Governor Walz appoints Roslyn Robertson as DLI commissioner

Gov. Tim Walz has appointed Roslyn Robertson as commissioner of the Minnesota Department of Labor and Industry (DLI). Robertson’s extensive history of leadership at DLI most recently includes her service as temporary commissioner.

“Roslyn Robertson’s deep and broad experience in worker protection issues have prepared her well to lead during this unprecedented time,” Walz said. “I am proud to appoint her to this critical role of keeping Minnesota workers safe and businesses strong as we continue to navigate the challenges of the COVID-19 pandemic together.”

“For more than 30 years, I have worked to ensure DLI is a trusted resource for Minnesota’s workers and businesses,” said Robertson, DLI commissioner. “I am excited to lead our agency’s dedicated staff members to address worker protection issues, help injured workers promptly receive benefits and services, educate employers and employees about their rights and responsibilities in the workplace, and improve our agency’s outreach efforts and business processes to ensure all our stakeholders’ input is considered, valued and acted upon.”


How do workers get injured?

Claim characteristics flyer updated with 2019 data

Approximately 22,200 Minnesota workers were paid workers’ compensation indemnity benefits (wage loss and disability) for injuries and illnesses in 2019.

• Sixty-two percent of these workers were men.
• Twenty-eight percent were older than 54 years.
• Ten percent were younger than 25 years.
• Thirty-three percent were at their job for less than a year.

View the updated one-page flyer online at www.dli.mn.gov/business/workers-compensation/claim-characteristics.
Work Comp Campus continues to support stakeholders, provide resources

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

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

Dedicated workers' compensation help desk taking your calls, email

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

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

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

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

Tracking questions to build division knowledge

The help desk staff routes a ticket for each correspondence. Tickets are then used to build a knowledge base so DLI will be poised to provide a more sophisticated software platform in the future. Every staff member in the Workers' Compensation Division has the ability to edit and initiate tickets.
DLI publishes reports analyzing timeliness, accuracy in two new systems in workers’ compensation for paying medical providers

David Berry  
DLI Research and Statistics

In January, the Department of Labor and Industry (DLI) provided two mandated reports to the Legislature concerning new systems in workers’ compensation for paying medical providers. One report analyzes payment accuracy and timeliness under the Hospital Outpatient Fee Schedule (HOFS), which took effect Oct. 1, 2018, and governs payments to Non-Critical-Access Hospital outpatient facilities. The other report, in part, analyzes payment accuracy and timeliness under the Ambulatory Surgical Center Payment System (ASCP), which also took effect Oct. 1, 2018, and governs payments to ambulatory surgical centers (ASCs). Because of the different mandate for the ASCP report, it also considers the effect of ASCP on total payments to the ASCs for workers’ compensation cases.

Where the HOFS report was concerned, the Legislature also provided that the Workers’ Compensation Advisory Council should, on the basis of the study results, “consider whether there is a minimum 80% compliance in timeliness and accuracy of payments” and whether statutory amendments are appropriate, relating, at minimum, to a “maximum 10% reduction in payments under HOFS and an increase in indemnity benefits to injured workers.”

To analyze the effect of ASCP on payments, DLI used the workers’ compensation medical call data from the Minnesota Workers’ Compensation Insurers Association (MWIC). In this data, the overall ratio of payments to charges for ASC services was essentially level for the periods before and after the inception of ASCP, but 25% lower for the latter period. On this basis, DLI estimated the transition to ASCP reduced workers’ compensation payments to ASCs by 25%. A payment reduction to ASCs was part of the intent of ASCP when enacted. At the time, DLI estimated the new system would reduce payments by 20%.

To analyze payment timeliness and accuracy in HOFS and ASCP, DLI collected data from workers’ compensation payers, third-party administrators, Non-Critical-Access Hospitals and ASCs. DLI sent the data request to all of these entities. The HOFS request pertained to patient visits to hospital outpatient facilities from Nov. 4 through Dec. 18, 2019; the ASCP request pertained to visits to ASCs from April 1 through Dec. 15, 2019. The overall response rate from insurers (including self-insurers) was 84%, representing 96% of total benefits paid (based on the most recently available set of medical and indemnity benefit data for 2016). The response rates from hospitals and ASCs were 90% and 63%, respectively.

For both the HOFS and ASCP studies, data was reported separately for patient visits covered by arrangements with preferred-provider organizations (PPOs) and visits not covered by PPO arrangements. Since PPO arrangements may supersede statutory payment provisions, only the visits not covered by PPO arrangements were used to analyze payment accuracy. Visits with and without PPO arrangements were used to analyze payment timeliness.

To gauge payment accuracy, DLI computed the correct payment for each non-PPO-covered visit from the reported data and compared this to the reported payment. DLI analyzed payment timeliness using the reported billing and payment dates.3
In the HOFS analysis, DLI found that the percentage of visits with either correct payment or greater (that is, an error on the high side) was 69.4% in the insurer data and 62.6% in the hospital data. The percentage of visits with timely payment (payment within 30 days of billing) was 92.4% in the insurer data and 67.3% in the hospital data. Regarding combined payment accuracy and timeliness, the percentage of cases with payment of at least 100% of the correct amount and within 30 days of billing was 63.9% in the insurer data and 39.9% in the hospital data. These latter percentages fell short of the 80% standard in the statutory language.

In the ASCPS analysis, DLI found that the percentage of visits with either correct payment or greater was 83.1% in the insurer data and 79.3% in the ASC data. The percentage of visits with timely payment (payment within 30 days of billing) was 88.3% in the insurer data and 66.2% in the ASC data. Regarding combined payment accuracy and timeliness, the percentage of cases with payment of at least 100% of the correct amount and within 30 days of billing was 71.0% in the insurer data and 47.8% in the ASC data. These latter percentages fell short of the 80% standard in the statutory language for the HOFS study, which DLI elected to use as the standard in the ASCPS study since none was specified in statute.


1 Non-Critical-Access Hospital is a Medicare designation pertaining to certain hospitals with 25 or fewer inpatient beds and at least 35 miles from another hospital. HOFS only pertains to Non-Critical-Access Hospitals.

2 The HOFS report mandate specifically directs DLI to analyze payment timeliness and accuracy under HOFS (Minnesota Statutes § 176.1364). The ASCPS report mandate directs DLI to analyze the "impact" of ASCPS including payment timeliness and accuracy under that system.

3 With the insurer data, DLI computed the time from billing to payment as the time from bill receipt to the sending of payment. With the provider data, DLI estimated the date the insurer received the bill from the date the provider sent it, and estimated the date the insurer sent payment from the date the provider received it. DLI then computed the time from billing to payment as the time from the estimated date the insurer received the bill to the estimated date it sent payment.

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Report of benefits paid (SCF assessment) accepted in Campus or on form

Work Comp Campus will now be used for the annual Workers' Compensation Report of Benefits Paid reporting process, but – this year only – reporting via a fillable form on the Department of Labor and Industry (DLI) website will also be accepted (see link below for the form).

In Campus, the individual who does the reporting must be designated as the "Assessment Contact" in Campus. Group administrators should ensure a contact has been identified and entered in Campus for their organization. Individuals who reported last year were notified recently by an email message instructing them to register in Campus and request access from their group administrator.

Workers’ compensation claims, costs show long-term downward trend

David Berry
DLI Research and Statistics

Minnesota’s workers’ compensation claim rate and system cost per $100 of payroll showed little change in 2019 as compared with the prior year, but their long-term trends are downward.

Figure 1 shows the rate of paid claims per 100 full-time-equivalent (FTE) workers from 1999 through 2019. During this period, the total claim rate fell in half, from 8.2 per 100 FTE workers to 4.1, and the indemnity claim rate fell by 42%, from 1.67 to .97. During the 20-year period, the total claim rate fell at an average annual rate of 3.6%.

Figure 2 shows total workers’ compensation system cost per $100 of covered payroll. From 1999 through 2019, system cost fell from $1.34 to $1.01 per $100 of payroll, a drop of 25%. During the long term, system cost per $100 of payroll follows a cycle of about 10 years.¹ Taking averages over adjacent 10-year periods gives an average annual rate of decline of 2.4%.

While the falling claim rate – at an average annual rate of 3.6% – tends to push down system cost per $100 of payroll, the latter is also affected by the trend in average claim cost. As adjusted for average wage growth, average claim cost grew rapidly from 1999 to 2008, but has been stable since 2008. Without the decrease in the claim rate, the increase in average claim cost during the first half of the period would have brought about an increase in system cost per $100 of payroll, but the increase in average claim cost was counter-acted by the falling claim rate.

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1. This cycle follows a nationwide cycle of alternating “hard” and “soft insurance markets – periods of high and low premiums, respectively, relative to claim costs.

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*Figure 1*
Paid claims per 100 full-time-equivalent workers, injury years 1999-2019 [1]

<table>
<thead>
<tr>
<th>Injury year</th>
<th>Indemnity claims</th>
<th>Medical-only claims</th>
<th>Total claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
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<td>8.2</td>
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<tr>
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<td>.94</td>
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<tr>
<td>2017</td>
<td>.94</td>
<td>3.0</td>
<td>4.0</td>
</tr>
<tr>
<td>2018</td>
<td>.97</td>
<td>3.1</td>
<td>4.1</td>
</tr>
<tr>
<td>2019</td>
<td>.97</td>
<td>3.2</td>
<td>4.1</td>
</tr>
</tbody>
</table>

¹. Computed by DLI Research and Statistics; projected to full maturity.

*Figure 2*
System cost per $100 of payroll, 1999-2019 [1]

<table>
<thead>
<tr>
<th>Cost per $100 of payroll</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
</tr>
<tr>
<td>2004</td>
</tr>
<tr>
<td>2010</td>
</tr>
<tr>
<td>2015 [2]</td>
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<tr>
<td>2016 [2]</td>
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<tr>
<td>2017 [2]</td>
</tr>
<tr>
<td>2018 [2]</td>
</tr>
<tr>
<td>2019 [2]</td>
</tr>
</tbody>
</table>

2. Subject to revision.
Wage differences in payment of PPD benefits, settlements

By Brian Zaidman, Research and Statistics

While averages and percentages based on all filed claims are a convenient tool to understand the overall status of the workers’ compensation system, they can often conceal important differences in how groups of workers experience the workers’ compensation benefit system. This is especially the case when we examine differences in types of benefit payments by wage level. As shown in the figures below, workers in the lowest and highest wage categories received permanent partial disability (PPD) and settlement payments (stipulated benefits) at opposite ends of the range above and below the total for all claims. Many workers making claims for PPD benefits enter into settlement agreements when the level of permanent disability is in dispute or when there is a desire to receive a lump-sum payment of benefits. Some workers receive both PPD benefits and settlement agreements.

Figure 1 shows the trend in the percentage of claims with PPD benefits paid outside of a settlement agreement, for five wage-level categories, by the year of claim closure. The lowest wage level, $195 or less, is the set of workers receiving the minimum temporary total disability (TTD) weekly benefit. Weekly benefits, including weekly PPD benefits, are paid at $130 a week, or the worker’s weekly wage if it is less than $130. As shown in Figure 1, the percentage of claims within each wage group receiving PPD benefit payments increased as weekly wage increased. For claims closed in 2019, 15% of the workers with weekly wages of $195 or less received PPD benefits, compared with 24% among workers with weekly wages greater than $1,000.

Figure 2 shows the trend in the percentage of claims with a stipulated benefit payment, for five wage-level categories, by the year of claim closure. As shown in Figure 2, the percentage of claims within each wage group receiving stipulated benefits generally decreased as weekly wages increased. For claims closed in 2019, 29% of the workers with weekly wages of $195 or less received stipulated benefits, compared with 16% among workers with weekly wages greater than $1,000.

CompFact, continues ...
The effect of these differences is highlighted in Figure 3, which shows the ratio of the number of claims receiving PPD benefits to the number of claims receiving stipulated benefits. For claims closed in 2019, while the overall ratio across all wage levels is 87 claims with PPD payments for every 100 claims with stipulated benefits (87% ratio), the ratio is 53% for workers with weekly wages of $195 or less, compared with a ratio of 145% among workers with weekly wages greater than $1,000.
FAQs: Workers' compensation coverage for employees who contract COVID-19; other resources


1. What should I do if I believe I contracted COVID-19 while working?

- You may be eligible for workers' compensation benefits if you contract COVID-19 at work. Notify your employer as soon as possible after you develop symptoms you think could be COVID-19. There are time limitations for reporting an injury to the employer. See the information sheet at www.dli.mn.gov/sites/default/files/pdf/infosheet_reporting_work_injury.pdf.
- Consider whether you might be covered by the law, passed in April 2020, that says certain employees on the front lines of the COVID-19 pandemic, as described in questions 3 and 4 below, are presumed to have contracted a workers' compensation occupational disease if they become ill with COVID-19. But even if you are not covered by the presumption law, you may be eligible for workers' compensation benefits. See questions 5 and 6 for more information.
- Seek medical care from a health care provider and request a test. Provide a copy of the test results or, if no test was available, a diagnosis by a licensed health care provider to your employer or your employer's workers' compensation insurer. If you believe you could be entitled to the presumption under the presumption law described in question 4, the diagnosis must be made by a licensed physician, licensed physician's assistant or licensed advanced practice registered nurse.
- Keep detailed records and be prepared to provide your employer with facts to support your claim as soon as you know or suspect you have COVID-19. For example, consider the following.
  - Why do you believe you contracted COVID-19 at work? When were you exposed at work, who were you exposed to and when did you develop symptoms? Can you identify one or more people with COVID-19 you were exposed to?
  - When did you develop symptoms, when did you contact a health care provider and when did you notify your employer of those symptoms?
  - When did you last work? If you are no longer working for the employer, why not?
  - If you think you might be covered by the presumption law, provide facts to show you were employed in one of the listed occupations (see question 4). What is your occupation? Where did you work at the time you became ill? What were your job responsibilities? Who did you have contact with as part of your job duties?
  - If you are a health care worker, did you care for or assist a person with COVID-19 or did you work on a COVID-19 unit? What dates did you work with a person with COVID-19 or work on a COVID-19 unit? Do you know the names of people with COVID-19 you cared for or assisted? It may be helpful to keep notes of any close contacts you have had with COVID-19 positive people while at work.
2. **What are an employer's obligations when an employee reports an injury or illness?**

- The employer must file a first report of injury with the workers' compensation insurer or claim administrator. The insurer or claim administrator must notify the employee in writing within 14 days whether the employee’s claim is accepted or denied.
- If the employer does not file a report of injury with its insurer or claim administrator, the employee may contact the Department of Labor and Industry's Workers' Compensation Division Help Desk for assistance (see question 15).

3. **I have heard there is a law about workers' compensation coverage of COVID-19. What does this law do?**

- The law, effective April 8, 2020, provides that certain employees on the front lines of the COVID-19 pandemic, as described in question 4 below, are presumed to have contracted a workers' compensation occupational disease if they become ill with COVID-19.

4. **Who is covered by the presumption law?**

An employee is entitled to the presumption if they contract COVID-19 on or after April 8, 2020, while employed in one of these occupations:

- a licensed peace officer under *Minnesota Statutes, section 626.84, subdivision 1*, a firefighter, a paramedic or an emergency medical technician;
- a nurse or health care worker, correctional officer or security counselor employed by the state or a political subdivision (such as a city or county) at a corrections, detention or secure treatment facility;
- a health care provider, nurse or assistive employee employed in a health care, home care or long-term care setting, with direct COVID-19 patient care or ancillary work in COVID-19 patient units;
- a person required to provide child care to first responders and health care workers under Executive Orders 20-02 and 20-19.

Note that Executive Order 20-82 and Executive Order 20-94 contain the following language: "Workers required to provide care to Eligible Children under this Executive Order, which extends the requirement under Executive Order 20-02, paragraph 11, and Executive Order 20-19, paragraph 18, will continue to enjoy the presumption provided under Minnesota Laws 2020, Chapter 72, section 1." The Minnesota Department of Education has more information about this in its document, "School-age care guidance and FAQs for 2020-21 school year," available at [www.dli.mn.gov/sites/default/files/pdf/dept_of_education_school-age_children_critical_workers.pdf](http://www.dli.mn.gov/sites/default/files/pdf/dept_of_education_school-age_children_critical_workers.pdf).

Under this presumption law, an employee's date of injury is either the date the employee was unable to work due to contraction of COVID-19 or was unable to work due to symptoms that were later diagnosed as COVID-19, whichever occurred first.

5. **Can I still make a workers' compensation claim related to COVID-19 if I am not employed in one of the occupations described in the presumption law?**

- Yes, an employee who has COVID-19 but who was not employed in one of the occupations described in question 4 can still claim a workers' compensation injury or occupational disease if they believe their illness is due to their employment.
6. **I believe I contracted COVID-19 from a coworker. My employer refuses to file a workers' compensation claim because they say I am not covered by the workers' compensation presumption under the law and I must have contracted it in the community. What are my rights?**

- If you notify your employer that you believe you contracted COVID-19 at work and want to file a workers' compensation claim, your employer must report the injury to its workers' compensation insurer even if you are not covered by the presumption law. The insurer must investigate your claim and notify you if it is accepting or denying your claim within 14 days. If your employer refuses to complete a report of injury, contact the Minnesota Department of Labor and Industry's Workers' Compensation Division Help Desk (see question 15).

7. **What are my rights if my workers' compensation claim is denied?**

- Review the reasons the insurer denied your claim. Are the reasons accurate? Does the insurer have all the facts that you have? (See question 1.) You may contact the insurer's claim manager to provide additional medical information or other facts to support your claim. If the insurer continues to deny your claim, you can contact the Workers' Compensation Division Help Desk (see question 15). You can also contact a workers' compensation attorney for an opinion about your rights to challenge the denial. Attorneys will not charge a fee for an initial consultation.

8. **What benefits are available to employees under workers' compensation law?**

- Other information about workers' compensation benefits is available on DLI's website at:
  - [www.dli.mn.gov/workers/workers-compensation-workers](http://www.dli.mn.gov/workers/workers-compensation-workers); and

9. **Are employees entitled to workers' compensation benefits if they are exposed to COVID-19 at work and are required by their employer to self-isolate?**

- If an employee is not ill, but must stay home from work because they were exposed to COVID-19, they are not entitled to workers' compensation benefits. If an employee was exposed at work and later contracted COVID-19, the illness may be a workers' compensation injury. Some employers also provide COVID-19 leave for employees who self-isolate at home due to a COVID-19 exposure. There may be compensation for the time missed during mandatory isolation from the Families First Coronavirus Response Act (FFCRA), although that expired Dec. 31, 2020. Learn more about FFCRA at [www.dol.gov/agencies/whd/pandemic/ffcra-questions](http://www.dol.gov/agencies/whd/pandemic/ffcra-questions).
10. Can an employer require an employee to sign a waiver agreeing the employer is not liable if an employee contracts COVID-19 on work premises? Can an employer fire an employee or refuse to allow an employee to return to work for refusing to sign a waiver?

- No, these waivers and agreements are prohibited and are not enforceable under Minnesota law. Employees cannot sign away the right to file a workers’ compensation claim and an employer may not discriminate against a worker for reporting an injury. It is also prohibited for employers to advise employees to not report an injury, agree to hold an employer harmless for an injury or relinquish rights an employee may have to workers’ compensation benefits. A waiver agreement could expose an employer to liability for civil damages for obstructing employees from seeking workers’ compensation benefits.

11. Can I still make a claim if I become ill with COVID-19 due to a workplace exposure if my employer is not insured for workers' compensation?

- Yes, you can contact the Workers' Compensation Division Help Desk to verify your employer’s workers’ compensation coverage (see question 15). If your employer has no coverage, the state of Minnesota’s Special Compensation Fund will investigate and administer the claim. You should still provide your employer with prompt notice of your claim and with a copy of your positive test results or documentation of your COVID-19 diagnosis.

12. I need assistance with returning to work. Who can help me?

- DLI’s Vocational Rehabilitation unit (VRU) provides vocational rehabilitation services to injured workers. VRU works with injured workers with accepted workers’ compensation claims and those whose claims have been denied by the employer or insurer when there is pending litigation. Contact the Workers' Compensation Division Help Desk to see if you are eligible for VRU assistance (see question 15).
- When an injured worker is eligible for rehabilitation services, an individualized rehabilitation plan is developed. Services might include assistance in returning to the date-of-injury employer or finding new employment.
- Injured workers do not have to pay for VRU services, unless agreed to in a settlement. The costs are paid by insurance carriers, self-insured employers or special state funds.

13. Is other relief available to workers who contract COVID-19, aside from workers' compensation benefits?

  - Use of sick leave;
  - Family and Medical Leave Act (FMLA);
  - Families First Coronavirus Response Act (FFCRA);
  - Employers cannot discriminate (employee’s right to a reasonable accommodation);
  - Reminders for employers;
  - Workers cannot be fired or denied the opportunity to be rehired for applying for unemployment insurance;
  - UI benefits;
  - Protections for workers who contract or have been exposed to COVID-19;
  - Workers’ compensation;
  - Final wages;
  - Changes to working conditions (overtime mandates, work location changes);
  - Hours worked; hours paid (salaried exempt employees, volunteering); and
  - Workplace safety and health (reporting health and safety concerns at work, refusal to work).
14. What other information is available about COVID-19 in the workplace?

  - Denials of liability related to COVID-19 illnesses;
  - Filing a first report of injury for COVID-19 claims;
  - COVID-19 and OSHA recordkeeping;
  - How the Office of Workers’ Compensation Ombudsman can help with claims;
  - Discontinuing benefits on COVID-19 claims: Specificity of reason, layoffs; and
  - Waiver of workers’ compensation rights prohibited.
- In addition to the resources described in these FAQs, DLI’s webpage has a variety of COVID-19 resources at www.dli.mn.gov/updates, including:
  - Stay Safe Plan for safely reopening Minnesota;
  - COVID-19 Preparedness Plan template and instructions (available in Burmese, English, Hmong, Somali and Spanish);
  - Frequently asked questions: COVID-19 and school employee rights and protections;
  - COVID-19 workers’ compensation claims statistics (updated every month);
  - Frequently asked questions for employers and employees related to COVID-19;
  - Minnesota OSHA printable handouts and resources related to COVID-19;
  - Minnesota worker resource guide for employees in processing and manufacturing plants;
  - Unemployment insurance; and
  - Updates from DLI’s work units and divisions.

15. Where can I get help with questions?

- **Workers’ compensation**: Contact DLI’s Workers’ Compensation Division Help Desk at 651-284-5005 (press 3), 800-342-5354 (press 3) or helpdesk.dli@state.mn.us.
- **Wage and hour related**: Contact DLI's Labor Standards unit at 651-284-5075, 800-342-5354 or dli.laborstandards@state.mn.us.
- **Workplace safety and health**: Contact DLI’s Minnesota OSHA Compliance unit at 651-284-5050, 877-470-6742 or osha.compliance@state.mn.us.
- **Discrimination**: Contact the Minnesota Department of Human Rights' Discrimination Helpline if your employer denied you a reasonable accommodation, at 833-454-0148 or by submitting the online form at https://mn.gov/mdhr/intake/consultationinquiryform/.

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**Annual reports updated, available online**

The Department of Labor and Industry (DLI) is required to publish an annual report about the assessment and collection of fines and penalties under the workers’ compensation law – **Collection and Assessment of Fines and Penalties**.

DLI is also required to publish an annual report about the promptness of all insurers and self-insurers making first payments or denials on a claim for injury – **Prompt First Action Report on Workers’ Compensation Claims**.

Both reports were recently updated and are available online at www.dli.mn.gov/business/workers-compensation/work-comp-reports-publications.
Recordkeeping training offered via webinar in May

Maintaining an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. The Department of Labor and Industry is offering free introductory-level training sessions about OSHA recordkeeping in May. Registration is required.

Dates

- May 7 – Webinar only, 8:30 to 11:30 a.m.

Topics

- Recordability of injuries and illnesses
- Differences between OSHA cases and workers’ compensation claims
- Classifying cases
- Counting time
- Privacy cases
- How many logs to keep
- Maintaining logs
- Creating a log summary
- Reporting log data to OSHA
- Recording COVID-19 cases

Registration, more information

For more information about the training sessions and to register, visit www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard.

Turn to Office of Workers' Compensation Ombudsman for help with claims

The Department of Labor and Industry's Office of Workers' Compensation Ombudsman informs, assists and empowers injured workers and small businesses having difficulty navigating the workers' compensation system.

The ombudsman assists injured workers by:

- providing information to help them protect their rights and to pursue a claim;
- contacting claims adjusters and other parties to resolve a dispute;
- assisting in preparing for settlement negotiations or mediations; and
- making appropriate referrals to other agencies or entities if needed.

The ombudsman assists small businesses by:

- providing information about what to do when an employee is injured;
- directing them to appropriate resources for assistance in obtaining and resolving issues regarding workers' compensation insurance; and
- responding to questions pertaining to employers' responsibilities under Minnesota’s workers' compensation law.

The Office of Workers' Compensation Ombudsman also recommends statute or rule changes to improve the effectiveness of the workers' compensation system.

To request assistance, contact the Office of Workers' Compensation Ombudsman at 651-284-5013, 800-342-5354 or dli.ombudsman@state.mn.us.
Workers' compensation events calendar

Note: Event dates may change. Always check the online calendar at www.dli.mn.gov/about-department/about-dli/events-workers-compensation.

April 2021

April 7  Campus Answer Hour for Insurers, Self-insurers, Third-party Administrators and Trading partners
April 7  Campus Answer Hour for Law Firms
April 8  Campus Answer Hour for EDI trading partners
April 15 Medical Services Review Board
April 23 Campus Answer Hour for Rehabilitation Providers

May 2021

May 7  Training: The basics of OSHA recordkeeping
May 19 Workers' Compensation Insurers' Task Force

June 2021

June 9  Workers' Compensation Advisory Council
Daniel Bierbach v. Digger’s Polaris, Nov. 10, 2020

Jurisdiction – Subject Matter

The compensation judge had subject matter jurisdiction under Minnesota law to determine whether the employee was entitled to reimbursement for medical cannabis. This court declines to rule on whether the Minnesota medical cannabis laws are pre-empted by federal criminal statutes.

Medical Treatment and Expense – Reasonable and Necessary

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

Affirmed.

Susan K. Musta v. Mendota Heights Dental Center, Nov. 10, 2020

Jurisdiction – Subject Matter

As the parties stipulated that the medical marijuana dispensed to the employee was reasonable and necessary to relieve the effects of the employee’s work injury, the compensation judge’s award of reimbursement is affirmed, but the findings made regarding the federal pre-emption issue arising under the Controlled Substances Act, 21 U.S.C. § 801 et seq., are stricken as the compensation judge had no subject matter jurisdiction to consider that issue.

Affirmed.

Michael H. McMillan v. Freeman Expositions, Inc., Nov. 25, 2020

Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge’s finding that the employee did not sustain a bilateral knee injury when he stepped on a power cord threshold while working for the employer.

Affirmed.
Pamela J. Upton v. Motel 6, Dec. 1, 2020

Causation – Substantial Evidence

Substantial evidence, including adequately founded expert medical opinion, supports the compensation judge’s finding that the employee had no disability related to her work injury.

Rehabilitation – Consultation

An employee who has no employment restrictions related to the work injury is not entitled to a rehabilitation consultation.

Temporary Total Disability – Work Restrictions
Temporary Partial Disability – Work Restrictions

An employee is not eligible for wage-loss benefits when not subject to employment restrictions related to the work injury.

Affirmed.

Ryan Boyum v. Dvorak Tree Services, Dec. 15, 2020

Wages – Seasonal Work
Wages – Calculation

Where the compensation judge did not make specific findings regarding the employee’s claim that he was a seasonal worker “in an industry where the hours of work are affected by seasonal conditions” pursuant to Minnesota Statutes § 176.011, subdivision 8a, the judge’s finding regarding the employee’s weekly wage determination is vacated and the matter is remanded to the compensation judge for further consideration.

Vacated and remanded.


Penalties

The compensation judge’s award of penalties under Minn. Stat. § 176.225, subds. 1 and 5, should have considered not only late payments made by the employer, but also undisputed and unpaid medical expenses.

Affirmed, in part, and vacated and remanded, in part.

Habtemicael Tcelehaimanot v. TCF Financial Corporation, Dec. 16, 2020

Medical Treatment and Expense – Causation

Substantial evidence, including expert medical opinion, supports the compensation judge’s denial of benefits as the employee did not demonstrate that his medical condition arose from a work injury.

Appeals – Scope of Review

This court’s standard of review on an appeal from a findings and order normally limits it to consider only the evidence submitted into the hearing record.

Affirmed.

**Notice of Injury – Gillette Injury**

Substantial evidence supports the compensation judge’s conclusion that the employer had sufficient knowledge of the employee’s injury within the statutory notice requirements.

**Weekly Wage – Calculation**

The compensation judge did not err in including payment for sick leave the employee earned and received when unable to work for a non-work-related condition in calculating his weekly wage.

Affirmed.


**Practice and Procedure**

The compensation judge did not err by declining to strike the employer and insurer’s untimely answer and to deem admitted the averments contained in the claim petition, and to instead proceed with an immediate hearing under the requirements of Minn. Stat. § 176.331.

Affirmed.

Jenny Hilpert v. Maid Pro, Dec. 23, 2020

**Medical Treatment and Expense – Treatment Parameters**

**Rules Construed – Minnesota Rules 5221.6200, Subpart 6(C)(1)(b)**

Substantial evidence supported the compensation judge’s finding that the employee was a candidate for another surgical treatment and accordingly failed to meet one of the three necessary requirements for a trial of a spinal stimulator. Where one of the necessary requirements is not met, the judge reasonably denied the employee’s request that the employer and insurer pay for a psychological consultation intended solely to determine whether the employee also met another of the three necessary conditions under the rule.

Affirmed.


**Attorney fees – Genuine Dispute**

An award of fees from a benefit of the employee that is not yet due and not yet payable is premature. Not until the benefit is payable to the employee can it be determined what role an attorney played in obtaining that benefit for purposes of awarding attorney fees.

Vacated.
Rowda Ibrahim v. Presbyterian Homes and Services, Dec. 29, 2020

Evidence – Credibility

The assessment of witness credibility is the unique function of the compensation judge and the compensation judge’s conclusion that the employee was not reliable or credible upon consideration of video surveillance footage and contemporaneous medical records is upheld.

Evidence – Expert Medical Opinion

The compensation judge’s reliance on medical expert opinions that were well-founded and consistent with the employee’s medical record is upheld.

Affirmed.

Mara Tellez v. JBS USA, L.L.C., Dec. 29, 2020

Gillette Injury – Substantial Evidence

Substantial evidence, including lay testimony, medical records and expert medical opinion, supported the findings of Gillette injuries with respect to the employee’s right shoulder, left carpal tunnel, left trigger fingers and recurrent right carpal tunnel, culminating in disability on July 23, 2019.

Affirmed.

William A. Schultz v. Andy and Steve’s Lawn and Landscape, Jan. 5, 2021

Employment Relationship – Independent Contractor

Rules Construed – Minnesota Rules 5224.0110, 5224.0330 and 5224.0340

The rule of law and substantial evidence support the compensation judge’s finding that the injured worker was an independent contractor where the worker did not meet the criteria under the safe harbor provisions of Minn. R. 5224.0110, subparts 2 or 3, and the judge properly applied the factors in Minn. R. 5224.0330 and 5224.0340.

Affirmed.

Gerald Grace v. Smith Foundry Company, Jan. 12, 2021

Attorney Fees

The compensation judge did not abuse her discretion in determining that the employee’s attorney’s claim for fees was not premature given the employee was furloughed, not working, and not receiving indemnity benefits, such that there was no ongoing stream of benefits from which the attorney could collect contingent fees.

Attorney Fees – Roraff or Irwin Fees

The compensation judge’s award of Roraff/Irwin fees is vacated and the matter remanded for application of the Irwin factors without consideration of medical benefits not yet recovered by the employee.

Costs and Disbursements

The compensation judge did not abuse her discretion in finding the costs to obtain expert reports to support the employee’s prior, unsuccessful claim were not taxable.

Affirmed in part, reversed and remanded in part.