

## **WORKERS COMPENSATION AND UNEMPLOYMENT ISSUES FOR SCHOOLS**

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KASBO Conference, Nov. 3, 2022

### **What does Workers Compensation Cover?**

Workers Compensation is an insurance policy provided by employers to pay employee benefits for job-related injuries, disability or death.

Relevant Questions:

- Who are “covered employees?”
- What is a “job-related injury”

## Notification of Injury

- Employees should notify their employer immediately of a work-related injury.
- Per K.S.A. 44-520, a claim may be denied if the employee fails to notify the employer within 20 calendar days from the date of the accident or repetitive trauma.
- Notice may be oral or in writing.
- Oral notice must be to the designated person.
- Written notice to a supervisor or manager.

## Contents of Notice

- No particular form is required, but notice must include:
  - Time, date and place of injury
  - The person injured, and the particulars of the injury
  - It must be apparent from the notice that the employee is claiming benefits under workers compensation or has suffered a work-related injury

## Benefits

- Benefits are paid by the employer's W.C. carrier or self-insurance program.
- Benefits include:
  - Medical treatment
  - Partial wage replacement for lost time
  - Additional benefits if the injury results in total disability

## Medical Treatment

- Employer is required to furnish all necessary medical treatment
- Employer has a right to designate the treating physician
- If the employee seeks treatment from a doctor not authorized by the employer, the employer or its carrier is only liable up to \$500 for the unauthorized medical treatment

## Sole and Exclusive Remedy

- Under the Workers Compensation Act, if an employee can recover workers compensation for an injury, he or she is barred from bringing a negligence suit for damages against an employer or a co-worker. K.S.A. 44-501b(d).
  - Limitation applies to injury or death on the job.

## Subrogation

- If a party other than the employer is held legally responsible for an injury or death that was covered by workers compensation, the employer shall be subrogated to the extent of compensation and medical aid and shall have a lien against the entire amount of compensation on any judgment rendered for the employee against the third party.
  - However, if negligence of the employer or one of its employees contributed to the injury, the employer's recovery is diminished by the percentage of its negligence attributable to the injury. K.S.A. 44-504

## Lost Wages Benefit

- Employees are compensated at 66.67% of their average weekly wage up to a maximum of 75% of the state's average weekly wage.
- If the employee has a second job, workers compensation generally pays for income lost from that job, as well.
- Not paid until week 2 after qualifying injury.
  - If temporary total disability persists for three consecutive weeks, first lost week will be paid.

## Compensation Where Death Results from Injury

- Death benefits
  - \$60,000 lump sum payment + benefits to dependent children until May 30 of senior year in high school, age 19 or, if the dependent child is physically or mentally incapable of self-support or is a full-time student at an accredited college or vocational school, age 23
  - Up to \$100,000 if there are no dependents who relied upon the employee's wages, in various scenarios.
  - Reasonable costs of funeral and burial up to \$10,000
  - Maximum payable death benefit: \$300,000
    - Exception: minor children continue receiving benefits until age of majority, even if the aggregate amount exceeds \$300,000

K.S.A. 44-510b

## Compensation Disallowed

- Compensation for an injury shall be disallowed if such injury results from:
    - The employee's deliberate intention to cause such injury
    - The employee's willful failure to use a guard or protection against accident or injury which is required by law and provided by the employer
    - The employee's willful failure to use a reasonable and proper guard and protection voluntarily provided by the employer
    - The employee's reckless violation of their employer's workplace safety rules or regulations
    - The employee's voluntary participation in fighting or horseplay with a co-employee for any reason, work-related or otherwise
- K.S.A. 44-501(a)

## Compensation Disallowed – Alcohol or Drug Use

- Worker's Compensation Act benefits not due if the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs
  - Includes prescription and non-prescription drugs, narcotics, marijuana, stimulants, depressants or hallucinogens
    - Comp shall not be denied if employee can show that legal drugs were taken in therapeutic doses and there have been no prior incidences of impairment on the job from use of the drugs.
  - It shall be conclusively presumed that an employee was impaired if, at the time of the injury, BAC was .04 or more.

K.S.A. 44-501

## **Drug and Alcohol Testing**

- An employee's refusal to submit to a chemical test at the request of the employer shall result in forfeiture of W.C. benefits if the employer had sufficient cause to suspect the use of alcohol or drugs or if employer policy authorizes post-injury testing.

## **Schools Authorized to Purchase Workers Compensation Coverage**

- Schools and other political subdivisions may pay for cost of workers compensation coverage from the "various funds from which compensation is paid to employees."
- School districts may pay W.C. costs from the special reserve fund of the school district.

K.S.A. 44-505c

- Schools may act as self-insurer under the workers compensation act by establishing a "school workers' compensation reserve fund." K.S.A. 44-505e

## Medical Examinations

- Employee must submit to examination by reputable health care provider selected by the employer at any reasonable time and place.
  - Benefits may be suspended for noncompliance
  - Employer is entitled to copy of medical provider's report
  - For out-of-town appointments, employee is not required to submit to examination until furnished with travel expenses.
  - At employee's request, the employee is entitled to have a health care provider of his or her choosing participate in the examination

## Reporting Requirements

- 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."
  - "Report to the director" = report accident to workers compensation insurer in time for it to report to the workers compensation division within 28 days.
  - Failure to report: Up to \$250 civil penalty for each violation



## **Does Workers Compensation Apply?**

### **Scope of employment inquiry:**

- Employee is injured while working from home.
- Employee stops over lunch hour to pick up supplies and is injured getting out of his truck.
- Employee contracted the flu and missed two weeks of work.
- Employee suffered a heart attack while carrying out trash.
- Employee fell and broke an arm at back-to-school picnic.
- A part-time employee falls off a ladder in the gymnasium and injures her back.
- An outside contractor's apprentice is injured by a piece of machinery while working on the gym floors.

## **PROCEDURAL ITEMS TO REMEMBER**

- Workers compensation coverage is mandatory by statute: i.e. insurance coverage through the KASB Workers Compensation Pool, a commercial company licensed in Kansas, or be a self-insured plan approved by the Kansas Insurance Department.
- Injured employees are required to notify the immediate supervisor within twenty days of the claimed injury, otherwise benefits may be denied.

- Covers all injuries and illnesses that “arise out of and in the course of employment”
- Pays 100% of the related medical expenses, subject to an approved fee schedule
- Pays the injured employee 2/3 of the average weekly wage
- Provides compensation for permanent partial disability

## **Unemployment Issues**

## Employment Security Law

- K.S.A. 44-701 *et seq.*
- Enforced by Department of Human Resources
- Unemployed workers must meet specific eligibility requirements to receive benefits

## Paying the Tax

- All employers required to pay
- Rate is determined by the employer's **experience rating**
- **Experience Rating** - determined by the amount of contributions paid in compared to benefits claimed by former employees

## Bottom Line

- If you can reduce the amount of claims filed against you, you can reduce your tax rate

## What employees are covered?

- Covered employment
  - Any service, unless specifically excluded, performed for compensation under a contract of hire
    - Expressed or implied
    - Written or oral
    - Without regard to whether the service is performed on a part-time, full-time or casual basis

## **Employee or Independent Contractor?**

- Two tests for determining Independent Contractor – BOTH must be met:
  - Is individual free from control or direction of employer under the contract and in fact?
  - Is the service outside the usual course of business for which such service is performed?
- Courts decide on a case-by-case basis

## **Other Eligibility Requirements**

- File a claim
- Registered for work
- Able to work, available for work, actively seeking work

## **After Former Employee Files a Claim**

- Employer receives an “Employer Notice” form
- Alerts the employer of the potential benefit charge to the employer’s account

## **After Receiving “Employer Notice”**

- Must respond within 10 days or waive your rights to challenge the claim
- 10 days from the date on the notice
- Provide factual and specific reasons for claimant’s separation

## Disqualification for Benefits

- Discharged for misconduct
- Discharged for gross misconduct
- Left work voluntarily without good cause
- Was and still is a part-time employee and continues part-time work while claiming benefits

## Misconduct

- **Misconduct** – a violation of a duty or obligation reasonably owed the employer as a condition of employment. K.S.A. 44-706(d)(1)
  - Failure of the employee to notify the employer of an absence shall be considered **prima facie** evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

## **Misconduct is Not**

- Employees who made a good faith effort but simply can't perform at ordinary standards
- Employees terminated after the employer learns they are searching for another job
- Failing to perform work in excess of their contract

## **Misconduct Is**

- Absence without good cause
- Use or impairment caused by the use of alcohol or non-prescription drugs
- Failure to pass a drug test (condition of employment or probable cause)



## What Constitutes Misconduct?

- What if new employee lies on employment forms about the fact that she had previously filed a workers' compensation claim?
- Breaching a duty or obligation reasonably owed to the employer as a condition of employment is enough to deny benefits.
- *Pouncil v. Kansas Empt. Sec. Bd. of Review*, 268 Kan. 470, 479 (2000).

## What Constitutes Misconduct?

- What if the school custodian is asked to report to the superintendent's office to discuss work performance, and she refuses to go?
- Insubordination is clearly adverse to the employer's business interest, and is misconduct.
- *Helmick v. Kansas Empt. Sec. Bd. of Review*, 17 Kan. App. 2d 444 (1992).

## What Constitutes Misconduct?

- What if the employee is late to work?
- A pattern of absenteeism or tardiness is misconduct sufficient to deny benefits.
- *Cummins v. Employment Sec. Bd. of Review*, 1989 Kan. App. LEXIS 846.

## What Constitutes Misconduct?

- What if the employee tests positive for drugs/alcohol?
- Conclusive evidence of misconduct if it meets the criteria set forth in K.S.A. § 44-706(b)(2)(A)

## **Voluntarily Quit: The Exceptions**

- K.S.A. 44-706(d)
  - Forced to leave work due to illness or injury
  - Accompany a spouse who has transferred
  - Hazardous working conditions
  - Unwelcome harassment

## **Facts Needed by Investigating Officer**

- Quit without good cause attributable to work
  - What did the employee say or do to indicate intention to resign?
  - What complaints were made by the worker regarding work, requests for transfer or leave of absence?

## Exceptions, cont.

- Instruction to violate the law
- Forced resignation – not without good cause attributable to the employer
- Circumstances resulting from domestic violence
  - Need to relocate to avoid future domestic violence

## Other Disqualifying Events

- Knowingly making a false statement on an unemployment application
- Receiving total disability under workers' compensation
- Receiving retirement benefits from the base employer in excess of weekly unemployment benefits

## **Ineligible Individuals**

- Employees of educational institutions not working during semester breaks and holidays if there are reasonable assurances of continued employment
- Substitute teachers – not eligible for benefits

## **Appeal Procedure**

- Right to appeal determination by a deputy examiner
- Within 16 days of the mailing date
- Informal hearing – Appeals Referee

## **Appeal to Kansas Board of Review**

- Within 16 days of date of decision
- No hearing; decision based on the record
- May appeal to district court

## **How can an employer reduce benefit charges?**

- Keep accurate records
- Document detailed circumstances leading up to separation from the workplace
- Answer requests for information from the investigating government agency completely and by the date specified on the form
  - Failure to do so can result in unnecessary benefit charges
- Verify each statement of benefit charges
- Appeal decisions believed to be incorrect as soon as possible before the deadline expires

# Questions?

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