

Overview of the Workers' Compensation Advisory Council Bill (HF 2478; Laws of Minnesota 2016, Chapter 110)

Note: This is only an overview of the amendments, not the actual law; the complete law is available online at www.revisor.mn.gov/laws/?year=2016&type=0&doctype=Chapter&id=110

Article 1. Workers' Compensation Court of Appeals (WCCA) Amendments

- **Sections 1, 2 and 6:** The amendments clarify the applicability of two statutes under which the WCCA awards attorney fees: 1) When there is an appeal to the WCCA disagreeing with the compensation judge's decision on the amount of attorney fees payable to the employee's attorney under 176.081; and 2) where the WCCA awards attorney fees for an attorney's work on an appeal before the WCCA under 176.511.
- **Sections 3 & 4:** These amendments eliminate the requirement that the appellant pay a bond (for the cost of the court's review) in every case a WCCA decision is appealed to the Supreme Court. The amendments allow a party to request a bond in extraordinary circumstances as prescribed by rule 107.2 of the Rules of Civil Appellate Procedure, but it is no longer mandatory.
- **Section 5:** The amendments allow the WCCA to order an adverse party to reimburse a prevailing party actual and necessary disbursements on cases before the court, and increase the time, from five to ten days, for giving notice of taxation of costs to the adverse party.
- Other terminology changes are made throughout Article 1 for clarity and consistency.

Effective date of Article 1: May 13, 2016

Article 2. Workers' Compensation Department Amendments

- **Section 1:** This section amends a law, initially enacted in 2015, that requires require workers' compensation providers and insurers to use one standard electronic format to electronically transmit and receive relevant medical records or reports with the medical bill. The amendments extend the effective date of this attachment standard six months, to Jan. 1, 2017, and provide more specificity about the electronic attachment standard that must be used.
- **Section 2:** This section restores payment for outpatient services at hospitals with 100 or fewer beds to the payment in effect before 2015 amendments (100% of usual and customary charges, unless the commissioner or compensation judge determines the charge to be unreasonably excessive).
- **Section 3:** This section reflects that the Department of Administration is the current state agency that administers workers' compensation claims of injured state workers.

Effective date of Article 2: May 13, 2016

Article 3. Workers' Compensation Litigation-Related Amendments

- **Section 1:** This section updates definitions to reflect the current location of compensation judges at the office of administrative hearings (OAH). The definition of "calendar judge" is deleted because OAH no longer uses one.
- **Sections 2, 3 and 4:** These sections amend the workers' compensation law that governs remodeling of an injured workers' residence as needed to accommodate the disability. The amendments reflect the current process for approval of remodeling requests and resolving disputes by the three workers' compensation agencies: The Department of Labor and Industry (DLI) approves remodeling agreements between the parties. If there is a dispute about a remodeling request, the case is heard by a compensation judge at OAH, and the compensation judge's decision is appealable to the WCCA.

- **Section 5:** This section allows the compensation judge to consider whether *good cause* exists to grant a continuance of a hearing where a party has not timely filed an Answer in response to a petition.
- **Sections 6 to 12:** These sections amend Minn. Stat. § 176.361, which governs intervention in workers' compensation disputes.
 - Sections 6, 7 and 8 make terminology changes for consistency and clarity, including "motions" instead of "application or motion," and "attend" instead of "appear."
 - Section 6 updates the proceedings at the DLI and OAH that are not subject to subdivisions 3 to 6: mediation proceedings; discontinuance conferences under section 176.239; and administrative conferences under section 176.106.
 - Section 7 clarifies what information must be submitted with the motion to intervene and who must be served with the motion (all parties except for other intervenors). It also requires a motion to intervene to provide the name and phone number of the person who has authority to represent the intervenor and reach settlement.
 - Section 8 requires objections to a motion to intervene to be "specific and detailed." It also allows OAH to establish procedures for filing objections when a timely motion to intervene is filed less than 30 days before a scheduled hearing.
 - Section 9:
 - Eliminates the requirement that intervenors must attend all settlement and pretrial conferences and hearings at OAH, but allows the compensation judge to order attendance upon a party's motion or the judge's own discretion.
 - Requires that a motion to require attendance must be served and filed at least 20 days before a scheduled hearing. The order granting or denying a motion to require attendance must be served and filed at least ten days before a hearing.
 - Provides that reimbursement is denied if the intervenor fails to attend a proceeding after being ordered to do so, unless the judge finds good cause for the failure to attend. Attendance may be in person or, if approved by the judge, by telephone or other electronic medium.
 - Provides that, even if attendance is not ordered, an intervenor may attend a proceeding in person, or may request the judge's permission to attend by phone or other electronic medium.
 - Section 10 provides that when the intervenor has not been ordered to attend the hearing, or has permission to attend the hearing by telephone or other electronic medium, the intervenor may provide a written response to an objection before the hearing for consideration as a matter of discretion by the judge.
 - Section 11 provides that when the intervenor has not been ordered to attend the hearing, or has permission to attend the hearing by telephone or other electronic medium, OAH may establish a procedure for submission of the intervenor's evidence and response to outstanding objections. If the intervenor does not submit a written response to an objection before the hearing, the judge's determination must be based on the information and evidence submitted before or at the hearing, as a matter of judicial discretion.
 - Section 12 grants the chief administrative law judge the authority to issue standing orders to implement the intervention statute in disputes before OAH.

Effective date of Article 3: August 1, 2016.

Changes to the Intervention Process: Here We Go Again...

Though the 2016 Legislature did not accomplish much, it did revise Chapter 176 to address the intervention process post-*Sumner*. **Effective August 1st**, the statutory changes include the following:

- **Attendance.** **Intervenors are no longer required to file a Notice of Election to Appear by Telephone.** An intervenor is only required to attend a proceeding at OAH if there is an order requiring attendance. The order may be issued by the block-assigned judge after a party has filed a motion requiring attendance or at the judge's discretion. [Minn. Stat. § 176.361, subd. 4.]

If an intervenor is ordered to attend a proceeding:

- ✓ The order will be issued at least 10 days prior to a scheduled hearing;
 - ✓ The order will require attendance in person, by telephone or via video; and
 - ✓ The intervenor's claim for reimbursement will be denied if no appearance is made as ordered.
- **Service.** Intervenors don't have to serve other intervenors with their motion to intervene; service on the employee, employer and insurer is sufficient. [Minn. Stat. § 176.361, subd. 2(a)]
 - **Stipulation or Specific, Detailed Objection.** If a motion to intervene includes a proposed stipulation of intervention, all parties must either sign and return the stipulation or file an objection to the motion. The objection must be specific and detailed; a generic template is not specific nor detailed with regard to each case. The objection must be filed within 30 days of service of the motion to intervene. If no objection is timely filed and no stipulation of intervention is returned, the intervenor's right to intervene is established. [Minn. Stat. § 176.361, subd. 3.]
 - **Response to Objection.** If a specific and detailed objection to intervention remains after the settlement or pretrial conferences, that issue will be addressed at the hearing. If an intervenor has not been ordered to attend the hearing, the intervenor may file a written response to the objection prior to the hearing. [Minn. Stat. § 176.361, subd. 5.]
 - **Presentation of Evidence.** Unless a signed stipulation of intervention was filed or an intervention interest was otherwise established, an intervenor is required to present evidence in support of the intervention claim at or before the hearing. [Minn. Stat. § 176.361, subd. 6.]

No Standing Order will be issued at this time. If the changed process reveals a need for further standardization, a Standing Order will be issued in the future.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
WORKERS' COMPENSATION DIVISION

WID:
DOI:

NOTICE OF CHANGE OF INTERVENTION
LAW AND PROCEDURE

Employee

Employer

Insurer

Intervenor

Effective August 1, 2016, the state law that governs the intervention process in workers' compensation matters has changed. All previously issued orders requiring the filing of or objection to Notices of Election to Appear by Telephone are now considered void and are replaced by the following process required by Minn. Stat. § 176.361 (2016). The changed process applies to all workers' compensation proceedings scheduled before the Office of Administrative Hearings on or after August 1, 2016:

Intervenors Are No Longer Required to:

- Serve the motion to intervene on other intervenors;
- File a Notice of Election to Appear by Telephone; or
- Attend any proceedings by telephone, in person or by video unless specifically required by order.

Parties May File a Motion to Require Attendance by Intervenors:

- Must be served and filed no later than 20 days before the scheduled proceeding;
- Must state specific and detailed reasons requiring the intervenor's attendance;
- Must indicate the type of appearance requested (phone or in-person);
- Intervenor may file a response to the motion;
- Compensation Judge will issue an order on the motion at least 10 days prior to the scheduled proceeding; and
- Intervenor's claim will be denied if no appearance is made as ordered, except upon a showing of good cause.

Consideration of Intervention Claims at Hearing:

- If a specific and detailed objection to intervention remains after the settlement or pretrial conference, the objection will be addressed at hearing.
 - Unless a signed stipulation was filed or an intervention claim was otherwise established by law, an intervenor is required to present evidence in support of the intervention claim at or before the hearing.
 - The intervenor retains the burden of proof to establish its claim in all proceedings.
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