

STATUTE OF LIMITATIONS:
WORKMEN'S COMPENSATION ACT:

Time for filing claim extended to
one year after the filing of report
of injury by employer, under Sec-
tions 287.430 and 287.440, Laws of
1965.

November 24, 1965

OPINION NO. 321

Honorable Richard J. Rabbitt
8th District Representative
7 North 7th - Suite 616
St. Louis, Missouri 63101



Dear Mr. Rabbitt:

Your letter of August 1, 1965, concerning Senate Bill No. 215 of the 73rd General Assembly requested whether the date of running of the statute of limitation set out in such bill is applicable when the injury occurred prior to the effective date of the bill and whether it applies where the report of the injury was filed prior to the effective date of the bill.

Senate Bill No. 215, 73rd General Assembly, Sections 287.430 and 287.440, Laws of 1965, repeals and reenacts Sections 287.430 and 287.440 RSMo, 1959.

Section 287.430 RSMo, 1959, provided that no proceeding under the Workmen's Compensation Act may be maintained unless the claim is filed within one year after the injury or death, or within one year from the date of the last payment if payment had been made on account of the injury or death. The new Section 287.430 is identical to the previous section, except that the time for filing a claim is extended to one year after the filing by the employer of a report of injury or death as required by Section 287.380, if the employee has filed the notice required by Section 287.420 RSMo. Section 287.380 requires the employer to file within a period of time after knowledge of an accident resulting in personal injury to an employee, a report of injury or death for which the employer would be liable for medical aid or compensation.

Section 287.430, Laws of 1965, is as follows:

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"No proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within one year after the injury or death, or in case payments have been made on account of the injury or death, within one year from the date of the last payment, or in cases where the employee has filed the notice required by Section 287.420. the claim may be filed within one year after the filing by the employer of the report of injury or death as required by section 287.380. The filing of any form, report, receipt, or agreement, other than a claim for compensation, shall not toll the running of the one year period provided in this section. In all other respects the limitations shall be governed by the law of civil actions other than for the recovery of real property, but the appointment of a guardian shall be deemed the termination of legal disability from minority or insanity."

The underscored portion of the statute indicates the amendment in the 1965 law.

To answer your questions specifically, if the injury occurred before the effective date of the legislation, the time for filing a claim is extended by the amendment, (unless the limitation period provided in Section 287.430 RSMo, 1959, has barred the claim). If the report of injury is filed before the effective date of the legislation but more than a year had elapsed since the injury or last payment of compensation, then the time for filing a claim would not be extended by the amendment.

Section 29, Article 3, of the Constitution of Missouri, of 1945, provides that legislation shall become effective ninety days after the adjournment of the Legislature which in this case is October 13, 1965.

The identical question has been considered by the Supreme Court of Missouri, in the case of *Wentz v. Price Candy Co.*, 352 Mo. 1, 175 S.W. 2d 852. Here Section 3727 RSMo 1939 was amended

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extending the time for filing claims under the Compensation Act, from six months to one year from the date of injury. Claimant was injured on April 26, 1941. At that time the statute required claims to be filed with the Compensation Commission within six months of the date of injury. Therefore the claimant had until October 26, 1941, to file her claim. The amendment to the statute extending the time for filing claims from six months to one year became effective October 10, 1941. The claimant filed her claim on December 26, 1941. This was within a year but more than six months after the date of injury. The Court said l.c. 853:

"The question for decision is whether the statute as amended is applicable to claims existing at the time the amendment became effective or only to claims accruing after such time. If the former, appellant's claim was timely filed. If the latter, appellant's claim remained subject to the six months' limitation, which period had expired and her claim was filed too late
* * *.

"A statute which affects only the remedy may properly apply to a cause of action which has already accrued and is existing at the time the statute is enacted. Ordinary statutes of limitation are held to affect the remedy only. The principle is well settled that the period of limitation prescribed by such statutes may be enlarged and become applicable to existing causes of action, but an enlargement of the period of limitation may not revive a cause of action which has been barred under the limitation as it previously existed. Annotation, 46 A.L.R. 1101. It is the rule in this State that a statute dealing only with procedure or the remedy applies, unless the contrary intention is expressed, to all actions falling within its terms whether commenced before or after the enactment."

Then at l.c. 855:

"The legislature clearly intended Section

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3727 to be one of limitation and repose, affecting the remedy only, and we are obliged to so regard it."

And at l.c. 857:

"The Workmen's Compensation Act is contractual. State ex rel. Brewen-Clark Syrup Co. v. Missouri Workmen's Comp. Comm., 320 Mo. 893, 8 S.W. 2d 897, 899. Still the application of the amendment enlarging the period of limitation to claims which had already accrued violates no constitutional inhibitions because the statute is procedural - applying to the remedy only. * * *

"The amendment to Section 3727 extending the limitation period to one year governs appellant's claim. As her claim was filed within the year it was not barred but was timely filed."

Thus it will be seen that a statute extending the time for filing claims has been held to be a procedural statute and governs the remedy only.

In State v. Jensen, Mo., 363 S.W. 2d 666, a similar question on statutory construction was discussed. On p. 669 the Court said:

"* * * Article I, Section 13 Constitution of Missouri 1945, V.A.M.S., which in substance bars the legislature of this state from passing a retroactive law, as follows: 'That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted.'

"The mentioned constitutional provision does not apply in some cases, as for example, to a statute dealing only with procedure or the remedy. In such case the statute applies to all actions falling within its terms, whether

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commenced before or after the enactment, that is, unless a contrary intention is expressed by the legislature, and a statute affecting only the remedy may apply to a cause of action existing at the time the statute was enacted. See *Wentz v. Price Candy Co.*, 352 Mo. 1, 175 S.W. 2d 852. *Darrah v. Foster*, Mo. Sup., 355 S.W. 2d 24, 29(3); *Aetna Insurance Co. v. O. Malley*, 342 Mo. 800, 118 S.W. 2d 3, 8. * * *

It is to be noted that the *Wentz* case, *supra*, which we have cited herein is approved and cited as authority.

We also call your attention to the case of *Welborn v. Southern Equipment Co.*, (not yet reported). This case was decided by the Supreme Court en banc on November 8, 1965. The former limitation statute, Section 287.430 RSMo, 1959, provided that a claim must be filed within one year after the date of injury or death, or within one year from the date of the last payment.

The court held that if medical treatment is furnished by the employer, even after the lapse of the specified period of one year, the claim is revived and the limitation time extended to one year after the date of the last medical treatment. The *Welborn* case also cites and approves the holding in the *Wentz* case.

CONCLUSION

It is the opinion of this office that by reason of the authorities cited herein that Senate Bill No. 215, Sections 287.430 and 287.440 Laws of 1965, which amend Section 287.430 and Section 287.440 RSMo, 1949, are procedural statutes and govern only the remedy and became effective October 13, 1965, and that the period of limitation in which a claim for Workmen's Compensation may be filed has been extended by this statute and shall apply to existing causes of action, but the

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enlargement of the period of limitation will not revive a cause of action which has been barred under the limitation previously existing.

The foregoing opinion which I hereby approve was prepared by my assistant, O. Hampton Stevens.

Respectfully submitted,


NORMAN H. ANDERSON
Attorney General