



GENERAL ASSEMBLY REVISED INITIAL COMPENSATION PERIOD, FAILS TO ACT ON ATTORNEYS' FEES LEGISLATION

Article

During an abbreviated legislative session due to COVID-19, the Tennessee General Assembly passed legislation that amends the initial compensation period. Due to time constraints, the General Assembly failed to act on a bill amending the statute governing awards of attorneys' fees.

HB2257/SB2190 The Initial Compensation Period Bill: The initial compensation period establishes when an employee may be eligible for increased benefits. If as of the expiration of the initial compensation period the employee has not returned to work with any employer or has returned to work and is receiving wages or a salary that is less than the pre-injury wage or salary, the employee may be eligible for increased benefits. The initial compensation period is a length of time equal to the employee's impairment rating times 450 weeks. It begins on the MMI date.

For example, if the employee has a 2% impairment rating, the initial compensation period is nine weeks ($.02 \times 450 \text{ weeks} = 9 \text{ weeks}$). If the employee's MMI date is June 1, 2020, the initial compensation period ends on August 3, 2020. If the employee is working for any employer at a wage equal to the pre-injury wage on August 3, 2020, the employee is not eligible for increased benefits.

HB2257/SB2190 amends the definition of the initial compensation period in cases where the employee receives a low impairment rating. Specifically, the bill provides that the initial compensation period shall not be less than 180 days, regardless of the impairment rating. In the case of the employee with a 2% rating, the initial compensation period would extend 180 days, rather than 9 weeks. The expiration date of the initial compensation period would be November 28, 2020, not August 3, 2020.

The 180 days provision sets the minimum length of the initial compensation period – it does not also serve as a cap. So, as a practical matter, the new provision applies to claims where the employee receives a 5% impairment to the body as a whole or less. Cases where the employee receives a 6% impairment or higher will not be impacted because the initial compensation period mathematically exceeds 180 days.

The new law applies to injuries occurring on or after June 22, 2020, the date Governor Lee signed the bill.

HB2154/SB2861 The Attorneys' Fee Bill: Prior to July 1, 2016, the attorneys' fee statute provided that a court could award attorneys' fees when the employer failed to furnish medical benefits pursuant to a court order, including a settlement order. In 2016, the statute was amended to enable a court to award attorneys' fees when the employer wrongfully denies a claim or fails to



initiate medical or disability benefits timely. The purpose of the statute is to incentivize lawyers to accept workers' compensation cases involving denied or delayed benefits. The new law applied to injuries occurring on or after July 1, 2016, but not to injuries occurring after June 30, 2018 (the sunset clause). In 2018, the General Assembly extended the sunset to June 30, 2020.

HB2154/SB2861 was introduced to extend the June 30, 2020 sunset date to June 30, 2022 and to cap the amount of fees a court could award. Specifically, attorneys' fees would be capped at \$15,000.00, except in extraordinary cases where the \$15,000.00 cap is deemed inequitable in light of the totality of the circumstances and other factors. In extraordinary cases, the cap would be \$30,000.00. The cap would apply to injuries occurring on or after July 1, 2020.

Though the bill was on track for passage, the General Assembly failed to act on the bill prior to adjourning, resulting in the June 30, 2020 expiration date remaining unchanged. Consequently, the statute providing for attorneys' fees when the employer wrongfully denies a claim or fails to initiate medical or disability benefits timely has no application to injuries occurring after June 30, 2020. Please note, however, that the part of the statute providing for attorneys' fees when an employer fails to furnish medical benefits pursuant to a court order does not have a sunset clause and will remain in effect after June 30, 2020.

For more information about the legislation and how it may impact your claims, please feel free to contact us.