

# GOTTSOMM NEWS

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## REBUTTABLE PRESUMPTION

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In October 2004 Substitute House Bill 223 went into effect, which created a “rebuttable presumption” that alcohol or drug was the cause of an injury if, after a qualifying chemical test, certain detection levels were met.

Rebuttable presumption also exists if an employee refuses to submit to a drug test after having been given notice that the refusal to comply with the test may affect his or her eligibility for benefits.

A qualifying chemical test is one administered:

After the employer has reasonable cause to suspect intoxication;

At the request of a policy officer pursuant to Revised Code §4511.191 (concerning driving under the influence);

At the request of a licensed physician.

Reasonable cause is defined as evidence that an employee is or was using alcohol or a controlled substance, taken from specific objective facts and reasonable inferences. These facts and inferences may be based on, but not limited to, any of the following:

[See “Texting”](#)

*“Employers can easily lose control over what employees can and cannot do with their cell phones”*

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## MINIMUM WAGE INCREASE

If your business has annual gross receipts of more than \$297,000 per year, then the minimum wage increase applies to you! Effective January 1, 2015, Ohio’s minimum wage will increase to \$8.10 per hour on January 1, 2015, which is a 15¢ jump. For tipped employees, the minimum wage rises to \$4.05 per hour, which is a 6¢ increase.

Ohio is one of 23 states that have a minimum wage higher than federal minimum of \$7.25. (In case you’re curious, Washington has the highest rate at \$9.32 per hour.) Ohio’s minimum wage increases are set by constitutional amendment passed by voters in 2006. This amendment states that the minimum wage will increase by the rate of inflation each year on January 1.

(Originally reported by The Columbus Dispatch, [www.dispatch.com](http://www.dispatch.com).)

## REBUTTABLE PRESUMPTION, *continued*

- A) Observable phenomena, such as direct observation of drug or alcohol use, possession or distribution of alcohol or a controlled substance, or physical symptoms of being under the influence of alcohol or a controlled substance, such as - but not limited to – slurred speech, dilated pupils, odor of alcohol, changes in affect or dynamic mood swings;
- B) A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance such as frequent absenteeism, excessive tardiness or recurrent accidents which appear to be related to use of alcohol or controlled substances and does not appear to be attributable to other factors;
- C) The identification of an employee as the focus of a criminal investigation into unauthorized possession, use or trafficking of a controlled substance;
- D) A report of use of alcohol or a controlled substance provided by a reliable and credible source; and/or
- E) Repeated or flagrant violations of employer’s safety or work rules that are determined by the employee’s supervisor to pose a substantial risk of injury or property damage and that appear to be related to the use of alcohol or a controlled substance, and that do not appear to be attributable to other factors.

The Statute also requires that laboratories used by employers be certified by the U.S. Department of Health and Human Services or meet or exceed standards established by the Department for laboratory certification.

The status requires that written notice be provided to employees by the posting of a notice at all employer locations, along with the company’s BWC Certificate of Coverage. The employee notice should be at least as large as the BWC’s Certificate and can be posted at employee information boards or near time clocks. Written notice to employees should include the following suggested language:

For questions concerning the application of this legislation or for assistance in preparing Notice for your employees, please contact Gottfried Sommers LLC.

## TEXTING POLICIES

The way businesses operate has changed, as technology continues to advance and younger generations enter the workforce. Where companies primarily conducted business by telephone calls, e-mails, or in-person contact, many people now prefer to conduct business using text messages. Additionally, many employees are now using personal laptops, tablets, and mobile devices for business purposes.

While text messages are fast, easy and often lead to more immediate responses than standard e-mail, allowing employees to use their own devices for business purposes can be dangerous. Employers can easily lose control over what employees can and cannot do with their cell phones and text messages do not stay archived as long

## TEXTING POLICIES, *continued*

as e-mails. As a result, a business can neither monitor an employee's communications nor maintain records of those communications in a consistent or long-term way. Additionally, text messages are less likely to be as secure as e-mails and employers may lack access to an employee's personal electronic devices, making it difficult to ascertain whether an employee is engaging appropriately with clients or other business personnel. Most importantly, if an employee is terminated, the employer has no access to any information on the employee's personal device.

Is your company allowing employees to use personal devices to conduct business by texting? If so, do you have procedures and/or policies in place for managing employee texting? Contact Gottfried Sommers for additional information on the creation and implementation of policies allowing for the appropriate use of technology by your employees.

## TIPS FOR HANDLING CLAIMS

WorkersCompensation.com released 60 tips for superior claims management. While not a "Top 10" list, a few items bear repeating:

1. Call the claims bluff and authorize treatment; sometimes it's the only way to keep the claim moving forward.
2. Put yourself in the shoes of the front line employee/manager; you will make better decisions if you know what they go through.
3. WC claims are more difficult than general liability claims and claims adjusters' jobs are more difficult as a result.
4. Create a solid return-to-work program that syncs with FMLA.
5. Develop an attorney-approved drug testing program for post-accident testing.
6. Partner with your defense attorney (preferably Gottfried Sommers LLC!) schedule regular roundtable times to discuss claims management, treatment, return to work issues, etc.