A wider lens on workplace law

Temporary Total Disability Benefits  Temporary Partial Disability Benefits

An employee is eligible for Temporary Total Disability ("TTD") if they are unable to work for a period of 7 weeks or more due to injury. If the employee is unable to work for at least 7 weeks, they shall be entitled to Total Disability benefits. T.C.A. (50-6-204). TTD payments are made until the employee reaches Maximum Medical Improvement ("MMI"). T.C.A. (50-6-207). An employee is entitled to a minimum of 7 weeks of benefits. T.C.A. (50-6-204(c)).

Permanent Total Disability Benefits: An employee is eligible for Permanent Total Disability Benefits if they are unable to work for a period of 66 2/3% of the deceased employee's average weekly wages. If an employee dies as a result of a workplace injury, the estate of the deceased employee shall be entitled to benefits. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(e).

Permanent Partial Disability Benefits: An employee is eligible for Permanent Partial Disability ("PPD") Benefits if they are disabled for at least 7 weeks. T.C.A. § 50-6-209(a). PPD benefits are based on the employee's pre-injury average weekly wages and the percentage of disability. T.C.A. § 50-6-209(b). In certain circumstances, the earnings history of a similarly-situated employee may be used. T.C.A. § 50-6-102(3)(A)-(D).

COMMISSIONER'S DECISION

The wage statement must be filed with the Bureau at least 3 days before the first mediation, or risk civil penalty. See workers' compensation present value, life expectancy & number-of-weeks calculators at http://www.constangy.com/service/wc_calculator.html

MEMPHIS OFFICE

Nashville Office
Kitty Boyle
Email: kittyboyle@constangy.com
Direct Line: 615.340.3803
Marcia McShane
Email: marciamc@constangy.com
Direct Line: 615.340.3802
401 Commerce Street, Suite 1010

Memphis Office
Red Holmes
Email: redholmes@constangy.com
Direct Line: 901.453.3272
Yasmin Mohammad
Email: yasminmoh@constangy.com
Direct Line: 901.453.3274
Jeri Key-Coble
Email: jkycoble@constangy.com
5000 Biscayne Avenue, Suite 350

TENNESSEE WORKERS' COMPENSATION AT A GLANCE
Updated September 2016

Notes: The wage statement must be filed with the Bureau at least 3 days before the first mediation, or risk civil penalty.

When an injury results in death, the surviving spouse or designated survivor is entitled to 50% of the deceased employee's average weekly wages, not to exceed the maximum per week. If the deceased leaves 2 or more dependent children, they are entitled to 66 2/3% of the deceased employee's average weekly wages. If the deceased leaves 6 or more dependent children, they are entitled to 100% of the deceased employee's average weekly wages. T.C.A. § 50-6-602.

The compensation rates are adjusted each year by the Tennessee Department of Labor. T.C.A. § 50-6-602.

If a deceased employee is survived by a spouse and one or more dependent children, 66 2/3% of the deceased employee's average weekly wages are paid, not to exceed the maximum per week. If a deceased employee is survived by two or more dependent children, 66 2/3% of the deceased employee's average weekly wages are paid, not to exceed the maximum per week.

An employee is eligible for Temporary Disability ("T.D.") if there is a substantial likelihood of partial disability. T.C.A. § 50-6-205(a). The first payment due and payable shall be due within 15 days after the employee has furnished written proof that the employer has knowledge of any disability or death. From there, compensation should be paid semimonthly. T.C.A. § 50-6-205(b)(2).

If the compensation payment is not made within 15 days after the employee has furnished written proof that the employer has knowledge of the injury or death, the employee may recover lost wages. T.C.A. § 50-6-205(c).

In certain situations, the earnings history of a similarly-situated employee may be used. T.C.A. § 50-6-102(3)(A)-(D).

In some situations, the earnings history of a similarly-situated employee may be used. T.C.A. § 50-6-102(3)(A)-(D).

An employee is entitled to 66 2/3 percent of the employee's pre-injury average weekly wages, subject to a maximum of 70 weeks, for any period during which the employee has not returned to work for a period of compensation. T.C.A. § 50-6-204(c).

Permanent Partial Disability Benefits: An employee is eligible for Permanent Partial Disability ("PPD") Benefits if they are disabled for at least 7 weeks. T.C.A. § 50-6-209(a). PPD benefits are based on the employee's pre-injury average weekly wages and the percentage of disability. T.C.A. § 50-6-209(b). In certain circumstances, the earnings history of a similarly-situated employee may be used. T.C.A. § 50-6-102(3)(A)-(D).

AVERAGE WEEKLY WAGE: An average weekly wage is determined by multiplying the employee's gross earnings over the 52 week period immediately preceding the date of injury or death. If the employer works less than 52 weeks, or if the employee works less than 52 weeks, the average weekly wage is calculated by dividing the total wage of the employee paid over the period of employment by the number of weeks worked. T.C.A. § 50-6-204(a).

When an injury results in death, the surviving spouse or designated survivor is entitled to 50% of the deceased employee's average weekly wages, not to exceed the maximum per week. If the deceased leaves 2 or more dependent children, they are entitled to 66 2/3% of the deceased employee's average weekly wages. If the deceased leaves 6 or more dependent children, they are entitled to 100% of the deceased employee's average weekly wages. T.C.A. § 50-6-602.

Death Benefits: An employee is entitled to death benefits if they die as a result of a workplace injury. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(c). Death benefits are payable until the maximum benefit amount has been paid. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(c). If an employee dies as a 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).

MAXIMUM MEDICAL IMPROVEMENT ("MMI"): MMI is defined as the maximum medical improvement an injured employee may attain. The term MMI is used to determine whether an injured employee is entitled to additional medical treatment. When an injury results in death, the surviving spouse or designated survivor is entitled to 50% of the deceased employee's average weekly wages, not to exceed the maximum per week. If the deceased leaves 2 or more dependent children, they are entitled to 66 2/3% of the deceased employee's average weekly wages. If the deceased leaves 6 or more dependent children, they are entitled to 100% of the deceased employee's average weekly wages. T.C.A. § 50-6-602.

If a deceased employee is survived by a spouse and one or more dependent children, 66 2/3% of the deceased employee's average weekly wages are paid, not to exceed the maximum per week. If a deceased employee is survived by two or more dependent children, 66 2/3% of the deceased employee's average weekly wages are paid, not to exceed the maximum per week.

Death Benefits: An employee is entitled to death benefits if they die as a result of a workplace injury. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(c). Death benefits are payable until the maximum benefit amount has been paid. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(c). If an employee dies as a 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).

MAXIMUM MEDICAL IMPROVEMENT ("MMI"): MMI is defined as the maximum medical improvement an injured employee may attain. The term MMI is used to determine whether an injured employee is entitled to additional medical treatment. When an injury results in death, the surviving spouse or designated survivor is entitled to 50% of the deceased employee's average weekly wages, not to exceed the maximum per week. If the deceased leaves 2 or more dependent children, they are entitled to 66 2/3% of the deceased employee's average weekly wages. If the deceased leaves 6 or more dependent children, they are entitled to 100% of the deceased employee's average weekly wages. T.C.A. § 50-6-602.

If a deceased employee is survived by a spouse and one or more dependent children, 66 2/3% of the deceased employee's average weekly wages are paid, not to exceed the maximum per week. If a deceased employee is survived by two or more dependent children, 66 2/3% of the deceased employee's average weekly wages are paid, not to exceed the maximum per week.

Death Benefits: An employee is entitled to death benefits if they die as a result of a workplace injury. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(c). Death benefits are payable until the maximum benefit amount has been paid. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(c). If an employee dies as a 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).

MAXIMUM MEDICAL IMPROVEMENT ("MMI"): MMI is defined as the maximum medical improvement an injured employee may attain. The term MMI is used to determine whether an injured employee is entitled to additional medical treatment. When an injury results in death, the surviving spouse or designated survivor is entitled to 50% of the deceased employee's average weekly wages, not to exceed the maximum per week. If the deceased leaves 2 or more dependent children, they are entitled to 66 2/3% of the deceased employee's average weekly wages. If the deceased leaves 6 or more dependent children, they are entitled to 100% of the deceased employee's average weekly wages. T.C.A. § 50-6-602.

If a deceased employee is survived by a spouse and one or more dependent children, 66 2/3% of the deceased employee's average weekly wages are paid, not to exceed the maximum per week. If a deceased employee is survived by two or more dependent children, 66 2/3% of the deceased employee's average weekly wages are paid, not to exceed the maximum per week.

Death Benefits: An employee is entitled to death benefits if they die as a result of a workplace injury. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(c). Death benefits are payable until the maximum benefit amount has been paid. T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(c). If an employee dies as a 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).
## MEDICAL BENEFITS

Unless terminated by settlement or order of the 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. T.C.A. § 50-6-204.

### SETTLEMENTS

For dates of injury on or after July 1, 2014, all settlements must be approved by a workers’ compensation judge or the settlement is voidable. 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 inform those rights.” If the settlement for PPD benefits is not presented for approval to a Workers’ Compensation Judge, the statute of limitations is extended to two (2) years from the date of the last payment.

### TENNESSEE FORMS NEEDED FOR POST-July 1, 2014 INJURIES:

(See [http://www.state.tn.us/labor/wfd/mainforms.html](http://www.state.tn.us/labor/wfd/mainforms.html)

| C-20: | First Report of Work Injury |
| C-22: | Notice of First Payment of Compensation |
| C-23: | Notice of Denial of Claim |
| C-26: | Notice of Change or Termination of Benefits |
| C-27: | Notice of Controversy |
| C-28: | Notice of Lawsuit |
| C-29: | Report of Payment & Receipt |
| C-30: | Attending Physician’s Report |
| C-30A: | Final Medical Report |
| C-31: | Medical Waiver & Consent Form (must be signed) |
| C-32A: | Physician’s Standard Form |
| C-33: | Medical Report |
| C-35: | Utilization Review Notification |
| C-36: | 52-week Wage Statement |
| C-42: | Choice of Physician Form (signed) |
| DCN: | Disability Certificate Notice |
| PBD: | Petition for Benefit Determination |
| SD-1: | Statistical Data Form |

### PHYSICIAN PANELS

As of July 1, 2014, employers and their representatives, including adjusters and 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 an injured employee with a panel of 3 physicians or practice groups in the employee’s community. When an employer accepts the services of a healthcare provider from the choice of physician panel paid for by the employer, that physician is deemed the “authorized treating physician.” When the authorized physician makes a referral to a specialist physician, the employer has 3 business days following receipt of the referral to offer a panel of specialists. Failure to do so will result in the automatic approval of the referral physician. All pain management panels can include physicians within a 175-mile radius of the employee’s work/home. The use of Schedule II, III or IV controlled substances for more than 90 days is subject to utilization review. T.C.A. § 50-6-204(i).

### MEDICAL DEPOSITION FEES:

A licensed physician may charge the usual and 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 and customary fee, not to exceed $450.00 per hour for deposition time in excess of one hour. Physicians shall not charge for the first hour of preparation time. In instances requiring over one hour of preparation time, a physician’s preparation time in excess of one hour shall be added to and included in the deposition time and billed at the rates as for the deposition. T.C.A. § 50-6-235(b) & TBWC Rule 0900-2-16.

### 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). Each medical provider shall be required to release the records of any authorized physician to an employer and employee within 20 days after admission or treatment. T.C.A. § 50-6-204(a)(2)(A). A Medical Release is not required to acquire records from authorized treating healthcare providers.

### MILEAGE REIMBURSEMENT:

If an employee is required to travel to a medical provider located outside a radius of 15 miles from the employee’s residence or workplace, travel expenses 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)-(B).

### FEES AND PENALTIES:

As of July 1, 2014, a filing fee of $150 must be paid to the clerk by the employer at the time of the settlement approval or following the conclusion of a trial. The fee must be paid in accordance by statute to authorized physicians or parties in pertinent and necessary situations, such as the failure to file appropriate forms, the failure to cooperate with the mediation, the failure to provide reasonable and necessary future medical benefits, the failure to cooperate with discovery and the failure to timely pay benefits in compensable cases. T.C.A. § 50-6-118.

### CLAIMS OF WORKERS’ COMPENSATION:

For injuries occurring on or after July 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. Then, 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. The judge will then schedule an initial and a discovery plan. Once the discovery is complete, there will be a compensation hearing where the judge will issue a compensation order addressing the disputed issues. T.C.A. § 50-6-237 & 238. Note corporations must be represented by an attorney licensed to practice law in the State of Tennessee.

### STATUTE OF LIMITATIONS:

For injuries occurring on or after July 1, 2014, the employer must file a Petition for Benefit Determination (“PBD”) within one year of the date of injury or last authorized 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. If employee was paid PPD benefits and no medical payments were paid but the court was not approved, the employer/employee have two years from the date of the last PPD benefit payment to file a PBD. T.C.A. § 50-6-202.

### JURISDICTION:

Any party to the proceedings in the court of workers’ compensation claims may, if dissatisfied or aggrieved by the judgment of the court, appeal to the Tennessee Court of Appeals. The Tennessee Rules of Appellate procedure apply to the appeal. The court will review the workers’ compensation court’s findings of fact under a de novo standard, which will be accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225.

### SIX CHECKLIST FOR ESTABLISHING A WORK-RELATED OCCUPATIONAL DISEASE

| Disease must have followed as a natural result of the work exposure. |
| Disease can be fairly traced to the work 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. |

### DEFENSES

- Notice
- § 50-6-201
- Statute of Limitations
- § 50-6-205, 50-6-306
- Casual vs. Regular Employee
- § 50-6-106(2)
- Independent Contractor
- Did Not Arise Out Of Employment
- § 50-6-102(13)
- Was Not In Course Of Employment
- § 50-6-201(13)
- Misconduct/Safety Equipment
- § 50-6-110
- Drug Abuse Use
- § 50-6-110
- Misrepresentation
- § 50-6-102(13)
- Malpractice

### HELPFUL WEBSITES

- Opinions from TBWC: [http://t ace.tennessee.edu/twc/workcomp/](http://t ace.tennessee.edu/twc/workcomp/)
- TBWC Contacts: [http://www.state.tn.us/labor/wfd/wc_contacts.pdf](http://www.state.tn.us/labor/wfd/wc_contacts.pdf)
- Medical Causation:
- § 50-6-110
- Disease can be fairly traced to the work 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. |

### 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. As of July 1, 2011, the employee only can rebut this presumption with clear and convincing evidence. T.C.A. § 50-6-110(c)(1) and T.C.A. § 50-6-110(1), et seq.

### SUBROGATION:

If an employee is injured under circumstances creating legal liability on the part of a third party, the employer has 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 a party (without which prejudice 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:

An employee must have a preexisting disability of which the employer was aware and must now be permanently and totally disabled in order for the second injury fund to have any liability.

### LEGAL ASSISTANCE

The information is intended for information purposes only. It is not a complete summary of Tennessee Workers’ Compensation Law & is not intended to replace legal counsel.