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1 Department of Labor and Industry

2

3 Adopted Permanent Rules Relating to Workers' Compensation Rules  
4 of Practice

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6 Rules as Adopted

7 5220.2690 SUBROGATION INTEREST IN THIRD-PARTY RECOVERY.

8 Subpart 1. [Unchanged.]

9 Subp. 2. Stipulated agreement. Where all of the parties  
10 have reached agreement with respect to the subrogation interest,  
11 a stipulated agreement concerning that interest may be submitted  
12 as provided in Minnesota Statutes, section 176.521.

13 Subp. 3. Determination of subrogation interest. The  
14 insurer or employee must comply with the procedures in this part  
15 in submitting a petition to the workers' compensation division  
16 for an order determining subrogation interest and credit.

17 A. The petition must be on the form prescribed by the  
18 commissioner and contain substantially the following:

19 (1) information identifying both the district  
20 court action if any and the workers' compensation claim  
21 involved;

22 (2) the total proceeds of the third-party  
23 settlement or award;

24 (3) the amount of legal fees and costs of the  
25 third-party claim;

26 (4) the subrogation interest of the employer  
27 itemized by type of benefits paid such as but not limited to:

28 (a) temporary total disability;

29 (b) temporary partial disability;

30 (c) permanent total disability;

31 (d) permanent partial disability;

32 (e) medical expenses where Minnesota

33 Statutes, section 176.061, subdivision 7, claim was not made;  
34 and

35 (f) other;

1 (5) the name, address, and telephone number of  
2 the attorney for each party if any.

3 B. The petitioner shall serve a copy of the petition  
4 and attachments on all parties to both the third-party action  
5 and the workers' compensation proceeding. Notice to the special  
6 compensation fund shall be given where a subrogation interest  
7 based on payments made pursuant to Minnesota Statutes, section  
8 176.183 or potential interest under Minnesota Statutes, section  
9 176.131 is known.

10 C. The original petition, together with a copy of the  
11 district court order or stipulation for settlement and  
12 corresponding order for dismissal or other documentary evidence  
13 reflecting the nature and extent of the resolution in district  
14 court must be filed with the division with proof of service as  
15 required in item B.

16 D. Upon receipt of the petition, the division will  
17 issue an order containing the following:

18 (1) information identifying both the district  
19 court action if any and the workers' compensation claim  
20 involved;

21 (2) the information upon which the subrogation  
22 order is based;

23 (3) the calculation of the subrogation interest,  
24 including the future credit amount and the sum payable to the  
25 employee; and

26 (4) an explanation of the effect of the credit  
27 upon future benefit entitlement.

28 The order will be served on all parties and will contain  
29 notice of the parties' right to appeal the order within 30 days  
30 of its service.

31 E. If an appeal of the order is not received by the  
32 division within 30 days, the order will become the final order.

33 Subp. 4. Appeal of order. A party may appeal the order by  
34 filing a written appeal with the division and serving it on all  
35 parties within 30 days of the service of the order. The appeal  
36 must contain a detailed statement explaining the factual or

1 legal basis for the appeal and include any documentation  
2 supporting the appeal.

3       Upon receipt of a timely appeal, the matter will be  
4 referred to a settlement judge for a settlement conference to  
5 resolve the issues by agreement.

6       If agreement is not reached at the settlement conference  
7 but the parties agree to a stipulated set of facts, the  
8 settlement judge will rule on the subrogation interest under  
9 Minnesota Statutes, section 176.322. The determination is  
10 appealable as provided in Minnesota Statutes, section 176.322.

11       If agreement is not reached at the settlement conference  
12 and facts remain in dispute, the matter will be certified to the  
13 office for hearing.

14 5220.2840 FAILURE TO MAKE PAYMENT TO SPECIAL FUND; PENALTY.

15       Subpart 1. Due date. For workers' compensation benefits  
16 paid from January 1 through June 30, the due date of the  
17 completed assessment form and corresponding assessment amount is  
18 August 15 of the same calendar year.

19       For workers' compensation benefits paid from July 1 through  
20 December 31, the due date of the corresponding assessment amount  
21 is March 1 of the following calendar year.

22       Notice of the assessment rate and instructions for payment  
23 will be issued by the fund 45 or more days before the due date.

24       Subp. 2. Basis. A penalty will be assessed under  
25 Minnesota Statutes, section 176.129, subdivision 10, where  
26 either:

27       A. the completed assessment form and payment of the  
28 special compensation fund assessment; or

29       B. written certification that the assessment report  
30 and assessment payment will not be made by the due date because  
31 of reasons beyond the control of the insurer, is not received by  
32 the special compensation fund on or before the due date.

33       Subp. 3. Amount. Within 30 days of the due date, the  
34 special compensation fund will give notice of penalty to those  
35 who have neither filed the completed assessment form and paid

1 the assessment amount, nor submitted a certified reason for  
2 nonpayment by the due date as follows:

3 A. Either:

4 (1) 2.5 percent of the assessment amount due if  
5 the assessment payment is received at the fund within five days  
6 after the due date; or

7 (2) five percent of the assessment amount due if  
8 the assessment payment is received at the fund within six to 30  
9 days after the due date; or

10 (3) ten percent of the assessment amount due if  
11 the assessment payment is received at the fund within 31 to 60  
12 days after the due date; or

13 (4) 15 percent of the assessment amount due if  
14 the assessment payment is received at the fund 61 or more days  
15 after the due date; or

16 B. \$500, whichever is greater.

17 Subp. 4. Payable to. Both the assessment amount and any  
18 penalty due under this part are payable to the special  
19 compensation fund.

20 Subp. 5. Continued nonpayment. If the insurer penalized  
21 does not make payment within six months of the due date, the  
22 fund director shall refer the file to the Department of Commerce  
23 for consideration of license or permit revocation.