

## TENNESSEE WORKERS' COMPENSATION UPDATE

### MAJOR CHANGES TO THE LAW

On May 21, 2011, the legislature passed the most extensive statutory reform since 2004. Although all of the concerns raised have not been fully addressed, these statutory changes to the Tennessee Workers' Compensation Law address some of the concerns of the employers and carriers. The new legislation focuses on four major areas: 1) future medical benefits, 2) communication with doctors, 3) gradual injuries and 4) causation.

### 1. SETTLEMENT OF FUTURE MEDICAL BENEFITS

In the past, the statute required parties to leave future medical benefits open for at least three years for injuries to scheduled members, or to the body as a whole, with a statutory value of 200 weeks or more. The exception to the three-year requirement was when the injury was to a scheduled member with a statutory value of 199 weeks or less, or on a doubtful and disputed basis. The new law eliminates the three-year open medical benefits provision. Tenn. Code Ann. §50-6-206(a) (2) now permits the closing of future medical benefits immediately in most cases. The only prohibition is in a case where an employee suffers a permanent total disability. There are otherwise no restrictions against closing future medical benefits, or in allocating an

additional payment to the injured employee in exchange for the agreement to waive the right to future medical treatment.

Prior to the revised Act, parties could only settle doubtful and disputed cases for a maximum lump sum payment of 50 times the statutory minimum compensation rate. This ceiling has been removed and now the parties can settle disputed claims in full for any agreed upon amount.

### 2. COMMUNICATION WITH DOCTORS

The revised statute makes it easier for employers, carriers and their representatives to communicate with authorized doctors, as Tenn. Code Ann. §50-6-204 has been revised in several sections to address the issues that arose out of the *Overstreet v. TRW Commercial Steering Division*, 256 S.W.3d 626 (Tenn. 2008) case.

The new provisions almost return the state of the law to the pre-2008 amendments. In 2008, the legislature codified the *Overstreet* decision and placed significant limitations on employers, carriers and their representatives speaking with authorized physicians. Such parties were not allowed to communicate with an authorized physician without first

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obtaining a Department of Labor-approved written authorization from the employee. If the employer or carrier communicated with the physician in writing, a copy of the written document was to be provided to the injured employee or the employee's attorney. If the communication between the employer or carrier and the physician was verbal, the law set forth specific requirements for notifying the employee or the employee's attorney of the substance of the conversation. Under the new version of Tenn. Code Ann. §50-6-204, employers, carriers and their representatives may once again communicate with authorized physicians. The injured employee must first sign a Department of Labor-approved medical authorization.

### 3. LIMITATION ON WHAT CONSTITUTES COMPENSABLE INJURY

Through an amendment to the definition of "injury," the new legislation significantly limits the scope of what constitutes a compensable injury, especially gradual injuries. Tenn. Code Ann. §50-6-102(12) previously stated:

"'Injury' and 'personal injury' mean an injury by accident arising out of and in the course of employment that causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment that cause either disablement or death of the employee and shall include a mental injury arising out of and in the course of employment."

This section of the statute has been significantly revised and now states:

"'Injury' and 'personal injury' means an injury by accident arising out of and in the course of employment that causes either disablement or death of the employee. 'Injury' and 'personal injury' shall not include a disease in any form, except when it arises out of and in the course and scope of employment. 'Injury' and 'personal injury' include a mental injury arising out of and in the course of employment. An injury is 'accidental' only if it is caused by a specific

incident (or incidents) arising out of and in the course of employment and is identifiable by time and place of occurrence.

"Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, and all other repetitive motion conditions shall not be considered an 'injury' or 'personal injury' unless such conditions arose primarily out of and in the course and scope of employment."

Thus, the new statute narrows the definition of "injury" to "a specific incident or incidents arising out of and in the course of employment, and is identifiable by time and place of occurrence." The revised statute also places significant limitations on the compensability of cumulative trauma conditions and repetitive or gradual injuries. It now provides that "cumulative trauma conditions, hearing loss, carpal tunnel syndrome, and all other repetitive motion conditions" are no longer compensable injuries in Tennessee unless these conditions arose primarily out of and in the course of employment. This is the legislature's first attempt at limiting the scope of compensable gradual injuries.

### 4. CAUSATION TO BE DETERMINED BY AUTHORIZED TREATING PHYSICIAN

The revised statute now provides that the authorized treating physician's opinion on causation is presumed to be correct. Tenn. Code Ann. §50-6-102(12) has been amended to include the following language, which was previously excluded from the statute:

"The opinion of the physician selected by the employee from the employer's designated panel of physicians pursuant to §50-6-204(a) (4) (A), (B) shall be presumed correct on the issue of causation and shall only be defeated by a preponderance of the evidence to the contrary."



Considering the new limitations on gradual injuries, the authorized physician's opinion on causation is paramount.

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