



# You Should Know

## Tennessee workers compensation revisions create new legal burdens for employers

*In 2018, the Tennessee Bureau of Workers' Compensation (BWC) introduced the most expansive revisions to the workers compensation rules since the 2013 reform act. These changes contain provisions that impose new legal burdens on Tennessee employers. This summarizes some of the most noteworthy changes for the purpose of increasing employer awareness and facilitating further review to ensure compliance.*

### Claim handling standards

A new set of regulations codified at 0800-02-14 et seq, which went into effect on August 2, 2018, have heightened the responsibilities of employers in both the handling and maintenance of workers compensation claims. Additionally, the BWC is placing the burden to educate employees on the processes, rights and responsibilities on employers and carriers.

- The employer shall now provide the BWC all information and documentation that is requested for the purpose of monitoring, examining or investigating the entity's operations and processes.
- In addition, employers are now required within 10 calendar days of request to provide any information requested by the Bureau of Workers' Compensation unless the BWC allows an extension of time.

When employers do receive requests from the BWC, they are under a separate duty from their adjusting entity or insurance company to provide the information. Often, the adjusting entity or insurance carrier will assume the burden to provide requested information, but this regulation makes it

the employer's ultimate responsibility for compliance with the potential for penalties of \$50 to \$5,000.

### General rules and penalties

General rule provisions effective May 31, 2018 require employers to:

- Report all known and reported accidents or injuries to the adjusting entity within one business day.
- Provide the employee a panel of physicians on the proper form (C-42) "as soon as practicable" with medical providers that are "qualified, willing and able to treat in a timely manner." If this panel is not provided within 3 business days, the employer will be subject to a penalty.

The legal duty for providing and maintaining the panel of physicians remains with the employer. Therefore, it is critical for the employer to maintain current panels, ensuring the doctors are qualified, willing and currently able to treat in a timely manner. The employer can no longer attempt to shift the responsibility to the insurance carrier for these obligations.

A medical panel must address the following:

1. Be on a [form C-42](#)
2. Given to an employee within three days
3. Contain doctors that are “qualified, willing and able to treat in a timely manner”
4. Doctors must actively accept workers compensation
5. Doctors must be properly qualified
6. Treatment must be timely without untimely delays
7. Emergency assistance does not remove the employer’s obligation to provide a panel
8. Walk-in clinics and urgent care facilities can be included in the panel but must name the staff physician or medical director from said facility
9. On-site, in-house or employer sponsored medical providers can be seen prior to the initial panel being given
10. Specialized facilities can continue to name the group without the associated doctor; however, it is recommended that employers, whenever possible, utilize the name of the doctor to not relinquish control over being able to direct medical treatment to the physician of their choice
11. Nurse practitioners can see employees; however, only the supervising physician may actually be listed on the panel

An employer must pay uncontested penalties within 20 days of receiving a notice from the Bureau of Workers’ Compensation. There is an appeals process which, of course, defers the requirement to provide payment.

## Drug-free workplace

The primary benefit of the Drug-Free Workplace Program is that an employee that tests positive for drugs or alcohol in a workers compensation case has the burden to prove that intoxication was not the proximate cause of injury. Effective May 6, 2018, new regulations clarify that an employer must be a certified member of the Drug-Free Workplace Program. A common problem for employers is that they fail to maintain an active certification by not completing the annual renewal process and thereby lose the intoxication presumption afforded by the program.

## Legislative changes

- **Wrongful denial.** An employee can obtain attorney’s fees from employers and insurance carriers who “wrongfully” deny a claim. Under this new legislation the term “wrongfully” is defined as erroneous, incorrect or otherwise inconsistent with the laws or facts.
- **Fee schedule.** The employer is required to pay any undisputed portion of a bill within 30 calendar days of receipt of a properly submitted medical bill. The employer also has 15 days to resubmit the bill to the provider if it is not a proper form or does not comply with the Tennessee Fee Schedule. The employer is required upon resubmission to notify the provider that the bill was not properly submitted and specify the reason. Thereafter, the employer shall date stamp medical bills and reports not submitted electronically on receipt.
- **Farm and agricultural, student intern and marketplace platforms** were also affected by this legislative session. Please see additional resources below for further reference.



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## Additional resources

<https://www.tn.gov/content/dam/tn/workforce/documents/injuries/legislativeupdate2018.pdf>

<https://www.tn.gov/workforce/injuries-at-work/bureau-announcements.html>

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