1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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INJUNCTIONS AND RESTRAINING ORDERS

4256. When restraining order or injunction not to be issued.
The labor injunction in Minnesota. 24MinnLawRev757.

4260-1. Jurisdiction of court limited.
The labor injunction in Minnesota. 24MinnLawRev757.
The state legislatures and unionism. 38MichLawRev 987.

4260-4. Court may not issue restraining orders in certain cases.
A non-profit hospital corporation cannot restrain picketing by non-professional maintenance employees desiring to bargain collectively. Northwestern Hospital v. P., 294NW215.

4260-7. Jurisdiction of court in certain cases.
Effect of illegal acts in course of picketing on right to injunction against all picketing. 24MinnLawRev131.
Picketing private residence. 24MinnLawRev132.

4260-12. Definitions.
(a).
Maintenance and non-professional employees of a non-profit hospital are within the statute. Northwestern Hospital v. P., 294NW215.

APPRENTICES

4260-37. Apprentice agreements — Contents. — Every apprentice agreement entered into under this act shall contain:

(1) The names of the contracting parties.

(2) The date of birth of the apprentice.

(3) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than 144 hours per year. Provided, however, that the maximum number of hours of work per week not including time spent in related and supplemental instruction for any apprentice shall not exceed either the number prescribed by law or the customary regular number of hours per week for the employees of the company by which the apprentice is employed, such number to be determined by the local joint apprenticeship committee for the trade.

(5) A statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process.

(6) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated.

(7) A statement providing for a period of probation of not more than 500 hours of employment and instruction extending over not more than four months, during which time the apprentice agreement shall be terminated by the director at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the director by mutual agreement of all parties thereto, or canceled by the director for good and sufficient reason.

(8) A provision that all controversies or differences concerning the apprentice agreement which cannot be adjusted locally shall be submitted to the director for determination as provided for in section nine.

(9) A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may, with the approval of the director, transfer such contract to any other employer provided that the apprentice consents and that such other employer agrees to assume the obligations of said apprentice agreement.

(10) Such additional terms and conditions as may be prescribed or approved by the director not inconsistent with the provisions of this act. (As amended Mar. 28, 1941, c. 85, §1.)

CHAPTER 23A

Workmen's Compensation Act

PART I
COMPENSATION BY ACTION AT LAW— MODIFICATION OF REMEDIES

4261. Injury or death of employee. [Repealed.]
Repealed. Laws 1937, c. 64, §10.
Severson v. H., (CCA8), 105F(2d)622. Cert. den., 60SCR 514. Reh. den., 60SCR607.

PART II
ELECTIVE COMPENSATION

4268. Not applicable to certain employments. [Repealed.]
3. Casual employment.
Removing screens and putting on storm windows on two 3-story buildings was casual employment, but employer and employee were within the Act if the employment was in the usual course of business or occupation of employer. Fisher v. M., 294NW477. See Dun. Dig. 10394.

4271. Presumption as to acceptance of provisions of part 2. [Repealed.]
Evidence sustains finding that employer neglected to post and keep posted in a conspicuous place in his place of business, notice of election not to be bound by Part II of compensation act, and his election was inoperative. Walerius v. F., 289NW55. See Dun. Dig. 10389.

4272-1. Employer's right to elect abolished.
Rights and obligations created by compensation act are contractual, and rights granted and obligations imposed necessarily rest upon statute and are limited as granted or imposed by it. McGough v. M., 287NW857. See Dun. Dig. 10385.

A basic thought underlying compensation act is that business or industry shall in the first instance pay for accidental injury as a business expense or a part of cost of production. Id.

Compensation act should receive a broad and liberal construction in the interest of workmen, and court should studiously avoid a narrow or forced construction of third party statute. Id.

Employer's liability has for its foundation the existence of employer-employee relation. Id. See Dun. Dig. 10393.

City employees working out relief furnished them cannot waive their right to benefit of compensation act, notwithstanding they are subject to epileptic fits and insurance companies hesitate to issue policies covering them. Op. Atty. Gen., (523a-17), Jan. 30, 1940.

A waiver signed by one taking employment from a city cannot affect liability for compensation. Op. Atty. Gen., (523E-1), April 18, 1940.

4272-2. All employers shall be insured—Exceptions.
It is optional with municipal officials to insure liability of employees. Op. Atty. Gen., (523E-4), March 15, 1940.

If independent contractor has no employees working for him, he is not required to carry insurance, since he is not an employer. Op. Atty. Gen., (523E-1), April 18, 1940.

Drivers of school buses may be either employees or independent contractors, depending upon terms of contract. Op. Atty. Gen. (523f), Oct. 15, 1940.

4272-3. Liability of employer exclusive.
Fact that person suing for personal injuries may have received payments from defendant's compensation insurer could in no sense be a bar to his common law action based on negligence if he in fact was not an employee engaged within scope of his employment at time of his injury. Hasse v. V., 294NW475. See Dun. Dig. 10386.

An underground miner who became afflicted with a disabling ailment not covered by Compensation Act through negligence of employer in failing properly to ventilate has an action at law for damages. Applequist v. O., 296NW13. See Dun. Dig. 10398.

4272-4. Application of act.

See also notes under §4326(g)(2).

Evidence that employer was engaged, independently of his farming operations, in business of cutting and dealing in cord wood, justifies holding that latter operation is not one of farming. Stahl v. P., 288NW854. See Dun. Dig. 10394.

An employment is not casual where the employee is hired on a part time basis to render services at regularly recurring periods, and is paid extra compensation for certain kinds of service. Chisholm v. D., 292NW268. See Dun. Dig. 10394.

4272-5. Liability of others than employer.

Where premises are in exclusive possession of a lessee, the lessor having no business thereon, the two are not engaged in the accomplishment of the same or related purposes. Murphy v. B., 289NW567. See Dun. Dig. 10393.

In case involving electrocution of employee by defendant's uninsulated electric wire, where recovery is sought by employer's insurer, as subrogee, for payments made to employee's dependents, questions of negligence, assumption of risk, and contributory negligence of both employee and employer were for jury. Standard Acc. Ins. Co. v. M., 289NW782. See Dun. Dig. 10408.

Solicitation of orders by salesman of wholesaler upon premises of retailer does not amount to either a furtherance of a common enterprise or to accomplishment of same or related purposes. Smith v. O., 292NW745. See Dun. Dig. 10395.

(2).

Section 9657 is not amended or supplemented by §4272-5(2) so as to affect rights of next of kin, who are not dependents. Joel v. P., 289NW524. See Dun. Dig. 2608.

4272-6. Joint employers shall contribute.

A demonstrator was employe of a department store though amount equal to her wages was paid to store by company whose goods were being demonstrated. Ekrem v. H., 296NW180. See Dun. Dig. 10395.

4272-11. Disputes over liability—Payment of benefits—Reimbursement—Attorneys' fees.—Where benefits are payable under the provisions of this act, and a dispute arises between two or more employers or insurers as to which of said employers or insurers is liable for payment thereof, the commission may direct the payment of said benefits by one or more of said employers or insurers pending the determination of liability. Upon determination of liability the commission shall order the party liable for said benefits to reimburse any other party for payments made with interest at the rate of five per cent per annum. The commission may also award reasonable attorney fees in favor of the claimant and against the party held liable for said benefits. (Act Mar. 14, 1941, c. 64, §1.)

4272-12. Same—Order for payment—Use as evidence.—

Section 2. Any order of the commission under the provisions of this act directing the payments of said benefits by one or more of said employers or insurers pending the determination of liability shall not be used as evidence before any referee, commission, or court in which said dispute is pending. (Act Mar. 14, 1941, c. 64, §2.)

4274. Schedule of compensation.—Following is the schedule of compensation: (a) For injury producing temporary total disability, 66⅔ per cent of the daily wage at the time of injury, subject to a maximum compensation of $20.00 per week, and a minimum of $8.00 per week; provided, that if the time of injury the employee receives wages of $8.00 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 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 66⅔ per cent 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 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 66⅔ per cent 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 35 weeks; and thereafter, and in addition thereto compensation shall be that named in the following schedule:

(1) For the loss of a thumb, 66⅔ per cent of the daily wage at the time of injury during 60 weeks.

(2) For the loss of a first finger, commonly called index finger, 66⅔ per cent of the daily wage at the time of injury during 35 weeks.

(3) For the loss of a second finger, 66⅔ per cent of the daily wage at the time of injury during 30 weeks.

(4) For the loss of a third finger, 66⅔ per cent of the daily wage at the time of injury during 20 weeks.

(5) For the loss of a fourth finger, commonly called the little finger, 66⅔ per cent of the daily wage at the time of injury during 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, 66⅔ per cent of the daily wage at the time of injury during 30 weeks.

(9) For the loss of one of the toes other than a great toe, 66⅔ per cent of the daily wage at the time of injury during ten 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, 66⅔ per cent of the daily wage at the time of injury during 150 weeks.

(13) For the loss of a hand, including the wrist movement, 66⅔ per cent of the daily wage at the time of injury during 175 weeks.

(14) For the loss of an arm, 66⅔ per cent of the daily wage at the time of injury during 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, 66⅔ per cent of the daily wage at the time of injury during 125 weeks.

(17) For the loss of a foot, including ankle movement, 66⅔ per cent of a daily wage at the time of injury during 150 weeks.

(18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, 66⅔ per cent of the daily wage at the time of injury during 175 weeks.

(19) For the loss of a leg so close to the hip that no effective artificial member can be used, 66⅔ per cent of the daily wage at the time of injury during 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 a leg.

(21) For the loss of an eye, 66⅔ per cent of the daily wage at the time of injury during 100 weeks.

(22) For the complete permanent loss of hearing in one ear, 66⅔ per cent of the daily wage at the time of injury during 52 weeks.

(23) For the complete permanent loss of hearing in both ears, 66⅔ per cent of the daily wage at the time of injury during 156 weeks.

(24) For the loss of an eye and a leg, 66⅔ per cent of the daily wage at the time of injury during 350 weeks.

(25) For the loss of an eye and arm, 66⅔ per cent of the daily wage at the time of injury during 350 weeks.

(26) For the loss of an eye and a hand, 66⅔ per cent of the daily wage at the time of injury during 325 weeks.

(27) For the loss of an eye and a foot, 66⅔ per cent of the daily wage at the time of injury during 300 weeks.

(28) For the loss of two arms other than at the shoulder, 66⅔ per cent of daily wage at the time of injury during 400 weeks.

(29) For the loss of two hands, 66⅔ per cent of the daily wage at the time of injury during 400 weeks.

(30) For the loss of two legs, other than so close to the hips that no effective artificial member can be used, 66⅔ per cent of the daily wage at the time of injury during 400 weeks.

(31) For the loss of two feet, 66⅔ per cent of the daily wage at the time of injury during 400 weeks.

(32) For the loss of one arm and the other hand, 66⅔ per cent of the daily wage at the time of injury during 400 weeks.

(33) For the loss of one hand and one foot, 66⅔ per cent of the daily wage at the time of injury during 400 weeks.

(34) For the loss of one leg and the other foot, 66⅔ per cent of the daily wage at the time of injury during 400 weeks.

(35) For the loss of one leg and one hand, 66⅔ per cent of the daily wage at the time of injury during 400 weeks.

(36) For the loss of one arm and one foot, 66⅔ per cent of the daily wage at the time of injury during 400 weeks.

(37) For the loss of one arm and one leg, 66⅔ per cent of the daily wage at the time of injury during 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 employee is then qualified, 66⅔ per cent of the daily wage at the time of injury for such period as the Industrial Commission may determine, not to exceed 75 weeks.

(39) Where an employee 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 member compensations are provided in the specific schedule and in Subsection (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 per cent of the compensation payable under the schedule 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 compensations provided in Clause (c) of this section for loss of members or loss of use of members are subject to the same limitations as to maximum and minimum as are stated in Clause (a).

(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 66⅔ per cent of the daily wage at the time of the injury, not exceeding 25 weeks, provided the injury is such as to entitle the workman to compensation for at least 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.

(44) In all other cases of permanent partial disability not above enumerated the compensation shall be 66⅔ per cent 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 $20.00 per week. Compensation shall continue during disability, not, however, beyond 300 weeks.

(d) For permanent total disability as defined in Subsection (e) below, 66⅔ per cent of the daily wage at the time of the injury, subject to a maximum compensation of $20.00 per week and a minimum compensation of $8.00 per week; provided that if at the time of the injury the employee was receiving wages of $8.00 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 subsection shall not exceed $10,000 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 employee 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 Subsection (1), (2) and (3) of Section 15 (whose dependency shall be determined as if the employee were deceased); in which case the compensation provided for in said Section 15 shall, during the period of such employee'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 employee from working at an occupation which brings him an income, shall constitute total disability.

(f) In case a workman sustains an injury due to an accident arising out of and in the course of his

employment, and during the period of disability caused thereby death results approximately 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.

(g) If any employee entitled to the benefits of the workmen's compensation law is a minor and sustains injuries resulting in permanent total or permanent partial disability, the weekly earnings, for the purpose of computing the compensation to which he is entitled, shall be the weekly earnings which such minor would probably earn after arriving at legal age if uninjured, which probable earnings shall be approximately the average earnings of adult workmen below the rank of superintendent or general foreman in the plant or industry in which such minor was employed at the time of his injury. (As amended Act Apr. 28, 1941, c. 522, §1.)

1. In general.

The test of an injured employee's right to continuing compensation is not amount he is actually receiving in wages at determinative moment, but his ability to earn rather than figure fixed by "charity" of employer. Gildea v. State, 293NW598. See Dun. Dig. 10410.

4275. Dependents and allowances.

(1).

Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 287NW 787. See Dun. Dig. 10418.

(19).

Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 287NW 787. See Dun. Dig. 10418.

4276. Disability or death resulting from injury—Increase of previous disability—Special compensation fund.—If an employee receives an injury which of itself would cause only 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 weeks, the employee shall be paid by the state the remainder of the compensation that would be due for permanent total disability as provided for by Mason's Minnesota Statutes of 1927, Section 4274, Subsection (d), out of a special fund known as the special compensation fund; provided, further, that all employees who are now receiving, or who may hereafter become entitled to receive, compensation for permanent total disability, whether from the employer or from said special fund, after receiving the full amount of $10,000 for such disability, shall be paid from said fund an additional sum of not to exceed $2,500, in the same manner and with the same limitations except as to amounts, at the rate of one-half of the wages they were receiving at the time of the injury which rendered them permanently totally disabled, subject to a maximum of $15.00 per week and a minimum of $8.00 per week, but the full amount of their wages if at the time of such injury they were receiving less than $8.00 per week. Said fund shall be created for such purposes in the following manner:

A. In every case of the death of an employee resulting from an accident arising out of and in the course of his employment where there are no persons entitled to compensation, the employer shall pay to the industrial commission the sum of $300.00.

B. Whenever an employee shall suffer a compensable injury, which results in permanent partial disability by reason of the total loss of a member or members, or injury to a member or members resulting in less than a total loss of such member, and which injury entitles him to compensation pursuant to Mason's Minnesota Statutes of 1927, Section 4274, paragraph (c), the employer or his insurer shall, in addition to the compensation provided for in said paragraph (c), pay to the industrial commission for the benefit of the special compensation fund a lump sum, without interest deductions, equal to two per cent of the total compensation to which the employee is entitled to under said paragraph (c) for said permanent partial disability, said sum to be paid to the industrial commission as soon as the total amount of the permanent partial disability payable for the particular injury is determined by the industrial commission, or arrived at by the agreement of the parties and such amount is approved by the industrial commission.

Such sums as are paid to the industrial commission pursuant to the provisions hereof shall be by it deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits provided by this act. All money 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 paragraph A of this section, and dependency later is shown, or if deposit is or has been made pursuant to either paragraphs A or B hereof by mistake or inadvertence, or under such circumstances that justice requires a refund thereof, the state treasurer is hereby authorized to refund such deposit upon order of the industrial commission. (As amended Act Apr. 22, 1941, c. 384, §1.)

4279. Medical and surgical treatment.

Evidence held to sustain finding that employee suffered intermittent total disability necessitating medical care and attention, as result of sprained back which became chronic. Paul v. T., 287NW856. See Dun. Dig. 10415.

Employer is liable for compensation for all legitimate consequences following an accident, including unskillfulness or error of judgment of physician furnished. Id.

An employee who insists upon treatment of his compensable injury by a physician of his own choice can obtain reasonable value of services rendered by such physician although employer is willing and ready to knowledge of employee to furnish and pay for proper medical treatment by a physician of employer's choice but not otherwise. Carmody v. C., 291NE895. See Dun. Dig. 10415.

Right of injured employee to a change of physicians and to charge employer and its insurer with reasonable expense resulting therefrom is conditioned upon approval of the industrial commission, but where commission fails to act and informs employee to get insurer's consent thereto upon erroneous theory of law that employer and its insurer have the exclusive right to appoint the attending physician, and employee then seeks but insurer refuses such consent by insisting upon its claim of exclusive right to make such selection, employee is entitled to reimbursement. Morrell v. C., 293NW144. See Dun. Dig. 10415.

Where there is residual disability and promise of aid from surgery which should go far to restore physical efficiency, employee is entitled to additional surgical attention at expense of employer. Gildea v. State, 293NW 598. See Dun. Dig. 10415.

4280. Notice of injury, etc.

Evidence held to sustain finding that injured employee gave proper notice to his employer of intermittent total disability occasioned by a sprained back. Paul v. T., 287 NW856. See Dun. Dig. 10420.

4282. Limit of actions.

Limitation affecting right to claimed allowance for medical expenses require consideration of sections relating to notification of commission of discontinuance of payments and awards of new hearing. Op. Atty. Gen. (523a-20), Dec. 18, 1940.

It is doubtful whether general limitations would apply to a proceeding under this Act. Id.

4288. Employer to insure employees—Exceptions.

Nylund v. T., 295NW411; note under §4290(4).

4289. Who may insure—Policies.

"Over-all Retrospective Coverage" plan of insurance. Op. Atty. Gen., (517J), Feb. 7, 1940.

4290. Certain persons liable as employers—Contractors—Subcontractors, etc.

(4).

Holder of a permit under §§6394-14 to 6314-40 to cut and remove timber from state land may be considered a general contractor of state so as to be liable to pay workmen's compensation to employee of a sub-contractor who cuts and removes timber without carrying insurance as provided by §4290(4). Nylund v. T., 295NW411. See Dun. Dig. 10391.

If independent contractor has no employees working for him, he is not required to carry insurance, since he is not an employer. Op. Atty. Gen., (523E-1), April 18, 1940.

4291. Liability of party other than employer—Procedure. [Repealed.]

3. Subdivision 2.

Statute contemplates injury originating under circumstances which render a third party and the employer liable, and if no common connection, relation or interest between third party and employer is established, employee may recover full damages from third party, and it is immaterial that employee has been awarded compensation from his employer. McGough v. M., 287NW857. See Dun. Dig. 10408.

Employer is not entitled to subrogation or to credit on compensation of amount recovered by employee from malpracticing physician, though such malpractice increased disability and resulted in increased compensation. Id.

4295. Employer to notify commission; etc.

A decision prior to amendment by Laws 1933, c. 74, §1, terminating payments, is final and conclusive as to right to further payments and terminates jurisdiction of commission. Terres v. I., 293NW301. See Dun. Dig. 10388.

4302. Procedure in case of dispute.

Industrial commission may direct payment of workmen's compensation benefits and allow attorneys fees in cases of disputed liability. Laws 1941, c. 64.

A demurrer is neither authorized nor recognized by the compensation act. McGough v. M., 287NW857. See Dun. Dig. 10421.

4304. Rehearing.

The mere fact that medical experts express divergent opinions as to cause of disability in a workmen's compensation case, heard by a referee, does not obligate commission to open case and appoint a neutral expert. Rehak v. S., 288NW22. See Dun. Dig. 10421.

4313. Commission not bound by rules of evidence.

Burden of proof is upon a claimant to show traumatic character of a hernia. Hillman v. N., 291NW609. See Dun. Dig. 10406.

Where it appears that industrial commission on appeal from findings of a referee considered an exhibit excluded by referee, there is no basis for claiming error in exclusion of evidence. Byhardt v. B., 296NW504. See Dun. Dig. 10421.

4315. Appeals to industrial commission—Time—Notice—Fee—Transcript—Determination.

Commission is ultimate trier of facts and has power to annul, modify or amend any findings made by its referee. Walerius v. F., 289NW55. See Dun. Dig. 10423.

4318. Proceedings in case of default—Entry of judgments upon awards.

Where parties to an award of compensation procured judgment thereon without waiting 30 days after default, there is no lack of jurisdiction in district court to render judgment on a stipulation for judgment. Connors v. U., 296NW21. See Dun. Dig. 9003c.

Stipulation for judgment in district court on a formal award approving workmen's compensation settlement held not obtained by fraud or misrepresentation. Id. See Dun. Dig. 10422.

4319. New hearing may be granted.

Terres v. I., 293NW301; note under §4295.

Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 287NW787. See Dun. Dig. 10421.

4320. Appeal to Supreme Court—Grounds—Fees.

It is for triers of fact to choose not only between conflicting evidence but also between opposed inferences. Husnick v. S., 288NW389. See Dun. Dig. 10426.

It is for triers of fact to choose not only between conflicting evidence but also between opposed inferences. Roberts v. R., 288NW591. See Dun. Dig. 10426.

Where evidence of causal connection between injury and alleged accident is in conflict, a finding of commission based on competent evidence must be sustained. Schwendig v. A., 289NW772. See Dun. Dig. 10426.

A decision should stand, where it is sustained by the facts well found, even though there was error in other findings, which if changed or set aside would not affect the result. Cieluch v. E., 290NW302. See Dun. Dig. 1402.

Where claim is made that industrial commission did not consider certain evidence, which was part of transcript in case, and decision of commission recites that it considered transcript, all files, records and proceedings, recitals will be taken as affirmatively showing that evidence was considered. Id. See Dun. Dig. 1402.

Finding of commission that claimant did not suffer a traumatic hernia was one of fact which court cannot disturb if it is justified by evidence and reasonable inferences to be drawn therefrom. Hillman v. N., 291NW 609. See Dun. Dig. 10426.

Finding of fact by Industrial Commission which is supported by evidence will not be reversed. Gildea v. State, 293NW598. See Dun. Dig. 10426.

Where a party to a workmen's compensation proceeding obtains additional time in which to apply for certiorari, writ must be obtained and be served upon both industrial commission and employer and insurance carrier within time so limited, and actual notice does not take place of written notice. Haimila v. O., 293NW599. See Dun. Dig. 10426.

Issue of employment was one of fact upon which finding of commission cannot be disturbed if fairly supported by evidence. Ekrem v. H., 296NW180. See Dun. Dig. 10426.

Findings of commission on questions of fact will not be disturbed unless consideration of evidence and permissible inferences require reasonable minds to adopt contrary conclusions. Budd v. C., 296NW571. See Dun. Dig. 10426.

4325. Definitions.—"Daily wage" as used in this act shall mean the daily wage of the employee in the employment in which he was engaged at the time of the injury, and if at the time of the injury the employee 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 the 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 compensation 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 employees.

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 times the daily wage. Occasional overtime shall not be considered in computing the weekly wage, but if such overtime 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 employee 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 employee. (As amended Act Apr. 28, 1941, c. 512, §1.)

"Weekly wage" of deceased employee correctly computed by multiplying daily wage by six, though deceased had for long been working but one day a week. Ferch v. G., 292NW424. See Dun. Dig. 10410.

This statute adopted in Wisconsin was construed as warranting basing of compensation for temporary disability upon actual earnings of a part time employee. Carr's, Inc. v. I., 292NW(Wis)1.

4326. Definitions, continued.

(a). Compensation.

There is a distinction between words "compensation" and "damages" as applied to malpractice of physician. McGough v. M., 287NW857. See Dun. Dig. 10415.

(d). Employer.

A demonstrator was employe of a department store though amount equal to her wages was paid to store by company whose goods were being demonstrated. Ekrem v. H., 296NW180. See Dun. Dig. 10395.

If independent contractor has no employees working for him, he is not required to carry insurance, since he is not an employer. Op. Atty. Gen., (523E-1), April 18, 1940.

(g). Employee.

(g)(1). Public employees.

Evidence held to sustain finding that one employed by town board to remove snow from highways at $1.50 per hour for his services and for use of his truck and plow was an employee and not an independent contractor. Whitted v. T., 291NW509. See Dun. Dig. 10395.

Evidence held to sustain finding that superintendent in charge of a W.P.A. project for improvement of a boulevard in a city was an agent of the city in managing trucks and drivers furnished by city and as such had authority to substitute a driver for one who was absent as chairman of grievance committee of union and to create relation of master and servant between city and substitute driver. Bushnell v. C., 295NW73. See Dun. Dig. 10395.

Township employee working out government relief is within act. Op. Atty. Gen., (523e-2), Jan. 15, 1940.

Fire department pursuant to direction of city council may respond to calls in neighboring state, and firemen responding to call are covered by workmen's compensation law. Op. Atty. Gen., (688a), Jan. 18, 1940.

Employees working out relief furnished them are entitled to benefits of act. Op. Atty. Gen., (523a-17), Jan. 30, 1940.

Law covers volunteer firemen acting within or without village. Op. Atty. Gen., (523E-4), March 15, 1940.

Whether lowest bidder to construct cabins for a city is an employee or an independent contractor is a question of fact. Op. Atty. Gen., (523E-1); April 18, 1940.

President and trustees, street commissioner, village attorney, village health officer, various inspectors and superintendents and registrar of water department held employees entitled to benefit of act in village operating under Laws of 1885. Op. Atty. Gen., (523E-4), April 25, 1940.

Drivers of school busses may be either employees or independent contractors, depending upon terms of contract. Op. Atty. Gen. (523f), Oct. 15, 1940.

Supervisors in cotton mattress program in connection with distribution of surplus cotton are not employees of the state. Op. Atty. Gen., (523g-18), Jan. 14, 1941.

Teachers employed by school district under defense training program have same protection under this law as other teachers. Op. Atty. Gen., (168d), Feb. 17, 1941.

(g)(2). Private employees.

In determining whether relationship is one of employee or independent contractor, most important factor is right of employer to control means and manner of performance, and other facts to be considered are mode of payment, furnishing of materials or tools, control of premises where work is done, and right of employer to discharge employee-contractor. Lemkuhl v. C., 296NW28. See Dun. Dig. 10395.

Evidence that decedent was hired and paid by employee to assist him in performing work for his employer with latter's consent and subject to his control as to details of work supports finding that decedent was employee of employer. Byhardt v. B., 296NW504. See Dun. Dig. 10395.

——Independent contractors.

One employed to cut indefinite amount of cord wood, employer retaining complete right of control, is not an independent contractor. Stahl v. P., 288NW854. See Dun. Dig. 10395.

Right of control is an important factor in determining whether relationship existing is one of employment or independent contract. Whitted v. T., 291NW509. See Dun. Dig. 10395.

Evidence held to sustain finding that one removing screens and washing and putting on storm windows at a certain price per window, was an employee and not an independent contractor. Fisher v. M., 294NW477. See Dun. Dig. 10395.

Evidence held to warrant finding that the persons painting a grain elevator were independent contractors. Lemkuhl v. C., 296NW28. See Dun. Dig. 10395.

One operating "cook truck" for a general contractor on highway work, under a contract to endure "for the summer", and therefore obligated to furnish all work and supplies and to take profits or suffer losses, with no right of control reserved by owner, was an independent contractor, and one working for her as cook's "flunkey" was her employee and not in service of owner. Curtis v. H., 296NW495. See Dun. Dig. 10395.

A servant is one who is employed to perform a service in which he is subject to employer's control as to details of work, while an independent contractor undertakes to do a specific piece of work for another without submitting himself to such party's control as to details and binds himself only as to results. Byhardt v. B., 296NW 504. See Dun. Dig. 10395.

——Casual employment.

See also notes under §4272-4.

"Casual" relates to employment which is not permanent or periodically regular but occasional or by chance and not in the usual course of employer's trade or business. Berry v. A., (CCA4), 114F(2d)255.

Tearing down a small shed on a lot belonging to estate of a decedent under employment of an executor was casual and not in usual course of any trade, business, profession, or occupation of owner or executors. Happel v. F., 289NW43. See Dun. Dig. 10394.

A regular employee hired on a part time basis is not excluded from the benefits of act upon ground that his injury did not occur in usual course of employer's business, trade, occupation or profession. Chisholm v. D., 292NW268. See Dun. Dig. 10394.

To take owners of apartment building outside the Act, evidence must show that employment was not in usual course of trade, business, profession or occupation of employer, and it is immaterial that employment was casual. Fisher v. M., 294NW477. See Dun. Dig. 10394.

An employment must be both casual and not in usual course of employer's business to take it out of statute where such grounds are relied on. Byhardt v. B., 296NW 504. See also §4272-4. See Dun. Dig. 10394.

(h). Accidental injuries.

Evidence sustains finding that, subsequent to date of accidental injury for which compensation was awarded, relator became afflicted from natural causes and diseases which rendered arm permanently partially disabled. Rehak v. S., 288NW22. See Dun. Dig. 10406.

Evidence held to sustain finding that disability of thumb was result of a diseased condition and was neither caused nor aggravated by accident. Husnick v. S., 288 NW389. See Dun. Dig. 10406.

Evidence held to sustain finding that intermittent temporary total disability resulted from original sprained back. Paul v. T., 287NW856. See Dun. Dig. 10406.

Evidence held to sustain finding that employee with a sprained back sustained a wage loss, though he worked intermittently for others following accident. Id.

Question is not whether cause of accident is referable to a tortious or a blameless act, or whether if tortious employer or some third person is blameworthy, or even that employee is at fault if not willfully so. McGough v. M., 287NW857. See Dun. Dig. 10396.

Malpracticing physician is not liable for original injury, and while his services are called in to play because thereof, his liability arises solely because of his own fault, later occurring, and has for its basis, not contract, but tort. Id. See Dun. Dig. 10408.

Evidence held to sustain finding of no causal connection between accident and hernia. Schwendig v. A., 289 NW772. See Dun. Dig. 10406.

Evidence held to sustain implied finding that loss of vision was not caused by subdural hemorrhage sustained as a result of injury, a "subdural hemorrhage" occurring intracranially in front of optic chiasm where optic nerve passes out of skull to eye, and effect of which is to compress optic nerve so as to ultimately cause atrophy and blindness. Cieluch v. E., 290NW302. See Dun. Dig. 10406.

Finding that relator did not suffer a traumatic hernia held sustained by record. Hillman v. N., 291NW609. See Dun. Dig. 10406.

Evidence held to sustain finding that death by extravasation of blood into media of aorta artery resulted from carrying a large sack of sugar in course of employment. Ferch v. G., 292NW424. See Dun. Dig. 10406.

Evidence held to raise question for jury on question whether underground miner contracted Pneum oconiosis or silicosis in defendant's mines and thereby became afflicted with an aggravation of existing tuberculosis. Applequist v. O., 296NW13. See Dun. Dig. 10397.

If an unforeseen accident to employee while engaged in performance of his work directly causes an injury to physical structure of his body, it is compensable even though employee had a natural weakness predisposing him to such an injury. Stenberg v. R., 296NW498. See Dun. Dig. 10397.

Whether employee falling and striking his head against leg of an adding machine died as result of a head injury or from heart failure presented purely a fact issue for commission. Id. See Dun. Dig. 10406.

(j). Injuries out of and in course of employment.

Relationship of employer-employee must exist and be in force at time occurrence of accident before liability can attach to employer, injury must arise out of and in course of employment. Roberts v. R., 288NW591. See Dun. Dig. 10403.

Evidence held to sustain finding that traveling salesman injured in a fall in a hotel did not receive injury arising out of and in course of his employment. Id. See Dun. Dig. 10405.

In action to determine obligation of automobile liability insurer to defend an action by a boy employed by insured to weed an onion patch and who rode in insured vehicle to the patch, evidence held to sustain finding that boy was not an employee of the insured nor engaged in his business at time and place of accident. State Farm Mut. Auto Ins. Co. v. S., 294NW413. See Dun. Dig. 10405.

If work of an employee creates necessity for travel, he is in course of his employment, although he is serving at same time some purpose of his own, but if work had no material part in creating the necessity of travel, then travel is personal and so is the risk. Lindell v. M., 294NW416. See Dun. Dig. 10403.

Circulation and advertising manager of American Legion Publishing Company was in the course of his employment while traveling in his automobile to make a speech at an armistice day program in answer to a request for a speaker by a local post. Id. See Dun. Dig. 10404.

Term "arising out of" employment points to origin or cause of injury, and determination of origin or cause requires a finding of proximate cause. Stenberg v. R., 296 NW498. See Dun. Dig. 10403.

Evidence held to sustain finding that death of employee resulted from a fall and that fall was an accident in course of employment and not merely result of heart disease. Id. See Dun. Dig. 10406.

An injury is regarded as arising out of and in the usual course of employment where employment exposes employee in special degree to risk of injury. Byhardt v. B., 296NW504. See Dun. Dig. 10403.

An injury occurring to an employee while engaged in moving office furniture, equipment and safe of a realtor from one office to another arises out of and in usual course of employer's business. Id. See Dun. Dig. 10404.

Where store manager suffered sudden pain in knee when stooping to pick up a piece of paper and it was discovered on examination that cartilage was torn, whether injury arose out of employment was question of fact for commission. Budd v. C., 296NW571. See Dun. Dig. 10406.

——Injuries occurring in another state.

Severson v. H., (CCA8), 105F(2d)622. Cert. den., 60SCR 514.

4327. Occupational diseases—How regarded—Compensation, etc.

(9).

Evidence sustains finding of disability arising out of and in course of his employment by reason of becoming afflicted with an occupational disease of phosphorus poisoning. Malzac v. S., 288NW837. See Dun. Dig. 10398.

4330-1. Settlement of claims.

Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 287NW 787. See Dun. Dig. 10418.

GENERAL PROVISIONS

4337-1. Application of act to state employees; etc.

Industrial commission should not undertake responsibility of determining claims of former SERA employees. Op. Atty. Gen. (523-g-18), May 27, 1940.

Supervisors in cotton mattress program in connection with distribution of surplus cotton are not employees of the state. Op. Atty. Gen. (523g-18), Jan. 14, 1941.

CHAPTER 23AA

Unemployment Compensation Law

4337-21. Declaration of public policy.

Arkansas unemployment compensation law is constitutional. McKinley v. R., 143SW(2d)(Ark)38.

4337-22. Definitions.—As used in this act, unless the context clearly requires otherwise—

A. "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual benefit year.

B. "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

C. "Benefit year", with respect to any individual means the one year period beginning with the first day of the first week with respect to which the individual files a valid claim for benefits.

D. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof, as the director may by regulation prescribe.

E. "Contributions" means the money payments required by this act to be made into the state unemployment compensation fund by any employing unit on account of having individuals in its employ.

F. "Corporation" includes associations, joint-stock companies, and insurance companies, provided, however, that this definition shall not be exclusive.

G. "Director" means the director of the division of employment and security.

H. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee, or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individual performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Notwithstanding any inconsistent provisions of this act whenever any employing unit contracts with or has under it any contractor or sub-contractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of section 4337-22F or Section 4337-29C, Mason's Supplement 1940, as amended by this act the employing unit shall for all the purposes of this act be deemed to employ each such contractor or subcontractor and individual in his employ for each day during which such contractor, subcontractor, and individual, is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of section 4337-22F, Mason's Supplement 1940, as amended by this act, shall alone be liable for the employer's contributions measured by wages payable to individuals in his employ. Each individual employed to perform or assist in performing the work of any agent or individual employed by an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act whether such individual was hired or paid directly by such employing unit or by such agent or individual, provided the employing unit had actual or constructive knowledge of such work.

I. "Employer" means:

(1) Any employing unit which for some portion of a day but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within the year 1936 has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day) and, for any calendar year subsequent to 1936, an employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state of Minnesota, within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day);

(2) Any employing unit which acquired the organization, trade, or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, and which, if treated as a single unit, with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing units or interests or both, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraphs (1), (2), (3), or (4), has not, under section 4337-29, Mason's Supplement 1940