

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 (Effective until July 1, 2019) is amended to read as
4 follows:

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

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

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

- 1 (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer
2 or carrier shall pay the cost of the examination. Upon notice from the commissioner
3 that an evaluation has been scheduled, the insurance carrier shall forward within
4 seven (7) days to the employee the expenses of travel necessary to attend the
5 evaluation at a rate equal to that paid to state employees for travel by private
6 automobile while conducting state business.
- 7 (5) Upon claims in which it is finally determined that the injured worker was not the
8 employee at the time of injury of an employer covered by this chapter, the special
9 fund shall reimburse the carrier for any evaluation performed pursuant to this
10 section for which the carrier has been erroneously compelled to make payment.
- 11 (6) Not less often than annually the designee of the secretary of the Cabinet for Health
12 and Family Services shall assess the performance of the medical schools and render
13 findings as to whether evaluations conducted under this section are being rendered
14 in a timely manner, whether examinations are conducted in accordance with
15 medically recognized techniques, whether impairment ratings are in conformity
16 with standards prescribed by the "Guides to the Evaluation of Permanent
17 Impairment," and whether coal workers' pneumoconiosis examinations are
18 conducted in accordance with the standards prescribed in this chapter.
- 19 (7) The General Assembly finds that good public policy mandates the realization of the
20 potential advantages, both economic and effectual, of the use of telemedicine and
21 telehealth. The commissioner may, to the extent that he or she finds it feasible and
22 appropriate, require the use of telemedicine and telehealth practices, as authorized
23 under KRS 194A.125, in the independent medical evaluation process required by
24 this chapter.
- 25 ➔Section 2. KRS 342.316 is amended to read as follows:
- 26 (1) (a) The employer liable for compensation for occupational disease shall be the
27 employer in whose employment the employee was last exposed to the hazard

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

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

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

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

23 (a) The application for resolution of claim shall set forth the complete work
24 history of the employee with a concise description of injurious exposure to a
25 specific occupational disease, together with the name and addresses of the
26 employer or employers with the approximate dates of employment. The
27 application shall also include at least one (1) written medical report supporting

1 his or her claim. This medical report shall be made on the basis of clinical or
2 X-ray examination performed in accordance with accepted medical standards
3 and shall contain full and complete statements of all examinations performed
4 and the results thereof. The report shall be made by a duly-licensed physician.
5 The commissioner shall promulgate administrative regulations which
6 prescribe the format of the medical report required by this section and the
7 manner in which the report shall be completed.

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

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

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

21 1. Chest X-rays shall be of acceptable quality with respect to exposure and
22 development and shall be indelibly labeled with the date of the X-ray
23 and the name and Social Security number of the claimant. Physicians'
24 reports of X-ray interpretations shall: identify the claimant by name and
25 Social Security number; include the date of the X-ray and the date of the
26 report; classify the X-ray interpretation using the latest ILO
27 Classification and be accompanied by a completed copy of the latest ILO

1 Classification report. Only interpretations by National Institute of
2 Occupational Safety and Health (NIOSH) certified "B" readers shall be
3 admissible.

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

27 3. The commissioner shall promulgate administrative regulations pursuant

1 to KRS Chapter 13A as necessary to effectuate the purposes of this
2 section. The commissioner shall periodically review the applicability of
3 the spirometric test values contained in the "Guides to the Evaluation of
4 Permanent Impairment" and may by administrative regulation substitute
5 other spirometric test values which are found to be more closely
6 representative of the normal pulmonary function of the coal mining
7 population.

8 4. The procedure for determination of occupational disease claims shall be
9 as follows:

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

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

24 c. The commissioner shall develop a procedure to annually audit the
25 performance of physicians and facilities that are selected to
26 perform examinations pursuant to this section. The audit shall
27 include an evaluation of the physician and facility with respect to

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

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

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

1 the specific basis for the denial.

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

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

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

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

26 (4) (a) The right to compensation under this chapter resulting from an occupational
27 disease shall be forever barred unless a claim is filed with the commissioner

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

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

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

27 (a) In no event shall the payment exceed the amounts that were in effect at the

- 1 time of the last injurious exposure;
- 2 (b) The time of the beginning of compensation payments shall be the date of the
3 employee's last injurious exposure to the cause of the disease, or the date of
4 actual disability, whichever is later; and
- 5 (c) In case of death where the employee has been awarded compensation or made
6 timely claim within the period provided for in this section, and an employee
7 has suffered continuous disability to the date of his or her death occurring at
8 any time within twenty (20) years from the date of disability, his or her
9 dependents, if any, shall be awarded compensation for his or her death as
10 provided for under the general provisions of the Workers' Compensation Act
11 and in this section, except as provided in KRS 342.750(6).
- 12 (6) If an autopsy has been performed, no testimony relative thereto shall be admitted
13 unless the employer or its representative has available findings and reports of the
14 pathologist or doctor who performed the autopsy examination.
- 15 (7) No compensation shall be payable for occupational disease if the employee at the
16 time of entering the employment of the employer by whom compensation would
17 otherwise be payable, falsely represented himself or herself, in writing, as not
18 having been previously disabled, laid-off, or compensated in damages or otherwise,
19 because of the occupational disease, or failed or omitted truthfully to state to the
20 best of his or her knowledge, in answer to written inquiry made by the employer, the
21 place, duration, and nature of previous employment, or, to the best of his or her
22 knowledge, the previous state of his or her health.
- 23 (8) No compensation for death from occupational disease shall be payable to any
24 person whose relationship to the deceased, which under the provisions of this
25 chapter would give right to compensation, arose subsequent to the beginning of the
26 first compensable disability, except only for after-born children of a marriage
27 existing at the beginning of such disability.

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

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

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

27 (b) Income benefits for coal-related occupational pneumoconiosis for claims filed

1 after June 30, 2017, shall be paid by the employer in whose employment the
2 employee was last exposed to the hazards of coal workers' pneumoconiosis.

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

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

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

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

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

1 by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or
2 successors.

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