

## CHAPTER 176

## WORKMEN'S COMPENSATION

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176.01 [Repealed, 1953 c 755 s 83]

**176.011 DEFINITIONS.** Subdivision 1. **Terms.** For the purposes of this chapter the terms described in this section have the meanings ascribed to them.

Subd. 2. **Child.** "Child" includes a posthumous child, a child entitled by law to inherit as a child of a deceased person, a child of a person adjudged by a court of competent jurisdiction to be the father of the child, and a stepchild, grandchild, or foster child who was a member of the family of a deceased employee at the time of his injury and dependent upon him for support.

Subd. 3. **Daily wage.** "Daily wage" means the daily wage of the employee in the employment in which he was engaged at the time of injury but does not include tips and gratuities paid directly to an employee by a customer of the employer and not accounted for by the employee to the employer. If at the time of injury the employee is working on part time for the day, his daily wage shall be computed by dividing the amount received or to be received for such part time service and multiplying the result by the number of hours of the normal working day for the employment involved. Where board or allowances other than tips and gratuities are made to an employee in addition to wages as a part of the wage con-

tract they are deemed a part of his earnings and computed at their value to the employee. 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 chapter, be taken to be the usual going wage paid for similar services in municipalities where such services are performed by paid employees.

**Subd. 4. Commercial baler.** "Commercial baler" means a person going from place to place baling hay or straw as a business, but does not include a farmer owning a baling machine not engaged in such business generally and doing his own baling and casually doing such work for other farmers in the same community or exchanging work with another farmer.

**Subd. 5. Commercial thresherman.** "Commercial thresherman" means a person going from place to place threshing grain or shredding or shelling corn as a business, but does not include a farmer owning a threshing, shredding, or shelling machine not engaged in such business generally and doing his own threshing, shredding, or shelling and casually doing such work for other farmers in the same community or exchanging work with another farmer.

**Subd. 6. Commission.** "Commission" means the Industrial Commission of Minnesota.

**Subd. 7. Commissioner.** "Commissioner" means a member of the commission.

**Subd. 8. Compensation.** "Compensation" includes all benefits provided by this chapter on account of injury or death.

**Subd. 9. Employee.** "Employee" means any person who performs service for another for hire; and includes an alien, a minor, a sheriff, deputy sheriff, constable, marshal, policeman, fireman, a county highway engineer, an executive officer of a corporation, and a peace officer while engaged in the enforcement of peace or in and about the pursuit or capture of any person charged with or suspected of crime; but does not include an official of the state, or of any county, city, town, village, borough, school district or governmental subdivision therein elected or appointed for a regular term of office or to complete the unexpired portion of any such regular term, except those heretofore specified.

Voluntary uncompensated workers, other than inmates, rendering services in state institutions under the commissioner of public welfare similar to those of officers and employees of such institutions, and whose services have been accepted or contracted for by the commissioner of public welfare under authority of Minnesota Statutes, Section 246.36, shall be employees within the meaning of this subdivision. In the event of injury or death of any such voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter shall be the usual going wage paid at the time of such injury or death for similar services in institutions where such services are performed by paid employees.

Voluntary uncompensated workers engaged in peace time in the civil defense program when ordered to training or other duty by the state or any political subdivision thereof, shall be employees. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of such injury or death for similar services where such services are performed by paid employees.

In the event it is difficult to determine the daily wage as herein provided, then the commission may determine the wage upon which the compensation is payable.

**Subd. 10. Employer.** "Employer" means any person who employs another to perform a service for hire; and includes corporation, partnership, association, group of persons, state, county, village, borough, town, city, school district, or governmental subdivision.

**Subd. 11. Executive officer of a corporation.** "Executive officer of a corporation" means any officer of a corporation elected or appointed in accordance with its charter or bylaws.

**Subd. 12. Farm laborer.** "Farm laborer" does not include an employee of a commercial thresherman or commercial baler.

**Subd. 13. Husband.** "Husband" includes widower.

**Subd. 14. Member.** "Member" includes leg, foot, toe, hand, finger, thumb, arm, back, eye, and ear when used with reference to the anatomy.

Subd. 15. **Occupational disease.** "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where such diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes such disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the workman would have been equally exposed outside of the employment. If immediately preceding the date of his disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, or as a member of the Minnesota highway patrol, and his disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of his employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department or with the Minnesota highway patrol which examination and report negatived any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of his employment.

Subd. 16. **Personal injury.** "Personal injury" means injury arising out of and in the course of employment and includes personal injury caused by occupational disease; but does not cover an employee except while engaged in, on, or about the premises where his services require his presence as a part of such service at the time of the injury and during the hours of such service. Where the employer regularly furnished transportation to his employees to and from the place of employment such employees are subject to this chapter while being so transported, but shall not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him, and not directed against him as an employee, or because of his employment.

Subd. 17. **Physician.** "Physician" means one authorized by law to practice his profession within one of the United States and in good standing in his profession, and includes surgeon.

Subd. 18. **Weekly wage.** "Weekly wage" is 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, but the weekly wage shall not be less than five times the daily wage. Occasional overtime is not to be considered in computing the weekly wage, but if overtime is regular or frequent throughout the year it shall be taken into consideration.

Subd. 19. **Worker.** "Worker" means employee.

[1953 c 443 s 1; 1953 c 755 s 1; 1955 c 206 s 1; 1955 c 652 s 1; 1955 c 765 s 1; 1957 c 834 s 1; 1959 c 20 s 1; 1959 c 283 s 1]

**176.02 [Repealed, 1953 c 755 s 83]**

**176.021 APPLICATION TO EMPLOYERS AND EMPLOYEES.** Subdivision 1. **Liability for compensation.** Except as excluded by this chapter all employers and employees are subject to the provisions of this chapter. Every such employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of his employee arising out of and in the course of employment without regard to the question of negligence, unless the injury or death was intentionally self-inflicted or when the intoxication of the employee is the proximate cause of the injury. The burden of proof of that fact is upon the employer.

Subd. 2. **Parties liable.** The liability imposed by subdivision 1 upon the employer extends to and binds those conducting the employer's business during insolvency, assignment for the benefit of creditors, and insofar as agreeable with the controlling federal law during bankruptcy.

Subd. 3. **Compensation, commencement of payment.** All employers shall com-

mence payment of the compensation at the time and in the manner prescribed by this chapter without the necessity of any agreement or any order of the commission. Except those of medical, burial, and other non-periodic benefits, payments shall be made as nearly as may be at the intervals when the wage was payable.

**Subd. 4. Void agreements.** Any agreement by any employee or dependent to take as compensation an amount less than that prescribed by this chapter is void.

**Subd. 5. Accumulated credits, additional payments.** If employees of the state or a county, city, village or other political subdivision of the state who are entitled to the benefits of the workmen's compensation law have, at the time of compensable injury, accumulated credits under a vacation, sick leave or overtime plan or system maintained by the governmental agency by which they are employed, the appointing authority may provide for the payment of additional benefits to such employees from their accumulated vacation, sick leave or overtime credits. Such additional payments to an employee may not exceed the amount of the total sick leave, vacation or overtime credits accumulated by the employee and shall not result in the payment of a total weekly rate of compensation that exceeds the weekly wage of the employee. Such additional payments to any employee shall be charged against the sick leave, vacation and overtime credits accumulated by such employee. The industrial commission for the state or the governing body of any county, city, village or other political subdivision to which the provisions of this chapter apply, may adopt rules and regulations not inconsistent with this chapter for carrying out the provisions hereof relating to payment of additional benefits to employees from accumulated sick leave, vacation or overtime credits.

**Subd. 6. Compensation under city charter.** Where, in any city operating under a home rule charter, a mode and manner of compensation is provided by the charter which is different from that provided by this chapter, and the amount of compensation provided by the charter would, if taken thereunder, exceed the amount the employee is entitled to under this chapter for the same period, he shall, in addition to his compensation under this chapter, receive under the charter an amount equal to the excess in compensation provided by the charter over what he is entitled to by this chapter; if the amount of compensation provided by the charter would, if taken thereunder, be equal to or less than the amount of compensation the employee is entitled to under this chapter for the same period, he shall take only under this chapter.

[1953 c 755 s 2]

**176.03** [Repealed, 1953 c 755 s 83]

**176.031 EMPLOYER'S LIABILITY EXCLUSIVE.** The liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee, his personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death. If an employer other than the state or any municipal subdivision thereof fails to insure or self-insure his liability for compensation to his injured employees and their dependents, an injured employee, or his legal representatives or, if death results from the injury, any dependent may elect to claim compensation under this chapter or to maintain an action in the courts for damages on account of such injury or death. In such action it is not necessary to plead or prove freedom from contributory negligence. The defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee, unless it appears that such negligence was wilful on the part of the employee. The burden of proof to establish such wilful negligence is upon the defendant. For the purposes of this chapter the state and each municipal subdivision thereof is treated as a self-insurer when not carrying insurance at the time of the injury or death of an employee.

[1953 c 755 s 3]

**176.04** [Repealed, 1953 c 755 s 83]

**176.041 APPLICATION, EXCEPTIONS.** This chapter does not apply to any common carrier by railroad engaged in interstate or foreign commerce, 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. Professional baseball players under contract for hire which contract gives compensation not less than that provided by this chapter are

not subject thereto if a written consent not to be bound thereby, signed by the professional baseball player and the employer professional baseball club and approved by the commission, is filed with the commission.

[1953 c 755 s 4]

**176.05** [Repealed, 1953 c 755 s 83]

**176.051 ASSUMPTION OF LIABILITY.** An employer of farm laborers or domestics may assume the liability for compensation imposed by this chapter and such employer's purchase and acceptance of a valid insurance policy, which includes in its coverage a classification of farm laborers or domestics constitutes an assumption by the employer of such liability. This assumption of liability takes effect and continues from the effective date of the policy and as long only as the policy remains in force. If during the life of any such insurance policy any employee, who is a farm laborer or domestic, suffers personal injury or death arising out of and in the course of his employment, the exclusive remedy of the employee or his dependents is under this chapter.

[1953 c 755 s 5]

**176.06** [Repealed, 1953 c 755 s 83]

**176.061 THIRD PARTY LIABILITY.** Subdivision 1. **Election of remedies.** Where an injury or death for which compensation is payable occurs under circumstances which create a legal liability for damages on the part of a party other than the employer and at the time of such injury or death that party was insured or self-insured in accordance with this chapter, the employee, in case of injury, or his dependents, in case of death, may proceed either at law against that party to recover damages or against the employer for compensation, but not against both.

Subd. 2. **Action for recovery of damages.** If the employee, in case of injury, or his dependents, in case of death, brings an action for the recovery of damages, the amount thereof, the manner in which, and the persons to whom the same are payable, shall be as provided in this chapter. In no case shall such party be liable to any person other than the employee or his dependents for any damages resulting from such injury or death.

Subd. 3. **Election to receive compensation from employer; subrogation.** If the employee or his dependents elect to receive compensation from the employer, such employer is subrogated to the right of the employee or his dependents to recover damages against the other party. The employer may bring legal proceedings against such party and recover the aggregate amount of compensation payable by him to the employee or his dependents, together with the costs, disbursements, and reasonable attorney's fees of the action.

Subd. 4. **Application of subdivisions 1, 2, 3.** The provisions of subdivisions 1, 2, and 3 apply only where the employer liable for compensation and the other party legally liable for damages are insured or self-insured and 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.

Subd. 5. **Cumulative remedies.** Where an injury or death for which compensation is payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, that party being then insured or self-insured in accordance with this chapter, and the provisions of subdivisions 1, 2, 3, and 4 do not apply, or the party other than the employer is not then insured or self-insured as provided by this chapter, legal proceedings may be taken by the employee or his dependents against the other party to recover damages, notwithstanding the payment by the employer or his liability to pay compensation. If the action against such other party is brought by the injured employee or his dependents and a judgment is obtained and paid and settlement is made with the other party, the employer may deduct from the compensation payable by him the amount actually received by the employee or dependents after deducting costs, reasonable attorney's fees, and reasonable expenses incurred by the employee or dependents in making collections or enforcing liability. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer, upon application the court may grant the employer the right to intervene in any such action for the prosecution thereof. If the injured employee or his dependents agree to receive compensation from the employer or institute proceedings to recover the same or accept from the employer any payment on account of such compensation, the employer is subrogated to the rights of the em-

ployee or his dependents. This employer may maintain an action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the dependents or in the name of the employer against such other party for the recovery of damages. If the action is not diligently prosecuted by the employer or the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or his dependents the right to intervene in the action for the prosecution thereof. The employer shall pay over to the injured employee or his dependents all sums collected from such other party in excess of the amount of the compensation payable by the employer under this chapter, costs, reasonable attorney's fees, and reasonable expenses incurred by the employer in making the collection and enforcing the liability. Such party is not liable to any person other than the employee or his dependents for any damages resulting from the injury or death.

**Subd. 6. Costs, attorney fees, expenses.** As between employer and employee or his dependents, in all actions governed by this subdivision the employer shall bear that proportion of the costs, reasonable attorney's fees, and reasonable expenses incurred in making collection from and enforcing liability against the party other than the employer which the amount claimed by the employer for deduction from, or to be retained against, compensation payable bears to the whole amount recovered from such other party.

**Subd. 7. Medical treatment.** The liability of an employer for medical treatment under this chapter shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, against whom the employee may have a cause of action which may be sued under this chapter, but the employer shall have a separate additional cause of action against such third party to recover any amounts paid by him for medical treatment under this section resulting from the negligence of such third party. This separate cause of action of the employer may be asserted in a separate action brought by the employer against such third party or in the action commenced by the employee or the employer under this chapter, but in the latter case the cause of action shall be separately stated, the amount awarded thereon shall be separately set out in the verdict, and the amount recovered by suit or otherwise as reimbursement for medical expenses shall be for the benefit of the employer to the extent that the employer has paid or will be required to pay for medical treatment of the injured employee and shall not affect the amount of periodic compensation to be paid.

**Subd. 8. State as employer.** In every case arising under subdivision 5 when the state is the employer and a settlement between the third party and the employee is made it is not valid unless prior notice thereof is given to the state within a reasonable time. If the state pays compensation to the employee under the provisions of this chapter and becomes subrogated to the rights of the employee or his dependents any settlement between the employee or his dependents and the third party is void as against the state's right of subrogation. When an action at law is instituted by an employee or his dependents against a third party for recovery of damages a copy of the complaint and notice of trial or note of issue in such action shall be served on the state. Any judgment rendered therein is subject to a lien of the state for the amount to which it is entitled to be subrogated under the provisions of subdivision 5.

**Subd. 9. Service of notice on attorney general.** In every case in which the state is liable to pay compensation or is subrogated to the rights of the employee or his dependents all notices required to be given the state shall be served on the attorney general and the state industrial commission.

[1953 c 755 s 6]

**176.07** [Repealed, 1953 c 755 s 83]

**176.071. JOINT EMPLOYERS; CONTRIBUTION.** When compensation is payable under this chapter for the injury or death of an employee employed and paid jointly by two or more employers at the time of the injury or death these employers shall contribute to the payment of the compensation in the proportion of their wage liabilities to the employee. If any such employer is excluded from the provisions of this chapter and is not liable for compensation, the liability of those employers who are liable for compensation is the proportion of the entire compensation which

their wage liability bears to the employee's entire wages. As between themselves such employers may arrange for a different distribution of payment of the compensation for which they are liable.

[1953 c 755 s 7]

**176.08** [Repealed, 1953 c 755 s 83]

**176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN.** No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this chapter is an enforceable lien against the compensation or be valid or binding in any other respect unless approved in writing by the commission, if the claim arises out of a proceeding for compensation under this chapter, or by the judge presiding at the trial in an action for damages, or by a judge of the district court in a settlement of a claim for damages without trial. If the employer or his insurer or the defendant is given written notice of such claims for legal services or disbursements, the same shall be a lien against the amount paid or payable as compensation, subject to determination of the amount and approval provided by this chapter.

[1953 c 755 s 8]

**176.09** [Repealed, 1953 c 755 s 83]

**176.091 MINOR EMPLOYEES.** A minor employee has the same power to enter into a contract, make election of remedy, make any settlement, and receive compensation as an adult employee, subject to the power of the commission to require the appointment of a guardian for the minor employee to make such settlement and to receive moneys thereunder or under an award.

[1953 c 755 s 9; 1957 c 781 s 1]

**176.10** [Repealed, 1953 c 755 s 83]

**176.101 COMPENSATION SCHEDULE.** Subdivision 1. **Temporary total disability.** For injury producing temporary total disability, 66% percent of the daily wage at the time of injury subject to a maximum compensation of \$45 per week and a minimum compensation of \$17.50 per week. This compensation shall be paid during the period of disability, but not exceeding 350 weeks, payment to be made at the intervals when the wage was payable, as nearly as may be.

Subd. 2. **Temporary partial disability.** In all cases of temporary partial disability the compensation shall be 66% percent of the difference between the daily wage of the worker 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 disability, but not beyond 350 weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the maximum compensation stated in subdivision 1. If the employer does not furnish the worker with work which he can do in his temporary partially disabled condition and he is unable to procure such work with another employer, after reasonably diligent effort, the commission may fix a rate of compensation to be paid to the worker during the period of disability and unemployment, but not beyond 350 weeks; which shall be based upon the percentage of his general physical disability as determined from competent medical testimony adduced at a hearing before a referee, a commissioner, or the commission.

Subd. 3. **Permanent partial disability.** For the permanent partial disability from the loss of a member the compensation during the healing period, but not exceeding 104 weeks, shall be 66% percent of the difference between the daily wage of the worker at the time of injury and any wages he is able to earn in his partially disabled condition; and thereafter and in addition thereto, compensation shall be that named in the following schedule:

(1) For the loss of a thumb, 66% percent of the daily wage at the time of injury during 65 weeks;

(2) For the loss of a first finger, commonly called index finger, 66% percent of the daily wage at the time of injury during 40 weeks;

(3) For the loss of a second finger, 66% percent of the daily wage at the time of injury during 35 weeks;

(4) For the loss of a third finger, 66% percent of the daily wage at the time of injury during 25 weeks;

(5) For the loss of a fourth finger, commonly called the little finger, 66% percent of the daily wage at the time of injury during 20 weeks;

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(6) The loss of the first phalange of the thumb or of any finger, is considered equal to the loss of one-half of the thumb or finger and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the thumb or finger;

(7) The loss of one and one-half or more phalanges is considered equal to the loss of the entire finger or thumb; but 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, 66% percent of the daily wage at the time of injury during 35 weeks;

(9) For the loss of a toe other than a great toe, 66% percent of the daily wage at the time of injury during 15 weeks;

(10) The loss of the first phalange of any toe is considered equal to the loss of one-half of the toe, and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the toe;

(11) The loss of one and one-half or more phalanges is considered equal to the loss of the entire toe;

(12) For the loss of a hand, not including the wrist movement, 66% percent of the daily wage at the time of injury during 195 weeks;

(13) For the loss of a hand, including wrist movement, 66% percent of the daily wage at the time of injury during 220 weeks;

(14) For the loss of an arm, 66% percent of the daily wage at the time of injury during 270 weeks;

(15) Amputation of the arm below the elbow is considered 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 is considered the loss of an arm;

(16) For the loss of a foot, not including ankle movement, 66% percent of the daily wage at the time of injury during 140 weeks;

(17) For the loss of a foot, including ankle movement, 66% percent of the daily wage at the time of injury during 165 weeks;

(18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, 66% percent of the daily wage at the time of injury during 195 weeks;

(19) For the loss of a leg so close to the hip that no effective artificial member can be used, 66% percent of the daily wage at the time of injury during 220 weeks;

(20) Amputation of a leg below the knee is considered as equal to the loss of a foot, including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member, otherwise it is considered as equal to the loss of a leg;

(21) For the loss of an eye, 66% percent of the daily wage at the time of injury during 160 weeks;

(22) For the complete permanent loss of hearing in one ear, 66% percent of the daily wage at the time of injury during 55 weeks;

(23) For the complete permanent loss of hearing in both ears, 66% percent of the daily wage at the time of injury during 170 weeks;

(24) For the loss of an eye and a leg, 66% percent of the daily wage at the time of injury during 400 weeks;

(25) For the loss of an eye and an arm, 66% percent of the daily wage at the time of injury during 400 weeks;

(26) For the loss of an eye and a hand, 66% percent of the daily wage at the time of injury during 450 weeks;

(27) For the loss of an eye and a foot, 66% percent of the daily wage at the time of injury during 400 weeks;

(28) For the loss of two arms, other than at the shoulder, 66% percent of the daily wage at the time of injury during 500 weeks;

(29) For the loss of two hands, 66% percent of the daily wage at the time of injury during 500 weeks;

(30) For the loss of two legs, other than so close to the hips that no effective artificial member can be used, 66% percent of the daily wage at the time of injury during 500 weeks;

(31) For the loss of two feet, 66% percent of the daily wage at the time of injury during 500 weeks;



(32) For the loss of one arm and the other hand, 66% percent of the daily wage at the time of injury during 500 weeks;

(33) For the loss of one hand and one foot, 66% percent of the daily wage at the time of injury during 500 weeks;

(34) For the loss of one leg and the other foot, 66% percent of the daily wage at the time of injury during 500 weeks;

(35) For the loss of one leg and one hand, 66% percent of the daily wage at the time of injury during 500 weeks;

(36) For the loss of one arm and one foot, 66% percent of the daily wage at the time of injury during 500 weeks;

(37) For the loss of one arm and one leg, 66% percent of the daily wage at the time of injury during 500 weeks;

(38) For disfigurement not resulting from the loss of a member or other injury specifically compensated, 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, 66% percent of the daily wage at the time of injury during such period as the commission determines, not beyond 90 weeks;

(39) For permanent partial disability resulting from injury to the back, 66% percent of the daily wage at the time of injury for that proportion of 350 weeks which is represented by the percentage of such permanent partial disability as is determined from competent testimony adduced at a hearing before a referee, a commissioner, or the commission;

(40) When an employee sustains concurrent injuries resulting in concurrent disabilities he shall receive compensation only for the injury which entitled him to the largest amount of compensation, but this does not affect liability for disfigurement 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 subdivision 5;

(41) In all cases of permanent partial disability it is considered that the permanent loss of the use of a member is equivalent to and draws the same compensation as the loss of that member, but the compensation in and by this 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 the workmen's compensation act, as amended, the amount of compensation awarded, or that he is entitled to receive, for such loss of use, is to be deducted from the compensation due under the schedules of this section for the loss of such member, provided, that the amount of compensation due for the loss of the member caused by the subsequent accident is in no case less than 25 percent of the compensation payable under the schedule of this section for the loss of such member;

(42) In cases of permanent partial disability due to injury to a member, resulting in less than total loss of the 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 member which the extent of the injury to the member bears to its total loss;

(43) In cases of permanent partial disability caused by simultaneous injury to two or more members, the applicable schedules in this subdivision shall be increased by 15 percent. This clause shall not apply when the injuries are compensated under paragraphs 24 to 37 inclusive, of this subdivision. In cases of partial disability due to injury to both eyes resulting in less than total loss of vision in one or both eyes compensation shall be paid at the prescribed rate during that part of 450 weeks which the extent of the combined injury to both eyes bears to the complete loss of industrial vision;

(44) The commission may make or revise rules for the determination of the extent of the impairment of the industrial use of one or both eyes taking into account all primary coordinate factors of vision. These rules shall be made or revised after consultation with experts on industrial vision and after public notice to and hearing of interested parties;

(45) In addition to the compensation provided in this chapter, the compensation during the period of retraining for a new occupation, as certified by the divi-

sion of vocational rehabilitation, department of education, shall be 66% percent of the daily wage, subject to the maximum compensation provided in this chapter, at the time of the injury, not beyond 52 weeks, provided the commission, after consultation with its bureau of workmen's rehabilitation, finds that the retraining is necessary and makes an order for such compensation;

(46) In all cases of permanent partial disability not enumerated in this schedule the compensation shall be 66% percent of the difference between the daily wage of the worker at the time of the injury and the daily wage he is able to earn in his partially disabled condition, subject to a maximum of \$45 per week, and continue during disability, not beyond 350 weeks; and if the employer does not furnish the worker with work which he can do in his permanently partially disabled condition and he is unable to secure such work with another employer after a reasonably diligent effort, the commission may fix a rate of compensation to be paid to the worker during the period of his unemployment, not beyond 350 weeks, which is to be based upon the percentage of his general physical disability as determined from competent medical testimony adduced at a hearing before a referee, a commissioner, or the commission;

(48) All compensations provided in this schedule for loss of members or loss of the use of members are subject to the limitations as to maximum and minimum stated in subdivision 1.

**Subd. 4. Permanent total disability.** For permanent total disability, as defined in subdivision 5, the compensation shall be 66% percent of the daily wage at the time of the injury, subject to a maximum compensation of \$45 per week and a minimum compensation of \$17.50 per week. If the wages of the employee at the time of the injury are \$17.50 or less per week, 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 if the employee is eligible for old age and survivors insurance benefits, such benefits shall be credited on the compensation benefits payable under this subdivision after a total of \$18,000 has been paid. Payments shall be made at the intervals when the wage was payable, as nearly as may be. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable during the period of his confinement in such institution, unless he has wholly dependent on him for support some person named in section 176.111, subdivisions 1, 2 or 3, in which case the compensation provided for in section 176.111, during the period of such confinement, shall be paid for the benefits of such dependent person during dependency. The dependency of such persons shall be determined as though the employee were deceased.

**Subd. 5. Total disability.** The total and permanent loss of the sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, 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 constitutes total disability.

**Subd. 6. Previous payments, deducted from benefits.** In case a worker sustains an injury arising out of and in the course of employment, and during the period of disability caused thereby death results approximately therefrom, all payments previously made as compensation for such injury are deducted from any compensation due on account of the death, and accrued compensation due to the deceased prior to his death but not paid is payable to such dependent persons or legal heirs as the commission may order, without probate administration.

**Subd. 7. Minors.** If any employee entitled to the benefits of this chapter is a minor or is an apprentice of any age and sustains injuries due to an accident arising out of and in the course of employment resulting in permanent total or permanent partial disability, for the purpose of computing the compensation to which he is entitled, the weekly earnings shall be the weekly earnings which such minor or apprentice would probably earn after arriving at legal age or completing the apprenticeship, if uninjured, which probable earnings shall be approximately the average earnings of adult journeymen workers of the same sex below the rank of superintendent or general foremen in the department of the plant or industry in which the minor or apprentice was employed at the time of injury.

[1953 c 755 s 10; 1955 c 615 s 1-5; 1957 c 781 s 2-5]

**176.11** [Repealed, 1953 c 755 s 83]

**176.111 DEPENDENTS, ALLOWANCES.** Subdivision 1. **Persons wholly dependent, presumption.** For the purposes of this chapter the following persons are 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 16 years.

**Subd. 2. Children.** Children between 16 and 18 years of age, or children over 18 when physically or mentally incapacitated from earning, are prima facie considered dependent.

**Subd. 3. Persons wholly supported.** A wife, child, husband, mother, father, grandmother, grandfather, grandchild, sister, brother, mother-in-law, father-in-law, wholly supported by a deceased worker at the time of his death and for a reasonable time prior thereto are considered his actual dependents and compensation shall be paid to them in the order named.

**Subd. 4. Persons partially supported.** Any member of a class named in subdivision 3 who regularly derived part of his support from the wages of a deceased worker at the time of his death and for a reasonable time prior thereto is considered his partial dependent and compensation shall be paid to such dependents in the order named.

**Subd. 5. Payments, to whom made.** In death cases compensation payable to dependents is computed on the following basis and shall be paid to the persons entitled thereto or to a guardian or such other person as the commission directs for the use and benefit of the person entitled thereto.

**Subd. 6. Widow, no dependent child.** If the deceased employee leave a widow and no dependent child, there shall be paid to the widow 40 percent of the daily wage at the time of the injury of the deceased.

**Subd. 7. Spouse, one dependent child.** If the deceased employee leave a surviving spouse and one dependent child, there shall be paid to the surviving spouse for the benefit of such spouse and child 50 percent of the daily wage at the time of the injury of the deceased.

**Subd. 8. Spouse, two dependent children.** If the deceased employee leave a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of such spouse and such children 60 percent of the daily wage at the time of the injury of the deceased.

**Subd. 9. Spouse, three or more children.** If the deceased employee leave a surviving spouse and three or more dependent children, there shall be paid to the surviving spouse for the benefit of such spouse and such children 66 $\frac{2}{3}$  percent of the daily wage at the time of injury of deceased.

**Subd. 10. Allocation of compensation.** In all cases where compensation is payable to the surviving spouse for the benefit of the surviving spouse and dependent children the commission may determine what portion of the compensation shall be applied for the benefit of any such child and may order the same paid to a guardian.

**Subd. 11. Remarriage of widow.** In the case of the remarriage of a widow without dependent children she shall receive a lump sum settlement equal to one-half of the amount of compensation remaining unpaid, without deduction for interest, but not to exceed two full years compensation. In case of the 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 commission orders for the use and benefit of the children during dependency. 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 provided herein shall be paid within 60 days after written notice to the employer of the remarriage or that the dependency of the children has ceased. No widow who has remarried shall be held to be a widow without dependent children when the deceased employee leaves any dependent child as defined by this chapter.

**Subd. 12. Orphans.** If the deceased employee leave a dependent orphan, there shall be paid 45 percent of the daily wage at the time of the injury of the deceased, with 10 percent additional for each additional orphan, with a maximum of 66 percent of such wages.

Subd. 13. **Husband, no dependent child.** If the deceased employee leave a dependent husband and no dependent child, there shall be paid to the husband 30 percent of the daily wage at the time of the injury of the deceased.

Subd. 14. **Parents.** If the deceased employee leave no widow or child or husband entitled to any payment under this chapter, but leaves both parents wholly dependent on deceased, there shall be paid to such parents jointly 45 percent of the weekly wage at the time of the injury of the deceased. In case of the death of either of the wholly dependent parents the survivor shall receive 35 percent of the weekly wage thereafter. If the deceased employee leave one parent wholly dependent on the deceased, there shall be paid to such parent 35 percent of the weekly wage at the time of the injury of the deceased employee. The compensation payments under this section shall not exceed the actual contributions made by the deceased employee to the support of his parents for a reasonable time immediately prior to the injury which caused the death of the deceased employee.

Subd. 15. **Remote dependents.** If the deceased employee leave no widow or child or husband or parent entitled to any payment under this chapter, but leaves a grandparent, 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, 30 percent of the daily wage at the time of injury of the deceased, or if more than one, 35 percent of the daily wage at the time of the injury of the deceased, divided among them share and share alike.

Subd. 16. **Cessation of compensation.** Except as provided in this chapter, compensation ceases upon the death or marriage of any dependent.

Subd. 17. **Partial dependents.** Partial dependents are 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 dependents at the time of and for a reasonable time immediately prior to the injury bore to the total income of the dependent during the same time; and if the amount regularly contributed by the deceased to such partial dependents cannot be ascertained because of the circumstances of the case the commission shall make a reasonable estimate thereof taking into account all pertinent factors of the case.

Subd. 18. **Burial expense.** In all cases where death results to an employee from a personal injury arising out of and in the course of employment, the employer shall pay the expense of burial, not exceeding in amount \$550. In case any dispute arises as to the reasonable value of the services rendered in connection with the burial such reasonable value shall be determined and approved by the commission before payment, after such reasonable notice to interested parties as is required by the commission. If the deceased leave no dependents, no compensation is payable, except as provided by this chapter.

Subd. 19. **Compensation; maximum, minimum.** The compensation payable in case of death to persons wholly dependent is subject to a maximum compensation of \$45 per week and a minimum of \$17.50 per week. If at the time of injury the employee receives wages of \$17.50 or less per week, then the compensation shall be the full amount of the wages per week. The compensation payable to partial dependents is subject to a maximum of \$45 per week and a minimum of \$17.50 per week. If the income loss of partial dependents by such death is \$17.50 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 \$17,500 in case of a dependent wife, child, or orphan and shall not exceed 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.

Subd. 20. **Actual dependents, compensation.** Actual dependents are entitled to take compensation in the order named in subdivision 3 during dependency until 66% percent of the daily wage of the deceased at the time of injury is exhausted. This compensation shall not exceed \$17,500 in case of a dependent wife, child, or orphan or continue beyond 300 weeks in case of any other dependent. The total compensation to be paid to full actual dependents of a deceased employee shall not exceed in the aggregate \$45 per week.

[1953 c 755 s 11; 1955 c 615 s 6-8; 1957 c 781 s 6, 7]

176.12 [Repealed, 1953 c 755 s 83]

176.121 **COMMENCEMENT OF COMPENSATION.** 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 176.135, nor in

any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 176.141. If such disability continues for three weeks or longer, such compensation shall be computed from the commencement of the disability.

[1953 c 755 s 12]

**176.13 SUBSEQUENT DISABILITY, SPECIAL FUND.** (a) If an employee who has a physical impairment from any cause or origin incurs a subsequent disability by injury arising out of and in the course of his employment resulting in compensation liability for permanent or temporary partial or total disability that is substantially greater by reason of the combined effects of the pre-existing impairment and subsequent injury than that which would have resulted from the subsequent injury alone in the absence of the pre-existing impairment, the employer or his insurance carrier shall in the first instance pay all compensation provided by this chapter, but such employer or his insurance carrier shall be reimbursed from the special compensation fund for all compensation subsequent to those payable for the first 104 weeks of disability, except that if the subsequent injury alone results in permanent partial disability the employer or his insurer shall not be reimbursed for that part of the compensation payable therefor as may be in excess of the first 104 weeks as provided by section 176.101, subdivision 3 (sections 1-42).

(b) If the subsequent injury of such an employee shall result in the death or permanent partial or total disability of the employee and it shall be determined that either the injury, death or disability would not have occurred except from pre-existing physical impairment, the employer or his insurance carrier shall in the first instance pay the compensation prescribed by this chapter, but he or his insurance carrier shall be reimbursed from the special compensation fund for all compensation payable in excess of 104 weeks.

(c) In order to qualify under this section for reimbursement from the special compensation fund, the employer must have qualified with the provisions of this chapter as to insurance or self-insurance as provided for by section 176.181, subdivisions 1 and 2, and except as to an employee whose pre-existing physical impairment is a permanent partial disability as scheduled in section 176.101, subdivision 3 (section 1-38), must register with the industrial commission, in advance of any subsequent injury, under rules prescribed by the industrial commission, the names of his employees with a pre-existing physical impairment, together with satisfactory evidence of such impairment, and for whom he may want to claim reimbursement for any compensation paid in event of a subsequent injury or death. At their option, the employer, employee or the commission may make application to the director, division of vocational rehabilitation of the department of education who shall then certify to the industrial commission declaring the existence or non-existence of a physical impairment, and if the director shall certify to the existence of a physical impairment, that certification shall be acceptable as evidence of such impairment but shall not be determinative thereof. In the event of a subsequent injury or death for which reimbursement is claimed, the employer or his insurer shall file with the industrial commission written notice of intention to claim reimbursement within 52 weeks after the occurrence of the subsequent injury in accordance with rules and regulations to be established by the industrial commission. Upon finally determining that an employer or his insurer is entitled to reimbursement hereunder, compensation shall thereafter be payable out of the special compensation fund.

(d) As used in this section "physical impairment" means any physical or mental condition which is or is likely to be a hindrance or obstacle to obtaining employment.

(e) Following July 1, 1953, no compensation shall be paid for permanent total disability from the special fund for injuries occurring after said date, except as provided herein. All employees who are now receiving, or who may hereafter become entitled to receive, compensation for permanent total disability, as a result of injuries occurring before July 1, 1953, whether from the employer or from the special fund, after receiving the full amount of \$10,000 for such disability, shall be paid from the fund an additional sum of not to exceed \$5,000, in the same manner and with the same limitations, except as to amounts, at the rate of two-thirds of the wages they were receiving at the time of the injury which rendered them permanently totally disabled, subject to a maximum of \$20 per week and a minimum of \$13.50 per week, but the full amount of their wages if at the time of such injury

they were receiving less than \$13.50 per week. Payments to permanently totally disabled employees from such additional sum of \$5,000 shall be made only upon petition by the injured employee to the industrial commission for the same, stating that the full amount of \$10,000 has been received, or is due to be paid within 30 days, which petition shall be accompanied by an affidavit of a reputable physician stating that he has examined the employee and found him to be still permanently totally disabled.

This fund shall be created for such purposes in the following manner:

(1) In every case of 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;

(2) When an employee shall suffer a compensable injury, which results in permanent partial disability, and which injury entitles him to compensation pursuant to section 176.101, subdivision 3 (1-42 inclusive), the employer, or his insurer, shall, in addition to the compensation provided for in subdivision 3 (1-42 inclusive), pay to the industrial commission, for the benefit of a special compensation fund, a lump sum, without interest deductions, equal to six percent of the total compensation to which the employee is entitled under said subdivision 3 for the permanent partial disability, this 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 chapter. 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 chapter 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 clause (1), and dependency later is shown, or if deposit is or has been made pursuant to either clause (1) or (2) by mistake or inadvertence, or under such circumstances that justice requires a refund thereof, the state treasurer is hereby authorized to refund such deposit under order of the industrial commission.

(3) There is hereby appropriated out of the general revenue fund to the industrial commission for credit to the special compensation fund the sum of \$125,000 for the period ending June 30, 1955, which appropriation is hereby made available in such amounts and at such times as may be deemed necessary by the industrial commission to discharge its obligations for the payment of benefits out of said special compensation fund. Any and all amounts so appropriated and credited to the special compensation fund shall be repaid from said fund without interest, at such times, and in such amounts as may be determined by the industrial commission; provided that in any event the entire amount so appropriated and credited shall be repaid to said fund on or before July 1, 1959.

(4) On and after July 1, 1962, payments to the fund based upon permanent partial disability as provided by clause (2) shall be reduced to two percent effective as to accidents occurring on and after July 1, 1962. The industrial commission shall report biennially to the governor and to the legislature as to the financial status of said special compensation fund, which report shall include a statement of the receipts and disbursements for the period covered.

(5) All employers and insurers shall make such reports to the industrial commission as may be required for the proper administration of this chapter.

[1921 c 82 s 16; 1923 c 300 s 5; 1933 c 75 s 1; Ex1933 c 21 s 1; 1935 c 311 s 1; Ex1936 c 43 s 1; 1941 c 384 s 1; 1945 c 106 s 1; 1947 c 90 s 1; 1947 c 247 s 1; 1949 c 705 s 1; 1951 c 457 s 7; 1953 c 112 s 1; 1957 c 908 s 1] (4276)

**176.135 TREATMENT; APPLIANCES; SUPPLIES.** Subdivision 1. **Medical, surgical, hospital.** The employer shall furnish such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from

the effects of the injury. Such treatment shall include treatments necessary to physical rehabilitation. The employer shall furnish replacement or repair for artificial members, glasses, or spectacles, artificial eyes, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches or wheel chairs damaged by reason of an injury arising out of and in the course of the employment. 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 employee in providing the same. The employer shall pay for the reasonable value of nursing services by a member of the employee's family in cases of permanent total disability. Orders of the commission with respect to this subdivision may be reviewed by the commission on petition of an aggrieved party or by writ of certiorari to the supreme court.

**Subd. 2. Change of physicians.** The commission shall make the necessary rules for a change of physicians in the case that either the employee or the employer desire a change and for the designation of a physician suggested by the injured employee or the commission. In such case the expense thereof shall be borne by the employer upon the same terms and conditions as provided in subdivision 1 and for medical and surgical treatment and attendance.

**Subd. 3. Limitation of liability.** The pecuniary liability of the employer for the treatment, articles and supplies required by this section 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. On this basis the commission may determine the reasonable value of all such services and supplies and the liability of the employer is limited to the amount so determined.

**Subd. 4. Christian Science treatment.** Any employee electing to receive Christian Science treatment as provided in subdivision 1 shall notify his employer in writing of his election within 30 days after July 1, 1953, and any person hereafter accepting employment shall give such notice at the time he accepts employment. Any employer may elect not to be subject to the provisions for Christian Science treatment provided for in this section by filing a written notice of such election with the commission, in which event the election of the employee shall have no force or effect whatsoever.

[1953 c 439 s 1; 1953 c 755 s 13]

**176.14** [Repealed, 1953 c 755 s 83]

**176.141 NOTICE OF INJURY.** Unless the employer has actual knowledge of the occurrence of the injury or unless the injured worker, or a dependent or some one in behalf of either, gives written notice thereof to the employer within 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 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 shows 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 90 days, and if the employee or other beneficiary shows 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 shows that he was prejudiced by failure to receive such notice, in which case the amount of compensation shall be reduced by such sum as fairly represents the prejudice shown. Unless knowledge is obtained or written notice given within 90 days after the occurrence of the injury no compensation shall be allowed.

[1953 c 755 s 14]

**176.145 SERVICE OF NOTICE, FORM.** The notice referred to in section 176.141 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 may 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

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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.  
Dated....., 19..... (signed).....  
(giving address)"

No variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, 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.

[1953 c 755 s 15]

176.15 [Repealed, 1953 c 755 s 83]

**176.151 TIME LIMITATIONS.** The time within which the following acts shall be performed shall be limited to the following periods, respectively:

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

(2) Actions or proceedings by dependents to determine or recover compensation, two years after the receipt by the commission of written notice of death, given by the employer, but not to exceed six years from the date of the accident. In any such case, if a dependent of the deceased, or any one in his behalf, gives written notice of such death to the commission, the commission shall forthwith give written notice to 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 within the United States, the commission shall give written notice of the death to the consul or other representative of the 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 specified in this section, the period of limitation in any such case shall be extended for two years from the date when the incapacity ceases.

[1953 c 755 s 16]

**176.155 EXAMINATIONS.** Subdivision 1. **Employer's physician.** The injured employee 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 employee is entitled upon request to have his own physician present at any such examination. Each party shall defray the cost of his own physician.

Subd. 2. **Neutral physician.** In each case of dispute as to the injury the commission, or in case of a hearing the commissioner or referee conducting the hearing may upon its own or his own motion, or upon request of any interested party, made in compliance with the rules of the commission regulating the proper time and forms for such request, designate a neutral physician of good standing and ability to make an examination of the injured worker and report his findings to the commission, a commissioner, or referee as the case may be. The commission, commissioner, or referee, as the case may be, may request the neutral physician to answer any particular question with reference to the medical phases of the case, including questions calling for an opinion as to the cause and occurrence of the injury insofar as medical knowledge is relevant in such answer. 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 purposes of cross-examination. Such signed certificate of a neutral physician is competent evidence of the facts stated therein. The expense of such examination shall be paid as ordered by the commission, commissioner or referee.

Subd. 3. **Refusal to be examined.** If the injured employee refuses to comply with any reasonable request for examination, his right to compensation may be suspended by order of the commission and no compensation shall be paid while he continues in such refusal.

Subd. 4. **Autopsies.** 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, upon petition and proper showing, shall order an autopsy. If any dependent claiming compensation or benefits does not consent to such autopsy within the time fixed by the commission in its order, all dependents shall forfeit all rights to compensation. The party demanding an autopsy shall bear the cost thereof.

Subd. 5. **Testimony of examining physicians.** 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 employee, 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 disability resulting therefrom.

[1953 c 755 s 17]

**176.16** [Repealed, 1953 c 755 s 83]

**176.161 ALIEN DEPENDENTS.** Subdivision 1. **Residing outside United States.** In case a deceased employee for whose injury or death compensation is payable leaves surviving him an alien dependent residing outside the United States the commission shall direct the payment of all compensation due the dependent to be made to the duly accredited consular officer of the country of which the beneficiary is a citizen residing within the state, or to his designated representative residing within the state; or, if the commission believes that the interests of the dependent will be better served and at any time prior to the final settlement the dependent files with the commission a power of attorney designating any other suitable person residing in this state to act as attorney in fact in such proceedings, the commission may appoint such person. If it appears necessary to institute proceedings to enforce payment of compensation due the dependent, the commission may permit the consular officer to institute these proceedings. If during the pendency of these proceedings, such power of attorney is filed by the alien dependent, the commission shall then determine whether such attorney in fact be substituted to represent such dependent or if the consular officer or his representative continue therein. The person so appointed may carry on proceedings to settle all claims for compensation and receive for distribution to such dependent all compensation arising under this chapter. The settlement and distribution of the funds shall be made only on the commission's written order. The person so appointed shall furnish a bond satisfactory to the commission, conditioned upon the proper application of the money received by him. Before the bond is discharged, the person so appointed shall file with the commission a verified account of his receipts and disbursements of such compensation.

Subd. 2. **List of dependents.** Before receiving the first payment of such compensation and thereafter when ordered so to do by the commission, the person so appointed shall furnish to the commission a sworn statement containing a list of the dependents showing the name, age, residence, extent of dependency, and relationship to the deceased of each dependent.

Subd. 3. **Certain proceedings legalized.** In any proceedings heretofore taken to recover compensation for any alien dependent carried on for at least five years in the name of a person as petitioner, designated by power of attorney from the alien dependent, the right of this designated petitioner to conclude the proceedings or final settlement and to fully bind all parties thereby is hereby legalized in all respects.

[1953 c 755 s 18]

**176.165 LUMP SUM PAYMENTS.** The amounts of compensation payable periodically 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 prescribes. The commission shall not authorize any lump sum payment until it has received from the Bureau of Workmen's Rehabilitation a recommendation as to the advisability of granting the same, but such recommendation is not binding on the commission. In making these commutations the lump sum payments shall amount, in the aggregate, to a sum equal to the present value of all future instalments of the compensation calculated on a five percent basis.

[1953 c 755 s 19]

**176.17** [Repealed, 1953 c 755 s 83]

**176.171 PAYMENT TO TRUSTEE.** At any time after the amount of any award or commutation is finally determined by the commission, a sum equal to the present value of all future instalments of the compensation, calculated on a five percent basis, where death or the nature of the injury renders the amount of future payments certain, may be paid by the employer to a savings bank or trust company in this state approved and designated by the commission. Such sum, together with all interest thereon, shall be held in trust for the employee or for the dependents of the employee, who shall have no further recourse against the employer. The employer's payment of this sum evidenced by a receipt of the trustee filed with the commission, operates as a satisfaction of the compensation liability as to the

employer. The trustee shall make payments from the fund in the same amounts and at the same time as are required of the employer until the fund and interest is exhausted, except when otherwise ordered by the commission. In the appointment of trustee the commission shall give preference to the choice of the injured employee or the choice of the dependents of the deceased employee.

[1953 c 755 s 20]

**176.175 RIGHT TO COMPENSATION, AWARD.** Subdivision 1. **Preferred claim.** The right to compensation and all compensation awarded any injured employee or for death claims to his dependents have the same preference against the assets of the employer as unpaid wages for labor. This compensation does not become a lien on the property of third persons by reason of this preference.

Subd. 2. **Non-assignability.** No claim for compensation owned by an injured employee or his dependents is assignable. Except as otherwise provided in this chapter, any claim for compensation owned by an injured employee or his dependents is exempt from seizure or sale for the payment of any debt or liability.

[1953 c 755 s 21]

**176.18** [Repealed, 1953 c 755 s 83]

**176.181 INSURANCE.** Subdivision 1. **Authorization.** Any employer responsible for compensation may insure the risk in any manner authorized by law.

Subd. 2. **Compulsory insurance; self-insurers.** Every employer, except the state and its municipal subdivisions, liable under this chapter to pay compensation shall insure payment of such compensation with some insurance carrier authorized to insure such liability in this state, or obtain a written order from the commission exempting such employer from insuring his liability for compensation and permitting him to self-insure such liability. With the approval of the commission, any employer may exclude medical and hospital benefits as required by this chapter. An employer conducting distinct operations at different locations may either insure or self-insure such other portion of his operations which may be determined by the 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 commission, showing his financial ability to pay such compensation, whereupon by written order the commission may make such exemption as it deems proper. The commission may require further statements of financial ability of the employer to pay compensation. Upon ten days written notice the commission may revoke its order granting such exemption, in which event the employer shall immediately insure his liability. As a condition for the granting of an exemption the commission may require the employer to furnish such security as it considers sufficient to insure payment of all claims under this chapter. If the required security is in the form of currency or negotiable bonds, the commission shall deposit same with the state treasurer. In the event of any default upon the part of a self-insurer to abide by any final order or decision of the commission directing and awarding payment of compensation and benefits to any employee or the dependents of any deceased employee, then upon at least ten days notice to such self-insurer, the commission may by written order to the state treasurer require him to sell the pledged and assigned securities or such part thereof as is necessary to pay the full amount of any such claim or award with interest thereon. This authority to sell may be exercised from time to time to satisfy any order or award of the commission or any judgment obtained thereon. When such securities are sold the money so obtained shall be deposited in the state treasury to the credit of the commission and awards made against any such self-insurer by the commission shall be paid to the persons entitled thereto by the state treasurer upon warrants prepared by the commission and approved by the state auditor out of the proceeds of the sale of such securities. Where the security is in the form of a surety bond or personal guaranty the commission, at any time, upon at least ten days notice and opportunity to be heard, may require the surety to pay the amount of the award, the payments to be enforced in like manner as the award may be enforced.

Subd. 3. **Failure to insure, penalty.** Any employer who fails to comply with the provisions of subdivision 2 to secure payment of compensation is liable to the state of Minnesota for a penalty of \$50, if the number of uninsured employees in his employment is less than 5 and for a penalty of \$200 if the number of such uninsured employees in his employment is 5 or more. If the employer continues his noncompliance, he is liable for five times the lawful premium for compensation insurance for such employer for the period he fails to comply with such provisions,

commencing ten days after notice has been served upon him by the commission by certified mail. These penalties may be recovered jointly or separately in a civil action brought in the name of the state by the attorney general in any court having jurisdiction. Whenever any such failure occurs the commission shall immediately certify the fact thereof to the attorney general. Upon receipt of such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state in any such action shall be paid into the state treasury and credited to the special compensation fund. If an employer fails to comply with the provisions of subdivision 2, to secure payment of compensation after having been notified of his duty, the attorney general, upon request of the commission, may proceed against the employer in any court having jurisdiction for an order restraining him from having any person in his employment at any time when he is not complying with the provisions of subdivision 2.

**Subd. 4. Gross misdemeanor.** In addition to being subject to the penalty prescribed in subdivision 3, any employer wilfully and intentionally failing to comply with the provisions of subdivision 2 is guilty of a gross misdemeanor.

[1953 c 755 s 22; 1959 c 265 s 1]

**176.185 POLICY OF INSURANCE.** Subdivision 1. **Cancellation.** A policy of insurance covering the liability to pay compensation under this chapter written by any insurer licensed to insure such liability in this state may be canceled at any time upon written notice to the insured stating when, not less than 30 days thereafter, cancellation shall be effective. This notice of cancellation shall be served upon the insured by written statement to that effect mailed by registered return receipt mail to the insured at the address indicated in the policy and by mailing a copy thereof to the main office of the commission. Upon receipt of said copy the commission shall notify the insured that he must obtain coverage from some other licensed carrier and that, if unable to do so, he shall request the Compensation Rating Bureau to designate some carrier to issue a policy as provided in section 79.25. Upon a cancellation of a policy by the insurer the employer is entitled to have a policy assigned to him in accordance with sections 79.24 to 79.27. Notice of cancellation by the insured shall be served upon the insurer by written statement to that effect mailed to the insurer at its home address stated in the policy. Upon receipt of such notice the insurer shall notify the commission of the cancellation and thereupon the commission shall ask the employer for the reasons of his cancellation and notify him of his duty under this chapter to insure his employees. When either party has complied with the provisions of this subdivision as to cancellation the effective date of cancellation stated in the notice shall be the end of the policy period.

**Subd. 2. Conditions.** A policy of insurance covering the liability to pay compensation under this chapter written by any insurer licensed to insure such liability in this state shall in every case be subject to the conditions of this section hereinafter named.

**Subd. 3. Provision for benefits conferred by this chapter.** Where the employer's risk is carried by an insurer the insurance policy shall provide compensation for injury or death in accordance with the full benefits conferred by this chapter.

**Subd. 4. Compulsory provisions.** Every insurance policy which insures the payment of compensation shall contain provisions declaring the following:

(1) Notice to or knowledge by the employer is notice to or knowledge by the insurer.

(2) Jurisdiction of the employer for any purpose is jurisdiction of the insurer.

(3) The insurer is bound by an award rendered against the employer.

(4) The employee has an equitable lien upon any amount which the insurer owes under the policy to the employer. Where the employer is legally incapacitated or otherwise unable to receive this amount and pay it over to the employee or his dependent, the insurer will pay the amount directly to the employee or his dependent. This payment by the insurer directly to the employee or his dependent discharges the obligation of the insurer to the employee, and the obligations of the insurer and the employer to the employee or his dependent.

(5) The insolvency or bankruptcy of the employer does not relieve the insurer from its obligation to pay compensation.

**Subd. 5. Agreement that employee pay part of cost of insurance.** Subject to the provisions of subdivision 6, an agreement between an employee and his employer

under which the employee is to pay any part of the cost of insuring the employer's risk is void. An employer who makes a charge or deduction prohibited by this subdivision is guilty of a misdemeanor.

**Subd. 6. Joining risks with other risks in policy.** Where the agreement has been approved by the commission the employer and employee may agree to carry the risk provided for in this chapter in conjunction with other and greater risks providing other and greater benefits in the form of additional compensation, or accident, sickness, or old age insurance or benefits. This agreement may provide for appropriate contribution by the employee.

**Subd. 7. Notice, effect.** Where an employer has properly insured the payment of compensation to his employee, and he posts a notice in conspicuous places about his place of business stating that he is so insured and by whom, and he files a copy of that notice with the industrial commission, the employee, or his dependent, shall proceed directly against the insurer. In such case but subject to subdivision 8, the employer is released from further liability in this respect.

**Subd. 8. Insurer insolvent or bankrupt.** Where the insurer has become insolvent or a bankrupt, the employer is not released from liability under this chapter. Where an employee has secured a return of execution upon a judgment against an insurer which is unsatisfied in whole or part, the return is conclusive evidence of the insolvency of the insurer.

Where the insurer is insolvent, or has been adjudged insolvent, or has become or adjudged a bankrupt, the employee may either bring an action directly against the employer, or against the employer and insurer as jointly and severally liable, or, where proceedings are pending against the insurer, compel the joinder of the employer in those proceedings at any time after the insurer has been found insolvent or a bankrupt.

**Subd. 9. Application of section.** Where an employer, who has been exempted from the requirement that he insure his liability for compensation under this chapter, insures any part of that liability, this section applies to such an employer to the extent that its provisions are applicable.

[1953 c 755 s 23]

**176.19** [Repealed, 1953 c 755 s 83]

**176.191 DISPUTE BETWEEN TWO OR MORE EMPLOYERS OR INSURERS REGARDING LIABILITY.** Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to which is liable for payment, the industrial commission may direct that one or more of the employers or insurers make payment of the benefits pending a determination of liability.

When liability has been determined, the commission shall order the party held liable for the benefits to reimburse any other party for payments which the latter has made, including interest at the rate of five percent per annum. The commission may also award the claimant a reasonable attorney fee, to be paid by the party held liable for the benefits.

An order of the commission directing payment of benefits pending a determination of liability may not be used as evidence before any referee, commission, or court in which the dispute is pending.

[1953 c 755 s 24]

**176.195 REVOCATION OF INSURER'S LICENSE.** **Subdivision 1. Grounds.** Where an insurer, or an agent of an insurer, has been guilty of fraud, misrepresentation, or culpable, persistent, and unreasonable delay in making payments or settlements under this chapter, the commissioner of insurance shall revoke the license of the insurer to write workmen's compensation insurance.

**Subd. 2. Commencement of proceedings.** Such commissioner may act under subdivision 1 upon his own motion, the recommendation of the industrial commission, or the complaint of any interested person.

**Subd. 3. Complaint, answer; hearing.** A complaint against an insurer shall be in writing and shall specify clearly the grounds upon which the license is sought to be revoked. The insurer may file a written answer to the complaint and is entitled to receive a hearing in its own behalf before the commissioner of insurance.

**Subd. 4. Notice of hearing.** Such commissioner shall prescribe the method of procedure at the hearing, and its time and place. He shall mail to all interested parties ten days notice of the hearing.

Subd. 5. **Findings of facts, order.** Such commissioner shall make findings of fact and enter an appropriate order. He shall file the findings and order, and mail a copy of them to the industrial commission, the complainant, and the insurer.

Subd. 6. **Appeal to district court.** If he acts within ten days from the date he received a copy of the findings and order, the insurer may appeal from an order revoking his license. The appeal shall be taken to the district court of the district in which the office of the commissioner of insurance is located by serving a written notice of appeal on such commissioner. Such commissioner shall thereupon file a certified copy of his findings and order with the clerk of the district court. This certified copy is prima facie evidence of the facts it states. When the certified copy has been filed with the clerk, the court shall summarily hear and determine the questions involved in the appeal.

[1953 c 755 s 25]

**176.20** [Repealed, 1953 c 755 s 83]

**176.201 DISCRIMINATORY RATES.** Subdivision 1. **Physically handicapped persons.** An insurer, or an agent or employee of an insurer, shall not make or charge a rate which discriminates against the employment of a person who is physically handicapped through the loss or loss of use of a member whether due to accident or other cause.

Subd. 2. **Violation a misdemeanor.** A person who violates subdivision 1 is guilty of a misdemeanor.

Subd. 3. **Conviction of violation, cancelation of license.** Where an insurer, or an agent or employee of an insurer, has been convicted under this section, the fact of conviction is sufficient cause for the commissioner of insurance to cancel the license of the insurer to write workmen's compensation insurance.

[1953 c 755 s 26]

**176.205 PERSON DEEMED EMPLOYER.** Subdivision 1. **Fraudulent device to evade responsibility to worker.** Subject to subdivision 2, a person who creates or executes any fraudulent scheme, artifice, or device to enable him to execute work without being responsible to the worker under this chapter, is deemed an "employer" and is subject to the liabilities which this chapter imposes on employers.

Subd. 2. **Contractor, subcontractor.** Subdivision 1 does not apply to an owner who in good faith lets a contract to a contractor. In such case, the contractor or subcontractor is deemed the "employer."

Subd. 3. **Exceptions.** A person shall not be deemed a contractor or subcontractor where:

(a) he performs his work upon another's premises, with the other's tools or appliances, and under the other's direction; or,

(b) he does what is commonly called "piece work;" or,

(c) in any way the system of employment merely provides a method of fixing the worker's wages.

Subd. 4. **Calculation of compensation.** Where compensation is claimed against a person under the terms of this section, the compensation shall be calculated with reference to the wages the worker was receiving at the time of the injury or death from the person by whom the worker was immediately employed.

[1953 c 755 s 27]

**176.21** [Repealed, 1953 c 755 s 83]

**176.211 ACTS OR OMISSIONS OF THIRD PERSONS.** Except as provided by this chapter the employer need not pay compensation for injuries due to the acts or omissions of third persons who are at the time neither in the service of the employer nor engaged in the work in which the injury occurs.

[1953 c 755 s 28]

**176.215 SUBCONTRACTOR'S FAILURE TO COMPLY WITH CHAPTER.** Subdivision 1. **Liability for payment of compensation.** Where a subcontractor fails to comply with this chapter, the general contractor, or intermediate contractor, or subcontractor is liable for payment of all compensation due an employee of a subsequent subcontractor who is engaged in work upon the subject matter of the contract.

Subd. 2. **Subrogation.** Where a person has paid compensation under this section, he is subrogated to the rights of the injured employee against his immediate employer, or any person whose liability for compensation payment to the employee is prior to the liability of the person who paid it.

**Subd. 3. Determination of respective liabilities.** The industrial commission may determine the respective liabilities of persons under this section.

[1953 c 755 s 29]

**176.22** [Repealed, 1953 c 755 s 83]

**176.221 PAYMENT OF COMPENSATION, COMMENCEMENT.** Subdivision 1. **Denial of liability, request for extension of time.** Within 30 days from the date of notice to or knowledge by the employer of an injury compensable under the chapter, and unless within that 30 day period the employer or the insurer files with the commission a denial of liability or a request for an extension of time within which to determine liability, the person responsible for payment of compensation shall begin payment of compensation.

**Subd. 2. Grant of extension.** Upon application made within the 30 day period referred to in subdivision 1, the commission may grant an extension of time within which to determine liability. The extension shall not exceed 30 days.

**Subd. 3. Payments to special compensation fund.** Where an employer or insurer fails to begin payment of compensation, or to file a denial of liability, or to request an extension of time within the 30 day period referred to in subdivision 1, he shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled because of the injury. In addition, each day subsequent to the end of the 30 day period and until a compensation payment is made to the injured employee, the person responsible for payment of compensation shall pay to the special compensation fund an amount equal to the total compensation to which injured employee is entitled.

**Subd. 4. Failure to make payments after extension.** Where an employer or insurer has been granted an extension of time within which to determine liability and fails to begin payment of compensation or to file a denial of liability within such extended period, he shall make the payments provided in subdivision 3.

**Subd. 5. Double payments to special compensation fund.** Where an employer or insurer has failed to make the payments required by subdivision 3 or subdivision 4 within 60 days from the end of the 30 day period or the extended period, the commission may require him to pay to the special compensation fund, each day subsequent to the end of the period and until a compensation payment is made to the injured employee, a sum equal to double the total amount of compensation to which the employee is entitled because of the injury. In addition, the person responsible for compensation shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled.

**Subd. 6. Assessment of penalties.** The commission shall assess the penalty payments provided for by subdivisions 3 to 5 against either the employer or the insurer depending upon to whom the delay is attributable in making payment of compensation. The insurer is not liable for a penalty payment assessed against the employer.

[1953 c 755 s 30]

**176.225 ADDITIONAL AWARD AS PENALTY.** Subdivision 1. **Grounds.** Upon reasonable notice and hearing or opportunity to be heard, the commission or upon appeal, the supreme court may award compensation, in addition to the total amount of compensation award, of up to 25 percent of that total amount where an employer or insurer has:

- (a) instituted a proceeding or interposed a defense which does not present a real controversy but which is frivolous or for the purpose of delay; or,
- (b) unreasonably or vexatiously delayed payment; or,
- (c) neglected or refused to pay compensation; or,
- (d) intentionally underpaid compensation.

**Subd. 2. Examination of books and records.** To determine whether an employer or insurer has become subject to the payment provided by subdivision 1, the industrial commission may examine the books and records of the person relating to the payment of compensation, and may require him to furnish any other information relating to the payment of compensation.

**Subd. 3. Defiance of industrial commission, complaint.** Where an insurer persists in an action or omission listed in subdivision 1, or does not permit the commission to examine his books and records, or fails to furnish such information as the commission requires, the commission shall file a written complaint with the insurance commissioner. The complaint shall specify the facts and recommend the revocation of the license of the insurer to do business in this state.

Subd. 4. **Hearing before insurance commissioner.** When he has received a complaint filed under subdivision 3, the insurance commissioner shall hear and determine the matter in the manner provided by this chapter. If he finds that a charge made by the complaint is true, the insurance commissioner shall revoke the license of the insurer to do business in this state. The insurer may appeal from the action of the commissioner revoking his license in the manner provided in this chapter.

[1953 c 755 s 31]

**176.23** [Repealed, 1953 c 755 s 83]

**176.231 REPORT OF DEATH OR INJURY TO COMMISSION.** Subdivision 1. **Time limitation.** Where death or serious injury occurs to an employee during the course of employment, the employer shall report the same to the commission within 48 hours after its occurrence. Where any other injury occurs which wholly or partly incapacitates the employee from performing labor or service for longer than the remainder of the day or shift during which the injury occurred, the employer shall report the injury to the commission within seven days from its occurrence. Where an injury has once been reported but subsequently death ensues, the employer shall report the death to the commission within 48 hours after he receives notice of such fact.

Subd. 2. **Initial report, written report.** Where subdivision 1 requires an injury to be reported within 48 hours, the employer may make his initial report by telephone, telegraph, or personal notice, and file a written report of the injury within seven days from its occurrence or within such time as the commission designates.

Subd. 3. **Physicians or surgeons to report injuries.** Where a physician or surgeon has examined, treated, or has special knowledge of an injury to an employee which may be compensable under this chapter, he shall report to the commission all facts relating to the nature and extent of the injury and disability within ten days after he has received a written request for such information from the commission.

Subd. 4. **Supplementary reports.** The commission may require the filing of such supplementary reports of accidents as it deems necessary to provide information required by law.

Subd. 5. **Forms for reports.** The commission shall prescribe forms for use in making the reports required by this section. The form which the employer submits with reference to an accident shall include a declaration by the employer that he will pay the compensation the law requires. The form shall also include a statement in which the employer admits liability for compensation in the particular case which is the subject of the report. Where the employer does in fact admit liability, he shall sign this statement.

Subd. 6. **Industrial commission, duty to keep informed.** The commission shall keep fully informed of the nature and extent of all injuries compensable under this chapter, their resultant disabilities, and of the rights of employees to compensation. Where a physician or surgeon has examined, treated, or has special knowledge relating to an injury which may be compensable under this chapter, the commission shall request in writing a report from such person of the attendant facts.

Subd. 7. **Medical reports.** If requested by the commission, an employer, insurer, or employee shall file with the commission the original or a verified copy of any medical report in his possession which bears upon the case.

Subd. 8. **No public inspection of reports.** Subject to subdivision 9, a report or its copy which has been filed with the commission under this section is not available to public inspection. Any person who has access to such a report shall not disclose its contents to anyone in any manner.

A person who unauthorizedly discloses a report or its contents to another is guilty of a misdemeanor.

Subd. 9. **Uses which may be made of reports.** Reports filed with the commission under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics.

The commission may permit an attorney at law who represents an employer, insurer, or an employee or his dependent to examine its file in a compensation case if the attorney furnishes written authorization to do so from his client.

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**Subd. 10. Failure to file required report, penalty.** Where an employer, physician, or surgeon has failed to file with the commission any report required by this section in the manner and within the time limitations prescribed, he shall forfeit to the state \$50 for each such failure.

The attorney general shall sue in a civil action to collect this penalty upon notification of the matter by the commission. The commission shall certify to the attorney general each failure to report immediately upon its occurrence.

Penalties collected by the state under this subdivision shall be paid into the state treasury.

[1953 c 755 s 32]

## **176.235 NOTICE TO INJURED EMPLOYEE OF HIS RIGHTS AND DUTIES.**

When the industrial commission has received notice or information that an employee has sustained an injury which may be compensable under this chapter, the commission shall mail a form letter notice to the employee stating briefly and simply the rights and duties of the employee in such case.

The notice:

(1) shall summarize the duty of the employer to pay compensation and to furnish medical and hospital treatment;

(2) shall invite the employee to ask the advice of the commission with reference to any doubt or dispute which the employee has concerning the injury;

(3) may contain whatever other relevant information the industrial commission deems necessary.

[1953 c 755 s 33]

**176.24** [Repealed, 1953 c 755 s 83]

**176.241 NOTICE TO COMMISSION OF INTENTION TO DISCONTINUE COMPENSATION PAYMENTS.** Subdivision 1. **Necessity for notice; contents.** Where an employee claims that the right to compensation continues, or refuses to sign or objects to signing a final receipt for compensation, the employer may not discontinue payment of compensation until he notifies the industrial commission in writing of his intention to do so.

The notice to the commission shall state the date of intended discontinuance, the reason for such action, and the fact that the employee objects to the discontinuance. The notice shall be accompanied by whatever medical reports are in the possession of the employer bearing on the physical condition of the employee at the time of the proposed discontinuance.

**Subd. 2. Continuance of employer's liability; suspension.** Except where the commission orders otherwise, until the notice and reports have been filed with the commission, the liability of the employer to make payments of compensation continues.

When the commission has received a notice of discontinuance and available medical reports, the duty of the employer to pay compensation is suspended pending an investigation, hearing, and determination of the matter by the commission as provided in the following subdivisions.

**Subd. 3. Copy of notice to employee, investigation, hearing.** When the commission has received a notice of discontinuance, it shall immediately send the employee a copy of the notice and copies of whatever medical reports have been submitted in conjunction with the notice. The commission shall make an investigation to determine whether the right to compensation has terminated. If it appears from the investigation that the right to compensation may not have terminated, the commission shall schedule a hearing before the commission, or a commissioner or referee, to determine the right of the employee, or his dependent, to further compensation.

The hearing shall be held within a reasonable time after the commission has received the notice of discontinuance. The commission shall give eight days notice of the hearing to interested parties.

**Subd. 4. Order.** When the hearing has been held, and he has duly considered the evidence, the person who held the hearing shall promptly enter an order directing the payment of further compensation or confirming the termination of compensation. Where the order confirms a termination of compensation, the commission shall notify the employer of such action. This notification relieves the



employer from further liability for compensation subject to the right of review afforded by this chapter, and to the right of the commission to set aside the order at any time prior to the review and grant a new hearing pursuant to this chapter.

[1953 c 755 s 34]

**176.245 RECEIPTS FOR PAYMENT OF COMPENSATION, FILING.** An employer shall promptly file with the commission each interim and final receipt for payment of compensation.

The commission shall periodically check its records in each case to determine whether these receipts have been promptly filed, and if not, shall require the employer to do so.

[1953 c 755 s 35]

**176.25** [Repealed, 1953 c 755 s 83]

**176.251 DUTIES OF INDUSTRIAL COMMISSION.** The commission shall actually supervise and require prompt and full compliance with all provisions of this chapter relating to the payment of compensation.

[1953 c 755 s 36]

**176.253 INSURER, EMPLOYER; PERFORMANCE OF ACTS.** Where this chapter requires an employer to perform an act, the insurer of the employer may perform that act. Where the insurer acts in behalf of the employer, the employer is responsible for the authorized acts of the insurer and for any delay, failure, or refusal of the insurer to perform the act.

This section does not relieve the employer from any penalty or forfeiture which this chapter imposes on him.

[1953 c 755 s 37]

**176.255, 176.26** [Repealed, 1953 c 755 s 83]

**176.261 EMPLOYEE OF INDUSTRIAL COMMISSION MAY ACT FOR AND ADVISE A PARTY TO A PROCEEDING.** When requested by an employer or an employee or his dependent, the industrial commission may designate one or more of its own employees to advise that party of his rights under this chapter, and as far as possible to assist in adjusting differences between the parties. The person so designated may appear in person in any proceedings under this chapter as the representative or adviser of the party. In such case, the party need not be represented by an attorney at law.

[1953 c 755 s 38]

**176.265 REPORT TO LEGISLATURE.** The commission shall observe in detail the operation of this chapter throughout the state. It shall make a report to each session of the legislature concerning the operation of the chapter, proposing such changes as it deems advisable to improve the law.

[1953 c 755 s 39]

**176.27** [Repealed, 1953 c 755 s 83]

**176.271 INITIATION OF PROCEEDINGS.** Unless otherwise provided by this chapter or by the commission, all proceedings before the industrial commission are initiated by the filing of a written petition on a prescribed form with the commission at its principal office.

[1953 c 755 s 40]

**176.275 FILING OF PAPERS.** The industrial commission shall file any paper which has been delivered to it for filing immediately upon its receipt.

[1953 c 755 s 41]

**176.28** [Repealed, 1953 c 755 s 83]

**176.281 ORDERS, DECISIONS, AND AWARDS OF REFEREES OR COMMISSIONERS; FILING; SERVICE.** When a commissioner or referee has rendered an order, decision, or award, he shall immediately file it with the commission. Where the commission, a commissioner, or referee has rendered an order, decision, or award, the commission shall immediately serve a copy upon every party in interest, together with a notification of the time the same was filed.

[1953 c 755 s 42]

**176.285 SERVICE OF PAPERS AND NOTICES.** Service of papers and notices shall be by mail or by such other means as the commission directs. Where service is by mail, service is effected at the time mailed if properly addressed and stamped. If it is so mailed, it is presumed the paper or notice reached the party to be served. However, a party may show by competent evidence that he did not receive it or

that it had been delayed in transit for an unusual or unreasonable period of time. In case of such non-receipt or delay, the commission shall make allowance for the party's failure to assert a right within the prescribed time.

The commission shall keep a careful record of each service including the time when made.

[1953 c 755 s 43]

**176.29** [Repealed, 1953 c 755 s 83]

**176.291 DISPUTES AND DEFAULTS; PROCEDURE.** Where there is a dispute as to a question of law or fact in connection with a claim for compensation, or where there has been a default in the payment of compensation for a period of ten days, a party may present a verified petition to the commission stating the matter in dispute or the fact of default.

The petition shall also state:

- (1) names and residence of parties;
- (2) facts relating to the employment at the time of injury, including amount of wages received;
- (3) extent and character of injury;
- (4) notice to or knowledge by employer of injury;
- (5) facts which the commission by rule requires; and,
- (6) such other facts as are necessary for the information of the commission.

[1953 c 755 s 44]

**176.295 NONRESIDENT EMPLOYERS; FOREIGN CORPORATIONS.** Subdivision 1. **Affidavit of inability to obtain service.** Where an employee or his dependent has filed a petition for compensation with the industrial commission, and he is unable to make service of the petition and other notices on the employer because the latter is a nonresident or a foreign corporation, the petitioner may file an affidavit with the commission stating that he is so unable to make service.

Subd. 2. **Action in district court.** When he has filed the affidavit with the commission, the petitioner may bring an action against the employer in the district court located in the county in which the employee resided at the time of the injury or death. The action shall be brought and conducted in the same manner as are other civil actions in district court. The complaint shall state that a petition for compensation has been filed with the industrial commission, and shall be accompanied by a verified copy of the affidavit. The complaint shall also state the facts upon which the right to compensation or other relief is based.

Subd. 3. **Attachment, garnishment; service by publication.** The remedies of attachment and garnishment are available to the petitioner in the district court action. Service of summons may be made by publication.

Subd. 4. **General appearances; security, bond.** Where the employer makes a general appearance in the district court action and files a bond or security approved by the commission, or where an insurer appears generally in the action and assumes liability for any award which may be rendered against the employer, the district court shall dismiss the action.

[1953 c 755 s 45]

**176.30** [Repealed, 1953 c 755 s 83]

**176.301 DETERMINATION OF ISSUES.** Subdivision 1. **Trial by court; reference to industrial commission.** When issue has been joined in the district court action, the court may try the action itself without a jury, or refer the matter to the commission for hearing. In the latter case, the commission shall hear the case in the manner in which it hears cases originally brought before it. The commission shall report its findings and decision to the district court. The court may approve or disapprove the decision of the commission in the same manner as it approves or disapproves the report of a referee. The court shall enter judgment upon the decision of the commission.

Subd. 2. **Appeal from judgment of district court.** An appeal lies from the judgment of the district court as in other cases.

[1953 c 755 s 46]

**176.305 PETITIONS FILED WITH INDUSTRIAL COMMISSION.** Subdivision 1. **Hearings on petitions.** When any petition other than one to commute further compensation has been filed with the commission, the commission shall, pursuant to its general rules or special order, direct that the matter presented by the petition be heard by the commission itself, or by a commissioner or referee. The commission itself shall hear petitions to commute further compensation.

**Subd. 2. Service of copy of petition.** Within ten days after a petition has been filed, the secretary of the commission shall serve upon each adverse party a copy of the petition and a notice stating whether the hearing will be held before the commission, a commissioner, or referee. Where the matter will be heard by a commissioner or referee, the secretary shall deliver to him the original petition and copies of the notices which have been served.

**Subd. 3. Testimony.** Unless the commission orders differently, where testimony is taken before a commissioner or referee, the testimony is considered as if taken before the commission itself. Where the commission has substituted itself or another commissioner or referee for a commissioner or referee originally assigned to hear a petition, as provided in this chapter, testimony taken before the original commissioner or referee is considered as if taken before the commission or substitute commissioner or referee.

[1953 c 755 s 47]

**176.31** [Repealed, 1953 c 755 s 83]

**176.311 REASSIGNMENT OF PETITION FOR HEARING.** Where a petition is heard before a commissioner or referee, at any time before an award or order has been made in such proceeding, the commission may reassign the petition for hearing before itself, or another commissioner or referee.

[1953 c 755 s 48]

**176.32** [Repealed, 1953 c 755 s 83]

**176.321 ANSWER TO PETITION.** Subdivision 1. **Filing, service.** Within ten days after he has been served with a copy of the petition, an adverse party may file a verified answer to the petition. When he files the answer, the party shall also serve a copy on the petitioner or his attorney.

Within five days after he has been served with a copy of the answer, the petitioner may file a verified reply admitting or denying new matter set forth in the answer.

**Subd. 2. Contents.** The answer shall admit, deny, or affirmatively defend against the substantial averments of the petition, and shall state the contention of the adverse party with reference to the matter in dispute.

Each fact alleged by the petition or answer and not specifically denied by the answer or reply is deemed admitted, but the failure to deny such a fact does not preclude the commission, commissioner, or referee from requiring proof of the fact.

**Subd. 3 Extension of time in which to file answer.** Upon a showing of cause, the commission may extend the time in which to file an answer or reply for not more than 30 additional days.

[1953 c 755 s 49]

**176.33** [Repealed, 1953 c 755 s 83]

**176.331 AWARD BY DEFAULT.** Where an adverse party has failed to file and serve an answer, if the petitioner presents proof of such fact, the commission shall enter whatever award or order to which petitioner is entitled on the basis of the facts alleged in the petition, but the commission may require proof of any alleged fact. If the commission requires such proof, it shall summarily hear and determine the matter and promptly make its award or order.

Where in such a default case the petition does not state facts sufficient to support an award, the commission shall give the petitioner or his attorney written notice of such fact. The petitioner may thereupon file another petition as in the case of an original petition.

[1953 c 755 s 50]

**176.34** [Repealed, 1953 c 755 s 83]

**176.341 HEARING ON PETITION.** Subdivision 1. **Time.** When the reply has been filed or the time has expired in which to file a reply, the commission shall fix a time and place for hearing the petition. The hearing shall be held not less than ten days from the time the reply is filed or the expiration of the time in which the reply could have been filed or as soon thereafter as the parties can be heard.

**Subd. 2. Place.** Unless otherwise ordered by the commission, commissioner, or referee, the hearing shall be held in the county where the injury or death occurred.

**Subd. 3. Notice mailed to each party.** At least five days prior to the date of hearing, the secretary of the commission (if the petition is to be heard before the commission), or the commissioner or referee before whom the petition will be heard, shall mail a notice of the time and place of hearing to each interested party.

[1953 c 755 s 51]

**176.35** [Repealed, 1953 c 755 s 83]

**176.351 TESTIMONIAL POWERS.** Subdivision 1. **Oaths.** A member of the industrial commission, or the commissioner or referee to whom a petition has been assigned for hearing shall administer an oath to each witness.

Subd. 2. **Subpoenas.** Upon his or its own initiative, or upon written request of an interested party, the commission, or the commissioner or referee before whom a hearing is held may issue a subpoena for the attendance of a witness or the production of such books, papers, records and documents as are material in the cause and are designated in the subpoena.

Subd. 3. **Advancement of fees and costs.** The person who applies for issuance of a subpoena shall advance the required service and witness fees. The commission shall pay for the attendance of witnesses it subpoenas. The fees are the same as the service and witness fees in civil actions in district court.

Subd. 4. **Proceedings as for contempt of court.** Where a person does not comply with an order or subpoena, the commission, or the commissioner or referee concerned, may apply to the district court in the county in which the petition is pending for issuance of an order compelling obedience. Upon such an application, the district court shall compel obedience to the order or subpoena by attachment proceedings as for contempt in the case of disobedience of a similar order or subpoena issued by the district court.

[1953 c 755 s 52]

**176.36** [Repealed, 1953 c 755 s 83]

**176.361 INTERVENTION.** Where a person has an interest in any matter before the commission, or commissioner, or referee of such a character that he may either gain or lose by an order or decision, he may intervene in the proceeding by filing an application in writing stating the facts which show such interest.

The commission shall adopt rules to govern the procedure for intervention.

[1953 c 755 s 53]

**176.37** [Repealed, 1953 c 755 s 83]

**176.371 AWARD OR DISALLOWANCE OF COMPENSATION.** The commission, or a commissioner or referee to whom a petition has been assigned for hearing, shall hear all competent evidence produced at the hearing, and, as soon after the hearing as possible, make such findings of fact, conclusions of law, and award or disallowance of compensation or other order as the pleadings, evidence and this chapter require.

[1953 c 755 s 54]

**176.38** [Repealed, 1953 c 755 s 83]

**176.381 REFERENCE OF QUESTIONS OF FACT.** Subdivision 1. **Hearing before industrial commission.** In the hearing of any petition before the industrial commission, including a petition to commute compensation, the commission may refer any question of fact to a commissioner or referee either to hear evidence and report it to the commission or to hear evidence and make findings of fact and report them to the commission.

Subd. 2. **Hearing before commissioner or referee.** In the hearing of any petition before a commissioner or referee, the commission may refer any question of fact to another commissioner or referee to hear evidence and report it to the original commissioner or referee.

[1953 c 755 s 55]

**176.39** [Repealed, 1953 c 755 s 83]

**176.391 INVESTIGATIONS.** Subdivision 1. **Power to make.** Before, during, or after any hearing, the commission, a commissioner, or a referee may make an independent investigation of the facts alleged in the petition or answer.

Subd. 2. **Appointment of physicians, surgeons, and other experts.** The commission, or a commissioner or referee who acts with the consent of the commission, may appoint one or more impartial physicians or surgeons to examine the injury of the employee and report thereon. Where necessary to determine the facts, the services of other experts may also be employed.

Subd. 3. **Reports.** The report of a physician, surgeon, or other expert shall be filed with the commission. The report shall be made a part of the record of the case and be open to inspection as such.

Subd. 4. **Compensation.** The commission shall fix the compensation of a physician, surgeon, or other expert whose services are employed under this chapter.

This compensation shall be paid initially out of the funds appropriated for the maintenance of the department of labor and industry, but shall be taxed as costs to either party, or both, or otherwise, as the commission directs.

Where a sum which has been taxed to a party has not been paid, it may be collected in the same manner as are costs generally.

[1953 c 755 s 56]

**176.40** [Repealed, 1953 c 755 s 83]

**176.401 HEARINGS PUBLIC.** All hearings before the commission, a commissioner, or referee are public.

[1953 c 755 s 57]

**176.41** [Repealed, 1953 c 755 s 83]

**176.411 RULES OF EVIDENCE, PLEADING, AND PROCEDURE.** Subdivision 1. **Conduct of hearings and investigations.** Except as otherwise provided by this chapter, when the commission, a commissioner or referee makes an investigation or conducts a hearing, it or he is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure. The investigation or hearing shall be conducted in a manner to ascertain the substantial rights of the parties.

Findings of fact shall be based upon competent evidence only.

Subd. 2. **Depositions.** Except where the commission, a commissioner, or referee orders otherwise, depositions may be taken in the manner which the law provides for depositions in civil actions in district court.

Subd. 3. **Hospital records as evidence.** A hospital record relating to medical or surgical treatment given an employee is admissible as evidence of the medical and surgical matters stated in the record, but it is not conclusive proof of such matters.

[1953 c 755 s 58]

**176.42** [Repealed, 1953 c 755 s 83]

**176.421 APPEALS TO INDUSTRIAL COMMISSION.** Subdivision 1. **Time for taking; grounds.** When a petition has been heard before a commissioner or referee, within 30 days after a party in interest has been served with notice of an award or disallowance of compensation, or other order affecting the merits of the case, he may appeal to the industrial commission on any of the following grounds:

- (1) The order does not conform with this chapter; or
- (2) The commissioner or referee committed an error of law; or
- (3) The findings of fact and order were unwarranted by the evidence; or
- (4) The findings of fact and order were procured by fraud, or coercion, or other improper conduct of a party in interest.

Subd. 2. **Extension of time.** Where a party shows cause within the 30 day period referred to in subdivision 1, the commission may extend the time for taking the appeal for not more than 30 additional days.

Subd. 3. **Notice of appeal.** The appellant shall prepare and sign a written notice of appeal specifying:

- (1) the order appealed from;
- (2) that appellant appeals from the order to the commission;
- (3) the particular finding of fact which he claims was unwarranted by the evidence or procured by fraud, coercion, or other improper conduct; and,
- (4) any other ground upon which the appeal is taken.

Subd. 4. **Service and filing of notice; cost of transcript.** Within the 30 day period for taking an appeal, the appellant shall:

- (1) Serve a copy of the notice of appeal on each adverse party;
- (2) File the original notice, with proof of service by admission or affidavit, with the commission;
- (3) In order to defray the cost of the transcript of the proceedings appealed from, pay to the commission the sum of \$10 or so much of that sum as is necessary to present the question raised on the appeal.

The appellant is liable for the cost of the transcript in excess of \$10, but is entitled to a refund of any part of that sum not used to pay the cost of the transcript.

Upon a showing of cause, the commission may direct that a transcript be prepared without expense to the appellant.

Subd. 5. **Transcript.** When the notice of appeal has been filed with the commission and the transcription fee has been paid, the commission shall immediately prepare a typewritten transcript of the proceedings. The official reporter who transcribes the proceedings shall certify to their correctness.

Subd. 6. **Powers of commission on appeal.** On an appeal taken under this section, the commission may:

- (1) disregard the findings of fact which the commissioner or referee has made;
- (2) examine the testimony and hear other evidence;
- (3) substitute for the findings of fact made by the commissioner or referee such findings as the total evidence requires; and,
- (4) make such award or disallowance of compensation or other order as the facts and findings require.

Subd. 7. **Record of proceedings.** At its own expense, the commission shall make a complete record of its proceedings. The commission shall provide a stenographer to make a record of the proceedings before a commissioner, referee, or the commission.

The stenographer shall furnish a transcript of these proceedings to any person who requests it and who pays a reasonable charge. The commission shall fix the amount of this charge.

[1953 c 755 s 59]

**176.43** [Repealed, 1953 c 755 s 83]

**176.431 APPEAL BASED ON ERROR OF LAW BY COMMISSIONER OR REFEREE.** Subdivision 1. **Hearing.** Where an appeal has been taken to the commission under this chapter on the ground that the commissioner or referee has made an error of law, the commission shall grant a hearing.

The commission shall fix a time and place for the hearing, and shall give each party in interest at least five days written notice.

Subd. 2. **Disposition by commission.** The commission shall either sustain, reverse, or modify the order appealed from. The commission shall act as soon after the hearing as possible.

[1953 c 755 s 60]

**176.44** [Repealed, 1953 c 755 s 83]

**176.441 APPEAL BASED ON FRAUD OR INSUFFICIENCY OF EVIDENCE.** Subdivision 1. **Disposition by commission.** Where an appeal has been taken to the commission under this chapter, on either the ground that the findings or order or both were unwarranted by the evidence, or were procured by fraud, coercion, or other improper conduct of a party, the commission may:

- (1) grant a hearing de novo; or,
- (2) assign the petition for rehearing before a commissioner or referee; or,
- (3) sustain, reverse, or modify the order appealed from.

Subd. 2. **Hearing de novo.** When the commission grants a hearing de novo under subdivision 1, it shall fix a time and place for the hearing, and give each party in interest at least five days written notice of the hearing.

As soon after the hearing as possible, the commission shall make written findings of fact and enter an order awarding or disallowing compensation.

[1953 c 755 s 61]

**176.45** [Repealed, 1953 c 755 s 83]

**176.451 DEFAULTS.** Subdivision 1. **Application to district court for judgment.** Where there has been a default of more than 30 days in the payment of compensation due under an award, the employee, or his dependent, or other person entitled to the payment of money under the award, may apply to the judge of any district court for the entry of judgment upon the award.

Subd. 2. **Certified copy of award; filing, notice.** The application shall be made by filing a certified copy of the award with the clerk of court and by serving a ten days notice upon adverse parties. Service of the notice shall be made in the manner provided by court rule for service of summons in district court.

Subd. 3. **Clerk's fees.** The clerk shall charge only 25 cents for the entire service he performs under this section.

Subd. 4. **Matters for determination; judgment.** When he hears the application for judgment upon the award, the judge has authority to determine only the facts of the award and the regularity of the proceedings upon which the award is based. The judge shall enter judgment accordingly.

Judgment shall not be entered upon an award while an appeal is pending.

**Subd. 5. Effect of district court judgment.** The judgment of the district court entered upon an award has the same force and effect, and may be vacated, set aside, or satisfied as may other judgments of the district court.

[1953 c 755 s 62]

**176.46** [Repealed, 1953 c 755 s 83]

**176.461 SETTING ASIDE AWARD.** Except where a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or where as a matter of law the determination of the supreme court cannot be subsequently modified, the commission, for cause, at any time after an award, upon application of either party and not less than five days written notice to all interested parties, may 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 chapter shall in its judgment require.

[1953 c 755 s 63]

**176.47** [Repealed, 1953 c 755 s 83]

**176.471 REVIEW BY SUPREME COURT ON CERTIORARI.** Subdivision 1. **Time for seeking review; grounds.** Where the commission has made an award or disallowance of compensation or other order, if a party in interest acts within 30 days from the date he was served with notice of the order, he may have the order reviewed by the supreme court on certiorari upon one of the following grounds:

- (1) The order does not conform with this chapter; or,
- (2) The commission committed any other error of law; or,
- (3) The findings of fact and order were unwarranted by the evidence.

**Subd. 2. Extension of time for seeking review or for filing other papers.** Where cause is shown within the 30 day period referred to in subdivision 1, the supreme court may extend the time for seeking review on certiorari. The supreme court may also extend the time for filing any other paper which this chapter requires to be filed with that court.

**Subd. 3. Service of writ and bond; filing fee.** To effect a review upon certiorari, the party shall serve a writ of certiorari and a bond upon the commission within the 30 day period referred to in subdivision 1. The party shall also at this time pay to the secretary of the commission a \$10 filing fee.

**Subd. 4. Contents of writ.** The writ of certiorari required by subdivision 3 shall show that a review is to be had in the supreme court of the proceedings of the commission upon which the order is based.

**Subd. 5. Bond.** The bond required by subdivision 3 shall be executed in such amount and with such sureties as the commission or a commissioner directs and approves. The bond shall be conditioned to pay the cost of the review.

**Subd. 6. Transmittal of fee and return.** When the writ of certiorari has been served upon the commission, the bond has been filed, and the filing fee has been paid, the secretary shall immediately transmit to the clerk of the supreme court that filing fee and the return to the writ of certiorari and bond.

**Subd. 7. Jurisdiction vested.** Filing such return and payment of the filing fee referred to in subdivision 6 vests the supreme court with jurisdiction of the case.

**Subd. 8. Return of proceedings transmitted to court.** Within 30 days after the writ of certiorari, bond, and filing fee have been filed with the commission, the secretary of the commission shall transmit to the clerk of the supreme court a true and complete return of the proceedings of the commission under review, or such part of those proceedings as is necessary to allow the supreme court to review properly the questions presented.

The secretary shall certify the return of the proceedings under the seal of the commission. The petitioner or relator shall pay to the secretary the reasonable expense of preparing the return.

**Subd. 9. Application of rules governing appeals in civil actions.** When the return of the proceedings before the commission has been filed with the clerk of the supreme court, the supreme court shall hear and dispose of the matter in accordance with the laws and court rules governing appeals in civil actions.

Subd. 10. **Rules.** The supreme court may adopt rules which are consistent with this chapter and necessary or convenient to the impartial and speedy disposition of these cases.

[1953 c 755 s 64]

**176.48** [Repealed, 1953 c 755 s 83]

**176.481 ORIGINAL JURISDICTION OF SUPREME COURT.** On review upon certiorari under this chapter, the supreme court has original jurisdiction. It may reverse, affirm, or modify the order allowing or disallowing compensation and enter such judgment as it deems just and proper. Where necessary the supreme court may remand the cause to the commission for a new hearing or for further proceedings with such directions as the court deems proper.

[1953 c 755 s 65]

**176.49** [Repealed, 1953 c 755 s 83]

**176.491 STAY OF PROCEEDINGS PENDING DISPOSITION OF CASE.** Where a writ of certiorari has been perfected under this chapter, it stays all proceedings for the enforcement of the order being reviewed until the case has been finally disposed of either in the supreme court or, where the cause has been remanded to the commission for a new hearing or further proceedings, before the commission.

[1953 c 755 s 66]

**176.50** [Repealed, 1953 c 755 s 83]

**176.501 ATTORNEY GENERAL ACTS FOR COMMISSION.** Unless the commission directs otherwise, when an order of the commission is reviewed by the supreme court under this chapter, the attorney general shall represent the commission. He shall prepare and present such papers, briefs, and arguments as he deems necessary to support the order under review.

[1953 c 755 s 67]

**176.51** [Repealed, 1953 c 755 s 83]

**176.511 COSTS.** Subdivision 1. **Parties not awarded costs.** Except as provided otherwise by this chapter and specifically by this section, in hearings before the commission, or a commissioner, or referee, costs shall not be awarded to either party.

Subd. 2. **Disbursements, taxation.** The commission, a commissioner, or a referee, or on appeals to the commission, the commission may award the prevailing party reimbursement for actual and necessary disbursements. These disbursements shall be taxed upon five days written notice to adverse parties.

Subd. 3. **Attorney's fee, allowance.** Where upon an appeal to the commission, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the commission may include in its award as an incident to its review on appeal an amount to cover a reasonable attorney's fee, or it may allow the fee in a proceeding to tax disbursements.

Subd. 4. **Costs and disbursements on certiorari.** On review by the supreme court upon certiorari, costs and disbursements shall be taxed as they are upon appeals in civil actions.

Subd. 5. **Attorney's fee on certiorari.** Where upon a review by the supreme court upon certiorari, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the court may allow a reasonable attorney's fee incident to the review. This allowance of an attorney's fee shall be made a part of the judgment order of the supreme court.

[1953 c 755 s 68]

**176.52** [Repealed, 1953 c 755 s 83]

**176.521 SETTLEMENT OF CLAIMS.** Subdivision 1. **Validity.** An agreement between an employee or his dependent and the employer or insurer to settle any claim for compensation under this chapter is valid where it has been executed in writing and signed by the parties, and the commission has approved the settlement and made an award thereon.

Subd. 2. **Approval.** Except for the amount of compensation, the commission shall approve a settlement only where its terms conform with this chapter.

The commission shall exercise discretion in approving or disapproving a proposed settlement.

The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with this chapter.



Subd. 3. **Setting aside award upon settlement.** Notwithstanding any provision in the agreement of settlement to the contrary, the commission may set aside an award made upon a settlement, pursuant to this chapter.

[1953 c 755 s 69]

**176.53** [Repealed, 1953 c 755 s 83]

**176.531 AWARD OF COMPENSATION AGAINST A POLITICAL SUBDIVISION OR SCHOOL DISTRICT.** Subdivision 1. **Preferred claim.** Where the commission or a court has ordered that an award of compensation under this chapter shall be paid by a political subdivision or a school district, the entitlement of a person to payment under the award is a preferred claim against the subdivision or district. The award shall be paid when and as ordered from the general fund of the subdivision or district, and from the current tax apportionment received by the subdivision or district for the credit of the general fund.

Subd. 2. **Payment from general fund.** When the political subdivision or school district has issued an order or warrant for payment of compensation, and the order or warrant has not been paid, it is a preferred claim which shall be paid from the general fund and from current tax apportionments received for the credit of the general fund before any subsequent claim for compensation is paid.

Subd. 3. **Prompt payment.** This section shall be liberally construed to insure the prompt payment of compensation.

[1953 c 755 s 70]

**176.54** [Repealed, 1953 c 755 s 83]

**176.541 STATE DEPARTMENTS.** Subdivision 1. **Application of chapter to state employees.** This chapter applies to the employees of any department of this state.

Subd. 2. **Defense of claim against state.** When the commission believes that a claim against the state for compensation should be contested, it shall defend the state claim.

Subd. 3. **Duties of attorney general.** At any stage in such a compensation proceeding, the attorney general may assume the duty of defending the state. When the commission or a department of this state requests the attorney general to assume the defense, he shall do so.

Subd. 4. **Medical examination of employee; witnesses; conduct of defense.** In conducting a defense against a claim for compensation, the commission or the attorney general, as the case may be, may require that an employee submit to a medical examination, procure the attendance of expert and other witnesses at a hearing, and do any other act necessary to conduct a proper defense.

Subd. 5. **Expenses of conducting defense.** The expenses of conducting a defense shall be charged to the department which employs the employee involved. These expenses shall be paid from the state compensation revolving fund.

Subd. 6. **Legal and clerical help.** The commission may employ such legal and clerical help as authorized by the legislature. The salaries of these persons shall be paid from the state compensation revolving fund, but shall be apportioned among the several departments of the state in relation to the amount of compensation paid to employees of any department as against the total amount of compensation paid to employees of all departments.

[1953 c 755 s 71]

**176.55** [Repealed, 1953 c 755 s 83]

**176.551 REPORTS.** Subdivision 1. **Heads of state departments to report accidents to employees.** Except as provided in subdivision 2, the head of a department of the state shall report each accident which occurs to an employee as and in the manner required by this chapter.

Subd. 2. **Contents.** The report need not contain a statement relating to liability to pay compensation as required by this chapter.

[1953 c 755 s 72]

**176.56** [Repealed, 1953 c 755 s 83]

**176.561 COMMISSION'S POWERS AND DUTIES AS TO STATE EMPLOYEES; PROCEDURE FOR DETERMINING LIABILITY.** The commission has the same powers and duties in matters relating to state employees as it has in relation to other employees.

Except as specifically provided otherwise herein, the procedure for determining the liability of the state for compensation is the same as that applicable in other cases.

[1953 c 755 s 73]

**176.57** [Repealed, 1953 c 755 s 83]

**176.571 INVESTIGATIONS OF INJURIES TO STATE EMPLOYEES.** Subdivision 1. **Preliminary investigation.** When the head of a department has filed a report or the commission has otherwise received information of the occurrence of an injury to a state employee for which liability to pay compensation may exist, the commission shall make a preliminary investigation to determine the question of probable liability.

In making this investigation, the commission may require the assistance of the head of any department or any employee of the state. The commission may require that all facts be furnished which appear in the records of any state department bearing on the issue.

Subd. 2. **Findings of fact, proposed order.** When the commission has completed its investigation, it shall make findings of fact and shall enter an award or other order which it proposes to make relating to the liability of the state to pay compensation.

Subd. 3. **Copies of findings and proposed order, mailing.** The commission shall mail a copy of its findings and proposed order to the employee, the head of the department in which he works, and the attorney general.

Subd. 4. **Objections to order.** Within ten days from the date the findings and order were mailed, or within such longer period which the commission may fix, the employee, or the head of the department, or the attorney general, may file an objection to the order with the commission.

Subd. 5. **Reconsideration of order.** When an objection has been filed under subdivision 4, the commission shall reconsider its proposed order. Subject to subdivision 6, in making this reconsideration, the commission may set aside or correct any finding or order, or both, without the necessity of holding a formal hearing.

Subd. 6. **Formal hearing on objections.** The commission shall hold a formal hearing on the objections which have been filed to the proposed order where the circumstances warrant such a hearing.

Subd. 7. **Finality of findings and order in absence of objection.** Where an objection has not been made to the proposed order under subdivision 4, the findings and order are final subject to the right of the commission to reform or modify it under this chapter.

The findings and order which the commission makes upon a reconsideration are likewise final though subject to the same review under this chapter.

[1953 c 755 s 74]

**176.58** [Repealed, 1953 c 755 s 83]

**176.581 FINDINGS AND FINAL ORDER.** Subdivision 1. **Filing of certified copies.** The commission shall file a certified copy of its findings and final order with the attorney general and the state auditor.

Subd. 2. **Payment of compensation.** Upon a warrant prepared by the commission and approved by the state auditor, and in accordance with the terms of the order awarding compensation, the state treasurer shall pay compensation to the employee or his dependent. These payments shall be made from money appropriated for this purpose.

Subd. 3. **Receipts filed.** The person to whom compensation is paid shall file with the commission all current interim and final receipts for such payment as is required of employers.

[1953 c 755 s 75]

**176.59** [Repealed, 1953 c 755 s 83]

**176.591 STATE COMPENSATION REVOLVING FUND.** Subdivision 1. **Establishment.** To facilitate the discharge by the state of its obligations under this chapter, there is established a revolving fund to be known as the state compensation revolving fund.

This fund is comprised of the unexpended balance in the fund on July 1, 1935, and the sums which the several departments of the state pay to the fund.

Subd. 2. **State treasurer as custodian.** The state treasurer is custodian of this fund.

Subd. 3. **Compensation payments upon warrants.** The state treasurer shall make compensation payments from the fund only as authorized by this chapter upon warrants of the commission.

[1953 c 755 s 76]

**176.60** [Repealed, 1953 c 755 s 83]

**176.601 PAYMENTS FROM STATE COMPENSATION REVOLVING FUND.**

From the state compensation revolving fund, the state treasurer shall pay in the order listed:

(1) annual cost to the commission of administering this chapter in relation to state employees;

(2) necessary expenses which the commission or the attorney general incurs in investigating and defending a claim against the state for compensation; and,

(3) awards of compensation, and the expenses of other benefits paid to an employee or his dependent.

[1953 c 755 s 77]

**176.61** [Repealed, 1953 c 755 s 83]

**176.611 MAINTENANCE OF STATE COMPENSATION REVOLVING FUND.**

Subdivision 1. **Generally.** The state compensation revolving fund shall be maintained as provided in the following subdivisions:

Subd. 2. **Self-sustaining departments.** Except that the state highway department shall reimburse the fund for moneys paid to its employees or their dependents at such times and in such amounts as the commission orders, every self-sustaining department of the state shall pay into such fund at the end of every fiscal year such amounts as the commission shall certify has been paid out of the fund for its employees or their dependents. For the purposes of this section, a "self-sustaining department" is one in which the income and revenue from its activities substantially offsets its cost of operation.

Subd. 3. **Departments not self-sustaining.** A department which is not self-sustaining shall pay to the fund at the end of each biennium, such sums as the commission certifies has been paid out of the fund for its employees or their dependents. The heads of the department shall anticipate these payments by including them in their budget requests to the legislature.

Subd. 4. **Departments partially self-sustaining.** Every department which is partially self-sustaining shall pay (1) at the end of every fiscal year such proportion of the sum which the commission certifies has been paid out of the fund during the year to its employees or their dependents as the total of their income and revenue bears to their annual cost of operation, and (2) at the end of each biennium, the balance of the sums so certified. The head of the department shall anticipate these payments by including them in their budget requests to the legislature.

Subd. 5. **Appropriation.** There is hereby appropriated from the general revenue fund in the state treasury to the state compensation revolving fund the sum of \$50,000 to be used in connection with the payment of workmen's compensation claims of employees of the state, which, with the sum of \$74,013.12 heretofore appropriated from the trunk highway fund of the department of highways in the state treasury to the state compensation revolving fund to be used in connection with the payment of workmen's compensation claims of employees of the department of highways together with \$525,986.88 heretofore appropriated, totals \$650,000, the latter sum to constitute the state compensation revolving fund and to be used and maintained as herein provided.

[1953 c 755 s 78; 1955 c 744 s 1; 1957 c 656 s 1]

**176.62** [Repealed, 1953 c 755 s 83]

**176.621 DECLARATION OF POLICY; ADVISORY COUNCIL.** Subdivision 1.

**Industrial commission's responsibility.** It is the policy of the state of Minnesota to restore the injured worker as soon and nearly as possible to the status of self-support as an able-bodied employee, and it is the responsibility of the industrial commission to make a final award only when the above policy has been carried out to its most practical extent.

Subd. 2. **Advisory council on rehabilitation; creation.** There is hereby created an advisory council on rehabilitation of injured workers to be appointed by the governor and consisting of one representative of the medical profession who is well versed in physical rehabilitation, one representative of the hospitals, one representative of the insurance carriers writing compensation insurance in the state, two representatives of employees and two representatives of employers.

**Subd. 3. Chairman of council; vacancies; terms; compensation.** The governor shall appoint one of the council as chairman and fill any vacancy in the council. Each member of the council shall serve at the pleasure of the governor and until his successor has been appointed, and shall receive \$15 for each day or portion thereof spent at meetings plus traveling expenses incidental to the attendance of meetings and other performance of their duties.

**Subd. 4. Meetings.** The council shall meet biannually or as often as it deems necessary under the direction of the commissioner in charge of the division of workmen's compensation of the industrial commission, who shall provide suitable quarters, clerical help, and give further assistance as the council deems necessary. Such commissioner and the director of the vocational rehabilitation division of the state board of education shall attend all council meetings or designate a representative from the division to attend for him. This council is in no way under the control of the commission or the state board of education.

**Subd. 5. Duties of council.** The council shall advise the commission and the state board of education on questions concerning the administration and improvement of the workmen's compensation law as it relates to the rehabilitation of injured workers, assist in the procurement and development of adequate facilities and personnel for an effective rehabilitation program and to devise procedures which will facilitate and assure the physical and vocational rehabilitation of injured workers.

**Subd. 6. Reports filed with governor and legislature.** The council may file reports of its findings and recommendations with the governor and the legislature.

[1953 c 755 s 79]

**176.63** [Repealed, 1953 c 755 s 83]

**176.631 BUREAU OF WORKMEN'S REHABILITATION.** Subdivision 1. **Creation.** There is hereby created a bureau of workmen's rehabilitation under the control and supervision of the division of workmen's compensation and appointed by the commission, to consist of personnel well versed in rehabilitation.

**Subd. 2. Duties.** The bureau, with the advice and assistance of the council, shall investigate, assemble, and keep a list of adequate facilities and personnel qualified to render rehabilitation treatment.

**Subd. 3. Notice to injured worker of available services and facilities.** The bureau shall promptly study each notice of injury incurred by a worker. If it concludes that rehabilitation is indicated it shall immediately take the necessary steps to inform the injured worker of the services available to him under the program and of the facilities and personnel at his disposal and notify the director of the division of vocational rehabilitation of the case. In each case recommendation of facilities and personnel shall only be done after consultation with the attending physician, who retains general supervision of treatment.

[1953 c 755 s 80]

**176.64** [Repealed, 1953 c 755 s 83]

**176.641 ACCIDENTS OR INJURIES ARISING PRIOR TO EFFECTIVE DATE.** All rights and liabilities arising on account of accidents or injuries occurring prior to the taking effect of this chapter shall be governed by the then existing law.

[1953 c 755 s 81]

**176.65** [Repealed, 1953 c 755 s 83]

**176.651 SEVERABILITY.** In case for any reason any paragraph or any provision of this chapter 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 thereof.

[1953 c 755 s 82]

**176.66 OCCUPATIONAL DISEASES; HOW REGARDED.** Subdivision 1. **Disability, disablement.** The disablement of an employee resulting from an occupational disease, except where specifically otherwise provided, is to be treated as the happening of an accident within the meaning of the workmen's compensation law and the procedure and practice provided applies to all proceedings under this section, except where specifically otherwise provided herein. When used in this section, "disability" means the state of being disabled from earning full wages at the work at which the employee was last employed and "disablement" means the act of becoming so disabled.

**Subd. 2. Disability or death caused by disease.** If an employee is disabled or dies and his disability or death is caused by a compensable occupational disease, he or his dependents are entitled to compensation for his death or for the duration of his disability according to the provisions of this chapter, except as otherwise provided in this chapter. If it be determined that such employee is able to earn wages at another occupation which is not unhealthful or injurious and such wages do not equal his full wages prior to the date of his disablement, the compensation payable is to be 66% per cent of the difference between the daily wage of the workman at the time of disablement and the daily wage he is able to earn in his partially disabled condition, as provided by section 176.101, subdivision 2.

**Subd. 3. Disease contracted within year, exceptions.** Neither the employee nor his dependents are entitled to compensation for disability or death resulting from occupational disease, unless such disease is due to the nature of his employment as defined in section 176.011, subdivision 15, and was contracted therein within 12 months previous to the date of disablement; except in the case of silicosis or asbestosis, in which cases disablement of the employee must occur within three years from the date of such employee's last exposure with an employer in an employment to the nature of which the disease may have been a hazard, and except if immediately preceding the date of his disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, or as a member of the Minnesota highway patrol, and his disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease shall be presumed to have been contracted therein within 12 months previous to the date of disablement.

**Subd. 4. False representation as to disease.** If an employee, 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 is payable.

**Subd. 5. Apportionment of compensation recoverable.** The total compensation due for occupational disease is recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If such disease was contracted while such employee was in the employment of a prior employer, the employer who is made liable for the total compensation, as provided by this subdivision may appeal to the commission for an apportionment of such compensation among the several employers who, since the contraction of such disease, employed such employee in the employment to the nature of which such disease was due. Such apportionment is to be proportioned to the time such employee was employed in the service of such employers provided, that if a prior employer has met the requirement as to minimum standards herein provided for and has been certified by the industrial commission to that effect, that then the commission shall take into consideration in the apportionment of such liability not only the period of service of said employee with such employer, but shall likewise consider the element of exposure to which the employee was subjected while in the service of such employer maintaining minimum standards, and the apportionment determined only after a hearing, notice of the time and place of which is to be given to each 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 subdivision, it shall make an award accordingly in favor of the last employer, which may be enforced in the same manner as an award for compensation.

**Subd. 6. Notice of death or disability; to whom given.** The employer to whom notice of death or disability is to be given or against whom claim is to be made by the employee or his dependents is the employer who last employed the employee during the 12 months in the employment to the nature of which the disease was due and in which it was contracted except in cases of silicosis or asbestosis, in which case the period shall be three years, and such notice is effective as against prior employers.

**Subd. 7. Information required to be furnished.** The employee or his dependents, if so requested, shall furnish the last employer, or the commission, with such information as to the names and addresses of his other employers during the periods as provided in subdivision 6, as he or they may possess. If such information is not furnished or is wilfully withheld and such last employer is for that reason unable

to take proceedings against a prior employer under subdivision 5, unless it be established that the disease was contracted while the employee was in his employment, such last employer is not 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 subdivision 5 such last employer is liable only for such part of the total compensation as, under the particular circumstances, the commission deems just; but a false statement in the information so furnished does not impair the employee's rights unless the last employer is prejudiced thereby.

**Subd. 8. Rights of employee to recover compensation for other diseases not affected.** Nothing in this section affects the rights of an employee 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 this chapter.

**Subd. 9. Provisions not retroactive.** The provisions of this chapter do not apply to disability or death resulting from a disease contracted prior to the date on which Laws 1921, Chapter 82, became effective, unless such disease is determined to be an occupational disease under the terms of Laws 1943, Chapter 633, and was compensable at the time it was contracted or in cases of silicosis or asbestosis as herein provided.

[1921 c 82 s 67; 1939 c 306; 1943 c 633 s 4; 1947 c 612 s 1; 1949 c 500 s 1-3; 1955 c 206 s 2; 1957 c 834 s 2; 1959 c 20 s 2] (4327)

**176.661 OCCUPATIONAL DISEASE AGGRAVATED.** Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disease or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or contributed to by an occupational disease, the compensation payable is to be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of disease or death, as such occupational disease, as a causative factor, bears to all the causes of such disease or death. No compensation shall be payable for occupational disease where the employee refuses or wilfully fails to use standard safety appliances, ordered and provided for his protection and use, and approved by the commission, or who wilfully refuses to obey reasonable rules prescribed, printed and posted by the commission for the conduct of the work or to perform a statutory duty. Failure of an employer to maintain minimum standards of safety and healthful working conditions as provided by the orders of the commission, or to post and order compliance with all reasonable rules prescribed and ordered by the commission for the conduct of the particular work shall constitute a violation of section 182.19. The commission shall each year certify any place of employment which has complied with the minimum standards for healthful working conditions as prescribed by the commission.

[1943 c 633 s 7; 1949 c 500 s 4]

**176.662 EVIDENCE, PRESUMPTIONS.** In the absence of conclusive evidence in favor of an employee's or a dependent's claim of disability or death from silicosis or asbestosis it shall be presumed not to be due to the nature of any occupation or employment within Laws 1943, Chapter 633, unless during the ten years immediately preceding the date of disablement the employee shall have been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five years, the last three years of which exposure shall have been in this state.

In cases of silicosis or asbestosis complicated with tuberculosis of the lungs causing total disability or death compensation is payable as and for uncomplicated silicosis or asbestosis when the silicosis or asbestosis is an essential factor in causing such complications of tuberculosis of the lungs. In cases of complications with other diseases than tuberculosis of the lungs compensation shall be proportioned as provided in section 176.661.

When an employee is afflicted with an occupational disease to such a degree that it is unduly hazardous for such employee to continue in any employment involving the hazard of exposure to such occupational disease, or where for other causes it is medically inadvisable and unduly hazardous for such employee to continue in an employment involving such hazard of occupational disease, the commission shall order the removal of such employee from such hazardous employment.

An employee so removed is eligible for retraining for a new occupation and compensation during such retraining, as provided by the workmen's compensation law. In the event retraining benefits are not accepted by such employee, he is to be compensated during his period of unemployment following such removal as though he were wholly or partially disabled by reason of compensable injury, but such compensation shall not exceed a period of 25 weeks following the date of the order so removing such employee. In the event an employee is disabled, by reason of compensable injury, at the time an order for his removal is issued, the benefits provided by this section attach and begin at the termination of such period of compensable disability and constitute additional benefits. In the event retraining of the employee is undertaken during the period of such partial disability compensation is not to continue beyond 25 weeks from the date when such retraining is begun.

If an employee, after being so removed from hazardous employment, returns to such hazardous employment exposing him to any occupational disease, without the consent of the commission, neither he nor his dependents are entitled to compensation for the disablement or death of such employee caused by occupational disease.

An employee so removed from employment is entitled to compensation for disability, or his dependents to compensation for his death, from occupational disease, if such disablement of the employee occurs within three years, in case of silicosis or asbestosis, or within one year, in case of other occupational diseases, from the date of such employee's last exposure to the hazards of such occupational diseases prior to such removal.

Whenever any employee is employed as a nurse and in the scope of such employment comes or has come in contact with persons who are afflicted with tuberculosis or with tuberculosis contaminated material and subsequently contracts tuberculosis, it shall be presumed that the tuberculosis is an occupational disease arising out of and in the course of such employment. "Contracts tuberculosis" shall be construed to mean the development of demonstrable lesions of tuberculosis or the demonstration of the germs of tuberculosis in that person's secretions or excretions. When a nurse has contracted tuberculosis within the meaning of this section, the limitations of time specified in section 176.66 and in section 176.664 shall not apply, and the periods of time specified in section 176.141 shall be computed from the date that a confirmed diagnosis of tuberculosis is first communicated to the nurse.

[1943 c 633 s 8; 1947 c 612 s 2; 1949 c 500 s 5; 1957 c 34 s 1]

**176.663 EMPLOYEE MAY WAIVE FULL COMPENSATION.** Subject to the approval of the commission, an employee affected by occupational disease, as an alternative to a forced change of occupation, may waive, in writing, full compensation for any aggravation of his condition resulting from his continuing in hazardous employment. A waiver so permitted shall remain effective for the trade, occupation, process or employment for which executed, notwithstanding a change or changes of employer. In such cases compensation and medical benefits for later resulting disability or death from such disease is not to continue beyond 100 weeks.

[1943 c. 633 s. 9]

**176.664 NOTICE, TIME LIMIT FOR SERVICE.** In all cases except silicosis or asbestosis unless the employer shall have actual notice of the injury any claim for occupational disease is barred unless within 90 days after disablement of an employee as defined in section 176.66, subdivision 1, notice thereof in accordance with section 176.141 shall have been given to the employer, and unless the claim is filed with the commission within the period specified in section 176.151, except that in case of silicosis or asbestosis the claim may be filed with the commission within three years after the date of employee's last exposure or within three years of the date of the last payment of compensation by the employer, or his default in payment. If disablement occurs within the last 90 days allowed by this section for filing claim with the commission, then the employee or his dependents shall be allowed a period of 90 days from the happening of such disablement to comply with the provisions of this section.

Compensation is not payable for partial disability from silicosis or asbestosis, except where such partial disability follows a compensable period of total disability.

[1943 c 633 s 10; 1947 c 612 s 3; 1949 c 500 s 6; 1951 c 454 s 1]

**176.665 HEARINGS.** Upon the filing with the commission of a claim petition by an employee or his dependents, claiming and demanding compensation and benefits as for occupational disease, if such claim petition and the answer thereto, filed with the commission, presents or raises a controverted medical question and in addition other questions of liability, the commissioner shall cause the petition and answer to be heard by the commission, a commissioner or referee, according to established practice, and permit all interested parties an opportunity to produce evidence relating to any issue involved.

[1943 c 633 s 11; 1947 c 612 s 4]

**176.666 INVESTIGATIONS.** When it appears to the state board of health that conditions exist which require investigation in order to determine the advisability of allowing or permitting an employee to continue in his hazardous employment, it shall file with the commission a petition demanding that the commission proceed to make such investigation and hold such hearings as may be necessary to such determination. Such investigation may also be initiated by the commission, or by petition of any employee or employer. The commission shall proceed promptly, after the filing of such petition or upon its own motion, with such investigation.

[1943 c. 633 s. 12]

**176.667 EMPLOYEES, MEDICAL EXAMINATION.** Each employee, hereafter entering the service of an employer whose business is one in which the hazard of silicosis or asbestosis is involved, who will be exposed to such hazard because of such employment, shall, at the request of the employer, submit to a medical examination for the purpose of determining whether such employee can safely be employed in such hazardous employment. The cost of such medical examination shall be borne by the employer.

Within one year after the effective date of Laws 1943, Chapter 633, and annually, thereafter, each employee engaged in employment which exposes him to the hazards of silicosis or asbestosis shall submit to a medical examination for the purpose of determining whether he is affected in any degree by silicosis or asbestosis, or peculiarly or especially susceptible to either of such diseases. The cost of such examination shall be paid by the employer. The findings and reports of the doctor making each such examination, together with X-ray films and other original exhibits, shall be filed in the office of the commission, and available to the department of health, provided that the commission shall be empowered to order, in such cases as it shall deem advisable, that the X-ray films be filed in any other suitable depository which the commission may designate, such films to be available to the department of health. Any such report is a public record, but may be used only for the purposes of Laws 1943, Chapter 633, as amended. A copy of such findings and report shall be furnished the employee's physician on request.

Upon the termination of an employee's service the employer may request employee to submit to a final medical examination by giving the employee leaving his service ten days notice in writing of the time and place that the medical examination is to be made, which notice may be delivered to such employee personally or mailed to his last known address. Any employee who wilfully fails or refuses to submit to such medical examination upon leaving the service of an employer, shall thereby waive any right to compensation from such employer for such occupational disease which later develops. The employer shall forthwith notify the commission in writing, of the employee's failure to submit to such medical examination, and such notice shall be filed in the office of the commission as in the case of medical reports, and shall serve as notice of termination of liability of such employer arising out of any claim by such individual, or by a subsequent employer because of the claim of such individual. The cost of such examination shall be borne by the employer.

[1943 c 633 s 13; 1947 c 612 s 5; 1949 c 500 s 7]

**176.668 REGULAR INSPECTION.** The commission shall keep a record of employments and regularly inspect places of employment in any industry in which the hazard of an occupational disease may exist. It shall establish reasonable minimum standards of safety and healthful working conditions in such places of employment and shall furnish such employers with written rules and regulations gov-



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erning the maintenance of such minimum standards of working conditions. The commission in preparing such rules, regulations or standards, relating to health, or in evaluating industrial health hazards, shall consult with the state department of health through its division of industrial health.

[1943 c. 633 s. 14]

**176.669 EXPENSES; RULES.** Subdivision 1. **Payment of expenses.** Any expense incurred by the commission in carrying out the purposes of Laws 1943, Chapter 633, shall be paid out of the general fund for the department of labor and industry.

Subd. 2. **Making of rules.** The commission shall make such rules, regulations, and orders with reference to procedure as it deems necessary not inconsistent with Laws 1943, Chapter 633.

[1943 c 633 s 15, 16]

**176.67-176.79** [Repealed, 1953 c 755 s 83]

**176.80** [Obsolete]

**176.81** [Repealed, 1953 c 755 s 83]