

Approved: 4-29-94

Date

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 9:00 a.m. on January 13, 1994, in Room 526-S of the Capitol.

All members were present except: Representative Nichols (excused)
Representative Packer (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

George Gomez, Director, Division of Workers Compensation

Others attending: See attached list

George Gomez, Director, Division of Workers Compensation, brought the committee up to date on what has been happening in the department since the new workers compensation act took effect 6 months ago--July 1, 1993. He thinks they are resolving more disputes before litigation. The benefit review conference was initiated so that a case would have to go through a benefit review before it went to preliminary hearing. A benefit review conference is a nonjudicial procedure where no record is made. Not all cases have to go to a benefit review conference; however, starting in October or November they have sent 100 percent of the cases through a benefit review. One reason they have done this is that there is a contradiction in the statutes. One statute states that the director has the authority to write rules and regulations to determine which cases don't have to go to a benefit review; another statute states that a case can't go to preliminary hearing without first going to a benefit review. If 100 percent of cases are run through a benefit review conference, then that contradiction is moot.

At this time most benefit review conferences are accomplished over the telephone, but they are starting to move toward more personal appearances at benefit review conferences. About 39 percent of the cases that have gone through a benefit review conference in the last 3 months have not gone on to the next level. For many cases they believe that they will be even more successful when they get people face to face. The benefit review conference forces attorneys, claim adjusters, and claimants to address the issues early so that the issues can be resolved before going before a judge. They have four full-time benefit review officers and three clerks. They had originally requested 20 officers.

The division is also hiring more ombudsmen/claims advisors as the ombudsmen calls have increased by about one-third. While all of their benefit review officers are attorneys, none of the ombudsmen are attorneys. In fact, several have a heavy investigative background. This is partly because rather than wait several months for a new classification, their ombudsmen were classified as special investigators, an existing state classification. They may want to change this in the future. Ombudsmen take calls on fraud and abuse with all of the calls now put on record, including anonymous calls. Attached is a list of several fraud and abuse cases. (Attachment 1) Mr. Gomez also shared several appreciative letters their ombudsmen have received. (Attachment 2)

Mr. Gomez included a letter from The Boeing Company of Wichita concerning an innovative new concept they are starting, partly for ADA compliance, but also workers comp related, to return injured employees back to work. They are using vocational rehabilitation counselors to help with this. The division is optimistic that in conjunction with labor and management that this new project will be a model to show the rest of the state how to reduce litigation, lower workers compensation costs, and get employees back to work. Under the new formula in the statutes on work disability, if the employee can return to work at 90 percent of comparable wage, functional impairment only is paid. Work disability on top of functional impairment would not be paid. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY, Room 526-S Statehouse, at 9:00 a.m. on January 13, 1994.

Copies of the Workers Compensation Information for Kansas Employers & Employees booklet, in both English and Spanish versions, explaining the new workers compensation act that they assembled in conjunction with the Kansas Department of Insurance for insurance companies and employers in July 1993 were given to the committee. (Attachment 4) Information sheets prepared in November 1993, also in both English and Spanish, for employers to give to injured workers were included in the packet of information. (Attachment 5) Representative Mayans called attention to several errors in the Spanish text.

Mr. Gomez also provided the committee with copies of the new medical fee schedule with over 6,000 different codes put into effect in November 1993. Copies of the fee schedule can be obtained from the office of the Division of Workers Compensation. In conjunction with the fee schedule, utilization review was put into place January 1. They have a temporary 90-day agreement with a group out of Wichita. They will be interviewing applicants in the near future for a 2-year contract. They have \$200, 000 in the budget for this.

Concerning data entry, they are taking a random sample of 500 cases out of 2,000 active cases. Letters were sent to insurance companies this week asking for data on different cases to build a data base. In three years they should know exactly how the new workers compensation act works; however, since they would like some data much sooner, they are doing base line studies and some long-term studies by attempting to identify certain cases and follow them long term.

Mr. Brunner with the safety program has hired or will be hiring seven employees. He has had some difficulty finding qualified people fitting the job specifications, but they have been hired and are completing their training. That program is getting off the ground, just not as fast as they had hoped.

They have had some inquiries concerning taking back child support payments from lump sum settlements.

Preliminary hearing appeals have been held. They have heard about 80 cases, decided about 36. They hear cases on Tuesdays and Thursdays and then decide cases on Fridays. Beginning in February they are going to start circuit riding throughout the state.

The advisory counsel has yet to meet, but should be meeting in the next two weeks. Data and information has been gathered for them. The same is true for the oversight committee. The chairman has resigned, so it is fortunate they have an experienced oversight committee. The advisory committee and oversight committee are the two areas most behind schedule.

There has been a law suit concerning the new workers compensation act. Director Gomez and Secretary Dick have been sued directly in something called Direct Application (Quo Warranto) which basically means "by what authority do you do this." The plaintiffs have asked the Supreme Court to take the case directly, no district court, no court of appeals. Actually the division prefers this and hopes to get the results during the legislative session. The division is going to fight this aggressively and has gotten permission from the Attorney General to hire outside counsel. (Attachment 6)

Like any other court system, the workers compensation division has increased security due to threats. Several national news stories involving shootings have been because of workers comp related cases. They are looking at purchasing metal detectors, more mirrors, buzz doors, etc.

Chairman Heinemann commented that the Appropriations Committee of the House is following alternative dispute resolution and the Chief Justice is very interested in continuing the development of mediation in Kansas and that it might be very beneficial for the ombudsmen to attend some conferences or training sessions in this area. Mr. Gomez reported that the ombudsmen had attended a half-day session on mediation offered by the Federal Mediation Conciliation Service, but more training in this area would be good.

The meeting adjourned at 9:45 a.m. The next meeting is On Call of the Chair.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY

DATE: 1-13-94

Fraud Cases reported to FOUQUET
Sept. 1, 1993 to Present

93-111811

Report was received from Larry who reported that Bob was working while receiving worker's compensation benefits. Larry stated that Bob and his wife had worked for him in Pueblo, Colorado as motel managers. Bob as maintenance man responsible for such tasks as moving furniture, scooping snow, etc.. Larry stated that Bob kept asking for time off to go to court in Garden City, Kansas. When Bob and his wife left this employer, Larry found that they took numerous items and charged several personal items to Larry before leaving town. When Larry was cleaning out the Bob's living quarters he found a calendar which stated that Bob had a Work Compensation hearing in Garden City, Kansas. It was also discovered that a similar injury was made against another Colorado employer. The time frames, type of injury and towns this individual has lives in suggest that the same injury is being claimed in two states. The Judge's Office was requested to notify myself if and when a hearing was scheduled. Colorado authorities were notified and criminal charges are pending in Colorado for theft and theft by deception, as well as the Fraud charges.

93-090828

Report was received from an anonymous informant who reported that Brian was working as a roofer while drawing work compensation. The case was supposedly scheduled for hearing in Liberal, Kansas. A computer check of the work compensation records indicated that there was no record of Brian having a workers compensation claim in Kansas. Judges office in Liberal was checked to see if they had ever heard of this case and there was no verification, so the case was closed as unfounded.

93-090916

Report was received from "Ron" who claimed that Sharon was working as a waitress at the Cardinal Cafe in Burton, Kansas while drawing workers compensation benefits. It was reported that she was being paid in cash for the hours she was working. A computer check did not indicate any work comp claim for this individual. A further check with the phone company and local authorities revealed that there was no such eating establishment in the Burton, Ks. area. Case was closed as unfounded.

93-092931

Report was received from anonymous informant who reported that Mary was working while receiving worker's compensation benefits for having a bad back. A computer check did not indicate any work comp claim for this individual. As Mary lives in Kansas City, Kansas, I thought it possible that her workers compensation claim might be a Missouri Claim. A call to

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Jefferson City, Mo. revealed that there was a work compensation claim in Missouri for this individual. All information plus file contents were transferred to Missouri authorities.

93-102134

Report was received from anonymous informant who reported that Ron was working while receiving worker's compensation benefits. Ron works for The County Refuse Department. In March of 1993 it was reported that Ron was injured on the job and while off work, was working for another employer for cash payment. The work comp record for this individual indicates that on this particular injury there was no time lost. Because of the extensive history of work comp injuries this individual has, this case has not been closed, however, the date for this injury that was reported upon, has been cleared. Inquiries made revealed facts which indicate that the injury sustained at this time might not be due to a work related activity but to an event that happened at Ron's home.

(ACTIVE)

93-102503

Report was received from anonymous informant who reported that Ron was working while receiving worker's compensation benefits for bi-lateral carpal tunnel syndrome. A check of the records indicated that there was no record of a workers compensation claim. I spoke with the employer, allegedly involved, who told me that the case was a strained shoulder muscle and that the matter had been resolved internally. I spoke with Darcy who stated that he had pulled a muscle and was under a doctor's care for about 10 days. The doctor had released him to full duty and that the employer had paid him full wages while off work. There was no long term injury and all medical bills had been paid by the employer. Both employer and Darcy indicated that they considered the matter resolved. Case closed.

93-102822

Report was received from anonymous informant who reported that Lester was working while receiving worker's compensation benefits. Information gathered did not match any of the Lester's we had in our files. As residence was reported to be in Arkansas City, Kansas, I checked with Oklahoma Workers Compensation and a match was found. File was forwarded to Oklahoma Authorities.

93-112412

Report was received from informant who reported that George was working while receiving worker's compensation benefits. Computer records check of Kansas Work Comp files has no George which matches the information given. Informant remained insistant that George was receiving compensation and was bragging about how he was "Screwing the government" out of money. These comments, and the lack of matching information led me to believe that this might not be a workers compensation claim but a

Social Security Disability Claim. A check with the Denver Social Security Office confirmed that this was their case. File forwarded to Denver Social Security Investigators.

93-111601

Report was received from Rick that apparently a subject Michael (DBA: True Heart Siding) had presented Rick with a Certificate of Insurance for Worker's Compensation. After sustaining an injury, a worker found that there was no coverage. I obtained a copy of the Certificate of Insurance and it appeared that there had been alterations made. I called the 'Producer' of the certificate who informed me that they had not issued this certificate and were not insuring the True Heart Siding Co.. This matter was referred to the Insurance Commissioner's Office.

93-111604

Report was received from informant who reported that Calvin was working around his home while receiving worker's compensation benefits and informant believed Calvin was faking injuries. Informant stated that Calvin had been off work for several years. As Calvin's only accident was a vehicle injury several years old, I contacted Puget Power, Calvin's employer. They stated that Calvin was receiving NO compensation benefits and had, in fact, retired several years ago. Case unfounded. Case closed.

93-111616

Report was received from informant who reported that Richard was working while receiving worker's compensation benefits. There are numerous loss time injuries for this individual in the records and so the case is still under investigation.

93-121513

Report was received from Greg, Atty., who reported that Richard was working while receiving worker's compensation benefits. It was reported that Richard hurt his shoulder and arm and was unable to work because of the injury. In a sworn deposition (taken by Mark, Atty.), Richard states that he is no able to even play the drums in the country western band that he plays with part time. However, video taped evidence shows him playing the drums in good form and with no apparent difficulty after this claim was filed. Director Gomez was notified and video tape is on the way.

93-121603

Report was received from informant who reported that Ron was working while receiving worker's compensation benefits. Ron is working for cash as a butcher for a meat company. A contact was made with a friend of mine who lives in Erie, Kansas and who went to the company and confirmed that Ron was working there. We have no record showing that this individual is receiving compensation from a Kansas claim and as this is a

border town near Missouri, I contacted the Missouri authorities who confirmed that they had an active case pending on this individual. File was turned over to them.

93-122901

Report was received from Al who reported that Ken was working while receiving worker's compensation benefits. Al has a Workers Compensation case and is receiving weekly TTD benefits. It has been reported that Ken is working for his son, Ken, Jr. at a car garage in Wichita. Independent confirmation that Ken senior is indeed working at the garage for his son.

MERCY HOSPITAL
P.O. BOX 388
800 W. MYRTLE STREET
INDEPENDENCE, KANSAS 67301
316-331-2200
FAX 316-331-0152

MERCY

NOVEMBER 23, 1993

RECEIVED

DEC 14 1993

KS. St. Workers Compensation

GEORGE GOMEZ
800 S.W. JACKSON
SUITE 600
TOPEKA, KANSAS 66612

DEAR MR GOMEZ,

I WOULD JUST LIKE TO STOP AND TAKE THIS MOMENT TO LET YOU KNOW THAT I WAS VERY IMPRESSED WITH MY DEALINGS WITH ONE OF YOUR EMPLOYEE'S JOSEPH NAVE. HE WAS VERY HELPFUL TO ME IN A WORKMAN'S COMP CLAIM THAT WE HAD BEEN FIGHTING FOR A LONG TIME. IT DIDN'T TAKE MR NAVE VERY LONG TO GET SOME POSITIVE ACTION GOING. IT WAS REFRESHING TO WORK WITH SOMEONE WHO OBVIOUSLY IS DEDICATED IN HIS WORK AND GETS TO THE POINT. I HAVE WORKED FOR MERCY HOSPITAL FOR 22 YEARS AND I DON'T SEE ALOT OF THIS DRIVE VERY OFTEN. YOUR LUCKY TO HAVE HIM ABOARD.

SINCERELY,

Carol Prather

CAROL PRATHER
FINANCE COUNSELOR
INDEPENDENCE MERCY HOSPITAL

CC: DICK THOMAS

*House Labor and Industry
Attachment 2
1-13-94*





P.O. Box 57929
Salt Lake City, Utah 84157

392 East 6400 South
Salt Lake City, Utah 84107

December 6, 1993

GEORGE GOMEZ
DIRECTOR OF THE DIVISION OF WORKERS COMPENSATION
DIVISION OF WORKERS COMPENSATION
SUITE 600
800 SOUTH WEST JACKSON STREET
TOPEKA KANSAS 66612-1227

RECEIVED

DEC 10 1993

KS. ST. WORKERS COMPENSATION

Dear Mr. Gomez:

I am sending this letter of appreciation to thank your investigators, Don Palmer and Joe Nave, for their cooperation and assistance in working with us on our case with Terry Kaba.

Mr. Kaba had moved, from Utah to Kansas, to care for his elderly father. He gained employment with Reif Welding and Construction in Plainsville without notifying his Adjustor. As he was collecting disability compensation from us, while working for Reif, we needed proof of that employment to file criminal charges here in Utah.

This situation provided our two states with the opportunity to cooperate and develop our networking capabilities.

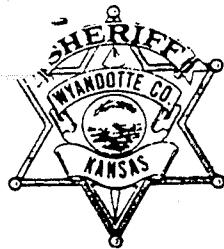
We look forward to working with your staff on an ongoing basis.

Sincerely

Fred Stroshine
Special Investigations

c c Personnel

2-2



OFFICE of the SHERIFF

WYANDOTTE COUNTY
710 NORTH 7TH STREET
KANSAS CITY, KANSAS 66101
PHONE: (913) 573-2865
Fax: (913) 573-2972

BILL E. DILLON
SHERIFF

MICHAEL B. McDONALD
DETENTION ADMINISTRATOR

RECEIVED

MR. JOSEPH O NAVÉ
CLAIMS ADVISOR/OMBUDSMAN
DIVISION OF WORKERS COMPENSATION
800 S.W. JACKSON, SUITE 600
TOPEKA, KANSAS 66612-1227

OCT 18 1993

KS. ST. WORKERS COMPENSATION

October 14, 1993

Dear Joe,

It was a pleasure to meet with you and discuss our problems here at the Detention Center. As I mentioned yesterday County Government as a whole and especially the Sheriffs' Office are concerned is reducing our expense's for worker injuries. I appreciate your offer to tour my facility with an eye towards reducing the occasion for injuries.

The best time for a tour would be Wednesday November 10, 1993. Please contact either myself or my assistant, Melissa Espy at (913) 573-2865.

Again thanks.

Yours truly,

A handwritten signature in black ink that reads "Michael B. McDonald".

Michael B. McDonald
Detention Administrator

cc Robert Brown
Jeff Fendorf
Sgt. Oscar Roberts
Pat Daugherty
Phil Sanders



Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Information
913-296-3441
Director's Office
913-296-4000
Rehabilitation
913-296-2050
Benefit Review
913-296-0849

Division of Workers Compensation

800 S.W. Jackson Street, Suite 600
Topeka, KS 66612-1227

FAX: 913-296-0839

**Ombudsman/
Claims Advisory**
913-296-2996
Self Insurance
913-296-3606
Medical Services
913-296-0846
Data Collection
913-296-4120

January 11, 1994

BOEING RETURN TO WORK PROGRAM

The Boeing Company of Wichita is in the process of establishing a Return to Work Program under the new Workers Compensation Act/Rehabilitation section K.S.A. 44-510g. Boeing is taking a proactive approach to return injured workers back to work through rehabilitation efforts including job modifications and accommodations. An early intervention program will put injured Boeing employees in touch with a vocation rehabilitation counselor soon after injury. Boeing will contract with a vendor that has been approved by the Division of Workers Compensation as required in K.S.A. 44-510g. Two vocation rehabilitation counselors will be assigned to work with the Boeing injured worker, and the personnel at Boeing to maximize the potential for a Boeing employee to return to work.

On a selective basis, employees will be referred to a separate vendor when a return to work at the Boeing plant cannot be implemented. I have been working closely with representatives from the Boeing Wichita office, as well as workers compensation personnel from the Boeing Seattle Office. Robin Odell, Assistant Rehabilitation Administrator with the Division of Workers Compensation, and I will act as liaisons with the Boeing return to work efforts. Follow-up reports of the progress of this proactive program will be forthcoming.

A handwritten signature in black ink that reads "Richard L. Thomas".

Richard L. Thomas
Rehabilitation Administrator

RLT:vpj
cc: George Gomez, Director Division Workers Compensation

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Workers Compensation Information for Kansas Employers & Employees

July 1993

Kansas Department of Insurance
and the
Kansas Department of Human Resources
Division of Workers Compensation

For information on workers compensation benefits,
employer guidelines and other general information, contact:

THE DIVISION OF WORKERS COMPENSATION

The Kansas Department of Human Resources
800 S.W. Jackson Street, Suite 600
Topeka, Kansas 66612-1227

(913) 296-3441

1-800-332-0353 (Claimants Use Only)

For information on workers compensation
insurance rates and insurance carrier conduct, contact:

THE KANSAS DEPARTMENT OF INSURANCE

420 S.W. 9th Street
Topeka, Kansas 66612-1678

1-800-432-2484

(913) 296-3071

This guide is based on changes to the Kansas Workers Compensation Act, amended by SB 307,
effective July 1, 1993. All information contained herein is subject to future legislative changes.

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What Is Workers Compensation?

Workers compensation is an insurance plan provided by the employer (by law) to pay employee benefits for job-related disability or death. Benefits are paid at the employer's expense. Coverage begins the first day on the job and covers virtually all employees, including temporary workers and non-citizens.

The present law covers all Kansas employers except for those in certain agricultural pursuits and/or a gross annual payroll of less than \$20,000. All payroll is taken into account, including that paid in Kansas or elsewhere. If the employer is a sole proprietor or a partnership, the wages paid to such employer(s) and any family members are not used in the computation of the \$20,000 gross.

Employees who are disabled due to a job-related injury or disease are entitled to:

- ▼ medical expenses to treat the job-related injury or illness;
- ▼ income benefits to replace part of the wages lost due to the disability; and
- ▼ survivors' benefits if death results.

Purpose of the Law

Kansas passed its first workers compensation law in 1911. By regulating litigation and benefits, the law is designed to protect the interests of both employers and employees. Employers benefit by substituting a known expense (premi-

ums) for the risk of large, unbudgeted expenses in the event of serious employee disabilities. Employees benefit because everyone is guaranteed some compensation, regardless of one's ability to pay attorney fees. While initially aimed at hazardous jobs, the law now covers virtually all workers, and protects those who claim compensation from firing or harassment.

Elections

Elections are options available to employers or employees that affect their coverage under the Workers Compensation Act. Depending on the circumstances, options may be available for:

- ▼ non-covered employers – e.g. those with payrolls under \$20,000 or in certain agricultural pursuits;
- ▼ corporate employees owning 10% or more of stock;
- ▼ individuals, proprietors or partnerships; and
- ▼ employers seeking coverage for volunteers and other non-covered workers.

EXAMPLE: A two-person partnership has two employees – a family member and a non-family member – and an annual payroll of \$15,000. The partnership may elect to purchase coverage under the Act and to extend such coverage to both employees. The partners are not covered because they are considered employers.

Employer Responsibilities

WORKERS COMPENSATION INSURANCE

Virtually all Kansas employers are required by law to provide for the payment of workers compensation claims, at no expense to the employee. Employers may satisfy this requirement in one of three ways:

- ▼ **Workers Compensation Insurance:** obtained from a licensed insurance carrier; the employer pays the premiums and the insurance company pays the claims. The insurance carriers are regulated by the Kansas Insurance Department.
- ▼ **Self-Insurance:** an individual employer must demonstrate to the State the financial ability to pay any claims that might arise. This program is administered by the Division of Workers Compensation.
- ▼ **Group-funded Pool:** a group of employers meeting certain statutory requirements may form a self-insurance program to jointly insure their ability to pay claims. This program is administered by the Kansas Department of Insurance.

Intentional failure to provide for workers compensation payment in one of the above ways is a class C misdemeanor and subjects the employer to legal penalties.

Employment categories excluded from the law are:

- ▼ certain agricultural pursuits;
- ▼ realtors who qualify as independent contractors;
- ▼ employers with gross annual payrolls of less than \$20,000; and
- ▼ firefighters belonging to a firefighters relief association which has waived coverage under the workers compensation law.

OTHER REQUIREMENTS

Employers must post written notice, in Spanish and English, of their workers compensation coverage. Free posting notices and other posters are available by calling the Division of Workers Compensation at 1-800-332-0353 or (913) 296-2996.

All employee injuries and deaths must be reported to Workers Compensation within 28 days from the date injury (death), or the date of employer notification. Failure to do so carries legal and financial penalties.

Immediately on learning of an employee's injury or death, employers must furnish written information to the employee or employee's beneficiaries of: available benefits, the claims process, an employer or insurance company contact for workers compensation claims, and other information required by law. This material is available from the Division of Workers Compensation, insurance carrier or group-funded pool.

Employee Rights

Kansas law protects an employee's right and ease in obtaining workers compensation. Specifically:

- ▼ Kansas law prohibits an employer from firing or otherwise discriminating against an employee for filing a claim in good faith.
- ▼ Employers must post written notice, in Spanish and English, of workers compensation insurance coverage.
- ▼ Employers must provide for the payment of workers compensation claims without any charge to employees. Employers cannot deduct from pay or benefits to pay insurance premiums or claims.
- ▼ Employers must pay compensation benefits regardless of insurance coverage.

- ▼ The State offers free help to both employers and employees in filing or appealing a claim. To obtain assistance contact the Workers Compensation Ombudsman's office at 1-800-332-0353 or (913) 296-2996.
- ▼ Employers must provide written material to every injured employee to assist that employee in attaining compensation. This material is available from the Division of Workers Compensation in Topeka, or the employer's insurance carrier. In the event of employee death, such information must be furnished to the employee's beneficiaries.
- ▼ The new law provides specific penalties for employer or employee fraud in workers compensation cases. For assistance or more information contact the Workers Compensation Ombudsman's office at 1-800-332-0353 or (913) 296-2996.

Vocational Rehabilitation

Vocational rehabilitation may be provided at the option of the employer or the employer's insurance carrier. General experience has shown that the longer the length of time away from work recovering from an injury, the greater the likelihood that an employee will need vocational rehabilitation to resume suitable work at comparable pay.

If the employer or insurance carrier does not choose to provide for vocational rehabilitation, the employee can ask

the rehabilitation administrator for a referral to a provider of such services, at the employee's expense. The employee can also request a referral to the Division of Rehabilitation Services, in the Kansas Department of Social and Rehabilitation Services. For assistance with vocational rehabilitation contact the rehabilitation administrator's office in the Division of Workers Compensation at 1-800-332-0353 or (913) 296-2050.

Rate Information

Workers compensation insurance in Kansas is mandated by state law for most but not all employers. The premiums paid by the employers should be sufficient to cover the claims incurred by their insurance companies. Rates are usually adjusted annually based on the most recent premiums, investment income, and losses reported by the insurance companies. These rates are submitted to the insurance commissioner for approval by the National Council on Compensation Insurance (NCCI).

The NCCI is a ratemaking organization, licensed by the insurance department, whose membership is primarily insurance companies. They develop the annual rate change needed based on the losses and premium reported to them by their member insurance companies.

The Kansas Insurance Department regulates the rates charged in Kansas. Each year, the Insurance Department reviews premiums, claims costs and other relevant data submitted by the NCCI to determine whether a rate change is supported. Currently, about 70¢ of every \$1 collected in premiums is projected to cover the cost of paying workers compensation claims. Approximately 27.5¢ of each dollar is used by insurance carriers to cover other costs of doing business – e.g. administrative expenses, salaries and overhead. The margin of profit is projected at 2.5¢ plus the earnings on investments.

The Commissioner of Insurance, after reviewing the rate filing, generally approves an “overall” statewide premium change. This “overall” change is stated as a percentage (for

example, a 5% overall increase); however, individual classification base rates may increase or decrease more than the “overall” change. Individual classification base rates must continue to reflect the experience (premiums and losses) of employers in each classification.

PREMIUM COMPONENTS

Workers compensation insurance premiums are calculated based on several factors. The primary factors are:

- ▼ **Base Rate:** the starting point in calculating premiums. The base rate or manual rate is expressed as an amount per \$100 of payroll. This could change annually based on loss experience of other employers in the same classification.
- ▼ **Classification:** a key factor in determining what rate an employer will pay. Classification denotes the employer's type of business; hazardous jobs are more likely to result in substantial and costly claims and, therefore, usually have a higher rate. There are about 600 classifications in use in Kansas.
- ▼ **Experience rating:** affects premium based on the frequency and severity of compensation claims of employers with sufficient premium size to be “experience rated.” Currently, employers with an annual premium of \$2,250 or more are experience rated.

More About Premiums

Fewer and less expensive claims mean a lower experience modification factor, which means a lower premium.

▼ **Payroll size:** employers with larger payrolls generate more workers compensation annual premium than those with a smaller payroll in the same classification. However, the expenses incurred in issuing and servicing the policy do not increase in direct proportion to the policy premium. Consequently, a premium discount is applied to policies with a larger premium to recognize this factor.

Also, some employers are subject to fixed payroll amounts: currently, partners and sole proprietors who elect to cover themselves under a workers compensation insurance policy pay premium based on a \$22,800 annual payroll. The premium for executive officers of corporations is based on the actual payroll of the officer, subject to the current \$200 per week minimum and \$1,600 per week maximum.

FACTORS AFFECTING PREMIUMS

Three of the most important factors in reducing premiums are:

1) **implementation of an accident prevention program:** these programs were mandated by 1993 legislation

and are to be made available to employers by all insurance carriers and group-funded pools operating in Kansas. Because accident prevention programs have been shown to reduce the frequency and severity of injuries, they offer employers the potential to reduce premiums. Premium reduction is, of course, only one benefit of accident prevention that employers should consider.

- 2) **assuring the proper classification(s) were used to calculate the premium:** the classification used on the policy should, as reasonably and accurately as possible, describe the employer's business and the employee's duties. The use of an inappropriate classification could result in the payment of an incorrect premium. If a classification does not seem to accurately describe a particular job, assistance in verifying that the proper classification was used, or in obtaining a correction is available by calling the Department of Insurance: 1-800-432-2484 or (913) 296-3071.
- 3) **use of deductible:** deductibles can be a cost-effective means of reducing premiums and are available in various amounts, with premium credits of up to 25%, on some classifications. Losses paid by the employer under the deductible shall not apply in calculating the employer's experience modification.

Premium Information

HOW TO OBTAIN INSURANCE

Workers compensation insurance coverage may be obtained by contacting a licensed insurance agent. For information on group-funded pools, contact the Kansas Department of Insurance. For information on how an individual employer can self-insure, contact the Division of Workers Compensation.

KANSAS WORKERS COMPENSATION INSURANCE PLAN (ASSIGNED RISK PLAN)

Any employer unable to purchase coverage in the voluntary workers compensation insurance market can obtain coverage in the assigned risk plan. This means an employer is assigned to an insurance carrier who must provide coverage. Assigned risk plan premiums are calculated using the same base rate as if the coverage were purchased in the voluntary market; however, premiums may be higher due to additional surcharges which are based on the employer's size of premium and loss experience.

INSURANCE RATING APPEALS PROCESS

If an employer suspects the wrong classification or other incorrect factor is being used in calculating premium, the rating may be appealed in writing to the insurance carrier from which the coverage was purchased. The employer may also appeal in writing to the Kansas Commissioner of

Insurance by outlining the nature of the complaint or appeal.

For additional information, or for assistance in appealing or correcting a classification error or other rate problem, contact the Kansas Insurance Department at 1-800-432 2484 or (913) 296-3071.

ACCIDENT PREVENTION PROGRAMS

Workplace safety and accident prevention is a key element of the new law. This requirement was designed with the idea of reducing claims/losses which would hold down premium for employers. Because rates are based on losses, the prevention of employee accidents through enhanced safety measures is one of the best ways employers can help keep rates down.

By law, insurance carriers and group-funded plans must make accident prevention programs available to their insureds. Notice of such accident prevention programs must appear on the front page of every policy issued after July 1993.

Accident prevention programs may be provided by insurance carriers at no charge, or under a separate contractual arrangement for which there could be a charge. The insurance company programs must be staffed and implemented by trained field safety representatives, who must meet qualifications as outlined by law. Insurance companies and group-funded plans failing to meet this requirement are subject to legal penalties.

Accident Prevention Programs

The programs must be tailored to meet the needs of the various employers and worksites around the state. These programs must include: surveys, recommendations, training programs, consultations, analysis of accident causes, industrial hygiene and industrial health services (adequate to meet the needs of the employer), and other assistance as needed to implement the program.

STATE SUPERVISION OF ACCIDENT PREVENTION PROGRAMS

Accident prevention programs will be supervised by the Division of Labor Management Relations and Employment Standards (913) 296-4386] in the Department of Human Resources. The division will conduct field inspections as needed. At least once a year, each insurance carrier or group-funded plan must submit the type of offered programs to the Division of Workers Compensation for review.

Such information must include:

- ▼ the amount of money spent by the insurance carrier or group-funded plan on accident prevention services;
- ▼ the number and qualifications of field safety representatives;
- ▼ the number of site inspections performed;
- ▼ any services available under contractual arrangements;
- ▼ specifics regarding the premium size of risks to which accident prevention services were provided;
- ▼ evidence of the effectiveness of the accident prevention services; and
- ▼ additional information as required by the Director of Workers Compensation.

Ombudsman & Benefit Review

The new law was designed to make it easier for claimants to obtain compensation without hiring an attorney. Attorney fees are costly – up to 25% of the total settlement – and litigation often delays or lengthens the benefit process. Two important features of the new law, the Benefit Review Conference and the Ombudsman program, are designed to help limit the need for litigation in obtaining fair compensation.

When there is litigation, attorney fees are limited to 25% of the first \$10,000 in total benefits; 20% of the second \$10,000, and 15% of all benefits above \$20,000. Attorney fees are prohibited on medical and vocational rehabilitation benefits.

DISPUTE RESOLUTION

Disputes sometimes arise over benefit awards or disability ratings. An important first step in dispute resolution is the Ombudsman's Office (Claims Advisory Section of the Division of Workers Compensation). Other avenues of dispute resolution include:

- ▼ **Benefit Review Conference:** which offers informal mediation, presided over by a Benefit Review Officer;
- ▼ **Pre-hearing Settlement Conference:** presided over by an administrative law judge; and
- ▼ **Preliminary Hearing:** presided over by an administrative law judge, in which evidence and testimony is taken from both parties.

To contact the Ombudsman's Office call 1-800-332-0353 or (913) 296-2996.

BENEFIT REVIEW CONFERENCE

The Benefit Review Conference, a new option implemented in July 1993, is meant to offer both parties a reasonable opportunity to resolve disputes without litigation. All disputed issues can be addressed at this informal session, presided over by a Benefit Review Officer. A claimant may be represented by an attorney at a Benefit Review Conference, but need not be. The absence of an attorney during this process does not mean legal representation cannot be obtained later, if the dispute is not settled in this informal setting.

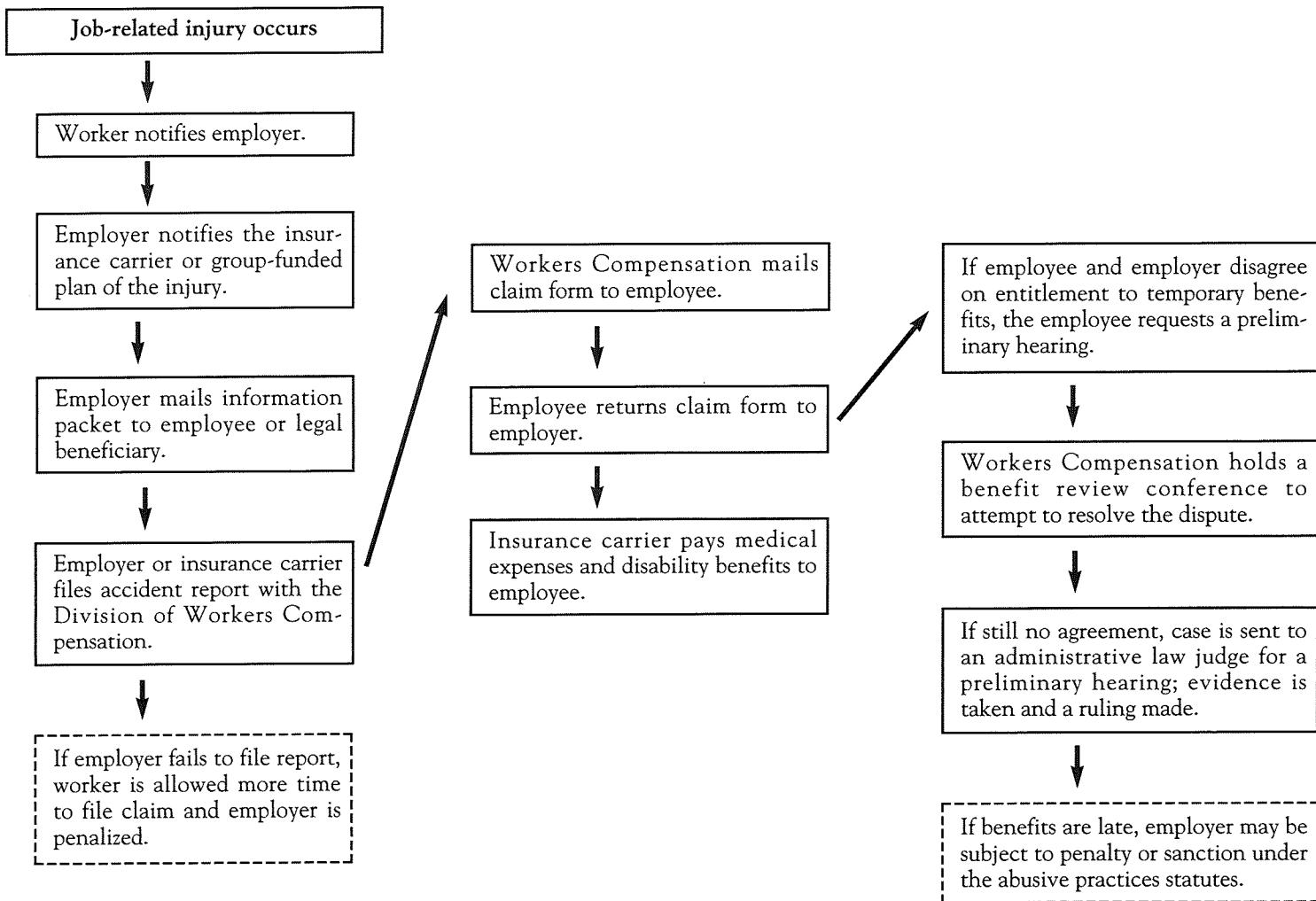
OMBUDSMAN PROGRAM

The Workers Compensation reform legislation of 1993 establishes an Ombudsman program to assist injured workers and those claiming survivors benefits. Located in the Division of Workers Compensation, the ombudsman will assist claimants in a number of ways:

- ▼ assist injured employees and persons claiming survivors' benefits in obtaining compensation;
- ▼ explain how to report an injury and file a claim;
- ▼ assist claimants in benefit review conferences;
- ▼ provide other general information; and
- ▼ assist claimants, employers and other parties in protecting their rights under the Workers Compensation Act.

Claims Process

The Claims Process



Division of Responsibilities

Employee

- ▼ Verbal notice to employer within 10 days of injury.
- ▼ Occupational disease: written notice to employer within 90 days of disability's onset; written claim to the Division of Workers Compensation within 1 year.
- ▼ Written compensation claim to employer within 200 days of date of injury or receipt of last medical or temporary benefits.
- ▼ Written claim in death cases to employer or insurance carrier within 1 year of employee's death.
- ▼ Written claim filed with employer, in person or by certified mail.
- ▼ Application for hearing within 3 years of injury, or 2 years of last compensation payment or last medical treatment.

Division of Workers Compensation

- ▼ Written claim form mailed to employee after receiving accident report from employer or insurance carrier.

Employer

- ▼ Written accident report filed with insurance carrier within 28 days from the date of injury or employee notification.
- ▼ Information delivered to employee or legal beneficiary to assist in the claims process. Material is available from the Division of Workers Compensation and must be delivered to employee immediately upon notification of injury.
- ▼ Advise insurance carrier or group-funded pool of employee's injury.

Disability Benefits

Benefit Information

Temporary Total Disability

Total disability expected to be of a temporary nature. Benefits are paid until the employee is released by a physician to return to work.

Permanent Total Disability

Complete and permanent disability that renders an employee unable to work; OR loss of use of both eyes, both hands, both arms, both feet, or any two such body parts (e.g. a leg and an arm); OR substantial paralysis, insanity or mental disorder. Employees receive benefits for life, unless their condition changes and they are able to return to work.

Permanent Partial Scheduled Disability

Complete or partial loss of use of a body part, such as an arm, due to a job-related injury. Compensation is limited to a percentage of the schedule on page 13.

Permanent Partial General Disability

Any permanent partial disability not specifically covered by schedule. Compensation is based on the percentage of disability after the injury and limited to 415 weeks.

Survivors' Benefits

Benefits paid to an employee's surviving spouse and dependent children. Burial expenses up to \$3,300 are also covered.

Total Disability Benefits

TEMPORARY TOTAL DISABILITY

Temporary total disability is paid after the employer-authorized physician confirms an employee's disability, and until the physician releases the employee to return to work.

There is a one week waiting period for benefits unless the disability continues for three consecutive weeks. Employees may collect medical benefits during the first week. [Employees missing three consecutive weeks may then collect for the first week.]

Benefits are 66.67% of an employee's average gross weekly wage; and not less than \$25 nor more than 75% of the statutory maximum. Temporary total compensation may not exceed \$100,000 per injury.

Vocational rehabilitation, re-education or training does not affect benefits if the employee is not working. Employees may not collect temporary total disability and unemployment for the same weeks.

PERMANENT TOTAL DISABILITY

Permanent total disability is paid when an employee is expected to be – and as long as an employee remains – completely unable to work; OR, for the loss of use of two or more major body parts; OR for significant mental¹ impairment.

Benefits are 66.67% of an employee's average gross weekly wage; and not less than \$25 nor more than the statutory maximum. Total compensation may not exceed \$125,000 per injury. There is no waiting period.

When an employee's condition improves so that total disability is changed to partial disability, compensation is continued at the partial disability rate.

Partial Disability

TEMPORARY PARTIAL DISABILITY

Benefits are 66.67% of the difference between the employee's average gross weekly wage before the injury and the employee's wage after the injury. Benefits may not exceed the state's statutory maximum. Total compensation may not exceed 415 weeks.

PERMANENT PARTIAL SCHEDULED DISABILITY

Permanent partial scheduled disability is paid according to the following schedule. Additional compensation is available in cases of amputation. There is a one week waiting period for benefits unless the disability continues for three consecutive weeks. Employees may collect medical benefits during the first week. (Employees missing three consecutive weeks may then collect for the first week.)

Benefits are 66.67% of an employee's average gross weekly wage and not less than \$25 nor more than the statutory maximum.

Schedule of Disability Compensation

Loss of Use	Weeks Paid
Thumb.....	60
Index (1st) finger	37
Second finger	30
Third finger	20
Fourth (little) finger.....	15
Great (big) toe	30
Any other toe.....	10
Hand.....	150
Forearm	200

Loss of Use	Weeks Paid
Arm210
Shoulder225
Foot125
Lower leg.....	.190
Leg.....	.200
Eye or sight.....	.120
Hearing in both ears110
Hearing in one ear30

Permanent Partial General Disability

Permanent partial general disability is paid for injuries not covered by the preceding schedule. Compensation is based on an employee's reduced ability to work or the percentage of *functional impairment*. Employees are *not* considered to have a work disability if they resume work at wages comparable to what they were earning before the injury.

Calculating Permanent Partial General Disability Benefits

- 1) Calculate weekly benefit rate by identifying the smaller of these two amounts:

Gross weekly wage \times 66.67%; OR
the statutory maximum

- 2) Calculate allowable weeks of compensation:

Begin with 415 weeks. If employee was paid more than 15 weeks of temporary total disability, subtract weeks in excess of 15 from 415, and multiply the difference by the percentage of disability.

- 3) Calculate total benefits: multiply weekly benefit rate by allowable weeks of compensation.

Example: Weekly wage is \$450. Employee has collected 25 weeks of temporary total disability and has a 25% disability rating.

- 1) Weekly benefit rate:

\$450 \times .6667 =	\$300.01 (<i>use lesser amount</i>)
statutory maximum	\$313.00

- 2) Allowable weeks of compensation:

$415 - [25-15] = 415 - 10 = 405$ weeks
 405 weeks $\times .25 = 101.25$ weeks

- 3) Maximum benefit amount:

101.25 weeks $\times \$300.01 = \underline{\$30,376.01}$

Survivors' Benefits

The law provides for survivors' benefits in the event of an employee's job-related death. Dependents need not be U.S. citizens or reside in the United States to also receive compensation.

Weekly benefits are equal to 66.67% of the employee's average gross weekly wage before death or the statutory maximum. Total compensation may not exceed \$200,000 per employee, except for a dependent child under the age of 18. Funeral expenses up to \$3,300 and all medical and hospital expenses related to the fatal injury are also covered.

IMMEDIATE FAMILY

If an employee is survived by a spouse but no dependent children, the spouse receives the entire weekly benefit. If an employee is survived by a spouse and children, the weekly benefit is paid half to the spouse and half to the children. If an employee is survived only by children, the weekly benefit is divided equally among the children.

The spouse may collect benefits until remarriage. Upon remarriage the spouse may receive a one-time lump sum payment equal to 100 weeks of benefits. Dependent children receive benefits until age 18, or until age 23 if they are full-time students or mentally or physically disabled.

OTHER DEPENDENTS

In the case of unmarried employees leaving no dependent children, any other beneficiaries who were wholly or partially dependent upon the employee may receive compensation. If survivors' benefits are paid to the spouse and/or children, they may not be paid to any other beneficiaries.

Dependents other than spouse or children may collect benefits until they die, remarry, or receive more than 50% of their support from another source. Maximum benefits to dependents other than spouse or children may not exceed a total of \$18,500 per employee.

More Benefit Information

DRUGS AND ALCOHOL

The new law prohibits the awarding of workers compensation benefits if the employee is impaired due to the use of alcohol or drugs and the impairment **contributed to** the injury or death. This includes the use of prescription or non-prescription medications.

Benefits may be allowed, however, if:

- ▼ the drugs or medications were taken in therapeutic doses, and
- ▼ the employee had not been impaired on the job from such medications within the past 24 months.

An employee is considered to be impaired from alcohol if the blood alcohol concentration at the time of injury is .04 or more.

An employee's refusal to submit to a chemical test may not be used as evidence of impairment, unless there is probable cause to believe that the employee used, possessed or was impaired by drugs or alcohol while working. If there is probable cause and the employee still refuses to submit to a test, then that employee may jeopardize the right to claim compensation. Any test sample to be used as evidence in the claims process must be collected in a timely manner, by a licensed health care professional, and the test conducted according to legal specifications.

HEART TROUBLE AND STROKE

The law does not provide compensation for heart disease, coronary artery disease or cerebrovascular injury (e.g. stroke), UNLESS it is shown that the exertion of the work that caused the injury was beyond that required by the employee's usual job duties.

PRIOR DISABILITIES

Compensation for any disability may be reduced by the existence of any applicable pre-existing condition(s). Benefits are reduced by the amount by which the first disability increased the latest disability. However, compensation is *only* reduced if:

- ▼ the prior disability increased the current disability;
- ▼ the employee has collected or is collecting compensation for the prior disability; and
- ▼ compensation for the prior disability extends into the weeks claimed for the current disability.

Any reduction is limited to those weeks in which benefits for the old disability overlap benefits for the new disability. Such reduction stops when the overlapping benefit period ends.

Medical Information

Workers compensation will provide and pay for all medical treatment for a job-related injury or disease so long as it is necessary. Here are some general guidelines relating to medical benefits.

WHO PAYS?

Employers are responsible for all medical treatment necessitated by a job-related injury or disease. This includes:

- ▼ Services of a licensed health care provider, such as a doctor, chiropractor, or podiatrist;
- ▼ Medical, surgical and hospital treatment;
- ▼ Medicines, medical and surgical supplies;
- ▼ Nursing services;
- ▼ Crutches and other medical apparatus; and
- ▼ Ambulance services and transportation between the employee's home and the doctor's office or hospital.

If an employer has workers compensation insurance, the insurance carrier is required to pay for all medical expenses. If an employer does not carry workers compensation insurance, the employer is still responsible for the medical bills of covered employees.

Employers are legally entitled to choose the treating physician. If an employee self-selects a physician who is not authorized or agreed upon by the employer, the employer is responsible for only the first \$500 in medical bills.

EMPLOYER-ORDERED EXAMINATIONS

After obtaining whatever emergency medical care is necessary, employees shall submit to any reasonable physical examination ordered by the employer. The employer can also require employees to submit to ongoing examinations – up to twice monthly, unless specifically ordered by Workers Compensation. Employees may forfeit the benefits that are available if they refuse to submit to such examinations.

Employees are also entitled to know the results of any physical examination ordered by the employer. At the employee's request, the doctor conducting the examination must furnish employees with an identical copy of the employer's medical report within 15 days of the examination.

All medical examinations ordered by the employer will be at the employer's expense. Employers are responsible for any reasonable charges associated with such examinations, such as transportation between the employee's home and place of examination.

Employees are entitled to have their own doctor present at, and participate in, any medical examination ordered by the employer. If this is not allowed, or if employees are not furnished a copy of the medical report, then the examination ordered by the employer will not be allowed as evidence related to the claim.

**Información Sobre la Compensación de Trabajadores
PARA
Empleadores y Trabajadores en Kansas**

Julio, 1993

**Departamento de Aseguraciones de Kansas
Y
Departamento de Recursos Humanos
División de Compensación de Trabajadores**

Para información sobre los beneficios y derechos de trabajadores bajo la nueva ley de Compensación de Trabajadores, responsabilidades de los empleadores, o información en general, directe sus preguntas a:

División de Compensación de Trabajadores

Departamento de Recursos Humanos
800 S.W. Jackson Street, Suite 600
Topeka, Kansas 66612-1227

Teléfonos:

(913)-296-3441

1-800-332-0353 (Solamente para el uso de los trabajadores)

Para información sobre el costo de Aseguros, y la conducta de las Compañías de Aseguros, directe sus preguntas a:

Departamento de Aseguraciones de Kansas

420 S.W. 9th Street
Topeka, Kansas 66612-1678

Teléfonos:

1-800-432-2484

(913)-296-3071

Toda la siguiente información fue basada sobre los cambios efectivos en la ley de Compensaciones para Trabajadores, los cuales tomaron efecto el 1 día de Julio de 1993. Ésta información podrá ser modificada por futuros cambios legislativos.

CONTENIDO

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Introducción

De Qué Se Trata La Compensación De Trabajadores?

La "Compensación de Trabajadores" es un plan, exigido por ley, por el cual el empleador les proporciona a sus trabajadores cierta clase de Seguro Médico que les paga beneficios cuando algún trabajador sufre un accidente o llega a fallecer a causa de su empleo. El empleador le toca pagar el costo de éstos beneficios. Este plan de aseguración cubre a casi todas clases de trabajadores, inclusive aquellos que no son ciudadanos Americanos y a los que trabajan solamente por temporada, desde el primer dia de su empleo con ése empleador.

La ley de Compensación de Trabajadores les afecta a todos los empleadores en Kansas, menos aquellos que pagan sueldos en total, por año, de menos de \$20,000 dólares, y aquellos quienes ocupan trabajadores en ciertas clases de empleo agrícola. Según la ley, se incluyen en el total todos los sueldos que paga ése empleador, no importa si se pagan en Kansas o en otro sitio fuera de Kansas. Sólo es diferente cuando el empleador es propietario de su negocio, o cuando el negocio es propiedad en comun de varios dueños asociados. En ése caso, el sueldo del dueño (o de los dueños asociados) y el de cualquier persona en su familia, no deben incluirse en el total de \$20,000 dólares.

Cualquier trabajador que llega a sufrir algún accidente, una herida, o alguna enfermedad industrial a causa de su empleo, tiene derecho a recibir los siguientes beneficios:

- *** El costo del tratamiento médico para la condición causada por el empleo;
- *** Asistencia para el trabajador en forma de sueldo reducido, mientras está incapacitado y se restablece;
- *** Compensación para los dependientes beneficiarios del trabajador cuando su fallecimiento fue a causa de su empleo.

Introducción

Propósito de la Ley

El estado de Kansas pasó la primera ley de Compensación de Trabajadores en el año 1911, con el fin de proteger el interés de los trabajadores, tanto como el de los empleadores. Ésta protección se realiza por medio de la regulación de los beneficios y las causas legales. A los empleadores les combiene porque en vez de estar a riesgo de tener la responsabilidad por algún accidente grave, se puede saber con anticipación el costo anual de la aseguración. A los trabajadores también les combiene porque todo mundo está garantizado alguna compensación, sin necesitar la representación de un abogado para recibir los beneficios. Aunque inicialmente ésta ley fue dirigida a las industrias más peligrosas, hoy en día la ley cubre a casi toda clase de trabajadores. La ley también exige que los trabajadores que reclaman beneficios no pueden ser despedidos sólo por haber reclamado los beneficios, y les protege contra el acosoamiento que puede suceder a causa del reclamo.

Elecciones

La ley de Compensación de Trabajadores les ofrece en ciertos casos, a los empleadores y a algunas clasificaciones de trabajadores la oportunidad de escoger diferentes alternativas de aseguración. En las siguientes situaciones se permite escoger:

- *** Cuando el empleador no paga más de \$20,000 dólares en sueldos anuales, y cuando el empleo es de tipo agrícola; (En estos casos no les afecta la ley)
- *** Cuando los empleados son dueños del diez porciento (10%) o más de acciones de la compañía donde trabajan;
- *** Para individuales, dueños propietarios, o dueños asociados; y
- *** Cuando el empleador busca aseguración para sus empleados voluntarios o algunos que no les afecta la ley.

POR EJEMPLO: Un negocio de dos dueños asociados, que ocupan a dos trabajadores, y les pagan sueldo en total combinado de \$15,000 dólares por año. Uno de esos trabajadores pertenece a la familia del dueño, y el otro no. En éste caso los dueños podrían escoger aseguración para ambos trabajadores. Los dueños no se incluyen en la aseguración porque ellos no se consideran como empleados.

Responsabilidades de los Empleadores

Seguro De Compensación De Trabajadores

La ley requiere que casi todos los empleadores en Kansas les proporcionen a sus trabajadores los beneficios de la compensación de trabajadores, sin costo al trabajador. Los empleadores pueden escojer una de las tres maneras siguientes de cumplir con este requisito:

- *** Pueden obtener Seguro de Compensación de Trabajadores de alguno de los aseguradores certificados por el estado. De ésta manera el empleador le paga una cantidad predeterminada al asegurador. Después, cuando un trabajador reclama beneficios, el asegurador le paga los beneficios directamente al trabajador incapacitado. Las compañías de aseguración estan reguladas por el Departamento de Aseguraciones de Kansas.
- *** Si algún empleador individual le comprueba al estado que su negocio tiene la capacidad fiscal para ser responsable en caso de algún accidente grave, el Departamento de Compensación de Trabajadores de Kansas le permite ocupar trabajadores sin tener que obtener aseguración. En ese caso el empleador asegura que él mismo cubrirá cualquier accidente industrial que le suceda a alguno de sus trabajadores.
- *** Ciertos grupos de empleadores pueden asociarse, para formar un grupo donde todos están de acuerdo que ellos mismos serán responsables uno al otro, en caso de un accidente o enfermedad relacionada al empleo de los trabajadores de todo el grupo. Éstos grupos, o programas de aseguración estan bajo la administración del Departamento de Aseguración de Kansas.

Se considera como Delito Menor de Clase "C" cuando algún empleador intencionalmente falla de proporcionarles a sus trabajadores la aseguración de compensación en alguna de éstas maneras. Ése empleador se expone a la imposicion de multas y otras consecuencias legales.

Las siguientes categorias de empleo no les afecta esta ley:

- ** Ciertas industrias agrícolas;
- ** Corredores de bienes raíces (las personas que venden propiedades residenciales y comerciales bajo contrato) y los contratistas independientes;
- ** Empleadores que pagan sueldos totales de menos de \$20,000 dólares por año;
- ** Bomberos que pertenecen a una asociación y han elegido no cargar aseguración de compensación.

Responsabilidades de los Empleadores

Otros Requisitos

Cada empleador debe anunciar en Español y en Inglés, en forma de letrero, su Aseguración de Compensación de Trabajadores. El Departamento de Compensación de Trabajadores del estado les ofrece un letrero que se puede exhibir en todos los sitios del empleo. Para recibir éste letrero gratis, llame al teléfono 1-800-332-0353, o al (913)296-2996.

Cuando algún trabajador llegue a sufrir un accidente industrial, un golpe, o una herida, se exige reportarlo dentro de 28 días de la fecha del accidente. Inclusivo si el trabajador falleció a causa del accidente, debe reportarse al Departamento de Compensación de Trabajadores del estado. Cuando menos, debe avisarle al estado dentro de 28 días de la fecha en que el trabajador le avisó al empleador (o al patrón) del accidente. Si alguien falla de reportar un accidente industrial, el resultado puede ser una multa y otras consecuencias legales.

Cuando un empleador se entere de un accidente industrial (o muerte) de alguno de sus trabajadores, inmediatamente debe darle en forma escrita, a ese trabajador (o a los beneficiarios sobrevivientes) toda la información necesaria para reclamar beneficios de la compensación de trabajadores. La información debe incluir el nombre y el teléfono de la persona encargada de estos asuntos, ya sea ahí o en la compañía de seguros, con quien se debe comunicar para recibir los beneficios de compensación. El Departamento de Compensación de Trabajadores del estado, o el asegurador, le ofrecen asistencia a los empleadores con toda la información que requiere la ley.

Responsabilidades de los Empleadores

Derechos De Los Trabajadores

En Kansas la ley protege los derechos de los trabajadores y les facilita la reclamación de los beneficios de compensación de trabajadores. Especialmente en las siguientes maneras:

- *** Se prohíbe despedir al trabajador, y otras formas de descriminación por la Sóla razón de haber reclamado, en buena fe, los beneficios de compensación de trabajadores.
- *** Cada empleador debe anunciar en forma de letrero, en Español y en Inglés, la Aseguración de Compensación de Trabajadores.
- *** Se exige que cada empleador se haga responsable por todos los accidentes a causa del empleo y las reclamaciones de beneficios bajo la ley de compensación de trabajadores. Todo esto debe ser sin costo alguno al trabajador. Se prohíbe que el empleador le reduzca los beneficios o el sueldo al trabajador para pagar el costo de la aseguración de compensación de trabajadores o para pagar las reclamaciones de beneficios.
- *** Se exige que los empleadores paguen los reclamos de beneficios de compensación de trabajadores, aunque no hayan obtenido aseguro.
- *** El Estado les ofrece asistencia gratis a ambos empleadores y trabajadores en las reclamaciones de los beneficios, así como con las apelaciones del reclamo. Para obtener asistencia, llame a la oficina de Compensación de Trabajadores del estado y pida el departamento del programa "Ombudsman", al teléfono 1-800-332-0353, o al (913)296-2996.
- *** Cada empleador debe darles a sus trabajadores incapacitados o lastimados, información en forma escrita, para facilitarles la reclamación de los beneficios de compensación. Para conseguir ésta información llame al Departamento de Compensación de Trabajadores en Topeka, o al asegurador del empleador. Si algún trabajador llega a fallecer a causa de su trabajo, el empleador debe darle esta misma información a los beneficiarios sobrevivientes del trabajador.
- *** La ley nueva trata muy estrictamente las reclamaciones fraudulentas de beneficios de compensación, tanto al empleador como al trabajador. Para más explicación y asistencia, llame al departamento del programa "Ombudsman" en la oficina de Compensación de Trabajadores al teléfono 1-800-332-0353, o al (913)296-2996.

Responsabilidades de los Empleadores

Rehabilitación Vocacional

En ciertos casos el empleador o el asegurador pueden permitirle al trabajador incapacitado o lastimado la rehabilitación vocacional. La experiencia ha sido que entre más se tarde el restablecimiento del trabajador, es más probable que vaya necesitar alguna clase de rehabilitación vocacional para poder resumir trabajo razonable, a un sueldo comparable al que ganaba antes del accidente o la incapacidad.

En caso de que el empleador o el asegurador no elija pagarle al trabajador la rehabilitación vocacional, y si el trabajador desea éste servicio, el trabajador puede pedirle al "administrador de rehabilitación" de la oficina de Compensación de Trabajadores una referencia de alguna compañía que ofrezca ése servicio, al costo del trabajador. Otro departamento que también le ofrece asistencia con información acerca de la rehabilitación vocacional es el Departamento de Servicios de Rehabilitación, del Departamento de Servicios Sociales y de Rehabilitación del estado (el "SRS"). Para asistencia acerca de rehabilitación vocacional, llame al administrador de rehabilitación en la oficina de Compensación de Trabajadores al teléfono 1-800-332-0353 o al (913)296-2050.

Información Sobre El Costo Del Seguro

En Kansas la ley les exige a muchos empleadores, pero no a todos, cargar alguna Aseguración de Compensación de Trabajadores. El seguro debe ser suficiente para cubrir cualquier reclamo de beneficios que el asegurador llegue a pagar. Por ésta razón, es normal ajustar el costo del aseguración anualmente, conforme a la condición fiscal del asegurador. Se requiere que el nuevo valor propuesto sea aprobado por el Comisionero de Aseguraciones del estado, y también por el Concilio Nacional de Aseguraciones de Compensación (NCCI).

La organización NCCI establece y aprueba el valor de los seguros de compensación por todo el país. Los miembros de esta organización son los aseguradores. La organización está regulada por el Departamento de Aseguraciones. El NCCI determina el nuevo costo ajustado del seguro. Ésta determinación debe ser conforme a las pérdidas y ganancias que reportan los aseguradores.

En Kansas, el Departamento de Aseguración del estado determina el valor de los seguros. Cada año revisan el costo de la aseguración, así como el costo de los reclamos, y cualquier otra información que el NCCI les haya enviado. Se consideran todos los datos para determinar si se soporta algún cambio en el costo de la aseguración. Actualmente, se separan casi .70 centavos de cada \$1.00 dólar que se colecta de aseguración para pagar los reclamos de compensación de trabajadores. Los aseguradores usan aproximadamente .27 1/2 centavos de cada dólar para cubrir sus propios gastos: por ejemplo sueldos de sus empleados y otros gastos administrativos. Se proyecta que las ganancias de los aseguradores son aproximadamente de .2 1/2 centavos de cada dólar, más las ganancias de cualquier otros negocios en que hayan participado.

El Comisionero de Aseguración del estado hace la decisión de aprobar el costo final de los seguros por todo el estado. El nuevo costo ajustado se declara como un porcentaje del costo anterior, por ejemplo: se puede anunciar un aumento en el costo básico de 5% porcento del costo anterior. Sin embargo, ciertas clasificaciones de seguros pueden aumentar o bajar en valor más que el porcentaje básico, ajustado por todo el estado. Aún se requiere que en estas clasificaciones individuales el valor del seguro refleje la experiencia fiscal del empleador (el costo del seguro y la cantidad de reclamaciones).

Información Sobre El Costo Del Seguro

Calculación Del Costo Del Seguro

El costo del aseguración de compensación de trabajadores se basa sobre varios datos. Los más importantes entre esos variables son los siguientes:

- ** El costo básico: Con este dato se comienza la calculación del costo anual del seguro. El costo básico se representa por una cantidad de cada \$100.00 dólares que el empleador paga de sueldos. El costo básico puede cambiar anualmente, según el número de reclamaciones de varios empleadores de la misma clasificación.
- ** La Clasificación: Ésto es muy importante en la determinación del costo del seguro de compensación de trabajadores. La clasificación refleja la clase del negocio de ese empleador. Es muy probable que los negocios mas peligrosos tengan mas reclamaciones de compensación de trabajadores. Por esa razón los negocios de ésta clase pagan más por su seguro. Actualmente existen como 600 seiscientas clasificaciones de negocios en Kansas.
- ** Clasificación basada sobre experiencia: Algunos empleadores que pagan \$2,250.00 dólares o más, de seguro de compensación de trabajadores, se les ajusta el costo del seguro según la frecuencia y severidad de las reclamaciones que han tenido en el pasado. Los que han reclamado menos accidentes de menos severidad, pagarán menos por el seguro.
- ** Cantidad total de sueldo: Empleadores que ocupan mas trabajadores y pagan mas en sueldos que otros de la misma clasificación, pagarán más por su aseguración anualmente. Sin embargo, no cuesta más administrar el seguro en estos casos; por esa razón, estos empleadores que pagan más por su aseguración reciben un descuento sobre el costo total.

Además, hay algunos empleadores que deben pagar una cantidad fija por su aseguración de compensación de trabajadores: por ejemplo, empleadores propietarios o los que están asociados con otros y elijen asegurarse a si mismos con seguro de compensación de trabajadores, éstos pagarán una cantidad fija igual a un empleador que paga \$22,800.00 dólares en sueldos anualmente. El costo del seguro para oficiales de la compañía se basa sobre el sueldo actual de cada oficial, dentro de los límites de \$200.00 dólares mínimo por semana, y un máximo de \$1,600.00 dólares por semana.

Información Sobre El Costo Del Seguro

Detalles Que Afectan El Costo Del Seguro

Hay tres detalles muy importantes que afectan el costo del seguro de compensación de trabajadores. Son los siguientes:

- 1.) **La implementación de algún programa para prevenir accidentes:** La ley nueva de 1993 exige ésta clase de programas. Se requiere que todos los aseguradores en Kansas les ofrescan éstos programas de prevención a los empleadores. Estos programas ayudan a reducir la frecuencia y severidad de los accidentes industriales y además para el empleador es una manera de reducir el costo del seguro de compensación de trabajadores. Esto es sólo un beneficio de la prevención de accidentes, también hay otros que el empleador debe considerar.
- 2.) **El empleador debe estar seguro que esta apropiadamente clasificado para la calculación del costo de la aseguración:** Debe hacer el esfuerzo de describir con toda exactitud el negocio y las obligaciones de los empleados, para que se use la clasificación correcta en calcular el costo del seguro. Si la clasificación incorrecta se usó para calcular el costo del seguro, puede resultarle más caro de lo que debe ser. Si esa clasificación no describe correctamente el trabajo que se hace en su negocio, o si quiere verificar que su clasificación está correcta o para corregirla, puede pedir asistencia al Departamento de Aseguraciones del estado al teléfono: 1-800-432-2484, o al (913)296-3071.
- 3.) **Considere un aseguración donde el empleador se hace responsable por una contribución en caso de un reclamo:** Esta clase de seguro le ayuda al empleador, porque puede escoger entre varios niveles de contribución, resultando en un descuento en el costo del seguro. En algunas clasificaciones el descuento puede ser hasta el 25% porciento. Si el empleador llega a pagar su contribución en caso de algún reclamo, ésta cantidad no será aplicada en la calculación del costo basado sobre su experiencia del pasado.

Información Sobre El Costo Del Seguro

Como obtener la Aseguración

El seguro de Compensación de Trabajadores se puede obtener al comunicarse con un agente del asegurador autorizado por el estado. Para obtener información con respecto a la aseguración de grupos de empleadores, debe comunicarse con el Departamento de Aseguraciones de Kansas. Aquellos empleadores que desean asegurarse por sí mismos, deben comunicarse con el Departamento de Compensación de Trabajadores del estado.

Plan de Compensación de Trabajadores de Kansas (Plan de Riesgos Asignados)

Cuando un empleador no califica para comprar seguro directamente de los aseguradores comerciales autorizados por el estado, se puede pedir aseguración bajo el plan de "riesgos asignados" del estado. En éste caso lo dirigen a un asegurador que no tiene otro recurso mas que asegurar a ese empleador. El costo del seguro en éste plan se calcula igual que cualquier otro, pero es posible que cueste más que los otros, porque incluye un costo adicional según el tamaño del negocio del empleador y la frecuencia y severidad de los reclamos que haya tenido en el pasado.

Apelación de Clasificación Incorrecta

Si algún empleador sospecha que la clasificación que se usó en la calculación del costo de su seguro está incorrecta (o cualquier otro error), debe pedir apelación del costo del seguro por escrito al asegurador. El empleador tambien puede apelar el costo del seguro al Comisionero de Aseguraciones de Kansas, por petición escrita. Para más información, o para recibir asistencia en corregir un error, o para pedir apelación, llame al Departamento de Aseguraciones de Kansas al teléfono: 1-800-432-2484 o al (913) 296-3071.

Información Sobre El Costo Del Seguro

Programas Para Prevenir los Accidentes Industriales

La prevención de los accidentes industriales, la eliminación de los peligros en el trabajo, y la protección de los empleados en general ocupa un lugar muy importante en la nueva ley de compensación de trabajadores. El propósito de la ley es de reducir el peligro, los accidentes y los reclamos, y al mismo tiempo reducir el costo del seguro para los empleadores ya que el costo del seguro se basa sobre la cantidad de reclamaciones. La prevención de los accidentes por medio de programas para eliminar el peligro en el sitio del trabajo es una de las mejores maneras en que el empleador puede reducir el costo de su aseguración de compensación de trabajadores.

La ley requiere que los aseguradores, ya sea compañía comercial o grupo de empleadores, pongan a la disposición de los asegurados un plan para prevenir los accidentes. Algun anuncio de éste plan de prevención debe aparecer sobre la primer página de cada póliza de seguro que se venda después del mes de Julio, 1993.

Se permite ofrecer el plan de prevención gratis a los empleadores. También se permite ofrecerlo en forma de un contrato entre el asegurador y el empleador asegurado. En éste caso el asegurador podría cobrar por éste servicio. La ley requiere que los programas o planes de prevención sean implementados y administrados por representantes entrenados en la eliminación de los peligros industriales, y que tienen las credenciales enumeradas por la ley. Si algún asegurador deja de satisfacer éste requisito de la ley, se expone a problemas legales y multas impuestas por el estado.

El diseño del los programas para prevenir accidentes debe ser útil para servirles a varias clasificaciones de empleadores alrededor del estado. Éstos programas deben incluir: los resultados de estudios, recomendaciones, programas de instrucción, consultaciones, análisis de las causas de los accidentes comunes, consejos para la higiene industrial, y servicios para la salud y el bienestar industrial. Todo ésto debe ser adecuado para las necesidades de los empleadores. Los programas también deben incluir cualquier otra asistencia necesaria para su implementación.

La Prevención De Los Accidentes Industriales

Supervisión de los Programas de Prevención por el Estado

Los programas de prevención de los accidentes industriales existen bajo la supervisión de la División de Relaciones Entre Trabajadores y Gerencia y Regulaciones del Empleo, dentro del Departamento de Recursos Humanos del estado. (Div. of Labor Management Relations and Employment Standards / DHR). El teléfono de éste departamento es (913)296-4386. Representantes de esa oficina deben presentarse a los sitios del empleo para inspeccionarlos cuando sea necesario. Además, cuando menos una vez al año, cada asegurador debe enviarle al Departamento de Compensaciones de Trabajadores (Div. of Workers Compensation) un reporte explicando los planes de prevención que les ofrecen a los empleadores asegurados, para que el representante del estado lo revise. Ese reporte anual debe incluir toda la información siguiente:

- *** El total que gasta el asegurador en los programas de prevención de accidentes;
- *** El número total de los representantes, y sus credenciales, entrenados en la administración de los programas para la eliminación de los peligros industriales;
- *** El total de sitios que han inspectado;
- *** Cualquier servicio de prevención ofrecido bajo contrato con el empleador;
- *** Detalles referentes al tipo de riesgos, donde se han implementado los programas de prevención de los accidentes;
- *** Evidencia tocante a la eficacia de los planes de prevención; y además
- *** Cualquier información adicional que les pida el Director del Departamento de Compensación de Trabajadores.

El Nuevo Programa "Ombudsman" Y El Reviso Informal De Beneficios

El propósito de la nueva ley de Compensación de Trabajadores es de facilitarles las reclamaciones de beneficios a los trabajadores, sin la representación de un abogado. El costo de los servicios de un abogado puede ser caro, hasta el 25% porciento de la cantidad que le toca al trabajador cuando se decide a terminar la obligación del empleador ("settlement"). Otro problema es que cuando se decide averiguar la causa, se puede tardar mucho en recibir los beneficios que le tocan. La ley nueva incluye dos programas importantes para asistirle al trabajador en conseguir los beneficios de compensación que le tocan, en manera mas justa y sin la representación de un abogado. Éstos programas nuevos son: el de los "Ombudsman" y el de "Reviso de Beneficios" (Benefit Review).

De ahora en adelante, cuando en realidad se necesite litigar un conflicto, el costo de la representación de un abogado sera menos para el trabajador. Los siguientes límites sobre el costo de la representación, en casos de compensación de trabajadores, estarán en efecto:

- ** Se prohíbe que un abogado cobre más del 25% porciento del total de los beneficios que le tocan al trabajador, hasta llegar a los primeros \$10,000.00 dólares de compensación;
- ** Después, no se permite cobrar más del 20% porciento hasta llegar a los segundos \$10,000.00 dólares de compensación, o sea hasta \$20,000.00 dólares;
- ** Y se sigue reduciendo hasta llegar al 15% porciento de toda la compensación más allá de \$20,000.00 dólares que reciba el trabajador.

Se prohíbe que el abogado cobre algún porciento sobre los beneficios de tratamiento médico y de rehabilitación vocacional que reciba el trabajador.

Reviso Informal De Beneficios

Resolución De Conflictos

Cuando los partidos están en desacuerdo con respecto a la cantidad de beneficios o con respecto al nivel de incapacidad que el médico le ha asignado al trabajador, el primer paso en la resolución de conflictos ahora será diferente y muy importante. Primero, debe comunicarse con la oficina del nuevo programa "Ombudsman". Ésta se encuentra dentro del Departamento de Compensación de Trabajadores del estado (Claims Advisory Section of the Division of Workers Compensation). Otras maneras de resolución de conflictos son las siguientes:

- ** **Conferencias Informales para Revisar y Descutir los Beneficios:** estas conferencias informales le ofrecen una manera de reconciliación con la ayuda y intervención de un individual neutral ("Benefit Review Officer"), que le ofrece asistencia con la resolución de su conflicto y además el reviso de los beneficios.
- ** **Conferencias Preliminares para Terminar la Obligación del Empleador:** estas conferencias se realizan ante el juez del departamento de Compensación de Trabajadores (ALJ).
- ** **Audencia Preliminaria:** para averiguar su causa, cada partido presenta su testimonio ante el juez (ALJ).

Para comunicarse con la oficina del programa "Ombudsman" llame al teléfono 1-800-332-0353, o al (913) 296-2996.

Nuevo Programa "Ombudsman"

Conferencias Informales Para Revisar Los Beneficios

Comenzando con el mes de Julio, 1993, existe un nuevo alternativo para la resolución de cualquier conflicto en una manera razonable y en un ambiente informal, sin la representación de un abogado. Sin embargo, si alguna persona desea ser representado por un abogado, éso también se permite. Con la asistencia y intervención de un individual neutral llamado "Benefit Review Officer", los partidos podrán resolver cualquier conflicto con más facilidad y rapidez. Además, si el conflicto no se llega a resolver de ésta manera informal, es posible seguir con el procedimiento formal igual como se ha hecho en el pasado, inclusivo se permite obtener la representación de un abogado.

Programa "Ombudsman"

La reformación de la ley de Compensación de Trabajadores de 1993 estableció un nuevo programa llamado "Ombudsman", para la asistencia de los trabajadores lastimados o incapacitados a causa de su trabajo, y también la de los beneficiarios de los trabajadores fallecidos, cuando la muerte fue a causa de su empleo. El nuevo programa está administrado por representantes del departamento de Compensación de Trabajadores, y le ofrece asistencia en varias maneras:

- *** Asistencia para facilitarles a los trabajadores incapacitados y a las personas beneficiarias del trabajador fallecido, a obtener los beneficios de compensación;
- *** Información con respecto al modo de reportar una herida o accidente, y cómo reclamar los beneficios;
- *** Asistencia a los trabajadores durante las conferencias informales;
- *** Se les ofrece a los trabajadores cualquier otra información que necesiten;
- *** Asistencia a los trabajadores, a los empleadores, y a cualquier otro partido interesado para proteger los derechos de todos según la ley de Compensaciones de Trabajadores.

Procedimiento De Reclamación De Beneficios

- 1.) El accidente industrial ocurre.
- 2.) El trabajador le avisa al empleador del accidente.
- 3.) El empleador le avisa al asegurador del accidente.
- 4.) El empleador le envía al trabajador incapacitado, (o al beneficiario legal) un paquete de información.
- 5.) El empleador o el asegurador le reporta el accidente al Departamento de Compensación de Trabajadores del estado.
5-A.) Si el empleador falla de reportar el accidente, se le permite al trabajador más tiempo para reportar el accidente, y el empleador sera penalizado.
- 6.) El departamento de compensación le envía al trabajador incapacitado un formulario para reclamar la compensación.
- 7.) El trabajador le regresa el reclamo al departamento de compensaciones del estado.
- 8.) La compañía o el asegurador le paga el costo de tratamiento médico y los beneficios al trabajador lastimado o incapacitado.
- 9.) En caso de que el empleador y el trabajador tengan algún conflicto respecto a los beneficios, el trabajador debe pedir una audiencia preliminaria.
- 10.) Primeramente, el Departamento de Compensación de Trabajadores trata de resolver el conflicto en una conferencia informal donde se presentan todos los partidos.
- 11.) Si no se puede resolver en esta manera, la causa sigue adelante en una audiencia preliminaria, frente a un juez, donde se presenta testimonio, y el juez anuncia su decisión.
11-A.) Si los beneficios que le tocan al trabajador se le pagan de manera atrasada o tarde, el empleador puede ser penalizado según las leyes que prohíben tales abusos.

Reclamación De Beneficios

División de Responsabilidades:

El Trabajador:

- **** Debe avisarle al empleador del accidente dentro de 10 días de la fecha del accidente.
- **** Si llega a sufrir una enfermedad industrial, se requiere que le avise al empleador, por escrito, dentro de 90 días de la fecha en que se comience a sentir enfermo; además, se requiere que reclame la compensación, por escrito, al Departamento de Compensación de Trabajadores dentro de un año.
- **** Debe reclamar beneficios, por escrito, dentro de 200 días de la fecha del accidente, o la fecha en que recibió el último tratamiento médico, o beneficios temporarios.
- **** El representante del trabajador fallecido debe reclamar beneficios al empleador, o al asegurador dentro de un año de la fecha del fallecimiento del trabajador.
- **** El reclamo escrito debe llevarse al empleador en persona, o enviarse por correo certificado.
- **** Para resolver la causa debe pedir audiencia dentro de 3 años de la fecha del accidente, o 2 años de la fecha del último pago de compensación, o el último tratamiento médico.

El Departamento De Compensación De Trabajadores:

- **** Enviarle al trabajador el formulario para hacer el reclamo de compensación y beneficios, tan pronto como le avisen del accidente, el empleador o el asegurador.

El Empleador:

- **** Enviarle al asegurador un reporte del accidente, por escrito, dentro de 28 días de la fecha del accidente, o de la fecha en que el trabajador le avisó al empleador.
- **** Poner a la disposición del trabajador incapacitado o su representante (en caso de fallecimiento) toda la información para facilitarles la reclamación de beneficios. Puede llamar al departamento de Compensación de Trabajadores del estado para conseguir toda la información que se le debe dar al trabajador inmediatamente después de que el empleador se entere del accidente.
- **** Avisarle al asegurador del accidente.

Explicación De Beneficios

Catagorias De Beneficios Para Trabajadores Incapacitados

-- Incapacidad Total, Temporaria

Éste beneficio se paga cuando la incapacidad es total, pero es sólo temporaria. Se paga hasta que el médico decida que el trabajador puede regresar al trabajo.

-- Incapacidad Total, de modo Permanente

Ésto es cuando un trabajador queda completamente incapacitado de modo permanente, y no podrá trabajar. También se paga cuando el trabajador pierde el uso completo de los dos ojos, las dos manos, los dos brazos, los dos pies, o cualquier otras dos partes mayores del cuerpo (por ejemplo: una pierna y un brazo). También cuando el trabajador queda extensivamente paralizado, o demente, o sufre alguna enfermedad o trastorno mental. En éstos casos el trabajador recibe los beneficios durante el resto de su vida, o hasta que se mejore y pueda volver a trabajar.

-- Impedimento Permanente Parcial - en una Parte Mayor del Cuerpo

** Incapacidad Permanente de una de las Partes del Cuerpo

que aparecen en la Lista (Schedule) --

Este beneficio se paga cuando un trabajador pierde el uso completo o parcial de modo permanente, de alguna parte del cuerpo, (como un brazo) en un accidente a causa de su trabajo. Esta compensación se limita a un porcentaje de los totales que aparecen en La Lista de la página 13.

** Impedimento Permanente General (NO en una de las partes del cuerpo)

que aparecen en la Lista) -

Esta clasificación incluye cualquier impedimento parcial de modo permanente, que no aparece en la Lista de la página 13. Esta compensación está basada sobre el porcentaje de incapacidad permanente que resulte después del accidente, y se limita a 415 semanas de compensación.

-- Compensación para los Dependientes Sobrevivientes del Tabajador Fallecido

Estos beneficios se le pagan a la esposa del trabajador fallecido, (o al esposo de la trabajadora), y también a los hijos beneficiarios. Los gastos del funeral, limitados a \$3,300.00 dólares, también se pagan.

Información De Beneficios

Beneficios para los Trabajadores Totalmente Incapacitados

Incapacidad Total Temporaria -- Los beneficios para los trabajadores que están temporariamente incapacitados por total se pagan después de que el médico que ha escogido el empleador, confirma la incapacidad del trabajador. Éstos beneficios siguen hasta que el médico decide que el trabajador puede regresar al trabajo.

Normalmente hay UNA semana de espera, durante la cual no se pagan beneficios. Sólo que la incapacidad temporal dure más de tres semanas consecutivas, entonces se puede reclamar compensación desde la primera semana.

La compensación equivale al 66.67% porciento del sueldo total del trabajador, dentro los siguientes límites legales: Lo mínimo es un total de \$25.00 dólares por semana, y lo máximo puede llegar hasta el 75% del total legal (para accidentes que ocurran entre 7-1-93 y 6-30-94, el total legal máximo es \$313.00 dólares por semana). Los beneficios que se permiten cuando la incapacidad es total pero temporal, se pagan hasta un máximo de \$100,000.00 por cada ocurrencia.

Si el trabajador está recibiendo beneficios en forma de rehabilitación vocacional, o educación, o algún entrenamiento, ésto no le afecta el total de compensación en casos donde el trabajador no puede trabajar, y en efecto no está trabajando. Sin embargo, no se permite que un trabajador colecte beneficios de incapacidad total temporal, y al mismo tiempo (durante las mismas semanas) cobrar beneficios del desempleo.

Incapacidad Total Permanente -- Los beneficios para los trabajadores que están totalmente incapacitados de modo permanente se pagan mientras el trabajador esté completamente incapaz de trabajar. También se paga en otros casos cuando un trabajador pierde el uso total de dos (o más) partes mayores del cuerpo, o cuando sufre un impedimento mental significante.

Éstos beneficios se pagan equivalente al 66.67% porciento del sueldo total del trabajador. Tienen límite de \$25.00 dólares mínimo, y lo máximo es según lo que la ley señale. En estos casos no hay periodo de espera. La compensación total que se permite es de \$125,000.00 dólares por ocurrencia.

Si la condición de incapacidad total del trabajador se llega a mejorar, y se clasifica ahora como incapacidad parcial, se le siguen pagando los beneficios al trabajador, pero al valor reducido del impedimiento parcial.

Información De Beneficios

Impedimientos Parciales

Impedimiento Temporario Parcial

La compensación en éstos casos es equivalente al 66.67% porciento de la diferencia entre el sueldo total del trabajador por semana antes del accidente, menos el sueldo total del trabajador por semana después del accidente. El estado impone un límite de 415 semanas en estos casos.

Impedimento Permanente Parcial de ciertas Partes del Cuerpo - enumeradas en la Lista

Para los impedimientos permanentes de una parte del cuerpo (parcial), se pagan beneficios según las semanas totales enumeradas en la Lista siguiente. Si un trabajador sufre una amputación de alguna parte del cuerpo, se le paga compensación adicional. Hay una semana de espera, durante la cual no se paga la compensación. Sólo que el impedimiento dure más de tres semanas consecutivas, entonces se puede cobrar la compensación desde la primera semana.

Los beneficios son equivalente al 66.67% porciento del sueldo total del trabajador, por semana, dentro de estos límites: mínimo de \$25.00, y lo máximo está indicado por ley.

(Schedule) Lista De Compensación Según El Impedimiento

Si Pierde El Uso De:

El Dedo Grande	--	De las Manos
El Primer Dedo (índice)	"	
El Segundo Dedo	"	
El Tercer Dedo	"	
El Cuarto Dedo (pequeno)	"	
El Dedo Grande	--	De los Pies
Cualquier otro Dedo	"	
La Mano (entera)		
El Brazo (hasta el codo)		
El Brazo (entero)		
El Hombro		
El Pie (entero)		
La Pierna (de la rodilla para abajo)		
La Pierna (entera)		
Un Ojo (o la Vista en un ojo)		
Sordera en Los Dos Oidos		
Sordera en Un Oido		

Se Permite Pago Total De Semanas:

60
37
30
20
15
30
10
150
200
210
225
125
190
200
120
110
30

Información De Beneficios

Impedimiento Parcial de modo Permanente

Un trabajador que sufre un impedimiento parcial (general) de modo permanente, pero que no pierde el uso de alguna parte del cuerpo enumerada en la Lista, se clasifica como impedimiento "general". La compensación que se paga en éstos casos esta basada sobre la capacidad reducida de hacer trabajo, o el porcentaje de incapacidad funcional que resulta después del accidente. Un trabajador no se considera estar "incapacitado" si vuelve a trabajar a un sueldo comparable a lo que ganaba antes del accidente.

Los Beneficios de Impedimiento Parcial de modo Permanente (General)

- 1) Para calcular el total del beneficio semanal, primero escoja el más pequeño de éstos dos:
-- El 66.67% porciento del sueldo semanal; o el límite máximo según la ley.
- 2) Después, para calcular cuantas semanas de compensación se permiten pagarle:
-- Comience con 415 semanas. Si el trabajador recibió más de 15 semanas de compensación de incapacidad total temporaria, determine cuantas semanas adicionales recibió. Después busque la diferencia entre ésta cantidad y el numero 415. Ahora multiplique ésa diferencia por el porcentaje del impedimiento, o la incapacidad.
- 3) Para calcular el total de la compensación multiplique el beneficio semanal por el número de semanas que se permiten pagar para ése impedimiento.

***** Por ejemplo: Con un sueldo por semana de \$450.00 dólares, si se le han pagado 25 semanas de compensación de incapacidad total temporaria, y el médico decide que tiene el 25% porciento de incapacidad, la compensación total se calcula de esta manera:

- 1) Total del beneficio semanal:

$$\begin{array}{rcl} \$450.00 \times .6667 & = & \$300.01 \backslash \quad \text{Se usa el total más pequeño.} = \$300.01 \\ \text{Máximo según la ley} & = & \$313.00 / \end{array}$$

- 2) La cantidad de semanas que se permiten pagar:

$$\begin{aligned} 415 - [25-15] &= 415 - 10 = 405 \text{ semanas} \\ 405 \text{ semanas} \times .25 \text{ porciento} &= 101.25 \text{ semanas} \end{aligned}$$

- 3) Total de Beneficio Máximo:

$$101.25 \text{ semanas} \times \$300.01 = \underline{\$30,376.01}$$

Información De Beneficios

Compensación para los Dependientes Beneficiarios

La ley les proporciona beneficios a los dependientes beneficiarios del trabajador difunto, si el fallecimiento fue a causa del empleo. No es necesario que los beneficiarios sean ciudadanos ni residentes Americanos para recibir estos beneficios.

El total de beneficios semanales es igual al 66.67% porciento de un promedio del sueldo total del trabajador difunto antes del accidente, o el límite máximo legal. El total de la compensación no debe ser más de \$200,000.00 dólares por trabajador, a menos que el trabajador difunto deje hijos menores de 18 años. A los hijos se les puede pagar más del total de \$200,000.00 dólares, en ciertos casos. Se permite recubrir los gastos del funeral hasta el límite de \$3,300.00 dolares, y también los gastos del tratamiento medico y el hospital relacionados con el accidente mortal del trabajador.

Familia Inmediata (del Trabajador Difunto):

Si el trabajador difunto dejó esposa sobreviviente, pero no dejó hijos, la esposa recibe todo el beneficio semanal. Si dejó esposa e hijos, los beneficios se les pagan una mitad a la esposa y la otra mitad a los hijos. Si dejó sólo hijos (si el trabajador murió sin esposa: soltero, divorciado, o viudo) los hijos se reparten los beneficios semanales en partes iguales.

Se permite que la viuda colecte beneficios semanales hasta que se vuelva a casar. Al volver a casarse, en ciertos casos, se permite que la viuda reciba un sólo pago equivalente al total de 100 semanas de beneficios. Los hijos beneficiarios reciben beneficios hasta la edad de 18 años. En ciertos casos los pagos pueden llegar hasta los 23 años, si los hijos siguen estudiando de jornada completa, o si los hijos están incapacitados físicamente o mentalmente.

Otros Dependientes:

Para un trabajador que no estaba casado y no tenía hijos al tiempo de la muerte, en ese caso, cualquier otra persona completamente o parcialmente dependiente del difunto, puede recibir beneficios. Cuando los beneficios se les pagan a los hijos o a la esposa, no se permite pagarles a ninguna otra persona dependiente.

Otras personas dependientes, no siendo la esposa o los hijos, pueden colectar beneficios hasta que se llegan a morir, se vuelvan a casar, o cuando llegan a recibir más del 50% porciento de su mantenimiento de otra manera. Lo maximo que puede recibir en beneficios una persona dependiente, no siendo la viuda o un hijo del trabajador difunto, es un total de \$18,500.00 dólares.

Más Información De Beneficios

El Alcohol y Las Drogas

La nueva ley (que comenzó en Julio 1993) prohíbe el pago de beneficios de compensación de trabajadores si la incapacidad o el impedimento del trabajador fue a causa del uso o abuso del alcohol (bebidas alcohólicas) o las drogas, y si ésta condición **contribuyó** al accidente o al fallecimiento. Inclusivo con el uso de drogas y medicinas recetadas por el médico.

Aún así, en ciertos casos se permite pagar los beneficios cuando:

- *** el trabajador se tomó las medicinas según la dosis terapéutica recetada Y,
- *** el trabajador no había estado incapacitado en el sitio del trabajo a causa de esas medicinas durante los pasados 24 meses.

Un trabajador se considera estar incapacitado a causa del uso o abuso del alcohol si la concentración del alcohol en la sangre mide .04 o más, a la hora del accidente industrial.

Si el trabajador no acepta sumeterse al examen para medirle la concentración del alcohol en la sangre, éste rechazo no se usará como evidencia de impedimento, sólo que hubiera causa probable de creer que el trabajador usó o abusó, tuviera en su posesión, o estaba incapacitado por el alcohol o las drogas mientras que trabajaba. Si es que se encuentra la causa probable, y el trabajador sigue rechazando el examen, ése trabajador se pone a riesgo de no recibir los beneficios de compensación de trabajadores. Cualquier muestra del examen que se vaya a usar como evidencia durante el procedimiento de la reclamación de beneficios debe ser colectada oportunamente, por una persona profesional certificada en sanidad, y el examen administrado según especificaciones legales.

Más Información De Beneficios

Problemas Cardiológicos y los Ataques (Strokes)

La ley no permite pagar beneficios de compensación de trabajadores cuando la incapacidad es a causa de problemas cardiológicos, problemas de las arterias, o ataques o embolias cerebrales (stroke). Sólo que se pueda comprobar que el esfuerzo del trabajo que causo el accidente fue mucho más de lo que normalmente se requiere para las obligaciones normales del trabajo.

Problemas o Incapacidades Anteriores

La cantidad de compensación puede ser reducida si anteriormente existía alguna condición de incapacidad. La reducción sera conforme a la cantidad en que la primera incapacidad ha aumentado a la más reciente incapacidad. Aún así, los beneficios sólo serán reducidos en los casos siguientes:

- *** Cuando la incapacidad anterior ha aumentado la incapacidad más reciente;
- *** El trabajador ha recibido, o esta recibiendo compensación de la incapacidad anterior;
- *** La compensación de la incapacidad anterior se extiende dentro del periodo de semanas en que está reclamando beneficios del accidente más reciente.

La reducción siempre se limita a las semanas donde los beneficios de la incapacidad anterior coincidan y se extienden dentro del periodo de semanas incluidas en el reclamo del accidente más reciente. Esta reducción se termina cuando el periodo coincidente anterior se termina, y el periodo nuevo comienza.

Información Médica

La Compensación de Trabajadores le pagará todo el tratamiento médico que sea necesario, cuando un trabajador sufre un accidente, una herida, o una enfermedad relacionada a, y a causa de, su trabajo. Lo siguiente le puede servir de guía con respecto a los beneficios médicos.

Quién Paga?

El empleador es responsable por todo el tratamiento médico que sea necesario cuando un trabajador sufre un accidente, o una enfermedad a causa de su trabajo. El tratamiento médico incluye los siguientes servicios :

- *** Los servicios de algún profesional que le proporcione servicios de salud como un doctor médico, quiropráctico, o un podíatra;
- *** Tratamiento medico, cirugia, o tratamiento en un hospital;
- *** Medicinas, y artículos de cirugía y medicinales;
- *** Servicios de enfermeras;
- *** Muletas y otros aparatos médicos; y
- *** Servicios de ambulancia y transportación entre la casa del trabajador y la oficina del doctor o al hospital.

Si el empleador ha obtenido aseguración de compensación de trabajadores, el asegurador es responsable por el costo de servicios médicos necesarios. Aún que el empleador no cARGE aseguración, se requiere que se haga responsable por el costo del tratamiento médico de sus trabajadores lastimados a causa del empleo, según la ley de compensación de trabajadores.

La ley permite que los empleadores escojan el doctor médico para tratar al trabajador lastimado. Si un trabajador escoge su propio médico y el empleador no lo autoriza, en ese caso se requiere que el empleador solo sea responsble por los primeros \$500.00 dólares del costo de ese tratamiento médico.

Información Médica

Examinaciones Médicas Requeridas por el Empleador

Después de recibir cualquier tratamiento médico que se necesite de emergencia, el trabajador debe sumeterse a cualquier examinación física razonable que ordene el empleador. Se permite que estas examinaciones continúen hasta dos veces al mes, a menos que el Departamento de Compensaciones de Trabajadores de orden diferente. Si algún trabajador rechaza estas examinaciones se pone a riesgo de perder los beneficios de compensación.

El trabajador tiene derecho a saber el resultado de los exámenes médicos que requiere el empleador. El doctor debe darle al trabajador una copia idéntica al reporte que se prepara para el empleador, dentro de 15 días de la examinación, si el trabajador se lo pide.

Todo el costo de cualquier examinación médica que el empleador requiera, será la responsabilidad del empleador. También le toca pagar todo el costo razonable asociado con la examinación, por ejemplo: el costo de la transportación entre la casa del trabajador y el lugar de la examinación.

El trabajador tiene derecho a tener presente a su propio doctor durante cualquier examinación médica que el empleador requiera. También se puede pedir que el doctor del trabajador participe en la examinación. Si no se permite, o si el trabajador no recibe la copia del reporte de la examinación médica, tampoco se permitirá que el resultado de esa examinación se use como evidencia en el procedimiento del reclamo de beneficios.

ATTENTION

IMPORTANT INFORMATION FOR INJURED EMPLOYEES

CLAIMS ADVISORY/OMBUDSMAN

DIVISION OF WORKERS COMPENSATION
800 SW JACKSON STREET STE 600
TOPEKA KS 66612-1227

TOLL FREE 1-800-332-0353

If you were hurt on the job and have any questions about Workers Compensation benefits contact the **Claims Advisory Section** at the Kansas Division of Workers Compensation. The Division of Workers Compensation has full-time personnel who specialize in aiding injured workers with claim information and problems. They can give information about benefits an injured worker is entitled to receive. They can help try to solve problems with benefits not being paid on time, with medical treatment, with unpaid medical bills, with questions about how to figure settlement amounts, etc. Spanish interpreters are available at the Division of Workers Compensation.

WHAT TO DO IF AN ACCIDENT OCCURS ON THE JOB:

1. Tell your employer that you were hurt on the job.
2. Follow your employer's instructions on getting medical aid and follow the doctor's instructions.
3. Within 200 days of the date of accident or the date of last payment of compensation for disability or authorized medical care, tell your employer **in writing** that you expect workers compensation benefits for your injury. Your employer might know you were hurt and compensation may be paid, however, you could lose all rights to future compensation if you do not tell the employer **in writing**. This is called a "**Written Claim**." Written claim may be served in person by taking it to the employer and getting a receipt for it or by mailing it to the employer by certified mail, return receipt requested. The post office receipt for the certified letter is generally sufficient proof that you sent written claim.

AVERAGE WEEKLY WAGE: A worker's "average weekly wage" is calculated by adding together the **base wage**, the **average weekly overtime** and the **weekly value of fringe benefits** that have been discontinued.

WEEKLY BENEFITS: Benefits are paid by the employer's insurance carrier or self-insurance program. Injured workers are not entitled to compensation for the first week they are

off work unless they lose three consecutive weeks. The first compensation payment is normally due at the end of the 14th day of lost time. An injured employee is entitled to a weekly amount of 66 2/3 percent of his average weekly wage up to a maximum of 75 percent of the state's average weekly wage. These benefits are subject to legislative changes. If the injury results in permanent disability, the Kansas compensation law provides for additional benefits.

MEDICAL BENEFITS: An injured worker is entitled to all medical services reasonably necessary to cure and relieve the worker from the effects of the injury. The employer has the right to select the doctor who will treat the injury. A worker may seek the services of an unauthorized doctor up to a limit of \$500. A worker may apply to the Workers Compensation Director to change the authorized treating doctor. Reimbursement for travel to obtain medical treatment is payable at a rate set by law for trips that are five miles or more.

RESPONSIBILITIES OF THE EMPLOYER:

1. Employers must report all employee injuries to the Division of Workers Compensation within 28 days from the date of injury, or the date the employer learned about the injury.
2. Employers must provide for the payment of workers compensation claims without any charge to employees.
3. Employers must post written notice of workers compensation insurance coverage in both Spanish and English.
4. Employers must pay compensation benefits regardless of insurance coverage.
5. Upon receiving notice of an injury, employers must provide the employee with written information to assist the injured worker in obtaining compensation.

EMPLOYERS MUST COMPLETE THE FOLLOWING INFORMATION FOR INJURED WORKERS:

YOUR CLAIM WILL BE HANDLED BY:

Company _____

Address _____

Contact Person _____

Telephone (_____) _____

A T E N C I O N

INFORMACIÓN IMPORTANTE PARA TRABAJADORES
LASTIMADOS EN EL TRABAJO

Llame a los: Consultivos de Reclamacion/Ombudsman

Llamada Gratis 1-800-332-0353

O Esciba A:
DIVISION OF WORKERS COMPENSATION
800 SW JACKSON STREET, SUITE 600
TOPEKA, KS 66612-1227

Si Ud. se ha lastimado a causa de su trabajo, y tiene algunas preguntas con respecto a los beneficios de la Compensación de Trabajadores, comuníquese con la SECCION DE CONSULTIVOS DE RECLAMACION/"OMBUDSMAN" del Departamento de Compensación Para Trabajadores de Kansas. Este departamento mantiene a sue disposición algun personal que especializa en dar asistencia con los problemas de reclamación y en dar información sobre los reclamos, a los trabajadores lastimados a causa del trabajo. Este personal le puede informar sobre los beneficios que un trabajador lastimado tiene derecho a recibir. Tambien pueden asistirle en resolver los problemas con respecto a los beneficios que no se le estan pagando a tiempo, al tratamiento medico, a las cuentas de los doctores que aun no se han pagado, y tambien con preguntas respecto a la cantidad del arreglo de resolución llamado "settlement".
Interpretes en Español estan a su disposicion en el Departamento de Compensación de Trabajadores.

QUE DEBE HACER SI LE SUCEDA UN ACCIDENTE A CAUSA DEL TRABAJO?

1. Avisese inmediatamente al patron, o a su empleador, que Ud. se ha lastimado a causa de su trabajo. (DENTRO DE 10 DIAS DEL ACCIDENTE).
2. Siga las instrucciones del patron, o el empleador, con respecto al tratamiento medico, y siga las instrucciones del doctor medico.
3. Dentro de 200 dias del accidente, o del ultimo dia en que le pagaron compensación por estar incapacitado, o en que recibio tratamiento medico autorizado, avisele al patron o al empleador POR ESCRITO que Ud. espera recibir los beneficios de compensacion de trabajadores, por su accidente. Aunque su patron ya se haya informado del accidente, y ya le este pagando los beneficios, Ud. puede perder el derecho de recibir compensación en el futuro, si no le avisa al patron o al empleador POR ESCRITO.

PROMEDIO DEL SUELDO SEMANAL: Para calcular un promedio del sueldo semanal "average weekly wage" del trabajador, se suman todos los siguientes: el sueldo basico, mas un promedio de las horas extras (overtime) que se trabajan por semana, mas el valor semanal de cualquier beneficio adicional que haya sido descontinuado.

BENEFICIOS, SEMANALES: Los Beneficios se los paga la compañia o el grupo de Aseguracion del Empleador, o el programa propio de Aseguracion del Empleador. Los trabajadores que se han lastimado a causa del trabajo, no tienen derecho a recibir compensación por la primera semana en que estan sin trabajar a causa del accidente industrial, **A MENOS QUE** esten sin trabajar por orden del doctor. Un trabajador lastimado a causa del trabajo tiene derecho cada semana a una cantidad

equivalente al 66 2/3% porciento del promedio de su sueldo semanal, hasta llegar a un maximo equivalente al 75% porciento del promedio de sueldos semanales designado por el Estado de Kansas. Estos beneficios estan expuestos a cualquier cambio que ordene la legislatura del estado. Si el accidente resulta en una incapacidad de modo permanente, la ley de compensación en Kansas le da derecho a otros beneficios adicionales.

BENEFICIOS MEDICOS: Un trabajador lastimado a causa del trabajo tiene derecho a todo servicio medico razonable y necesario para curar y aliviar al trabajador de los efectos del accidente. El patrón, o el empleador, tiene derecho a escoger el doctor autorizado para darle tratamiento medico al trabajador. Aun asi, el trabajador tiene derecho de escoger los servicios de otro doctor que no sea autorizado hasta llegar al limite maximo de \$500.00 dolores. Un trabajador puede pedirle al Director del Departamento de Compensación de Trabajadores que le cambie el doctor autorizado. Tambien tiene derecho de pedir recompensación de la cantidad de gastos de viajes necesarios que haya hecho de mas de cinco (5) millas, para obtener tratamiento medico de un accidente industrial. El porcentaje que se puede recompensar se establece por ley.

RESPONSABILIDADES DEL EMPLEADOR (EL PATRON):

1. El empleador debe reportar cada accidente industrial de los trabajadores al Departamento de Compensación de Trabajadores, dentro de 28 dias de la fecha del accidente, o de la fecha en que el empleador se haya dado cuenta del accidente.
2. El empleador debe suministrar el pago de las reclamaciones sin cobrarle a los trabajadores que hacen los reclamos de beneficios.
3. El empleador debe exhibir AVISOS POR ESCRITO en Ingles y en Español, avisandole a los trabajadores del Aseguración de Compensación de Trabajadores que tiene el empleador.
4. El empleador debe pagar los beneficios de compensación aunque no tenga aseguración.
5. En cuanto reciba aviso de un accidente, el empleador o patrón debe proporcionarle al trabajador información escrita, dandole asistencia al trabajador en la reclamación de los beneficios.

LOS EMPLEADORES (EL PATRON) DEBEN COMPLETAR LA SIGUIENTE INFORMACION PARA CADA TRABAJADOR LASTIMADO A CAUSA DEL TRABAJO:

ESTA PERSONA NOMBRADA SE ENCARGARA DE SU RECLAMO:

La Compañia Es: _____

El Domicilio Es: _____

Pongase En Contacto Con Esta Persona: _____

Llame a Este Telefono: _____ () _____

Jim W. Fox - 6/18

IN THE SUPREME COURT FOR THE STATE OF KANSAS

FILED

175444

MICHAEL SEDLAK and
RICHARD D. WOODWORTH,
Plaintiffs,

vs.

JOE DICK, Secretary of Human Resources
and GEORGE GOMEZ, Director of Workers'
Compensation,
Defendants.

DEC 13 11 25 AM '93

CAROL G. GREEN
CLERK COURTS
Case No.

RECEIVED

DEC 14 1993

K.S. St. Workers Compensation

ORIGINAL PETITION FOR RELIEF IN QUO WARRANTO

The Plaintiffs complaint against the Defendants is as follows;

1. This is an action to declare unconstitutional Sections 19 and 58 of Senate Bill 307 which provides for the selection of Judges for the Workers' Compensation Board and which repeal former provisions allowing review by the Director and District Court.

2. The Plaintiffs both have cases now pending before the Workers' Compensation Appeals Board. Michael Sedlack received an Award from Administrative Law Judge George R. Robertson October 13, 1993. His case is captioned as Sedlak v. All Freight Systems and Travelers Insurance Company, docket 175,444. He was notified October 21, 1993 that the case was appealed to said Workers' Compensation Appeals Board. The attorney for All Freight and Travelers is C. Stanley Nelson. They are not named as Defendants here but are being given notice of these proceedings through Mr. Nelson.

3. Richard D. Woodworth, the other Plaintiff, received a Preliminary Order for compensation from Administrative Law Judge Floyd V. Palmer on October 18, 1993 and was subsequently notified November 5, 1993 that the matter would be heard by the Workers' Compensation Appeals Board. His case is captioned Woodworth v. Myers and Cincinnati

*Patrick Nichols
Josephine K.*

*House Labor and Industry
Attachment 6
1-13-94*

Casualty Co., docket 175,411. The attorney for Myers and Cincinnati is Anton C. Anderson. They are not named as defendants but are being given notice of these proceedings through Mr. Anderson.

4. The defendants are Joe Dick, lawfully appointed Secretary of Human Resources and George Gomez, Director of Workers' Compensation; they are the administrative representatives of the Judges of the Workers' Compensation Board; Gary Peterson, Don Ramsay, Duncan Whittier, Gary Korte and Kenton Wirth.

5. Both Plaintiffs claim and can establish that they suffer peculiar injury separate and apart from other citizens as a result of the existence of the Workers' Compensation Appeal Board. By virtue of pending, docketed cases, these Plaintiffs' rights are put into immediate jeopardy. As such, Plaintiffs have proper standing. Fransham v. McDowell, 202 Kan. 604; 541 P.2d 131 (1969); Rowlands v. State, 187 Kan. 174, 54 P.2d 674 (1960)

6. Relief in the form of Quo Warranto, injunction or mandamus is a proper remedy for original action to question the constitutionality of statutes, for authoritative interpretation of the law in matters of great public important and concern, or the question the constitutionality of the legislature's actions. State, ex rel. Stephan v. Finney, 251 Kan. 559, 836 P.2d 1169 (1992)

JURISDICTION

7. The Supreme Court has been granted original jurisdiction in proceedings in mandamus and Quo Warranto by Article 3, Section 3, of the Kansas Constitution, as implemented by K.S.A. 60-801 et. seq. and K.S.A. 60-1201 et. seq.

STATEMENT OF CLAIM

8. Senate Bill 307 establishes a "Workers' Compensation Appeals Board" which has exclusive jurisdiction "to review all decisions, findings, orders and awards of compensation of Administrative Law Judges under the Workers' Compensation Act." Section 19(a) Such agency actions are no longer reviewable by the District Court in any way.

9. The District Court Judges are selected either through elections or through a bipartisan nomination process. The Governor is not compelled to select the nominee or even from the group of nominees but may in fact reject them all. This bipartisan selection process with discretion on the part of the State's Chief Executive is a hallmark of the proper balance between the Executive and the Judicial roles of government.

10. Workers' Compensation is an administrative system whereby the rights of the parties that common law to seek redress of injuries by jury trial has been taken away in favor of a statutorily defined scheme of remedies. In order to pass constitutional muster these administrative remedies must provide a proper "quid pro quo" for the injured worker's loss of access to the courts. (Citation)

11. Senate Bill 307 establishes a patently unconstitutional system for the selection and nomination of the ultimate fact-finders, the Workers' Compensation Appeal Board. The legislature has unconstitutionally delegated the selection process to two (2) special interest groups, accountable to no branch of government and vested them with total autonomy in selection of the Board members. Nominations are made under Section 19(e) which creates a "nominating committee" made up of one (1) representative from the Kansas AFL-CIO and one (1) representative from the Kansas Chamber of Commerce and Industry.

12. Most Kansas citizens are not members of the Kansas AFL-CIO or the Kansas Chamber of Commerce and Industry. Therefore, they are not eligible to participate in selecting the representative of each group to this committee. Moreover, the members of this "committee" are not state officials, not selected by state officials, and are not accountable to the public or citizens of the State of Kansas in any way.

13. The Kansas AFL-CIO represents only 10% of the Kansas workers; the Kansas Chamber of Commerce and Industry represents only 3-10% of employers in the State of Kansas.

14. The statute above cited further unconstitutionally infringes on the power of the Executive by mandating the nominee of this exclusive "committee" be appointed; there is no discretion to appoint from a list of nominees nor to reject them all based on executive discretion. If the nominee meets the criteria of seven (7) years of practice, the nominee must be appointed; "the Secretary shall accept and appoint each person nominated by the Nominating Committee to the position on the Board for which the person is nominated . . ."

15. The Secretary of Human Resources has no authority to accept or reject the nominees to the "appointment committee" from the AFL-CIO and KCCI. The Secretary has no discretion to accept or reject a properly qualified nominee from the Committee to the Workers' Compensation Appeal Board. The law even denies the Secretary the right to designate which position the nominee will fill, mandating that the person be appointed ". . . to the position on the Board for which the person is nominated . . ."

16. Subject to the minimum qualification of seven (7) years of experience, it is apparent that total discretion for the appointment of the ultimate arbiters of fact for all injured

workers of Kansas rests not with the Legislative, the Executive or the Judicial branches of government but instead with two (2) special, private interest groups unrepresentative of Kansans as a whole.

17. Accountability in government is the hallmark of democracy. Some government official must be accountable for the actions of those who control the fate of workers and employers throughout the state. Under the current system for the selection of the "committee" and the "Board" no government official has any discretion and therefore no accountability. Instead, total control has been ceded by the legislature to two (2) narrowly defined non-governmental special interests groups.

18. The selection criteria established by the legislature violates the separation of powers doctrine enumerated in the Kansas Constitutions, Article 1, Section 3 (Executive) and Article 2, Section 1 (Legislative). By stripping from the Executive the discretion to appoint the "committee", to choose from among several nominees for the Board or to reject them all, the legislature has unlawfully usurped the Executive's authority.

19. The provisions further violate the Constitutional principle prohibiting improper delegation of governmental authority. Not only has the legislature stripped the Executive's discretion to appoint the "Committee" or "Board" but it has vested the selection of both groups in narrowly defined special interest groups who neither represent nor are accountable to the citizens of the State as a whole. Kansas Courts have prohibited delegation of authority to private interest groups in the area of pharmacy licensing, Gumbhir v. Kansas State Board of Pharmacy, 228 Kan. 579, 618 P.2d 837 (1980); power to fix resale prices for trademark commodities, Quality Oil Co. v. DuPont and Company, 182 Kan. 488 (1958); electrical codes

for theater owners, State v. Crawford, 104 Kan. 141 (1919) and in the area of alcohol beverage pricing, State, ex rel. v. Mermis, 187 Kan. 611, 358 P.2d 936 (1961).

20. The statutory scheme denies the citizens of Kansas equal protection of the laws under the United States Constitution, 14th Amend., Section 1 and the Kansas Constitution, Bill of Rights, Section 2. Members of the two (2) special interest groups to whom the selection process has been delegated have at least some voice in the selection of the ultimate fact-finders in workers' compensation cases. The vast majority of Kansas citizens, not members of either of these two (2) organizations, have no such protection. Moreover, individuals who either prosecute or defend claims for person injury not arising out of the work place are endowed with the right to present those claims to a properly selected judiciary while claims based on work place injuries must go before the improperly selected panel.

21. The selection criteria denies those persons who prosecute or defend work place injury claims due process of law under the United States Constitution, 14th Amendment, Section 1 and the Kansas Constitution, Bill of Rights, Section 2. They are denied their rights to a properly selected judicial review of the facts of their case by the special interest selection criteria and the absence of further District Court review. Moreover, these individuals have been denied the fundamental assurances of a fair and impartial judiciary which were inherent in the trade-off or "Quid Pro Quo" which justified the trade-off of access to the courts for the administrative scheme.

22. The elimination of judicial review by the District Court denies due process and deprives injured workers of a finder of fact for any issues relating to the constitutionality of provisions of the Workers' Compensation Act, since such issues cannot be decided by an

administrative tribunal. See Baker v. List and Clark Construction Co., 222 Kan. 127, 128, 563, P.2d 431 (1977).

ORIGINAL JURISDICTION

23. This action is brought in the Appellate rather than District Courts. Adequate relief is not available in the District Court. Particularly unique and compelling circumstances justify exercise of concurrent jurisdiction by the courts of Appeal in this state. The selection process here presents a patently unconstitutional effort by which the legislature has invaded the power of the Executive and delegated it to a private interest group. Such offenses to the doctrine of separation of powers and delegation of authority strike at the very heart of our system of government. As fundamentally anti-democratic measures, they will harm not only the two (2) Plaintiffs here but all citizens who have or will have claims made by or against them for workplace injuries. The harm here is vast, effecting not only thousands of individuals, businesses and their insurers, but the fabric of government in Kansas itself. The magnitude of harm suffered represents the type of compelling circumstance and issue of great public importance and concern which have typified those cases wherein the Kansas Supreme Court has agreed to here an original action in mandamus or Quo Warranto. Berst v. Chipman, 232 Kan. 180, 183, 653 P.2d 107 (1982); State, ex. rel. Stephan v. Finney, 251 Kan. 559, 567, 836 P.2d 1169 (1992).

24. The Court should exercise original jurisdiction in order to determine this issue as a matter of public policy. If litigated through the District Courts, substantial delay would occur and, as a result, scores if not hundreds of decisions will be made by the Workers' Compensation Appeals Board. If this challenge is ultimately meritorious, as Plaintiffs believe

it will be, an eventual decision in their favor would jeopardize the finality of those decisions. This would wreak havoc on those whose claims have been decided and who are responsible for the payment thereof. State ex. rel. v. Bennett, 219 Kan. 285, 547 P.2d 786 (1976) challenged legislation under the separation of powers and improper delegation doctrines. That case recognized the difficulties inherent in striking down a panel whose existence is offensive to the law but which has taken action over the years. If indeed the Appeals Board is unconstitutional, this Court, as a matter of policy, should address that issue forthwith. This issue clouds the cases of hundreds, if not thousands, of litigants. Delay in determining this issue serves no end.

25. The simplicity of the factual issues argues in favor of the exercise of original jurisdiction. The issues before this Court require very little in the way of a factual record. Such a record will not consist of controverted facts but will, of necessity be based on stipulations. The Plaintiffs claims as set forth in this brief are legal, not factual.

26. Since Woodworth cannot appeal the decision of the Board (See Senate Bill 307, Section 58) he has no other remedy at law.

PRAYER FOR RELIEF

The Plaintiffs request the following relief;

a. An Order setting a time for the filing of an Answer or other pleading by the Defendants herein.

b. An Order determining that a Workers' Compensation Appeals Board has been selected through a procedure violating the constitutions of the United States of America and the State of Kansas, that its members have taken office illegally and should be ousted and, further, that their decisions have no force and effect.

c. An Order striking as unconstitutional the entirety of Section 19 and 58 of Senate Bill 307, the Sections which establish the Workers' Compensation Appeals Board and which repeal the former procedure allowing review by the Director and District Court.

RESPECTFULLY SUBMITTED,

Richard D. Woodworth
Richard D. Woodworth

Michael Sedlack
Michael Sedlack

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE)

We, Michael Sedlak and Richard D. Woodworth, of lawful age, being first duly sworn, state that we are Plaintiffs in the above-named; We have read the above and foregoing Original Petition for Relief in Quo Warranto and Injunction and know the contents thereof; and the statements contained in the foregoing Original Petition for Relief in Quo Warranto and Injunction are true and correct to the best of our knowledge.

Michael Sedlak
Michael Sedlak

APRIL 5, FAIRCLOTH
NOTARY SUBSCRIBED AND SWORN to before me this 8th day of December, 1993.
PUB. S. DAURICH
STANFORD

Sue S. Daurich
Notary Public

My Commission Expires:

8/14/96

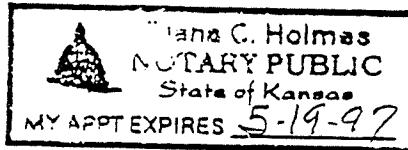
Richard D. Woodworth
Richard D. Woodworth

SUBSCRIBED AND SWORN to before me this 8th day of December, 1993.

Diana C. Holmes
Notary Public

My Commission Expires:

May 19, 1997



PREPARED AND APPROVED BY:

Patrick R. Nichols
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Topeka, KS 66614
(913) 273-8300

CERTIFICATE OF SERVICE

Patrick R. Nichols, attorney for the Plaintiffs, herewith certifies that he has caused to be personally delivered a copy of the Petition herein filed upon the following individuals:

- a. Joe Dick, Secretary of Human Resources for the State of Kansas.
- b. George Gomez, Director of the Division of Workers' Compensation.
- c. Honorable Robert T. Stephan, Attorney General for the State of Kansas.
- d. Anton C. Anderson, 707 Minnesota, 4th Floor, Kansas City, KS 66117
- e. C. Stanley Nelson, P.O. Box 1247, Salina, KS 67402

By causing a copy to be deposited restricted mail pursuant to the Rules of Appellate Procedure 9.01. December 13, 1993

Patrick R. Nichols
Patrick R. Nichols