillyer, Hoops, Ingram, Jones, Keller, Kelly, Kick, Lanese, Lang, LaRe, Leland, Lepore-Hagan, Liston, Manning, D., Manning, G., McClain, Miller, J., Miranda, Oelslager, Patterson, Plummer, Roemer, Rogers, Russo, Smith, K., Smith, T., Sobecki, Stephens, Stoltzfus, Strahorn, Sweeney, West, Wiggam

SENATE COSPONSORS: Hackett, Antonio, Blessing, Burke, Craig, Dolan, Eklund, Fedor, Gavarone, Hoagland, Huffman, S., Johnson, Kunze, Lehner, Maharath, Manning, McColley, Obhof, O'Brien, Peterson, Rulli, Schaffer, Schuring, Thomas, Williams, Wilson

EFFECTIVE DATE: September 15, 2020

BACKGROUND

House Bill 81 (HB 81) extends post-exposure testing requirements to all detention facility employees, including corrections officers, that are exposed to blood or bodily fluids. Previously, the Bureau of Workers' Compensation (BWC) or a self-insuring employer covered the cost of this testing for peace officers, firefighters and EMS workers, but did not extend the same coverage to detention facility employees.

Additionally, the bill codifies a memo from the BWC stating that the costs of testing for opioid exposure should be covered and expands this testing to all drugs and chemical substances. The bill sponsor identified the opioid crisis as one of the catalysts for seeking this legislative change. Throughout the legislative process, several other changes were added to the legislation relating to workers' compensation.

DEFINITIONS

"Corrections officer" means "a person employed by a detention facility as a corrections officer." (ORC 4123.026(C)(4))

"Detention facility" means "any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States." (ORC 4123.026(C)(5))

SYNOPSIS

Post-exposure testing for detention facility employees

HB 81 amends ORC 4123.026 to expand post-exposure testing law to include all detention facility employees. BWC or a self-insured detention facility must pay for post-exposure medical diagnostic services to investigate whether an employee of a detention facility, including a corrections officer, sustained an injury or occupational disease from contact with blood or bodily fluid of another person in the course of the employee's employment.

Under ORC 4123.026(A), post-exposure diagnostic tests are covered if they are consistent with the standards of medical care existing at the time of exposure and the employee came into contact with blood or bodily fluid through any of the following means:

- Splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;
- A puncture in the skin;
- A cut in the skin or another opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.

HB 81 also amends ORC 4123.026 to require the Administrator or self-insuring employer to pay for the costs of conducting post-exposure medical diagnostic services to investigate whether an employee covered by the post-exposure testing requirement above sustained an injury or occupational disease after exposure to a drug or other chemical substance in the course of the employee's employment. "Drug or chemical

substance” is intentionally left undefined in the bill to avoid having to change the Ohio Revised Code to account for new drugs or substances.

These changes apply to all new claims arising on or after July 1, 2020.

Prior to HB 81, the following employees were covered by the post-exposure testing requirement:

- A peace officer with arrest powers under the Arrest, Citation and Disposition Alternatives law;
- A paid or volunteer firefighter;
- A paid or volunteer emergency medical worker under the Emergency Medical Services Law.

Temporary Total Disability (TTD) and Permanent Total Disability (PTD) compensation

Prior to HB 81, the Ohio Revised Code provided specific guidelines for when Temporary Total Disability (TTD) compensation is no longer payable but did not provide criteria for when an employee is eligible for TTD compensation. HB 81 amends ORC 4123.56 to state that TTD compensation is only paid when an individual not working or an individual’s lost wage is the direct result of a workplace injury or occupational disease, not from other non-employment related factors. (ORC 4123.56)

This change statutorily recognizes the voluntary abandonment doctrine, which holds that, if an injured worker removes themselves from the workforce for reasons other than their injury, they have voluntarily abandoned their employment and are not eligible for TTD or wage loss. The bill states, “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.” (ORC 4123.56(F))

HB 81 makes a consistent change for Permanent Total Disability (PTD) as well. Under the bill, an injured worker is not eligible for PTD compensation if the injured worker is retired or otherwise is not working for reasons unrelated to the allowed injury or occupational disease. (ORC 4123.58)

These changes apply to all claims pending on or arising after September 15, 2020.

Statute of limitations for the Violation of Specific Safety Rule (VSSR)

HB 81 reduces the statute of limitations to file a Violation of Specific Safety Rule (VSSR) from two years to one year after the date of injury or death or one year after the disability due to an occupational disease began. (ORC 4121.471)

Procedures for final settlement agreements

State fund settlements take effect 30 days after the BWC Administrator approves the settlement, and settlements between a self-insuring employer and a claimant take effect 30 days after the parties sign them. In this 30-day period, a party is permitted to withdraw from the settlement. HB 81 amends ORC 4123.65 to prohibit an employer from withdrawing from a proposed settlement agreement if both of the following apply:

- The claim is no longer within the date of impact pursuant to the employer's industrial accident or occupational disease experience for premium calculation purposes; and
- The employee named in the claim is no longer employed by the employer.

These changes apply to all claims currently pending regardless of the date of injury or occupational disease.

Continuing jurisdiction over workers' compensation claims

HB 81 amends ORC 4123.52 to make the commencement of the continuing jurisdiction for the BWC and Industrial Commission the date an injured worker last received medical treatment. Prior to HB 81, the extension began at the time of payment of services. The amendment applies to claims arising on or after July 1, 2020.

Funeral expenses cap

HB 81 increases the amount the BWC Administrator is authorized to spend from the State Insurance Fund to pay for funeral expenses from \$5,500 to \$7,500 for any claims arising on or after September 15, 2020. The Administrator or self-insuring employer is required to pay a reasonable amount of funeral expenses when an employee dies from a compensable injury or occupational disease. (ORC 4123.66)

Appealing Industrial Commission orders

For any claims pending on or arising after September 29, 2017, the time to appeal an Industrial Commission order may be extended from 60 days to 150 days if a party gives notice of intent to settle and the opposing party has no objection. Sub. House Bill 27 of the 132nd General Assembly amended ORC 4123.512 to extend the time to appeal from 60 days to 150 days. When the bill passed, the language did not apply this provision to claims pending on September 29, 2017. Section 4 of HB 81 extends this extended time to appeal to all claims pending on September 29, 2017.

Employee medical examinations

HB 81 prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act of 1965 from requiring an

applicant, prospective employee, or employee to pay for an initial or any subsequent medical examination that is required as a condition of employment. (ORC 4113.21)