

## Changes to Kansas Workers' Compensation Act – 2011

<b>Issue</b>	<b>Law Before Changes</b>	<b>Law After Changes</b>
Causation	Aggravates, accelerates, or intensifies condition.	Prevailing factor in the injury. Prevailing factor means primary factor. 44-508(g).
Arising Out Of and in the Course of Employment	Not compensable if recreational or social events not obligated to attend. 44-508(f).	Not compensable: (1) work a triggering or precipitating factor, (2) work aggravates or accelerates a pre-existing condition, (3) work renders a pre-existing condition symptomatic, (4) natural aging process, (5) neutral risk, (6) idiopathic injuries, (7) risk personal to the worker, (8) recreational or social events not required to attend. 44-508(f).
Coming and Going	Injuries sustained on way to or after leaving work not compensable. Worker on the premises of employer or only route involving a special risk or hazard was compensable. 44-508(f).	Premises must be owned or controlled by employer to be compensable. Special risk or hazard of route must be connected to nature of the employment as well. 44-508(f).
Notice	10 days or 75 days for just cause. 44-520.	Earliest of: (1) 30 days, (2) 20 days from the employee seeks medical treatment if still employed, or (3) 20 days from last day of work.
Repetitive Trauma	Considered same as accident. 44-508(d).	(1) Result of repetitive use, cumulative trauma, or microtrauma. (2) Must be demonstrated by diagnostic or clinical tests (3) Repetitive trauma must be the prevailing factor in injury (4) Repetitive trauma is never an occupational disease. 44-508(e).
Date of Accident for Repetitive Trauma	Date authorized physician takes claimant off work or provides restrictions. If not done, then earliest of the following: (1) Date of written notice to the employer. (2) Date condition diagnosed as work related. 44-508(d).	Earliest of: (1) date taken off work by doctor, (2) date placed on light duty by doctor, (3) date advised by doctor condition is work related, or (4) last date worked if no longer employed. 44-508(e).
Arising out of for Repetitive Trauma	No provisions separate from accident.	Must be: (1) Increased risk or hazard compared to non-employment life. (2) Increased risk or hazard is the prevailing factor in the trauma. (3) Repetitive trauma is the prevailing factor in both the medical condition and the resulting disability or impairment. 44-508(e).
Alcohol and Drug Testing	Employer must show that impairment contributed to accident. 44-501(d)(2).	Positive drug or alcohol test is rebuttable presumption the impairment contributed to the accident. 44-501(b)(1)(D).
Safety Rules	No benefits if injury results from deliberate intent, willful failure to use guard or protection provided. 44-501(d)(1).	No compensation for reckless violation of safety rules or fighting or horseplay. Compensation allowed when under the totality of the circumstances it was reasonable not to use a guard or protection or if the employer approved the work without the equipment. 44-508(f).

Video Conferencing	Not explicitly authorized.	Any hearing can be by video or telephone conference unless otherwise mutually agreed by the employee and employer.
Average Weekly Wage	26 weeks; full time employees based on 40 hour week plus overtime regardless of actual hours worked. 44-511(b)(4).	26 week average only; only actual wages considered. 44-511(b)(1).
TTD	TTD if completely and temporarily incapable of substantial and gainful employment. 44-510c(b)(2).	No TTD if (1) light duty refused, (2) if employee quits or is terminated for cause if light duty available, (3) employee receiving unemployment. 44-510(b)
TPD	Body as a whole only. 44-510e(a).	Available for any injury. 44-510d(a)
PTD	“Completely and permanently incapable of engaging in any type of substantial and gainful employment.” Presumption of permanent total disability for loss of both eyes, hands, arms, feet, legs, or any combination thereof. 44-510c(a)(2).	Expert evidence required for PTD. 44-510c(a)(2).
PPD	(1) Each injury to be rated separately, even if to same extremity. (2) TPD is considered a whole week to be subtracted from schedule for calculation of PPD.	(1) Multiple impairments to single extremity combined to highest scheduled member actually impaired. (2) Total TTD and TPD to be divided by compensation rate to determine what subtracted from schedule. (3) TTD and PPD to never run concurrently. 44-510d(b).
Pre-Existing Impairment	Only recover increase in disability for pre-existing condition. Award to be reduced by any pre-existing functional impairment. 44-501(c).	(1) Percentage of prior settlement shall conclusively establish pre-existing functional impairment. If no prior settlement, pre-existing impairment established by competent evidence. (2) If pre-existing impairment from injury from current employer, award reduced by “current dollar value” of pre-existing functional impairment (pre-existing impairment times current compensation rate). 44-510(e)
Body as a Whole	Does not include bilateral extremities.	Work disability available for loss of use of bilateral extremities or both eyes. 44-510e.
Work Disability	(1) post injury wages less than 90% of pre-injury wages (2) cannot impute wage under any circumstance (3) task loss based on tasks for past 15 years. 44-510e(a).	(1) impairment must exceed 7.5% BAW or 10% BAW if pre-existing (2) wage loss must be attributable to injury (3) wage loss based on earnings capability (4) task loss based on tasks for past 5 years (5) fringe benefits to be included post-injury average weekly wage (6) refusal of accommodated work at 90% or more of pre-injury wages shall result in rebuttable presumption of no wage loss (7) legal capacity to enter a contract required. 44-510e.
Post Award Medical	For life. Left open after trial as of right.	Awarded only if medical evidence shows that it is more probably true than not that additional treatment will be necessary. If no further medical treatment two years from award, employer can make application for termination of future medical. 44-510h, 44-510k.
Caps	Perm Total - \$125,000.00 PPD - \$100,000.00 Functional Impairment only - \$50,000.00 Death benefit - \$250,000.00. 44-510f, 44-510b.	Perm Total - \$155,000.00 PPD - \$130,000.00 Functional Impairment only - \$75,000.00 Death benefit - \$300,000.00. 44-510f, 44-510b.