

Missouri Division of Workers' Compensation
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Missouri Workers' Compensation At-A-Glance

- Claimant bears the burden of proof that the propositions being asserted are "more likely true than not true"
- All companies with more than 5 employees are required to have workers' compensation insurance (or 1 if in construction)

GENERAL DOCKETING PROCEDURES

- Unrepresented – no claim for comp filed: Pro Se conference
- Litigated claims – claim for comp filed - Pre-hearing, Mediation, Hearing (Reg. or Hardship)
- ER to file ROI within 30 days once knowledge of the injury is provided to employer
- Any injury which requires medical care shall be reported to the Division with a report of injury within five days of the date of accident
- Notice of Commencement/Termination of Benefits must be filed in lost time claims
- Once a Claim for Compensation has been filed an Answer is due in 30 days

COMPENSABILITY ISSUES

- For an injury to be compensable it must arise out of/in the course of employment
- The injury does not come from a hazard or risk unrelated to the employment which the worker would have been equally exposed to outside of their employment
- An injury is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability.
Prevailing factor defined as the primary factor, in relation to any other factor, causing both the resulting medical condition and disability
- For OD/repetitive trauma claims – the occupational exposure must be the prevailing factor causing the medical condition & disability
- 90-day rule – if the exposure to the OD is for less than 3 months and there is evidence that the exposure to the repetitive motion with the immediate prior employer was the prevailing factor; the prior employer shall be liable for the occ. disease.

GENERALLY

- Going to and coming from employment is not compensable
- Extension of premises cases are not compensable (unless the employer owns or controls the area)
- Idiopathic injuries are not compensable (e.g. stroke, heart attack, seizure)
- Cardiovascular, Pulmonary, Respiratory are not compensable unless the accident was the prevailing factor in causing that physiological event
- Communicable Diseases can be compensable
- Hernia claims: to be compensable EE must show 1) there was an accident or unusual strain which resulted in a hernia and 2) that the hernia did not exist prior to the accident
- Occupational hearing loss and vision loss injuries have specific regulations regarding permanency valuation" or something to that effect, since the regs only apply to how PPD is evaluated, not how physicians treat.
- Loss of teeth permanency value is determined according to regulations.

TOTAL DISABILITY STANDARD (TEMPORARY & PERMANENT)

- Employee must show he/she is unable to return to ANY employment / is unable to compete in the open labor market because no reasonable employer would hire

AFFIRMATIVE DEFENSES

Statute of Limitations –

- 2 years from the date of injury or last payment of benefits (whichever is later) if a Report of Injury was timely filed, 3 years if there is no timely Report of Injury.
- Occupational disease claims – begins to run when it is "reasonably discoverable" and apparent that the injury has been sustained

Drugs, Alcohol, Safety-

- Injury caused by employer's failure comply with a *state statute*, compensation increased 15%
- Injury caused by employee's failure to use safety devices or obey ER's rules, comp reduced 25%-50%
- Where employee fails to follow a company policy about a drug free work place, all benefits can be reduced by 50% (If use of drugs or alcohol is the proximate cause of the injury EE barred from all benefits)
- Employee's refusal to take a drug test can result in a complete forfeiture of benefits

Notice-

- *Accidents:* Employee must provide written notice of injury to employer within 30 days of the work injury
- *Accidents:* Failure to provide timely notice of injury to ER can result in forfeiture of benefits if deficient report results in undue prejudice.
- *Occupational Diseases:* Must be provided within 30 days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by the failure to receive notice

MEDICAL BENEFITS

- ERs are responsible for providing care to cure and relieve the effects of the work related condition but have the right to direct medical care
- ER/IR are required to request a rating of disability
- EE can choose their own physician at their own expense
- Artificial Limbs: ER/IR responsible to provide replacements for the rest of the EE's life where necessary

INDEMNITY

- AWW based on EEs earnings during the 13 weeks immediately prior to injury. There is a 3 day waiting period before TTD/TPD are due. If EE misses more than 14 days, then indemnity benefits for the three day waiting period must be paid
- If a part-time worker, PPD rate is increased to hr rate x a min of 30 hours
- Termination due to post-injury misconduct or voluntary separation when light duty is offered = forfeiture of TTD
- EE cannot get TTD while receiving unemployment benefits
- Death benefits due to spouse for life and children until age of 18 or 22 (if they attend accredited secondary school)