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## LABOR AND EMPLOYMENT ALERT

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### Ohio Supreme Court Severely Limits Employers' Ability to Terminate Temporary Total Disability of Discharged Employee

On February 13, 2008 the Ohio Supreme Court decided *State ex rel. Reitter Stucco, Inc. v. Industrial Commission of Ohio et al.*, 117 Ohio St.3d 71, emphasizing that temporary total disability (TTD) compensation cannot be terminated following an employee's discharge unless the employee is not disabled at the time employment is terminated. In *Reitter*, the employee was discharged for comments he made about the company's president. At the time of his discharge, the employee was receiving wages in lieu of TTD payments for a completely unrelated industrial injury.

Following the discharge, the employer stopped paying wages, relying upon the Ohio Supreme Court's holding in *Louisiana-Pacific Corp. v. Indus. Comm. of Ohio* (1995), 72 Ohio St.3d 401. In *Louisiana-Pacific*, the court outlined a three-step process for determining whether an employee has "voluntarily" abandoned employment. Following *Louisiana-Pacific*, if an employee was deemed to have voluntarily abandoned employment, it was believed that employers could stop TTD payments.

However, in *Reitter*, the court held that voluntary abandonment is only the first step in analyzing whether an employer can terminate a discharged employee's TTD benefits. It has long been understood that if an employee's position is terminated involuntarily, the employer cannot terminate TTD benefits. In *Reitter*, the court expanded this theory by holding that if an employee voluntarily abandons employment, a court must then determine if the employee was disabled at the time of discharge. If the employee is disabled at the time of discharge, TTD benefits cannot be terminated.

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In essence, the court's decision in *Reitter* eliminates an employer's ability to terminate TTD payments to any employee who is receiving TTD benefits at the time of discharge, regardless of the reason for termination. If an employee is medically unable to return to work at the time of discharge, TTD benefits will continue until the employee is medically cleared to return to his or her former position, with or without restrictions. It is now more important than ever for businesses to proceed cautiously when terminating an employee who is or may become eligible for TTD compensation.

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