

Approved: _____
Date 2/7/95

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairperson Al Lane at 9:04 a.m. on January 20, 1995 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: Bob Nugent, Revisor of Statutes
George Gomez, Director, Workers Comp
Dick Thomas, Worker Comp Ombudsman Program

Others attending: See attached list

Bob Nugent, Revisor, passed out a memo that gave a brief synopsis of **SB 59**, explaining the changes that are necessary to comply with the Supreme Court ruling on January 13, 1995 that found the procedure by which members of the Workers Compensation Appeals Board are appointed unconstitutional (see Attachment 1). Bob explained how the bill was written and answered questions from the committee.

George Gomez, Director of Workers Compensation, started his presentation by introducing the Workers Compensation Appeals Board (WCAB) Chairman, Gary Peterson. Mr. Gomez explained that the Board has five members and the Chairmanship rotates each year among the members. They have a heavy case load, which was anticipated.

Mr. Gomez called the committee's attention to the book contained in the packet, "Kansas Workers Compensation Law and Rules." It is the law book which is sold by the Dept. of Human Resources, Division of Workers Compensation for \$5.00. Other material was contained in the packet (see Attachment 2).

Dick Thomas, Administrative Supervisor of the new Ombudsman Program, gave us an update about this program that was created in 1993 as part of the claims advisory section established in 1978. This is explained more fully in Attachment 2. The Ombudsman Section was expanded from three to a total of 12 Ombudsman in 1994. There is an 800 number available to answer questions about worker compensation claims. The pie chart shows the breakdown of general information contacts to the 800 number. Employers have a form that they give to their injured workers that tells them what to do if an accident occurs on the job. There are versions printed in English and Spanish. It contains instructions of what to do, has the 800 number, and on the back the employers complete the part about where the worker should go to have their claim handled.

Mr. Gomez brought the committee up to date of the status of the other lawsuit against the Workers Compensation Reform Act of 1993. It is still in its early stages and is likely to go on for many years. There has been a motion to dismiss and Judge Andrews may make a decision at anytime.

Mr. Gomez continued his presentation discussing benefit review conferences and whether they were helping keep the number of hearings down. The conferences are held by telephone but statistics are not clear on the results. They do force everyone to get together earlier and force them to go through the process and address the files early, hopefully to settle the cases without going before a judge.

Chairman Lane concluded the meeting by explaining the procedure by which **SB 59** will go through the Senate and the House. The bill was heard yesterday in the Senate by the Committee of the Whole, it was then emergencied and passed (with another bill) 38-0, on final action. It will be read into the House today and referred directly to the Committee of the Whole. It will be heard on Monday and voted on emergency final action the same day. The main purpose of the bill is that the Secretary of the Kansas Dept. of Human Resources will now have the opportunity to reject the AFL/CIO/KCCI nominations for the WCAB.

The meeting adjourned at 10:45.

The next meeting is scheduled for January 24, 1995.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE January 20, 1995

NAME	REPRESENTING
Wayne Matthews	K. AFL-CIO
Kevin Robertson	BARBEE & ASSOC.
Jon Neuman	Ks Governmental Consulting
Joe Fungine	Ks Chiropractic Assn
Rich Cutler	Health Midwest
Donald Snodgrass	Ks Food Dealers Assn.
George Barbee	Barbee & Associates
George Welch	State Self Ins. Fund
Ken Baker	Ks. Hospital Assn.
Bill Curtis	Ks Assoc of School Bds
MIKE SPEIGHT	Ks. FOUNDATION for MEDICAL CARE
Gary M. Petteron	Workers Compensation Appeals Bd
Laurie Hartman	Ks. Bar Assoc.
Diane Joy	Ks Workers Comp - Fraud Unit
George Schueman	" " " "
Amyndy Anderson	" " " "
Richard J. Horn	OHQ/WORKERS COMP
MURRAY PRESS	WORKERS COMP
Dana Sullt	Work Comp

Memo

To: Rep. Al Lane, Chairman, House Business, Commerce & Labor Committee
From: Robert Nugent, Assistant Revisor of Statutes
Date: January 19, 1995
Subject: Senate Bill 59

Section 1: The Senate re-enacted KSA 44-551 as a new section. Senate Bill 59 recreated the Workers Compensation Board with powers identical to those it possessed under the old statute. The bill retains the Nominating Committee and the Committee still nominates only one qualified individual for each position on the board, but the Secretary of Human Resources now may reject the nomination for any reason and require the Nominating Committee to propose a different candidate. The bill still requires both Committee members approve candidates before their nomination. The board members who were serving on the board on January 12, 1995, (before Sedlak), have been reappointed to the board for the remainder of their terms as they existed on that date. This section cures the constitutional infirmity by investing the Secretary with the discretion to reject candidates and thus removes the complete authority to appoint candidates away from the Nominating Committee.

Sections 2 & 3: KSA 44-551 and KSA 44-556 were constitutionally revived by amending sections 8 & 9 of chapter 183 of the 1990 Session Laws. These Statutes have not been changed from the original 1993 amendments.

Section 4: SB 59 amended KSA 44-508 to state that after the effective date of this act all references to the Workers Compensation Board or Board mean the board established in Section 1. This section cures the Supreme Court directive to ignore all references to the board.

Section 5: The Senate added a new section to provide a transition from the system imposed by the court back to a statutory system. This section provides that any cases the Supreme Court transferred from the board to either to a district court or the director for review shall be returned to the board if no decision has been rendered by the director or the court. Additionally, the bill returns any case transferred from the Court of Appeals to a district court back to the Court of Appeals if the district court rendered no decision in the case.

Section 6: Both the 1993 and 1990 versions of KSA 44-551 and KSA 44-556 have been repealed. The existing versions of KSA 44-555b and 44-508 have been repealed.

Section 7: The Act would be effective upon publication in the Kansas Register. Thus the week after the bill was signed by the Governor it would be effective.

*Business, Commerce, &
Labor Committee
1/20/95
Attachment 1*

OMBUDSMAN/CLAIMS ADVISORY SECTION

Kansas Division of Workers Compensation established a Claims Advisory Section in 1978. The 1993 Legislature followed a national trend and, by statute, created the Ombudsman Program effective July 1, 1993, under K.S.A. 44-5,110. The duties of the Claims Advisory Section was expanded to be more pro-active in the Division's efforts to provide information and technical assistance to all interested parties involved in the workers compensation process.

In Fiscal Year 1994, the Ombudsman Section was expanded from three to six individuals. In September of 1994, the Ombudsman Section was expanded to a total of 12 Ombudsmen.

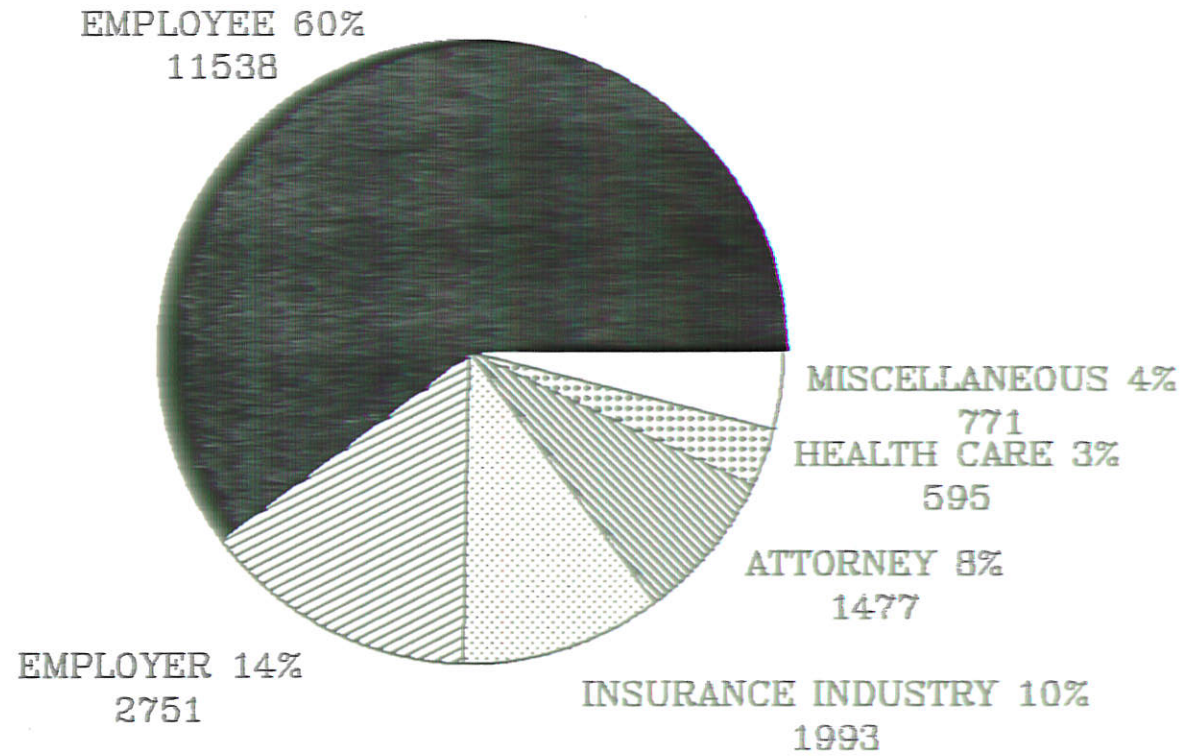
Through the employer institutes, the Division's annual seminars, and numerous requests for presentations, the Ombudsman Section continues to experience an increase in the number of contacts. Several of the 1993 changes were changes that emphasized communication between the injured worker and the employer. It is pretty obvious, the Legislature felt that if all parties knew what to expect from the system, there would be less issues to litigate. The Pie Chart attached depicts the breakdown of the general information contacts. As expected, the majority (60%) of the contacts are from injured workers. However, employers and the insurance industry make up 24% of the general contacts.

Employers are now required by statute to give injured employees information about their rights and expectations immediately after an alleged injury is reported. This information includes identifying the Division's Ombudsman Section as a source of information. As more and more of the employers come into compliance with this requirement, the number of contacts generated will increase.

During the first six months of FY95 (July-December), the Ombudsman Section had 22,648 separate contacts with individuals on workers compensation issues. A conservative estimate, with the number of contacts just staying at the same monthly rate, would result in 45,296 contacts. The attached Bar Graph compares the contacts from FY89 through the first six months of FY95. The contacts during the first six months of FY95 already equal the total contacts the Section received for the entire FY91.

*House Business, Commerce
& Labor
1/20/95
Attachment 2*

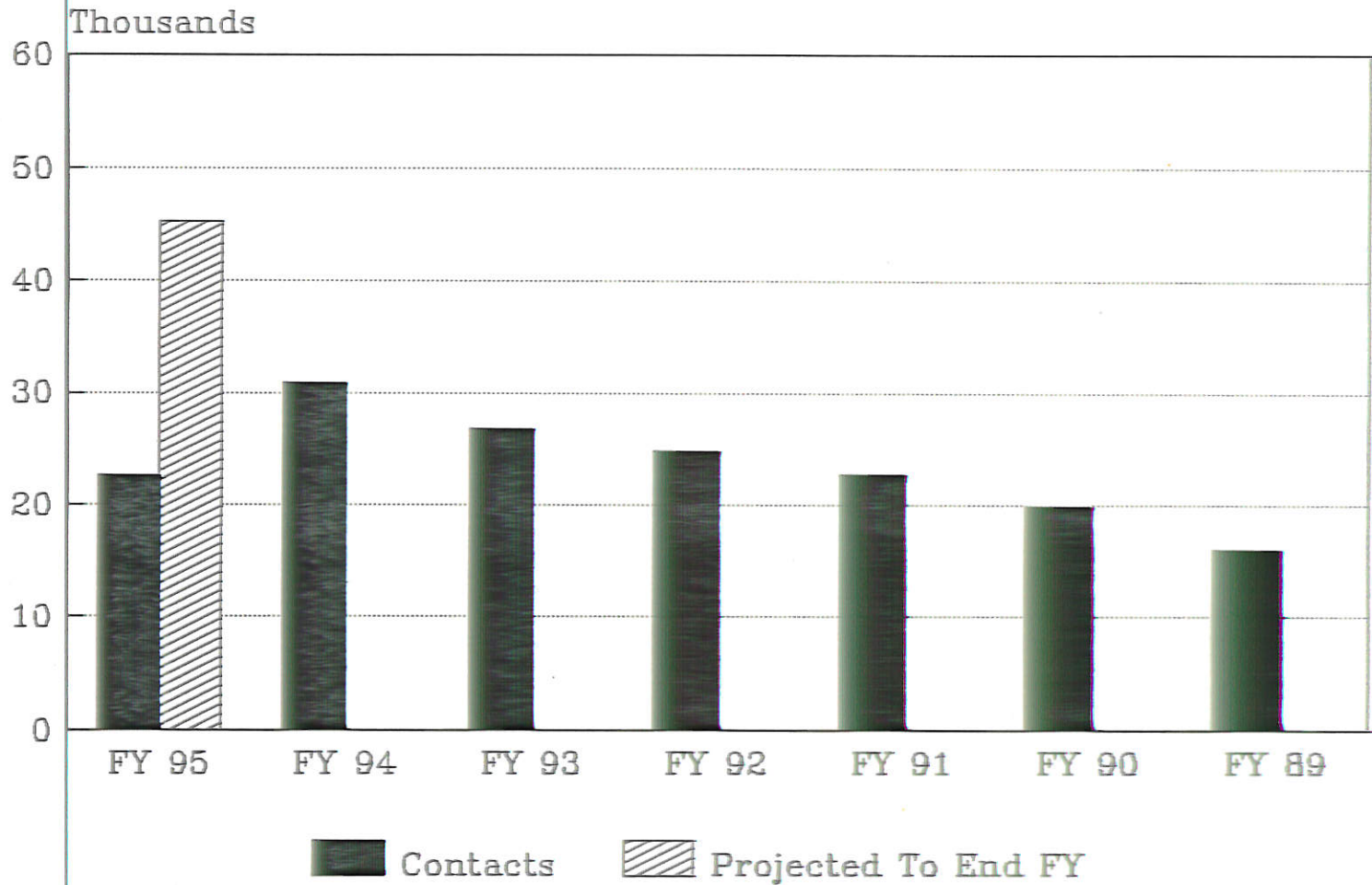
GENERAL INFORMATIONAL CONTACTS SIX MONTHS FY 95



January 17, 1995

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CLAIMS ADVISORY/OMBUDSMAN CONTACTS FY 89 - FY 95 (Jul-Dec)



January 17, 1995

ATTENTION

IMPORTANT INFORMATION FOR INJURED EMPLOYEES

CLAIMS ADVISORY/OMBUDSMAN

DIVISION OF WORKERS COMPENSATION
800 SW JACKSON STREET STE 600
TOPEKA KS 66612-1227

TOLL FREE 1-800-332-0353

If you were hurt on the job and have any questions about Workers Compensation benefits contact the Claims Advisory Section at the Kansas Division of Workers Compensation. The Division of Workers Compensation has full-time personnel who specialize in aiding injured workers with claim information and problems. They can give information about benefits an injured worker is entitled to receive. They can help try to solve problems with benefits not being paid on time, with medical treatment, with unpaid medical bills, with questions about how to figure settlement amounts, etc. Spanish interpreters are available at the Division of Workers Compensation.

WHAT TO DO IF AN ACCIDENT OCCURS ON THE JOB:

1. Tell your employer that you were hurt on the job.
2. Follow your employer's instructions on getting medical aid and follow the doctor's instructions.
3. Within 200 days of the date of accident or the date of last payment of compensation for disability or authorized medical care, tell your employer **in writing** that you expect workers compensation benefits for your injury. Your employer might know you were hurt and compensation may be paid, however, you could lose all rights to future compensation if you do not tell the employer **in writing**. This is called a "**Written Claim**." Written claim may be served in person by taking it to the employer and getting a receipt for it or by mailing it to the employer by certified mail, return receipt requested. The post office receipt for the certified letter is generally sufficient proof that you sent written claim.

AVERAGE WEEKLY WAGE: A worker's "average weekly wage" is calculated by adding together the **base wage**, the **average weekly overtime** and the **weekly value of fringe benefits** that have been discontinued.

WEEKLY BENEFITS: Benefits are paid by the employer's insurance carrier or self-insurance program. Injured workers are not entitled to compensation for the first week they are

off work unless they lose three consecutive weeks. The first compensation payment is normally due at the end of the 14th day of lost time. An injured employee is entitled to a weekly amount of 66 2/3 percent of his average weekly wage up to a maximum of 75 percent of the state's average weekly wage. These benefits are subject to legislative changes. If the injury results in permanent disability, the Kansas compensation law provides for additional benefits.

MEDICAL BENEFITS: An injured worker is entitled to all medical services reasonably necessary to cure and relieve the worker from the effects of the injury. The employer has the right to select the doctor who will treat the injury. A worker may seek the services of an unauthorized doctor up to a limit of \$500. A worker may apply to the Workers Compensation Director to change the authorized treating doctor. Reimbursement for travel to obtain medical treatment is payable at a rate set by law for trips that are five miles or more.

RESPONSIBILITIES OF THE EMPLOYER:

1. Employers must report all employee injuries to the Division of Workers Compensation within 28 days from the date of injury, or the date the employer learned about the injury.
2. Employers must provide for the payment of workers compensation claims without any charge to employees.
3. Employers must post written notice of workers compensation insurance coverage in both Spanish and English.
4. Employers must pay compensation benefits regardless of insurance coverage.
5. Upon receiving notice of an injury, employers must provide the employee with written information to assist the injured worker in obtaining compensation.

EMPLOYERS MUST COMPLETE THE FOLLOWING INFORMATION FOR INJURED WORKERS:

YOUR CLAIM WILL BE HANDLED BY:

Company _____

Address _____

Contact Person _____

Telephone () _____

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ATENCIÓN

INFORMACIÓN IMPORTANTE PARA TRABAJADORES LASTIMADOS EN EL TRABAJO

Llame a los Consultivos de Reclamación/Ombudsman

Llamada Gratis 1-800-332-0353

O Escriba A:
DIVISION OF WORKERS COMPENSATION
800 SW JACKSON STREET, SUITE 600
TOPEKA, KS 66612-1227

Si Ud. se ha lastimado a causa de su trabajo, y tiene algunas preguntas con respecto a los beneficios de la Compensación de Trabajadores, comuníquese con la **SECCIÓN DE CONSULTIVOS DE RECLAMACIÓN/"OMBUDSMAN"** del Departamento de Compensación Para Trabajadores de Kansas. Este departamento mantiene a su disposición algún personal que se especializa en dar asistencia con los problemas de reclamación y en dar información sobre los reclamos, a los trabajadores lastimados a causa del trabajo. Este personal le puede informar sobre los beneficios que un trabajador lastimado tiene derecho a recibir. También pueden asistirle en resolver los problemas con respecto a los beneficios que no se le están pagando a tiempo, al tratamiento médico, a las cuentas de los doctores que aún no se han pagado, y también con preguntas respecto a la cantidad del arreglo de resolución llamado "settlement". Intérpretes en Español están a su disposición en el Departamento de Compensación de Trabajadores.

¿QUÉ DEBE HACER SI LE SUCEDE UN ACCIDENTE A CAUSA DEL TRABAJO?

1. Avísele inmediatamente al patrón, o a su empleador, que Ud. se ha lastimado a causa de su trabajo. **(DENTRO DE 10 DÍAS DEL ACCIDENTE)**.
2. Siga las instrucciones del patrón, o el empleador, con respecto al tratamiento médico, y siga las instrucciones del doctor médico.
3. Dentro de 200 días del accidente, o del último día en que le pagaron compensación por estar incapacitado, o en que recibió tratamiento médico autorizado, avísele al patrón o al empleador **POR ESCRITO** que Ud. espera recibir los beneficios de compensación de trabajadores, por su accidente. Aunque su patrón ya se haya informado del accidente, y ya le esté pagando los beneficios, Ud. puede perder el derecho de recibir compensación en el futuro, si no le avisa al patrón o al empleador **POR ESCRITO**. Esta documentación es lo que se nombra un "AVISO POR ESCRITO" o "WRITTEN CLAIM". El "Aviso Por Escrito" se puede entregar al empleador o al patrón de dos maneras diferentes: Se lo puede entregar en persona, y al mismo tiempo que se lo entrega, pídale al patrón un recibo. También se lo puede enviar por correo certificado, y pída que el correo le devuelva a Ud. un recibo indicando el nombre y la firma de la persona que recibió el aviso por correo. Ese recibo del correo normalmente es suficiente para comprobar que Ud. envió el "Aviso Por Escrito".

PROMEDIO DEL SUELDO SEMANAL: Para calcular un promedio del sueldo semanal "average weekly wage" del trabajador, se suman todos los siguientes: el sueldo básico, mas un promedio de las horas extras (overtime) que se trabajan por semana, mas el valor semanal de cualquier beneficio adicional que haya sido discontinuado.

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BENEFICIOS SEMANALES: Los Beneficios se los paga la compañía o el grupo de Aseguración del Empleador, o el programa propio de Aseguración del Empleador. Los trabajadores que se han lastimado a causa del trabajo, no tienen derecho a recibir compensación por la primera semana en que están sin trabajar a causa del accidente industrial, **A MENOS QUE** estén sin trabajar por orden del doctor, durante tres semanas consecutivas. El primer pago de compensación normalmente se le debe al trabajador al terminar el catorzavo día de estar sin trabajar, por orden del doctor. Un trabajador lastimado a causa del trabajo tiene derecho cada semana a una cantidad equivalente al 66 2/3% por ciento del promedio de su sueldo semanal, hasta llegar a un máximo equivalente al 75% por ciento del promedio de sueldos semanales designado por el Estado de Kansas. Estos beneficios están expuestos a cualquier cambio que ordene la legislatura del estado. Si el accidente resulta en una incapacidad de modo permanente, la ley de compensación en Kansas le da derecho a otros beneficios adicionales.

BENEFICIOS MEDICOS: Un trabajador lastimado a causa del trabajo tiene derecho a todo servicio médico razonable y necesario para curar y aliviar al trabajador de los efectos del accidente. El patrón, o el empleador, tiene derecho a escoger el doctor autorizado para darle tratamiento médico al trabajador. Aún así, el trabajador tiene derecho de escoger los servicios de otro doctor que no sea autorizado hasta llegar al límite máximo de \$500.00 dólares. Un trabajador puede pedirle al Director del Departamento de Compensación de Trabajadores que le cambie el doctor autorizado. También tiene derecho de pedir recompensación de la cantidad de gastos de viajes necesarios que haya hecho de más de cinco (5) millas, para obtener tratamiento médico de un accidente industrial. El porcentaje que se puede recompensar se establece por ley.

RESPONSABILIDADES DEL EMPLEADOR (EL PATRÓN):

1. El empleador debe reportar cada accidente industrial de los trabajadores al Departamento de Compensación de Trabajadores, dentro de 28 días de la fecha del accidente, o de la fecha en que el empleador se haya dado cuenta del accidente.
2. El empleador debe suministrar el pago de las reclamaciones sin cobrarle a los trabajadores que hacen los reclamos de beneficios.
3. El empleador debe exhibir **AVISOS POR ESCRITO** en Inglés y en Español, avisándoles a los trabajadores del Aseguración de Compensación de Trabajadores que tiene el empleador.
4. El empleador debe pagar los beneficios de compensación aunque no tenga aseguración.
5. En cuanto reciba aviso de un accidente, el empleador o patrón debe proporcionarle al trabajador información escrita, dándole asistencia al trabajador en la reclamación de los beneficios.

LOS EMPLEADORES (EL PATRÓN) DEBEN COMPLETAR LA SIGUIENTE INFORMACION PARA CADA TRABAJADOR LASTIMADO A CAUSA DEL TRABAJO:

ESTA PERSONA NOMBRADA SE ENCARGARÁ DE SU RECLAMO:

La Compañía Es: _____

El Domicilio Es: _____

Póngase En Contacto Con Esta Persona: _____

Llame a Este Teléfono: () _____

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