

44-504. Remedy against negligent third party; employer and workers compensation fund subrogated, exclusion; credits against future payments; limitation of actions; attorney fees. (a) When the injury or death for which compensation is payable under the workers compensation act was caused under circumstances creating a legal liability against some person other than the employer or any person in the same employ to pay damages, the injured worker or the worker's dependents or personal representatives shall have the right to take compensation under the workers compensation act and pursue a remedy by proper action in a court of competent jurisdiction against such other person.

(b) In the event of recovery from such other person by the injured worker or the dependents or personal representatives of a deceased worker by judgment, settlement or otherwise, the employer shall be subrogated to the extent of the compensation and medical aid provided by the employer to the date of such recovery and shall have a lien therefor against the entire amount of such recovery, excluding any recovery, or portion thereof, determined by a court to be loss of consortium or loss of services to a spouse. The employer shall receive notice of the action, have a right to intervene and may participate in the action. The district court shall determine the extent of participation of the intervenor, including the apportionment of costs and fees. Whenever any judgment in any such action, settlement or recovery otherwise is recovered by the injured worker or the worker's dependents or personal representative prior to the completion of compensation or medical aid payments, the amount of such judgment, settlement or recovery otherwise actually paid and recovered which is in excess of the amount of compensation and medical aid paid to the date of recovery of such judgment, settlement or recovery otherwise shall be credited against future payments of the compensation or medical aid. Such action against the other party, if prosecuted by the worker, must be instituted within one year from the date of the injury and, if prosecuted by the dependents or personal representatives of a deceased worker, must be instituted within 18 months from the date of such injury.

(c) Failure on the part of the injured worker, or the dependents or personal representatives of a deceased worker to bring such action within the time specified by this section, shall operate as an assignment to the employer of any cause of action in tort which the worker or the dependents or personal representatives of a deceased worker may have against any other party for such injury or death, and such employer may enforce the cause of action in the employer's name or in the name of the worker, dependents or personal representatives for their benefit as their interest may appear by proper action in any court of competent jurisdiction. The court shall fix the attorney fees which shall be paid proportionately by the employer and employee in the amounts determined by the court.

(d) If the negligence of the worker's employer or those for whom the employer is responsible, other than the injured worker, is found to have contributed to the party's injury, the employer's subrogation interest or credits against future payments of compensation and medical aid, as provided by this section, shall be diminished by the percentage of the recovery attributed to the negligence of the employer or those for whom the employer is responsible, other than the injured worker.

(e) In any case under the workers compensation act in which the workers compensation fund has paid or is paying compensation, the workers compensation fund is hereby subrogated to the rights of the employer under this section and shall have all the rights of subrogation or to credits against future compensation payments which are granted to the employer by this section. The commissioner of insurance may exercise all such rights for the fund to the same extent that such rights may be exercised by the employer under this section, including the right to intervene, to enforce a lien or to bring any cause of action, all as provided in this section.

(f) As used in this section, "compensation and medical aid" includes all payments of medical compensation, disability compensation, death compensation, including payments under K.S.A. 44-570 and amendments thereto, and any other payments made or provided pursuant to the workers compensation act.

(g) In any case under the workers compensation act in which the workers compensation fund or an insurer or a qualified group-funded workers compensation pool, as provided in K.S.A. 44-532 and amendments thereto, is subrogated to the rights of the employer under the workers compensation act, the court shall fix the attorney fees which shall be paid proportionately by the workers compensation fund, insurer or qualified group-funded workers compensation pool and the worker or such worker's dependents or personal representatives in the amounts determined by the court based upon the amounts to be received from any recovery pursuant to an action brought under this section.

History: L. 1927, ch. 232, § 4; L. 1938, ch. 50, § 1; L. 1947, ch. 287, § 1; L. 1955, ch. 250, § 1; L. 1961, ch. 243, § 10; L. 1967, ch. 280, § 2; L. 1974, ch. 203, § 3; L. 1982, ch. 212, § 1; L. 1988, ch. 166, § 1; L. 1993, ch. 286, § 26; July 1.