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# Public Law Update

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Local, State and Federal Legislative Updates  
Presented By Tucker Ellis & West LLP

**MARCH 2006**

## **WORKERS' COMPENSATION CHANGES COMPLETED**

The General Assembly has completed work on an omnibus rewrite of Bureau of Workers' Compensation laws that also include a provision to raise the state minimum wage. Governor Bob Taft is expected to sign the measure. The changes affect benefits, coverage, injury definitions, public records, anti-fraud efforts, fines and appeals. Late changes to the measure included an amendment that blocks a BWC Oversight Commission policy of limiting campaign contributions from investment managers to \$250. Under the change, which prohibits the panel from imposing restrictions that go beyond current campaign finance laws, the contractors could donate \$1,000 to a gubernatorial campaign and up to the regular state law maximum of \$10,000 to candidates for other statewide offices.

The minimum wage amendment would increase the state minimum wage by 90 cents to equal the federal minimum of \$5.15 and tie the state's minimum wage to future increases in the federal rate. It is widely believed that no employers in Ohio were paying the lower state rate as it only applies to employers with annual gross sales of less than \$500,000.

## **APPEALS PANEL ALLOWS NURSING HOMES TO SUE ODJFS OVER REIMBURSEMENT RATES IN COMMON PLEAS COURT**

An appeals court has cleared the way for three nursing home operators to pursue their lawsuit against the state over reimbursement rates in common pleas court rather than the Ohio Court of Claims. The 10<sup>th</sup> Ohio District Court of Appeals overturned the ruling of a Franklin County common pleas judge who initially dismissed the operators' complaint against the Ohio Department of Job and Family Services. Nursing home companies PNP, Inc., BLCC, Inc., and Crestview Nursing and Rehabilitation Center went to court in March 2004. They alleged ODJFS failed to adequately reimburse them for complying with a mandated increase in the minimum nurse-to-patient staffing ratio. Each home hired extra nursing staff to comply with the new

regulation, but the prospectively calculated reimbursement rates for fiscal years 2002 and 2003 did not account for the increased employment costs. The trial court dismissed the nursing homes' complaint after ruling the claim for monetary damages was "inextricably intertwined" with other requests. A unanimous appellate panel agreed Thursday with the nursing homes that jurisdiction over the action properly belonged in common pleas court.

## **BILL BARRING WRONGFUL BIRTH/LIFE LAWSUITS HEADS TO TAFT FOR SIGNATURE**

A bill to bar lawsuits against doctors for failing to provide information to parents that might have caused them to seek an abortion cleared the House Tuesday and is headed to Governor Taft for his signature. Wrongful birth actions are brought by parents of children with birth defects who allege their doctor is liable because the parents would have ended the life of the child had they known about prenatal birth defects. The Ohio Supreme Court recently ruled that parents pursuing such a course of action could collect damages for costs arising from the pregnancy and birth. Parents could not, however, recover the economic cost of raising a disabled child nor other non-economic damages. The bill being sent to Taft would eliminate the former course of action as well. Under the measure doctors could not be sued for misdiagnosing or failing to diagnose a disability that parents say should have been caught.

## **LATEST VERSION OF 'FALSE CLAIMS ACT' DETAILED**

A proposal to allow citizens to initiate claims of fraud perpetrated against state government was detailed recently by Sen. David Goodman (R-New Albany) and will be introduced in the Senate Judiciary-Civil Justice Committee in the coming weeks. The bill, patterned after the federal False Claims Act, would allow Ohioans to initiate civil lawsuits regarding fraud on behalf of the state. The attorney general would review the sealed complaints and, if the official decides to

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move forward and is successful at proving that a fraud has been "knowingly and deliberately committed," share with the whistleblower 15-25% of any recovered proceeds. The bill imposes civil fines of \$5,500-\$11,000 for each false or fraudulent claim and allows the state to seek triple the amount of money lost through the illegal activity.

**EMINENT DOMAIN PANEL BEGINS TO WEIGH ECONOMIC DEVELOPMENT VS. PROPERTY RIGHTS**

The 25-member Eminent Domain Task Force authorized under legislation (SB 167) last year that imposed a moratorium on local government use of eminent domain held its first meeting. The Task Force and moratorium were created in response to a 5-4 U.S. Supreme Court decision in 2005 that held that government could use eminent domain to take property from private owners for hotels, office parks or other projects that would generate more tax revenue.

The group faces an April 1 deadline for recommending how, if at all, the General Assembly should respond to the U.S. Supreme Court decision. Possible recommendations include: legislators should do nothing, allowing courts to sort out disputes that arise; legislators should pursue statutory changes about use of eminent domain; legislators should propose a constitutional amendment in which statutory changes would apply uniformly regardless of constitutional home rule powers that municipalities enjoy. The task force faces a second deadline of Aug. 1 for making specific policy and procedural recommendations to the General Assembly.

Pending in the Senate is a measure (SJR 6) Sen. Coughlin introduced proposing submission of a constitutional amendment that would eliminate the grant of eminent domain to municipalities. The amendment would allow cities to use such powers only as the General Assembly authorizes, the same restriction that currently applies to all other local governments.

**GROCCERS SUE TO BLOCK NEW BUSINESS TAX'S APPLICATION TO FOOD**

The Ohio Grocers Association and four local businesses filed a complaint in Franklin County Common Pleas Court which claimed that the new commercial activity tax is an unconstitutional levy on food purchased for off-premise consumption and should be blocked from such applications. The suit seeks an order "invalidating the CAT" when applied to

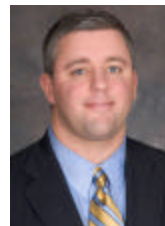
retail sales for off-premise consumption, wholesale and packaged food. Plaintiffs also want the state to refund all CAT receipts collected from the sales of such products. The Ohio Constitution prohibits sales taxes on food bought for off-premise consumption. The CAT, once fully implemented after a five-year phase-in, will apply at a 0.26% rate to businesses' gross receipts that exceed \$1 million a year. Businesses making between \$150,000 and \$1 million a year are subject to a minimum annual payment of \$150. Those making less than \$150,000 annually don't have to register or pay the CAT. Along with an invalidation order, the complaint seeks a declaration that the CAT violates the Ohio Constitution, a permanent order barring the state tax commissioner from enforcing the tax on certain food, and an order for the state to refund CAT receipts already paid on the aforementioned products.

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*For assistance or more information regarding the legislation and programs referenced in this newsletter please contact:*



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