

# Summary of the New Wage Loss Rules

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# What's New?

- ▶ New version of Ohio Administrative Code §4125-1-01 went into effect for all wage loss applications filed after February 13, 2014.

# Key Differences From the Old Rules

- ▶ Truncated definition section.
- ▶ Mostly the same from the prior rules, but reduced from 19 to 15 defined terms.

# New Term: Voluntary Retirement

- ▶ Retirement, voluntary separation of employment, and discharge for just caused combined.
  - ▶ A voluntary termination of employment by an injured worker such that the injured worker is completely removed from the active workforce based on factors that are not causally related to the allowed conditions in the claim.
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# Job Search Statements

- ▶ Job search statements still must be filled out weekly and sent to the BWC or SI every four weeks.
- ▶ Three new exceptions for working wage loss:
  - 1) Excused by the BWC, Industrial Commission, or the SI.

# Job Search Statements (cont'd.)

- 2) Claimant is eligible for TTD under O.R.C. §4123.56 and returns to alternative employment with the same employer or another employer at the direction of the employer of record (4125-1-01(D)(4)).
- 3) Where the claimant must miss work in order to obtain treatment for the allowed conditions that cannot be obtained outside work hours (4125-1-01(D)(5)).

- ▶ Codification of *Williams-Laker v. Indus. Comm.*, 80 Ohio St.3d 694, 1998-Ohio-169, 687 N.E. 2d 1379 (1998).
  - ▶ Requirements:
    - 1) The treatment must be medically necessary for the injured worker to perform his or her job duties (which job?).
    - 2) The injured worker could not continue to work full-time without the treatment.
    - 3) The treatment is only available during hours of employment.
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# Wage Loss Applications

- ▶ Same requirements for non-working wage loss (§4125-1-01(C)) and working wage loss (§4125-1-01(D)).
- ▶ Must include:
  - Address of employer contacted.
  - Employer's phone number (what about online?).
  - Position sought.
  - Reasonable identification by name or position of the person contacted.

# Wage Loss Applications (cont'd.)

- Date and method of contact.
- New: For an online search, a copy of the online posting and verification of application submission, result of the contact, and other information requested by the BWC job search statement.

# Eligibility

- ▶ Under the old rules, you had to seek suitable employment with the employer of record and register with ODJFS.
- ▶ New: Must seek employment with the employer of record unless the injured worker can establish to doing so would be futile (§4125-1-01(E)(1)(ii)).
  - Examples: Injured worker has been discharged or the employer of record has gone out of business.

# Eligibility cont'd.

- ▶ The injured worker only has to register with ODJFS if requesting non-working wage loss (§4125-1-01(E)(1)(a)(iii)).

# Expansion of the Job Search

- ▶ The job search must include entry-level unskilled employment if after 60 days the injured worker is unable to find employment within his or her skills, prior employment history, and educational background (§4125-1-01(E)(1)(b)).

# Application Requirements

- ▶ Must be filed with the BWC or the SI if applicable.
- ▶ Must be accompanied by a medical report identifying the following (§4125-1-01(B)(2)):
  - 1) Restrictions.
  - 2) Whether the restrictions are permanent or temporary.
  - 3) Date of the last examination.
  - 4) Date of the report.
  - 5) Name of the physician.
  - 6) Signature of the physician.

# Specific Requirements Based Upon Temporary Restrictions (§4125-1-01(B)(3))

- ▶ The expected duration of the restrictions must be stated.
  - ▶ The restrictions cannot be certified for a period exceeding 90 days without a new exam.
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# Specific Requirements Based Upon Permanent Restrictions (§4125-1-01(B)(3))

- ▶ The restrictions must be based upon an examination or treatment 90 days prior to the initial date wage loss compensation is requested.
- ▶ New: The BWC or SI may request a supplemental medical report once every 180 days.
  - Under the old rules, the injured worker was required to submit a medical report once every 180 days.

# Failure to Accept a Good Faith Offer of Suitable Employment

- ▶ Can serve as a bar to wage loss.
- ▶ From the employer of record, must be made in writing with a reasonable description of (§4125-1-01(E)(2)(a)):
  - Job duties.
  - Hours.
  - Rate of Pay.

# Failure to Accept a Good Faith Offer of Suitable Employment (Cont'd.)

- ▶ With employers other than the employer of record, any offer will do (§4125-1-1(E)(2)(b)).
- ▶ An injured worker may decline a job which requires more hours than the former position of employment (§4125-1-01(E)(2)(b)).

# Good Faith Job Search

- ▶ Definition (§4125-1-01(E)(1)(c)): A consistent, sincere, and best attempt to obtain suitable employment that will eliminate the wage loss.

# Factors

- ▶ Skills and educational background.
  - ▶ Number, quality, and regularity of contacts.
  - ▶ Amount of time devoted to making contacts versus the hours worked at the former position of employment.
  - ▶ Refusal without good cause to accept assistance from the BWC.
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# Factors (cont'd.)

- ▶ Refusal to accept public or private assistance free of charge.
  - ▶ Labor market conditions.
  - ▶ Restrictions.
  - ▶ Change of residence.
  - ▶ Economic status as it relates to search for employment (access to transportation and technology).
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# Factors (cont'd.)

- ▶ Self-employment income capabilities.
  - ▶ Part-time employment opportunities.
  - ▶ Restricting the search based upon hours (adjudicator may consider relocation or a different shift in determining if an offer was made in good faith).
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# Practical Implications:

- ▶ What is considered a good faith search?
- ▶ Vocational instructions.

# Practical Implications: Working Wage Loss

- ▶ What we all know: Injured worker is going to get it, and now it's easier.

# Practical Implications: Until it's Not

- ▶ Request for 8 months of Working Wage Loss.
  - ▶ Full-time employee at Job A working three twelve hour shifts a week.
  - ▶ Part-time employee at Job B working two eight hour shifts.
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# Practical Implications (Cont'd.)

- ▶ Doctor limits claimant to forty hours a week.
  - ▶ Job A offers her light-duty work within restrictions, but only three eight hour shifts.
  - ▶ Job B can't accommodate restrictions.
  - ▶ Goes from fifty-two hours a week to twenty-four hours a week.
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# Practical Implications (Cont'd.)

- ▶ Claimant makes no effort to try and find another position to eliminate wage loss.
- ▶ She does not think anyone will hire her with her restrictions.

# Practical Implications (Cont'd.)

- ▶ What's the problem?
  - ▶ Employer of record offered her light-duty, and she otherwise would have been eligible for TTD.
  - ▶ No job search required?
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# Practical Implications (Cont'd.)

- ▶ Result: Full Commission Hearing.

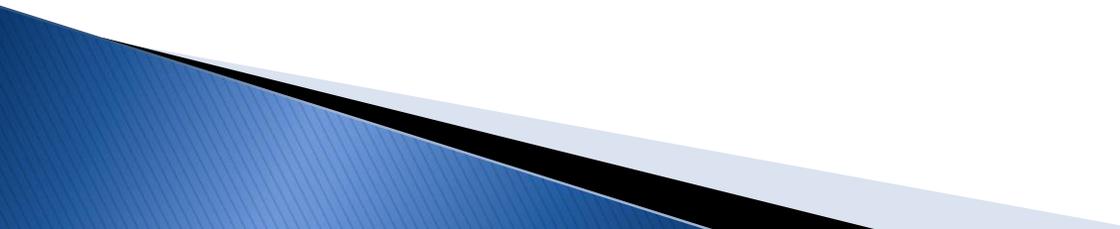
# Practical Implications (Cont'd.)

- ▶ Three Medco-14's, none of which mark if the restrictions were permanent or temporary.
  - ▶ If the restrictions were temporary, the duration was not listed.
  - ▶ If the restrictions were temporary, they weren't based off an exam within 90 days, because only one office visit was filed.
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# Practical Implications (Cont'd.)

- ▶ No medical report accompanying the application.
  - ▶ If the Medco's were considered valid, working wage loss was only payable for 90 days after the exam.
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# Practical Implications (Cont'd.)

- ▶ Would she qualify for TTD?
  - ▶ No examinations to support ongoing disability aside from the initial record.
  - ▶ Medco-14 was not complete.
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# Discussion Points / Questions?