

**OHIO SUPREME COURT DRAMATICALLY CHANGES THE WAY EMPLOYERS CAN DEAL WITH EMPLOYEES WHO ARE RECEIVING WORKERS' COMPENSATION BENEFITS**

**BY: MICHAEL ANDERTON, ESQ.**

On October 22, 2003, the Ohio Supreme Court issued a unanimous opinion in *Coolidge v. Riverdale Local School District* (“*Coolidge*”), where it ruled that an employee who is receiving temporary total disability (“TTD”) compensation under Ohio workers’ compensation law, cannot be discharged solely on the basis of absenteeism or inability to work, where the absence or inability to work is directly related to the allowed condition. While *Coolidge* appears to be straightforward on its face, in reality, the decision likely creates a variety of unknown and unanticipated difficulties for Ohio employers who wrestle with the related issues which arise from and are not discussed in *Coolidge*.

**INJURY, LEAVE OF ABSENCE AND ULTIMATE TERMINATION**

Ms. Coolidge was an elementary school teacher who was injured when she was assaulted by one of her students. She received a 30 day assault leave under the relevant provisions of the collective bargaining agreement between the school district and her union. In addition, Ms. Coolidge filed a workers’ compensation claim. In the course of processing that claim, it was ultimately determined that Ms. Coolidge was temporarily totally disabled and she began to receive TTD benefits. When Ms. Coolidge could not return to work at the expiration of her initial assault leave, she was granted an additional 30 day assault leave. Her request for a third assault leave was denied. Ms. Coolidge’s continued absence from work was covered by accumulated sick leave.

Ms. Coolidge exhausted her sick leave May

11, 1999; however, she remained medically unable to return to work. Pursuant to existing policy, Ms. Coolidge was placed on uncompensated leave of absence, which was available for up to one year.

Ms. Coolidge still had not returned to work as of March 2000. On April 17, 2000, the school board initiated the process of terminating Ms. Coolidge’s teaching contract due to her continued inability to work. Ms. Coolidge requested a hearing, as permitted by Ohio statutes governing employment and tenure of teachers. Ms. Coolidge’s unpaid leave expired May 10, 2000 and she did not request any additional leave.

A hearing regarding Ms. Coolidge’s contract occurred August 1, 2000. Following the hearing, the referee decided that Ms. Coolidge had been absent without leave since her unpaid leave expired May 10, 2000 and that her AWOL status provided just cause to terminate her contract. Ms. Coolidge apparently argued that an employer should not be able to discharge an employee who fails to return to work from leave of absence while the employee is still receiving TTD benefits, an argument the referee rejected.

On September 18, 2000, nearly 23 months after Ms. Coolidge had last actually worked, the school board terminated her contract, citing the conclusions earlier reached by the referee, that Ms. Coolidge had exhausted all available leave and that her status was inconsistent with the obligations of her contract. According to the school board, Ms. Coolidge’s failure to perform the duties of her job provided good and just cause to terminate the contract.

### **OHIO SUPREME COURT DECISION**

The case worked its way through the Ohio court system and eventually landed at the Ohio Supreme Court. A variety of arguments were made by Ms. Coolidge and the school board before the referee and the lower courts. The Supreme Court reached into this pile and pulled out public policy, immediately characterizing the question of "whether public policy embodied in the Workers' Compensation Act protects an employee who is receiving TTD compensation from being discharged solely because of the disabling effects of the allowed injury" as the "overriding issue" present in the case, even though neither lower court had addressed the public policy issue.

The Court first recognized that public policy normally operates as an exception only to the employment-at-will doctrine and that Ms. Coolidge was not an at-will employee. The Court also acknowledged that it has never decided whether the discharge of an employee receiving TTD benefits, which is not otherwise retaliatory in violation of Ohio Revised Code § 4123.90, violates public policy. Neither fact dissuaded the Court from deciding that this was properly a public policy case.

The Court analyzed a variety authority, from Ohio and several other states, which supports both positions in this case. Ultimately, the Court concluded that the public policy of Ohio's Workers' Compensation Act can only be effectuated if an employer is prohibited from terminating an employee for being absent from work due to a work-related, allowed injury for which the employee is receiving TTD compensation, even though the Court acknowledged that this was the minority position and was not supported by any Ohio statutory language.

### **PRACTICAL EFFECTS OF COOLIDGE**

The long range effects of *Coolidge* remain to be determined. However, some effects or potential effects are already apparent.

The most practical outgrowth of *Coolidge* is that an employee cannot be discharged for being absent from work where the employee's absence is the result of a medical condition which results from a work-related injury for which the employee is receiving TTD benefits. This includes any variation on that general theme; an employee cannot be discharged under such circumstances for excessive absenteeism, for violating an otherwise facially neutral attendance policy or for exhausting available leave(s) of absence, paid or unpaid.

The employee can be terminated, so long as the employer has independent grounds for the discharge. However, non-compliance with various leave or policy requirements and/or obligations which flow from the employee's work-related injury cannot constitute such an independent ground if the employer is aware or deemed to be aware of the employee's status. For example, the employee cannot be discharged for failing to complete forms required for a leave of absence or for failing to notify the employer of the length of the absence where the employer is otherwise on notice of the employee's status. Because employers almost always are explicitly aware of the fact that one of their employees has been granted TTD status, there are likely very few circumstances where an employer could support a termination based on noncompliance with any requirement associated with the employee's leave of absence.

An employee who refuses to cooperate regarding requests for relevant information concerning the employee’s condition and/or work status may provide the employer with independent cause to support a termination. However, the Court expressly cautioned employers against trying to circumvent the practical application of *Coolidge* by couching an absenteeism-based discharge in terms of non-cooperation in circumstances where the facts make it obvious that the employer is well aware of the employee’s medical condition and status.

The actual holding of *Coolidge* is that Ms. Coolidge’s termination violated public policy and, therefore, left the employer without “good and just cause” to terminate her teaching contract. The Court did not explicitly state that *Coolidge* creates another public policy exception to Ohio’s at-will-employment doctrine; however, it must be presumed that *Coolidge* stands for exactly that proposition, even though employees with contracts arguably have more protection, which could justify imposing a stricter standard. Thus, employers should assume that terminating an at-will employee who is off work and receiving TTD compensation constitutes wrongful discharge in violation of Ohio public policy.

One obvious reality created by *Coolidge* is an explicit distinction between employees who suffer work-related injuries and those who are absent from work for injuries which are unrelated to work. The Court quickly dismissed the argument that employers should not be required to treat workers’ compensation claimants more advantageously than other absent employees as nothing more than a “galvanizing slogan” stating, simply, “workers’ compensation claimants are not similarly situated to other employees precisely because they are workers’ compensation claimants.” Employers should continue to deal with their non-workers’ compensation leave of absence employees the same way they always have. Such employees should be granted leaves provided by all relevant sources, i.e., employer policies, collective bargaining agreement provisions, the Americans with Disabilities Act, and/or the Family and Medical Leave Act, if applicable.

Another important question unanswered by *Coolidge* concerns health insurance premiums. After *Coolidge*, what obligation does an employer have to continue paying its share of health insurance premiums for an employee who is absent from work and receiving TTD compensation? *Coolidge* effectively says that an employee who is receiving TTD benefits is entitled to unlimited leave of absence for the entire time he is receiving TTD, which could be several years. If an employer’s standard policies state that the employer pays the health insurance premiums of an employee who is on leave of absence, does *Coolidge* impose an obligation to pay health insurance premiums for the entire TTD period, even if employees who are not receiving TTD while on leave would get employer-paid premiums only for the “standard” period of leave? *Coolidge* makes clear that such individuals are still “employees,” a designation that triggers coverage under many medical insurance benefit plans. One change which employers might immediately consider is to modify any applicable leave of absence policy/language, if possible, so that the employee is responsible for payment of any health insurance premiums during the entire period of leave which occurs after the employee has exhausted his or her FMLA entitlement, if any.

Another result of *Coolidge* is that the determinations reached in processing workers’ compensation claims are now more crucial than ever. Employers will almost certainly - and should - be more aggressive in contesting claims and diagnoses and pursuing their rights to challenge a determination, particularly in this era of skyrocketing health care costs when the alternative might be paying health insurance premiums for years after the employee stops working for the employer. Likewise, employees now have an even greater incentive to falsify claims. If an employee can get an initial determination that a medical condition is allowed and that he is temporarily totally disabled from the condition, he may have secured continued employment for as long as he is off work. In short, we may see an increase in the number of claims where it is legitimately questionable as to whether the injury at issue is even work-related.

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*“Ohio Supreme Court”...continued*

The full scope of possible issues created by *Coolidge* cannot be measured at this time. It is safe to say that the impact could be extremely significant if left undisturbed by the Ohio legislature, which can clean up some of the issues created by *Coolidge* via statutory amendment. Until subsequent court decisions clarify some of the issues and/or the Ohio legislature takes action, one directive of *Coolidge* is clear. Employees may not be terminated as a result of the absence or absenteeism which flows from their work related injury.

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