

An Overview of Kentucky's Workers' Compensation Law



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Department of Workers' Claims**



Introduction

History of Workers' Compensation

- 1909-1910:** First Workers' Compensation Statutes. Wisconsin is generally viewed as first – 100th anniversary.
- 1914:** First Kentucky Workers' Compensation Act. It was declared unconstitutional because it violated a portion of the Kentucky Constitution prohibiting impairment of compensation for personal injury.
- 1916:** Reenacted with a voluntary acceptance provision for employees – today we have voluntary rejection.



Purpose

Placed responsibility of workplace injuries and diseases on industry in which it occurred rather than with the general public.





Social Legislation or Tort Reform

Both

1. Social Legislation: No fault medical and income benefits. More certainty and expeditious in the delivery of benefits.
2. Tort Reform: Exclusivity and replaced some master – servant liability. Can't sue in civil action for general compensatory damage; Can't sue fellow employees (KRS 342.680). Limitation of damages.



State Specific

Every State, Federal Government is different

1.

Federal Employer's Liability Act, FELA (Railroads)

2.

Longshore-Harbor Workers Act (workers on shore)

Federal Government

3.

Jones Act (Crew members on waterway vessels)

4.

Federal Worker's Compensation (TVA)



Who is an employer

1. Any person or entity with one or more employees
2. Includes state, city, county





Kentucky

A. Who is an employer – KRS 342.630

The following shall constitute employers mandatorily subject to, and required to comply with, the provisions of this chapter:

- (1) Any person, other than one engaged solely in agriculture, that has in this state one (1) or more employees subject to this chapter.*
- (2) The state, any agency thereof, and each county, city of any class, school district, sewer district, drainage district, tax district, public or quasipublic corporation, or any other political subdivision or political entity of the state that has one (1) or more employees subject to this chapter.*





Who is an employee

- a. Anyone working under contract for hire, expressed or implied
- b. Executive officers of corporations
- c. State, county or city employees
- d. Volunteer firefighters
- e. Those who sell and deliver newspapers
- f. Any person performing services in a trade profession or business



Kentucky

B. Who is an employee – KRS 342.640

The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

- 1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;*
- 2) Every executive officer of a corporation;*





Kentucky

B. Who is an employee – KRS 342.640

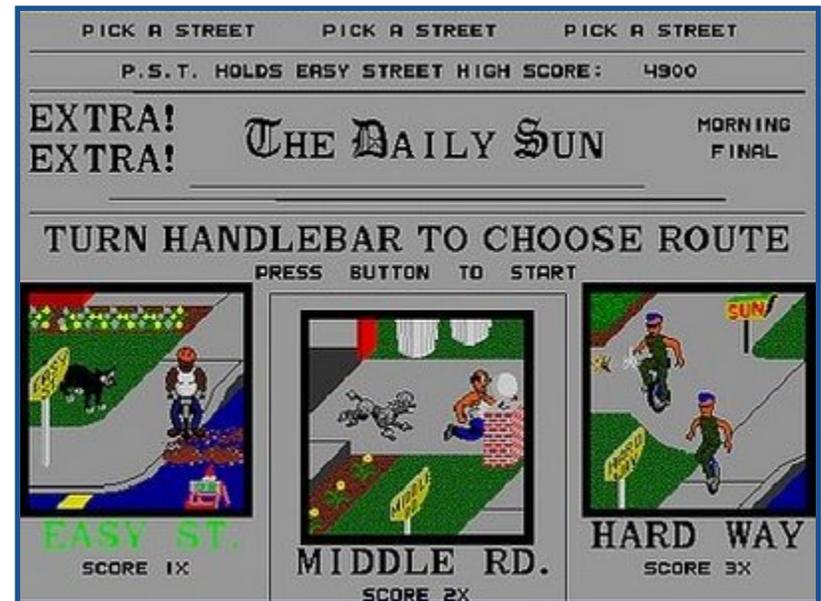
- 3) *Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation, or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly-enrolled volunteer member or trainee of an emergency management agency, as established under KRS Chapters 39A to 39E, shall be deemed, for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38:010(4), shall be deemed, for the purposes of this chapter, to be in the employment of the state;*



Kentucky

B. Who is an employee – KRS 342.640

- 4) *Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and*
- 5) *Subject to the provisions in subsection (4) of this section, every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.*





Who is exempt

- a. Agriculture employers/employees
- b. Domestic worker in private home if less than two (must work less than 40 hours per week)
- c. Working for sustenance if with charitable or religious organization
- d. Covered by Federal Act
- e. Voluntary rejects
- f. Voluntary carpools
- g. Certain religious organizations
- h. All can voluntarily accept



Kentucky

C. Who is exempt – KRS 342.650;

The following employees are exempt from the coverage of this chapter:

- 1. Any person employed as a domestic servant in a private home by an employer who has less than two (2) employees each regularly employed forty (40) or more hours a week in domestic servant employment.*
- 2. Any person employed, for not exceeding twenty (20) consecutive work days, to do maintenance, repair, remodeling, or similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where that employer carries on his trade, business, or profession.*
- 3. Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.*
- 4. Any person for whom a rule of liability for injury or death is provided by the laws of the United States, except those persons covered under Title IV, Public Law 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the Federal Coal Mine Health and Safety Act of 1969, or as amended.*



Kentucky

C. Who is exempt – KRS 342.650;

The following employees are exempt from the coverage of this chapter:

- 5. Any person employed in agriculture.*
- 6. Any person who would otherwise be covered but who elects not to be covered in accordance with the administrative regulations promulgated by the executive director.*
- 7. Any person participating as a driver or passenger in a voluntary vanpool or carpool program while that person is on the way to or from his place of employment. For the purposes of this subsection, carpool or vanpool means any method by which two (2) or more employees are transported from their residences to their places of employment.*
- 8. Members of a religious sect or division that is an adherent of established tenets or teachings by reason of which members are conscientiously opposed to acceptance of the benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance systems established by the Federal Social Security Act, 42 U.S.C. sec. 301 et seq., and it is the practice, and has been for ten (10) years, for members of the sect or division to make reasonable provisions for their dependent members.*



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C. Voluntary acceptance – KRS 342.660

- 1. An employer who has in his employment any employee exempted under KRS 342.650 may elect to be subject to this chapter. This election on the part of the employer shall be made by the employer securing the payment of compensation to these exempted employees in accordance with KRS 342.340. Any employee, otherwise exempted under KRS 342.650, of the employer shall be deemed to have elected to come under this chapter, if at the time of the injury for which liability is claims, his employer has in force an election to be subject to this chapter with respect to the employment in which the employee was injured and the employee has not, either upon entering into employment or within five (5) days after the filing of an election by the employer given to his employer and to the executive director notice in writing that he elects not to be subject to this chapter.*
- 2. An employer within the scope of subsection (1) of this section, within five (5) days after securing the payment of compensation in accordance with KRS 342.340, shall give the executive director written notice of his election to be subject to this chapter. The employer shall post and keep posted on the premises where any employee or employees, otherwise exempted under KRS 342.650, works, printed notices furnished by the executive director stating his acceptance of this chapter. Failure to give notices required by this paragraph shall not void or impair the employer's election to be subject to or relieve him of any liability under this chapter.*



Kentucky

C. Voluntary acceptance – KRS 342.660

3. *Any employer who has complied with subsection (2) of this section may withdraw his acceptance of this chapter, by filing written notice with the executive director of the withdrawal of his acceptance. A withdrawal shall become effective 60 days after the filing of notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The withdrawal shall not be effective until the employer shall theretofore post notice of the withdrawal where the affected employee or employees work or shall otherwise notify the employees of withdrawal.*





Who is liable and must have workers' compensation insurance

- a. Any employer
- b. "Up the ladder" coverage





Kentucky

D. Who is liable – KRS 342.610

1. *Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.*
2. *A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another:*
 - (a) *To have work performed consisting of the removal, excavation, or drilling of soil, rock, or mineral, or the cutting or removal of timber from land; or*
 - (b) *To have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such person shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.*



Kentucky

D. Who is liable – KRS 342.610

3. *Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by voluntary intoxication as defined in KRS 501.010, or by his willful intention to injure or kill himself or another.*
4. *If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependent as herein defined shall receive the amount provided in this chapter in a lump sum to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.*



Kentucky

D. Who is liable – KRS 342.610

5. *Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage from the builder before a permit is issued. A person who is exempt under the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter, shall so certify to the local building official, in writing and on a form Page 2 of 2 prescribed by the executive director, in lieu of providing proof of workers' compensation coverage.*

6. *Every employer subject to this chapter, at its principal office and such other locations where employees customarily report for payroll and personnel matters, shall post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the executive director so as to afford every employee the opportunity to become informed about the employer's workers' compensation program. The format and contents of the notice shall be established by the executive director through administrative regulation, and copies shall be provided to the employer by its insurance carrier.*

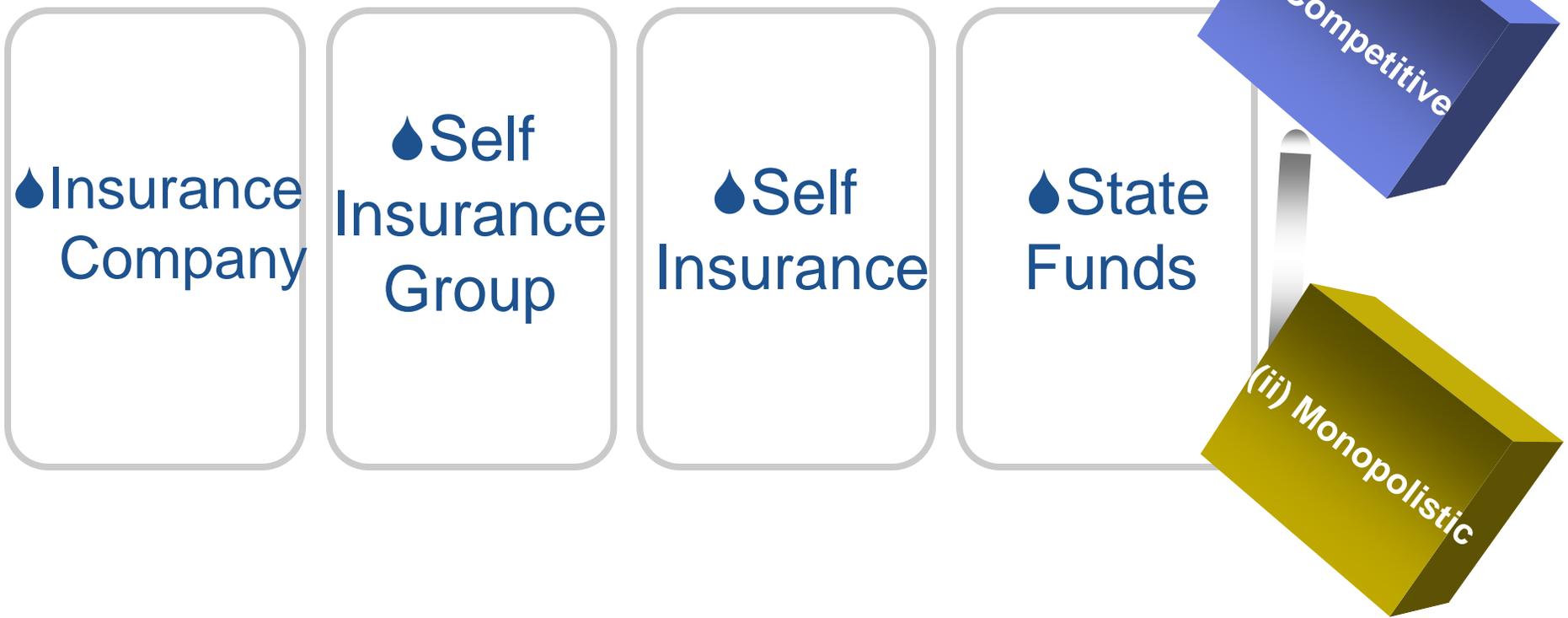


Employer required to Provide Security/Insurance



State

D. Types of Insurance/Security Allowed

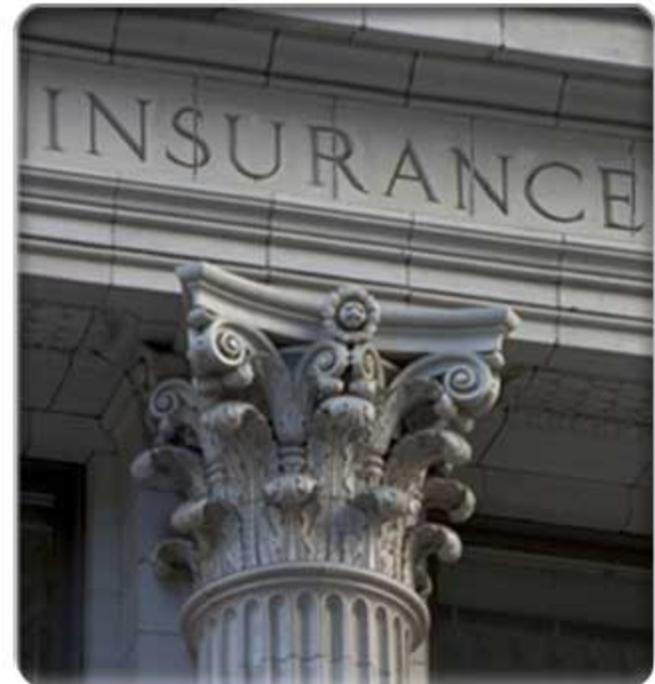




Kentucky

E. Obligation to provide insurance security – KRS 342.340

- ❖ Insurance – Including Competitive State Fund (KEMI)
- ❖ Self Insurance
- ❖ Self Insurance Groups





Kentucky

E. Obligation to provide insurance security – KRS 342.340

- 1. Every employer under this chapter shall either insure and keep insured his liability for compensation hereunder in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state or shall furnish to the executive director satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this chapter. In the latter case, the executive director shall require the deposit of an acceptable security, indemnity, or bond to secure, to the extent the executive director directs, the payment of compensation liabilities as they are incurred. A public sector self-insured employer shall not be required to deposit funds as security, indemnity, or bond to secure the payment of liabilities under this chapter, if the public employer has authority to raise taxes, notwithstanding provisions of KRS 68.245, 132.023, 132.027, and 160.470 relating to recall and reconsideration of local taxes; raise tuition; issue bonds; raise fees or fares for services provided; or has other authority to generate funds for its operation.*



Kentucky

E. Obligation to provide insurance security – KRS 342.340

2. *Every employer subject to this chapter shall file, or have filed on its behalf, with the office, as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating hereto. Any insurance carrier or self-insured group providing workers' compensation insurance coverage for a Kentucky location shall file on behalf of the employer, with the executive director, evidence of the employer's compliance with this chapter. Evidence of compliance filed with the office may include a named additional insured who has been provided proof of workers' compensation insurance coverage by the employer. The filing shall be made within ten (10) days after the issuance of a policy, endorsement to a policy, or similar documentation of coverage. Every employer who has complied with the foregoing provision and has subsequently canceled its insurance or its membership in an approved self-insured group, as the case may be, shall immediately notify, or have notice given on its behalf to the office of the cancellation, the date thereof, and the reasons therefor; and every insurance carrier or self-insured group shall in like manner notify the executive director upon the cancellation, lapse, termination, expiration by reason of termination of policy period, or nonrenewal of any policy issued by it or termination of any membership agreement, whichever is applicable under the provisions of this chapter, except that the carrier or self-insured group need not set forth its reasons therefor unless requested by the executive director.*



Kentucky

E. Obligation to provide insurance security – KRS 342.340 (Continued)

2. *The above filings are to be made on the forms prescribed by the executive director. Termination of any policy of insurance issued under the provisions of this chapter shall take effect no greater than ten (10) days prior to the receipt of the notification by the executive director unless the employer has obtained other insurance and the executive director is notified of that fact by the insurer assuming the risk. Upon determination that any employer under this chapter has failed to comply with these provisions, the executive director shall promptly notify interested government agencies of this failure and, with particular reference to employers engaged in coal mining, the executive director shall promptly report any failures to the Department for Natural Resources so that appropriate action may be undertaken pursuant to KRS 351.175.*



Where Does it Apply

- In Kentucky
- Under right conditions outside Kentucky





Kentucky

F. Where does it apply?

In Kentucky – Outside Kentucky KRS 342.670

1. *If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee, or in the event of his death resulting from that injury, his dependents, shall be entitled to the benefits provided by this chapter, if at the time of the injury:*
 - (a) *His employment is principally localized in this state, or*
 - (b) *He is working under a contract of hire made in this state in employment not principally localized in any state, or*
 - (c) *He is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his employer, or*
 - (d) *He is working under a contract of hire made in this state for employment outside the United States and Canada.*



Kentucky

F. Where does it apply?

In Kentucky – Outside Kentucky KRS 342.670

2. *The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his dependents otherwise entitled on account of such injury or death to the benefits of this chapter shall not be a bar to a claim for benefits under this chapter, if a claim under this chapter is filed within two (2) years after that injury or death. If compensation is paid or awarded under this chapter:
 - (a) *The medical and related benefits furnished or paid for by the employer under another jurisdiction's workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;*
 - (b) *The total amount of all income benefits paid or awarded the employee under another jurisdiction's workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter, had claim been made solely under this chapter; and*
 - (c) *The total amount of death benefits paid or awarded under another jurisdiction's workers' compensation law shall be credited against the total amount of death benefits due under this chapter.**



Kentucky

F. Where does it apply?

In Kentucky – Outside Kentucky KRS 342.670

3. *If any employee is entitled to the benefits of this chapter by reason of an injury sustained in this state in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this chapter, the employer or his carrier may file with the executive director a certificate, issued by the commission or agency of the other state having jurisdiction over workers' compensation claims, certifying that the employer has secured the payment of compensation under the workers' compensation law of the other state and that with respect to the injury the employee is entitled to the benefits provided under that law, and that the benefits to which the employee or his dependents is entitled are at least as great as those to which he would be entitled if the injury occurred and was processed under Kentucky law, under Kentucky coverage. In this event:*
 - (a) *The filing of the certificate shall constitute an appointment by the employer or his carrier of the executive director as his agent for acceptance of the service of process in any proceeding brought by the employee or his dependents to enforce his or their rights under this chapter on account of the injury;*
 - (b) *The executive director shall send to the employer or carrier, by certified mail to the address shown on the certificate, a true copy of any notice of claim or other process served on the executive director by the employee or his dependents in any proceeding brought to enforce his or their rights under this chapter;*



Kentucky

F. Where does it apply? In Kentucky – Outside Kentucky KRS 342.670

- (c) 1. *If the employer is a qualified self-insurer under the workers' compensation law of the other state, the employer shall, upon submission of evidence satisfactory to the executive director, of his ability to meet his liability to the employee under this chapter, be deemed to be a qualified self-insurer under this chapter;*
2. *If the employer's liability under the workers' compensation law of the other state is insured, the employer's carrier, as to the employee or his dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this chapter; however, unless its contract with the employer requires it to pay an amount equivalent to the compensation benefits provided by this chapter, its liability for income benefits or medical and related benefits shall not exceed the amounts of the benefits for which the insurer would have been liable under the workers' compensation law of the other state;*
- (d) *If the total amount for which the employer's insurance is liable under (c) above is less than the total of the compensation benefits to which the employee is entitled under this chapter, the executive director may, if he deems it necessary, require the employer to file security, satisfactory to the executive director, to secure the payment of benefits due the employee or his dependents under this chapter; and*
- (e) *Upon compliance with the preceding requirements of this subsection (3), the employer, as to the employee only, shall be deemed to have secured the payment of compensation under this chapter.*



Kentucky

F. Where does it apply?

In Kentucky – Outside Kentucky KRS 342.670

- 4. Any professional athlete, coach, or trainer who has been hired outside this Commonwealth by an employer domiciled in a foreign state, including professional baseball, basketball, football, and ice-hockey clubs, is exempted from the provisions of this chapter while that employee is temporarily within this Commonwealth doing work for the employer, if the foreign employer has secured workers' compensation insurance coverage under the workers' compensation law of the foreign state, so as to cover the employee's employment while in this Commonwealth. The benefits under the workers' compensation law of the foreign state shall be the exclusive remedy against that employer and any affiliated club for any injury, whether resulting in death or not, received by any employee while working for that employer in this Commonwealth.*





Kentucky

F. Where does it apply? In Kentucky – Outside Kentucky KRS 342.670

5. *As used in this section:*

- (a) *"United States" includes only the states of the United States and the District of Columbia;*
- (b) *"State" includes any state of the United States, the District of Columbia, or any province of Canada;*
- (c) *"Carrier" includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workers' compensation law;*



Kentucky

F. Where does it apply? In Kentucky – Outside Kentucky KRS 342.670

- (d) A person's employment is principally localized in this or another state when:
 - 1. His employer has a place of business in this or the other state and he regularly works at or from that place of business, or
 - 2. If subparagraph 1. foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or the other state;
- (e) An employee whose duties require him to travel regularly in the service of his employer in this and one (1) or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall be given effect under this chapter;
- (f) "Workers' compensation law" includes "occupational disease law."



State

- E. What benefits are paid?
- F. Duration of Benefits?
- G. Definition of Benefits
 - (a) Temporary Total Disability (TTD)
 - (b) Temporary Partial Disability (TPD)
 - (c) Permanent Partial Disability (PPD)
 - (d) Permanent Total Disability (PTD)
- H. Adjudication System





Employer

Why be involved?

- A. Your employee knows you
- B. Cooperate – with counsel, insurance, etc.
- C. Safety – be conscious of it
- D. Know your employee





www.Labor.Ky.Gov/Workersclaims

What we are going/trying to do to improve the system

A. Online Tools

1. Look up – what you can and can't
2. Filing – First Reports, etc.
3. Claims
4. Management of Claims
5. Information – web site



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What we are going/trying to do to improve the system

B. Laws

1. Medicals
2. Indemnity Benefits





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What we are going/trying to do to improve the system

C. Regulations

1. Practice Regs
2. Medical Fee Disputes
3. Medical Cost Containment
 - a) Utilization Review
 - b) Managed Care
 - c) Fee Schedules





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