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1 of 1

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Tenn. Code Ann. § 50-6-104 (Copy w/ Cite)

Pages: 2

*Tenn. Code Ann. § 50-6-104*

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\*\*\* Current through the 2013 Regular Session \*\*\*

Title 50 Employer And Employee  
Chapter 6 Workers' Compensation Law  
Part 1 General Provisions

Tenn. Code Ann. § 50-6-104 (2013)

**Second of 2 versions of this section**

**50-6-104. Election of corporate officer to be exempt from chapter. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a) Any officer of a corporation or member of a limited liability company may elect to be exempt from the operation of this chapter. Any officer who elects exemption and who, after electing exemption then revokes that exemption, shall give notice to that effect in accordance with a form prescribed by the division.

(b) Notice given pursuant to subsection (a) shall be given thirty (30) days prior to any accident resulting in injury or death; provided, that if any injury or death occurs less than thirty (30) days after the date of employment, notice of the exemption or acceptance given at the time of employment shall be sufficient notice of exemption.

(c) The notice of election not to accept this chapter, shall be as follows: the employee shall give written or printed notice to the employer of the employee's election not to be bound by the Workers' Compensation Law and file with the division, a duplicate, with proof of service on the employer attached to the notice, together with an affidavit of the employee that the action of the employee in rejecting the Workers' Compensation Law was not advised, counseled or encouraged by the employer or by anyone acting for the employer.

(d) [Deleted by 2013 amendment, effective July 1, 2014.]

(e) The election by any employee, who is a corporate officer of the employer or member of a limited liability company, to be exempted from this chapter, shall not reduce the number of employees of the employer for the purposes of determining the requirements of coverage of the employer under this chapter.

(f) Every employee who is a corporate officer or member of a limited liability company and who elects not to operate under this chapter, in any action to recover damages for personal injury or death by accident brought against an employer who has elected to operate under this chapter, shall proceed as at common law, and the employer may make use of all common law defenses. This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.

**HISTORY:** Acts 1975, ch. 198, § 2; impl. am. Acts 1980, ch. 534, § 1; T.C.A., § 50-904; Acts 2010, ch. 1149, § 4; 2013, ch. 289, § 12.

View Full 

 1 of 1

Book Browse

**Tenn. Code Ann. § 50-6-104** (Copy w/ Cite)



Page(s): 2

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View Full

1 of 1

Book Browse

**Tenn. Code Ann. § 50-6-118** (Copy w/ Cite)  
*Tenn. Code Ann. § 50-6-118*

Pages:2

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\*\*\* Current through the 2013 Regular Session \*\*\*

Title 50 Employer And Employee  
Chapter 6 Workers' Compensation Law  
Part 1 General Provisions

Tenn. Code Ann. § 50-6-118 (2013)

#### First of 2 versions of this section

**50-6-118. Penalties.** [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a) The division of workers' compensation shall, by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, establish and collect penalties for the following:

(1) Failure of a covered employer to provide workers' compensation coverage or qualify as a self-insurer;

(2) Late filing of accident reports;

(3) Bad faith denial of claims;

(4) Late filing of notice of denial of claim;

(5) Late filing of notice of change in benefit payments;

(6) Late filing with the department of notice of filing of lawsuits by employees or employee representatives; and

(7) Late filing of judgments by insurance companies or by employers, if self-insured.

(b) All penalties collected by the department from an employer for failure to provide workers' compensation coverage or failure to qualify as a self-insurer shall be paid into and become a part of the uninsured employers fund. All other penalties collected by the department shall be paid into and become a part of the second injury fund.

(c) The commissioner, commissioner's designee, or an agency member appointed by the commissioner, may assess the penalties authorized by this chapter, upon providing notice and an opportunity for a hearing to an employer, an employee, an insurer, or a self-insured pool or trust. If a hearing is requested, the commissioner, commissioner's designee, or an agency member appointed by the commissioner shall have the authority to hear the matter as a contested case, and the authority to hear the administrative appeal of an agency decision, relating to the assessment of the penalties authorized by this chapter. When a hearing or

review of an agency decision is requested, the requesting party shall have the burden of proving, by a preponderance of the evidence, that the penalized party was either not subject to this chapter, or that the penalties assessed pursuant to this chapter should not have been assessed.

**HISTORY:** Acts 1985, ch. 393, § 18; 1999, ch. 520, § 41; 2000, ch. 972, § 3; 2001, ch. 192, § 8; 2004, ch. 962, § 8; 2005, ch. 390, § 2.

View Full 

1 of 1 

Book Browse

**Tenn. Code Ann. § 50-6-118** (Copy w/ Cite)

Pages: 2



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1 of 1

Book Browse

Tenn. Code Ann. § 50-6-118 (Copy w/ Cite)

Pages: 3

Tenn. Code Ann. § 50-6-118

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\*\*\* Current through the 2013 Regular Session \*\*\*

Title 50 Employer And Employee  
Chapter 6 Workers' Compensation Law  
Part 1 General Provisions

Tenn. Code Ann. § 50-6-118 (2013)

**Second of 2 versions of this section**

**50-6-118. Penalties. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a) The division of workers' compensation shall, by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, establish and collect penalties for the following:

(1) Failure of a covered employer to provide workers' compensation coverage or qualify as a self-insurer;

(2) Late filing of accident reports;

(3) Bad faith denial of claims;

(4) Late filing of notice of denial of claim;

(5) [Deleted by 2013 amendment, effective July 1, 2014.]

(6) [Deleted by 2013 amendment, effective July 1, 2014.]

(7) [Deleted by 2013 amendment, effective July 1, 2014.]

(8) Failure of any party to appear or to mediate in good faith at any alternative dispute resolution proceeding;

(9) Failure of any party to comply, within the designated timeframe, with any order or judgment issued by a workers' compensation judge;

(10) Performance of any enumerated action provided in § 29-9-102 in relation to any proceedings in the court of workers' compensation claims;

(11) Failure of any employer to timely provide medical treatment made reasonably necessary by the accident and recommended by the authorized treating physician or operating physician;

(12) Failure of an employer to timely provide a panel of physicians that meets the statutory

requirements of this chapter;

(13) Wrongful failure of an employer to pay an employee's claim for temporary total disability payments;

(14) Wrongful failure to satisfy the terms of an approved settlement; and

(15) Refusal to cooperate with the services provided by an ombudsman;

(b) All penalties collected by the department from an employer for failure to provide workers' compensation coverage or failure to qualify as a self-insurer shall be paid into and become a part of the uninsured employers fund. All other penalties collected by the department shall be paid into and become a part of the second injury fund.

(c) The division of workers' compensation may assess the penalties authorized by this chapter, upon providing notice and an opportunity for a hearing to an employer, an employee, an insurer, or a self-insured pool or trust. If a hearing is requested, the commissioner, commissioner's designee, or an agency member appointed by the commissioner shall have the authority to hear the matter as a contested case, and the authority to hear the administrative appeal of an agency decision, relating to the assessment of the penalties authorized by this chapter. When a hearing or review of an agency decision is requested, the requesting party shall have the burden of proving, by a preponderance of the evidence, that the penalized party was either not subject to this chapter, or that the penalties assessed pursuant to this chapter should not have been assessed. Any party assessed a penalty pursuant to this section shall have the right to appeal the penalty assessed by the division and affirmed by the commissioner, the commissioner's designee or an agency member in the manner provided in this subsection, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) If an employee receives a settlement, judgment or decree under this chapter that includes the payment of medical expenses and the employer or workers' compensation carrier wrongfully fails to reimburse an employee for any medical expenses actually paid by the employee within sixty (60) days of the settlement, judgment or decree, or fails to provide reasonable and necessary medical expenses and treatment, including failure to reimburse for reasonable and necessary medical expenses, in bad faith after receiving reasonable notice of their obligation to provide the medical treatment, the employer or [Middle dot] workers' compensation carrier shall be liable, in the discretion of the court, to pay the employee, in addition to the amount due for medical expenses paid, a sum not exceeding twenty-five percent (25%) of the expenses; provided, that it is made to appear to the court that the refusal to pay the claim was not in good faith and that the failure to pay inflicted additional expense, loss or injury upon the employee.

**HISTORY:** Acts 1985, ch. 393, § 18; 1999, ch. 520, § 41; 2000, ch. 972, § 3; 2001, ch. 192, § 8; 2004, ch. 962, § 8; 2005, ch. 390, § 2; 2013, ch. 289, §§ 17, 18.

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1 of 1

Book Browse

Tenn. Code Ann. § 50-6-118 (Copy w/ Cite)

Pages: 2



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1 of 1

Book Browse

**Tenn. Code Ann. § 50-6-125** (Copy w/ Cite)  
*Tenn. Code Ann. § 50-6-125*

Pages:2

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Title 50 Employer And Employee  
Chapter 6 Workers' Compensation Law  
Part 1 General Provisions

Tenn. Code Ann. § 50-6-125 (2013)

### Second of 2 versions of this section

#### **50-6-125. Medical payment committee. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a) (1) The administrator shall appoint a medical payment committee. The committee shall 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. Upon hearing disputes on medical bill payments between providers and insurers, the medical payment committee shall have authority to render a decision on the merits of a dispute. If the medical payment committee determines that a provider or insurer has acted in bad faith in refusing to provide payment for a medical bill or refusing to provide reimbursement for overpayment, the medical payment committee, upon a majority vote, shall refer the malfeasant provider or insurer to the division for consideration of assessment of a civil penalty of no more than one thousand dollars (\$1,000) per occurrence. Any provider or insurer aggrieved by the assessment of a penalty under this subsection (a) shall have the right to seek review of the penalty assessment in the manner provided by § 50-6-118(c).

(2) The committee shall be comprised of seven (7) voting members appointed by the administrator as follows:

(A) Three (3) members shall be representative of the medical provider industry;

(B) Three (3) members shall be representative of the workers' compensation insurance industry; and

(C) The medical director shall serve as the final member of the committee but shall not cast a vote unless a vote taken by members results in a tie. In that case, the medical director shall cast the deciding vote.

(b) In making appointments, the administrator shall strive to achieve a geographic balance and, in the case of the physician members of the committee, shall assure, to the extent possible, that the membership of the committee reflects the diversity of specialties involved in the medical treatment and management of workers' compensation claimants.

(c) Members of the committee shall serve without compensation but, when engaged in the

conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

**(d)** Each member appointed shall serve a term of four (4) years and may be reappointed by the administrator. If a member leaves the position prior to the expiration of the term, the administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term, and the individual may be reappointed by the administrator upon expiration of the term.

**HISTORY:** Acts 1992, ch. 900, § 9; 1999, ch. 520, § 41; 2004, ch. 962, § 33; 2005, ch. 105, §§ 1, 2; 2013, ch. 289, § 23.

View Full 

 1 of 1 

Book Browse

**Tenn. Code Ann. § 50-6-125** (Copy w/ Cite)



Pages: 2



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1 of 1

Book Browse

**Tenn. Code Ann. § 50-6-204** (Copy w/ Cite)

Pages:11

*Tenn. Code Ann. § 50-6-204*

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\*\*\* Current through the 2013 Regular Session \*\*\*

Title 50 Employer And Employee  
Chapter 6 Workers' Compensation Law  
Part 2 Claims and Payment of Compensation

Tenn. Code Ann. § 50-6-204 (2013)

#### Second of 2 versions of this section

**50-6-204. Medical treatment, attendance and hospitalization -- Release of medical records -- Reports -- Disputes -- Reimbursement or payment of expenses -- Burial expenses -- Physical examinations -- Pain management.** [Effective on July 1, 2014. See the version effective until July 1, 2014.]

(a) (1) (A) The employer or the employer's agent shall furnish, free of charge to the employee, such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other reasonable and necessary apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services as ordered by the attending physician and hospitalization, including such dental work made reasonably necessary by accident as defined in the chapter.

(B) No medical provider shall charge more than ten dollars (\$10.00) for the first twenty (20) pages or less, and twenty-five cents (25cent(s)) per page for each page after the first twenty (20) pages, for any medical reports, medical records or documents pertaining to medical treatment or hospitalization of the employee that are furnished pursuant to this subsection (a).

(2) (A) It is the intent of the general assembly that the administration of the workers' compensation system proceed in a timely manner and that the parties and the division have reasonable access to the employee's medical records and medical providers that are pertinent to and necessary for the efficient resolution of the employee's workers' compensation claim in a timely manner. To that end, 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.

(B) For purposes of subdivision (a)(2), "employer" means the employer, the employer's attorney, the employer's insurance carrier or third party administrator, a case manager as authorized by § 50-6-123, or any utilization review agent as authorized by § 50-6-124 during the employee's treatment for the claimed workers' compensation injury.

**(C)** If the division becomes involved in the appeal of a utilization review issue, then the division is authorized to communicate with the medical provider involved in the dispute, either orally or in writing, to permit the timely resolution of the issue and shall notify the employee, employer, and any attorney representing the employee or employer that they may review or copy the documents and responses. Each party requesting copies of records shall pay a fee authorized by subdivision (a)(1)(B) prior to the division providing the requested copies.

**(D)** No relevant information developed in connection with authorized medical treatment or an examination provided pursuant to this section for which compensation is sought by the employee shall be considered a privileged communication, and no medical provider shall incur any liability as a result of providing medical information, records, opinions, or reports as described in subdivision (a)(2)(C); provided, that the medical provider complies with subdivision (a)(2)(C).

**(3) (A)** The injured employee shall accept the medical benefits afforded under this section; provided that in any case when the employee has suffered an injury and expressed a need for medical care, the employer shall designate a group of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups if available in the injured employee's community or, if not so available, in accordance with subdivision (a)(3)(B), from which the injured employee shall select one (1) to be the treating physician.

**(i)** When necessary, the treating physician selected in accordance with this subdivision (a)(3)(A) shall make referrals to a specialist physician, surgeon, or chiropractor and immediately notify the employer. The employer shall be deemed to have accepted the referral, unless the employer, within three (3) business days, provides the employee a panel of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups. In this case, the employee may choose a specialist physician, surgeon, chiropractor or specialty practice group to provide treatment only from the panel provided by the employer.

**(ii)** The liability of the employer for the services provided to the employee shall be limited to the maximum allowable fees that are established in the applicable medical fee schedule adopted pursuant to this section.

**(iii)** The division shall have authority to waive subdivision (a)(3)(A)(ii) when necessary to provide treatment for an injured employee.

**(B)** If three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups are not available in the employee's community, the employer shall provide a list of three (3) independent reputable physicians, surgeons, chiropractors or specialty practice groups, within a one hundred (100) mile radius of the employee's community.

**(C)** When the treating physician or chiropractor refers the injured employee, the employee shall be entitled to have a second opinion on the issue of surgery and diagnosis from a physician or chiropractor specified in the initial panel of physicians provided by the employer pursuant to subdivision (a)(3)(A). The employee's decision to obtain a second opinion shall not alter the previous selection of the treating physician or chiropractor.

**(D) (i)** The employer shall provide the applicable panel of physicians or chiropractors to the employee in writing on a form prescribed by the division, and the employee shall select a physician or chiropractor from the panel, sign and date the completed form, and return the form to the employer. The employer shall provide a copy of the completed form to the employee and shall maintain a copy of the completed form in the records of the employer and shall produce a copy of the completed form upon request by the division.

**(ii)** In any case when the employee has been presented the physician selection form but has failed to sign the completed form and return it to the employer, the employee's receipt of treatment from any physician provided in the panel after the date the panel was provided shall

constitute acceptance of the panel and selection of the physician from whom the employee received treatment as the treating physician, specialist physician, chiropractor or surgeon.

**(E)** In all cases where the treating physician has referred the employee to a specialist physician, surgeon, chiropractor or specialty practice group, the specialist physician, surgeon, or chiropractor to which the employee has been referred, or selected by the employee from a panel provided by the employer, shall become the treating physician until treatment by the specialist physician, surgeon, or chiropractor concludes and the employee has been referred back to the treating physician selected by the employee from the initial panel provided by the employer under subdivision (a)(3)(A).

**(F)** In all cases when an employee changes his or her community of residence after selection of a physician under this subdivision (a)(3), the employer shall provide the employee, upon written request, a new panel of reputable physicians, surgeons, chiropractors or specialty practice groups, as provided in subdivision (a)(3)(A), from which the injured employee shall select one (1) to be the treating physician.

**(G)** If any physician, surgeon, chiropractor or specialty practice group included on a panel provided to an employee under this subsection declines to accept the employee as a patient for the purpose of providing treatment to the employee for his workers' compensation injury, the employee may either select a physician from the remaining physicians, surgeons or chiropractors included on the initial panel provided to the employee pursuant to subdivision (a)(3)(A) or request that the employer provide an additional choice of a physician, surgeon, chiropractor or specialty practice group to replace the physician, surgeon or chiropractor who refused to accept the injured employee as a patient for the purpose of treating his or her workers' compensation injury.

**(H)** Any treatment recommended by a physician or chiropractor selected pursuant to this subdivision (a)(3) or by referral, if applicable, shall be presumed to be medically necessary for treatment of the injured employee.

**(I)** Following the adoption of treatment guidelines pursuant to § 50-6-124, the presumption of medical necessity for treatment recommended by a physician or chiropractor selected pursuant to this subsection or by referral, if applicable, shall be rebuttable only by clear and convincing evidence demonstrating that the recommended treatment substantially deviates from, or presents an unreasonable interpretation of, the treatment guidelines.

**(4)** [Deleted by 2013 amendment, effective July 1, 2014.]

**(5)** [Deleted by 2013 amendment, effective July 1, 2014.]

**(6) (A)** When an injured worker is required by the worker's employer to travel to an authorized medical provider or facility located outside a radius of fifteen (15) miles from the insured worker's residence or workplace, then, upon request, the employee shall be reimbursed for reasonable travel expenses. The injured employee's travel reimbursement shall be calculated based on a per mile reimbursement rate, as defined in subdivision (a)(6)(B), times the total round trip mileage as measured from the employee's residence or workplace to the location of the medical provider's facility. The definition of community as contemplated by this subdivision (a)(6)(A) shall apply only for the purposes of this section.

**(B)** The per mile reimbursement rate for the injured employee shall be no less than the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the performance of their duties. This minimum per mile reimbursement rate shall be based on the last published comprehensive travel regulations promulgated by the department of finance and administration.

**(b) (1)** Where the nature of the injury or occupational disease, as defined in § 50-6-102, is

such that it does not disable the employee but reasonably requires medical, surgical, psychological or dental treatment or care, medicine, surgery, dental and psychological treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus shall be furnished by the employer.

(2) [Deleted by 2013 amendment, effective July 1, 2014.]

(c) In case death results from the injury or occupational disease, as defined in § 50-6-102, the employer shall, in addition to the medical services, etc., referred to in subsections (a) and (b), pay the burial expenses of the deceased employee, not exceeding seven thousand five hundred dollars (\$7,500). If the deceased employee leaves no dependents entitled to compensation under this chapter, the employer shall pay to the employee's estate the additional benefits provided in § 50-6-209(b)(2) and (3), and shall also be liable for the medical and hospital services and burial expenses provided for in this section.

(d) (1) The injured employee must submit to examination by the employer's physician at all reasonable times if requested to do so by the employer, but the employee shall have the right to have the employee's own physician present at the examination, in which case the employee shall be liable to the employee's physician for that physician's services.

(2) Any medical report submitted to the employer based upon the examination, or a true copy of the report, shall be furnished by the employer to the employee upon request; provided, that the employer may, in the employer's discretion, furnish the report to the attorney for the employee or to a member of the employee's family.

(3) [Deleted by 2013 amendment, effective July 1, 2014.]

(4) The employer shall pay for the services of the physician making the examination at the instance of the employer.

(5) When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from the administrator's registry. If the parties are unable to mutually agree on the selection of an independent medical examiner from the administrator's registry, it shall be the responsibility of the employer to provide a written request to the administrator for assignment of an independent medical examiner with a copy of the notice provided to the other party. Upon receipt of the written request, the administrator shall provide the names of three (3) independent medical examiners chosen at random from the registry. No physician may serve as an independent medical examiner in a case and serve on any panel of providers selected under this section for the employer involved in such case. The administrator shall immediately notify the parties by facsimile or e-mail when the list of independent medical examiners has been assigned to a matter, but in any event the notification shall be made within five (5) business days of the date of the request. The employer may strike one (1) name from the list, with the rejection made and communicated to the other party by facsimile or e-mail no later than the third business day after the date on which notification of the list is provided. The employee shall select a physician to perform the independent medical examination from the remaining physicians on the list. All costs and fees for an independent medical examination and report made pursuant to this subdivision (d)(5) shall be paid by the employer. The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary.

(6) The administrator shall establish by rule, in accordance with the Uniform Administrative Procedures Act, compiled title 4, chapter 5, an independent medical examiners registry. The administrator shall establish qualifications for the independent medical examiners, including continuing education and peer review requirements, with the advice of the Tennessee Medical Association and the advisory council on workers' compensation, established by § 50-6-121. The

rules established shall include, but not be limited to, qualifications and procedures for submission of an application for inclusion on the registry, procedures for the review and maintenance of the registry, and procedures for assignment that ensures that the composition of the panels is random.

**(7)** Whenever the nature of the injury is such that specialized medical attention is required or indicated and the specialized medical attention is not available in the community in which the injured employee resides, the injured employee can be required to go, at the request of and at the expense of the employer, to the nearest location at which the specialized medical attention is available.

**(8)** If the injured employee refuses to comply with any reasonable request for examination or to accept the medical or specialized medical services that the employer is required to furnish under this chapter, the injured employee's right to compensation shall be suspended and no compensation shall be due and payable while the injured employee continues to refuse.

**(9)** For accidents or injuries occurring on or after July 1, 2005, in case of a dispute as to the injury, other than disputes as to the degree of medical impairment, the court may, at the instance of either party or on its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured person and report the physician's findings to the court, the expense of which examination shall be borne equally by the parties.

**(e)** In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding the autopsy.

**(f)** Any physician whose services are furnished or paid for by the employer and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge acquired by the physician in the course of the treatment or examination as the treatment or examination relates to the injury or disability arising therefrom.

**(g) (1)** If an emergency, or on account of the employer's failure or refusal to provide the medical care and services required by this law, the injured employee or the injured employee's dependents may provide the medical care and services, and the cost of the medical care and services, not exceeding three hundred dollars (\$300), shall be borne by the employer; provided, that the pecuniary liability of the employer shall be limited to the charges for the service that prevail in the community where the services are rendered.

**(2) (A)** If an employer does not provide medical care and treatment, medical services or medical benefits, or both, that an employee contends should be provided as a result of a judgment or decree entered by a workers' compensation judge following a workers' compensation trial or as a result of a workers' compensation settlement agreement, either the employee or the employer, or the attorney for the employee or employer, shall request the assistance of a workers' compensation mediator to determine whether such medical care and treatment, medical services or medical benefits, or both, are appropriate by filing a petition for benefit determination and participating in alternative dispute resolution as provided in § 50-6-236. If the parties do not resolve the dispute by agreement, either party may file a request for a hearing and submit the dispute to a workers' compensation judge for resolution after the workers' compensation mediator has issued a dispute certification notice in accordance with § 50-6-236.

**(B)** A workers' compensation judge shall have the authority to determine whether it is appropriate to order the employer or the employer's insurer to provide specific medical care and treatment, medical services or medical benefits, or both, to the employee pursuant to a judgment or decree entered by a judge following a workers' compensation trial or pursuant to a workers' compensation settlement agreement approved by a workers' compensation judge pursuant to § 50-6-240. The workers' compensation judge's authority shall include, but is not limited to, the authority to order specific medical care and treatment, medical services or

medical benefits, or both. The authority of a workers' compensation judge to order the provision of benefits under this section shall include authority to order specific medical care and treatment, medical services or medical benefits, or both for all settlements approved by the department, the division, the commissioner, the commissioner's designee or a workers' compensation specialist even if the settlement was approved under prior law.

**(h)** All psychological or psychiatric services available under subdivisions (a)(1) and (b)(1) shall be rendered only by psychologists or psychiatrists and shall be limited to those ordered upon the referral of physicians authorized under subdivision (a)(4).

**(i) (1)** The administrator, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, is authorized to establish by rule, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, a comprehensive medical fee schedule and a related system that includes, but is not limited to, procedures for review of charges, enforcement procedures and appeal hearings to implement the fee schedule. In developing the rules, the administrator shall strive to assure the delivery of quality medical care in workers' compensation cases and access by injured workers to primary and specialist care while controlling prices and system costs. The medical care fee schedule shall be comprehensive in scope and shall address fees of physicians and surgeons, hospitals, prescription drugs, and ancillary services provided by other health care facilities and providers. The administrator may consider any and all reimbursement systems and methodologies in developing the fee schedule, except that, in no event shall the fee schedule set forth differing rates for reimbursement or conversion factors for reimbursement of physical or occupational therapy services based or dependent on whether the services are performed in independently-owned facilities or physician-affiliated facilities, and shall not otherwise consider the physician ownership in the facility providing services. However, differing reimbursement rates may be implemented by the administrator upon the department's presentation of state data demonstrating there is a need for differing reimbursement rates for physical/occupational therapy services and upon the department's holding a public hearing on the issue.

**(2)** The administrator is authorized to retain experts to assist in the development of the fee schedule and related system in accordance with the contracting rules of the department of finance and administration.

**(3)** The administrator, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, shall review the fee schedules adopted pursuant to this section on an annual basis and when appropriate the administrator shall revise the fee schedules as necessary. It is the intent of the general assembly that this annual review consider, among other factors, the medical consumer price index.

**(4) (A)** The comprehensive medical fee schedule adopted pursuant to this subsection (i) is not intended to prohibit an employer, trust or pool, or insurer from negotiating lower fees in its own medical fee agreements.

**(B)** [Deleted by 2010 amendment.]

**(C)** [Deleted by 2010 amendment.]

**(D)** [Deleted by 2010 amendment.]

**(j) (1)** If a treating physician determines that pain is persisting for an injured or disabled employee beyond an expected period for healing, the treating physician may either prescribe, if the physician is a qualified physician as defined in subdivision (j)(2)(B), or refer, such injured or disabled employee for pain management encompassing pharmacological, nonpharmacological and other approaches to manage chronic pain.

**(2) (A)** In the event that a treating physician refers an injured or disabled employee for

pain management, the employee is entitled to a panel of qualified physicians as provided in subdivision (a)(4) except that, in light of the variation in availability of qualified pain management resources across the state, if the office of each qualified physician listed on the panel is located not more than one hundred seventy-five (175) miles from the injured or disabled employee's residence or place of employment, then the community requirement of subdivision (a)(4) shall not apply for the purposes of pain management.

**(B)** For the purposes of the panel required by subdivision (j)(2)(A), "qualified physician" means an individual licensed to practice medicine or osteopathy in this state and:

**(i)** Board certified in anesthesiology, neurological surgery, orthopedic surgery, radiology or physical medicine and rehabilitation through the:

- (a)** American Board of Medical Specialties (ABMS);
- (b)** American Osteopathic Association (AOA); or
- (c)** Another organization authorized by the commissioner;

**(ii)** Board certified by an organization listed in subdivision (j)(2)(B)(i)(a)-(c) in a specialty other than a specialty listed in subdivision (j)(2)(B)(i) and who has completed an ABMS or AOA subspecialty board in pain medicine, or completed an Accreditation Council for Graduate Medical Education (ACGMA) accredited pain fellowship; or

**(iii)** Serving as a clinical instructor in pain management at an accredited Tennessee medical training program.

**(3)** The injured or disabled employee is not entitled to a second opinion on the issue of impairment, diagnosis or prescribed treatment relating to pain management. However, on no more than one (1) occasion, if the injured or disabled employee submits a request in writing to the employer stating that the prescribed pain management fails to meet medically accepted standards, then the employer shall initiate and participate in utilization review as provided in this chapter for the limited purpose of determining whether the prescribed pain management meets medically accepted standards.

**(4) (A)** As a condition of receiving pain management that requires prescribing Schedule II, III, or IV controlled substances, the injured or disabled employee may sign a formal written agreement with the physician prescribing the Schedule II, III, or IV controlled substances acknowledging the conditions under which the injured or disabled employee may continue to be prescribed Schedule II, III, or IV controlled substances and agreeing to comply with such conditions.

**(B)** If the injured or disabled employee violates any of the conditions of the agreement on more than one (1) occasion, then:

**(i)** The employee's right to pain management through the prescription of Schedule II, III, or IV controlled substances under this chapter shall be terminated and the injured or disabled employee shall no longer be entitled under this chapter to the prescription of such substances for the management of pain;

**(ii)** For injuries occurring on or after July 1, 2012, the violation shall be deemed to be misconduct connected with the employee's employment for purposes of § 50-6-241(d); and

**(iii)** For injuries occurring on or after July 1, 2012, in the event such violation occurs prior to a finding that the injured or disabled employee is totally disabled as provided in § 50-6-207(4), through either a judgment or decree entered by a court following a workers' compensation trial or a settlement agreement approved pursuant to § 50-6-206, the incapacity

to work due to lack of pain management shall not be considered when determining whether the injured employee is entitled to permanent total disability benefits as provided in § 50-6-207(4).

**(C)** A physician may disclose the employee's violation of the formal written agreement on the physician's own initiative. Upon request of the employer, a physician shall disclose the employee's violation of the formal written agreement as provided in this section.

**(D)** The formal written agreement shall include a notice to the employee in capitalized, conspicuous lettering on the face of the agreement the consequences for violating the terms of the agreement as provided for in this subsection (j).

**(E) (i)** If an employer terminates an injured or disabled employee's right under this chapter to pain management through the prescription of Schedule II, III, or IV controlled substances pursuant to alleged violations of the formal agreement as provided in subdivision (j)(4)(B), then the employee may file a petition for benefit determination.

**(ii)** If an employer or insurer alleges that an injured or disabled employee is not entitled to reconsideration under § 50-6-241(d) or permanent total disability benefits as provided in § 50-6-207(4) because of the employee's alleged violations of the formal agreement as provided in subdivision (j)(4)(B), then a court shall also determine whether such violations occurred.

**(5)** Prescribing one (1) or more Schedule II, III, or IV controlled substances for pain management treatment of an injured or disabled employee for a period of time exceeding ninety (90) days from the initial prescription of any such controlled substances is considered to be medical care services for the purposes of utilization review as provided in this chapter. The department is authorized to impose a fee for the administration of an appeal process for utilization review under this subdivision (j)(5) and subdivision (j)(3).

**(k)** All permanent impairment ratings shall be assigned by the treating physician or chiropractor.

**(1)** The treating physician or chiropractor shall utilize the applicable edition of the AMA guides as established by this chapter.

**(A)** The medical advisory committee shall, within six (6) months of the release of a new edition, conduct an evaluation of the new edition, report the committee's findings to the administrator and recommend to the administrator whether the new edition should be designated for application to the provisions of this chapter. The administrator shall report the committee's findings and recommendation to the general assembly. The AMA guides, as defined in § 50-6-102, shall remain in effect until a new edition is designated by the general assembly.

**(B)** No impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to § 50-6-235(c), deposition, or oral expert opinion testimony shall be accepted during alternative dispute resolution proceedings or be admissible into evidence at the trial of a workers' compensation claim unless the impairment rating is based on the applicable edition of the AMA guides or, in cases not covered by the AMA guides, an impairment rating by any appropriate method used and accepted by the medical community.

**(2)** 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 as established by this chapter.

**(3)** The treating physician or chiropractor shall evaluate the employee for purposes of *assigning an impairment rating* and the employee shall attend the evaluation. An employee who fails to attend a scheduled evaluation without justifiable cause shall be subject to sanctions up to and including dismissal of the employee's claim for workers' compensation benefits.

(4) Scheduling of the evaluation shall occur within time limits and according to procedures promulgated by the administrator by rule.

(5) The treating physician or chiropractor shall complete the evaluation and submit an impairment rating report, on a form prescribed by the administrator, within time limits imposed by the administrator through the promulgation of rules.

(6) The treating physician's or chiropractor's written opinion of the injured employee's permanent impairment rating shall be presumed to be the accurate impairment rating. This presumption shall be rebuttable by the presentation of contrary evidence that satisfies a preponderance of the evidence standard.

**HISTORY:** Acts 1919, ch. 123, § 25; Shan. Supp., § 3608a174; Code 1932, § 6875; Acts 1941, ch. 90, § 3; 1943, ch. 117, § 1; 1949, ch. 227, § 2; C. Supp. 1950, § 6875; Acts 1953, ch. 111, § 1; 1957, ch. 234, § 1; 1959, ch. 62, § 1; 1959, ch. 172, § 1; 1963, ch. 362, § 3; 1967, ch. 313, § 3; 1971, ch. 134, § 3; 1973, ch. 379, § 4; 1977, ch. 417, § 1; 1978, ch. 521, § 1; impl. am. Acts 1980, ch. 534, § 1; Acts 1980, ch. 650, § 1; T.C.A. (orig. ed.), § 50-1004; Acts 1983, ch. 194, § 1; 1983, ch. 215, § 1; 1983, ch. 276, § 1; 1984, ch. 782, § 1; 1985, ch. 393, § 3; 1986, ch. 792, § 1; 1986, ch. 809, § 1; 1988, ch. 525, § 3; 1989, ch. 210, § 1; 1989, ch. 446, § 1; 1991, ch. 255, § 1; 1996, ch. 790, § 1; 1997, ch. 198, § 1; 1997, ch. 259, § 1; 1997, ch. 533, § 2; 1998, ch. 1024, §§ 21, 22; 1999, ch. 225, § 1; 1999, ch. 294, §§ 2-5; 1999, ch. 520, § 41; 2000, ch. 990, §§ 1, 3; 2001, ch. 192, §§ 9, 10; 2001, ch. 246, § 1; 2003, ch. 359, § 2; 2004, ch. 433, § 1; 2004, ch. 962, §§ 1, 2, 5, 13, 24, 46; 2005, ch. 7, § 1; 2005, ch. 107, §§ 1, 2; 2005, ch. 188, § 1; 2006, ch. 902, § 1; 2007, ch. 300, § 1; 2007, ch. 522, § 1; 2007, ch. 543, § 1; 2008, ch. 835, § 1; 2008, ch. 1025, § 2; 2009, ch. 486, § 1; 2010, ch. 792, § 1; 2010, ch. 858, § 1; 2011, ch. 416, § 7; 2012, ch. 1100, § 3; 2013, ch. 282, §§ 1, 3; 2013, ch. 289, §§ 35-43.

View Full

1 of 1

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Tenn. Code Ann. § 50-6-204 (Copy w/ Cite)

Pages:11



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Tenn. Code Ann. § 50-6-207

Pages:9

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\*\*\* Current through the 2013 Regular Session \*\*\*

Title 50 Employer And Employee  
Chapter 6 Workers' Compensation Law  
Part 2 Claims and Payment of Compensation

Tenn. Code Ann. § 50-6-207 (2013)

#### Second of 2 versions of this section

#### **50-6-207. Schedule of compensation. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

The following is the schedule of compensation to be allowed employees under this chapter:

**(1) Temporary Total Disability. (A)** For injury producing temporary total disability, sixty-six and two thirds percent (66 2/3%) of the average weekly wages as defined in this chapter, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; and provided, further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. Where a fractional week of temporary total disability is involved, the compensation for each day shall be one seventh (1/7) of the amount due for a full week;

**(B) (i)** An employer may choose to continue to compensate an injured employee at the employee's regular wages or salary during the employee's period of temporary total and temporary partial disability. The payments shall not result in an employee's receiving less than the employee would otherwise receive for temporary disability benefits under this chapter; however, a court or the department has no authority to require an employer to pay any temporary disability benefits required by subdivision (1)(A), in addition to the employee's regular wages or salary;

**(ii)** When an employee receives payments under subdivision (1)(B)(i) and the employee's claim for compensation under this chapter is determined by a court or settlement to be compensable, the employer shall be given credit for the payments. The credit shall be no more than the employee would have been otherwise paid under subdivision (1)(A), and any amount paid beyond the amount that would have otherwise been paid under subdivision (1)(A) shall not be credited against any award for permanent disability;

**(C)** Any person who has drawn unemployment compensation benefits and who subsequently receives compensation for temporary disability benefits under a workers' compensation law with respect to the same period shall be required to repay the unemployment compensation benefits; provided, that the amount to be repaid does not exceed the amount of

temporary disability benefits;

**(D)** An employee claiming a mental injury as defined by § 50-6-102 occurring on or after July 1, 2009, shall be conclusively presumed to be at maximum medical improvement upon the earliest occurrence of the following:

**(i)** At the time the treating psychiatrist concludes the employee has reached maximum medical improvement; or

**(ii)** [Deleted by 2013 amendment, effective July 1, 2014.]

**(iii)** One hundred four (104) weeks after the date of injury in the case of mental injuries where there is no underlying physical injury;

**(E)** An employee claiming an injury as defined in § 50-6-102, other than a mental injury, when the date of injury is on or after July 1, 2014, shall be conclusively presumed to be at maximum medical improvement when the treating physician ends all active medical treatment and the only care provided is for the treatment of pain. 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 date that the employee attains maximum medical improvement as determined by a workers' compensation judge.

**(2) Temporary Partial Disability. (A)** In all cases of temporary partial disability, the compensation shall be sixty-six and two thirds percent (66 2/3%) of the difference between the average weekly wage of the worker at the time of the injury and the wage the worker is able to earn in the worker's partially disabled condition. This compensation shall be paid during the period of the disability, not, however, beyond four hundred fifty (450) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit;

**(B)** In all cases of temporary partial disability for claims with a date of injury on or after July 1, 2014, the compensation shall be sixty-six and two-thirds percent (66 2/3%) of the difference between the average weekly wage of the worker at the time of the injury and the wage the worker is able to earn in the worker's partially disabled condition. This compensation shall be paid during the period of the disability, but payment shall not extend beyond four hundred fifty (450) weeks. Payment shall be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit;

**(C)** In any case when a dispute exists over the date of the employee's attainment of maximum medical improvement, the employer shall be given credit against an award of permanent disability for any amount of temporary partial disability paid to the employee after the date on which the workers' compensation judge determines maximum medical improvement.

**(3) Permanent Partial Disability. (A)** In case of disability partial in character but adjudged to be permanent, at the time the injured employee reaches maximum medical improvement the injured employee shall be paid sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages for the period of compensation, which shall be determined by multiplying the employee's impairment rating by four hundred fifty (450) weeks. The injured employee shall receive these benefits, in addition to the benefits provided in subdivisions (1) and (2) and those provided by § 50-6-204, whether the employee has returned to work or not; and

**(B)** If at the time the period of compensation provided by subdivision (3)(A) ends, the employee has not returned to work with any employer or has returned to work and is receiving

wages or a salary that is less than one hundred percent (100%) of the wages or salary the employee received from his pre-injury employer on the date of injury, the injured employee may file a claim for increased benefits. If appropriate, the injured employee's award as determined under subdivision (3)(A) shall be increased by multiplying the award by a factor of one and thirty-five one hundredths (1.35); in addition, the injured employee's award shall be further increased by multiplying the award by the product of the following factors, if applicable:

(1) Education: One and forty-five one hundredths (1.45), if the employee lacks a high school diploma or general equivalency diploma;

(2) Age: One and two tenths (1.2), if the employee was more than forty (40) years of age at the time the period of compensation ends; and

(3) Unemployment rate: One and three tenths (1.3), if the unemployment rate, in the Tennessee county where the employee was employed by the employer on the date of the workers' compensation injury, was at least two (2) percentage points greater than the yearly average unemployment rate in Tennessee according to the yearly average unemployment rate compiled by the department for the year immediately prior to the expiration of the period of compensation.

(C) In determining the employee's increased award pursuant to subdivision (3)(B), the employer shall be given credit for payment of the original award of benefits as determined under subdivision (3)(A) against the increased award.

(D) Any employee may file a claim for increased benefits under subdivision (3)(B) by filing a new petition for benefit determination, on a form prescribed by the administrator, with the division no more than one (1) year after the period of compensation provided in subdivision (3)(A) ends. Any claim for increased benefits under this subdivision (3)(D) shall be forever barred, unless the employee files a new petition for benefit determination with the division within one (1) year after the period of compensation for the subject injury ends. Under no circumstances shall an employee be entitled to additional benefits when:

(1) The employee's loss of employment is due to the employee's voluntary resignation or retirement; provided, however, that the resignation or retirement does not result from the work-related disability;

(2) The employee's loss of employment is due to the employee's misconduct connected with the employee's employment; or

(3) The employee remains employed but received a reduction in salary, wages, or hours that is concurrent with a reduction in salary, wages or reduction in hours that affected at least fifty percent (50%) of all hourly employees operating at or out of the same location.

(E) Nothing in this subsection shall prohibit the employer and employee from settling the issue of additional benefits at any time after the employee reaches maximum medical improvement. Any settlement or award of additional permanent partial disability benefits pursuant to this subdivision shall give the employer credit for prior permanent partial disability benefits paid to the employee.

(F) Subdivision (3)(B) shall not apply to injuries sustained by an employee who is not eligible or authorized to work in the United States under federal immigration laws.

(G) The total amount of compensation payable in this subdivision (3) shall not exceed the maximum total benefit. The payment of temporary total disability benefits or temporary partial disability benefits shall not be included in calculating the maximum total benefit.

(H) All cases of permanent partial disability shall be apportioned to the body as a whole,

which shall have a value of four hundred fifty (450) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. If an employee has previously sustained an injury compensable under this section and has been awarded benefits for that injury, the injured employee shall be paid compensation for the period of temporary total disability or temporary partial disability and only for the degree of permanent disability that results from the subsequent injury.

**(4) Permanent Total Disability. (A) (i)** For permanent total disability as defined in subdivision (4)(B), sixty-six and two thirds percent (662/3%) of the wages received at the time of the injury, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; provided, further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. This compensation shall be paid during the period of the permanent total disability until the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act, compiled in 42 U.S.C. § 401 et seq.; provided, that with respect to disabilities resulting from injuries that occur less than five (5) years before the date when the employee is eligible for full benefits in the Old Age Insurance Benefit Program as referenced previously in this subdivision (4)(A)(i) or after the employee is eligible for such benefits, permanent total disability benefits are payable for a period of two hundred sixty (260) weeks. The compensation payments shall be reduced by the amount of any old age insurance benefit payments attributable to employer contributions that the employee may receive under title 42, chapter 7, title II of the Social Security Act, 42 U.S.C. § 401 et seq. Notwithstanding any statute or court decision to the contrary, the statutory social security offset provided by this section shall have no applicability to death benefits awarded to a deceased worker's dependents pursuant to this chapter;

**(ii)** Notwithstanding any other law to the contrary and notwithstanding any agreement of the parties to the contrary, permanent total disability payments shall not be commuted to a lump sum, except in accordance with the following:

**(a)** Benefits may be commuted to a lump sum to pay only the employee's attorney's fees and litigation expenses and to pay pre-injury obligations in arrears;

**(b)** The commuted portion of an award shall not exceed the value of one hundred (100) weeks of the employee's benefits;

**(c)** After the total amount of the commuted lump sum is determined, the amount of the weekly disability benefit shall be recalculated to distribute the total remaining permanent total benefits in equal weekly installments beginning with the date of entry of the order and terminating on the date the employee's disability benefits terminate pursuant to subdivision (4) (A)(i);

**(iii)** For injuries occurring before July 1, 2014, attorneys' fees in contested cases of permanent total disability shall be calculated upon the first four hundred (400) weeks of disability only; for injuries occurring on or after July 1, 2014, attorneys' fees in contested cases of permanent disability shall be calculated upon the first four hundred fifty (450) weeks of disability only;

**(iv)** In case an employee who is permanently and totally disabled becomes a resident of a public institution, and provided further, that if no person or persons are wholly dependent upon the employee, then the amounts falling due during the lifetime of the employee shall be paid to the employee or to the employee's guardian or conservator, if adjudicated incompetent, to be spent for the employee's benefit; such payments to cease upon the death of the employee;

**(B)** When an injury not otherwise specifically provided for in this chapter totally incapacitates the employee from working at an occupation that brings the employee an income, the employee shall be considered totally disabled and for such disability compensation shall be paid as provided in subdivision (4)(A); provided, that the total amount of compensation payable under this subdivision (4)(B) shall not exceed the maximum total benefit, exclusive of medical and hospital benefits;

**(C) (i)** If an employee is determined, by trial or settlement, to be permanently totally disabled, the employer, insurer or the department, in the event the second injury fund is involved, may have the employee examined, at the expense of the requesting entity, from time to time, subject to the conditions outlined in this section, and may seek reconsideration of the issue of permanent total disability as provided in this subdivision (4)(C);

**(ii)** The request for the examination of the employee may not be made until twenty-four (24) months have elapsed following the entry of a final order in which it is determined that the employee is permanently totally disabled. Any request for an examination is subject to considerations of reasonableness in regard to notice prior to examination, place of examination and length of examination;

**(iii)** A request for an examination may not be made more often than once every twenty-four (24) months. The procedure for this examination shall be as follows:

**(a)** The requesting entity shall first make informal contact with the employee, either by letter or by telephone, to attempt to schedule an appointment with a physician for examination at a mutually agreeable time and place. It is the intent of the general assembly that the requesting entity make a good faith effort to reach a mutual agreement for examination, recognizing the inherently intrusive nature of a request for examination;

**(b)** If, after a reasonable period of time, not to exceed thirty (30) days, mutual agreement is not reached, the requesting entity shall send the employee written notice of demand for examination by certified mail, return receipt requested, on a form provided by the department. The form shall clearly inform the employee of the following: the date, time and place of the examination; the name of the examining physician; the employee's obligations; any pertinent time limitations; the employee's rights; and any consequences of the employee's failure to submit to the examination. The examination shall be scheduled to take place within thirty (30) days of the date on the notice;

**(c)** After receipt of the notice of demand for examination, the employee shall either submit to the examination at the time and place identified in the notice form, or, within thirty (30) days from the date of the notice, the employee shall schedule an appointment for a different date and time conducted by the same physician, and this examination shall be completed no later than ninety (90) days from the date of the notice;

**(d)** In the event the employee fails to submit to the examination at the time and place identified in the notice form and fails to schedule, within thirty (30) days from the date of the notice, an alternative examination date, as provided in subdivision (4)(C)(iii)(c), then the employee's periodic benefits shall be suspended for a period of thirty (30) days;

**(e)** In the event the employee schedules an alternative date for the examination as provided in subdivision (4)(C)(iii)(c), and fails to submit to the examination within the ninety (90) day period, then the employee's periodic benefits shall be suspended for a period of thirty (30) days beginning at the end of the ninety (90) day period within which the alternatively scheduled examination was to be completed;

**(f)** If the employee submits to an examination within any period of suspension of benefits, then within fourteen (14) days of the submission, periodic benefits shall be restored

and any periodic benefits that were withheld during any period of suspension of benefits shall be remitted to the employee;

**(g)** Within ten (10) days of the date on which periodic benefits are suspended pursuant to either subdivision (4)(C)(iii)(d) or (4)(C)(iii)(e), the entity suspending the periodic benefits shall notify the department, in writing, that periodic benefits have been suspended and the date on which the periodic benefits were suspended and shall provide the department a copy of the original notice of demand for examination sent to the employee; and

**(h)** After the department receives notice of suspension of benefits pursuant to either subdivision (4)(C)(iii)(d) or (4)(C)(iii)(e), the department shall contact the employee and for a period of thirty (30) days assist the employee to schedule an examination to be conducted by the physician named in the notice. After the thirty (30) day assistance period has elapsed, if the employee has not submitted to an examination, the department shall authorize the employer, insurer or department to suspend periodic benefits for a period of thirty (30) days. At the conclusion of each thirty (30) day suspension period, periodic benefits shall be restored. After the restoration of periodic benefits, the department shall, in thirty (30) day cycles, continue to assist the employee to schedule the examination, to be followed by thirty (30) day cycles of suspension of benefits until the examination of the employee is completed. If, at any time during any period of suspension of periodic benefits, the employee submits to an examination, then within fourteen (14) days of notice of the examination having been conducted, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension shall be remitted to the employee;

**(iv)** Subsequent to an examination as described in this subdivision (4)(C), the employer, insurer or department may request a reconsideration of the issue of whether the employee continues to be permanently totally disabled based on any changes in the employee's circumstances that have occurred since the time of the initial settlement or trial;

**(v)** Prior to filing any request for reconsideration, the employer, insurer or department shall file a petition for benefit determination and participate in alternative dispute resolution pursuant to § 50-6-236. In the event the parties are unable to reach an agreement through alternative dispute resolution, the workers' compensation mediator shall issue a dispute certification notice and the employer, insurer or department may file a request for a hearing, as provided in § 50-6-239, to determine the issue of reconsideration.

**(vi)** In the event a reconsideration request is filed pursuant to this section, the only remedy available to the employer, insurer or department is the modification or termination of future periodic disability benefits;

**(vii)** In the event the employer, insurer or department files a request for reconsideration or cause of action under this subdivision (4)(C) and the court does not terminate the employee's future periodic disability benefits, the employee shall be entitled to an award of reasonable attorney fees, court costs and reasonable and necessary expenses incurred by the employee in responding to the request for reconsideration upon application to and approval by the court. In determining what attorney fees shall be awarded under this subdivision (4)(C), the court shall make specific findings with respect to the following criteria:

**(a)** The time and labor required, the novelty and difficulty of the questions involved in responding to the request for reconsideration, and the skill requisite to perform the legal service properly;

**(b)** The fee customarily charged in the locality or by the attorney for similar legal services;

**(c)** The amount involved and the results obtained;

(d) The time limitations imposed by the client or by the circumstances; and

(e) The experience, reputation, and ability of the lawyer or lawyers performing the services;

(D) (i) The employer, insurer or department, in the event the second injury fund is involved, shall notify the department, on a form to be developed by the department, of the entry of a final order adjudging an employee to be permanently totally disabled. The form shall be submitted to the department within thirty (30) days of the entry of the order;

(ii) On an annual basis, the department shall require an employee who is receiving permanent total disability benefits to certify on forms provided by the department that the employee continues to be permanently totally disabled, that the employee is not currently working at an occupation that brings the employee an income and has not been gainfully employed since the date permanent total disability benefits were awarded, by trial or settlement;

(iii) The department shall send the certification form to the employee by certified mail, return receipt requested and shall include a self-addressed stamped envelope for the return of the completed form; and

(iv) In each annual cycle, if the employee fails to return the form to the department within thirty (30) days of the date of receipt of the form, as evidenced by the date on the return receipt notice, then the department shall notify the entity who gave notice to the department that the employee was permanently totally disabled pursuant to subdivision (4)(D)(i) that four (4) weeks of periodic disability benefits shall be withheld from the employee as a penalty for the failure to return the form to the department. If the completed form is returned to the department within one hundred twenty (120) days of the date on the return receipt notice, the department shall notify the appropriate entity and then, within fourteen (14) days of receipt of the notice from the department, that entity shall refund to the employee the entire four (4) weeks of periodic disability benefits previously withheld from the employee;

**(5) Deductions in Case of Death.** In case a worker sustains an injury due to an accident arising primarily out of and in the course and scope of the worker's employment, and during the period of disability caused by the injury death results proximately from the injury, all payments previously made as compensation for the injury shall be deducted from the compensation, if any, due on account of death; and

**(6)** For social security purposes only, as permitted by federal law or regulation, in an award of compensation as a lump sum or a partial lump sum under this chapter for permanent partial or permanent total disability, the court may make a finding of fact that the payment represents a payment to the individual to be distributed over the individual's lifetime based upon life expectancy as determined from mortality tables maintained by the United States Centers for Disease Control and Prevention.

**HISTORY:** Acts 1919, ch. 123, § 28; 1923, ch. 84, § 1; Shan. Supp., § 3608a177; Acts 1927, ch. 40, § 2; Code 1932, § 6878; Acts 1941, ch. 90, § 5; 1947, ch. 139, § 6; 1949, ch. 277, § 3; C. Supp. 1950, § 6878; Acts 1953, ch. 111, § 2; 1955, ch. 182, §§ 2-5; 1957, ch. 270, §§ 1-3; 1959, ch. 172, §§ 2-6; 1961, ch. 26, § 1; 1961, ch. 125, § 1; 1963, ch. 362, §§ 1, 4; 1965, ch. 158, § 1; 1967, ch. 313, §§ 1, 2, 4, 5; 1969, ch. 196, §§ 1, 2; 1971, ch. 134, §§ 1, 2, 4; 1973, ch. 379, § 6; 1974, ch. 617, §§ 2, 7; 1975, ch. 86, §§ 2, 7; 1977, ch. 354, § 2; impl. am. Acts 1978, ch. 934, §§ 16, 36; Acts 1979, ch. 365, § 2; impl. am. Acts 1980, ch. 534, § 1; Acts 1980, ch. 607, §§ 2-5; 1981, ch. 333, §§ 2-5; 1982, ch. 880, §§ 2-5; T.C.A. (orig. ed.), § 50-1007; Acts 1985, ch. 393, §§ 5-9; 1992, ch. 900, § 17; 1996, ch. 919, § 2; 2000, ch. 852, §§ 4, 20; 2002, ch. 833, §§ 1-3; 2003, ch. 194, § 1; 2004, ch. 443, § 1; 2007, ch. 403, § 1; 2007, ch. 513, § 1; 2009, ch. 599, § 4; 2010, ch. 920, § 1; 2011, ch. 47, § 52; 2013, ch. 282, §§ 4, 5; 2013, ch. 289, §§ 47-53.

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1 of 1

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**Tenn. Code Ann. § 50-6-207** (Copy w/ Cite)

Pages: 9



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*Tenn. Code Ann. § 50-6-242*

Pages: 2

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\*\*\* Current through the 2013 Regular Session \*\*\*

Title 50 Employer And Employee  
Chapter 6 Workers' Compensation Law  
Part 2 Claims and Payment of Compensation

Tenn. Code Ann. § 50-6-242 (2013)

#### Second of 2 versions of this section

**50-6-242. Additional disability benefits -- Award of permanent partial disability benefits for permanent medical impairment in certain cases -- Specific documented findings required -- Employees not eligible or authorized to work in the United States under federal immigration laws are ineligible. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a) For those injuries that occur on or after July 1, 2014, in appropriate cases where the employee has not returned to work and is entitled to additional benefits under § 50-6-207(3)(B), the employee may receive additional disability benefits not to exceed the maximum number of weeks as set forth in § 50-6-207(2)(B). In such cases, the court or the workers' compensation judge shall make specific documented findings, supported by clear and convincing evidence, that as of the date of the award or settlement, at least three (3) of the following facts concerning the employee are true:

- (1) The employee lacks a high school diploma or general equivalency diploma, or the employee cannot read or write on a grade eight (8) level;
- (2) The employee is fifty-five (55) years of age or older;
- (3) The employee has no reasonably transferable job skills from prior vocational background and training; and
- (4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.

(b) For those injuries that occur on or after July 1, 2004, and notwithstanding any provision of this chapter to the contrary and in appropriate cases where the employee is eligible to receive the maximum permanent partial disability award under § 50-6-207(3)(B), the employee may receive disability benefits not to exceed the appropriate maximum number of weeks as set forth in § 50-6-207 for the type of injury sustained by the employee. In those cases, the workers' compensation judge shall make specific documented findings, supported by clear and convincing evidence, that as of the date of the award or settlement, at least three (3) of the following facts concerning the employee are true:

- (1) The employee lacks a high school diploma or general equivalency diploma or the

employee cannot read or write on a grade eight (8) level;

(2) The employee is fifty-five (55) years of age or older;

(3) The employee has no reasonably transferable job skills from prior vocational background and training; and

(4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.

(c) Subsections (a) and (b) shall not apply to injuries sustained on or after July 1, 2009, by an employee who is not eligible or authorized to work in the United States under federal immigration laws.

**HISTORY:** Acts 1992, ch. 900, § 18; 2004, ch. 962, § 12; 2009, ch. 526, § 2; 2013, ch. 282, § 8; 2013, ch. 289, § 90.

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 1 of 1 

Book Browse

Tenn. Code Ann. § 50-6-242 (Copy w/ Cite)



Pages: 2



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1 of 1

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Pages:5

*Tenn. Code Ann. § 50-6-412*

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\*\*\* Current through the 2013 Regular Session \*\*\*

Title 50 Employer And Employee  
Chapter 6 Workers' Compensation Law  
Part 4 Insurance

Tenn. Code Ann. § 50-6-412 (2013)

**50-6-412. Penalties for noncompliance with insurance requirements.**

(a) The commissioner of labor and workforce development or the commissioner's designee has the authority to issue a subpoena to require an employer doing business in the state to produce any and all books, documents or other tangible things that may be relevant to or reasonably calculated to lead to the discovery of relevant information necessary to determine whether an employer is subject to this chapter, or has secured payment of compensation pursuant to this chapter, and to determine the amount of any monetary penalty that is required to be assessed against an employer for failure to secure payment of compensation pursuant to this chapter.

(b) (1) All monetary penalties assessed pursuant to this section that are based on the average yearly workers' compensation premium shall be calculated by utilizing the appropriate assigned risk plan advisory prospective loss cost and multiplier for the employer as of the date of determination that the employer is subject to this chapter, and has not secured payment of compensation pursuant to this chapter.

(2) If the commissioner or commissioner's designee determines the period of noncompliance with this chapter, is less than one (1) year, any assessed monetary penalty shall be prorated; however, the monetary penalty shall not be less than an amount equal to one (1) month's premium of the average yearly workers' compensation premium for the employer based on the appropriate assigned risk plan advisory prospective loss cost and multiplier.

(3) If any monetary penalty assessed against an employer is held in abeyance pursuant to this section, the period of abeyance shall be two (2) years. Any abated penalty becomes void upon the expiration of the two-year period; provided, that the employer remained subject to this chapter, during the two-year period and continuously secured payment of compensation as required by law. Any abated penalty becomes voidable, if within the two-year period, the employer provides notice to the commissioner that the employer is no longer subject to this chapter and upon concurrence of the commissioner that the employer is no longer subject to this chapter, the penalty shall become void. Any abated penalty shall become due and payable immediately if, within the two-year period, the employer continues to be subject to this chapter and fails to secure payment of compensation as required by law.

(4) The commissioner shall advise an employer of the amount of any assessed monetary penalty in writing and shall include the date on which the monetary penalty shall be due and payable.

**(c) (1)** When the records of the department of labor and workforce development indicate, or when the department's investigation of an employer indicates, that an employer is subject to this chapter, and has failed to secure payment of compensation as required by this chapter, the department shall so notify the employer by certified letter, return receipt requested.

**(2)** The department shall require the employer to provide, within ten (10) days of the receipt of the certified letter, excluding Saturdays, Sundays and holidays, either proof that the employer had secured payment of compensation as required by this chapter or a verifiable sworn affidavit, with supporting documentation, that the employer is exempt from this chapter.

**(3)** The certified letter shall also advise the employer of the monetary penalties that may be assessed against the employer if it is determined by the commissioner or the commissioner's designee that the employer has failed to secure payment of compensation as required by this chapter and shall advise the employer of the criminal penalties to which the employer may be subject for the failure.

**(d) (1)** If the employer responds to the certified letter within ten (10) days of its receipt, excluding Saturdays, Sundays, and holidays, and it is determined by the commissioner or the commissioner's designee that the employer has secured payment of compensation as required by this chapter, or that the employer is not subject to this chapter, no monetary penalty shall be assessed.

**(2)** If the employer responds to the certified letter within ten (10) days of its receipt, excluding Saturdays, Sundays, and holidays, and it is determined by the commissioner or the commissioner's designee that the employer is subject to this chapter and that the employer has secured the payment of compensation since the date of receipt of the certified letter, the commissioner shall issue a monetary penalty to the employer equal to one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium.

**(e) (1)** If the employer fails to respond to the certified letter within ten (10) days of its receipt, excluding Saturdays, Sundays, and holidays, or the employer responds to the certified letter but does not provide a verifiable sworn affidavit of exemption, the commissioner or the commissioner's designee shall issue a show cause order and notice of hearing, which shall be sent to the employer by certified mail, return receipt requested, to the employer's last known address, according to department records. If either of these circumstances occur, the commissioner shall assess two (2) penalties. The first monetary penalty shall be equal to one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium. The second monetary penalty shall be equal to the average yearly workers' compensation premium for such employer.

**(2)** The show cause order and notice of hearing shall notify the employer of all monetary penalties that have been assessed against the employer and the criminal penalties to which the employer may be subject.

**(3)** The show cause order and notice of hearing shall advise the employer it must appear at the show cause hearing before the commissioner or the commissioner's designee to show cause why it should not be held to be in violation of this chapter, by its failure to secure compensation as required by this chapter.

**(4)** The employer shall have the burden of proof at the show cause hearing and shall be required to produce documentary evidence that the employer is not subject to this chapter, or that the employer was in compliance with this chapter.

**(5)** The department shall schedule the show cause hearing in a timely manner, not to exceed sixty (60) days from the date of the employer's receipt of the first certified letter sent pursuant to subdivision (c)(1).

**(f) (1)** If the commissioner or the commissioner's designee determines at the show cause hearing that the employer is not subject to this chapter, or that the employer had secured and continues to secure payment of compensation as required by this chapter, all monetary penalties shall be void.

**(2)** If the employer appears at the show cause hearing and it is determined by the commissioner or the commissioner's designee that the employer is subject to this chapter and that the employer has come into compliance with this chapter by securing payment of compensation prior to the date of the show cause hearing, the first monetary penalty equal to one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium shall be due; however, the second monetary penalty equal to the average yearly workers' compensation premium shall be held in abeyance.

**(3)** If the employer appears at the show cause hearing and it is determined by the commissioner or the commissioner's designee that the employer is subject to this chapter and that the employer has failed to secure payment of compensation as required by this chapter, the employer shall be ordered to procure workers' compensation insurance coverage and to provide the department with proof of coverage within five (5) days of the issuance of the order, excluding Saturdays, Sundays and holidays. If the employer obtains workers' compensation insurance coverage and provides the department with proof of coverage as ordered, the first monetary penalty equal to one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium shall be due; however, the second monetary penalty equal to the average yearly workers' compensation premium shall be held in abeyance.

**(4)** If the employer fails to obtain workers' compensation insurance coverage as ordered by the commissioner or commissioner's designee within the required time period, all monetary penalties, totaling two and one half (2 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of two thousand dollars (\$2,000) or two and one half (2 1/2) times the average yearly workers' compensation premium, shall be immediately due and payable.

**(g)** The commissioner shall notify the secretary of state when any employer engaged in the construction industry:

**(1)** Fails to secure payment of compensation, as required by this chapter; and

**(2)** When any employer who has failed to secure payment of compensation, as required by this chapter, has secured payment of such compensation.

**(h) (1)** In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five-year period, then the commissioner shall issue a monetary penalty against the employer that is the greater of three thousand dollars (\$3,000) or three (3) times the average yearly workers' compensation premium for each second or subsequent violation.

**(2) (A)** In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two

(2) or more times within a five-year period, such employer shall be permanently prohibited from obtaining an exemption pursuant to part 9 of this chapter and the commissioner shall notify the secretary of state of such prohibition.

**(B)** For purposes of subdivision (h)(2)(A), "such employer" includes any construction services provider, as defined by § 50-6-901, who applies for or has ever received a workers' compensation exemption pursuant to part 9 of this chapter using the same federal employer identification number as the employer who fails to comply with the requirements of this chapter.

**(i) (1)** The commissioner has the authority to seek an injunction in the chancery court of Davidson County to prohibit an employer from operating its business in any way until the employer has complied with an order by the commissioner or the commissioner's designee to obtain workers' compensation insurance coverage.

**(2)** In the event an employer shall fail to comply with the requirements of this chapter, by failing to secure payment of compensation on a second or subsequent occasion, the commissioner shall have the authority to seek an injunction in the chancery court of Davidson County to prohibit the employer from operating its business in any way until the employer provides proof that it has complied with this chapter by securing payment of compensation.

**(j)** The employer shall have the right to appeal, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, any decision made by or order issued by the commissioner or the commissioner's designee pursuant to this section.

**HISTORY:** Acts 1992, ch. 900, § 23; 1999, ch. 520, § 41; 2000, ch. 972, § 4; 2010, ch. 1149, §§ 8-12.

View Full 

1 of 1 

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Tenn. Code Ann. § 50-6-412 (Copy w/ Cite)

Pages:5