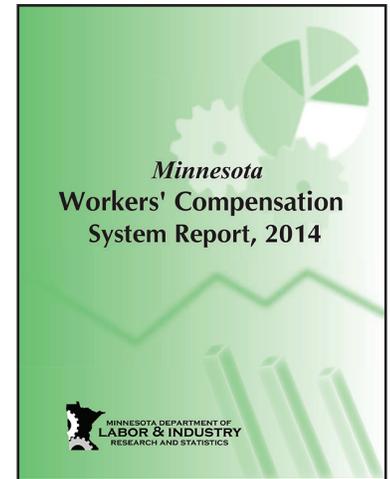


## Annual Minnesota Workers' Compensation System Report released:

### Long-term downward trend continues for number of workers' compensation claims, costs of insurance premiums

The number of paid workers' compensation claims in Minnesota fell 49 percent relative to the number of employees from 1997 to 2014, according to the *2014 Minnesota Workers' Compensation System Report*, released last month by the Minnesota Department of Labor and Industry (DLI).

"Again this year, medical treatment for injuries was the chief cost driver for the system, increasing annually per claim by 5 percent above average wages since 1997," said Ken Peterson, DLI commissioner. "To curtail rising medical costs, legislation was approved in 2015 to control increases for inpatient hospital charges and our agency hopes to pass similar controls for outpatient and ambulatory surgical center charges during the 2017 session."



#### Significant findings

- The workers' compensation claim rate fell considerably from 1997 to 2014, from 9 to 4 claims per 100 full-time-equivalent employees.
- The 2014 total workers' compensation system cost was \$1.27 per \$100 of payroll. In Minnesota and elsewhere, this cost follows a multi-year pricing cycle. However, there does seem to be a long-term downward trend.
- Because of the falling rate of claims, total costs of benefits, including medical, cash and rehabilitation, fell 18 percent relative to payroll between 1997 and 2014.
- Medical care accounts for the largest share of total system cost, 36 percent; then insurance expenses, 32 percent; and cash benefits, 28 percent.
- The percentage of claims with disputes rose from 16 percent to 21 percent from 1997 to 2008, but has shown little change since 2008.
- About 24 percent of cash-benefit claimants received vocational rehabilitation services in 2014, the highest since 1997.

This report, part of an annual series, presents data from 1997 through 2014 about aspects of Minnesota's workers' compensation system. The purpose of the report is to describe the current status and direction of workers' compensation in Minnesota and to offer explanations, where possible, for recent developments. It is available at [www.dli.mn.gov/RS/WcSystemReport.asp](http://www.dli.mn.gov/RS/WcSystemReport.asp).

#### Updated flier online: How do teen workers get injured?

The Department of Labor and Industry's Research and Statistics unit has updated its one-page handout about teen worker injuries to include injuries from 2012 through 2014. The flier is available online at [www.dli.mn.gov/RS/ClaimCharac.asp](http://www.dli.mn.gov/RS/ClaimCharac.asp).



# DLI interns gain experience working throughout the agency

## **Youth Development Program**

The Department of Labor and Industry's (DLI's) Youth Development Program hosted seven students from three Twin Cities area intern programs during summer 2016.

The students represent: Right Track, St. Paul schools; STEP-UP Achieve, Minneapolis high schools; and Urban Scholars, U.S. college students. Within DLI, two students worked in the Labor Standards unit, two in the Workers' Compensation Division, two in the Construction Codes and Licensing Division, one in the Commissioner's Office and one in Special Projects.



Students and DLI staff members participating in DLI's 2016 Youth Development Program gather in August. Pictured above left to right are: back row – Janell Westveer, Sandy Barnes, Anthony Paladie (summer intern), Cheyenne Fields (Right Track), Daneil Okabue (Urban Scholars), Assistant Commissioner Chris Leifeld; and front row – Alexis Russell, Thamyr Golafaie (Urban Scholars), Mariah Pojar (Right Track), Sonya Herr, Scarlett Lopez (STEP-UP Achieve), Angela Aryiku (RightTrack) and Denise Corrier.

## **Program structure**

DLI made structural changes to its Youth Development Program in 2016, allowing for seven interns – up from two interns in 2015 – to work from May 31 through Aug. 19.

The program supervisor meets weekly with each student to review their working experience, provide mentoring and answer questions. The program supervisor also meets biweekly with supervisors in the units that are hosting a student to touch base and to learn of any concerns they may be having with assigned students.

Unit supervisors guide the students as they work, help students assimilate into the division's or unit's workplace culture, provide content-related work and projects, and build relationships with the students.

The student workers are also required to connect with three agency professionals for 30 minutes during their internship and to prepare and present an end-of-summer presentation about their experience at the agency.

## **Youth professional development training**

DLI's program includes four one-hour training sessions, offered every other week, about professional development issues, including: PowerPoint presentations, memorandums, effective note-taking at meetings, professional relationship building, workplace etiquette, handling constructive feedback, using social media platforms professionally, resumes, cover letters and how to apply for state of Minnesota jobs online. The sessions also included four guest speakers who spoke about their careers at DLI.

At the training sessions, students are encouraged to build relationships with other students, ask questions and engage in open and facilitated discussions about the topics.

# New benefit and provider fee levels effective October 2016

By Brian Zaidman, Research and Statistics, and Kate Berger, Office of General Counsel

The statewide average weekly wage (SAWW) effective Oct. 1, 2016, is \$1,026, a 3.74 percent increase from the current SAWW of \$989, which has been in effect since Oct. 1, 2015. (See the table below.) The levels for minimum and maximum weekly benefit payments are presented in the table on page 5. The statewide annual average wage will change to \$53,349 on Jan. 1, 2017.

The new SAWW is based on 2015 payroll and employment figures supplied by the Department of Employment and Economic Development and the calculation procedure in Minnesota Statutes § 176.011, subd. 1b. The change in the SAWW is the basis for the M.S. § 176.645 annual benefit adjustment. The time of the first adjustment is limited by M.S. § 176.645, subd. 2.

Pursuant to Minnesota Rules 5220.1900, subp. 1b, the maximum qualified rehabilitation consultant (QRC) hourly fee will increase by 3.00 percent to \$107.21 on Oct. 1, 2016. The maximum hourly rate for rehabilitation job development and placement services, whether provided by rehabilitation vendors or by QRC firms, will increase to \$81.39 on Oct. 1, 2016. Notice of the increase will be published in the *State Register* in September 2016.

## Fee schedule adjustments

The adjustments to the workers' compensation medical fee schedule conversion factors and the independent medical examination fees are as follows.

### 1. Conversion factor adjustment based on updated relative value units (RVUs) and rules:

Pursuant to Minnesota Statutes § 176.136, subd. 1a, paragraph (c), the Department of Labor and Industry (DLI) is updating the fee schedule by incorporating by reference the 2016 Medicare RVUs. The Notice of Incorporation by Reference of the 2016 Relative Value

Tables was published in the *State Register* on Aug. 8, 2016; it is also on page 4 of this publication. Rule amendments to implement the new RVU tables have been approved by an administration law judge at the Office of Administrative Hearings and will be published in the *State Register* in September 2016. A link to the corresponding rule amendments is at [www.dli.mn.gov/Pdf/docket/5219\\_5221\\_rules.pdf](http://www.dli.mn.gov/Pdf/docket/5219_5221_rules.pdf).

As required by M.S. § 176.136, subd. 1a, paragraph (c)(2), DLI has adjusted the conversion factors so that overall payment for services covered under both the old and new RVUs will be the same under both sets of RVUs.<sup>1</sup> As required by law, DLI has done this separately for each of the four categories of services listed below.

## Statewide average weekly wage Effective Oct. 1 of the indicated year

	Statewide average weekly wage	Percent change from prior year
2002.....	\$702 .....	3.24%
2003.....	\$718 .....	2.28%
2004.....	\$740 .....	3.06%
2005.....	\$774 .....	4.59%
2006.....	\$782 .....	1.03%
2007.....	\$808 .....	3.32%
2008.....	\$850 .....	5.20%
2009.....	\$878 .....	3.29%
2010.....	\$868 .....	-1.14%
2011.....	\$896 .....	3.23%
2012.....	\$916 .....	2.23%
2013.....	\$945 .....	3.17%
2014.....	\$961 .....	1.69%
2015.....	\$989 .....	2.91%
2016.....	\$1,026 .....	3.74%

<sup>1</sup>For this calculation, DLI used a de-identified database of Minnesota workers' compensation medical services, charges and related data. The database was a 20-percent sample from the Minnesota Workers' Compensation Medical Data Call, provided to DLI by the Minnesota Workers' Compensation Insurers Association.

As a result of the adjustments, for services provided on or after Oct. 1, 2016, the new conversion factors will be:

- medical/surgical services described in Minnesota Rules 5221.4030 .....\$69.48
- pathology and laboratory services described in Minn. R. 5221.4040 .....\$56.70
- physical medicine/rehabilitation services described in Minn. R. 5221.4050 .....\$55.57
- chiropractic services described in Minn. R. 5221.4060.....\$49.34

**2. Conversion factor annual adjustment:** M.S. § 176.136, subd. 1a, paragraph (c)(1) provides for annual adjustment of the medical fee schedule conversion factors by no more than the percent change in the SAWW. DLI adjusts the conversion factors (computed as described above) by the percent change in the Producer Price Index for Offices of Physicians (PPI-P).<sup>2</sup> Because the change in PPI-P for 2015 was -1.2 percent, no additional adjustment to the conversion factors is made.

### IME fee adjustments

Minnesota Rules, part 5219.0500, subp. 4, provides for adjustment of the maximum fees for independent medical examinations (IMEs) in the same manner as the annual adjustment of the conversion factors. Because there is no annual adjustment of the conversion factors, the maximum IME fees remain the same for services provided on or after Oct. 1, 2016.

All of the above referenced documents are also online at [www.dli.mn.gov/WC/HealthCareProv.asp](http://www.dli.mn.gov/WC/HealthCareProv.asp).

<sup>2</sup>The PPI, produced by the U.S. Bureau of Labor Statistics, measures the average change over time in the selling prices received by producers for their output. The annual PPI-P and the associated annual changes (using industry code 62111 – offices of physicians) are available at [www.bls.gov/ppi/data.htm](http://www.bls.gov/ppi/data.htm).

## Notice of incorporation by reference of relative value tables

### Whereas;

Minnesota Statutes § 176.136, subd. 1a, paragraph (d), clause (2) (supp. 2015), requires the commissioner to, at least every three years, update the workers' compensation relative value tables in the workers' compensation fee schedule in Minnesota Rules, Chapter 5221, by incorporating by reference the relative value tables in the national physician fee schedule relative value file established by the Centers for Medicare and Medicaid Services (CMS). Each notice of incorporation must state the date the incorporated tables will become effective and must include information about how the Medicare relative value tables may be obtained.

**Therefore**, notice is hereby given that the following relative value tables, released by CMS on Feb. 2, 2016, are incorporated by reference, effective for workers' compensation health care services provided on or after Oct. 1, 2016:

The files CY2016\_GPCIs and PPRRVU16\_April\_V0202 found in RVU16B [ZIP, 3MB] on the "PFS Relative Value Files" page are on the CMS website currently at:  
<https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Relative-Value-Files-Items/RVU16B.html?DLPage=1&DLEntries=10&DLSort=0&DLSortDir=descending>.

Additional information about how to access these tables is available on the Department of Labor and Industry website at [www.dli.mn.gov/WC/HealthCareProv.asp](http://www.dli.mn.gov/WC/HealthCareProv.asp).

Pursuant to Minnesota Statutes § 176.136, subd. 1a, paragraphs (c) and (d), notice of amendments to rules to implement the above incorporated tables will be published in the *State Register* in September 2016.

# Compensation rates as of Oct. 1, 2016

**Statewide average weekly wage (SAWW) = \$1,026**  
**Percentage change in SAWW from previous year = 3.74%**

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

Maximum under M.S. § 176.101 and 176.111	Minimum under M.S. § 176.101, subd. 1(2)	Supplementary benefits under M.S. § 176.132 (Minnesota Statutes 1994)
<i>100% of SAWW</i>	<i>50% of the SAWW or gross wage, whichever is less, but in no case less than 20% of the SAWW</i>	<b>and permanent total minimum under M.S. § 176.101, subd. 4</b>
10-01-88.....\$391.00	50%.....20%	<b>(for injuries 10-1-95 and later)</b>
10-01-89.....\$413.00	10-01-88.....\$195.50 (gross wage - \$293.25) .....\$ 78.20	10-01-98.....\$376.35 (rounded to \$377)*
10-01-90.....\$428.00	10-01-89.....\$206.50 (gross wage - \$309.75) .....\$ 82.60	10-01-99.....\$399.75 (rounded to \$400)*
10-01-91.....\$443.00	10-01-90.....\$214.00 (gross wage - \$321.00) .....\$ 85.60	10-01-00.....\$417.30 (rounded to \$418)*
<i>105% of SAWW</i>	10-01-91.....\$221.50 (gross wage - \$332.25) .....\$ 88.60	10-01-01.....\$442.00 (round)
10-01-92.....\$481.95	<i>20% of the SAWW or the employee's actual weekly wage, whichever is less</i>	10-01-02.....\$456.30 (rounded to \$457)*
10-01-93.....\$508.20	10-01-92.....\$91.80	10-01-03.....\$466.70 (rounded to \$467)*
10-01-94.....\$516.60	10-01-93.....\$96.80	10-01-04.....\$481.00 (round)
<i>Set by statute</i>	10-01-94.....\$98.40	10-01-05.....\$503.10 (rounded to \$504)*
10-01-95.....\$615.00	<i>Set by statute, the listed amount or the employee's actual weekly wage, whichever is less</i>	10-01-06.....\$508.30 (rounded to \$509)*
10-01-00.....\$750.00	10-01-95.....\$104.00	10-01-07.....\$525.20 (rounded to \$526)*
10-01-08.....\$850.00	<b>10-01-00 ..... \$130.00</b>	10-01-08.....\$552.50 (rounded to \$553)
<i>102% of SAWW</i>		10-01-09.....\$570.70 (rounded to \$571)*
10-01-13.....\$963.90		10-01-10.....\$564.20 (rounded to \$565)*
10-01-14.....\$980.22		10-01-11.....\$582.40 (rounded to \$583)*
10-01-15.....\$1,008.78		10-01-12.....\$595.40 (rounded to \$596)*
<b>10-01-16.....\$1,046.52</b>		10-01-13.....\$614.25 (rounded to \$615)*
		10-01-14.....\$624.65 (rounded to \$625)*
		10-01-15.....\$642.85 (rounded to \$643)*
		<b>10-01-16 ..... \$666.90 (rounded to \$667)*</b>

\*Rounding applies to supplementary benefits.

## DLI's involvement in international workers' compensation association

The International Association of Industrial Accident Boards and Commissions (IAIABC) is a nonprofit organization representing government agencies charged with the administration of workers' compensation claims. Its mission is to advance the efficiency and effectiveness of workers' compensation systems both domestically and internationally. Although each state has different workers' compensation laws, rules and administrative practices, IAIABC has developed, analyzed and promulgated standards and uniform practices in workers' compensation.



IAIABC brought payers and jurisdictions together to develop a national standard for reporting first report of injury (FROI) data via electronic data interchange (EDI). The electronic submission of data offers a streamlined, standardized technical solution to what was historically a paper-based system. Minnesota has been a part of developing and maintaining this national standard for more than 20 years and, in 2014, mandated the electronic submission of FROI data using IAIABC's Claims Release 3.0 standard.

In addition to its EDI and policy programming, IAIABC has a very active role in medical matters pertaining to workers' compensation, including containing medical costs, identifying an industry standard for electronic billing, and promoting best medical and disability management practices across jurisdictions.

Department of Labor and Industry (DLI) staff member participation in IAIABC events and committees has enabled Minnesota to ensure its legal and business process requirements are addressed and maintained, while benefiting from the efficiencies of standardized electronic reporting. Contacts made at IAIABC events have advanced DLI initiatives and events, including the Workers' Compensation Modernization Project (WCMP), the Workers' Compensation Summit events, legislative initiatives involving medical policy and maintenance of the EDI FROI reporting standard.

**Jessica Stimac**, director of DLI's Compliance, Records and Training unit, is currently serving as vice president of the Central States Association (CSA) of IAIABC. CSA is an association of workers' compensation agencies in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. At the recent CSA conference, topics included regulatory and legislative trends, opt-out programs and legislation, a comparison of state judicial performance, controlling the opioid crisis, New Mexico's proposed 2016 bill exempting workers' compensation payers from liability for medical cannabis and issues around air ambulance charges.

Stimac also represents Minnesota's seat on IAIABC's EDI Council, which comprises 12 jurisdictional members and 12 associate members. Members are selected after an application process and serve three-year terms. The EDI Council is responsible for oversight of IAIABC's EDI Claims, Medical, ProPay and Proof of Coverage submission standards, as well as the Systems Committee and XML Task Group. The EDI Council promotes and facilitates a uniform standard of reporting data to jurisdictions and safeguards the integrity of the data and the reporting process to increase efficiencies.

**Lisa Wichterman**, DLI's medical policy specialist, has been chairwoman of the Medical Issues Committee for the past four years. The committee is currently working on a formulary white paper and an opioid white paper, and is actively discussing fee schedules, wearables and telehealth.

**Jon Brothen**, DLI's workers' compensation compliance supervisor, is a member of the Disability Management and Return to Work Committee, which addresses best practices in the areas of treatment,

early and safe return to work/function and injury prevention. Brothen is also one of a select group of participants working on a new claims data reporting standard.

Additionally, DLI has an EDI Team comprising various members of its Compliance, Records and Training unit and MN.IT Services @ Labor and Industry. Multiple members of DLI's EDI Team are members of the Claims and Systems Committees, which oversee the current reporting standard for first and subsequent reports of injury. The EDI Team has been actively involved in these committees and various workgroups to develop an enhanced claims data reporting standard.

Information about DLI's EDI program can be found at [www.dli.mn.gov/WC/Edi.asp](http://www.dli.mn.gov/WC/Edi.asp). Questions about the EDI program can be directed to [dli.edi@state.mn.us](mailto:dli.edi@state.mn.us).

## OSHA recordkeeping training offered Oct. 21: Reviewing the basics

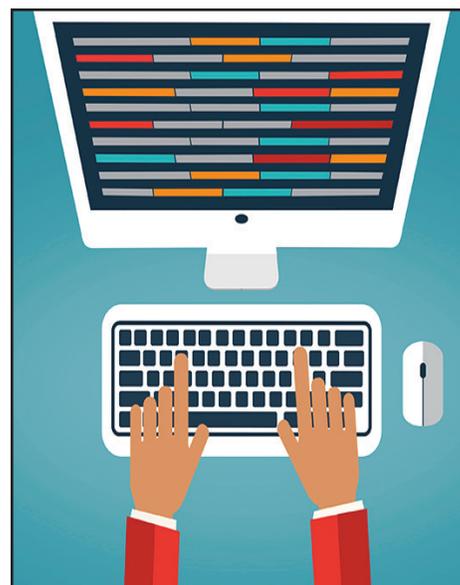
The ability to maintain an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies. The requirements for including a workplace injury or illness on the OSHA log are different from the laws an insurer uses to decide whether to accept primary liability for a workers' compensation claim. OSHA log recordkeeping training is necessary to learn how to keep an accurate OSHA log.

The Department of Labor and Industry is offering free introductory-level training sessions about OSHA recordkeeping.

When: Fridays, Oct. 21 and Oct. 28 (attend one session), 9 a.m. to 11:30 a.m.

Where: Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN (directions at [www.dli.mn.gov/Direct.asp](http://www.dli.mn.gov/Direct.asp))

Register: To register, visit [www.dli.mn.gov/OSHA/Recordkeeping.asp](http://www.dli.mn.gov/OSHA/Recordkeeping.asp)



### OFFICE OF WORKERS' COMPENSATION OMBUDSMAN



The Office of Workers' Compensation Ombudsman informs, assists and empowers injured workers and small businesses having difficulty navigating the workers' compensation system. It is a separate entity within the Minnesota Department of Labor and Industry.

#### ***The ombudsman assists injured workers by:***

- providing information to help them protect their rights and to pursue a claim;
- contacting claims adjusters and other parties to resolve a dispute;
- assisting in preparing for settlement negotiations or mediations; and
- making appropriate referrals to other agencies or entities if needed.

#### ***The ombudsman assists small businesses by:***

- providing information about what to do when an employee is injured;
- directing them to appropriate resources for assistance in obtaining and resolving issues regarding workers' compensation insurance; and
- responding to questions pertaining to employers' responsibilities under Minnesota's workers' compensation law.

For assistance, contact the Office of Workers' Compensation Ombudsman at (651) 284-5013, 1-800-342-5354 or [dli.ombudsman@state.mn.us](mailto:dli.ombudsman@state.mn.us).

# Results of 2016 Special Compensation Fund assessment

By John Kufus, Accounting Officer, Financial Services

The Special Compensation Fund (SCF) assessment funds Minnesota's workers' compensation programs. Most of the assessment dollars go to funding the supplementary and second-injury benefit programs. The assessment also pays the operating expenses of the Workers' Compensation Court of Appeals and the workers' compensation divisions of the Department of Labor and Industry and the Office of Administrative Hearings. It also supports anti-fraud activities at the Department of Commerce.

The Special Compensation Fund assessment is directly invoiced by the Minnesota Department of Labor and Industry. The first half of the assessment is invoiced by June 30 of each year, and is due Aug. 1 of that year. The second billing is due Feb. 1 of the following year, and is mailed approximately 30 days before the due date.

The estimated state-fiscal-year 2017 funding requirement for the Special Compensation Fund was determined to be \$80 million. The liability was divided between the insurers and self-insurers by the ratio of their 2015 indemnity payments to the total indemnity reported by both groups.

Due to decreasing second-injury and supplementary benefit obligations, the 2016 SCF assessment continues a downward trend in the amount of funding required, with a corresponding reduction in the assessment rate. The 2016 assessment of \$80 million is

	2015 indemnity	Ratio	Estimated liabilities	DSR pure premium
Insurers	\$310,210,932	74.80%	\$59,839,599	\$846,334,640
Self-insurers	\$104,513,724	25.20%	\$20,160,401	
Total	\$414,724,656	100.00%	\$80,000,000	\$846,334,640

\$1 million less than the 2015 assessment of \$81 million. During the past eight years, the annual funding requirement has dropped \$11 million: the 2009 assessment was \$91 million versus \$80 million for the 2016 assessment. The assessment rate has dropped 18 percent – from 23.3 percent for the 2009 assessment to 19.3 percent for the 2016 assessment.

## Insurer premium surcharge rate

The insurer premium surcharge rate applied for the purpose of determining the Special Compensation Fund assessment was 7.0704 percent. The rate was determined by dividing the insurer portion of the Special Compensation Fund state-fiscal-year 2017 liability (\$59,839,599) by the 2015 designated statistical reporting pure premium reported by all insurers to the Minnesota Workers' Compensation Insurers Association (\$846,334,640).

Percentage for assessments due for insurers and self-insurers			
Year assessed	Basis for assessment	Insurers	Self-insurers
2006	2005	9.2312%	23.6870%
2007	2006	8.7176%	24.0396%
2008	2007	8.6050%	23.8969%
2009	2008	8.5347%	23.3185%
2010	2009	8.6636%	22.4319%
2011	2010	8.9013%	22.0264%
2012	2011	8.296%	21.631%
2013	2012	7.6546%	19.9725%
2014	2013	7.5457%	19.8520%
2015	2014	7.5652%	19.2567%
2016	2015	7.0704%	19.2897%

## Self-insured assessment rate

The imputed self-insured assessment rate was 19.2897 percent. It was determined by dividing the self-insured portion of the Special Compensation Fund state-fiscal-year 2017 liability (\$20,160,401) by the total 2015 indemnity reported by the self-insured employers (\$104,513,724).

The current assessment is considered to be an estimate based on the prior year's data. The reconciliation and final determination (true-up) for insurers will be completed by Dec. 1, 2017.

## More information

For further information, contact John Kufus at (651) 284-5179 or [john.kufus@state.mn.us](mailto:john.kufus@state.mn.us).

# Making timely permanent partial disability benefit payments

By Ralph Hapness; Compliance, Records and Training

Permanent partial disability (PPD) benefits compensate for permanent loss of use of a body part. These benefits are paid after temporary total disability (TTD) ends, at approximately the same rate and intervals. Injured workers may request payment of PPD benefits in a lump sum.

PPD benefits must be paid at the time specified in Minnesota Statutes §§ 176.021 and 176.101 and Minnesota Rules 5220.2550. If the benefits are being paid periodically, the payments must be continued without interruption at the same intervals that TTD benefits were or would have been paid. This applies whether or not temporary partial disability (TPD) benefits are being paid concurrently with PPD benefits. When PPD benefits are being paid periodically and concurrently with the payment of permanent total disability (PTD), the payments must be continued without interruption at the same intervals as the PTD benefits are being paid. If a rating has not been received when an employee reaches maximum medical improvement (MMI), the insurer must request an assessment of PPD from the treating doctor. Insurers must act upon PPD ratings within 30 days of knowledge of a minimum rating or receipt of a medical report containing a rating.



## Minimum ascertainable PPD

There may be times when an insurer knows a minimum PPD is ratable, even though a rating has not yet been received from the treating doctor. This is true in cases where there is medical data showing a condition for which the PPD schedule has a rating. For example, if there has been an amputation of part of a finger or if there is knee surgery required where up to 50 percent of a meniscus is removed.

If PPD benefits are payable, the current minimum rating (or minimum ascertainable PPD) must be paid and any additional PPD benefits, after the treating doctor gives a final rating, would be paid at a later date.

## Before payment is due

If the PPD benefits are not currently payable, the insurer must, within 30 days of the knowledge of a minimum rating or receipt of a medical report containing a rating:

- inform the employee in writing of the rating; and
- advise the employee when the PPD benefits will be payable.

## When PPD benefits are currently payable

When the extent of the PPD is not disputed, the insurer must, within 30 days of knowledge of a minimum rating or receipt of a medical report containing a rating:

- make at least a minimum lump-sum payment or begin periodic payments to the employee; and
- inform the employee in writing of the PPD rating and the number of weeks the PPD benefit payments will be made (see Minnesota Rules 5220.2550, subp. 1).

When the extent of the PPD is disputed, the insurer must, within 30 days of the receipt of a medical report containing a rating:

- make at least the minimum lump-sum payment or begin periodic payments, based on any undisputed portion of the rating;
- notify the employee in writing that an independent medical examination has been scheduled and provide the date, time and place of the examination; and
- determine and pay any remaining PPD benefits within 120 days of receipt of the initial medical report that contained the PPD rating.

For more information, see Minnesota Statutes §§ 176.021 and 176.101 and Minnesota Rules 5220.2550 on the Office of the Revisor of Statutes website at [www.revisor.mn.gov](http://www.revisor.mn.gov).

Failure to timely pay PPD benefits may result in penalties under Minnesota Rules 5220.2550, subp. 4: If benefits are not paid as required under subpart 1 or 2, the division may assess penalties under Minnesota Statutes §§ 176.221 and 176.225, and parts 5220.2750 [\$5,000 maximum], 5220.2760 [up to 30 percent of the amount delayed] and 5220.2790 [25 percent of the amount delayed]. A penalty for failure to file a notice required by this subpart may be assessed under part 5220.2830 [up to \$500].

Penalties under M.S. § 176.221 are payable to the Assigned Risk Safety Account; penalties under M.S. § 176.225 are payable to the injured employee.

### How to timely file PPD benefit payments

The Notice of Benefit Payment (NOBP) form is served with the division and the employee (Minnesota Rules 5220.2550, subp. 2). It requires:

- 1) the disability percent;
- 2) the PPD schedule number(s);
- 3) the doctor and attached referenced medical report;
- 4) the date of the medical report; and
- 5) the date the insurer received the report.

<b>1)</b> % of whole body according to Minnesota Workers' Compensation Permanent Partial Disability Schedule rule number(s):
<b>2)</b>
The rating is based on the attached medical report of Dr. <b>3)</b>
dated <b>4)</b> , received by the insurer on <b>5)</b> (date).
<input type="checkbox"/> This payment is based on the preliminary rating. If your final disability rating is higher, additional payments may be made.

Check the box on the form if payment is based on a preliminary rating and the final rating is higher and additional payments may be made. Always ensure the dates are accurate.

For injuries on or after Oct. 1, 1995, indicate when:

- 1) the initial payment was or will be made;
- 2) the weekly payment rate;
- 3) the final through-date of payment; and
- 4) the total amount of PPD benefits.

<input type="checkbox"/> For injuries on or after 10/01/1995:
<input type="checkbox"/> The initial payment of weekly benefits was or will be made on <b>1)</b> (date). Benefits will be paid at a weekly rate of \$ <b>2)</b> through <b>3)</b> (date) for a total of \$ <b>4)</b> .
<input type="checkbox"/> A lump-sum payment of \$ _____, instead of weekly payments, was or will be made on _____ (date) as requested by the employee on _____ (date).

When making periodic PPD benefit payments, the NOBP form is filed when the payments start and again when the PPD payments end.

### Lump-sum PPD benefit payments

Lump-sum payments must indicate the dollar amount, the date of the payment and the date the employee requested payment. The discount for the lump-sum payment is not a straight discount. It is based on the present-day value. Factors that affect the discount are the number of payments, the size of the payment, the total amount due before the discount is applied and the discount rate (up to 5 percent). For more information, see Minnesota Statutes § 176.101, subd. 2a(b).

# CompFact: Law enforcement injuries due to assaults, contact with people

By Brian Zaidman, Research and Statistics

Law enforcement officers face many hazards in their daily work. Nationally, in 2014, local government police and sheriff's patrol officers had an injury and illness incidence rate of 520 cases per 10,000 full-time-equivalent (FTE) workers, the highest of any occupation. The rate for all occupations (private and public ownership) was 107 cases per 10,000 FTE workers.

Minnesota's workers' compensation claims database contains information about the number of paid indemnity claims, worker characteristics and injury characteristics for law enforcement officers and supervisors. For purposes of this article, law enforcement includes bailiffs, detectives, criminal investigators, police and sheriff's patrol officers and supervisors, parking enforcement workers and fish and game wardens. As shown in Figure 1, the number of indemnity claims has been relatively constant, with a high of 302 indemnity claims in 2012 and a low of 258 claims in 2014. (The claim count for 2014 is considered preliminary.)

There were 852 indemnity claims for the three-year period of 2012 through 2014. Among these injured workers:

- 80 percent were men;
- 40 percent were between 35 and 44 years old, with similar percentages younger and older than this group;
- 79 percent had their job for five years or longer;
- 54 percent were living within the Twin Cities metropolitan area; and
- 51 percent had sprains and strains, while 18 percent had soreness and pain.

Figure 2 shows the distribution of the most common events and exposures for the 2012 through 2014 claims. Violence and other injuries by persons or animals was the most common type of event, accounting for 29 percent of the injuries (250 claims), followed by falls, slips and trips with 26 percent.

Figure 3 shows the number of claims with the most common specific types of violence and other injuries by persons or animals. Injuries occurring while restraining or subduing another person were the most common violence injury incidents. Fewer than 10 officers' injuries were due to intentional shooting during these three years.

Figure 1. Number of indemnity claims to law enforcement officers

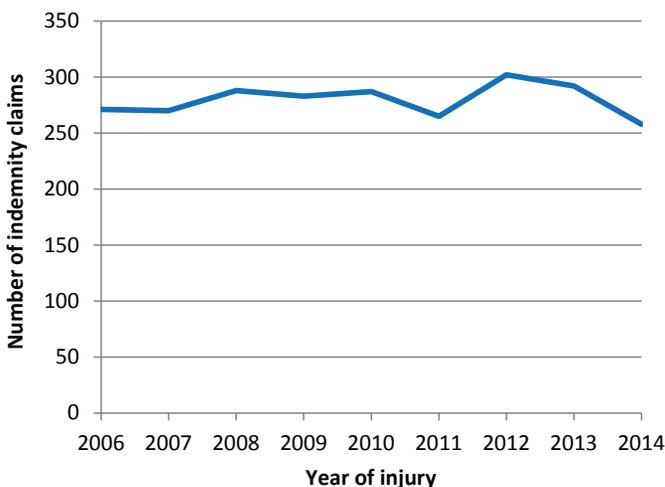


Figure 2. Most common categories of events resulting in indemnity claims to law enforcement officers, 2012-2014

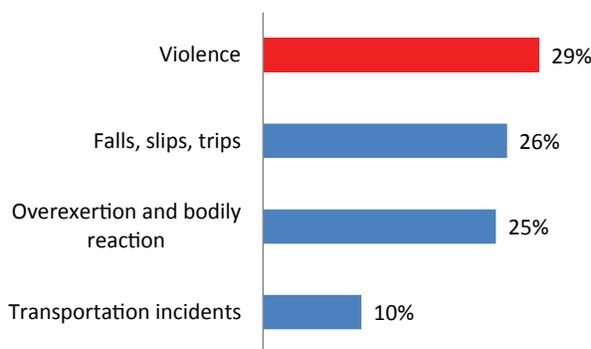
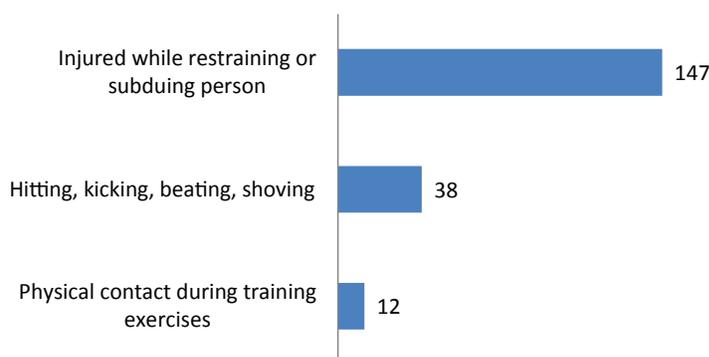


Figure 3. Most common types of violence and other injuries by persons or animals resulting in indemnity claims to law enforcement officers, 2012-2014



Source (all figures): Minnesota workers' compensation claims database, downloaded Oct. 1, 2015.

## Part two:

# Understanding the dispute certification process

By Dave Bateson, *Alternative Dispute Resolution*

The Minnesota Department of Labor and Industry (DLI) is required by Minnesota Statutes § 176.081, subd. 1 (c), to certify that a rehabilitation or medical issue is actually disputed, and that DLI has tried to resolve the dispute, before an attorney can claim attorney fees for resolving that issue. DLI's Alternative Dispute Resolution (ADR) unit handles the certification process for the agency.

### **Tips for petitioners**

If a request for certification is too vague for a mediator to understand the issue presented it may be noncertified, necessitating a new certification request. Here are some tips to help petitioners make the certification process as efficient and successful as possible.



- Be as complete as possible when filling in the claims information at the top of the certification request. If you have the adjuster's name and phone number and the insurer's claim number, be sure to provide them.
- Be as specific as possible about the issue in dispute. For example, if you are asking for payment of medical bills, specify the amounts and dates of service rather than a general "payment of medical bills" statement. Attach copies of the bills if you have them. And if you are seeking approval of a medical procedure, identify the specific procedure and the provider recommending it, rather than stating "approval of surgery."
- Attach copies of any documentation that bills were already properly submitted for payment if the issue is payment of bills. That allows the mediator to address any discrepancies about whether the bills were submitted during the first contact with the insurer's representative, speeding up a determination of whether the issue is disputed.
- Send a courtesy copy of the request to the insurer or insurer's attorney. Often, an insurer will ask the mediator to send them documentation of the disputed issue, so sending a courtesy copy to the insurer allows for a quicker response to the mediator's inquiry.

### **Tips for insurers and defense counsel**

Insurers and defense counsel can resolve issues early in the dispute process, assuming DLI's mediators have all of the information they need to help keep the process moving. Here are some tips to help insurers and defense counsel make the certification process as efficient and successful as possible.

- Respond to communication from DLI mediators right away. DLI must act on requests for certification in a timely fashion. A mediator will assume the issue is disputed if he or she receives no response to attempts to contact an insurer representative. If the insurer representative's outgoing message indicates the representative is unavailable for a period of time, the mediator will contact a supervisor or other designee for a response. If a file has been transferred to a new adjuster, DLI expects the contacted adjuster to forward the message to the new adjuster for a timely response.

- Remember the request to certify a dispute relates to the insurer, not just one claims examiner. While a medical bill may not have been previously submitted to a particular adjuster, if it was properly submitted to the prior adjuster or sent to the company's medical bill review service, the adjuster will be expected to take a position about whether the bill is disputed if the 30-day deadline has passed.

Similarly, if the adjuster needs a day or two to consult with counsel or confirm a payment, the mediator will give them that time. However, a decision does need to be made about whether an issue is disputed.



Sometimes adjusters will indicate they are neither agreeing nor disputing an issue, so they are asking the mediator not to certify a dispute. The mediator has an obligation to resolve the dispute or certify it. Unless the request for certification is legally premature – such as the bill was submitted fewer than 30 days ago or the referral for the procedure has not been made – the insurer will need to take a position.

### Conclusion

DLI's dispute certification process successfully helps resolve potential disputes early in the litigation process. Injured workers are often able to get medical or rehabilitation services more quickly than if the issues are litigated. At the same time, employers and insurers save the costs of more lengthy litigation.

DLI is committed to providing a dispute certification process that is timely, efficient and fair for both petitioners and insurers. DLI's ADR unit regularly reviews the process to assess possible improvements.

DLI mediators are always willing to answer questions about the certification process via the workers' compensation hotline at (651) 284-5005 or 1-800-342-5354.

*Dave Bateson joined DLI as a mediator and arbitrator in October 2015. He has been a lawyer for more than 15 years, with the vast majority of his practice litigating workers' compensation cases. He has been a frequent speaker at workers' compensation continuing legal education events and seminars. Parties interested in scheduling a mediation with Bateson can call him at (651) 284-5161 or call ADR scheduler Melanie Tischler at (651) 284-5326.*

## National association focused on workplace laws has annual meeting



DLI Commissioner Ken Peterson (left) welcomes attendees to the annual National Association of Governmental Labor Officials (NAGLO) meeting in July in Portland, Maine. NAGLO comprises government leaders from every U.S. state and territory responsible for overseeing various workplace laws. Peterson served as NAGLO president for the past year.

The National Association of Governmental Labor Officials (NAGLO) had its annual meeting in July in Portland, Maine. On the agenda were youth apprenticeship, impairment in the workplace, the effects of a changing workforce and approaches to family medical leave.

Department of Labor and Industry Commissioner Ken Peterson served as NAGLO president for the past year.

Learn about NAGLO at [www.naglo.org](http://www.naglo.org).

## PART ONE:

# Results of DLI survey of attorneys' use of mediation services

By Christopher Raymond, Alternative Dispute Resolution, and Brian Zaidman, Research and Statistics

To learn more about why attorneys use mediation and how mediation helps resolve workers' compensation disputes, the Department of Labor and Industry (DLI) recently surveyed workers' compensation attorneys about their use of mediation services, whether by a DLI mediator, a private mediator or an Office of Administrative Hearings judge.

DLI's Alternative Dispute Resolution (ADR) unit provides mediation services for workers' compensation disputes. Mediations accounted for 34 percent of the average annual number of ADR proceedings from 2013 through 2015, with an average of 520 mediations a year.

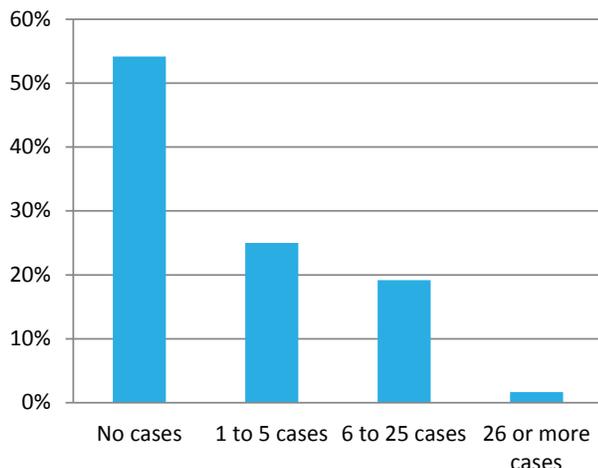
The survey was sent to 552 attorneys and 120 responses were received to the 21-item survey. A technical appendix (at [www.dli.mn.gov/RS/Pdf/mediation\\_survey\\_technical\\_appendix.pdf](http://www.dli.mn.gov/RS/Pdf/mediation_survey_technical_appendix.pdf)) provides additional survey methodology and the survey questions. Questions the survey addressed included:

- Who uses mediation to resolve these cases and why?
- When do attorneys believe it is the right time to mediate?
- What type of workers' compensation cases do attorneys prefer to mediate?

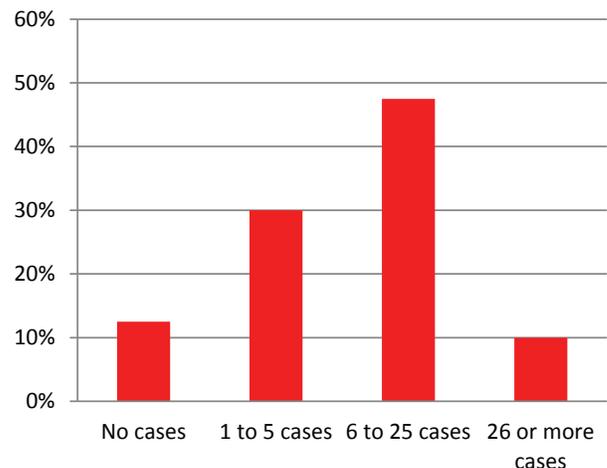
### Survey results

- Respondents said they were inclined to bring workers' compensation cases to mediation more than 87 percent of the time.
- Fifteen of the 120 respondents said they did not use mediation as a method of resolving case.
- Slightly more than 56 percent of the respondents indicated they had used mediation six or more times during the preceding 12 months.
- The majority of respondents indicated they use mediation in workers' compensation cases, but not in non-workers' compensation cases.

**Fig. 1. Non-workers' compensation cases brought to mediation in past 12 months**



**Fig. 2. Workers' compensation cases brought to mediation in past 12 months**



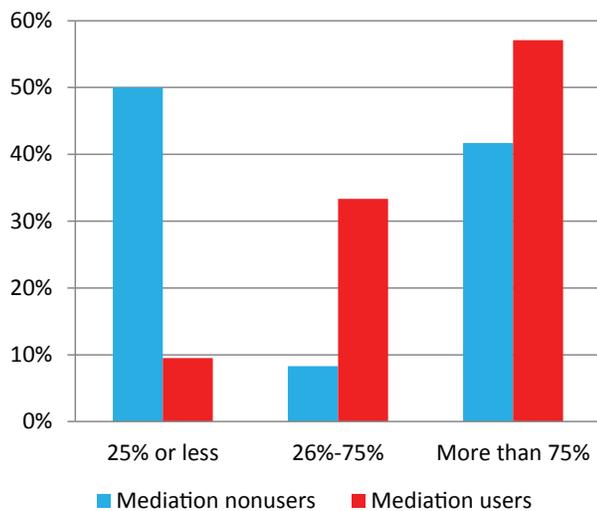
- The majority of respondents brought fewer than five non-workers' compensation cases into mediation.

### More seasoned attorneys using mediation

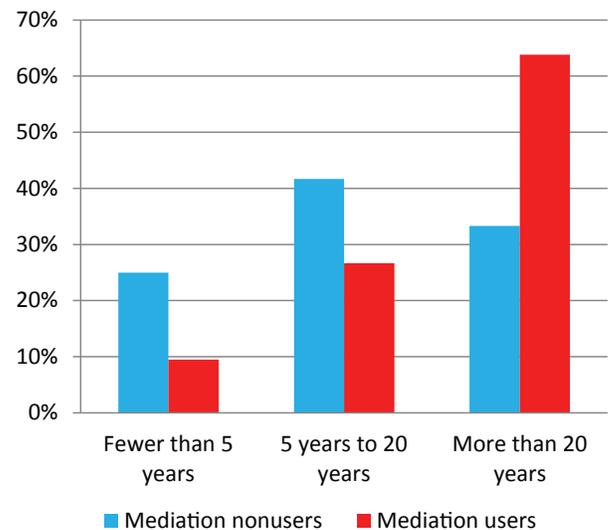
The majority of mediation users said they spent more than 75 percent of their time in a law practice representing workers' compensation parties. And more than 60 percent of the mediation users had more than 20 years of experience practicing in workers' compensation law.

In contrast, half of the mediation non-users spent 25 percent or less of their time practicing workers' compensation law and only 30 percent had more than 20 years of experience in the area of workers' compensation. This suggests the majority-users of mediation in workers' compensation cases are the more seasoned attorneys in Minnesota.

**Fig. 3. Percent of practice in workers' compensation**



**Fig. 4. Years practicing in workers' compensation**



## DLI's Duluth office available for workers' compensation mediation sessions

The Minnesota Department of Labor and Industry's (DLI's) Duluth office is available for free workers' compensation mediation sessions with the mediators/arbitrators from the department's Alternative Dispute Resolution (ADR) unit. The office is centrally located in Duluth's Canal Park, at 525 Lake Ave. S., Suite 330, and has four conference rooms for multiparty mediations.

Ken Kimber is a DLI mediator/arbitrator who is based in the Duluth office. He joined ADR in August 2015 and is available for mediations in Duluth as well as anywhere else in Minnesota, including attorneys' offices, courthouses and county offices. Kimber has more than 13 years of litigation experience, with significant work litigating workers' compensation matters, including all facets of claims from the commencement of claims to mediations to administrative conferences to hearings to appeals.

Contact Kimber about mediation services in Central and Northern Minnesota at (218) 733-7816 or [kenneth.kimber@state.mn.us](mailto:kenneth.kimber@state.mn.us). If Kimber is unavailable, Melanie Tischler can assist with scheduling of mediations and can be reached at (651) 284-5326 or [mediations.dli@state.mn.us](mailto:mediations.dli@state.mn.us). (Inquiries about the services of other ADR mediators/arbitrators anywhere in Minnesota can be directed to Tischler as well.)

More information about DLI's mediation services for workers' compensation disputes is available online at [www.dli.mn.gov/WC/DispRes.asp](http://www.dli.mn.gov/WC/DispRes.asp).

# Workers' compensation events calendar

## September

- Sept. 14** Workers' Compensation Advisory Council meeting  
[www.dli.mn.gov/Wcac.asp](http://www.dli.mn.gov/Wcac.asp)
- Sept. 20** Rehabilitation provider update  
[www.dli.mn.gov/WC/TrainingRp.asp](http://www.dli.mn.gov/WC/TrainingRp.asp)
- Sept. 21** Workers' Compensation Insurers' Task Force meeting  
[www.dli.mn.gov/Wcitf.asp](http://www.dli.mn.gov/Wcitf.asp)

## October

- Oct. 11** Medical Services Review Board meeting  
[www.dli.mn.gov/Msrb.asp](http://www.dli.mn.gov/Msrb.asp)
- Oct. 12** Workers' Compensation Advisory Council meeting  
[www.dli.mn.gov/Wcac.asp](http://www.dli.mn.gov/Wcac.asp)
- Oct. 14** Rehabilitation Review Panel meeting  
[www.dli.mn.gov/Rrp.asp](http://www.dli.mn.gov/Rrp.asp)
- Oct. 21** OSHA recordkeeping training: Learn the basics  
[www.dli.mn.gov/OSHA/Recordkeeping.asp](http://www.dli.mn.gov/OSHA/Recordkeeping.asp)

## November

- Nov. 8 and 9** Basic adjuster training  
[www.dli.mn.gov/WC/TrainingIns.asp](http://www.dli.mn.gov/WC/TrainingIns.asp)
- Nov. 16** Workers' Compensation Insurers' Task Force meeting  
[www.dli.mn.gov/Wcitf.asp](http://www.dli.mn.gov/Wcitf.asp)

## December

- Dec. 14** Workers' Compensation Advisory Council meeting  
[www.dli.mn.gov/Wcac.asp](http://www.dli.mn.gov/Wcac.asp)

## Request for comments:

# Possible amendments to rules regulating reasonable medical record cost reimbursement; Minnesota Rules, part 5219.0300

### Subject of rules

The Minnesota Department of Labor and Industry requests comments on its possible amendment to rules governing the reasonable reimbursement allowance to a health care provider for copies of existing medical records related to a claim for workers' compensation under Minnesota Statutes, chapter 176. The department is considering amendments that will update the allowed reasonable charges specified in Minnesota Rules 5219.0300 for copies of medical records, including rules that would specify maximum charges for records maintained in an electronic format. Comments related to a health care provider's costs of providing medical records for workers' compensation claims are sought. Comments from persons or entities that request medical records for workers' compensation claims are also sought.

### Persons affected

The amendments to the rules would likely affect health care providers who treat injured workers, workers' compensation employers and insurers, and any other person or entity that requests or obtains medical records related to a workers' compensation claim.

### Statutory authority

Minnesota Statutes § 176.135, subd. 7 (a), requires the commissioner to adopt a schedule of reasonable charges for copies of existing records or reports that directly relate to items for which payment is sought under workers' compensation law. Minnesota Statutes § 176.83, subd. 1, authorizes the commissioner to adopt, amend or repeal rules to implement the provisions of chapter 176.

### Public comment

Interested persons or groups may submit comments or information on these possible rules in writing until further notice is published in the *State Register* that the department intends to adopt or to withdraw the rules. The department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments.

### Rules drafts

The department has not yet drafted the possible rules amendments, but anticipates that when a draft becomes available it will be posted on the department's workers' compensation rule docket web page at [www.dli.mn.gov/RulemakingWC.asp](http://www.dli.mn.gov/RulemakingWC.asp).

### Agency contact person

Written or oral comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to: Ethan Landy, Office of General Counsel, 443 Lafayette Road N., St. Paul, MN 55155; (651) 284-5006; or [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us).

### Alternative format

Upon request, this information can be made available in an alternative format, such as audio, Braille or large print. To make such a request, contact the agency contact person at the address or telephone number listed above.

Note: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the administrative law judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

*Signed by Department of Labor and Industry Commissioner Ken B. Peterson on Aug. 3, 2016.*

DLI will be conducting a survey of health care providers about the costs associated with copying workers' compensation medical records in an effort to gather more information about this topic. If you are a health care provider who is interested in taking part in this survey, contact Ethan Landy, Office of General Counsel, at [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us).

## More resources from DLI: newsletters, specialty email lists, rulemaking lists

**Newsletters** – The Minnesota Department of Labor and Industry (DLI) offers three quarterly publications in addition to *COMPACT: Apprenticeship Works, CCLD Review* and *Safety Lines*.

- ***Apprenticeship Works*** is the newsletter from DLI's Apprenticeship unit. Its purpose is to inform the public of the goals, plans and progress of the Apprenticeship unit. Learn more or subscribe online at [www.dli.mn.gov/Appr/Works.asp](http://www.dli.mn.gov/Appr/Works.asp).
- ***CCLD Review*** is the newsletter from DLI's Construction Codes and Licensing Division. Its purpose is to promote safe, healthy work and living environments in Minnesota and to inform construction and code professionals about the purpose, plans and progress of the division. Learn more or subscribe online at [www.dli.mn.gov/CCLD/Review.asp](http://www.dli.mn.gov/CCLD/Review.asp).
- ***Safety Lines***, from Minnesota OSHA, promotes occupational safety and health, and informs readers of the purpose, plans and progress of Minnesota OSHA. Learn more or subscribe online at [www.dli.mn.gov/OSHA/SafetyLines.asp](http://www.dli.mn.gov/OSHA/SafetyLines.asp).



**Monthly update** – Stay up-to-date with the Department of Labor and Industry by signing up for its monthly email update at [www.dli.mn.gov/Email.asp](http://www.dli.mn.gov/Email.asp) about DLI activities.

**Specialty and rulemaking news** – DLI also maintains five specialty email lists and 11 rulemaking lists to which interested parties may subscribe. The specialty email lists are: prevailing-wage information; workers' compensation adjuster information; workers' compensation EDI trading partners; workers' compensation medical providers information; and workers' compensation rehabilitation information. Learn more about DLI's specialty email lists, subscribe or review previously sent messages online at [www.dli.mn.gov/EmailLists.asp](http://www.dli.mn.gov/EmailLists.asp).

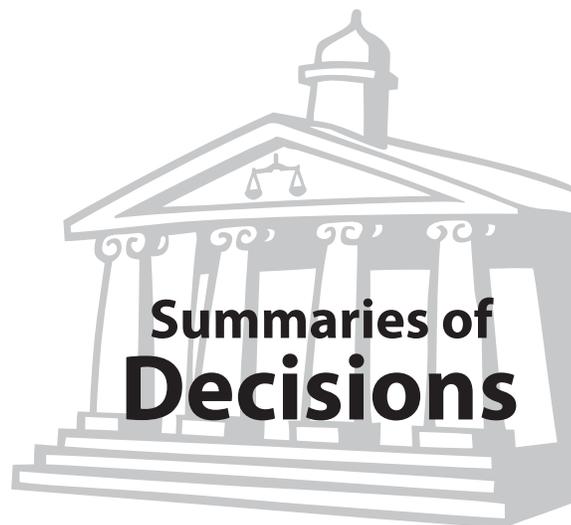
The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent contractor; labor standards/prevaling wage; Minnesota OSHA; plumbing; state building code; and workers' compensation. Learn more or subscribe at [www.dli.mn.gov/Rulemaking.asp](http://www.dli.mn.gov/Rulemaking.asp).

**Subscribing to *COMPACT*** – Interested parties may subscribe or unsubscribe from the *COMPACT* email list at <https://webmail.mnet.state.mn.us/mailman/listinfo/wc-compact>. Subscribers receive emailed notices about editions of the quarterly workers' compensation newsletter and other periodic updates from DLI.

## Workers' Compensation Court of Appeals

April through June 2016

Case summaries published are  
those prepared by the WCCA



### ***Kevin Groetsch v. Kemps, April 4, 2016***

#### Gillette Injury

Substantial evidence in the form of well-founded medical opinions support the compensation judge's determination that the employee sustained a *Gillette* injury in the nature of bilateral carpal tunnel syndrome culminating on or about July 8, 2014.

#### Course and Scope of Employment – Medical Appointments

Where an employee travels to a medical appointment and performs a personal errand as a part of that travel, the dual purpose trip test applies. Where the employee suffers further personal injury in a motor-vehicle accident in close proximity to the location of the medical appointment and near the time of the appointment, the determination of the compensation judge that the employee was in the course of his employment and his injuries from the automobile accident are compensable is supported by substantial evidence and is affirmed.

Affirmed.

### ***Joseph A. Gruba v. Tradesman International, Inc., April 5, 2016***

#### Jurisdiction – Subject Matter

The compensation judge did not err in dismissing the employee's petition for recovery of benefits paid under the North Dakota compensation system for which benefits the North Dakota system now seeks repayment as there is no subject-matter jurisdiction for the claim.

Affirmed.

### ***Penny L. Winter v. Blackwoods Bar and Grill and Arrowpoint Capital Group, April 5, 2016***

#### Medical Treatment – Reasonable and Necessary

Where substantial evidence supports the compensation judge's findings and order that the employee's ongoing use of medication, including narcotic medication, was monitored, used in moderation and kept

the employee's symptoms stable, and where there is no challenge to the medical opinion of the treating doctor supporting the ongoing use of medications, the compensation judge did not err as a matter of law in finding that the use of medication was reasonable and necessary for the cure or relief of the effects of the work-related injury.

Affirmed.

***Linda Xayamongkhon v. I.S.D. 625, April 19, 2016***

#### Intervenors

A medical provider who has intervened in a pending action must make appearances at conferences and hearings in the action. Failure to do so mandates a denial of the intervenor's claim.

Reversed.

***Richard E. Carlson v. Lakeside Foods, Inc., April 20, 2016***

#### Permanent Total Disability

Where there is no evidence to support the compensation judge's determination that the employee is capable of employment within the work restrictions found by the compensation judge, the denial of permanent total disability is reversed.

Reversed.

***Michael G. Rutledge v. TNT Holland Motor Express, Inc., April 25, 2016***

#### Causation – Substantial Evidence

Substantial evidence supports the compensation judge's findings that the employee's March 9, 1992, low back injury was permanent and was a substantial contributing cause of his current condition, and that the employee sustained a Gillette injury culminating on Feb. 1, 2013, that was a permanent aggravation of the employee's degenerative lumbar spine condition resulting from the 1992 work injury.

#### Apportionment – Equitable

The compensation judge properly apportioned responsibility for the employee's medical treatment and need for work restrictions 50 percent to the March 9, 1992, injury and 50 percent to the Feb. 1, 2013, injury based on the record as a whole.

#### Permanent Partial Disability – Substantial Evidence Apportionment – Permanent Partial Disability

Substantial evidence supports the compensation judge's finding of a 10 percent permanent partial disability as the result of the combined effects of the 1992 and 2013 injuries. Where there was no evidence in the record of a previous permanency rating for the 1992 injury, and statutory apportionment was not raised at the hearing below, the judge's order is modified to apportion responsibility for the employee's permanency 50 percent to the 1992 injury and 50 percent to the 2013 injury.

## Temporary Total Disability – Substantial Evidence

Substantial evidence supports the compensation judge's determination that the employee was temporarily and totally disabled from Feb. 1 through July 9, 2013.

## Maximum Medical Improvement

The employee's medical records evidence some improvement in the employee's condition from April 30 through Oct. 31, 2013. There is no evidence of any improvement in the employee's condition in the medical records after that date. The judge's finding that maximum medical improvement was reached Nov. 27, 2013, is accordingly modified.

## Medical Treatment and Expense – Substantial Evidence

Substantial evidence supports the compensation judge's finding that the medical treatment paid for by the intervenor on behalf of the employee was reasonable and necessary as a result of both injuries.

Affirmed as modified.

### ***Maurice Jackson v. Har Ned Lumber, April 20, 2016***

## Insolvent Insurer – Statutes Construed – Minnesota Statutes § 176.185, subd. 8a

Where an insurer in a multi-insurer settlement becomes insolvent and the Minnesota Insurance Guarantee Association (MIGA) has determined that the ongoing obligation of that insurer is not a covered claim under Minnesota Statutes Chapter 60C, the employer is obligated to pay the compensable workers' compensation claim under Minnesota Statutes § 176.185, subd. 8a. The provision of item (b) of sub. 8a must be followed to obtain relief.

Affirmed.

### ***Mary Wiese v. Becklund Home Health, April 21, 2016***

## Apportionment – Substantial Evidence

Where an employee undergoes retraining after prior work injuries and is able to work more than full time without limitation, substantial evidence supports the compensation judge's determination that the employee's permanent total disability is 100 percent attributable to a subsequent disabling injury and that no contribution is appropriate.

Affirmed.

### ***Susan Reiners v. Hospice of the Twin Cities, April 28, 2016***

## Medical Treatment – Substantial Evidence

Where competent medical expert opinion concludes that an employee would not benefit from a rhizotomy procedure and piriformis injections, and does not need continued opioid medication, substantial evidence supports the compensation judge's denial of the requested medical care, the

termination of compensation for opioid medication and the award of pain clinic care to assist with the potential ill-effects of withdrawal from further use of opioid medication.

Affirmed.

***Jennamarie McKenna v. Security Products, Inc., April 29, 2016***

Permanent Total Disability – Substantial Evidence

Substantial evidence, including expert medical and vocational opinion, supported the finding that the employee is not permanently totally disabled.

Job Search – Substantial Evidence

The compensation judge's conclusion that the employee failed to conduct a reasonably diligent job search was substantially supported by the record in this case, where the employee's testimony about job search efforts was vague and no documentary records of a job search were submitted in evidence.

Wages – Calculation

Where the pre-injury wage information in evidence was insufficient to allow a calculation of the number of days the employee worked during the 26 weeks prior to her injuries, it was reasonable for the compensation judge to calculate the employee's weekly wage by dividing the total wages by 26.

Affirmed.

***Shannon Gilbertson v. Williams Dingmann, LLC, May 2, 2016***

Job Offer – Refusal

Where the employee's rehabilitation plan calls for returning to work with a different employer, refusal of a job offer by the date of injury employer does not meet the statutory requirements of Minnesota Statutes § 176.101, subd. 1(i), for discontinuance of temporary total disability payments.

Job Offer – Refusal

An employee's refusal of a job offer does not demonstrate the employee's earning capacity for calculation of temporary partial disability payments for periods after the job offer had expired.

Rehabilitation – Eligibility

An otherwise qualified employee is not required to request a change of QRC prior to resumption of rehabilitation services where the prior QRC had filed an R-8 that terminated the provision of such services.

Affirmed in part, reversed in part.

***Nancy Sandberg v. Minnesota Department of Human Services, May 5, 2016***

Appeals – Interlocutory Order

An order dismissing a claim petition without prejudice is not an order affecting the merits of the case. Pursuant to Minnesota Statutes § 176.421, subd. 1, this court does not have jurisdiction to consider an appeal from such an order.

Dismissed.

***Julie D. Halvorson v. B&F Fastener Supply, May 9, 2016***

Rehabilitation – Discontinuance  
Statutes Construed – Minnesota Statutes § 176.102, subd. 8  
Rules Construed – Minnesota Rules 5220.0510

While the definition of whether an employee is a "qualified employee" for rehabilitation services is central to the inception of rehabilitation services, that concept is not relevant to the discontinuance of rehabilitation services, which is governed instead by the provisions of Minnesota Statutes § 176.102, subd. 8, and Minnesota Rules 5220.0510. Where the parties expressly limited the issue before the judge to whether the employee was a "qualified employee," a finding that she was not does not support the discontinuance of rehabilitation.

Reversed.

***Tessa M. Washek v. New Dimensions Home Health, May 16, 2016***

Rehabilitation – Substantial Evidence

Where the employee was not physically capable of returning to her pre-injury vocation, did not have a rehabilitation plan to return to work and was not capable of working for almost all of the 10-year time period involved, substantial evidence supports the compensation judge's finding that a handicap accessible vehicle did not enable the employee to seek or engage in employment on a sustained basis, and the judge did not err by denying the base cost of the vehicle.

Affirmed.

***Carmen L. Rochel v. Schwan's Home Service, May 20, 2016***

Settlements – Interpretation

Where a settlement closes out "any and all future chronic pain treatment" in the context of completing a chronic pain management program and makes no mention of closing out specific pain treatment modalities in use by the employee, the settlement is ambiguous. In such a situation, ambiguities are construed against the drafter and unrebutted testimony by the employee that she did not intend to close out any other pain treatment modality is sufficient to conclude that those modalities are not closed out by the settlement.

Reversed.

Practice and Procedure – Appeal

Where there were material facts at issue regarding the type of employment relationship between an alleged employer and the employee, there were other employment theories raised by the respondents, and there were no stipulated facts by the parties, the compensation judge erred by making the determination that the alleged employer was not the employee's employer without an evidentiary hearing and by dismissing that party from the matter.

Vacated.

**Detrice L. Oglesby v. Metro Transit, June 6, 2016**

Causation – Substantial Evidence

Substantial evidence, including medical records and expert medical opinion, supported the compensation judge's finding that the employee's work activities were not a substantial contributing cause of her right shoulder condition.

Affirmed.

**Pamela J. Engren v. Majestic Oaks Golf Club, June 6, 2016**

Attorney Fees – Genuine Dispute

Where the employer and insurer failed to acknowledge the employee's claim for payment of a medication and orthotics made four months before the hearing, went to hearing on the issue, tried and lost the issue, and did not appeal the issue, there is sufficient evidence that a genuine dispute existed.

Attorney Fees – Roraff fees

Where the record below did not establish that the medical benefits approved were recovered by the employee, the employee's attorney is not entitled to Roraff fees solely for obtaining approval of the medical benefits, and the matter is remanded to the compensation judge for a determination regarding whether or not medical benefits were "recovered" by the employee justifying an award of attorney fees.

Attorney Fees – Irwin Fees

Where the employee's attorney had previously received fees in excess of the \$13,000 cap, the compensation judge properly applied the Irwin factors in determining the amount of a reasonable fee.

Affirmed in part and remanded in part.

***John A. Warner v. Kath Brothers Fuel Oil Co., June 6, 2016***

Practice and Procedure – Adequacy of Findings

The absence of explicit findings regarding a proposed surgery does not require a remand where substantial evidence and competent medical expert opinion supports the denial of surgery and the compensation judge fully explains the reasons for denial of the requested medical procedure in the memorandum.

Affirmed.

***Michael P. Moen v. North Metro Asphalt, June 20, 2016***

Causation – Substantial Evidence

Substantial evidence, including expert medical opinion, medical records and lay testimony, supported the compensation judge's finding that the employee had failed to prove a cervical injury on Oct. 22, 2013.

Affirmed.

***Samuel R. Erven v. Magnetation, June 20, 2016***

Arising Out Of and in the Course Of

Substantial evidence supports the compensation judge's finding that the employee's injury arose out of his employment when it occurred as the employee was distracted and walking rapidly to respond to an emergency situation he was responsible for handling.

Intervenors

Where the intervention motion of a health care provider was not filed within 60 days of being notified of its right to intervene, the motion was not timely under Minnesota Statutes § 176.361, subd. 2(a), and the compensation judge erred in allowing the intervention claim.

Affirmed, in part, and reversed, in part.

***Scott R. Schuette v. City of Hutchinson, June 22, 2016***

Evidence – Res Judicata

Where the issue of whether the Nov. 12, 2008, incident resulted in a compensable injury was raised in the 2012 proceeding and a judgment on the merits was issued in that case; the claim asserted by the employee in the current proceeding was ripe in 2012 and the information necessary to establish the claim was available; the factual circumstances giving rise to the claim are identical to the operative facts underlying the employee's claim in the first proceeding and the employee submitted the same documentary evidence to support his claims in both proceedings, the compensation judge properly determined the employee's current claim is precluded by the doctrine of *res judicata*.

## Practice and Procedure – Statute of Limitations

When the employee's claim in the proceeding is predicated on a separate claim or action, new and independent from that made in the original proceeding (and therefore not precluded by *res judicata*), the claim presently before the court was not filed within the three-year statute of limitations and is accordingly barred.

Affirmed.

### ***Emma McKinley v. Target Corp., June 27, 2016***

#### Vacation of Award – Substantial Change in Medical Condition

When an employee, who had been wheelchair-bound with multiple medical conditions and consequential issues and needed personal care services for more than 15 years, suddenly goes into remission and is able to walk and care for herself, there has been an unanticipated substantial change in the employee's medical condition.

Petition to vacate granted.

### ***Maria E. Garcia v. Wal-Mart, June 29, 2016***

#### Notice of Injury – Gillette Injury

Timely notice of a Gillette-type injury was provided where the employee, as a reasonable person, credibly testified that she was not aware that a compensable injury could arise through work activities absent a specific, identifiable incident, the employee's symptoms were not plainly arising out of her employment and the employee promptly notified the employer upon being told by a physician that the employee's condition was a compensable work injury.

Affirmed.