

**WORKERS' COMPENSATION
OVERVIEW OF NEW LAW**
PRESENTED BY
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**WORKERS COMPENSATION
OVERVIEW OF NEW LAW**

- CHANGES PURSUANT TO SENATE BILLS 1 & 130 SIGNED BY GOV. BLUNT MARCH 30, 2005
- MOST CHANGES WILL BE EFFECTIVE ON AUGUST 28, 2005
- CHANGES REGARDING ADMINISTRATIVE LAW JUDGES AND LEGAL ADVISORS EFFECTIVE JANUARY 1, 2006

**WORKERS COMPENSATION
OVERVIEW OF NEW LAW**

- **Disclaimer: Each Workers' Compensation case is fact specific. The interpretation of the law and changes thereto will be determined by the Administrative Law Judges, Labor & Industrial Relations Commission or the Appellate Courts of the State based upon the issues and the evidence presented.**

STRICT CONSTRUCTION

The Labor & Industrial Relations Commission and the Division of Workers' Compensation, Administrative Law Judges, Associate Administrative Law Judges and reviewing courts will be required to interpret the workers' compensation law strictly.

Section 287.800.1

STRICT CONSTRUCTION

The Commission, Division and the reviewing courts will strictly interpret the words to further the purpose and object of the statutory changes to the workers' compensation law as written by the legislature.

Section 287.800.1

STRICT CONSTRUCTION

The Administrative Law Judges and the Labor & Industrial Relations Commission shall weigh the evidence impartially without giving the benefit of doubt to any party when resolving the factual conflicts.

Section 287.800.2

ABROGATION OF CASE LAW

In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate (abolish) certain earlier case law interpretations. This was done by the legislature to emphasize the importance of new definitions and the strict interpretation of the law by the Labor and Industrial Relations Commission, Division of Workers' Compensation and the Administrative Law Judges.

Section 287.020.10

JURISDICTION

- Chapter 287 RSMo applies to all cases within its provisions, except to those exclusively covered by any federal law and those addressed in §287.120.

Section 287.110 (1)

JURISDICTION CONT.

- Chapter 287 RSMo applies to:
 - ◆ All injuries received and occupational diseases contracted in Missouri;
 - ◆ All injuries received and occupational diseases contracted outside Missouri under contract of employment made in the State of Missouri, unless the contract of employment provides otherwise,
 - ◆ All injuries received and occupational diseases contracted outside of Missouri where the employee's employment was principally localized in Missouri within thirteen calendar weeks of the injury or diagnosis of the occupational disease.

Section 287.110 (2)

BURDEN OF PROOF

- New §287.808 has been added.
 - ◆ The burden of establishing an affirmative defense is on the employer.
 - ◆ The employee or dependent has the burden of proving that he is entitled to compensation under the workers' compensation law.
 - ◆ In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

DEFINITION OF EMPLOYEE

- Does not include an individual who is:
 - ◆ The owner, as defined by §301.010 (43), and
 - ◆ Operator of a motor vehicle which is
 - ◆ Leased or contracted with a driver,
 - ◆ To a for-hire motor carrier operating within a commercial zone or operating under a certificate issued by the Missouri or United States Department of Transportation or by any of its sub-agencies.

Section 287.020 (1)

**DEFINITION OF EMPLOYEE
CONT.**

- The old subsection 6 of §287.020 has been deleted. The old subsection stated that:
 - ◆ A person who is employed by the same employer for more than five and one-half consecutive work days shall for the purpose of this chapter be considered an "employee".

DEFINITION OF ACCIDENT

CHAPTER 287.020 RSMo

- Unexpected traumatic event or unusual strain identifiable by time and place of occurrence.
- Producing objective symptoms of injury caused by a specific event during a single work shift.
- Injury is not compensable if work was a triggering or precipitating factor.
- Injury should arise out of and in the course of employment.

Section 287.020.2

DEFINITION OF INJURY

PREVAILING FACTOR: Formerly for an injury to be compensable, employment had to be a **substantial factor** in causing the resulting medical condition or disability.

Now, to be compensable the accident must be:
“THE PREVAILING FACTOR IN CAUSING BOTH THE RESULTING MEDICAL CONDITION AND DISABILITY.”

Section 287.020.3

PREVAILING FACTOR

Definition - The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

Section 287.020.3(1)

IDIOPATHIC INJURIES

Idiopathic Injuries are not compensable.

An idiopathic injury is one that is innate or is a peculiar weakness personal to the employee unrelated to employment.

The event results from some cause personal to the individual.

Section 287.020.3 (3)

HEART ATTACKS, ETC.

A cardiovascular (a disease of the heart or blood vessels), pulmonary (relating to, or affecting the lungs), respiratory (relating to, used in, or affecting respiration), or other disease, or cerebrovascular accident (stroke) or myocardial infarction (heart attack) suffered by an employee is not compensable unless

The employee proves that the accident was the prevailing factor in causing the resulting medical condition.

Section 287.020.3(4)

GOING TO AND COMING FROM WORK

General Rule:

Injuries that an employee sustains going to and coming from the place of employment are not compensable.

Recent revisions impact upon company owned or subsidized cars and "extension of premises" doctrine [mall parking lot cases].

GOING TO AND COMING FROM WORK

Company Owned or Subsidized Autos

Injuries, in company owned or subsidized automobiles, that occur while traveling from the employee's home to the employer's principal place of business or vice versa are not compensable.

Section 287.020.5

PARKING LOT CASES

The "extension of premises" doctrine is abrogated (abolished) to the extent it extends liability for accidents that occur on property not owned or controlled by the employer. Even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from his place of employment.

Section 287.020.5

OCCUPATIONAL DISEASES

- **Last Exposure:** The last exposure rule changes which employer is liable in an occupational disease case. Formerly, the employer who last exposed the employee to the hazard prior to the claim being filed was liable.
- Now the last employer who exposed the employee to the hazard, *prior to evidence of disability*, is liable, subject to the notice provision of §287.420.

Section 287.063.2

OCCUPATIONAL DISEASES

- **Statute of Limitations:** Adds that the statute of limitations in occupational disease cases shall not begin to run until it becomes reasonably discoverable and apparent that an injury has been sustained “related to such exposure.”

Section 287.063.3

OCCUPATIONAL DISEASES DEFINED

- **Prevailing Factor:** Occupational diseases and injuries due to repetitive motion “are compensable only if the occupational exposure was the prevailing factor” in causing both the resulting medical condition and the disability.
Section 287.067.2

◆ **Definition:** “Prevailing Factor” is “the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.”

Section 287.067.2

OCCUPATIONAL DISEASES

- **Repetitive Motion:** Creates a new subsection 3 recognizing injuries due to repetitive motion as occupational diseases.

Section 287.067.3

- **Aging:** “Ordinary, gradual deterioration or progressive degeneration of the body caused by aging, or by the normal activities of day-to-day living shall not be compensable.”

Section 287.067.3

OCCUPATIONAL DISEASES

■ **Firefighters and Police Officers:**

- Paid firefighters of a paid fire department or paid police officers of a paid police department certified under chapter 590, RSMo, need to establish a direct causal relationship in order to receive workers' compensation benefits for diseases of the lungs or respiratory tract, hypotension, hypertension, or diseases of the heart or cardiovascular system. These diseases are defined to be a disability due to exposure to smoke, gases, carcinogens and inadequate oxygen.
- Under the current law, a firefighter of a paid fire department must establish a direct causal relationship in order to receive benefits for psychological stress. The new law does not change this requirement. The new law does not extend the direct causal relationship standard for psychological stress to the paid police officers of a paid police department.

Section 287.067.6

OCCUPATIONAL DISEASES

Three Month Rule:

The three month rule regarding repetitive motion injuries – is limited to going back to the “immediate prior employer” if work at that immediate prior employer was the prevailing factor in causing the injury. This specifically deletes the former “the substantial contributing factor” language.

Section 287.067.8

SAFETY CHANGES

1. If the employee fails to use safety devices provided by the employer or fails to obey safety rules, compensation is reduced between twenty-five (25) and fifty (50) percent. Current law requires reduction of 15%.
2. The employee's failure to use safety devices no longer has to be willful. In addition an employer is required to make a “reasonable” effort to cause employees to follow the safety rules.

Section 287.120.5

SAFETY CHANGES CONT.

- Changes will place greater emphasis on safety and make employees and employers more conscious of the impact safety has on injury reduction.

DRUG AND ALCOHOL CHANGES

The effect of the new statutory changes will be to reduce benefits in those circumstances where drugs or alcohol were the proximate cause of the injury. It allows employers to control the use of drugs and alcohol in the workplace that might lead to injuries.

Section 287.120.6(1)

DRUG AND ALCOHOL CHANGES CONT.

1. When an injury is sustained in conjunction with the use of alcohol or non-prescribed controlled drugs the compensation "shall" be reduced by 50% instead of the former 15% reduction.

Section 287.120.6 (1)

DRUG AND ALCOHOL CHANGES

Actual Knowledge/Diligent Effort Deleted:

- 2. Deletes the former requirement that an employee had to have "actual knowledge" of the employer's no alcohol/drug-free workplace policy in order for the former 15% benefit reduction to apply.
- 3. Now, not only does the law not require actual knowledge of such policies, but the former requirement that employers had to make a "diligent effort to inform the employee of the requirement to obey any reasonable rule or policy" was deleted and not replaced with any new standard.

Section 287.120.6(1)

DRUG AND ALCOHOL CHANGES

Proximate Cause-Forfeiture:

- The law remains that if "the use of alcohol or non-prescribed controlled drugs in violation of the employer's rule or policy is the proximate cause of the injury" benefits shall be forfeited.
- The new law does not require an employer to post and publicize its rules or policy.
- In addition, the new law deletes the former provision that forfeiture did not apply if the employer had actual knowledge of the employee's alcohol/drug use which was not authorized by the employer.

(Deleted Section 287.120.6(2)(a) and (b).)

DRUG AND ALCOHOL CHANGES

Legal Intoxication:

- New 287.120.6(3) provides that if the employee's blood alcohol content is sufficient to constitute legal intoxication a rebuttable presumption is created that the employee's voluntary use of alcohol was the proximate cause of the injury. An employee can rebut the presumption by a preponderance of the evidence.
- Also, adds that an employee's refusal to take a drug or alcohol test at the employer's request results in benefit forfeiture if: (1) "the employer had sufficient cause to suspect" drug or alcohol use OR (2) the employer's policy clearly authorizes such post-injury testing.

Section 287.120.6(3)

RECREATIONAL ACTIVITIES

- The former law specifically excluded from coverage only injuries resulting from voluntary participation in a recreational activity or program that resulted in the proximate cause of the injury.
- The new law deletes the words “voluntary” and “proximate” and excludes injuries where the recreational activity or program is the prevailing cause of the injury regardless of the fact that the employer may have promoted, sponsored or supported the recreational activity or program.

Section 287.120.7

**RECREATIONAL ACTIVITIES
CONTD.**

The forfeiture of benefits or compensation shall not apply when:

- a) The employee was directly ordered by the employer to participate in such recreational activity or program;
- b) The employee was paid wages or travel expenses while participating in such recreational activity or program; or

**RECREATIONAL ACTIVITIES
CONT.**

- c) The injury from such recreational activity or program occurs on the employer’s premises due to an unsafe condition and the employer had actual knowledge of the employee’s participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

FRAUD CHANGES

Deletes the previous subsection (2) and moves it under subsection 1.

- It shall be unlawful for any insurance company or self-insured employer in Missouri to knowingly and intentionally refuse to comply with known and legally indisputable compensation obligations with intent to defraud.

Section 287.18.2

Creates a new subsection 8:

- It shall be unlawful for any person to knowingly make or cause to be made a false or fraudulent material statement to an investigator of the Division who is investigating an allegation of fraud or noncompliance

Section 287.128.8

FRAUD CHANGES

- Section 287.128.4 makes a violation of the fraud provisions in §287.128 (1) or (2) a class D felony rather than a class A misdemeanor. The person shall be liable to the State of Missouri for a fine up to ten thousand dollars or double the value of the fraud whichever is greater.
- A violation of §287.128 (3) is a class A misdemeanor and a person is liable to the State of Missouri for a fine up to ten thousand dollars.
- A person who previously pled guilty or was found guilty of violating subsection 1, 2 or 3 and subsequently violates any provision of subsection 1,2, or 3 shall be guilty of a class C felony.

FRAUD CHANGES

Creates a new sub-section 5

- It is unlawful for any person, company or entity to prepare or provide an invalid certificate of workers' compensation insurance.
- Any person who violates this subsection shall be guilty of a class D felony and, in addition, is liable to the State of Missouri for a fine up to ten thousand dollars or double the value of the fraud, whichever is greater.

Section 287.128.5

FRAUD CHANGES

- Any employer who knowingly fails to insure its workers' compensation liability under the law shall be guilty of a class A misdemeanor.
- The employer is also liable to the State of Missouri for a penalty up to three times the annual premium the employer would have paid if he obtained coverage or up to fifty thousand dollars whichever is greater.

Section 287.128.7

FRAUD CHANGES

- All records, reports, tapes, photographs and documentation submitted to the Division's Fraud and Noncompliance Unit by any person, including the Department of Insurance, to conduct the investigation for violations under the workers' compensation law, are confidential and not subject to the Sunshine Law.
- However, the Fraud Unit's records can be released to the local, state or federal law enforcement authorities that are conducting an investigation upon written request.

Section 287.128.9

FRAUD CHANGES

All fraud prosecutions shall be commenced within three years after discovery of the offense by the aggrieved party or by a "person who has the legal duty to represent the aggrieved party" [i.e. the attorney general or the prosecuting attorney having jurisdiction to file charges] and who is not a party to the offense.

Section 287.128.11

**ADMINISTRATIVE LAW JUDGES
AND LEGAL ADVISORS**

- 1) The Division Director may appoint additional Administrative Law Judges for a maximum number of forty.
 - a) The Division currently has twenty-six (26) Administrative Law Judges and twenty-two (22) Legal Advisors. One of the changes is the elimination of the Legal Advisors position from the current statute.
 - b) Fourteen (14) additional Administrative Law Judges may be appointed to bring the total number to 40 as authorized by the new law.

Section 287.610.1

ADMINISTRATIVE LAW JUDGES

The Division Director along with the members of the "Administrative Law Judge Review Committee" will develop written performance audit standards by October 1, 2005.

The Division Director along with the ALJ Review Committee will conduct a performance audit of all Administrative Law Judges every two (2) years.

Upon completing the performance audit for each Administrative Law Judge, the Committee will make a recommendation of confidence or no confidence.

Section 287.610.2

**REPORTING OF INJURIES
CHANGES TO POSTER**

Employees who fail to notify their employer of an accident or injury within thirty (30) days "may jeopardize their ability to receive compensation, and any other benefits under this chapter".

Section 287.127.1(2)

REPORTING OF INJURIES

Employers/Insurers have 30 days - instead of 10 - after knowledge of an injury to file a First Report of Injury with the Division under the rules and in such form and detail as the Division may require.

However, the new law does not change the requirement for an employer to report all injuries to its insurance carrier or third-party administrator, within five days of the date of injury or within five days of the date the injury was reported to the employer by the employee, whichever is later.

Section 287.380.1

REPORTING OF INJURIES

Employers must report the injury to their workers' compensation insurance carrier. Self-insured employers must report the injuries to their Claims Administrator or TPA to enable them to file a First Report of Injury with the Division.

Injuries reported in a timely manner may result in a reduction of costs and provide better service to the injured employee.

Section 287.380.1

REPORTING OF INJURIES

The law remains that any employer or insurer who knowingly fails to report any accident to the Division

or knowingly makes a false report or statement in writing to the Division or Commission,

shall be deemed guilty of a misdemeanor and subject to a fine or imprisonment or both.

Section 287.380.4

EXPERIENCE RATING PLAN

- The rating plan shall prohibit an adjustment to the experience modification of an employer if:
 - ◆ The total medical cost does not exceed one thousand dollars, and
 - ◆ The employer pays all of the total medical costs, and
 - ◆ There is no lost time from employment other than the first three days or less of disability under §287.160 (1) and
 - ◆ No claim is filed

Section 287.957

**EXPERIENCE RATING PLAN
CONT.**

Note: An employer opting to utilize this provision maintains an obligation to report the injury under subsection 1 of §287.380.

Section 287.957

**LEAVE TO ATTEND TO
MEDICAL CARE**

The employer may allow or require an employee to use any of the employee's accumulated paid leave, personal leave, or medical or sick leave to attend to medical treatment, physical rehabilitation, or medical evaluations during work time.

The intent of this subsection is to specifically supercede and abrogate (abolish) any case law that contradicts the express language of this section.

Section 287.140.14

BONUS PAYMENTS

A monetary bonus, paid by an employer to an employee, of up to three percent (3%) of the employee's yearly compensation from such employer shall not have the effect of increasing the compensation amount used in calculating the employee's compensation or wages for purposes of any workers' compensation claim governed by this chapter.

Section 287.253

COST OF PROCEEDINGS TEMPORARY AWARDS

If the Division or the Commission determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the division may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them.

Previously, §287.203 stated that "Reasonable cost of recovery shall be awarded to the prevailing party."

The statutory changes do not make a distinction between the hardship hearing or an evidentiary hearing that is brought, prosecuted or defended without reasonable grounds.

In such cases, the Administrative Law Judge may assess the whole cost of the proceeding upon the party who brought, prosecuted or defended them.

Section 287.203

WRITTEN NOTICE OF THE ACCIDENT

To maintain a proceeding for compensation under Chapter 287;

- Written notice of the time, place and nature of the injury; and
- The name and address of the injured person;
- Has to be given to the employer;
- No later than thirty days after the accident;
- Unless the employer was not prejudiced by failure to receive the notice.

Section 287.420

WRITTEN NOTICE OF THE ACCIDENT CONT.

- The previous requirement of providing written notice of the time, place and nature of the injury and name and address of the person injured "as soon as practicable after the happening thereof" has been deleted.
- Also deleted is the finding of the Division or Commission on good cause for failure to give notice
- In addition, the old language of "no defect or inaccuracy in the notice shall invalidate it unless the commission finds that the employer was in fact misled and prejudiced thereby" has been deleted.

Section 287.420

WRITTEN NOTICE OF THE OCCUPATIONAL DISEASE OR REPETITIVE TRAUMA

To maintain a proceeding for compensation under Chapter 287 for any occupational disease or repetitive trauma:

- Written notice of the time, place, and nature of the injury; and
- The name and address of the person injured;
- Has to be given to the employer;
- No later than thirty days after the diagnosis of the condition;
- Unless the employee can prove the employer was not prejudiced by failure to receive notice.

Section 287.420

TEMPORARY TOTAL DISABILITY (TTD) BENEFITS

An employee is disqualified from receiving TTD during any period of time in which the claimant applies and receives unemployment compensation.

The dollar for dollar credit to the employer for unemployment compensation paid to the employee and charged to the employer for the adjudicated or agreed – upon period of TTD has been deleted.

Section 287.170.3

**POST INJURY MISCONDUCT
TERMINATION**

If the employee is terminated from employment based upon post-injury misconduct neither TTD nor TPD benefits are payable

The phrase "post-injury misconduct" shall not include absence from the work place due to an injury unless the employee is capable of working with restrictions as certified by a physician.

Section 287.170.4

**PERMANENT PARTIAL
DISABILITY**

I.

- Permanent Partial Disability means a disability that is permanent in nature and partial in degree.

Section 287.190.6 (1)

**PERMANENT PARTIAL
DISABILITY CONT.**

II. Where payments are made as indicated below, the percentage of disability shall be conclusively presumed to continue undiminished, when:

- ◆ (i) a settlement is approved by either the Administrative Law Judge or Commission,
- ◆ (ii) a rating established by medical finding, certified by a physician, and approved by an Administrative Law Judge, or
- ◆ (iii) an award by the Administrative Law Judge or Commission.

Section 287.190.6 (1)

**PERMANENT PARTIAL
DISABILITY CONT.**

III. Pre-existing Disability Credit:

Any award of compensation shall be reduced by an amount proportional to permanent partial disability that is determined to be:

- A pre-existing disease or condition, or
- Attributed to natural aging process that is sufficient to cause or prolong the disability or need for treatment.

Section 287.190.6 (3)

COMPROMISE SETTLEMENTS

- Parties may enter into voluntary agreements to settle or compromise any dispute or claim for compensation.
- For the agreement to be valid it must be approved by the Administrative Law Judge or Commission.
- Settlement must be in accordance with the rights of the parties.

Section 287.390.1

**COMPROMISE SETTLEMENTS
CONT.**

- The Administrative Law Judge or Commission shall approve a settlement agreement as valid and enforceable.
 - ◆ As long as the settlement is not the result of undue influence or fraud,
 - ◆ The employee fully understands his or her rights to benefits, and
 - ◆ Voluntarily agrees to accept the terms of the agreement.

Section 287.390.1

COMPROMISE SETTLEMENTS

- Offer Made by Employer/Employee not represented by an attorney-
 - ◆ When an offer of settlement is made in writing and filed with the Division by the employer, an employee is entitled to 100% of the amount offered, provided that such employee is not represented by counsel at the time the offer is tendered.

Section 287.390.5

COMPROMISE SETTLEMENTS CONT.

- Offer not accepted by the employee/additional proceeding on claim
 - ◆ Where the employee does not accept the offer of settlement and additional proceedings take place with respect to the claim:
 - ◆ The employee is entitled to 100% of the amount initially offered.
 - ◆ Legal counsel representing the employee shall receive reasonable fees for services rendered.

Section 287.390.5

COMPROMISE SETTLEMENTS CONT.

- "Amount in dispute" is defined as "the dollar amount in excess of the dollar amount offered or paid by the employer."
- An offer of settlement shall not be construed as an admission of liability.

Section 287.390.6

**SELF INSURED EMPLOYER FILING
BANKRUPTCY LIQUIDATION OR
DISSOLUTION**

- Upon notice of a self-insured member filing for bankruptcy, liquidation or dissolution, the division shall notify in writing any employee of a self-insured member who has:
 - ◆ An open claim for compensation or First Report of Injury filed with the division,
 - ◆ At that employee's last known address
 - ◆ Of his/her obligation to file a proof of claim,
 - ◆ With the court of jurisdiction,
 - ◆ And provide to the Division and the Missouri Private Sector Individual Self Employers Guaranty Corporation (MPSISIGC) the records set out in §287.865.

Section 287.865 (5)

**SELF INSURED EMPLOYER FILING
BANKRUPTCY LIQUIDATION OR
DISSOLUTION CONT.**

- Any claimant who claims benefits under Chapter 287 RSMo against an insolvent self-insured member of MPSISIGC shall:
 - ◆ File with the bankruptcy court having jurisdiction over the bankruptcy of the self-insured employer.
 - ◆ A proof of claim or other claim forms required by the bankruptcy court.
- To secure a claim against the bankrupt employer,
- Before the Division acquires jurisdiction

Section 287.865 (5)

**SELF INSURED EMPLOYER FILING
BANKRUPTCY LIQUIDATION OR
DISSOLUTION CONT.**

- Claimant shall provide the MPSISIGC and the Division a copy, certified by the bankruptcy court, attesting to the filing of such claim or claim forms.
- Certification shall include:
 - ◆ The date of alleged loss alleged against the bankrupt employer,
 - ◆ Description of injuries claimed, and
 - ◆ The date the claim or claims were filed with the bankruptcy court

**SELF INSURED EMPLOYER FILING
BANKRUPTCY LIQUIDATION OR
DISSOLUTION CONT.**

- If the claimant fails to provide the records, the Division is barred from exercising jurisdiction over any matter for which an employee may otherwise be entitled to benefits under Chapter 287, RSMo.

Section 287.865 (5)

OTHER CHANGES

- MILEAGE – Employee will receive mileage reimbursement for medical examination or treatment outside of local or metropolitan area from the employee’s principal place of employment (not place of injury or place of residence under old law)
- DELETES – The temporary partial disability benefits paid to employee for undergoing physical rehabilitation for “serious injury,” or for evaluating permanent disability.

Note: §287.141 still governs the physical rehabilitation benefits from the Second Injury Fund.

Section 287.140.1

OTHER CHANGES CONT.

- VOCATIONAL EVALUATION- Requires employees to submit to appropriate vocational testing and vocational rehabilitation assessment scheduled by an employer or its insurer.
- EMPLOYER’S SUBROGATION LIEN- Adds language giving employers a subrogation lien on any third-party recovery.

Section 287.143

Section 287.150

OTHER CHANGES CONT.

- **OCCUPATIONAL HEARING LOSS**- Establishes the decibel standards on the most current ANSI occupational hearing loss standard. The Division shall promulgate a rule on the hearing loss standards.

Section 287.197

- **SURVEILLANCE NOT A "STATEMENT"**- Statement does not include a videotape, motion picture, or visual reproduction of an image of an employee. Also, 'statement' now may be provided within 30 days - instead of 15 days- of a proper written request by employee, dependent or their attorney.

Section 287.215

- **TEMPORARY AWARD PENALTY** - Failure to comply with temporary award may result in the doubling of the amount "equal to the value of compensation ordered and unpaid" in the final award.

Section 287.510

OTHER CHANGES CONT.

- **RELIGIOUS EXEMPTION** - 287.804 -
Religious Exception: An employee may file an application to be excepted from workers' compensation coverage if both the "employee and employer are members of a recognized religious sect or division, as defined in 26 U.S.C. 1402 (g)" and are conscientiously opposed to accepting public or private insurance benefits. Exception may be prospective only.

Section 287.804

STATUTORY EMPLOYER OWNER/OPERATOR

- **Deletes:** Subsection 2 of §287.040
- **Adds:** New subsection 4 to §287.040 which states:
(i) §287.040 shall not apply to the relationship between a for-hire motor carrier and an owner and operator of a motor vehicle.

Section 287.040

OWNER/OPERATOR

- Creates a new §287.043 that rejects and abrogates certain cases that interpreted or defined 'owner' in applying the provisions of §287.040 (4) [relationship between for-hire motor carrier and owner] and §287.020 (1) [definition of employee]

OWNER/OPERATOR CONT.

- Creates a new Section 287.041 which states that:
 - ⦿ Notwithstanding the provisions of §287.030 [employer defined] and §287.040 [statutory employers.]
 - ⦿ For-hire motor carrier shall not be determined to be the employer of
 - a lessor defined by 49 C.F.R. §376.2 (f), or
 - a driver receiving remuneration from a lessor

The term "for-hire motor carrier" shall not include an organization described in §501 (c) (3) of the Internal Revenue Code or any governmental entity.

OTHER CHANGES CONT.

- REVIEW OF CLAIMS – Beginning January 1, 2006, only Administrative Law Judges, the Commission, and the Appellate Courts have the power to review claims.

Section 287.801

**WORKERS' COMPENSATION
ADMINISTRATIVE TAX**

- Changes Cash Flow of tax payment
- Requires payment of tax on current year tax rate instead of prior year's tax rate

Section 287.710

**WORKERS' COMPENSATION
ADMINISTRATIVE TAX**

- Caps the annual surcharge rate at 3% of insurance premiums
- Prior law imposed no limit on the surcharge percentage
- Requires Division Director to calculate surcharge by October 31st for the following year
- If not calculated timely, any increase from prior year is not effective for the first calendar quarter of the following year

Section 287.715

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- Jefferson City Adjudication Office 573/751-4231
- Joplin Adjudication Office 417/629-3032
- Kansas City Adjudication Office 816/889-2481
- St. Charles Adjudication Office 636/940-3326
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