

# EMPLOYMENT LAW SUMMARY

## Kentucky Workers Compensation - Claims Process



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Workers compensation is a system of no-fault insurance that provides monetary and medical benefits to employees or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Kentucky Workers' Compensation Act (WCA) establishes the procedures for handling claims in the state. The Kentucky [Department of Workers' Claims](#) (DWC) is responsible for administering the workers' compensation system and resolving disputed claims in the state.

This Employment Law Summary provides a general overview of the claims process for most work-related injuries and diseases in Kentucky. However, other procedures may apply for certain specific conditions, such as coal-related occupational pneumoconiosis certain types of cancer and any radiation- or asbestos-related diseases.

### INJURY REPORT

If a work-related condition results in an employee's absence from work for more than one day, the employer (or its insurer, if applicable) must report it to the DWC within **one week** after the later of either the date the injury occurred or the date the employer first had knowledge of the condition.

### FORMAL CLAIMS

Any party may initiate a formal workers' compensation claim by filing an Application for Resolution of Claim with the DWC. As of July 1, 2017, all claims must be filed using the DWC's [Litigation Management System](#) (LMS).

In order to preserve any right to receive benefits for a work-related condition, an employee must file a claim application within the time period specified by the WCA. The time periods depend on the type of injury an employee claims. These are explained in the table on the next page.

Once the DWC receives a claim application form, it will assign the case to an administrative law judge (ALJ) and send a scheduling order to the parties. The scheduling order will include a date for a benefit review conference along with several deadlines, all within a **105-day period**, by which each party must complete evidence-gathering activities for the claim.

The table below provides more information about times for filing claims.

Accidental Injuries

Cumulative Trauma Injuries

Occupational Diseases

Accidental Injuries	Cumulative Trauma Injuries	Occupational Diseases
<p>Employees must file within <b>two years</b> after the later of:</p> <ul style="list-style-type: none"> <li>•The date of the accident that caused the injury; or</li> <li>•The date the employer last paid benefits for the injury.</li> </ul>	<p>As of July 14, 2018, employees must file within <b>two years</b> after a physician tells them the condition is work related. However, a claim is forever barred if an application is not filed within <b>five years</b> after the last injurious exposure.</p>	<p>Employees must file within <b>three years</b> after the later of:</p> <ul style="list-style-type: none"> <li>•The employee’s last injurious exposure to the occupational hazard that caused an occupational disease;</li> <li>•The date the employee first experienced a distinct manifestation of the occupational disease; or</li> <li>•The date the employer last paid benefits for the disease. •However, a claim is forever barred if an application is not filed within <b>five years</b> after the last injurious exposure.</li> </ul>

## COST OF COVERAGE

Employers must deny or accept a claim that has been filed with the DWC within **45 days** after a scheduling order is issued. Employers (or their insurers, if applicable) must file [Form 111](#) to satisfy this requirement. Upon filing, employers must specify all admitted and denied claims and provide the bases for any denials

## BENEFIT REVIEW CONFERENCE

A benefit review conference is an informal proceeding designed to expedite the claim process and, if possible, avoid the need for a hearing. All parties must attend the benefit review conference, either in person or through a representative who has settlement authority.

Employers	Claimants
<ul style="list-style-type: none"> <li>•An employer must bring the following to the benefit review conference:</li> <li>•A completed Average Weekly Wage Certification (<a href="#">Form AWW-1</a>); and</li> <li>•Copies of any disputed medical bills.</li> </ul>	<ul style="list-style-type: none"> <li>•An employee who filed a claim must bring the following to the benefit review conference:</li> <li>•Copies of unpaid medical bills; and</li> <li>•Documentation of any out-of-pocket expenses.</li> </ul>

During the conference, the ALJ will facilitate the exchange of relevant information between the parties, and the parties must:

- Attempt to resolve controversies and disputed issues;
- Narrow and define disputed issues; and
- Work toward a prompt settlement.

If the parties do not reach an agreement on all disputed issues at the conference, the ALJ will prepare, sign and have the parties sign a summary of all contested and uncontested issues. The ALJ will also schedule a final hearing. The ALJ may order the parties to obtain additional evidence between the conference and the hearing date. However, the contested issues included on the ALJ’s summary are the only issues that may be addressed at the final hearing.

## ADMINISTRATIVE HEARINGS

At a final hearing, the ALJ gives both parties an opportunity to present evidence concerning the contested issues. Although workers’ compensation hearings are similar to court trials, they are designed to be as brief and simple as reasonably possible. Therefore, the ALJ has broad discretion as to how the hearing is conducted and which evidence will be allowed. In addition, the ALJ may continue a hearing and order the parties to submit written arguments after they have presented their evidence.

Once a hearing concludes, the ALJ may either announce its decision to the parties right away or defer until putting the decision in writing. Either way, the ALJ must issue a written decision on all disputed issues and send a copy of the decision to the parties within 60 days after the end of the hearing. The decision must include the ALJ’s findings of fact, rulings of law and explanations regarding any relevant matters.

## PETITION FOR RECONSIDERATION

Any party may ask the ALJ to reconsider its decision (or any portion of it) by filing a Petition for Reconsideration within **14 days** from the date of the written decision. If neither party files this petition, the ALJ’s decision becomes final after those 14 days.

A Petition for Reconsideration must clearly state any errors alleged to be present in the ALJ's decision and must also include the filing party's reasons and arguments for reconsideration. In addition, the filing party must submit a proposed order granting the relief requested. Any party opposed to the ALJ's reconsideration must file a response within **10 days** after the petition is filed.

The ALJ will either reject the petition for reconsideration or issue a corrected decision within 10 days after the due date for the opposing party's response. The ALJ's power to change the original decision is limited to correcting obvious errors, and a corrected decision becomes final as of the date the ALJ issues it. If the ALJ rejects a Petition for Reconsideration, the ALJ's original decision becomes final as of the date of the rejection.

## WORKERS' COMPENSATION BOARD APPEALS

Any party aggrieved by an ALJ's final decision may appeal it to the Workers' Compensation Board (Board). The Board is a three-member panel of individuals within the Division who are qualified to serve as appeals court judges. At least two of the Board members must decide each appeal.

A party initiates the Board's review by filing a Notice of Appeal with the DWC and providing a copy to the other parties within 30 days of the date of the ALJ's final decision. The DWC will then issue an acknowledgement of the appeal to all parties.

The appealing party must submit a written brief explaining the reasons for the appeal within **30 days** after filing the Notice of Appeal. The opposing party will then have **30 days** to file a response brief, after which the appealing party may take **10 days** to file another brief in reply. All briefs must conform to several requirements; otherwise, the Board may reject them and impose sanctions against the noncompliant party.

The Board may also allow the parties to present oral arguments during its review. However, the parties may not present any new evidence to the Board unless an appeal involves allegations of fraud or misconduct. The Board may only consider the evidence contained in the record from the hearing before the ALJ. In addition, the Board must defer to the ALJ's judgment as to questions of fact. The Board may only decide whether:

- The ALJ acted without or in excess of its powers;
- The ALJ's decision was procured by fraud;
- The ALJ's decision conforms to the WCA;
- The ALJ's decision is clearly erroneous based on reliable, probative and material evidence contained in the whole record;  
or
- The ALJ's decision is arbitrary, capricious or characterized by an abuse or unwarranted exercise of the ALJ's powers.

The Board will issue a decision within 60 days after the date of the last brief filing (or the date of oral arguments, if applicable). A Board decision may either affirm, modify or set aside the ALJ's decision. Alternatively, the Board may send the case back to the ALJ with instructions for further proceedings.

## COURT APPEALS

Board decisions are subject to review by the Kentucky Court of Appeals. Court of Appeals' review is limited to correcting errors of law in workers' compensation cases. Decisions by the Court of Appeals may be appealed to the Kentucky Supreme Court for the highest level of review in the state.

## MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the DWC [website](#) for more information on workers' compensation laws in Kentucky.

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