

MISSOURI

I. INITIAL CLAIM PROCESSING

By: Chris Archer, Feb. 2019

A. Initial Claim Procedure: (Section 287.380)

Employees are to give written notice of an injury sustained by an accident to their employer within 30 days-. If notice is not given within 30 days of the injury, the employer has a potential "notice" defense. For repetitive trauma/ occupational disease injury, the statute requires notice to be provided to an employer within 30 days of diagnosis. Case law suggests that a doctor has to have informed the Claimant that the injury is related to his/her employment.

A formal Claim for Compensation (Form 21) can be filed by the employee or his legal counsel. Once a Form 21 is filed, a defense attorney must be retained and an Answer on Form 22 must be filed within 30 days. If an Answer is not timely filed, the factual allegations in the claim are deemed admitted.

The Division of Workers' Compensation enters information from the Report of Injury (WC-1) or Claim (Form 21) into their system, and assigns an Injury Number. Notice of the Injury Number is sent to the carrier. All future correspondence to the Division should reflect that Injury Number.

If the employee loses time from work and the claim is not contested or questioned, temporary total disability is to be paid within 14 days. (For state audit purposes, auditor looks at the date on the Report of Injury from employer.) There is a three day waiting period on TTD benefits. Those days are compensated if claimant is off more than 14 days. The three day waiting period are not based upon scheduled work days but based on when the employer is open for business.

B. Evaluation of Compensability:

- 1. Verify coverage.**
- 2. Has the Report of Injury (WC-1) been filed with Commission?**

A Missouri Report of Injury (Form WC-1) is to be completed by the employer or insurer and filed with the DWC within thirty days of the employee/claimant giving notice of injury to his employer. The employer or agent of the employer is required to complete, sign, and date the form.

A report of injury is required if more than immediate first aid is needed or the employee incurs any lost time. An Employer has an obligation to report any accident or injury to their carrier or TPA within five days.

The law allows an employer to pay the first \$3,200 in medical and if there is no additional medical, no compensable lost time, PPD or claim filed, the injury must still be reported, but the injury is not to be counted in the employer's experience modification.

Effective July 2011 however, Missouri now discounts med expenses by 70% for inclusion in experience modification. It is therefore of less "value" for an employer pay the first \$3,200.

3. Statute of Limitations:

Two years from date of accident or last payment on account of the injury. If the claim was not reported to the Division, and notice was given to the employer of the injury by the employee, then within three years of the last payment. (Section 287.430)

a. Statute of Limitations for Occupational Disease:
(Section 287.063)

Statute of Limitations does not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an injury has been sustained.

4. Does Missouri have jurisdiction?

Yes, if the injury was sustained within Missouri, the employment contract was made in Missouri, or the employee worked principally in Missouri. For occupational diseases, if the occupational disease was contracted outside of this state, Missouri will have jurisdiction where the employee's employment

was principally localized in this state within thirteen calendar weeks of the injury or diagnosis of the occupational disease.

5. Is this a covered employment? (Section 287.020)

"Employees" are every person, including volunteers, in the service of any, under contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. (For officers not to be an employee, they must be specifically excluded in the policy.)

Family members need to be elected specifically in the policy for accidents before 8-28-98. For accidents after that date, the policy is assumed to cover family members. Common carriers (owners and drivers of trucks) are excluded from coverage under 287.020 and 287.040 for the company for whom they are hauling freight.

If the employee is dead, "employee" also includes their dependents and other persons to whom compensation may be payable. Employees include minors, even if in violation of law.

Persons excluded: Individuals who are owners and operators of motor vehicles which are leased or contracted with a driver for-hire, common or contract motor carriers; independent contractors; and real estate agents.

6. Does employer verify that injury occurred as alleged?

Yes, and insurer determines if claim is admitted or denied as appropriate.

7. Is this a compensable injury or disease?

a. Accident:

1. an unexpected traumatic event or unusual strain;
2. identifiable by time and place of occurrence;
3. caused by a specific event during a single work shift.
4. An injury is not compensable because work was a triggering or precipitating factor.

b. Injury:

1. An injury by accident is compensable only if the accident was **the prevailing factor** in causing both the **resulting medical condition** and **disability**. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability
2. An injury shall be deemed to arise out of and in the course of the employment only if:
 - (a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and
 - (b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life;
3. An injury resulting directly or **indirectly** from idiopathic causes is not compensable;
4. A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition;

b. Compensable as an occupational disease?

If employed in an occupation or process in which a "hazard of a disease exists" and the disease after contraction appears to have its origin in risk connected with employment, and the disease flowed from that source as a rational consequence, the liable employer is the **last employer** (or last carrier) where (when) employee was exposed.

c. Compensable as a repetitive trauma?

Yes, if the exposure to the repetitive motion is found to be the prevailing factor in causing the resulting medical condition and disability. If the repetitive trauma is for a period of less than three months and there was exposure to repetitive motion with the immediate prior employer was "the prevailing factor" then the prior employer is liable. This "three month rule" is not applicable to successive carriers.

d. Compensable hernia? (Mo. Rev. Stat. Section 287.195)

Yes, if:

1. Accident or unusual strain resulting in hernia; or
2. Hernia did not pre-exist strain or accident.

8. Was Written Notice of the Injury given by the Employee to his Employer?

287.420. No proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice.

No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the **diagnosis of the condition** unless the employee can prove the employer was not prejudiced by failure to receive the notice.

9. Drugs and Alcohol

- The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption

that the voluntary use of alcohol under such circumstances was the proximate cause of the injury. A preponderance of the evidence standard shall apply to rebut such presumption.

- An **employee's refusal** to take a test for alcohol or a nonprescribed controlled substance, as defined by section 195.010, RSMo, at the request of the employer shall result in the **forfeiture of benefits** under this chapter if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

10. **Employee's Safety violations**

Where the injury is caused by the failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, the compensation and death benefit provided for herein shall be reduced **at least twenty-five but not more than fifty** percent; provided; that it is shown that the employee had actual knowledge of the rule so adopted by the employer; provided, further, that the employer had, prior to the injury, made a **reasonable** effort to cause his **or her** employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.

11. **Special Compensability Issues:**

a. **Psychological injuries:**

Yes, if stress is work related and by objective standards is extraordinary and unusual. See special rule for ***Firemen***.

C. Contesting or Denying Non-Compensable Claims:

A claim representative or the attorney for the employer and insurer can deny claims. If a claim is generally denied, the employer loses the right to control the medical treatment. The employer can deny for "lack of knowledge" or deny the "nature and extent of the injury" but specifically agree to provide medical treatment and thereby retain control of medical treatment.

To effectively deny a claim, the answer must include the reason for the denial (e.g., did not arise in course and scope of employment), and must be filed within 30 days of the receipt of claim notice from the Division.

D. Processing and Payment of Compensable Claims:

1. Computation of Average Weekly Wage: (Section 287.250)

The AWW is determined in Missouri by taking earnings from the last 13 weeks prior to the accident (excluding the accident week). If the wage is fixed weekly, that amount is the AWW; if fixed monthly, the AWW is determined by multiplying that amount by 12 and dividing it by 52; if fixed yearly, it is divided by 52.

If wages are fixed by the day, hour, or output of employee, AWW is computed by dividing by 13 the 13 weeks of wages actually earned during that period. If the employee missed five or more scheduled days during the 13 weeks, a week is deducted for each five days missed. Therefore, if an employee missed 5-9 days during the 13 week period, you divide by 12 weeks. There is a \$40.00 weekly minimum rate; that is the least amount an employee will be paid, even if their wage rate was less than \$40.00.

A monetary bonus, paid by an employer to an employee, of up to three percent of the employee's yearly compensation from such employer shall not have the effect of increasing the compensation amount used in calculating the employee's compensation. (287.253)

If an employee has worked less than two weeks, look to earnings of two like employees working in same job classification for one year.

If employed part time, use the above rule for TTD rate. The PPD rate may have to assume a 30 hour minimum. Call your attorney on this issue and if the claimant has concurrent employment or is less than 21 years of age.

2. Waiting Period: (Section 287.160)

- a. Applies to TTD benefits only.
- b. A three day waiting period - retroactive payment of three day waiting period if disability exceeds 14 days. After 8-28-98, the waiting period is the first three days after the accident that the claimant didn't work but for which the business was open.

3. Temporary Total Disability: (Section 287.170)

- a. Rate is $\frac{2}{3}$ of the claimant's AWW, up to the state's maximum for that accident year. (Rates usually change effective July 1 of the calendar year.) Temporary total disability benefits are to be paid to the claimant by check, not a draft, and forwarded directly to the claimant without intervention, or if requested, to the claimant's attorney. If it is anticipated that the employee will be disabled from work for a few weeks, you need to file a Form 3 with the Division advising length of anticipated disability, date of first payment, diagnosis, and weekly rate amount. (Call defense counsel if claimant was part time or had concurrent employment)
- b. Minimum rate is \$40.00.
- c. For temporary partial benefits -- compensation shall be paid no more than 100 weeks and shall be $66\frac{2}{3}\%$ of the difference between the average earnings prior to the accident and the earnings during disability. (AWW - light duty gross wage) x $\frac{2}{3}$
- d. Permanent partial benefits (Section 287.190) -- shall be payable to the employee, in addition to the temporary total

benefits, and be based upon the calculation of the average weekly wage, subject to the maximums allowed.

1. Minors (under age 21 at the time of the injury) can present evidence of increased earning capacity (e.g. education) to bolster PPD rate.
2. If the disability or injury resulted in a severance or complete loss of use, the disability will be increased by 10%. If the disability affects multiple body parts, the Commission can award a 10-20% loading factor, or multiplicity.

4. Termination of Temporary Total Disability Benefits:

Temporary total benefits can be stopped if:

- a) Employee returned to work full duty or light duty;
- b) Employee fails to attend doctor's appointments and follow treatment plan;
- c) It is reasonable to expect that the Claimant under the facts of the case could obtain employment in the open labor market within the temporary restrictions if no longer an employee of the Employer;
- d) Claimant has reached maximum medical improvement;
- e) Claimant is receiving unemployment;
- f) Claimant was terminated for "post-injury misconduct";
- g) Claimant resigns and Employer had light duty available

II. SUBSEQUENT CLAIM PROCEEDINGS

A. In General:

1. **Forms/Pleadings: (Most forms available off the internet or on disk)**

Form WC-1 -- Report of Injury

Form WC-2 -- Notice of Commencement/ Termination of Compensation: If the employee is anticipated to be disabled for a few weeks the form provides information as to diagnosis, weekly rate, anticipated length of disability, date of first payment to the employee, etc. When the temporary total disability is stopped, complete a Form WC-2. The new form (2005) does not require the claimant's signature.

Form 9A: Filed as the medical with Division if the claim involves an eye injury.

Form 21: Claim for Compensation.

Form 22: Answer to Claim for Compensation: See I(C) Contesting or Denying Non-Compensable Claims.

2. Procedures:

If a claim is denied, TTD stopped, or medical treatment stopped or denied, the claimant can seek a Hardship Hearing. Counsel must be retained *immediately*, as the Hardship Hearing will be promptly set and counsel must have evidence prepared to present at the hearing. Section 287.203 allows for a penalty if benefits are stopped without reasonable grounds

B. Proceedings for Additional Temporary Total Disability and/or Medical Treatment:

If TTD is terminated, the claimant may seek a hardship hearing for a determination if the employee has achieved maximum medical improvement or to contest a total denial of compensability. Unless the liability for the claim is at issue, no appeal will be allowed to the Commission.

C. Proceedings for Permanent Disability:

Trials to Administrative Law Judges occur in 3% of claims. Attorneys must appear and defend and the Rules of Evidence apply.

D. Settlements and Other Claim Agreements:

A claim handler can make an offer to an unrepresented employee, but a settlement is not binding until an Administrative Law Judge approves the settlement (Section 287.390).

The employer shall provide medical, surgical, chiropractic, hospital treatment, including nursing, custodial, ambulance and medicines, as may be reasonably required to cure and relieve the effects of the injury. The employer directs medical. If the employee desires, he can select his own physician at his own expense.

If the employee is required to submit to medical examinations or necessary medical treatment outside the metropolitan area of injury or place of residence, the employer/insurer is to advance or reimburse employee for all necessary and reasonable expenses. In no case will the employer/insurer be required to pay transportation costs for a greater distance than 250 miles each way from place of treatment.

If the employee has returned to full-time employment and is required to submit to a medical examination for purpose of evaluating permanent disability, or to undergo physical rehabilitation, the employer may allow or require the claimant to use any paid leave benefits available to the claimant to attend to such exams, physical rehab or Independent Medical appointments.

III. ADDITIONAL PERTINENT INFORMATION

A. Attorney's Fees:

Attorney fees shall not exceed 25% and must be approved on the Stipulation for Compromise Settlement. Attorney fees are deducted from the claimant's award.

B. Rehearings or Reopenings:

Reopenings/ Motions to Modify:

Missouri allows final settlements to be reopened for life-threatening medical treatment and replacement of artificial devices; payments can be commuted to a lump sum by the Commission if it is in the best interest of the employee or a deceased employee's dependents. If

compensation is still being paid out under an award from the ALJ and/or commission, a party can bring a motion to modify an award for a change in the physical condition of the claimant.

C. Claim Adjudication and Appeals:

Hearings on claims are conducted by Administrative Law Judges. . The Division of Workers' Compensation has permanent offices in larger metropolitan areas and has periodic dockets at various locations around the state.

Appeal to the Industrial Commission:

Within 20 days of an award, an Application for Review may be filed with the Labor and Industrial Relations Commission and the case must be reopened. Only newly discovered evidence will be considered. The Commission may review an award at any time on its own motion.

Appeal to Court of Appeals:

Appeals from the Labor and Industrial Relations Commission are to the Missouri Court of Appeals.

D. Vocational Rehabilitation: Optional. Employers/ Carriers have the right to a vocational assessment from a qualified expert.

Physical Rehabilitation: (Section 287.141)

Where physical rehabilitation is necessary for a serious injury, the employee may be entitled to an additional benefit of \$40.00 per week, payable from the Second Injury Fund, if the physical therapy is at a state authorized facility. Even though this benefit is not paid by the carrier, it is of benefit to the claim handler to educate the employee as to state approved facilities.

E. Second Injury Fund:

If the claimant has a prior injury of such seriousness as to be a hindrance to employment then a claim may be made against the Second Injury Fund. The Second Injury Fund can be found responsible for permanent total disability for a combination of pre-existing disability and the disability from the primary injury.

