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MINNESOTA DEPARTMENT OF LABOR & INDUSTRY
WORKERS' COMPENSATION DIVISION

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Workers' compensation cumulative trauma injuries: *Gillette* injuries in Minnesota

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Q. What is a *Gillette* injury?

A. A *Gillette* injury is a concept in Minnesota workers' compensation. A *Gillette* injury occurs when the cumulative effects of minute, repetitive trauma are serious enough to disable an employee. The term *Gillette* came from the case in which this type of injury was first recognized by the Minnesota Supreme Court: *Gillette v. Harold, Inc.*[1]

Based on that case, a workers' compensation injury is not limited to one distinct event (such as a fall resulting in a broken arm) but may extend over a continuous period of time. The court also noted that "in the course of one's ordinary duties, injuries may occur daily which may cause minimal damage, the cumulative effect of which in the course of time may be as injurious as a single traumatic occurrence which is completely disabling."

Examples of work that has been found to cause *Gillette* injuries are: assembly line, clerical/secretarial, construction or other occupations involving repetitive activities such as bending, stooping, lifting, standing or walking. For example, carpal tunnel syndrome caused by work activity may be the result of a *Gillette* injury.

Q.Since a Gillette injury may occur over a period of time, how is the date of injury determined for purposes of workers' compensation?

A. There are various factors that determine when a *Gillette* injury occurred. A *Gillette* injury is considered to have occurred on the "date of disablement." Initially, courts held that the date of a *Gillette* injury was established when there was an "ultimate breakdown"; an "ultimate breakdown" occurred when an employee lost time from work due to the *Gillette* injury.[2,3]

The courts broadened the meaning of the "date of disablement" and now consider other "ascertainable events" that evidence the culmination of a disability.[4] Examples of these ascertainable events are: modification of job duties due to doctor's restrictions;[5] the date the employee initiated medical attention;[6] the date of an MRI scan and of a definite diagnosis;[7] when the employee's treating doctor determined the condition was related to the worker's employment;[8] when the employee's symptoms recurred after they had previously subsided;[9] and when the employee sought regular medical care even though the employee had not lost significant time from work.[10]

Q. How does an employee or other party prove to a court a *Gillette* injury has occurred?

A. Initially, courts required an employee to prove specific work activities caused specific symptoms that led to a disability.[11] However, in a later case,[12] the Minnesota Supreme Court held that an employee need only prove a causal connection between his or her ordinary work and the ensuing disability. The employee's testimony alone is not enough to establish the connection; the finding depends mainly on medical evidence.[13] The medical

provider must have adequate foundation of the actual nature of the employee's work duties to determine those duties caused the employee's symptoms.[14]

Q. Since a *Gillette* injury occurs over time, which employers are required to pay workers' compensation benefits to the injured worker?

A. The liability for a *Gillette* injury is on the employer for whom the employee was working on the date of disablement. Earlier employers whose work may have contributed to the *Gillette* injury usually aren't liable at all. An exception would be in rare circumstances where substantial and uncontroverted medical evidence will permit a precise allocation of liability between different employers.[15] There may be apportionment between the *Gillette* injury for which liability is being established and previous specific injuries or *Gillette* injuries that have been previously established.[16]

Q. How much time is required for an employee's work to be considered a *Gillette* injury?

A. The length of time the employee performed the work activity is one factor to be considered. Courts have found that relatively short periods of time (one month or fewer) can contribute to a *Gillette* injury and, therefore, the employer for that short period of time was liable.[17] However, other courts have held that much longer periods of employment did not cause a *Gillette* injury.[18]

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[1] *Gillette v. Harold, Inc.*, 21 W.C.D. 105, 101 N.W.2d 200 (1960)

[2] *Prouty v. City of Duluth*, 29 W.C.D. 550 (1977)

[3] *Gilmore v. Little Jack's Steakhouse*, 32 W.C.D. 4 (1979)

[4] *Schnurrer v. Hoerner-Waldorf*, 345 N.W.2d 230 (Minn. 1984)

[5] *Weckerly v. Smythe Cos. Inc.*, slip op. (W.C.C.A. January 14, 2002) Westlaw Citation: 2002 WL 187176

[6] *Schaffer v. Minn. Orchestra*, 53 W.C.D. 341 (1995)

[7] *Reel v. Loftness Specialty Farm Equipment*, slip op. (W.C.C.A. February 3, 2004) Westlaw Citation: 2004 WL 377651 (Minn.Work.Comp.Ct.App.)

[8] *Neff v. Supervalue, Inc.*, 71 W.C.D. 217 (W.C.C.A. 2011)

[9] *Giesbrecht v. Interplastics*, slip op. (W.C.C.A. October 6, 2003)

[10] *Cramer v. United Parcel Servs.*, 72 W.C.D. 519 (W.C.C.A. 2012)

[11] *Reese v. North Star Concrete*, 38 W.C.D. 63 (1985)

[12] *Steffen v. Target Stores*, 50 W.C.D. 464, 517 N.W.2d 579 (Minn. 1994)

[13] *Barros v. Scimed Life*, slip op. (W.C.C.A. May 5, 2004) Westlaw Citation: 2004 WL 1195636 (Minn.Work.Comp.Ct.App.)

[14] *Jones v. Accessible Space*, slip op. (W.C.C.A. August 25, 1994) Westlaw Citation: 1994 WL 498685 (Minn.Work.Comp.Ct.App.)

[15] *Carlson v. Flour City Brush Co.*, 33 W.C.D. 594, 305 N.W.2d 347 (Minn. 1981)

[16] *Sanchez v. Land O Lakes*, 43 W.C.D. 113 (1990)

[17] *Giesbrecht v. Interplastics*, slip op. (W.C.C.A. October 6, 2003)

[18] *Miska v. Peck Construction*, slip op. No. WC05-306, (W.C.C.A. September 19, 2006) Westlaw Citation: 2006 WL 2923530 (Minn.Work.Comp.Ct.App.)