

Division of Workers' Compensation Seminar
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"Workers' Compensation for Newbies"

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I. Introduction

II. Early Stages in a Workers' Compensation Case

a) Jurisdiction § 287.110.2 RSMo.

This chapter shall apply to all injuries received and occupational diseases contracted in this state, regardless of where the contract of employment was made, and also to all injuries received and occupational diseases contracted outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide, and also to all injuries received and occupational diseases contracted outside of this state where the employee's employment was principally localized in this state within thirteen calendar weeks of the injury or diagnosis of the occupational disease

- 1) Accident occurs in Missouri (or occupational disease contracted in Missouri);
- 2) Contract of hire made in Missouri;
- 3) Employment principally localized in Missouri within 13 calendar weeks of the injury or diagnosis of the occupational disease.

b) Employee § 287.020 RSMo.

The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations.

- 1) Service of another for pay;
- 2) Must be a contract of hire (written or oral);
- 3) Volunteers may be an employee.

c) Employer § 287.030 RSMo.

The word "employer" as used in this chapter shall be construed to mean:

(1) Every person, partnership, association, corporation, limited liability partnership or company, trustee, receiver, the legal representatives of a deceased employer, and every other person, including any person or corporation operating a railroad and any public service corporation, using the service of another for pay;

(2) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation, or quasi-corporation, or cities under special charter, or under the commission form of government;

(3) Any of the above-defined employers must have five or more employees to be deemed an employer for the purposes of this chapter unless election is made to become subject to the provisions of this chapter as provided in subsection 2 of section [287.090](#), except that construction industry employers who erect, demolish, alter or repair improvements shall be deemed an employer for the purposes of this chapter if they have one or more employees. An employee who is a member of the employer's family within the third degree of affinity or consanguinity shall be counted in determining the total number of employees of such employer.

- 1) Using services of another for pay;
- 2) Must have 5 or more employees;
- 3) Construction industry must have 1 or more employees;
- 4) Employer with less than 5 employees may elect to become subject to the Workers' Compensation Act by purchasing workers' compensation insurance;
- 5) Employer may withdraw the election to be subject to the Act by cancellation or non-renewal of the insurance coverage.

d) Statutory Employers § 287.040 RSMo.

1. Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business.

2. The provisions of this section shall not apply to the owner of premises upon which improvements are being erected, demolished, altered or repaired by an independent contractor but such independent contractor shall be deemed to be the employer of the employees of his subcontractors and their subcontractors when employed on or about the premises where the principal contractor is doing work.

3. In all cases mentioned in the preceding subsections, the immediate contractor or subcontractor shall be liable as an employer of the employees of his subcontractors. All persons so liable may be made parties to the proceedings on the application of any party. The liability of the immediate employer shall be primary, and that of the others secondary in their order, and any compensation paid by those secondarily liable may be recovered from those primarily liable, with attorney's fees and expenses of the suit. Such recovery may be had on motion in the original proceedings. No such employer shall be liable as in this section provided, if the employee was insured by his immediate or any intermediate employer.

- 1) Work under contract on the premises in the ordinary course of business;
- 2) There must be a contract;
- 2) Ladder – Contractor, subcontractor, sub subcontractor;
- 3) General contractor on construction project is liable for all workers on the project;
- 4) Owner of the premises is exempt, unless the work is in the ordinary course of business of the owner, such as an owner in the business of buying, renovating and selling property.

e) Accident § 287.020 RSMo.

2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor"

is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

4. "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred weeks after the accident; except that in cases of occupational disease, the limitation of three hundred weeks shall not be applicable.

5. Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment. . .

10. In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

- 1) Prior to 1983 an accident was defined in Missouri law as a traumatic event. The employee had to prove a slip, twist or fall;
- 2) In 1983 the Missouri Supreme Court defined the word accident to mean "job-related". Wolfegeher v. Wagner Cartage Service, Inc. 646 S.W. 2d (1983);
- 3) In 1993 the Missouri legislature defined accident as "a substantial factor" in causing the resulting medical condition and disability;
- 4) In 2005 the Missouri legislature defined accident as "the prevailing factor" in causing the resulting medical condition and disability;
- 5) Prevailing factor is defined as the primary factor in relation to all factors in causing the resulting medical condition and disability.

f) Occupational Diseases § 287.063. RSMo.

Definition:

In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to occupational disease due to repetitive motion, as is set forth in subsection 8 of section [287.067](#).

- 1) Must be an identifiable disease;
- 2) Ordinary diseases of life such as the common cold and flu are generally not included in the definition;
- 3) Must be actually exposed to the hazard which caused the disease (respiratory mask or protective device may mean no exposure);
- 4) Last employer to expose the employee to the hazard is liable;
- 5) Length of time exposed to the hazard is not important in establishing liability, unless the case involves a repetitive motion injury;
- 6) Separate last exposure rule exist for repetitive motion injuries.

g) Prevailing Factor:

An injury or death by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

- 1) Exposure must be the primary factor in causing the condition and disability;
- 2) The employee must prove an exposure (mask or protective clothing could mean no exposure).

h) Last Exposure Rule as set out in statute:

The employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease prior to evidence of disability, regardless of the length of time of such last exposure, subject to the notice provision of section [287.420](#).

- 1) Last employer who exposes employee to the hazard is liable regardless of length of exposure, except in certain repetitive motion cases;
- 2) Length of exposure is not relevant other than with repetitive motion injuries as specifically set out in the statute;
- 3) Last exposure rule is not a rule of causation. Johnson v. Denton, 911 S.W.2d 286, 287 (Mo. banc 1995);
- 4) Last exposure rule is a rule of convenience;
- 5) In 2002 the Missouri Supreme Court changed the law to last employer to expose the employee to the hazard before the date of the claim. Endicott v. Display Technologies, Inc., et al 77 S.W.3d 612 (Mo.banc 2002);
- 6) Now, the employer liable is the last employer who exposed the employee to the hazard prior to evidence of disability;
- 7) "Prior to evidence of disability" is another clarification of the last exposure rule.

i) Repetitive Motion Injuries § 287.067 RSMo.:

An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

- 1) Repetitive motion injuries are recognized as an occupational disease;
- 2) Same standard for establishing liability as for all other occupational diseases, (prevailing factor)
- 3) Last exposure rule still applies, but there are exceptions as set out below.

j) Three Months Rule for Repetitive Motion Injuries

With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with the immediate prior employer was the prevailing factor in causing the injury, the prior employer shall be liable for such occupational disease.

- 1) Employee must have worked for last employer for less than 3 months;
- 2) Employee must have been exposed to the same repetitive motion injury or occupational disease with immediate prior employer;
- 3) If last employer can prove that the prior employment caused the repetitive motion injury or occupational disease; the prior employer is liable;
- 4) Element of causation has been added for repetitive motion injuries where exposure is for less than three months.

k) Notice § 287.420 RSMo.

No proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person

injured, has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice. No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.

- 1) Employee has 30 days to provide written notice of the accident;
- 2) Notice must include time, place and nature of the injury;
- 3) Actual notice by the employer of the injury satisfies the notice requirement;
- 4) Employee must provide written notice within 30 days of diagnosis of an occupational disease;
- 5) Notice defense fails if the employee can prove that the employer was not prejudiced by the failure to receive timely or proper notice of the injury.

l) Statute of Limitations § 287.430 RSMo.

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section [287.380](#), the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. The filing of any form, report, receipt, or agreement, other than a claim for compensation, shall not toll the running of the periods of limitation provided in this section. The filing of the report of injury or death three years or more after the date of injury, death, or last payment made under this chapter on account of the injury or death, shall not toll the running of the periods of limitation provided in this section, nor shall such filing reactivate or revive the period of time in which a claim may be filed. A claim against the second injury fund shall be filed within two years after the date of the injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later. In all other respects the limitations shall be governed by the law of civil actions other than for the recovery of real property, but the appointment of a conservator shall be deemed the termination of the legal disability from minority or disability as defined in chapter 475. The statute of limitations contained in this section is one of extinction and not of repose.

- 1) Claimant must be filed within 2 years from date of accident or last payment made in the case;

- 2) Statute is one of extinction and not repose, meaning that it cannot be revived if a payment is made after the Statute of Limitations has expired.
- 3) Employer has 30 days to file an answer to the claim;
- 4) If employer does not file the answer to the claim within 30 days; employer admits all factual allegations made in the claim
- 5) Example - Employee works at McDonalds and makes a salary based on \$7.00 per hour. Employee has an accident at work on August 16, 2017. Employee alleges in the claim for compensation under Average Weekly Wage, "max rate."

The Missouri Court of Appeals in T.H. v. Sonic Drive In of High Ridge, 388 S.W.3d 585 (Mo. App. E.D. 2012) found that if the employer did not file the answer on a timely basis that "max rate" meant that the employee was entitled to the maximum compensation rate in effect as of the date of injury, or in our example the maximum compensation rate in effect on August 16, 2017. The maximum compensation rate in effect on August 16, 2017 was \$923.01 per week for temporary total disability benefits. (Rate based on \$7.00 per hour would be \$186.67 per week). The maximum compensation rate for permanent partial disability effective with August 16, 2017 was \$483.48.

m) Statute of Limitations for Occupational Diseases:

The statute of limitation referred to in section [287.430](#) shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an injury has been sustained related to such exposure, except that in cases of loss of hearing due to industrial noise said limitation shall not begin to run until the employee is eligible to file a claim as hereinafter provided in section [287.197](#).

- 1) Prior Court interpretations of the Law - the statute began to run upon diagnosis and when disability accrued;
- 2) Disability accrued occurred when the employee was taken off work due to the injury;

- 3) 2005 legislation changed the law to provide that the statute of limitations begins to run when it becomes reasonably discoverable and apparent that an injury has been sustained;
- 4) Standard in 2005 legislation is much more favorable for employers

III A compensable workers' compensation case

There are three basic types of benefits provided in a workers' compensation case.

a) Medical §287.140.1 RSMo.

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

The employer shall have the right to select the licensed treating physician, surgeon, chiropractic physician, or other health care provider; provided, however, that such physicians, surgeons or other health care providers shall offer only those services authorized within the scope of their licenses. For the purpose of this subsection, subsection 2 of section 287.030 shall not apply.

- 1) Medical includes doctors' bills; hospital bills, physical therapy and medications;
- 2) Medical treatment must be reasonable;
- 3) Custodial care included in the medical treatment;
- 4) Employer gets to direct the medical treatment (choose the treating doctors).

Artificial Devices § 287.140.8 RSMo.

The employer may be required by the division or the commission to furnish an injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as needed, for life whenever the division or the commission shall find that the injured employee may be partially or wholly relieved of the effects of a permanent injury by the use thereof. The director of the division shall establish a procedure whereby a claim for compensation may be reactivated after settlement of

such claim is completed. The claim shall be reactivated only after the claimant can show good cause for the reactivation of this claim and the claim shall be made only for the payment of medical procedures involving life-threatening surgical procedures or if the claimant requires the use of a new, or the modification, alteration or exchange of an existing, prosthetic device. For the purpose of this subsection, "life threatening" shall mean a situation or condition which, if not treated immediately, will likely result in the death of the injured worker.

Employee has the right to direct his or her own medical treatment - §287.140 RSMo.

- 1) Employee must pay for the treatment if employee chooses to direct his or her own medical treatment;
- 2) If employee directs his or her own treatment, the treatment will not toll the Statute of Limitations.

Mileage § 287.140 RSMo.

When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer.

- 1) Treatment must be outside the metropolitan area of the employee's principal place of employment;
- 2) Employer may not be ordered to pay mileage for a greater distance than 250 miles each way from place of treatment.

Fees must be fair and reasonable §287.140 RSMo.

All fees and charges under this chapter shall be fair and reasonable, shall be subject to regulation by the division or the commission,

Consequences if Employee refuses reasonable and necessary treatment §287.140.5 RSMo.

No compensation shall be payable for the death or disability of an employee, if and insofar as the death or disability may be caused, continued or aggravated by any unreasonable refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the opinion of the division or the commission, inconsiderable in view of the seriousness of the injury. If the employee dies as a result of an operation made necessary by the injury, the death shall be deemed to be caused by the injury.

b) Temporary Total Disability Benefits § § 287.160 and 287.170 RSMo.

Temporary Total Disability (TTD) benefits are payments for lost time from work. The payments are based on 2/3 of the Employee's Average Weekly Wages (AWW) up to the State Maximum which is set every July 1st.

- 1) 2/3 of average weekly wages;
- 2) No benefits for first 3 days or less of disability during which employer is open for business;
- 3) If employee misses 14 or more days, the employee is entitled to benefits for first 3 days;
- 4) If employer does not contest liability and benefits are made more than 30 days after becoming due, the employee is entitled to 10 percent simple interest per annum for the late payments;
- 5) No TTD payments if employee receives unemployment compensation benefits for the period of TTD;
- 6) TTD minimum payment is \$40 per week.
- 7) Employee is not entitled to TTD benefits if terminated due to post-injury misconduct;
- 8) As a general rule, it is not post-injury misconduct if the employee is absent from work due to the injury. Exception would be if the employee is capable of work with restrictions but refuses to come to work.

Temporary Partial Disability § 287.180 RSMo.

For temporary partial disability, compensation shall be paid during such disability but not for more than one hundred weeks, and shall be sixty-six and two-thirds percent of the difference between the

average earnings prior to the accident and the amount which the employee, in the exercise of reasonable diligence, will be able to earn during the disability, to be determined in view of the nature and extent of the injury and the ability of the employee to compete in an open labor market. The amount of such compensation shall be computed as follows:

Compensation Rate: § 287.250 RSMo.

1. Except as otherwise provided for in this chapter, the method of computing an injured employee's average weekly earnings which will serve as the basis for compensation provided for in this chapter shall be as follows:

(1) If the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(2) If the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(3) If the wages are fixed by the year, the average weekly wage shall be the yearly wage fixed divided by fifty-two;

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured or if actually employed by the employer for less than thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the employee was actually employed by the employer. For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week. If the employee commenced employment on a day other than the beginning of a calendar week, such calendar week and the wages earned during such week shall be excluded in computing the average weekly wage pursuant to this subdivision;

(5) If the employee has been employed less than two calendar weeks immediately preceding the injury, the employee's weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment at the time of the injury, except if the employer has agreed to a certain hourly wage, then the hourly wage agreed upon multiplied by the number of weekly hours scheduled shall be the employee's average weekly wage;

(6) If the hourly wage has not been fixed or cannot be ascertained, or the employee earned no wage, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees of the employer or any other employer;

(7) In computing the average weekly wage pursuant to subdivisions (1) to (6) of this subsection, an employee shall be considered to have been actually employed for only those weeks in which labor is actually performed by the employee for the employer and wages are actually paid by the employer as compensation for such labor.

2. For purposes of this section, the term "gross wages" includes, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging or similar advance received from the employer, except if such benefits continue to be provided during the period of the disability, then the value of such benefits shall not be considered in calculating the average weekly wage of the employee. The term "wages", as used in this section, includes the value of any gratuities received in the course of employment from persons other than the employer to the extent that such gratuities are reported for income tax purposes. "Wages", as used in this section, does not include fringe benefits such as retirement, pension, health and welfare, life insurance, training, Social Security or other employee or dependent benefit plan furnished by the employer for the benefit of the employee. Any wages paid to helpers or any money paid by the employer to the employee to cover any special expenses incurred by the employee because of the nature of his employment shall not be included in wages.

3. If an employee is hired by the employer for less than the number of hours per week needed to be classified as a full-time or regular employee, benefits computed for purposes of this chapter for permanent partial disability, permanent total disability and death benefits shall be based upon the average weekly wage of a full-time or regular employee engaged by the employer to perform work of the same or similar nature and at the number of hours per week required by the employer to classify the employee as a full-time or regular employee, but such computation shall not be based on less than thirty hours per week.

4. If pursuant to this section the average weekly wage cannot fairly and justly be determined by the formulas provided in subsections 1 to 3 of this section, the division or the commission may determine the average weekly wage in such manner and by such method as, in the opinion of the division or the commission, based upon the exceptional facts presented, fairly determine such employee's average weekly wage.

5. In computing the compensation to be paid to an employee, who, before the injury for which the employee claims compensation, was disabled and drawing compensation under the provisions of this chapter, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which the employee may have suffered.

6. For purposes of establishing a rate of compensation applicable only to permanent partial disability, permanent total disability and death benefits, pursuant to this chapter, the average weekly wage for an employee who is under the age of twenty-one years shall be adjusted to take into consideration the increased earning power of such employee until she or he attains the age of twenty-one years and the average weekly wage for an employee who is an apprentice or a trainee, and whose earnings would reasonably be expected to increase, shall be adjusted to reflect a level of expected increase, based upon completion of apprenticeship or traineeship, provided that such adjustment of the average weekly wage shall not consider expected increase for a period occurring more than three years after the date of the injury.

7. In all cases in which it is found by the division or the commission that the employer knowingly employed a minor in violation of the child labor laws of this state, a fifty percent additional compensation shall be allowed.

- 1) Compensation rate is calculated based on 2/3 of the employee's average weekly wages;
- 2) If wages are fixed by the week, month or year, the rate is 2/3 of the average weekly wage once the month or yearly wage is reduced to a weekly wage;
- 3) If wages are fixed by the day, hour or output, the compensation rate is based on the employee's average weekly wages for the 13 weeks immediately preceding the accident at work;
- 4) If there are absences of regularly scheduled workdays in the weeks in the 13 week period immediately preceding the accident at work; those weeks are excluded in the calculation;
- 5) Minimum rate is \$40 per week;
- 6) Reasonable value of food, rent, housing and lodging are included in the average weekly wages;
- 7) Compensation rate for minors, defined in the statute as under the age of 21, shall take into account the minor's increased earnings capacity until the age of 21 for permanent disability and death benefits;
- 8) Part - time workers may be entitled to a compensation rate based on the 30 hour rule for permanent disability benefits;
- 9) If the average weekly wages cannot be fairly determined applying sections 1 through 3 of the statute, the judge may determine the average weekly wage in a fair and just manner taking into consideration the exceptional facts in the case.

c) Permanent Partial Disability § 287.190 RSMo.

SCHEDULE OF LOSSES

Weeks

- (1) Loss of arm at shoulder 232
- (2) Loss of arm between shoulder and elbow 222
- (3) Loss of arm at elbow joint 210
- (4) Loss of arm between elbow and wrist 200
- (5) Loss of hand at the wrist joint 175
- (6) Loss of thumb at proximal joint 60

- (7) Loss of thumb at distal joint 45
- (8) Loss of index finger at proximal joint 45
- (9) Loss of index finger at second joint 35
- (10) Loss of index finger at distal joint 30
- (11) Loss of either the middle or ring finger at the proximal joint
- (12) Loss of either the middle or ring finger at second joint 30
- (13) Loss of either the middle or ring finger at the distal joint
- (14) Loss of little finger at proximal joint 22
- (15) Loss of little finger at second joint 20
- (16) Loss of little finger at distal joint 16
- (17) Loss of one leg at the hip joint or so near thereto as to preclude the use of artificial limb 207
- (18) Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb 160
- (19) Loss of one leg at or above ankle and below knee joint 155
- (20) Loss of one foot in tarsus 150
- (21) Loss of one foot in metatarsus 110
- (22) Loss of great toe of one foot at proximal joint 40
- (23) Loss of great toe of one foot at distal joint 22
- (24) Loss of any other toe at proximal joint 14
- (25) Loss of any other toe at second joint 10
- (26) Loss of any other toe at distal joint 8
- (27) Complete deafness of both ears 180
- (28) Complete deafness of one ear, the other being normal 49
- (29) Complete loss of the sight of one eye 140

- 1) There must be permanent disability;
- 2) Disability must be partial and not total

Example of how to calculate benefits:

- 1) Leg at the knee level is worth 160 weeks;
- 2) Employee injures knee;

- 3) Employee sustains a permanent partial disability of 15 percent to his or her knee as a result of an injury at work;
- 4) Employee is entitled to 24-weeks of permanent partial disability benefits (160 weeks x .15 percent = 24 weeks);
- 5) The 24 weeks is multiplied by the compensation rate to determine the amount of compensation owed to the employee;
- 6) 100 percent loss results in an additional 10 percent increase in the number of weeks of benefits. (loss of leg at knee level results in 160 weeks of compensation plus an additional 10 percent increase in the number of weeks for a total of 176 weeks).

Statutory Reference to Complete loss of use § 287.190 RSMo.

If the disability suffered in any of items (1) through (29) of the schedule of losses is total by reason of severance or complete loss of use thereof the number of weeks of compensation allowed in the schedule for such disability shall be increased by ten percent.

d) Permanent Total Disability § 287.020 RSMo.

The term "total disability" as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

- 1) Worker must be unable to do any work, not just work he or she was doing at the time of the accident;
- 2) Age, education, prior work experience and transferable work skills must be considered;
- 3) Nature of the injury must be considered;
- 4) Ability to compete for work in the open labor market must be considered;
- 5) Not all jobs are considered work in the open labor market;
- 6) Benefits are 2/3 of the employee's average weekly wages up to the State Maximum;
- 7) Benefits terminate upon employee's death or when he or she becomes able to return to the work force. See statute below at § 287.200

§ 287.200 RSMo.

Compensation for permanent total disability shall be paid during the continuance of such disability for the lifetime of the employee at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made. The word "employee" as used in this section shall not include the injured worker's dependents, estate, or other persons to whom

compensation may be payable as provided in subsection 1 of section [287.020](#). The amount of such compensation shall be computed as follows

e) Death Benefits: § 287.240 RSMo.

If the injury causes death, either with or without disability, the compensation therefor shall be as provided in this section:

1) Burial Allowance:

In all cases the employer shall pay direct to the persons furnishing the same the reasonable expense of the burial of the deceased employee not exceeding five thousand dollars. But no person shall be entitled to compensation for the burial expenses of a deceased employee unless he has furnished the same by authority of the widow or widower, the nearest relative of the deceased employee in the county of his death, his personal representative, or the employer, who shall have the right to give the authority in the order named. All fees and charges under this section shall be fair and reasonable, shall be subject to regulation by the division or the commission and shall be limited to such as are fair and reasonable for similar service to persons of a like standard of living. The division or the commission shall also have jurisdiction to hear and determine all disputes as to the charges.

2) Death Benefits Paid to Dependents

If the deceased employee leaves no dependents, the death benefit in this subdivision provided shall be the limit of the liability of the employer under this chapter on account of the death, except as herein provided for burial expenses and except as provided in section [287.140](#); provided that in all cases when the employer admits or does not deny liability for the burial expense, it shall be paid within thirty days after written notice, that the service has been rendered, has been delivered to the employer. The notice may be sent by registered mail, return receipt requested, or may be made by personal delivery;

3) Dependents Defined §287.240 RSMo.

The word "dependent" as used in this chapter shall be construed to mean a relative by blood or marriage of a deceased employee, who is actually dependent for support, in whole or in part, upon his or her wages at the time of the injury. The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee, and any death benefit shall be payable to them to the exclusion of other total dependents:

A wife upon a husband with whom she lives or who is legally liable for her support, and a husband upon a wife with whom he lives or who is legally liable for his support; provided that on the death or remarriage of a widow or widower, the death benefit shall cease unless there be other total dependents entitled to any death benefits under this chapter. In the event of remarriage, a lump sum payment equal in amount to the benefits due for a period of two years shall be paid to the widow or widower. Thereupon the periodic death benefits shall cease unless there are other total dependents entitled to any death benefit under this chapter, in which event the periodic benefits to which such widow or widower would have been entitled had he or she not died or remarried shall be divided among such other total dependents and paid to them during their period of entitlement under this chapter;

A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of eighteen years, or over that age if physically or mentally incapacitated from wage earning, upon the parent legally liable for the support or with whom he, she, or they are living at the time of the death of the parent. In case there is a wife or a husband mentally or physically incapacitated from wage earning, dependent upon a wife or husband, and a child or more than one child thus dependent, the death benefit shall be divided among them in such proportion as may be determined by the commission after considering their ages and other facts bearing on the dependency. In all other cases questions of total or partial dependency shall be determined in accordance with the facts at the time of the injury, and in such other cases if there is more than one person wholly dependent the death benefit shall be divided equally among them. The payment of death benefits to a child or other dependent as provided in this paragraph shall cease when the dependent dies, attains the age of eighteen years, or becomes physically and mentally capable of wage earning over that age, or until twenty-two years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution, or if at eighteen years of age the dependent child is a member of the Armed Forces of the United States on active duty; provided, however, that such dependent child shall be entitled to compensation during four years of full-time attendance at a fully accredited educational institution to commence prior to twenty-three years of age and immediately upon cessation of his active duty in the Armed Forces, unless there are other total dependents entitled to the death benefit under this chapter;

4) Death Benefits Paid to Total Dependents §287.240 RSMo.

The employer shall also pay to the total dependents of the employee a death benefit based on the employee's average weekly earnings during the year immediately preceding the injury that results in the death of the employee, as provided in section [287.250](#). The amount of compensation for death, which shall be paid in installments in the same manner that compensation is required to be paid under this chapter, shall be computed as follows:

5) Death Benefits Paid to Partial Dependents §287.240 RSMo.

If there are partial dependents, and **no total dependents**, a part of the death benefit herein provided in the case of total dependents, determined by the proportion of his contributions to all partial dependents by the employee at the time of the injury, shall be paid by the employer to each of the dependents proportionately;

- 1) Death benefits are based on 2/3 of the employee's average weekly wages up to the state maximum;
- 2) Death benefits are paid to the deceased employee's dependents;
- 3) Total dependents by statute are the spouse and minor children;
- 4) The spouse is entitled to death benefits for life, unless he or she remarries. If the spouse remarries, the spouse is entitled to a lump-sum dowry equal to two years worth of the spouse's share of the death benefits;
- 5) Dependent children are defined as children 18 years of age or younger;
- 6) Physically or mentally handicapped children may qualify as dependents for as long as they remain a dependent due to their impairment;
- 7) Children may be dependents until age 22 as long as the child is enrolled as a full-time student at an accredited educational institution until the age of 22;
- 8) If a child is in the Military on active duty at age 18 at the time of his or her parent's death, the child may be entitled to death benefits if there are no other dependent children and if the child enrolls as a full-time student at an accredited education institution prior to age 23.
- 9) When any total dependent, including the surviving spouse no longer qualifies as a dependent, that dependent's share of the death benefits is paid to the other remaining total dependents;
- 10) Benefits are not paid to partial dependents if there are any total dependents;

1V Defenses to a Workers' Compensation Claim

Jurisdiction, employee-employer relationship, accident, notice, Statute of Limitations,

Other statutory Defenses

- a) Alcohol and Drug Penalties § 287.120 RSMo.

6.1. Where the employee fails to obey any rule or policy adopted by the employer relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the workplace, the compensation and death benefit provided for herein shall be reduced fifty percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs.

2 If, however, the use of alcohol or nonprescribed controlled drugs in violation of the employer's rule or policy is the proximate cause of the injury, then the benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited.

3. The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication shall give rise to a rebuttable presumption that the voluntary use of alcohol under such circumstances was the proximate cause of the injury. A preponderance of the evidence standard shall apply to rebut such presumption. An employee's refusal to take a test for alcohol or a nonprescribed controlled substance, as defined by section [195.010](#), at the request of the employer shall result in the forfeiture of benefits under this chapter if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled substance by the claimant or if the employer's policy clearly authorizes post-injury testing.

- 1) Employer must have an alcohol and drug rule or policy;
- 2) Prior statute required the policy to be posted in a conspicuous place; 2005 statute does not specifically state that the policy must be written, but it may be difficult to prove that there is a policy or rule if it is not written;
- 3) Employer may not acquiesce in employees using alcohol or drugs;
- 4) If accident occurs in conjunction with employee's use of alcohol or nonprescribed drugs; the penalty is 50 percent;
- 5) If the employee's use of alcohol or nonprescribed drugs is the proximate cause of the accident; the penalty is 100 percent.
- 6) If the employee's blood alcohol content is sufficient to constitute legal intoxication under Missouri law, there is a rebuttable presumption that the voluntary use of alcohol was the proximate cause of the accident.
- 7) If employer's alcohol or drug policy requires the employee to be tested for alcohol and drugs after an accident and the employee refuses to take the test, the employee forfeits his or her right to all benefits.
- 8) If the employer does not have a policy requiring an employee to be tested for alcohol and drugs, the employee still forfeits his or her right to benefits, if the employer has a reasonable suspicion that the employee was using drugs or alcohol and the employee refuses to submit to a test for drugs or alcohol.

b) Safety Penalties §287.120 RSMo.

Where the injury is caused by the failure of the employer to comply with any statute in this state or any lawful order of the division or the commission, the compensation and death benefit provided for under this chapter shall be increased fifteen percent.

Where the injury is caused by the failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, the compensation and death benefit provided for herein shall be reduced at least twenty-five but not more than fifty percent; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; and provided, further, that the employer had, prior to the injury, made a reasonable effort to cause his or her employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.

- 1) If the employee commits the safety violation; the penalty is 25 to 50 percent;
- 2) If the employer fails to comply with a state safety statute the penalty is 15 percent.

c) Recreational Injuries § 287.120 RSMo.

Where the employee's participation in a recreational activity or program is the prevailing cause of the injury, benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited regardless that the employer may have promoted, sponsored or supported the recreational activity or program, expressly or impliedly, in whole or in part. The forfeiture of benefits or compensation shall not apply when:

(1)The employee was directly ordered by the employer to participate in such recreational activity or program;

(2)The employee was paid wages or travel expenses while participating in such recreational activity or program; or

(3)The injury from such recreational activity or program occurs on the employer's premises due to an unsafe condition and the employer had actual knowledge of the employee's participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

Miscellaneous

d) Mental Injuries § 287.120.

Mental injury resulting from work-related stress does not arise out of and in the course of the employment, unless it is demonstrated that the stress is work related and was extraordinary and unusual. The amount of work stress shall be measured by objective standards and actual events.

A mental injury is not considered to arise out of and in the course of the employment if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action taken in good faith by the employer.

- 1) In mental stress cases the stress must be extraordinary and unusual;
- 2) The extraordinary and unusual requirement only applies to mental stress allegedly causing a mental injury;
- 3) The requirement does not apply to mental stress allegedly causing a physical injury such as a myocardial infarction or stroke;
- 4) Objective standards means that the stress is not measured by whether it may have been stressful to the individual, but rather to a reasonable person;
- 5) What may constitute extraordinary and unusual for some occupations may not be extraordinary and unusual for other occupations.

e) Self-Inflicted Injuries §287.120.3 RSMo.

No compensation shall be allowed under this chapter for the injury or death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted injury shall be on the employer or the person contesting the claim for allowance.

