

# RETAINING THE FOCUS

SPECIAL EDITION

WINTER 2013, ISSUE 2



*Jones & Associates, PLLC*

Attorneys & Counselors at Law  
With Over 20 Years Experience

A QUARTERLY DISCUSSION OF RESOURCES AND DEVELOPING LEGAL ISSUES  
AFFECTING PEOPLE AND BUSINESS IN THE STATE OF TENNESSEE

## Workers' Compensation 2013

### Maximum & Minimum Benefit Changes

Temporary Benefits for injuries occurring after July 1, 2013 through June 30, 2014 are \$918.50 or 110% of the state's average weekly wage

The maximum weekly benefit for injuries occurring July 1, 2013 through June 30, 2014 is \$835.00 or 100% of the state's average weekly wage.

The minimum weekly benefit for the above-referenced time periods is \$125.25

### Extraterritorial Workers' Compensation Coverage

Workers from a foreign state, temporarily working in TN for a foreign state employer will be covered under the laws of the foreign state. However, if the extraterritorial provisions of Tennessee workers' compensation law are recognized in the foreign state, then the workers are exempt from coverage by the foreign state. The touchstone of the law is whether the employment was principally located in TN; the contract for hire was made in TN; or the employee was a Tennessee resident at the time the injury occurred in the foreign state and "there existed a substantial relationship between Tennessee and the particular employer and employee relationship. The bill became effective on May 13, 2013.

### The Workers' Compensation Reform Act of 2013

Public Chapter 289 separates the Division of Workers' Compensation from the Department of Labor and Workforce Development. After July 1, 2014, "maximum total benefits" will be 450 times 100 percent of the state's average weekly wage. This is 50 weeks more than the previous formula.

The entire system will be more administrative than court-oriented in 2014. The law establishes an alternative dispute method for resolving workers' compensation claims, composed of judges for the adjudication of claims.

## INSIDE THIS ISSUE:

2. More on the 2013 Reform Act
3. Certain Defenses Under The Tennessee Workers' Compensation Act
  - a. Notice
  - b. Ingress/Egress
  - c. Idiopathic Falls



The new law only governs “injuries that occur on or after July 1, 2014. Prior medical treatment will continue as it does now. Prior to July 1, 2014, either party may file a Request for Assistance (“RFA”). After July 1, 2014, employees can file a petition for benefit determination. If no agreement is reached, an appropriate official with the Division will issue an order after hearing from the employee and employer.

With respect to medical treatment, a nurse practitioner working under the supervision of a physician is an authorized visit.

The employer has 3 business days after a referral from the authorized treating physician to provide another panel. Otherwise, the referral will stand.

After July 1, 2014, employers no longer have to put a chiropractor on a back panel. The penalty for not providing a proper medical panel can be up to \$5,000 per violation.

The reform law allows the employer or its representative to communicate with the authorized treating physician. Releases are still necessary for physicians who are not authorized treating physicians.

The division continues to work to resolve conflicts. Claims move to



## 2013 WORKERS COMPENSATION REFORM

to the Workers’ Compensation judicial process only after diligent efforts to resolve differences have not succeeded.

If the injured worker is able to return to work for any employer making at least the pre-injury wage, the permanent partial disability benefit is one (1) times the impairment rating.

All injuries that occur on or after July 1, 2014 are considered “body as a whole,” rather than scheduled injuries.

Under the reform law, the parties may settle the entire claim at any time after the employee reaches maximum medical improvement.

The treating physician’s rating is presumed to be correct, but the presumption can be overcome by a preponderance of evidence to the contrary.

There will be a \$150 filing fee for all approvals; however, there is no charge for the hearings.

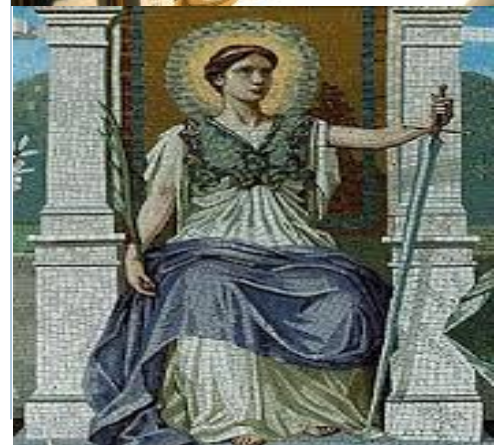


Jones & Associates, PLLC

1-B Paulmar Drive  
Chattanooga, TN 37415  
(423) 668-8798

Email: [Joneslaw08@gmail.com](mailto:Joneslaw08@gmail.com)

Web: [joneslaw.moonfruit.com](http://joneslaw.moonfruit.com)



## CERTAIN DEFENSES UNDER THE TENNESSEE WORKERS' COMPENSATION ACT

### A. NOTICE

Written notice of an injury at work is required by statute in cases where the employer has not been provided actual notice. Tenn. Code Ann. § 50-6-201 requires employees to provide notice within 30 days of a work-related injury. However, the employee must first be aware or reasonably should be aware that he/she has sustained a compensable injury. *Lyle v. Exxon Corp.*, 746 S.W.2d 694, 698 (Tenn. 1988). Timely notice of an employer's agent or representative with actual or apparent authority to receive notice of an injury is sufficient notice to the employer under Tennessee law. *Kirk v. Magnavox Consumer Electronics Co.*, 665 S.W.2d 711, 712 (Tenn. 1984). Notice is one of the more difficult defenses to succeed in making. By way of example, if an employee slips on ice on January 15, 2013 but does not discover that he/she has a permanent injury to his/her back until his/her physician tells him in April of 2013, then many courts will allow the case to proceed. On the other side of the picture, if an employee falls on January 15, 2013, but does not give notice until April of 2013 when he/she realizes that he/she is going to be laid off and had never mentioned pain or discomfort until then, then the Tennessee Department of Labor or court can order that the requisite element has not been satisfied. The determination is generally very factually intensive.

### B. INGRESS / EGRESS

Generally speaking, the courts hold that an employee is not acting within "the course and scope of employment" when the employee is going to or from work, unless the injury occurs on the employer's premises. *Hubble v. Dyer Nursing Home*, 188 S.W.3d 525, 534 (Tenn. 2006); *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143, 150 (Tenn. 1989). The general rule is that an accidental injury received by an employee while en route to or from his or her place of employment is not compensable unless the journey itself is a substantial part of the service for which the employee was employed and compensated. *Douglas v. Lewis Bros. Bakeries, Inc.*, 477 S.W.2d 202 (Tenn. 1972). In *Lollar*, the court went a bit further and stated that if the parking lot is both available to employees and the general public, then the employee is still within the course and scope of employment if he/she falls in the parking lot. Of course, if an employee is "forced" to go a certain pathway on the way to his/her vehicle, then the injury could be deemed compensable.

### C. IDIOPATHIC FALLS

Generally, if an employee falls or is injured due to intrinsic health problems or for no apparent reason, then the injury is "idiopathic," and not compensable. *Sudduth v. Williams*, 517 S.W.2d 520 (Tenn. 1974); *Greeson v. American Lava Corp.*, 216 Tenn. 461, 392 S.W.2d 931, 934-35 (Tenn. 1965). However, if there is a "hazard of employment," such as uneven tile, water or grease on the floor or the corner of a desk, then the injury will be compensable. The Tennessee Supreme Court discussed in *Wilhelm v. Krogers*, 235 S.W.3d 122 (Tenn. 2007) the situation where an employee is "walking" and falls. The Court held that unless there is a "hazard of employment," such as those mentioned above, then the employee may not recover for the injury.

**DISCLAIMER**

The within and foregoing document is a very general overview of legal principles. Additionally, the law is constantly changing with new legislation, administrative rules and cases. As with any law, there are always exceptions that need to be considered. There are always time periods for filing legal actions. If you have specific questions or situations, do not hesitate to contact Jones & Associates, PLLC, 1-B Paulmar Drive, Chattanooga, TN 37415, Telephone (423) 668-8798. Email: [Joneslaw08@gmail.com](mailto:Joneslaw08@gmail.com). Visit us on the Web at: [www.joneslaw.moonfruit.com](http://www.joneslaw.moonfruit.com).



*Jones & Associates, PLLC*

**Attorneys and Counselors at Law  
With Over 20 Years Experience**

**1-B Paulmar Drive  
Chattanooga, TN 37415  
(423) 668-8798**

**Email: [Joneslaw08@gmail.com](mailto:Joneslaw08@gmail.com)**

**Visit us on the Web: [www.joneslaw.moonfruit.com](http://www.joneslaw.moonfruit.com)**