

## DLI Workers' Compensation Division updates related to COVID-19

- Visit [www.dli.mn.gov/updates](http://www.dli.mn.gov/updates) for the most recent information about Department of Labor and Industry changes, cancellations and resources related to the COVID-19 pandemic, **including the bill language, bill summary and FAQs about the legislation that creates a presumption of workers' compensation coverage for first responders, certain workers at a corrections, detention or secure treatment facility, and certain health and child care workers who contract COVID-19.**
- There will be a COVID-19 special edition of *COMPACT* published shortly.

### Administrative conferences, mediations

Department of Labor and Industry (DLI) administrative conferences and mediations are being conducted remotely by telephone or video conference only. Parties also have the option of rescheduling these events to a later date. Contact the DLI Workers' Compensation Division at [dli.workcomp@state.mn.us](mailto:dli.workcomp@state.mn.us) or 651-284-5032, or contact your assigned mediator, for more information.

### Copy file review

DLI's Copy File Review team will be contacting citizens who have appointments scheduled to look at their workers' compensation files, so they can reschedule their appointment 30 days or more in the future. If it is imperative they see their file at their scheduled appointment time, DLI will limit the individual's access to a singular room and the Copy File Review team will ensure social-distancing practices are followed.

### Rehabilitation consultations

Until further notice, DLI will not take any enforcement action under Minnesota Rules 5220.0130 against any qualified rehabilitation consultant (QRC) who conducts a rehabilitation consultation with an injured worker by telephone or video, rather than in person. DLI encourages QRCs to limit in-person meetings and implement social-distancing measures when providing a rehabilitation consultation and other rehabilitation services to injured workers. Placement vendors and their staff members, who meet with injured workers, are also encouraged to conduct meetings by phone or video.

### Work Comp Campus

The Workers' Compensation Modernization Program (WCMP) continues to work on implementing Work Comp Campus as scheduled. Email questions and concerns to [dli.wcmp@state.mn.us](mailto:dli.wcmp@state.mn.us).

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## DLI seeks medical consultant

The Department of Labor and Industry (DLI) is seeking requests for proposal to hire a medical consultant, pursuant to Minnesota Statutes § 176.103, subd. 1. The medical consultant must be an eligible physician who would be able to serve DLI, including consulting with the Workers' Compensation Division, Research and Statistics unit, Special Compensation Fund unit, Minnesota Occupational Safety and Health Administration (MNOSHA) unit, Workers' Compensation Advisory Council and Medical Services Review Board, and serve as DLI's representative on the Minnesota Opiate Prescribing Work Group. The proposal is for July 1, 2020, through June 30, 2021, with an annual option to renew for up to four additional years.



### Learn more

View the request for proposals, related attachments and a sample contract at [www.dli.mn.gov/about-department/about-dli/requests-proposals](http://www.dli.mn.gov/about-department/about-dli/requests-proposals). Submissions must be received no later than 2 p.m., Central Time, June 25, 2020.

If you have questions about the position, contact Chris Leifeld at [christopher.leifeld@state.mn.us](mailto:christopher.leifeld@state.mn.us).

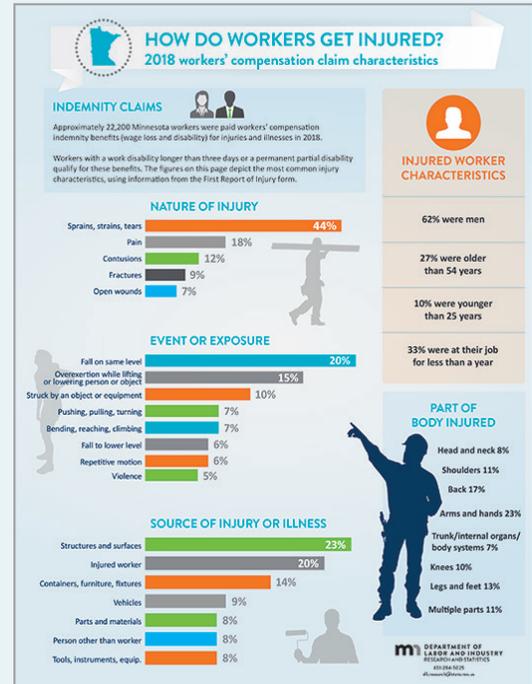
## How do workers get injured?

### Claim characteristics flyer updated with 2018 data

Approximately 22,200 Minnesota workers were paid workers' compensation indemnity benefits (wage loss and disability) for injuries and illnesses in 2018.

- Sixty-two percent of these workers were men.
- Twenty-seven percent were older than 54 years.
- Ten percent were younger than 25 years.
- Thirty-three percent were at their job for less than a year.

View the updated one-page flyer online at [www.dli.mn.gov/business/workers-compensation/claim-characteristics](http://www.dli.mn.gov/business/workers-compensation/claim-characteristics).



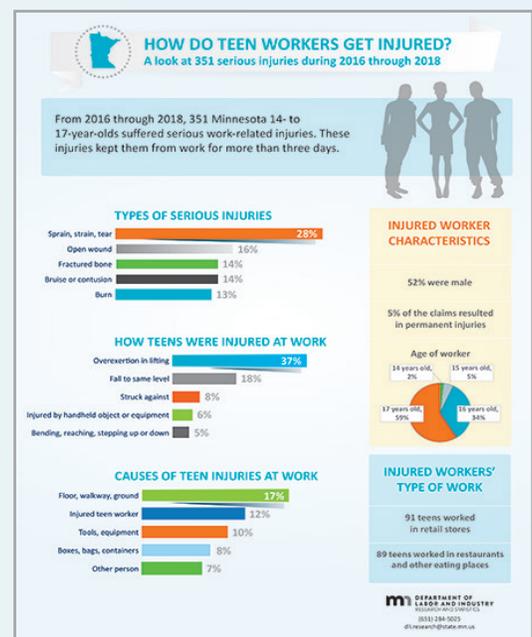
## How do teen workers get injured?

### Claim characteristics flyer updated for 2016-2018

From 2016 through 2018, 351 Minnesota 14- to 17-year-olds suffered serious work-related injuries. These injuries kept them from work for more than three days.

- Fifty-two percent of these workers were male.
- Five percent of these claims resulted in permanent injuries.
- Thirty-seven percent were caused by overexertion in lifting.
- Ninety-one injured teens worked in the retail stores.

View the updated one-page flyer online at [www.dli.mn.gov/business/workers-compensation/claim-characteristics](http://www.dli.mn.gov/business/workers-compensation/claim-characteristics).



## Work Comp Campus:

### Testing, developing training, announcing new virtual Q&A sessions

The Department of Labor and Industry (DLI) is working to improve workers' compensation for Minnesotans by building the new web-based system, Work Comp Campus, for filing and accessing workers' compensation claims. Campus will go live for all users in August 2020. Campus will allow ready and easy access for all parties involved in a workers' compensation claim to manage their claims in real time, online. Quicker access to claim information among all parties will ensure work injuries are reported and compensated in a streamlined process.



### Stakeholders helping build, test Campus

Many stakeholders are helping DLI build and test Campus. After the Campus Stakeholder Showcase generated much interest last November, stakeholder groups are being invited to DLI for more focused, small-group testing of Campus. In a large IT project, it is rare to have the chance to share a system with users while it is still in development.

At the end of January, a group of proxy injured workers tested Campus functionality for employees. They provided valuable feedback about the user experience of managing a claim. On March 4, a group of rehabilitation providers came to DLI to test R-forms and other functionality rehabilitation providers will typically use in Campus.

### Developing user training

Campus user-training will begin in June and end in August 2020. DLI is taking a multi-channel approach to training to ensure it is meeting the needs of the many users and reaching those users where they are. Training will include virtual training courses, as well as on-demand materials. All training will focus on how the user will use Campus in their role (employer, insurer, attorney, etc.).

More information about training scheduling will be available soon and shared via DLI's [workers' compensation email lists](#). Training schedule information will also be posted on the [Campus webpage](#).

### Announcing Campus Answer Hours

The Workers' Compensation Modernization Program (WCMP) is hosting open Campus Answer Hour sessions for each stakeholder group. Campus Answer Hours are regularly scheduled virtual question and answer sessions that provide opportunities to ask questions and get information about Campus. The first Campus Answer Hours were in early March. Campus Answer Hours occur every five weeks through the end of July.

#### To join a Campus Answer Hour

To get the login information you'll need so you can join a Campus Answer Hour, download the calendar invitation specific to your group. Visit the [Campus webpage](#) and click on the appropriate group in the boxes under "What will Campus mean for me?" If there is a Campus Answer Hour scheduled for that group, the calendar invitation will be posted on that group's webpage, with instructions about how to download it and how to prepare for the conversation.

### More information

Visit the [Campus webpage](#) to learn more about the program and subscribe to one (or more) of the [DLI workers' compensation email lists](#) to receive all of the Campus announcements, training information, testing opportunities and more. If you have questions or want to become involved in Campus user-group testing, email [dli.wcmp@state.mn.us](mailto:dli.wcmp@state.mn.us).

## DLI or OAH: Where to file documents related to a dispute

The workers' compensation law was changed June 1, 2018, to specify whether documents related to a dispute must be filed at the Office of Administrative Hearings (OAH) or the Department of Labor and Industry (DLI). See [Minnesota Statutes § 176.2611, subdivision 3 \(2018\)](#).

### Intervention filings

As a result of this law change:

- Motions to Intervene in claims **pending at OAH** must be [eFiled](#) with **OAH** or mailed to OAH at P.O. Box 64620, St. Paul, MN 55164-0620. eFiling instructions are available on the [OAH website](#).
- Motions to Intervene in a medical or rehabilitation administrative conference **pending at DLI** must be filed with **DLI** at P.O. Box 64221, St. Paul, MN 55164-0221.

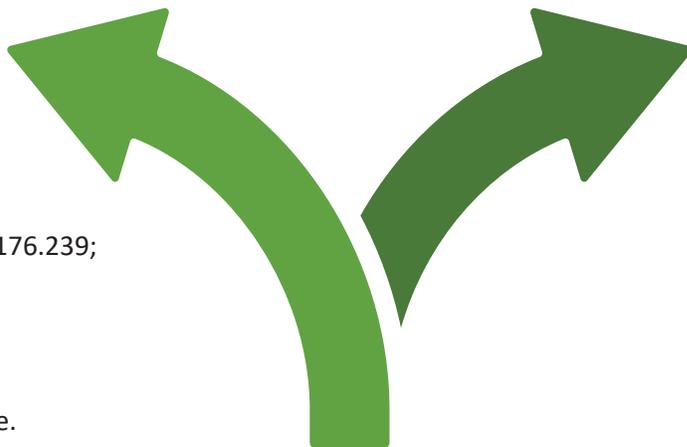
Some intervenors are not aware of this law change and continue to file Motions to Intervene with DLI for claims pending at OAH. Forms that reflect the proper filing location are available on both [DLI's website](#) and [OAH's website](#). If you have not updated your forms, please do.

If you have received notice of your right to intervene in a dispute, but don't know where the dispute is pending, call the attorney who sent you the notice, email OAH at [oah.wcefiling@state.mn.us](mailto:oah.wcefiling@state.mn.us) or call DLI at 651-284-5032.

### All other filings

The following filings must be filed with **OAH** and not DLI:

- Motions relating to any case pending at OAH;
- Answers;
- Statements of Attorney Fees/Objections;
- Requests for Formal Hearing;
- Claim Petitions (with the exception noted below);
- Discontinuance conference requests under Minn. Stat. § 176.239;
- Asbestos filings;
- OAH Mediation Requests/Responses;
- Petitions for Contribution/Reimbursement;
- Petitions for Temporary Orders; and
- Petitions to Discontinue and Objections to Discontinuance.



The following documents must be filed with **DLI** and not OAH:

- Motions to Intervene in a medical or rehabilitation administrative conference pending at DLI;
- Requests for a medical or rehabilitation administrative conference under Minn. Stat. § 176.106 and related documents, regardless of the amount in dispute;
- Requests for medical or rehabilitation dispute certification under Minn. Stat. § 176.081, subd. 1(c), and related documents;
- Claim Petitions that only identify medical or rehabilitation issues, unless primary liability is disputed;
- Objections to penalties assessed by DLI;
- Requests for mediation at DLI, and responses to the mediation request; and
- Any other document required to be filed with the commissioner under Minn. Stat. ch. 176, such as Notices of Intention to Discontinue Workers' Compensation Benefits (NOIDs) under Minn. Stat. § 176.238, subd. 1, First Reports of Injury, Notices of Insurer's Primary Liability Determination, Notices of Benefit Payment, documents related to vocational rehabilitation plans and other required forms.

### Forms

Forms that reflect the proper filing location are available on both [DLI's website](#) and [OAH's website](#).

### Questions?

If you need help, call DLI at 651-284-5032 or email OAH at [oah.wcefiling@state.mn.us](mailto:oah.wcefiling@state.mn.us). This inbox is staffed consistently during OAH business hours to ensure you will receive a quick response.

## Recordkeeping training offered in September, October

Maintaining an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. The Department of Labor and Industry is offering free introductory-level training sessions about OSHA recordkeeping in September and October. **Registration is required.**

### Dates

- **Sept. 25** – Webinar only, 8:30 to 11:30 a.m.
- **Oct. 2** – Webinar only, 8:30 to 11:30 a.m.

### Topics

- Recordability of injuries and illnesses
- Differences between OSHA cases and workers' compensation claims
- Classifying cases
- Counting time
- Privacy cases
- How many logs to keep
- Maintaining logs
- Creating a log summary
- Reporting log data to OSHA
- Recording COVID-19 cases



### Registration, more information

To register, visit <https://secure.doli.state.mn.us/events>. For more information about the training sessions, visit [www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard](http://www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard).

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

The Department of Labor and Industry's Office of Workers' Compensation Ombudsman informs, assists and empowers injured workers and small businesses having difficulty navigating the workers' compensation system.

### 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.

The Office of Workers' Compensation Ombudsman also recommends statute or rule changes to improve the effectiveness of the workers' compensation system.

To request assistance, contact the Office of Workers' Compensation Ombudsman at 651-284-5013, 800-342-5354 or [dli.ombudsman@state.mn.us](mailto:dli.ombudsman@state.mn.us).



# Outcomes of complaints about registered rehabilitation providers, 2019

By Mike Hill, Rehabilitation Policy Specialist

If a party believes a rehabilitation provider is not following the statutes or rules, they can file a written complaint with the Minnesota Department of Labor and Industry (DLI). Upon receipt and review of the information provided, DLI may perform an investigation to determine if disciplinary action is warranted. Below: Table 1 details complaints received and where they originated; Table 2 details complaints and their outcomes; and Table 3 details the violations and the statutes or rules involved.

**Table 1. Source of complaints**

Year	ER/IR	EE	Attorney	Rehabilitation provider	DLI	Other	Total
2019	3	0	0	0	1	0	4
2018	0	0	0	0	14	0	14
2017	1	0	2	0	5	0	8
2016	1	0	1	0	15	0	17
2015	1	2	1	1	2	0	7
2014	1	2	0	3	24	1	31
2013	2	0	5	6	1	0	14

## Complaint outcomes

A complaint may allege violations of workers' compensation statutes or rehabilitation rules. During the course of an investigation, additional issues may be identified. Outcomes are determined by the findings of the investigation. Possible outcomes include the following.

- **Unsubstantiated** – The allegations are not supported by the information obtained.
- **Letter of instruction** – A letter is not considered to be formal discipline; the letter is retained by DLI in case subsequent inquiries into a provider's conduct are undertaken.
- **Discipline/stipulation** – Discipline, in the form of a stipulated agreement, involves corrective action and a fine. The severity of the disciplinary action may be increased if the subject has a history of similar violations.
- **Inactive rehabilitation provider** – The rehabilitation provider's registration became inactive during the investigation. Before being allowed to be re-registered, the complaint must be resolved.

**Table 2. Professional conduct and accountability outcomes**

Year	No jurisdiction	Unsubstantiated	Letter of instruction	Stipulation	No appeal	Inactive	Total
2019	0	0	1	3	0	0	4
2018	0	1	7	4	0	3	15
2017	1	1	6	2	0	1	11
2016	1	7	4	1	0	2	15
2015	0	0	11	5	0	1	17
2014	1	45	40	7	0	6	99
2013	0	5	19	3	0	1	28

**Table 3. 2019 rehabilitation violations of Minnesota Statutes and Minnesota Rules**

Violation	Statute (ch. 176), rule (pt. 5220)
*Failure to attend DLI's mandatory September 2018 update in person or via simulcast	5220.0510, subp. 3a 5220.1801, subp. 9 (E)
*Failure to be knowledgeable about workers' compensation laws	5220.1803, subp. 2 5220.1801, subp. 9 (E)
*Failure to maintain separate roles between a claims agent and rehabilitation provider by assisting the insurer with claims adjustment and claims investigation	5220.1801, subp. 8B (1), (2) 5220.1801, subp. 9 (E)
*Failure to provide copies of all required reports and progress records, including email messages, to the employee and all parties	5220.1802, subp. 3 5220.0100, subp. 30 and 31
*Failure to use invoice form that is compliant with example posted on DLI's website	5220.1900, subp. 1a 176.102, subd. 9(6)(b)
Failure to use correct service code on the rehabilitation consultation invoice, thereby causing costs to appear lower	5220.1801, subp. 9 (A) 5220.1801, subp. 9 (E)
*Failure to disclose business referral or other arrangements (verbal or written) to the injured worker and parties	176.102, subd. 4 (c) 5220.1803, subp. 1 (A), (B)
*Filing false or misleading rehabilitation consultation cost information on the R-2 and R-8 forms to DLI and the parties	5220.1801, subp. 9 (A) 5220.1801, subp. 9 (E)
*Failure to file rehabilitation consultation report forms and failure to file narrative reports that explained the basis for the qualified rehabilitation consultant's (QRC's) determination that the employee was qualified to receive rehabilitation services	5220.1803, subp. 2 5220.0130, subp. 3(C)(4) 5220.0130, subp. 3(D) 5220.0130, subp. 3 D 5220.1801, subp. 9 E
*Failure to file R-2 Rehabilitation Plan forms with initial evaluation reports, covering eight required points, within 45 days of the first in-person meeting	5220.0410, subp. 5 5220.1801, subp. 9 (E) 5220.1803, subp. 5
*Failure to correctly file plan progress reports, including identification of barriers and steps to overcome them on a separate narrative report, six months after the R-2 plan was filed	5220.0450, subp. 2 (E) and 3 (A) 5220.1801, subp. 9 (E)
*Failure to file an R-3 Rehabilitation Plan Amendment form and/or to provide evidence the form was sent to the parties	5220.0510, subp. 2d 5220.1801, subp. 9 (E)
Failure to list the injured worker's worker identification number or full Social Security number on required reports or required progress records	5220.1802, subp. 1 5220.1801, subp. 9 (E)
Failure to adequately monitor the performance of services provided by a person working for the rehabilitation provider	5220.1801, subp. 9 (E)
Failure to file an R-3 change of QRC and to review with the employee the rights and responsibilities form	5220.0510, subp. 2d 5220.1803, subp. 1 5220.1801, subp. 9 (E)
Failure to correctly use the rehabilitation consultation form prescribed by the commissioner by adding an "unknown" section and then determining the employee was qualified for services based on the QRC's inability to decide	5220.0130, subp. 3(C) 5220.1801, subp. 9 (E)
Failure to file evidence with the R-2 and R-3 forms that the plans were sent to the parties for their review, signature and return	5220.0410, subp. 6 5220.0510, subp. 2d
Failure to file an R-8 closure form and summary narrative report within 30 calendar-days knowledge the file should be closed	5220.0510, subp. 7 5220.1801, subp. 9 (E)
*Similar professional conduct violations were reported in the March 2019 edition of <i>COMPACT</i> , for 2018.	

## Conclusion

The purpose of a professional conduct investigation is to determine if a violation of the rules and statutes has occurred, so the behavior can be corrected, preventing future problems. Through outreach, education and compliance efforts the

department strives to work with rehabilitation providers to improve the quality of services provided to the stakeholders in Minnesota.

## More information

DLI's [Work comp: For rehabilitation providers](#) webpage was developed to provide information to QRCs and placement vendors to enhance their work product. Stakeholders may also call DLI, at 800-342-5354, with their rehabilitation questions and concerns.

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## WCRI report compares Minnesota with 17 other states

The Workers' Compensation Research Institute's (WCRI's) most recent report for Minnesota, *CompScope Benchmarks for Minnesota, 20th 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 2013 to 2018 period. The report is available for purchase from WCRI at [www.wcrinet.org](http://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 (2016 claims measured in 2019) were 19% lower in Minnesota than the 18-state median.
- For cases with more than seven days of lost time, Minnesota's claim costs were 8% lower than the median value. Medical costs, indemnity benefits and benefit delivery expenses were all below the median, although fairly typical relative to other states. Benefit delivery expenses include medical cost containment expenses, defense attorney fees and independent medical examination costs.
- Average payments for Minnesota claims have showed little to moderate growth from 2013 to 2018. Analysis of claims with more than seven days of lost time, measured an average of 12 months after the injury, shows that the total of medical costs, indemnity benefits, vocational rehabilitation and claims expenses increased at an average annual rate of 3.0%. Claim costs measured an average of 36 months after the injury grew at an annual rate of 2.0%.
- Minnesota had slightly fewer claims with any permanent partial disability (PPD) or lump-sum payment, at an average of 36 months after the injury, than the median state; however, the average PPD/lump-sum payment for these claims was 39% higher than the median for states with similar PPD systems.
- Medical-legal expenses per claim have remained fairly stable since 2015.

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## Annual reports updated, available online

The Department of Labor and Industry (DLI) is required to publish an annual report about the assessment and collection of fines and penalties under the workers' compensation law – **Collection and Assessment of Fines and Penalties**.

DLI is also required to publish an annual report about the promptness of all insurers and self-insurers making first payments or denials on a claim for injury – **Prompt First Action Report on Workers' Compensation Claims**.

Both reports were recently updated and are available online at [www.dli.mn.gov/business/workers-compensation/work-comp-reports-publications](http://www.dli.mn.gov/business/workers-compensation/work-comp-reports-publications).



## Workers' compensation indemnity claims trends by industry

By Brian Zaidman, Research and Statistics

Workers' compensation indemnity claims are concentrated in certain industries due to a combination of the number of workers and the claims rate. In 2018, the most recent available data year, the five industries with the most claims (health care and social assistance, manufacturing, retail trade, transportation and warehousing, and construction) accounted for 47% of Minnesota's employment (excluding federal government) and for 60% of the indemnity claims.

Figure 1 shows the trends since 2010 in the number of indemnity claims for the five industries with the most claims in 2018. The two industries with the most claims (health care and social assistance, and manufacturing) saw decreases during this time period, while the other three industries saw increases. The number of claims in transportation and warehousing increased by 37% during these years. (Claim counts for recent years are preliminary, additional indemnity claims will be added as primary liability disputes settle and some medical-only claims become indemnity claims. These claim counts are based on workers' compensation claims data downloaded Oct. 1, 2019.)

Figure 2 shows the trends in the percentage of total indemnity claims for these five industries. Because the overall trend across all industries has been for a steady number of indemnity claims, the percentage trends resemble the trends in the number of claims. The percentage of all indemnity claims in health care and social assistance decreased from 17.9% of claims in 2010 to 16.0% in 2018, and the percentage in manufacturing decreased from 15.3% in 2010 to 13.7% in 2018. Each of the other three industries increased by less than 1%.

Information about other industries and for more finely detailed industries (such as specific types of manufacturing) can be obtained by emailing the Research and Statistics unit at [dli.research@state.mn.us](mailto:dli.research@state.mn.us).

Figure 1

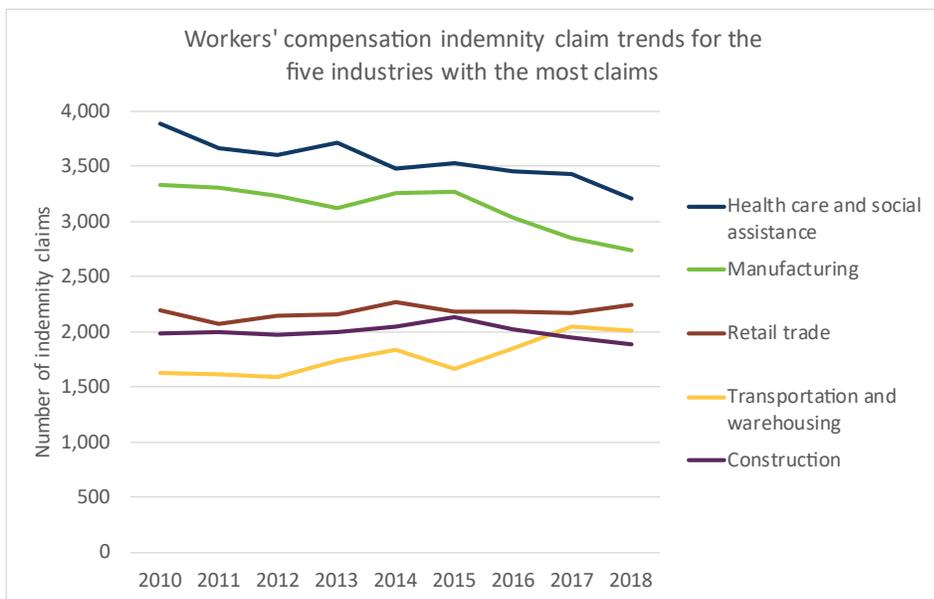
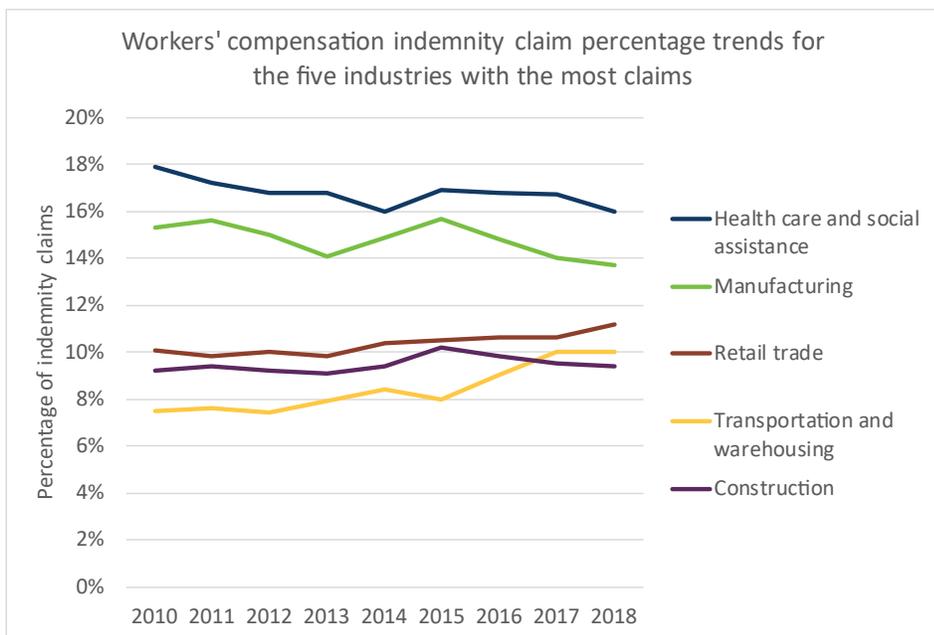


Figure 2



# Workers' compensation events calendar

Note: Event dates may change. Always check the online calendar at [www.dli.mn.gov/about-department/about-dli/events-workers-compensation](http://www.dli.mn.gov/about-department/about-dli/events-workers-compensation).

## June 2020

- June 22 Campus Answer Hour for Rehabilitation Providers
- June 23 Campus Answer Hour for Law Firms
- June 24 Campus Answer Hour for Employers

## July 2020

- July 9 Rehabilitation Review Panel
- July 16 Medical Services Review Board
- July 27 Campus Answer Hour for Rehabilitation Providers
- July 28 Campus Answer Hour for Law Firms
- July 29 Campus Answer Hour for Employers

## August 2020

- Aug. 12 Workers' Compensation Advisory Council
- Aug. 20 Rehabilitation provider orientation training

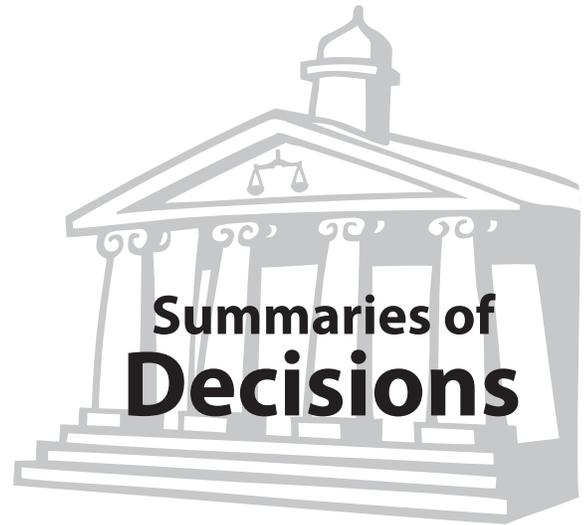
## September 2020

- Sept. 1 Campus Answer Hour for Law Firms
- Sept. 22 Rehabilitation provider orientation training
- Sept. 25 OSHA recordkeeping training

# Workers' Compensation Court of Appeals

November 2019 through April 2020

Case summaries published are  
those prepared by the WCCA



## *Margaret Jaafaru v. Cerenity Senior Care, Nov. 1, 2019*

### **Causation**

Because the compensation judge denied the employee's claim without making a finding regarding causation, remand of the matter is necessary.

Vacated and remanded.

## *Janet Hufnagel v. Deer River Health Care Center, Nov. 12, 2019*

### **Attorney Fees – Roraff Fees – Excess Fees**

Where the compensation judge properly applied factors set out in Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999), and did not abuse his discretion, his determination of excess fees is affirmed.

### **Attorney Fees – Roraff Fees – Excess Fees**

Where the issues litigated regarding the employee's awarded medical claim were closely intertwined between injuries with multiple employers and the compensation judge found that all the litigated injuries contributed to the employee's need for the medical care awarded, allocation of Roraff fees is not an error of law where only one employer was ordered to pay for the awarded care.

### **Practice and Procedure – Remand**

Where the no new relevant evidence regarding the matters at issue is proposed to be presented, the compensation judge did not abuse his discretion in declining to conduct a hearing on remand on an attorney fee award.

Affirmed.

***Michael H. Lenneman v. Brainerd General Rental, Nov. 13, 2019***

**Causation – Substantial Evidence**

Where the medical opinions supporting the employee's claim for surgery did not substantially support that the surgery was causally related to the employee's work injuries, and the compensation judge adopted an adequately founded medical expert opinion of no causal relationship with the work injuries, substantial evidence supports the compensation judge's denial of the claim.

Affirmed.

***Rosanne G. Thompson v. Target Corporation, Nov. 20, 2019***

**Gillette Injury – Substantial Evidence**

Substantial evidence, including medical records, the employee's testimony and expert medical opinion, supports the compensation judge's finding that the employee sustained a work-related Gillette injury to her bilateral thumbs culminating on Sept. 1, 2017.

Affirmed.

***Robert Maxfield v. Stremel Manufacturing, Dec. 6, 2019***

**Permanent Total Disability – Substantial Evidence**

Substantial evidence, including expert vocational opinion that the employee had not conducted a reasonable and diligent job search, the employee was capable of a full-time job search and full-time work, and that his job search since his layoff in 2015 was self-limiting, supports the compensation judge's finding that the employee is not permanently and totally disabled.

**Permanent Total Disability – Retirement  
Statutes Construed – Minnesota Statutes 176.101, Subdivision 8**

Once the statutory presumption of retirement under Minn. Stat. 176.101, subd. 8 (1990), has been rebutted by the employee, the presumption does not apply to subsequent claims for permanent total disability, but the affirmative defense of retirement remains available to oppose such claims.

**Interest  
Statutes Construed – Minn. Stat. 176.221, Subd. 7**

Payment for the temporary partial disability benefits ordered by the compensation judge in June 2016 were due within 14 days of the filing of the order. Payments not made when due bear interest from the due date to the date payment is made under Minn. Stat. 176.221, subd. 7. Settlement negotiations made after the payment was ordered did not affect the period of time that interest accrued.

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

***Mark Gerdes v. Mammoth/Nortek, Dec. 19, 2019***

**Vacation of Award – Substantial Change in Condition**

Where the employee had extensive additional medical treatment for an admitted injury, a change in diagnosis and a change in his ability to work since the time of an award on stipulation, but had no additional permanent partial disability

(PPD) rating and did not show the worsening of his condition was not and could not reasonably have been anticipated, the employee has not shown good cause to vacate the award on stipulation.

Petition to vacate denied.

***Ronald L. Sherva v. St. Regis Paper Company, Dec. 23, 2019***

**Causation – Substantial Evidence**

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's left hip condition was not causally related to his work injuries.

**Settlements – Scope**

The employee failed to meet his burden of proof in establishing that his claimed consequential injury could not have been contemplated at the time of the settlement.

Affirmed.

***Myron Williams v. Farmers Union Industries, Dec. 23, 2019***

**Causation – Substantial Evidence**

Substantial evidence, including the medical records and expert medical opinion, supports the compensation judge's determination that the employee did not suffer a psychological injury arising from a physical work injury.

Affirmed.

***Scott Koehnen v. Flagship Marine Co., Dec. 27, 2019***

**Intervenors – Standing**

The compensation judge did not err in extinguishing the interests of a potential intervenor who received notice of the right to intervene but chose not to do so, and the dismissal of a subsequent petition for payment of the potential intervenor's claim for lack of standing was appropriate.

Affirmed.

***Luis Roque Sagastume v. Viking Acoustical Corporation, Dec. 30, 2019***

**Causation – Gillette Injury**

Substantial evidence, including the employee's testimony, medical records and expert medical opinion, supported the finding of a Gillette injury.

**Notice of Injury – Substantial Evidence**

Substantial evidence, including the employee's testimony and the employer's personnel records, supported the finding that the employee gave adequate notice of injury.

### **Temporary Partial Disability – Substantial Evidence**

Substantial evidence, including the employee’s testimony, medical records and expert medical opinion, supported the award of temporary partial disability compensation.

Affirmed.

*Michael R. Otto v. Heartland Motor Company, Jan. 15, 2020*

### **Temporary Total Disability – Retirement Temporary Total Disability – Withdrawal From Labor Market**

The compensation judge’s determination that the employee did not retire or withdraw from the labor market through his application for, and receipt of, Social Security disability insurance (SSDI) benefits is supported by substantial evidence in the record.

### **Temporary Total Disability Job Offer – Refusal**

The compensation judge’s determination that the employee did not unreasonably refuse an offer of employment due to a significant disparity between the offered pay and the employee’s date of injury wage is supported by substantial evidence in the record.

### **Job Search – Substantial Evidence**

The compensation judge’s determination that the employee conducted an adequate job search is supported by substantial evidence in the record where the employee’s age, physical limitations and specialized skills rendered few appropriate openings and the employee applied for the openings identified by the employer and the insurer’s vocational expert.

### **Evidence – Admission Evidence – Vocational Expert**

The compensation judge did not abuse his discretion in admitting vocational expert reports over a hearsay objection where no effort was made to depose the witness before trial and no request was made to hold the record open to conduct such an examination.

Affirmed.

*Eliakim Angwenyi v. Aggressive Industries, Inc., Jan. 21, 2020*

### **Causation – Temporary Injury**

Substantial evidence, including well-founded expert medical opinion, supported the compensation judge’s determination that the employee’s April 12, 2017, injury had not resolved, and that the employee was entitled to temporary total disability benefits for certain periods.

### **Practice and Procedure – Matters at Issue**

Based on the procedural history, the compensation judge’s description, at hearing, of the issues she would decide, and the record presented in this case, the compensation judge did not improperly expand the scope of the hearing when she determined that the employee’s return to work aggravated his bilateral elbow condition.

Affirmed.

*Ezell Jones v. CBIZ, Inc., Jan. 24, 2020*

### **Penalties – Substantial Evidence**

The compensation judge's denial of the employee's claim for penalties under Minnesota Statutes 176.225, subs. 1 and 5, is supported by substantial evidence in the record.

Affirmed.

*Debra K. Karsky v. Tri-county Co-op Oil Association, Jan. 28, 2020*

### **Causation – Substantial Evidence**

Substantial evidence, including a well-founded expert medical opinion, supported the compensation judge's finding that the employee did not sustain a right shoulder or right hand/wrist injury either as a result of her admitted Aug. 2, 2011, work injury or due to an alleged Gillette injury culminating on that date.

*Gregory Gritz v. State of Minnesota, Department of Human Services, Feb. 4, 2020*

### **Arising Out Of And In The Course Of**

The employee's burden of proof to establish that his injury arose out of his employment was met upon showing that he fell and was injured while using a stairway located on the employer's premises for purposes related to the employment.

Affirmed.

*Richard G. Hamble v. Anderson Corp., Feb. 5, 2020*

### **Evidence – Expert Medical Opinion**

The treating physician whose opinion took into consideration work activities related to the employee's prior positions and not just the position he had on the claimed date of cumulation of a Gillette injury, and who has treated the employee for many years and for multiple work-related injuries, and who reviewed the well-founded IME report, has adequate foundation to render an opinion and, therefore, the compensation judge's choice of that expert opinion is affirmed.

Affirmed.

*Deangelo Profit v. HRT Holding d/b/a Doubletree Suites, Feb. 10, 2020*

### **Appeals – Interlocutory Order**

The compensation judge's order denying a motion to dismiss a claim petition is not appealable as the order did not constitute a final decision on the merits.

Dismissed.

***Trevor M. Arndt v. Tri County Coop Oil Association, Feb. 11, 2020***

**Causation – Intervening Cause**

Substantial evidence in the record, including the testimony of the employee, medical records and well-founded expert medical opinion, supports the compensation judge's determination that an incident in which the employee moved 510-pound barrels of hydrogen peroxide constituted a superseding intervening cause of the employee's low back condition.

Affirmed as modified.

***Anne M. James v. Independent School District 1, Feb. 11, 2020***

**Statutes Construed – Minnesota Statutes 176.011, subdivision 15(d)**

**Evidence – Expert Medical Opinion**

The compensation judge's reliance on well-founded expert psychological opinion meets the requirements of Minnesota Statutes 176.011, subd. 15(d), for determining the employee suffered from direct and consequential post-traumatic stress disorder (PTSD) arising from the work injury.

**Evidence – Expert Medical Opinion**

The compensation judge's choice between two competing psychological experts was consistent with the employee's credible testimony, and the opinion relied upon constitutes substantial evidence supporting a finding of consequential PTSD arising from the work injury.

Affirmed.

***Michael L. Mellin v. Independent School District 286, Feb. 13, 2020***

**Medical Treatment and Expense – Reasonable and Necessary**

Where the compensation judge found that employee's expert medical opinion was too general to support the employee's claim for custom orthotics as treatment for his work injury, but the opinion specifically stated the employee would benefit from custom orthotics on this basis, the compensation judge's finding that the employee's custom orthotics were not reasonable and necessary treatment for the employee's work injury is vacated and the issue is remanded to the compensation judge.

Vacated and remanded.

***Kristopher Ouellette v. Walmart Stores, Inc., Feb. 19, 2020***

**Evidence – Res Judicata**

To the extent the employee's current claim for permanent partial disability benefits is based on evidence that was presented in support of a prior claim that was adjudicated and denied, his current claim is barred by res judicata. To the extent the employee's current claim for permanent partial disability benefits is based on new evidence and for a different condition, the compensation judge must consider the compensability of that claim.

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

***Kendra K. Perpich v. Delta Airlines, Inc., March 5, 2020***

**Evidence – Expert Medical Testimony**

The compensation judge could reasonably rely on the expert medical opinion of a board-certified orthopedic surgeon regarding causation for the employee’s low back condition, even though the doctor did not specialize in treating low back patients and had not performed the surgical procedure the employee underwent to treat that condition.

**Causation – Substantial Evidence**

Substantial evidence, including medical records and expert medical opinion, supports the denial of the employee’s claim of a low back injury.

Affirmed.

***Martez Gibson v City of St. Paul and City of St. Paul Risk Management, March 17, 2020***

**Evidence – Exclusion  
Practice and Procedure**

Where the employee was represented at the hearing below and the transcript does not indicate any disputes or objections as to the exhibits submitted, there is no basis in the record that the compensation judge erred by excluding exhibits at the hearing.

**Causation – Substantial Evidence**

Substantial evidence, including adequately founded expert medical opinion, supports the judge’s findings that the employee’s work-related low back injury was temporary and had resolved, and that he had not sustained work-related shoulder injuries.

Affirmed.

# Minnesota Supreme Court

November 2019 through April 2020

Case summaries published are  
those prepared by the WCCA



## ***Galen T. Block v. Exterior Remodelers, Inc., A-19-0584, Nov. 27, 2019***

Galen T. Block appeals from a Workers' Compensation Court of Appeals (WCCA) decision holding that Minnesota Statutes § 176.179 (1988) does not apply to his vacated workers' compensation award because there was no mutual mistake in fact or law.

We affirm the WCCA decision.

## ***Frederick S. Fish v. Ramler Trucking, Inc., A18-0143, Nov. 27, 2019***

Because an employer immune from tort liability under the Workers' Compensation Act is not a person "severally liable" under Minnesota Statutes § 604.02, subdivision 1 (2018), a third-party tortfeasor's liability to an injured employee for a workplace injury is not reduced by the employer's fault.

Affirmed.

## ***Damon A. Ewing v. Print Craft, Inc., A19-0534, Jan. 2, 2020***

The compensation judge correctly held that the employer was not liable for rehabilitation services provided after the date by which the employee's work-related injury had resolved, thus making those services neither reasonable nor necessary.

Reversed.