



LEGISLATIVE CHANGES COMING TO MISSOURI'S WORKERS' COMPENSATION LAW ON JANUARY 1, 2014

Some major changes are coming soon to Missouri's Workers' Compensation Law. Earlier this year, the Missouri General Assembly passed what began as a legislative effort to address issues in the coverage of occupational diseases created by the switch in 2005 to strict construction of the Law. In the end, this effort resulted in a much broader set of amendments, though the changes are still heavily focused on occupational diseases. The new law takes effect January 1, 2014. Below are some highlights.

- For purposes of the Workers' Compensation Law, the phrase "occupational diseases due to toxic exposure" shall only include the following: mesothelioma, asbestosis, berylliosis, coal worker's pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous leukemia, and myelodysplastic syndrome. Sec. 287.020.11. This is an entirely new definition as the previous version of the Law did not seek to define in any way "occupational diseases due to toxic exposure." The phrase "occupational disease," in general, remains defined as in the previous version of the Law as "an identifiable disease arising with or without human fault out of and in the course of the employment."

- The Law's exclusive remedy provision – i.e., the provision which gives the employer and co-employees general immunity from civil suits for work-related injuries and accidents – is modified to specifically include "occupational diseases." Sec. 287.120.1 and 287.120.2. This reaffirms that occupational diseases are a part of the Law and that the Law is intended to be the employee's exclusive remedy for work-related occupational diseases otherwise qualifying under the Law.

- In the case of an "occupational disease due to toxic exposure," the employer no longer has a right of subrogation in any wrongful death case. Sec. 287.150.7. The newly added section provides, "[W]hen a third person or party is liable to the employee, to the dependents of an employee, or to any person eligible to sue for the employer's (sic) wrongful death as provided is (sic) section 537.080 in a case where the employee suffers or suffered from an occupational disease due to toxic exposure and the employee, dependents, or persons eligible to sue for wrongful death are compensated under this chapter, in no case shall the employer then be subrogated to the rights of an employee, dependents, or persons eligible to sue for wrongful death against such third person or party when the occupational disease due to toxic exposure arose from the employee's work for employer."

- For all claims filed on or after January 1, 2014, for "occupational diseases due to toxic exposure" which result in permanent total disability or death, benefits will be provided as outlined in Sec. 287.200.4. For all "occupational diseases due to toxic exposure" except mesothelioma, this section provides for extra compensation in addition to the normal benefits paid for total disability or death equal to 100 weeks of compensation at a rate equal to 200% of the average state's average weekly wage as of the date of diagnosis. Sec. 287.200.4(2). For mesothelioma, this section basically allows the employer to either accept or reject mesothelioma liability under this subsection. If accepted, extra compensation in addition to normal benefits will be paid for total disability or death equal to 300% of the state's average weekly wage for 200 hundred weeks.

(Continued from Page 1)

If an employer rejects mesothelioma liability under this subsection, then the exclusive remedy provisions under Sec. 287.120 shall not apply and the employer can be sued in civil court. Sec. 287.200.4(3). The section further limits recovery in the case of an employee who first obtains benefits for asbestosis and later seeks benefits for mesothelioma. Such an employee shall not receive more benefits than he or she would have received if only obtaining benefits for mesothelioma under this section. Sec. 287.200.5.

•Sec. 287.223 creates a specific fund to be called the “Missouri Mesothelioma Risk Management Fund.” It provides that any employer may participate in the Mesothelioma Risk Management Fund and use those funds to pay mesothelioma awards made against the employer member pursuant to the opt-in provisions of Sec. 287.200.4(3)(a), as described in the previous paragraph. Participating employers must make annual contributions in amounts to be determined by the board of trustee for the fund.

•For all claims against the Second Injury Fund for accidental injuries occurring after January 1, 2014, and for occupational disease claims filed after January 1, 2014, the fund will no longer make payments for permanent partial disability. Further, claims for permanent total disability will only be compensable from the fund when it is either: (1) a medically documented disability due to military duty or (2) a preexisting disability of at least 50 weeks that is either (a) due to active military duty, (b) was the result of a compensable injury, or (c) was not compensable but aggravated a subsequent injury or involves preexisting permanent partial disability of an extremity, the loss of eyesight in one eye, or the loss of hearing in one ear, where the subsequent injury is to the opposing extremity, eye or ear. Sec. 287.220.3(1). The employer at the time of the last work-related injury shall only be liable for the disability resulting from the subsequent work-related injury considered alone and of itself. Sec. 287.220.3(2). Further, no compensation will be payable from the fund if the employee files a claim for compensation under the workers’ compensation law of another state having jurisdiction over the employee’s injury, accident, or occupational disease. Sec. 287.220.12. Finally, life payments to an injured employee made from the fund will be suspended when the employee is able to obtain suitable gainful employment or be self-employed in view of the nature and severity of the injury. Sec. 287.220.13.

•The new Law also adds a new statute of limitations for applications for additional reimbursement by medical providers. All applications for additional reimbursement must be filed within two years of the date the first notice of dispute of the medical charge was received by the health care provider if the services were rendered before July 1, 2013. If the services were rendered after July 1, 2013, then within one year from the date of the first notice of dispute of the medical charge. Sec. 287.140.4. It should be noted that this section does not address or change the procedure for applications for direct payment. It remains the case that the employee cannot be made a party to any dispute over medical charges and that the employee’s recovery cannot in any way be jeopardized because of such a dispute. Sec. 287.140.4.

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