

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on January 21 in Room 241-N of the Capitol.

Committee members absent: Dale Swenson- unexcused
Jeff Jack- excused

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department
June Evans, Committee Secretary

Conferees appearing before the committee: Paula Greathouse, Director of Workers Compensation
Carol S. Cast, Coordinator, Employer Services, Kansas
Department of Labor, Division of Workers Compensation

The Chairman introduced Paula Greathouse, Director of Workers Compensation, Kansas Department of Labor (KDOL).

Ms. Greathouse stated the Workers Compensation Advisory Council is set forth in K.S.A. 44-596. All actions of the Advisory Council are required to be open meetings except when there is a recess for a closed caucus type meeting of either group; however, no binding action can be taken at such a meeting. The Director of Workers Compensation serves as the Chair of the Advisory Council and coordinates the agenda for the Advisory Council. The Director puts together the agenda of issues that are current concerns in the workers compensation arena. The Advisory Council discusses these issues and may invite experts on a specific issue to present their viewpoints at the Advisory Council meetings. A current listing of the members will be sent to the Committee (Attachment 1).

Ms. Greathouse introduced Carol S. Cast, Coordinator, Employer Services, Kansas Department of Labor, Division of Workers Compensation, who gave an overview of the basics of Workers Compensation (Attachment 2).

A committee member referenced form K-WC 40 (Rev. 11-04) and suggested that KDOL might include some type of warning on the form concerning making fraudulent claims (Attachment 3).

It was asked what happened to the recommendations sent to the Advisory Council last year?

Ms. Greathouse replied the Council was unable to come to an agreement but would make another stab at it this year.

The meeting adjourned at 10:00 A.M. and the next meeting will be January 25, 2005.

**Testimony before the
House Commerce and Labor Committee
Advisory Council Update
Paula Greathouse, Director of Workers' Compensation
Kansas Department of Labor
January 21, 2005**

Chairman Dahl and Members of the Committee

Thank you for the opportunity to appear before you today to talk about the Workers Compensation Advisory Council.

The Workers Compensation Advisory Council is set forth in K.S.A. 44-596 which I have attached with my testimony.

All actions of the Advisory Council are required to be open meeting except when there is a recess for a closed caucus type meeting of either group; however, no binding action can be taken at such a meeting.

History of Advisory Council

Prior to the 1993 legislation that statutorily established the Labor Management Advisory Council, there were attempts to bring together the parties to look at the major issues. Several Governors had Workers Compensation Task Forces' that were often large with every possible interest involved. It was difficult to obtain any type of consensus with such a large group and legislators were subjected to many levels of special interest lobbying. The Legislative Committee Chairs were inundated with testimony on many aspects of proposed changes wanted by special interest groups. The results were often a delay in passing legislation and long sessions for the Senate Commerce and the House Commerce and Industry Committee because the Chair had to start each issue from the very beginning.

The 1993 legislative session was long, often lasting into the early morning hours, and the Legislature decided that there must be a better way to deal with the complex workers compensation issues. The creation of the Worker Compensation Advisory Council was a result of a desire for issues to be worked out prior to the Committees need to take up these issues. If the parties having a special interest have a forum to discuss and reach a compromise that all sides can agree, the Legislature would then have an opportunity to pass bills that have solutions to the problems in the workers compensation arena. No one wanted to go through another session like the 1993 Workers Compensation Reform.

Several States had adopted a form of an Advisory Council and these were reviewed by the Committees. Wisconsin had a very active Advisory Council that looked at each proposed amendments and only those amendments that the Advisory Council

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recommended were passed on the Legislature to review, take testimony and to consider for passage. The Advisory Council format that was adopted by the 1993 Legislature was a smaller council made up of Management and Labor with a non voting representative from the Insurance Department and the Division of Workers Compensation Director.

Currently the Director of Workers Compensation serves as the Chair of the Advisory Council and coordinates the agenda for the Advisory Council. The Director puts together the agenda of issues that are current concerns in the workers compensation arena. The Advisory Council discusses these issues and may invite experts on a specific issue to present their viewpoints at the Advisory Council meetings.

The Chairs of the Senate Commerce and the House Commerce and Labor Committees may send bills with specific language to the Advisory Council for their review and recommendations prior to having a full hearing on the bill. The Committee Chairs also may request the opinion of the Council on specific issues that are before their committees. If both sides can reach an agreement, specific language is drafted for the Committee with a notation to the committee members that it is the recommendation of the Advisory Council that the language be adopted into statute.

As you know, it has been the desire of the Secretary of Labor, Jim Garner, to increase the participation of legislators in the Advisory Council and to allow the legislature to gain a better understanding of the deliberative workings of the Advisory Council, its role in the process and the variety of issues it considers related to the workers compensation system. Legislative leadership, at the request of Secretary Garner has designated four legislators, two from each party from both the House and Senate to participate as ex-officio members of the council.

The Advisory Council has met on a number of occasions last fall and early this year to cover a broad range of issues. Currently, there are a number of appointed subcommittees working on issues of import to both business and labor.

Again, Mr. Chairman, thank you for the opportunity to appear and share this information with you. I would be happy to respond to any questions you may have.

Workers Compensation Advisory Council K.S.A. 44-596

There is hereby established the workers compensation advisory council. The advisory council shall be composed of the director of workers compensation, or the director's designee from the division of workers compensation, a representative of the insurance industry appointed by the commissioner of insurance, and 10 members who shall be appointed by the secretary of human resources in accordance with this section. Five members of the advisory council shall be broadly representative of employers throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of human resources by the Kansas chamber of commerce and industry and four members shall be appointed from nominees submitted to the secretary of human resources by employers or other representatives of employers or other employer organizations. Five members of the advisory council shall be broadly representative of employees throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of human resources by the Kansas A.F.L.-C.I.O. and four members shall be appointed from nominees submitted to the secretary of human resources by employees or other representatives of employees or other employee organizations. The representative of the insurance industry shall be knowledgeable of insurance underwriting practices. The director of workers compensation and the representative of the insurance industry shall be nonvoting members of the advisory council.

(c) The advisory council shall study the workers compensation act, proposed amendments to the act and such other matters relating thereto that may be recommended by the secretary of human resources or the director of workers compensation and shall advise the secretary and the director thereon. The advisory council shall also review and report its recommendations on any legislative bill amending, supplementing or affecting the workers compensation act or rules and regulations adopted thereunder or affecting the administration of such act or rules and regulations, which is introduced in the legislature and which is requested to be reviewed and reported on to a standing committee of either house of the legislature to which the bill is currently referred, upon the request of the chairperson of such committee.

(d) The advisory council shall organize annually by electing a chairperson and a vice-chairperson and shall meet upon the call of the chairperson. All actions of the advisory council adopting recommendations regarding the workers compensation act or any other matter referred to the advisory committee under subsection (c) shall be by motion adopted by the affirmative vote in open meeting of four of the five voting members who are appointed as representative of employers and four of the five voting members who are appointed as representative of employees. All other actions of the advisory council shall be by motion adopted by the affirmative vote of at least six voting members in open meeting.

*Kansas
Legislature*

**House Commerce
and Labor**

Presented by:

**Carol S. Cast, Coordinator Employer Services
Kansas Department of Labor
Division of Workers Compensation**

January 21, 2005

TOPICS PRESENTED

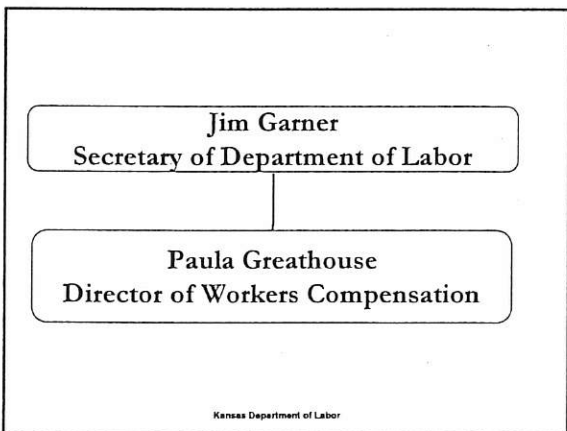
1) Introduction to the Sections/Units of Workers Compensation

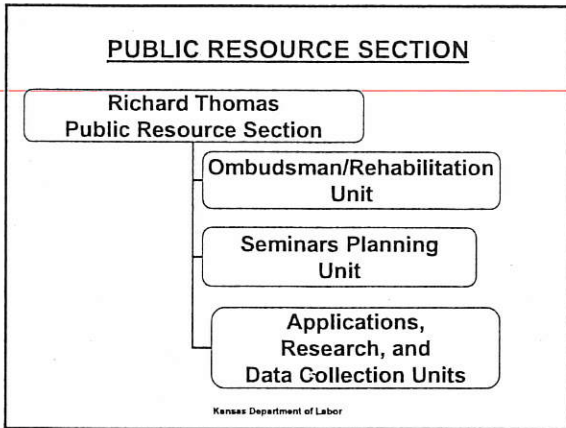
2) Basics of Workers Compensation

Kansas Department of Labor

Roles in the operations of the Division

Kansas Department of Labor





OMBUDSMAN UNIT

- Assist pro-se claimants with hearing process and mediations
- Death benefit requirements
- Provides information on workers compensation to all interested parties
- 2 ombudsmen are available to assist with Spanish speaking employees

Kansas Department of Labor

OMBUDSMAN UNIT
EMPLOYER SERVICES

- Expanded program to increase involvement with Kansas Employers
- Technical assistance available:
 - Telephone contacts
 - On-site visits
 - Presentations
 - Training

Kansas Department of Labor

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REHABILITATION UNIT
Primary Functions

- Coordinates vocational rehabilitation services for injured workers when the insurance company/employer elects to provide services.
- Reviews medical management closures
- Refers injured workers to state vocational rehabilitation agency

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SEMINAR PLANNING UNIT

Coordinates the planning for the Annual Workers Compensation Seminars and Safety and Health Seminars.

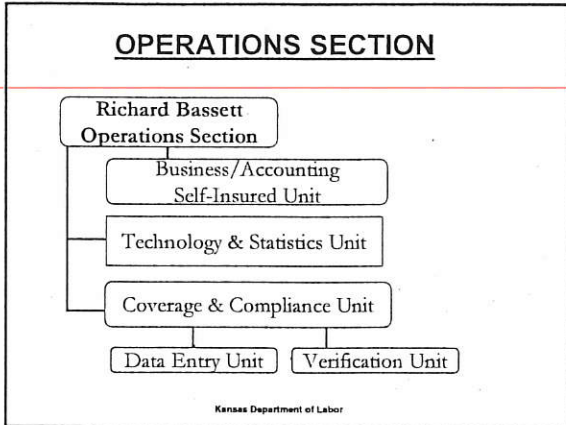
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Applications, Research, and Data Collection Units

- Applications processes applications for hearings and assigns to Administrative Law Judges.
- Research responds to requests from attorneys, insurance carriers & employers for workers compensation documents.
- Data Collection codes and enters data into data base, reviews settlements and certifies dockets for Court of Appeals.

Kansas Department of Labor

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BUSINESS & ACCOUNTING/SELF INSURED UNIT

- Prepare annual budget
- Office management
- Collect and tabulate information needed to issue assessments against insurances carriers, group pools and self-insured employers to generate fees to support the Division as mandated by K.S.A. 74-712
- Self insured employers

Kansas Department of Labor

TECHNOLOGY AND STATISTICS UNIT

- Responsible for research studies mandated by statute, collects data, statistical analysis and closed claims studies.
- Responsible for annual statistical report.
- Responsible for working with Division users and Department programmers to maintain web-based system.
- EDI System (Electronic Data Interchange)

Kansas Department of Labor

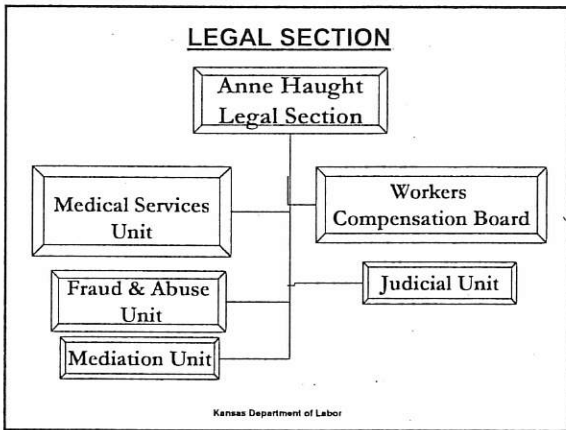
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COVERAGE & COMPLIANCE UNIT

- Monitors Workers Compensation Insurance Coverage and Accident Reports accuracy and timeliness.

- Data Entry and Verification Units:
Ensures all accident reports are accurately coded and keyed into the web-based database system.

Kansas Department of Labor



MEDICAL UNIT

- Administers medical fee schedule

- Administers utilization review and peer review of health care services

Kansas Department of Labor

FRAUD AND ABUSE UNIT

FRAUD AND ABUSE FINES & PENALTIES

(K.S.A. 44-5,120; 44-5,125)

Fraudulent/abusive acts for purposes of workers compensation act include, willfully, knowingly or intentionally:

List of violations under Statute

K.S.A. 44-5,120

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MEDIATION UNIT

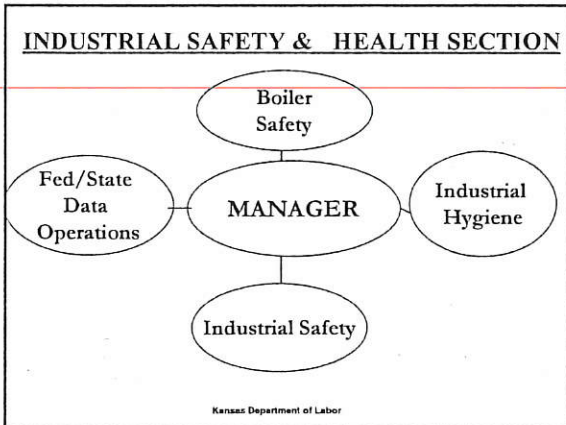
Provides mediation conferences to assist parties in resolving their disputes

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JUDICIAL UNIT AND WORKERS COMPENSATION BOARD

- Judicial Unit consists of the Administrative Law Judges and Specials.
- The Board reviews Administrative Law Judge's decisions appealed in workers compensation matters.

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- INDUSTRIAL SAFETY & HEALTH SECTION**
- Offers safety consultation assistance to private sector employers.
 - Monitors public sector compliance
 - Accident prevention evaluations
 - Boiler Inspections
- Kansas Department of Labor

**INTRODUCTION
TO BASIC
WORKERS
COMPENSATION**

Kansas Department of Labor

Kansas Department of Labor
Website:
www.dol.ks.gov

Workers Compensation E-mail:
workerscomp@dol.ks.gov

Kansas Department of Labor

POSTING NOTICE
(FORM 40)

- Employees must be informed on what to do if they are injured on the job.
- Notice must be posted in one or more conspicuous places.

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COMPENSABILITY

**Arising out of
and in the course of
employment**

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SUMMARY OF HOW THE PROCESS WORKS

- Injury Occurs
- Worker Notifies employer within 10 days; 75 days just cause – K.S.A. 44-520
- Employer mails or delivers KWC-27 to employee or legal beneficiary - K.S.A. 44-5,102(a)
- Employer notifies insurance carrier or group funded plan
- Employer/insurance carrier provides medical treatment
- Accident report filed with Division within 28 days

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SUMMARY OF HOW THE PROCESS WORKS

- Division mails written claim form (K-WC-15) to employee along with (K-WC-136) informational explaining injured workers rights.
- Employee files written claim form with employer
- Insurance provider pays benefits

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BENEFITS

MEDICAL TREATMENT

After employee sustains injury, employer is required to furnish all necessary medical treatment and has the right to designate the treating physician.

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BENEFITS
MEDICAL TREATMENT

- Medical treatment to cure and relieve the effects of the injury - no \$\$ maximum
- Medical mileage (More than 5 miles round trip) (Current \$.37/mile)

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UNAUTHORIZED MEDICAL TREATMENT

Without application or approval, employee may consult a health care provider of the employee's choice for purpose of examination, diagnosis or treatment up to \$500.

(May not be used to obtain a functional impairment rating.)

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UNSATISFACTORY MEDICAL TREATMENT

- Insurance carrier/self-insured employer submits names of three health care providers who, if possible given the availability of local health care providers, are not associated in the same practice.
- Injured worker selects one as authorized treating healthcare provider.

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MEDICAL TREATMENT

The authorized Treating Doctor determines when the injured employee can return to work:

- Restricted
- Full Duty
- MMI (Maximum Medical Improvement)

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WHO PAYS WHAT

The insurance carrier, group funded pool, or self-insured employer pays:

- Medical Treatment (Includes prescriptions)
- Medical Mileage – More than 5 miles roundtrip
- Travel & living expenses (KSA 44-515)
- Disability benefits

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PAYMENT OF MEDICAL BILLS

- Employer co-ordinates with insurance carrier what medical treating facility to use – relay information to employees
- All medical bills submitted to insurance carrier (K.S.A. 44-559a(b))
- Employer does not pay any workers compensation expenses out of pocket unless they are a self-insured -employer and can, by statute, directly pay medical

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Temporary Total Benefits

Exist when the injured worker is completely and temporarily incapable of engaging in any type of substantial and gainful employment

K.S.A. 44-510c(b)2

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TEMPORARY TOTAL BENEFITS

- Temporary total disability 2/3 average weekly wage (AWW) not to exceed the state maximum in effect at time of injury (Current Maximum is \$449)
- Seven day waiting period

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TEMPORARY TOTAL

Maximum temporary total computed as the dollar amount nearest to 75% of the state's average weekly wage for the previous calendar year.

Example: The maximum weekly benefit rate of \$449 for 7/1/04 – 6/30/05 was calculated based on the State's average weekly wage of \$598.79 for calendar year 2003.

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LEGAL PROCESS

- If employer and employee disagree on entitlement of benefits, the employee can request a preliminary hearing
- Case is assigned to an Administrative Law Judge to make a ruling based on the evidence presented

Refer to Legal Flow Chart for Legal Process

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LEGAL PROCESS

At any time during the legal process, any party may request a mediation conference. All parties have to agree to mediate.

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DOCKETED CASES

- Once a claim is docketed, the insurance adjuster usually turns the claim over to the insurance carrier's attorney.
- Communication between the injured worker and the insurance adjuster may stop.

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DOCKETED CASES

- If represented, claimant must communicate through their attorney.
- If not represented, Ombudsmen make it clear to the claimant that they can only assist and not represent.

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DEATH BENEFITS
(KSA 44-510b)

- \$250,000 Maximum to spouse and/or dependent children
- \$40,000 Lump sum immediately
- Minimum benefit is 50% of the state's average weekly wage (current minimum is \$299)

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PAYMENT TO MINORS

When compensation is paid to or on behalf of minors, K.S.A. 44-513a directs such compensation to be paid in accordance with K.S.A. 59-3050 through 59-3095 which establishes the guidelines for obtaining a guardian or a conservator, or both for minor(s).

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GUARDIAN OR CONSERVATOR

Probate statutes dictate if the compensation is over \$10,000, a guardian or conservator must be appointed to manage the minor's benefits.

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DEATH BENEFITS

- \$25,000 to heirs if no spouse or dependents
- No dependents or heirs the insurance company pays \$18,500 to the Workers Compensation Fund
- Burial allowance is \$5000

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Kansas Department of Labor

★ NOTICE ★

YOUR EMPLOYER IS SUBJECT TO THE KANSAS WORKERS COMPENSATION LAW WHICH PROVIDES COMPENSATION FOR JOB-RELATED INJURIES 1-800-332-0353

WHAT TO DO IF AN INJURY OCCURS ON THE JOB - Notify your employer immediately. **Your claim may be denied if you fail to tell your employer within 10 days of the injury.** For just cause you may have 75 days to tell the employer of your injury. Thereafter you **must** file a written claim within 200 days of the accident or last date benefits are paid. Submission of Employer's Report of Accident does not constitute a written claim.

MEDICAL BENEFITS - An employer is required to furnish all necessary medical treatment and has the right to designate the treating physician. If the employee seeks treatment from a doctor not authorized by the employer, the employer or its insurance carrier is only liable up to \$500.00.

WEEKLY BENEFITS - Benefits are paid by the employer's insurance carrier or self-insurance program. Injured workers are not entitled to compensation for the first week they are off work unless they lose three consecutive weeks. The first compensation payment is normally due at the end of the 14th day of lost time. An injured employee is entitled to a weekly amount of 66 2/3% of his average weekly wage up to a maximum of 75% of the state's average weekly wage. These benefits are subject to legislative changes and for the latest information on benefit levels, please contact the Division at the address and phone number below. If the injury results in permanent disability, the Kansas compensation law provides for additional benefits.

HELPFUL INFORMATION - OMBUDSMAN WHERE TO GET HELP OR INFORMATION ON YOUR CLAIM

Contact the Ombudsman/Claims Advisory Section at the Kansas Division of Workers Compensation immediately if you do not receive compensation in a timely manner. The Division of Workers Compensation has full-time personnel who specialize in aiding injured workers with claim problems. They can give information on what benefits an injured

worker is entitled to receive. Such problems as benefits not being paid on time, unpaid medical bills, questions in regard to proper settlement amounts, etc., should be brought to the attention of the Division's Ombudsman/Claims Advisory Section. Injured workers may use our toll free telephone number 1-800-332-0353.

INFORMACIÓN SOBRE COMPENSACIÓN DE TRABAJADORES

La ley exige que cuando un trabajador llega a sufrir un accidente, una herida, o una enfermedad a causa de su empleo, el empleador debe proporcionarle al trabajador incapacitado tratamiento médico y otros beneficios sin ningún costo al trabajador. El trabajador incapacitado tiene derecho a recibir un sueldo reducido, mientras se restablece. La ley también protege los derechos del trabajador incapacitado en otras maneras, por ejemplo: se prohíbe el desempleo de un trabajador solo por haber reclamado los beneficios de la compensación de trabajadores. Reporte cada accidente o lastimadura industrial inmediatamente al patrón, o al

empleador. **Su reclamo puede ser negado si usted no notifica (avisa) a su empleador (patrón) dentro de 10 días del accidente o lastimadura.** Por buena causa usted puede tener 75 días para avisarle a su empleador (patrón) de su accidente o lastimadura. De allí en adelante, usted debe entregar un aviso por escrito dentro de 200 días del accidente o último día que recibió tratamiento médico, o que recibió beneficios. Un reporte de accidente no constituta un aviso por escrito. Para más información acerca de los beneficios o para recibir asistencia con un reclamo, llame al teléfono 1-800-332-0353 (gratis) o al 785-296-2996.

WHERE TO GET HELP OR INFORMATION ON YOUR CLAIM:

Current claims are being administered by _____

Their claims office is located at _____ telephone (_____) _____

DIVISION OF WORKERS COMPENSATION
KANSAS DEPARTMENT OF LABOR
 800 SW JACKSON ST STE 600
 TOPEKA KS 66612-1227

Telephone Number: 785-296-2996 • Web site: www.dol.ks.gov • e-mail: workerscomp@dol.ks.gov

Persons with impaired hearing or speech utilizing a telecommunications device may access the above number(s) by using the Kansas Relay Center at 1-800-766-3777.

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