

IMPORTANT TERMS IN TENNESSEE WORKERS' COMPENSATION CLAIMS

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WORK-RELATED INJURY

Any injury, illness, or death arising out of and in the course and scope of employment. The injury or illness must occur while the employee is performing assigned duties during assigned work time. Injuries sustained while engaging in unassigned job duties, during lunch time, or during a break are not work-related injuries provided that these injuries occur away from the employer's premises. Any injury resulting from an employee's willful misconduct or due to intoxication from alcohol or drugs is not compensable.

ACCIDENTAL INJURY

Work-related injury caused by specific incident(s) arising out of and in the course and scope of employment. Does not include an aggravation of a pre-existing condition unless there is a reasonable degree of certainty that the aggravation arose primarily out of and in course and scope of employment.

OCCUPATIONAL DISEASE

Medical condition determined to have been caused by employment. In order to be deemed compensable, all of the following six factors must be met: (1) the disease must follow as a natural incident of the work conditions; (2) the employment is the proximate cause of the disease; (3) the cause is not a hazard which the employee would be equally exposed to outside of employment; (4) the disease is incidental to the character of the employment; (5) the disease originated from a risk connected with the employment; and, (6) there is a direct causal connections between the work conditions and the occupational disease.

PRIMARILY OUT OF AND IN COURSE AND SCOPE OF EMPLOYMENT

Shown by preponderance of evidence, or to a reasonable degree of medical certainty, that employment contributed more than 50% in causing the injury.

COMPENSABILITY DETERMINATION

The insurance carrier must make a determination of compensability within fifteen (15) days' notice of the work-related injury or illness.

TEMPORARY TOTAL DISABILITY (TTD)

Benefit for an injured employee whose work-related injury temporarily disables him from working any job. The benefit is 66 2/3% of the pre-injury average weekly wages and cannot be less than the minimum, or more than the maximum, weekly benefit. It is payable until maximum medical improvement, or to return to work, or for 450 weeks, whichever is shorter.

TEMPORARY PARTIAL DISABILITY (TPD)

Benefit for an injured employee who is working but whose post-injury wages are less than his pre-injury regular wages. The benefit amount is 66 2/3% of the *difference* between the pre-injury wage and the post-injury wage, and cannot be less than the minimum, or more than the maximum, weekly benefit. It is payable until maximum medical improvement, or for 450 weeks, whichever is shorter.

PERMANENT TOTAL DISABILITY (PTD)

Benefit for an injured employee who is unable to return to any job in the open market because he retains a permanent disability from the work-related injury. This benefit is 66 2/3% of pre-injury wage amount paid until employee is eligible for Social Security retirement benefits. However, if the employee is permanently and totally disabled as a result of a work-related injury which occurs within five years of becoming eligible for full Social Security retirement benefits, the employee is entitled to benefits for 260 weeks.

PERMANENT PARTIAL DISABILITY (PPD)

All compensable injuries are eligible up to 450 weeks of benefits. Injured employees with a permanent partial impairment (PPI) rating are entitled PPD benefits calculated as 450 weeks multiplied by the impairment rating to determine the number of weeks of benefits. (Impairment rating % x Compensation rate \$ x 450 = Settlement amount \$). Injured employees may be entitled to **additional benefits** if at the end of the benefit period they are not working or working but earning less than pre-injury wage. (Factors are cumulative.):

- Employee did not return to any work, or is working but receiving less than pre-injury wages, original award is multiplied by **1.35**.
- Employee lacks a high school diploma or GED; original award is multiplied by **1.45**.
- Employee is more than 40 years old, original award is multiplied by **1.2**.
- Unemployment rate in employee's county of employment is at least 2% greater than average unemployment rate in TN for the year prior to the end of the benefit period, original award is multiplied by **1.3**.

The employer/insurance carrier will be given credit for payment of the original award. Unless included in settlement, the **injured employee** must file a new petition for benefit determination **within one year** after the benefit period has expired to request additional benefits. Employer is not required to notify the employee of his eligibility for additional PPI benefits.

PETITION FOR BENEFIT DETERMINATION (PBD)

Form submitted to the TN Bureau of Workers' Compensation in order to seek benefits which are under dispute in a workers' compensation claim. The legal process of a TN workers' compensation claim begins with this filing.

KEY DEADLINES AND HEARING PROCEDURES FOR TENNESSEE WORKERS' COMPENSATION CLAIMS



BENEFIT DETERMINATION / HEARING PROCEDURE

- **Petition for Benefit Determination (PBD):** Request for the Bureau of WC to provide assistance with resolution of disputed issues in a claim. PBD is also used to request settlement approval. Once a PBD is filed, Employer must provide wage report on C-42 form within 5 days and medical records must be promptly exchanged.
- **Alternative Dispute Resolution (ADR):** All claims in which a party has submitted a PBD will be handled first by mediation. Any issues not resolved by mediation, will be listed on a Dispute Certification Notice (DCN). Any party may request a hearing for a ruling on issues stated in the DCN. If all issues are resolved, terms are drawn up a settlement agreement and the claim is added to the court docket for a settlement approval hearing.
- **Request for Hearing:** Any party may request a hearing before the Court of Workers' Compensation Claims on issues listed on the DCN. That request must be submitted within 60 days after the DCN is filed.
- **Initial Hearing:** Teleconference of parties and the judge to establish a discovery plan and set dates for post-discovery ADR and compensation hearing. Initial hearing will be held within 30 days of Request for Hearing. Parties must submit a proposed initial hearing order within 3 days of the teleconference.
- **Discovery Period:** Period of time for depositions, written discovery and certification of medical records. All depositions must be taken within the discovery period. A list of witnesses, exhibits, and deposition transcripts must be submitted to the Court 10 days before the hearing. Items not listed may not be allowed into evidence at the hearing. Compensation hearings will **not** be reset in order to complete discovery.
- **Post-Discovery ADR:** After the discovery period has ended, parties will be required to mediate any issues for hearing. Once again, any unresolved issues will be stated on a new Dispute Certification Notice (DCN).
- **Compensation Hearing:** Hearing before a judge in the Court of Workers' Compensation Claims at which witnesses may testify and evidence may be presented. Only those issues listed on a DCN will be adjudicated.
- **Compensation Order:** Ruling by a WC judge following a hearing or after joint stipulation to resolve issues in dispute.
- **Appeals:** Orders from a WC judge may be appealed to the Board of Appeals within 30 days of the Order. Parties may also appeal to the TN Supreme Court.
- **Settlement:** No settlement of a WC claim is effective until signed by a WC judge. Settlement agreements must either state that employee is receiving substantially the benefits entitled to under TN WC law, or that the settlement is in the best interest of the employee. An estimated cost of additional medical treatment, or a statement that no further care is needed, should also be included in any agreement which includes closure of medical benefits. A filing fee of \$150.00 is required for each settlement.

KEY DEADLINES FOR INJURIES

- **Filing WC Claim:** Claim for WC benefits must be filed within 1 year of the date of injury, the last date of treatment or the last date of voluntary payment.
- **Exchange of Medical Records:** Records must be provided to the opposing party within 14 days of receipt.
- **Filing C-42 Wage Statement:** Wage statement must be filed within 3 business days of the scheduled ADR.
- **Objection to Contents of Dispute Certification Notice:** Either party may file an objection within 5 business days of receipt.
- **Request for Hearing:** Submit within 60 days of after the Dispute Certification Notice has been filed with the Clerk of Court of Workers' Compensation.
- **Notice of Deposition:** Notice must be given at least 5 days prior to deposition for an in-county resident. Depositions of parties outside the county must have at least 7 days notice.
- **Service of Subpoena for Appearance at Hearing:** Subpoenas for hearing appearance must be served at least 5 days before the scheduled hearing.
- **Motion for Expedited Hearing:** Motion requesting an expedited hearing on the issue of awarding temporary indemnity or medical benefits. A WC judge may hold an expedited hearing or may issue an Interlocutory Order awarding or denying temporary benefits after a review of submitted written material. Either party may object to a Motion for Expedited Hearing within 5 days of the motion's filing.

JUDICIAL STRUCTURE

Court of Workers' Compensation Claims

Judicial function solely within the TN Bureau of Workers' Compensation. Judges are assigned to each of eight bureau offices throughout the state and handle all judicial activities.

Board of Appeals

The Appeals Board is made up of three judges who are not a part of the Court of WC Claims. Appeals Board render decisions on appeal of Court of WC Claims judges' orders. Rulings of Appeals Board may be appealed to the TN Supreme Court.

Mediation and Ombudsman Services of Tennessee (MOST)

Mediation Specialists provide alternative dispute resolution for all claims in which a PBD has been filed. The goal is to resolve disputes involving compensability and medical treatment.