

# ADVANCED WORKERS COMPENSATION

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# Discussion

- Recap of Basics – A few points to remember
- Concerns for Employers

Horseplay and Fighting

Drugs and Alcohol

Recreational Activities

Workplace Safety

- Need to Know:

Affidavit of Exempt Status

Roofers Act

- Computation

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# RECAP OF BASICS

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# Workers Compensation Insurance

- Workers Compensation is an insurance plan provided by the employer to pay employee benefits for job-related injuries, disability or death.
- Coverage begins the first day on the job.
- Coverage is regulated by [K.S.A. 44-505](#) (Application of Act) and [K.A.R. 51-11-6](#) (Computing Payroll for Corporations)

# Methods of Coverage - K.S.A. 44-532(b)

- Every employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways:
  - (1) By insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas;
  - (2) by showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self;
  - (3) by maintaining a membership in a qualified group-funded workers compensation pool. The cost of carrying such insurance or risk shall be paid by the employer and not the employee.

# Personal Injury

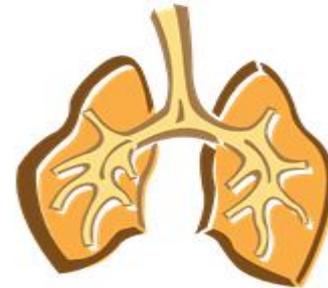
Any lesion or change in the physical structure of the body, causing damage or harm thereto. May occur by accident, repetitive trauma, or occupational disease (K.S.A. 44-508(f)).



Accident



Repetitive



Occupational  
(Lung Disease)

# Prevailing Factor For Compensability of Claim

- The primary factor in relation to any other factor.
- In determining what constitutes the **prevailing factor** in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.
- **Note of Interest:** Having creditable medical records and information is a must. This also helps determine if there are preexisting conditions.

# Concerns Employers Face

- Horseplay and Fighting
- Drugs and Alcohol
- Workplace Safety

# Horseplay and Fighting in the Workplace

Voluntary participation in fighting or horseplay with a coworker is not compensable, whether related to work or not.

- However be aware of third party who may be innocent victim





# Drugs and Alcohol

## K.S.A. 44-501



- **Tightened standards for alcohol or drug use**
- **Added safeguards for employer-controlled testing**
- **A split sample sufficient for testing shall be retained and made available to the employee within 48 hours of a positive test. (Board ruled that this applies to hospitals, approved labs, as well as employers taking their own sample**
- **Rebuttable presumption that the impairment contributed to accident**
- **Refusal to submit to testing results in forfeiture of benefits if sufficient cause to suspect use of alcohol or drugs**

# Drug Testing – Collection of Samples – Things for Employers to Remember

- K.S.A. 44-501(b)(3)
  - (A) Reasonable time after accident
  - (B) Under the supervision of licensed health care professional
  - (C) Approved Laboratory
  - (D) Confirmed by gas chromatography-mass spectroscopy
  - (E) Foundation Evidence
  - (F) Split Sample retained and available



# Safety Devices

- Compensation disallowed for injury resulting from reckless violation or deliberate intention of safety rules or regulations
- “Reckless” is an undefined term
- “Willful failure to use.....which is required pursuant to any statute and provided for employee.



# NEED TO KNOW

- Affidavit of Exempt Status
  - Roofers Act

# Affidavit of Exempt Status

- Permits “any person” who is not required to be covered under workers compensation to execute affidavit of exempt status.
- Form available on the Kansas Department of Insurance web site [www.ksinsurance.org](http://www.ksinsurance.org)
- Not a Workers Compensation Division affidavit.
- **Need to comply with Workers Compensation laws as to whether coverage is required.**

# Affidavit of Exempt Status

## AFFIDAVIT OF EXEMPT STATUS UNDER THE WORKERS' COMPENSATION ACT

State of (Kansas)

County of \_\_\_\_\_

I, \_\_\_\_\_ state under oath as follows:

1. I, \_\_\_\_\_ (Name of individual) operating as \_\_\_\_\_  
(Independent contractor's business name), have agreed to provide services to  
\_\_\_\_\_ (Contractor) during calendar year \_\_\_\_\_.

2. I have read, signed and attached the Exempt Status Fact Sheet and understand that an Independent Contractor is one who engages to perform certain services for another, according to his own manner, method, free from control and direction of his contractor in all matters connected with the performance of the service, except as to the result or product of the work.

3. I understand that based upon the representations in this Affidavit of Exempt Status, I am requesting that \_\_\_\_\_ (Insert contractor's name) consider my business to be that of an independent contractor; that I am not an employee under the Workers' Compensation Act and the policy issued by \_\_\_\_\_ (Insurance Carrier).

4. I am an independent contractor, not an employee of the contractor. I do not want workers' compensation insurance and understand that I am not eligible for Workers' Compensation benefits.

5. I agree to obtain workers' compensation and employers' liability insurance for my employees if any, or otherwise be responsible for payment of earned premium for any employees determined to be mine, unless they are otherwise determined to be exempt from the requirements of the Workers' Compensation Act.

6. I have read, signed and attached the Exempt Status Fact Sheet describing what is an Independent Contractor and the information provided is not the result of force, threats, coercion, compulsion or duress.

7. I understand that the execution of the affidavit shall establish a rebuttable presumption that (the executor) is not an employee for purposes of the Workers' Compensation Act.

8. I understand that the execution of an affidavit shall not affect the rights or coverage of any employee of the individual executing the affidavit.

9. I understand that knowingly providing false information on an Affidavit of Exempt Status Under the Workers' Compensation Act shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) per violation.

Independent Contractor Signature Date \_\_\_\_\_ Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_ Business Name \_\_\_\_\_

Contractor signature Date \_\_\_\_\_ Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_ Business Name \_\_\_\_\_

Notary Public

Signed and

Need to go to search screen in [www.ksinsurance.org](http://www.ksinsurance.org) website and type in Contractors Affidavit

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## EXEMPT STATUS FACT SHEET

An independent contractor is defined by law as one who engages to perform certain services for another, according to his own manner, method, free from control and direction of his contractor in all matters connected with the performance of the service, except as to the result or product of the work.

**Below are statements to help you decide if you are an independent contractor. No one statement is controlling, and your status is based on all the facts in your situation.**

1. The nature of the contract between you and the contractor shows you are independent from the contractor. For example: Is there a written contract where you agree that you are an independent contractor? Do you maintain commercial general liability insurance or other business insurance?
2. The contractor exercises very little control over the details of your work or independence. You exercise control over most of the details of the work? Do you create plans or specifications for the job? Do you set your own work hours?
3. You are engaged in a distinct occupation or business for others. Do you work for companies or individuals other than the Contractor? Do you work for competitors of the Contractor? Does your business have a logo or uniform?
4. Your job is the kind of occupation where the work is usually performed by a specialist without supervision, and not under the direction of the contractor.
5. Your occupation requires special skills, license, education or training.
6. The contractor does not supply the things needed to perform your job such as the tools and the place of work. Do you operate a vehicle owned by the contractor? Was the work performed at your business or the contractor's business location or jobsite?
7. The length of the job and how long you have worked for the Contractor does not show that you are really an employee. For example: Is this a one-time job, or will you be doing this for the contractor regularly?
8. You are paid as a separate contractor, not as an employee. Do you invoice the Contractor for your services? Do you file a federal income tax return for your business? Do you expect to receive an IRS Form 1099 from the Contractor?
9. Your work is not the regular business of the Contractor
10. You do not have the right to terminate the relationship without liability. For example: If you quit before the job is finished, is there a penalty?

**Based upon these factors, do you believe that you are an independent contractor with exempt status?**

Signature \_\_\_\_\_

(WRITE YES OR NO) (INDEPENDENT CONTRACTOR/EXECUTOR)

Note: Employers who knowingly and willfully require an employee or subcontractor to execute an affidavit when the employer knows that the employee or subcontractor is required to be covered under a workers' compensation insurance policy shall be liable for a civil penalty of up to \$1,000.00 per offense.

How to determine if  
You are an independent  
Contractor. Fact Sheet  
Located with Affidavit on  
[ksinsurance.org](http://ksinsurance.org)

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# ROOFER'S ACT SUBSTITUTE FOR HOUSE BILL 2024

- Not a Workers Compensation Bill
- Belongs to Attorney General – Kansas Consumer Protection Unit
- Requires all roofing contractors to register with the Attorney General's Office (Information found under "Apply for License") on Kansas Attorney General's Website at <http://ag.ks.gov>



# How does the Roofers Act affect Workers Compensation?

- Affidavit not part of Workers Compensation – Attorney General's Office

SO.....

- Need to comply with Workers Compensation laws as to whether coverage is needed.
- Providing fraudulent information on the Affidavit of Workers Compensation Exemption under the Kansas Roofing Registration Act is unlawful under the workers compensation act.
- May be either a misdemeanor or a felony, punishable by imprisonment and fine.

# COMPUTATION FACTS



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# Computation Rules

- Date of Accident
- Weekly Maximum Rate
- Scheduled or Whole Body
- Situs of Disability

# Current Weekly Benefits

**July 1, 2014 - June 30, 2015**

<b>Maximum Weekly</b>	\$594
<b>Minimum Weekly</b>	\$25
<b>Minimum Weekly Survivors Benefit</b>	\$396
<b>Mileage Reimbursement</b>	56¢ per mile

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# MAXIMUM BENEFITS

## Effective July 1, 2014

Medical and hospital allowances .....	no limit
Death: spouse and wholly dependent children.....	\$300,000
Death: heirs (no dependents).....	\$25,000
Burial allowance .....	\$5,000
Permanent total disability .....	\$155,000
Temporary total disability.....	\$130,000
Partial disability.....	\$130,000
Partial disability limited to functional impairment.....	\$75,000

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# Additional Death Benefit Information

## K.S.A 44-510b

- \$300,000 Maximum to spouse and/or dependent children
- \$40,000 Lump sum immediately (Comes out of the \$300,000)
- Where required, the employer shall pay the costs of a court-appointed conservator for minor dependent not to exceed \$1000.(Does not come out of the \$300,000)

# Death Benefits Continued

- \$5,000 Burial allowance (Does not come out of \$300,000)
- Minimum benefit is 50% of the state's average weekly wage (effective July 1, 2014 is \$396)

# Calculation of Average Weekly Wage

## K.S.A.44-511

- **“Wages” = Money + Additional Compensation**
- **“Money”**
  - Include bonuses and gratuities
- **“Additional Compensation”**
  - Include only if employer discontinues (Board/lodging and employer-paid fringes only)
- **Average Weekly Wage:**
  - Calculate using add and divide method
  - Use up to 26 weeks preceding injury, if worked

# Temporary Total Disability (TTD) Benefits

## **K.S.A. 44-510c(b)(2)**

- Opinion of authorized treating physician presumed determinative as to work status**
- Employee entitled to TTD if employer cannot accommodate temporary restrictions of authorized treating physician**
- No TTD if employee is terminated for cause or voluntarily resigns and employer could have accommodated temporary restrictions**

# Temporary Total Disability (TTD) Benefits (cont'd)

- No TTD for weeks during which employee receives unemployment benefits (44-510c(b)(4))
- 7-day waiting period/21 day retro (44-501c(b)(1))
- Temporary Total Disability is two-thirds of the average weekly wage, not to exceed the state maximum in effect at the time of injury

# Warning Notice to Employees

An insurer or self-insured employer shall provide the following notice to an insured worker on or with the first check for temporary disability benefits:

**Warning: Acceptance of employment with a different employer that requires the performance of activities you have stated you cannot perform because of the injury for which you are receiving temporary disability benefits could constitute fraud and could result in loss of future benefits and restitution of prior workers compensation awards and benefits paid.**

# Temporary Total Disability

- Opinion of authorized treating physician presumed determinative as to work status
- Employee entitled to TTD if employer cannot accommodate temporary restrictions of authorized treating physician
- No TTD if employee is terminated for cause or voluntarily resigns and employer could have accommodated temporary restrictions

# Temporary Total Disability

- Examples: Based on current Max Amounts of July 1, 2014 – June 30, 2015

$$(1) \text{GAWW} = \$300 \times .6667 = \$200 \text{ TTD}$$

$$(2) \text{GAWW} = \$1000 \times .6667 = \$666.70$$

(However only receive Max of \$594)

# Schedule Injuries & Temporary Partial Disability

- K.S.A. 2011 Supp 44-510d (a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i, *and amendments thereto. The injured employee may be entitled to payment of temporary total disability as defined in K.S.A. 44-510c, and amendments thereto, or temporary partial disability as defined in subsection (a)(1) of K.S.A. 44-510e, and amendments thereto, provided that the injured employee shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total or temporary partial disability as provided in the following schedule, 66 $\frac{2}{3}$ % of the average weekly wages to be computed as provided in K.S.A. 44-511, and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c, and amendments thereto.*

# Temporary Partial Disability

- Diminishment of Wages
- Money not hours
- Scheduled Injuries
  - Prior to 5/15/2011 Not allowed
  - After 5/15/2011 May be Allowed
- Must be temporary
- Maximum applies

# TPD Calculation - Claim 1

- Date of accident: 8/16/2014
- AWW: \$400.00
- Return to work earning: \$150.00
- $\$400 - \$150 = \$250$  Wage loss
- Wage Loss:  $\$250 \times .6667 = \$166.68$  TPD

# TPD Calculation - Claim 2

35

- Date of Accident: 8/22/2014
- AWW: \$1,400.00
- Return to work earning: \$300.00
- Wage loss:  $\$1,100.00 \times .6667 = \$733.37$
- TPD Rate: \$594.00 (Max for DOA) Can't exceed Maximum.

# TPD Conversion

- Amount of TPD divided by Weekly Comp Rate = number of weeks to be subtracted from weeks allowed for disability

\$1,950.00 TPD / \$594.00 weekly rate  
= 3.28 weeks

# PPD – Scheduled Member

- Date of Injury: 8/3/2014
- Injury: Ankle
- Schedule : 190 weeks for lower leg
- Average Weekly Wage: \$756.00
- Schedule : 190 weeks for lower leg
- Comp Rate:  $\$756.00 \times .6667 = \$504.03$
- TTD paid: 7 weeks
- Rating to lower leg: 14%

# PPD – Scheduled Member Continued

**190 Weeks**

**- 7 weeks TTD paid**

**183 weeks remaining**

**x14% impairment rating**

**25.62 weeks owed**

**x \$504.03 weekly rate**

**\$12,913.25 Total amount PPD owed**

# Rules for General Body Disability

- AMA Guides 4<sup>th</sup> Edition (Currently)
- (Note) AMA Guides 6<sup>th</sup> Edition Effective January 2015)
- Functional or Work Disability
- First 15 weeks TTD are not subtracted
- Functional limit applies - \$75,000
- Limited to \$130,000 for Work Disability

# PPD - General Body

- Date of accident: 8/19/2014
- General body injury: 415 weeks
- Average weekly wage: \$907.00
- Comp Rate:  $\$907.00 \times .6667 = \$604.70$
- Max Rate applies: \$594.00
- TTD paid: 38 weeks
- Rating to body as a whole: 15%

# PPD - General Body Continued

415	Weeks
- <u>23</u>	weeks (38-15)
392	weeks remaining
<u>x 15 %</u>	impairment rating
58.8	weeks owed
<u>x \$594.00</u>	weekly rate
<b>\$34,927.20</b>	<b>Total amount PPD owed</b>

# Body as a Whole Injuries

- Presumption is functional impairment
- Work disability available only if certain thresholds meet
  - Functional impairment  $> 7.5\%$
  - If preexisting impairment  $>$  or equal to  $10\%$
  - Wage loss  $> 10\%$

# Work Disability

A + B

2 = Work Disability percentage

**A = Work tasks performed in the last 5 years**

**B = Wage Loss**

# 2011 Law – Redefined Task Loss

- **Task Loss**- lost ability of claimant to perform work tasks performed in the last 5 years of employment
  - Based on Permanent restrictions issued by licensed physician
  - Does not include task lost due to preexisting restrictions

# 2011 Law - Redefined Wage Loss

- **Wage loss** – difference between AWW employee earned before injury and AWW employee capable of earning after injury
  - Capability based on all factors, ALJ imputes appropriate wage
  - Legal capacity to enter contract of employment required
  - Includes actual or projected weekly value of fringes
  - Refusal of accommodated work within restrictions and at comparable wage results in presumption of no wage loss

# COMMUNICATION



Insured Worker



Employer



Insurance



Healthcare



Attorney



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# **CONTACT**

**(800) 332-0353 (Option 3)**

**or**

**(785) 296-4000 (Option 3)**

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**Email:**  
**[wcemployerservices@dol.ks.gov](mailto:wcemployerservices@dol.ks.gov)**

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# Questions



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