



GOVERNMENT &amp; POLITICS

# KS workers compensation law among worst in nation, critics say, but change is unlikely

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Jennifer Young was a radiology technician, making about \$80,000 a year in 2017, when she was savagely attacked by a patient midway through an X-ray. Her head injuries required brain surgery. The ordeal left her with back problems and permanent neurological damage. The Wichita single mother, still in her early 30s, learned that she would never work again. That led to her next nightmare: a seemingly endless battle with Kansas' workers compensation system.

Workers compensation was created in the late 19th century to prevent lawsuits against employers and ensure that employees hurt on the job could get disability benefits. Nearly all Kansas employers are required to carry insurance to cover costs when they are liable for an on the job injury. In 2020, 8,851 Kansans were compensated for lost time after bring hurt at work. But critics say the system is long overdue for reform. Low lifetime caps on benefits and regulatory changes friendly to employers and insurance companies interested in lowering costs mean that injured workers are surviving on less.

Debbie Berkowitz, Worker Health and Safety Program Director at the National Employment Law Project, said Kansas appears to be one of the worst states for help after an injury on the job. "It means that a work-related injury could cause your worker to fall right out of the middle class and into poverty," Berkowitz said . Jennifer Young initially went back to work after the attack, the result of pressure, she said, from her superiors at Family Medicine East. The clinic declined to comment when reached by The Star. "I was immediately pushed around by my employer," Young said "It wasn't until about a few weeks of working in pain that I realized I needed to do something further to protect myself."

Subsequent doctors appointments revealed the full extent of her injuries. But it took an attorney and three years in court before Young gained a settlement.

Even then, Kansas' cap on benefits means that the most she can earn from workers compensation in her lifetime is less than she would have in two years on the job. Once that is exhausted, she'll have to apply for Social Security disability. "I'm fully, permanently disabled so I'm no longer able to use my college diploma that I worked so hard to get. I have a bachelor's degree, an associates degree and I still have to pay those student loans back," Young said. "There are no options available for me .. I'm not going to ever be able to work another day in my life." "There's no way a single mom would be able to financially live off of this." Kansas has the lowest cap for workers compensation in the nation, blocking anyone — regardless of the age

they are injured — from receiving more than \$155,000 over the course of their lifetime. The next lowest cap is \$213,819 in Colorado, according to the National Academy of Social Insurance. Missouri has no cap on benefits. Kansas has only raised the cap once in the last decade, falling well behind the rate of inflation. By comparison, 45 states have no cap at all.

Healthcare expenses related to the injury will always be covered, but each treatment must be approved by the employers insurance company and workers have to go to a doctor approved by the company. For older Kansans, the potential for benefits is just as limited. Seniors who return to work to supplement their Social Security income are penalized for that choice if they are injured on the job. Any income they're receiving from Social Security offsets the workers compensation benefits they can earn. Efforts to reform the system, however, have largely stalled out in the Legislature. Bills introduced to raise the cap and eliminate the Social Security offset failed to get formal hearings during the first half of the Legislative session.

Rep. Sean Tarwater and Sen. Renee Erickson, who chair the House and Senate Commerce Committees, said last month that the issue isn't a priority.

Rep. John Carmichael, a Wichita Democrat who proposed one of the bills, said he believes the Legislature could become more sympathetic to these sorts of proposals soon. "I think today, as I talk to people in the Statehouse there are more and more of us that are still working at retirement age and I think more and more of us can appreciate the serious economic impact this may have not only on some workers who are 65 and older but also their families and grandkids who are depending on them for support," Carmichael said. But even efforts to reform the program at the administrative level have been met with resistance in the Legislature. Lawmakers pointed to administrative changes within workers compensation as evidence of the need to pass a constitutional amendment granting themselves veto power over agency rules and regulations. The changes in question have not yet been enacted but aim to require insurance providers to give written notice to claimants when benefits are cut off and allow claimants to be more involved in medical decisions. Speaking to a caucus of House Republicans, Tarwater warned that those regulatory changes would cause insurance rates to go through the roof. Tarwater also sponsored a bill that would overturn the rules. Advocates for workers said the reaction is typical.

"That is the answer to every change to every comp law in Kansas," said Jan Fisher, a Kansas workers compensation attorney. Even if Kansas lifts its benefits cap, the change will be too late to help people like Young who are already in the system. They would have been game-changing though. "I probably wouldn't be struggling to put food on the table every single day," she said. "The people that follow behind me don't deserve to go through what I've been put through ... There needs to be a change that will help the people that are actually getting hurt, that are suffering everyday."