



Apr 18, 2018

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Comprehensive Changes to Kentucky Workers' Compensation Law

Governor Bevin recently signed off on House Bill 2, after it passed with a vote of 55–39. Hailed by some as a workers' compensation modernization bill, it made changes throughout the entire system. These changes are intended to save money for employers by limiting liability. Some of the changes limit the duration of liability while other changes completely bar claims that would have been allowed under the previous law. Below is a summary of the major changes that will occur when the bill goes into effect, on or about July 12, 2018.

Termination of Income Benefits – KRS 342.730(4)

Possibly the most anticipated change brought by House Bill 2 is the legislature's response to *Parker v. Webster County Coal, LLC*. The previous version of KRS 342.730(4) terminated income benefits when an employee "qualifies for normal old-age Social Security retirement benefits" or two years after the employee's injury or last exposure, whichever occurs later. In *Parker*, the Supreme Court of Kentucky found this provision to be unconstitutional on equal protection grounds because it applied only to employees who *actually qualified* for Social Security. Thus, the statute terminated benefits for someone upon qualifying for old-age Social Security, but not for someone who happened to be the same age but did not qualify. *Parker v. Webster County Coal, LLC (Dotiki Mine)*, 529 S.W.3d 759 (2017).

The legislature addressed *Parker* by amending the provision to terminate income benefits when the employee reaches the age of 70 or four years after the injury or last exposure and removes all mention of Social Security. The new version should now pass constitutional muster since the statute seeks to prevent a worker from receiving duplicate benefits. *Id.* at 767–768.

Voluntary Intoxication: Presumption of Causation – KRS 342.610(3)–(4)

An employer is not liable for compensation in cases of injury, occupational disease, or death of the employee **if the employee willfully intended to** injure or kill himself, herself, or another. The amendment of this section not only adds the “willfully intended” language, but removes the portion related to voluntary intoxication. Instead, voluntary intoxication is addressed in a new section and is worth quoting:

“If an employee voluntarily introduced an illegal, nonprescribed substance or substances or a prescribed substance or substances in amounts in excess of prescribed amounts into his or her body detected in the blood, as measured by a scientifically reliable test, that could cause a disturbance of mental or physical capacities, it shall be presumed that the illegal, nonprescribed substance or substances or the prescribed substance or substances in amounts in excess of prescribed amounts caused the injury, occupational disease, or death of the employee and liability for compensation shall not apply to the injury, occupational disease, or death to the employee.”

Although a bit unwieldy, this new section creates a presumption that the voluntary intoxication caused the injury, occupational disease, or death and precludes liability of the employer in such a case. Presumably, an expert would need to provide an opinion regarding the levels of the substance in the blood and whether that level could be sufficient to cause a disturbance of mental or physical capacities. This new rebuttable presumption appears to be a pretty low threshold as the requirement is only that the level *could* cause impairment. The burden would then shift to the claimant to show either that it did not actually cause an impairment or that the impairment did not cause the injury, occupational disease, or death. This presumption will come up more and more frequently as Kentucky continues to battle the opioid epidemic.

Cumulative Trauma Claims Barred After Five Years – KRS 342.185(3)

Employees alleging cumulative trauma injuries must give notice and file an application within two years from the date he or she is told by a physician that the cumulative trauma is work-related. However, a cumulative trauma claim will be forever barred if an application is not filed with the Commissioner within five years after the last injurious exposure. This change mirrors the current statute of limitations for occupational diseases.

Duration of Obligation to Pay Medical Benefits – KRS 342.020(3)(a)-(d)

In claims with an award of Permanent Partial Disability not involving one of the enumerated injuries in KRS 342.020(9) (including amputation and hearing loss, among others), the employer's obligation to pay medical benefits will continue for 780 weeks (15 years) from the date of injury or date of last exposure. The Department of Workers' Claims Commissioner must notify the injured worker of the right to file an application for the continuation of benefits. This notification must occur 754 weeks (14.5 years) from the date of injury or date of last exposure.

The injured worker shall receive a continuation of benefits only if **all three** of the following requirements are met:

- (1) The injured worker files an application within 75 days prior to the termination of the 780-week period;
- (2) the injured worker demonstrates that continued medical treatment is reasonably necessary and related to the claim; and
- (3) an Administrative Law Judge determines and orders that continued medical benefits are reasonably necessary and related.

However, if the injured worker fails to make a timely application, or if an Administrative Law Judge determines that medical benefits are not reasonably necessary or not related, any future medical treatment is deemed unrelated to the work injury, thus ending the

employer's obligation to pay medical benefits.

If the application deadline is missed, future medical benefits will be barred forever. Unfortunately, the statute is silent on a remedy in the event the required notice is not timely or not given at all.

Conclusion

Many of the changes to Kentucky's Workers' Compensation statute are technical and wide-sweeping. Still, the bill's sponsors are hopeful they will lead to lower claim costs for employers.

If you have questions about this or any workers' compensation matter, please contact [Elise Elam](#) or any other attorney on Frost Brown Todd's [Workers' Compensation Service Team](#).

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