

BAYLOR BULLETIN

Baylor Associates, Inc.

7000 Fitzwater Road • Suite 325 • Cleveland • Ohio • 44141-1358
(440) 546-7600 • Fax (440) 546-7601 • (800) 433-1922

2010 MCO OPEN ENROLLMENT



“opportunity to choose the MCO to help manage the medical portion of their workers’ compensation claims.”

The 2010 Managed Care Organization (MCO) open enrollment period begins at 7:30 a.m. May 3 and ends at 5:30 p.m. May 28. Open enrollment gives all state fund employers with an active workers’ compensation policy the opportunity to choose the MCO to help manage the medical portion of their workers’ compensation claims. A strong MCO-employer partnership helps injured workers

receive the treatment they need to get back to work as safely and quickly as possible.

Choosing an MCO that meets the needs of your business and your employees is an important decision.

To help you make your choice, the BWC will post updated versions of the *MCO Open Enrollment Guide* and *MCO Report Card* on www.ohiobwc.com.

The guide will help you with the selection process while the

report card provides 2009 MCO performance information. BWC representatives are available at the MCO selection line at (800) 859-6631 from 7:30 a.m. to 5:30 p.m.

MCO’s cannot market to employers before May 3 but MCO’s can respond to an employer’s request. If you require additional information concerning the MCO relationship, please contact us at 800-433-1922.

EMPLOYMENT INTENTIONAL TORT STATUTE UPHELD

In 1982, the Supreme Court of Ohio created an exception to the longstanding rule that an employee may not sue his employer over a workplace injury. Under this exception, an employee could bypass workers’ compensation immunity from such

suits if he could prove that his employer was aware of a dangerous practice or condition, knew that the practice or condition was so dangerous that injury was substantially certain to occur and with such knowledge exposed the employee to the

danger. If the employee proved these elements, a jury could award civil damages beyond the benefits available under the workers’ compensation system.

Shortly after the creation of this new



“The ruling is a victory for Ohio employers because it confirms that the exclusive remedy for workplace injuries rests with the workers’ compensation system”

cause of action, the Ohio General Assembly commenced its decades-long quest to limit this economic threat to the business community. With two prior statutory fixes declared unconstitutional, the legislature finally met its goal with the latest version of Ohio Revised Code §2745.01. Enacted in 2005, this statute did not abolish employment intentional torts, but set the standard for an employee recovery extremely high. Specifically, employees were now required to prove that their employer deliberately intended to injure them. The Supreme Court addressed the constitutionality

question via its decisions in companion cases: *Kaminsky v. Metal & Wire Products Co.* and *Stetter v. R.J. Corman Derailment Services, LLC*. The injured employees brought eight separate constitutional challenges to the statute between the two cases. The Court ruled that the General Assembly had properly exercised its authority to limit the reach of employer intentional torts, adding that “the legislature is entrusted with the power to continually refine Ohio’s laws to meet the needs of our citizens.” Though certainly similar in purpose, Court noted that this statute did not meet the same

fate as its predecessors because of differences in the required standard of proof and limitations on damages.

The ruling is a victory for Ohio employers because it confirms that the exclusive remedy for workplace injuries rests with the workers’ compensation system except in those rare cases where an employer acts with deliberate intent to injure.

Editor’s Note: The foregoing article is not a substitute for legal advice concerning specific situations. Those with questions concerning this topic should contact Kelly E. Drushel, Esq. at (800)478-6499.

MANDATORY DISCOUNT PROGRAM SAFETY TRAINING

If you are enrolled in a group rating plan for the policy year which began July 1, 2009 and incurred at least one claim in 2007 or 2008, the Ohio Bureau of Workers' Compensation requires that you complete 2 hours of safety training

between July 1, 2009 and June 30, 2010. Failure to comply with the requirement may result in withdrawal of the discount for the current policy year and denial of participation for the next.

One method of complying is taking

advantage of the BWC’s On Demand courses that are geared toward safety. Currently available on-line courses that meet the 2-hour criteria are: *Avoiding Back Trauma (2hrs)*, *Getting Started with Safety (4hrs)*, or any combination of the

following courses amounting to two or more hours of training: Preventing Slips/ Trips /Falls (1hr), Industrial Hygiene Overview (1 hr), Preventing Cuts and Lacerations (35 min), and Ladder/Stairway Safety (45min).

All pages of the online course must be completed and the test passed before a certificate can be printed from the student transcript in the BWC Learning Center located in the "Personal Learning Center." BWC online courses can be accessed through the following path: OhioBWC.Com Com - Safety Services – under Training Services - Safety and Hygiene Training center - Web Based Courses -online course, select course (click on BWC Learning Center) - Enter log in ID or for first time customers select "First Visit."

You may attend courses made available at the Divisions Learning Center in Pickerington or at the BWC's district offices, but

remember participation is limited and you must have completed the training by June 30, 2010, so do not delay registering. You can schedule classes by going to: <http://www.ohiobwc.com/employer/programs/safety/SandHEducation.asp>.

Courses offered through non-BWC training forums can also satisfy the requirement. The topics must be workplace safety related and at least two hours long (or two one-hour classes). BWC preapproval is not required. They must be conducted by reliable and credible safety training sources. You can even use in-house training provided that the training is well documented and is beyond the expected regular day-to-day safety training in the workplace.

If you are in a 100% EM Cap Program, you must attend at least 6 hours of Safety Training through the BWC's Division of Safety & Hygiene. Online training does not meet this

requirement. If you are in the 10-Step Safety Plan for Business sponsored through the OPMCA and managed by us, attending one of the Safety & Workers' Compensation Seminars we conducted in December will have met this requirement.

If you are in the One Claim Program, you must complete 2 days of Safety Training through the BWC's Divisions of Safety & Hygiene. One, and only one, of the days can be completed online.

Please forward to our Lynne Miller documentation that you have completed the training, such as the course completion certificates from the BWC Division of Safety & Hygiene. You can forward them to Lynne via fax to (440) 546-6701, email to lmiller@baylorwc.com or by mail to Baylor Associates, Inc., 7000 Fitzwater Road, Suite 325, Brecksville, OH 44141. Please contact Lynne with any questions at (800)433-1922.



"One method of complying is taking advantage of the BWC's On Demand courses that are geared toward safety."

DRUG-FREE SAFETY PROGRAM

Baylor Associates, Inc.

7000 Fitzwater Rd
Suite 325
Brecksville, OH
44141-1358

PHONE:
(440) 546-7600

FAX:
(440) 546-7601

E-MAIL:
jdanner@baylorwc.com

We're on the Web!
See us at:
www.baylorwc.com

Effective July 1, 2010, the Ohio Bureau of Workers' Compensation (BWC) will phase out the Drug-Free Workplace Program (DFWP) and start the Drug-Free Safety Program (DFSP). The DFSP relies upon better integration of an employer's drug-free efforts with a comprehensive workplace safety program.

DFSP is a voluntary program that encourages employers to detect and deter substance use and misuse, and take appropriate corrective action within the context of addressing overall workplace safety. DFSP participation is not limited to five years and previous participants in the DFWP are eligible to join. Employers can enroll by **June 30, 2010** for the program year starting July 1, 2010 or by October 30, 2010 for the program year starting January 1, 2011.

Basic Level (4% Discount)
DFSP Basic requires completion of a safety review, timely accident reporting,

accident-analysis training for supervisors and development of a written DFSP policy. Required drug testing includes pre-employment/new hire, reasonable suspicion, post accident, return-to-duty and follow-up. Participants are required to provide one hour of employee education and two hours of additional training for supervisors. The Basic level also requires the employer to develop a list of community resources for employees with substance abuse problems.

Advanced Level (7% Discount)
DFSP Advance requires an employer to implement a safety action plan based upon the results of the completed safety review. The employer is required to meet all of the drug policy, education, training and testing requirements of the Basic Level plus random testing of 15% of the average annual workforce. It also requires the employer to facilitate and pay for substance assessment for any

employee who tests positive and offered a second chance to retain employment.

Participation
Group Rated employers must participate at the Advance Level to earn an additional 3% discount up to the maximum group credit. Employers participating at either level may also receive the benefit of the Small Deductible Plan and/or Safety Council Incentive Program. Employers in the DFSP can not pay salary continuation on claims with injury date after January 1, 2011 and can not participate in the 15K medical Only Program.

For more information, contact Joel Danner at (800) 433-1922 or email at jdanner@baylorwc.com. You may also learn more at www.ohiobwc.com and click on the Drug-Free Safety Program link.