

Workers Compensation and Employment Security Boards Nominating Committee; Qualifications for Injury Compensation Claims; ALJ Recusal; Evaluation of Physical Impairment; State Workers Compensation Self-insurance Program; SB 187

SB 187 replaces the Workers Compensation Administrative Law Judge (ALJ) Nominating and Review Committee and the Workers Compensation Board Nominating Committee with a new entity named the Workers Compensation and Employment Security Boards Nominating Committee. The new Committee makes nominations pertaining to positions in the Workers Compensation Division, the Workers Compensation Review Board, and the Employment Security (Unemployment Insurance or UI) Board of Review. The bill also revises provisions of the Workers Compensation Act regarding qualifications for injury compensation claims, the appeals process pertaining to the recusal of an ALJ, the evaluation of physical impairment, and administrative responsibility for the State Workers Compensation Self-insurance Program.

Workers Compensation and Employment Security Boards Nominating Committee

The new Nominating Committee has seven members. The following state official and groups will nominate members for the Governor to consider:

- Secretary of Labor (Secretary);
- Kansas Chamber of Commerce;
- National Federation of Independent Businesses;
- Kansas AFL-CIO;
- Kansas State Council of the Society for Human Resource Management;
- Kansas Self-Insurers Association; and
- The Secretary nominates one member from either an employee organization, as defined by KSA 75-4322, or a professional employees' organization, as defined by KSA 72-5413.

From the persons first nominated, the Governor appoints three members to two-year terms and four members to four-year terms. The Governor appoints subsequent members to four-year terms. No member serves longer than two consecutive terms. If the Governor chose not to appoint a person, the same nominating source replaces the selection by the same process. If a vacancy were to occur on the new Nominating Committee, the respective nominating source has 30 days to nominate another person.

The new Nominating Committee meets as needed. A two-thirds majority of the new Nominating Committee is required to approve an action.

Workers Compensation Administrative Law Judges

The bill increases the annual salary for unclassified ALJ positions, from 75 percent to 85 percent of the annual salary paid to a district judge.

If there is a vacant ALJ position, the new Nominating Committee nominates a person from a list of qualified applicants provided by the Director of the Workers Compensation Division. The Secretary has the discretion to appoint or reject a nomination. In the latter case, the new Nominating Committee nominates another person for the vacancy.

The reappointment process for an ALJ who has served a four-year term is revised. An incumbent ALJ submits an application to the Director of Workers Compensation. The application is forwarded to the Secretary unless the new Nominating Committee decides, by a two-thirds majority vote, to not forward the application. Under previous law, an incumbent ALJ who requested to be reappointed was considered directly by the ALJ Nominating and Review Committee.

The previous ALJ Nominating and Review Committee was composed of two members. The Secretary was required to appoint one person nominated by the Kansas AFL-CIO and the other nominated by the Kansas Chamber of Commerce. Using a list of qualified applicants provided by the Director of Workers Compensation, the Nominating and Review Committee made a unanimous nomination to the Secretary. The Secretary had the discretion to accept or reject the applicant.

Worker Compensation Appeals Board

Under continuing law, the Workers Compensation Board reviews the decisions, findings, orders, and awards made by the ALJs. The five members of the Workers Compensation Board are required by statute to have a minimum of seven years' experience practicing law in Kansas. The bill requires Board members to have a minimum of five years of that experience with Workers Compensation law. The bill renames the Board, calling it the Worker Compensation Appeals Board.

The previous Nominating Committee for the Workers Compensation Board was composed of two members. The Secretary of Labor was required to appoint one person nominated by the Kansas AFL-CIO and the other nominated by the Kansas Chamber of Commerce.

UI Board of Review

With regard to a vacancy on the UI Board of Review, the new Nominating Committee submits nominees for the Governor's consideration. The Governor may choose not to appoint any of the nominees; in that case, the new Nominating Committee nominates another person for the vacancy. Appointees will continue to require confirmation by the Senate. Board members are limited to serving two consecutive terms.

Under previous law, the UI Board of Review was composed of three members appointed to four-year terms. The Kansas AFL-CIO and the Kansas Chamber of Commerce each

nominated three persons to the Governor. The Governor then appointed one from each list. After Senate confirmation, the two Board members agreed upon the selection of the third member, who represented the general public.

Qualifications for Workers Compensation

Under the bill, a qualified, injured worker may seek payment from the Workers Compensation Fund if the employer was self-insured with an insufficient letter of credit.

In order to be eligible for workers compensation, the bill shortens certain time periods for employees to give notice to the employer of the accident or injury:

- From 30 days to 20 days, starting from the date of the accident or injury due to repetitive trauma; and
- From 20 days to 10 days, starting after the employee's last day of work for the employer.

Appeals Process for ALJ Recusal

In instances where an ALJ declines a request to recuse the ALJ from hearing a workers compensation case, a party to the hearing may appeal to the Workers Compensation Board. Previously, appeals of this sort were made to county district court. If a majority of the Workers Compensation Board finds sufficient grounds, the Board directs the Director of the Workers Compensation Division to assign another ALJ. If there is no pending claim for compensation, the Board's decision may be appealed to the Kansas Court of Appeals.

Evaluation of Physical Impairment

Starting on January 1, 2015, physicians are required to use the *American Medical Association (AMA) Guides for Evaluation of Permanent Impairment, Sixth Edition*, when evaluating the extent of an injured employee's impairment, rather than the AMA's fourth edition.

State Workers Compensation Self-insurance Program

The bill transfers responsibility for the State Workers Compensation Self-insurance Program from the Secretary of the Department of Administration to the Secretary of the Kansas Department of Health and Environment (KDHE). The Division of Industrial Health and Safety within the Department of Labor assists KDHE in administering the State Workplace Health and Safety Program for state agencies.