



**MINNESOTA DEFENSE LAWYERS'
ASSOCIATIONS PROPOSALS FOR
LEGISLATIVE CHANGES**

**Workers' Compensation
Advisory Committee**

March 8, 2023

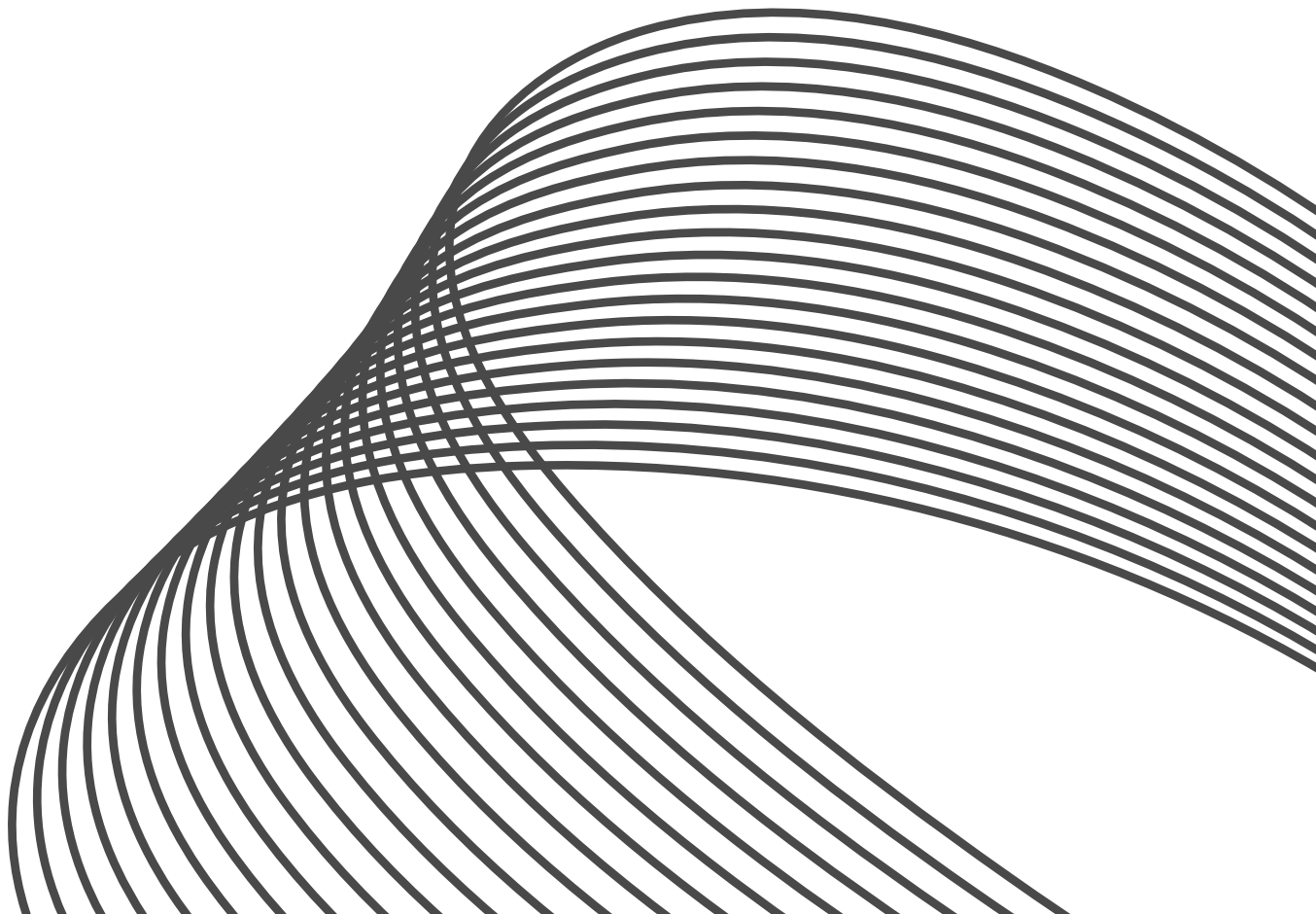


Table of Contents

#1. Service of Claims for Attorney Fees on All Parties.....	1
#2. Expedited Hearings on Motion.....	1
#3. Fairness at Hearings on Discontinuances.....	1
#4. Claim Petition Standards.....	2
#5. Expedited Medical Authorization Process.....	4

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

#1. Service of Claims for Attorney Fees on All Parties

176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.

Subdivision 1. Limitation of fees.

(d) An attorney who is claiming legal fees for representing an employee in a workers' compensation matter shall file a statement of attorney fees with the commissioner or compensation judge before whom the matter was heard. A copy of the signed retainer agreement shall also be filed. The employee, employer, and insurer, and any attorney representing the employer or insurer, shall receive a copy of the statement. The statement shall be on a form prescribed by the commissioner and shall report the number of hours spent on the case.

#2. Expedited Hearings on Motion

176.331 PROCEEDINGS WHEN ANSWER NOT FILED.

Except in cases involving multiple employers or multiple insurers, if an adverse party fails to file and serve an answer or obtain an extension from the office or the petitioner as required by section 176.321, subdivision 3, the office shall set the matter for upon motion of the petitioner, prior to any answer being filed, a compensation judge may schedule an immediate hearing and prompt award or other order. The adverse party that failed to file an answer may appear at the hearing, present evidence and question witnesses, but shall not be granted a continuance except upon a showing of good cause.

#3. Fairness at Hearings on Discontinuances

176.239 ADMINISTRATIVE DECISION CONCERNING DISCONTINUANCE OF COMPENSATION.

Subd. 6. Scope of the administrative decision.

If benefits have been discontinued due to the employee's return to work, the commissioner shall determine whether, as a result of occurrences arising during the initial 14

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

1 calendar days after the return to work, the employee is entitled to additional payment of
2 temporary total, temporary partial, or permanent total compensation.

3 If periodic payment of temporary total, temporary partial, or permanent total
4 compensation has been discontinued for reasons other than a return to work, the
5 commissioner shall determine whether the employer has reasonable grounds to support the
6 discontinuance. Only ~~information or~~ reasons specified on the notice of discontinuance shall
7 provide a basis for a discontinuance, unless the parties agree otherwise. §

8 **Subd. 7.** Interim administrative decision.

9 After considering the information provided by the parties at the administrative
10 conference, ~~including exhibits submitted by both the Employer and Insurer and the Employee,~~
11 the commissioner shall issue to all interested parties a written decision on payment of
12 compensation. Administrative decisions under this section shall be issued within five
13 working days from the close of the conference. Disputed issues of fact shall be determined
14 by a preponderance of the evidence.

15 **#4. Claim Petition Standards**

16 **176.291 DISPUTES; PETITIONS; PROCEDURE.**

17 (a) Where there is a dispute as to a question of law or fact in connection with a claim for
18 compensation, a party may serve on all other parties and file a petition with the commissioner
19 stating the matter in dispute. The petition shall be on a form prescribed by the commissioner and
20 shall be signed by the petitioner.

21 (b) The petition shall also state and include, ~~where applicable:~~

22 (1) names and residence or business address of parties;

23 (2) facts relating to the employment at the time of injury, including amount of wages
24 received;

25 (3) extent and character of ~~each~~ injury;

26 (4) notice to or knowledge by employer of injury;

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

1 (5) copies of written medical reports or factual documentation supporting the occurrences
2 of or other information in support of the each alleged work injury and claim;

3 (6) names and addresses of all known witnesses intended to be called in support of ~~the~~ each
4 injury and claim;

5 (7) the desired location of any hearing and estimated time needed to present evidence at
6 the hearing;

7 (8) any requests for a prehearing or settlement conference;

8 (9) a list of all known third parties, including the Departments of Human Services and
9 Employment and Economic Development, who may have paid any medical bills or other
10 benefits to the employee for the injuries or disease alleged in the petition or for the time
11 the employee was unable to work due to the injuries or disease, together with a listing of
12 the amounts paid by each;

13 (10) the nature and extent of the claim(s); and
14

15 (c) Incomplete petitions may be dismissed or stricken from the calendar as provided by section
16 176.305, subdivisions 4 and 5. The time limits in Minn. Stat. §176.155, 176.312, 176.331, and
17 Minn. R. 1420.2200, shall be tolled until the request by a party is acted upon by a compensation
18 judge or withdrawn. Within 30 days of a request by a party, an employee who has filed a claim
19 petition pursuant to section 176.271 or this section shall furnish a list of physicians and health care
20 providers from whom the employee has received treatment for the same or a similar condition as
21 well as authorizations to release relevant information, data, and records to the requester. The
22 petition may be stricken from the calendar upon motion of a party for failure to timely provide the
23 required list of health care providers or authorizations.
24

25 (d) Within 30 days of a request by a party, an employee who has filed a claim petition pursuant to
26 section 176.271 or this section shall furnish a list of physicians and health care providers from
27 whom the employee has received treatment for the same or a similar condition as well as
28 authorizations to release relevant information, data, and records to the requester. The petition may

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

1 ~~be stricken from the calendar upon motion of a party for failure to timely provide the required list~~
2 ~~of health care providers or authorizations.~~

3
4 **176.305 PETITIONS FILED WITH WORKERS' COMPENSATION DIVISION.**

5 Subd. 4.Striking from calendar

6 A compensation judge, after receiving a properly served motion, ~~may~~ shall strike a case
7 from the active trial calendar after the employee has been given 30 days to correct ~~the a~~
8 ~~deficient~~ petition if it is shown that the information on the petition or included with the
9 petition is incomplete. Once a case is stricken, it may not be reinstated until the missing
10 information is provided to the adverse parties and filed with the compensation judge. If a
11 case has been stricken from the calendar for ~~one year or more and~~ 30 days or more and no
12 corrective action has been taken, the compensation judge ~~may,~~ shall upon the judge's own
13 motion or a motion of a party which is properly served on all parties, dismiss the case,
14 without prejudice. ~~The petitioner must be given at least 30 days' advance notice of the~~
15 ~~proposed dismissal before the dismissal is effective.~~

16 **#5. Expedited Medical Authorization Process**

17 **176.101 COMPENSATION SCHEDULE.**

18 §

19 **Subdivision 1.**Temporary total disability.

20
21 (a) For injury producing temporary total disability, the compensation is 66-2/3 percent
22 of the weekly wage at the time of injury.

23 (b)(1) Commencing on October 1, 2013, and each October 1 thereafter, the maximum
24 weekly compensation payable is 102 percent of the statewide average weekly wage for the
25 period ending December 31 of the preceding year.

26 (2) The Workers' Compensation Advisory Council may consider adjustment increases
27 and make recommendations to the legislature.

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

1 (c) The minimum weekly compensation payable is \$130 per week or the injured
2 employee's actual weekly wage, whichever is less. Beginning on October 1, 2021, and each
3 October 1 thereafter, the minimum weekly compensation shall be 20 percent of the
4 maximum weekly compensation payable or the employee's actual weekly wage, whichever is
5 less.

6 (d) Temporary total compensation shall be paid during the period of disability subject to
7 the cessation and recommencement conditions in paragraphs (e) to (l).

8 (e) Temporary total disability compensation shall cease when the employee returns to
9 work. Except as otherwise provided in section [176.102, subdivision 11](#), temporary total
10 disability compensation may only be recommenced following cessation under this paragraph,
11 paragraph (h), or paragraph (j) prior to payment of 130 weeks of temporary total disability
12 compensation and only as follows:

13 (1) if temporary total disability compensation ceased because the employee returned to
14 work, it may be recommenced if the employee is laid off or terminated for reasons other than
15 misconduct if the layoff or termination occurs prior to 90 days after the employee has
16 reached maximum medical improvement. Recommended temporary total disability
17 compensation under this clause ceases when any of the cessation events in paragraphs (e) to
18 (l) occurs; or

19 (2) if temporary total disability compensation ceased because the employee returned to
20 work or ceased under paragraph (h) or (j), it may be recommenced if the employee is
21 medically unable to continue at a job due to the injury. Where the employee is medically
22 unable to continue working due to the injury, temporary total disability compensation may
23 continue until any of the cessation events in paragraphs (e) to (l) occurs following
24 recommencement. If an employee who has not yet received temporary total disability
25 compensation becomes medically unable to continue working due to the injury after reaching
26 maximum medical improvement, temporary total disability compensation shall commence
27 and shall continue until any of the events in paragraphs (e) to (l) occurs following
28 commencement. For purposes of commencement or recommencement under this clause only,

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

1 a new period of maximum medical improvement under paragraph (j) begins when the
2 employee becomes medically unable to continue working due to the injury. Temporary total
3 disability compensation may not be recommenced under this clause and a new period of
4 maximum medical improvement does not begin if the employee is not actively employed
5 when the employee becomes medically unable to work. All periods of initial and
6 recommenced temporary total disability compensation are included in the 130-week
7 limitation specified in paragraph (k).

8 (f) Temporary total disability compensation shall cease if the employee withdraws from
9 the labor market. Temporary total disability compensation may be recommenced following
10 cessation under this paragraph only if the employee reenters the labor market prior to 90 days
11 after the employee reached maximum medical improvement and prior to payment of 130
12 weeks of temporary total disability compensation. Once recommenced, temporary total
13 disability ceases when any of the cessation events in paragraphs (e) to (l) occurs.

14 (g) Temporary total disability compensation shall cease if the total disability ends and
15 the employee fails to diligently search for appropriate work within the employee's physical
16 restrictions. Temporary total disability compensation may be recommenced following
17 cessation under this paragraph only if the employee begins diligently searching for
18 appropriate work within the employee's physical restrictions prior to 90 days after maximum
19 medical improvement and prior to payment of 130 weeks of temporary total disability
20 compensation. Once recommenced, temporary total disability compensation ceases when any
21 of the cessation events in paragraphs (e) to (l) occurs.

22 (h) Temporary total disability compensation shall cease if the employee has been
23 released to work without any physical restrictions caused by the work injury.

24 (i) Temporary total disability compensation shall cease if the employee refuses an offer
25 of work that is consistent with a plan of rehabilitation filed with the commissioner which
26 meets the requirements of section [176.102, subdivision 4](#), or, if no plan has been filed, the
27 employee refuses an offer of gainful employment that the employee can do in the employee's

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

1 physical condition. Once temporary total disability compensation has ceased under this
2 paragraph, it may not be recommenced.

3 (j) Temporary total disability compensation shall cease 90 days after the employee has
4 reached maximum medical improvement, except as provided in section [176.102, subdivision](#)
5 [11, paragraph \(b\)](#). For purposes of this subdivision, the 90-day period after maximum
6 medical improvement commences on the earlier of: (1) the date that the employee receives a
7 written medical report indicating that the employee has reached maximum medical
8 improvement; or (2) the date that the employer or insurer serves the report on the employee
9 and the employee's attorney, if any. Once temporary total disability compensation has ceased
10 under this paragraph, it may not be recommenced except if the employee returns to work and
11 is subsequently medically unable to continue working as provided in paragraph (e), clause
12 (2).

13 (k) Temporary total disability compensation shall cease entirely when 130 weeks of
14 temporary total disability compensation have been paid, except as provided in
15 section [176.102, subdivision 11, paragraph \(b\)](#). Notwithstanding anything in this section to
16 the contrary, initial and recommenced temporary total disability compensation combined
17 shall not be paid for more than 130 weeks, regardless of the number of weeks that have
18 elapsed since the injury, except that if the employee is in a retraining plan approved under
19 section [176.102, subdivision 11](#), the 130-week limitation shall not apply during the
20 retraining, but is subject to the limitation before the plan begins and after the plan ends.

21 (l) temporary total disability compensation shall cease if the employee fails to provide
22 unaltered authorizations for release of medical records within 14 days of a request from an
23 employer, insurer, or their attorney. These authorizations must identify of all medical providers
24 with whom the injured employee has treated, prior to and since the date of the injury. The
25 authorizations must allow for release of records both prior and subsequent to the date of injury. If
26 the injured employee fails to provide the signed authorizations within the 14 days, all deadlines
27 for the employer and insurer to proceed with an Employer's Examination are tolled until the
28 authorizations are provided.

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

1 (~~lm~~) Paragraphs (e) to (~~kl~~) do not limit other grounds under law to suspend or
2 discontinue temporary total disability compensation provided under this chapter.

3 (~~mn~~) Once an employee has been paid 52 weeks of temporary total compensation, the
4 employer or insurer must notify the employee in writing of the 130-week limitation on
5 payment of temporary total compensation. A copy of this notice must also be filed with the
6 department.

7 **Subd. 2.** Temporary partial disability.

8 (a) In all cases of temporary partial disability the compensation shall be 66-2/3 percent
9 of the difference between the weekly wage of the employee at the time of injury and the
10 wage the employee is able to earn in the employee's partially disabled condition. This
11 compensation shall be paid during the period of disability except as provided in this section,
12 payment to be made at the intervals when the wage was payable, as nearly as may be, and
13 subject to the maximum rate for temporary total compensation.

14 (b) Temporary partial compensation may be paid only while the employee is employed,
15 earning less than the employee's weekly wage at the time of the injury, and the reduced wage
16 the employee is able to earn in the employee's partially disabled condition is due to the
17 injury. Except as provided in section [176.102, subdivision 11](#), paragraphs (b) and (c),
18 temporary partial compensation may not be paid for more than 275 weeks, or after 450
19 weeks after the date of injury, whichever occurs first.

20 (c) Temporary partial compensation must be reduced to the extent that the wage the
21 employee is able to earn in the employee's partially disabled condition plus the temporary
22 partial disability payment otherwise payable under this subdivision exceeds 500 percent of
23 the statewide average weekly wage.

24 (d) temporary partial disability compensation shall cease if the employee fails to provide
25 unaltered authorizations for release of medical records within 14 days of a request from an
26 employer, insurer, or their attorney. These authorizations must identify of all medical providers
27 with whom the injured employee has treated, prior to and since the date of the injury. The
28 authorizations must allow for release of records both prior and subsequent to the date of injury. If

MINNESOTA DEFENSE LAWYERS' ASSOCIATIONS
PROPOSALS FOR LEGISLATIVE CHANGES
WORKERS' COMPENSATION ADVISORY COMMITTEE MEETING
MARCH 8, 2023

1 the injured employee fails to provide the signed authorizations within the 14 days, all deadlines
2 for the employer and insurer to proceed with an Employer's Examination are tolled until the
3 authorizations are provided.

4
5 **176.155 EXAMINATIONS.**

6 Subdivision 1. Employer's physician.

7 The injured employee must submit to examination by the employer's physician, if requested
8 by the employer, and at reasonable times thereafter upon the employer's request. Examinations
9 shall not be conducted in hotel or motel facilities. The examination must be scheduled at a
10 location within 150 miles of the employee's residence unless the employer can show cause to the
11 department to order an examination at a location further from the employee's residence. The
12 employee is entitled upon request to have a personal physician present at any such examination.
13 Each party shall defray the cost of that party's physician. Any report or written statement made
14 by the employer's physician as a result of an examination of the employee, regardless of whether
15 the examination preceded the injury or was made subsequent to the injury, shall be made
16 available, upon request and without charge, to the injured employee or representative of the
17 employee. The employer shall pay reasonable travel expenses incurred by the employee in
18 attending the examination including mileage, parking, and, if necessary, lodging and meals. The
19 employer shall also pay the employee for any lost wages resulting from attendance at the
20 examination. A self-insured employer or insurer who is served with a claim petition pursuant to
21 section [176.271, subdivision 1](#), or [176.291](#), shall schedule any necessary examinations of the
22 employee, if an examination by the employer's physician or health care provider is necessary to
23 evaluate benefits claimed. The examination shall be completed and the report of the examination
24 shall be served on the employee and filed with the commissioner within 120 days of service of
25 the claim petition. The 120 days tolls if the employee fails to return unaltered authorizations for
26 all medical providers who have treated the employee within 14 days of a request by the
27 employer, insurer, or their attorney.