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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
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H.B. 81  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by Senate Insurance and Financial Institutions

**Primary Sponsor:** Rep. Perales

Kelly Bomba, Attorney

## SUMMARY

### Post-exposure testing

- Requires, under specified conditions, the Administrator of Workers' Compensation or a self-insuring employer to pay for services used to determine whether a detention facility employee sustained an injury or occupational disease after exposure to another person's blood or bodily fluids.
- Requires, under specified conditions, the Administrator or a self-insuring employer to pay for services used to determine whether specified safety officers, including detention facility employees, sustained an injury or occupational disease after exposure to a drug or other chemical substance.

### Voluntary abandonment doctrine

- Provides that, to be eligible to receive temporary total disability (TTD) compensation, a person must be unable to work or must suffer a wage loss as the direct result of an impairment arising from an injury or occupational disease.
- Prohibits a person from receiving TTD compensation when the person is not working or has suffered a wage loss as the direct result of reasons unrelated to an allowed injury or occupational disease.
- States that the General Assembly intends to supersede any previous judicial decision that applied the voluntary abandonment doctrine to TTD or wage loss claims.
- Prohibits a person from receiving permanent total disability compensation when the person is not working for reasons unrelated to an allowed injury or occupational disease, rather than if the person voluntarily abandoned the workforce as under current law.
- Applies the rule to claims pending on the bill's effective date and to claims arising after that date.

## **Additional award for specific safety violation**

- Requires, for claims arising on or after the bill's effective date, a claim for an additional award of compensation for a violation of a specific safety rule to be filed within one year after the injury or death or within one year after a disability due to occupational disease begins, rather than within two years as currently required.

## **Final settlement agreements**

- Prohibits an employer from refusing or withdrawing from a proposed claim settlement agreement if the employee who is the subject of the claim is no longer employed by the employer and 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.

## **Continuing jurisdiction over workers' compensation claims**

- Makes the rendering of medical services, rather than payment for the services as under current law, an event that continues the Industrial Commission's jurisdiction to modify or change a claim or to make a finding or award under a claim.

## **Funeral expenses**

- Increases the funeral expense benefit cap from \$5,500 to \$7,500.

## **Appealing Industrial Commission orders**

- Applies to claims pending on and arising after September 29, 2017, a provision in Sub. H.B. 27 of the 132<sup>nd</sup> General Assembly extending the time to appeal an Industrial Commission order from 60 days to 150 days when certain conditions are satisfied.

## **Employee medical examinations**

- Prohibits a private employer furnishing services for a public employer under a contract governed by the federal Service Contract Act from generally requiring an applicant or employee to pay for medical examinations that are required as a condition of employment or continued employment.

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# **DETAILED ANALYSIS**

## **Post-exposure testing**

### **Blood and bodily fluid exposure**

The bill expands the current post-exposure testing law, which covers diagnostic testing for specified safety officers under certain conditions, to include detention facility employees. Under the bill, the Administrator of Workers' Compensation, or a detention facility that is a self-insuring employer (an employer authorized to directly pay compensation and benefits in a claim), must pay for post-exposure medical diagnostic services to investigate whether a person employed by a detention facility, including a corrections officer, sustained an injury or occupational disease from coming into contact with the blood or other body fluid of another

person in the course of and arising out of the employee's employment. Under continuing law, 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 the blood or bodily fluid through any of the following means:

- A 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.<sup>1</sup>

The bill defines "corrections officer" as a person employed by a detention facility as a corrections officer. A "detention facility" is any public or private place used for the confinement of a person charged with or convicted of any state or federal crime or found to be a delinquent child or unruly child under any state or federal law.<sup>2</sup>

Currently, all of the following employees are covered by the post-exposure testing requirement:

- A peace officer who has arrest powers under the Arrest, Citation, and Disposition Alternatives Law (a correction officer is not considered a peace officer for this law);
- A paid or volunteer firefighter of a lawfully constituted fire department;
- A paid or volunteer emergency medical worker, which is a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic certified under the Emergency Medical Services Law.<sup>3</sup>

According to the Industrial Commission, the administrative body that adjudicates claims under the Workers' Compensation Law,<sup>4</sup> "[t]he list of covered individuals and job classifications is extensive, but the classification of a 'corrections officer' is not [currently] included."<sup>5</sup>

### **Drug or chemical substance exposure**

Additionally, the bill requires the Administrator or a 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 discussed above, under current

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<sup>1</sup> R.C. 4123.026(A).

<sup>2</sup> R.C. 4123.026(C).

<sup>3</sup> R.C. 4123.026, by reference to R.C. 2935.01, not in the bill, and R.C. Chapter 4765.

<sup>4</sup> R.C. Chapters 4121, 4123, 4127, and 4131.

<sup>5</sup> Ohio Industrial Commission, Record of Proceedings, Claim 06-344388, 2007 WL 9703017.

law and the bill, sustained an injury or occupational disease after exposure to a drug or other chemical substance in the course of the employee's employment.<sup>6</sup>

## **Application**

Under continuing law, any employee who is injured or who contracts an occupational disease in the course of employment is entitled to necessary medical, nurse, and hospital services and medicines.<sup>7</sup> Thus, if an employee suffers an injury or contracts an occupational disease in the course of employment, and diagnostic tests are a necessary part of treatment, the costs currently are covered if the claim is otherwise compensable. The bill applies only to post-exposure medical tests used to investigate whether the employee sustained an injury or occupational disease.<sup>8</sup>

## **Voluntary abandonment doctrine**

### **TTD compensation**

The bill provides, for all claims pending on or arising after the bill's effective date, that an employee who is unable to work or suffers a wage loss as the direct result of an impairment arising from an injury or occupational disease is entitled to receive temporary total disability (TTD) compensation, provided the employee is otherwise qualified. If the employee is not working or has suffered a wage loss as the direct result of reasons unrelated to an allowed injury or occupational disease, the employee is not eligible to receive TTD compensation. Continuing law governing TTD compensation refers to an employee's "disability." It is unclear how the bill's reference to "impairment" will be interpreted.<sup>9</sup>

The bill states that the General Assembly intends to supersede any previous court opinion that applied the doctrine of voluntary abandonment to a TTD claim. Under the doctrine, to be eligible for TTD compensation, a claimant must be medically incapable of returning to the claimant's former position and the claimant's injury or occupational disease must be the cause of the claimant's lost earnings.<sup>10</sup>

### **PTD compensation**

The bill prohibits, for all claims pending on or arising after the bill's effective date, a person from receiving permanent total disability (PTD) compensation when the person is not working for reasons unrelated to an allowed injury or occupational disease. Current law prohibits a person from receiving PTD compensation when the person voluntarily abandons the workforce for reasons unrelated to an allowed injury or occupational disease. Under continuing

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<sup>6</sup> R.C. 4123.026(B).

<sup>7</sup> R.C. 4123.54, not in the bill, and R.C. 4123.66.

<sup>8</sup> See, e.g., Ohio Industrial Commission, Record of Proceedings, Claim 08-351946, 2008 WL 11408637.

<sup>9</sup> R.C. 4123.56 and Section 3.

<sup>10</sup> See, e.g., *State ex rel. Gross v. Indus. Commission*, 115 Ohio St.3d 249, 253-255 (2007).

law, a person also may not receive PTD compensation if the person is unable to engage in sustained remunerative employment for one, or any combination, of the following reasons:

- Retirement unrelated to an allowed injury or occupational disease;
- The person's impairments are not the result of an allowed injury or occupational disease;
- Solely due to the person's age or aging;
- The person has not engaged in educational or rehabilitative efforts to enhance the person's employability, unless such efforts are determined to be in vain.<sup>11</sup>

### **Additional award for specific safety violation**

In addition to authorizing the creation of the workers' compensation system, the Workers' Compensation Amendment to the Ohio Constitution allows the filing of a claim that a person suffered an injury, contracted an occupational disease, or was killed in the course of employment because the person's employer violated a specific safety rule enacted by the General Assembly or adopted by the Administrator. The Industrial Commission has exclusive jurisdiction to hear and decide claims alleging violations of specific safety rules. If the Commission finds that the employer's violation of a specific safety rule caused an injury, disease, or death, the Commission must grant an additional award that is between 15% and 50% "of the maximum award established by law."<sup>12</sup>

Under the bill, a claim arising on or after the bill's effective date for an additional award for violation of a specific safety rule (a "VSSR" award) must be filed within one year after the date of the injury or death or within one year after the disability due to an occupational disease began.<sup>13</sup> Currently, an administrative rule requires claims for these additional awards to be filed within two years of the date of injury, death, or inception of disability due to occupational disease.<sup>14</sup>

### **Final settlement agreements**

The Worker's Compensation Law allows a state fund employer (an employer who obtains workers' compensation coverage through the State Insurance Fund), the employer's employee, or the Administrator to file an application for approval of a final settlement against the State Insurance Fund. The Law also allows a self-insuring employer and the employer's employee to enter a settlement agreement. A proposed settlement of a state fund claim takes effect 30 days after the Administrator approves the settlement. A settlement between a self-insuring employer and a claimant takes effect 30 days after the parties sign it. During the 30-

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<sup>11</sup> R.C. 4123.58 and Section 3.

<sup>12</sup> Ohio Constitution, Article II, Section 35.

<sup>13</sup> R.C. 4121.471 and Section 3.

<sup>14</sup> Ohio Administrative Code 4121-3-20.

day period, a party may withdraw from a proposed settlement by sending written notice to the other interested parties.

The bill prohibits an employer, for claims pending on or arising after the bill's effective date, from refusing or withdrawing from a proposed settlement agreement if both of the following apply:

- The employee named in the claim is no longer employed by the employer;
- 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.<sup>15</sup>

Under continuing law, the Administrator annually revises basic premium rates so they are adequate to maintain the solvency of the State Insurance Fund and a reasonable surplus. When revising basic employer rates, the Administrator examines the oldest four of the last five policy years of combined accident and occupational disease experience.<sup>16</sup> Continuing law governing basic premium rate calculations does not appear to define the phrase "date of impact."

## **Continuing jurisdiction over workers' compensation claims**

The Industrial Commission and the Administrator have continuing jurisdiction over each workers' compensation claim, and the Commission may modify or change its former findings and orders. However, in the absence of statutorily specified events, the Commission cannot modify or change a former finding or order, nor award compensation or benefits in a claim, if more than five years have passed since the date of injury. If a statutorily specified event occurs, the Commission's authority to change or modify a finding or order, or award compensation or benefits in the claim, extends for an additional five years from the date of the event.

The bill makes the rendering of medical services, rather than payment for the services as under current law, an event that extends the Commission's authority for an additional five years. This applies to claims arising on or after July 1, 2020. Under continuing law, the following events also extend the Commission's authority for an additional five years:

- A payment of compensation for TTD, wage loss, permanent partial disability, or PTD;
- A payment of wages in lieu of compensation in accordance with continuing law;
- The claimant's death.<sup>17</sup>

## **Funeral expenses**

Under continuing law, the Administrator or a self-insuring employer is required to pay a reasonable amount to cover funeral expenses when an employee dies from a compensable

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<sup>15</sup> R.C. 4123.65 and Section 3.

<sup>16</sup> R.C. 4123.34, not in the bill.

<sup>17</sup> R.C. 4123.52 and Section 3.

injury or occupational disease. The bill increases the amount the Administrator is authorized to expend from the State Insurance Fund to pay funeral expenses from \$5,500 to \$7,500. The increase applies to claims arising on or after the bill's effective date.<sup>18</sup>

## **Appealing Industrial Commission orders**

Sub. H.B. 27 of the 132<sup>nd</sup> General Assembly extended the time to appeal an Industrial Commission order to a court of common pleas from 60 days to 150 days, provided a party gives notice of intent to settle and the opposing party does not object.<sup>19</sup> The bill applies the extension to workers' compensation claims pending on or arising after September 29, 2017, the effective date of that change.<sup>20</sup>

## **Employee medical examinations**

The bill 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 or continued employment.<sup>21</sup> The federal Act generally applies to any contract with the federal government that has as its principal purpose the furnishing of services in the U.S. through the use of service employees, regardless of whether the employees are the contractor's employees or those of any subcontractor.<sup>22</sup>

Under continuing law, a private employer is prohibited from requiring any prospective employee or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment. A public employer cannot require an employee, prospective employee, or applicant to pay the cost of a medical examination required by the public employer as a condition of employment or continued employment. Any employer who violates these prohibitions must forfeit not more than \$100 for each violation. BWC and the Public Utilities Commission of Ohio enforce the penalty.<sup>23</sup>

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<sup>18</sup> R.C. 4123.66 and Section 3.

<sup>19</sup> R.C. 4123.512, not in the bill.

<sup>20</sup> Section 4.

<sup>21</sup> R.C. 4113.21.

<sup>22</sup> 41 United States Code 6702 and 29 Code of Federal Regulations 4.150.

<sup>23</sup> R.C. 4113.21.

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## HISTORY

| Action  | Date     |
|---|----------|
| Introduced  | 02-19-19 |
| Reported, H. Insurance                            | 11-19-19 |
| Passed House (94-0)                               | 11-20-19 |
| Reported, S. Insurance and Financial Institutions | 02-26-20 |

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