

## BASIC REQUIREMENTS

### REPORT OF INJURY:

#### K.R.S. 342.038 provides as follows:

(1) Every employer subject to this chapter shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. **Within (1) week after the occurrence and knowledge**, as provided in KRS 342.185 to 342.200, of an injury to an employee causing his absence from work for more than one (1) day, a report thereof shall be made to the department in the manner directed by the commissioner through administrative regulations. **An employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be responsible for making the report to the Department of Workers' Claims within one week of receiving the notification referred to in subsection (3) of this section.**

(3) Every employer subject to this chapter shall report to his workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits **any work-related injury or disease or alleged work-related injury or disease within three (3) working days of receiving notification of the incident or alleged incident.**

#### **803 KAR 25:170 Section 2**

(1) Beginning with work-related injuries and occupational diseases reported to employers on or after January 1, 1996, **each carrier shall file the information required of the Form IA-1 with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format, according to the time periods prescribed by KRS 342.038.**

### REPORT OF VOLUNTARY INDEMNITY PAYMENTS

#### K.R.S. 342.038

(4) Every employer or insurer subject to this chapter shall file additional reports covering specifically **voluntary payments and settlements**, and any other reports required by the commissioner by administrative regulation for the determination of the promptness of voluntary payment and validity and fairness of agreements. In addition, the commissioner may require additional information as may be necessary to comply with a federal statute or regulation or any state statute.

(5) Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of sixty (60) days, then also at the expiration of that period, the employer shall make a supplementary report to the commissioner on blanks procured from the department for the purpose.

#### **803 KAR 25:170 Section 2:**

(1) Each carrier shall file the information required on the Form IA- 1 with a data collection agent or a value added network designated by the Office of Workers' Claims, in electronic format, according to the time period prescribed by KRS 342.038.

(2) Each carrier shall file the information required on the Form IA- 2 with a data collection agent, a value added network designated by the Office of Workers' Claims in electronic format.

(a) As soon as practicable and not later than one (1) week from the date payments to an employee are commenced, terminated, changed, or resumed.

(b) Every sixty (60) days during temporary total disability.

## TIMING REQUIREMENTS

### WAITING PERIOD:

KRS 342.040 (1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of six percent (6%) per annum on each installment from the time it is due until paid, except that if the administrative law judge determines that the delay was caused by the employee, then no interest shall be due, or determines that a denial, delay, or termination in payment of income benefits was without reasonable foundation, then the rate of interest shall be 12% per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, the party shall notify the Commissioner of the termination or failure to make payments and the Commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter. Thus, you will never owe TTD benefits until eight days after the injury. Then you have until the first regular payday after seven days after the injury in which to issue the first payment of TTD benefits. But, the first TTD payment must be made no later than fifteen days after the first TTD began. If you have not yet completed your investigation of the claim at the end of the 15 day period, then you can simply report to owe by EDI on a form IA-2 that you have failed to make payments when due because your own investigation is not yet complete.

### CIVIL PENALTIES

Per KRS 342.990 (7) the following civil penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any employer, insurer, or payment obligor subject to this Chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) for each offense.

(b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make a timely payment of a statement for services under KRS 342.020 (4) without having reasonable grounds to delay payment may be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) for each offense.

(c) Any person who violates KRS 342.020 (12), 342.035 (2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) for each offense. **With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the Commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date of employer was notified of an alleged work-related injury or disease is not filed with the Commissioner within twenty one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the office pursuant to KRS 342.038 (1), shall raise a rebuttable presumption of the date on which the employer received notice.**

### CRIMINAL PENALTIES

Per KRS 342.990 (9) the following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020 (12), 342.035 (2), **342.040**, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000), or imprisoned for **not less than thirty (30) days nor more than one hundred eighty (180) days**, or both.

### Investigation Pending:

If you have been notified of an allegation of an injury with lost time and you are diligently investigating the claim, you have **21 days** from the date the First Report of Injury shows that the employer was notified of the injury by the claimant in which to file a Form IA-2 stating that you did not make payments when due because you are investigating the claim.



## Unfair Claims Settlement Practices Act

The Administrative Regulations to KRS Chapter 342 include provisions which establish standards against which claims adjusters will be judged relative to allegations of an Unfair Claims Settlement Practice. The Unfair Claims Settlement Practices provisions of the Act were adopted on December, 12, 1996.

These provisions are located at 803 KAR 25:240, specifically Sections 4-7. The most often cited are as follows:

### Section 4. Duty to investigate

Upon notice of a work related injury, a carrier shall diligently investigate a claim for facts warranting the extension or denial of benefits.

### Section 5. Standards for Prompt and Timely Actions

- 1) After receipt of notice of a work-related injury necessitating medical care or causing lost work days, a carrier shall **as soon as practicable** advise an injured employee of acceptance or denial of the claim.
- 2) A carrier shall provide to the employee in writing the specific reasons for denial of the claim.
- 3) A carrier shall inform an employee of additional information needed for the claim to be accepted.
- 4) A carrier shall meet the time constraints for accepting and paying workers' compensation claims established in KRS Chapter 342 and applicable administrative regulations.

### Section 6. Standards for Fair and Equitable Settlement

- 1) A carrier shall attempt in good faith to promptly pay a claim in which liability is clear;
- 2) A carrier shall not misrepresent pertinent facts or law with regard to a claim;
- 3) A carrier shall not compel an employee to institute formal proceedings with the Department of Workers' Claims to recover benefits where liability is clear
- 4) A carrier shall not offer a settlement which is substantially less than the reasonable value of a claim;
- 5) A carrier shall not threaten to file or invoke a policy of filing appeals for the purpose of compelling a settlement for less than a workers' compensation award or benefit review determination; and
- 6) A carrier shall not require an employee to obtain information which is accessible to the carrier.

### Section 7. Acknowledgement of Communications

- 1) Upon receipt of an inquiry from the Department of Workers' Claims, each carrier shall furnish the Department of Workers' Claims a full response within fifteen (15) days.
- 2) Upon receipt of a communication from an injured employee which reasonably suggests a response is expected, a carrier shall make a prompt and appropriate reply to the employee. (25 Ky.R. 1285; Am1671;1884;eff. 2-18-99.)

According to KRS 342.267, the fine for a violation of this Regulation is \$1000 to \$5000 per violation.

## FREQUENTLY ASKED QUESTIONS

### QUESTION 1) What is the fine for late reporting?

**ANSWER:** KRS 342.990 (7)(a) provides: "Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined **not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) for each offense.**"

### QUESTION 2) How long does the injured employee have to notify his/her employer of a work related injury?

**ANSWER:** KRS 342.185 (1) provides; "no proceeding under this chapter for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon **as practicable after the happening thereof.**" The Administrative Law Judge has broad discretion to determine whether notice was given as soon as practicable, and, if there was a delay in giving notice, whether the delay was excusable.

### QUESTION 3) How long does the employer have to report an injury to the carrier:

**ANSWER:** KRS 342.038(3) provides: "Every employer subject to this chapter shall report to his workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits any work-related injury or disease or alleged work-related injury or disease **within three (3) working days of receiving notification of the incident or alleged incident.**"

### QUESTION 4) What kind of claims must be reported to the State and when?

**ANSWER:** KRS 342.038(1) provides: "Within one (1) week after the occurrence and knowledge, as provided in KRS 342.185 to 342.200, of **an injury to an employee causing his absence from work for more than one (1) day,** a report thereof shall be made to the office in the manner directed by the Commissioner through administrative regulations. An employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be responsible for making the report to the Department of Workers' Claims within one week of receiving the notification referred to in subsection(3) of this section."

### QUESTION 5) How much time do I have to make a decision on compensability?

**ANSWER:** The answer to that question is that you have an unlimited amount of time to make that determination as long as you are proceeding with your investigation in a "diligent" fashion. (See UCSPA provisions above).

### QUESTION 6) If the employee is incurring lost time benefits, and indemnity has not been initiated because the investigation is continuing, does anything have to be filed with the state and, if so, what should be filed and what is the timeframe?

**ANSWER:** See KRS 342.040(1) under "**Timing Requirements- Waiting Period**": on the reverse side of this Quick Guide for the actual language from the statute. Essentially, the carrier has **21 days** from the date the First Report of Injury shows that the employer was notified of the injury by the claimant in which to file a Form IA-2 with the Department of Workers' Claims (via EDI) stating that payments have not been initiated because the investigation is continuing.