

WORKERS' COMPENSATION QUICK REFERENCE GUIDE

Tennessee Work Comp Reform

- I. Public Chapter 289, Effective July 1, 2014.
- II. Liberal construction of statute will be replaced with strict construction favoring neither Employer nor Employee.
- III. All injuries must arise "primarily" out of and in the course and scope of work to be compensable, i.e. employment must contribute more than 50% in causing the injury.
- IV. Jurisdiction of Circuit and Chancery Court is replaced by administrative system comprised of Workers' Compensation Judges appointed by the Administrator of the Division of Workers' Compensation. Tennessee Supreme Court remains final forum for appeal.
- V. All impairment ratings must be expressed as a percentage of the body as a whole and shall not consider complaints of pain.
- VI. All permanent partial disability (PPD) benefits based on body as a whole, which is valued at maximum of 450 weeks instead of 400 weeks.
- VII. Initial award of PPD calculated by multiplying impairment rating times 450 weeks times compensation rate, regardless of return to work status.
- VIII. If at the expiration of the initial award of PPD the Employee has not returned to work for any employer or has returned to work at less than 100% of pre-injury wages, the Employee's award shall be increased by a factor of 1.35, and is eligible for additional benefits by multiplying the award by the product of the following factors: (1) 1.45, if the employee lacks high school diploma or GED; (2) 1.2, if the employee is more than 40 years of age; and (3) 1.3, if the Tennessee county where the Employee worked had an unemployment rate at least 2% higher than state average.
- IX. Panel of physicians must include 3 or more independent physicians, surgeons, chiropractors, or specialty practice groups in the employee's community; and if not available in the employee's community, within 100 mile radius. When treating physician makes referral to specialist, the employer will be deemed to have accepted the referral unless a specialist panel is provided within 3 business days.
- X. Ombudsman program designed to assist unrepresented parties by advising them of rights and obligations under the law, by assisting parties to complete forms, and by acting as liaison among parties to ensure efficiency in administration of claims.

Coverage

- I. *There must be an employer/employee relationship.* "Employee" includes minors, aliens, and corporate officers. Officers can "opt out" by completing TDOL Form I-6. Partners/sole proprietors can "opt in" by completing TDOL Form I-4.
- II. *Employer must have at least five (5) employees.* This includes full and part-time workers.
- III. *Employee must receive compensation.* Gratuitous service is not enough.
- IV. *Construction Contractors must have workers' compensation insurance on all employees, regardless of number. Effective 3/1/2011, certain contractors may apply for exemption.*

Compensability for Injuries Before July 1, 2014

- I. Injured employee must show that work condition caused the injury. Two requirements: (1) injury must "arise out of" work condition; and (2) injury must be sustained "in the course of" employment, i.e., while performing duties for the employer at employer's place of business.
- II. "Accidental" only if injury caused by a specific incident or incidents...must identify time and place of occurrence.
- III. Authorized treating physician selected by employee presumed correct on issue of causation, but presumption can be rebutted by preponderance of the evidence.
- IV. Does not include cumulative trauma conditions, hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions unless such conditions arose primarily out of and in the course and scope of employment.
- V. For injuries on or after 7/1/2014, all injuries must arise primarily out of and in the course and scope of work, i.e. employment must contribute more than 50% in causing the injury.

Calculation of Benefits

I. Minimum / Maximum Weekly Benefit

DATES	MIN. RATE	Permanent Benefits MAX. RATE	Temporary Benefits MAX. RATE
7/1/11 - 6/30/12	\$118.00	\$789.00	\$868.00
7/1/12 - 6/30/13	\$120.90	\$806.00	\$886.60
7/1/13 - 6/30/14	\$125.25	\$835.00	\$918.50
7/1/14 - 6/30/15	\$127.20	\$848.00	\$932.80
7/1/15 - 6/30/16	\$128.70	\$858.00	\$943.80

- II. Average Weekly Wage (AWW): Gross earnings of the injured worker for 52 weeks divided by 52. If employee worked less than 52 weeks, then gross earnings divided by number of weeks worked, but the result must be "just and fair" to both parties. Tenn. Code Ann. § 50-6-102(3).
- III. Workers' Comp Rate (CR): 66 2/3% of AWW, subject to minimum and maximum weekly benefit rates listed above.
- IV. Wages include "anything" received by the employee under terms of the employment from which the employee recognizes economic gain.
- V. Employers are required to file a wage statement within 3 business days of the first scheduled ADR proceeding.

Medical Benefits/Records/Mileage

- I. Employer is obligated to provide injured workers with medical benefits for compensable injuries/occupational diseases, without limitation as to time/amount, unless unreasonable and/or unnecessary. Tenn. Code Ann. § 50-6-204(a)(1).
- II. As of 7/1/2004, case management is no longer mandatory and if utilized, it is at the employer's expense and the employee must cooperate.
- III. For injuries prior to 7/1/2014, employers are required to include a chiropractor on the panel for back injuries. Additionally, more than 12 visits may be authorized with approval of the employer. No chiropractor required on panel for injuries on or after 7/1/2014.
- IV. The Medical and Hospital Fee Schedules are effective for dates of service on or after 7/1/2005. All penalties associated with the fee schedule became effective 1/1/2006.
- V. Upon request, a physician shall, within 30 days of treatment, furnish to the employer or its insurance carrier a complete copy of the medical report. A physician may not charge in excess of \$10.00 for medical reports 20 pages or less, and \$0.25 for each page thereafter. Tenn. Code Ann. § 50-6-204(1)(B).
- VI. When an injured worker is required to travel over fifteen (15) miles from the worker's home or workplace to an authorized physician, or thirty (30) miles round trip, the employee shall be reimbursed for travel expenses. The minimum per mile reimbursement shall be based on travel regulations promulgated by the Department of Finance and Administration. Tenn. Code Ann. § 50-6-204(6)(A).
- VII. For referral to pain management made on or after 7/1/2012, the radius for a panel of physicians is expanded to 175 miles from the employee's home or place of employment. The pain management physician can require the employee to sign a written pain management agreement. The consequences for violating the agreement must be spelled out in CAPITALIZED, conspicuous lettering. After the second violation of the agreement, the employee can be discharged from pain management with no further obligation to provide Schedule II, III, and IV controlled substances. If discharged from pain management for violation of the agreement, the discharge may not be a factor in determining the applicability of the right of reconsideration, the multiplier caps, or permanent total disability benefits.

Panel of Physicians

- I. For injuries prior to 7/1/2014, panel must include three (3) physicians; however, if back injury, panel of 4 must be provided, including a chiropractor. If orthopedist or neurosurgeon panel, panel may include five (5) physicians, with no more than four (4) of the physicians associated in the same practice. If panel of five (5) is provided, employee is entitled to second opinion from the same panel on issues of surgery, impairment, and diagnosis. Panels of physicians for referrals to pain management made on or after 7/1/2012 can include physicians within 175 miles of employee's home or work.
- II. For injuries on or after 7/1/2014, panel must include three (3) or more independent physicians, surgeons, chiropractors, or specialty practice groups in the employee's community; and if not available in the employee's community, within 100 mile radius. When treating physician makes referral to specialist, the employer will be deemed to have accepted the referral unless a specialist panel is provided within three (3) business days.
- III. The Tennessee Department of Labor has established and maintains a Medical Impairment Rating (MIR) Registry for injuries 7/1/2005 or later. Any party who disputes the impairment rating may apply if specific criteria are met. The employer is responsible for all costs associated with the IME and report.
- IV. Employer must immediately provide panel upon notice of work injury. If panel is not given within 5 business days from notice, or if non-compliant panel is given more than once, the Employer may be assessed penalty not to exceed \$5,000.00.

Maximum Permanent Benefits for Scheduled Injuries Prior to July 1, 2014

Permanent Partial Disability (PPD): (Tenn. Code Ann. § 50-6-207)

Thumb.....60 Weeks	Phalange of Thumb.....30 Weeks
Index Finger.....35 Weeks	Phalange of Index Finger.....17.5 Weeks
Middle Finger.....30 Weeks	Phalange of Middle Finger.....15 Weeks
Ring Finger.....20 Weeks	Phalange of Ring Finger.....10 Weeks
Little Finger.....15 Weeks	Phalange of Little Finger.....7.5 Weeks
Big Toe.....30 Weeks	Phalange of Big Toe.....15 Weeks
Other Toes.....10 Weeks	Phalange of Other Toes.....5 Weeks
Hand.....150 Weeks	Both Hands.....400 Weeks
Foot.....125 Weeks	Both Feet.....400 Weeks
Arm.....200 Weeks	Both Arms.....400 Weeks
Leg.....200 Weeks	Both Legs.....400 Weeks
Eye.....100 Weeks	Both Eyes.....400 Weeks
Eye and Leg.....350 Weeks	Hearing (both ears).....150 Weeks
Eye and Arm.....350 Weeks	Eye and Hand.....325 Weeks
Eye and Foot.....300 Weeks	Arm and Other Hand.....400 Weeks
Hand and Foot.....400 Weeks	Leg and Hand.....400 Weeks
Arm and Foot.....400 Weeks	Arm and Leg.....400 Weeks

Serious disfigurement to head, face, or hands, not resulting from loss of member, which affects employability..... 200 Weeks

For injuries on or after 7/1/2014, no more scheduled members — all injuries converted to BAW.

Temporary Benefits

- I. Temporary Total Disability (TTD): 66 2/3% of AWW, up to maximum benefit rate. TTD begins on the eighth day of disability. Tenn. Code Ann. § 50-6-207(a)(1). If disability lasts 14 days or more, must pay compensation retroactively to the first day of disability. Tenn. Code Ann. § 50-6-205(a).
- II. Temporary Partial Disability (TPD): 66 2/3% of difference between wages earned and AWW before injury. Tenn. Code Ann. § 50-6-207(2).
- III. 104 week cap for psychological injuries and pain management situation. Tenn. Code Ann. § 50-6-207(1)(D) and (E).

Statute of Limitations

- I. For injuries occurring before 7/1/2014, a BRC must be requested within one year of date of injury or last benefit paid, whichever is later.
- II. For injuries on or after 7/1/2014, a Petition for Benefit Determination must be filed within one year after the injury or last benefit paid, whichever is later.
- III. Where PPD is paid in attempt to settle claim but not approved by Workers' Comp Judge, SOL is extended for 2 years from date of last PPD payment.

Future Medical Benefits

- I. For injuries occurring prior to 7/1/2004, and on and after 6/6/2011 employees can settle their right to future medical benefits.
- II. For injuries occurring on or after 7/1/2004, and before 6/6/2011 employees are prohibited from settling their right to future medical benefits until three (3) years after the date of settlement or trial award for BAW injuries or to scheduled members with a value of 200 weeks or greater.
- III. Employee's right to future medical benefits for PTD can never be closed.
- IV. Employees are permitted to close future medical benefits on any scheduled member injury permitted less than 200 weeks regardless of date of injury.
- V. Employees are permitted to close future medical benefits after 7/1/2004 and before 6/6/2011 on a doubtful and disputed basis if the total settlement does not exceed 50 times the minimum weekly benefit rate as of the date of the injury.
- VI. For injuries on and after 6/6/2011, future medical benefits may be closed in all cases, except for PTD. Must advise claimant of consequences of Medicare and TennCare benefits and liabilities.

The "Caps" for Injuries Prior to July 1, 2014

- I. **Employee returns to work:** If pre-injury employer returns the employee to work at a wage equal to or greater than the wage the employee was making at time of injury, the maximum PPD award employee may receive is 1.5 times the medical impairment rating determined by the *AMA Guides* for injuries occurring on or after 7/1/2004. The cap is 2.5 times for injuries occurring before 7/1/2004.
- II. **Employee is unable to return to work:** If pre-injury employer does not return employee to work, employee may receive up to 6 times the medical impairment rating. If the Court awards a multiplier of 5 or more, specific findings of fact must be made by the Court. Tenn. Code Ann. § 50-6-241. For employees who are over age 60 at the time of injury, recovery is capped at 260 weeks for BAW injuries.
 - A. For injuries occurring on or after 7/1/2004, caps apply to all BAW impairments and scheduled member impairments worth 200 weeks or greater.
 - B. Scheduled member injuries occurring prior to 7/1/2004 are not subject to caps.
- III. **Exceeding the Caps:** For those injuries where employee is unable to return to work, Court can exceed the statutory caps where the employee establishes by clear and convincing evidence three of four criteria, as of the date of award or settlement (Tenn. Code Ann. § 50-6-242):
 - (1) Employee lacks high school diploma or GED, or cannot read or write on 8th grade level;
 - (2) Employee is 55 years of age or older;
 - (3) Employee has no reasonably transferable job skills; and
 - (4) Employee has no reasonable, local employment opportunities.

Permanent Total Disability (PTD)

Must pay benefits until the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit program under the Social Security Act. If over 60 at time of injury, or within 5 years before Social Security eligibility, then must pay benefits for 260 weeks, which amount shall be reduced by any amount of old age benefits. Tenn. Code Ann. §50-6-207(4)(A)(i).

Death Benefits

If employee dies as a result of an injury, employer is responsible for medical expenses and limited burial expenses. Also, subject to maximum total benefit, employer must pay *either* a lump sum benefit *or* if there are dependents, then:

- I. 50% of the deceased employee's AWW to a surviving spouse;
- II. 66 2/3% of the deceased employee's AWW to a surviving spouse and dependent child/children;
- III. Upon remarriage of surviving spouse, if there is no child of deceased employee, compensation terminates; but if there is a child/children; 50% of the deceased employee's AWW to a surviving dependent orphan, or 66 2/3% if more than one surviving orphan. Tenn. Code Ann. § 50-6-210(e);
- IV. If employee leaves no dependents \$20,000.00 lump sum payment to estate of deceased employee. Tenn. Code Ann. § 50-6-209(2).

Reconsideration

- I. For injuries occurring prior to 7/1/2004, if employee returns to work and receives award for a BAW injury based on a 2.5 or less multiplier and employee is subsequently no longer employed by pre-injury employer at same or greater wage within 400 weeks of the day employee returned to work, employee may seek reconsideration of the PPD award. (Tenn. Code Ann. § 50-6-241)
- II. For injuries occurring on or after 7/1/2004 but prior to 7/1/2014, if employee returns to work and receives an award based on BAW impairments or scheduled member impairments worth 200 weeks or greater based on 1.5 cap, and employee is subsequently no longer employed by pre-injury employer at same or greater wage within the maximum number of weeks employee was eligible to receive benefit for injury from day employee returned to work, employee may seek reconsideration.
- III. Reconsideration is not permitted in three circumstances:
 - A. Voluntary resignation or retirement unrelated to the work-related disability;
 - B. Employee misconduct.
 - C. The employee continues in his/her employment after a reduction in pay or a reduction in hours due to economic conditions if the reduction in pay or hours affected at least fifty percent (50%) of all hourly employees operating at or out of the same location. (approved or tried after 7/1/2010).
- IV. Neither the employee nor the employer/carrier is permitted to waive, forfeit, or compromise and settle the right to reconsideration for injuries occurring on or after 7/1/04.

Second Injury Fund

For injuries occurring on or after 7/1/2006, the Fund is liable only when employees had previously sustained a permanent disability from any cause or origin of which the employer is aware prior to a subsequent, compensable injury, and the employee becomes PTD as a result of a compensable injury. The Employer is liable only for the percentage of PTD attributable to the subsequent compensable injury.

Subrogation

- I. If an employee is injured or dies under circumstances which create legal liability for damages against some person or entity other than the employer, the employee may have a separate claim against the third party. The employee has 1 year from the date of injury to initiate a claim against the third party. If the employee fails to initiate a claim, the employer has an additional 6 months to initiate a claim either in the employee's name or its own.
 - II. The employer has a subrogation lien for workers' compensation benefits paid. It may choose to intervene in the third party action to protect and enforce its lien. If the employee receives compensation from the third party that exceeds the employer's lien to date, the employer is entitled to a credit against future benefits paid. When the indemnity portion of the workers' compensation claim is settled in a lump sum and future medical benefits are left open, the employer must Intervene in the third party action and present medical proof of required future medical expenses to recover.
 - III. The "made whole" doctrine is not applicable.
- Tenn. Code Ann. § 50-6-112.

IMPORTANT PENALTIES UNDER NEW LAW FOR INJURIES ON OR AFTER JULY 1, 2014

- ◆ Failure of a covered employer to provide workers' compensation coverage or qualify as a self-insurer
- ◆ Late filing of accident reports
- ◆ Bad faith denial of claims
- ◆ Late filing of notice of denial of claim
- ◆ Failure of any party to appear or to mediate in good faith at any Alternative Dispute Resolution proceeding
- ◆ Failure of any party to comply, within the designated timeframe, with any order or judgment issued by a Workers' Compensation Judge
- ◆ Arrive more than 30 minutes late to any scheduled ADR resolution proceeding without previously notifying the mediator of their tardiness
- ◆ Deny or stop providing benefits for a claim of temporary disability or medical benefits without first performing a reasonable investigation of the claim
- ◆ Provide medical providers on a Form C-42 that the party knew, should have known, or had good reason to believe, would not provide treatment for the injured employee
- ◆ Provide medical providers on a Form C-42 in an untimely manner
- ◆ Provide non-compliant medical panel on more than one occasion
- ◆ Failure to comply within a reasonable amount of time with any appropriate request or directive of an ombudsman
- ◆ Failure to timely provide documents as required by the Tennessee Workers' Compensation Act or the Division's rules
- ◆ Failure to provide a representative with authority to settle a case at Alternative Dispute Resolution proceeding

Employer Defenses

TCA § 50-6-102(10)	Independent contractor / subcontractor
TCA § 50-6-102(12)	Not "arising out of" (no causation)
TCA § 50-6-102(12)	Not "in the course of employment" (no causation)
Common law	Misrepresentation as to physical limitations
TCA § 50-6-110(1)(2)	Employee's willful misconduct or self-inflicted injury
TCA § 50-6-110(3)	Intoxication or illegal drugs
TCA § 50-6-110(4)	Willful failure/refusal to use a safety appliance
TCA § 50-6-110(5)	Willful failure to perform a duty required by law
TCA § 50-6-110(6)	Voluntary participation in recreational, social, athletic, or exercise activities
TCA § 50-6-106(2)	Casual vs. regular employee
Common law	"Last injurious injury/exposure" rule
Common law	Temporary aggravation of a pre-existing injury
TCA § 50-6-201	Notice
TCA § 50-6-203	Statute of Limitations

Defenses Not Available: Employee's Negligence, Assumption of Risk, or Co-Employee's Negligence

Maximum Total Benefit

- I. For injuries occurring on or after 7/1/2009 but prior to 7/1/2014, the maximum total benefits are 400 weeks times the State's average weekly wage, except for awards of permanent total disability.
- II. Temporary total disability benefits are not included in calculating the maximum total benefit.
- III. For injuries on or after 7/1/2014, the maximum total benefits are 450 weeks times the State's average weekly wage, except for awards of permanent total disability.

Communications with Medical Providers

FOR INJURIES BEFORE JULY 1, 2014:

- I. No implied covenant of confidentiality with signed C-31 release.
- II. No prohibition against ex parte communications or privacy of medical records in the custody of authorized treating physicians (ATP) with respect to case managers, employers, insurance companies, their attorneys...must comply with (a)(2)(C).
- III. However, employee or employee's attorney shall be provided copies no later than 10 days in advance of a deposition of the authorized treating physician taken for any purpose or the appearance of the authorized treating physician (ATP) for testimony, of any and all written memorandum or visual or recorded materials, including e-mails or other written materials either provided to the employee's ATP or received from employee's ATP.
- IV. ATP is permitted to communicate orally or in writing with the employer or the employer's attorney and shall honor any request by the employer for medical information, records, professional opinions, or medical reports pertaining to the compensation injury.
- V. Oral communication may be utilized and includes, but is not limited to, a telephone conversation or an in-person meeting.
- VI. HIPAA authorization is required to obtain information from unauthorized medical providers.

FOR INJURIES ON OR AFTER JULY 1, 2014:

- I. No implied covenant of confidentiality.
- II. ATP shall provide medical records without signed medical release.
- III. HIPAA authorization still required to obtain information for unauthorized medical providers.

TIME REQUIREMENTS UNDER NEW LAW FOR INJURIES ON OR AFTER JULY 1, 2014

Event	Rule	Time Period
Response opposing a motion for temporary benefits to be heard on an expedited basis	0800-02-21-.14	Within 5 business days after the motion is filed — filing party should also include an explanation of why the motion should not be heard on an expedited basis if it opposes the hearing
Notice of Deposition to opposing party	0800-02-21-.16	5 days before the deposition for an in-county resident 7 days before deposition for an out-of-county resident
Filing medical records with the Division before a hearing	0800-02-21-.16	No later than 10 days before the scheduled hearing
Filing a prehearing statement and exhibits with the Division prior to a compensation hearing	0800-02-21-.18	No more than 10 days prior to the hearing or on a date selected by the presiding judge
Service of subpoenas compelling attendance at a hearing	0800-02-21-.18	No later than 5 days before the scheduled hearing
Notice of Appeal	0800-02-22-.01	Within 7 days after issuance of an interlocutory order Within 30 days after issuance of a compensation order **Time for filing each is jurisdictional
Filing of transcript	0800-02-22-.01	Within 15 days after the Notice of Appeal of a compensation order is filed
Filing a brief in a case before the Workers' Compensation Appeals Board	0800-02-22-.01	Within 15 days after the case is docketed
Attorney Notice of Appearance filing	0800-02-21-.05(2)	Immediately upon accepting representation
Payment of \$150 filing fee	0800-02-21-.07	Prior to scheduled settlement approval or within 5 business days after fee has been assessed by judge
Exchange of medical records	0800-02-21-.10	Must be provided to the opposing party within 14 calendar days of receipt
Employer filing of wage statement	0800-02-21-.10	Must be filed within 3 business days of the scheduled ADR
Filing an objection to the contents of a Dispute Certification Notice	0800-02-21-.11	Either party may file within 5 business days of receipt
Request for a hearing	0800-02-21-.12	Within 60 days after the Dispute Certification Notice is filed with the clerk or the claim is placed on the dismissal docket
Participation in Initial Hearing Conference	0800-02-21-.13	Within 30 days after request for hearing is filed
Submitting the proposed initial hearing report	0800-02-21-.13	Within 3 business days after the initial hearing is concluded