



# Workers Compensation Claim State Environmental Guide - Missouri

MISSOURI – <http://www.labor.mo.gov/dwc/>

## Indemnity issues

Temporary Total Benefits	<p>Paid at 2/3 of the injured workers average weekly wage, which is based on the gross wages for 13 weeks before the date of injury. The current maximum rate (through 6-30-16) is \$886.92. The current minimum is \$40 per week.</p> <p><b>Temporary Total cap</b> – Compensation is capped at 400 weeks.</p> <p>The first three days of disability are the waiting period which becomes payable after 14 days of lost time. The waiting period is based on the days the employer is open for purposes of operating a business, not calendar or scheduled work days.</p>
Temporary Partial Benefits	<p>Paid two-thirds of the difference between the average weekly wage and what the injured worker is paid while working light duty. The three day waiting period applies to this also.</p>
Permanent Partial Benefits	<p>Is scheduled in Missouri (percentage of disability multiplied by body part value multiplied by permanent partial disability rate). The current maximum rate (through 6-30-16) is \$464.58</p> <p><b>Permanent Partial</b> based on AMA Guidelines (or similar objective Guidelines) – No.</p>
Permanent Total Benefits	<p>Paid at the same rate of temporary total disability for the life of the injured worker.</p>
Fatality Benefits	<p>Fatality benefits are paid at the temporary total disability rate payable to surviving legal spouse or wholly dependent child under age of 18, or if full time student through age 22 or longer if that child is physically or mentally incapacitated from wage earning. If a dependent child enters the armed forces at age 18 they would then be entitled to receive benefits for a period of four years as long as they are a full time student at an accredited institution and to commence before the age of 23 and immediately following discharge from the armed forces.</p> <p>Funeral benefits limited to \$5,000.</p>
Vocational Rehabilitation	<p>Voluntary.</p>
Settlement Allowed	<p>Full and final settlement is allowed.</p>



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**Indemnity issues**

Penalties	<p><b>DRUG AND ALCOHOL:</b> Where the employee fails to obey any rule or policy adopted by the employer relating to a drug-free workplace or the use of alcohol or non-prescribed controlled drugs in the workplace, the compensation and death benefit provided for herein shall be reduced fifty percent if the injury was sustained in conjunction with the use of alcohol or non-prescribed controlled drugs.</p> <p>If, however, 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, then the benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited.</p> <p>An employee's refusal to take a test for alcohol or a non-prescribed controlled substance, as defined by section 195.010, RSMo, at the request of the employer shall result in the forfeiture of benefits under this chapter, if the employer had sufficient cause to suspect use of alcohol or a non-prescribed controlled substance by the claimant, or if the employer's policy clearly authorizes post-injury testing.</p> <p><b>SAFETY:</b> Where the injury is caused by the failure of the employer to comply with any statute in this state or any lawful order of the division or the commission, the compensation and death benefit provided for under this chapter shall be increased fifteen percent.</p> <p>Where the injury is caused by the failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, the compensation and death benefit provided for herein shall be reduced at least twenty-five but not more than fifty percent; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; and provided, further, that the employer had, prior to the injury, made a reasonable effort to cause his or her employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.</p>
Cap on benefits, exceptions	

**Medical issues**

Initial Choice of Provider	Employer
Change of Provider	Employer
Medical Fee Schedule	No
Managed Care	No
Utilization Review	No
Treatment Guidelines	No
Generic Drug Substitution	The state allows generic substitution; however, it is not mandatory.
Medical Mileage Reimbursement Rate	Effective 07/01/15 \$54.5 cents per mile for all treatment outside the metropolitan area
Network Information	First Health (primary) and CorVel (secondary).
Ability to Terminate Medical Treatment	Determined by physician only
Settlement Allowed	Settlement is allowed. Medical can be settled <b>Full &amp; Final</b> - Yes.
Cap on benefits, exceptions	None

**Other Issues**

WC Hearing Docket Speed	Conferences, Pre-Hearings, Mediations and Trials set upon request, usually within 3 months. Docket speed varies among various venues in Missouri
Staff Counsel	Law Offices of Stephen Larson (314-579-8925) 940 West Port Plaza, Suite 208 St. Louis, MO 63146
Hearings require attorney or claim handler participation	Attorney
Occupational Diseases	Yes.
Second Injury Fund availability	Yes. State Paid. Benefits payable to injured worker only. Provides potential safe haven for employers/insurers as SIF is often alternative "target" for litigation exposure. SIF no longer pays perm partial disability, only perm total disability.
Other Offset Opportunities	Credit for prior settlement to specific body part. Subrogation applies and cannot be contractually waived.
EDI	Claims EDI Release 1: FROI only (1/1/2009)
In-State Adjusting Required	No
License or Certification Required	

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*Note: The following sections and any information contained within these sections, are intended for internal use only and should not be distributed or shared outside of Travelers.*

**Need for Reform**

	<p>Missouri is an employer friendly State. Three items that could help are:</p> <ol style="list-style-type: none"> <li>1. No need for an attorney to complete settlement documents. It is an unnecessary cost. It is a State form with fill-in the blanks. A claim professional should be able to complete, send to the IW, and then be submitted to the court for approval.</li> <li>2. The State should not be allowed to arbitrarily set cases for voluntary conference when neither party has requested it be set. This drives up cost, as an attorney has to be hired on our part to attend.</li> <li>3. Judges need to be held to some accountability. As it now stands, no one wants to complain about a judge for fear of retaliation. In 2005, the WC Act was amended to include 287.610. This section authorized "performance audits" of all ALJs with periodic retention votes. This new section purports to make ALJs accountable.</li> </ol>
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**Major Developments**

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**Additional Comments**

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Need for Reform

	<p>The Missouri Workers' Comp Act is now the exclusive remedy for occupational diseases as of January 1, 2014. Here are some other 2013 Missouri Workers' Compensation Legislative Changes, effective January 1, 2014:</p> <p>The phrase "occupational disease" has been added to Sec. 287.120 to make it clear that occupational disease is indeed part of Chapter 287 and that the workers' compensation law is intended to be the employee's (or dependent's) exclusive remedy where an occupational disease has been contracted.</p> <p>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. It should be noted that this section does not refer to applications for direct payment, which are distinct from additional payment applications, but direct payment applications are resolved along with the claim, so a provider cannot later file a direct payment application, as they can an additional payment application, once the underlying claim has been settled, litigated or dismissed.</p> <p>The presumption of compensability under Sec. 287.067.6 applicable to psychological stress by paid firefighters has now been expanded to include paid peace officers who are certified under Chapter 590.</p> <p>Under an amendment to Sec. 287.120.1, the Second Injury Fund is given the right to have the employee examined but only if the employer has not done so.</p> <p>An employee cannot file a claim against the Second Injury Fund if they have opted to pursue benefits under some other state's WC law. Sec. 287.220.12 This prevents an employee from pursuing primary injury benefits in some other state but then filing a claim against the Second Injury Fund in Missouri.</p> <p>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. Why is this important? Read on.</p> <p>Sec. 287.200.4 will now provide that in the event that an employee becomes permanently totally disabled or dies as the result of one of the specified toxic exposure occupational diseases, that in addition to the normal benefits paid in the case of total disability or death, that the employer shall pay 100 weeks of compensation at a rate equal to 200% of the average state wage except if the disease that caused the total disability or death is mesothelioma, and where the employer has accepted mesothelioma liability, then the rate of compensation is based upon 300% of the average state wage and is to be paid for a period of 212 weeks. However, should an employee contract both asbestosis and develop mesothelioma, they will only be compensated for the latter.</p>
	<p>The employee or dependents can't receive both regular permanent total disability or death benefits simultaneously with the enhanced benefit but the regular benefits become due when the enhanced benefits are exhausted. In addition, the suspension of benefits that can take place under subsection .3 of 287.200 (where the employee is restored to work after being awarded permanent total disability benefits) shall not apply in the case of toxic exposure occupational diseases.</p> <p>The enhanced benefits survive the employee's death and any unpaid enhanced benefits must be paid to the employee's dependents or become an asset of the</p>

Need for Reform

	<p>employee's estate if there are no dependents.</p> <p>SB 1 goes on to create a new fund, the "Missouri Mesothelioma Risk Management Fund", which any employer can join. Although space doesn't allow for a detailed discussion of the 33 provisions of Sec. 287.223 relating to this new fund, suffice it to say that if an employer does not become of member of the Fund, that is "rejects mesothelioma liability", then under Sec. 287.067.4(3)(b) the employer loses the exclusivity protection afforded by 297.120. If it is any comfort, this last provision expires on December 31, 2038.</p> <p>It should be noted that there is no provision allowing the employer to purchase insurance to cover mesothelioma liability and this liability may be exclusively that of the employer, although the law is open to interpretation in that regard. In addition, although many employments may not involve exposure to any of the toxic substances that cause the specified diseases, no categories of employment are exempted from 287.223.</p> <p>Second Injury Fund payments will no longer be allowed for permanent partial disability.</p> <p>Claims for permanent total disability shall only be allowed where the prior disability (for Second Injury Fund disability purposes) is a medically documented disability due to military duty or preexisting disability of at least 50 weeks that is either due to active military duty, the direct result of a compensable injury, was not compensable but aggravates the subsequent injury or involves preexisting permanent partial disability of an extremity, the loss of eyesight in one eye, or the loss of hearing in one ear, where the subsequent injury is to the opposing extremity, or involves a loss of sight in, or the loss of hearing in, the opposite eye or ear.</p> <p>Employees of sheltered workshops only have access to the Second Injury Fund where their preexisting disability and the current disability results in permanent total disability.</p> <p>The Fund is no longer liable for medical expenses where the employer is uninsured.</p> <p>Fund payments are assigned priority, with defense costs and expenses being given the highest priority followed in turn by permanent total disability cases that are settled or fully adjudicated, permanent partial disability cases that are settled or fully adjudicated, medical expenses incurred before July 1, 2012 and finally, interest on unpaid awards.</p> <p>A supplemental surcharge (against employers) not to exceed 3% is to be added to the existing 3% surcharge to finance the Fund beginning in 2014 to run through 2021.</p> <p>SB 1 also includes provisions dealing with committee on the retention of Administrative Law Judges and individual insurer's risk premium modification rating plans.</p> <p>Furthermore, the employer will no longer have a right of subrogation in any third party injury or wrongful death case if the injury of death is the result of a toxic exposure occupational disease. Sec. 287.150.7.</p>
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