



**STATE OF TENNESSEE  
WORKERS' COMPENSATION ADVISORY COUNCIL**

REPORT ON  
DEFINITION OF "INJURY" AND "PERSONAL INJURY"

**INTRODUCTION**

Public Chapter 952, Section 30, codified as *TCA* §50-6-121(k), requires the Advisory Council to review the definition of "injury" and "personal injury" as defined in *TCA* §50-6-102(12) and make recommendations concerning any proposed revisions to the definition. The Advisory Council reviewed the statutory definitions of "injury", "personal injury" and related terms from each of the states. Special attention was paid to the states that are contiguous to Tennessee. In addition, the Council requested the Tennessee Bar Association to provide a definition of a compensable injury in Tennessee under the current statutory definitions and case law.

## STATUTORY DEFINITION(S)

In general, most states have a similar starting point when defining a workers' compensation injury that is compensable. The primary starting definition is "an accidental injury that arises out of and in the course of employment." Tennessee is no different. However, that definition had its genesis in the early 1900s when workers' compensation laws were being enacted. The statutory definition left room for interpretation when questions began to be raised: What is an accidental injury? When does an injury arise out of employment? When is an injury sustained in the course of employment? These questions had to be answered through judicial interpretation, whether in a court based workers' compensation system or in an administrative system. Therefore, to review of the statutory definition should be coupled with a review of the cases that interpret the statute. This is the task the Tennessee Bar Association performed for the Advisory Council.

To understand the evolution of the definition of a compensable injury one must begin with the statutory definition. Not only is this where the courts or commissions begin, but such a review also reveals how the definition changes over time by legislative action. However, this is not the only manner by which the definition changes over time. It changes by judicial [commission or court] interpretation of the definition and by judicial interpretation of the "intent" of the law. The statutory definition in all states will have been and will continue to be changed by judicial interpretation.

The following is a discussion of the Tennessee statutory definition and the interpretation of the definition as contained in case law. The statutory definitions in the states that are contiguous to

Tennessee are contained in "Appendix A". It was not possible to research the case law in all these states to determine how commission/judicial interpretation may have changed the statutory definition.

### **TENNESSEE - STATUTORY DEFINITION(S)**

The statutory definition of a compensable injury is found in two subsections of *Tennessee Code Annotated* §50-6-102.. They are as follows:

*TCA* §50-6-102. Definitions.--

(12) "Injury" and "personal injury" mean an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment which cause either disablement or death of the employee and shall include a mental injury arising out of and in the course of employment;

(15) "Mental injury" means a loss of mental faculties or a mental and/or behavioral disorder where the proximate cause is a compensable physical injury resulting in a permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus. A mental injury shall not include a psychological or psychiatric response due to the loss of employment opportunities.

### **TENNESSEE - COMPENSABLE INJURY - CASE LAW**

The Tennessee Bar Association provided the following to the Advisory Council as a comprehensive definition of a compensable injury in Tennessee pursuant to current statute and judicial construction:

Generally, an injury recognized by Tennessee Workers' Compensation Law occurs as the result of an accident that arises out of and in the course and scope of employment. T.C.A. § 50-6-102(12) defines "injury" and "personal injury" to mean an injury by accident arising out of and in the course of employment, which causes disablement or death of the employee as well as an employee's occupational diseases which cause disablement or death of the employee. Often, the Courts interpreting workers' compensation law do not differentiate between the terms "injury" and "accident."

Traditionally, an accident could be defined as a specific time and place and event. However, it is well settled in Tennessee law that the term "injury" includes those injuries that occur gradually over time due to the repeated use of a body part resulting in a condition that becomes disabling. Typically, these claims are based on repeated use resulting in cumulative trauma over time, such as that which results in carpal tunnel syndrome, epicondylitis, and rotator cuff tears or strains. It can also include, although much less frequently seen, back injury claims based on repeated lifting or turning, as well as injury due to inhalation of or dermatological exposure to chemicals.

An injury has been defined to include the aggravation of a pre-existing condition in which an anatomical change in the person's underlying, pre-existing condition occurs, which produces disability and does not merely result in an increase in pain. In other words,

an underlying, preexisting condition must be permanently advanced in severity on an anatomic basis by the employment and result in disability, to be the basis of an award of permanent disability. Temporary disability, however, can result from injury which temporarily worsens a pre-existing condition, but which reverts back to the pre-existing state, and thereby still constitute an injury, but simply a transitory one.

Occupational diseases, as covered by the Tennessee Workers' Compensation Law, require that six criteria be met in order to be judged to have arisen out of the employment, pursuant to TCA 50-6-301. It does not require "injury" in the traditional sense of an isolated event. In addition, the law does not cover aggravations of pre-existing occupational diseases. As a result, a condition such as a stroke or heart attack is frequently characterized as an injury by accident, as well as an occupational disease, particularly where there is a pre-existing history or susceptibility. Heart attacks and strokes can be compensable as the result of physical activity, and can also be compensable following a "mental stimulus arising from a specific dramatic event or series of events."

With the amendment of the statute in 2002, the law provides a change in the law for recovery of disability for mental injury. There are two approaches, depending on whether the mental injury was accompanied by a physical injury. If a physical injury occurred which later results in a loss of mental faculties or mental and/or behavioral disorder, then recovery may be awarded for permanent disability from both conditions in a combined award, or for the mental injury only. If, however, there is no physical injury underlying the claim for mental injury, there must be an "identifiable work-related event resulting in

sudden or unusual mental stimulus” in order to recover an award. This is typically the development of post-traumatic stress disorder (PTSD) or other neurosis, but does not include generalized stress claims, nor does it include a mental response to loss of employment or employment opportunities. In general, in order to recover for mental injury only, in the absence of a physical injury, the alleged injury must be the result of a specific incident or series of incidents involving mental or emotional stress of an unusual or abnormal nature.

References for this discussion were principally drawn from Professor Thomas A. Reynolds' book: Tennessee Workers' Compensation -- Practice and Procedure (The Harrison Company 2003).

## CONCLUSION

A review of the foregoing information and the statutory definitions from other states reveals that each state has determined what type of injury will or will not be a compensable workers' compensation injury. This occurred by a statutory change by the legislature or by judicial (or commission) interpretation and application of the law to the facts of a specific case. Sometimes, a court or commission's interpretation of both current statutory and case law will cause the legislature to change the statute following such a decision. Thus, the definition of a compensable injury in Tennessee as elsewhere, is never static but is ever evolving depending on the circumstances of a specific case, changes in medical treatment or as a result of public opinion.

The Advisory Council submits the information outlined in this report as an educational effort for anyone interested in the topic. At present, the Advisory Council has been presented with no proposed revisions to the definition and none of its members has made any proposal for change to the definition. Therefore, it would be premature for the Advisory Council to make any type of recommendation. However, if proposed legislation is filed that addresses the topic and the Advisory Council is requested to review and comment on a bill that proposes to alter the current definition of a compensable injury in Tennessee the Advisory Council will review the proposal(s) and make an appropriate recommendation.

Respectfully submitted on behalf of the  
Workers' Compensation Advisory Council,

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Dale Sims, State Treasurer  
Chair

APPENDIX A  
STATUTORY DEFINITIONS - CONTIGUOUS STATES

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**ALABAMA**

§25-5-1

(7) ACCIDENT. The term, as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" shall be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body or damage to an artificial member of the body by accidental means.

(9) INJURY. "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except for an occupational disease or where it results naturally and unavoidably from the accident. Injury shall include physical injury caused either by carpal tunnel syndrome disorder or by other cumulative trauma disorder if either disorder arises out of and in the course of the employment, and breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body, when injury to them is incidental to an on-the-job injury to the body. Injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him or her and not directed against him or her as an employee or because of his or her employment. Injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body.



## ARKANSAS

### § 11-9-102

(4)(A) "Compensable injury" means:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence;

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition;

(b) A back injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence; or

(c) Hearing loss which is not caused by a specific incident or which is not identifiable by time and place of occurrence;

(iii) Mental illness as set out in § 11-9-113;

(iv) Heart or cardiovascular injury, accident, or disease as set out in § 11-9-114;

(v) A hernia as set out in § 11-9-523; or

(vi) An adverse reaction experienced by any employee of the Department of Health or any employee of a hospital licensed by the Department of Health related to vaccination with Vaccinia vaccines for smallpox, including the Dryvax vaccine, regardless of whether the adverse reaction is the result of voluntary action by the injured employee.

(B) "Compensable injury" does not include:

(i) Injury to any active participant in assaults or combats which, although they may occur in the workplace, are the result of nonemployment-related hostility or animus of one, both, or all of the combatants and which said assault or combat amounts to a deviation from customary duties; further, except for innocent victims, injuries caused by horseplay shall not be considered to be compensable injuries;

(ii) Injury incurred while engaging in or performing or as the result of engaging in or performing any recreational or social activities for the employee's personal pleasure;

(iii) Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated; or

(iv)(a) Injury where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

(b) The presence of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs,

or prescription drugs used in contravention of physician's orders.

(c) Every employee is deemed by his or her performance of services to have impliedly consented to reasonable and responsible testing by properly trained medical or law enforcement personnel for the presence of any of the aforementioned substances in the employee's body.

(d) An employee shall not be entitled to compensation unless it is proved by a preponderance of the evidence that the alcohol, illegal drugs, or prescription drugs utilized in contravention of the physician's orders did not substantially occasion the injury or accident.

(C) The definition of "compensable injury" as set forth in this subdivision (4) shall not be deemed to limit or abrogate the right to recover for mental injuries as set forth in § 11-9-113 or occupational diseases as set forth in § 11-9-601 et seq.

(D) A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this section.

## GEORGIA

### §34-9-1

(4) 'Injury' or 'personal injury' means only injury by accident arising out of and in the course of the employment and shall not, except as provided in this chapter, include a disease in any form except where it results naturally and unavoidably from the accident. Except as otherwise provided in this chapter, 'injury' and 'personal injury' shall include the aggravation of a preexisting condition by accident arising out of and in the course of employment, but only for so long as the aggravation of the preexisting condition continues to be the cause of the disability; the preexisting condition shall no longer meet this criteria when the aggravation ceases to be the cause of the disability. 'Injury' and 'personal injury' shall not include injury caused by the willful act of a third person directed against an employee for reasons personal to such employee, nor shall 'injury' and 'personal injury' include heart disease, heart attack, the failure or occlusion of any of the coronary blood vessels, stroke, or thrombosis unless it is shown by a preponderance of competent and credible evidence, which shall include medical evidence, that any of such conditions were attributable to the performance of the usual work of employment. Alcoholism and disabilities attributable thereto shall not be deemed to be 'injury' or 'personal injury' by accident arising out of and in the course of employment. Drug addiction or disabilities resulting therefrom shall not be deemed to be 'injury' or 'personal injury' by accident arising out of and in the course of employment except when such addiction or disability resulted from the use of drugs or medicines prescribed for the treatment of the initial injury by an authorized physician. Notwithstanding any other provision of this chapter, and solely for members

of the Georgia National Guard and State Defense Force, an injury arising in the course of employment shall include any injury incurred by a member of the Georgia National Guard or State Defense Force while serving on state active duty or when traveling to and from state active duty.

## KENTUCKY

342.0011 Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

(2) "Occupational disease" means a disease arising out of and in the course of the employment.

(3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational

disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

(4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.

## MISSISSIPPI

### § 71-3-3. Definitions.

Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this chapter:

(b) "Injury" means accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event or events, if contributed to or aggravated or accelerated by the employment in a significant manner. Untoward event includes events causing unexpected results. An untoward event or events shall not be presumed to have arisen out of and in the course of employment, except in the case of an employee found dead in the course of employment. This definition includes injuries to artificial members, and also includes an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job, and disability or death due to exposure to ionizing radiation from any process in employment involving the use of or direct contact with radium or radioactive substances with the use of or direct exposure to roentgen (X-rays) or ionizing radiation. In radiation cases only, the date of disablement shall be treated as the date of the accident. Occupational diseases, or the aggravation thereof, are excluded from the term "injury," provided that, except as otherwise specified, all provisions of this chapter apply equally to occupational diseases as well as injury.



## MISSOURI

287.020.

2. The word "accident" as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and

(b) It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal

nonemployment life;

(3) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

## NORTH CAROLINA

### § 97-2. Definitions.

(6) Injury. - "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident. With respect to back injuries, however, where injury to the back arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, "injury by accident" shall be construed to include any disabling physical injury to the back arising out of and causally related to such incident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for unless injury to them is incidental to a compensable injury.

## **SOUTH CAROLINA**

§42-1-160. "Injury" and "personal injury" defined. [SC ST SEC 42-1-160]

"Injury" and "personal injury" shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In construing this section an accident arising out of and in the course of employment shall include employment of an employee of a municipality outside the corporate limits of the municipality when the employment was ordered by a duly authorized employee of the municipality.

Stress arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury is not a personal injury unless it is established that the stressful employment conditions causing the mental injury were extraordinary and unusual in comparison to the normal conditions of the employment.

Stress arising out of and in the course of employment unaccompanied by physical injury is not considered compensable if it results from any event or series of events which is incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

## VIRGINIA

### § 65.2-101. Definitions.

"Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes. However, such term does not include any injury, disease or condition resulting from an employee's voluntary participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties. Such term shall include any injury, disease or condition:

1. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in § 32.1-123, (b) an employee of a health care provider as defined in § 8.01-581.1, (c) an employee of the Department of Health or a local department of health, (d) a member of a search and rescue organization, or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of § 65.2-402.1 otherwise subject to the provisions of this title; and

2. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofivir and derivatives thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b) transmission of vaccinia in the course of employment from an employee participating in such countermeasures to a coemployee of the same employer.

### § 65.2-400. "Occupational disease" defined.

A. As used in this title, unless the context clearly indicates otherwise, the term "occupational disease" means a disease arising out of and in the course of employment, but not an ordinary disease

of life to which the general public is exposed outside of the employment.

B. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:

1. A direct causal connection between the conditions under which work is performed and the occupational disease;
2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
3. It can be fairly traced to the employment as the proximate cause;
4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or spinal column;
5. It is incidental to the character of the business and not independent of the relation of employer and employee; and
6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

C. Hearing loss and the condition of carpal tunnel syndrome are not occupational diseases but are ordinary diseases of life as defined in § 65.2-401.

§ 65.2-401. "Ordinary disease of life" coverage.

An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease for purposes of this title if each of the following elements is established by clear and convincing evidence, (not a mere probability):

1. That the disease exists and arose out of and in the course of employment as provided in § 65.2-400 with respect to occupational diseases and did not result from causes outside of the employment, and
2. That one of the following exists:
  - a. It follows as an incident of occupational disease as defined in this title; or
  - b. It is an infectious or contagious disease contracted in the course of one's employment in a hospital or sanitarium or laboratory or nursing home as defined in § 32.1-123, or while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and those volunteer emergency rescue personnel referred to in § 65.2-101; or
  - c. It is characteristic of the employment and was caused by conditions peculiar to such employment.