

Workers' compensation costs continue to trend downward

By David Berry, Research and Statistics

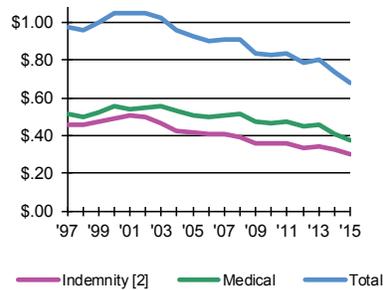
The cost of workers' compensation benefits has been declining relative to payroll since the early 2000s. In the voluntary market (insured employers not in the Assigned Risk Plan), indemnity benefits declined from \$.49 to \$.30 per \$100 of payroll between injury years 2000 and 2015, while medical benefits declined from \$.56 to \$.38 per \$100 (Figure 1).

These decreases occurred because falling claim rates more than offset increases in claim costs. From 2000 to 2014 (the most recent year available), after adjusting for average wage growth, indemnity benefits per paid claim (including claims with and without indemnity benefits) increased 16 percent, medical benefits per claim increased 44 percent and total benefits per claim increased 31 percent. However, total paid claims per 100 full-time-equivalent employees fell 46 percent from 2000 to 2014, more than offsetting the combined increase in indemnity and medical benefits per claim.

Because of decreasing costs of benefits per \$100 of payroll, the long-term trend in system cost relative to payroll has been downward (Figure 2). This is true even though system cost (primarily a premium-based figure) follows a nationwide insurance pricing cycle. The low-point of \$1.21 per \$100 of payroll reached in 2010 was significantly below the relative low of \$1.31 for 2000. Five years after the 2010 low-point, the 2015 figure was \$1.27; five years after the 2000 low-point, the 2005 figure was \$1.70.

One precursor of likely system cost changes in the next few years is the 2017 pure premium rate decrease of 12.1 percent filed by the Minnesota Workers' Compensation Insurers Association (MWCIA) with the Minnesota Department of Commerce. (The MWCIA is Minnesota's workers' compensation rating bureau and data service organization. Insurers use the pure premium rates as the starting point in setting their own workers' compensation insurance rates.)

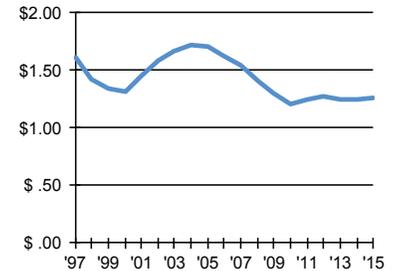
Figure 1. Benefits per \$100 of payroll in the voluntary market, accident years 1997-2015 [1]



Accident year	Indemnity benefits [2]	Medical benefits	Total benefits
1997	.46	.52	.98
2000	.49	.56	1.05
2001	.50	.54	1.05
2011	.36	.47	.83
2012	.33	.45	.79
2013	.34	.46	.80
2014	.33	.41	.74
2015	.30	.38	.68

1. Developed statistics from data from the Minnesota Workers' Compensation Insurers Association. Excludes self-insured employers, the Assigned Risk Plan and those benefits paid through DLI programs (including supplementary and second-injury benefits).
2. Includes vocational rehabilitation benefits.

Figure 2. System cost per \$100 of payroll, 1997-2015 [1]



Year	Cost per \$100 of payroll
1997	\$1.61
2000	1.31
2004	1.72
2005	1.70
2010	1.21
2011 [2]	1.24
2012 [2]	1.28
2013 [2]	1.25
2014 [2]	1.25
2015 [2]	1.27

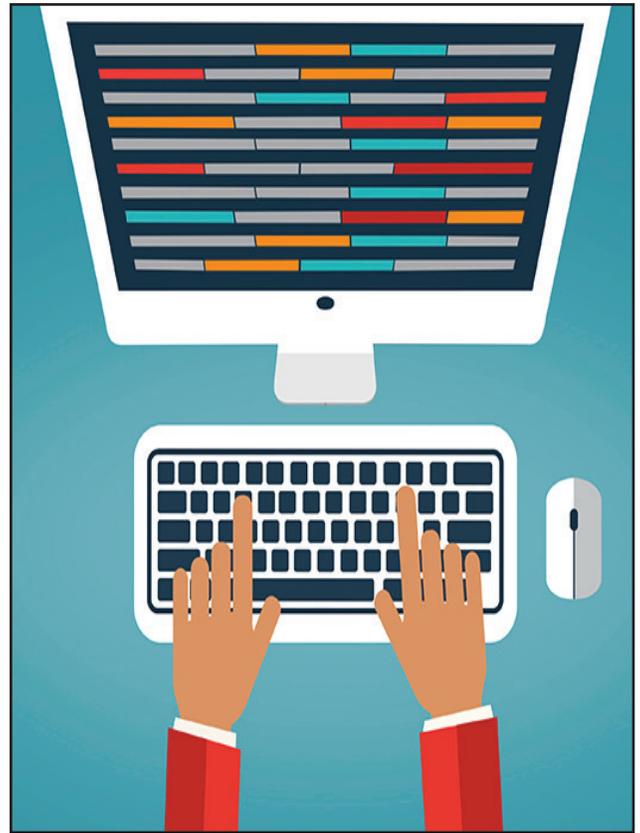
1. Data from several sources. Includes insured and self-insured employers.
2. Subject to revision.

Pricing inpatient hospital bills for dates of service Oct. 1 through Dec. 31, 2016

In 2015, the workers' compensation law was amended 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. (See Minnesota Statutes § 176.1362 for complete information.)

For hospital discharges from Jan. 1 through Dec. 31, 2016, the law directs payers to use Medicare's "PC-Pricer" program in effect Jan. 1, 2016, to calculate the Medicare amount payable. However, because Medicare's payment year is from Oct. 1 through Sept. 30, the PC-Pricer in effect Jan. 1, 2016, will not price discharges on or after Oct. 1, 2016.

The solution for discharges occurring from Oct. 1 through Dec. 31, 2016, is to enter the discharge year of "2015" (instead of 2016) into the PC-Pricer with the month and day portions of the dates of service. The PC-Pricer will then calculate the amount that would be paid by Medicare using the Jan. 1, 2016, pricer as directed by the law.



Reminder: 2015 Special Compensation Fund assessment 'true-up'

Minnesota Statutes § 176.129, subd. 2a, now provides for an adjustment – or "true-up" – of the assessment paid by insurers for deposit into the Special Compensation Fund (SCF).



The Department of Labor and Industry commissioner *estimates* each insurer's share of the assessment using the insurer's earned standard premium from the previous calendar year. The commissioner must later make a final determination of the amount owed based on the insurer's *actual* earned standard workers' compensation premium for the current year, after those figures become available.

As a result of this "true-up," insurers will likely owe additional monies to SCF or be refunded monies that were overpaid.

Invoices for additional funds will be mailed to insurers by Nov. 15, with payment due Dec. 15. Refunds will be processed by Dec. 1.

To be issued a refund, insurance companies that are not currently registered as vendors with the state of Minnesota will be required to file a W-9 Request for Taxpayer Identification Number and Certification form.

Contact John Kufus at (651) 284-5179 or john.kufus@state.mn.us for more information.

Request for comments:

Possible amendments to rules regulating reasonable medical record cost reimbursement; Minnesota Rules, part 5219.0300

Subject of rules

The Minnesota Department of Labor and Industry requests comments on its possible amendment to rules governing the reasonable reimbursement allowance to a health care provider for copies of existing medical records related to a claim for workers' compensation under Minnesota Statutes, chapter 176. The department is considering amendments that will update the allowed reasonable charges specified in Minnesota Rules 5219.0300 for copies of medical records, including rules that would specify maximum charges for records maintained in an electronic format. Comments related to a health care provider's costs of providing medical records for workers' compensation claims are sought. Comments from persons or entities that request medical records for workers' compensation claims are also sought.

Persons affected

The amendments to the rules would likely affect health care providers who treat injured workers, workers' compensation employers and insurers, and any other person or entity that requests or obtains medical records related to a workers' compensation claim.

Statutory authority

Minnesota Statutes § 176.135, subd. 7 (a), requires the commissioner to adopt a schedule of reasonable charges for copies of existing records or reports that directly relate to items for which payment is sought under workers' compensation law. Minnesota Statutes § 176.83, subd. 1, authorizes the commissioner to adopt, amend or repeal rules to implement the provisions of chapter 176.

Public comment

Interested persons or groups may submit comments or information on these possible rules in writing until further notice is published in the *State Register* that the department intends to adopt or to withdraw the rules. The department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments.

Rules drafts

The department has not yet drafted the possible rules amendments, but anticipates that when a draft becomes available it will be posted on the department's workers' compensation rule docket web page at www.dli.mn.gov/RulemakingWC.asp.

Agency contact person

Written or oral comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to: Ethan Landy, Office of General Counsel, 443 Lafayette Road N., St. Paul, MN 55155; (651) 284-5006; or dli.rules@state.mn.us.

Alternative format

Upon request, this information can be made available in an alternative format, such as audio, Braille or large print. To make such a request, contact the agency contact person at the address or telephone number listed above.

Note: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the administrative law judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Signed by Department of Labor and Industry Commissioner Ken B. Peterson on Aug. 3, 2016.

DLI will be conducting a survey of health care providers about the costs associated with copying workers' compensation medical records in an effort to gather more information about this topic. If you are a health care provider who is interested in taking part in this survey, contact Ethan Landy, Office of General Counsel, at dli.rules@state.mn.us.

Workers' compensation coverage for farms

By Brian Zaidman, Research and Statistics

A farm operation must provide workers' compensation insurance for its employees, unless it paid or was obligated to pay cash wages to farm laborers during the previous calendar-year less than a certain dollar amount. That threshold dollar amount depends on whether the farm operation maintains specified liability insurance.



If the farm operation has a farm liability insurance policy with \$300,000 total liability coverage and \$5,000 medical payment coverage for farm laborers, then the farm operation is not required to maintain workers' compensation insurance if the total wages to farm laborers during the previous calendar year were less than the statewide average annual wage.¹ If the farm operation does not maintain the specified liability insurance, then the farm operation must maintain workers' compensation insurance unless the total wages to farm laborers during the previous calendar-year were less than \$8,000.²

The chart below may be used to determine if the farm operation's wages to farm laborers (roughly payroll) during the previous calendar-year are less than the statewide average annual wage for the year in which the farm liability policy is written.

Family farm coverage

Minnesota Statutes § 176.011, subd. 11a (a)(2)

Average annual wage under M.S. § 176.011, subd. 20	Services rendered (roughly payroll) year	Policy written year
\$45,618	Jan. 1-Dec. 31, 2009	Jan. 1-Dec. 31, 2010
\$45,095	Jan. 1-Dec. 31, 2010	Jan. 1-Dec. 31, 2011
\$46,572	Jan. 1-Dec. 31, 2011	Jan. 1-Dec. 31, 2012
\$47,616	Jan. 1-Dec. 31, 2012	Jan. 1-Dec. 31, 2013
\$49,134	Jan. 1-Dec. 31, 2013	Jan. 1-Dec. 31, 2014
\$49,924	Jan. 1-Dec. 31, 2014	Jan. 1-Dec. 31, 2015
\$51,420	Jan. 1-Dec. 31, 2015	Jan. 1-Dec. 31, 2016
\$53,349	Jan. 1-Dec. 31, 2016	Jan. 1-Dec. 31, 2017

¹The statewide average annual wage is received from the Department of Employment and Economic Development and is the number from which the statewide average weekly wage is derived.

²Farm laborer does not include machine hire and other persons specified in [Minnesota Statutes § 176.011, subds. 11a and 12](#). Other farm employees excluded from workers' compensation coverage in certain circumstances are described in [Minnesota Statutes § 176.041, subd. 1](#).

Request for comments:

Possible amendments to rules governing workers' compensation vocational rehabilitation; Minnesota Rules, Chapter 5220

Subject of rules

The Minnesota Department of Labor and Industry (DLI) requests comments on its possible amendments to rules governing workers' compensation vocational rehabilitation. DLI is considering amendments to all the rehabilitation rules in Minnesota Rules 5220.0100 to 5220.1900 and is also considering amendments to the rules of practice in Minnesota Rules 5220.2510 to 5220.2870 regarding penalties for failure to timely provide or pay for rehabilitation services.

Persons affected

The amendments to the rules would likely affect rehabilitation providers, workers' compensation payers (employers, self-insured employers and insurers), agents of payers and injured workers.

Statutory authority

Minnesota Statutes § 176.102, subd. 2(a), requires the commissioner to, by rule, establish a fee schedule or otherwise limit fees charged by qualified rehabilitation consultants and vendors. Minnesota Statutes § 176.83, subd. 2, authorizes the commissioner to adopt rules necessary to implement and administer M.S. § 176.102, including the establishment of qualifications necessary to be a qualified rehabilitation consultant and an approved registered vendor of rehabilitation services; rules for penalties to be imposed by the commissioner against insurers or self-insured employers that fail to provide rehabilitation consultation to employees pursuant to M.S. § 176.102; and rules to establish criteria for determining "reasonable moving expenses" under M.S. § 176.102. Minnesota Statutes § 176.83, subd. 1, authorizes the commissioner to adopt, amend or repeal rules to implement the provisions of M.S. chapter 176. Minnesota Statutes §§ 176.221 and 176.225 authorize the commissioner to assess a penalty when an employer or insurer does not timely make a payment or frivolously denies a claim for a payment.

Public comment

Interested persons or groups may submit comments or information about these possible rules in writing until further notice is published in the *State Register* that DLI intends to adopt or to withdraw the rules. DLI will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments.

Rules drafts

The Department of Labor and Industry has not yet drafted the possible rule amendments, but when a draft becomes available it will be posted on DLI's workers' compensation rulemaking docket web page at www.dli.mn.gov/RulemakingWC.asp.

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Signed by Department of Labor and Industry Commissioner Ken B. Peterson on Sept. 21, 2016.

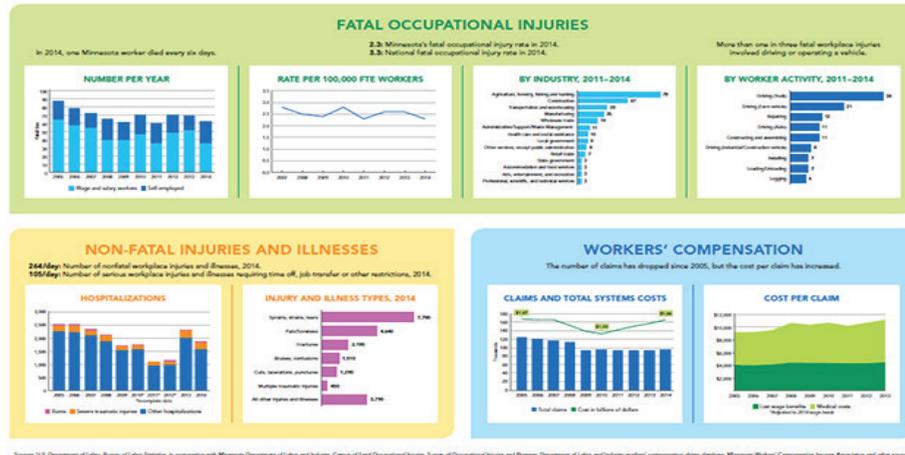
Statistics shine spotlight on worker safety indicators

MINNESOTA WORKPLACE SAFETY

September 2016

DLI Department of Labor and Industry

MDH Minnesota Department of Health



Source: U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with Minnesota Department of Labor and Industry, Census of Occupational Injuries, Survey of Occupational Injuries and Illnesses, Department of Labor and Industry, workers' compensation claims database, Minnesota Workers' Compensation System, Rehabilitation and other sources.

To create greater awareness of occupational hazards, the Minnesota Department of Labor and Industry (DLI), Minnesota Department of Health (MDH) and Minnesota Safety Council have created a workplace safety "dashboard" spotlighting a number of key indicators related to worker safety and health.

"In the past decade, Minnesota has seen the number of work-related injuries and illnesses fall from 124,900 in 2004 to 96,300 in 2014; a 23 percent decrease," said Ken Peterson, DLI commissioner. "To continue this positive trend, we need to build safer worksites so more workers go home healthy each night."

Dashboard highlights

- More than one in three fatal workplace injuries involve driving or operating a vehicle (2011 through 2014).
- Agriculture remains one of the most dangerous industries in Minnesota: 30 percent of fatal work injuries from 2011 through 2014 were among people working in the agriculture, forestry, fishing and hunting sector, particularly in crop production. On average, seven farm workers are injured seriously enough each day to require medical attention.
- On average, five new cases of workers with elevated lead blood levels are reported every week.
- The total cost of Minnesota's workers' compensation system in 2014 was an estimated \$1.66 billion.

"Our health is not only greatly influenced by where we live but also by where we work," said Dr. Ed Ehlinger, MDH commissioner. "While the implementation of labor laws and occupational health standards have greatly improved the well-being of our workforce, continued efforts are necessary to monitor the health and safety of our workers and ensure all workers have a safe and healthy workplace."

The dashboard, "Minnesota Workplace Safety, 2016," is online at www.minnesotasafetycouncil.org/WorkplaceSafetyDashboard.pdf.

Rehabilitation Review Panel seeks new member

The Rehabilitation Review Panel was created in 1981 by Minnesota Statutes § 176.102 to offer vocational rehabilitation rule advice and to make determinations, including sanctions, related to contested cases about rehabilitation provider registration and professional conduct.

The panel currently has an opening for an alternate-member labor representative. To apply for the position, complete and submit the application found on the Secretary of State's website at www.sos.mn.gov/index.aspx?page=5.

The panel meets quarterly at the Department of Labor and Industry (DLI). The Rehabilitation Review Panel advises the DLI commissioner about rehabilitation issues and makes determinations in contested registration and professional conduct cases. (The panel may meet more often if needed.) The meeting schedule, agendas and minutes are available online at www.dli.mn.gov/Rrp.asp.

The panel is composed of two members each representing employers, insurers, rehabilitation and medicine (for a total of eight), one member representing chiropractors and four members representing labor.



Worksites, other organizations can apply for Heart Safe designation

Sudden cardiac arrest can happen anywhere, at any time, to anyone and it's almost always fatal.

Cardiovascular events, including cardiac arrest, are the second-leading cause of death in Minnesota, responsible for almost 20 percent of deaths.

Research has shown early bystander help, such as CPR and the use of an automated external defibrillator (AED), can double or triple the chance of survival. By worksites earning the "Heart Safe" designation, employers are preparing their employees to better respond to these emergencies.

Businesses, educational institutions, nonprofit agencies, government agencies, faith-based organizations, communities and others can apply for the Heart Safe designation. The application process,

developed by the Minnesota Department of Health, American Heart Association, Minnesota Resuscitation Consortium and other statewide partners, is simple. The application follows a "chain of survival" and awards points for activities, including: creating awareness of cardiac emergencies and how to activate the emergency response system; knowing how to perform CPR and use an AED; what to expect from emergency services; and what the community has in place in its hospital system.



Learn more, apply for Heart Safe designation

To learn more, search "heart safe designation" online at www.health.state.mn.us.

Receive DLI notices, documents via secure email, rather than U.S. mail

The Department of Labor and Industry (DLI) can now send more of its workers' compensation notices and documents via secure email, instead of via postal mail. While all parties will continue to receive some correspondence via U.S. mail, DLI is working to provide improved and timely services.

This expansion of secure email service is one-way only, for documents sent by DLI. With the expansion, insurers can receive twice the correspondence previously available via secure email rather than U.S. mail. It also allows qualified rehabilitation consultants to receive important plan-filing notices.

For more information or to register for secure email receipt, email DLI's Lisa Smith at lisa.smith@state.mn.us.

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.

Report compares Minnesota medical payments, utilization with 17 other states

By Brian Zaidman, Research and Statistics



The Workers' Compensation Research Institute's (WCRI's) most recent report for Minnesota, *CompScope Medical Benchmarks for Minnesota, 17th Edition*, was released in October. This report uses insurer claim files to compare Minnesota's medical payments and service utilization with those of 17 other

states, including Iowa and Wisconsin. The report is available for purchase from WCRI at www.wcrinet.org.

The report focuses on results for workers injured in 2014 and on trends from 2009 to 2014, for claims with more than seven days of lost time, measured at an average of one year following the injury. Below are some of the major findings.

- Minnesota's average adjusted medical payment per 2014 claim was 6 percent lower than the median of the 18 study states. Payments per claim for nonhospital providers were 15 percent lower, while hospital outpatient payments were 8 percent higher and payments per hospital inpatient episode were 11 percent higher than the median.
- From 2009 through 2014, the average annual growth in medical payments in Minnesota was 0.7 percent, slower than the 2.9 percent median increase among the study states.
- Sixty-seven percent of the 2014 claims had payment to a hospital (typical of the study states) and hospitals accounted for 51 percent of the medical payments (higher than the median).
- Average hospital outpatient payments for 2014 claims were typical – \$5,800 Minnesota and \$5,300 median value.
- Average hospital inpatient payments per episode for 2013 claims were higher than the median study state – \$32,300 versus \$29,400.
- Among 2013 claims, 31 percent had surgery (either inpatient or outpatient), which was typical compared to the median of 34 percent.
- Fewer injured workers in Minnesota had hospital inpatient care, the same as the median value; the percentage of claims with inpatient care decreased from 9.2 percent in 2009 to 5.5 percent in 2014. This was the largest decrease among the study states. This decrease was mainly due to a decrease in inpatient surgery.
- Among claims at one year maturity, hospital inpatient care decreased from between 20 percent and 23 percent of the total medical payments for claims from 2009 through 2013, to 18 percent of total payments for 2014 claims.

Estimated injury, illness incidence rates for 2015 now available

The estimated injury and illness incidence rates and case counts for industries were released Oct. 27. The estimates are prepared from the Survey of Occupational Injuries and Illnesses, conducted in Minnesota jointly by the U.S. Bureau of Labor Statistics and the Minnesota Department of Labor and Industry (DLI). The 2015 estimates are posted on DLI's "Occupational safety and health statistics" web page at www.dli.mn.gov/RS/StatWSH.asp.

The release of the industry-level data will be followed by the release of the case and demographic estimates (expected Nov. 10). These estimates address the worker and injury characteristics for injury and illness cases where the worker is unable to work for one or more days after the date of injury.

Information about the number and characteristics of fatal work-related injuries in 2015 is expected to be released Dec. 16. This will be the final release of the data from the 2015 Census of Fatal Occupational Injuries.

CompFact:

Age increase may have passed its peak

By Brian Zaidman, Research and Statistics

Analysis of workers' compensation indemnity claims shows that the median age of injured workers increased from 42.4 years in 2004 to 45.5 years in 2013 and has decreased the past two years, reaching 44.7 years for workers injured in 2015.

Figure 1 shows the age-group trends in the percentages of workers by year of injury. The largest increase has been among workers 55 to 64 years old, increasing from 12.5 percent of the workers in 2004 to 21.0 percent in 2015. Workers 65 years old and older increased from 2.3 percent of the injured workers in 2004 to 4.0 percent in 2015. The percentage of injured workers between 55 and 64 years old decreased slightly from 2014 to 2015, the first percentage decrease in this group during the period studied.

The increasing spread in the age distribution of injured workers can be seen by the increase, from two groups to four, in the number of age groups with at least 20 percent of the injured workers during this time period.

The age distribution of workers with indemnity claims is similar to the age distribution of employed workers.

As shown in Figure 2, the percentages of injured workers are slightly below the percentages for all workers for the three youngest groups, slightly above the percentages for all workers for workers 45 to 54 years old and workers 55 to 64 years old, and below the all worker percentage for workers age 65 and older.

This suggests workers between 45 and 64 years old might have a higher injury rate than younger workers or might qualify for indemnity benefits at a higher rate because they need more days to recover.

Figure 1. Distribution of age of workers with indemnity claims, 2004 to 2015

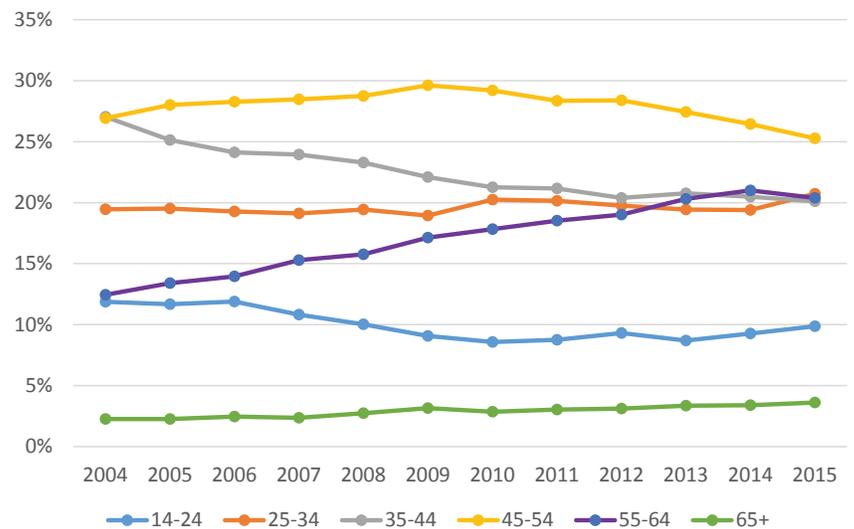
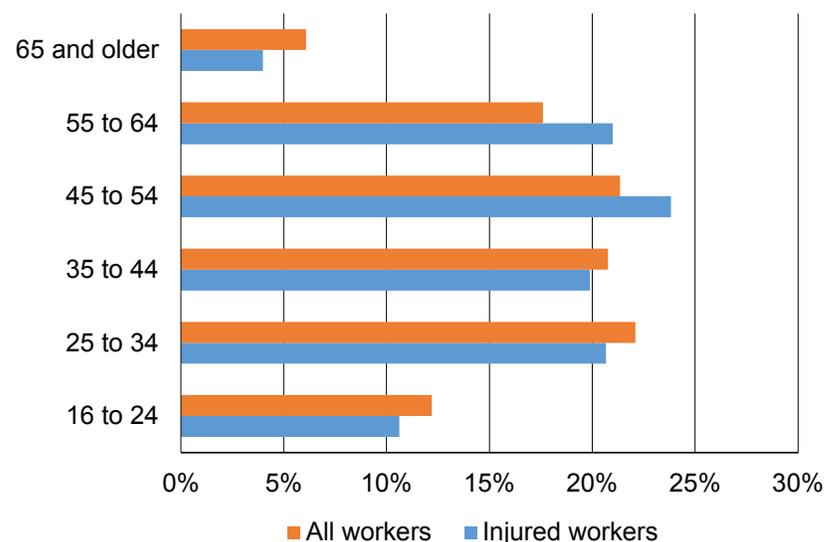


Figure 2. Age distribution of all workers and workers with indemnity claims, 2015



Workers' compensation events calendar

December

Dec. 7 Workers' Compensation Advisory Council meeting
www.dli.mn.gov/Wcac.asp

January

Jan. 5 Rehabilitation Review Panel
www.dli.mn.gov/Rrp.asp

Jan. 19 Medical Services Review Board meeting
www.dli.mn.gov/Msrb.asp

February

Feb. 8 Workers' Compensation Advisory Council meeting
www.dli.mn.gov/Wcac.asp

Feb. 10 Orientation training session
www.dli.mn.gov/WC/TrainingRp.asp

March

March 22 Workers' Compensation Insurers' Task Force meeting
www.dli.mn.gov/Wcitif.asp

April

April 6 Rehabilitation Review Panel
www.dli.mn.gov/Rrp.asp

April 12 Workers' Compensation Advisory Council
www.dli.mn.gov/Wcac.asp

April 20 Medical Services Review Board
www.dli.mn.gov/Msrb.asp

More resources from DLI: newsletters, specialty email lists, rulemaking lists

Newsletters – The Minnesota Department of Labor and Industry (DLI) offers three quarterly publications in addition to *COMPACT: Apprenticeship Works, CCLD Review* and *Safety Lines*.

- **Apprenticeship Works** is the newsletter from DLI's Apprenticeship unit. Its purpose is to inform the public of the goals, plans and progress of the Apprenticeship unit. Learn more or subscribe online at www.dli.mn.gov/Appr/Works.asp.
- **CCLD Review** is the newsletter from DLI's Construction Codes and Licensing Division. Its purpose is to promote safe, healthy work and living environments in Minnesota and to inform construction and code professionals about the purpose, plans and progress of the division. Learn more or subscribe online at www.dli.mn.gov/CCLD/Review.asp.
- **Safety Lines**, from Minnesota OSHA, promotes occupational safety and health, and informs readers of the purpose, plans and progress of Minnesota OSHA. Learn more or subscribe online at www.dli.mn.gov/OSHA/SafetyLines.asp.



Monthly update – Stay up-to-date with the Department of Labor and Industry by signing up for its monthly email update at www.dli.mn.gov/Email.asp about DLI activities.

Specialty and rulemaking news – DLI also maintains five specialty email lists and 11 rulemaking lists to which interested parties may subscribe. The specialty email lists are: prevailing-wage information; workers' compensation adjuster information; workers' compensation EDI trading partners; workers' compensation medical providers information; and workers' compensation rehabilitation information. Learn more about DLI's specialty email lists, subscribe or review previously sent messages online at www.dli.mn.gov/EmailLists.asp.

The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent contractor; labor standards/prevailing wage; Minnesota OSHA; plumbing; state building code; and workers' compensation. Learn more or subscribe at www.dli.mn.gov/Rulemaking.asp.

Subscribing to COMPACT – Interested parties may subscribe or unsubscribe from the *COMPACT* email list at <https://webmail.mnet.state.mn.us/mailman/listinfo/wc-compact>. Subscribers receive emailed notices about editions of the quarterly workers' compensation newsletter and other periodic updates from DLI.

Workers' Compensation Court of Appeals

July through September 2016

Case summaries published are
those prepared by the WCCA



Toni L. Goble v. Leisure Hills of Hibbing, July 11, 2016

Practice and Procedure – Intervention Notice

Common law governing the effect of notice between a principal and agent does not supplant the notice requirement under Minnesota Statutes § 176.361, subd. 2(a). A request to extinguish an intervention under Minnesota Statutes § 176.361, subd. 2(a), must comply with the statutory notice requirement to be granted.

Affirmed.

Madieu Williams v. Minnesota Vikings Football Club, July 12, 2016

Causation

Substantial evidence in the form of a well-founded medical opinion, the employee's testimony and the employee's medical records supports the compensation judge's determination that the employee's injuries while employed by the employer were substantial contributing causes of the employee's disability.

Affirmed.

Asher Allen v. Minnesota Vikings Football Club, July 14, 2016

Temporary Partial Disability Benefits – Substantial Evidence

Where expert medical opinion indicated that a full battery of psychometric testing was necessary to diagnose a traumatic brain injury and the employee had not completed such testing, substantial evidence supports the compensation judge's finding that the employee had not proven that he had sustained a traumatic brain injury as a result of concussion injuries, the judge's determination that the employee had not established a causal relationship between the work injuries and the employee's reduced wages, and the judge's denial of the employee's claim for temporary partial disability benefits.

Affirmed.

John McGrath v. Kemp's, LLC, July 22, 2016

Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee did not sustain a Gillette injury to his right hip while working for the employer.

Affirmed.

Raymond B. Hendricks v. AVR, Inc., July 25, 2016

Evidence – Credibility

Assessment of a witness's credibility is the unique function of the trier of fact. The record, including the employee's chiropractic and medical treatment post-injury, adequately supports the compensation judge's acceptance of the employee's testimony that he was never pain-free following the admitted April 4, 2014, work injury until Oct. 28, 2015.

Causation – Substantial Evidence

Substantial evidence, including the employee's post-injury chiropractic and medical treatment records, supports the compensation judge's finding that the April 4, 2014, work injury is a substantial contributing factor to the employee's ongoing cervical spine condition.

Practice and Procedure – Matters at Issue

The question of whether the employee's epidural steroid injection was reasonable and necessary was clearly at issue at the hearing, and the compensation judge did not err in awarding payment for the procedure.

Affirmed.

Mary Jo Newgard-Gray v. The Travelers Companies, July 28, 2016

Causation, Evidence – Expert Medical Opinion

Substantial evidence in the form of well-founded medical opinion supports the compensation judge's decision as to the extent of the employee's admitted cervical injury and her denial of the employee's claim of a bilateral carpal tunnel Gillette injury.

Affirmed.

Victoria C. Giles v. Montu Staffing Solutions, July 29, 2016

Wages – Calculation

Where an employee is not working for the second employer at the time of the work injury and substantial evidence supports a finding that the employee would not be scheduled to work concurrently at the second employer with the date of injury employer, calculating the average weekly wage figure sequentially is appropriate.

Affirmed, in part, and vacated, in part.

Michael J. Cobb v. Continental Hydraulics, Aug. 4, 2016

Appeals – Notice of Appeal

Substantial evidence supports the compensation judge's finding that the employee failed to prove that his notice of appeal was timely filed under the requirements of Minnesota Statutes §§ 176.421 and 176.275.

Affirmed.

Tammy L. Myers v. Super 8, Aug. 11, 2016

Rules Construed – Minnesota Rules 5221.6600, Application

Where an employee does not exhibit impairment of regular activities of daily life including regular vocational activities, there is no basis for considering Minnesota Rules 5221.6600 in an application for medical treatment.

Rehabilitation – Discontinuance

Where a compensation judge adopts an independent medical examination (IME) opinion that the employee has suffered a temporary aggravation that resolved without residual impairment of regular vocational activities or regular activities of daily life, discontinuance of rehabilitation services is appropriate.

Temporary Total Disability – Discontinuance

Where a compensation judge adopts an IME opinion that the employee has no impairment of regular vocational activities or regular activities of daily life, discontinuance of temporary total disability is appropriate.

Affirmed.

Loretta J. (Gansen) Bach v. Upper Mississippi Mental Health Center, Aug. 22, 2016

Wages – Multiple Employments

Where the employee did not have evidence to support her claim of payment for work for regular employment with a second employer, the compensation judge did not err by finding that the employee did not regularly work for multiple employers on the date of injury and, therefore, no claimed additional earnings from the second employer would be included in determining the employee's weekly wage.

Wages – Calculation

Where the employee's proposed weekly wage calculation erroneously included incorrect amounts for weeks where the employee did not work for the employer or had worked only part time, the compensation judge did not err by declining to adopt the proposed calculation.

Affirmed.

Permanent Partial Disability – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the employee's claim for an additional 10 percent permanent partial disability for vertigo, pursuant to Minnesota Rules 5223.0360, subp. 5A, was premature "at this time."

Permanent Total Disability – Threshold

Where the compensation judge denied the employee's claim for an additional 10 percent permanency, the judge's determination that the employee failed to prove he is permanently and totally incapacitated from gainful employment is vacated as the employee did not meet the 17 percent permanent partial disability required for permanent total disability eligibility under Minnesota Statutes § 176.101, subd. 5(2)(i).

Affirmed in part and vacated in part.

Arising Out Of and In the Course Of

Where the employee was injured in a fall when her foot stuck on an irregular concrete surface while she was entering the employer's premises, substantial evidence supported the compensation judge's finding that the injury was caused by the condition of the walkway, which constituted an increased risk. Based upon *Dykhoff v. Xcel Energy*, 840 N.W.2d 821, 73 W.C.D. 865 (Minn. 2013) and related case law, an employee's trip and fall on an irregular concrete surface on the employer's premises arose out of her employment.

Affirmed.

Vacation of Award – Substantial Change in Condition

The employee adequately demonstrated all of the factors outlined in *Fodness v. Standard Cafe*, 41 W.C.D. 1054 (W.C.C.A. 1989) to show that he has experienced a substantial change in his medical condition constituting good cause to grant the employee's petition to vacate his 1992 award on stipulation.

Vacation of Award – Mutual Mistake

The employee's subjective belief that he was "cured" by surgery only to later require multiple level fusion does not constitute a basis for vacating an award due to a mutual mistake of fact where there was no medical evidence available at the time of settlement to indicate that a later fusion would be required. See *Monson v. White Bear Mitsubishi*, 663 N.W.2d 534; 63 W.C.D. 337 (Minn. 2003).

Petition to vacate granted.

Causation – Substantial Evidence

Where the treating physician’s opinion has proper foundation and the employee’s medical record lacks an contradictory indications, the compensation judge cannot disregard the treating physician’s opinion regarding causation in the absence of a well-founded medical opinion to the contrary, following *Ruether v. State, Mankato State Univ.*, 455 N.W.2d 475, 42 W.C.D. 1118, 1122 (Minn. 1990); *Olson v. Midwest Printing Co.*, 347 N.W.2d 43, 46, 36 W.C.D. 623, 627 (Minn. 1984); *Flansburg v. Giza*, 284 Minn. 199, 169 N.W.2d 744, 25 W.C.D. 3 (1969).

Evidence – Unopposed Medical Opinion

Argument of counsel regarding the nature of a medical condition and reference to a claims adjuster’s opinion that the employee’s medical condition was not caused by the work injury does not constitute evidence in opposition to a well-founded medical opinion regarding causation.

Reversed.

**Rehabilitation – Surviving Spouse
Statutes Construed – Minnesota Statutes § 176.102, subd. 1a**

A 54-year-old surviving spouse, whose dependency benefits will cease within six years, in need of additional training to obtain full licensure to secure and maintain employment, has demonstrated a need for rehabilitation services to become self-supporting and is a qualified dependent surviving spouse entitled to rehabilitation assistance as contemplated by Minnesota Statutes § 176.102, subd. 1a.

Dependency Benefits – Burial Expenses

A granite bench placed on the petitioner’s husband’s grave in the customary position of a headstone constitutes compensable “expense of burial” pursuant to Minnesota Statutes § 176.111, subd. 18.

Affirmed in part and reversed in part.

Penalties

Substantial evidence supports the determination that the employer and insurer had at least a colorable defense to the employee’s claims and the compensation judge did not err in denying the claim for penalties.

**Temporary Benefits – Fully Recovered
Permanent Partial Disability**

Where there is no basis for the compensation judge’s finding that the claim for permanent partial disability was reserved for later determination, and where the judge’s determination that the employee’s injury had “resolved” is, accordingly, unclear, the matter is remanded for further proceedings.

Medical Treatment and Expense – Substantial Evidence

Substantial evidence, including the records of the employee's treating physician, support the compensation judge's award of medical expenses through June 22, 2015.

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

Javier Sotelo Cantu v. C.R. Fischer & Sons, Inc., Sept. 7, 2016

Vacation of Award – Fraud

Where the employee failed to establish the elements of fraud and did not allege any of the other definitions of cause set out in Minnesota Statutes § 176.461, the employee's request to vacate the award on settlement is denied.

Denied.

Bertha Perez-Rivera v. MPLSP Hotel Corp., Sept. 20, 2016

Settlements – Approval and Disapproval

In reviewing a compensation judge's determination to approve or disapprove a stipulation for settlement, this court will not reverse absent an abuse of discretion. On the fact of this case, we conclude the judge did not abuse his discretion and could reasonably conclude that closing out all future medical benefits and costs may be opposed to the best interests of the employee given her injury and the medical opinions submitted by the parties.

Appeals – Interlocutory Order

This court lacks jurisdiction to consider or determine an appeal from an order denying a motion to disqualify a judge as the order is interlocutory and does not affect the merits of the case nor does it prevent a later determination on the merits.

Order disapproving stipulation affirmed; order denying motion to disqualify judge dismissed.

Daniel Driggins v. Midwest Specialty Maintenance, Sept. 21, 2016

Causation – Temporary Aggravation

Substantial evidence in the record supports the compensation judge's conclusion that the work injury represented a temporary aggravation of a pre-existing condition and the need for restrictions and resulting wage-loss were not causally related to the work injury.

Affirmed.

Janet Barrick v. Custom Products of Litchfield, Inc., Sept. 23, 2016

Permanent Partial Disability – Substantial Evidence

Substantial evidence, including the opinions of a neutral physician, supports the compensation judge's award of permanent partial disability.

Medical Treatment and Expense – Reasonable and Necessary

Where the neutral physician opines that injection treatment was initially reasonable, but that ongoing injections were not reasonable, and did not indicate how long the injections remained reasonable treatment, substantial evidence supports the compensation judge's award of injection treatment through the date of the neutral physician's examination.

Temporary Total Disability – Substantial Evidence

Where the neutral physician had indicated the employee could work with restrictions and the employee had not conducted a job search, substantial evidence supports the compensation judge's finding that the employee was not entitled to temporary total disability benefits.

Attorney Fees – Subd. 7 Fees Penalties

Attorney fees awards under Minnesota Statutes § 176.081, subd. 7, are reduced by \$250 one time per injury. Penalty awards are not reduced by the deduction under Minnesota Statutes § 176.081, subd. 7.

Practice and Procedure – Matters at Issue

Where the employee had not requested approval for a medical referral, the issue was not before the compensation judge and the denial of the referral is vacated.

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

Mark R. Puffer v. Precision Tune, Sept. 23, 2016

Medical Treatment and Expense – Surgery

Substantial evidence in the form of a well-founded medical opinion supports the compensation judge's determination that the surgery proposed by the employee's treating doctor is reasonable and necessary to cure and relieve from the effects of the employee's Oct. 1, 1998, work injury.

Affirmed.

Bradley Yde v. Viking Coca-Cola Bottling Co., Sept. 27, 2016

Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge's finding that the employee's work injury was a substantial contributing cause of his biceps avulsion injury and need for surgery.

Affirmed.

Medical Treatment and Expense

Bills incurred by several different providers with whom the employee sought opioid medication immediately after she violated an opioid contract are not reasonable and necessary medical expenses pursuant to Minnesota Statutes § 176.135 where each of the providers declined the employee's request for opioids as contraindicated.

Evidence – Exclusion

Where a compensation judge states in the memorandum that he relied on evidence that was excluded from the record, the findings associated with the application of the excluded evidence do not comply with Minnesota Statutes § 176.411, subd. 1, and the findings based on the excluded evidence are reversed.

Affirmed in part and reversed in part.

Mary L. Clark v. Metro Transit, Sept. 29, 2016

Causation – Substantial Evidence

Substantial evidence in the record supports the compensation judge's determination that the employee's right knee condition and need for surgery are causally related to the work injury.

Affirmed.

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Virgenia M. Ryan v. Potlatch Corporation, A15-1404 – July 13, 2016

A workers' compensation settlement agreement may close out not only the benefits claim for the compensable injury, but also claims for conditions and complications arising out of that injury that were reasonably anticipated by the parties at the time of the settlement agreement. Reversed and remanded.