CLIENT ALERTS & INSIGHTS

Ohio Supreme Court Rejects Deference to Industrial Commission in VSSR Proceedings

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Key Takeaways:

- **Ohio Supreme Court Limits Deference to Industrial Commission**

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

- **Similar to-but Distinct from-Federal Loper Bright Decision**

  Although the ruling somewhat echoes the U.S. Supreme Court's *Loper Bright* decision limiting deference to federal agencies, its impact is potentially opposite for employers. Unlike *Loper Bright*, which generally favored employers, *Berry* could increase employer exposure in VSSR proceedings brought by injured employees.

- **Implications for Future VSSR Proceedings**

  Employees may in the future argue for broader interpretations of specific safety requirements at the Industrial Commission and in court.

- **Potentially Broader Impacts on Administrative Deference in Ohio**

  The *Berry*

decision may signal a shift toward reduced judicial deference to other Ohio administrative agencies beyond workers' compensation, potentially reshaping how courts review agency decisions in a variety of regulatory contexts.

On October 16, 2025, 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. Indus. Commission*, the court somewhat aligned itself with the U.S. Supreme Court's landmark case, *Loper Bright Enterprises v. Raimondo*, which directed federal courts to independently interpret ambiguous statutes rather than rely on agency interpretations, as we have previously reported. But unlike the *Loper Bright* decision, which generally benefited employers dealing with federal agencies, the *Berry* decision could have the opposite effect when their injured employees accuse them of violating the state's specific safety requirements. Ohio's specific safety requirements are similar to OSHA's safety standards, and Ohio employers are generally subject to both.

The *Berry* case stemmed from an employee's applying for a Violation of Specific Safety Requirement (VSSR) award against his employer in the Industrial Commission. Generally, when an employee applies for a VSSR award, the Bureau of Workers' Compensation conducts an investigation, after which the Industrial Commission conducts a hearing to determine if the employer violated one or more of the specific safety requirements identified by the employee and whether any such violation contributed to the employee's injuries. Although Ohio law 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 rule would typically be interpreted in favor of the employer. Because of that, the Industrial Commission typically interprets the state's specific safety requirements in a way that benefits employers in VSSR proceedings. That is what happened in the *Berry* case.

In a mandamus proceeding, which is similar to an appeal, brought by the employee after the Industrial Commission denied his application for a VSSR award, the 10th District Court of Appeals unanimously concluded that the Industrial Commission erred in denying the employee's VSSR application and found 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 in favor of the employee and award him compensation.

In *Berry*, 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. However, it 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 reserved exclusively for the Industrial Commission. The court issued a limited writ of mandamus, like an order, directing the Industrial Commission to revisit the case and resolve the factual issues it had previously bypassed but considering the interpretation of the specific safety requirements at issue, as determined by the Court of Appeals.

Practical Implications for Employers

Although the Industrial Commission may not interpret the state's specific safety requirements any differently than it had, employers should expect that their employees will likely take the position at the Industrial Commission and in the courts afterwards that the applicable safety requirements should be interpreted more broadly in favor of finding employer liability and an award. Employees will also have another argument to make at the Court of Appeals, now being able to argue that the *Berry* decision makes it incumbent on the Court of Appeals to interpret the specific safety requirements at issue and not simply rubber-stamp the Industrial Commission's interpretation.

The *Berry* case also signals that Ohio courts may be less inclined to defer to other administrative agencies, resulting in broader impacts beyond the workers' compensation system. Employers should continue to monitor legal updates in this area.