

Workers' Comp Ruling May Expand Ohio Employer Liability

By **Joseph Gross and Deedra Thompson** (November 21, 2025)

In *State ex rel. Berry v. Industrial Commission*, the Ohio Supreme Court recently ruled that courts are not required to defer to the Ohio Industrial Commission's interpretations of the state's specific safety requirements. Courts must instead independently interpret them, particularly when the language is clear.

The *Berry* decision marks a shift in Ohio workers' compensation law by reducing judicial deference to the Industrial Commission's interpretations of Ohio's specific safety requirements, and potentially expanding employer exposure in violations of specific safety requirements, or VSSR, cases.

It also signals that Ohio courts will increasingly scrutinize agency decisions outside the workers' compensation area.

Case Background

On Oct. 16, the Ohio Supreme Court held that courts should not merely defer to the Industrial Commission's legal interpretations of the state's specific safety requirements when reviewing whether an employer violated them.

In *State ex rel. Berry v. Industrial Commission*, the court somewhat aligned itself with the 2024 U.S. Supreme Court decision, *Loper Bright Enterprises v. Raimondo*, which directed federal courts to independently interpret ambiguous statutes rather than rely on agency interpretations.

But unlike *Loper Bright*, which generally benefited employers dealing with federal agencies, *Berry* could have the opposite effect when injured employees accuse their employer of violating Ohio's specific safety requirements.

Ohio's safety requirements are similar to the Occupational Safety and Health Administration's safety standards, and Ohio employers are generally subject to both.

Berry stemmed from an employee applying for a VSSR award against his employer in the Industrial Commission. The central issue was whether the employer violated a specific safety requirement by having a large excavator "on a level above and near" a trench, when the trench's side walls were not supported by any type of shoring or bracing system. A piece of asphalt detached from the side of the trench, injuring the employee.

The relevant specific safety requirement, Section 4123:1-3-13(E)(7) of the Ohio Administrative Code, provided: "If it is necessary to place or operate power shovels, derricks, trucks, materials, or other heavy objects on a level above and near an excavation, the side of the excavation shall be sheet-piled, shored, braced or sloped as necessary to resist the extra pressure due to such superimposed loads."

Among other things, the Industrial Commission determined that the large excavator was not a power shovel, and, as a result, its presence near the trench did not require the employer to sheet pile, shore up, brace or slope the trench's walls.



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Generally, when an employee applies for a VSSR award, the Ohio Bureau of Workers' Compensation conducts an investigation, after which the Industrial Commission conducts a hearing to determine whether the employer violated one or more of the specific safety requirements that the employee has identified, and whether any violation contributed to the employee's injuries.

Although Section 4123.95 of the Ohio Revised Code requires the Industrial Commission to interpret the state's workers' compensation laws in favor of employees, that is not true for VSSR proceedings, where the benefit of any ambiguity of a specific safety requirement would typically be interpreted in favor of the employer.

Because of that, the Industrial Commission has typically interpreted the state's specific safety requirements in a way that benefits employers in VSSR proceedings. The Industrial Commission appears to have done this in the claim that led to Berry.

On July 9, 2024, in a mandamus proceeding brought by the employee after the Industrial Commission denied his application for a VSSR award, Ohio's Tenth District Court of Appeals unanimously concluded that the Industrial Commission erred in denying his VSSR application, and found that the Industrial Commission's interpretation of its own safety rules no longer warranted judicial deference.

Two of the three appellate judges went further, holding that the Industrial Commission should find that the fill dirt next to the trench was a heavy object, and award additional compensation to the employee on his VSSR application.

On the employer's appeal, the Ohio Supreme Court agreed with the Court of Appeals that courts are not required to defer to the Industrial Commission's legal interpretations of the specific safety requirements, particularly when the requirements' language is clear. And when the language is ambiguous, courts may consider, but do not need to accept, the Industrial Commission's interpretation for its persuasive power only.

This extended the Ohio Supreme Court's previous directive in two non-workers' compensation cases that courts do not need to defer to administrative agencies' interpretations of statutes when they are ambiguous.[1]

In Berry, the Ohio Supreme Court found that the Court of Appeals went too far in ordering an award, emphasizing that determining whether a violation occurred and caused an injury involves factual questions — a power that is reserved exclusively for the Industrial Commission.

The state's high court issued a limited writ of mandamus, like an order, directing the Industrial Commission to revisit the employee's VSSR application and resolve the factual issues that it had previously bypassed, while also considering the interpretation of the specific safety requirements at issue, as determined by the Court of Appeals.

According to the court in Berry, the Industrial Commission should consider whether any heavy object was near the trench that would have required the employer to have sheet piled, shored up, braced, or sloped the trench's walls.

Practical Implications

The decision in Berry denotes a shift in how Ohio courts should review Industrial Commission orders on VSSR applications in the future.

Before Berry, both employers and injured workers faced steep uphill battles when challenging the Industrial Commission's interpretations of Ohio's specific safety requirements.

Now, both can try to persuade the Industrial Commission as to what an arguably ambiguous specific safety requirement means, and then get a second chance to do the same in court.

Both employees and employers should expect more mandamus actions challenging the Industrial Commission's interpretations of the state's specific safety requirements.

Parties should be increasingly willing to argue their interpretations of the applicable specific safety requirements, and should not necessarily rely on precedent.

Berry's importance extends beyond workers' compensation. It expands the Ohio Supreme Court's mandate that, similar to the federal Loper Bright framework, courts should not defer to an agency's interpretation of its rules and statutes.

This means that people who go before other Ohio agencies — such as the Department of Insurance, the Department of Commerce and the Unemployment Compensation Review Commission — may be able to make similar challenges to the agencies' interpretations of their applicable rules and statutes.

The ripple effect of Berry will continue to unfold, just like Loper Bright continues to unfold on the federal level.

A note of caution: Berry opens the door to reduced deference only when the statutory or regulatory language is ambiguous. If the text is clear, courts, as they always have done, will apply the plain language rule and enforce the statute exactly as written. Of course, what is plain language to one party can be ambiguous language to another.

Conclusion

Although this decision mirrors aspects of the Loper Bright ruling, its practical impact in Ohio likely cuts the opposite direction for employers, as Berry may expand their exposure in VSSR proceedings.

Beyond workers' compensation, Berry signals a continuing shift toward reduced judicial deference to administrative agencies — potentially reshaping how courts review agency decisions across a wide range of regulatory contexts.

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[1] TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors, 172 Ohio St. 3d 225, 2022-Ohio-4677, 223 N.E.3d 371; In re Alamo Solar I, L.L.C., 174 Ohio St. 3d 143, 2023-Ohio-3778, 235 N.E.2d 372.