

## **Update: Applicable PC Pricer program for DRG 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.

### **For hospital discharge dates on or after Oct. 1, 2017**

The PC Pricer program most recently available on the Medicare website as of July 1, 2017, must be used to calculate the amount payable. This is the FY 2017.0 PC Pricer, updated April 24, 2017. Instructions and a link to the program for downloading are at [www.dli.mn.gov/WC/PcPricer.asp](http://www.dli.mn.gov/WC/PcPricer.asp). (For calculating hospital discharge dates from May 31 through Sept. 30, 2017, the FY 2016.1 PC Pricer is also available on the web page.)

The Department of Labor and Industry will publish notice of the above program in the *Minnesota State Register* in September 2017.



The banner features a background of autumn trees. On the left, there is a map of Minnesota with a gear icon. The text reads: "2017 WORKERS' COMPENSATION SUMMIT Building a Better Future Together". On the right, it says "Sept. 19 in St. Paul" and "www.dli.mn.gov/Summit". Below the banner is a white box with a registration notice and a list of topics.

**Registration closes soon** 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
- See the schedule, get complete information, register today! – [www.dli.mn.gov/Summit](http://www.dli.mn.gov/Summit)

## **Ekdahl procedures, forms ready for use**

New legislation, effective May 31, 2017, responded to issues raised by the Minnesota Supreme Court's 2014 decisions in *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. In these cases, the Supreme Court decided that the workers' compensation law does not allow permanent total disability (PTD) benefits to be reduced by an employee's government retirement benefits (other than Social Security retirement benefits). The new law will be codified as Minnesota Statutes § 176.1292. (2017 Minn. Laws, ch. 94, art. 4.)

The law requires the Minnesota Department of Labor and Industry (DLI) to establish procedures to implement the legislation. In consultation with payers, DLI has created procedures and forms that payers must use to report PTD calculations and payments to injured workers under Minn. Stat. § 176.1292. Final versions of the procedures and forms are available on the DLI website at [www.dli.mn.gov/WC/EkdahlFiles.asp](http://www.dli.mn.gov/WC/EkdahlFiles.asp).

Additional information, including links to the actual legislation and FAQs, is available on the DLI website at [www.dli.mn.gov/WC/EkdahlLaw.asp](http://www.dli.mn.gov/WC/EkdahlLaw.asp).

# Results of 2017 Special Compensation Fund assessment

By John Kufus, Accounting Officer, Financial Services

The Special Compensation Fund (SCF) assessment funds Minnesota's workers' compensation programs. Most of the assessment dollars go to funding the supplementary and second-injury benefit programs. The assessment also pays the operating expenses of the Workers' Compensation Court of Appeals and the workers' compensation divisions of the Department of Labor and Industry and the Office of Administrative Hearings. It also supports anti-fraud activities at the Department of Commerce.

The Special Compensation Fund assessment is directly invoiced by the Minnesota Department of Labor and Industry. The first half of the assessment is invoiced by June 30 of each year, and is due Aug. 1 of that year. The second billing is due Feb. 1 of the following year, and is mailed approximately 30 days before the due date.

The estimated state-fiscal-year 2018 funding requirement for the Special Compensation Fund was determined to be \$78 million. The liability was divided between the insurers and self-insurers by the ratio of their 2016 indemnity payments to the total indemnity reported by both groups.

	2016 indemnity	Ratio	Estimated liabilities	DSR pure premium
Insurers	\$305,490,740	74.16%	\$57,845,847	\$890,268,555
Self-insurers	\$106,437,876	25.84%	\$20,154,153	
Total	\$411,928,616	100.00%	\$78,000,000	\$890,268,555

Due to decreasing second-injury and supplementary benefit obligations, the 2017 SCF assessment continues a downward trend in the amount of funding required, with a corresponding reduction in the assessment rate. The 2017 assessment of \$78 million is \$2 million less than the 2016 assessment of \$80 million. During the past nine years, the annual funding requirement has dropped \$13 million: the 2009 assessment was \$91 million versus \$78 million for the 2017 assessment. The assessment rate has dropped 19 percent – from 23.3 percent for the 2009 assessment to 18.9 percent for the 2017 assessment.

## Insurer premium surcharge rate

The insurer premium surcharge rate applied for the purpose of determining the Special Compensation Fund assessment was 6.4976 percent. The rate was determined by dividing the insurer portion of the Special Compensation Fund state-fiscal-year 2018 liability (\$57,845,847) by the 2016 designated statistical reporting pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$890,268,555).

## Self-insured assessment rate

The imputed self-insured assessment rate was 18.9351 percent. It was determined by dividing the self-insured portion of the Special Compensation Fund state-fiscal-year 2018 liability (\$20,154,153) by the total 2016 indemnity reported by the self-insured employers (\$106,437,876).

The current assessment is considered to be an estimate based on the prior year's data. The reconciliation and final determination (true-up) for insurers will be completed by Dec. 1, 2018.

## More information

For further information, contact Loni Delmonico at (651) 284-5311 or [dli.assessment@state.mn.us](mailto:dli.assessment@state.mn.us).

Percentage for assessments due for insurers and self-insurers			
Year assessed	Basis for assessment	Insurers	Self-insurers
2007	2006	8.7176%	24.0396%
2008	2007	8.6050%	23.8969%
2009	2008	8.5347%	23.3185%
2010	2009	8.6636%	22.4319%
2011	2010	8.9013%	22.0264%
2012	2011	8.2960%	21.6310%
2013	2012	7.6546%	19.9725%
2014	2013	7.5457%	19.8520%
2015	2014	7.2723%	19.2567%
2016	2015	7.0704%	19.2897%
2017	2016	6.4976%	18.9351%

# New benefit and provider fee levels effective October 2017

By Brian Zaidman, Research and Statistics, and Kate Berger, Office of General Counsel

*Editor's note: Notices of the adjustments to the rehabilitation fees, medical conversion factors, independent medical examination fees and inpatient hospital threshold described in this article will be published in the Minnesota State Registers in September 2017.*

The statewide average weekly wage (SAWW) effective Oct. 1, 2017, is \$1,041, a 1.46 percent increase from the current SAWW of \$1,026, which has been in effect since Oct. 1, 2016. (See the table below.) The levels for minimum and maximum weekly benefit payments are presented in the table on page 4. The statewide annual average wage will change to \$54,132 on Jan. 1, 2018.

The new SAWW is based on 2016 payroll and employment figures supplied by the Department of Employment and Economic Development and the calculation procedure in Minnesota Statutes § 176.011, subd. 1b. The change in the SAWW is the basis for the M.S. § 176.645 annual benefit adjustment. The time of the first adjustment is limited by M.S. § 176.645, subd. 2.

Pursuant to Minnesota Rules 5220.1900, subp. 1b, the maximum qualified rehabilitation consultant (QRC) hourly fee will increase by 1.46 percent to \$108.78 on Oct. 1, 2017. The maximum hourly rate for rehabilitation job development and placement services, whether provided by rehabilitation vendors or by QRC firms, will increase to \$82.58 on Oct. 1, 2017.

## Fee schedule adjustments

The annual adjustments to the workers' compensation medical fee schedule conversion factors and the independent medical examination fees are as follows.

**1. Conversion factor annual adjustment:** Minnesota Statutes § 176.136, subd. 1a, paragraph (c)(1), provides for annual adjustment of the medical fee schedule conversion factors by no more than the percent change in the SAWW. As in previous years, the Department of Labor and Industry (DLI) is adjusting the conversion factors by the percent change in the Producer Price Index for Offices of Physicians (PPI-P) for 2016 (annual-average basis).<sup>1</sup> This change is 0.2 percent.

Therefore, for services provided on or after Oct. 1, 2017, the new conversion factors will be:

- medical/surgical services described in Minnesota Rules 5221.4030 ..... \$69.62
- pathology and laboratory services described in Minn. R. 5221.4040 ..... \$56.81
- physical medicine/rehabilitation services described in Minn. R. 5221.4050 ..... \$55.68
- chiropractic services described in Minn. R. 5221.4060 ..... \$49.44

**2. IME fee adjustment:** Minnesota Rules, part 5219.0500, subp. 4, provides for adjustment of the maximum fees for independent medical examinations (IMEs) in the same manner as the adjustment of the conversion factors. Therefore, the maximum fees will increase by 0.2 percent for services provided on or after Oct. 1, 2017.

## Hospital catastrophic injury threshold adjustment

The threshold for payment of inpatient hospital services, articles and supplies provided to patients with catastrophic, high-cost injuries is adjusted pursuant to Minnesota Statutes § 176.362, subd. 2, as amended in 2017. (See 2017 Minn. Laws ch. 94, art. 4.) For hospital discharges on or after Oct. 1, 2017, the threshold amount is adjusted 6.81 percent, from \$183,523 to \$196,021. If a hospital's usual and customary charges exceed this amount, payment is 75 percent of charges.

<sup>1</sup>The PPI, produced by the U.S. Bureau of Labor Statistics, measures the average change over time in the selling prices received by producers for their output. The annual PPI-P and the associated annual changes (using industry code 62111 – offices of physicians) are available at [www.bls.gov/ppi/data.htm](http://www.bls.gov/ppi/data.htm).

Statewide average weekly wage Effective Oct. 1 of the indicated year		
	Statewide average weekly wage	Percent change from prior year
2004	\$740	3.06%
2005	\$774	4.59%
2006	\$782	1.03%
2007	\$808	3.32%
2008	\$850	5.20%
2009	\$878	3.29%
2010	\$868	-1.14%
2011	\$896	3.23%
2012	\$916	2.23%
2013	\$945	3.17%
2014	\$961	1.69%
2015	\$989	2.91%
2016	\$1,026	3.74%
2017	\$1,041	1.46%

# Compensation rates as of Oct. 1, 2017

**Statewide average weekly wage (SAWW) = \$1,041**  
**Percentage change in SAWW from previous year = 1.46%**

*(Apply Minnesota Statutes § 176.645 adjustment as necessary based on date of injury.)*

Maximum under M.S. §§ 176.101 and 176.111	Minimum under M.S. § 176.101, subd. 1(2)	Supplementary benefits under M.S. § 176.132 (Minnesota Statutes 1994)
	<i>50% of the SAWW or gross wage, whichever is less, but in no case less than 20% of the SAWW</i>	<b>and permanent total minimum under M.S. § 176.101, subd. 4 (for injuries 10-1-95 and later)</b>
	50% <span style="float: right;">20%</span>	
10-01-89 .....\$413.00	10-01-88 .....\$195.50 (gross wage – \$293.25) .....\$ 78.20	10-01-99 .....\$399.75 (rounded to \$400)*
10-01-90 .....\$428.00	10-01-89 .....\$206.50 (gross wage – \$309.75) .....\$ 82.60	10-01-00 .....\$417.30 (rounded to \$418)*
10-01-91 .....\$443.00	10-01-90 .....\$214.00 (gross wage – \$321.00) .....\$ 85.60	10-01-01 .....\$442.00 (round)
	10-01-91 .....\$221.50 (gross wage – \$332.25) .....\$ 88.60	10-01-02 .....\$456.30 (rounded to \$457)*
	<i>20% of the SAWW or the employee's actual weekly wage, whichever is less</i>	10-01-03 .....\$466.70 (rounded to \$467)*
10-01-92 .....\$481.95	10-01-92 .....\$ 91.80	10-01-04 .....\$481.00 (round)
10-01-93 .....\$508.20	10-01-93 .....\$ 96.80	10-01-05 .....\$503.10 (rounded to \$504)*
10-01-94 .....\$516.60	10-01-94 .....\$ 98.40	10-01-06 .....\$508.30 (rounded to \$509)*
	<i>Set by statute</i>	10-01-07 .....\$525.20 (rounded to \$526)*
10-01-95 .....\$615.00		10-01-08 .....\$552.50 (rounded to \$553)
10-01-00 .....\$750.00	<i>Set by statute, the listed amount or the employee's actual weekly wage, whichever is less</i>	10-01-09 .....\$570.70 (rounded to \$571)*
10-01-08 .....\$850.00	10-01-95 .....\$104.00	10-01-10 .....\$564.20 (rounded to \$565)*
	<b>10-01-00 .....\$130.00</b>	10-01-11 .....\$582.40 (rounded to \$583)*
		10-01-12 .....\$595.40 (rounded to \$596)*
10-01-13 .....\$963.90		10-01-13 .....\$614.25 (rounded to \$615)*
10-01-14 .....\$980.22		10-01-14 .....\$624.65 (rounded to \$625)*
10-01-15 .....\$1,008.78		10-01-15 .....\$642.85 (rounded to \$643)*
10-01-16 .....\$1,046.52		10-01-16 .....\$666.90 (rounded to \$667)*
10-01-17 .....\$1,061.82		10-01-17 .....\$676.65 (rounded to \$677)*

\*Rounding applies to supplementary benefits.

## CompFact:

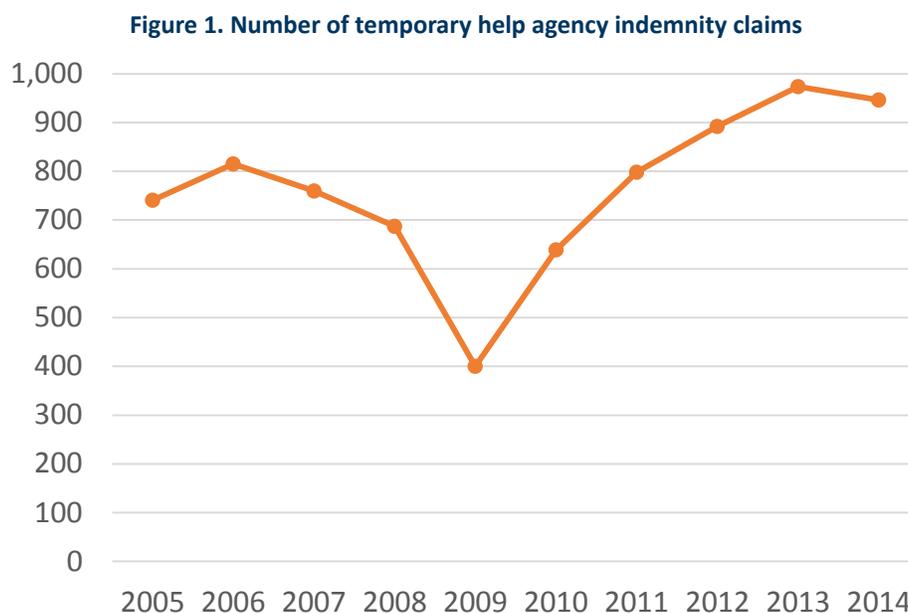
# Growing number of claims at temporary help agencies

By Brian Zaidman, Research and Statistics

Recent research and media reports have brought attention to the safety risks concerning temporary workers. These are workers hired through service companies that provide workers to employers on a temporary basis. Workers' compensation coverage for these workers is typically provided through the service company (although the employer controlling the worksite and providing day-to-day supervision of the workers is responsible for recording injuries and illnesses on its own OSHA recordkeeping log). There is a concern that temporary workers may not receive adequate workplace safety training before starting work at a new worksite.

This article provides some background information about the number and characteristics of temporary workers who were injured or became ill on the job and are receiving workers' compensation indemnity benefits. The claims information for temporary-help agencies includes both the temporary-help workers and the permanent staff of the agencies, who hire the workers and arrange for their placement with client employers. Data for 2015 and 2016 is not yet adequately mature to include here.

Figure 1 shows that the number of temporary workers with indemnity benefits, after dipping to about 400 claims in 2009, increased to just under 1,000 claims in 2013 and 2014. The sudden drop in injured temporary workers in 2009 was likely due to employment shifts caused by the recession. Injured temporary workers accounted for 4.5 percent of indemnity claims in both 2013 and 2014. Temporary-help agency employment accounted for 2.4 percent of private ownership employment in 2014.

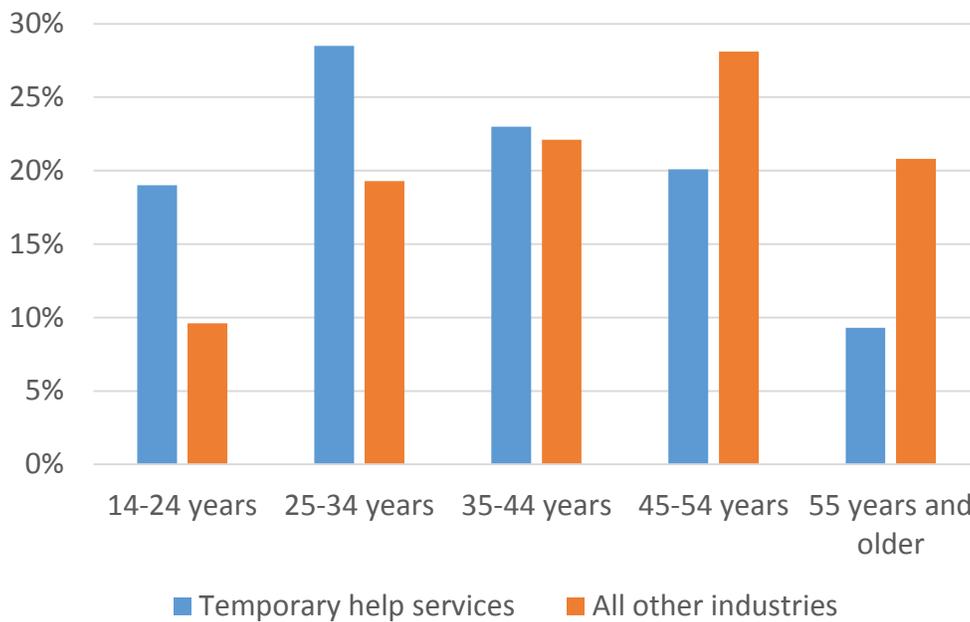


Compared to injured workers in other industries, injured temporary workers show a very different profile of characteristics. (Figures are totals for the 2005 through 2014 period.)

- Female workers accounted for a smaller percentage of the injured workers for temporary-help agencies (28 percent) than among all other industries (37 percent).
- Nearly half of the injured temporary workers are age 34 or younger, compared with 29 percent among workers at all other industries. (See Figure 2.)

- As expected, temporary workers are injured much earlier in their job tenure than other workers: 55 percent of temporary worker injuries were in the first three months of employment, compared with 11 percent among workers at other industries. Injured temporary workers account for 15 percent of all indemnity claims to workers within the first three months of job tenure and for 21 percent of indemnity claims to workers injured within the first 10 days of employment.
- While temporary workers are found in many different industries and have many different occupations, temporary workers receiving indemnity benefits are concentrated in just two occupation groups: transportation and material moving occupations (53 percent of claims); and production occupations (33 percent of claims).

**Figure 2. Distribution of injured workers by age at injury, indemnity claims, 2005 through 2014**



Many more figures comparing temporary workers with other workers will soon be available on the Department of Labor and Industry website. The figures will provide a more in-depth comparison among workers in transportation and material moving occupations and production occupations during their first year of job tenure.

## OSHA recordkeeping training offered Oct. 20 and Oct. 27: Reviewing the basics

The ability to maintain an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. The requirements for including a workplace injury or illness on the OSHA log are different from the laws an insurer uses to decide whether to accept primary liability for a workers' compensation claim. OSHA log recordkeeping training is necessary to learn how to keep an accurate OSHA log. The Department of Labor and Industry is offering two free introductory-level training sessions about OSHA recordkeeping.

**When:** Fridays, Oct. 20 and Oct. 27 (attend one session), 9 a.m. to 11:30 a.m.

**Where:** Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN (directions at [www.dli.mn.gov/Direct.asp](http://www.dli.mn.gov/Direct.asp))

**Register:** To register, visit [www.dli.mn.gov/OSHA/Recordkeeping.asp](http://www.dli.mn.gov/OSHA/Recordkeeping.asp)

## Jessica Stimac receives IAIABC NextGen Award

*Director of Compliance, Records and Training one of 11 recognized as new talent, leadership*

The IAIABC NextGen Awards seek to recognize new talent and leadership in workers' compensation as the industry, like many others, moves to adapt and thrive in a changing world. IAIABC NextGen, in its inaugural year, recognizes 11 individuals under the age of 40 who are making their mark on the industry.

The IAIABC congratulates the following recipients of the 2017 IAIABC NextGen Award:

- **Amanda Aponte**, actuary and director of Analytics, SFM Insurance Company;
- **Kendra DePaul**, other states coverage manager, Ohio Bureau of Workers' Compensation;
- **Alfred Faber**, director, Insurance Services Office, Inc. (ISO);
- **Brian Holmes**, director, Mediation/Ombudsman Services, Tennessee Bureau of Workers' Compensation;
- **Stevi Leech**, management analyst, Pennsylvania Workers' Compensation Office of Adjudication;
- **Neil McSheim**, senior business advisor, Strategic Analytics, Workplace Safety and Insurance Board (WSIB);
- **Harte Pricer**, manager, EDI, Pennsylvania Bureau of Workers' Compensation;
- **Tina Queen**, manager, Business Systems Analysis, Mitchell
- **Crystal Ricciuti**, project manager I, New York State Board of Workers' Compensation;
- **Jessica Stimac**, director, Compliance, Records and Training, Minnesota Department of Labor and Industry; and
- **Sarah Tayts**, claim support manager, Eastern Alliance Insurance Group.



Jessica Stimac, director  
Compliance, Records and Training

With more than 30 qualified nominees, the NextGen selection committee faced a difficult task in selecting this year's recipients. Evelyn McGill, executive director, Virginia Workers' Compensation Commission and IAIABC Secretary-Treasurer, said, "The accomplishments of the NextGen nominees were quite impressive and I believe workers' compensation will be in very capable hands as their generations move into more leadership roles in the future."

Recipients of the IAIABC NextGen Award will be profiled in the October issue of *Perspectives*, the IAIABC's quarterly digital magazine. Recipients will also participate in a special session, "A Conversation with the NextGen," Tuesday, Oct. 3, at the IAIABC 103rd Convention in Portland, Oregon.

Visit [www.iaiaabc.org/nextgen](http://www.iaiaabc.org/nextgen) for more information about this year's NextGen recipients.

### About the IAIABC

The International Association of Industrial Accident Boards and Commissions is a not-for-profit association representing government agencies charged with the administration of workers' compensation systems as well as other workers' compensation professionals in the private sector. Its mission is to find solutions to reduce harm and aid recovery from occupational injuries and illnesses.

Learn more about IAIABC at [www.iaiaabc.org](http://www.iaiaabc.org).

# Four recent reports review Minnesota's workers' compensation system

By Brian Zaidman, Research and Statistics

Four reports published in the past few months by the Workers Compensation Research Institute (WCRI) provide insight into various aspects of Minnesota's workers' compensation system. This article provides some highlights of the findings about Minnesota. Readers are encouraged to visit the WCRI website at [www.wcrinet.org](http://www.wcrinet.org) to purchase full studies and view results of all the states involved.

## Interstate Variations in Use of Opioids, Fourth Edition

This study looks at nonsurgical claims with more than seven days of lost time at an average of 24 months after the injury date. The most recent data is for claims from Oct. 1, 2012, through Sept. 30, 2013, with prescriptions filled through March 31, 2015. Results from 26 states are presented.

- Among the 2013 Minnesota injured workers with any pain medication prescriptions, 78 percent received at least one prescription for opioids; the median state value was 73 percent.
- Minnesota injured workers with opioid prescriptions received an average of 154 pills for an average of 32 days; the median values were 176 pills and 44 days.
- The morphine equivalent amount of opioid decreased in Minnesota by 26 percent from 2010 claims to 2013 claims.

## Medical Price Index, Ninth Edition

This study examines prices paid for medical professional services by physicians, physical and occupational therapists, and chiropractors. WCRI uses a market-basket based on services for each provider type to compare the prices across states. The study looks at data for 31 states, presenting data about prices paid during 2015 and the first half of 2016.

- Minnesota had the 10th highest price index in 2015 and the 11th highest index in 2016.
- Minnesota's prices increased by 9 percent from 2008 through 2016.

- Minnesota's prices for evaluation and management services increased by 47 percent from 2008 through 2016, and, at the low end, pain management services decreased by 35 percent.

## Hospital Outpatient Payment Index: Interstate Variations and Policy Analysis, Sixth Edition

This study examines payments for a group of common hospital outpatient surgeries. Data from 35 states is included, with a focus on prices paid during 2015.

- With the median state payment index set to 100, Minnesota's 2015 index value was 164. The states' values ranged from 30 to 216. Minnesota had the eighth highest value.
- Minnesota experienced a 22 percent cumulative growth in payments for outpatient hospital surgeries from 2011 to 2015 and 58 percent growth from 2006 to 2015. Among the 28 states with no substantial changes to their hospital outpatient fee schedule structure, Minnesota had the fifth highest change in payments.

## WCRI FlashReport – Worker Attorney Involvement: A New Measure

This study introduces WCRI's new measure of worker attorney involvement, using claims with more than seven days of lost time at an average of 36 months after the injury date. The most recent data is for 2013 claims measured in 2016. Results are presented for 18 states.

- Of Minnesota's injured workers, 25.4 percent had an attorney, compared to the median value of 29.2 percent. Minnesota had the sixth lowest rate. These are similar to the percentages of claims with defense attorney payments.
- Minnesota experienced a 5.8 percent growth in worker attorney involvement, from 19.6 percent in 2002 to 25.4 percent in 2013. The median state increase was 4.8 percent.

## 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](mailto: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](http://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](mailto:dli.wctraining@state.mn.us) or (651) 284-5431.

**Insurers** – Learn about insurer training opportunities at [www.dli.mn.gov/WC/TrainingIns.asp](http://www.dli.mn.gov/WC/TrainingIns.asp).

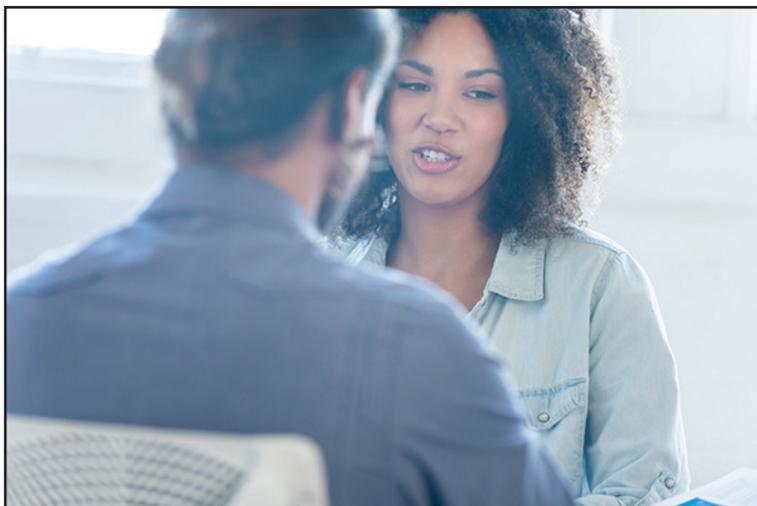
**Rehabilitation providers** – Learn about training opportunities at [www.dli.mn.gov/WC/TrainingRp.asp](http://www.dli.mn.gov/WC/TrainingRp.asp).

## 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](mailto:dli.ombudsman@state.mn.us).

# Workers' compensation events calendar

## August

**Aug. 24** Orientation training session  
[www.dli.mn.gov/WC/TrainingRp.asp](http://www.dli.mn.gov/WC/TrainingRp.asp)

## September

**Sept. 12, 13** Basic adjuster training  
[www.dli.mn.gov/WC/TrainingIns.asp](http://www.dli.mn.gov/WC/TrainingIns.asp)

**Sept. 19** 2017 Workers' Compensation Summit  
[www.dli.mn.gov/Summit](http://www.dli.mn.gov/Summit)

**Sept. 20** Workers' Compensation Insurers' Task Force  
[www.dli.mn.gov/Wcitf.asp](http://www.dli.mn.gov/Wcitf.asp)

## October

**Oct. 11** Workers' Compensation Advisory Council  
[www.dli.mn.gov/Wcac.asp](http://www.dli.mn.gov/Wcac.asp)

**Oct. 12** Medical Services Review Board  
[www.dli.mn.gov/Msrb.asp](http://www.dli.mn.gov/Msrb.asp)

**Oct. 12** Rehabilitation Review Panel  
[www.dli.mn.gov/Rrp.asp](http://www.dli.mn.gov/Rrp.asp)

## November

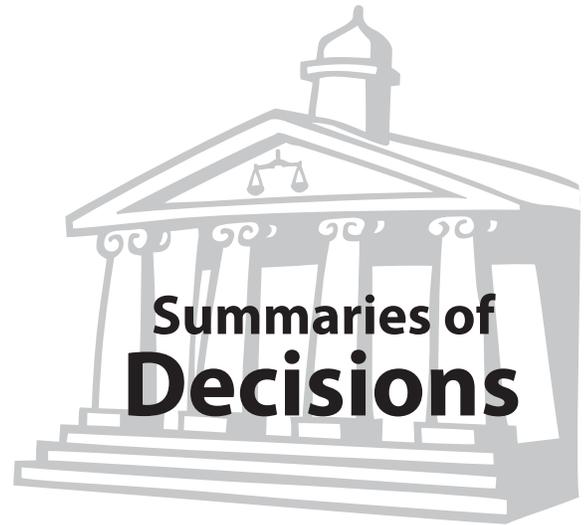
**Nov. 8** Workers' Compensation Advisory Council  
[www.dli.mn.gov/Wcac.asp](http://www.dli.mn.gov/Wcac.asp)

**Nov. 9** Workers' Compensation Insurers' Task Force  
[www.dli.mn.gov/Wcitf.asp](http://www.dli.mn.gov/Wcitf.asp)

# Workers' Compensation Court of Appeals

June 2017

Case summaries published are  
those prepared by the WCCA



## *Jerald P. Cochran v. Target Stores, June 5, 2017*

### **Practice and Procedure – Adequacy of the Findings**

That the compensation judge did not cite to specific diagnoses made by the employee's treating physician is not an indication that the compensation judge failed to address the claims of the employee or all questions of law and fact, as required by Minnesota Statutes § 176.371.

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

Arguments regarding the competency of a witness goes to the weight of the evidence and not to admissibility when no objection is made to the admission of the expert's opinion at hearing.

Affirmed.

## *Cody L. Weatherly v. Hormel Foods Corp., June 13, 2017*

### **Attorney Fees – Roraff Fees**

### **Attorney Fees – Heaton Fees**

Where substantial evidence supports the compensation judge's determination that there was no genuine dispute over medical or rehabilitation benefits, a denial of Roraff or Heaton fees is appropriate.

Affirmed.

## *Juliette P. Akakpo v. Children's Health Care, June 21, 2017*

### **Causation – Substantial Evidence**

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee's Aug. 25, 2015, work injury had resolved without need of restrictions and that the employee had not suffered a compensable work injury on Jan. 26, 2016.

## Practice and Procedure – Record

Photographs not entered into evidence at trial cannot be considered as part of the argument advanced on appeal.

Affirmed.

*Douglas Dahl v. AG Processing, Inc., June 21, 2017*

## Settlements – Interpretation

Given the language of the settlement agreement and the circumstances of the case, the compensation judge properly concluded that medical expense claims for treatment of a cervical condition were closed out by the settlement.

## Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence supported the compensation judge's decision that certain medical treatment was provided for a cervical condition rather than for the cure and relief of the employee's right shoulder injury.

Affirmed.

*Anthony Gist v. Atlas Staffing, Inc., June 21, 2017*

## Causation – Substantial Evidence Evidence – Expert Medical Opinion

Substantial evidence, including the adequately founded medical opinion of the employee's treating nephrologist, supports the compensation judge's finding that the employee's exposure to silica sand while working for the employer was a substantial contributing cause of the employee's end-stage kidney failure.

## Jurisdiction – Subject Matter

The jurisdiction of workers' compensation courts does not extend to interpreting or applying laws designed specifically for the handling of claims outside the workers' compensation system. Where the employer and its third-party administrator's position requires the interpretation and application of federal law implementing the Medicaid and Medicare programs, the compensation judge properly determined she lacked subject matter jurisdiction.

## Medical Treatment and Expense

The compensation judge properly rejected the employer and its third-party administrator's argument that a medical provider that accepts payments from Medicaid and Medicare is barred from receiving workers' compensation payment for treatment provided to an injured employee, and properly awarded payment of the outstanding medical intervention interests associated with treatment of the employee's end-stage renal disease pursuant to the Minnesota workers' compensation medical fee schedule and in accordance with the workers' compensation law/fee schedule of the state of Michigan for services rendered in that state.

Affirmed as modified.

### **Settlements – Interpretation**

The compensation judge correctly interpreted a stipulation for settlement in concluding that a claim against that particular employer was closed out because the condition at issue was known to the parties at the time of settlement. The fact the employee did not identify a separate date of injury until well after the settlement does not alter the analysis under Ryan v. Potlatch Corp., 882 N.W.2d 220 (Minn. 2016). Accordingly, the judge did not err in dismissing the employer from further participation in the litigation of the employee’s claim petition against other employers.

Affirmed.

### **Practice and Procedure**

Where an award has been issued on a stipulation, the compensation judge had no authority to issue an order vacating a portion of that stipulation.

Reversed.

# Minnesota Supreme Court

June 2017

Case summaries published are  
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## ***Jessica Kelly v. Kraemer Construction, A15-1751 – June 7, 2017***

1. Because respondent's crew was working interdependently with the general contractor's crew, they were engaged in a common activity, establishing the second requirement of a common-enterprise defense to third-party liability under the Minnesota Workers' Compensation Act, Minn. Stat. § 176.061, subs. 1, 4 (2016).
2. Respondent's crane crew was subject to the same or similar hazards as the general contractor's crew, establishing the third requirement of a common-enterprise defense to third-party liability under the Minnesota Workers' Compensation Act, Minn. Stat. § 176.061, subs. 1, 4.

Affirmed.

## ***Eddie Hudson v. Trilliam Staffing, A16-2017 – June 5, 2017***

The Workers' Compensation Court of Appeals abused its discretion when it set aside the respondent's stipulated award of benefits based on an expert medical opinion that lacked foundation.

Reversed.

## ***Josephine M. Hohlt v. University of Minnesota, A16-0349, June 28, 2017***

1. An employee who slipped and fell on ice met the "arising out of" employment requirement of Minn. Stat. § 176.021, subd. 1 (2016), because there was a causal connection between her injury and her employment in that her employment exposed her to a hazard that originated on the employer's premises as part of the working environment.
2. An employee who slipped and fell on ice while walking from her workplace to the employer's parking ramp on a sidewalk maintained by her employer met the "in the course of" employment requirement of Minn. Stat. § 176.021, subd. 1.

Affirmed.

***Anibal Sanchez v. Dahlke Trailer Sales, Inc., A15-1183, June 28, 2017***

1. Under the Minnesota workers' compensation anti-retaliation statute, Minn. Stat. § 176.82, subd. 1 (2016), an employer discharges an employee when the employer ends the employment relationship with no intention to resume it.
2. The employee raised a genuine issue of material fact as to whether he was discharged in retaliation for filing a workers' compensation claim.
3. Federal immigration law does not pre-empt an undocumented worker's claim under Minn. Stat. § 172.82, subd. 1, that his employer discharged him in retaliation for seeking workers' compensation benefits.

Affirmed.

***Kristel Kubis v. Community Memorial Hospital Association, A16-0361, June 28, 2017***

The Workers' Compensation Court of Appeals erred by substituting its own view of the evidence to overturn the compensation judge's determination that the employee had failed to establish her claim for benefits by a preponderance of the evidence.

Reversed.