

**WORKMEN'S
COMPENSATION LAW OF
THE STATE OF KENTUCKY**

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Workmen's Compensation Law of the State of Kentucky by Various

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VARIOUS

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Workmen's Compensation Law

of the

State of Kentucky

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Digest of the Kentucky Workmen's Compensation Law*

TITLE, ETC.

Senate Bill No. 40, Laws of 1916; approved March 23, 1916. Administrative provisions effective April 1, 1916; liability provisions effective August 1, 1916 (§§1).

SYSTEM PROVIDED FOR

Compensation, elective (§ 3), with insurance or security (§§ 63, 84-100). Administered by Workmen's Compensation Board of three members, one for each of three districts into which State is divided (§§ 39-45).

HOW ELECTED

Employer elects by filing written notice, in prescribed form, with the Board (§ 73). Employee elects by signing prescribed form of notice to be filed with employer (§ 74). In case of employments not subject to the Act, employer and employees may elect to come under the Act by joint application to the Board, for period stated in application (§ 1).

HOW ELECTION CHANGED

Employer may change his election by filing written notice with the Board, by personal written notice to employees or posting same at place of business for at least a week. Employee may change election by filing with employer written notice of withdrawal, specifying date on which effective (§ 76). As to employments not subject to the Act, acceptance is binding for period stated in application and until written revocation is filed with the Board (§ 1).

ALTERNATIVE LIABILITY

If employer does not elect to come under the Act, he is liable to injured employee for damages, with the defenses of contributory negligence, fellow servant's fault and assumption of risk abrogated (§ 76a). If employer elects to come under the Act and the employee does not, such defenses are available in case of action by employee (§ 76b).

EMPLOYMENTS COVERED

All, including municipal corporations, in which five or more are regularly employed, except domestic service, farm labor, steam railways and

* The headings of this Digest conform in substance and order with those of the "Digest of Workmen's Compensation Laws in the United States and Territories" (compiled by F. Robertson Jones and published by the Workmen's Compensation Publicity Bureau, 80 Maiden Lane, New York City)—so that the former supplements the latter.

common carriers other than steam railways which are subject to a Federal liability law (§§ 1-2). Excepted employments may be brought under the Act by joint application of employer and employee (§ 1).

EMPLOYMENT IN INTERSTATE COMMERCE

The Act does not extend to steam railways or to common carriers other than steam railways for which a rule of liability is provided by Federal law (§ 1).

INJURIES COVERED

Personal injuries by accident arising out of and in the course of employment, unless wilfully self-inflicted or caused by wilful misconduct or intoxication. Not to include disease except where it is the natural and direct result of a traumatic injury by accident, nor the results of a pre-existing disease (§§ 1, 3). Special restrictions governing injuries producing hernia (§ 4a).

NOTICE OF INJURY AND CLAIM FOR COMPENSATION

Written notice, with certain particulars, must be given to employer as soon as practicable after accident. Defect in notice does not invalidate claim unless employer was misled to his injury. Want of notice or delay in giving same does not bar claim if occasioned by mistake or other reasonable cause, or if employer had knowledge of injury. Claim must be made within a year after accident, death or suspension of payments (§§ 23, 33-36).

WAITING PERIOD

No compensation is payable for first two weeks of disability. Compensation begins on first regular pay day after expiration of two weeks' period (§ 7).

MEDICAL AND SURGICAL AID

Employer must furnish medical, surgical or hospital treatment, etc., as reasonably required during 90 days after injury, unless Board otherwise directs within that time; maximum \$100. In case of operation for hernia, maximum liability is raised to \$200, and employee is entitled to 26 weeks' compensation in addition. Board may under certain circumstances require a change of physician. Charges for treatment are limited to those prevailing in the community, and are subject to regulation by the Board. Employee who unreasonably refuses to submit to treatment forfeits compensation (§§ 4-6).

COMPENSATION FOR TOTAL DISABILITY

65 per cent of average weekly earnings, maximum \$12, minimum \$5, weekly, maximum period eight years, maximum amount \$5,000, including partial disability payments, if any. Certain severe injuries deemed to constitute permanent total disability (§ 16).

COMPENSATION FOR PARTIAL DISABILITY

65 per cent of loss of earning power, maximum \$12 weekly, maximum period 335 weeks, including period of total disability payments, if any. Special schedule of compensation for loss of certain members, etc. Employee's refusal to accept suitable employment during partial disability, unless justified, forfeits compensation for period of refusal (§§ 17-19).

COMPENSATION FOR DEATH

If death results from accident within two years, in all cases, reasonable burial expenses, maximum \$75. In addition, to total dependents, 65 per cent of average weekly earnings, maximum amount \$4,000, maximum period 335 weeks, including period of disability payments, if any. To partial dependents, payments based on foregoing schedule and proportioned to measure of dependency, maximum amount and period same as above. Compensation to cease upon death or marriage of dependent. If no dependents, \$100 to personal representative of deceased (§§ 12, 13).

EFFECT OF PREVIOUS DISABILITY

If previously injured employee sustains subsequent injury resulting in a condition to which both injuries contribute, employer in whose employment the later injury is received is liable for compensation based on such resulting condition, less amount payable for prior injury (§ 20).

AVERAGE WAGES—HOW COMPUTED

Average weekly wages to be based on earnings while working at full time. If employee at the time of injury is employed at higher wages than earlier in the year (unless such employment is seasonal), only such higher wages to be considered in computing average weekly earnings (§ 24).

WHO ARE DEPENDENTS

Certain persons presumed to be wholly dependent; in other cases, dependency to be determined in accordance with facts at time of accident. Dependents are limited to parents, spouse, father-in-law, mother-in-law, grandparents, child, grandchild, brother, sister, or one living in household of employee at time of accident. Partial dependency may be determined by proportion of employee's earnings contributed to dependent during year preceding injury; otherwise Board may fix degree of dependency. Payment of death benefits to supposed dependent or to one subsequent in right releases employer in absence of written notice of prior claim (§§ 12-15).

NON-RESIDENT ALIENS

Non-resident alien dependents are excluded from benefits of the Act, except widows and children, who are entitled to one-half the amount provided for residents; and employer may at any time commute such payments to the then value thereof (§ 22).

MEDICAL EXAMINATION

Injured employee must submit to medical examination at reasonable times and places upon request of employer or Board. Employee may have his own physician present. Refusal to submit forfeits right to compensation for period of continuance. Employer's physician may visit employee at reasonable times (§ 37). Board may appoint physician for this purpose upon application of either party (§ 58). Special regulations governing examination for hernia (§ 4a).

SETTLEMENT OF CLAIMS AND DISPUTES

Terms of compensation may be settled by agreement, subject to approval of Board (§ 48); otherwise, upon application of either party as soon as possible after disagreement, by the Board or a member thereof or a referee authorized by the Board (§§ 49, 50, 60). If first hearing was not held before full Board, application for review may be made to the Board within seven days after award (§ 51).

RIGHT OF APPEAL

Board's award is final as to questions of fact; but either party may within 20 days file a petition for a review by the Circuit Court upon certain specified grounds. Where amount involved is sufficient under existing laws, judgment of Circuit Court may be reviewed by Court of Appeals (§§ 52-55).

MODIFICATION OF AGREEMENTS AND AWARDS

Upon its own motion or upon application of any party interested, the Board may at any time review award and end, diminish or increase payments on the ground of changed conditions (§ 21).

COMMUTATIONS

After six months' payments, upon application of either party and notice to the other, if Board finds it for the best interests of either party and that it will no subject the employer or insurer to undue risk of overpayment, future compensation may be commuted to a lump sum equal to the present value of probable future payments discounted at 5 per cent. per annum. The Board may direct such payments to be made to a trustee, thus discharging employer and insurer (§§ 26-27).

PREFERENCE

The right of compensation has the same preference or priority for the whole thereof against the assets of the employer as is allowed for unpaid wages for labor (§ 31).

ASSIGNMENTS AND EXEMPTIONS

Claim for compensation is not assignable, and is exempt from claims of creditors (§ 32).

HOW COMPENSATION IS SECURED

Assenting employer is required to insure his liability for compensation in some authorized corporation or association, or furnish the Board with satisfactory proof of financial ability to make payments direct and deposit acceptable bond, indemnity or other security (§ 63).

METHOD OF PAYMENT AND PROCEEDINGS TO COLLECT

Compensation is payable directly to employee or dependent by employer or insurer, on regular pay days, with interest at 6 per cent. per annum on each instalment from time it is due until paid (§ 7). The Board may, upon application of either party, order payments made monthly or quarterly (§ 25). Any party in interest may file in Circuit Court a certified copy of memorandum of agreement approved by the Board, or of the Board's award, whereupon the Court must render judgment in accordance therewith, which may be enforced as other judgments duly rendered (§ 56).

ATTORNEYS' LIENS AND FEES

Fees of attorneys, physicians, etc., are subject to approval of the Board. Attorney's fee is limited to 15 per cent. of amount of recovery up to \$1,000 and 10 per cent. of any recovery in excess of \$1,000. The Board may deny or reduce fee upon proof of solicitation of employment (§ 59).

MINORS AND INCOMPETENT PERSONS

Minors of legal working age are deemed *sui juris* for purpose of Act; but lump sum awarded must be paid to guardian (§ 11). Compensation of insane person is to be paid to committee (§ 28). No limitation of time is to run against mentally incompetent person or minor dependent while he is without a guardian, committee or next friend (§ 38). Guardian or personal representative of minor illegally employed may claim compensation or sue for damages (§ 30).

WHERE INJURY IS CAUSED BY THIRD PARTY

Where injury is caused by third party, employee may elect to claim compensation from employer or to sue third party for damages, but may not collect from both. If compensation is awarded, employer is subrogated to employee's right of action against third party (§ 9).

PRINCIPAL AND SUB-CONTRACTOR

A principal, intermediate or sub-contractor is liable for compensation to injured employees of a sub-contractor if injury occurs on premises under the control or management of the former, but is entitled to indemnity from sub-contractor. Claim must be presented in the first place to immediate employer, and in case of full recovery, claim against principal or intermediate contractor is barred (§ 10).