

Bugbee & Conkle, LLP

Workers' Compensation News

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BUGBEE & CONKLE FIRM SEMINAR

Bugbee & Conkle, LLP will host a Fall seminar for its clients the afternoon of September 22, 2010. Please mark this date on your calendar. More specific information regarding the seminar will be distributed over

SUPREME COURT HOLDS SELF-INSURED EMPLOYERS ENTITLED TO *Sysco* REIMBURSEMENT FOR CLAIM EXPENSES INCURRED BEFORE OPT-OUT DATE

On June 8, 2010, in *State ex rel. Extencicare Health Services, Inc. v. Ryan*, 2010-Ohio-2452, the Ohio Supreme Court reviewed a self-insured employer's request for *Sysco* reimbursement for claim expenses incurred before the employer opted out of the *Sysco* reimbursement program pursuant to R.C. 4123.512 (H).

The claim, which had its inception in 2002, had been previously allowed for various right shoulder conditions. The Industrial Commission ordered payment of temporary total disability compensation based on the original allowances, which commenced in 2002 and continued through at least 2007. In 2004, the claimant successfully amended the claim for additional shoulder conditions, which the employer appealed to court. In 2007, the employer opted out of *Sysco*. Later, in 2008, the employer obtained judgment disallowing the additional shoulder conditions. Thereafter, the employer requested reimbursement for medical benefits and temporary total disability compensation paid through the date the employer opted out of *Sysco*.

The Supreme Court carefully reviewed the language of R.C. 4123.512 (H) and found while opting out of *Sysco* may be irrevocable, this does not mean the employer cannot seek reimbursement for claim expenses incurred prior to the opt-out date. The Court found the employer in this case was entitled to reimbursement of medical benefits only and not TTD compensation because the compensation was not based on the disallowed conditions. Certainly, under the court's analysis, the employer would have been entitled to reimbursement of TTD compensation had the compensation been paid for the disallowed conditions.

This is an important case for self-insured employers, who have opted out of *Sysco* and who may have reimbursement opportunities available to them. Self-insured employers who have opted out of *Sysco* should review their claims to ascertain whether they may be able to seek reimbursement for compensation and medical benefits paid prior to the employer's opt-out date.



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COURT OF APPEALS HOLDS OFF-DUTY EMPLOYEES MAY BE ENTITLED TO WORKERS' COMPENSATION

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In *Phelps v. Dispatch Printing Co.*, 2010-Ohio-2423, the 10th District Court of Appeals found an employee who sustained an injury while picking up his paycheck was entitled to workers' compensation.

In accordance with the employer's accepted practices, the claimant entered the employer's premises for the sole purpose of obtaining his paycheck. While on the premises, the claimant slipped and fell, injuring his left knee and hip. The Commission allowed the claim, which the employer appealed to the trial court.

The trial court granted the claimant summary judgment, concluding that the claim occurred in the course of and arose out of his employment. The court of appeals upheld the trial

court's decision. The court of appeals reasoned the mere fact that the claimant was not engaged in work activity at the time of the injury did not mean his injury was not in the course of employment because collecting a paycheck is sufficiently incidental to employment. Additionally, the court found the injury arose out of employment under a totality of the circumstances analysis.

The court was careful to limit its decision to the specific facts of this case and recognized other courts have denied claims under similar factual scenarios. Nevertheless, employers may wish to re-examine their practices regarding disbursement of paychecks in light of this case.

COMMISSION TO EMPLOY NEW CONTINUANCE PROCEDURES SOON

In January, 2010, the Commission conducted a "Kaizen Event" to devise solutions to the docketing and continuance processes employed by the Commission. Kaizen Events or Blitzes are based on a philosophy or practices focusing upon continuous improvement of processes through scientific study. Recently, the Commission held a lengthy follow-up meeting to the January Kaizen Event to solidify changes to the docketing system. The Commission plans to implement an improved docketing system sometime in Fall 2010.

The information contained in this publication is not intended to serve as legal advice, but merely to alert readers to developments in the law. If you have any questions, either call at the address listed above left or email us through our website. The website can be accessed by clicking the link below.

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