Approved: March 5 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 25, 1997 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Gooch, Harris, Jordan, Ranson, 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:
Carol Marinovich, Mayor, City of Kansas City, Kansas

Others attending: See attached list

Upon motion by Senator Ranson, seconded by Senator Jordan, the Minutes of the February 24, 1997 meeting were unanimously approved.

Confirmation of Carol Marinovich, Kansas Development Finance Authority, appointment expires January 15, 2001.

Carol Marinovich stated she received her B.S. in Education from St. Marys College, Leavenworth, and her M.S. in Education from the University of Kansas. Ms. Marinovich stated she was an elementary and special education teacher, served on the Kansas City City Council, and was elected Mayor of Kansas City in 1995. Ms. Marinovich stated she is knowledgeable about general obligation and industrial revenue bonds, and believes her governmental experience will be of value to the Kansas Development Finance Authority Board. Ms. Marinovich stated she is aware of the necessity of not infringing into the private sector relating to state financing of economic development and housing.

The hearing was concluded and Ms. Marinovich excused.

Sharon Huffman, Commission on Disability Concerns submitted written material relating to **SB 321**. Attachment 1

Senator Steineger moved, seconded by Senator Steffes, that **Carol Marinovich** be recommended favorable for confirmation to the Kansas Development Finance Authority. The recorded vote was unanimous in favor of the motion.

The Chair opened the meeting to questions and discussion on amendments proposed to the Workers Compensation Act. The question was asked of conferees representing labor, business, claimants and the Division: "what are the strengths and weaknesses of the present workers compensation system?"

Jolene Grabill, KTLA, stated the weakness of the present system is the number of claimants that are unrepresented as a result of the present attorney fee structure and the concern of claimants being able to keep future medical claims open.

Terry Leatherman, KCCI, stated the weaknesses are: definition of work disability, selection of administrative law judges, and claimants not agreeing to early settlement.

John Ostrowski, AFL-CIO, stated the weaknesses are: safety in the work place, reduced benefits to claimants, and the backlog of claims before the Workers Compensation Appeals Board.

Philip S. Harness, Director, Workers Compensation Division, stated weaknesses are: backlog of claims, definition of work disability, and procedural problems with utilization and peer review process.

Mr. Harness stated it is difficult to interpret the definition of work disability when the legislature continues to amend the definition and its intent.

The Chair asked Conferees and Committee members to have all amendments prepared in order that the workers compensation bills can be discussed and acted upon. There will be no action on **SB 321** prior to the March 10 Advisory Council meeting.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 5, 1997.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 25, 1997

NAME	REPRESENTING
LINDA WOOD	KANSAS DEVELOPMENT FINANCE AUTHORITY
Bill Caton	" "
BUD GORLAND	KCCI
Bill Jarrell	BOEING
Rich Guthrie	Health Midwest
Hal Hudson	NFIB/KS
Bob Brown	mid-Am Lumbermen
TERRY LEATHERMAN	KCCI
Teresa Hanover	State Farm
HARRY BORSI	Dept DPS
CHAS STANFIELD	KDHE
Roger Towzko	BK IV
Whitney Damron	City of KC, KS
Phillip Harness	KDHR - Div. of Work. Comp.
David A. Shufelt	" " " "
Mark Bascellino	KDOC&A
Jim Wetroff	KS AFL-CIO
John Ostrowski	KS AFL-CIO
KEVIN ROBERTSON	KANSAS SEED DEALERS ASSN.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: 2-25-97

NAME	REPRESENTING
Stephen Durrell	Attorney Gen.
Lou Sauri	KDHE

STATE OF KANSAS
DEPARTMENT OF HUMAN RESOURCES

Bill Graves, Governor

Wayne L. Franklin, Secretary

COMMISSION ON DISABILITY CONCERNS
1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877
VOICE: (913) 296-1722 • **TTY:** (913) 296-5044 • **FAX:** (913) 296-0466
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SENATE COMMERCE COMMITTEE
SB 321
February 19, 1997

Madam Chair, members of the Committee, thank you for this opportunity to testify in support of SB 321.

I represent the Kansas Commission on Disability Concerns, a state commission established by law to carry on a continuing program to promote a higher quality of life for people with disabilities. One of our responsibilities is to submit recommendations to the legislature believed necessary to promote the independence of people with disabilities.

Our Commission began studying the issue of workers compensation records being open to the public after receiving numerous phone calls from individuals questioning the legality of potential employers making inquiries about their prior workers compensation claims. The study revealed several things which I will outline below.

FACT:
The Kansas Division of Workers Compensation is required under K.S.A. 44-550b(a) to release the information contained within a claimant's file to the public.

PROBLEM:
The Americans with Disabilities Act of 1990 (ADA) prohibits employers from making medical inquiries prior to a conditional offer of employment (29 CFR Section 1630.13(a)). This includes using a third party, such as a previous employer, insurance company or the state workers compensation division to obtain the information. An inquiry about previous workers compensation claims or on-the-job injuries is considered to be a medical inquiry. Denying employment opportunities based on an individual's records or history of workers compensation claims is a violation of the ADA, as is denying employment opportunities based on the perception of disability.

FACT:
The State of Kansas, through the Division of Workers Compensation is providing significant assistance to employers that discriminate on the basis of a perceived disability by allowing indiscriminate access to the workers compensation case records.

Senate Commerce Committee
Date Feb. 25, 1997
Attachment # 1-1 thru 1-50

PROBLEM:
By administering a program that provides access to workers compensation records without the signed consent of the claimant, being a party to the claim or having a court order, the Kansas Division of Workers Compensation is quite possibly violating 28 CFR Section 35-130(b)(1)(v). This section of the ADA states that aiding or perpetuating discrimination against a qualified individual with a disability is prohibited.

SOLUTION:
Restrict access to workers compensation records as proposed in SB 321. This would take away the temptation for employers to check out a potential employee's history of claims and therefore significantly reduce the discrimination against individuals with previous on-the-job injuries. It would also make a statement that the State of Kansas believes it is good public policy to avoid anything that even gives the appearance of aiding employers who deny employment opportunities based on a person's history or record of disability.

CONCLUSION:
As you are all aware, an income is one of the requirements for survival in this world for all people, not just people with disabilities. Employment is generally the means of obtaining an income unless a person is totally disabled and unable to work, at which time their income is derived from taxes collected from employed citizens. People with disabilities traditionally have had a tougher time finding a job than those without disabilities even after the implementation of Title I of the Americans with Disabilities Act of 1990. Many fully qualified individuals are being denied employment opportunities simply because they have been injured on the job at some time in their life. It would be in the best interest of all employers, job-seekers and the State of Kansas to pass SB 321 and begin restricting access to workers compensation records to those who truly have the need and legal right to know.

Attached to this testimony you will find a packet containing KCDC's presentation to House Labor and Industry Committee in 1993, results of KCDC's nationwide survey of workers compensation policies regarding open records, Governor Finney's 1993 Veto Message and two news articles about workers compensation records being open to the public.

If you have any questions or need assistance please contact Sharon Huffman, Legislative Liaison for KCDC, at 296-6527 or email shuffman@idir.net.

Thank you for considering this important matter.

STATE OF KANSAS

OFFICE OF THE GOVERNOR

JOAN FINNEY, *Governor*
State Capitol, 2nd Floor
Topeka, KS 66612-1590

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TDD# 1-800-992-0152
FAX# (913) 296-7973

April 21, 1993

Message to the Senate and the House of Representatives of the State of Kansas:

Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I am vetoing Senate Substitute for House Substitute for House Bill 2354.

Over the past year, and during the regular session of this Legislature, many dedicated people have worked with me to reform the Kansas' workers compensation system before the 1993 Legislature adjourns. Our mission is two-fold. On the one hand, we must protect our workers who have been, or might be, injured on the job. On the other hand, it is imperative that we reduce the excessive workers compensation costs which threaten a weakening of the Kansas economy.

I call upon the members of the Kansas Legislature to join with me in focusing on these two groups, business people and workers, and to disregard the pressures of special interest groups which represent the principal cost-driving forces in this system.

Earlier, the Kansas Chamber of Commerce and Industry laid 37 issues on the table for resolution. Thirty-six were resolved to represent a fair and meaningful reform package.

As a preface to the final wrap-up session, I am asking the members of the bill's conference committee to meet with me this week to discuss the merits of House Bill 2354 and its weaknesses.

I agree with the provisions of the bill as it was passed by the members of the House of Representatives. I commend the provisions adopted by the House members regarding the handling of second injury claims. This process would immediately save employers $4 million.

I support the $50,000 cap on permanent partial disability as stated in the House of Representatives' version of HB 2354.

I support the compromise language of HB 2354 aimed at containing medical costs. I concur with the curtailment of costly lump sum settlements in injury disputes.

I ask the Members of the Legislature to consider the following suggestions:

1) Give small businesses the opportunity to join self-insurance pools by expanding the present law, thus allowing a variety of small businesses to join in a pool so as to drive costs lower and provide higher quality services for their employees.

2) Limit rate increases for any business classification to 15 percent, rather than as high as 50 percent until the effect of changes in a new law can be accurately reviewed.

3) Strengthen the workplace safety measures in the bill so that employees will be protected and premium costs can be lowered.

4) Change the modification system so that implemented safety programs can be rewarded by insurance companies on a timely basis.

5) Consider implementing a small business competitive insurance fund to revive marketplace competition and provide a baseline for future premium rate increases.

6) To reduce litigation costs and to serve workers fairly, change the definition of "work disability" to the language proposed by the Director of Workers Compensation.

7) Provide for just representation for injured workers when they are negotiating their needs against highly trained attorneys and insurance professionals.

8) Streamline vocational rehabilitation measures to reduce costs.

* 9) Delete sections of this bill that would close certain records to public scrutiny. I have already directed the Division of Workers Compensation to take administrative steps to meet the disclosure protection needs of disabled persons under the law. But I cannot condone legislated secrecy in handling of workers compensation when the public has a right to know how public monies are being spent.

During its regular session, the Legislature made considerable effort and progress toward reforming the Kansas workers compensation system. For that, I commend those legislators who were directly involved, especially those who served on the conference committee. As with any major legislative reform issue, we inevitably come to the time for compromise. Now is such a time. We must reach a meaningful, reasoned compromise that will accomplish what we all desire -- reducing costs to employers while maintaining a basic fairness in the law for workers injured on the job. This process must begin immediately.

Accordingly, as I meet with legislators in the next few days in an effort to draft an acceptable reform package, I look forward to working with all legislative members upon their return on April 28th toward agreement on a bill they can support and one that I can sign into law.

Joan Finney, Governor

Date

Shaw

Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Commission on Disability Concerns
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April 27, 1993

The Honorable Joan Finney
State Capitol, 2nd Floor
Topeka KS 66612-1590

Dear Governor Finney,

Thank you for your consideration of the injured worker in your veto message of Senate Substitute for House Substitute for House Bill 2354, the Workers Compensation Reform Bill.

In response to your suggestion about not closing the records to the public I submit the following:

1. There is nothing that the Director of Workers Compensation can do under the current law to restrict access to the records. K.S.A. 44-550b mandates that all the records be open to public disclosure...period. It does not allow for any administrative requirement for release forms from the claimant, nor does it allow the Director to restrict access to certain employers (ie. only after conditional offer of employment has been made). At best, the only thing the Director can do is make a feeble attempt to slow down the process of discrimination and provide a means for the injured worker to prove that an employer accessed their files prior to offer of employment.

2. You say that you cannot condone legislated secrecy in handling of workers compensation when the public has a right to know how public monies are being spent. There are numerous programs operating within our state, using public monies (state and/or federal), that do not allow public access to client files. Unemployment Insurance, Social and Rehabilitation Services programs, and Medicaid patients, just to name a few. If the Federal Government can mandate that Unemployment Insurance files be kept so confidential that warning signs are posted on each claims examiner's computer, cannot we as a state also protect the files of the injured worker? Do we consider income information more confidential and "secret" than information regarding a person's mental or physical disabilities? It seems rather uncanny that once this same individual ends up on unemployment or welfare their records will be confidential within programs that are truly operating on public monies, not insurance premiums like the workers compensation system.

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I have attached a flow chart describing what happens when an injured worker applies for a job. This is not just mere speculation, but comes from numerous conversations with job applicants who have alleged employment discrimination based on their history of on-the-job injury. Please note that three of the outcomes result in the injured worker draining public monies from state agencies that are already operating on depleted budgets.

The ideal solution would be to amend K.S.A. 44-550b to allow access to workers compensation files to the following:

a. Parties to the claim.
b. Persons with written authorization from the injured worker.
c. To others that demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction. (taken from Idaho Code §9-340[(38)](37)).

There is not one person other than those listed above that has a legitimate need to know about an individual's record of on-the-job injury. If it's fraud and abuse that people are so concerned about, then that needs to be dealt with by writing stronger anti-abuse statutes, not by continuing to penalize the injured worker over and over again each time they apply for work and are denied because of their history of an injury (which we all know by now employers are not allowed to ask the applicant, so they must be finding out from the Division of Workers Compensation).

Please lend your support to this vital issue of closing the workers compensation records to the public. There are many injured workers yearning to be tax-paying citizens once again who are finding it difficult, if not impossible, to obtain employment.

Thank you for your thoughtful consideration of this matter.

Sincerely,

Martha K. Gabehart
Executive Director

attachment

cc: All members of the Senate
All members of the House of Representatives
Renee Gardner, Constituent Services
Joe Dick, Secretary, KS Dept of Human Resources
George Gomez, Director, Division of Workers Compensation
Ann Golubski, Special Assistant to the Secretary of KDHR
All members of the Kansas Commission on Disability Concerns

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Proposal targets discrimination

By JOHN HANNA
The Associated Press

A provision in the Legislature's comprehensive workers' compensation bill is designed to prevent discrimination against the disabled, but it also could close hundreds of state records to the public.

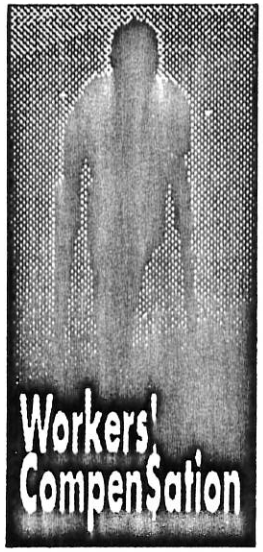
Gov. Joan Finney cited the "secrecy provision" when she promised publicly to veto the bill almost two weeks ago. She has planned the veto for Wednesday.

But others said the provision reflects concerns about discrimination. They said the goal is to prevent employers from routinely screening out disabled job applicants.

The five senators and five House members who drafted the final version of the workers' compensation bill added the provision during their last meeting, late at night. Some later admitted they did not know how far the provision could go.

The debate comes after reports about a $94,469 workers' compensation award to former Insurance Commissioner Fletcher Bell, who injured his back lifting his briefcase.

"It was past 11 o'clock at night," said George Gomez, director of the division of workers' compensation, recalling how the provision became part of the bill. "How could you hurt, doing something like that? I mean, who would have thought that would protect Fletch?"



A 1984 state law declared records in workers' compensation cases "open to public inspection." Those records are now accessible by computer through a telephone link, allowing anyone with the right equipment to search for information.

Basic information about Bell's case was available by computer, as well as information about cases involving Robert Anderson, a former division director, and Sen. Mike Harris, R-Wichita, who helped draft the bill's final version.

However, Richard Charlton, a Topeka attorney and an advocate for the disabled, said Kansans with disabilities or medical problems worry that employers can easily find out about their medical problems and reject their applications — without the potential employee finding out.

The federal Americans with Disabilities Act prohibits employers from discriminating against the disabled in hiring. It also prohibits public agencies from aiding or perpetuating that discrimination.

Charlton and the state Commission on Disability Concerns believe the Division of Workers' Compensation and the Department of Human Resources would be in violation of the law if the system isn't changed.

But Finney thinks the Legislature doesn't have to approve the provision to comply with federal law.

"That can be handled, and that will be handled administratively," Finney said. "I'll see that it's done."

Meta

4/20/93 Capital-Topeka Journal

Offi Newspaper of
S ee County
and the
City of Topeka

THE TOPEKA
METRO NEWS

The Business, Community and Legal Newspaper of Topeka and Shawnee County

Volume 99.1, Number 71 Single Copy 50 cents Wednesday, September 8, 1993

Workers comp records allow employers to sidestep ADA regs

BY BILL CRAVEN
Metro News Staff

The interplay between the Americans with Disabilities Act (ADA) and the state workers compensation system is creating problems for job applicants, the House Labor and Industry committee learned late last week.

Highlighted at the hearing was the fact that unrestricted employer access to workers compensation records may mean that job applicants are not hired, even if they are otherwise qualified for the job. Such actions are violations of the ADA.

At the Sept. 2 hearing, Sharon Huffman, the legislative liasion for the Commission on Disability Concerns, an agency within the Kansas Department of Human Resources, told the committee that Kansas is in the unenviable position of leading the nation in the percentage of claims alleging disability-based discrimination. The data used by Huffman shows that as of mid-July, the federal Equal Employment Opportunity Commission has logged more than 11,500 complaints involving employers with 24 or more workers, and that Kansas, on a per capita basis, is the leading state of origin of these complaints.

Huffman said that .41 charges per 1,000 members of the state labor force have been accumulated.

It is illegal not to hire someone based only on the fact that previous workers compensation claims have been filed, Huffman told the committee.

The Division of Workers Compensation has a computerized system by which workers compensation records are open to the public, including prospective employers.

Statistics kept by the Kansas Human Rights Commission pursuant to a Kansas law similar to the ADA show that approximately 10 percent of the employment discrimination claims filed here are based on physical handicap and disability claims and this percentage of people directly mentioned workers compensation or an on-the-job injury as the basis for the alleged discrimination.

The ADA, which is still largely misunderstood in many parts of the business community, Huffman noted, strictly prohibits employers from making medical inquiries prior to an offer of employment.

The ADA now covers businesses with 25 or more employees, although next July, the act's coverage will drop to those with 15 or more employees. A parallel Kansas statute, however, covers businesses with four or more employees, Huffman said.

About 88 percent of Kansas businesses

please turn to page 2

1-9

have less than 20 employees, according to federal statistics, she stated.

Her testimony pointed out that many employers have changed their application forms to eliminate medical inquiries, but that they still use the state's workers compensation computers to obtain the same information.

"Unfortunately, the job applicants are unaware of this illegal practice, so many of them don't file a complaint with the Kansas Human Rights Commission or the EEOC," Huffman testified.

The division of workers compensation refused to shut down the computer system, Huffman said, although it has agreed to install a tracking and notification system. This system would keep track of who accessed the system, what information was obtained, and those whose information was extracted from the database would be notified.

Last year, the legislature passed a measure which would have closed many of these records by making the computer system subject to the Open Records Act. Gov. Finney, however, vetoed the bill because she thought it was too restrictive and because she had ordered administration officials to take other steps to restrict access to these records.

Huffman said workers compensation records need to be private, analogizing to SRS (welfare) and unemployment records.

"The public doesn't have a right to know about someone's disability," she said. The public does have a right to statistical summaries of workers compensation data, however, she said.

The basic premise of the ADA, Huffman told the committee, is that employers don't have to hire unqualified workers for jobs, but that at the same time, employers can't refuse to hire if someone with a disability is otherwise qualified. Disabled workers have to be qualified and have to be able to perform, she said. She recommended that "help wanted" ads make it clear that certain qualifications attach to the jobs which are advertised.

"ADA has not closed a business down," Huffman said. "But there is a lot of educating that needs to be done."

Sharon Huffman, the legislative liaison for the Commission on Disability Concerns, an agency within the Kansas Department of Human Resources, told a legislative committee of problems in the workers compensation system that discriminate against injured or handicapped workers. Gary Reser, a legislative liaison for Gov. Finney, is standing behind her.

Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

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September 2, 1993

TO: House Committee on Labor and Industry

FROM: Sharon Huffman
Legislative Liaison

SUBJECT: Workers Compensation and the Americans with Disabilities Act (ADA)

I. INTRODUCTION

Since the members of this committee received a briefing on the ADA at the beginning of the 1993 Legislative Session I will not linger on the basics of the Act. Attachment 1 contains excerpts from the Equal Employment Opportunity Commission (EEOC) Final Rule on Title I, the employment provisions of the ADA that specifically refer to workers compensation. What I have been asked to speak about are the problems associated with the workers compensation records being open to the public.

Approximately two years ago the Kansas Commission on Disability Concerns (KCDC) began investigating the Kansas laws regarding open records after we received numerous telephone inquiries from consumers about potential violation of the ADA when they were denied employment based on their prior workers compensation claim. (Several consumers indicated that they were not asked, or did not tell the potential employer about their history of on-the-job injury.) What we found was K.S.A. 44-550b which says that all the workers compensation records are open to the public. We also discovered that the Division of Workers Compensation operated a computer Dial-Up system that allowed unrestricted access to all claim files. This solved the mystery of how employers were finding out about previous claims without asking the applicant directly.

II. EEOC AND KHRC COMPLAINTS

Kansas Human Rights Commission (KHRC)

In the time period from July 1, 1991 (when the amendments to the Kansas Act Against Discrimination were implemented making it comparable to the ADA) to April 21, 1992 approximately 10% of the employment discrimination based on physical handicap and disability claims either directly mentioned workers compensation or on-the-job injury as the basis for the discrimination. Attachment 2 gives two examples of actual claims filed with KHRC along with copies of their workers compensation claims as found on the Dial-Up system.

Equal Employment Opportunity Commission (EEOC)

According to the August 1993 BNA's Americans With Disabilities Act Manual, as of July 13 the EEOC has reported over 11,500 charges alleging disability-based employment discrimination since July 26, 1992, the effective date of the ADA's employment provisions covering employers of 24 or more workers. BNA also reports that Kansans have filed the most Title I charges so far measured on a per capita basis -- 0.41 charges per 1,000 members of the state labor force. Back impairments continued to form the basis for the largest number of ADA charges, with 18.5 percent of the charging parties citing some sort of back problem as a disability, followed by mental illness, 9.8 percent; heart impairments a little over 4 percent; neurological disorders, 4 percent; and diabetes, 3.5 percent. Discharges were the employment actions most frequently complained about, with fully 50 percent of the charges alleging discriminatory termination. These were followed by failure to make reasonable accommodations, 20 percent; failure to hire, 13 percent; harassment, 10 percent; and discipline, 7.2 percent.

III. The ADA and Medical Inquiries

Title I of the ADA prohibits employers from making medical inquiries prior to offer of employment (29 CFR Section 1630.13(a)). This includes using a third party to obtain the information (ie. previous employer, insurance company or State Workers Compensation Division). An inquiry about previous workers compensation claims or on-the-job injuries is considered to be a medical inquiry.

Employers who obtain information about a job applicant's workers compensation history prior to offer of employment are breaking the law! Many employers have

changed their application forms to eliminate any medical inquiries, but they continue to make use of Index Bureaus or the Division of Workers Compensation to obtain the same information that they recognize they cannot legally ask the applicant. Unfortunately the job applicants are unaware of this illegal practice, so many of them don't file a complaint with KHRC or EEOC.

IV. Title II

Title II of the ADA prohibits discrimination on the basis of disability by public entities. Specifically, 28 CFR Part 35, Section 35-130(b)(1)(v) states that a public entity, in providing any aid, benefit, or service, may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program. Attachment 3 is a letter from Richard D. Charlton, Sr., Attorney at Law to Bruce Kent, General Counsel for Kansas Department of Human Resources requesting that the workers compensation records be closed to persons who do not have written consent or court order.

V. Open Records Laws in Other States

In February of 1993 KCDC sent a survey out to all 50 states asking about their policies regarding workers compensation records being released to the public. Attachment 4 includes a sample response letter summarizing the results, a table showing individual results, and excerpts from various state laws that were sent along with the survey replies. I have recently learned that Kentucky does not allow unrestricted access to their records, so that means only two out of 38 states allow unrestricted access.

VI. 1993 Session Activity

K.S.A. 44-550b was amended at the end of the session. The amendment would have made the workers compensation records subject to the Kansas Open Records Act providing for much more restriction than currently exists. In the Governor's veto message this restriction was specifically mentioned as something she did not agree with. She did, however, instruct the Director of Workers Compensation to restrict access to the records and he is currently in the process of developing the necessary programs to carry out this task.

VII. Conclusion

It is our understanding that the Division of Workers Compensation is currently undergoing some changes that will not only restrict access to claimant records, but will also provide a method whereby the claimant will be notified that his or her records were requested or viewed by someone. When the claimant is notified about the records being accessed, they will also be told about their rights under the KAAD and the ADA and give the telephone numbers for the KHRC and the EEOC. Consumers that KCDC has spoken with consider this to be somewhat of a band-aid approach because it only provides a method to catch the violators rather than a means of stopping them. Injured workers would prefer that their medical history be kept private until their is a legitimate need for someone to obtain them. The only way to stop access to workers compensation claim files is to repeal K.S.A. 44-550b or to amend it to require written authorization from the claimant prior to release of information.

Attachment 1

Excerpts from 29 CFR Part 1630 - Equal Employment Opportunity for Individuals With Disabilities; Final Rule (The Americans With Disabilities Act, Title I)

Overview of Regulations, p. 35726-35727

To assist us in the development of this guidance, the Commission requested comment in the NPRM from disability rights organizations, employers, unions, state agencies concerned with employment or workers compensation practices, and interested individuals on specific questions about insurance, workers' compensation, and collective bargaining agreements. Many commenters responded to these questions, and several commenters addressed other matters pertinent to these areas. The Commission has considered these comments in the development of the final rule and will continue to consider them as it develops further ADA guidance.

In the NPRM, the Commission raised questions about a number of insurance-related matters. Specifically, the Commission asked commenters to discuss risk assessment and classification, the relationship between "risk" and "cost," and whether employers should consider the effects that changes in insurance coverage will have on individuals with disabilities before making those changes. Many commenters provided information about insurance practices and explained some of the considerations that affect insurance decisions. In addition, some commenters discussed their experiences with insurance plans and coverage. The commenters presented a wide range of opinions on insurance-related matters, and the Commission will consider the comments as it continues to analyze these complex matters.

The Commission received a large number of comments concerning inquiries about an individual's workers' compensation history. Many employers asserted that such inquiries are job related and consistent with business necessity. Several individuals with disabilities and disability rights organizations, however, argued that such inquiries are prohibited pre-employment inquiries and are not job related and consistent with business necessity. The Commission has addressed this issue in the interpretive guidance accompanying section 1630.14(a) and will discuss the matter further in future guidance.

There was little controversy about the submission of medical information to workers' compensation offices. A number of employers and employer groups pointed out that the workers' compensation offices of many states request medical information in connection with the administration of second-injury funds. Further,

they noted that the disclosure of medical information may be necessary to the defense of a workers' compensation claim. The Commission has responded to these comments by amending the interpretive guidance accompanying section 1630.14(b). This amendment, discussed below, notes that the submission of medical information to workers' compensation offices in accordance with state workers' compensation laws is not inconsistent with section 1630.14(b). The Commission will address this area in greater detail and will discuss other issues concerning workers' compensation matters in future guidances, including the policy guidance on pre-employment inquiries.

With respect to collective bargaining agreements, the Commission asked commenters to discuss the relationship between collective bargaining agreements and such matters as undue hardship, reassignment to a vacant position, the determination of what constitutes a "vacant" position, and the confidentiality requirements of the ADA. The comments that we received reflected a wide variety of views. For example, some commenters argued that it would always be an undue hardship for an employer to provide a reasonable accommodation that conflicted with the provisions of a collective bargaining agreement. Other commenters, however, argued that an accommodation's effect on an agreement should not be considered when assessing undue hardship. Similarly, some commenters stated that the appropriateness of reassignment to a vacant position should depend upon the provisions of a collective bargaining agreement while others asserted that an agreement cannot limit the right to reassignment. Many commenters discussed the relationship between an agreement's seniority provisions and an employer's reasonable accommodation obligations.

In response to comments, the Commission has amended section 1630.2(n)(3) to include "the terms of a collective bargaining agreement" in the types of evidence relevant to determining the essential functions of a position. The Commission has made a corresponding change to the interpretive guidance on section 1630.2(n)(3). In addition, the Commission has amended the interpretive guidance on section 1630.15(d) to note that the terms of a collective bargaining agreement may be relevant to determining whether an accommodation would pose an undue hardship on the operation of a covered entity's business.

The divergent views expressed in the public comments demonstrate the complexity of employment-related issues concerning insurance, workers' compensation, and collective bargaining agreement matters. These highly complex issues require extensive research and analysis and warrant further consideration. Accordingly, the Commission has decided to address the issues in depth in future Compliance Manual sections and policy guidances. The Commission will consider the public

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comments that it received in response to the NPRM as it develops further guidance on the application of title I of the ADA to these matters.

The Commission has also decided to address burdens-of-proof issues in future guidance documents, including the Compliance Manual section on the theories of discrimination. Many commenters discussed the allocation of the various burdens of proof under title I of the ADA and asked the Commission to clarify those burdens. The comments in this area addressed such matters as determining whether a person is a qualified individual with a disability, job relatedness and business necessity, and undue hardship. The Commission will consider these comments as it prepares further guidance in this area.

A discussion of other significant comments and an explanation of the changes made in part 1630 since publication of the NPRM follows.

Section-by-Section Analysis of Comments and Revisions

Section 1630.1 Purpose, applicability, and construction

The Commission has made a technical correction to section 1630.1(a) by adding section 506(e) to the list of statutory provisions implemented by this part. Section 506(e) of the ADA provides that the failure to receive technical assistance from the federal agencies that administer the ADA is not a defense to failing to meet the obligations of title I.

Some commenters asked the Commission to note that the ADA does not preempt state claims, such as state tort claims, that confer greater remedies than are available under the ADA. The Commission has added a paragraph to that effect in the Appendix discussion of sections 1630.1(b) and (c). This interpretation is consistent with the legislative history of the Act. See H.R. Rep. No. 485 Part 3, 101st Cong., 2d Sess. 69-70 (1990) [hereinafter referred to as House Judiciary Report].

In addition, the Commission has made a technical amendment to the Appendix discussion to note that the ADA does not automatically preempt medical standards or safety requirements established by Federal law or regulations. The Commission has also amended the discussion to refer to a direct threat that cannot be eliminated "or reduced" through reasonable accommodation. This language is consistent with the regulatory definition of direct threat. (See section 1630.2(r), below.)

Section 1630.2 Definitions

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Section 1630.2(h) Physical or mental impairment

The Commission has amended the interpretive guidance accompanying section 1630.2(h) to note that the definition of the term "impairment" does not include characteristic predisposition to illness or disease.

In addition, the Commission has specifically noted in the interpretive guidance that pregnancy is not an impairment. This change responds to the numerous questions that the Commission has received concerning whether pregnancy is a disability covered by the ADA. Pregnancy, by itself, is not an impairment and is therefore not a disability.

Section 1630.2(j) Substantially limits

The Commission has revised the interpretive guidance accompanying section 1630.2(j) to make clear that the determination of whether an impairment substantially limits one or more major life activities is to be made without regard to the availability of medicines, assistive devices, or other mitigating measures. This interpretation is consistent with the legislative history of the ADA. See S. Rep. No. 116, 101st Cong., 1st Sess. 23 (1989) [hereinafter referred to as Senate Report]; H.R. Rep. No. 485 Part 2, 101st Cong., 2d Sess. 52 (1990) [hereinafter referred to as House Labor Report]; House Judiciary Report at 28. The Commission has also revised the examples in the third paragraph of this section's guidance. The examples now focus on the individual's capacity to perform major life activities rather than on the presence or absence of mitigating measures. These revisions respond to comments from disability rights groups, which were concerned that the discussion could be misconstrued to exclude from ADA coverage individuals with disabilities who function well because of assistive devices or other mitigating measures.

In an amendment to the paragraph concerning the factors to consider when determining whether an impairment is substantially limiting, the Commission has provided a second example of an impairment's "impact." This example notes that a traumatic head injury's affect on cognitive functions is the "impact" of that impairment.

Many commenters addressed the provisions concerning the definition of "substantially limits" with respect to the major life activity of working (section 1630.2(j)(3)). Some employers generally supported the definition but argued that it should be applied narrowly. Other employers argued that the definition is too broad. Disability rights groups and individuals with disabilities, on the other hand,

argued that the definition is too narrow, unduly limits coverage, and places an onerous burden on individuals seeking to establish that they are covered by the ADA. The Commission has responded to these comments by making a number of clarifications in this area.

The Commission has revised section 1630.2(j)(3)(ii) and the accompanying interpretive guidance to note that the listed factors "may" be considered when determining whether an individual is substantially limited in working. This revision clarifies that the factors are relevant to, but are not required elements of, a showing of a substantial limitation in working.

Disability rights groups asked the Commission to clarify that "substantially limited in working" applies only when an individual is not substantially limited in any other major life activity. In addition, several other commenters indicated confusion about whether and when the ability to work should be considered when assessing if an individual has a disability. In response to these comments, the Commission has amended the interpretive guidance by adding a new paragraph clarifying the circumstances under which one should determine whether an individual is substantially limited in the major life activity of working. This paragraph makes clear that a determination of whether an individual is substantially limited in the ability to work should be made only when the individual is not disabled in any other major life activity. Thus, individuals need not establish that they are substantially limited in working if they already have established that they are, have a record of, or are regarded as being substantially limited in another major life activity.

The proposed interpretive guidance in this area provided an example concerning a surgeon with a slight hand impairment. Several commenters expressed concern about this example. Many of these comments indicated that the example confused, rather than clarified, the matter. The Commission, therefore, has deleted this example. To explain further the application of the "substantially limited in working" concept, the Commission has provided another example (concerning a commercial airline pilot) in the interpretive guidance.

In addition, the Commission has clarified that the terms "numbers and types of jobs" (see section 1630.2(j)(3)(ii)(B)) and "numbers and types of other jobs" (see section 1630.2(j)(3)(ii)(C)) do not require an onerous evidentiary showing.

In the proposed Appendix, after the interpretive guidance accompanying section 1630.2(l), the Commission included a discussion entitled "Frequently Disabling Impairments." Many commenters expressed concern about this discussion. In

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response to these comments, and to avoid confusion, the Commission has revised the discussion and has deleted the list of frequently disabling impairments. The revised discussion now appears in the interpretive guidance accompanying section 1630.2(j).

Section 1630.2(l) Is regarded as having such an impairment

Section 1630.2(l)(3) has been changed to refer to "a substantially limiting impairment" rather than "such an impairment." This change clarifies that an individual meets the definition of the term "disability" when a covered entity treats the individual as having a substantially limiting impairment. That is, section 1630.2(l)(3) refers to any substantially limiting impairment, rather than just to one of the impairments described in sections 1630.2(l)(1) or (2).

The proposed interpretive guidance on section 1630.2(l) stated that, when determining whether an individual is regarded as substantially limited in working, "it should be assumed that all similar employers would apply the same exclusionary qualification standard that the employer charged with discrimination has used." The Commission specifically requested comment on this proposal, and many commenters addressed this issue. The Commission has decided to eliminate this assumption and to revise the interpretive guidance. The guidance now explains that an individual meets the "regarded as" part of the definition of disability if he or she can show that a covered entity made an employment decision because of a perception of a disability based on "myth, fear, or stereotype." This is consistent with the legislative history of the ADA. See House Judiciary Report at 30.

Many individuals with disabilities and disability rights groups asked the Commission to emphasize that the determination of whether a person is a qualified individual with a disability must be made at the time of the employment action in question and cannot be based on speculation that the individual will become unable to perform the job in the future or may cause increased health insurance or workers' compensation costs. The Commission has amended the interpretive guidance on section 1630.2(m) to reflect this point. This guidance is consistent with the legislative history of the Act. See Senate Report at 26, House Labor Report at 55, 136; House Judiciary Report at 34, 71.

1630.13 Prohibited medical examinations and inquiries

In response to the Commission's request for comment on certain workers' compensation matters, many commenters addressed whether a covered entity may

ask applicants about their history of workers' compensation claims. Many employers and employer groups argued that an inquiry about an individual's workers' compensation history is job related and consistent with business necessity. Disability rights groups and individuals with disabilities, however, asserted that such an inquiry could disclose the existence of a disability. In response to comments and to clarify this matter, the Commission has amended the interpretive guidance accompanying section 1630.13(a). The amendment states that an employer may not inquire about an individual's workers' compensation history at the pre-offer stage.

The Commission has made a technical change to section 1630.13(b) by deleting the phrase "unless the examination or inquiry is shown to be job-related and consistent with business necessity" from the section. This change does not affect the substantive provisions of section 1630.13(b). The Commission has incorporated the job-relatedness and business-necessity requirement into a new section 1630.14(c), which clarifies the scope of permissible examinations or inquiries of employees. (See section 1630.14(c), below.)

Section 1630.14(b) Employment Entrance Examinations

Many commenters addressed the confidentiality provisions of this section. They noted that it may be necessary to disclose medical information in defense of workers' compensation claims or during the course of other legal proceedings. In addition, they pointed out that the workers' compensation offices of many states request such information for the administration of second-injury funds or for other administrative purposes.

The Commission has revised the last paragraph of the interpretive guidance on section 1630.14(b) to reflect that the information obtained during a permitted employment entrance examination or inquiry may be used only "in a manner not inconsistent with this part." In addition, the Commission has added language clarifying that it is permissible to submit the information to state workers' compensation offices.

Several commenters asked the Commission to clarify whether information obtained from employment entrance examinations and inquiries may be used for insurance purposes. In response to these comments, the Commission has noted in the interpretive guidance that such information may be used for insurance purposes described in section 1630.16(f).

1630.15 Defenses

The Commission has added a sentence to the interpretive guidance on section 1630.15(a) to clarify that the assertion that an insurance plan does not cover an individual's disability or that the disability would cause increased insurance or workers' compensation costs does not constitute a legitimate, nondiscriminatory reason for disparate treatment of an individual with a disability. This clarification, made in response to many comments from individuals with disabilities and disability rights groups, is consistent with the legislative history of the ADA. See Senate Report at 85; House Labor Report at 136; House Judiciary Report at 71.

Section 1630.2(l) Regarded as Substantially Limited in a Major Life Activity

An individual rejected from a job because of the "myths, fears and stereotypes" associated with disabilities would be covered under this part of the definition of disability, whether or not the employer's or other covered entity's perception were shared by others in the field and whether or not the individual's actual physical or mental condition would be considered a disability under the first or second part of this definition. As the legislative history notes, sociologists have identified common attitudinal barriers that frequently result in employers excluding individuals with disabilities. These include concerns regarding productivity, safety, insurance, liability, attendance, cost of accommodation and accessibility, workers' compensation costs, and acceptance by coworkers and customers.

Therefore, if an individual can show that an employer or other covered entity made an employment decision because of a perception of disability based on "myth, fear or stereotype," the individual will satisfy the "regarded as"part of the definition of disability. If the employer cannot articulate a non-discriminatory reason for the employment action, an interference that the employer is acting on the basis of "myth, fear or stereotype" can be drawn.

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.

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 1630.15(a) Disparate Treatment Defense

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

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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 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.

It should be noted, however, that some uniformly applied employment policies or practices, such as leave policies, are not subject to challenge under the adverse impact theory. "No-leave" policies (e.g., no leave during the first six months of employment) are likewise not subject to challenge under the adverse impact theory. However, an employer, in spite of its "no-leave" policy, may, in appropriate circumstances, have to consider the provision of leave to an employee with a disability as a reasonable accommodation, unless the provision of leave would impose an undue hardship. See discussion at section 1630.5 Limiting, Segregating and Classifying, and section 1630.10 Qualification Standards, Tests, and Other Selection Criteria.

Attachment C

STATE OF KANSAS

KANSAS HUMAN RIGHTS COMMISSION

DOCKET NO. 13629-92-CU

On the complaint of

[redacted]

Complainant,

vs.

[redacted] CORPORATION AND ITS REPRESENTATIVES

Respondent,

I, [redacted]

residing at [redacted] Wichita, Kansas 67208

charge [redacted] Corporation and its representatives

whose address is [redacted] Wichita, Kansas 67206

With an unlawful practice within the meaning of:

[X] The Kansas Act Against Discrimination (Chapter 44, Art. 10, K.S.A.) and specifically within the meaning of subsection (a)(1) of Section 44-1009 of said Act, because of my RACE ( ), RELIGION( ) COLOR ( ), SEX ( ), NATIONAL ORIGIN ( ), ANCESTRY(X), DISABILITY(X), RETALIATION ( ).

[ ] The Kansas Age Discrimination in Employment Act (Chapter 44, Art. 11, K.S.A.) and specifically within the meaning of subsection _____ of Section _____ of said Act, because of my AGE.

Alleged Date of Incident, on or about September 11, 1991 to September 30, 1991

The aforesaid charges are based on the following facts:

I. I am a Hispanic and am considered disabled by the Respondent.

A. I made application for a position in sheetmetal with the Respondent. On or about September 9, 1991, the Respondent's physician noted on my application that I had filed a previous workers compensation claim. We discussed the injury to my finger. He told me there was no real problem, and that all I needed to do was get the records of the previous injury from my physician. I did so. I was then required to get my complete medical records from my physician. After having done so I was denied employment on the basis that the Respondent felt my worki in sheetmetal would be detrimental to me.

1-26

STATE OF KANSAS

KANSAS HUMAN RIGHTS COMMISSION **DOCKET NO.** 1362-92U

(Continued)

II. I feel this act on the part of the Respondent and its representatives is due to my ancestry and my being regarded as disabled.

III. I hereby charge [redacted] Corporation and its representatives with a violation of the Kansas Act Against Discrimination in that I was denied employment due to my ancestry, Hispanic, and my being regarded as disabled.

I have not commenced any action, civil or criminal, based upon the grievance set forth above, except

STATE OF KANSAS)
) ss:
COUNTY OF)

X [redacted]
(SIGNATURE OF COMPLAINANT)

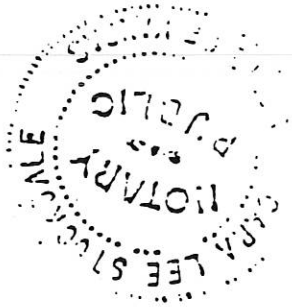
[redacted], being duly sworn, deposes and says that: that ___he is the Complainant herein; that ___ he read the foregoing complaint and knows the contents thereof; that the same is true of h is own knowledge except as to the matters therein stated on information belief; that as to those matters ___he believes the same to be true.

Subscribed and sworn to before me

X [redacted]
(SIGNATURE OF COMPLAINANT)

this 26th day of November, 1991

Carrie Lee Stubbs
(SIGNATURE OF NOTARY)



MY COMMISSION EXPIRES:

February 7, 1995

1-27

WORKERS COMPENSATION ACCIDENT REPORT DATE - 10/22/92

SSN: [redacted] MOD: 010 DOA: 06/16/87 CART NO: 334-965
CLAIMANT: [redacted] FILED: 06/16/87 SEX: N-N/A
AGE: 18
[redacted] KS 67801-0000

EMPLOYER: 0000000 SERIAL NOT IN FILE SIC: 07000

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

INJURY: YES DISEASE: N - NO REHAB: 0
SEVERITY: 1 - TIME LOSS DEATH DATE: 00/00/00 RTW: 00/00/00
CAUSE: 998 - NO EXPLANATION
SOURCE: 9800 - NONCLASSIFIABLE
NATURE: 210 - FRACTURE
MEMBER: 340 - FINGER(S)
COUNTY: 057 - [redacted] DOCKET NO.:

PROC DATE: 06/16/87
SCREEN: AU

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STATE OF KANSAS

KANSAS HUMAN RIGHTS COMMISSION

DOCKET NO. 13736-92-W

On the complaint of

[redacted]

Complainant,

vs.

[redacted] INDUSTRIES AND ITS REPRESENTATIVES Respondent,

I, [redacted]

residing at [redacted] Wichita, Kansas 67213

charge [redacted]ndustries and its representatives

whose address is [redacted] Wichita, Kansas 67219

With an unlawful practice within the meaning of:

[X] The Kansas Act Against Discrimination (Chapter 44, Art. 10, K.S.A.) and specifically within the meaning of subsection (a) (1) of Section 44-1009 of said Act, because of my RACE ( ), RELIGION( ) COLOR ( ), SEX ( ), NATIONAL ORIGIN ( ), ANCESTRY( ), DISABILITY(X), RETALIATION ( ).

[ ] The Kansas Age Discrimination in Employment Act (Chapter 44, Art. 11, K.S.A.) and specifically within the meaning of subsection _____ of Section _____ of said Act, because of my AGE.

Alleged Date of Incident, on or about November 1, 1991.

The aforesaid charges are based on the following facts:

I. I have a record of previous injuries which resulted in a crushed disc, and the Respondent percieves me to be disabled.

A. On or about November 1, 1991, I was informed I would not be hired on a full-time basis by the Respondent. I had been working for the Respondent through a temporary service for approximately two months. Through the fact that my name was not given to the clinic doing the employment physicals I was not allowed to take the physical. [redacted] then told me that it had come to the Respondent's attention that I had two previous back injuries, and that his supervisor did nc want me working there. However, the back injuries were five years ago.

II. I feel this act on the part of the Respondent and its representativ is due to my being percieved as disabled.

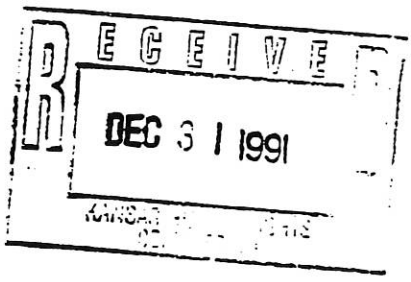
1-29

STATE OF KANSAS

KANSAS HUMAN RIGHTS COMMISSION DOCKET NO. 13B6424

(Continued)

III. I hereby charge [redacted] Industries and its representatives with a violation of the Kansas Act Against Discrimination in that I was denied full-time employment due to my being regarded as disabled.



I have not commenced any action, civil or criminal, based upon the grievance set forth above, except

STATE OF KANSAS)
) ss:
COUNTY OF)

X [redacted]
(SIGNATURE OF COMPLAINANT)

[redacted], being duly sworn, deposes and says that: that ___he is the Complainant herein; that ___ he read the foregoing complaint and knows the contents thereof; that the same is true of h is own knowledge except as to the matters therein stated on information belief; that as to those matters ___he believes the same to be true.

Subscribed and sworn to before me

X [redacted]
(SIGNATURE OF COMPLAINANT)

this 27 day of Dec, 1991

Donna J. Waite
(SIGNATURE OF NOTARY)

MY COMMISSION EXPIRES:

DONNA J. WAITE
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 2-7-95

1-30

WORKERS COMPENSATION ACCIDENT REPORT DATE - 10/22/92

SSN: [redacted] MOD: 020 DOA: 01/04/87 CART NO: 321-492
CLAIMANT: [redacted] FILED: 01/04/87 SEX: N-N/A
[redacted] AGE: 22
[redacted] KS 66061-4804

EMPLOYER: 0000000 SERIAL NOT IN FILE SIC: 07000

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

INJURY: YES DISEASE: N - NO REHAB: 0
SEVERITY: 1 - TIME LOSS DEATH DATE: 00/00/00 RTW: 00/00/00
CAUSE: 121 - LIFTING OBJECTS (LIFTING, PULLING, LOADING INVOLVED)
SOURCE: 9800 - NONCLASSIFIABLE
NATURE: 311 - NOT IN TABLE
MEMBER: 420 - BACK
COUNTY: 091 - [redacted] DOCKET NO.:

PROC DATE: 01/04/87
SCREEN: AU

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PC N

WORKERS COMPENSATION ACCIDENT REPORT DATE - 10/22/92

SSN: [redacted] MOD: 010 DOA: 08/24/87 CART NO: 344-7
CLAIMANT: [redacted] FILED: 10/02/87 SEX: M-MALE
[redacted] AGE: 23
[redacted] KS 66061-4804

EMPLOYER: 2000430 [redacted] SIC: 07392
[redacted]
OVERLAND PARK KS 66214
INSUR NO: 11223-02 AETNA CASUALTY & SURETY CO
CLAIM NO:

INJURY: YES DISEASE: N - NO REHAB: 0
SEVERITY: 0 - NO TIME LOSS DEATH DATE: 00/00/00 RTW: 08/24/87
CAUSE: 121 - LIFTING OBJECTS (LIFTING, PULLING, LOADING INVOLVED)
SOURCE: 6020 - PERSON, OTHER THAN INJURED
NATURE: 310 - SPRAINS, STRAINS
MEMBER: 420 - BACK
COUNTY: 091 - [redacted] DOCKET NO.:

PROC DATE: 10/12/87
SCREEN: AU

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Attachment 3

A.D.A.P.T. INC.

ADVOCATES FOR DISABLED ACCESS TO PROGRAMS AND TRAINING INC.

PRESIDENT

RICHARD D CHARLTON, SR
ATTORNEY AT LAW

OFFICE

1951 SW MISSION AVE
TOPEKA KS 66604-3371
(913)271-1213

April 5, 1993

Bruce Kent, General Counsel:
Department of Human Resources
401 SW Topeka Blvd
Topeka, KS 66603

RE:SENATE SUBSTITUTE FOR HOUSE SUBSTITUTE FOR HOUSE BILL NO. 2354 Sec. 46. K.S.A. 44-550b ("Open Records Provisions")

Dear Mr Kent:

On Friday March 26, 1993 in a meeting with Secretary Dick and his staff, the KANSAS COMMISSION ON DISABILITY CONCERNS (KCDC) Staff and Commissioners recommended closing the Workman's Compensation records. During the entire legislative hearings on this issue KCDC has stated that the open records provisions are in direct violation of "THE 1990 AMERICAN DISABILITIES ACT" (ADA). You requested a legal opinion regarding non-compliance with the ADA.

1. My understanding is that your agency has a toll free computer dial up system without any tracking mechanism in place. There is also a written access system which does not keep on file any inquiries which were made about a workers' compensation case records. Therefore, anyone can access the workers' compensation records of any individual without any permanent record or trace, of who, when, or what was accessed.

2. UNITED STATES DEPARTMENT OF JUSTICE rule 28 CFR Part 35 which implements subtitle A of title II of the Americans with Disabilities Act (ADA), Public Law 101-336, which prohibits discrimination on the basis of disability by public entities became effective January 26, 1992. Subtitle A protects qualified individuals with disabilities on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability from titles I, III, and V of the ADA.
3. The following applicable Rules and Regulations are found in 28CFR Part 35, Subpart B- General Requirements.

Section 35-130 General Prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability ---

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration;

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities;

4. Since January 26, 1992, your agency has been in violation of 28CFR; 35-130(b)(1)(v) 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 indiscriminate access to the workers' compensation case records.

5. Since January 26, 1992, your agency has been in violation of 28CFR; 35-130(b)(3) by utilizing criteria or methods of administration that perpetuate the discrimination by employers in their hiring practices.

6. Therefore, it is recommended that workers' compensation cases be closed except when a written release is signed by the claimant or when ordered by the court. Procedures should be initiated immediately, under the current regulations, by installing a tracking system to process and record all requests for information from the workers' compensation case records.

It is requested that your agency immediately discontinue the practice of supplying information via the toll free number and accept only written requests for information concerning workers' compensation cases. Your assistance in bringing Kansas in compliance with ADA would be appreciated.

Sincerely,

Richard D. Charlton

Richard D. Charlton, Sr
Attorney At Law

Cc:Senate and House Conference Committee Members Including:
Senator Alicia Salisbury, Chairperson
Senator Mike Harris
Senator David Kerr
Senator Anthony Hensley
Senator Marge Petty
Representative David Heinemann
Representative Al Lane
Representative Tim Carmody
Representative Darrell Webb
Representative Janice Pauls
Other Senators and Representatives
Joan Finney, Governor
Joe Dick, Secretary Human Resources
George Gomez, Director Workers Compensation
Martha Gabehart, Executive Director KCDC
Paralyzed Veterans of America
Mid-America PVA
SunFlower/Mid-America PVA
Director National Rehabilitation Assn
Kansas Rehabilitation Assn
Topeka Rehabilitation Assn
Kansas Trial Lawyers Association
Kansas AFL-CIO

Attachment 4

Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Commission on Disability Concerns
1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877
913-296-1722 (Voice) -- 913-296-5044 (TDD)
913-296-4065 (Fax)

July 22, 1993

SAMPLE

Ms. Valerie Salven
General Counsel
Department of Workers' Claims
Perimeter Park West, Building C
1270 Louisville Road
Frankfort, KY 40601

Dear Ms. Salven;

Thank you for your response to my Workers Compensation Survey. The results have been compiled and are enclosed with this letter. The following is a brief summary:

Of the 38 states responding to the survey, 10 indicated that their records were open to public inspection. Out of those 10 states the following 7 states indicated that restrictions apply:

Alabama: Release form required
Alaska: Penalty for illegal use. Tracking system used.
California: Only legal proceedings released, not medical records.
Florida: Release form required for medical records. Tracking system used.
Louisiana: Only trial records open to the public with unnamed limitations.
Maryland: Release required for medical records.
Minnesota: Medical and accident reports require specific authorization. Tracking system used.

In conclusion, in addition to Kansas, only 3 states indicated total unrestricted access to workers compensation records: Iowa, Kentucky and Maine.

As a result of the efforts of our Commission the Workers Compensation Bill that went to the Governor for signature contained an amendment that would subject all workers compensation records to the Kansas Open Records Act. This change would have restricted access considerably and would have significantly benefitted job seekers with workers compensation histories. Unfortunately, the original bill was vetoed. The following statement was made in the Governor's

veto message, "Delete sections of this bill that would close certain records to public scrutiny. I have already directed the Division of Workers Compensation to take administrative steps to meet the disclosure protection needs of disabled persons under the law. But I cannot condone legislated secrecy in handling of workers compensation when the public has a right to know how public monies are being spent."

At present, a program is being developed to track usage of our computer dial-up link to workers compensation records. In addition to tracking who accesses claimant's files a letter will be mailed to all claimants whose files are accessed informing them of the inquiry. The letter will indicate who made the inquiry, the date of the inquiry, and inform the individual of their rights under the Americans With Disabilities Act.

Thank you for your help with this matter. Please contact me if you desire additional information.

Sincerely,

Sharon Huffman

Sharon Huffman
Legislative Liaison

encl

cc: Joe Dick, Secretary, KDHR
Ann Golubski, Special Assistant
Martha Gabehart, Executive Director, KCDC
George Gomez, Director, Div of Workers Compensation
KCDC Commissioners

C:\WP51\WORKCOMP\SVYRSLT.PRI

	LAW THAT REQUIRES ALL WC RECORDS BE OPEN TO THE PUBLIC?	WHICH RECORDS ARE OPEN TO THE PUBLIC?	DO YOU REQUIRE A RELEASE FROM THE CLAIMANT?	IS THERE A PENALTY FOR ILLEGAL USE OF INFORMATION?	HOW ARE THE RECORDS MADE AVAILABLE TO THE PUBLIC?*	NUMBER OF REQUESTS PROCESSED ANNUALLY?	ANNUAL COST TO PROCESS REQUESTS?	DO YOU USE A TRACKING SYSTEM?	ARE RECORDS AVAILABLE TO OTHER ENTITIES?
ALABAMA	YES	BLANK	YES	BLANK	W		$4 per req	NO	NO
ALASKA	YES	ALL	NO	YES	WCP	1,000		YES	YES
ARKANSAS	NO	ALL	NO	NO	W		25¢/page	NO	NO
CALIFORNIA	YES(NOT MED)	LEGAL[1]	NO	BLANK	BLANK			BLANK	BLANK
D.C.	NO	NONE	YES	NO	N/A			YES	NO
FLORIDA	YES	ACC & LEGAL	FOR MEDICAL	NO	WP	4,900	$21,000	YES	YES[2]
GEORGIA	NO	NONE	N/A	NO	W	9,500		NO	NO
IDAHO	NO	NONE[3]	YES	NO	W	1,700-1,800		YES	NO
ILLINOIS	NO	MED & LEGAL	NO	NO	TWP	75-100/day		YES	NO
IOWA	YES	ALL	NO	NO	TWP	T250,W30,P30		NO	NO
KENTUCKY	YES	ALL	NO[4]	BLANK	TWP			NO	BLANK
LOUISIANA	YES(W/LIMITS)	TRIAL RCDS	NO	NO	WP		$14,000	NO	UNKNOWN
MAINE	YES	ALL	NO	NO	TWP	SEVERAL THOU		NO	NO
MARYLAND	YES	ACC & LEG[5]	FOR MEDICAL	NO	TWP	[6]	$75,000	NO	NO
MASS.	NO	ACC & LEGAL	YES	NO	TWP	[7]		NO	NO
MICHIGAN	NO	LEGAL	NO	NO	W[8]	500/mo		YES	YES[9]
MINNESOTA	YES	LEGAL[10]	YES	YES	W	600/mo	$132,000	YES	NO
MISS.	NO	MED[11],AC,LG	NO	NO	W	5		NO	YES[12]
NEBRASKA	NO[13]	ACC & LEGAL	FOR MEDICAL	NO	WP	5,000	$5 per req	NO	YES[14]
NEVADA	NO	NONE	YES	YES	N/A			N/A	NO
N. HAMPSHIRE	NO	ACC & LEG[15]	YES	NO	W	2,500		YES	NO
NEW JERSEY	NO	ALL[16]	NO	NO	W			NO	NO
NEW MEXICO	NO	EVIDENCE[17]	YES	NO	W	1,500	25¢/page	YES	NO
N. DAKOTA	NO	GENERIC[18]	YES	NO	TWP			NO	NO
[illegible]O	NO	ACC & LEGAL	NO[19]	NO	WP	HUNDREDS		YES	NO
[illegible].	NO[20]	DECISIONS[21]	YES	NO	W	2,600		YES	NO
RHODE ISLAND	NO	LEGAL	YES	YES	N/A	N/A		YES	YES-NCCI

	LAW THAT REQUIRES ALL WC RECORDS BE OPEN TO THE PUBLIC?	WHICH RECORDS ARE OPEN TO THE PUBLIC?	DO YOU REQUIRE A RELEASE FROM THE CLAIMANT?	IS THERE A PENALTY FOR ILLEGAL USE OF INFORMATION?	HOW ARE THE RECORDS MADE AVAILABLE TO THE PUBLIC?[a]	NUMBER OF REQUESTS PROCESSED ANNUALLY?	ANNUAL COST TO PROCESS REQUESTS?	DO YOU USE A TRACKING SYSTEM?	ARE RECORDS AVAILABLE TO OTHER ENTITIES?
S. CAROLINA	NO	LEGAL	YES[22]	NO	W			NO	NO
S. DAKOTA	NO	LEGAL	YES	NO	W			NO	NO
TENNESSEE	NO	LEGAL	YES	NO	W	5,500	$1,980	NO	YES
TEXAS	NO	NONE	YES	YES	BLANK			NO	BLANK
UTAH	NO	LEGAL	YES	NO	WP	1,200	$8,500	NO	NO
VERMONT	NO	NONE[23]	YES[24]	BLANK	BLANK			NO	NO
VIRGINIA	NO	LEGAL[25]	YES	NO	WP			NO	NO
VIRGIN ISL.	NO	NONE	YES	NO	N/A			NO	NO
WASHINGTON	NO	NONE	YES	NO	N/A			NO	NO
WISCONSIN	NO	ALL[26]	YES	NO	TWP[27]			YES	NO
WYOMING	NO	NONE	YES	YES	N/A			YES	NO

a. T = Telephone, W = Written, C = Computer, P = In person

1. Except working papers of the judge and certain medical records that the judge has ordered sealed

2. Private research companies purchase microfiche records from the Division of Workers Compensation

3. Unless authorized by §9-340[(38)](37) Idaho Code

4. After "formal application for adjustment of claim" has been filed

5. All records/documents except medical

6. T=50,880; W=7,200; P=12,000

7. T=5,000-10,000; W=1,000; P=2,000-3,000

8. With the following information on bureau responses, "The users of this information should be aware of prohibitions against covered entities using this information for pre-employment inquiries as described in Title I of Public Law 101-336, The Americans with Disabilities Act of 1990".

9. Bureau of Safety & Regulation (MIOSHA)

10. Minn Statute, Section 176.231, subds 8 and 9 make medical and accident reports private and therefor only available to parties or those with specific authorization

1 overted cases only

12. Mississippi Business Information, Inc. which is pre-employment screening service

13. Subject to general public records statutes

ormation from our data base is provided to a company called Avert in Colorado. They, in turn, provide information to employers and have also apparently sold the data to at least one other company
noma.

15. With the exception of medical reference

16. Open for employer inspection in pending cases only (NJSA 34:15-128)

17. Evidence submitted at a hearing is open to public inspection

18. Under the provisions of NDCC 65-05-32(5) unless requestor is the claimant, the employer, claimant's attorney or authorized medical provider, the following generic information is available: The claimant's name, social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status.

19. Medical not released

20. Except that "all hearings before a referee shall be public"

21. Referee decisions, Workers Compensation Appeal Board and Appellate Court decisions are considered public records.

22. Any party to the action may release

23. We confirm or deny the existence of a cliam upon presentation of a signed release. Otherwise the contents of files are available only to employee and employer (carrier) unless a court subpoenas same.

24. Only confirm or deny the existence of a claim

25. Only transcript of hearings and judicial opinions

26. Except claims files

27. Only public (non claim) records

STATE LAWS REGARDING WORKERS COMPENSATION RECORDS

ALASKA - Sec. 23.30.107. **Release of information.** Upon request, *an employee shall provide written authority to the employer, carrier, rehabilitation provider, or rehabilitation administrator to obtain medical and rehabilitation information relative to the employee's injury.*

Sec. 23.30.247. **Discrimination prohibited.** (a) An employer may not discriminate in hiring, promotion, or retention policies or practices against an employee who has in good faith filed a claim for or received benefits under this chapter. An employer who violates this section is liable to the employee for damages to be assessed by the court in a private civil action.

(b) This section may not be construed to prevent an employer from basing hiring, promotion or retention policies or practices on considerations of the employee's safety practices or the employee's physical and mental abilities; or may this section be construed so as to create employment rights not otherwise in existence.

(c) This section may not be construed to prohibit an employer from requiring a prospective employee to fill out a preemployment questionnaire or application regarding the person's prior health or disability history as long as it is meant to either document written notice for second injury fund reimbursement under AS 23.30.205(c) or determine whether the employee has the physical or mental capacity to meet the documented physical or mental demands of the work. (§ 40 ch 79 SLA 1988)

Effective date - July 1, 1988 *(Please note that this law pre-dates the ADA)*

GEORGIA - 34-9-12. Employer's record of injuries; availability of board records...

(b) *The records of the board, insofar as they refer to accidents, injuries, and settlements, shall not be open to the public but only to the parties satisfying the board of their interest in such records and their right to inspect them.* Under such reasonable rules and regulations as the board may adopt, the records of the board as to any employee in any previous case in which such employee was a claimant shall be open to and made available to such claimant, to an employer or its insurance carrier which is called upon to pay compensation, medical expenses, or funeral expenses, and to any party at interest, except that the board may make such reasonable charge as it deems proper for furnishing information by mail and for copies of records.

AG letter, dated January 25, 1991, RE: All records of the State Board of Workers' Compensation pertaining to accidents, injuries, and settlements are confidential, unless a party can meet the statutory requirements for access or has authority pursuant to the Child Support Recovery Act.

The parties to the claim are the employee, the employer, and the insurer.

FARRELL et al. v. DUNN. Plaintiff's (Farrell) car was struck by Defendant's (Dunn) car. Defendant attempted to obtain certified copies of Plaintiff's workers compensation records but was denied. Defendant filed a motion to compel the Board to produce the records, but was denied based upon OCGA § 34-9-12 because Defendant was not a party in the workers compensation claim.

Idaho - ***(A very good example of what we could do here in Kansas!)*** The following information sheet must accompany all certification forms (requests for information from workers compensation records):

Idaho Code §9-340[(38)](37) exempts from mandatory disclosure under the Idaho Public Records Act "worker's compensation records of the Idaho Industrial Commission" except:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with Disabilities Act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with Disabilities Act, 42 U.S.C. 12112, or other statutory limitation; or

(c) To employers and prospective employers not subject to the provisions of the Americans with Disabilities Act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

If you or your business employ five or more persons or do business with the federal government or receive federal funding, you or your business may be subject to the Americans with Disabilities (42 U.S.C. 12112), the Rehabilitation Act of 1973 (29 U.S.C. 701), or the Idaho Human Rights Act (§67-5901), Idaho

Code. If you have any questions as to whether you are subject to these laws, please consult your attorney.

MARYLAND - AG Letter, dated April 25, 1990, RE: Disclosure of Medical Records concludes that *medical records should be placed in a sealed envelope within the claim file,* or access thereto otherwise restricted, so that these records will not be impermissibly redisclosed when public access to the file is allowed.

The Annotated Code of Maryland, health General Article, §4-302(d), as amended by Senate Bill 584, provides as follows:

A person to whom a medical record is disclosed may not redisclose the medical record to any other person unless the redisclosure is:

(1) authorized by the person in interest;
(2) otherwise permitted by this subtitle;
(3) permitted under Article 88A, §6B of the Code; or
(4) directory information

A claimant's consent to disclosure of medical records by a health care provider is not authorization for redisclosure by any person, including the Commission, to whom the records are disclosed. Thus, medical records within a workers' compensation claim file, under this revised law, are not to be open to public inspection.

MICHIGAN - Letter from Douglas Langham, Administrator, Vocational Rehabilitation Division, Michigan Bureau of Workers Disability Compensation, February 8, 1993

Since July 1992, as a result of the ADA, bureau responses to requests for information include the following information:

> *"The users of this information should be aware of prohibitions against covered entities using this information for pre-employment inquires as described in Title I of Public Law 101-336, The Americans with Disabilities Act of 1990".*

The number of responses to requests from employers for workers compensation information decreased by 71% within the first year.

MINNESOTA - Workers Compensation 176.231 Subd. 8. **No public inspection of reports.** Subject to subdivision 9, *a report or its copy which has been filed with the commissioner of the department of labor and industry under this section is not*

available to public inspection. Any person who has access to such a report shall not disclose its contents to anyone in any manner.

**A person who unauthorizedly discloses a report or its contents to another is guilty of a misdemeanor.*

Subd. 9 **Uses which may be made of reports**. Reports filed with the commissioner under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics. These reports are available to the department of revenue for use in enforcing Minnesota income tax and property tax refund laws, and the information shall be protected as provided in chapter 270B.

The division or office of administrative hearings or workers' compensation court of appeals may permit the examination of its file by the employer, insurer, employee, or dependent of a deceased employee or any person who furnishes written authorization to do so from the employer, insurer, employee, or dependent of a deceased employee.

> ***The following is contained on the Authorization Form:***
> ***"Information concerning disability may not be used to make a job decision unless state or federal law requires use of this information. Any use or distribution of this information beyond that authorized by the subject of this data unless authorized by state or federal law is prohibited. Questions concerning use of disability information may be directed to the Minnesota Department of Human Rights at (612) 296-5663, or toll free in greater Minnesota at 1-800-652-9747."***

NEVADA - NRS 616.192 **Confidentiality and disclosure of information; penalty for use of information for political purposes; privileged communications.**

1. Except as otherwise provided in this section and in NRS 616-193 and 616-550, information obtained from any employer or employee is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's identity.

2. Any claimant or his legal representative is entitled to information from the records of the insurer, to the extent necessary for the proper presentation of a claim in any proceeding under this chapter.

*6. If any employee or member of the board of directors or manager or any employee of the manager, in violation of this section, discloses information obtained from the files of claimants or policyholders, or if any person who has

obtained a list of claimants or policyholders under this chapter uses or permits the use of the list for any political purposes, he is guilty of a gross misdemeanor.

NORTH DAKOTA - North Dakota Century Code, Chapter 65-05-32. **Privacy of records and hearings.** *Information contained in the claim files and records of injured employees is confidential and is not open to public inspection,* other than to bureau employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant.

2. Employers or their duly authorized representatives may review and have access to any files of their own injured workers.

3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.

4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.

5. The claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public.

6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

NEW JERSEY - Article 9. Inspection of Records. §34:15-128. **Limited right to inspect or copy records**. Notwithstanding any other provision of the chapter to which this act is a supplement or of any other law, *no records maintained by the Division of Workmen's Compensation shall be open to inspection or copying by or on behalf of any person who seeks such inspection or copying for the purpose of selling or furnishing for a consideration to others reports or abstracts or workmen's compensation records or work-injury records pertaining to any individual, except in the case of an investigation by or on behalf of an employer in connection with any pending workmen's compensation case.*

§34:15-59. **Docket; records.** The secretary of the bureau shall keep a docket in which shall be entered the title of each cause, the date of the determination thereof, the date of appeal, if any, and the date on which the record in case of

appeal was transmitted to the appellant. The secretary shall also file the record of each case left with him by the official conducting the hearing, and shall keep a card index of such record in such manner as to afford ready reference thereto. such records shall be open to the inspection of the public.

NEW MEXICO - 52-5-21. **Administration records confidentiality; authorized use.** Unless introduced as evidence in an administrative or judicial proceeding, all records of the administration shall be confidential, provided, however, that, once an accident or disablement occurs, any person who is a party to a claim upon that accident or disablement is entitled to access to all files relating to that accident or disablement and to all files relating to any prior accident, injury or disablement of the worker.
Effective date: January 1, 1991.

NEW YORK - Workers' Compensation Law §125. **Job discrimination prohibited based on prior receipt of benefits.**
1. It shall be unlawful for any employer to inquire into, or to consider for the purpose of assessing fitness or capability for employment, whether a job applicant has filed for or received benefits under this chapter, or to discriminate against a job applicant with regard to employment on the basis of that claimant having filed for or received benefits under this chapter. An individual aggrieved under this subdivision may initiate proceedings in a court of competent jurisdiction seeking damages, including reasonable attorney fees, for violation of this subdivision.
*2. An employer who violates the provisions of subdivision one of this section shall be guilty of a misdemeanor, and upon conviction shall be punished, except as in this chapter or in the penal law otherwise provided, by a fine of not more than one thousand dollars.
3. In addition to the criminal penalty set forth herein, where the chair has determined that an employer has violated the provisions of subdivision one of this section, the chair may, after a hearing, impose a penalty against such employer in an amount not exceeding twenty-five hundred dollars.
Effective date Jan 1, 1992.

OHIO - BWC Internal Memorandum from Law Director to BWC Administrator, Subject: Release of Information to the General Public, Dated November 12, 1992.

"The Bureau's obligation to disclose public information is set forth in Ohio Revised Code §149.43(B) which states the following, in relevant part:

> All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular

business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time.

More specifically, Ohio Revised Code §4123.88 restricts the public availability of information contained in workers' compensation claim files. Section 4123.88 states, in pertinent part:

> *No person shall, without prior authority from the bureau, a member of the commission, the claimant, or the employer, examine or directly or indirectly cause or employ another person to examine any claim file or any other file pertaining thereto ... No employee of the bureau or commission ... shall divulge any information in respect of any claim which is or may be filed with the bureau or commission to any person other than members of the commission or to the superior of the employee except upon authorization of the administrator of workers' compensation or a member of the commission or upon authorization of the claimant or employer.*

TEXAS - Texas Workers' Compensation Act, Article 2, Chapter C,
§2.31. **Injury information confidential.** (a) *Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this Act.*

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 10.04 of this Act or Section 32.51, penal Code, is not confidential.

(c) The commission shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (d) of this section if:

(1) the claim is open or pending before the commission, on appeal to a court of competent jurisdiction, or the subject of a subsequent suit where the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form developed by the commission for this purpose and provides all required information.

(d) Information on a claim may be released as provided in Subsection (c) of this section to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association, if established by law and if that association has assumed the obligations of an impaired worker;

(6) the Texas and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company; or

(7) a third party litigant in a lawsuit in which the cause of action arises from the incident which gave rise to the injury, in which case Subsection (c)(1) of this section does not apply.

§2.33. **Information available to prospective employers.** (a) When a person applies for employment, the prospective employer who has workers' compensation insurance coverage is entitled, on compliance with this chapter, to obtain information on the applicant's prior injuries.

(b) The employer must make the request by telephone or file the request in writing not more than 14 days after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) the employer must obtain written authorization from the applicant before making the request.

(e) If the request is made in writing, the authorization shall be filed simultaneously. If the request is made over the telephone, the employer shall file the authorization not later than the 10th day after the date on which the request is made.

VIRGINIA - §65.2-903. **Records not public.** *The records of the Commission, insofar as they refer to accidents, injuries and settlements, shall not be open to the public but only to the parties satisfying the Commission of their interest in such records and their right to inspect them.*

WASHINGTON - RCW 51.28.070. **Claim files and records confidential.** *Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection* (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. A claimant may review his or her claim file if the director determines, pursuant to criteria adopted by rule,

that the review is in the claimant's interest. Employers or their duly authorized representatives may review any files of their own injured workers in connection with any pending claims. Physicians tr3eating or examining workers claiming benefits under this title, or physicians giving medical advice to the department regarding any claim may, at the discretion of the department, inspect the claim files and records of injured workers, and other persons may make such inspection, at the department's discretion, when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this title.

WISCONSIN - §102.33(2)(a) Except as provided in par. (b), the records of the department related to the administration of this chapter are subject to inspection and copying under s. 19.35(1).

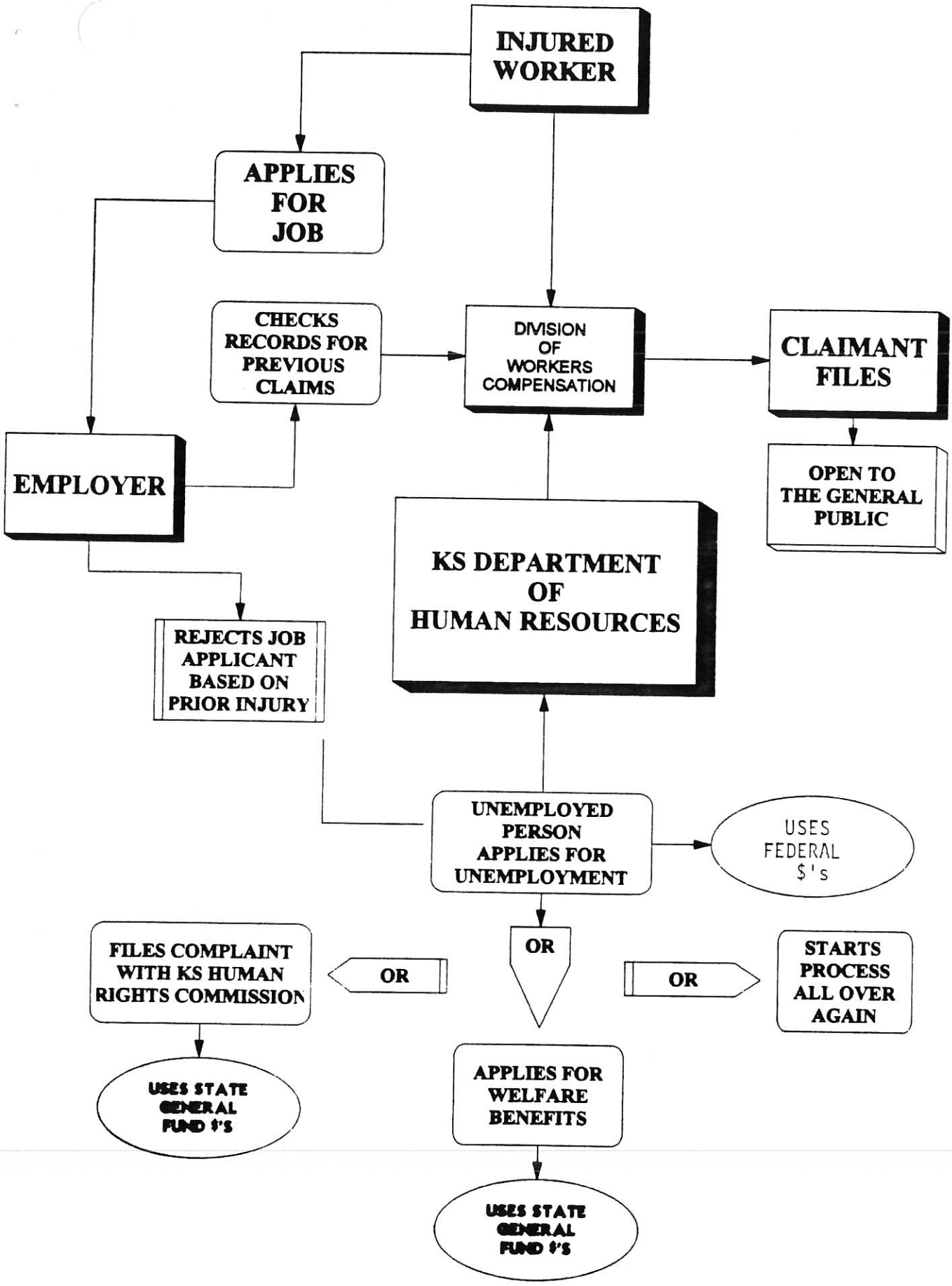
102.33(2)(b), Stats., Notwithstanding par. (a), a record maintained by the department that reveals the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's amount, type or duration of benefits paid to the employee or any financial information provided to the department by a self insured employer or by an applicant for exemption under s. 102.28(2)(b) is confidential and not open to public inspection or copying under s. 19.35(1). The department may deny a request made under s. 19.35(1) to inspect and copy a record that is confidential under this paragraph, unless one of the following applies:

1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. an attorney or authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the department.

2. The record that is requested contains confidential information concerning a worker's compensation claim and the requester is an insurance carrier or employer that is a party to the claim or an attorney or authorized agent of that insurance carrier or employer. an attorney or authorized agent of an insurance carrier or employer that is a party to an employee's worker's compensation claim shall provide written authorization for inspection and copying from the insurance carrier or employer if requested by the department.

***WYOMING** - §27-14-805. **Confidentiality of information**. Except as otherwise provided by this act, *information obtained from any employer or covered employee pursuant to reporting requirements under this act shall not be disclosed in a manner which reveals the identity of the employer or employee* except to the employer, the employee, legal counsel for an employer, legal counsel for an

employee or in situations necessary for the division to enforce any of the provisions of this act. The confidentiality limitations of this section do not apply to transfers of information between the divisions of the department of employment so long as the transfer of information is not restricted by federal law, rule or contract. Any employee who discloses information outside of the department in violation of federal or state law may be terminated without progressive discipline.


INJURED WORKER
APPLIES FOR JOB
CHECKS RECORDS FOR PREVIOUS CLAIMS
DIVISION OF WORKERS COMPENSATION
CLAIMANT FILES
EMPLOYER
OPEN TO THE GENERAL PUBLIC
KS DEPARTMENT OF HUMAN RESOURCES
REJECTS JOB APPLICANT BASED ON PRIOR INJURY
UNEMPLOYED PERSON APPLIES FOR UNEMPLOYMENT
USES FEDERAL $'s
FILES COMPLAINT WITH KS HUMAN RIGHTS COMMISSION
OR
OR
OR
STARTS PROCESS ALL OVER AGAIN
USES STATE GENERAL FUND $'S
APPLIES FOR WELFARE BENEFITS
USES STATE GENERAL FUND $'S