

PICK UP AFTER YOURSELF!

WORKPLACE SAFETY CONSIDERATIONS FOR EMPLOYERS BIG AND SMALL

West Central Ohio Safety Council
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EMPLOYER'S DUTY TO PROVIDE SAFE ENVIRONMENT

- **No employer shall require, permit, or suffer any employee to go or be in any employment or place of employment which is not safe;**
- **No employer shall fail to furnish, provide, and use safety devices and safeguards, or fail to obey and follow orders or to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe;**
- **No employer shall fail to do every other thing reasonably necessary to protect the life, health, safety, and welfare of employees or frequenters of the employer; and**
- **No such employer or other person shall construct, occupy, or maintain any place of employment that is not safe. O.R.C. § 4101.12**

EMPLOYEE'S DUTY TO MAINTAIN A SAFE ENVIRONMENT

- **No employee shall remove, displace, damage, destroy, interfere with, or carry off any safety device or safeguard furnished or provided for use in any employment or place of employment;**
- **No employee shall interfere with the use of any method or process adopted for the protection of any employee or frequenters of the place of business;**
- **No employee shall fail to follow and obey orders and to do every other thing reasonably necessary to protect the life, health, safety, and welfare of employees and frequenters of the place of business.**

O.R.C. § 4101.13

EMPLOYEE'S PROPER REFUSAL TO WORK

- **Employee complained to the employer about the dangerous condition and employer refused to correct it;**
- **Employee refuses to work in good faith;**
- **A reasonable person in the employee's position would agree that there's an immediate danger of death or serious injury; and**
- **Because of the urgency, there is no time to wait for the unsafe condition to be corrected through proper channels (ie. reporting to OSHA)**



EMPLOYER LIABILITY – NEGLIGENCE LAWSUITS

- **Employers who comply with the Ohio Workers' Compensation Act (including paying all premiums) are not liable for a work-related injury, illness or death. O.R.C. § 4123.74**

EMPLOYER LIABILITY – INTENTIONAL TORTS

- **Employer’s knowledge of the existence of a dangerous process, procedure, instrumentality or condition within its business operation;**
- **Employer’s knowledge that if the employee is subjected by his employment to such dangerous process, procedure, instrumentality or condition, then harm to the employee will be a substantial certainty; and**
- **The employer nevertheless required the employee to continue to perform the dangerous task**

EMPLOYER LIABILITY – VSSR CLAIMS

- **An IW with a BWC claim may be eligible to receive an additional award of compensation if the injury occurred as a result of the employer’s violation of a specific safety requirement (VSSR)**
- **Industry standards and OSHA laws may be considered by the IC in interpreting the VSSR regulations. *State ex rel. Richmond v. Indus. Comm.*, 2014-Ohio-1604**
- **Additional award is purely punitive and ranges from 15% to 50% of the maximum allowable weekly compensation granted to the IW (2018 →\$932)**
- **Civil penalty up to \$50,000 against an employer with 2 or more safety violations in a 24 month period. O.R.C. § 4121.47**

VSSR PROCESS

- **Claim allowed by BWC**
- **IW will file an IC-8/9 form within 2 years of the injury, death, disease diagnosis**
- **IC notifies all parties of the filing**
- **Employer should file answer within 30 days**
- **BWC investigates (inspection of site, interviews and reviews documents)**
- **Investigator files a Report of Investigation with the IC**

VSSR PROCESS (CONT.)

- **Parties receive the Report and have 30 days to supplement the Report**
- **IC schedules a pre-hearing conference (to discuss new information, possible settlement, set hearing date)**
- **Merit hearing scheduled and held**
- **IC may grant an additional award and issue a correction order**
- **Investigator will ensure that the Employer complied with the correction order**

EMPLOYER LIABILITY - OSHA

- **Employers must prominently display OSHA Rights and Responsibilities Poster;**
- **Inform workers about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods;**
- **Provide safety training to workers in a language/vocabulary they can understand;**
- **Keep accurate records of work-related injuries and illnesses;**
- **Perform tests in the workplace, such as sampling, as required by some OSHA standards;**

EMPLOYER LIABILITY – OSHA (CONT.)

- **Provide required personal protective equipment at no cost to workers;**
- **Provide hearing tests or other medical tests required by OSHA standards;**
- **Post OSHA citations and injury and illness data where employees can see them;**
- **Notify OSHA within 8 hours of a workplace fatality or within 24 hours of any work-related in-patient hospitalization, amputation or loss of an eye; and**
- **Not retaliate against workers for exercising their rights, including their right to report a work-related injury or illness.**

RETALIATION CONCERNS

- **Employer shall now retaliate against an employee who reports law violation (Ohio Whistleblower's Law) O.R.C. § 4113.52**
- **Employer shall not retaliate against an employee for filing, pursuing or participating in a workers' compensation claim. O.R.C. § 4123.90**
- **At-will employment exception—terminating employees because they file a workplace safety rule complaint is against public policy**

BEST PRACTICES TO AVOID RETALIATION CLAIMS

- 1. Provide thorough safety training to all employees.**
- 2. Adopt safety rules that are specific, clear and follow OSHA guidelines.**
- 3. Incorporate your disciplinary policy into your safety program.**
- 4. Clearly communicate to employees what they did wrong.**
- 5. Use progressive discipline as appropriate.**
- 6. DOCUMENT your investigation and the outcome.**
- 7. Equally enforce the safety rules.**

HOW TO AVOID LIABILITY

- **Know your safety standards (industry standards, OSHA, OAC)**
- **Provide safety equipment**
- **Provide safety training**
- **Encourage employees to report unsafe conditions**

WORKPLACE SAFETY IN PERFORMANCE EVALUATIONS

- **Safety assessments in performance evaluations is a way to lessen liability.**
- **Utilize numerical performance evaluations. Fall below a certain number → required to be retrained on safety practices.**
- **Frequency of the evaluation is just as important as the content.**

SAMPLE EMPLOYEE SAFETY EVALUATION QUESTIONS

- **Demonstrate knowledge of the safety responsibilities of the job**
- **Effectively carry out the safety responsibilities (i.e. wearing safety equipment)**
- **Maintains/inspects all equipment for safe, operable condition**
- **Completes accident/incident reports in a timely, factual basis**
- **Actively pursue correction of any safety hazards or violations that he/she is aware of**

SAMPLE SUPERVISOR SAFETY EVALUATION QUESTIONS

- **Explains and demonstrates safety in a positive manner**
- **Monitors the safe work habits of new employees**
- **Observes others to ensure safety practices are followed**
- **Knows the value of equipment safeguards, and assures they are properly provided and used**
- **Takes the initiative to inform management of ideas for safer practices**
- **Keeps equipment in top performance and safe condition**
- **Addresses safety violations or hazards immediately**
- **Completes accident/incident reports in a timely, factual basis**

IMPORTANCE OF ADDRESSING WORKPLACE SAFETY IN EMPLOYMENT POLICIES/ HANDBOOKS

- **Clear policies assist in defending against retaliation claims**
- **Policies give supervisors direction**
- **Shows your seriousness to safety in defending a VSSR claim**
- **Encourages employees to report safety violations**

WORKERS' COMP WAGE LOSS ELIGIBILITY FOR TERMINATED EMPLOYEES

- If an employee's departure from the workplace was causally related to the injury, it does not preclude the employee's eligibility for TTD compensation. *Gross v. Indus. Comm.*, 115 Ohio St.3d 249 (2007)
- But, if the decision to terminate had been made prior to the industrial injury and the IC can be certain that the IW would not continue to be employed even if he/she had not been injured, then TTD is not appropriate. *Sheets v. Indus. Comm.*, 2017-Ohio-1169 (10th Dist.)

TOP TAKE-AWAYS FROM TODAY'S PRESENTATION

- **Know your safety standards**
- **Addressing workplace safety in employee handbook and employee/supervisor evaluations**
- **Be consistent in disciplining for work safety rule violations**



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