

Lana Gordon, Secretary

Sam Brownback, Governor

Testimony before the
Senate Committee on Commerce regarding SB 167
By the Division of Workers Compensation
Kansas Department of Labor
February 18, 2015

Chairperson Lynn and Members of the Committee:

In 2011 major reforms were enacted by the Kansas legislature. These reforms created an equitable workers compensation system to support and promote commerce in Kansas. Prior to the 2011 changes, the definition of a compensable work accident in Kansas had become very liberal. The law stated that to be compensable, an accident was to arise out of and occur during the course of employment. The arising out of element historically had envisioned a causal link between the employment and the accident. That element had eroded and when added to the Supreme Court *Bergstrom* decision, that allowed considering wage loss suffered by the employee whether that wage loss was related to the injury or not, the workers compensation laws of Kansas were ripe for legislative overhaul.

In response, the legislature unanimously adopted reforms negotiated between labor and industry. The keystones of the negotiated revisions were 1) the adoption of work being the required prevailing factor for compensability, 2) the reversal of *Bergstrom* on wage loss consideration, and 3) the reversal of the Supreme Court's *Casco* decision allowing bilateral extremity injuries, such as carpal tunnel, to be treated not as separate injuries to each limb, but instead to be whole body injuries which could qualify for enhanced workers compensation benefits.

These enhanced benefits, known as work disability, provide increased compensation and per the agreement in 2011 between labor and industry are available only if the injury is 1) a whole body injury versus a scheduled member injury, 2) results in a whole body impairment rating greater than 7 1/2% (based on the AMA Guides to Rating Permanent Impairment 4th Edition) and 3) result in wage loss now causally related to the injury of 10% or more.

If the above thresholds are met, the worker is compensated for their permanent injury, not by a formula using the impairment rating generated by use of the AMA Guides, but rather by a formula which averages the injured employee's percentage of wage loss and the percentage of work tasks the employee can no longer perform.

The 2011 changes have been very successful and have resulted in cost savings and significantly reduced premium costs for Kansas businesses. The continuation of these reforms should be a priority.

The current issue before the legislature is the edition of the AMA Guides to use for impairment ratings. Which Guide is used impacts the level of benefits awarded to the employee. The use of the 6th Edition in place of the 4th Edition will result in lower impairment ratings and an even greater reduction in workers benefits. The 2011 Amendments did not include adoption of the 6th Edition. The 6th Edition was adopted in 2012 legislation. Reverting back to the 4th Edition will return the formula back to where it was when the 2011 amendments were negotiated and enacted.

In summary, the Guides provide two functions. First, to determine the impairment rating and resulting compensation for injuries that do not qualify for enhanced work disability benefits and second, to provide the threshold rating an employee must have to show the seriousness of their injury before qualifying for work disability benefits. The Kansas Department of Labor does not have concerns with reverting to the use of the 4th Edition. The benefit adequacy is something that is a public policy to be determined by the legislature.

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