

Nashville Office

Kitty Boyte

Email: kboyte@constangy.com

Direct Line: 615.340.3803

Marcia McShane

Email: mmcshane@constangy.com

Direct Line: 615.340.3802

401 Commerce Street, Suite 1010



**CONSTANGY
BROOKS, SMITH &
PROPHETE LLP**

A wider lens on workplace law

Memphis Office

Rod Holmes

Email: rohmes@constangy.com

Direct Line: 901.453.3272

Yasmin Mohammad

Email: ymohammad@constangy.com

Direct Line: 901.453.3274

Kacy Coble

Email: kcoble@constangy.com

Direct Line: 901.453.8021

6000 Poplar Avenue, Suite 250

Memphis, Tennessee 38119

TENNESSEE WORKERS' COMPENSATION AT A GLANCE

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See workers' compensation present value, life expectancy & number-of-weeks calculators at http://www.constangy.com/service/wc_calculator.html

Temporary 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. T.C.A. § 50-6-205(a). The first payment of benefits shall be due within 15 days after the employer has knowledge of any disability or death. From there, compensation should be paid semimonthly. T.C.A. § 50-6-205(b)(2). When an employee reaches Maximum Medical Improvement ("MMI"), a permanent impairment rating is given and the compensability of the injury is not contested by the employer, payments must continue until the employee: 1) accepts or rejects a job offered by the employer at a wage equal to or greater than the employee's pre-injury wage, if the employee is able to perform the duties of the position within any restrictions placed on the employee by a physician; or 2) a Benefit Review Conference ("BRC") is held and report filed pursuant to T.C.A. § 50-6-240. Weekly TTD benefits must continue for 60 days or the value of a PPD impairment rating, whichever is less. This amount is credited against any PPD award. T.C.A. § 50-6-234(b).

Temporary Partial Disability Benefits

An employee is eligible for Temporary Partial Disability ("TPD") Benefits if there is a return to work in a partially disabled condition and the employee earns less than prior to the injury. Such an employee is entitled to 66 2/3 percent of the difference between the pre-injury average weekly wage and the wage earned in the partially disabled condition. TPD payments are made during TPD period, but not extend beyond 450 weeks and should not be less than the minimum weekly benefit. T.C.A. § 50-6-207(2).

Permanent Total Disability Benefits: 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, by age, eligible for full benefits from Social Security's OAB Program. T.C.A. § 50-6-207(A) & (B). Total PTD benefits shall not exceed maximum total benefit, exclusive of medical and hospital benefits. T.C.A. § 50-6-207(B). Medical benefits for PTD claims cannot be closed. T.C.A. § 50-6-240(d).

Permanent Partial Disability Benefits: An employee is eligible for Permanent Partial Disability ("PPD") Benefits if disability is partial in character but adjudged to be permanent. As of July 1, 2014, all medical impairment ratings are assigned to the body as a whole ("BAW"). Thus, injuries occurring on or after July 1, 2014 will no longer be subject to a scheduled member list. When the employee reaches MMI, the employer is required to pay 66 2/3 percent of the employee's average weekly wages for the initial period of compensation (determined by multiplying the impairment rating by 450 weeks). The employee is entitled to these benefits in addition to any TTD and TPD benefits received and medical benefits provided pursuant to T.C.A. § 50-6-204, whether the employee has returned to work or not. This payment must be approved by a workers' compensation judge or is voidable. If, at the end of this "initial compensation period," the employee has returned to work for any employer at an equal or greater wage or salary as before the injury, no further PPD benefits are owed. However, if the employee has not returned to work for any employer at an equal or greater wage or salary as before the injury, then the employee may be eligible for increased benefits as set forth below. T.C.A. § 50-6-207(3).

INCREASED BENEFIT CALCULATION

For injuries occurring on or after 7/1/2014: If at the end of the "initial compensation period," the employee is not working with any employer at a wage or salary equal or greater as before the injury, the employee may receive an increased benefit by multiplying the "initial compensation period" amount by 1.35. T.C.A. § 50-6-207(3)(B). This award is referred to as the "resulting award." Additionally, the employee's "resulting award" shall be further increased if the following factors apply:

1. Education: no high school diploma or GED (1.45 factor);
2. Age: the employee is more than 40 years old at the end of the initial compensation period (1.2 factor); and
3. Unemployment rate: if the unemployment rate in the county where the employee was employed by the employer on the date of the injury was at least 2 percentage points greater than the yearly average unemployment rate compiled by the department for the year immediately prior to the expiration of the period of compensation (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. In determining the increased award the employer shall be given credit for the amount paid during the initial compensation period. T.C.A. § 50-6-207(3)(B).

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

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

COMPENSATION RATE

The compensation rate is 66 2/3% (66.67%) 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.

MAXIMUM & MINIMUM COMPENSATION RATES

Date of Accident	Temporary Disability Max. Rate	Permanent Disability Max. Rate	Permanent/Temporary Min. Rate
7/1/03 to 6/30/04	-	\$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
7/1/10 to 6/30/11	\$841.50	\$765.00	\$114.75
7/1/11 to 6/30/12	\$867.90	\$789.00	\$118.35
7/1/12 to 6/30/13	\$886.60	\$806.00	\$120.90
7/1/13 to 6/30/14	\$918.50	\$835.00	\$125.75
7/1/14 to 6/30/15	\$932.80	\$848.00	\$127.20
7/1/15 to 6/30/16	\$943.80	\$858.00	\$128.70
7/1/16 to 6/30/17	\$976.80	\$888.00	\$133.20

DEATH BENEFITS T.C.A. § 50-6-209(b)(1)-(2) and § 50-6-210(e)

When an injury results in death, the surviving spouse or dependent orphan 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 orphans, they are entitled to 66 2/3% of the deceased employee's average weekly wages.

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 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. So long as the surviving spouse and/or dependents remain eligible for death benefits, the benefits are payable until the maximum benefit amount (at the time of the injury) has been paid.

If an employee dies without dependents, a lump sum of \$20,000 is owed to the estate of the employee. For purposes of calculating max exposure to death benefits, the maximum amount of benefits is \$399,600.00

FUNERAL BENEFITS

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).

MAXIMUM MEDICAL IMPROVEMENT (MMI): MMI is determined by the treating physician except in certain circumstances. In mental injury cases, for injuries after 7/1/2009, MMI will occur no later than 104 weeks after the employee reaches MMI on the physical injury (or 104 weeks after the date of injury if there was no physical injury). In pain management cases, for injuries occurring after 7/1/2010, MMI will occur no later than 104 weeks after the commencement of pain management treatment. In all cases with dates of injury occurring 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. T.C.A. § 50-6-207(D) & (E).

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

GEORGIA / TENNESSEE / ALABAMA / NORTH CAROLINA / SOUTH CAROLINA / KANSAS / MISSOURI / MISSISSIPPI

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 protect 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 voluntary payment.

TENNESSEE FORMS NEEDED FOR POST-July 1, 2014 INJURIES: (See <http://www.state.tn.us/labor-wfd/mainforms.html>)

C-20: First Report of Work Injury	C-27: Notice of Controversy	C-30A: Final Medical Report	C-42: Choice of Physician Form (signed)
C-22: Notice of First Payment of Compensation	C-28: Notice of Lawsuit	C-31: Medical Waiver & Consent Form (must be signed)	DCN: Dispute Certification Notice
C-23: Notice of Denial of Claim	C-29: Final Report of Payment & Receipt	C-32: Physician's Standard Form Medical Report	PBD: Petition for Benefit Determination
C-26: Notice of Change or Termination of Benefits	C-30: Attending Physician's Report	C-35: Utilization Review Notification	SD-1: Statistical Data Form
		C-41: 52-week Wage Statement	

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 employee 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 or 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(j)

EXPERT MEDICAL TESTIMONY

As of July 1, 2014, the opinions of authorized physicians regarding medical causation and impairment ratings are entitled to a presumption of correctness, which can be overcome by a preponderance of the evidence. T.C.A. § 50-6-102(12), § 50-6-204(a)(3) and § 50-6-204(k)(7). Either party may select an evaluation from a physician listed on the Medical Impairment Registry. 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. T.C.A. § 50-6-204.

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 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) & TBWC 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). Each medical provider shall be required to release the records of any employee treated for a work-related injury to both the employer and the employee within 30 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: 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)-(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 case. The Bureau is authorized by statute to assess penalties to parties in numerous 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.

BUREAU 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 set 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 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. If employee was paid PPD benefits and no medicals were paid but the settlement was not Court approved, the will employee have two years from the date of the last PPD benefit payment to file a PBD. T.C.A. § 50-6-203.

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 Supreme Court. The Tennessee Rules of Appellate procedure apply to the appeal. The court will review the workers' compensation court's findings of facts 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 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(11)
Did Not Arise Out Of Employment	T.C.A. § 50-6-102(13)
Was Not In Course Of Employment	T.C.A. § 50-6-201(13)
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(13)
Misrepresentation	<u>Federal Copper & Aluminum Company v. Dickey</u> , 493 S.W.2d 463 (Tenn.1973)
Last Injurious Injury	T.C.A. § 50-6-208
Idiopathic Injuries	<u>Waley v. First TN Bank of National Ins.</u> , 2014 WL 9910050 (TN WC Claims)

HELPFUL WEBSITES

Copies of Statutes :	http://www.lexisnexis.com/hottopics/tncode/
Work Comp Forms:	http://www.tn.gov/workforce/topic/forms
Opinions from TBWC	http://trace.tennessee.edu/utk_workerscomp/
Calculators:	http://www.constangy.com/service/wc_calculator.html
TN Counties:	http://www.tennesseeanytime.org/local/counties.html
TBWC Contacts:	http://www.state.tn.us/labor-wfd/wc_contacts.pdf
Rules of the TBWC:	http://www.tn.gov/assets/entities/labor/attachments/Court_of_Workers_Compensation_Claims_Rules_With_Table_of_Contents_WC.pdf
TBWC Mileage :	http://www.tn.gov/labor-wfd/public_info.htm
TN Penalty Info:	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. As of July 7, 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. § 50-9-101, *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 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: 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.

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