

# EMPLOYERS WIN BIG UNDER OHIO SUPREME COURT'S WORKERS' COMP RULING: HERE'S WHAT YOU NEED TO KNOW ABOUT RECOUPING OVERPAYMENTS

Insights  
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Employers faced many obstacles over the last few years, but the Ohio Supreme Court just gave them a welcomed boost in a ruling that should significantly reduce workers' compensation claim costs. In a highly contentious 4-3 decision issued on March 5, the court eliminated more than 25 years of precedent and will now make it easier for employers to recoup overpayments when an injured worker has reached maximum medical improvement after collecting temporary total disability benefits. Here's what employers need to know about this hot-button issue and what to expect next.

## First, the Workers' Compensation Basics

**Temporary Total Disability Benefits.** When an employee is injured on the job and is temporarily unable to return to work due to the disability caused by the work injury, they are eligible to collect temporary total disability (TTD) benefits. These benefits are paid on a weekly basis and are intended to substitute the injured worker's income while they are recuperating and being treated for the workplace injury.

**Maximum Medical Improvement.** While there are several ways TTD benefits can be terminated, one of those ways – which happened to be the issue in the current case – concerns when the injured worker has reached what is called "maximum medical improvement" or MMI. This means, despite ongoing treatment, the injured worker has reached a plateau for which no discernable improvement is expected. So, whatever the level of disability, it has now

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become permanent, making the injured worker no longer eligible for temporary total disability benefits.

**Disputes About Temporary or Permanent Disability.** In order to continue receiving TTD benefits, the injured worker's attending physician must periodically complete certain paperwork declaring that their patient is still temporarily and totally disabled. This could conceivably continue for quite some time, which can significantly run up claim costs. To combat what is sometimes an abuse of the system, the employer may have the injured worker examined by a non-attending physician to determine if the injured worker has reached MMI. If the non-attending physician determines MMI, but the treating physician does not, a dispute arises, which is determined at a hearing before a state agency called the Industrial Commission of Ohio.

### **The Continuous Debate Over When Benefits Terminate**

**Historical Context.** For many years, the proper date to terminate TTD benefits was the date of the termination hearing before an Industrial Commission hearing officer. However, in 1995, the Commission adopted a resolution that said TTD benefits could be terminated on the date of a non-attending physician's report declaring MMI.

Since the date of this report could be months prior to a termination hearing, overpayments were declared in a significant number of cases. These overpayments could be recouped by the Ohio Bureau of Workers' Compensation or self-insured employer from the injured worker, through future payments in their claim.

This is an important issue for employers because overpayments that accumulate over a few months could amount to several thousand dollars.

As you can imagine, this change created significant tension between employer groups and worker representatives, and it ended up before the Ohio Supreme Court.

**The Last 25 Years.** In 1998, the court found that the Commission's 1995 resolution was unlawful and determined that the proper date for termination of TTD benefits based upon a finding of MMI was the date of the termination hearing – not the earlier date of the non-attending physician's report declaring MMI.

**The 2024 Ruling.** Now, fast-forward to March 2024. The Ohio Supreme Court essentially just overruled the 1998 decision, which is good news for employers. In [\*State ex rel. Dillon v. Indus. Comm.\*](#), the court found that the date for termination of TTD benefits was the date when the injured worker was declared MMI by any physician, including a physician hired by the employer to conduct an examination to determine MMI.

### **What Does This Mean For Employers?**

- The *Dillon* decision will undoubtedly cause a significant uptick in the number of overpayments declared in Ohio.
- Will *Dillon* last, or will it be rendered moot by the General Assembly through an amendment to Ohio law? It is hard to say.
- To cut down on potential overpayments, the Commission could fast-track motions by employers requesting termination of TTD benefits. This would decrease the time between the date of the non-attending physician's report on MMI and the termination hearing before the Commission, which would theoretically reduce the amount of the overpayment. However, it is not known whether the Commission plans to take such action.
- In the meantime, the *Dillon* decision will have a positive impact by reducing claim costs for employers in Ohio.

### **Conclusion**

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Ohio employers, so make sure you are subscribed to [\*Fisher Phillips' Insight System\*](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Cleveland](#) or [Columbus](#) offices.