

# Workers Compensation 101

Ryan Boswell

Lead Ombudsman, Mediator

Division of Workers Compensation



# Workers Compensation

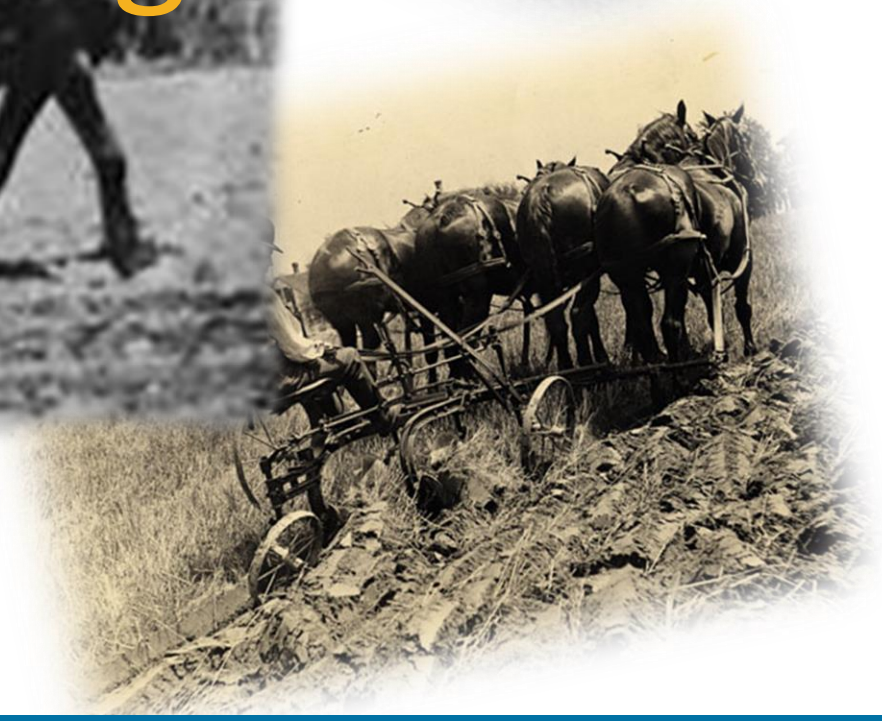
an insurance plan provided by employers to provide employee benefits for job related injuries, disability or death.

# Why do we have Workers Compensation?

- Exclusive Remedy
- No-Fault System

Workers Compensation coverage is provided by the employer & begins with the 1st day of employment.

# Back Breaking Work







“It’s a Pirate’s Life For Me!



The Benefits Are Great.”



# Workers' Compensation CLAIM FOR COMPENSATION

*Failure to complete this form in its entirety may result in a denial of benefits.*

Submit original and three copies. Please read instructions.

☐ Original Claim

☐ Amended Claim

# Grand Bargain

- Specific Benefits
- No Fault
- Safety Net

- No Law Suit
- Limits Benefits
- Good for Commerce



# No Fault

- Doesn't mean the employee can deliberately cause an injury or recklessly violate workplace safety rules or regulations
- The employee still must use reasonable protection against an accident or injury
- Culture of safety by the employer

# EXEMPT

- Sole Proprietor, Partnerships
- \$20,000 or less in gross annual payroll
- Agricultural Pursuits
- Real Estate Agents
- Construction Design Professionals
- Members of a Limited Liability Company (LLC)
- Sub-Contractors/Independent Contractors

NEW: National Guard members are entitled to WC benefits, subject to the Act

# Injury

Injury is defined in K.S.A. 44-508(f) as a lesion or change in the physical structure of the body causing damage or harm.

- Accident
  - Repetitive Trauma
    - Occupational Disease

# Accident

- K.S.A. 44-508(d)
- Unexpected
- Specific date
- Specific place





# Repetitive Trauma



- K.S.A. 44-508(f)
  - Repetitive use, cumulative traumas or micro traumas
  - Demonstrative by diagnostic or clinical tests
  - No specific date or time for injury
    - The date advised by physician that the condition is work related (diagnosed, off work, modified duty)
    - Last day worked if no longer employed

# Occupational Disease

- K.S.A. 44-5a01
  - Disease arising out of and in the course of the employment and within one year of the last injurious exposure
  - The occupation would have a particular or peculiar hazard distinctive to that employment
  - The hazard of the disease associated with the employment exceeds that of the general population

# Prevailing Factor — K.S.A. 44-508(f)

- Arises out of and in the course of employment
- The primary factor in relation to any other factor
- If due to a preexisting condition, then the incident is not compensable

# Substance Impairment

An employer is not liable for workers compensation benefits if an employee is impaired and the impairment contributed to the injury.

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 has sufficient cause to suspect the use of alcohol/drugs by the claimant or if the employer's policy clearly authorizes post injury testing.



# Employers Must

- Post K-WC 40-A form.
- Fill in insurance carrier's information
- Form is in English and Spanish
- Available to download at [www.dol.ks.gov](http://www.dol.ks.gov)



## Workers Compensation Rights and Responsibilities

Your employer is subject to the Kansas Workers Compensation Law which provides compensation for job-related injuries.

**This notice applies to dates of accidents on or after July 1, 2024.**  
**Este aviso aplica a las fechas de los accidentes a partir de Julio 1, 2024.**

### WHAT TO DO IF AN INJURY OCCURS ON THE JOB

**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: (A) **30 calendar days** from the date of accident or the date of injury by repetitive trauma; (B) if the employee no longer works for the employer against whom benefits are being sought, **20 calendar days** after the employee's last day of actual work for the employer.

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.

**BENEFITS. Benefits are paid by the employer's insurance carrier or self insurance program.** Benefits include medical treatment, partial wage replacement for lost time and additional benefits if the injury results in permanent disability. An employer is required to furnish all necessary medical treatment and has the right to designate the treating physician. If the employee seeks treatment from a doctor not authorized by the employer, the employer or its insurance carrier is only liable up to \$800.00 dollars for the unauthorized medical treatment.

### QUE HACER SI UNA LESIÓN OCURRE EN EL TRABAJO

**NOTIFIQUE A SU EMPLEADOR INMEDIATAMENTE.** De acuerdo con el artículo de ley K.S.A. 44-520, un reclamo puede ser negado si el empleado no notifica a su empleador dentro del antes de las siguientes fechas: (A) **30 días** a partir de la fecha del accidente o la fecha de la lesión debido a trauma por movimientos repetitivos; (B) si el empleado está trabajando con el empleador en contra del cual se está buscando beneficios, **20 días** después del último día de trabajo para dicho empleador.

El aviso puede darse oralmente o por escrito. Donde el aviso se da oralmente, si el empleador ha designado un individuo o departamento a quien el aviso se debe dar y tal designación ha sido comunicada por escrito al empleado, aviso a cualquier otro individuo o departamento deberá ser insuficiente bajo esta sección. Si el empleador no ha designado a un individuo o departamento a quien se debe dar el aviso, el aviso puede darse a un supervisor o gerente.

Donde el aviso se hace por escrito, el aviso debe ser enviado a un supervisor o gerente de la oficina principal de empleo del trabajador.

El aviso, sea que se haga oralmente o por escrito, debe incluir la hora, fecha, lugar, persona lesionada y detalles de tal lesión. Debe ser visible a partir del contenido del aviso, que el empleado está reclamando beneficios bajo la ley de compensación del trabajador o que ha sufrido una lesión relacionada con el trabajo.

**BENEFICIOS. Los beneficios son pagados por la compañía aseguradora del empleador o programa de seguro propio.** Los beneficios incluyen tratamiento médico, reemplazo de sueldo parcial por tiempo perdido y beneficios adicionales si la lesión resulta en incapacidad permanente. El empleador debe proporcionar todo el tratamiento médico necesario y tiene el derecho de designar al doctor para dicho tratamiento. Si el empleado busca tratamiento con un doctor que no ha sido autorizado por el empleador, el empleador o su compañía aseguradora serán responsables de pagar solamente los primeros \$800.00 dólares para tratamiento médico no autorizado.

### WHERE TO GET HELP WITH YOUR CLAIM (DÓNDE CONSEGUIR AYUDA CON SU RECLAMO):

Employer's Insurance Carrier (Compañía Aseguradora del Empleador)

Telephone (Teléfono de la Aseguradora)

Address (Dirección de la Aseguradora)

**For questions about Workers Compensation Law, contact (Para preguntas acerca de la Ley de Compensación del Trabajador):**

KANSAS DEPARTMENT OF LABOR  
Workers Compensation Division/Ombudsman  
401 SW Topeka Blvd., Suite 2, Topeka, KS 66603-3105

Website: <https://www.dol.ks.gov/wc>  
Email: [KDOL.wc@ks.gov](mailto:KDOL.wc@ks.gov)  
Phone: (800) 332-0353 or (785) 296-4000

Persons with impaired hearing or speech utilizing a telecommunications device may access the above number(s) by using the Kansas Relay Center at (800) 766-3777.

[www.dol.ks.gov](http://www.dol.ks.gov)

**KANSAS DEPARTMENT OF LABOR**

K-WC 40-A (06-18-24)

# Notice of Injury

- Injuries must be reported to the employer
  - 30 ~~20~~ calendar days from the date of the accident
  - 30 ~~20~~ calendar days from the date when the employee seeks medical treatment
  - 20 ~~10~~ calendar days from the employee's last date of employment
  - 90 days from disablement from occupational disease

Employees can provide either an oral or written notice but must include particulars:

➤ Who, When, What, Where

# Employers Must

- Once an employer is notified of an injury, the employer must provide K-WC 27-A (English) or K-WC-270A (Spanish) to the employee, or dependent if death occurred.
- Send employee for medical evaluation / treatment
- The employer should respond quickly to have the greatest chance for a successful outcome

## INFORMATION FOR INJURED EMPLOYEES

K-WC 27-A (Rev. 06-18-24)

\* THIS NOTICE APPLIES TO ACCIDENTS ON OR AFTER JULY 1, 2024 \*

**Employers are required to provide this information to each injured worker.**

### WHAT TO DO IF AN INJURY OCCURS ON THE JOB

If you have any questions about workers compensation benefits, contact the Division of Workers Compensation at the phone number at the bottom of the page. **Assistance in Spanish is available.**

**(1) 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: (A) 30 calendar days from the date of accident or the date of injury by repetitive trauma; (B) if the employee no longer works for the employer against whom benefits are being sought, 20 calendar days after the employee's last day of actual work for the employer.

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.

**(2) FOLLOW YOUR EMPLOYER'S INSTRUCTIONS** for getting medical aid and follow the doctor's instructions.

**(3) 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 \$800.00. 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 (round trip).

**(4) 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 14<sup>th</sup> day of lost time. An injured employee is entitled to a weekly amount of 66 ⅔ percent of his/her 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 Workers Compensation law provides for additional benefits.

# Employers Do Not Pay

for any workers compensation expenses  
out of pocket unless they are a self-  
insured employer.



# Claim

- Employer/insurance carrier has the right to designate the treating physician
- Injured worker may seek services of an unauthorized physician up to \$800 ~~\$500~~ in fees
  - Notify Insurance Adjuster
  - Cannot be used for functional impairment rating

# Benefits Include

- Employer provides
  - Medical treatment, including medicines
  - Temporary partial wage replacement
  - Medical mileage for more than 5 miles round trip, or transportation services
- In addition, if injury leaves a permanent impairment, the employer will provide
  - Permanent impairment award

# Reporting

- Required by K.S.A. 44-557 the employer must report any alleged lost-time accident to the Director of Workers Compensation
  - Insurance Carrier
  - Electronic Data Interchange (EDI)
  - Within 28 days of knowledge
- Failure to report = \$250 per occurrence

# Maximum Benefits as of July 1, 2024

- Medical treatment (includes Rx) - no limit
- Medical mileage > 5 miles round trip at \$0.67 per mile
- Maximum weekly benefits - \$835
  - Minimum ~~\$25~~ \$50; Minimum fatality benefit = \$557
- Temporary total disability (TTD) - ~~\$130,000~~ \$225,000
- Permanent partial disability (PPD) - ~~\$130,000~~ \$225,000
- Permanent total disability (PTD) - ~~\$155,000~~ \$400,000
- Starting in 2027 a COLA is added



# Maximum Fatality Benefits as of July 1, 2024

- Death with spouse/wholly dependent children:  
\$500,000 ~~\$300,000~~ – paid 50/50
- \$60,000 upon determination of dependency, balance paid weekly (minimum is 50% of state's AWW)
- Death with no spouse/children but other wholly dependent: \$100,000
- Death with partial dependents: Percentage of 3 x annual earnings up to \$100,000, not < \$25,000

# Maximum Fatality Benefits as of July 1, 2024

- Death with no dependents: \$100,000 minus employer life insurance > \$50,000
- Burial: \$10,000
- Conservator: \$2,500
- Starting in 2027 a COLA is added

Table of Maximum Benefits Available at [www.dol.ks.gov](http://www.dol.ks.gov)

# 2024 Law Changes

- A new section now allows for members of the KS National Guard to receive benefits under workers compensation. The Average Weekly Wage is the member's current military wage.
- 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 preexisting *to the same physical structure as the body part injured*. Shall not apply to TTD, nor to compensation for medical treatment.

# 2024 Law Changes

- 44-501(f) - If the employee receives retirement benefits under the federal social security act, any compensation benefit payments *for permanent partial disability or permanent total disability that* the employee is eligible to receive under the workers compensation act for such claim shall be reduced by *50% of* the weekly equivalent amount of, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment. *The reduction in benefits allowed by this subsection shall not apply to temporary total disability compensation or temporary partial disability compensation.*

# 2024 Law Changes

- 44-501(g) - If the employee receives retirement benefits from any other retirement system, program, policy or plan that is provided by the employer against whom the claim is being made, any compensation for permanent partial disability or permanent total disability benefits the employee is eligible to receive under the workers compensation act for the claim shall be reduced by the weekly equivalent amount of such retirement benefits less any portion of any such retirement benefit that is attributable to payments or contributions made by the employee. In no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment. The credit allowed by this subsection shall not apply to temporary total disability compensation or temporary partial disability compensation.

# 2024 Law Changes

- 44-510b(a) – Adds *Upon a judicial determination of dependency*, there shall be an initial payment of \$60,000 to the surviving legal spouse or a wholly dependent child or children or both.
- 44-510b(h) – Increases maximum fatality benefits to \$500,000;
  - compensation under this section to any ~~minor~~ wholly dependent child of the employee shall continue *until the latest of the following dates ...*
    - (1) The wholly dependent child, who is not enrolled in high school, becomes 18 years of age;
    - (2) 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
    - (3) 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.



# 2024 Law Changes

- 44-510b(i) – Provides for a yearly COLA to the maximum fatality benefits beginning with July 1, 2027.
- 44-510c(a)(2)(A)(iii) – Adds a requirement for permanent total disability to include an AMA Guide 6<sup>th</sup> edition impairment, if so contained therein, and a functional impairment  $\geq$  10% to the whole body or an overall functional impairment  $\geq$  15% if there is a preexisting functional impairment.
- 44-510e(A)(2)(C)(i) – Lowers the threshold for work disability to equal to or exceeds 7 ½% to the body as a whole, rather than just exceeds.

# 2024 Law Changes

- 44-510f(a) – Increases maximums as such:
  - Permanent Total Disability to \$400,000 from \$155,000
  - Temporary Total Disability to \$225,000 from \$130,000
  - Permanent Partial Disability, Functional impairment only to \$100,000 from \$75,000
  - Provides for a yearly COLA to the maximums beginning with July 1, 2027.
- 44-510h(b)(2) – Increases unauthorized medical to \$800 from \$500.
- 44-510h(e)(2) and (3) – If the employee has undergone an invasive or surgical procedure or an authorized treating healthcare provider recommends that the employee will need an invasive or surgical procedure in the future, the presumption to terminate the right to medical treatment at MMI may be overcome with evidence that it is more probably true than not that future medical treatment will be needed after reaching MMI. Otherwise, clear and convincing evidence is needed for future medical.

# 2024 Law Changes

- 44-511(b)(2) – If the employee worked less than the employee's expected weekly schedule during the first week of employment, such week shall not be included in the calculation of the employee's average weekly wage.
- 44-512 – Adds language for payment of TTD benefits by electronic funds transfer or by a payment card. When such payment methods are used, the attorney of a represented employee must be notified by the employer each time a payment is made.
- 44-515 – Employer is responsible for reimbursement of the reasonable expenses for overnight accommodations as needed to avoid undue hardship on the employee. The per diem increased to \$30 from \$15.

# 2024 Law Changes

- 44-516 – Prior to a prehearing settlement conference, if the parties have not agreed to a neutral exam, the ALJ may appoint one to address certain items. The report shall be admitted into evidence without further foundation. Cancellation or missed appointment fees may be taxed to the responsible party.
- 44-519 – Except for preliminary hearings, upon notice of a hearing date, the parties shall exchange all medical reports at no cost 30 days before the hearing. Provisions allow for medical reports to be admitted into evidence without foundational evidence.
- 44-520 – Increases injury reporting time limits to 30 days from 20 for accidents and repetitive traumas, and to 20 days from 10 after the employee's last day of employment rather than actual work.

# 2024 Law Changes

- 44-523 – Removes the requirement that a motion to extend be filed prior to the 3-year time limit.
- 44-531 – Allows for a settlement award on written stipulation for docketed cases. Certain conditions apply.
- 44-534a – Provides for the exchange of medical reports between the parties without charge at least 20 days before a preliminary hearing. This statute may no longer be used for a party seeking post-award medical.
- 44-552 – Allows for a hearing to be recorded and transcribed by a certified shorthand reporter.
- 44-556a – The Fund may implead a principal for liability.

# Feedback Survey



Your feedback is important to me!



Any Questions?

Thank You!

## Connect With Us

- ▶ **Website:** [dol.ks.gov](http://dol.ks.gov)
- ▶ **Twitter:** @KansasDOL
- ▶ **Facebook:** [facebook.com/KansasDOL](https://facebook.com/KansasDOL)
- ▶ **LinkedIn:** [linkedin.com/company/KDOL](https://linkedin.com/company/KDOL)
- ▶ **Instagram:** [ks\\_dol](https://instagram.com/ks_dol)



Department of Labor  
785-296-4000 or 800-332-0353  
Ombudsman Unit, Option 2  
[kdol.wc@ks.gov](mailto:kdol.wc@ks.gov)  
Ryan Boswell, Extension 7361