

## **Workers Compensation Lifetime Benefit Increase and Other Changes; SB 430**

**SB 430** amends workers compensation law to, among other things, increase lifetime benefit maximums, provide coverage for members of the Kansas National Guard, and modernize elements of the administrative process.

### ***Lifetime Benefit Caps***

The bill will increase the following lifetime maximum benefits:

<b>Benefit</b>	<b>Current Law</b>	<b>SB 430</b>
Death	\$300,000	\$500,000
Permanent Total Disability	\$155,000	\$400,000
Temporary Total Disability	\$130,000	\$225,000
Permanent Partial Disability	\$130,000	\$225,000
Temporary Partial Disability	\$130,000	\$225,000
Functional Only	\$75,000	\$100,000

The bill also establishes, beginning on July 1, 2027, an adjustment formula that will increase the maximum benefit caps annually by a five-year average of the percentage change in the state average weekly wage.

### ***Additional Benefit Changes***

#### ***Additional Benefit Payments and Reimbursements***

The bill requires an employer to provide reimbursement for “reasonable expenses” for overnight accommodations in cases in which the employer requires the employee to seek a medical opinion outside of their town or city of residence. The bill also increases the per diem requirement from \$15 to \$30 to help defray the employee’s meal expenses. [Note: Continuing law requires employers to provide funds for transportation in such instances.]

The bill also increases the amount of medical charges an employer is liable to cover from \$500 to \$800 when an employee consults a health care provider for the purpose of examination, diagnosis, or treatment without prior application or approval.

#### ***Benefit Calculation***

The bill clarifies the reduction in the award of compensation for both permanent partial and permanent total disability based upon preexisting functional impairment is only for the “same physical structure as the body part injured.”

The bill amends the benefit reduction calculations for retirement benefits under the federal Social Security Act by deducting 50.0 percent of the weekly equivalent amount of

benefits from the employee's permanent partial or permanent total disability benefits rather than 100.0 percent. The bill excludes temporary total and temporary partial disability compensation from said deduction.

The definition of "wage" is amended to exclude the employee's first week of employment, if the employee worked less than their expected weekly schedule that week, from the calculation of their average weekly wage .

### *Benefit Payment Methods*

The bill allows, upon agreement of the parties, benefit payments to be made by electronic funds transfer or a payment card and that, if payment is made in such a manner, that notification of payment be made to the injured worker's attorney each time a payment is made.

### *Minimum Weekly Payments*

The bill increases the minimum weekly benefit payment amount from \$25 to \$50.

### *Payments for Death Due to Injury*

The bill requires a judicial determination of dependency prior to any initial payments for the death of an employee due to injury.

The term "minor child" is also replaced with the term "wholly dependent child."

The bill requires benefit payments to a wholly dependent child to continue until the latest of the following dates:

- If not enrolled in high school, when the wholly dependent child becomes 18 years of age;
- If enrolled in high school, May 30 of the wholly dependent child's senior year in high school or until the child becomes 19 years of age, whichever comes first; or
- If such child is a student enrolled full-time in an accredited institution of higher education or vocational education, the wholly dependent child's 23rd birthday.

### *Injuries Not on the Schedule*

For injuries not on the schedule, the bill amends employee eligibility requirements for receiving permanent partial general disability compensation to employees who suffer an injury that, among other things, involves a functional impairment caused solely by the injury that is equal to or exceeds 7.5 percent to the body as a whole rather than just those that exceed 7.5 percent.

### *Permanent Partial Disability*

The bill amends the compensation calculation for the loss of or loss of use of a scheduled member (*i.e.*, body part listed on the rating schedule) to be the percentage of functional impairment the employee sustained from the injury.

### ***Kansas National Guard***

The bill entitles members of the Kansas National Guard to receive their benefits under the general workers compensation benefits starting July 1, 2024, rather than under the National Guard-specific workers compensation benefits in statute. [*Note:* Compensation for any wound, injury, disease, illness, or death that occurs prior to July 1, 2024, would be governed by current National Guard benefits.]

The bill states that, for purposes of benefit calculation, the service member's current military earnings will be used as their average weekly wage. Additionally, the bill deducts from the state benefit amount owed to the service member any federal benefits the service member, or their dependent, receives for a wound, injury, disease, illness, or death. To access benefits under the Workers Compensation Act, a service member will be required to sign an authorization consenting to the release of information regarding any federal compensation received.

### ***Medical Examination, Records, and Treatment***

#### *Exchange of Medical Records*

The bill requires that, except for preliminary hearings conducted under KSA 44-534a, both parties or their attorneys shall arrange for the free exchange of all medical reports, including those made by treating and examining health care providers, upon receiving notice of the hearing date for a case. The bill requires all medical records to be exchanged no less than 30 days prior to the hearing date. The bill states that failure by any party to comply would be grounds for the administrative law judge to grant a party's request for additional time to present evidence.

The bill also adds requirements regarding the following topics:

- Documents to be included in the notice;
- Disputes of medical reports submitted as evidence;
- Submission of medical records as evidence in a hearing; and
- Testimony by treating or examining health care providers.

In the event the parties are utilizing the preliminary hearing process established in KSA 44-534a, the bill requires such exchange of medical reports to occur no less than 20 days prior to the date of the preliminary hearing.

### *Neutral Medical Examination*

The bill authorizes the administrative law judge to appoint a neutral health care provider to conduct a neutral health care examination should the parties not agree to a neutral health care examination or a neutral health care provider prior to the prehearing settlement conference. The neutral health care provider is required to be “of good standing and ability” and required to address the diagnosis, treatment recommendations, and temporary restrictions of the injured employee. The bill requires the selected health care provider to issue a written report which would be admitted into evidence without additional foundation.

The bill prohibits the appointed neutral health care provider from addressing the injured worker’s permanent restrictions, impairment, permanent partial disability, job task loss, wage loss, or permanent total disability in any written report unless the provider is subsequently designated to be the authorized treating health care provider.

The bill also allows any charges or costs incurred from the neutral health care provider due to unreasonable late cancellation or a missed appointment to be charged to the party responsible for the canceled or missed appointment.

### *Post-award Medical Benefits*

The bill amends the circumstances under which an employer’s liability for an injured employee’s medical benefits would not terminate upon the employee reaching maximum medical improvement. Such employer liability would not terminate if the following conditions were met:

- The employee has undergone invasive or surgical procedures or an authorized treating health care provider recommends the employee would need an invasive or surgical procedure in the future, and evidence is provided that “it is more probably true than not” that future medical treatment will be needed after the employee reaches maximum medical improvement; or
- There is “clear and convincing evidence” that the employee will need future medical treatment.

The bill prohibits proceedings for post-award medical benefits from utilizing preliminary hearing procedures contained in KSA 44-534a.

The bill requires all applications made for a hearing on post-award medical benefits to specifically identify the post-award medical benefits being sought. If the benefits are provided within 30 days, no award of attorney fees would be made unless “clear and convincing evidence” is provided that the employee’s attorney expended significant time or resources to obtain the benefits.

## ***Miscellaneous Provisions***

### *Hearing Extension Limitation*

The bill removes, for claimants who have not reached maximum medical improvement, a prohibition on grants of extensions for claims that have not proceeded to a regular hearing, settlement hearing, or agreed award within three years of making the claim.

### *Medical Reference Guides*

The bill amends all references to the fourth edition of the American Medical Association Guides for Evaluation of Permanent Impairment to refer to the sixth edition of the publication.

### *Notification of Injury*

The bill clarifies an employee could notify their employer of an injury by accident or repetitive trauma either orally or in writing as provided by law and increases the timeframe in which an injured employee must notify the employer. An employee must notify the employer by the earliest of the following dates:

- Within 30, rather than 20, calendar days from the date of the accident or date of injury by repetitive trauma; or
- Within 20, rather than 10, calendar days after the employee's last day of employment with the employer.

The bill removes a notification deadline related to the date medical treatment is sought.

### *Records of Hearings*

The bill allows the Director of Worker's Compensation (Director) at the Kansas Department of Labor to record hearings by digital recording or other comparable means. Should this occur, the bill requires the recordings to be transcribed by either a certified shorthand reporter or notary public who would then attest to the accuracy of the transcript.

### *Settlements*

The bill allows for settlements to occur by settlement award on written stipulation by a form established by the Director, but only if both parties are represented by legal counsel and the claimant is over the age of 18.

The bill requires any settlement made in this manner to be approved or rejected by the assigned administrative law judge within five business days of the electronic filing of the settlement award by the parties.

## *Workers Compensation Fund*

The bill permits the Workers Compensation Fund (Fund), when engaged in a lawsuit in which the Fund has reasonable belief the liability for the injured worker's benefits should be covered by a principal, to file an application to bring the principal as a party into the lawsuit. Any application made to the Fund to carry out such actions is required to be heard within 60 days from the date the principal was notified of the Fund's application.

### **Definitions**

The bill amends the following definitions:

- "Functional Impairment" will utilize the sixth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment instead of the fourth edition of the publication;
- "Money" includes sick, vacation, or other paid time off;
- "Workman," "employee," or "worker" includes "claimant" as an equivalent term;
- "Permanent total disability" requires the claimant to meet the following requirements:
  - Suffers impairment as established by competent medical evidence and based on the sixth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment; and
  - Suffers a percentage of functional impairment determined to be caused solely by the injury that is equal to or exceeds 10.0 percent to the body as a whole or the overall functional impairment is equal to or exceeds 15.0 percent if there is a preexisting functional impairment;
- "Complete medical record" is the report of a health care provider and includes the provider's qualifications, patient's history, complaints, details of the findings of examinations, diagnosis, prognosis, nature of the impairment and disability, and an estimate of the percentage of permanent partial disability, if any; and
- "Registered mail" is:
  - Registered mail or certified mail that provides a mailing receipt or is trackable and provides proof of receipt;
  - Electronic mail with proof that the electronic mail was delivered; or
  - Facsimile with proof of delivery.