

Legislature approves workers' compensation cost-savings measure

Legislation approved this week and signed by Gov. Mark Dayton will cut workers' compensation inpatient hospital costs by 10 to 15 percent and slow future medical cost increases.

Minnesota's workers' compensation system will be required by the legislation to use the same payment system Medicare uses to reimburse hospitals beginning in January 2016. The system bases a hospital's reimbursement on a patient's diagnosis, using Medicare Severity – Diagnosis-Related Groups (MS-DRGs). This replaces the current system in which reimbursement is based on charges billed for treating a patient.



Department of Labor and Industry Commissioner Ken Peterson (left) and Sen. Dan Sparks testify before the Senate State and Local Government Committee, April 22, urging passage of the Workers' Compensation Advisory Council (WCAC) bill.

The legislation enhances electronic billing, reduces information hospitals must submit with bills and reduces payment disputes. It also ensures injured workers are granted the right to have disability benefit payments electronically deposited in their own accounts.

The legislation authorizes the commissioner of the Department of Labor and Industry (DLI) to adopt rules, to take effect in 2017, setting up a similar system to pay for outpatient hospital and ambulatory surgical center services provided to injured workers. The department will continue to work with all interested parties in developing the rules.

The bill is the result of eight months of complex negotiations involving hospitals, insurers, organized labor and employers.

"This is the most significant workers' compensation cost control measure in two decades," said Ken Peterson, DLI commissioner. "Proper care will continue to be provided for injured workers, while costs will be driven down and the system made more efficient."

Before being submitted to the Legislature, all workers' compensation bills must be approved by the Workers' Compensation Advisory Council, composed equally of labor and management representatives. The council approved this measure in April 2015.

A section-by-section overview of the legislation begins on the next page.

A section-by-section overview: 2015 workers' compensation legislation

Workers' Compensation Advisory Council Bill – H.F. 2193 (Laws of Minnesota 2015, chapter 43)

By Kate Berger, Office of General Counsel

This is only a summary of the amendments, not the actual law; the complete law is available online at www.revisor.mn.gov/laws/?year=2015&type=0&doctype=Chapter&id=43.

Section 1

Section 1 amends Minnesota Statutes, section 176.135, related to electronic health care billing transactions, by adding new subdivision 7a.

Subdivision 7a. Electronic transactions

(a) through (c) – By Jan. 1, 2016, workers' compensation payers (insurers and self-insured employers) must provide health care providers with information the providers need to submit the electronic health care claim form required by Minnesota law since 2009. The payer must place the following information in a prominent location on its website or otherwise provide the information to health care providers:

- the payer identification number;
- the name of any clearinghouse the payer uses to transmit electronic bills;
- information about how to report the payer's claim number on the bill; and
- contact information for the payer and the payer's clearinghouse.

(d) – By July 1, 2016, medical records to support a workers' compensation bill must be sent and accepted electronically, using the most recently approved version of the ASC X12N 275 attachment transaction standard. If a different standard is later mandated by federal law, it would replace this one.

(e) – By Sept. 1, 2015, payers must provide sufficient information to allow providers to match the payment to specific bills. If a bulk payment is made to a provider for more than one patient, the check or electronic funds transfer statement must specify the amount paid for each patient.

(f) – The commissioner may assess a penalty of \$500 for each violation, up to \$25,000 for identical violations per calendar year, but must provide a 30-day warning and opportunity to correct the violation before penalizing. Penalties are payable to the commissioner for deposit in the assigned risk safety account.

Effective date: Section 1 is effective, May 20, 2015, the day following final enactment.

Section 2

Section 2 amends Minn. Stat. § 176.136, subd. 1b, Limitation of liability. This subdivision is the current law governing payment to hospitals for inpatient treatment of injured workers. Subdivision 1b is amended to reflect and cross-reference the new Section 3 (to be codified as Minn. Stat. § 176.1362).



Effective date: The amendments to Section 2 are effective for billing and payment of inpatient hospital services, articles and supplies provided to patients discharged on or after Jan. 1, 2016.

Section 3

Section 3 adds a new Minn. Stat. § 176.1362, Inpatient hospital payment for patient discharges on or after Jan. 1, 2016.

Subdivision 1. Payment based on Medicare MS-DRG system

(a) – Except as provided in subdivisions 2 (catastrophic injuries) and 3 (critical access hospitals), workers' compensation payment for inpatient services, articles and supplies will be based on the patient's diagnosis, using the applicable MS-DRG (under the federal Inpatient Prospective Payment System).

(b) – The maximum reimbursement for an inpatient hospitalization will be 200 percent of the amount paid by Medicare for the applicable DRG, using the Medicare PC-Pricer program in effect on Jan. 1 of the year the patient was discharged.

(c) – Hospitals must bill the same way they bill for Medicare. The bill must be submitted within the time frames required by Minn. Stat. § 62Q.75, subd. 3 (six months of either the date of service or the date the hospital learned the identity of the responsible workers' compensation insurer).



Subdivision 2. Payment for catastrophic, high-cost injuries

(a) – If the hospital's charges exceed \$175,000, payment will be 75 percent of the hospital's usual and customary charge instead of by MS-DRG.

(b) – The \$175,000 amount must be adjusted every Jan. 1, starting in 2017, by the percent change in average total charges per inpatient case, based on hospital data for non-critical access hospitals reported to the Minnesota Department of Health under Minnesota Statutes, chapter 144. The updated threshold amount must be published in the *State Register*.

Subdivision 3. Critical access hospitals

Medicare-certified critical access hospitals must be paid at 100 percent of the hospital's usual and customary charges instead of by MS-DRG.

Subdivision 4. Submission of information when payment is by MS-DRG

When payment is by DRG, the insurer may not require an itemization of charges or additional documentation to support the bill from a non-critical access hospital if all of the following requirements are met:

- the hospital submits its charges on the 837 institutional electronic transaction required by Minn. Stat. § 62J.536;
- an MS-DRG applies to the hospitalization; and
- the hospital's total charges do not exceed the \$175,000 threshold (as annually adjusted) in subdivision 2.

Subdivision 5. Prompt payment requirement when MS-DRG payment is made

(a) – When the requirements of subdivision 4 are met (the hospital submitted an electronic bill, total charges that do not exceed \$175,000 as annually adjusted and a DRG applies), the workers' compensation payer must, within 30 days, pay the entire bill at 200 percent of the Medicare amount under subdivision 1, with no reductions, or deny payment for the entire hospitalization because:

- the patient's injury is denied;
- the diagnosis for which the patient was hospitalized is not related to the admitted work injury; or
- the hospitalization was not reasonably required to cure and relieve the employee from the effects of the injury.

(b) – When the requirements of subdivision 4 are met, payment may not be denied for a charge on the basis that it could have been bundled into another charge or because a particular service, article or supply was not reasonably required. However, post-payment audits are permitted under subdivision 6.

Subdivision 6. Postpayment audits; records and interest

(a) – A payer may conduct a post-payment audit if the hospital bill was paid according to subdivision 1 within 30 days and the amount paid according to the PC-Pricer included an "outlier" amount. (An outlier payment is payment above the MS-DRG amount, allowed by Medicare for some more expensive cases.)

(b) – When an audit is permitted, the payer must request any additional records and an itemized statement of charges within six months after payment. The hospital must provide the records within 30 days. The payer must not request additional information more than three times per audit.

(c) – Following the audit, 4 percent interest must be paid by the insurer, if it owes the hospital additional reimbursement, or by the hospital, if the insurer overpaid the hospital.

Subdivision 7. Study

The commissioner must conduct a study to analyze the impact of the reforms and determine whether further changes are needed. The report to the Workers' Compensation Advisory Council and the Legislature is due Jan. 15, 2018.

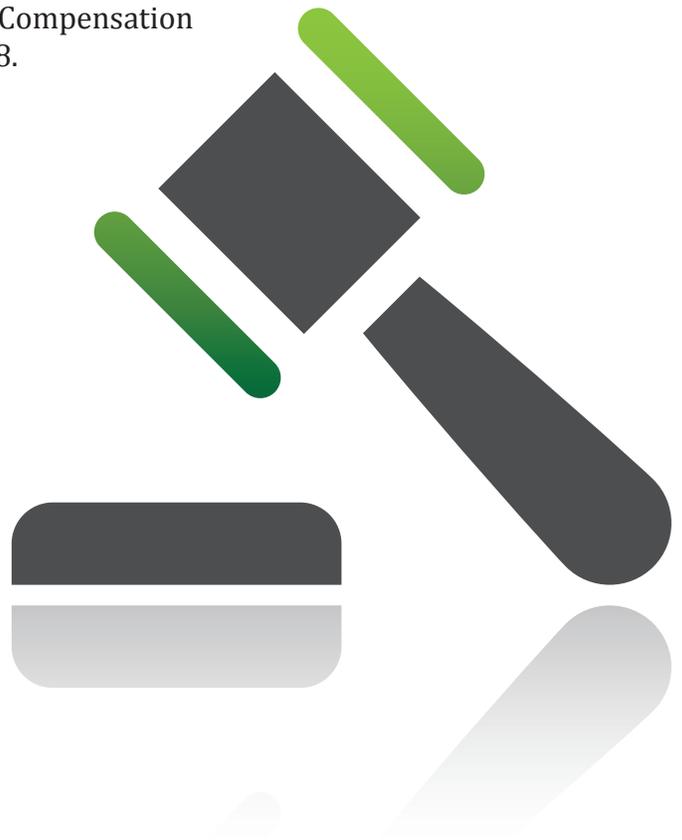
Subdivision 8. Rulemaking

The commissioner is authorized to adopt rules, using expedited rulemaking, if needed to (1) implement the Medicare MS-DRG system for workers' compensation; and (2) implement the Medicare Hospital Outpatient Prospective Payment System or other fee schedule for payment of outpatient services provided by a hospital or ambulatory surgical center outpatient treatment. The outpatient rules are not to take effect before Jan. 1, 2017.

Effective dates: Sections 1 through 6 are effective for billing and payment of inpatient hospital services, articles and supplies provided to patients discharged on or after Jan. 1, 2016. Subdivision 8 is effective, May 20, 2015, the day following final enactment.

Section 4

Section 4 amends Minn. Stat. § 176.221, subd. 8, to require payment of workers' compensation monetary benefits by electronic funds transfer (EFT).



(a) through (e) – By Jan. 1, 2016, an employer or insurer (the payer) responsible for payment of periodic monetary workers' compensation benefits must send the payment by EFT to a bank, savings association or credit union, if requested by the employee or a dependent of a deceased employee.

- If the payer already has an EFT arrangement with the bank, savings association or credit union, payment must be sent by EFT within 30 days after the payer receives the employee's request.
- If there is no established arrangement, the payer must make reasonable efforts to establish the arrangement within 14 days after receiving the request from the employee with the necessary information.
- The employee's request must be signed and dated and include the name of the financial institution, the account number and any other information needed to implement EFT. The payer must retain a copy of the request for as long as the benefits are paid by EFT.
- Payment is considered made as of the date payment is sent by EFT.
- Payment by EFT is not required if the benefits are likely to end before EFT can be arranged.

(f) – The commissioner may assess a penalty of \$500 against the payer for failing to pay benefits by EFT when requested, or for failing to retain a copy of the employee's request, but the commissioner must provide a 30-day warning and opportunity to correct the violation before penalizing. Penalties are payable to the commissioner for deposit in the assigned risk safety account.



Effective date: Section 4 is effective Jan. 1, 2016.

Section 5

Section 5 amends Minn. Stat. § 176.231, subd. 1, to coordinate workers' compensation and OSHA reporting requirements. Federal OSHA reporting rules recently changed. This amendment makes the time frames for reporting fatalities and inpatient hospitalizations the same for both OSHA and workers' compensation so the employer only needs to make one phone call.

The amendment states an employer that provides notice to the Department of Labor and Industry's Occupational Safety and Health Administration of a fatality within the eight-hour time frame required by law, or of an inpatient hospitalization within the 24-hour time frame required by law, has satisfied the employer's obligation under Minn. Stat. § 176.231.

Effective date: Section 5 is effective, May 20, 2015, the day following final enactment.

WORKERS' COMPENSATION
SUMMIT
KEEPING MINNESOTA SAFE AND HEALTHY

Join us at the 2015 Workers' Compensation Summit – Keeping Minnesota Safe and Healthy – at Cragun's Conference Center in Brainerd, Minnesota, June 17 and 18.

Our General Session speakers include:

- Department of Labor and Industry Commissioner **Ken Peterson**;
- WorkersCompensation.com President and CEO **Bob Wilson**;
- Inspirational Speaker **Dick Beardsley**; and
- State Demographer Susan Brower.

Our 16 Breakout Session topics, include:

- The Mediation Tsunami;
- Medical Marijuana;
- Faster Than the Speed of Light, the New Medical Electronic Transaction Legislation;
- The ABCs of FCEs and FJDs;
- Hot Infectious Disease Topics; and
- Minimally Invasive Spine Surgery.

For all the information about topics, speakers and the schedule, visit www.dli.mn.gov/Summit.

Don't wait: Register today!

From the State Register

Provider participation list available

Minnesota Statutes §256B.0644 and Minnesota Rules parts 5221.0500, subp. 1, and 9505.5200 to 9505.5240, also known as the Department of Human Services (DHS) "Rule 101," require health care providers to provide medical services to an injured worker under the workers' compensation law to participate in the Medical Assistance Program, the General Assistance Medical Care Program and the MinnesotaCare Program.

Notice is hereby given that the Minnesota Health Care Programs provider participation list for April 2015 is now available. The provider participation list is a compilation of health care providers that are in compliance with DHS Rule 101. If a provider's name is not on the list, DHS considers the provider noncompliant.

The list of providers is separated by provider types, each section is in alphabetical order by provider name and there is no additional information on the list other than the provider's name. This list is distributed on a quarterly basis to Minnesota Management and Budget, the Department of Labor and Industry, and the Department of Commerce.

To obtain the list, call the DHS Provider Call Center at (651) 431-2700 or 1-800-366-5411. Requests may also be faxed to (651) 431-7462 or mailed to the Department of Human Services, P.O. Box 64987, St. Paul, MN 55164-0987.

DLI's experts are ready to help

Are you looking for a speaker for your next meeting or event? Department of Labor and Industry (DLI) staff members speak often to many sizes and types of groups – community, industry, school.

DLI's speakers bureau can provide you with a knowledgeable speaker for a variety of topics and issues affecting employees, employers and other stakeholders.

Visit www.dli.mn.gov/Speakers.asp for more.

Recordkeeping: introductory-level training offered July 15

The ability to maintain an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. Recording the correct cases and accurately including the required information leads to higher quality injury and illness rates that enable employers to better understand their relation to the benchmark rates and help government agencies to properly direct resources.



Register now – at www.dli.mn.gov/OSHA/Recordkeeping.asp – for an introductory-level training session about OSHA recordkeeping requirements on Wednesday, July 15, from 9 to 11:30 a.m. This free review will be at the Minnesota Department of Labor and Industry (DLI) in St. Paul. Topics will include a review of the fundamental requirements of OSHA recordkeeping and will expose the most common OSHA log errors. If you have questions, call the DLI Research and Statistics unit at (651) 284-5025.

Helpful recordkeeping series online

If you are already beyond the introductory level of recordkeeping but want to learn more, see the Recordkeeping 101 and Recordkeeping 201 series at www.dli.mn.gov/OSHA/Recordkeeping.asp. These brief articles will take you from learning about classifying recorded injuries to knowing when to record injury recurrences and episodic illnesses.

Training: Orientation session for rehabilitation providers Aug. 19



There will be a 2015 orientation training session Aug. 19. The session is only for qualified rehabilitation consultant (QRC) interns, QRC intern supervisors, newly registered job placement vendors or rehabilitation providers re-entering the field, if absent for two years or more.

The training session is from 7:30 a.m. to 4:15 p.m. at DLI's St. Paul office. The cost is \$75. Complete information about and registration for the training session is at www.dli.mn.gov/WC/TrainingRP.asp.

Rehabilitation Review Panel seeks new regular, alternate members

The Rehabilitation Review Panel (RRP) was created in 1981 by Minnesota Statutes § 176.102 to offer vocational rehabilitation rule advice and to make determinations, including sanctions, related to contested cases about rehabilitation provider registration and professional conduct.

Currently, the panel has a "regular member" opening for one insurer representative and an "alternate member" opening for one labor representative. To apply for a position, complete the application on the Secretary of State's website at www.sos.mn.gov/index.aspx?page=5.

The panel meets quarterly at the Department of Labor and Industry. The meeting schedule, agendas and minutes are online at www.dli.mn.gov/Rrp.asp.

The Minnesota Department of Labor and Industry's Workers' Compensation Division provides oversight for all vocational rehabilitation services provided to injured workers covered by the Minnesota workers' compensation statutes.

Ask the ADR pro

DLI's Alternative Dispute Resolution unit answers frequently asked questions

Editor's note: The Alternative Dispute Resolution (ADR) unit at the Minnesota Department of Labor and Industry seeks early intervention in workers' compensation disputes through conference and mediation. It handles calls from the workers' compensation hotline and responds to questions from injured workers and their employers.

Q. I work in the billing office for a hospital. Sometimes the bill review companies make payment for our facility fees based on the fee schedule allowance for the minor surgery CPT procedure code that was performed in our emergency room, rather than for the facility fee that we are actually billing. What information should we include so our bill appeals go through smoothly?

A. Make sure the bill clearly reflects the correct revenue code and corresponding charge for the emergency room facility fee. In your billing scenario, the only reason the CPT code appears on the bill is because this is the format required by federal rules so the facility fee can be cross-referenced with the medical procedure that was done on that day in your facility. However, because the CPT code is listed on the bill, some bill payers think you are billing the professional service represented by the CPT code. This issue is discussed thoroughly by the Minnesota Workers' Compensation Court of Appeals in [Stranberg v. Carver County Sheriff](#) (W.C.C.A. March 9, 2011).

The correct payment standard for your emergency department facility fee depends on the number of licensed beds for your facility.

- **Services at a hospital with more than 100 licensed beds:** Use the workers' compensation fee schedule if the emergency department's service is listed in the fee schedule. For example, if the facility takes an X-ray of an emergency department patient's injured arm, payment for the X-ray would be subject to the fee schedule.* However, presently, there are no facility fees listed in the relative value fee schedule tables; therefore, payment for the facility fee is limited to the lower of 85 percent of the provider's usual and customary charges or 85 percent of the prevailing charge for similar treatment, articles or supplies. See Minnesota Statutes §176.136, subd. 1b; Minnesota Rules 5221.0500, subp. 2. (*Note that a different rule, Minnesota Rules 5221.4033, governs what charges are included in a facility fee for services provided by an ambulatory surgical center or hospital outpatient surgical center.)

- **Services at a hospital with one hundred or fewer licensed beds:** The correct payment standard in this case is 100 percent of the hospital's usual and customary charge, unless the charge is unreasonably excessive.



For help with a specific payment situation, call ADR at (651) 284-5000 or 1-800-342-5354.

CompFact: Patterns of service costs by vocational rehabilitation outcome

By Brian Zaidman, Research and Statistics

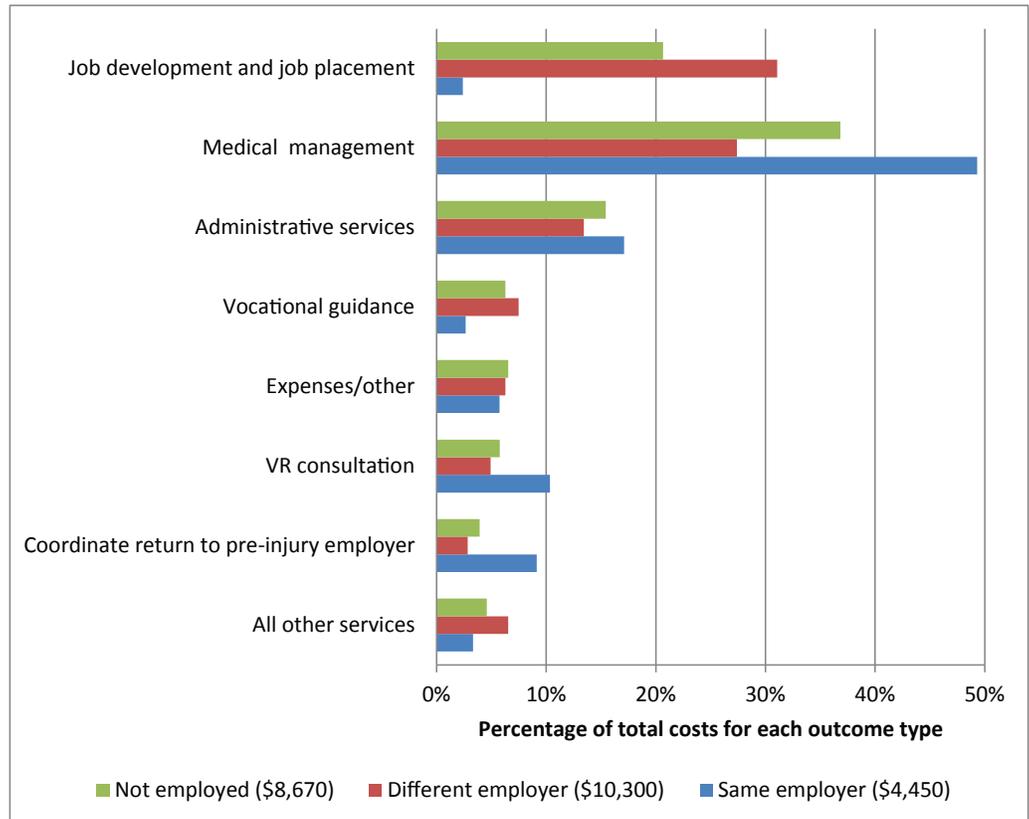
Beginning in 2011, the vocational rehabilitation plan closure form (R-8) has included a listing of 21 vocational rehabilitation services. Qualified rehabilitation consultants (QRCs) enter the costs for each service and whether it was provided by that QRC, an earlier QRC, the vendor listed on the R8 or a previous vendor. This article presents the distribution of current QRC and vendor service costs by the worker's work status at plan closure.

The percentages were calculated from the sum of costs for each service for each of the three work outcomes. The figure shows the percentage distribution for the seven services that accounted for at least 1 percent of the costs for each type of return-to-work outcome: return to the same employer; return to a different employer or did not return to work. The remaining 16 services are combined into "all other services." (The complete list of services can be viewed on the R-8 form at www.dli.mn.gov/WC/Wcforms.asp.)

Among this set of claims, 42 percent returned to the same employer, 17 percent returned to a different employer and 41 percent were not employed. The statistics are based on workers' compensation vocational rehabilitation plans closed in 2012 and 2013 with injuries within six years of plan closure, comprising 10,345 plans. Due to inconsistencies in reporting prior QRC and vendor costs, only the current QRC and vendor costs were included. Dollar values were not adjusted for inflation.

The average cost for each component can be estimated by multiplying the percentage by the mean total service cost, printed in the legend beneath the chart. For example, medical

Distribution of current QRC and vendor service costs by employment outcome, 2012 and 2013 plan closures with maximum six-year plan duration



management for workers returning to the same employer has an estimated mean cost of \$2,180 (estimated from 49% x \$4,450), which differs from the actual mean of \$2,190 due to rounding. The mean cost per service includes zero values for those workers who did not receive that service.

The services are listed in order from highest to lowest percentage for workers returning to a different employer. The figure shows that medical management accounts for the highest percentage of costs for workers who were not employed at plan closure, followed by job development and placement and by administrative services. For workers returning to a different employer, the top three services, in order, were job development and placement, medical management and administrative services. For workers returning to the same employer, the top three services, in order, were medical management, followed by administrative services and vocational rehabilitation consultation.

Basic Adjuster Training 2015

• **Sept. 24 and 25** •
8:30 a.m. to 4 p.m.

Recommended for claim adjusters who have less than one year of experience in Minnesota workers' compensation

Session topics

- Overview of Minnesota workers' compensation
- Rehabilitation benefits and issues
- Medical benefits and issues
- Waiting period
- Liability determination
- Indemnity benefits
- Penalties
- Dispute resolution
- How to file forms

CEU credits

This educational offering is recognized by the Minnesota commissioner of commerce as satisfying 10.5 hours of credit toward continuing insurance education requirements.

Location

Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155

Cost

\$150 for this two-day session (includes lunch)

Early registration is encouraged. The session is limited to 30 people and the class will be filled on a first-come, first-served basis. The Department of Labor and Industry reserves the right to cancel this session if there are not enough participants registered.

Take the pre-test

Do you administer Minnesota workers' compensation claims? Not sure if you need training? Take the pre-test at www.dli.mn.gov/WC/PDF/quiz.pdf and see how you do.

If you need special accommodations to enable you to participate or have questions about this training, call Lisa Smith at (651) 284-5273 or toll-free at 1-800-342-5354.



More resources from DLI: newsletters, specialty email lists, rulemaking lists

Newsletters – The Minnesota Department of Labor and Industry (DLI) offers three quarterly publications in addition to *COMPACT: Apprenticeship Works, CCLD Review* and *Safety Lines*.

- ***Apprenticeship Works*** is the newsletter from DLI's Apprenticeship unit. Its purpose is to inform the public of the goals, plans and progress of the Apprenticeship unit. Learn more or subscribe online at www.dli.mn.gov/Appr/Works.asp.
- ***CCLD Review*** is the newsletter from DLI's Construction Codes and Licensing Division. Its purpose is to promote safe, healthy work and living environments in Minnesota and to inform construction and code professionals about the purpose, plans and progress of the division. Learn more or subscribe online at www.dli.mn.gov/CCLD/Review.asp.
- ***Safety Lines***, from Minnesota OSHA, promotes occupational safety and health, and informs readers of the purpose, plans and progress of Minnesota OSHA. Learn more or subscribe online at www.dli.mn.gov/OSHA/SafetyLines.asp.



Breaking news – Stay up-to-date with the Department of Labor and Industry by signing up for its email newsletter at www.dli.mn.gov/Email.asp. The agency sends occasional messages to subscribers to share news about DLI activities.

Specialty and rulemaking news – DLI also maintains five specialty email lists and 11 rulemaking lists to which interested parties may subscribe. The specialty email lists are: prevailing-wage information; workers' compensation adjuster information; workers' compensation EDI trading partners; workers' compensation medical providers information; and workers' compensation rehabilitation information. Learn more about DLI's specialty email lists, subscribe or review previously sent messages online at www.dli.mn.gov/EmailLists.asp.

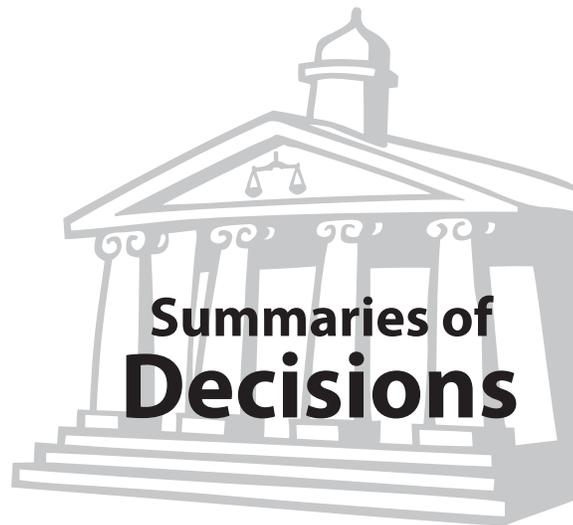
The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent contractor; labor standards/prevaling wage; Minnesota OSHA; plumbing; state building code; and workers' compensation. Learn more or subscribe at www.dli.mn.gov/Rulemaking.asp.

Subscribing to *COMPACT* – Interested parties may subscribe or unsubscribe from the *COMPACT* email list at <https://webmail.mnet.state.mn.us/mailman/listinfo/wc-compact>. Subscribers receive emailed notices about editions of the quarterly workers' compensation newsletter and other periodic updates from DLI.

Workers' Compensation Court of Appeals

January through March 2015

Case summaries published are
those prepared by the WCCA



Hoffman vs. Timberline Sports N Convenience, Jan. 6, 2015

Rehabilitation – Consultation

Substantial evidence in the form of a medical opinion with adequate foundation supports the compensation judge's determination that the employee had no employment restrictions from her work injury and the compensation judge's denial of the employee's claim for a rehabilitation consultation.

Affirmed.

Bonilla vs. Dakota Premium Foods, Jan. 6, 2015

Notice of Appeal

Although the notice of appeal failed to specifically list the finding being appealed and did not include a detailed description of the issues being appealed, listing Order Number 1 as being appealed was sufficient to place the respondents on notice of the issues being appealed given the level of specificity in Order Number 1, and its description that the compensation judge was denying benefits "because the employee failed to give timely notice of the 2013 injury."

Notice of Injury – Actual Knowledge

The testimony of the witnesses in this case presented a conflict requiring resolution by the compensation judge, and it was not error to conclude, based on that testimony, that the employer did not have actual knowledge of the injury. Furthermore, substantial evidence supported the conclusion that the employee did not establish any of the statutory notice exceptions because the employee had sufficient information to reasonably connect her symptoms to her work activities but failed to report an injury to the employer.

Gillette Injury – Substantial Evidence

Although the employee may have "overstated" some of her work activities, and although the medical expert relied upon by the compensation judge did not have the same understanding of some of the weight measures and work activities involved with the employee's job as those found by the compensation judge, the compensation judge correctly noted the medical expert was aware of the repetitive lifting and

reaching motions, including outstretched reaching, performed by the employee, and the medical expert opined that those movements caused the employee's shoulder injury. Therefore, the expert opinion provided sufficient evidentiary support for the compensation judge's determination regarding causation.

Affirmed.

Ochoa vs. Aspen Ridge Lawn Maintenance, Jan. 16, 2015

Permanent Partial Disability – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee sustained 22.5 percent permanent partial disability.

Medical Treatment and Expense – Treatment Parameters
Rules Construed – Minnesota Rules 5221.6200

Substantial evidence supports the compensation judge's award of 12 additional visits under Minnesota Rules 5221.6200, subp. 3.B.(1).

Medical Treatment and Expense – Substantial Evidence

Where the employee sustained a significant exacerbation of his cervical and low back pain, the compensation judge did not err by approving a neurological consultation and cervical MRI scan.

Affirmed as modified.

Johnson vs. Univ. Good Samaritan, Jan. 22, 2015

Petition to Vacate – Fraud

The employee has not established good cause to set aside the mediation resolution/award on the basis of fraud.

Petition to vacate denied.

Hartwig vs. Traverse Care Center, Jan. 27, 2015

Credits and Offsets – Public Employee Retirement Benefits

Pursuant to *Ekdahl v. Ind. Sch. Dist. #213*, 851 N.W.2d 874, 74 W.C.D. 463 (Minn. 2014), Minnesota Statutes § 176.101, subd. 4, does not allow an employer and insurer to reduce the employee's permanent total disability benefits by the amount of retirement benefits being paid to the employee through PERA.

Appeals – Attorney Fees

An employee's claim for attorney fees related to her attorney's work before the Minnesota Supreme Court should appropriately be directed to that court.

Reversed.

Labaw vs. Pearson Auto Body, Jan. 29, 2015

Temporary Total Disability
Applicable Law – Controlling Event

The compensation judge did not err by allowing discontinuance of the employee's temporary total disability benefits based on attainment of maximum medical improvement where the employee had sustained work-related injuries causally related to his disability before and after 1984.

Affirmed.

Fiedler vs. Home Depot, Feb. 6, 2015

Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinions and the credible testimony of the employee, supports the compensation judge's finding that the employee sustained a left knee injury in a fall at work.

Affirmed.

Sebghati vs. Life Time Fitness, Feb. 6, 2015

Causation – Substantial Evidence

Substantial evidence, including medical records and expert medical opinion, supports the compensation judge's findings that the employee's work injury resulted in cervico-disequilibrium and headaches, but that it was not a substantial contributing cause of the employee's visual complaints.

Rehabilitation – Substantial Evidence

Substantial evidence, including rehabilitation records, medical records, and expert and lay testimony, supports the compensation judge's finding that qualified rehabilitation consultant services from Aug. 20, 2013, through February 2014 were not shown to be reasonable or necessary.

Affirmed.

Moon vs. Travel Tags, Inc., Feb. 12, 2015

Evidence – Expert Medical Opinion

Where there was no dispute about the expert qualifications of all three doctors or their familiarity with the employee's medical care and treatment related to her hearing loss, the compensation judge did not err in adopting, as more persuasive, the opinion of the employer's medical expert over the opinions of the employee's physicians.

Causation – Substantial Evidence

The medical records in combination with the employer's medical expert's opinions adequately support the compensation judge's determination that the employee failed to prove she sustained an injury in

the nature of an aggravation or acceleration of her right ear hearing loss arising from noise exposure in the workplace.

Affirmed.

Brist vs. Fergus Falls Granite, Inc., Feb. 17, 2015

Vacation of Award – Substantial Change in Condition

The employee has presented sufficient evidence of a substantial change in medical condition to warrant vacating the December 2010 award on stipulation.

Petition to vacate award on stipulation granted.

Johnson vs. A Touch of Class Painting, Inc., Feb. 17, 2015

Vacation of Award

Where the arguments and evidence in support of the petition to vacate were previously reviewed and considered by this court in two earlier decisions, *res judicata* bars the present petition.

Petition to vacate award on stipulation denied.

Krueger vs. Pizza Hut, Feb. 17, 2015

Vacation of Award – Substantial Change in Condition

Where the employee adequately demonstrated that, on balance, sufficient support existed for vacation pursuant to the factors outlined in Fodness v. Standard Cafe, 41 W.C.D. 1054 (W.C.C.A. 1989), there is good cause to grant the employee's petition to vacate her 1991 award on stipulation on grounds that she had experienced a substantial change in her medical condition.

Petition to vacate award on stipulation granted.

Kuhnau vs. Manpower, Inc., Feb. 17, 2015

Attorney Fees – Roraff Fees

Where fees on appeal were awarded at the time of the decision rendered by the Workers' Compensation Court of Appeals, where no appeal or objection was taken from the fees awarded, and where a petition seeking Roraff fees as an additional fee for the work performed on the appeal by the employee's counsel was not filed until 10 months after the issuance of our appellate decision, we decline to reopen the issue of fees on appeal.

Petition for additional fees on appeal denied.

Middlestead vs. Range Regional Health Services/Univ. Medical Center-Mesabi, March 3, 2015

Temporary Partial Disability – Work Restrictions

The issue of whether an employee is able to return to work without restrictions is a question of fact for the compensation judge. Formal written restrictions are not required. An employee's testimony alone may constitute sufficient evidence **to support a** compensation judge's finding that the employee has a disability that restricts or limits her ability to perform work. There is substantial evidence in the record as a whole to support the conclusion that the employee has had ongoing symptoms, problems and restrictions related to the July 21, 2010, injury, and that the effects of the injury were a substantial contributing factor to the employee's pursuit of the lower paying positions in which she has been employed since Aug. 15, 2011.

Temporary Partial Disability – Earning Capacity

While the employee's efforts to obtain additional education and improve her employability is commendable, the question is not whether the employee made reasonable efforts to vocationally rehabilitate herself, but whether the employee demonstrated an inability to work full time within her restrictions. The compensation judge made no specific findings addressing when, whether and to what extent the employee's reduced hours and/or earnings may be attributable to her enrollment in online classes rather than to her injury-related disability, and the issue of the employee's post-injury earning capacity is, accordingly, remanded for reconsideration.

Affirmed in part and vacated and remanded in part.

Andrade vs. G & K Services and Gallagher Bassett Services, March 12, 2015

Causation – Temporary Aggravation

Substantial evidence, including expert medical opinion, medical records and lay testimony, supports the compensation judge's findings that the employee's 2010 work injury was temporary in nature, and that the employee failed to prove a subsequent aggravation or injury.

Affirmed.

Rodriguez vs. Peavy/Conagra, March 16, 2015

Vacation of Award – Substantial Change in Condition

The employee has established an unanticipated and substantial change in medical condition sufficient to constitute cause to vacate an award on stipulation issued Sept. 11, 1992.

Petition to vacate award on stipulation granted.

Rivera vs. Cargill Kitchen Solutions, Inc., March 17, 2015

Rehabilitation – Work Restrictions

Substantial evidence supports the compensation judge's findings that the employee did not have work restrictions related to his hernia injury after he stopped working for the employer.

Medical Treatment and Expense – Reasonable and Necessary

Where treatment for the employee's diabetic condition is reasonably required for the employee's work injury to be surgically treated as recommended, the compensation judge's denial of payment for the employee's treatment for that condition is reversed.

Temporary Total Disability – Withdrawal From Labor Market Job Search Rehabilitation – Cooperation

Where the employee did not have a rehabilitation plan in place requiring a job search after being terminated by the employer and where the employee attended a rehabilitation consultation and met with a job placement specialist in the weeks after his termination, the compensation judge erred by denying temporary total disability benefits until a rehabilitation plan required a job search. Substantial evidence supports the compensation judge's findings that the employee did not cooperate with rehabilitation assistance, did not conduct a reasonable and diligent job search, and had withdrawn from the labor market and the related denial of temporary total disability benefits after the rehabilitation plan was in place where the employee made a minimal job search, did not regularly turn in job logs and had withdrawn from the labor market by attending school.

Affirmed in part and reversed in part.

Jaffer vs. Holiday Station Stores, Inc., March 17, 2015

Notice of Injury – Substantial Evidence

Substantial evidence, including the credible testimony of the employee, supports the compensation judge's determination that the employee gave timely statutory notice of the work injury to the employer.

Causation – Substantial Evidence

Substantial evidence, including the credible testimony of the employee, the employee's medical treatment records and the adequately founded opinion of the employee's treating physician, supports the compensation judge's determination that the employee sustained a work-related injury March 22, 2013.

Affirmed.

Medlock vs. Masterson Personnel, March 20, 2015

Evidence – Expert Medical Opinion

The record as a whole is sufficiently consistent with the opinions of Dr. Starhook, and the compensation judge did not err in relying on his opinions with respect to maximum medical improvement and the nature and extent of the employee's injury.

Evidence – Admission

It does not appear the judge relied solely on uncorroborated hearsay evidence or the employer and insurer were unduly prejudiced by the employee's testimony, and we find no abuse of discretion in the

judge's consideration and acceptance of the employee's testimony that he provided notice to the employer of the injury shortly after the incident.

Temporary Total Disability – Work Restrictions

The compensation judge could, based on the employee's testimony and his medical records, reasonably conclude the employee had ongoing symptoms that precluded a return to work until Sept. 24, 2013, and was entitled to temporary total disability benefits from Jan. 30 to Sept. 23, 2013.

Rehabilitation – Substantial Evidence

Substantial evidence supports the compensation judge's determination that the employee continues to have restrictions on his activities as a result of the work injury and is a qualified employee for the purpose of receiving rehabilitation assistance.

Affirmed.