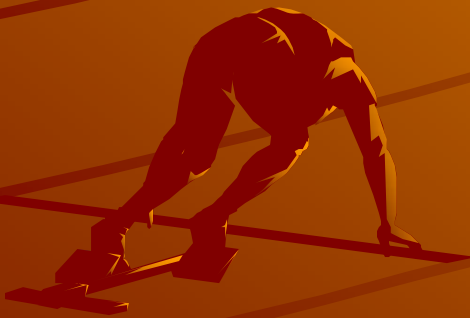


# MANIER & HEROD



**Terry L. Hill, Attorney**  
**September 17, 2009**

# Tennessee Workers' Compensation Legislative Update

New Laws Change Workers'  
Compensation Practice



# SB 1574: Now TCA §50-6-204(a)

This bill puts to rest the Overstreet decision, a 2008 Supreme Court case preventing employers, insurance carriers and attorneys from communicating with the authorized treating physician.

SB 1574 allows us to communicate with the authorized treating physician under the following terms...

1. The employer may send written communications to the treating physician, but must copy the employee or the employee's attorney on the correspondence with any attached materials and must provide the employee or the employee's attorney with copies of the physician's response to the correspondence within 7 days of receipt.

2. The employer may communicate orally with the treating physician, but must send the employee or the employee's attorney a written summary of the opinions or statements of the physician within 7 days of a request by the employee or the employee's attorney.

3. The employer's attorney may communicate orally with the authorized treating physician, but must provide written notice to the employee or the employee's attorney at least 7 days prior to the communication and must provide the employee or the employee's attorney with a written summary of all opinions expressed by the physician within 7 days of the communication.

# Language Required for Releases

**THIS MEDICAL AUTHORIZATION FORM ONLY PERMITS THE EMPLOYER OR THE DIVISION OF WORKERS' COMPENSATION TO OBTAIN MEDICAL INFORMATION THROUGH ORAL OR WRITTEN COMMUNICATION, INCLUDING, BUT NOT LIMITED TO, CHARTS, FILES, RECORDS, AND REPORTS IN THE POSSESSION OF A MEDICAL PROVIDER AUTHORIZED BY THE EMPLOYER PURSUANT TO T.C.A § 50-6-204 AND A MEDICAL PROVIDER THAT IS REIMBURSED BY THE EMPLOYER FOR THE EMPLOYEES TREATMENT.**

## SB 1909: Now TCA §50-6-110 (a)

**This bill disallows employees from recovering for injuries sustained during recreational activities, except in the following limited circumstances...**

1. *When the employee's participation was expressly or impliedly required by the employer;*
2. *When the employee's participating produced a direct benefit to the employer beyond improvement in employee health and morale;*

3. *When the employee's participation was during the employee's work hours and was part of the employee's work related duties; or*
  
4. *When the injury occurred due to an unsafe condition during voluntary participation using facilities designated by, furnished by or maintained by the employer on or off the employer's premises and the employer had actual knowledge of the unsafe condition and failed to curtail the activity or program or cure the unsafe condition.*

## SB 1567:Now TCA § 50-6-241(a)1(c)

This bill states that if an employer is bought out by another company and retains the employee at the same or greater pay, the employee is not entitled to reopen his case under T.C.A §50-6-241(a).

Prior case law counter-intuitively dictated that when a company simply changed its name, the employee could reopen his case and still keep his job. This bill was signed by the Governor on June 5, 2009 and will be effective on July 1, 2009.

## SB 2162: Now TCA §50-6-241(e)(1)

This bill makes it clear that an employee who is an illegal alien may not recover more than 1.5 times his impairment rating.

The argument here is that the employee should not be able to go up to the 6 times cap if the employer is required to fire the employee because of the Federal law that prohibits the employer from retaining illegal workers.

# SB 2162: Now TCA §50-6-241(e)(1)

(continued)

However, the bill also holds that if the employer is aware that the employee is illegal, there will be an automatic award of 5 times the rating.

The employee will not get those funds, which will go to the State Second Injury Fund.

SB 2000: Now TCA §50-6-102(13) &  
TCA §50-6-207(1)

- \* This bill amends two existing statutes and:
  - 1) Disallows the employer from claiming a credit for TTD benefits paid in a 400 week case;
  - 2) Caps the amount of TTD an employee may receive in a mental injury case at 104 weeks

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