Workers' Compensation Reform in Tennessee

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Gabriel C. “Gabe” Stapleton

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A. Intro/Thesis

This paper discusses three different components of workers' compensation laws in Tennessee. First, the paper reviews the history of the state's workers' compensation laws, starting with the first statutes enacted in 1919. Second, the paper discusses the major reforms to the law in 2013 legislation, which was effective in 2014. Third, the paper does an overview of how the workers' compensation system has evolved in the state since the reforms in 2014. The goal of the paper is to show how benefits, and the process in which benefits are obtained by injured workers has become less generous over time. To illustrate these trends, this paper will address the law itself in the form of statutes, court opinions in cases where the law was challenged, and current political action that could adversely affect the injured worker.

B. History

1. Public Policy Reasons for Workers' Compensation Law

The idea behind workers' compensation is that employers in general are better situated to bear the expense of various types of insurances to cover costs resulting from accidents in the workplace. The specifics as to what extent the employer is liable have been debated since the inception of Tennessee's first workers' compensation statutes in 1919. For businesses, the selling point for the new laws was consistency in the value of claims as well as regulation on how to keep workplace activity safer to avoid potential claims.

Prior to the Tennessee Legislature enacting the first workers' compensation statutes in 1919, the injured worker used the court system in seeking redress. The employer's liability and the employee's damages were evaluated in civil suits guided by precedent on some issues and

facts of the individual case on others. Due to the nature of a lawsuit, the time from injury to monetary recovery was often longer then preferred. Another issue was inconstant recoveries for the same type of injury, which often led to appeal. Typically, a civil negligence suit was used to sue employers for injuries and recover damages, lost wages, future medical expenses etc. Just as the employee had access to common law causes of action, the employer could use traditional defenses such as contributory negligence, assumption of the risk, and the fellow servant doctrine. The fellow servant doctrine was arguably one of the more pro-business and anti-worker parts of these civil suits as applied. This doctrine excluded recovery from the business if a fellow worker in the same course of business was the cause of the injured parties' accident.

2. Overview of Tennessee Workers' Compensation Statutes in 1919

Tennessee adopted it's first Workers' Compensation Laws in 1919, Senate Bill No. 1000 created the "Workmen's Compensation Act." [*sic*] This new platform allowed injured workers the right to recover death, medical and disability benefits by essentially a predetermined amount "without regard to fault as a cause of the injury or death." *Tenn. Code Ann. § 50-6-103 (West 2018).* Part of the idea behind a fault neutral system was to take the incentive away from businesses and insurance companies to defend claims as hard, which resulted in longer waits to resolve claims among other issues. This system was put into place with the idea of streamlining the recovery process, limit costs of administering benefits, and placing the costs of work injuries on industry itself without burdening other parts of the economy.

The "Workmen's Compensation Act" [*sic*] only applied to businesses with ten or more employees, although there were certain businesses who were exempted: common carriers doing an interstate business while engaged in interstate commerce, domestic servants and employees

thereof, farm or agricultural laborers, the State of Tennessee including counties and municipalities, coal minors, and independent contractors. Employees were allowed to opt out of this coverage, but this allowed employers to assert defenses such as assumption of the risk, fellow servant doctrine, and contributory negligence. All of these defenses would potentially weaken the injured workers claim and would be a risky legal strategy unless the cause of the injury was clearly the fault of the employer and the injury was significant. In this specific situation it would be ideal to go outside of the Act, because the award was not predetermined. The Act also gave jurisdiction of these claims (within, or outside of the act) to the state's Circuit and Chancery Courts. Appeals from these courts went directly to the Tennessee Supreme Court.

3. Significant Challenges to the law starting in 1919

The original Workmen's Compensation Act was amended shortly after it's passage in 1919 due to successful challenges in the court system. An initial part of this statute that was later challenged but upheld is that both the employer and the employee waive their right to a jury trial by consenting to the terms of the act. The court determined that this was okay, arguing "a jury may be waived by parties falling within the provisions of the Workmen's Compensation Act by their voluntary acceptance of the terms of said act." *Scott v. Nashville Bridge Co., 143 Tenn. 86, (1920).* In this same case it was also argued that the act was unconstitutional because of a provision that exempted coal mine operators along with their employees but at the same time applied to all other mine operators and employees. In *Scott,* the majority of the court reasoned that due to inherent risks in coal mines and the fact that the legislature had often dealt with coal issues differently than other mining, there was a reasonable basis for the exemption. Justice Bachman dissented, "the act, exempting as it does coal mine operators and their employés from its operation, is arbitrary, discriminatory, and unreasonable because of this classification." [*sic*]

Id. In Justice Bachman's mind it seems that the legislature regulating the operations of coal mines on separate occasions does not disqualify the workers of said mines from different treatment than any other mine worker. This is a logical conclusion considering the employee has nothing to do with mine regulation and was a setback in respect to options if a coal miner was injured.

Third-party actions and subrogation were later addressed and upheld by the Tennessee Supreme Court, reasoning that since employees had contracted for the application of these laws they were bound to its remedies. "The employé is not deprived of any right. He is given free choice to proceed against either his employer or the third party, or both, but he is precluded from collecting from both." [*sic*] *Mitchell v. Usilton, 146 Tenn. 419, (1922).* In the same case, the court held that after the employer had paid the required judgement to the employee, it could sue the third-party who may have contributed all or some part of the accident; "then the employer may proceed against the third person whose wrong caused the injury and collect the indemnity paid by him to the employé, or for which he may have become liable." [*sic*] *Id.* In a 1923 case, an employee had accepted a certain payment and signed a receipt, but the settlement had not been approved by a judge, as required by law. The employee then moved forward with the action despite the agreement. The employer argued that the settlement was final. The court held that it was not because the "settlement was not approved by the circuit court, as required by section 27 of the workmen's compensation statute," *Vester Gas Range & Mfg. Co. v. Leonard, 148 Tenn. 665, (1923).* This was a reasonable decision that upheld a simple requirement within the law itself. In 1935 the high court again addressed an issue not specifically addressed in the original act. An employee had suffered an eye injury and the employer made compensation. The settlement was approved by a judge but included a provision that if the health of the eye declined

in the future the employer would further compensate the employee. A few years later, the employee lost sight in the eye and sought additional compensation pursuant to the settlement. The employer disputed this claim claiming the statute of limitations had run. The court, expressing the importance of freedom to contract freely, approved the additional compensation. "By the express terms of the decree in the instant case, the jurisdictional right was extended and final disposition was deferred, and this by agreement and consent of the parties." *Phillips v. Memphis Furniture Mfg. Co., 168 Tenn. 481, (1935).* The court held that the parties had contracted to leave the case open pending further damage to the eye. This was a fairly simple ruling that, in the bigger picture, upheld freedom in how parties negotiate and resolve claims.

The original act required that notice of any work injury be given to the employer within 30 days. In a 1940 case, an employee was struck in the chest by a falling spool of yarn. A year later, the employee became discerned that a cancer had developed in the exact area where she was struck. She immediately notified her employer of this condition and what had caused it. The employer argued that suit was barred because of the untimely notice. The court ruled for the employee, holding that she acted reasonable by notifying the employer of the injury as soon as she became aware of it, even though the notification was after the 30-day statutory requirement. "How could she give notice of an injury of which she had no knowledge? The law never requires the impossible" *McBrayer v. Dixie Mercerizing Co., 176 Tenn. 560, (1940).* This was definitely a ruling in favor of the injured, because it gave coverage to injuries that aren't readily apparent. Miners and other workers subjected to substances with adverse effects discovered at a later date were well served by this ruling.

In 1947 the 75th General Assembly amended the act, specifying the definition of "injury" and included certain occupational diseases, which in turn gave coverage to a larger group of

workers. “Injury and personal injury shall mean any injury by accident arising out of and in the course of employment and shall include certain occupational diseases arising out of and in the course of employment which cause either disable-ment or death of the employee resulting from the hereinafter named occupational diseases.” *1947 Tenn. Pub. Acts 537.* In a 1950 case, a worker who had been exposed to silica dust (which is one way to develop silicosis) quit his job one month prior to the amendment. The worker nevertheless sought compensation. The court ruled in favor of the employer stating, “Where it appears that an occupational disease was contracted before the effective date of the amendment, i. e., March 12, 1947, and the employee severed his connection with the employer before that date, there can be no recovery of benefits under the amendatory Act.” *McClung v. Nat'l Carbon Co., 190 Tenn. 202, (1950).* The court also held that the legislature did not intend for the law to apply retroactively, and even if so, it would have violated the Constitution which provides that no retrospective law shall be made. While this is a sad outcome for the injured party, one can understand the logic and legality of the decision. The retroactive application of statutes rarely serve the interests of society. On a wider scale, an opposite ruling in this case would have a substantial adverse economic impact on businesses and insurance carriers which could not have anticipated changes in the law. The statute of limitations had already run in this instance, and a ruling in favor of the employee would have been a poor precedent.

Courts have also addressed claims for work related heart attacks. In a 1965 case, the employer argued the claim was barred due to the employee having prior heart disease. The court held that a prior condition does not clear the employer of liability if the work activity accelerated the heart. “The fact that the plaintiff's condition worsened as he continued working clearly shows that the work accelerated or aggravated the attack.” *Gluck Bros. v. Breeden, 215 Tenn. 587*

(1965). The court system once again protected the rights of the worker, recognizing that certain occupations have an affect on bodily functions. In a 1973 case, the employee, a Tennessee resident was injured while giving tours in Virginia. The employer was located in both states. The employer initially calculated benefits under Tennessee law, but later asked the court to apply Virginia law. The benefits under Tennessee law were greater by $28.00 per week, which would result in a substantial increase in the total compensation. The court held that "there is no constitutional barrier to the application of Tennessee law because Tennessee has a 'legitimate interest' in the controversy and there is a 'substantial connection' between Tennessee and the 'particular employer-employee relationship." *Bryant v. Seward, 490 S.W.2d 497, (Tenn. 1973).* In its ruling the court also pointed out that both the employer and employee had originally argued that Tennessee law applied. This relates back to cases discussed earlier that tend to hold employees and employers to good faith arguments in the application of proper jurisdiction.

In 1974, the court addressed injuries in the workplace resulting from "Acts of God". The employee, a night watchman, was killed when the building collapsed during a tornado. Experts at trial testified that most industrial buildings are not built to withstand tornados because the construction would not be economically feasible and because tornados were so unpredictable. The court determined that "it did not flow from his work as a rational consequence." *Hill v. St. Paul Fire & Marine Ins. Co., 512 S.W.2d 560, (Tenn. 1974).* As a result, the employees widow was denied compensation because his injury did not qualify as in the course of employment. This outcome was clearly not ideal for the beneficiary in this case, but the rational is that the employer should not be subject to liability as a result of uncontrollable circumstances.

I. 1992 Workers' Compensation Reform Act

This legislation created the Workers' Compensation Specialist Program which was designed "to assist injured or disabled employees, persons claiming death benefits, employers and other persons." *1992 Tenn. Pub. Acts 867.* The 1992 reform was an attempt to either monitor or control the workers' compensation process by employing individuals who were to guide parties through the process. This is arguably a necessity due to the laws becoming increasingly more complex, specifically this 1992 legislation. In this act, workers' compensation specialists were given the authority to order the initiation of temporary medical benefits. *1992 Tenn. Pub. Acts 869.* This was designed to ensure that those injured and needing immediate care could have access to it, while keeping their file open to be reviewed at a later date. This was a way to quickly give workers the healthcare they were entitled to. The Benefit Review Conference was introduced in this reform, which was a mandatory proceeding in which a state employee conducted mediation of disputes while having a statutory obligation to inform both parties of their rights under this law. *1992 Tenn. Pub. Acts 868.* Among other statutory duties, the "specialists" were required to see that the injured employee and the employer abided by the laws that in large part, guided the process and determined the awards. The reform act also included statutory caps on the awards for permanent disability for certain workers. Employees who were 60 years of age or older at the time of injury were limited to a maximum of 260 weeks of permanent disability benefits. *1992 Tenn. Pub. Acts 861.* While committee hearings debating this specific change were unavailable, one could speculate as to the reasoning for this change. Older workers have less of a life expectancy than younger workers and are more likely to need further medical attention. By capping the recovery of someone of this age and having a permanent disability, this would limit the insurance companies' potential exposure. The act was designed to lower insurance premiums for the employer. Employees who returned to work for the pre-injury employer at an equal or

higher rate of pay were limited to 2.5 times the medical impairment rating in "body as a whole" cases. *1992 Tenn. Pub. Acts 870.* This specific change has no age factor but will, as a whole, leave the injured party with less benefits.

The constitutionality of the statutory caps mentioned above were later challenged by an injured employee. In 1995, an employee of the Campbell County Board of Education injured her neck and shoulder trying to open a steam table. Later that month she fell in the stock room while conducting inventory. Ms. Brown's physician opined that these work-related injuries aggravated her pre-existing conditions. The Tennessee Supreme court upheld these statutory caps, reasoning that "the caps provide employees, employers and their insurers with a measure of predictability since all awards have defined outer limits." *Brown v. Campbell Cty. Bd. of Educ., 915 S.W.2d 407, (Tenn. 1995).* The court reasoned that the benefits would likely be inconsistent and abnormally high in some cases if it did not uphold the caps. The reasoning behind statutory caps is easy to understand for the reasons mentioned above, however, before the legislature began regulating benefits for injuries in the workplace, it was left to the court system entirely.

A trial court's ability to initiate benefits at a pretrial hearing was next addressed by the high court. In a 2003 case, an employee of National Health Corporation was injured when her supervisor grabbed her by the shoulder, shook her, and spoke angrily and aggressively at her. The Supreme Court found "that the trial court has the power to initiate temporary benefits in a workers' compensation case and that it does not have to hold a full evidentiary hearing prior to such initiation unless the trial court finds it necessary." *McCall v. Nat'l Health Corp., 100 S.W.3d 209, (Tenn. 2003).* Similar to the ruling above, this is a very practical finding with consistent reasoning that provided injured parties access to immediate care before the merits of a claim are addressed.

II. 2004 Workers' Compensation Reform Act

This legislation established a "hybrid system" which required claims by employees to first go through the administrative system which mediated medical benefits, temporary disability benefits etc. The act retained jurisdiction in the Chancery and Circuit Courts for the second step in the claim, which addressed future medical expenses, permanent disability, etc. As of January 1, 2005, the benefit review conference was mandatory in all cases. The benefit review conference (BRC) was designed as an informal dispute resolution proceeding to explain the rights of each party, consider the particular facts about the case, mediate claims, begin settlement discussion, etc. This was designed to reduce costs of litigation and to speed up the process.

The mandatory benefit review conference was challenged in the court system in a 2006 case. The defendants argued that this mandatory process did not deny the plaintiff their due process rights because access to the court system was still available upon completion of the benefit review process. The court agreed, "we hold that the benefit review conference requirement embodied in … does not violate the due process protections of the Tennessee or United States Constitutions, the separation of powers doctrine …, or the open courts doctrine found in article I, section 17, of the Tennessee Constitution." *Lynch v. City of Jellico, 205 S.W.3d 384, (Tenn. 2006).* The court rejected this challenge to the benefit review conference, which on its face seemed like a fair concept but in a larger picture was adding more oversight to the workers compensation system that was consistently becoming more invasive.

C. Changes to Tennessee Workers' Compensation law effective July 1, 2014

1. What changes did Senate Bill 0200(Norris)/House Bill 0194(McCormick) "Tennessee Workers' Compensation Reform Act of 2013" make to the law?

In Tennessee today, any injury in the course of employment will first be addressed by the Department of Labor and Workforce Development. Due to the exclusive remedy rule, this new administrative system will be the only redress available to the employee. This means the trial, chancery, and circuit courts no longer have jurisdiction to resolve these claims. This is likely not a surprise coming after the mandatory benefit review conferences, and the "hybrid system" adopted in 2004. However, there is an exception to this rule if the harm is intentional, such as a retaliatory discharge or a case of sexual harassment, or when an employer fails to comply with the statutory insurance requirements. These claims will fall within the jurisdiction of the trial court system, as intentional torts.

The 2013 Workers' Compensation legislation created the Division of Workers Compensation, this is a taxpayer funded organization that once again added state oversight to the process. This is arguably the most drastic reform to the workers' compensation laws yet. Some of the selling points for this proposal included streamlining the process for injured workers, cutting costs of litigating these claims, and providing consistency among awards to ensure statewide fairness. The reality being that creating a state-run agency to oversee these claims, the legislature is able to predetermine the value of each specific injury and the levels of compensation through formulas that tend to produce inadequate financial compensation. Further, this strips the jurisdiction of claims from elected judges and shifts to those subject to political appointment. This program sends workers with claims first to a mediation process, then to an appeals board which consists of three judges appointed by the governor. If the claim is appealed again it is heard by the Tennessee Supreme Court. Naturally this process is subject to criticism as

those who oversee the first two steps in the process are appointed by the party in control of the Executive Branch, which could naturally involve a degree of partisanship.

If an individual with a workers' compensation claim or a beneficiary thereof should choose not to hire an attorney to represent them in their dispute, this new legislation created a mediation and ombudsman programs to guide parties through the process. The ombudsman program is designed to inform the injured party or beneficiary thereof of the rights and benefits they are or may be entitled to. Practically speaking, this decreases the number of attorneys involved in these claims, but in reality, the legislature makes the process more efficient. Of course, these ombudsmen are employed by the State of Tennessee. This moreover suggests the legislature has a political interest in keeping the Tennessee's workers compensation system cost effective to benefit business and, therefore, business recruitment. The mediation program requires multiple things, among which that all claims be mediated in good faith. The mediator is also required to inform all parties of their rights under the Workers' Compensation Act. The goal here is to either mediate the claim to a settlement which is reduced to writing and subject to approval by a judge, or after a good faith attempt of all parties to negotiate a settlement with no agreement prepare a dispute certification notice specifying the issues that remain in dispute. This notice is a requirement for the claim to move forward. *Tenn. Code Ann. § 50-6-236 (West 2018).*

The new legislation addresses how the law itself must be interpreted, likely the second biggest reform in the law: "For any claim for workers' compensation benefits for an injury, as defined in this chapter, when the date of injury is on or after July 1, 2014, this chapter shall not be remedially or liberally construed but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction and this chapter shall not be construed in a manner favoring either the employee or the employer." *Tenn. Code Ann. § 50-6-116 (West 2018).*

Advocates for this language envision objective analysis by the fact finder. The prior law required that the law be construed "equitably," which favored the injured worker. This change alters the mindset of the fact finder in applying law to these claims that was previously tipped toward the injured party. Not to say this change is "wrong," but objectively compensation to injured employees will be less generous. For example, in situations debating if the injury was in the course of employment, case law provided that "any reasonable doubt as to whether an injury "arose out of the employment" is to be resolved in favor of the employee." *DeBow v. First Inv. Prop., Inc., 623 S.W.2d 273 (Tenn. 1981).* The other side of the argument may be that "objectively" and "equitably" are so similar that the results will be the same. This begs the question. If the words are that similar, then why change and, in doing so, clarify that the law not be construed liberally or in favor of either party?

The definition of "injury" has changed in that it must arise "primarily out of and in the course and scope of employment." *Tenn. Code Ann. § 50-6-102 (West 2018).* Injury is defined more in depth in the following: "An injury 'arises primarily out of and in the course and scope of employment' only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes." *Id.* Placing this requirement on determining whether or not a certain injury qualifies as an "injury," limits the potential liability for employers that could have previously been found through workers misusing machinery, horseplay, etc. This in turn creates an extra burden for an injured worker because, they must prove that it was in the course and scope of employment by the use of many different factors depending on the specific occupation. This new language also creates the potential for employers to appeal findings of judges or fail to settle based on the argument that the certain injury did not meet the injury definition. "Injury" has also been redefined in respect to

maximum medical improvement (MMI). Maximum medical improvement is essentially a state of health, determined by a qualified physician. The legislative intent behind this new law is to try and incentivize injured employees to return to work quicker, and to disincentivize unnecessary medical treatment. Injury "shall be conclusively presumed to be at maximum medical improvement when the treating physician ends all active medical treatment and the only care provided is for the treatment of pain or for a mental injury that arose primarily out of a compensable physical injury." *Tenn. Code Ann. § 50-6-207 (West 2018).* This allows the employer to be given credit against any award for permanent disability paid for any amount of temporary total disability benefits awarded to the employee after the employee reaches maximum medical improvement. This separates the treatment of the specific injury from the pain that may occur once the injury has been treated to the best of the physician's ability. Once again, the goal is to incentivize the injured employee to return to work, but practically speaking, this may result in rushing the recovery process to the detriment of the injured worker.

The new law provides that employers are required to provide an initial panel of three physicians. to injured workers. If this is not available in the specific locale, then the law requires that "the employer shall provide a list of three (3) independent reputable physicians, surgeons, chiropractors, or specialty practice groups not associated in practice together that are within a one-hundred-twenty-five-mile radius of the employee's community of residence." *Tenn. Code Ann. § 50-6-204 (West 2018).* While this seems reasonable on its face, this may subject certain physicians to go about treatment in a more conservative manner or err to decisions that may attempt to minimize injures and encourage employees to return to work earlier than they otherwise would. All of which could be done in an effort to minimize healthcare costs in an attempt to satisfy the notion of cost effectiveness within the workers' compensation system.

This reform also reconfigured the process by which medical records are gathered. Employers are now able to obtain an employee's medical records within thirty days of admission or treatment without the employee's consent. This program is designed for companies to have faster access to these records in order to begin investigating compensability for the employee. On the other hand, it is likely that the underlying reason for this particular portion of the legislation is to let the employers, and insurance companies who represent them, get a head start on preparing their potential defenses. Another reason could be that employers are attempting to be proactive in discovering the cause of the employee's injury so that policy can be put in place or changed so that this particular injury never happens again.

A medical advisory committee is created with the goal of streamlining collaboration between insurers, physicians, and employers. This committee will establish treatment guidelines in an effort to establish consistency in how injured employees are treated statewide. The committee members are appointed, receive no compensation but will get reimbursed for travel expenses and will serve a term of four years but may be reappointed. The committee will consist of "practitioners in the medical community having experience in the treatment of workers' compensation injuries, representatives of the insurance industry, employer representatives, and employee representatives." *Tenn. Code Ann. § 50-6-135 (West 2018).* While this has an indirect effect on employees, the legislative intent seems to be along the lines of providing a more practical approach in establishing guidelines and procedures in the application of the law.

Impairment ratings are now required to be given consistent with the American Medical Association (AMA) guidelines. This is designed to provide consistency among the ratings which will likely lead to a more equitable distribution of benefits. In determining Permanent partial disability (PPD) the award calculation is increased from 400 weeks to 450 weeks which will lead

to a greater award for specific employees. "All cases of permanent partial disability shall be apportioned to the body as a whole, which shall have a value of four hundred fifty (450) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury." *Tenn. Code Ann. § 50-6-207 (West 2018).* This is one of the few fair changes in the 2014 reform that increases the value of the awards available to the worker fitting the specific criteria.

D. Post July 1, 2014 changes to Tennessee Workers' Compensation law

1. Statutory changes to Tennessee Workers' Compensation Law post July 1, 2014

A number of different bills have been enacted since the 2014 Workers' Compensation Reform Act. The following are summaries of each bill. The descriptions start with the House of Representative's bill number, the Senate bill number, the last name of member of the House who introduced it, and then the last name of the member of the Senate who introduced it. The summaries are from *http://www.capitol.tn.gov/legislation/.*

I. HB0558/SB0171 (Eldridge-Ketron) Effective 4/22/2015 – This bill, as enacted, prohibits an insurance company from charging a premium for any individual determined to be an independent contractor and requires additional defense costs and loss adjustment costs be reported to the Commissioner of Commerce and Insurance as supplementary rate and loss costs information. - Amends TCA Title 50, Chapter 6 and Title 56, Chapter 5.

II. HB0094/SB0105 (McCormick-Norris) Effective 05/04/2015 – This bill, as enacted, specifies that no party may settle a claim for permanent disability benefits unless the settlement agreement is approved by a workers' compensation

judge and that any settlement not so approved is void; the bill revises other various provisions of the Workers' Compensation Law. - Amends TCA Title 4, Chapter 29, Part 2; Title 4, Chapter 3, Part 14; Title 8, Chapter 21, Part 4; Title 50, Chapter 6; Title 50, Chapter 9 and Title 50, Chapter 3, Part 7.

III. HB2038/SB1880 (Eldridge-Johnson) Effective 4/14/2016 – This bill, as enacted, revises various provisions governing workers' compensation in regard to the case management system and settlements. More specifically, it provides that no medical provider shall charge more than ten dollars ($10) for the first thirty (30) pages or fewer, and twenty-five cents (25¢) per page for each page after the first thirty (30) pages, for any medical reports, medical records, or documents pertaining to medical treatment or hospitalization of the employee that are furnished pursuant to this subsection (a). - Amends TCA Title 50 and Title 56.

IV. HB1559/SB2563 (McCormick-Norris) Effective 4/26/2016 – This bill, as enacted, lays out a deadline for Workers' Compensation judges in that they have three (3) business days to approve or deny a settlement after it has been received by the bureau and assigned to them. This bill also changes multiplying factors that determine awards among other things.

V. HB1720/SB1758 (White M-Green) Effective 4/26/2016 – This bill, as enacted, authorizes the Bureau of Workers' Compensation of the Department of Labor and Workforce Development to investigate complaints alleging certain disclosure and payment requirements related to rental and assignment of PPO network rights; authorizes certain penalties. - Amends TCA Title 50, Chapter 6.

VI. HB2416/SB2582 (Lynn-Norris) Effective 5/05/2016 – This bill, as enacted, revises various workers' compensation and drug-free workplace provisions relating to the ombudsman program and statistical data used in determining awards. - Amends TCA Title 50, Chapter 6 and Title 50, Chapter 9.

VII. HB0325/SB1214 (Hawk-Norris) Effective 5/22/2017 – This bill, as enacted, renames the second injury fund to subsequent injury and vocational recovery fund and authorizes the bureau to use money from the fund to provide vocational recovery assistance to employees with certain limitations. The amendment also revises certain provisions regarding electing to be exempt from the law; and revises various procedural provisions regarding appeals of workers' compensation orders. - Amends TCA Section 9-8-307; Section 29-20-401 and Title 50, Chapter 6.

2. Current legislative action/political discussion (Spring 2018)

There are a number of different bills being introduced in the 2018 legislative session, the following are summaries of each bill. The descriptions start with the House of Representative's bill number, the Senate bill number, the last name of member of the House who introduced it, and then the last name of the member of the Senate who introduced it. The summaries are from *http://www.capitol.tn.gov/legislation/*.

I. HB1491/SB1798 (Reedy-Ketron) – This bill, as introduced, creates a rebuttable presumption that a firefighter's cancer that causes a disabling health condition is a result of the firefighter's duties as a firefighter. - Amends TCA Title 7, Chapter 51; Title 50, Chapter 6 and Title 68, Chapter 102.

II. HB1714/SB1615 (Lynn-Johnson) – This bill, as introduced, removes requirement that every workers' compensation insurer that provides insurance for Tennessee workers' compensation claims be required to maintain a claims office or to contract with a claims adjuster located within this state. - Amends TCA Title 50, Chapter 6.

III. HB2105/SB2141 (Halford-Gresham) – This bill, as introduced, allows farm and agricultural employers to accept the workers' compensation chapter by purchasing a workers' compensation insurance policy. It allows 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. - Amends TCA Section 50-6-106.

IV. HB2304/SB2475 (Beck-Roberts) – This bill, as introduced, removes the termination date on the recovery of attorney fees and other costs against an employer in a workers' compensation action who wrongfully denies a claim by filing a timely notice of denial. This is conditional upon the workers' compensation judge later holding that such benefits were owed at an expedited hearing or compensation hearing. - Amends TCA Section 50-6-102 and Section 50-6-226.

V. HB2333/SB2544 (Cooper-Tate) – This bill, as introduced, prohibits retaliatory discharge by employer or other person for conduct relating to filing a workers' compensation claim and authorizes a cause of action by the employee as a remedy. - Amends TCA Title 50.

VI. HB2411/SB2543 (Thompson-Tate) – This bill, as introduced, prohibits retaliatory discharge of employees under the Tennessee workers' compensation law under

certain circumstances and prescribes certain damages available to prevailing plaintiffs under retaliatory discharge claims. - Amends TCA Title 4; Title 8 and Title 50.

VII. HB1978/SB1967 (Marsh-Watson) – This bill as introduced, specifies that a marketplace contractor of a marketplace platform is not an employee of the marketplace platform. - Amends TCA Title 50; Title 56 and Title 62.

In the current (Spring 2018) election campaign for governor, Workers' Compensation does not seem to be a hot button issue. Looking at the campaign websites in either the "issues" section, or a section that discusses campaign issues the following candidates made no reference to Workers' Compensation laws: Randy Boyd (R), Bill Lee (R), Diane Black (R), Craig Fitzhugh (D), Karl Dean (D), Beth Harwell (R), Kay White (R). What all campaigns seemed to have in common is promoting job growth in Tennessee, and how they planned to make Tennessee an ideal location for new businesses. Naturally, this type of campaign rhetoric creates a breeding ground for cost cutting in respect to business expenses. For many reasons, it seems workers' compensation reform is an easy target for the legislature because it is not a campaign issue, workers' compensation benefits are rarely on the minds of potential employees seeking jobs. The typical blue-collar worker that these laws apply to is primarily concerned with compensation, which would include pay, insurances, paid vacations etc. "What happens if I am injured in my course of employment?" is not a typical question asked by a potential employee in an interview setting. If the question was asked, the ideal answer from the business would be to explain that the Workers' Compensation Laws are the only form of redress. If this was not sufficient, blame the recent reforming on members of the legislature. In the next election cycle the same politicians who sponsored these more recent reforms, will tout economic growth, job creation, and how they have helped in the effort to attract business to Tennessee. What will not be mentioned is what

laws were changed to make Tennessee competitive in attracting businesses. The average cost of insurance premiums to employers per $100 paid to employees in 1988 was $2.63, in 2014 it was $1.95. The cost of coverage has fallen $.68 per $100.00 in the past 26 years, despite inflation and rising healthcare costs. *Michael Grabell, The Demolition of Workers' Comp, (March 4, 2015) https://www.propublica.org/article/the-demolition-of-workers-compensation.* There is an element of unfairness in this increasingly Republican, pro-business dominated state that is designed to obtain the working man's vote by promising economic prosperity. What isn't discussed is how these newer policies take rights away from the worker in the event they are injured in their course of employment. Where a worker's injuries result in permanent disability, the amount the worker is entitled to receive will likely be inadequate. Thus, this worker may be forced to apply for a taxpayer funded program such as social security disability, unemployment insurance etc. This in turn adds costs to the state or federal government with the original goal of promoting business, because too many politicians are willing to sacrifice the well-earned rights of the injured workers.

E. Conclusion

It is a widely accepted idea that workers should be entitled to compensation in the event they are injured during the course of employment. There may not be a "perfect" system, but what we have isn't getting better when benefits have shifted away from injured workers, while the promised economic benefits to businesses and the economy as a whole have not been realized. Prior to 1919, there were no Workers' Compensation Benefits required by statute because the claims were left up to the court system. Moving to 1992, it was mandatory all claims go through a state administered mediation process, and in 2004 part of the claims jurisdiction was taken away from the trial court system. All of this led to 2013 legislation that put the jurisdiction of

these claims in an administrative system entirely, which is a state-run organization. Tennessee has seen a pattern of increased governmental oversight of these claims since 1919. Along the way, the court system has, in many cases, ruled for the injured worker only to find the legislature following shortly thereafter to reform the law that permitted recovery. Reform is justified by placing the "needs" of business over the moral obligation of safety and compensation for injury that companies owe to their workers. Reform to workers' compensation law has indeed led to efficiency in administering these claims, but is not worth the downward spiral in benefits and awards - especially when accompanied by the absence of cheaper insurance premiums and the lack of promised economic growth. All of this is not to say that the system is 100% ineffective, but it is to say that it is far less generous than it used to be, and ought to be.

Raising awareness to this issue is the first step in getting the pendulum swinging back in the direction of the injured worker. Moving forward, it is important for all to pay close attention to this area of politics. Voters should question policies, and research which members of the legislature sponsor this type of legislation. I support that our citizenry reach out to State Representatives and Senators to find out where they stand, or, more importantly, how they vote on these types of issues.