

## Ohio General Assembly Enacts Sweeping Changes to Workers' Compensation Law

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### CLIENT ALERT | 6.19.2020

Sweeping changes to the Ohio Workers' Compensation Act were made when Am. Sub. H.B. 81 was signed into law by Governor Mike DeWine on June 16, 2020. Most provisions become effective 90 days from the signing date. Measures included in the law address temporary total compensation, safety violations, state fund settlements, and court appeals. Of particular importance to self-insured employers is the change to the time limitations for claim closure. All employers should be aware of the new statutory language that precludes payment of temporary and permanent total compensation where the economic loss is the direct result of reasons unrelated to the injury. Contact your Vorys lawyer if you have questions about these changes or other aspects of Ohio's workers' compensation system.

This alert is limited to the changes wrought by H.B. 81. For a discussion of legislation pending to make COVID-19 a presumptive workers' compensation claim, [click here](#).

### Time Limitation: Claim Closure

Current law allows an injured worker to receive compensation and benefits within five years from the date of the last payment in certain claims. The new law shortens the time during which an inactive claim remains "open" for payments by moving the claim lapse date from the date of last payment of medical services back to the date the services were rendered. This allows claims to be statutorily closed at an earlier date. Limitations can be complex, depending on the date of injury and whether the claim includes payment of medical benefits only. Consult with your Vorys lawyer regarding the appropriate limitation for specific claims.

### Time Limitation: Filing for additional compensation for Violation of a Specific Safety Requirement (VSSR)

The new law contains a reduction in the time allowed for filing a VSSR application from two years to one year, making the limitations period consistent with the limitations period for filing an injury or death claim.

With respect to occupational disease (OD) claims, the limitation is also reduced to one year for VSSR filings, but the current limitation for filing an OD claim is two years, which creates a discrepancy by requiring the filing of the VSSR before the limitation for filing the claim.

## Voluntary Abandonment and Temporary Total/Permanent Total

The new law codifies the requirement that there must be a causal connection between economic loss and an injury or disease in order for the loss to be compensated. Thus, temporary total is not payable when the loss of wages is “the direct result of reasons unrelated to the allowed injury or occupational disease.” Likewise, as to permanent total disability compensation, payment is precluded when the employee either retired or “is not working for reasons unrelated to the allowed injury or occupational disease.”

The General Assembly removed the term “voluntary abandonment” from the law, and identified the statutory intent as “to supersede any previous judicial decision that applied the doctrine of voluntary abandonment to a claim brought under this section.” This is a reference to contradictory and often confusing court cases on the subject of “voluntary abandonment” as a defense to temporary or permanent total compensation.

It is not clear whether the “judicial decisions” in the new law include certain court cases like *Gross II* (employee terminated for violation of work rule which results in his injury, is entitled to TTD because the economic loss is causally related to the injury); *Louisiana Pacific* (voluntary abandonment for violation of a written work rule must be proven by the employer satisfying certain evidentiary criteria); or *Klein* (employee who was injured after giving notice of intent to move to another state was entitled to TTD until he moved and voluntarily abandoned his employment).

The Supreme Court in *Gross II* invited the General Assembly to address whether separation for violation of a work rule precludes compensation. However, the change in law does not focus on work rule violations, but rather on the causal relationship between the income loss and the injury or OD. The language is broad and subjective, which could invite more litigation, rather than tempering it.

## Court Appeals

For claims arising on or after September 29, 2017, the time for appealing a final Industrial Commission order to common pleas court may be extended from 60 days to 150 days when a party provides notice of intent to settle the claim and there is no objection by the other party.

## State Fund Settlements

A state fund employer may no longer object to settlement where the claim is both (1) outside the employer’s experience, and (2) the injured worker is no longer employed by the employer.

## Funeral Expenses

The maximum amount for funeral expenses is increased from \$5,500 to \$7,500. The adjustment is based upon reports from the funeral industry regarding the average cost of a funeral.

## Corrections Officers/First Responders

Current law provides that the Administrator of Workers' Compensation or a self-insured public employer must provide medical testing and care to a firefighter, peace officer, or emergency medical worker who is exposed to blood or other bodily fluids in the course of their employment. These protections are now extended to employees of a self-insured detention facility, including correction officers.