

STATEMENT OF EMERGENCY
803 KAR 25:305E

Joint Resolution 1 from the 2021 Special Legislative Session, 21 SS HJR 1/GA, extended certain emergency executive actions until January 15, 2022, and declared an emergency related to SARS-COV-2, also known as COVID-19. Joint Resolution 1 and Executive Order 2020-277 were issued to meet an imminent threat to public health, safety, and welfare. Joint resolution 1 extended Executive Order 2020-277, pertaining to temporary total benefits provided pursuant to KRS Chapter 342. This emergency administrative regulation provides guidance in the application of Executive Order 2020-277 and protects human health and public health, safety, and welfare. the guidance provided in this emergency administrative regulation cannot be provided through an ordinary administrative regulation because the ordinary rulemaking process cannot be completed until after January 15, 2022, and the extension will have expired. This emergency regulation will not be replaced by an ordinary administrative regulation because it is anticipated the emergency will resolve.

ANDY BESHEAR, GOVERNOR
ROBERT WALKER, INTERIM COMMISSIONER

LABOR CABINET
Department of Workers' Claims
(New Emergency Administrative Regulation)

803 KAR 25:305E. Workers' compensation expedited hearings pursuant to occupational exposure to COVID-19.

EFFECTIVE: September 28, 2021

RELATES TO: KRS 342.0011(11)(a), 342.020, 342.040, 342.270, 342.730.

STATUTORY AUTHORITY: KRS 342.020, 342.260, 342.270, 342.730

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.020(1) requires employers to pay for the cure and relief from the effects of an injury or occupational disease as may reasonably be required at the time of injury and thereafter or as may be required for the cure and treatment of an occupational disease. KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department and the work of the administrative law judges. KRS 342.270(3) requires the commissioner to promulgate or amend existing administrative regulations to establish procedures for the resolution of claims. This emergency administrative regulation establishes the procedure for resolution of claims for temporary total benefits pursuant to Executive Order 2020-277.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "COVID-19" means the novel coronavirus designated SARS-COVE-2.

(4) "Department" is defined by KRS 342.0011(8).

(5) "Designated class" means employees of a healthcare entity; law enforcement personnel, emergency medical services personnel, and fire department personnel; corrections officers; military personnel; activated National Guard personnel; domestic violence shelter workers; child advocacy workers; rape crisis center staff; Department of Community Based Services

workers; grocery workers; postal service workers; and child care workers permitted by the Cabinet for Health and Family Services to provide child care in a limited duration center during the state of emergency.

(6) "Executive order" means Executive Order 2020-277.

(7) "Joint Resolution 1" means 21 SS HJR 1/GA.

Section 2. Motion to Expedite Hearing. (1) Each claim by a member of the designated class solely seeking temporary total disability benefits pursuant to Executive Order 2020-277 and Joint Resolution 1, alleging an injury or occupational disability due to occupational exposure to COVID-19, shall file an Application Seeking TTD Benefits and Expedited Hearing, Form 101-COV.

(2) When an Application Seeking TTD Benefits and Expedited Hearing, Form 101-COV is received by the Department, it shall notify the employer and insurance carrier identified on the application for resolution of claim within three (3) business days of receipt.

(3) When an Application Seeking TTD Benefits and Expedited Hearing, Form 101-COV is received by the Department, the claim shall be assigned to an administrative law judge within three (3) business days of receipt.

(4) The matter shall be set for hearing within ten (10) calendar days following the date of assignment to the administrative law judge.

(5) The expedited hearing shall be limited to whether an employee was removed from work by a physician due to occupational exposure to COVID-19.

(6) The executive order establishes there must be a causal connection between the conditions under which the work is performed and COVID-19, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment, in order for the exposure to be occupational.

(7) If the employee is found to have an occupational exposure to COVID-19, the limitations in KRS 342.040(1) shall be suspended and temporary total disability payments shall be payable from the first day the employee is removed from work.

(8) The parties shall file all proof no later than three (3) calendar days prior to the hearing date.

(9) The administrative law judge shall render a decision no later than two (2) business days after the date of the hearing.

Section 3. (1) Voluntary temporary total disability payments by the employer or its payment obligor to an employee removed from work by a physician due to occupational exposure to COVID-19 which are made without a hearing and decision by the administrative law judge shall not waive the employer's right to contest its liability for the claim or other benefits to be provided.

(2) Nothing in this emergency administrative regulation precludes a claimant from seeking additional benefits under KRS Chapter 342.

Section 4. Incorporation by Reference. (1) "Application Seeking TTD Benefits and Expedited Hearing, Form 101-COV," September 2021 edition, is incorporated by reference

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., and at <https://labor.ky.gov/comp/Forms/Pages/default.aspx>.

This is to certify the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

ROBERT WALKER, Interim Commissioner

APPROVED BY AGENCY: September 27, 2021

FILED WITH LRC: September 28, 2021 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on November 23, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0682, email dale.hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the procedure for resolution of claims for temporary total benefits pursuant to Executive Order 2020-277.

(b) The necessity of this administrative regulation: Executive Order 2020-277 provides for temporary total disability benefits from the first day of removal from work by a physician when removed from work for an occupational exposure to COVID-19. KRS 342.270(3) requires the commissioner to promulgate or amend existing administrative regulations to establish procedures for the resolution of claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation establishes the procedure for resolution of claims for temporary total benefits pursuant to Executive Order 2020-277.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation provides guidance to those seeking temporary total disability benefits pursuant to Executive Order 2020-277.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new emergency administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All employees within the Designated Class removed from work by a physician due to occupational exposure to COVID-19 and employers of those employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employees within the Designated Class seeking temporary total disability benefits pursuant to Executive Order 2020-277 will have to file a motion to expedite hearing. Employees within the Designated Class, employers, and insurance carriers will have expedited timelines to supply proof of whether the employee was removed from work by a physician due to occupational exposure to COVID-19.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employees within the Designated Class removed from work by a physician due to occupational exposure to COVID-19 and their employer will be entitled to an expedited hearing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs are associated with implementation.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this emergency administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the procedure applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all parts of government with employees within the Designated Class.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.260, 342.270, 342.730, Executive Order 2020-277, and 21 SS HJR 1/GA.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No new administrative costs will be required.

(d) How much will it cost to administer this program for subsequent years? No new administrative costs will be required.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on state or local government because the activities associated with the emergency administrative regulation are already performed, only the timing is changed.