COMPACT

May/June 2017

FOR WORKERS' COMPENSATION PROFESSIONALS

2017 Minnesota Session Laws:

Summary of Workers' Compensation Advisory Council legislation

By Kate Berger, Office of General Counsel

The following provides only an overview of the 2017 workers' compensation legislation. The actual language is in Chapter 94, Articles 3, 4 and 5, of the 2017 Minnesota Session Laws at www.revisor.mn.gov/laws/?year=2017&type=0&doctype=Chapter&id=94.

View Articles 3, 4 and 5 on the Department of Labor and Industry website at www.dli.mn.gov/WC/Pdf/wcac_3-5.pdf.

Article 3. Department proposals

Section 1 amends Minnesota Statutes § 176.135, by adding subd. 9; Designated contact persons and required training related to submission and payment of medical bills.

- Overview: This language designates a contact person and requires training related to submission and payment of medical bills between payers and providers in compliance with workers' compensation law.

- Paragraph (a): Defines the entities that must provide a designated contact person under the amendments (workers' compensation insurers, third-party administrators and hospitals) and provides a definition of "submission and payment of medical bills" under workers' compensation law.

- Paragraph (b): Effective Nov. 1, 2017, each payer, hospital and clearinghouse must provide the Minnesota Department of Labor and Industry (DLI) with the name and contact information of a designated employee to answer inquiries related to submission and payment of workers' compensation medical bills. A directory of this contact information must be posted on DLI's website.

- Paragraph (c): The designated employee must complete training provided by DLI (except for payers that have not received any workers' compensation medical bills in the previous 12 months) and must respond within 30 days to DLI-written inquiries about submission or payment of medical bills.

Summary, continues ...

Same department. New look.

The Minnesota Department of Labor and Industry is launching a new logo on our website, social media accounts and email lists through July 2017.

The new logo is part of a statewide branding effort of all Minnesota state agencies, boards and commissions to strengthen our shared identity as the state of Minnesota.

While many of our items will include the new logo and branding by July, other printed items and forms will be updated when it is time for reordering or replacing.

The change to a unified state of Minnesota brand will make it easier for residents, visitors and business partners to identify the many services state agencies provide across the state. It is the state's goal that this new brand be seen as the mark of high-quality work, done on behalf of all Minnesotans.

Read more about the statewide branding initiative at mn.gov/portal/brand.

- Paragraph (d): Penalties may be assessed as follows.
  (1) For failure to provide DLI with the name of the designated contact person: $50 a day, but only after DLI gives an advance 30-day written warning.
  (2) For failure to complete training within 90 days after DLI gives notice that training is available: $3,000.
  (3) For failure to respond to a DLI inquiry: $3,000. However, this penalty can't be stacked with the penalty under section 176.194, subd. 3, clause (6), for failure to respond to the same department inquiry.

- Effective date of Section 1: Oct. 1, 2017.
  See page 3, *Designated employee required for payers, hospitals, clearinghouses* for more information.

Section 2 amends Minn. Stat. § 176.1362, subd. 1; Payment based on Medicare MS-DRG system.

- Overview: The PC Pricer program is developed by Medicare to calculate payment of inpatient hospital care under the Medicare severity-diagnosis related group (MS-DRG) system. It is used to calculate payment for workers' compensation inpatient hospital treatment. This section amends Minn. Stat. § 176.1362, subd. 1, to address Medicare delays in updating the PC Pricer program.

- Paragraph (c): For patients discharged on or after May 31, 2017, payment for inpatient hospital services is calculated according to the PC Pricer program identified on Medicare's website as FY 2016.1, updated Jan. 19, 2016.

- Paragraph (d): For patients discharged on or after Oct. 1, 2017, payment for inpatient services, articles and supplies must be calculated according to the PC Pricer program posted on DLI's website as follows.
  – No later than Oct. 1, 2017, and every subsequent Oct. 1, the DLI commissioner must post on DLI's website the version of the PC Pricer program most recently available on Medicare's website as of the preceding July 1. If no PC Pricer program is available on Medicare's website on any July 1, the PC Pricer program most recently posted on DLI's website remains in effect.
  – The DLI commissioner must publish notice of the applicable PC Pricer program in the *State Register* no later than Oct. 1 of each year.

- Paragraph (e): The MS-DRG grouper software of programs that corresponds to the applicable version of the PC-Pricer program must be used to determine payment.

- Effective date of Section 2: May 31, 2017.
  See page 4, *Change to statute identifies applicable PC Pricer program for payments* for more information.

Section 3 amends Minn. Stat. § 176.1362, subd. 2; Payment for catastrophic, high-cost injuries.

- Overview: This statute provides that payment for catastrophic injuries (those above a certain dollar threshold) is made at 75 percent of the hospital's charges instead of by the MS-DRG PC Pricer under subdivision 1. It is amended as follows.

- Paragraph (a): Clarifies that the dollar amount in effect on the date of discharge determines whether payment is by MS-DRG or at 75 percent of the hospital's usual and customary charges.

- Paragraph (b): Provides that the commissioner must update the threshold dollar amount in paragraph (a) every Oct. 1 using the data available as of the preceding July 1 (for consistency with the October updates to the PC-Pricer).

- Effective date of Section 3: May 31, 2017.

Summary, continues on page 13

2017 WORKERS' COMPENSATION

SUMMIT

Building a Better Future Together

Sept. 19 in St. Paul

www.dli.mn.gov/Summit

Registration is now open for the 2017 Workers' Compensation Summit on Tuesday, Sept. 19!

- General sessions and breakout sessions focusing on current issues in workers' compensation
- Discussions of ways to improve processes and services affecting employers and injured workers
- Time to network with others and visit our exhibitors
- Learn more, register today to get early-bird pricing – www.dli.mn.gov/Summit

Designated employee required for payers, hospitals, clearinghouses

New legislation was passed to improve communication between workers' compensation insurers, hospitals and clearinghouses. Effective Nov. 1, 2017, Minnesota Statutes § 176.135, subd. 9, requires each payer, hospital and clearinghouse to provide the Department of Labor and Industry (DLI) with the name and contact information of a designated employee to answer inquiries related to the submission or payment of medical bills.

The designated employee must complete DLI-provided training about submission or payment of medical bills and respond to written inquiries from DLI.

The name and contact information of the designated employee must be provided on forms and at intervals prescribed by the department. DLI will post a directory of designated employees on its website.

Workers' compensation rulemaking:

Amendments to Minnesota Rules, chapters 5219, 5221

The Minnesota Department of Labor and Industry (DLI) has updated the workers' compensation rules to implement the independent medical examination fee schedule in Minnesota Rules, chapter 5219, and the medical rules of practice, billing and payment rules, relative value fee schedule rules and pharmacy fee schedule in Minnesota Rules, chapter 5221. The good cause amendments adopted under Minnesota Statutes, § 14.388:

- make wording, formatting and renumbering changes recommended by the Office of the Revisor of Statutes that do not alter the sense, meaning or effect of the rule; and
- incorporate specific changes set forth in the following statutes when no interpretation of law is required
  - changes in Minnesota Statutes §§ 176.135 and 62J governing electronic submission and payment of workers' compensation medical bills and
  - changes in Minnesota Statutes §§ 176.136 and 176.1362 related to billing and payment of workers' compensation hospital bills.

The exempt rules were approved by the Office of Administrative Hearings on Feb. 27, 2017. The adopted rules were published in the *State Register* on March 20, 2017, and are available online at mn.gov/admin/assets/SR41_38%20-%20Accessible_tcm36-284499.pdf.

Change to statute identifies applicable PC Pricer program for payments

In 2015, Minnesota Statutes § 176.1362 was enacted to provide that the maximum payment for most workers' compensation inpatient hospital services is 200 percent of the amount calculated under the Medicare diagnosis-related group (DRG) system, using Medicare's PC Pricer program.

Effective May 31, 2017, Minn.Stat. § 176.1362 was amended to address Medicare delays in updating the PC Pricer program.

For hospital discharge dates from May 31 through Sept. 30, 2017: The FY 2016.1 PC Pricer, updated Jan. 19, 2016, must be used to calculate the amount payable. Instructions and a link to the FY 2016.1 PC Pricer program for downloading are available at www.dli.mn.gov/WC/PcPricer.asp.

For hospital discharge dates on or after Oct. 1, 2017: No later than Oct. 1, 2017, and Oct. 1 of each subsequent year, the Department of Labor and Industry (DLI) must post on its website the version of the PC Pricer program that is most recently available on Medicare's website as of the preceding July 1. DLI will publish notice of the applicable program in the *State Register* no later than Oct. 1 of each year. If Medicare does not update the PC Pricer program, the version most recently posted on DLI's website remains in effect.

Minnesota workers' compensation benchmarks compared to 17 other states

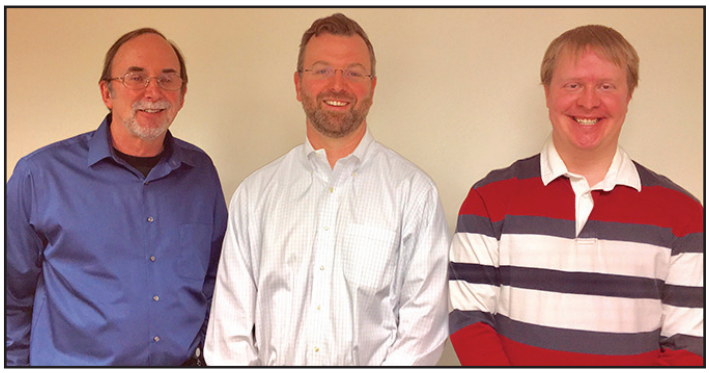
The Workers' Compensation Research Institute's (WCRI's) most recent report for Minnesota, *CompScope Benchmarks for Minnesota, 17th Edition*, was released in April. This report uses insurer claim files to compare Minnesota's medical payments, indemnity benefits and insurer expenses with those of 17 other states, including Iowa and Wisconsin, for the 2010 to 2015 period.

The report is available for purchase from WCRI at www.wcrinet.org. Here are some of the major findings.

- Average costs for all paid claims, measured at an average of 36 months after the injury (2013 claims measured in 2016), were 16 percent lower in Minnesota than the 18-state median.
- Average costs for Minnesota claims have been relatively stable from 2010 to 2015. Analysis of claims with more than seven days of lost time, measured an average of 12 months after the injury, shows the total of medical costs, indemnity benefits, vocational rehabilitation and claims expenses increased at an average annual rate of 1.8 percent.
- Medical payments for Minnesota claims with more than seven days of lost time, at an average of 12 months after the injury, grew at a rate of 1.0 percent from 2010 to 2015, slightly slower than the median annual growth of 1.9 percent among the 18 study states.
- Although Minnesota had slightly fewer claims with any permanent partial disability (PPD) or lump-sum payment than the median state, at an average of 36 months after the injury, the average PPD/lump-sum payment for these claims was 24 percent higher than the median.
- Adjusted benefit delivery expenses for claims with any benefit delivery expenses, which include medical cost containment expenses, defense attorney fees and independent medical examination costs, for Minnesota claims with more than seven days of lost time, at an average of 36 months after the injury, were 14 percent lower than the median.

Serving Greater Minnesota: DLI staff members in Duluth

The Department of Labor and Industry's (DLI's) Duluth, Minnesota, office houses both workers' compensation and Minnesota OSHA staff members. The workers' compensation staff includes one representative each for the Alternative Dispute Resolution (ADR) unit, the Special Compensation Fund (SCF) unit and the Vocational Rehabilitation unit (VRU).



DLI staff members in the Duluth office include (left to right) Richard Klemond, Kenneth Kimber and Matthew Voigt.

Kenneth Kimber

Kenneth Kimber joined the Duluth ADR unit as a mediator in August 2015. He has extensive experience litigating workers' compensation matters involving medical, vocational rehabilitation and indemnity benefits. He provides a full range of early intervention services to injured workers, insurers, employers, attorneys and others regarding workers' compensation disputes, including informal telephone assistance, administrative conferences and mediation sessions. Kimber regularly conducts mediation sessions at DLI's Duluth office, as well as at other locations throughout Minnesota. Those in central and northern Minnesota can contact him at (218) 733-7816, 1-800-342-5354 or kenneth.kimber@state.mn.us.

Richard Klemond

Richard Klemond, SCF claims manager, is the newest member of the Duluth staff. He replaces Jeff Lane, who retired in April and had been with SCF for many years. Before joining DLI, Klemond operated his own adjusting company and also spent many years working at Wausau Insurance Company and RAM Mutual Insurance Company. He manages uninsured claims north of St. Cloud, as well as a number of bankrupt self-insured claims, many of which are provided permanent total disability benefits. Like Lane did for many years, Klemond is developing professional relationships with the stakeholders he services. The Duluth office has a long-standing history of providing high-quality claim services, a tradition Klemond embraces and continues to promote. He can be reached at (218) 733-7814 or richard.klemond@state.mn.us.

Matthew Voigt

Matthew Voigt, VRU qualified rehabilitation consultant (QRC), provides statutory vocational rehabilitation services to injured workers residing in northeastern Minnesota. He provides services to injured workers whose claims have been denied while they are going through the litigation process, as well as those with accepted claims. Voigt has been a VRU QRC since 2013 and has a thorough understanding of the regional labor market, medical providers and community resources. In addition, VRU's placement team provides vocational testing and assessment, job-seeking-skills training and comprehensive placement services to individuals residing in that area of the state. He can be reached at (218) 733-7813 or matthew.voigt@state.mn.us. (To make a referral to VRU, call 1-888-772-5500.)

Office location, contact information

The Duluth office is in the Palucci Building, at 525 Lake Ave. S., Suite 330, Duluth, MN 55802; phone (218) 733-7810; fax (218) 733-2362.

Steven Sullivan joins Alternative Dispute Resolution in St. Paul office

Steven Sullivan recently joined the Alternative Dispute Resolution (ADR) unit as a mediator at the Department of Labor and Industry's main office in St. Paul, Minnesota. Sullivan has more than 25 years of experience as a workers' compensation attorney. He obtained his bachelor's degree from the University of Minnesota and his juris doctor from William Mitchell College of Law.

ADR 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, employers, health care providers, attorneys and qualified rehabilitation consultants.

To speak with an ADR mediator/arbitrator, call (651) 284-5032 or 1-800-342-5354; press 3 and then press 1.

CompFact:

Part one – Claims filed for PTSD, related conditions increase

By Brian Zaidman, Research and Statistics

The law change to Minnesota Statutes chapter 176.011, subd. 15, effective Oct. 1, 2013, provided coverage for post-traumatic stress disorder (PTSD), without any accompanying physical injury, when diagnosed by a licensed psychologist or psychiatrist according to the Diagnostic and Statistical Manual of Mental Disorders. For injuries before Oct. 1, 2013, PTSD and other mental disorders were compensable only if they resulted from or resulted in a physical injury.

This article examines the number of claims for indemnity benefits filed for mental disorders such as anxiety, stress and PTSD, based on their description filed on a First Report of Injury (FROI) form and coded into the workers' compensation claims database. It is very likely additional claims for PTSD injuries have been filed using claim petitions, which sometimes result in the injury characteristics not being coded. Although the statute allows for payment of only PTSD, a broader range of mental disorders are included because the FROI form description is often not based on a diagnosis; some claims not coded as PTSD are later determined to be PTSD claims that are compensable.

Here, claims filing behavior for the three years before and after the law change are examined. Because the law change became effective Oct. 1, 2013, the claims years begin Oct. 1 and end Sept. 30 of the numbered year. The "old law" claims are from October 2010 through September 2013; the "new law" claims are from October 2013 through September 2016. Information about claims-year 2016 should be regarded as preliminary; some claims might still be filed and many of the filed claims are being disputed or are in litigation, so their payment status is unknown.

Figure 1. Mental stress, anxiety and PTSD claims for indemnity benefits by payment status

Claim year (Oct.-Sept.)	Total claims	Benefits denied	Paid or payable	Percentage paid
2011	73	63	10	14%
2012	98	85	13	13%
2013	95	85	10	11%
Total "old law"	266	233	33	12%
2014	136	105	31	23%
2015[1]	125	101	24	19%
2016[1]	121	—	—	—
Total "new law"[2]	382	—	—	21%

[1]Numbers for these years are preliminary; additional claims may be reported and claims currently in dispute may result in payment.
[2]Claim count is for all three years; percentage paid is for 2014 and 2015 combined.
The "—" indicates publishable totals are not yet available due to the large number of claims in litigation.
Source: Minnesota workers' compensation claims database

Figure 1 shows the number of claims filed for indemnity benefits increased following enactment of the new law. An average of 89 claims were filed annually under the old law and this increased to 127 claims annually under the new law, an increase of 44 percent. Payment of claims also increased, from 12 percent under the old law to 21 percent under the new law. It should be noted that all of the claims paid under the old law were linked to work-related physical injuries.

***CompFact*, continues ...**

Figure 2. Payment of settlements and attorney fees among mental stress, anxiety and PTSD claims paid indemnity benefits

Claim year (Oct.-Sept.)[1]	Paid or payable	Paid with settlement		Attorney fees paid	
		Count	*Percentage*	*Count*	*Percentage*
2011	10	9	90%	6	60%
2012	13	10	77%	9	69%
2013	10	9	90%	9	90%
Total "old law"	33	28	85%	24	73%
2014	31	21	68%	18	58%
2015[2]	24	9	38%	6	25%
Total "new law"	55	30	55%	24	44%

[1]Claims from 2016 claim year (October 2015 through September 2016) are not included due to the large number still in litigation.
[2]Numbers for 2015 are preliminary; additional claims may be reported and claims currently in dispute may result in payment.
Source: Minnesota workers' compensation claims database

Figure 2 shows that among claims with paid indemnity benefits, the majority had benefits paid through a settlement agreement. However, under the new law, this percentage has dropped considerably. A similar pattern is evident when examining payment of attorney fees: fewer claims under the new law included payment of attorney fees. This is evidence that more PTSD claims are now being paid benefits without entering the dispute resolution process.

Part two – Low-wage workers who receive indemnity benefits

Many statistics about Minnesota's workers' compensation system usually look at injured workers as a single group and characteristics are thought of as spread throughout the group. However, differences emerge among workers when they are examined along various dimensions. This article looks at the characteristics of three groups of low-wage injured workers, those earning: $200 or less a week; from $201 to $300 a week; and from $301 to $400 a week. The minimum benefit level is $130 a week or the injured worker's actual wage, whichever is less. This means workers earning between $130 and $195 a week receive the minimum benefit and workers earning less than $130 a week receive their full wage as their weekly benefit.

The statistics presented are based on workers receiving indemnity benefits, with injuries and illnesses occurring from 2011 through 2015. There were 104,351 indemnity claims during this period when the data was downloaded from the Minnesota workers' compensation claims database Oct. 1, 2016.

Figure 1 shows that the sizes of the three groups increase with weekly wage. As a whole, 20 percent of injured workers with indemnity claims earned $400 or less a week during the 2011 through 2015 period.

Figure 1. Percentage of workers with indemnity claims by weekly wage group, 2011 through 2015

Worker age

Figure 2 shows worker age varies among these three low-wage groups and contrasts markedly with workers earning more than $400 a week. Workers between 14 and 24 years old are the largest group among workers in the two lowest-wage groups. For workers earning between $301 and $400 a week, the largest proportion of workers are between 25 and 34 years old. In contrast, workers earning more than $400 a week are concentrated in the categories from 35 to 64

years old and have a much lower percentage in the 14- to 24-year-old group. A higher percentage of workers in the low-wage categories are age 65 or older, compared with workers earning $400 or more.

Worker gender

Gender also shows marked differences, with women accounting for the majority of the low-wage workers but only one-third of the injured workers earning more than $400 a week (Figure 3).

Figure 2. Age distribution of workers with indemnity claims in each weekly wage group, 2011 through 2015

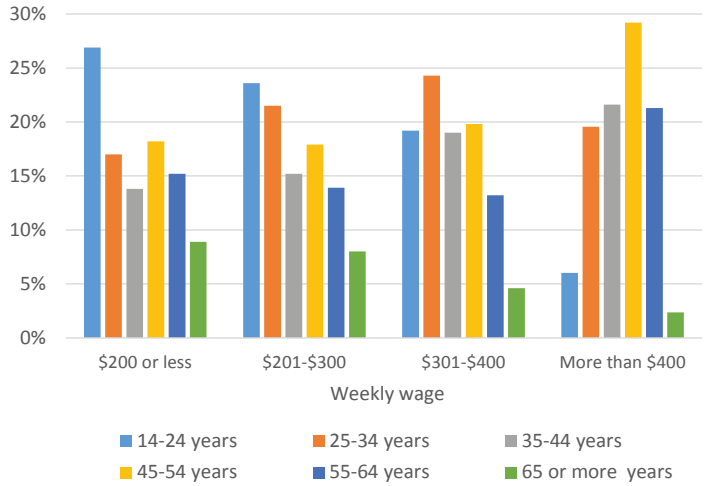
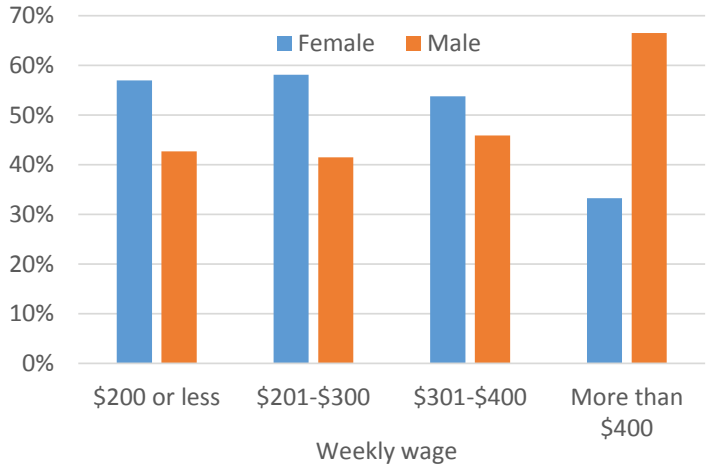


Figure 3. Gender distribution of workers with indemnity claims in each weekly wage group, 2011 through 2015



Employment status

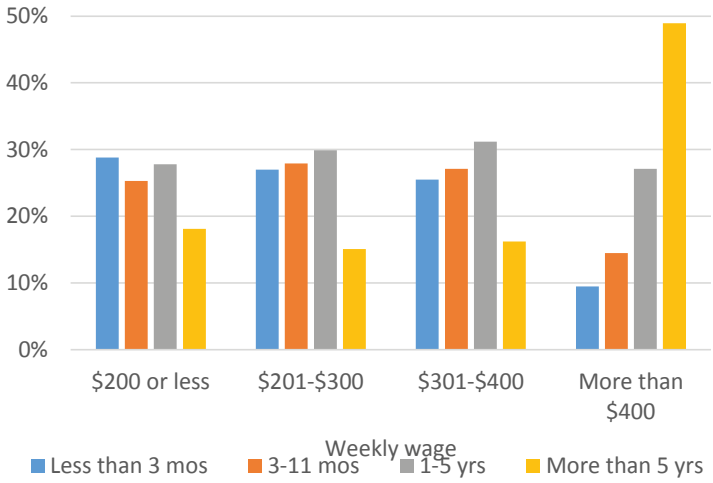
Not surprisingly, employment status is an important characteristic of low-wage workers. Part-time workers account for 61 percent of the workers earning $200 or less and for 54 percent of the workers earning between $201 and $300 (Figure 4). This characteristic reverses among workers earning $301 to $400 and full-time workers predominate among workers earning more than $400 a week. Employment status was used as reported to the Department of Labor and Industry, no attempt was made to verify the status or correct it for very low-wage levels among full-time workers.

Job tenure

Job tenure, the length of time the worker has been employed by the employer at the time of injury, does not show large differences between the three low-wage groups (Figure 5). The majority of these workers have been at their present jobs for less than one year. The distribution of job tenure among these low-wage groups is very different from the pattern among workers earning more than $400 a week, 49 percent of whom had job tenures of longer than five years.

Figure 4. Employment status distribution of workers with indemnity claims in each weekly wage group, 2011 through 2015

Figure 5. Job tenure of workers with indemnity claims in each weekly wage group, 2011 through 2015



Industry

As shown in Figure 6, health care and social assistance shows up among the most common industry sectors for all three low-wage groups and it is also the second most common among workers earning more than $400 a week. Injured workers earning $200 or less a week were most commonly employed in the accommodations and food services sector and injured workers earning $201 to $300 a week were in retail trade. The industry sector with the highest percentage among workers earning more than $400 a week was manufacturing.

Occupation

Food preparation and serving occupations, and transportation and material moving occupations are the most common occupation groups among the two lowest wage groups (Figure 7). Transportation and material moving is followed by production occupations among injured workers earning $301 to $400 a week; the same pattern holds for workers earning more than $400 a week.

More information about low-wage workers

The Department of Labor and Industry's most recent edition of the *Minnesota Minimum-wage Report* is online at www.dli.mn.gov/RS/MinWageReport.asp.

Figure 6. Most common industry sectors of workers with indemnity claims in each weekly wage group, 2011 through 2015

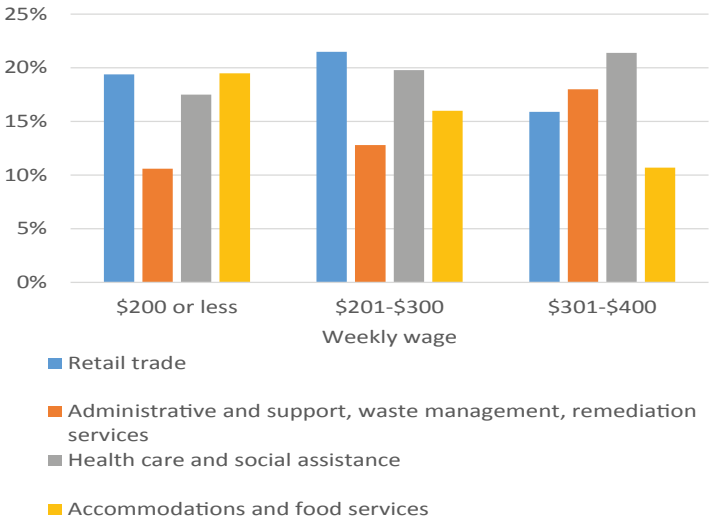
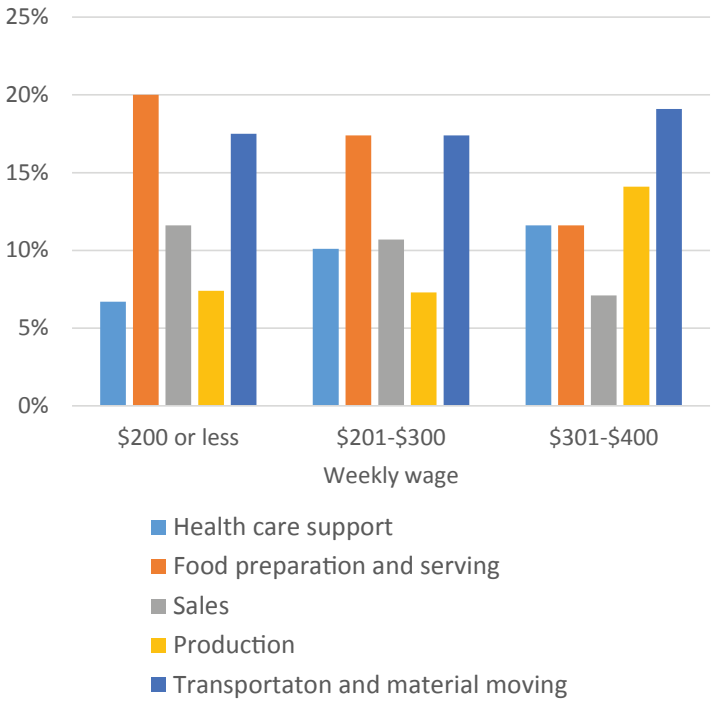


Figure 7. Most common occupation groups of workers with indemnity claims in each weekly wage group, 2011 through 2015



Mediation: new online request form now available

Parties may now use the Department of Labor and Industry's newest online form to request mediation with an Alternative Dispute Resolution (ADR) mediator.

MINNESOTA DEPARTMENT OF LABOR & INDUSTRY

About DLI | Construction Codes and Licensing | OSHA | Wage and Hour | Workers' Compensation

Mediation form submission

Alternative Dispute Resolution (ADR) unit – mediation request form

This online mediation request form is used to request a mediation session with an ADR mediator at the Department of Labor and Industry (DLI). The form gathers necessary information and allows users to select a preferred mediator and preferred mediation date and time. The submission will be sent to an ADR mediation scheduler for completion of the scheduling process.

A mediation request may also be made by contacting ADR at (651) 284-5005, 1-800-342-5354 or **mediation.dli@state.mn.us**.

To complete the mediation request form, the user will need the following information:

- WID number or Social Security number;
- date of injury;

The form allows users to:

- select a preferred mediation date and time;
- select a preferred mediator; and
- view a mediator's calendar of already scheduled appointments.

The process became available May 16. The form is online at www.dli.mn.gov/WC/WcForms.asp. A mediation request may also be made by contacting ADR at (651) 284-5005, 1-800-342-5354 or mediation.dli@state.mn.us.

DLI videos offer quick, concise lessons

The Department of Labor and Industry currently offers nine brief online videos about workers' compensation subjects. Each video explains a specific topic in five minutes or fewer. Visit www.dli.mn.gov/WC/Videos.asp.

Forms

- How QRCs can submit vocational rehabilitation forms online
- How to complete a Notice of Benefit Reinstatement form
- How to complete an online Annual Claim for Reimbursement form
- Injury reporting for workers' compensation claims adjusters using electronic data interchange and electronic first report of injury

Medical benefits

- Minnesota workers' compensation inpatient hospital payments
- Payment of medical bills and requests for treatment

Vocational rehabilitation benefits

- How VRU uses technology to facilitate a faster return to work for injured workers

Workers' compensation coverage requirements

- Do I need to provide workers' compensation coverage for my family members?
- Workers' compensation insurance coverage requirements

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 that 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 2017 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.

DEPARTMENT OF HUMAN SERVICES

DLI Research and Statistics to study new inpatient hospital payment system

By David Berry, Research and Statistics

A new system for paying for inpatient hospital care for Minnesota's injured workers took effect Jan. 1, 2016 (Minnesota Statutes § 176.1362). The system is modeled after Medicare's system, which is formally called the Inpatient Prospective Payment System (IPPS) but is also referred to as the "DRG" system in reference to its payment methodology that is based on diagnosis-related groups (DRGs).

The Legislature has required the Department of Labor and Industry to produce a report evaluating the new system, specifically "analyzing the impact of the reforms under this section to determine whether the objectives have been met and whether further changes are needed" (Minn. Stat. § 176.1362, subd. 7). The study is due Jan. 15, 2018.

To conduct the study, the Minnesota Department of Labor and Industry is requesting data from insurers, self-insurers and hospitals. The requested data pertains to billing and payment for inpatient hospital cases under Minnesota workers' compensation before and after the new law took effect. The study will examine how billing and payment have changed under the new law and whether the new system has been operating as the law provides.

Turn to Office of Workers' Compensation Ombudsman for help with claims

The Office of Workers' Compensation Ombudsman informs, assists and empowers injured workers and small businesses having difficulty navigating the workers' compensation system. It is a separate entity within the Minnesota Department of Labor and Industry.

The ombudsman assists injured workers by:

- providing information to help them protect their rights and to pursue a claim;
- contacting claims adjusters and other parties to resolve a dispute;
- assisting in preparing for settlement negotiations or mediations; and
- making appropriate referrals to other agencies or entities if needed.

The ombudsman assists small businesses by:

- providing information about what to do when an employee is injured;
- directing them to appropriate resources for assistance in obtaining and resolving issues regarding workers' compensation insurance; and
- responding to questions pertaining to employers' responsibilities under Minnesota's workers' compensation law.

For assistance, contact the Office of Workers' Compensation Ombudsman at (651) 284-5013, 1-800-342-5354 or dli.ombudsman@state.mn.us.

Workers' compensation events calendar

July

July 13 Rehabilitation Review Panel
www.dli.mn.gov/Rrp.asp

August

Aug. 9 Workers' Compensation Advisory Council
www.dli.mn.gov/Wcac.asp

Aug. 10 Medical Services Review Board
www.dli.mn.gov/Msrb.asp

Aug. 24 Orientation training session
www.dli.mn.gov/WC/TrainingRp.asp

September

Sept. 12, 13 Basic adjuster training
www.dli.mn.gov/WC/TrainingIns.asp

Sept. 19 2017 Workers' Compensation Summit
www.dli.mn.gov/Summit

Sept. 20 Workers' Compensation Insurers' Task Force
www.dli.mn.gov/Wcitf.asp

October

Oct. 11 Workers' Compensation Advisory Council
www.dli.mn.gov/Wcac.asp

Oct. 12 Medical Services Review BoardRehabilitation Review Panel
www.dli.mn.gov/Msrb.asp

Oct. 12 Rehabilitation Review Panel
www.dli.mn.gov/Rrp.asp

Summary, continued from page 2

Section 4 amends Minn. Stat. § 176.275, subd. 1, which governs filing documents with state workers' compensation agencies.

- Allows DLI, the Office of Administrative Hearings and the Workers' Compensation Court of Appeals to destroy duplicate forms or documents that have been already filed.
- Allows the same agencies to refuse to accept any form or document that lacks information required by statute or rule.
- Effective date of Section 4: May 31, 2017.

Section 5 amends Minn. Stat. § 176.285, which governs service of papers and notices, and electronic filing of documents. The amendments include grouping the text of the section into four subdivisions.

- Subd. 2, paragraph (a): If electronic filing is authorized by the agency, and a copy of the electronically filed document must be provided to or served on another person, the copy must contain the same information as the filed document in the format required by the DLI commissioner.
- Subd. 2, paragraph (b): Defines an electronic signature as it is defined in Minn. Stat. § 325L.02.
- Subd. 2, paragraph (c): Allows workers' compensation agencies to serve documents electronically on payers, rehabilitation providers and attorneys. It specifies that an electronic document is "served" when sent electronically or when the recipient is notified that the document is available on a website.
- Subd. 4, paragraph (a): Defines "payer" as a workers' compensation insurer, self-insured employer or third-party administrator.
- Effective date of Section 5: May 31, 2017.

Sections 6 through 10 amend Minn. Stat. §§ 176.541 and 176.611, which govern how workers' compensation law applies to state departments and the state compensation revolving fund, respectively. The amendments clarify the participants of the workers' compensation program for state employees by: adding a cross-reference to the definition of "state," as defined in Minn. Stat. § 3.732, subd. 1 (1); repealing the reference to the Minnesota Historical Society in Minn. Stat. § 176.541 because it is already included in the definition of "state"; deleting a reference to the University of Minnesota because it operates its own program; and updating references to federal programs that have been replaced or renamed.

- Effective date of Sections 6 through 10: May 31, 2017.

Article 4. Special Compensation Fund

This article addresses issues raised by the *Ekdahl/Hartwig* decisions issued by the Minnesota Supreme Court in August 2014.[1] The new law will be codified as Minn. Stat. § 176.1292. Forebearance of amounts owed to the Special Compensation Fund (SCF).

[1]*Ekdahl v. Independent School District #213, et al.*, 851 N.W.2d 874 and *Hartwig v. Traverse Care Center, et al.*, 852 N.W.2d 251 (Minn. 2014). In these decisions, the court ruled that workers' compensation permanent total disability benefits may not be reduced by an employee's government retirement benefits (other than Social Security retirement benefits).

Summary, continues ...

Section 1

Subd. 1. Definitions

- "Payer" means a workers' compensation insurer, or an employer or group of employers that are self-insured for workers' compensation.

- "Retirement benefits" means retirement benefits paid by any government retirement benefit program, other than Social Security retirement benefits. Retirement benefits include specified types of annuities and any other benefit or annuity paid by a government benefit program that is not clearly identified as a disability benefit or disability annuity in the governing statute.

Subd. 2. Payment of permanent total disability (PTD) benefits to employees, dependents and legal heirs

- If a payer pays all of its permanent total disability employees (regardless of the date of injury), legal heirs and dependents, past and future PTD benefits without reducing the PTD benefits by the employee's retirement benefits, SCF will reimburse the payer for supplementary benefits paid to injured workers before the date of the decisions. The payer will also receive relief from paying a portion of SCF assessments on any increased PTD amounts paid due to removal of the retirement offset under subparts 3 and 4.

- Deadlines are provided for: payment to employees entitled to ongoing PTD benefits; payment to employees for past underpaid PTD benefits; and payment to legal heirs and dependents of affected deceased employees. The commissioner may waive payment or extend the time frames if the payer, after making a good faith effort, is unable to: locate an employee; identify or locate the dependents or legal heirs; or locate documentation to determine the amount of an underpayment.

- The legislation does not apply if:
  - the employee died before Jan. 1, 2008;
  - the employee's last PTD benefit was paid before Jan. 1, 2000;
  - the employee's last PTD benefit would have been paid before Jan. 1, 2000, if it had not been reduced by retirement benefits;
  - a stipulation for settlement approved by a compensation judge provided for a full, final and complete settlement of PTD benefits in exchange for a lump sum;
  - a final court order or stipulation was vacated after the effective date of the legislation; or
  - a final court order, or stipulation approved by a compensation judge, explicitly states the employee's PTD benefits may be reduced by specified retirement benefits (except that the legislation does apply if a court order or stipulation is ambiguous about whether PTD benefits could be reduced by retirement benefits).

Subd. 3. Reimbursement of supplementary benefits

- A payer that has complied with subdivision 2 is entitled to reimbursement of supplementary benefits paid or payable before Aug. 13, 2014, and is not required to repay supplementary benefits the SCF over-reimbursed due to the payer's reduction of PTD benefits by retirement benefits.

Subd. 4. Assessments

- A payer that has complied with subdivision 2 is not required to pay past or future assessments under section 176.129 on the amount of increased or additional PTD benefits paid, or on supplementary benefits that are appropriately characterized as PTD benefits, due to the elimination of the retirement benefit reduction.

- SCF is not permitted to recalculate assessments previously paid by a payer because of the assessment

Summary, continues ...

adjustments.

- The assessment adjustments do not apply to PTD benefits paid to employees with dates of injury on or after Aug. 13, 2014. Full assessments must be paid on PTD benefits calculated without a reduction for retirement benefits for these employees.

Subd. 5. Refunds

- A payer that has complied with subdivision 2 and repaid SCF for over-reimbursement of supplementary benefits, or paid assessments on increased PTD benefits for employees with dates of injury before Aug. 13, 2014, is entitled to a refund for the amounts that are not owed under subdivisions 3 and 4. SCF must issue a refund with interest within 30 days of receipt of the payer's itemization of the amount claimed and documentation of compliance with subdivision 2.

Subd. 6. Applicability

- Employees, dependents and legal heirs are not precluded from pursuing additional benefits beyond those paid under subdivision 2, although payments under subdivision 2 are not to be construed as an admission of liability by the payer in any proceeding, and payers reserve all defenses to claims to which the legislation does not apply.

- If an employee, dependent or legal heir pursues additional benefi7ts, claims or penalties related to benefits paid or payable under subdivision 2, payers may assert all defenses with respect to the additional benefits, claims and penalties, and any future PTD benefits payable, subject to the following conditions.
  - If a compensation judge or appellate court determines the payer is entitled to reduce the employee's PTD benefits by retirement benefits, the payer is not permitted to recover any overpayment that results from PTD benefits already paid under subdivision 2 and is not permitted to take a credit for those overpayments against future benefits.
  - If a compensation judge or appellate court determines the payer is not entitled to reduce the employee's PTD benefits by retirement benefits, the payer is not entitled to the assessment relief described in subdivision 4 for that specific claim.
  - A payer is not permitted to assert defenses related to the offset of retirement benefits against an employee's future PTD benefits if the only additional claims asserted by the employee are for attorney fees, costs and disbursements, and an additional award under section 176.081, subd. 7.

Subd. 7. Procedure

- No later than 60 days after final enactment, in consultation with affected payers, the commissioner must establish a procedure to implement the legislation.

Subd. 8. Reporting

- The legislation does not affect a payer's obligation to report the full amount of PTD benefits paid to the extent required by the workers' compensation or other law. A payer must report supplementary benefits as PTD benefits if the supplementary benefits were paid because PTD benefits were reduced by retirement benefits.

Subd. 9. Failure to comply

- This subdivision specifies the consequences and penalties if a payer reports to the department that it has complied with the requirements of subdivision 2, but the payer has not paid and employee, dependent or legal heir. In this circumstance:
  - the payer must pay the employee, dependent or legal heir within 14 days of the date the payer discovers the noncompliance or the date DLI notifies the payer of noncompliance;
  - the payer is not entitled to the relief provided in subdivisions 3 and 4 for the claim and SCF may

Summary, continues ...

immediately begin collection of any assessments or over-reimbursement owed for the claim; and
  - if the commissioner determines the noncompliance was not in good faith, the commissioner may assess a penalty, payable to the person owed the benefits, of up to 25 percent of the total PTD benefits underpaid. If the payer is found after hearing to be liable for PTD benefits that were improperly reduced by retirement benefits, the compensation judge must assess a penalty against the payer, payable to the employee or dependent, up to the total amount of the PTD benefits underpaid. The compensation judge has discretion of whether to issue a penalty payable to a legal heir.

- The penalties assessed under this subdivision are in addition to any other penalty that may be or is required to be assessed under the workers' compensation law. However, the commissioner shall not assess a penalty against a payer for late payment of PTD benefits if the employee's benefits have been paid and documented according to subdivision 2.

- If the payer and SCF agree to a list of employees required to be paid under subdivision 2, this subdivision does not apply to any claim with a date of injury before Oct. 1, 1995, that is not on the agreed-upon list.

- Effective date of Section 1: May 31, 2017.
  Additional information, including links to an excerpt of the session law containing only Article 3 and FAQs, is available on the DLI website at www.dli.mn.gov/WC/EkdahlLaw.asp.

Article 5. Workers' compensation intervention

This article amends Minn. Stat. § 176.361, governing intervention.

Sections 1 and 2 are nonsubstantive clarifications of existing language in subdivisions 2 and 3.

Section 3 creates a new subdivision 2b, Approval of partial stipulations for settlement.

- This new subdivision allows a compensation judge to approve a "partial" stipulation that settles the employee's claim, but does not settle one or more intervenor's claims. The partial stipulation must include a statement explaining that, despite good faith efforts, the other parties were unable to:
  - obtain a response from the intervenor in response to an offer of settlement within a reasonable time;
  - reach agreement with the intervenor despite negotiating in good faith making a reasonable offer; or
  - obtain the intervenor's signature within a reasonable time after informal agreement was reached.

- The partial stipulation must include detailed support for the statements, reserve the intervenor's right to a hearing and contain a statement that the employee will cooperate at the hearing.

- Before filing the partial stipulation with the compensation judge for approval, it must be served on the non-signing intervenor with notice that the stipulation will be submitted to a compensation judge for approval and that the intervenor has a right to a hearing on the merits of the intervenor's claim if the partial stipulation is approved.

- The intervenor may serve and file an objection to approval of the partial stipulation within 10 days after service of the partial stipulation on the intervenor. The objection must include detailed and case-specific facts establishing that approval of the stipulation will adversely impact the rights of the intervenor. After expiration of the 10-day period, a party may file for approval of the partial stipulation with an affidavit of service.

- The compensation judge must immediately approve the partial stipulation unless the judge reasonably

Summary, continues ...

believes approval will adversely impact the rights of the non-signing intervenor, in which case the stipulation must be disapproved. The judge's award must notify the intervenors and other parties of their right to request amendment findings within 30 days.

- The Office of Administrative Hearings is directed to amend its intervention rules in Minnesota Rules part 1420.1850 to conform to these amendments, using the expedited rulemaking provisions of Minn. Stat. § 14.389.

- Effective date of Section 3: July 1, 2017.

DLI offers variety of workers' compensation training opportunities

Employees, employers, health care providers and staff, insurers, rehabilitation providers

Workers' compensation training is offered about a variety of subjects by Department of Labor and Industry staff members. Some classes are sponsored by the department and take place at its 443 Lafayette Road N., St. Paul, location, but off-site training can be scheduled as well.

Employees – Contact Melissa Parish at dli.wctraining@state.mn.us or (651) 284-5431 for more information.

Employers – Learn about employer training opportunities at www.dli.mn.gov/WC/TrainingEr.asp.

Health care providers – Training can be arranged for groups of at least 20 employees or injured workers by contacting Melissa Parish at dli.wctraining@state.mn.us or (651) 284-5431.

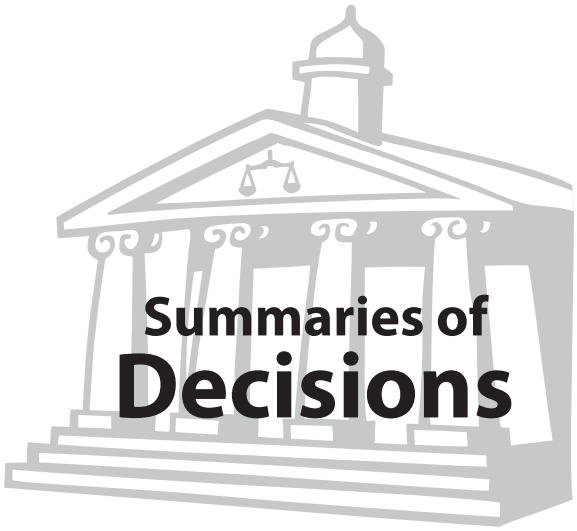
Insurers – Learn about insurer training opportunities at www.dli.mn.gov/WC/TrainingIns.asp.

Rehabilitation providers – Learn about training opportunities at www.dli.mn.gov/WC/TrainingRp.asp.

Workers' Compensation Court of Appeals

January through May 2017

Case summaries published are those prepared by the WCCA



Dustin Basting v. Metz Framing, Inc., Jan. 5, 2017

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, supported the compensation judge's decision that the employee's low back, mid back, right ankle and right knee injuries were temporary, rather than permanent, in nature and that the employee did not sustain SI joint or coccygeal injuries.

Intervenors

Upon intervention by a medical provider, an employee cannot assert a direct claim for benefits on behalf of that provider absent a demonstration that the employee or employee's counsel is authorized to act on that provider's behalf.

Affirmed.

Tina Castro v. Superamerica, Jan. 9, 2017

Medical Treatment and Expense – Treatment Parameters

The requirement for improvement in pain and functioning for the opioid medication treatment parameter, Minnesota Rules 5221.6110, subp. 8.B., applies to the first six months of long-term treatment. After that period, the treatment parameter is met for that standard where an employee demonstrates maintenance of that level of pain relief and functioning.

Affirmed.

Michael S. Romens v. Ballet of the Dolls, Inc., Jan. 9, 2017

Causation – Mental Stress

Substantial evidence supports the compensation judge's determination that the employee experienced an unusual and extraordinary level of stress, beyond the ordinary day to day stress to which all employees are exposed, as a result of his work activities for the employer producing a compensable physical injury in the nature of a seizure disorder.

Causation – Substantial Evidence

Substantial evidence supports the compensation judge's findings that the employee failed to prove he sustained separate stress-induced injuries on July 6, 2012, Dec. 10, 2012, and March 15, 2013.

Vacation of Award – Mutual Mistake

The employer and insurer failed to establish good cause on the basis of a mutual mistake of fact with respect to any incorrect captioning of the insurer and/or the third-party administrator, and their petition to vacate the Findings and Order is denied.

Affirmed in part and vacated in part.
Petition to vacate Findings and Order denied.

Christopher J. Siedow v. Gruber Pallets, Inc., Jan. 19, 2017

Causation – Temporary Injury
Evidence – Expert Medical Opinion

Substantial evidence, including medical records, a surveillance videotape and the adequately founded expert medical opinion of the independent medical examiner, supports the compensation judge's determination that the employee sustained a temporary injury that resolved without any ongoing disability or need for restrictions.

Affirmed.

Justin Elmer v. St. Paul Linoleum and Carpet Co., Jan. 20, 2017

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, medical records and the employee's testimony, supports the compensation judge's findings that the employee's testimony, supports the compensation judge's findings that the employee's 2014 and 2015 work injuries were substantial contributing factors to the employee's disc herniation and need for treatment.

Affirmed.

Pamalyn K. Buley v. Polaris Indus., Inc., Jan. 23, 2017

Permanent Partial Disability – Discontinuance
Permanent Total Disability – Retirement

Where an employer and insurer seek to discontinue permanent total disability due to reaching the presumptive retirement age, no process is required, subject to the employee's right to petition under Minnesota Statutes § 176.291.

Petition to discontinue dismissed.

Debbie Legatt v. Viking Coca-Cola Bottling Co., Jan. 26, 2017

Arising Out Of And In The Course Of

Substantial evidence supports the finding that the employee's injury arose out of an increased risk of her employment, where the evidence reasonably supported the judge's finding that the employee was injured in a fall when her shoe was caught in a damaged or crumbling crevice in the concrete floor of the employer's warehouse.

Affirmed.

Robert T. Maxfield v. Stremel Mfg., LLC, Jan. 27, 2017

Permanent Total Disability – Substantial Evidence

Substantial evidence in the record supports the compensation judge's conclusion that the employee has not met his burden of proof regarding whether he is permanently and totally disabled until a better directed and more comprehensive job search has been completed.

Rehabilitation – Consultation

An employee who requests a rehabilitation consultation is entitled to the same pursuant to Minnesota Statutes § 176.102, subd. 4(a).

Affirmed in part and reversed and remanded in part.

Christa Coleman v. Professional Resource Network, Feb. 3, 2017

Vacation of award

Where the employee failed to present any evidence of a causal relationship between the work injury that was the subject of the award on stipulation and the employee's present medical condition, the employee failed to establish cause to vacate the award.

Petition to vacate award on stipulation denied.

Thomas D. Fishback, Sr. v. Am. Steel and Indus. Supply, Feb. 3, 2017

Interest

Pursuant to Minnesota Statutes § 176.221, subd. 7, "[a]ny payment of compensation … not made when due shall bear interest from the due date to the date the payment is made." Under the plain language of the statute, interest on *any* delayed payment of benefits – including underpayments – is mandatory and not discretionary. The compensation judge erred in denying payment of interest on admitted underpayments of dependency benefits.

Penalties

Substantial evidence supports the compensation judge's factual determination denying penalties for unreasonably, vexatiously or inexcusably delayed payment of benefits or neglect to pay compensation.

Affirmed in part and reversed in part.

Scott T. Hanson v. Electric Builders Inc., Feb. 3, 2017

Causation – Substantial Evidence
Permanent Total Disability

Substantial evidence, including expert medical and vocational opinion, supports the compensation judge's findings that the employee's work injury is a substantial contributing cause of his disability and the employee is permanently and totally disabled.

Causation – Medical Treatment

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the disputed treatment for the employee's cervical spine was causally related to the employee's work injury.

Affirmed.

Daniel M. Ansello v. Wis. Cent., Ltd., Feb. 10, 2017

Jurisdiction – Concurrent

The compensation judge's dismissal of the employee's claim for medical expenses under the Minnesota Workers' Compensation Act on the ground that the benefits claimed by the employee would supplant, rather than supplement, benefits available under the Longshore and Harbor Workers' Compensation Act, is clearly erroneous and contrary to law establishing concurrent jurisdiction between the Longshore Act and state workers' compensation acts.

Practice and Procedure

The compensation judge lacked authority to invoke the equitable rule of *forum non conveniens* in dismissing the employee's claim, nor are the circumstances in this case consistent with such a dismissal.

Reversed and remanded.

Ursula G. Paniagua v. Employer Solutions Staffing Group, Feb. 16, 2017

Attorney Fees – Contigent Fees
Statutes Construed – Minnesota Statutes § 176.081, subd. 1(a)

Temporary total disability paid pursuant to an order on discontinuance that an employee is ultimately determined not to be owed by a compensation judge's decision is not "compensation awarded to the employee" under Minnesota Statutes § 176.081, subd. 1(a), and, therefore, an employee is not entitled to contingent attorney fees on those benefits. Disputed temporary total disability paid during a period before the date a compensation judge found an employee to have recovered from a work injury, however, is "compensation awarded to an employee" and the employee is entitled to attorney fees on those benefits.

Affirmed in part and reversed in part.

James D. Sirian v. City of St. Paul Public Works, Feb. 27, 2017

Appeals – Scope of Review

When a foundation objection to the admission of expert testimony is not raised at the hearing, that objection may not be raised for the first time on appeal.

Practice and Procedure – Matters at Issue

Where the parties did not put the nature of the personal care services provided at issue in the proceeding, the compensation judge did not err in awarding an increase in reimbursement where the record contains an adequate description of the services provided and there is substantial evidence that costs for such services had increased.

Jurisdiction – Subject matter

A compensation judge has no authority to award benefits beyond the date of the hearing. As the order language imposes an ongoing annual adjustment to the benefits awarded, the order is prospective and beyond the subject-matter jurisdiction of the judge.

Affirmed in part and vacated in part.

Tiffany Torgusson v. Lutheran Social Services, Feb. 27, 2017

Causation – Temporary Injury

Substantial evidence, including the independent medical examiner's opinions, supported the compensation judge's determination that the employee's July 21, 2015, work injury was temporary and had resolved by Sept. 15, 2015.

Affirmed.

Paul E. Fisher v. Jim Lupient Auto Mall, March 1, 2017

Rehabilitation – Retraining

Substantial documentation and the testimony of the employee and his qualified rehabilitation consultant (QRC) regarding 29 months of extensive job search demonstrates the employee has engaged in a diligent search for alternative work. The record supports the reasonableness of the retraining proposed by the employee as compared to less costly retraining options where the employer and insurer failed to demonstrate suggested alternatives would be equally viable and effective in restoring the employee to suitable, gainful employment. Gainful employment is likely reasonably attainable upon completion of the operations management degree at St. Thomas with wages producing an economic status as close as possible to that the employee would have enjoyed without the disability.

Reversed.

Roberto U. Varela Leal v. Knife River Corp., March 3, 2017

Intervenors
Practice and Procedure – Intervention

Upon intervention by a medical provider, an employee cannot assert a direct claim for benefits of the intervenor absent a demonstration that the employee or employee's counsel is authorized to act on the intervenor's behalf.

Temporary Total Disability – Substantial Evidence

Where the employee had been laid off for a seasonal work stoppage and had been contacted about returning to work for the employer in the spring, the compensation judge could reasonably conclude that the employee had a reasonable expectation of returning to work for the employer and was not disqualified from receiving temporary total disability benefits on the grounds of failure to conduct a job search.

Temporary Partial Disability – Substantial Evidence

Where the employee had a wage loss while working with restrictions causally related to the work injury and the employer and insurer had not rebutted the presumption that the employee's actual earnings accurately reflect the employee's reduced earning capacity, substantial evidence supports the compensation judge's award of temporary partial disability benefits.

Affirmed in part, reversed in part and vacated in part.

Debra Peterson v. Midwest Machine Tool Supply, Inc., March 7, 2017

Causation – Gillette Injury

Substantial evidence, in the form of a well-founded medical opinion, supports the compensation judge's determination that the employee did not sustain a Gillette injury.

Affirmed.

Cindy Gerhardson v. Industries Inc., March 15, 2017

Permanent Total Disability – Substantial Evidence

Substantial evidence, including the opinions of the medical and vocational experts, supports the compensation judge's determination that the employee is not presently permanently and totally disabled.

Affirmed.

Galen J. Koll V. Independent School District 345, March 16, 2017

Temporary Total Disability – Substantial Evidence

Substantial evidence in the form of well-founded medical opinions, the medical record and the employee's testimony supported the compensation judge's conclusion that the employee was temporarily totally disabled.

Temporary Total Disability
Job Search

Where the employee was taken off of all work in a second job, only medically released for some form of restructured work in the date of injury job, offered no restructured job and provided no rehabilitation assistance, substantial evidence supports the compensation judge's finding that the employee was entitled to continued temporary total disability benefits without a job search.

Practice and Procedure – Matters at Issue

Failing to raise a specific issue before the compensation judge limited the scope of the hearing and casual mention during opening statements does not provide adequate notice to the judge that a further issue was to be raised.

Affirmed.

Brooks A. Duehn v. Connell Care Care, March 20, 2017

Notice of Injury – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the employee did not give timely notice to the employer of his Aug. 21, 2013, injury. Substantial evidence does support the conclusion that the employer had actual knowledge of the employee's low back injury on Nov. 18, 2014.

Causation – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the Nov. 18, 2014, injury was a substantial contributing cause of the employee's work-related disability.

Job Search – Substantial Evidence

Where the employee provided minimal detail regarding the scope of his job search or the time spent looking for work, and no job logs or other records were submitted to support the employee's testimony, the compensation judge's finding that the employee failed to establish a reasonably diligent job search was not unreasonable or manifestly contrary to the evidence.

Intervenors

Where the intervention motion of a health care provider was not filed within 60 days of being notified of its right to intervene, the motion was not timely filed under Minnesota Statutes § 176.361, subd. 2(a), and the compensation judge erred in allowing the intervention claim.

Affirmed in part and reversed in part.

Alejandro Cruz v. Express Employment Professionals, March 24, 2017

Appeals – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the employee had not shown that the required $25 filing fee was paid for his notice of appeal.

Appeals – Notice of Appeal

The $25 filing fee for a notice of appeal must be paid within the statutory period under Minnesota Statutes § 176.421, subd. 4, to perfect an appeal. Where the employee failed to timely remit the filing fee, this court lacks jurisdiction to consider the merits of the appeal.

Affirmed.
Appeal dismissed.

Ali Mohammed v. Minnesota Veterans Home, State of Minnesota, April 4, 2017

Practice and Procedure – Statute of Limitations

Substantial evidence supports the conclusion that the employee was not mentally incapacitated to such a degree that he was incapable of performing the acts required to initiate a claim such that the time to file a claim should be extended, under Minnesota Statutes § 176.151, subd. 3, for three years from the date any incapacity ceased. Substantial evidence supports the determination that the employee's claim of a left knee injury on or about June 29, 2002, is barred by the statute of limitations.

Causation – Temporary Injury

Substantial evidence, including adequately founded expert medical opinions, supports the compensation judge's determination that the employee's October 2002 right shoulder injury was temporary and resolved by March 11, 2004.

Affirmed.

Alapati Noga v. Minnesota Vikings Football Club, April 20, 2017

Causation – Gillette Injury
Causation – Substantial Contributing Cause

Imposition of liability for a Gillette injury on an employer and insurer requires medical evidence connecting the employee's disability to the employee's job duties. Where, in assigning liability to the employer and insurer in this case, the compensation judge failed to address the issue of whether the employee's work for the employer was, by itself, a substantial contributing factor in the employee's Gillette injury, the matter was remanded for reconsideration of that issue and for appropriate findings and order.

Gillette Injury – Date of Injury
Gillette Injury – Ultimate Breakdown
Notice of Injury – Gillette Injury
Practice and Procedure – Statute of Limitations

The judge's findings on these issues are based on the determination of a Gillette injury culminating on Dec. 1, 1992. Since we have vacated that determination for further consideration, we vacate the applicable findings and request the compensation judge to review these issues on remand.

Settlements – Interpretation

The compensation judge appropriately concluded that the employee's current claims are not directly barred by the terms of a prior stipulation for settlement.

Affirmed in part, vacated in part and remanded in part.

Thomas J. Bolstad v. Target Center/Ogden and Broadspire, May 5, 2017

Causation – Consequential Injury

Substantial evidence in the record, including medical reports, medical expert opinion and credible testimony of the employee supports the compensation judge's denial of a Gillette injury to the left shoulder consequential to injuries sustained to the right shoulder.

Causation – Intervening Cause

Substantial evidence in the record in the nature of medical expert opinions support the compensation judge's conclusion that the employee's left shoulder condition was caused by his work injury and not a superseding, intervening personal injury.

Temporary Partial Disability – Earning Capacity

Substantial evidence in the record, primarily the credible testimony of the employee, supports the compensation judge's determination that the employee made a good faith effort to return to his pre-injury earning capacity.

Temporary Total Disability – Substantial Evidence

Substantial evidence in the record supports the compensation judge's apportionment of liability to right shoulder injuries for periods of temporary total disability benefits during periods of time immediately following surgeries to the left shoulder.

Affirmed as modified.

Teri J. Parker v. Foley Locker, Inc., May 11, 2017

Causation – Permanent Aggravation
Medical Treatment and Expense – Substantial Evidence

Substantial evidence, including expert medical opinion, medical records and lay testimony, supported the compensation judge's findings that the employee's work injury had aggravated or accelerated the employee's pre-existing low back condition; that the injury had not fully resolved within three months; and that the work injury remained a substantial contributing cause of the employee's restrictions and disability, need for medical treatment and permanent partial disability.

Temporary Partial Disability

Attainment of maximum medical improvement does not, as a matter of law, trigger a cessation of an employee's temporary partial disability compensation.

Permanent Partial Disability – Substantial Evidence
Rules Construed – Minnesota Rules 5223.0390, subp. 4

Substantial evidence, including expert medical opinion, medical records and lay testimony, supported a 13 percent permanency rating for the employee's condition.

Affirmed.

Mark S. Younghans v. Johnson Brothers Liquor, May 12, 2017

Evidence – Expert Medical Opinion

A medical expert's concession that setting restrictions for a particular condition was not in her area of expertise did not disqualify her from issuing a competent, well-founded causation opinion upon which the compensation judge was able to rely.

Causation – Substantial Evidence

Evidence to show that a work injury remains a substantial contributing factor in an employee's current condition beyond the mere fact that a permanent injury was sustained is necessary to establish an ongoing causal connection.

John E. Petzel v. DS Agri Construction, May 16, 2017

Temporary Partial Disability – Substantial Evidence

Substantial evidence supports the compensation judge's determination that the employee was not entitled to temporary partial disability benefits where his employment resulted in insubstantial income of $80 per month for eight hours of work per month.

Affirmed.

Tracey L. Robertson v. Manpower Tempory Services, May 16, 2017

Settlements – Interpretation

The compensation judge correctly interpreted a stipulation for settlement for the employee's work injury in concluding that permanent partial disability and rehabilitation benefits were closed out, despite a failure to identify the specific condition claimed, where the record at the time of the settlement showed the condition was within the contemplation of the parties. Accordingly, the judge did not err in dismissing the portion of the employee's claim petition which sough further awards of permanent partial disability and rehabilitation benefits.

Settlements – Interpretation

Where a stipulation closes out benefits on a full, final and complete basis, reserving only future medical care, dismissal of an entire claim petition on the basis of the close out is error, where the claim petition states a claim for medical benefits.

Affirmed in part, vacated in part, modified in part and remanded.

Lori Titchenal v. Prairie River Home Care, May 18, 2017

Vacation of Award – Substantial Change in Condition

Where the employee has shown a substantial change in medical condition since the time of a stipulation for settlement through a change in diagnosis, a change in ability to work, additional permanent partial disability, the need for more costly and extensive medical care, the admitted causal relationship between the employee's additional medical treatment and her work injury, and the contemplation of the parties, the employee's petition to vacate the award on stipulation is granted.

Petition to vacate granted.

David Holtslander v. Granite City Roofing, Inc., May 24, 2017

Vacation of Award – Substantial Change in Condition

The employee established good cause to vacate the 2002 Award on Stipulation on the grounds of a substantial change in medical condition pursuant to Minnesota Statutes § 176.461 and Fodness v. Standard Café.

Vacation of Award – Mutual Mistake

Any mistake with respect to the severity of the employee's injuries, or the extent to which he would be vocationally limited, cannot be said to have been mutual between the parties, and a unilateral mistake is not sufficient to support vacation of an award.

Vacated.

Minnesota Supreme Court

January through May 2017

Case summaries published are those prepared by the WCCA

Ellen Gianotti v. Independent School District 152, A16-0629 – Feb. 8, 2017

1. The Workers' Compensation Court of Appeals (WCCA) erred when it ruled on the forfeited issue of whether a psychologist was competent to provide an expert opinion. 2. The WCCA erred when it reversed the compensation judge's determination that there was an adequate factual foundation for the psychologist's opinion. 3. The WCCA erred when it reversed the compensation judge's factual finding that respondent did not suffer a concussion and post-concussive syndrome. Reversed.

Shannon Gilbertson v. Williams Dingmann, L.L.C., A16-0895 – May 3, 2017

Under the plain language of Minnesota Statutes § 176.101, subd. 1(i) (2016), an offer to return to work with the same employer is not "consistent with" the parties' agreed-upon plan of rehabilitation stating that the employee's vocational goal is to return to work with a different employer. Affirmed.