

Wimberly Lawson
Wright Daves & Jones, PLLC

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Briefly
November 2011 Volume 11, Issue 11

EEOC OFFICIALS TO PARTICIPATE IN PANEL DISCUSSION AT 2011 CONFERENCE

Thursday, November 3
Marriott Downtown Knoxville
Riverview Room
*EEOC Officials Talk
Directly With You*
2:45 pm to 3:45 pm
Moderated by
Fred J. Bissinger



Fred Bissinger

Friday, November 4
Marriott Downtown Knoxville
Riverview Room
*EEOC Officials Talk
Directly With You*
9:45 am to 10:45 am
Moderated by
Fred J. Bissinger

Based on the response to last year's EEOC panel discussion, we have again invited representatives from the EEOC's Nashville Area Office to participate in our 2011 Annual Seminar. These representatives include, Nashville Area Director, Sarah Smith, Enforcement Supervisory Federal Investigator, Sylvia Hall, and Senior Trial Attorney, Sally Ramsey. Ms. Smith, Ms. Hall, and Ms. Ramsey have graciously accepted our invitation to participate, and they will help us better understand the EEOC's enforcement initiatives and how employers can better navigate the Charge of Discrimination process.

In 2010, private sector workplace discrimination charge filings with the EEOC hit an unprecedented high of 99,922. Historically, race has been the most common basis for charges of discrimination. From 1997-2010, race claims constituted between 35%-37% of all charges filed on an annual basis. However, in 2009, for the first time ever, retaliation (all statutes) slightly surpassed race as the number one basis for charges of discrimination (33,613 retaliation v. 33,579 race). In 2010, retaliation again surpassed race, but by an even higher margin (36,258 retaliation v. 35,890 race). This means employers must make a concerted effort to deal with the retaliation issue and avoid retaliatory responses to employee complaints.

The EEOC has continued to receive record numbers of charges of discrimination since 2008. The dramatic increase in the number of charges filed corresponds with the current economic downturn and the trend is not expected to slow in the near future. As our economy struggles to find traction and unemployment hovers near 10%, the EEOC anticipates the number of charges filed each year to continue at record-high levels. Given the increase in charges and renewed political emphasis on investigating and enforcing the laws for which the EEOC has responsibility, it is imperative that employers examine their policies and practices to ensure compliance with all applicable laws and take appropriate steps to correct any discrimination or harassment issues that arise. Our conversation with Ms. Smith, Ms. Hall, and Ms. Ramsey will help shed more light on how employers can meet this challenge.

For more information on the EEOC initiatives, Fred Bissinger will moderate a panel discussion with Ms. Smith, Ms. Hall, and Ms. Ramsey at the Annual Labor and Employment Law Update Conference on Thursday, November 3, 2011, in the Riverview Room at the Marriott Downtown Knoxville from 2:45 - 3:45 p.m. On Friday, November 4, 2011, join Fred in the panel discussions with the EEOC panelists in the Marriott's Riverview Room from 9:45 a.m. - 10:45 a.m.



**To register for the conference please
call /email Bernice Houle at 865-546-1000
or bhoule@wimberlylawson.com
or online at www.wimberlylawson.com**

Our Firm Wimberly Lawson Wright Daves & Jones, PLLC is a full service labor, employment and immigration law firm representing management exclusively. The firm has offices in Knoxville, Morristown, Cookeville and Nashville, Tennessee and maintains its affiliation with the firms of Wimberly, Lawson, Steckel, Schneider & Stine, P.C., Atlanta, Georgia; and Wimberly Lawson Daniels & Fisher, LLC, Greenville, South Carolina.

UNEMPLOYMENT CLAIMS – TACTICS AND STRATEGIES

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work, or until his employer can recall him to work. In Tennessee, this coverage is authorized in the Tennessee Employment Security Law, codified at Tenn.Code Ann. § 50-7-101, *et. seq.* Annually, approximately 400,000 workers file initial or partial unemployment claims in local offices across the State of Tennessee.



Jeffrey G. Jones

Eligibility Criteria

There are certain requirements that a worker in Tennessee must meet before he can receive unemployment insurance benefits. Among these are the following:

- The worker must be totally or partially unemployed through no fault of his own and be approved for benefits.
- The worker must have worked in employment that is covered by unemployment insurance and have qualifying wages in the base period.
- The worker must be physically and medically able to work at the time he files his first claim.
- The worker must be available to accept suitable work offered to him.
- The worker must have earned enough wages at his work to qualify for benefits.
- The worker must be authorized to work in the United States, i.e., must fulfill all I-9 requirements.
- After filing his claim, the worker must serve one week of waiting for which no payment is made.
- In order to receive payment for that waiting week, the worker must be certified and eligible for four consecutive weeks, beginning with and including the waiting week.
- Each week, the worker must report the gross amount of any money he has earned during that week, even if he is not paid until later.



Andrew J. Hebar

Disqualification

Disqualification of workers from eligibility for unemployment benefits is important because such disqualification can have positive results for employers. Those positive benefits include overall reduction of benefits; non-charging of employer's account; credit to an employer's account; and effect on other employee initiated actions. Therefore, it is important for an employer to carefully document all employee separations from employment, as that documentation may be determinative of the employee's disqualification from eligibility for benefits.

Think About It

Representation of claimants in unemployment hearings is an increasingly alarming trend. Unemployment claims make a fertile proving ground for aspiring attorneys and a rich source of information for skilled plaintiff attorneys mining additional claims.



Margaret Noland

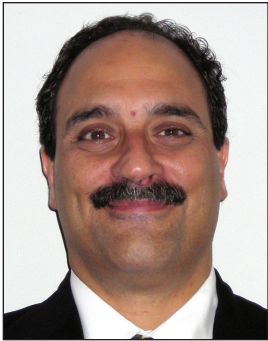
Friday, November 4
Marriott Downtown Knoxville
William Blount North
Unemployment Claims
9:45 am to 10:45 am
Presented by
Jeff Jones, Andrew Hebar, and
Margaret Noland

Proper preparation is essential and good training a must. Be sure management and human resources are on the same page and that everyone is well aware of their roles and responsibilities before a termination decision is made. If there is any inkling that a claimant may be represented, always consult an attorney for representation during the unemployment claims process.

For more information on Unemployment Claims, Jeff Jones, Andrew Hebar and Margaret Noland will participate in presenting a breakout session on Friday, November 4, 2011 from 9:45 a.m. - 10:45 a.m. in William Blount North at the Marriott Downtown Knoxville.

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PRACTICAL STRATEGIES TO DEFEND WORKERS' COMPENSATION CLAIMS



Gerard Jabaley



Michael Jones



Joseph Lynch

This article aims to provide cost-saving strategies involving preventive measures, claims investigation and management, and programs that should enable employers to reduce their workers' compensation costs. The point is to direct employers to the tools, resources, and strategies that make handling work comp claims feel less "out of control" and more of a cooperative effort to ensure that productive employees are appropriately treated and can continue to be positive and productive. We cannot convey strongly enough just how important each point is to managing the bottom line when it comes to work comp.

Begin with Proper Accident Investigation • Explore Light Duty and Return to Work Programs • Proper Administration of Physician Panels • Pre-Employment Physicals • Enforcement of Safety Rules • Drug Free Workplace • Communications with Medical Providers • General Techniques For Avoiding Liability

A central authority should review all terminations to confirm appropriate procedures have been followed and the discharge is consistent with prior treatment of other employees. Before a final decision to discharge an employee is made, Human Resources should become involved. It is generally insufficient for a department head to review a supervisor's decision. The Human Resources Department should check for oversights to ensure uniform and consistent treatment of all employees.

For more information on the latest developments in Tennessee Workers Compensation law, Gerard Jabaley, Joseph Lynch, Andrew Hebar and Amanda Lowe will participate in presenting *Practical Strategies to Defend Workers' Compensation Claims*, a breakout session, on Thursday, November 3, 2011 in William Blount South at the Marriott Downtown Knoxville from 11:00 a.m. - 12:00 noon. On Friday, November 4, 2011, Fred Baker, Michael Jones, Anne McKnight and Terri Bernal will present an encore breakout session on *Practical Strategies to Defend Workers' Compensation Claims*, in the Marriott's James Polk room from 9:45 a.m. - 10:45 a.m.

Thursday, November 3

Marriott Downtown Knoxville
William Blount South

Practical Strategies to Defend Worker's Comp
11:00 am to 12:00 pm

Presented by Gerard Jabaley, Joseph Lynch,
Andrew Hebar, and Amanda Lowe

Friday, November 4

Marriott Downtown Knoxville
James Polk Room

Practical Strategies to Defend Worker's Comp
9:45 am to 10:45 am

Presented by Fred Baker, Michel Jones, Anne
McKnight, and Terri Bernal

KNOW YOUR ATTORNEY AMANDA INMAN LOWE

AMANDA INMAN LOWE is a Senior Associate in the Knoxville, Tennessee office of the firm, joining in October, 2011. Her law practice focuses on workers' compensation defense, employment law,



general civil practice, and subrogation.

Amanda graduated from the University of Tennessee-Martin as a magna cum laude University Scholar with a B.A. in English. In 2005, she obtained her Doctor of

Jurisprudence degree from the University of Tennessee College of Law in Knoxville, Tennessee. Amanda spent three years as an Assistant District Attorney in Tennessee's Fourth Judicial District prior to entering the private practice of law. After spending time in bankruptcy practice, Amanda transitioned into a small firm in Johnson City, Tennessee, where she focused on workers' compensation, personal injury and Social Security disability.



Anne T. McKnight

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LEGISLATIVE DEVELOPMENTS IN WORKERS' COMPENSATION



Fred R. Baker.....

Thursday, November 3
Marriott Downtown Knoxville
Main Ballroom
*Legislative Developments
in Workers' Compensation*
4:00 pm
Presented by
Fred R. Baker
.....

In 2011, the Tennessee General Assembly enacted four Public Chapters which address workers' compensation issues. Public Chapter 203 involves the intoxication defense. Public Chapter 376 addresses one aspect of the overlap between workers' compensation benefits and unemployment compensation. Public Chapter 416 is a wide-ranging act which addresses the definition of injury, the settlement of future medical benefits, and communications with authorized treating physicians. Finally, Public Chapter 422 deals with the construction industry.

I. Public Chapter 203 - Intoxication Defense

This act changes the standard of proof required for an employee to rebut the statutory presumption that the claimed workers' compensation injury was caused by intoxication or illegal drug usage. Essentially, this act will make it more difficult for employees to defeat the intoxication defense, if the employer has qualified under the Tennessee Drug Free Workplace Program. Public Chapter 203 took effect July 1, 2011.

II. Public Chapter 376 - Unemployment Compensation

This Act addresses one aspect of the overlap between unemployment compensation and workers' compensation - namely, how to establish the base period for unemployment claims. Under the new law, when establishing the base period in cases involving employees receiving temporary total disability benefits, the periods of temporary total disability should be excluded from the base period. The base period will then be determined from the last four completed quarters of work before any such disability. Public Chapter 376 took effect July 1, 2011.

III. Public Chapter 416 - Definition of Injury, Settlement of Future Medicals, and Communicating with Treating Physicians

This important legislation addresses three areas of workers' compensation law: (A) the definition of injury, (B) the settlement of future medical benefits, and (C) communicating with authorized treating physicians. Based on the legislative history, it is clear that the General Assembly intended Public Chapter 416 to ultimately reduce the liability of employers for certain types of workers' compensation claims, and thereby make Tennessee a more attractive business environment for prospective employers.

IV. Public Chapter 422 - Construction Industry

This year, Public Chapter 422 was enacted to make some modifications to that system. First, the new law changed the standard for construction providers doing work directly for the owner of the property or doing work on the provider's own property. Under the 2010 law, providers doing these type of projects were exempt from the requirement to carry workers' compensation insurance on themselves, but only if they were either a sole proprietor or partner. The new law expands this standard to include anyone who qualifies as a "construction services provider," which is essentially any person or entity engaged in the construction industry. However, the new law does clarify that the exemption will not apply to a construction services provider doing work directly for the owner of the property, if that provider is a general or intermediate contractor, and who subsequently subcontracts any of the work.

For more information on the latest legislative developments in Tennessee Workers Compensation law, join Fred Baker as he presents this topic on Thursday, November 3, 2011, at 4:00 p.m. in the General Session, Main Ballroom of the Marriott Downtown Knoxville.