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OCTOBER 2025

WORKERS COMPENSATION IN AGRICULTURAL EMPLOYMENT IN KANSAS

WHAT IS WORKERS COMPENSATION?

Workers compensation is a type of insurance, required by law to be provided by most employers, that helps compensate employees when they experience job-related injuries or disabilities. Workers compensation may also compensate family members of deceased employees if their death occurs on-the-job. What many people may not know, however, is that workers compensation also provides protections for participating employers. If a work-related injury, disability, or death is covered by workers compensation, the employee is barred from bringing a legal claim against the employer for the same injuries.

Kansas workers compensation laws date back to 1911, when Kansas passed its first workers compensation law. Originally applicable to only hazardous occupations, the law now applies broadly to most private employment within the state. There are some statutory exceptions in Kansas where workers compensation insurance is not required, like in agricultural employment.

WHAT IS THE KANSAS AGRICULTURAL EXEMPTION FROM WORKERS COMPENSATION?

The workers compensation exemption for agriculture in Kansas applies to "agricultural pursuits and employments incident thereto."[1] Kansas courts have had several opportunities to apply the agricultural exemption to different fact scenarios, but most of those cases predate the current agricultural exemption language that was adopted by the Kansas legislature in 1974.

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THE KANSAS AGRICULTURAL EXEMPTION, CONT'D:

The Kansas Court of Appeals applied a two-step analysis for the agricultural exemption in *Frost v. Builders Service, Inc.*, and said that cases decided prior to 1974 were no longer controlling in their analysis of whether an employment situation was agricultural in nature.[2] The first step of the analysis is to determine whether the employer was engaged in an agricultural pursuit. If the court finds the answer to that question to be no, then the court may find that there is coverage, but if the answer is yes, then the court proceeds to the second step, which is to determine if the injury occurred while the employee was engaged in an employment incident to the agricultural pursuit. If the answer to that question is yes, then the employee is not covered by the workers compensation act, but if the answer to that question is no, then the workers compensation act applies.[3] Further enlightening the determination of whether something is a agricultural pursuit within the meaning of K.S.A. 44-505(a)(1), are three considerations: (1) the general nature of the employer's business; (2) the traditional meaning of agriculture as the term is commonly understood; and (3) each business will be judged on its own unique characteristics.[4]

Since the 1974 amendments, Kansas courts and administrative law judges have found:

- An employee working for a trucking business was not an agricultural pursuit, even though the employee was injured on the way to pick up a load of corn.[5]
- An employee working primarily at a hotel, but who also worked for their employer doing farm work, could make a claim under the workers compensation act for an injury that occurred while doing farm work.[6]
- A non-commercial feedlot is an agricultural pursuit.[7]
- The traditional meaning of agriculture would probably not include boarding and showing other people's horses, and the ordinary farmer typically did not show and board horses.[8]

CAN AGRICULTURAL EMPLOYERS PARTICIPATE IN WORKERS COMPENSATION IF THEY WANT TO?

Yes. Even if they are exempt from application of the workers compensation act, agricultural employers can elect to come within the provisions of the act by 1) becoming a member, and maintaining a membership, in a qualified group-funded workers compensation pool (as defined by statute), or 2) filing with the director (of the Division of Workers Compensation in the Kansas Department of Labor) a written statement of election to accept applicability of the workers compensation act.

WHY WOULD AN AGRICULTURAL EMPLOYER OPT-IN TO WORKERS COMPENSATION COVERAGE?

The benefit to employees is clear. In addition to workers compensation providing an opportunity for compensation to employees that have been injured on-the-job, it provides employees with additional protections. For example, an employee cannot be fired, demoted or otherwise discriminated against for filing a workers compensation claim in good faith.

As discussed above, participation in workers compensation can help employers by limiting liability to a workers compensation claim if an employee gets hurt on the job. In situations where employees perform work in more than one trade of business of the employer, including agriculture, opting in to provide workers compensation to cover all work scenarios can provide clarity and peace of mind to the parties that insurance will be available in the event of injury.

If an employer can take care of their employee while also limiting their own liability, it is a win-win. In addition to workers compensation insurance, agricultural employers may provide other benefits to their employees, like health insurance, that can help employees cover medical costs, but that would not help with ongoing disability. Additionally, there may be other existing liability insurance coverages that could apply in a situation to help compensate the employee and shield the employer from personal liability. That is a question best answered by a conversation with the employer’s insurance agent, and by a close review of their insurance policy documents.

WHO PAYS FOR WORKERS COMPENSATION CLAIMS?

Employers covered by the act, or choosing to opt-in to coverage of the act, must insure against workers compensation claims in one of the following three ways:

- *Workers compensation insurance*: the employer can purchase workers compensation insurance through a licensed insurance carrier, and the insurance company pays the claims.
- *Self-insurance*: an individual employer may opt to demonstrate their financial ability to pay any claims that might arise. This program is administered by the Workers Compensation Division of the Kansas Department of Labor.
- *Group-funded pool*: a group of employers meeting certain statutory requirements may form a self-insurance program to jointly insure their ability to pay claims. This program is administered by the Kansas Department of Insurance.

KEY TAKEAWAYS:

- Workers compensation insurance provides benefits for both employees and employers.
- Even if exempted from complying with the workers compensation act, agricultural employers can, and may want to, opt-in to participate in the workers compensation system.

END NOTES

[1] K.S.A. 44-505(a)(1).

[2] *Frost v. Builders Service, Inc.*, 760 P.2d 43, 47 (Kan. Ct. App. 1988).

[3] *Id.* at Syl. para. 2.

[4] *Id.* at Syl. para. 3, citing Whitham v. Paris, 720 P.2d 1125 (Kan. Ct. App. 1986).

[5] *Olds-Carter v. Lakeshore Farms, Inc.*, 250 P.3d 825 (Kan. Ct. App. 2011).

[6] *J. D. Cook Corp. v. Weil*, 1992 Kan. App. LEXIS 445.

[7] *Ben Cavens v. Krebs Feedyard*, 2007 KS WRK. COMP. LEXIS 411, 2007 KS WRK. COMP. LEXIS 411.

[8] *Whitham v. Parris*, 11 Kan. App. 2d 303.

[9] K.S.A. 44-505(b). It is important to note that purchasing workers compensation insurance, without filing a statement with the Secretary, is likely insufficient to bring an employment arrangement within the workers compensation act.

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