

Summary of the statutory amendments adopting the recommendations of the Workers' Compensation Advisory Council

2011 Minn. Laws, Chapter 89

Overview

The amendments recommended by the Workers' Compensation Advisory Council address the use and timing of settlement conferences before a hearing; the need for flexibility in scheduling to avoid unnecessary resets; and the need for the use of experienced and independent decision-makers at hearing. All changes would be at the Office of Administrative Hearings where judges decide cases after efforts at the Department of Labor and Industry have failed. The law also makes technical changes incorporating existing workers' compensation law changes, enacted in 1998, that were never codified in Minnesota Statutes, Chapter 176.

In addition, the amendments increase the amount of money available for remodeling or alteration of an injured worker's residence, and specify when an architect's certification and supervision is not required. They also allow a change in the formula used to establish maximum fees for drugs used to treat a workers' compensation injury.

For purposes of the following summary, references to "the commissioner" are to the commissioner of the Department of Labor and Industry; "the chief administrative law judge" is the chief administrative law judge at the Office of Administrative Hearings (OAH); "compensation judges" are workers' compensation judges at OAH; and "administrative law judges" are administrative law judges at OAH.

This article summarizes the amendments, but does not necessarily describe every wording change. It is not intended to represent the Department of Labor and Industry's interpretation of the amendments. The actual language of the amendments should, therefore, be consulted. The entire session law can be viewed on the website of the Minnesota Office of the Revisor of Statutes at www.revisor.mn.gov/laws/?id=89&doctype=chapter&year=2011&type=0.

Section by section summary

Section 1

Minn. Stat. § 14.48, subd. 2

References to chapters 14 and 176 (the workers' compensation law) are deleted and a reference to the Office of Administrative Hearings is added.

Section 2

Minn. Stat. § 14.48, subd. 3

Only workers' compensation judges at OAH may conduct workers' compensation proceedings within the jurisdiction of OAH under chapter 176, unless the workers' compensation law requires proceedings to be conducted under Minn. Stat. chapter 14.

Section 3

Minn. Stat. § 14.49

Only currently employed workers' compensation judges are authorized to hear workers' compensation cases, unless all available compensation judges are disqualified under the Code of

Judicial Conduct. When all available judges are disqualified, the chief ALJ may contract with a workers' compensation attorney or former workers' compensation judge or attorney for the case.

Section 4

Minn. Stat. § 14.50

Language authorizing the chief ALJ to assign administrative law judges to hear workers' compensation cases is deleted.

Section 5

Minn. Stat. § 176.106, subd. 1

Pursuant to a session law enacted in 1998, but which was never codified in Minn. Stat. chapter 176, compensation judges at OAH also hold administrative conferences. (1998 Minn. Laws, ch. 366, sec. 80-84.) The amendments to this section incorporate the uncodified 1998 law related to administrative conferences into section 176.106 to show the existing administrative conference authority of both the commissioner and compensation judges; the commissioner holds administrative conferences when the medical dispute is \$7,500 or less, while compensation judges at OAH hold them when the amount in dispute is more than \$7,500.

Section 6

Minn. Stat. § 176.106, subd. 3

The amendments to this section again reflect the 1998 uncodified law that authorizes compensation judges to also hold administrative conferences.

Section 7

Minn. Stat. § 176.106, subd. 5

The amendments to this section reflect that either the commissioner or compensation judge might refer a medical or rehabilitation dispute before them for a settlement or pretrial conference or a hearing under subdivision 3. The reference to compensation judges is added because under the 1998 uncodified law compensation judges also have jurisdiction to hold administrative conferences.

Section 8

Minn. Stat. § 176.106, subd. 6

The amendment to this section again reflects that, pursuant to the 1998 uncodified law, compensation judges also have jurisdiction to hold administrative conferences and issue orders under Minn. Stat. § 176.106.

Section 9

Minn. Stat. § 176.106, subd. 7

There are two amendments to this section. The first one reflects that compensation judges also have authority to hold administrative conferences, pursuant to the 1998 uncodified law. The second amendment provides that when a party disagrees with a compensation judge's decision following an administrative conference on a medical or rehabilitation dispute, the formal hearing must be held before a compensation judge other than the compensation judge who presided over the administrative conference.

Section 10

Minn. Stat. § 176.106, subd. 8

This amendment codifies the 1998 uncodified law, which transferred jurisdiction to issue summary decisions under 176.305 from the commissioner to compensation judges at OAH.

Section 11

Minn. Stat. § 176.106, subd. 9

The first amendment to this subdivision reflects that, pursuant to the 1998 uncodified law, compensation judges also have authority to hold administrative conferences. The second amendment cross-references subdivision 7, which describes the procedure when a party disagrees with the commissioner's or compensation judge's decision more precisely than the deleted language.

Sections 12 through 14

Minn. Stat. § 176.137

These sections amend Minn. Stat. § 176.137, which provides for alteration, remodeling or purchase of a residence to accommodate an injured workers' disability.

- The amendments in sections 12 and 14 increase the amount available to the employee under this law from \$60,000 to \$75,000, and provide that the cost of obtaining architectural certification and supervision are included in the \$75,000 limit.
- The amendments in section 13 provide that remodeling or alteration projects do not require an architect's certification and supervision if the project is approved by the Council on Disability; is performed by a residential building contractor or residential remodeler licensed under Minn. Stat. § 326B.805; and is approved by a certified building official or certified accessibility specialist under section 326B.133, subdivision 3a, paragraphs (b) and (d), who states in writing that the proposed remodeling or alterations are reasonably required to enable the employee to move freely into and throughout the residence and to otherwise accommodate the disability.

Section 15

Minn. Stat. § 176.238, subd. 6

The amendments to paragraph (a) change "commissioner's decision" to "interim administrative decision." This incorporates into the statute the existing 1998 uncodified law, which transferred to compensation judges the jurisdiction to hold administrative conferences and issue interim administrative decisions when there is a dispute over the discontinuance of wage loss benefits. The amendments to paragraph (b) provide that when a party disagrees with the compensation judge's interim decision on discontinuance of wage loss benefits, a compensation judge other than the judge who issued the interim administrative decision must preside over the formal hearing on the discontinuance issue.

Section 16

Minn. Stat. § 176.305, subd. 1

The amendments to this section clarify that the commissioner must refer all petitions over which the commissioner lacks jurisdiction to the OAH within 10 days of filing. (Pursuant to the 1998 uncodified law, settlement conferences are conducted by compensation judges at OAH.)

Section 17

Minn. Stat. § 176.305, subd. 1a

- Settlement conferences are held before a compensation judge at the Office of Administrative Hearings instead of the Department of Labor and Industry, pursuant to the 1998 uncodified law.
- The chief administrative law judge is required to schedule settlement conferences before every hearing, including expedited hearings. The settlement conferences must be held within the following time frames:
 - a settlement conference on a petition, including an employee’s claim petition, must be held within 180 days of receipt; and
 - a settlement conference must be held within 45 days of receipt of an objection to discontinuance of wage loss benefits, a petition to discontinue wage loss benefits and a request for a formal hearing on a medical or rehabilitation dispute.
- Parties are required to appear at the settlement conference, and must serve and file a pretrial statement at least five days before the settlement conference.
- If settlement is not reached, the hearing must be scheduled within 90 days from the date of the scheduled settlement conference, unless the workers’ compensation law requires that an expedited hearing be held at an earlier date.
- The compensation judge who conducts the settlement conference may not preside over the hearing on the same dispute.
- The compensation judge assigned to hold the hearing may choose to also conduct a pretrial conference to clarify issues and evidence.
- Cancellations and continuations are disfavored but may be granted upon the showing of good cause under Minn. Stat. § 176.341, subd. 4.
- A “compensation judge” (replacing “presiding officer”) conducting the settlement conference may issue a summary decision if settlement is not reached.

Section 18

Minn. Stat. § 176.307

The amendments to this section:

- Provide that a block system of assigning cases to the same compensation judge is preferred.
- Specify the circumstances under which cases shall not be block assigned to the same judge:
 - when a party exercises a legal right to remove a judge;
 - when the judge is incapacitated or otherwise unable to hold the hearing;
 - when the law requires a different compensation judge to preside over a hearing than the judge who presided over an administrative or settlement conference in the same matter; and

- when the code of judicial conduct requires a different judge to be assigned (such as when there is a conflict of interest).

Section 19

Minn. Stat. § 176.341

The amendments provide that prehearing and settlement conferences are conducted at the Office of Administrative Hearings, not the Department of Labor and Industry, pursuant to the 1998 uncodified law. A settlement conference shall be granted if all parties agree.

Section 20

This section authorizes the commissioner to amend the formula that establishes the maximum fees for drugs used in the treatment of workers' compensation injuries by replacing the "average wholesale price" standard in Minn. R. 5221.4070 with the "wholesale acquisition cost" standard. If the new standard is adopted, the commissioner must adjust the formula so that the maximum fees under the amended formula will remain the same as under the current formula.

The amendments also authorize the commissioner to make this change using the expedited rulemaking process under Minn. Stat. § 14.386. The adjustment is permanent, unless the commissioner amends the rules through the regular rule adoption process. The amendments also provide that the substitution of the WAC benchmark is not a new grant of rulemaking authority that would trigger the rule adoption timelines in Minn. Stat. § 14.125.

Section 21

A onetime \$600,000 is appropriated to the commissioner from the special compensation fund to implement a case management system and electronic filing system as requested by the chief administrative law judge at the Office of Administrative Hearings. A review panel convened by OAH to review proposals must include one labor representative and one business representative service pursuant to Minn. Stat. § 176.007, subd. 1, paragraph (b) or (c).

Section 22

The Revisor of Statutes is instructed to substitute "interim administrative decision" for "commissioner's decision" where it appears in Minn. Stat. § 176.238 and 176.239.

Section 23

Sections 1 through 11 and 15 through 21 are effective Aug. 1, 2011.
Sections 12 through 14 are effective the day following final enactment.
(Signed by the governor on May 27, 2011.)