

WORKERS' COMPENSATION UPDATE

June 2016

CHANGES TO MINNESOTA WORKERS' COMPENSATION LAW 2016

Recently, the State of Minnesota instituted several changes to its Workers' Compensation Act. While the changes do not alter the fundamentals of workers' compensation, the changes will impact how Employers and Insurers process and defend their claims.

The below amended statutory sections are highlights of the amendment efforts and are those most likely to impact an Employer's or Insurer's typical workers' compensation claim. Additional details regarding the statutory amendments under HF 2478 can be found on the Department of Labor & Industry's webpage: <http://www.dli.mn.gov/WC/Compact.asp>

Definition of a Compensation Judge	<u>Minn. Stat. 2014 § 176.011, Subd. 7a</u>	<ul style="list-style-type: none"> Amends definition of a Compensation Judge to mean: "a workers' compensation judge at the Office of Administrative Hearings. Compensation judges may conduct settlement conferences, issue summary decisions, approve settlements and issue awards thereon, determine petitions for attorney fees and costs, and make other determinations, decisions, orders, and awards as may be delegated to them by law or the commissioner. Compensation judges must be learned in the law." Deletes the term and definition of a "calendar judge" as such judges are no longer used by OAH.
Request and Appeal for a Determination on the Amount of Attorney Fees	<p>§ 176.081 Subd. 1(d)</p> <p>§ 176.081 Subd. 3</p>	<ul style="list-style-type: none"> An attorney who is claiming legal fees for representing an employee must file a statement of attorney fees with the commissioner, or compensation judge. Amendment deletes consideration for filing any statement with the WCCA. A copy of the signed retainer agreement must also be filed. The statement must be on a form prescribed by the commissioner and must report the number of hours spent on the case. A party that is dissatisfied with the attorney

		<p>fees awarded by the commissioner or a compensation judge may file a petition for review by the WCCA.</p> <ul style="list-style-type: none"> • The petition must state the basis for the need of review and whether or not a hearing is requested • A copy of the petition must be served by the court upon the attorney awarded or denied attorney fees.
Remodeling a Residence in Cases of a Permanently Disabled Employee	<p>§ 176.137 Subd. 1</p> <p>Subd. 4</p> <p>Subd. 6</p>	<ul style="list-style-type: none"> • The employer is required to furnish to a permanently disabled employee alterations or remodeling of the employee's residence as is reasonably required to enable the employee to move freely throughout the residence. • Any remodeling or alteration shall be furnished only when the division determines that the injury is to such a degree that the employee is substantially prevented from functioning within the principal residence. • Generally, an award for remodeling requires the certification of a licensed architect to the division that the proposed remodeling or purchase of a different residence is reasonably required to enable the employee to move freely throughout the residence. • The alteration/remodeling of the residence or purchase of a different home must be done under the supervision of a licensed architect relative to the specific needs of the disability. • A proceeding to resolve a dispute under this section is initiated by the filing of a petition. • It is then decided by a compensation judge at OAH. • The decision of the compensation judge is then appealable to the WCCA.
Proceedings when an Answer is not Filed	§ 176.331	Where a party has not timely filed an Answer in response to a Petition, Amendment allows the compensation judge to consider whether good cause exists to grant a continuance of a hearing.
Intervention	§ 176.361 Subd. 1	<ul style="list-style-type: none"> • Specifies the proceedings at DLI and OAH that are not subject to the Intervention subdivisions 3 to 6: Mediation Proceedings; .239 Discontinuance Conferences; and Administrative Conferences.

	Subd. 2	<ul style="list-style-type: none"> • Details the information that must be submitted with the Motion to Intervene and that all parties except for other intervenors must be served with the motion. • Requires a Motion to Intervene to provide the name and phone number of the person who has authority to represent the intervenor and reach settlement.
	Subd. 3	<ul style="list-style-type: none"> • Requires objections to a motion to intervene to be "specific and detailed." • Permits OAH to establish procedures for filing objections when a timely motion to intervene is filed less than 30 days before a scheduled hearing.
	Subd. 4	<ul style="list-style-type: none"> • Eliminates requirement that intervenors must attend all settlement, pretrial conferences and hearings at OAH, but permits the compensation judge to order attendance upon a party's motion or on judge's discretion. • Requires that any Motion to Require Attendance must be served and filed at least 20 days before a scheduled hearing and the order granting or denying a motion to require attendance must be served and filed at least 10 days before a hearing. • Reimbursement is denied if intervenor fails to attend a proceeding after being ordered to appear. Exception provided for "good cause" for the failure to attend. Judge permitted to approve request to attend by telephone or other electronic medium. • Even if attendance is not ordered, an intervenor may attend a proceeding in person or may request the permission to attend by phone or other electronic medium.
	Subd. 5	<ul style="list-style-type: none"> • When the intervenor has not been ordered to attend the hearing or has permission to attend a hearing by telephone, the intervenor may provide a written response to an objection before the hearing for consideration under the discretion of the judge.
	Subd. 6	<ul style="list-style-type: none"> • OAH may establish procedures for submission of the intervenor's evidence and response to outstanding objections.

	Subd. 8	<ul style="list-style-type: none"> • If the intervenor does not submit a written response to an objection before the hearing, the judge's determination must be based on the evidence submitted before or at the hearing. • Grants the chief administrative law judge the authority to issue standing orders to implement the intervention statute in disputes before OAH.
Review by the Supreme Court on Certiorari	§ 176.471 Subd. 3 Subd. 5	<ul style="list-style-type: none"> • Eliminates the requirement that the appellant pay a bond - for the cost of the court's review - in every case a WCCA decision is appealed to the Supreme Court. • Instead, the party shall pay to the clerk of the appellate courts the fee prescribed by rule 116.03 of the Rules of Civil Appellate Procedure. • Permits a party to request a bond in “extraordinary circumstances” as prescribed by rule 107.2 of the Rules of Civil Appellate Procedure. A bond is no longer mandatory.
Costs and Fees in Cases of Appeal	§ 176.511 Subd. 2 Subd. 3	<ul style="list-style-type: none"> • Permits the commissioner or compensation judge, and WCCA to order an adverse party to reimburse a prevailing party actual and necessary disbursements on cases before the court. • Increases the time for giving notice of taxation of costs to the adverse party from 5 days to 10 days. • Where (1) an award of compensation is affirmed, (2) an order disallowing compensation is reversed, or (3) a petition to vacate an award is granted, the WCCA may include in its award an amount to cover a reasonable attorney fee, or it may allow an attorney fee in a proceeding to tax disbursements.
Investigations of Injuries to State Employees	176.571 Subd. 1	Defines the Department of Administration as the State agency that administers and investigates workers' compensation claims of State workers.
Use of Standard Electronic Format to Electronically Transmit Medical Records or Reports with a Medical Bill	<u>Minn. Stat. 2015 Supplement § 176.135, Subd. 7a</u>	<ul style="list-style-type: none"> • Amendment to law requiring workers' compensation providers and insurers to use one standard electronic format to electronically transmit and receive relevant medical records or reports with the medical bill.

		<ul style="list-style-type: none"> • Amendment extends the effective date to Jan. 1, 2017. • Specifies that the electronic attachment standard that must be used is the ASC X12N 5010 version of the ASC X12.
Limitation of Liability for Medical Fees	§ 176.136 Subd. 1b	<ul style="list-style-type: none"> • The liability of the Employer/Insurer for treatment provided to an employee while an inpatient or outpatient at a Critical Access Hospital or while an outpatient at a hospital with 100 or fewer licensed beds, will be the hospital's usual and customary charge. • The commissioner or judge may determine that the charge is unreasonably excessive.

Please contact [McCollum, Crowley, Moschet, Miller & Laak, Ltd.](#) if you have any questions regarding these amendments.