

Employee Workers' Compensation Handbook

Preface. Workers' Compensation is a state-defined optional benefit that may be provided by Tennessee's local governmental employers. It is designed to provide some "No Fault" relief to workers injured while acting within the scope and in the course of their employment. Workers' Comp was designed to provide care for injured workers... something of a safety net. It was certainly never intended to create an adversarial relationship between an employer and an injured employee. The law is very specific regarding what will and will not be paid, but because many employers as well as employees have little knowledge of the law, the mechanics of the law may be confusing. The intention of this manual is to serve as a guide to understanding the Tennessee Workers' Compensation Law for both the employee and the supervisor. It is recommended that this manual be read comprehensively for a general understanding of the statutes, but to assist in understanding specific terms, you will also find definitions and an index in the back of this booklet. The booklet is divided into eight broad sections containing general questions regarding workers' compensation commonly asked by both employees and employers, questions frequently asked about returning injured employees to the workplace, and reference material. We hope you find this helpful. Please use it and share it with all of your employees.

Section 1. What is & what is not covered under workers' compensation? Basically, what are the benefits... in plain language?

A. Benefits are provided when a "**compensable injury**" occurs. A compensable injury is an injury or illness that arises out of and in the course of employment without regard to fault.

B. Medical expenses are covered. All medical expenses are paid when you are injured on the job. The state law provides for **lifetime medical benefits** for injuries received from a compensable accident if care is provided by an Authorized Treating Physician. The medical expense benefit is terminated (by Statute of Limitations) one year after the last voluntary medical payment by the employer/TML Pool, or by release of the authorized treating physician. Medical expenses include the following:

1. Medical/Surgical treatment.
2. Medication.
3. Medical/Surgical supplies.
4. Crutches, artificial members, glasses.
5. Nursing ordered by Authorized Treating Physician & hospitalization.
6. Dental work.
7. Travel expenses are reimbursed at the rate allowed to state employees for use of their personal vehicles on state business if the trip to the doctor and/or hospital requires the employee to leave the community where he/she resides. This rate is \$.24 per mile as of 1/1/97.
8. Emergency medical care up to \$300.

C. When is an injury not covered? What other expenses are not covered by workers' compensation? An injury or loss is not covered under the workers' compensation statute if the cause falls under one of the following categories:

1. Injuries to and from work.
2. Injuries proximately caused by alcohol or controlled substance.
3. Intentional self-inflicted injuries.
4. Willful misconduct.
5. Willful refusal to use a safety device or perform a duty required by law.
6. Unauthorized medical treatment.
7. Benefits obtained by fraud.
8. Damage to clothing, tools, etc. (Exception is eye wear damaged as a result of an accident).
9. Claims for pain and suffering.
10. Hernia where rupture existed before accident.
11. Loss of employment benefits such as vacation pay, etc.

D. Who selects the physicians and sets appointments? For treatment of an on-the-job injury, the employee must select the Authorized Treating Physician from the “**Panel of Physicians**” (Tennessee Code Annotated 50-6-204) chosen and provided by the employer. The employer must provide employees with a panel of three or more reputable physicians (not in practice together) from which the employee must choose an Authorized Treating Physician. Once this physicians panel has been implemented, employees must use a physician from the panel or, if they choose to go to a doctor not on the panel, the injured worker may have to pay for those medical bills themselves.

Initial appointments are usually made by the employer, and the doctor sets subsequent office visits. The TML Pool Claims Adjuster, or the employee's case manager, sometimes will assist in setting up appointments for visits to a Specialist for an independent medical exam or treatment.

E. How long will medical benefits be paid, and when do they start and end? Medical benefits begin when a compensable accident occurs and they continue as long as treatment is recommended by the Authorized Treating Physician. One of the obvious benefits of establishing and using the panel of physicians is that the doctor knows ahead of time to bill the workers' compensation provider for all medical treatments instead of billing the employee. The workers' comp benefits provider is required to reimburse the authorized treating physician at reasonable and customary rates for the treatment. *Exceptions:* Usually medical benefits stop one year from the date of the last voluntary payment of benefits by the TML Pool unless the court has ordered for future medical benefits.

If an employee pays for a prescription or an office visit to the Authorized Treating Physician, the TML Pool will reimburse him/her upon submission of the receipt for payment. Checks are sent through the city, or directly to the employee if the employee wants the check mailed to his/her home address.

The employee may be reimbursed for travel costs when required to travel more than twenty miles in one direction for treatment. Miles driven to and from treatment must be submitted to the TML Pool claims adjuster and a check will be issued. Travel dates must coincide with authorized medical

treatments.

Section 2. What happens with my pay? Will it continue? How much will I receive?

The state of Tennessee defines when and how much the indemnity (or “lost time”) check will be and how long it will be paid. Some employers allow employees to draw portions of accrued leave along with the state-defined amount and others do not. Described below is the legal indemnity benefit and how it works.

A. Temporary Total Disability & the Waiting Period. This is the most common type of indemnity payment and outlines the amount the employee will receive if out of work for a short period of time due to an injury. It is paid based on 2/3rds of an employee's average weekly wage for 52 weeks prior to the accident subject to a maximum of \$492.00 per week effective July 1, 1997. This maximum rate is based on the average weekly wage in the state of Tennessee as defined by the Department of Labor, and is subject to change each year.

There is no compensation (except for medical benefits) for the first 7 days (waiting period), calculated on the basis of calendar days not including the date of injury. If the disability continues for more than 13 days, the employee is entitled to receive compensation for those first 7 days. Once indemnity is started, it will continue until the authorized treating physician releases the employee to return to work, he/she has reached maximum medical recovery, or until 400 weeks of indemnity have been paid, whichever comes first. To make this clearer, we have described some lost time injury scenarios below.

Example 1: Date of Injury 9/30/96 - Employee returns to work on October 8th. There is no indemnity payment made because the employee returned to work within eight calendar days.

Example 2: Date of Injury 9/30/96 - Employee returns to work on October 14. Indemnity payment due would cover 10/8/96 through 10/13/96 or 6 days, because no payment would be made for the waiting period.

Example 3: Date of Injury 9/30/96 - Employee returns to work on October 30. The indemnity check issued around October 14th would cover the period of October 1 - 14 because the injured employee missed more than thirteen days. Another check would be issued approximately two weeks later for the period October 15 through October 29.

Example 4: Date of Injury 9/30/96 - Employee returns to work on October 8, 1996 and works until October 18th when it is determined the injury is not healing properly and the employee is sent back home until November 15. The employee's indemnity would be effective on October 19th because the waiting period for indemnity payment occurred from October 1 through October 7.

Note: The waiting period may be completely waived in cases of severe injuries where it is apparent the employee will be totally disabled for an extended period of time.

B. Temporary Partial Disability - This is the benefit paid when the injured employee returns to work on a limited basis such as four hours a day, or when the employee is assigned to

another job that pays less than the employee's normal wages. Payment is based on 66-2/3% of the income lost.

Example: Employee earns \$300 a week. Returns to work and earns \$200 due to temporary disability. Benefit would be $.66\text{-}2/3 \times \$100$ or \$66.67 per week.

Note: Benefit continues until Employee returns to full duty, reaches maximum medical improvement, or receives an impairment rating.

C. Permanent Partial Disability - Benefit is for injuries that result in a permanent physical impairment. This is a lump sum or weekly payment that is agreed upon between the injured employee and the TML Pool claims adjuster, or approved by the courts. This payment is based on the compensation rate established for the employee, the maximum weeks of indemnity appropriate under the schedule of benefits defined by Tennessee state statute, and the impairment rating. The impairment rating is a ratio that reflects the employee's limitations as determined by the authorized treating physician according to guidelines set by the American Medical Association (AMA). The impairment rating is described in a ratio, or percentage, that defines limitation to the body as a whole to a specific body part. This schedule can be viewed in its entirety in **Appendix A**.

Example 1: Permanent impairment (rating supplied by the authorized treating physician) of 10% to the lower extremity (leg) and Employee's compensation rate is \$200 per week. $10\% \times 200$ weeks (value for loss of leg per schedule in the Statute) = 20 weeks at \$200 or a permanent impairment award of \$4,000. $10\% \times 200$ weeks \times \$200 = \$4,000.

Example 2: Employee's impairment rating is 10% to the body as a whole (back injuries, etc.) $10\% \times 400$ weeks (maximum number of weeks available to person) \times \$200 = \$8,000.

In certain circumstances, it may be appropriate for the settlement to be higher than the impairment rating assigned by the doctor. If, for example, an employee's promotability is limited due to the injury (even though she can do her current job), it may be appropriate to increase the impairment rating because of these factors. The law prohibits an employee from receiving more than 2 and one-half times the impairment rating if returning to the same job with the same pay.

D. Permanent Total Disability - Employee is entitled to 400 weeks of compensation if he/she is totally disabled (260 weeks if employee was 60 of age or older when accident occurred). Benefits include temporary total disability payments. 400 weeks is the maximum benefit available. **Exception:** Benefits are paid to age 65 if employee is 100% permanently impaired; an example would be a paraplegic.

E. Death Benefits - Medical expenses; Funeral Benefit \$4,500. If deceased employee leaves a widow, death benefit is based on 50% of the gross average weekly wage for 52 weeks prior to the date of accident, subject to the maximum of \$492.00 per week for 400 weeks.

If deceased leaves two or more dependents, benefits are based on 66-2/3% of the gross average weekly wage. If no dependents are left, the total benefit to the estate is \$10,000 plus the funeral benefit.

Example: Deceased employee's gross average weekly wage was \$500 and there is only one

dependent, spouse. Payments would be \$250 per week for 400 weeks unless spouse dies or remarries, which terminates the death benefit.

Note: The maximum benefit is set by the state and it changes each year. For injuries occurring on 7/1/97 and after, it is \$492.00 per week and in cases involving permanent total disability, the maximum would be 400 X \$492.00 or \$196,800 (Applies only if injured Employee is entitled to the maximum). Workers' compensation benefits are not subject to income taxes or social security taxes.

Section 3. What are the mechanics of making a claim and the time limits?

A. Making A Claim:

The injured employee must report an injury as soon as it occurs, or as soon as reasonable or practicable. Written reports or notice must be filed but as a matter of practice, oral notice to your supervisor (not a fellow employee) or an official of the employer is sufficient.

B. Time Limit:

Notice as described above must be given immediately or as soon as reasonable or practical, and no compensation shall be payable if notice is not given within 30 days from the date of the accident unless there is reasonable excuse for the failure. Additionally, your employer may have established a specific time frame for notice of injuries (for example, 24 hours). Consult with your personnel handbook or personnel director for these requirements.

Compensation benefits are forever barred unless, within one year after the accident, notice is given the employer and a claim for compensation is filed with a court of competent jurisdiction. In other words, if an injured employee waits 13 months to file a claim, the statute of limitations may have run, but there are exceptions.

Section 4. Specialists and Experts that Can Assist with your Claim

A. What is a “Case Manager” and how can they assist with my claim? If your injury is rather serious in nature the Tennessee Workers’ Compensation Law requires that a Case Manager be assigned to help with the claim. The Case Manager is a specialist in the area of vocational rehabilitation, who has a designation of RN (Registered Nurse), and is certified by the state. The primary focus of their job is to assist the employee by seeing that appropriate medical care is administered, and to help in the transition back to work by working with the Authorized Treating Physician and the employer. In addition, the Case Manager serves as a resource person to educate the employee with regard to medical care provided, medication prescribed, and what to expect in terms of the treatment regimen. By the state requirement, a case manager will be assigned when the employee will have \$10,000 in medical bills, will miss eight weeks of work, or is immediately hospitalized following the accident. However, the workers’ comp provider or employer can assign a case manager under other circumstances.

B. Who can, and should, an employee talk to before hiring an attorney? Even though we have tried to make this handbook straightforward and simplistic, it is easy to get confused about certain aspects of the law. Many people assume that attorneys are the only source of “reliable” information, but the state of Tennessee has provided another avenue for the employees. First, any questions about your claim should be addressed within your own organization, if possible. We suggest you talk with the person in your organization who handles the workers’ comp claims, or the TML Pool claims adjuster assigned to your case (at 1-800-288-0829). If you are not satisfied with the responses from your employer or the TML Pool claims adjuster, you may also request a review of your claim by the TML Pool Claims Manager. And finally, if you still have questions that you want answered or are not satisfied with the responses provided by the TML Pool Claims Department, the Tennessee Department of Labor makes available to every employee a Workers’ Compensation Benefit Review Specialist who can be reached at 1-800-332-2667. Importantly, all of these are sources available to you **at no cost**.

C. What does an employee have to lose by hiring an attorney? By statute, the attorney can charge 20% of the disability benefits the employee is awarded. Also, once an attorney is hired, the TML Pool’s Claims Adjusters and the city officials can no longer negotiate with the injured employee, or otherwise discuss the employee’s claim. Finally, hiring an attorney where benefits have not yet been contested by the employer or the TML Pool can result in long delays in finalizing the claim. Attorneys provide a valuable service in our society and that is to settle legal disputes. The benefits provided under the workers’ compensation law are fairly straightforward. We encourage all employees to avoid attorney involvement unless **there is a legal dispute over benefits**. If a legal dispute exists, the involvement of an attorney may be appropriate. This document is not suggesting that there is never a time for utilizing an attorney in a Workers’ Comp case. However, attorney involvement should be saved for disputes, not the routine handling of claims. Again, if you’re concerned that you may not be getting complete information regarding your claim, consult with a Workers’ Comp Benefit Review Specialist with the state of Tennessee Department of Labor at 1-800-332-2667 **before** you pay part of your money to an attorney.

Section 5. Questions Commonly Asked by Employees that are Injured

A. Who approves and pays for second and/or third opinions? The TML Pool can approve a second or third opinion, and will pay the doctor for the exam. If an employee chooses to seek a second opinion not authorized by the TML Pool’s Claims Adjuster, the injured employee would be responsible for the bill.

B. What does an employee do if he/she receives a bill from a medical provider for a workers’ compensation claim? Bills received by the injured employee should be referred immediately to the TML Pool Claims Adjuster through the city or directly to the TML Pool Claims Department.

If the claim has been accepted, the providers should refer their bills to the employer or the TML Pool. The workers' compensation statute prohibits medical care providers from balance billing an injured employee. If the claim is contested, provider bills can be submitted to the TML Pool or to the employee's attorney, if represented.

C. Can I be fired for filing a Workers’ Compensation claim? Exactly what does the

statute say? Although retaliatory discharge is covered in case law and not the workers' compensation statute, the courts have held that it's against public policy in Tennessee to discharge an employee simply because he/she files a workers' compensation claim.

Section 6. Other Specifics Concerning Workers' Compensation.

A. Where does the money come from that pays for workers' compensation claims?

The money comes from the tax-generated revenue in each city or agency. Each member city of the TML Risk Management Pool pays an annual premium for Workers' Compensation coverage based on exposures, loss history, etc. If a city's losses are controlled in a reasonable way, the city contributes a base premium into the Pool. However, if the city's losses are high, then the city will have to pay considerably more. Higher premiums due to high loss experience is money from the city's budget that could obviously be used locally for other expenses.

B. What is the second injury fund? This is a fund designed to provide indemnity payments for employees who have had previous permanent disability awards and designed to encourage employers to retain those injured workers. When subsequent impairment ratings are combined with current rating to exceed 100%, the benefits in excess of 100% will be paid from the State of Tennessee's **Second Injury Fund**. If an injured employee has previous workers' compensation settlements, either with your organization or others located in the state of Tennessee, be sure to inform the TML Pool claims adjuster handling the injury.

C. What does it mean when some people are guilty of workers' comp fraud? When some people fraudulently file workers' compensation claims, falsely exaggerate an injury, or otherwise attempt to abuse the workers' comp benefits, all of us lose. Whether the fraud is successful or not, it costs all of us money, time and other resources.

Under the Workers' Compensation Reform Act of 1996, fraud is not tolerated in the state of Tennessee. Prior to this legislative action, workers' comp fraud was prosecuted only as a Class B misdemeanor. As of July 1, 1996, however, those convicted of workers' comp fraud may be guilty of a felony, and can be punished with fines of up to \$25,000, imprisonment of up to 30 years, or both.

The Tennessee Bureau of Investigation (TBI) has created a fraud unit to investigate workers' compensation fraud. To provide further assistance in cracking down on fraud, the Tennessee Department of Labor, Workers' Compensation Division has created a Fraud Hotline at 1-888-24FRAUD (1-888-243-7283).

Whenever workers' compensation fraud occurs, we all pay. With everyone's assistance, fraud can be combated, and workers' comp can be administered for its intended purpose of aiding Tennessee's injured workforce. If you know of any circumstance where an individual or an entity may be committing workers' compensation fraud, call the fraud hotline at the Tennessee Department of Labor.

Section 7. Other Commonly Asked Questions.

A. Is an employer required to accept an injured employee back at work with doctor-prescribed limitations? If there isn't a light-duty job for them, does the employer have

to create work so the injured worker can come back? No, the employer does not have to accept the employee back at work until the employee is fully recovered, and the employer does not have a legal requirement to create work so that the employee can come back. But, if you can alter duties or find an alternative job for a short period of time, you will probably reduce the overall cost of your workers' comp claims. A major benefit of a limited duty assignment is that the routine of coming to work often helps to accelerate the employee's recovery, but limited duty positions are not always available or feasible. If light-duty is not available and the injured worker has not reached maximum medical recovery, temporary total benefits will continue to be paid by the TML Pool.

B. If the employer desires to bring an injured employee back to work with limitations, how can a light-duty job be found? A light-duty job does not have to be an established position. It may be possible to use an employee to complete a much needed task that will not be an ongoing job. For example, water meter fittings may need counting, telephone surveys may be needed in the police department, or the fire department may need an "eight-to-five" person to provide light housekeeping and/or cook meals. Create your own light-duty function, if possible. If a light-duty job is available, send the Authorized Treating Physician a description of these job tasks and ask if the employee can be released for the less physically-demanding duties. Once the doctor's approval has been obtained, document the terms of the assignment, in writing, and include the date the light-duty assignment will conclude. It is recommended that light-duty assignments be evaluated every 15-30 days. The light-duty can be extended and each assignment should be evaluated on its own merits. Also, it must be emphasized that assignment to light-duty work is not a guarantee of permanent continued employment. And when the employee is ready to return to his/her regular job, a written release must be obtained from the Authorized Treating Physician. If an employee reaches maximum medical recovery and is still unable to perform the essential functions of his or her job, a permanent job transfer may have to be made and wages adjusted, or the employment may have to be terminated.

C. What if you cannot utilize the worker with temporary limited capabilities? If light-duty jobs are not an option, it is recommended that the employer find other avenues to assist the employee in his/her return to full working capacity. The authorized treating physician may be able to suggest work hardening programs that are designed to build the injured employee's strength and stamina, and prepare the employee for the return to their routine position. In some cases, it may even be feasible to return the employee to his/her routine position but accommodate the temporary disability by providing additional breaks and/or limiting the employee's duties. Like all other limited duty assignments, it is suggested that an employee returning to his/her regular job with only limited capacity be told that a review will be done in 15 to 30 days to determine if the department can continue to utilize the limited duty position. If no limited duty work is available in the department *and no work modifications can be made*, it is acceptable and legal to send the employee home until he or she is capable of returning to work.

D. What if the employee can't return to work? If the injured employee will never be able to perform the essential functions of the job, the city or agency does not have to retain him or her in this position, nor does the employer have to create a position for the injured employee. But receiving a permanent disability rating or settlement does not automatically prohibit the employee from returning to his or her assigned duties. The authorized treating physician must authorize the return to work and the supervisor should always require this in writing. If the authorized treating physician states in writing that the injured employee will never be able to perform the essential tasks

of his or her job, the city should determine if there are any vacant positions to which the employee can be assigned. Again, the authorized treating physician should verify in writing the employee's physical ability to perform the essential functions of any alternative job. The Americans with Disabilities Act requires the disabled employee to be transferred to another position within the organization *if one is available*, and the employee is physically capable of performing the essential tasks. If the job pays less than the employee's prior position, the wages can be reduced to the standard pay rate for the alternative position.

Section 8. A Sound Safety Program

While understanding the workers' compensation law is one component of controlling work-related injuries, it is only a small piece of reducing the cost of workers' compensation. A good safety program has preventive, as well as post-accident policies and procedures. Below we have listed some of the characteristics of a sound safety program. Do you have these in place?

- A. Preventive Measures...**
 - Safety Policy Developed _____
 - Panel of Physicians Designated & Employees Informed _____
 - Reasonable Indemnity Plan Established _____
 - Orientation Provided _____
 - Ongoing Safety Training _____
 - Safety Committee Established _____
 - Accidents/Injuries Investigated _____
 - Accident Trends Analyzed _____

- B. Post-Accident Steps...**
 - Personal Contact by the Supervisor _____
 - Injury Leave Policy Communicated to Employee _____
 - Job Description/Duties Sent to Doctor (if Lost Work Time) _____
 - Light Duty Job Identified/Offered _____
 - Periodic Contact by Supervisor _____
 - Injured Employee Sent Newsletters & other Information _____

If you need help in improving any of these areas of your safety program, contact your regional TML Pool Loss Control Consultant.

APPENDICES

Appendix A Scheduled Injuries

Loss/Disability of:

Thumb	60 weeks
First or Index Finger	35 weeks
Second or Middle Finger	30 weeks
Third or Ring Finger	20 weeks
Fourth or Little Finger	15 weeks
Great Toe	30 weeks
Any Other Toe	10 weeks
Hand	150 weeks
Arm	200 weeks
Foot	125 weeks
Leg	200 weeks
Eye	100 weeks
Hearing (one ear)	75 weeks
Hearing (both ears)	150 weeks
Non-scheduled (Body as a Whole)	400 weeks

Appendix B Workers' Comp Definitions

Authorized Treating Physician - a doctor selected by an injured employee from the Panel of Physicians designated by the employer to treat on-the-job injuries to be covered by workers' compensation. When referrals to a specialist are made by the initial authorized treating physician and approved by the workers' comp claims adjuster, the specialist becomes an Authorized Treating Physician.

Case Manager - a specialist in the area of vocational rehabilitation, who has achieved the designation of Registered Nurse, and is certified by the state. The case manager serves to assist the injured employee by seeing that appropriate medical care is administered, and to help in the employee's transition back to work by working with the Authorized Treating Physician and the Employer.

Compensable Injury - an injury or illness determined to have arisen out of and in the course of employment without regard to fault, and covered under the Workers' Compensation Law in Tennessee.

Impairment Rating is the figure the treating physician supplies where the injury results in permanent partial disability. It is a medical impairment rating as distinguished from vocational disability.

Example: The injured employee has back surgery, is given an impairment rating of 10% to the body, but is unable to return to his/her regular job. In this situation, the vocational disability could exceed the 10% impairment rating.

Permanent Partial Disability is defined as a partial physical disability that is determined by the Authorized Treating Physician to be permanent, and subsequently, a permanent partial disability benefit is awarded.

Temporary Total Disability covers the period of time an injured employee is temporarily disabled from work and it continues until he/she is able to return to work or in the alternative, reaches maximum medical improvement per the opinion of the authorized treating physician.

Workers' Compensation Benefit Review Specialist - an employee of the Workers' Compensation Division of the State of Tennessee Department of Labor who, upon request from an injured employee or his/her employer, may review the specific details of an injury and subsequent workers' compensation claim, and then assist in resolving disputes and settling claims at no cost to the employee or employer. The Specialists can be reached at 800-332-2667.

Appendix C Notice to Employees: Panel of Physicians - The form on the following page should be used to provide notice to employees of the Panel of Physicians designated by their employer to treat on-the-job injuries.

NOTICE TO EMPLOYEES

IN CASE OF INJURY

Any employee, injured while at work, must report the injury to their supervisor or employer - immediately.

PANEL OF PHYSICIANS

The Tennessee Workers' Compensation Law (T.C.A. 50-6-204) allows your employer to select a group of three or more physicians (not in practice together) to provide treatment for these work-related injuries. These physicians are listed below.

1.

2.

3.

NOTE: These restrictions do not apply to work-related injuries for which you require immediate, emergency treatment. For these, the nearest Emergency Room is appropriate.

Your employer has provided for the payment of benefits under the Tennessee Workers' Compensation Law by securing coverage with...



INDEX

Adversarial Relationship	1
American Medical Association (AMA)	4
Americans with Disabilities Act (ADA)	9
Attorneys	6, 7
Authorized Treating Physician	1-4, 6, 8, 9, 11
Average Weekly Wage	3, 5
Balance Billing	7
Billing	2, 6, 7
Case Manager	2, 6, 11
City's Budget (Tax Revenue)	7
Claims Manager, TML Pool	6
Compensable Injury	1, 11
Death Benefits	5
Definitions	1, 11
Employment, In the scope and course of	1, 11
Essential Functions	9
Felony	8
Fraud	2, 8
Fraud Hotline	8
Funeral Benefit	5
Giving Notice	5
Impairment Rating	4, 7, 11
Income taxes or social security taxes	5
Indemnity	3, 4, 7, 10
Injury not covered	2
Labor, Tennessee Department of	6, 8, 11
Legal Disputes	6
Lost Time	3
Maximum Medical Recovery	3, 4, 8, 9, 11
Medical Benefits	1-3
Medical Expenses	1, 5
No Fault	1
Panel of Physicians	2, 10-12
Permanent Partial Disability	4, 7, 9, 11
Permanent Total Disability	5
Premiums	7
Registered Nurse	6, 11
Retaliatory Discharge	7
Safety Devices, Refusal to Use	2
Safety Program	9, 10
Scheduled Injuries	10
Second Injury Fund	7
Second or third opinion	7
Statute of Limitations	1, 5
Temporary Partial Disability	4
Temporary Total Disability	3, 5, 8, 11
Tennessee Bureau of Investigation (TBI)	8
Time Limit	5
Unauthorized Medical Treatment	2
Vocational Rehabilitation	6, 11
Waiting Period	3, 4
Workers' Compensation Benefit Review Specialist	6, 11
Workers' Compensation Law	1, 6, 9, 11, 12
Written Release	9

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