

Tennessee Option

Frequently Asked Questions

What is the Tennessee Option?

The Tennessee Option is a **free-market alternative to traditional workers' compensation insurance**. Public employers in Tennessee already have an option to not provide workers' compensation insurance and can setup their own injury benefit plans, with no mandated benefits, financial security requirements, or qualification process. The Tennessee Option will give private employers the ability to setup their own injury benefit plans, subject to a **minimum benefit mandate**, financial security review, and other **employee protections**. Texas and Oklahoma are Option states, and the Tennessee Option was developed by drawing upon the best parts of those two systems. The Tennessee Option will provide occupational injury benefits to employees with **higher return-to-work rates** and **lower costs** to employers than traditional workers' compensation.

How will the Tennessee Option work?

Employers who elect the Option will set up their own **fully-insured or self-insured occupational injury benefit plans**. All plans will require certification by the Tennessee Department of Commerce and Insurance. Employees will not be required to pay for any of the cost of Option coverage.

How will disputes over benefits be resolved?

Benefit dispute processes will include internal review steps and appeals of "adverse benefit determinations." These internal review steps will be **subject to further appeal** to state or federal district court.

How will employees learn about the Tennessee Option?

Employers will be required to provide written notices to employees and post signs in the workplace informing the employees of their rights and responsibilities under the Option plan. Employers will also be **required to provide very detailed information** regarding benefits, appeals, and reporting requirements.

Why would employers choose the Tennessee Option?

The Tennessee Option will allow employers to **more directly deliver** occupational injury benefits to injured workers, which **reduces costs for employers and the government, improves outcomes, and increases employee satisfaction**. By providing more communication to their workforce, employers can require more accountability from injured workers in the form of **faster notice of injury claims**, use of specific medical providers, and following **physician treatment plans** as a condition of benefit payment. Employers will also be more likely to provide enhanced wage replacement benefits that go beyond the state-mandated level. A Tennessee Option will put the focus back on the principle stakeholders in the process – employees and employers.

Can employers return to the workers' comp system?

Yes, an employer can return to workers' compensation at any time. The employer **makes an election each year** to provide either workers' compensation or Option coverage. Having a free-market alternative to workers' compensation allows the employer to **decide which plan best fits the needs of the employer and its workforce**.

Who can decide to elect the Tennessee Option?

Private employers can elect the Tennessee Option. Current Tennessee law allows cities, counties, and school districts to "opt out" of the workers' compensation system, and several have elected to do so. **Tennessee law already exempts** employers with less than five employees from the requirement to provide workers' compensation insurance. The Tennessee Option legislation will not amend those current exemptions. The Option will not be available to construction or coal mining companies due to their unique industry requirements.

Can injured employees sue employers if they elect the Option?

Yes, the law provides for **employer liability for negligence** that causes an employee injury. An injured employee can sue their employer for economic, non-economic, and punitive damages. An employer has **certain damage caps and defenses** that are provided for in the bill, such as intentional injury, intoxication that was the proximate cause of the injury, failure to follow instructions, or injuries that occurred outside the course and scope of employment. This **liability exposure holds employers more accountable** for providing a safe workplace than the traditional workers' compensation system. It represents a **tradeoff** for the employer having more control over delivery of injury benefits. This is the same form of liability seen in the Texas Option – commonly known as "Texas nonsubscription". One-third of all Texas employers nonsubscribe and are subject to such liability exposure and have found it to be manageable and fully insurable.

How will the Tennessee Option protect employees?

By **removing various third parties** from between the true stakeholders – employees and employers – the Tennessee Option will **encourage more collaboration** between the parties. At least a **mandated level of benefits** must be paid. Many Option employers will pay higher wage replacement benefits than workers' compensation. The employer must prove that **financial security** is available to pay the benefits, and a **guaranty fund** will be established. **Stringent appeal rights** are included in the Option to provide employees due process. Due to **disclosure requirements**, employees in an Option will be more aware of their injury benefits and the processes for procuring them. And more employee accountability will lead to better medical outcomes, which is good for all parties.

What type of security will the Tennessee Option require?

All qualified **employers must secure compensation to their employees** by either showing proof of insurance coverage or proof of financial ability to self-insure. The bill also creates a **guaranty fund** that is supported by fees assessed on Option insurance carriers and employers to provide for the payment of obligations should a carrier or employer become unable to pay benefits.

What benefits will the Tennessee Option provide?

Like workers' compensation, the Tennessee Option **will provide injured employees the following minimum benefits**: temporary total disability, permanent loss or loss of use of a scheduled member, death, and medical benefits as a result of an occupational injury. In fact, most Option employers in other states **provide better benefits and access to care** than in the workers' compensation system.

Who is ARAWC?

The Association for Responsible Alternatives to Workers' Compensation (ARAWC) is a **national organization** formed to advance the proliferation of Option legislation in states across the country. ARAWC **advocates** in these states by building **coalitions** and **educating** legislators and other stakeholders about the positive benefits of an Option.