

## **NEW OHIO SUPREME COURT CASE CREATES UNLIMITED WORKERS' COMPENSATION LEAVE**

*Patricia F. Weisberg and Nancy A. Noall*

Employers in Ohio must be very careful in firing employees who have been absent and unable to work because of a job-related injury even when the employee has given no indication as to when, if ever, he or she can return to work.

In a recent unanimous decision, the Ohio Supreme Court expanded job protection to employees who are absent from work because of job-related injuries. *Coolidge v. Riverdale Local School Dist.*, (2003), 100 Ohio St.3d 141. The Court said that an employer may not discharge an employee who is receiving temporary total disability (TTD) compensation under Ohio's Workers' Compensation Act solely because of absences or inability to work directly related to the allowed condition for which the employee is receiving benefits *even if* the employee has used up all available leave.

Prior to this decision, Ohio employees who were injured on the job could be terminated for being absent in excess of employers' leave policies so long as the termination was not to punish or retaliate against the employees for filing a workers' compensation claim. Most courts held that a neutral policy calling for discharge after a certain length of leave could be lawfully applied to employees with workers' compensation claims so long as it was applied to all other types of absences. Moreover, federal courts construing the Americans With Disabilities Act routinely uphold the discharges of disabled employees who have been on extended leave on the grounds that regular attendance is an essential element of most jobs.

The prevailing view in other states is that a workers' compensation act is not designed to provide an injured worker with job security or guaranteed employment during a work-related disability.

Therefore, employees suffering from work-related injuries can be terminated in most states for exceeding attendance and leave policies.

The Ohio Supreme Court, however, rejected the majority view and decided instead, that the public policy underlying the Ohio Workers' Compensation Act dictates that injured workers have a right both to compensation and to whatever amount of recovery time is needed for their injuries. Under the Court's ruling, an Ohio employer could be required to keep an employee on its payroll even if the employee hasn't been able to work for almost four years (employees can receive TTD benefits for 200 weeks.)

The Court also held that an employer could not terminate an employee receiving TTD compensation for failing to comply with the requirements of the employer's leave policy, such as filling out required leave forms, "where the employer is on notice of the employee's work-related injury and that [the] injury was the cause of [the] continued absence...."

The Court did not, however, decide whether employers are required to continue paying and/or offering benefits to injured employees who have otherwise exceeded their leave, but can't be fired. The Court also did not decide whether employers have to hold the employee's specific job open, similar to the obligations imposed under the Family and Medical Leave Act, or whether the employee simply remains on the payroll and is eligible for an open position when he/she is capable of returning to work. Certainly, these and other issues are likely to result in more litigation.

Employment law experts predict that the business community will quickly begin lobbying the politicians to change the law.

What does this decision mean for you?

- Revise company policies and handbooks, as appropriate, unless and until the legislators act on the anticipated barrage of complaints by the business community;
- Keep track of the employees who are receiving temporary total disability leave and track all the benefits to which they are entitled;

- Aggressively review your workers' compensation claims and make sure that the only employees who receive TTD benefits are *really* entitled to it;
- Do not terminate workers absent due to work-related injuries while they're on leave without carefully reviewing the entire situation and/or seeking legal counsel;
- Obtain copies of everything submitted in employees' workers' compensation claim files and stay apprised of the proceedings (or make sure your Third Party Administrator keeps the company informed);
- Work closely with the company's third party administrator to make sure there is coordination with the company's Human Resources department.

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**Walter & Haverfield LLP • 1301 East Ninth Street • Suite 3500 • Cleveland, Ohio 44114**

**Phone (216) 781-1212 Fax (216) 575-0911**

*For more information on this or other employment law matters, please feel free to contact our Employment Law attorneys:*

Michael McMenamain ( <a href="mailto:mmcmenamain@walterhav.com">mmcmenamain@walterhav.com</a> )	216-928-2929
Nancy A. Noall ( <a href="mailto:mnoall@walterhav.com">mnoall@walterhav.com</a> )	216-928-2926
Patricia F. Weisberg ( <a href="mailto:pweisberg@walterhav.com">pweisberg@walterhav.com</a> )	216-928-2928
Jonathan D. Greenberg ( <a href="mailto:jgreenberg@walterhav.com">jgreenberg@walterhav.com</a> )	216-928-2977
Susan M. Zidek ( <a href="mailto:szidek@walterhav.com">szidek@walterhav.com</a> )	216-928-2936
Randal G. Ammons ( <a href="mailto:rammons@walterhav.com">rammons@walterhav.com</a> )	216-928-2932
William R. Hanna ( <a href="mailto:whanna@walterhav.com">whanna@walterhav.com</a> )	217-928-2940
Morris L. Hawk ( <a href="mailto:mhawk@walterhav.com">mhawk@walterhav.com</a> )	216-619-7842
Leslie G. Wolfe ( <a href="mailto:lwolfe@walterhav.com">lwolfe@walterhav.com</a> )	216-928-2927