

## Two for the Employer: Ohio Supreme Court Upholds Limitation On Employment Intentional Tort Lawsuits

*Kaminski v. Metal & Wire Prods. Co., Slip Opinion No. 2010-Ohio-1027, and Stetter v. R.J. Corman Derailment Servs., L.L.C., Slip Opinion No. 2010-Ohio-1029.*

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In two separate opinions issued on March 23, 2010, the Ohio Supreme Court upheld the constitutionality of Ohio Rev. Code § 2745.01, the Ohio employment intentional tort statute which became effective April 7, 2005. The statute will apply to cases arising from injuries sustained on or after that date. The legislation was enacted in response to a series of Supreme Court decisions holding that an injured worker may pursue a direct liability action against his or her employer based on a claim of intentional tort, despite the constitutional and statutory immunity provided to Ohio employers under the workers' compensation laws.

Notwithstanding the exclusivity of the workers' compensation remedy, many Ohio employers were forced to defend these costly intentional tort cases while at the same time their injured workers were enjoying the compensation and benefits provided under the workers' compensation system for the very same injuries. Further, since the Supreme Court first permitted such intentional tort actions in 1982, the standard for holding employers liable had been vague but evolving, creating uncertainty and needless litigation.

The Court's welcome decisions uphold the limitations placed on such direct

liability actions by the Ohio General Assembly. The employment intentional tort statute prohibits recovery against an employer unless the employee can prove that the employer committed an act (1) "with the intent to injure" or (2) with the belief that the injury was "substantially certain" to occur. "Substantially certain" is further defined in the statute as the "deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death." The deliberate removal of an equipment safety guard or the deliberate misrepresentation of a toxic or hazardous substance can result in liability for an employer under the statute.

The Court's decisions should result in fewer intentional tort lawsuits being filed and, of those that are filed, fewer cases surviving a motion for summary judgment. Importantly, the Court's decisions restore the balance struck a century ago when Ohio joined virtually every American jurisdiction in choosing to eliminate lawsuits as the means to remedy industrial injuries and, instead, creating a no-fault system providing swift and certain compensation for the victims of industrial injuries and their families. The Court's decisions do much to restore the limitation on liability enjoyed by employers in virtually every other state.

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