

Basics of Filing and Answering Workers' Compensation Claims

Chief Judge Victorine Mahon
Judge Lee Schaefer

When to File a Claim for Compensation

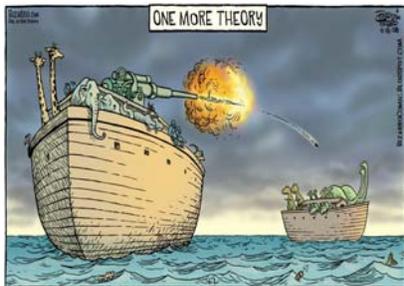
Against the Employer and Insurer for an accidental injury:
The Claim must be filed within two years after the date of injury or last payment made under the chapter.

Section 287.430 RSMo

EXCEPTION: If the Employer fails to file a Report of Injury as required by Section 287.230 RSMo, the Claim may be filed within three years after the date of injury or the last payment under the chapter.

Section 287.430 RSMo

The Statute of Limitation in Workers' Compensation is one of extinction rather than repose, therefore, if a Claim is not filed in a timely manner, the Division does not have jurisdiction to proceed.



Against the Employer/Insurer for an occupational disease:
The Statute of Limitations begins to run when it becomes reasonably discoverable and apparent that an injury has been sustained related to exposure to the hazards of an occupational disease.

Section 287.063.3 RSMo

When a compensable injury is reasonably apparent is a fact question to be determined by the Commission.

Lawrence v. Anheuser Busch Companies, Inc., 310 S.W.3d 248, 252 (Mo. App. ED 2010)

Against the Second Injury Fund: The Claim must be filed within two years after the date of injury or death, or within one year after a claim is filed against the Employer/Insurer, whichever is later.

If the Claimant files a "bona fide" Amended Claim against the Employer/Insurer that is considered a "claim" for purposes of the Second Injury Fund Statute of Limitations.

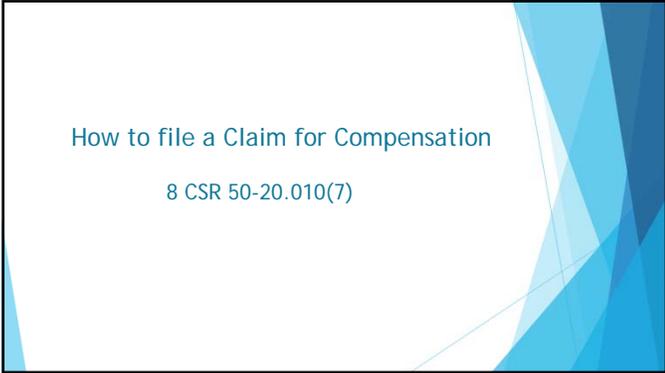
Elrod v. Treasurer of the State of Missouri, 138 S.W.3d 714, 715 (Mo. banc 2004)

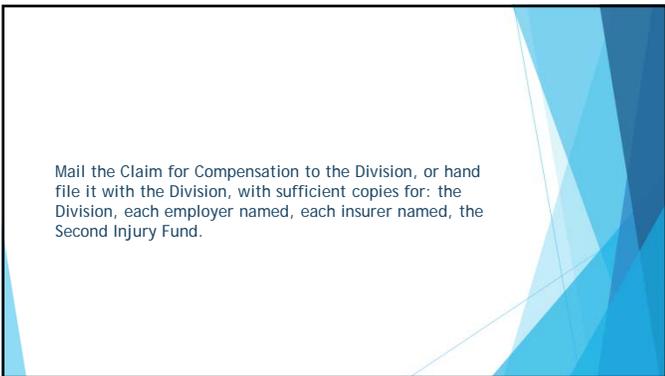
Settlement Stipulation between Claimant and Employer/Insurer cannot be used to extend the Statute of Limitations against the Second Injury Fund.

Treasurer of the State of Missouri v. Couch, 478 S.W.3d 417, 422 (Mo. App. WD 2015)

An Amended Claim that makes no changes or additions to the Employer section is not a valid claim against the Employer that would trigger the running of an one year Statute of Limitations for the Second Injury Fund.

Naeter v. Treasurer of Missouri, ---S.W.3d--- (Mo. App. ED March 12, 2019)







The Division also now accepts Claims and Answers electronically from law firms in which the attorneys are admitted to practice law in the State of Missouri. To electronically file these documents, the law firm must set up a virtual mail box or box account. This is accomplished by:

- 1) Sending an email to ElectronicFiling@labor.mo.gov and including all authorized email addresses that will be allowed access to upload the filings;
- 1) You then will receive an invitation to create a box account;
- 1) Once the box account is created, you will be granted authority to upload your filing into your law firm folder;
- 1) The Division will sweep for filings daily;
- 1) Questions may be addressed to: (573) 526-0359.



What Claim Form to Use

Use Form WC-21-A (06-15) for all injuries after January 1, 2014.

What to Put on the Claim for Compensation

Name of Claimant

Do not use nicknames

YOUR NINJA NAME



A - ka	J - zu	S - ari
B - zu	K - me	T - chi
C - mi	L - ta	U - do
D - te	M - rin	V - ru
E - ku	N - to	W - mei
F - lu	O - mo	X - na
G - ji	P - no	Y - fu
H - ri	Q - ke	Z - zi
I - ki	R - shi	

Name of Employer

If possible, look at paycheck, or something else with the correct/legal name of the Employer.



If the Claimant is employed by a temporary agency, or placement service, make sure they are listed on the Claim.

You may want to include the d/b/a as well as the corporate name.

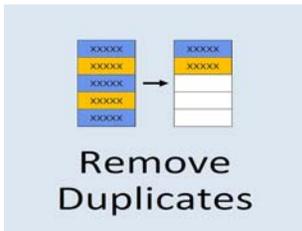


Date of Accident

It is important to get this correct. If the date of injury on the Claim is different than the one listed on the Report of Injury, there will be two Division files for the same accident/injury.



If you have duplicate claims and want to absorb one into another, the Division will "consolidate" the two claims, leaving only one injury number. This is different from "Joining" individual companion cases for purposes of docketing only.



What to Look for on the Claim for Compensation

Is the Claimant requesting more treatment?



Is the Claimant alleging a safety violation?



Is the Claim for a specific accident or an occupational disease?

Is this a death case?
If so, is the dependent information completed?

Is the Claim signed?
Employee/Claimant need not sign the Claim if represented by an attorney.

Answering the Claim for Compensation

The Employer, Insurer, Third Party Administrators, and Second Injury Fund have 30 days to file their Answer after the Division acknowledges the Claim. 8 CSR 50-2.010(8).



Answer carefully

If the Employer/Insurer admits something in their Answer, it is a persuasive judicial admission.

Admission that the accident occurred in the course and scope of employment is binding.

Grgic v. P & G Construction, 904 S.W.2d 464, 467 (Mo. App ED 1995)



Getting an Extension to File an Answer Out of Time

Arguably, according to the CSR, you cannot get permission to file an Answer after 30 days. A party can Request an Extension of Time for filing an Answer for "a showing of good cause." A Request for an Extension of Time to File an Answer is made to the Chief Judge of the local office with venue over the case.

8 CSR 2.010.(8)(A)

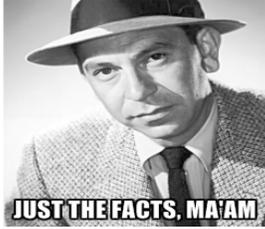
Effect of a Late Answer



If an Answer is filed late, all statements of fact contained on the Claim for Compensation are deemed to be admitted.

8 CSR 50-2010(8)(B)

The wage rate is considered a Statement of Fact.



Alleging "max rate" without a good faith basis may be an ethical violation.

Rule 4-3.1: Meritorious claims and contentions:

A lawyer shall not... assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...

Not a Statement of Fact

Percentage of disability

Arising out of and in the course and scope of employment

Medical Causation

A Few Pointers



A claim against the Second Injury Fund must be specifically set forth on the Claim. Merely naming the Treasurer as a party is not sufficient.

Venue is determined based on what is on the Claim. It is either the county where the accident occurred or a county adjacent thereto. If the accident occurred outside of Missouri, the hearing shall be held in the county or city where the contract of employment was made or where the employee's employment was principally localized.

One may waive an objection to venue if you take steps relating to the merits of the case before objecting.
Cable v. Schneider Transp., Inc., 957 S.W.2d 802 (Mo. App. S.D. 1997).