

The background features a dark blue color with a pattern of diagonal, hatched lines forming a series of upward-pointing chevrons. The Vorys logo is positioned in the upper right area.

VORYS

New thinking.
Since 1909.

Workers' Compensation

J.B. Lind

Today's Topic

- Gain a comprehensive understanding of workers' compensation laws, from claim procedures to employer responsibilities, ensuring effective risk management and employee support.

Why Workers' Compensation Insurance?

- The Industrial Revolution
 - Prior to the enactment of the Statute, employee's remedy was common law torts.
 - Set up a system whereby employees had to prove the employer was at fault.
 - Workers' Compensation changes that analysis and simply requires that the "injury" occurred in the course of and arising out of the injured worker's employment.

Early 1900's

- Ohio was the center of the Industrial Revolution
 - Specifically, Cleveland, Akron, Canton and Youngstown
 - Indeed, the overwhelming majority of claims are still from that region
- Recognizing the need for Worker Safety, Ohio passed a constitutional amendment and the General Assembly then codified what we now know as the workers' compensation system on February 6, 1913

The Constitutional Amendment

- “For the purpose of providing compensation to workmen and their deponents for death, injuries or occupational disease occasioned in the course of such worker’s employment”
 - Article II, Section 35, Ohio Constitution
- **Simple enough, right ??**

The System

- 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 one year 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

Temporary Total Disability (TTD) Compensation

- Most important feature of Ohio Workers' Compensation
- Addresses the need for immediate compensation because employee cannot work
- Filed two ways:
 - With initial claim
 - By Motion (this is far more contested)
- Remember Causation !! The injury must be the reason the temporary total is being paid

Other forms of Indemnity

- As an initial point, all forms of indemnity have calculations called for in the statute
- Wage Loss
 - “the difference between the employee’s present earnings and the greater of the employee’s full weekly wage or average weekly wage.”
- Permanent Partial Disability (C-92)
 - Paid to worker for the physical or mental impairment that injury has caused. A percentage % is assigned
- Temporary Partial Disability and Permanent Total Disability also forms of indemnity

So What to Do about Indemnity?

- Permanent Disability
 - Have all heard the horror stories
 - Much better than in the past
 - Ohio law provides that after 200 weeks of TTD, claimant must be seen by a BWC physician for determination of permanency
- Temporary Total Disability is a huge cost driver
 - What are the best practices to use

So What to Do about Indemnity, cont.?

- All studies show, that the quicker return to work for an injured worker, the least likely a condition will become permanent
- Institute strong return to work programs and offer job within the restrictions set forth by the treating physician
- Do not be afraid to seek Maximum Medical Improvement (“MMI”)
 - Cost associated, by absolutely worth it
- The determination of MMI ends TTD
- If suspicious about the claim, do not be afraid to surveil or call BWC Fraud hotline

Hot Topics in Workers' Compensation Law

- *State ex rel. Autozone Stores, Inc. v. Industrial Commission*, 2023-Ohio-633
 - Dealt with “voluntary abandonment”
 - Not employer friendly
 - Court analysis: R.C. 4123.56(F) does not impose an additional requirement on a claimant to prove he or she is unable to work solely due to an impairment arising from an injury or occupational disease. Only when an otherwise qualified claimant is not working as a direct result of reasons unrelated to the allowed injury or occupational disease is the claimant ineligible to receive TTD compensation.”
- Waiting for Ohio Supreme Court to decide appeal

Hot Topics, Cont.

- *State ex rel. Dillon v. Indus. Comm.*, Slip Op. No. 2024-Ohio-744.
- Another TTD case
- Remember MMI ? Previous authority held that MMI terminated at the hearing date
- *Dillon* allows for termination much earlier, for instance the date of the examination in favor of finding MMI
- And, Employers may claim an overpayment and recoup funds paid from MMI date and date of hearing
- Ohio Self-Insurers Association supports this ruling

Problematic Claims

- If you face one of these claims it should garner special attention
 - Concussions
 - Continue to be a “popular” claim with claimant’s bar
 - Absent a baseline test these claims are very hard to pin down
 - Document, Document, Document !!
 - Strong medical opinions are a must
 - Post-Concussion Syndrome
 - Concussion symptoms should alleviate within weeks. After that, suspicion should be elevated

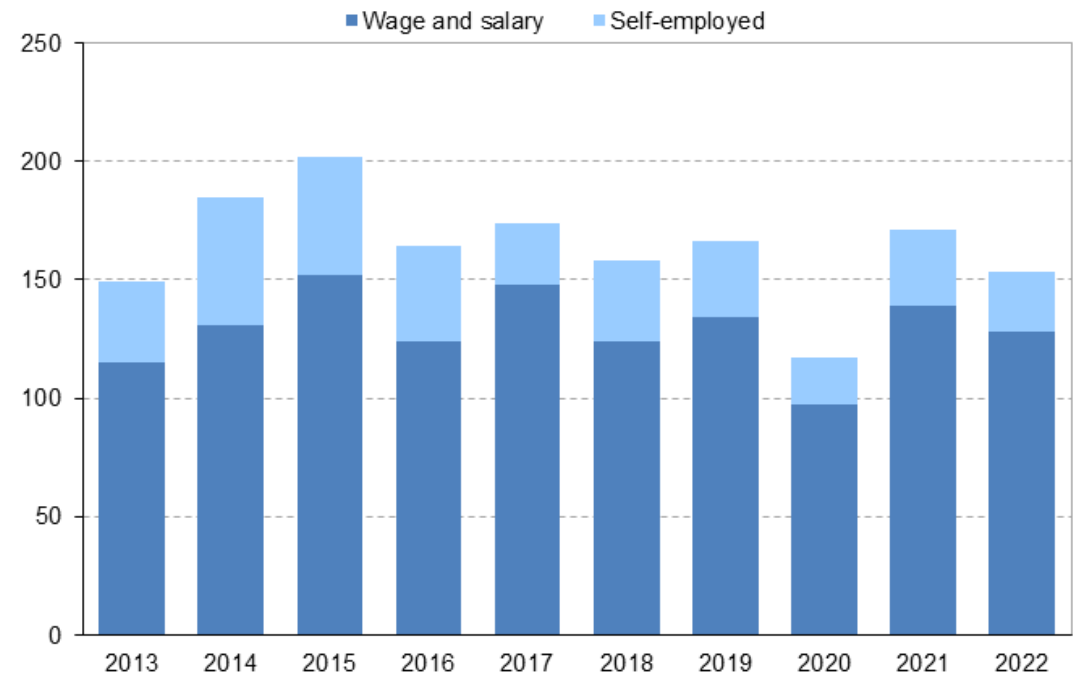
Problematic Claims, Cont.

- Complex Regional Pain Syndrome (“CRPS”)
 - CRPS is a form of chronic pain that usually affects an arm or a leg
 - CRPS is uncommon, **and its cause isn't clearly understood.** Treatment is most effective when started early. In such cases, improvement and even remission are possible.
- Lower back Injuries
 - One of the more common “degenerative” diagnosis that we see. Degeneration is Normally Not work-related and is usually a strong defense for employers.

Final Thoughts

- Our clients, and employers in general, have done a nice job with workplace safety since the 1980's
- Studies show that a focus on safety increases productivity

Chart 1. Number of fatal occupational injuries by employee status, Ohio, 2013–22

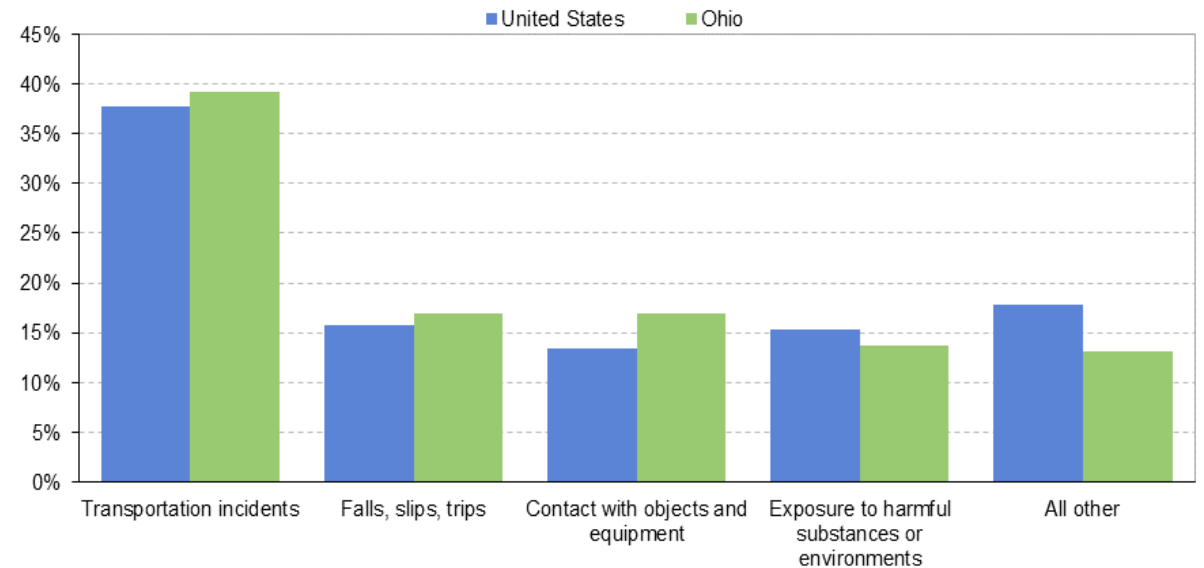


Source: U.S. Bureau of Labor Statistics.

Final Thoughts, Cont.

- While fatalities are the worst type of workplace accident imaginable, the categories of accidents are instructive on what our facilities and companies need to protect against.

Chart 2. Percent distribution of total fatal occupational injuries by event, United States and Ohio, 2022



Source: U.S. Bureau of Labor Statistics.

Questions?

J.B. Lind

Partner

Vorys, Sater, Seymour and
Pease LLP

513.842.8119

jblind@vorys.com





VORYS

New thinking.
Since 1909.

Thank You