



THINGS YOU NEED TO KNOW ABOUT HB 2 AFFECTING CHANGE TO THE STATE OCCUPATIONAL DISEASE (BLACK LUNG) LAW

With the passage of HB2, and its signing into law by the Governor, we have assembled for your reading enjoyment a list of important changes to the Kentucky Workers' Compensation Act concerning Occupational Disease that you should know. We believe that these changes will come up soon, and frequently, in the handling of Kentucky Occupational Disability claims. Note that we have also included information about the effective date of each section, since they are all different.

The Section numbers we reference are the Section numbers in HB2 for your ready reference.

Kentucky law states, that unless otherwise provided, the law in effect on the date of last exposure controls the rights of the parties. The effective date of laws passed is 90 days after the General Session closes. We are advised that date will be July 14, 2018.

UNIVERSITY COMMISSIONER REFERRALS TO UNIVERSITY EVALUATORS

Because of the difficulty in scheduling black lung claims with one of the Universities, a change provides that the Commissioner shall contract not only with University of Kentucky and University of Louisville Medical school but with other physicians who are Board Certified pulmonary specialists and duly qualified as "B" readers. As a consequence, Drs. Broudy, Jarbo, Baker, Selby and Dahhan may be conducting more examinations, with State filed claims.

Effective Date

This is Section (1) of Section 8 of the Act, and shall apply to pending claims after July 14, 2018 irrespective of the date of injury or last exposure as such a change is considered remedial.

PULMONARY FUNCTION STUDIES

There is now a penalty placed upon the employee if it is noted that full cooperation during the course of the pulmonary exam was not given; in that the Claimant's right to take or prosecute a claim shall be suspended until the refusal or obstruction ceases and no compensation shall be payable during the period of time which the refusal or obstruction continues.

Effective Date

This Section (3) of Section 9 and shall apply to claims that are pending after July 14, 2018 irrespective of the date of injury or last exposure as that change is remedial.

QUALITY STANDARDS FOR OCCUPATIONAL DISEASE CLAIMS

Once a claim is assigned by the Commissioner to an ALJ, he shall also refer the employee to a duly qualified B-Reader physician licensed in the Commonwealth and is a Board Certified pulmonary specialist. Such specialist shall provide a report to be given to all parties.

An annual audit shall be performed by the Commissioner to insure that the evaluation and facility are timely, complete, and fair insofar as frequency in which the physician classifies an x-ray differing from those other physicians who have reviewed x-rays. The Commissioner shall remove a physician from the selection process if the reports are incomplete, untimely, or if the interpretations are not in conformity with other readers at least 50% of the time. A report under this section shall be provided to the Legislature on or before July 1.

In black lung claims, if the x-ray interpretation is positive for complicated CWP, the Commissioner shall refer the employee to a facility for a CT scan to verify findings. The report shall be filed with the Commissioner. The employer shall pay for the cost of the scan pursuant to the fee schedule. The ALJ may rely upon the findings in the report.

Within thirty (30) days of receipt of the statement for the evaluation, the employer shall pay for the cost and for the expenses of travel to attend the evaluation. If an employee alleges pulmonary dysfunction but has not filed pulmonary function studies, the employee shall be responsible for 50% of the cost of the evaluation.

Effective Date

This is Section (4) of Section 9 of the Act. This is considered remedial and shall apply to all pending claims after July 14, 2018 irrespective of the date of injury or last exposure (pending claims).

STATUTE OF LIMITATIONS

EXPANDED FOR SPECIFIC CANCER CASES IN KRS 61.315(11)(b)

The Statute of Limitations for certain type cancers has been extended to three (3) years after the last injurious exposure or after the employee has first experienced distinct manifestations of the occupational disease sufficient to apprise the employee that he has contracted the disease, whichever shall last occur. However, such a claim must be filed within twenty (20) years from the date of last exposure to the occupational hazard. The listed cancers are: bladder cancer, brain cancer, colon cancer, non-Hodgkin's lymphoma, kidney cancer, liver cancer, lymphatic or

haematopoietic cancer, prostate cancer, testicular cancer, skin cancer, cervical cancer, and breast cancer.

Effective Date

This is Section (4) of Section 9 of the Act. This is considered remedial and shall apply to all pending claims after July 14, 2018 irrespective of the last date of injury or last exposure.