



Ohio Revised Code

Section 4123.75 Remedy of employee against noncomplying employer.

Effective: October 20, 1993

Legislation: House Bill 107 - 120th General Assembly

Any employee whose employer has failed to comply with section 4123.35 of the Revised Code, who has been injured or has suffered an occupational disease in the course of his employment, which was not purposely self-inflicted, or his dependents in case death has ensued, may file his application with the industrial commission or the bureau of workers' compensation for compensation and the administrator of workers' compensation shall determine the application for compensation in like manner as in other claims and shall make an award to the claimant as he would be entitled to receive if the employer had complied with section 4123.35 of the Revised Code. Payment of the claim shall be made promptly from the statutory surplus fund. Payment shall not bar any action under section 4123.77 of the Revised Code. If a recovery is made in an action under section 4123.77 of the Revised Code any funds paid from the state insurance fund under this section shall be repaid by the claimant. The administrator shall institute proceedings to recover from the employer any moneys paid from the surplus fund and to secure the employer's payment of the award. The employer shall pay the award in the manner and amount fixed thereby or shall furnish to the bureau a bond, in an amount and with sureties as the bureau requires, to pay the employee the award in the manner and amount fixed thereby.

An order of the administrator issued under this section is appealable pursuant to section 4123.511 and 4123.512 of the Revised Code. In the event payments are made to a claimant which should not have been made under the final decision in the appeal of the claim, the amount of the payments shall be charged to the surplus fund created under division (B) of section 4123.34 of the Revised Code. In the event recovery is made from the noncomplying employer, the sums that are recovered shall be paid into the surplus fund.

If the employer fails to pay the compensation to the person entitled thereto, or fails to furnish the bond, within a period of ten days after notification of the award, the award constitutes a liquidated claim for damages against the employer in the amount ascertained and fixed by the administrator or commission, and the administrator shall certify the same to the attorney general who shall forthwith institute a civil action against the employer in the name of the state for the collection of the award.



In the action it is sufficient for the plaintiff to set forth a copy of the record of proceedings of the commission or bureau relative to the claims certified by the administrator to the attorney general and to state that there is due to plaintiff on account of the finding and award of the commission or bureau a specified sum which plaintiff claims with interest. A certified copy of the record of proceedings in the claim shall be attached to the complaint and constitutes prima-facie evidence of the truth of the facts therein contained. Further proceedings shall be as provided in the Rules of Civil Procedure. As soon as the issues are made up in any such case, it shall be placed at the head of the trial docket and shall be first in order for trial. The cause of action provided in this section and the cause of action provided by section 4123.37 of the Revised Code may be joined in one action against an employer, and the amount of any premium paid or recovered from the employer for the period not exceeding six months during which the injury or disease, or injury or disease resulting in death, occurred shall be credited against the amount of any judgment for compensation recovered pursuant to this section. The amount recovered in the action from the employer shall be paid into the surplus fund created under division (B) of section 4123.34 of the Revised Code up to the amount paid out of the surplus fund and the balance into the state insurance fund. Any employee of a self-insuring employer, in the event of the failure of his employer to pay the compensation or furnish the medical, surgical, nursing, and hospital services and attention or funeral expenses, may file his application with the commission or the bureau for the purpose of having the amount of the compensation and the medical, surgical, nursing, and hospital services and attention or funeral expenses determined; and thereupon like proceedings shall be had before the bureau and with like effect as provided in this section.

The administrator shall adopt and publish rules governing the procedure before the bureau and commission provided in this section and shall prescribe the form of notices and the manner of serving the same in all claims for compensation arising under this section. Any suit, action, proceeding, or award brought or made against any employer under this section may be compromised by the administrator, or the suit, action, or proceeding may be prosecuted to final judgment as in the administrator's discretion may best subserve the interests of the state insurance fund.

A final judgment against the employer recovered in the manner provided in this section entitles the claimant to the compensation provided in this chapter for the injury, occupational disease, or death and the compensation shall be paid from the surplus fund created by section 4123.34 of the Revised Code, and any sum recovered on account of the judgment shall be paid to the bureau and credited to



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the fund the administrator designates.