

1 AN ACT relating to workers' compensation and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 342.0011 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

- 5 (1) "Injury" means any work-related traumatic event or series of traumatic events,
6 including cumulative trauma, arising out of and in the course of employment which
7 is the proximate cause producing a harmful change in the human organism
8 evidenced by objective medical findings. "Injury" does not include the effects of the
9 natural aging process, and does not include any communicable disease unless the
10 risk of contracting the disease is increased by the nature of the employment.
11 "Injury" when used generally, unless the context indicates otherwise, shall include
12 an occupational disease and damage to a prosthetic appliance, but shall not include
13 a psychological, psychiatric, or stress-related change in the human organism, unless
14 it is a direct result of a physical injury;
- 15 (2) "Occupational disease" means a disease arising out of and in the course of the
16 employment;
- 17 (3) An occupational disease as defined in this chapter shall be deemed to arise out of
18 the employment if there is apparent to the rational mind, upon consideration of all
19 the circumstances, a causal connection between the conditions under which the
20 work is performed and the occupational disease, and which can be seen to have
21 followed as a natural incident to the work as a result of the exposure occasioned by
22 the nature of the employment and which can be fairly traced to the employment as
23 the proximate cause. The occupational disease shall be incidental to the character of
24 the business and not independent of the relationship of employer and employee. An
25 occupational disease need not have been foreseen or expected but, after its
26 contraction, it must appear to be related to a risk connected with the employment
27 and to have flowed from that source as a rational consequence;

- 1 (4) "Injurious exposure" shall mean that exposure to occupational hazard which would,
2 independently of any other cause whatsoever, produce or cause the disease for
3 which the claim is made;
- 4 (5) "Death" means death resulting from an injury or occupational disease;
- 5 (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the
6 liability of employers under this chapter and includes a self-insurer;
- 7 (7) "Self-insurer" is an employer who has been authorized under the provisions of this
8 chapter to carry his own liability on his employees covered by this chapter;
- 9 (8) "Department" means the Department of Workers' Claims in the Labor Cabinet;
- 10 (9) "Commissioner" means the commissioner of the Department of Workers' Claims
11 under the direction and supervision of the secretary of the Labor Cabinet;
- 12 (10) "Board" means the Workers' Compensation Board;
- 13 (11) (a) "Temporary total disability" means the condition of an employee who has not
14 reached maximum medical improvement from an injury and has not reached a
15 level of improvement that would permit a return to employment;
- 16 (b) "Permanent partial disability" means the condition of an employee who, due to
17 an injury, has a permanent disability rating but retains the ability to work; and
- 18 (c) "Permanent total disability" means the condition of an employee who, due to
19 an injury, has a permanent disability rating and has a complete and permanent
20 inability to perform any type of work as a result of an injury, except that total
21 disability shall be irrebuttably presumed to exist for an injury that results in:
- 22 1. Total and permanent loss of sight in both eyes;
- 23 2. Loss of both feet at or above the ankle;
- 24 3. Loss of both hands at or above the wrist;
- 25 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at
26 or above the wrist;
- 27 5. Permanent and complete paralysis of both arms, both legs, or one (1)

1 arm and one (1) leg;

2 6. Incurable insanity or imbecility; or

3 7. Total loss of hearing;

4 (12) "Income benefits" means payments made under the provisions of this chapter to the
5 disabled worker or his dependents in case of death, excluding medical and related
6 benefits;

7 (13) "Medical and related benefits" means payments made for medical, hospital, burial,
8 and other services as provided in this chapter, other than income benefits;

9 (14) "Compensation" means all payments made under the provisions of this chapter
10 representing the sum of income benefits and medical and related benefits;

11 (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical
12 rehabilitation services, medicines, and fittings for artificial or prosthetic devices;

13 (16) "Person" means any individual, partnership, limited partnership, limited liability
14 company, firm, association, trust, joint venture, corporation, or legal representative
15 thereof;

16 (17) "Wages" means, in addition to money payments for services rendered, the
17 reasonable value of board, rent, housing, lodging, fuel, or similar advantages
18 received from the employer, and gratuities received in the course of employment
19 from persons other than the employer as evidenced by the employee's federal and
20 state tax returns;

21 (18) "Agriculture" means the operation of farm premises, including the planting,
22 cultivation, producing, growing, harvesting, and preparation for market of
23 agricultural or horticultural commodities thereon, the raising of livestock for food
24 products and for racing purposes, and poultry thereon, and any work performed as
25 an incident to or in conjunction with the farm operations, including the sale of
26 produce at on-site markets and the processing of produce for sale at on-site markets.
27 It shall not include the commercial processing, packing, drying, storing, or canning

1 of such commodities for market, or making cheese or butter or other dairy products
2 for market;

3 (19) "Beneficiary" means any person who is entitled to income benefits or medical and
4 related benefits under this chapter;

5 (20) "United States," when used in a geographic sense, means the several states, the
6 District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the
7 territories of the United States;

8 (21) "Alien" means a person who is not a citizen, a national, or a resident of the United
9 States or Canada. Any person not a citizen or national of the United States who
10 relinquishes or is about to relinquish his residence in the United States shall be
11 regarded as an alien;

12 (22) "Insurance carrier" means every insurance carrier or insurance company authorized
13 to do business in the Commonwealth writing workers' compensation insurance
14 coverage and includes the Kentucky Employers Mutual Insurance Authority and
15 every self-insured group operating under the provisions of this chapter;

16 (23) (a) "Severance or processing of coal" means all activities performed in the
17 Commonwealth at underground, auger, and surface mining sites; all activities
18 performed at tipple or processing plants that clean, break, size, or treat coal;
19 and all activities performed at coal loading facilities for trucks, railroads, and
20 barges. Severance or processing of coal shall not include acts performed by a
21 final consumer if the acts are performed at the site of final consumption.

22 (b) "Engaged in severance or processing of coal" shall include all individuals,
23 partnerships, limited partnerships, limited liability companies, corporations,
24 joint ventures, associations, or any other business entity in the Commonwealth
25 which has employees on its payroll who perform any of the acts stated in
26 paragraph (a) of this subsection, regardless of whether the acts are performed
27 as owner of the coal or on a contract or fee basis for the actual owner of the

1 coal. A business entity engaged in the severance or processing of coal,
2 including but not limited to administrative or selling functions, shall be
3 considered wholly engaged in the severance or processing of coal for the
4 purpose of this chapter. However, a business entity which is engaged in a
5 separate business activity not related to coal, for which a separate premium
6 charge is not made, shall be deemed to be engaged in the severance or
7 processing of coal only to the extent that the number of employees engaged in
8 the severance or processing of coal bears to the total number of employees.
9 Any employee who is involved in the business of severing or processing of
10 coal and business activities not related to coal shall be prorated based on the
11 time involved in severance or processing of coal bears to his total time;

12 (24) "Premium" for every self-insured group means any and all assessments levied on its
13 members by such group or contributed to it by the members thereof. For special
14 fund assessment purposes, "premium" also includes any and all membership dues,
15 fees, or other payments by members of the group to associations or other entities
16 used for underwriting, claims handling, loss control, premium audit, actuarial, or
17 other services associated with the maintenance or operation of the self-insurance
18 group;

19 (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for
20 insurance companies means direct written premiums as reported in the annual
21 statement to the Department of Insurance by insurance companies, except that
22 "premiums received" includes premiums charged off or deferred, and, on
23 insurance policies or other evidence of coverage with provisions for
24 deductibles, the calculated cost for coverage, including experience
25 modification and premium surcharge or discount, prior to any reduction for
26 deductibles. The rates, factors, and methods used to calculate the cost for
27 coverage under this paragraph for insurance policies or other evidence of

1 coverage with provisions for deductibles shall be the same rates, factors, and
2 methods normally used by the insurance company in Kentucky to calculate the
3 cost for coverage for insurance policies or other evidence of coverage without
4 provisions for deductibles, except that, for insurance policies or other
5 evidence of coverage with provisions for deductibles effective on or after
6 January 1, 1995, the calculated cost for coverage shall not include any
7 schedule rating modification, debits, or credits. For policies with provisions
8 for deductibles with effective dates on or after January 1, 1995, assessments
9 shall be imposed on premiums received as calculated by the deductible
10 program adjustment. The cost for coverage calculated under this paragraph by
11 insurance companies that issue only deductible insurance policies in Kentucky
12 shall be actuarially adequate to cover the entire liability of the employer for
13 compensation under this chapter, including all expenses and allowances
14 normally used to calculate the cost for coverage. For policies with provisions
15 for deductibles with effective dates of May 6, 1993, through December 31,
16 1993, for which the insurance company did not report premiums and remit
17 special fund assessments based on the calculated cost for coverage prior to the
18 reduction for deductibles, "premiums received" includes the initial premium
19 plus any reimbursements invoiced for losses, expenses, and fees charged
20 under the deductibles. The special fund assessment rates in effect for
21 reimbursements invoiced for losses, expenses, or fees charged under the
22 deductibles shall be those percentages in effect on the effective date of the
23 insurance policy. For policies covering leased employees as defined in KRS
24 342.615, "premiums received" means premiums calculated using the
25 experience modification factor of each lessee as defined in KRS 342.615 for
26 each leased employee for that portion of the payroll pertaining to the leased
27 employee.

- 1 (b) "Direct written premium" for insurance companies means the gross premium
2 written less return premiums and premiums on policies not taken but
3 including policy and membership fees.
- 4 (c) "Premium," for policies effective on or after January 1, 1994, for insurance
5 companies means all consideration, whether designated as premium or
6 otherwise, for workers' compensation insurance paid to an insurance company
7 or its representative, including, on insurance policies with provisions for
8 deductibles, the calculated cost for coverage, including experience
9 modification and premium surcharge or discount, prior to any reduction for
10 deductibles. The rates, factors, and methods used to calculate the cost for
11 coverage under this paragraph for insurance policies or other evidence of
12 coverage with provisions for deductibles shall be the same rates, factors, and
13 methods normally used by the insurance company in Kentucky to calculate the
14 cost for coverage for insurance policies or other evidence of coverage without
15 provisions for deductibles, except that, for insurance policies or other
16 evidence of coverage with provisions for deductibles effective on or after
17 January 1, 1995, the calculated cost for coverage shall not include any
18 schedule rating modifications, debits, or credits. For policies with provisions
19 for deductibles with effective dates on or after January 1, 1995, assessments
20 shall be imposed as calculated by the deductible program adjustment. The cost
21 for coverage calculated under this paragraph by insurance companies that
22 issue only deductible insurance policies in Kentucky shall be actuarially
23 adequate to cover the entire liability of the employer for compensation under
24 this chapter, including all expenses and allowances normally used to calculate
25 the cost for coverage. For policies with provisions for deductibles with
26 effective dates of May 6, 1993, through December 31, 1993, for which the
27 insurance company did not report premiums and remit special fund

1 assessments based on the calculated cost for coverage prior to the reduction
2 for deductibles, "premium" includes the initial consideration plus any
3 reimbursements invoiced for losses, expenses, or fees charged under the
4 deductibles.

5 (d) "Return premiums" for insurance companies means amounts returned to
6 insureds due to endorsements, retrospective adjustments, cancellations,
7 dividends, or errors.

8 (e) "Deductible program adjustment" means calculating premium and premiums
9 received on a gross basis without regard to the following:

- 10 1. Schedule rating modifications, debits, or credits;
- 11 2. Deductible credits; or
- 12 3. Modifications to the cost of coverage from inception through and
13 including any audit that are based on negotiated retrospective rating
14 arrangements, including but not limited to large risk alternative rating
15 options;

16 (26) "Insurance policy" for an insurance company or self-insured group means the term
17 of insurance coverage commencing from the date coverage is extended, whether a
18 new policy or a renewal, through its expiration, not to exceed the anniversary date
19 of the renewal for the following year;

20 (27) "Self-insurance year" for a self-insured group means the annual period of
21 certification of the group created pursuant to KRS 342.350(4) and 304.50-010;

22 (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1)
23 shall be the projected value of the employer's workers' compensation claims for the
24 next calendar year as calculated by the commissioner using generally-accepted
25 actuarial methods as follows:

26 (a) The base period shall be the earliest three (3) calendar years of the five (5)
27 calendar years immediately preceding the calendar year for which the

1 calculation is made. The commissioner shall identify each claim of the
2 employer which has an injury date or date of last injurious exposure to the
3 cause of an occupational disease during each one (1) of the three (3) calendar
4 years to be used as the base, and shall assign a value to each claim. The value
5 shall be the total of the indemnity benefits paid to date and projected to be
6 paid, adjusted to current benefit levels, plus the medical benefits paid to date
7 and projected to be paid for the life of the claim, plus the cost of medical and
8 vocational rehabilitation paid to date and projected to be paid. Adjustment to
9 current benefit levels shall be done by multiplying the weekly indemnity
10 benefit for each claim by the number obtained by dividing the statewide
11 average weekly wage which will be in effect for the year for which the
12 premium is being calculated by the statewide average weekly wage in effect
13 during the year in which the injury or date of the last exposure occurred. The
14 total value of the claims using the adjusted weekly benefit shall then be
15 calculated by the commissioner. Values for claims in which awards have been
16 made or settlements reached because of findings of permanent partial or
17 permanent total disability shall be calculated using the mortality and interest
18 discount assumptions used in the latest available statistical plan of the
19 advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The
20 sum of all calculated values shall be computed for all claims in the base
21 period;

- 22 (b) The commissioner shall obtain the annual payroll for each of the three (3)
23 years in the base period for each employer carrying his own risk from records
24 of the department and from the records of the Department of Workforce
25 Investment, Education and Workforce Development Cabinet. The
26 commissioner shall multiply each of the three (3) years of payroll by the
27 number obtained by dividing the statewide average weekly wage which will

1 be in effect for the year in which the premium is being calculated by the
2 statewide average weekly wage in effect in each of the years of the base
3 period;

4 (c) The commissioner shall divide the total of the adjusted claim values for the
5 three (3) year base period by the total adjusted payroll for the same three (3)
6 year period. The value so calculated shall be multiplied by 1.25 and shall then
7 be multiplied by the employer's most recent annualized payroll, calculated
8 using records of the department and the Department of Workforce Investment
9 data which shall be made available for this purpose on a quarterly basis as
10 reported, to obtain the premium for the next calendar year for assessment
11 purposes under KRS 342.122;

12 (d) For November 1, 1987, through December 31, 1988, premium for each
13 employer carrying its own risk shall be an amount calculated by the board
14 pursuant to the provisions contained in this subsection and such premium
15 shall be provided to each employer carrying its own risk and to the funding
16 commission on or before January 1, 1988. Thereafter, the calculations set
17 forth in this subsection shall be performed annually, at the time each employer
18 applies or renews its application for certification to carry its own risk for the
19 next twelve (12) month period and submits payroll and other data in support
20 of the application. The employer and the funding commission shall be notified
21 at the time of the certification or recertification of the premium calculated by
22 the commissioner, which shall form the employer's basis for assessments
23 pursuant to KRS 342.122 for the calendar year beginning on January 1
24 following the date of certification or recertification;

25 (e) If an employer having fewer than five (5) years of doing business in this state
26 applies to carry its own risk and is so certified, its premium for the purposes of
27 KRS 342.122 shall be based on the lesser number of years of experience as

1 may be available including the two (2) most recent years if necessary to create
2 a three (3) year base period. If the employer has less than two (2) years of
3 operation in this state available for the premium calculation, then its premium
4 shall be the greater of the value obtained by the calculation called for in this
5 subsection or the amount of security required by the commissioner pursuant to
6 KRS 342.340(1);

7 (f) If an employer is certified to carry its own risk after having previously insured
8 the risk, its premium shall be calculated using values obtained from claims
9 incurred while insured for as many of the years of the base period as may be
10 necessary to create a full three (3) year base. After the employer is certified to
11 carry its own risk and has paid all amounts due for assessments upon
12 premiums paid while insured, the employer shall be assessed only upon the
13 premium calculated under this subsection;

14 (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated
15 as set forth in this subsection; and

16 (h) Notwithstanding any other provision of this subsection, the premium of any
17 employer authorized to carry its own risk for purposes of assessments due
18 under this chapter shall be no less than thirty cents (\$0.30) per one hundred
19 dollars (\$100) of the employer's most recent annualized payroll for employees
20 covered by this chapter;

21 (29) "SIC code" as used in this chapter means the Standard Industrial Classification
22 Code contained in the latest edition of the Standard Industrial Classification Manual
23 published by the Federal Office of Management and Budget;

24 (30) "Investment interest" means any pecuniary or beneficial interest in a provider of
25 medical services or treatment under this chapter, other than a provider in which that
26 pecuniary or investment interest is obtained on terms equally available to the public
27 through trading on a registered national securities exchange, such as the New York

1 Stock Exchange or the American Stock Exchange, or on the National Association of
2 Securities Dealers Automated Quotation System;

3 (31) "Managed health care system" means a health care system that employs gatekeeper
4 providers, performs utilization review, and does medical bill audits;

5 (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists,
6 podiatrists, and osteopathic and chiropractic practitioners acting within the scope of
7 their license issued by the Commonwealth;

8 (33) "Objective medical findings" means information gained through direct observation
9 and testing of the patient applying objective or standardized methods;

10 (34) "Work" means providing services to another in return for remuneration on a regular
11 and sustained basis in a competitive economy;

12 (35) "Permanent impairment rating" means percentage of whole body impairment caused
13 by the injury or occupational disease as determined by the "Guides to the Evaluation
14 of Permanent Impairment";

15 (36) "Permanent disability rating" means the permanent impairment rating selected by an
16 administrative law judge times the factor set forth in the table that appears at KRS
17 342.730(1)(b);~~and~~

18 (37) "Guides to the Evaluation of Permanent Impairment" means, except as provided in
19 KRS 342.262:

20 (a) The fifth edition published by the American Medical Association; and

21 (b) For psychological impairments, Chapter 12 of the second edition published by
22 the American Medical Association;~~and~~

23 **(38) "COVID-19" means the novel coronavirus identified as SARS-CoV-2, or a virus**
24 **mutating from SARS-CoV-2, or any variant of SARS-CoV-2, and medical**
25 **conditions associated with either virus.**

26 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO
27 READ AS FOLLOWS:

1 (1) Notwithstanding any other statute, if any employer requires any immunization
2 relating to COVID-19 as a condition of continued or new employment, or
3 imposes additional requirements or workplace conditions upon employees who
4 decline to receive immunization relating to COVID-19, or provides a bonus or
5 other additional compensation to any employee who receives immunization
6 relating to COVID-19, and the employee develops an adverse reaction in relation
7 to that immunization, then the adverse reaction and any sickness, disease,
8 trauma, injury, or condition arising from it shall be considered an occupational
9 disease.

10 (a) For purposes of this section, a rebuttable presumption shall arise that an
11 adverse reaction occurred from the immunization if:

12 1. The adverse reaction or sickness, disease, trauma, injury, or condition
13 arising from it was not present prior to administration of the
14 immunization; and

15 2. The adverse reaction or sickness, disease, trauma, injury, or condition
16 arising from it occurs within fourteen (14) days of administration of
17 any dose of the immunization.

18 (b) Nothing in this subsection shall preclude an employee from otherwise
19 demonstrating that the immunization was the cause of any particular
20 adverse reaction and any sickness, disease, trauma, injury, or condition
21 arising from it.

22 (2) This section shall not apply in any instance where an employer is made immune
23 under 42 U.S.C. sec. 247d-6d.

24 ➔Section 3. Section 2 of this Act is retroactive to December 14, 2020.

25 ➔Section 4. Whereas state and national employers have begun requiring
26 employees to receive COVID-19 vaccines and the health of Kentucky citizens is of the
27 utmost importance, an emergency is declared to exist, and this Act takes effect upon its

- 1 passage and approval by the Governor or upon its otherwise becoming a law.