

44-5,104. Accident prevention programs; requirements and reports; inspections; duties of secretary of labor; failure to maintain, penalties. (a) Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas shall maintain and shall provide accident prevention programs upon request of the covered employer as a prerequisite for authority to provide such insurance or coverage. The accident prevention programs shall be adequate to furnish accident prevention services required by the nature of the operations of the policyholders or other covered entities and the accident prevention services shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The accident prevention programs shall be staffed with field safety representatives. Each field safety representative shall be a person who is (1) a college graduate who has a bachelor's degree in science, industrial hygiene, safety or loss control, or engineering, (2) a registered professional engineer, (3) a certified safety professional, who has attained the designation from the board of certified safety professionals, (4) a certified industrial hygienist, who has attained the designation from the American board of industrial hygiene, (5) an individual with five years of experience in occupational safety and health, (6) a person who is working under direct supervision of a person who meets the qualification requirements of this section, (7) a person who has attained the designation of associate in loss control management or associate in risk management from the insurance institute of America, who has attained the designation of occupational safety and health technologist from the board of certified safety professionals, or who has attained any other comparable designation or certification by a recognized organization as determined by the secretary of labor, or (8) an individual who has completed a certified training program in accident prevention services approved by the secretary of labor. The insurance company or group-funded self-insurance plan may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of such methods to fulfill the obligations imposed by this section. Accident prevention personnel shall have the qualifications required for field safety representatives.

(b) The secretary of labor may conduct such inspections as the secretary deems necessary to determine the adequacy of the accident prevention services required by subsection (a) for each insurance company and group-funded self-insurance plan providing workers compensation insurance coverage in Kansas, including, but not limited to, random inspections and those based upon employer complaints. Documented employer complaints shall be appropriately investigated and the results shall be reported to the commissioner of insurance. The secretary shall not be required by this section to inspect each insurance company or group-funded self-insurance plan.

(c) A notice that accident prevention services are available to the policyholder from the insurance company shall appear in no less than ten-point boldface type on the front page of each workers compensation insurance policy delivered or issued for delivery in this state.

(d) At least once each year, each insurance company or group-funded self-insurance plan providing workers compensation insurance in Kansas shall submit to the director of workers compensation detailed information on the type of accident prevention programs offered to the policyholders by the insurance company or to the covered entities by the group-funded self-insurance plan, as the case may be. The information shall include:

- (1) The amount of money spent by the insurance company or group-funded self-insured plan on accident prevention services;
- (2) the names, number and qualifications of field safety representatives employed;
- (3) the number of site inspections performed;
- (4) any accident prevention services made available under a contractual arrangement;
- (5) a specification and listing of the premium size of the risks to which accident prevention services were actually provided;
- (6) evidence of the effectiveness of and accomplishments in accident prevention; and
- (7) any additional information required by the director of workers compensation.

(e) If the insurance company or group-funded self-insurance plan does not maintain or provide the accident prevention services required by this section, the director of workers compensation shall notify the commissioner of insurance. Upon receiving such notification, the commissioner of insurance shall presume the insurance company or group-funded self-insurance plan knew or reasonably should have known of the violation and shall assess the penalty prescribed therefore pursuant to K.S.A. 40-2,125, and amendments thereto. The secretary shall send the information and results obtained pursuant to subsection (d) to the insurance commissioner who shall widely disseminate information about the program.

(f) The secretary of labor shall employ the personnel necessary to enforce the provisions of this section and shall employ sufficient safety inspectors to perform inspections at job sites or other work places and may audit accident prevention programs of each insurance company or group-funded self-insurance plan which is subject to this section to determine the adequacy of the accident prevention services provided. The safety inspectors shall have the qualifications required for field safety representatives by subsection (a).

(g) The insurance company or group-funded self-insurance plan, and any agent, servant, or employee thereof, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection or other activity or by a service undertaken or not undertaken by the insurance company or group-funded self-insurance plan for the prevention of accidents in connection with operations of the employer. This immunity shall not affect the liability of the insurance company or group-funded self-insurance plan for compensation or as otherwise provided in this act.

History: L. 1993, ch. 286, § 10; L. 2000, ch. 160, § 21; L. 2004, ch. 179, § 20; July 1.