Kansas
Department of Labor

Workers Compensation Information for Kansas Employers and Employees

K-WC 25 (Rev. 04-25)

The mandated Posting Notice (K-WC 40-A) and other Workers Compensation forms are available to download at dol.ks.gov.

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

Kansas Department of Labor
Workers Compensation Division
401 SW Topeka Blvd., Suite 2
Topeka, Kansas 66603-3105
785-296-4000
800-332-0353
Email: kdol.wc@ks.gov
Website: dol.ks.gov

Follow us:

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

Kansas Department of Insurance
1300 SW Arrowhead Rd.
Topeka, Kansas 66604
785-296-3071
800-432-2484
Email: kid.commissioner@ks.gov
Website: insurance.kansas.gov

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What is Workers Compensation?

Workers compensation is a required insurance plan provided by the employer to pay employee benefits for job-related injuries, disability or death that arise out of and in the course of employment.

Per K.S.A. 44-508, an injury by accident shall be deemed to arise out of employment if:

- There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- The accident is the prevailing factor causing the injury, medical condition and resulting disability or impairment.

The words "arising out of and in the course of employment" as used in the Workers Compensation Act shall not be construed to include:

- Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;
- accident or injury which arose out of a neutral risk with no particular employment or personal character;
- accident or injury which arose out of a risk personal to the worker; or
- accident or injury which arose either directly or indirectly from idiopathic causes.

Benefits are paid at the employer's expense. Coverage begins the first day on the job.

The present law covers all Kansas employers except for those in certain agricultural pursuits or those with a gross annual payroll of $20,000 or less. 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 the owners and any of their family members are not used in the computation of the gross annual payroll. Per K.A.R. 51-11-6, the provision in K.S.A. 44-505 excluding the payroll of workers who are members of the employer's family shall not apply to corporate employers. A corporate employer's payroll for purposes of determining whether the employer is subject to the workers compensation act shall be determined by the total amount of payroll paid to all corporate employees even when a corporate employee has elected out of the workers compensation act pursuant to K.S.A. 44-543.

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; and
- income benefits to replace part of the wages lost due to disability.

If death results from a job-related injury or disease, benefits may be paid to the surviving spouse, dependents or heirs.

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 (premiums) for the risk of large, unbudgeted expenses in the event of serious employee disabilities. Employees benefit because negligence of the employer is not an issue in determining liability. Workers compensation coverage is a no-fault system. The provisions of the Workers Compensation Act shall be applied impartially to both employers and employees. While initially aimed at hazardous jobs, the law now covers most workers.

Elections

Elections in or out of the Workers Compensation Act are options available to employers or employees. Depending on the circumstances, options may be available for:

- non-covered employers – e.g., those with payrolls of $20,000 or less or in certain agricultural pursuits;
- corporate employees owning 10% or more of stock;
- individuals, proprietors or partnerships;
- employers seeking coverage for volunteers and other non-covered workers; and
- volunteer directors, officers or trustees of a nonprofit organization.

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 to be the employer.

Elections may be filed online at https://oscar.dol.ks.gov.

Employee Rights and Responsibilities

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

- An employee cannot be fired, demoted or otherwise discriminated against for filing a claim in good faith.
- Employees must be informed of their rights and responsibilities in case of injury. In the event of employee death, such information must be furnished to the employee's beneficiaries.
- Employees must not be charged for the payment of workers compensation claims. Employers cannot deduct from pay or benefits to pay insurance premiums or claims.
- Employees may be entitled to compensation benefits from an employer subject to the Act regardless of insurance coverage.
- Employees may obtain free assistance by contacting the Workers Compensation Ombudsman's office at 800-332-0353 or 785-296-4000.
- The law provides specific penalties for employee or employer fraud in workers compensation cases. For assistance or more information, or to report suspected fraud, contact the Workers Compensation Ombudsman or the Fraud and Abuse office at 800-332-0353 or 785-296-4000.

Employer Responsibilities

Workers Compensation Insurance

Most employers are required by law to provide for the payment of workers compensation claims, at no expense to the employee. Employers shall 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 Workers Compensation Division.
- **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 A misdemeanor** and subjects the employer to a civil penalty in an amount twice the annual premium the employer would have paid for insurance or $25,000, whichever amount is greater.

Employment categories excluded from the law are:

- certain agricultural pursuits;
- realtors who qualify as independent contractors;
- employers with gross annual payrolls of $20,000 or less;
- firefighters belonging to a firefighters relief association which has waived coverage under the workers compensation law; and
- certain owner-operator vehicle drivers covered by their own occupational accident insurance policy.

OTHER REQUIREMENTS

- Employers must post written notice K-WC 40-A advising employees what to do in case of injury.
- Per K.S.A. 44-557, "it is...the duty of every employer to make or cause to be made a report to the director* of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's supervisor has knowledge, which report shall be made upon a form to be prepared by the director**, within 28 days, after the receipt of such knowledge, 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 the remainder of the day, shift or turn on which such injuries were sustained."

  As outlined in K.A.R. 51-9-17, all insurance carriers, group pools and self-insurers are required to use Electronic Data Interchange (EDI) to file First Reports of Injury (FROI) and Subsequent Reports of Injury (SROI) using the Release 3.1 standards. For details contact Techs and Stats, Workers Compensation Division at 785-296-4000 or 800-332-0353, or visit our EDI website at https://dol.ks.gov/workers-compensation/electronic-data-interchange-edi

Immediately upon learning of an employee's injury or death, the employer must furnish written information to the employee or employee's dependents on available benefits, the claims process, an employer or insurance company contact for workers compensation claims, and other matters as required by law. Use forms K-WC 27-A (English) and K-WC 270-A (Spanish) for reporting.

- An insurer or self-insured employer shall provide the following notice to an insured worker on or with the first check for temporary disability benefits: *Warning: Acceptance of employment with a different employer that requires the performance of activities you have stated you cannot perform because of the injury for which you are receiving temporary disability benefits could constitute fraud and could result in loss of future benefits and restitution of prior workers compensation awards and benefits paid.*

If you need assistance, call 800-332-0353 or 785-296-4000.

*As of January 1, 2014, by "make or cause to be made a report to the director" is meant that an employer must report to the employer's insurer for workers compensation any accident witnessed by the employer, claimed or alleged, with sufficient timeliness to allow the insurer to file the accident report with the division within 28 days, as required by K.A.R. 51-9-17.

**The requisite form for reporting by the insurer as of January 1, 2014, is outlined in K.A.R. 51-9-17.

Categories of Disability Benefits

Temporary Total Disability

Exists when the employee, on account of injury, is unable to engage in any type of substantial and gainful employment. Benefits are paid for the duration of the temporary total disability (TTD). There is a one-week waiting period (seven calendar days) before TTD benefits are paid. If the disability continues for three consecutive weeks, the employee is reimbursed for the waiting period. Employees may collect medical benefits during the first week. Benefits are 66 2/3% of an employee's average gross weekly wage, but not less than $50 nor more than the statutory maximum. Temporary total compensation may not exceed $225,000 per injury.

Employees may **not** collect temporary total disability and unemployment benefits for the same weeks.

Temporary Partial Disability

Exists when the worker returns to any employment at a wage less than the time of injury wage. Compensation is calculated on a weekly basis and is paid until the wage loss is no longer present or the benefit maximum is reached, whichever comes first.

Benefits are 66 2/3% 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.

Permanent Partial Scheduled Disability

Exists when there is complete or partial loss of or loss of use of a body part, such as an arm, due to a job-related injury. Compensation for permanent partial scheduled disability is limited to a percentage of the following schedule. A healing period is available in cases of amputation. Benefits are 66 2/3% of an employee's average gross weekly wage, but not less than $50 nor more than the statutory maximum cap of $225,000.

Benefit Information Schedule

Loss of or loss of use of:	Weeks Paid:	Loss of or loss of use of:	Weeks Paid:
Shoulder	225	Thumb	60
Arm	210	1st (index) finger	37
Forearm	200	2nd (middle) finger	30
Hand	150	3rd (ring) finger	20
Leg	200	4th (little) finger	15
Lower leg	190	Great toe	30
Foot	125	Great toe, end joint	15
Eye	120	Each other toe	10
Hearing, both ears	110	Each other toe, end joint only	5
Hearing, one ear	30		

Permanent Partial General Disability

Exists when a worker is disabled in a manner which is partial in character and permanent in quality, and which is not covered by the schedule above. For example, disability involving the back or the loss of use of a shoulder, arm, forearm or hand of one upper extremity, combined with the loss of or loss of use of a shoulder, arm, forearm or hand of the other upper extremity; or the loss of or loss of use of a leg, lower leg or foot of one lower extremity, combined with the loss of or loss of use of a leg, lower leg or foot of the other lower extremity; or the loss of or loss of use of both eyes which is partial in character and permanent in quality are whole body disabilities and are not covered by the above schedule. Compensation for such "non-scheduled" or "whole body" disability is based on the greater of the following: the percentage of functional impairment; or, the employee's reduced ability to perform work tasks and the average weekly wage the employee is capable of earning after the injury. Employees earning 90% of pre-injury wage are limited to functional impairment.

Calculating Permanent Partial General Disability Benefits

1. **Calculate weekly benefit rate by identifying the smaller of these two amounts:** Gross average weekly wage x 66 2/3%; or the statutory maximum.

2. **Calculate allowable weeks of compensation:** Begin with 415 weeks. Subtract from 415 the number of weeks of temporary total disability paid, excluding the first 15 weeks of such temporary total paid. Multiply the difference by the percentage of disability.

3. **Calculate total benefits:** Multiply weekly benefit rate by allowable weeks of compensation.

Example: Average weekly wage is $875 at date of accident *(7/10/2011)*. Employee has collected 25 weeks of temporary total disability and has a 25% disability rating.

Weekly benefit rate: (use lesser amount)
$875 x .6667 = $583.36
statutory maximum *(as of 7/1/11)* $555

Allowable weeks of compensation:
415 - [25-15] = 415 - 10 = 405 weeks
405 weeks x .25 = 101.25 weeks

Maximum benefit amount:
101.25 weeks x $555 = $56,193.75

Our website has a Workers Compensation Calculation Program. The date program allows you to calculate time between two dates or to calculate the addition of days to a known date. The scheduled injury and whole body injury programs will allow you to compute the compensation benefits due to the claimant. Step-by-step instructions are provided for each program.

Permanent Total Disability

Exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, both legs or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from injury independent of all other causes, shall also constitute permanent total disability.

Benefits are 66 2/3% of an employee's average gross weekly wage, but not less than $50 nor more than the statutory maximum. Total compensation may not exceed $400,000 per injury.

An employee is not allowed to receive more than one award of permanent total disability in a lifetime.

How Rates are Determined

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 adjusted based on the most recent premiums, investment income and losses reported by the insurance companies. The National Council on Compensation Insurance (NCCI) submits these rates annually to the insurance commissioner for approval.

The NCCI is a ratemaking organization, licensed by the Insurance Department, whose membership is primarily comprised of 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 cents 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 roughly 2.5% plus the earnings on investments.

After reviewing the rate filing, the commissioner of insurance generally approves an "overall" statewide premium change. This "overall" change is stated as a percentage (for example, a five percent 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 loss cost is filed by NCCI and all carriers are required to use it. The base rates can change annually due to statewide loss experience of all employers in the same classification. The companies multiply the base rate by their approved Loss Cost Multiplier (LCM) in order to determine the rate per $100 of payroll.

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 at least $4,500 within the past two years, or if more than two years, an average annual premium of $2,250 or more are experience rated. 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 premiums 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 may be applied to policies with a larger premium to recognize this factor.

Also, some employers are subject to fixed payroll amounts. Partners, sole proprietors and members of a limited liability company who elect to cover themselves under a workers compensation insurance policy pay a premium based on a set payroll which is adjusted annually. The premium for an executive officer of a corporation is based on the actual payroll of the officer, subject to a set per-week minimum and maximum payroll which may be adjusted annually.

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) was 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 Insurance Department: 800-432-2484 or 785-296-3071, or visiting the website at: insurance.kansas.gov
3. **Use of deductible:** Deductibles can be a cost-effective means of reducing premiums and are available in various amounts. Losses paid by the employer under the deductible shall not apply in calculating the employer's experience modification. The insurer shall pay the deductible amount and seek reimbursement from the insured employer for the applicable deductible amount.

General Information

How to Obtain Insurance

Workers compensation insurance coverage can be obtained by:

- contacting a licensed insurance agent;
- contacting the Kansas Insurance Department for information on group-funded pools; or
- contacting the Workers Compensation Division for information on self-insurance.

Kansas Workers Compensation Insurance Plan (Assigned Risk Plan)

Any employer who is in good faith entitled to but 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 is authorized to provide coverage. Assigned Risk Plan premiums are calculated using the same loss costs as if the coverage were purchased in the voluntary market; however, premiums may be higher due to differentials applied to assigned risk rates and individual employer loss experience.

For assistance and questions about the Assigned Risk Plan, contact the Kansas Insurance Department at 800-432-2484 or 785-296-3071.

Insurance Rating Appeals Process

If an employer suspects the wrong classification or other incorrect factor is being used in calculating a 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 800-432-2484 or 785-296-3071.

Division of Responsibilities

Responsibilities of the Employee:

- Notify your employer immediately. Per K.S.A. 44-520, a claim may be denied if an employee fails to notify their employer within the earliest of the following dates:
  - 30 calendar days from the date of accident or the date of injury by repetitive trauma;
  - 20 calendar days after the employee's last day of actual work for the employer if the employee no longer works for the employer against whom benefits are being sought.
- Notice may be given orally or in writing. Where notice is provided orally, if the employer has designated an individual or department to whom notice must be given and such designation has been communicated in writing to the employee, notice to any other individual or department shall be insufficient under this section. If the employer has not designated an individual or department to whom notice must be given, notice must be provided to a supervisor or manager.
- Where notice is provided in writing, notice must be sent to a supervisor or manager at the employee's principal location of employment.
- The notice, whether provided orally or in writing, shall include the time, date, place, person injured and particulars of such injury. It must be apparent from the content of the notice that the employee is claiming benefits under the Workers Compensation Act or has suffered a work-related injury.

Responsibilities of the Employer:

- Unless self-insured, the employer must advise its insurance carrier or group-funded pool of employee's injury.
- **The employer is required** by K.S.A. 44-5,102(a) to deliver information immediately to employee or legal beneficiary to assist in the claims process (material is available from the employer's carrier or the Workers Compensation Division), including form K-WC 27-A or K-WC 270-A (Spanish).

Responsibilities of the Workers Compensation Division:

- Makes official record of accident reports filed with the division.

Survivors' Benefits

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

The weekly benefits are based on 66 2/3% of the employee's average weekly wage at the time of the accident or injury, but cannot exceed the statutory **maximum**. The **minimum** death benefit is 50% of the state's average weekly wage in effect on the date of accident. Total compensation benefits may not exceed $500,000, unless benefits are being paid to a dependent child under the age of 18. Funeral expenses up to $10,000 and all medical and hospital expenses related to the fatal injury are also covered.

An initial payment of $60,000 must be made to the surviving legal spouse or wholly dependent child(ren) or divided among them, 50% to the surviving legal spouse and 50% to the dependent children. This $60,000 payment is not subject to the eight percent discount normally allowed for lump sum payments. The initial payment shall be paid immediately.

Spouse and Children
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 wholly dependent children may continue receiving benefits even if they exceed the statutory limit at the time of the accident, if: The wholly dependent child, who is not enrolled in high school, becomes 18 years of age; If enrolled in high school, May 30 of the wholly dependent child's senior year in high school or until the child becomes 19 years of age, whichever occurs first; or the wholly dependent child's 23rd birthday, if such child is a student enrolled full-time in an accredited institution of higher education or vocational education.

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

Dependents other than spouse or children may collect weekly benefits subject to the statutory provisions, until they die, remarry or receive more than 50% of their support from another source.

Legal Heirs
If the employee leaves no spouse, dependent children or other dependents either wholly or partially dependent upon the employee, a lump sum payment of $100,000 shall be made to the legal heirs of the employee, subject to reductions based on employer procured life insurance.

Conditions Affecting Benefits

Drugs and Alcohol
An employer is not liable for workers compensation benefits if an employee is impaired due to the use of alcohol* or drugs** and the impairment contributed to 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.

If it is shown that the employee was impaired at the time of the injury, there shall be a rebuttable presumption that the accident, injury, disability or death was contributed to by such impairment.

An employee's refusal to submit to a chemical test at the request of the employer shall result in the forfeiture of benefits under the Workers Compensation Act if the employer had sufficient cause to suspect the use of alcohol or drugs by the claimant, or if the employer's policy clearly authorizes post-injury testing.

The results of a chemical test shall be admissible evidence to prove impairment if the employer establishes that the testing was done under any of the following circumstances:

1. as a result of an employer-mandated drug testing policy, in place in writing prior to the date of accident or injury, requiring any worker to submit to testing for drugs or alcohol;
2. during an autopsy or in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and not at the direction of the employer;
3. the worker, prior to the date and time of the accident or injury, gave written consent to the employer that the worker would voluntarily submit to a chemical test for drugs or alcohol following any accident or injury;

4. the worker voluntarily agrees to submit to a chemical test for drugs or alcohol following any accident or injury; or
5. as a result of federal or state law, or a federal or state rule or regulation having the force and effect of law, requiring a post-injury testing program and such required program was properly implemented at the time of testing.

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

** Confirmatory test cutoff levels (ng/ml)

Marijuana metabolite	15
Cocaine metabolite	150
Amphetamines:	
Amphetamine	500
Methamphetamine	500
Opiates:	
Morphine	2000
Codeine	2000
6-Acetylmorphine	10ng/ml
Phencyclidine	25

Safety Violations: K.S.A. 44-501(a)(1)

Compensation for an injury shall be disallowed if such injury to the employee results from:

1. the employee's deliberate intention to cause such injury;
2. the employee's willful failure to use a guard or protection against accident or injury which is required pursuant to any statutes and provided for the employee;
3. the employee's willful failure to use a reasonable and proper guard and protection voluntarily furnished the employee by the employer;
4. the employee's reckless violation of their employer's workplace safety rules or regulations; or
5. the employee's voluntary participation in fighting or horseplay with a co-worker for any reason, work related or otherwise.

The preceding shall not apply when it was reasonable under the totality of the circumstances to not use such equipment, or if the employer approved the work engaged in at the time of an accident or injury to be performed without such equipment.

Coronary Disease and Stroke

The law does not provide compensation for coronary or 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. Another exception is vascular injury caused by extreme heat.

Prior Disability Ratings/Pre-existing Condition

Compensation for any permanent disability may be reduced by the existence of a rating on any applicable pre-existing disability.

K.S.A. 44-501(e): An award of compensation for permanent partial impairment, work disability or permanent total disability shall be reduced by the amount of functional impairment determined to be pre-existing to the same physical structure as the body part injured. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment.

K.S.A. 44-501(e)(1): Where workers compensation benefits have previously been awarded through settlement or judicial administrative determination in Kansas, the percentage basis of the prior settlement or award shall conclusively establish the amount of functional impairment determined to be pre-existing. Where workers

compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Kansas, the amount of pre-existing functional impairment shall be established by competent evidence.

Guidelines for Obtaining Medical Treatment

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;
- surgical, hospital and other medical treatment;
- medications, medical and surgical supplies;
- nursing services;
- crutches and other medical apparatus;
- ambulance services; and
- transportation between the employee's home and the place of medical treatment, subject to a minimum of five miles round trip.

If an employer has workers compensation insurance, the insurance carrier is required to pay for applicable medical expenses. Uninsured employers subject to workers compensation laws are 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 $800 in medical bills from such self-selected physicians.

Employer-Ordered Examinations

After obtaining whatever emergency medical care is necessary, an employee shall submit to any reasonable physical examination ordered by the employer. The employer can also require the employee to submit to ongoing examinations – up to twice monthly, or more often if specifically ordered by the Workers Compensation Division. Employees may forfeit the benefits that are available if they refuse to submit to such examinations. Employees are 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 the employee, within a reasonable time after the examination, a report identical to that sent to the employer or the employer's carrier. 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.

Fraud and Abuse

Both the Workers Compensation Division and the Kansas Insurance Department have units dedicated to the investigation of fraudulent or abusive acts and practices that occur with regard to the Workers Compensation Act. Acts or conduct that are considered to be fraudulent or abusive can generally be described as situations in which claimants, employers or companies fail or refuse to follow directives of the Workers Compensation Act. The Workers Compensation Act applies to the following:

- persons claiming benefits under the Workers Compensation Act;
- employers subject to the requirements of the Workers Compensation Act;
- insurance carriers and group-funded self-insurance plans providing coverage for work-related injuries;
- any person, corporation, business or health care facility providing treatment for work-related injuries
- attorneys and other representatives of employers, employees, insurers or other entities involved in the administration of the Workers Compensation Act.

If the director, or the assistant attorney general assigned to the Workers Compensation Division, has probable cause to believe a fraudulent or abusive act or practice that violates the Workers Compensation Act has occurred, a copy of any order and all investigative reports and any evidence in the possession of the Workers Compensation Division which relates to such act shall be forwarded to the prosecuting attorney of the county in which the act occurred.

Any person who believes a violation of the Workers Compensation Act has occurred may notify the Workers Compensation Division immediately and should send the information relating to the alleged violation to the division. The director shall evaluate the facts surrounding the alleged violation to determine the extent, if any, to which violations of the Workers Compensation Act exist. For more information, call 785-296-4000 or 800-332-0353; or send email to KDOL.WCFraud@ks.gov.

Any person who has a complaint against an insurance company, or other person/entity regulated by the Kansas Insurance Department, regarding the handling of a workers compensation claim, should contact the Anti-Fraud Division at the Kansas Insurance Department. Complaints may be made by calling 800-432-2484 or 785-296-3071, in writing by sending information to the Anti-Fraud Division at 1300 SW Arrowhead Rd., Topeka, KS 66604 or online at insurance.kansas.gov.

Coverage and Compliance

The Compliance section monitors and assists employers to ensure that they fulfill two requirements under the Workers Compensation Act:

1. to secure workers compensation benefits for employees and
2. to file written reports of alleged work accidents.

Failure to secure workers compensation benefits or report accidents can result in monetary penalties against the employer. Failure to secure workers compensation benefits can also result in closure of the business.

Per K.S.A. 44-557, "it is...the duty of every employer to make or cause to be made a report to the director* of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's supervisor has knowledge, which report shall be made upon a form to be prepared by the director**, within 28 days, after the receipt of such knowledge, 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 the remainder of the day, shift or turn on which such injuries were sustained."

As outlined in K.A.R. 51-9-17, all insurance carriers, group pools and self-insurers are required to use Electronic Data Interchange (EDI) to file First Reports of Injury (FROI) and Subsequent Reports of Injury (SROI) using the Release 3.1 standards. For details contact Techs and Stats, Workers Compensation Division at 785-296-4000 or 800-332-0353, or visit our EDI website at https://dol.ks.gov/workers-compensation/electronic-data-interchange-edi

*As of January 1, 2014, by "make or cause to be made a report to the director" is meant that an employer must report to the employer's insurer for workers compensation any accident witnessed by the employer, claimed or alleged, with sufficient timeliness to allow the insurer to file the accident report with the division within 28 days, as required by K.A.R. 51-9-17.

**The requisite form for reporting by the insurer as of January 1, 2014 is outlined in KA.R. 51-9-17.

When the director has reason to believe an employer has engaged in the knowing and intentional failure to secure the payment of workers compensation to its employees, the director shall issue and serve upon such employer a statement of the charges and shall conduct a hearing in accordance with the Kansas Administrative Procedure Act. The employer may be liable to the state for a civil penalty in an amount equal to twice the annual premium or $25,000, whichever amount is greater.

The director shall order employers to come under the Workers Compensation Act by:

1. insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas;
2. showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self; or
3. maintaining a membership in a qualified group-funded workers compensation pool. The cost of carrying such insurance or risk shall be paid by the employer and not the employee.

For more information, call 785-296-4000 or 800-332-0353; or send email to KDOL.WCCompliance@ks.gov or go to dol.ks.gov.

Verify Coverage

You can check whether a business has workers compensation coverage online. The website provides public access to portions of the information reported by private workers compensation insurance carriers for use by the Kansas Department of Labor (KDOL). The accuracy of data from any third party cannot be guaranteed by the agency and KDOL is not responsible for the coverage information available through this link.

For additional help with verifying workers compensation coverage in Kansas, call Workers Compensation Coverage and Compliance at 785-296-4000.

Safety and Health Services

Workplace safety and accident prevention is a key element of the law. This requirement was designed to reduce claims/losses which would hold down premiums 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 provide accident prevention programs upon request to their insureds. Notice of such accident prevention programs must appear on the front page of every policy issued after July 1993.

Programs Offered by the Kansas Department of Labor

Consultation: offers assistance to private sector employers in safety and health program evaluations. Consultants offer advice in the recognition, evaluation and control of hazards in the workplace. Assistance with program initiation and development is available. Training, both formal and informal, is performed in all areas of safety and health. All services are at no cost to the client.

Public Sector Compliance: monitors the public sector – cities, counties, state agencies and school districts – by performing compliance audits under K.S.A. 44-636 and/or K.S.A. 44-575(f). Occupational hazards are identified and program elements are assessed. Hazards must be abated within 60 days. Investigations of employee complaints, near misses and fatalities are also conducted.

Accident Prevention: evaluates insurance companies and group-funded self-insurance plans to ensure that they are offering and providing safety and health services at no charge to their insureds as required by law. The quality and quantity of these services are evaluated by trained consultants by directly reviewing insurance company records and contacting those insured who have requested and been provided services. Accident prevention assistance is available by emailing KDOL.WC@ks.gov. You can also find information online at Industrial Safety and Health Division | State of Kansas Department of Labor, KS.

Safety and Health Conference: the annual Kansas Safety and Health Conference brings industrial, academic, vendor and government safety representatives together. The conference is self-supporting and seeks to address the relevant safety issues in a variety of workshops and presentations.

Workplace safety and health assistance is available by calling 785-296-4386 or by emailing KDOL.IndSafetyHealth@ks.gov. You can also find information online under Workplace Safety at dol.ks.gov.

Ombudsman Services

The Kansas Workers Compensation Division established a Claimant Advisory Section in 1978. In 1993 the Legislature followed a national trend and, by statute, created the ombudsman program. The workers compensation reform legislation of 1993 mandated an expanded role for the Claims Advisory Section to enable a more proactive approach to assisting all parties in understanding their rights and responsibilities under the Workers Compensation Act (Ombudsman do not provide legal advice).

The division employs full-time personnel who specialize in aiding injured workers, employers and insurance professionals with claims information and problems arising from job-related injuries and illnesses. The ombudsman acts in an impartial manner and is available to provide the parties with information about the current issues within the workers compensation system. For example, the ombudsman has current information on legislative changes or changes due to decisions made by the Workers Compensation Board or the courts. The ombudsman section also can assist with specific issues on current workers compensation claims.

Assisting Injured Workers with:

- Providing general information
- Obtaining medical treatment
- Benefits not being paid or not being paid on a timely basis
- Unpaid medical benefits
- Calculations of benefits
- Timely notification of employer
- Procedures for filing for a hearing
- Obtaining survivors' benefits
- Informal dispute resolution
- Mediation assistance
- Interpretation for Spanish-speaking workers

Assisting Employers/Insurance Companies with:

- Providing general information
- Posting Workers Compensation Notice (K-WC 40-A)
- Providing required information to injured workers (K-WC 27-A or K-WC 270-A)
- Timely submission of accident reports
- Timely and appropriate payment of medical services
- Election information
- Assistance with death benefit requirements
- Informal dispute resolution
- Assistance with Spanish-speaking workers
- Employer staff training on workers compensation issues

Ombudsman assistance is available either in person or by calling 785-296-4000 or 800-332-0353. You also may send an email to KDOL.WC@ks.gov. Additionally, forms are available for download at dol.ks.gov.

Employer Services Unit

For technical assistance, and presentations and training for employers, call 785-296-4000 or 800-332-0353, or email KDOL.WCEmployerServices@ks.gov.

Mediation

Mediation was legislatively created in 1996 (K.S.A. 44-5,117) and can be utilized at any point during the workers compensation process. The statute was amended in 1998 to allow mediation by video conferencing. Mediation is not mandatory or a prerequisite to a hearing and it may be utilized at any time during the worker compensation process. The issues that can be mediated are not restricted to medical or temporary total disability benefits.

What Is Mediation?

Mediation is a means of resolving disputes in an informal and non-adversarial atmosphere. The parties to a dispute use a neutral third party to facilitate the discussion. The mediator has no decision making authority or interest in the outcome to the dispute. The mediator's job is to assist the parties in identifying the issues in dispute and establishing common goals. The key to mediation is allowing the parties to work through their dispute and create their own agreements (self-determination).

Who Are the Mediators?

The mediators are employees of the Workers Compensation Division who have received special training in the process of mediation. The mediators used by the Workers Compensation Division meet or exceed the requirements established by K.S.A. 5-501 and amendments thereto, and any relevant rules of the Kansas Supreme Court as authorized pursuant to K.S.A. 5-510, and amendments thereto. Mediators receive training in conflict resolution techniques, neutrality, agreement writing, ethics, role playing, communication skills, evaluation of cases and the laws governing mediation.

Representation and Assistance

Any party may be represented by an attorney at this mediation conference or may request assistance from the Ombudsman/Workers Compensation Consultants The absence of an attorney during the process does not mean legal representation cannot be obtained later if the dispute is not settled in this informal setting.

For additional information or to schedule a mediation conference, please call 785-296-4000 or 800-332-0353. Write to Mediation Section, Kansas Department of Labor, Workers Compensation Division, 401 SW Topeka Blvd., Topeka, KS 66603-3105. You may send email to KDOL.WC@ks.gov.

Medical Services

The primary function of the Medical Services section is the administration of the Schedule of Medical Fees. The fee schedule is updated and revised on an annual basis to promote health care cost containment, yet insure the availability of necessary treatment and care for injured employees.

The Medical Services section is available to act as a liaison between health care providers, employers, employees, insurance carriers, group-funded pools or self-insured businesses. Additionally, the section conducts informal hearings to assist in the resolution of disputed medical claims and related payments involving health care providers.

For assistance in resolving issues related to fee schedule interpretation, payment disputes, etc., contact the Medical Services section at 785-296-4000 or fax 785-296-0025.

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 for Children and Families.

For assistance with vocational rehabilitation, contact the rehabilitation administrator's office in the Workers Compensation Division at 800-332-0353 or 785-296-4000 or send email to KDOL.WCRehab@ks.gov.

Kansas Department of Labor
Workers Compensation Division

Kansas Department of Insurance