

Calfee's Workers' Compensation and OSHA group uses an aggressive yet efficient approach in our representation of employers facing every conceivable workers' compensation, OSHA and related employer liability concern. Our attorneys counsel a wide range of industries including: chemical, construction, metalforming and metal finishing, hotel, health care, restaurant, food products, interstate trucking, employee leasing, packaging, warehousing and distribution, and other manufacturing and service industries. Many of these companies are self-insured for workers' compensation liability. In addition, we counsel public employers.

Nothing exists in a vacuum. A single industrial accident may have workers' compensation, OSHA, intentional tort/personal injury, insurance coverage, ADA, FMLA, retaliatory discharge and even crisis management implications. Our attorneys are available 24 hours a day to counsel clients in such situations. We also work with employers on OSHA compliance (the "accident that never happens"), workers' compensation audits including coverage options, and individual "problem" workers' compensation claims (those involving high liability, fraud, or the need to present witnesses or legal argument). Our attorneys pride themselves on having the experience and knowledge to have the complete picture in mind when advising employers. The solutions we offer not only address our clients' concerns but do so in a cost-efficient manner.

What is The National Workers' Compensation Defense Network?

Calfee serves as the Ohio member of The National Workers' Compensation Defense Network (NWCDN), a nationwide and Canadian network of independent law firms. NWCDN was created to provide an organization where reputable law firms could form a network to provide employers and insurers access to quality representation in workers' compensation and related employer liability fields. (Visit www.nwcdn.com for more information.)

Do smaller and mid-sized businesses also have workers' compensation issues?

Yes. Most of these businesses and their workers' compensation claims are subject to the Ohio Bureau of Workers' Compensation's "MIRA" reserving system. Reserves affect group rating eligibility and the potential for large premium savings. In claims where the claimant has an attorney, which may significantly impact premiums, employers should consider retaining outside legal representation.

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Representative Experience

Ohio Industrial Commission

- > Claim allowance, injury and occupational disease, and use of positive drug tests
- > Extent of disability, including permanent total disability
- > Termination of benefits, including ex parte
- > Ohio Workers' Compensation jurisdictional disputes, including interstate trucking and use of C-112 agreements
- > Safety violations (VSSRs)
- > Structured and other settlements

Ohio Bureau of Workers' Compensation

- > Self-insured conversions and renewals
- > State buy-backs of self-insured liability
- > Self-insured complaints
- > DWRF and other assessments review
- > State-fund payroll, manual classification, and experience rating review
- > BWC field audits and protests
- > Non-complying employer liability and settlements
- > Handicap reimbursement
- > MCO and QHP considerations
- > Self-Insured Review Panel and Self-Insured Employers Evaluation Board representation
- > Adjudicating Committee representation

Workers' Compensation Court Litigation

- > Jury trials on allowance issues
- > Appellate and Supreme Court practice
- > Mandamus/abuse of discretion actions
- > Declaratory judgments
- > Third party administrator breach of contract and malpractice cases
- > Workers' compensation discrimination cases

OSHA

- > Formal and informal complaint responses
- > Safety inspections
- > Health inspections
- > Ergonomic and related "general duty clause" inspections
- > Site-Specific Targeting ("SST"), National and Local Emphasis Programs ("NEP" and "LEP") and other targeted/focused inspections
- > Inspection warrant issues, including warrant litigation
- > Preparation for inspections
- > Area director conferences and settlements
- > Occupational Safety and Health Review Commission appeals
- > Compliance audits
- > OSHA discrimination charges (Section 11(c) and "public policy" violations)

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Related Issues

- > Workers' compensation, unemployment compensation, OSHA, and related considerations in corporate merger, acquisition and lending transactions
- > Employee vs. employer intentional tort litigation (and insurance coverage analysis)
- > Subrogation and third party claims
- > "Dual capacity" claims
- > Self-insured excess carrier issues
- > Non-Ohio workers' compensation matters (NCCI and other states)
- > Unemployment compensation rate and claim disputes
- > Transitional duty/alternate duty and other return to work programs
- > Interplay of workers' compensation and the ADA, FMLA, OSHA and collective bargaining agreements

Representative Projects*Workers' Compensation*

- > Aggressive representation of employers at every Industrial Commission hearing level, including successful arguments before the full commission on drug testing, occupational disease, work place violence, wage loss, interstate trucking and permanent total disability matters.
- > "Re-opened" unfavorable Industrial Commission decisions in previously allowed claims for lodging, nursing home and trucking clients.
- > Obtained and preserved group rating eligibility for state fund employers in construction, lodging, manufacturing, nursing home, and trucking industries through aggressive hearing representation and strategic settlement analysis utilizing reserving mechanisms.
- > Achieved multi-million dollar savings for bottling company through years of aggressive claims management in retrospective rating plan.
- > Obtained fraud finding from full Industrial Commission for heating equipment distributor.
- > Successfully utilized surveillance to demonstrate lodging employee was not suffering from reflex sympathetic dystrophy.
- > Aggressive use of self-insured regulations to terminate benefits ex parte along with judicious use of surveillance operatives to confirm workers' compensation fraud.

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- > Achievement of 90 percent reduction in workers' compensation claim costs for major self-insured client with two year program of aggressive claims management.
- > Structured settlement of amputation claim whereby claimant conceded employer right to reimbursement of entire settlement amount from proceeds of pending medical malpractice action.
- > Realization of two million dollars in self-insured "buy out" savings for major client by working with the BWC legal staff to amend the BWC's buy out regulations, with the change leading to the current "zero" buyout charge for self-insured conversion.
- > Reversal of Industrial Commission finding that asbestos death claim should be charged to employer's self-insured risk number instead of prior State fund number which, along with negotiation with claimant's counsel allowing for non-payment of lump sum death benefits otherwise due, led to a several hundred thousand dollar savings for the client.
- > Reversals of BWC field audit findings as to proper manual classification, officer excess, and other issues at adjudicating committee hearings leading to tens of thousands of dollars in annual premiums savings for firm clients.
- > Settlements of non-complying employer liability at fraction of claims costs and back premiums allegedly owed to the BWC.
- > Favorable jury verdicts in heart attack, carpal tunnel, slip and fall, back strain, tendonitis/"over use" syndrome, and other injury and occupational disease cases.
- > Reversal of Industrial Commission permanent total disability awards in appellate court and Ohio Supreme Court.
- > Summary judgments in 4123.90 and "violation of public policy" workers' compensation discrimination cases.

Occupational Safety and Health

- > Representation of numerous employers in administrative inspections and enforcement proceedings brought by federal OSHA and its state counterparts, including representation of major industrial employer throughout OSHA investigation of three fatalities in the workplace resulting in no citations by OSHA, and representation of major bedding industry client in challenging legitimacy and scope of state OSHA ergonomic inspection.
- > Frequent consultations with OSHA area directors to re-classify/de-classify and otherwise settle citations without litigation (including substantial reduction in penalties and agreed changes to abatement methods and deadlines).
- > Litigation before the Occupational Safety and Health Review Commission of willful citation for alleged violations of personal protective equipment standard by major steel industry employer leading to dismissal of government's complaint.
- > Development of OSHA compliance programs for major publicly and privately held companies and assistance in implementing a nationwide program of OSHA compliance auditing.

Related Legal Concerns

- > Review of workers' compensation, unemployment compensation, and OSHA liabilities and responsibilities in corporate transactions and drafting and negotiating of related warranties and indemnities.

- > Successful restructuring of Ohio interstate trucking entity so as to avoid Ohio Workers' Compensation liability.
- > Successful defense of employers in employee vs. employer intentional tort cases involving death and serious bodily injuries.
- > Obtained full indemnification from employers' insurers for defense of intentional tort claims as well as reimbursement of attorney fees already expended together with significant settlement contribution after insurer was brought into employment intentional tort lawsuit by employer.
- > Recoupment of workers' compensation claim costs caused by the negligence or other fault of third parties.

Representative Clients

- > Agilysys, Inc.
- > AMAC Plating
- > American Spring Wire
- > Automated Packaging Systems
- > Construction Employers Association (Cleveland Chapter)
- > Dr. Pepper/Seven Up Bottling Group
- > Eliza Jennings Nursing Homes
- > ExxonMobil
- > Famous Industries
- > Howard Concrete Pumping
- > Independence Excavating, Inc.
- > J.J. DeLong Temporary Services
- > Kirkwood Industries
- > The Longaberger Company
- > Meridia Health Foundation/Cleveland Clinic
- > Nestlé USA/Stouffer Frozen Foods
- > Overland Trucking/Vitran Express
- > Renaissance Cleveland Hotel
- > Republic Storage Systems Company
- > The Ritz-Carlton
- > Thomas 5 North, Limited (DBA Wendy's)
- > Torr Metal and Stamping
- > Willoway Nurseries

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