



## Contents

### Law changes, department updates

---

New benefit, provider fee levels, and fee schedules effective Oct. 1..... page 2

Using the dispute certification process to settle disputes..... page 5

ADR welcomes new supervisor Melissa Parish ..... page 7

Rehabilitation Review Panel seeks a new alternate member..... page 7

### Tips, reminders

---

Ask the ADR and Work Comp Campus pro..... page 8

Stay in-the-know: Subscribe for news from DLI ..... page 9

Translated materials, Language Line available via DLI website ..... page 9

Are you registered to vote?..... page 9

### Data, reports

---

CompFact: Return-to-work wage trends, distributions following vocational rehabilitation..... page 10

Workers' compensation claim rates, benefits paid continue long-term downward trajectories ..... page 11

### Events, training

---

Workers' compensation events calendar ..... page 13

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

Free training: Recordkeeping basics offered online Friday, Oct. 27..... page 13

### Court decisions

---

Workers' Compensation Court of Appeals decisions..... page D-1

Minnesota Supreme Court decisions ..... page D-5



## New benefit, provider fee levels, and fee schedules effective Oct. 1

The statewide average weekly wage (SAWW) effective Oct. 1, 2023, is \$1,337, a 3.89% increase from the current SAWW of \$1,287, which has been in effect since Oct. 1, 2022. The levels for minimum and maximum weekly benefit payments are presented in the table on page 4. The statewide annual average wage will change to \$69,517 on Jan. 1, 2024.

The new SAWW is based on 2022 payroll and employment figures supplied by the Department of Employment and Economic Development and the calculation procedure in Minnesota Statutes § 176.011, subdivision 1b. The change in the SAWW is the basis for the Minn. Stat. § 176.645 annual benefit adjustment. The time and amount of the adjustments are limited by Minn. Stat. § 176.645.

Tables showing the historical value of workers' compensation benefits, reimbursements, medical services conversion factors, maximum hourly vocational rehabilitation rates and independent medical examination (IME) fees are posted on the Department of Labor and Industry (DLI) website at [dli.mn.gov/business/workers-compensation/work-comp-rate-information-statewide-average-weekly-wage-saww](https://dli.mn.gov/business/workers-compensation/work-comp-rate-information-statewide-average-weekly-wage-saww).



### Vocational rehabilitation maximum hourly fee adjustments

Pursuant to Minnesota Rules, part 5220.1900, subpart 1b:

- the maximum qualified rehabilitation consultant (QRC) hourly rate will increase by 3.00% to \$122.97 for rehabilitation services provided on or after Oct. 1, 2023; and
- the maximum hourly rate for rehabilitation job development and placement services, whether provided by rehabilitation vendors or by QRC firms, will increase by 3.00% to \$98.48 on Oct. 1, 2023.

### Relative value medical fee schedule adjustments

The following updates to the workers' compensation physician fee schedule conversion factors in Minn. R. part 5221.4020 have been approved by an administrative law judge. The rule amendments, which are effective for services provided on or after Oct. 1, 2023, are available on DLI's website at [dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-5221-2023](https://dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-5221-2023).

Minnesota Statutes § 176.136, subd. 1a, paragraph (c)(1), provides for annual adjustments of the medical fee schedule conversion factors by no more than the percent change in the SAWW. As in previous years, the annual adjustment of the conversion factors is based on the percent change in the U.S. Department of Labor's Producer Price Index for Offices of Physicians (PPI-P) (annual-average basis), which for 2022 was 0.50%.

Based on the approved adjustment, the conversion factors effective for services provided on or after Oct. 1, 2023, are:

- for medical/surgical services described in Minn. R. 5221.4030 ..... \$67.17;
- for pathology and laboratory services described in Minn. R. 5221.4040 ..... \$61.08;
- for physical medicine/rehabilitation services described in Minn. R. 5221.4050 ..... \$60.32; and
- for chiropractic services described in Minn. R. 5221.4060 ..... \$52.27.

### Independent medical examination fee adjustment

Minnesota Rules, part 5219.0500, subp. 4, provides for adjustment of the maximum fees for IMEs in the same manner as the adjustment of the conversion factors. Therefore, the maximum fees will increase by 0.50% for IME services provided on or after Oct. 1, 2023.

A table of the maximum IME fee adjustments from Dec. 1, 1993, to present is available on DLI's website at [dli.mn.gov/business/work-comp-ime-fees](https://dli.mn.gov/business/work-comp-ime-fees).

## Link to inpatient PPS Web Pricer under Minn. Stat. § 176.1362, subd. 1

Since Oct. 1, 2021, payment for inpatient services, articles and supplies must be calculated using the inpatient PPS Web Pricer available on Medicare's website using the applicable dates of inpatient hospitalization. DLI must publish the link to the inpatient PPS Web Pricer on its website.

The link to the inpatient PPS Web Pricer is available at [dli.mn.gov/business/workers-compensation/work-comp-pc-pricer-tool-inpatient-hospital-bills](https://dli.mn.gov/business/workers-compensation/work-comp-pc-pricer-tool-inpatient-hospital-bills).

## Hospital catastrophic injury threshold adjustment

The threshold for payment of inpatient hospital services, articles and supplies provided to patients with catastrophic, high-cost injuries is adjusted pursuant to Minn. Stat. § 176.362, subd. 2. For hospital discharges on or after Oct. 1, 2023, the threshold amount is adjusted to \$291,835. If a hospital's usual and customary charges exceed this amount, payment is 75% of the hospital's charges instead of the MS-DRG amount calculated using the inpatient PPS Web Pricer.

## Notice of availability of ambulatory surgical center addenda

The fee schedule for workers' compensation ambulatory surgical center (ASC) services is based on the Medicare Ambulatory Surgical Center Payment System (ASCPS) addenda AA, BB and DD1, available on the Medicare website as of July 1, 2023, and the corresponding Medicare rules and claims processing manual. Payment for workers' compensation procedures and services is the ASCPS amount on the total bill multiplied by 320%, or the ASC's total usual and customary charges, whichever is less.



The June 29, 2023, addenda AA, BB and DD1 are the most recent ASCPS addenda available on the Medicare website as of July 1, 2023. Links to addenda AA, BB and DD1 are available on the DLI website at [dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-ascps](https://dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-ascps). They are effective for services provided by an ASC on or after Oct. 1, 2023.

## Notice of availability of hospital outpatient fee schedule

The workers' compensation hospital outpatient fee schedule (HOFS) establishes payment rates for workers' compensation outpatient hospital services that are listed in the HOFS (see Minn. Stat. § 176.1364). The updated HOFS table, effective for services from Oct. 1, 2023, through Sept. 30, 2024, is available on the DLI website at [dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-hofs](https://dli.mn.gov/business/workers-compensation/work-comp-medical-fee-schedules-hofs).

HOFS provides two separate payment rates, one for hospitals with more than 100 licensed beds and one for non-critical access hospitals with 100 or fewer licensed beds.

## Compensation rates as of Oct. 1, 2023

Statewide average weekly wage (SAWW) = \$1,337

Percentage change in SAWW from previous year = 3.89%

(Apply Minnesota Statutes § 176.645 adjustment as necessary based on date of injury.)

### Maximum under Minn. Stat. § 176.101, subd. 1(b)(1)

*Set by statute*

10-01-00 .....	\$750.00
10-01-08 .....	\$850.00

*102% of SAWW*

10-01-13 .....	\$963.90
10-01-14 .....	\$980.22
10-01-15 .....	\$1,008.78
10-01-16 .....	\$1,046.52
10-01-17 .....	\$1,061.82
10-01-18 .....	\$1,098.54
10-01-19 .....	\$1,134.24
10-01-20 .....	\$1,166.88
10-01-21 .....	\$1,256.64
10-01-22 .....	\$1,312.74
<b>10-01-23 .....</b>	<b>\$1,363.74</b>

### Minimum under Minn. Stat. § 176.101, subd. 1(c)

*Set by statute, the listed amount or the employee's actual weekly wage, whichever is less*

10-01-00.....\$130.00

*20% of the maximum weekly benefit or the employee's actual weekly wage, whichever is less*

10-01-21.....\$251.33

10-01-22.....\$262.55

**10-01-23.....\$272.75**

### Supplementary benefits under Minn. Stat. § 176.132 (Minnesota Statutes 1994)

**and permanent total minimum under  
Minn. Stat. § 176.101, subd. 4  
(for injuries 10-1-95 and later)**

10-01-05 .....	\$503.10	(rounded to \$504)*
10-01-06 .....	\$508.30	(rounded to \$509)*
10-01-07 .....	\$525.20	(rounded to \$526)*
10-01-08 .....	\$552.50	(rounded to \$553)
10-01-09 .....	\$570.70	(rounded to \$571)*
10-01-10 .....	\$564.20	(rounded to \$565)*
10-01-11 .....	\$582.40	(rounded to \$583)*
10-01-12 .....	\$595.40	(rounded to \$596)*
10-01-13 .....	\$614.25	(rounded to \$615)*
10-01-14 .....	\$624.65	(rounded to \$625)*
10-01-15 .....	\$642.85	(rounded to \$643)*
10-01-16 .....	\$666.90	(rounded to \$667)*
10-01-17 .....	\$676.65	(rounded to \$677)*
10-01-18 .....	\$700.05	(rounded to \$701)*
10-01-19 .....	\$722.80	(rounded to \$723)*
10-01-20 .....	\$743.60	(rounded to \$744)*
10-01-21 .....	\$800.80	(rounded to \$801)
10-01-22 .....	\$836.55	(rounded to \$837)*
<b>10-01-23 .....</b>	<b>\$869.05</b>	<b>(rounded to \$870)*</b>

\*Rounding applies to supplementary benefits.

## Using the dispute certification process to settle disputes

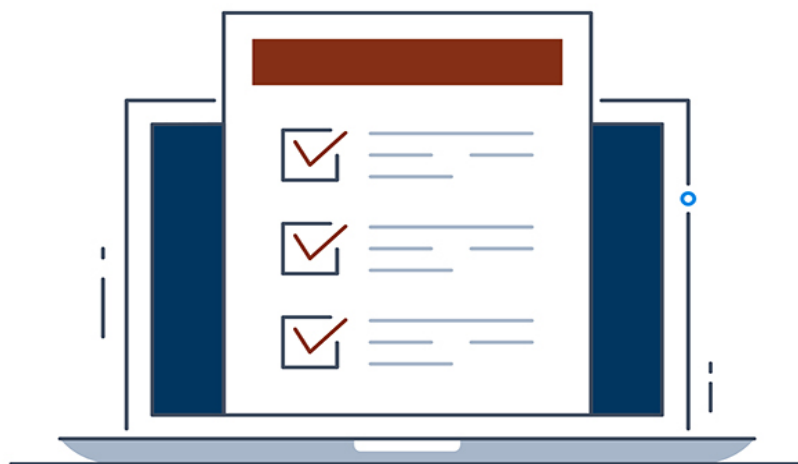
By Aaron Frederickson, Alternative Dispute Resolution mediator/arbitrator

The Department of Labor and Industry's (DLI's) Alternative Dispute Resolution (ADR) unit serves interested stakeholders to resolve workers' compensation disputes. While starting a dispute to resolve something may appear counterintuitive, a closer look at the dispute certification process demonstrates its effectiveness in seeking resolution.

### Dispute certification process origins

The dispute certification process is outlined in Minnesota Statutes § 176.081, subdivision 1 (c), which requires that before the employee or their attorney may charge a fee for services with respect to a medical or rehabilitation issue, they consult with DLI, and "the department certifies that there is a dispute and that it has tried to resolve the dispute."

**Reminder:** Per revisions to Minn. Stat. § 176.081, as of Aug. 1, 2023, a request for certification must be "served on the employer or insurer and the attorney representing the employer or insurer, if any." See Chapter 51, Minnesota Session Laws – 2023 at [revisor.mn.gov/laws/2023/0/Session+Law/Chapter/51/](https://revisor.mn.gov/laws/2023/0/Session+Law/Chapter/51/).



An attorney consults with DLI by filing a "Request for Certification of Dispute." When the request is filed, it is assigned to a mediator/arbitrator who contacts the claim handler or attorney to determine if there is a genuine dispute.

- **Practice pointer:** Filing supporting documentation with a "Request for Certification of Dispute" is helpful. These documents help DLI staff members and the responding party to better understand the item or service sought.

### Information needed in the dispute certification process

All interested stakeholders can use the dispute certification process to resolve workers' compensation disputes.

Before initiating the process, parties are encouraged to address the underlying issue by attempting to contact the claim handler to try to resolve the matter before even filing with DLI. Seeking amicable resolution of all disputes should be the goal of all parties. The process can also narrow the disputed items or services and outline agreements.

If a dispute reaches DLI, ADR works hard to resolve the issue between the parties. For DLI to provide the best assistance, it is helpful to include the following information when making a request:

- the correct information about the parties (employee, employer, insurer and other third parties); and
- the name, telephone number and email address of the current claim handler.

All requests must be completed via webform in Work Comp Campus.

*Using dispute certification*, continues ...

## Responding to department inquiries assists in resolution

The assigned mediator/arbitrator's first step is to contact the other party via telephone or email. Under recent changes to the dispute certification process, an attorney must serve the request on the employer or insurer, and any attorney representing the employer or insurer. Because the employer or insurer should have notice of the dispute, it is particularly helpful to:

- timely respond to mediator/arbitrator inquiries;
- consider inquiries from the mediator/arbitrator as a serious opportunity to resolve the issue(s); and
- recognize having an issue certified means the employee's attorney will be entitled to attorneys' fees if they prevail.
- **Practice pointer:** Claim handlers and attorneys should try to respond to an information request before certification and avoid unnecessary certifications for nonresponse.

Use the initial request as an opportunity to review the facts of the case, determine possible defenses and to potentially resolve the issue(s) – whether it is a single issue or the entire claim. After filing a "Request for Assistance," any certified issues will be set for an administrative conference.

**Reminder:** Effective Aug. 1, 2023, Minn. Stat. § 176.081 now provides that if DLI has not issued a determination regarding a "Request for Certification of Dispute" after 30 days from the date of filing, it will be certified if:

- the insurer has not approved the requested benefit;
- the employee, the employee's attorney or the treating provider has submitted any and all requested information necessary to determine whether the benefit is disputed or approved; and
- the insurer has had at least seven days to review additional information submitted.

For non-emergency surgery, a dispute will not be certified until 45 days after a request for a second opinion or independent medical examination and the conditions described above have been met. See Chapter 51, Minnesota Sessions Laws – 2023 at [revisor.mn.gov/laws/2023/0/Session+Law/Chapter/51/](https://revisor.mn.gov/laws/2023/0/Session+Law/Chapter/51/).

## Consider dispute resolution before litigation

Resolving an issue before an administrative conference allows parties to be creative and avoid litigation.

- No issue should be viewed as being beyond the possibility of resolution. Use the dispute-resolution process as an opportunity to understand the strengths and weaknesses of a position.
- Open a dialogue with the opposing stakeholder regarding settling the issue or the entire claim. Focus on the bigger picture and not single issues.
- Consider opportunities to mediate the workers' compensation dispute. Dispute resolution specialists also serve as mediators. Free mediation services are available with an option to use DLI's newly remodeled mediation suite in the St. Paul office.

The ADR unit at DLI is essential to resolving workers' compensation disputes during the certification process. With recent changes to the dispute certification process, it is even more important for all interested stakeholders to use the process to attempt to settle disputes. This includes providing accurate information to DLI and working hard to review the strengths and weaknesses of a claim. This will also promote efficiency in legal practices and reduce costly litigation.

## ADR welcomes new supervisor Melissa Parish

The Department of Labor and Industry (DLI) is pleased to announce Melissa Parish is a new supervisor in its Workers' Compensation Division's Alternative Dispute Resolution (ADR) unit. Parish will help supervise the 13 mediators/arbitrators and four administrative staff members of the unit along with Supervisor Donna Olson and Director Brian Mak.

ADR provides services for all workers' compensation stakeholders, by:

- responding to direct inquiries or escalations from the Workers' Compensation Division Help Desk about workers' compensation benefits and Work Comp Campus;
- providing early dispute-resolution efforts through the dispute certification process;
- conducting administrative conferences about medical and vocational rehabilitation disputes; and
- providing no-cost mediations at any stage of a workers' compensation claim.



**Melissa Parish**

Parish, who has extensive experience with Minnesota's workers' compensation system, will be a valuable addition to ADR and is well-respected by her peers. She has been with DLI for more than 16 years in positions of increasing responsibility, including as a compliance officer within the Compliance, Records and Training unit, as an electronic data interchange (EDI) supervisor and as a Work Comp Campus technical expert.

## Rehabilitation Review Panel seeks a new alternate member

The Rehabilitation Review Panel (RRP) currently has an opening for one alternate union labor member (annual term). To apply for this position, visit the Secretary of State website at [sos.state.mn.us/boards-commissions](https://sos.state.mn.us/boards-commissions).

RRP is composed of employer, insurer, labor, medical and rehabilitation representatives, and:

- advises the Department of Labor and Industry (DLI) about workers' compensation vocational rehabilitation issues and rules;
- is a liaison between DLI and interested people about workers' compensation vocational rehabilitation; and
- makes final decisions about certification approval or disciplinary matters of qualified rehabilitation consultants and vendors in conjunction with contested hearings.

Learn more about RRP at [dli.mn.gov/about-department/boards-and-councils/rehabilitation-review-panel](https://dli.mn.gov/about-department/boards-and-councils/rehabilitation-review-panel).



# Ask the ADR and Work Comp Campus pro

## DLI's Alternative Dispute Resolution unit answers frequently asked questions

By Brian Mak, director, Alternative Dispute Resolution

*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 mediations. It handles calls from the Workers' Compensation Division Help Desk and responds to questions from all stakeholders.*

**Q. When a Notice of Intention to Discontinue Workers' Compensation Benefits (NOID) is filed via one of the electronic data interchange (EDI) submissions and the NOID document displays in the Campus documents tab, do the employee and the employee's attorney still need to be served by the insurer?**

**A.** Yes, the principle that attorneys and insurers must remember for filing discontinuances via NOID is unchanged from the way it was done prior to Work Comp Campus. Before Campus, an insurer or attorney would file their NOID with the Minnesota Department of Labor and Industry (DLI) and mail a copy to the employee and the employee's attorney. With Campus, the only difference is the NOID is filed via EDI and then appears in Campus. The insurer or attorney must still send a copy to the employee and the employee's attorney. As it was before Campus, DLI does not serve parties with a NOID.

**Q. When I am initiating a dispute – and I have identified the party for whom I am filing the dispute – which "Other Parties in Dispute" do I need to include?**

**A.** The "Other Parties in Dispute" added in that section of the Request for Assistance (RFA) webform make up the caption of the dispute. Therefore, the employee, the employer, the insurer and the third-party administrator should always be selected as "Other Parties in Dispute" as necessary parties for any dispute.

**Q. Why might a claim in my dashboard queue not show up even when there is a Notice of Appearance or Notice of Representation filed?**

**A.** When viewing the dashboard, click the "Include Inactive" button at the far right of the queue tabs. This will cause all claims to be displayed, whether they are open or closed.

**Q. What are some tips for successful initiations of disputes?**

**A.** In addition to making sure the employee, the employer, the insurer and the third-party administrator are selected as "Other Parties in Dispute," there are a few other steps that sometimes get overlooked in the process of completing the Request for Assistance webform.

- For "Choose Dispute Resolution Service": If you are filing a Request for Assistance webform as you would a Medical Request or a Rehabilitation Request, select "Request an Administrative Conference."
- For "What Type of Request Are You Filing?": Choose either "Medical" or "Rehabilitation," even if you are requesting a mediation with this webform.
- For "Disputed Issues": Always click "Add Issue" and select the best option for the issue in dispute. Without this, the responding party will not be able to make a response to your filing.
- For "Full Name of Signatory": Enter the name exactly as is it spelled for your login name, seen at the top right corner of your dashboard.



## 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](https://dli.mn.gov/about-department/news-and-media/sign-news-department-labor-and-industry).

## 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](https://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](https://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.



### Are you registered to vote?

The Minnesota Secretary of State website has everything you need to know about voting in Minnesota. Visit [sos.state.mn.us/elections-voting](https://sos.state.mn.us/elections-voting) to register to vote, find out where and how you can cast your vote, what's on your ballot and more.

**New:** Sixteen- and 17-year-olds can now pre-register to vote in Minnesota.

## CompFact: Return-to-work wage trends, distributions following vocational rehabilitation

By Brian Zaidman, Research and Statistics

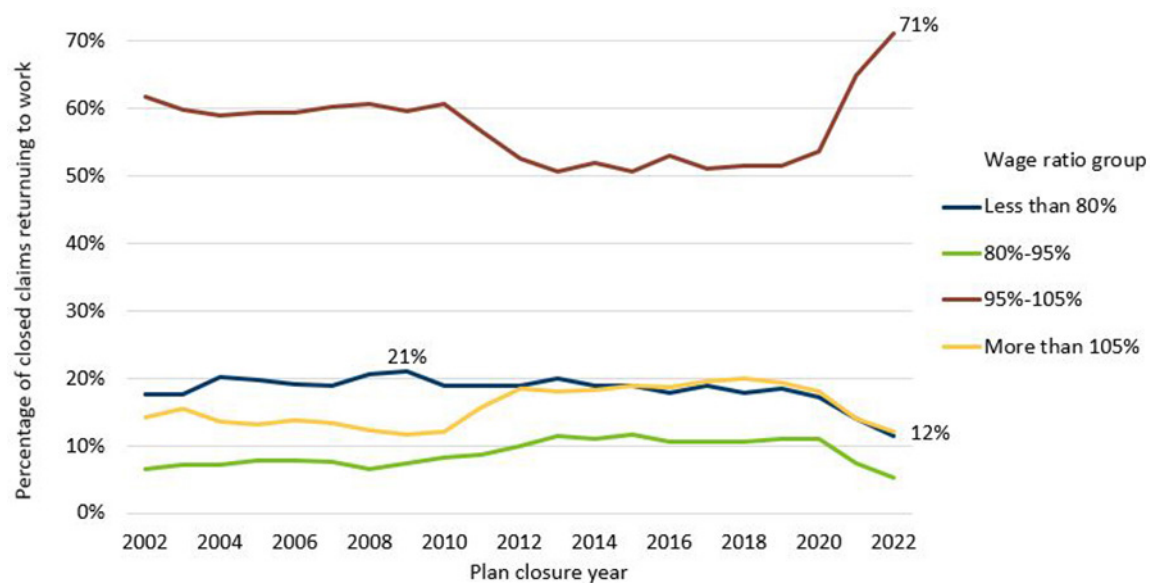
A key performance measure of vocational rehabilitation is the ratio of a worker's return-to-work wage with their pre-injury wage (referred to as the wage ratio). As shown in Figure 4.15 of the [2023 Minnesota Workers' Compensation System Report](#), the average wage ratio for workers with a reported return to work increased from 94% for plan-closure year 2005 to 99% for plan-closure year 2022. (Plan-closure years start Oct. 1 and end Sept. 30 of the indicated year.) This increase was driven by an increase in the wage ratio among workers returning to a different employer; their wage ratios increased from 82% in 2005 to 96% in 2022. Increases in the average wage ratio for workers returning to a different employer increased by three percentage points since the start of the COVID-19 pandemic.

In addition to the trends in the average wage ratio, there are trends in the wage ratio distribution itself. Figure 1 shows the percentage of workers in each of four wage ratio groups for plan-closure years 2002 through 2022. The increase in the percentage of workers with wage ratios between 95% and 105% is the most noticeable change. The percentage of workers in the 95% to 105% group increased from 54% in closure-year 2019 to 71% in closure-year 2022. For the first time, seven of every 10 workers returning to work following vocational rehabilitation earned a weekly wage the same as, or very similar to, their pre-injury wage.

The wage ratios for workers earning less than their pre-injury wage also decreased during the past three plan-closure years; the combined percentage for workers earning less than 95% of their pre-injury wage dropped from 29% in 2019 to 17% in 2022.

These results can be linked to the increase in wages during the COVID-19 pandemic and the shortage of workers. Workers who were unable to return to their pre-injury employer were able to find new jobs with comparable wages. The wage ratio trend will be followed to see if these improved results can be sustained over the long term.

**Figure 1. Percentage of workers with return-to-work by wage ratio value**



## Workers' compensation claim rates, benefits paid continue long-term downward trajectories

Workers' compensation claim rates and benefits paid in Minnesota continue their long-term downward trajectories, even with major system impact due to COVID-19 since 2020, a new Department of Labor and Industry (DLI) report shows.

The *2023 Minnesota Workers' Compensation System Report* presents trend data from 2001 to the present regarding several aspects of Minnesota's workers' compensation system. For the past two years, the report has tracked two sets of trends for the workers' compensation system: one for the whole system, including COVID-19 claims; and another for the system excluding COVID-19 claims, which shows a pattern more similar to prior years.

### Significant findings

- Relative to the number of full-time-equivalent workers, the total number of paid claims dropped by 52%, indemnity claims by 17% and medical-only claims by 62% from 2001 to 2021.
  - COVID-19: Due to the influx of COVID-19 indemnity claims, there was a 32% increase in the indemnity claim rate from 2019 to 2021.
- Relative to total payroll, indemnity benefits were down 30%, while medical benefits were down 49%, between 2001 and 2021. These trends are the result of the claim rate falling faster than increases in benefits per claim.
- The total cost of Minnesota's workers' compensation system relative to payroll follows a multi-year cycle, but a comparison of similar points in the cycle indicates a long-term decrease that extrapolates to 44% during a 20-year period.
- 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%).
- Compared to 2001, the average duration of total disability benefits (temporary total disability benefits and permanent total disability benefits combined) was 19% longer in 2021 for non-COVID-19 claims, while the average duration of temporary partial disability (TPD) benefits fell 16% by 2021.
  - COVID-19: When COVID-19 claims were included, total disability duration decreased 28% from 2019 to 2021 due to the significantly shorter duration of COVID-19 claims, while TPD duration increased 1% during the same period.

After adjusting for average wage growth, the following was found.

- Total disability benefits per paid indemnity claim were largely stable from 2001 to 2019 but decreased 5% from 2019 through 2021 for non-COVID-19 claims.
- COVID-19: When COVID-19 claims were included, total disability benefits per paid indemnity claim fell 24% from 2019 to 2021.



- TPD benefits per paid indemnity claim fell 40% from 2001 to 2021 for non-COVID-19 claims.
  - COVID-19: When COVID-19 claims were included, there was a 25% decrease in TPD benefits per paid indemnity claim from 2019 to 2021.
- Permanent partial disability (PPD) benefits per paid indemnity claim fell 69% from 2001 to 2021 for non-COVID-19 claims.
  - COVID-19: When COVID-19 claims were included, there was a 38% decrease in PPD benefits per paid indemnity claim from 2019 to 2021.
- 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.
  - COVID-19: There was a 15% decrease in the estimated number of workers who will receive vocational rehabilitation services for their injuries and illnesses in 2021 compared with the number in 2019.
  - COVID-19: The 2021 vocational rehabilitation participation rate is 16% when COVID-19 indemnity claims are included.
- The denial rate for non-COVID-19 claims in 2021 was 24%, which exceeded the 16% rate observed in 2020 and surpassed the highest rate, 17%, recorded in the past 20 years.
  - COVID-19: The denial rate of filed indemnity claims, with COVID-19 claims included, was 29% for 2021. This was above the rate of 23% for 2020. A large part of the 2021 increase in denial rate was due to the influx of COVID-19 claims that began in 2020; the denial rate for COVID-19 claims was 39% in 2021.

The complete report is available at [dli.mn.gov/business/workers-compensation/work-comp-minnesota-workers-compensation-system-report](https://dli.mn.gov/business/workers-compensation/work-comp-minnesota-workers-compensation-system-report).

## 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](http://www.dli.mn.gov/about-department/about-dli/events-workers-compensation).

### October 2023

- |               |  |
|---------------|--|
| Oct. 5, 2023  | Rehabilitation Review Panel              |
| Oct. 12, 2023 | Medical Services Review Board            |
| Oct. 27, 2023 | Free training: OSHA recordkeeping basics |

### November 2023

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

### 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, at the Interncontinental MSP Airport Hotel, 5005 Glumack Drive, Minneapolis, MN. Visit [mnworkcompforum.com](http://mnworkcompforum.com) for more information.

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.



### Free training: Recordkeeping basics offered online Friday, Oct. 27

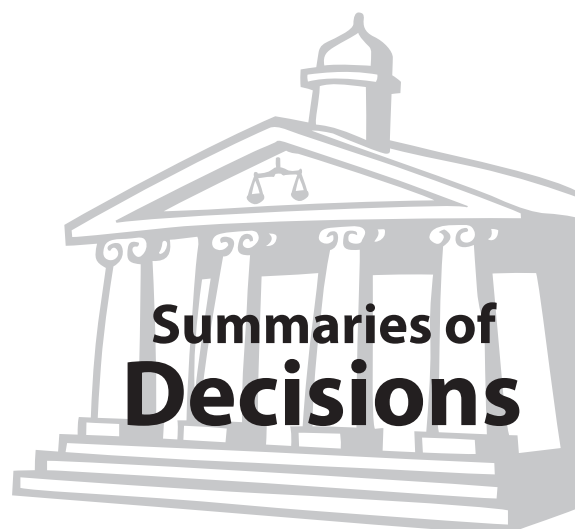
Maintaining an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, worker, safety professionals and government agencies. The Department of Labor and Industry is offering a free, introductory-level training Friday, Oct. 27, about OSHA recordkeeping requirements. There is no cost to attend the online training via Microsoft Teams, but **registration is required**.

Get complete information and register at [dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard](http://dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard).

# Workers' Compensation Court of Appeals

*May through July 2023*

Case summaries published are those prepared by the WCCA



## ***Dennis Sershen v. Metropolitan Council, May 11, 2023***

### **Statutes Construed – Minnesota Statutes § 176.135, Subdivision 5**

The compensation judge did not err by determining that the employer did not have a right to reimbursement under Minnesota Statutes § 176.135, subd. 5, because there had been no disablement of the employee as required by the statute.

Affirmed.

## ***Marquitta L. Bridgemon v. Mayo Clinic, May 19, 2023***

### **Attorney Fees – Genuine Dispute**

Where the self-insured employer sought to close out further litigation by moving to disburse withheld attorney fees, the compensation judge did not err in releasing withheld attorney fees to the employee's attorney, awarding Minnesota Statutes § 176.081, subdivision 7, fees and awarding costs.

### **Interest**

### **Statutes Construed – Minn. Stat. § 176.221, subd. 7**

Where the self-insured employer disputed the release of withheld attorney fees to the employee's former attorney, interest is calculated on the withheld attorney fees from the date of the execution of the order dismissing all pleadings and accrues whether expressly awarded by the compensation judge.

Affirmed.

## ***Dana Handeland v. Target Corporation, May 23, 2023***

### **Evidence – Expert Medical Opinion**

The compensation judge did not err in relying upon an adequately founded medical expert opinion in determining that the employee did not sustain a work-related injury on July 31, 2020.

### Practice and Procedure – Adequacy of the Findings

The compensation judge did not err in not discussing portions of the employee’s testimony at hearing as she is not required to refer to or discuss each portion of evidence introduced at hearing.

Affirmed.

*Jeovany Fuentes v. Mechanical Systems, Inc., May 25, 2023*

### Substantial Evidence – Expert Medical Opinion

The compensation judge did not err in relying upon the medical records, credibility determinations of the witness testimony, surveillance video and the adequately founded opinions of the employer and insurer’s medical experts over the opinion of the employee’s medical expert in determining the employee no longer suffered from the effects of the admitted work injury.

### Evidence – Credibility

The assessment of credibility is the unique function of the compensation judge, and evidence of the employee’s actions in claimed contradiction to the employee’s testimony regarding the effects of a work injury is to be resolved by the compensation judge.

### Practice and Procedure – Matters at Issue

Where the employee’s mental health claims were inherently included in the employee’s claims regarding effects of the work injury, the compensation judge’s determination that the employee was not credible and was able to work resolved the employee’s mental health claims.

Affirmed.

*Esther Briones Parral v. The Cleaning Authority, June 21, 2023*

### Practice and Procedure – Notice of Hearing Vacation of Award – Referral for Hearing

Where the petitioner contended that it was not properly served the claim petition and that it was not the employer’s insurer on the date of injury, the matter of whether proper service on the petitioner occurred is referred to a compensation judge for determination after an evidentiary hearing.

### Practice and Procedure – Default Award – Referral for Hearing

Where there is no finding or stipulation as to the identity of the party ordered to pay workers’ compensation benefits, the matter is referred to a compensation judge for determination.

Disposition: Petition to vacate findings and order and order on attorneys fees referred to the Office of Administrative Hearings.

***Richard Anderson v. Westmor Industries, June 26, 2023*****Evidence – Credibility**

The assessment of witness credibility is the unique function of the compensation judge, and substantial evidence supports the compensation judge's finding that the employee's testimony was credible.

**Evidence – Expert Medical Opinion**

The choice between the two competing medical expert opinions is within the discretion of the finder of fact, and this court will not disturb that determination when it is supported by substantial evidence.

**Rehabilitation – Rehabilitation Plan**

Under Minnesota Statutes § 176.102, rehabilitation services, including reasonable travel expenses, shall be paid when the services are specifically listed and submitted on the proper forms and where substantial evidence supports the reasonableness and necessity of the expenses.

Affirmed.

***Robert Kramm v. Lund Food Holdings, Inc., June 30, 2023***

**Causation – Medical Treatment**  
**Causation – Temporary Aggravation**  
**Causation – Preexisting Condition**

The employee's credible testimony, medical records and the well-founded opinion of a treating doctor constitute substantial evidence to support the compensation judge's findings that the employee's work injury did not resolve and that the injury permanently aggravated the employee's preexisting medical condition.

**Permanent Partial Disability – Substantial Evidence**

Substantial evidence, including the adequately founded opinion of the employee's treating chiropractor, supports the compensation judge's determination of the employee's permanent partial disability rating.

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

Substantial evidence, including medical records, expert medical opinion and the employee's credible testimony, supports findings that the employee was improving symptomatically and functionally and the judge's determination that a departure from the medical treatment parameters was warranted under Minn. R. 5221.6050, subp. 8.D.

Affirmed.

***Harley D. Gayle v. Parasole Restaurant Holdings, Inc., July 10, 2023***

**Appeals – Notice of Appeal**  
**Jurisdiction – Subject Matter**

Substantial evidence supports the compensation judge's finding that the employee did not timely serve the notice of appeal on the employer and insurers. Where a notice of appeal is not timely served on the opposing parties, this court lacks jurisdiction to consider the appeal.

Findings and Order on Referral affirmed and the employee's 2019 appeal dismissed.



*Janine Tea v. Ramsey County, July 28, 2023*

**Statutes Construed – Minnesota Statute § 176.011, Subdivision 15  
Evidence – Expert Medical Opinion**

Where the compensation judge was presented with competing well-founded opinions with regard to a post-traumatic stress disorder diagnosis under the DSM, this court must affirm in light of *Smith v. Carver Cnty.*, 931 N.W.2d 390 (Minn. 2019).

**Practice and Procedure – Matters At Issue**

When the consequential major depressive disorder was not raised as an issue at hearing, the compensation judge erred in finding that it was a compensable work-related injury and that award is vacated.

Affirmed in part and vacated in part.

# Minnesota Supreme Court

*May through July 2023*

Case summaries published are  
those prepared by the WCCA



## ***Rogelio Onofre Espinoza v. Direct Home Health Care, Inc., June 29, 2023***

### **Order**

It is hereby ordered that the decision of the Workers' Compensation Court of Appeals filed Dec. 20, 2022, is affirmed without opinion. See *Hoff v. Kempton*, 317 N.W.2d 361, 366 (Minn. 1982) (explaining that summary affirmances lack precedential value because "they do no commit the court to any particular point of view," and because they "do no more than establish the law of the case").

Employee is awarded \$3,500 in attorney fees.