

MINNESOTA

1. Citation for the state's workers' compensation statute.

Minnesota Statutes Annotated Ch. 175A and 176, et seq.

SCOPE OF COMPENSABILITY

2. Who are covered "employees" for the purposes of workers' compensation?

"Employee" means any person who performs services for another for hire. Minn. Stat. Ann. §176.011(9)(1-25). Employee does not include farmers or members of their family who exchange work with other farmers in the same community. §176.011(9a).

3. Identify and describe any "statutory employer" provision.

In an injury or death occur under circumstances creating a legal liability on the part of a party other than employer and that party was insured or self-insured in accordance with the Act, the employee or his dependent may proceed either at law against that party to recover damages or against the employer for benefits but not against both.

The provisions of this section only apply if the employer is liable for benefits and the other party legally liable for damages are insured or self-insured and engaged in due course of business in 1) furtherance of a common enterprise or 2) in the accomplishment of the same or related purpose in operations on the premise where the injury was received at the time of the injury.

Minn. Stat. Ann. §176.061 (1) and (4). See *Schleicher v. LundaConst Co.*, 406 N.W.2d 311 (Minn. 1987); *Rasmussen v. George Benz & Sons*, 168 Minn. 319, 210 N.W. 75 (1926).

4. What types of injuries are covered and what is the standard of proof for each:

A. Traumatic or "single occurrence" claims.

Personal injury means any mental impairment or physical injury arising out of and in the course of employment and includes personal injury caused by occupational disease; but does not cover an employee except while engaged in, on, or about the premises where the employee's services require the employee's presence as a part of that service at the time of the injury and during the hours of that service. Where the employer regularly furnished transportation to employees to and from the place of employment, those employees are subject to this chapter while being so transported. Physical stimulus resulting in mental injury and mental stimulus resulting in physical injury shall remain compensable. Minn. Stat. Ann. §176.011(16). Predisposition to the disease does not disqualify the claimant from coverage. *Swanson v City of St. Paul*, 526 NW 2d 366, 369(Minn. Ct. App. 1995).

B. Occupational disease (including respiratory and repetitive use).

“A mental impairment or physical disease arising out of and in the course of employment peculiar to the occupation in which employee is engaged and due to causes in excess of the hazards ordinary of employment” is compensable. Also, “physical stimulus resulting in mental injury and mental stimulus resulting in physical injury shall remain compensable.” Mental impairment is not considered a disease if it results from a disciplinary action, work evaluation, job transfer, etc. Ordinary disease of life to which the public is equally exposed outside of the employment are not compensable, except for if the disease follows an incident of an occupational disease where the exposure particular to the occupation makes the disease an occupational disease hazard. There must be “a direct causal connection between the conditions under which work is performed and it must follow as a natural incident of the employment.” Minn. Stat. Ann. §176.011(15). Predisposition to the disease does not disqualify the employee from coverage. *Swanson v. City of St. Paul*, 526 N.W. 2d 366, 369 (Minn. Ct. App. 1995).

5. What, if any, injuries or claims are excluded?

Any injury caused by the intentional act of a third person or fellow employee for personal reasons and not directed against the employee as an employee, or because of employment, is excluded. Minn. Stat. Ann. §176.011(16). If injury was intentionally self-inflicted or the intoxication of the employee is the proximate cause of the injury, the employer is not liable, the burden of proof is on the employer. Minn. Stat. Ann §176.021 (1).

Mental impairment is not considered a personal injury or a disease if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. Minn. Stat. Ann. §176.011(15) and (16).

6. What psychiatric claims or treatments are compensable?

Prior to October 1, 2013, any mental injury caused by a job-related stress without physical trauma is not compensable. Minn. Stat. Ann. § 176.021(1); *Lockwood v. Independent School District No. 877*, 312 N.W.2d 924 (Minn. 1981). However, in *Middleton v Northwest Airlines*, 600 NW2d 707,711 (Minn. 1999), the Supreme Court ruled that a suicide is compensable even without physical injury if work-related stress can be shown to be the legal and medical cause of the suicide.

Effective October 1, 2013, an employee must be diagnosed with post-traumatic stress disorder by a licensed psychiatrist or psychologist in order to make a compensable mental impairment claim. For the purpose of this chapter, “post-traumatic stress disorder” means the condition as described in the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association. Minn. Stat. Ann. §176.011(15)(d).

7. What are the applicable statutes of limitations?

A claim must be filed within three years after the date the employer makes written report of injury to the commissioner or within six years of the date of accident. Minn. Stat. Ann. §176.151(a). In the case of physical or mental incapacity, the period of limitation shall be extended for three years from the date the incapacity ceases. Minn. Stat. Ann. §176.151(c).

8. What are the reporting and notice requirements for those alleging an injury?

Unless the employer has actual knowledge of the occurrence of an injury or the employee gives written notice within 14 days after the injury, no compensation is due until notice is given or knowledge is obtained. If notice or knowledge is obtained by the employer within 30 days of the occurrence, compensation will be paid unless the employer can show it was prejudiced by the lack of notice. In any event, if notice is not provided within 180 days, no compensation is allowed excepting extreme circumstances, in which case the amount of compensation is reduced by a sum, which fairly represents the prejudice shown. Minn. Stat. Ann. §§176.141; Service of Notice Form Minn Stat Ann 176.145.

9. Describe available defenses based on employee conduct:

A. Self-inflicted injury, suicide [generally] and intoxication.

Minn. Stat. Ann. §176.021 (1) and (1a). See answer 5.

B. Willful misconduct, “horseplay,” etc.

Generally, where injury-producing conduct is in violation of a specific instruction or order of the employer, benefits are denied unless, contemporaneously with the violation, the employee was performing work in furtherance of the employer’s business. The test is whether the employee departed from the work for which he or she was employed to such an extent that it could not be said to have arisen out of the employment. *Bartley v. C/i-H Riding Stables, Inc.*, 206 N.W. 2d 660 (Minn. 1973); *Van Buren v City of Willmar*, MCCA, No. WC09-5012 (dec’d April 30, 2010), Minn Stat Ann §§176.031

C. Injuries involving drugs and/or alcohol.

When an employee becomes so intoxicated that he or she cannot perform any of the usual duties of the employment, an injury sustained while in that condition does not arise out of and in the course of the employment. *Fogarty v. Martin Hotel Co.*, 257 Minn 398 (1960). See also answer 5. Also, if the injury was intentionally self-inflicted or the intoxication of the employee is the proximate cause of the injury, then the employer is not liable for compensation. Minn. Stat. Ann. §176.021(1) and (1a).

10. What, if any, penalties or remedies are available in claims involving fraud?

MINNESOTA

Any person who, with intent to defraud, receives workers compensation benefits to which the person is not entitled by knowingly misrepresenting, misstating, or failing to disclose any material fact is guilty of theft and shall be sentenced under the theft statute Minn Stat Ann §609.52. See Minn Stat. Ann. §176.178 (1).

11. Is there any defense for falsification of employment records regarding medical history?

False representation as to physical condition or health made by an employee in procuring employment will preclude an award of benefits for an otherwise compensable injury if: (1) the employee knowingly and willfully made the false representation; (2) the employer substantially and justifiably relied on the false representation in hiring the employee; and (3) there is a causal relationship between the false representation and the injury. Minn Stat Ann § 176-178. *Jewison v. Frerichs Const.*, 434 N.W.2d 259 (Minn. 1989).

12. Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?

Generally, injuries are not considered “arising out of or in the course of employment” if the employer did not control or benefit from the recreational or non-work activity. See *McDonald v. St. Paul Fire & Marine Ins. Co.*, 183 NW2d 276 (Minn. 1970). See Answer 9b.

13. Are injuries by co-employees compensable?

Generally, yes, unless the injury is caused by an intentional act of a fellow employee due to personal reasons. Minn. Stat. Ann. §176.011(16).

14. Are acts by third parties unrelated to work but committed on the premises, compensable (e.g. “irate paramour” claims)?

No. Compensable personal injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of personal reasons, and not directed against the employee as an employee, or because of the employment. Minn. Stat. Ann. §176.011(16).

BENEFITS

15. What criterion is used for calculating the average weekly wage?

An employee’s “average weekly wage” is derived by multiplying the daily wage by the number of days and fractional days normally worked in the business of the employer for the employment involved. If the employee normally works less than five days per week or works an irregular number of days per week, the number of days normally worked shall be computed by dividing the total number of days in which the employee actually performed any of the duties of employment

in the last 26 weeks by the number of weeks in which the employee actually performed such duties, provided that the weekly wage for part time employment during a period of seasonal or temporary layoff shall be computed on the number of days and fractional days normally worked in the business of the employer for the employment involved. If, at the time of the injury, the employee was regularly employed by two or more employers, the employee's days of work for all such employment shall be included in the computation of the average weekly wage. Overtime is considered if it is regular or frequent, but not if it is occasional. The maximum weekly compensation must not exceed two-thirds of the product of the daily wage times the number of days normally worked. Minn. Stat. Ann. §176.011(18).

16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

The temporary total disability rate is 66 2/3 percent of the weekly wage at the time of the injury. The maximum weekly compensation payable is \$615 per week for dates of injury from 10/01/95 through 09/30/00. For dates of injury from 10/01/00 to 09/30/08, the maximum weekly rate is \$750.00. From 10/01/08 to 10/01/13 the maximum weekly rate is \$850.00. Commencing on 10/01/13, and each October 1 thereafter, the maximum weekly compensation payable is 102 percent of the statewide average weekly wage for the period ending December 31 of the preceding year. The minimum weekly compensation payable is \$104 per week or the employee's actual weekly wage, whichever is less for dates of injury from 10/01/95 through 09/30/00. For dates of injury on or after 10/01/00, the minimum weekly rate is \$130.00 or the actual weekly wage, whichever is less. Temporary total compensation must be paid during the period of disability. Minn. Stat. Ann. § 176.101(1). The maximum period of compensation may not exceed 130 weeks. However, during a period of retraining, the 130 week limitation does not apply, but is subject to the limitation before the plan begins and after the plan ends. . Minn. Stat. Ann. § 176.101 (1)(k).

In all cases of temporary partial disability, the compensation is 66 2/3 percent of the difference between employee's weekly wage at the time of injury and the wage the employee is able to earn in the employee's partially disabled condition. Such compensation must be paid during the period of disability, with payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the maximum rate for temporary total compensation. Minn. Stat. Ann. §176.101(2)(a).

17. How long does the employer/insurer have to begin temporary benefits from the date disability begins?

The employer/insurer must commence payment within 14 days of notice to or knowledge by the employer of a compensable injury. It must resume payment within the same time for a new period of temporary total disability, unless it files for an extension with the commissioner within the 14-day period, in which case compensation must commence no later than 30 days from the date of the notice or knowledge of the new period of disability. Minn. Stat. Ann. §176.221(1); Minn. R. 5220.2540.

Once temporary total or permanent total disability benefits have been commenced, they must continue on a regular basis. Payments are due on the date the employee would have received wages from the employer had the employee continued working. The same time limits apply to payments of temporary partial disability benefits. Minn. R. 5220.2540.

18. What is the “waiting” or “retroactive” period for temporary benefits (e.g. must be out — days before recovering benefits for the first ___ days)?

In the case of TTD or TPD, no compensation is allowed for the three calendar days after the disability commenced, nor in any case unless the employer has actual knowledge of the injury or is notified within the time period under §176.141. If disability continues for ten calendar days or longer, the compensation is computed from the commencement of the disability. Disability is deemed to commence on the first calendar day or fraction of a calendar day that the employee is unable to work. Minn. Stat. Ann. §176.121.

19. What is the standard/procedure for terminating temporary benefits?

The employer/insurer may not discontinue payment of compensation until it provides the employee with written notice of its intention to do so. The notice must be filed with the division and state the date of intended discontinuance and set forth a statement of facts clearly indicating the reason for the action. Copies of medical reports or other written reports relied upon for the discontinuance must be attached to the notice. Minn. Stat. Ann. § 176.238(1)(a).

If the reason for discontinuance is that the employee has returned to work, TTD may be discontinued effective the date the employee returned to work. A written notice shall be served upon the employee and filed with the Workers’ Compensation Division with 14 days. Minn. Stat. Ann. §176.238(1)(b).

Instead of filing a notice of discontinuance, an employer/insurer may serve on the employee and file with the commissioner a petition to discontinue compensation. The petition must include copies of medical reports or other written reports or evidence bearing on the physical condition or other present status of the employee which relate to the proposed discontinuance. Minn. Stat. Ann. § 176.238(5); Minn. R. 5220.2630 (discontinuance of compensation).

20. Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?

No.

21. What disfigurement benefits are available and how are they calculated?

There is a provision for disability calculations due to burns. Minn. R. 5223.0240. There is no other specific provision regarding disfigurement. However, under certain circumstances, with respect to

MINNESOTA

certain industries disfigurement may be characterized as a “personal injury” under the statute, which has led to direct wage loss. *See* Minn. Stat. Ann. §176.011(16).

22. How are permanent partial disability benefits calculated, including the minimum and maximum rates?

A. How many weeks are available for scheduled members/parts, and the standard for recovery?

See answer 22B.

B. Number of weeks for “whole person” and standard for recovery.

Payments for permanent partial disability must be made in the following manner: (1) If the employee returns to work, payment is made at the same interval as temporary total payments were made; (2) If temporary total payments have ceased; but the employee has not returned to work, payment is made at the same intervals as temporary total payments were made; (3) If temporary total disability payments cease because the employee is receiving payments for permanent total disability or because the employee is retiring or has retired from the work force, then payment is made at the same intervals as temporary total payments were made; (4) If the employee completes a rehabilitation plan, but the employer does not furnish the employee with work the employee can do in a permanently partially disabled condition, and the employee is unable to procure such work with another employer, then payment is made at the same intervals as temporary total payments were made. Minn. Stat. Ann. §176.021(3a).

Compensation for permanent partial disability must be rated as a percentage of the whole body. Minn. Stat. Ann. §§176.101(2) and 176.105. The percentage determined pursuant to the rules must be multiplied by the corresponding amount in the following table:

Impairment Compensation

<u>Percent of disability</u>	<u>Amount</u>
0 to less than 5.5	\$ 75,000
5.5 to less than 10.5	\$ 80,000
10.5 to less than 15.5	\$ 85,000
15.5 to less than 20.5	\$ 90,000
20.5 to less than 25.5	\$ 95,000
25.5 to less than 30.5	\$100,000
30.5 to less than 35.5	\$110,000
35.5 to less than 40.5	\$120,000
40.5 to less than 45.5	\$130,000
45.5 to less than 50.5	\$140,000
50.5 to less than 55.5	\$165,000

MINNESOTA

55.5 to less than 60.5	\$190,000
60.5 to less than 65.5	\$215,000
65.5 to less than 70.5	\$240,000
70.5 to less than 75.5	\$265,000
75.5 to less than 80.5	\$315,000
80.5 to less than 85.5	\$365,000
85.5 to less than 90.5	\$415,000
90.5 to less than 95.5	\$465,000
95.5 up to and including 100	\$515,000

Minn. Stat. Ann. §176.101(2a)(a).

An employee may not receive compensation for more than a 100 percent disability of the whole body, even if he or she sustains disability in two or more body parts. §176.101(2a)(a).

Permanent partial disability is payable upon cessation of temporary total disability. The employee may request a payment in lump sum. If so, he or she must be paid in 30 days. The payment may be discounted to the present value calculated up to a maximum five percent basis. The compensation is also payable in installments at the same intervals and in the same amount as the employee's temporary total disability rate on the date of injury. Permanent partial disability is not payable while temporary total compensation is being paid. Minn. Stat. Ann. § 176.101(2a)(b).

23. Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?

Such benefits are available and intended to return the employee to a job related to the former employment or to another job which produces an economic status as close as possible to that the employee would have had but for the disability. Rehabilitation to a job with a higher economic status is permitted if it can be demonstrated that it is necessary to increase the likelihood of re-employment. Economic status is measured by both opportunity for immediate and future income. Minn. Stat. Ann. §176.102(1)(b).

A rehabilitation consultation must be provided upon request of the employee, the employer, or the commissioner. Minn. Stat. Ann. § 176.102(4). The employer may select the consultant, but if the employee objects to the employer's choice, he or she may select one within 60 days after a rehabilitation plan is filed. *Id.* The commissioner or a compensation judge determines eligibility for rehabilitation services, and will review, approve, modify, or reject rehabilitation plans. Minn. Stat. Ann. § 176.102(6)(a).

24. How are permanent total disability benefits calculated, including the minimum and maximum rates?

Permanent total disability is defined as: (1) the total and permanent loss of the sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips than no effective

artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties; or (2) any other injury which totally and permanently incapacitates the employee from working at an occupation which brings the employee an income, provided that the employee must also meet the criteria of one of the following clauses: (a) the employee has at least a 17 percent permanent partial disability rating of the whole body; or (b) the employee has a permanent partial disability rating of the whole body of at least 15 percent and the employee is at least 50 years old at the time of the injury; or (c) the employee has a permanent partial disability rating or the whole body of least 13 percent and the employee is at least 55 years old at the time of the injury, and has not completed grade 12 or obtained a GED certificate. Employees must also show that the above causes result in the fact that the employee is unable to secure anything more than sporadic employment resulting in an insubstantial income other factors non-specified above including the employee's age, education, training and experience, may only be considered in determining whether an employee is totally and permanently incapacitated after the employee meets the threshold criteria. . Minn. Stat. Ann. §176.101(5) (2) (ii) (iii).

Compensation for permanent total disability is 66-2/3 percent of the daily wage at the time of the injury, subject to a maximum weekly compensation equal to the maximum weekly compensation for a temporary total disability, and a minimum weekly compensation equal to 65 percent of the state average weekly wage. Such compensation is to be paid during the employee's permanent total disability, but after a total of \$25,000 of weekly compensation has been paid, the amount of weekly compensation benefits being paid by the same employer is reduced by the amount of any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which gave rise to payments under the subdivision.. Minn. Stat. Ann. §176.101(4).

25. How are death benefits calculated, including the minimum and maximum rates?

A. Funeral expenses.

The employer must pay the expense of burial up to \$15,000. Minn. Stat. Ann. §176.111(9)(12)(14)(15)&(17)

B. Dependency claims.

A spouse, child, parent, grandparent, grandchild, sister, brother, mother-in-law, or father-in-law wholly supported by a deceased employee at the time of death, and for a reasonable time prior thereto, is considered an actual dependent of the deceased employee, and compensation is paid to such dependents in the order named. Minn. Stat. Ann. §176.111(3).

Actual dependents are entitled to take compensation during dependency until two-thirds of the weekly wage of the deceased at the time of injury is exhausted. The total weekly compensation to be paid to full actual dependents of a deceased employee must not exceed, in the aggregate, an amount equal to the maximum weekly compensation for temporary total disability. Minn. Stat. Ann. §176.111(20).

There are also provisions for remarriage of a spouse, orphans, parents, remote dependents, and partial dependents. *See generally* Minn. Stat. Ann. § 176.111 (9) – (17).

26. What are the criteria for establishing a “second injury” fund recovery?

The Special Compensation Fund will not reimburse an employer for a subsequent injury occurring after June 30, 1992. The Fund will continue to reimburse employers for subsequent injuries occurring prior to July 1, 1992. Minn. Stat. Ann. § 176.131. (repealed fund for “second injury” recovery).

27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?

Except when a writ of certiorari has been issued by the state supreme court and the matter is still pending in that court, or if as a matter of law the determination of the state supreme court cannot be subsequently modified, the workers’ compensation court of appeals, for cause, at any time after an award, upon application of either party and not less than five working days after written notice to all interested parties, may set the award aside and grant a new hearing and refer the matter for a determination on its merits to the chief administrative law judge for assignment to a compensation judge, who will make findings of fact, conclusions of law, and an order of award or disallowance of compensation or other order based on the pleadings and the evidence produced. Minn. Stat. Ann. § 176.461.

As used in this section, the phrase “for cause” is limited to the following: (1) a mutual mistake of fact; (2) newly discovered evidence; (3) fraud; or (4) a substantial change in medical condition since the time of the award that was clearly not anticipated and could not reasonably have been anticipated at the time of the award. There is no statute of limitations for re-opening a claim. *Id.*

28. What situation would place responsibility on the employer to pay an employee’s attorney fees?

Attorney fees incurred with respect to a disputed recovery of medical or rehabilitation benefits or services are assessed against the employer/insurers only if the attorney establishes that the contingent fee is inadequate to reasonably compensate the attorney for representing the employee in the medical or rehabilitation dispute. Minn. Stat. Ann.. §176.081(1a)(l).

EXCLUSIVITY/TORT IMMUNITY

29. Is the compensation remedy exclusive?

A. Scope of immunity.

The liability of an employer is exclusive and in the place of any other liability to such employee or other person entitled to recover damages on account of such injury or death. If an employer, other than the state or any municipal subdivision thereof, fails to insure or self-insure its liability for compensation, an employee, representative, or if death results from the injury, any dependent, may elect to claim compensation or to maintain a common law action for such injury or death. In such an action, the employer may not plead as a defense: (1) negligence of a fellow servant; (2) assumption of the risk; or (3) contributory negligence, unless such negligence was willful. The burden of proof is upon the employer. Minn. Stat. Ann. §176.031.

B. Exceptions (intentional acts, contractual waiver, “dual capacity,” etc.).

There is an exception for intentional torts of the employer, with deliberate intent to inflict the injury. *See Konken v. Oakland Farmers’ Elevator Co.*, 425 N.W.2d 302 (Minn. App. 1988). This exception has not been extended to acts taken in intentional disregard of safety standards or circumstances in which the employer knows injury is substantially certain to result from the act. *See DeVries v. Emblom*, 420 N.W.2d 670 (Minn. App. 1988).

The “dual capacity” doctrine provides that the employer may become liable to employees if it has a second capacity that imposes obligations independent of those imposed as an employer. *See Terveer v. Norling Bros. Silo Co., Inc.*, 365 N.W.2d 279 (Minn. App. 1985).

30. Are there any penalties against the employer for unsafe working conditions?

There is no such specific provision.

31. What is the penalty, if any, for an injured minor?

None.

32. What is the potential exposure for “bad faith” or claims handling?

Up to an additional 30% of benefits paid may be awarded if the employer/insurer has: (1) instituted a proceeding or defense which is frivolous or for delay; (2) unreasonably delayed payment; (3) neglected or refused to pay compensation; (4) intentionally underpaid compensation; (5) frivolously denied a claim; or (6) unreasonably discontinued compensation. Minn. Stat. Ann. § 176.225(1). Where the employer has inexcusably delayed payments, the delayed payments are increased by 25%. Withholding amounts due because the employee refuses to execute a release from further benefits is regarded as inexcusable delay in making payments. Minn. Stat. Ann § 176.225(5) If any sum ordered by the Department is not paid when due, and no appeal of the order is made, it bears interest at 12%. Minn. Stat. Ann. § 176.225(5). There are additional penalties for advising an employee not to obtain an attorney, regularly failing to timely pay weekly benefits, failing to reply, within 30 days, to a written communication from an employee about a claim that requests a response, etc. Minn. Stat. Ann. §§176.194(3) and (4).

MINNESOTA

33. What is the exposure for terminating an employee who has been injured?

A justifiable discharge for misconduct suspends an employee's right to wage loss benefits, but the suspension of benefits will be lifted if the employee's work-related disability is the cause of the inability to find or hold new employment. *Marsolek v. George A. Horinel Co.*, 438 N.W.2d 922, 924 (Minn. 1989). Any person discharging or intentionally threatening to discharge an employee for seeking benefits, or obstructing an employee seeking benefits, is liable in a civil action for damages incurred by the employee, including any diminution in benefits caused by such action, including costs and attorney fees, and for punitive damages up to three times the amount of benefits to which the employee is entitled. Damages so awarded will not be offset by any worker's compensation benefits. Minn. Stat. Ann. § 176.82(1).

THIRD PARTY ACTIONS

34. Can third parties be sued by the employee?

Yes, but the employee must elect to either collect workers' compensation benefits or pursue such an action against the third party. Minn. Stat. Ann. § 176.061(1). This section applies only if the employer and the other liable party are insured and engaged in business: (1) in furtherance of a common enterprise; or (2) in the accomplishment of the same or related purposes in operations on the premises where the injury was received at the time of the injury. Minn. Stat. Ann. §176.061(4). If the third party is not insured, legal proceedings may be taken by the employee, employer, or by the attorney general on behalf of the Special Compensation Fund, against the third party, notwithstanding the payment of benefits by the employer or the special compensation fund or their liability to pay benefits. Minn. Stat. Ann. § 176.061(5).

35. Can co-employees be sued for work-related injuries?

Only if the injury results from the gross negligence or intentional act of the co-employee. Minn. Stat. Ann. §176.061(5) (e).

36. Is subrogation available?

Yes. The employer/insurer or the attorney general on behalf of the Special Compensation Fund may pursue a third party for the aggregate amount of benefits payable to or on behalf of the employee, regardless of whether such benefits are recoverable by the employee at common law or by statute, together with costs, disbursements, and attorney's fees. Minn. Stat. Ann. §176.061(3).

MEDICALS

37. Is there a time limit for medical bills to be paid, and are penalties available for late payment?

The employer/insurer must pay medical bills, or any portion, which is not denied, or deny the bill, within 30 days of written notice to the employee and the provider explaining the basis for any denial. Minn. Stat. Ann. §176.135(6). Penalties, up to 105% (not to exceed \$5,000.) of the amount owed, may be assessed for late payment, in the commissioners discretion. Minn. Stat. Ann. §176.221(3) and (6 (a)); Alternatively, a penalty of up to \$2,000.00 may be assessed for failure to make payment. Minn. Stat. Ann. §176.221(3)(a).

38. What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?

The release of medical data related to a claim to any party, or to the Department, does not require the approval of any party. Medical data not directly related to a claim must not be released without the employee's prior authorization. The data must be provided within seven working days of a proper request. If any party other than the employee makes the request, it must provide written notice of the request, or discussion with the provider, to the employee. Failure to release medical data as required may be punishable by a fine up to \$600. Minn. Stat. Ann. §176.138(a), (b),(c).

An employer/insurer may, for the sole purpose of identifying duplicate billings, disclose information about treatment dates and charges, etc., to other insurers without prior authorization. Such data, however, must not be used for any other purpose, and must be destroyed after verification that there was no duplicate billing. If the data is used in a manner not allowed, the employee has a cause of action for actual and punitive damages of at least \$5,000. Minn. Stat. Ann. §176.138(d).

39. What is the rule on (a) Claimant's choice of physician; and (b) Employer's right to a second opinion?

Employees may choose their own physicians, but must submit to examination by the employer's physician if requested. Such an examination must be scheduled within 150 miles of the employee's residence unless the employer can show cause for a more distant location. The employee is entitled upon request to have a personal physician present at any such examination. The examination shall be completed and the report of the examination shall be served on the employee and filed with the commissioner within 120 days of services of the claim petition. Minn. Stat. Ann. § 176.155(1). Where the injury is disputed, the commissioner of labor and industry, or the compensation judge conducting a hearing, may designate a neutral physician to conduct an examination and report the findings. Minn. Stat. Ann. §176.155(2).

40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?

The employer must furnish any medical, psychological, chiropractic, podiatric, surgical and hospital treatment, including nursing, medical, medicines, chiropractic, and surgical supplies,

supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed the proscribed notice. Christian Science treatment, in lieu of medical treatment, chiropractic medicine and medical supplies, as may be reasonably required at the time of the injury and any time thereafter to cure and relieve the effects of the injury. The treatment shall also include treatments necessary to physical rehabilitation. Minn. Stat. Ann. §176.135(1)(a).

41. Which prosthetic devices are covered, and for how long?

The employer shall furnish replacement or repair artificial members, glasses, spectacles, artificial eyes, podiatric orthotics, dental bridgework, dentures or artificial teeth, hearing aides, canes, crutches or wheelchairs damaged by a reason of an injury arising out of the course of the employment. For purposes of this paragraph, injury includes damaged wholly or in part to artificial member. Minn. Stat. Ann. §176.135(1)(d).

42. Are vehicle and/or home modifications covered as medical expenses?

The employer must furnish to an employee who is permanently disabled alterations or remodeling reasonably required to enable the employee to move freely into and throughout the principal residence and to otherwise accommodate the disability. Such payments need only be made if the Division or workers' compensation court of appeals determines that the injury substantially prevents the employee from functioning within the principal residence. Minn. Stat. Ann. § 176.137(1). Such payments are limited to prevailing costs in the community. The cost of obtaining architectural certification and supervision is included in the statutory limit. Minn. Stat. Ann. §176.137(2). An employee is limited to \$75,000 under §137 for each personal injury. Minn. Stat. Ann. §176.137(5).

Vehicular modification is not specifically covered. The standard is most likely "reasonableness under the circumstances".

43. Is there a medical fee guide or schedule, or other provisions for cost containment?

Yes, the Commissioner is to establish necessary procedures and codes. Minn. Stat. Ann. § 176.136.

44. What, if any, provisions or requirements are there for "managed care"?

Any person or entity, other than a workers' compensation insurer or an employer for its own employees, may make written application to the commissioner to have a plan certified that provides management of quality treatment to employees for compensable injuries and diseases. Application for certification must be made in the form and manner prescribed by law and must set forth information regarding the proposed plan for providing services as the commissioner may prescribe. Minn. Stat. Ann. § 176.1351. The commissioner shall certify a managed care plan. If the commissioner finds the plan satisfies the requirements of the statute. Minn. Stat. Ann § 176.1351 (2) (1-12)

PRACTICE/PROCEDURE

45. What is the procedure for contesting all or part of a claim?

The employer/insurer must give the employee written notice of a denial of liability. If liability is denied for an injury, which must be reported to the commissioner, the denial of liability must be filed with the commissioner within 14 days after notice to or knowledge by the employer of the injury. If the employer/insurer has commenced payment but determines that the disability is not compensable, payment may be terminated upon the filing of a notice of denial of liability within 60 days. After that time, payment may be terminated only by the filing of a special notice. Upon termination, payments may be recovered by the employer if the employee's claim was not made in good faith. Commencement of payment by an employer or insurer does not waive any rights to any defense the employer has on any claim or incident either with respect to the compensability of the claim under this chapter or the amount of compensation due. Minn. Stat. Ann. §176.221(1).

46. What is the method of claim adjudication?

A. Administrative level.

There are a number of applicable administrative panels. The rehabilitation review panel reviews and makes determinations "with respect to appeals from orders of the commissioner regarding certification approval of qualified rehabilitation consultants and vendors." The hearings are *de novo* and are appealable to the workers' compensation court of appeals. Minn. Stat. Ann. § 176.102(3). The rehabilitation panel also reviews decisions related to the eligibility of an employee for rehabilitation. There is a medical services review board, which reviews "clinical results for adequacy and recommend[s] to the commissioner scales for disabilities and apportionment." Minn. Stat. Ann. §176.103(3). There is also a provision for an administrative conference concerning discontinuance of compensation. Minn. Stat. Ann. § 176.239.

B. Trial court.

The Department of Labor and Industry small claims court, presided over by settlement judges, was established for the purpose of settling small claims. Minn. Stat. Ann. §176.2615(1). When a workers' compensation issue is present in the district court action, the court may try the action itself, without a jury, or refer the matter to the chief administrative law judge for assignment to a compensation judge to report findings and decisions to the court. Minn. Stat. Ann. §176.301. The court may approve or disapprove such decision in the same manner as it approves or disapproves the report of a referee.

The court enters judgment upon such a decision. Minn. Stat. Ann. § 176.301(1).

Decisions of the district court are appealable. See Minn. Stat. Ann. §176.301(2). When a petition has been filed with the Division, the commission refers the matter presented by the petition for a

settlement conference, for an administrative conference, or for a hearing. See Minn. Stat. Ann. §176.305. Hearings on petitions are held before a compensation judge pursuant to a determination by the chief administrative law judge. Minn. Stat. Ann. §176.341(1).

C. Appellate.

The Workers' Compensation Court of Appeals (WCCA) has statewide jurisdiction to determine all compensation issues in cases appealed to the WCCA or transferred from district court. See Minn. Stat. Ann. §175A.01 (5). A party may appeal within 30 days from a compensation judge's award or disallowance of compensation or other order. See Minn. Stat. Ann. §176.421(1). A party may also appeal from a decision or determination of the commissioner affecting a right, privilege, benefit, or duty, which is imposed by Chapter 176. Minn. Stat. Ann. §176.442. No direct appeal to the WCCA is allowed if the decision may be heard *de novo* in another proceeding, including but not limited to a decision from an administrative conference under §§176.102, 176.103, 176.106, 176.239, or a summary decision under §176.305. Minn. Stat. Ann. § 176.442. The grounds for appeal are contained in Minn. Stat. Ann. §176.421.

A party may seek review of the WCCA's decision by the Minnesota Supreme Court, on certiorari, upon three grounds: (1) the order does not conform with Chapter 176; (2) the WCCA committed any other error of law; or (3) the findings of fact and order were unsupported by substantial evidence in view of the entire record as submitted. See Minn. Stat. Ann. § 176.471(1).

47. What are the requirements for stipulations or settlements?

If the parties agree to stipulated set of facts, the commissioner or compensation judge may determine the matter without a hearing and the determination is appealable to the court of appeals. In any case where facts are stipulated to, the chief administrative law judge immediately assigns the case to a compensation judge, who must issue a determination within 60 days. Minn. Stat. Ann. §176.322.

An agreement to settle any claim is valid if: (1) it is in writing and signed by the parties; and (2) where any party is unrepresented, the commissioner or judge has approved the settlement and made an award thereon. If the matter is on appeal before the district court, the district court is the approving body. Minn. Stat. Ann. § 176.521(1)(a).

If the matter is on appeal before the workers' compensation court of appeals, the proposed settlement shall be submitted for approval to a compensation judge at the Office of Administrative Hearings. Before the settlement is submitted to the compensation judge, the parties shall notify the workers' compensation court of appeals and request that it suspend further action on the appeal pending review of the settlement by the compensation judge. Within 14 days after the compensation judge's final approval or disapproval of the settlement, the parties shall notify the workers' compensation court of appeals of the compensation judge's action and shall request that the appeal be dismissed or reactivated. Minn. Stat. Ann. § 176.521(1)(b).

MINNESOTA

48. Are full and final settlements with closed medicals available?

The commissioner, compensation judge, and the district court exercise discretion in approving or disapproving a proposed settlement. The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with the Act. Minn. Stat. Ann. § 176.521(2).

A settlement agreement where both parties are represented by an attorney is conclusively presumed to be reasonable, fair, and in conformity with the Act, except when the settlement purports to be a full, final, and complete settlement of an employee's right to medical compensation. A settlement, which purports to do so, must be approved by the commissioner or a compensation judge. The conclusive presumption applies to a settlement agreement entered into on or after January 15, 1982, regardless of the date of injury. Minn. Stat. Ann. §176.521(2).

49. Must stipulations and/or settlements be approved by the state administrative body?

See answer 48. Further, when a settled case is not subject to approval, upon receipt of the stipulation for settlement, the commissioner or a compensation judge must immediately sign the award and file it with the commissioner. Payment pursuant to the award is made within 14 days after it is filed. The commissioner may correct mathematical or clerical errors at any time. Minn. Stat. Ann. §176.521(2a).

RISK FINANCE FOR WORKERS' COMPENSATION

50. What insurance is required; and what is available (e.g. private carriers, state fund, assigned risk pool, etc.)?

Every employer, except the state and municipal and its subdivisions, liable under this chapter to pay compensation shall ensure payment of compensation with some insurance carrier authorized to ensure workers' compensation liability in this state, or obtain a written order from the commissioner of commerce exempting the employer from insuring liability for compensation and permitting self-insurance of liability. The terms governing self-insured shall be established by the commissioner pursuant to Chapter 14. Minn. Stat. Ann. § 176.181(2). With the approval of the commissioner of commerce, any employer may exclude the medical, chiropractic and hospital benefits required. *Id.* Workers' compensation insurance is available from private insurers, a state created special compensation fund, and an assigned risk pool. *See generally* Minn. Stat. Ann. §§176.129, 176.181, 176.183.

51. What are the provisions/requirements for self-insurance?

A. For individual entities.

See answer 50. *See generally* Minn. Stat. Ann. §176.181.

B. For groups or “pools” of private entities.

Two or more employers regardless of whether they are in the same industry, may pool for the purpose of qualifying as a group self-insurer. Minn. Stat. Ann. §176.181(2)(a). No association, corporation partnership, sole proprietorship, trust or other business entity shall provide services in the design, establishment or administration of a group self-insurance plan unless it is licensed to do so by the commissioner of commerce. Minn. Stat. Ann. §176.181(2)(b).

52. **Are “illegal aliens” entitled to benefits of workers’ compensation in light of The Immigration Reform and Control Act of 1986, indicates that they cannot lawfully enter into an employment contract in the United States, although most state acts include them within the definition of “employee”?**

“Aliens” are identified as employees without exception for their legal status. Minn. Stat. Ann § 176.011(9)(1). There is nothing in the statute that disqualifies an injured employee from receiving workers’ compensation benefits because he is an undocumented alien. *Gonzalez v Midwest Staffing Group*, 1999 WL 297157 (Minn. Work. Comp. Ct. App.).

53. **Are terrorist acts or injuries covered or excluded under workers’ compensation law?**

Under Minnesota’s Workers’ Compensation Act, injuries caused by terrorist acts are not excluded.

54. **Are there any state specific requirements which must be satisfied in light of the obligation of the parties to satisfy Medicare’s interests pursuant to the Medicare Secondary Payer Act?**

Federal law requires that Medicare’s interests be protected in all workers’ compensation settlements per 42CFR 411.46. It requires that a specific portion of the workers’ compensation claim settlement be allocated to cover future medical expenses that otherwise would be paid by Medicare and a specific set-aside arrangement for paying those future medical expenses be presented to and approved by Medicare before the settlement is finalized. The Centers for Medicare and Medicaid Services (CMS) evaluates, on a case by case basis, Medicare Set Aside Arrangements as a way of complying with the federal law. In order to evaluate whether Medicare’s interests have been reasonably consider, CMS looks at the settlement agreement, the life care plan, documentation that gives the basis for the amount of projected expenses, administrative fee, et cetera.

CMS has created a threshold which states: “An injured individual who is not yet a Medicare beneficiary should only consider Medicare’s interests when the injured individual has a ‘reasonable expectation’ of Medicare enrollment within 30 months of the settlement date, and the anticipated total settlement amount for future medical expenses and disability/loss wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.”

55. How are subrogation liens with Medicaid and health insurers treated under workers' compensation law?

The Federal Medicaid statute requires states to include in their plan for medical assistance provision (1) that the individual will assign to the state any rights to payment for medical care from any third party and (2) that the individual will cooperate with the state in pursuing any third party who may be liable to pay for care and services available under the Medicaid plan. 42 U.S.C.A. § 1396k(a). The state is authorized to retain such amounts as is necessary to reimburse it (and the federal government as appropriate) for medical assistance payments and to pay the remainder to the individual. 42 U.S.C.A. § 1396k(b).

In practice, a Medicaid lien typically involves monies paid out in advance of the settlement. At the time of settlement, the parties have identified the exact amount of the Medicaid lien which can be compromised before the settlement is finalized.

Health insurers' liens also typically involve monies paid out in advance of the settlement. At the time of settlement, the parties again have identified the exact amount of the health insurers' lien which can be compromised before the settlement is finalized.

56. What are the requirements for confidentiality and privacy of medical records under workers' compensation law and how are they affected by state and federal law (HIPPA)?

See answer to question 38.

HIPPA is a federal statute assigned to establish a national standard for protecting the privacy of, and ensuring a patient's access to, his or her individual medical information. Compliance became mandatory on April 14, 2003. An exception to the general rule applies to certain very narrowly defined disclosures of protected health information that occurs in the context of workers' compensation claims. A covered entity may disclose medical information without individual authorization to the extent necessary to comply with a workers' compensation statute. Other than this, HIPPA requires that the disclosure of medical information in the workers' compensation context is subject to the general rule requiring a HIPPA-compliant authorization, a court order, "satisfactory assurance" or a qualified protective order.

57. What are the provisions for "Independent Contractors"?

Every independent contractor doing commercial or residential building construction or improvements in the public or private sector is an employee of any employer under this chapter for whom the independent contractor is performing service in the course of the trade, business, profession, or occupation of that employer at the time of the injury. Minn. Stat. Ann. §176.041(1). The independent contractor is not an employee of an employer for whom the independent contractor performs work or services only if the following conditions are met: (1) the individual holds a current independent contractor exemption certificate issued by the commissioner; and (2) the individual is performing services for the person under the independent contractor exemption

certificate as provided in subdivision 6. the requirement in clause (1) and (2) must be met in order to qualify as an independent contractor and not as an employee of the person for whom the individual is performing services in the course of the person's trade, business, profession or occupation. Minn. Stat. Ann §181.723 (4).

A person, partnership, limited liability company, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor. A person, partnership, limited liability company, or corporation may charge the independent contractor a fee for providing the coverage only if the independent contractor (1) elects in writing to be covered, (2) is issued an endorsement setting forth the terms of the coverage, the name of the independent contractors, and the fee and how it is calculated. Minn. Stat. Ann. § 176.041(1)(f).

- 58. Are there any specific provisions for “Independent Contractors” pertaining to professional employment organizations/temporary companies/leasing companies?**

No.

- 59. Are there any specific provisions for “Independent Contractors” pertaining to owner/operators of trucks or other vehicles for driving or delivery of people or property?**

In the trucking and messenger/courier industries, an operator of a car, van, truck, tractor or truck-tractor that is licensed and registered by a governmental vehicle agency is an employee unless each of certain factors is present, and if each factor is present, the operator is an independent contractor. The factors are (1) the individual owns the equipment or holds it under a *bona fide* lease agreement; (2) the individual is responsible for maintenance of the equipment; (3) the individual is responsible for the operating costs, including fuel, repairs, supplies, vehicle insurance and personal expenses; (4) the individual is responsible for supplying the necessary personal services to operate the equipment; (5) the individual's compensation is based on factors related to work performed, such as a percentage of any schedule of rates, and not on the basis of hours of time expended; (6) the individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper; and (7) the individual enters into a written contract that specifies the relationship to be that of an independent contractor and not that of an employee. Minn. Stat. Ann. §176.043.

- 60. What are the “Best Practices” for defending workers’ compensation claims and controlling workers’ compensation benefits costs and losses?**

Financial exposure to workers’ compensation is an expensive and complex challenge for every business. The best means for reducing and eliminating that exposure is a strong and individualized “Best Practices” plan.

MINNESOTA

Every business must deal with the expense of workers' compensation in its risk management and in dealing with the inevitable claim. The best approach to ameliorating a business exposure is a strong and individualized "Best Practices" plan.

61. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to protect Medicare's interest when settling the right to medical treatment benefits under a claim?

Under the Minnesota Workers' Compensation Act, there is no specific requirement. However, as noted, in the event of a settlement the Commissioner will insist that Medicare's interest and/or Medicaid's interest be considered as part of the settlement. The Commissioner will also require the parties to resolve any and all Medicaid liens prior to settlement.

The provisions of Medicare Act 42C FR 411-46 requires the state to consider the interest of Medicare. The Federal Medicaid Statute 42 USCA § 1396(K)(b) protects the interest of Medicaid, both on a state and federal level.