

OHIO INDUSTRIAL COMMISSION

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AUDIO TRANSCRIPT  
SEPTEMBER 14, 2020

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Michele M. Snyder  
Professional Reporter

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APPEARANCES:

Chairman Jim Hughes  
Commissioner Jodie M. Taylor  
Commissioner Karen L. Gilmor  
Executive Director Tim Adams  
Director of Adjudication Tom Connor

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P R O C E E D I N G S

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JIM HUGHES: Thank you. Good morning.

This is Chairman Jim Hughes. This special meeting of the Ohio Industrial Commission is called to order. This meeting is being conducted telephonically. It is being streamed by the Ohio Industrial Commission's YouTube channel. The link to listen to our meeting is available on our public website.

On June 16th, 2020, Governor Mike DeWine signed into law House Bill 81. House Bill 81 makes significant changes to several sections of the Ohio Revised Code in the matters of adjudication for the Ohio Industrial Commission.

The topic of this meeting is limited to discussing Industrial Commission's response to House Bill 81, and its provision and rescission of Memo D5, voluntary abandonment. During this meeting it is important that prior to speaking, each participant introduce themselves by stating their name and title. That is so that the record, after we reflect proceedings, the public is properly informed.

I now ask our Executive Director, Mr. Tim Adams, to call the roll, please.

1           TIM ADAMS: This is Tim Adams, Executive  
2 Director of the Ohio Industrial Commission. As I  
3 call your name, please restate your name and affirm  
4 your presence. Commissioner Karen Gilmor.

5           KAREN GILMOR: Commissioner Karen  
6 Gilmor, here.

7           TIM ADAMS: Commissioner, Jodie Taylor.

8           JODIE TAYLOR: Commissioner  
9 Jodie Taylor, here.

10          TIM ADAMS: Chairman Jim Hughes.

11          JIM HUGHES: Chairman Jim Hughes,  
12 present.

13                 This is Chairman Jim Hughes. Let the  
14 record show a quorum is present. And now the quorum  
15 is open to discuss the addition of the issue of House  
16 Bill 81. This is being called for a special meeting.  
17 Once again, during this discussion it is important  
18 that the speakers state their name prior to speaking.  
19 And this is necessary to make sure that we create an  
20 accurate record of the proceedings of this  
21 Commission.

22                 At this point in time I would like to  
23 call upon our Director of Adjudication, Tom Connor,  
24 please, regarding House Bill 81.

25          TOM CONNOR: This is Tom Connor,

1 Director of Adjudication. The current issue of  
2 voluntary abandonment is handled -- or the policy on  
3 the Industrial Commission is in adjudications before  
4 the Ohio Industrial Commission, Memo D5.

5 This is a policy memo that is  
6 a -- really a synthesis of all the different cases  
7 trying to put the whole picture together as the  
8 different fact patterns have gone through the courts  
9 over the past 20 or so years.

10 In House Bill 81, it was the specific  
11 intent of the General Assembly by placing language in  
12 Ohio Revised Code 4123.56 for temporary total and  
13 wage loss, and 4123.58 for permanent total, as well  
14 as, removing from the 4123.58, a reference of  
15 voluntary abandonment, to supersede the prior case  
16 law entirely so that the issue of whether an action  
17 has taken place that would break the chain of  
18 causation between the inability to work or wage loss,  
19 which would make it so that the payment of temporary  
20 total wage loss or permanent total would be  
21 inappropriate.

22 That language in the statute is now the  
23 standard. And the prior case law has been superseded  
24 or will be superseded effective tomorrow. So it was  
25 my suggestion and is my suggestion that the

1 Commission simply rescind Memo D5 because the cases  
2 upon which it was based will no longer be in effect  
3 starting tomorrow.

4 I do not recommend replacing it with  
5 anything at this point. There may come a time when  
6 we start to see a trend in certain fact patterns or  
7 gray areas that the Commission would like to see some  
8 kind of consistent application, but that will be  
9 something that we'll have to observe for a period of  
10 time to see what types of fact patterns are tending  
11 to come before the hearing officers where guidance  
12 would be helpful.

13 So that is the recommendation today, is  
14 for purposes of today to simply rescind Memo D5.

15 JIM HUGHES: This is Jim Hughes,  
16 Chairman. Thank you Director Tom Connor. Are there  
17 any questions of Director Tom Connor regarding his  
18 recommendation?

19 KAREN GILMOR: Mr. Chairman, this is  
20 Commissioner Gilmor. I would like to make the motion  
21 that Tom has just proposed before we discuss or ask  
22 questions.

23 JIM HUGHES: This is Chairman  
24 Jim Hughes. Commission Karen Gilmor, do you want to  
25 make a motion? I ask you to make your motion,

1 please.

2 KAREN GILMOR: Well, my motion would be  
3 that the Industrial Commission rescind memo -- I'm  
4 sorry. I don't have it in front of me, but something  
5 five. I wanted to make a motion, but I think we need  
6 to do that before we discuss or ask questions.

7 JIM HUGHES: This is Chairman  
8 Jim Hughes. Just to be clear, Commissioner Gilmor, I  
9 think, is moving to rescind Memo D5 of voluntary  
10 abandonment that, due to the fact that House Bill 81  
11 becomes effective on December 15th; is that correct,  
12 Commissioner Gilmor?

13 KAREN GILMOR: Yes. Thank you very  
14 much.

15 JIM HUGHES: This is Chairman  
16 Jim Hughes. That was Commissioner Gilmor that just  
17 spoke. This is Chairman Jim Hughes -- has been  
18 moved. Is there a second to Commissioner Gilmor's  
19 motion? I as Chairman Jim Hughes will second  
20 Commissioner Gilmor's motion.

21 I will now open it up for any discussion  
22 on the motion at this point in time. Does anybody  
23 have any discussion they want to share?

24 And before we do that, I want to make  
25 sure I didn't misstate this; I have also talked to

1 the stakeholders on this issue, and it should be  
2 noted too that when House Bill 81 went through the  
3 legislature, it was supported by the NFID, which is  
4 one of the stakeholders, as well as the Ohio Chamber  
5 of Commerce, one of the stakeholders, and also Labor  
6 was also on board with this.

7 And that I, as chairman, and my staff  
8 have also reached out to the stakeholders to let them  
9 know what we are doing today, and we have received no  
10 opposition in terms of what we are doing. I want to  
11 make sure we had that.

12 I will go back now to see if there is  
13 any discussion on the motion that has been properly  
14 moved by Commissioner Gilmor, seconded by me,  
15 Chairman Jim Hughes. Any discussion on that?  
16 Hearing no discussion on --

17 JODIE TAYLOR: This is Commissioner  
18 Jodie Taylor. I would like to ask Tom Connor, the  
19 Director of Hearing Services, a couple of questions.  
20 Tom, you have recommended that we are not replacing  
21 Memo D5 with another memo or policy; is that correct?

22 TOM CONNOR: This is Tom Connor,  
23 Director of Adjudication. Yes, that is correct.

24 JODIE TAYLOR: Okay. This is  
25 Commissioner Jodie Taylor, and I just want to make



1 sure that we understand that that does not mean there  
2 will not be guidance given to the hearing officers.

3 Can you explain to me what your plan is providing  
4 guidance to the hearing officers on this new  
5 legislation? How are we going to reach out to the  
6 hearing officers to give them advice on guidance or  
7 how to process these requests for temp or total and  
8 to handle this new legislation?

9 TOM CONNOR: This is Tom Connor,  
10 Director of Adjudication. Yes, in a separate action  
11 by memo and also in answering questions that may come  
12 up, there will be an explanation that this issue now  
13 is one of causation, and they should treat it that  
14 way much like an intermediate injury or something  
15 like that might come up as an issue of causation to  
16 break the chain of the loss in wages or inability to  
17 work.

18 So then we will obviously invite them to  
19 let us know any unusual fact patterns to seek  
20 guidance, or so that we can start -- when I say we,  
21 that would be Laura Schank, the Hearing Officer  
22 trainer and I, to start to compile those to look for  
23 any kind of trends that might come up that would  
24 justify or could possibly justify future Commission  
25 action in this area. I don't want to leave anyone

1 with the impression that we will never need to  
2 provide some formal guidance. I just don't think  
3 there is sufficient information when we are just  
4 getting started with the statute to put it out there  
5 at this period of time. But there will be separate  
6 memos explaining all the changes in House Bill 81.  
7 This is the only change involving involuntary  
8 abandonment that is expected to come to hearing in  
9 the coming weeks.

10 JODIE TAYLOR: All right. This is  
11 Commissioner Jodie Taylor. I just want to make sure  
12 that we are not leaving the impression that our  
13 hearing officers tomorrow are going to not be  
14 provided any kind of guidance via a memo, which is  
15 informal. It's not a formal policy of the Commission  
16 docs, but they will be provided that guidance by  
17 tomorrow to conduct hearings on this matter; is that  
18 correct?

19 TOM CONNOR: This is Tom Connor,  
20 Director of Adjudication. Yes, that is accurate.

21 JODIE TAYLOR: Okay. This is  
22 Commissioner Jodie Taylor. I have no further  
23 questions.

24 JIM HUGHES: This Chairman Jim Hughes.  
25 Thank you, Commissioner Taylor. Commissioner Gilmor,

1 do you have any questions of Mr. Tom Connor, Director  
2 of Adjudication?

3 KAREN GILMOR: No questions. Thank you.

4 JIM HUGHES: Thank you. At this point  
5 in time, since the discussions all have taken place,  
6 I will call the question and I will ask the Executive  
7 Director, Mr. Tim Adams, to call the roll.

8 TIM ADAMS: This is Tim Adams, the  
9 Executive Director of the Ohio Industrial Commission.  
10 As I call your name, please restate your name and  
11 state your vote. Commissioner Karen Gilmor?

12 KAREN GILMOR: Commissioner Karen  
13 Gilmore, yes.

14 TIM ADAMS: Commissioner, Jodie Taylor?

15 JODIE TAYLOR: Commissioner Jodie  
16 Taylor, yes.

17 TIM ADAMS: Chairman Jim Hughes?

18 JIM HUGHES: This is Chairman  
19 Jim Hughes, yes.

20 This is chairman Jim Hughes. The motion  
21 does carry, so therefore, we will have the rescission  
22 of the Memo D5, Voluntary Abandonment. This is the  
23 only item that we had for a special meeting today.  
24 At this point in time I will move that we will  
25 adjourn the meeting. Thank you.

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(Whereupon, the special meeting  
was concluded.)

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CERTIFICATE

I do hereby certify that the foregoing is a true, correct and complete written transcript of the audiotaped proceedings in the matter, reduced by me into stenotypy, to the best of my ability, and transcribed from my stenographic notes on the June 23, 2021.

  
Michele M. Snyder  
Notary Public  
In and for the State of Ohio  
My commission expires  
February 2, 2026

