

**44-510c. Compensation for permanent total and temporary total disabilities.** Where death does not result from the injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and as follows:

(a) (1) Where permanent total disability results from the injury, weekly payments shall be made during the period of permanent total disability in a sum equal to 66<sup>2</sup>/<sub>3</sub>% of the average weekly wage of the injured employee, computed as provided in K.S.A. 44-511, and amendments thereto, but in no case less than \$25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto, per week. The payment of compensation for permanent total disability shall continue for the duration of such disability, subject to review and modification as provided in K.S.A. 44-528, and amendments thereto.

(2) Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Expert evidence shall be required to prove permanent total disability.

(3) An injured worker shall not be eligible to receive more than one award of workers compensation permanent total disability in such worker's lifetime.

(b) (1) Where temporary total disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in K.S.A. 44-510h and 44-510i, and amendments thereto, unless the temporary total disability exists for three consecutive weeks, in which case compensation shall be paid for the first week of such disability. Thereafter weekly payments shall be made during such temporary total disability, in a sum equal to 66<sup>2</sup>/<sub>3</sub>% of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511, and amendments thereto, but in no case less than \$25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto, per week.

(2) (A) Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary restrictions for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, provided that if there is an authorized treating physician, such physician's opinion regarding the employee's work status shall be presumed to be determinative.

(B) Where the employee remains employed with the employer against whom benefits are sought, an employee shall be entitled to temporary total disability benefits if the authorized treating physician imposed temporary restrictions as a result of the work injury which the employer cannot accommodate. A refusal by the employee of accommodated work within the temporary restrictions imposed by the authorized treating physician shall result in a rebuttable presumption that the employee is ineligible to receive temporary total disability benefits.

(C) If the employee has been terminated for cause or voluntarily resigns following a compensable injury, the employer shall not be liable for temporary total disability benefits if the employer could have accommodated the temporary restrictions imposed by the authorized treating physician but for the employee's separation from employment.

(3) Where no award has been entered, a return by the employee to any type of substantial and gainful employment shall suspend the employee's right to the payment of temporary total disability compensation, but shall not affect any right the employee may have to compensation for partial disability in accordance with K.S.A. 44-510d and 44-510e, and amendments thereto.

(4) An employee shall not be entitled to receive temporary total disability benefits for those weeks during which the employee is also receiving unemployment benefits.

(c) When any permanent total disability or temporary total disability is followed by partial disability, compensation shall be paid as provided in K.S.A. 44-510d and 44-510e, and amendments thereto.

**History:** L. 1968, ch. 102, § 5; L. 1970, ch. 190, § 5; L. 1974, ch. 203, § 12; L. 1979, ch. 156, § 6; L. 1987, ch. 187, § 5; L. 1990, ch. 183, § 3; L. 1993, ch. 286, § 32; L. 2000, ch. 160, § 8; L. 2011, ch. 55, § 7; May 15.