
2013 Changes to the Tennessee Workers' Compensation Act

Overview

On April 29, 2013 Tennessee Governor Bill Haslam signed into law the Tennessee Workers' Compensation Reform Act of 2013 (SB200/HB194). This is the most significant, far-reaching revision of the workers compensation law in Tennessee since the original act was passed in 1919. The goals of the 2013 revisions are to provide more clarity and efficiency to the workers' compensation system. The Workers' Compensation Reform Act of 2013 **applies to injuries occurring on or after July 1, 2014.**

Major Provisions of SB200 / HB194

Administrative and Procedural Changes

- Creates the Division of Workers Compensation within the Department of Labor and Workforce Development.
- Moves adjudication of workers' compensation claims to an administrative system from a court-based system.
- A mediation and ombudsman program will assist parties in resolving disputes outside of the formal hearing process
- Replaces the remedial nature of the law by applying a requirement that the law be "construed fairly, impartially, and in accordance with basic principles of statutory construction" and not "remedially or liberally," without "favoring either the employee or the employer."

Compensability Changes

- To be found compensable, the new law requires that the injury "***primarily*** arise out of and in the course and scope" of employment. (emphasis added)

Medical Changes

- Access to medical records is simplified.
- Establishes a Medical Payment Committee which will hear disputes between insurers and providers on medical payments and advise the administrator on issues related to the medical fee schedule and medical care cost containment in the workers' compensation system.
- Establishes a Medical Advisory Committee to assist in developing treatment guidelines and advise the Administrator on issues related to medical care in the workers compensation system.
- Establishes a conclusive presumption of maximum medical improvement when the treating physician ends all active medical care and the only care provided for is the treatment of pain (other than for mental injury).

Indemnity Changes

- Disability benefits are to be calculated on a "body as a whole" basis.
- Duration of Temporary Partial Disability benefits is extended.

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- Replaces the current Permanent Partial Disability multipliers with multipliers based on age, education and unemployment rate.

Effective dates:

- **4/29/13:** Sections 1 and 2 of the Act creating the Division of Workers' Compensation and establishing the qualifications, term and duties of the Division's Administrator
- **7/1/2014:** All other sections of the Act become effective
- **1/1/2016:** Regulatory guidelines for the diagnosis and treatment of commonly occurring workers compensation injuries adopted by Workers' Compensation Administrator

Administrative and Procedural Changes

- **The Division of Workers' Compensation is created within the Department of Labor and Workforce Development.**

The goal of the workers' compensation law reform is to ensure the health and safety of Tennessee workers and to promote Tennessee as an attractive destination for business. The law removes jurisdiction over workers compensation from the Circuit and Chancery courts of Tennessee and creates the Division of Workers' Compensation. The Tennessee General Assembly stressed the importance of the independence of the Division, providing that the Division is to be an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only.

The Division of Workers' Compensation is to be under the charge and general supervision of an Administrator, whose responsibilities include "development and maintenance of an organizational structure to ensure fair, equitable, expeditious, and efficient administration of the workers' compensation law" and "responsibility for the administration of a workers' compensation system that protects the life, health, and safety of Tennessee's workforce and ensures the viability of Tennessee's business environment." The Administrator will have responsibility to promulgate rules and regulations to implement and fulfill the provisions of the new law.

Under the new law, the Administrator must have a minimum of seven (7) years of credible experience in the field of workers' compensation and be recognized by the business and labor communities as a person of good standing and reputation in matters concerning workers compensation.

- **The "Court of Workers' Compensation Claims" is created within the Division of Workers' Compensation. Workers compensation claims are adjudicated administratively rather than through the state court system.**

The Court of Workers' Compensation claims will have jurisdiction over all contested claims for workers compensation with an alleged date of injury on or after July 1, 2014. The Administrator of the Division of Workers' Compensation will have sole administrative authority over the court, including authority to appoint and to remove workers compensation judges. The governor shall appoint three judges to sit on the workers compensation appeal board. The administrator will also set up rules and regulations of the new administrative claim adjudication system.

The newly created Court of Workers' Compensation Claims, rather than the state trial courts, will adjudicate a claim if it cannot be resolved through the mediation program as set forth below. The initial level of appeal will also be handled within the administrative system, by the Workers' Compensation Appeals Board, but all final appeals will continue to be heard by the Tennessee Supreme Court.

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Analysis of Impact:

- Eliminates “jurisdiction” shopping.
- While decisions should be more consistent, they could be affected by the political leanings of the governor’s administrative appointees.
- **Mediator and Ombudsman programs will be established, which are intended to assist parties in resolving disputes outside the judicial process**

The Administrator shall establish a mediators program to assist injured or disabled employees in protecting their rights, resolving disputes and obtaining information about workers compensation laws and practices. The mediator’s role is to conduct alternative dispute resolution to mediate all disputes between the parties related to resolution of the workers compensation claim. The mediator must inform all parties of their rights and responsibilities under the Act and accept and review all documents and information presented to the Division relevant to the disputed issue. If the mediator succeeds in reaching a settlement agreement between the parties, the mediator shall reduce the settlement to writing. The settlement must be approved by a workers’ compensation judge before it becomes effective. If no settlement is reached at mediation, then the mediator must prepare a “dispute certification notice” specifying the issues that remain in dispute. No party to a dispute is entitled to a hearing before a workers’ compensation judge to resolve a dispute over benefits or a settlement until the mediator has issued this notice.

The ombudsman program will assist injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights, resolving disputes and obtaining information about workers compensation laws; however this program will be available only to parties not represented by an attorney in their claim for workers’ compensation benefits.

Analysis of Impact:

- Both programs may result in cases resolving without going through the formal adjudication process, thereby potentially reducing litigation expense.
- The Ombudsmen program will provide assistance to unrepresented injured workers, potentially reducing attorney involvement.
- **The Workers’ Compensation System is no longer “remedial” in nature.**

The original workers’ compensation act was “remedial.” Courts frequently used this language to justify decisions that favored the employee in close or ambiguous cases. The new Act declares that the law “shall not be remedially or liberally construed but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction.” In other words, the law should be applied impartially favoring neither the employee nor the employer.

Analysis of Impact:

- Should result in more objective judicial decisions
- May lead to more contested cases and potentially more litigation

Compensability Changes

- **To be found compensable, the new law requires that the injury “*primarily* arise out of and in the course and scope” of employment.**

The law modifies the definition of “injury” to mean “an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion

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conditions, arising *primarily* [emphasis added] out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee.”

An injury “arises primarily out of and in the course and scope of employment” only if it has been shown that employment contributed more than 50% percent in causing the injury, considering all causes, by a preponderance of the evidence.

The opinion of the treating physician, selected by the employee from the employer’s designated panel of physicians, is presumed to be correct on the issue of causation, but the presumption is rebuttable.

Analysis of Impact:

- May lead to more independent medical examinations on the issue of causation.
- Removes the “could have” theory so that physicians will have to be more definitive in their assessment.
- May lead to more denials and potentially more litigation.

Medical Changes

- **Access to medical records is simplified**

The new law removes a requirement that permitted medical records to be released only with a signed authorization addressed only to each specific medical provider. Under the new law, employers or case managers may communicate with the employee’s authorized treating physician, orally or in writing, and 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 thirty (30) days after admission or treatment. There shall be no implied covenant of confidentiality with respect to those records, which will include all written memoranda or visual or recorded materials, e-mails and any written materials provided to the employee’s authorized treating physician, by case managers, employers, insurance companies, or their attorneys or received from the employee’s authorized treating physician.

Analysis of Impact:

- Faster turnaround time on medical records for investigating compensability
 - Written release no longer needed to obtain records of authorized treating physician/facility. Should eliminate and/or reduce delays caused by the “Overstreet” decision which required releases for all records.
- **A Medical Payment Committee will be appointed to hear disputes between providers and insurers**

The new law establishes a Medical Payment Committee appointed by the Administrator, consisting of three medical provider representatives, three insurance industry representatives, and the medical director (who will only vote in case of a tie). Members will serve a term of four years (without compensation, save for travel expenses) and may be reappointed. The Committee will hear disputes on medical bill payments between providers and insurers and advise the Administrator on issues relating to the medical fee schedule and medical care cost containment in the workers’ compensation system. The Committee will have authority to render a decision on the merits of a dispute, and can refer a party determined to have acted in bad faith to the division for consideration of assessment of a civil penalty (up to \$1,000 per occurrence).

Analysis of Impact:

- Opportunity for collaboration within the workers’ compensation industry

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- More consistency in outcomes and provides framework to avoid future disputes
- **A Medical Advisory Committee will be appointed to assist in developing treatment guidelines and advising the Administrator on issues relating to medical care in workers' compensation**

The Medical Advisory Committee will be appointed by the Administrator to assist the Administrator in developing treatment guidelines and advise the Administrator on issues relating to medical care in the workers' compensation system. The committee will be composed of an unspecified number of medical practitioners and representatives of insurers, employers and employees. Members will serve a term of four years (without compensation, save for travel expenses) and may be reappointed.

Analysis of Impact:

- Consistency in treatment guidelines
- Foster collaboration between insurer, employer and provider
- **Maximum medical improvement (MMI) is conclusively presumed to have been reached when the treating physician ends all active medical treatment and the only care provided is for the treatment of pain (other than for mental injury).**

The employer shall be given credit against an award of permanent disability for any amount of temporary total disability benefits paid to the employee after the employee reaches MMI as determined by a workers compensation judge.

Analysis of Impact:

- May reduce overall costs of claims by enabling earlier settlements
- Prior law's requirement to pay up to 2 years TTD is now changed and this may remove a disincentive for an employee to return to work

Indemnity Changes

- **Impairment ratings are to be assigned by the treating physician or chiropractor using the applicable edition of the AMA guides. The rating is to be assigned on a percentage of the "body-as-a-whole" basis, and the whole body will have a value of 450 weeks. Compensation is payable to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury.**

The current method for determining PPD benefits (scheduled members and non-scheduled members with varying values) is replaced. The treating physician or chiropractor shall assign impairment ratings as a percentage of the body as a whole and shall not consider complaints of pain in calculating the degree of impairment, notwithstanding allowances for pain provided by the applicable edition of the AMA guides. Disability is to be measured based on the whole person with the maximum value for 100% loss increased to 450 weeks from 400 weeks.

Analysis of Impact:

- The cost of the impairment rating may increase, but AMA guidelines will help keep consistency with the ratings
- The increase from 400 to 450 weeks has the potential to increase payout on PPD
- Enables a simpler analysis of case values

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- **Standard impairment rating multipliers are eliminated, and factors supporting an increase in the base rating are limited.**

Under prior law, a judge had considerable leeway to make an award of permanent partial disability. If the injured worker was able to return to the pre-injury employment with that same employer at the same wage for a specified length of time, that worker was capped at 1.5 times the medical impairment rating. If unable to return to work with the same employer, the award could be as high as six times the rating in certain situation, and even higher in very rare situations.

The new law provides that the base rating is to be paid out regardless of employment status. For example, if a worker's medical impairment rating is 10%, the worker would receive 45 weeks of wages regardless of work status (.10 x 450 weeks.) If the worker does not return to employment **anywhere** during that 45 weeks making at least what the worker was making at the time of the injury, the worker may file a claim for increased benefits. An initial factor of 1.35 the rating may be awarded if appropriate. A workers compensation judge may increase the employee's award by multiplying the initial award by factors associated with the injured employee's education (1.45), age (1.2) and unemployment rate (1.3).

Injured employees who are not eligible or authorized to work in the United States under federal immigration laws will be paid based on their impairment rating, but will not be eligible for increased benefits as described above.

Analysis of Impact:

- Case value is easier to determine due to objective factors
- Increases predictability of what judges will award as this removes most of the subjectivity of an award