

Workers' Compensation in Kentucky (KRS Chapter 342)

Kentucky has an efficient and equitable system for fairly compensating demonstrated instances of work related injuries. It possesses a streamlined process for claims resolution that minimizes the legal and administrative fees associated with claims awards. Reforms made in 1996 ensure speedier claims settlement, an administrative rather than litigious system, tighter definitions of "injury" and "disability", and limiting the reopening of claims.

Other improvements that Kentucky has made over the last thirteen years are as follows:

- The number of requests for resolution of claims filed with the Kentucky Department of Workers' Claims (DWC) has fallen from a high of 12,066 in FY 1993-94 to just 4,885 in FY 2008-09, a drop of 60% in fifteen years.
- First reports of injury have dropped from 51,326 during FY 1994-95 to 29,836 for FY 2008-09. This is a reduction of nearly 42%.
- Work related fatalities have dropped from 86 during FY 1994-95 to 38 for FY 2008-09, representing a 56% drop in fatalities.

Increased safety education programs as well as collaborative investigative efforts between [Occupational Safety and Health Administration](#) (OSHA) and the DWC specialists has contributed to this significant reduction in work-related deaths.

Kentucky's workers' compensation comparative cost for the manufacturing sector is about one and a half percent (2.4%) below the national average as of January 2009 (*Actuarial & Technical Solutions, Inc.*). It was the first state with an active benchmarking program that issues data on workers' compensation carrier performance. This benchmarking program uses eleven (11) indicators to review the performance of each carrier within the Commonwealth. Performance review data has proven to be both a tool for monitoring carrier performance, as well as a medium for improving services to injured workers of Kentucky. Its comparative cost decreased from 2007 to 2008.

Employer Requirements

All Kentucky employers, both public and private, are required by state law to provide workers' compensation coverage for their employees, including corporation executives (KRS 342.640, 342.340). This coverage may come in the form of insurance or an organization shall furnish to the executive director satisfactory proof of its financial ability to pay directly for the compensation amount and manner when due. Excluded from coverage are federal employees, domestic workers, most farm workers, certain casual workers working fewer than 20 consecutive days, and car-pool participants during commuting (KRS 342.650). Business owners and qualifying partners may elect to be covered (KRS 342.012). Employees continue to be covered when they are sent out of Kentucky on temporary work assignments (KRS 342.375, 342.670). Kentucky employers have five options for coverage:

Workers' Compensation in Kentucky (KRS Chapter 342)

- Self-insurance, upon approval by the Executive Director of the [Kentucky Department of Insurance](#). Self-insured employers are required to deposit an acceptable security, indemnity, or bond to secure potential liability claims. Starting in 2006, the individual self-insurance certificates will remain in effect until revoked or modified by the Executive Director of the DWC. The employer must file with ten (10) days after issuance of the policy, endorsement to a policy or similar documentation of coverage the evidence to support its ability to self-insure. It must also be able to provide as often as necessary evidence of its compliance with the provisions of the self-insurance statutes. In the past, certificates were issued annually (KRS 342.340, 342.345, 803 KAR 25:021).
- Join a self-insurance group, upon approval by the Executive Director of the Kentucky Department of Insurance. Allows a group of 20 or more employers with a common interest or membership in a bona fide trade organization or two separate governmental entities to enter into agreements to pool their liabilities under KRS 342 for the purpose of qualifying as a workers' compensation self-insured group under (KRS 304.50-010) and (KRS 342.350).
- Kentucky employers may form a captive insurance company for purposes of providing excess workers' compensation insurance for itself and any subsidiaries or affiliates. Those captive insurers issued an initial certificate on or after July 1, 2006 shall not directly provide workers' compensation insurance to its parent or affiliated companies, but it may provide excess workers' compensation insurance or it may reinsure a parent or other affiliated companies. Captive insurance companies are licensed and regulated by the Executive Director of the Kentucky Department of Insurance. (KRS 304.49-020)
- Purchase coverage from private insurance companies. A separate insurance policy for a specific plant or work site may be authorized by the Executive Director of the Department of Workers' Claims. Workers' compensation insurance coverage in Kentucky is provided by private insurance companies on a competitive basis. Kentucky insurance laws prohibit standard workers' compensation rates set by rate making bureaus, and each insurance carrier that provides workers' compensation coverage in the state files its own rate schedule with the state Department of Insurance Executive Director. Employers seeking workers' compensation insurance coverage in Kentucky may wish to solicit quotations from several competing insurance companies (KRS 342.340, 342.375, 342.380).
- Purchase coverage from the [Kentucky Employers' Mutual Insurance Authority](#), (KEMI) a nonprofit, independent, self-supporting de jure municipal corporation. (KRS 342.803) KEMI began selling workers' compensation insurance coverage to Kentucky employers on September 1, 1995 (KRS 342.801-843).

Insurance rates are based on the risk of injury and occupational disease in the various industries/occupations. Rates are determined for individual industries on the basis of a 4-digit numbering system of insurance industry "manual codes." The insurance industry does not use

Workers' Compensation in Kentucky (KRS Chapter 342)

the SIC (Standard Industrial Classification) numbers, or the NAICS (North American Industry Classification System) numbers that are used to classify U.S. industries for federal statistical purposes. Rates are quoted on the basis of costs per \$100 payroll. This includes gross payrolls before deductions, but excludes extra pay for overtime.

All insurers that sell workers' compensation coverage in Kentucky are required to offer deductibles, ranging from \$100 to \$10,000 per occurrence. (KRS 304.13-400) Premiums are reduced by the deductibles before the application of experience modification adjustments, premium discounts, or premium surcharges. The net experience of an employer is computed after applying the deductible amount (KRS 304.13-410).

Important Definitions

Injury: any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. It should be noted that injury does not include the effects of the natural aging process, nor any communicable disease unless the risk of contracting the disease is increased by the nature of the employment, nor any psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury. (KRS 342.0011(1))

Temporary Total Disability: the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment. (KRS 342.0011(11)(a))

Permanent Partial Disability: the condition of an employee who due to an injury, has a permanent disability rating but retains the ability to work. (KRS 342.0011(11)(b))

Permanent Total Disability: the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. (KRS 342.0011(11)(c))

Objective Medical Findings: information gained through direct observation and testing of the patient applying objective or standardized methods. (KRS 342.0011(33))

Work: means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy. (KRS 342.0011(34))

Claims Resolution Process

Kentucky's claims resolution process incorporates the use of objective medical findings based upon American Medical Association (AMA) guidelines, combined with a judicious schedule of time limits pertaining to administrative resolution of the claim and any subsequent appeals.

When an employer and employee cannot reach an agreement on the compensation for an injury or occupational disease, either party, may make written application for resolution of claim. The application must be filed within two years after the death or injury unless income benefits have been voluntarily paid, in which case the application must be filed within two years after the last payment. (KRS 342.270)

- The Executive Director shall issue notice of the filing to all parties and shall promptly assign the claim to an administrative law judge for benefit review. (KRS 342.230)
- Within 45 days of the date of issuance of the above notice, the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim. (KRS 342.270)
- The administrative law judge shall conduct proceedings as necessary to the resolution of the claim and may order the parties to appear for a benefit review conference, or submit medical reports and other information, or refer the employee for medical evaluation. (KRS 342.275)
- An administrative law judge may grant or deny any benefits afforded under KRS Chapter 342. (KRS 342.275)
- The administrative law judge shall render the award, order, or decision within 60 days following the final hearing unless an extension is mutually agreed to by all parties. (KRS 342.275)
- Any party may file a petition for reconsideration of the award, order, or decision of the administrative law judge, within 14 days from the date of the award, order, or decision. All other parties shall have 10 days thereafter to file a response to the petition. The administrative law judge shall overrule the petition for reconsideration or make any correction within 10 days after submission. (KRS 342.281)
- Whenever a medical question is at issue, referral may be made to the University of Kentucky or the University of Louisville medical school, for evaluation of workers who have had injuries or become affected by occupational diseases. The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges. (KRS 342.315)



Workers' Compensation in Kentucky (KRS Chapter 342)

- Upon the application of any party or upon his own motion, administrative law judge, or the Executive Director of the Kentucky Department of Workers' Claims may direct appointment of a medical evaluator, as outlined above, to make any necessary medical examination of the employee. Such medical evaluator shall file a written report within 15 days after such examination. (KRS 342.315)
- For services performed up to and including the date of a written determination by the administrative law judge, legal fees are limited to 20% of the award, not to exceed \$12,000. (KRS 342.320)

For further information on workers' compensation in Kentucky, please consult the [2008 Guidebook to Workers' Compensation](#) available through the [Kentucky Department of Workers' Claims](#). All current publications, which includes current benefit and future benefit schedules are listed at the following link, [publications](#). These links provide answers to employers' questions, definitions and procedures, and current benefit payment rates.

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