

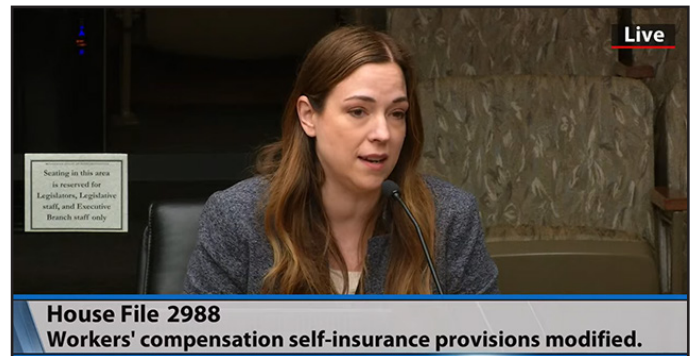
2023 WCAC legislation enacted

Gov. Tim Walz signed legislation May 22, enacting statutory amendments recommended by the Workers' Compensation Advisory Council (WCAC) during the 2023 legislative session.

WCAC is a statutory council made up of representatives from business and organized labor charged with recommending to the Legislature amendments to Minnesota Chapter 176, the chapter governing workers' compensation in Minnesota. See Minnesota Statutes § 175.007.

In a series of meetings, WCAC unanimously approved amendments that will introduce efficiencies to the system, increase benefits for injured workers, control costs in the system and establish groundwork to improve outcomes for injured workers with work-related post-traumatic stress disorder (PTSD).

Specifically, this bill, H.F. 2988, adopts recommendations made by WCAC related to: criteria for certifying disputes at DLI; a charge structure for copies of electronic medical records; a weighted increase to the permanent partial disability schedule payable to injured workers; reduction of medical costs under the hospital outpatient fee schedule over a three-year period; and a study of work-related PTSD.



Department of Labor and Industry Commissioner Nicole Blissenbach testifies in support of House File 2988 on May 4, 2023.

Below is a brief overview of the 2023 workers' compensation legislation, [2023 Minnesota Session Laws, Chapter 51 – H.F. 2988](#).

Article 1. Workers' Compensation Self-insurance – amends chapter 79A regarding procedures at the Department of Commerce related to bankruptcy of a self-insurer.

Article 2. System efficiencies – amends chapter 176 to generate greater efficiencies in the workers' compensation system. This article has 10 sections, including provisions for certifying disputes at the Department of Labor and Industry (DLI) and outlining a charge structure for copies of electronic medical records.

Article 3. Permanent partial disability schedule – amends the permanent partial disability (PPD) schedule in chapter 176, resulting in increased payments to injured workers with permanent impairments. The amendment also requires WCAC, in 2026 and every other year thereafter, to consider the adequacy of compensation for permanent impairment.

Article 4. Hospital outpatient fee schedule – amends chapter 176 to provide for reductions to the hospital outpatient fee schedule over a period of three years. Repeals the provision describing the criteria that must be met for the reductions to occur.

Article 5. Post-traumatic stress disorder study – requires the commissioner of DLI to conduct a study identifying systemic or regulatory changes that may improve the experience and outcomes of employees with work-related PTSD. It includes a \$500,000 appropriation for the commissioner to contract with a third-party to complete part or all of the study and hire additional staff to support the study.

Article 6. Housekeeping – amends chapter 176 to make various technical changes.

A detailed summary of this bill, including effective dates, begins on page 13.



DLI mourns death of medical consultant Dr. Emily Bannister

On March 14, 2023, Dr. Emily Bannister, the Department of Labor and Industry's (DLI's) medical consultant, died after a courageous battle with cancer. As DLI's medical consultant, Bannister was instrumental in providing advice about workers' compensation rulemaking and medical policy considerations.

In addition to her role with DLI, she ran the Workers' Clinic, an occupational medicine clinic, to serve injured workers.

Bannister was a gifted physician, a passionate advocate for mental and physical health, and a highly respected voice in the occupational medicine community.

She leaves behind her mother Barbara, her husband David, a seven-year-old daughter Lucy and five-year-old twins Abby and David Jr.

A memorial service is scheduled for 10 a.m., June 10, at the Breck School chapel in Golden Valley, Minnesota.



VRU P.O. box eliminated, one shared fax number

The Minnesota Department of Labor and Industry's Vocational Rehabilitation unit (VRU) has two updates to its contact information.

1. **VRU is discontinuing its P.O. box, effective June 30, 2023.** Mail for the St. Paul VRU office should be sent to: Minnesota Department of Labor and Industry, VRU, 443 Lafayette Road N., St. Paul, MN 55155. VRU [Greater Minnesota addresses](#) remain unchanged.
2. All VRU office locations now share one fax number, 651-284-5734.

ADR administrative conferences now use Teams technology

On May 15, the Department of Labor and Industry's Alternative Dispute Resolution unit started scheduling administrative conferences to use the Microsoft Teams dial-in feature. Conferences will continue to be **audio-only** at this time.

Each conference is assigned a unique conference code I.D. number. Instead of the arbitrator calling each party, the parties will each call the general conference number and enter the unique conference code I.D. number to join the conference at the scheduled time. The conference number and conference code I.D. number are provided on the administrative conference notice.



If a party cannot find their scheduling notice, they should email dli.workcomp@state.mn.us for assistance.

If a conference notice was issued before May 15, 2023, Teams will not be used; those conferences will use the previous system.

Teams numbers and codes will not be used for mediations at this time. Mediations will continue to be initiated by the mediator calling the parties.

When to file a first report of injury with the DLI commissioner

By Nancy Wallrich, *Alternative Dispute Resolution, mediator/arbitrator*

The Minnesota Department of Labor and Industry (DLI) is often asked whether an employer, a self-insured employer or an insurer should file a first report of injury (FROI) following a work-related injury. The FROI is required to generate a workers' compensation claim file in Work Comp Campus and provides valuable details about a claim. Subsequent filings build off of the FROI so that the claim file includes information about the employee, employer, insurer, initiated disputes, benefits paid, notices of primary liability determination and notices of appearance by attorneys. None of this information will appear in Campus unless and until a FROI is filed, and state forms that need to be submitted by electronic data interchange (EDI) cannot be filed unless a FROI was filed to create a claim in Campus.



Submitting a FROI is not an admission of acceptance or denial of liability. Its submission begins the three-year statute of limitations for actions or proceedings by an injured employee to determine or recover compensation (see Minnesota Statutes 176.151).

A FROI must be filed when any of the following occurs.

1. The employee has claimed disability or claimed lost wages beyond the three-day waiting period. The lost time does not need to be a full day; any portion of lost time, including time lost for medical treatment, starts the three-day waiting period. The lost time also does not need to be accepted as claim-related lost time by the carrier. In those instances, if the claimed lost time extends beyond the waiting period, the FROI must still be filed; however, the claim may be denied.
2. Any document initiating a workers' compensation dispute under Minn. Stat. Chapter 176 is filed.
3. A rehabilitation consultation report or a rehabilitation plan is filed under Minn. Stat. Chapter 176.
4. Permanent partial disability is ascertainable under Minn. Stat. 176.101, subdivision 2a.

The timing of filing the FROI depends on the facts of the case.

- When an injury occurs that wholly or partly incapacitates an employee from performing labor or service for more than three calendar days, **the employer must report the injury to its insurer within 10 days from its occurrence.**
- **The insurer or self-insured employer must report the injury no later than 14 days from its occurrence.**
- However, where death or serious injury occurs to an employee during the course of employment, **the employer must report the injury or death to the DLI commissioner and its insurer within 48 hours after occurrence.**
- See Minn. Stat. § 176.231 for complete information. See Minnesota Rules 5220.2530 for additional FROI requirements.

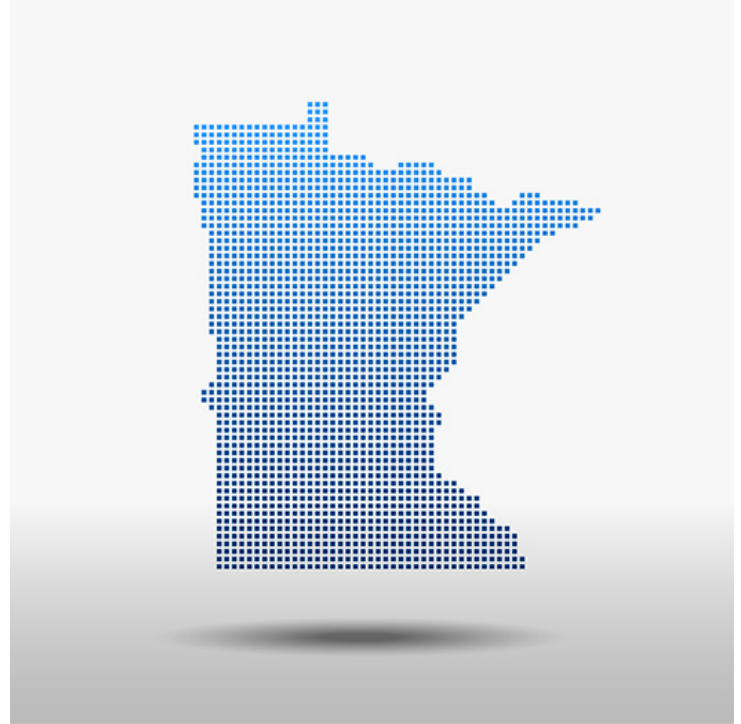
First reports of injury must be filed in Campus via EDI. For EDI-specific questions, contact DLI's EDI team at dli.edi@state.mn.us.

For questions about workers' compensation or Campus, contact the Workers' Compensation Division Help Desk at 651-284-5005 (press 3), 800-342-5354 (press 3) or helpdesk.dli@state.mn.us. Live support is available 8 a.m. to 4:30 p.m., Monday through Friday.

WCRI report compares Minnesota with 17 other states

The Workers Compensation Research Institute's (WCRI's) most recent report for Minnesota, *CompScope Benchmarks for Minnesota, 23rd Edition*, was released in April. This report uses insurer claim files to compare Minnesota's medical payments, indemnity benefits and insurer expenses with those of 17 other states, including Iowa and Wisconsin, for 2016 through 2021. The report is available for purchase from WCRI at wcrinet.org. The following are some of the major findings.

- Average costs for non-COVID-19 claims with more than seven days of lost time at three years' average maturity, (2019 claims measured in 2022) were 13% lower in Minnesota than the 17-state median. Medical payment (-26%), indemnity benefits (-14%) and benefit delivery expenses (-5%) were all below the median.
- Among non-COVID-19 claims in Minnesota with more than seven days of lost time, total costs per claim annually increased 1% from 2016 through 2021. This cost growth was close to the typical value for the 17 study states.
- Average medical payments per claim for 2021 non-COVID-19 claims with more than seven days of lost time at one year average maturity were 22% below the 17-state median.
- Litigation expenses per claim in 2021 with more than seven days of lost time at three years' average maturity were 18% higher than the median state, although Minnesota had a lower litigation rate relative to most of the study states. Average defense attorney expenses per claim, among claims with defense attorney payments of more than \$500, were among the highest of the study states.
- The average duration of temporary total disability benefits per claim decreased by about half a week in 2021 after increasing by about a week in 2020. Many of the study states experienced a similar trend.
- In 2021, 19% of claims at three years' maturity were claims with a lump-sum settlement only, while the average settlement amount for those claims was higher than that of the median state.
- Medical-legal expenses per claim increased 3% in 2021 following a 3% decrease in 2020, but has otherwise been stable since 2016.



Translated materials, Language Line available via DLI website

The Department of Labor and Industry (DLI) posts its available translated materials online at dli.mn.gov/about-department/about-dli/translated-materials. It has documents available in Chinese, Hmong, Karen, Somali and Spanish. A few other documents throughout the website are available in additional languages.

Also, the DLI website now provides Google Translate, allowing visitors to choose the language for the website text.

In addition, DLI has access to Language Line, a free language translation phone service for limited-English speakers. If DLI help is needed, view the contact information at dli.mn.gov/about-department/about-dli/contact-us, call and a DLI employee will get in touch with an interpreter in the needed language.

Workers' Compensation Division Help Desk: Group administration

The Workers' Compensation Division Help Desk regularly receives questions about group administration within Work Comp Campus. Group administration tasks, such as adding members to a group, changing permissions, editing relationships and more, can only be performed as a group administrator within Campus.

Several actions are needed for a group administrator to grant permissions or create relationships for users in Campus.

1. The individual must register in Campus, making themselves a Campus user.
2. A group administrator of the group then adds the user as a member of the group. Only members of groups can access claims in Campus, with the exception of injured workers.
3. A group administrator can then assign specific permissions to any members within the group.
4. A group administrator can also link individual users in the group to share claim access with each other, such as a paralegal and an attorney.



Removing a member from a group

When a member of a group leaves an organization, it is the responsibility of the group administrator to remove the individual member from their group. If the group member being removed is the only member assigned to certain permissions, such as the group administrator permission, Campus will require that those permissions are assigned to someone else in the group before the departing group member can be removed.

Resources

The Department of Labor and Industry's (DLI's) Business Technology Office (BTO) unit worked with the other Workers' Compensation Division work units to create an instruction manual, the [Campus group administration manual](#), to help users with group administrator permissions complete these tasks.

Help desk representatives are available to assist users by ensuring users' accounts are set up correctly and by guiding users through their next steps. The representatives are familiar with the business processes of all of the Workers' Compensation Division work units, which helps ensure inquiries get resolved and DLI provides the best customer service.

Contacting the help desk

Individuals may contact the help desk at 651-284-5005 (option 3), 800-342-5354 (option 3) or helpdesk.dli@state.mn.us. The team is available Monday through Friday, 8 a.m. to 4:30 p.m. If calling outside of office hours, leave a voicemail message and a help desk staff member will respond within 24 hours of business hours resuming.

Tips for contacting the help desk

When contacting the help desk, be as detailed as possible in your messages, both via voicemail and email. It is also helpful to the help desk staff to have as much identifying information as possible regarding your inquiry.

Any questions regarding workers' compensation claims for state of Minnesota employees should be directed to the Department of Administration at 651-201-2587. If you are unsure if a claim has been filed, you can call its claim lookup line at 651-201-3000 to learn whether anything has been submitted.

If you are having technical issues with Campus, such as receiving an error message while filing a claim, first clear the cache and cookies of the internet browser you are using and then try accessing Campus again. If you continue to have technical issues:

- take a screenshot of the error or issue;
- make a note of the date and time the problem occurred; and
- send detailed information, including the screenshot, via email to the help desk at helpdesk.dli@state.mn.us.

Including the claim or dispute number on which the issue occurred is also important. This information will assist the help desk staff and the Campus technical team resolve the issue.

Addendum added to police officer disability benefits study

The "Adequacy of disability benefits for Minnesota police officers" study was recently updated with an addendum that summarizes interviews with police officers and their family members. The interviews allowed the research team to learn additional information about the advantages and limitations of workers' compensation and Public Employees Retirement Association (PERA) benefits available to police officers in Minnesota from the perspective of direct recipients.

The addendum and report are available at dli.mn.gov/business/workers-compensation/police-benefit-study. For additional information about the study, contact Ethan Landy, Department of Labor and Industry's Office of General Counsel, at pdbastudy.dli@state.mn.us or 651-284-5006.

Save the date: Work Comp Forum set for Oct. 13

The Workers' Compensation Reinsurance Association and the Minnesota Workers' Compensation Insurers Association will again team up to offer the Minnesota Work Comp Forum from 8 a.m. to 4 p.m., Friday, Oct. 13, in Minneapolis.

The forum is a day of learning relevant to the Minnesota workers' compensation community. Attendees can learn from industry professionals, meet local and regional professionals, and expand their knowledge and networks.

- **More information:** mnworkcompforum.com
- **Cost:** \$125 (includes breakfast, lunch)
- **Where:** Intercontinental MSP Airport Hotel, 5005 Glumack Drive, Minneapolis



Stay in the know: Subscribe for news from DLI

Did you know the Department of Labor and Industry offers more than two dozen email lists you can subscribe to receive news targeted to specific groups? (If you are reading this, you are probably on the *COMPACT* email list.)

Lists related to workers' compensation news include the following:

- Adjusters updates
- Employer updates
- Rehabilitation providers updates
- Attorney updates
- Medical providers updates
- Trading partner updates



Other email lists are available for:

- Agency news
- Construction codes, licensing and building trades
- Minnesota OSHA and workplace safety
- Apprenticeship, dual-training and Youth Skills Training
- Labor standards, worker rights, wage and hour
- Rulemaking

To learn more about the available email lists, visit dli.mn.gov/about-department/news-and-media/sign-news-department-labor-and-industry.

CompFact: Rehabilitation eligibility consultation outcomes and timing

By Brian Zaidman, Research and Statistics

The vocational rehabilitation eligibility process typically begins when the insurer files a disability status report (DSR) to notify the Department of Labor and Industry (DLI) it is referring the injured worker to a qualified rehabilitation consultant (QRC) for a vocational rehabilitation consultation or requesting a waiver of vocational rehabilitation services. The QRC conducts a consultation with the employee to determine if the employee is eligible to receive services. The QRC schedules and conducts the consultation and then completes a Rehabilitation Consultation Report to inform the parties and DLI of the consultation outcome. A "qualified employee" for rehabilitation services is defined in Minnesota Rules 5220.0100, subpart 22.

The insurer is required to file the DSR within 14 days of becoming aware that temporary total disability is likely to exceed 13 weeks, 90 days after the injury if the employee has not returned to work or 14 days after receiving a consultation request from the employee, whichever is earlier. Although the insurer typically refers the employee for a consultation via the DSR, the employee or employer may request a consultation and DLI can also order a consultation. A QRC in DLI's Vocational Rehabilitation unit may also provide a consultation if the insurer denies the employee's injury or condition is work-related and the employee has disputed the denial.

The Rehabilitation Consultation Report offers three outcome choices: the worker is not eligible to receive rehabilitation services; the worker is eligible for rehabilitation services; and the parties agree to initiate statutory rehabilitation services.

Only about 3% of rehabilitation consultations find the injured worker is not eligible for services. From 2015 through 2022, this percentage ranged between 2.6% and 3.7%.

Figure 1 shows the outcome percentages for consultations in 2022. This distribution was unchanged from 2021 and has been stable over the past eight years.

Figure 1. Outcomes of 4,351 rehabilitation consultations in 2022

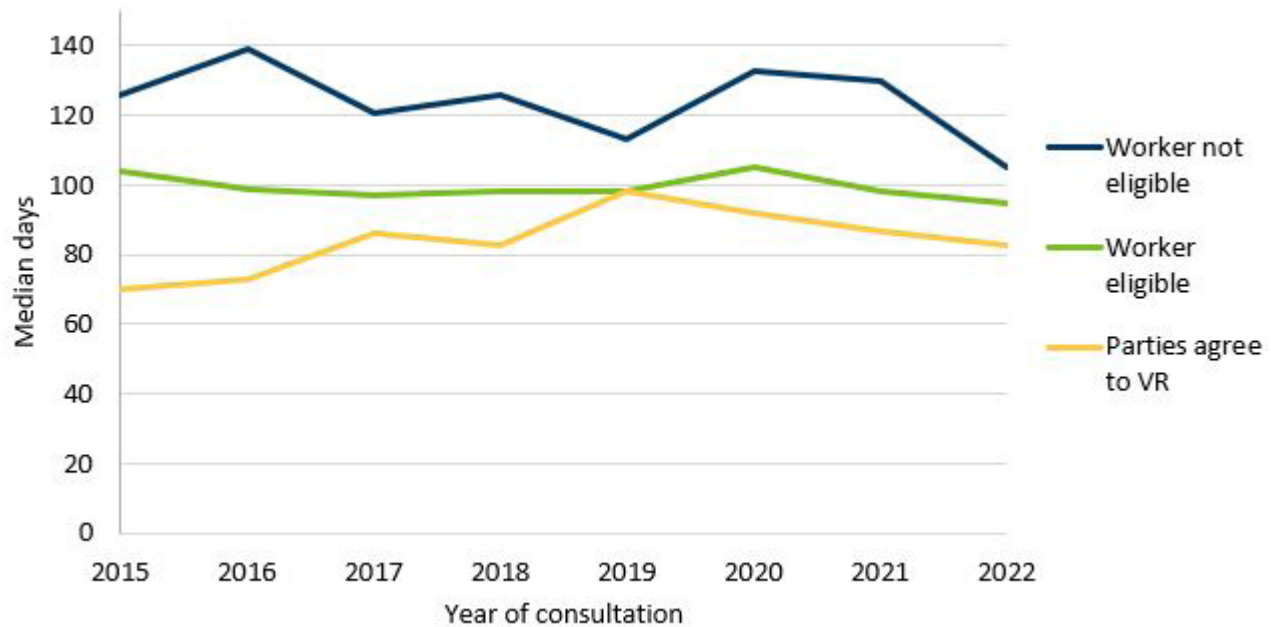


The median number of days from the date of injury to the consultation date has been very stable over the past eight years, varying only from a high of 105 days (2020) to a low of 95 days (2022). Since the median value indicates the 50th percentile of the cases, this means half the injured workers received a vocational rehabilitation consultation before the median number of days.

The median length of the injury to vocational rehabilitation consultation period shows consistent differences depending on the consultation outcome. As shown in Figure 2, the median duration from injury to consultation is longest for workers found not eligible for vocational rehabilitation, with an average of 124 days for the median duration values from 2015 through 2022. The median values for the injury to consultation period remained near 100 days for workers found

eligible for vocational rehabilitation. The injury to consultation duration was shortest for workers provided vocational rehabilitation through agreement of the parties, with an 84-day average of the median values, 40 days fewer than the average for workers found ineligible for such services. This may be due to the parties agreeing to provide vocational rehabilitation services to expedite the worker's return to work.

Figure 2. Median days from injury to rehabilitation consultation by eligibility status



Rehabilitation Review Panel: Open forum at July 6 meeting

There will be an open forum about proposed amendments to the rehabilitation registration rules in Minnesota Rules Chapter 5220 at the July 6 meeting of the Rehabilitation Review Panel (RRP). Interested parties are welcome to offer feedback about the most recent draft of the rules, which is [available on the RRP webpage](#).

To speak at the meeting, individuals must complete the [open forum request form](#) and email it by the end of business, June 30, 2023, to Mike Hill at mike.hill@state.mn.us. Requests received after this time will not be considered for the meeting.

From the State Register: Provider participation list available

Health care providers that provide medical services to an injured worker under the workers' compensation law are required to participate in the Medical Assistance Program and MinnesotaCare as a condition of receiving payment for treatment of the workers' compensation injury. (See Minnesota Statutes § 256B.0644 and Minnesota Rules, parts 5221.0500, subpart 1, and 9505.5200 to 9505.5240.)



The Department of Human Services (DHS) list of providers that participate in the Medical Assistance Program and MinnesotaCare is now available online. To see if a provider is on the list, check the Minnesota Health Care Programs (MHCP) provider directory at mhcpproviderdirectory.dhs.state.mn.us.

To obtain a full list of participating providers, call the DHS Provider Call Center at 651-431-2700 or 800-366-5411 and request a work order to have the list sent to you. You may also fax the request to 651-431-7462 or mail it to the Department of Human Services, Provider Eligibility and Compliance, P.O. Box 64987, St. Paul, MN 55164-0987.

Ask the ADR pro

DLI's Alternative Dispute Resolution unit answers frequently asked questions

ADR contributors: Brian Mak, director; and Patti Provencher, mediator/arbitrator

Editor's note: The Alternative Dispute Resolution (ADR) unit at the Minnesota Department of Labor and Industry seeks early intervention in workers' compensation disputes through conferences and mediation. It handles calls from the Workers' Compensation Division Help Desk and responds to questions from injured workers and their employers.

Q. A Request for Certification was filed. Can I file a Medical or Rehabilitation Response?

A. No, a Medical or Rehabilitation Response is only filed after a Medical Request or Rehabilitation Request has been filed. If the dispute is still procedurally a Request for Certification, you can upload a letter (PDF file) to the dispute explaining your position, under "Other filing."

Q. If my access to a claim was removed, how can I get it back when I am still the attorney for a party?

A. You can regain user access simply by filing a new Notice of Appearance or Notice of Representation.

Q. I am the new attorney for a party on a claim, replacing a former attorney. How do I advise the Department of Labor and Industry (DLI) of this change?

A. To notify DLI of the change, start a substitution webform by clicking the "Access a Claim" option on your Work Comp Campus dashboard and then clicking to file a Notice of Appearance or Representation. Identify the claim and click the party you are representing. The name of the attorney currently representing that party will display and you can click that you are substituting for that attorney. Proceed with the webform and a Notice of Substitution will generate and be filed.

Q. When I am initiating a dispute and I have identified the claim, do I need to click the "other parties to the dispute"?

A. Yes, the caption of the dispute will be created based on the selected "parties to the dispute." Therefore, it is important for a correct caption to be generated to be sure all of the necessary parties are selected. Adding a party to the Affidavit of Service will result in that entity being served, but will not make that entity a party.

Q. I have initiated a dispute and need to make a change to it. Is that possible?

A. You can amend your dispute after it has been initiated. From the dispute page in Campus, click "Submit Filing" and then you can select to amend the webform you filed.

For help with any questions, contact the Workers' Compensation Division Help Desk at 651-284-5005 (press 3), 800-342-5354 (press 3) or helpdesk.dli@state.mn.us.

Updated report: COVID-19 workers' compensation claim statistics

The Department of Labor and Industry's Research and Statistics unit has updated its presentation outlining COVID-19 workers' compensation claims statistics through March 16, 2023. The presentation is available on the department's "Updates related to COVID-19" webpage at dli.mn.gov/updates.

Preliminary findings of Minnesota Workers' Compensation System Report

The annual *Minnesota Workers' Compensation System Report* will present statistics about 2021 workers' compensation claims and the trend for the preceding 20 years. The report uses the most recently available data from various sources, which leads to different data years being presented for different measures.

The report's preliminary findings include the following.

- The workers' compensation paid claim rate fell 52%, from 7.4 per 100 full-time-equivalent (FTE) employees in 2001 to 3.5 in 2021.
- Estimated claim rates for 2020 and 2021 were strongly affected by the COVID-19 pandemic. From 2019 to 2021, there was a 32% increase in the indemnity claim rate, which can be attributed to the influx of COVID-19 claims in 2020 and 2021. There was also a 25% decrease in the medical-only claim rate, resulting in an 11% decrease in the total claim rate during this period. While 90% of COVID-19 claims in 2021 were for indemnity benefits, most claims for all other injuries and illnesses were medical-only claims.
- Adjusted for average wage growth, average indemnity benefits per claim were 10% higher and medical benefits per claim were 2% higher in 2020 than in 2001. These increases were more modest compared to the increases from 2001 to 2019. This could be partly because COVID-19 claims had smaller indemnity and medical costs.
- Despite higher benefits per claim, costs are down relative to payroll because of the falling claim rate. Indemnity benefits per \$100 of payroll were 39% lower and medical benefits were 49% lower in 2021 than in 2001.
- The cost of the Minnesota workers' compensation system for 2021 was an estimated \$1.62 billion, or \$.93 per \$100 of payroll. System cost follows a national multi-year pricing cycle. However, comparable points in the cycle for Minnesota indicate a long-term downward trend averaging 2.9% a year.
- In 2021, on a current-payment basis, the three largest components of total workers' compensation system cost were medical benefits (33%), indemnity benefits other than vocational rehabilitation (31%) and insurer expenses (30%). Vocational rehabilitation benefits accounted for an estimated 2.9% of total workers' compensation system cost.
- With COVID-19 claims included, an estimated 87% of all paid indemnity claims received total disability benefits (temporary total and permanent total combined) in 2021. The proportion receiving the other benefit types was 20% for temporary partial disability benefits, 16% for settlement benefits and 10% for permanent partial disability benefits.
- Average duration of total disability benefits was 10 weeks for 2021, 16% below 2001. Much of this decrease can be attributed to the significantly shorter duration of COVID-19 claims.
- Participation in vocational rehabilitation rose from 20% of paid indemnity claims for injury-year 2001 to 24% for 2019 but decreased to 22% among non-COVID-19 indemnity claims in 2021. The 2021 vocational rehabilitation participation rate was 16% when COVID-19 indemnity claims were included.



A summary of recent WCRI reports

From January through March 2023, the Workers Compensation Research Institute (WCRI) published five studies examining aspects of medical care for injured workers with workers' compensation claims. WCRI studies provide a wealth of information about the provision of medical care, including information about results across all the states studied. In this article, the focus is on the results for Minnesota. Readers are encouraged to review the full WCRI studies available at wcrinet.org.



Workers' Compensation Providers: Describing the Marketplace (March 2023)

This report describes the distribution of the types of providers providing medical services to injured workers and examines the volume and types of services. It also compares rates of provider involvement across 34 states, covering treatments from 2016 through 2018.

Minnesota had the third-highest rate (53%) of primary care providers that are registered to provide care to Medicare patients and that also saw workers' compensation patients. The percentages ranged from a low of 22% in Florida to 61% in Wisconsin.

Minnesota had the second-highest rate (71%) of chiropractors that are registered to provide care to Medicare patients and that also saw workers' compensation patients. The percentages ranged from a low of 7% in South Carolina to 72% in Wisconsin.

Only 5% of the primary care physician visits in Minnesota were with physicians specializing in occupational medicine. This was the fifth-lowest percentage among the 34 states. The highest occupational medicine percentage was 25% in Colorado; it was 14% in Wisconsin.

Impact of Medical Provider Consolidation on Workers' Compensation Payments (March 2023)

This report examined the impact of the trend in health care systems for large hospitals and hospital systems to control a growing share of the medical market. The analysis looked at the trends in the consolidation of medical providers treating injured workers and the effects on payments for their care.

WCRI's analysis of data from 34 states from 2012 through 2018 found an increase in the percentage of primary-care physicians and orthopedic surgeons providing care to injured workers that worked for health systems or hospitals. The percentage of Minnesota primary care physicians practicing within a health system or hospital increased from 69% in 2012 to 80% in 2018. For orthopedic surgeons, the percentage practicing in a health system or hospital increased from 47% in 2012 to 50% in 2018, with a decrease in the percentage in physician groups from 43% to 38%.

In 2018, Minnesota had the second-highest percentages of primary-care physicians and fifth-highest percentage of orthopedic surgeons working at sites owned by a health system or hospital. Wisconsin had the highest percentages of both types of providers working at sites owned by a health system or hospital. These ranking generally reflect the overall medical market concentration of the states.

However, the effects of increasing market concentration on medical service payments were strongly affected by the workers' compensation medical fee schedules used in the various states.

Factors Associated with Extended Use of Physical Medicine Services for Workers with Low Back Pain (March 2023)

This study compared the medical costs and indemnity payments for workers with physical medicine services for nonsurgical low back pain claims who had physical medicine services completed within three months of injury, with workers whose physical medicine services extended beyond three months. The study also looked at factors that are associated with an increased likelihood of having extended physical medicine use. This study included low back claims

from 28 states, with injuries occurring between October 2015 and September 2017, and observed treatments and benefit payments for 18 months post-injury.

Minnesota had the fifth-highest percentage of claims with extended physical medicine use (23%). Comparing measures at 18 months post-injury for workers with physical medicine use of greater than and less than six weeks, workers with extended physical medicine use had higher average medical costs (\$6,500 vs. \$1,600), higher average payments for physical medicine treatment (\$3,600 vs. \$900), higher indemnity payments (\$6,600 vs. \$600) and longer average duration of temporary disability (6.0 weeks vs. 0.8 weeks). Minnesota's values for both groups were below the 28-state median values for both treatment groups.

Looking at the provider types for physical medicine treatment, Minnesota had the highest percentage of workers with exclusive chiropractic care for regular physical medicine care (38% vs. median value of 3%) and the second-highest percentage for extended physical medicine care (22% vs. median value of 2%). Wisconsin had the second-highest percentage of exclusive chiropractic use for regular physical medicine care and the highest percentage for extended physical medicine care.

Patient-reported Functional Outcomes After Low Back Pain – A Comparison of Workers' Compensation and Other Payors (February 2023)

This study compared how workers' compensation coverage affects patient-reported outcome measures for patients receiving physical or occupational therapy for low back pain. The data covers patients receiving outpatient physical or occupational therapy from 2017 to 2021, comparing data collected at admission and discharge. State-specific results were not available.

The results showed, compared with all other payer types, workers' compensation patients had the smallest improvements in their outcome scores. These differences were mainly because of the outcome score changes for workers without surgeries related to low back pain.

WCRI found, relative to non-workers' compensation patients, workers' compensation patients were more likely to be very limited in their ability to perform their usual work or household activities, less likely to experience minimal clinically important improvements and more likely to experience decreases in function over the course of treatment.

Long COVID in the Workers' Compensation System Early in the Pandemic (January 2023)

This study examined the prevalence of long COVID among workers with COVID-19 infections that occurred between March and September 2020. WCRI looked at detailed workers' compensation medical billing records for 39,000 claims in 31 states.

Initial COVID-related medical care varied from no medical care (67% of the workers) to hospitalization or ICU care (3% of workers). About half of the workers with any medical care had only one day of medical care.

Among all COVID-19 claims, 7% received treatment for long COVID symptoms. The prevalence of long COVID was related to the intensity of medical care during the first month, varying from 74% among workers with ICU care, 44% among workers with hospitalization but no ICU care, 19% among workers with two or more days of medical care without hospitalization and 5% among workers with one day of medical care. Claims with treatment for long COVID had higher average medical payments, indemnity benefits and duration of temporary disability than COVID-19 claims that did not develop long COVID.

Only 23% of the workers in Minnesota's COVID-19 sample received medical care, below the 31-state average of 33%. WCRI found that 6% of Minnesota's COVID-19 claims in their sample received long COVID treatments, the same as the average for the 31 states (percentage adjusted for age distribution). The state percentages ranged from a high of 15% in New York to a low of 2% in Kansas.

Workers' Compensation Advisory Council (WCAC) legislation summary

2023 Minnesota Sessions Laws, Chapter 51 – HF2988

This provides only a summary of the 2023 workers' compensation legislation. The actual language of Chapter 51 is available at revisor.mn.gov/laws/2023/0/Session+Law/Chapter/51/.

Article 1: Workers' compensation self-insurance

Article 1 amends Minnesota Statutes chapter 79A to require a self-insurer to notify the commissioner of the Department of Commerce prior to or immediately upon filing a bankruptcy petition and/or when it has been declared to be bankrupt. The bill requires the commissioner of the Department of Commerce to call the self-insurer's security deposit if that self-insurer has not paid its workers' compensation benefits as required by chapter 176. If the self-insurer has failed to pay its workers' compensation benefits, as verified in consultation with DLI, the commissioner of the Department of Commerce may call the security deposit if they determine workers' compensation benefits would be delayed in any way.



Effective date: The sections in this article are effective Aug. 1, 2023.

Article 2: System efficiencies

Article 2 amends Minn. Stat. chapter 176 to generate greater efficiencies in the workers' compensation system.

Section 1: Minn. Stat. § 176.081, subdivision 1 – Limitation of fees

- Clarifies attorney fees are payable only to an attorney who procures a benefit on behalf of the employee.
- Updates the dispute certification process at DLI as follows:
 - an attorney must file with the commissioner and serve on the employer or insurer a request for certification;
 - a dispute is certified if within 30 days of the filing of the request the department has not issued a determination of whether a dispute exists, and
 1. the insurer has not approved the requested benefit,
 2. the employee, employee's attorney or the treating provider has submitted any and all information requested by the insurer necessary to determine whether the benefit is disputed or approved, and
 3. the insurer has had at least seven days to review additional information submitted; and
 - for nonemergency surgery, if the employer or insurer requests a second opinion or an independent medical examination (IME), the dispute must be certified if 45 days have passed following the request for examination or second opinion and the conditions described in (1) to (3) above have been met.

Effective date: This section is effective Aug. 1, 2023.

Section 2: Minn. Stat. § 176.135, subd. 1 – Medical, psychological, chiropractic, podiatric, surgical, hospital

- Provides that items under this subdivision that are customized specifically for an injured worker are the property of the injured worker.

Effective date: This section is effective the day following final enactment.

Section 3: Minn. Stat. § 176.135, subd. 1a – Nonemergency surgery; second surgical opinion

- Adds response and request timelines for second opinions related to nonemergency surgery as follows:
 - an employer or insurer that receives a request for nonemergency surgery must respond in writing no later than seven calendar days after receipt of the request by approving the request, denying authorization or requesting an examination by the employer’s physician;
 - an employer or insurer requesting a second opinion must notify the employee and provider within seven calendar days of the request for nonemergency surgery –
 - if the employer or insurer denies authorization within seven calendar days of receiving the second opinion, the health care provider may elect to perform the surgery, subject to a determination of compensability; and
 - failure to obtain a second surgical opinion is not reason for nonpayment of the charges for surgery.

Effective date: This section is effective Aug. 1, 2023.

Section 4: Minn. Stat. § 176.135, subd. 7 – Medical bills and records

- Creates a charge structure for copies of electronic medical records related to a workers’ compensation claim.
- For each request for copies of existing medical records that are required to be obtained in an electronic format:
 - the provider must notify the requestor of the estimated cost before sending copies;
 - the provider may charge a fee, which must not exceed \$10, if the requestor does not pay for the records after the request;
 - the provider cannot require prepayment for copies of medical records unless there is an outstanding past-due invoice from a previous request to the provider;
 - the provider must provide the records in electronic format; and
 - the charges in this section include any fee for retrieval, download or other delivery of the records.
- The allowed fees for copies of electronic medical records are no more than the total of:
 - \$10 if there are no records available;
 - \$30 for copies of records of up to 25 pages;
 - \$50 for copies of records of up to 100 pages;
 - \$50, plus an additional 20 cents for each page for pages 101 and above; or
 - \$500 for any request.
- The changes do not apply to charges for copies of records or reports related to substantiating charges from a health care provider. Those charges are covered by Minnesota Rules part 5219.0300.

Effective date: This section is effective Aug. 1, 2023.

Section 5: Minn. Stat. § 176.155, subd. 1 – Employer’s physician

- Allows the employee to have a witness present at an IME.
- Requires the report produced by an employer’s physician to be served on the employee and an attorney representing the employee, if any, no later than 14 calendar days within the issuance of the report or statement.
- Requires that a request for good cause extension must be made within 120 days of service of a claim petition, unless there is:
 - a change to the employee’s claim regarding the nature and extent of the injury;
 - a change to the permanency benefits claimed by the employee, including a change in permanent partial disability percentage;
 - a new claim for indemnity benefits; or
 - the employment relationship is not admitted by the uninsured employer.

Effective date: This section is effective Aug. 1, 2023.

Section 6: Minn. Stat. § 176.239, subd. 6 – Scope of the administrative decision

- Provides that only reasons specified on the noticed of discontinuance provide a basis for the discontinuance, unless the parties agree otherwise.

Effective date: This section is effective Aug. 1, 2023.

Section 7: Minn. Stat. § 176.239, subd. 7 – Interim administrative decision

- Provides that exhibits filed by the parties with the Office of Administrative Hearings (OAH), as well as information provided at an administrative conference, should be considered for the administrative decision.

Effective date: This section is effective Aug. 1, 2023.

Section 8: Minn. Stat. § 176.291 – Disputes; petitions; procedures

- Revises portions of the list of information required to be included on a claim petition to require:
 - the extent and character of *each* injury;
 - copies of medical records supporting *each claim asserted*;
 - copies of other information in support of the claim;
 - names and addresses of witnesses for *each injury and claim*; and
 - the nature and extent of *each claim*.
- Requires an employee who has filed a claim petition to furnish a list of providers or an authorization to release information relevant to a claim for benefits within 14 days of a request by a party.

Effective date: This section is effective Aug. 1, 2023.

Section 9: Minn. Stat. § 176.305, subd. 4 – Striking from calendar

- Allows a judge to dismiss a claim petition that has been stricken from the calendar for 180 days or more.

Effective date: This section is effective Aug. 1, 2023.

Section 10: Minn. Stat. § 176.331 – Proceedings when answer not filed

- Allows for a pretrial conference when an answer to a claim petition has not been timely filed.

Effective date: This section is effective Aug. 1, 2023.

Article 3: Permanent partial disability schedule

Article 3 amends the permanent partial disability (PPD) schedule in Minn. Stat. § 176.101, subd. 2a.

The amendments to this section require the Workers' Compensation Advisory Council (WCAC) to consider whether the PPD schedule represents adequate compensation for permanent impairment during the 2026 legislation session and every even year thereafter.

The amendments also institute a weighted increase to the listed PPD amounts. All dollar amounts for impairment ratings in subdivision 2a are increased to reflect the changes approved by WCAC.

Effective date: The changes to this section are effective for injuries occurring on or after Oct. 1, 2023.

Article 4: Hospital outpatient fee schedule

Article 4 amends the hospital outpatient fee schedule in Minn. Stat. § 176.1364, as follows.

Section 1: Amends Minn. Stat. § 176.1364, subd. 3, to provide reductions over a period of three years, from 2023 through 2025, to the hospital outpatient fee schedule (HOFS) conversion factors used to determine payments under HOFS. The reductions applied to the conversion factors are:

- 3%, effective Oct. 1 2023;
- 3%, effective Oct. 1, 2024; and
- 4%, effective Oct. 1, 2025.

Section 2: Repeals subdivision 6 of Minn. Stat. § 176.1364, which describes the criteria that must be met for the reductions in subdivision 3 to occur.

Effective date: The changes to this section are effective for services on or after Oct. 1, 2023.

Article 5: Post-traumatic stress disorder (PTSD) study

Article 5 requires the commissioner of DLI to conduct a study to identify systemic or regulatory changes to improve the experience and outcomes of employees with work-related PTSD.

The study must:

- identify evidence-based methods and best practices for early detection and treatment of PTSD;
- review models, including those used in other jurisdictions and systems, for delivering mental health wellness training or employee assistance programs, and treatment and benefits related to PTSD;
- identify any programs in other jurisdictions with effective prevention, timely and effective medical intervention, or high return-to-work rates for employees with work-related PTSD;
- review the definition of PTSD provided in Minn. Stat. § 176.011, subd. 15, paragraph (d), and compare to definitions in other jurisdictions; and
- consider the list of occupations subject to the rebuttable presumption in Minn. Stat. § 176.011, subd. 15, paragraph (e).

The results of the study must be reported to WCAC and chairs and ranking minority members of the house and senate committees with jurisdiction of workers' compensation by Aug. 1, 2025.

The language includes a \$500,000 appropriation for the commissioner to contract with a third party to complete part or all of the study and hire additional staff members to support work on the study.

Effective date: This section is effective the day following final enactment.

Article 6: Housekeeping

Article 6 amends chapter 176 to make various technical changes to Minn. Stat. chapter 176, as follows.

Section 1: Updates a cross-reference in the definition of family farm in Minn. Stat. § 176.011, subd. 11a.

Effective date: This section is effective the day following final enactment.

Section 2: Adds a subdivision, 17b, with a definition for "relative value fee schedule" that cross-references the physician fee schedule tables from the federal Medicare program used to adopt the rules under section 176.136, subd. 1a.

Effective date: This section is effective the day following final enactment.

Section 3: Amends Minn. Stat. § 176.102, subd. 3, to give the Rehabilitation Review Panel (RRP) oversight of appeals regarding approval of qualified rehabilitation consultant (QRC) firms. RRP already has oversight regarding appeals from orders of the commissioner regarding certification approval of QRCs and vendors; this is adding QRC firms to this section.

Effective date: This section is effective the day following final enactment.

Section 4: Amends Minn. Stat. § 176.111, subd. 16, to require a notice of cessation of benefits under the newly added subdivision 23.

Effective date: This section is effective for violations on or after Aug. 1, 2023.

Section 5: Adds subdivision 23 to Minn. Stat. § 176.111, describing required notice of cessation of workers' compensation dependency benefits. Written notice is currently required under section 176.231, subd. 6, but this subdivision describes the specifics of the notice for discontinuing dependency benefits, including:

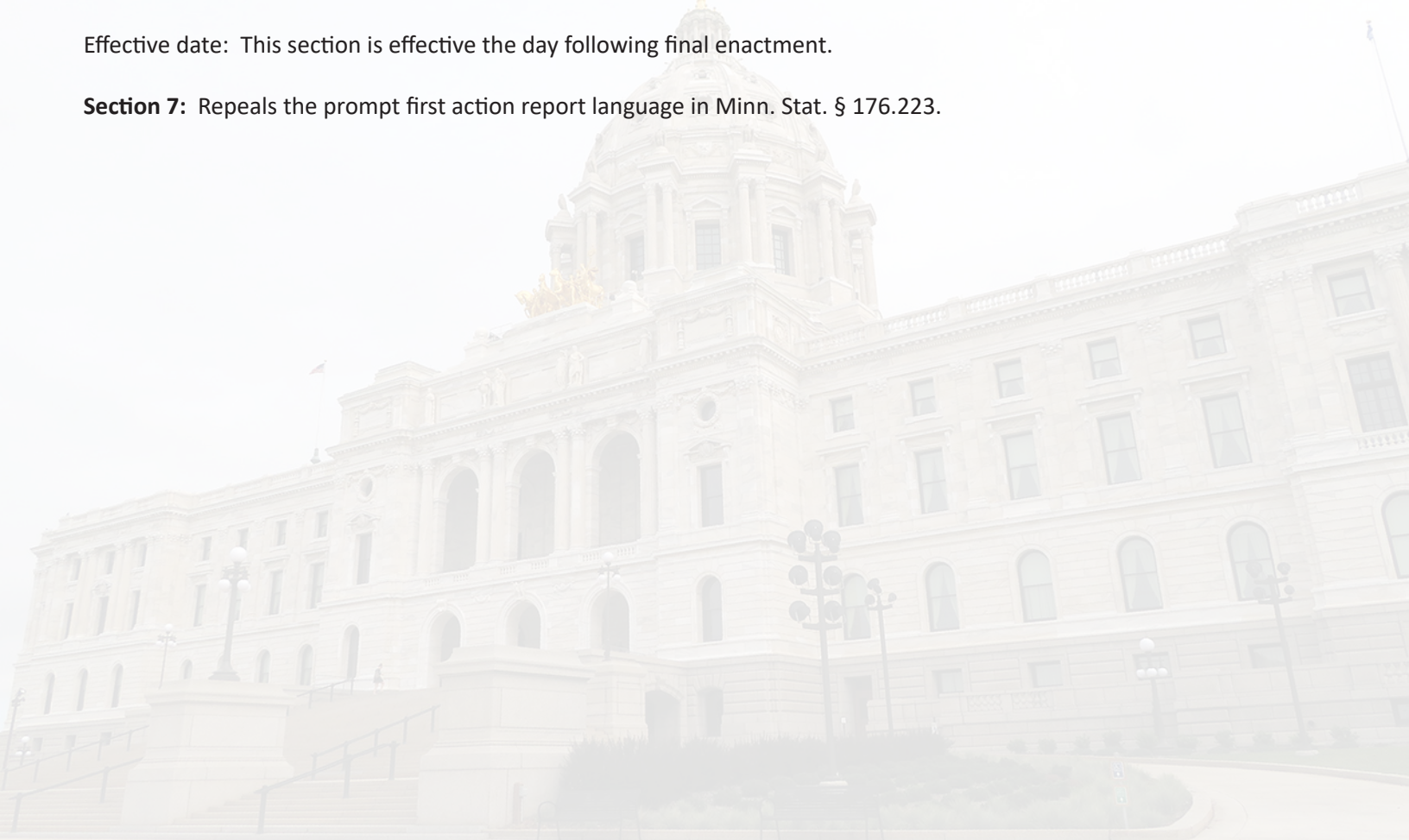
- the name of the individual whose benefits are being discontinued;
- the date the benefits will be discontinued; and
- a statement of facts and any documentation to support the reason the individual is no longer receiving dependency benefits.

Effective date: This section is effective for violations on or after Aug. 1, 2023.

Section 6: Amends Minn. Stat. § 176.1362, subd. 1, to simplify the language regarding payment of inpatient hospital charges. There is no substantive change to inpatient payment requirements, but the language now clarifies the payment is *the lesser of* the hospital's total usual and customary charge or 200% of the amount calculated under the federal inpatient Prospective Payment System (PPS) using the inpatient PPS Web Pricer (unless subject to the outlier provision).

Effective date: This section is effective the day following final enactment.

Section 7: Repeals the prompt first action report language in Minn. Stat. § 176.223.



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.

July 2023

- July 6 **Rehabilitation Review Panel**
- July 20 **Medical Services Review Board**

August 2023

- Aug. 25 **QRC intern, vendor, supervisor orientation session**

September 2023

- Sept. 20 **Workers' Compensation Insurer's Task Force**

October 2023

- Oct. 5, 2023 **Rehabilitation Review Panel**
- Oct. 12, 2023 **Medical Services Review Board**

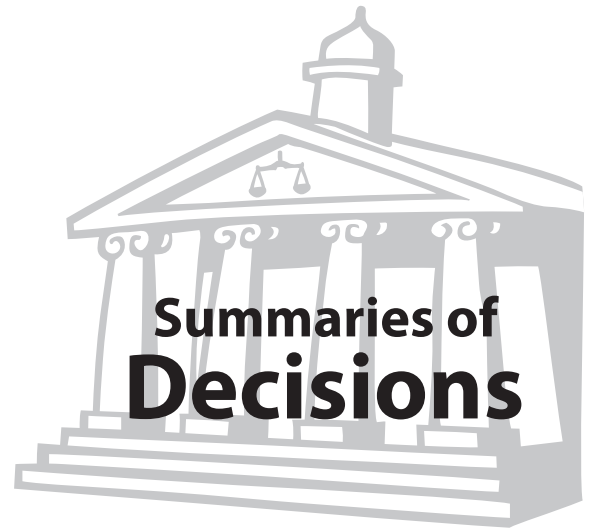
November 2023

- Nov. 15 **Workers' Compensation Insurer's Task Force**

Workers' Compensation Court of Appeals

February through April 2023

Case summaries published are
those prepared by the WCCA



Melvin Rivera-Mata v. G&L Employment Services dba Specialty Personnel Services, Feb. 1, 2023

Causation – Substantial Evidence

Substantial evidence, including medical records, video surveillance, expert medical opinion and the employee's hearing testimony, supports the compensation judge's decision that the employee did not sustain a work-related injury.

Affirmed.

Paul Eull v. Metal Sales and Manufacturing, Feb. 9, 2023

Practice and Procedure – Matters at Issue

Where the employee's diagnoses were long-standing and discussed by both treating physicians and independent medical examiners, those diagnoses were properly at issue where the nature and extent of the employee's injury was placed at issue for determination at hearing.

Practice and Procedure – Adequacy of Findings

The compensation judge's findings were sufficient and the basis for her decision was clearly articulated to allow for meaningful review on appeal.

Affirmed.

Daniel Johnson v. Concrete Treatments, Inc., March 14, 2023

Causation – Permanent Aggravation

Substantial evidence, including expert medical opinion, supports the compensation judge's finding that the employee sustained a work-related permanent aggravation of a preexisting condition.

Apportionment – Substantial Evidence

Substantial evidence, including expert medical opinion, supports the compensation judge's determination of apportionment.

Intervenor – Direct Claims

Where potential intervenors' interests had been extinguished by prior order and the employee's attorney did not unequivocally establish representation of parties which had not intervened in the matter, the attorney could not make direct claims for their interests.

Affirmed in part and reversed in part.

Juan Guzman Morales v. Installed Building Products, March 27, 2023

Causation – Intoxication Statutes Construed – Minnesota Statutes § 176.021, Subdivision 1

An employer is not liable for compensation benefits if (1) the employee was intoxicated at the time of the injury and (2) the intoxication was the proximate cause of the injury. Substantial evidence, including well-founded expert opinion, supports the compensation judge's finding the employee was not intoxicated at the time of his motor vehicle accident and the employee did not experience cocaine washout syndrome.

Evidence – Expert Opinion

The employee's forensic toxicologist had the training and experience to qualify him as an expert on the effects of cocaine on the human body. The forensic toxicologist relied on facts consistent with those found by the compensation judge in arriving at an opinion as to whether the employee was intoxicated. The compensation judge's reliance on that expert's opinion as to whether the employee was intoxicated at the time of the work injury was not an abuse of discretion.

Arriving Out Of And In The Course Of – Prohibited Act

The employee's violation of the employer's drug policy did not constitute misconduct sufficient to disqualify the employee from benefits where there was no demonstration of a connection between failing a drug screen and the employee's motor vehicle accident as the compensation judge had reasonably concluded the employee's drug use did not result in intoxication that was the proximate cause of the accident.

Job Search Rehabilitation – Cooperation Temporary Total Disability

Where the employee's qualified rehabilitation consultant directed placement services prior to a search for employment through the period of disability and the employee cooperated with the rehabilitation assistance, the compensation judge's determination regarding the adequacy of the job search and the award of temporary total disability benefits was supported by substantial evidence and not clearly erroneous.

Affirmed.

Jacqueline A. Peterson v. Allina Health, April 5, 2023

Evidence – Expert Medical Opinion

The compensation judge did not err in relying upon the employee's medical experts and the employee's testimony in finding that the work injury remains a substantial contributing factor in the employee's ongoing symptoms.

Maximum Medical Improvement – Substantial Evidence

Substantial evidence, including the employee’s credible testimony and expert medical opinions, supports the compensation judge’s determination that the employee had not yet reached maximum medical improvement from her work injury.

Statutory Interpretation Statutes Construed – Minnesota Statutes § 176.011, Subdivision 13A

A compensation judge, in finding that an employee had not yet reached maximum medical improvement, does not contradict the plain meaning of the statute as long as the judge does not base this finding solely on the employee’s subjective complaints of pain.

Affirmed.

Howard Thompson v. On Time Delivery Service, April 12, 2023

Causation – Substantial Evidence

Substantial evidence in the record, including adequately founded medical expert opinion, supports the compensation judge’s finding that the employee did not sustain injuries to his right hip, right shoulder or left hand as a result of the work injury.

Causation – Temporary Injury

Substantial evidence in the record, including adequately founded expert medical opinion, supports the compensation judge’s finding that the employee’s neck and back conditions were temporary in nature and had resolved by Aug. 20, 2018.

Temporary Total Disability Job Search

The compensation judge’s factual determination that the employee failed to make a reasonable and diligent search for suitable employment is supported by substantial evidence in the record, including the employee’s testimony at hearing.

Wages – Calculation

The compensation judge did not err in determining that the employee’s weekly wage should not include actual incurred expenses deducted from the employee’s earnings.

Affirmed.

Mark Sullinger v. KIW Constuction, April 21, 2023

Evidence – Admission

The compensation judge did not err by allowing unattributed pharmacotherapy records into evidence where the employee had not demonstrated any prejudice and the judge relied upon other evidence in making her determinations.

**Medical Treatment and Expense – Treatment Parameters
Rules Construed – Minnesota Rules 5221.6050, Subpart 8
Minnesota Rules 5221.6110**

Substantial evidence supports the compensation judge's findings that the employee's medical provider did not follow the requirements of Minn. R. 5221.6110, the employee did not qualify for a departure from the parameters under Minn. R. 5221.6050, subp. 8, and he did not qualify for a rare case exception since there had been noncompliance with the parameters.

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence in the record, including expert medical opinion, supports the decision of the compensation judge that the employee's prescription opioid medication at issue was not reasonable and necessary treatment.

Affirmed.

Minnesota Supreme Court

February through April 2023

Case summaries published are
those prepared by the WCCA



Ryan Chrz v. Mower County, March 8, 2023

Statutory Interpretation

Statutes Construed – Minnesota Statutes § 176.011, Subdivision 15(D)

An employee, whose post-traumatic stress disorder (PTSD) symptoms have improved to the point where the criteria for a diagnosis of PTSD under Minn. Stat. § 176.011, subd. 15(d), are no longer met, is not entitled to workers' compensation benefits under Minn. Stat. § 176.66, subd. 1.

Affirmed.

Deangelo Profit v. HRT Holdings D/B/A Doubletree Suites, March 29, 2023

Arising Out Of And In The Course Of – Assault

Statutes Construed – Minnesota Statutes § 176.011, Subdivision 16

Under the Workers' Compensation Act, the plain meaning of the assault exception in Minn. Stat. § 176.011, subd. 16 (2022), is that an act must be consciously and deliberately intended to injure the employee for personal reasons.

Arising Out Of And In The Course Of – Assault

Statutes Construed – Minn. Stat. § 176.011, subd. 16

Under the assault exception in Minn. Stat. § 176.011, subd. 16, the mental illness of an assailant does not prevent a compensation judge from determining that an assailant intended to injure an employee for personal reasons, which bars the victim employee from receiving workers' compensation benefits.

Affirmed.

Jerry B. Darvell v. Wherley Motors, Inc., April 4, 2023

Considered without oral argument.

Affirmed without opinion.

Neomi Schmidt v. Walmart Stores, Inc., April 5, 2023

Gillette Injury – Ultimate Breakdown

The compensation judge's finding that the employee's Gillette injury culminated in October 2015 is not manifestly contrary to the evidence.

Notice of Injury – Gillette Injury

Under Minnesota Statutes § 176.141 (2022) and Supreme Court precedent, the compensation judge’s finding that the employee’s statutory notice period for her injury began in March 2019 is not manifestly contrary to the evidence.

Temporary Partial Disability Benefits – Withdrawal From Labor Market

The compensation judge’s finding that the employee’s bus aide job was representative of her post-injury earning capacity was not manifestly contrary to the evidence.

Considered without oral argument.

Affirmed.