MISSOURI WORKERS' **COMPENSATION LAW** Michelle Daum Haskins Partner - Cunstangy, Bruoks & Smith 2600 Grand Blvd., Suite 750 Kansas City, MO 64108 816.229,5940 fax 816.256.5508 mhaskins@constangy.com General Overview If an employee is injured at work, while performing their job duties, they are entitled potentially to 3 benefits under workers' compensation: 1. Medical care 2. Lost time benefits (TTD/TPD) Permanent benefits (PPD/PTD) Current legal standard The accident must be the "prevailing factor" in the injury. This is defined to mean the primary or superior factor.

	Parties' obligations • Employee - must notify the Employer of the accident: -within 30 days, -in writing and -list the date, time, place and nature of the injury. (§287.420)	
	Obligations (cont'd) • Employer – within 5 days of receiving the notice from the Employee, report the incident to your insurance carrier or TPA. • Either Employer or Insurer – within 30 days of the accident, complete and submit to the DWC the First Report of Injury. • Offer guidance to Employee on where/who to see for authorized medical care.	
● ※	Medical Treatment and Work • Employee – obligated to attend medical appointments and remain in contact with the physician in terms of knowing appointment information and expectations. • Employee – provide Employer with medical restrictions and off-work slips.	

Employer o Employer - keep Employee's work comp file documented with work restriction slips, notes on conversations, and any billing or other items received. o Employer - if accommodated work is available, convey in writing to the Employee. o Employer - prepare a wage statement for Insurer (13 weeks prior to the date of accident). Once medical care has concluded. Discussion should be had to verify if the Employee is released to return to work with or without restrictions. If the physician imposed permanent restrictions, discussion should be had as to whether you have work within those restrictions. What to expect as the claim progresses. o DWC may ask for information from time to time. o Insurance carrier or TPA will ask for a wage statement, ability to accommodate with light duty or on a permanent basis, information as to the accident itself, background on Employee. o If Employee retains counsel, do not speak to their attorney. All contact will come through your counsel. You may disregard letters (boilerplate requests) for production of documents. Counsel will handle.

What to expect (cont'd) o If the injury was to certain body parts, ie. the head, neck, face, hands/fingers, or in cases of death, there will likely be a conference set by the DWC. This may result in a settlement (money) to the Employee. o If the Employee retains counsel, they are looking for a financial recovery, ie. WAYS TO MINIMIZE **EXPOSURE** o Be clear in posting and discussing with workforce their obligations in the event of an accident. o Train managers/supervisors/forepersons to dialogue and question workers in situations of possible accidents/injuries. o Be aware of external factors that may be motivating an alleged claim. Avail yourselves of external sources of information and training: MWSP (Mo. Workers' Safety Program), your claims' adjusters, your defense counsel, your occ. clinic personnel, and seminars. Checklist O Do I have the most recent posters up and placed in a prominent location? o Do I have my claims' adjuster's phone/fax/email address - memorized or at O Do I have the name/phone/address of my designated, authorized medical clinic available? O Do we have accurate and legible pay records on employees?

Additional considerations	
Current pending legislation	
 Overlap of ADAAA and FMLA with workers' compensation. 	
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Sources of Information	
• www.constangy.com	
o <u>www.labor.mo.gov</u>	
0 <u>www.labor.mo.gov</u> Thank you!	



Missouri Division of Workers' Compensation P.O. Box 58, Jefferson City, MO 65102 573-751-4231

Insurance Company, Third	Na
Party Administrator, Service	Ad
Company, or Designated	
Individual If Self-Insured	Ph

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Phone	

EMPLOYEE INFORMATION

The Missouri Division of Workers' Compensation (DWC) administers programs for workers who have been injured on the job or exposed to an occupational disease arising out of and in the course of employment. The Division's Administrative Law Judges have the authority to approve settlements or issue awards after a hearing relating to an injured employee's entitlement to benefits.

Steps to Take When Injured on the Job

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*Failure to do so may jeopardize your ability to receive benefits

- 2. Seek medical attention (your employer/insurer is responsible for providing medical treatment and paying the medical fees and charges unless you choose to treat with another doctor at your own expense without your employer/insurer's approval).
- 3. Get more information about the benefits available under the Workers' Compensation Program or about the steps you may take to get the benefits you need.

Visit www.labor.mo.gov/DWC or call 800-775-COMP.

Benefits for Injured Employees

Medical Care:

The employer or insurer is required to provide medical treatment and care to cure and relieve the effects of the injury. This includes all costs for authorized medical treatment, prescriptions, and medical devices. There is no deductible, and all costs are paid by the employer or its workers' compensation insurance company. If you receive a bill, contact your employer or the insurance company immediately. The employer/insurer has the right to choose the healthcare provider or treating physician. You may select a different healthcare provider or treating physician, but if you do so, it may be at your own expense.

Payment for Lost Wages:

- If a doctor says you are unable to work due to your injuries or recovery from a surgery, you may be entitled to temporary total disability (TTD) benefits. If a doctor says that you can perform light or modified duty work and your employer offers you such work, you may not be eligible for TTD benefits. TTD benefits should be continued until the doctor says you can return to work, or when your treatment is concluded because your condition has reached "maximum medical improvement," whichever occurs first.
- If you return to light or modified duty at less than full pay, you may be entitled to temporary partial disability benefits.

Permanent Disability Benefits:

If the injury or illness results in a permanent disability, you may be entitled to receive either permanent partial or permanent total disability benefits.

Survivor Benefits:

If an employee dies on the job, the surviving dependents may receive weekly death benefits paid at 66 2/3% of the deceased employee's average weekly wage for the year immediately preceding the injury, along with funeral expenses up to \$5,000 from the employer/insurer. For additional information relating to survivor's benefits, including college scholarship opportunities for surviving children, please visit www.labor.mo.gov/DWC.

The Division of Workers' Compensation does not discriminate against individuals with disabilities as mandated by P.L. 101-336, The Americans With Disability Act. Alternative format available upon request.

Workers' Compensation Law

Roles and Responsibilities for Employers and Employees

EMPLOYER INFORMATION.

With some exceptions, all employers with five or more employees, and construction industry employers with one or more employees, are required to insure their workers' compensation liability, either by purchasing a policy or obtaining self-insurance authority. Workers' compensation insurance provides benefits to workers injured on the job. Employers also are required to post this notice in the workplace for employees to view. This poster is required by section 287.127, RSMo, and is available to employers and insurers free of charge by contacting the Division at 800-775-Comp.

Steps to Take When an Injury Occurs

- 1. Be sure first aid is administered and the employee is taken to a physician or hospital for further medical care, if necessary.
- 2. Report the injury to the insurance company or Third Party Administrator (TPA) within five days of the date of injury or within five days of the date on which the injury was reported to the employer by the employee, whichever is later. The insurer, TPA, or admitted self-insurer is responsible for filing a <u>First Report of Injury</u> with the Division of Workers' Compensation within 30 days of knowledge of the injury.
- 3. Pay medical bills related to the work injury to cure and relieve the employee of the effects of the injury. This includes all costs for authorized medical treatment, prescriptions, and medical devices. The employer/insurer has the right to choose the healthcare provider or treating physician. (The employee may select a different healthcare provider or treating physician, but if the employee does so, it may be at his/her own expense.)
- 4. For more liability and insurance information relating to the Workers' Compensation Program, visit www.labor.mo.gov/DWC or call 800-775-COMP.

Workplace Safety

The Missouri Department of Labor offers free safety services to employers through its Missouri Workers' Safety Program (MWSP) to help employers reduce occupational injuries and workers' compensation costs. Call 573-751-3403 or e-mail mwsp@labor.mo.gov for more information or for a registry of certified consultants and safety engineers. Employees are urged to report all safety hazards or concerns to the Occupational Safety and Health Administration (OSHA) at 816-483-9531 or 314-425-4249.

Fraud/Noncompliance

Employee Fraud – knowingly making a claim for workers' compensation benefits to which an employee knows he/she is not entitled or knowingly presenting multiple claims for the same occurrence is a class D felony, punishable by a fine of up to \$10,000, or double the value of the fraud, whichever is greater. A subsequent violation is a class C felony.

Employer Fraud – knowingly misrepresenting an employee's job classification to obtain insurance at less than the proper rate is a class A misdemeanor. A subsequent violation is a class D felony. An employer who knowingly makes a false or fraudulent statement regarding an employee's entitlement to benefits to discourage the worker from making a legitimate claim or who knowingly makes a false or fraudulent material statement or material representation to deny benefits to a worker is guilty of a class A misdemeanor punishable by a fine of up to \$10,000. A subsequent violation is a class C felony.

Insurer Fraud – knowingly and intentionally refusing to comply with workers' compensation obligations to which an insurance company or self-insurer knows an employee is entitled is a class D felony, punishable by a fine of up to \$10,000 or double the value of the fraud, whichever is greater. A subsequent violation is a class C felony.

Employer Noncompliance – knowingly failing to insure workers' compensation liability under the law is a class A misdemeanor punishable by a fine of up to three times the annual premium the employer would have paid had it been insured or up to \$50,000, whichever is greater. A subsequent violation is a class D felony. An employer who willfully fails to post the notice of workers' compensation at the workplace is guilty of a class A misdemeanor punishable by a fine of \$50 to \$1,000 or by imprisonment or both fine and imprisonment.