

# ADJUDICATOR – WINTER 2009



## \$15 Million Saved Without a Single Layoff

During fiscal year 2009, the Industrial Commission (IC) of Ohio aggressively sought and implemented numerous cost saving initiatives that will save the Commission an estimated \$15 million over the next five years. Even better yet in these tough economic times, all of these initiatives will take place without a single layoff.

“Ohio families have had to cut back and as a government agency, we are no different,” said IC Executive Director Christa Deegan.

An annual savings of over two million dollars will come as a direct result of the consolidation of eight IC district offices. Over the past fiscal year, Springfield closed and moved into the Dayton IC office; Canton closed and moved into the Akron office; Bridgeport and Zanesville closed and combined into a new Cambridge office; and our Hamilton office closed and moved into the Cincinnati office.

The IC has also consolidated the space used in our Columbus headquarters, which will save \$800,000 in rent annually.

Another huge cost saver for the fiscal year has been the installation of Voice over Internet Protocol (VoIP) phones in most IC offices.

Because these phones operate via the Internet, they do not need landlines. Over the next five years, it is estimated that VoIP phones will save the agency \$865,000.



This past year, the IC consolidated eight district offices including the Bridgeport and Zanesville offices, which merged into this new office location in Cambridge.

“New technology has made these cost savings possible,” Deegan said. “The new phones are not only more reliable, but the IC does not now have to pay for the installation and usage of each individual phone line.”

The Industrial Commission has also significantly reduced employee overtime and overnight delivery expenses, resulting in a savings of more than \$58,000 annually. Furthermore, the IC has

reduced the purchases of supplies by more than \$60,000 per year.

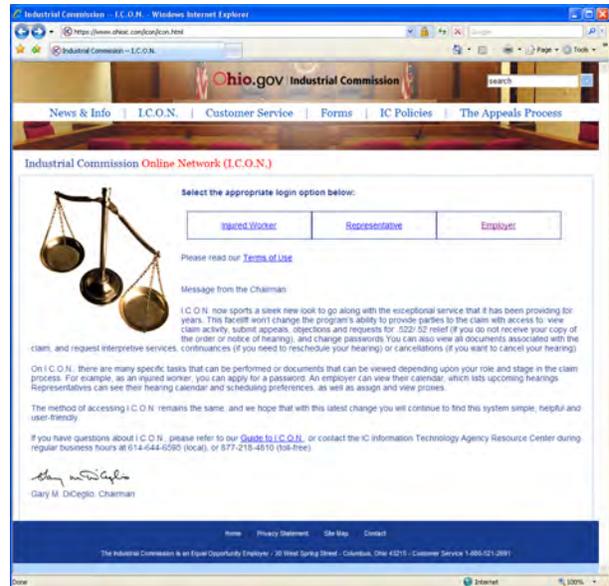
Finally, thousands of dollars in printing and mailing costs will be saved annually due to the elimination of hard copy dissemination of this newsletter, the *Adjudicator*. Earlier this year, the IC began the process of collecting the email addresses of employers, employer representatives, legislators, and other parties interested in continuing to receive the *Adjudicator*, so that the publication could be distributed exclusively via email.

# It's Not too Late to Sign Up for the *Adjudicator*!

Even though our deadline was December 30, 2009, if you or someone you know has not yet been added to our email *Adjudicator* database, you can still sign up! Since this edition marks the first time we have sent the *Adjudicator* exclusively via email, we will continue to keep tabs on those who sign up after January 4, 2010, and make sure that they get an electronic copy.

To sign up for the *Adjudicator* database, logon to [www.ohioic.com](http://www.ohioic.com) and click on the ICON link. Then, logon to ICON with your representative or employer ID and password. Finally, visit your *Adjudicator* page and enter your email address in the box provided.

If you have problems signing up for the new electronic database, or in receiving the *Adjudicator* via email, contact the IC's Agency Resource Center between 8 a.m. and 5 p.m., Monday through Friday, at 614-644-6595 (local), or 877-218-4810 (toll-free).



Visit [www.ohioic.com](http://www.ohioic.com) and logon to ICON to sign up to receive the new electronic *Adjudicator*.

## Two is a Charm for New Commissioner



The IC's new Commissioner Jodie Taylor.

When the IC's newest Commissioner began her term in July, it was her second time working for the agency and she was expecting twins.

Clearly, two is a charm for Commissioner Jodie Taylor. Twins Evan and Elizabeth arrived a few months later in October.

"They are growing and are very healthy," said Taylor. "It has been challenging

to care for two babies, just the physical part of caring for twins is exhausting."

Exhausting, especially since the new mom is also tackling the challenges of a new high-profile position.

"I was stunned when I got the call from the Governor's Office," she said. "I was speechless but I am looking forward to representing employers in Ohio to the best of my ability. Having been appointed the employers' representative, I think that is my first responsibility."

Taylor was appointed by Governor Ted Strickland to replace

Commissioner Bill Thompson as the employer member of the Commission. Her term began July 1, 2009, and ends in June 2015, when she will be eligible for a second term.

Jodie began her legal career as an attorney with the Sheerer, Pitts & Zerebniak law firm in Akron, where she represented injured workers before the Industrial Commission. Then, from 1997-2000, she worked as an assistant to a former IC Commissioner. In this role, Jodie performed legal and legislative research and assisted during hearings.

After leaving the IC, Taylor served as an attorney for two Columbus law firms, where she represented state-funded and self-insured employers at all levels of IC hearings throughout Ohio.

"I have represented employers, worked for the IC, and represented claimants," she said. "By combining those three things, it helps me see the big picture."

She earned her bachelor's degree from Miami University in 1991. In 1995, she received her law degree from the University of Akron School of Law. Commissioner Taylor is a member of the Ohio State Bar Association and Columbus Bar Association.

She lives in Columbus with the twins and her husband, Michael Korosec. A happy family that the Industrial Commission is thrilled to have as a part of our family.

## IC to Public: We Want to Hear from You!

The Industrial Commission recently decided to ask our customers to come give us a piece of their minds, and they did. Over 50 people brought their suggestions and complaints to the Industrial Commission Public Forum in the William Green Building on December 18. The purpose of the forum was to receive public feedback regarding the IC's continuance and docketing processes.

"We realize the process isn't perfect, but it is a process we would like to improve with input from our customers," Executive Director Christa Deegan said.

Steve Wall, from the Department of Administrative Services, explained the method that the IC will use to improve both processes. It's called Kaizen — which is Japanese for "to break for the better." This methodology is a way for workers to evaluate efficiency and make methodical, data-driven improvements resulting in a better use of people, machines and materials.

"State government is like an ocean liner that collects barnacles and we never stop and scrape the barnacles off," Steve said.

Steve described how the Ohio Bureau of Workers' Compensation

used the Kaizen process to eliminate over 100 days from the appeals process.

"The old 119-day process involved 87 steps, 20 decision points and 37 handoffs," Steve said. "After going through the Kaizen process, the team was able to eliminate waste and reduce complexity, including cutting steps in the process by 69 percent and reducing handoffs by 73 percent."

After Steve explained the process, the audience broke into small groups to brainstorm.

"The biggest issue appears to be the inconsistency of granting continuances within the agency," said the IC's Agency Review Coordinator Jeff Potts.

Now that the forum is complete, IC administration will select volunteers to attend the Kaizen event during the last week of January 2010. The volunteers will then review the processes and devise solutions based forum suggestions and the data provided by the IC, as well as information that is derived by the Kaizen process itself.

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## IC An Agency Doing More With Less



*Customer Service Assistants continue to deliver great service to our customers despite IC cut backs.*

Although the agency continues to decrease in size due to attrition, the numbers show that our leaner Industrial Commission still maintains the great quality service that you've grown to expect. You might say we've become experts on doing more with less.

"Over the past decade, the workforce of the IC has decreased by more than 150 employees, yet we have been able to continually meet and

exceed statutory requirements for timely service," said Executive Director Christa Deegan. "We are an agency that is maximizing productivity while minimizing expenditures, a philosophy that is serving us well in these tough economic times."

In fiscal year 2009, the IC conducted 175,726 hearings. In addition

to the Commissioners, hearings are held by 99 hearing officers — all attorneys — in five regional and eight district IC offices throughout the state.

While the number of IC employees may have declined, our success rate has not.

In fiscal year 2009, the IC continued its high success rate in handling claims well within the 45-day timeframe mandated by statute. From the date the appeal is filed to the date of hearing, district level (first level) hearings averaged 29.5 days. Staff level (second level) hearing appeals averaged 27.5 days.

The statistics of appeal filing to mailing date are just as favorable. For the district level, filing to mailing date took 32.8 days on average during the fiscal year. For the staff level, it averaged 30.5 days.

The IC's continued success is due, in part, to technological advances that have made it easier than ever to file appeals on the Web via the IC's Online Network (ICON).

"Our technological advances have allowed us to provide a faster, better service to our customers," Deegan said.

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There were 66,539 first level appeals filed on ICON during the fiscal year. There were also 69,241 second level or above appeals (staff and Commission level appeals) filed on ICON during the fiscal year. That marks an increase of nine percent from last year's online filings at both levels.

Ask IC is another technological tool that has helped increase customer satisfaction. It is an email feature of our Web site, [www.ohioic.com](http://www.ohioic.com), and is located on the Customer Service Web page. Ask IC gives the public the opportunity to submit questions to the agency's Customer Service Department.

This fiscal year, the IC's Customer Service Department received and responded to 819 Ask IC submissions. The department also scheduled 1,165 interpreters to help facilitate hearings where language could be a barrier. In addition, the agency's toll-free customer service line received 12,081 calls this fiscal year. In person, IC staff assisted 6,365 people at its Columbus office.

"In 2010, the IC will keep looking for new ways to provide excellent service to customers either in person, on the phone, or on the Web," Deegan said.

## The IC Unveils a Site to Behold

The Industrial Commission underwent a very public facelift during the past fiscal year when we launched the brand new [www.ohioic.com](http://www.ohioic.com) in May.

"The agency continues to be on the cutting edge of technology," said IC Chairperson Gary DiCeglio. "I think injured workers and employers will find the new Web site easier to use and more informative."

The new site accelerated our service to customers via streamlined navigation, "Quick Links" for ease of use, and by updating our online manuals to user and printer friendly PDFs. Plus, the latest IC news and events are now displayed on the site's homepage.

Several other enhancements have been added since the new [www.ohioic.com](http://www.ohioic.com) launched, such as the brand new Medical Specialist Resources section which features our *Mediscene* newsletter for medical examiners. This new section also features an examiner credentialing page that breaks down the requirements for becoming a specialist who performs medical exams on behalf of the Commission, as well as information regarding the maintenance of examiner credentials.

In addition, the new [www.ohioic.com](http://www.ohioic.com) helped the agency fulfill Governor Strickland's call for transparency in state government by displaying publications and internal reports more prominently on our site.

There is now a link to our 2010/2011 budget booklet entitled



This past year, the IC launched a new Internet Web site.

*Building on a History of Fiscal Prudence* on our homepage. This booklet was published in March 2009 to provide information about the IC to legislators during the state's biennium budget process. It is loaded with information about cost savings initiatives undertaken by the agency in the past fiscal year, data on agency productivity, as well as our plan to continue our objective of fiscal prudence.

The IC has also added more of our internal reports than ever before to the site, including the IC's Annual "Production Activity Report." This report examines statistical data on operational activities to estimate appropriate agency resources.

"Basically, anything you need to know about the IC can be found on the new site," DiCeglio said.

## Weigh in on Our Redesign

We've added color, changed the design and beefed up the content of the Adjudicator to provide you with more detailed information about the agency's successes during the past year. Now, we want to know what you think about our redesigned newsletter. Please take a

moment and fill out our confidential survey at: <http://surveymonkeys.com/s/GYYCFDR> Thank you for taking the time to share your opinion! Your opinion matters to us!

## On the Cutting Edge of Better Customer Service

A revamped Internet site was just one of many groundbreaking customer service initiatives launched by the Industrial Commission in fiscal year 2009. Other high-tech projects included: HEAT, the Customer Service Pool, the Word Processing Pool, and VoIP phones. A Claims Examining Pool is also in the works.

“The changes our agency is undertaking are very exciting,” Executive Director Christa Deegan says. “Every new initiative has the same goal: keeping our customers first.”

Helpdesk Expert Automation Tool (HEAT) is a new tracking system for customer service. During each phone call, a customer service associate types in specific information about the type of call and the response to the call. Management is then able to run reports and study the types of calls, phone call lengths, and the IC’s responses to customers.

The Customer Service Pool came into being when a vacancy arose in the IC’s Customer Service Department.

“Instead of hiring a new customer service assistant (CSA), IC staff members arranged the transfer of calls from Columbus to the Dayton office,” Deegan said. “Since two IC offices had recently been consolidated, the Dayton office had two more CSA’s than they needed, so those CSA’s were able to pick up the extra workload in Dayton to make up for the vacancy in the Columbus office.”

In this case, the pool created a more efficient way of doing business and prevented layoffs.

During the past year, a Word Processing Pool was implemented in a similar manner. Since the IC went paperless a few years ago, all word processing is done online. This new pool allows word processors in a less busy IC office to pull up and complete work from other offices.

“The pool spreads the work out across the state so that the workload of one office is not overwhelming, while another office does not have enough work to do,” Deegan said.

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## New and Amended Hearing Officer Manual Policies

Effective May 13, 2009:

### **Memo A5 Substantial Aggravation**

Hearing officers must ensure that an order is clear as to which standard of aggravation is being applied in a claim. Therefore, in claims with dates of injury or disability on or after August 25, 2006, the hearing officer should state that the claim is either allowed or disallowed for substantial aggravation of a pre-existing condition. Obviously, if the issue is abatement of a substantially aggravated condition, that should be stated as well, and only applied to dates of injury or disability on or after August 25, 2006.

Further, when allowing a claim for substantial aggravation of a pre-existing condition, the hearing officer must cite in the order evidence which documents the substantial aggravation by objective diagnostic findings, objective clinical findings, or objective test results. The determination as to whether a “substantial aggravation” has occurred is a legal determination rather than a medical determination. Therefore, while it is necessary that a hearing officer rely on medical evidence which provides the necessary documentation pursuant to the statute, it is not necessary that the relied upon medical evidence contain an opinion as to substantial aggravation.

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Effective May 13, 2009:

### **Memo I1 Continuing Jurisdiction – 10 Years and 5 Years**

When the date of injury or disability is prior to August 25, 2006, and when there has been a payment of compensation under O.R.C. 4123.56, 4123.57, or 4123.58, the claim is active for ten years from the date of the last payment of compensation or ten years from the last payment of a medical bill, whichever is later.

When the date of injury or disability is on or after August 25, 2006, the claim is active for five years from the date of the last payment of compensation or five years from the last payment of a medical bill, whichever is later.

**NOTE:** O.R.C. 4123.52.

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Effective May 13, 2009:

### **Memo S11 Request for Allowance of a Condition by Either Direct Causation or by Aggravation/ Substantial Aggravation and Jurisdiction to Rule at Hearing**

If there is evidence on file or presented at hearing to support both the theories of direct causation, or aggravation (date of injury or disability prior to August 25, 2006) /substantial aggravation (date of injury or disability on or after August 25, 2006), a request to allow a condition in a claim is to be broadly construed to cover either theory of causation (i.e., direct vs. aggravation/substantial aggravation). The hearing officer must address the origin of the condition under both theories of causation without referring the claim back to the prior hearing level or the BWC. Where new evidence regarding an alternative theory of causation is submitted by any party, hearing officers and/or hearing administrators shall ensure that all parties are given adequate opportunity to obtain evidence in support of their position by continuing the hearing for a period of at least thirty (30) days, unless the parties agree that less time is sufficient for obtaining the necessary evidence. The hearing officers and/or hearing administrators shall state in their compliance letter or order the period of time required to obtain the necessary evidence.

**NOTE:** O.A.C. 4121-3-09 (A) (1) (b).

# Supreme Court Case Updates

## ***R.C. 4123.56(A) does not permit an employer to terminate TTD based solely on a determination of permanent inability to return to former position of employment***

In *State ex rel. DaimlerChrysler Corp. v. Indus. Comm.*, 121 Ohio St.3d 341, 2009-Ohio-1219 (decided March 24, 2009), the injured worker was receiving TTD compensation and there was no indication that her allowed conditions had reached maximum medical improvement (MMI). However, the employer filed a motion to terminate TTD compensation based on the injured worker's attending physician's statement that she can never return to her former position of employment. The commission denied the employer's motion, finding that the employer had not demonstrated that TTD should be barred because none of the situations described in R.C. 4123.56(A) had occurred. R.C. 4123.56(A) bars TTD compensation when "any employee has returned to work, when an employee's treating physician has made a written statement that the employee is capable of returning to the employee's former position of employment, when work within the physical capabilities of the employee is made available by the employer or another employer, or when the employee has reached the maximum medical improvement."

The employer asserted that a temporary disability becomes permanent when an injured worker is permanently unable to return to the former position of employment and not just when the underlying medical condition reaches a state of permanency. The Court disagreed with the employer, finding that the IC had not abused their discretion and holding that MMI is the only standard by which TTD compensation can be terminated on the basis of permanency. The Court explained that the fact that the injured worker is not ever able to return to the former position of employment is not part of the permanency analysis related to R.C. 4123.56(A).

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## ***No vested right to full payment of brand name drugs so no impermissible retroactivity of BWC amended rule 4123-6-21(I)***

In *State ex rel. Jordan v. Indus. Comm.*, 120 Ohio St.3d 412, 2008-Ohio-6137 (decided December 3, 2008), the injured worker suffered an industrial injury in 1984 and was prescribed various medications over the years. She had always taken brand name medication, which was paid in full until OAC 4123-6-21(I) took effect in October 2005. Prior to October 2005, the Bureau's administrative rule provided an exception allowing for full reimbursement of a brand name drug if prior authorization was obtained by the prescriber. The removal of the prior authorization language meant that there is no longer any circumstance under which the Bureau will cover the full price of a brand name drug when there is a generic substitute. The injured worker argued that the commission applied the new administrative rule retroactively to deprive her of the right to full payment.

The Court found no abuse of discretion in the IC order and held that the injured worker did not demonstrate a vested right to reimbursement for the cost of brand name drugs because R.C. §4123.66 has always given the Bureau the right to determine the terms of medical treatment and the conditions of payment. Since there was no vested right to the full payment of the brand name drugs there was no credible claim of impermissible retroactivity of the BWC's amended rule.

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## ***VSSR – To Meet Definition of "Feed Rolls," Rolls Must Only Have Single Function***

In *State ex rel. AK Steel Corp. v. Davis*, Slip Opinion No. 2009-Ohio-5865 (decided November 12, 2009), the injured worker was hurt when she was assigned as a helper to operate a mill. While preparing the mill for production, the injured worker attempted to clean a spot on one of the work rolls without realizing that the mill had been turned on to production mode. The rolls grabbed the rag she was using to clean and with it, her hand. After the claim was allowed, the injured worker filed an application for additional compensation alleging that the employer had violated a specific safety regulation applicable to power driven feed rolls requiring that they are guarded to prevent the hands of the operator from coming into contact with the in-running rolls at any point. The commission granted the application, finding that AK steel violated the regulation (Bulletin 203 Section 207) because the nip point was not guarded. The Court held that the definition of "feed rolls" in Section 2.8 of Bulletin 203 includes the requirement that the "feed rolls" have a single function. Since the mill's work rolls were not a single function apparatus (in addition to feeding material to the point of operation, they also tempered the steel as it passed through), they are not "feed rolls" as defined in the bulletin. The Court reversed the judgment of the court of appeals, clarifying that their prior decision in Harris did not expand the single function requirement, and issued a writ of mandamus ordering the commission to vacate its order allowing the VSSR award and to issue an order denying the award.

### ***Refusal of Suitable Alternative Employment Terminates Eligibility for TTD***

In *State ex rel. Sebring v. Indus. Comm.*, 123 Ohio St.3d 241, 2009-Ohio-5258 (decided October 7, 2009), the injured worker sprained his back at work and returned to his former position of employment one month later. Unrelated to his industrial injury, the injured worker was laid off by his employer and subsequently, moved to Wyoming after his wife accepted a job there. After moving, the employer notified the injured worker via certified mail that he had been recalled to work and, a few days later, the injured worker informed the employer that he would not be returning to work. The claim was later additionally allowed for two disc conditions and TTD was awarded. The employer made two offers of light-duty work but ultimately, the injured worker refused both offers. The employer moved to terminate TTD based on the rejection of a valid light duty job offer. The Court upheld the IC decision to terminate TTD and found that, under these facts, that there was no need to address the general question of whether an employer has satisfied the "reasonable proximity" requirement of OAC § 4121-3-32(A)(6) when the employer has offered a position within reasonable proximity of the injured worker's former residence but not within reasonable proximity of the injured worker's current place of residence. In this case, the employer offered light-duty positions located in both Wyoming and Ohio. Therefore, the employer made a written job offer of suitable employment within reasonable proximity to the injured worker's former and current residences satisfying the requirements of R.C. § 4123.56(A).

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### ***Voluntary Abandonment Doctrine Inapplicable Where Unable to Establish Injured Worker Had Notice of Work Rule***

In *State ex rel. Saunders v. Cornerstone Found. Sys., Inc.*, 123 Ohio St.3d 40, 2009-Ohio-4083 (decided August 19, 2009) the injured worker sustained a knee injury at work and returned to work two days later. About a month later, the injured worker was terminated after refusing his supervisor's order to run a bulldozer. The injured worker claimed that after the injury, he had reached an agreement with his employer that he would not have to operate heavy equipment, however, he could not produce any evidence of such agreement, and such a restriction was not noted on his medical report. The employer asserted that the injured worker was terminated pursuant to a written work rule related to insubordination contained in a June 2004 version of the employee manual, however, the employer could not produce a signature from the employee indicating receipt of that version of the manual. Also, the employer conceded that it did not publish the work rule in any other way. After termination, the injured worker applied for temporary total disability benefits.

The Court held that there was no evidence to support the employer's contention that the injured had received the June 2004 employee handbook. The only manual that the injured worker conclusively received did not contain the rule addressing insubordination and its consequences. Therefore, the court found the IC's finding of voluntary abandonment was an abuse of discretion because there was no clear, written articulation of the workplace rule that the injured worker violated so the Louisiana-Pacific voluntary abandonment doctrine was held to be inapplicable.

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### ***Commission's Refusal to Find Fraud is Not a Right to Participate Issue under R.C. 4123.512***

In *Benton et al., v. Hamilton County Educational Services Center*, Slip Opinion No. 2009-Ohio-4969 (decided September 29, 2009) the Court determined that the refusal of the Industrial Commission to discontinue a claim does not involve the right of the claimant to participate in the workers' compensation fund under R.C. § 4123.512 and thus, a court of common pleas lacks subject matter jurisdiction on appeal.

The case involved a woman who was injured in a car accident. In her initial application for workers' compensation benefits, she claimed that she was driving on behalf of her employer to pick up medical forms for a client. The Bureau of Worker's Compensation granted her claim, allowing her to participate in the worker's compensation fund and her employer did not file an appeal. The employer later filed a motion with the Industrial Commission asking them to deny benefits on the grounds of fraud. The employer asserted that the worker had misrepresented her purpose for driving when the accident occurred and that she had not been in the scope of her employment when she was injured. The DHO denied the employer's motion, finding no evidence of fraud, and the SHO affirmed. The commission refused to hear any further appeal. The employer then filed a notice of appeal with the Hamilton County Court of Common Pleas. The injured worker filed a motion to dismiss the appeal for lack of subject matter jurisdiction. The Court held that the IC's refusal to find fraud in order to exercise continuing jurisdiction is not an issue involving the right to participate or to continue to participate under R.C. 4123.512.

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