



ANNUAL REPORT

JULY 1, 2018

*Annual Report to the General Assembly of the State of Tennessee
on the Impact of the 2013 Workers' Compensation Reform Act*

TN.GOV/WORKERSCOMP

Administrator's Letter

June 29, 2018

*Honorable Members of 110th Tennessee General Assembly
Legislative Plaza
320 6th Avenue North
Nashville, TN 37243*

Dear Members:

This is the Tennessee Bureau of Workers' Compensation's fourth annual report to each member of the General Assembly in accordance with T.C.A. § 50-6-134 that requires the Bureau to provide a report on or before July 1 of each year that reviews the impact of the 2013 Reform Act on the Tennessee workers' compensation system.

I am pleased to report that the impact continues to be positive and those results, joined with legislation in subsequent years, have made Tennessee's workers' compensation program more effective. Some examples of that positive impact are:

- The Court of Workers' Compensation Claims (CWCC) has functioned well from its beginning on July 1, 2014. The state now has twelve judges in the CWCC who are experts in workers' compensation law, which is reflected in the annual survey of attorneys who appear before the Court. The Court has also shortened the time it takes for a case to be heard from years to months. The CWCC has been a pioneer in its emphasis on continuing improvement in legal writing and has been asked to make presentations on its methods at national meetings.
- The Workers' Compensation Appeals Board meets statutory timeframes for issuing opinions and has expanded parties' access to the appeals process by instituting hearings for oral arguments on a regular basis across the state. An indication of the quality of its legal expertise came recently when the Tennessee Supreme Court adopted the Appeals Board's opinion as its own.
- Assistance to unrepresented parties has increased each year. Four ombudsmen have been available to parties since 2014, and in 2017, an ombudsman attorney was added after legislation was passed in 2016 that allowed

the position to “provide limited legal advice.”

- The Court of Workers’ Compensation Claims, the Appeals Board, and the mediation program have developed handbooks and videos to help injured workers who are not represented by attorneys understand the system.
- Mediations continue to improve in effectiveness, reaching a 77% settlement rate this year.
- The new Vocational Recovery Program created by 2017 legislation is moving toward implementation with the approval process for its rules and should be ready to help workers who are injured on or after July 1, 2018.

We are grateful for Governor Haslam’s and the General Assembly’s support of a workers’ compensation system that is fair for both employees and employers and that “fulfills the promise of workers’ compensation today... and tomorrow.”

Sincerely,



Abbie Hudgens, Administrator
Bureau of Workers’ Compensation

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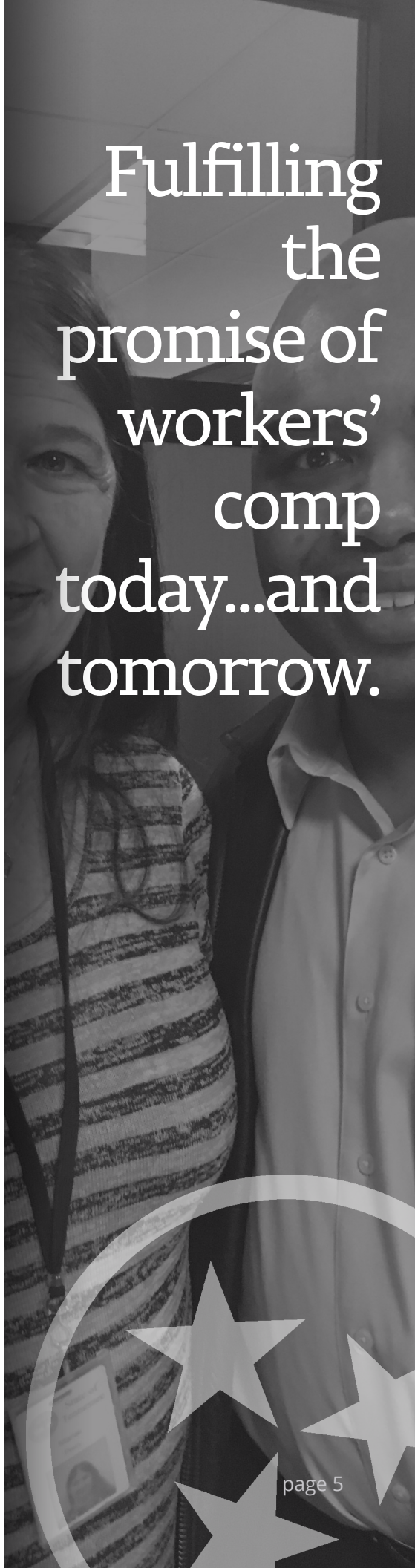
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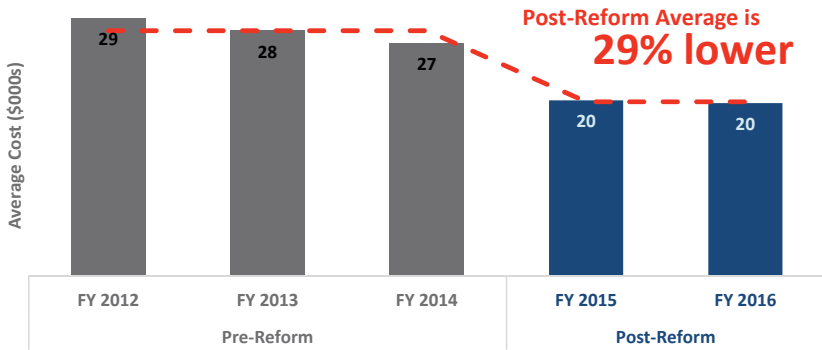
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Fulfilling
the
promise of
workers'
comp
today...and
tomorrow.

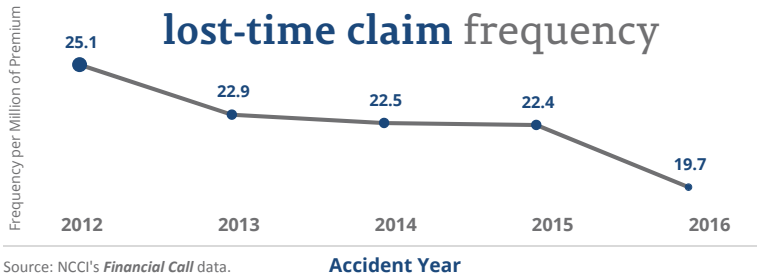
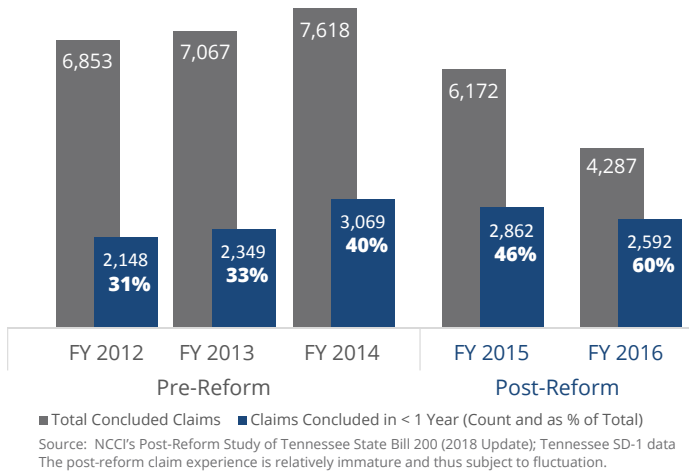
Highlights

permanent partial average cost per case



Source: NCCI's Workers Compensation Statistical Plan data as of 2nd report, adjusted to latest wage and benefit level

acceleration of claim resolution process

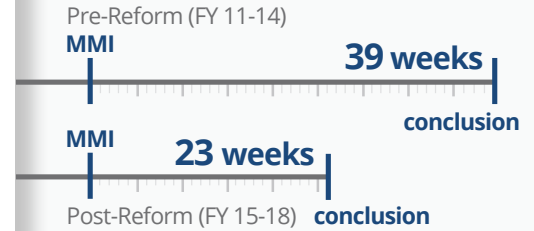


"...because every business is looking for predictability, we passed tort reform and workers' compensation reform to bring our state into a more competitive position and make our business environment more predictable for businesses looking to grow or to locate here."

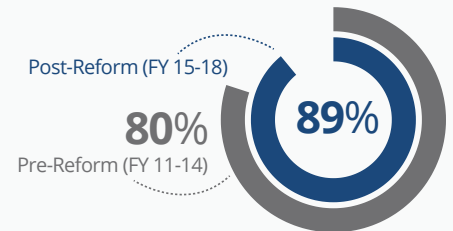
Excerpt from Governor Haslam's State of the State Address on January 29, 2018

MMI to conclusion

The length of time from Maximum Medical Improvement (MMI) to the conclusion of the claim has shortened when comparing the four-year average before and after the reform.



% of employees who returned to work after claim settlement



average duration of temporary total disability claims



Numbers for FY 2018 are "to date." For the TTD data, that was June 22, 2018; for the RTW and average duration, those are for claims concluded through May 6, 2018.

Mediation

Alternative Dispute Resolution

Claim disputes are a part of the workers' compensation system. A proper regulatory system provides simple, expeditious ways to resolve disputes fairly, with increased satisfaction of the parties and reduced costs, while maintaining cordial and cooperative relationships between the employee and the employer. These are all benefits of a successful mediation program. Since the implementation of the Reform Act, the mediation program has been increasingly effective. Year after year, the percentage of disputes resolved without going before a judge has increased.

When a party requests alternative dispute resolution to resolve a workers' compensation claim dispute, it initiates a process that grabs the attention of the opposing party and informs them of the issues that need to be resolved. The two parties are then able to focus on understanding the problems that are preventing settlement. During mediation, employers and injured workers work together with the Bureau's mediators to obtain relevant claim information, learn about workers' compensation, seek compromise, weigh options, and reach settlements.

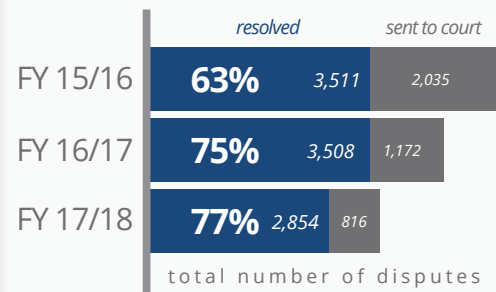
Better Prepared for Mediation

The 2013 Reform resulted in more engaging and meaningful mediation. It imposes a simple, common sense requirement that parties come to mediation prepared with the appropriate resources and requires the parties to share information. Parties must mediate all disputed issues and cooperate with scheduling the mediation.

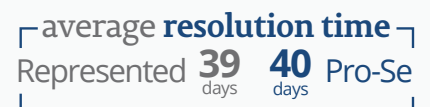
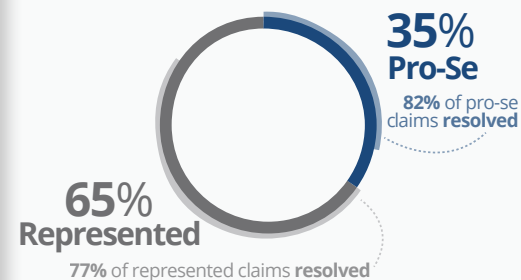
The Bureau has invested in enhanced training and mediator development in each of the last five years. The implementation of co-mediation, peer-to-peer review, and process training has reaped significant benefits.

More informed injured workers and employers, combined with better trained mediators, have resulted in more settlements.

disputes resolved



FY 2017/18 claims breakdown



Game-Changing Documentation

An unexpected positive impact on mediation came from the Reform's requirement that a mediator complete a Dispute Certification Notice to accurately document the disputed issues. To issue a Dispute Certification Notice, a mediator will conduct a joint mediation to discuss the issues with the parties one last time before the case goes to court. This might result in a resolution of the dispute during the joint session because an unknown or unclear fact is brought forth or a party's dispute is clarified. Some disputes resolve during the waiting period between the date the Dispute Certification Notice is created with the parties and before it is sent to the Court of Workers' Compensation Claims. All of the enhancements since the reform have resulted in an improved process with better outcomes.

Positive Feedback from Injured Workers

...Over the past several weeks, or months, I have had the absolute pleasure of dealing with Mediator Lisa Armstrong,... Not only did Ms. Armstrong do her job and do it very well, she also, for no other reason than to help, did what she was able to do to help me better understand what was and what would be happening and she was instrumental in helping me get through a difficult and complicated process with which I was not at all familiar. As far as I'm concerned, Ms. Armstrong is a valuable component of your operation and an asset to the State...

Sincerely, Edward Lee Rose III (Employee)

I hope no one ever has to go through a work related injury. But if you have the misfortune I truly hope you have the pleasure of meeting Nicole Billings out of the Chattanooga, Tennessee office. She is the nicest lady I have ever met. She is patient, helpful, responsive, and she takes the time to make sure you know your rights and the process. Above and beyond professional. Great experience dealing with her.

*From: Michael Holt via Facebook
(Employee)*

Ombudsman

Assistance for Unrepresented Parties

The most efficient way the Bureau helps resolve disputes fairly and quickly is through the ombudsman program. Many employees who are injured at work may only be injured once in their lifetimes and do not understand how to pursue their claims. Likewise, many employers seldom have employees injured at work. Inexperienced employees and employers might make mistakes or missteps, and they need assistance from someone who understands workers' compensation. Many obtain a lawyer for this assistance. Those who do not may contact our ombudsman program.

The 2013 Reform Act created the program to provide free, experienced, and neutral assistance to inform, guide, and reassure those who need help. The program teaches interested parties about workers' compensation principles and connects them to resources so they can learn more. This helps prevent or resolve disputes caused by confusion and misinformation.

New Video Resources

This past year, the program added five video resources to educate and inform the public. Below is a scene from one video, and we invite you to click on the picture to explore the video series.

How Do I Report My Work Injury?



<https://youtu.be/F0nBR-NHPBw>

Solving Problems

The ombudsman program's role in dispute resolution continues to grow. In this most recent fiscal year, the ombudsman program helped a record number of injured

top reasons for contacting us

Basic information 10,394

Employer had not reported the claim 573

Carrier denied the claim 537

Temporary disability benefits problems 484

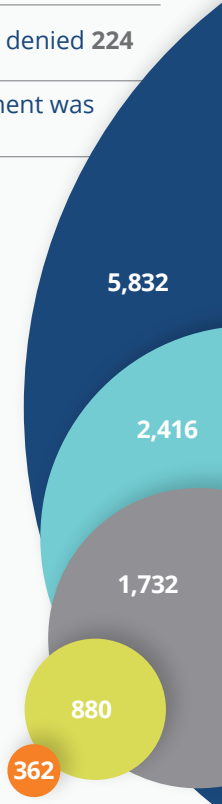
Employee had not been contacted by the insurance carrier 395

Medical Treatment was denied 224

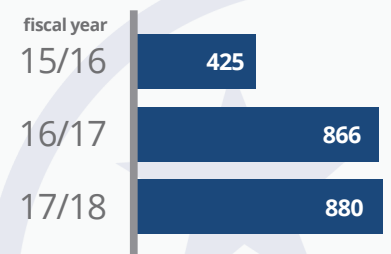
Lifetime medical treatment was denied 166

assistance provided

- Provide Basic Information
- Provide or assist with dispute resolution forms
- Provide Literature
- Contact the opposing party and resolve the problem
- Connect claimant with the adjuster



disputes resolved



workers with obtaining workers' compensation benefits. These disputes are resolved within two or three days without formal mediation. This provides a significant advantage over the mediation process, which may take several weeks.

Customer Feedback

Customers of the ombudsman program recognized the importance of the program. During the 17/18 fiscal year, 91% reported they had a positive experience with the ombudsman program. Eighty-nine percent of those who prosecuted their cases in Court indicated the ombudsman program positively impacted their ability to understand the Court of Workers' Compensation Claims.

I just wanted to let you know that I went to my doctor yesterday, and he released me. My shoulder is in good shape, and everything is good to go. I wanted to call and thank you [Darlene McDonald] for your help. I would have been lost without you. And I thank God for you and think you're a very special person. You have a very good day, and I appreciate all of your help.

Norman Perry Jr (Employee)

I just wanted to let you [Susanne LaPlante] know that my surgery has been okayed. The mediation went well. I didn't even have to talk to anybody. I wrote a pretty good 2 page dissertation, and apparently that, I think, made the difference in getting my surgery okayed. So, I wanted to thank you for your expertise and helping me get through this. If you would like to call, that's fine. But once again, I just wanted to thank you for your work and helping me get this surgery okayed. And hopefully, everything will go well. Thank you.

Jack Lawson (Employee)

survey results
overall satisfaction

92% **96%** **91%**

15/16

16/17

17/18

positively impacted

ability to understand the Court of
Workers' Compensation Claims

84% **89%**

16/17

17/18

Ombudsman Attorney

The mediation and ombudsman programs are not yet resolving every disputed workers' compensation claim. Until that day comes, parties who choose to represent themselves or are unable to obtain an attorney need help prosecuting their cases before the Court of Workers' Compensation Claims. The ombudsman program has increasingly become more effective at explaining the court process with simpler terms and by developing tools self-represented litigants can use to better present their cases. The Bureau's efforts to assist unrepresented parties was aided by the 2016 amendment to the Reform act.

The amendment allows an ombudsman who is a licensed attorney to "provide limited legal advice" but cannot "represent any party as the party's attorney." (T.C.A. § 50-6-216(e)(3)). The Bureau spent many months seeking to determine the ethical parameters that "limited legal advice" imposes. It was assisted in this effort by the Board of Professional Responsibility of the Supreme Court of Tennessee, which issued a formal ethics opinion that delineated the permissible tasks, actions, and areas of advice that will provide genuine assistance to self-represented litigants. This clarification ensures that the ombudsman program provides the best possible information to employees while maintaining the highest ethical standards.

The ombudsman attorney began assisting Tennesseans in August 2017. Forty-eight self-represented litigants have enlisted the ombudsman attorney's aid as they litigate their workers' compensation disputes. Many have needed help with understanding and navigating the Court of Workers' Compensation Claims. Others have received assistance to better understand their legal issues.

The charts to the right detail the additional assistance the self-represented litigants received because of this new law.

Reasons for Contacting

- Entire claim denied **32**
 - Employer was uninsured **3**
 - Medical care denied **2**
- Temporary disability benefits denied **2**
- Panel of physician dispute **1**
- Settlement set aside **1**

Basic Legal Principles

- Causation **30**
 - Hernia statute **3**
 - Light duty / layoff / termination **2**
- Employee versus subcontractor **1**
 - Jurisdiction **1**
 - Rules of Civil Procedure **1**
 - Service / Notice of lawsuit **1**

Legal Advice

- Settling Doubtful and Disputed versus Proceeding in Court **12**
 - None **5**
- How to Solicit and Present a Physician's Medical Opinion **4**
 - How to Answer Interrogatories **1**
 - How to Respond to a Motion for Summary Judgment **1**
 - How to Provide Notice **1**

Services Provided

- Explained the Law **31**
 - Procedural Guidance **9**
 - Provided and Explained Written Materials **9**
 - Referred to Source **3**
 - Provided Basic WC Info **1**

Results

- Employee Settled Their Claim **11**
 - Lost at Expedited Hearing **8**
- Awarded Benefits at an Expedited Hearing **4**
 - Employee Retained Counsel **3**
 - Case Dismissed Without Prejudice **2**
- Prevailed on Motions for Summary Judgment **2**

Court of Workers' Compensation Claims

The Reform Act of 2013 created the Court of Workers' Compensation Claims, a trial court devoted exclusively to workers' compensation. By designating an exclusive court, the reform established speedier, more efficient and consistent resolution of contested matters. Below is a brief summary of how the Court has achieved the expected results and gone even further.

Introducing TNComp

Now four years in operation, the Court of Workers' Compensation Claims and the Appeals Board ushered in a significant milestone this past year with the unveiling of a new electronic filing system, TNComp.

TNComp is an innovative system that allows attorneys and parties to file documents online without printing copies or traveling to Bureau offices across the state. It allows all parties to file contested case pleadings in a more efficient, cost-effective manner.

Previously, both litigants and counsel filed documents via email. On the receiving end, however, Bureau staff had to print each emailed document, file-stamp the document and then enter the information into a database. The manual filing process took between 24 and 48 hours to complete. In addition, if counsel or parties wanted to view a file, they had to contact the Clerk to receive the information. Now, documents can be filed and accessed from the convenience of their offices or homes.

The Bureau modeled TNComp after the PACER platform in the federal court system but tailored it to the Tennessee Workers' Compensation Law.

Attorneys and litigants can now electronically file documents any time, view any documents associated with the case, receive notices when a new document is filed, and receive reminders of upcoming hearings. All of TNComp's services are provided at no cost.



No more
printing,
stamping,
or entering
documents
manually.

To educate the TNComp external users, the Bureau developed instructional videos as well as written instructions. The Bureau also conducted "Coffee with the Court" sessions in April 2018, where TNComp was a central topic of discussion.

TNComp is not just for the Court of Workers' Compensation Claims and the Workers' Compensation Appeals Board but will expand to other units within the Bureau soon. Both Courts have always emphasized the administration of justice at an expeditious pace; TNComp will enhance that.

High Quality, High Speed Decisions

Along these lines, all twelve judges of the Court of Workers' Compensation Claims continued to meet their internal deadlines for releasing orders. The "fastest" judge released opinions after all evidentiary hearings within two business days, while the average for all judges was seven and one-half business days for expedited hearings and ten and one-half business days for compensation hearings.

Positive Assessments

This relatively rapid turnaround did not result in decreased quality of the decisions. The judges of the Court of Workers' Compensation Claims, all specialists in the area, continued to receive high marks in the annual survey from the practicing bar and self-represented litigants who participated in contested hearings in the past year. The Court is especially proud of the survey findings regarding impartiality, as fairness, ethics and honesty are central components of the Court's mission.

The Court continues to tap external subject-matter experts to critique each judge's writing. Unlike any other court system, the judges' orders are regularly reviewed and scored by outside subject matter experts. On a five-point scale, with five as "exceptional" and four as "above average," the judges received an average rating of 4.52, while several judges received fives.

How to Register on TNComp



<https://youtu.be/IgRuold9oLk>

attorney **survey** attribute **averages**

Legal Ability	★★★★★
Written Decisions	★★★★☆
Temperament	★★★★★
Diligence	★★★★★
Impartiality	★★★★★

National Recognition

After just four years, the Tennessee Courts are emerging as leaders among workers' compensation judiciaries nationally. Chief Judge Kenneth Switzer serves on the board of the National Association of Workers' Compensation Judiciary. The NAWCJ chose Tennessee to host a two-day "boot camp" for new judges from across the country, where several Bureau employees and the Court's writing, subject-matter experts offered their general expertise and practical approaches. Following the "boot camp," Chief Judge Switzer delivered the keynote address at the annual College of Workers' Compensation Lawyers induction ceremony, a black-tie affair where Appeals Board Presiding Judge Marshall Davidson was inducted as a Fellow.

Looking Ahead

Throughout the past four years, the Court has pursued the ideal that prompt, hands-on management of litigation results in a predictable, efficient court system. The Court will continue to emphasize quality orders and the accessibility of the courts.

In addition, the Bureau will continue to make infrastructure improvements where necessary. For example, in Fiscal Year 2017/18, the Nashville office opened its own dedicated courtroom, while the East Tennessee branch moved from Kingsport to a new, state-of-the-art facility in Gray. Chattanooga will be the last location to install a dedicated courtroom later this year.

Finally, safety remains a prime focus as the Court searches for ways to provide in-person security measures for each of our eight locations. Jackson and Nashville are leading the way, with facility protection officers already on site. The goal is to provide similar protection in the other six facilities with proper funding.



Our staff
joins the
experts
in a "boot
camp"
for new
judges.

Appeals Board

Any adjudicatory system that values fairness and justice includes appellate review. Accordingly, a key element of the 2013 reforms was the creation of the Workers' Compensation Appeals Board, which consists of three judges appointed by the Governor.

Oral Arguments

The Appeals Board, now in its fourth year, continues to emphasize its core function of providing fair, efficient, and meaningful appellate review of decisions issued by the Court of Workers' Compensation Claims. To that end, the Appeals Board has begun hearing oral arguments on a regular basis across the state. Some of these oral arguments have been held at law schools. Hundreds of students, attorneys, and members of the public have attended oral arguments and report finding the process interesting, educational, and transparent. Importantly, the parties to the cases feel as though they have been heard, no matter the outcome, when given the chance to make their legal arguments directly to the appellate judges.

Materials to Assist Parties

Additionally, the Appeals Board has developed tools intended to assist self-represented litigants in navigating the appellate process. Specifically, the Appeals Board created a guidebook to walk litigants through the process of an appeal from the filing of a notice of appeal until a decision is issued. Additionally, the Appeals Board created an instructional video for self-represented litigants that explains how the appellate process works and what to expect when appealing a case. These tools are designed to educate litigants and help them make their appeal as meaningful as possible. Both the guidebook and the video are available on the Bureau's website at no cost to the parties.

Faster Decisions

The Appeals Board continues to issue its decisions within statutorily-mandated timeframes. The practical significance

Only 27
new law
cases
have been
appealed
to the
Tennessee
Supreme
Court.

There continues to be a marked reduction of workers' compensation appeals to the Tennessee Supreme Court. In the four years prior to the reform, there were 319 workers' compensation appeals to that Court. In the four years since the reform, there have been 27 new law cases appealed to the Supreme Court.

of this is that appeals are being decided more quickly than under pre-reform law, giving employees and businesses alike the ability to better plan for the future.

Fresh Regulations

The Appeals Board successfully updated its regulations, which became effective February 5, 2018. The benefit of the amended regulations is two-fold. First, the language of the regulations is now consistent with statutory changes that took effect in 2017. Second, the regulations were simplified and streamlined, with unnecessary or repetitive portions being eliminated. Also, the regulations were reorganized to more accurately reflect the natural order and flow of appeals. Changes like these are no small matters, as parties need to be clear on what to do when appealing and how to do it.

Constitutional Challenge

A major milestone in the Appeals Board's development occurred when the Tennessee Supreme Court's Special Workers' Compensation Appeals Panel decided *Pope v. Nebco of Cleveland, Inc.*, E2017-00254-SC-R3-WC, 2018 Tenn. LEXIS 146 (Tenn. Workers' Comp. Panel Jan. 16, 2018). In the seminal case on the subject, constitutional challenges to the establishment and operation of the Appeals Board were rejected. The Tennessee Supreme Court, in January 2018, adopted the Panel's decision as its own. The *Pope* decision represents an important step in institutionalizing the Appeals Board and the 2013 reforms.

Recent Decision Adopted by Supreme Court

In another major decision concerning the Appeals Board's development, the Supreme Court's Workers' Compensation Appeals Panel issued a decision in *Thysavathdy v. Bridgestone*, No. M2017-01575-SC-R3-WC, 2018 Tenn. LEXIS 313 (Tenn. Workers' Comp. Panel June 8, 2018), in which the Court adopted the Appeals Board's opinion as its own. It is rare for a higher court to do this with a lower court's decision.

geographic source of appeals

21 Jackson	12 Cookeville	31 Kingsport / Gray
44 Memphis	44 Nashville	24 Knoxville
	40 Murfreesboro	53 Chattanooga



Medical Components

of the 2013 Reform

Two Committees

The Reform Act separated the Medical Care and Cost Containment Committee into two committees with distinct and separate responsibilities. One hears disputes on medical bill payments between medical providers and payers and advises the Administrator on the medical fee schedule. The other assists the Administrator in the continued development of treatment guidelines and provides advice on issues related to medical care in workers' compensation.

The **Medical Payment Committee** provided opinions for 28 disputed cases in FY 2017-18 and completed work on the revisions to the Medical Fee Schedules for providers and hospitals. These became effective February 25, 2018, and were cost-neutral. A new review, commenced in January 2018 to be completed this year, is analyzing the adequacy of fee payments to providers, alternate rules for outpatient radiology services, and reimbursements to ambulatory surgery centers.

The **Medical Advisory Committee** completed its work on the treatment guidelines and drug formulary in 2016. At its quarterly meetings, it reviews any updates to the guidelines or formulary and reviews problems arising in the delivery of medical services to injured employees. Insurers are now reporting reduced costs as a result of the application of the drug formulary rules. In advising the Administrator, it has recently worked on finding solutions to friction points in the workers' compensation provision of medical care and cost containment. The committee has helped address the opioid crisis in workers' compensation claims. It has crafted advisory opinions about medical evidence for procedures that have been shown to be less effective for injured employees than desirable, such as certain back surgeries and some treatments in the drug formulary.

e-Billing

To improve payment efficiencies to providers and payers, e-Billing rules go into effect July 1, 2018, after being approved by the Joint Government Operations Committee. The Bureau partnered with many stakeholders in adopting national standards for e-Billing. A user guide that includes provisions for exemptions and implementation procedures is posted on the website to help in the transition.

Drug-Free Workplace Program

The Drug-Free Workplace Program revised its rules for 2018, changing the tests and procedures for alcohol, illicit drugs, and prescription drugs to conform to the U.S. Department of Transportation guidelines. These revised rules were approved by the Joint Government Operations Committee in February 2018. Safety in the workplace continues to be the focus of the program, while recruiting more participants to the program by simplifying the implementation process through written materials, drafting user-friendly policies and giving live presentations.

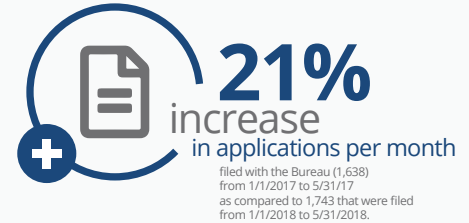
Educational Efforts for Medical Issues

Changes in the 2013 Reform Act regarding the interpretation of medical causation and ratings for permanent impairment have required continued educational efforts. Members of the Medical Unit reached out to providers and payers, giving educational materials and presentations on case management, utilization review, treatment guidelines, the Medical Impairment Rating Registry and the recent updates to the fee schedule.

Utilization Review Appeals

If an injured employee is denied care recommended by their physician, he or she may appeal to the Bureau for a determination of medical necessity according to the published medical treatment guidelines. During FY 2017-18, the Bureau reviewed 1209 appeals for denied medical services. Fifty-two percent of these appeals were overturned, and the requested treatment was approved for the employees.

drug-free workplace



Opioid Crisis

The Bureau has participated in the Department of Health's *Chronic Pain Management Guidelines* project and has updated its appendix for circumstances unique to injured employees. Special emphasis is on the appropriate treatment of acute pain according to the CDC guidelines and on applying the latest medical evidence to the long-term treatment of chronic pain in injured employees (with or without opioids).

The Utilization Review appeals process is one of many educational tools used by the system to address this issue, helping the injured workers return to work and to effect a functional recovery with appropriate drug therapies.

Opioids
were
associated
with over
1,600
deaths in
Tennessee
in 2017.

Compliance

UEF + EMEEF

A second reform in 2013 broadened the Bureau's ability to impose penalties on construction companies that avoid paying workers' compensation premiums by misclassifying workers' job duties, number of workers, or the amount of the construction company's payroll. This reform divided the work of the Compliance Program into two sections. First, the Employee Misclassification and Education and Enforcement Fund (EMEEF) identifies employers in the construction services industry who misclassify and often deny employees coverage to avoid paying the appropriate workers' compensation insurance premiums. The other is the Uninsured Employers Fund (UEF), which identifies employers who fail to provide any workers' compensation coverage to its employees in spite of the law's requirements.

Both population and economic growth present great opportunities for the State of Tennessee, but they also encourage some employers to take advantage of their employees by not providing proper insurance coverage to get more profits and compete unfairly with law-abiding employers.

Outreach

Outreach programs conducted this year have focused on two groups: the Hispanic community and insurance company auditors. The Bureau reached out in three public meetings with the Hispanic community to provide information and answer questions. These meetings, beginning in July 2017, led to increased trust between the Compliance Program and members of the Hispanic community. Developing a rapport between the Bureau and insurance carriers has created a shared vision of combatting the problems that hurt so many.

Nashville's Growth Gets Our Attention

The population in the Nashville Metro area is growing, as more people and businesses are relocating to Nashville and the surrounding areas. In 2017, Nashville-Davidson County alone issued 4,407 residential building permits, and 315 building permits for new commercial buildings,

Compliance Program Overview



<https://youtu.be/OFC-bDUI0KU>

Our efforts
increase
fairness among
businesses.

Misclassification
affects the entire
construction
industry.



Bureau staff, Martha-Lynn Lee, speaks on November 15, 2017, with Hispanic employees and employers in Knoxville.

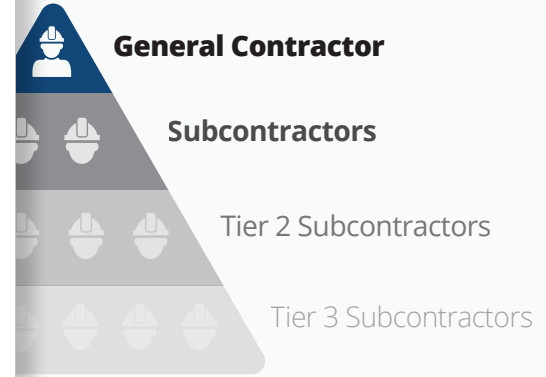
totaling over \$1.7 billion dollars in estimated construction costs.^[1] Considering this growth and evidence of significant noncompliance, the Bureau increased its focus on the construction industry this year.

Investigations have found that most general contractors of larger construction companies abide by the workers' compensation laws. However, general contractors often utilize subcontractors for much of the work on their projects. Subcontractors employ other subcontractors and those subcontractors may use "subs." The Bureau finds most problems among the second, third, and lower-tier subcontractors.

Unregulated "Labor Brokers"

Construction costs are on the rise, while laborers are in short supply. Responding to those pressures is a type of subcontractor known as a "labor broker," who provides a certain number of laborers on specified dates to a general contractor or subcontractor for work on large construction projects. The contractor pays the labor broker for the labor, and the labor broker pays the workers. Usually, no paper trail exists on these workers.

These labor brokers are more likely to engage in employee misclassification, either by underreporting the number of workers on their payroll or by misrepresenting the work being done by employees. General contractors do not always confirm that the subcontractors maintain the correct insurance coverage. Sometimes the labor broker provides a certificate of coverage and then cancels the insurance. Misclassification and failure to provide workers' compensation insurance causes problems for general contractors, too, because they can be held accountable for a lack of insurance by their subcontractors according to Tennessee Code Annotated section 50-6-113.



[1] Metro Codes Department (<https://data.nashville.gov/Licenses-Permits/Building-Permits-Issued/3h5w-q8b7>)

From Input to Output

The Bureau's Compliance Program is fortunate to have an Employee Misclassification Advisory Committee (EMAC) as a resource for input and guidance. The committee is made up of representatives from state agencies and stakeholders who are committed to reducing misclassification and employers' failure to provide workers' compensation in Tennessee. This group emerged from the EMEEF Task Force established in 2010 by statute. When the enabling statute sunset, the task force remained as a voluntary advisory committee that continues to provide valuable perspectives, expertise, and advice about important issues.

One of its suggestions was implemented this past summer and fall. The Bureau, with cooperation of the Department of Labor and Workforce Development, hosted two forums for insurance company auditors and other stakeholders. As a result of these meetings, some insurance companies have changed practices that might reduce noncompliance. A new level of cooperation emerged between the state and insurance companies to combat the problems faced by both.

We Keep Moving

As we continue to see progress, the fight to end unfairness in the workplace over workers' compensation coverage is far from over. Employee misclassification continues to riddle our state. We are committed to improving efforts with both enforcement and educational outreach across the state to ensure that employees are adequately protected while on the job.

Vocational Recovery Act

In May 2017, the Reform Act was amended to connect permanently disabled workers with public institutions and monetary resources to acquire the knowledge, skills and abilities they need to return to meaningful employment. The Bureau drafted rules and conducted a public rulemaking hearing on June 21, 2018. After receiving public comments, the revised rules will be submitted to the Attorney General for review and his signature before filing the final rules with the Secretary of State and appearing before the Joint Government Operations Committee for approval. This assistance will be available to workers who are injured after July 1, 2018.

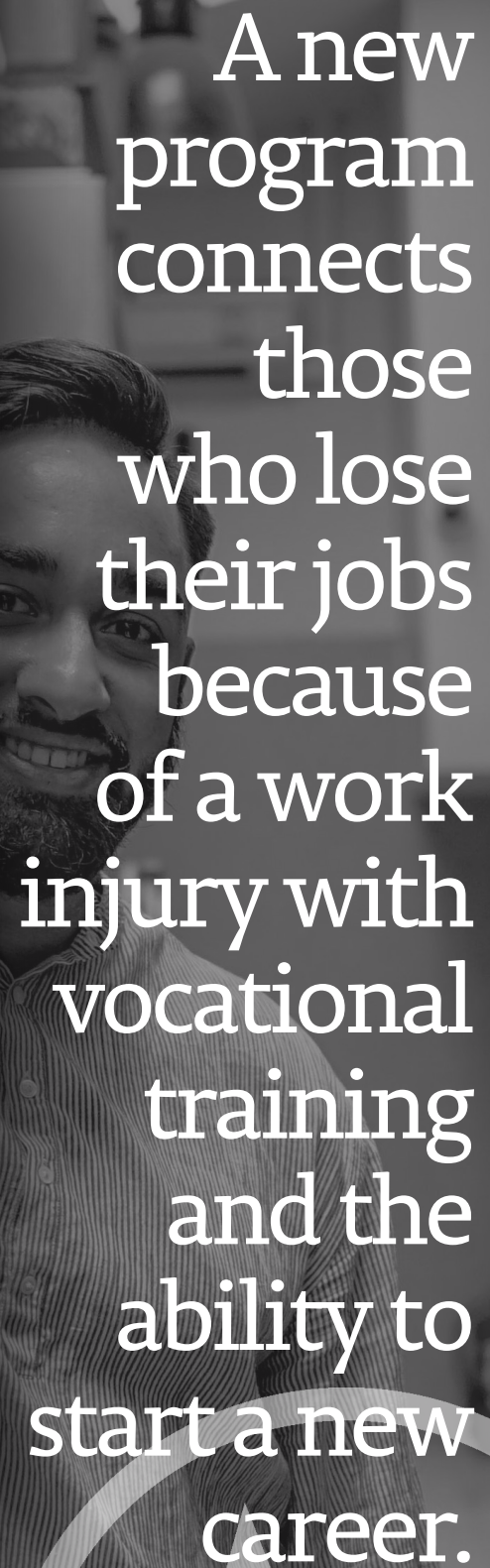
Collaborating with other Agencies

To promulgate the rules, the Bureau sought input from other state government entities that provided important information and opportunities for collaboration. The Tennessee Department of Labor and Workforce Development provided assistance with understanding the educational opportunities and resources available to complement the \$5,000 per fiscal year aid provided in the 2017 amendment to the Reform Act. The Tennessee Higher Education Commission provided help understanding the programs available at Tennessee higher education institutions and enhanced the Bureau's knowledge regarding how the financial aid process works.

Collaborating with Stakeholders

The Bureau enlisted assistance from industry stakeholders. Members of the Chamber of Commerce, the Tennessee Defense Lawyers Association, AFL-CIO, a physician, and a vocational rehabilitation expert have provided input regarding the rules. The combined expertise of these individuals provided keen insight for avoiding pitfalls and better understanding the needs of customers.

Collaboration with stakeholders and with other state agencies prepared the Bureau for challenges with implementing this program.



A new program connects those who lose their jobs because of a work injury with vocational training and the ability to start a new career.

Communication and Outreach

The Bureau has a strong emphasis on equipping both employers and workers alike with the know-how and resources to recover from injury, reduce costs, and return to work. Every program in the Bureau makes continuous educational efforts via speaking, videos, or written materials—most in both English and Spanish.

Adjuster Certification Program

Our two-day, voluntary training designed for insurance adjusters is in high demand. Within 24 hours of its announcement, the third class had already filled all 36 seats. These classes are crafted to ensure injured workers are treated fairly and that claims are handled consistently across the various insurance companies. To date, thirty-nine claims handlers (100%) have passed the exam provided at the end of the training sessions and are recognized by the Bureau as “Certified Adjusters.” Three more trainings are being planned across the state before the end of the calendar year.

Bureau Leadership Academy

Strong communication starts from within. The Bureau partnered with DOHR to develop a Leadership Academy to discover and prepare the next generation of leaders from within the Bureau. From the 32 submitted applications, twelve staff members were selected and are on track to graduate in April 2019.

Reaching over 2,000 in Speaking Engagements

Collectively, the Bureau’s staff has conducted over 50 presentations reaching over 2,000 individuals in the last fiscal year. Audiences include employers, attorneys, medical providers, insurance adjusters, laborers, nurse case managers, and safety officials. The Bureau’s 21st Educational Conference was a three-day event in June 2018 that reached over 600 attendees, who heard from nationally-known presenters as well as local experts. This year, Miss Tennessee 2017, Caty Davis, joined a panel discussion about the opioid



epidemic and shared her family’s personal tragic experiences with the audience. Another feature of the conference involved a fundraiser for Kids’ Chance of Tennessee, a non-profit organization that provides college assistance to children whose parent was killed or catastrophically injured in a work-related accident.

Staying Current with Newsletters and Social Media

Newsletters and social media platforms serve as great tools to keep interested parties informed of the latest updates from the Bureau—especially the younger stakeholders. The Bureau has a presence on Facebook, Instagram, YouTube, Twitter, and LinkedIn. At the conference, Facebook Live was used to broadcast seven short interviews of the speakers to provide a “behind-the-scenes” look at what was being discussed.

Moving Forward

As we look toward FY 2018-19, the Bureau is preparing a campaign to inform the public about the new Next Step Vocational Assistance Program and plans are being made to offer at least four Adjuster Certification sessions in CY 2019. With building momentum, outreach efforts will continue to educate employers about the claims process, produce newsletters, and grow the social media following.

21 things to love in 45 seconds!








<https://youtu.be/lyebTHpg9gY>

newsletter distribution

	recent issues	subscribers
 External Newsletter	5	2,170
 Internal Newsletter	5	~150
 Medical Journal	4	~650

“It keeps getting better and better.”

	Followers	Recent Posts
	179	76
	240	68
	53	14
	27	11
	76	12

Post-Reform Benefits That Did Not Change or That Improved

Legislative Updates

The following three main pillars of workers' compensation were improved in two ways.

Permanent Total Disability (PTD)

It is important to note that provisions for Permanent Total Disability (PTD) benefits have remained unchanged since the 2013 reform, as the law still contains section 50-6-207(4). An injured employee is determined to be permanently and totally disabled if the injury (or combination of injuries) totally incapacitates the employee from working at an occupation that brings the employee an income. In cases of permanent total disability, benefits are payable to the employee until they are eligible, by age, for full benefits in the Old Age Insurance Benefit Program under the Social Security Act. The 2013 Reform Act included a provision to eliminate gaps in benefits for those who were within five years of the previous eligibility age for Social Security benefits.

Temporary Total Disability (TTD)

The benefits for Temporary Total Disability (TTD) benefits did not change with the reform. They are still based on a maximum of 110% of the average weekly wage which has increased each year since the reform. As of July 1, 2018, the maximum TTD weekly benefit will be \$1,021.90. Temporary total benefits are not limited to a certain number of weeks with one exception. In the case of mental injuries with no underlying physical injury, there is a limit of 104 weeks after the date of injury. This valuable benefit for workers often goes unappreciated.

Death Benefits

Death benefits were also left largely unchanged in the Reform Act but were enhanced. The number of weeks on which the benefit was based was increased in the Reform Act from 400 weeks to 450 weeks. In 2017, the benefit for

funeral expenses increased from \$7,500 to \$10,000.

2018 Legislative Changes That Will Impact the Reforms

The workers' compensation system in Tennessee will be affected by several legislative changes made by the 110th General Assembly in the 2018 session.

Farm and Agricultural Employers

Public Chapter 629 (SB2141 by Gresham/HB2105 by Halford) will allow farm and agricultural employers to accept the workers' compensation law by purchasing a workers' compensation insurance policy. This law will also allow a farm or agricultural employer to withdraw acceptance of the workers' compensation chapter at any time by canceling or not renewing the policy and providing notice to its employees.

Governor Haslam signed this into law on April 2, 2018, and it became effective upon signing.

Attorney Fees

Public Chapter 757 (SB2475 by Roberts/HB2304 by Beck) will extend the sunset date to June 30, 2020, in section 50-6-226(d) on the recovery of attorney fees and other costs against an employer in a workers' compensation action who wrongfully denies a claim, if the workers' compensation judge subsequently makes a finding that such benefits were owed at an expedited hearing or compensation hearing. Importantly, the new law defines "wrongfully" as "erroneous, incorrect, or otherwise inconsistent with the law or facts," which is a broader standard that should result in greater judicial discretion in awarding fees and costs.

Governor Haslam signed this into law on April 18, 2018, and it became effective upon signing (for injuries on/after the effective date).

Marketplace Platforms

Public Chapter 648 (SB1967 by Watson/HB1978 by Marsh) provides that a marketplace contractor is an independent contractor and not an employee of the marketplace platform for all purposes under state and local laws, rules, ordinances, and resolutions if certain conditions are set forth in a written agreement between the marketplace platform and the marketplace contractor.

Governor Haslam signed this into law on April 9, 2018, and it becomes effective July 1, 2018, for services provided through a marketplace platform on or after that date.

Bureau of Workers' Compensation Sunset Extensions

Public Chapter 563 (SB1521 by Bell/HB1615 by Faison) extends the Bureau of Workers' Compensation for six years to June 30, 2024. The Bureau's Medical Advisory Committee (PC 513) and Medical Payment Committee (PC 514) were also extended to June 30, 2024. These extensions were an affirmation of the Reform Act of 2013 and of the efforts of the Bureau's staff.

Conclusion

Next year, Tennessee's workers' compensation system will be one hundred years old. The last century has been a period of great change in our state. The workers' compensation system has been no exception. Fewer jobs involve hard, manual labor and more jobs now exist in the service industries. The make-up of the labor force is no longer predominately male and not as young as it was in 1919, when workers' compensation was enacted.

Along with these and other changes, medical and indemnity benefits increased and, beginning in the 1990s, the state began to implement reforms addressing the scope and administration of these benefits. Reporting on the most comprehensive of those reforms is the purpose of this report. The effects of the 2013 Reform Act have been predominately positive. The new administrative court system has delivered on the expectation of providing speedier, more efficient and consistent resolution of contested claims. Now a fully developed ombudsman program is in place, including one ombudsman attorney, who helped over 12,500 people this year who were not represented by an attorney. The percentage of contested claims that are settled without a trial rose to 77% this fiscal year through the Bureau's alternative dispute resolution program. An e-Billing program will go into effect July 1st, which can save money for insurance companies and provide payments to medical providers more rapidly. Medical treatment guidelines were established to identify evidence-based best practices and a drug formulary was implemented to address and protect injured workers from the inappropriate use of drugs.

The determination and commitment to improve the workers' compensation system underlying the 2013 Reform continued in legislative sessions after 2013. A new benefit program funded by the Uninsured Employers Fund was implemented to provide limited benefits to employees whose employer illegally denied them workers' compensation benefits. Quality standards and qualifications were established for case management and utilization review providers. And most recently, a new educational opportunity for workers injured on or after July 1, 2018, who cannot return to their



One
hundred
years
in the
making.

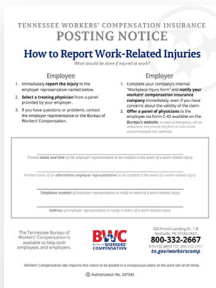
pre-injury job was developed called the Next Step program. This exciting development will give injured workers new opportunities for rehabilitation and a meaningful, productive future.

Observers outside our state often ask how Tennessee has been able to take so many “next steps” in so many areas of workers’ compensation. The answer lies in the leadership of the Governor and General Assembly. It is also due to the multitude of stakeholders through the last five years who have worked together to make Tennessee’s workers’ compensation system work better for both employers and employees. And it has taken the dedication of the Bureau of Workers’ Compensation that implemented the next steps, along with a keen awareness that this area of the law impacts people in swift, tangible, and significant ways.

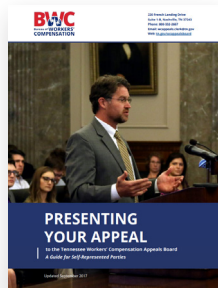
Workers’ compensation has been called a “grand compromise,” but a more appropriate descriptor might be a “fragile balance.” It will take the continued work of elected officials, stakeholders, and the Bureau of Workers’ Compensation to maintain that balance and continue to improve the workers’ compensation system through the next 100 years.



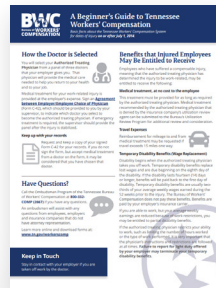
New Resources



Required Posting Notice



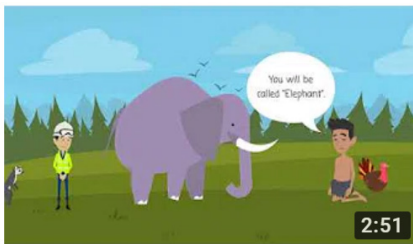
Appeals Pro-Se Handbook



Beginner's Guide to Workers' Compensation

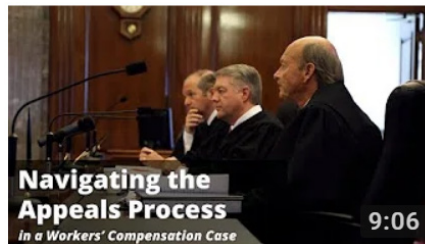


Utilization Review Brochure



Compliance Program

<https://www.youtube.com/watch?v=Ofc-bDUI0KU>



Navigating the Appeals Process in a Workers' Compensation Case

<https://www.youtube.com/watch?v=7BTBTxBmYa8>



What to Expect at your Workers' Compensation Hearing

<https://www.youtube.com/watch?v=b-gfsZDprSM>



Ombudsman Hotline

615-532-4812

WC.Ombudsman@tn.gov

Mon - Fri 8:00 AM - 4:30 PM

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