

PENALTIES

ER or carrier which fails to pay benefits as provided in the Act shall pay a penalty of six percent (6%) on any unpaid installments. For injuries after 7/1/04, penalty increases to 25% of unpaid TTD if TTD not paid within 20 days after ER has knowledge of qualifying disability. *T.C.A. § 50-6-205(b)(3)*. For injuries prior to 7/1/04, if ER wrongfully fails to pay EE's claim for TTD benefits, ER shall be liable, in the discretion of the Court, to an additional sum not to exceed twenty-five percent (25%) of such TTD claim. However, EE must establish that the failure to pay was not in good faith and inflicted additional expense, loss or injury upon the EE. An ER who, within 60 days of settlement, judgment or decree, fails to reimburse compensable medical expenses, or fails in bad faith to provide reasonable and necessary medical benefits, after reasonable notice of such obligation to provide treatment, may be liable for (1) the amount due for medical expenses; and (2) an additional 25% of medical expenses. This provision applies only if the refusal was not in good faith and it inflicted additional expense, loss or injury on EE. *T.C.A. § 50-6-225 (Effective 7/1/00)*. An ER who knowingly, willfully and intentionally fails to provide reasonable and necessary medical treatment (or reimbursement) when ER knew the claim was compensable is subject to a \$500.00 civil penalty. *T.C.A. § 50-6-128*. If ER/Insurer fails to comply with an Order of a Workers' Compensation Specialist within 15 days, the Commissioner shall assess a \$10,000.00 penalty. If proof of compliance is not provided within five days of penalty assessment, additional penalties of \$1,000 per day shall accrue beginning on the 21st day. *T.C.A. § 50-6-238(d)*.

SETTLEMENTS

For injuries occurring after 7/1/04, settlement agreements cannot provide for closure of future medical benefits for any scheduled (or body) injuries involving a maximum possible value of 200 weeks or greater until three years after the settlement approval, at which time a new Petition must be filed seeking approval of any agreement to close medical benefits. Future medical benefits cannot be closed in cases of permanent total disability. Settlements in "doubtful and disputed" cases cannot exceed the value of 50 times the minimum compensation rate as of the date of the injury and such agreements cannot attribute any amount toward future medical benefits. Such settlements must be deemed to be "in the best interests of the EE." EE cannot waive right to reconsideration under § 50-6-241 in a settlement agreement unless it is "doubtful & disputed." *T.C.A. § 50-6-206 (a) & (b), § 50-6-241*.

WORKERS' COMP. SPECIALISTS

Workers' Compensation Specialists employed by the TDOL are authorized to conduct Benefit Review Conferences to: (1) decide preliminary issues regarding payment of medical benefits and/or temporary benefits (can order initiation, continuation or reinstatement); and (2) to act as mediator to resolve any or all issues between the parties. Specialists may also approve settlements. Specialists have authority to waive the requirement for a BRC within his/her discretion. *T.C.A. § 50-6-236, 238*. After DOA 7/1/04, specialists may only order such specific medical relief, including appropriate medical specialists, recommended by the treating physician.

DEFENSE CHECKLIST

Notice (w/in 30 days unless reasonably excused)	§50-6-201
Statute of Limitations	§50-6-203, 306
Misrepresentation on Employment Application	§50-6-106(2)
Casual v. Regular EE	
Independent Contractor	§50-6-102(11)
Did not "arise out of" Employment	§50-6-102(13)
Was not "in course of" Employment	§50-6-102(13)
Willful misconduct, failure to use safety equip.	§50-6-110
Illegal drug/alcohol use	§50-6-110
Medical Causation issues	§50-6-102(13)
"Last Injurious Injury/Exposure" rule	

OCCUPATIONAL DISEASE

Six criteria for establishing a work-related occupational disease:

- 1) Must have followed as a natural incident of the work exposure;
- 2) Can be fairly traced to the employment as a proximate cause;
- 3) Is not from a hazard to which EE is equally exposed outside of employment;
- 4) Is incidental to character of employment and not independent of relation of ER and EE;
- 5) Originated from a risk connected to employment and flowed as a natural consequence therefrom; and
- 6) There is a direct causal connection between the conditions under which the work is performed and the disease. Diseases of the heart, lung and hypertension arising out of and in the course of employment are considered occupational diseases. *T.C.A. § 50-6-301*.

EXTRATERRITORIAL APPLICATION

If EE is injured outside the State of Tennessee in an accident which would be considered compensable under Tennessee law, EE may nevertheless be entitled to Tennessee workers' compensation benefits if: (1) Employment was principally localized within the State; (2) Contract of hire was made in Tenn; or (3) EE is Tenn resident and there is a substantial connection between Tenn and ER-EE relationship. *T.C.A. § 50-6-115*. **HOWEVER**, EE may make a knowing and willful election to receive workers' compensation benefits under the laws of another State, which precludes Tennessee benefits. (Merely accepting payments of temporary or medical benefits under another State's laws is generally not enough to establish a knowing and willful election). If EE also lives outside the state of Tennessee, after BRC failure, complaint can be filed in any county where ER maintains an office.

INJURIES NOT COVERED

No compensation is allowed for injury or death due to the EE's willful misconduct, intentional self-inflicted injury, or due to intoxication or illegal drugs, or willful failure to use a safety appliance or perform a duty required by law. ER has the burden of proof on these issues, including the perverseness of plaintiff and proximate cause of intoxication or drug use. **HOWEVER**, if ER has a "drug free workplace" pursuant to Tennessee law and there is evidence that illegal drugs or alcohol had been consumed by EE prior to the alleged injury, ER may be entitled to a statutory presumption that the drug or alcohol use was the proximate cause of the injury, providing a defense to EE's claim for workers' compensation benefits. *T.C.A. § 50-6-11(c)(1) and T.C.A. § 50-9-101 et seq.*

SUBROGATION CLAIMS

If EE is injured under circumstances creating legal liability on the part of a third party (other than ER), then EE may have a claim against that third party and ER "shall" have a subrogation lien for WC benefits paid to date and a subrogation credit to be applied against future liability, up to EE's net recovery. However, when indemnity is concluded by lump sum, there is no future credit or setoff of net recovery against future medical benefits. (See *Graves v. Cocke County, T and Cocke Co. Schools*). If EE fails to file suit against the other party within one year after the date of the injury, this acts as an assignment of the claim to ER, which then has an additional six months to file suit against the other party. The "made whole doctrine" is not applicable to workers' compensation subrogation. *T.C.A. § 50-6-112*.

SET OFF

Any ER may set off from TTDs, TPDs, PPDs and PTDs any payment made to an EE under ER funded disability policy so long as:

- 1) the policy allows an offset;
- 2) the offset does not result in EE receiving less than EE would otherwise receive under TN WC laws; and
- 3) if collective bargaining agreement is in effect, set off provision is subject to the same.

T.C.A. §50-6-114(b)

DISCLAIMER:

This document is intended for general information purposes only. It does not and is not intended to replace legal counsel. You should consult a qualified Tennessee attorney for any issue regarding applicability or interpretation of any provision of the Tennessee Workers' Compensation Act. This is not, and is not intended, to be a complete summary of Tennessee's law.

TENNESSEE WORKERS' COMPENSATION QUICK REFERENCE

TPD BENEFITS
If EE returns to work with medical restrictions, and earns less than wages earned pre-injury, the EE is entitled to 66 2/3% of the difference between the EE's pre-injury and post-injury wages. Total TPDs shall not exceed 400 weeks. *T.C.A. § 50-6-207 (2).*

MILEAGE
If requested by the EE, mileage will be reimbursed at the current Tennessee state EE rate per mile beyond a 15 mile radius of home or work to medical appointment. (As of 1/1/10 \$.50).

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SCHEDULED MEMBERS/BODY AS A WHOLE (BAW)	
MEMBER	MAXIMUM
Thumb	60 weeks
Index (1st) Finger	35 weeks
Middle (2nd) Finger	30 weeks
Ring (3rd) Finger	20 weeks
Little (4th) Finger	15 weeks
Great toe	30 weeks
Other toes	10 weeks
Hand	150 weeks
Both Hands	400 weeks
Arm	200 weeks
Both Arms	400 weeks
Foot	125 weeks
Both Feet	400 weeks
Leg	200 weeks
Both Legs	400 weeks
Eye	100 weeks
Both Eyes	400 weeks
Hearing (both ears)	150 weeks
Arm and other hand	400 weeks
Hand and foot	400 weeks
Arm and foot	400 weeks
Eye and leg	350 weeks
Eye and foot	300 weeks
Eye and arm	350 weeks
Eye and hand	325 weeks
Leg and Hand	400 weeks
Arm and Leg	400 weeks
Both Arms/Shoulders	400 weeks
Complete paralysis	400 weeks
Body as a Whole (BAW)	400 weeks
Disfigurement to head, face or hands, not otherwise provided for, which alters appearance so as to affect employability in pre-injury job or other job for which EE is qualified: 200 weeks	
All other cases are considered BAW	
If the injury affects 3 or more members, Award may be based on impairment to BAW.	
If injury affects a paramount member (finger/hand), the impairment may be taken to the higher member. If injury to scheduled member affects the BAW, the award may be extended to BAW.	
EEs who are PTD are entitled to benefits at compensation rate until EE is, by age, eligible for full benefits in the OAB Program of Social Security. Such benefits are not subject to the Maximum Total Benefit. <i>T.C.A. § 50-6-207(4)(A)(i).</i>	

TTD BENEFITS

Due after EE has missed 7 days of work. If up to 14 days are missed, TTD is paid only from the eighth day forward. If more than 14 days are missed, TTD must be paid from the first day of disability.

Once EE reaches MMI and PPI rating is given by authorized MD and if injury is not contested, TTD must continue for up to 60 days or the value of the PPI rating, whichever is less. The amount is credited to the PPD award. *T.C.A. § 50-6-234(d).*

STATUTORY CAPS

For BAW injuries from 7-1-92 thru 6-30-04, if EE returns to work for pre-injury ER at an equal or higher wage rate, award is limited to a maximum of 2.5 times the permanent medical impairment as determined by the Court. For injuries after 7-1-04, the total value of which could be 200 weeks or greater, the maximum award under such circumstances described above is 1.5 times the medical impairment rating.

RECONSIDERATION

Award may be subject to reconsideration if EE loses job within a specific time after returning to work, as long as request for BRC is filed in a timely manner. EE's voluntary resignation not resulting from WR injury or misconduct precludes reconsideration. *T.C.A. § 50-6-241.*

If EE does not return to work for pre-injury ER at equal or higher wage rate, or if EE files appropriate petition for reconsideration for injury subject to a maximum of 200 weeks or more, then award is limited to a maximum of six times the medical impairment rating determined by the Court, minus any PPD already paid. If Court uses a multiplier of five or more, it must make specific findings of fact. *T.C.A. § 50-6-241.*

SCHEDULE OF COMPENSATION

Average Weekly Wage (AWW): determined by calculating the EE's average gross wages per week for the 52 week period immediately before DOA. If EE worked less than 52 weeks prior to DOA, number of weeks worked or similarly situated EE's AWW is used.

Compensation Rate equals 66 2/3% of the average weekly wage. *T.C.A. § 50-6-207(1).*

MAXIMUM & MINIMUM COMPENSATION RATES:

Date of Accident	Max Rate (TTD)	Max Rate (PPD)	Min Rate
7-1-94 thru 6-30-95	\$382.79	\$382.79	\$66.15
7-1-95 thru 6-30-96	\$415.87	\$415.87	\$68.40
7-1-96 thru 6-30-97	\$453.14	\$453.14	\$71.10
7-1-97 thru 6-30-98	\$492.00	\$492.00	\$73.80
7-1-98 thru 6-30-99	\$515.00	\$515.00	\$77.25
7-1-99 thru 6-30-00	\$541.00	\$541.00	\$81.15
7-1-00 thru 6-30-01	\$562.00	\$562.00	\$84.30
7-1-01 thru 6-30-02	\$581.00	\$581.00	\$87.15
7-1-02 thru 6-30-03	\$599.00	\$599.00	\$89.85
7-1-03 thru 6-30-04	\$618.00	\$618.00	\$92.70
7-1-04 thru 6-30-05	\$670.00	\$638.00	\$95.70
7-1-05 thru 6-30-06	\$729.00	\$663.00	\$99.45
7-1-06 thru 6-30-07	\$750.00	\$682.00	\$102.30
7-1-07 thru 6-30-08	\$784.00	\$713.00	\$106.95
7-1-08 thru 6-30-09	\$827.00	\$752.00	\$112.80
7-1-09 thru 6-30-10	\$837.00	\$761.00	\$114.15
7-1-10 thru 6-30-11	\$841.50	\$765.00	\$114.75

T.C.A. §50-6-102(14) & §50-6-102(17)
Max benefit is 400 weeks, except in cases of permanent and total disability

STATUTE OF LIMITATIONS

Injuries on or after 1-1-05: EE whose claim remains unresolved must file a request for Benefit Review Conference (BRC) with the Tenn. Dept. of Labor (TDOL) within 1 year of the injury, if no benefits have been paid. If the ER has paid benefits voluntarily or as a result of an Order to do so, then the request for BRC must be filed within 1 year of last medical treatment or the date the ER ceased making payments, whichever is later. If the BRC is not successful, then the EE has 90 days after the BRC report is filed within which to file suit in Circuit or Chancery Court in county with proper venue. *T.C.A. § 50-6-203.* Injuries on or after 7-1-08: if Request for Assistance (RFA) filed within Statute of Limitations, time for filing for BRC is extended for 60 days from date Report on RFA is issued.

MEDICAL BENEFITS/PANELS

Generally, ER is required to provide a panel of three physicians not associated together in practice (or an orthopedic/neuroscience panel of five, with up to four associated together in practice) for selection of a treating physician by the EE. In back injury cases ER must include a Chiropractor on its panel (limited to 12 sessions), for a total of four providers, for selection by the EE. ER must provide appropriate panels for EE to select each attending physician and operating surgeon. Choice of Physicians form must be presented in writing and selection must be signed by the EE. As of 7-1-05, the TDOL will maintain and provide a list of 3 physicians for an evaluation under the Medical Impairment Rating Registry (MIR). The ER may strike one name and the EE will choose from the other two. The ER pays for the MIR and the report. This physician's opinion will be given greater weight.