

# MINNESOTA STATUTES 1977 SUPPLEMENT

## WORKER'S COMPENSATION 176.011

provisions

shall be appointed by the governor under the provisions of section 15.06. There shall be one deputy commissioner in the department.

[For text of subd 2, see M.S.1976]

Subd. 4. [ Repealed, 1977 c 305 s 46 ]

[For text of subd 5, see M.S.1976]

[ 1977 c 305 s 24 ]

### CHAPTER 176. WORKER'S COMPENSATION

Sec.		Sec.	
176.011	Definitions.	176.137	Remodeling of residence; handicapped employees. [New]
176.012	Owners may be covered.	176.141	Notice of injury.
176.021	Application to employers and employees.	176.155	Examinations.
176.041	Excluded employments; application, exceptions.	176.183	Uninsured and self-insured employers; benefits to employees and dependents; liability of employer.
176.051	Assumption of liability.	176.185	Policy of insurance.
176.081	Legal services or disbursements; lien; review.	176.221	Payment of compensation, commencement.
176.101	Compensation schedule.	176.511	Costs.
176.111	Dependents, allowances.	176.645	Adjustment of benefits.
176.132	Supplementary benefits.		

#### 176.011 Definitions.

[For text of subs 1 to 8, see M.S.1976]

Subd. 9. **Employee.** "Employee" means any person who performs services for another for hire; and includes the following:

- (1) an alien;
- (2) a minor;
- (3) a sheriff, deputy sheriff, constable, marshal, policeman, fireman, a county highway engineer, 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;
- (4) a county assessor;
- (5) an elected or appointed official of the state, or of any county, city, town, school district or governmental subdivision therein but an officer of a political subdivision elected or appointed for a regular term of office or to complete the unexpired portion of any such regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;
- (6) an executive officer of a corporation except an officer of a family farm corporation as defined in section 500.24, subdivision 1, clause (c);
- (7) a voluntary uncompensated worker, other than an inmate, rendering services in state institutions under the commissioner of public welfare and state institutions under the commissioner of corrections 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 or the commissioner of corrections as authorized by law, shall be employees within the meaning of this subdivision. In the event of injury or death of any such voluntary uncompensated worker, the

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## WORKER'S COMPENSATION 176.011

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shall be appointed by the governor under the provisions of section 15.06. There shall be one deputy commissioner in the department.

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[For text of subd 5, see M.S.1976]

[ 1977 c 305 s 24 ]

### CHAPTER 176. WORKER'S COMPENSATION

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- (4) a county assessor;
- (5) an elected or appointed official of the state, or of any county, city, town, school district or governmental subdivision therein but an officer of a political subdivision elected or appointed for a regular term of office or to complete the unexpired portion of any such regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;
- (6) an executive officer of a corporation except an officer of a family farm corporation as defined in section 500.24, subdivision 1, clause (c);
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## 176.011 WORKER'S COMPENSATION

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;

(8) a voluntary uncompensated worker 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;

(9) a voluntary uncompensated worker participating in a program established by a county welfare board shall be an employee within the meaning of this subdivision. In the event of injury or death of any such voluntary uncompensated worker, the wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid in the county at the time of such injury or death for similar services where such services are performed by paid employees working a normal day and week;

(10) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section 85.041 shall be an employee. 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 injury or death for similar services where such services are performed by paid employees.

(11) a member of the military forces, as defined in section 190.05, while in "active service" or "on duty" as defined in section 190.05, when the service or duty is ordered by state authority. The daily wage of the member for the purpose of calculating compensation payable under this chapter shall be based on the member's usual earnings in civil life. If there is no evidence of previous occupation or earning, the trier of fact shall consider the member's earnings as a member of the military forces;

(12) a voluntary uncompensated worker, accepted by the director of the Minnesota historical society, rendering services as a volunteer, pursuant to chapter 138, shall be an employee. The daily wage of the worker, for the purposes of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of 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 trier of fact may determine the wage upon which the compensation is payable.

[For text of subds 10 and 11, see M.S.1976]

Subd. 11a. **Family farm.** "Family farm" means any farm operation which pays or is obligated to pay less than \$2,000 in cash wages, exclusive of machine hire, to farm laborers for services rendered during the preceding calendar year. For purposes of this subdivision, farm laborer does not include any spouse, parent or child, regardless of age, of a farmer employed by the farmer, or any executive officer of a family farm corporation as defined in section 500.24, subdivision 1, or any spouse, parent or child, regardless of age, of such an officer employed by that family farm corporation, or other farmers in the same community or members of their families exchanging work with the employer. Notwithstanding any law to the con-

## WORKER'S COMPENSATION 176.021

trary, a farm laborer shall not be considered as an independent contractor for the purposes of this chapter.

[For text of subds 12 to 21, see M.S.1976]

[ 1977 c 342 s 1,2 ]

### 176.012 Owners may be covered.

If a workers' compensation policy is procured for the purposes of this chapter, an owner or owners of a business or farm, executive officer of a family farm corporation as defined in section 500.24, subdivision 1, clause (c), and the spouse, parent, and child, regardless of age, of the farm owner or farm owners or executive officer and working therefor, or partners of a partnership owning a business or farm, whether or not employing any other person to perform a service for hire, shall be included within the meaning of the term employee unless such owner, owners, partners or corporation elect in writing not to bring themselves, an executive officer, or a spouse, parent, or child under the provisions of this chapter, and the policy so states the election. Nothing in this section shall be construed to limit the responsibilities of such owners, partners or corporations to provide coverage for their employees, if any, required under this chapter.

[ 1977 c 342 s 3 ]

NOTE: The amendments to this section as added by Laws 1977, Chapter 342, Section 3, are effective January 1, 1978.

### 176.021 Application to employers and employees.

[For text of subds 1 and 2, see M.S.1976]

Subd. 3. **Compensation, commencement of payment.** All employers shall commence 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 division. 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; provided, however, that payments for permanent partial disability shall be made by lump sum payment, and the provisions of section 176.165 shall not apply, without the necessity of any agreement, or order of the division, upon termination of the healing period, or as soon as such disability can be ascertained. If doubt exists at such time as to the eventual permanent partial disability, payment shall be then made for the minimum permanent partial disability ascertainable in lump sum, and further lump sum payment shall be made upon any later ascertainment of greater permanent partial disability. At the time of the tender of any such lump sum payment, the employee and employer shall be furnished with a copy of the medical report upon which such payment is based, together with a statement by the insurer as to whether the tendered payment is for minimum permanent partial disability or final and eventual disability. Compensation for permanent partial disability is payable concurrently and in addition to compensation for temporary total disability and temporary partial disability as set forth in section 176.101, subdivisions 1 and 2, and for permanent total disability as defined in section 176.101, subdivision 5; and such compensation for permanent partial disability shall not be deferred pending completion of payment for temporary disability or permanent total disability, and no credit shall be taken for payment of permanent partial disability against liability for permanent total disability. Liability on the part of an employer or his insurer for disability of a temporary total, temporary partial, and permanent total nature shall be considered as a continuing product and part of the employee's inability to earn or reduction in earning capacity due to injury or occupational disease and shall be payable accordingly. Permanent partial disability is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation. In the event that an employee's death is not compensable under this chapter, the right to receive a permanent partial disability payment shall vest in the injured employee or his dependents under this chapter or, if none, in his legal heirs at the

## 176.021 WORKER'S COMPENSATION

time the disability can be ascertained and the right shall not be abrogated by the employee's death prior to the making of the payment.

[For text of subds 4 to 7, see M.S.1976]

[ 1977 c 342 s 4 ]

### 176.041 Excluded employments; application, exceptions.

Subdivision 1. **Employments excluded.** This chapter does not apply to persons employed by any common carrier by railroad engaged in interstate or foreign commerce, which persons are covered by the Federal Employers' Liability Act (45 U.S.C. 51-60) or other comparable federal law; persons employed by family farms as defined by section 176.011, subdivision 11a, spouses, parents and children, regardless of their age, of a farmer employer working for him; partners engaged in any farm operation and the spouses, parents, and children, regardless of age, of any of the partners; an executive officer of a family farm corporation; any spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 1, employed by that family farm corporation; or other farmers or members of their families exchanging work with the farmer employer or family farm corporation operator in the same community, 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; nor does it apply to officers or members of veteran's organizations whose employment relationship arises solely by virtue of attending meetings or conventions of their organization, unless such veteran's organizations elect by resolution to provide coverage under this chapter for such officers or members. Neither shall the chapter apply to any person employed as a household worker in, for, or about, a private home or household who earns less than \$500 in cash in any three month period from a single private home or household provided that any household worker who has earned \$500 or more from his present employer in any three month period within the previous year shall be covered by Laws 1975, Chapter 359 regardless of whether or not he has in the present quarter earned \$500. This chapter does not apply to those persons employed by a corporation where those persons are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to all of the officers of the corporation, and if the corporation files a written election with the commissioner of labor and industry to have those persons excluded from this chapter. This chapter does not apply to a nonprofit association which does not pay more than \$500 in salary or wages in a year.

[For text of subds 2 to 4, see M.S.1976]

[ 1977 c 342 s 5 ]

### 176.051 Assumption of liability.

An employer of workers on any farm operation or household workers not otherwise covered by this chapter may assume the liability for compensation imposed by this chapter and such employer's procurement of a workers' compensation policy constitutes an assumption by the employer of such liability unless the employer elects in writing not to have such persons covered and the policy so states the election. 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 worker on any farm operation or a household worker, 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. For purposes of this section, farm worker shall not include any spouse, parent or child, regardless of age, of any farmer or of any partner in a farm operation or of any officer of a family farm corporation as defined in section 500.24, subdivision 1, nor shall it include other farmers in the same community or members of their family exchanging work with the farmer employer or family farm corporation operator.

[ 1977 c 342 s 6 ]

# MINNESOTA STATUTES 1977 SUPPLEMENT

## WORKER'S COMPENSATION 176.101

NOTE: The amendments to this section as added by Laws 1977, Chapter 342, Section 6, are effective January 1, 1978.

### 176.081 Legal services or disbursements; lien; review.

Subdivision 1. 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 is valid or binding in any other respect unless approved in writing by the commissioner of the department of labor and industry, compensation judge, or worker's compensation court of appeals, 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. A compensation judge shall in matters before him have authority to approve a fee of up to 25 percent of the first \$4,000 of compensation awarded to the employee and up to 20 percent of the next \$20,000 of compensation awarded to employee. The worker's compensation court of appeals judge shall have authority only to approve fees in settlements upon appeal before them up to 25 percent of the first \$4,000 of compensation awarded to the employee and up to 20 percent of the next \$20,000 of compensation awarded to the employee. 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.

Subd. 2. Any application for attorney fees in excess of the amount which a compensation judge or the worker's compensation court of appeals may authorize shall be made to the commissioner of labor and industry. The application shall set forth the fee requested and the basis for such request and whether or not a hearing is requested. The application, with affidavit of service upon the employee, shall be filed by the attorney requesting the fee. If a hearing is requested by an interested party, a hearing shall be set with notice of such hearing served upon known interested parties. In all cases the employee shall be served with notice of hearing.

Subd. 3. An employee who is dissatisfied with his attorney fees, may file an application for review by the commissioner of labor and industry. Such application shall state the basis for the need of review and whether or not a hearing is requested. A copy of such application shall be served upon the attorney for the employee by the commissioner and if a hearing is requested by either party, the matter shall be set for hearing. The notice of hearing shall be served upon known interested parties. The attorney for the employee shall be served with a notice of the hearing. The commissioner of labor and industry shall have the authority to raise the question of the issue of the attorney fees at any time upon his own motion and shall have continuing jurisdiction over attorney fees.

Subd. 4. The review of a determination by the commissioner of labor and industry shall be only by supreme court by certiorari upon the ground that it is arbitrary and unwarranted by the evidence. There shall be no review under sections 176.421 and 176.442.

[For text of subd 5, see M.S.1976]

Subd. 6. The commissioner of labor and industry may prescribe reasonable and proper rules and regulations to effect his and the division's obligations under this section without regard to the joint prescription required under section 175.17, subdivision 3.

[For text of subds 7 and 8, see M.S.1976]

[ 1977 c 342 s 7-11 ]

### 176.101 Compensation schedule.

Subdivision 1. **Temporary total disability.** For injury producing temporary total disability, 66 2/3 percent of the daily wage at the time of injury subject to the following limitations:

## 176.101 WORKER'S COMPENSATION

(1) During the year commencing on October 1, 1977, and each year thereafter, commencing on October 1, the maximum weekly benefits payable shall be the statewide average weekly wage for the period ending December 31, of the preceding year.

(2) The minimum weekly compensation benefits for temporary total disability shall be not less than 50 percent of the statewide average weekly wage or the injured employee's actual weekly wage, whichever is less. In no case shall a weekly benefit be less than 20 percent of the statewide average weekly wage.

This compensation shall be paid during the period of disability, 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  $66 \frac{2}{3}$  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, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to a maximum compensation equal to the statewide average weekly wage. 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 employee shall be paid at the full compensation rate for his or her temporary total disability.

Subd. 3. **Permanent partial disability.** For the permanent partial disability from the loss of a member the compensation for total disability during the healing period shall be as stated in subdivision 1. For partial disability during the healing period the compensation shall be as stated in subdivision 2. The healing period shall not exceed 104 weeks. Thereafter and in addition thereto, compensation shall be that named in the following schedule, subject to a maximum compensation equal to the statewide weekly wage:

(1) For the loss of a thumb,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 40 weeks;

(3) For the loss of a second finger,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 35 weeks;

(4) For the loss of a third finger,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 20 weeks;

(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,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 195 weeks;

(13) For the loss of a hand, including wrist movement,  $66 \frac{2}{3}$  percent of the

## WORKER'S COMPENSATION 176.101

daily wage at the time of injury during 220 weeks;

(14) For the loss of an arm,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 140 weeks;

(17) For the loss of a foot, including ankle movement,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 160 weeks;

(22) For the complete permanent loss of hearing in one ear,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 85 weeks;

(23) For the complete permanent loss of hearing in both ears,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 170 weeks;

(24) For the loss of an eye and a leg,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 475 weeks;

(25) For the loss of an eye and an arm,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 475 weeks;

(26) For the loss of an eye and a hand,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 450 weeks;

(27) For the loss of an eye and a foot,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;

(29) For the loss of two hands,  $66 \frac{2}{3}$  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,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;

(31) For the loss of two feet,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;

(32) For the loss of one arm and the other hand,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;

(33) For the loss of one hand and one foot,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;

(34) For the loss of one leg and the other foot,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;

(35) For the loss of one leg and one hand,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;

(36) For the loss of one arm and one foot,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;

(37) For the loss of one arm and one leg,  $66 \frac{2}{3}$  percent of the daily wage at the time of injury during 500 weeks;



## 176.101 WORKER'S COMPENSATION

(38) For loss of the voice mechanism, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(39) For head injuries resulting in permanent partial disability, 66 2/3 percent of the daily wage at the time of injury for that proportion of 500 weeks which is represented by the percentage of such permanent partial disability as is determined from competent testimony adduced at a hearing before a compensation judge, a commissioner, or the board;

(40) For permanent partial disability resulting from injury to any internal organ, including the heart, 66 2/3 percent of the daily wage at time of injury for that proportion of 500 weeks which is the proportionate amount of permanent partial disability caused to the entire body by the injury and is determined from competent testimony adduced at a hearing before a compensation judge, a commissioner, or the worker's compensation court of appeals;

(41) For disfigurement or scarring not resulting from the loss of a member or other injury specifically compensated, affecting the employability or advancement opportunity of the injured person in the employment in which he was injured or other employment for which the employee is then qualified or for which the employee has become qualified, 66 2/3 percent of the daily wage at the time of injury during such period as the compensation judge or the worker's compensation court of appeals in cases on appeal determines, not beyond 90 weeks;

(42) For permanent partial disability resulting from injury to the back, 66 2/3 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 compensation judge, a commissioner, or the worker's compensation court of appeals;

(43) 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;

(44) 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 worker has been awarded, or is entitled to receive, a compensation for loss of use of a member under any workers' compensation law, and thereafter sustains a loss of such member under circumstances entitling him to compensation therefor under the workers' 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;

(45) 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;

(46) 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 22 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;

## WORKER'S COMPENSATION 176.101

(47) The commissioner of the department of labor and industry with the worker's compensation court of appeals 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;

(48) For permanent partial disability resulting from injury to the body as a whole due to burns,  $66 \frac{2}{3}$  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 compensation judge, a commissioner or the worker's compensation court of appeals, said compensation to be paid in addition to such compensation as employee would otherwise be entitled to for loss of use of a member in accordance with this section;

(49) In all cases of permanent partial disability not enumerated in this schedule the compensation shall be  $66 \frac{2}{3}$  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 equal to the statewide average weekly wage, and continue during disability, not to exceed 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 employee shall be paid at his or her maximum rate of compensation for total disability.

Subd. 4. **Permanent total disability.** For permanent total disability, as defined in subdivision 5, the compensation shall be  $66 \frac{2}{3}$  percent of the daily wage at the time of the injury, subject to a maximum weekly compensation equal to the maximum weekly compensation for a temporary total disability and a minimum weekly compensation equal to the minimum weekly compensation for a temporary total disability. This compensation shall be paid during the permanent total disability of the injured employee but after a total of \$25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if such disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision. Such reduction shall also apply to any old age and survivor insurance benefits. 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. **Minors.** If any employee entitled to the benefits of this chapter is a minor or is an apprentice of any age and sustains a personal injury 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 for said injury the compensation rate for temporary total, temporary partial, retraining, permanent partial or permanent total disability shall be the larger of either the statewide average weekly wage or the employee's weekly wage, but in no case shall the compensation exceed the maximum weekly compensation rate payable under this chapter.

Subd. 7. **Compensation during retraining.** For any injury producing permanent

## 176.101 WORKER'S COMPENSATION

disability which will prevent the employee from adequately performing the duties of the occupation he held at the time of injury, or any other injury which will or is likely to produce indefinite and continuous disability in excess of 26 weeks, the commissioner of the department of labor and industry shall require that the injured employee be promptly referred to the division of vocational rehabilitation, department of education, or other public or private, properly accredited agency, to determine if retraining for a new occupation would significantly reduce or remove any reduction in employability caused by the injury. The employer shall pay any usual and reasonable expenses and charges for such evaluation. If the evaluating agency certifies to the commissioner of the department of labor and industry that a period of retraining will significantly reduce or prevent the decrease in employability resulting from the injury, and if the commissioner of the department of labor and industry, compensation judge, or worker's compensation court of appeals, in cases upon appeal, determines the retraining is necessary and makes an order for such compensation, the employer shall pay up to 156 weeks of additional compensation during the actual period of retraining according to the schedule of compensation for temporary total disability and shall pay any other expense determined as reasonably necessary to restore former earning capacity by the commissioner of labor and industry after consultation with the division of vocational rehabilitation to rehabilitate the employee.

[ 1977 c 342 s 12; 1977 c 347 s 30 ]

NOTE: This section as amended by Laws 1977, Chapter 342, Section 12, except for the amendment to subdivision 7, is effective October 1, 1977. The amendments to subdivision 7 by Laws 1977, Chapter 342, Section 12, were effective May 28, 1977.

## 176.111 Dependents, allowances.

[For text of subds 1 to 5, see M.S.1976]

Subd. 6. **Spouse, no dependent child.** If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the dependent surviving spouse 50 percent of the daily wage at the time of the injury of the deceased.

[For text of subds 7 to 10, see M.S.1976]

Subd. 11. **Remarriage of dependent surviving spouse.** In the case of the remarriage of a dependent surviving spouse without dependent children the dependent surviving spouse shall receive a lump sum settlement equal to two full years compensation. In case of the remarriage of a dependent surviving spouse who has dependent children the compensation which would otherwise become the dependent surviving spouse's due shall be payable to the dependent surviving spouse, guardian, or such other person as the commissioner of the department of labor and industry, compensation judge, or worker's compensation court of appeals in cases upon appeal, 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 dependent surviving spouse's compensation has been paid to the children, the remainder of the two years compensation shall be payable in a lump sum to the dependent surviving spouse 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 dependent surviving spouse who has remarried shall be held to be a dependent surviving spouse without dependent children when the deceased employee leaves any dependent child as defined by this chapter.

[For text of subd 12, see M.S.1976]

Subd. 13. [ Repealed, 1977 c 342 s 28 ]

[For text of subds 14 to 20, see M.S.1976]

## WORKER'S COMPENSATION 176.132

Subd. 21. **Death, benefits; coordination with governmental survivor benefits.** The following provision shall apply to any dependent entitled to receive weekly compensation benefits under this section as the result of the death of an employee, and who is also receiving or entitled to receive benefits under any government survivor program:

The combined total of weekly government survivor benefits and worker's compensation death benefits provided under this section shall not exceed 100 percent of the weekly wage being earned by the deceased employee at the time of the injury causing his death; provided, however, that no state worker's compensation death benefit shall be paid for any week in which the survivor benefits paid under the federal program, by themselves, exceed 100 percent of such weekly wage provided, however, the workers' compensation benefits payable to a dependent surviving spouse shall not be reduced on account of any governmental survivor benefits payable to decedent's children if the support of the children is not the responsibility of the dependent surviving spouse.

[ 1977 c 342 s 13-15 ]

**176.132 Supplementary benefits.**

Subdivision 1. **Eligible recipients.** An employee who has suffered personal injury for which benefits are payable under section 176.101 and who has been totally disabled for more than 104 weeks shall be eligible for supplementary benefits as hereinafter prescribed after 104 weeks have elapsed and for the remainder of his total disablement. Regardless of the number of weeks of total disability, no totally disabled person shall be ineligible for supplementary benefits after four years have elapsed since the first date of his total disability, provided that all periods of disability are caused by the same injury.

Subd. 2. **Amount.** (a) The supplementary benefit payable under this section shall be the difference between the amount the employee receives on or after January 1, 1976, under section 176.101, subdivision 1 or subdivision 4, and 60 percent of the statewide average weekly wage as computed annually.

(b) In the event an eligible recipient is currently receiving no compensation or is receiving a reduced level of compensation because of a credit being applied as the result of a third party liability or damages, the employer or insurer shall compute the offset credit as if the individual were entitled to the actual benefit or 60 percent of the statewide average weekly wage as computed annually, whichever is greater. If this results in the use of a higher credit than otherwise would have been applied and the employer or insurer becomes liable for compensation benefits which would otherwise not have been paid, the additional benefits resulting shall be handled according to this section.

(c) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of a valid agreement in settlement of a claim, no supplementary benefit shall be payable under this section.

(d) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of prior limitations in the maximum amount payable for permanent total disability or because of reductions resulting from the simultaneous receipt of old age or disability benefits, the supplementary benefit shall be payable for the difference between the actual amount of compensation currently being paid and 60 percent of the statewide average weekly wage as computed annually.

(e) In the event that an eligible recipient is receiving simultaneous benefits from any government disability program, the amount of supplementary benefits payable under this section shall be reduced by five percent.

Subd. 3. **Payment.** The payment of supplementary benefits shall be the responsibility of the employer or insurer currently paying total disability benefits, or any other payer of such benefits. When the eligible individual is not currently receiving benefits because the total paid has reached the maximum prescribed by law the employer and insurer shall, nevertheless, pay the supplementary benefits that

## 176.132 WORKER'S COMPENSATION

are prescribed by law. The employer or insurer paying the supplementary benefit shall have the right of full reimbursement from the special compensation fund for the amount of such benefits paid.

[For text of subd 4, see M.S.1976]

[ 1977 c 342 s 16-18 ]

NOTE: The amendment to subdivision 2 as added by Laws 1977, Chapter 342, Section 17 is effective July 1, 1977. The amendments to subdivisions 1 and 3 as added by Laws 1977, Chapter 342, Sections 16 and 18 are effective May 28, 1977.

### 176.137 Remodeling of residence; handicapped employees.

Subdivision 1. The employer shall furnish to an employee who is permanently disabled because of a personal injury suffered in the course of employment with that employer such alteration or remodeling of his principal residence as is reasonably required to enable the employee to move freely into and throughout his residence and to otherwise adequately accommodate the disability. Any remodeling or alteration shall be furnished only when the division or workers' compensation court of appeals determines that the injury is to such a degree that the employee is substantially prevented from functioning within the principal residence.

Subd. 2. The pecuniary liability of an employer for remodeling or alteration required by this section is limited to prevailing costs in the community for remodeling or alteration of that type.

Subd. 3. Where the alteration or remodeling of the employee's residence is not practicable, the award may be to purchase or lease a new or different residence if the new or different residence would better accommodate the disability.

Subd. 4. No award may be made except upon the certification of a licensed architect to the division or workers' compensation court of appeals that the proposed alteration or remodeling of an existing residence or the building or purchase of a new or different residence is reasonably required for the purposes specified in subdivision 1. The council for the handicapped shall advise the division or workers' compensation court of appeals as provided in section 256.482, subdivision 5, clause (7). The alteration or remodeling of an existing residence, or the building or purchase of a new home must be done under the supervision of a licensed architect relative to the specific needs to accommodate the handicap.

Subd. 5. An employee is limited to \$30,000 under this section for each personal injury.

[ 1977 c 177 s 1 ]

### 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 someone 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 180 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 180 days after the occurrence of the injury no compensation shall be allowed.

[ 1977 c 343 s 19 ]

# MINNESOTA STATUTES 1977 SUPPLEMENT

## WORKER'S COMPENSATION 176.511

### 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. Any report or written statement made by the employer's physician as a result of an examination of the employee, regardless of whether the examination preceded the injury or was made subsequent to the injury, shall be made available, upon request and without charge, to the injured employee or his representative.

[For text of subds 2 to 5, see M.S.1976]

[ 1977 c 342 s 20 ]

### 176.183 Uninsured and self-insured employers; benefits to employees and dependents; liability of employer.

[For text of subds 1 and 1a, see M.S.1976]

Subd. 2. Upon a warrant prepared by the commissioner of the department of labor and industry and approved by the commissioner of finance, and in accordance with the terms of the order awarding compensation, the state treasurer shall pay compensation to the employee or his dependent from the special compensation fund. The commissioner of the department of labor and industry shall certify to the state treasurer and to the legislature at the end of each biennium the total amount of compensation paid from the special compensation fund under subdivisions 1 and 1a. The state treasurer shall upon proper certification reimburse the special compensation fund the total amount certified as paid under this section.

[ 1977 c 403 s 6 ]

### 176.185 Policy of insurance.

[For text of subds 1 to 7, see M.S.1976]

Subd. 8. [ Repealed, 1977 c 342 s 28 ]

[For text of subd 9, see M.S.1976]

### 176.221 Payment of compensation, commencement.

[For text of subds 1 to 6, see M.S.1976]

Subd. 7. **Interest.** Any payment of compensation not made when due shall bear interest at the rate of eight percent per annum from the due date to the date the payment is made.

[ 1977 c 342 s 21 ]

### 176.511 Costs.

[For text of subds 1 and 2, see M.S.1976]

Subd. 3. **Attorney's fee, allowance.** Where upon an appeal to the worker's compensation court of appeals, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the worker's compensation court of appeals may include in its award as an incident to its review on

# MINNESOTA STATUTES 1977 SUPPLEMENT

## 176.511 WORKER'S COMPENSATION

appeal an amount to cover a reasonable attorney's fee, or it may allow the fee in a proceeding to tax disbursements.

[For text of subds 4 and 5, see M.S.1976]

[ 1977 c 342 s 22 ]

### 176.645 Adjustment of benefits.

For injuries occurring after October 1, 1975 for which benefits are payable under section 176.101, subdivisions 1, 2 and 4, and section 176.111, subdivision 5, the amount due the employee or any dependents shall be adjusted in accordance with this section. On October 1, 1976, and each October 1 thereafter the amount due shall be adjusted by multiplying the amount due prior to each adjustment by a fraction, the denominator of which is the statewide average weekly wage for December 31, 21 months prior to the adjustment and the numerator of which is the statewide average weekly wage for December 31, nine months prior to the adjustment. For injuries occurring after October 1, 1975, all adjustments provided for in this section shall be included in computing any benefit due under this section. Any limitations of amounts due for daily or weekly compensation under this chapter shall not apply to adjustments made under this section. No adjustment increase made on October 1, 1977 or thereafter under this section shall exceed six percent a year. In those instances where the adjustment under the formula of this section would exceed this maximum the increase shall be deemed to be six percent.

[ 1977 c 342 s 23 ]

NOTE: This section as amended by Laws 1977, Chapter 342, Section 23 is effective retroactively to October 1, 1975.

## CHAPTER 177. MINIMUM WAGES

Sec.  
177.23 Definitions.

Sec.  
177.24 Payment of minimum wages.  
177.28 Power to make regulations.

### 177.23 Definitions.

[For text of subds 1 to 8, see M.S.1976]

Subd. 9. "Gratuities" means monetary contributions received directly or indirectly by an employee from a guest, patron, or customer for services rendered and includes an obligatory charge assessed to customers, guests or patrons which might reasonably be construed by the guest, customer, or patron as being a payment for personal services rendered by an employee and for which no clear and conspicuous notice is given by the employer to the customer, guest, or patron that the charge is not the property of the employee.

[ 1977 c 369 s 1 ]

### 177.24 Payment of minimum wages.

Subdivision 1. Except as may otherwise be provided in sections 177.21 to 177.35, or by regulation issued pursuant thereto, every employer shall pay to each of his employees who is 18 years of age or older wages at a rate of not less than \$2.30 an hour and shall pay to each of his employees who is under the age of 18 wages at a rate of not less than \$2.07 an hour.

Subd. 2. No employer shall directly or indirectly credit, apply or utilize gratuities towards payment of minimum wages except as provided for under section 177.28.

Subd. 3. For purposes of this chapter, any gratuity received by an employee or deposited in or about a place of business for personal services rendered by an employee is the sole property of the employee. No employer shall require an employee to contribute or share a gratuity received by the employee with the em-