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Understanding Workers' Compensation

As an employee in either Missouri or Illinois, you may seek compensation for on the job injuries by filing a claim under your state's Workers' Compensation Law. We have developed the question and answer format below to help you formulate a general understanding of this law and how the process works. Please be aware there may be unique circumstances in your case, or other exceptions to these general answers that may affect your particular situation. There are also certain distinct differences in the laws of each state. Therefore, while the focus below is on Missouri law, under Chapter 287 of the Missouri Revised Statutes, if you live or work in Illinois, we can guide you through the process there as well. In addition, please be aware there are certain limited categories of employees and also employers that are not covered by workers' compensation laws. This information page addresses those employees and employers who are subject to the workers' compensation laws.

The legislature enacted significant amendments to Missouri's Workers' Compensation Law (the "Act") which became effective in 2005. In doing so, it specifically threw out prior case law governing employers and employees to the extent that the new law addressed those issues. Specifically, Section 287.020.10 provides, "[I]t is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning or definition of 'accident', 'occupational disease', 'arising out of', and 'in the course of employment'...." Presuming the primary readers of this information page have questions concerning accidents occurring after 2005, we limit our discussion herein to the statutory provisions currently in effect in Missouri.

Who pays for the medical care and treatment of an injured employee?

The employer is obligated to provide medical, surgical, chiropractic, and hospital treatment. This obligation includes nursing, custodial, ambulance and medicines for care and treatment. Section 287.140 RSMo. (2005). However, because the employer is obligated to PAY for the care, the employer is also allowed to select the care providers for the employee. The employee has the right to select his own physician, surgeon, or other care provider, but if the employee does so, then the employee is obligated to pay for the care and treatment. Regardless of whether the health care provider is selected by the employer or the employee, the health care provider has a duty to communicate fully with the employee regarding the nature of the employee's injury and recommended treatment. Section 287.140 RSMo (2005).

Is physical rehabilitation available to an employee?

Physical rehabilitation is also a service available to an injured worker. 287.295 RSMo. (2005).

Is vocational rehabilitation available to an employee?

Vocational rehabilitation may be available to an injured worker. An employee must submit to appropriate vocational testing and vocational rehabilitation assessment scheduled by an employer.

Under this Act, the employer has the obligation to determine whether a worker has sustained an injury that results in loss of suitable, gainful employment within 120 days of the injury date or at an appropriate interval of the employee's recovery. The employer may then retain the services of a rehabilitation practitioner or provider. The rehabilitation practitioner or provider shall send a written determination of the findings to the Division of Workers' Compensation with a copy to the employer and employee, among others. Rehabilitation services may also be suggested to the employer by the Director of the Division of Workers' Compensation. Section 287.148 RSMo. (2005).

An employee may refuse to accept rehabilitation services or to submit to a vocational rehabilitation assessment, but the employee will be penalized a 50% reduction in all disability payments. Section 287.149 RSMo. (2005).

What monetary benefits does the employee receive while off work for an injury?

There are two forms of payment under the Act for the employee being disabled and unable to fully work and not at maximum medical improvement: Temporary Total Disability and Temporary Partial Disability.

Temporary Total Disability ("TTD"): When an employee is injured and off work completely because of the injury, the employee receives temporary total disability. Temporary total disability is a disability that is temporary in nature and total in degree. TTD is paid by the employer to the employee for up to 400 weeks. The employee's TTD weekly rate is computed by calculating 66 2/3% of the injured employee's average weekly earnings as of the date of the injury. There is a maximum weekly benefit rate for TTD payable under the Act which depends upon the date of the injury. The maximum weekly benefit rate of TTD for the fiscal year beginning July 1, 2009 and ending June 30, 2010 is \$807.48.

Example TTD calculations:

$\$800 \text{ gross weekly earnings} \times .6667 = \$533.36 \text{ TTD weekly rate paid to the employee.}$

$\$1,600 \text{ gross weekly earnings} \times .6667 = \$1,066.72.$ Since this amount exceeds the maximum TTD benefits payable by the employer, the employee's TTD weekly payments are Missouri's maximum amount of \$807.48.

Temporary Partial Disability ("TPD"): When an employee is injured and partially off work because of the injury, the employee receives temporary partial disability. A temporary partial disability is a disability that is temporary in nature

and partial in degree. For example, an employee has a back strain resulting in the employee only being able to work part time. TPD is paid by the employer to the employee for up to 100 weeks. The employee's TPD rate is computed by calculating 66 2/3% of the injured employee's average weekly earnings as of the date of the injury. This amount is not to exceed 105% of the state's average weekly wage in effect on the date of the injury.

How is an employee compensated for permanent injuries?

After an employee reaches maximum medical improvement ("MMI"), the employee's permanent disability from the work related injury is then determined. MMI occurs when the employee has received the maximum benefit from the care and treatment. Despite reaching maximum medical improvement under the circumstances, the employee at MMI often times will have permanent disability.

Representatives of the employer and employee will typically each secure an "independent medical examination" (IME) of the employee once the employee is determined by the treating health care providers to have reached MMI. The examiner will rate the percentage of permanent disability the employee sustained as a result of the work related accident. Thereafter, either the employer or employee's representatives negotiate a permanent disability rating of disability or the employee's claim proceeds to a hearing before the Administrative Law Judge for a determination of the percentage of permanent disability.

There are two forms of permanent disability: Permanent Partial Disability and Permanent Total Disability

Permanent Partial Disability ("PPD") means a disability that is permanent in nature and partial in degree. In other words, the disability is permanent, but the disability to that particular part of the body does not 100% disable that part of the body. For example, the injury does not result in total loss of use of a hand, but the use of the hand is partially affected on a permanent basis.

The PPD rate is calculated by multiplying the PPD wage times the "weeks" attributed to the injured body part times the percent of the permanency. These three elements of calculation are defined below:

Element 1, PPD Weekly Wage: For all injuries occurring on or after August 28, 1992, the weekly compensation shall be an amount equal to 66 2/3% of the employee's average weekly wage as of the date of the injury up to an annually adjusted maximum. From July 1, 2009 through June 30, 2010, the PPD maximum weekly wage is \$422.97. In other words, employees who earn \$634.45 per week average weekly wage or over are limited to the PPD wage amount of \$422.97.

Element 2, the “weeks” attributable to the injured body part: The employee’s disability is rated at the body part(s) of the injury, i.e. back, right hand, head, etc. Each part of the body is assigned what is referred to as “weeks.” The attached partial disability schedule provides the “weeks” assigned to each body part.

Element 3, the percentage of disability of the injured body part: The percentage of permanent injury to the body part is typically determined by disability ratings provided by independent medical examinations requested by the employer and also by the employee’s representative. The parties or their representatives will thereafter either negotiate an agreed upon percentage or the claim proceeds to a hearing at which time the Administrative Law Judge determines the percentage of disability. Generally, the Administrative Law Judge will render his or her opinion of the nature and extent of disability after evidence is presented on behalf of both the employer and the employee and the parties submit supportive legal memorandum.

To calculate the permanency, the PPD weekly wage is then multiplied times the number of weeks for that body party times the percentage disability rating given by the physician. For example, an employee has (1) a PPD rate that is the maximum, \$422.97; (2) the employee fractured his right ankle (155 weeks per the attached chart); and (3) the parties agreed to a partial disability percentage of 25% of the right ankle. This computation equals \$16,390.09 compensation for permanent partial disability at the level of the right ankle (\$422.97 PPD rate x 155 weeks at the level of the ankle on the chart x .25 percent rating by employee’s rating physician).

For certain losses or injuries, such as complete deafness in one or both ears, loss of a limb, or loss of eyesight, the Act provides for additional payment of 10%. Section 287.190 RSMo (2005).

Permanent Total Disability (“PTD”) means a disability that is permanent in nature and total in degree. Total Disability means the employee is unable to return to ANY employment and not merely the inability to return to the job which the employee was doing at the time of the accident. 287.020.6 RSMo (2005). Permanent Total Disability Payments are paid for the lifetime of the employee. The PTD weekly payment is equal to 66 2/3% of the employee’s average weekly wage as of the date of the injury, provided the amount shall not be lower than \$40.00 a week nor exceed 105% of the state average weekly wage. PTD settlements may be negotiated to a single lump sum payment.

What benefits do a spouse and children receive for the death of an employee?

The employer pays a total death benefit equal to 66 2/3% of the employee’s average week wage earned during the year preceding the injury regardless of whether the benefit is only for a spouse or for a spouse and children. The death benefit can not be less than \$40 nor exceed 105% of the state average weekly wage. The percentage of allocation between the spouse and the children depends upon the circumstances of each case. The death benefits also include burial expenses of \$5,000.00.

If the spouse remarries, the spouse is paid a lump sum equal to 2 years of payments, and the payments cease. In situations involving children under age 18, payments to the children cease at age 18, unless the children are enrolled in an accredited college. The payments extend to age 22 if the child is enrolled in an accredited college. Section 287.240 RSMo (2005). The recipient of the weekly benefits may change during the course of the payments. For example, if there originally is a spouse and minor children, the spouse will receive the total weekly benefit once both children reach age 18 and are not enrolled in an accredited college. The sum allocated between the spouse and the children is negotiated between the representatives of the employer and spouse/children conditioned upon review and approval by the ALJ or, if there is no agreement, then determined by the ALJ after presentation of evidence.

What are my options if the employer terminates benefits?

The employer has to notify the employee if the employer is terminating the benefits and the reason for the termination. The employee may request an emergency hearing, which will be set within 60 days of the request.

If the Division of Workers' Compensation determines the proceedings were brought, prosecuted or defended without reasonable grounds, the Division of Workers' Compensation may award the entire cost of the proceedings to the prevailing party. Section 287.203 RSMo (2005).

When should the injury be reported to the employer?

The employee should report any work injury immediately to the employer. If possible, the employee may want to obtain a copy of the report (if in writing) or should make a note of the date and the person to whom they reported the injury. The employee may lose the right to receive compensation if the injury or illness is not reported within at least 30 days. The timeline for reporting to the employer is different with occupational diseases. An employee who has sustained an occupational disease, such as carpal tunnel syndrome, should report the disease to the employer within thirty days he or she is reasonably aware of the work relatedness of the injury or illness. Section 287.127 V.A.M.S. (2005).

Is my injury or occupational disease governed by Missouri's Workers' Compensation Law?

Except for those employers who are not construed to be "employers" under Missouri's Workers' Compensation Act, the Act applies to all injuries received and occupational diseases contracted by an employee in Missouri regardless of where you were hired. However, if you have an employment contract with your employer, this contract may provide that another State's law will govern your injury or occupational disease.

If you were hired in Missouri and you were injured or contracted an occupational disease outside Missouri, Missouri's Workers' Compensation Law still applies to you. Again, the exception to this rule is if your employment contract provides that another state's law shall govern your injury or occupational disease.

Missouri's law also governs your injury or occupational disease if you were injured outside Missouri and your work was primarily localized in Missouri within the 13 weeks before the injury or the diagnosis of occupational disease.

Is my employer responsible for my injury or occupational disease under the Workers' Compensation Act?

Every employer subject to the provisions of this law shall furnish compensation for the personal injury or death of an employee by accident arising out of and in the course of the employee's employment regardless of whether the employee was negligent. The trade off, if you will, for this responsibility is that the employer is released from all other liability arising out of the injury or occupational disease. For example, you and your spouse are not able to bring suit against your employer in civil courts for damages arising out of your injury or occupational disease.

However, the Missouri Supreme Court recently ruled that certain workers no longer fall within the exclusivity provision of the Act. As a result, some employees will bring their claims in the form of a lawsuit filed in circuit court. The question of whether certain employees have remedies under the current workers' compensation laws or under common law (litigation) is decided on a case-by-case basis depending upon the particular facts. *Missouri Alliance for Retired Americans v. Department of Labor and Industrial Relations*, 277 S.W.3d 670, 680 (Mo. 2009).

What qualifies as an accident?

The injury or death must be caused by an accident, and the injury must arise out of and in the course of the employee's employment. The term "accident" has a rather complicated definition in the statute. "Accident" is identified as:

....an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

Essentially, an accident is a traumatic event or unusual strain occurring during work.

What qualifies as an injury?

An "injury" is defined as an "injury which arises out of and in the course of employment."

Recent amendments to the statute require that the accident be the "prevailing factor" causing both the medical condition and the disability. In other words, for an injury to be compensable under the Missouri Workers' Compensation Act, the work performed must have been a substantial factor in causing the medical condition and disability. V.A.M.S. § 287.020(2).

For example, a worker with pre-existing mild degenerative joint disease falls at work and suffers a herniated disc from the fall, the accident (fall) is the prevailing factor of the medical condition (herniated disc) and the disability (i.e. weight restrictions, movement restrictions, etc.).

If the employee is exposed to a hazard or risk while working unrelated to the employment and to which the employee is equally exposed outside of employment, there is no "injury." Further, an injury resulting directly or indirectly from idiopathic causes does not qualify.

Case example: Workers' compensation claimant's fall from roof while working as a carpenter resulting in shoulder injury is determined to be not compensable. The fall was caused by a seizure condition from a prior motorcycle accident, and, therefore, was not compensable because the seizure condition was idiopathic. The Act provides that injuries resulting directly or indirectly from idiopathic causes are not compensable. V.A.M.S. § 287.020(3)(3). See Ahern v. P & H, LLC, 254 S.W.3rd 129 (Mo. App. E.D. 2008).

A cardiovascular, pulmonary, respiratory, or other disease or stroke or heart attack suffered by a worker is an injury if the accident is the prevailing factor in causing the resulting medical condition.

Case example: Appellate Court ruled that substantial evidence did not support the Commission's finding that an injured employee failed to show causal connection between the severe aggravation of his heart condition and electrical shock he received on the job. The physicians could not deny that the electrical shock at work must have caused recycling of the electrical pathways of the hear that severely altered the employee's condition. The assertion that the severe and uncontrollable aggravation of the employee's condition occurred by "natural progression" was unsupported. Kliethermes v. ABB Power T & D, 264 S.W.3d 626 (Mo. App. W.D. 2008).

An injury "arises out of" the employment if it is the natural and reasonable incident of the employment and there is a causal connection between the employee's duties and the injury. In the "course of employment" refers to the time, place and circumstances of the employee's injury.

Do I need an attorney, and if so why? What do they charge?

As described above, there are certainly very subtle issues that can make pursuing a workers compensation claim rather complex. Sometimes, the employer may challenge whether the accident is on that is compensable under the law. Oftentimes, the doctor who performs the IME on the employee to assess the nature or degree of their injury may undervalue that injury, and having another independent physician perform an IME for the employee can lead to a more reasonable and fair compensation award being rendered. An attorney can help you through this maze. Under the statute, most attorneys receive a contingency fee (they are not paid if you do not settle or win your claim) of 25% of your final award. In Illinois, the attorneys' fee differs slightly based on the overall value of the claim.

Will there be a hearing, and if so, what happens?

Workers compensation hearings are like trials, but without a jury, and usually in a more informal setting, before one Administrative Law Judge. Most workers' compensation claims are actually resolved without a formal hearing. You may need to appear at a "conference" or a "mediation", depending on your case, but your attorney will be with you throughout, and will guide you through the process. If your case cannot be resolved without a formal hearing, your attorney will be there with you through that as well, and will explain the process to you in advance.