

PTD benefits cannot be reduced by non-Social-Security retirement benefits

The Minnesota Supreme Court issued decisions Aug. 13, 2014, in *Ekdahl v. Indep. Sch. Dist. #213, et al.*, 851 N.W.2d 874 and *Hartwig v. Traverse Care Ctr., et al.*, 852 N.W.2d 251. The court held that Minnesota workers' compensation law does not allow permanent total disability (PTD) benefits to be reduced by non-Social-Security retirement benefits, such as PERA, TRA or MSRS. The Minnesota Supreme Court explained in its decisions that, since 1953, the offset language found in Minnesota Statutes § 176.101, subd. 4, has consistently referred only to Social Security retirement benefits. The Department of Labor and Industry (DLI) has taken several steps to ensure injured workers and workers' compensation payers are aware of and complying with the decisions.

DLI has sent letters and email messages to workers' compensation insurers, self-insured employers and third-party administrators (payers) notifying them of DLI's expectation that the payers will audit each PTD claim – from the date a non-Social-Security retirement offset was initially taken – to determine whether the injured worker has been underpaid. The audits should be performed for all PTD claims and for all dates of injury.

For dates of injury before Oct. 1, 1995, the DLI Special Compensation Fund (SCF) unit has been working to identify affected supplementary benefit cases. Upon request, SCF will provide payers with the names of injured workers who have files with SCF and may be entitled to additional benefits based on the *Ekdahl* and *Hartwig* cases. Payers may request a list of potentially affected claims from SCF's David Dolsky at david.dolsky@state.mn.us. Note that any such list, which includes both open and closed claims, should not be considered comprehensive and is based on data that may not have been updated since the file was closed.



For dates of injury on or after Oct. 1, 1995, DLI's information about PTD offsets is not as detailed. In those cases, DLI has requested that payers submit a form (available at www.dli.mn.gov/ekdahl.pdf) identifying injured workers whose PTD benefits were reduced by government benefits, other than government disability or Social Security retirement or disability benefits. DLI recommends payers contact the government benefit administrator to determine whether the offsetting benefit is retirement or disability – DLI does not expect payers to submit the form if the offsetting benefit was characterized by the administrator as disability.

Payers must submit the form for affected claims with dates of injury on or after Oct. 1, 1995, that are open, closed (including deceased injured workers) or resolved by settlement or court order. If the payer has determined the cases do not require payment of additional PTD benefits for a potentially affected claim, the form asks payers to provide the basis for that determination.

Every workers' compensation payer was sent this request for information with response required by Nov. 12, 2015, unless before the deadline, the payer contacted DLI and was granted an extension for good cause.

Based on the pre-1995 audits performed by SCF and the information payers provide to DLI on post-1995 claims, DLI will send a letter to injured workers who may be entitled to additional benefits. The letter provides an overview of the *Ekdahl* and *Hartwig* cases and recommends the injured workers contact their workers' compensation payer, attorney or DLI's ombudsman with any questions they may have.

Updates to forms, online submission tools

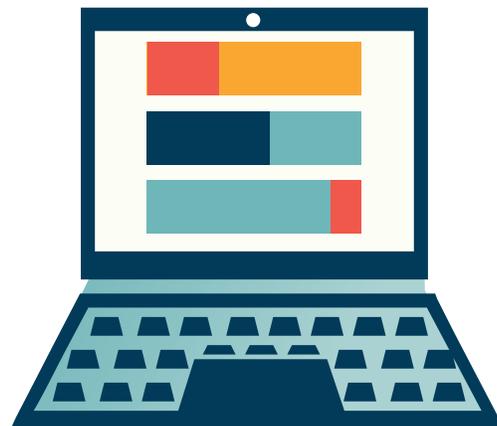
New feature for online filed dispute forms

The Department of Labor and Industry (DLI) has a new feature that allows users to save online filed dispute documents. It also requires users to login to the system in a new way.

Because of the new feature, users can now save incomplete dispute documents they are still working on, save completed dispute documents and review dispute documents that have already been filed. The ability to save online filed dispute documents will reduce duplicate filing and reduce paperwork for DLI, as well as for stakeholders. Documents included in this project are indicated below.

- Medical Request
- Amended Medical Request
- Medical Response
- Rehabilitation Request
- Amended Rehabilitation Request
- Rehabilitation Response
- Attorney Request for Certificate of Dispute

As a result of this new feature, users will need to create a user account using a preset access number and choose a user I.D. and password.



More information

- The new online filing process is linked on the main forms page – www.dli.mn.gov/WC/WcForms.asp.
- Learn more about the new online filing process – www.dli.mn.gov/WC/WcFormsAdrLogin.asp.
- Call the DLI Alternative Dispute Resolution unit at (651) 284-5032 or 1-800-342-5354.

Changes and updates to fillable forms

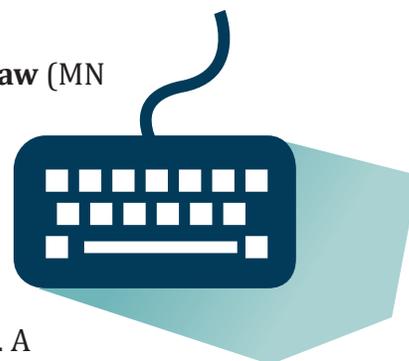
The Department of Labor and Industry has revised several of its workers' compensation forms during the past year to provide updated contact information or reflect needed changes.

October 2014

The **Notice of Penalty Payment** (N00015) form was revised due to formatting changes.

May 2015

The **Certificate of Compliance; Minnesota Workers' Compensation Law** (MN LIC 04) form was revised to clarify contact information. This form is not filed with DLI but is used by other government licensing agencies that need to verify workers' compensation coverage before issuing a business license.



June 2015

The **Notice of Benefit Payment** (NB01) form had several changes made. A summary of those changes was published in the August 2015 edition of *COMPACT*.

July 2015

The rehabilitation provider application forms were revised due to the expiration of the 10 percent surcharge of the licensing fee for electronic licensing (Minnesota Statutes § 16E.22).

September 2015

The **Health Care Provider Report** (HC01) form was modified to reflect the collection of ICD-10-CM diagnosis codes effective Oct. 1, 2015, as required by the federal Department of Health and Human Services (DHHS) and Minnesota Rules 5221.0410. In 2014, the workers' compensation law was amended to require the use of ICD-10 codes when required by DHHS. This update was referenced in the November 2014 edition of *COMPACT*.

The **Notice of Benefit Reinstatement** (NC010) form was revised to include a space to explain, if needed, why the average weekly wage was changing from what had previously been reported.

The **Election to Exclude Relatives of Executive Officers of a Closely Held Corporation** (SF0138) form and **Election to Exclude Relatives of Managers of a Limited Liability Company** (SF0137) form were revised to reflect a contact name change and fax number change.

The **Motion/Application to Intervene** (MO0001) form was revised to reflect changes needed due to the Office of Administrative Hearings' Standing Order dated Aug. 26, 2015.



October 2015

Several forms used by DLI's Special Compensation Fund were revised to reflect a fax number change. Those forms were the: **Annual Claim for Reimbursement From the Second Injury Fund** (AR04); **Annual Claim for Reimbursement of Supplementary Benefits** (AC03); and **Notice of Intention to Claim Reimbursement from the Second Injury Fund** (RS05).

The **Employee's Objection to Discontinuance** (ED02) form, the **Excess Fee Exhibit** (PR04) form and the **Permanent Total Disability Agreement** (PA04) form were revised due to a fax number change.

The revised forms are available for use on the DLI website at www.dli.mn.gov/WC/WcForms.asp. For more information about workers' compensation forms, in general, contact Kathy Hanson, of DLI's Compliance, Records and Training unit, at (651) 284-5299 or dli.wcrequest@state.mn.us.

New, improved online Rehabilitation Plan Amendment form

The Department of Labor and Industry's online forms submission tool now has additional Rehabilitation Plan Amendment (R-3) form template information pre-populated from previous R-3 form submissions. Users can check "Yes" when selecting an amending form, which will then pre-fill the new R-3 form with the same rehabilitation data, including the box 17 category descriptions.

MINNESOTA DEPARTMENT OF LABOR & INDUSTRY

About DLI Construction Codes and Licensing OSHA Wage and Hour Workers' Compensation

Rehabilitation Forms Submission Welcome Log Out Change Password

A previous Rehabilitation Plan Amendment (R-3) was filed. Would you like the system to prefill this Rehabilitation Plan Amendment (R-3) with the data from the other R-3 (for questions 1-12 and 15)?

Yes No

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Minnesota Department of Labor and Industry
443 Lafayette Road N., St. Paul, MN 55155

The new feature assists qualified rehabilitation consultants by removing the need to retype previously submitted information.

McCrea, Vogel named unit directors for Workers' Compensation Division

Mark McCrea and Jeanne Vogel have been named as directors for the Minnesota Department of Labor and Industry Workers' Compensation Division's Alternative Dispute Resolution (ADR) unit and Vocational Rehabilitation unit (VRU), respectively.



McCrea has supervised mediation and arbitration services for ADR since 2003. Before that, he worked as a DLI mediator/arbitrator and rehabilitation/medical specialist for more than 20 years. McCrea was a member of the Minnesota Supreme Court ADR Review Board from 1996 to 2005. In 2007, he was presented a Distinguished Service Award by the Minnesota State Bar Association Dispute Resolution Section for his contributions to alternative dispute resolution in Minnesota. In 2009, the International Association of Industrial Accident Boards and Commissions presented him with a Distinguished Service award for his work on its ADR/Judicial Committee. McCrea has a master's degree in vocational rehabilitation counseling from Minnesota State University at Mankato. He was appointed as ADR director in January.

Vogel has been a supervisor in VRU since 2012. She has been instrumental in the integration of technology to connect staff members with one another in VRU's six regional offices, as well as its use within the unit to enhance client-related services. She began working for VRU in 1997 as a qualified rehabilitation consultant and has supervised numerous interns. In 2011, Vogel was recognized by St. Cloud State University (SCSU) with an Outstanding Intern Supervision award. Vogel earned a master's degree in vocational rehabilitation counseling from SCSU and serves on its rehabilitation counseling advisory board. She was appointed as VRU director in October.

DLI demonstrates applications, tutorial videos at Work Comp Tech Expo



DLI staff members Steve Gilmore, Dave Horning and Mike Haire provide information at the Minnesota Work Comp Tech Expo on Sept. 30.

The Minnesota Work Comp Tech Expo, Sept. 30 in Bloomington, Minnesota, attracted more than 150 attendees, including insurance carriers, agents, vendors, claims adjusters, attorneys and members of the business community interested in learning more about data tools and resources to improve efficiency.

The event was sponsored by the Minnesota Workers' Compensation Insurers Association and the Workers' Compensation Reinsurance Association. Exhibitors, including the Minnesota Assigned Risk Plan, the Minnesota Department of Commerce and the Minnesota Department of Labor and Industry (DLI) showcased applications and informative resources for the workers' compensation community.

DLI demonstrated applications, as well as tutorial videos that included: step-by-step instructions for completing the Notice of Benefit Reinstatement form, online Annual Claim for Reimbursement form and online vocational rehabilitation forms; workers' compensation insurance coverage requirements; payment of medical bills and requests for treatments; and injury reporting for claims adjusters using electronic data interchange (EDI). The videos are now available online at www.dli.mn.gov/WC/Videos.asp.

Workers' compensation coverage for farms

By Brian Zaidman, Research and Statistics

A farm operation must provide workers' compensation insurance for its employees, unless it paid or was obligated to pay cash wages to farm laborers during the previous calendar-year less than a certain dollar amount. That threshold dollar amount depends on whether the farm operation maintains specified liability insurance.



If the farm operation has a farm liability insurance policy with \$300,000 total liability coverage and \$5,000 medical payment coverage for farm laborers, then the farm operation is not required to maintain workers' compensation insurance if the total wages to farm laborers during the previous calendar year were less than the statewide average annual wage.¹ If the farm operation does not maintain the specified liability insurance, then the farm operation must maintain workers' compensation insurance unless the total wages to farm laborers during the previous calendar-year were less than \$8,000.²

The chart below may be used to determine if the farm operation's wages to farm laborers (roughly payroll) during the previous calendar-year are less than the statewide average annual wage for the year in which the farm liability policy is written.

Family farm coverage

Minnesota Statutes § 176.011, subd. 11a (a)(2)

Average annual wage under M.S. § 176.011 subd. 20	Services rendered (roughly payroll) year	Policy written year
\$44,154	Jan. 1-Dec. 31, 2008	Jan. 1-Dec. 31, 2009
\$45,618	Jan. 1-Dec. 31, 2009	Jan. 1-Dec. 31, 2010
\$45,095	Jan. 1-Dec. 31, 2010	Jan. 1-Dec. 31, 2011
\$46,572	Jan. 1-Dec. 31, 2011	Jan. 1-Dec. 31, 2012
\$47,616	Jan. 1-Dec. 31, 2012	Jan. 1-Dec. 31, 2013
\$49,134	Jan. 1-Dec. 31, 2013	Jan. 1-Dec. 31, 2014
\$49,924	Jan. 1-Dec. 31, 2014	Jan. 1-Dec. 31, 2015
\$51,420	Jan. 1-Dec. 31, 2015	Jan. 1-Dec. 31, 2016

¹The statewide average annual wage is received from the Department of Employment and Economic Development and is the number from which the statewide average weekly wage is derived.

²Farm laborer does not include machine hire and other persons specified in [Minnesota Statutes § 176.011, subds. 11a and 12](#). Other farm employees excluded from workers' compensation coverage in certain circumstances are described in [Minnesota Statutes § 176.041, subd. 1](#).

Avoid penalties: Guidelines about when to file a FROI form

A worrisome trend has surfaced from the Department of Labor and Industry's (DLI's) reviews of First Report of Injury (FROI) form data: Many FROI forms are being filed with a first day of lost time, but without a return to work date. Yet later on, the payers assert these are no-lost-time claims.

Because of this trend, DLI's Compliance, Records and Training (CRT) compliance auditors have had to spend a great deal of time gathering additional information to determine whether the dates and data submitted by the payer are actually correct. However, they will no longer be taking this additional step. The auditors will begin issuing penalties based on the dates and data submitted by payers via electronic data interchange (EDI) or eFROI Web portal and on the Notice of Insurer's Primary Liability Determination (NOPLD) forms.

What does no-lost-time mean?

Claimed lost time includes partial days of lost time or wages, including time missed for medical treatment for the claimed work injury, whether or not the employer pays for that lost time.

Based on anecdotal evidence, the phrase "no lost time" can mean several things to payers:

- there is no claimed lost time at all;
- the claimed lost time was within the three-day waiting period; or
- the claimed lost time exceeds the three-day waiting period, but the payer does not believe the lost time is compensable.



In Minnesota, the last example is a lost-time claim because the claimed lost time exceeds the waiting period. Only claims where there is no claimed lost time at all or where the claimed lost time was within the three-day waiting period are considered "no-lost-time" claims.

The dates on the FROI form determine whether the claim is categorized as lost-time or no-lost-time. The lost-time determination impacts penalty exposure and auditing. If the FROI form shows a first date of lost time and no return-to-work date within the waiting period, then the file is considered a lost-time claim. An NOPLD form is expected to be filed with DLI for lost-time claims. Lost-time claims are reviewed and audited for potential penalties, benefits paid and required form filing.

A FROI form is always required when claimed lost time exceeds the waiting period. (Three consecutive calendar-days starting with the first date of claimed lost time or wages.) If the injured worker does not have any claimed lost time or wages due to the work injury or if all missed time or wages are within the three-day waiting period, the FROI form does not need to be filed with DLI unless there is an exception, as noted in the next section.

FROI form filing guidelines



1. Do not file FROI forms for files that are no-lost-time claims. The only exception is when another required document is being filed with DLI. For example where a notice is being filed to show permanent partial disability benefits are being paid on the claim. When a no-lost-time claim FROI form is filed with DLI for these purposes, make sure the dates and data on the FROI form clearly show there is no lost time beyond the waiting period.
2. If a FROI form is submitted erroneously showing lost time, it *must* be corrected by submitting an updated FROI form electronically. The corrected FROI form must delete the first date of lost time or include both a first date of lost time *and* a return-to-work date within the three-day waiting period. *The filing of an NOPLD form is not a substitute for filing a corrected FROI form.*

If an NOPLD form is filed in addition to a corrected FROI form, the NOPLD form must be completed fully, including, if applicable, the first date of lost time and initial return-to-work date. An "X" must also be placed in box 2A of the form to confirm the claim is one with no lost time beyond the waiting period. *Phoning DLI or writing "No lost time," "Claim submitted in error, there is no lost time" or something similar on an NOPLD form or other correspondence to DLI is not enough to correct the error.*

Avoiding penalties

If there is no lost time, a date should not be entered in Box 26 (EDI data element DN0056). If a date is entered in Box 26, the claim is considered as having ongoing lost time unless a return-to-work date is listed in Box 30 (EDI data elements DN0068/DN0189). Note that if the return-to-work date is entered, but is not within the three-day waiting period, it is still considered a lost-time claim.

The easiest way for payers to avoid submitting extra forms and receiving communication from DLI about no-lost-time claims and penalties is to not file the forms unless another required document is being filed with DLI. In those cases, make sure the dates and data on the FROI form are accurate.



CRT compliance auditors have been told by some adjusters that when they are filing FROI forms they are forced to enter a first date of lost time. This is not required by DLI. The payer's claim system or EDI vendor should not require it either.



Answers to frequently asked questions

Q. Is it a lost-time claim if the employer continued wages when the injured worker was off work beyond the waiting period?

A. Yes, even though the injured worker was compensated by the employer, there is lost time from work. The dates the employee was not working should be reflected on the NOPLD form.

Q. Can I file a denial of primary liability on a no-lost-time claim?

A. An NOPLD form is not required to be filed with DLI if the employee returned to work within the waiting period. However, if the NOPLD form is filed, it must reflect the first date of lost time and the return-to-work date. Also, a FROI form must be filed via EDI or eFROI Web portal for the NOPLD form to be processed by DLI.

Q. I included attachments to an NOPLD form that indicate a no-lost-time claim, isn't that good enough?

A. No, the correct dates must be on the NOPLD form. While attachments may provide helpful information, the forms must be completed fully and accurately.

Q. I received a penalty for the late filing of the FROI form. It really is a no-lost-time claim. What do I do?

A. File an objection to the penalty assessment with DLI no later than 30 days from the date the penalty was issued, including proof of the return to work within the waiting period. Also, you must file an updated FROI form via EDI or eFROI Web portal documenting there was no lost time beyond the waiting period. If an NOPLD form is filed in addition to a corrected FROI form, the NOPLD form must be completed fully, including, if applicable, the first date of lost time and initial return to work date. An "X" must also be placed in box 2A of the form to confirm the claim is one with no lost time beyond the waiting period.

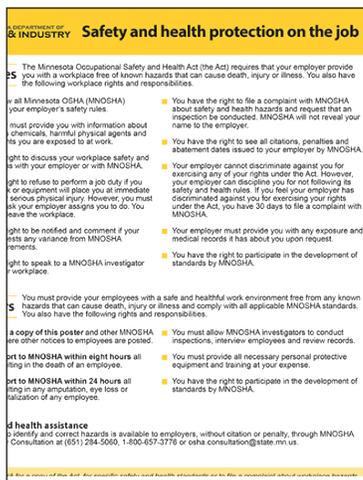
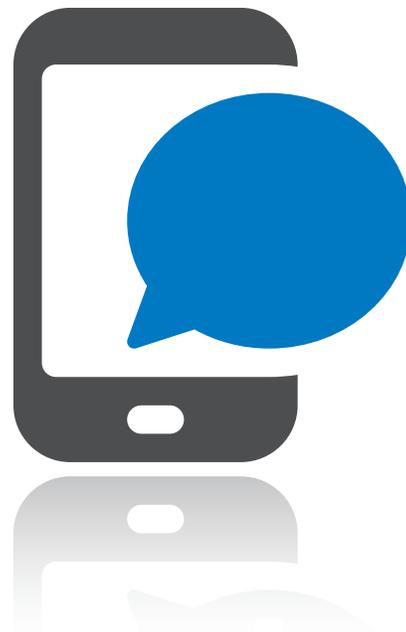
New accident reporting requirements effective; workplace poster updated

Minnesota employers must now report the following to Minnesota OSHA (MNOSHA):

- all work-related fatalities within eight hours;
- all work-related inpatient hospitalizations within 24 hours;
- all work-related amputations within 24 hours; and
- all work-related losses of an eye within 24 hours.

To file the report, the employer must call MNOSHA Compliance at (651) 284-5050 or 1-877-470-6742 during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday.

If it is outside of MNOSHA Compliance business hours, or on a weekend or holiday, the employer must call federal OSHA at 1-800-321-6742.



MNOSHA mandatory poster updated, available free

The free mandatory MNOSHA workplace poster has been revised to reflect the changes in reporting requirements.

The new poster is available at no cost from the Minnesota Department of Labor and Industry (DLI). It can be printed or ordered from the DLI website at www.dli.mn.gov/LS/Posters.asp. The poster may also be ordered by phone at (651) 284-5042 and 1-800-342-5354.

The English, Somali and Spanish versions of the poster are available now; a Hmong version will be available soon.

Mediator David Bateson joins Alternative Dispute Resolution unit

David Bateson has joined the Department of Labor and Industry's Alternative Dispute Resolution (ADR) unit as its newest mediator. He is an experienced workers' compensation attorney with more than nine years of litigation experience. He obtained his juris doctor from the University of Minnesota Law School.

ADR seeks early intervention in workers' compensation disputes through conference and mediation. It handles calls from the workers' compensation hotline and responds to questions from injured workers, employers, health care providers, attorneys and qualified rehabilitation consultants. To speak with an ADR mediator/arbitrator, call (651) 284-5032 or 1-800-342-5354; press 3 and then press 1.

2014 workplace fatality statistics released

By Brian Zaidman, Research and Statistics

Information about fatal workplace injuries from the Census of Fatal Occupational Injuries (CFOI) is now available on the Department of Labor and Industry (DLI) and U.S. Department of Labor websites. Minnesota 2014 CFOI tables are available at www.dli.mn.gov/RS/StatFatal.asp. National fatality figures from the CFOI program are available at www.bls.gov/iif/oshcfoi1.htm.

The 2014 estimated numbers and rates of nonfatal work-related injuries and illnesses by industry were released Oct. 29. These will be followed by the Nov. 19 release of the case and demographic statistics for cases with days away from work. Minnesota statistics are available at www.dli.mn.gov/RS/StatWSH.asp.

Fatality statistics

The CFOI program shows a preliminary total of 62 fatal work-injuries in Minnesota in 2014, a decrease from the final count of 69 fatal work-injuries in 2013. The 2014 total is below the average of 66 cases a year for 2009 through 2013. Final 2014 data from the CFOI program will be released in spring 2016.

The CFOI also provides the following statistics for Minnesota's workplace fatalities during 2014.

Industries

- Agriculture, forestry, fishing and hunting recorded the highest number of worker fatalities, with 21 cases, an increase from 17 cases in 2013.
- Trade, transportation and utilities had the second-highest number of fatalities, with 18 cases, compared to 16 cases in 2013.
- Construction had the third-highest number of fatalities, with seven cases, compared to 12 cases in 2013.

Types of incidents

- Transportation incidents accounted for 25 fatalities, the most for any incident type. Ten of these fatalities occurred in the agriculture, forestry, fishing and hunting industry sector and 10 fatalities occurred in trade, transportation and utilities. There were 34 transportation incident fatalities in 2013.
- Contact with objects and equipment was the second most frequent fatal work-injury event in 2014, with 14 fatalities. Most of these cases involved the worker being struck by an object or equipment.
- Nine of the fatalities were due to falls, with four in construction.
- There were eight fatalities resulting from violence in 2014, compared to six fatalities in 2013.

Worker characteristics

- Men accounted for 60 of the 62 fatally injured workers in 2014.
- Workers age 55 and older accounted for 28 fatalities, with 15 of these fatalities in the agriculture, forestry, fishing and hunting industry sector.
- Self-employed workers accounted for 27 fatalities, including 19 fatalities to workers in agriculture, forestry, fishing and hunting and four in construction. There were 18 fatalities to self-employed workers in 2013.



WCRI report compares Minnesota medical payments, utilization with 16 other states

By Brian Zaidman, Research and Statistics

The Workers' Compensation Research Institute's (WCRI) most recent report for Minnesota, *CompScope Medical Benchmarks for Minnesota, 16th Edition*, was released in October. This report uses insurer claim files to compare Minnesota's medical payments and service utilization with those of 16 other states, including Iowa and Wisconsin. The report is available for purchase at www.wcrinet.org.

The report focuses on results for workers injured in 2013 and on trends for the 2005 to 2013 period, for claims with more than seven days of lost time, measured at an average of one year following the injury.

Major findings

- Minnesota's average adjusted medical payment per 2013 claim was 5 percent lower than the median of the 17 study states. Payments per claim for nonhospital providers were 15 percent lower, while hospital outpatient payments were 12 percent higher and payments per hospital inpatient episode were 10 percent higher than the median.
- During the period from 2005 through 2013, the average annual growth in medical payments in Minnesota was 4.4 percent, similar to the 4.3 percent median increase among the study states.
- Sixty-six percent of the 2013 claims had payment to a hospital; hospitals accounted for 53 percent of the medical payments.
- Average hospital outpatient payments for 2013 claims were slightly higher than the median study state (\$5,800 vs. \$5,200).
- Average hospital inpatient payments per episode for 2012 claims were higher than the median study state (\$30,100 vs. \$27,500). This is partly due to Minnesota having the highest percentage of inpatient episodes involving surgery.
- Among 2012 claims, 32 percent had surgery (either inpatient or outpatient), which was comparable to the median of 34 percent.
- Fewer injured workers in Minnesota have hospital inpatient care; the percentage of claims with inpatient care decreased from 10.2 percent in 2005 to 6.1 percent in 2013. This was matched by increased payments for hospital outpatient surgery and payments to ambulatory surgery centers.



Minnesota's average adjusted medical payment per 2013 claim was 5 percent lower than the median of the 17 study states.



REHABILITATION PROVIDER ORIENTATION – Offered Feb. 12 and Aug. 25, 2016

The 2016 orientation sessions are only for qualified rehabilitation consultant (QRC) interns, QRC intern supervisors, newly registered job placement vendors or rehabilitation providers re-entering the field, if absent for two years or more.

Topics

- Workers' compensation 101
- Medical aspects
- Rehabilitation consultation practices and ethics
- Registration renewal and completion of internship
- Litigation procedures at DLI
- Work as a provider and documentation
- A vendor's perspective
- Intern qualifying criteria
- Online R-form submission
- Follow-up questions and answers

The training sessions are from 7:30 a.m. to 4:15 p.m. at the Department of Labor and Industry office in St. Paul, Minnesota. Participants must register and pay online. Complete information is available online at www.dli.mn.gov/WC/TrainingRp.asp.

MINNESOTA WORKERS' COMPENSATION SEMINAR – Offered March 17 and May 12, 2016

These seminars are offered by St. Paul College, Customized Training and Consulting.

Topics

- Employer responsibility
- What to do when an injury occurs or is reported
- What is covered by workers' comp in Minnesota
- Coverage requirements, independent contractors
- Workers' compensation resources, phone numbers
- What to do before an injury occurs
- Benefits provided, terminology
- Avoiding late reporting penalties
- Employer scenarios
- Questions and answers

The training sessions are from 8:30 to 11:30 a.m. at St. Paul College in St. Paul, Minnesota. Complete information is available online <https://saintpaul.augusoft.net>.

A BALANCE OF BUSINESS AND LABOR:

Advisory council works with DLI on workers' compensation matters

The Workers' Compensation Advisory Council (WCAC) advises the commissioner of the Department of Labor and Industry about workers' compensation matters and submits its recommendations for proposed changes to the workers' compensation statutes to the proper legislative committees.

The WCAC is made up of 12 voting members (six representing organized labor and six representing Minnesota businesses), 10 of which are appointed by the governor, the majority and minority leaders of the Senate, and by the speaker and minority leader of the House of Representatives. The other two members are the presidents of the largest statewide Minnesota business organization and the largest organized labor association. Two members of each legislative house serve as nonvoting, advisory members.



The WCAC generally meets on the second Wednesday of even-numbered months from 9:30 to 11:30 a.m. at the Minnesota Department of Labor and Industry.

Information about the council, including a member list, alternates list, meeting agendas and meeting minutes, is online at www.dli.mn.gov/Wcac.asp.

CompFact: Workers' compensation indemnity claim characteristics in agriculture

By Brian Zaidman, Research and Statistics

While there are approximately 74,000 farms operating in Minnesota, only about 1,800 farm operations have paid employees, which qualifies the farms for inclusion in the Quarterly Census of Employment and Wages and makes it very likely the farm must also carry workers' compensation insurance. Family farms that only employ family members and farms with wages less than the average annual wage level are not required to purchase workers' compensation insurance.

Farms are classified by whether they are primarily involved in crop production or animal production. Along with about 439 agricultural support establishments, there were 2,311 farming establishments in Minnesota in 2014, covering 19,363 workers. The covered agriculture employment accounts for 0.8 percent of Minnesota's private-sector employment.

As shown in Figure 1, covered agriculture employment has been increasing during the past decade. Comparing the three-year average annual employment for 2003, 2004 and 2005 with employment in 2012, 2013 and 2014, employment increased by 25 percent and the number of establishments increased by 37 percent.

The number of workers' compensation indemnity claims to workers in the three main agricultural industry divisions has also increased during this time, as shown in Figure 2. Comparing the three-year average annual claim count for 2003, 2004 and 2005 with claims in 2012, 2013 and 2014, the number of agriculture industry claims increased by 19 percent. (Claim counts for 2013 and 2014 should be considered preliminary.)

The characteristics of the injuries and illnesses leading to the workers' compensation claims are described in the figures on page 13, based on indemnity claims from 2012 through 2014.

Injuries to the arms and legs were the most common, and these were often sprains and strains.

The most common events causing the injuries were overexertion, falls and contact with objects or equipment.

Animal and insect-related incidents include being stepped on, kicked or bitten by animals. The injury source distribution shows that a very high proportion of the injuries were due to interactions with animals. The other two most common sources of injury were structures and surfaces, as a result of falls, and the injured worker's own body, often due to overexertion or a sudden movement.

Figure 1. Number of employees covered by unemployment insurance in agriculture, Minnesota, 2003-2014

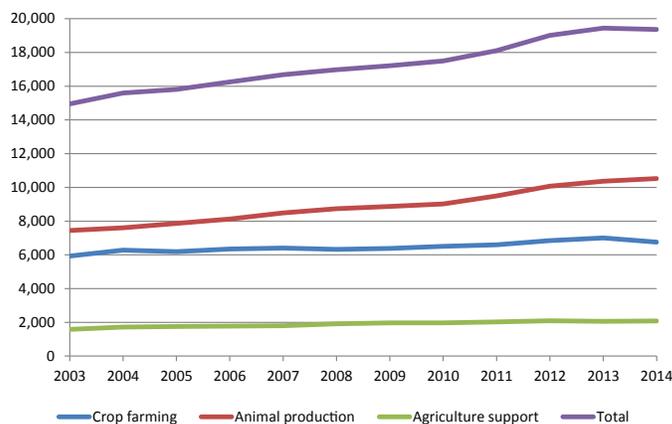


Figure 2. Number of workers' compensation indemnity claims in agriculture, Minnesota, 2003-2014

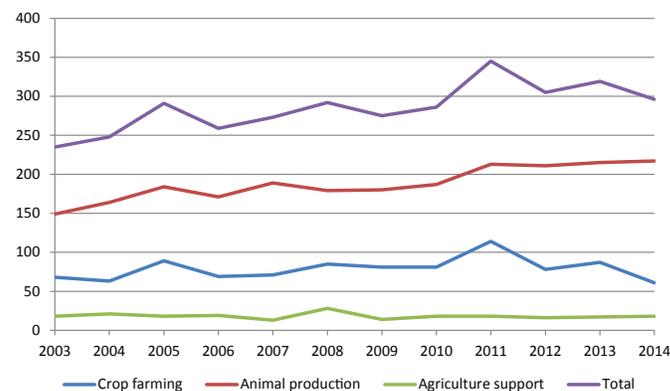


Figure 3. Part of body injured, indemnity claims in agriculture, Minnesota, 2012-2014

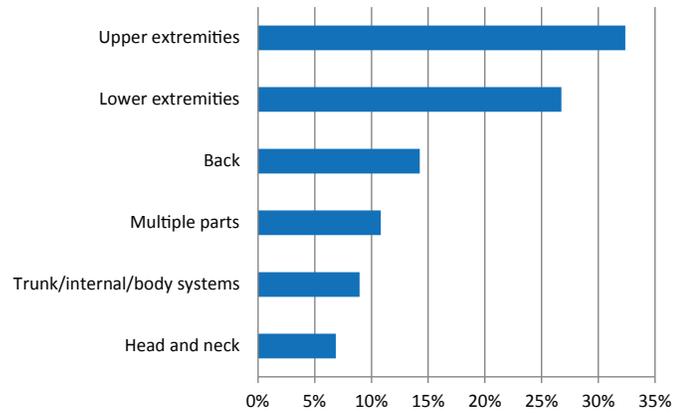


Figure 4. Nature of injury, indemnity claims in agriculture, Minnesota, 2012-2014

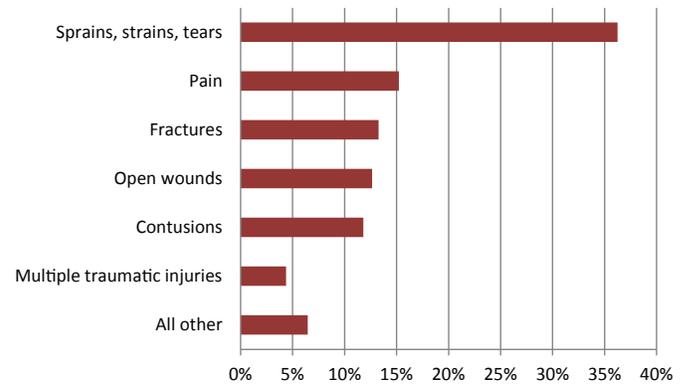


Figure 5. Event or exposure, indemnity claims in agriculture, Minnesota, 2012-2014

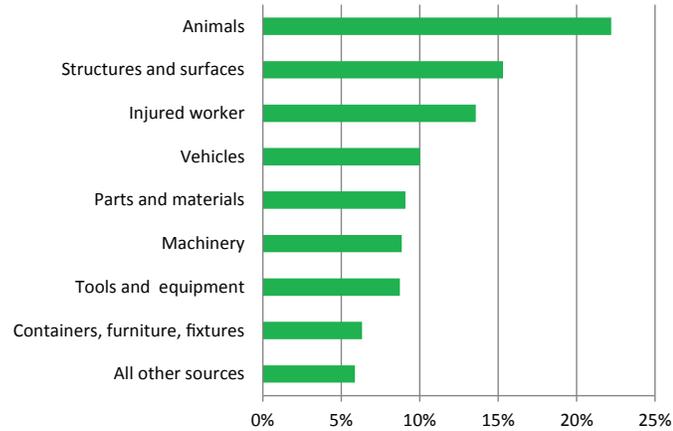
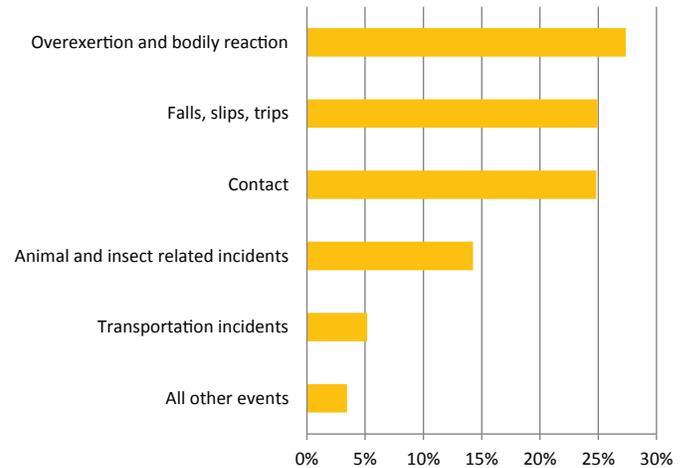


Figure 6. Source of injury or illness, indemnity claims in agriculture, Minnesota, 2012-2014



Start 2016 on the 'right' foot: Recordkeeping training offered in January



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. Recording the correct cases and accurately including the required information leads to higher quality injury and illness rates that enable employers to better understand their relation to the benchmark rates and help government agencies to properly direct resources.

This free introductory-level training session about OSHA recordkeeping requirements will be Thursday, Jan. 21, from 9 to 11:30 a.m., at the Minnesota Department of Labor and Industry (DLI) in St. Paul, Minnesota. Register now at www.dli.mn.gov/OSHA/Recordkeeping.asp.

Topics will include a review of the fundamental requirements of OSHA recordkeeping and will expose the most common OSHA log errors. If you have questions about the training session or about recordkeeping, call the DLI Research and Statistics unit at (651) 284-5025.

Helpful recordkeeping series online

If you are already beyond the introductory level of recordkeeping but want to learn more, see the Recordkeeping 101 and Recordkeeping 201 series at www.dli.mn.gov/OSHA/Recordkeeping.asp. These brief articles will take you from learning about classifying recorded injuries to knowing when to record injury recurrences and episodic illnesses.

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.
- ***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.
- ***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.



Breaking news – Stay up-to-date with the Department of Labor and Industry by signing up for its email newsletter at www.dli.mn.gov/Email.asp. The agency sends occasional messages to subscribers to share news 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.

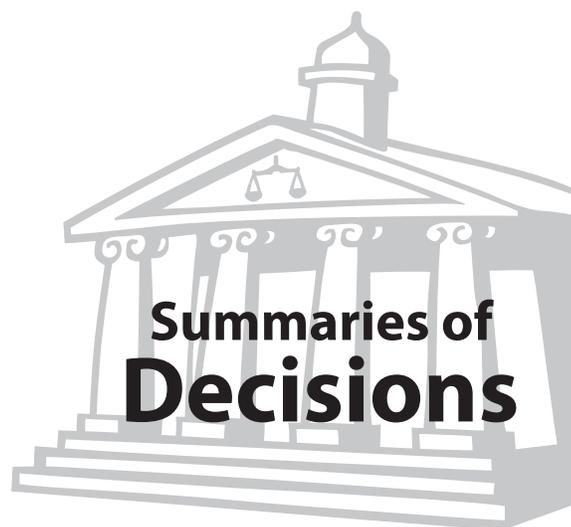
The rulemaking lists are required to be maintained for people who have registered with the agency to receive notices of agency rule proceedings via email or U.S. mail. The rulemaking lists topic areas are: apprenticeship; boats/boats-for-hire; electrical; fire code; high-pressure piping; independent 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.

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

July through September 2015

Case summaries published are
those prepared by the WCCA



Muhonen vs. New Horizon Academy, July 1, 2015

Causation – Substantial Evidence

Substantial evidence, including the adequately founded opinion of the employer and insurer's independent medical expert, supports the compensation judge's finding that the employee sustained a temporary cervical and thoracic injury only on Jan. 26, 2010, with no lumbar injury on that date.

Temporary Total Disability – Substantial Evidence

Substantial evidence supports the compensation judge's determination that the employee's time off work after November 2011 was not caused by or related to the Jan. 26, 2010, injury and that the employee was not entitled to temporary total disability benefits.

Practice and Procedure

The compensation judge did not commit reversible error in his conduct of the proceedings in this case.

Affirmed.

Wessel vs. Minnesota Department of Human Services, July 13, 2015

Permanent Total Disability

Substantial evidence in the record supports the compensation judge's conclusion that, in light of the fact that the employee has not completed the recommended plan for treatment set forth by her treating physicians, it is premature to rate any emotional disability and that in the absence of such a rating, the employee has not met the permanent total disability threshold.

Affirmed.

Beekman vs. JPS Lawn Service, July 16, 2015

Where the employee's petition for taxation of costs and disbursements was untimely pursuant to Minnesota Rules 9800.1700, which requires a petition to the Workers' Compensation Court of Appeals for the taxation of costs and disbursements to be filed within 45 days of the filing of the final appellate decision, the petition is denied.

Petition for taxation of costs and disbursements denied.

Melness vs. Overhead Door Co, July 17, 2015

Medical Treatment and Expense – Medications

The medical records of the employee since his injury, his testimony as to the relief he has obtained from his use of the medication and the opinion of the employee's treating physician provide substantial evidence to support the compensation judge's finding that the employee's prescription for Viagra was reasonable, necessary and related to the work injury.

Affirmed

Ryan vs. Potlatch Corp, July 31, 2015

Settlements – Interpretation
Vacation of Award

The compensation judge correctly interpreted a stipulation for settlement for the employee's low back injury in concluding that it did not close out liability for a consequential psychological condition where there was no evidence or claim of a psychological injury at the time of the settlement. Accordingly the judge did not err in holding that the employee was not required to seek vacation of the stipulation for settlement in order to proceed with her psychological injury claim.

Jurisdiction

This court's jurisdiction is not exceeded by construction or interpretation of a stipulation for settlement in order to determine the procedural or substantive effects of the stipulation on the employee's claims as expressly set forth in the Workers' Compensation Act.

Affirmed.

Marschel vs. Bird and Cronin, Aug. 8, 2015

Medical Treatment – Treatment Parameters
Substantial Evidence

Substantial evidence in the record supports the compensation judge's conclusion that, for the employee's three dates of injury, chiropractic treatment beyond what is provided for in the treatment parameters is appropriate pursuant to the applicable treatment parameter provisions and departure provisions, including the consideration of the rationale set forth in Jacka.

Affirmed.

Shannon vs. McCormick and Schmick's Seafood Restaurant, Aug. 10, 2015

Temporary Partial Disability – Earning Capacity

Where a part-time employee works longer hours than his normal weekly average for a period of time post-injury and obtains a temporary part-time job in addition to his usual employment, substantial evidence supports the determination that the employee failed to prove that he experienced an impairment in his earning capacity arising from his work injury that would entitle the employee to an award of temporary partial disability benefits.

Affirmed.

Berg vs. Maplewood Care Center, Aug. 22, 2015

Vacation of Award – Substantial Change in Condition

Where the petitioner has not shown that any new symptoms after fusion surgery were causally related to the surgery and where the fusion surgery was not reasonable and necessary medical treatment, the petitioner has not shown a substantial change in medical condition and the petition to partially vacate the award on stipulation is denied.

Petition to vacate denied.

Murphy vs. Ameripride Services, Inc., Aug. 25, 2015

Gillette Injury – Causation

The compensation judge properly considered whether the employee's work activity was a substantial contributing factor in the development of the employee's cervical condition in determining whether the employee sustained a Gillette injury.

Gillette Injury – Causation

Substantial evidence supports the compensation judge's determination that the employee failed to establish a Gillette injury by a preponderance of the evidence.

Affirmed.

Cruz vs. Express Services, Inc., Aug. 31, 2015

Appeal – Practice and Procedure

Where the issue at trial was primary liability, the pro se employee's notice of appeal alerting the employer and insurer of the appeal from the compensation judge's decision was sufficient to confer jurisdiction.

Causation – Substantial Evidence

Substantial evidence supports the compensation judge finding that the employee did not sustain a Gillette-type injury to his head, neck, right shoulder, upper back and/or eye or in the form of headaches or head pain on or around Aug. 20, 2013. Where the compensation judge did not make a specific finding as

to whether the environment at RPU caused the employee to suffer an allergic reaction as claimed by the employee, we remand the matter to the compensation judge to make a factual determination as to whether the employee developed an allergic reaction from workplace exposure to dust and soot and chemicals on or about Aug. 20, 2013, and whether medical treatment for treatment immediately following the employee's claim of a reaction was reasonable and necessary.

Affirmed in part, vacated in part and remanded in part.

Besic vs. Wal-Mart Stores, Sept. 2, 2015

Medical Treatment and Expense – Substantial Evidence

Where the employee had received an “incredible” amount of conservative care, and the treatment did not result in improvement other than occasional temporary relief of the employee's condition, substantial evidence, also including expert medical opinion, supports the compensation judge's finding that the treatment at issue was not reasonable and necessary.

Permanent Total Disability – Substantial Evidence

Given expert medical opinion that the employee could not be productive in any way given her physical findings and that a return to work was not realistic for the employee, as well as expert vocational evidence that the employee had no transferable skills and was permanently and totally disabled, and the conclusion of the functional capacities evaluation that the employee did not function at a level that would be considered employable, substantial evidence supports the compensation judge's finding that the employee has been permanently and totally disabled.

Affirmed.

Ruby vs. Casey's General Store, Inc., Sept. 23, 2015

Medical Treatment and Expense – Causation

The medical records of the employee, her testimony as to the pain experienced and relief she obtained from the use of stellate ganglion blocks, and the opinions of the employee's treating physicians provided substantial evidence to support the compensation judge's findings that the employee was experiencing transferred neuropathic pain from the employee's work-related RSD/CRPS condition and the medical care provided was reasonable, necessary and related to the work injury.

Affirmed.

Lopez vs. JBS USA, LLC, Sept. 28, 2015

Evidence – Temporary Injury

Substantial evidence supports the compensation judge's determination that the employee's work injury had resolved and he was not entitled to further workers' compensation benefits.

Affirmed.

Minnesota Supreme Court

July through September 2015

Case summaries published are
those prepared by the WCCA



David J. Mach, Jr. vs. Wells Concrete Products Co., A14-2065 – July 22, 2015

Decision of the Workers' Compensation Court of Appeals filed July 22, 2015, to vacate the decision of the WCCA and remand to the compensation judge for further proceedings consistent with this opinion.

Vacated and remanded.

Yer Summer vs. Jim Lupient Infiniti, A14-0726 – July 8, 2014

Minnesota Statutes § 176.361, subd. 4 (2014), requires an intervenor in a workers' compensation case to appear at conferences and hearings.

Affirmed.