

MISSOURI

1. Citation for the State's workers' compensation statute.

Chapter 287 R.S.Mo. 2005 for accidents after August 28, 2005

SCOPE OF COMPENSABILITY

2. Who are covered "employees" for purposes of workers' compensation?

Any person in the service of an employer under contract of hire, appointment or election, including officers of corporations but excluding owner/operators of leased trucks in interstate commerce. 287.020 Excludes farm labor, domestic servants, family chauffeurs and licensed real estate agents. Also excludes inmates, volunteers of tax-exempt organizations, sports officials, and direct sellers. 287.090

3. Identify and describe any "statutory employer" provision.

A person who has work done which is 1) under contract, 2) on his premises, and 3) part of his usual business is a statutory employer of contractor/subcontractor's employees. Exempts owner of premises having improvements done. 287.040

4. What types of injuries are covered and what is the standard of proof for each:

A. Traumatic or "single occurrence" claims.

Injuries covered are the result of violence to the physical structure of the body. 287.020 The result must be triggered by an event that arises out of and in the course of employment but need not be an unusual event. Wolfgeher v. Wagner Cartage Service, Inc., 646 S.W.2d 781 (Mo. banc 1983): the focus is whether an injury occurred, not what act or force preceded the injury. As of the 2005 Amendments, an accident means an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused

by a specific event during a single work shift. The accident must now be the prevailing factor in causing both the resulting medical condition and disability. Prevailing factor is defined to be the primary factor, in relation to any other factor.

B. Occupational disease (including respiratory and repetitive use).

An OD must be a disease arising out of and in the course of employment. An ordinary disease of life requires clear proof of causal connection to the conditions of employment. Specifically includes, but is not limited to, hearing loss, radiation disability, diseases of the lungs and heart. 287.067 As of the 2005 Amendments, repetitive trauma is now legislatively defined as an occupational disease. To be compensable, an occupational exposure must be the prevailing factor in causing both the resulting medical condition and disability. It must be the primary factor, in relation to any other factor. Gradual deterioration caused by aging or day-to-day activities is not compensable.

A cardiovascular, pulmonary, respiratory, or other disease, or cerebral-vascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition. 287.020.

Effective January 1, 2014, Sec. 287.067.11 creates a category of occupational diseases to be known as “occupational diseases due to toxic exposure”. These are limited to mesothelioma, asbestosis, beryllosis, coal worker’s pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous leukemia and myelodysplastic syndrome.

5. What, if any, injuries or claims are excluded?

Excluded are injuries caused by the employee's self-inflicted act. 287.120(3). Since 8/28/93, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except as an incident of employment. 287.020(3)

6. What psychiatric claims or treatments are compensable?

Mental injury from work stress does not arise out of employment unless the stress is unusual and extraordinary by objective standards. 287.120(8). Claims of stress from good faith disciplinary and personnel actions are not compensable. 287.120(9). However, these restrictive rules do not apply to firefighters. 287.120(10). A recent case made a special standard for EMT workers as well. Missouri has historically been conservative on the compensability of psychiatric claims, but has become more liberal in recent years.

7. What are the applicable statutes of limitations?

Two years from date of accident or date of the last payment on account of the injury (for either medical expenses or TTD). If the employer failed to file the Report of Injury as required, three years from the date of accident. 287.430. In occupational disease cases the statute does not start to run until the disease is reasonably apparent. 287.063(3). By case law, the same has been held of repetitive trauma claims under the older law. Under the new law, repetitive trauma claims are now clearly OD cases. A claim against the Second Injury Fund may be filed within two years of the date of accident or one year after the claim against the employer is filed, whichever is later. 287.430.

An amendment to Sec. 287.140 has now created a Statute of Limitations applicable to additional payment medical fee disputes. Subsections .4(1) provides that in the case of medical services rendered prior to July 1, 2013, that the application for additional payment must be filed within 2 years from when the provider is first notified of the dispute and .4(2) reduces the statutory period to 1 year in the case of services rendered after July 1, 2013.

8. What are the reporting and notice requirements for those alleging an injury?

Written notice (often waived by the mere allegation of actual or oral notice) within thirty days, unless court finds good cause for the employee's failure to notify the employer in a timely manner or if it finds no prejudice to employer. 287.420

For occupational diseases or repetitive trauma, the employee has thirty days after the diagnosis to report it, unless the employee can prove no prejudice by late notice.

9. Describe available defenses based on employee's conduct:

A. Self-inflicted injury.

Complete statutory defense. 287.120(3)

B. Willful misconduct, "horseplay," etc.

Injuries caused by horseplay do not arise out of employment. Gregory v. Lewis Sales Company, 348 S.W.2d 743 (Mo.App. 1961) However, if horseplay is a regular incident of employment, especially when known about by the employer, a participant may still recover. Pullum v. Hudson Foods, Inc., 871 S.W.2d 94 (Mo.App. 1994)

Willful misconduct is not a defense in Missouri unless it violates state safety rules. If the employee fails to use safety devices or fails to obey reasonable rules of safety, the judge can penalize the employee "at least 25% but not more than 50%" of all benefits. 287.120(5).

C. Injuries involving drugs and/or alcohol.

For injuries occurring merely in conjunction with the use of alcohol and non-prescribed drugs there is a 50% penalty for accidents arising after 8/28/05 on all benefits, including medical. For injuries medically shown to have been proximately caused by the alcohol or drug use there is a 100% forfeiture of all benefits. There is a rebuttable presumption that the use of alcohol was the proximate cause of the injury if the employee was legally intoxicated (BAC of .08 in Missouri) at the time of the work injury. 287.120(6)(2).

10. What, if any, penalties or remedies are available in claims involving fraud?

It is unlawful for any person to be presenting a false claim, presenting multiple claims for the same incident (claimant) or assisting in the filing of such a claim (claimant's attorney), to make multiple claims for payment of medical treatment or a claim for non-existent treatment (claimant and medical providers), to make false statements or misrepresentations to deny benefits or discourage an employee from making a claim (employer, investigators and claims adjusters).

It is unlawful for an insurance company or self-insured to intentionally refuse indisputable compensation obligations, or to discharge or administer obligations in a dishonest manner. A violation of any of the above is a class D felony and carries a fine of \$10,000 or double the amount of the value of the fraud, whichever is greater. 287.128. To knowingly misrepresent any fact in order to obtain workers' compensation insurance at a lower rate is a misdemeanor and an employer failing to insure his liability under the Act is subject to a misdemeanor and a fine of three times the annual premium or \$50,000, whichever is greater. 287.128.

A health care provider commits fraud in presenting to an insurer a bill involving the practices of unbundling, up-coding, exploding and duplicating entries with intent to defraud. 287.129.

11. Is there a defense for falsification of employment records regarding medical history?

No.

12. Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?

No. Where participation in recreational activities is the cause of the injury benefits are held to be "forfeited." This does not apply where the employee is ordered to participate, is paid wages or travel expenses or where the accident is caused by an unsafe condition on the employer's premises. 287.120(7) Being on a paid break is apparently enough to make an injury compensable under recent interpretations.

13. Are injuries by co-employees compensable?

Yes. Accident is defined to include injury or death caused by unprovoked violence or assault by any person if arising out of employment. 287.120. The Workers' compensation statutes mandates that workers' compensation is the exclusive remedy for such injuries unless the employee causing the harm engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury.

14. Are acts by third-parties unrelated to work, but committed on the premises, compensable (e.g. "irate paramour" claims)?

No. Assaults arising out of personal quarrels are not acts arising out of employment and are not compensable. Scheper v. Hair Repair, Ltd., 825 S.W.2d 1 (Mo.App. 1991). Assaults that are

unexplained are assumed to be work-related unless shown otherwise. Lyons v. Lyons Truck Service, 831 S.W.2d 706 (Mo.App. W.D. 1992)

BENEFITS

15. What criteria are used for calculating the average weekly wage?

Wages include earnings, board, lodging and gratuities to the extent they are reported to the IRS. The **average weekly wage**

is calculated by dividing the actual earnings for the prior 13 weeks by 13. For every five days not worked, the divisor is reduced by one week. If there are less than 2 weeks employment, the average weekly rate is established by hourly rate and the work schedule. In the case of part-timers, the **average weekly wage** of a full-time worker is used to calculate the PPD rate. Full-time is determined by the practices of the business but shall be no less than 30 hours per week. 287.250.

16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

Two-thirds of the **average weekly wage** up to a percentage of the state average weekly wage which represents the maximum for the time period in which the state wage was calculated. 287.170. Currently the maximum is 105% of the state average weekly wage and between 7/1/20 and 6/30/21 equals \$1011.. The minimum is a flat \$40.

17. How long does the employer/insurer have to begin TTD benefits from the date disability begins?

No specific requirement, however, 287.160(3) states that interest starts 30 days after the date of

accident if the payment is not disputed but not paid. If disputed, interest does not start until 30 days after the first award of TTD also not disputed by the winning party on appeal.

18. What is the "waiting" or "retroactive" period for temporary benefits?

Employee must be out 14 days before recovering benefits for the first 3 days. 287.160(1). The three day waiting period is based on assigned workdays when the employer is open.

19. What is the standard/procedure for terminating temporary benefits?

The employer shall notify the employee and shall advise the employee of the reason for such termination. 287.203. The employee is requested to sign a Receipt for Compensation (Form 2) which is filed with the Division of Workers' Compensation and notifies them of the termination. (Very rarely complied with.) The standard is MMI (maximum medical improvement), ability to work full duty according to a medical report or ability to work light duty and such a job is then made available. See, 287.020(7), and Pellitteri v. Blackmer & Post Pipe Co., 50 S.W.2d 662 (Mo.App. 1932). Temporary benefits can be terminated for employees who are terminated for cause.

20. Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?

No. 287.160(3) eliminates any such credits, previously allowed in the law decades ago.

21. What disfigurement benefits are available and how are they calculated?

If an employee is seriously and permanently disfigured about the head, neck, hands or arms the

court is authorized to award additional amounts for disfigurement up to 40 weeks at the PPD rate. 287.190(4) Disfigurement to the feet or legs is not covered in Missouri.

22. How are permanent partial disability benefits calculated, including the minimum and maximum rates:

Two-thirds of the average weekly wage up to a percentage of the state average weekly wage which represents the maximum for the period of time in which the state average weekly wage was calculated. 287.190(5) For the period between 7/1/20 and 6/30/21 this was 55% of the state average weekly wage or \$530.05. The minimum is a flat \$40.

A. How many weeks are available for scheduled members/parts, and the standard for recovery.

The standard of recovery is the proportionate loss of use of a member.

Weeks available are as follows:

Arm at shoulder	232				
Arm elbow to shoulder	222				
Arm at elbow	210				
Arm elbow to wrist	200				
Hand	175				
Thumb	MP	60	PIP/DIP	45	
Index finger	MP	45	PIP	35	DIP 30
Middle/ring	MP	35	PIP	30	DIP 26
Small finger	MP	22	PIP	20	DIP 16

Leg at hip	207						
Leg hip to knee, at knee	160						
Leg knee to ankle, at ankle	155						
Foot at tarsus	150						
Foot at metatarsus	110						
Large toe	MP	40		PIP/DIP	22		
Other toes	MP	14		PIP	10	DIP	8
Deafness bilateral	180						
Deafness unilateral	49						
Loss of sight unilateral	140						
287.190(1)							

Severance or total loss of a scheduled part is compensated at 110% of whatever weeks are available for that body part. 287.190(2).

B. Number of weeks for "whole person" and standard for recovery.

For permanent injuries other than those listed in the specific loss schedule, including those causing a loss of earning power, compensation is paid for such periods as are proportionate to the relation which the other injury has to specified injuries, but not to exceed 400 weeks. 287.190(3)

23. Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?

Until 1990, the statute only referred to physical rehabilitation, limited to medical, surgical and hospital treatment, intended to restore an injured employee to a condition of self-support and maintenance as an able-bodied worker. 287.141. In 1990, multiple sections were inserted into the statute comprising a complete rehabilitation package, including definitions, licensing requirements, mandatory reporting requirements, standards, procedures, etc. At the last moment the bill was amended to make all these sections completely voluntary. As a result, the sections are ineffective.

By case law, neither the employer/insurer nor the Second Injury Fund could compel the employee to be evaluated by a rehabilitation expert. State ex rel. Lakeman v. Siedlik, 872 S.W.2d 503 (Mo.App. 1994) As of 8/28/05, the right to such an evaluation has now been given to the employer/insurer.

24. How are permanent total disability benefits calculated, including the minimum and maximum rates?

It is identical to the calculations for TTD above.

25. How are death benefits calculated, including the minimum and maximum rates?

Also identical to the calculations for TTD above.

- A. Funeral expenses.

Actual cost up to \$5,000. 287.240(1)

- B. Dependency claims.

Dependents are relatives by blood or marriage (common-law marriages and live-ins are not recognized) who are actually dependent for support, in whole or part, at the time of the injury. Those presumed to be total dependents include a spouse and a natural, posthumous or adopted child, legitimate or not, under the age of 18 or physically or mentally incapacitated. 287.240(4). There are extensions on time for children who are in school or the military.

26. What are the criteria for establishing a Second Injury Fund recovery?

Where there is a previous disability and a present disability that combine to cause a disability greater than the expected result of the last injury considered alone, the employer/insurer is to pay for the effects of the last injury alone and the Fund is to pay for the greater effect of the combination. 287.220. There are no restrictions on what type of preexisting conditions or parts of the body combine. Case law has read the requirement of a preexisting disability to be an "industrial" disability, meaning a showing must be made that the preexisting condition limited or could have limited job opportunities or caused lost time from work. Wilhite v. Hurd, 411 S.W.2d 72 (Mo. 1967). There is a threshold or a minimum level of severity for each part of the body or condition amounting to at least 50 weeks (12.5% of the person) or 15% of a major extremity. This is true for both the preexisting condition and the primary one.

Effective January 1, 2014, recovery for permanent partial disability is no longer available to employees. Permanent total disability from the Fund is only available (with limited exceptions) when the pre-existing disability which totals fifty or more weeks of disability.

27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?

The Commission may, at any time upon rehearing, after due notice, make an award ending,

diminishing or increasing the compensation previously awarded. 287.470. "At any time" has been severely restricted by case law. The Commission has been held to lose jurisdiction following the expiration of the time during which the award is to be paid. Johnson v. St. John's Mercy Medical Center, 812 S.W.2d 845 (Mo.App. 1991) This means that if the award is for 100 weeks of permanency, the Commission loses jurisdiction if the application for reopening is not filed within 100 weeks of the date of accident or the last payment of TTD, which-ever is later.

Since 8/28/93, a claim can be reactivated if the claimant can show good cause and the claim is for payment of medical procedures involving life-threatening surgery or replacement of a prosthetic device. 287.430(2).

28. What situation would place responsibility on the employer to pay a claimant's attorney fees?

It is considered in two rare situations. If the Division feels that a case has been defended without reasonable ground, it may assess the whole cost of the proceedings under 287.560 This has been held to include claimant's attorney fees. However, under 287.203, which applies to emergency trials only, the court was required to award to the prevailing party the cost of recovery including attorney fees. As of 8/28/05, the section does not make the award of costs and fees mandatory but does allow for it, if warranted.

EXCLUSIVITY/TORT IMMUNITY

29. Is the compensation remedy exclusive?

Yes. Rights and remedies under the Act shall exclude all other rights of the employee, their spouses, parents, dependents, heirs and legal representatives, etc. on account of the accident or death, except as such rights are not provided under the Act. 287.120(2)

A. Scope of immunity

Immunity is wide ranging with limited exceptions, such as for affirmative negligent acts of co-workers

30. Are there any penalties against the employer for unsafe working conditions?

Yes. Where the injury is caused by the failure of the employer to comply with any state statute on safety (not OSHA), all compensation and benefits are increased by 15% as a penalty. 287.120(4).

31. What penalty, if any, for an injured minor?

The compensation rate of an employee under 21 may be adjusted in the discretion of the Administrative Law Judge to take into consideration the potential for increased earning power up to the age of 21. 287.250(6). In practice this means that minors usually have a higher compensation rate than would be expected and works as a penalty. If the employer is found to have knowingly employed a minor in violation of state child labor laws, there is potentially a penalty of an additional 50%. 287.250(7).

32. What is the potential exposure for "bad faith" in claims handling?

The doctrine of "first party bad faith" has not been recognized in Missouri. State ex rel. American Motorists Ins. v. Ryan, 755 S.W.2d 399 (Mo.App. 1988).

33. What is the exposure for terminating an employee who has been injured?

Missouri is a termination-at-will state and there is no provision for exposure in the Act except for the termination of an employee specifically for pursuing his workers compensation rights. 287.780 creates a civil right of recovery for discrimination based on exercising rights under the Workers Compensation Act only. If the employee is a qualified individual under the ADA, that Act may apply for discrimination against the disabled.

THIRD-PARTY ACTIONS

34. Can third-parties be sued by the Claimant?

Yes. 287.150.

35. Can co-employees be sued for work-related injuries?

Not unless the co-employee causing the harm engaged in an affirmative negligent act that purposefully and dangerously caused or increased the risk of injury.

36. Is subrogation available?

Yes. 287.150. It is now be subject to comparative fault if determined before settlement.

MEDICALS

37. Is there a time limit for medical bills to be paid, and are penalties available for late payment?

No time limits in the Act. If the employee has to pay interest to the facility, there would be reimbursement of the interest if the underlying medical was owed by the employer/insurer and not paid. This opinion is based on dictum by the Supreme Court in Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105 (Mo. banc 1989). More recent cases have denied interest unless shown to be paid by the employee.

38. What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?

A. Medical Reports

The testimony of any treating or examining physician is admissible in any proceedings, but only if the report has been served on all parties seven days before trial or deposition. 287.210(3). If a party refuses to provide the medical report the physician shall not be permitted to testify. Upon request, the administrative law judge, the Division or the Commission is to be provided with any medical report asked for.

Upon request of a party, the treating physician is required to furnish to the parties, a rating and complete medical report at the expense of the party selecting the physician, along with a complete copy of the physician's clinical record, including copies of records received from other providers. 287.210(6).

The testimony of a treating or examining physician may be submitted by report without other foundation as evidence when the party gives 60-days notice and provides reasonable opportunity to obtain cross-examination. The specific notice required under this section is to include the report, the curriculum vitae, the clinical records and outside reports in the doctor's file. Because the testimony under this rule would not be admissible against the Second Injury Fund, the claimants' attorneys do not use this section often and depositions are common.

B. Executed Authorizations

Any party shall be entitled to process to compel the attendance of witnesses and the production of books and papers and the Administrative Law Judge can issue subpoenae and authorizations to inspect medical records if they feel they are appropriate. 287.560.

39. What is the rule on (a) Claimant's choice of a physician; (b) Employer's right to a second opinion and/or Independent Medical Examination?

A. Claimant's choice of a physician.

The employer (not the carrier) has the right to select the licensed treating physician, surgeon or other health care provider. 287.140(9) The employee's choice is at his own expense unless the court finds the employer failed to offer reasonable treatment when requested.

B. Employer's right to a second opinion and/or Independent Medical Examination.

If a situation arises where the employee treats with his own doctor, the employer has a right to a second opinion and/or an IME as often as is reasonable.

40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?

All health care providers offering services within the scope of their licenses are covered. 287.140(9). Nothing in the Act shall prevent an employee from being treated by prayer or spiritual means if the employer does not object. 287.140(8).

41. Which prosthetic devices are covered, and for how long?

The employer may be required by the Division to furnish artificial legs, arms, hands, surgical orthopedic joints, eyes or braces, as needed, for life. 287.140(7).

42. Are vehicle and/or home modifications covered as medical expenses?

Yes, by case law.

43. Is there a medical fee guide or schedule, or other provisions for cost containment?

There is no fee schedule. A health service provider is bound by the court's determination of reasonableness of bills and may not bring an action against the employee for disputed charges. 287.140(3).

44. What, if any, provisions or requirements are there for "managed care?"

The Department of Insurance regulates managed care organizations and certifies them for employers who voluntarily use such organizations. The Department maintains a registry to supply information to employers. Fees are regulated but apply only to those who volunteer to be under the program.

PRACTICE/PROCEDURE

45. What is the procedure for contesting all or part of a claim?

No formal letter or document is required. If a Claim for Compensation has been filed, the Answer should indicate a denial of all or part of the claim, as appropriate. The denial of any issue can be raised right up to the time of trial when pretrial stipulations are called for. Title 8, Division 50, Chapter 2, 50-2.010(22) Rules and Regulations of the Division of Workers' Compensation

46. Method of adjudication:

A. Administrative level.

The Division, through an Administrative Law Judge, shall hear in a summary proceeding the parties at issue and their witnesses and shall determine the dispute. 287.460. If an application for review is made with the Industrial Commission within twenty days, the Commission shall review the evidence and shall make an award, which is de novo. 287.480. Review by the Commission of temporary or partial awards is restricted to situations where the employer has issued a complete denial, including work injury, or when a temporary award is actually a final award.

B. Trial court.

There is no trial court involvement any longer. 287.490.

C. Appellate.

Appeals from the Commission go directly to the Court of Appeals having jurisdiction over the area where the accident occurred. 287.495. There are three Courts of Appeal: Eastern, Western and Southern Districts. Appeals of temporary or partial awards are limited in the same manner as applications for review to the Commission.

47. What are the requirements for stipulations or settlements?

Parties may enter into voluntary agreements in settlement but no such agreement is valid until approved by an Administrative Law Judge. 287.390. The employee who is not represented is usually required to appear personally before the judge in order to conclude the matter.

48. Are full and final settlements with closed medicals available?

Yes. The official form for settlements, Stipulation for Compromise Settlement, requires the employee to sign that he understands that he will not receive any more medical treatment for this injury because of the settlement. Since 8/28/98, the form is now qualified by 287.430(2) which allows for reopening medical for life-threatening surgeries and prosthetic devices.

49. Must stipulations and/or settlements be approved by the state administrative body?

Yes. 287.390.

RISK FINANCE FOR WORKERS' COMPENSATION

50. What insurance is required? What is available (e.g. private carriers, state Fund, assigned risk pool, etc.)?

Every policy shall be in accordance with the form approved by the Department of Insurance. 287.310. Private carriers are available. A risk pool is provided for. 287.310(10).

51. What are the provisions/requirements for self-insurance:

A. For individual entities.

An employer may itself carry the liability under the Act upon satisfying the Division of its ability to do so. 287.280. Payroll reports, profit and loss statements, a statement of assets and liabilities and the NCCI rating sheet are usually required. A security bond or escrow of at least \$125,000 is required.

B. For groups or "pools" of private entities.

Same rules and citations apply to groups as to individual entities.

52. Are illegal aliens entitled to benefits of workers' compensation as The Immigration Control Act indicates that they cannot be employees, although most state acts include them within the definition of employee?

This issue has been raised in individual cases but there has been no ruling by the courts.

53. Are terrorist acts or injuries covered or excluded under workers= compensation law?

Unless an act of violence, causing injury at work, is aimed at the employee for personal reasons, it is compensable in Missouri. Acts that are neutral as to the employee or caused by irrational or insane behavior are compensable.

54. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to satisfy Medicare's interests pursuant to the Medicare Secondary Payer Act?

No.

55. How are subrogation liens of Medicaid and health insurers treated under workers= compensation law?

The Federal Medicaid statute requires States to include in their plan for medical assistance provisions (1) that the individual will assign to the State any rights to payment for medical care from any third party and (2) that the individual will cooperate with the State in pursuing any third party who may be liable to pay for care and services available under the Medicaid plan. 42 U.S.C.A. 1396k(a). The State is authorized to retain such amount as is necessary to reimburse it (and the Federal Government as appropriate) for medical assistance payments and to pay the remainder to the individual. 42 U.S.C.A. 1396k(b).

Under federal law, the funds received by claimant in workers' compensation are subject to an absolute lien. They do not have to be designated as past or future medical expenses. The state statute does not specifically recognize the lien as an exception.

56. What are the requirements for confidentiality and privacy of medical records under workers' compensation law and how are they affected by state and federal law (HIPAA)?

HIPAA, 45 C.F.R. parts 160-164 and 65 F.R. 82462, provides an exception for workers' compensation claims so as to allow the collection of medical records by employers and insurers. [45 C.F.R. 164.512(l)]. Therefore, your current practice of obtaining medical records could proceed under state law.

Missouri's workers' compensation statute does not deal specifically with confidentiality and privacy of medical records. There are individual court rules concerning privacy. HIPAA does not preempt state workers' compensation laws. (Federal Register, vol. 67, #157, pp. 53266-53273, August 14, 2002). Privacy rule 164.512(l) allows the disclosure of medical records to the extent needed to comply with state statutes on workers' compensation. The problem is that medical facilities will not make distinctions and exceptions, so, as a practical matter, we will need the employee's written consent or a subpoena to get records.

57. What are the provisions for "Independent Contractors"?

Independent contractors are by definition not employees; however Missouri will ignore a contract asserting such a relationship if the circumstances show a statutory employee instead. Ceradsky v. Mid-America Dairymen, Inc., 583 S.W.2d 193 (Mo.App. W.D. 1979) said that control was relevant but not the only test. They applied the Restatement of Law, Agency 2d, Section 220, and held that just as important was the length of time the parties worked together, if the relationship was continuous, whether the business of the alleged independent was distinct from the business of the alleged employer, the way the alleged independent was paid and whether special equipment or tools were needed and used.

58. Are there any specific provisions for "Independent Contractors" pertaining to professional employment organizations/temporary service companies/leasing companies?

No.

59. Are there any specific provisions for “Independent Contractors” pertaining to owner/operators of trucks or other vehicles for driving or delivery of people or property?

Yes. The definition of employee excludes the owner and operator of a motor vehicle which is leased or contracted with a driver to a for-hire common or contract motor vehicle carrier operating within a commercial zone as defined in Sections 390.020 or 390.041, or operating under a certificate issued by the transportation division of the department of economic development or by the Interstate Commerce Commission. 287.020 (1). An unpublished opinion held that this exemption did not apply to the driver who was an employee of the owner/operator; it only applied to the owner/operator himself.

60. Does your state permit medical marijuana and what are the restrictions for use and for work activity in your Workers’ Compensation law?

Yes. If a work injury occurs while the employee is under the influence of alcohol or illegal drugs, all benefits are reduced by 50%. If the injury is found to be causally related to the use of alcohol or illegal drugs, all benefits are denied. Benefits will not be reduced if the employer is aware of drug or alcohol use by employees on the job and does nothing to forbid it.

61. Does your state permit the recreational use of marijuana and what are the restrictions for use and for work activity in your state Workers’ Compensation law?

No. If a work injury occurs while the employee is under the influence of alcohol or illegal drugs, all benefits are reduced by 50%. If the injury is found to be causally related to the use of alcohol or illegal drugs, all benefits are denied.