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Worker's Compensation 101

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Presentation Goals

To provide a an overview of the guidelines and processes related to worker's compensation including the following;

- **The Source of Worker's Compensation Benefits**
- **Employment Status**
- **Injury**
- **Medical Benefits**

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CASE STUDY

- Pat, a previous client, calls and requests assistance; the following are the facts presented.
- Pat is an illegal alien without a SS#.
- He works at Volcano Industries where he is employed through a Temporary Employment Agency.
- Pat was located on the Volcano Industries parking lot during his lunch break.
- Pat saw a coin and while walking to pick the penny from the ground, his leg gave way and as a result, tore the ligaments in his knee
- At the time there were no witnesses. He also failed to report the accident to his employer. He waited 90 days before visiting a doctor.
- Pat told the Dr. that the accident was work-related but a claim was not filed.
- Twenty-three months have passed and the employee now requires surgery.
- Pat is now employed by a different company.

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I. The Source of Worker's Compensation Benefits

- **The Ohio Revised Code** contains the statutes enacted by the Ohio Legislature. The provisions of Ohio's workers' compensation system are in Ohio Revised Code Chapters 4121 and 4123.

As a general rule, injured workers receive the workers compensation benefits available under the law on the date of the injury. The procedural rules used to determine compensation or benefits are based on the law in effect at the time of the decision. Death benefits, however are controlled by the law in effect at the date of death rather than the date of injury.

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I. The Source of Worker's Compensation Benefits

- **Ohio Administrative Code/Administrative Policy** – The Bureau of Workers' Compensation and Industrial Commission administer the workers' compensation system. The policies they follow are either adopted as rules or issued as guidelines or policy resolutions. Rules are also set forth in the Ohio Administrative code, which is abbreviated as "O.A.C." Policy guidelines can be set forth by Industrial Commission Resolutions, the Hearing Officer Manual, or interoffice communications.
- **Court Decisions** – Many important workers compensation questions are answered when a case is taken to court. Courts may interpret a statute or rule and a court decision may inform the BWC and Industrial Commission how to apply the workers' compensation law.

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I. The Source of Worker's Compensation Benefits

- **Ohio Bureau of Worker's Compensation (BWC)** -The **Ohio Bureau of Workers' Compensation (OBWC or BWC)** provides workers' compensation insurance coverage for employers and employees in the State of Ohio through a \$22 billion fund. Based on assets under management, OBWC is the largest exclusive state-operated and second largest overall provider of workers' compensation insurance in the United States.
- The **OBWC** reported providing coverage to more than 288,000 employers and supports more than 1.5 million open cases of worker disability. OBWC paid out more than \$1.9 billion in benefits against premiums from employers of \$2.1 billion.
- Since its founding in 1912, BWC has provided medical and compensation benefits for work-related injuries, diseases and deaths. BWC provides insurance to about two-thirds of Ohio's work force.

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I. The Source of Worker's Compensation Benefits

Types of Insurance

- **State Fund**-Most employers have their coverage thru the State Fund. This means they have purchased the coverage from the BWC.
- **Self - Insured**- Self-Insured employers make all payments themselves-either directly to the injured worker or for the injured worker's benefit. Normally, self-insurers are very large corporations. They must obey the Ohio worker's compensation law.

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I. The Source of Worker's Compensation Benefits

Administrative Agencies-

The workers compensation system functions through two separate agencies: The Bureau of Workers Compensation (BWC) and the Industrial Commission.

- **Bureau of Workers Compensation**- the BWC handles the administrative and ministerial functions of the workers compensation system. The BWC is headed by an Administrator appointed by the Governor. The current administrator is Steve Bueher.
- **Industrial Commission** – The Industrial Commission handles the decision making in the worker's compensation system. These decisions are distributed in a record of proceedings as issued after an administrative hearing.
The Industrial commission has two levels of hearing officers- District Hearing Officers and Staff Hearing Officers. The Governor appoints a three member board, known as the Industrial commission which establishes adjudicatory policy for the agency and hears appeals in cases it chooses.

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II. Employment Status

Ohio's revised code and Ohio Administrative code 4123.01

- (b) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (i) employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, or (ii) is bound by any such contract of hire or by any other written contract, is required to pay into the state insurance fund the premiums provided by this chapter.

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II. Employment Status

- All employers are required to have Worker's Compensation coverage.
- Coverage can be Self- Insured, Public Employer, State Fund or Non-covered

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II. Employment Status

- **Independent contractor** –Needs to be scrutinized. Business will often try to categorize as I.C to avoid paying Workers' Compensation. Case law provides a series of questions to be considered if the issue arises.
- Which party controls the details and quality of work
- Which party controls the hours worked (freedom to work for other principals often indicates a contractor's independence)
- Which party selects the materials, tools, and personnel (ownership of tools, equipment, and means of performance by the principal indicates employer control)
- Which party selects the route the worker travels
- The length of employment
- The type of business
- The method of payment (payment based solely on commission or production of certain results indicates independence) while the withholding of taxes and social security contributions and providing regular employee benefits indicates employment status.
- All indicia of an employment relationship must be assessed cumulatively in determining whether a worker is an employee or an independent contractor.

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II. Employment Status

- **Construction Contractor** –Has its own statute 4123.01 (A) (1) (c) The general definitions of “employer” and “employee” seem to include a construction contractor or subcontractor and any employee thereof. Amended Substitute H.B. 245, effective September 17, 1965, however, enacted R.C. 4123.01 (A) (1) (c) in order to “specifically identify as being within the definition of ‘employee’. Every person who performs work pursuant to a construction contract.”The legislature added this provision to remedy the so-called “independent contracting violation.”
- Construction contractors often underbid projects by deducting payroll taxes from their bids. In doing so, they treated their employees as if they were independent contractors who were responsible for paying their own taxes and worker’s compensation premiums; payments which the employee rarely made. The statute now provides a self-executing enforcement mechanism to prevent this underbidding and failure to pay payroll taxes.

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II. Employment Status

- **Temporary Employee** –The Temporary Agency is the Employer
- **Non-Covered** – can sue Employer or pursue BWC State Insurance Fund.
- **Business Owner** – did they cover themselves?
- Very Detailed, can elect coverage but affirmative action is required for coverage.
- **Extra Territorial. ORC 4123.54** provides Ohio BWC coverage if contacts established.
 - a. Situs of Injury
 - b. Location of Employers’ Principle place of Business
 - c. Extent work is performed in OH.
 - d. Intrastate vs. Interstate Commerce
 - e. Location Employment contract was made

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III. Injury

- **Definition** - ORC 4123.01 (c) "Injury" includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment.

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III. Injury

"Injury" does not include:

- (1) Psychiatric conditions except where the claimant's psychiatric conditions have arisen from an injury or occupational disease sustained by that claimant or where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.
- (2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body.

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III. Injury

"Injury" does not include:

- (3) Injury or disability incurred in voluntary participation in an employer-sponsored recreation or fitness activity if the employee signs a waiver of the employee's right to compensation or benefits under this chapter prior to engaging in the recreation or fitness activity.
- (4) A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation.

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III. Injury

Unusual Incident Not Required

- a. Caused by accidental means.
- b. Accidental in character and result
- c. No requirement for an unusual event.
- d. EX: Czarnecki Case

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III. Injury

- **Gradually Developing Injury**- an injury can develop gradually.
EX: Village Case – Battery Installer at GM had developed back ache over 5 days.
- **Work Connection Injury** needs to occur in the course of and arising out of the Employment.
 - a. in the course of - time, place or circumstances of the accident.
 - b. Arising out of – causal relationship between employment and accident
 - Performance Duty
 - At Workplace
 - During Work Hours
 - Distinguished from an Idiopathic Injury
- Employee does not necessarily need to be performing work related duties. Injury may also happen within the general scope of employment.

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III. Injury

- **Coming and Going**-Fixed vs. Non Fixed situs.
- **Zone of Employment**- An injury may extend beyond the Employer premises and still fall within Employer Environment. This additional territory is called Zone of Employment. You then look at injury situs within the peculiar circumstances and Hazards of the incident. One example case would be Littlefield vs. Pillsbury. There are Parking Lot cases as well.

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III. Injury

- **Scope of Employment** – Definition of an injury needs to occur within the time and the course of Employment related activities. Examples:
 - a. Picking up Pay check
 - b. Showering up in Locker room
 - c. Changing to work clothes
 - d. Personal comfort- eating, drinking, smoking, restroom

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III. Injury

- **Causal Relationships-**
 - a. Direct Cause
 - b. Substantial aggravation
 - c. Flow Through

- **Psychiatric** – Is not allowed unless condition has arisen from the injury

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III. Injury

Time Limitations

- **Claims for Injury or Death** = 2 years
- **Occupational Disease** - must be filed within two years after disability due to disease begins. It may be filed within such longer periods as does not exceed six months after the diagnosis of the occupational disease by a licensed physician.
An **occupational disease** is any chronic ailment that occurs as a result of work or occupational activity. It is an aspect of occupational safety and health. An occupational disease is typically identified when it is shown that it is more prevalent in a given body of workers than in the general population, or in other worker populations.
- **Self Insured**- If Self Insured Employer pays wages or Medical Benefits in some cases this tolls the 2 year Statute

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III. Injury

Time Limitations (continued)

- **Additional Conditions**- Is unlimited to Body Parts already recognized but notice of an unrecognized body part must be given within 2 years.
- **Continuing Jurisdiction**- For claims on or after 8/25/06 the claim stays open for 5 years from each payment of a medical or wage benefit
- **6. Appeals** – there are 3 three types of appeals
 - a. **Administrative Orders** – 14 days from receipt, 20 if a PPI is awarded.
 - b. **IC- DHO, SHO orders** have a 14 day appeal period.
 - c. **Industrial Commission** – 60 days to appeal to court if issue is Right to Participate. Also have Mandamus options.

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III. Injury

Wages and Compensation

- **1. TTD - Temporary Total Disability**
Temporary Total disability compensation is available for a work-related injury or illness which requires you to miss eight(8) or more calendar days of work.
- **2. Living Maintenance** - If an injured worker is actively involved in an approved rehabilitation program which may enable him or her to return to employment, Living Maintenance payments may be received.
- **3. Wage Loss** - When an injured worker is ready to return to work and they are actively seeking employment, but a job within their restrictions cannot be found, Non-working Wage Loss may be available. When an injured worker returns to work and they suffer a loss of wages due to injury caused limitations, Working Wage Loss may be available as supplemental income.

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III. Injury

Wages and Compensation (continued)

- **PPI- Permanent Partial Disability** - An injured worker becomes eligible for Permanent Partial Disability twenty-six (26) weeks after the last payment of Compensation resulting from the injury. An award is based upon the percentage of impairment and computed with the injured worker's wages at the time of the injury. There are caps on the amount of wages paid.
- **Scheduled Loss**- Under worker's compensation law, a schedule loss of use is the set amount of compensation an employee may receive for the inability to use a particular body, member such as an arm, hand, finger, leg, foot, or toe. An injured employee will receive monetary benefits for the loss of use of such a body member during periods of temporary disability associated therewith, and/or at the time a judicial finding is made of permanent impairment. These monetary benefits are in addition to other benefits for compensation such as medical benefits.

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III. Injury

Wages and Compensation (continued)

- **Permanent Total Disability** - When an injured worker is determined to be unfit for sustained employment based upon their recognized injuries, a finding of Permanent Total disability may occur. Benefits are payable for the life of the injured worker.
- **Lump Sum Settlement** - Often the Bureau of Worker's Compensation or injured worker's employer may be willing to negotiate a final settlement in lieu of continual payments of wage and/or medical benefits. It is important that the full value of the injury claim be recognized in order to maximize the settlement benefit.

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IV. Medical Benefits

Overview- March 1, 1997 Ohio created the Health Partnership Program.

Managed Care Organizations (MCO's) became responsible for the Medical Management of claims. Self-Insured Employers can set up an similar program which is then called a Qualified Health Plan (QHP) or can manage the medical themselves.

- 1. Medical Treatment- Anything reasonable or necessary for the care and relief of the allowed conditions in the claim.
 - a. Reasonably related to the allowed conditions.
 - b. Reasonably necessary for treatment of the injury
 - c. Is cost medically reasonable
- 2. POR – All doctors must be a certified BWC provider (Have a BWC provider number) Employees can changer Doctors as desired with a C-23 change of doctor, form.
- 3. Process- Request treatment using a C- 9 form. If the MCO denies, file an appeal to ADR (Alternate Dispute Resolution) where a file review or exam occurs. If the ADR is not favorable an appeal to the IC (Industrial Commission) hearing process is necessary

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Credits

The Presenter wishes to acknowledge the use of the following references and invaluable assistance.

- Ohio AFL-CIO -Ohio Worker's Compensation Manual written by Stewart R. Jaffey, Warren T. Smith and Mark J. Jaffey
- Ohio's Worker Compensation Law written by Phillip J. Fulton
- Michael E. Zeh- Presentation Construction and Edits

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