I. JURISDICTION

A. Act will apply where:

i. The injury occurred in the state of Arkansas

ii. The contract of employment is entered into in Arkansas between an Arkansas resident and an employer who is a resident or who maintains an office exercising general control over the employee, even if the injury occurred in a different state in which both parties contemplated the employment would be performed. *International Paper Co. v. Tidwell*, 250 Ark. 623

II. ACCIDENTS


i. An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment which requires medical services or results in disability or death.

   1. “Arising out of” refers to the cause of the accident. An injury arises out of employment if the employee is carrying out the employer’s purpose or advancing the employer’s interests.

   2. “In the course of” refers to the time, place and circumstances of the accident. The accident must occur within the time and space boundaries of the employment.

   3. Accident must the major cause (more than 50%) of the injury.

ii. Must be caused by specific incident and be identifiable by time and place of occurrence.

iii. An injury not caused by a specific incident or not identifiable by time and place of occurrence may still be compensable if it is caused by rapid repetitive motion, a back or neck injury or hearing loss.
iv. Mental illness Ark. Code Ann. § 11-9-113
   1. For mental illness to be a compensable injury it must be caused by physical injury to the employee’s body, demonstrated by a preponderance of the evidence, and diagnosed by a licensed psychiatrist or psychologist.

v. Heart or cardiovascular injury, accident, or disease Ark. Code Ann. § 11-9-114
   1. Compensable only if an accident is the major cause of the physical harm.

   2. The employee must show that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee’s usual work or that an unusual and unpredicted incident occurred which was the major cause of the physical harm and stress must not be considered.

   1. Employee must show that the hernia occurred immediately following and as a result of sudden effort, severe strain, or the application of force directly to the abdominal wall; that there was severe pain in the hernia region that caused the employee to immediately cease work; that the employee gave the employer notice within 48 hours afterward and that medical attention was required within 72 hours.

   i. Occupational Disease is defined as any disease that results in disability or death and arises out of and in the course of the occupation or employment or naturally follows or results from a compensable injury.

   ii. There must be a causal connection between the occupation and the disease established by a preponderance of the evidence.

   iii. An occupational disease is characteristic of an occupation, process or employment where there is a recognizable link between the nature of the job performed and an increased risk in contracting the disease in question.
iv. The test of compensability is whether the nature of the employment exposes the worker to a greater risk of the disease than the risk experienced by the general public or workers in other employments.

v. The amount of compensation will be based on the average weekly wage of the employee when last exposed to the occupational disease.

III. **NOTICE Ark. Code Ann. § 11-9-701**

A. Notice of the accident should be given immediately after it occurs and must be reported on the appropriate form prescribed or approved by the Commission.

B. A claim for an injury other than an occupational disease must be filed within 2 years from the date of the injury unless compensation has been paid, in which case a claim for additional compensation must be filed with the commission within 1 year from the date of the last payment of compensation or 2 years from the date of the injury, whichever is greater.

   i. The date of the injury is defined as the date of the occurrence of the accident from which a compensable injury results.

C. Claims based on occupational diseases must be filed within 2 years from the date of the last injurious exposure to the hazards of the disease.

   i. The statute of limitations does not begin to run until the employee knows or should be reasonably expected to be aware of the extent or nature of the injury. *Quality Service Railcar v. Williams*, 36 Ark. App. 29.

D. Failure to give notice will not bar a claim if:

   i. The employer had knowledge of the injury; or

      1. Constructive knowledge seems to be adequate. See *Gunn Distributing Co. v. Talbert*, 230 Ark. 442, claimant’s failure to give notice did not bar the claim because the insurance carrier could not establish prejudice since claimant had promptly made a claim against the same insurer for benefits under a group hospitalization policy.

   ii. If the employee had no knowledge that the condition or disease arose out of and in the course of employment; or
iii. If the commission excuses the failure due to a satisfactory reason that the notice could not be given.
   1. Fear of retaliation or harassment for filing a claim for compensation is not a satisfactory reason to excuse the failure to give notice. *Wallis v. Whirlpool Corp.*, 12 Ark. App. 101.


A. Employers must file a report of injury with the Arkansas Workers’ Compensation Commission within 10 days of receiving notice or knowledge of the injury.

B. The report filed with the Commission must include:
   i. Name, address, business of the employer
   ii. Name, address, occupation of employee
   iii. Cause and nature of the injury
   iv. Date, time and location of the injury

C. Failure to file a report could result in a $500 fine.

V. CLAIM FOR COMPENSATION

A. Employee has two years from the date of the injury or one year from the date of the last payment of compensation, whichever is greater, to file a claim for compensation.

B. If the employee has not made a request for a hearing within six months of filing a claim for compensation the employer may move to dismiss the claim without prejudice.

C. Failure to file a claim within the statutory time limits is not a bar to the right to file a claim unless the employer objects at the first hearing on the claim.

VI. ANSWER TO CLAIM FOR COMPENSATION Ark. Code Ann. § 11-9-803

A. Employer must file a statement of its intent to accept or controvert a claim within fifteen days of the date upon which it receives notice of the alleged injury.

B. Employer may request a time extension if it has made a good faith effort to obtain medical records, but has been unable to do so and
is therefore unable to determine the validity of the employee’s claim.

C. Note that this step must be done within fifteen days of the injury, **not** within fifteen days of the claim for compensation, so that this step may be required before the employee has even filed a claim for compensation.

VII. MEDICAL TREATMENT Ark. Code Ann. § 11-9-508

A. Employer has the right to select the initial treating physician, however the employee may request a one-time change of physician from the employer or carrier.
   i. Treatment furnished by any physician other than the ones selected according to these methods, except emergency treatment, will be at the employee’s expense
   
   ii. Exception: If the employer does not deliver to the employee, either in person or by certified mail, a copy of a notice which explains the employee’s rights and responsibilities concerning a change of physician, then the changes of physician rules do not apply and the employer will be responsible for the unauthorized treatment.

B. If the employee’s request for a change of physician is denied, the employee can petition the Commission and if the Commission agrees, they may select the physician if they do not agree with the employee’s choice.

C. If the employer fails to provide prompt medical services within a reasonable time, the Commission may direct that the injured employee obtain the medical service at the expense of the employer.

D. If the employer has contracted with a certified managed care organization:
   
   i. Employer has the right to select the initial primary care physician from among those in the organization
   
   ii. Employee may be allowed to change physicians one time by petitioning the commission. The new physician must be either:
      1. associated with the managed care entity chosen by the employer, or
2. the regular treating physician of the employee provided the following factors are met:
   a. the physician maintains the employee’s medical records;
   b. the employee has a bona fide doctor-patient relationship with they physician;
   c. there is a history of regular treatment prior to the onset of the compensable injury;
   d. the primary care physician agrees to refer the employee to the managed care entity for specialized treatment; and
   e. the primary care physician agrees to comply with the rules, terms, and conditions regarding services performed by the managed care entity chosen by the employer.

VIII. Vocational Rehabilitation Ark. Code Ann. § 11-9-505
A. Upon a finding by the commission that a vocational rehabilitation program is reasonable, an employer will be liable to an employee for vocational rehabilitation costs if the employee:
   i. Is entitled to receive compensation benefits for permanent disability and
   ii. Has not been offered an opportunity to return to work or reemployment assistance

B. Employer’s responsibility for payments for the program will not exceed 72 weeks

C. Employee will not be required to enter a program against his or her consent
   i. If employee waives rehabilitation or refuses to participate in an offered program, the employee will not be entitled to benefits beyond the established percentage of permanent physical impairment

D. Claimant must request the program by filing a request with the Commission prior to a determination of the amount of permanent disability benefits.

IX. AVERAGE WEEKLY WAGE Ark. Code Ann. § 11-9-518
A. Computed based on the contract of hire in force at the time of the accident, considering the fifty-two weeks prior to the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer as well as tips and commissions.

B. Piece-basis employees: divide the earnings by the number of hours required to earn those wages during the fifty-two weeks preceding the week in which the accident occurred, then multiply this hourly wage by the number of hours in a full-time workweek.

C. Overtime: add to the regular weekly wages, compute by dividing the overtime earnings by the number of weeks worked by the employee.

X. DISABILITY BENEFITS

A. Temporary Total Disability (TTD)
   i. Compensation rate two-thirds of the Average Weekly Wage (AWW) up to maximum.

   ii. If an injured employer refuses suitable employment he loses any entitlement to compensation unless the Commission determines the refusal is justifiable.

   iii. Waiting period:
      1. For the first seven calendar days, no TTD is due.

      2. For more than seven, but less than fourteen days, only the second week is due.

      3. For more than fourteen days of disability, go back to the first day of disability.

      4. The waiting period does not include the date of injury

   iv. TTD is calculated using the calendar week with each day being one-seventh of the week.

   v. Failure to pay TTD without an award within fifteen days after it becomes due is an eighteen percent penalty which must be paid at the same time as the installment unless notice of controversion is filed or an extension is granted.
vi. If a TTD installment payable under an award is not paid within fifteen days after it becomes due, there is a twenty percent penalty.

vii. Willful failure to pay a benefit results in a penalty up to thirty-six percent.

B. Temporary Partial Disability (TPD)
   i. Compensation rate sixty-six and two-thirds percent of the difference between the employee’s average weekly wage prior to the accident and his wage-earning capacity after the injury.

C. Permanent Partial Disability (PPD)
   i. In addition to temporary total and temporary partial disability benefits during the healing period or until the employee returns to work, whichever occurs first, the employee must receive weekly benefits at the permanent partial disability rate attributable to the injury for that period of time set out in the statutory schedule.

   ii. Permanent partial disabilities not listed in the statutory schedule will be apportioned to the body as a whole with a value of four hundred fifty weeks.

   iii. The employee must be paid for the proportionate loss of use of the body as a whole resulting from the injury.

   iv. In considering these types of claims, the Commission may take into account the employee’s age, education, work experience, and other matters that may affect his future earning capacity.

   v. Compensation is allowed after twelve months after the injury, for serious and permanent facial or head disfigurement for not more than $3,500.

   vi. The physician gives the clinical rating.
       1. If the employee is back to work, only the clinical rating is due.

       2. If unable to return to work, the rating is negotiable and can be awarded by the ALJ.
vii. PPD payments should start from the date the rating is given and notification in writing should be given to the injured employee.

D. Permanent Total Disability (PTD)
   i. Permanent total disability means the inability because of compensable injury or occupational disease to earn any meaningful wages in the same or other employment.

   ii. Compensation rate sixty-six and two-thirds percent of the average weekly wage.

   iii. The employer or carrier may, annually, require the injured worker receiving permanent total disability benefits to certify that he is permanently and totally disabled and not gainfully employed.

   iv. As of January 1, 2008 the cap for PTD is 325 times the maximum total disability rate established at the date of injury.

E. Death
   i. For deaths occurring as the result of an injury that occurred on or after July 1, 1993, the employer is responsible for funeral expenses of $6,000 or less.

   ii. There is a rebuttable presumption that death did not result from the injury if:
       1. death does not occur within one year from the date of the accident or
       2. within the first three years of the period for compensation benefits.

   iii. Compensation for death of an employee is payable to the dependents in the following percentages of the average weekly wage and in the following order of preference:
       1. Widow/Widower with no children:
           a. 35% paid until his/her death or remarriage

       2. Widow/Widower with children:
           a. 35% paid until his/her death or remarriage and
           b. 15% for each child

       3. One child with no widow/widower:
           a. 50%
4. More than one child with no widow/widower:
   a. 15% for each child and
   b. 35% to the children as a class to be divided equally among them

5. Parents:
   a. 25% each

6. Siblings, grandchildren, grandparents:
   a. 15% each

iv. If a spouse remarries before complete payment of benefits, he/she must be paid a lump sum equal to compensation for 104 weeks.

v. Benefits to children will terminate at age eighteen unless the child is a full-time student under the age of twenty-five.

vi. Incapacitated dependants are entitled to compensation regardless of age or marital status.

F. Illegally Employed Minor
   i. Minors employed in violation of federal or state statutes pertaining to minimum ages for employment of minors are entitled to double the statutory amounts of compensation or death benefits.

   ii. This provision applies unless the minor misrepresented his or her age, in writing, to the employer.

XI. PROCEDURE
A. Pre-Injury
   i. Employers should have Form P displayed in a conspicuous place to instruct employees in how to deal with an injury.

   ii. If employee fails to follow Form P instructions employer has a defense to employee’s resulting in a bar to the claim as long as the objection to failure to give notice is made at or before the first hearing on the claim.

B. Employee’s Notice of Injury
   i. Employee is required to fill out Form N and provide notice of his injury to the person and place specified by the employer.

   ii. Employer is not responsible for any benefits to the employee incurred prior to notification of the injury, except for
emergency treatment that occurs outside the normal business hours of the employer, so long as a report of injury is made the next day.

iii. Employee need not file Form N if:
   1. the injury renders the employee incapable of informing the employer of it, or
   2. if employer had actual knowledge of the injury.

C. Employer's Notice of Injury
   i. Employer must report an employee's injury to the workers’ compensation commission within ten days from receipt of notice of actual knowledge using Form 1.

   ii. Failure to do so may result in a fine up to $500.

D. Claim for Compensation
   i. Employee must file a claim for compensation using Form C within the two year statute of limitations.

   ii. The claim will be assigned to one of six geographic districts throughout the state, based on the county in which the injury occurred or the district in which the respondent’s place of business is located if the injury occurred outside the state.

   iii. Ark. Code Ann. § 11-9-704. The Commission must notify the employer and any interested parties that an employee has filed a claim for compensation within ten days of such a filing.

   iv. Ark. Code Ann. § 11-9-702. If the employee fails to request a hearing within six months of filing his or her claim the claim may, upon motion and hearing, be dismissed without prejudice, allowing the employee to refile his claim within the two-year statute of limitations.

E. Employer's Response
   i. Employer must file a statement of its intent to accept or controvert a claim within fifteen days of the date upon which it received notice of the alleged injury on Form 2.

   ii. Employer may request a time extension if a good faith, but unsuccessful effort has been made to obtain medical records rendering the employer unable to determine the validity of an employee’s claim.
F. Payment of Benefits
   i. The first installment of compensation must be paid on the fifteenth day after the employer received notice of the injury, with payments to continue every two weeks thereafter.

G. Disputed Claims
   i. Preliminary Conference
      1. Mediation Conferences will be held in all cases in which the amount in dispute is less than $2,500.
      2. For cases in which the amount in dispute is more than $2,500 the parties may request a voluntary mediation if all parties agree.
      3. The conference will be informal, nonbinding, and confidential, by telephone or in person.
      4. Attendance by the parties or a representative is required and the mediator is authorized to compel attendance, however the mediator is not authorized to compel settlement.
      5. Following the conference, the Report of Mediation Conference (Form R) is placed in the file and copies are sent to all the parties.

   ii. Depositions
      1. Any party may conduct depositions after the claim has been controverted by the filing of Form 2, however prior to the time a case has been controverted, the Commission may order depositions for good cause shown and upon application of either party.

iii. Settlement
      1. If both parties agree to a settlement a joint petition must be filed with the Commission.
      2. The Commission will hear the petition, take testimony, and make investigations to determine whether to allow the final settlement.
      3. Neither party may appeal an order or award denying a joint petition, however the denial is made without prejudice to either party.

iv. Hearing
1. Either party may file an application for a hearing that clearly identifies the specific issues of fact or law in controversy and the applying party’s contentions.

2. If ordered, the Commission must give interested parties ten days’ notice of the hearing.

3. The hearing will be held in the county where the accident occurred, or the county of the employer’s residence or place of business if the injury occurred outside the state.

4. Evidence may include verified medical reports provided the party using the reports has given opposing counsel notice and copies of all records and reports within seven days of the hearing.

5. Expert testimony is only permissible if such testimony complies with the requirements of Daubert and Kumho.

v. Award
1. The order denying the claim or making the award will be filed in the office of the commission and a copy will be sent to each party.

vi. Appellate Process
1. Full Workers' Compensation Commission
   a. 30 days from the date of receipt of the order or award to file application for review

   b. Will review the evidence, or hear the parties, their representatives, and witnesses.

2. Court of Appeals
   a. 30 days from the date of receipt of the order or award to file notice of appeal

   b. Notice filed in office of commission

   c. Court will review only questions of law and may modify, reverse, remand for rehearing, or set aside the order or award upon any of the following grounds, but no others:
      i. The commission acted without or in excess of its powers
ii. The order or award was procured by fraud

iii. The facts found by the commission do not support the order or award

iv. The order or award was not supported by substantial evidence of record

XII. DEFENSES

A. Assault
   i. Employee's claim will be barred if it occurred as a result of an assault absent a showing by a preponderance of the evidence that the incident arose out of a work related animus or hostility between the claimant and the co-worker who caused the assault.

B. Horseplay
   i. An injury that occurs as a result of horseplay will not be compensable except as to innocent victims of the playing.
   
   ii. Arkansas statutes and cases do not define horseplay, but find it synonymous with the terms “skylarking,” or “rough or boisterous play.” Morales v. Martinez, 88 Ark. App. 274.

C. Going and Coming Rule
   i. Precludes recovery for an injury sustained while the employee is going to or returning from his place of employment.
   
   ii. Premises exception no longer exists in Arkansas. The 1993 Act excludes from compensation injuries that occur “at time when employment services were not being performed.”
      1. Merely walking through an employer’s parking lot will not qualify as performing “employment services” and therefore a claim for injury arising out of that activity will be precluded. See Hightower v. Newark Public School System, 57 Ark. App. 159.
   
   iii. The rule does not preclude benefits where the journey itself is part of employment services, such as in the case of delivery drivers.
   
   iv. Dual Purpose Exception

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1. An injury occurring during a trip that serves both a business and personal purpose is within the course of employment.
   a. A trip that involves the performance of services for the employer which would have caused the trip to be taken by someone else falls under this exception

2. Applies to out of town trips, trips to and from work, and miscellaneous errands such as visits to bars and restaurants if motivated in part by the intention to transact business there.

3. Exception will not apply to identifiable deviations from the business trip for personal reasons until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial.

D. Recreational or social activities
   i. An employee injured while engaging in or performing or as a result of engaging in or performing any recreational or social activities for the employee’s personal pleasure is precluded from receiving compensation benefits.

E. Employment services were not being performed, employee had not yet been hired or employment relationship had terminated

   i. An injury “substantially occasioned” by the use of alcohol or drugs is not compensable.

   ii. The mere presence of alcohol or drugs creates a rebuttable presumption that the accident was substantially occasioned by the use of the drugs or alcohol.

   iii. By performing services for the employer, the employee has impliedly consented to reasonable drug and alcohol testing for the presence of these substances in the employee’s body at the time of the accident and refusal to test precludes the employee from receiving benefits unless he proves it did not substantially cause the injury.

   iv. The employee must prove by a preponderance of the evidence that the alcohol or drugs did not substantially occasion the accident.
v. If a reasonable suspicion of alcohol exists at the time of the accident testing must be done within eight hours.

vi. If a reasonable suspicion of drugs exists at the time of the accident testing must be done within thirty-two hours.


i. A false statement in an employment application will bar workers’ compensation benefits if the following conditions are shown:

1. The employee must have knowingly and willfully made a false representation as to his or her physical condition;

2. The employer must have relied upon the false representation;

3. The reliance upon the false misrepresentation was a substantial factor in the hiring; and

4. There is a causal connection between the false representation and the injury.

ii. For the defense to apply, the questions asked on the employment application must request factual information, not an opinion.