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KANSAS WORKERS COMPENSATION OVERVIEW

Jurisdiction (K.S.A. 44-505, 44-506)

1. Contract of hire
2. Location where hurt
3. Where employee does majority of work

Coverage

1. Any employment that has at least \$20,000.00 of gross payroll. 44-505(a)(2).
2. Any personal injury caused by an accident arising out of and in the course of employment. 44-501. Burden of proof is on claimant.

Statute of Limitations

An application for a hearing should be filed within 3 years of the alleged date of injury or 2 years of the last payment of compensation, whichever is later. 44-534(b).

Notice

Notice must be given at the earliest of the following dates: (1) 20 days from the date of the accident or date of injury if for repetitive trauma; (2) if the employee is working for the employer against whom treatment is sought, 20 days from the day treatment is sought; (3) if the employee no longer works for the employer against whom benefits are sought, 10 days from the last day actually worked. 44-520(a)(1). Notice may be provided orally to designated individual or department or in writing to a supervisor, and must include time, date, and place of injury. 44-520(a)(2)-(4).

Venue

All hearings are to be held by the ALJ in the county of accident, or by video or telephone conference, unless otherwise agreed. 44-549.

Report of Accident

A Report of Accident must be filed with the State within 28 days “if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than remainder of day, shift, or turn on which such injuries were sustained.” 44-557.

Average Weekly Wage/Comp Rate

1. 26 weeks prior to the date of the accident. 44-511(b).
2. Comp rate is lower of 66 2/3% of the AWW or max rate. Only one rate for both TTD and PPD.

Injury

1. The injury must be the prevailing factor in causing the injury. 44-508(d).
2. Prevailing factor is the “primary factor.” 44-508(g).
3. An injury that just aggravates, accelerates, or exacerbates a preexisting condition is not compensable. 44-508(f)(2).
4. An injury does not arise out of and in the course and scope of employment if the employee is on the way to assume the duties of employment or leaving such duties. If the employee is on premises owned or exclusively controlled by the employer, then the employee will not be held to be on the way to assume the duties of employment or leaving such duties. 44-508(f)(3)(B).

Occupational Disease

1. Date of injury is earliest of: (1) the date the employee, while employed for the employer against whom benefits are sought, is taken off work or placed on modified duty by a physician due to the alleged repetitive trauma, or told by a physician that the condition is work related, or (2) the last day worked, if the employee no longer works for the employer against whom benefits are sought. 44-508(e).
2. Last employer is 100% responsible for occupational disease.
3. Only compensable if exposure is the prevailing factor in the injury and the employment exposed the employee to an increased risk or hazard not found “in normal non-employment life.” 44-508(f).

Benefits

1. Medical: Employer directs medical and selects physicians. Fee Schedule decides how much providers charge.
 - a. **Unauthorized medical**: Claimant can receive up to \$500 unauthorized medical care (not for rating).
 - b. **Mileage**: Owed for anything over 5 miles (medical only).
2. TTD: Employee is “completely and temporarily incapable of engaging in any type of substantial and gainful employment.” 44-510c(b)(2).
 - a. Up to \$130,000.00. 44-510f(a)(2).
 - b. 1 week waiting period. If TTD lasts for 3 weeks, then first week is retroactive. 44- 510c(b)(1).
 - c. Return to or release by treating physician to any substantial and gainful employment terminates TTD. 44-510c(b)(3).
 - d. No TTD for the weeks unemployment is received. 44-510c(b)(4).
3. PTD: Employee has been “rendered completely and permanently incapable of engaging in any type of substantial and gainful employment.” \$155,000.00 compensation cap.
4. PPD
 - a. According to schedule of 44-510d(a).
 - b. Impairment to be determined according to Guides to Evaluation of Permanent Impairment, 4th Edition.
 - c. Impairment to be reduced by the amount of pre-existing impairment.
 - d. Up to \$130,000.00, including TTD paid. 44-510f(a)(2).
5. TPD

Work Disability (K.S.A. 44-510e)

1. If claimant injures his or her head, neck, back, or parallel extremities and has permanent restrictions that cannot be accommodated by the employer, then work disability is triggered.
2. Can defeat claim if claimant finds work that pays 90% or more of pre-injury wage.
3. Requires more than a 7.5% impairment to the body as a whole, or a 10% impairment to the body as a whole if pre-existing impairment.
4. Work Disability equals (Wage Loss + Task Loss)/2. Wage loss based on wages employee is capable of earning. Task Loss based on 5 years before date of accident.
5. Must be able to legally enter employment contract under state law to receive work disability.

Penalties

Employer is not liable when injury, disability, or death was contributed to by the use of drugs or alcohol on behalf of the employee. If employee was impaired at the time of the

injury, there is a rebuttable presumption that the impairment contributed to the injury, disability, or death. 44-501(b).

Future Benefits

1. Future medical awarded if ALJ finds it is more probable than not that future medical treatment will be required as a result of the work injury. 44-525(a). If future medical treatment has not been requested within two years from the award, application can be made to terminate future medical benefits. 44-510k(a)(3).

Death

1. Benefits payable to dependents of deceased claimant. 44-510b(a).
 - a. Initial payment of \$40,000.00 to any surviving spouse or wholly dependent child. 44-510b(a).
 - b. Weekly compensation to all dependents not to exceed PTD limits. 44-510b(a).
 - c. Surviving spouse's benefits capped at \$300,000.00.
2. Burial expense to not exceed \$5,000.00. 44-510b(f).

Dismissal (44-523(f))

If a claim has not proceeded to a regular hearing within 3 years of filing the Application for Hearing, the employer can request dismissal with prejudice for lack of prosecution. The ALJ does have the ability to deny this for good cause. If a claimant is not at maximum medical improvement, good cause is conclusively presumed.