Approved: February 21, 1997
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 20, 1997 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Feleciano, Gooch, Harris, Jordan, Steffes, Steineger and Umbarger.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Gordon Cotton, Olathe
Rob Keehn, Olathe
Pat Keehn, Olathe
Hal Hudson, State Director, National Federation of Independent Business
Art Brown, Mid-America Lumbermens Association
Shannon Jones, Independent Living Council of Kansas
Susan Tabor, Independence, Inc., Lawrence
Mike Oxford, Executive Director, Topeka Independent Living Resource Center
Dennis Jackson, Local Tourette's Group, Topeka
JoAnn Donnell, Adapt Disabled Attendant Programs
Fred Mosteller, Wichita
Philip S. Harness, Director, Workers Compensation Division
Mary Adams, Kansas Association for the Blind and Visually Impaired, Inc.
Florence Pratt

Others attending: See attached list

Upon motion by Senator Steineger, seconded by Senator Gooch, the Minutes of the February 19, 1997 Meeting were unanimously approved.

SB 285 - Sole proprietorship without employees exempt from workers compensation coverage

Gordon Cotton, a sole proprietor, testified in support of **SB 285**. Mr. Cotton stated he is presently required to purchase a certificate of insurance in the amount of $750. **SB 285** would allow him to exempt himself from workers compensation coverage by giving an affidavit to the contractor stating he has no employees. The affidavit would hold the contractor harmless. Missouri and Oklahoma currently have legislation as proposed in **SB 285.**

Rob Keehn, Olathe, testified in support of **SB 285.** Mr. Keehn stated **SB 285** would assist his business and would eliminate the necessity of paying out money for a certificate of insurance at a cost of $750 which is passed on in bid proposals.

Hal Hudson, State Director, National Federation of Independent Business, testified in support of **SB 285**. The legislation would open opportunities for individual entrepreneurs to work as subcontractors without imposing the burden of workers compensation insurance costs on the principle contractors. Attachment 1

Art Brown, Mid-America Lumbermens Association, testified in support of **SB 285**. Mr. Brown testified Oklahoma presently has legislation similar to **SB 285**, and has provided a mechanism to protect employers from exposure to claims. Mr. Brown requested an amendment which would clarify a workers' status which reads: "whoever is paying the workers FICA would be the principal who would be responsible for the payment of a workers compensation claim." Attachment 2

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Pat Keehn, PR Builders, Olathe, testified in support of **SB 285**.

SB 321 - Conforming workers compensation act to provisions of the American's with Disabilities Act.

Shannon M. Jones, Statewide Independent Living Council of Kansas (SLICK), testified in support of **SB 321**. Ms. Jones stated SLICK is concerned that workers compensation records are open and are easy to access by phone call, "walk-in" or a written request. Ms. Jones stated disability advocates have worked to restrict access to workers compensation records and believe the Workers Compensation Division is possibly violating the Americans with Disabilities Act (ADA). Ms. Jones testified **SB 321** provides a safeguard to protect individuals and their right to privacy. Attachment 3

Susan E. Tabor, Independence Inc., testified in support of **SB 321.** Ms. Tabor stated the open workers compensation records are an unnecessary and illegal barrier to employment for many persons with disabilities. Medical records and other information about prior workers compensation claims is easily accessible by employers, who frequently do not hire an applicant due to past claims. Attachment 4

Mike Oxford, Executive Director, Topeka Independent Living Resource Center, testified in support of **SB 321**. Mr. Oxford stated people with disabilities face rampant discrimination and experience a 70% unemployment rate nationwide which is exacerbated in Kansas due to existing law - open workers compensation records. Mr. Oxford stated employers are illegally using workers compensation information to discriminate and deny employment opportunities to people with disabilities every day. **SB 321** allows appropriate business related access to the records, including research efforts to uncover fraud, and prevents the records being used against individuals in their search for employment. Attachment 5

Dennis Jackson, Representative of the Topeka Tourette's Group, testified in support of **SB 321.** Mr. Jackson stated the current open records law provides access and an invasion of privacy into a person's life by anyone at any time without the person's authorization. The present law discriminates against an employee attempting to find employment if they have ever filed a workers compensation claim. Passage of **SB 321** will restrict access to workers compensation records to only those who have legitimate business reasons to review the files. Attachment 6

JoAnn Donnell, Adapt Disabled Attendant Programs, testified in support of **SB 321**. Ms. Donnell stated individuals should not be subjected to possible discrimination by anyone, especially a possible employer. Ms. Donnell testified that the availability of workers compensation records to anyone who asks opens the door to possible employment discrimination as the result of a disability. Attachment 7

Fred Mosteller, Wichita, testified in support of **SB 321** and stated he has experienced discrimination in obtaining a job due to his disability. He has been advised that an employer is regarded as negligent if they do not screen out people with a history of job related accidents. Attachment 8

Phil Harness, Director, Workers Compensation Division, stated the Workers Compensation Advisory Council considered the question of open records at its November 21, 1996 meeting, its January 23, 1997 meeting and its February 10, 1997 meeting. Over those three meetings several persons testified as to the wisdom of keeping the workers compensation act records open in view of the Americans with Disabilities Act. At the February 10 meeting, half of the advisory council representing employees offered a draft generally keeping open such records with some exceptions. The half of the advisory council representing employers offered a draft retaining the present open records law but requiring a tracking system.

Mr. Harness stated presently the Division receives record requests orally, by telephone, by walk-ins, in writing and by computer. The Division keeps track of those individuals who sign onto the computer, along with the name of the individual whose records were viewed. However, the Division does not audit those records for any particular employer or other individual usage. Mr. Harness submitted an analysis of policies on open records of the 50 states. Attachment 9

Mary Adams, Kansas Association for the Blind and Visually Impaired, submitted written testimony in support of **SB 321.** Attachment 10

Florence Pratt, submitted written testimony in support of **SB 321.** Attachment 11

The meeting was adjourned at 9:00 a.m.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 20, 1997

NAME	REPRESENTING
FRED MOSTELLER	ME
Mike Oxford	Topeka Independent Living
TRINA PFEFER	SIGN LANGUAGE INTERPRETER
Martha Gabehart	KCDC
Shannon Jones	SILCK
Teresa Sittenauer	State Farm
TERRY LEATHERMAN	KCCI
Les Vogt	DOA
George Schureman	Div of Work Comp.
Jim Huff	Workers Comp
Diana Doak	Div of Workers Comp
Larry Bingham	IBEW PROF. WKRS
Jim Hodges	Teamsters Local 696
Jim Bigge	TEAMSTERS - 696
Larry Cain	Teamsters - 696
Bill Moore	TEAMSTER 696
Harry Bossw	DOA / DPS / SSIF
Jim Hastings	IRONWORKS LOCAL #10
Jim DeHoff	KS AFL-CIO

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: ______________________

NAME	REPRESENTING
Jim G. Valenzuela	KS AFL-CIO
[illegible]	Public
Earl Karstaytz	Ks. State Carpenters Union
Lou Smelser	DofA/DPS/HRMED
Roy T. Artman	DofA/DPS/L&L
[illegible]	Division of Workers Compensation
Steve [illegible]	Yellow Corporation
Sheli Sweeney	Division of Workers Comp.
Stephen Durrell	Attorney General's Office
David A. Shufelt	Dept Human Resources - Div Work Comp
Philip S. Harness	KDHR - Workers Comp.
Josie Torrez	Families Together, Inc.

KANSAS

LEGISLATIVE TESTIMONY

The Voice of Small Business

Testimony of Hal Hudson, State Director
Kansas Chapter, National Federation of Independent Business
Before the Kansas Senate Commerce Committee
on Senate Bill 285
Wednesday, February 19, 1997

Madame Chair Person and Members of the Committee:

Thank you for this opportunity to speak to you in support of Senate Bill 285.

My name is Hal Hudson, and I am the State Director for the 8,000-member Kansas Chapter of the National Federation of Independent Business. Our membership covers a broad spectrum of all types of businesses, who have one thing in common -- they are small.

While collectively they employ nearly 95,000 Kansans, with annual gross sales of over $8.5 billion, approximately 20 percent of our members employ only one or two persons. Often, the second "employee" is the spouse of the owner, who may serve as the office manager, bookkeeper, etc., and who need not be covered by workers compensation insurance by virtue of his/her relationship to the business owner/employer.

If enacted, S.B. 285 would open up opportunities for these individual entrepreneurs to work as subcontractors, without imposing the burden of workers compensation insurance costs on the principal contractors who use their services.

Two examples of the type of principal contractors who would be helped by this legislation are: carpet and floor covering stores who contract with individuals to install their products; and, remodeling contractors who obtain the services of an individual painter or a carpenter on small jobs.

S.B. 285 is the perfect companion to legislation enacted last year extending a similar advantage to owner-operators of motor vehicles, and exempting principal motor carriers who use their services. (See language beginning on page two, line 35 of this bill.)

We urge you to report S.B. 285 favorably, and to support its enactment.

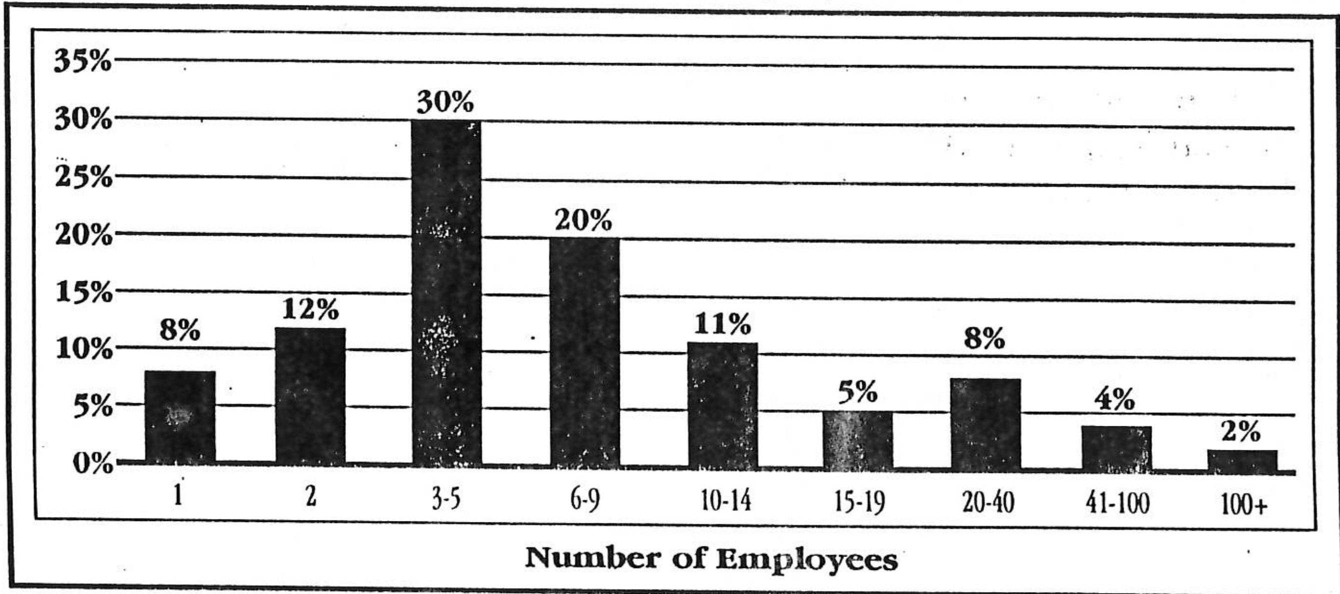
Thank you.

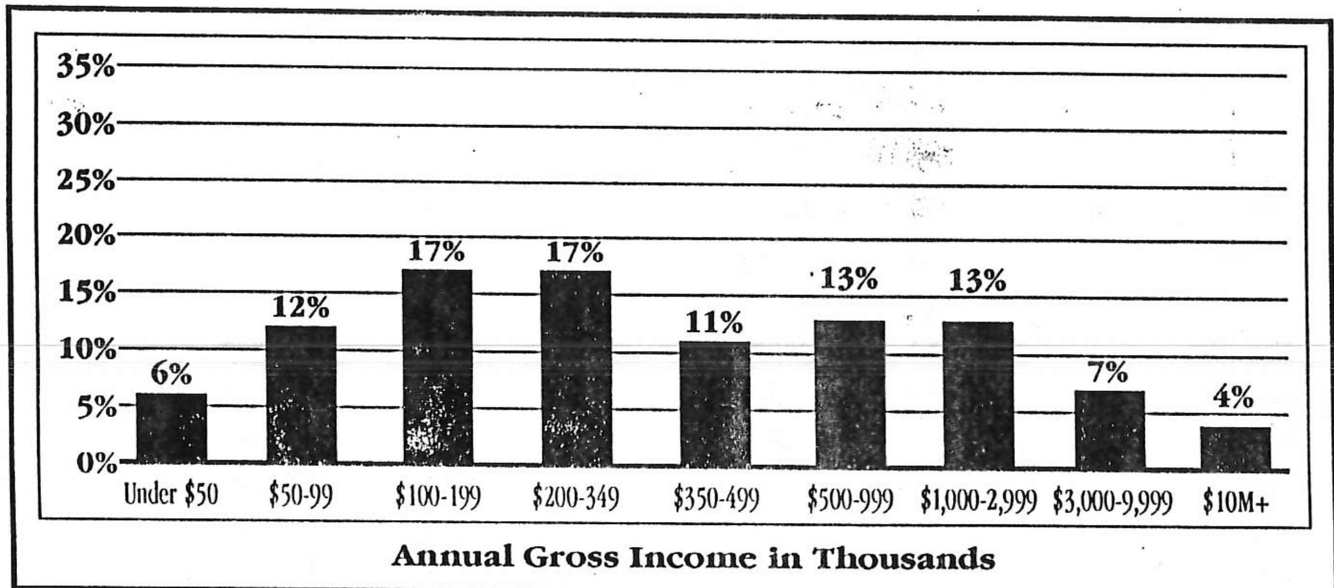
Senate Commerce Committee
February 20, 1997
Attachment 1-1 thru 1-3

3601 S.W. 29th St., Suite 116-B · Topeka, Kansas 66614 · 913-271-9449 · Fax 913-273-9200

NFIB / Kansas Membership Profile

NFIB/Kansas represents the entire spectrum of independent business, from one-person home-based operations to enterprises employing more than 100 people. The typical NFIB/Kansas member is quite small, employing five workers and ringing up gross sales of about $330,000 per year. Yet, in aggregate, the membership is a potent economic force, employing nearly 95,000 and earning more than $8.5 billion (gross) annually.





National Federation of Independent Business
Kansas Chapter
Membership by County
January 1997

County	Members	County	Members	County	Members
Allen	57	Greely	8	Osborne	9
Anderson	21	Greenwood	17	Ottawa	17
Atchison	54	Hamilton	22	Pawnee	19
Barber	15	Harper	15	Phillips	41
Barton	103	Harvey	88	Pottawatomie	70
Bourbon	52	Haskell	7	Pratt	25
Brown	68	Hodgeman	5	Rawlins	34
Butler	66	Jackson	38	Reno	153
Chase	8	Jefferson	56	Republic	22
Chautauqua	10	Jewell	17	Rice	30
Cherokee	30	Johnson	1,299	Riley	152
Cheyenne	56	Kearney	13	Rooks	52
Clark	9	Kingman	47	Rush	8
Clay	34	Kiowa	10	Russell	23
Cloud	54	Labette	40	Saline	156
Coffey	17	Lane	7	Scott	128
Comanche	13	Leavenworth	133	Sedgwick	695
Cowley	73	Lincoln	14	Seward	97
Crawford	102	Linn	19	Shawnee	420
Decatur	46	Logan	48	Sheridan	42
Dickinson	75	Lyon	113	Sherman	82
Doniphan	18	Marion	32	Smith	27
Douglas	258	Marshall	85	Stafford	6
Edwards	8	McPherson	80	Stanton	14
Elk	7	Meade	13	Stevens	14
Ellis	132	Miami	123	Sumner	38
Ellsworth	21	Mitchell	43	Thomas	94
Finney	80	Montgomery	111	Trego	23
Ford	74	Morris	14	Wabaunsee	11
Franklin	84	Morton	15	Wallace	25
Geary	58	Nemaha	86	Washington	32
Gove	68	Neosho	70	Wichita	6
Graham	26	Ness	11	Wilson	26
Grant	53	Norton	90	Woodson	7
Gray	27	Osage	72	Wyandotte	201

800 WESTPORT ROAD • KANSAS CITY, MISSOURI 64111-3190
816/931-2102 FAX 816/931-4617

MID-AMERICA LUMBERMENS ASSOCIATION

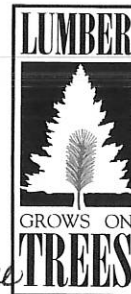
TESTIMONY BEFORE THE SENATE COMMERCE COMMITTEE

Senate Bill No. 285 February 20, 1997

Madame Chair, members of the Senate Commerce Committee, my name is Art Brown, and I represent the retail lumber and building material dealers in Kansas through the Mid-America Lumbermens Association.

I appear before you today in support of Senate Bill No. 285 which we believe provides a remedy to concerns an employer has about certain workers compensation responsibilities.

Attached to my testimony are documents from the Oklahoma State Dept. of Labor, outlining the provision they have in their law in regards to such an affidavit as described in line 19 page 2 of the bill. Our sense is that you as a Committee don't have to "invent the wheel," in providing language to implement this bill, as Oklahoma has already provided statutory language as to how this concept is utilized in their State. By registering with the director as the bill describes their is a control mechanism that allows for oversight into protecting employers from exposure to possible Workers Compensation claims.



Senate Commerce Committee
February 20, 1997
Attachment 2-1 thru 2-8

IN PARTNERSHIP WITH THE NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION

As we understand the bill, if a contractor is to perform work or a service for a principal with the intent of performance on a for hire basis, an affidavit is then provided to the principal as well as the director attesting that the contractor has no one in their employ to which the work comp act is applicable. With this affidavit, the contractor cannot file a workers compensation claim against the principal relating to work that the sole proprietor or his/her workers are doing for that principal. Given the understanding of the intent of this bill, this is a scenario that we envision occurring :

A for hire contractor agrees to perform a service for one of our members. For the sake of simplicity, let's say it is the application of siding. This contractor has 2 workers under their employment. Under this bill, the aforementioned affidavit would be presented to our member that absolves him from exposure to any Workers Compensation claim. If one of these workers were injured on the job, the exposure of the claim would go to the sole proprietor mentioned in the bill, and they would be subject to paying the claim either through the workers compensation act, or through tort action from the worker against the sole proprietor. To us, that is a decision that has to be worked out by the sole proprietor and their workers as how such an occurrance would be covered.

As a matter of pure suggestion or a possible amdendment we

recommend that whoever is paying the workers FICA would be the principal who would be responsible for the payment of a Workers Compensation claim.

Independent contractors are a real flash point issue to us. More and more of our members are starting to utilize such services as they provide. We have to think that if this is happening in our business, it is happening in several other businesses as well.

We highly encourge this Committee to take a very serious look at this issue, as we feel many more issues regarding independent contractors will be brought before this Committee in the upcoming Legislative sessions.

As a membership, we ask that after listening to my testimony, and reviewing the information you have attached to same, that this Committee passes out Senate Bill # 285 favorably.

I thank you for your time and consideration on this issue, and stand ready to answer any questions or address any comments you may have in regards to my testimony.

STATE OF KANSAS
HOUSE CHAMBER

Brenda Reneau
COMMISSIONER

GARRY BOSTON
REPRESENTATIVE 72ND DISTRICT

rank Keating
GOVERNOR

STATE CAPITOL
TOPEKA, KANSAS 66612

14 CIRCLE DRIVE
NEWTON, KANSAS 67114
(316) 283-3232

APPLICATION CHECK LIST FOR CERTIFICATE OF NON-COVERAGE

Please check off and be sure the following items are completed before you bring in or mail your certificate.

____ Name

____ Birth Date

____ Social Security Number

____ Correct and complete address

____ Phone Number

____ Nature of Business

____ Please check business formation: **Note:** If two people carry the same business name, neither can check "Sole Proprietor" box. This is in violation of the Non-Coverage Workers' Compensation Act.

____ Valid Notarization

____ Check or Money order

____ Enclose a legal size self-addressed stamped envelope

*****If the application is incomplete it will delay processing your certificate.*****

If you need more information or have any questions please call (405) 528-1500 ext. 356, 247, 265.

Note: Certificate of Non-Coverage rules are on reverse side

380:60-1-7. Certificate of Non-Coverage

(a) Certificate of Non-Coverage shall mean a certificate issued to an individual who declares exemption from the definition of "Employee" under Section 3 of Title 85 of the Oklahoma Statutes.
(b) A non-refundable fee of Ten Dollars ($10.00) shall be charged to each individual applying for certification of non-coverage under the Workers' Compensation Act.

(1) Prior to the approval and issuance of any certificate of non-coverage under the Workers' Compensation Act, an individual must complete a notarized application on a form provided by the Department of Labor.
(2) Each application shall be accompanied by a ten-dollar fee.
(3) A certificate of non-coverage must be renewed annually. A certificate of non-coverage is valid until the last day of the birth month of the certificate holders next birthday. Except if the birthday of the certificate holder falls between September 1, 1993 and March 31, 1994, the certificate holder's first renewal shall be the last day of his/her first birth month subsequent to March 31, 1994.
(4) Replacement costs for lost or destroyed certificates of non-coverage shall be five dollars ($5.00).

[Source: Added at 11 OK Reg 3217, eff 7-25-94]

2-5

Fals[illegible]g information to obtain certification of non-coverage is punishable by a f[illegible] not t[illegible]xceed Five Thousand Dollars ($5,000.00) (40 O.S., §415.1, 21 O.S., §1663)

APPLICATION FOR CERTIFICATE OF NON-COVERAGE

IS CERTIFICATION: **NEW** ☐ **DUPLICATE** ☐ **RENEWAL** ☐ ⇨ **CERTIFICATION #** ☐

NAME — First / MI / Last

BIRTH DATE   SSN

MAILING ADDRESS

CITY   STATE   ZIP

YOUR COMPANY NAME

HOW LONG # OF YEARS # OF MONTHS TELEPHONE NO.

ADDRESS

CITY   STATE   ZIP

NATURE OF BUSINESS

NON-REFUNDABLE CERTIFICATION FEE

One year $10.00 ☐   **Duplicate $5.00** ☐ **(of Current Certificate)**

I, ______________________ (Applicants Name), certify under penalty of law that I am engaged in the business of

______________________ (Describe Occupation)

I further certify that for the purposes of exemption for Workers' Compensation coverage, that I am not engaged in this business as an employee. I understand tha if I become an employee under 85 O.S., § 3(4) this changes my status and workers' compensation coverage must be provided by my employer.

Check business formation:
1) ☐ Sole proprietor.
2) ☐ Member of a partnership.
3) ☐ Owners of at least 10% of the capital of a Limited Liability company.
4) ☐ Stockholder of 10% or more of stocks issued by the business.

I have read the applicable statutory language in Title 40 O.S., §415.1, Title 85 O.S., § 3(4), Title 21 O.S., §1663 and Title 85 O.S., §11(B)(1). I understand that falsifyinc information to obtain certification of non-coverage is punishable by a fine not to exceed Five Thousand Dollars ($5,000.00) (40 O.S., §415.1, 21 O.S., §1663).

(Check or Money Order) Payable To:
OKLAHOMA DEPARTMENT OF LABOR
4001 North Lincoln Boulevard
Oklahoma City, OK 73105-5212
(405) 528-1500

SIGNED ______________________

PLEASE HAVE NOTARIZED

STATE OF OKLAHOMA
COUNTY OF ______________ } ss:

The applicant, ______________________, being duly sworn, on his oath say: that he/she has read the above, is acquainted with the circumstances to which it relates, and that the matters represented therein are true to the best of his/her knowledge, information and belief.

Subscribed and sworn to before me, the undersigned Notary Public, this ________ day of ____________, 19______.

____
Notary Public

My Commission Expires:

____

Did you remember to:
1. Complete the entire application? 2. Enclose payment? 3. Have application notarized? 4. Enclose a legal size self-addressed stamped envelope

Above items must be completed and notarized with payment attached before application is processed.

YOU WILL RENEW ANNUALLY ON YOUR BIRTH DATE

FOR OFFICE USE ONLY			
OCCUPATION CODE	CERTIFICATION NO.	TYPE OF PAYMENT	RECEIPT NO.

WCNC-2 (Revised 07/13/95)

2-6

The ce[illegible]e is good only when you are working within the boundaries of the following statutes. If you are performing work in which you would [illegible]nsidered an em[illegible] your employer should be supplying workers' compensation insurance for you.

APPLICABLE LEGAL DESCRIPTION

Title 40 O.S., § 415.1 - The Commissioner of Labor shall receive and maintain any "Certification of Non-Coverage Under the Workers' Compensation Act", which, if filed by an individual exempt from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes, shall establish a rebuttable presumption that the filer is not an employee for purposes of the Workers' Compensation Act. The Commissioner of Labor shall develop necessary rules for the establishment and maintenance of such certificates and shall charge a reasonable filing fee, not to exceed Ten Dollars ($10.00) for each certificate issued. Except as otherwise provided in Section 11 of Title 85 of the Oklahoma Statutes, the filing of such a certificate shall not affect the rights or coverage of any employee of the individual filing the certificate. Falsifying information for purposes of obtaining a "Certification of Non-Coverage Under the Workers' Compensation Act" shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars ($1,000.00).

Title 21 O.S., § 1663 (A) - Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not exceeding five (5) years or by a fine not exceeding Five Thousand Dollars ($5,000.00) or by both such fine and imprisonment. (B) For the purposes of this section, workers' compensation fraud shall include, but not be limited to, any act or omission prohibited by subsection C of this section and committed by a person with the intent to injure, defraud or deceive another with respect to any of the following: **(11)** A contract of insurance or a Certification of Non-Coverage Under the Workers' Compensation Act. © A person is guilty of workers' compensation fraud who: **(1)** Presents, causes to be presented or intends to present to another, any statement as part of or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose for the statement; **(2)** Assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to, used by or relied upon by another in connection with or in support of any of the statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose of the statement; **(3)** Conceals, attempts to conceal or conspires to conceal any information concerning any fact material to any of the purposes described in subsection B of this section; **(9)** Conceals, attempts to conceal, conspires to conceal or fails to disclose any change in any material fact, circumstance or thing for which there is a duty to disclose to another; or **(10)** Alters, falsifies, forges, distorts, counterfeits or otherwise changes any material statement, form, document, contract, application, certificate, or other writing with the intent to defraud, deceive, or mislead another.

Title 85 O.S., § 3(4) - "Employee" means any person engaged in the employment of any person, firm, limited liability company or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company, or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company, or any stockholder-employee of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a subcontractor, shall not be eligible to be covered under the prime contractor's policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage for their employees. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company, or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members, any or all of the limited liability company members, or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included, the sole proprietors, members of a partnership, members of a limited liability company, or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a fire fighter, peace officer or civil defense worker. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor. "Employee" shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor.

Title 85 O.S., § 11(B)(1) - The independent contractor shall, at all times, be liable for compensation due to his direct employees, or the employees of any subcontractor of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance policy issued to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor Under Section 20 of this act, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.

OKLAHOMA EMPLOYERS ARE REQUIRED TO PROVIDE APPROVED WORKERS' COMPENSATION FOR THEIR EMPLOYEES.

FAILURE TO PROVIDE WORKERS' COMPENSATION INSURANCE SUBJECTS VIOLATORS TO CIVIL PENALTIES (Title 85 O.S., § 61 et seq., Workers' Compensation Act.)

Brenda Reneau
COMMISSIONER

Frank Keating
GOVERNOR

Oklahoma Department of Labor

WORKERS' COMPENSATION DIVISION INFORMATION BULLETIN

CERTIFICATE OF NON-COVERAGE

This bulletin is issued by the Workers' Compensation Division of the State Department of Labor as a service to provide information to employers as well as contractors, sole proprietors and others who may qualify for the Certificate of Non-Coverage under the Workers' Compensation Act.

This certificate is not protection from the Workers' Compensation Act. There have been workers' compensation claims filed by individuals who have been issued a Certificate of Non-Coverage. These individuals, either on their own or at the request of their employers, have obtained certificates by falsely claiming they qualify for the exemption from employee status. Be aware that the Workers' Compensation Court has the right, by statute, to require an employer to pay the work-related injury claims filed by individuals who show evidence that they were actually employees, even if that individual obtained a Certificate of Non-Coverage.

The law allows for a penalty not to exceed $1,000.00 for falsifying information to obtain a Certificate of Non-Coverage. In addition, if fraudulent intent is discovered, criminal penalties of imprisonment not to exceed five years and/or a fine not to exceed $5,000.00 will be imposed. These penalties can be assessed against employee and employer alike. <u>Any person who applies for the certificate or requires a worker to obtain a certificate just to avoid the worker's compensation coverage requirements is subject to these civil and criminal penalties.</u>

If you are using the Certificate of Non-Coverage to reduce liability without regard to the consequences, you should reconsider your position. The Certificate of Non-Coverage <u>does not</u> keep an injured worker from filing a workers' compensation claim against you and your company. If employee status is established, the judge will require you to pay <u>all</u> costs of the injury. If you are requiring your employees to obtain Certificates of Non-Coverage with false information, you are violating the law.

If you have any questions about the work status of the people who perform work for you, contact the Workers' Compensation Court, the Internal Revenue Service, the Oklahoma Employment Security Commission, your accountant or lawyer.

This bulletin is informational in nature, and should not be construed as legal or financial advice.

Call (405) 528-1500, ext. 216, if you have any questions or require additional information about this pertinent issue

Statewide Independent Living Council of Kansas

SILCK

700 S.W. Jackson, Suite 1003, Topeka, KS 66603 ☎ (913) 234-6990 voice / tdd ☎ (913) 234-6651 fax

Testimony to
Senate Commerce Committee
SB 321
by
Shannon M. Jones
Statewide Independent Living Council of Kansas
February 20, 1997

Thank you for the opportunity to present testimony in support of Senate Bill 321. My name is Shannon Jones and I am the executive director of the Statewide Independent Living Council of Kansas (SILCK). The SILCK is a federally mandated Council responsible for ensuring that community options are available for Kansans with disabilities who want to live independently in the community of their choice.

The SILCK is concerned with the fact that at this time workers compensation records are completely open. Currently, there are three methods used to access these records: by phone call, "walk-in", or written request. There is absolutely no monitoring or restriction on looking at workers comp records. In addition there is no record kept of when the workers comp records are accessed AND more importantly, no record of the reason why an individual needs to access these workers comp records.

For the past several years, disability advocates have worked to restrict access to workers compensation records. Most recently we have expressed these concerns and provided testimony to the Workers Compensation Advisory Council and have met at least three times and offered language to some members of the Workers Compensation Advisory Council. For years we have attempted to resolve this issue yet our concerns have been ignored. Throughout these meetings we have asked one primary question:

> For what specific purpose do employers need access to this information before a person is hired?

To date we have not received any reasonable answer to this basic question.

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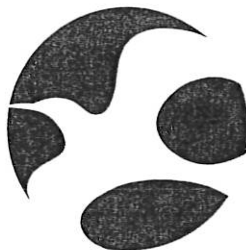
Attachment 3-1 thru 3-2

By administering a program that provides access to workers compensation records without being a party to the claim, or a court order, the Kansas Division of Workers Compensation is quite possibly violating the Americans with Disabilities Act (ADA), Title I Sec. 102 and the state law, Kansas Act Against Discrimination (KAAD) in aiding or perpetuating discrimination against a qualified individual with a disability by providing significant assistance to an employer that discriminates on the basis of a perceived disability by allowing access to the workers compensation case records.

The SILCK believes SB 321 would provide a safeguard for protected individuals and their right to privacy otherwise workers comp records are open to abuse.

Another issue for this committee to consider as the state of Kansas works towards implementing welfare reform, if this abuse is allowed to continue, this only creates another barrier to employment for those people who want to work. The state of Kansas spends millions of dollars educating people with disabilities and rehabilitating people with disabilities in order for them to become taxpaying citizens. We certainly do not need another roadblock to getting people off of the welfare rolls and into a job.

Therefore, the SILCK respectfully requests this committee to support passage of SB 321 in order to protect the state of Kansas and its citizens who simply want to work.



February 20, 1997

Kansas Senate Commerce Committee

Regarding: S.B.321

From: Susan E. Tabor, L.S.C.S.W.,
Benefits Advocate
Independence, Inc.
1910 Haskell Avenue
Lawrence, Kansas 66046

I appreciate the opportunity to come before you today in support of Senate Bill 321. In my work, I assist people in applying for Social Security and other benefits for which they may be eligible, in appealing denials of benefits, and with representation in administrative hearings. I also assist people who can work with referrals and support in their return-to-work efforts.

Frequently, people for whom I provide representation in Social Security matters are currently receiving or have received Worker's Compensation benefits. In addition to these, there areothers with whom I work who are receiving or have received Worker's Compensation benefits.

Open Worker's Compensation records have presented unnecessary and illegal barriers to employment for many people with disabilities. Despite changes in our Federal and state laws to protect people with disabilities, the fact that records for Worker's Compensation are open still sets up opportunities for information to be misused and abused by employers.

In the current system, medical records and other information about prior Worker's Compensation claims is easily accessible by employers. Even if access were made more difficult, as in requiring a signature from an employer for accountability purposes, how the records are used can't be controlled or monitored. Whether people do what they say they will do with the information would be impossible to document.

The best way to demonstrate to you the far-reaching and tragic effects this injustice can have on people's lives is best done through sharing stories of a couple of people with whom I have worked regarding their disability-related benefits. (Names have been changed to protect confidentiality, at my their request.)

Cheryl, aged 39, had held a variety of factory and other unskilled work since her middle teenage years. She was a single mother in her mid-twenties, and was solely responsible for the support of her four children. Though she worked hard, she loved her work and was good at it.

Cheryl experienced a work-related injury that left her in chronic pain and with other residual ongoing symptoms. She applied for Social Security and was denied benefits, even after a hearing. Despite her many restrictions, she really wanted to work, and despite her application for Social Security, looked for work. She noticed a pattern of rejections despite very positive interviews.

As she followed up with and befriended some of the employers with whom she had applied, she learned, much to her horror, that information regarding her prior Worker's Compensation history and medical records had been obtained by these people, which in effect eliminated her from being considered. She learned that their fear of re-injury or of their Worker's Compensation rate increasing transcended their knowledge of or regard for the current disability rights laws.

As time passes, she becomes harder to re-employ because she has more unemployed time to account for on her resume. She is not a candidate for formal schooling because she has a learning disability, which was not a problem when she did manual labor. She is terrified about her future.

Steve has another story to tell. He had worked for a number of years for the same business in a job that required work with chemicals. He developed a condition because of this work that made it impossible for him to continue working.

His condition improved after a few years, and though he could not return to the same specialized work, he wanted to begin working again. He had gone to school to learn a new skill and was anxious to return to the work force. In addition to his medical condition improving, thanks to progress in medicine, he had also learned that he had been at least partially misdiagnosed earlier, again thanks to progress in medicine.

When he began looking for work, he too was surprised and dismayed by constant rejections after positive interviews. Again, he learned after networking with potential employers, that they had grave concerns about hiring him because of information gleaned from prior Worker's Compensation records, some of which was grossly inaccurate now because of changes in his situation which were not accurately reflected in that information.

He too is frightened about what his future may hold for him and his family.

Both of these people would have and could have happily provided documentation of disability post-offer, for purposes of

establishing the legitimacy of their request for reasonable accommodation, within the scope of the law.

And others have found that even though their conditions have radically improved and in some cases have almost totally healed, that employers are so afraid of additional claims being filed that the fact that people have used that benefit to which they were entitled is an unnecessary barrier. Despite its illegality, people report that they are told by employers that they do not hire people with prior Worker's Compensation claims, current health notwithstanding.

Since we are not in the business of legislating the morality of employers and employees (nor do we have the capability), I submit to you that the most sensible way to protect employees and employers from inaccurate information or use of information is to close Worker's Compensation records.

Prior Worker's Compensation records should be available only by Court order, and for purposes of pending litigation only.

Topeka Independent Living Resource Center

(913) 233-4572 V/TDD • Fax 913-233-1561 • Toll Free 1-800-443-2207
501 SW Jackson Street • Suite 100 • Topeka, KS 66603-3300

February 19, 1997

Testimony presented to Senate Commerce Committee

in support of Senate Bill 321

by Mike Oxford
Executive Director

Thank you for the opportunity to present my views on this important piece of legislation. This testimony will outline for you why this bill needs to be passed into law. Legalities and technicalities aside, I also appeal to your sense of fair play as lawmakers of the free state of Kansas.

People with disabilities face rampant discrimination, despite great strides forward since the passage of the Americans with Disabilities Act in 1990. People with disabilities face a 70% unemployment rate nationwide. In our state, we have identified a practice carried out under existing state law - open workers compensation records - that exacerbates discrimination in employment.

It is illegal under federal law to make pre-employment inquiries about a job applicant's disability or medical condition. This happens every day in Kansas. Individuals' medical conditions are published and available to the general public, including cyberspace - the world wide web. People should have a reasonable expectation of privacy related to medical information. People who think what goes on between a doctor, nurse, therapist, etc. and themselves should be private need to be disabused of this notion if their medical need involves an on - the - job injury. Their injury, any resulting disability and the costs involved are published and available including via the internet.

Employers are illegally using workers compensation information to discriminate and deny employment opportunities to people with disabilities every day in our state. I sent a staff member down to the workers compensation office yesterday to see how easy (or difficult) it really was to obtain the information. All she had to do was to give the name and social security number to the clerk who promptly gave her the complete file. She was never asked her name, for any ID, for the purpose or anything. The information was provided completely anonymously. (See attachment 1)

Senate Commerce Committee
February 20, 1997

It is attached with identifying information blacked out. I have also attached a copy of the informational sheet provided along with the record by the state of Kansas. The guidance it provides is, at best insufficient and at worst very misleading. Employers following its guidance are in danger of violating the civil rights of people with disabilities. The text at issue is below:

> "According to the Equal Employment Opportunity Commission (EEOC) Guidance on the Americans with Disabilities Act (ADA), AFTER making a conditional job offer, employers may ask about a person's workers compensation history in a medical inquiry or examination, as long as it is required of all applicants in the same job category."

The informational sheet warns employers they MAY NOT inquire into a person's workers compensation history prior to a conditional job offer. At the same time, the practice warned against is encouraged by state law and policy thereunder. This is worse than just being disingenuous. It is hypocrisy to warn against something in one breath and then encourage it in the next.

What the rest of the interpretive guidance which is referred to by DHR / Workers Compensation states, but is not included in their informational sheet, is the following (attached are the complete regulatory citations and interpretive guidance published by the EEOC which DHR / Workers Compensation refers to in its instructional sheet - See Attachment 2):

> "However, if an employer withdraws an offer of employment because the medical examination reveals that the employee does not satisfy certain employment criteria, either the exclusionary criteria must not screen out an individual with a disability or a class of individuals with disabilities, or they must be job related and consistent with business necessity. As part of the showing that an exclusionary criteria is job-related and consistent with business necessity, the employer must also demonstrate that there is no reasonable accommodation that will enable the individual with a disability to perform the essential functions of the job."

What this boils down to is that it is illegal to use workers compensations records alone to disqualify an applicant AFTER the offer of a job. It must be demonstrated that the individual cannot perform the job after accommodations are made. This is obviously a much higher standard than is currently in place. Senate Bill 321 rectifies this egregious practice of discrimination.

You have heard (or will hear) plenty about the abuse of the system and about fraud committed by a few people. The disability community applauds efforts to prevent and punish fraud, but not at the expense of illegally violating our civil rights and locking us out of jobs.

Senate Bill 321 allows appropriate business related access to the records, including research efforts to uncover fraud. There is no legitimate business reason to keep the records open. Any use of the information obtained under the current system is most likely illegal. Without belaboring the point further, I simply refer you to the attached documentation noted above.

In Kansas, before the passage of the Americans with Disabilities Act, we began taking strides to enhance the freedom and independence of people with disabilities. The Hayden administration and the legislature of the time saw the wisdom of allowing us directs our own in-home, attendant services. Kansas is recognized nationwide as a leader in this arena. This leadership has passed along through the Finney and now the Graves administration. We are asking for the same kind of bipartisan support for this issue - closing discriminatory employment practices.

Why are we spending millions of dollars to educate, train, re-train, rehabilitate and maintain in the community, people whom we turn right around and allow to be screened out of job opportunities in violation of state and federal law and, really, basic common decency?

By closing the records per Senate Bill 321, we are causing no harm. By keeping the records open we are causing harm. The choice is clear. Whether records are open or closed, some people are going to try to cheat the system. Let us not throw out the baby with the bath water. Most people with disabilities want to work for the first time or to re-enter the job force. Do not continue to lock us out because of the few cheaters. Close the records. Keep our lives and our medical conditions private.

I am a middleweight employer around here. We have 48 staff and act as a payroll agent for some 1100 personal attendants. Our payroll is 5.3 million per year. Most of our employees are disabled. They pay taxes, purchase homes, cars, appliances, etc. People with disabilities can and do contribute to the economy. Close the records. We will be able to contribute more. My agency pays about $150,000 per year for workers compensation insurance. I want my money well protected and as well spent as the next employer. I have paid some claims which I felt were very unfair to me, the employer. I pledge my support to help with fixing the system where it is broken, but not at the expense of violating the civil rights of people with disabilities.

If the records stay open or some "more accountable" system is set in place, then only a storm of litigation and ill will can follow. People with workers compensation claims, including people with disabilities, can only assume that they weren't interviewed or offered a job due to discrimination.

Even if people have to identify themselves to get the records, third parties will still be used (illegally), and people who know they have records will have to check with workers compensation to see if their files have been pulled by potential employers and then litigate to see if the records were used illegally. This is a nightmarish scenario we can simply avoid by passing Senate Bill 321 into law.

I leave this presentation with this challenge. Pass Senate Bill 321 and see if the fraud rate changes at all - increase or decrease - then make decisions based on empirical evidence. My prediction is that closing the records will not change fraudulent claims, nor rid us of malingerers and abusers. This unfortunate condition will not change. What will change will be the elimination of illegal, discriminatory employment practices and more people with disabilities will get back to work.

Attachment 1

STATE OF KANSAS
DEPARTMENT OF HUMAN RESOURCES

Bill Graves, Governor

Wayne L. Franklin, Secretary

DIVISION OF WORKERS COMPENSATION
800 S.W. Jackson Street, Suite 600, Topeka, KS 66612-1227
PHONE .... (913) 296-3441
FAX .... (913) 296-0839

TO: Recipient

FROM: Phil Harness
Director, Workers Compensation

IMPORTANT INFORMATION--PLEASE READ

Enclosed is the information you recently requested. The Division of Workers Compensation is glad to have been able to assist you in your research. However, you should be aware of the following prohibitions regarding when and how such data may be obtained and how it may be used.

DISABILITY DISCRIMINATION LAW: 29 CFR 1630.13(a) (appendix) states that an employer may not inquire into an applicant's workers compensation history PRIOR to making a conditional offer of employment to the individual. In addition, 29 CFR 1630.6(a) provides that it is an unlawful discriminatory practice to enter into a contractual relationship or other arrangment that has the effect of subjecting a covered employer's employees or applicants to the discrimination prohibited by the ADA. Therefore, the use of a third party to make inquiries about workers compensation histories prior to an offer of employment is prohibited.

According to the Equal Employment Opportunity Commission (EEOC) Guidance on the Americans With Disabilities Act (ADA), AFTER making a conditional job offer, employers may ask about a person's workers compensation history in a medical inquiry or examination, as long as it is required of all applicants in the same job category. 42 USC 12112(d)(3) provides that information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate files and be treated as a confidential medical record.

If you have questions, regarding the permissible or impermissible uses of information obtained from the Division of Workers Compensation, you are strongly urged to seek legal counsel.

K-WC 881 (10-96)

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WORKERS COMPENSATION STATISTICS

SSN: [redacted] NAME: [redacted]

FILE	COUNT
ACCIDENT FILE	5
FORM D FILE	0
DOCKET FILE	1
REHABILITATION FILE	0
ELECTION FILE	0
FORM 88 FILE	1

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WORKERS COMPENSATION ACCIDENT REPORT

PAGE 01
DATE - 02/17/97

SSN: [redacted] MOD: 010
CLAIMANT: [redacted]
KS [redacted]

DOA: 08/12/92 CART NO: 532-446
FILED: 08/21/92 SEX: F-FEMALE
AGE: 30

EMPLOYER: 0780036 STATE OF KANSAS
LANDON OFFICE BLDG RM 951S
TOPEKA KS 66612
SIC: 09199

INSUR NO: 80951-02 STATE SELF INSURANCE FUND
CLAIM NO:

INJURY: YES
SEVERITY: 0 - NO TIME LOSS
CAUSE: 998 - NO EXPLANATION
SOURCE: 9998 - NO EXPLANATION
NATURE: 507 - CARPOL TUNNEL SYNDROME, GANGLIA (BELL) PALSEY
MEMBER: 997 - MULTIPLE MEMBERS INJURED
COUNTY: 177 - SHAWNEE

DISEASE: N - NO
DEATH DATE: 00/00/00
REHAB: N
RTW: 00/00/00

DOCKET NO.

56

PROC DATE: 09/01/9
SCREEN:
D

PC

WORKERS COMPENSATION ACCIDENT REPORT

PAGE 02
DATE - 02/17/97

SSN: [redacted] MOD: 020
CLAIMANT: [redacted]
KS [redacted]

DOA: 01/23/91 CART NO: 467-1923
FILED: 02/05/91 SEX: F-FEMALE
AGE: 29

EMPLOYER: 0427161 SRS
DSOB RM 625 SOUTH
TOPEKA KS 66612
SIC: 09441
INSUR NO: 80851-02 STATE SELF INSURANCE FUND
CLAIM NO:

INJURY: YES
SEVERITY: 1 - TIME LOSS
CAUSE: 052 - FALL, ONTO OR AGAINST OBJECTS
SOURCE: 1900 - FURNITURE, FIXTURES, FURNISHINGS ETC
NATURE: 998 - NO EXPANATION
MEMBER: 997 - MULTIPLE MEMBERS INJURED
COUNTY: 177 - SHAWNEE

DISEASE: N - NO
DEATH DATE: 00/00/00
REHAB: 0
RTW: 00/00/00

DOCKET NO.:

PROC DATE: 02/08/91
SCREEN: AU
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WORKERS COMPENSATION ACCIDENT REPORT

PAGE 03
DATE - 02/17/97

SSN: [redacted] MOD: 030
CLAIMANT: [redacted]
KS 66604-1252

DOA: 09/01/89 CART NO: 434-416
FILED: 04/04/90 SEX: F-FEMALE
AGE: 28

EMPLOYER: 0427161 SRS
DSOB RM 625 SOUTH
TOPEKA KS 66612
SIC: 09441
INSUR NO: 80851-02 STATE SELF INSURANCE FUND
CLAIM NO:

INJURY: YES
SEVERITY: 0 - NO TIME LOSS
CAUSE: 100 - BODILY REACTION (IMPOSED STRESS, STRAIN ON PART OF BODY)
SOURCE: 0400 - BODILY MOTION
NATURE: 562 - CARPOL TUNNEL SYNDROME, GANGLIA (BELLS PALSEY)
MEMBER: 320 - WRIST
COUNTY: 177 - SHAWNEE

DISEASE: N - NO
DEATH DATE: 00/00/00
REHAB: 0
RTW: 09/01/89

DOCKET NO.:

PROC DATE: 04/09/90
SCREEN: AU
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WORKERS COMPENSATION ACCIDENT REPORT

PAGE 04
DATE - 02/17/97

[redacted] MOD: 0[illegible]
CLAIMANT: [redacted]
KS 66604-1252

DOA: [illegible] CART NO: [illegible]
FILED: [illegible]
SEX: N-N/A
AGE: [illegible]

EMPLOYER: [illegible] STATE [illegible]

INSUR NO: 00000-00 INSURANCE CO. UNKNOWN
CLAIM NO:

INJURY: YES
SEVERITY: 1 - TIME LOSS
CAUSE: 121 - LIFTING OBJECTS (LIFTING, PULLING, LOADING INVOLVED)
SOURCE: 9800 - NONCLASSIFIABLE
NATURE: 160 - BRUISE, CONTUSION, CRUSHING
MEMBER: 330 - HAND
COUNTY: 177 - SHAWNEE

DISEASE: N - NO
DEATH DATE: 00/00/00
REHAB: 0
RTW: 00/00/0

DOCKET NO.

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PROC DATE: 03/17/8
SCREEN: AU
D 70

WORKERS COMPENSATION ACCIDENT REPORT

PAGE 05
DATE - 02/17/97

SSN: [redacted] MOD: 050
CLAIMANT: [redacted]
KS [redacted]

DOA: 09/28/82 CART NO: 178-134
FILED: 09/28/82
SEX: N-N/A
AGE: 21

EMPLOYER: 0000000 SERIAL NOT IN FILE

SIC: 05000

INSUR NO: 00000-00 INSURANCE CO. UNKNOWN
CLAIM NO:

INJURY: YES
SEVERITY: 1 - TIME LOSS
CAUSE: 998 - NO EXPLANATION
SOURCE: 9800 - NONCLASSIFIABLE
NATURE: 160 - BRUISE, CONTUSION, CRUSHING
MEMBER: 320 - WRIST
COUNTY: 177 - SHAWNEE

DISEASE: N - NO
DEATH DATE: 00/00/00
REHAB: 0
RTW: 00/00/00

DOCKET NO.:

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PROC DATE: 09/23/82
SCREEN: AU
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PAGE 01

WORKERS COMPENSATION FORM 88 RECORD

DATE - 02/17/97

SSN: [redacted] MOD: 001
EMPLOYEE: [redacted]

FILED DATE: 01/02/85
CARTRIDGE NO.: 35-964

SERIAL: 0000000
EMPLOYER:

SIC: 00000
DATE EMPLOYED: 00/00/00

CATEGORY: 180 N.E.C.

STATUS: A - ACTIVE ENTRY: XX PROC DATE: 01/02/85

PV. N

WORKERS COMPENSATION DOCKET RECORD

02/17/97

SSN: [redacted] MOD: 0100 DOCKET NO: 144879 SERIES:

CLAIMANT: [redacted] LOCATOR: SSS

DOA: 05/03/90

CART-NO-1:

KS [redacted] CART-NO-2:

EMPLOYER: 0427161 SRS

SIC: 09441

INSURANCE: 8085102 STATE SELF INSURANCE FUND ADDTL DATA: NO

VENUE COUNTY: 177 SHAWNEE HEARING COUNTY: 177 SHAWNEE

ALJ: 020 WARD, JAMES R.

REG. TERRITORY: 06

INJURY CAUSE: 085 REPITITION OF PRESSURE

SOURCE: 3400 OFFICE MACHINES

MEMBER: 398 UPPER EXTREMITIES, MULTIPLE FATAL: NO

FILED DATE: 05/18/90

STATUS: INACTIVE

PROC: 05/23/90

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SSN: [redacted] MOD: 0102 NAME: [redacted]

DOCKET NO: 14487

ACTIONS AND COMPENSATIONS

401 STLMT (DKT) BY RUCKER, ERIC K 09/26/91 LS

COMMENTS: WCF DISMSD

TEMP TOTAL IN THE SUM OF $5,374.74

MED. & HOSP. IN THE SUM OF $2,750.94

UNAUTH. MED. IN THE SUM OF $350.00

LUMP SUM IN THE SUM OF $5,374.74

410 COURT REPORTER FEES TO NORA LYON & ASSOC. 09/26/91 LS

502 PRELIM HEARING CANCELLD BY CLAIMANT 12/27/90 DA

COMMENTS: BY PHONE (AM)

600 PRELIM HEARING SET BY WARD, JAMES R. 11/26/90 DA

COMMENTS: TOPEKA/12-27-90

102 APP PRELIM HEAR (E-3) BY CLAIMANT 10/17/90 MK

309 MOT IMPLD WCF-2ND INJRY BY RESPONDENT 07/27/90 DA

100 APP HEAR (E-1) BY CLAIMANT 05/18/90 MP

304 MOT PROD OR INSP RECDS BY CLAIMANT 05/18/90 MP

992 SERIES ACCIDENTS FROM 00/00/00 THRU 05/03/90 MP

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SCREEN: DA

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Attachment 2

Regulation

1630.13 Prohibited medical examinations and inquiries.

(a) Pre-employment examination or inquiry. Except as permitted by section 1630.14, it is unlawful for a covered entity to conduct a medical examination of an applicant or to make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability.

(b) Examination or inquiry of employees. Except as permitted by section 1630.14, it is unlawful for a covered entity to require a medical examination of an employee or to make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability.

Interpretive Guidance

Section 1630.13 Prohibited Medical Examinations and Inquiries

Section 1630.13(a) Pre-employment Examination or Inquiry

This provision makes clear that an employer cannot inquire as to whether an individual has a disability at the pre-offer stage of the selection process. Nor can an employer inquire at the pre-offer stage about an applicant's workers' compensation history.

Employers may ask questions that relate to the applicant's ability to perform job-related functions. However, these questions should not be phrased in terms of disability. An employer, for example, may ask whether the applicant has a driver's license, if driving is a job function, but may not ask whether the applicant has a visual disability. Employers may ask about an applicant's ability to perform both essential and marginal job functions. Employers, though, may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions. See Senate Report at 39; House Labor Report at 72-73; House Judiciary Report at 42-43.

Section 1630.13(b) Examination or Inquiry of Employees

The purpose of this provision is to prevent the administration to employees of medical tests or inquiries that do not serve a legitimate business purpose. For example, if an employee suddenly starts to use increased amounts of sick leave or starts to appear sickly, an employer could not require that employee to be tested for AIDS, HIV infection, or cancer unless the employer can demonstrate that such testing is job-related and consistent with business necessity. See Senate Report at 39; House Labor Report at 75; House Judiciary Report at 44.

REGULATION

1630.12 Retaliation and coercion.

(a) Retaliation. It is unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by this part or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this part.

(b) Coercion, interference or intimidation. It is unlawful to coerce, intimidate, threaten, harass or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this part.

INTERPRETIVE GUIDANCE

REGULATION

1630.14 Medical examinations and inquiries specifically permitted.

(a) Acceptable pre-employment inquiry. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

INTERPRETIVE GUIDANCE

Section 1630.14 Medical Examinations and Inquiries Specifically Permitted

Section 1630.14(a) Pre-employment Inquiry

Employers are permitted to make pre-employment inquiries into the ability of an applicant to perform job-related functions. This inquiry must be narrowly tailored. The employer may describe or demonstrate the job function and inquire whether or not the applicant can perform that function with or without reasonable accommodation. For example, an employer may explain that the job requires assembling small parts and ask if the individual will be able to perform that function, with or without reasonable accommodation. See Senate Report at 39; House Labor Report at 73; House Judiciary Report at 43.

An employer may also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. Such a request may be made of all applicants in the same job category regardless of disability. Such a request may also be made of an applicant whose known disability may interfere with or prevent the performance of a job-related function, whether or not the employer routinely makes such a request of all applicants in the job category. For example, an employer may ask an individual with one leg who applies for a position as a home washing machine repairman to demonstrate or to explain how, with or without reasonable accommodation, he would be able to transport himself and his tools down basement stairs. However, the employer may not inquire as to the nature or severity of the disability. Therefore, for example, the employer cannot ask how the individual lost the leg or whether the loss of the leg is indicative of an underlying impairment.

On the other hand, if the known disability of an applicant will not interfere with or prevent the performance of a job-related function, the employer may only request a description or demonstration by the applicant if it routinely makes such a request of all applicants in the same job category. So, for example, it would not be permitted for an employer to request that an applicant with one leg demonstrate his ability to assemble small parts while seated at a table, if the employer does not routinely request that all applicants provide such a demonstration.

An employer that requires an applicant with a disability to demonstrate how he or she will perform a job-related function

REGULATION

INTERPRETIVE GUIDANCE

must either provide the reasonable accommodation the applicant needs to perform the function or permit the applicant to explain how, with the accommodation, he or she will perform the function. If the job-related function is not an essential function, the employer may not exclude the applicant with a disability because of the applicant's inability to perform that function. Rather, the employer must, as a reasonable accommodation, either provide an accommodation that will enable the individual to perform the function, transfer the function to another position, or exchange the function for one the applicant is able to perform.

An employer may not use an application form that lists a number of potentially disabling impairments and ask the applicant to check any of the impairments he or she may have. In addition, as noted above, an employer may not ask how a particular individual became disabled or the prognosis of the individual's disability. The employer is also prohibited from asking how often the individual will require leave for treatment or use leave as a result of incapacitation because of the disability. However, the employer may state the attendance requirements of the job and inquire whether the applicant can meet them.

An employer is permitted to ask, on a test announcement or application form, that individuals with disabilities who will require a reasonable accommodation in order to take the test so inform the employer within a reasonable established time period prior to the administration of the test. The employer may also request that documentation of the need for the accommodation accompany the request. Requested accommodations may include accessible testing sites, modified testing conditions and accessible test formats. (See section 1630.11 Administration of Tests).

Physical agility tests are not medical examinations and so may be given at any point in the application or employment process. Such tests must be given to all similarly situated applicants or employees regardless of disability. If such tests screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, the employer would have to demonstrate that the test is job-related and consistent with business necessity and that performance cannot be achieved with reasonable accommodation. (See section 1630.9 Not Making Reasonable Accommodation: Process of Determining the Appropriate Reasonable Accommodation).

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(b) Employment entrance examination. A covered entity may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

(1) Information obtained under paragraph (b) of this section regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require

INTERPRETIVE GUIDANCE

As previously noted, collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of Section 503 of the Rehabilitation Act is not restricted by this part. (See section 1630.1(b) and (c) Applicability and Construction).

Section 1630.14(b) Employment Entrance Examination

An employer is permitted to require post-offer medical examinations before the employee actually starts working. The employer may condition the offer of employment on the results of the examination, provided that all entering employees in the same job category are subjected to such an examination, regardless of disability, and that the confidentiality requirements specified in this part are met.

This provision recognizes that in many industries, such as air transportation or construction, applicants for certain positions are chosen on the basis of many factors including physical and psychological criteria, some of which may be identified as a result of post-offer medical examinations given prior to entry on duty. Only those employees who meet the employer's physical and psychological criteria for the job, with or without reasonable accommodation, will be qualified to receive confirmed offers of employment and begin working.

Medical examinations permitted by this section are not required to be job-related and consistent with business necessity. However, if an employer withdraws an offer of employment because the medical examination reveals that the employee does not satisfy certain employment criteria, either the exclusionary criteria must not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, or they must be job-related and consistent with business necessity. As part of the showing that an exclusionary criteria is job-related and consistent with business necessity, the employer must also demonstrate that there is no reasonable accommodation that will enable the individual with a disability to perform the essential functions of the job. See Conference Report at 59-60; Senate Report at 39; House Labor Report at 73-74; House Judiciary Report at 43.

As an example, suppose an employer makes a conditional offer of employment to an applicant, and it is an essential function of the job that the incumbent be available to work every day for the next three months. An employment entrance

REGULATION

emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) The results of such examination shall not be used for any purpose inconsistent with this part.

(3) Medical examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation as required in this part. (See section 1630.15(b) Defenses to charges of discriminatory application of selection criteria).

(c) Examination of employees. A covered entity may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

INTERPRETIVE GUIDANCE

examination then reveals that the applicant has a disabling impairment that, according to reasonable medical judgment that relies on the most current medical knowledge, will require treatment that will render the applicant unable to work for a portion of the three month period. Under these circumstances, the employer would be able to withdraw the employment offer without violating this part.

The information obtained in the course of a permitted entrance examination or inquiry is to be treated as a confidential medical record and may only be used in a manner not inconsistent with this part. State workers' compensation laws are not preempted by the ADA or this part. These laws require the collection of information from individuals for state administrative purposes that do not conflict with the ADA or this part. Consequently, employers or other covered entities may submit information to state workers' compensation offices or second injury funds in accordance with state workers' compensation laws without violating this part.

Consistent with this section and with section 1630.16(f) of this part, information obtained in the course of a permitted entrance examination or inquiry may be used for insurance purposes described in section 1630.16(f).

Section 1630.14(c) Examination of employees

This provision permits employers to make inquiries or require medical examinations (fitness for duty exams) when there is a need to determine whether an employee is still able to perform the essential functions of his or her job. The provision permits employers or other covered entities to make inquiries or require medical examinations necessary to the reasonable accommodation process described in this part. This provision also permits periodic physicals to determine fitness for duty or other medical monitoring if such physicals or monitoring are

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(1) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.

(d) Other acceptable examinations and inquiries. A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program

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required by medical standards or requirements established by Federal, state, or local law that are consistent with the ADA and this part (or in the case of a federal standard, with Section 504 of the Rehabilitation Act) in that they are job-related and consistent with business necessity.

Such standards may include federal safety regulations that regulate bus and truck driver qualifications, as well as laws establishing medical requirements for pilots or other air transportation personnel. These standards also include health standards promulgated pursuant to the Occupational Safety and Health Act of 1970, the Federal Coal Mine Health and Safety Act of 1969, or other similar statutes that require that employees exposed to certain toxic and hazardous substances be medically monitored at specific intervals. See House Labor Report at 74-75.

The information obtained in the course of such examination or inquiries is to be treated as a confidential medical record and may only be used in a manner not inconsistent with this part.

Section 1630.14(d) Other Acceptable Examinations and Inquiries

Part 1630 permits voluntary medical examinations, including voluntary medical histories, as part of employee health programs. These programs often include, for example, medical screening for high blood pressure, weight control counseling, and cancer detection. Voluntary activities, such as blood pressure monitoring and the administering of prescription

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available to employees at the work site.

(1) Information obtained under paragraph (d) of this section regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) Information obtained under paragraph (d) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.

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drugs, such as insulin, are also permitted. It should be noted, however, that the medical records developed in the course of such activities must be maintained in the confidential manner required by this part and must not be used for any purpose in violation of this part, such as limiting health insurance eligibility. House Labor Report at 75; House Judiciary Report at 43-44.

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1630.15 Defenses.

Defenses to an allegation of discrimination under this part may include, but are not limited to, the following:

(a) Disparate treatment charges. It may be a defense to a charge of disparate treatment brought under sections 1630.4 through 1630.8 and 1630.11 through 1630.12 that the challenged action is justified by a legitimate, nondiscriminatory reason.

(b) Charges of discriminatory application of selection criteria. -- (1) In general. It may be a defense to a charge of discrimination, as described in section 1630.10, that an alleged application of

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Section 1630.15 Defenses

The section on defenses in part 1630 is not intended to be exhaustive. However, it is intended to inform employers of some of the potential defenses available to a charge of discrimination under the ADA and this part.

Section 1630.15(a) Disparate Treatment Defenses

The "traditional" defense to a charge of disparate treatment under title VII, as expressed in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and their progeny, may be applicable to charges of disparate treatment brought under the ADA. See Prewitt v. U.S. Postal Service, 662 F.2d 292 (5th Cir. 1981). Disparate treatment means, with respect to title I of the ADA, that an individual was treated differently on the basis of his or her disability. For example, disparate treatment has occurred where an employer excludes an employee with a severe facial disfigurement from staff meetings because the employer does not like to look at the employee. The individual is being treated differently because of the employer's attitude towards his or her perceived disability. Disparate treatment has also occurred where an employer has a policy of not hiring individuals with AIDS regardless of the individuals' qualifications.

The crux of the defense to this type of charge is that the individual was treated differently not because of his or her disability but for a legitimate nondiscriminatory reason such as poor performance unrelated to the individual's disability. The fact that the individual's disability is not covered by the employer's current insurance plan or would cause the employer's insurance premiums or workers' compensation costs to increase, would not be a legitimate nondiscriminatory reason justifying disparate treatment of a individual with a disability. Senate Report at 85; House Labor Report at 136 and House Judiciary Report at 70. The defense of a legitimate nondiscriminatory reason is rebutted if the alleged nondiscriminatory reason is shown to be pretextual.

Section 1630.15(b) and (c) Disparate Impact Defenses

Disparate impact means, with respect to title I of the ADA and this part, that uniformly applied criteria have an adverse impact on an individual with a disability or a disproportionately negative impact on a class of individuals with disabilities. Section 1630.15(b) clarifies that an employer may use selection criteria that have such a disparate impact, i.e., that

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qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise denies a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(2) Direct threat as a qualification standard. The term "qualification standard" may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (See section 1630.2(r) defining direct threat).

(c) Other disparate impact charges. It may be a defense to a charge of discrimination brought under this part that a uniformly applied standard, criterion, or policy has a disparate impact on an individual with a disability or a class of individuals with disabilities that the challenged standard, criterion or policy has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

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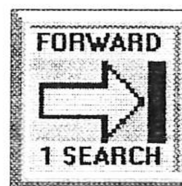
screen out or tend to screen out an individual with a disability or a class of individuals with disabilities only when they are job-related and consistent with business necessity.

For example, an employer interviews two candidates for a position, one of whom is blind. Both are equally qualified. The employer decides that while it is not essential to the job it would be convenient to have an employee who has a driver's license and so could occasionally be asked to run errands by car. The employer hires the individual who is sighted because this individual has a driver's license. This is an example of a uniformly applied criterion, having a driver's permit, that screens out an individual who has a disability that makes it impossible to obtain a driver's permit. The employer would, thus, have to show that this criterion is job-related and consistent with business necessity. See House Labor Report at 55.

However, even if the criterion is job-related and consistent with business necessity, an employer could not exclude an individual with a disability if the criterion could be met or job performance accomplished with a reasonable accommodation. For example, suppose an employer requires, as part of its application process, an interview that is job-related and consistent with business necessity. The employer would not be able to refuse to hire a hearing impaired applicant because he or she could not be interviewed. This is so because an interpreter could be provided as a reasonable accommodation that would allow the individual to be interviewed, and thus satisfy the selection criterion.

With regard to safety requirements that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, an employer must demonstrate that the requirement, as applied to the individual, satisfies the "direct threat" standard in section 1630.2(r) in order to show that the requirement is job related and consistent with business necessity.

Section 1630.15(c) clarifies that there may be uniformly applied standards, criteria and policies not relating to selection that may also screen out or tend to screen out an individual with a disability or a class of individuals with disabilities. Like selection criteria that have a disparate impact, non-selection criteria having such an impact may also have to be job-related and consistent with business necessity, subject to consideration of reasonable accommodation.



Worker Compensation Claims Records Search

Verify and determine Worker Compensation Claims Records of applicants, employees or subjects before you hire, promote or do business with them. You can search by 41 different states, the District of Columbia and Puerto Rico.

Why Do I Need A Worker Compensation Claims Records Search?

Minimize your liability in hiring individuals that could jeopardize your business, create financial disaster or harm other employees. This search is vital in determining the type of applicant or subject you will be associating with.

What Is Required To Request This Report?

This will somewhat vary by the Worker Compensation Claims record repository, but normally: name, address, date of birth and/or social security number. See the below tutorial for more detailed information.

Worker Compensation Claims Records Tutorial

Information provided to NCI clients on Worker Compensation Claims record searches require a release from the subject you are requesting information on or a general indemnity release by the NCI client. Each report request cannot be sent back to you without a release.

ENTRY FORMAT - STANDARD PROCEDURE

The following information should be included in your report request for accurate searches to be performed. If items of information are missing, the request will be sent for processing, but the results may not be satisfactory to your needs. Once the request has been sent by you, you will be charged since NCI automatically begins the computerized search for the record.

Testimony Submitted to Senate Commerce Committee
in Support of Senate Bill 321
by Dennis Jackson
Representative of the Local Tourette's Group

Thank you for allowing me this chance to speak to you today. At this time, Workman's Compensation Records are open and made available for anyone who requests them. All that is needed to make an inquiry is the person's name and Social Security Number. The information provided in these records are private medical records regarding any claim that has been filed by this individual. The current system provides access and invasion of privacy into a person's life by anyone at any time without the person being notified in any way that this has taken place.

This practice has the potential of adversely affecting an individual's pursuit of employment and self-sufficiency.

Example: I have spoken with a lady who stated that it was common practice for the company she worked for to check Workman's Compensation records on applicants that were suspected of being disabled. I have also spoken with a lady who filed a claim at her place of employment and was terminated four days after she returned to work on grounds of "incompetence".

Another example is that if someone, through their employment - such as nursing, becomes HIV positive; that person may choose not to work in the health field any longer, but may choose to apply for a different type of job. If that person applies for another job and the potential employer checks the Workman's Compensation records, the fact that the potential employee is HIV positive will become known and therefore could possibly affect that person getting a job.

The passage of Senate Bill 321 will rectify this problem by restricting access to workers compensation records to only those who have legitimate business reasons to review the files. Disability rights advocates believe that Senate Bill 321 is in keeping with the spirit and intent of the Americans With Disabilities Act and the Kansas Act Against Discrimination.

Again, thank you for your time and consideration of this matter.

Senate Commerce Committee
February 20, 1997
Attachment 6

Hello, my name is Jo Ann Donnell and I am a recent arrival to Topeka from Pittsburgh, Pennsylvania. I have been a counselor and an advocate of people with disabilities for well over 10 years. Upon hearing about Senate Bill #321 and given explanation of what it is or about an alarm throughout my whole being. I strongly support passage of this bill to ensure the right to privacy and fairness.

Lets be real about this situation especially in the area of employment. I learned early on in my vocational endeavors not to expose my disability before receiving an interview. At one time, I was nieve and would when asked on an employment application "are there any extra ordinary circumstances or disability" I simply would say "BLINDNESS". I am an educated woman with a Master's Degree and varied employment experience stated on my resume. However, when I state my disability questions come up and doubts creep into the employer's mind "How could she do this job? No Way!" I learned simply to present myself and credentials forgetting about my disability which I often do, and put my hat into the employment ring displaying my qualifications like everyone else.

Even in the 90's fear and prejudice still exist. I don't want and should not be subjected to possible discrimination by anyone especially a possible employer. I am a talented counselor with varied experiential skills and am entitled to a fair shot employment wise. I hope never to hear again as in the past when walking into an interview "well, How the hell did you get here?" And I replied meekly " I took a bus" Guess what. No job for me that day. The manager's mind was made shut down before I even set down. All I am saying is the ease of availability of Workmen's Comp records concerning my medical status to anyone without question of why these records are wanted and even at the time no identification is required. I demand this gross lack of concern for personal privacy be stopped. I strongly urge bipartisan support of Senate Bill of #321. And sincerely thank the sponsors of this legislation for having the courage and conviction by bringing to the forefront these vital issues.

ADAPT member who I represent would simply say " Equality and justice for all!" That would include the employment market place. On a daily basis the availability to anyone who asks for these records open the door to possible employment discrimination as result of a disability. This must not remain so, this must stop! Immediately. Thank you for allowing me to speak my mind.

Senate Commerce Committee
February 20, 1997
Attachment 7

My wife and I are here from Wichita advocating for our House Bill 2153 expanding the current tax credit for handicap Accessible housing to include New Construction. When we learned about this bill. Sen. 321

TESTIMONY
FRED MOSTELLER
February 20, 1997

Thank you for the opportunity to speak on behalf of sealing the Worker Compensation Files. Please lock those files.

I have been seeking employment since I obtained my Associates degree in Electronics in 1994.

I have applied to several different employers. These same employers continue to publish job openings, that matched my qualifications even after I had received a "No Thank You" letter.

We have been told that an employer is regarded as negligent if they do not screen out people with a history of job related accidents.

Fred Mosteller

Senate Commerce Committee
February 20, 1997
Attachment 8

TESTIMONY BEFORE THE SENATE COMMERCE COMMITTEE ON SENATE BILL NO. 321

BY PHILIP S. HARNESS, DIRECTOR OF WORKERS COMPENSATION FEBRUARY 20, 1997

Madame Chair and committee persons:

Thank you for allowing me to testify before you as to Senate Bill No. 321 which, in summary form, seeks to amend the present law requiring the workers compensation records to be open and instead requiring them to be closed, with few exceptions.

The Workers Compensation Advisory Council considered the question of open records at its November 21, 1996, meeting, as well as its January 23, 1997, meeting, and again at its February 10, 1997, meeting. Over those three (3) meetings, several persons appeared and testified as to the wisdom of keeping the workers compensation act records open in view of the Americans with Disabilities Act. Members of the advisory council offered several suggested drafts. One of those early drafts is presently embodied in Senate Bill No. 321. After a great deal of discussion as to whether an amendment is recommended at all, and if so, whether the draft should start with the general proposition that the records be closed with certain exceptions or open with certain exceptions, at the February 10, 1997, meeting the half of the advisory council representing employees offered a draft generally keeping open such records with some exceptions. The half of the advisory council representing employers in the state offered a draft retaining the present law (open records) but requiring a tracking system.

Currently, the Division receives records requests in essentially the following forms: oral, by telephone, walk-in, written requests, the dial-up research method (by computer), and in addition, the Division releases its records to three (3) entities for a fee. As to the computer requests, the Division issues passwords to certain requesting individuals, who must enter those passwords on the computer to access the Division's records. The Division keeps track of those individuals who sign onto the computer, along with a notation as to which of the four (4) screens were viewed, along with the name of the individual whose records were viewed. While we retain those tracking records, the Division does not audit those records for any particular employer or other individual usage.

There are legitimate, non-discriminatory reasons by some to view workers compensation records. For example, with the 1993 Legislative changes and the abolition of the fund's function as an incentive to hire handicapped workers, evidence of prior injury is a mitigating defense available to a subsequent employer. That evidence (of a prior injury) is available by examination of the records within the Division of Workers Compensation.

Thank you for your courtesy in receiving this testimony and the Division is, of course, happy to answer any questions regarding it.

Senate Commerce Committee
February 20, 1997
Attachment 9-1 thru 9-2

COMPARISON OF STATE WORKERS COMPENSATION DIVISIONS OPEN RECORDS POLICIES (2-3-97)

The following is an analysis of states' policies on open records within each Division of Workers Compensation. There are four main categories, as outlined below. Information obtained via phone survey with each individual Workers Compensation division.

1--OPEN RECORDS TO ALL INTERESTED PARTIES
2--MEDICAL AND/OR PERSONAL INFORMATION CONFIDENTIAL
3--INFORMATION RELEASED TO PARTIES OF CLAIM
4--INFORMATION RELEASED WITH SIGNED WAIVER FROM CLAIMANT

STATE	CATEGORY				COMMENTS
ALABAMA				4	
ALASKA			3	4	
ARIZONA		2	3	4	
ARKANSAS	1*				1* Except claimant information regarding AIDS.
CALIFORNIA			3	4*	4* - Or if authorized by Division of WC.
COLORADO				4	
CONNECTICUT	1	2*			2* - Can be released with a signed request/waiver from claimant.
DELAWARE			3	4	
FLORIDA	1*				1* - Except medical, AIDS or personal police officer information.
GEORGIA			3		Need court order if not party to claim.
HAWAII			3		
IDAHO				4	
ILLINOIS	1				
INDIANA			3	4	
IOWA	1				Provide ADA warning and keep log of requests.
KANSAS	1				
KENTUCKY		2			Once litigated, all records open.
LOUISIANA		2	3		2-Reporting Forms 3-Orders signed by ALJ.
MAINE			3	4	
MARYLAND	1				
MASSACHUSETTS	1*				*Except medical, DOB, SSN as protected by Privacy Act.
MICHIGAN		2			Once litigated, all records open.
MINNESOTA			3	4	
MISSISSIPPI		2			Once controverted (to ALJ) ALL records open.
MISSOURI		2	3	4	
MONTANA				4	Appeals board decisions open record.
NEBRASKA		2			Charge fee for records search.
NEVADA			3	4	
NEW HAMPSHIRE		2	3	4	First report of injury public record.
NEW JERSEY	1				
NEW MEXICO			3		Tapes of hearings are public record.
NEW YORK			3	4	
NORTH CAROLINA	1*	2			1* Orders, opinions, awards, appeal records.
NORTH DAKOTA			3	4	Settlements, awards, appeal decisions are open record.
OKLAHOMA	1				
OREGON			3	4	4-Also review requests on case by case basis.
PENNSYLVANIA			3	4	Orders, awards, appeal decisions are open record.
RHODE ISLAND			3		Appeal decisions open to the public.
SOUTH CAROLINA			3	4	
SOUTH DAKOTA	1*			4	1* -Once litigated, all records open.
TENNESSEE			3	4	
TEXAS		2	3	4	
UTAH				4	
VERMONT		2		4	First report open record; subsequent information confidential.
VIRGINIA	1*		3	4	1* - Awards and orders.
WASHINGTON			3	4	
WEST VIRGINIA			3	4	
WISCONSIN			3	4	Appeal decisions are open record.
WYOMING			3	4	
TOTALS	13	12	27	29	

9-2

Kansas Association for the Blind and Visually Impaired, Inc.

AN AFFILIATE OF THE AMERICAN COUNCIL OF THE BLIND

February 20, 1997

TO: Senate Committee on Commerce

FROM: Mary Ada,s, Chair, Legislative Committee

SUBJECT: Senate Bill 321 - SUPPORT

We support Senate Bill 321. Our organization feels that current law creates an invasion of privacy for persons who have had a workers compensation related disability.

Medical records are quite comprehensive. There is no way to limit workers compensation records to a specific injury alone. Many very personal things about a persons' disability or disabilities may be contained in such records, which are open under current the law.

The Americans With Disabilities Act and Section 504 of the Rehabilitation Act both make it illegal to discriminate against a qualified applicant for employment because they have a record of disability. This is a good provision in that, if it is the desire of State and federal lawmakers who, for example, have implemented welfare reform, to insure that all who can work are able to get jobs and do so, then one's past record of disabling conditions should not be considered. The best way to not have an employer inadvertently consider past disabilities is to close the records about them. After all, if is very hard in making employment decisions for an interviewer to imagine that the do not know something which has come to their attention through a routine search of open records.

Senate Commerce Committee
February 20, 1997
Attachment 10

Post Office Box 292 / Topeka, Kansas 6660

SUPPORT STATE BILL 321

I am here today to talk about the state bill 321. I would like to say that I should be judged on my qualifications if my resume show that I have the skills, that mean that I should have interview with whoever I am applying to work for.

I have a question for you what if I want to see my boss record how will she/he feels about me going through her/his file and violating her/his privacy.

I should be judged by my skills not my disability. Any one should be able to get a job if you have the qualifications the disability should not be put into consideration.

Easy access to record by anyone not related to business should be stopped unless I am employee by this company and injury occurs that result in my applying for workmans comp, the employer should not have the right to my record. I am asking for employment equality.

Please support State Bill 321

Senate Commerce Committee
February 20, 1997

Attachment 11