

The background of the top half of the page is a photograph of the Kansas State Capitol building. The building is a grand, classical structure with a prominent central dome topped by a statue. The facade features a portico with several columns. The sky is a clear, bright blue with some light clouds.

# PRACTICE AND PROCEDURE GUIDE

## **Kansas Department of Labor Division of Workers Compensation**



# PRACTICE AND PROCEDURE GUIDE

## TABLE OF CONTENTS

Chapter		Page
1.	<a href="#">Pleading Requirements</a> .....	1
2.	<a href="#">Filing Workers Compensation Forms and Pleadings</a> .....	2
3.	<a href="#">Notice of Claim and Time Limitations</a> .....	4
4.	<a href="#">Special Rules for Occupational Disease Claims</a> .....	6
5.	<a href="#">Location of Proceedings</a> .....	7
6.	<a href="#">Administrative Law Judge Schedules</a> .....	8
7.	<a href="#">Hearing Room Locations for the Division of Workers Compensation</a> .....	10
8.	<a href="#">Court Location for Out-Of-State Accident</a> .....	11
9.	<a href="#">Removal of Administrative Law Judge from a Case</a> .....	12
10.	<a href="#">Notice of Intent and Certification</a> .....	13
11.	<a href="#">Application for Preliminary Hearing</a> .....	14
12.	<a href="#">Setting a Preliminary Hearing</a> .....	15
13.	<a href="#">Preliminary Hearing Award or Order</a> .....	16
14.	<a href="#">Pre-Hearing Settlement Conference</a> .....	17
15.	Local Rules	
	<a href="#">15A. Judge Belden</a> .....	19
	<a href="#">15B. Judge Fuller</a> .....	19
	<a href="#">15C. Judge Jones</a> .....	20
	<a href="#">15D. Judge Moore</a> .....	21
	<a href="#">15E. Judge Sanders</a> .....	25
16.	<a href="#">Setting a Regular Hearing</a> .....	26
17.	<a href="#">Regular Hearing</a> .....	27
18.	<a href="#">Terminal Dates</a> .....	28
19.	<a href="#">Submission Letters</a> .....	29
20.	<a href="#">Administering Depositions</a> .....	30
21.	<a href="#">Rulings Without A Certified Transcript</a> .....	31
22.	<a href="#">Requirements of Findings and Awards</a> .....	32

23.	<a href="#">Filing Voluntary Modifications</a>	33
24.	<a href="#">Lump Sum Awards</a>	34
25.	<a href="#">Joint Petition and Stipulation</a>	35
26.	<a href="#">Settlement Hearings</a>	36
27.	<a href="#">Medical Evidence in Settlements</a>	37
28.	<a href="#">Attorney Fees</a>	38
29.	<a href="#">Special Administrative Law Judges</a>	39
30.	<a href="#">Court Reporters and Fees</a>	40
31.	<a href="#">Interpreters</a>	41
32.	<a href="#">Subpoenas</a>	42
33.	<a href="#">Witness Fees</a>	43
34.	<a href="#">Enforcement of Support Order</a>	44
35.	<a href="#">Post-Award Medical</a>	45
36.	<a href="#">Review and Modification</a>	46
37.	<a href="#">Other Post-Award Filings</a>	47
38.	<a href="#">Termination of Compensable Cases</a>	48
39.	<a href="#">Appeals</a>	50
40.	<a href="#">Employer Must Report Accident to Workers Compensation Director</a>	52
41.	<a href="#">Employer Must Provide Information to the Employee After an Injury</a>	53
42.	<a href="#">Request for Records</a>	54
43.	<a href="#">Procedure for Reporting Suspected Fraud or Abuse</a>	55
44.	<a href="#">Elections</a>	59
45.	<a href="#">Public Use Policy</a>	60
46.	<a href="#">Office Locations</a>	61
47.	<a href="#">Contact Us</a>	62
48.	<a href="#">Forms and Publications</a>	63

# 1. PLEADING REQUIREMENTS

[Back to Table of Contents](#)

If a party is represented by an attorney, all pleadings, applications, motions and other documents under the Workers Compensation Act need to be signed by at least one attorney of record. The documents must include the attorney's name, address, phone number and email address. If a party is not represented by an attorney, the documents need to be signed by the party and include their address, phone number and email address if available. If any pleading, application, motion or other document is not signed, it will not be accepted and is considered void unless it is signed after notice of the omission. See [K.S.A. 44-536a\(a\)](#).

Unless specifically provided by rule and regulation of the Director of Workers Compensation, pleadings do not need to be verified or accompanied by an affidavit. The signature of the person signifies that the person has read the pleading, the pleading is well grounded in fact and is warranted by existing law or an extension and/or modification of existing law and the pleading is not imposed for any improper purpose.

If a pleading, application, motion or other document is signed in violation of [K.S.A. 44-536a](#), the Administrative Law Judge, Division Director or Workers Compensation Appeals Board shall impose an appropriate sanction. This may include an order to pay to the other party or parties the amount of expenses incurred because of the filing, including attorney's fees.

## 2. FILING WORKERS COMPENSATION FORMS AND PLEADINGS

[Back to Table of Contents](#)

The Division's case docketing and case record keeping system is on a shared computer database. Therefore, it is not necessary to send copies of trial pleadings, motions, entries of appearances, etc., to both the Administrative Law Judge (ALJ) and the Director's office.

### Where to File

A pleading is to be sent to the office of the ALJ assigned to the case, if it is of the type that deals with the trial of the case, such as an application for extension of time, entry of appearance, motion for production of records, etc. A Motion to Implead the Workers Compensation Fund should be served on the Commissioner of Insurance at the Kansas Insurance Department per [K.S.A. 44-566a\(c\)\(1\)](#), with a copy sent to the ALJ.

#### **Filings sent to Administrative Law Judge:**

(addresses for ALJ offices can be found [online](#) and in [Chapter 46](#))

Entry of Appearance

Motion for Production or Protection

Motion for Extension of Time

Notice of Hearing

Copy of Motion to Implead Workers Compensation Fund

(original Motion to the Kansas Insurance Commissioner, in care of the Workers Compensation Fund at the Kansas Insurance Department); for further information see:

<http://www.ksinsurance.org/consumers/workcomp.htm> or contact

Kansas Insurance Department

Kansas Workers Compensation Fund

420 SW 9<sup>th</sup> Street

Topeka, KS 66612

(785) 296-3071

A pleading is to be sent to the Director of the Division of Workers Compensation if the pleading is to:

- create a new case
- change a party
- begin a new action on an existing case such as an application for review and modification hearing, application for penalties
- or is an application or motion dealing with the preliminary hearing subjects of temporary total compensation, medical treatment or vocational rehabilitation.

Joint Petition and Stipulations are also filed with the Director's office. Documents to be submitted to the Director's office are to be sent to Director of Workers Compensation, 401 SW Topeka Blvd., Suite 2, Topeka, Ks, 66603-3105.

**Filings sent to Director:** 401 SW Topeka Blvd., Suite 2, Topeka, Ks, 66603-3105.

New case application form ([K-WC E-1 – Application for Hearing](#))

Pleading to change parties (amended [K-WC E-1](#))

Pleading to amend the date or details of the accident (amended [K-WC E-1](#))

Application for preliminary hearing form ([K-WC E-3](#)) involving:

- 1) Temporary total disability compensation
- 2) Medical expenses or medical treatment
- 3) Penalties

Joint Petition and Stipulation

Request for Certification for Reimbursement by Workers Compensation Fund  
(see [K.S.A. 44-534a\(b\)](#))

Final Release of Liability (Form D and Medical Records)

Motion to Implead the Workers Compensation Fund (see [K.S.A. 44-566a\(c\)\(1\)](#)).

Documents to be submitted to the Rehabilitation Administrator's office are to be sent to Director of Workers Compensation, 401 SW Topeka Blvd., Suite 2, Topeka, Ks, 66603-3105.

**Filings sent to Rehabilitation Administrator:**

Requests for referral in non-litigated cases

Agreed order approving a plan in non-litigated cases

**Filings not sent to any of the Division offices:**

Pleadings in cases not docketed before the Director

Medical Reports (except when attached as evidence to be submitted with a form listed above)

Demand under [K.S.A. 44-512a](#) for payment of disability and/or medical compensation due, plus penalties

### 3. NOTICE OF CLAIM AND TIME LIMITATIONS

[Back to Table of Contents](#)

#### Notice of Accident or Injury

Per [K.S.A. 44-520](#), for injuries on or after May 15, 2011, and before April 25, 2013, an employee must notify their employer within the earliest of the following dates:

- 1) 30 calendar days from the date of accident or the date of injury by repetitive trauma;
- 2) 20 calendar days from the date such medical treatment is sought if the employee is working for the employer against whom benefits are being sought and such employee seeks medical treatment for any injury by accident or repetitive trauma; or
- 3) 20 calendar days after the employee's last day of actual work for the employer if the employee no longer works for the employer against whom benefits are being sought.

Per [K.S.A. 44-520](#), for injuries on or after April 25, 2013, an employee must notify their employer within the earliest of the following dates:

- 1) 20 calendar days from the date of accident or the date of injury by repetitive trauma;
- 2) 20 calendar days from the date such medical treatment is sought if the employee is working for the employer against whom benefits are being sought and such employee seeks medical treatment for any injury by accident or repetitive trauma; or
- 3) 10 calendar days after the employee's last day of actual work for the employer if the employee no longer works for the employer against whom benefits are being sought.

No proceeding for workers compensation will be maintained if timely notice has not been given to the employer, unless:

- 1) The employer has actual knowledge of the accident.
- 2) The employer was unavailable to receive such notice.
- 3) The employee was physically unable to give such notice.

#### Statute of Limitations to File Application for Hearing

An injured worker must file an Application for Hearing (form [K-WC E-1](#)) with the Director within three (3) years of the date of accident or within two (2) years of the date of the last payment of compensation, whichever is later. When the Application for Hearing is filed with the Director, the claim is assigned a docket number and is assigned to an Administrative Law Judge (ALJ). After filing the E-1, the docket number and the assigned ALJ's name and phone number may be obtained prior to your receipt from the Division of the assigned judge and docket number by contacting the Division of Workers Compensation's Ombudsman/Claims Advisory Section at (785) 296-4000, option 1, or toll free (800) 332-0353, option 1.

#### Final Hearing

All claims must proceed to a final hearing within three (3) years from the date the application for hearing (form [K-WC E-1](#)) was filed with the Division or the claims may be dismissed for lack of prosecution.

[K.S.A. 44-523\(f\)\(1\)](#) provides: "In any claim that has not proceeded to a regular hearing, a settlement hearing, or an agreed award under the workers compensation act within three years from the date of filing an application for hearing pursuant to [K.S.A. 44-534](#), and amendments thereto, the

employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant's attorney, if the claimant is represented, or to the claimant's last known address. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the three year limitation provided for herein. If the claimant cannot establish good cause, the claim shall be dismissed with prejudice by the administrative law judge for lack of prosecution. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of [K.S.A. 44-534a](#), and amendments thereto."

The requirements set forth in [K.S.A. 44-523\(f\)](#) only apply to accidents occurring on or after May 15, 2011.

## **4. SPECIAL RULES FOR OCCUPATIONAL DISEASE CLAIMS**

[Back to Table of Contents](#)

### **Compensation Date**

The date an employee becomes incapacitated by an occupational disease from performing their work shall be considered the date of the injury. If compensation is due, the employer at the time the worker was last exposed to occupational hazards shall be held liable. Prior employers or insurance carriers will not be required to contribute compensation. The amount of compensation will be based on the average weekly wage at the time of injury. The notice of disability and claim for compensation shall be given to such employer. However, if the employee has silicosis, the employer and insurance carrier where the employee worked for at least 60 days will be held liable. See [K.S.A. 44-5a06](#).

### **Notice of Disease and Filing of Claim**

Written notice of an occupational disease shall be given to the employer within 90 days after disablement. If death has resulted, notice shall be given to the employer within 90 days. If the employer is aware of the occupational disease, this shall be considered sufficient notice. If no claim for death or disability is filed within one year, the right to compensation shall be considered forfeited. However, the failure to file shall be deemed waived if

- 1) No objection has been made at a hearing before any award or decision thereon
- 2) The employer or insurance carrier makes compensation payments or the employer or insurance carrier by his or its conduct leads the employee or workman or claimant reasonably to believe that notice or claim has been waived.

The time limit shall not apply if the disease or death was caused by latent or delayed pathological conditions, changes or malignancies due to the occupation exposure to X-rays, radium, radioactive substances or machines or ionizing radiation. However, no claim shall be allowed unless a claim has been filed within one year after the date the employee first suffered incapacity from the exposure and the employee knew, or should have known, that the disease was caused by present or prior employment. See [K.S.A. 44-5a17](#).

### **Review of Award or Denial of Award**

An award or denial of compensation for an occupational disease may be reviewed and compensation increased, reduced or terminated where it was previously awarded or denied. This can be done only if proof of fraud, undue influence or change in condition is alleged and established by credible evidence. For review of previously ordered compensation, the party has one year to file after denial of award, if compensation was awarded or agreed to be paid, or after the award or the date of last payment. If the case involves silicosis, the party will have two years to file for review. See [K.S.A. 44-5a19](#).

## 5. LOCATION OF PROCEEDINGS

[Back to Table of Contents](#)

Pursuant to [K.S.A. 44-549](#), upon request, hearings shall be held by the Administrative Law Judge (ALJ) in the county in Kansas where the accident took place unless another venue is mutually agreed upon by the employee and employer. Generally, hearings are held in the various locations where the ALJ routinely hears dockets on set dates of the month. See the schedules of docket dates in Chapter 6. The availability of these dates should be confirmed with the ALJ's legal assistant when scheduling a hearing. The Division's website has a listing of the [counties served](#) by each ALJ and a [districting map](#) showing the areas of coverage by each judge.

## 6. ADMINISTRATIVE LAW JUDGE SCHEDULES

[Back to Table of Contents](#)

The following information details the Administrative Law Judges' days and times they conduct different proceedings. However **all times and dates are subject to change** depending on courtroom availability as well as a judge's schedule and involved parties should contact the appropriate regional offices to verify specifics. (PHSC – Pre-Hearing Settlement Conference, see [Chapter 14](#))

### Steven Roth

Barbara Zeller  
Legal Assistant  
( 785) 296-4000  
option 0, ext. 2188

### Topeka

Preliminary Hearings .....Mon., Tues., Thurs., Fri.

PHSC.....Wed.\*

Regular Hearings .....Mon., Tues., Thurs., Fri.

**Lawrence**.....Third Tues.

**Emporia** .....First and third Fri.

**Pittsburg**.....First Mon. and fourth Fri.

\* Contested hearings may be scheduled on PHSC docket, depending on the circumstances of the request and with the approval of the judge.

### Will Belden

Veronica Cooper  
Legal Assistant  
(913) 642-7650  
option 0, ext. 2641

### Lenexa

Preliminary Hearings .....Wed. 1:00 p.m.

PHSC ..... Tues. 1:00 p.m. and Wed. 10:00 a.m.

Regular Hearings .....Tues. 9:00 a.m.

### Pamela Fuller

Mary Richardson  
Legal Assistant  
(620) 275-0414

Hearings are scheduled in three locations (shown below) during **one week each month**. Judge Fuller provides a calendar prior to January 1 each year with the monthly hearing schedule.

All hearings are scheduled on a docket at 9:00 a.m. Everyone should be present and ready to proceed at 9:00 a.m.

### Garden City

Preliminary and Regular Hearings....Monday

PHSC .....Tuesday

### Cimarron

Preliminary and Regular Hearings....Wednesday

PHSC.....Thursday

### Liberal

Preliminary, PHSC and Regular

Hearings .....Friday

### Steve Howard

Jess Weber  
Legal Assistant  
(913) 642-7650  
option 0, ext. 2642

### Lenexa

Preliminary Hearings .....Tues. 1:00 p.m.

PHSC .....Mon. 1:30 p.m. and every other Mon. 11 a.m.

Regular Hearings .....Every other Tues. 9:00 a.m.

**Ken Hursh**

Jane Hogan  
Legal Assistant  
(913) 642-7650  
option 0, ext. 2640

**Lenexa**

Preliminary Hearings .....Wed. 10:00 a.m. and Mon. 1:00 p.m. as  
needed  
PHSC.....Wed. 1:00 p.m.  
Regular Hearings .....Thurs. 10:00 a.m.

**Gary Jones**

Sandi Peck  
(316) 267-9510

**Wichita**

Preliminary Hearings .....Tues., Thurs. 9:00 a.m.  
PHSC.....Mon., Wed. 9:00 a.m.  
Regular Hearings .....Mon., Tues., Wed., Thurs. 1:30 p.m.

**Thomas Klein**

Terri Davis  
Legal Assistant  
(316) 267-9510  
option 0, ext. 2813

**Wichita**

Preliminary Hearings .....Tues., Thurs. 1:00 p.m.  
PHSC.....Mon., Wed. 1:45 p.m.  
Regular Hearings .....Mon., Wed. 10:00 a.m.–11:00 a.m.  
and 1:00 p.m.  
Tues., Thurs. 10:00 a.m.–11:00 a.m.

**Hutchinson**

Preliminary & Regular Hearings .....Every other week  
Tues., Wed. 10:00 a.m.  
PHSC.....Tues., Wed. 9:00 a.m.

**Ali Marchant**

AnaMaria Chavez  
Legal Assistant  
(316) 267-9510  
option 0, ext. 2812

**Wichita**

Preliminary Hearings .....Tues., Thurs. 9:00 a.m.  
PHSC.....Mon., Wed. 9:00 a.m.  
Regular Hearings .....Mon., Tues., Wed., Thurs. 1:30 p.m.

**Bruce Moore**

Legal Assistant  
Sandy Branda  
(785) 827-0724  
option 0, ext. 2100

**Salina**

Any type.....First and second Tues. 9:00 a.m.  
Preliminary & Regular Hearings .....Third Tues. 9:00 a.m.  
PHSC.....Third Tues. 1:30 p.m.  
Any type.....First, second, and third Thurs. a.m. and p.m.  
Any special settings .....As needed when time available  
**Independence**.....First and second Wed. 9:00 a.m.  
**Great Bend** .....First Fri. 9:00 a.m.  
**Ellsworth**.....Second Fri. 9:00 a.m.  
**Russell**.....Third Fri. 9:00 a.m. (effective 1/1/15)

**Rebecca Sanders**

Sheryl Hesser  
Legal Assistant  
(785) 296-4000  
option 0, ext. 2190

**Topeka**

Preliminary Hearings .....Tues. 1:00 p.m. and every other Tues.  
9:00 a.m.; Wed. 9:00 a.m. or 1:00 p.m.  
PHSC .....Every other Tues. 9:00 a.m.  
Regular Hearings .....First and third Thurs.

## 7. HEARING ROOM LOCATIONS FOR THE DIVISION OF WORKERS COMPENSATION

[Back to Table of Contents](#)

Following is a list of the hearing rooms used for Kansas workers compensation hearings and their addresses:

- Cimarron** – Gray County Courthouse – 300 S Main Street
- Ellsworth** – Ellsworth County Courthouse – 210 N Kansas, 3<sup>rd</sup> Floor
- Emporia** – Municipal Court Building – 518 Mechanic
- Garden City** – 407 Campus Drive
- Great Bend** – Barton County Courthouse – 1400 Main Street
- Hutchinson** – Reno County Courthouse – 206 W 1<sup>st</sup> Street
- Independence** – Judicial Center – 300 E Main, Suite 201
- Lawrence** – County Commission Room – 1100 Massachusetts or  
Judicial Law Enforcement Center, Rm. 144b, 111 E 11<sup>th</sup> Street
- Lenexa** – 11900 West 87th Street Pkwy, Suite 200
- Liberal** – Seward County Courthouse – 415 N Washington
- Pittsburg** – Crawford County Judicial Center – 602 N Locust
- Russell** – Russell County Courthouse – 401 N Main Street
- Salina** – 901 Westchester Drive, Suite B
- Topeka** – 401 SW Topeka Boulevard
- Wichita** – 266 N. Main Street., Suite 100

## **8. COURT LOCATION FOR OUT-OF-STATE ACCIDENT**

[Back to Table of Contents](#)

If an accident occurs outside the State of Kansas but is still under the jurisdiction of the Kansas Workers Compensation Act, the Director shall designate a county where the hearing is to be held as is directed by [K.A.R. 51-3-6](#). Both parties may submit an application requesting a location for the hearing.

## 9. REMOVAL OF ADMINISTRATIVE LAW JUDGE FROM A CASE

[Back to Table of Contents](#)

A party may file a motion for change of Administrative Law Judge (ALJ) pursuant to [K.S.A. 44-523\(e\)](#) if that party believes a fair hearing could not be afforded from the assigned ALJ. The ALJ will hear the motion promptly and informally upon reasonable notice to all parties who have appeared in the case. The ALJ will decide whether to recuse him/herself. If this occurs, the Director will assign another ALJ. If the ALJ refuses to withdraw, the party may appeal and file an affidavit within 10 days of the ALJ's decision with the Workers Compensation Appeals Board.

The Appeals Board shall promptly determine the legal sufficiency of the affidavit. If the affidavit is found to be legally sufficient, the Appeals Board will order the Director to assign another ALJ.

There are five situations that generally constitute grounds that may disqualify an Administrative Law Judge from hearing a certain matter:

- 1) The ALJ has been engaged as counsel in the case prior to the appointment as ALJ.
- 2) The ALJ is otherwise interested in the case.
- 3) The ALJ is related to either party in the case.
- 4) The ALJ is a material witness in the case.
- 5) A party has cause to believe the party cannot obtain a fair and impartial hearing on account of personal bias, prejudice or interest of the ALJ.

The affidavit shall state the facts and reasons for belief in any of these five areas.

## 10. NOTICE OF INTENT AND CERTIFICATION

[Back to Table of Contents](#)

### Notice of Intent

If there is a disagreement about whether the employee is entitled to medical or temporary total disability benefits, the applicant is required to provide a seven-day notice of intent to the adverse party, in writing, of the intent to file an Application for Preliminary Hearing to obtain the requested benefits. This notification needs to include a specific statement of the benefit change being sought that is to be the subject of the requested preliminary hearing. If temporary total/temporary partial disability benefits are being requested, the notice of intent should state for which dates these benefits are being requested. If medical treatment is being requested, the notice of intent should specify what type of treatment is being requested and for what medical condition. If a party is requesting either a change of physician or the termination of treatment, it should be specified in the notice of intent why the treatment that is being provided is unsatisfactory or should be discontinued. If an agreement to grant or discontinue the requested benefits is not reached after seven days, a [K-WC E-3, Application for Preliminary Hearing](#), may be filed with the Director with a copy of the notice of intent and required medical evidence attached. See [K.S.A. 44-534a\(a\)\(1\)](#).

### Certification

Also required to be filed with the notice of intent to apply for a preliminary hearing is the applicant's **certification that the notice of intent was served on the adverse party or that party's attorney**, and that the request for benefit change has either been denied or was not answered within seven days after service of the notice of intent.

## 11. APPLICATION FOR PRELIMINARY HEARING

[Back to Table of Contents](#)

If the notice of intent fails to settle the disagreement within seven days, a [K-WC E-3 – Application for Preliminary Hearing](#) may be filed with the Director of Workers Compensation. Such application shall include the notice of intent to the adverse party, certification that the notice was received and if the requested change was denied or not answered. The applicant shall include medical reports or other evidence intended to be used as supporting exhibits. An Application for Preliminary Hearing shall not be entered when a seven-day notice of intent has not been given to the adverse party. Additionally, the requesting party or parties must provide notice of the date set for the preliminary hearing to the adverse party or parties at least seven days prior to the date of the hearing. See the next chapter for the procedure to obtain a date and time for a preliminary hearing before the Administrative Law Judge. If a [K-WC E-1 – Application for Hearing](#) has not previously been filed pursuant to [K.S.A. 44-534](#), the employee or party seeking the hearing should submit a [K-WC E-1 – Application for Hearing](#) at the same time the [K-WC E-3 – Application for Preliminary Hearing](#) is filed with the Director's Office in order for the claim to be docketed. See [Chapter 3: Notice of Claim and Time Limitations](#), under heading Statute of Limitations to File Application for Hearing.

Also see [K.A.R. 51-3-5a](#) and [K.S.A. 44-534a](#).

## 12. SETTING A PRELIMINARY HEARING

[Back to Table of Contents](#)

After a [K-WC E-3 – Application for Preliminary Hearing](#) has been filed with the Workers Compensation Division a preliminary hearing can be scheduled by the party requesting the hearing, who shall:

- 1) Contact the legal assistant for the Administrative Law Judge (ALJ) assigned to the case to obtain the available dates and times for the hearing;
- 2) Clear a date and time with all the involved counsel or parties and advise the ALJ's office of the agreed upon date and time; and,
- 3) Serve a Notice of Hearing with the date, time and location of the scheduled hearing to all involved counsel or parties with a copy to the ALJ.

If the party has followed the preceding requirements the hearing shall proceed as scheduled.

Medical reports or other evidence which the party intends to produce and exhibits supporting the change of benefits that will be offered into evidence must be attached to the Application For Preliminary Hearing when such application is filed with the Division. See [K.S.A. 44-534a\(a\)\(1\)](#).

See also [K.A.R. 51-3-5a](#).

## 13. PRELIMINARY HEARING AWARD OR ORDER

[Back to Table of Contents](#)

K.S.A. 44-534a(a)(1) provides:

“After an application for a hearing has been filed pursuant to K.S.A. 44-534, and amendments thereto, the employee or the employer may make application for a preliminary hearing, in such form as the director may require, on the issues of the furnishing of medical treatment and the payment of temporary total or temporary partial disability compensation. At least seven days prior to filing an application for a preliminary hearing, the applicant shall give written notice to the adverse party of the intent to file such an application. Such notice of intent shall contain a specific statement of the benefit change being sought that is to be the subject of the requested preliminary hearing. If the parties do not agree to the change of benefits within the seven-day period, the party seeking a change in benefits may file an application for preliminary hearing which shall be accompanied by a copy of the notice of intent and the applicant’s certification that the notice of intent was served on the adverse party or that party’s attorney and that the request for a benefit change has either been denied or was not answered within seven days after service. Copies of medical reports or other evidence which the party intends to produce as exhibits supporting the change of benefits shall be included with the application. The director shall assign the application to an administrative law judge who shall set the matter for a preliminary hearing and shall give at least seven days’ written notice by mail to the parties of the date set for such hearing.”

If at the hearing it is found that the employee’s injury is compensable and in accordance with the facts presented at the preliminary hearing, the ALJ may make a preliminary award for medical compensation and temporary total disability compensation as per [K.S.A. 44-534a\(a\)\(2\)](#). This award will be in effect pending further adjudication or the conclusion of a full hearing on the claim. No preliminary award will be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues.

Medical reports and other records may be considered by the ALJ at the preliminary hearing. However, the medical reports shall not be considered as evidence when the ALJ makes a final award in the case, unless all parties stipulate to the reports, records or statements, or unless the report, record or statement is later supported by the testimony of the physician, surgeon or other persons making the report, record or statement. If medical reports are not available or have not been produced, either party is entitled to an ex parte production order upon motion to the ALJ.

Findings shall be considered jurisdictional and subject to review by the Workers Compensation Appeals Board on issues concerning whether the employee’s injury was accidental, if the injury arose out of the course of the employee’s employment, if the accident was the prevailing factor, whether notice was timely given or whether certain defenses apply. The Board’s review of these preliminary hearing rulings is not subject to further interlocutory judicial review. If a preliminary order is appealed to the Board, payment of medical compensation and/or temporary total disability compensation shall not be stayed. All preliminary hearing rulings are subject to review at the regular hearing.

If temporary total disability compensation is awarded, it may be ordered paid from the filing date of the application. If the ALJ finds that, prior to filing, there were one or more periods of temporary total disability, compensation may be ordered for all periods.

The decision in preliminary hearings shall be made within five days of the conclusion of the hearing. The ALJ may decide to leave the record open for a reasonable amount of time following the actual hearing to allow for evidence and depositions to be completed. If an ALJ does not render a decision within five days of the conclusion of the evidence to be presented, the applicant’s attorney may notify the Director. The Director shall make demand upon the ALJ for this decision.

## 14. PRE-HEARING SETTLEMENT CONFERENCE

[Back to Table of Contents](#)

A pre-hearing settlement conference (PHSC) is required by statute prior to a regular hearing and it may also be helpful to have more than one PHSC to settle a claim prior to a regular hearing.

Prior to setting a PHSC, the party requesting said conference must certify the following **in writing to the Court:**

- 1) That claimant's medical condition has stabilized and has reached maximum medical improvement;
- 2) That claimant has received a permanent impairment of function rating;
- 3) That claimant is neither receiving nor requesting temporary total disability benefits, unless prior arrangements are made with and approved by the Administrative Law Judge (ALJ);
- 4) Medical and lay testimony is scheduled or will be scheduled;
- 5) That claimant is neither receiving nor requesting vocational rehabilitation; and,
- 6) That claimant will be ready to submit, by submission letter received in the ALJ's office, within 30 days of the date of the regular hearing.

After receipt of the above certification, the ALJ shall conduct a PHSC not less than 10 days before the first full hearing. To set a PHSC, the requesting party must contact the ALJ's legal assistant to obtain available dates; then after clearing those dates with the opposing party, the requesting party must send a notice of the PHSC to the opposing party or parties with a copy to the ALJ. The PHSC is held for "the purpose of obtaining stipulations from the parties, determining the issues and exploring the possibility that the parties may resolve those issues and reach a settlement prior to the first full hearing" as directed by [K.S.A. 44-523\(d\)](#). Also, an ALJ shall conduct a pretrial conference before any testimony is taken as per [K.A.R. 51-3-8\(b\)](#). If a settlement is not reached, the stipulations and issues will be made a part of the record.

Respondent shall be prepared to admit any and all facts respondents cannot justifiably deny. Also, respondent shall have payroll information available to be able to address matters concerning the average weekly wage.

Evidence shall be confined to matters pertinent to the dispute. The ALJ will not be bound by rules of civil procedure or evidence.

If the weekly wage is not an issue in the case, all parties shall be prepared at the first hearing to agree on the claimant's average weekly wage. Both parties shall exchange medical information and confer on what issues can be stipulated to and what is in dispute before the first hearing.

All parties to the PHSC shall be prepared to make stipulations of fact ([K-WC 139 – Pretrial Stipulations](#)) and exchange offers of settlement. Counsel should obtain settlement authority prior to the PHSC or shall make arrangements to have immediate access during the conference to the person with settlement authority.

The following questions shall be used to identify issues in the matter:

### **Questions to Claimant**

- 1) In what county is it claimed that claimant met with personal injury by accident? (If the accident occurred in a different county from that in which the hearing is held, then the parties shall stipulate that they consent to the conduct of the hearing in the county in which it is being held).
- 2) Upon what date is it claimed that claimant met with personal injury by accident?
- 3) Upon what date is it claimed that claimant met with personal injury by repetitive trauma?

### **Questions to Respondent**

- 4) Does respondent admit that claimant met with personal injury by accident on the date alleged?
- 5) Does respondent admit that claimant met with personal injury by repetitive trauma on the date alleged?
- 6) Does respondent admit that claimant's alleged personal injury "arose out of and in the course" of claimant's employment?
- 7) Does respondent admit proper notice?
- 8) Does respondent admit that the relationship of employer and employee existed?
- 9) Does respondent admit that the parties are covered by the Kansas Workers Compensation Act?
- 10) Does respondent admit that claim was made?
- 11) Did the respondent have an insurance carrier on the date of the alleged accident? If so, what is the name of the insurance company? Was the respondent self-insured?
- 12) Does respondent admit that the accident or repetitive trauma was the prevailing factor causing the injury, the medical condition, and the resulting disability or impairment?

### **Questions to Both Parties**

- 13) What was the average weekly wage?
- 14) Has any compensation been paid?
- 15) Has any medical or hospital treatment been furnished? Is claimant making claim for any future medical treatment?
- 16) Has claimant incurred any medical or hospital expense for which reimbursement is claimed?
- 17) What was the nature and extent of the disability suffered as a result of the alleged injury?
- 18) What medical and hospital expenses does the claimant have?
- 19) What are the additional dates of temporary total disability, if any are claimed?
- 20) Is the Workers Compensation Fund to be impleaded as an additional party?
- 21) Have the parties agreed upon a functional impairment rating?

The same stipulations are to be used in occupational disease cases except that questions regarding "accidental injury" shall be changed to discover facts concerning "disability from occupational disease" or "disablement."

Permission to withdraw admissions or stipulations shall be decided by the ALJ on a case-by-case basis.

## 15A. LOCAL RULES: JUDGE BELDEN

[Back to Table of Contents](#)

**Local Rule #1:** Attorneys should complete the pretrial stipulation sheet before appearing at a pre-hearing settlement conference.

**Local Rule #2:** The claimant's signature (along with the attorney's) must be on any voluntary stipulation of dismissal with prejudice made under the new (2011) act.

## 15B. LOCAL RULES: JUDGE FULLER

[Back to Table of Contents](#)

**Local Rule #1:** When requesting a preliminary hearing for medical treatment, have the medical report in hand prior to requesting the hearing. That prevents having to continue the hearing and leaves space open on the docket for those who are prepared. When requesting a Pre-Hearing Settlement Conference (PHSC), be prepared to state who your doctor is and his rating; whether you believe there is a work disability and, if so, who your expert is; and, what your written offer of settlement was and when it was made.

**Local Rule #2:** Be on time for the hearings and be prepared; talk to your clients prior to hearing day. If you are going to be late, please notify the Court or opposing counsel prior to the time for the hearings to start.

**Local Rule #3:** Have your exhibits ready including copies for opposing counsel.

**Local Rule #4:** Terminal Dates: That is exactly what they are. Have all your evidence in to the Court by your terminal date or request an extension prior to your terminal date (see Chapter 18).

**Local Rule #5:** Respondents are to send a paragraph to opposing counsel and the Court at least one week prior to a preliminary hearing. The paragraph only needs to state what your understanding is as to what the claimant is requesting and why you are not willing to accommodate them. Do not attach exhibits. Those must be properly entered into evidence at the hearing. This is to insure that all parties, including the Court, are aware of the issues as well as informing all if the accommodations have been or will be made.

**Local Rule #6:** Counsel is required to appear at all hearings. Claimants are required to appear in person at all hearings of record unless agreed to by all parties in advance. This Court does not hold any hearings by phone. At PHSCs, the claimant and respondent attorneys need to be present; their clients need to be available by phone if not present in person.

## 15C. LOCAL RULES: JUDGE JONES

[Back to Table of Contents](#)

**Posted August 13, 2015**

### **Local Rule #1: Prehearing Settlement Conferences (PHSC)**

Parties should prepare a pretrial stipulation form prior to the PHSC and submit it to the administrative law judge (ALJ) at the conference. Forms are available on the [Department of Labor website](#) and at the Wichita Workers Compensation court (the “Court”).

### **Local Rule #2: Interpreters**

At the time the matter is scheduled for hearing, counsel for the party requiring the interpreter must notify the Court and opposing counsel that an interpreter is required and the language to be interpreted. The Court will arrange for the interpreter to be present for the hearing. Normally the costs of the interpreter will be assessed to the respondent and insurance carrier.

### **Local Rule #3: Hearing Exhibits**

Medical records from different health care providers should be marked as separate exhibits. Personal identification numbers such as Social Security numbers and birth dates should be redacted from exhibits before they are offered into evidence.

### **Local Rule #4A: Withdrawal of Attorney When Client Will Be Left Without Counsel**

When withdrawal of an attorney will leave the client without counsel, the attorney may withdraw only when:

- (1) the attorney has filed a motion for withdrawal and served the motion on the client and on all counsel of record and unrepresented parties;
- (2) the attorney schedules the motion for a hearing and provides notice of the hearing to the client and all counsel of record and unrepresented parties; and
- (3) the Court issues an order approving the withdrawal.

(Note: Most of the time the withdrawing attorney and the other parties do not appear at the hearing. If no one appears at the hearing, the Court will normally grant the motion for withdrawal. If someone does appear and objects to the withdrawal, the Court may grant the withdrawal anyway or may deny the withdrawal and notify the parties that the hearing may be reset so that everyone can appear).

### **Local Rule #4B: Withdrawal of Attorney When Client Continues to Be Represented by Other Counsel of Record**

When the client will continue to be represented by other counsel of record who have previously entered an appearance, an attorney may withdraw without a Court order by filing a notice of withdrawal signed by the withdrawing attorney. The notice must identify the attorney(s) of record who will continue to represent the client and must be served on the client and all counsel of record and unrepresented parties.

### **Local Rule #4C: Withdrawal of Attorney When Client Will Be Represented by Substituted Counsel**

An attorney may withdraw without Court order upon simultaneous substitution of counsel admitted to practice law in Kansas by filing a notice of withdrawal of counsel and entry of appearance of substituted counsel signed by both the attorney withdrawing and the attorney to be substituted as counsel and serving the notice on the client and all counsel of record and unrepresented parties.

## 15D. LOCAL RULES: JUDGE MOORE

[Back to Table of Contents](#)

### To All Counsel and Self-Represented (formerly, “*pro se*”) Litigants

#### Local Rule # 1 (Posted April 10, 1996; revised July 21, 2011; revised March 3, 2015): Preliminary Hearings

- a) Prior to filing for a preliminary hearing, a party requesting benefits, or a change in existing benefits, must still give written notice of the requested benefits or change in benefits (“Notice of Intent”) at least seven days before filing an [Application for Preliminary Hearing \(K-WC E-3\)](#). The application must be accompanied by a certification that the request has been denied, or that no response has been received within seven days after service of the request, along with all “medical reports or other evidence” which the party intends to offer as evidence at the preliminary hearing.
- b) For Judge Moore’s benefit as the ALJ hearing the case, and to enable the judge to be prepared to address the issues to be litigated at preliminary hearing, the judge requests each party to direct a letter to the judge’s attention by 6:00 p.m. on the day prior to a scheduled preliminary hearing, with copies to opposing counsel, stating his/her position on the requested benefits or change in benefits. Copies of the medical exhibits to be offered at the preliminary hearing should be [faxed](#), not emailed, to the court’s attention by 6:00 p.m. on the day prior to the scheduled hearing.
- c) Evidence presented at the preliminary hearing will be limited to those requests **specifically** described in the “Notice of Intent,” unless otherwise agreed by the parties.
- d) The Court welcomes telephone conference calls prior to hearing, if this will help the parties resolve their issues.

#### Local Rule # 2A (Posted January 27, 1997; revised July 21, 2011): Pre-Hearing Settlement Conference (PHSC) Settings

Prior to setting a PHSC, the party requesting said conference must certify the following in writing to the Court:

- a) Claimant has received a permanent impairment of function rating.
- b) Claimant’s medical condition has stabilized.
- c) Claimant is neither receiving nor requesting temporary total disability benefits, unless prior arrangements are made with and approved by the Administrative Law Judge.
- d) Medical and lay testimony is scheduled or will be scheduled.
- e) Claimant is neither receiving nor requesting vocational rehabilitation.
- f) Claimant will have completed presentation of his/her evidence within thirty days of the date of the regular hearing.

#### Local Rule # 2B (Posted January 12, 1999; revised June 15, 2004; revised July 21, 2011): Pre-Hearing Settlement Conference Procedures

In an effort to expedite the PHSC and make the conference more effective, the following procedures will be implemented. Through these procedures, counsel can be better prepared to identify and discuss material issues affecting a resolution of the claim. These procedures will also help make better use of the parties’ time while awaiting your turn before the Court. Failure to comply with these procedures will cause your case to be relegated to the tail of the docket. Thank you for your cooperation!

- a) When counsel arrive, obtain partially-completed “[Pre-Trial Stipulations](#)” form (K-WC 139).

- b) Counsel for all parties should identify the issues about which there is no dispute and place a “v” or “x” in the “Admit” column. If there is a genuine issue as to an item, counsel should place a “v” or “x” in the “Deny” column. If there are multiple dates of accident, each will be given a letter designation. Use the appropriate letter for admissions or denials as to each date of accident. If the injuries are claimed to be the product of repetitive use or repetitive trauma, the claimant must designate a date of accident for the injury or injuries, by reference to statutory provisions.
- c) Average weekly wage, functional impairment ratings, temporary total disability/temporary partial disability (TTD/TPD) and medical benefits paid/claimed should be inserted where appropriate.
- d) If the parties are able to agree on a functional impairment pending determination of a work disability, the stipulated rating should be included on line 18.
- e) When the form is completed, it should be signed by all parties.
- f) The completed form should be taken to the bench/judge’s chambers for the balance of the PHSC. No PHSC will be **deemed “held” unless the parties actually appear before the judge for discussion of remaining issues and settlement prospects**. Completion of the form by counsel, without more, will **not** satisfy the statutory requirement for a PHSC!
- g) If a party believes that there has been either an underpayment of TTD benefits, an overpayment of TTD benefits or an underpayment or overpayment of medical benefits, the overpayments or underpayments are to be itemized at the time of the PHSC. If a party asserts a claim for underpayment/overpayment of TTD benefits, or unpaid/overpaid medical benefits, but cannot fully document or itemize the overpayment or underpayment as of the date of the PHSC, the party may supplement the PHSC by providing to the Court and opposing counsel an itemized and documented claim for such overpayment or underpayment at least 10 days prior to a regular hearing. If a party fails to assert a claim for an underpayment/overpayment of TTD benefits or unpaid/overpaid medical benefits at the PHSC, and if the party fails to itemize and document a claim for overpayment/underpayment of TTD benefits at least 10 days prior to the regular hearing, no evidence or testimony on that issue will be permitted at the regular hearing. Alternatively, the Court may, in its discretion, allow assertion of that element of the claim, but grant the opposing party additional time to respond.

**Local Rule # 2C (Posted August 1, 2014): Protocol For Telephonic Pre-Hearing Settlement Conference**

This Court welcomes the opportunity to hold PHSCs by telephone conference call or through video conferencing provided by GoToMeeting. PHSCs by telephone or video conferencing are set in 15-minute increments throughout the month, at 8:45 a.m. and 1:15 p.m., or at such other times as are mutually convenient to the Court and counsel. Times for such calls should be coordinated through the Court’s administrative assistant.

Prior to the scheduled PHSC, the Court will forward to counsel a partially-completed PHSC stipulations form. Upon receipt of the partially-completed form from the Court, counsel for the respondent should:

- a) Indicate on the form all admissions and denials.
- b) Set forth the respondent’s wage contention.
- c) Set forth the TTD benefits paid; including the number of weeks paid, the benefit rate and the total paid.
- d) Set forth the medical paid, including any unauthorized medical paid.
- e) Set forth any impairment ratings obtained by the respondent or from the authorized treating physician(s).
- f) Forward the partially completed form to the claimant’s counsel.
- g) After the claimant’s counsel has returned the completed, signed form to the respondent’s counsel (see paragraph o, below), the respondent’s counsel should then print the form, sign it, scan it and return scanned copies to the claimant’s counsel and the Court.

Upon receipt of the partially completed PHSC stipulations form from the respondent's counsel, counsel for the claimant should:

- h) If a series is claimed, set forth the statutory date of accident for the series.
- i) Set forth the claimant's wage contention or indicate an agreement with the wage offered by the respondent.
- j) Itemize any additional TTD claimed, including the dates for which the TTD is claimed.
- k) Itemize any unpaid or disputed medical expenses.
- l) Indicate whether future medical is claimed.
- m) Set forth any impairment ratings obtained.
- n) Set forth the claimant's current weekly earnings, inclusive of "additional compensation."
- o) Sign the completed form and forward it to the respondent's counsel for signature.

Counsel should then endeavor to cooperate in setting up a telephone conference call with the Court to review the stipulations. A PHSC will NOT be deemed HELD and the matter cleared for a regular hearing until:

- a completed stipulations form, signed by both counsel, has been received by the Court
- a telephone conference has been held to review the stipulations and discuss settlement prospects.

### **Local Rule #3 (Posted May 21, 1998): Interpreters**

In cases where interpreters are to be required for any formal hearing, counsel for the party requiring the interpreter shall notify the Court and opposing counsel of such need at the time the matter is scheduled for hearing. While the Court may maintain a list of qualified interpreters, the particular dialect spoken by the witness and/or interpreter is not known to the Court. It is, therefore, the responsibility of counsel to cooperate in the arrangements for the attendance and qualification of an interpreter. Counsel should endeavor to agree on the interpreter, to ensure that the interpreter has the qualifications to serve (specified in [K.S.A. 75-4353](#)), and to avoid any unnecessary delays.

Under normal circumstances, costs of the interpreter will be assessed to the respondent and insurance carrier. For that reason, the respondent's choice of interpreter will ordinarily govern, if the interpreter meets the qualifications of [K.S.A. 75-4353](#).

### **Local Rule #4 (Posted July 1, 2011): Witnesses**

Because there are multiple hearings scheduled on each docket, and to enable all parties to have a timely hearing, each party will be limited to no more than two witnesses per hearing. Additional testimony should be taken by deposition. Alternatively, and with prior Court approval, the parties may obtain a special setting, where the number of witnesses will not be limited, unless the testimony is irrelevant or cumulative. Unless the parties agree otherwise, witnesses will be sequestered until their testimony is complete. A company or corporate party may have one representative sit at counsel's table. That representative will not be required to be sequestered before testifying.

### **Local Rule #5 (Posted September 11, 2014): Exhibits**

To ensure a coherent record, all exhibits offered at hearing shall conform to the following:

- a) Medical records will be separated by provider.
- b) Each provider's medical records will be a separate exhibit, and will be tabbed with that provider's name.
- c) Medical records should be limited to those pages that are directly relevant to the issues before the Court. Unless directly relevant, records of routine monitoring of vital signs, electrocardiogram tracings, lab tests, etc., should not be marked as exhibits. Similarly, records pertaining to

unrelated injuries, illnesses, conditions or treatments unrelated to the issues before the Court should not be marked as exhibits. A party who offers irrelevant or extraneous records may be assessed the costs of reproducing those exhibits.

- d) All multi-page exhibits will be paginated to enable the Court, counsel and reviewing bodies to find relevant references in the exhibit.
- e) Counsel should endeavor to redact the claimant's Social Security number from any exhibits offered in evidence, unless the identity of the claimant is in issue. In that circumstance, the first five (5) digits of the Social Security number should be redacted.

**Local Rule #6 (Posted September 11, 2014): Deposition transcripts**

For the benefit of the parties, the Court and any reviewing bodies, all deposition transcripts should include a word index. It is the responsibility of the party scheduling the deposition to request the reporter to provide a word index for each transcript.

## 15E. LOCAL RULES: JUDGE SANDERS

[Back to Table of Contents](#)

### **Local Rule #1: Scheduling of Preliminary Hearings Following Adoption of Senate Bill 649 on March 29, 1996**

- a) A party requesting benefits, or a change in existing benefits, must still give written notice of the requested benefits or change in benefits at least seven days before filing an Application for Preliminary Hearing. The Application (E-3) must be accompanied by a Certification that the request has been denied, or that no response has been received within seven days after service of the request, along with all “medical reports or other evidence” which the party intends to offer as evidence at the Preliminary Hearing.
- b) For my benefit as the Administrative Law Judge hearing the case, and to enable me to be prepared to address the issues to be litigated at preliminary hearing, upon scheduling a preliminary hearing with my office or after receiving notice of a scheduled preliminary hearing, each party is requested to direct a letter to my attention, with copies to opposing counsel, stating his/her position on the requested benefits or change in benefits and enclosing/attaching copies of the medical exhibits to be offered at the preliminary hearing. This should be delivered to myself via mail or facsimile before the scheduled hearing.

It is my hope that implementation of this procedure will expedite resolution of preliminary hearing issues. If counsel should have additional suggestions, I would be happy to entertain them.

### **Local Rule #2: Interpreters**

In cases where interpreters are to be required for any formal hearing, counsel for the party requiring the interpreter shall notify the Court and opposing counsel of such need **at the time the matter is scheduled for hearing**. While the Court may maintain a list of qualified interpreters, the particular dialect spoken by the witness and/or interpreter is not known to the Court. It is, therefore, the responsibility of counsel to cooperate in the arrangements for the attendance and qualification of an interpreter. Counsel should endeavor to agree on the interpreter, to ensure that the interpreter has the qualifications to serve specified at [K.S.A. 75-4353](#), and to avoid any unnecessary delays.

Under normal circumstances, costs of the interpreter will be assessed to the Respondent and Insurance Carrier. For that reason, respondent’s choice of interpreter will ordinarily govern, if the interpreter meets the qualifications of [K.S.A. 75-4353](#).

### **Local Rule #3: Withdrawal of Counsel; Reference Rule 117 of Rules Relating to District Courts**

- a) Motion of Withdrawal by counsel shall be served on the client and opposing counsel.
- b) File a copy of the motion and the certificate of service with the Judge’s office setting the motion to withdraw for hearing notifying the client and opposing counsel.
- c) On or about the date of the motion hearing, prepare an Order of Withdrawal of Counsel with a certificate of service on the client and opposing counsel. If the Order is granted, the Order will be signed and mailed to all interested parties.
- d) Counsel’s attendance at the hearing is not required. If the client appears, an explanation will be given as to what is occurring. We will obtain current contact information from them and give them a copy of the Order.
- e) This procedure is not required if there is a simultaneous withdrawal of counsel and entry of appearance of new counsel with required services. An Order of Withdrawal of Counsel is enough with a simultaneous entry of appearance.

## 16. SETTING A REGULAR HEARING

[Back to Table of Contents](#)

If the parties are unable to reach a compromise at the pre-hearing settlement conference and would like to schedule a regular hearing, such a hearing can be scheduled by the party requesting the hearing, who shall:

- 1) Contact the legal assistant for the Administrative Law Judge (ALJ) assigned to the case to obtain available dates and times for the hearing;
- 2) Clear a date and time with all involved counsel or parties and advise the ALJ's office of the agreed upon date and time; and
- 3) Serve notice of the date and time of the hearing by mailing a Notice of Hearing with a certificate of service to all involved counsel or parties with a copy to the ALJ.

If the party has followed the preceding requirements the hearing shall proceed as scheduled.

## 17. REGULAR HEARING

[Back to Table of Contents](#)

A pre-hearing settlement conference (PHSC) must be held prior to the regular hearing. The Administrative Law Judge (ALJ) may require more than one PHSC. The ALJ may require a PHSC for post-award hearings.

If the parties are unable to reach a compromise at the PHSC, a regular hearing is held to present the evidence before an ALJ.

The ALJ shall not be bound by adherence to technical rules of procedure during any proceeding. The ALJ will be afforded the latitude to conduct hearings in a manner deemed to give the parties “reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality,” as is stated in [K.S.A. 44-523\(a\)](#).

After all parties have submitted evidence, the ALJ shall issue an award within 30 days of the final terminal date. A party’s terminal date is that party’s deadline to take deposition testimony or offer any other form of evidence. This award shall not be stayed due to lack of a submission letter.

Also, if the award has not been entered within 30 days, any party may notify the Director who shall assign a Special Administrative Law Judge to enter a decision based on the record. The Director may remove the ALJ who failed to enter the award within 30 days and reassign a different ALJ to make an immediate decision.

## 18. TERMINAL DATES

[Back to Table of Contents](#)

A party's terminal date is that party's deadline within which the party must take deposition testimony or offer any other form of evidence. When a regular hearing is conducted, the Administrative Law Judge (ALJ) shall set a terminal date no later than 30 days after the first full hearing to require the submission of all evidence in support of the claimant. The terminal date for the respondent shall be set, requiring the submission of all evidence in support of the respondent, 30 days thereafter. An extension may be given for the following reasons:

- 1) If the employee is being paid temporary or permanent total disability compensation.
- 2) If medical examination of the claimant could not be secured prior to the submission of the case and the examination appointment was set and its notice sent prior to submission by the claimant.
- 3) If application is made and good cause shown.
- 4) By agreement of the parties.

The ALJ will place the case in line for decision when the last terminal date expires. If the parties believe that the transcripts will not be made available to the ALJ on or before the last terminal date, the parties should request an extension of the terminal date to assure that all evidence is considered by the ALJ.

## 19. SUBMISSION LETTERS

[Back to Table of Contents](#)

After the regular hearing, if a dispute still exists between the employer and the worker regarding compensation due, each party shall write the Administrative Law Judge (ALJ) a letter (submission letter) submitting the case for decision as is set forth in [K.A.R. 51-3-5](#). The letter shall contain a list of evidence to be considered that includes the following information:

- 1) The dates and name of the ALJ for each hearing held and a list of exhibits submitted at each hearing.
- 2) The date and name of witnesses in each deposition taken and a list of exhibits submitted at each deposition.
- 3) A description of any stipulations entered into by the parties outside of a hearing or deposition.
- 4) A list of any other exhibits that should be contained in the record.
- 5) An itemization of all medical expenses that are in issue.
- 6) An itemization of all medical expenses not in issue but that a party wishes itemized in the award.
- 7) A list of the issues to be decided by the ALJ, together with a list of those items to which the parties have stipulated.

The submission letter is not required to be in a specific form but should include all the above information. The submission letter is not evidence and is merely an argument of the case by a particular party. A decision will not be stayed due to the failure to submit a letter to the ALJ.

## **20. ADMINISTERING DEPOSITIONS**

[Back to Table of Contents](#)

An Administrative Law Judge conducting a hearing or other proceeding, or any party affected by the hearing or other proceeding, may cause the depositions of witnesses residing within or without the state to be taken in the same manner prescribed by the law for like depositions in Kansas District Court civil actions.

## 21. RULINGS WITHOUT A CERTIFIED TRANSCRIPT

[Back to Table of Contents](#)

[K.S.A. 44-552\(c\)](#) allows the Administrative Law Judge to make findings, awards, decisions, rulings or modifications without awaiting for the transcription of testimony if it is deemed expedient and advisable to do so.

## 22. REQUIREMENTS OF FINDINGS AND AWARDS

[Back to Table of Contents](#)

[K.S.A. 44-525](#) stipulates that all findings or awards of compensation shall:

- 1) Be signed and acknowledged by the Administrative Law Judge;
- 2) Specify the amount due and unpaid by the employer to the employee up to the date of the award, if any; and,
- 3) Specify the amount of the payments thereafter to be paid by the employer to the employee, if any, and the length of time such payment shall continue.

“No award shall include the right to future medical treatment, unless it is proved by the claimant that it is more probable than not that future medical treatment, as defined in subsection (e) of K.S.A. 44-510h, and amendments thereto, will be required as a result of the work-related injury.” See K.S.A. 44-525(a).

The effective date of the award shall be the day following the date of the award.

## 23. FILING VOLUNTARY MODIFICATIONS

[Back to Table of Contents](#)

[K.S.A. 44-526](#) establishes that any award may be modified if the terms are agreed upon by the involved parties. If the award is modified against the worker, then the agreement must be filed by the employer in the Director's office within 60 days after the execution of such agreement.

## 24. LUMP-SUM AWARDS

[Back to Table of Contents](#)

A lump sum will only be given as compensation in two situations that are outlined in [K.S.A. 44-525](#). First, when a portion of the compensation is found to be due and unpaid at the time of the award. And second, when the settlement agreement has been approved by the Director. If the employee has already received payments, the amount paid by the employer will be totaled and considered credit towards the total of the lump-sum payment.

If the employee has been overpaid temporary total disability compensation and the employee is entitled to additional compensation, the Administrative Law Judge shall use the overpayment as credit towards the additional compensation. The credit shall be applied to the final week of additional compensation and then to each preceding week until the credit is exhausted.

## 25. JOINT PETITION AND STIPULATION

[Back to Table of Contents](#)

If the claimant lives out of the state and travelling to the state for a hearing would be a hardship, the parties may agree to settle the claim by an award on joint petition and stipulation according to [K.A.R. 51-3-16](#). Joint petition and stipulation may also be used in death cases where liability and entitlement to compensation is clearly defined.

When filed, the joint petition and stipulation must be signed and accompanied by an original award or order prepared by the parties for the Director's signature. It must include the claimant's name, address and a notarized signature. Also, it must include the employer's name and address. The joint petition must either include within its text, or by supporting documents, the following information:

- 1) An explanation of the terms of the settlement, including average weekly wage, temporary total rate and weeks paid, if any, percent of, or approximate percent of, permanent disability. If the compensation offered, or paid, does not correspond to the compensation payable according to medical reports and/or figures given, such as average weekly wage, please explain the discrepancy. If the settlement is between respondent/carrier and Workers Compensation Fund, percentage of reimbursement and lump sum amount shall be given.
- 2) Copies of medical reports, birth certificates, death certificates, marriage certificates and any other supporting documents the case may require.
- 3) An itemization or a total of medical expenses.
- 4) An agreement that all medical bills incurred up to the date of the Joint Petition's signing have been or will be paid by respondent, or if a medical bill is not being paid by respondent, an explanation of how claimant will pay it.
- 5) If a medical bill will be paid from the settlement proceeds, there must be a statement that the bill will be paid before settlement proceeds are delivered to claimant.

## 26. SETTLEMENT HEARINGS

[Back to Table of Contents](#)

Pursuant to [K.S.A. 44-531\(a\)](#), a hearing may be held for the purpose of settling a claim and liability can be released for the portion of the employer's liability at issue if it is in the best interest of the claimant, or if it will avoid undue expense, litigation or hardship to any party. See [Grajeda v. Aramark Uniform Services, Docket No. 1,013,096](#).

[K.A.R. 51-3-9](#) states that a settlement award will not be issued unless the claimant personally testifies, medical testimony is introduced as evidence by a qualified physician and all necessary testimony required to determine the extent of the disability and the amount of compensation due is provided.

Consideration should be made to determine if a [Medicare Set-Aside Arrangement](#) should be included as a condition of the settlement to limit potential liability in the future.

To schedule a settlement hearing, the requesting party must:

- obtain a date and time from a Special Administrative Law Judge
- clear the date and time with opposing counsel
- send a notice of settlement hearing with a certificate of service to opposing counsel, and the Special Administrative Law Judge.

[K-WC 12](#) and [K-WC 13](#) – Work Sheets for Settlements

[List of Current Special Administrative Law Judges](#)

## 27. MEDICAL EVIDENCE IN SETTLEMENTS

[Back to Table of Contents](#)

[K.A.R. 51-3-9](#) states three issues to be considered by an Administrative Law Judge when considering a settlement award. They are as follows:

- 1) The claimant personally testifies.
- 2) Qualified medical testimony is introduced as evidence either by oral testimony or submission of a documentary report based on a recent physical examination concerning the claimant's disabilities.
- 3) Any additional testimony determined to be necessary to require proper determination of the extent of disability and ensuing compensation is given.

If documentary evidence concerning the claimant's medical condition is introduced in evidence, the claimant shall testify that he/she has either read or had the report read to him/her and understands the medical evidence.

Records of hospitalization and treatment may be received in evidence at a hearing if submitted by the claimant. Medical and hospital expenses shall be made part of the record.

## 28. ATTORNEY FEES

[Back to Table of Contents](#)

Per [K.S.A. 44-536](#), attorney fees for services rendered in connection with the securing of compensation for an employee or the employee's dependents, whether secured by agreement, order, award or a judgment in any court, shall be a reasonable amount for such services or 25 percent of the amount of compensation recovered and paid, whichever is less, in addition to actual expenses incurred and subject to the other provisions of this section. Except as hereinafter provided in this section, in death cases, total disability and partial disability cases, the amount of attorney fees shall not exceed 25 percent of the sum which would be due under the Workers Compensation Act beyond 415 weeks of permanent total disability based upon the employee's average gross weekly wage prior to the date of the accident and subject to the maximum weekly benefits provided in [K.S.A. 44-510c](#) and amendments thereto.

[K.S.A. 44-536\(b\)](#): "All attorney fees in connection with the initial or original claim for compensation shall be fixed pursuant to a written contract between the attorney and the employee or the employee's dependents, which shall be subject to approval by the director in accordance with this section. Every attorney, whether the disposition of the original claim is by agreement, settlement, award, judgment or otherwise, shall file the attorney contract with the director for review in accordance with this section. The director shall review each such contract and the fees claimed thereunder as provided in this section and shall approve such contract and fees only if both are in accordance with all provisions of this section. Any claims for attorney fees not in excess of the limits provided in this section and approved by the director shall be enforceable as a lien on the compensation due or to become due. The director shall specifically and individually review each claim of an attorney for services rendered under the workers compensation act in each case of a settlement agreement...or a lump-sum payment...as to the reasonableness thereof." See [K.S.A. 44-521](#) and [K.S.A. 44-531](#).

[K.S.A. 44-536\(c\)](#): "No attorney fees shall be charged with respect to compensation for medical expenses, except where an allowance is made for proposed or future treatment as a part of a compromise settlement. No attorney fees shall be charged with respect to vocational rehabilitation benefits."

[K.S.A. 44-536\(d\)](#): "No attorney fees shall be charged in connection with any temporary total disability compensation unless the payment of such compensation in the proper amount is refused, or unless such compensation is terminated by the employer and the payment of such compensation is obtained or reinstated by the efforts of the attorney, whether by agreement, settlement, award or judgment."

If there is no dispute as to any of the material issues prior to representation of the claimant or claimants by an attorney, or where the amount to be paid for compensation does not exceed the written offer made to the claimant or claimants by the employer prior to execution of a written contract between the employee and an attorney, the fees to any such attorney shall not exceed either the sum of \$250 or a reasonable fee for the time actually spent by the attorney, as determined by the Director, whichever is greater, exclusive of reasonable attorney fees for any representation by such attorney in reference to any necessary probate proceedings.

If the amount to be paid for compensation does exceed the written offer made prior to representation, fees for services rendered by an attorney shall not exceed the lesser of:

- (1) A reasonable amount for such services;
- (2) An amount equal to the total of 50 percent of that portion of the amount of compensation recovered and paid, which is in excess of the amount of compensation offered to the employee by the employer prior to the execution of a written contract between the employee and the attorney; or
- (3) Twenty-five percent of the total amount of compensation recovered and paid.

Per [K.S.A. 44-510b\(f\)](#), "where required, the employer shall pay the costs of a court-appointed conservator not to exceed \$1,000."

## 29. SPECIAL ADMINISTRATIVE LAW JUDGES

[Back to Table of Contents](#)

[K.S.A. 44-551\(n\)](#) gives the Director the authority to appoint Special Administrative Law Judges for the purpose of examining and hearing any designated cases. Special Administrative Law Judges shall be attorneys admitted to practice law in Kansas. They shall have the same authority to exercise powers of regular Administrative Law Judges. Special Administrative Law Judges shall be paid according to [K.A.R. 51-2-5](#) amended, effective November 11, 2005.

[List of Current Special Administrative Law Judges](#)

## 30. COURT REPORTERS AND FEES

[Back to Table of Contents](#)

The Administrative Law Judge (ALJ) is authorized per [K.S.A. 44-555](#) to assess all or part of the certified shorthand reporter's fees for hearings and depositions, including all copies provided, and shall note the amounts on the findings, award or order. Pursuant to [K.A.R. 51-2-4\(d\)](#), these fees shall be assessed in the final award. If fees have already been paid by respondent and the ALJ assesses them against another party, the designated party shall make the necessary reimbursement. A determination of reasonableness of a reporter fee shall be made by the ALJ if the fee is challenged.

Also, [K.A.R. 51-2-4](#) directs the court reporter transcribing a proceeding or deposition to furnish the original transcript to the ALJ, one copy to the employer, insurance carrier or its attorney, and one copy to claimant or claimant's attorney. If the case involves the Workers Compensation Fund, a copy of the transcript should be furnished to its attorney.

If the case is settled, the original transcript of the settlement hearing shall be furnished to the Director within two weeks. This transcript shall constitute a final award.

[List of Current Court Reporters](#)

## 31. INTERPRETERS

[Back to Table of Contents](#)

For hearings before an Administrative Law Judge (ALJ) or the Workers Compensation Board, an interpreter will be appointed for each person whose primary language is not English as is required by [K.A.R. 51-2-6](#). Accommodation will be provided for anyone who is deaf, hard-of-hearing or speech-impaired, as well.

Prior to the hearing, the parties or their counsel shall notify the ALJ's office if they will have a participant in the hearing who requires an interpreter. The ALJ or the Workers Compensation Board will provide the interpreter upon request.

It is the responsibility of counsel to cooperate in the arrangements for the attendance and qualification of an interpreter. The Court does maintain a list of qualified interpreters. Counsel should endeavor to agree on the interpreter to ensure that the interpreter has the qualifications to serve specified at [K.S.A. 75-4353](#) and to avoid any unnecessary delays.

A reasonable fee for the interpreter's service shall be determined and fixed by the ALJ. Under normal circumstances, the costs shall be paid by the respondent as a hearing expense and not assessed against the person in need of accommodation.

## 32. SUBPOENAS

[Back to Table of Contents](#)

Pursuant to [K.A.R. 51-3-8\(f\)](#), if a party to an action covered by the Kansas Workers Compensation Act requires a subpoena to obtain records or testimony, the party must first request the subpoena from the office of the Director. The request may be made by facsimile, regular mail or email at [wc@dol.ks.gov](mailto:wc@dol.ks.gov). The party subpoenaing witnesses shall be responsible for the completion, service and costs in connection with the subpoenas. Subpoenas should be handled to the same extent as is conferred on district courts of this state under the code of civil procedure. See [K.S.A. 60-303](#) et. seq.

Subpoenas are not available online.

There are four types of subpoena forms that may be obtained from the Director:

- 1) Regular Subpoena, Form K-WC 41 – This type of subpoena is used when the party only wishes to compel the attendance of a person at a specified location to testify at a hearing.
- 2) Subpoena Duces Tecum, Form K-WC 41-A – This type of subpoena is used when a party wants a person to bring identified records, papers, writings or other evidence to a hearing.
- 3) Deposition Subpoena/Deposition Subpoena Duces Tecum, Form K-WC 41-B – This type of subpoena is used when a party wants a person to appear to testify at a deposition and/or bring identified records, papers, writings or other evidence to the deposition.
- 4) Subpoena Duces Tecum, K-WC 41-C – This type of subpoena is used when a party wants a named person to make identified records, papers, writings or other evidence available for inspection. The inspection takes place at the person's residence or place of business. Other locations can be arranged by agreement.

### **33. WITNESS FEES**

[Back to Table of Contents](#)

Pursuant to [K.S.A. 28-125](#), witnesses compelled to appear through subpoena shall receive the same fee and mileage as is provided for witnesses attending district court cases. These witness fees are set out in K.S.A. 28-125. The Administrative Law Judge shall apportion such fees and make orders securing their payment according to [K.S.A. 44-553](#).

## 34. ENFORCEMENT OF SUPPORT ORDER

[Back to Table of Contents](#)

Claims for compensation paid to the worker on a weekly basis or in lump sum shall be subject to enforcement of an order for support by means of voluntary or involuntary assignment of a portion of the compensation enumerated in [K.S.A. 44-514\(b\)](#).

An involuntary assignment shall be obtained from a motion filed within the case which is the basis of the existing order of support. This motion shall be served on the claimant and the claimant's counsel and it shall set forth the following:

- 1) The amount of the current support order to be enforced;
- 2) The amount of any arrearage alleged to be owed under the support order;
- 3) The identity of the payer of the compensation to the claimant, if known; and,
- 4) Whether the assignment requested seeks to attach compensation for current support or arrearages or both.

Motions for involuntary assignments of compensation shall be granted. Relief may be granted for the following:

- 1) Current support shall be collectible from benefits paid on a weekly basis but shall not exceed 25 percent of the workers gross weekly compensation excluding any medical compensation and rehabilitation costs paid directly to providers.
- 2) Past due support shall be collectible from lump-sum settlements, judgments or awards but shall not exceed 40 percent of a lump-sum, excluding any medical compensation and rehabilitation costs paid directly to providers.

An order of involuntary assignment of compensation shall be served to the payer and shall set forth the following:

- 1) Amount of the current support order;
- 2) Amount of the arrearage owed, if any;
- 3) Applicable percentage limitations;
- 4) Name and address of the payee to whom assigned sums shall be disbursed by the payer; and,
- 5) Date the assignment is to take effect and the conditions for termination of the assignment.

Any proceeding under [K.S.A. 44-514\(b\)](#) may consider the modification of the existing support order upon proper notice to the other interested parties.

**Please note:** Issues related to child support enforcement must be determined in the District Court and neither the Workers Compensation Board nor the Administrative Law Judges have jurisdiction to determine the propriety of a District Court's Order.

**Further note:** At the time of the publication of this guide, litigation may be pending regarding the percentages which may be withheld for support from workers compensation benefits.

## 35. POST-AWARD MEDICAL

[Back to Table of Contents](#)

After an award for compensation is made, the claimant may make an application for a post-award medical hearing at any time pursuant to [K.S.A. 44-510k](#) and amendments thereto. See [K-WC E-4 – Application for Post-Award Medical, Termination or Modification of Medical Benefits](#).

If medical treatment is the only issue after an award/settlement, [K-WC E-4 – Application for Post-Award Medical, Termination or Modification of Medical Benefits](#) must be filed with the Director.

As an alternative procedure, the Court of Appeals in *Siler v. U.S.D. 512, 45 Kan. App. 2d 546, 251 P.3d 92* (2011) held that a claimant may file an application for preliminary hearing (see [K-WC E-3 – Application for Preliminary Hearing](#)) for post-award medical benefits.

If the issues include both medical treatment and temporary total disability compensation, both [K-WC E-3 – Application for Preliminary Hearing](#) and [K-WC E-4 – Application for Post-Award Medical, Termination or Modification of Medical Benefits](#) should be filed with the Director. Temporary total disability compensation under an Award requires a seven-day demand letter and Notice of Intent prior to the filing of an E-3 or E-4.

The respondent/carrier may file an application to terminate or modify post award medical ([K-WC E-4 – Application for Post-Award Medical, Termination or Modification of Medical Benefits](#)). A respondent may file a [K-WC E-3 – Application for Preliminary Hearing](#) in order to make any changes in medical treatment after an award or settlement. All necessary attachments relating to the change in medical treatment should be filed with the E-3, including the Notice of Intent and the Certification.

An Administrative Law Judge (ALJ) shall conduct the hearing in accordance to [K.S.A. 44-523](#) and amendments thereto. If the ALJ finds that further care is necessary to cure or relieve the effects of the accidental injury that was the subject of the underlying award, the ALJ may make an award for additional medical care.

Any application for a post-award medical benefit shall receive priority by the ALJ only to be superseded by preliminary hearings pursuant to [K.S.A. 44-534a](#) and amendments thereto. A pre-hearing settlement conference is not necessary but the parties shall meet and confer prior to the hearing. The procedure for setting a hearing is the same as a preliminary and regular hearing and all dates should be cleared through the ALJ's office. If no agreement can be reached prior to the hearing, the ALJ will hear the evidence and set terminal dates for evidence to be submitted.

A post-award medical award is subject to a full review by the Board under subsection (b) of [K.S.A. 44-551](#). Any action of the Board of the underlying issue shall be subject to review by the Kansas Court of Appeals under [K.S.A. 44-556](#).

An ALJ has the authority to award medical treatment relating to the underlying award up to six months before the application for post-award treatment. Reviews of such awards shall be given priority setting with the Board, superseded only by reviews of preliminary hearings. A decision by the Board shall be rendered within 30 days from when it was submitted.

Attorney fees and costs will be awarded consistent with subsection (g) of [K.S.A. 44-536](#).

## 36. REVIEW AND MODIFICATION

[Back to Table of Contents](#)

Any award, except previously approved lump-sum settlements, may be reviewed upon application by any interested party, pursuant to [K.S.A. 44-528\(a\)](#). Applications for review and modification ([K-WC E-5 – Application for Review and Modification](#)) must articulate at least one specific reason for the requested relief.

The process for obtaining a hearing on an application for review and modification is the same as the procedure for obtaining a hearing before the Administrative Law Judge (ALJ) for a regular hearing (see [Chapter 16, Setting a Regular Hearing](#)).

The ALJ may assign one or two independent medical examinations and base their review, and possible modification, of the original award on an Independent Medical Examination (IME) and all other competent evidence relating to the present matter. [K.S.A. 44-528\(a\)](#) outlines a number of conditions that would justify this modification:

- 1) The award has been obtained by fraud or undue influence.
- 2) The award was obtained without authority or as a result of serious misconduct.
- 3) The award is excessive or inadequate or the functional impairment or work disability of the employee has diminished.

The ALJ may increase or decrease the level of compensation based on the findings in one or more of these areas subject to the limitations provided in the Workers Compensation Act.

The review and subsequent modification of an award shall be effective on the date that the increase or decrease in function occurred as is stated by [K.S.A. 44-528\(d\)](#). However, the effective date shall not be more than six months before the date the application was made for review.

According to [K.A.R. 51-19-1](#), if an application for review or appeal of an award is made and the application is affirmed or modified, application for review and modification pursuant to [K.S.A. 44-528](#) may still be made to the Division.

Except in highly unusual situations, applications for review and modification should not be made more than once in any six-month timeframe.

[K-WC E-5 – Application for Review and Modification](#)

## 37. OTHER POST-AWARD FILINGS

[Back to Table of Contents](#)

**Post-Award Request for Temporary Total Disability (TTD) only:** If TTD is the only issue, a [K-WC E-3 – Application for Preliminary Hearing](#) must be filed. All necessary attachments relating to TTD should be filed with the E-3, including the Notice of Intent and the Certification.

**Post-Award Request for Change in Disability:** Any issue regarding a change in permanent disability, including the modification of an award to reflect post award TTD payments, requires filing a [K-WC E-5 – Application for Review and Modification](#).

**Post-Award Motion to Terminate or Modify TTD:** All requests by any party to terminate or modify temporary total compensation must file a [K-WC E-3 – Application for Preliminary Hearing](#). All necessary attachments relating to TTD should be filed with the E-3, including the Notice of Intent and the Certification.

**Post-Award Motion to Assess Liability onto the Fund:** If an award has been issued creating an obligation to pay and the obligation is being met by an uninsured employer and the employer becomes insolvent and unable to pay the benefits pursuant to an Order of the Administrative Law Judge or the Board, the claimant may seek relief against the Workers Compensation Fund under [K.S.A. 44-532a](#). The relief must be sought by filing a Motion to Implead the Fund and not by filing for review and modification or a preliminary hearing. The original motion must be filed with the fund with copies to the Administrative Law Judge and the Director. See [K.S.A.44-566a\(c\)\(1\)](#).

## 38. TERMINATION OF COMPENSABLE CASES

[Back to Table of Contents](#)

[K.A.R. 51-3-1](#) establishes that compensable cases may be terminated by the following five procedures:

- 1) By filing a final receipt and release of liability pursuant to [K.S.A. 44-527](#) and amendments thereto.
- 2) By hearing and written award.
- 3) By joint petition and stipulation subject to [K.A.R. 51-3-16](#).
- 4) By settlement hearing before an Administrative Law Judge.
- 5) By voluntary dismissal by the parties.

See also [K.S.A. 44-523\(f\)](#) for the procedure to dismiss docketed claims for lack of prosecution.

### **Application For Dismissal For Lack Of Prosecution**

All claims must proceed to a final hearing within three (3) years from the date of the application for hearing ([form K-WC E-1](#)), or one (1) year from the date of a preliminary hearing denying compensability of the claim, or they may be dismissed. The requirements set forth below apply only to accidents occurring on or after May 15, 2011.

K.S.A. 2011 Supp. 44-523(f)(1): “In any claim that has not proceeded to a regular hearing, a settlement hearing, or an agreed award under the workers compensation act within three years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant’s attorney, if the claimant is represented, or to the claimant’s last known address. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the three year limitation provided for herein. If the claimant cannot establish good cause, the claim shall be dismissed with prejudice by the administrative law judge for lack of prosecution. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto.

(2) In any claim which has not proceeded to regular hearing within one year from the date of a preliminary award denying compensability of the claim, the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant’s attorney, if the claimant is represented, or to the claimant’s last known address. Unless the claimant can prove a good faith reason for delay, the claim shall be dismissed with prejudice by the administrative law judge. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto.

(3) This section shall not affect any future benefits which have been left open upon proper application by an award or settlement.”

The [K-WC E-6 Application for Dismissal](#) form is used to request dismissal pursuant to the above statute.

For accidents occurring after July 1, 2006, but prior to May 15, 2011, the following dismissal provisions apply:

K.S.A 2006 Supp. 44-523(f): “Any claim that has not proceeded to final hearing, a settlement hearing or an agreed award under the workers compensation act within five years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendment thereto, shall be dismissed by the administrative law judge for lack of prosecution. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the five year limitation provided for herein. This section shall not affect any future benefits which have been left open upon proper application by award or settlement.”

It is recommended that for accidents occurring between July 1, 2006, and May 15, 2011, the moving party file a motion to dismiss with notice to the parties to obtain an order of dismissal, and that the motion be set for hearing before the ALJ.

## 39. APPEALS

[Back to Table of Contents](#)

### **Appeal Of A Preliminary Hearing Order To The Workers Compensation Appeals Board**

Preliminary hearing orders with findings with regard to a disputed issue of whether the employee:

- suffered an accident, repetitive trauma or resulting injury
- whether the injury arose out of and in the course of the employee's employment
- whether notice is given or
- whether certain defenses apply

shall be considered jurisdictional and subject to review by the Workers Compensation Appeals Board (the "Board").

In addition, an appeal from a preliminary order may be conducted if it is alleged the administrative law judge (ALJ) exceeded the ALJ's jurisdiction in granting or denying the relief requested. Such issues may be reviewed by the Board upon written request made within ten days. The effective date of the ALJ's decision shall be the day following the date noted thereon by the ALJ. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. For specific requirements, see [K.S.A. 44-551\(l\)\(1\)](#), [K.A.R. 51-18-2](#), and [K.A.R. 51-18-3](#). Applications for review should specify the issues to be considered and the jurisdictional basis for the appeal from a preliminary hearing. Such review of preliminary hearing orders by the Board shall not be subject to judicial review. See [K.S.A. 44-534a\(2\)](#) and [K.S.A. 44-551\(l\)\(2\)\(A\)](#).

### **Appeal Of A Regular Hearing Award To The Workers Compensation Appeals Board**

All final orders, awards and modifications of awards made by an ALJ shall be subject to review by the Board upon written request by any interested party within ten (10) days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. Review by the Board shall be a prerequisite to judicial review as provided for in [K.S.A. 44-556](#) and amendments thereto. For specific requirements, see [K.S.A. 44-551\(l\)\(1\)](#) and [K.A.R. 51-18-2](#).

### **Where to File**

Applications for review by the Workers Compensation Appeals Board may be filed with (1) the Board, (2) the [main office](#) or (3) one of the [regional offices](#) of the Division. An application for review may also be filed by facsimile directly to the Division. See [K.A.R. 51-18-2](#).

### **Judicial Review: Appeal To The Kansas Court Of Appeals**

Any action of the Workers Compensation Appeals Board pursuant to the Workers Compensation Act, other than the disposition of appeals of preliminary orders or awards under [K.S.A. 44-534a](#) and amendments thereto, shall be subject to review in accordance with the Kansas Judicial Review Act by appeal directly to the Court of Appeals. Any party may appeal from a final order of the Board by filing an appeal with the Court of Appeals within thirty (30) days of the date of the final order. When an appeal has been filed

pursuant to this section, an appellee may file a cross appeal within twenty (20) days after the date upon which the appellee was served with notice of the appeal. See [K.S.A. 44-556](#) and [Kansas Supreme Court Rule 9.04](#).

### **Guidelines For Briefs To The Board**

- 1) File a brief.
- 2) Timely Filed: Appellant's brief is due 30 days after the application for review is filed. Appellee's brief shall be submitted within 20 days thereafter. Appellant may submit a reply brief within 10 days thereafter, but only if appellee raises a new issue. See [K.A.R. 51-18-4](#). A party may file for an extension of time to file a brief. See [K.A.R. 51-18-5](#).
- 3) Send Original Plus Five Copies: If faxing the brief, please retain the original document. See [K.A.R. 51-17-2](#).
- 4) Format: The Board prefers a brief format, rather than a letter format. The brief should be in the following order:
  - a. The name, Supreme Court number, address, telephone number, facsimile number and email address of the attorney.
  - b. The case caption and docket number(s) should be placed on the first page of the brief.
  - c. Identify the record. List the transcripts, documents, stipulations, etc. that are to be considered on appeal.
  - d. Set forth the issues on appeal. If new issues are raised in your brief that were not listed in the application for review, please state why. Only issues raised before the ALJ may be raised on review.
  - e. Findings of fact: Set forth the facts in a clear and concise manner. Facts that have no bearing on the issues appealed should not need to be included in the brief. Do not alter, exaggerate facts or omit facts adverse to your position. Be sure to cite to the evidentiary record.
  - f. Arguments and authorities: Make your arguments clear and concise. The Board reads all cases and orders you cite. Make sure the cases in your brief have the correct citations.
  - g. Attach a Certificate of Service indicating the date opposing counsel was served with the brief. Include the address and email address of opposing counsel.
  - h. Use a readable font. We prefer you double space your lines.
  - i. Paginate your brief.
- 5) Standard Of Review: The Board has *de novo* review. Therefore, it is unnecessary to set forth the standard of review.
- 6) Jurisdiction: An Appellant should indicate in its brief why the Board has jurisdiction. If appellee asserts the Board has no jurisdiction, then appellee should list jurisdiction as an issue and provide arguments and authorities.
- 7) Proofread: Please carefully proofread your brief and pay attention to the following:
  - Did you spell names correctly?
  - Did you list the correct attorney in the Certificate of Service?
  - Did you address all issues raised in the application for review?
  - Did you paginate and double space the brief?
  - Did you use the correct gender when identifying witnesses?
  - Did you check citations and quotes for accuracy?
  - Did you use spell check?
  - Did you delete unnecessary facts?

## 40. EMPLOYER MUST REPORT ACCIDENT TO WORKERS COMPENSATION DIRECTOR

[Back to Table of Contents](#)

The Workers Compensation Act states that it is the duty of the employer to notify the Director of an accident within 28 days from the date the injured worker notifies the employer, if sustained injuries wholly or partially incapacitate the employee for more than the remainder of the day or shift [see [K.S.A. 44-557\(a\)](#)]. By regulation, however, **as of January 1, 2014, the electronic reporting (EDI) of employer's Notice of Accidents and Occupational Diseases is now required.** See [K.A.R. 51-9-17](#).

If the employee that was the subject of a previously filed accident has died, a supplemental report must be filed with the Director within 28 days of being notified of the death. This report should detail the facts in connection with the death and information the Director may require concerning the dependents. This report shall not be considered as evidence in any court proceeding. See [K.S.A. 44-557\(b\)](#).

The repeated failure of an employer to file accident reports as required may result in a penalty of up to \$250 for each violation pursuant to [K.S.A. 44-557](#).

## 41. EMPLOYER MUST PROVIDE INFORMATION TO THE EMPLOYEE AFTER AN INJURY

[Back to Table of Contents](#)

After receiving notice of injury or death, the employer needs to mail or deliver to the employee or legal beneficiary a clear and concise description of:

- 1) The benefits available under the Workers Compensation Act;
- 2) The process to be followed in making a claim for benefits;
- 3) The identification of the person, firm or organization directly responsible for responding to and processing a claim for workers compensation benefits;
- 4) The responsibilities of the self-insured employer, insurance company or groupfunded self-insurance plan;
- 5) The assistance available from the office of the Director of Workers Compensation; and
- 6) The address and toll-free number that will facilitate access to the assistance available from the Director's office.

See [K.S.A 44-5,102](#)

The requirement stated above can be met by providing the publication [K-WC 27-A](#), for accidents on or after April 25, 2013, to the injured worker. This publication is also available in Spanish ([K-WC 270-A](#)). More information can be found on the Division's [website](#) or requested via the telephone at (800) 332- 0353, option 3. Inquiries can also be made through postal mail to the [Division's main office](#).

The process to be followed in making a claim for benefits can be found in publication [K-WC 25](#) or the Spanish version [K-WC 250](#).

Assistance is available from the Ombudsman/Claims Advisory Section of the Workers Compensation Division. Information regarding the Ombudsman/Claims Advisory Section can be found [online](#).

## 42. REQUEST FOR RECORDS

[Back to Table of Contents](#)

Pursuant to K.S.A. 44-550, the Director shall designate a person to maintain a full true and correct record of all proceedings of the Director, of all documents or papers filed by the Director, or with the Director, of all awards, orders and decisions made by the Director and such person shall be responsible for the safe custody and preservation of all such papers and documents. [K.S.A. 44-550b](#) relates to records open for public inspection, but excludes:

- 1) Records relating to financial information submitted by an employer to qualify as a self-insurer pursuant to [K.S.A. 44-532](#) and amendments thereto;
- 2) Records which relate to utilization review or peer review conducted pursuant to [K.S.A. 44-510j](#) and amendments thereto shall not be disclosed except to the health care provider and as otherwise specifically provided by the Workers Compensation Act;
- 3) Records relating to private premises safety inspections;
- 4) Medical records, forms collected pursuant to subsection (b) of [K.S.A. 44-567](#) and amendments thereto, accident reports maintained under [K.S.A. 44-550](#) and amendments thereto, and Social Security numbers pertaining to an individual which shall not be disclosed except:
  - a) Upon order of a court of competent jurisdiction
  - b) To the employer, its insurance carrier or its representative, from whom a worker seeks workers compensation benefits;
  - c) To the Division of Workers Compensation for its own purposes;
  - d) To federal or state governmental agencies for purposes of fraud and abuse investigations;
  - e) To an employer in connection with an application for employment to an employer, its insurance carrier or representatives providing for records includes a signed release by the individual, identifies the job conditionally offered by the employer and is submitted in writing, either by mail or electronically. Requests relating to an individual under this subsection shall be considered a record to be maintained and open to public inspection under [K.S.A. 44-550](#) and amendments thereto except Social Security numbers;
  - f) To the workers compensation fund for its own purposes; and
  - g) To the worker upon written release by the worker.

To obtain records from the Director, a request for records should be sent to the Workers Compensation Division. The forms can be obtained on the [website](#) or at the Division of Workers Compensation Office and are listed below.

[K-WC 95 – Records Download Requestor’s Guide](#)

[K-WC 96 – Registration for Access to Electronic Records](#)

[K-WC 97 – Employers/Carrier’s Request For Workers Compensation Records](#)

[K-WC 98 – Worker’s Request For Workers Compensation Records](#)

[K-WC 308 – Affidavit Attesting to the Use of Public Records](#)

[K-WC 970 – Request for Workers Compensation Records / Solicitud de Datos de los Expedientes de Compensación de Trabajadores](#)

[K-WC 980 – Solicitud del Trabajador para Registros de Compensación de Trabajadores](#)

## **43. PROCEDURE FOR REPORTING SUSPECTED FRAUD OR ABUSE**

[Back to Table of Contents](#)

The Workers Compensation Fraud and Abuse Section is responsible for the investigation of alleged violations of the Workers Compensation Act, including the failure to maintain workers compensation insurance coverage, failure of an employer to file accident reports and fraudulent and abusive acts. If a violation occurs, the section generally pursues administrative or civil remedies. In some cases criminal charges will be filed.

### **Kansas Workers Compensation Statutes**

#### **Failure of an Employer to Secure Workers Compensation Insurance**

In general, most employers in the state of Kansas are required to secure workers compensation insurance for employees if the total gross annual payroll for the preceding calendar year exceeded \$20,000. See [K.S.A. 44-532](#) and [K.S.A. 44-505](#).

K.S.A. 44-532(d) states:

“Whenever the director has reason to believe that any employer has engaged or is engaging in the knowing and intentional failure to secure the payment of workers compensation to the employer’s employees...the director shall issue and serve upon such employer a statement of the charges with respect thereto and shall conduct a hearing in accordance with the Kansas administrative procedure act, wherein the employer may be liable to the state for a civil penalty in an amount equal to twice the annual premium the employer would have paid had such employer been insured or \$25,000, whichever amount is greater.”

#### **Failure of an Employer to File Accident Reports**

Every employer has a duty to report accidents to the Director within 28 days from the date the injured worker notifies. See [K.S.A. 44-557\(a\)](#). The employer must file an accident report if:

- 1) The accident or alleged accident occurred in the course of the employee’s employment;
- 2) The employer or employer’s supervisor has knowledge; and
- 3) The personal injuries which are sustained by such accidents are sufficient, wholly or partially, to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

[K.S.A. 44-557\(c\)](#) states:

“The repeated failure of any employer to file or cause to be filed any report required by this section shall be subject to a civil penalty for each violation of not to exceed \$250.”

#### **Fraudulent or Abusive Acts: Civil/Administrative Violations**

[K.S.A. 44-5,120\(e\)](#) grants the authority to the Director of Workers Compensation and the Commissioner of Insurance to file civil proceedings to assess penalties against a party engaged in a fraudulent practice.

[K.S.A. 44-5,120\(e\)](#) states:

“Whenever the director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the conduct of Kansas workers compensation insurance...the director...shall issue and serve upon such person a summary order or statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.”

[K.S.A. 44-5,120\(d\)](#) sets forth twenty-one (21) acts that are considered to be fraudulent or abusive acts for purposes of the Workers Compensation Act. These violations can result in an order for penalties and/or restitution of any money gained as the result of the fraudulent act. The most commonly investigated violations include:

- 1) [K.S.A. 44-5,120\(d\)\(4\)](#): willfully, knowingly or intentionally obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:
  - (A) Making a false or misleading statement; or
  - (B) Misrepresenting or concealing a material fact.
- 2) [K.S.A. 44-5,120\(d\)\(18\)](#): willfully, knowingly or intentionally refusing to pay compensation as and when the compensation is due; and
- 3) [K.S.A. 44-5,120\(d\)\(19\)](#): willfully, knowingly or intentionally refusing to pay any order awarding compensation

### **Fraudulent or Abusive Acts: Criminal Violations**

[K.S.A. 44-5,122\(a\)](#) allows for the criminal prosecution of some violations of the fraud and abuse provisions of the Act. K.S.A. 44-5,122(a) states:

“If the director or the assistant attorney general assigned to the division of workers compensation has probable cause to believe a fraudulent or abusive act or practice or any other violation of the workers compensation act is of such significance as to constitute a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of workers compensation which relates to such act, practice or violation may be forwarded to the prosecuting attorney of the county in which the act or any of the acts were performed which constitute the fraudulent or abusive act or practice or other violation.”

[K.S.A. 44-5,125](#) defines fraudulent acts that can result in criminal prosecution and result in fines, restitution and/or incarceration. Depending on the amount of monetary damages, violations of K.S.A. 44-5,125 can be a misdemeanor or a non-person felony. The primary violations that can result in criminal prosecution are:

- 1) An injured worker drawing temporary total disability benefits while working and earning wages with another employer;
- 2) An employer misclassifying employees for the purpose of reducing workers compensation insurance premiums.
- 3) Making a false or misleading statement in an attempt to obtain or deny benefits.

### **Procedure for Reporting Fraud**

The Director of Workers Compensation is authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud and abuse by any persons who are not licensed or regulated by the Commissioner of Insurance in connection with securing the liability of an employer under the Workers Compensation Act or in connection with claims or benefits thereunder. See [K.S.A. 44-5,120\(a\)](#).

[K.S.A. 44-5,122\(b\)](#) states, “any person who believes a violation of the workers compensation act has been or is being committed may notify the division of workers compensation of the department of labor immediately after discovery of the alleged violation. The person shall send to the division of workers compensation, in a manner prescribed by the director, the information describing the facts of the alleged violation and such additional information relating to the alleged violation as the director may require.”

### **Contact Information**

To report a suspected violation of the Workers Compensation Act, an individual should contact the Division of Workers Compensation, [Fraud and Abuse Investigation Section](#). This contact may be in writing, by telephone or online. **An individual reporting a suspected violation may remain anonymous.**

Fraud and abuse complaints may be communicated with the Division of Workers Compensation by any of the following means:

- A. Address: 401 SW Topeka Blvd., Suite 2, Topeka, KS 66603-3105
- B. Telephone: (785) 296-4000, ext. 2174; or toll free: (800) 332-0353, ext. 2174.
- C. [Online](#)

### **Information to be Reported**

Any person reporting a suspected violation of the Workers Compensation Act should provide as much information as possible, including, but not limited to, name and address of the victim (business or person), name and address of the subject (person or business) being investigated, alleged violation and where the offense was committed.

Basic facts to remember in reporting include: WHO, WHAT, WHEN, WHERE, WHY and HOW.

### **Investigation**

If it is determined a reported violation warrants investigation, the assistant attorney general will assign the case to a special investigator. At the conclusion of the investigation, the special investigator will submit the case to the assistant attorney general for review. The assistant attorney general will determine whether to file charges or close the case.

## **Division of Workers Compensation vs. Kansas Insurance Department**

Like the Division of Workers Compensation, the [Kansas Insurance Department](#) (KID) has an [Anti-Fraud Unit](#) dedicated to combat fraud. The two fraud sections are distinguishable in terms of the violations they investigate, and it is important to understand the differences.

### **Overview and Scope**

The Division of Workers Compensation [Fraud and Abuse Investigation Section](#) investigates violations of the Kansas Workers Compensation Act committed by employers including self-insured employers, health care providers and injured workers covered by the Act. Violations that could be investigated include:

- working while receiving workers compensation benefits
- making a false or misleading statement in an attempt to obtain or deny workers compensation benefits
- misclassifying employees for the purpose of reducing workers compensation insurance premiums
- refusing to pay compensation when compensation is due.

[K.S.A. 44-5,120\(d\)](#) contains a list of twenty-one (21) fraudulent or abusive practices. See [K.S.A. 44-5,125](#) for types of workers compensation fraud and other acts constituting crimes.

KID's [Anti-Fraud Unit](#) was established to handle all types of insurance-related misconduct **except for** Medicaid, Medicare and workers compensation fraud. Thus, KID's authority encompasses a wide range of insurance fraud involving insurance carriers and their agents, whereas the Division of Workers Compensation focuses on one specific type of insurance fraud.

### **Examples**

The following examples may be helpful in recognizing the different types of fraud and determining whether such fraud should be reported to KID or to the Division of Workers Compensation. According to KID, insurance fraud falls primarily into two categories: internal and external.

Internal fraud is perpetrated against an insurance company or its policyholders by insurance agents, managers, executives or other insurance employees. Examples include an agent or insurer making a false statement on a filing with KID or an agent or insurer pocketing premiums.

External fraud is fraud perpetrated against an insurance company by a third part. Examples of external fraud include arson, exaggerated claims, personal injury schemes, property fraud, home owner, life insurance and vehicle scams. For a detailed list of internal and external fraud, visit [What is Fraud?](#) **If it is still unclear where to report suspected fraud, either anti-fraud section may be contacted for assistance.**

Kansas Workers Compensation  
Fraud & Abuse Investigation Section  
401 SW Topeka Blvd., Suite 2  
Topeka, Kansas 66603-3105  
(785) 296-4000 ext. 2174  
Toll free: (800) 332-0353 ext. 2174

Kansas Insurance Department  
Consumer Assistance Division  
420 SW 9th Street  
Topeka, Kansas 66612  
(785) 296-3918  
Toll free: (800) 432-2484

## 44. ELECTIONS

[Back to Table of Contents](#)

In order to be valid and in effect, an election must be filled out completely and filed with the Division of Workers Compensation. Election forms are available on the Division's [website](#). **Questions concerning the proper filing or use of elections can be answered by the Ombudsman/Claims Advisory Section at (785) 296-4000, option 1 or toll free (800) 332-0353, option 1.**

### Election Forms

The Kansas Workers Compensation Act allows certain employers or individuals to choose their status under the Act. This process is known as filing a written statement of election. Below are the various election forms presently in use (or see [K-WC 138 – Workers Compensation Election Information](#), which contains the same explanations as below):

[Form K-WC 50](#) is filed by an employee of a corporation who owns 10 percent or more of the corporate stock to elect not to be covered under the Act. [Form K-WC 50-A](#) cancels a K-WC 50 election. See [K.S.A. 44-543\(b\)](#).

[Form K-WC 51](#) is filed by an employer that is exempt from the law to choose to be covered. This includes employers with less than a \$20,000 payroll and employers involved in agricultural pursuits. [Form K-WC 51-A](#) cancels the election made by K-WC 51. See [K.S.A. 44-505\(b\)](#).

[Form K-WC 113](#) is filed by an individual, proprietor, members of LLCs, or partner to elect to cover himself or herself under the Act. [Form K-WC 114](#) cancels the election made by K-WC 113. Both of these forms must be signed by a group pool administrator or an official of the insurance carrier. A signature of an agent is **not acceptable**. See [K.S.A. 44-542a](#).

[Form K-WC 123](#) is filed by an employer to elect to provide coverage for all or part of his or her volunteer workers. [Form K-WC 124](#) cancels the election made by K-WC 123. See [K.S.A. 44-508\(b\)](#).

[Form K-WC 135](#) is filed by an employer to elect to provide coverage for persons who are performing public or community service as a requirement to receive public assistance or as a result of a contract or diversion, or assignment to a community corrections program or suspension of sentence, or as a condition of probation or in lieu of a fine. [Form K-WC 135-A](#) cancels the election made by K-WC 135. See [K.S.A. 44-508\(b\)](#).

[Form K-WC 137](#) is filed by volunteer directors, officers or trustees of a nonprofit organization to elect coverage under the Workers Compensation Act. [Form K-WC 137-A](#) cancels the election made by K-WC 137. See [K.S.A. 44-543\(a\)](#).

**All fields must be complete or the document will not be accepted by the Division.**

## **45. PUBLIC USE POLICY**

[Back to Table of Contents](#)

### **Use of Workers Compensation Judicial Offices**

Attorneys may use Division facilities for purposes related to docketed workers compensation cases if:

- 1) A conference room is available in a common area that does not provide access to Department of Labor work areas or offices,
- 2) The judicial office is notified in advance,
- 3) The activity is scheduled during normal business hours and consistent with the schedule of Division personnel and
- 4) The activity will not result in unsupervised individuals having access to Division resources.

## 46. OFFICE LOCATIONS

[Back to Table of Contents](#)

[Back to Chapter 2: Filing Forms and Pleadings](#)

### Main Office

Kansas Division of Workers Compensation  
401 SW Topeka Blvd, Suite 2 [\(see map\)](#)  
Topeka, KS 66603-3105  
(785) 296-4000  
(800) 332-0353  
(785) 296-0025 FAX

### Regional Offices

#### Administrative Law Judge – Garden City

Pamela Fuller  
Kansas Division of Workers Compensation  
407 Campus Drive [\(see map\)](#)  
P.O. Box 1138  
Garden City, KS 67846-6124  
(620) 275-0414  
(620) 272-0128 FAX

#### Administrative Law Judges – Lenexa

Will Belden  
Steven Howard  
Ken Hursh  
Kansas Division of Workers Compensation  
11900 West 87th Street Pkwy, Suite 200 [\(see map\)](#)  
Lenexa, KS 66215  
(913) 642-7650, option 3  
(913) 642-3364 FAX

#### Administrative Law Judge – Salina

Bruce Moore  
Kansas Division of Workers Compensation  
901 Westchester Drive, Suite B [\(see map\)](#)  
P.O. Box 2207  
Salina, KS 67401-7418  
(785) 827-0724, option 1  
(785) 827-0942 FAX

#### Administrative Law Judges – Topeka

Steven Roth  
Rebecca Sanders  
Kansas Division of Workers Compensation  
401 SW Topeka Blvd [\(see map\)](#)  
Topeka, KS 66603-3105  
(785) 296-4000, option 6  
(800) 332-0353  
(785) 296-0025 FAX

#### Administrative Law Judges – Wichita

Gary Jones  
Tom Klein  
Ali Marchant  
Kansas Division of Workers Compensation  
266 N. Main St., Suite 100 [\(see map\)](#)  
Wichita, KS 67202-1513  
(316) 267-9510, option 3  
(316) 267-1930 FAX

## 47. CONTACT US

[Back to Table of Contents](#)

### **Administrative Law Judges** Office Locations

<b><u>Appeals Board</u></b>	<a href="mailto:wcboard@dol.ks.gov">wcboard@dol.ks.gov</a>	(785) 296-4000, option 7	(800) 332-0353
<b><u>Applications</u></b> (for Hearings) (inquiries only; emailed applications not accepted)			
Brian Hayes	<a href="mailto:wc_app_rsched@dol.ks.gov">wc_app_rsched@dol.ks.gov</a>	(785) 296-4000, option 8	(800) 332-0353
<b><u>Business and Accounting</u></b>	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 8	
<b><u>Coverage and Compliance</u></b> (including Data Collection and Verification)			
Nancy Wessel	<a href="mailto:wccompliance@dol.ks.gov">wccompliance@dol.ks.gov</a>	(785) 296-4000, option 5	(800) 332-0353
<b>Director's Office</b>			
Larry Karns, Director	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 9	
<b>Employer Services</b>			
Suzanne Sachs	<a href="mailto:wcemployerservices@dol.ks.gov">wcemployerservices@dol.ks.gov</a>	(785) 296-4000, option 3	(800) 332-0353
<b><u>Fraud &amp; Abuse</u></b>			
Ezra Ginzburg	<a href="mailto:wcfraud@dol.ks.gov">wcfraud@dol.ks.gov</a>	(785) 296-4000, option 4	(800) 332-0353
<b><u>Judicial</u></b>			
Jose Castillo	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 9	
<b><u>Mediation</u></b>			
Sue Picard	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 8	(800) 332-0353
<b><u>Medical Services and Fee Schedule</u></b>			
Anne Haught	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 8	(800) 332-0353
<b><u>Ombudsman/Claims Advisory</u></b> (for injured workers and general public)			
	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 1	(800) 332-0353
<b><u>Operations including EDI</u></b>			
David Sprick	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 8	(800) 332-0353
<b>Public Resource</b>			
Carol Cast	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 9	
<b><u>Rehabilitation</u></b>			
Alan Stanton	<a href="mailto:wcrehab@dol.ks.gov">wcrehab@dol.ks.gov</a>	(785) 296-4000, option 9	(800) 332-0353
<b><u>Research</u></b> (inquiries only; emailed request for records forms not accepted)			
Brian Hayes	<a href="mailto:wc_app_rsched@dol.ks.gov">wc_app_rsched@dol.ks.gov</a>	(785) 296-4000, option 8	(800) 332-0353
<b><u>Self-Insurance</u></b>			
Marilyn Atkinson	<a href="mailto:wselfinsurance@dol.ks.gov">wselfinsurance@dol.ks.gov</a>	(785) 296-4000, option 8	(800) 332-0353
<b><u>Seminar Planning Unit</u></b>			
Shirley Hastings	<a href="mailto:wseminar@dol.ks.gov">wseminar@dol.ks.gov</a>	(785) 296-4000, option 8 Fax (785) 296-8177	(800) 332-0353
<b><u>Technology and Statistics</u></b>			
David Sprick	<a href="mailto:wc@dol.ks.gov">wc@dol.ks.gov</a>	(785) 296-4000, option 8	(800) 332-0353
<b><u>Website</u></b>			
Alan Stanton	<a href="mailto:alan.stanton@dol.ks.gov">alan.stanton@dol.ks.gov</a>	(785) 296-4000, option 9	

## 48. FORMS AND PUBLICATIONS

[Back to Table of Contents](#)

Following is a list of forms and publications furnished by the Division of Workers Compensation and a brief description of their content. You may find these (except for subpoenas) on the Department of Labor, Division of Workers Compensation website on the [Forms and Publications](#) page.

### Benefits

- [K-WC 107:](#) Benefit Card listing maximum total and weekly benefits
- [K-WC 140:](#) Death Benefit Information
- [K-WC 1070-A:](#) Tabla De Beneficios Máximos (Spanish version of the K-WC 107)

### Annual Reports

[Annual Reports](#) from FY2001 to the present

### Elections

- [K-WC 50:](#) Employee Not to Accept Coverage Under Act, 10 Percent or More Shareholder
- [K-WC 50-A:](#) Cancellation of K-WC 50
- [K-WC 51:](#) Employer to Cover Employees Under Act, Gross Annual Payroll is \$20,000 or Less, or Agricultural Pursuits
- [K-WC 51-A:](#) Cancellation of K-WC 51
- [K-WC 113:](#) Individual, Partner or Self-Employed to Come under Act
- [K-WC 114:](#) Cancellation of K-WC 113
- [K-WC 123:](#) Employer to Provide Coverage for Volunteer Workers
- [K-WC 124:](#) Cancellation of K-WC 123
- [K-WC 135:](#) Employer to Provide Coverage for Persons Performing Public or Community Service
- [K-WC 135-A:](#) Cancellation of K-WC 135
- [K-WC 137:](#) Election of a Non-compensated Volunteer Officer, Director or Trustee of a Nonprofit Corporation to be Covered
- [K-WC 137-A:](#) Cancellation of Form 137
- [K-WC 138:](#) Workers Compensation Election Information

### Employers and Employees

- [K-WC 25:](#) Workers Compensation Information for Kansas Employers and Employees
- [K-WC 250:](#) Información Para Empleadores y Empleados (Rev. 08-14) (Spanish version of K-WC 25)
- [K-WC 27-A:](#) Important Information for Injured Employees
- [K-WC 270-A:](#) Información Importante Para Trabajadores Lastimados en el Trabajo (Spanish version of K-WC 27-A)
- [K-WC 40-A:](#) Poster employers are required to display concerning the employee's rights under the Workers Compensation Act
- [K-WC 126:](#) Information addressing ambiguity of whether a person is an independent contractor or employee
- [K-WC 530:](#) Information for employers regarding forms K-WC 27-A and K-WC 270-A

### Fraud and Abuse

- [K-WC 44:](#) Report of Fraud or Abuse (Confidential)

## Hearings and Settlements

- K-WC 14:** *Workers Compensation Practice and Procedure Guide*, A handbook for all participants involved in Kansas workers compensation claims.
- [K-WC D:](#)** Final Receipt and Release of Liability Agreement
- [K-WC E-1:](#)** Application for Hearing
- [K-WC E-2:](#)** Application for Hearing for Surviving Spouse or Dependents/Heirs
- [K-WC E-3:](#)** Application for Preliminary Hearing
- [K-WC E-4:](#)** Application for Post-Award Medical, Termination or Modification of Medical Benefits
- [K-WC E-5:](#)** Application for Review and Modification
- [K-WC E-6:](#)** Application for Dismissal
- [K-WC 12:](#)** Work Sheet for Settlements: Injury Case
- [K-WC 13:](#)** Work Sheet for Settlements: Death Case
- [K-WC 28:](#)** Information for Self-Represented Litigants
- [K-WC 112:](#)** Annual Statement
- [K-WC 139:](#)** Pretrial Stipulations Worksheet
- [K-WC 160:](#)** Statement Regarding Attorney Fees
- [K-WC 280:](#)** Información Para Litigantes Representados A Si Mismos (Spanish version of K-WC 28)
- [K-WC 317:](#)** Order for Production of Records
- K-WC 321:** Joint Petition and Stipulation for Claim Settled ([Word](#) — [WordPerfect](#))
- K-WC 322:** Award on Joint Petition and Stipulation for Claim Settled ([Word](#) — [WordPerfect](#))
- K-WC 323:** Joint Petition and Stipulation for Reimbursement from WC Fund ([Word](#) — [WordPerfect](#))
- K-WC 324:** Order on Joint Petition and Stipulation for Reimbursement from WC Fund ([Word](#) — [WordPerfect](#))
- K-WC 325:** Award on Joint Petition and Stipulation for Structured Settlement or Annuity Contract ([Word](#) — [WordPerfect](#))
- [K-WC 326:](#)** Requirements for Joint Petition and Stipulations submissions

## Newsletter: Work Comp Connection

Newsletter issues from 2012 to the present

## Publications For Sale

- [K-WC 300:](#)** Order Form for Workers Compensation Publications

## Rehabilitation

- [K-WC-R 87-7:](#)** Medical Management Closure Report
- [K-WC-R 93-2:](#)** Vendor Referral Report
- [K-WC-R 93-2 IAMC:](#)** IAM CREST Vendor Referral Report
- [K-WC-R 93-3:](#)** Rehabilitation Vendor Progress Report
- [K-WC-R 93-3A:](#)** Vocational Assessment
- [K-WC-R 93-3B:](#)** Rehabilitation Plan
- [K-WC-R 93-3C:](#)** Plan Amendment
- [K-WC-R 93-5:](#)** Vocational Rehabilitation Closure Report
- [K-WC-R 93-6:](#)** Rehabilitation Reporting Guidelines
- [K-WC-R 93-10:](#)** Vocational Rehabilitation Vendor Application
- [K-WC-R 93-11:](#)** Qualified Rehabilitation Professional Application
- [K-WC-R 93-12:](#)** How to Become a Qualified Rehabilitation Professional

- [K-WC-R 93-13:](#) Important Reminders for Vendors and Qualified Rehabilitation Professionals (QRP)
- [K-WC-R 93-20:](#) Law & Regulations for Vocational Rehabilitation
- [K-WC-R 99-8:](#) Vendor's Request for Additional Expenditures

### Requests for Records

- [K-WC 95:](#) Electronic Records Download Requestor's Guide
- [K-WC 96:](#) Registration for Access to Electronic Records
- [K-WC 97:](#) Employer's/Carrier's Request for Workers Compensation Records
- [K-WC 98:](#) Worker's Request for Workers Compensation Records
- [K-WC 308:](#) Affidavit Attesting to the Use of Public Records
- [K-WC 970:](#) Request for Workers Compensation Records / Solicitud de Datos de los Expedientes de Compensación de Trabajadores (Spanish/English version of K-WC 97)
- [K-WC 980:](#) Solicitud del Trabajador para Registros de Compensación de Trabajadores (Spanish version of K-WC 98)

### Self-Insurance

- [K-WC 20:](#) Bank Fact Sheet
- [K-WC 105:](#) Employer's Application Oath to Become a Self-Insurer
- [K-WC 120:](#) Application for Self-Insurance  
If you prefer to download an interactive Excel version of this form, select **K-WC 120:** Interactive on the [website](#).
- [K-WC 121:](#) Assessment Information
- [K-WC 129:](#) Certificate of Excess Insurance
- [K-WC 130:](#) Letter of Credit
- [K-WC 130-A:](#) Trust Operational Agreement
- [K-WC 131:](#) Self-Insurance Aggregate Surety Bond
- [K-WC 131-A:](#) Amendatory Rider to Surety Bond
- [K-WC 132:](#) Indemnity & Guaranty Agreement
- [K-WC 133:](#) Statement of Insured
- [K-WC 144:](#) Self-Insurance Information
- [K-WC 309:](#) Why Audited Financial Statements are Required
- [K-WC 1441:](#) Information for Self-Insured Employers on the Kansas Workers Compensation Act

### Statutes and Regulations

The complete set of law and regulations concerning workers compensation in Kansas, along with current supplements to the last published hard copy law book.

### Subpoenas

The following four forms are not available for download online but may be obtained by calling or writing to the Director's secretary. See the [Office Locations Directory](#) for main office contact information.

- K-WC 41:** Subpoena
- K-WC 41-A:** Subpoena Duces Tecum (in person)
- K-WC 41-B:** Deposition Subpoena/Deposition Subpoena Duces Tecum
- K-WC 41-C:** Subpoena Duces Tecum (evidence)