

OCCUPATIONAL COMPENSATION PLAN OF SUMNER COUNTY

SECTION 1- General Conditions

1-101. Title- This plan shall be known as the Occupational Compensation Plan of Sumner County.

Reference in this document to "County" or "Sumner County" shall mean Sumner County Government.

1-102. Purpose- The purpose of the Occupational Compensation Plan is to replace the Tennessee Workers Compensation Act as applicable to employees of Sumner County, Tennessee.

1-103. Authority- TCA § 50-6-106(5) provides a county government with the option to accept or reject the Workers Compensation Act for its employees. With the approval of the Occupational Compensation Plan by the Sumner County Commission, coverage for injuries and illnesses that would have otherwise been provided by the Workers Compensation Act, shall be provided exclusively by the Occupational Compensation Act.

1-104. Effective Date- The effective date of the Occupational Compensation Plan, also referred to as OCP or Plan, shall be May 1, 1999 and as later amended by the Sumner County Commission.

1-105. Applicability-Exclusivity- (1) The rights and remedies herein granted to an employee subject to the Occupational Compensation Plan on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, such employee's personal representative, dependents or next of kin, at common law or otherwise, on account of such injury or death insofar as it relates to Sumner County Government.

(2) It is agreed and understood by employees of Sumner County that, by continued employment, the provisions of (1) above shall apply.

1-106. Definitions- As used in this Occupational Compensation Plan,

(1) "Employee" shall mean every person employed by the Sumner County Government and included in the payroll of the County;

(2) "Injury" and "personal injury" mean an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment which cause either injury or disablement of the employee;

(3)(A) "Average weekly wages" means the earnings of the injured employee in the employment in which the injured employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of the injury divided by fifty-two (52); but if the injured employee lost more than seven (7) days during such period when the injured employee did not work, although not in the same week, then the earnings for the remainder of such (52) weeks shall be divided by the number of weeks remaining after the time so lost has been deducted;

(B) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and

parts thereof during which the employee earned wages shall be followed; provided, that results just and fair to both parties will thereby be obtained;

(C) Where by reason of the shortness of the time during which the employee has been in the employment of Sumner County Government, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the first fifty-two (52) weeks prior to the injury or death was earned by a person in the same grade, employed at the same work by Sumner County Government, and if there is no such person employed, by the established average weekly wage as designated by Sumner County;

(4) "Maximum total benefit" means the sum of all weekly benefits to which a worker may be entitled; and

(A) The maximum weekly benefits shall be sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage as determined by the Department of Employment Security; and

(B) As used in this subdivision (4)(A), the state average weekly wage shall be determined as of the preceding January 1 and shall be adjusted annually using the data from the Department of Employment Security and shall be effective on July 1 of each year;

(5) "Minimum weekly benefit" means the minimum compensation per week payable to the worker shall be fifteen percent (15%) of the state's average weekly wage as determined by the Department of Employment Security;

(6) "Casualty Insurance Board" (CIB) means the committee, established by the Sumner County Commission, that has general oversight of the property and casualty insurance and self-insurance plans, including injuries to employees;

(7) "Office of Risk Management" (Risk Management Office) means that office established to manage the property and casualty and self-insurance plans, including injuries to employees;

(8) "Case management" means medical care management or the ongoing coordination of medical care provided to an injured or disabled employee on all cases where medical expenses and disability meets the criteria established at the discretion of the Office of Risk Management;

(9) "Occupational Compensation Review Board" means a group of non-County employees that serve as a board of appeal for employees as respects the provisions of this Plan.

1-107. Injuries not covered- Drug and alcohol testing- (a) No compensation shall be allowed for an injury or death due to the employee's willful misconduct, or involved in horseplay, or intentional self-inflicted injury, or due to intoxication or illegal drugs, or willful failure or refusal to use a safety appliance, or follow a safety rule or perform a duty required by law

(b)(1) If the employee has, at the time of injury, a blood alcohol concentration level equal, as determined by blood or breath testing, to or greater than four hundredths of one percent (.04%), or if the injured employee has a confirmation of the presence of an illegal drug in the employee's body, it is presumed that such alcohol or drug was the proximate cause of the injury and not employment related.

(2) For any disabling injury or at the discretion of the Office of Risk Management, an injured employee shall submit to drug and/or alcohol test. If the injured worker refuses to submit to an alcohol or drug test, it shall be presumed, in the absence of a preponderance of the evidence to the contrary, that the proximate cause of the injury was the influence of alcohol or drugs.

1-108. Actions against third persons- (a) When the injury or death for which compensation is payable under this Occupational Compensation Plan was caused by circumstances creating a legal liability against some person other than the County to pay damages, the injured employee,

or such employee's dependents, shall have the right to pursue action against the responsible third party in a court of competent jurisdiction.

(b) In the event of recovery from such third party, the attorney representing such injured employee, or those to whom such employee's right of action survives, shall be entitled to reasonable fee for attorney's services, and the attorney shall have first lien against the recovery; provided, that if the County has engaged other counsel or utilized an attorney employed by the County to represent the County in affecting recovery against such other person, then a court of competent jurisdiction shall, upon application, apportion the reasonable fee between the attorney for the employee and attorney for the County, in proportion to the services rendered.

(c)(1) In the event of recovery against such third party by the employee, or those to whom employee's right of action survives, by judgment, settlement or otherwise, and the County's maximum liability for compensation under this Plan has been fully or partially paid, the County shall have a subrogation lien therefore against such recovery, and the County may intervene in any action to protect and enforce such lien.

(2) In the event the net recovery by the employee, or those to whom such right of action survives, exceeds the amount paid by the County, and the County has not, at the time, paid and discharged the County's maximum liability for compensation under this Plan, the County shall be entitled to a credit on the County's future liability, as it accrues, to the extent the net recovery collected exceeds the amount paid by the County.

(3) In the event the employee, or those to whom such employee right of action survives, effects a recovery, and collection, from such person by judgment, settlement or otherwise, without intervention by the County, the County shall nevertheless be entitled to a credit on the County's future liability for compensation, as it accrues under this Plan, to the extent of the net recovery.

1-109. Setoffs for payments of disability plans- The County may set off from temporary total, temporary partial, permanent total, and permanent partial disability benefits any payment made to an employee under a County funded disability plan for the same injury, provided that the disability plan permits such an offset. Such an offset from a disability plan may not result in an employee receiving less than the employee would otherwise receive under this Plan.

1-110. Funds Unaffected- Nothing in the Occupational Compensation Plan shall be construed as amending or repealing any statute or municipal ordinance relating to funds for the relief, pensioning, retirement or other benefit of any employees of the County, or of the surviving spouses, children or dependents of such employees, or in any manner interfering with the same as now or hereinafter established.

Section 2- Medical Care

2-201. Medical Care- (a) (1) It is the intent of Sumner County that medical care services shall be available to employees that are injured or disabled while acting in the course of employment.

(2) To assure that quality medical care is rendered and to control care costs, the County shall implement a managed care program. The County shall designate, in each population concentration area where there is a significant number of County employees, a primary care physician that will be responsible for managing the care of injured and disabled employees. The names of these primary care physicians shall be made known to the employees and shall be posted in the offices of each department and be available to all employees. All employees shall utilize the services of the primary care physicians, subject to (b) below, and it shall be the

responsibility of the primary care physician to refer the injured or disabled employee to a competent physician specialist for such treatment, if the primary care physician shall deem such treatment is necessary.

(b) In event of the necessity of emergency treatment for injuries, the employee may utilize the nearest medical facility; however, after the initial treatment or as soon as medically expedient, the employee must receive continuing medical care from the primary care physician or the physician specialist designated by the primary care physician.

(c) In case of dissatisfaction with the primary care physician by the injured employee, the employee, subject to the approval by the Office of Risk Management, may transfer medical treatment to another designated primary care physician designated by the County; provided, however, that any expense incurred for travel to the alternative primary care physician shall be the obligation of the employee.

(d) Excluding the expenses incurred for immediate emergency health care, any other expenses for medical care obtained at the direction of the employee and not authorized by the primary care physician shall be at the expense of the injured or disabled employee.

2-202. Medical care case management- (a) At the discretion of the County, medical care case management of an injured or disabled employee shall be under the direction of a registered nurse, as case manager. By receiving benefits under the terms and conditions of this Occupational Compensation Plan, the injured or disabled employee agrees to cooperate with the case manager and further agrees that all medical records relating to or has a direct relationship with the medical treatment being received by the injured or disabled employee shall be made available to the case manager and the County.

(b) Any medical record of an injured or disabled employee made available to the case manager and/or the County pursuant to a claim being filed under this Plan shall be considered confidential between the parties unless waived by the injured or disabled employee in writing or by exercising an appeal on any decision filed by or on behalf of said employee.

Section 3- Claims and Payment of Compensation

3-301. Notice of injury- Every injured employee or such employee's representative shall, immediately and on the same day as the occurrence of any injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the County who has not actual notice, written notice of the injury. The employee shall not be entitled to physician's fees or any compensation which may have accrued under the provisions of the Occupational Compensation Plan from the date of accident to the giving of such notice, unless it can be shown that the County had actual knowledge of the accident. No compensation shall be payable under the provisions of this Plan unless such written notice is given to the County within seven (7) days after the occurrence of the accident but the extension to seven (7) days or a portion thereof must be for a valid reason and accepted by the Office of Risk Management, subject to review by the Casualty Insurance Board. The seven (7) day notice is an absolute unless there are extenuating circumstances that prevented the employee from providing notice as provided by the appeal process, §3-317.

3-302. Limitation of time- When a claim for medical expenses and/or compensation for a disability of an injured employee has been filed in accordance with § 2-203 and payments have commenced, such payments as covered by this Plan shall continue as long as it is considered to be medically expedient; however, should payments for medical and/or compensation for disability be suspended and there has been no medical attention required for which the County

is liable for a period of six (6) months from the date of the last medical treatment or the last day of compensation for disability, the claim for the injury sustained by the employee shall be considered concluded and no further payments shall be made for said injury.

3-303. Contents and service of notice- (a) The notice required to be given of an occurrence of an accident to the County shall be on forms provided by the County and shall state the name and address of the employee, the time, place, and nature and cause of the accident resulting in injury or death, and shall be signed by the claimant or by some person on behalf of the claimant, or by any one (1) or more of the claimant's dependents if the accident resulted in death to the employee.

(b) The notice shall be forwarded to the Office of Risk Management of Sumner County, which has the responsibility for the management of the Occupational Compensation Plan.

3-304. Medical attendance and hospitalization - Reports - Physical examinations- (a)(1) Sumner County shall furnish free of charge to the employee such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus, including prescription eyeglasses and eye wear, such nursing services as ordered by the attending physician and hospitalization, including such dental work made reasonably necessary by accident as herein defined, as may be reasonably required; provided, the employee has utilized the managed care program contained in this Plan, except where such treatment was emergency in nature and prior to transferring medical treatment to the primary care physician. The injured employee, as a consideration for the payment of medical expenses by the County, shall sign any authorization required for the full release of all medical records to the County.

(2) An injured employee shall use the primary care physicians as designated by the County, except for immediate emergency medical treatment, after which the employee shall receive any necessary continuing medical treatment by the primary care physician, or the physician's designee.

(b) Where the nature of the injury or occupational disease is such that it does not disable the employee but reasonably requires medical, surgical or dental treatment or care, medicine, surgery and dental treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus shall be furnished by the County through its managed care program.

(c) In case death results from the injury or occupational disease, the County shall pay the burial expenses of the deceased employee, not exceeding four thousand five hundred dollars (\$4,500). If the deceased leaves no dependents entitled to compensation under the provisions of this Plan, the County shall be liable to such employee's estate for the medical and hospital services and burial expenses provided for herein.

(d)(1) The injured employee must submit to examination by the County's physician at all reasonable times if requested to do so by the County, but the employee shall have the right to have the employee's own physician present at such examination, to be conducted in the location as designated by the County's physician, in which case the employee shall be liable to such physician for such physician's services.

(2) Any medical report submitted to the County based upon such examination, or a true copy, shall be furnished by the County to the employee or his designee, upon request.

(3) To provide uniformity and fairness for all parties, any medical report prepared by a physician furnishing medical treatment to an employee shall use the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association) or the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment

(American Academy of Orthopedic Surgeons). The physician shall utilize the most recent edition of either publication in determining the degree of anatomical impairment. The physician shall be required to give an impairment rating based on one (1) of the two- (2) publications.

(4) The County shall pay for the services of the physician making the examination at the request of the County.

(5) If the injured employee refuses to comply with any reasonable request for examination or accept the medical or specialized medical services which the County is required to furnish under the provisions of this Plan, such injured employee's right to compensation shall be suspended and no compensation shall be due and payable while such employee continues such refusal and, in no instance, shall the payments normally payable during such suspension be later paid to the employee.

(e) In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding same.

3-305. Period of compensation- Maximum amount- Notice of payment, change or non-payment- Records- Notice of controversy- (a) No compensation shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, but, if disability extends beyond that period, compensation shall commence with the eighth day after the injury, In the event, however, the disability from the injury exists for a period as much as fourteen (14) days, then compensation shall be allowed beginning with the first day after the injury.

(b)(1) The total amount of compensation under this part shall not exceed the maximum total benefit provided under § 1-106(3)- "Average weekly wages" in any case, exclusive of travel reimbursement, medical, hospital and funeral benefits.

(2) Compensation shall be promptly paid, the first payment shall be due and payable within fifteen (15) days after the County has knowledge of any disability or death, and thereafter compensation shall be paid to the employee or the employee's dependents semimonthly.

(c)(1) The prior payment of compensation shall not be considered a binding determination of the obligations of the County as to future compensation payments.

(2) The acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the County as to future compensation payments.

3-306. Settlements and Administration- (a) The provisions of this Plan shall be administered by the Office of Risk Management, operating under the oversight of the Casualty Insurance Board, and have sole responsibility for the disposition of any claim for injury arising out of and in the course of employment.

(b) In order for a claim for an injury to be processed, the injured employee shall cooperate with and file all necessary forms with the County and comply with the provisions contained in this Plan.

(c) If the employee objects to the disposition of the reported claim and desires relief from the decision, the employee shall file, within fourteen (14) days after receipt of the disposition or denial letter, a written request with the Office of Risk Management requesting an appeal of the decision to be heard by the Occupational Compensation Review Board within a period of thirty (30) days.

3-307. Schedule of Compensation- The following is the schedule of compensation to be allowed employees under the provisions of this Occupational Compensation Plan:

(1) TEMPORARY TOTAL DISABILITY. For injury producing temporary total disability, sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the average weekly wages as defined in this Plan, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's

average weekly wages are equal to or greater than the minimum weekly benefit, such employee shall not receive less than the minimum weekly benefit; and provided further, that if such employee's average weekly wages are less than the minimum weekly benefit such employee shall receive the full amount of such employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. Where a fractional week of temporary total disability is involved, the compensation for each day shall be one-seventh (1/7) of the amount due for a full week;

(2) TEMPORARY PARTIAL DISABILITY. In all cases of temporary partial disability, the compensation shall be sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the difference between the wage of the employee at the time of the injury and the wage such employee is able to earn in such employee's partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond four hundred (400) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit;

(3) PERMANENT PARTIAL DISABILITY.

(A) In case of partial disability but adjudged to be permanent, there shall be paid, in addition to medical and hospitalization benefits, the following:

(i) Sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of injured employee's average weekly wages for the period of time during which such injured employee suffers temporary total disability on account of the injury, the same being subject to the same limitation as to minimum and maximum as provided in subsection (1); and

(ii) In addition to the forgoing, such injured employee shall receive sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of such injured employee's average weekly wages in accordance with the schedule hereinafter set out; provided, that the compensation paid the injured employee for the period of temporary total disability and temporary partial disability shall not be deducted from the compensation to be paid under such schedule:

(a) For the loss of a thumb, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during sixty (60) weeks;

(b) For the loss of a first finger, commonly called index finger, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during thirty-five (35) weeks;

(c) For the loss of a second finger, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during thirty (30) weeks;

(d) For the loss of a third finger, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during twenty (20) weeks;

(e) For the loss of a fourth finger, commonly called little finger, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during fifteen (15) weeks;

(f) For the loss of the first phalange of the thumb, or of any finger, which shall be considered equal to the loss of one half ($\frac{1}{2}$) of such thumb or finger, compensation shall be paid at the prescribed rate during one half ($\frac{1}{2}$) of the time specified above for such thumb or finger;

(g) The loss of more than (1) phalange shall be considered as the loss of the entire finger or thumb; provided, that in no case shall the amount received for more than one (1) finger exceed the amount provided in this schedule for the loss of a hand;

(h) For the loss of the great toe, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during thirty (30) weeks;

(i) For the loss of one (1) of the toes other than the great toe, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during ten (10) weeks;

- (j) The loss of a first phalange of any toe shall be considered to be equal to the loss of one half ($\frac{1}{2}$) of such toe, and compensation shall be paid at the prescribed rate during one half ($\frac{1}{2}$) of the time specified above for such toe;
- (k) The loss of more than one (1) phalange shall be considered as the loss of the entire toe;
- (l) For the loss of a hand, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during one hundred fifty (150) weeks;
- (m) For the loss of an arm, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during two hundred (200) weeks;
- (n) For the loss of a foot, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages for one hundred twenty-five (125) weeks;
- (o) For the loss of a leg, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during two hundred (200) weeks;
- (p) Compensation for an arm or leg, if amputated above the wrist joint or above the ankle joint shall be for the loss of the arm or leg;
- (q) For the loss of an eye, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during one hundred (100) weeks;
- (r) For the complete permanent loss of hearing in both ears, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during one hundred fifty (150) weeks;
- (s) For the loss of an eye and a leg, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during three hundred fifty (350) weeks;
- (t) For the loss of an eye and an arm, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during three hundred fifty (350) weeks;
- (u) For the loss of an eye and a hand, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of a average weekly wages during three hundred twenty-five (325) weeks;
- (v) For the loss of an eye and a foot, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during three hundred (300) weeks;
- (w) For the loss of two (2) arms, other than at the shoulder, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during four (400) weeks;
- (x) For the loss of two (2) hands, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of average weekly wages during four (400) weeks;
- (y) For the loss of two (2) legs, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) average weekly wages during four hundred (400) weeks;
- (z) For the loss of two (2) feet, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) average weekly wages during four hundred (400) weeks;
- (aa) For the loss of one (1) arm and the other hand, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during four hundred (400) weeks;
- (bb) For the loss of one (1) hand and one (1) foot, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during four hundred (400) weeks;
- (cc) For the loss of one (1) leg and one (1) hand, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during four hundred (400) weeks;
- (dd) For the loss of one (1) arm and one (1) foot, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during four hundred (400) weeks;
- (ee) For the loss of one (1) arm and one (1) leg, sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages during four hundred (400) weeks; and
- (ff) For the total and permanent loss of the sight of both eyes, or the loss of both arms at the shoulder, or complete and permanent paralysis. or total and permanent loss of

mental faculties, sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the average weekly wages during four hundred (400) weeks.

(B) The total amount of compensation payable in this subdivision (3) shall not exceed the maximum total benefit.

(C) When an employee sustains concurrent injuries resulting in concurrent disabilities, such employee shall receive compensation only for the injury which produced the longest period of disability, but this section shall not affect liability for the concurrent loss of more than one (1) member, for which members compensations are provided in the specific schedule and in subdivision (4)(B). In all cases the permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation in and by the schedule provided shall be in lieu of all other compensation.

(D) In cases of permanent partial disability due to an injury to a member resulting in less than total loss of use of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member, which the extent of injury to the member bears to its total loss. If an injured employee refuses employment suitable to such injured employee's capacity, offered to or procured for such injured employee, such injured employee shall not be entitled to any compensation during the continuance of such refusal. All compensation provided in this subdivision (3) for loss to members, or loss of use of members, is subject to the same limitation as to maximum and minimum as are stated in subdivision (1).

(E) For serious disfigurement to the head, face or hands, not resulting from the loss of a member or other injury specifically compensated, so altering the personal appearance of the injured employee as to materially affect such injured employee's employability in the employment in which such injured employee was injured or other employment for which such injured employee is then qualified, sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the average weekly wages for such period as the County may determine, subject to review by the Occupational Compensation Review Board, at the employee's request, not exceeding two hundred (200) weeks. The benefit herein shall not be awarded in any case where the injured employee is compensated under any other provision of this Occupational Compensation Plan.

(F) All other cases of permanent partial disability not above enumerated shall be apportioned to the body as a whole, which shall have a value of four hundred (400) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. Compensation for such permanent partial disability shall be subject to the same limitations as to maximum and minimum as provided in subdivision (1). If an employee has previously sustained an injury compensable under this section for which the County has awarded benefits based on percentage of disability to the body as a whole and suffers a subsequent injury not enumerated above, the injured employee shall be paid compensation for the period of temporary total disability and only for the degree of permanent disability that results from the subsequent injury. The benefits provided by this paragraph shall not be awarded in any case where benefits for a specific loss are otherwise provided in this Plan;

(4)(A)(i) PERMANENT TOTAL DISABILITY. For permanent total disability as defined in subdivision (4)(B), sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the wages received at the time of the injury, subject to the maximum and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly

benefit, the employee shall receive not less than the minimum weekly benefit; provided further, that, if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. The compensation shall be paid during the period of such permanent total disability until the employee reaches the age of sixty-five (65); provided, that respect to disabilities resulting from injuries which occur after age sixty (60), regardless of the age of the employee, permanent total disability benefits are payable for a period of two hundred sixty (260) weeks. Such compensation payments shall be reduced by the amount of any old age insurance benefit payment attributable to employer contributions which the employee may receive under the Social Security Act, as amended.

(ii) In no event shall the commuted portion of an award under this section exceed the value of one hundred (100) percent of the employee's benefits.

(iii) In case an employee who is permanently and totally disabled becomes an inmate of a public institution, and provided further, that if no person(s) is wholly dependent upon such employee, then the amounts falling due during the lifetime of such employee shall be suspended during the period of confinement.

(B) When an injury not otherwise specifically provided for in this Plan, totally incapacitates the employee from working at an occupation which brings such employee an income, such employee shall be considered "totally disabled," and for such disability compensation shall be paid as provided in subdivision (4)(A); provided, that the total amount of compensation payable hereunder shall not exceed the maximum total benefit, exclusive of medical and hospital benefits;

(5) DEDUCTIONS IN CASE OF DEATH. In case an employee sustains an injury due to an accident arising out of and in course of the employee's employment, and, during the period of disability caused thereby death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of death; and

(6) For social security purposes only, as permitted by federal law or regulation, in an award of compensation as a lump sum or a partial lump sum under this Plan for permanent partial or permanent total disability, the Court may make a finding of fact that the payment represents a payment to the individual to be distributed over the individual's lifetime based upon life expectancy as determined from mortality tables from Tennessee Code Annotated.

3-308. Subsequent permanent injury after receiving previous permanent injury - "Second injury fund." (a)(1) If an employee has previously sustained a permanent physical disability from any cause or origin and becomes permanently and totally disabled through a subsequent injury, such employee shall be entitled to compensation from the County only for the disability that would have resulted from the subsequent injury, and such previous injury shall not be considered in estimating the compensation to which such employee may be entitled under this Plan.

(2) With the adoption and on the effective date of this Plan, Sumner County has excluded itself from the Workers Compensation Act in accordance with the provision in TCA § 50-6-106(5) and, therefore, is not a participant in the "second injury fund."

(b) If an employee of the County has received or is in the process of obtaining partial or total permanent disability and failed to disclose the payment(s) to the County at the time of

employment by the County, any benefits normally available to the employee under this Plan, other than medical and hospital benefits resulting from a subsequent injury, are void and uncorrectable from the County.

3-309. Maximum Compensation- (a) In all cases of permanent total disability of an employee covered by this Plan, sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the average weekly wages, as defined, shall be paid, subject to maximum compensation as follows: where there are or are not persons dependent upon each injured employee, the maximum weekly benefit per week.

(b)(1) In all cases of death of an employee covered by this Plan, sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the average weekly wages, defined as stated, shall be paid in cases where such deceased employee leaves dependents, subject to the maximum weekly benefit.

(2) In all cases of death of an employee covered by this Plan, and where such employee leaves no dependents, as provided in Dependents- Compensation payments, then the lump sum of ten thousand dollars (\$10,000) shall be paid to the estate of such deceased employee.

(3) The total amount of compensation payable under this subsection shall not exceed the maximum total benefit exclusive of medical, hospital, and funeral benefits.

3-310. Dependents- Compensation Payments- (a) Persons Wholly Dependent. For the purposes of this Plan, the following shall be conclusively presumed to be wholly dependent:

(1) A surviving spouse, unless it is shown that the surviving spouse was voluntarily living apart from the surviving spouse's spouse at the time of injury; and

(2) Children under sixteen (16) years of age.

(b) Persons Prima Facie Dependent: Children between sixteen (16) and eighteen (18) years of age, if physically or mentally incapacitated from earning, shall prima facie be considered dependent.

(c) Actual Dependents. Wife, husband, child, mother, father, grandparent, sister, brother, mother-in-law, father-in-law, who were totally supported by the deceased employee at the time of death and for a reasonable period of time immediately prior thereto, shall be considered actual dependents, and payment of compensation shall be made in the order named.

(d) Partial Dependents. Any member of a class named in subsection (c) who regularly derived part of such member's support from the deceased employee at the time of death and for a reasonable period of time immediately prior thereto shall be considered a partial dependent, and payment of compensation shall be made to such dependents in the order named.

(e) Compensation in Death Cases. In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to persons entitled thereto, without administration:

(1) Surviving Spouse and No Dependent Child. If the deceased employee leaves a surviving spouse and no dependent child, there shall be paid to the surviving spouse fifty percent (50%) of the average weekly wages of deceased.

(2) Surviving Spouse and Child. If the deceased employee leaves a surviving spouse and one (1) or more dependent child, there shall be paid to the surviving spouse for the benefit of such surviving spouse and such child or children, sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the average weekly wages of deceased.

(3) Remarriage of Surviving Spouse. Upon remarriage of a surviving spouse, if there is no child of the deceased employee, the compensation shall terminate; but if there is a child or children under eighteen (18) years of age or over eighteen (18) years of age if physically or mentally incapacitated from earning, from the time of the remarriage the child or children shall have status or orphan or orphans, and draw compensation accordingly, not, however, to exceed sixty-six and two thirds percent (66 $\frac{2}{3}$ %) of the average weekly wages of the deceased.

(4) Dependent Orphans. If the deceased employee leaves one (1) dependent orphan, there shall be paid fifty percent (50%) of the average weekly wages of the deceased; if the deceased leaves two (2) or more dependent orphans there shall be paid sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the average weekly wages of the deceased.

(5) Parent or Parents. If the deceased employee leaves no surviving spouse or child entitled to any payment hereunder, but should leave a parent or parents, either or both whom are wholly dependent on the deceased, there shall be paid, if only one (1) parent, twenty-five percent (25%) of the average weekly wages of the deceased to such parent, and, if both parents, thirty-five percent (35%) of the average weekly wages of the deceased to such parents.

(6) Grandparent, Brother, Sister, Mother-in-Law or Father-in-Law. If the deceased leaves no surviving spouse or dependent child or parent entitled to any payment hereunder, but leaves a grandparent, brother, sister, mother-in-law or father-in-law wholly dependent upon the deceased for support. there shall be paid to such dependent, if but one (1), twenty percent (20%) of the average weekly wages of the deceased, or if more than one (1) twenty-five percent (25%) of the average weekly wages of the deceased. divided between them or among them share and share alike.

(7) Compensation to Dependents to Cease upon Death or Marriage. If compensation is being paid under this Plan to any dependent, such compensation shall cease, upon the death or marriage of such dependent, unless otherwise provided herein.

(8) Partial Dependents to Receive Proportion. Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time.

(9) Maximum and Minimum Compensation. The compensation payable in case of death to persons wholly dependent shall be subject to the maximum and weekly benefits; provided, that if at the time of injury the employee receives wages of less than the minimum weekly benefit, the compensation shall be the full amount of such wages a week, but in no event shall the compensation payable under this provision be less than the minimum weekly benefit. The compensation payable to partial dependents shall be subject to the same maximum and minimum specified in the foregoing sentence; provided, that if the income loss of the partial dependents by such death is less than the minimum weekly benefit, then the dependents shall receive the full amount of the income loss. The compensation shall be paid during dependency not to exceed the maximum total benefit, payments to be paid at the intervals when the wage was payable as nearly as may be.

(10) Orphans and Other Children. In computing and paying compensation to orphans or other children, in all cases, only those under eighteen (18) years of age, or those over eighteen (18) years of age who are physically or mentally incapacitated from earning, shall be included, the former to receive compensation only during the time they are under eighteen (18) years of age, the latter only for the time they are so incapacitated. If the dependent is attending a recognized educational institution, benefits shall be paid until twenty-two (22) years of age.

(11) Actual Dependents. Actual dependents shall be entitled to take compensation in the order named in subsection (c), until sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the monthly wages of the deceased during the time specified in this Plan shall have been exhausted, but the total compensation to be paid to actual dependents of a deceased employee shall not exceed in the aggregate the maximum weekly benefit.

(12) Dependency Status Not Affected by Certain Assistance Payments. Sums distributed under the Employment Security Law, chapter 7; the Old-Age Assistance Law, title 71, chapter 2, part 2; the Aid to Dependent Children Law, title 71, chapter 3, parts 1 and 2; Aid to Blind Law,

title 71, chapter 4, part 1; the federal Social Security Act, or any other public assistance distributed by the United States government, the State of Tennessee, or any other county or municipality thereof, shall not be considered income within the meaning of this Plan and shall not affect the status or compensation of any person entitled to benefits as herein provided.

3-311. Hernia- (a) In all claims for compensation for hernia or rupture, resulting from injury by accident arising out and in the course of employee's employment, it must be definitely proven to the satisfaction of the County that:

- (1) There was an injury resulting in hernia or rupture;
- (2) The hernia or rupture appeared suddenly;
- (3) It was accompanied by pain;
- (4) The hernia or rupture immediately followed the accident; and
- (5) The hernia or rupture did not exist prior to the accident for which compensation is claimed.

(b) All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of employment, shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as the result of the injury, and compensation paid in accordance with the provisions of this Plan.

(c)(1) In case the injured employee refuses to undergo the radical operation for the cure of such hernia or rupture, no compensation will be allowed during the time such refusal continues.

(2) If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the County finds it unsafe for the employee to undergo such operation, the employee shall be paid compensation in accordance with this Plan.

3-312. Epileptics- Election not to be covered by certain provisions- Revocation - (a) Epileptics may elect not to be subject to this part for injuries resulting because of epilepsy and still remain subject to its provisions for all other injuries.

(b) Such election shall be made by giving notice to the County.

(c) An election may be revoked by giving written notice to the County.

3-313. Receipts for payments- (a) Whenever payment of compensation is made to a surviving spouse for such surviving spouses use and/or the use of a child or children, any form of written receipt, including the endorsement of a check, by the surviving spouse shall release the County.

(b) Whenever payment is made to any person eighteen years of age or older, the written receipt, including the endorsement of a check, shall release the County.

(c) Whenever payment is made to a person under eighteen (18) years of age, or to a dependent child as previously defined over eighteen (18) years of age, the same shall be paid to a duly appointed guardian or trustee of such child, and the receipt by such guardian or trustee shall release the County and shall be in lieu of any claim of the parents of such child or minor for loss of services.

3-314. Maximum permanent partial disability- (a) In cases where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to § 3-307(3)(A) and (F), and the County returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is one (1) time the medical impairment as determined by the guidelines designated in § 3-304(d)(3).

(b) In cases where an injured employee is eligible to receive permanent partial benefits, pursuant to § 3-307(3)(A) and (F), and the County does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury,

the maximum permanent partial disability award that the employee may receive is two (2) times the medical impairment as determined by the guidelines designated in § 3-304(d).

3-315. Lump Sum Payment- (a) The compensation that would normally be paid in periodic installments to an injured employee or dependents may be reduced to a lump sum, by a written agreement, discounted for a present value rate of six percent (6%) with the agreement signed by the injured employee or dependents, or their guardians if under eighteen (18) years of age, and the County Executive, as chairperson of the Casualty Insurance Board.

(b) If the amount of the agreement for a lump sum settlement exceeds the authority for the payment of claims granted to the Casualty Insurance Board, as established by the Sumner County Commission, the agreement must be approved by the Sumner County Commission.

(c) When an agreement for the payment of a lump is executed and the County has paid the lump sum as consideration, the responsibilities of the County shall be consummated insofar as its financial obligations to the employee and dependents for the injury/disability.

3-316. Plan Fraud- As it relates to the Occupational Compensation Plan, any employee who, knowingly and with intent to defraud, and for the purpose of depriving the County of pecuniary gain, commits or permits another on behalf of the employee to make any false or misleading statement, oral or written, in a claim for medical expenses and/or disability compensation is guilty of Plan fraud and may be grounds for prosecution and is automatically the basis for denial of any other benefit to which the employee may have been entitled under the Plan and is also grounds for disciplinary action, including termination, by the department in which of the employee is employed.

3-317. Appeal- Occupational Compensation Review Board- (a) By passage of this Plan, the Sumner County Commission authorizes the Casualty Insurance Board to form the Occupational Compensation Review Board (OCRB) to serve as the tribunal for appeals on employees.

(b) The Occupational Compensation Review Board shall be composed of seven (7) non-employee members from the population of Sumner County selected from various areas of Sumner County. The Board members shall serve periodically on a three (3) member panel and shall hear appeals from employees that file a request who dispute the findings of the Office of Risk Management and the Casualty Insurance Board and appeal their decisions, provided, however, a member of the panel chosen to hear the appeal are not family related to the employee, have direct knowledge of the claim, or from the same Commission district as the appellant.

(c) If an appealing employee or a person on the employee's behalf contacts any member or members of the Occupational Compensation Review Board in support of the claim of the employee, that Board member or members shall be disqualified to hear the appeal, and, if sufficient members are contacted so as not to permit a three (3) member panel, the action shall serve as an automatic waiver of the employee's right to appeal and the appeal shall automatically be denied.

(d) The OCRB shall review the decision within a period of thirty (30) days from the date of the appeal of the employee with its decision to be final adjudication of the appeal unless the award has a lump sum cash payment of \$100,000 or more, at which time, the decision must be submitted to the Sumner County Commission for its approval or rejection.

(e) If the employee engages the services of legal counsel to assist in the appeal process, the expenses of such legal services shall be at the expense of the employee while the County shall be represented by the County law director or the director's designee.

(f) The Casualty Insurance Board is empowered to appoint the members of the OCRB and to develop the rules, regulations, and procedures of the OCRB.

3-318. Light duty requirement- (a) With the implementation of this Occupational Compensation Plan, the Office of Risk Management and the Casualty Insurance Board are instructed to develop and initiate a light duty pool for those employees that are precluded, due to the employee's medical condition, from returning to the employee's normal employment, to provide a degree of work activities for the County commensurate with the employees ability to perform.

(b) The primary care physician, based on the employee's medical condition, shall inform the employee and the County of any work limitations based on the medical condition.

(c) In accordance with the provisions of the developed light duty plan, the employee shall be instructed as to the assigned work function compatible with the employee's capabilities without limitation as the department to which the employee is assigned.

(d) While the injured employee performs the assigned light duty, the employee shall receive compensation in accordance with § 1-103(3)- Average weekly wages.

(e) If an employee refuses to perform the light duty assignment, payments for compensation to the employee that are the result of the injury in course of the employment shall be suspended until such time as the employee accepts and begins to perform said light duty.

(f) If an employee performs gainful employment for another employer following the filing of a claim for compensation for an injury sustained while in the course of performing duties for the County, the performance of such work for the other employer shall be prima facie evidence that the employee is capable of returning to the employee's normal job or participate in the light duty pool.

3-319. Venue- Adjudication on the terms and conditions of this Plan shall be in the Chancery Court or Circuit Court of Sumner County regardless of the residence of the employee or location of the event which gave rise to the purported injury; provided, however, that, if a suit is filed by the employee on the terms or conditions of this Plan, any compensation being paid to the employee for the purported injury shall immediately be terminated.

Section 4- Occupational Diseases

4-401. "Occupational diseases" defined- As used in the Occupational Compensation Plan "occupational diseases" means all diseases arising out of and in the course of employment. A disease shall be deemed to arise out of the employment only if:

(1) It can be determined to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(2) It can be fairly traced to the employment as a proximate cause;

(3) It has not originated from a hazard to which workers would not have been equally exposed outside of the employment;

(4) It is incidental to the character of the employment and not independent of the relation of the County and employee;

(5) It originated from a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected prior to its contraction; and

(6) There is a direct casual connection between the conditions under which the work is performed and the occupational disease. Diseases of the heart, lung, and hypertension arising out of and in the course of any type of employment shall be deemed occupational diseases.

4-402. Compensation and benefits- (a) The partial or total incapacity for work or the death of an employee resulting from an occupational disease as herein defined shall be treated as the happening of an injury by accident or death by accident, and the employee, or in case of the employee's death the employee's dependents, shall be entitled to compensation as provided in this Plan.

(b) An employee who has an occupational disease shall be entitled to the same hospital, medical and miscellaneous benefits as an employee who has a compensable injury by accident, and in the event of death the same funeral benefit shall be paid as in the case of death from a compensable accident.

(c) All obligations of the employee contained in other provisions of the Plan, shall be applicable to claims for occupational diseases.

4-403. Notice of contraction of disease and claim for compensation- Immediately, but no later than seven (7) days, after the first distinct manifestation of an occupational disease, the employee, or someone in the employee's behalf, shall give written notice thereof to the County in the same manner as is provided in the case of a compensable accidental injury as contained in § 3-301.

4-404. Limitations- (a) The right to compensation for occupational disease will be contingent on the employee's adherence to the requirements for medical care as contained in § 2-201 and § 2-202.

(b) The right to compensation for said occupational disease shall forever be barred unless an appeal to a timely denial is filed by the employee or dependent in accordance with § 3-306 for a hearing before the Occupational Compensation Review Board.

Section 5- General

5-101. Right to Amend, modify or terminate- Sumner County, with or without notice and by action of the Sumner County Commission, retains the right to amend, otherwise modify, or terminate this Occupational Compensation Plan when it is deemed in the best interest of Sumner County.

Amendment Added 10/26/04

Section 6 – Amendment

6-101. Outside Employment When Employee Is Disabled For Work With Sumner County Due To Work-Related Injury – When an employee is off from work due to a Sumner County employment work-related injury, outside employment must be approved by the Casualty Insurance Board and Department Head prior to performance of such outside employment.

Failure to obtain such approval could result in benefit reduction or termination.