

**44-501. Compensation; disallowances; substance abuse testing; exceptions, pre-existing conditions; public service benefits protection act, coronary disease or cerebrovascular injury benefits for firefighters and law enforcement officers; liability limited for construction design professional; benefits reduced for certain retirement benefits.** (a) (1) Compensation for an injury shall be disallowed if such injury to the employee results from:

- (A) The employee's deliberate intention to cause such injury;
  - (B) the employee's willful failure to use a guard or protection against accident or injury which is required pursuant to any statute and provided for the employee;
  - (C) the employee's willful failure to use a reasonable and proper guard and protection voluntarily furnished the employee by the employer;
  - (D) the employee's reckless violation of their employer's workplace safety rules or regulations; or
  - (E) the employee's voluntary participation in fighting or horseplay with a co-employee for any reason, work related or otherwise.
- (2) Subparagraphs (B) and (C) of paragraph (1) of subsection (a) shall not apply when it was reasonable under the totality of the circumstances to not use such equipment, or if the employer approved the work engaged in at the time of an accident or injury to be performed without such equipment.

(b) (1) (A) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances, including, but not limited to, any drugs or medications which are available to the public without a prescription from a health care provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens.

(B) In the case of drugs or medications which are available to the public without a prescription from a health care provider and prescription drugs or medications, compensation shall not be denied if the employee can show that such drugs or medications were being taken or used in therapeutic doses and there have been no prior incidences of the employee's impairment on the job as the result of the use of such drugs or medications within the previous 24 months.

(C) It shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that, at the time of the injury, the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above the levels shown on the following chart for the drugs of abuse listed:

Confirmatory test cutoff levels (ng/ml)

Marijuana metabolite<sup>1</sup> 15  
Cocaine metabolite<sup>2</sup> 150

Opiates:

Morphine 2000  
Codeine 2000  
6-Acetylmorphine<sup>4</sup> 10 ng/ml  
Phencyclidine 25

Amphetamines:

Amphetamine 500  
Methamphetamine<sup>3</sup> 500

1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.

2 Benzoylcegonine.

3 Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

4 Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

(D) If it is shown that the employee was impaired pursuant to subsection (b)(1)(C) at the time of the injury, there shall be a rebuttable presumption that the accident, injury, disability or death was contributed to by such impairment. The employee may overcome the presumption of contribution by clear and convincing evidence.

(E) An employee's refusal to submit to a chemical test at the request of the employer shall result in the forfeiture of benefits under the workers compensation act if the employer had sufficient cause to suspect the use of alcohol or drugs by the claimant or if the employer's policy clearly authorizes post-injury testing.

(2) The results of a chemical test shall be admissible evidence to prove impairment if the employer establishes that the testing was done under any of the following circumstances:

- (A) As a result of an employer mandated drug testing policy, in place in writing prior to the date of accident or injury, requiring any worker to submit to testing for drugs or alcohol;
- (B) during an autopsy or in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and not at the direction of the employer;
- (C) the worker, prior to the date and time of the accident or injury, gave written consent to the employer that the worker would voluntarily submit to a chemical test for drugs or alcohol following any accident or injury;
- (D) the worker voluntarily agrees to submit to a chemical test for drugs or alcohol following any accident or injury; or
- (E) as a result of federal or state law or a federal or state rule or regulation having the force and effect of law requiring a post-injury testing program and such required program was properly implemented at the time of testing.

(3) Notwithstanding subsection (b)(2), the results of a chemical test performed on a sample collected by an employer shall not be admissible evidence to prove impairment unless the following conditions are met:

- (A) The test sample was collected within a reasonable time following the accident or injury;
- (B) the collecting and labeling of the test sample was performed by or under the supervision of a licensed health care professional;
- (C) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;
- (D) the test was confirmed by gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample;
- (E) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the employee; and
- (F) a split sample sufficient for testing shall be retained and made available to the employee within 48 hours of a positive test.

(c) (1) Except as provided in paragraph (2), compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

(2) For events occurring on or after July 1, 2014, in the case of a firefighter as defined by K.S.A. 40-1709(b)(1), and amendments thereto, or a law enforcement officer as defined by K.S.A. 74-5602, and amendments thereto, coronary or coronary artery disease or cerebrovascular injury shall be compensable if:

- (A) The injury can be identified as caused by a specific event occurring in the course and scope of employment;
  - (B) the coronary or cerebrovascular injury occurred within 24 hours of the specific event; and
  - (C) the specific event was the prevailing factor in causing the coronary or coronary artery disease or cerebrovascular injury.
- (d) Except as provided in the workers compensation act, no construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injury resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under the workers compensation act, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

(e) An award of compensation for permanent partial impairment, work disability, or permanent total disability shall be reduced by the amount of functional impairment determined to be preexisting. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment.

(1) Where workers compensation benefits have previously been awarded through settlement or judicial or administrative determination in Kansas, the percentage basis of the prior settlement or award shall conclusively establish the amount of functional impairment determined to be preexisting. Where workers compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Kansas, the amount of preexisting functional impairment shall be established by competent evidence.

(2) In all cases, the applicable reduction shall be calculated as follows:

(A) If the preexisting impairment is the result of injury sustained while working for the employer against whom workers compensation benefits are currently being sought, any award of compensation shall be reduced by the current dollar value attributable under the workers compensation act to the percentage of functional impairment determined to be preexisting. The "current dollar value" shall be calculated by multiplying the percentage of preexisting impairment by the compensation rate in effect on the date of the accident or injury against which the reduction will be applied.

(B) In all other cases, the employer against whom benefits are currently being sought shall be entitled to a credit for the percentage of preexisting impairment.

(f) If the employee receives, whether periodically or by lump sum, retirement benefits under the federal social security act or retirement benefits from any other retirement system, program, policy or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions made by the employee, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment. Where the employee elects to take retirement benefits in a lump sum, the lump sum payment shall be amortized at the rate of 4% per year over the employee's life expectancy to determine the weekly equivalent value of the benefits.

**History:** L. 1927, ch. 232, § 1; L. 1967, ch. 280, § 1; L. 1974, ch. 203, § 1; L. 1975, ch. 258, § 1; L. 1979, ch. 156, § 1; L. 1985, ch. 175, § 1; L. 1987, ch. 187, § 1; L. 1990, ch. 182, § 1; L. 1993, ch. 286, § 24; L. 1996, ch. 79, § 1; L. 2000, ch. 160, § 5; L. 2005, ch. 54, § 1; L. 2011, ch. 55, § 3; L. 2014, ch. 25, § 1; July 1.