



Employer-Friendly Overhaul of Tennessee Workers' Compensation System Passes in the Legislature

The Tennessee legislature has passed a workers' compensation reform bill that significantly changes the way claims are handled in Tennessee after July 1, 2014. Though Governor Bill Haslam has not yet signed the bill, he is expected to do so soon, as the reform was a major part of his legislative agenda this year. Senate Bill 200 (House Bill 0194), which passed overwhelmingly in both houses, shifts the responsibility for workers' compensation administration from the state's court system to an independent administrative judiciary. Significantly, it also rejects the courts' liberal construction of the workers' compensation law in favor of injured workers, and replaces it with construction that is "fair," "impartial," and "without favor to either employee or employer."¹ This represents a major and positive change for Tennessee businesses, as it promises to bring cost reductions, quicker claim resolution, and more consistency to the current system.

Workers' Compensation Oversight Consolidated Into a Single Independent Agency

Oversight of the present system is shared between the state Labor Department, the legislature, and the courts. The new bill consolidates this responsibility into a single separate state division of workers' compensation, which will operate independently under a governor-appointed administrator. The administrator will select and appoint the first crop of workers' compensation judges, and retains the power to appoint and remove them from their staggered six-year terms. The law does not set a number of judges as yet – presumably the administrator, once appointed, will perform a needs assessment. The decisions of workers' compensation judges are appealable to a three-person appeals board, whose members will also be appointed by the administrator. Further appeals of board decisions will continue to be filed with the Tennessee Supreme Court, as they are presently.

A New, Higher Hurdle for Proving Compensability

In addition to altering the claims process, the new law significantly restricts coverage for workers compensation claims, raising the hurdle for employees to prove compensability. Current law covers injuries that "arise out of and in the course of employment." The new law changes this standard, and only covers injuries that arise "primarily out of and in the course and scope of employment." The online summary of the bill notes that "an injury arises primarily out

¹ Quoted language from the online Summary of SB 0200, posted on the Tennessee General Assembly website and available at: <http://wapp.capitol.tn.gov/apps/billinfo/BillSummaryArchive.aspx?BillNumber=SB0200&ga=108>.

of and in course and scope of employment only if it has been shown by a preponderance of the evidence that the employment contributed **more than 50 percent in causing the injury**, considering all causes.” The amendment further specifies that the burden of proof on every element of a workers’ compensation claim rests on the employee, who must prove a claim by a preponderance of the evidence standard.

Additional Changes Should Streamline and Simplify

In addition to structuring the judge and court systems, the administrator will be required to perform a number of other tasks to improve and streamline the workers’ compensation claims process. These tasks include establishing an ombudsman program to provide assistance to parties not represented by an attorney; adopting guidelines for the diagnosis and treatment of commonly occurring workers’ compensation injuries; adopting rules regarding electronic submission of medical bills; and instituting a training program for mediators, judges, and the new ombudsmen. The administrator will also create two separate advisory committees with cost-containing roles: one which will hear disputes on medical bill payments between providers and insurers, and one which will develop and enforce guidelines for diagnosis and treatment.

The bill also makes other changes, including major adjustments to how the system calculates benefits. It deletes the scheduled members list, and provides new methods for calculating impairment ratings, permanent partial disability benefits, and dates of maximum medical improvement. It also makes an adjustment to the type and number of doctors on a treatment panel once an injury is compensable, and to the system of referrals and approvals.

A Positive Move for the State

The bill presents a workers’ compensation program that provides significant benefits to both employers and employees. With this new revamped system, employees will experience fewer delays in claim resolution, better medical treatment, and a simpler claim process. Employers gain cost reductions, predictability, and more efficient claim handling. The bill, if signed by the governor, does not go into effect until next summer. However, it may be beneficial for businesses to talk with their insurance carriers now, and to think through how the reform could affect business processes and claims handling.

For assistance with evaluating how this bill impacts your business or for more information, contact:

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