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***PRACTICAL GUIDE TO WORKERS' COMPENSATION:  
THE EMPLOYER'S PERSPECTIVE***

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*The purpose of this monograph is to give you, the small business owner/operator or the human resources director of such a business, a brief thumbnail sketch of what your company's obligations are under Kentucky's Workers' Compensation Act and what you need to do when your employee has an accident on the job.*

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**I. WORKPLACE SAFETY**

Preliminarily, best way to handle workers' compensation claims is to avoid them in the first place. Certainly, you as a small business owner/operator are far ahead of the game if you can cultivate a culture of safety in your business and your workplace. You can do that by talking about safety, by promulgating a safety manual, or by including a section on safety in your employee handbook. Send your employees to safety seminars. Provide rewards or incentives for safety longevity. Hire a safety director or, if your company is not large enough to warrant such a position, designate one of your employees to be the one who thinks about safety. Conduct a safety analysis of your business to determine the safe way to do your job, what existing company practices are dangerous, and what techniques

can enhance your safety record. Engage your employees actively in this process by establishing a safety committee and holding periodic safety meetings. It has been demonstrated repeatedly that a company that emphasizes safety in the workplace will have fewer accidents, fewer claims, and a healthier workforce. Finally, insist that your employees quickly and accurately report every workplace injury, regardless of how seemingly insignificant.

**II. EMPLOYER'S OBLIGATIONS**

Generally, an employer that is subject to the Workers' Compensation Act is liable for compensation to his employee for workplace injury, occupational disease, or death, without regard to the fault for the cause of the accident. Employers are subject to the Act and are required to comply with its provisions if their business is not engaged solely in agriculture and if their business has one or more employees who are subject to the Act.

Employees that are subject to the Act include, basically, everyone except those who are engaged in agriculture, domestic servants working less than 40 hours per week, and those who do maintenance, remodeling, repair, or similar work in the private home of an employer for not more than 20 consecutive days. Those persons covered under a federal compensation scheme such as FELA, the Jones Act, or the Long Shore Act are not covered by Kentucky's Workers' Compensation Act.

After an employee has been injured on the job, his employer's general obligations under the Workers' Compensation Act include the following: to secure payment of the employee's medical bills and to secure payment of the required income benefits. How do you as a business owner/operator comply with these requirements? The best way: make sure that you obtain workers compensation insurance, pay your premiums, and stay in close contact with your insurance representatives, including your agent and your carrier's adjusters. Your business is still on the hook for satisfaction of benefits under the Act even if it is uninsured. If an injury results and you are uninsured, payment of your employee's medical bills and income benefits can be a significant financial burden and an administrative nightmare.

### **III. WHEN THE ACCIDENT HAPPENS**

When the work-related accident happens (and if you are in business long enough it will happen) this is what you need to be doing: generally, you need to investigate the accident; you need to be able to describe your employee's job and his wage rate; you need to monitor your

employee's medical treatment, and assist and facilitate such; and you need to monitor your employee's return to work. Hopefully, you will have obtained workers compensation insurance coverage and have paid your premiums and can therefore coordinate all of this through your insurance company.

#### **A. Investigate**

An investigation needs to be thorough, complete, and immediate. Generally, it is advantageous to have a trained person on staff to be responsible for an accident investigation, if at all possible. Don't split investigation duties among multiple employees because that will lead to confusion and insufficiency of investigation. Your investigator needs to find out the who, what, when, where, and why of the accident. Some things that you need to be alert for are the following items that may prove to be a defense to a spurious claim: did injury this really happen "at work"? Is there a violation of company safety policy? Did the employee get hurt through his own voluntary intoxication? Is this a false or fraudulent claim?

It is extremely helpful to have an accident report form to guide your investigation. Have a form ready to go so that you or your supervisors can fill it out item by item when the workplace injury occurs. Such a form should require answers to the following questions: it needs to provide the full name of the employee, his social security number, and date of birth. Your form should have a box or space to identify the date and time of the accident. Your form needs to require your investigator to describe whether the accident occurred "on the job" or not. The form needs to describe

the details of the accident. It should ask for a description of the details of the job your worker was performing at the time of his accident. The form should ask who the witnesses to the accident are, if any. Be specific as to when the accident was reported and to whom it was reported. Identify what first aid was afforded, if any. Be sure to provide a wage rate and identify any time lost from work. Have a signature line for the injured employee and a signature line for the supervisor or person preparing the report. Send this report to your insurance carrier.

We recommend obtaining written statements from your injured employee and from witnesses. This will help ensure that the facts are preserved and your insurance adjuster can take it from there.

You are required to report the accident to your insurance company within three days of the accident.

Make sure that you have on hand a written job description for each of your employees or a good idea of what that job entails. This will be important later if a formal claim is filed because a key issue will be whether or not your employee can return to the job he was doing at the time of his accident. Your job description should include a title for your employee's job, a description of his duties, and a description of the physical nature of his job.

## **B. Coordinate**

After the accident, you, as the employer or human resource director, should closely liaison between your employee, his doctors, and your insurance carrier. Help

your employee get to his doctor's appointments. Make sure you get a copy of all of his doctor's reports and bills and make sure that your insurance carrier gets them as well. What you should be alert to in the medical reports is language from the physician that your employee has attained "maximum medical improvement" and that he is able to return to work.

After medical treatment, monitor closely your employee's return to work, which should be the goal of both you and your employee. Can he return to his full-time formal duties? When is he able to do that? Is he physically able to do all of those duties?

If a formal claim for workers' compensation benefits is filed, you will need to liaison very closely with your insurance company. Immediately forward to your insurance company all letters and notices from your employee's attorney. When the claim is filed, if you have properly investigated the accident and monitored your employee's medical treatment and returned to work, you will have done basically all you can do and you will be in good shape to assist your insurance company. That assistance will consist mainly of providing documentation of the facts of the accident and data as to the employee's wages and medical treatment.

## **IV. CONCLUSION**

In conclusion, if you are an employer covered by the Workers' Compensation Act with employees covered by the Act, you are required to comply with the Act. This basically means that you will be required to satisfy your employee's medical

expenses and income benefits in accord with the Act's schedule. Hopefully your company has obtained insurance coverage for this liability and has paid the premiums when due. When the accident happens, do investigate immediately and thoroughly. When an accident happens, notify your insurance carrier.

Finally, the best way to keep accidents down, to keep workers' compensation claims against your business down (and, most importantly, your insurance premiums down) cultivate a culture of workplace safety in your company. It works. *A safe workforce is no accident.*

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### ***About Bill Pinkston***

Bill's practice is largely devoted to civil litigation involving Workers' Compensation and maritime matters.

It is not surprising, then, that he has developed an exceptional working knowledge of Workers' Compensation and maritime law that gives him a keen awareness of client expectations within this discipline.

His prodigious writing and verbal skills provide an edge that ensures Bill's clients the highest form of legal representation. Bill has a strong devotion to his profession.

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