

December 2007

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### **New Ohio Supreme Court Decision Sharply Limits *Coolidge* Case – Workers' Compensation Claimants Not Immune from Absenteeism Policies**

In an important victory for employers, the Ohio Supreme Court has essentially reversed an earlier decision that prohibited the discharge of employees on workers' compensation leave. Generally, the new ruling puts workers' compensation recipients on the same footing as other employees who are out on leave.

On Thursday, December 20, 2007, the Ohio Supreme Court issued its decision in *Bickers v. W. & S. Life Ins. Co.*, greatly limiting the application of the 2003 *Coolidge v. Riverdale Local School Dist.* decision. Lower courts and lawyers had interpreted *Coolidge* to mean that employees in general could not be disciplined or discharged for absenteeism caused by an industrial injury. In *Bickers*, the Court held that *Coolidge* only applied to the peculiar facts of that case, which concerned a public school teacher who could be discharged for only "good and just cause." The Court disavowed that workers' compensation claimants are immune from their employers' absenteeism policies and made it plain that workers' compensation claimants are protected only against retaliatory actions taken because of their pursuit of a workers' compensation claim. In so holding, the Court has restored the long-held understanding of Ohio law on this subject, which appeared to be disturbed by the *Coolidge* decision.

Because of *Coolidge*, many Ohio employers feared that they had lost the ability to enforce their normal absenteeism policies as to employees who claimed that they were missing work because of an industrial injury. Employers were understandably concerned that *Coolidge* required them to hold jobs open indefinitely for employees who said they were missing work because of a workplace injury or illness entitling them to receive workers' compensation benefits. The *Bickers* Court addressed that concern and wrote that *Coolidge* "does not create a claim of wrongful discharge in violation of public policy for an employee who is discharged while receiving workers' compensation."

In *Bickers*, an employee of the Western & Southern Life Insurance Company filed a workers' compensation claim which was allowed for multiple conditions. Following the injury, *Bickers* experienced periods of inability to work, which were compensated through temporary total disability benefits under the Workers' Compensation Act. *Bickers* was terminated by her employer because of absenteeism while she was receiving temporary total disability compensation. *Bickers* filed a complaint for wrongful discharge, relying on *Coolidge*. The Supreme Court, however, held her discharge to be lawful, holding that the rule in *Coolidge* only applies to a determination of

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whether there was a cause sufficient to overturn the contractual protection afforded under R.C. 3319.16, governing contracts involving school teachers. The Court took note that *Bickers*, unlike the plaintiff in *Coolidge*, was not a school teacher whose employment was subject to R.C. 3319 and, for that reason, could not base a claim on *Coolidge*. This strict limitation on the scope of the *Coolidge* case practically overturns it.

The Court noted that if Ohio ever adopts an immunity from absenteeism policies for workers' compensation claimants, it will have to be the General Assembly that enacts the immunity. The Court's majority says that it will not impose such a rule in Ohio through judge-created law.

While the Court acknowledged the long-standing principle that workers' compensation claimants cannot be singled out for selective enforcement of absenteeism policies, workers' compensation claimants have no greater right to be absent from work without penalty than do all other Ohio workers. It remains the case that workers' compensation claimants may enjoy a right to limited absence without penalty under certain familiar laws, such as the Family and Medical Leave Act, but there is no special right to be absent enjoyed by those who claim an inability to work due to industrial injury. The opportunity of employers to set attendance policies for employees, including workers' compensation claimants, is vindicated by the new *Bickers* decision.

Many Ohio employers suspended enforcement of their normal absenteeism policies as to employees who claimed that they were missing work because of an industrial injury. Those employers will now want to revisit with their lawyers renewed enforcement of attendance policies with respect to workers' compensation claimants. The Court's majority, consisting of Justices Stratton, O'Connor, O'Donnell, Lanzinger and Cupp (who wrote the majority decision), have ended a four-year period of ambiguity on this important point of Ohio employment and workers' compensation law.

Please do not hesitate to contact us about the application of the *Bickers* rule to your company's attendance policies.

**If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.**

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