

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2375

103RD GENERAL ASSEMBLY

4743H.02P

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 287.020, 287.067, 287.140, 287.270, 287.510, and 287.655, RSMo, and to enact in lieu thereof seven new sections relating to workers' compensation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 287.020, 287.067, 287.140, 287.270, 287.510, and 287.655, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 287.020, 287.067, 287.140, 287.270, 287.445, 287.510, and 287.655, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his or her dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or **as described in section 390.041**, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies. The word "employee" also shall not include any person performing services

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 for board, lodging, aid, or sustenance received from any religious, charitable, or relief
17 organization.

18 2. The word "accident" as used in this chapter shall mean an unexpected traumatic
19 event or unusual strain identifiable by time and place of occurrence and producing at the time
20 objective symptoms of an injury caused by a specific event during a single work shift. An
21 injury is not compensable because work was a triggering or precipitating factor.

22 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has
23 arisen out of and in the course of employment. An injury by accident is compensable only if
24 the accident was the prevailing factor in causing ~~[both]~~ **the injury, the** resulting medical
25 condition ~~[and]~~, **the disability, and the need for treatment.** "The prevailing factor" is
26 defined to be the primary factor, in relation to any other factor, causing ~~[both]~~ **the injury, the**
27 resulting medical condition ~~[and]~~, **the disability, and the need for treatment.**

28 (2) An injury shall be deemed to arise out of and in the course of the employment
29 only if:

30 (a) It is reasonably apparent, upon consideration of all the circumstances, that the
31 accident is the prevailing factor in causing the injury; and

32 (b) It does not come from a hazard or risk unrelated to the employment to which
33 workers would have been equally exposed outside of and unrelated to the employment in
34 normal nonemployment life.

35 (3) An injury resulting directly or indirectly from idiopathic causes is not
36 compensable.

37 (4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular
38 accident or myocardial infarction suffered by a worker is an injury only if the accident is the
39 prevailing factor in causing the resulting medical condition.

40 (5) The terms "injury" and "personal injuries" shall mean violence to the physical
41 structure of the body and to the personal property which is used to make up the physical
42 structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and
43 other prostheses which are placed in or on the body to replace the physical structure and such
44 disease or infection as naturally results therefrom. These terms shall in no case except as
45 specifically provided in this chapter be construed to include occupational disease in any form,
46 nor shall they be construed to include any contagious or infectious disease contracted during
47 the course of the employment, nor shall they include death due to natural causes occurring
48 while the worker is at work.

49 4. "Death" when mentioned as a basis for the right to compensation means only death
50 resulting from such violence and its resultant effects occurring within three hundred weeks
51 after the accident; except that in cases of occupational disease, the limitation of three hundred
52 weeks shall not be applicable.

53 5. Injuries sustained in company-owned or subsidized automobiles in accidents that
54 occur while traveling from the employee's home to the employer's principal place of business
55 or from the employer's principal place of business to the employee's home are not
56 compensable. The extension of premises doctrine is abrogated to the extent it extends
57 liability for accidents that occur on property not owned or controlled by the employer even if
58 the accident occurs on customary, approved, permitted, usual or accepted routes used by the
59 employee to get to and from their place of employment.

60 6. The term "total disability" as used in this chapter shall mean inability to return to
61 any employment and not merely mean inability to return to the employment in which the
62 employee was engaged at the time of the accident.

63 7. As used in this chapter and all acts amendatory thereof, the term "commission"
64 shall hereafter be construed as meaning and referring exclusively to the labor and industrial
65 relations commission of Missouri, and the term "director" shall hereafter be construed as
66 meaning the director of the department of commerce and insurance of the state of Missouri or
67 such agency of government as shall exercise the powers and duties now conferred and
68 imposed upon the department of commerce and insurance of the state of Missouri.

69 8. The term "division" as used in this chapter means the division of workers'
70 compensation of the department of labor and industrial relations of the state of Missouri.

71 9. For the purposes of this chapter, the term "minor" means a person who has not
72 attained the age of eighteen years; except that, for the purpose of computing the compensation
73 provided for in this chapter, the provisions of section 287.250 shall control.

74 10. In applying the provisions of this chapter, it is the intent of the legislature to reject
75 and abrogate earlier case law interpretations on the meaning of or definition of "accident",
76 "occupational disease", "arising out of", and "in the course of the employment" to include, but
77 not be limited to, holdings in: *Bennett v. Columbia Health Care and Rehabilitation*, 80
78 S.W.3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc
79 1999); and *Drewes v. TWA*, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing,
80 interpreting, applying, or following those cases.

81 11. For the purposes of this chapter, "occupational diseases due to toxic exposure"
82 shall only include the following: mesothelioma, asbestosis, berylliosis, coal worker's
83 pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute
84 myelogenous leukemia, and myelodysplastic syndrome.

85 12. For the purposes of this chapter, "maximum medical improvement" shall mean
86 the point at which the injured employee's medical condition has stabilized and can no longer
87 reasonably improve with additional medical care, as determined within a reasonable degree of
88 medical certainty.

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An injury or death by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing ~~both~~ **the injury**, the resulting medical condition ~~and~~, **the disability, and the need for treatment**. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing ~~both~~ **the injury**, the resulting medical condition ~~and~~, **the disability, and the need for treatment**. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable. **Notwithstanding the foregoing, gradual deterioration or progressive degeneration due to the risks or hazards associated with the employee's employment are compensable so long as such risks or hazards associated with the employee's employment are the prevailing factor resulting in such gradual deterioration or progressive degeneration.**

3. An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing ~~both~~ **the injury**, the resulting medical condition ~~and~~, **the disability, and the need for treatment**. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing ~~both~~ **the injury**, the resulting medical condition ~~and~~, **the disability, and the need for treatment**. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable. **Notwithstanding the foregoing, gradual deterioration or progressive degeneration due to the risks or hazards associated with the employee's employment are compensable so long as such risks or hazards associated with the employee's employment are the prevailing factor resulting in such gradual deterioration or progressive degeneration.**

4. "Loss of hearing due to industrial noise" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears due to prolonged exposure to harmful noise in employment. "Harmful noise" means sound capable of producing occupational deafness.

5. "Radiation disability" is recognized as an occupational disease for purposes of this chapter and is hereby defined to be that disability due to radioactive properties or substances

38 or to Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process
39 involving the use of or direct contact with radium or radioactive properties or substances or
40 the use of or direct exposure to Roentgen rays (X-rays) or ionizing radiation.

41 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of
42 the heart or cardiovascular system, including carcinoma, may be recognized as occupational
43 diseases for the purposes of this chapter and are defined to be disability due to exposure to
44 smoke, gases, carcinogens, inadequate oxygen, of paid firefighters of a paid fire department
45 or paid police officers of a paid police department certified under chapter 590 if a direct
46 causal relationship is established, or psychological stress of firefighters of a paid fire
47 department or paid peace officers of a police department who are certified under chapter 590
48 if a direct causal relationship is established.

49 7. Any employee who is exposed to and contracts any contagious or communicable
50 disease arising out of and in the course of his or her employment shall be eligible for benefits
51 under this chapter as an occupational disease.

52 8. With regard to occupational disease due to repetitive motion, if the exposure to the
53 repetitive motion which is found to be the cause of the injury is for a period of less than three
54 months and the evidence demonstrates that the exposure to the repetitive motion with the
55 immediate prior employer was the prevailing factor in causing the injury, the prior employer
56 shall be liable for such occupational disease.

57 9. (1) (a) Posttraumatic stress disorder (PTSD), as described in the Diagnostic and
58 Statistical Manual of Mental Health Disorders, Fifth Edition, published by the American
59 Psychiatric Association, (DSM-5) is recognized as a compensable occupational disease for
60 purposes of this chapter when diagnosed in a first responder, as that term is defined under
61 section 67.145.

62 (b) Benefits payable to a first responder under this section shall not require a physical
63 injury to the first responder, and are not subject to any preexisting PTSD.

64 (c) Benefits payable to a first responder under this section are compensable only if
65 demonstrated by clear and convincing evidence that PTSD has resulted from the course and
66 scope of employment, and the first responder is examined and diagnosed with PTSD by an
67 authorized treating physician, due to the first responder experiencing one of the following
68 qualifying events:

69 a. Seeing for oneself a deceased minor;

70 b. Witnessing directly the death of a minor;

71 c. Witnessing directly the injury to a minor who subsequently died prior to or upon
72 arrival at a hospital emergency department, participating in the physical treatment of, or
73 manually transporting, an injured minor who subsequently died prior to or upon arrival at a
74 hospital emergency department;

75 d. Seeing for oneself a person who has suffered serious physical injury of a nature
76 that shocks the conscience;

77 e. Witnessing directly a death, including suicide, due to serious physical injury; or
78 homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and
79 negligence;

80 f. Witnessing directly an injury that results in death, if the person suffered serious
81 physical injury that shocks the conscience;

82 g. Participating in the physical treatment of an injury, including attempted suicide, or
83 manually transporting an injured person who suffered serious physical injury, if the injured
84 person subsequently died prior to or upon arrival at a hospital emergency department; or

85 h. Involvement in an event that caused or may have caused serious injury or harm to
86 the first responder or had the potential to cause the death of the first responder, whether
87 accidental or by an intentional act of another individual.

88 (2) The time for notice of injury or death in cases of compensable PTSD under this
89 section is measured from exposure to one of the qualifying stressors listed in the DSM-5
90 criteria, or the diagnosis of the disorder, whichever is later. Any claim for compensation for
91 such injury shall be properly noticed within fifty-two weeks after the qualifying exposure, or
92 the diagnosis of the disorder, whichever is later.

287.140. 1. In addition to all other compensation paid to the employee under this
2 section, the employee shall receive and the employer shall provide such medical, surgical,
3 chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines,
4 as may reasonably be required after the injury or disability, to cure and relieve from the
5 effects of the injury. **For an employee to receive such treatment, the accident or**
6 **occupational disease shall be the prevailing factor in causing the injury, the resulting**
7 **medical condition, the disability, and the need for treatment.** If the employee desires, he
8 shall have the right to select his own physician, surgeon, or other such requirement at his own
9 expense. Where the requirements are furnished by a public hospital or other institution,
10 payment therefor shall be made to the proper authorities. Regardless of whether the health
11 care provider is selected by the employer or is selected by the employee at the employee's
12 expense, the health care provider shall have the affirmative duty to communicate fully with
13 the employee regarding the nature of the employee's injury and recommended treatment
14 exclusive of any evaluation for a permanent disability rating. Failure to perform such duty to
15 communicate shall constitute a disciplinary violation by the provider subject to the provisions
16 of chapter ~~[620]~~ 334. When an employee is required to submit to medical examinations or
17 necessary medical treatment at a place outside of the local or metropolitan area from the
18 employee's principal place of employment, the employer or its insurer shall advance or
19 reimburse the employee for all necessary and reasonable expenses; except that an injured

20 employee who resides outside the state of Missouri and who is employed by an employer
21 located in Missouri shall have the option of selecting the location of services provided in this
22 section either at a location within one hundred miles of the injured employee's residence,
23 place of injury or place of hire by the employer. The choice of provider within the location
24 selected shall continue to be made by the employer. In case of a medical examination if a
25 dispute arises as to what expenses shall be paid by the employer, the matter shall be presented
26 to the legal advisor, the administrative law judge or the commission, who shall set the sum to
27 be paid and same shall be paid by the employer prior to the medical examination. In no event,
28 however, shall the employer or its insurer be required to pay transportation costs for a greater
29 distance than two hundred fifty miles each way from place of treatment.

30 2. If it be shown to the division or the commission that the requirements are being
31 furnished in such manner that there is reasonable ground for believing that the life, health, or
32 recovery of the employee is endangered thereby, the division or the commission may order a
33 change in the physician, surgeon, hospital or other requirement.

34 3. All fees and charges under this chapter shall be fair and reasonable, shall be subject
35 to regulation by the division or the commission, or the board of rehabilitation in rehabilitation
36 cases. A health care provider shall not charge a fee for treatment and care which is governed
37 by the provisions of this chapter greater than the usual and customary fee the provider
38 receives for the same treatment or service when the ~~[payer]~~ **payer** for such treatment or
39 service is a private individual or a private health insurance carrier. The division or the
40 commission, or the board of rehabilitation in rehabilitation cases, shall also have jurisdiction
41 to hear and determine all disputes as to such charges. A health care provider is bound by the
42 determination upon the reasonableness of health care bills.

43 4. The division shall, by regulation, establish methods to resolve disputes concerning
44 the reasonableness of medical charges, services, or aids. This regulation shall govern
45 resolution of disputes between employers and medical providers over fees charged, whether
46 or not paid, and shall be in lieu of any other administrative procedure under this chapter. The
47 employee shall not be a party to a dispute over medical charges, nor shall the employee's
48 recovery in any way be jeopardized because of such dispute. Any application for payment of
49 additional reimbursement, as such term is used in 8 CSR 50- 2.030, as amended, shall be filed
50 not later than:

51 (1) Two years from the date the first notice of dispute of the medical charge was
52 received by the health care provider if such services were rendered before July 1, 2013; and

53 (2) One year from the date the first notice of dispute of the medical charge was
54 received by the health care provider if such services were rendered after July 1, 2013.

55

56 Notice shall be presumed to occur no later than five business days after transmission by
57 certified United States mail.

58 5. No compensation shall be payable for the death or disability of an employee, if and
59 insofar as the death or disability may be caused, continued or aggravated by any unreasonable
60 refusal to submit to any medical or surgical treatment or operation, the risk of which is, in the
61 opinion of the division or the commission, inconsiderable in view of the seriousness of the
62 injury. If the employee dies as a result of an operation made necessary by the injury, the death
63 shall be deemed to be caused by the injury.

64 6. The testimony of any physician or chiropractic physician who treated the employee
65 shall be admissible in evidence in any proceedings for compensation under this chapter,
66 subject to all of the provisions of section 287.210.

67 7. Every hospital or other person furnishing the employee with medical aid shall
68 permit its record to be copied by and shall furnish full information to the division or the
69 commission, the employer, the employee or his **or her** dependents and any other party to any
70 proceedings for compensation under this chapter, and certified copies of the records shall be
71 admissible in evidence in any such proceedings.

72 8. The employer may be required by the division or the commission to furnish an
73 injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or
74 braces, as needed, for life whenever the division or the commission shall find that the injured
75 employee may be partially or wholly relieved of the effects of a permanent injury by the use
76 thereof. The director of the division shall establish a procedure whereby a claim for
77 compensation may be reactivated after settlement of such claim is completed. The claim shall
78 be reactivated only after the claimant can show good cause for the reactivation of this claim
79 and the claim shall be made only for the payment of medical procedures involving life-
80 threatening surgical procedures or if the claimant requires the use of a new, or the
81 modification, alteration or exchange of an existing, prosthetic device. For the purpose of this
82 subsection, "life threatening" shall mean a situation or condition which, if not treated
83 immediately, will likely result in the death of the injured worker.

84 9. Nothing in this chapter shall prevent an employee being provided treatment for his
85 **or her** injuries by prayer or spiritual means if the employer does not object to the treatment.

86 10. The employer shall have the right to select the licensed treating physician,
87 surgeon, chiropractic physician, or other health care provider; provided, however, that such
88 physicians, surgeons or other health care providers shall offer only those services authorized
89 within the scope of their licenses. For the purpose of this subsection, subsection 2 of section
90 287.030 shall not apply.

91 11. Any physician or other health care provider who orders, directs or refers a patient
92 for treatment, testing, therapy or rehabilitation at any institution or facility shall, at or prior to

93 the time of the referral, disclose in writing if such health care provider, any of his **or her**
94 partners or his **or her** employer has a financial interest in the institution or facility to which
95 the patient is being referred, to the following:

96 (1) The patient;

97 (2) The employer of the patient with workers' compensation liability for the injury or
98 disease being treated;

99 (3) The workers' compensation insurer of such employer; and

100 (4) The workers' compensation adjusting company for such insurer.

101 12. Violation of subsection 11 of this section is a class A misdemeanor.

102 13. (1) No hospital, physician or other health care provider, other than a hospital,
103 physician or health care provider selected by the employee at his **or her** own expense
104 pursuant to subsection 1 of this section, shall bill or attempt to collect any fee or any portion
105 of a fee for services rendered to an employee due to a work-related injury or report to any
106 credit reporting agency any failure of the employee to make such payment, when an injury
107 covered by this chapter has occurred and such hospital, physician or health care provider has
108 received actual notice given in writing by the employee, the employer or the employer's
109 insurer. Actual notice shall be deemed received by the hospital, physician or health care
110 provider five days after mailing by certified mail by the employer or insurer to the hospital,
111 physician or health care provider.

112 (2) The notice shall include:

113 (a) The name of the employer;

114 (b) The name of the insurer, if known;

115 (c) The name of the employee receiving the services;

116 (d) The general nature of the injury, if known; and

117 (e) Where a claim has been filed, the claim number, if known.

118 (3) When an injury is found to be noncompensable under this chapter, the hospital,
119 physician or other health care provider shall be entitled to pursue the employee for any unpaid
120 portion of the fee or other charges for authorized services provided to the employee. Any
121 applicable statute of limitations for an action for such fees or other charges shall be tolled
122 from the time notice is given to the division by a hospital, physician or other health care
123 provider pursuant to subdivision (6) of this subsection, until a determination of
124 noncompensability in regard to the injury which is the basis of such services is made, or
125 in the event there is an appeal to the labor and industrial relations commission, until a
126 decision is rendered by that commission.

127 (4) If a hospital, physician or other health care provider or a debt collector on behalf
128 of such hospital, physician or other health care provider pursues any action to collect from an
129 employee after such notice is properly given, the employee shall have a cause of action

130 against the hospital, physician or other health care provider for actual damages sustained plus
131 up to one thousand dollars in additional damages, costs and reasonable attorney's fees.

132 (5) If an employer or insurer fails to make payment for authorized services provided
133 to the employee by a hospital, physician or other health care provider pursuant to this chapter,
134 the hospital, physician or other health care provider may proceed pursuant to subsection 4 of
135 this section with a dispute against the employer or insurer for any fees or other charges for
136 services provided.

137 (6) A hospital, physician or other health care provider whose services have been
138 authorized in advance by the employer or insurer may give notice to the division of any claim
139 for fees or other charges for services provided for a work-related injury that is covered by this
140 chapter, with copies of the notice to the employee, employer and the employer's insurer.
141 Where such notice has been filed, the administrative law judge may order direct payment
142 from the proceeds of any settlement or award to the hospital, physician or other health care
143 provider for such fees as are determined by the division. The notice shall be on a form
144 prescribed by the division.

145 14. The employer may allow or require an employee to use any of the employee's
146 accumulated paid leave, personal leave, or medical or sick leave to attend to medical
147 treatment, physical rehabilitation, or medical evaluations during work time. The intent of this
148 subsection is to specifically ~~supereede~~ **supersede** and abrogate any case law that contradicts
149 the express language of this section.

287.270. ~~[No savings or insurance of the injured employee, nor any benefits derived
2 from any other source than the employer or the employer's insurer for liability under this
3 chapter, shall be considered in determining the compensation due hereunder; except as
4 provided in subsection 3 of section 287.170, and] 1. Any savings from benefits from the
5 employer or the employer's insurer for liability under this chapter, and any savings or
6 payments through insurance procured or provided by the employer, shall be applied
7 when determining the compensation due under this chapter and shall be deducted from
8 the compensation otherwise due under this chapter. The amount deducted from
9 compensation otherwise due under this chapter resulting from payments or benefits
10 from an insurance policy shall be limited to the portion of such savings equal to the
11 employer's pro rata share of the premium or expense for such policy. Nothing in this
12 section affects the rights of the injured employee under subsection 13 of section 287.140.~~
13 Employers of professional athletes under contract shall be entitled to full credit for wages or
14 benefits paid to the employee after the injury, including medical, surgical, or hospital benefits
15 paid to or for the **professional athlete** employee or his **or her** dependents on account of the
16 injury, disability, or death, pursuant to the provisions of the contract.

17 **2. If medical bills are in dispute and the administrative law judge or the**
18 **commission determines that the employer is responsible for the disputed medical bills,**
19 **the administrative law judge or the commission shall have the authority to order the**
20 **employer responsible for the medical bills and shall have the authority to order the**
21 **employer to make a payment only to the medical provider or providers to whom the**
22 **bills are due.**

287.445. 1. Within one hundred eighty days of the filing of the claim, if the
2 **matter has not already been set for a division prehearing conference, mediation**
3 **conference, or hearing, the employer may file a motion to dismiss the matter. The**
4 **employer may file the motion to dismiss to specifically raise one or more of the following**
5 **arguments:**

6 **(1) That the employee did not notify the employer in a timely manner or file the**
7 **claim in a timely manner under sections 287.420 and 287.430;**

8 **(2) That the employee was not performing work for the employer at the time**
9 **when the alleged injury occurred;**

10 **(3) That the employer is not liable due to the employee's intoxication from use of**
11 **alcohol or controlled substances under section 287.120;**

12 **(4) That the claimant was not employed by the employer when the alleged**
13 **incident occurred; or**

14 **(5) That the employee has otherwise failed to comply with this section in setting**
15 **forth a valid claim for compensation irrespective of whether the employee has suffered**
16 **an injury or the degree of the severity of the alleged injury.**

17 **2. Following the filing of a motion to dismiss, the division shall set a date for a**
18 **hearing, which shall be held as soon as practicable, and shall notify the interested**
19 **parties of the time and place of the hearing.**

20 **3. At the hearing for the motion to dismiss, the division, through an**
21 **administrative law judge, shall consider evidence submitted by the parties at issue**
22 **and their representatives and witnesses. Such evidence shall be related only to the issue**
23 **or issues raised by the employer in its motion to dismiss. If the division determines that,**
24 **by a preponderance of the evidence, the employer has established that the matter should**
25 **be dismissed for one or more of the arguments made in its motion to dismiss, the**
26 **division shall issue an order within thirty days dismissing the claim. Such dismissal**
27 **shall be subject to review and appeal, subject to the provisions of sections 287.470,**
28 **287.480, and 287.490.**

287.510. In any case a temporary or partial award of compensation may be made, and
2 **the same may be modified from time to time to meet the needs of the case, and the same may**
3 **be kept open until a final award can be made~~], and if the same be not complied with, the~~**

4 ~~amount equal to the value of compensation ordered and unpaid may be doubled in the final~~
5 ~~award, if the final award shall be in accordance with the temporary or partial award].~~ The
6 **temporary or partial award of compensation shall be subject to review and appeal after**
7 **the date of the final award, subject to the provisions of sections 287.470, 287.480, and**
8 **287.490.**

287.655. 1. Any claim before the division may be dismissed for failure to prosecute
2 **or upon motion of the employer, as provided herein,** in accordance with rules and
3 regulations promulgated by the commission. Such notice shall be made in a manner
4 determined by the division, except that for the employee such notice shall be by certified or
5 registered mail unless the employee to whom notice is directed is represented by counsel and
6 counsel is also given such notice. To dismiss a claim the administrative law judge shall enter
7 an order of dismissal which shall be deemed an award and subject to review and appeal in the
8 same manner as provided for other awards in this chapter.

9 **2. Within one hundred eighty days of the filing of the claim, if the matter has not**
10 **already been set for a division prehearing conference, mediation conference, or hearing,**
11 **the employer may file a motion to dismiss the matter. The employer may file the motion**
12 **to dismiss to specifically raise one or more of the following arguments:**

13 **(1) That the employee did not notify the employer in a timely manner or file the**
14 **claim in a timely manner under sections 287.420 and 287.430;**

15 **(2) That the employee was not performing work for the employer at the time**
16 **when the alleged injury occurred;**

17 **(3) That the employer is not liable due to the employee's intoxication from use of**
18 **alcohol or controlled substances under section 287.120; or**

19 **(4) That the claimant was not employed by the employer when the alleged**
20 **incident occurred.**

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