

- Menu
 - Broccoli Cheddar Soup
 - Chicken Dumpling Soup
 - Turkey & Cheese or Ham & Cheese Slider
 - Salad Bar
 - Cranberry Salad
- Dessert:
 - Pumpkin Bar w/Cream Cheese Frosting
 - No Bake Cheese Cake w/Cherry Pie Filling
- Drinks
 - Soda and Water

PLEASE

SILENCE

YOUR CELL PHONE





**Bureau of Workers'
Compensation**

November Safety Council Update

Ohio West Safety Council

DAYNA

NOBLE

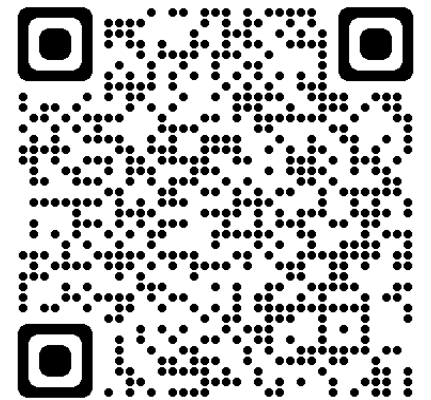
Industrial Safety Consultant Specialist

Region 4

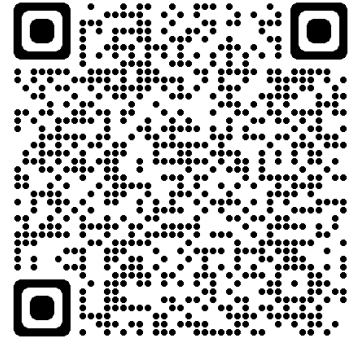
567-204-8917

Dayna.noble@bwc.ohio.gov

bwc.ohio.gov



MONTHLY LEARNING DECEMBER 2024



bwclearningcenter.com

Dec 3-4 - OSHA10: Industry safety basics
Mid-Ohio Conference Center

Dec 4 - First aid in the workplace
Wolf Event Center 201

Dec 4-5 - OSHA10: Construction safety basics
Cincinnati/Springdale

Dec 5 - Electrical safety in the workplace through insight and implementation of NFPA 70E
Indiana Wesleyan University

Dec 5 - OSHA 10: Construction industry outreach training *Spanish*
Allied Construction Industries, Cincinnati

Dec 10-11 - OSHA 10: Industry safety basics
Edison State Community College

Dec 12 - OSHA 10: Construction industry outreach training *Spanish*
Allied Construction Industries, Cincinnati



IN-PERSON CLASSES and
VIRTUAL TRAINING CLASSES
(VTC) qualify for Safety Council
rebate external training credits.

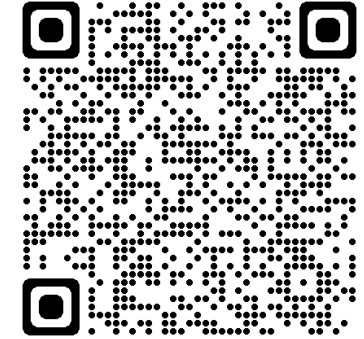
VIRTUAL TRAINING NOVEMBER/DECEMBER 2024

Nov 21 - Hazardous waste operations and emergency response awareness

Dec 3 - Safety series workshop module 2: Ergonomics, accident analysis, and hazard assessment basics

Dec 10 - Violence in the workplace

Dec 12 - OSHA recordkeeping half-day workshop



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IN-PERSON CLASSES and
VIRTUAL TRAINING CLASSES
(VTC) qualify for Safety Council
rebate external training credits.

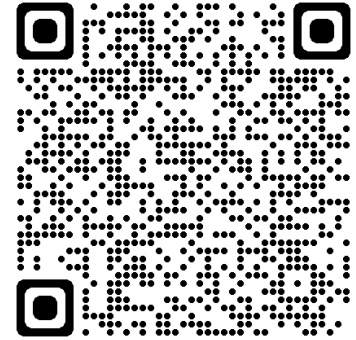
WEBINARS NOVEMBER/DECEMBER 2024

Nov 20 - Are all respirators the same?

Nov 21 - Employer update webinar

Dec 3 - PERRP recordkeeping

Dec 10 - Better You, Better Ohio! wellness webinar



bwclearningcenter.com



Webinar DO NOT
qualify for Safety Council rebate
external training credits.

EMPLOYER DEADLINE DATES

Private employer deadlines

Nov 25 – PA Group Experience Rating application deadline for 7/1/2025

Dec 31 – Grow Ohio deadline for employers with an initial policy effective date of Jan. 1 thru June 30 to complete the program safety requirements.

Public employer deadlines

Nov. 29 – DFSP application deadline for 1/1/2025 start date

Nov. 29 – PEC Transitional Work Bonus application deadline for 1/1/2025 start date.

Dec. 1 – PEC last day for retro settlements.

Dec. 23 – First Installment due for PY 2025

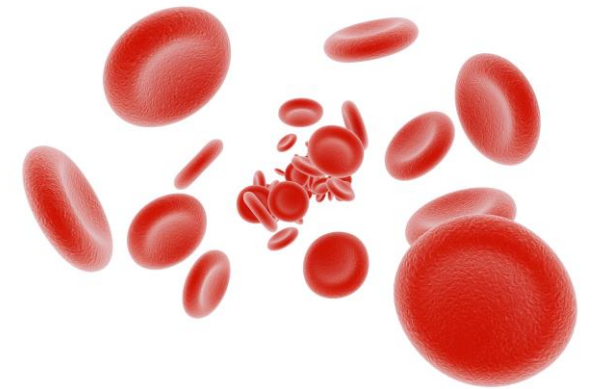
Carbon monoxide



**Bureau of Workers'
Compensation**

A SMALL MOLECULE WITH A BIG IMPACT

- Hemoglobin in our blood prefers carbon monoxide (CO) to oxygen, so if given a choice, our blood will pick up carbon monoxide.
- Unfortunately, we can't use CO to breathe.



SYMPTOMS OF CO POISONING

- Confusion
- Nausea
- Headache
- Dizziness
- Tiredness
- Death (severe poisoning)



Sources of co



Liquid fuel?



Gas fuel?



Burns fuel?

Ways to mitigate co exposure potential



Monitor



Maintain



Minimize enclosure

REQUEST A CONSULTATION

- CO exposure can occur in the workplace anywhere fuel is burned.
- We have trained staff who can help you evaluate your workers' exposures to CO.
- To request a consultation from our safety services staff, please use the QR code to the right.



ROBERT L. SOLT, III

- ROBERT L. SOLT, III has practiced law in Toledo, Ohio, with Bugbee & Conkle, LLP continuously since 1984.
- Rob concentrates his practice in all areas of workers' compensation law representing employers before the Industrial Commission of Ohio, the Bureau of Workers' Compensation, and in trial and appellate courts throughout Ohio, including Lucas, Wood, Erie, Allen, Hancock, Richland, Defiance, and Franklin counties.
- Rob attended Miami University in Oxford, Ohio, where he received his Bachelor of Arts degree, with honors in 1981.
- Rob received his Juris Doctor degree from the Toledo College of Law in 1984 and has been a partner with Bugbee & Conkle since 1989.



The Impact of Marijuana Legalization and Workplace Policies

**Black Swamp Safety Council
November 19, 2024**

**Robert L. Solt, III, Esq.
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419-244-6788
rsolt@bugbeelawyers.com
www.Bugbeelawyers.com**

Increase of workplace overdose deaths since 2011:

536%

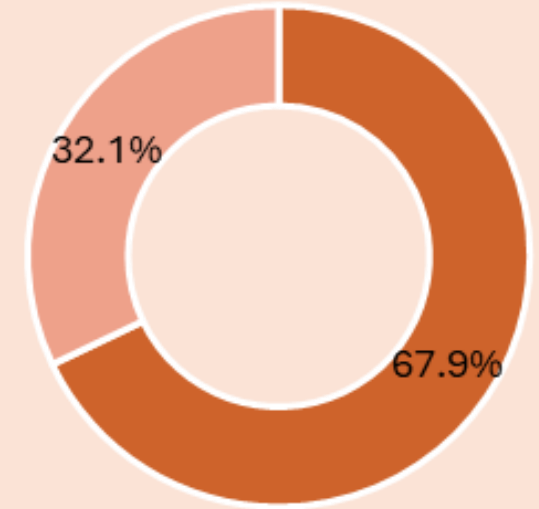
Substance Abusers are 5x more likely to file a Workers' Compensation claim

American business dollars in lost productivity due to alcohol and drug abuse every year:

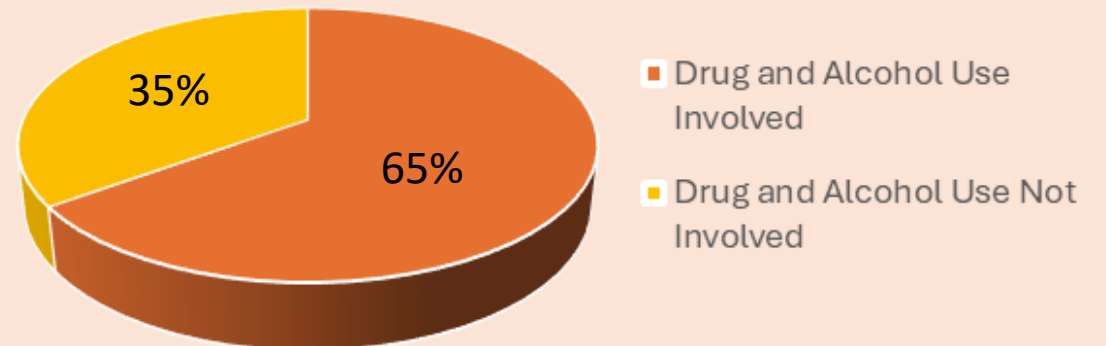
\$81,000,000,000

Why do you care?

■ Employed Illicit Drug Users
■ Unemployed Illicit Drug Users



% of Industrial Injuries



R.C. 3719.01(M) Defines Marijuana*

Marijuana means all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin.

*Marijuana in the Revised Code is spelled "Marihuana"



Ohio Legalized Recreational Marijuana

On November 7, 2023, voters made Ohio the 24th state to legalize the recreational use of marijuana by passing Issue 2



On December 7, 2023, the new law went into effect. Chapter 3780 of the Ohio Revised Code – Adult Use Cannabis Control



What Does This Mean for
Employers?



Employers are **Protected**

- Issue 2 provided specific language to protect an Employer's right to discipline and discharge employees for marijuana use that impacts the workplace.
- Recreational marijuana is addressed by the Ohio Legislature in amending Chapter 3780 of the Ohio Revised Code





R.C. 3780.35 – Rights of Employer

- (A) Nothing in chapter R.C. 3780
 - (1) Requires an employer to permit or accommodate an employee's use, possession or distribution of adult use cannabis;
 - (2) Prohibits an employer from refusing to hire, discharge, discipline, or otherwise taking an adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of employment because of that individual's use, possession, or distribution of cannabis;
 - (3) Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;



R.C. 3780.35 – Rights of Employer (cont.)

- Nothing in this chapter
 - (4) Interferes with any federal restrictions on employment, including the regulations adopted by the U.S. Dept. of Transportation in Title 49 of the Code of Federal Regulations, as amended
 - (5) Permits an individual to commence a cause of action against an employer for refusing to hire, discharge, discipline...regarding the hiring...related to the individual's use of marijuana
 - (6) Affects the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program

R.C. 3780.35 – Rights of Employer (cont.)

- (B) An individual who is discharged from employment because of that individual's use of cannabis shall be considered to have been discharged for just cause for purposes of division (D) of section 4141.29 of the Revised Code if the individual's use of cannabis was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of cannabis.



*Fisher v Airgas
USA, LLC, 2024
(6th Cir., January
31, 2024)*

Facts of the Case

- Employee tested positive
- Employee claimed to only use legal CBD
- Employer terminated employee for violation of drug policy

Decision

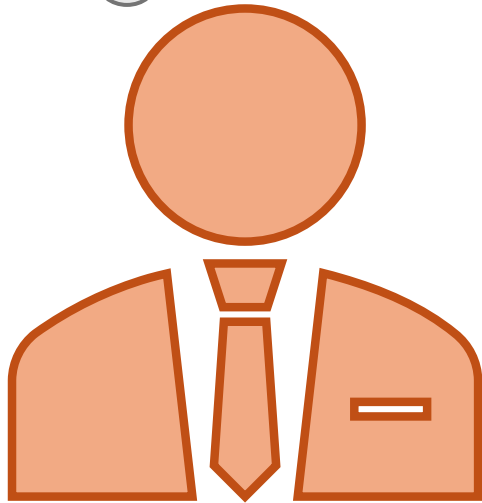
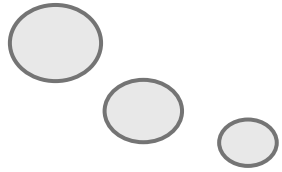
- 6th Circuit reversed District Court's grant of Summary Judgment to the employer
- Employer did not properly investigate and consider employee's assertion of legal CBD use
- Remanded to trial court

Concern

- No mention of Ohio's Marijuana Law, R.C. 3780

Hypothetical:

- Rebecca Reefer, an employee, comes to work with some gummies. She has no physical signs of impairment. Rebecca shows the gummies to a colleague, Shelly Snitch. Shelly reports Rebecca to Human Resources.
- What could happen?
- Does this law change the policy to terminate? **NO**
- Rebecca Reefer could be disciplined or even terminated for his actions.
- What about *Fisher*?

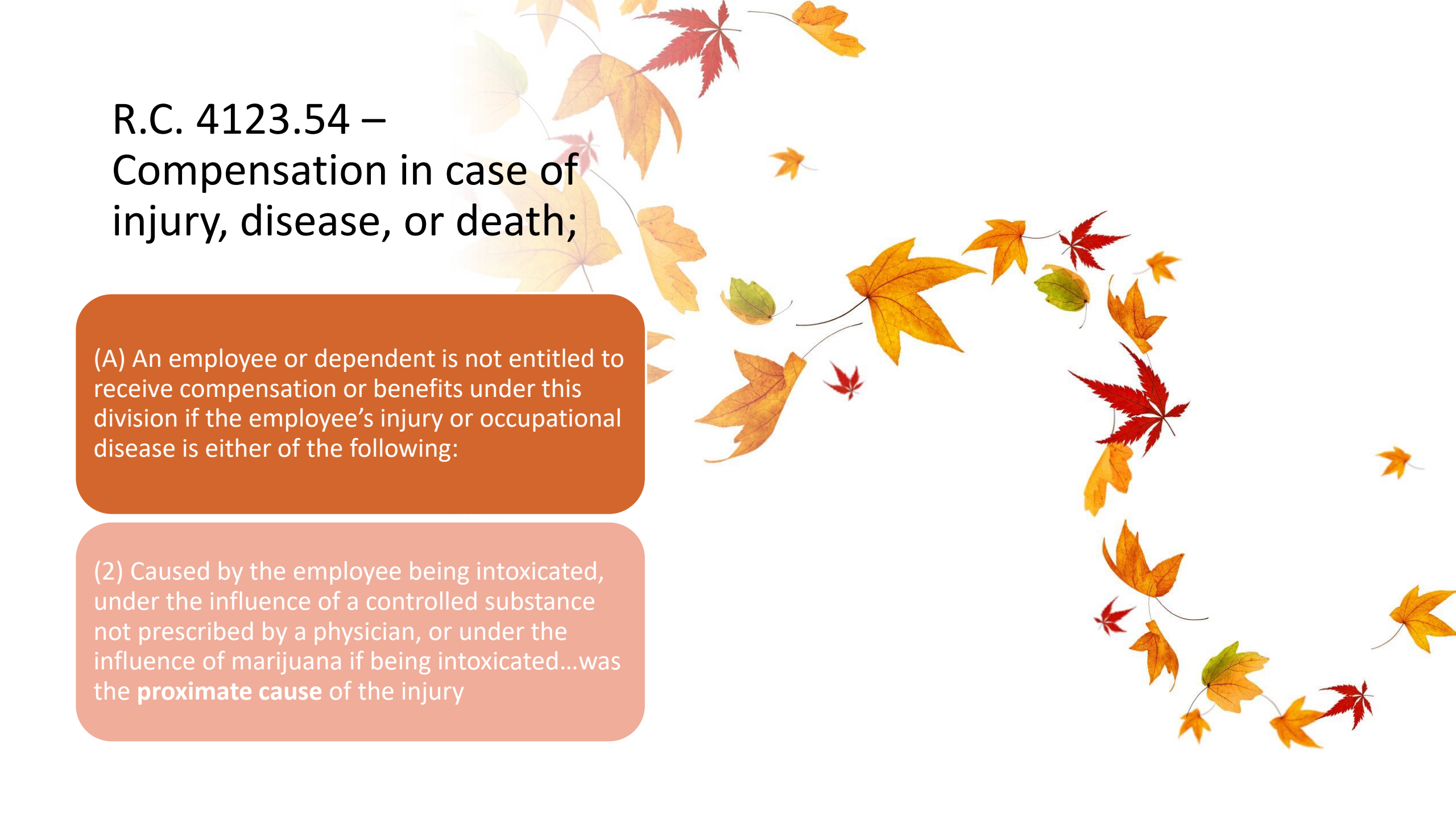


Workers' Compensation Implications

Under the Influence

- Proximate Cause of the Injury
- Rebuttable Presumption





R.C. 4123.54 – Compensation in case of injury, disease, or death;

(A) An employee or dependent is not entitled to receive compensation or benefits under this division if the employee's injury or occupational disease is either of the following:

(2) Caused by the employee being intoxicated, under the influence of a controlled substance not prescribed by a physician, or under the influence of marijuana if being intoxicated...was the **proximate cause** of the injury

R.C. 4123.54(B)

Rebuttable Presumption

There is a rebuttable presumption that an employee is intoxicated, under the influence of a controlled substance not prescribed by the employee's physician, or under the influence of marijuana and that being intoxicated, under the influence of a controlled substance not prescribed by the employee's physician, or under the influence of marijuana is the proximate cause of an injury under the following conditions:

(1)(b) the employee, through a qualifying chemical test administered within 32 hours of an injury, is determined to have...marijuana in the employee's system at a level equal to or in excess of the cutoff concentration level

(2) when the employee refuses to submit to a requested chemical test...may affect the employee's eligibility for compensation and benefits

Rebuttable Presumption

Written notice to the employee that employee's refusal to submit to a chemical test may affect the employee's eligibility for workers' compensation

Must have reasonable cause to suspect that the employee may be intoxicated or under the influence

What is Reasonable Cause?



OBSERVABLE
PHENOMENON



PATTERN/ABNORMAL
CONDUCT



IDENTIFICATION OF
AN EMPLOYEE AS
FOCUS OF A
CRIMINAL
INVESTIGATION



REPORT OF USE OF
ALCOHOL OR A
CONTROLLED SUBSTANCE
PROVIDED BY A RELIABLE
AND CREDIBLE SOURCE



REPEATED OR
FLAGRANT
VIOLATIONS OF
SAFETY RULES

Checklist



Written notice posted



Handbook language



Drug and alcohol training



Procedure for investigation and documentation of reasonable suspicion

What steps should you take if there has been an accident?



INVESTIGATE...

But Who Should Conduct the Investigation?

Supervisors

Workers know the supervisor and the supervisor knows the workers

Supervisors may be privy to information such as worker's personal problems, habits, or other "rumors"

Supervisors know the job and equipment



Accident Reports

Dates and Times are
Critical

Do not simply restate as
"fact" what claimant or
other works tell you –
"alleges"

Exact location of the
incident

Get written statements
from all people involved
in the incident and all
witnesses

What happened – be
specific

Point out
inconsistencies

Interview all Witnesses and Supervisors



Make witnesses and supervisors sign and date their statements



Get detailed descriptions of the incident

Any Signs or Evidence of Drugs or Alcohol?

Mandatory drug/alcohol tests after incident

Alert supervisors or investigators they should look for signs of evidence of drugs or alcohol

If there is “reasonable suspicion” drugs or alcohol are involved, document this fact in order to create a rebuttable presumption



Document the Scene



- Take photographs and videos of the incident site and all involved equipment
- Take measurements and document the scene of the incident in as much detail as possible
- You may not know what is actually important during the initial stages of the investigation



Things to Consider During an Investigation

Claimant's
age

Nature of
"alleged"
medical
conditions

Good
reputation?

Does
employee
have other
claims?

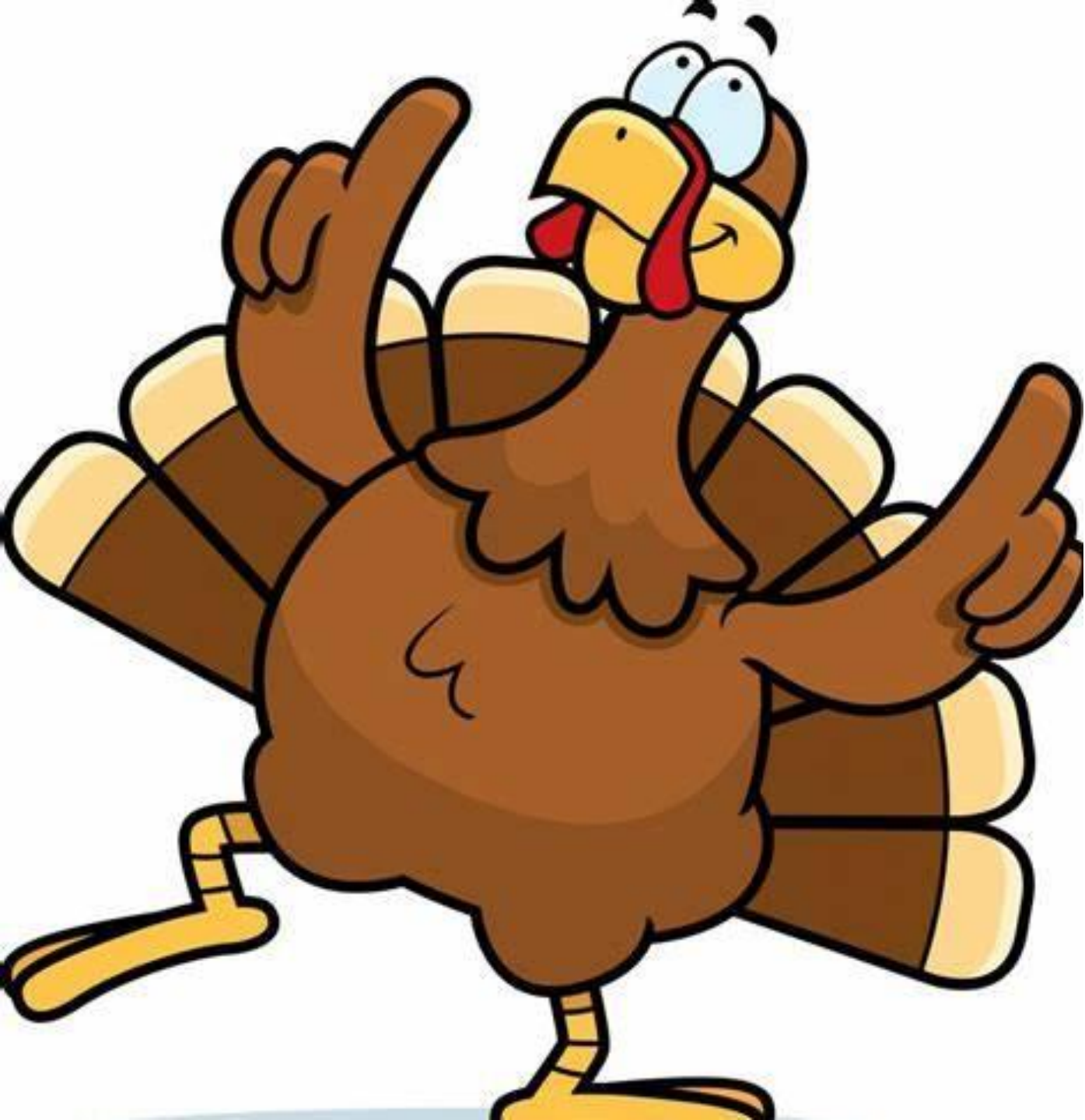
Disciplinary
issues?

Attendance
issues?

Possible red
flag!!!

Questions from the Black Swamp Safety Council Steering Committee

- What is the legal liability if you keep testing post-accident?
- Can you ask what they are taking?
- What is the newest technology to test for marijuana?
 - Is there a breathalyzer?
- What will the Feds do?



Thank you!

Look us up!

-Bugbee & Conkle-

www.bugbeelawyers.com

Contact us!

419-244-6788

rsolt@bugbeelawyers.com

Questions?

Thank you for attending!