



Average Weekly Wage: "AWW" is determined by calculating the Employee's average gross wages per week for the 52 week period prior to the alleged accident date. If the Employee worked less than 52 weeks, or missed more than 7 days (even if non-consecutively), then the total wages are divided by the actual number of weeks worked to arrive at the AWW. *Source: Tenn.Code Ann. § 50-6-102(a)(1)(A).* The wage statement must be filed with TDOL within 30 days of Notice of Injury or the maximum rate may apply.

Compensation Rate: "CR" is sixty-six and two thirds percent (66.67%) of the average weekly wage. *Source: Tenn.Code Ann. § 50-6-207(1).*

Maximum and Minimum Compensation Rates:

Date/Accident	TTD Min./Max. Rates	PPD Max Rate
7-1-14 to 6-30-15	\$127.20/\$932.80	\$848.00
7-1-15 to 6-30-16	\$128.70/\$943.80	\$858.00
7-1-16 to 6-30-17	\$133.20/\$976.80	\$888.00
7-1-17 to 6-30-18	\$135.30/\$992.20	\$902.00
7-1-18 to 6-30-19	\$139.35/\$1,021.90	\$929.00

Compensable Injury The injury, condition, occupational disease or death must be shown to a reasonable degree of medical certainty that it contributed more than 50% in causing the death, disablement or need for medical treatment, considering all causes. The opinion of the authorized treating doctor on causation is presumed correct, but may be rebutted. *Source: Tenn.Code Ann. § 50-6-102(14)*

DISABILITY BENEFITS

Temporary Total Disability Benefits: "TTD" benefits are due for lost time following the seventh day after the injury. If less than 14 days has passed before employee's return to work, TTD is paid only from the eighth day forward. If 14 or more days has passed, TTD benefits must be paid from the first date of disability. *Source: Tenn.Code Ann. § 50-6-205(a).*

Once Employee reaches MMI and a permanent partial impairment rating is given, weekly benefits (if voluntarily paid) must continue for up to 60 days or the value of the impairment rating, whichever is less. This amount is credited to the PPD award. *Source: Tenn.Code Ann. § 50-6-234(d)*

In cases involving claimed mental injuries only, MMI is conclusively presumed to be at the earliest of the treating psychiatrist finding MMI or 104 weeks after the date of injury. *Source: Tenn.Code Ann. § 50-6-207(1)(D).*

If there was a physical injury that includes a mental injury, or when the only treatment being provided is for pain, MMI is conclusively presumed when the physician ends all active medical treatment. *Source: Tenn.Code Ann. § 50-6-207(1)(E).*

- This is intended for general informational purposes only and is not meant to replace legal counsel. We urge you to consult an attorney for any issue regarding applicability or interpretation of any provision contained herein.
- This is not intended to be a complete summary of the law.

Temporary Partial Disability Benefits: If the Employee returns to work in a partially disabled condition and earns less than prior to the injury, the Employee is entitled to 66.67% of the difference between the Employee's pre-injury AWW and post-injury wages. Such benefits shall not exceed 450 weeks. *Source: Tenn.Code Ann. § 50-6-207(2).*

Permanent Partial Disability (PPD) Benefits: No more "scheduled members". All injuries are converted to "body as a whole", using the AMA Guides, and based on 450 weeks of benefits.

To determine the original award period, multiply the employee's impairment rating (as a decimal, 6% = .06), by 450 weeks. For amount of benefits, then multiply that number by the Compensation Rate. For example, an injury that results in a 6% impairment to an employee with a \$550 CR, settlement would be: .06 x 450 x .550 = \$14,850.00.

The initial compensation period runs from the date of Maximum Medical Improvement (MMI) for the number of weeks in the original award.

The Employee's voluntary resignation, retirement, or misconduct may preclude reconsideration and possibly an additional award.

If the Employee has not returned to work for any employer at an equal or higher wage rate, the Employee may be entitled to additional award of benefits. The additional benefits are calculated by multiplying the original award by 1.35. Further increased benefits may be awarded if the Employee lacks a high school diploma or GED (1.45), is over 40 (1.2) or worked in high unemployment counties (1.3).

Any award of additional benefits is reduced by the amount paid to the Employee in the original award. To be eligible for additional benefits, the Employee must file a new petition of benefit determination within one year after the initial compensation period has expired.

Additional PPD Benefits: In extraordinary cases, an Employee may be entitled to up to 275 weeks of additional benefits (minus the original award), if the Employee establishes by *clear and convincing evidence* the following are true:

1. Employee's impairment rating is at least 10% to the body as a whole;
 2. The authorized treating doctor certifies that due to restrictions the Employee no longer has the ability to perform his pre-injury job; and
 3. Employee is not earning 70% of his pre-injury wage or salary.
- Source: Tenn.Code Ann. § 50-6-242*

Permanent Total Disability: Employees who are adjudged permanently and totally disabled (unable to engage in any work activity which generates an income) are entitled to weekly benefits at the Employee's compensation rate until the Employee is, by age, eligible for full benefits in the Old Age Benefit program of Social Security, or for 260 weeks, whichever is more. Such benefits are not subject to the Maximum Total Benefit. *Source: Tenn.Code Ann. § 50-6-207.*



MEDICAL BENEFITS: In general, within three (3) business days after a request for medical care, the Employer is required to provide a panel of three physicians, in the Employee's community, willing and able to treat the injury or condition. In an emergency, treatment by ambulance, EMT, etc. After the condition has stabilized, offer the panel.

Referrals If the treating physician makes a referral to a specialist, the Employer is deemed to have accepted the referral unless, within three (3) days, provides the Employee with a panel of three (3) specialists or specialty practice groups.

Medical Records Releases are not required to obtain records from authorized treating providers.

DEATH BENEFITS If an employee dies from a work-related injury, the surviving spouse and/or other dependents are entitled to benefits. The weekly rate varies depending on the number of dependents, up to the weekly maximum. If there are no dependents, a lump sum of \$20,000 is paid to the employee's estate. In addition, funeral and burial expenses are paid, up to \$10,000 for deaths after May 19, 2017, up to \$7,500 for deaths occurring prior to that date.

SETTLEMENTS: Settlement agreements can provide for closure of future medical benefits, except in case of permanent and total disability. Settlements closing future medical benefits must have a statement from the treating physician that no further treatment is anticipated or documentation of the cost of future treatment. Source: Rule 9 Court Practices and Procedures.

EXTRATERRITORIAL APPLICATION: If an Employee is injured outside the State of Tennessee in an accident which would be considered compensable under Tennessee law, he or she may nevertheless be entitled to Tennessee workers' compensation benefits if: (1) The employment was principally localized within the State; or (2) The contract of hire was made in Tennessee or (3) there is a substantial connection between Tennessee and the employment. Source: Tenn. Code Ann. § 50-6-115. **HOWEVER**, an Employee may make a knowing and willful election to receive workers' compensation benefits under the laws of another State, thus precluding Tennessee benefits. (Merely accepting payments of temporary or medical benefits under another State's laws is generally not enough to establish a knowing and willful election).

INJURIES NOT COVERED: No compensation is allowed for injury or death due to the Employee's willful misconduct, intentional self-inflicted injury, or due to intoxication or illegal drugs, or willful failure to use a safety appliance or perform a duty required by law. The Employer has the burden of proof on these issues, including the proximate cause of intoxication or drug use. **HOWEVER**, if the Employer has a "drug free workplace" pursuant to Tennessee law and there is a positive screening, the Employer may be entitled to a statutory presumption that the drug or alcohol use was the proximate cause of the injury. See Tenn. Code Ann. § 50-6-110(c)(1) for details; see also Tenn. Code Ann. § 50-9-101 et seq.

SUBROGATION CLAIMS: If the Employee is injured under circumstances creating legal liability on the part of a third party (other than the Employer), then the Employee may have a claim against that third party and the Employer "shall" have a subrogation lien for WC benefits paid to date and a subrogation credit to be applied against future liability, up to the Employee's net recovery. However, when indemnity is concluded by lump sum, there is no future credit or setoff of net recovery against future medical benefits. If the Employee fails to file suit against the other party within one year after the date of the injury, this acts as an assignment of the claim to the Employer, which then has an additional six months to file suit against the other party. The "made whole doctrine" is not applicable to workers' compensation subrogation. Source: Tenn. Code Ann. § 50-6-112.

STATUTE OF LIMITATIONS: The Court of Worker' Compensation Claims has exclusive jurisdiction for injuries on or after July 1, 2014. Claims are initiated by filing a petition for benefit determination. Must be filed within one year from the latter of the injury, date of the last authorized treatment of time the Employer ceased to make payments of compensation. Source: Tenn. Code Ann. § 50-6-203.

CLAIM PROCESS: If a Petition for Benefit Determination is filed, a claim is assigned for mediation. The mediator will request documents and information. In the typical case, once the employee is released from medical treatment, mediation is scheduled. If the case is resolved, a date for approval of the settlement by a judge will be scheduled. If not settled, the mediator issues a Dispute Certification Notice. Next, a judge will hold a scheduling conference and set deadlines for discovery and disclosures, as well as a trial date (compensation hearing). The case proceeds like other civil cases, with written discovery and depositions.

PENALTIES: Numerous penalty provisions (some including attorney fees) for failure to file appropriate forms, failure to cooperate with mediation, failure to provide reasonable and necessary medical care, failure to make timely payments of benefits and failing to properly respond to discovery.

SUBSEQUENT INJURY FUND (formerly known as the Second Injury Fund): Before the Second Injury is liable, the Employee must (1) have a preexisting disability of which the employer was aware, and (2) must now be permanently and totally disabled.