

WORKERS' COMPENSATION:

Missouri law does not prohibit an employer from agreeing to allow its employees who sustain occupational injuries or illnesses from selecting physicians of their own choice or from agreement to pay for such physicians.

OPINION NO. 132-2003

November 6, 2003

Honorable Dan Bishop
Representative, District 38
State Capitol Building, Room 109-G
Jefferson City, MO 65101

Dear Representative Bishop:

You have submitted the following question to this office:

Is a provision in a private sector collective bargaining agreement which provides that an employee who sustains an occupational injury or illness shall be allowed to select a physician of their own choice, prohibited by or violative of Chapter 287 of the Revised Statutes of Missouri or any other Missouri law?

Section 287.140.1, RSMo 2000, governs the selection of physicians in workers' compensation cases. It provides:

In addition to all other compensation, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. *If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense.*

(Emphasis added.)

The first rule of statutory construction is to implement the intent of the legislature. *State v. Burnau*, 642 S.W.2d 621, 623 (Mo. banc 1982). In such construction, words are to be given their plain and ordinary meaning. *Hovis v. Daves*, 14 S.W.3d 593, 595 (Mo. banc 2000). The statute expressly allows employees to select physicians at their own expense. Accordingly, there is nothing in the language of the statute or Missouri case law that prohibits an employee from choosing his or her own physician. There is also nothing in the statute that prohibits an employer from agreeing to allow its employees to choose their own physicians, or from agreeing to pay for physicians chosen by employees. Although the statute does not require an employer to pay for a physician chosen by its employee, nothing in its terms prohibits an employer from undertaking the obligation, by agreement, to pay for such a physician. Likewise, the subject matter and context of the statute do not suggest any intent to prohibit an employer from taking on the additional obligation of paying for physicians chosen by its employees. *See Estate of Welch*, 797 S.W.2d 742, 745-46 (Mo. App. W.D. 1990) (statute did not prohibit or void contract where statute's language and subject matter demonstrated that legislature did not intend such result).

CONCLUSION

Missouri law does not prohibit an employer from agreeing to allow its employees who sustain occupational injuries or illnesses from selecting physicians of their own choice or from agreeing to pay for such physicians.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General