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# CONSTANGY

## BROOKS & SMITH, LLP

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# TENNESSEE WORKERS' COMPENSATION AT A GLANCE

## June 2009

See workers' compensation present value, life expectancy, & number-of-weeks calculators at [http://www.constangy.com/service/wc\\_calculator.html](http://www.constangy.com/service/wc_calculator.html)

Temporary Total Disability Benefits	Temporary Partial Disability Benefits	Permanent Total Disability Benefits
An employee is not eligible for benefits in the first seven days of disability but is eligible for benefits on the eighth day. If an employee continues to miss time from work through the fourteenth day, the initial seven days are owed. Additional benefits should be paid twice per month. T.C.A. § 50-6-205(a). When an employee reaches MMI and is given an impairment rating, weekly benefits must continue for 60 days or the value of the rating, whichever is less. This amount is credited against the PPD award. T.C.A. § 50-6-234(d). TTD benefits terminate upon a return to any employment.	An employee is eligible for Temporary Partial Disability Benefits if there is a return to work in a partially disabled condition. Such an employee is entitled to 66 2/3 percent of the difference between the pre-injury wage and the wage earned in the partially disabled condition. Such benefits shall not exceed 400 weeks. T.C.A. § 50-6-207(2).	An employee is eligible for Permanent Total Disability Benefits if adjudged unable to return to any form of income-generating employment. Such benefits are paid until the employee is eligible for full benefits from Social Security's OAB Program. T.C.A. § 50-6-207(4)(A)(1). Such benefits are not subject to the Maximum Total Benefit cap. Medical benefits for PTD claims cannot be closed.

**Permanent Partial Disability Benefits** An employee is eligible for Permanent Partial Disability Benefits if adjudged to have retained permanent anatomic disability. Such benefits are subject to the following schedule:

Scheduled Member	Maximum	Scheduled Member	Maximum	Scheduled Member	Maximum	Scheduled Member	Maximum
Finger (little)	15 Weeks	Hand	150 Weeks	Arm & Foot	400 Weeks	Two Feet	400 Weeks
Finger (ring)	20 Weeks	Arm	200 Weeks	Eye & Leg	350 Weeks	Hearing (both ears)	150 Weeks
Finger (middle)	30 Weeks	Foot	125 Weeks	Eye & Arm	350 Weeks	Leg & Hand	400 Weeks
Finger (index)	35 Weeks	Leg	200 Weeks	Eye & Foot	300 Weeks	Arm & Leg	400 Weeks
Thumb	60 Weeks	Eye	100 Weeks	Two Arms	400 Weeks		
Great Toe	30 Weeks	Arm & Other Hand	400 Weeks	Two Hands	400 Weeks		
Any other Toe	10 Weeks	Hand & Foot	400 Weeks	Two Legs	400 Weeks		

**AVERAGE WEEKLY WAGE** An average weekly wage is determined by dividing the employee's gross earnings over the 52 week period immediately preceding the date of the injury by 52. If there is less than a 52-week earnings history, then the gross earnings are divided by the actual number of weeks worked. In certain situations, the earnings history of a similarly-situated employee may be used. T.C.A. § 50-6-102(a)(1)(A)

**Note:** Wage statement should be submitted to defense counsel immediately. In litigated cases, wage statements must be filed within 60 days of filing of the Answer.

COMPENSATION RATE	MAXIMUM & MINIMUM COMPENSATION RATES			
	Date of Accident	Temporary Disability Max. Rate	Permanent Disability Max. Rate	Permanent/Temporary Min. Rate
The compensation rate is 66 2/3% of the average weekly wage, subject to the maximum & minimum compensation rates in effect on the date of the injury. T.C.A. § 50-6-207(1). The maximum & minimum compensation rates are adjusted each year by the Tennessee Department of Labor. T.C.A. § 50-6-102(14) & (16).	7/1/94 to 6/30/95	\$382.79	\$382.79	\$66.15
	7/1/95 to 6/30/96	\$415.87	\$415.87	\$68.40
	7/1/96 to 6/30/97	\$453.14	\$453.14	\$71.10
	7/1/97 to 6/30/98	\$492.00	\$492.00	\$73.80
	7/1/98 to 6/30/99	\$515.00	\$515.00	\$77.25
	7/1/99 to 6/30/00	\$541.00	\$541.00	\$81.15
	7/1/00 to 6/30/01	\$562.00	\$562.00	\$84.30
	7/1/01 to 6/30/02	\$581.00	\$581.00	\$87.15
	7/1/02 to 6/30/03	\$599.00	\$599.00	\$89.85
	7/1/03 to 6/30/04	\$618.00	\$618.00	\$92.70
	7/1/04 to 6/30/05	\$670.00	\$638.00	\$95.70
	7/1/05 to 6/30/06	\$729.00	\$663.00	\$99.45
7/1/06 to 6/30/07	\$750.00	\$682.00	102.30	
7/1/07 to 6/30/08	\$784.00	\$713.00	\$106.95	
7/1/08 to 6/30/09	\$827.00	\$752.00	\$112.80	
7/1/09 to 6/30/10	\$837.00	\$761.00	\$114.15	

DEATH BENEFITS (T.C.A. § 50-6-209(a)(2))				FUNERAL BENEFITS
When an injury results in death, the surviving spouse or dependent orphan is entitled to 50% of the deceased employee's average weekly wage, not to exceed the maximum per week.	If a deceased employee is survived by a spouse & one or more dependent children, 66 2/3% of the deceased employee's AWW is owed, not to exceed the maximum per week.	If a deceased employee is survived by other relatives dependent on the employee for support, compensation may also be payable to those dependents.	If an employee dies without dependents, a lump sum of \$20,000.00 is owed to the estate of the employee.	If an employee dies as the result of a compensable injury or an occupational disease, burial expenses of up to \$7,500.00 are owed. T.C.A. § 50-6-204(c).

**MULTIPLIERS:** For injuries occurring on or after 07.01.04: If an employee makes a meaningful return to work for the pre-injury employer at a wage equal to or greater than the pre-injury wage, a claim for permanent partial disability benefits arising from an injury to a scheduled member valued at 200 weeks or more or to the body as a whole is limited to one & one half (1.5) times the medical impairment rating. T.C.A. § 50-6-241 (a)(1). If an employee fails to make a meaningful return to work for the pre-injury employer at a wage equal to or greater than the pre-injury wage, a claim for permanent partial disability benefits arising from an injury to a scheduled member valued at 200 weeks or more or to the body as a whole is limited to six (6) times the medical impairment rating. T.C.A. § 50-6-241(b). An award based on five times or greater must be supported by specific findings of facts detailing the reasons for the award. T.C.A. § 50-6-241(c).

**"BREAKING THE CAP":** If an employee establishes by clear & convincing evidence three of the following four criteria, the Court can award more than 6 times the rating. Such an award is limited to 400 weeks prior to 07.01.04 & up to the maximum weeks in the schedule after 07.01.04. T.C.A. § 50-6-242:

1. No high school diploma or equivalency, or cannot read and write at an 8 <sup>th</sup> grade level.	2. Employee is 55 years old or older.	3. No reasonably transferable job skills.	4. No reasonable employment opportunities locally.
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**RECONSIDERATION:** If an employee loses his job within a specified time after returning to work, an award of disability benefits may be subject to reconsideration. Such a request for reconsideration must be timely. An employee's voluntary resignation, retirement, or misconduct often precludes reconsideration. The right to reconsideration cannot be waived or compromised for injuries occurring on or after 07.01.04.

**SETTLEMENTS:** All workers' compensation settlements require some form of approval. For injuries occurring after 07.01.04, settlements cannot incorporate the closure of future medical benefits as to any scheduled member valued at 200 weeks or greater until 3 years after the settlement approval. Likewise, an employee cannot waive the right to reconsideration. If the injury involves a scheduled member valued at less than 200 weeks, then future medical benefits may be closed. An employee cannot waive the right to reconsideration. Future medical benefits cannot be closed in cases of permanent total disability. Settlement of "doubtful & disputed" cases cannot exceed the value of 50 times the minimum compensation rate applicable to the date of injury. If an employee is a Medicare recipient or is reasonably expected to become a Medicare recipient within 30 months, a Medicare Set-Aside must be considered before closing future medical benefits.

Defense of Workers' Compensation Claims in the following states can also be handled by Constangy:

**GEORGIA / FLORIDA / ALABAMA / SOUTH CAROLINA / KANSAS / MISSOURI**

Handling of these claims can be arranged by contacting **Kitty Boyte**  
of **Constangy, Brooks & Smith, LLP** at (615) 340-3803 or [kboyte@constangy.com](mailto:kboyte@constangy.com)

**Nashville Office****Kitty Boyte**Email: [kboyte@constangy.com](mailto:kboyte@constangy.com)**Marcia McShane Watson**Email: [mwatson@constangy.com](mailto:mwatson@constangy.com)Website: [www.constangy.com](http://www.constangy.com)

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**COMMON TENNESSEE FORMS :** (See <http://www.state.tn.us/labor-wfd/mainforms.html> for viewing/printing)

C-20: First Report of Work Injury	C-27: Notice of Controversy	C-30A: Final Medical Report	C-40B: Request for Benefit Review Conference
C-22: Notice of First Payment of Compensation	C-28: Notice of Lawsuit	C-32: Physician's Standard Form Medical Report	C-41: 52-week Wage Statement
C-23: Notice of Denial of Claim	C-29: Final Report of Payment & Receipt	C-35: Utilization Review Notification	SD-1: Statistical Data Form
C-26: Notice of Change or Termination of Benefits	C-30: Attending Physician's Report	C-40A: Request for Assistance	

**MEDICAL TREATMENT**

When an employee sustains an injury by accident arising out of & in the course of his employment, the employer is required to provide all reasonable, necessary, and causally-connected medical expenses. The employer is generally required to provide a panel of three physicians, not associated in the same practice, from which the employee may choose. In the event of a back injury, a chiropractor must be added to the panel of physicians. Chiropractic care is limited to 12 visits. For orthopaedic or neurological care, a panel of five physicians may be offered, of which no more than four are associated & the employee then has an automatic right to a 2nd opinion from the panel. T.C.A. § 50-6-204(a)(4). Tennessee has adopted a medical fee schedule and created a Medical Impairment Registry for injuries occurring on or after 07.01.05. In the event of an anatomic impairment dispute, the opinion of the MIR physician is presumed accurate.

**MEDICAL DEPOSITION FEES**

A licensed physician may charge the usual & customary fee for deposition testimony in a workers' compensation claim, not to exceed \$750.00 for the first hour. A deposition lasting more than one hour must be pro-rated based on the usual & customary fee, not to exceed \$450.00 per hour for deposition time in excess of one hour. Physicians shall not charge for the first quarter hour of preparation time. In instances requiring over one quarter hour of preparation time, a physician's preparation time in excess of one quarter hour shall be added to and included in the deposition time and billed at the same rates as for the deposition. T.C.A. § 50-6-235(d) & TDOL Rule 0800-2-16.

**CHARGES FOR MEDICAL RECORDS:** Medical Records generated by treating physicians shall be furnished upon request, at a charge not to exceed \$10.00 for reports of 20 pages or less in length and 25 cents per page for each page after the first 20 pages. T.C.A. § 50-6-204(a)(1). Upon request, a treating physician must furnish to the employer or the employer's insurer and to the employee or the employee's attorney, a complete medical report as to the claimed injury. T.C.A. § 50-6-204(2)(B)

**MILEAGE REIMBURSEMENT:** When an employee is required to travel to a medical provider located outside a radius of 15 miles from the employee's residence or workplace, reimbursement for travel expenses is required upon request. The reimbursement rate shall not be less than the rate authorized for state employees. T.C.A. § 50-6-204(a)(6)(A). As of 10.01.08, the rate is 54 cents per mile. See [www.state.tn.us/labor-wfd/wc\\_mileage.pdf](http://www.state.tn.us/labor-wfd/wc_mileage.pdf).

**STATUTE OF LIMITATIONS:** For injuries occurring on or after 01.05.05, the employee must file a Request for Benefit Review Conference (C-40B) with the Tennessee Department of Labor within 1 year of the date of injury, if no benefits have been paid. If the employer has paid benefits voluntarily or as the result of an Order, an employee must file the C-40B within one year of the date of the last authorized treatment or the date of the employer's last benefit payment, whichever is later. If the BRC fails to resolve the claim, either party has 90 days from issuance of the impasse report to file suit in a court of proper jurisdiction and venue. T.C.A. § 50-6-203. For injuries occurring on or after 07.01.08, the filing of a Request for Assistance (C-40A) will toll the time period within which a C-40B must be filed, creating a window of 60 days from issuance of the TDOL report resolving the Request for Assistance for timely filing the C-40B.

**WORKERS' COMPENSATION SPECIALISTS:** Specialists are employed by the TDOL and are authorized to conduct Benefit Review Conferences to (1) decide preliminary issues regarding payment of medical and/or temporary benefits & (2) act as a mediator to resolve any issue raised by the parties. Certain Specialists may also approve settlements. Specialists enjoy the discretionary authority to waive the BRC requirement. T.C.A. § 50-6-236, 238. After 07.01.04, Specialists may order specific medical benefits as recommended by medical providers.

**JURISDICTION:** Either party may file for determination of benefits where the employee resides or where the injury occurred. After 01.01.05, a Request for Assistance must precede the initiation of a lawsuit. After 07.01.04, no workers' compensation matter may be filed in criminal court. Either party may file a Request for Reconsideration of a Specialist's order: a hearing will then be conducted to determine whether the specialist's order should be affirmed. If an employee sustains a compensable injury outside the State of Tennessee, the employee may still be entitled to Tennessee workers' compensation benefits if (1) the employment was principally localized within Tennessee; or (2) the contract of hire was made in Tennessee; or (3) there is a "substantial connection" between Tennessee & the employment. T.C.A. § 50-6-115. If an employee makes a knowing & willful election to receive workers' compensation benefits pursuant to the laws of another state, the employee is precluded from receiving Tennessee benefits (note that accepting benefits pursuant to the laws of another state is generally insufficient to establish a knowing & willful election). If an employee resides outside Tennessee, a lawsuit can be filed in any county where the employer maintains an office. For Tennessee counties, see <http://www.tennesseeanyttime.org/local/counties.html>

**SIX CRITERIA FOR ESTABLISHING A WORK-RELATED OCCUPATIONAL DISEASE**

Disease must have followed as a natural incident of the work exposure.	Disease can be fairly traced to the employment as a proximate cause.	Disease is not from a hazard to which employees are equally exposed outside of employment.	Disease is incidental to character of employment & not independent of relationship between employer/employee.	Disease originated from a risk connected to employment & flowed as a natural consequence of it.	Disease has a direct causal connection to workplace conditions.
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**DEFENSES**

Notice	T.C.A. § 50-6-201
Statute of Limitations	T.C.A. § 50-6-203, 50-6-306
Casual vs. Regular Employee	T.C.A. § 50-6-106(2)
Independent Contractor	T.C.A. § 50-6-102(10)
Arise Out Of Employment	T.C.A. § 50-6-102(12)
In Course Of Employment	T.C.A. § 50-6-201(12)
Misconduct/Safety Equipment	T.C.A. § 50-6-110
Drug/Alcohol Use	T.C.A. § 50-6-110
Medical Causation	T.C.A. § 50-6-102(10)
Misrepresentation	
Last Injurious Injury	T.C.A. § 50-6-208

**HELPFUL WEBSITES\***

Copies of Statutes :	<a href="http://www.michie.com">www.michie.com</a>
Work Comp Forms:	<a href="http://www.state.tn.us/labor-wfd/mainforms.html">http://www.state.tn.us/labor-wfd/mainforms.html</a>
Calculators:	<a href="http://www.constangy.com/service/wc_calculator.html">http://www.constangy.com/service/wc_calculator.html</a>
TN Counties:	<a href="http://www.tennesseeanyttime.org/local/counties.html">http://www.tennesseeanyttime.org/local/counties.html</a>
TDOL Contacts:	<a href="http://www.state.tn.us/labor-wfd/wc_contacts.pdf">http://www.state.tn.us/labor-wfd/wc_contacts.pdf</a>
Rules of the TDOL:	<a href="http://www.state.tn.us/sos/rules/0800/0800-02/0800-02.htm">http://www.state.tn.us/sos/rules/0800/0800-02/0800-02.htm</a>
TNDOL Mileage :	<a href="http://www.state.tn.us/labor-wfd/wc_mileage.pdf">www.state.tn.us/labor-wfd/wc_mileage.pdf</a>
TN Penalty Info:	<a href="http://www.tennessee.gov/labor-wfd/wcpenaltyoverview.pdf">http://www.tennessee.gov/labor-wfd/wcpenaltyoverview.pdf</a>
Rules of the TNDOL:	<a href="http://www.state.tn.us/sos/rules/0800/0800-02/0800-02.htm">http://www.state.tn.us/sos/rules/0800/0800-02/0800-02.htm</a>

**PENALTIES:** An employer or its insurance carrier that fails to pay appropriate benefits is subject to a penalty of 6% on any unpaid benefits. For injuries occurring after 07.01.04, this penalty increases to 25% if not paid within 20 days of the employer's knowledge of the qualifying disability. T.C.A. § 50-6-205(b)(3). An employer that fails to provide reasonable and necessary medical expenses within 60 days of a settlement, judgment or decree, after reasonable notice, is subject to a penalty of 25% of the value of the medical expenses. Such a penalty applies only if the refusal was not in good faith and inflicted additional expense, loss, or injury on the employee. T.C.A. § 50-6-225. An employer who knowingly, willfully, and intentionally fails to provide reasonable and necessary medical benefits is subject to a \$500 civil penalty. If an employer fails to comply with a Specialist's Order within 15 days, the employer is subject to a penalty of \$10,000 and an additional penalty of \$1,000 per day until compliance is established. T.C.A. § 50-6-238(d). For more information regarding penalties, see <http://www.tennessee.gov/labor-wfd/wcpenaltyoverview.pdf>.

**INJURIES NOT COVERED:** No compensation is allowed for injury or death due to an employee's willful misconduct, intentional self-inflicted injury, use of alcohol or illegal drugs, willful failure to use a safety appliance, or failure to perform a duty required by law. An employer has the burden of proof as to these issues; however, if the employer has a certified drug free workplace and there is a positive screening, the employer is entitled to a statutory presumption that the drug or alcohol use was the proximate cause of the injury. T.C.A. § 50-6-110(c)(1) and T.C.A. § 50-9-101 et seq.

**SUBROGATION:** If an employee is injured under circumstances creating legal liability on the part of a third party, the employer enjoys a subrogation interest arising from all benefits paid to or on behalf of the employee; however, once an employer's workers' compensation liability is resolved via lump sum, no future credit or set-off exists. If an employee fails to file suit against the third party within one year of the date of the injury, the employer is assigned the right to pursue recovery of its subrogation interest from the third party and enjoys an additional six months to file suit. The "made whole" doctrine is not applicable. T.C.A. § 50-6-112.

**SECOND INJURY FUND:** The Second Injury Fund is a state-created entity designed to limit an employer's liability in certain instances. The purpose of the Second Injury Fund is to encourage employers to hire workers with pre-existing disabilities. To create Second Injury Fund liability, it must be established that the employee had pre-existing disability of which the employer was aware and that the subsequent injury resulted in permanent total disability. The Second Injury Fund limits the employer's liability to the amount of disability caused by the subsequent injury. The Second Injury Fund also reimburses the employer for all amounts paid pursuant to a Specialist's order when a court subsequently finds that the injury was not compensable.