



When Workers' Compensation and Disabilities Laws Collide — Blind Reliance on a Workers' Comp Order Can Violate the ADA, Sixth Circuit Holds

by Vladimir Belo and James Petrie of Bricker & Eckler. Reprinted with permission.

The legal worlds of workers' compensation law and the laws against disability discrimination sometimes collide and leave employers with difficult decisions about how to comply with each. Earlier this month, the U.S. Court of Appeals for the Sixth Circuit (which covers Ohio, Michigan, Kentucky, and Tennessee) issued a decision that serves as a cautionary tale to employers that impose work restrictions upon an employee based on what they perceive their responsibilities to be under a workers' compensation or some other administrative order.

The Court held that the employer violated the Americans With Disabilities Act ("ADA") when it imposed overbroad medical restrictions and unpaid leave upon an employee based on the employer's own interpretation of a workers' compensation order instead of an individualized inquiry into an employee's actual medical condition. (*Jones v. Nissan N. Am. Inc.*, 6th Cir., No. 09-5786, unpublished opinion 8/18/11). Thus, no matter what a workers' compensation order or other administrative order might say, employers must undertake an individualized inquiry into an em-

ployee's capabilities before imposing work restrictions that have an adverse effect on the employee's employment.

Factual Background

The case involved Mark Jones, an employee who worked for a Nissan manufacturing plant. Jones injured his elbow in 2003 while working the "hood install" job. He eventually required surgery in September 2004 and was cleared to work with no restrictions in January 2005. Jones' treating physician for workers' compensation purposes, who was on Nissan's approved list, assigned an "anatomical impairment rating of 3%" to Jones' right arm. A year later, Jones visited the treating physician again, complaining of right arm pain. By this time, Jones worked in a "body trim fits" job, where he used hand tools to adjust panels on vehicle bodies. His doctor again released him to return to work with no restrictions.

Meanwhile, during his workers' compensation trial for his 2003 elbow injury, the judge concluded that Jones "couldn't

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Hamilton County Law Library

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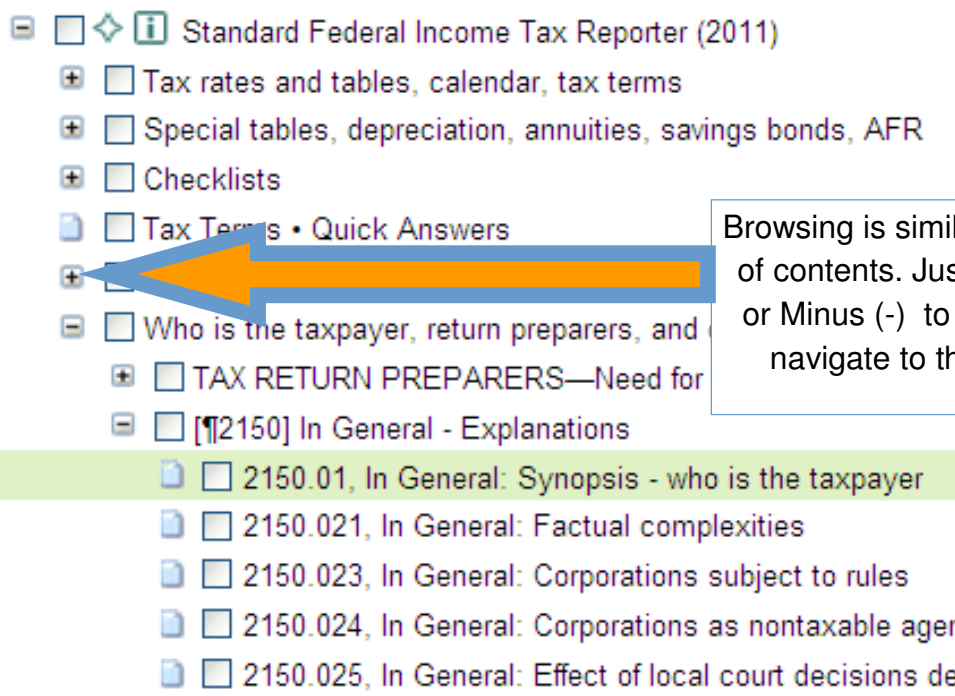
[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

Tech Tip: CCH Federal Tax Material Online via HCLL

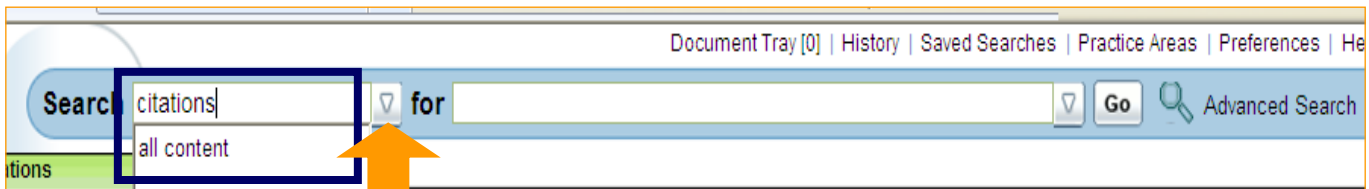
By Julie Koehne, Systems Librarian

Check out the Federal Tax titles we have available for use in the Law Library Computer Lab!

There are different ways to search, such as, browsing, by citation or using terms across all titles or a specific title.



Browsing is similar to looking at a table of contents. Just click on the Plus (+) or Minus (-) to the left of the titles to navigate to the specific material.



Both terms or citation searches use the same box. Select the type of search you prefer, citation or all content, using the drop down box, then click Go.

Upcoming CLEs

Lexis CLE (Two Sessions)

Wednesday, November 16

Session 1: 12:30-1:30– Lexis Search Tips

Session 2: 1:45-2:45– Litigation Research: Focus on treatises, forms, and jury instructions

Westlaw CLE (Two Sessions)

Thursday, December 1

Session 1: 12:30-1:30– Jury Verdicts and Formfinder

Session 2: 1:45-2:45– Secondary Sources, Focus on Treatises

Each session is approved for 1.0 hour of general credit in Ohio.

Free to law library subscribers; \$35 per session for nonsubscribers.

To register for any of these CLE events, contact Mary Ann Sweeney at 513.946.5300 or via email at masweeney@cms.hamilton-co.org

Statewide Consortium of County Law Libraries

As previously announced in this newsletter, a legislatively mandated statewide consortium of county law libraries was created last year (see [R.C. 3375.481](#)). Now staffed on a part-time basis and with a set of priorities established, the consortium of County Law Library Resources Boards promises to offer libraries substantial cost savings and efficiencies in exchange for the required pay-in of a portion of revenues. We anticipate reduced prices for print materials, and favorable pricing on licensed databases among other benefits. [Mary Jenkins](#) serves as vice-chair of the consortium board and welcomes comments and questions.

Ohio Criminal Sentencing and Juvenile Amendments under H.B. 86 Resources

Ohio House Bill 86, signed by Governor John Kasich on June 29, 2011 and becoming effective this September 30, 2011, represents some of the most significant sentencing, criminal and prison law amendments since Senate Bill 2 back in 1996 took effect. House Bill 86 also makes noteworthy changes in juvenile law. Since HB 86's passage, the several summaries and analyses below have come to our attention as being noteworthy and of possible help to our patrons.

Full Text of HB 86

http://www.legislature.state.oh.us/BillText129/129_HB_86_EN_N.pdf

The Ohio Legislative Service's "final analysis" of HB 86 (140 pp.)

<http://www.lsc.state.oh.us/analyses129/11-hb86-129.pdf>

Ohio Sentencing Commission's summary (August 2011 draft @ 36 pp.)

<http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/summaries/HB86Summary.pdf>

Ohio Judicial Conference's "Felony Sentencing & Juvenile Justice" enactment news (6 pp.)

http://www.ohiojudges.org/cms/tools/act_Download.cfm?FileID=3475&/HB%2086%20Enactment%20News%20hyperlinked.pdf

Ohio Judicial Conference's "judicial impact statement of HB 86" (17 pp.)

http://www.ohiojudges.org/cms/tools/act_Download.cfm?FileID=3412&/HB%2086%20JIS%20Sentencing%20Reform%20FINAL.pdf

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probably do the job he was doing at the time of his injury [i.e., hood install] because it required lots of lifting and more use of vibratory tools.” Although the judge concluded Jones could use the hammer and chisel in his body-trim-fits job, he noted that the hammer and chisel use was a “light type of use” that did not cause Jones the same type of pain and difficulty as the use of heavier duty “vibratory tools.” The Judge found a “30% permanent disability to the right arm.” The written ruling also noted Jones’ restrictions on working with power tools and heavy lifting.

Afterward, Nissan interpreted the court’s order as affirmatively ordering broad medical restrictions and restricted Jones from lifting and using power tools. Significantly, Nissan also restricted Jones from using hand tools in his job, even though the judge’s order said nothing of hand-tool restrictions.

Based on these restrictions, Nissan found that there were no jobs in the plant that Jones could perform. Over Jones’ objection, Nissan placed Jones on unpaid medical leave. In 2007, Jones obtained a job elsewhere, and Nissan fired Jones for violating its policy requiring advance approval prior to taking other employment.

Jones then sued Nissan alleging that Nissan regarded him as disabled and discriminated against him under the ADA. In other words, Jones argued that Nissan regarded him as having a “substantially limiting” physical impairment when he did not, in fact, have one that prevented him from performing his job. At trial, the jury returned a defense verdict for Nissan. Jones appealed to the Sixth Circuit.

Nissan Inappropriately Relied on its Own Overbroad Interpretation of a Court Order

For its defense, Nissan contended that it could not disregard a workers’ compensation order and was merely attempting to comply with the state court ruling. Nissan’s reliance on the court order, however, did not insulate it from ADA liability under a

“regarded as” theory.

Under Sixth Circuit precedent, an employer is required to conduct an “individualized inquiry” into an employee’s “actual medical condition” when deciding whether an impairment disqualifies that employee from a particular job.

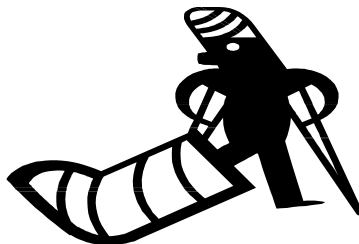
The court of appeals found that the workers’ compensation order did not require Nissan to restrict Jones from continuing in the body-trim-fit position he previously held. The court also found that the record contained no evidence that Nissan performed the “individualized inquiry” required by the ADA. Indeed, Nissan had relied completely on the court order as imposing a medical restriction, even though the court did not purport to make any medical judgment with respect to Jones’ physical capability.

The court of appeals then reversed the judgment in Nissan’s favor, found in favor of Jones, and ordered the trial court to determine the amount of damages Jones should recover.

Employer Takeaway: The Employer Cannot Shortcut the ADA’s Individualized Inquiry

This decision serves as a reminder about the requirements of the ADA and the perils that can befall even those well-meaning employers that seek to comply with workers’ compensation orders. To comply with the ADA, no matter what a workers’ compensation order or other administrative order might say, employers must undertake an individualized inquiry into an employee’s capabilities before imposing work restrictions that have an adverse effect on the employee’s employment.

For more information, contact Vladimir Belo (vbelo@bricker.com) or James Petrie (jpetrie@bricker.com.)



New Library Staff Member

Our new Technical Services Librarian, Melissa Barney, starts work on October 3. Please join us in welcoming Melissa next time you stop in. Her office is right next to the area where we offer coffee and tea. Melissa most recently worked at the law library at Dinsmore & Shohl in Cincinnati. Melissa is a graduate of Kent State's MLIS program and has been working in technical services since 1998, starting out as a processing clerk and moving into acquisitions and cataloging, first at the Public Library of Cincinnati and Hamilton County and then at Dinsmore & Shohl. She brings strong experience to the position. Melissa will be responsible for the areas of cataloging, acquisitions, and serials. Most fundamentally, Melissa will ensure our users' ability to efficiently access the Law Library's resources, including descriptive records in the catalog and good organization of the materials on shelf. Melissa will also maintain information about our license agreements for online content. It is a pleasure to welcome her to our staff.

Library Welcomes International Visitors

On behalf of the U.S. Department of State's International Visitor Leadership Program, the Greater Cincinnati World Affairs Council invited the Hamilton County Law Library to meet with visiting librarians again this year. On September 29, library staff members will welcome eight librarians from Central and South America to tour our library and to learn about the services and resources that we offer. The U.S. Department of State outlined the following specific goals for this program:

To promote a better understanding of the role and function of libraries and museums as information specialists in U.S. society;

To demonstrate the diversity of library and museum services and to study the use of

technology, including online and digital services and public outreach;

To examine the institutions and individuals involved in the research, presentation, conservation, and education of American cultural heritage; and,

To offer opportunities for professional dialogue and exchange to increase international cooperation.

OSBA CLE Books: The Most Recent Shipment

Our quarterly package of CLE books from the OSBA includes the following titles. This area of our collection sees a lot of use. Many of these books are on our New Books shelving right now but the collection is shelved next to reference librarian Laura Dixon-Caldwell's desk. Just ask us if you'd like us to hold some of these for your use.

- Solo contendere : how to go directly from law school into the practice of law without getting a job
- Advising corporate directors and officers.
- Basics of employment law
- Basics of estate administration
- Basics of Ohio workers' compensation law 2011
- Commercial leases
- Digital lawyering : how to make use of technology to improve your law practice
- Hot issues in employment law
- I'm buried in paper-- what can I do? : scanning, PDFs, document management, and iPads/tablets for legal professionals
- Introduction to real estate practice
- Introduction to social networking : what it is and why you need to know
- NLRB region 8 labor law
- Section 1031 real estate exchanges and Eminent domain
- Social networking and legal investigations : what is and isn't permissible
- Taxes affecting a decedent's estate
- Trust Accounts 101

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

You and the Legal System: Family Law

Karen Brinkman of Brinkman & Associates is the next speaker in our *You and the Legal System* series for the public. She will speak about family law matters on Friday, October 21, 2011 at 12:00 noon at the Law Library. The program is free to the public. To register, call 513.946.5300.

Ms. Brinkman will address these points:

Divorce versus Dissolution and Family Law Basics, including:

- Procedural differences
- Property division
- Support issues

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may also want to pass along the program announcement to clients, staff, and community organizations. If you would like flyers to distribute, please contact law librarian Mary Jenkins at 513.946.5300.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on October 6, 2011 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>

Family Law Resources

The list below is a small selection of our strong collection in family law. If you'd like to borrow one of these books, call 513.945.5300 or email reference@cms.hamilton-co.org and we'll hold it for you. We also have helpful online materials like *FinPlan Divorce Planner* and *Equal Shares*, BNA's *Family Law Reporter*, and e-books from West and Aspen. Ask a reference librarian to orient you to any of the online content.

Building a parenting agreement that works : how to put your kids first when your marriage doesn't last / by Mimi E. Lyster.
KF547 .L97 2007

Child custody practice and procedure. by Linda D. Elrod.
KF547 .E47

Child custody procedures [in Ohio] : form by form / Cathy R. Cook ... [et al.].
KFO104.A75 C87 2010

The complete guide to divorce practice : forms and procedures for the lawyer / Larry Rice.
KF533.5 .R52 2005

Current events for family lawyers : legislative and case law update [in Ohio]
KFO100.A75 C8 2009

Divorce & money : how to make the best financial decisions during divorce / by Violet Woodhouse ; with Dale Fetherling.
KF524 .W66 2011

Divorce after 50 : your guide to the unique legal & financial challenges / Janice Green.
KF535.Z9 G738 2010

Divorce in the golden years : estate planning, spousal support, and retirement issues for clients at midlife and beyond / Leslie Ann Shaner.

KF535 .S49 2010

Family law in a nutshell / by Harry D. Krause, David D. Meyer.
KF505.Z9 K7 2007

Handling divorce cases from start to finish [in Ohio]
KFO100.A75 H36 2010

A judge's guide to divorce : uncommon advice from the bench / by Roderic Duncan.
KF535.Z9 D857 2007

Nolo's essential guide to divorce / by Emily Duskow.
KF535.Z9 D67 2008

Ohio divorce, annulment, alimony, dissolution, and child custody. by Robert D. Walker.
KFO100 .W34

Qualified domestic relations order answer book / Mark W. Dundee.
KF532.7 .M47 2011

The special needs child and divorce : a practical guide to evaluating and handling cases / Margaret "Pegi" S. Price.
KF547 .P73 2009

Tax aspects of marital dissolution. Harold G. Wren, Leon Gabinet.
KF6333 .W74

Understanding QDROs : and Divorce and tax : a practical approach.
KFO100 .U56 2009



Upcoming Events

October 6: Hamilton County Law Library Resources Board Meeting

October 21: You and the Legal System: Family Law

November 16: Lexis CLEs: Search Tips & Litigation Research

December 1: Westlaw CLEs: Jury Verdicts/Formfinder and Treatises



October 2011 Law Library Newsletter

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