



Weston Hurd Client Advisory - November 2012

Ohio Supreme Court Strictly Construes Workplace Intentional Tort Statute

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In a highly watched case, the Ohio Supreme Court narrowly interpreted the portion of Ohio's workplace intentional tort statute under which employers can be held liable if they remove safety guards from equipment. *Hewitt v. L.E. Myers Co.*, 2012-Ohio-5317. Ohio Revised Code Section 2745.019 limits an employer's liability for workplace injuries to cases where it deliberately intends injury. The statute creates an exception for cases of "deliberate removal by an employer of an equipment safety guard," which creates a rebuttable presumption that the employer intended injury.

In *Hewitt*, the plaintiff argued his employer fell within the exception by instructing him that he did not need to wear rubber gloves because the high voltage line he was working near was de-energized. The trial judge allowed the case to go to the jury and it found for the plaintiff. The Court of Appeals affirmed, finding that the statute's exception was broad enough to include an employer failing to require an employee to wear rubber gloves when working near energized power lines.

The Supreme Court reversed the Court of Appeals holding that deliberate removal of an equipment safety guard occurs only "when an employer makes a deliberate decision to lift, push aside, take off, or otherwise eliminate" a guard from a machine. The court held personal protective equipment, back up alarms, trench supports, and the like are not "equipment safety guards" and that failure to provide them does not create a presumption of deliberate intent to injure so as to support an intentional tort claim against an employer. The court looked to dictionary definitions and rules of grammar to support its holding. It also found its decision consistent with the Ohio legislature's intent to reduce employer liability for workplace injuries.

The *Hewitt* decision can be found at [*Hewitt v. L.E. Myers Co.*, 2012-Ohio-5317, 2012 Ohio LEXIS 2874.](#)

Please contact Weston Hurd if you have any questions about how this decision may impact your pending claims.



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