TENNESSEE WORKERS’ COMPENSATION REFORM – THE WINDS OF CHANGE BLOW STRONG

Aimed at improving the state’s business climate by making the system more efficient, impartial and predictable, the Tennessee Workers’ Compensation Reform Act of 2013 (Senate Bill 200) creates landmark changes expected to have a significant impact on claims occurring on or after July 1, 2014. While the new law contains extensive administrative, procedural and benefits-related reforms, we highlight below selected changes.

JURISDICTION

Tennessee was only one of three states with a workers’ compensation court-based dispute resolution system (Oklahoma just passed legislation removing courts, leaving Alabama as the sole remaining state with court-based system). The new law completely removes jurisdiction from circuit and chancery courts and creates a new tribunal called the “court of workers’ compensation claims” within the Division of Workers’ Compensation (DWC). The administrator of DWC will have sole administrative authority to appoint and remove workers’ compensation judges.

The new law establishes the DWC as an “autonomous unit” attached to the Tennessee Department of Labor and Workforce Development for “administrative matters only”. Governor Haslam is required to appoint an administrator of the DWC by July 1, 2013 or as soon thereafter as practicable.

NATURE OF LAW

The present law is remedially and liberally construed in favor of the employee. The new law is to be construed fairly and impartially without favor.

INJURY CAUSATION

In order for injuries or aggravations of pre-existing conditions to be compensable, under the new law they must arise “primarily” out of and in the course of employment which is defined to mean that by a preponderance of evidence the employment “contributed more than 50% in causing the injury, considering all causes.”

The new law adds that the opinion of the treating physician, selected by the employee from the employer’s designated panel of physicians, is presumed to be correct on the issue of causation but is rebuttable by a preponderance of evidence.
PHYSICIAN SELECTION

The present law requires employers to provide only one panel of three physicians, surgeons, chiropractors or specialty groups. Under the new law, if a treating physician refers an employee to a specialist, the employer/insurer is deemed to have accepted the referral unless providing a panel of three specialists to the employee within three business days.

COMMUNICATION WITH TREATING PHYSICIAN

The present law requires that the employee sign a waiver, before the employer or employer’s authorized representative is allowed to review medical records. The new law removes employee waiver and permits employers to have written and oral communication with treating physicians while also requiring release of medical records within 30 days after treatment. There will be no implied covenant of confidentiality with respect to those records.

DISABILITY BENEFITS

The present law provides for a total maximum benefit of 400 weeks but is expanded under new law to 450 weeks. Under the present law, scheduled body parts and body as a whole injuries are worth varying number of weeks.

The new law eliminates “scheduled members” and uses “body as a whole” to determine degree of impairment without consideration of pain (pain may be considered in present law).

The present law requires Permanent Partial Disability Benefits (PPD) to be paid any time after the employee reaches Maximum Medical Improvement (MMI) with a multiplier as high as six times the impairment rating. The new law creates two tiers of PPD:

(A) Benefits owed immediately upon the employee receiving rating from an authorized treating physician equal to the number of weeks the rating represents; i.e., 10% impairment = 45 weeks

and

(B) If at any time within the number of weeks equal to impairment rating, the employee has not returned to work at the same or greater wage for any employer, an employee who applies may have their award increased by 1.35 plus an additional:

1. 1.45x if no high school diploma or GED
2. 1.2x if over the age of 40 at time compensation period ends and
3. 1.3x if employee’s home county’s residence has unemployment more than 2% higher than the state average

Temporary Total Disability benefits end upon return to work or MMI under present law. The new law requires benefits to continue beyond date of MMI and until employee accepts/rejects return to work offer from any employer, or 60 days, whichever occurs first.

OMBUDSMAN PROGRAM

The new law creates ombudsman program to assist injured or disabled employees, persons claiming death benefits, and other persons in protecting their rights, resolving disputes and obtaining information available under worker’ compensation law. This program is only available to those individuals not represented by an attorney.
MEDICAL TREATMENT GUIDELINES

Effective January 1, 2016, the administrator must adopt guidelines for the diagnosis and treatment of commonly occurring workers’ compensation injuries. Treatment that follows the guidelines will be presumed medically necessary for review purposes.

PENALTIES

A number of offenses subject to penalties were added, including:

- Failure of any party to appear or to mediate in good faith during alternative dispute resolution
- Failure of an employer to timely provide a panel of physicians per statutory requirements
- Refusal of any party to cooperate with the services provided by an ombudsman
- Wrongful failure of employer to satisfy the terms of approved settlement

Click here to view more details of the bill prepared by the Tennessee legislature.

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