



A Guide to Workers' Compensation for Tennessee Clinicians Serving Farmworkers

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Farmworker Justice

I. INTRODUCTION

This guide is designed to provide Tennessee health professionals serving farmworkers with an introduction to the workers' compensation law in that state. Using a question and answer format, it: 1) offers a brief description of the workers' compensation system; 2) explains the key roles that the clinician can play in these cases; 3) provides a timeline of critical deadlines; and, 4) includes copies of important forms.

II. BACKGROUND AND OVERVIEW OF WORKERS' COMPENSATION

What is workers' compensation?

Workers' compensation is a system of employer-provided insurance that offers benefits to employees who suffer a job-related injury or illness. These benefits:

- Cover needed care and rehabilitation services, including medical treatment, surgery, physical therapy, hospitalization, laboratory tests, and medications;
- Provide partial payment of wages for the time period when temporarily-disabled employees cannot work;
- Pay workers who suffer a permanent disability; and,
- Cover burial costs and provide monetary support for surviving dependent family members (when the work-related injury or illness is fatal).

Why should clinicians learn about workers' compensation?

It's worth taking the time to become familiar with Tennessee's workers' compensation law for several reasons. First, farmworkers need these benefits. Without them, many farmworkers with a job-related injury or illness would forego needed treatment or their families would go into debt in order to secure it for them. Farmworker families would also be destitute while the injured worker was out of work. Second, farmworker advocates believe too many health centers are writing off as uncollectable services that should be paid for by an insurance company or employer. Accepting workers' compensation cases can provide an additional income stream for a health center.

Are migrant and seasonal farmworkers covered by workers' compensation?

Under Tennessee law, agricultural employers are exempt from the requirement to carry workers' compensation insurance for farmworkers, but they may voluntarily elect coverage.¹ However, foreign workers brought to the US on temporary "H-2A" visas must be covered by workers' compensation insurance.

Are undocumented farmworkers covered by workers' compensation?

Undocumented workers in Tennessee are generally entitled to workers' compensation benefits when they are injured at work or contract an occupational illness, unless they are otherwise excluded from coverage as farmworkers are.²

What must an injured worker prove in order to secure workers' compensation benefits?

Typically, employees must show that they:

- suffered a work-related injury or an occupational illness;
- notified the employer of the ailment within 30 days of its occurrence or of learning of it;³
- are an employee of the entity identified as the employer;

and, if applicable, that they:

- have followed all the health care providers' instructions, including when to return to work and any work restrictions; and,
- have a permanent level of disability, after achieving maximum medical improvement.

What is the degree of proof required?

For a successful workers' compensation claim, the worker must prove all elements of the claim by a preponderance of the evidence, including the existence of a work-related injury.⁴

III. THE ROLE OF THE HEALTH CARE PROVIDER

What medical benefits is an employee entitled to receive?

A worker is entitled to receive medical expenses during the healing period. This includes medicine, surgery, dental and psychological treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus that is reasonably required. The right to payment for medical expenses generally ends one year after the date of last payment for any compensation, but may be extended if necessary.⁵

¹ Tenn. Code Ann. §§ 50-6-106(4) and (5)

² Tenn. Code Ann. § 50-6-102(10)(A).

³ The employee's failure to give notice within 30 days does not act as a bar to recovery if the worker has a reasonable excuse. Nonetheless, it is better for the injury or illness to be reported as soon as possible.

⁴ *Fritts v. Safety Nat. Cas. Corp.*, 163 S.W.3d 673, 677-78 (Tenn. 2005)

⁵ Tenn. Code Ann. § 50-6-203(b)

How quickly should the employer notify the insurer of the employee's illness or injury?

The employer must file the First Report of Work Injury (Form C-20) with its insurance carrier within one (1) working day of knowledge of the employee's illness or injury. A statement of the employee's gross wages (for the past 52 weeks) should accompany the First Report or be sent to the insurer as soon as possible.

Who chooses the health care provider?

The employer provides the employee a panel of three physicians. A signed Form C-42, Agreement Between Employer/Employee Choice of Physician, must be completed and provided to the employee. In the case of a back injury, the panel must include a chiropractor. If the employee requires specialized treatment, a panel of specialized physicians should be offered. If the injury requires the treatment of a physician or surgeon who practices orthopedic or neuroscience medicine, then the employer may appoint a panel of 5 such medical specialists. An employer or insurer aren't required to offer a second opinion, but may do so voluntarily. The employee may seek treatment from any physician at his/her expense, but an employer is only required to follow the restrictions of the authorized physician. When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from a registry established by the Commissioner of the Tennessee Department of Labor.⁶

What initial steps should a health care provider take when handling a patient with a work-related injury or illness?

During the first visit, the health care professional should provide all necessary treatment. A health professional who believes that the patient is suffering from a work-related ailment should send a report and bill for payment to the patient's employer or to the employer's workers' compensation insurance carrier. A medical report should show in detail the nature and extent of the injury, its effect upon the employee, the medical treatment prescribed, an estimate of the duration of required hospitalization, if any, and an itemized statement of charges for medical services to date. Medical providers must submit to a requesting party a complete medical report within 30 days after treatment is rendered.⁷

What other responsibilities do health professionals have when treating patients with workers' compensation claims?

Health care providers should take a thorough patient history that includes occupational and environmental exposures, and secure all appropriate tests to determine the nature, cause and extent of the injury or illness. With the approval of the insurance carrier or claims administrator, all necessary treatment should be provided. When needed, appropriate referrals should be made for specialized care. To facilitate approval of the claim and the treatment plan, the health professional will need to submit a detailed report(s) to the employer, insurer and/or claims

⁶ Tenn. Code Ann. § 50-6-204(d)(5)

⁷ Tenn. Code Ann. § 50-6-204(a)

administrator, documenting: (i) the nature and full extent of the illness or injury; (ii) its causal connection to work activity; (iii) the treatment provided and the patient's compliance with it; (iv) when the patient can return to work; and, (v) what work modifications, if any, are needed to enable the patient to resume previous employment. Health professionals should be careful not to allow the employer or his agents, who have a competing interest, to act as interpreter during the medical visits.

Why is it important to consult the patient in formulating a treatment plan?

Health providers should fully discuss treatment options with patients to ensure that the patient is in agreement with the treatment option selected and able to comply with the provider's instructions (for example, whether the patient has access to transportation for follow-up appointments). These considerations are important because a patient's failure to comply with a clinician's instructions could result in the termination of workers' compensation benefits.

How can a health professional assist a worker in proving that the injury or illness is related to work activity?

While clinicians do not usually concern themselves with the cause of an ailment, in the workers' compensation context, showing a work-related cause is a critical element of the claim. In a report submitted to the employer and insurer or claims administrator, the health professional should state facts, inferences and conclusions that support the worker's contention that the ailment is due to work activity. It is helpful to obtain from the worker information concerning:

- tasks performed on the job, including amount of weight lifted or carried;
- the work environment such as equipment used and chemical exposures experienced; as well as,
- how the injury or illness occurred or developed.

The patient's statements should be incorporated into the clinician's report. For example, when treating an injured patient, the health professional should ask:

- Did the incident occur on the employer's premises?
- Did it occur during working hours?
- What work-related activity were you engaged in at the time of the incident?
- Had you ever experienced this type of injury before? If so, how did it occur?

When treating a patient with an occupational illness, questions could include:

- Were you exposed to pesticides or other chemicals on the day you became ill?
- How soon after the exposure did your symptoms begin?
- Did any other workers in your area experience similar symptoms that day?
- Have you ever experienced symptoms like this before? If so, under what circumstances?

Bear in mind that, even if the initial underlying injury is preexisting or not work-related, the acceleration or aggravation of that underlying injury due to employment may be compensable.

Can an illness or injury be covered by workers' compensation when work activity is not the sole cause of the condition?

When a combination of factors caused the illness or injury, workers' compensation will cover the condition if work activity was a major contributing cause.

Why does the health professional's report often play an important role in supporting a farmworker's claim for workers' compensation benefits?

The health professional's report often provides critical evidence on several elements of the claim (i.e., the nature and extent of the illness or injury, its work-related cause, the employee's compliance with the clinician's instructions, the date the worker can return to work, and any work restrictions). The more the report rests on objective findings and test results and is internally consistent, the stronger it will be. Keep in mind that the opposing party will carefully review the report to identify any unsupported assertions or inconsistencies. The health professional's report is especially important in many cases involving farmworkers and other low-income workers because co-workers are frequently reluctant to provide corroborating testimony for fear of losing their jobs (even though such retaliation is unlawful).

When should a clinician recommend "light duty" to facilitate a quick return to work?

To limit costs for temporary disability, an employer may put pressure on the clinician to direct an early return to work. Similarly, a worker may request a clinician recommendation of light duty due to economic need or fear of losing her job. But light duty should only be recommended if it is available and the patient would be able to accomplish such tasks without jeopardizing recovery or experiencing undue pain. Keep in mind that a worker's failure to comply with a clinician's direction to return to work or her inability to perform the work with the restrictions imposed by the clinician may lead to a termination of benefits.

To avoid common pitfalls, a clinician should consult the patient to determine the degree of recovery, including on-going pain, range of motion, etc. In addition, the clinician should inquire into the physical demands of the job and ascertain whether any light duty jobs exist at that establishment. If light duty is available and appears appropriate, the clinician should specify the conditions under which such duty may be performed, e.g., amount of weight that can be lifted, number of hours that the worker can stand, whether work can be performed in a stooped position.

Finally, the clinician should advise the worker to return to the clinic if injury prevents her from performing light duty. In such circumstances, the clinician can, after an examination, make a determination that temporary disability requires time off work. When handled in this manner, a worker should be able to receive workers' compensation benefits for the additional period of disability.

Does the employee need to prove fault or lack of contributory fault in order to secure workers' compensation benefits?

Workers' compensation is generally a no-fault system. There are, however, a limited number of exceptions to this rule. For example, an employee may be denied benefits for an injury or death due to the employee's willful misconduct or intentional self-inflicted injury, due to intoxication or illegal drug usage, or willful failure or refusal to use a safety appliance or perform a duty required by law. However, any employer who fails to secure required workers compensation insurance may not claim employee negligence as a defense to liability.⁸

What are the primary obstacles that keep workers from filing workers' compensation claims?

The most frequently cited obstacle is fear of employer retaliation.⁹ In Tennessee, the only farmworkers eligible for workers' compensation are present in the United States with a temporary visa controlled by the employer. Workers fear that they will be sent back to their home country if they 'cause trouble.' Although such retaliation is illegal and would result in a substantial penalty to the employer if proved, many workers are unwilling to risk job loss for the uncertain prospect of obtaining financial compensation in the future. Other obstacles include lack of knowledge of the availability of benefits, inability to navigate the workers' compensation system (especially for low literacy or limited English proficient workers), pressure from co-workers, and undocumented status. Many farmworkers lack personal transportation and are not aware that sick travel costs should be reimbursed by the insurance carrier or employer where the worker must travel more than 15 miles to obtain medical treatment.

Does a worker need legal assistance to obtain workers' compensation benefits?

A recent report found that low-wage immigrant workers were much more likely to secure needed benefits when they had legal assistance in handling their claims.¹⁰ In any case involving significant costs, the health professional should consider recommending that the worker retain a lawyer to pursue the claim. Local legal services agencies such as Southern Migrant Legal Services (866-721-7828) will provide referrals. Patients can also obtain free information from the Tennessee Department of Labor's Workers' Compensation Division Help Line by calling 800-332-2667 or visiting www.tn.gov/labor-wfd/wcomp.html.

How do disputed claims get resolved in the workers' compensation system?

Any party may request a Benefit Review Conference (BRC) in order to negotiate final settlement of all workers' compensation issues. A BRC is handled by a Workers' Compensation Specialist

⁸ Tenn. Code Ann. §§ 50-6-110 and 50-6-111

⁹ Lashuay N, Harrison R. *Barriers to Occupational Health Services for Low-wage Workers in California: A Report to the Commission on Health and Safety and Workers' Compensation, California Department of Industrial Relations*. April 2006. Available at http://www.dir.ca.gov/Chswc/chswc_whatsnew2006.html (accessed May 29, 2009).

¹⁰ *Id.*

of the Tennessee Department of Labor. If a mediated settlement occurs, it must be signed by both parties and approved by the Commissioner of the Tennessee Department of Labor. If the parties fail to reach a compromise and settlement of all issues at the BRC, they may file a complaint in state court.

What steps may migrant health centers need to take prior to accepting workers' compensation cases?

A recent study found that many health centers already screen patients for work-related injuries, but do not take on workers' compensation cases.¹¹ Some clinicians were reluctant to take on such cases because:

- the paperwork is too burdensome;
- the system is too complex; and/or,
- they need additional training in occupational medicine.

Consequently, to prepare for accepting workers' compensation cases, health centers may consider taking the following steps:

- Securing additional training for clinical staff in occupational medicine as well as obtaining consultant services from a board-certified occupational medicine specialist who has handled many workers' compensation cases
- Providing staff an orientation to Tennessee's workers' compensation law and their role in assisting patients in pursuing claims for benefits
- Setting up billing protocols so that for workers' compensation patients, billing would be based on specific services provided, rather than on a per visit basis
- Scheduling longer visits for workers' compensation patients
- Adjusting clinician productivity requirements to take into account the time that must be spent completing necessary reports

Can a clinician treat a patient who has a pending workers' compensation claim and bill the patient for the services rendered?

A health care provider should not bill the patient for services rendered unless (a) a court determines that the injury is not compensable under workers' compensation law; or (b) either the physician or the patient were aware that the physician was not employer-authorized to provide treatment and it was not an emergency.

IV. IMPORTANT DEADLINES

1. The worker must report the injury or illness to the employer, orally and in writing, immediately and in any event within **30 days** of its occurrence or of the employee's learning of it.
2. The employer must file the Employer's First Report of Work Injury (Form C20) with the insurer within **one (1) day** of learning of the injury or illness.

¹¹ *Id.*

3. The insurance carrier then has **15 days** to accept or deny the claim and notify the employer and the claimant of its decision.
4. If a claim is denied, a worker has **one (1) year** from the date of the injury to file Form C40B (Request for Benefit Review Conference) with the TN Workers' Compensation Division to preserve the right to compensation. The request must be made within **one (1) year** from the latter of the date of the last authorized treatment or the issuing date of the last payment of compensation by the employer.
5. If the parties fail to reach a compromise and settlement of all issues at the benefit review conference, they have **90 days** to file a complaint in state court.

Failure to meet these deadlines does not necessarily bar recovery. Nonetheless, it is better for workers to report the injury or illness, and to comply with other requirements as soon as possible.

Key Forms

The following forms are attached:

- Employer's First Report of Work Injury (Form C20)
- Request for Benefit Review Conference (Form C40B)
- Agreement Between Employer/Employee Choice of Physician (Form C42)

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The contents of this publication are solely the responsibility of Farmworker Justice and Migrant Clinicians Network and do not necessarily reflect the official views of the Bureau of Primary Health Care or the Health Resources and Services Administration.

**TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
EMPLOYER'S FIRST REPORT OF WORK INJURY OR ILLNESS**



CLAIMS ADM/CARRIER	JURISDICTION CLAIM # (STATE FILE #)		CLAIM TYPE CODE <input type="checkbox"/> MED ONLY <input type="checkbox"/> INDEMNITY <input type="checkbox"/> BECAME LOST TIME <input type="checkbox"/> BECAME MED ONLY <input type="checkbox"/> NOTIFY ONLY <input type="checkbox"/> TRANSFER		THE USE OF THIS FORM IS REQUIRED UNDER THE PROVISIONS OF THE TENNESSEE WORKERS' COMPENSATION LAW AND MUST BE COMPLETED AND FILED WITH YOUR INSURANCE CARRIER IMMEDIATELY AFTER NOTICE OF INJURY. IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO ANY PARTY TO A WORKERS' COMPENSATION TRANSACTION FOR THE PURPOSE OF COMMITTING FRAUD. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS. IF YOU HAVE QUESTIONS, THE STATE NOW HAS A BENEFIT REVIEW SYSTEM WHERE A WORKERS' COMPENSATION SPECIALIST CAN PROVIDE ASSISTANCE. CALL 1-800-332-2667 (TDD).					
	CLAIMS ADM CLAIM # (INSURER CLAIM #)		CARRIER FEIN							
	OSHA LOG CASE #		FEIN OF CLMS ADM							
	NAME OF INSURANCE CARRIER		CLMS ADJ PHONE #							
	CLAIMS ADMIN FIRM NAME (IF DIFFERENT FROM CARRIER)		CITY					STATE	ZIP	
	CLAIMS ADJUSTER NAME		ADDRESS LINE 1 AND LINE 2							
	CLAIM HANDLING OFFICE ADDRESS LINE 1 AND LINE 2									
EMPLOYER	EMPLOYER NAME		EMPLOYER FEIN		SIC CODE		PHONE NUMBER			
	EMPLOYER ADDRESS LINE 1 AND LINE 2				NATURE OF BUSINESS					
	CITY		STATE	ZIP	INSURED REPORT #		EMPLOYER LOCATION			
POLICY	INSURED NAME (PARENT CO. IF DIFFERENT THAN EMPLOYER)		POLICY NUMBER		EFF DATE		EMPLOYMENT STATUS CODE <input type="checkbox"/> FULL TIME/REGULAR <input type="checkbox"/> PART TIME <input type="checkbox"/> PIECE WORKER <input type="checkbox"/> SEASONAL <input type="checkbox"/> VOLUNTEER <input type="checkbox"/> APPRENTICE FULL TIME <input type="checkbox"/> APPRENTICE PART TIME			
			SELF INSURED? <input type="checkbox"/> YES <input type="checkbox"/> NO		EXP DATE					
EMPLOYEE	EMPLOYEE LAST NAME		PHONE INCL AREA CODE		GENDER <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN					
	FIRST	MI	DEPARTMENT REGULARLY WORKED		OCCUPATION DESCRIPTION					
	ADDRESS LINE 1 & 2		CITY		STATE	ZIP	MARITAL STATUS <input type="checkbox"/> UNMARRIED, SINGLE, DIVORCED		<input type="checkbox"/> MARRIED <input type="checkbox"/> SEPARATED <input type="checkbox"/> UNKNOWN	NCCI CLASS CODE
	SSN		DATE OF BIRTH	DATE OF HIRE						
	WAGE \$		PERIOD <input type="checkbox"/> WEEKLY <input type="checkbox"/> HOURLY <input type="checkbox"/> DAILY	NUMBER OF DAYS WORKED PER WEEK		SALARY CONTINUED IN LIEU OF COMPENSATION <input type="checkbox"/> YES <input type="checkbox"/> NO		FULL WAGES PAID FOR DATE OF INJURY <input type="checkbox"/> YES <input type="checkbox"/> NO		
ACCIDENT/INJURY	DATE OF INJURY		TIME OF INJURY <input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> COULD NOT BE DETERMINED		TIME EMPLOYEE BEGAN WORK ON INJURY DATE <input type="checkbox"/> AM <input type="checkbox"/> PM					
	DATE EMPLOYER NOTIFIED OF INJURY		BODY PART AFFECTED CODE		NATURE OF INJURY CODE		CAUSE OF INJURY CODE			
	DATE CLAIM ADM NOTIFIED OF INJURY		HOW INJURY OR ILLNESS OCCURRED. DESCRIBE THE INCIDENT INCLUDING WHAT THE EMPLOYEE WAS DOING JUST BEFORE, THE PART OF THE BODY AFFECTED AND HOW, AND OBJECT OR SUBSTANCE THAT DIRECTLY HARMED THE EMPLOYEE.							
	DATE LAST DAY WORKED									
	DATE DISABILITY BEGAN									
	RETURN TO WORK DATE (IF APPLICABLE)									
	DATE OF DEATH (IF APPLICABLE)		IF DEATH CLAIM, GIVE # DEPENDENTS FOR EACH RELATIONSHIP				TOTAL # DEPENDENTS			
	DID INJURY/ILLNESS OCCUR ON EMPLOYER'S PREMISES? <input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> WIDOW	<input type="checkbox"/> FATHER	___ SISTER					
		<input type="checkbox"/> WIDOWER	___ DAUGHTER	___ BROTHER						
		<input type="checkbox"/> MOTHER	___ SON	___ HANDICAPPED CHILD						
ADDRESS WHERE INJURY OCCURRED (IF OTHER THAN EMPLOYER'S PREMISES)							COUNTY OF INJURY			
CITY							STATE	ZIP		
TREATMENT	PHYSICIAN NAME		HOSPITAL OR OFF SITE TREATMENT NAME							
	ADDRESS LINE 1 AND 2		ADDRESS LINE 1 AND 2							
	CITY	STATE	ZIP	CITY	STATE	ZIP				
	INITIAL TREATMENT <input type="checkbox"/> NO MEDICAL TREATMENT		<input type="checkbox"/> MINOR BY EMPLOYER <input type="checkbox"/> MINOR BY CLINIC/HOSPITAL		<input type="checkbox"/> HOSPITALIZED > 24 HRS <input type="checkbox"/> EMERGENCY CARE		<input type="checkbox"/> FUTURE MAJOR MEDICAL/LOST TIME ANTICIPATED			
OTHER	DATE PREPARED		PREPARER'S NAME & TITLE		PREPARER'S COMPANY NAME		PHONE NUMBER			

Division of Workers' Compensation

2222 Metro Center Blvd.

Nashville, Tennessee 37228

Toll Free: 1-800-332-2667

FAX: 615-253-1223 or 615-253-2479



REQUEST FOR BENEFIT REVIEW CONFERENCE (BRC)

A) DATE OF INJURY: _____

B) This REQUEST is FOR: (Check all that apply)

Mediation, New Injury: _____ Has Claimant reached Maximum Medical Improvement? ___ Yes ___ No

Mediation, Reconsideration: _____

(The Employee must have reached Maximum Medical Improvement before a BRC can be scheduled.)

Is Second Injury Fund involved? Yes No If yes, you should fax a copy of this form to TDL&WD Legal Office fax number 615-741-4169 or mail a copy to: Director Legal Services, TDL&WD Legal Section, 220 French Landing Drive, 3B, Nashville, TN 37243.

C) INJURED EMPLOYEE'S NAME: _____

SSN: _____ Date of Birth: _____

Street Address: _____

City: _____ State: _____ Zip: _____

County: _____ Telephone: _____

Is Employee Represented By An Attorney?

Attorney's Name: _____ BPR# _____

Mailing Address: _____

Telephone: _____ Fax: _____

D) EMPLOYER'S NAME: _____

Street Address: _____

City: _____ State: _____ Zip: _____

County: _____ Telephone: _____

Do Five Or More Employees Work For Employer? _____

Is Employer Represented By An Attorney?

Attorney's Name: _____ BPR# _____

Mailing Address: _____

Telephone: _____ Fax: _____

E) WORKER'S COMPENSATION INSURANCE COMPANY NAME: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Adjuster's Name: _____ Telephone: _____ Fax: _____

