

# MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-  
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THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED  
BY THE SUBSEQUENT LEGISLATION OF 1925  
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES  
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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CHAPTER 23A

WORKMEN'S COMPENSATION ACT

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Compensation insurance board and bureau, see §§ 3612 to 3634, herein.

Part 1  
COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

4261. Injury or death of employe—When personal injury or death is caused to an employe by accident arising out of and in the course of his employment, of which injury the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he, or, in case of death, his personal representative, for the exclusive benefit of the surviving spouse and next of kin, shall receive compensation by way of damages therefor from his employer, provided the employe was himself not wilfully negligent at the time of receiving such injury; and the question of whether the employe was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence, or to law. ('21 c. 82 § 1)

See also notes under § 4326.

**In General.**

139-409, 166+772; 132-249, 156+120; 132-328, 156+669; 134-131, 158+797; 126-286, 148+71; 128-221, 150+623; 128-43, 150+211; 142-356, 172+216; 144-323, 175+610; 145-181, 176+749; 147-413, 180+552; 143-129, 173+405; 144-313, 175+694; 150-507, 185+948; 186+863, 186+860, 190+256; 140-216, 166+185; 140-399, 167+1039; 140-427, 168+130; 140-470, 168+555; 150-2, 188+265; 150-364, 188+286; 151-144, 189+429; 151-428, 860; 152-253, 186+860; 153-151, 189+931.

Injuries in course of employment, 129-176, 151+912; 129-502, 153+119; 138-131, 164+585; 138-210, 164+810; 138-250, 164+916; 140-470, 160+555; 138-326, 164+1012; 134-113, 158+913; 138-312, 164+1020; 141-61, 169+274; 141-166, 169+532; 137-435, 163+755; 144-259, 175+110; 149-1, 182+622; 149-429, 183+828; 150-1, 183+977; 150-521, 185+948; 145-286, 177+131; 147-366, 180+219; 153-225, 190+356; 151-258, 186+946; 152-512, 189+426; 153-479, 190+984; 153-150, 189+931.

4261  
 Et seq.  
 242nw 405  
 242nw 717  
 243nw 706  
 245nw 630  
 247nw 2

4261Etseq  
 174m 156  
 174m 491  
 218nw 54  
 218nw 66  
 223nw 77  
 224nw 450  
 4326J

4261Etseq.  
 170m 422  
 177m 98  
 231nw 214  
 232nw 621  
 233nw 300  
 233nw 467

4261  
 Et seq.  
 174m 359  
 170m 373  
 179m 395  
 181m 417  
 182m 289  
 218nw 392  
 223nw 608  
 229nw 340  
 232nw 918  
 236nw 322  
 237nw 610  
 238nw 559  
 248nw 233  
 239nw 614  
 See 4290

4261  
 170m 158  
 180m 400  
 228nw 559  
 248nw 233  
 248nw 824  
 250nw 812  
 251nw 277  
 251nw 284  
 251nw 534  
 251nw 909  
 252nw 453  
 252nw 666

166-251, 207+636; 210+622.

Acts necessary to the comfort and convenience of the employee while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment 157-290, 196+261.

The Workmen's Compensation Act must be liberally construed. 157-290, 196+261.

Intent of legislature was that employee's recovery should be speedy, certain, and definite. 157-290, 196+261.

A workman afflicted with arterio sclerosis was injured by falling and striking a concrete floor with the back of his head. The Industrial Commission found that death was caused by the accidental injury. Under the evidence, the finding cannot be held to have been the result of speculation and conjecture. 158-491, 198+133.

Finding that accident arose out of and in the course of the employment sustained by evidence. 210+64.

Dependents of employee killed by robbers were entitled to compensation. 210+1003.

Firemen on way to fire. 212+461.

Injury received on way home after special errand compensable. 162-493, 203+442.

**Employees.**

Teamster held employee. 158-522, 198+134.

**Presumption Against Suicide.**

The presumption against suicide is a presumption of fact, and a strong one; but it does not control where there is substantial proof, from which rational consideration may reach the conclusion of suicide. 157-33, 195+766.

**4262. Certain defenses excluded**—In all cases brought under part 1 of this act, it shall not be a defense (a) that the employe was negligent, unless and except it shall also appear that such negligence was wilful; (b) that the injury was caused by the negligence of a fellow employe; (c) that the employe has assumed the risks inherent in, or incidental to the work, or arising out of and in the course of his employment from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished except as provided in section 4. ('21 c. 82 § 2)

Section 4 is § 4264, herein.

The Compensation Act is liberally construed to secure to employes the benefits intended, and an employe is not necessarily placed outside the protection of the act by disobeying an order. 210+64.

**4263. Defenses—When excluded**—If the employer elects not to come under part 2 of this act, he loses the right to interpose the three defenses named in section 2 in any action brought against him for personal injury or death of an employe; provided, that this section shall not be held to apply to any employer of farm labor, whether or not he has elected to accept part 2 of this act. ('21 c. 82 § 3)

**4264. Defenses—When available**—If the employer becomes subject to part 2 of this act and the employe does not, then the employer may set up such defenses as are available at the time of the passage of this act. ('21 c. 82 § 4)

**4265. Death claimed**—The provisions of Sections 1, 2, 3 and 4 shall apply to any claim for the death of an employe arising under section 4503 of chapter 84, Revised Laws of Minnesota 1905, and the acts or parts of acts amendatory thereof, concerning death by wrongful act. ('21 c. 82 § 5)

**Explanatory note**—For R. L. '05, § 4503, see § 3657, herein.

**4266. Burden of proof**—In all actions at law brought pursuant to part 1 of this act, the burden of proof to establish wilful negligence of the injured employe shall be upon the defendant. ('21 c. 82 § 6)

**4267. Legal services and disbursements when lien—**Medical services, etc.—No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or in case of settlement without trial, by a judge of the district court, or in cases arising under part 2 of this act by the Industrial Commission. Provided, that if notice in writing be given the defendant of such claims for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided. All sums allowed as liens against such compensation or paid for legal, medical and hospital services and other disbursements arising under part 2 of this act, shall be reported by the employe to the Industrial Commission in writing within ten days after such payment. ('21 c. 82 § 7)

191+742.

The provision authorizing the allowance of actual and necessary "disbursements" to the prevailing party does not include attorney's fees. 211+674.

**Part II.**

**ELECTIVE COMPENSATION**

**4268. Not applicable to certain employments**—This act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession or occupation of his employer; provided, that part 2 of this act shall apply to farm labor if the employer shall have elected to accept the provisions of such part 2 by posting a written or printed statement of his election and filing a duplicate thereof with the Industrial Commission as provided by section 11 of this act, before the accident occurs to an employe, for which damages or compensation may be claimed, unless the employe shall signify his election, as provided by section 11 of this act, not to accept or be bound by the provisions of this act, in which case said part 2 shall not apply; and, provided further, that either party may terminate his acceptance or election not to accept the provisions of part 2 of this act as provided by section 12 hereof. ('21 c. 82 § 8, amended '23 c. 300 § 1)

Sections 11 and 12 are §§ 4271, 4272, herein

212+461.

128-486, 151+182; 132-328, 156+669; 131-352, 155+103; 126-286, 148+71; 138-103, 164+366; 138-416, 165+268. 151-428, 188+860; 154-498, 191+1009; 192+106.

In a workman's compensation case, it is held the findings that the employee was not a farm laborer, that the employment was not casual, and was in course of the business and occupation of the employer, are not without sufficient support. 161-223, 201+312.

The Compensation Act excludes farm labor from its operation, but provides that it shall apply to such labor if the employer shall have elected to accept the provisions of the act by posting a statement of such election and filing a duplicate thereof with the Industrial Commission. Under this statute, filing a notice without posting it does not bring the employer of such labor within the act. 166-251, 207+636.

To exclude an employe from the benefits of the act, under the provisions that it shall not apply to persons whose employment is casual and not in the usual course of the business of the employer, the employment must be both casual and not in the usual course of such business. 166-251, 207+636.

Persons employed exclusively in caring for the home and serving the members of the family therein are not covered by the Workmen's Compensation Act. 166-339, 208+18.

4268  
19 — 363  
19 — 532  
27 — 190  
173m 414  
173m 441  
174m 594  
217nw 376  
217nw 491  
222nw 525  
4280  
4268  
177m 462  
177m 518  
225nw 426  
225nw 448  
4326.  
4268  
176m 100  
177m 503  
225nw 428  
230nw 124  
234nw 452  
4326 F&G  
4268  
Et seq.  
35 — 134  
185m 70  
215nw 138  
240nw 464  
243nw 706  
246nw 542  
4268  
177m 465  
248nw 756  
248nw 827  
252nw 430  
4290  
4326 (d)

4263  
182m 419  
234nw 687  
239nw 896

**Farm Laborers.**

One employed upon a steam dredge in a drainage project is not excluded from the compensation act as coming within the class designated as "farm laborers." 157-357, 196+266.

**Casual Employment.**

Although he may have been a casual employe, his employment was in the usual course of the employer's business, and his remedy is under the Workmen's Compensation Law. An action at law will not lie. 164-199, 204+641.

The workmen's employment was not casual, but was in the usual course of the performance by the town of its duty to keep its roads in repair. 164-358, 205+258.

Employment, though casual and not otherwise excepted from the operation of the Workmen's Compensation Act, held subject thereto if within the "usual course of the trade, business, \* \* \* or occupation" of the employer. 167-72, 208+421.

A person owning but one small building which he rents out, and having no trade, business, profession, or occupation, does not subject himself to the Workmen's Compensation Act by hiring a workman at an hourly wage to reshingle the building. 212+192.

**Violation of Law As Defense.**

Violation of law as defense. 213+546.

4269. Agreement to be subject to provisions of part 2—If both employer and employe shall, by agreement expressed or implied, or otherwise, as herein provided, become subject to part 2 of this act, compensation according to the schedules hereinafter contained shall be paid by every such employer, in every case of personal injury or death of his employe, caused by accident, arising out of and in the course of employment, without regard to the question of negligence, except accidents which are intentionally self-inflicted or when the intoxication of such employe is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer. It is hereby made the duty of all such employers to commence payment of compensation at the time and in the manner prescribed by part 2 of this act without the necessity of any agreement or order of the commission, payments to be made at the intervals when the wage was payable as nearly as may be. No agreement by any employe or dependent to take as compensation an amount less than that prescribed by law shall be valid. ('21 c. 82 § 9)

**In General.**

129-502, 153+119; 137-30, 162+678; 141-64, 169+254; 141-166, 169+532.

141-348, 170+218; 144-313, 175+694; 145-98, 176+155; 145-286, 171+131.

161-240, 201+305.

The Industrial Commission found that Louis Beci died from injuries arising out of and in the course of his employment. The record does not establish conclusively that his injuries were sustained while in a place of danger in disobedience of orders to leave it. 161-237, 201+313.

**Rights of Action by Parents of Injured Minor.**

The Workmen's Compensation Act destroys the parent's common-law action to recover for loss of services of an injured minor child who is an employe, and for the expenses incurred incident to such injuries. 158-505, 198+294.

If the parent desires to retain the common-law remedy, he may cause an election to be made by the employe not to be bound by part 2 of the act; and, if he fails to cause such election to be made, he accepts the provisions of the statute, and thereby surrenders his right to any other method or form of compensation. 158-505, 198+294.

When the Compensation Act applies it is exclusive of all other remedies. 158-505, 198+294.

**Presumption Against Suicide.**

The presumption against suicide is a presumption of

fact, and a strong one; but it does not control where there is substantial proof, from which rational consideration may reach the conclusion of suicide. 157-33, 195+766.

4270. Surrender of other rights—Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in part 2 of this act, and an acceptance of all the provisions of part 2 of this act, and shall bind the employe himself, and for compensation for his death shall bind his personal representative, the surviving spouse and the next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency, for compensation for death or injury, as provided for by part 2 of this act. ('21 c. 82 § 10)

147-415, 180+552.

158-505, 198+294, note under § 4269; 161-240, 201+305.

An injured employe, who has a common-law action against a third person for negligence, and also has a claim against his employer under the Compensation Act, may pursue both. 163-54, 203+622.

Effect of award of compensation as barring action under Employers' Liability Act (Mason's Code, Title 45, ch. 2). 163-460, 204+552; 163-457, 204+557.

4271. Presumption as to acceptance of provisions of part 2—All contracts of employment made after the taking effect of this act shall be presumed to have been made with reference, and subject to the provisions of part 2, unless otherwise expressly stated in the contract in writing, and a copy of such contract or the portion of the contract containing such provision shall be filed with the Industrial Commission; or unless written or printed notice has been given by either party to the other, as hereinafter provided that he does not accept the provisions of part 2. Every employer and every employe is presumed to have accepted and come under part 2 hereof, unless prior to the accident, he shall have signified his election not to accept or be bound by the provisions of part 2. This election not to accept part 2 shall be by notice as follows:

The employer shall post and keep posted in a conspicuous place in his shop or place of business and such other places as the Industrial Commission may order, a written or printed notice of his election not to be bound by part 2 hereof and file a duplicate therewith to the Industrial Commission.

The employe shall give written or printed notice to the employer of his election not to be bound by part 2, and file a duplicate with affidavit of service attached thereto with the Industrial Commission.

All such notices of election or re-election shall be on forms prescribed by the Industrial Commission and the election shall become effective when the copy of the notice is filed with the Industrial Commission. ('21 c. 82 § 11, amended '23 c. 300 § 2)

127-399, 149+662, 128-158, 150+620; 144-322, 175+610; 150-182, 184+833.

153-505, 198+294, note under § 4269; 166-251, 207+636; 211-327.

Occupational diseases. 161-240, 201+305.

4272. Termination of acceptance or election—Notice—Either party may terminate his acceptance, or his election not to accept the provisions of part 2 by thirty (30) days' written notice to the other, such notice to be given as provided in section 11. A duplicate of such notice with affidavit of service attached thereto shall be filed with the Industrial Commission and the

time shall not begin to run until the notice is so filed. ('21 c. 82 § 12)

Section 11 is § 4271, herein.  
211+327.

127-400, 149+662; 148-277, 181+643.

**4273. Minors have power to contract, etc.**—Minors who are permitted to work by the laws of this state shall, for the purpose of part 2 of this act, have the same power to contract, make election of remedy, make settlements, and receive compensation as adult employes; subject, however, to the power of the Industrial Commission, in its discretion at any time to require the appointment of a guardian to make such settlement and to receive moneys thereunder or under an award. ('21 c. 82 § 13)

The Workmen's Compensation Act destroys the parent's common-law action to recover for loss of services of an injured minor child who is an employee, and for the expenses incurred incident to such injuries.

If the parent desires to retain the common-law remedy, he may cause an election to be made, by the employee not to be bound by part 2 of the act; and, if he fails to cause such election to be made, he accepts the provisions of the statute, and thereby surrenders his right to any other method or form of compensation.

When the Compensation Act applies it is exclusive of all other remedies. 158-505, 198+294.

**4274. Schedule of compensation**—Following is the schedule of compensation: (a) For injury producing temporary total disability, sixty-six and two-thirds per centum of the daily wage at the time of injury subject to a maximum compensation of twenty (\$20.00) dollars per week and a minimum of eight (\$8.00) dollars per week; provided, that if at the time of injury the employe receives wages of eight (\$8.00) dollars or less per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability; not, however, beyond three hundred (300) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be sixty-six and two-thirds per centum of the difference between the daily wage of the workman at the time of injury and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond three hundred (300) weeks, payment to be made at the intervals when the wage was payable as nearly as may be and subject to the same maximum as stated in clause (a).

(c) For the permanent partial disability from the loss of a member, the compensation during the healing period to be determined by the commission but not exceeding fifteen weeks shall be sixty-six and two-thirds per centum of the difference between the daily wage of the workman at the time of injury and the wages he shall be able to earn, if any, in his partially disabled condition, unless on application to the Industrial Commission, made in the same manner as provided in section 19 for additional medical service, the period is extended by the Commission for not to exceed an additional ten weeks; and thereafter, and in addition thereto, compensation shall be that named in the following schedule:

- (1) For the loss of a thumb, sixty-six and two-thirds per centum of the daily wage at the time of injury during sixty (60) weeks.
- (2) For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of the daily wage at the time of injury during thirty-five (35) weeks.
- (3) For the loss of a second finger, sixty-six and two-thirds per centum of the daily wage at

the time of the injury during thirty (30) weeks.

- (4) For the loss of a third finger, sixty-six and two-thirds per centum of the daily wage at the time of the injury during twenty (20) weeks.
- (5) For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds per centum of the daily wage at the time of injury during fifteen (15) weeks.
- (6) The loss of the first phalange of the thumb, or of any finger, shall be considered equal to the loss of one-half of such thumb or finger and compensation shall be paid at the prescribed rate during one-half the time specified above for such thumb or finger.
- (7) The loss of one and one-half or more phalanges shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.
- (8) For the loss of a great toe, sixty-six and two-thirds per centum of the daily wage at the time of injury during thirty (30) weeks.
- (9) For the loss of one of the toes other than a great toe, sixty-six and two-thirds per centum of the daily wage at the time of injury during ten (10) weeks.
- (10) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be paid at the prescribed rate during one-half the time specified above for such toe.
- (11) The loss of one and one-half or more phalanges shall be considered as the loss of the entire toe.
- (12) For the loss of a hand, not including the wrist movement, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and fifty (150) weeks.
- (13) For the loss of a hand, including the wrist movement, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and seventy-five (175) weeks.
- (14) For the loss of an arm, sixty-six and two-thirds per centum of the daily wage at the time of injury during two hundred (200) weeks.
- (15) Amputation of the arm below the elbow shall be considered as the loss of a hand including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it shall be considered as the loss of an arm.
- (16) For the loss of a foot, not including the ankle movement, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and twenty-five (125) weeks.
- (17) For the loss of a foot including ankle movement, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and fifty (150) weeks.
- (18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and seventy-five (175) weeks.

- (19) For the loss of a leg so close to the hip that no effective artificial member can be used, sixty-six and two-thirds per centum of the daily wage at the time of injury during two hundred (200) weeks.
- (20) Amputation of the leg below the knee shall be considered as loss of foot including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member; otherwise it shall be considered as loss of leg.
- (21) For the loss of an eye, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred (100) weeks.
- (22) For complete permanent loss of hearing in one ear, sixty-six and two-thirds per centum of the daily wage at the time of injury during fifty-two (52) weeks.
- (23) For the complete permanent loss of hearing in both ears, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and fifty-six (156) weeks.
- (24) For the loss of an eye and a leg, sixty-six and two-thirds per centum of the daily wage at the time of injury during three hundred and fifty (350) weeks.
- (25) For the loss of an eye and arm, sixty-six and two-thirds per centum of the daily wage at the time of injury during three hundred and fifty (350) weeks.
- (26) For the loss of an eye and a hand, sixty-six and two-thirds per centum of the daily wage at the time of injury during three hundred and twenty-five (325) weeks.
- (27) For the loss of an eye and a foot, sixty-six and two-thirds per centum of the daily wage at the time of injury during three hundred (300) weeks.
- (28) For the loss of two arms other than at the shoulder, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (29) For the loss of two hands, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (30) For the loss of two legs, other than so close to the hips that no effective artificial members can be used, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (31) For the loss of two feet, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (32) For the loss of one arm and the other hand, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (33) For the loss of one hand and one foot, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (34) For the loss of one leg and the other foot, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (35) For the loss of one leg and one hand, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (36) For the loss of one arm and one foot, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (37) For the loss of one arm and one leg, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (38) For serious disfigurement not resulting from the loss of a member or other injury specifically compensated, materially affecting the employability of the injured person in the employment in which he was injured or other employment for which the employe is then qualified, sixty-six and two-thirds per centum of the daily wage at the time of injury for such period as the Industrial Commission may determine, not to exceed seventy-five (75) weeks.
- (39) Where, an employe sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which entitles him to the largest amount of compensation; but this section shall not affect liability for serious disfigurement materially affecting the employability of the injured person or liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in sub-section (e) below.
- (40) In all cases of permanent partial disability it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member; but the compensation in and by said schedule provided, shall be in lieu of all other compensation in such cases, except as otherwise provided by this section.
- In the event a workman has been awarded, or is entitled to receive a compensation for loss of use of a member under any workmen's compensation law, and thereafter sustains a loss of such member under circumstances entitling him to compensation therefor under this act, the amount of compensation awarded, or that he is entitled to receive for such loss of use, shall be deducted from the compensation due under the schedules of this Act for the loss of such member. Provided, however, that the amount of compensation due for loss of the member caused by the subsequent accident shall in no case be less than 25% of the compensation payable under the schedules of this act for the loss of such member.
- (41) In cases of permanent partial disability due to injury to a member, resulting in less than total loss of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the respective member, which the extent of injury to the member bears to its total loss.
- (42) All the compensation provided in clause (c) of this section for loss of members or loss of the use of members are subject to the same limitations as to maximum and minimum as are stated in clause (a).

4274  
Sub. sec.  
28-37  
177m 889  
225nw 8954274<sup>11</sup>  
228nw 169  
4274<sup>19</sup>

(43) In addition to the compensation provided in the foregoing schedule for loss or loss of the use of a member, the compensation during the period of retraining for a new occupation as certified by the division of re-education, operating under Chapter 365, Laws of Minnesota 1919, shall be sixty-six and two-thirds per centum of the daily wage at the time of the injury, not exceeding twenty-five (25) weeks, provided the injury is such as to entitle the workman to compensation for at least seventy-five (75) weeks in the schedule of indemnities for permanent impairments and provided the Industrial Commission on application thereto shall find that such retraining is necessary and make an order for such compensation.

**Explanatory note**—For Laws 1919, c. 365, see §§ 2983 to 2986, herein.

(44) In all other cases of permanent partial disability not above enumerated the compensation shall be sixty-six and two-thirds per centum of the difference between the wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition subject to a maximum of twenty (\$20.00) dollars per week. Compensation shall continue during disability, not, however, beyond three hundred (300) weeks.

(d) For permanent total disability as defined in sub-section (e) below, sixty-six and two-thirds per centum of the daily wage at the time of the injury, subject to a maximum compensation of twenty (\$20.00) dollars per week, and a minimum compensation of eight (\$8.00) dollars per week; provided, that if at the time of the injury the employe was receiving wages of eight (\$8.00) dollars or less per week, then he shall receive the full amount of his wages per week. This compensation shall be paid during the permanent total disability of the injured person, but the total amount payable under this sub-section shall not exceed ten thousand (\$10,000) dollars in any case; payments to be made at the intervals when the wage was payable as nearly as may be. Provided, however, that in case an employe who is permanently and totally disabled becomes an inmate of a public institution, then no compensation shall be payable during the period of his confinement in such institution, unless he has wholly dependent on him for support a person or persons named in sub-sections (1), (2) and (3) of section 15 (whose dependency shall be determined as if the employe were deceased); in which case the compensation provided for in said section 15 shall during the period of such employe's confinement, as aforesaid, be paid for the benefit of said persons so dependent during dependency.

(e) The total and permanent loss of the sight of both eyes or the loss of both arms at the shoulder, or the loss of both legs so close to the hips that no effective artificial members can be used, or complete and permanent paralysis, or total and permanent loss of mental faculties, or any other injury which totally incapacitates the employe from working at an occupation which brings him an income, shall constitute total disability.

(f) In case a workman sustains an injury due to accident arising out of and in the course of his employment, and during the period of disability caused thereby, death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of the death. Accrued compensation

due to the deceased prior to death but not paid, shall be payable to such dependent persons, or legal heirs, as the Industrial Commission may order without probate administration. ('21, c. 82, § 14; amended '23, c. 300, § 3; '23, c. 408, § 1; amended as to subsec. c. par. 40 by '25, c. 219; amended as to subsections d and f by '25, c. 161, §§ 1, 2)  
Section 15 is § 4275, herein.

**In General.**

129-92, 151+530; 129-423, 152+838; 129-156, 151+910; 131-27, 154+509; 133-439, 158+700; 136-147, 161+391; 136-448, 162+527; 138-136, 164+581; 143-397, 173+857; 146-284, 178+594, 148-278; 150-95, 184+572; 195+275.

165-390, 206+714.

In this, a proceeding under the Workmen's Compensation Act, it is held as a matter of law that there was an insufficient allowance for medical attendance, and an insufficient award for temporary disability. 162-71, 203+452.

Nature and extent of injury. 165-169, 205+953.

**Temporary Total and Permanent Partial Disability.**

Where an employe sustained concurrent permanent partial injuries to his left wrist and to a vertebra, and where the combined injuries produce temporary total disability, and permanent partial disability thereafter, he is entitled to compensation under the Workmen's Compensation Act, as follows:

(1) For such total disability, 66-2/3 per cent. of the weekly wage at the time of the injury, during such total disability, not exceeding 300 weeks. 157-456, 196+566.

(2) For the permanent partial loss, 66-2/3 per cent. of the difference between the wage at the time of the injury and the wage he is able to earn in his partial disabled condition, not beyond 300 weeks in all. 157-456, 196+566.

**Loss of Eye Already Impaired.**

Under the Workmen's Compensation Act, the amount to be paid an employe for an injury to an eye which necessitates its removal is the sum stated in the schedule for the loss of an eye, even though the sight in that eye had been almost wholly destroyed in childhood. 156-405, 195+274.

Compensation for the loss of the use of an eye, does not debar the employe from recovering the full schedule compensation specified in the law for the removal of the same eye, injured in a subsequent employment under a different employer. 161-275, 201+543.

For the removal of a sightless eye, necessitated by an industrial accident, a workman is entitled to receive compensation for the loss of an eye. 161-318, 201+545.

Loss of eye ball after injury to eye. 166-506, 208+188.

**Injury to Finger.**

The evidence in this proceeding held sufficient to make a question of fact as to the condition of respondent's finger, whether the injury of December 2d was the proximate cause of its condition on and subsequent to January 13, 1925, and whether he was entitled to compensation subsequent to that date, for the triers of such matters to determine from all the evidence in the case. 165-354, 206+433.

**Hernia and Recurring Disability.**

The evidence sustains the finding of the Industrial Commission of recurring disability from a hernia, and its award of compensation is sustained. 213+32.

**"Necessity" for Retraining.**

The word "necessary" therein should not be construed as meaning "indispensable," but such compensation should be found necessary if it appears that the retraining sought will materially assist the employe in restoring his impaired capacity to earn a livelihood. 166-139, 207+202.

**Permanent Total Disability.**

212+20, note under § 4291.

4275. Dependents and allowances—(1) For the purpose of this act, the following described persons shall be conclusively presumed to be wholly dependent: (a) wife, unless it be shown that she was voluntarily living apart from her husband at the time of his injury or death. (b) Minor children under the age of sixteen years.

4275  
180m 289  
237nw 506  
239nw 761  
4275  
Sub. Div.  
3 & 4  
230nw 652  
4275  
21 — 82  
184m 598  
185m 31  
187m 223  
240nw 189  
252nw 78  
4326 (B)

4274D  
232nw 342

4274 (E)  
250nw 673

4274F  
223nw 773  
4287

(2) Children between sixteen and eighteen years of age, or those over eighteen if physically or mentally incapacitated from earning, shall prima facie, be considered dependent.

(3) Wife, child, husband, mother, father, grandmother, grandfather, grandchild, sister, brother, mother-in-law, father-in-law who were wholly supported by the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto, shall be considered his actual dependents, and payment of compensation shall be made to them in the order named.

(4) Any member of a class named in subdivision (3), who regularly derived part of his support from the wages of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto, shall be considered his partial dependent, and payment of compensation shall be made to such dependents in the order named.

(5) In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled thereto, or to a guardian or such other person as the Industrial Commission may direct, for the use and benefit of the person entitled thereto.

(6) If the deceased employe leave a widow and no dependent child, there shall be paid to the widow forty per centum of the daily wage at the time of the injury of the deceased.

(7) If the deceased employe leave a widow or widower and one dependent child, there shall be paid to the widow or widower for the benefit of herself or himself and such child, fifty per centum of the daily wage at the time of injury of the deceased.

(8) If the deceased employe leave a widow or widower and two dependent children, there shall be paid to the widow or widower for the benefit of herself or himself and such children, sixty per centum of the daily wage at the time of injury of the deceased.

(9) If the deceased employe leave a widow or widower and three or more dependent children, there shall be paid to the widow or widower for the benefit of herself or himself and such children, sixty-six and two-thirds per centum of the daily wage at the time of injury of the deceased.

(10) In all cases where compensation is payable to the widow or widower for the benefit of herself or himself and dependent child or children, the Industrial Commission shall have power to determine in its discretion what portion of the compensation shall be applied for the benefit of any such child or children and may order the same paid to a guardian.

(11) In the case of remarriage of a widow without dependent children, she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid, without deduction for interest, but not to exceed two full years compensation. In case of remarriage of a widow who has dependent children, the unpaid balance of compensation which would otherwise become her due shall be payable to the mother, guardian, or such other person as the Industrial Commission may order, for the use and benefit of such children, during dependency; provided, that if the dependency of the children ceases before the equivalent of two years of the mother's compensation has been paid to the children, the remainder of the two years compensation shall be payable in a lump sum to the mother, without deduction for interest. The payments as provided herein shall be paid within

sixty (60) days after written notice to the employer of such remarriage, or that dependency of children has ceased.

(12) If the deceased employe leave a dependent orphan, there shall be paid forty-five per centum of the daily wage at the time of injury of the deceased, with ten per centum additional for each additional orphan with a maximum of sixty-six and two-thirds per centum of such wages.

(13) If the deceased employe leave a dependent husband and no dependent child, there shall be paid to the husband thirty per centum of the daily wage at the time of injury of the deceased.

(14) If the deceased employe leaves no widow or child or husband entitled to any payment hereunder, but leaves both parents wholly dependent on deceased, there shall be paid to such parents jointly forty-five per centum of the weekly wage at the time of the injury of the deceased; provided, that in case of the death of either of the wholly dependent parents the survivor shall receive thirty-five per centum of the weekly wage thereafter. If the deceased employe leaves one parent wholly dependent on said deceased, there shall be paid to such parent thirty-five per centum of the weekly wage at the time of the injury of the deceased; provided, that the compensation payable under this paragraph shall not exceed the actual contributions made by the deceased to the support of such parent or parents, for a reasonable time immediately prior to the injury which caused the death of the said decedent.

(15) If the deceased should leave no widow or child or husband or parent entitled to any payment hereunder, but should leave a grand-parent, grandchild, brother, sister, mother-in-law, or father-in-law wholly dependent on him for support, there shall be paid to such dependent, if but one, thirty per centum of the daily wage at the time of injury of the deceased, or if more than one, thirty-five per centum of the daily wage at the time of injury of the deceased, divided between or among them share and share alike.

(16) If compensation is being paid under part 2 of this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein.

(17) Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time.

(18) In all cases where death results to an employe caused by accident arising out of and in the course of employment, the employer shall pay in addition to the expenses provided for in section 19, the expense of burial, not exceeding in amount one hundred and fifty (\$150.00) dollars, except in cases where an insurer of the deceased or a benefit association is liable therefor, or for a part thereof; in which case the employer shall not be required to pay any part of such expense, for which such insurer or a benefit association is liable, unless such non-payment by the employer would diminish the benefits received by the dependents of the deceased from any such insurer or a benefit association. In case any dispute arises as to the reasonable value of the services rendered in connection with the burial, the same shall be determined and approved by the Industrial Commission before payment, after such reasonable notice to interested parties as the Industrial Commission shall require. If

4275  
Sub. Sec.  
17, 19-20  
230aw 652

4275<sup>11</sup>  
33 — 61



the deceased leave no dependents, no compensation shall be payable except as provided by this subsection or section 16 hereof.

(19) The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of twenty (\$20.00) dollars per week and a minimum of eight (\$8.00) dollars per week; provided that if at the time of injury the employe receives wages of eight (\$8.00) dollars or less per week, then the compensation shall be the full amount of such wages per week. The compensation payable to partial dependents shall be subject to a maximum of twenty (\$20.00) dollars per week and a minimum of eight (\$8.00) dollars per week; provided that if the income loss of the said partial dependents by such death is eight (\$8.00) dollars or less per week; then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency, but shall not exceed seventy-five hundred (\$7,500.00) dollars in case of a dependent wife, child, children or orphan, and shall not exceed three hundred (300) weeks in case of any other dependent, payments to be made at the intervals when the wage was payable as nearly as may be.

(20) Actual dependents shall be entitled to take compensation in the order named in Sub-section (3) above, during dependency, until sixty-six and two-thirds per centum of the daily wage of the deceased at the time of injury shall have been exhausted, provided that such compensation shall not exceed seventy-five hundred (\$7,500.00) dollars in case of a dependent wife, child, children or orphan, or continue beyond three hundred (300) weeks in case of any other dependent; but the total compensation to be paid to all actual dependents of a deceased employe shall not exceed in the aggregate twenty (\$20.00) dollars per week. ('21, c. 82, § 15; amended '23, c. 300, § 4; '23, c. 408, §§ 2, 3; amended as to pars. 5, 8, 9, 11, 14 by '25, c. 161, §§ 3 to 7)

128-222, 623; 128-338, 151+123; 131-27, 154+509; 132-249, 156+120; 133-454, 158+509; 134-131, 158+798; 134-324, 159+755; 146-62, 177+934; 133-265, 158+250; 149-4, 182+622, 149-308, 183+839.

165-390, 206+714.

Fireman was paid \$2 for each call and \$1 per hour for time spent at a call over one hour. His employment did not afford employment for any fixed or regular number of days in any one week. Held, compensation was properly determined pursuant to section 13, c. 300. Laws 1923, (4325) and not pursuant to subdivision 19, § 15, c. 82. Laws 1921, (4275). 161-20, 200+927.

Substantial regularity of contribution toward support, under the Compensation Act, is an essential element of partial dependency 212+175.

Remarriage of widow. 209+630.

4276 229nw 553  
4276 179nw 388  
33 4276 75  
34 4276 21  
4276. Injury increasing disability—If an employe receive an injury, which of itself, would only cause permanent partial disability, but which combined with a previous disability does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury.

Provided, however, that in addition to compensation for such permanent partial disability and after the cessation of the payments for the prescribed period of weeks, the employe shall be paid by the state the remainder of the compensation that would be due for permanent total disability, out of a special fund known as the Special Compensation Fund, and created for such purpose in the following manner:

Every employer shall pay to the state treasurer for every case of injury occurring in his employ and causing death in which there are no persons entitled to compensation the sum of two hundred (\$200.00) dol-

lars, which is to be placed into this special compensation fund and to be used to pay the benefits provided by this section. All moneys heretofore arising from the provisions of this section shall be transferred to this special compensation fund. All penalties collected for violation of any of the provisions of this act shall be credited to this special compensation fund.

The State Treasurer shall be the custodian of this special fund and the Industrial Commission shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of this section, and dependency later is shown, the state treasurer is hereby authorized to refund such deposit. ('21 c. 82 § 16, amended '23 c. 300 § 5)

129-156, 151+910; 143-400, 173+857.  
209+635, note under § 4326(h).

Loss of Eye After Loss of Use.

Compensation for the loss of the use of an eye, does not debar the employe from recovering the full schedule compensation specified in the law for the removal of the same eye, injured in a subsequent employment under a different employer. 161-275, 201+543.

For the removal of a sightless eye, necessitated by an industrial accident, a workman is entitled to receive compensation for the loss of an eye. 161-318, 201+545.

Loss of eye ball after injury to eye. 166-506, 208+188.

4277. Liability of joint employers—In case any employe for whose injury or death compensation is payable under part 2 of this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute the payment of such compensation in the proportion of their several wage liability to such employe. If one or more but not all of such employers should be subject to part 2 of this act, and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject, shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employe; provided, however, that nothing in this section shall prevent any arrangement between such employers for a different distribution, as between themselves, of the ultimate burden of such compensation. ('21 c. 82 § 17)

4278. When compensation begins—In cases of temporary total or temporary partial disability no compensation shall be allowed for the first week after the disability commenced except as provided by section 19, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 20. Provided, however, that if such disability continues for four weeks or longer, such compensation shall be computed from the commencement of such disability. ('21 c. 82 § 18)

4279. Medical and surgical treatment—The employer shall furnish such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required at the time of the injury, and during the disability for not exceeding ninety (90) days to cure and relieve from the effects of the injury, provided that in case of his inability or refusal seasonably to do so, the employer shall be liable for the reasonable expense incurred by or on behalf of the employe in providing the same; provided further that upon request by the employe made during or after said period of ninety (90) days, the Industrial Commission may require the above treatment, articles and supplies for such further time as the Industrial Commission may determine, and a copy of such order shall be forthwith mailed to the parties in interest. Any party in interest within ten days

4279  
13 - 467  
15 - 209  
19 - 354  
19 - 359  
29 - 248  
174m 551  
219nw 867  
221nw 65  
222nw 508  
223nw 787  
9283  
2279-80  
242nw 397

from the date of mailing, may demand a hearing and review of such order.

The Commission may at any time upon the request of an employe or employer order a change of physicians and designate a physician suggested by the injured employe or by the Commission itself and in such case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The pecuniary liability of the employer for the treatment, articles and supplies herein required, shall be limited to such charges therefor as prevail in the same community for similar treatment, articles and supplies furnished to injured persons of a like standard of living, when the same are paid for by the injured persons. The Industrial Commission may on the basis above stated determine the reasonable value of all such service and supplies and the liability of the employer shall be limited to the amount so determined. ('21 c. 82 § 19, amended '23 c. 300 § 6)

Section 5 is § 4581, herein.

134-16, 158+713; 146-233, 178+503; 148-423, 182+607; 190+984.

167-424, 209+313.

In this, a proceeding under the Workmen's Compensation Act, it is held as a matter of law that there was an insufficient allowance for medical attendance, and an insufficient award for temporary disability. 163-71, 203+452.

The right to medical and hospital treatment, governed by law in force at time of injury. 212+190.

Whether employe who has sustained total permanent disability is entitled to further medical and hospital treatment, when all has been done that can be done to cure or improve the injury, rests in the discretionary power of the commission. 212+190.

An order of the Industrial Commission, providing for an injured employe a change of physicians and hospitalization, is not reviewable by certiorari. 212+415.

4280  
19 - 363  
173m 414  
217nw 491  
4268  
4280  
252nw 439  
4326 (J)

4280. Notice of injury, etc.—Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the injured workman, or a dependent, or someone in behalf of either, shall give notice thereof to the employer in writing, within fourteen (14) days after the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty (30) days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety (90) days, and if the employe, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of the employer or his agent, then compensation may be allowed, unless the employer shall show that he was prejudiced by failure to receive such notice, in which case the amount of compensation shall be reduced by such sum, as shall fairly represent the prejudice shown. Unless knowledge be obtained or notice given, within ninety (90) days after the occurrence of the injury, no compensation shall be allowed. ('21 c. 82 § 20)

129-243, 152+838; 131-352, 155+103; 132-251, 156+278; 148-140, 180+1014.

The evidence justified finding that workman failed to give notice of the injury within the time prescribed, because of mistake and ignorance of the law, and that the town was not prejudiced by the delay. 164-358, 205+258.

Rights of alien workmen, or his dependents were lost, by failure to take steps within time limited. 210+47.

4281. Service and form of notice—The notice referred to in section 20 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it by registered mail to the employer at the last known residence or business place thereof within the state, and shall be substantially in the following form:

NOTICE.

"You are hereby notified that an injury was received by (name).....who was in your employment at (place).....while engaged as (kind of work).....on or about the.....day of .....19...., and who is now located at (give town, street and number).....that so far as now known, the nature of the injury was.....and that compensation may be claimed therefor.

(Signed)..... (giving address)

Dated ..... 19...."

But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employe, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified. ('21 c. 82 § 21)

Section 20 is § 4280, herein.

134-21, 151+715; 150-364, 185+388; 151-423, 186+861; 154-23, 191+277; 193+163.

4282. Limit of actions—The time within which the following acts shall be performed under part 2 of this act shall be limited to the following periods, respectively:

4282  
243aw 108

(1) Actions or proceedings by an injured employe to determine or recover compensation; two years after the employer has made written report of the injury to the Industrial Commission but not to exceed six years from the date of the accident.

4282  
177m 555  
225nw 889  
4293  
4313  
4318-20

(2) Actions or proceedings by dependents to determine or recover compensation two years after the receipt by the Industrial Commission of notice in writing of death given by the employer but not to exceed six years from the date of the accident; provided that in any such case, if a dependent of the deceased or any one in his behalf shall give notice of such death to the Industrial Commission, said Commission shall forthwith notify in writing the employer of the time and place of such death. In case the deceased was a native of a foreign country, and leaves no known dependent or dependents within the United States, it shall be the duty of the Industrial Commission to give written notice of said death to the consul or other representative of said foreign country forthwith.

(3) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time by this section specified, the period of limitation in any such case shall be extended for two years from the date when such incapacity ceases. ('21 c. 82 § 22, amended '23 c. 300 § 7)

The trial court rightly ordered the dismissal of an action on the showing made, the clerk having mistakenly entered a memorandum indicating that the case was stricken from the calendar, when in fact it was dismissed by the court on the motion of the defendant. 196+486.

Such order, under the circumstances of this case, should not have been entered nunc pro tunc, when the effect of such entry would prevent the plaintiff or the beneficiary of the action from obtaining a reinstatement of the action, so that he might proceed with it as a

compensation proceeding, or substantially embarrass him in so doing, the time for instituting a proceeding under the Compensation Act having expired. 157-396, 196+486.

Rights of alien workmen or dependents were lost where not enforced in time limited, though claim was seized by Alien Property Custodian. 210+47.

**4283. Examination and verification of injury—**

(1) The injured employe must submit himself to examination by the employer's physician, if requested by the employer, and at reasonable times thereafter upon the employer's request. The employe shall be entitled upon request to have his own physician present at any such examination. Each party shall defray the cost of his own physician.

(2) In case of dispute as to the injury, the Industrial Commission, or in case of a hearing, the commissioner or referee conducting the hearing may, upon its or his own motion, or upon request of any interested party designate a neutral physician of good standing and ability to make an examination of the injured person and report his findings to the Industrial Commission, a commissioner or referee as the case may be. A copy of the signed certificate of such neutral physician shall be mailed to the parties in interest and either party within five days from date of mailing may demand that such physician be produced for purpose of cross-examination. Such signed certificate of a neutral physician shall be competent evidence of the facts stated therein. The expense of such examination shall be paid as ordered by the Commission, commissioner or referee.

(3) If the injured employe refuses to comply with any reasonable request for examination, his right to compensation may be suspended by order of the Commissioner and, in such case, no compensation shall be paid while he continues in such refusal.

(4) In all death claims where the cause of death is obscure or disputed, any interested party may request an autopsy and if denied, the Commission may upon petition order the same; the cost of such autopsy shall be borne by the party demanding the same.

(5) Any physician designated by the Commission, Commissioner or Referee, or whose services are furnished or paid for by the employer, who treats, or who makes or is present at any examination, of an injured employe, may be required to testify as to any knowledge acquired by him in the course of such treatment or examination, relative to the injury or the disability resulting therefrom. ('21 c. 82 § 23, amended '23 c. 300 § 8)

See notes under prior sections.

**4284. Compensation to alien dependents—**

In case a deceased employe, for whose injury or death compensation is payable, leaves surviving him an alien dependent or dependents residing outside of the United States, the Industrial Commission shall direct payment of all compensation due to the deceased or to his dependents, to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if such consular officer resides within the State of Minnesota, or if not, to his designated representative residing within the state, and such consular officer or his representative shall be the sole representative of such deceased employe and of such dependents to settle all claims for compensation and to receive for distribution to the persons entitled thereto, all compensation arising hereunder. The settlement and distribution of said funds shall be made only on order of the Commission. Such consular officer or his representative shall furnish, if required by the commission, a good and sufficient bond, satisfactory to the

commission, conditioned upon the proper application of the moneys received by him. Before such bond is discharged, such consular officer or representative shall file with the commission a verified account of the items of his receipts and disbursements of such compensation.

Such consular officer or his representative shall, before receiving the first payment of such compensation, and thereafter, when so ordered so to do by the commission, furnish to the commission a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency and relationship to the deceased of each dependent. ('21 c. 82 § 24)

**4285. Payment in lump sum—**The amounts of compensation payable periodically hereunder may be commuted to one or more lump sum payments only by order of the commission and on such terms and conditions as the commission may prescribe.

In making such commutations the lump sum payments shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six percent basis. ('21 c. 82 § 25)

146-286, 178+594; 148-333, 181+857; 149-339, 183+837; 187+703.  
209+630.

**4286. Payment to trustee—**At any time after the amount of any award or commutation has been finally determined by the commission, a sum equal to the present value of all future installments of the compensation calculated on a six percent basis may (where death or the nature of the injury renders the amount of future payments certain) by leave of the commission, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the commission, and such sum, together with all interest thereon, shall, thereafter, be held in trust for the employe or the dependents of the employe, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by receipt of the trustee, filed with the Industrial Commission, shall operate as a satisfaction of the compensation liability as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until said fund and interest shall be exhausted, excepting as the Commission shall otherwise order. In the appointment of the trustee, preference shall be given, in the discretion of the Industrial Commission, to the choice of the injured employe or the dependents of the deceased employe, as the case may be. ('21 c. 82 § 26)

134-191, 158+825; 136-148, 161+391.

**4287. Compensation preferred claim—Assignment—**

**Exemption—**The right to compensation and all compensation awarded any injured employe or for death claims to his dependents, shall have the same preference against the assets of the employer as other unpaid wages for labor; but such compensation shall not become a lien on the property of third persons by reason of such preference.

Claims for compensation owned by an injured employe or his dependents, shall not be assignable and shall be exempt from seizure or sale for the payment of any debt or liability except as otherwise provided herein. ('21 c. 82 § 27)

**4288. Employer to insure employes—Exceptions—**

**Violations—Penalties—**Every employer except the state and the municipal subdivisions thereof, liable under this act to pay compensation shall insure payment

4285  
29 - 400

4285  
245nw 619

4283  
241nw 805

4283  
242nw 465

4284  
29 - 251

4287  
175m 161  
220nw 421  
223nw 773

4287  
231nw 193  
4324

4287  
176m 464  
180m 388

4288-89  
173m 354  
177nw 353

4288-89  
31 - 352

of such compensation with some insurance carrier authorized to insure such liability in this state unless such employer shall be exempted from such insurance by the Industrial Commission; provided that nothing herein contained shall prevent any employer with the approval of the Commission from excluding medical and hospital benefits as required in Section 19; provided, also, that an employer conducting distinct operations or establishments at different locations may either insure or self-insure each separate establishment, or operation and such other portion of his operations, which may be determined by the Industrial Commission to be a distinct and separate risk. An employer desiring to be exempted from insuring his liability for compensation, shall make application to the Industrial Commission, showing his financial ability to pay such compensation, whereupon the Commission by written order may make such exemption, as it deems proper. The Commission may, from time to time, require further statement of financial ability of such employer to pay compensation and may upon ten days' notice in writing revoke its order granting such exemption, in which case such employer shall immediately insure his liability. As a condition for the granting of an exemption, the Commission shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the Commission may, at any time, either before or after the entry of an award, upon at least ten days' notice, and opportunity to be heard, require the surety to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced.

Any employer who shall fail to comply with the provisions of this section to secure payment of compensation shall be liable to the State of Minnesota for a penalty of fifty (\$50.00) dollars; and in addition thereto, if the employer continues his noncompliance, he shall be liable for five (5) times the lawful premium, as determined by the Compensation Insurance Board, for compensation insurance for such employer for the period he fails to comply with such provisions, commencing ten (10) days after notice has been served upon such employer by the Industrial Commission in the manner provided for the service of the summons in civil actions. Such penalties may be covered jointly or separately in a civil action brought in the name of the state by the attorney general in any court having jurisdiction thereof, and it shall be the duty of the Industrial Commission, whenever any such failure occurs, to immediately certify the fact thereof to the attorney general and upon receipt of such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state hereunder shall be paid into the state treasury, to be credited to the special compensation fund. ('21 c. 82 § 28, amended '23 c. 282 § 1)

151-428, 186+860.

166-295, 207+634.

A municipality may carry compensation insurance. 163-54, 203+622.

**4289. Who may insure—Policies, etc.**—Any employer who is responsible for compensation as provided under part 2 of this act may insure the risk in any manner then authorized by law. But those writing such insurance shall, in every case, be subject to the conditions of this section hereinafter named.

If the risk of the employer is carried by any insurer doing business for profit, or by an insurance association or corporation formed of employers, or of em-

ployers and workmen, to insure the risks under part 2 of this act, operating by the mutual assessment or other plan or otherwise, then insofar as policies are issued on such risks they shall provide for compensation for injuries or death, according to the full benefits of part 2 of this act.

Such policies shall contain a clause to the effect that as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for any purpose shall be jurisdiction of the insurer, and that the insurer will, in all things, be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer, and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workman or dependents, thereby discharging all obligations under the policy to the employer, and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provision relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the state of Minnesota and authority is hereby granted to all insurance companies writing such insurance to include in their policies in addition to the requirements now provided by law, the additional requirements, terms and conditions in this section provided. No agreement by an employe to pay to an employer any portion of the cost of insuring his risk under this act shall be valid. But it shall be lawful for the employer and the workman to agree to carry the risk covered by part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the Industrial Commission. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

If the employer shall insure to his employes the payment of the compensation provided by part 2 of this act in a corporation or association authorized to do business in the state of Minnesota, and approved by the insurance commissioner of the state of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the Industrial Commission, then, and in such case, any proceedings brought by an injured employe or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability.

Provided that in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employe against any such insurance company un-

satisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company, and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction proceedings may be brought by the employe against the employer in the first instance, or against such employer and insurance company jointly or severally or in any pending proceedings against any insurance company, the employer may be joined at any time after such adjudication. ('21 c. 82 § 29, amended '23 c. 282 § 2)

4289-1. Insurance rates discriminating against employment of physically handicapped persons—Prohibition against—No person, partnership, association or corporation, or their agents or employes writing workmen's compensation insurance in this state shall make or charge any rate which discriminates against the employment by the insured of any person who is physically handicapped by reason of loss or loss of use of any member due to accident or other cause. ('19, c. 367, § 1)

4289-2. Same—Penalty—Any person, partnership, association or corporation, or their agents or employes, offering a rate of compensation insurance forbidden by section 1 of this act shall be guilty of a misdemeanor. ('19, c. 367, § 2)

4289-3. Same—Cancellation of license—Whenever any company or its agents or employes shall have been convicted of a violation of this act, such fact shall be sufficient cause for the cancellation of its license by the commissioner of insurance. ('19, c. 367, § 3)

4289-4. Licenses to write workmen's compensation insurance—Revocation grounds—The license now or hereafter granted to any insurer to write workmen's compensation insurance in the state of Minnesota shall be revoked by the commissioner of insurance in case it or its agents have been guilty of fraud, misrepresentation, or culpable, persistent and unreasonable delay in making settlements under the provisions of the workmen's compensation act and acts amendatory thereof. Such action may be taken by the commissioner upon his own motion, the recommendation of the commissioner of labor or the complaint of any interested person. A complaint against any such insurer shall be in writing and shall clearly specify the grounds upon which the revocation of the license of such insurer is sought, and such insurer shall have the right to answer the complaint in writing and be heard before the commissioner of insurance in its own behalf, and the method of procedure for the hearing shall be prescribed by said commissioner, who shall set a time and place therefor and shall give all parties interested at least ten days' notice thereof by mail. The commissioner of insurance shall make and file his findings and order and shall send a copy thereof to the commissioner of labor, to the complainant, and to the insurer against whom the charges were made. Within ten days after the service of the findings and order of the commissioner of insurance, revoking the license of any insurer, which service may be made by mail, said insurer may appeal from such order to the district court of the district in which the office of the commissioner is located by serving written notice of appeal upon the commissioner. The commissioner of insurance shall thereupon file with the clerk of such court a certified copy of his findings and order, which shall be prima facie evidence of the facts therein stated. Thereupon the court shall summarily hear and determine the questions involved on said appeal. ('19, c. 508)

4290. Certain persons liable as employers—Contractors—Sub-contractors, etc.—(1) Any person who creates or carries into operation any fraudulent scheme, artifice or device to enable him to execute work without himself being responsible to the workman for the provisions of this act, shall himself be included in the term "employer" and be subject to all the liabilities of the employers under this act. But this section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith nor a contractor, who, in good faith, lets to a subcontractor a portion of his contract. Provided, however, that no person shall be deemed a contractor or subcontractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employers' premises and with the employers' tools or appliances and under the employers' directions; nor one who does what is commonly known as "piece work" or in any way where the system of employment used merely provides a method of fixing the workman's wages.

(2) Where compensation is claimed from, or proceedings taken against a person under subdivision 1 of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

(3) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in the service of the employer, nor engaged in the work in which the injury occurs, except as provided in Section 31, or under the conditions set forth in Section 66-J. ('21 c. 82 § 30)

128-47. 150+211.

See notes under § 4326, post.

211+327, note under § 4326(g).

Relator, using his own motor truck to make occasional hauls of merchandise for respondents, at a stated price per load, his loading and unloading points being designated by respondents but they having no right to control him otherwise, held to be an "independent contractor" and not an employee, and so not entitled to compensation. 213+49.

4291. Liability of party other than employer—Procedure—(1) Where an injury or death for which compensation is payable under part 2 of this act is caused, under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of part 2 of this act, the employe, in case of injury, or his dependents in case of death may, at his or their option, proceed either at law against such party to recover damages, or against the employer for compensation under part 2 of this act, but not against both.

If the employe in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer, the amount thereof, manner in which, and the persons to whom the same are payable, shall be as provided for in part 2 of this act, and not otherwise; provided, that in no case shall such party be liable to any person other than the employe or his dependents for any damages growing out of or resulting from such injury or death.

If the employe or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employe or his dependents to recover against such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation payable by him to such employe or his dependents here-

4291 177m 410 177m 570 225nw 391 225nw 004 225nw 911 227nw 47 4291 178m 313 231nw 233 232nw 114 4291 181m 232 240nw 890 4291 66 Fed. 2d 678

under, together with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

The provisions of Subdivision 1 of this section shall apply only where the employer liable for compensation under part 2 of this act, and the other party or parties legally liable for damages were engaged in the due course of business, (a) in furtherance of a common enterprise, or (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received at the time thereof, and not otherwise.

(2) Where an injury or death for which compensation is payable under part 2 of this act is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of part 2 of this act but where the provisions of subdivision 1 of this section do not apply or where said party or parties other than the employer are not subject to the provisions of part 2 of this act legal proceedings may be taken by the employee or dependents against such other party or parties to recover damages, notwithstanding the payment by the employer or his liability to pay compensation hereunder, but in such case if the action against such other party or parties is brought by the injured employee, or in case of his death, by his dependents, and a judgment is obtained and paid or settlement is made with such other party either with or without suit, the employer shall be entitled to deduct from the compensation payable by him, the amount actually received by such employee or dependents after deducting costs, reasonable attorney's fees and reasonable expenses incurred by such employee or dependents in making such collection or enforcing such liability; provided that in such case action be not diligently prosecuted by the employee or if, for any reason, the Court deem it necessary or advisable in order to protect the interests of the employer, the Court may upon application grant the right to the employer to intervene in any such action for the prosecution thereof, as now provided by law; provided that if the injured employee or in case of his death, his dependent shall agree to receive compensation from the employer or shall institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all of the rights of such employee or dependents and may maintain or, in case an action has already been instituted may continue the action either in the name of the employer or dependents or in his own name, against such other party for the recovery of damages, provided that in such case, if such action be not diligently prosecuted by the employer or if, for any reason, the Court deem it necessary or advisable in order to protect the interest of the employee, the Court may, upon application, grant the right to the employee or his dependents, as the case may be, to intervene in any such action for the prosecution thereof, as now provided by law, but such employer shall nevertheless pay over to the injured employee or dependents all sums collected from such other party or parties by judgment or otherwise in excess of the amount of such compensation payable by the employer under part 2 of this act, and costs, reasonable attorney's fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability provided that in no case shall such party be liable to any person other than the employee or his dependents for any damages growing out of or re-

sulting from such injury or death. ('21 c. 82 § 31, amended '23 c. 279 § 1)

#### In General.

132-346, 157+506; 136-154, 161+388; 143-131, 173+407; 144-108, 174+727; 144-166, 175+104; 144-315, 175+695; 145-380, 176+174; 148-41, 180+778; 149-340; 183+837, 185+949; 151-436, 186+863; 187+610.

Neither the employer nor his insurer is a necessary party to an action against a third party whose negligence caused the injury or death of the employee. 165-390, 206+714.

Sec. 4291, Gen. St. 1923, does not destroy the right of action enforceable, under the death statute (section 9657, Gen. St. 1923), by the personal representative of a deceased employee whose employer has paid compensation pursuant to the Workmen's Compensation Act. 165-390, 206+714.

Defendant and the contractor were engaged in the accomplishment of related purposes, and plaintiff could not maintain the action. 165-475, 206+937.

Owner of building and the ice company, at the time the employee of ice company was injured, were engaged in the due course of business in the accomplishment of related purposes on the premises within the purview of subdivision 1, and employee's exclusive remedy is under the Workmen's Compensation Act. 210+75.

Where injury for which compensation is payable, is caused by circumstances also creating a legal liability for damages on the part of any party other than the employer, the employee may, at his option, proceed either at law against such party to recover damages or against the employer for compensation, but not against both. If he brings an action for the recovery of damages, the amount thereof and the manner of payment shall be as provided in part 2 of said act. 212+20.

Where an employee pursues the employer for compensation under the mistaken impression that the law afforded him no other remedy or an additional remedy, equity, in the absence of injury to others or of facts creating an estoppel, may relieve him from his apparent election. 212+461.

#### Subdivision 1.

212+461.

#### Subdivision 2.

Where the award to the employee is paid by an insurance company, pursuant to a policy held by the city, and the city has paid nothing, it has suffered no damage, is not the real party in interest, and cannot maintain an action against the negligent third party who caused the injury. 163-54, 203+622.

When employee claims and receives compensation from the employer, the common law action passes to the employer by virtue of subrogation. The payment or obligation to pay the award on the part of the employer is a condition precedent to his right to prosecute such action. 163-54, 203+622.

4292. Penalties for unreasonable delay—In any case where any proceeding has been instituted or carried on or any defense interposed by any employer or insurer liable to pay compensation hereunder, which does not present a real controversy but is merely frivolous or for delay, or where there has been any unreasonable or vexatious delay of payment, or neglect or refusal to pay, or intentional underpayment of any compensation due to any employee or dependent under part 2 of this act, the industrial commission or the Supreme Court on appeal may, after reasonable notice and hearing or opportunity to be heard, as in cases of dispute arising under part 2 of this act, award, in addition to the compensation payable or to become payable, an amount equal to not more than twenty-five per centum of the compensation payable or to become payable as aforesaid. To secure information as to any act or omission specified in this section the Industrial Commission, by itself or employes, may examine from time to time the books and records of any employer or insurance carrier, relative to the payment of compensation hereunder, or require any such employer or insurance carrier to furnish any other information relating to the payment of compensation hereunder. In case of an insurer persisting in any act

4292  
173m 481  
217nw 680

or omission hereinbefore specified in this section, or refusing or failing to allow the Industrial Commission to examine its books and records or to furnish such information, the Industrial Commission shall make complaint in writing to the insurance commissioner, setting forth the facts and recommending the revocation of the license of such insurer to do business in this state, whereupon the commissioner of insurance shall hear and determine the matter as provided in chapter 508 of the General Laws of Minnesota for 1919; and if any such charge is found true, the commissioner of insurance shall revoke the license of such insurer and thereafter it shall be unlawful for such insurer to write or effect insurance in this state. ('21 c. 82 § 32)

Laws 1919, c. 508, referred to in this section is set forth ante, as section 4289-4.

4293  
177m 555  
225nw 889  
4282  
4313  
4318-20  
  
4493  
242nw 397  
243nw 108

**4293. Employers must report accidents—Reports—Duty of physicians—Penalties—**It is hereby made the duty of every employer subject to the provisions of part 2 of this act to make or cause to be made a report to the Industrial Commission of any accident to any employe which occurs in the course of his employment, and which causes death or serious injury within forty-eight (48) hours of the occurrence of such accident, and of all other accidents which occur to any employe in the course of his employment, and of which the employer or his foreman has knowledge within seven days after the occurrence of such accident, provided that such injuries are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which the injury was sustained, which reports shall be made upon a form to be prescribed by the Industrial Commission.

The Industrial Commission shall include in the form of report prepared by it a statement that the employer will pay the compensation as required by law, to be signed by the employer, or his representative, where a liability to pay compensation is admitted.

Accidents required by this section to be reported within 48 hours may be reported by telephone, telegraph or personal notice and a written report of such accident shall then be made within seven days, or at such time as the Industrial Commission shall designate, and the Commission may require such supplementary reports of any accident as it may deem necessary for the securing of the information required by law, provided that when an accident has been reported which subsequently terminates fatally, a supplemental report shall be filed with the Industrial Commission within forty-eight (48) hours after receipt of knowledge of such death, stating that the injury has proved fatal and any other facts in connection with such death or as to the dependents of such deceased employe which the Industrial Commission may require.

Every physician or surgeon who shall examine, treat or have special knowledge of any injury to any employe compensable under part 2 of this act shall within ten days after receipt of any request therefor, in writing, made by the Industrial Commission, report to the Commission all facts within his knowledge relative to the nature and extent of any such injury and the extent of any disability resulting therefrom, upon a form to be prescribed by the Commission.

It is hereby made the duty of the Industrial Commission from time to time and as often as may be necessary, to keep itself fully informed as to the nature and extent of any injury to any employe compensable

under part 2 of this act and the extent of any disability resulting therefrom and the rights of such employe to compensation, to request in writing and procure from any physician or surgeon examining, treating or having special knowledge of any such injury, a report of the facts within his knowledge relative thereto.

Any employer or physician or surgeon who shall fail to make any report required by this section, in the manner and within the time herein specified, shall be liable to the state of Minnesota for a penalty of fifty (\$50.00) dollars for each such failure and such penalty shall be recovered in a civil action brought in the name of the State by the Attorney General in any court having jurisdiction thereof, and it shall be the duty of the Industrial Commission, whenever any such failure to report occurs, to immediately certify the fact thereof to the Attorney General, and upon receipt of any such certification the Attorney General shall forthwith commence and prosecute such action. All penalties recovered by the State hereunder shall be paid into the state treasury.

No such report nor part thereof, nor any copy of the same or part thereof shall be open to the public, nor shall any of the contents thereof be disclosed in any manner by any official or clerk or other employe or person having access thereto, but the same may be used upon the hearings under this act or for state investigations and for statistics only, and any such disclosure is hereby declared to be a misdemeanor and punishable as such.

Any employer or insurer or injured employees shall, upon request of the Industrial Commission, file with said Commission all medical reports in the possession of such employer or insurer having any bearing upon the case or showing the nature and extent of disability; provided that duly verified copies of such reports may be filed with the Industrial Commission in lieu of the originals. ('21, c. 82, § 33; amended '25, c. 161, § 8, by addition of paragraph)

**4294. Duties of commission when employe is injured**—On receipt of notice or information that an employe governed by part 2 of this act has sustained an injury which may be compensable, the Industrial Commission shall forthwith mail to such employe, if his postoffice address be known or ascertainable, a written or printed notice in the form of a letter, giving a brief statement in simple language of such employe's general rights and duties under this act. In addition to such other matters as in the discretion of the Commission may be incorporated in this notice, it shall summarize the employer's duty to furnish medical and hospital treatment, and to pay compensation, and shall, also, invite such employe to ask the advice of the Commission in case any doubt or dispute arises concerning his rights under this act on account of such injury. The notice shall be accompanied by an envelope addressed to the Industrial Commission, for use by the employe, in making any reply. ('21 c. 82 § 34)

**4295. Employer to notify commission of discontinuance of payments**—Before discontinuing the payment of compensation in any case coming under part 2 of this act, the employer shall, if it is claimed by or on behalf of the injured person or his dependents that his right to compensation still continues, or if such employe or his dependents shall refuse to sign or object to signing a final receipt, notify the Industrial Commission, in writing, of such proposed discontinuance of payment, with the date of discontinuance and the reason therefor, and that the employe or depend-

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33 — 74

ent, as the case may be, objects thereto, and such employer shall also file with such notice of discontinuance any medical reports in his possession bearing upon the physical condition of the injured employee at or about the time of the discontinuance of the compensation, or duly verified copies of such reports in lieu of the originals; and until such notice is given, and such reports filed, as aforesaid, the liability for and the making of such payments shall continue unless otherwise ordered by the Commission; provided, that the receipt of any such notice of discontinuance, together with such reports, by the Commission, as herein provided, shall operate as a suspension of payment of compensation until the right thereto can be investigated, heard and determined, as herein provided. It is hereby made the duty of the Industrial Commission forthwith, upon receipt of any such notices of discontinuance, to notify the employee of the receipt thereof and mail him a copy of the same, together with copies of the reports filed with such notice, at his last known place of residence, and to make such investigations and inquiries as may be necessary to ascertain and determine whether the right to compensation in any such case has terminated in accordance with law, and if upon investigation it shall appear that the right to compensation in any such case has not terminated or will not terminate upon the date specified in any such notice of discontinuance, the Industrial Commission shall set down for hearing before the Commission, or some commissioner or referee, the question of the right of the employee, or dependent, as the case may be, to further compensation, such hearing to be held within twenty-five (25) days of the receipt by the Commission of any such notice of discontinuance, and eight (8) days notice of such hearing shall be given by the Commission to the interested parties.

After the hearing by the Commission, commissioner or referee, and due consideration of all the evidence submitted, the Commission, commissioner or referee, shall promptly enter an order or award for such further amount of compensation to be paid by the employer, if any, as may be due and payable. If upon investigation it shall appear that the right to compensation in any such case has terminated, the Commission shall forthwith notify the employer in writing of such fact and the receipt of such notice by the employer shall operate to relieve him and the insurance carrier, as of the date when payment of compensation became suspended as provided by this section, from any further liability for payment of compensation in such case, subject to the right of review provided by this act.

In addition to the filing of the reports required by law, all employers subject to part 2 of this act shall promptly file or cause to be filed with the Industrial Commission all current interim and final receipts for the payments of compensation made, and it is hereby made the duty of the Industrial Commission periodically to check the records of such commission in each case, and require such employers to file or cause to be filed all such receipts for compensation payments as and when due, it being the intention of this section that the Industrial Commission shall definitely supervise and require prompt and full compliance with all provisions for the payment of compensation as required by law. Any insurance carrier insuring any employer in this State against liability imposed by this Act shall be and hereby is authorized and empowered for and on behalf of said employer to perform any and all acts

required of the employer under the provisions of this Act; provided, that the employer shall be responsible for all authorized acts of an insurer in his behalf and for any omission or delay or any failure, refusal or neglect of any such insurer to perform any such act, and nothing herein contained shall be construed to relieve the employer from any penalty or forfeiture provided by this act. ('21, c. 82, § 35; amended as to par. 1, '25, c. 161, § 9)

**Explanatory note**—The first par. of this section only is amended by Laws 1925, c. 161, § 9.  
165-354, 206+433.

**4296. Commission may advise—Shall report to legislature**—The Industrial Commission may, upon demand of an employer or an employe or his dependent designate one or more of its employes who shall advise such party or parties of his or their rights under this act, and shall assist so far as possible in adjusting the differences between the employe or his dependents and the employer under part 2 hereof and the employe or employes of the Commission so designated are hereby empowered to appear in person before the Commission, Commissioner or referee in any proceeding under part 2 of this act, as the representative or advisor of any such party; and in any such case, such party shall not be required to be also represented by an attorney at law.

The Industrial Commission shall observe in detail the operation of the act throughout the state and shall make report thereof to each session of the legislature, together with such suggestions and recommendations as to changes as it may deem necessary or advisable for the improvement thereof. ('21 c. 82 § 36)

**4297. Proceeding begun by petition**—All proceedings before the Industrial Commission shall be by petition addressed to the Commission. All petitions shall be in writing and in such form as may be prescribed by the commission, except as otherwise provided by this act. ('21 c. 82 § 37)

**4298. Papers filed in main office**—All papers to be filed or acted upon by the Industrial Commission shall be delivered to it at its principal office, except as the Commission may otherwise order. ('21 c. 82 § 38)

**4299. Papers shall be filed immediately**—All papers delivered to the Industrial Commission for filing under the provisions of this act or the rules and regulations of the Commission shall be immediately filed. ('21 c. 82 § 39)

**4300. Orders and decisions filed**—Every order, decision or award made by any commissioner or referee shall be forthwith filed with the Industrial Commission, and the Commission shall immediately serve or cause to be served upon every party in interest a copy of every order, decision or award made by it or him, together with a notification of the time when the same was filed. ('21 c. 82 § 40)

**4301. Service by mail**—All papers and notices to which any party shall be entitled under part 2 of this act shall be served by mail, or in such other manner as the Industrial Commission may direct. Any such paper or notice shall be deemed served on the date when mailed, properly stamped and addressed, and shall be presumed to have reached the party to be served; but any party may show by competent evidence that any paper or notice was not received, or that there was an unusual or unreasonable delay in its transmission through the mails. In such case proper allowance shall be made for the party's failure within the prescribed time to assert any right given him by this act. The Industrial Commission, its secre-



tary, and any commissioner or referee, serving or causing to be served any such paper or notice shall keep a careful record of such service. ('21 c. 82 § 41)

**4302. Procedure in case of dispute**—In cases of dispute as to any question of law or fact in connection with any claim for compensation, either party, or in case of default for a period of at least ten (10) days, in payment of compensation due and payable, the person or persons entitled thereto may present a verified petition to the Industrial Commission setting forth in addition to such other facts as the rules of the Commission may require, the names and residences of the parties and the facts relating to employment at the time of injury, the injury, its extent and character, the amount of wages being received, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the Commission, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. ('21 c. 82 § 42)

**4302A. Action where employer is non-resident—Venue—Complaint—Attachment or garnishment—Appearance by employer**—At any time after the filing of a petition for compensation, the petitioner, his agent or attorney, may file an affidavit stating that the employer named in said petition is a non-resident or is a foreign corporation, and that the service of said petition and other notices as provided by this act cannot be made on said employer. Thereupon the petitioner may commence an action in the District Court of the county where the employe in respect to whom compensation is claimed resided at the time of injury or death, as the case may be. Such action shall be commenced and proceed in the same manner as is provided by law for actions in the District Court. The complaint in such action shall contain a statement that a petition for compensation in said matter has been filed with the Industrial Commission of Minnesota, together with the affidavit as hereinbefore provided, and a statement of the facts upon which the right to compensation or other relief is based, as provided in this chapter. In any such action the property of defendant may be attached by writ of attachment or proceedings in garnishment, and the summons may be served by publication as provided in other actions in the District Court. Provided, that in the event the employer makes a general appearance in the proceedings upon the petition so filed with the Industrial Commission and shall file therein such bond or security as may be fixed and approved by said commission, or in the event any insurance company authorized to do business in this state shall appear in such proceedings for said employe and assume liability for any award that may be entered in such proceedings against such employer, the proceedings in said District Court shall be dismissed. ('27, c. 417, § 1)

**Explanatory note**—This section is added to § 4302. of Gen. St. 1923, as subsection 4302a by Laws 1927, c. 417, § 1.

**4302B. Same—Determination of issues—Reference—Appeals to Supreme Court**—When issue is joined in any such case in the District Court, said court may try and fully determine the same without a jury, or the court may refer the matter to the Industrial Commission of Minnesota, and thereupon the said commission shall proceed to determine the matter as in cases originally commenced before said commission, and said commission shall report its findings and decisions therein to the said District Court, which said findings and decision may be approved or disapproved

by the court in the same manner as is provided by law and the rules of such court for the approval or disapproval of the report of a referee, and shall order judgment which shall be entered accordingly as in other cases. An appeal shall lie from such decision and judgment of the District Court to the Supreme Court as in other cases. ('27, c. 417, § 1)

**Explanatory note**—This section is added to Gen. St. 1923, § 4302, as subsection 4302B.

**4303. Commission to give hearing on claim petition**—When a claim-petition or other petition is presented to the Industrial Commission, the Commission shall, by general rules or special order, either direct it to be heard by the Commission or assign it to a commissioner or a referee for hearing: Provided, that petitions to commute further compensation payments shall be heard by the Commission.

The Secretary of the Commission shall within ten days after the same is presented serve upon each adverse party a copy of the petition, together with a notice that the petition will be heard by the Commission or the commissioner or referee to whom it has been assigned (giving his name and address) as the case may be, and if the petition shall be assigned to a commissioner or a referee, shall deliver the original petition to him with copies of the notices served on the adverse parties. ('21 c. 82 § 43)

The Workmen's Compensation Act intended summary and inexpensive relief. 157-122, 202+904.

**4304. Rehearing**—Any time before an award or disallowance of compensation or order has been made by a commissioner or referee to whom a petition has been assigned, the Commission may order such petition heard before it or may reassign it to another commissioner or referee. Unless the Commission shall otherwise order, the testimony taken before the original commissioner or referee shall be considered as though taken before the Commission or substituted commissioner or referee. ('21 c. 82 § 44)

163-264, 203+963, note under § 4319.

Upon the facts stated in the opinion it is held that whether a claimant shall have a rehearing before the Industrial Commission rests in its discretion. 210+624.

**4305. Answer to petition**—Within ten days after a copy of any petition has been served on the adverse party, he may file with the Industrial Commission and serve upon the petitioner or his attorney, a verified answer to the petition, which shall admit or deny the substantial averments of the petition and shall state the contention of such adverse party with reference to the matter in dispute as disclosed by the petition. Within five days after the service of the answer, the petitioner may file with the Commission and serve on the adverse party or his attorney, a verified reply, admitting or denying the matter set forth in the answer.

Every fact alleged in a petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. But the failure of any adverse party or of all of them to deny a fact so alleged shall not preclude the Commission, commissioner or referee before whom the petition is heard from requiring, of its or his own motion, proof of such fact. ('21 c. 82 § 45)

**4306. Commission to fix time and place of hearing**—When the reply has been filed or the time in which to file a reply has expired, the commission shall fix a time and place for hearing said petition not less than ten (10) days after the filing of the reply or the expiration of the time within which a reply can be filed. Notice of such hearing shall be given by mailing a copy

4303  
225nw 921  
4315

4304  
172m 489  
172m 603  
216nw 241  
216nw 242

to the interested parties not less than five days before the date fixed for such hearing. Such hearing may be had before the commission, or before a commissioner or referee designated by the secretary by written order, copy of which said written order shall be mailed to the commissioner or referee so designated. All hearings shall be held in the county where the injury occurred unless otherwise ordered by the commission or the commissioner or referee conducting the hearing. The secretary, if the petition has been directed to be heard by the commission, or the commissioner or referee to whom the petition has been assigned, shall serve upon all parties in interest a notice of the time and place of hearing, at least five days prior to such hearing. ('21 c. 82 § 46, amended '23 c. 300 § 9)

**4307. Award by default**—Upon failure of an adverse party in any case to serve and file an answer as provided by this act, the commission, upon proof of service of the petition and failure to answer being made and filed with the commission, shall forthwith make an award based upon the petition, if the facts stated therein are sufficient to support the same, of such compensation as the claimant is shown thereby to be entitled to; provided, that the commission may require proof of any fact alleged in the petition, and, in such case, the commission shall promptly and summarily hear and determine the matter and promptly make its award. If the petition does not state facts sufficient to support an award, the commission shall promptly notify the petitioner or his attorney of such fact in writing, and another petition may be filed as in the case of an original petition. ('21 c. 82 § 47)

**4308. Commission shall administer oaths and issue subpoenas**—The Industrial Commission by a member, or the commissioner or referee to whom a cause may be assigned by the commission for hearing, shall administer oaths to all witnesses, and, upon its or his own motion or the written request of any interested party, may issue subpoenas for the attendance of witnesses and the production of such books, papers, records and documents, material in the cause as shall be designated in such request or required by the commission, commissioner or referee. Provided, that the applicants for subpoenas shall advance necessary service and witness fees, which shall be the same as the service and witness fees provided by law for civil causes in the district court; the Industrial Commission shall pay for the attendance of all witnesses subpoenaed by it on its own motion. If any person refuses to comply with any order or subpoena issued by the commission, or by any commissioner or referee in a cause assigned to him by the commission, or if any person refuses to permit an inspection of any place or premises or to produce any books, papers, records or documents, material in the cause, or if any witness refuses to appear or testify regarding that which he may be lawfully interrogated, any judge of the district court in the county in which the cause is pending, on application of the commission, or the commissioner or referee hearing the cause, shall compel obedience by attachment proceedings as for contempt as in the case of disobedience of a similar order or subpoena issued by such court. ('21 c. 82 § 48)

**4309. Commission to make award—Who may intervene**—The Industrial Commission, if a petition is directed to be heard by it, or the commissioner or referee to whom a petition is assigned for hearing, shall hear all competent evidence produced and shall make, in writing, and as soon as may be after the conclusion of the hearing, such findings of fact, conclusions of law, and award or disallowance of compensation or

other order, as the pleadings and the evidence produced before it or him and the provisions of this act shall, in its or his judgment require. Any person having such an interest in any matter before the commission, a commissioner or referee, that he may either gain or lose by any order or decision relating thereto, shall, upon written application to the commission, commissioner or referee, setting forth the facts which show such interest, be permitted to intervene under such rules and regulations as the commission may prescribe. ('21 c. 82 § 49)

212+813.

On the evidence in this case, reasonable minds might differ as to whether an infection of relator's arm resulted from a compensable injury to his hand received some time before. Hence, the decision of the Industrial Commission awarding compensation will not be disturbed. 160-195, 200+292.

In reviewing proceedings before the Industrial Commission, findings on questions of fact will not be disturbed, unless consideration of the evidence and the inference permissible therefrom clearly requires reasonable minds to adopt a conclusion contrary to the one at which the commission arrived. 210+871.

The evidence in this case examined and held to require an award for hernia. 210+876.

**4310. Commission may appoint referee**—The Industrial Commission may refer any question of fact arising under any petition, including a petition for commutation of compensation heard by it, to a commissioner or referee to hear evidence and report to the commission the testimony taken before him or such testimony and findings of fact thereon as the commission may order. The commission may refer any question of fact arising under any petition assigned to a commissioner or referee, to another commissioner or referee to hear evidence, and report the testimony so taken thereon to the original commissioner or referee. ('21 c. 82 § 50)

**4311. Commission or referee may make investigation**—The Industrial Commission, commissioner or referee, if it or he deem it necessary, may, of its or his own motion, either before, during or after any hearing, make an investigation of the facts set forth in the petition or answer. The commission, or a commissioner, or referee, with the consent of the commission, may appoint one or more impartial physicians or surgeons to examine the injuries of the claimant and report thereon, and may employ the services of such other experts as shall appear necessary to ascertain the facts. The report of any physician, surgeon or expert appointed by the commission or by a commissioner or referee shall be filed with the commission and shall be a part of the record and open to inspection as such.

The commission shall fix the compensation of such physicians, surgeons and experts, which when so fixed, shall be paid out of the funds appropriated to the department of labor and industries for the maintenance of the department, and shall be taxed as a part of the costs of the proceedings to be repaid to such department by either party or both, or otherwise, as the commission may direct. If any sum so taxed shall not be paid by the party directed to repay, the same may be collected as costs are now collectible. ('21 c. 82 § 51)

**4312. Hearings shall be public**—All hearings before the commission, a commissioner or a referee shall be public. ('21 c. 82 § 52)

**4313. Commission not bound by rules of evidence**—The commission, or a commissioner, or a referee, in making an investigation or conducting a hearing under this act, shall not be bound by common law or statutory rules of evidence or by technical or formal rules of pleading or procedure, except as provided by this

act; and shall make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties. But all findings of fact shall be based only upon competent evidence. ('21 c. 82 § 53)

A decision of the Industrial Commission in a workmen's compensation case will not be reversed on a mere matter of procedure. 157-122, 195+784.

The undisputed, unimpeached testimony, not inherently improbable, nor discredited by any facts or circumstances in the case, required a finding that relator suffered an accidental injury, viz a hernia, "arising out of and in the course of his employment." 157-122, 195+784.

The Industrial Commission is not subject to the rules of evidence governing courts, and their decisions will not be disturbed because incompetent evidence may have been admitted. 167-407, 209+26.

The reception of incompetent evidence before the referee of the Industrial Commission will not be considered in this court, when there is sufficient competent evidence in the case to sustain the findings. 209+635.

**4314. Depositions—Evidence—**Depositions may be taken as now provided by law for civil cases, except as otherwise ordered by the commission, commissioner or referee. The records kept by a hospital of the medical or surgical treatment given to an employe in such hospital shall be admissible as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters. ('21 c. 82 § 54)

**4315. Appeal—Expense—Transcript—**Any party in interest may, within twenty days after notice of a commissioner's or referee's award or disallowance of compensation, or other order involving the merits of the case, shall have been served on him, take an appeal to the Industrial Commission on the ground: (1) That the award or disallowance of compensation or other order appealed from is not in conformity with the terms of this act, or that the commissioner or referee committed any other error of law; (2) that the findings of fact and award or disallowance of compensation, or other order appealed from was unwarranted by the evidence, or was procured by fraud, coercion or other improper conduct of any party in interest. The commission may, upon cause shown, within thirty days after such notice has been served as aforesaid, extend the time for taking such appeal or for filing of an answer or other pleading.

Any party desiring to appeal to the commission as aforesaid, shall prepare and sign a written notice specifying the award or order appealed from, and that the said appellant appeals therefrom to the Industrial Commission, and specifying the particular finding of fact which appellant claims is unwarranted by the evidence of which appellant claims was procured by fraud, coercion or other improper conduct of any party in interest, or specifying any other ground upon which the appeal is based. The appealing parties shall also serve a copy of such written notice of appeal upon all adverse parties within the time limited for appeal, and file the original thereof with the Industrial Commission with proof of service thereon by admission or affidavit. The appealing parties shall also pay to the Industrial Commission the sum of ten (\$10.00) dollars to be applied on the cost of the transcript of the proceedings appealed from, or so much thereof as may be necessary to present the question raised on such appeal. The appellant shall also be liable for any excess of said ten (\$10.00) dollars in the cost of said transcript and any part of said sum exceeding the actual cost of said transcript shall be refunded to said appellant; provided that the commission may on cause shown direct that a transcript be made without expense to the appellant.

Upon the filing of said notice and the paying of said

appeal fee, the commission shall immediately cause the transcript of testimony and proceedings to be type-written, which said transcript shall be certified as true and correct by the official reporter transcribing the same.

On any such appeal the commission may disregard the findings of fact of the commissioner or referee, and may examine the testimony taken before such commissioner or referee, and if it deem proper, may hear other evidence, and may substitute for the findings of the commissioner or referee such findings of fact as the evidence taken before the commissioner or referee and the commission, as hereinbefore provided, may, in the judgment of the commission, require, and may make such disallowance or award of compensation or other order as the fact so found by it may require. The commission, at its expense, shall cause a complete record of its proceedings to be made and shall provide a stenographer to take the testimony and record of proceedings at the hearings before a referee, commissioner or the commission, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him of a reasonable charge therefor to be fixed by the commission. ('21 c. 82 § 55, amended '23 c. 300 § 10)

So far as the statute specifies the form of the notice of appeal from the findings of a referee, it is directory rather than mandatory, and, if there is objectionable indefiniteness, it should be remedied by an order rather than punished by dismissal of the appeal. 163-394, 204+161.

The remanding of a proceeding to the Industrial Commission for rehearing on the merits does not require a trial de novo nor the resubmission of the evidence already in. 166-212, 207+499.

**4316. Appeal based on error—**Whenever an appeal to the commission shall be based upon an alleged error of law, it shall be its duty to grant a hearing thereon. The commission shall fix a time and place for such hearing, and shall give at least five days' notice thereof in writing to all parties in interest. As soon as may be after any such hearing, the commission shall either sustain or reverse the commissioner, or referee's award or disallowance of compensation, or other order appealed from or make such modification thereof as it shall deem proper. ('21 c. 82 § 56)

**4317. Appeal based on fraud or insufficiency of evidence—**Whenever an appeal shall be taken to the commission on the ground that the commissioner or referee's award or disallowance of compensation was unwarranted by the evidence, or because of fraud, coercion, or other improper conduct by any party in interest, the commission may, in its discretion, grant a hearing de novo before the commission or assign the petition for re-hearing to any commissioner or referee designated by it or sustain the commissioner or referee's award or disallowance of compensation. If the commission shall grant a hearing de novo, it shall fix a time and place for same, and shall give at least five days' notice in writing to all parties in interest. As soon as may be after any hearing de novo by the commission, it shall in writing state its findings of fact and award or disallow compensation in accordance with the provisions of this act. ('21 c. 82 § 57)

**4318. Proceedings in case of default in payment of compensation—**On at least thirty days' default in the payment of compensation due under any award made under part 2 of this act, the employe or dependents, entitled to such compensation may file a certified copy of such award with the clerk of the district court of any county in the state, and on ten days' notice in writing to the adverse parties served as provided by law for service of a summons, may apply to the judge

4318-20  
177m 555  
225nw 889  
4282'  
4293  
4313

of any district court for judgment thereon. On such hearing the judge of such court shall have the right to determine only the facts of said award and the regularity of the proceedings upon which said award is based, and shall order judgment accordingly; and such judgment shall have the same force and effect, and may be vacated, set aside or satisfied as other judgments of the same court; provided, that no judgment shall be entered on an award while an appeal is pending. There shall be but one fee of 25 cents charged by said clerk for services in each case under this section, and said fee shall cover all services performed by him. ('21 c. 82 § 58, amended '23 c. 300 § 11)

4319. New hearing may be granted—At any time after an award has been made and before the same has been reduced to judgment or writ of certiorari issued by the Supreme Court, the commission may for cause, upon application of either party and not less than five days' notice in writing to all interested parties, set the award aside and grant a new hearing and thereon determine the matter on its merits and make such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the pleadings and the evidence produced before it and the provisions of this act shall in its judgment require. ('21 c. 82 § 59, amended '21 c. 423 § 1)

The Industrial Commission acted within the discretion conferred upon it by the statute in refusing to grant a rehearing. 163-264, 203+963.

4320. Appeal to Supreme Court—Grounds—Fees—Any party in interest may, within thirty days after the service of notice on him of any award or disallowance of compensation or order involving the merits of the case or any part thereof made by the commission, have the same reviewed on certiorari by the Supreme Court on any of the following grounds: (1) That the award or disallowance of compensation or other order sought to be reviewed is not in conformity with the terms of the act, or that the commission committed any other error of law; (2) that the findings of fact and award or disallowance of compensation or other order sought to be reviewed was unwarranted by the evidence. The Supreme Court may, upon cause shown within said thirty (30) days, extend the time provided in this section for review on certiorari, or for filing any paper required to be filed in such court. To render certiorari effective, the petitioner or relator shall, within thirty days after notice of such final award or disallowance or other order, serve upon the Industrial Commission a writ of certiorari showing that a review is to be had in the Supreme Court of the proceedings of the commission, on which such final award or disallowance of compensation is based, together with a bond with such surety or sureties, and in such amount as the commission or commissioner shall direct and approve, conditioned to pay the cost of such review. The petitioner or relator shall also pay to the secretary of the Industrial Commission \$10.00, to be paid, in turn, by such secretary to the clerk of the Supreme Court as the filing fee provided by Chapter 177 of Laws 1915. On serving of such writ of certiorari and filing bond and the payment of the amount aforesaid, the secretary of the commission shall immediately transmit to such clerk the filing fee aforesaid, together with the return to such writ of certiorari and bond. The receipt by the clerk of such fee and the filing of such return shall vest the Supreme Court with jurisdiction of the matter. Within thirty days from receipt of the amount aforesaid and filing with the commission of the return to writ of certiorari and bond, the secretary shall transmit to the clerk of the

Supreme Court a true and complete return of the proceedings of the commission in the cause sought to be reviewed, or such parts thereof as may be necessary to enable the Supreme Court properly to review the questions presented to it. Such return shall be certified to by the secretary under the seal of the commission, and the petitioner or relator shall pay to the secretary the reasonable expense of preparing the return. On the filing of the return in the Supreme Court, the matter shall be heard and disposed of in accordance with the laws and rules of the court governing civil appeals. The Supreme Court may adopt such rules not inconsistent with the provisions of this act as may be deemed necessary or convenient for the impartial and speedy disposition of such matters. ('21 c. 82 § 60, amended '21 c. 423 § 2; '23 c. 300 § 12)

Explanatory note—For Laws 1915, c. 177, see § 6992, herein.

Determinations of law and fact. 160-185, 199+573.

Certiorari to review a judgment awarding compensation to the relator under the Workmen's Compensation Law. The only questions presented are questions of fact not within the province of this court to determine. 161-153, 201+141.

The commission made no findings in respect to the claim against the Percy Vitium Company, and the cause is remanded, with directions to make findings upon that claim in accordance with the evidence, and award compensation thereon. 166-295, 207+634.

Certiorari, 166-339, 208+18.

An order of the Industrial Commission, providing for an injured employee a change of physicians and hospitalization, is not reviewable by certiorari. 212+415.

4321. Supreme Court to have original jurisdiction—The Supreme Court, on review taken under the preceding section, shall have and take original jurisdiction and may reverse, affirm or modify the award or order of disallowance reviewed and enter such judgment as may be just and proper; and where necessary, may remand the cause to the Industrial Commission for a new hearing or for further proceedings, with such directions as the court may deem proper. ('21 c. 82 § 61, amended '21 c. 423 § 3)

166-251, 207+636; 167-518, 209+39.

On the evidence in this case, reasonable minds might differ as to whether an infection of relator's arm resulted from a compensable injury to his hand received some time before. Hence, the decision of the Industrial Commission awarding compensation will not be disturbed. 160-195, 200+292.

Findings of fact on conflicting evidence not disturbed. 160-410, 200+475.

The finding of the Industrial Commission on questions of fact is binding upon the Supreme Court. 161-461, 202+30.

Upon conflicting evidence, the findings of the Industrial Commission on question of fact will not be disturbed. 163-498, 204+635.

In reviewing proceedings before the Industrial Commission, findings on questions of fact will not be disturbed, unless consideration of the evidence and the inference permissible therefrom clearly requires reasonable minds to adopt a conclusion contrary to the one at which the commission arrived. 210+871.

Upon a record, in a compensation matter, where the Industrial Commission could find either way on the facts, its determination must control. 212-187.

In this claim under the Workmen's Compensation Act, the finding that the accident to the employee caused no "disablement" was made on conflicting testimony, and cannot be disturbed on appeal. 212+813.

4322. Writ to stay proceedings—A writ perfected under the provisions of this act shall stay all proceedings for the enforcement of collection of the award sought to be reviewed, or any part thereof, until the final disposition of the cause in the Supreme Court or before the Industrial Commission when the cause is remanded for a new hearing or further proceedings. ('21 c. 82 § 62, amended '21 c. 423 § 4)

**4323. Attorney general to appear for commission**—On all such reviews the attorney general shall, unless otherwise directed by the commission, appear as attorney for the Industrial Commission, and he shall prepare and present to the Supreme Court such papers, briefs and arguments as he shall deem proper and necessary to a fair presentation of the questions involved, in support of the award or order of disallowance sought to be reviewed. ('21 c. 82 § 63, amended '21 c. 423 § 5)

**4324. Costs—Reimbursements to prevailing party**—Attorney's fees—Costs on certiorari—No costs shall be awarded against either party in hearings before the Commission, commissioner or referee, except as especially provided by this act, but in the discretion of the Industrial Commission, commissioner, or referee conducting a hearing, or in the discretion of the Commission in an appeal to it the prevailing party may be awarded reimbursement for actual necessary disbursements, to be taxed and allowed by the Commission, commissioner, or referee on five days' notice in writing to the adverse party. The Commission in affirming, or modifying and affirming, or reversing a disallowance and allowing an award may include in its award reasonable attorney's fees incident to the review on appeal, or may fix and allow a reasonable attorney's fee in such cases in a proceeding to tax disbursements thereon. On writs of certiorari the supreme court costs and disbursements shall be taxed the same as on civil appeals. Provided, that if upon such review by the supreme court any award in favor of the injured employee or his dependents is affirmed, or modified and affirmed, or if the disallowance is reversed, the court may allow reasonable attorney's fees incident to such review, which shall be included as a part of the judgment order of the supreme court. ('21, c. 82, § 64; amended '21, c. 423, § 6; '25, c. 161, § 10)

Attorney's fees in Supreme Court allowed. 161-471, 2014-934.

The provision authorizing the allowance of actual and necessary "disbursements" to the prevailing party does not include attorney's fees. 211+674.

**4325. Definitions**—"Daily Wage" as used in this act shall mean the daily wage of the employe in the employment in which he was engaged at the time of the injury, and if at the time of the injury the employe is working on part time for the day, his daily wage shall be arrived at by dividing the amount received or to be received by him for such part time service for the day by the number of hours of such part time service and multiplying the result by the number of hours of the normal working day for the employment involved. Provided, that in the case of persons performing services for municipal corporations in case of emergency, then the normal working day shall be considered and computed as eight hours, and in cases where such services are performed gratis or without fixed competition the daily wage of the person injured shall, for the purpose of calculating compensation payable under this act, be taken to be the usual going wage paid for similar services in municipalities where such services are performed by paid employes.

The weekly wage shall be arrived at by multiplying the daily wage by the number of days and fractional days normally worked in the business of the employer for the employment involved; provided that the weekly wage shall not be less than five and one-half times the daily wage. Occasional overtime shall not be considered in computing the weekly wage, but if such over-

time is regular or frequent throughout the year for the employment involved, then it shall be taken into consideration.

Where board or other allowances of any character except gratuities are made to an employe in addition to wages as a part of the wage contract, they shall be deemed a part of his earnings and computed at the value thereof to the employe. ('21, c. 82, § 65; amended '23, c. 300, § 13; '25, c. 175; '27, c. 216)

166-251, 207+636.

Fireman was paid \$2 for each call and \$1 per hour for time spent at a call over one hour. His employment did not afford employment for any fixed or regular number of days in any one week. Held, compensation was properly determined pursuant to section 13, c. 300, Laws 1923, and not pursuant to subdivision 19, § 15, c. 82, Laws 1921. 161-20, 200+927.

**4326. Definitions, continued**—Throughout this act the following words and phrases as used therein shall be considered to have the following meaning respectively, unless the context shall clearly indicate a different meaning in the connection used:

(a) The word "compensation" has been used both in parts 1 and 2 of this act to indicate the money benefits to be paid on account of injury or death. Strictly speaking, the benefit which an employe may receive by action at law under part 1 of this act is damages, and this is indicated in section 1. To avoid confusion, the word "compensation" has been used in both parts of the act, but it should be understood that under part 1 the compensation by way of damages is determined by an action at law.

(b) "Child" or "children" shall include posthumous children and all other children entitled by law to inherit as children of the deceased, also stepchildren who were members of the family of the deceased at the time of his injury and dependent upon him for support.

(c) The terms "husband" and "widower" are used interchangeably and have the same meaning in this act.

(d) The term "employer" as used herein, shall mean every person not excluded by section 8, who employs another to perform a service for hire and to whom the "employer" directly pays wages, and shall include any person or corporation, co-partnership or association or group thereof, and shall include state, county, village, borough, town, city, school district and other public employers.

(e) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession within one of the United States and in good standing in his profession at the time.

(f) The term "workman" shall include the plural and all ages and both sexes.

(g) The terms "employe" and "workman" are used interchangeably and have the same meaning throughout this act and shall be construed to mean:

(1) Every person in the service of the state, or any county, city, town, village, borough or school district therein, under any appointment or contract of hire, expressed or implied, oral or written, but shall not include any official of the state or of any county, city, town, village, borough or school district therein, who shall have been elected or appointed for a regular term of office or to complete the unexpired portion of any regular term; provided, however, that sheriffs, deputy sheriffs, constables, marshals, policemen and firemen shall be deemed employes within the meaning of this section; provided further, that where in any city operating under a Home Rule Charter, a mode and manner of compensation is provided by said char-

4325  
250nw 73  
4274 (a)

4326  
221nw 911  
4326  
177m 376  
225nw 284  
4326  
174m 362  
175m 579  
219nw 293  
229nw 101  
230nw 813  
4326  
179m 272  
228nw 931  
238nw 676  
See 4290  
4326  
251nw 3  
4313

4326R  
239nw 673

4326D  
240nw 464  
See 4290  
176m 422  
229nw 561  
228nw 935  
222m 275  
223m 772

4326 (d)  
248nw 827  
4268

4326F  
234nw 452  
4268

ter which is different from that provided by this act, and the amount of compensation provided by said charter would, if taken thereunder, exceed the amount the employe is entitled to under this act for the same period, he shall, in addition to his compensation under this act, receive under said charter an amount equal to the excess in compensation provided by said charter over what he is entitled to by this act; if the amount of compensation provided by said charter would, if taken thereunder, be equal to or less than the amount of compensation the employe is entitled to under this act for the same period, he shall take only under this act; provided further, that any peace officer other than a sheriff, deputy sheriff, marshal or policeman shall be considered an employe while engaged in the enforcement of peace or in and about the pursuit and capture of any person charged with or suspected of crime.

(2) Every person not excluded by section 8, in service of another under any contract of hire, expressed or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state, who, for the purpose of making election of remedy under this act, shall be construed the same, and have the same power of contracting and electing as adult employes.

(h) The word "accident" as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body.

(i) "Member" as an anatomy term in this act, shall include eye and ear, as well as leg, foot, toe, hand, finger, thumb and arm.

(j) Without otherwise affecting either the meaning or interpretation of the abridged clause "personal injuries arising out of and in the course of employment." It is hereby declared:

Not to cover workmen except while engaged in, on, or about the premises where their services are being performed, or where their services requires their presence as a part of such service, at the time of the injury, and during the hours of service as such workmen; provided, that where the employer regularly furnishes transportation to his employes to or from the place of employment, such employes shall be held to be subject to this act while being so transported, but shall not include an injury caused by the act of a third person or fellow employe intended to injure the employe because of reasons personal to him, and not directed against him as an employe, or because of his employment.

(k) Wherever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

(1) "Industrial Commission" and "Commission" as used in this act, means the Industrial Commission of Minnesota; and "Commissioner" means a member of that commission.

(m) The term "farm laborers" shall not include the employes of commercial threshermen or of commercial balers. Commercial threshermen and commercial balers are hereby defined to be persons going about from place to place threshing grain, shredding or shelling corn, or baling hay or straw, respectively, as a business; provided, that farmers owning threshing, shredding, shelling or baling machines not engaged in such business generally and doing their own threshing,

shredding, shelling or baling or casually doing such work for other farmers in the same community, and farmers exchanging work among themselves shall not be classed as commercial threshermen or commercial balers. ('21 c. 82 § 66, amended '23 c. 91 § 1; '23 c. 300 § 14)

- Subd. (a) 134-21, 158+715; 134-25, 158+717.
- (b) 133-265, 158+250; 132-249, 156+120; 134-131, 158+798; 143-144, 172+897.
- (d) 128-43, 150+211; 133-402, 158+615; 145-185, 176+761; 147-13, 179+216.
- (g1) 134-26, 158+790; 137-24, 162+680; 145-185, 176+751; 148-40, 180+777.
- (g2) 133-109, 157+995; 142-141, 171+302.
- (h) 137-32, 162+679; 138-132, 164+685; 138-211, 164+810; 138-252, 164+916; 140-472, 168+555; 142-423, 172+312; 149-2, 182+622.

**In general.**

166-251, 207+636; 167-269, 208+802.

An employe who has become afflicted with a disabling ailment, not among those enumerated, through negligence of the employer amounting to the omission of a statutory duty, has an action at law for damages. 161-240, 201+305.

The findings that the accident arose out of and in the course of the employment, that the employment was not casual in its nature, and that the employe was not a farm laborer, are supported by the evidence. 163-325, 204+22.

**Employer.**

211+327, note under § 4326 (g).

The evidence supports the finding and justifies the conclusion that the town board had authorized the work to be done and, in having the road graded over the railroad crossing at the expense of the railroad company, was acting within the scope of its authority. 211+477.

**Employee.**

165-30, 205+633.

One employed upon a steam dredge in a drainage project is not excluded from the compensation act as coming within the class designated as "farm laborers." 157-357, 195+266.

Employer used elevator without guards as provided by law, and the employe, a minor over 16 years old, was injured thereon. Held, that the language, "minors who are legally permitted to work under the laws of the state" excludes from the act minors whose employment is prohibited by law. 158-495, 198+290.

Teamster held employe. 158-522, 198+134.

The undisputed facts show that the claimant was in the employ of the county at the time of the accident which caused the injuries for which he seeks compensation. 163-309, 204+40.

Upon the facts stated in the opinion, the commission was justified as a matter of law in holding that decedent was not an employe. 163-498, 204+635.

By auditing, allowing, and paying the bill of a workman employed by direction of a member of the board to remove brush growing along the sides of a town road, the board ratified unauthorized employment. 164-358, 205+258.

The evidence in this case compels a finding that the employe received a hernia, being an injury to the physical structure of his body, from an accident arising out of and in the course of his employment. 166-41, 207+183.

The transaction amounted to a substitution of the father for the son; and that he having been killed in an accident arising out of and in course of his employment his dependents were entitled to compensation. 166-186, 207+621.

Respondent held an employe and not an independent contractor. 167-72, 208+421.

There is evidence supporting the finding of the Industrial Commission that the deceased was an employe of the town, hired by the overseer, in virtue of the statute mentioned, under conditions existing which gave him authority to act for the town. 209+910.

An employe who receives compensation for his services in the form of commissions instead of wages is within the scope of the Compensation Act. 210+1004.

Construing a written contract, it is held that relator's husband was not an independent contractor, but an employe or servant of the corporation he served. 210+1004.

A partnership is not a legal entity. The members thereof may become the individual employes of a person who hires them to perform services for him. 210+1004.

A well driller, who was hired to sink a well for the owner of a building under the circumstances related in

4326G?  
234nw 452  
  
4326H  
177m 98  
230nw 486  
  
4326H  
173m 564  
173m 147  
175m 368  
218nw 126  
218nw 555  
221nw 430  
224nw 459  
Sec. 1-2  
243nw 706  
246nw 37  
  
4326J  
177m 197  
178m 310  
233nw 467  
  
227nw 48  
228nw 931  
  
174m 491  
219nw 869  
224nw 840  
245nw 615  
  
4326J  
174m 491  
250nw 679  
251nw 274  
252nw 439  
4261  
4269  
4280  
  
4326L-1  
242nw 897  
242nw 721  
  
4326M  
227nw 661  
227nw 663

the opinion, was not an independent contractor, but an "employee". 211+313.

In gaveling a town road the town board paid the farmer who presented himself with a team and wagon a certain price for each load loaded, hauled and unloaded, the board provided the gravel pit, and supervised the loading of the proper quantity and kind of material, and designated the place of unloading. It is held: The relation thereby created between the town and the hauler was that of employer and "employee." 211+327.

Firemen are within the operation of the Workmen's Compensation Act. 212+461.

Truckman held independent contractor. 213+49.

#### Accidental injuries.

A sudden and violent rupture or break in the physical structure of the body of an employee, caused by some strain or exertion in the employment of the master, is an "accidental injury" within the meaning of the Workmen's Compensation Act, even though no external unforeseen event, such as slipping, falling, or being struck, contributes thereto. 157-122, 195+784.

An inguinal hernia, the development of which is caused by overexertion or strain, is an "accidental injury" within the Workmen's Compensation Act and is compensable. 161-461, 202+30.

If an unforeseen accident to an employee, while engaged in the performance of his work, directly causes an injury to the physical structure of his body, the injury is compensable under the Workmen's Compensation Act, even though the employee had a natural weakness predisposing him to such an injury. 166-41, 207+183.

The existence of a disease which does not impair the employee's ability to work will not prevent a recovery if an accident accelerates the disease to a degree of disability. 209+635.

An actual aggravation of an existing infirmity caused by accident in the course of employment is compensable, even though the accident would have caused no injury to a normal person. 209+635.

Compensation follows because of the effect of the injuries upon the disease. 209+635.

Whether paresis, primarily caused by syphilis, is lighted up or accelerated by injuries is a question of fact. 209+635.

#### Injuries arising out of employment.

165-354, 206+433; 165-473, 206+933.

Claimant was employed to act as Santa Claus about and in a store. In his work children pulled at his clothes, and because of that he sought seclusion in a room in the rear of the store, and there removed the mask half from his face and attempted to light and smoke a cigarette. The beard caught fire, injuring his face and hands. Held, that his injuries arose out of and in the course of his employment. 157-290, 196+261.

An employee who suffers injury in a street brawl brought on by himself, and for his own purposes, is not entitled to compensation, even though he was engaged in his employer's business just before the fracas, and intended to resume it immediately afterwards. 157-428, 196+477.

Where the employee enters the premises of the employer on her way to her work and pursues the proper course to the place of her labor, while there in the performance of her duties, and until she leaves the premises by the ordinary means of exit, she is engaged in the ordinary pursuit of her employment, and is entitled to the protection and is subject to the limitations of the Compensation Act. 158-495, 198+290.

An employee necessarily using an elevator on premises of employer is at common law an employee, and not a passenger. 158-495, 198+290.

Such employee using such elevator 20 minutes before time to begin work is there within a reasonable time, and on the premises "during the hours of service." 158-495, 198+290.

Some general characteristics indicated: (1) Employee is "in course of employment" when he does those reasonable things which his contract with his employment expressly or impliedly permits him to do. (2) It "arises out of" the employment when it reasonably appears from all the facts and circumstances that there is a casual connection between the conditions which the employer puts about the employee and the resulting injury. (3) It is employment as a contributing proximate cause and which comes from a hazard to which the employee would have been equally exposed apart from the employment. (4) It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. 158-495, 198+290.

The word "reasons" as there used refers to the provocation for the assault, and, if the proper work of the employee furnishes the sole provocation for the assault, it is to be considered as directed against him because of his employment. 160-185, 199+573.

Injury from assault by third person was compensable. 160-185, 199+573.

Voluntary fireman held within scope of employment. 161-20, 200+927.

Finding that death caused by shock of accident sustained. 161-471, 201+934.

Whether claimant's disability resulted from the injury or from prior disease was, under the evidence, a question of fact for the Industrial Commission to determine. 161-490, 202+26.

Workman not protected while going to or returning from work. 162-213, 202+485.

Respondent was sent upon a special errand which required his presence out several miles from the office until 10 o'clock at night. He was returning to his home when injured. Held that he was where his duties called him in the course of his employment, and is entitled to compensation. 162-433, 203+442.

There being no evidence contra, there is required a finding that the hernia was due to an accident arising out of and in the course of relator's employment. 163-394, 204+161.

Medical testimony attributed the cancer to the injury. Held, that the evidence justified an award, and that the conclusion of the Industrial Commission was not conjectural. 163-397, 204+323.

Repairing automatic machines. 164-199, 204+641.

Employee on way home not in course of employment. 165-458, 206+717.

A strain to which the relator was subjected in his work was the exciting or immediate cause of a hernia which developed, and he is entitled to compensation under the Workmen's Compensation Act. 166-55, 207+185.

Where employer and employee are residents of this state, and the employer has his business localized in this state, and the employee performs services pertaining to that business under a contract made in this state, he is within the protection of the Compensation Law, although his services may be performed outside the state. 166-149, 207+193.

An employee is not within the act while performing services outside the scope of his employment as a voluntary accommodation to his employer or to others. 166-251, 207+636.

An employer, who directs an employee to perform services for a third party, remains liable under the act for injuries sustained, if the relation of employer and employee continued to exist between them during the performance of such services. 166-251, 207+636.

A police officer, while on duty, went to his home where he kept his weapons to get his revolver. It accidentally fell upon the floor, and was discharged, breaking his leg. Held, that the compensation law applied. 167-407, 209+26.

The evidence establishes that a strain to which the relator was subjected in the course of his work was the immediate or exciting cause of a rupture of the abdominal muscles, and that he is entitled to compensation for the disability resulting therefrom. 167-424, 209+313.

Truck driver returning to place of business. 167-515, 208+645.

There should have been an award, under the Compensation Act, for a hernia resulting to the relator from accidental injury. 209+887.

Injury during lunch hour. 209+898.

Dependents of employee killed by robbers were entitled to compensation. 210+1003.

The finding of the Industrial Commission that a hernia was caused by a workman's attempt to lift a can of garbage is sufficiently supported by competent evidence. 211+8.

To relieve the hernia, a surgical operation was performed. It was followed by an attack of delirium tremens and the death of the workman. The commission sustained a finding of the referee that the "operation did set into activity delirium tremens," and that death was the result of the operation and the subsequent complications. Held, that the finding is supported by the evidence. 211+8.

The undisputed evidence shows that the claimant's disability resulted from an injury sustained in performing the duties of his employment. 211+320.

Injury from accidental discharge of gun carried for employ's own purposes not compensable. 211+330.

An employee with his own team was hauling dirt at a stated price per day or hour, and, as the noon hour approached, with the permission of the employer, he

drove from the place of hauling to his home, about a mile distant, to eat, and to feed his team, and while engaged in unhitching his team he suffered an accidental injury. It is held: The finding that the accident did not arise out of or in the course of his employment cannot be disturbed. 211+579.

Evidence considered, and held sufficient to warrant a finding that decedent's injury was the proximate cause of his death, and warranted the award made. 211+683.

The evidence sustains the finding of the Industrial Commission that the deceased employee, he janitor and caretaker of a church, was killed in the course of his employment, though the work was not that which he was specifically directed to do. 212+173.

Firemen on way to fire. 212+461.

Boarding freight going to working place. 213+546.

Effect of violation of law. 213+546.

4327 sub sec 9-10 173m 564 218nw 126 4327 247aw 235  
**4327. Occupational diseases—How regarded—Compensation for—Definitions of—**(1) The disablement of an employe resulting from an occupational disease described in sub-section (9) of this section, except where specifically otherwise provided, shall be treated as the happening of an accident within the meaning of Part 2 of this act and the procedure and practice provided in such Part 2 shall apply to all proceedings under this section, except where specifically otherwise provided herein. Whenever used in this section, "disability" means the state of being disabled from earning full wages at the work at which the employe was last employed, and "disablement" means the act of becoming so disabled.

(2) If an employe is disabled or dies and his disability or death is caused by one of the diseases mentioned in sub-section (9) of this section, and the disease is due to the nature of the corresponding employment as described in such sub-section in which such employe was engaged and was contracted therein, he or his dependents shall be entitled to compensation for his death or for the duration of his disability according to the provisions of Part 2 of this act, except as otherwise provided in this section; provided, however, that if it shall be determined that such employe is able to earn wages at another occupation which shall be neither unhealthful nor injurious, and such wages do not equal his full wages prior to the date of his disablement, the compensation payable shall be a percentage of full compensation proportionate to the reduction in his earning capacity.

(3) Neither the employe nor his dependents shall be entitled to compensation for disability or death resulting from disease unless the disease is due to the nature of his employment and contracted therein within the twelve months previous to the date of disablement, whether under one or more employers.

(4) If an employe at the time of his employment, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation shall be payable.

(5) The total compensation due shall be recoverable from the employer who last employed the employe in the employment to the nature of which the disease was due and in which it was contracted. If, however, such disease was contracted while such employe was in the employment of a prior employer, the employer who is made liable for the total compensation as provided by this sub-section, may appeal to the commission for an apportionment of such compensation among the several employers who since the contraction of such disease shall have employed such employe in the employment to the nature of which the disease was due. Such apportionment shall be proportioned to the time such employe was employed in the service of such employers, and shall be determined

only after a hearing, notice of the time and place of which shall have been given to every employer alleged to be liable for any portion of such compensation. If the commission find that any portion of such compensation is payable by an employer prior to the employer who is made liable to the total compensation as provided by this sub-section, it shall make an award accordingly in favor of the last employer, and such award may be enforced in the same manner as an award for compensation.

(6) The employer to whom notice of death or disability is to be given, or against whom claim is to be made by the employer shall be the employer who last employed the employe during the said twelve months in the employment to the nature of which the disease was due and in which it was contracted, and such notice and claim shall be deemed seasonable as against prior employers.

(7) The employe or his dependents, if so requested, shall furnish the last employer or the commission with such information as to the names and addresses of all his other employers during the said twelve months, as he or they may possess; and if such information is not furnished, or is not sufficient to enable such last employer to take proceedings against a prior employer under sub-section (5) of this section, unless it be established that the disease actually was contracted while the employe was in his employment, such last employer shall not be liable to pay compensation, or, if such information is not furnished or is not sufficient to enable such last employer to take proceedings against other employers under sub-section (5) such last employer shall be liable only for such part of the total compensation as under the particular circumstances the commission may deem just; but a false statement in the information furnished as aforesaid shall not impair the employe's rights unless the last employer is prejudiced thereby.

(8) If the employe, at or immediately before the date of disablement, was employed in any process mentioned in the second column of the schedule of diseases in sub-section (9) of this section, and his disease is the disease in the first column of such schedule set opposite the description of the process, the disease presumptively shall be deemed to have been due to the nature of that employment.

(9) For the purposes of this act only the diseases enumerated in column one, following, shall be deemed to be occupational diseases:

Column 1.	
Description of Diseases.	Description of Process.
1. Anthrax.	1. Handling of wool, hair, bristles, hides or skins.
2. Lead poisoning or its sequelae.	2. Any process involving the use of lead or its preparations or compounds.
3. Mercury poisoning or its sequelae.	3. Any process involving the use of mercury or its preparations or compounds.
4. Phosphorous poisoning or its sequelae.	4. Any process involving the use of phosphorous or its preparations or compounds.
5. Arsenic poisoning or its sequelae.	5. Any process involving the use of arsenic or its preparations or compounds.



6. Poisoning by wood alcohol.
7. Poisoning by nitro and amido-derivatives of benzene (dinitrobenzol, anilin and others), or its sequelae.
8. Poisoning by carbon bisulphide or its sequelae.
9. Poisoning by nitrous fumes or its sequelae.
10. Poisoning by nickel carbonyl or its sequelae.
11. Dope poisoning (poisoning by tetrachloromethane or any substance used as or in conjunction with a solvent for acetate of cellulose or its sequelae).
12. Poisoning by gonioma kamassi (African boxwood) or its sequelae.
13. Chrome ulceration or its sequelae.
14. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.
15. Glanders.
16. Compressed air illness or its sequelae.
17. Ankylostomiasis.
18. Miner's nystagmus.
19. Subcutaneous cellulitis of the hand (beat hand).
20. Subcutaneous cellulitis over the patella (Miner's beat knee).
21. Acute bursitis over the elbow (Miner's beat elbow).
22. Inflammation of the synovial lining of the wrist joint and tendon sheaths.
23. Cataract in glassworkers.
6. Any process involving the use of wood alcohol or any preparation containing wood alcohol.
7. Any process involving the use of a nitro or amido-derivative of benzene or its preparations or compounds.
8. Any process involving the use of carbon bisulphide or its preparations or compounds.
9. Any process in which nitrous fumes are evolved.
10. Any process in which nickel carbonyl gas is evolved.
11. Any process involving the use of any substance used as or in conjunction with a solvent for acetate of cellulose.
12. Any process in the manufacture of articles from gonioma kamassi (African boxwood).
13. Any process involving the use of chromic acid or bichromate of ammonium potassium, or sodium, or their preparations.
14. Handling or use of tar, pitch, bitumen, mineral oil, or paraffin or any compound, product or residue of any of these substances.
15. Care or handling of any equine animal or the carcass of any such animal.
16. Any process carried on in compressed air.
17. Mining.
18. Mining.
19. Mining.
20. Mining.
21. Mining.
22. Mining.
23. Processes in the manufacture of glass involving exposure to the glare of molten glass.

(10) Nothing in this section shall affect the rights of an employe to recover compensation in respect to a disease to which this section does not apply if the disease is an accidental personal injury within the meaning of the other provisions of Part 2 of this act.

(11) The provisions of this section shall not apply to disability or death resulting from a disease contracted prior to the date on which this act takes effect. ('21 c. 82 § 67)

An employe who has become afflicted with a disabling ailment, not among those enumerated, through negligence of the employer amounting to the omission of a statutory duty, has an action at law for damages. 161-240, 201+305.

**4328. Not retroactive**—All rights and liabilities arising on account of accidents or injuries occurring prior to the taking effect of this act shall be governed by the then existing law. ('21 c. 82 § 68)

**4329. Invalidity of part not to affect all**—In case for any reason any paragraph or any provision of this act shall be questioned in any court of last resort, and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that parts 1 and 2 are hereby declared to be inseparable, and if either part be declared void or inoperative in an essential part, so that the whole of such part must fail, the other part shall fall with it and not stand alone. Except as otherwise expressly provided, Part 1 of this act shall not apply in cases where part 2 becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension or modification of the common law. ('21 c. 82 § 69)

161-240, 201+305.

**4330. Laws repealed**—Chapter 467, General Laws Minnesota for 1913, and all acts amendatory thereof, and all acts and parts of acts inconsistent with this act are hereby repealed; provided, however, that this act shall not be deemed to repeal chapter 359, Laws of Minnesota for 1919, insofar as the same applies to employers not under part 2 of this act. ('21 c. 82 § 70)

#### GENERAL PROVISIONS.

**4331. Workmen's compensation for employes of highway department**—The Commissioner of Highways shall report to the Industrial Commission of Minnesota any accident which may occur to any person in the employ of the highway department in the same manner and upon the same conditions as is prescribed in Section 32 of Chapter 82, Laws of 1921, relating to reports of employers, except that such report shall not be required to contain any statement in relation to liability to pay compensation as is required in cases of other employers. ('23 c. 242 § 1)

**Explanatory note**—For Laws 1921, c. 82, § 83, see § 4293.

**4332. Duties and powers of industrial commission**—The Industrial Commission of Minnesota shall be vested with the same powers and duties with reference to claims for compensation or other benefits of any employe of the Highway Department as in cases of employes of any other employer, and the same procedure shall be used in determining any such liability as in other cases of liability under the Workmen's Compensation Laws of this State, except as in this Act otherwise provided. ('23 c. 242 § 2)

**4333. Same—Report of commission**—Upon the filing of any such report, or upon information received by the Industrial Commission of any injury for which liability for compensation from the Highway Depart-

4330  
223nw 926  
9283

4331  
232nw 718  
2554

ment may arise, it shall be the duty of the Industrial Commission to make a preliminary investigation to determine whether there is a probable liability for compensation to such injured person. The Industrial Commission may require the assistance of the Highway Department or any of the employes thereof in making such investigation, and shall be furnished with all facts which may appear in the records of such Highway Department bearing upon facts relating to such employe or such accident or injury. The Industrial Commission shall thereupon make Findings of Fact indicated by such preliminary investigation, and the award or other determination which the Commission may determine should be made with reference to the liability for compensation, and a copy of such Findings of Fact and proposed award or other determination shall be furnished to such injured person, the Commissioner of Highways and the Attorney General by mailing a copy to each thereof. Within ten days after the mailing of such Findings of Fact and proposed award or other determination, or such further time as the Industrial Commission may fix, the injured person, Commissioner of Highways or the Attorney General may file with the Industrial Commission an objection to such proposed award or other determination. If such objection is filed, the Industrial Commission shall reconsider such proposed award or determination and may set aside or correct any such findings, award or other determination made as aforesaid without formal hearing. In the event that an award or other determination cannot be made in conformity with the performance of the Workmen's Compensation Law and the approval of the injured person or other persons filing such objections, without formal hearing as aforesaid, the said matter shall be set down for a formal hearing and determination by the Commission as in other contested cases. If no such objections are filed as provided herein, such proposed Findings and Award or other determination that the Commission may make upon such preliminary investigation or reconsideration aforesaid, shall be final, subject to the right of the Commission to reopen or modify as provided in the Compensation Laws with reference to other awards or determinations of compensation claims. ('23 c. 242 § 3)

**4334. Rate of compensation**—All compensation or other benefits due to employes of the Highway Department as the same may be determined by the Industrial Commission shall be paid pursuant to the Workmen's Compensation Laws of this state and the award or determination that the Industrial Commission may make, out of the part of the trunk highway fund apportioned to the department in which the employe was engaged at the time of the accident. Provided also that the same receipts for payment of compensation and reports as are required to be filed with the Industrial Commission showing payment of compensation in other cases shall be taken for such payments by the Highway Department and filed with the Industrial Commission. ('23 c. 242 § 4)

**4334-1. Injuries prior to June 1, 1921**—That the powers and duties vested in the Industrial Commission of Minnesota by this act shall apply to injuries to any employe of the Highway Department which arose out of and in the course of his employment since and including June 1, 1921, and which have not been settled and paid by specific appropriation of the Legislature of the State of Minnesota; provided, that all claims based on injuries resulting from accident, that occurred prior to April 12, 1923, shall be forever barred unless proceedings for the enforcement thereof are

commenced prior to January 1, 1926, and any award of the Industrial Commission for such claims shall be paid out of the Trunk Highway Fund, as other awards are paid. ('23, c. 242, § 5; amended '25, c. 26; '25, c. 121)

**4335. Compensation for injury preferred claim in certain cases**—That whenever compensation has heretofore been awarded, or shall hereafter be awarded against any county, city, town, village or school district by any court or commission, having jurisdiction, to any injured employe, or to the dependents of any deceased employe, under the provisions of any workmen's compensation law of this state, such compensation shall be a preferred claim against such county, city, town, village or school district and it shall be the duty of the proper officers of any such county, city, town, village or school district to pay any such claim for workmen's compensation at such times and in such amounts as shall be ordered by the court or commission, out of the general fund of such county, city, town, village or school district, and from the current tax apportionment received by any such employer for the credit of said fund. ('21 c. 26 § 1)

**4336. Warrants are preferred claims**—That in any and all cases where the orders or warrants of such county, city, town, village or school district, have heretofore been issued, or shall hereafter be issued, in payment of any such compensation, and shall remain unpaid all such orders or warrants shall be preferred claims and shall be paid out of said fund, from current tax apportionments received for the credit of said fund, in preference to any other claims for compensation arising under said law subsequent to the issuing of any such orders or warrants by said employer. ('21 c. 26 § 2)

**4337. Act construed liberally**—This act shall be liberally construed in order to effect the prompt payment of claims for workmen's compensation against any county, city, town, village or school district by any injured employe, or the dependents of any deceased employe of such county, city, town, village or school district. ('21 c. 26 § 3)

**4337-1. State employees**—Application of workmen's compensation act—Employees of highway department excepted—This act shall apply to all employees of the State of Minnesota employed in any department thereof, except the highway department, whose employes are already provided for by Chapter 242 Laws of 1923, and wherever in this act the terms "heads of departments" or "employees of the State of Minnesota" are mentioned it is understood that said highway department and the employees thereof are excepted and nothing in this act shall be construed as modifying, amending or repealing Chapter 242, General Laws of 1923. ('27, c. 436, § 1)

**Explanatory note**—For Laws 1923, c. 242, see §§ 4331 to 4334-1, herein.

**4337-2. Same**—Reports by heads of state Departments to Industrial Commission—The head of every department of the State of Minnesota shall report to the Industrial Commission of Minnesota any accident which may occur to any person in the employment of the State of Minnesota in such department in the same manner and upon the same conditions as prescribed in Section 32, Chapter 82, Laws of 1921, relating to reports of employers, except that such report need not contain any statement in relation to liability to pay compensation. ('27, c. 436, § 2)

**Explanatory note**—For Laws 1921, c. 82, § 32, see § 4292, herein.

4334 Et seq.  
23 — 269  
229nw 560  
5416

4337-5  
229nw 560

4337  
Et seq.  
27 — 436  
33 — 161

**4337-3. Same—Powers of Industrial Commission as to claims by state employees**—The Industrial Commission of Minnesota is hereby vested with the same powers and duties with reference to claims for compensation or other benefits to employees of the State as in the case of employees of other employers, and the same procedure shall govern in determining the liability of the State for compensation to employees of the State as in other cases of liability under the Workmen's Compensation Laws of this State, except as herein otherwise provided. ('27, c. 436, § 3)

**4337-4. Same — Procedure — Findings — Awards**—Upon the filing of any such report or upon information received by the Industrial Commission of any injuries for which liability for compensation from the State may arise, it shall be the duty of the Industrial Commission to make a preliminary investigation to determine whether there is a probable liability for compensation by the State to such injured employee. The Industrial Commission may require the assistance of the head of any State department or any other employees of the State in making such investigation and shall be furnished with all facts which may appear in the records of any State department bearing upon the question of accident or injury to any such employees. The Industrial Commission shall thereupon make findings of fact as determined by such preliminary investigation and the award or other determination which the Commission may determine should be made with reference to the liability of the State for compensation, and a copy of such findings of fact and proposed award or determination shall be furnished to such injured person, the head of the department in which he is an employee, and the Attorney General, by mailing a copy thereof to each such official. Within ten (10) days after the mailing of such findings of fact, proposed award or other determination, or such further time as the Industrial Commission may fix, the injured person, head of said department, and Attorney General may file with the Industrial Commission an

objection to such proposed award or determination. After such objection is filed the Industrial Commission shall reconsider such proposed award or determination and may set aside or correct any such findings, award or other determination without formal hearing. In the event that an award or other determination cannot be made in conformity with the provisions of the Workmen's Compensation Law and the approval of the injured person or other persons filing such objections without formal hearing as aforesaid, the matter shall be set down for a formal hearing and determination by the Commission as in other contested cases. If no such objections are filed, as provided herein, such proposed findings, award or other determination that the Commission shall have made upon such preliminary investigation or reconsideration aforesaid shall be final, subject to the right of the Commission to reform or modify the same as provided in the compensation laws with reference to other awards or determination of compensation claims. ('27, c. 436, § 4)

**4337-5. Same—Payment of compensation awarded**—A certified copy of the said findings and final award of the Commission, as herein provided, shall be filed with the Attorney General and with the State Auditor, and payment of compensation or other benefits as the same may be determined by the Industrial Commission in such final award shall be paid to the persons entitled thereto by the State Treasurer upon warrants prepared and signed by the Industrial Commission and approved by the State Auditor, pursuant to said final award, out of any money appropriated for the purpose of paying such compensation claims against the State of Minnesota. Provided that it shall not be necessary to take and file receipts with the Industrial Commission for the payment of installments of compensation or other compensation benefits paid under the provisions of this act to employees of the State of Minnesota or in compliance with the final awards of the Commission herein provided. ('27, c. 436, § 5)

CHAPTER 23B

IMMIGRATION

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4338, 4339. [Superseded.] >

State board of immigration and the office of Commissioner of Immigration are abolished. See § 53-45. The powers of the board and Commissioner are transferred to the Department of Conservation. See § 53-22.

**4340. Commissioner of immigration—Term—Compensation, etc.—Other agents**—The said board of immigration shall appoint a qualified elector of this state to be the general executive agent of said board, and such agent shall be officially known and styled, commissioner of immigration. The said commissioner of immigration shall hold office during the pleasure of said board, shall receive such compensation as said board shall determine, and shall perform such functions as said board may designate. Before entrance upon the duties of his office, the commissioner of immigration shall make and subscribe an oath of office in the usual

form and shall execute and deliver to the governor a bond to the state of Minnesota, in the sum of ten thousand dollars, with sufficient sureties, to be approved by said board, conditioned upon the honest and faithful performance of his duties as such commissioner. The said board shall also employ such other servants and agents as in the judgment of said board shall be necessary, and shall define the duties, terms of service and compensation of the persons so employed. ('07 c. 267 § 3) [3949]

Office of commissioner of immigration abolished. See § 53-45. The powers of the Commissioner are transferred to the Department of Conservation.

**4341. Office**—The Minnesota state board of immigration shall be provided with an office and suitable furniture and stationery at the expense of the state. ('07 c. 267 § 4) [3950]

**4342. Duties of board—Annual report**—The duties of said board of immigration, so far as practicable, shall be to collect and arrange statistics and other information in reference to the lands and general and