

1 AN ACT relating to workers' compensation.

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

3 ➔Section 1. KRS 342.315 is amended to read as follows:

4 (1) For workers who have had injuries or occupational hearing loss, the commissioner
5 shall contract with the University of Kentucky and the University of Louisville
6 medical schools to evaluate workers. For workers who have become affected by
7 occupational diseases, the commissioner shall contract with the University of
8 Kentucky and the University of Louisville medical schools, or other~~[physicians~~
9 ~~otherwise]~~ duly qualified physicians~~[as "B" readers who are licensed in the~~
10 ~~Commonwealth and are board-certified pulmonary specialists]~~. Referral for
11 evaluation may be made whenever a medical question is at issue.

12 (2) The physicians and institutions performing evaluations pursuant to this section shall
13 render reports encompassing their findings and opinions in the form prescribed by
14 the commissioner. Except as otherwise provided in KRS 342.316, the clinical
15 findings and opinions of the designated evaluator shall be afforded presumptive
16 weight by administrative law judges and the burden to overcome such findings and
17 opinions shall fall on the opponent of that evidence. When administrative law
18 judges reject the clinical findings and opinions of the designated evaluator, they
19 shall specifically state in the order the reasons for rejecting that evidence.

20 (3) The commissioner or an administrative law judge may, upon the application of any
21 party or upon his own motion, direct appointment by the commissioner, pursuant to
22 subsection (1) of this section, of a medical evaluator to make any necessary medical
23 examination of the employee. Such medical evaluator shall file with the
24 commissioner within fifteen (15) days after such examination a written report. The
25 medical evaluator appointed may charge a reasonable fee not exceeding fees
26 established by the commissioner for those services.

27 (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer

1 or carrier shall pay the cost of the examination. Upon notice from the commissioner
2 that an evaluation has been scheduled, the insurance carrier shall forward within
3 seven (7) days to the employee the expenses of travel necessary to attend the
4 evaluation at a rate equal to that paid to state employees for travel by private
5 automobile while conducting state business.

6 (5) Upon claims in which it is finally determined that the injured worker was not the
7 employee at the time of injury of an employer covered by this chapter, the special
8 fund shall reimburse the carrier for any evaluation performed pursuant to this
9 section for which the carrier has been erroneously compelled to make payment.

10 (6) Not less often than annually the designee of the secretary of the Cabinet for Health
11 and Family Services shall assess the performance of the medical schools and render
12 findings as to whether evaluations conducted under this section are being rendered
13 in a timely manner, whether examinations are conducted in accordance with
14 medically recognized techniques, whether impairment ratings are in conformity
15 with standards prescribed by the "Guides to the Evaluation of Permanent
16 Impairment," and whether coal workers' pneumoconiosis examinations are
17 conducted in accordance with the standards prescribed in this chapter.

18 (7) The General Assembly finds that good public policy mandates the realization of the
19 potential advantages, both economic and effectual, of the use of telehealth. The
20 commissioner may, to the extent that he or she finds it feasible and appropriate,
21 require the use of telehealth, as defined in KRS 304.17A-005, in the independent
22 medical evaluation process required by this chapter.

23 ➔Section 2. KRS 342.316 is amended to read as follows:

24 (1) (a) The employer liable for compensation for occupational disease shall be the
25 employer in whose employment the employee was last exposed to the hazard
26 of the occupational disease. During any period in which this section is
27 applicable to a coal mine, an operator who acquired it or substantially all of its

1 assets from a person who was its operator on and after January 1, 1973, shall
2 be liable for, and secure the payment of, the benefits which would have been
3 payable by the prior operator under this section with respect to miners
4 previously employed in the mine if it had not been acquired by such later
5 operator. At the same time, however, this subsection does not relieve the prior
6 operator of any liability under this section. Also, it does not affect whatever
7 rights the later operator might have against the prior operator.

8 (b) The time of the beginning of compensation payments shall be the date of the
9 employee's last injurious exposure to the cause of the disease, or the date of
10 actual disability, whichever is later.

11 (2) The procedure with respect to the giving of notice and determination of claims in
12 occupational disease cases and the compensation and medical benefits payable for
13 disability or death due to the disease shall be the same as in cases of accidental
14 injury or death under the general provisions of this chapter, except that notice of
15 claim shall be given to the employer as soon as practicable after the employee first
16 experiences a distinct manifestation of an occupational disease in the form of
17 symptoms reasonably sufficient to apprise the employee that he or she has
18 contracted the disease, or a diagnosis of the disease is first communicated to him or
19 her, whichever shall first occur.

20 (3) The procedure for filing occupational disease claims shall be as follows:

21 (a) The application for resolution of claim shall set forth the complete work
22 history of the employee with a concise description of injurious exposure to a
23 specific occupational disease, together with the name and addresses of the
24 employer or employers with the approximate dates of employment. The
25 application shall also include at least one (1) written medical report supporting
26 his or her claim. This medical report shall be made on the basis of clinical or
27 X-ray examination performed in accordance with accepted medical standards

1 and shall contain full and complete statements of all examinations performed
2 and the results thereof. The report shall be made by a duly-licensed physician.
3 The commissioner shall promulgate administrative regulations which
4 prescribe the format of the medical report required by this section and the
5 manner in which the report shall be completed.

6 1. For coal-related occupational pneumoconiosis claims, each clinical
7 examination shall include a chest X-ray interpretation by a National
8 Institute of Occupational Safety and Health (NIOSH) certified "B"
9 reader. The chest X-ray upon which the report is made shall be filed
10 with the application as well as spirometric tests when pulmonary
11 dysfunction is alleged.

12 2. For other compensable occupational pneumoconiosis claims, each
13 clinical examination shall include a chest X-ray examination and
14 appropriate pulmonary function tests.

15 (b) To be admissible, medical evidence offered in any proceeding under this
16 chapter for determining a claim for occupational pneumoconiosis resulting
17 from exposure to coal dust shall comply with accepted medical standards as
18 follows:

19 1. Chest X-rays shall be of acceptable quality with respect to exposure and
20 development and shall be indelibly labeled with the date of the X-ray
21 and the name and Social Security number of the claimant. Physicians'
22 reports of X-ray interpretations shall: identify the claimant by name and
23 Social Security number; include the date of the X-ray and the date of the
24 report; classify the X-ray interpretation using the latest ILO
25 Classification and be accompanied by a completed copy of the latest ILO
26 Classification report. Only interpretations by National Institute of
27 Occupational Safety and Health (NIOSH) certified "B" readers shall be

- 1 admissible.
- 2 2. Spirometric testing shall be conducted in accordance with the standards
- 3 recommended in the "Guides to the Evaluation of Permanent
- 4 Impairment" and the 1978 ATS epidemiology standardization project
- 5 with the exception that the predicted normal values for lung function
- 6 shall not be adjusted based upon the race of the subject. The FVC or the
- 7 FEV1 values shall represent the largest of such values obtained from
- 8 three (3) acceptable forced expiratory volume maneuvers as corrected to
- 9 BTPS (body temperature, ambient pressure and saturated with water
- 10 vapor at these conditions) and the variance between the two (2) largest
- 11 acceptable FVC values shall be either less than five percent (5%) of the
- 12 largest FVC value or less than one hundred (100) milliliters, whichever
- 13 is greater. The variance between the two (2) largest acceptable FEV1
- 14 values shall be either less than five percent (5%) of the largest FEV1
- 15 value or less than one hundred (100) milliliters, whichever is greater.
- 16 Reports of spirometric testing shall include a description by the
- 17 physician of the procedures utilized in conducting such spirometric
- 18 testing and a copy of the spirometric chart and tracings from which
- 19 spirometric values submitted as evidence were taken. If it is shown that
- 20 the spirometric testing is not valid due to inadequate cooperation or poor
- 21 effort on the part of the claimant, the claimant's right to take or prosecute
- 22 any proceedings under this chapter shall be suspended until the refusal
- 23 or obstruction ceases. No compensation shall be payable for the period
- 24 during which the refusal or obstruction continues.
- 25 3. The commissioner shall promulgate administrative regulations pursuant
- 26 to KRS Chapter 13A as necessary to effectuate the purposes of this
- 27 section. The commissioner shall periodically review the applicability of

1 the spirometric test values contained in the "Guides to the Evaluation of
2 Permanent Impairment" and may by administrative regulation substitute
3 other spirometric test values which are found to be more closely
4 representative of the normal pulmonary function of the coal mining
5 population.

6 4. The procedure for determination of occupational disease claims shall be
7 as follows:

8 a. Immediately upon receipt of an application for resolution of claim,
9 the commissioner shall notify the responsible employer and all
10 other interested parties and shall furnish them with a full and
11 complete copy of the application.

12 b. The commissioner shall assign the claim to an administrative law
13 judge and shall promptly refer the employee to ~~["a duly qualified~~
14 ~~"B" reader physician who is licensed in the Commonwealth and is~~
15 ~~a board certified pulmonary specialist as set forth pursuant to KRS~~
16 ~~342.315 and 342.794(1)]~~ **such physician or medical facility as the**
17 **commissioner may select for examination.** The report from this
18 examination shall be provided to all parties of record. The
19 employee shall not be referred by the commissioner for
20 examination within two (2) years following any prior referral for
21 examination for the same disease.

22 c. The commissioner shall develop a procedure to annually audit the
23 performance of physicians and facilities that are selected to
24 perform examinations pursuant to this section. The audit shall
25 include an evaluation of the physician and facility with respect to
26 the timeliness and completeness of the reports and the frequency at
27 which the physician's classification of an X-ray differs from those

1 of the other physicians of that X-ray. The commissioner shall
2 remove a physician or facility from selection consideration if the
3 physician or facility consistently renders incomplete or untimely
4 reports or if the physician's interpretations of X-rays are not in
5 conformity with the readings of other physicians of record at least
6 fifty percent (50%) of the time. The report required under this
7 subdivision shall be provided to the Interim Joint Committee on
8 Economic Development and Workforce Investment on or before
9 July 1, 2019, and on or before July 1 of each year thereafter.

10 d. In coal workers' pneumoconiosis claims, if the physician selected
11 by the commissioner interprets an X-ray as positive for
12 complicated coal workers' pneumoconiosis, the commissioner
13 shall refer the employee to the facility at which the claimant was
14 previously evaluated for a computerized tomography scan in order
15 to verify the findings. The computerized tomography scan shall be
16 interpreted by the facility and a report shall be filed with the
17 commissioner. The employer, insurer, or payment obligor shall pay
18 the cost of the examination pursuant to the medical fee schedule.
19 The administrative law judge may rely upon the findings in the
20 report in accepting or rejecting ILO radiographic evidence of the
21 disease required under KRS 342.732 for benefit determination.

22 e. Within forty-five (45) days following the notice of filing an
23 application for resolution of claim, the employer or carrier shall
24 notify the commissioner and all parties of record of its acceptance
25 or denial of the claim. A denial shall be in writing and shall state
26 the specific basis for the denial.

27 f. The administrative law judge shall conduct such proceedings as

1 are necessary to resolve the claim and shall have authority to grant
2 or deny any relief, including interlocutory relief, to order additional
3 proof, to conduct a benefit review conference, or to take such other
4 action as may be appropriate to resolve the claim.

5 g. Unless a voluntary settlement is reached by the parties, or the
6 parties agree otherwise, the administrative law judge shall issue a
7 written determination within sixty (60) days following a hearing.
8 The written determination shall address all contested issues and
9 shall be enforceable under KRS 342.305.

10 h. Within thirty (30) days of the receipt of the statement for the
11 evaluation, the employer, insurer, or payment obligor shall pay the
12 cost of the examination. Upon notice from the commissioner that
13 an evaluation has been scheduled, the employer, insurer, or
14 payment obligor shall forward the expenses of travel necessary to
15 attend the evaluation at the state employee reimbursement rates to
16 the employee within seven (7) days. However, if the employee has
17 alleged a pulmonary dysfunction but has not filed spirometric
18 evidence as required by paragraph (a) of this subsection at the time
19 the evaluation is scheduled by the commissioner, the employee
20 will be responsible for fifty percent (50%) of the cost of the
21 evaluation.

22 5. The procedure for appeal from a determination of an administrative law
23 judge shall be as set forth in KRS 342.285.

24 (4) (a) The right to compensation under this chapter resulting from an occupational
25 disease shall be forever barred unless a claim is filed with the commissioner
26 within three (3) years after the last injurious exposure to the occupational
27 hazard or after the employee first experiences a distinct manifestation of an

1 occupational disease in the form of symptoms reasonably sufficient to apprise
2 the employee that he or she has contracted the disease, whichever shall last
3 occur; and if death results from the occupational disease within that period,
4 unless a claim therefor be filed with the commissioner within three (3) years
5 after the death; but that notice of claim shall be deemed waived in case of
6 disability or death where the employer, or its insurance carrier, voluntarily
7 makes payment therefor, or if the incurrence of the disease or the death of the
8 employee and its cause was known to the employer. However, the right to
9 compensation for any occupational disease shall be forever barred, unless a
10 claim is filed with the commissioner within five (5) years from the last
11 injurious exposure to the occupational hazard, except that, in cases of
12 radiation disease, asbestos-related disease, or a type of cancer specified in
13 KRS 61.315(11)(b), a claim must be filed within twenty (20) years from the
14 last injurious exposure to the occupational hazard.

15 (b) Income benefits for the disease of pneumoconiosis resulting from exposure to
16 coal dust or death therefrom shall not be payable unless the employee has
17 been exposed to the hazards of such pneumoconiosis in the Commonwealth of
18 Kentucky over a continuous period of not less than two (2) years during the
19 ten (10) years immediately preceding the date of his or her last exposure to
20 such hazard, or for any five (5) of the fifteen (15) years immediately preceding
21 the date of such last exposure.

22 (5) The amount of compensation payable for disability due to occupational disease or
23 for death from the disease, and the time and manner of its payment, shall be as
24 provided for under the general provisions of the Workers' Compensation Act, but:

25 (a) In no event shall the payment exceed the amounts that were in effect at the
26 time of the last injurious exposure;

27 (b) The time of the beginning of compensation payments shall be the date of the

1 employee's last injurious exposure to the cause of the disease, or the date of
2 actual disability, whichever is later; and

3 (c) In case of death where the employee has been awarded compensation or made
4 timely claim within the period provided for in this section, and an employee
5 has suffered continuous disability to the date of his or her death occurring at
6 any time within twenty (20) years from the date of disability, his or her
7 dependents, if any, shall be awarded compensation for his or her death as
8 provided for under the general provisions of the Workers' Compensation Act
9 and in this section, except as provided in KRS 342.750(6).

10 (6) If an autopsy has been performed, no testimony relative thereto shall be admitted
11 unless the employer or its representative has available findings and reports of the
12 pathologist or doctor who performed the autopsy examination.

13 (7) No compensation shall be payable for occupational disease if the employee at the
14 time of entering the employment of the employer by whom compensation would
15 otherwise be payable, falsely represented himself or herself, in writing, as not
16 having been previously disabled, laid-off, or compensated in damages or otherwise,
17 because of the occupational disease, or failed or omitted truthfully to state to the
18 best of his or her knowledge, in answer to written inquiry made by the employer, the
19 place, duration, and nature of previous employment, or, to the best of his or her
20 knowledge, the previous state of his or her health.

21 (8) No compensation for death from occupational disease shall be payable to any
22 person whose relationship to the deceased, which under the provisions of this
23 chapter would give right to compensation, arose subsequent to the beginning of the
24 first compensable disability, except only for after-born children of a marriage
25 existing at the beginning of such disability.

26 (9) Whenever any claimant misconceives his or her remedy and files an application for
27 adjustment of claim under the general provisions of this chapter and it is

1 subsequently discovered, at any time before the final disposition of the cause, that
2 the claim for injury, disability, or death which was the basis for his or her
3 application should properly have been made under the provisions of this section,
4 then the application so filed may be amended in form or substance, or both, to assert
5 a claim for injury, disability, or death under the provisions of this section, and it
6 shall be deemed to have been so filed as amended on the date of the original filing
7 thereof, and compensation may be awarded that is warranted by the whole evidence
8 pursuant to the provisions of this chapter. When amendment of this type is
9 submitted, further or additional evidence may be heard when deemed necessary.
10 Nothing this section contains shall be construed to be or permit a waiver of any of
11 the provisions of this chapter with reference to notice of time for filing of a claim,
12 but notice of filing a claim, if given or done, shall be deemed to be a notice of filing
13 of a claim under provisions of this chapter, if given or done within the time required
14 by this subsection.

15 (10) When an employee has an occupational disease that is covered by this chapter, the
16 employer in whose employment he or she was last injuriously exposed to the hazard
17 of the disease, and the employer's insurance carrier, if any, at the time of the
18 exposure, shall alone be liable therefor, without right to contribution from any prior
19 employer or insurance carrier, except as otherwise provided in this chapter.

20 (11) (a) For claims filed on or before June 30, 2017, income benefits for coal-related
21 occupational pneumoconiosis shall be paid fifty percent (50%) by the
22 Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242
23 and fifty percent (50%) by the employer in whose employment the employee
24 was last exposed to the hazard of that occupational disease.

25 (b) Income benefits for coal-related occupational pneumoconiosis for claims filed
26 after June 30, 2017, shall be paid by the employer in whose employment the
27 employee was last exposed to the hazards of coal workers' pneumoconiosis.

1 (c) Compensation for all other occupational disease shall be paid by the employer
2 in whose employment the employee was last exposed to the hazards of the
3 occupational disease.

4 (12) A concluded claim for benefits by reason of contraction of coal workers'
5 pneumoconiosis in the severance or processing of coal shall bar any subsequent
6 claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless
7 there has occurred in the interim between the conclusion of the first claim and the
8 filing of the second claim at least two (2) years of employment wherein the
9 employee was continuously exposed to the hazards of the disease in the
10 Commonwealth.

11 ➔Section 3. KRS 342.794 is amended to read as follows:

12 (1) The commissioner shall maintain a list of duly qualified "B" reader physicians ~~who~~
13 ~~are licensed in the Commonwealth and are board certified pulmonary specialists,~~
14 ~~currently certified by the National Institute of Occupational Safety and Health~~
15 ~~(NIOSH) who have agreed to perform pulmonary examinations,~~ interpret chest X-
16 rays~~,~~ and review other medical evidence pursuant to KRS 342.316 for a fee to be
17 fixed by the commissioner and paid by the Kentucky coal workers' pneumoconiosis
18 fund or the carrier, whichever is the appropriate payment obligor, the provisions of
19 KRS 342.1242 notwithstanding, for claims filed on or before June 30, 2017, and by
20 the employer for claims filed after June 30, 2017.

21 (2) "B' reader" means a physician who has demonstrated proficiency in evaluating
22 chest roentgenograms for roentgenographic quality and in the use of the ILO
23 classification for interpreting chest roentgenograms for pneumoconiosis and other
24 diseases by taking and passing a specially designed proficiency examination given
25 on behalf of the National Institute of Occupational Safety and Health (NIOSH) or
26 by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or
27 successors.

1 ~~[(3) "Board certified pulmonary specialist" means a physician licensed in the~~
2 ~~Commonwealth who is board certified in internal medicine with a certification in~~
3 ~~the subspecialty of pulmonary medicine by the American Board of Internal~~
4 ~~Medicine.~~