

342.700 Remedies when third party is legally liable -- Liability and indemnification rights of principal contractors, intermediates, and subcontractors -- Requirement of waiver of remedies for award of contract unlawful.

- (1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded or paid under this chapter, the employer, his insurance carrier, the special fund, the Kentucky coal workers' pneumoconiosis fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity and medical expenses paid and payable to or on behalf of the injured employee, less a pro rata share of the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).
- (2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays the compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall the claim be barred by limitations, if the claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by an administrative law judge determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.
- (3) It shall be considered to be contrary to public policy and unlawful for any owner or employer to require another employer to waive its remedies granted by this section as a condition of receiving a contract or purchase order. Furthermore, in selecting between two (2) or more contractors or suppliers, consideration may not be given by

an owner or employer to whether one (1) contractor or supplier voluntarily waives its remedies under this section or offers to accept lesser compensation than another contractor or supplier for that waiver of remedies.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 40, sec. 12, effective July 14, 2018. -- Amended 2000 Ky. Acts ch. 514, sec. 27, effective July 14, 2000. -- Amended 1996 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 65, effective December 12, 1996. -- Amended 1994 Ky. Acts ch. 181, Part 14, sec. 71, effective April 4, 1994; and ch. 495, sec. 1, effective July 15, 1994. -- Amended 1987 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 53, effective January 4, 1988. -- Created 1972 Ky. Acts ch. 78, sec. 10, effective January 1, 1973.

Legislative Research Commission Note (7/14/2018). This statute was amended in Section 12 of 2018 Ky. Acts ch. 40. Subsection (1) of Section 20 of that Act reads, "Sections 1, 3, and 12 of this Act shall apply to any claim arising from an injury or occupational disease or last exposure to the hazards of an occupational disease or cumulative trauma occurring on or after the effective date of this Act."