

#### SPEAKERS

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# TOPICS

Administrative, Legal and Related Employment Matters in the Workers' Compensation Arena

July 11, 2019

# Administrative Updates – BWC and OSHA

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# Updates and Reminders

- Billion Back Continued Again
- True Up
- BWC Webinars
- OSHA Electronic Reporting
- House Bill 207 (Motor Vehicle Accidents)
- General Reminders

#### • \$1.5 Billion Back

- BWC again has too much in surplus
- New Administrator
- Refunds will start processing in September
  - Non group-retro participants
  - 88% of premiums paid for policy year 7/1/17 to 6/30/18
  - Checks should all be out by mid October
  - Group Retro Employers
  - Refunds mailed after retro review

#### True Up

- State fund employers
- True up by August 15
- Payroll Period 7/1/18 to 6/30/19
- NEW THIS YEAR -
  - Opt in for paperless billing
  - This will be the only way to receive Go Green Discount
  - The option to opt in will be available during True Up

- July 1, 2019 Estimated Installment Plans • Received in May
  - If you did not receive, let me know
  - Check payroll estimate carefully • Updates can be made to payroll figures

  - BWC makes random changes after true up

#### BWC Webinars

- Twice monthly webinars
- Schedule for July
  - Two days ago (July 9)
  - Thursday, July 25 11:30 AM
- You can find the link to attend at:
  - www.bwc.ohio.gov
  - Under Menu (upper right corner) select EMPLOYER and then select MAINTAINING A POLICY

#### BWC Safety

- BWC Learning Center
- BWC website go to the menu
   Click on SAFETY
  - From there you can navigate to in-person or online classes
  - Online classes may be helpful for anyone new to your company or workers' comp

#### OSHA Electronic Reporting

- Last Phase just completed
- Reporting now done every year on March 2
- 250 or more employees
- Submit 2019 300A only
- No news on when more info may be needed for the upload
- 20-249 employees (high risk industry)
  - Submit 2019 300A only

### MVAs – Subrogation

#### Subrogation

- The BWC has a right of subrogation when a third party is the cause of an injury to a claimant
- House Bill 207 resulted in a change in the rules of subrogation for MVAs only
- Effective 7/1/17

### MVAs – Subrogation

#### Subrogation

- Pre July 1, 2017
- Employee involved in MVA caused by third party
- BWC asserts its right to subrogate against the third party
- Years go by and the case settles and BWC receives a sum of money
- That money is applied to the claim costs paid by the BWC which are being charged against Employer

# MVAs – Subrogation

#### Subrogation

- Employer could been charged for years on the losses paid as a result of MVA
- Claim could have negative impact on Employer premiums
  - May lose eligibility in a program
  - May lose bids as a result of a high EMR
- Employer or BWC not in control of settlement timeline

# House Bill 207

- Passage of HB 207
  - July 1, 2017
  - <u>Not-at fault</u> MVAs now charged to surplus fund
  - Is this for all accidents?
    - Only applies to motor vehicle accidents
    - Third party has to be the cause of the accident
    - A citation needs to be issued to third party for causing the accident – This is now changed

### House Bill 207

- Not-at-fault MVAs
  - Accident occurred; now what?
    - Employer responsibility
    - Employer has to file request to charge claim to surplus fund
    - Form AC28
    - Supporting documents
      - Copy of police report of MVA
      - Copy of citation issued to third party (REVISED)
      - Proof of third party insurance (ID Card, Dec Page, other proof)

# House Bill 207

#### Not-at-fault MVAs

- Biggest problem
  - "Proof that insurer accepts liability"
  - Or uninsured or underinsured motorist coverage exists
- Form AC28 with supporting documents must be filed with BWC
- BWC has 180 days to make decision
- If denied, Employer has right to appeal
- If no determination by BWC after 180 days, claim automatically charged to surplus fund

### House Bill 207

- September 2018
- Copy of citation no longer needed
  BWC will base decision on accident report and
- insurer's acceptance of liability

  Suggestions
- Suggestions
  - Advise employees of this change
  - Make sure they are prepared in the event of a MVA

#### General Reminders

• DFSP

- Annual online safety review needs to be done by July 31
- Accident analysis training (at the Learning Center) also by July 31 (or within 60 days if you bring on someone new with supervisory duties)
- Advanced level only Safety action plan by end of August

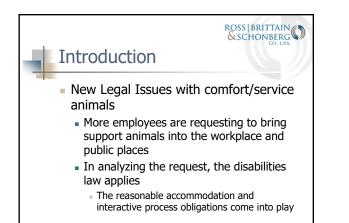
#### Safety Grants

- Take advantage of these!
- BWC gives \$3 for every \$1 an employer spends on safety up to \$40,000
- BWC publishes an annual list of awarded safety grants (public info)
  - If you'd like a copy, let me know

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# Service Animals, Comfort Animals and the ADA

Presented by: **Lynn Schonberg, Esq.** Ross, Brittain & Schonberg Co., L.P.A. July 11, 2019

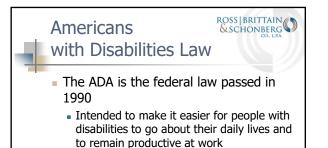


# Introduction

- New Legal Issues with comfort/service animals
  - We all know how to analyze whether or not a reasonable accommodation exists and how to deal with injured workers

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 But it's a whole new analysis when the proposed "accommodation" walks on four legs, flies or slithers



- The ADA has 3 Parts:
  - Title I: Applicable to Employers
  - Title II: Applicable to public employers
  - Title III: Applicable to public places



# Americans with Disabilities Law

Title I: Employment Protections

 Makes it unlawful to discriminate in employment against a "qualified individual with a disability"

- "Disability" = mental or physical impairment that substantially limits 1 or more major life activity
  - Seeing, hearing, listening, walking, caring for oneself, working, communicating, etc.



- Makes it unlawful to discriminate in employment against a "qualified individual with a disability"
  - "Qualified" = be able to perform essential duties of job with or without a reasonable accommodation
  - Factors to consider = whether position exists is to perform that function; how many others perform it; can it be distributed, etc.



# Americans with Disabilities Law

 Titles I and III: Require employers to provide reasonable accommodations to

- Qualified Individuals with disabilities
- Who are employees, applicants or patrons
- Unless
  - Doing so would cause an undue hardship or
  - Directly threaten the health or safety of the employee or others

# Americans with Disabilities Law

#### Reasonable Accommodations

- Assistance or changes to a position or workplace that will enable an employee to perform the essential functions of her job
  - Examples include: job restructuring; reduced work schedule; reassignment to vacant position

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 Does not include: elimination of essential job function; lower production standards; provide personal use items

# Americans with Disabilities Law

- Reasonable Accommodations
  - All qualified disabled employees entitled to reasonable accommodation regardless of whether they are part-time, probationary, etc.
  - Generally, the individual must inform employer that an accommodation is needed

# Americans with Disabilities Law

What is Reasonable?

• Is it feasible and effective in meeting the needs of the individual?

- Does it enable the individual to perform the essential functions of his or her position?
- Does it allow the individual to fully participate and be considered for the job?



- Requests for Accommodations
  - Must be requested
    - But need not mention ADA or any specific word
    - Family, friend, doctor may request
    - Need not be in writing
  - Upon receipt, Employer must commence the "Interactive Process" with the employee to identify possible reasonable accommodations



accommodation but not the one desired or requested by employee

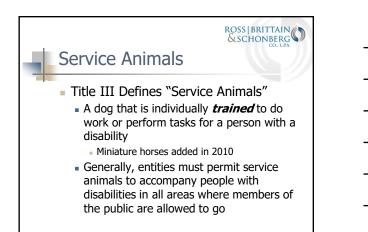
# Americans with Disabilities Law

- The Interactive Process
  - A two-way street
    - Both the employer and employee must interact in good faith

- Everything on the table
- Both employer and employee required to communicate and offer suggestions, etc.
- Always document the process and have at least 2 members of management



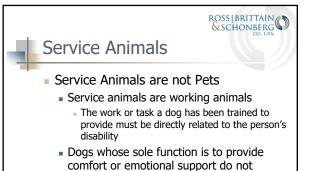
- However, if reject and cannot perform the essential functions of job, she will no longer be a qualified individual with a disability
- Employee cannot demand one accommodation if another reasonable accommodation is provided



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# Service Animals

- Examples of Service Animals
  - Seeing-Eye Dogs
  - Dogs that alert deaf people or pull a wheelchair
  - Alerting and protecting a person who is having a seizure
  - Reminding a person to take prescribed medications
  - Calming a person with PTSD during an anxiety attack



- qualify as service animals under the ADA
- Note: FAA has different regulations



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# Service Animals

Maintain Control of Service Animals

- Service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices
  - If so, the individual must maintain control of the animal through voice, signal, or other effective controls



- Mobility Impaired individuals
- Psychiatric service animals, or comfort animals do not qualify



"Permanent Registration – Ohio Assistance Dog"

# Animal Assistants In Employment

- ORC Chapter § 4112 contains Ohio's disabilities law
  - Nowhere is service animals mentioned
  - ORC § 4112.01(A)(13)
    - Ohio's definition of disability discrimination
    - "Disability" means a physical or mental impairment that substantially limits one or more major life activities
    - Identical to ADA

# Animal Assistants In Employment

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#### • OAC § 4112-5-02(C)

- Defines "animal assistant" as "any animal which aids the disabled"
- Lists three "specific examples include"
  - A dog that alerts hearing impaired person
  - A dog that guides visually impaired person
  - A monkey that collects/retrieves items for mobility impaired person



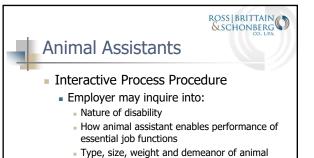
Rather, are therapeutic in nature

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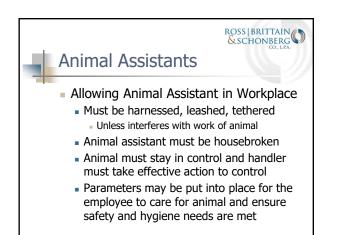
# Animal Assistants

#### Animal Assistants in Employment

- OCRC Policy Guidance
  - Must reasonably accommodate a disabled individual who needs an animal assistant
  - Accommodations include making changes to rules, policies and practices against having animals on the property
  - Obligation applies only to qualified individuals with disabilities



- Specific training animal has had
- Whether animal poses undue hardship/safety or health risk

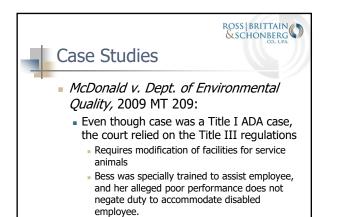


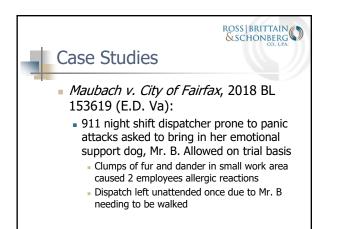
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### **Case Studies**

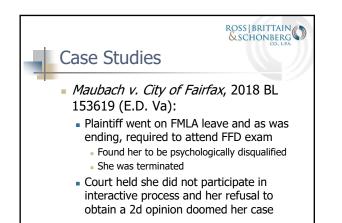
 McDonald v. Dept. of Environmental Quality, 2009 MT 209:

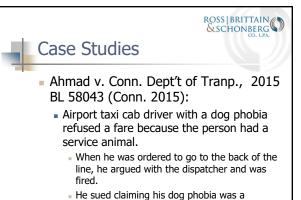
- Plaintiff wheelchaired-bound and used a service animal, Bess, for various tasks
- Bess unable to walk on Employer's floors and Employer refused to accommodate Bess by purchasing runners for \$8600.00
- Held: Employer liable for not accommodating Bess since she is "an assistive device" like a wheelchair





# Case Studies Maubach v. City of Fairfax, 2018 BL 153619 (E.D. Va): Mr. B no longer allowed and interactive process begun Plaintiff offered to switch to day shift but refused due to her friend worked on nights Told to bring in non-allergenic dog, but refused because won't be bullied as to type of dog





disability and the employer refused to provide any accommodations.

