

A bill for an act
relating to workers' compensation; modifying payment and retraining provisions;
amending Minnesota Statutes 2006, sections 176.101, subdivisions 1, 2, 4;
176.102, subdivision 11; 176.645.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 176.101, subdivision 1, is amended to read:

Subdivision 1. **Temporary total disability.** (a) For injury producing temporary total disability, the compensation is 66-2/3 percent of the weekly wage at the time of injury.

(b)(1) ~~Commencing on October 1, 2000,~~ The maximum weekly compensation payable is ~~\$750 per week~~ equal to the statewide average weekly wage defined in section 176.011, subdivision 20.

(2) The Workers' Compensation Advisory Council may consider adjustment increases and make recommendations to the legislature.

(c) The minimum weekly compensation payable is \$130 per week or the injured employee's actual weekly wage, whichever is less.

(d) Temporary total compensation shall be paid during the period of disability subject to the cessation and recommencement conditions in paragraphs (e) to (l).

(e) Temporary total disability compensation shall cease when the employee returns to work. Except as otherwise provided in section 176.102, subdivision 11, temporary total disability compensation may only be recommenced following cessation under this paragraph, paragraph (h), or paragraph (j) ~~prior to payment of 104 weeks of temporary total disability compensation,~~ and only as follows:

(1) if temporary total disability compensation ceased because the employee returned to work, it may be recommenced if the employee is laid off or terminated for reasons other

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than misconduct if the layoff or termination occurs prior to 90 days after the employee has reached maximum medical improvement. Recommended temporary total disability compensation under this clause ceases when any of the cessation events in paragraphs (e) to (l) occurs; or

(2) if temporary total disability compensation ceased because the employee returned to work or ceased under paragraph (h) or (j), it may be recommenced if the employee is medically unable to continue at a job due to the injury. Where the employee is medically unable to continue working due to the injury, temporary total disability compensation may continue until any of the cessation events in paragraphs (e) to (l) occurs following recommencement. If an employee who has not yet received temporary total disability compensation becomes medically unable to continue working due to the injury after reaching maximum medical improvement, temporary total disability compensation shall commence and shall continue until any of the events in paragraphs (e) to (l) occurs following commencement. For purposes of commencement or recommencement under this clause only, a new period of maximum medical improvement under paragraph (j) begins when the employee becomes medically unable to continue working due to the injury. Temporary total disability compensation may not be recommenced under this clause and a new period of maximum medical improvement does not begin if the employee is not actively employed when the employee becomes medically unable to work. ~~All periods of initial and recommenced temporary total disability compensation are included in the 104-week limitation specified in paragraph (k).~~

(f) Temporary total disability compensation shall cease if the employee withdraws from the labor market. Temporary total disability compensation may be recommenced following cessation under this paragraph only if the employee reenters the labor market prior to 90 days after the employee reached maximum medical improvement ~~and prior to payment of 104 weeks of temporary total disability compensation.~~ Once recommenced, temporary total disability ceases when any of the cessation events in paragraphs (e) to (l) occurs.

(g) Temporary total disability compensation shall cease if the total disability ends and the employee fails to diligently search for appropriate work within the employee's physical restrictions. Temporary total disability compensation may be recommenced following cessation under this paragraph only if the employee begins diligently searching for appropriate work within the employee's physical restrictions prior to 90 days after maximum medical improvement ~~and prior to payment of 104 weeks of temporary total disability compensation.~~ Once recommenced, temporary total disability compensation ceases when any of the cessation events in paragraphs (e) to (l) occurs.

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(h) Temporary total disability compensation shall cease if the employee has been released to work without any physical restrictions caused by the work injury.

(i) Temporary total disability compensation shall cease if the employee refuses an offer of work that is consistent with a plan of rehabilitation filed with the commissioner which meets the requirements of section 176.102, subdivision 4, or, if no plan has been filed, the employee refuses an offer of gainful employment that the employee can do in the employee's physical condition. Once temporary total disability compensation has ceased under this paragraph, it may not be recommenced.

(j) Temporary total disability compensation shall cease 90 days after the employee has reached maximum medical improvement, except as provided in section 176.102, subdivision 11, paragraph (b). For purposes of this subdivision, the 90-day period after maximum medical improvement commences on the earlier of: (1) the date that the employee receives a written medical report indicating that the employee has reached maximum medical improvement; or (2) the date that the employer or insurer serves the report on the employee and the employee's attorney, if any. Once temporary total disability compensation has ceased under this paragraph, it may not be recommenced except if the employee returns to work and is subsequently medically unable to continue working as provided in paragraph (e), clause (2).

~~(k) Temporary total disability compensation shall cease entirely when 104 weeks of temporary total disability compensation have been paid, except as provided in section 176.102, subdivision 11, paragraph (b). Notwithstanding anything in this section to the contrary, initial and recommenced temporary total disability compensation combined shall not be paid for more than 104 weeks, regardless of the number of weeks that have elapsed since the injury, except that if the employee is in a retraining plan approved under section 176.102, subdivision 11, the 104 week limitation shall not apply during the retraining, but is subject to the limitation before the plan begins and after the plan ends~~ 500 weeks of any combination of temporary total disability, temporary partial disability, or retraining compensation has been paid.

(l) Paragraphs (e) to (k) do not limit other grounds under law to suspend or discontinue temporary total disability compensation provided under this chapter.

~~(m) Once an employee has been paid 52 weeks of temporary total compensation, the employer or insurer must notify the employee in writing of the 104-week limitation on payment of temporary total compensation. A copy of this notice must also be filed with the department.~~

Sec. 2. Minnesota Statutes 2006, section 176.101, subdivision 2, is amended to read:

4.1 Subd. 2. **Temporary partial disability.** (a) In all cases of temporary partial
4.2 disability the compensation shall be 66-2/3 percent of the difference between the weekly
4.3 wage of the employee at the time of injury and the wage the employee is able to earn in
4.4 the employee's partially disabled condition. This compensation shall be paid during the
4.5 period of disability except as provided in this section, payment to be made at the intervals
4.6 when the wage was payable, as nearly as may be, and subject to the maximum rate for
4.7 temporary total compensation.

4.8 (b) Temporary partial compensation may be paid only while the employee is
4.9 employed, earning less than the employee's weekly wage at the time of the injury, and the
4.10 reduced wage the employee is able to earn in the employee's partially disabled condition is
4.11 due to the injury. ~~Except as provided in section 176.102, subdivision 11, paragraphs (b)~~
4.12 ~~and (c), temporary partial compensation may not be paid for more than 225 weeks, or after~~
4.13 ~~450 weeks after the date of injury, whichever occurs first.~~ Temporary partial disability
4.14 compensation payments are subject to the 500-week limit allowed for any combination of
4.15 temporary total disability, temporary partial disability, or retraining compensation.

4.16 (c) Temporary partial compensation must be reduced to the extent that the wage the
4.17 employee is able to earn in the employee's partially disabled condition plus the temporary
4.18 partial disability payment otherwise payable under this subdivision exceeds 500 percent of
4.19 the statewide average weekly wage.

4.20 Sec. 3. Minnesota Statutes 2006, section 176.101, subdivision 4, is amended to read:

4.21 Subd. 4. **Permanent total disability.** For permanent total disability, as defined in
4.22 subdivision 5, the compensation shall be 66-2/3 percent of the daily wage at the time of
4.23 the injury, subject to a maximum weekly compensation equal to the maximum weekly
4.24 compensation for a temporary total disability and a minimum weekly compensation
4.25 equal to 65 percent of the statewide average weekly wage. This compensation shall be
4.26 paid during the permanent total disability of the injured employee ~~but after a total of~~
4.27 ~~\$25,000 of weekly compensation has been paid, the amount of the weekly compensation~~
4.28 ~~benefits being paid by the employer shall be reduced by the amount of any disability~~
4.29 ~~benefits being paid by any government disability benefit program if the disability benefits~~
4.30 ~~are occasioned by the same injury or injuries which give rise to payments under this~~
4.31 ~~subdivision. This reduction shall also apply to any old age and survivor insurance benefits.~~
4.32 Payments shall be made at the intervals when the wage was payable, as nearly as may
4.33 be. In case an employee who is permanently and totally disabled becomes an inmate of
4.34 a public institution, no compensation shall be payable during the period of confinement
4.35 in the institution, unless there is wholly dependent on the employee for support some

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person named in section 176.111, subdivision 1, 2 or 3, in which case the compensation provided for in section 176.111, during the period of confinement, shall be paid for the benefit of the dependent person during dependency. The dependency of this person shall be determined as though the employee were deceased. Permanent total disability shall cease at age 67 because the employee is presumed retired from the labor market. This presumption is rebuttable by the employee. The subjective statement the employee is not retired is not sufficient in itself to rebut the presumptive evidence of retirement but may be considered along with other evidence.

Sec. 4. Minnesota Statutes 2006, section 176.102, subdivision 11, is amended to read:

Subd. 11. **Retraining; compensation.** (a) Retraining is ~~limited to 156 weeks~~ subject to the 500-week limit allowed for any combination of temporary total disability, temporary partial disability, or retraining compensation. An employee who has been approved for retraining may petition the commissioner or compensation judge for additional compensation not to exceed 25 percent of the compensation otherwise payable. If the commissioner or compensation judge determines that this additional compensation is warranted due to unusual or unique circumstances of the employee's retraining plan, the commissioner may award additional compensation in an amount not to exceed the employee's request. This additional compensation shall cease at any time the commissioner or compensation judge determines the special circumstances are no longer present.

(b) If the employee is not employed during a retraining plan that has been specifically approved under this section, temporary total compensation is payable for up to 90 days after the end of the retraining plan; except that, payment during the 90-day period is subject to cessation in accordance with section 176.101. If the employee is employed during the retraining plan but earning less than at the time of injury, temporary partial compensation is payable at the rate of 66-2/3 percent of the difference between the employee's weekly wage at the time of injury and the weekly wage the employee is able to earn in the employee's partially disabled condition, subject to the maximum rate for temporary total compensation. ~~Temporary partial compensation is not subject to the 225-week or 450-week limitations provided by section 176.101, subdivision 2, during the retraining plan, but is subject to those limitations before and after the plan.~~

(c) Any request for retraining shall be filed with the commissioner before ~~156~~ 500 weeks of any combination of temporary total or temporary partial compensation have been paid. Retraining shall not be available after ~~156~~ 500 weeks of any combination of temporary total or temporary partial compensation benefits have been paid unless the

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request for the retraining has been filed with the commissioner prior to the time the 156 weeks of compensation have been paid.

(d) The employer or insurer must notify the employee in writing of the ~~156-week~~ 500-week limitation for filing a request for retraining with the commissioner. This notice must be given before 80 weeks of temporary total disability or temporary partial disability compensation have been paid, regardless of the number of weeks that have elapsed since the date of injury. If the notice is not given before the 80 weeks, the period of time within which to file a request for retraining is extended by the number of days the notice is late, ~~but in no event may a request be filed later than 225 weeks after any combination of temporary total disability or temporary partial disability compensation have been paid.~~ The commissioner may assess a penalty of \$25 per day that the notice is late, up to a maximum penalty of \$2,000, against an employer or insurer for failure to provide the notice. The penalty is payable to the commissioner for deposit in the assigned risk safety account.

Sec. 5. Minnesota Statutes 2006, section 176.645, is amended to read:

176.645 ADJUSTMENT OF BENEFITS.

Subdivision 1. **Amount.** For injuries occurring after October 1, 1975 for which benefits are payable under section 176.101, subdivisions 1, 2 and 4, and section 176.111, subdivision 5, the total benefits due the employee or any dependents shall be adjusted in accordance with this section. On October 1, 1981, and thereafter on the anniversary of the date of the employee's injury the total benefits due shall be adjusted by multiplying the total benefits due prior to each adjustment by a fraction, the denominator of which is the statewide average weekly wage for December 31, of the year two years previous to the adjustment and the numerator of which is the statewide average weekly wage for December 31, of the year previous to the adjustment. For injuries occurring after October 1, 1975, all adjustments provided for in this section shall be included in computing any benefit due under this section. Any limitations of amounts due for daily or weekly compensation under this chapter shall not apply to adjustments made under this section. No adjustment increase made on or after October 1, 1977, but prior to October 1, 1992, under this section shall exceed six percent a year; in those instances where the adjustment under the formula of this section would exceed this maximum, the increase shall be deemed to be six percent. No adjustment increase made on or after October 1, 1992, under this section shall exceed four percent a year; in those instances where the adjustment under the formula of this section would exceed this maximum, the increase shall be deemed to be four percent. ~~For injuries occurring on and after October 1, 1995, no adjustment increase made on or after October 1, 1995, shall exceed two percent a~~

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~~year, in those instances where the adjustment under the formula of this section would exceed this maximum, the increase shall be deemed to be two percent. The Workers' Compensation Advisory Council may consider adjustment or other further increases and make recommendations to the legislature.~~

Subd. 2. **Time of first adjustment.** For injuries occurring on or after October 1, 1981, the initial adjustment made pursuant to subdivision 1 is deferred until the first anniversary of the date of the injury. For injuries occurring on or after October 1, 1992, the initial adjustment under subdivision 1 is deferred until the second anniversary of the date of the injury. ~~The adjustment made at that time shall be that of the last year only. For injuries occurring on or after October 1, 1995, the initial adjustment under subdivision 1 is deferred until the fourth anniversary of the date of injury. The adjustment at that time shall be that of the last year only.~~