

Quick Guide

TENNESSEE

WORKERS' COMPENSATION LAWS

July 2023

COMPENSATION RATE ISSUES

Average Weekly Wage: "AWW" is determined by calculating the Employee's average gross wages per week for the 52 week period prior to the alleged accident date. If the Employee worked less than 52 weeks, or missed more than 7 days (even if non-consecutively), then the total wages are divided by the actual number of weeks worked to arrive at the AWW. *Source: Tenn.Code Ann. § 50-6-102(3)(A).* The wage statement must be filed with the Division at least 3 days before the first mediation, or risk civil penalty.

Compensation Rate: "CR" is sixty-six and two thirds percent (66.67%) of the average weekly wage. *Source: Tenn.Code Ann. § 50-6-207(1).*

Maximum and Minimum Compensation Rates:

Date/Accident	Max. PPD Rate	Max. TTD Rate	Min. Rate
7-1-07 - 6-30-08	\$713.00	\$784.00	\$106.95
7-1-08 - 6-30-09	\$752.00	\$827.00	\$112.80
7-1-09 - 6-30-10	\$761.00	\$837.00	\$114.15
7-1-10 - 6-30-11	\$765.00	\$841.50	\$114.75
7-1-11 - 6-30-12	\$789.00	\$867.90	\$118.35
7-1-12 - 6-30-13	\$806.00	\$886.60	\$120.90
7-1-13 - 6-30-14	\$835.00	\$918.50	\$125.25
7-1-14 - 6-30-15	\$848.00	\$932.80	\$127.20
7-1-15 - 6-30-16	\$858.00	\$943.80	\$128.70
7-1-16 - 6-30-17	\$888.00	\$976.80	\$133.20
7-1-17 - 6-30-18	\$902.00	\$992.20	\$135.30
7-1-18 - 6-30-19	\$929.00	\$1,021.90	\$139.35
7-1-19 - 6-30-20	\$960.00	\$1,056.00	\$144.00
7-1-20 - 6-30-21	\$994.00	\$1,093.40	\$149.10
7-1-21 - 6-30-22	\$1,060.00	\$1,166.00	\$159.00
7-1-22 - 6-30-23	\$1,121.00	\$1,233.10	\$168.15
7-1-23 - 6-30-24	\$1,194.00	\$1,313.40	\$179.10

TENNESSEE'S STATUTORY CAPS

For injuries occurring between 7-1-2004 and 6-30-2014, the maximum value of which could be 200 weeks or greater, the maximum award for an employee who returns to work for the pre-injury employer at an equal or greater rate of pay is 1.5 times the medical impairment rating. Injuries with a maximum value of less than 200 weeks have no cap. As of 7-1-2009, undocumented workers are limited to the 1.5 cap regardless of their work status. But if the proof shows that the Employer "knowingly hired" an undocumented employee, the employer may be required to pay up to an additional 3.5 times the rating to the uninsured employer's fund. *Source: Tenn. Code Ann. § 50-6-241(d)&(e).*

For injuries occurring after 7-1-2014, if the employee returns to work for any employer at an equal or greater rate of pay as before the injury and remains so employed during the number of weeks represented by the medical impairment rating (the "original compensation period") [For injuries occurring after 6-22-2020, the "original compensation period" or 180 days, whichever is later], then the employee will receive permanent disability benefits as determined by the medical impairment rating only. In appropriate cases, if the Employee has not returned to work for any employer, through no fault of their own, at an equal or greater wage as before the injury, then that employee could receive 1.35 times the medical impairment rating. The PPD award could be entitled to further increased benefits based on the following factors:

1. the employee has no high school diploma or GED: 1.45 factor;
2. the employee is over the age of 40 at the end of the original compensation period: 1.2 factor; and
3. the unemployment rate in the employee's county of employment is at least two percentage points higher than the State's unemployment rate as of the end of the original compensation period: 1.3 factor.

All factors applicable to any given case are multiplied by each other, then multiplied by 450 weeks, to determine the total number of weeks during which PPD benefits are paid. The employer is entitled to a credit for all PPD benefits paid during the original compensation period. *Source: T.C.A. § 50-6-207(3)(2014)*

THE "ESCAPE CLAUSE"

For injuries occurring after 7-1-2014, in "extraordinary cases" where the Judge finds by clear and convincing evidence that limiting the employee's recovery to the factors specified above would by "inequitable in light of the totality of the circumstances," the Judge may award any amount up to a maximum of 275 weeks if the Judge documents the following three facts:

1. The authorized treating physician has assigned a medical impairment rating of 10% to the body as a whole or greater;
2. The authorized treating physician has certified on a TDOL form that the employee's injury has resulted in permanent restrictions which prevent the employee from returning to the "pre-injury occupation"; and
3. The employee is earning an average weekly wage less than 70% of the pre-injury "wage or salary." *Source: T.C.A. § 50-6-242 (2014)*

BENEFITS

Temporary Total Disability: "TTD" is due for lost time following the seventh day after the injury. If less than 14 days has passed before employee's return to work, TTD is paid only from the eighth day forward. If 14 or more days has passed, TTD benefits must be paid from the first date of disability. Such benefits shall not exceed the maximum total benefit. *Source: Tenn.Code Ann. § 50-6-205(a).*

Temporary Partial Disability: If the Employee returns to work in a partially disabled condition and earns less than prior to the injury, the Employee is entitled to 66.67% of the difference between the Employee's pre-injury AWW and post-injury wages. Such benefits shall not exceed the maximum total benefit. *Source: Tenn.Code Ann. § 50-6-207(2).*

Permanent Partial Disability: As of July 1, 2014, all medical impairment ratings are assigned to the body as a whole, regardless of the body part(s) injured. If the Employee is assigned a medical impairment rating, the Employer shall pay PPD benefits for the number of weeks represented by the medical impairment rating (rating x 450 weeks). This payment must be approved by a workers' compensation Judge. If, at the end of the original compensation period, the Employee has returned to work for any employer at an equal or greater rate of pay as before the injury, then no further permanent disability benefits are owed. If, however, at the end of the original compensation period, the Employee has not returned to work for any employer at an equal or greater rate of pay as before the injury, then the "enhancement factors" as described in the "Tennessee Statutory Caps" section shall apply. *Source: T.C.A. § 50-6-207 (3)(2014)*

Permanent Total Disability: Employees who are adjudged permanently and totally disabled (unable to engage in any work activity which generates an income) are entitled to weekly benefits at the Employee's compensation rate until the Employee is, by age, eligible for full benefits in the OAB program of Social Security. Such benefits are not subject to the Maximum Total Benefit. *Source: Tenn.Code Ann. § 50-6-207(4).*

Maximum Medical Improvement (MMI): MMI is determined by the treating physician, except as follows: Between 7-1-09 and 6-30-14, MMI in mental injury cases will occur no later than 104 weeks after MMI on the physical injury (or 104 weeks after date of injury, if there was no physical injury). For dates of injury between 7-1-10 and 6-30-14, MMI in pain management cases will occur no later than 104 weeks after the commencement of pain management treatment. In all cases with dates of injury after 7-1-2014, MMI is "conclusively presumed" when the authorized treating physician ends all active treatment and the only care provided is for the treatment of pain. *Source: T.C.A. § 50-6-207*

Medical Benefits: Unless terminated by settlement (see back) or order of court, an injured employee is entitled to reasonable and necessary future medical benefits which are causally-related to the work injury for the rest of the Employee's life. *Source: T.C.A. § 50-6-204*

Wage Statement: Have you provided a 52-week wage statement to your defense counsel? This information must be provided to the Division of Workers' Compensation and/or the Court in a timely manner.

Current Mileage Reimbursement Rate: Mileage is reimbursed to injured workers for medical appointment trips greater than 15 miles one way from work or home. For current mileage rate, please check <http://www.state.tn.us/labor-wfd/wcomp.shtml> and search "mileage rates".



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SETTLEMENTS: For dates of injury between 7-1-2004 and 6-6-2011, in compensable cases with a potential value of 200 weeks or greater, the parties cannot close future medical benefits until three years after settlement and cannot settle on a “doubtful and disputed” basis for any amount greater than fifty times the minimum compensation rate. For dates of injury after 6-6-2011, the parties may negotiate the closure of future medical benefits, or settle on a “doubtful and disputed” basis for any amount, provided that any Medicare or TennCare interests are protected in the settlement. For dates of injury as of July 1, 2014, all settlements must be approved by a workers’ compensation judge. If the employee is pro se, the judge must “thoroughly inform the employee of the scope of benefits available” and “the employee’s right and procedures necessary to protect those rights.” Those employees deemed permanently and total disabled cannot compromise and settle future medical benefits. *Source: T.C.A. § 50-6-206 (2013) & 50-6-240 (2014).*

EXTRATERRITORIAL APPLICATION: If an Employee is injured outside the State of Tennessee in an accident which would otherwise be compensable under Tennessee law, he or she may seek Tennessee benefits if: (1) the employment was principally localized in Tenn., (2) the contract of hire was made in Tenn., or (3) the employee was a Tenn. resident and there existed a “substantial connection” between Tenn. and the employment relationship. **HOWEVER**, an Employee may make a knowing and willful election to receive workers' compensation benefits under the laws of another State, thus precluding Tennessee benefits. (Merely accepting payments of temporary or medical benefits under another State's laws is generally not enough to establish a knowing and willful election). If employee also lives outside the state of Tennessee, after BRC failure, complaint can be filed in any county where employer maintains an office. *Source: Tenn. Code Ann. § 50-6-115*

INJURIES NOT COVERED: No compensation is allowed for injury or death due to the Employee's willful misconduct, intentional self-inflicted injury, or due to intoxication or illegal drugs, or willful failure to use a safety appliance or perform a duty required by law. The Employer has the burden of proof on these issues, including the proximate cause of intoxication or drug use. **HOWEVER**, If the Employer has a "drug free workplace" pursuant to Tennessee law and there is a positive screening, the Employer may be entitled to a statutory presumption that the drug or alcohol use was the proximate cause of the injury, thereby providing a defense to the Employee's claim for workers' compensation benefits. See *Tenn. Code Ann. § 50-6-110(c)(1)* for details; see also *Tenn. Code Ann. § 50-9-101* et seq. As of 6-11-09, benefits are not owed for injuries that occur during recreational activities that are not required by the employer and do not directly benefit the employer. As of 6-6-11, in circumstances where the employer is entitled to a presumption that the employee's intoxication was the proximate cause of the injury, this presumption can only be rebutted by "clear and convincing" evidence.

SUBROGATION CLAIMS: If the Employee is injured under circumstances creating legal liability on the part of a third party (other than the Employer), then the Employee may have a claim against that third party and the Employer "shall" have a subrogation lien for WC benefits paid to date and a subrogation credit to be applied against future liability, up to the Employee's net recovery. However, when indemnity is concluded by lump sum, there is no future credit or setoff of net recovery against future medical benefits. (See *Graves v. Cocke County, TN and Cocke Co. Schools*). If the Employee fails to file suit against the other party within one year after the date of the injury, this acts as an assignment of the claim to the Employer, which then has an additional six months to file suit against the other party. The "made whole doctrine" is not applicable to workers' compensation subrogation. *Source: Tenn. Code Ann. § 50-6-112.*

STATUTE OF LIMITATIONS: For dates of injury after 1-1-2005 but before 7-1-2014, parties must file a Request for Benefit Review Conference within one year of the date of injury or date of last voluntary payment of benefits. Once the BRC has occurred, either party has ninety days to file a Petition in an appropriate Circuit or Chancery Court. *Source T.C.A. § 50-6-203 (2013).* For dates of injury as of 7-1-2014, the Employee must file a Petition for Benefit Determination (“PBD”) within one year of the date of injury or date of last voluntary payment of benefits or last authorized treatment, whichever is later. No hearing can occur until after a mediator has issued a Dispute Certification Notice (“DCN”) certifying the issues in dispute. *Source T.C.A. § 50-6-203 (2014).*

BUREAU OF WORKERS' COMPENSATION: For dates of injury as of 7-1-2014, all issues will be addressed in the Bureau of Workers' Compensation and the Court of Workers' Compensation claims. All claims will first be assigned to mediators, who are responsible for contacting the parties, gathering information and attempting to mediate a voluntary resolution of all issues. Once a mediation has reached impasse on one or more issues, the mediator will issue a Dispute Certification Notice and transfer the case to a workers’ compensation judge, who will schedule an initial hearing and set a discovery plan. Once the discovery is complete, a compensation hearing will occur, after which the judge will issue a compensation order addressing all disputed issues. *Source: T.C.A. § 50-6-237 & 238 (2014)*

FEES AND PENALTIES: As of July 1, 2014, a filing fee of \$150.00 shall be paid to the clerk by the employer at the time of the settlement approval or following the conclusion of a case. Moreover, the Division is authorized by statute to assess penalties in numerous situations, including failure to file appropriate forms, failure to timely pay benefits in compensable cases, failure to cooperate with the mediator, failure to cooperate with discovery and failure to provide reasonable and necessary future medical benefits. *Source: T.C.A. § 50-6-238*

PHYSICIAN PANELS: As of July 1, 2014, employers and their representatives (adjusters, attorneys) can communicate with authorized medical providers, orally or in writing, without the need for a medical release or consent form. Employers are required to provide the injured employee a panel of three physicians or practice groups in the employee’s community. If three such physicians/groups are not available in that community, the panel can extend up to a 100-mile radius of the employee’s community. When the authorized physician makes a referral to a specialist physician, the employer has three (3) business days following receipt of the referral to offer a panel of specialists. Failure to provide such a panel will result in the automatic approval of the referral physician. As of 7-1-2012, pain management panels can include physicians within a 175-mile radius of the employee’s work or home. The use of Schedule II, III or IV controlled substances for more than ninety (90) days is subject to Utilization Review. If the employee is subject to a drug contract required by the authorized physician, the Employee's right to controlled substances is terminated for two or more violations of the drug contract. *Source: T.C.A § 50-6-204 (2014).*

EXPERT MEDICAL TESTIMONY: As of 7-1-2014, the opinions of the authorized physician regarding medical causation and the impairment rating are entitled to a presumption of correctness, which can be overcome by a preponderance of the evidence. *Source: T.C.A. § 50-6-102(13), 50-6-204 (2014).* Either party may select an evaluation from a physician listed on the Medical Impairment Registry (“MIR”). The opinion of the MIR physician regarding the medical impairment rating is entitled to a presumption of correctness, which can only be overcome by clear and convincing evidence. *Source: T.C.A. § 50-6-204 (2014).*

SECOND INJURY FUND: As of 7-1-06, only part (a) of the Second Injury Fund statute remains viable. An Employee must (1) have a preexisting disability of which the employer was aware, and (2) must now be permanently and totally disabled, in order for the SIF to have any liability. *Source: T.C.A. § 50-6-208*

STATUTORY CONSTRUCTION: Prior to 7-1-14, the statute was liberally construed to accomplish the remedial nature of the statute. As of 7-1-14, the statute shall not be given a liberal or remedial construction, but shall be construed fairly and impartially, favoring neither the employee nor the employer. *Source: T.C.A. § 50-6-116.*

DEFENSE CHECKLIST

We recommend that you keep in mind the following defenses when evaluating a claim:	
Notice (w/in 15 days unless reasonably excused)	§50-6-201
Statute of Limitations	§50-6-203, § 50-6-306
Misrepresentation on Employment Application	
Casual v. Regular Employee	§ 50-6-106(2)
Independent Contractor	§ 50-6-102(11)
Did not "arise primarily out of" Employment	§ 50-6-102(13)
Was not "in course of" Employment	§ 50-6-102(13)
Willful misconduct, failure to use safety equip.	§ 50-6-110
Illegal drug/ alcohol use	§ 50-6-110
Medical Causation issues	§50-6-102(13)
"Last Injurious Injury/ Exposure" rule	
Second Injury Fund	§50-6-208
[section (b)(1) no longer applies for date of accident 7/1/06 and after.]	

TENNESSEE FORMS

(Most commonly needed)

C-20: First Report of Work Injury	C-30A: Final Medical Report
C-23: Notice of Denial of Claim	C-31: Medical Waiver & Consent
C-26: Notice of Change or Termination of Benefits	C-32: Physician's Standard Form Medical Report
C-27: Notice of Controversy	C-35: Utilization Review Notification
C-28: Notice of Lawsuit	C-40 A, B & R now referred to as "Request for Mediation" and also replaces "Request for Assistance"
C-29: Final Report of Payment & Receipt	
C-30: Attending Physician's Report	
DCN: Dispute Certification Notice (post 7-1-14)	C-41: 52-week Wage Statement
	C-42: Choice of Physician
	SD-2: Statistical Data Form
	PBD: Petition for Benefit Determination (post 7-1-14)