

KASBO | Kentucky Association of
 School Business Officials

Workers' Comp 101
 2010 Spring Conference
 May 2010
Presented by KLCIS

Workers' Compensation

- **Provides benefits** for employees who are injured during the "course and scope" of their employment.
- **Mandatory** – since 1916
- **No fault system**
 - Employee gets timely benefits without proving employer negligence
 - Employer gets controlled benefits

Workers' Comp 101 **KLCIS**

What determines benefits?

- **Statute:** KRS Chapter 342 – Workers Compensation Law
- **Regulations:** 803 KAR Chapter 25
- **Case Law**
 - Administrative Law Judges
 - Workers' Comp Board
 - Court of Appeals
 - KY Supreme Court

Workers' Comp 101 **KLCIS**

KRS 342.0011

342.0011 Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

Workers' Comp 101

KLCIS

KRS 342.0011

What it means to you:

Any incident resulting in harm to the employee occurring while the employee is performing a job duty for the employer is considered an on the job injury. This also includes cumulative trauma resulting from repetitive motion. Stress is no longer covered unless it is the direct result of a traumatic event.

Workers' Comp 101

KLCIS

KRS 342.0011

342.0011 Definitions for chapter.

- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence:

Workers' Comp 101

KLCIS

KRS 342.0011

What it means to you:

- If the employee contracts a disease while performing a job duty for the employer, this is considered an occupational disease under worker's compensation.
- The work place must be the proximate cause.
- The statute of limitations is extended to 5 years and for radiation and asbestosis 20 years.

Workers' Comp 101

KLCIS

KRS 342.020

342.020 Medical treatment at expense of employer -- Selection of physician and hospital -- Payment -- Managed health care system -- Artificial members and braces -- Waiver of privilege -- Disclosure of interest in referrals.

- (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The executive director shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The executive director may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

Workers' Comp 101

KLCIS

KRS 342.020

What it means to you:

- The employee has the right to choose their treating physician and the employer is responsible for payment of reasonable medical treatment. If in MCO, employee must choose physician within network.
- Bills are to be paid within 30 days of receipt and are paid according to a medical fee schedule established by the Department of Workers' Claims.

Workers' Comp 101

KLCIS

KRS 342.020

342.020 Medical treatment at expense of employer – Selection of physician and hospital – Payment – Managed health care system – Artificial members and braces – Waiver of privilege – Disclosure of interest in referrals.

- (2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.
- (5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

Workers' Comp 101

KLCIS

KRS 342.020

What it means to you:

- A medical provider must accept payment according to the medical fee schedule and **can not** balance bill the employee.
- The employee can change physicians one time without approval by the assigned adjuster. Referrals do not count as a change. Must use the Form 113.
- Employee inform medical facility that it is work related.

Workers' Comp 101

KLCIS

KRS 342.038

342.038 Employer to keep record of injuries -- Reports required to be filed.

- (1) Every employer subject to this chapter shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one (1) week after the occurrence and knowledge, as provided in KRS 342.184 to 342.200, of an injury to an employee causing his absence from work for more than one (1) day, a report thereof shall be made to the office in the manner directed by the executive director through administrative regulations. An employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be responsible for making the report to the Office of Workers' Claims within one week of receiving the notification referred to in subsection (3) of this section.
- (2) The report shall contain the name, nature, and location of the business of the employer and name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and any other information required by the executive director.
- (3) Every employer subject to this chapter shall report to his workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits any work-related injury or disease or alleged work-related injury or disease within three (3) working days of receiving notification of the incident or alleged incident.

Workers' Comp 101

KLCIS

KRS 342.038

What it means to you:

- Employer must keep record of every incident occurring on the job. Must report to insurance carrier within 3 days. If the employee losses more than one day from work, must be reported to the Department of Workers' Claims within 7 days. This is done electronically by your carrier.
- State can fine "*not less than \$100 nor more than \$1,000 for each offense*"

Workers' Comp 101

KLCIS

KRS 342.040

342.040 Time of payment of income benefits and retraining incentive benefits – Attorney's fees for recovery of overdue temporary total disability income benefits – Interest on overdue benefits.

- (1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid, except that if the administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semi-monthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, that party shall notify the executive director of the termination or failure to make payments and the executive director shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.

Workers' Comp 101

KLCIS

KRS 342.040

What it means to you:

- Must have doctors statement.
- Comp does not pay for the first seven calendar days an employee is disabled from work until they are disabled for 15 calendar days.
- Pay days 8 through 14, then if off the 15 day, goes back and picks up the first 7.
- Weekends are counted.

Workers' Comp 101

KLCIS

KRS 342.165

342.165 Increase or decrease in compensation for failure to comply with safety law
 -- Compensation not payable if employee falsely represents physical condition or medical history at time of employment.

- (2) No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his physical condition or medical history, if all of the following factors are present:
- (a) The employee has knowingly and willfully made a false representation as to his physical condition or medical history;
 - (b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and
 - (c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

Workers' Comp 101

KLCIS

KRS 342.165

What it means to you:

If an employee willingly provides false information or omits information on an employment application and the employer relied on that information and the injury is directly related, the employer will not be liable for the injury.

Workers' Comp 101

KLCIS

KRS 342.205

342.205 Right of employer to require continued physical examination -- Payment of cost of examination -- Effect of employee's refusal -- Statement of earnings to be furnished at request of party.

- (1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the administrative law judge, shall submit himself to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly-qualified physician or surgeon designated and paid by himself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.
- (3) If an employee refuses to submit himself to or in any way obstructs the examination, his right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

Workers' Comp 101

KLCIS

KRS 342.205

What it means to you:

The employee has the right to choose their treating physician, however, the employer has the right to have them examined by a physician of their choice. If the employee refuses to be examined by the employers physician, benefits can be suspended until they submit to the exam. This must be coordinated with the assigned adjuster.

Workers' Comp 101

KLCIS

KRS 342.730

342.730 Determination of income benefits for disability -- Survivors' rights -- Termination -- Offsets -- Notification of return to work.

- (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:
- (a) For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.

Workers' Comp 101

KLCIS

KRS 342.730

What it means to you:

The injured employee will receive 66 2/3% of their AWW. AWW is based on the highest quarter of the 52 weeks prior to the injury. The date of the injury controls the AWW. These payments are tax free and are not reported on their tax return. There is a maximum set by the Department of Workers' Claims.

Workers' Comp 101

KLCIS

KRS 342.197

342.197 Discrimination against employees who have filed claims or who have a diagnosis of coal-related pneumoconiosis – Civil remedies.

- (1) No employee shall be harassed, coerced, discharged, or discriminated against in any manner whatsoever for filing and pursuing a lawful claim under this chapter.
- (2) It is unlawful practice for an employer:
 - (a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment, because such individual has been diagnosed as having category 1/0, 1/1, or 1/2 occupational pneumoconiosis with no respiratory impairment resulting from exposure to coal dust; or
 - (b) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee, because such individual has been diagnosed as having category 1/0, 1/1, or 1/2 occupational pneumoconiosis with no respiratory impairment resulting from exposure to coal dust.
- (3) Any individual injured by any act in violation of the provisions of subsection (1) or (2) of this section shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained by him, together with the costs of the law suit, including a reasonable fee for his attorney of record.

Workers' Comp 101

KLCIS

KRS 342.197

What it means to you:

- You can not terminate or discriminate against an employee because they had an injury on the job.
- Workers' compensation is not a clearing house for your unwanted employees.

Workers' Comp 101

KLCIS

Work Comp Tidbits

- **2 Year Statute of Limitations**
 - Medical Only - Day of Injury
 - Lost Time - Last day of paid indemnity benefits
- If there is settlement or award, injured employee has **life time medical** as long as it is directly related to the original injury, unless they sell their future medical.

Workers' Comp 101

KLCIS

Work Comp Tidbits

- If receiving **TTD** benefits, employee can not work a 2nd job.
- The employer that he was working for at the time of the injury must include wages from second job in calculating TTD benefits.

Workers' Comp 101

KLCIS

When an Injury Occurs

- **Obtain medical treatment for injured worker**
- Report the injury
- Investigate and document the accident
- Preserve any defective equipment
- Stay in contact with injured worker
- Bring worker back to work ASAP

Workers' Comp 101

KLCIS

Questionable Claims

- **DO NOT DENY THE CLAIM**
 - Report it and let the insurance adjuster investigate and decide compensability
 - Get witness statements ASAP
- **Do not do surveillance - report to insurance carrier**
- **If insurance through KSBIT:**
KLCIS Fraud Tip Line: 1-866-552-8471

Workers' Comp 101

KLCIS

Timely Reporting

- **KRS 342.038** – employer must report to insurance within 3 days of knowledge of injury; insurance carrier must report to DOWC within one week.
- State can fine “*not less than \$100 nor more than \$1,000 for each offense*”



Workers' Comp 101

KLCIS

Timely Reporting Benefits

- Timely investigation – get facts before employee or coworkers are “coached”
- Reduces cost
- Recent lag time study by The Hartford found the following:
 - Claims reported 7-14 days after injury > **18%**
 - Claims reported 15-28 days after injury > **30%**
 - Claims reported 29 days and over > **45%**

Workers' Comp 101

KLCIS

Controlling Workers' Compensation Cost

Workers' Comp 101 **KLCIS**

Workers' Comp Premium

➤ **Step 1:** Manual Premium Calculated

- Rate per \$100 of **payroll** by class code

➤ **Step 2:** Manual Premium multiplied by **Experience Modifier**

Workers' Comp 101 **KLCIS**

Workers' Comp Premium

➤ **Experience Modifier**

- Comparison of actual losses to expected losses
- Based on prior 3 year history
- Lower losses = lower exp mod
- Higher losses = higher exp mod
- 1 is average or equal to "C"

Workers' Comp 101 **KLCIS**

Workers' Comp Premium

- | | |
|-----------------------------------|----------------------------------|
| School of Whatever | School of We Care |
| ▪ Manual Premium =
\$500,000 | ▪ Manual Premium =
\$500,000 |
| ▪ Exp Mod = 1.25 | ▪ Exp Mod = .75 |
| ▪ \$500,000 x 1.25 =
\$625,000 | ▪ \$500,000 x .75 =
\$375,000 |

Savings: \$250,000

Workers' Comp 101

KLCIS

Workers' Comp Premium

➤ How to Reduce Premium:

- Manual Premium
 - Payroll
- Experience Mod
 - Losses



Workers' Comp 101

KLCIS

Controlling Workers' Comp Cost

➤ 2 Ways to Control Cost

- Prevention
 - Safety Programs
- Control Claims
 - Return to Work Program



Workers' Comp 101

KLCIS

Controlling Workers' Comp Cost

➤ **RTW Program**

- Reduces Claim Totals for Experience Mod
 - If indemnity (replacement wages) paid, 100% of claim total goes into experience mod calculation
 - If claim remains medical only, only 30% of claim total goes into experience mod calculation

Workers' Comp 101 **KLCIS**

Case Study

John Smith suffered low back strain on 2/5/09. Doctor placed restrictions of no lifting over 10 lbs for 2 wks and ordered PT for 3 times a week for 2 wks.

On 2/19/09 he was re-eval, restrictions were increased to 20 lbs for 2 wks and PT was continued at 3 times a week for 2 wks.

On 3/5/09 he was re-eval, restrictions were increased to 50 lbs for 2 wks and PT ordered for 2 times a week for 2 wks.

On 3/19/09 he as re-eval and released to full duty as of 3/20/09.

Workers' Comp 101 **KLCIS**

Controlling Workers' Comp Cost

School of Whatever	School of We Care
❖ Indemnity: \$2,400 <small>(6 wks TTD)</small>	❖ Indemnity: \$0
❖ Physician: \$330 <small>(4 office visits)</small>	❖ Physician: \$330 <small>(4 office visits)</small>
❖ PT (16 visits): \$1,760	❖ PT (8 visits): \$880
Total: \$4,490	Total: \$1,210
Amount used in Exp Mod: \$4,490	Amount used in Exp Mod: \$363

Workers' Comp 101 **KLCIS**

Controlling Workers' Comp Cost

➤ **Return to Work Program**

- the safe, rapid return of an injured employee to transitional or regular employment when medically possible following an on the job injury.
- Not a guarantee that everyone will be brought back
- Not a hardship on employer
- Temporary assignment

Workers' Comp 101 **KLCIS**

Return to Work Program

➤ **Benefits**

- Retain experienced workers
- Improves employee morale
- Reduces cost
- Frees up funds that can be used for other items (benefits, raises, equipment)

Workers' Comp 101 **KLCIS**

Return to Work Program

➤ **Keys to Success**

- Commitment
- Preparation
- Training
- Communication

Workers' Comp 101 **KLCIS**

Return to Work Program

➤ **Keys to Success**

- Commitment
 - From Upper Management
 - Lead by Example
- Preparation
- Training
- Communication

Workers' Comp 101 **KLCIS**

Return to Work Program

➤ **Keys to Success**

- Commitment
- Preparation
 - Review current policy
 - Develop written program
 - Review all jobs
- Training
- Communication

Workers' Comp 101 **KLCIS**

Return to Work Program

➤ **Keys to Success**

- Commitment
- Preparation
- Training
 - Current Employees prior to implementing
 - Benefits of program
 - Copy of program with effective date
 - Employer Contact
- Communication

Workers' Comp 101 **KLCIS**

Return to Work Program

➤ **Keys to Success**

- Commitment
- Preparation
- Training
- Communication
 - Employee
 - Employer
 - Physician
 - Adjuster

} **TEAMWORK!!!**

Workers' Comp 101 **KLCIS**

Summary

➤ Your employees are valuable.

➤ Worker's Compensation is controllable.

➤ You can make a difference.

Workers' Comp 101 **KLCIS**

➤ Questions?

Workers' Comp 101 **KLCIS**
