

WORKERS' COMPENSATION

PURPOSE AND PHILOSOPHY OF THE WORKERS' COMPENSATION SYSTEM

In the absence of a workers' compensation system, an employee injured while working would in most cases have no recourse for the injury except if the employer, its agents or some third party had been negligent. Most work-related injuries would not be compensable because they are not the result of negligence (e.g., back injuries sustained while lifting) or they are caused by the negligence of the injured employee (e.g., an employee driving a forklift off a dock).

The philosophy of the workers' compensation system is to provide benefits to injured employees under all circumstances where the injury relates to the work activity regardless of whether anyone has been negligent. While this places a greater financial burden on the employer, the employer is able to add the cost to the product or service it provides, thereby spreading this cost of doing business among the consuming public. Furthermore, in exchange for providing these benefits, the exposure of the employer is limited by the workers' compensation law. The employer is responsible only for specifically defined benefits such as wage loss, medical expense and permanent injury. Other damage claims such as those for pain and suffering, emotional distress, or loss of consortium are not permitted. With limited exceptions, these workers' compensation benefits become the only responsibility of the employer to its employees for work-related injuries, and the employer is not subject to other claims or lawsuits even if the injuries were caused by the employer's negligence.

EMPLOYERS SUBJECT TO THE MINNESOTA WORKERS' COMPENSATION LAW

All Minnesota employers, with very limited exceptions, are subject to the Minnesota Workers' Compensation Act.³⁷³ The term "employer" means any person who employs another to perform a service for hire, and includes a corporation, partnership, association, group of persons, a state, a county, a town, a city, a school district or a governmental subdivision.³⁷⁴ With limited exceptions, any such employer who has one or more employees is subject to the workers' compensation law.

Employees include any persons who provide services to another for hire. Any person—no matter their age, duty, or title—may be included as an employee. Voluntary, uncompensated workers

also may fall within the definition of an employee. There are some very limited exclusion to the categories of employees covered by the workers' compensation law.³⁷⁵ The exclusions to coverage, however, are extremely limited, and no exclusion should be assumed without careful review.

INSURING OR SELF-INSURING AGAINST WORKERS' COMPENSATION CLAIMS

Any employer subject to the Minnesota Workers' Compensation Act must obtain workers' compensation insurance coverage through an insurance company authorized to insure for such liability in the State of Minnesota.³⁷⁶ Certain employers, if they obtain approval from the Division of Insurance, may self-insure against workers' compensation liability, or may establish a group of self-insurers. In order to qualify as a self-insured employer, the employer must meet stringent requirements including proof of substantial financial stability.³⁷⁷ Any employer who fails to insure or self-insure is subject to penalties³⁷⁸ and, in addition to the penalties, remains subject to workers' compensation claims or to broader damage claims in a civil damage action.³⁷⁹ Insurance companies providing workers' compensation insurance in Minnesota are now required to make available to their insured employers a deductible plan whereby the employer pays up to a set amount per claim.³⁸⁰ The amount of premium to be paid by an employer who selects a policy with a deductible will be reduced.

Employers may work with their insurance agents or brokers to obtain workers' compensation coverage, or they may seek assistance in obtaining coverage by contacting the State of Minnesota Workers' Compensation Division of the Department of Labor and Industry at (800) 342-5354 or by visiting www.doli.state.mn.us/workcomp.asp.

THE DETERMINATION OF WORKERS' COMPENSATION INSURANCE PREMIUMS

Insurance premiums employers must pay for workers' compensation insurance are determined by various factors including employee class codes, annual employee payrolls, and the employer's loss experience rating. All employees, depending upon the nature of their work, are placed in a class. These classes, in turn, are evaluated and coded by the degree of risk of injury. The annual payroll for each class is then factored in and a premium calculated. Obviously, the greater the payroll, and/or the higher the risk classes, the greater the premium. In addition, the loss experience rating of the employer is periodically analyzed and factored into the premium structure. An employer may benefit by lowered insurance premiums if the employer is successful in maintaining a safe workplace and in working with injured employees to minimize their lost work time.³⁸¹

EMPLOYERS REQUIRED TO POST NOTICE OF EMPLOYEES' RIGHTS

Employers are required by law to post at conspicuous locations a notice to employees of their rights under the Minnesota Workers' Compensation Act.³⁸² These notices advise employees of assistance available to them, the operation of the workers' compensation system, and the name and address of the workers' compensation insurance carrier (or the fact that the employer is self-insured, if applicable). Copies of preprinted notices may be obtained from the Minnesota Department of Labor and Industry, Workers' Compensation Division at (800) 342-5354 or by visiting www.doli.state.mn.us/LS/Posters.asp.

ACTION TO BE TAKEN BY THE EMPLOYER IN CASE OF AN INJURY TO AN EMPLOYEE

When an employee is injured, the employer has the responsibility of immediately reporting any such injury to its workers' compensation insurance carrier. Preprinted forms entitled "First Report of Injury" for use in reporting injuries may be obtained either from the Department of Labor and Industry, Minnesota Workers' Compensation Division, or from the insurance carrier or the insurance administrator. If death or serious injury occurs during the course of employment, the employer must report the death or injury to both the Department of Labor and Industry and the insurer within 48 hours.³⁸³ It is the responsibility of the employer, not the employee, to complete the First Report of Injury form. This form must then be sent to the insurance company, and the insurance company will in turn send a report to the Department of Labor and Industry within 14 days after the injury.³⁸⁴ Failure to meet this reporting period may result in a penalty imposed upon the insurance carrier. Note that the employer must also give the employee the "Minnesota Workers' Compensation System Employee Information Sheet" at the time the employee is given a copy of the First Report of Injury Form.

OSHA regulations require that when an employment-related incident results in the death of at least one employee, or the inpatient hospitalization of at least three employees, the death or hospitalization must be reported within eight hours to the Department of Labor and Industry's OSHA office.³⁸⁵ After normal business hours and on Saturdays, Sundays and holidays, the report must still be made within eight hours, and is to be made by telephoning OSHA's toll-free telephone number, which is (800) 321-6742. This reporting requirement applies to employment-related incidents that, within 30 days of their occurrence, subsequently result in the death of one employee, or the in-patient hospitalization of at least three employees. Employers that learn about such reportable incidents after they occur must make the required report within eight hours of the time the incident is reported to any agent or employee of the employer.

Reporting an injury to the workers' compensation insurance carrier or to the Commissioner of Labor and Industry does not constitute an admission that the injury was work-related or that it

is covered by the workers' compensation law. These are notice and reporting requirements that must be met as soon as the employer is aware of a claimed injury. The employer and its insurance carrier are not, by virtue of this reporting, precluded from contesting the claim.

Employers are also encouraged to promptly notify their insurance carriers so that an appropriate investigation may be immediately conducted. The employer should not only cooperate fully with the insurance carrier, but may also work with the insurance carrier and assist in the investigation.

BENEFITS UNDER THE WORKERS' COMPENSATION LAW FOR AN INJURED EMPLOYEE

Benefits available for a work-related injury are established by statute. These statutes are frequently amended by the legislature and the statutes in effect at the time of injury must be consulted for specifics. General categories of benefits include the following:³⁸⁶

- **Medical and Related Services.** The employee is entitled to medical, chiropractic, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, apparatus including artificial members, and other reasonable expenses for care and treatment.
- **Temporary Total Disability.** During the period when an employee is recovering from the injury and unable to work, the employee is entitled to two-thirds of his or her weekly wage at the time of injury, subject to a statutory maximum. An injured employee disabled from work and who has a low weekly wage nevertheless is entitled to a minimum set by statute. This temporary total disability benefit is available throughout the period of the employee's inability to return to work, subject to time limitations, and may be terminated 90 days after the employee has reached maximum medical improvement from the injury, or upon the employee's retirement.
- **Temporary Partial Disability.** If the injured employee is able to work in a partially disabled condition but because of the injury is not able to earn the same amount of money that the employee earned at the time of the injury, the employee is entitled to temporary partial disability. Temporary partial disability is measured by two-thirds of the difference between what the employee was earning at the time of the injury and what the employee is able to earn in the partially disabled condition, subject to statutory maximums. Temporary partial disability is limited to 225 weeks of cumulative benefits, and will not be paid after 450 weeks from the date of injury.

- **Permanent Partial Disability.** Upon cessation of temporary total disability, permanent partial disability becomes payable. If the employee has permanent disability, the percentage of this permanent disability is determined by an evaluating doctor through application of disability schedules.³⁸⁷ The amount of these benefits is statutorily determined based upon the percentage rating of disability.
- **Permanent Total Disability.** Where an injured employee is permanently and totally disabled from substantial gainful employment, the employee is entitled to permanent and total disability. This compensation is paid during the permanent total disability of the injured employee, but is subject to some reduction if the employee receives disability benefits because of the same injury from a governmental disability benefit program, or if the employee receives old age or survivor benefits under the Social Security law. Permanent total disability benefits typically cease at age 67 because of presumed retirement.
- **Dependency Benefits.** In the case of a fatal work-related injury, limited burial expenses are paid. In addition, dependency benefits are paid to persons dependent upon the deceased employee. Compensation for the spouse is paid at the rate of 50 percent of the employee's weekly wage at the time of injury for a period of ten years. These payments are increased depending upon the number of dependent children up to a maximum of two-thirds of the employee's wage at the time of the accident.³⁸⁸
- **Refusal to Offer Continued Employment.** The Minnesota Workers' Compensation Act encourages employers to return injured employees to gainful employment. The Act provides that an employer who, without reasonable cause, refuses to offer continued employment to its employee when employment is available within the employee's physical limitations, may be liable in a civil action for up to one year's wages, subject to a maximum of \$15,000. This obligation by the employer is not covered by insurance.³⁸⁹

For employers who are insured for workers' compensation coverage, the administration of these numerous benefits is handled by the insurance company or by a third-party administrator. Self-insured employers must, of course, administer their own benefits.

INFORMAL RESOLUTION OF DISPUTES

A vast majority of workers' compensation claims are handled quickly and without problems. The claims are investigated by the insurance carrier or third party administrator and, where appropriate, benefits are voluntarily paid.

Where an injury is work-related and the employee is entitled to benefits, benefits will be paid under the law as noted above. Occasionally, disputes arise with respect to discontinuing benefits after a period of time. A system is in place for resolving such disputes by an administrative conference. An administrative conference is intended as an informal meeting attended by the employee and possibly the employee's attorney, by the employer, by the employer's insurance company, and by a representative of the Department of Labor and Industry. An attempt is made to resolve these disputes through such a conference. If a resolution cannot be voluntarily made, the Department will make a decision. This decision can be appealed.³⁹⁰

Additionally, a small claims court has been established for the purpose of quickly and inexpensively resolving disputed claims involving \$5,000 or less.³⁹¹ If both the employee and employer agree, qualifying claims may be submitted for resolution by the small claims court. It is not necessary that the parties be represented by attorneys. The determination is not appealable, and has binding effect for later proceedings.

PROCEDURE FOR RESOLUTION OF DISPUTED CLAIMS AND RIGHTS OF APPEAL

Disputes over claims arise where the employer and its insurer deny that the injury is work-related, or deny that the benefits claimed are justified. Disputes may also arise over efforts to terminate benefits. When such disputes exist, the insurance carrier will retain legal counsel to represent the interest of the employer in the dispute. These disputes, unless settled, will proceed to a hearing before a workers' compensation judge who will hear the evidence and render a formal decision. The evidence submitted to the judge may include the testimony of witnesses, including testimony of doctors through depositions or medical reports, and occasionally testimony of rehabilitation consultants or other experts. After the hearing, the compensation judge will render a formal written opinion. Any party dissatisfied with the decision of the compensation judge may appeal that decision to the Minnesota Workers' Compensation Court of Appeals. Upon such an appeal, the matter is not retried, but rather, the Court of Appeals determines whether or not the compensation judge's decision was clearly erroneous and not supported by substantial evidence. The Court of Appeals may affirm, modify or reverse the decision, or remand the case. Any party dissatisfied with the decision of the Workers' Compensation Court of Appeals may file a Writ of Certiorari to appeal the matter to the Minnesota Supreme Court.

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³⁷⁴ Id. § 176.011, subd. 10.

³⁷⁵ Id. § 176.041.

³⁷⁶ Id. § 176.181, subd. 2.

³⁷⁷ Id.

³⁷⁹ Id. § 176.031.

³⁸⁰ Id. § 79.081.

³⁸¹ See id. §§ 79.50–.55 (setting forth procedures for premium calculation).

³⁸² Id. § 176.139.

³⁸³ Id. § 176.231.

³⁸⁴ Id.

³⁸⁵ 29 C.F.R. § 1904.39(a) (2011).

³⁸⁶ Minn. Stat. §§ 176.101, .111, .135.

³⁸⁷ Minn. Rules Chapter 5223 (2011).

³⁸⁸ Minn. Stat. § 176.111.

³⁸⁹ Id. § 176.82, subd. 2.

³⁹⁰ Id. § 176.23.

³⁹¹ Id. § 176.2615.