

## 2021 Workers' Compensation Advisory Council bill signed into law

Governor Tim Walz signed legislation April 26, 2021, enacting statutory amendments recommended by the Workers' Compensation Advisory Council (WCAC). This bill, H.F. 2253, adopts recommendations made by WCAC related to: the minimum weekly compensation rate; inpatient hospital and ambulatory surgical center (ASC) payment; prohibited practices; annual payer reports of prompt first action; subpoenas of Department of Labor and Industry employees; penalties for billing injured workers for treatment; and extension of the workers' compensation COVID-19 presumption through Dec. 31, 2021.



Below is a brief overview of the 2021 workers' compensation legislation, [2021 Minnesota Session Laws, Chapter 12 – H.F. No. 2253 final engrossment](#).

**Section 1** provides that the minimum weekly compensation is the lesser of 20% of the maximum compensation rate or the employee's actual weekly wage.

**Section 2** allows the commissioner to assess penalties against a health care provider that bills an injured worker for treatment in violation of the workers' compensation law; requires notice to the provider before a penalty can be assessed; and requires providers to reimburse employees for expenses related to the violation.

**Sections 3 and 4** require use of a new Medicare web-based calculator to calculate the maximum fees payable for workers' compensation inpatient hospital treatment for discharges on or after Oct. 1, 2021.

**Sections 5 to 7** provide technical changes to the ambulatory surgical center payment fee schedule that: describe the multiple procedure payment reduction rule; clarify when payment to an ASC is based on the ASC's actual charges; and delete an inapplicable cross-reference and a phrase related to payment for services not in the fee schedule.

**Sections 8 and 9** clarify application of existing workers' compensation prohibited practices; add new prohibited practices for providing fraudulent written information to the department or an employee and for failing to pay benefits or correct behavior on a claim if a penalty for the conduct was paid or became a final order; and eliminate warnings before penalizing for specified intentional or egregious prohibited practices.

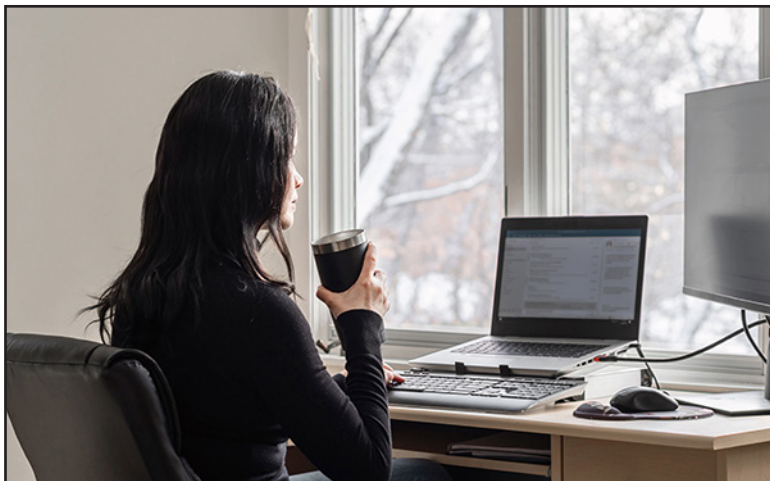
**Section 10** amends the date the first *Prompt First Action Report on Workers' Compensation Claims* must be published by the department based on data filed in Work Comp Campus, to March 15, 2022; allows the commissioner to exclude incomplete or unreliable data; and requires workers' compensation payers to electronically file corrected data in Campus by Feb. 15 for the data to be reflected in the annual report.

**Section 11** prohibits subpoenas of Department of Labor and Industry employees, unless the department is a party to a claim or enforcement action or provides vocational rehabilitation services to an injured worker.

**Section 12** extends the May 1, 2021, sunset date of the current workers' compensation COVID-19 presumption statute to 11:59 p.m., Dec. 31, 2021.

A detailed summary of this bill, including the effective dates, begins on page 8.

## Work Comp Campus continues to support stakeholders, provide resources



Work Comp Campus, DLI's workers' compensation claims portal that launched Nov. 2, continues to support internal and external stakeholders through:

- Campus Answer Hour question and answer sessions – see the schedule at [www.dli.mn.gov/about-department/about-dli/events-workers-compensation](http://www.dli.mn.gov/about-department/about-dli/events-workers-compensation);
- stakeholder-specific biweekly newsletters that include recent system update information – sign up at [www.dli.mn.gov/about-department/news-and-media/sign-news-department-labor-and-industry](http://www.dli.mn.gov/about-department/news-and-media/sign-news-department-labor-and-industry);
- posting of FAQs specific to each stakeholder group – see [www.dli.mn.gov/business/workers-compensation/work-comp-campus-faqs](http://www.dli.mn.gov/business/workers-compensation/work-comp-campus-faqs);
- online availability of training materials and video resources – see [www.dli.mn.gov/business/workers-compensation/work-comp-campus-training](http://www.dli.mn.gov/business/workers-compensation/work-comp-campus-training);
- an anonymous feedback form – see <https://secure.doli.state.mn.us/stakeholderfeedback/>; and
- staffing the Workers' Compensation Division Help Desk, which is available by phone or email Monday through Friday from 8 a.m. to 4:30 p.m. – learn more below.

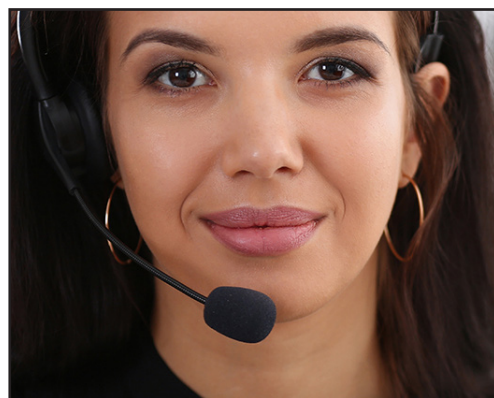
---

## Dedicated workers' compensation help desk taking your calls, email

The Department of Labor and Industry's (DLI's) Workers' Compensation Division Help Desk delivers high-quality customer service for workers' compensation stakeholders. It is staffed by four Workers' Compensation Division staff members whose positions are dedicated to answering calls and responding to email messages.

The help desk is available from 8 a.m. to 4:30 p.m., Monday through Friday at:

- 651-284-5005 (press 3);
- 800-342-5354 (press 3); or
- [helpdesk.dli@state.mn.us](mailto:helpdesk.dli@state.mn.us).



Those calling outside of help desk hours can leave a message and a staff member will respond the next business day.

## Tracking questions to build division knowledge

The help desk staff routes a ticket for each correspondence. Tickets are then used to build a knowledge base so DLI will be poised to provide a more sophisticated software platform in the future. Every staff member in the Workers' Compensation Division has the ability to edit and initiate tickets.

## Update: DLI St. Paul office renovations, ADR in-person activities

The first phase of the Department of Labor and Industry's (DLI's) St. Paul office first-floor renovation remains on schedule. Construction is planned through June 30, occurring in two six-week phases.

This renovation will benefit staff members and customers alike and includes improved security features and soundproofing of conference rooms. Additionally, enhanced LED lighting and updated technology in the conference rooms will help meet agency sustainability targets. In addition, the building landlord will provide new carpet and paint, giving this area a much needed and updated look.

The second six-week phase of construction began in mid-May, focusing on changes to the front desk and lobby area, such as new signage and lobby furniture. DLI will also be installing turnstiles for added security.

While this work is taking place, no Alternative Dispute Resolution (ADR) mediations or conferences will be conducted on site at DLI until further notice; however, ADR staff members may travel to conduct mediations in person, subject to additional considerations, such as wearing masks, maintaining social distance, washing or sanitizing hands, and engaging in other reasonable safety precautions. Any decision to meet in person for a mediation will be made on a case-by-case basis, subject to agreement by all parties.

Stakeholders should contact the assigned mediator or arbitrator if there are questions related to the location of a scheduled event.



---

## New guidance for hospital outpatient, ASC fee payments

The Department of Labor and Industry (DLI) has published new guidance on its website regarding payment practices for ambulatory surgical center (ASC) and hospital outpatient fees at [www.dli.mn.gov/business/workers-compensation/tables-ascps-and-hofs-payment-errors](http://www.dli.mn.gov/business/workers-compensation/tables-ascps-and-hofs-payment-errors).

In January, DLI released studies about the ambulatory surgical center payment system (ASCPS) and hospital outpatient fee schedule (HOFS) statutes. (The studies are available at [www.dli.mn.gov/sites/default/files/pdf/ASCPS\\_report.pdf](http://www.dli.mn.gov/sites/default/files/pdf/ASCPS_report.pdf) and [www.dli.mn.gov/sites/default/files/pdf/HOFS\\_report.pdf](http://www.dli.mn.gov/sites/default/files/pdf/HOFS_report.pdf), respectively.) As required under Minnesota Statutes §§ 176.1363 and 176.1364, the studies reviewed payment accuracy and timeliness under the respective statutory provisions.



As part of these studies, DLI analyzed the reasons for payment errors in submitted cases. A wide variety of error reasons were found in these samples. The new guidance describes the proper payment practices for the types of errors, including errors in payment of HOFS bills with J1 services, HOFS bills with no J1 services and ASC bills.

DLI is also contacting insurers regarding the errors from their individual submissions. Insurers are encouraged to review the new guidance for information about how to correct the payment errors for future cases.

If you have further questions about the ASCPS or HOFS statutes, contact DLI's medical policy staff at 651-284-5052 or [medical.policy.dli@state.mn.us](mailto:medical.policy.dli@state.mn.us).

## DLI ombudsman continues work with DEED, others via RETAIN grant

Through a federal grant awarded to the Department of Employment and Economic Development (DEED), the Department of Labor and Industry's (DLI's) Office of Workers' Compensation Ombudsman will continue to help employees stay at or return to work more rapidly when an injury or illness impacts their ability to work.

The four-year \$19,518,509 Retraining Employment and Talent After Injury/Illness Network (RETAIN) Phase II grant was awarded by the U.S. Department of Labor (DOL) in April to fund Phase II of the Minnesota (MN) RETAIN collaboration between DEED, DLI, the Department of Health, the Governor's Workforce Development Workforce Board, Workforce Development Inc. and Mayo Clinic.

MN RETAIN works by connecting the injured or ill employee, their employer and their health care provider through a return-to-work case manager during the employee's recovery from illness or injury. MN RETAIN can offer such assistance for up to six months.

During Phase I, which started in 2018, the DLI ombudsman provided advice and input about how to include workers' compensation injured workers in the grant services while ensuring these workers comply with Minnesota workers' compensation laws. Phase II will involve a much larger group of participants. The DLI ombudsman will still be involved, helping the grant participants who are also workers' compensation recipients understand their rights and responsibilities.

- For more information about the grant, see the DEED news release at [mn.gov/deed/newscenter/press-releases/#/detail/appld/1/id/479890](https://mn.gov/deed/newscenter/press-releases/#/detail/appld/1/id/479890).
- For more about MN RETAIN, visit [www.careerforcemn.com/RETAINworkers](https://www.careerforcemn.com/RETAINworkers).

---

## 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).



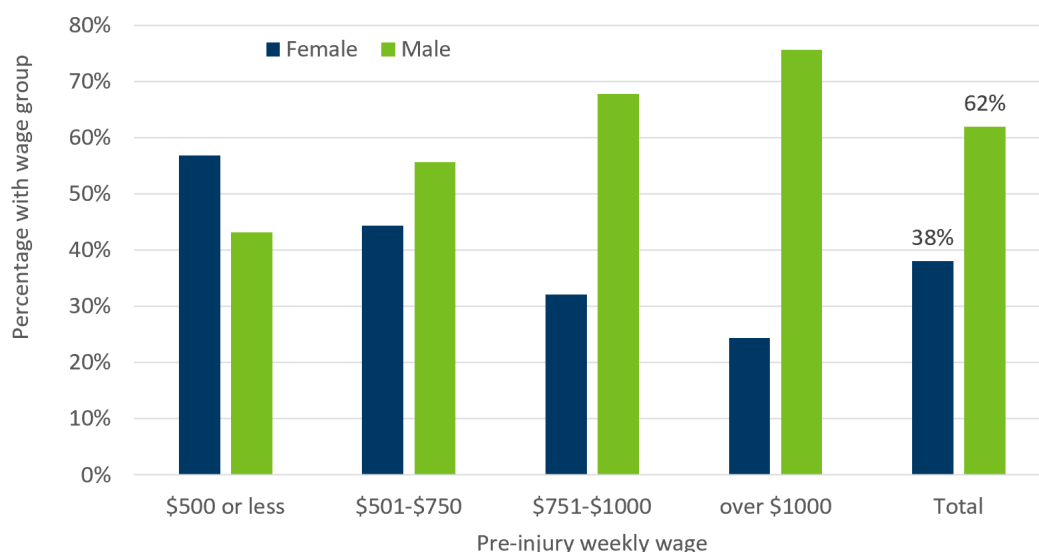
## A brief look at gender differences in indemnity payments

By Brian Zaidman, Research and Statistics

Many economic studies and reports have documented wage differences between men and women. These differences are also evident in workers' compensation indemnity benefit payments. Men and women often work in different occupations and job settings, exposing themselves to different injury and illness risks. These occupation differences are evident in wage differences among injured workers.

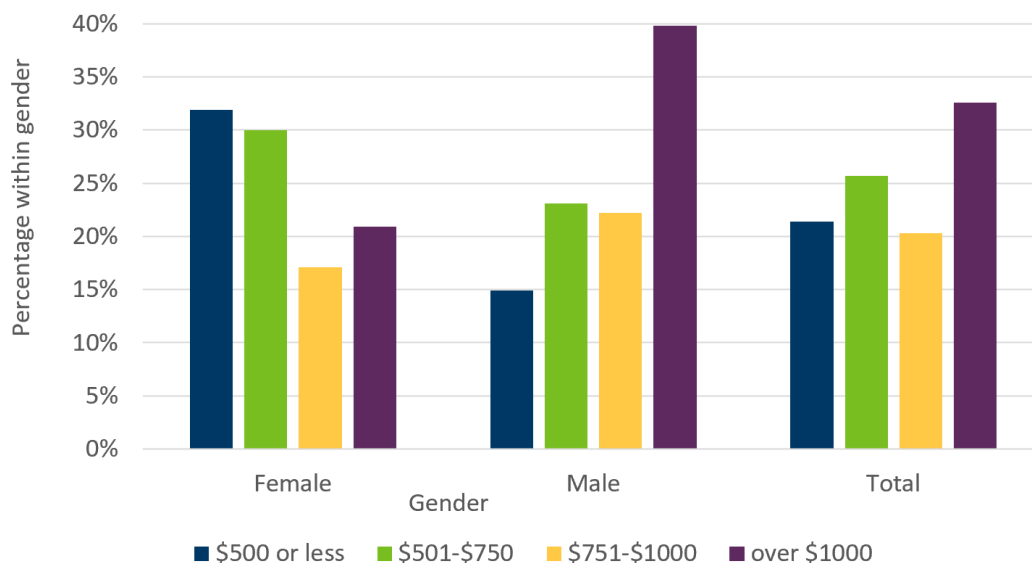
Figure 1 looks at the percentages of male and female workers within each pre-injury wage category, for workers with indemnity claims closed in 2019. This figure shows that the percentage of injured female workers decreases from 57% among workers with weekly wages of \$500 or less to 24% among workers earning more than \$1,000 a week.

**Figure 1. Distribution of gender within each pre-injury wage group, 2019 closed indemnity claims**



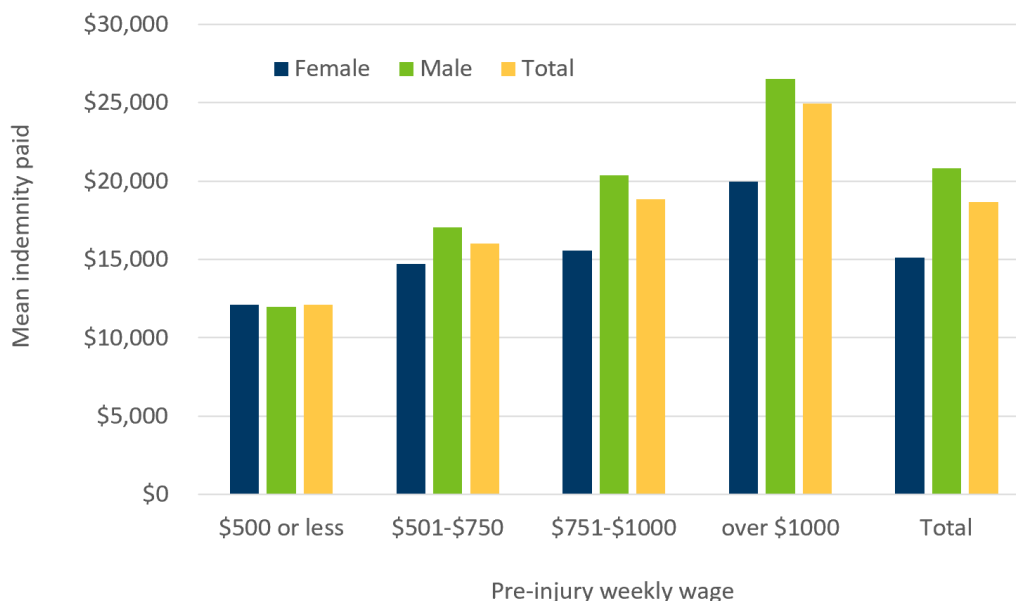
The distribution of pre-injury wage levels within each gender also shows different patterns for men and women. Injured female workers were much more likely than their male counterparts to earn \$750 or less per week before their injury, while the highest percentage group of injured male workers earned more than \$1,000 a week.

**Figure 2. Distribution of gender within each pre-injury wage group, 2019 closed indemnity claims**



These gender-related wage differences are evident when indemnity benefit payments are examined (Figure 3). This figure shows that, as expected, mean indemnity benefits increase as wage levels increase. However, within the wage groups, male workers average higher indemnity benefits than female workers, with the exception of workers earning \$500 or less pre-injury, where there are no gender differences.

**Figure 3. Mean indemnity paid by pre-injury wage and gender, 2019 claim closures**



## Recordkeeping training offered via webinar in September

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. **Registration is required.**

### Dates

- Friday, Sept. 24, 8:30 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

For more information about the training sessions and to register, 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).

# Annual Workers' Compensation System Report to be released in August:

## *Long-term downward trends continue in number of claims and system cost*

by David Berry, Research and Statistics

The number of paid workers' compensation claims fell 50% relative to the number of full-time-equivalent (FTE) employees from 1999 to 2019, according to the 2019 Minnesota Workers' Compensation System Report, soon to be released by the Department of Labor and Industry.

Among the report's findings are the following.

- The number of paid claims fell from 8.2 per 100 FTE employees in 1999 to 4.1 in 2019.
- Adjusted for average wage growth, average medical benefits per claim were 40% higher in 2018 than in 1999; indemnity benefits per claim were 26% higher. All of these increases took place prior to 2003; medical and indemnity benefits per claim have shown virtually no net change relative to average wages since that year.
- Despite higher benefits per claim since 1999, costs are down relative to payroll because of the falling claim rate. As compared to 1999, indemnity benefits per \$100 of payroll were 29% lower in 2018 and medical benefits were 34% lower.
- The cost of the workers' compensation system for 2019 amounted to \$1.01 per \$100 of payroll. In Minnesota and elsewhere, this cost follows a multi-year pricing cycle. However, comparable points in the cycle for Minnesota indicate a long-term downward trend averaging 2.6% a year.
- In 2019, on a current-payment basis, medical benefits accounted for an estimated 35% of total system cost, followed by insurer expenses at 30% and indemnity benefits other than vocational rehabilitation at 29%.
- The percentage of indemnity benefit claimants receiving vocational rehabilitation services rose from 17% in 1999 to 23% in 2019.

This report, part of an annual series, presents data from 1999 through 2019 about Minnesota's workers' compensation system. The purpose of the report is to describe the current status and direction of the system and to offer explanations, where possible, for recent developments. It will be available at [www.dli.mn.gov/business/workers-compensation/work-comp-minnesota-workers-compensation-system-report](http://www.dli.mn.gov/business/workers-compensation/work-comp-minnesota-workers-compensation-system-report).

---

## From the *State Register*: Provider participation list available

Health care providers that provide medical services to an injured worker under the workers' compensation law are required to participate in the Medical Assistance Program and MinnesotaCare as a condition of receiving payment for treatment of the workers' compensation injury.

(See Minnesota Statutes § 256B.0644 and Minnesota Rules, parts 5221.0500, subpart 1, and 9505.5200 to 9505.5240.)



The Department of Human Services (DHS) list of providers that participate in the Medical Assistance Program and MinnesotaCare is now available online. To see if a provider is on the list, check the Minnesota Health Care Programs (MHCP) provider directory at <http://mhcpproviderdirectory.dhs.state.mn.us>.

To obtain a full list of participating providers, call the DHS Provider Call Center at 651-431-2700 or 800-366-5411 and request a work order to have the list sent to you. You may also fax the request to 651-431-7462 or mail it to the Department of Human Services, Provider Eligibility and Compliance, P.O. Box 64987, St. Paul, MN 55164-0987.

# Workers' Compensation Advisory Council legislation summary 2021

## *2021 Minnesota Session Laws, Chapter 12 – H.F. 2253 final engrossment; governor approval: April 26, 2021*

This provides only a summary of the 2021 workers' compensation legislation. The actual language of chapter 12 is available at [www.revisor.mn.gov/laws/2021/0/Session+Law/Chapter/12/](http://www.revisor.mn.gov/laws/2021/0/Session+Law/Chapter/12/).

### Section 1

#### **Minnesota Statutes § 176.101, subdivision 1 – Temporary total disability**

The amendment updates the minimum weekly compensation rate for temporary total disability. The current minimum benefit level, which was last updated in 2000, is the lesser of the employee's actual weekly wage or \$130. This language sets the benefit level at the lesser of 20% of the maximum compensation rate or the employee's actual weekly wage. The annual change for the minimum compensation rate will then be determined by the statewide average weekly wage (SAWW), the same as the change used for the maximum temporary total disability benefit.

Effective date: This section is effective for dates of injury on or after Oct. 1, 2021.

### Section 2

#### **Minn. Stat. § 176.136, subd. 2a – Penalties, costs and expenses for improper collection or attempts to collect payment for medical services from an employee**

Section 2 adds a new subdivision to Minn. Stat. § 176.136 that allows the Department of Labor and Industry (DLI) to assess a penalty, payable to the Assigned Risk Safety Account, against a health care provider that bills an injured worker for treatment, which is prohibited by workers' compensation law.

- Paragraph (a) provides that the health care provider or its representative must be informed that the treatment was for a workers' compensation injury. It also provides examples of prohibited actions involved in collecting or attempting to collect payment from an employee for workers' compensation treatment.
- Paragraph (b) describes the commissioner's authority to assess a penalty for a violation of this subdivision. The penalty assessed against a provider for each violation is \$1,000, except that for certain violations in paragraph (a), clause (2), the penalty is \$2,000. The paragraph also requires that, before a penalty is assessed, the health care provider or its representative has received written notice that attempting to collect or collecting payment from an employee is prohibited by workers' compensation law and that a penalty may be assessed. The written notice must only be provided once.
- Paragraph (c) authorizes the commissioner to order the provider to reimburse employee costs and expenses incurred because of the violation. Reimbursement to the employee must include any amounts the employee paid to the provider as a result of a violation, with interest, as well as a minimum lump-sum payment if the provider committed certain listed violations.

Effective date: This section is effective for violations on or after Aug. 1, 2021.

### Sections 3 and 4

#### **Minn. Stat. § 176.1362 – Inpatient hospital payment**

Sections 3 and 4 amend the workers' compensation fee schedule pertaining to payment of inpatient hospital fees in Minn. Stat. § 176.1362, to require use of a new Medicare web-based calculator to calculate the maximum fees payable for inpatient hospital treatment for discharges on or after Oct. 1, 2021.

- Section 3 updates the references to the PC-Pricer program in Minn. Stat. § 176.1362, subd. 1 – Payment based on Medicare MS-DRG system, to reference Medicare's inpatient PPS Web Pricer. It also provides that DLI must publish the link to the inpatient PPS Web Pricer on its website.

- Section 4 updates the references to the pricer in Minn. Stat. § 176.1362, subd. 6 – Postpayment audits; records; interest.

Effective date: These sections are effective April 27, 2021.

## Sections 5 through 7

### Minn. Stat. § 176.1363 – Ambulatory surgical center payment

Sections 5 through 7 amend the workers' compensation fee schedule pertaining to ambulatory surgical center (ASC) payments in Minn. Stat. § 176.1363.

- Section 5 amends Minn. Stat. § 176.1363, subd. 1 – Definitions, by removing the reference to Medicare's multiple procedure rule in the Code of Federal Regulations.
- Section 6 amends Minn. Stat. § 176.1363, subd. 2 – Payment for covered surgical procedures and ancillary services based on Medicare ASCPS to:
  - remove an inapplicable cross-reference;
  - clarify when payment to an ASC is based on actual charges instead of the fee schedule amount; and
  - describe the multiple surgical procedure billing requirements, in lieu of the previous section 5 reference.
- Section 7 amends Minn. Stat. § 176.1363, subd. 3 – Payment for compensable surgical services not covered under the Ambulatory Surgical Center Payment System (ASCPS), to remove a phrase for payment for services not specified in the fee schedule.

Effective date: These sections are effective for services provided on or after April 27, 2021.

## Sections 8 and 9

### Minn. Stat. § 176.194 – Prohibited practices

Sections 8 and 9 amend Minn. Stat. § 176.194, which sets out prohibited conduct by a workers' compensation payer or entities acting on behalf of the payer, and associated warnings and penalties.

- Section 8 amends and adds to the list of prohibited conduct in Minn. Stat. § 176.194, subd. 3. The changes include:
  - clarifying that it is a prohibited practice for a payer to fail to pay or to deny medical bills within 45 days after the receipt of all information requested from medical providers if the requested information is necessary to make a payment determination;
  - providing that it is a prohibited practice to not respond to DLI after the department asks about a matter related to *benefits*, rather than about a *specific claim*, and requires responses to DLI's inquiries to be substantive and actually address the issue raised;
  - adding a new prohibited practice where a payer provides fraudulent written information to DLI or an employee; and
  - adding a new prohibited practice for failing to pay benefits or correct behavior on a claim if the payer paid the penalty for the conduct or if the penalty became a final order.
- Section 9 amends Minn. Stat. § 176.194, subd. 4 – Penalties, to eliminate required warnings before DLI can penalize for specified intentional or egregious prohibited practices.

Effective date: These sections are effective for prohibited conduct and violations on or after July 1, 2021.

## Section 10

### Minn. Stat. § 176.223 – Prompt First Action Report on Workers' Compensation Claims

Section 10 amends Minn. Stat. § 176.223, which requires DLI to issue an annual report describing the number and percentage of claims a payer pays or denies within statutory deadlines. This report will now be based on data for each claim the payer files in Work Comp Campus.

The first report, as described by the amendments to this section, must be published by DLI no later than March 15, 2022. The amendments allow the commissioner to exclude incomplete or unreliable data and require workers' compensation payers to electronically file corrected data in Campus by Feb. 15 for the data to be reflected in the annual report. Finally, the language provides that the reports do not need to be sent individually to payers because they can see their information in Campus and the report will be published on the DLI website.

Effective date: This section is effective April 27, 2021.

## Section 11

### Minn. Stat. § 176.351 – Testimonial powers

This section updates Minn. Stat. § 176.351 by adding subdivision 2b to prohibit subpoenas of DLI employees, unless DLI is a party to a claim or enforcement action or provides vocational rehabilitation services to an injured worker.

Effective date: This section is effective April 27, 2021.

## Section 12

### Minn. Stat. § 176.011, subd. 15, paragraph (f) – Occupational disease

This section amends the workers' compensation COVID-19 presumption statute (Minn. Stat. § 176.011, subd. 15 (f)) by extending the sunset date from May 1, 2021, to 11:59 p.m., Dec. 31, 2021. It provides, as does the current presumption statute, that after the law sunsets, the employee is still entitled to claim workers' compensation for contracting work-related COVID-19 but, as with other injuries and illnesses, the employee is no longer entitled to the presumption that the disease was work-related.

Effective date: This section is effective April 27, 2021.

---

## Rehabilitation review panel seeks new alternate member

The Rehabilitation Review Panel (RRP) has an opening for a chiropractor/health care provider/rehabilitation provider member. To apply for this position, visit [www.sos.state.mn.us/boards-commissions](http://www.sos.state.mn.us/boards-commissions) on the Secretary of State website.

The Rehabilitation Review Panel:

- is composed of employer, insurer, labor, medical and rehabilitation representatives;
- advises the Department of Labor and Industry (DLI) about workers' compensation vocational rehabilitation issues and rules;
- is a liaison between DLI and interested people about workers' compensation vocational rehabilitation; and
- makes final decisions about certification approval or disciplinary matters of qualified rehabilitation consultants and vendors in conjunction with contested hearings.

## About RRP

The Rehabilitation Review Panel currently meets quarterly via Webex and members of the public may monitor the meetings by Webex. Future meetings may be in-person at the Department of Labor and Industry. The quarterly meetings are generally two hours. If issues warrant, meetings and subcommittee meetings may occur more often. The meeting schedule, agendas and minutes are online at [www.dli.mn.gov/about-department/boards-and-councils/rehabilitation-review-panel](http://www.dli.mn.gov/about-department/boards-and-councils/rehabilitation-review-panel).



# 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).

## July 2021

- |         |                               |
|---------|-------------------------------|
| July 8  | Rehabilitation Review Panel   |
| July 15 | Medical Services Review Board |

## August 2021

- |         |  |
|---------|--|
| Aug. 11 | Workers' Compensation Advisory Council             |
| Aug. 18 | Workers' Compensation Insurers' Task Force         |
| Aug. 26 | QRC intern, vendor, supervisor orientation session |

## October 2021

- |         |  |
|---------|--|
| Oct. 7  | Rehabilitation Review Panel            |
| Oct. 13 | Workers' Compensation Advisory Council |
| Oct. 14 | Medical Services Review Board          |

## November 2021

- |         |  |
|---------|--|
| Nov. 17 | Workers' Compensation Insurers' Task Force |
|---------|--|

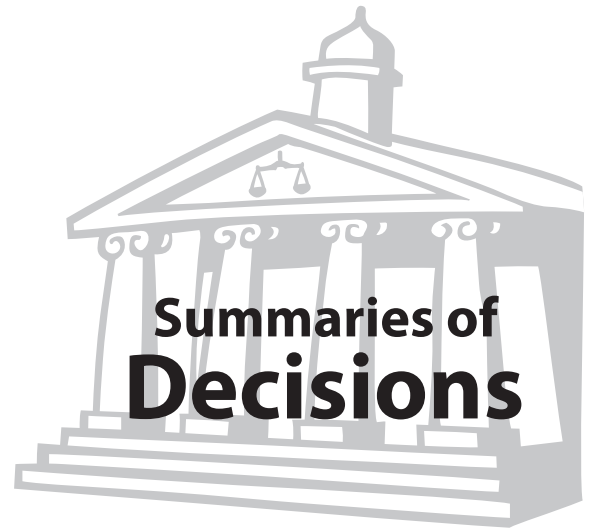
## December 2021

- |        |  |
|--------|--|
| Dec. 8 | Workers' Compensation Advisory Council |
|--------|--|

## Workers' Compensation Court of Appeals

*February through April 2021*

Case summaries published are  
those prepared by the WCCA



### ***Dick Wilkins v. United States Distilled Products, Feb. 5, 2021***

#### **Causation – Substantial Evidence**

A medical opinion is not necessarily unopposed, even though there is no competing medical opinion, when the record contains other evidence contradictory to that opinion.

Affirmed.

### ***Andre Eckberg v. Atlas Roofing, April 5, 2021***

#### **Causation – Substantial Evidence**

Substantial evidence, including expert medical opinion, medical records and lay testimony, supports the compensation judge's findings denying the employee's injury claims.

Affirmed.

### ***Anthony Powell v. Masterson Staffing Solutions, April 7, 2021***

#### **Causation – Substantial Evidence**

Substantial evidence, including expert opinion and medical records, supports the compensation judge's decision that the employee's 2019 work injury had not caused or affected any medical conditions beyond the admitted injury to the employee's left elbow.

Affirmed.

### ***Lillian S. Jensen v. Donnelly Custom Manufacturing Company, April 8, 2021***

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

Where a case is remanded for reconsideration, the decision of whether to hold another hearing to accept additional testimony and argument is generally within the discretion of the compensation judge.

## Practice and Procedure – Estoppel

The doctrine of collateral estoppel, or issue preclusion, applies to matters that were necessarily determined in a previous judgment based on the same or a different case of action.

### Causation

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee did not sustain CRPS.

Affirmed.

*Michael D. Warhol v. Corexpo, Inc., April 28, 2021*

## Practice and Procedure – Independent Medical Examination

The compensation judge did not abuse her discretion by denying the employer and insurer's request to compel an independent psychological examination beyond the statutory limit for presenting such a report. The requesting party was aware of the employee's psychological treatment and took no action to obtain discovery until immediately before trial.

### Causation – Psychological Injury Causation – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the employee's depression and related psychological treatment are causally related to his work injury and resulting intractable pain and physical limitations. As the employee's injuries have not healed and the employee's ability to work remains impaired, no expert psychological opinion was required to support the compensation judge's determination of causation.

## Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including medical records and lay testimony, supports the award to the employee for gastroesophageal care as reasonable and necessary treatment resulting from the employee's work injury.

## Medical Treatment Expense – Reasonable and Necessary

Substantial evidence, including medical records, expert medical opinion and lay testimony, supports the award to the employee for medical cannabis as reasonable and necessary treatment for intractable pain caused by the employee's work injury.

## Jurisdiction – Subject Matter

The compensation judge correctly concluded that she lacked subject matter jurisdiction to consider the appellants' defense of federal pre-emption arising under the Controlled Substances Act, 21 U.S.C § 801 et seq., regarding a claim for medical marijuana to treat intractable pain.

Affirmed as modified.

## Minnesota Supreme Court

*February through April 2021*

Case summaries published are  
those prepared by the WCCA



### ***Margaret Leuthard v. Independent School District 912, April 28, 2021***

1. Substantial evidence in the record supports the decision of the compensation judge that the employee's medical treatment exceeded the treatment parameters and was, therefore, not reasonable and necessary.
2. The Workers' Compensation Court of Appeals erred in directing the compensation judge to address whether the employee's claim presented a rare exception to the treatment parameters promulgated by the Department of Labor and Industry when the employee raised that claim for the first time on appeal.

Reversed.