

Changes to the Missouri Workers' Compensation Law

Changes Effective Jan. 1, 2014



**DIVISION OF
WORKERS'
COMPENSATION**

Coverage Requirements

Section 287.280.1, was amended to state that:

- every employer subject to the provisions of chapter 287, *shall*
- on either an individual or group basis;
- insure their entire liability under the workers' compensation law, *and*
- **may insure “in whole or in part” their employer liability, under a policy of insurance or a self insurance plan.**

NOTE: §287.200 (4) allows an employer to reject mesothelioma liability

Definition of Employee

Section 287.020.1 was amended to specifically exclude from the definition of employee, “any person performing services for board, lodging, aid, or sustenance received from any religious, charitable, or relief organization.”

Occupational Disease

Occupational diseases added to the exclusive remedy provision under Workers' Compensation Law as set out in §287.120.1 and §287.120.2 RSMo.

This means that all injuries arising out of and in the course of an employee's employment will be litigated before the Division of Workers' Compensation and benefits will be based upon chapter 287, RSMo. NOTE: Employers may elect to reject mesothelioma liability.

MO. REV. STAT. §§287.120.1, 287.120.2 (Supp. 2013)

Occupational Diseases Due to Toxic Exposure

New subsection 11 was added to §287.020 RSMo defining “occupational diseases due to toxic exposure” to include the following:

- Mesothelioma
- Asbestosis
- Berylliosis
- Coal Worker’s Pneumoconiosis
- Bronchiolitis Obliterans
- Silicosis
- Silicotuberculosis
- Manganism
- Acute Myelogenous Leukemia
- Myelodysplastic Syndrome

Occupational Disease

Section 287.067.2 RSMo was amended to add the word “death” and states that 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.

Psychological Stress

- Under current law, a firefighter of a paid fire department must establish a direct causal relationship in order to receive benefits for psychological stress.
- The direct causal relationship standard of proof for psychological stress has been extended to paid peace officers of a police department who are certified under Chapter 590 RSMo.

Occupational Diseases Due to Toxic Exposure – Enhanced Benefits

- For all claims filed on or after January 1, 2014, for occupational diseases due to toxic exposure that results in permanent total disability (PTD) or death, an employee is entitled to:
 - Such amount due to employee during employee's life based upon an award of PTD and death; except
 - the PTD and death shall only be paid when the enhanced benefits have been exhausted.

Occupational Diseases Due to Toxic Exposure – Enhanced Benefits

- The enhanced benefit for occupational disease due to toxic exposure *not including mesothelioma* is an amount equal to 200 percent of the state average weekly wage (SAWW) as of the date of diagnosis for 100 weeks.
- The enhanced benefit for occupational disease due to toxic exposure that *is diagnosed to be mesothelioma*, is an amount equal to 300 percent of the SAWW for 212 weeks.

Mesothelioma Election

- Employers who elect to accept mesothelioma liability may do so by either:
 - Insuring their liability by purchasing insurance coverage with an insurance carrier
 - Qualifying as a self-insurer
 - By becoming a member of a group of employers that agrees to pool their liabilities. Such group shall comply with the requirements of §287.223, RSMo (Supp. 2013). This section creates the Missouri Mesothelioma Risk Management Fund.

MO. REV. STAT. § 287.200.4(3) (Supp. 2013).

Mesothelioma Election

- For employers who reject mesothelioma liability under subsection 4 of §287.200, RSMo (Supp. 2013) the exclusive remedy provisions of §287.120, RSMo shall not apply to such liability. Therefore, the employer could be sued in civil court.
- The provisions expire on Dec. 31, 2038.

Occupational Diseases Due to Toxic Exposure

- If the employee dies before the enhanced or additional benefits have been paid, the additional benefits are payable to the employee's spouse or children, in addition to the benefits under §287.240, RSMo.
- If there is no surviving spouse or children and the employee has received less than the additional benefits, the remainder shall be paid in one single payment to the employee's estate.

Impact on Other Benefits

- Subdivision 6 of §287.200.4 states that the provisions of subdivision 1 of §287.200.4 shall not be construed to affect the employee's ability to obtain medical treatment at the employer's expense or other benefits otherwise available under this chapter.

Award of Mesothelioma

Employee who obtains additional benefits for acquiring asbestosis who later gets an award for mesothelioma shall not receive more benefits than the employee would have received for mesothelioma

- The enhanced benefits cannot be greater than mesothelioma benefits even if the employee later acquires asbestosis.

Toxic Exposure Subrogation

- If the employee suffers or suffered from occupational disease due to toxic exposure
- Employee, dependents, or persons eligible to sue for wrongful death under §537.080 are compensated under chapter 287
- Employer shall not be subrogated to the rights of the employee, dependents, or persons eligible to sue for wrongful death

contd.

Toxic Exposure Subrogation

- Against such third person or party when the occupational disease due to toxic exposure arose from the employee's work for the employer.

No subrogation means that the employer or insurance company would be unable to recover monies paid in the workers' compensation case from a third-party action.

Missouri Mesothelioma Risk Management Fund

- Section 287.223 RSMo (Supp. 2013) creates the Missouri Mesothelioma Risk Management Fund as a body corporate and politic.
- Powers and duties are vested in the Board of Trustees to carry out the purposes of this section.
- Any employer may participate in this Fund and use monies collected to pay mesothelioma awards against the employer member of the Fund.

Missouri Mesothelioma Risk Management Fund

- Employers who join the Fund make annual contributions in amounts determined by the board based upon rates filed by insurers.
- Joining the Fund has same effect as purchase of insurance and as a self-insurance plan.
- Money in the fund is available for:
 - payment and settlement of mesothelioma related awards for employers who participate in the Fund
 - Attorney's fees and expenses related to administration and representation of the Fund.

Missouri Mesothelioma Risk Management Fund

- No amount in excess of the enhanced benefit for occupational diseases due to toxic exposure diagnosed as mesothelioma, which is 300 percent of the SAWW for 212 weeks shall be paid by the Fund.
- The Board shall issue payment of benefits in accordance with coverage offered by the Board
 - If employer discontinues participation in Fund, the employer cannot resume joining the Fund for five calendar years after discontinuing participation.
 - If employer does not make yearly contribution to Fund, the Board shall not pay claim arising from an occurrence in that year
 - Employer will be liable for paying the claim.

Missouri Mesothelioma Risk Management Fund

- Employer has seven working days to notify the Fund that a claim for benefits has been filed against the employer.
- All staff to be provided by Missouri Department of Labor, except as determined by the Board. Fund to reimburse Labor Department for all costs of providing staff.
- Board can contract with independent insurance agents. It may select and employ or contract with persons experienced in insurance underwriting, accounting, servicing of claims and rate making, who serves as technical advisors in establishing annual contribution or call upon DIFP for such services.

Missouri Mesothelioma Risk Management Fund

- Composition of the Board:
 - Labor Director
 - Four members appointed by the Governor with advice and consent of the Senate who are officers or employees of those employers that participate in the Fund
- Other duties relating to meetings, quorum, record of proceedings, operations of the Fund, administration and operation of the Fund, rules, coverages, use of moneys collected, investments, assessments of members, refunds, etc. are set out in §287.223 (10) to (33).

Medical Fee Reasonableness Disputes

- Statute of limitations period was added in §287.140.4 for health care providers who file an application for payment of additional reimbursement of medical fees pursuant to 8 CSR 50-2.030. It is:
 - Two years from the date the first notice of dispute of medical charge was received by health care provider if the services were provided before July 1, 2013

Medical Fee Reasonableness Disputes

- One year from the date the first notice of dispute of medical charge was received by health care provider if the services were provided after July 1, 2013.
- Notice is presumed to occur no later than five business days after transmission by certified U.S. mail.

Reasonable Medical Examination

- Section 287.210.1 was amended to allow the Attorney General's Office, on behalf of the Second Injury Fund, to request a reasonable medical examination if the employer has not obtained a medical examination report.

Second Injury Fund

- Section 287.220 RSMo states that the Second Injury Fund (SIF) is created exclusively for purposes indicated in this section and for special weekly benefits in rehabilitation cases as set out in §287.141.
- SIF is maintained as provided in §287.710
- State Treasurer is custodian of the SIF
- SIF is subject to audit like state funds and protected by a bond
- Upon requisition of Division Director, warrants are issued on the State Treasurer for payment of benefits awarded against the SIF

Second Injury Fund

- Cases of permanent disability involving previous disability due to injuries occurring prior to January 1, 2014, shall be compensated under §287.220.2.
- All claims for injuries after January 1, 2014, and all claims involving a subsequent compensable injury for occupational disease after January 1, 2014, shall be compensated per §287.220.3.
 - No claim for permanent partial disability (PPD) shall be filed against the SIF after January 1, 2014.

Second Injury Fund – PTD Requirements

- Claims for PTD under §287.200 RSMo shall be compensable only when the following conditions are met:
 - (a) a. An employee has a medically documented preexisting disability equaling a minimum of 50 weeks of PPD compensation which is:
 - A direct result of active military duty in any branch of U.S. Armed Forces
 - A direct result of a compensable injury defined in §287.020 RSMo.

- Non-compensable injury, but such preexisting disability directly and significantly, aggravates or accelerates the subsequent work-related injury
- Preexisting PPD of an extremity, loss of eyesight in one eye, or loss of hearing in one ear where subsequent compensable work-related injury is to opposite extremity, eye or ear
- (a) b. The employee sustains a subsequent compensable work-related injury that in combination with the above items results in PTD.
- (b) Employee is employed in a sheltered workshop and sustains a compensable work-related injury that combines with the pre-existing disability that results in PTD.

Second Injury Fund – Employer Liability

- Employer Liability for the last work-related injury shall only be for the disability resulting from the subsequent work-related injury considered alone and of itself.
- Compensation for benefits are determined per the employee's compensation rate calculated under §287.250 RSMo.

Second Injury Fund – Benefit Payments No Longer Being Made

- Uninsured Cases – medical and death benefits will no longer be paid from the SIF in uninsured employer cases relating to claims for injuries occurring after January 1, 2014.

MO. REV. STAT. § 287.220.7 (Supp. 2013)

- Second job wage loss benefits will no longer be paid for injuries after January 1, 2014.

MO. REV. STAT. § 287.220.11 (Supp. 2013)

Second Injury Fund – Payments No Longer Being Made

- No compensation is payable from the SIF if an employee files a Claim for Compensation under the Workers' Compensation Law of another state with jurisdiction over the employee's injury, accident or occupational disease.

MO. REV. STAT. § 287.220.12 (Supp. 2013)

- Life payments made from the SIF shall be suspended when the employee is able to obtain suitable gainful employment or be self-employed.

MO. REV. STAT. § 287.220.13 (Supp. 2013)

Second Injury Fund - Prioritization

- A prioritization schedule was established for payment of SIF liabilities in the following order:
 1. Expenses relating to legal defense of the SIF
 2. PTD awards in order in which claims are settled or finally adjudicated
 3. PPD awards in order in which claims are settled or finally adjudicated
 4. Medical expenses incurred prior to July 1, 2012
 5. Interest on unpaid awards

Liabilities are paid to the extent SIF has positive balance. Unpaid amounts are ongoing liability of the SIF until satisfied.

Second Injury Fund

- Instead of every three years, an **actuarial study** shall be done every year to determine the solvency of the SIF. The first study is to be completed by July 1, 2014.

MO. REV. STAT. § 287.220.8(Supp. 2013)

- **Post award interest** on Fund claims is set at the adjusted rate established by the director of revenue or 5 percent, whichever is greater.

MO. REV. STAT. § 287.220.16 (Supp. 2013)

Second Injury Fund – Additional Surcharge

- To address the solvency issues of the SIF, Mo. Rev. Stat. §287.715.6 authorizes the Division Director to collect a **supplemental SIF surcharge** not to exceed 3 percent for calendar years 2014 to 2021, of policyholder's or self-insured's workers' compensation net deposits, net premiums or net assessments of the previous policy year.
- Division to notify the policyholders and self-insurers of surcharge and supplemental surcharge to be imposed.

SIF Surcharge Rate

- The following rates are in effect for Calendar Year 2014:
 - Administrative Tax (authorized under Sec. 287.690) - 1 percent
 - Administrative Surcharge (authorized under Sec. 287.716) - 1 percent
 - Second Injury Fund Surcharge (authorized under Sec. 287.715) - 3 percent
 - Second Injury Fund Supplemental Surcharge (authorized under Sec. 287.715.6) – 3 percent
- Announcement made on this website:
<http://www.labor.mo.gov/DWC/notices.asp#WCrates>

Refund or Credit

- If the amount paid exceeds the amount due at the end of any taxable year, the taxpayer shall make an election to either:
 - Request a refund
 - Have credit applied against the tax for following year
and
- In the event of a credit, deducted from the quarterly installment otherwise due on June 1.

Administrative Law Judge Review Committee

- The Director of the Division of Workers' Compensation is removed as a member of the Administrative Law Judge (ALJ) Review Committee.
- The ALJ Review Committee consists of the following members:
 - One member appointed by the President Pro Tem of the Senate
 - One member appointed by the Minority Leader of the Senate
 - One member appointed by the Speaker of the House

Administrative Law Judge Review Committee

- One member appointed by the Minority Leader of the House
- One member appointed by the Governor from the Commission on Retirement, Removal and Discipline of Judges.
- The ALJ Review Committee shall annually elect a chairperson from its members for a term of one year.

Administrative Law Judge Review Committee

- The term of service for all members shall be two years.
- The ALJ Review Committee shall conduct a performance audit of all ALJs every two years.
- Any ALJ who receives three or more votes of no confidence under two successive performance audits by the ALJ Review Committee may have their appointment immediately withdrawn.

Individual Risk Modification Rating Plans

- Subsection 6 was added to §287.955 to allow a workers' compensation insurer to develop an individual risk premium modification rating plan.
- Plan allows for the prospective modification of premiums based on individual risk characteristics predictive of future loss.
- Plans must be “actuarial justified” and not result in premiums that are excessive, inadequate, or unfairly discriminatory.
- Plan to be filed 30 days prior to use with DIFP and may be subject to disapproval.