

Department of Labor and Industry, Special Compensation Fund

Procedure for reporting permanent total disability benefits under Minn. Stat. § 176.1292 for dates of injury before 10/1/1995

A. Purpose. This describes the procedure to be used by workers' compensation insurers and self-insured employers (payers) to report permanent total disability (PTD) benefits paid to injured workers and their dependents and legal heirs for purposes of obtaining the relief under Minn. Stat. § 176.1292 from:ⁱ

- Special Compensation Fund (SCF) assessments on additional PTD benefits paid because of the elimination of the non-Social Security retirement benefit offset; and
- SCF claims for over-reimbursement of supplementary benefits (SBs) because PTD benefits were offset by non-Social Security retirement benefits.

B. Applicability.

- This procedure does not apply to claims described in Minn. Stat. § 176.1292, subd. 2 (e).
- This procedure applies only to dates of injury before October 1, 1995.
- The SCF and a payer may agree to a list of covered employees as provided in Minn. Stat. § 176.1292, subd. 9 (c). Interested payers should email their proposed list of covered employees to David Dolsky at david.dolsky@state.mn.us by September 1, 2017.

C. Documentation of payment to employees, dependents and legal heirs. The table below describes due dates and the forms used to document payment to employees, dependents and legal heirs. The notes beneath the table correspond to the numbers in the column headings.

Please mail all forms in paper format by the dates specified to Robin Hanly, Personal & Confidential, Special Compensation Fund, Department of Labor and Industry, PO Box 64229, St. Paul, MN 55164-0229.

Category of benefits owed	Payment due date (1)	Due date for optional request for preliminary review of PTD calculations and payment by submitting updated <i>Annual Claim</i> (2)	Due date to submit final <i>Annual Claim</i> and <i>NOBP</i> to report payment made (3)	Date SCF approves or disapproves PTD calculations and payment after receiving <i>Annual Claim</i> and <i>NOBP</i> (4)	Due date for <i>Annual Claim</i> and <i>Addendum to Annual Claim</i> if SBs are payable, or <i>Annual Report of PTD Benefits</i> if no SBs due (5)	Date SCF approves or disapproves PTD calculations and payment after receiving <i>Annual Claim</i> and <i>Addendum to Annual Claim</i> (6)
Recalculated payment to employees who are currently receiving PTD benefits	10/27/2017	8/28/2017	At the time of payment	Within 21 days of receipt	April 1, annually	Within 30 days of receipt
Past PTD under-payment to employees	12/26/2017	10/28/2017	At the time of payment	Within 21 days of receipt	April 1, annually	Within 30 days of receipt
Payment to dependents or legal heirs	2/24/2018	12/26/2017	At the time of payment	Within 21 days of receipt	N/A	N/A

1. Payment due date. These are statutory time frames.
2. Due date for optional request for preliminary review of PTD calculations and payment by submitting updated *Annual Claim*. The payer has the option of requesting early review of the proposed corrected payments by the dates in column (2), which are 60 days before the payment due dates in column (1). If the *Annual Claim for Reimbursement of Supplementary Benefits* form (*Annual Claim*) through the most recent payment date has not already been submitted, the payer must provide an updated *Annual Claim* form by the dates in column (2). The SCF will review the request for early review within 30 days of receipt to allow time to resolve any payment issues. The *Annual Claim* will need to be resubmitted to the SCF when the actual payment is made.
3. Due date to submit final *Annual Claim* and *NOBP* to report payment made. The payer must submit the *Annual Claim* and the *Notice of Benefit Payment* form (*NOBP*) with the SCF when payment to the employee, dependents or legal heirs has been made. The *Annual Claim* must be updated through the most recent payment date.
4. Date SCF approves or disapproves PTD calculations and payment after receiving *Annual Claim* and *NOBP*. The SCF will send written notice of approval or disapproval of the PTD payments to the payer within 21 days of receipt of the *Annual Claim* and *NOBP* forms. If the SCF disagrees with the payer's *Annual Claim* and *NOBP* forms documenting payment under #1, it will ask for corrections or explanations. The payer will have 14 days to provide additional explanation or make the correction by filing an Amended *Annual Claim* form and an Amended *NOBP*.
5. Due date for annual forms. The period for determining the SCF assessments is the calendar year, January 1 through December 31. The payer must submit the *Annual Claim* form showing actual benefits paid for the calendar year and **must also complete the *Addendum to Annual Claim for Reimbursement of Supplementary Benefits* form showing the benefits that would have been paid if an offset of non-Social Security retirement benefits were allowed.** Both forms must be submitted together no later than April 1st of the year following the previous calendar year. The *Annual Report of PTD Benefits* form should only be used for injuries before October 1, 1995 if supplementary benefits are no longer payable.
6. SCF approval of annual forms. SCF staff will review the *Annual Claim* and *Addendum to Annual Claim* forms within 30 days of receipt. After the review, the payer will be notified of the amount the SCF will use for calculation of assessments. The payer will have 14 days to provide additional explanation or make the correction by submitting amended forms.

D. Reimbursement of SBs paid before August 13, 2014. Payers should not resubmit a new *Annual Claim* form for benefits paid before August 13, 2014 if one has already been submitted. The SCF will reimburse supplementary benefits paid before August 13, 2014 in accordance with Minn. Stat. § 176.1292 within 90 days of the payer satisfying all requirements of the statute.

E. Refunds. A payer may be entitled to a refund if the payer has complied with Minn. Stat. § 176.1292 and documents that it is entitled to a refund in either of the following circumstances:

1. A payer may be entitled to a refund if it repaid the SCF in response to the SCF's claim that it over-reimbursed supplementary benefits paid before August 13, 2014, due to the *Ekdahl* decision. Requests for a refund in this situation should be made to the SCF, attention Robin Hanly, robin.hanly@state.mn.us, 651-284-5149.

2. A payer may be entitled to a refund of assessments invoiced after July of 2015 if the payer documents it has complied with Minn. Stat. § 176.1292 and has already paid PTD benefits under the *Ekdahl* decision. If the payer falls into this category, it should contact Loni Delmonico, Department of Labor and Industry Financial Services, at loni.delmonico@state.mn.us or 651-284-5311.

F. Extensions. To request an extension of these time frames, or a waiver of PTD benefits owed pursuant to Minn. Stat. § 176.1292, subd. 2 (d) (4), the *Request for extension or waiver of permanent total disability benefits owed* form must be submitted at least 30 days before the payment due date.

G. Documentation of Dependents and Legal Heirs. Minnesota Statutes, section 176.1292, requires past PTD underpayment amounts to be made to the employee's dependents, or if there are none, to the employee's legal heirs. Dependents are listed in Minn. Stat. § 176.111, subdivisions 1 to 4. Minnesota Statutes, section 176.1292, does not require a dependent to be receiving or to have received dependency benefits.

- Submit documentation of dependency. For example, documentation of a dependent spouse could include a marriage certificate and a notarized Affidavit stating that the spouse was married to and residing with the employee at the time of the disability or death. Joint mortgage, lease and utility bills may also be considered.
- If there are no dependents, submit documentation of legal heirs. To document payment to a legal heir, submit a certified death certificate, or other evidence of death, for the deceased employee. In addition, in order to show that you have the legal authority to pay the claim to a specific person on behalf of the decedent's estate, submit one of the following documents: 1) Letters Testamentary; 2) Letters of Administration; or 3) a Certificate of Trust.
- Contact Robin Hanly at robin.hanly@state.mn.us if you have questions about other types of dependents or heirs.

For questions about this procedure (for dates of injury before 10/1/1995), contact David Dolsky at 651-284-5455 or david.dolsky@state.mn.us.

Equal Opportunity Employer

ⁱ Minn. Stat. § 176.1292 was enacted, effective May 31, 2017, in response to the Minnesota Supreme Court 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. See 2017 Minn. Laws, Ch. 94, Art. 4.