

Publications

Labor and Employment Alert: Ohio Industrial Commission Issues Policy Changing Hearing Continuance Process

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Industrial Commission Resolution

On Tuesday, July 10, 2012, the chairman of the Ohio Industrial Commission issued a notice of changes being implemented in the policy regarding hearing continuances and hearing procedures via the publication of a temporary IC Resolution, effective from July 11, 2012 through September 8, 2012. For the next 60 days, IC hearing policies include changes which are described by the IC chairman as follows;

- The Industrial Commission will begin docketing claims without regard for the representatives' concurrent hearing values;
- The Industrial Commission has removed conflicting Industrial Commission hearings as a justification for continuances;
- The Industrial Commission has reduced the number of full-day hearing blocks from 22 to 12 during the temporary modification period; and
- The Industrial Commission has reduced the number of half-day hearing blocks from 20 to 10 during the temporary modification period.

In addition, the Commission's regional managers are conducting hearings, permanent partial disability hearings are being docketed aggressively, and the Commission's largest office, Columbus, began adding more hearing hours.

The practical implication of these changes is that claims will be set for hearing without delay and requests for continuances during this temporary period are likely to undergo strict scrutiny. Employers will not be able to rely upon having a hearing continued due to scheduling conflicts or by agreement of the parties. Further, contested claims that are set for hearing by the IC will be more likely to proceed as scheduled, regardless of the status of ongoing discovery efforts of the parties. There is some history that explains what prompted these changes. Coordination between Ohio employers and their legal representatives can help to minimize the impact of the new policies.

Background

In the late 1980s and early 1990s, there was a considerable delay in contested claims getting to hearing. It was not uncommon for contested motions for temporary total disability compensation, or the termination thereof, to take six to eight months before getting to hearing. House Bill No. 107, effective in 1993, placed timelines on the Industrial Commission to set matters for hearing and on hearing officers to issue their orders. In 1996, a law was enacted that requires the Industrial Commission to report "hearing spikes" to the General Assembly. A hearing spike occurs when the volume of claims that are "ready for hearing" exceeds a certain benchmark, roughly 15 percent over the average number of hearings held in any given month. When hearing spikes occur in any six months within a calendar year, the IC is required by law to address the issue by using all resources at its disposal or by hiring temporary hearing officers.

In March, April, May and June of this year, the Industrial Commission had to report hearing spikes. In an effort to address concerns which may arise from hearing spikes, the IC conducted a meeting on Tuesday, July 10 and made a number of changes in the process for setting claims for hearing which are reflected in the resolution described above.

Best Practices

In light of these changes, Ohio employers will want to coordinate a review of the processes in place for gathering information and evidence in preparation for hearings to defend or approve workers' compensation claims. The review should include the company's legal counsel and third party administrators and should focus on insuring that claims defenses are being prepared as soon as practical, and without reliance upon agreements of the parties to extend the timeframe in which a claim defense can be prepared for hearing. For example, an individual could be identified to conduct a weekly review of incoming IC hearing notices in order to confirm that the matter has been referred to the proper representative for hearing preparation and representation. Weekly dockets can be prepared by the representative for the company's review.

For specific inquiries related to these policy changes, and how they might affect your company, or other issues related to the defense of workers' compensation claims in Ohio, please contact a member of Vorys' workers' compensation group.