



Kentucky Labor Cabinet

Department of Workers' Claims

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The following guidance is to advise the reader of the current position of the Department of Workers' Claims (the "Department") on the specified issue.

FROM: Robert L. Swisher, Commissioner

RE: Executive Order 2020-277

DATE: April 15, 2020

On March 6, 2020, Governor Andy Beshear issued Executive Order 2020-215 declaring a state of emergency in the Commonwealth of Kentucky in response to the novel coronavirus (COVID-19) pandemic. On April 9, 2020, Governor Beshear issued Executive Order 2020-277 (the "Order") relating to payment of temporary total disability benefits pursuant to KRS 342.730(1) (a).

The Department has been requested to provide guidance regarding the application of the Order. The Department understands that the intent of the Order is to provide for a limited period of temporary total disability benefits for those workers who are removed from work by a

physician for a period of self-quarantine as a result of occupational exposure to COVID-19. Based upon that understanding, it is the position of the Department that:

(1) The Order applies only to the issue of payment of temporary total disability benefits under the circumstance in which a worker is removed from work by a physician due to occupational exposure to COVID-19, and has no application to resolution of any issue beyond the scope of the Order;

(2) The Order is to be applied prospectively from April 9, 2020;

(3) Temporary total disability benefits payable pursuant to the Order are subject to offset under KRS 342.730 (6) by virtue of FMLA benefits paid pursuant to the federal Families First Coronavirus Response Act;

(4) Temporary total disability benefits payable pursuant to the Order are subject to offset under KRS 342.730(5) for unemployment benefits paid for the same period;

(5) The Order does not extend benefits to workers who are not otherwise subject to coverage under the Kentucky Workers' Compensation Act;

(6) A worker whose removal from work falls within the presumption of numerical paragraph three of the Order is eligible for benefits immediately upon removal. The employer or its payment obligor may not deny payment of benefits pursuant to the Order without evidence forming a good faith basis for denial. For example, if a grocery worker's spouse tests positive for COVID-19 and the worker is removed from work solely due to that exposure, the employer may deny the claim since the evidence rebuts the presumption that the exposure was occupational; and

(7) A worker whose removal from work does not fall within the presumption of numerical paragraph three of the Order must establish that the removal is due to "occupational exposure" as that term is defined in numerical paragraph one of the Order. The employer or its payment obligor must promptly investigate the claim and may deny payment of benefits pursuant to the Order if it has a good faith basis for doing so. For example, a restaurant worker who is removed

from work by a physician based on “exposure to COVID-19” without further explanation has not established “occupational exposure” and has not established entitlement to benefits.

No position stated herein shall be binding upon an Administrative Law Judge in the resolution of any claim arising under KRS Chapter 342.

/s/ Robert L. Swisher

Commissioner, Department of Workers’ Claims

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