

Government and Legal Affairs

An Update on Work Comp Reform of 2013

Written by Ashley N. Gold, JD, Insurors General Counsel

On April 29, 2013, Governor Bill Haslam signed the bill known as the Workers' Compensation Reform Act of 2013. This reform made sweeping changes to Tennessee's Workers' Compensation system which were intended to reduce costs, improve resolution times and create more uniform results. The new law, which has been in effect for just over one year now, is meeting all of the target goals.

On July 1st of this year, the Bureau of Workers' Compensation filed its first report. During the time since the passage of the bill, the Bureau has implemented the provisions of the bill with success and the results are already beginning to be apparent. Among many, several milestones of the implementation were:

- Governor Haslam appointed Abbie Hudgens, administrator, effective July 1, 2013 for a term of six years.



- On July 1, 2014, the Tennessee the Court of Workers' Compensation Claims went into effect with the historic result that state trial courts will no longer decide disputed workers' compensation claims. Instead, administrative courts devoted exclusively to workers' compensation claims will make these decisions.
- The construction of the workers' compensation statute changed to one that required the new workers' compensation courts to construe the statute fairly and impartially in claims for injuries that occur on July 1, 2014 or later.
- The Bureau developed and implemented an ombudsman program in the spring of 2014. Ombudsmen began to assist to self-represented employees and employers July 1, 2014.

During the first year, the overwhelming majority of cases received by the new Court were "Expedited Hearings." In an Expedited Hearing, the Court enters a non-final order that grants or denies the requested medical and/or temporary disability ben-

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efits. The clerk schedules an Expedited Hearing as soon as is convenient for all involved. After the hearing takes place, the judge typically enters an order within 7 to 10 business days. This process generally results in a faster resolution of these temporary matters than what occurred under the previous law's process. These Orders are then immediately reviewable.

As of June 24, 2015, the Court had conducted 86 Expedited Hearings in which a judge issued an order. It takes, on average, 52 days from the time a mediator files a DCN until the judge issues the order. Thirty days typically pass between the clerk scheduling an Expedited Hearing and issuance of an order. The average time it takes for a judge to issue an order is 10 days from the day of the Expedited Hearing. This dramatic shortening of the time required for a party to have his or her "day in court" was one of the central goals of the Reform Act of 2013, and is already being realized.

In all, the Board has resolved twenty-nine expedited appeals as of June 24, 2015, each within the seven business days mandated by law. The average time for a decision is now 4.37 days from the date the Appeals Board receives the appellate record, far less time than under prior law. In addition, as of June 24, 2015, the appeals judges have decided 181 appeals of the 376 decisions made by administrator designees since August 2014.

The number of pre-reform appeals has dropped by approximately forty percent from the same time a year ago. Every appeal decided under pre-reform law has been resolved within the statutorily required time to do so. In other words, the Appeals Board has timely decided 100% of the appeals to date, thereby giving employees and employers alike the certainty needed to move on.

Under the new system, a sizeable percentage of litigants before the Court are unrepresented. Looking at statistics from the first year, approximately 88% of settlement approvals involved a self-represented litigant. Roughly 40 % of litigants who appeared before the Court in Expedited Hearings were unrepresented and approximately 44 % of appellants were unrepresented.

The law has only been in effect one year. It was not until September that the new court received its first case. As a result, it is hard to make definitive statements about the ultimate financial impact of the reform act until more time has passed. However, there are facts we know now that give us a glimpse of the financial impact that the act will have:

- Workers' compensation costs in Tennessee are already decreasing. In the past two years, NCCI loss costs have decreased 21.05%.
- The new permanent partial disability benefit for employees who return to work is 33 % less than the pre-reform benefit.

- The maximum permanent partial disability benefit for employees who are not able to return to work at their pre-injury wage is more than 40% less for the post reform case than the maximum for pre-reform cases.
- Claimants that have very little objective evidence to prove that their employment caused the injury are no longer able to meet the standard for causation, which will bring savings and more fairness to the workers' compensation system.

Insurance companies require more than one year's claims experience before insurance premiums are lowered substantially, but self-insured employers are already beginning to comment on the positive financial impact of the new law. We will continue to watch how these changes will positively affect Tennessee employees and employers, but clearly, the new system is working.

About the Author



Ashley N. Gold has served as General Counsel of Insurers of Tennessee since 2007, and previously consulted for the Association on legal and government affairs matters. She received her undergrad degree from the University of Kentucky and her Juris Doctor from Samford University. She may be contacted at aarnold@insurers.org or by calling her at 615.515.2606. ♦

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