



Ohio Legislative Service Commission

Bill Analysis

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S.B. 176

130th General Assembly
(As Introduced)

Sens. Seitz, Burke, Schaffer

BILL SUMMARY

- Prohibits an illegal or unauthorized alien from receiving compensation or benefits under Ohio's Workers' Compensation Law.
- Prohibits an employer from electing to cover an illegal or unauthorized alien under the Workers' Compensation Law.
- Requires a claimant for workers' compensation benefits to submit an attestation certifying that the claimant or the deceased employee who is the subject of the claim was an eligible "employee" under Workers' Compensation Law.
- Prohibits a person from making a false statement in an attestation with purpose to defraud or knowing that the person is facilitating a fraud.
- Grants an employer immunity from liability for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the employer's wrongful act or omission or neglect unless the employer employed the individual knowing that the individual was not authorized to work under federal law.
- Maintains employer liability for intentional torts.
- Creates an irrebuttable presumption that an illegal or unauthorized alien assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for an employer.
- Eliminates the potential jurisdiction of Ohio courts to hear any claim for damages suffered by an illegal or unauthorized alien by reason of personal injury sustained or

occupational disease contracted in the course of employment and caused by the employer's wrongful act or omission or neglect unless the employer employed the individual knowing that the individual was not authorized to work under federal law.

CONTENT AND OPERATION

Overview of workers' compensation liability

Ohio's workers' compensation system compensates an employee or an employee's dependents for death, injuries, or occupational diseases occurring in the course of and arising out of the employee's employment. The Ohio Constitution authorizes the General Assembly to enact legislation that creates a system of workers' compensation payments to injured employees or their families in lieu of all other rights to compensation or damages as a result of death, injuries, or occupational disease. According to the constitutional provision, an employer who pays the premium or compensation as required by the Workers' Compensation Law will not be held liable in damages at common law or by statute for the death, injury, or occupational disease of an employee.¹

On the other hand, an employer may be liable at common law or under a statute outside of the Workers' Compensation Law for an injury sustained by an individual if that individual is not an "employee" under the Workers' Compensation Law. For example, worker's compensation immunity does not apply, and an employer may be liable under common law, for an injury sustained by an independent contractor.²

Exclusion of illegal aliens and unauthorized aliens from the Workers' Compensation Law

Current law defines "employee" for purposes of Ohio's Workers' Compensation Law³ to include every person in the service of any person, firm, or private corporation, including any public service corporation, that employs one or more persons regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens.⁴ The Workers' Compensation Law does not define "alien."

¹ Section 35, Article II, Ohio Constitution and R.C. 4123.74 and 4123.77, not in the bill.

² *Fuhrman v. Garrison Feist Constr. Co.*, Hamilton App. Nos. C-000063, C-000080 2000 Ohio App. LEXIS 5851 (December 15, 2000).

³ R.C. Chapters 4121., 4123., 4127., and 4131.

⁴ R.C. 4123.01(A)(1)(b).



The bill limits the definition of employee with respect to aliens to include only aliens authorized to work by the U.S. Department of Homeland Security or its successor. The bill excludes illegal aliens and unauthorized aliens from the definition of employee. Under the bill, "illegal alien" means an alien who is deportable if apprehended because of one of the following:

(1) The alien entered the United States illegally without the proper authorization and documents.

(2) The alien once entered the U.S. legally and has since violated the terms of the status under which the alien entered the U.S., making that alien an "out of status" alien.

(3) The alien once entered the U.S. legally but has overstayed the time limits of the original legal status.

The bill defines "unauthorized alien" as an alien who is not authorized to be employed as determined in accordance with the Immigration Reform and Control Act (IRCA).⁵

Current law allows any employer to elect to include as an "employee" within the Workers' Compensation Law any person expressly excluded from the definition of "employee." The bill does not extend this authority to employers with respect to illegal or unauthorized aliens; thus, under the bill, an employer may not elect to obtain coverage under the Workers' Compensation Law for an illegal alien or unauthorized alien.⁶

Liability for injuries incurred or occupational diseases contracted by illegal or unauthorized aliens

General employer immunity from liability under the bill

Except as otherwise provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, under the bill if a claim is denied under "**Attestation of eligibility**" or "**Administrator review of attestation**" below, the claimant's employer, or, if the claimant is a dependent of an employee who died as a result of suffering an injury or contracting an occupational disease, the deceased employee's employer, is not liable to that claimant for damages suffered by reason of personal injury sustained or occupational disease contracted in

⁵ R.C. 4123.01(A)(1)(b), (A)(2)(e), (L), and (M) and Section 101(a) of the "Immigration Reform and Control Act of 1986," 100 Stat. 3360, 8 U.S.C. 1324a.

⁶ R.C. 4123.01(A).



the course of employment caused by the wrongful act or omission or neglect of the employer. For such a claimant, filing a claim under Ohio's Workers' Compensation Law is the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the claimant's or deceased employee's employment. Notwithstanding the continuing law provision stating that noncomplying employers are not entitled to the benefits of the Workers' Compensation Law⁷ and except as provided below, the bill creates an irrebuttable presumption that the individual assumed the risk of incurring an injury or contracting an occupational disease at the workplace, or dying as a result of such an injury or occupational disease, when performing services or providing labor for that employer.⁸

State and political subdivision immunity under the bill

Under the bill, the state or a political subdivision is not liable in any civil action brought by or on behalf of an illegal alien or an unauthorized alien for damages suffered by reason of personal injury sustained or occupational disease contracted in the course of employment caused by the wrongful act or omission or neglect of the state or political subdivision acting as an employer unless the state or political subdivision employed that illegal alien or unauthorized alien knowing that the illegal alien or unauthorized alien was not authorized to work under the IRCA (see "**Liability for knowingly employing an employee not authorized to work**" below).⁹

Elimination of jurisdiction

Except as provided under "**Liability for knowingly employing an employee not authorized to work**" and "**Liability for intentional torts**" below, the bill also eliminates the jurisdiction of Ohio courts to hear a potential claim for damages suffered by an illegal alien or an unauthorized alien by reason of personal injury sustained or occupational disease contracted by the illegal alien or unauthorized alien in the course of employment caused by the wrongful act or omission or neglect of the employer. Under the bill, an illegal alien or unauthorized alien assumes the risk of incurring such an injury or contracting an occupational disease, and that assumption is a complete bar to a recovery of damages for such an injury or occupational disease.¹⁰

⁷ R.C. 4127.77, not in the bill.

⁸ R.C. 4123.513(A).

⁹ R.C. 2743.02(I) and 2744.02(A)(1).

¹⁰ R.C. 2307.82(B).



Liability for knowingly employing an employee not authorized to work

An employer is liable under the bill, however, to a claimant whose claim is denied under "**Attestation of eligibility**" or "**Review by Administrator**" below for such damages if the claimant establishes, by clear and convincing evidence:

(1) That the employer employed the claimant or the deceased employee who is the subject of the claim knowing that the claimant or deceased employee was not authorized to work under the IRCA on the date the claimant or deceased employee suffered the injury or contracted the occupational disease;

(2) That the employer's knowledge was not solely the result of communications made by the claimant or the deceased individual to the employer.

An employer may not assert the fellow servant rule, assumption of risk, or contributory negligence to defend against such a claim. As discussed above, under the bill the state or a political subdivision is liable in such a claim if the state or political subdivision employed an illegal or unauthorized alien knowing that the illegal or unauthorized alien was not authorized to work. Additionally, the bill grants a court jurisdiction over such a claim.¹¹

Liability for intentional torts

The bill prohibits anything in "**General employer immunity from liability under the bill**" above from being construed to prevent an illegal alien, unauthorized alien, or a claimant whose claim is denied because the claimant is or the deceased individual was an unauthorized alien from bringing a claim against an employer in a court of competent jurisdiction for an intentional tort allegedly committed by the employer against the illegal or unauthorized alien.¹²

Change in claim procedure to include attestation and review

Under continuing law, within seven days after receipt of any claim under the Workers' Compensation Law, the Bureau of Workers' Compensation (BWC) must notify the claimant and the employer of the receipt of the claim and of the facts alleged therein. Generally, in claims other than those in which the employer is a self-insuring employer, if the Administrator of Workers' Compensation determines that a claimant is or is not entitled to an award of compensation or benefits, the Administrator must issue an order no later than 28 days after the sending of the notice of the receipt of

¹¹ R.C. 4123.513(B), 2307.82(C), 2743.02(I), and 2744.02(A)(1), by reference to R.C. 4123.77, not in the bill.

¹² R.C. 2307.82(C) and 4123.513(C).



the claim, granting or denying the payment of the compensation, benefits, or both as is appropriate to the claimant.¹³

Attestation of eligibility

Under the bill, to be considered eligible for compensation or benefits paid under the Workers' Compensation Law other than for medical benefits, a claimant must submit to the Administrator a signed attestation that the claimant, or if the claimant is a dependent of an individual who died as a result of suffering an injury or contracting an occupational disease, the deceased employee was an eligible "employee" as defined in "**Exclusion of illegal aliens and unauthorized aliens from the Workers' Compensation Law**" above. The Administrator may not pay compensation or benefits, other than medical benefits, unless the Administrator receives the signed attestation.¹⁴

Review by Administrator

If the Administrator has reason to believe that a submitted attestation is not valid, the Administrator may request that the claimant submit proof of the attestation's validity. The bill requires the Administrator to make the request in writing and to state in the request the type of proof necessary to determine validity and the date by which the claimant must submit the proof. The bill requires the Administrator to deny any claim for compensation or benefits other than medical benefits if a claimant fails to comply with a written request to provide proof of the attestation's validity. A claimant who fails to comply with that written request is barred from refiling the claim for compensation or benefits for which the proof was requested, but the claimant may appeal according to the current law appeals process.¹⁵

Criminal liability for fraud

The bill prohibits a claimant from making a false statement in an attestation submitted to the Administrator under "**Attestation of eligibility**" above with purpose to defraud or knowing that the person is facilitating a fraud. A person who violates this prohibition is guilty of workers' compensation fraud, a first degree misdemeanor.¹⁶

¹³ R.C. 4123.511(A) and (B)(1).

¹⁴ R.C. 4123.511(A) and 4123.01(A).

¹⁵ R.C. 4123.511(A).

¹⁶ R.C. 2913.48.

Applicability of the bill

The bill applies to claims arising on or after the bill's effective date.¹⁷

HISTORY

ACTION	DATE
Introduced	08-12-13

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¹⁷ Section 3.

