

**Rules of
Department of Labor and Industrial
Relations**

**Division 50—Workers’ Compensation
Chapter 6—Crime Victims**

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**Title 8—DEPARTMENT OF
LABOR AND INDUSTRIAL
RELATIONS**

**Division 50—Workers' Compensation
Chapter 6—Crime Victims**

**8 CSR 50-6.010 Rules Governing Crime
Victims**

PURPOSE: This rule sets forth requirements for filing and pursuing claims under Chapter 595 of the Revised Statutes of Missouri.

(1) Compliance with and Suspension of Rules. All parties seeking action of the Division of Workers' Compensation, referred to in this rule as the division, shall comply with these rules, unless in its judgement, the division determines that compliance with any of the rules under particular circumstances will result in injustice to any party. Rules therefore may be suspended at the discretion of the division and additional evidence received or cases scheduled out of their regular order.

(2) Terms Defined.

(A) Terms defined in Chapter 595 have the same meaning when used in these rules.

(B) Gainful employment—Any lawful activity engaged in on a regular and continuous basis from which a person derives a livelihood including any benefit received from a federal, state or other governmental agency.

(3) Filing.

(A) In addition to all other statutory requirements, claims must be filed on official Application for Compensation (CV-1) forms with the Crime Victims' Unit at the Jefferson City office of the division within two (2) years of the date of the crime. Subject to the discretion of the division, an application can be made on a CV-1 form reproduced from electronic means.

(B) Formal claim will not be considered as filed until the application form has been completed in its entirety and date-stamped by the division.

(C) All communications, documents and letters shall be filed with this office.

(D) All forms, reports, letters and other documents filed by the claimant must be original documents unless this requirement is waived by the division.

(E) The claimant shall be responsible for proving to the satisfaction of the division, by a preponderance of evidence, that the injuries or death giving rise to the application arose from a crime which was promptly reported to a proper law enforcement agency; the extent

of out-of-pocket losses sustained as a direct result of the crime; and that the victim, by his/her acts, did not contribute to the injuries suffered.

(F) The claimant shall file with the division current medical reports covering treatment, diagnosis and prognosis, including an estimate of any permanent injury impairing claimant's ability to secure gainful employment.

(G) Claimant shall produce legible identical copies of all bills and documents supporting the payment of all unreimbursed expenses and wage losses or loss of support incurred unless this requirement is waived by the division.

(H) Following the initial filing of a claim, if a claimant fails to take further steps to support or perfect the claim as may be required by the division within thirty (30) days after written notice of the requirement is sent by the division to the claimant, the claimant shall be deemed in default. If the claimant is in default, the division shall notify the claimant that the claim is denied and the claimant shall be forever barred from reasserting it; however, the division may reopen the proceeding upon a showing by the claimant that the failure to do the acts required by the division was beyond the control of the claimant.

(I) All communications from the division to the claimant will be sent to the claimant's last known address. The claimant must promptly advise the division of any change in address in writing.

(4) Death Cases.

(A) The division may require an autopsy report. Refusal to allow an autopsy may be cause for denial of benefits.

(B) Claimant must file a Death Certificate.

(C) Claimant must file a Birth Certificate for each child for whom compensation is sought as a dependent of the victim.

(D) Claimant must provide documentable evidence of support when a claim is being made for loss of support.

(E) The division may require federal income tax returns indicating the claimant is a dependent of the victims.

(5) Public Inspection of Documents.

(A) A request to inspect or receive copies of any document in the possession of the division as a result of a claim made under the Crime Victims Law shall be in writing.

(B) The charge for copies shall be a reasonable cost determined by the division.

(C) Persons inspecting documents shall not alter, deface or mark the documents in any manner.

(6) Suspension of Proceedings. The division may suspend all proceedings pending disposition of a criminal prosecution.

(7) Reporting.

(A) Victims shall promptly report the crime to the proper authorities. No compensation shall be paid if the report shows that such report was made more than forty-eight (48) hours after the occurrence or the discovery of the crime upon which the claim is based, unless the division finds that the report was delayed because of the incapacity of the victim. A report made to the circuit court for the purpose of child or adult protective services shall meet this requirement. In the discretion of the division, a report made to any state agency for the purposes of child or adult protective services may meet this requirement.

(B) A victim continually residing in a certified domestic violence shelter for up to five (5) days from the date of the crime may constitute good cause for delay in reporting the crime.

(8) Cooperation.

(A) Claimant shall cooperate with any law enforcement agency investigating the crime giving rise to the claim. Refusal to cooperate may result in the denial of the claim.

(B) All claimants must fully cooperate with investigators or representatives of the division in order to be eligible for an award. In the event that cooperation is refused or denied, the division may deny a claim for lack of cooperation.

(9) Contribution.

(A) Contribution is determined by the action portrayed by the victim at the time of or preceding the crime. If the victim participated in an illegal act in which there was a direct relationship between the illegal act by the victim and the infliction of the injury upon which the claim is based, it will be considered *prima facie* evidence of contributory conduct and the claim shall be denied.

(B) The actions of the victim in events leading up to the crime will be examined to find if the victim was involved in an act in which there is a proximate relationship between the victim's actions and the infliction of the injuries to the victim. If a finding is made that the victim's actions attributed to the infliction of the injuries for which the claim is based, then the amount of the award will be reduced or the claim will be denied. The division shall disregard the responsibility of the victim for his/her own injury where the victim was provoked by the defendant in a manner threatening bodily harm to the vic-

tim and the victim acted in self-defense, or where responsibility was attributable to efforts by the victim to aid a victim or to prevent a crime or an attempted crime from occurring in his/her presence or to apprehend a person who had committed a crime in his/her presence.

(10) Unjust Enrichment.

(A) In determining whether a compensation award can be made without unjustly enriching an offender, the division shall evaluate whether the victim has reported the crime and is cooperating with the criminal justice system in the investigation and prosecution of the crime, and whether the victim will do what is possible to prevent access by the offender to compensation paid to the victim. If the victim is cooperating fully and if the offender will not benefit from or have access to a substantial portion of any cash award made by the division to the victim, then the award shall not be denied on the basis that the offender would be unjustly enriched.

(B) An unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award. The presence of the offender in the household is only one factor to be considered in determining unjust enrichment, and it is necessary to make a case-by-case determination of whether the offender will be unjustly enriched, according to the facts of each situation.

(C) In determining whether enrichment is substantial or inconsequential, factors to be considered include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his/her living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied. It should be remembered, however, that a portion of an award that may pay for some of the offender's living expenses, such as rent, may also be paying for the same essential needs of the victim and the victim's dependents.

(D) The Crime Victim's Compensation Fund is a payor of last resort. Collateral resources available to the victim from the offender shall be examined. Collateral resources may include court-ordered restitution, an offending spouse's medical insurance or other resources of the offender available to cover the victim's expenses. In evaluating the availability of collateral resources, a determi-

nation shall be made first as to whether the offender has a legal responsibility to pay; second, whether the offender has resources to pay; and third, whether payment is likely. The victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery. If the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impeded payment of insurance that may be available to cover a spouse's or child's expenses, the division should attempt to meet the victim's needs to the extent allowed, and the division may pursue whatever actions are appropriate to seek reimbursement from the offender. The division shall ensure that the program is subrogated to any restitution the offender may owe to the victim.

(E) Payments shall be made to third-party providers to prevent cash intended to pay for the victim's expenses to be used by or on behalf of the offender.

(F) With regard to claims from or on behalf of abused children, the division shall not penalize child victims by denying or delaying payment when the offender is not meeting legal obligations or collateral resources are not forthcoming. Third-party payments shall be used whenever possible to prevent or minimize unjust enrichment of offenders living with abused children. The division may also consider establishment of a trust arrangement to guarantee that the award is used for the purposes it is intended.

(G) Life insurance proceeds shall not be considered a collateral source for a claim for loss of support.

(H) A dependent, a family member or survivor of a victim of homicide shall not be denied compensation on the basis of the homicide victim being finally adjudicated and found guilty in a criminal prosecution under the laws of this state of two (2) felonies within the past ten (10) years, of which one (1) or both involves illegal drugs or violence.

(11) Award.

(A) All awards shall be one (1)-time payments, including payments made for medical care or other services necessary as a result of the injury, with the exception, at the discretion of the division, of mental health treatment or extended medical treatment which may be made in multiple payments;

(B) When disbursing an award, the division shall apply the proceeds of the award in the following order:

1. Reimbursement for compensable out-of-pocket expenses;

2. Loss of income from gainful employment the victim would have earned had the victim not been injured;

3. Loss of financial support from gainful employment that the victim would have supplied to legal dependents had the victim not died; and

4. Outstanding medical and funeral expenses.

(C) The division shall prorate the remaining amount of the award among the providers in category (11)(B)4. after compensation awarded outlined in paragraphs (11)(B)1., 2. and 3. have been deducted.

(D) If the recipient of an award is a minor, the division may require that a guardianship be established and the award be delivered to the guardian of the minor's estate. In no instance shall payments be made directly to any person legally incompetent to receive them but instead shall be made to the parent, guardian or conservator for the benefit of such incapacitated person.

(E) In determining whether to award loss of income from gainful employment to a victim or loss of support from gainful employment to a dependent of a victim, the following factors may be considered by the division:

1. Whether the victim was gainfully employed at the time of the injury or death as shown by federal and state income tax returns; and

2. If the victim was self-employed, federal income tax returns and any estimated returns for the year of the crime.

(F) In no case will an award for loss of income or loss of support from gainful employment be made without substantial proof of earnings at the time of the crime on which the claim is based.

(G) The division will make an emergency award only upon a showing of dire necessity. The claimant must request, in writing, an emergency award when submitting his/her application form and show just cause as to why an emergency award should be considered. No award will be made until the police report is acquired.

(H) The division shall not be liable for payment of compensation for any out-of-pocket expenses incurred more than three (3) years following the date of the crime.

(12) Claim Filed.

(A) Upon receipt of an Application for Compensation on Form CV-1, the division will assign the case for investigation.

(B) After the investigation is completed and necessary documents are filed, the division may issue an administrative decision offering a settlement based upon its opinion as to the dollar value of the claim or deny the

claim based upon the provisions outlined in Chapter 595.

(13) Procedure.

(A) Claimant may accept the offer of settlement as long as it remains open.

(B) If the claimant disagrees with the decision of the division, s/he may ask the division to set the case for hearing before an administrative law judge.

(C) The request for a hearing shall be made in writing and shall be submitted to the division office in Jefferson City.

(D) The request for the hearing must be made within thirty (30) days of the date of the letter containing the decision of the division.

(E) Claimant may ask that his/her case be advanced on the hearing docket on the grounds of extreme need and undue hardship. This request must be accompanied by affidavit setting forth facts that will allow a determination of the degree of need and hardship.

(F) Hearings before the division representative will be simple, informal and summary with respect to the conduct. All of the competent evidence desired to be offered by the claimant and by the division shall be heard.

(G) The division may receive as evidence any statements, documents, information or material, that it finds is relevant and of a nature to afford the parties a fair hearing. The division may also accept police reports, hospital records and reports, physicians' reports and other documentation as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.

(H) If claimant fails to appear at the first docket setting of his/her claim, claimant may be notified of the second setting by certified United States mail. If s/he fails to appear at the second setting, the claim may be dismissed for want of prosecution.

(I) Notice of the hearing sent to a party's attorney at the attorney's last known address shall be deemed notice to the party.

(14) Attorneys and Attorney Fees.

(A) Claimants have the right to be represented before the division by an attorney-at-law, licensed to practice in Missouri. The attorney shall file a notice of appearance and a signed contract for legal services between the attorney and claimant.

(B) The attorney representing a claimant before the division must submit an affidavit setting forth the total number of hours expended and describing the nature of the work performed on the claim.

(C) Attorney's fees shall be awarded at the discretion of the division.

(D) Attorney's fees may be based on the number of hours spent in representing the claimant on the Crime Victims' Compensation claim. Hourly fee rate shall be determined by the division.

(E) The attorney's fee shall not exceed fifteen percent (15%) of the total amount awarded to the claimant.

(F) No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the division.

(G) The attorney shall not receive fees from any other source in regard to the claim.

(15) Disclosure. No information obtained by the division shall be disclosed to persons other than the parties to compensation proceedings and their attorneys, except by order of the division or the Labor and Industrial Relations Commission, or at a conference proceeding, but information may be used by the division or the commission for statistical purposes.

AUTHORITY: sections 287.650 and 595.060, RSMo Supp. 1998. Original rule filed Dec. 14, 1982, effective March 11, 1983. Amended: Filed Dec. 28, 1990, effective June 10, 1991. Amended: Filed March 18, 1999, effective Oct. 30, 1999.*

**Original authority: 287.650, RSMo 1939, amended 1949, 1961, 1980, 1993, 1995, 1998; and 595.060, RSMo 1981, amended 1993, 1995.*

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