

CHAPTER 5222

DEPARTMENT OF LABOR AND INDUSTRY

REIMBURSEMENT; COVERAGE; LOGGERS FUND

REIMBURSEMENT OF SUPPLEMENTARY BENEFITS

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REIMBURSEMENT OF SUPPLEMENTARY BENEFITS**5222.0100 DEFINITIONS.**

Subpart 1. **Generally.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 3. **Proposed effective date of permanent total disability.** "Proposed effective date of permanent total disability" is the date, supported by documented medical reports and/or rehabilitation reports, on which the employer or insurer and employee agree that permanent total disability began.

Subp. 3a. **Proposed effective date of offset.** "Proposed effective date of offset" is the date when the statutory requirements have been met and the insurer proposes to take the offset, the employee has been paid \$25,000 in permanent total disability benefits after the date of permanent total disability, and the employee is simultaneously receiving a government benefit as defined in subpart 4.

Subp. 4. **Government disability benefits.** "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101, subdivision 4. It includes, but is not limited to, social security disability benefits, old age and survivor benefits, fire relief association benefits, police relief association benefits, and public employee's retirement benefits.

Subp. 5. [Repealed, 15 SR 1846]

Subp. 6. **Rehabilitation plan.** "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

Subp. 7. **Supplementary benefits.** "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

Subp. 8. [Repealed, 15 SR 1846]

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: *8 SR 1898; 15 SR 1846*

5222.0200 AUTHORITY AND PURPOSE.

Parts 5222.0100 to 5222.1000 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 176.132, subdivision 4, 175.17, clause (2), and 176.83. The purpose of these parts is to specify the procedure by which an employer may

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apply for an administrative finding of permanent total disability in order to obtain reimbursement for supplementary benefits pursuant to Minnesota Statutes, section 176.132.

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: 8 SR 1898; 15 SR 1846

5222.0300 SCOPE.

Parts 5222.0100 to 5222.1000 apply only if all of the following prerequisites are met:

A. The employee is and has been receiving disability benefits under Minnesota Statutes, section 176.101, subdivision 1, 3a, or 4, without substantial interruption by suitable gainful employment after the proposed effective date of permanent total disability.

B. The employee is receiving government disability benefits.

C. The employee will be eligible for supplementary benefits after a finding of permanent total disability is made and the waiting period requirements of Minnesota Statutes, section 176.132, subdivision 1, are met.

D. The issue of whether the employee's total disability is permanent for the period on or after the proposed effective date of permanent total disability is not pending and has not been decided in any judicial or quasi-judicial administrative proceeding, including administrative conferences under Minnesota Statutes, section 176.239.

E. The employer or insurer and employee agree that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5, and applicable case law.

F. The employer or insurer and employee agree to the date on which the employee's permanent total disability began.

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: 8 SR 1898; 15 SR 1846

5222.0400 PROCEDURE.

Subpart 1. **Generally.** The employer or insurer must comply with the procedures set forth in this part by submitting a signed agreement to the commissioner for a finding of permanent total disability.

Subp. 2. **Contents of agreement.** This agreement must state:

- A. the name of the employee;
- B. the social security number of the employee;
- C. the name of the employer;
- D. the insurer of the employer, or that the employer is self-insured;
- E. the date of the injury which gave rise to permanent total disability;
- F. the date on which the employee became permanently totally disabled;
- G. the date on which the employee became eligible for government disability benefits;
- H. the date on which the employer or insurer will apply the offset;
- I. the names of the medical and vocational providers submitting the reports showing the employee is permanently totally disabled as of the date stated in item F and the dates of those reports;
- J. the status of the rehabilitation plan as active, inactive, or nonexistent; and
- K. the signatures of the employer or insurer and the employee.

Subp. 3. [Repealed, 15 SR 1846]

Subp. 4. **Filing of medical reports.** Any medical reports which are identified pursuant to subpart 2, item I, but have not been previously filed with the commissioner, must be attached to the agreement.

Subp. 5. **Filing of rehabilitation reports.** Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the agreement.

Subp. 6. **Benefit amounts.** The agreement must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The agreement must also state the amount of each of these benefits which will be received by the employee if the agreement is approved.

Subp. 7. **Signing of agreement.** The agreement must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of each person signing the agreement.

Subp. 8. **Instructions to employee.** The employer or insurer must mail two copies of the agreement with instructions to the employee and, if represented, a copy to the employee's attorney by first class mail, and must so affirm.

Subp. 9. **Filing with commissioner.** A copy signed by the employee must be filed with the commissioner before action will be taken on the request.

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: *8 SR 1898; 15 SR 1846*

5222.0500 APPROVAL BY COMMISSIONER.

An agreement is deemed approved upon the signature of the commissioner. Approval by the commissioner constitutes a finding of the employee's permanent total disability as of the proposed effective date of permanent total disability. The commissioner must approve an agreement unless grounds for disapproval exist pursuant to part 5222.0600.

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: *8 SR 1898; 15 SR 1846*

5222.0600 DISAPPROVAL BY COMMISSIONER.

An agreement for a finding of permanent total disability shall be disapproved if any of the following grounds are present:

A. The agreement is incomplete, is inaccurate, or is not in conformity with any provision of parts 5222.0100 to 5222.1000. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled on and after the proposed date of the permanent total disability renders an agreement incomplete and inaccurate and not in conformity with the rules. Agreements which are disapproved on any of these grounds may be resubmitted under the procedure authorized in part 5222.0400.

B. The employer or insurer has not complied with the provisions of Minnesota Statutes, section 176.102, regarding the provision of rehabilitation services to the employee. This shall apply only if the injury giving rise to total disability occurred on or after October 1, 1979.

C. The commissioner concludes that the medical and rehabilitation reports do not support the assertion that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5, and applicable case law.

D. The commissioner concludes that the available information does not support the proposed effective date of the employee's permanent total disability.

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: *8 SR 1898; 15 SR 1846*

5222.0650 NOTICE OF DECISION.

A copy of the decision approving or disapproving the agreement will be mailed to each party within 30 days of the receipt by the Special Compensation Fund of a complete agreement under part 5222.0400.

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: *15 SR 1846*

5222.0700 EFFECT OF DISAPPROVAL.

Disapproval of an agreement by the commissioner is without prejudice to a party's right to petition for a hearing pursuant to Minnesota Statutes, section 176.305, for a finding or revision of a finding of permanent total disability.

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: *8 SR 1898; 15 SR 1846*

5222.0750 EFFECT OF APPROVAL.

Approval of an agreement by the commissioner constitutes a final order determining permanent total disability.

Statutory Authority: *MS s 175.17; 176.132; 176.83*

History: *15 SR 1846*

5222.0800 [Repealed, 15 SR 1846]**5222.0900 SEVERABILITY.**

If any provision of this chapter is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the chapter shall in no manner be affected.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.1000 EFFECTIVE DATE.

Parts 5222.0100 to 5222.0900 shall apply to requests for reimbursement of supplementary benefits filed on or after February 27, 1984.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

INSURANCE VERIFICATION**5222.2000 PURPOSE.**

Parts 5222.2000 to 5222.2006 govern the filing by insurers of insurance coverage notices under Minnesota Statutes, section 176.185. Those parts apply to endorsements; binders; notices of new policy issuance, cancellation, expiration, termination, intent to provide insurance, policy reinstatement, and corrections; and similar documents relating to policy coverage.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2001 CONTENTS OF NOTICE.

Subpart 1. Form. Notices relating to policy coverage shall be filed on forms prescribed by the commissioner or as provided in subpart 2. All notices submitted must be typewritten, machine printed, on computer magnetic tape in an approved format, or via telecommunications using an approved format and protocol.

Subp. 2. Use of declaration sheets. An insurer's policy declaration sheet or insurance binder may be used in place of forms prescribed by the commissioner if the declaration contains at least the following information:

A. Type of action, such as new policy, correction, binder, reinstatement, expiration, cancellation, termination, or notice of intent to provide insurance.

- B. Employer's legal name.
- C. Every dba (doing business as) name used by the employer.
- D. Employer's legal form of ownership, such as corporation, partnership, limited partnership, or government entity. All owners or partners must be specifically named. In limited partnerships, only the general partners must be identified.
- E. Employer's complete mailing address, including zip code.
- F. Nature of employer's business.
- G. Policy number.
- H. Effective and expiration dates of policy.
- I. Name of carrier.
- J. Carrier office issuing the policy.
- K. Type of cancellation, if applicable.
- L. Reason for cancellation, if applicable.
- M. Effective date of cancellation, if applicable.
- N. Every employer's federal employer identification number (FEIN) and unemployment account number.

Subp. 3. **Filing not accepted.** Notices not in compliance with this part will not be accepted for filing.

Subp. 4. **Data contract.** A party who contracts with the commissioner for the collection of appropriate insurance coverage data under Minnesota Statutes, section 176.185, subdivision 10, must enter the data elements required subpart 2, and other data elements according to the terms of the contract, in an insurance coverage data base.

Statutory Authority: *MS s 176.185; 176.83*

History: *11 SR 1505; 17 SR 3364*

5222.2002 PLACE OF FILING.

All notices required by Minnesota Statutes, section 176.185 shall be filed with the commissioner's contract designee for this purpose, the Minnesota Workers' Compensation Insurers Association, Inc. (MWCIA). This part applies to all insurers licensed to write workers' compensation insurance in Minnesota, including insurers who are not members of the MWCIA. MWCIA shall function only as a repository for data collection and processing; any issues regarding the adequacy, timeliness, or other aspects of the filing are to be addressed to the commissioner.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2003 TIME FOR FILING NOTICE.

Subpart 1. **Policy issuance.** Notice of coverage must be filed by the insurer within ten days of issuance (effective date) of a policy or 20 days of issuance (effective date) of a binder or acceptance of an employer's application for insurance, whichever is earlier.

Subp. 2. **Cancellation.** Notice of cancellation, termination, or expiration must be filed by the insurer at the same time that notice is given to the insured, or, if cancellation is initiated by the insured, upon receipt of notice from the insured. The policy shall remain in effect for 30 days after the insurer's filing of notice, or, if sooner, until another policy or binder is issued by the same carrier or a different carrier.

Subp. 3. **Receipt of notice.** Filing is effective upon receipt by the Minnesota Workers' Compensation Insurers Association, Inc. (MWCIA) of a notice that complies with part 5222.2001. Notices received by the commissioner will be forwarded to the MWCIA and will not become effective until received by that organization.

Subp. 4. **Failure to timely file.** If an insurer fails to file timely notice, other than a notice of cancellation, termination, or expiration provided for in subpart 2, as required by parts 5222.2000 to 5222.2006 on five percent of all policies for which such notices are due in any

calendar month, if greater than five notices, it shall be subject to the sanctions described below. If the commissioner determines that an insurer has exceeded this percentage on more than one occasion in any 12-month period, the commissioner shall issue a warning letter advising the insurer of its responsibilities under the law, and the effect of future noncompliance.

If the commissioner determines that an insurer has exceeded this percentage on more than two occasions in any 12-month period, the commissioner may require the insurer to provide to the commissioner a written description of the steps the insurer will take to implement changes in the insurer's notice filing procedures to prevent future untimely delays and periodic written reports as to the progress and success of the implementation of such procedures.

If the commissioner determines that an insurer has exceeded this percentage on more than four occasions in any 12-month period, the commissioner may in addition to the other actions identified in this subpart notify the Department of Commerce and request a review of the insurer's authority to write workers' compensation insurance in Minnesota. This subpart does not affect the insurer's continued liability on the policy, as determined by law, for failure to timely file.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2004 EFFECT OF FILING.

Filing with the Minnesota Workers' Compensation Insurers Association, Inc. under parts 5220.2000 to 5220.2006 is deemed a filing with the commissioner for purposes of Minnesota Statutes, section 176.185, subdivision 1. Filing under this part is not notice to the employer under Minnesota Statutes, sections 176.181 and 176.185.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2005 CANCELLATION OF SUBSIDIARY COVERAGE.

If a single policy covers a parent corporation and its subsidiaries, a cancellation or endorsement must be filed even if the policy for the parent is to continue. The notice must specify that the subsidiary is canceled and the parent remains covered. If a new subsidiary is added to the policy, an endorsement to the declaration sheet must be filed.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

5222.2006 COVERAGE.

Parts 5222.2000 to 5222.2006 shall apply to all filings required by Minnesota Statutes, section 176.185 on or after March 1, 1987.

Statutory Authority: *MS s 176.185; 176.83 subd 1*

History: *11 SR 1505*

LOGGERS TARGETED INDUSTRY FUND REPORTING PROCEDURES AND PROGRAMS

5222.3000 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5222.3000 to 5222.3007, the following terms have the meanings given them.

Subp. 2. **Full-time logger.** "Full-time logger" means a logger who is employed for at least 100 hours in each of three different months during a calendar year.

Subp. 3. **Logger.** "Logger" has the meaning given it in Minnesota Statutes, section 176.130, subdivision 1, paragraph (b).

Subp. 4. **Purchaser.** "Purchaser" has the meaning given it in Minnesota Statutes, section 176.130, subdivision 3.

Subp. 5. **Qualified employer.** “Qualified employer” has the meaning given it in Minnesota Statutes, section 176.130, subdivision 1, paragraph (f).

Subp. 6. **Woodmill.** “Woodmill” has the meaning given it in Minnesota Statutes, section 176.130, subdivision 1, paragraph (d).

Statutory Authority: *MS s 175.17; 176.83*

History: *15 SR 1847*

5222.3001 AUTHORITY AND PURPOSE.

Parts 5222.3000 to 5222.3007 are adopted pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 175.17, 176.83, and 176.130. The purpose of parts 5222.3000 to 5222.3007 is to specify the procedures by which woodmills and qualified employers report to the commissioner for the purpose of administering and implementing the provisions of Minnesota Statutes, section 176.130.

Statutory Authority: *MS s 175.17; 176.83*

History: *15 SR 1847*

5222.3002 ANNUAL REPORTING BY WOODMILL.

Subpart 1. **Content of report.** Each woodmill shall make an annual report, as provided in Minnesota Statutes, section 176.130, subdivision 5, paragraph (a), on a form prescribed by the commissioner, including the following:

- A. name and address of woodmill;
 - B. federal and state employer identification numbers of woodmill;
 - C. reporting period dates;
 - D. total number of cords purchased or acquired in the preceding calendar year per species of wood;
 - E. supporting documentation or other information requested by the commissioner;
- and
- F. payment of assessment as provided in Minnesota Statutes, section 176.130, subdivision 4.

Subp. 2. **Conversion formulas.** For purposes of reporting under subpart 1, item E, where the woodmill uses a measurement other than by cord, the following conversion formulas shall apply:

- A. 4,500 pounds of cut logs or tree-length timber equals one cord;
- B. 500 board feet of saw logs or bolts equals one cord; and
- C. 6,000 pounds of whole tree chips equals one cord.

Subp. 3. **Incomplete reports.** Reports not in compliance with this part will not be accepted for filing and do not satisfy reporting or payment requirements.

Subp. 4. **Extensions.** Requests by woodmills for extension of the time for reporting and making payment will be granted within seven days of receipt by the commissioner, only in rare cases where:

- A. the request is made in writing;
- B. the request is received by the commissioner before the reporting due date;
- C. the request is based on circumstances beyond the control of the woodmill; and
- D. the commissioner determines the extension period is reasonable.

Statutory Authority: *MS s 175.17; 176.83*

History: *15 SR 1847*

5222.3003 FAILURE TO MAKE PAYMENT OF ASSESSMENT; PENALTY.

Subpart 1. **Due date.** The due date for payment of the annual assessment by a woodmill is February 15 for the previous calendar year.

Subp. 2. **Basis.** A penalty will be assessed under Minnesota Statutes, section 176.129, subdivision 10, where, on or before the due date, either:

- A. the payment of the assessment is not received by the commissioner; or
- B. a request for extension is not approved.

Subp. 3. **Amount.** Within 60 days of the due date, the commissioner will give notice of penalty to woodmills who have not made, without an approved extension, timely and full payment of the assessment. The amount of the penalty shall be either:

- A. (1) five percent of the assessment payments due, if received by the commissioner late but not more than ten days after the due date;
- (2) ten percent of the assessment payments due, if received by the commissioner within 11 to 29 days after the due date; or
- (3) 15 percent of the assessment payments due, if payment is not made within 30 days of the due date; or
- B. \$500, whichever is greater.

Subp. 4. **Payment to.** Both the assessment payment and any penalty due under this part and part 5222.3004 are payable to the special compensation fund.

Statutory Authority: *MS s 175.17; 176.83*

History: *15 SR 1847*

5222.3004 FALSE REPORTING BY WOODMILL.

Pursuant to Minnesota Statutes, section 176.130, subdivision 9, any woodmill that makes a false report for the purposes of evading payment of the assessment, or any part of it, shall be penalized in an amount equal to 50 percent of the assessment due. For purposes of this penalty "false report" includes, but is not limited to, a failure to file the report by the due date. If a woodmill fails to file within 30 days of a request by the department, the failure to file will be presumed to be for the purpose of evading payment of the assessment.

Statutory Authority: *MS s 175.17; 176.83*

History: *15 SR 1847*

5222.3005 PROOF OF COVERAGE.

Subpart 1. **Generally.** Purchasers of wood from the logging industry must, pursuant to Minnesota Statutes, section 176.130, subdivision 3, obtain from the logger, and submit to the special compensation fund, within 14 days of receipt of the information by the purchaser, certification of compliance with the mandatory insurance requirement of Minnesota Statutes, chapter 176.

Subp. 2. **Obtaining proof.** Certification of coverage shall be obtained by the purchaser, on a form prescribed by the commissioner, when the purchaser and the logger enter into a contract for the purchase of wood.

Statutory Authority: *MS s 175.17; 176.83*

History: *15 SR 1847*

5222.3006 ANNUAL REPORTING BY QUALIFIED EMPLOYER.

Subpart 1. **Content of report.** Each qualified employer shall make an annual report, as provided in Minnesota Statutes, section 176.130, subdivision 5, paragraph (b), on a form prescribed by the commissioner containing the following information:

- A. name and address of qualified employer;
- B. Social Security number and federal and state employer identification numbers of qualified employer;
- C. reporting period dates;
- D. total amount of payroll dollars paid to loggers;
- E. name and address of workers' compensation insurer;
- F. proof of premium dollars paid for loggers, which may include copies of canceled checks or receipts from insurers;
- G. certification of attendance, for each full-time logger, at a safety seminar established or approved by the commissioner; and

H. supporting documentation or other information requested by the commissioner.

Subp. 2. **No extensions.** An employer must satisfy the requirements of Minnesota Statutes, section 176.130, subdivision 1, paragraph (f), in order to be categorized as a qualified employer. A qualified employer must report timely and fully under this part and Minnesota Statutes, section 176.130, subdivision 5, paragraph (b), to be eligible for any rebate. No extensions are allowed pursuant to Minnesota Statutes, section 176.130, subdivision 6.

Subp. 3. **Incomplete reports.** Reports not in compliance with this part will not be accepted for filing and do not satisfy reporting requirements.

Statutory Authority: *MS s 175.17; 176.83*

History: *15 SR 1847*

5222.3007 ESTABLISHMENT OR APPROVAL OF SAFETY PROGRAM.

Subpart 1. **Safety program required.** The commissioner shall establish or approve a safety program under subpart 2 or 3.

Subp. 2. **Establishment.** The commissioner may establish a mandatory safety program including any of the following:

- A. safety seminars;
- B. educational publications or video presentations;
- C. on-site consultations; or
- D. testing of safety equipment.

Subp. 3. **Approval.** The commissioner may approve privately sponsored safety programs or seminars based on the following criteria:

- A. cost of program;
- B. specificity of subject matter to industry concerns;
- C. availability of program in terms of locations and number of seminars;
- D. expertise of program sponsor; and
- E. recommendations of Minnesota Occupational Safety and Health Administration consultation unit.

Statutory Authority: *MS s 175.17; 176.83*

History: *15 SR 1847*