

44-567. Same; employment or retention of handicapped workers; relief from or apportionment of liability for subsequent injuries; knowledge of impairment; presumptions; commissioner of insurance to be impleaded. (a) An employer who operates within the provisions of the workers compensation act and who knowingly employs or retains a handicapped employee, as defined in K.S.A. 44-566 and amendments thereto shall be relieved of liability for compensation awarded or be entitled to an apportionment of the costs thereof as follows:

(1) Whenever a handicapped employee is injured or is disabled or dies as a result of an injury which occurs prior to July 1, 1994, and the administrative law judge awards compensation therefor and finds the injury, disability or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability or death shall be paid from the workers compensation fund; and

(2) subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the administrative law judge finds the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the administrative law judge shall determine in a manner which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers compensation fund.

(b) In order to be relieved of liability under this section, the employer must prove either the employer had knowledge of the preexisting impairment at the time the employer employed the handicapped employee or the employer retained the handicapped employee in employment after acquiring such knowledge. The employer's knowledge of the preexisting impairment may be established by any evidence sufficient to maintain the employer's burden of proof with regard thereto. If the employer, prior to the occurrence of a subsequent injury to a handicapped employee, files with the director a notice of the employment or retention of such employee, together with a description of the handicap claimed, such notice and description of handicap shall create a presumption that the employer had knowledge of the preexisting impairment. If the employer files a written notice of an employee's preexisting impairment with the director in a form approved by the director therefor, such notice establishes the existence of a reservation in the mind of the employer when deciding whether to hire or retain the employee.

(c) Knowledge of the employee's preexisting impairment or handicap at the time the employer employs or retains the employee in employment shall be presumed conclusively if the employee, in connection with an application for employment or an employment medical examination or otherwise in connection with obtaining or retaining employment with the employer, knowingly: (1) Misrepresents that such employee does not have such an impairment or handicap; (2) misrepresents that such employee has not had any previous accidents; (3) misrepresents that such employee has not previously been disabled or compensated in damages or otherwise because of any prior accident, injury or disease; (4) misrepresents that such employee has not had any employment terminated or suspended because of any prior accident, injury or disease; (5) misrepresents that such employee does not have any mental, emotional or physical impairment, disability, condition, disease or infirmity; or (6) misrepresents or conceals any facts or information which are reasonably related to the employee's claim for compensation.

(d) An employer shall not be relieved of liability for compensation awarded nor shall an employer be entitled to an apportionment of the costs thereof as provided in this section, unless the employer shall cause the commissioner of insurance, in the capacity of administrator of the workers compensation fund, to be impleaded, as provided in K.S.A. 44-566a and amendments thereto, in any proceedings to determine the compensation to be awarded a handicapped employee who is injured or disabled or has died, by giving written notice of the employee's claim to the commissioner of insurance ten days prior to the first full hearing where any evidence is presented on the claim.

(e) Amendments to this section shall apply only to cases where a handicapped employee, or the employee's dependents, claims compensation as a result of an injury occurring after the effective date of such amendments.

(f) The total amount of compensation due the employee shall be the amount for disability computed as provided in K.S.A. 44-503a, 44-510a through 44-510i and 44-511, and amendments thereto, and in no case shall the payments be less nor more than the amounts provided in K.S.A. 44-510c and amendments thereto.

History: L. 1945, ch. 221, § 2; L. 1947, ch. 290, § 1; L. 1955, ch. 250, § 12; L. 1957, ch. 293, § 8; L. 1961, ch. 243, § 9; L. 1967, ch. 280, § 13; L. 1970, ch. 190, § 11; L. 1974, ch. 203, § 47; L. 1977, ch. 179, § 2; L. 1979, ch. 156, § 15; L. 1982, ch. 213, § 7; L. 1987, ch. 187, § 15; L. 1987, ch. 189, § 3; L. 1993, ch. 286, § 62; L. 1997, ch. 125, § 16; L. 2000, ch. 160, § 18; July 1.