



Excellence is Not an Accident

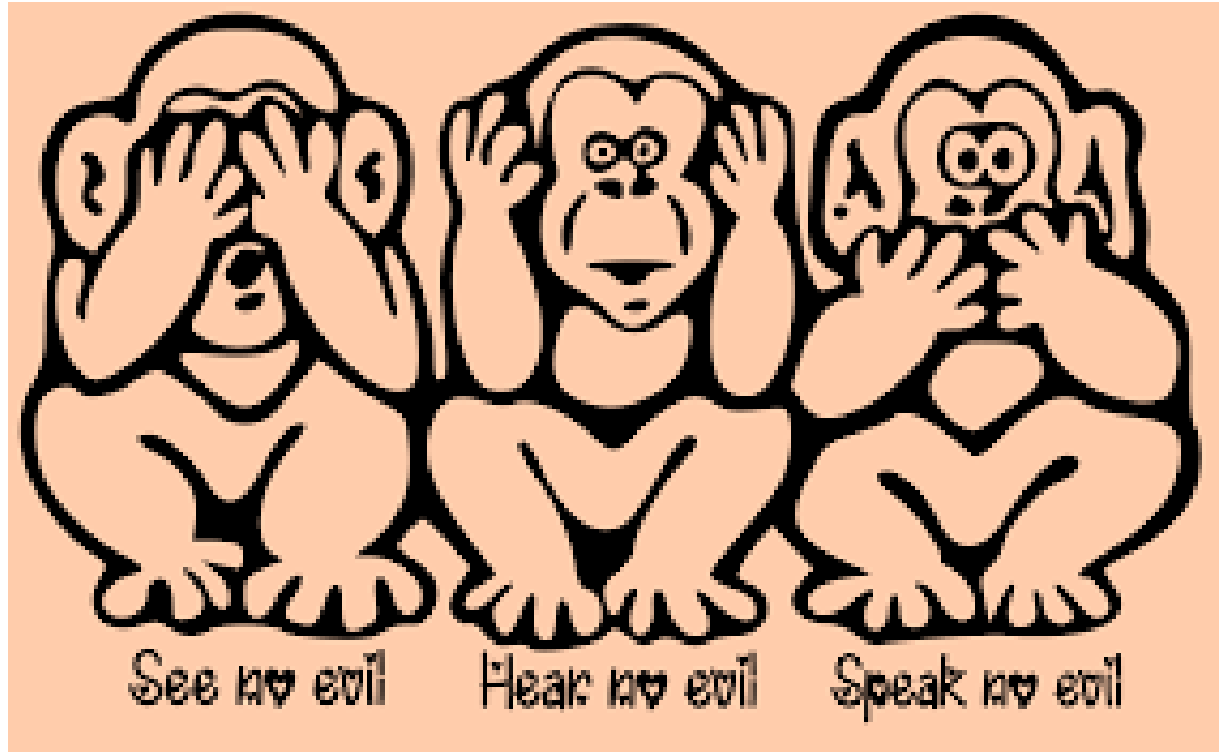
Best Practices for Employers **when an**
injury is reported

Presenter

Jeff Francis, Assistant Administrator
Tennessee Bureau of Workers' Compensation

2020

Does this represent your feelings about WC?



Or maybe this is how you feel?



If either of these are true...

...please sit back, relax, and
be prepared to learn why neither of
those approaches are in your best
interests.

Let's start with a simple question...

What do you think is the best way to save money on workers' compensation claims?

- a) Utilize in-network doctors for treatment
- b) Investigate all claims thoroughly
- c) Drug test all injured employees
- d) All of the above

All are good ideas, but the best way to save money is...

The best way to save money on your WC...

Injury
Prevention!

Have a
Safe Worksite!



SAFETY FIRST



Safety
Starts
Here

Think Safe...
Work Safe...
Be Safe

Discussion Topics

- Learn the basics of workers' compensation
- Learn the rights and responsibilities for:
 - Employers
 - Employees
 - Adjusters
- Learn ways to protect your rights and save \$\$
- Learn the Consequences for not following the law

What is workers' compensation?

- Workers' comp is a state-mandated and state-regulated insurance program that provides benefits when the work an employee performs causes an injury or illness.
 - Unlike OSHA (TOSHA), all 50 states, the Federal Government and D.C. have their own requirements and benefits
 - No two are alike

What is workers' compensation?

- Mandatory for most employers in Tennessee
 - Required for most employers with 5 or more employees
 - Part-time or full-time, doesn't matter
 - Family members count if they are treated like employees
- In construction, every employee must be covered
 - Construction owners can exempt themselves

Workers' Compensation in Tennessee

- Originally passed by the legislature in 1919
 - Wisconsin was first state to enact it, in 1913
 - Mississippi was last in 1948
- Early workers' compensation systems didn't cover all injuries:
 - If employee slipped and fell
 - If caused by fellow employee
- Employees assumed many risks of their jobs

Who administers and enforces WC laws?

The Tennessee Bureau of Workers' Compensation

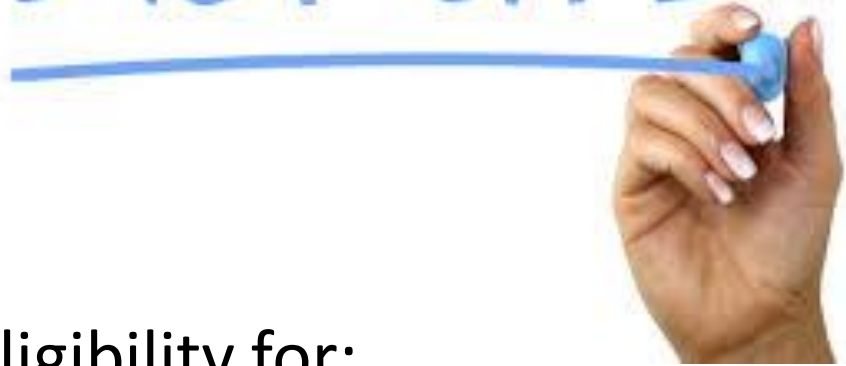
- Vision:
 - Minimize the any negative impact caused by a **work-related injury**
- Goal
 - Help injured employees return to their health and to their jobs as quickly as possible

In an overwhelming majority of claims, when parties act responsibly, proper benefits are provided, the injured worker returns to work and the Bureau of Workers' Compensation is not involved.

However, it is in those claims that a party **doesn't** act responsibly that the Bureau must become involved.

How does the Bureau get involved?

DISPUTE



Involving eligibility for:

- Medical Benefits
- Disability Benefits (Wage Replacement)

How does the Bureau get involved?



Often, it is because of poor management skills.

- Employers don't know what to do if someone reports an injury
- Employees are afraid to report an injury—feel intimidated
- Employers think that denying a claim is in their best interest—it usually isn't!

What does workers' compensation do?

Protects employees:

What does workers' compensation do?

Protects employees:

- By providing them assured access to a guaranteed level of benefits.
- Don't have to prove it's the company's fault
- Medical treatment for as long as necessary
- Possibly wage replacement benefits if taken off work by the authorized treating physician

What does workers' compensation do?

Protects employers:

What does workers' compensation do?

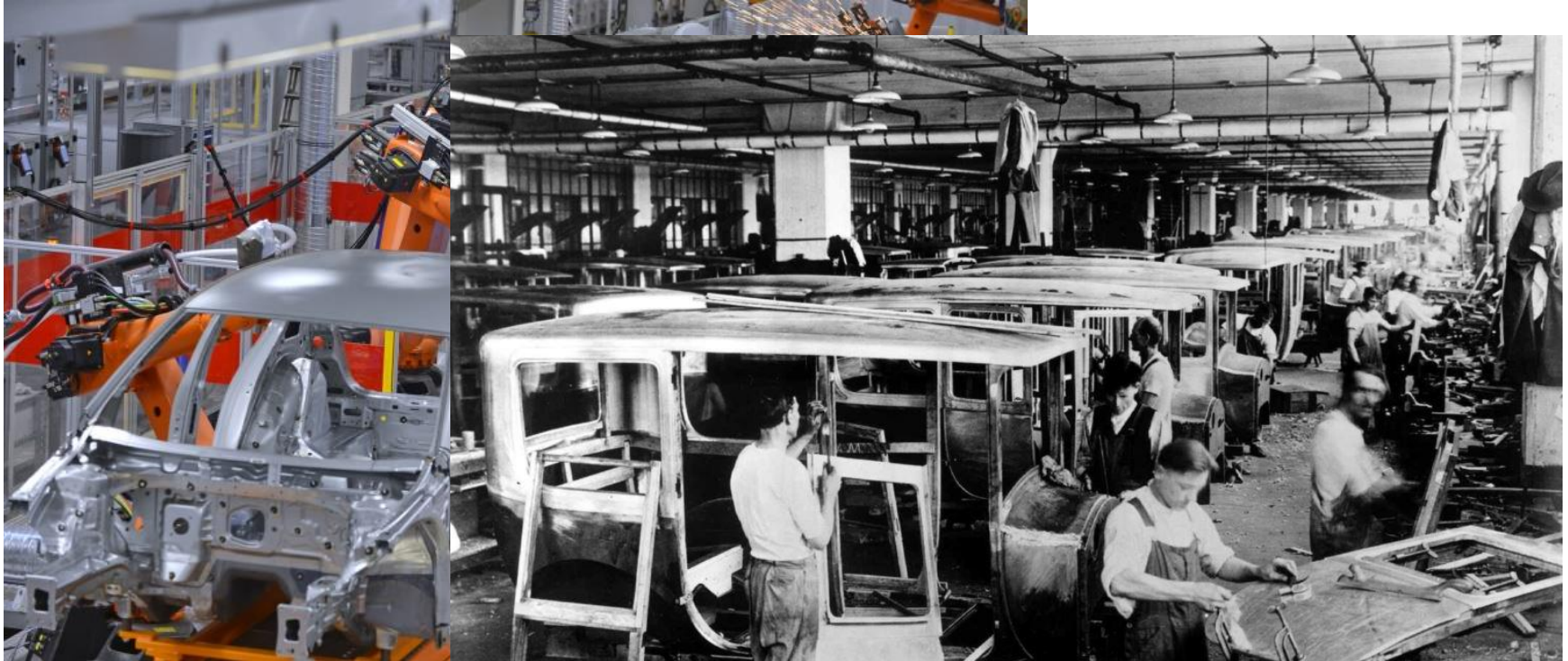
Protects employers:

- By shielding them from tort/negligence claims that could carry huge, unpredictable cash awards and expenses ordered by a judge or jury.
- Pain and suffering not considered
- No punitive damages
- Generally, no negligence

Since WC helps protect employers...

...employers need to know and follow the rules to be able to take advantage of the protections offered by the law.

While jobs today are safer, they aren't without risks...



But workers don't always work smart.



...There are still too many people are being injured at work

July 1, 2018 - June 30, 2019:
-93,991 injuries reported

In calendar year 2018:
-41 workplace fatalities



What should an employer do **before** an injury?

- Secure workers' compensation insurance, if required
 - Consider purchasing it even if it isn't
- Post the required Posting Notice to inform your employees who they should report their injury to

Wait, did you say required Posting Notice???

Yes I did.

TENNESSEE WORKERS' COMPENSATION INSURANCE POSTING NOTICE

How to Report Work-Related Injuries

What should be done if injured at work?

Employee

1. Immediately report the injury to the employer representative named below.
2. Select a treating physician from a panel provided by your employer.
3. If you have questions or problems, contact the employer representative or the Bureau of Workers' Compensation.

Employer

1. Complete your company's internal "Workplace Injury form" and notify your workers' compensation insurance company immediately, even if you have concerns about the validity of the claim.
2. Offer a panel of physicians to the employee via Form C-42 available on the Bureau's website. In cases of emergency, call an ambulance and provide this form as soon as the injured employee has stabilized.

Printed name and title of the employer representative to be notified in the event of a work-related injury

Printed name of an alternative employer representative to be notified in the event of a work-related injury

Telephone number of employer representative to notify in event of a work-related injury

Address of employer representative to notify in event of a work-related injury

The Tennessee Bureau of
Workers' Compensation is
available to help both
employees and employers.



220 French Landing Dr. 1-B
Nashville, TN 37243-2667

800-332-2667

615-532-4812 TTD; 800-332-2257
tn.gov/workerscomp

Workers' Compensation law requires this notice to be posted in a conspicuous place at the work site at all times.

Employee's Rights and Responsibilities

An employee has a right to report an injury or illness he/she **suspects** was caused by work.

They need to know who to report it to.

- 15 calendar days of when they:
 - knew or
 - should have known

Does your company policy violate state law?

Employer's Should Have A Plan & Not Stick Their Head in the Sand



- One of the worst things an Employer can do when an injury is reported, is to do nothing at all
- Many problematic and disputed cases arise when the Employee claims the Employer refused to even acknowledge the report of injury

What should an employer do **after** an injury?

Begin to protect its rights:

- An Employer “**must accept any notice**” of a claim for workers’ compensation benefits from any employee or employee’s representative alleging and injury?
 - Rights are not lost by acknowledging a claim—they are protected because the law allows employers to control many aspects of the claim!
- Employer’s shall report all known or reported accidents or injuries to their insurance adjuster **within one (1) business day** of knowledge of injury
 - Reporting a claim to your adjuster doesn’t raise your rates or mean that you have accepted compensability!

Employee's Rights—Medical Benefits

After employees report an injury, they are entitled to appropriate medical care.

- First Aid
- Medical provider
- Emergency Care
- At no cost to the injured employee

When an injury is reported...

...you should
immediately begin to
protect your rights

But, how is that done?

- By providing a panel of physicians
- Choice of Physician Form C-42



Tennessee Bureau of Workers' Compensation
220 French Landing Drive, I-B
Nashville, TN 37243-1002

FORM C-42

EMPLOYEE'S CHOICE OF PHYSICIAN

An employer must provide a partially-completed form listing at least three physicians to an employee upon the report of a workplace injury. The employee must complete and then sign and date the section below that indicates the physician chosen. A copy of the fully-completed form should be provided to the employee with the original kept on file by the employer. If the employee refuses to accept medical services from the chosen physician, the employee's rights to benefits may be delayed. **NOTE:** Employees traveling more than 15 miles one way to or from medical treatment may seek reimbursement of their travel expenses from the insurance carrier.

TO BE COMPLETED BY THE EMPLOYER:

Employer Date of Injury

Employer Contact Phone Email

Physician Name Phone

Address City State Zip

Physician Name Phone

Address City State Zip

Physician Name Phone

Address City State Zip

TO BE COMPLETED BY THE EMPLOYEE:

I have selected the following physician from the list provided to me by my employer:

Physician Name Date Selected

Employee Name Appt Date/Time

Address City State Zip

Phone Email

Employee Signature Date

Creating the Medical Panel

- ▣ At least 3 physicians on the panel
 - Must be independent physicians
 - Within the community
 - Can go as far as 125 miles if required
 - Can go up to 175 miles for pain management
 - Can be of any specialty
 - No longer must include a chiro

New Rules concerning Medical Panels

- Have three business days to provide it
 - Psst...it shouldn't take that long in most cases
- Employers can use onsite medical care as a triage
 - But not to replace the panel
 - Can be listed on the panel
- Walk-in clinics and urgent care facilities can be named on the panel
 - Make sure you list name of the supervising MD
- Must be three different MDs

When an injury is reported...

...you should immediately begin to work to **gain the trust and cooperation of your employee**

But, how is that done?

- By providing a "Beginner's Guide"



A Beginner's Guide to Tennessee Workers' Compensation

Basic facts about the Tennessee Workers' Compensation System for dates of injury on or after July 1, 2014.

How the Doctor is Selected

You will select your **Authorized Treating Physician** from a panel of three doctors that your employer gives you. That physician will provide the medical care needed to help you return to your health and to your job.



Medical treatment for your work-related injury is provided at the employer's expense. Sign an **Agreement between Employer/Employee Choice of Physician** (Form C-42), which should be provided to you by your supervisor, to indicate which doctor you select to become the authorized treating physician. If emergency treatment is required, the supervisor should provide the panel after the injury is stabilized.

Keep up with your records



Request and keep a copy of your signed Form C-42 for your records. If you do not sign the form, but accept medical treatment from a doctor on the form, it may be considered that you have chosen that doctor.

Have Questions?

Call the Ombudsman Program of the Tennessee Bureau of Workers' Compensation at **800-332-COMP (2667)** if you have any questions.

An ombudsman will assist with any questions from employees, employers and insurance companies that do not have attorney representation.

Learn more online and download forms at:
www.tn.gov/workerscomp



Keep in Touch

Stay in contact with your employer if you are taken off work by the doctor.

Benefits that Injured Employees May Be Entitled to Receive

Employees who have suffered a compensable injury, meaning that the authorized treating physician has determined the injury to be work-related, may be entitled to receive the following:

Medical treatment, at no cost to the employee

This treatment must be provided for as long as required by the authorized treating physician. Medical treatment recommended by the authorized treating physician that is denied by the insurance company's utilization review agent can be submitted to the Bureau's Utilization Review Program for additional review and consideration.

Travel Expenses

Reimbursement for mileage to and from medical treatment may be requested if travel exceeds 15 miles one way.



Temporary Disability Benefits (Wage Replacement)

Disability begins when the authorized treating physician takes you off work. Temporary disability benefits replace lost wages and are due beginning on the eighth day of the disability. If the disability lasts fourteen (14) days or longer, benefits will be paid back to the first day of disability. Temporary disability benefits are usually two-thirds of your average weekly wages earned during the 52 weeks prior to the injury. The Bureau of Workers' Compensation does not pay these benefits. Benefits are paid by your employer's insurance carrier.

If you are able to work, but your average weekly earnings are reduced because of work restrictions, you may be entitled to partial disability benefits.

If the authorized treating physician restricts your ability to work, such as limiting the number of hours worked or the type of work performed, it is very important that the physician's instructions and restrictions are followed at all times. **Failure to report for light duty offered by your employer may terminate your temporary disability benefits.**

Another way to protect your rights **after** an injury.

- Have the employee provide you with a written statement, especially if you have doubts:
 - Who, what, when, where, why
 - Witnesses



Employee rights—Wage Replacement Benefits

- Wage replacement benefits are called Temporary Disability Benefits.
- They are not required for the first **8 days** of missed work.
 - Temporary Total Disability (TTD)
 - Temporary Partial Disability (TPD)
- If the disability lasts **14 days** or longer, the benefits go back to the first day of disability.

What should employers do **before** an injury?

- Determine the **essential functions** and **job duties** for each of the positions at your worksite.

Job Description Components

Identification

- Job title
- Reporting relationships
- Department
- Location
- Date of analysis

General Summary

- Describes the job's distinguishing responsibilities and components

Essential Functions and Duties

- Lists major tasks, duties and responsibilities

Job Specifications

- Knowledge, skills, and abilities
- Education and experience
- Physical requirements

Disclaimer

- Of implied contract

Signature of approvals

Job descriptions are beneficial **after** an injury.

- Create **alternative work** or **light duty** possibilities for when needed
- If you view them as disabled, how do you think they will view themselves?



"You were lucky this time, Mr. Dumpty. But I think your wall-sitting days are over."

Develop a Return-to-Work Program

Employers should work with their:

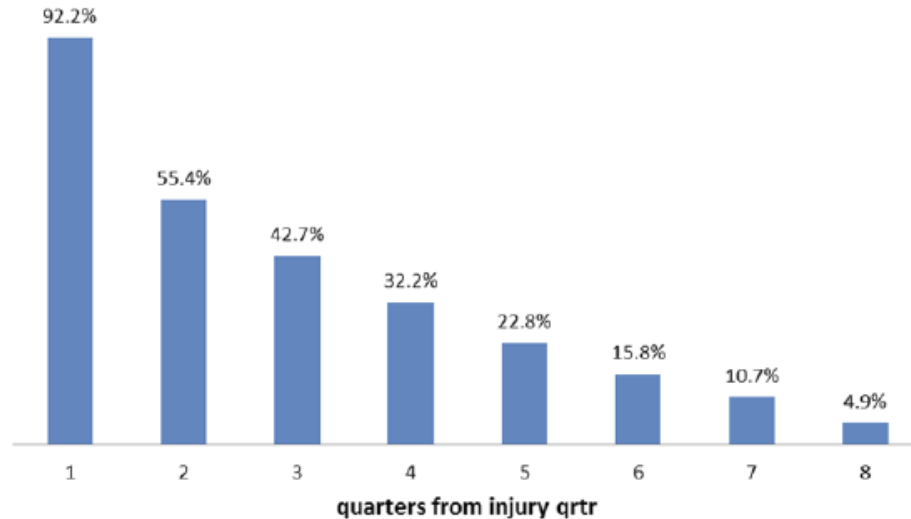
- Treating Physicians
- Nurse Case Managers
- Insurance Adjusters
- Upper Management
- Front Line Supervisors

To develop light duty or alternative work for employees that cannot return to their normal duties.

- If you don't have something, consider having them work at a non-profit

Why is it important to return them to work?

Studies prove that the longer someone stays off work, the less likely they are to ever return to work.



There is no doubt...your injured employees will have questions

The only question is where will they seek advice?

- Spouse
- Friends and Neighbors
- Co-workers
- That lawyer that advertises on TV
- **Don't you want them to come to you?**



If they come to you, what will you tell them?

Give employees the phone number to the Bureau's Ombudsman Program: **800-332-2667**



Drugs in the workplace

Let's be honest...

The next slide is probably what a lot of you think when the issue of drugs is discussed.



Drugs in the workplace

- But, unfortunately drug use isn't confined to:
 - Hippies
 - Millennials
 - To after hours, or
 - Just weekends
- WARNING: This next video contains shocking footage
 - Count the number of employees you see in the video



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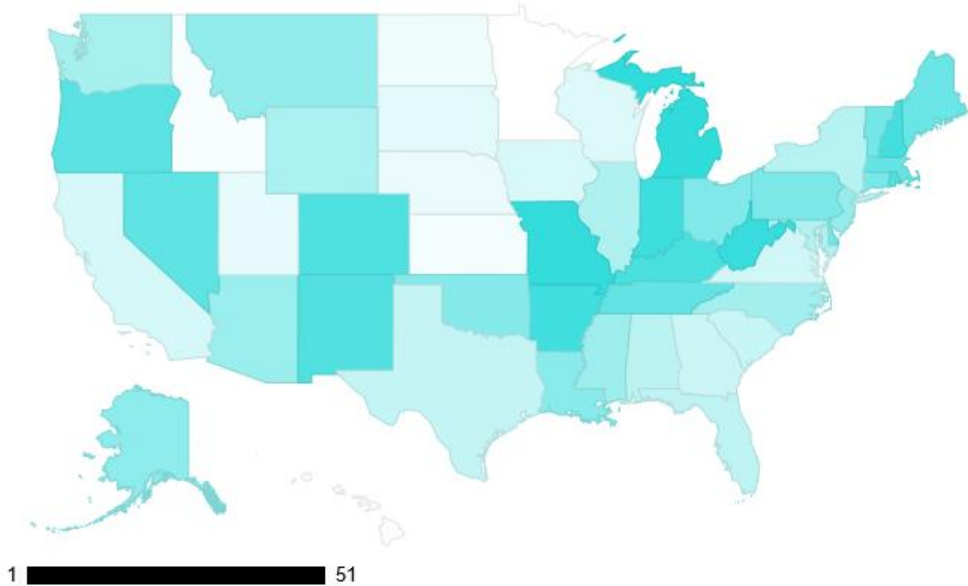
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How BIG is substance abuse in the Workplace?

- Approximately **75 percent of adult illicit drug users are employed**, as are most binge and heavy alcohol users.
 - Source: AlcoholRehab.com
- This means that in nearly every workplace, there is likely at least one employee who has a substance abuse problem.

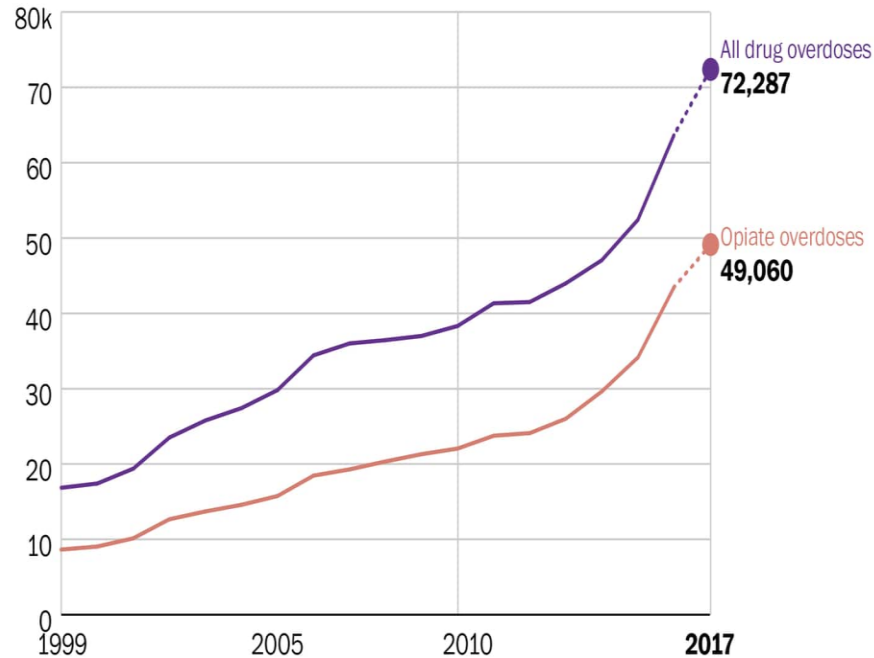
DRUG USE BY STATE: 2019 PROBLEM AREAS

| Overall Rank (1='Biggest Problem') | State | Total Score | 'Drug Use & Addiction' Rank |
|---------------------------------------|----------------------|-------------|-----------------------------|
| 1 | District of Columbia | 59.95 | 1 |
| 2 | Michigan | 58.59 | 3 |
| 3 | Missouri | 57.93 | 18 |
| 4 | West Virginia | 56.62 | 5 |
| 5 | Indiana | 54.96 | 7 |
| 6 | Arkansas | 54.23 | 9 |
| 7 | New Hampshire | 53.17 | 16 |
| 8 | Kentucky | 53.00 | 2 |
| 9 | Colorado | 52.99 | 24 |
| 10 | New Mexico | 52.36 | 12 |
| 11 | Rhode Island | 50.15 | 6 |
| 12 | Oregon | 50.03 | 8 |
| 13 | Nevada | 49.19 | 17 |
| 14 | Tennessee | 48.22 | 10 |



Overdose deaths hit record high

Annual deaths from all drug overdoses and opiate overdoses



Note: 2017 figures are provisional

Source: Centers for Disease Control and Prevention

WAPO.ST/WONKBLOG

Tennessee

| | |
|----------------------------|-------|
| Reported cases, June 2019: | 1,881 |
| Reported cases, June 2018: | 1,792 |
| Percent change: | 5.0 |

Did You Know...

- It costs employers on average **\$7,000** in direct and indirect costs to replace an employee.
- Substance abusers are more than twice as likely to miss 8 or more workdays a year.
- Substance abusers are 1/3 less productive than other employees.
- 40% of industrial fatalities are linked to substance abuse.

Does a failed drug test mean claim denied?

- No. Not necessarily.
- To be able to deny the claim:
 - The employer must prove that intoxication was the proximate cause of the injury if the employer is not a member of the Bureau's Drug Free Workplace Program.
- A simple violation of your company policy is not enough to deny their workers' comp claim.

Does a failed drug test mean claim denied?

However, if the employer is a member of the program and if employee is confirmed positive for a drug, **it is presumed the drug or alcohol is proximate cause of the injury**, and employee can be denied benefits.

- Can be rebutted by employee by clear and convincing evidence.

Consider joining the Tennessee Drug Free Workplace Program

- It is good for employees:
 - Fewer drugs in the workplace will result in a **safer worksite**.
 - Employees who feel safe at work are **more productive**.
 - Employees will appreciate your concern for them, resulting in **better morale**.
 - 5% credit on your workers' comp premiums.

What should employers do **after** an injury is reported?

Seven important steps to take:

1. Accept the report and provide a panel of physicians on the proper form
2. Provide a copy of the Beginner's Guide to Tennessee Workers' Compensation
3. Have the injured employee provide you with a written statement
4. Complete your company's internal Notice of Injury Form

What should employers do **after** an injury is reported?

Seven important steps to take:

5. Notify your insurance adjuster
6. Start your investigation
7. Work to eliminate the possibility of someone else being injured

The Century Old Problem

One of the problems with workers' compensation is its name.

What word do you think most people hear when they hear the words:

Workers' Compensation?

I guarantee you it's...

Compensation!

It should have been called Workers' Recovery!

When an employee becomes an **active participant** in their own recovery workers' compensation becomes **"workers' recovery."**

Why is this important?

- Employees that **feel disengaged** have lengthier recovery times and costlier claims.

Make your culture one based on recovery rather than compensation!

You have the ability to make a difference in the outcomes of your workers' comp claims!

- Don't complain about the process
 - Your complaints are heard by others
 - The system isn't perfect, but what other system is?
- Value your employees
 - When you show it, they know it
- Take control of the process
 - Employers can control most aspects as long as they follow the rules
- Lead by example
 - It is all about the expectations you set for your injured employees

Improving your WC culture is as simple as The Golden Rule

What would you want your employer to do for you if you were hurt on the job?

- Help make doctor/PT appointments?
- Help ensure your benefits were received timely?
- Feel as though you were missed?
- Receive a phone call from the company occasionally?
- Mail a "Get Well" card!



You can ignore my advice, but...

...not taking injuries seriously can have repercussions:

- Employers can be assessed a **25% penalty** if wage replacement benefits are not provided in a timely manner
- A **penalty of up to \$5,000** can be assessed against an employer if a valid panel is not provided timely



Injuries at Work: Bureau of Workers' Compensation

The Bureau of Workers' Compensation administers the Tennessee Workers' Compensation Act, assisting both employees and employers in minimizing the impact of work-related injuries. The Bureau's programs are designed to provide timely and effective services that help injured employees return to their health and jobs as quickly as possible. Informing all parties of their rights and responsibilities, these programs promote a better understanding of the benefits and requirements provided by the Workers' Compensation Act.

The Bureau's mission: fulfilling the promise of workers' compensation today...and tomorrow.

NEWS

Free Legal Clinic on March 14 in Knoxville

February UR Working Group Meeting Announced

March Medical Advisory Committee Meeting Announced

[View More Announcements](#)

[Compensation Rates](#)





Injured Workers

[I Need Help \(Ombudsman Program\)](#)

[Filing a Claim](#)

[What Are My Rights](#)

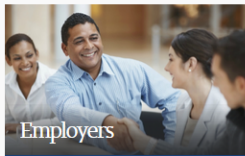
[Employee Misclassification](#)

[Benefits](#)

[Returning to Work](#)

[Area Offices](#)

[FAQs for Injured Workers](#)



Employers

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Bureau Services

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[Mediation Services](#)

[Court of WC Claims](#)

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[Medical Programs](#)

[Medical Treatment Guidelines](#)

[Assistance for Medical Providers](#)

[Penalty Program](#)



Available Resources

[Beginner's Guide to Workers' Comp](#)

[Request a Speaker](#)

[Workers' Compensation Act](#)

[Coverage Verification](#)

[EDI Guide](#)

[Program Rules](#)

[Open Records Request Policy](#)

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**Department of Labor and
Workforce Development**
Burns Phillips, Commissioner

220 French Landing Drive
Nashville, Tennessee 37243
(844) 224-5818

JOBS4TN.GOV

[Help](#)

Your presenter

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QUESTIONS?



THANK YOU