

## Tennessee New Law: Injuries on or after July 1, 2014

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### BENEFIT DEFINITIONS

- **Accidental Injury:** Injury (accident, cumulative trauma, occupational disease, mental injury or death) caused by specific incident(s) arising out of and in the course and scope of employment. Does not include an aggravation of a pre-existing condition, there is a reasonable degree of certainty that the aggravation arose primarily out of and in course and scope of employment.
- **Primarily Out of and In Course and Scope of Employment:** Shown by preponderance of evidence, or to a reasonable degree of medical certainty, that employment contributed more than 50% in causing the injury.
- **Temporary Total Disability (TTD):** Benefit for an injured employee whose work-related injury temporarily disables him from working any job. The benefit is 66 2/3% of the pre-injury average weekly wages and cannot be less than the minimum, or more than the maximum, weekly benefit. It is payable until maximum medical improvement, or to return to work, or for 450 weeks, whichever is shorter.
- **Temporary Partial Disability (TPD):** Benefit for an injured employee who is working but whose post-injury wages are less than his pre-injury regular wages. The benefit amount is 66 2/3% of the difference between the pre-injury wage and the post-injury wage, and cannot be less than the minimum, or more than the maximum, weekly benefit. It is payable until maximum medical improvement, or for 450 weeks, whichever is shorter.
- **Permanent Total Disability (PTD):** Benefit for an injured employee who is unable to return to any job in the open market because he retains a permanent disability from the work-related injury. This benefit is 66 2/3% of pre-injury wage amount paid until employee is eligible for Social Security retirement benefits. However, if the employee is permanently and totally disabled as a result of a work-related injury which occurs within five years of becoming eligible for full Social Security retirement benefits, the employee is entitled to benefits for 260 weeks.
- **Permanent Partial Impairment (PPI): All compensable injuries are eligible up to 450 weeks of benefits.** Injured employee with a permanent impairment rating is entitled to 1 time the impairment rating for the benefit period, which is 450 weeks multiplied by the impairment rating. (Impairment rating % x Compensation rate \$ x 450 = Settlement amount \$). Injured employees may be entitled to **additional benefits** if at the end of the benefit period they are not working or working but earning less than pre-injury wage. (Factors are cumulative.):
  - Employee did not return to any work, or is working but receiving less than pre-injury wages, original award is multiplied by **1.35**.
  - Employee lacks a high school diploma or GED, original award is multiplied by **1.45**.
  - Employee is more than 40 years old, original award is multiplied by **1.2**.
  - Unemployment rate in employee's county of employment is at least 2% greater than average unemployment rate in TN for the year prior to the end of the benefit period, original award is multiplied by **1.3**.The employer/insurance carrier will be given credit for payment of the original award. Unless included in settlement, the **injured employee** must file a new petition for benefit determination **within one year** after the benefit period has expired to request add'l benefits. Employer is not required to notify the employee of his eligibility for additional PPI benefits.

### MEDICAL TREATMENT

- **Panel of Physicians:** All panels of physicians must include three or more physicians, specialists, or practice groups willing to treat the subject injury. If no appropriate provider is in employee's county, providers within 100 miles may be listed. No requirement to list chiropractors. Improper panels may incur penalties.
- **Causation:** A "reasonable degree of medical certainty" that employment contributed more than 50% in causing the work-related injury. A panel physician is presumed to be correct on the issue of causation, but can be overturned by a preponderance of contrary evidence obtained through an IME.
- **Referrals:** Any panel physician who treats the employee is presumed to be the authorized treating physician (ATP). Specific referrals made by the ATP are automatically accepted **unless** a panel of specialists is provided within **3 days** of the referral. A nurse practitioner working under the supervision of a panel physician is an authorized provider, not a referral.
- **Treatment Records:** Any medical practitioner providing treatment for a work-related injury must provide copies of treatment records, upon request, to all parties within 30 days of the treatment. No HIPAA release or authorization is required, unless records of treatment unrelated to the subject injury are requested.
- **Communication with Treating Physician:** Employer, Carrier, or their representative may communicate with the treating physician, orally or in writing, without a HIPAA release, so long as the physician is providing information about the subject at-work injury.
- **Maximum Medical Improvement (MMI):** Employee is deemed to be at MMI when the authorized treating physician says no further improvement or healing can be expected **OR** when active medical treatment ends and employee's only treatment is for pain management. TTD benefits end at MMI. PPI benefits begin at MMI, whether or not employee returns to work. Claims may be settled any time after the injured employee reaches MMI.

### BUREAU OF WORKERS' COMPENSATION - ADMINISTRATIVE STRUCTURE

- **Court of Workers' Compensation Claims:** Judicial function solely within the TN Bureau of Workers' Compensation. Judges are assigned to each of the eight Bureau offices throughout the state.
- **Board of Appeals:** Three judges who are not a part of the Court of WC Claims. Appeals Board will render decisions on appeal of WC judge's orders. Rulings may also be appealed to the TN Supreme Court.
- **Ombudsman:** Available to any **unrepresented** party - an ombudsman may provide information on WC laws and procedures, inform about rights and benefits, assist in completing forms and may assist with medical appointments and obtaining medical records. An ombudsman may **NOT** provide legal advice.



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### BENEFIT REVIEW PROCEDURE

- **Petition for Benefit Determination (PBD):** Request for the Bureau of WC to provide assistance with resolution of disputed issues in a claim. PBD is also used to request settlement approval. Once a PBD is filed, Employer must provide wage report on C-42 form within 5 days and medical records must be promptly exchanged.
- **Alternative Dispute Resolution (ADR):** All claims in which a party has submitted a PBD will be handled first by mediation. Any issues not resolved by mediation, will be listed on a Dispute Certification Notice (DCN). Any party may request a hearing for a ruling on issues stated in the DCN. If all issues are resolved, terms are drawn up a settlement agreement and the claim is added to the court docket for a settlement approval hearing.
- **Request for Hearing:** Any party may request a hearing before the Court of Workers' Compensation Claims on issues listed on the DCN. That request must be submitted within 60 days after the DCN is filed.
- **Initial Hearing:** Teleconference of parties and the judge to establish a discovery plan and set dates for post-discovery ADR and compensation hearing. Initial hearing will be held within 30 days of Request for Hearing. Parties must submit a proposed initial hearing order within 3 days of the teleconference.
- **Discovery Period:** Period of time for depositions, written discovery and certification of medical records. All depositions must be taken within the discovery period. A list of witnesses, exhibits, and deposition transcripts must be submitted to the Court 10 days before the hearing. Items not listed may not be allowed into evidence at the hearing. Compensation hearings will **not** be reset in order to complete discovery.
- **Post-Discovery ADR:** After the discovery period has ended, parties will be required to mediate any issues for hearing. Once again, any unresolved issues will be stated on a new Dispute Certification Notice (DCN).
- **Compensation Hearing:** Hearing before a judge in the Court of Workers' Compensation Claims at which witnesses may testify and evidence may be presented. Only those issues listed on a DCN will be adjudicated.
- **Compensation Order:** Ruling by a WC judge following a hearing or after joint stipulation to resolve issues in dispute.
- **Appeals:** Orders from a WC judge may be appealed to the Board of Appeals within 30 days of the Order. Parties may also appeal to the TN Supreme Court.
- **Settlement:** No settlement of a WC claim is effective until signed by a WC judge. Settlement agreements must either state that employee is receiving substantially the benefits entitled to under TN WC law, or that the settlement is in the best interest of the employee. An estimated cost of additional medical treatment, or a statement that no further care is needed, should also be included in any agreement which includes closure of medical benefits. A filing fee of \$150.00 is required for each settlement.

### KEY DEADLINES

- **Employers must work closely with insurance adjusters in order to ensure that authorizations, reports, and payments are made in a timely manner. Failure to meet key deadlines may result in penalties.**
- **Filing WC Claim:** Claim for WC benefits must be filed within 1 year of the date of injury, the last date of treatment or the last date of voluntary payment.
- **Exchange of Medical Records:** Records must be provided to the opposing party within 14 days of receipt.
- **Filing C-42 Wage Statement:** Wage statement must be filed within 3 business days of the scheduled ADR.
- **Objection to Contents of Dispute Certification Notice:** Either party may file an objection within 5 business days of receipt.
- **Request for Hearing:** Submit within 60 days of after the Dispute Certification Notice has been filed with the Clerk of Court of Workers' Compensation.
- **Notice of Deposition:** Notice must be given at least 5 days prior to deposition for an in-county resident. Depositions of parties outside the county must have at least 7 days notice.
- **Service of Subpoena for Appearance at Hearing:** Subpoenas for hearing appearance must be served at least 5 days before the scheduled hearing.
- **Motion for Expedited Hearing:** Motion requesting an expedited hearing on the issue of awarding temporary indemnity or medical benefits. A WC judge may hold an expedited hearing or may issue an Interlocutory Order awarding or denying temporary benefits after a review of submitted written material. Either party may object to a Motion for Expedited Hearing within 5 days of the motion's filing.
- **PPI Benefit Period:** Upon reaching MMI, any injured employee assigned a permanent partial impairment (PPI) rating is entitled to PPI benefits for a specified length of time determined by multiplying the impairment rating (%) by 450, the maximum number of PPI weeks.
- **Request for Additional PPI Benefits:** At the end of the PPI benefit period, employees who have not returned to any work or have returned to work at a lower wage rate are eligible for additional benefits. Unless included with impairment benefit settlement, the employee must request those additional benefits within 1 year of the end of the original benefit period. The employer is not required to tell employee about such eligibility. However, we suggest including additional benefits in any settlement where the initial compensation period has already expired.