CHAPTER 176

WORKERS' COMPENSATION

176.001 INTENT OF THE LEGISLATURE.

It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. It is the specific intent of the legislature that workers' compensation cases shall be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' compensation legislation shall not apply in such cases. The workers' compensation system in Minnesota is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Employees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the provisions of this chapter, and employers' rights to raise common law defenses such as lack of negligence, contributory negligence on the part of the employee, and others, are curtailed as well. Accordingly, the legislature hereby declares that the workers' compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

History: *1981 c 346 s 52; 1983 c 290 s 25*

176.01 [Repealed, 1953 c 755 s 83]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 injury and dependent upon the employee for support.

Subd. 3. **Daily wage.** "Daily wage" means the daily wage of the employee in the employment engaged in 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 the amount of the daily wage received or to be received by the employee in the employment engaged in at the time of injury was irregular or difficult to determine, or if the employment was part time, the daily wage shall be computed by dividing the total amount the employee actually earned in such employment in the last 26 weeks, by the total number of days in which the employee actually performed any of the duties of such employment, provided further, that in the case of the construction industry, mining industry, or other industry where the hours of work are affected by seasonal conditions, the weekly wage shall not be less than five times the daily wage. Where board or allowances other than tips and gratuities are made to an employee in addition to wages as a part of the wage contract they are deemed a part of 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. If, at the time of injury, the employee was regularly employed by two or more employers, the employee's earnings in all such employments shall be included in the computation of daily wage.

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 the farmer's own baling and casually doing such work for other farmers in the same community or exchanging work with another farmer.

Subd. 5. **Commercial thresher.** "Commercial thresher" 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 the farmer's 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. (1) "Court of appeals" means the workers' compensation court of appeals of Minnesota.

(2) "Division" means the workers' compensation division of the department of labor and industry.

(3) "Department" means the department of labor and industry.

(4) "Commissioner", unless the context clearly indicates otherwise, means the commissioner of labor and industry.

Subd. 7. **Judge.** "Judge" means a member of the workers' compensation court of appeals.

Subd. 7a. **Compensation judge.** The title referee as used in this chapter, relating to workers' compensation is hereby changed to compensation judge.

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 services for another for hire including the following:

(1) an alien;

(2) a minor;

(3) a sheriff, deputy sheriff, constable, marshal, police officer, firefighter, county highway engineer, and peace officer while engaged in the enforcement of peace or in the pursuit or capture of any person charged with or suspected of crime and any person requested or commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any legal process in which case, for purposes of calculating compensation payable under this chapter, the daily wage of the person requested or commanded to assist an officer or to execute a legal process shall be the prevailing wage for similar services where the services are performed by paid employees;

(4) a county assessor;

(5) an elected or appointed official of the state, or of any county, city, town, school district or governmental subdivision in it. An officer of a political subdivision elected or appointed for a regular term of office, or to complete the unexpired portion of a 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), or an executive officer of a closely held corporation who is referred to in section 176.012;

(7) a voluntary uncompensated worker, other than an inmate, rendering services in state institutions under the commissioner of human services and state institutions under the commissioner of corrections similar to those of officers and employees of these institutions, and whose services have been accepted or contracted for by the

commissioner of human services or the commissioner of corrections as authorized by law, shall be employees. In the event of injury or death of the 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 the injury or death for similar services in institutions where the 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 of it, 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 the injury or death for similar services where the 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. In the event of injury or death of the 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 the injury or death for similar services where the 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 84.089 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 the services are performed by paid employees;

(11) a member of the military forces, as defined in section 190.05, while in state active service, as defined in section 190.05, subdivision 5a. 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 the services are performed by paid employees;

(13) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota School for the Deaf or the Minnesota Braille and Sight-Saving School, and whose services have been accepted or contracted for by the state board of education, as authorized by law, shall be an employee. In the event of injury or death of the 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 the injury or death for similar services in institutions where the services are performed by paid employees;

(14) a voluntary uncompensated worker, other than a resident of the veterans home, who renders services at a Minnesota veterans home, and whose services have been accepted or contracted for by the commissioner of veterans affairs, as authorized by law, is an employee. In the event of injury or death of the 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 the injury or death for similar services in institutions where the services are performed by paid employees;

(15) a worker who renders in-home attendant care services to a physically handicapped person, and who is paid directly by the commissioner of human services for these services, shall be an employee of the state within the meaning of this subdivision, but for no other purpose;

(16) those students enrolled in and regularly attending the medical school of the

University of Minnesota, whether in the graduate school program or the post-graduate program, notwithstanding that the students shall not be considered employees for any other purpose. In the event of the student's injury or death, the weekly wage of the student for the purpose of calculating compensation payable under this chapter, shall be the annualized educational stipend awarded to the student, divided by 52 weeks. The institution in which the student is enrolled shall be considered the "employer" for the limited purpose of determining responsibility for paying benefits payable under this chapter;

(17) a faculty member of the University of Minnesota employed for the current academic year is also an employee for the period between that academic year and the succeeding academic year if:

(a) the faculty member has a contract or reasonable assurance of a contract from the University of Minnesota for the succeeding academic year; and

(b) the personal injury for which compensation is sought arises out of and in the course of activities related to the faculty member's employment by the University of Minnesota; and

(18) a worker who performs volunteer ambulance driver or attendant services is an employee of the political subdivision, nonprofit hospital, nonprofit corporation, or other entity for which the worker performs the services. The daily wage of the worker for the purpose of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees; and

(19) a voluntary uncompensated worker, accepted by the commissioner of administration, rendering services as a volunteer at the department of administration. In the event of injury or death of the 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 the injury or death for similar services in institutions where the services were performed by paid employees.

In the event it is difficult to determine the daily wage as provided in this subdivision, then the trier of fact may determine the wage upon which the compensation is payable.

Subd. 9a. **Employee.** For purposes of this chapter "employee" does not include farmers or members of their family who exchange work with other farmers in the same community.

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, 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. 11a. **Family farm.** "Family farm" means any farm operation which pays or is obligated to pay less than $8,000 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 2, 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 contrary, a farm laborer shall not be considered as an independent contractor for the purposes of this chapter; provided that a commercial baler or commercial thresher shall be considered an independent contractor.

Subd. 12. **Farm laborer.** "Farm laborer" does not include an employee of a commercial thresher 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 the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the 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 worker would have been equally exposed outside of the employment. If immediately preceding the date of disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota state patrol, conservation officer service, state crime bureau, as a forest officer by the department of natural resources, or sheriff or full time deputy sheriff of any county, and the disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of 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, with the Minnesota state patrol, conservation officer service, state crime bureau, department of natural resources, or sheriff's department of any county, 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 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 the employee's services require the employee's 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 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 personal reasons, and not directed against the employee as an employee, or because of the employment.

Subd. 17. **Physician.** "Physician" means one authorized by law to practice the medical profession within one of the United States and in good standing in the 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. If the employee normally works less than five days per week or works an irregular number of days per week, the number of days normally worked shall be computed by dividing the total number of days in which the employee actually performed any of the duties of employment in the last 26 weeks by the number of weeks in which the employee actually performed such duties, provided that the weekly wage for part time employment during a period of seasonal or temporary layoff shall be computed on the number of days and fractional days normally worked in the business of the employer for the employment involved. If, at the time of the injury, the employee was regularly employed by two or more employers, the employee's days of work for all such employments shall be included in the computation of weekly 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. The maximum weekly compensation payable to an employee, or to the employee's dependents in the event of death, shall not exceed 66 2/3 percent of the product of the daily wage times the number of days normally worked, provided that the compensation payable for permanent partial disability under section 176.101, subdivision 3, and for permanent total disability under section 176.101, subdivision 4, or death under section 176.111, shall not be computed on less than the number of hours normally worked in the employment or industry in which the injury was sustained, subject also to such maximums as are specifically otherwise provided.

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

Subd. 20. **Average weekly wage.** The statewide average weekly wage for any year means that wage determined by the commissioner in the following manner: On or before July 1 preceding the year in which the wage is to be applicable, the total wages reported on contribution reports to the department of jobs and training for the preceding 12 months ending on December 31 of that year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for the year ending December 31 by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the next highest dollar.

Subd. 21. **Household worker.** "Household worker" means one who is a domestic, repairer, groundskeeper, or maintenance worker in, for, or about a private home or household, but the term shall not include independent contractors nor shall it include persons performing labor for which they may elect workers' compensation coverage under section 176.012.

Subd. 22. **Closely held corporations.** "Closely held corporation" means a corporation whose stock is held by no more than ten persons. The determination of ownership shall be made annually on the effective date of the policy issued under this chapter. In case of self-insureds the determination shall be made annually on the date of approval of self-insurance or renewal of self-insurance.

Subd. 23. **Retraining.** "Retraining" means a formal course of study in a school setting which is designed to train an employee to return to suitable gainful employment.

Subd. 24. **Health care provider.** "Health care provider" means a physician, podiatrist, chiropractor, dentist, optometrist, osteopath, psychologist, psychiatric social worker, or any other person who furnishes a medical or health service to an employee under this chapter but does not include a qualified rehabilitation consultant or approved vendor.

Subd. 25. **Maximum medical improvement.** "Maximum medical improvement" means the date after which no further significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability.

Subd. 26. **Monitoring period.** "Monitoring period" means the number of weeks during which economic recovery compensation pursuant to section 176.101, subdivision 3a, would have been paid if that compensation were payable.

History: *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; 1963 c 493 s 1; 1963 c 497 s 1; 1967 c 701 s 1; 1967 c 806 s 1; 1967 c 905 s 9; Ex1967 c 1 s 6; Ex1967 c 40 s 1,2; 1969 c 9 s 53; 1969 c 148 s 2; 1969 c 276 s 1; 1969 c 936 s 2; 1973 c 123 art 5 s 7; 1973 c 388 s 12; 1973 c 420 s 2; 1973 c 657 s 1; 1975 c 271 s 6; 1975 c 359 s 3,4,23; 1976 c 331 s 36; 1977 c 342 s 1,2; 1977 c 429 s 63; 1977 c 430 s 25 subd 1; 1978 c 574 s 1; 1978 c 702 s 1; 1978 c 757 s 1; 1978 c 764 s 99; 1979 c 92 s 2; Ex1979 c 3 s 28,29; 1980 c 384 s 2; 1980 c 385 s 1,2; 1980 c 414 s 2; 1980 c 556 s 12; 1981 c 37 s 2; 1981 c 346 s 53,54,139; 1983 c 193 s 2; 1983 c 290 s 26-30; 1984 c 469 s 1; 1984 c 544 s 85; 1984 c 654 art 5 s 58; 1985 c 247 s 20; 1Sp1985 c 14 art 9 s 75; 1986 c 444*

176.012. ELECTION OF COVERAGE.

The persons, partnerships and corporations described in this section may elect to provide the insurance coverage required by this chapter.

(a) An owner or owners of a business or farm may elect coverage for themselves.

(b) A partnership owning a business or farm may elect coverage for any partner.

(c) A family farm corporation as defined in section 500.24, subdivision 2, clause (c) may elect coverage for any executive officer.

(d) A closely held corporation which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any executive officer if that executive officer is also an owner of at least 25 percent of the stock of the corporation.

(e) A person, partnership, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor.

A person, partnership, or corporation may charge the independent contractor a fee for providing the coverage only if the independent contractor (1) elects in writing to be covered, (2) is issued an endorsement setting forth the terms of the coverage and the name of the independent contractors, and (3) the fee and how it is calculated.

The persons, partnerships and corporations described in this section may also elect coverage for an employee who is a spouse, parent or child, regardless of age, of an owner, partner, or executive officer, who is eligible for coverage under this section. Coverage may be elected for a spouse, parent or child whether or not coverage is elected for the related owner, partner or executive director and whether or not the person, partnership or corporation employs any other person to perform a service for hire. Any person for whom coverage is elected pursuant to this section shall be included within the meaning of the term employee for the purposes of this chapter.

Notice of election of coverage or of termination of election under this section shall be provided in writing to the insurer. Coverage or termination of coverage is effective the day following receipt of notice by the insurer or at a subsequent date if so indicated in the notice. The insurance policy shall be endorsed to indicate the names of those persons for whom coverage has been elected or terminated under this section. An election of coverage under this section shall continue in effect as long as a policy or renewal policy of the same insurer is in effect.

Nothing in this section shall be construed to limit the responsibilities of owners, partnerships or corporations to provide coverage for their employees, if any, as required under this chapter.

History: *1974 c 1 s 1; 1977 c 342 s 3; 1978 c 757 s 2; 1979 c 74 s 1; 1979 c 92 s 3; 1980 c 392 s 1; 1983 c 290 s 31; 1986 c 461 s 2*

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 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 an employee arising out of and in the course of employment without regard to the question of negligence. The burden of proof of these facts is upon the employee.

If the injury was intentionally self-inflicted or the intoxication of the employee is the proximate cause of the injury, then the employer is not liable for compensation. The burden of proof of these facts is upon the employer.

Subd. 1a. **Burden of proof.** All disputed issues of fact arising under this chapter shall be determined by a preponderance of the evidence, and in accordance with the principles laid down in section 176.001. Preponderance of the evidence means evidence produced in substantiation of a fact which, when weighed against the evidence opposing the fact, has more convincing force and greater probability of truth.

Questions of law arising under chapter 176 shall be determined on an even-handed basis in accordance with the principles laid down in section 176.001.

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 commence payment of 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 for medical, burial, and other nonperiodic benefits, payments shall be made as nearly as possible at the intervals when the wage was payable, provided, however, that payments for permanent partial disability shall be governed by section 176.101. If doubt exists as to the eventual permanent partial disability, payment for the economic recovery compensation or impairment compensation, whichever is due, pursuant to section 176.101, shall be then made when due for the minimum permanent partial disability ascertainable, and further payment shall be made upon any later ascertainment of greater permanent partial disability. Prior to or at the time of commencement of the payment of economic recovery compensation or lump sum or periodic payment of impairment compensation, the employee and employer shall be furnished with a copy of the medical report upon which the payment is based and all other medical reports which the insurer has that indicate a permanent partial disability rating, together with a statement by the insurer as to whether the tendered payment is for minimum permanent partial disability or final and eventual disability. After receipt of all reports available to the insurer that indicate a permanent partial disability rating, the employee shall make available or permit the insurer to obtain any medical report that the employee has or has knowledge of that contains a permanent partial disability rating which the insurer does not already have. Economic recovery compensation or impairment compensation pursuant to section 176.101 is payable in addition to but not concurrently with compensation for temporary total disability but is payable pursuant to section 176.101. Impairment compensation is payable concurrently and in addition to compensation for permanent total disability pursuant to section 176.101. Economic recovery compensation or impairment compensation pursuant to section 176.101 shall be withheld pending completion of payment for temporary total disability, and no credit shall be taken for payment of economic recovery compensation or impairment compensation against liability for temporary total or future permanent total disability. Liability on the part of an employer or the 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 compensation is payable accordingly, subject to section 176.101. Economic recovery compensation or impairment compensation 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, subject to section 176.101. The right to receive temporary total, temporary partial, or permanent total disability payments vests in the injured employee or the employee's dependents under this chapter or, if none, in the employee's legal heirs at the time the disability can be ascertained and the right is not abrogated by the employee's death prior to the making of the payment.

The right to receive economic recovery compensation or impairment compensation vests in an injured employee at the time the disability can be ascertained provided that the employee lives for at least 30 days beyond the date of the injury. Upon the death of an employee who is receiving economic recovery compensation or impairment compensation, further compensation is payable pursuant to section 176.101. Impairment compensation is payable under this paragraph if vesting has occurred, the employee dies prior to reaching maximum medical improvement, and the requirements and conditions under section 176.101, subdivision 3e, are not met.

Disability ratings for permanent partial disability shall be based on objective medical evidence.

Subd. 3a. **Permanent partial benefits, payment.** Payments for permanent partial disability as provided in section 176.101, subdivision 3, shall be made in the following manner:

(a) If the employee returns to work, payment shall be made by lump sum;

(b) If temporary total payments have ceased, but the employee has not returned to work, payment shall be made at the same intervals as temporary total payments were made;

(c) If temporary total disability payments cease because the employee is receiving payments for permanent total disability or because the employee is retiring or has retired from the work force, then payment shall be made by lump sum;

(d) If the employee completes a rehabilitation plan pursuant to section 176.102, but the employer does not furnish the employee with work the employee can do in a permanently partially disabled condition, and the employee is unable to procure such work with another employer, then payment shall be made by lump sum.

Subd. 3b. **Temporary and permanent partial.** If an employee has returned to work for at least six months and has, if applicable, completed a rehabilitation plan, this section does not prevent the payment of compensation for permanent partial disability because the employee is receiving compensation for temporary partial disability. This subdivision is procedural and applies regardless of the date of injury.

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 or other political subdivision of the state who are entitled to the benefits of the workers' 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. Employees of a county, city or other political subdivision entitled to the benefits of the workers' compensation law may receive additional benefits pursuant to a collective bargaining agreement or other plan, entered into or in effect on or after January 1, 1980, providing payments by or on behalf of the employer and these additional benefits may be unrelated to any accumulated sick leave, holiday or overtime credits and need not be charged against any accumulation; provided that the additional payments shall not result in the payment of a total weekly rate of compensation that exceeds the weekly wage of the employee. The commissioner of the department of labor and industry for the state or the governing body of any county, city or other political subdivision to which the provisions of this chapter apply, may adopt rules not inconsistent with this chapter for carrying out the provisions hereof relating to payment of additional benefits to employees from accumulated sick leave, vacation, overtime credits or other sources.

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, the employee shall, in addition to compensation under this chapter, receive under the charter an amount equal to the excess in compensation provided by the charter over what the employee 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, the employee shall take only under this chapter.

Subd. 7. **Public officer.** If an employee who is a public officer of the state or governmental subdivision continues to receive the compensation of office during a period when receiving benefits under the workers' compensation law for temporary total or temporary partial disability or permanent total disability and the compensation of office exceeds $100 a year, the amount of that compensation attributable to the period for which benefits under the workers' compensation law are paid shall be deducted from such benefits. If an employee covered by the Minnesota state retirement system receives total and permanent disability benefits pursuant to section 352.113 or disability benefits pursuant to sections 352.95 and 352B.10, the amount of disability benefits shall be deducted from workers' compensation benefits otherwise payable. Notwithstanding the provisions of section 176.132, a deduction under this subdivision does not entitle an employee to supplemental benefits under section 176.132.

Subd. 8. **Amounts adjusted.** Amounts of compensation payable by an employer or an employer's insurer under this chapter may be rounded to the nearest dollar amount. An employer or insurer who elects to make such adjustments shall do so for all compensation payments under this chapter.

Subd. 9. **Employer responsibility for wellness programs.** Injuries incurred while participating in voluntary recreational programs sponsored by the employer, including health promotion programs, athletic events, parties, and picnics, do not arise out of and in the course of the employment even though the employer pays some or all of the cost of the program. This exclusion does not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program.

History: *1953 c 755 s 2; 1967 c 701 s 2; Ex1967 c 40 s 3,5; 1973 c 123 art 5 s 7; 1973 c 388 s 13,14; 1973 c 623 s 1; 1974 c 486 s 1; 1975 c 359 s 23; 1977 c 342 s 4; Ex1979 c 3 s 30; 1981 c 346 s 55-59; 1982 c 610 s 1; 1983 c 290 s 32,33; 1985 c 234 s 3,4; 1985 c 248 s 70; 1Sp1985 c 7 s 3; 1986 c 444*

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, 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 liability for compensation to injured employees and their dependents, an injured employee, or 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 employment, or that the injury was due to the contributory negligence of the employee, unless it appears that such negligence was willful on the part of the employee. The burden of proof to establish such willful 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.

History: *1953 c 755 s 3; 1986 c 444*

176.04 [Repealed, 1953 c 755 s 83]

176.041 EXCLUDED EMPLOYMENTS; APPLICATION, EXCEPTIONS.

Subdivision 1. **Employments excluded.** This chapter does not apply to a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law; to a person employed by a family

farm as defined by section 176.011, subdivision 11a, or the spouse, parent, and child, regardless of age, of a farmer-employer working for the farmer-employer; to a partner engaged in a farm operation or a partner engaged in a business and the spouse, parent, and child, regardless of age, of a partner in the farm operation or business; to an executive officer of a family farm corporation; to an executive officer of a closely held corporation referred to in section 176.012; to a spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 2, and employed by that family farm corporation; to a spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation referred to in section 176.012; to another farmer or to a member of the other farmer's family exchanging work with the farmer-employer or family farm corporation operator in the same community; to a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer; persons who are independent contractors as defined by rules adopted by the commissioner pursuant to section 176.83 except that this exclusion does not apply to an employee of an independent contractor; nor does this chapter apply to an officer or a member of a veterans' organization whose employment relationship arises solely by virtue of attending meetings or conventions of the veterans' organization, unless the veterans' organization elects by resolution to provide coverage under this chapter for the officer or member.

Neither does the chapter apply to a person employed as a household worker in, for, or about a private home or household who earns less than $1,000 in cash in a three-month period from a single private home or household provided that a household worker who has earned $1,000 or more from the household worker's present employer in a three-month period within the previous year is covered by this chapter regardless of whether or not the household worker has earned $1,000 in the present quarter.

This chapter does not apply to those persons employed by a corporation if those persons are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to the officers of the corporation, and if the corporation files a written election with the commissioner to have those persons excluded from this chapter except that a written election is not required for a person who is otherwise excluded from this chapter by this section.

This chapter does not apply to a nonprofit association which does not pay more than $1,000 in salary or wages in a year.

This chapter does not apply to persons covered under the Domestic Volunteer Service Act of 1973, as amended, United States Code, title 42, sections 5011, et. seq.

Subd. 2. **Extraterritorial application.** If an employee who regularly performs the primary duties of employment within this state receives an injury while outside of this state in the employ of the same employer, the provisions of this chapter shall apply to such injury. If a resident of this state is transferred outside the territorial limits of the United States as an employee of a Minnesota employer, the resident shall be presumed to be temporarily employed outside of this state while so employed.

Subd. 3. **Temporary out-of-state employment.** If an employee hired in this state by a Minnesota employer, receives an injury while temporarily employed outside of this state, such injury shall be subject to the provisions of this chapter.

Subd. 4. **Out-of-state employments.** If an employee who regularly performs the primary duties of employment outside of this state or is hired to perform the primary duties of employment outside of this state, receives an injury within this state in the employ of the same employer, such injury shall be covered within the provisions of this chapter if the employee chooses to forego any workers' compensation claim resulting from the injury that the employee may have a right to pursue in some other state.

Subd. 5. [Repealed, 1974 c 486 s 6]

Subd. 5a. **Out-of-state injuries.** Except as specifically provided by subdivisions 2 and 3, injuries occurring outside of this state are not subject to this chapter.

Subd. 6. **Commissioner of labor and industry; additional powers.** Whenever an

employee is covered by subdivision 2, 3 or 4, the commissioner may enter into agreements with the appropriate agencies of other states for the purpose of resolving conflicts of jurisdiction or disputes concerning workers' compensation coverage. An agreement entered into pursuant to this subdivision may be appealed in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals or the district court.

History: *1953 c 755 s 4; Ex1967 c 40 s 6; 1971 c 669 s 1; 1973 c 657 s 2; 1974 c 286 s 1; 1975 c 271 s 2; 1975 c 359 s 5; 1977 c 342 s 5; 1978 c 722 s 2; 1979 c 15 s 1; 1979 c 74 s 2; 1979 c 92 s 4; 1981 c 346 s 60; 1983 c 290 s 34; 1983 c 311 s 8; 1984 c 432 art 1 s 3; 1986 c 444; 1986 c 461 s 3-6*

176.05 [Repealed, 1953 c 755 s 83]

176.051 ASSUMPTION OF LIABILITY; FARM AND HOUSEHOLD WORKERS; RIDESHARING.

Subdivision 1. **Farm and household workers.** An employer of workers on a farm operation or household workers not otherwise covered by this chapter may assume the liability for compensation imposed by this chapter and the employer's procurement of a workers' compensation policy constitutes an assumption by the employer of liability unless the employer elects in writing not to have those persons covered and the policy states that election. This assumption of liability takes effect and continues from the effective date of the policy and only as long as the policy remains in force. If during the life of the insurance policy, an employee, who is a worker on a farm operation or a household worker, suffers personal injury or death arising out of and in the course of employment, the exclusive remedy of the employee or the employee's dependents is under this chapter. For purposes of this section, farm worker does not include a spouse, parent, or child, regardless of age, of a farmer, a partner in a farm operation, or an officer of a family farm corporation as defined in section 500.24, subdivision 1, nor does it include other farmers in the same community or members of their family exchanging work with the farmer-employer or family farm corporation operator.

Subd. 2. [Repealed, 1984 c 432 art 1 s 4]

Subd. 3. [Repealed, 1984 c 432 art 1 s 4]

Subd. 4. [Repealed, 1984 c 432 art 1 s 4]

History: *1953 c 755 s 5; 1973 c 657 s 3; 1975 c 359 s 6; 1977 c 342 s 6; 1983 c 311 s 9*

176.06 [Repealed, 1953 c 755 s 83]

176.061 THIRD PARTY LIABILITY.

Subdivision 1. **Election of remedies.** If an injury or death for which benefits are 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 the injury or death that party was insured or self-insured in accordance with this chapter, the employee, in case of injury, or the employee's dependents, in case of death, may proceed either at law against that party to recover damages or against the employer for benefits, but not against both.

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

Subd. 3. **Election to receive benefits from employer; subrogation.** If the employee or the employee's dependents elect to receive benefits from the employer, or the special

compensation fund, the employer or the special compensation fund has a right of indemnity or is subrogated to the right of the employee or the employee's dependents to recover damages against the other party. The employer, or the attorney general on behalf of the special compensation fund, may bring legal proceedings against the party and recover the aggregate amount of benefits payable to or on behalf of the employee or the employee's dependents, together with costs, disbursements, and reasonable attorney's fees of the action.

If an action as provided in this chapter is prosecuted by the employee, the employer, or the attorney general on behalf of the special compensation fund, against the third person, and results in judgment against the third person, or settlement by the third person, the employer has no liability to reimburse or hold the third person harmless on the judgment or settlement in absence of a written agreement to do so executed prior to the injury.

Subd. 4. **Application of subdivisions 1, 2, and 3.** The provisions of subdivisions 1, 2, and 3 apply only if the employer liable for benefits and the other party legally liable for damages are insured or self-insured and engaged, in the due course of business in, (a) furtherance of a common enterprise, or (b) in the accomplishment of the same or related purposes in operations on the premises where the injury was received at the time of the injury.

Subd. 5. **Cumulative remedies.** If an injury or death for which benefits are 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 the employee's dependents in accordance with clause (a), or by the employer, or by the attorney general on behalf of the special compensation fund, in accordance with clause (b), against the other party to recover damages, notwithstanding the payment of benefits by the employer or the special compensation fund or their liability to pay benefits.

(a) If an action against the other party is brought by the injured employee or the employee's dependents and a judgment is obtained and paid or settlement is made with the other party, the employer or the special compensation fund may deduct from the benefits payable the amount actually received by the employee or dependents or paid on their behalf in accordance with subdivision 6. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer or the special compensation fund, upon application the court may grant the employer or the special compensation fund the right to intervene in the action for the prosecution of the action. If the injured employee or the employee's dependents or any party on their behalf receives benefits from the employer or the special compensation fund or institutes proceedings to recover benefits or accepts from the employer or the special compensation fund any payment on account of the benefits, the employer or the special compensation fund is subrogated to the rights of the employee or the employee's dependents or has a right of indemnity against a third party. The employer or the attorney general on behalf of the special compensation fund may maintain a separate action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the employee's dependents, or in the name of the employer, or in the name of the attorney general on behalf of the special compensation fund, against the other party for the recovery of damages. If the action is not diligently prosecuted by the employer or the attorney general on behalf of the special compensation fund, or if the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or the employee's dependents the right to intervene in the action for the prosecution of the action. The proceeds of the action or settlement of the action shall be paid in accordance with subdivision 6.

(b) If an employer, being then insured, sustains damages due to a change in

workers' compensation insurance premiums, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of an employee which was caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the employer, notwithstanding other remedies provided, may maintain an action against the other party for recovery of the premiums. This cause of action may be brought either by joining in an action described in clause (a) or by a separate action. Damages recovered under this clause are for the benefit of the employer and the provisions of subdivision 6 are not applicable to the damages.

(c) The third party is not liable to any person other than the employee or the employee's dependents, or the employer, or the special compensation fund, for any damages resulting from the injury or death.

A coemployee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the coemployee or was intentionally inflicted by the coemployee.

Subd. 6. **Costs, attorney fees, expenses.** The proceeds of all actions for damages or of a settlement of an action under this section, except for damages received under subdivision 5, clause (b) received by the injured employee or the employee's dependents or by the employer or the special compensation fund, as provided by subdivision 5, shall be divided as follows:

(a) After deducting the reasonable cost of collection, including but not limited to attorneys fees and burial expense in excess of the statutory liability, then

(b) One-third of the remainder shall in any event be paid to the injured employee or the employee's dependents, without being subject to any right of subrogation.

(c) Out of the balance remaining, the employer or the special compensation fund shall be reimbursed in an amount equal to all benefits paid under this chapter to or on behalf of the employee or the employee's dependents by the employer or special compensation fund, less the product of the costs deducted under clause (a) divided by the total proceeds received by the employee or dependents from the other party multiplied by all benefits paid by the employer or the special compensation fund to the employee or the employee's dependents.

(d) Any balance remaining shall be paid to the employee or the employee's dependents, and shall be a credit to the employer or the special compensation fund for any benefits which the employer or the special compensation fund is obligated to pay, but has not paid, and for any benefits that the employer or the special compensation fund is obligated to make in the future.

There shall be no reimbursement or credit to the employer or to the special compensation fund for interest or penalties.

Subd. 7. **Medical treatment.** The liability of an employer or the special compensation fund for medical treatment or payment of any other compensation under this chapter is not affected by the fact that the 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, or the attorney general on behalf of the special compensation fund, has a separate additional cause of action against the third party to recover any amounts paid for medical treatment or for other compensation payable under this section resulting from the negligence of the third party. This separate cause of action of the employer or the attorney general on behalf of the special compensation fund may be asserted in a separate action brought by the employer or the attorney general on behalf of the special compensation fund against the third party, or in the action commenced by the employee or the employer or the attorney general on behalf of the special compensation fund under this chapter, but in the latter case the cause of action shall be separately stated, the amount awarded in the action shall be separately set out in the verdict, and the amount recovered by suit or otherwise as reimbursement for medical expenses or other compensation shall be for the benefit of the employer or the special compensation fund to the extent that the

employer or the special compensation fund has paid or will be required to pay compensation or pay for medical treatment of the injured employee and does not affect the amount of periodic compensation to be paid.

Subd. 8. [Repealed, 1983 c 290 s 35]

Subd. 8a. **Notice to employer.** In every case arising under subdivision 5, a settlement between the third party and the employee is not valid unless prior notice of the intention to settle is given to the employer within a reasonable time. If the employer or insurer pays compensation to the employee under the provisions of this chapter and becomes subrogated to the right of the employee or the employee's dependents or has a right of indemnity, any settlement between the employee or the employee's dependents and the third party is void as against the employer's right of subrogation or indemnity. When an action at law is instituted by an employee or the employee's dependents against a third party for recovery of damages, a copy of the complaint and notice of trial or note of issue in the action shall be served on the employer or insurer. Any judgment rendered in the action is subject to a lien of the employer for the amount to which it is entitled to be subrogated or indemnified 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 the employee's dependents or has a right of indemnity, all notices required to be given the state shall be served on the attorney general and the commissioner.

Subd. 10. MS 1974 [Repealed, 1976 c 2 s 70; 1976 c 154 s 3]

Subd. 10. **Indemnity.** Notwithstanding the provisions of chapter 65B or any other law to the contrary, an employer has a right of indemnity for any compensation paid or payable pursuant to this chapter, including temporary total compensation, temporary partial compensation, permanent partial disability, economic recovery compensation, impairment compensation, medical compensation, rehabilitation, death, and permanent total compensation.

History: *1953 c 755 s 6; Ex1967 c 1 s 6; Ex1967 c 40 s 4; 1969 c 199 s 1,2; 1969 c 936 s 3,4; 1973 c 388 s 15; 1976 c 154 s 1,2; 1979 c 81 s 1,2; Ex1979 c 3 s 31; 1981 c 346 s 61-66; 1983 c 290 s 35; 1986 c 444*

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.

History: *1953 c 755 s 7*

176.08 [Repealed, 1953 c 755 s 83]

176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.

Subdivision 1. (a) A fee for legal services of 25 percent of the first $4,000 of compensation awarded to the employee and 20 percent of the next $27,500 of compensation awarded to the employee is permissible and does not require approval by the commissioner, compensation judge, or any other party except as provided in clause (b). If the employer or the insurer or the defendant is given written notice of claims for legal services or disbursements, the claim shall be a lien against the amount paid or payable

as compensation. In no case shall fees be calculated on the basis of any undisputed portion of compensation awards. Allowable fees under this chapter shall be based solely upon genuinely disputed portions of claims, including disputes related to the payment of rehabilitation benefits or to other aspects of a rehabilitation plan. Fees for administrative conferences under section 176.242, 176.2421, 176.243, or 176.244 shall be determined on an hourly basis, according to the criteria in subdivision 5.

(b) An attorney who is claiming legal fees under this section shall file a statement of attorney's fees with the commissioner, compensation judge before whom the matter was heard, or workers' compensation court of appeals on cases before the court. A copy of the signed retainer agreement shall also be filed. The employee and insurer shall receive a copy of the statement. The statement shall be on a form prescribed by the commissioner and shall clearly and conspicuously state that the employee or insurer has ten calendar days to object to the attorney fees requested. If no objection is timely made by the employee or insurer, the amount requested shall be conclusively presumed reasonable providing the amount does not exceed the limitation in subdivision 1. The commissioner, compensation judge, or court of appeals shall issue an order granting the fees and the amount requested shall be awarded to the party requesting the fee.

If a timely objection is filed, or the fee is determined on an hourly basis, the commissioner, compensation judge, or court of appeals shall review the matter and make a determination based on the criteria in subdivision 5.

If no timely objection is made by an employer or insurer, reimbursement under subdivision 7 shall be made if the statement of fees requested this reimbursement.

Subd. 2. An application for attorney fees in excess of the amount authorized in subdivision 1 shall be made to the division, compensation judge, or district judge, before whom the matter was heard. An appeal of a decision by a compensation judge or district court judge on additional fees may be made to the workers' compensation court of appeals. The application shall set forth the fee requested and the basis for the 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 the 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 attorney fees, may file an application for review by the workers' compensation court of appeals. 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 court administrator 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 workers' compensation court of appeals shall have the authority to raise the question of the issue of the attorney fees at any time upon its own motion and shall have continuing jurisdiction over attorney fees.

Subd. 4. [Repealed, 1985 c 234 s 22]

Subd. 5. In the determination of an award of fees in excess of the amount authorized under subdivision 1, or if an objection is filed under subdivision 1, clause (b), the following principles are to be applied:

(a) The fee in each individual case must be a reasonable one.

(b) There is no set standard fee to be awarded in any workers' compensation matter.

(c) No attorney-client fee contract or arrangement is binding in any workers' compensation matter.

(d) In determining a reasonable attorney fee, important factors to be taken into account are: the amount involved, the time and expense necessary to prepare for trial, the responsibility assumed by counsel, the expertise of counsel in the workers' compensation field, the difficulties of the issues involved, the nature of proof needed to be

adduced and the results obtained. The amount of money involved shall not be the controlling factor.

(e) The determination of the fee in each specific workers' compensation matter must be done with the same care as the determination of any other fact question in the matter.

(f) The determiner of the attorney fee in each matter must ascertain whether or not a retainer fee has been paid to the attorney and if so, the amount of the retainer fee.

(g) The determiner of attorney fees in each case must personally see that the workers' compensation file contains fully adequate information to justify the fee that is determined.

Subd. 6. The commissioner, office of administrative hearings, and the workers' compensation court of appeals may adopt reasonable and proper joint rules to effect each of their obligations under this section.

Subd. 7. If the employer or insurer files a denial of liability, notice of discontinuance, or fails to make payment of compensation or medical expenses within the statutory period after notice of injury or occupational disease, or otherwise unsuccessfully resists the payment of compensation or medical expenses, or unsuccessfully disputes the payment of rehabilitation benefits or other aspects of a rehabilitation plan, and the injured person has employed an attorney at law, who successfully procures payment on behalf of the employee or who enables the resolution of a dispute with respect to a rehabilitation plan, the compensation judge, commissioner, or the workers' compensation court of appeals upon appeal, upon application, shall award to the employee against the insurer or self-insured employer or uninsured employer, in addition to the compensation benefits paid or awarded to the employee, an amount equal to 25 percent of that portion of the attorney's fee which has been awarded pursuant to this section that is in excess of $250.

Subd. 7a. At any time prior to one day before a matter is to be heard, a party litigating a claim made pursuant to this chapter may serve upon the adverse party a reasonable offer of settlement of the claim, with provision for costs and disbursements then accrued. If before the hearing the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with the proof of service thereof, and thereupon judgment shall be entered.

If an offer by an employer or insurer is not accepted by the employee, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees. Notwithstanding the provisions of subdivision 7, if the judgment finally obtained by the employee is less favorable than the offer, the employer shall not be liable for any part of the attorney's fees awarded pursuant to this section.

If an offer by an employee is not accepted by the employer or insurer, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees. Notwithstanding the provisions of subdivision 7, if the judgment finally obtained by the employee is at least as favorable as the offer, the employer shall pay an additional 25 percent, over the amount provided in subdivision 7, of that portion of the attorney's fee which has been awarded pursuant to this section that is in excess of $250.

The fact that an offer is made but not accepted does not preclude a subsequent offer.

Subd. 8. 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, and litigation ensues to resolve such dispute, the employee shall be awarded against the party held liable for the benefits, the reasonable attorney fees, costs and disbursements incurred to protect the employee's rights, even if the employee is being voluntarily paid benefits by one of the parties to the dispute.

Subd. 9. An attorney who is hired by an employee to provide legal services with respect to a claim for compensation made pursuant to this chapter shall prepare a

retainer agreement in which the provisions of this section are specifically set out and provide a copy of this agreement to the employee. The retainer agreement shall provide a space for the signature of the employee. A signed agreement shall raise a conclusive presumption that the employee has read and understands the statutory fee provisions. No fee shall be awarded pursuant to this section in the absence of a signed retainer agreement.

Subd. 10. An attorney who knowingly violates any of the provisions of this chapter with respect to authorized fees for legal services in connection with any demand made or suit or proceeding brought under the provisions of this chapter is guilty of a gross misdemeanor.

Subd. 11. **When fees due.** Attorney fees and other disbursements for a proceeding under this chapter shall not be due or paid until the issue for which the fee or disbursement was incurred has been resolved.

History: *1953 c 755 s 8; 1973 c 388 s 16; 1975 c 271 s 6; 1975 c 359 s 7; 1976 c 134 s 78; 1977 c 342 s 7-11; Ex1979 c 3 s 32; 1981 c 346 s 67-74; 1983 c 290 s 36-41; 1986 c 444; 1986 c 461 s 7*

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 commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals to require the appointment of a guardian for the minor employee to make such settlement and to receive moneys thereunder or under an award.

History: *1953 c 755 s 9; 1957 c 781 s 1; 1973 c 388 s 17; 1975 c 271 s 6; 1975 c 359 23; 1976 c 134 s 78*

176.095 LEGISLATIVE FINDINGS.

The legislature finds that workers' compensation benefits for total disabilities should exceed those benefits provided for partial disabilities in order to fairly compensate the person unable to engage in gainful employment or suffering an injury described in section 176.101, subdivision 5. It is the policy of the legislature that any change in the benefit schedule for total disability be accompanied by an appropriate change in the benefit schedule for partial disability.

History: *1969 c 936 s 1; 1975 c 359 s 23*

176.10 [Repealed, 1953 c 755 s 83]

176.101 COMPENSATION SCHEDULE.

Subdivision 1. **Temporary total disability.** For injury producing temporary total disability, the compensation is 66-2/3 percent of the weekly wage at the time of injury

(1) provided that during the year commencing on October 1, 1979, and each year thereafter, commencing on October 1, the maximum weekly compensation payable is 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.

Subject to subdivisions 3a to 3u 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 66-2/3 percent of the difference between the weekly wage of the employee at the time of injury and the wage the employee is able to earn in the employee's partially disabled condition. This compensation shall be paid during the period of disability except as provided in this section, 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.

Subd. 3. [Repealed, 1983 c 290 s 173]

Subd. 3a. **Economic recovery compensation.** If an employee is not eligible for an impairment award pursuant to subdivision 3b, then the employee shall receive economic recovery compensation for a permanent partial disability pursuant to this subdivision. The compensation shall be 66-2/3 percent of the weekly wage at the time of injury subject to a maximum equal to the statewide average weekly wage. For permanent partial disability up to the percent of the whole body in the following schedule the compensation shall be paid for the proportion that the loss of function of the disabled part bears to the whole body multiplied by the number of weeks aligned with that percent.

Percent of disability	Weeks of compensation
0-25	600
26-30	640
31-35	680
36-40	720
41-45	760
46-50	800
51-55	880
56-60	960
61-65	1040
66-70	1120
71-100	1200

The percentage loss in all cases under this subdivision is determined according to the rules adopted by the commissioner pursuant to section 176.105, subdivision 4. This subdivision applies to an injury which occurs on or after January 1, 1984.

Subd. 3b. **Impairment compensation.** An employee who suffers a permanent partial disability due to a personal injury and receives impairment compensation under this section shall receive compensation in an amount as provided by this subdivision. For permanent partial disability up to the percent of the whole body shown in the following schedule the amount shall be equal to the proportion that the loss of function of the disabled part bears to the whole body multiplied by the amount aligned with that percent in the following schedule:

Percent of disability	Amount
0-25	$ 75,000
26-30	80,000
31-35	85,000
36-40	90,000
41-45	95,000
46-50	100,000
51-55	120,000
56-60	140,000
61-65	160,000
66-70	180,000
71-75	200,000
76-80	240,000
81-85	280,000
86-90	320,000

91-95	360,000
96-100	400,000

For all cases under this subdivision the percentage loss of function of a part of the body is determined according to the rules adopted by the commissioner pursuant to section 176.105, subdivision 4. This subdivision applies to an injury which occurs on or after January 1, 1984.

Subd. 3c. **Maximum payable.** The maximum amount payable under subdivisions 3a and 3b is the maximum compensation payable to an employee who has a 100 percent disability to the body as a whole and under no conditions shall an employee receive more than those amounts even if the employee sustains a disability to two or more body parts.

Subd. 3d. **General.** An employee who has incurred a personal injury shall receive temporary total compensation until these benefits are no longer payable pursuant to this section. If the injury results in a permanent partial disability the employee shall receive compensation as provided in this section.

Subd. 3e. **End of temporary total compensation; suitable job.** (a) Ninety days after an employee has reached maximum medical improvement and the medical report described in clause (c) has been served on the employee, or 90 days after the end of an approved retraining program, whichever is later, the employee's temporary total compensation shall cease. This cessation shall occur at an earlier date if otherwise provided by this chapter.

(b) If at any time prior to the end of the 90-day period described in clause (a) the employee retires or the employer furnishes work to the employee that is consistent with an approved plan of rehabilitation and meets the requirements of section 176.102, subdivision 1, or, if no plan has been approved, that the employee can do in the employee's physical condition and that job produces an economic status as close as possible to that the employee would have enjoyed without the disability, or the employer procures this employment with another employer or the employee accepts this job with another employer, temporary total compensation shall cease and the employee shall, if appropriate, receive impairment compensation pursuant to subdivision 3b. This impairment compensation is in lieu of economic recovery compensation under subdivision 3a, and the employee shall not receive both economic recovery compensation and impairment compensation. Temporary total compensation and impairment compensation shall not be paid concurrently. Once temporary total compensation ceases no further temporary total compensation is payable except as specifically provided by this section.

(c) Upon receipt of a written medical report indicating that the employee has reached maximum medical improvement, the employer or insurer shall serve a copy of the report upon the employee and shall file a copy with the division. The beginning of the 90-day period described in clause (a) shall commence on the day this report is served on the employee for the purpose of determining whether a job offer consistent with the requirements of this subdivision is made. A job offer may be made before the employee reaches maximum medical improvement.

(d) The job which is offered or procured by the employer or accepted by the employee under clause (b) does not necessarily have to commence immediately but shall commence within a reasonable period after the end of the 90-day period described in clause (a). Temporary total compensation shall not cease under this subdivision until the job commences.

(e) If the job offered under clause (a) is offered or procured by the employer and is not the job the employee had at the time of injury it shall be offered and described in writing. The written description shall state the nature of the job, the rate of pay, the physical requirements of the job, and any other information necessary to fully and completely inform the employee of the job duties and responsibilities. The written description and the written offer need not be contained in the same document.

The employee has 14 calendar days after receipt of the written description and offer

to accept or reject the job offer. If the employee does not respond within this period it is deemed a refusal of the offer. Where there is an administrative conference to determine suitability under subdivision 3v, or section 176.242, the period begins to run on the date of the commissioner's decision.

(f) Self-employment may be an appropriate job under this subdivision.

The commissioner shall monitor application of this subdivision and may adopt rules to assure its proper application.

Subd. 3f. **Light-duty job prior to the end of temporary total compensation.** If the employer offers a job prior to the end of the 90-day period referred to in subdivision 3e, paragraph (a) and the job is consistent with an approved plan of rehabilitation or if no rehabilitation plan has been approved and the job is within the employee's physical limitations; or the employer procures a job for the employee with another employer which meets the requirements of this subdivision; or the employee accepts a job with another employer which meets the requirements of this subdivision, the employee's temporary total compensation shall cease. In this case the employee shall receive impairment compensation for the permanent partial disability which is ascertainable at that time. This impairment compensation shall be paid at the same rate that temporary total compensation was last paid. Upon the end of temporary total compensation under subdivision 3e, paragraph (a), the provisions of subdivision 3e or 3p apply, whichever is appropriate, and economic recovery compensation or impairment compensation is payable accordingly except that the compensation shall be offset by impairment compensation received under this subdivision.

Subd. 3g. **Acceptance of job offer.** If the employee accepts a job offer described in subdivision 3e and the employee begins work at that job, although not necessarily within the 90-day period specified in that subdivision, the impairment compensation shall be paid in a lump sum 30 calendar days after the employee actually commences work if the employment has not been substantially interrupted by the injury for any part of the 30 days and the employee is still employed at that job at the end of the period.

Subd. 3h. **Temporary partial compensation.** An employee who accepts a job under subdivision 3e or subdivision 3f and begins that job shall receive temporary partial compensation pursuant to subdivision 2, if appropriate.

Subd. 3i. **Lay off because of lack of work or released for other than seasonal conditions.** (a) If an employee accepts a job under subdivision 3e and begins work at that job and is subsequently unemployed at that job because of economic conditions, other than seasonal conditions, the employee shall receive monitoring period compensation pursuant to clause (b). In addition, the employer who was the employer at the time of the injury shall provide rehabilitation consultation by a qualified rehabilitation consultant if the employee remains unemployed for 45 calendar days. The commissioner may waive this rehabilitation consultation if the commissioner deems it appropriate. Further rehabilitation, if deemed appropriate, is governed by section 176.102.

(b) Upon the employee's initial return to work the monitoring period begins to run. If the employee is unemployed for the reason in clause (a), prior to the end of the monitoring period the employee shall receive monitoring period compensation. This compensation shall be paid until (1) the monitoring period expires, or (2) the sum of monitoring period compensation paid and impairment compensation paid or payable is equal to the amount of economic recovery compensation that would have been paid if that compensation were payable, whichever occurs first. No monitoring period compensation is payable if the unemployment occurs after the expiration of the monitoring period. Monitoring period compensation is payable at the same intervals and at the same rate as when temporary total compensation ceased, provided that the minimum monitoring period compensation rate is 66-2/3 percent of the weekly wage for permanent partial disability as determined by section 176.011, subdivision 18 and subject to the maximums specified therein.

(c) Compensation under this subdivision shall not be escalated pursuant to section 176.645.

(d) If the employee returns to work and is still receiving monitoring period compensation, this compensation shall cease. Any period remaining in the monitoring period upon this return to work shall be used to determine further benefits if the employee is again unemployed under clause (a).

(e) Upon the employee's return to work pursuant to this section the insurer shall notify the employee of the length of the employee's monitoring period and shall notify the employee of the amount of impairment to be paid and the date of payment.

Subd. 3j. **Medically unable to continue work.** (a) If the employee has started the job offered under subdivision 3e and is medically unable to continue at that job because of the injury, that employee shall receive temporary total compensation pursuant to clause (b). In addition, the employer who was the employer at the time of the injury shall provide rehabilitation consultation by a qualified rehabilitation consultant. Further rehabilitation, if deemed appropriate, is governed by section 176.102.

(b) Temporary total compensation shall be paid for up to 90 days after the employee has reached maximum medical improvement or 90 days after the end of an approved retraining plan, whichever is later. The temporary total compensation shall cease at any time within the 90-day period that the employee begins work meeting the requirements of subdivision 3e or 3f. If no job is offered to the employee by the end of this 90-day period, the employee shall receive economic recovery compensation pursuant to this section but reduced by the impairment compensation previously received by the employee for the same disability.

Subd. 3k. **Unemployment due to seasonal condition.** If an employee has started the job offered under subdivision 3e and is subsequently unemployed from that job because of the job's seasonal nature, the employee shall receive any unemployment compensation the employee is eligible for pursuant to chapter 268. The employee shall receive, in addition and concurrently, the amount that the employee was receiving for temporary partial disability at the time of the lay off. No further or additional compensation is payable under this chapter because of the seasonal lay off.

Subd. 3l. **Failure to accept job offer.** If the employee has been offered a job under subdivision 3e and has refused the offer, the impairment compensation shall not be paid in a lump sum but shall be paid in the same interval and amount that temporary total compensation was initially paid. This compensation shall not be escalated pursuant to section 176.645. Temporary total compensation shall cease upon the employee's refusal to accept the job offered and no further or additional temporary total compensation is payable for that injury. The payment of the periodic impairment compensation shall cease when the amount the employee is eligible to receive under subdivision 3b is reached, after which time the employee shall not receive additional impairment compensation or any other compensation under this chapter unless the employee has a greater permanent partial disability than already compensated for.

Subd. 3m. **Return to work after refusal of job offer.** If the employee has refused the job offer under subdivision 3e and is receiving periodic impairment compensation and returns to work at another job, the employee shall receive the remaining impairment compensation due, in a lump sum, 30 days after return to work if the employment has not been substantially interrupted by the injury for any part of the 30 days and the employee is still employed at that job at the end of the period.

Subd. 3n. **No temporary partial compensation or rehabilitation if job offer refused.** An employee who has been offered a job under subdivision 3e and has refused that offer and who subsequently returns to work shall not receive temporary partial compensation pursuant to subdivision 2 if the job the employee returns to provides a wage less than the wage at the time of the injury. No rehabilitation shall be provided to this employee.

Subd. 3o. **Inability to return to work.** (a) An employee who is permanently totally disabled pursuant to subdivision 5 shall receive impairment compensation as determined pursuant to subdivision 3b. This compensation is payable in addition to permanent total compensation pursuant to subdivision 4 and is payable concurrently. In this case the impairment compensation shall be paid in the same intervals and

amount as the permanent total compensation was initially paid, and the impairment compensation shall cease when the amount due under subdivision 3b is reached. If this employee returns to work at any job during the period the impairment compensation is being paid, the remaining impairment compensation due shall be paid in a lump sum 30 days after the employee has returned to work and no further temporary total compensation shall be paid.

(b) If an employee is receiving periodic economic recovery compensation and is determined to be permanently totally disabled no offset shall be taken against future permanent total compensation for the compensation paid and no permanent total weekly compensation is payable for any period during which economic recovery compensation has already been paid. No further economic recovery compensation is payable even if the amount due the employee pursuant to subdivision 3a has not yet been reached.

(c) An employee who has received periodic economic recovery compensation and who meets the criteria under clause (b) shall receive impairment compensation pursuant to clause (a) even if the employee has previously received economic recovery compensation for that disability.

(d) Rehabilitation consultation pursuant to section 176.102 shall be provided to an employee who is permanently totally disabled.

Subd. 3p. **No job offer.** Where the employee has a permanent partial disability and has reached maximum medical improvement or upon completion of an approved retraining program, whichever is later, that employee shall receive economic recovery compensation pursuant to subdivision 3a if no job offer meeting the criteria of the job in subdivision 3e is made within 90 days after reaching maximum medical improvement or 90 days after the end of an approved retraining plan, whichever is later.

Temporary total compensation shall cease upon commencement of the payment of economic recovery compensation. Temporary total compensation shall not be paid concurrently with economic recovery compensation.

Subd. 3q. **Method of payment of economic recovery compensation.** (a) Economic recovery compensation is payable at the same intervals and in the same amount as temporary total compensation was initially paid. If the employee returns to work and the economic recovery compensation is still being paid, the remaining economic recovery compensation due shall be paid in a lump sum 30 days after the employee has returned to work if the employment has not been substantially interrupted by the injury for any part of the 30 days and the employee is still employed at that job at the end of the period.

(b) Periodic economic recovery compensation paid to the employee shall not be adjusted pursuant to section 176.645.

Subd. 3r. **Payment of compensation at death.** If an employee receiving economic recovery compensation or impairment compensation in periodic amounts dies during the period from causes unrelated to the injury, the compensation shall be paid in the following manner:

(a) If the deceased employee leaves a dependent surviving spouse and no dependent children, as defined by section 176.111, subdivision 1, the spouse shall receive the periodic economic recovery or impairment compensation that the deceased was receiving before the death. This compensation shall be paid for a period of up to ten years after the date of death at which time payments and future entitlement to it ceases.

(b) If the deceased employee leaves a dependent spouse and dependent children, as defined in section 176.111, subdivision 1, the periodic economic recovery or impairment compensation shall continue to be paid to the surviving spouse for up to ten years after the last child is no longer dependent after which time payments and future entitlement to the compensation ceases.

(c) If the deceased employee leaves a dependent child, as defined by section 176.111, and no dependent spouse, the periodic economic recovery or impairment compensation shall continue to be paid to the child until the child is no longer

dependent or until the amount to which the employee was entitled to receive is exhausted, whichever is later.

(d) Payment of compensation under this subdivision shall cease prior to the end of the ten-year periods in this subdivision if the amount to which the employee is entitled to receive under subdivision 3a or 3b is reached prior to the end of the ten-year period except as provided in clause (c). If the deceased employee is not survived by dependent children or a dependent spouse as defined in section 176.111, no further economic recovery compensation or impairment compensation is payable to any person.

(e) If the death results from the injury, the payment of economic recovery compensation or impairment compensation shall cease upon the death and in lieu thereof death benefits are payable pursuant to section 176.111.

Subd. 3s. **Additional economic recovery compensation or impairment compensation.** No additional economic recovery compensation or impairment compensation is payable to an employee who has received that compensation to which the employee is entitled pursuant to subdivision 3a or 3b unless the employee has a greater permanent partial disability than already compensated.

Subd. 3t. **Minimum economic recovery compensation.** (a) Economic recovery compensation pursuant to this section shall be at least 120 percent of the impairment compensation the employee would receive if that compensation were payable to the employee.

(b) Where an employee has suffered a personal injury for which temporary total compensation is payable but which produces no permanent partial disability and the employee is unable to return to former employment for medical reasons attributable to the injury, the employee shall receive 26 weeks of economic recovery compensation. This paragraph shall not be used to determine monitoring period compensation under subdivision 3i and shall not be a minimum for determining the amount of compensation when an employee has suffered a permanent partial disability.

Subd. 3u. **Medical benefits.** This section does not in any way limit the medical benefits to which an injured employee is otherwise entitled pursuant to this chapter.

Subd. 3v. **Administrative conference.** The provisions of section 176.242 apply if there exists a dispute regarding maximum medical improvement or whether the job offered meets the criteria under subdivision 3e or 3f.

Subd. 4. **Permanent total disability.** For permanent total disability, as defined in subdivision 5, the compensation shall be 66-2/3 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 the disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision. This 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 confinement in the institution, unless there is wholly dependent on the employee for support some person named in section 176.111, subdivision 1, 2 or 3, in which case the compensation provided for in section 176.111, during the period of confinement, shall be paid for the benefit of the dependent person during dependency. The dependency of this person shall be determined as though the employee were deceased.

Subd. 4a. **Preexisting condition or disability; apportionment.** (a) If a personal injury results in a disability which is attributable in part to a preexisting disability that

arises from a congenital condition or is the result of a traumatic injury or incident, whether or not compensable under this chapter, the compensation payable for the permanent partial disability pursuant to this section shall be reduced by the proportion of the disability which is attributable only to the preexisting disability. An apportionment of a permanent partial disability under this subdivision shall be made only if the preexisting disability is clearly evidenced in a medical report or record made prior to the current personal injury. Evidence of a copy of the medical report or record upon which apportionment is based shall be made available to the employee by the employer at the time compensation for the permanent partial disability is begun.

(b) The compensable portion of the permanent partial disability under this section shall be paid at the rate at which the entire disability would be compensated but for the apportionment.

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 the employee 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 a compensable permanent partial disability, for the purpose of computing the compensation to which the employee is entitled for the injury the compensation rate for temporary total, temporary partial, a permanent total disability or economic recovery compensation shall be the statewide average weekly wage.

Subd. 7. [Repealed, Ex1979 c 3 s 70]

Subd. 8. **Retirement presumption.** For injuries occurring after the effective date of this subdivision an employee who receives social security old age and survivors insurance retirement benefits is presumed retired from the labor market. This presumption is rebuttable by a preponderance of the evidence.

History: *1953 c 755 s 10; 1955 c 615 s 1-5; 1957 c 781 s 2-5; Ex1967 c 40 s 7-11; 1969 c 186 s 1; 1969 c 276 s 2; 1969 c 936 s 5-8; 1971 c 422 s 1,2; 1971 c 475 s 1-4; 1973 c 388 s 18-20; 1973 c 600 s 1; 1973 c 643 s 1-4; 1974 c 486 s 2-4; 1975 c 271 s 6; 1975 c 359 s 8,23; 1976 c 134 s 78; 1977 c 342 s 12; 1977 c 347 s 30; Ex1979 c 3 s 33-35; 1981 c 346 s 75; 1983 c 290 s 42-68; 1984 c 432 art 2 s 1-12; 1985 c 234 s 5-7; 1986 c 444; 1986 c 461 s 8,9*

176.102 REHABILITATION.

Subdivision 1. **Scope.** Rehabilitation is intended to restore the injured employee, through physical and vocational rehabilitation, so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.

Subd. 1a. **Surviving spouse.** Upon the request of a qualified dependent surviving spouse, rehabilitation services shall be provided through the rehabilitation services section of the workers' compensation division. For the purposes of this subdivision a qualified dependent surviving spouse is a dependent surviving spouse, as determined under section 176.111, who is in need of rehabilitation assistance to become self-supporting. A spouse who is provided rehabilitation services under this subdivision is not entitled to compensation under subdivision 11.

Subd. 2. **Administrators.** The commissioner shall hire a director of rehabilitation

services in the classified service. The commissioner shall monitor and supervise rehabilitation services, including, but not limited to, making determinations regarding the selection and delivery of rehabilitation services and the criteria used to approve qualified rehabilitation consultants and rehabilitation vendors. The commissioner may also make determinations regarding fees for rehabilitation services, the fitness of qualified rehabilitation consultants and vendors to continue to be approved under this section and has authority to discipline, by fine or otherwise, the consultants or vendors who act in violation of this chapter or rules adopted pursuant to this chapter. The commissioner may hire qualified personnel to assist in the commissioner's duties under this section and may delegate the duties and performance.

Subd. 3. **Review panel.** There is created a rehabilitation review panel composed of the commissioner or a designee, who shall serve as an ex officio member and two members each from employers, insurers, rehabilitation, and medicine, one member representing chiropractors, and four members representing labor. The members shall be appointed by the commissioner and shall serve four-year terms which may be renewed. Compensation for members shall be governed by section 15.0575. The panel shall select a chair. The panel shall review and make a determination with respect to (a) appeals regarding eligibility for rehabilitation services, rehabilitation plans and rehabilitation benefits under subdivisions 9 and 11; (b) appeals on any other rehabilitation issue the commissioner determines under this section; and (c) appeals regarding fee disputes, penalties, discipline, certification approval or revocation of registration of qualified rehabilitation consultants and approved vendors. The panel shall continuously study rehabilitation services and delivery and develop and recommend rehabilitation rules to the commissioner.

The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable. The number of alternates shall not exceed one labor member, one employer or insurer member, and one member representing medicine, chiropractic, or rehabilitation.

Subd. 3a. **Review panel appeals.** Appeals to the review panel shall be heard before a panel of five members designated by the review panel. Each five-member panel shall consist of at least one labor member, at least one employer or insurer member, and at least one member representing medicine, chiropractic, or rehabilitation. The number of labor members and employer or insurer members on the five-member panel shall be equal. The determination of the five-member panel shall be by a majority vote and shall represent the determination of the entire review panel and is not subject to review by the panel as a whole. When conducting a review of the commissioner's determination regarding any rehabilitation issue or plan the panel shall give the parties notice that the appeal will be heard. This notice shall be given at least ten working days prior to the hearing. The notice shall state that parties may be represented by counsel at the hearing. In conducting its review the panel shall permit an interested party to present relevant, competent, oral or written evidence and to cross-examine opposing evidence. Evidence presented is not limited to the evidence previously submitted to the commissioner. A record of the proceeding shall be made by the panel. Upon determination of the issue presented, the panel shall issue to the interested parties a written decision and order. The decision need not contain a recitation of the evidence presented at the hearing, but shall be limited to the panel's basis for the decision. The panel may adopt rules of procedure which may be joint rules with the medical services review board.

Subd. 4. **Rehabilitation plan; development.** (a) An employer or insurer shall provide rehabilitation consultation by a qualified rehabilitation consultant or by another person permitted by rule to provide consultation to an injured employee within five days after the employee has 60 days of lost work time due to the personal injury, except as otherwise provided in this subdivision. Where an employee has incurred an injury to the back, the consultation shall be made within five days after the employee has 30 days of lost work time due to the injury. The lost work time in either case may be intermittent lost work time. If an employer or insurer has medical information at any time prior to the time specified in this subdivision that the employee will be unable to

return to the job the employee held at the time of the injury rehabilitation consultation shall be provided immediately after receipt of this information.

For purposes of this section "lost work time" means only those days during which the employee would actually be working but for the injury. In the case of the construction industry, mining industry, or other industry where the hours and days of work are affected by seasonal conditions, "lost work time" shall be computed by using the normal schedule worked when employees are working full time.

If the employee objects to the employer's selection of a qualified rehabilitation consultant, the employee shall notify the employer and the commissioner in writing of the objection.

Upon receipt of the notice of objection, the commissioner may schedule an administrative conference for the purpose of determining which qualified rehabilitation consultant may be mutually acceptable. The employee has the final decision on which qualified rehabilitation consultant is to be utilized.

The employee and employer shall enter into a program if one is prescribed in a rehabilitation plan. A copy of the plan, including a target date for return to work, shall be submitted to the commissioner.

(b) If the employer does not provide rehabilitation consultation as required by this section, the commissioner shall notify the employer that if the employer fails to appoint a qualified rehabilitation consultant or other persons as permitted by clause (a) within 15 days to conduct a rehabilitation consultation, the commissioner shall appoint a qualified rehabilitation consultant to provide the consultation at the expense of the employer unless the commissioner determines the consultation is not required.

(c) In developing a rehabilitation plan consideration shall be given to the employee's qualifications, including but not limited to age, education, previous work history, interest, transferable skills, and present and future labor market conditions.

(d) The commissioner may waive rehabilitation consultation under this section if the commissioner is satisfied that the employee will return to work in the near future or that rehabilitation consultation will not be useful in returning an employee to work.

Subd. 5. **On-the-job training.** On-the-job training is to be given consideration in developing a rehabilitation plan especially where it would produce an economic status similar to that enjoyed prior to disability.

Subd. 6. **Plan, eligibility for rehabilitation, approval and appeal.** The commissioner shall determine eligibility for rehabilitation services and shall review, approve, modify or reject rehabilitation plans developed under subdivision 4. The commissioner shall also make determinations regarding rehabilitation issues not necessarily part of a plan including, but not limited to, determinations regarding whether an employee is eligible for further rehabilitation and the benefits under subdivisions 9 and 11 to which an employee is entitled. A decision of the commissioner may be appealed to the rehabilitation review panel within 30 days of the commissioner's decision. The decision of the panel may be appealed to the workers' compensation court of appeals in the same manner as other matters appealed to the court.

Subd. 6a. **Eligibility determination.** The commissioner has the sole authority under this chapter to determine eligibility for rehabilitation services under this section and to review, approve, modify, or reject rehabilitation plans and make other rehabilitation determinations pursuant to this chapter. These determinations shall not be made by a compensation judge but may be appealed to the rehabilitation review panel and workers' compensation court of appeals as provided by subdivision 6.

Subd. 7. **Plan implementation; reports.** Upon request by the commissioner, insurer, employer or employee, medical and rehabilitation reports shall be made by the provider of the medical and rehabilitation service to the commissioner, insurer, employer or employee.

Subd. 8. **Plan modification.** Upon request to the commissioner by the employer, the insurer, or employee, or upon the commissioner's own request, the plan may be suspended, terminated or altered upon a showing of good cause, including:

(a) a physical impairment that does not allow the employee to pursue the rehabilitation plan;

(b) the employee's performance level indicates the plan will not be successfully completed;

(c) an employee does not cooperate with a plan;

(d) that the plan or its administration is substantially inadequate to achieve the rehabilitation plan objectives.

An employee may request a change in a rehabilitation plan once because the employee feels ill-suited for the type of work for which rehabilitation is being provided. If the rehabilitation plan includes retraining, this request must be made within 90 days of the beginning of the retraining program. Any decision of the commissioner regarding a change in a plan may be appealed to the rehabilitation review panel within 30 days of the decision.

Subd. 9. **Plan, costs.** An employer is liable for the following rehabilitation expenses under this section:

(a) Cost of rehabilitation evaluation and preparation of a plan;

(b) Cost of all rehabilitation services and supplies necessary for implementation of the plan;

(c) Reasonable cost of tuition, books, travel, and custodial daycare; and, in addition, reasonable costs of board and lodging when rehabilitation requires residence away from the employee's customary residence;

(d) Reasonable costs of travel and custodial daycare during the job interview process;

(e) Reasonable cost for moving expenses of the employee and family if a job is found in a geographic area beyond reasonable commuting distance after a diligent search within the present community. Relocation shall not be paid more than once during any rehabilitation program, and relocation shall not be required if the new job is located within the same standard metropolitan statistical area as the employee's job at the time of injury. An employee shall not be required to relocate and a refusal to relocate shall not result in a suspension or termination of compensation under this chapter; and

(f) Any other expense agreed to be paid.

Subd. 10. **Rehabilitation; consultants.** The commissioner shall approve rehabilitation consultants who may propose and implement plans if they satisfy rules adopted by the commissioner for rehabilitation consultants. A consultant may be an individual or public or private entity, but may not be a vendor or the agent of a vendor of rehabilitation services.

Subd. 11. **Retraining.** Retraining is limited to 156 weeks. An employee who has been approved for retraining may petition the commissioner for additional compensation not to exceed 25 percent of the compensation otherwise payable. If the commissioner determines that this additional compensation is warranted due to unusual or unique circumstances of the employee's retraining plan, the commissioner may award additional compensation in an amount the commissioner determines is appropriate, not to exceed the employee's request. This additional compensation shall cease at any time the commissioner determines the special circumstances are no longer present.

Subd. 11a. **Applicability of section.** This section is applicable to all employees injured prior to or on and after October 1, 1979, except for those provisions which affect an employee's monetary benefits.

Subd. 12. [Repealed, 1983 c 290 s 173]

Subd. 13. **Discontinuance.** All benefits payable under chapter 176 may, after a determination and order by the commissioner, be discontinued or forfeited for any time during which the employee refuses to submit to any reasonable examinations and evaluative procedures ordered by the commissioner to determine the need for and details of a plan of rehabilitation, or refuses to participate in rehabilitation evaluation

as required by this section or does not make a good faith effort to participate in a rehabilitation plan. A discontinuance under this section is governed by section 176.242.

Subd. 14. **Fees.** The commissioner shall impose fees under section 16A.128 sufficient to cover the cost of approving and monitoring qualified rehabilitation consultants, consultant firms, and vendors of rehabilitation services.

History: *Ex1979 c 3 s 36; 1981 c 346 s 76; 1983 c 290 s 69-83; 1984 c 432 art 2 s 13,14; 1985 c 234 s 8,9; 1Sp1985 c 13 s 273; 1986 c 444*

176.103 MEDICAL HEALTH CARE REVIEW.

Subdivision 1. **Purpose.** It is the purpose of this section to provide for review of clinical health care providers who render services to injured employees. This review shall be achieved by establishing a quality control system within the department of labor and industry.

The commissioner shall hire a medical consultant to assist in the administration of this section.

The medical consultant shall be a doctor of medicine licensed under the laws of Minnesota.

The medical consultant shall perform all duties assigned by the commissioner relating to the supervision of the total continuum of care of injured employees and shall also advise the department on matters on which the commissioner requests the consultant's advice or if the consultant deems it appropriate.

Subd. 2. **Scope.** (a) The commissioner shall monitor the medical and surgical treatment provided to injured employees, the services of other health care providers and shall also monitor hospital utilization as it relates to the treatment of injured employees. This monitoring shall include determinations concerning the appropriateness of the service, whether the treatment is necessary and effective, the proper cost of services, the quality of the treatment, the right of providers to receive payment under this chapter for services rendered or the right to receive payment under this chapter for future services. The commissioner may penalize, disqualify, or suspend a provider from receiving payment for services rendered under this chapter, if the commissioner determines that the provider has violated any part of this chapter or rule adopted under this chapter. The commissioner's authority under this section also includes the authority to make determinations regarding any other activity involving the questions of utilization of medical services, and any other determination the commissioner deems necessary for the proper administration of this section.

Except as provided in paragraph (b), the commissioner has the sole authority to make determinations under this section with a right of appeal to the medical services review board as provided in subdivision 3 and the workers' compensation court of appeals. A compensation judge has no jurisdiction in making determinations under this section.

(b) The commissioner has authority under this section to make determinations regarding medical causation. Objections to these determinations shall be referred to the chief administrative law judge for a de novo hearing before a compensation judge, with a right to review by the workers' compensation court of appeals, as provided in this chapter.

Subd. 3. **Medical services review board; selection; powers.** (a) There is created a medical services review board composed of the commissioner or the commissioner's designee as an ex officio member, two persons representing chiropractic, one person representing hospital administrators, and six physicians representing different specialties which the commissioner determines are the most frequently utilized by injured employees. The board shall also have one person representing employees, one person representing employers or insurers, and one person representing the general public. The members shall be appointed by the commissioner and shall be governed by section 15.0575. Terms of the board's members may be renewed. The board shall appoint from among its clinical members a clinical advisory subcommittee on clinical quality and

a clinical advisory subcommittee on clinical cost containment. Each subcommittee shall consist of at least three members one of whom shall be a member who is not a chiropractor or licensed physician.

The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable. The number of alternates shall not exceed one chiropractor, one hospital administrator, three physicians, one employee representative, one employer or insurer representative, and one representative of the general public.

The clinical quality subcommittee shall review clinical results for adequacy and recommend to the commissioner scales for disabilities and apportionment.

The clinical cost containment subcommittee shall review and recommend to the commissioner rates for individual clinical procedures and aggregate costs. The subcommittees shall make regular reports to the board and the commissioner which shall evaluate the reports for the purpose of determining whether or not a particular health care provider continues to qualify for payment under this chapter or is subject to any other sanctions or penalties authorized under this section and to determine whether an employee has been off work longer than necessary.

In evaluating the clinical consequences of the services provided to an employee by a clinical health care provider, the board shall consider the following factors in the priority listed:

(1) the clinical effectiveness of the treatment;

(2) the clinical cost of the treatment; and

(3) the length of time of treatment.

In its consideration of these factors, the board shall utilize the information and recommendations developed by the subcommittees. In addition, the board shall utilize any other data developed by the subcommittees pursuant to the duties assigned to the subcommittees under this section.

After making a determination, the board shall submit its recommendation in writing to the commissioner. The board shall advise the commissioner on the adoption of rules regarding all aspects of medical care and services provided to injured employees.

(b) The board shall appoint three of its members to hear appeals from decisions of the commissioner regarding quality control and supervision of medical care; any other disputes regarding medical, surgical, and hospital care; decisions regarding the eligibility of medical providers to receive payments; or any other determinations of the commissioner pursuant to subdivision 2. The three-member panel shall be composed of one member who does not represent a health care specialty, one member who represents the same specialty as the specialty at issue or, if the same specialty is not available, one member whose specialty is as close as possible considering the board's composition, and one member representing a different specialty. The three-member panel shall conduct a hearing in the same manner, giving the same notice and following other procedures required of the rehabilitation review panel in section 176.102, subdivision 3a. A majority vote of the three-member panel constitutes the decision of the full board. This decision may be appealed to the workers' compensation court of appeals.

(c) In any situation where a conflict of interest prevents the appointment of a full three-member panel or in any other situation where the commissioner deems it necessary to resolve a conflict of interest, the commissioner may appoint a temporary substitute board member to serve until the situation creating the conflict of interest has been resolved.

(d) The board may adopt rules of procedure. The rules may be joint rules with the rehabilitation review panel.

Subd. 4. **Advisory council.** The commissioner shall appoint an advisory council to the medical services review board. The council shall consist of health professionals other than physicians or chiropractors who are involved in the clinical care of injured

workers receiving compensation under this chapter, including but not limited to physical therapists, nurses, qualified rehabilitation consultants, psychologists, dentists, and vocational rehabilitation consultants. The terms, compensation, and removal of members, and the expiration date of the council is governed by section 15.059.

History: *1983 c 290 s 84; 1984 c 432 art 2 s 15,16; 1985 c 234 s 10; 1986 c 461 s 10*

176.104 REHABILITATION PRIOR TO DETERMINATION OF LIABILITY.

Subdivision 1. **Dispute.** If there exists a dispute regarding medical causation or whether an injury arose out of and in the course and scope of employment and an employee has been disabled for the requisite time under section 176.102, subdivision 4, prior to determination of liability, the employee shall be referred by the commissioner to the division of vocational rehabilitation which shall provide rehabilitation consultation if appropriate. The services provided by the division of vocational rehabilitation and the scope and term of the rehabilitation are governed by section 176.102 and rules adopted pursuant to that section. Rehabilitation costs and services under this subdivision shall be monitored by the commissioner.

Subd. 2. **Liability for past rehabilitation.** If liability is determined after the employee has commenced rehabilitation under this section the liable party is responsible for the cost of rehabilitation provided. Future rehabilitation after liability is established is governed by section 176.102.

History: *1983 c 290 s 85; 1984 c 432 art 2 s 17,18; 1986 c 461 s 11*

176.1041 CERTIFICATION FOR FEDERAL TAX CREDIT.

Subdivision 1. **Certification program.** The division of vocational rehabilitation shall establish a program authorizing qualified rehabilitation consultants and approved vendors to refer an employee to the division for the sole purpose of federal targeted jobs tax credit eligibility determination. The division shall set forth the specific requirements, procedures and eligibility criteria for purposes of this section. The division shall not be required to certify an injured employee who does not meet the eligibility requirements set forth in the federal Rehabilitation Act of 1973, as amended.

Subd. 2. **Fee.** The division is authorized to collect a fee from the qualified rehabilitation consultant or approved vendor in the amount necessary to determine eligibility and to certify an employee for this program.

History: *1984 c 432 art 2 s 19*

176.105 COMMISSIONER TO ESTABLISH DISABILITY SCHEDULES.

Subdivision 1. The commissioner of labor and industry shall by rule establish a schedule of degrees of disability resulting from different kinds of injuries.

Subd. 2. The commissioner shall by rule establish a schedule of internal organs that are compensable and indicate in the schedule to what extent the organs are compensable under section 176.101, subdivision 3.

Subd. 3. In order to accomplish the purposes of this section, the commissioner shall study disability or permanent impairment schedules set up by other states, the American Medical Association and other organizations.

Subd. 4. **Legislative intent; rules; loss of more than one body part.** (a) For the purpose of establishing a disability schedule pursuant to clause (b), the legislature declares its intent that the commissioner establish a disability schedule which, assuming the same number and distribution of severity of injuries, the aggregate total of impairment compensation and economic recovery compensation benefits under section 176.101, subdivisions 3a to 3u be approximately equal to the total aggregate amount payable for permanent partial disabilities under section 176.101, subdivision 3, provided, however, that awards for specific injuries under the proposed schedule need not be the same as they were for the same injuries under the schedule pursuant to section 176.101, subdivision 3. The schedule shall be determined by sound actuarial evaluation and shall be based on the benefit level which exists on January 1, 1983.

(b) The commissioner shall by rulemaking adopt procedures setting forth rules for the evaluation and rating of functional disability and the schedule for permanent partial disability and to determine the percentage of loss of function of a part of the body based on the body as a whole, including internal organs, described in section 176.101, subdivision 3, and any other body part not listed in section 176.101, subdivision 3, which the commissioner deems appropriate.

The rules shall promote objectivity and consistency in the evaluation of permanent functional impairment due to personal injury and in the assignment of a numerical rating to the functional impairment.

Prior to adoption of rules the commissioner shall conduct an analysis of the current permanent partial disability schedule for the purpose of determining the number and distribution of permanent partial disabilities and the average compensation for various permanent partial disabilities. The commissioner shall consider setting the compensation under the proposed schedule for the most serious conditions higher in comparison to the current schedule and shall consider decreasing awards for minor conditions in comparison to the current schedule.

The commissioner may consider, among other factors, and shall not be limited to the following factors in developing rules for the evaluation and rating of functional disability and the schedule for permanent partial disability benefits:

(1) the workability and simplicity of the procedures with respect to the evaluation of functional disability;

(2) the consistency of the procedures with accepted medical standards;

(3) rules, guidelines, and schedules that exist in other states that are related to the evaluation of permanent partial disability or to a schedule of benefits for functional disability provided that the commissioner is not bound by the degree of disability in these sources but shall adjust the relative degree of disability to conform to the expressed intent of clause (a);

(4) rules, guidelines, and schedules that have been developed by associations of health care providers or organizations provided that the commissioner is not bound by the degree of disability in these sources but shall adjust the relative degree of disability to conform to the expressed intent of clause (a);

(5) the effect the rules may have on reducing litigation;

(6) the treatment of preexisting disabilities with respect to the evaluation of permanent functional disability provided that any preexisting disabilities must be objectively determined by medical evidence; and

(7) symptomatology and loss of function and use of the injured member.

The factors in paragraphs (1) to (7) shall not be used in any individual or specific workers' compensation claim under this chapter but shall be used only in the adoption of rules pursuant to this section.

Nothing listed in paragraphs (1) to (7) shall be used to dispute or challenge a disability rating given to a part of the body so long as the whole schedule conforms with the expressed intent of clause (a).

(c) If an employee suffers a permanent functional disability of more than one body part due to a personal injury incurred in a single occurrence, the percent of the whole body which is permanently partially disabled shall be determined by the following formula so as to ensure that the percentage for all functional disability combined does not exceed the total for the whole body:

$$A + B (1 - A)$$

where: A is the greater percentage whole body loss of the first body part; and B is the lesser percentage whole body loss otherwise payable for the second body part. A + B (1-A) is equivalent to A + B - AB.

For permanent partial disabilities to three body parts due to a single occurrence

or as the result of an occupational disease, the above formula shall be applied, providing that A equals the result obtained from application of the formula to the first two body parts and B equals the percentage for the third body part. For permanent partial disability to four or more body parts incurred as described above, A equals the result obtained from the prior application of the formula, and B equals the percentage for the fourth body part or more in arithmetic progressions.

History: *Ex1979 c 3 s 62; 1981 c 346 s 77; 1983 c 290 s 86; 1984 c 640 s 32; 1986 c 461 s 12*

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) spouse, unless it be shown that the spouse and decedent were voluntarily living apart at the time of the injury or death;

(b) children under 18 years of age, or a child under the age of 25 years who is regularly attending as a full time student at a high school, college, or university, or regularly attending as a full time student in a course of vocational or technical training.

Subd. 2. **Children.** Children 18 years of age, or 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 death and for a reasonable time prior thereto are considered actual dependents of the deceased worker 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 partial support from the wages of a deceased worker at the time of death and for a reasonable time prior thereto is considered a 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 commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal directs for the use and benefit of the person entitled thereto.

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 spouse weekly workers' compensation benefits at 50 percent of the weekly wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.

Subd. 7. **Spouse, one dependent child.** If the deceased employee leaves a surviving spouse and one dependent child, there shall be paid to the surviving spouse for the benefit of the spouse and child 60 percent of the daily wage at the time of the injury of the deceased until the child is no longer a dependent as defined in subdivision 1. At that time there shall be paid to the dependent surviving spouse weekly benefits at a rate which is 16-2/3 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, including adjustments as provided in section 176.645.

Subd. 8. **Spouse, two dependent children.** If the deceased employee leaves a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of the spouse and children 66-2/3 percent of the daily wage at the time of the injury of the deceased until the last dependent child is no longer dependent. At that time the dependent surviving spouse shall be paid weekly benefits at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, adjusted according to section 176.645.

Subd. 8a. **Last weekly benefit payment.** For the purposes of subdivisions 7 and 8, "last weekly workers' compensation benefit payment" means the workers' compensation benefit which would have been payable without the application of subdivision 21.

Subd. 9. [Repealed, 1975 c 359 s 22]

Subd. 9a. **Remarriage of spouse.** A surviving spouse who remarries and is receiving benefits under subdivision 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse is entitled to receive benefits pursuant to this section.

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 commissioner, compensation judge, or workers' compensation court of appeals or district court in cases upon appeal shall determine what portion of the compensation applies for the benefit of dependent children and may order that portion paid to a guardian. This subdivision shall not be construed to increase the combined total of weekly government survivor benefits and workers' compensation beyond the limitation established in subdivision 21.

Subd. 11. [Repealed, 1981 c 346 s 145]

Subd. 12. **Orphans.** If the deceased employee leaves a dependent orphan, there shall be paid 55 percent of the weekly wage at the time of the injury of the deceased, for two or more orphans there shall be paid 66-2/3 percent of the wages.

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

Subd. 14. **Parents.** If the deceased employee leave no surviving spouse or child 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 the employee's 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 leaves no surviving spouse 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 the employee for support, there shall be paid to such dependent, if but one, 30 percent of the weekly wage at the time of injury of the deceased, or if more than one, 35 percent of the weekly 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 compensation judge or workers' compensation court of appeals, in cases upon appeal, 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 $2,500. In case any dispute arises as to the reasonable value of the services rendered in connection with the burial, its reasonable value shall be determined and approved by the commissioner, a compensa-

tion judge, or workers' compensation court of appeals, in cases upon appeal, before payment, after reasonable notice to interested parties as is required by the commissioner. If the deceased leaves no dependents, no compensation is payable, except as provided by this chapter.

Subd. 19. [Repealed, 1975 c 359 s 22]

Subd. 20. **Actual dependents, compensation.** Actual dependents are entitled to take compensation in the order named in subdivision 3 during dependency until 66-2/3 percent of the weekly wage of the deceased at the time of injury is exhausted. The total weekly compensation to be paid to full actual dependents of a deceased employee shall not exceed in the aggregate an amount equal to the maximum weekly compensation for a temporary total disability.

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 workers' 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 death; provided, however, that no state workers' 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.

For the purposes of this subdivision "dependent" means dependent surviving spouse together with all dependent children and any other dependents. For the purposes of this subdivision, mother's insurance benefits received pursuant to United States Code, title 42, section 402(g), are benefits under a government survivor program.

History: *1953 c 755 s 11; 1955 c 615 s 6-8; 1957 c 781 s 6,7; 1965 c 742 s 1; Ex1967 c 40 s 12,13; 1969 c 936 s 9-12; 1971 c 475 s 5-7; 1973 c 388 s 21-25; 1973 c 643 s 5-7; 1975 c 271 s 6; 1975 c 359 s 9-16,23; 1976 c 134 s 78; 1977 c 342 s 13-15; Ex1979 c 3 s 37; 1981 c 346 s 78-83; 1983 c 290 s 87-91; 1984 c 655 art 1 s 34; 1986 c 444; 1986 c 461 s 13-16*

176.12 [Repealed, 1953 c 755 s 83]

176.121 COMMENCEMENT OF COMPENSATION.

In cases of temporary total or temporary partial disability no compensation is allowed for the three calendar days 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 the disability continues for ten calendar days or longer, the compensation is computed from the commencement of the disability. Disability is deemed to commence on the first calendar day or fraction of a calendar day that the employee is unable to work.

History: *1953 c 755 s 12; 1969 c 936 s 13; 1983 c 290 s 92*

176.129 CREATION OF THE SPECIAL COMPENSATION FUND.

Subdivision 1. **Deposit of funds.** The special compensation fund is created for the purposes provided for in this chapter. The state treasurer is the custodian of the special compensation fund. Sums paid to the commissioner pursuant to this section shall be deposited with the state treasurer for the benefit of the fund and used to pay the benefits under this chapter. Any interest or profit accruing from investment of these sums shall be credited to the special compensation fund. Subject to the provisions of this section, all the powers, duties, functions, obligations, and rights vested in the special compensation fund immediately prior to January 1, 1984 are transferred to and

vested in the special compensation fund recreated by this section. All rights and obligations of employers with regard to the special compensation fund which existed immediately prior to January 1, 1984, continue, subject to the provisions of this section.

Subd. 2. **Payments to fund, death.** In every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to monetary benefits of dependency compensation, the employer shall pay to the commissioner the sum of $25,000 for the benefit of the special compensation fund. In every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to at least $25,000 in monetary benefits of dependency compensation, the employer shall pay to the commissioner for the benefit of the special compensation fund the difference between the amounts actually paid for the dependency benefits and $25,000; but in no event shall the employer pay the commissioner less than $5,000.

Subd. 3. **Payments to fund, injury.** If an employee suffers a personal injury resulting in permanent partial disability, temporary total disability, temporary partial disability, permanent total disability, or death and the employee or the employee's dependents are entitled to compensation under sections 176.101 or 176.111 the employer shall pay to the commissioner a lump sum amount, without any interest deduction, equal to 20 percent of the total compensation payable. The rate under this subdivision shall be adjusted as provided under subdivision 4a and applies to injuries occurring after June 1, 1971, for payments made on or after January 1, 1984. This payment is to be credited to the special compensation fund and shall be in addition to any compensation payments made by the employer under this chapter. Payment shall be made as soon as the amount is determined and approved by the commissioner.

Subd. 4. **Time of injury.** Subdivision 3 applies to all workers' compensation payments, exclusive of medical costs, paid under section 176.101 or 176.111 for an injury or death occurring on or after June 1, 1971.

Payments made for personal injuries that occurred prior to June 1, 1971, shall be assessed at the rate in effect on the date of occurrence.

Subd. 4a. **Contribution rate adjustment.** In determining the rate of adjustment as provided by subdivision 3, the commissioner shall determine the revenues received less claims received for the preceding 12 months ending June 30, 1984, and each June 30 thereafter.

If the result is:	the range of adjustment is:
over $15,000,000	-10% to 0%
less than $15,000,000 but more than $10,000,000	-7% to +3%
less than $10,000,000 but more than $5,000,000	-5% to +5%
less than $5,000,000 but more than $0	-3% to +7%
$0 but less than a $5,000,000 deficit	0% to +10%
more than a $5,000,000 deficit	+5% to +12%

The adjustment under this subdivision shall be used for assessments for calendar year 1984 and each year thereafter.

An amount assessed pursuant to this section is payable to the commissioner within 45 days of mailing notice of the amount due unless the commissioner orders otherwise.

Subd. 5. [Repealed, 1984 c 432 art 2 s 55]

Subd. 6. **Payments out of fund.** The workers' compensation division, a compensation judge, the workers' compensation court of appeals, or district court in cases before them shall direct the distribution of benefits provided by this chapter. These benefits are payable in the same manner as other payments of compensation.

Subd. 7. **Refunds.** In case deposit is or has been made under subdivision 2 and dependency later is shown, or if deposit is or has been made pursuant to subdivision 2 or 3 by mistake or inadvertence, or under circumstances that justice requires a refund, the state treasurer is authorized to refund the deposit under order of the commissioner, a compensation judge, the workers' compensation court of appeals, or a district court. There is appropriated to the commissioner from the fund an amount sufficient to make the refund and payment.

Subd. 8. **Commissioner as administrator.** The commissioner is the administrator of the special compensation fund. The special fund shall be designated a party in an action regarding any right, obligation, and liability of the special fund. The state treasurer, as custodian, does not have standing in an action determining any right, obligation, or liability of the special fund. As requested by the commissioner, the attorney general shall represent the special fund in all legal matters in which the special fund has an interest. The commissioner may designate one or more division employees to appear on behalf of the special fund in proceedings under this chapter. The division employees so designated need not be attorneys-at-law.

Subd. 9. **Powers of fund.** In addition to powers granted to the special compensation fund by this chapter the fund may do the following:

(a) sue and be sued in its own name;

(b) intervene in or commence an action under this chapter or any other law, including, but not limited to, intervention or action as a subrogee to the division's right in a third-party action, any proceeding under this chapter in which liability of the special compensation fund is an issue, or any proceeding which may result in other liability of the fund or to protect the legal right of the fund;

(c) enter into settlements including but not limited to structured, annuity purchase agreements with appropriate parties under this chapter;

(d) contract with another party to administer the special compensation fund; and

(e) take any other action which an insurer is permitted by law to take in operating within this chapter.

Subd. 10. **Penalty.** Sums paid to the commissioner pursuant to this section shall be in the manner prescribed by the commissioner. The commissioner may impose a penalty of up to 15 percent of the amount due under this section but not less than $500 in the event payment is not made in the manner prescribed.

Subd. 11. **Administrative provisions.** The accounting, investigation, and legal costs necessary for the administration of the programs financed by the special compensation fund shall be paid from the fund during each biennium commencing July 1, 1981. Staffing and expenditures related to the administration of the special compensation fund shall be approved through the regular budget and appropriations process.

Subd. 12. **Report of commissioner.** The commissioner shall report biennially to the governor and to the legislature as to the financial status of the special compensation fund. The report shall include a statement of the receipts and the disbursements for the period covered.

Subd. 13. **Employer reports.** All employers shall make reports to the commissioner as required for the proper administration of this section and section 176.131.

History: *1983 c 290 s 93; 1984 c 432 art 2 s 20-22; 1986 c 461 s 17*

176.13 [Repealed, 1965 c 327 s 2]

176.131 SUBSEQUENT DISABILITY, SPECIAL FUND.

Subdivision 1. If an employee incurs personal injury and suffers disability that is substantially greater, because of a preexisting physical impairment, than what would have resulted from the personal injury alone, the employer shall pay all compensation provided by this chapter, but the employer shall be reimbursed from the special compensation fund for all compensation paid in excess of 52 weeks of monetary benefits and $2,000 in medical expenses, subject to the following exceptions:

If the personal injury alone results in permanent partial disability to a scheduled member under the schedule adopted by the commissioner pursuant to section 176.105, the monetary and medical expense limitations shall not apply and the employer is liable for the compensation, medical expense, and rehabilitation attributable to the permanent partial disability, and may be reimbursed from the special compensation fund only for compensation paid in excess of the disability.

Subd. 1a. If an employee is employed in an on-the-job training program pursuant to an approved rehabilitation plan under section 176.102 and the employee incurs a personal injury that aggravates the personal injury for which the employee has been certified to enter the on-the-job training program, the on-the-job training employer shall pay the medical expenses and compensation required by this chapter, and shall be reimbursed from the special compensation fund for the compensation and medical expense that is attributable to the aggravated injury. The employer, at the time of the personal injury for which the employee has been approved for on-the-job training, is liable for the portion of the disability that is attributable to that injury.

Subd. 2. If the employee's personal injury results in disability or death, and if the injury, death, or disability would not have occurred except for the preexisting physical impairment registered with the special compensation fund, the employer shall pay all compensation provided by this chapter, and shall be fully reimbursed from the special compensation fund for the compensation except that this full reimbursement shall not be made for cardiac disease or a condition registered pursuant to subdivision 8, clause (t) or (u) unless the commissioner by rule provides otherwise.

Subd. 3. To entitle the employer to secure reimbursement from the special compensation fund, the following provisions must be complied with:

(a) Provisions of section 176.181, subdivisions 1 and 2.

(b) The employee with a preexisting physical impairment must have been registered with the commissioner prior to the employee's personal injury.

Subd. 4. Any employer who hires or retains in its employment any person who has a physical impairment shall file a formal registration for the employee with the commissioner on a form prescribed by the commissioner.

Subd. 5. Registration under this section may be made by the employee or any employer provided:

(a) registration is accompanied by satisfactory evidence of the physical impairment;

(b) registration is in effect as long as the impairment exists;

(c) upon request, a registered employee shall be furnished by the commissioner with a registration card evidencing the registration, and other facts as the commissioner deems advisable.

Subd. 6. When the employer claims reimbursement from the special compensation fund after paying compensation as prescribed by this section, the employer shall file with the commissioner written notice of intention to claim reimbursement in accordance with the rules adopted by the commissioner.

Subd. 7. Under subdivisions 1 and 2, an occupational disease may be deemed to be the personal (second) injury.

If the subsequent disability for which reimbursement is claimed is an occupational disease, and if, subsequent to registration as provided by subdivisions 4 and 5, the employee has been employed by the employer in employment similar to that which initially resulted in the occupational disease, no reimbursement shall be paid to the employer.

Subd. 8. As used in this section the following terms have the meanings given them:

"Physical impairment" means any physical or mental condition that is permanent in nature, whether congenital or due to injury, disease or surgery and which is or is likely to be a hindrance or obstacle to obtaining employment except that physical impairment is limited to the following:

(a) Epilepsy,

(b) Diabetes,

(c) Hemophilia,

(d) Cardiac disease,

(e) Partial or entire absence of thumb, finger, hand, foot, arm or leg,

(f) Lack of sight in one or both eyes or vision in either eye not correctable to 20/40,

(g) Residual disability from poliomyelitis,

(h) Cerebral Palsy,

(i) Multiple Sclerosis,

(j) Parkinson's disease,

(k) Cerebral vascular accident,

(l) Chronic Osteomyelitis,

(m) Muscular Dystrophy,

(n) Thrombophlebitis,

(o) Brain tumors,

(p) Pott's disease,

(q) Seizures,

(r) Cancer of the bone,

(s) Leukemia,

(t) Any other physical impairment resulting in a disability rating of at least ten percent of the whole body if the physical impairment were evaluated according to standards used in workers' compensation proceedings, and

(u) Any other physical impairments of a permanent nature which the commissioner may by rule prescribe;

"Compensation" has the meaning defined in section 176.011;

"Employer" includes insurer;

"Disability" means, unless otherwise indicated, any condition causing either temporary total, temporary partial, permanent total, permanent partial, death, medical expense, or rehabilitation.

Subd. 9. [Repealed, 1983 c 290 s 173]

Subd. 10. [Repealed, 1983 c 290 s 173]

Subd. 11. [Repealed, 1983 c 290 s 173]

Subd. 12. [Repealed, 1983 c 290 s 173]

History: *1965 c 327 s 1; Ex1967 c 1 s 6; 1969 c 122 s 1; 1969 c 653 s 1; 1971 c 589 s 1-4; 1971 c 593 s 1; 1973 c 388 s 26-33; 1973 c 643 s 8; 1974 c 355 s 21; 1974 c 406 s 40; 1975 c 271 s 6; 1975 c 359 s 17,23; 1976 c 134 s 78; Ex1979 c 3 s 38-40; 1981 c 346 s 84; 1981 c 356 s 327; 3Sp1981 c 2 art 1 s 20; 1983 c 290 s 94-102; 1986 c 461 s 18,19*

176.132 SUPPLEMENTARY BENEFITS.

Subdivision 1. **Eligible recipients.** (a) An employee who has suffered personal injury prior to October 1, 1983 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 prescribed in this section after 104 weeks have elapsed and for the remainder of the total disablement. Regardless of the number of weeks of total disability, no totally disabled person is ineligible for supplementary benefits after four years have elapsed since the first date of the total disability, except as provided by clause (b), provided that all periods of disability are caused by the same injury.

(b) An employee who has suffered personal injury after October 1, 1983 is eligible to receive supplementary benefits after the employee has been receiving temporary total or permanent total benefits for 208 weeks. Regardless of the number of weeks of total disability, no person who is receiving temporary total compensation shall be ineligible

for supplementary benefits after four years have elapsed since the first date of the 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 4, and 65 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 65 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. Attorney's fees shall be allowed in settlements of claims for supplementary benefits in accordance with this chapter.

(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 65 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. If the individual does not receive the maximum benefits for which the individual is eligible under other governmental disability programs due to the provisions of United States Code, title 42, section 424a(d), this reduction shall not apply.

Subd. 2a. **Time of adjustment.** Supplementary benefits payable under this section shall be adjusted each October 1, beginning in 1980, based upon the statewide average weekly wage for the preceding calendar year.

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 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.

Subd. 4. **Administrative procedures.** The commissioner of the department of labor and industry shall prescribe such forms and procedures as are required for the administration of this section.

Subd. 5. **Rounding of payments.** A payment made under this section shall be rounded up to the nearest whole dollar.

History: *1971 c 383 s 1; 1973 c 388 s 34; 1973 c 643 s 9; 1974 c 431 s 1,2; 1975 c 359 s 18; 1977 c 342 s 16-18; 1978 c 797 s 3; Ex1979 c 3 s 41; 1980 c 389 s 1; 1981 c 346 s 85; 1983 c 290 s 103,104; 1986 c 444*

176.1321 EFFECTIVE DATE OF BENEFIT CHANGES.

Unless otherwise specified in the act making the change, any workers' compensation benefit change shall be effective on the October 1 next following its final enactment.

History: *Ex1979 c 3 s 42*

176.133 ATTORNEY'S FEES, SUPPLEMENTARY BENEFITS.

Attorney's fees may be approved by a compensation judge or by the workers' compensation court of appeals from the supplementary workers' compensation benefits provided by section 176.132 if the case involves the obtaining of supplementary workers' compensation benefits. When such fees are allowed an amount equal to 25 percent of that portion of the fee which is in excess of $250 shall be added to the employee's benefit as provided in section 176.081 rather than deducted as a portion thereof. The fees shall be determined according to section 176.081.

History: *Ex1971 c 48 s 41; 1975 c 271 s 6; 1975 c 359 s 16,23; 1976 c 134 s 78; 1981 c 346 s 86*

176.134 [Repealed, 1985 c 234 s 22]

176.135 TREATMENT; APPLIANCES; SUPPLIES.

Subdivision 1. **Medical, chiropractic, podiatric, surgical, hospital.** (a) The employer shall furnish any medical, chiropractic, podiatric, surgical and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric, 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, chiropractic 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. This treatment shall include treatments necessary to physical rehabilitation. The employer shall furnish replacement or repair for artificial members, glasses, or spectacles, artificial eyes, podiatric orthotics, 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 the employer's inability or refusal seasonably to do so the employer is 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. Except as provided in paragraph (b), orders of the commissioner with respect to this subdivision may be reviewed by the medical services review board pursuant to section 176.103. Orders of the medical services review board with respect to this subdivision may be reviewed by the workers' compensation court of appeals on petition of an aggrieved party pursuant to section 176.103. Orders of the court of appeals may be reviewed by writ of certiorari to the supreme court.

(b) The commissioner has authority to make determinations regarding medical causation and regarding the question whether the medical condition, which required the furnished treatment or supplies, is a consequence of the injury. Objections to any order of the commissioner with respect to this paragraph shall be referred to the chief administrative law judge for a de novo hearing before a compensation judge, with a right to review by the workers' compensation court of appeals, as provided in this chapter.

Subd. 1a. **Nonemergency surgery; second surgical opinion.** The employer is required to furnish surgical treatment pursuant to subdivision 1 only after the employee has obtained two surgical opinions concerning whether the surgery is reasonably required to cure and relieve the effects of the personal injury or occupational disease. If at least one of the opinions affirms that the surgery is reasonably required, the employee may choose to undergo the surgery. The employer is required to pay the reasonable value of the surgery unless the commissioner determines that the surgery is not reasonably required. A second surgical opinion is not required in cases of emergency surgery or when the employer and employee agree that the opinion is not necessary.

Subd. 2. **Change of physicians, podiatrists, or chiropractors.** The commissioner of the department of labor and industry shall make the necessary rules for a change of physicians, podiatrists, or chiropractors in the case that either the employee or the

employer desire a change and for the designation of a physician, podiatrist, or chiropractor suggested by the injured employee or the commissioner of the department of labor and industry. 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, podiatric, chiropractic and surgical treatment and attendance.

Subd. 2a. **Definitions.** For the purposes of this section, the word "physicians" shall include persons holding the degree M. D. (Doctor of Medicine) and persons holding the degree D. O. (Doctor of Osteopathy); and the terms "medical, surgical and hospital treatment" shall include professional services rendered by licensed persons who have earned the degree M. D. or the degree D. O.

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 the 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 commissioner, medical services review board, or workers' compensation court of appeals on appeal 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 the employer in writing of the election within 30 days after July 1, 1953, and any person hereafter accepting employment shall give such notice at the time of accepting 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 commissioner of the department of labor and industry, in which event the election of the employee shall have no force or effect whatsoever.

Subd. 5. **Occupational disease medical eligibility.** Notwithstanding section 176.66, an employee who has contracted an occupational disease is eligible to receive compensation under this section even if the employee is not disabled from earning full wages at the work at which the employee was last employed.

History: *1953 c 439 s 1; 1953 c 755 s 13; 1971 c 863 s 1,2; 1973 c 258 s 1; 1973 c 388 s 35-38; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1979 c 107 s 1,2; Ex1979 c 3 s 44; 1983 c 290 s 106,107; 1984 c 432 art 2 s 23,24; 1986 c 444; 1986 c 461 s 20,21*

176.136 MEDICAL FEE REVIEW.

Subdivision 1. **Schedule.** The commissioner shall by rule establish procedures for determining whether or not the charge for a health service is excessive. In order to accomplish this purpose, the commissioner shall consult with insurers, associations and organizations representing the medical and other providers of treatment services and other appropriate groups. The procedures established by the commissioner shall limit the charges allowable for medical, chiropractic, podiatric, surgical, hospital and other health care provider treatment or services, as defined and compensable under section 176.135, to the 75th percentile of usual and customary fees or charges based upon billings for each class of health care provider during all of the calendar year preceding the year in which the determination is made of the amount to be paid the health care provider for the billing. The procedures established by the commissioner for determining whether or not the charge for a health service is excessive shall be structured to encourage providers to develop and deliver services for rehabilitation of injured workers. The procedures shall incorporate the provisions of sections 144.701, 144.702, and 144.703 to the extent that the commissioner finds that these provisions effectively accomplish the intent of this section or are otherwise necessary to insure that quality hospital care is available to injured employees.

Subd. 2. **Excessive fees.** If the payer determines that the charge for a health service or medical service is excessive, no payment in excess of the reasonable charge for that service shall be made under this chapter nor may the provider collect or attempt to collect from the injured employee or any other insurer or government amounts in

excess of the amount payable under this chapter unless the commissioner, medical services review board, or workers' compensation court of appeals determines otherwise.

Subd. 3. **Report.** The commissioner shall contract with a review organization as defined in section 145.61 for the purposes listed in section 145.61, subdivision 5, and report to the legislature on January 15 of every odd-numbered year, regarding the delivery of medical and health care services, including rehabilitation services, under the workers' compensation laws of this state.

The commissioner shall also conduct a study of the qualifications and background of rehabilitation consultants and vendors providing services under section 176.102 for the purpose of determining whether there are adequate professional standards provided, including safeguards to protect against conflicts of interest.

Subd. 4. **Emergency rules.** The commissioner shall adopt emergency rules in order to implement the provisions of this subdivision. Notwithstanding the provisions of section 14.14, subdivision 1, and any amendments, the emergency rules adopted by the commissioner pursuant to this subdivision may be extended for an additional 180 days if the procedures for adoption of a rule pursuant to sections 14.13 to 14.20 or 14.21 to 14.28, and other provisions of the administrative procedure act related to final agency action and rule adoption have not been concluded.

Any rules adopted by the commissioner of commerce pursuant to this section shall remain in effect but may be amended, modified, or repealed only by the commissioner of labor and industry.

Subd. 5. **Permanent rules.** Where permanent rules have been adopted to implement this section, the commissioner shall annually give notice in the State Register of the 75th percentile to meet the requirements of subdivision 1. The notice shall be in lieu of the requirements of chapter 14 if the 75th percentile for the service meets the requirements of paragraphs (a) to (e).

(a) The data base includes at least three different providers of the service.

(b) The data base contains at least 20 billings for the service.

(c) The standard deviation as a percentage of the mean of billings for the service is 50 percent or less.

(d) The means of the Blue Cross and Blue Shield data base and of the department of human services data base for the service are within 20 percent of each other.

(e) The data is taken from the data base of Blue Cross and Blue Shield or the department of human services.

History: *Ex1979 c 3 s 45; 1981 c 346 s 87; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1983 c 290 s 108; 1984 c 432 art 2 s 25; 1984 c 640 s 32; 1984 c 655 art 1 s 92; 1985 c 234 s 11*

176.1361 TESTIMONY OF PROVIDERS.

When a compensation judge or the workers' compensation court of appeals has reason to believe that a medical or other provider of treatment services has submitted false testimony or a false report in any proceeding under this chapter, the compensation judge or the workers' compensation court of appeals shall refer the matter to an appropriate licensing body or other professional certifying organization for review and recommendations. Based upon their recommendation, the commissioner may bar the provider from making an appearance, and disallow the admission into evidence of written reports of the provider, in any proceeding under this chapter for a period not to exceed one year in the first instance and three years in the second instance, and may permanently bar the provider from appearance and the provider's reports from admission in evidence thereafter.

History: *1981 c 346 s 88; 1986 c 444*

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 the employee's principal residence as is reasonably required to enable the employee to move freely into and throughout the 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.

History: *1977 c 177 s 1; 1986 c 444*

176.138 MEDICAL DATA; ACCESS.

Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release of medical data related to a current claim for compensation under this chapter to the employee, employer, or insurer who are parties to the claim, or to the department of labor and industry, shall not require prior approval of any party to the claim. This section does not preclude the release of medical data under section 175.10 or 176.231, subdivision 9. Requests for pertinent data shall be made in writing to the person or organization that collected or currently possesses the data. The data shall be provided by the collector or possessor within seven working days of receiving the request. In all cases of a request for the data, except when it is the employee who is making the request, the employee shall be sent written notification of the request by the party requesting the data at the same time the request is made. This data shall be treated as private data by the party who requests or receives the data and the party receiving the data shall provide the employee or the employee's attorney with a copy of all data requested by the requester.

Medical data which is not directly related to a current injury or disability shall not be released without prior authorization of the employee.

The commissioner may impose a penalty of up to $200 payable to the special compensation fund against a party who does not release the data in a timely manner. A party who does not treat this data as private pursuant to this section is guilty of a misdemeanor. This section applies only to written medical data which exists at the time the request is made.

History: *1983 c 290 s 109; 1984 c 432 art 2 s 26; 1985 c 234 s 12; 1986 c 461 s 22*

176.139 NOTICE OF RIGHTS POSTED.

A notice, in form approved by the commissioner of labor and industry, shall be posted in a conspicuous place at each place of employment, advising employees of their

rights and obligations under this chapter, assistance available to them, and the operation of the workers' compensation system.

History: *Ex1979 c 3 s 46*

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 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 the 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 prejudice by such want, defect, or inaccuracy, and then only to the extent of the prejudice. If the notice is given or the knowledge obtained within 180 days, and if the employee or other beneficiary shows that failure to give prior notice was due to the employee's or beneficiary's mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of the employer or agent, then compensation may be allowed, unless the employer shows prejudice by failure to receive the notice, in which case the amount of compensation shall be reduced by a sum which 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, except that an employee who is unable, because of mental or physical incapacity, to give notice to the employer within 180 days from the injury shall give the prescribed notice within 180 days from the time the incapacity ceases.

History: *1953 c 755 s 14; 1977 c 343 s 19; Ex1979 c 3 s 47; 1986 c 444*

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 certified 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 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 employment on or about a specified time, at or near a certain place specified.

History: *1953 c 755 s 15; 1978 c 674 s 60; 1986 c 444*

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, three years after the employer has made written report of the injury to the

commissioner of the department of labor and industry, but not to exceed six years from the date of the accident.

(2) Actions or proceedings by dependents to determine or recover compensation, three years after the receipt by the commissioner of the department of labor and industry of written notice of death, given by the employer, but not to exceed six years from the date of injury, provided, however, if the employee was paid compensation for the injury from which the death resulted, such actions or proceedings by dependents must be commenced within three years after the receipt by the commissioner of the department of labor and industry of written notice of death, given by the employer, but not to exceed six years from the date of death. In any such case, if a dependent of the deceased, or any one in the dependent's behalf, gives written notice of such death to the commissioner of the department of labor and industry, the commissioner 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 commissioner of the department of labor and industry 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 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 three years from the date when the incapacity ceases.

(4) In the case of injury caused by X-rays, radium, radioactive substances or machines, ionizing radiation, or any other occupational disease, the time limitations otherwise prescribed by Minnesota Statutes 1961, chapter 176, and acts amendatory thereof, shall not apply, but the employee shall give notice to the employer and commence an action within three years after the employee has knowledge of the cause of such injury and the injury has resulted in disability.

History: *1953 c 755 s 16; 1965 c 419 s 1; Ex1967 c 40 s 14; 1973 c 388 s 39; 1973 c 643 s 10; 1975 c 359 s 17; 1986 c 444*

176.152 [Repealed, 1983 c 290 s 173]

176.155 EXAMINATIONS.

Subdivision 1. **Employer's physician.** The injured employee must submit 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 a personal physician present at any such examination. Each party shall defray the cost of that party's 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 representative of the employee.

Subd. 2. **Neutral physician.** In each case of dispute as to the injury the commissioner of labor and industry, or in case of a hearing the compensation judge conducting the hearing, or the workers' compensation court of appeals if the matter is before it, may with or without the request of any interested party, designate a neutral physician from the list of neutral physicians developed by the commissioner of labor and industry to make an examination of the injured worker and report the findings to the commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals, as the case may be; provided that the request of the interested party must comply with the rules of the commissioner of labor and industry and the workers' compensation court of appeals regulating the proper time and forms for the request, and further provided that when an interested party requests, not later than 30 days prior to a scheduled prehearing conference, that a neutral physician be designated, the compensation judge shall make such a designation. When a party has requested the designation of a neutral physician prior to a prehearing conference, that party may

withdraw the request at any time prior to the hearing. The commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals, 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 the answer. A copy of the signed certificate of the neutral physician shall be mailed to the parties in interest and either party, within five days from date of mailing, may demand that the physician be produced for purposes of cross-examination. The signed certificate of a neutral physician is competent evidence of the facts stated therein. The expense of the examination shall be paid as ordered by the commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals.

The commissioner of labor and industry shall develop and maintain a list of neutral physicians available for designation pursuant to this subdivision or section 176.391, subdivision 2.

Subd. 3. **Refusal to be examined.** If the injured employee refuses to comply with any reasonable request for examination, the right to compensation may be suspended by order of the division, a compensation judge or workers' compensation court of appeals in a matter before it, and no compensation shall be paid while the employee continues in the 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 compensation judge, or workers' compensation court of appeals upon appeal, 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 order, all dependents shall forfeit all rights to compensation. The party demanding an autopsy shall bear the cost thereof.

Subd. 5. **Testimony of health care provider.** Any physician or other health care provider designated by the commissioner, compensation judge, or workers' compensation court of appeals or whose services are furnished or paid for by the employer, who treats, examines, or is present at any examination, of an injured employee, may be required to testify as to any knowledge acquired by the physician or health care provider in the course of the treatment or examination relative to the injury or disability resulting from the injury only if the commissioner or a compensation judge makes a written finding that the appearance of the physician or health care provider is crucial to the accurate determination of the employee's disability. In all other cases all evidence related to health care must be submitted by written report as prescribed by the chief administrative law judge. A party may cross-examine by deposition a physician or health care provider who has examined or treated the employee. If a physician or health care provider is not available for cross-examination prior to the hearing and the physician's or health care provider's written report is submitted at the hearing, the compensation judge shall, upon request of the adverse party, require the physician or health care provider to testify at the hearing for the purpose of being cross-examined by the adverse party. All written evidence relating to health care must be submitted prior to or at the time of the hearing and no evidence shall be considered which was submitted after the hearing unless the compensation judge orders otherwise.

History: *1953 c 755 s 17; 1969 c 276 s 2; 1973 c 388 s 40-43; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 342 s 26; Ex1979 c 3 s 48; 1983 c 290 s 110,111; 1984 c 640 s 32; 1986 c 444*

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 an alien dependent residing outside the United States the commissioner 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 a designated representative residing within the state; or, if the commissioner 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 commissioner a power of attorney designating any other suitable person residing in this state to act as attorney in fact in such proceedings, the commissioner may appoint such person. If it appears necessary to institute proceedings to enforce payment of compensation due the dependent, the commissioner 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 commissioner shall then determine whether such attorney in fact be substituted to represent such dependent or if the consular officer or a 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 written order of the commissioner. The person so appointed shall furnish a bond satisfactory to the commissioner, conditioned upon the proper application of the money received. Before the bond is discharged, the person so appointed shall file with the commissioner a verified account of 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 commissioner of the department of labor and industry, the person so appointed shall furnish to the commissioner of the department of labor and industry 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.

History: *1953 c 755 s 18; 1973 c 388 s 44,45; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 90; 1986 c 444*

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 commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal, and on such terms and conditions as the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals prescribes. In making these commutations the lump sum payments shall amount, in the aggregate, to a sum equal to the present value of all future installments of the compensation calculated on a five percent basis.

History: *1953 c 755 s 19; 1973 c 388 s 46; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78*

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, a sum equal to the present value of all future installments 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 any bank, mutual savings bank, savings and loan association, or trust company in this state approved and designated by the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal. 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 commissioner of the department of labor and industry, 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 commissioner of the department of labor and industry. In the appointment of trustee the preference shall be given to the choice of the injured employee or the choice of the dependents of the deceased employee.

History: *1953 c 755 s 20; 1971 c 422 s 3; 1973 c 388 s 47; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78*

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

History: *1953 c 755 s 21; 1986 c 444*

176.179 PAYMENTS OF COMPENSATION RECEIVED IN GOOD FAITH.

Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or the survivors of a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to an order of the workers' compensation division, a compensation judge, or court of appeals relative to a claim by an injured employee or the employee's survivors, and received in good faith by the employee or the employee's survivors shall be refunded to the paying employer or insurer in the event that it is subsequently determined that the payment was made under a mistake in fact or law by the employer or insurer. When the payments have been made to a person who is entitled to receive further payments of compensation for the same injury, the mistaken compensation may be taken as a full credit against future lump sum benefit entitlement and as a partial credit against future weekly benefits. The credit applied against further payments of temporary total disability, temporary partial disability, permanent total disability, retraining benefits, death benefits, or weekly payments of economic recovery or impairment compensation shall not exceed 20 percent of the amount that would otherwise be payable.

History: *1974 c 486 s 5; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 49; 1983 c 290 s 112; 1986 c 461 s 23*

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.** (1) Every employer, except the state and its municipal subdivisions, liable under this chapter to pay compensation shall insure payment of compensation with some insurance carrier authorized to insure workers' compensation liability in this state, or obtain a written order from the commissioner of commerce exempting the employer from insuring liability for com-

pensation and permitting self-insurance of the liability. The terms, conditions and requirements governing self-insurance shall be established by the commissioner pursuant to chapter 14. The commissioner of commerce shall also adopt, pursuant to clause (2)(c), rules permitting two or more employers, whether or not they are in the same industry, to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as group self-insurers. With the approval of the commissioner of commerce, any employer may exclude medical, chiropractic and hospital benefits as required by this chapter. An employer conducting distinct operations at different locations may either insure or self-insure the other portion of operations as a distinct and separate risk. An employer desiring to be exempted from insuring liability for compensation shall make application to the commissioner of commerce, showing financial ability to pay the compensation, whereupon by written order the commissioner of commerce, on deeming it proper, may make an exemption. The commissioner of commerce may require further statements of financial ability of the employer to pay compensation. Upon ten days written notice the commissioner of commerce may revoke the order granting an exemption, in which event the employer shall immediately insure the liability. As a condition for the granting of an exemption the commissioner of commerce may require the employer to furnish security the commissioner of commerce 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 commissioner of commerce shall deposit it 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 commissioner of labor and industry 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 the self-insurer, the commissioner of commerce may by written order to the state treasurer require the treasurer to sell the pledged and assigned securities or a part thereof 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 commissioner of labor and industry or any judgment obtained thereon. When securities are sold the money obtained shall be deposited in the state treasury to the credit of the commissioner of commerce and awards made against any such self-insurer by the commissioner of commerce shall be paid to the persons entitled thereto by the state treasurer upon warrants prepared by the commissioner of commerce and approved by the commissioner of finance out of the proceeds of the sale of securities. Where the security is in the form of a surety bond or personal guaranty the commissioner of commerce, 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.

(2)(a) No association, corporation, partnership, sole proprietorship, trust or other business entity shall provide services in the design, establishment or administration of a group self-insurance plan under rules adopted pursuant to this subdivision unless it is licensed to do so by the commissioner of commerce. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license shall be granted only when the commissioner of commerce is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner of commerce may issue a license subject to restrictions or limitations, including restrictions or limitations on the type of services which may be supplied or the activities which may be engaged in. The license is for a two-year period.

(b) To assure that group self-insurance plans are financially solvent, administered in a fair and capable fashion, and able to process claims and pay benefits in a prompt, fair and equitable manner, entities licensed to engage in such business are subject to supervision and examination by the commissioner of commerce.

(c) To carry out the purposes of this subdivision, the commissioner of commerce may promulgate administrative rules, including emergency rules, pursuant to sections 14.01 to 14.70. These rules may:

(i) establish reporting requirements for administrators of group self-insurance plans;

(ii) establish standards and guidelines to assure the adequacy of the financing and administration of group self-insurance plans;

(iii) establish bonding requirements or other provisions assuring the financial integrity of entities administering group self-insurance plans;

(iv) establish standards, including but not limited to minimum terms of membership in self-insurance plans, as necessary to provide stability for those plans;

(v) establish standards or guidelines governing the formation, operation, administration and dissolution of self-insurance plans; and

(vi) establish other reasonable requirements to further the purposes of this subdivision.

Subd. 2a. **Application fee.** Every initial application filed pursuant to subdivision 2 requesting authority to self-insure shall be accompanied by a fee of $1,000. The fee is not refundable.

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 $100, if the number of uninsured employees is less than five and for a penalty of $400 if the number of such uninsured employees is five or more. If the commissioner determines that the failure to comply with the provisions of subdivision 2 was willful and deliberate, the employer shall be liable to the state of Minnesota for a penalty of $500, if the number of uninsured employees is less than five, and for a penalty of $2,000 if the number of uninsured employees is five or more. If the employer continues noncompliance, the employer is liable for five times the lawful premium for compensation insurance for such employer for the period the employer fails to comply with such provisions, commencing ten days after notice has been served upon the employer by the commissioner of the department of labor and industry 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 commissioner of the department of labor and industry 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 the employer's duty, the attorney general, upon request of the commissioner, may proceed against the employer in any court having jurisdiction for an order restraining the employer from having any person in employment at any time when the employer 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 willfully and intentionally failing to comply with the provisions of subdivision 2 is guilty of a gross misdemeanor.

Subd. 5. **Indemnification.** A political subdivision or association of political subdivisions which is self insured, may be indemnified by the special compensation fund for payments for which the political subdivision or association is liable under this chapter. This indemnification shall be made only if all other assets together with the interest earned thereon which have been contributed by the subdivision pursuant to rules adopted by the commissioner of commerce as provided for in this section have been exhausted.

The state treasurer, as custodian of the fund, has a cause of action for all money paid out or to be paid out if the political subdivisions or association of subdivisions fail to meet a repayment schedule which the treasurer establishes at the time the request for indemnification is granted.

Subd. 6. **Financial statements.** No employer shall be required to provide financial statements certified by an "independent certified public accountant" or "certified public accountant" as a condition of approval for group self-insurance.

Subd. 7. **Penalty.** Any entity that is self-insured pursuant to subdivision 2, and that knowingly violates any provision of subdivision 2 or any rule adopted pursuant thereto is subject to a civil penalty of not more than $5,000 for each offense.

History: *1953 c 755 s 22; 1959 c 265 s 1; 1971 c 863 s 3; 1973 c 388 s 48,49; 1973 c 492 s 14; 1978 c 797 s 4; Ex1979 c 3 s 50,51; 1981 c 346 s 91-93; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1983 c 290 s 113; 1984 c 592 s 80,81; 1984 c 655 art 1 s 92; 1986 c 444*

176.182 BUSINESS LICENSES OR PERMITS; COVERAGE REQUIRED.

Every state licensing agency shall withhold the issuance of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

Neither the state nor any governmental subdivision of the state shall enter into any contract for the doing of any public work before receiving from all other contracting parties acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

This section shall not be construed to create any liability on the part of the state or any governmental subdivision to pay workers' compensation benefits or to indemnify the special compensation fund, an employer, or insurer who pays workers' compensation benefits.

History: *1981 c 346 s 94; 1983 c 290 s 114*

176.183 UNINSURED AND SELF-INSURED EMPLOYERS; BENEFITS TO EMPLOYEES AND DEPENDENTS; LIABILITY OF EMPLOYER.

Subdivision 1. When any employee sustains an injury arising out of and in the course of employment while in the employ of an employer, other than the state or its political subdivisions, not insured or self-insured as provided for in this chapter, the employee or the employee's dependents shall nevertheless receive benefits as provided for in this chapter from the special compensation fund, and the commissioner has a cause of action against the employer for reimbursement for all moneys paid out or to be paid out, and, in the discretion of the court, as punitive damages an additional amount not exceeding 50 percent of all moneys paid out or to be paid out. As used in this subdivision, "employer" includes officers of corporations who have legal control, either individually or jointly with another or others, of the payment of wages. An action to recover the moneys shall be instituted unless the commissioner determines that no recovery is possible. All moneys recovered shall be deposited in the general fund. There shall be no payment from the special compensation fund if there is liability for the injury under the provisions of section 176.215, by an insurer or self-insurer.

Subd. 1a. When an employee or the employee's dependent is entitled to benefits under this chapter from a self-insurer, present or past, other than the state and its municipal subdivisions, but the self-insurer fails to pay the benefits, the employee or the employee's dependents, regardless of the date when the accident, personal injury, occupational disease, or death occurred, shall nevertheless receive the benefits from the special compensation fund. The commissioner has a cause of action against the self-insuring employer for reimbursement for all benefits and other expenditures paid out or to be paid out and, in the discretion of the court, the self-insurer is liable for punitive damages in an amount not to exceed 50 percent of the total of all benefits and other expenditures paid out or to be paid out. The commissioner shall institute an action to recover the total expenditures from the fund unless the commissioner determines that no recovery is possible. All proceeds recovered shall be deposited in the general fund.

Subd. 2. The commissioner of labor and industry, in accordance with the terms of the order awarding compensation, shall pay compensation to the employee or the employee's dependent from the special compensation fund. The commissioner of labor

and industry shall certify to the commissioner of finance and to the legislature annually the total amount of compensation paid from the special compensation fund under subdivisions 1 and 1a. The commissioner of finance shall upon proper certification reimburse the special compensation fund from the general fund appropriation provided for this purpose. The amount reimbursed shall be limited to the certified amount paid under this section or the appropriation made for this purpose, whichever is the lesser amount. Compensation paid under this section which is not reimbursed by the general fund shall remain a liability of the special compensation fund and shall be financed by the percentage assessed under section 176.131, subdivision 10.

Subd. 3. (a) Notwithstanding subdivision 2, the commissioner may direct payment from the special compensation fund for compensation payable pursuant to subdivisions 1 and 1a, including benefits payable under sections 176.102 and 176.135, prior to issuance of an order of a compensation judge or the workers' compensation court of appeals directing payment or awarding compensation.

(b) The commissioner may suspend or terminate an order under clause (a) for good cause as determined by the commissioner.

Subd. 4. If the commissioner authorizes the special fund to commence payment under this section, the commissioner shall serve by certified mail notice upon the employer and other interested parties of the intention to commence payment. This notice shall be served at least ten calendar days before commencing payment and shall be mailed to the last known address of the parties. The notice shall include a statement that failure of the employer to respond within ten calendar days of the date of service will be deemed acceptance by the employer of the proposed action by the commissioner and will be deemed a waiver of defenses the employer has to a subrogation or indemnity action by the commissioner. At any time prior to final determination of liability, the employer may appear as a party and present defenses the employer has, whether or not an appearance by the employer has previously been made in the matter. The commissioner has a cause of action against the employer to recover compensation paid by the special fund under this section.

History: *1967 c 330 s 1; 1969 c 372 s 1; 1969 c 399 s 49; 1973 c 388 s 50; 1973 c 750 s 1,2; 1974 c 355 s 22; 1977 c 403 s 6; 1981 c 356 s 328; 1983 c 290 s 115-118; 1983 c 301 s 147; 1984 c 432 art 2 s 27; 1986 c 444*

176.185 POLICY OF INSURANCE.

Subdivision 1. **Notice of coverage, termination, cancellation.** Within ten days after the issuance of a policy of insurance covering the liability to pay compensation under this chapter written by an insurer licensed to insure such liability in this state, the insurer shall file notice of coverage with the commissioner under rules and on forms prescribed by the commissioner. No policy shall be canceled by the insurer within the policy period nor terminated upon its expiration date until a notice in writing is delivered or mailed to the insured and filed with the commissioner, fixing the date on which it is proposed to cancel it, or declaring that the insurer does not intend to renew the policy upon the expiration date. A cancellation or termination is not effective until 30 days after written notice has been filed with the commissioner in a manner prescribed by the commissioner unless prior to the expiration of the 30-day period the employer obtains other insurance coverage or an order exempting the employer from carrying insurance as provided in section 176.181. Upon receipt of the notice the commissioner shall notify the insured that the insured must obtain coverage from some other licensed carrier and that, if unable to do so, the insured shall request the commissioner of commerce to require the issuance of a policy as provided in section 79.251, subdivision 4. Upon a cancellation or termination of a policy by the insurer the employer is entitled to be assigned a policy in accordance with sections 79.251 and 79.252. Notice of cancellation or termination by the insured shall be served upon the insurer by written statement mailed or delivered to the insurer. Upon receipt of the notice the insurer shall notify the commissioner of the cancellation or termination and the commissioner shall ask the employer for the reasons for the cancellation or termina-

tion and notify the employer of the duty under this chapter to insure the employer's employees.

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 the employee's dependent, the insurer will pay the amount directly to the employee or dependent. This payment by the insurer directly to the employee or dependent discharges the obligation of the insurer to the employee, and the obligations of the insurer and the employer to the employee or 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 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 commissioner of the department of labor and industry 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 an employee, and posts a notice in conspicuous places about the place of business stating that there is insurance and the name of the insurer, and files a copy of that notice with the commissioner of the department of labor and industry, the employee, or the employee's 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. [Repealed, 1977 c 342 s 28]

Subd. 9. **Application of section.** Where an employer, who has been exempted from the requirement to insure 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.

Subd. 10. **Data collection contracts.** The commissioner may contract with other parties regarding the collection of appropriate data to assist in meeting the requirements of this section.

History: *1953 c 755 s 23; Ex1967 c 1 s 6; 1969 c 178 s 1; 1973 c 388 s 51-53; 1983 c 289 s 114 subd 1; 1983 c 290 s 119,120; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444*

176.186 RECORDS FROM OTHER STATE AGENCIES.

Notwithstanding any other state law to the contrary except section 290.61, the commissioner may obtain from the department of jobs and training, and office of the secretary of state, or any other state agency, upon request, names or lists of employers doing business in the state. This information shall be treated by the commissioner in the manner provided by chapter 13 and shall be used only for insurance verification by the commissioner.

History: *1983 c 290 s 121; 1984 c 514 art 3 s 2; 1Sp1985 c 14 art 9 s 75*

176.19 [Repealed, 1953 c 755 s 83]

176.191 DISPUTE BETWEEN TWO OR MORE EMPLOYERS OR INSURERS REGARDING LIABILITY.

Subdivision 1. 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 commissioner, compensation judge, or workers' compensation court of appeals upon appeal shall direct, unless action is taken under subdivision 2, 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 party held liable for the benefits shall be ordered to reimburse any other party for payments which the latter has made, including interest at the rate of 12 percent a year. The claimant shall also be awarded a reasonable attorney fee, to be paid by the party held liable for the benefits.

An order directing payment of benefits pending a determination of liability may not be used as evidence before a compensation judge, the workers' compensation court of appeals, or court in which the dispute is pending.

Subd. 2. 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 commissioner shall authorize, unless action is taken under subdivision 1, the special compensation fund established in section 176.131 to make payment of the benefits pending a determination of liability.

The personal injury for which the commissioner shall order compensation from the special fund is not limited by section 176.131, subdivision 8.

When liability has been determined, the party held liable for benefits shall be ordered to reimburse the special compensation fund for payments made, including interest at the rate of 12 percent a year.

Subd. 3. If a dispute exists as to whether an employee's injury is compensable under this chapter and the employee is otherwise covered by an insurer pursuant to chapters 62A, 62C and 62D, that insurer shall pay any medical costs incurred by the employee for the injury up to the limits of the applicable coverage and shall make any disability payments otherwise payable by that insurer in the absence of or in addition to workers' compensation liability. If the injury is subsequently determined to be compensable pursuant to this chapter, the workers' compensation insurer shall be ordered to reimburse the insurer that made the payments for all payments made under this subdivision by the insurer, including interest at a rate of 12 percent a year. If a payment pursuant to this subdivision exceeds the reasonable value as permitted by sections 176.135 and 176.136, the provider shall reimburse the workers' compensation insurer for all the excess as provided by rules promulgated by the commissioner.

Subd. 4. If the employee's medical expenses for a personal injury are paid pursuant to any program administered by the commissioner of human services, or the employee receives subsistence or other payments pursuant to such a program, and it is subsequently determined that the injury is compensable pursuant to this chapter, the workers' compensation insurer shall reimburse the commissioner of human services for the payments made, including interest at a rate of 12 percent a year.

Amounts paid to an injured employee pursuant to such a program and attributable

to the personal injury shall be deducted from any settlement or award of compensation or benefits under this chapter. The insurer shall attempt, with due diligence, to ascertain whether payments have been made to an injured employee pursuant to such a program prior to any settlement or issuance of a binding award and shall notify the commissioner when such payments have been made.

Subd. 5. Where a dispute exists between an employer, insurer, the special compensation fund, the reopened case fund, or the workers' compensation reinsurance association, regarding benefits payable under this chapter, the dispute may be submitted with consent of all interested parties to binding arbitration. The decision of the arbitrator shall be conclusive with respect to all issues presented except as provided in subdivisions 6 and 7. Consent of the employee is not required for submission of a dispute to arbitration pursuant to this section and the employee is not bound by the results of the arbitration. An arbitration award shall not be admissible in any other proceeding under this chapter. Notice of the proceeding shall be given to the employee.

The employee, or any person with material information to the facts to be arbitrated, shall attend the arbitration proceeding if any party to the proceeding deems it necessary. Nothing said by an employee in connection with any arbitration proceeding may be used against the employee in any other proceeding under this chapter. Reasonable expenses of meals, lost wages, and travel of the employee or witnesses in attending shall be reimbursed on a pro rata basis. Arbitration costs shall be paid by the parties, except the employee, on a pro rata basis.

Subd. 6. If the employee commences an action under this chapter for benefits arising out of the same injury which resulted in the dispute arbitrated under subdivision 5, and if the benefits awarded to the employee under the employee's claim are inconsistent with the arbitration decision, any increase in benefits over those paid pursuant to the arbitration proceeding is paid by the party or parties who ordinarily would have been required to pay the increased benefits but for the arbitration. Any reimbursement from the employee of any decrease in benefits from those paid pursuant to the arbitration is paid to the party or parties who previously had paid the increased benefits. The provisions of this subdivision apply regardless of whether more or fewer employers and insurers or the special fund have been added or omitted as parties to the employee's subsequent action after arbitration.

Subd. 7. If an employee brings an action under the circumstances described in subdivision 6, the parties to the previous arbitration may be represented at the new action by a common or joint attorney.

Subd. 8. No attorney's fees shall be awarded under either section 176.081, subdivision 8, or 176.191 against any employer or insurer in connection with any arbitration proceeding unless the employee chooses to retain an attorney to represent the employee's interests during arbitration.

History: *1953 c 755 s 24; Ex1967 c 1 s 6; 1973 c 388 s 54; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 52; 1981 c 346 s 95; 1983 c 290 s 122-125; 1984 c 654 art 5 s 58; 1985 c 234 s 13,14; 1986 c 444*

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 commerce shall revoke the license of the insurer to write workers' compensation insurance.

Subd. 1a. **Additional grounds.** Where an insurer or agent of an insurer has failed to comply with provisions of this chapter, other than the provisions in subdivision 1, the commissioner of commerce may revoke the license of the insurer to write workers' compensation insurance.

Subd. 2. **Commencement of proceedings.** The commissioner of commerce may act under subdivision 1 or subdivision 1a upon the commissioner's own motion, the recommendation of the commissioner of labor and industry, the chief administrative

law judge, or the workers' compensation court of appeals, 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 commerce.

Subd. 4. **Notice of hearing.** Such commissioner shall prescribe the method of procedure at the hearing, its time and place, and 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. The commissioner shall file the findings and order, and mail a copy of them to the commissioner of the department of labor and industry, the complainant, and the insurer.

Subd. 6. **Appeal to district court.** If the insurer acts within ten days from the date of receipt of a copy of the findings and order, the insurer may appeal from an order revoking the license. The appeal shall be taken to the district court of the district in which the office of the commissioner of commerce is located by serving a written notice of appeal on such commissioner. Such commissioner shall thereupon file a certified copy of the commissioner's findings and order with the court administrator 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 court administrator, the court shall summarily hear and determine the questions involved in the appeal.

Subd. 7. **Report to commissioner of commerce.** The commissioner may send reports to the commissioner of commerce regarding compliance with this chapter by insurers writing workers' compensation insurance. A report may include a recommendation for revocation of an insurer's license under this section and may also recommend the imposition of other penalties which may be imposed upon insurers by the commissioner of commerce.

History: *1953 c 755 s 25; Ex1967 c 1 s 6; 1973 c 388 s 55,56; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1983 c 289 s 114 subd 1; 1983 c 290 s 126-128; 1984 c 640 s 32; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

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, cancellation 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 commerce to cancel the license of the insurer to write workers' compensation insurance.

History: *1953 c 755 s 26; 1975 c 359 s 23; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

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 the person 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) the person performs work upon another's premises, with the other's tools or appliances, and under the other's direction; or,

(b) the person 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.

History: *1953 c 755 s 27; 1986 c 444*

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.

History: *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.** A person who has paid compensation under this section is subrogated to the rights of the injured employee against the employee's 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 workers' compensation division may determine the respective liabilities of persons under this section.

History: *1953 c 755 s 29; Ex1967 c 1 s 6; 1973 c 388 s 57; 1975 c 359 s 23; 1986 c 444*

176.22 [Repealed, 1953 c 755 s 83]

176.221 PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT.

Subdivision 1. **Commencement of payment.** Within 14 days of notice to or knowledge by the employer of an injury compensable under this chapter the payment of temporary total compensation shall commence. Within 14 days of notice to or knowledge by an employer of a new period of temporary total disability which is caused by an old injury compensable under this chapter, the payment of temporary total compensation shall commence; provided that the employer or insurer may file for an extension with the commissioner within this 14-day period, in which case the compensation need not commence within the 14-day period but shall commence no later than 30 days from the date of the notice to or knowledge by the employer of the new period of disability. Commencement of payment by an employer or insurer does not waive any rights to any defense the employer has on any claim or incident either with respect to the compensability of the claim under this chapter or the amount of the compensation due. Where there are multiple employers, the first employer shall pay, unless it

is shown that the injury has arisen out of employment with the second or subsequent employer. Liability for compensation under this chapter may be denied by the employer or insurer by giving the employee written notice of the denial of liability. If liability is denied for an injury which is required to be reported to the commissioner under section 176.231, subdivision 1, the denial of liability must be filed with the commissioner within 14 days after notice to or knowledge by the employer of an injury which is alleged to be compensable under this chapter. If the employer or insurer has commenced payment of compensation under this subdivision but determines within 30 days of notice to or knowledge by the employer of the injury that the disability is not a result of a personal injury, payment of compensation may be terminated upon the filing of a notice of denial of liability within 30 days of notice or knowledge. After the 30-day period, payment may be terminated only by the filing of a notice as provided under section 176.242. Upon the termination, payments made may be recovered by the employer if the commissioner or compensation judge finds that the employee's claim of work related disability was not made in good faith. A notice of denial of liability must state in detail specific reasons explaining why the claimed injury or occupational disease was determined not to be within the scope and course of employment and shall include the name and telephone number of the person making this determination.

Subd. 2. [Repealed, 1983 c 290 s 129]

Subd. 3. **Penalty.** If the employer or insurer does not begin payment of compensation within the time limit prescribed under subdivision 1 or 8, the commissioner may assess a penalty, payable to the special compensation fund, of up to 100 percent of the amount of compensation to which the employee is entitled because of the injury to receive up to the date compensation payment is made to the employee or the compensation to which the employee is entitled to receive up to the date the penalty is imposed, in addition to any other penalty otherwise provided by statute. This penalty may also be imposed on an employer or insurer who violates section 176.242 or 176.243 including, but not limited to, violating the commissioner's decision not to discontinue compensation.

Subd. 3a. **Penalty.** In lieu of any other penalty under this section, the commissioner may assess a penalty of up to $1,000 for each instance in which an employer or insurer does not pay benefits or file a notice of denial of liability within the time limits prescribed under this section.

Subd. 4. [Repealed, 1983 c 290 s 129]

Subd. 5. [Repealed, 1983 c 290 s 129]

Subd. 6. **Assessment of penalties.** The division or compensation judge shall assess the penalty payments provided for by subdivision 3 and any increase in benefit payments provided by section 176.225, subdivision 5, against the insurer. The insurer is liable for a penalty payment assessed against it even if the delay is attributable to the employer.

An insurer who has paid a penalty under this section may recover from the employer the portion of the penalty attributable to the acts of the employer which resulted in the delay. A penalty paid by an insurer under this section which is attributable to the fault of the employer shall be treated as a loss in an experience rated plan, retrospective rating plan, or dividend calculation where appropriate.

Subd. 6a. **Medical, rehabilitation, economic recovery, and impairment compensation.** The penalties provided by this section apply in cases where payment for treatment under section 176.135, rehabilitation expenses under section 176.102, subdivisions 9 and 11, economic recovery compensation or impairment compensation are not made in a timely manner as required by law or by rule adopted by the commissioner.

Subd. 7. **Interest.** Any payment of compensation, charges for treatment under section 176.135 or rehabilitation expenses under 176.102, subdivision 9 not made when due shall bear interest at the rate of eight percent a year from the due date to the date the payment is made or the rate set by section 549.09, subdivision 1, whichever is greater.

Subd. 8. **Method and timeliness of payment.** Payment of compensation under this chapter shall be by immediately payable negotiable instrument, or if by any other method, arrangements shall be available to provide for the immediate negotiability of the payment instrument.

All payment of compensation shall be made within 14 days of the filing of an appropriate order by the division or a compensation judge, unless the order is appealed or if a different time period is provided by this chapter.

Subd. 9. **Payment of full wages.** An employer who pays full wages to an injured employee is not relieved of the obligation for reporting the injury and making a liability determination within the times specified in this chapter. If the full wage is paid the employer's insurer or self-insurer shall report the amount of this payment to the division and determine the portion which is temporary total compensation for purposes of administering this chapter and special compensation fund assessments. The employer shall also make appropriate adjustments to the employee's payroll records to assure that the employee's sick leave or the vacation time is not inappropriately charged against the employee, and to assure the proper income tax treatment for the payments.

History: *1953 c 755 s 30; 1973 c 388 s 58-61; 1977 c 342 s 21; Ex1979 c 3 s 53; 1981 c 346 s 96; 1983 c 290 s 129; 1984 c 432 art 2 s 28-30*

176.225 ADDITIONAL AWARD AS PENALTY.

Subdivision 1. **Grounds.** Upon reasonable notice and hearing or opportunity to be heard, the division, a compensation judge, or upon appeal, the workers' compensation court of appeals or 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; or

(e) unreasonably or vexatiously discontinued compensation in violation of section 176.242.

Subd. 2. **Examination of books and records.** To determine whether an employer or insurer is liable for the payment provided by subdivision 1, the division, a compensation judge, or the workers' compensation court of appeals upon appeal may examine the books and records of the employer or insurer relating to the payment of compensation, and may require the employer or insurer to furnish any other information relating to the payment of compensation.

Subd. 3. **Defiance of division, compensation judge, or workers' compensation court of appeals, complaint.** If an insurer persists in an action or omission listed in subdivision 1, or does not permit the examination of books and records, or fails to furnish information as required, the commissioner or the chief administrative law judge shall file a written complaint with the commissioner of commerce. The complaint shall specify the facts and recommend the revocation of the license of the insurer to do business in this state. The workers' compensation court of appeals may also file a written complaint.

Subd. 4. **Hearing before commissioner of commerce.** Upon receipt of a complaint filed under subdivision 3, the commissioner of commerce shall hear and determine the matter in the manner provided by this chapter. On finding that a charge made by the complaint is true, the commissioner of commerce shall revoke the license of the insurer to do business in this state. The insurer may appeal from the action of the commissioner revoking the license in the manner provided in this chapter.

Subd. 5. **Penalty.** Where the employer is guilty of inexcusable delay in making payments, the payments which are found to be delayed shall be increased by ten

percent. Withholding amounts unquestionably due because the injured employee refuses to execute a release of the employee's right to claim further benefits will be regarded as inexcusable delay in the making of compensation payments. If any sum ordered by the department to be paid is not paid when due, and no appeal of the order is made, the sum shall bear interest at the rate of 12 percent per annum. Any penalties paid pursuant to this section shall not be considered as a loss or expense item for purposes of a petition for a rate increase made pursuant to chapter 79.

History: *1953 c 755 s 31; Ex1967 c 1 s 6; 1973 c 388 s 62-64; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 97; 1983 c 289 s 114 subd 1; 1983 c 290 s 130-132; 1984 c 640 s 32; 1984 c 655 art 1 s 92; 1986 c 444; 1986 c 461 s 24*

176.23 [Repealed, 1953 c 755 s 83]

176.231 REPORT OF DEATH OR INJURY TO COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

Subdivision 1. **Time limitation.** Where death or serious injury occurs to an employee during the course of employment, the employer shall report the injury or death to the commissioner and insurer within 48 hours after its occurrence. Where any other injury occurs which wholly or partly incapacitates the employee from performing labor or service for more than three calendar days, the employer shall report the injury to the insurer on a form prescribed by the commissioner within ten days from its occurrence. An insurer and self-insured employer shall report the injury to the commissioner no later than 14 days from its occurrence. Where an injury has once been reported but subsequently death ensues, the employer shall report the death to the commissioner and insurer within 48 hours after the employer receives notice of this fact.

Subd. 2. **Initial report, written report.** Where subdivision 1 requires an injury to be reported within 48 hours, the employer may make an 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 commissioner of labor and industry designates. All written reports of injuries required by subdivision 1 shall include the date of injury, amounts of payments made, if any, and the date of the first payment. The reports shall be in quadruplicate on a form designed by the commissioner, with two copies to the commissioner and one to the insurer.

If an insurer or self-insurer repeatedly fails to pay benefits within three days of the due date, pursuant to section 176.221, the insurer or self-insurer shall be ordered by the commissioner to explain, in person, the failure to pay benefits due in a reasonable time. If prompt payments are not thereafter made, the commissioner shall refer the insurer or self-insurer to the commissioner of commerce for action pursuant to section 176.225, subdivision 4.

Subd. 3. **Physicians, chiropractors, or other health care providers to report injuries.** A physician, chiropractor, or other health care provider who has examined, treated, or has special knowledge of an injury to an employee which may be compensable under this chapter, shall report to the commissioner all facts relating to the nature and extent of the injury and disability, and the treatment provided for the injury or disability, within ten days after the health care provider has received a written request for the information from the commissioner or an authorized representative of the commissioner.

Subd. 4. **Supplementary reports.** The commissioner or an authorized representative may require the filing of supplementary reports of accidents as is deemed necessary to provide information required by law.

Supplementary reports related to the current nature and extent of the employee's injury, disability, or treatment may be requested from a physician, surgeon, chiropractor, or other health care provider by the commissioner or a representative, an employer or insurer, or the employee.

Subd. 5. **Forms for reports.** The commissioner shall prescribe forms for use in making the reports required by this section. The first report of injury form which the employer submits shall include a declaration by the employer that the employer will pay the compensation the law requires. Forms for reports required by this section shall be as prescribed by the commissioner and shall be the only forms used by an employer, insurer, self-insurer, group self-insurer, and all health care providers.

Subd. 6. **Commissioner of the department of labor and industry; duty to keep informed.** The commissioner of the department of labor and industry 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 commissioner of the department of labor and industry or any member or employee thereof shall request in writing a report from such person of the attendant facts.

Subd. 7. **Medical reports.** If requested by the division, a compensation judge, the workers' compensation court of appeals, or any member or employee thereof an employer, insurer, or employee shall file with the commissioner the original or a verified copy of any medical report in possession which bears upon the case and shall also file a verified copy of the same report with the agency or individual who made the request.

Subd. 8. **No public inspection of reports.** Subject to subdivision 9, a report or its copy which has been filed with the commissioner of the department of labor and industry 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 commissioner under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics. These reports are available to the department of revenue for use in enforcing Minnesota income tax and property tax refund laws, and the information shall be protected as provided in section 290.61 or 290A.17.

The division or office of administrative hearings or workers' compensation court of appeals may permit the examination of its file by the employer, insurer, employee, or dependent of a deceased employee or any person who furnishes written authorization to do so from the employer, insurer, employee, or dependent of a deceased employee. Reports filed under this section and other information the commissioner has regarding injuries or deaths shall be made available to the workers' compensation reinsurance association for use by the association in carrying out its responsibilities under chapter 79.

Subd. 10. **Failure to file required report, penalty.** If an employer, physician, chiropractor, or other health provider fails to file with the commissioner any report required by this section in the manner and within the time limitations prescribed, or otherwise fails to provide a report required by this section in the manner provided by this section, the commissioner may impose a penalty of up to $200 for each failure.

The imposition of a penalty may be appealed to a compensation judge within 30 days of notice of the penalty.

Penalties collected by the state under this subdivision shall be paid into the special compensation fund.

History: *1953 c 755 s 32; 1969 c 583 s 1; 1971 c 422 s 4-9; 1973 c 388 s 65-74; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 54,55; 1981 c 346 s 98,99; 1983 c 15 s 2; 1983 c 289 s 114 subd 1; 1983 c 290 s 133-137; 1984 c 432 art 2 s 31,32; 1984 c 655 art 1 s 92; 1986 c 444; 1986 c 461 s 25,26*

176.235 NOTICE TO EMPLOYERS AND INJURED EMPLOYEE OF RIGHTS AND DUTIES.

Subdivision 1. When the commissioner of labor and industry has received notice or information that an employee has sustained an injury which may be compensable under this chapter, the commissioner of labor and industry shall mail a brochure, written in language easily readable and understandable by a person of average intelligence and education, to the employee explaining the rights and obligations of the employee, the assistance available to the employee, the operation of the workers' compensation system, and whatever other relevant information the commissioner of labor and industry deems necessary.

Subd. 2. The commissioner shall prepare, in language easily readable and understandable by a person of average intelligence and education, a brochure explaining to employers their rights and obligations under this chapter and shall furnish it to employers subject to this chapter.

History: *1953 c 755 s 33; Ex1967 c 1 s 6; 1973 c 388 s 75; Ex1979 c 3 s 56*

176.24 [Repealed, 1953 c 755 s 83]

176.241 NOTICE TO DIVISION OF INTENTION TO DISCONTINUE COMPENSATION PAYMENTS.

Subdivision 1. **Necessity for notice and showing; contents.** Subject to sections 176.242 and 176.243, where an employee claims that the right to compensation continues, the employer may not discontinue payment of compensation until the employer provides the employee with notice in writing of intention to do so, on a form prescribed by the commissioner, together with a statement of facts clearly indicating the reasons for the discontinuance. A copy of the notice shall be provided to the division by the employer.

The notice to the employee and the copy to the division shall state the date of intended discontinuance and the reason for the action. The notice to the employee and the copy to the division shall be accompanied by a statement of facts in support of the discontinuance of compensation payments and 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 when the commissioner orders otherwise, until the copy of the notice and reports have been filed with the division, the liability of the employer to make payments of compensation continues.

When the division has received a copy of the notice of discontinuance, the statement of facts and available medical reports, the duty of the employer to pay compensation is suspended, except as provided in the following subdivisions and in sections 176.242 and 176.243.

Subd. 3. **Copy of notice to employee.** When the employer has reason to believe compensation may be terminated within the requirements of this chapter, notice shall be given to the employee informing the employee of the employee's right to object to the discontinuance pursuant to sections 176.242 and 176.243 and providing instructions as to how to contact the employer, insurer, and commissioner regarding the discontinuance and the procedures related to initiation of a claim.

Subd. 3a. **Objection to discontinuance.** If the employee is aggrieved by the commissioner's decision under section 176.242 or 176.243 or the employee has not timely proceeded under either of those sections, or the discontinuance is not governed by those sections, the employee may file an objection to discontinuance with the commissioner. The commissioner shall refer the matter to the chief administrative law judge in order that a hearing before a compensation judge may be scheduled to determine the right of the employee, or the employee's dependent, to further compensation.

The hearing shall be a de novo hearing and shall be held within a reasonable time after the chief administrative law judge has received the notice of the objection to discontinuance.

Subd. 3b. **Petition to discontinue.** Pursuant to section 176.242, subdivision 5, an employer or insurer may file a petition to discontinue benefits with the commissioner. The commissioner shall refer the matter to the chief administrative law judge in order that a hearing on the petition be held before a compensation judge. This hearing shall be a de novo hearing. The employer or insurer shall continue payment of compensation until the filing of the decision of the compensation judge and thereafter as the compensation judge, court of appeals, or supreme court directs.

Subd. 4. **Order.** When the hearing has been held and the evidence duly considered, the person who held the hearing shall promptly enter an order directing the payment of further compensation or confirming the termination of compensation. If the order confirms a termination of compensation, the service and filing of the order relieves the employer from further liability for compensation subject to the right of review afforded by this chapter, and to the right of the compensation judge to set aside the order at any time prior to the review and to grant a new hearing pursuant to this chapter. Once an appeal to the workers' compensation court of appeals is filed, a compensation judge may not set aside the order but the court of appeals may remand the matter to a compensation judge for a new hearing.

History: *1953 c 755 s 34; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 76-79; Ex1979 c 3 s 57; 1981 c 346 s 100-102; 1983 c 290 s 138,139; 1984 c 432 art 2 s 33-37; 1984 c 640 s 32; 1986 c 444*

176.242 ADMINISTRATIVE CONFERENCE PRIOR TO DISCONTINUANCE OF COMPENSATION.

Subdivision 1. **Notice of discontinuance; grounds.** If an employer or insurer files a notice of intention to discontinue weekly payments of temporary total, temporary partial, or permanent total disability benefits, the employer or insurer shall serve a copy upon the commissioner and the employee including detailed reasons for the intended discontinuance.

Subd. 2. **Conference, request.** (a) The employee has ten calendar days from the date the notice was filed with the commissioner to request that the commissioner schedule an administrative conference to determine the appropriateness of the proposed discontinuance. The employer or insurer may request an administrative conference under this section at any time whether or not a notice of intent to discontinue is filed. If a notice of intent to discontinue has been filed, the commissioner shall schedule an administrative conference within ten calendar days after the commissioner receives timely notice of the request for an administrative conference. If no notice of intent to discontinue has been filed and the employer or insurer has requested a conference, the commissioner shall schedule an administrative conference to be held within 30 calendar days after the commissioner receives the employer's or insurer's request for a conference.

(b) If the employee does not, in a timely manner, request that the commissioner schedule an administrative conference, or fails to appear, without good cause, at a scheduled conference, compensation may be discontinued, subject to the employee's right under section 176.241.

(c) An employee, employer, or insurer may request a continuance of a scheduled administrative conference. If the commissioner determines that good cause exists for granting a continuance, the commissioner may grant the continuance which shall not exceed ten calendar days unless the parties agree to a longer continuance. If the employee is granted a continuance, compensation need not be paid during the period of continuance but shall recommence upon the date of the conference unless the commissioner orders otherwise. If the employer or insurer is granted a continuance, compensation shall continue to be paid during the continuance. There is no limit to the number of continuances the commissioner may grant provided that the payment of compensation is subject to this clause during the continuance.

(d) If the insurer's stated reason for the discontinuance is that the employee has reached maximum medical improvement, the employee may request a continuance under paragraph (c) for the purpose of obtaining a medical report. The continuance under this paragraph may at the discretion of the commissioner exceed ten days and benefits shall not cease until the expiration of the 90-day period following maximum medical improvement.

(e) The purpose of an administrative conference is to determine whether reasonable grounds exist for a discontinuance.

Subd. 3. **Necessity for conference, commissioner's discretion.** The commissioner may determine that no administrative conference is necessary under this section and permit the employer or insurer to discontinue compensation, subject to the employee's right under section 176.241.

The commissioner may permit compensation to be discontinued at any time after a notice pursuant to subdivision 1 is received even if no administrative conference has been held, if the commissioner deems the discontinuance appropriate based on the information the commissioner has, subject to the employee's right under section 176.241.

Subd. 4. **Administrative decision.** After considering the information provided by the parties at the administrative conference, the commissioner shall issue to all interested parties a written administrative decision permitting or denying the employer's or insurer's request to discontinue compensation. The decision shall be issued within five working days from the close of the conference. The commissioner's decision is binding on the parties. The commissioner shall advise all parties of the right to petition to the chief administrative law judge under section 176.241 and of the right to be represented by an attorney at a hearing before a compensation judge.

Subd. 5. **Objection to decision.** If the commissioner grants the employer's or insurer's request to discontinue compensation and the employee objects to the discontinuance, the employee may file an objection to discontinuance under section 176.241. If the commissioner denies the request to discontinue compensation the employer or insurer may file a petition to discontinue under section 176.241.

Subd. 6. **Effect of decision, review, tolling.** (a) If an objection or a petition is filed under subdivision 5, the commissioner's administrative decision remains in effect and the parties obligations or rights to pay or receive compensation are governed by the commissioner's administrative decision, pending a determination by a compensation judge pursuant to section 176.241.

(b) If a party seeks a review of the commissioner's determination involving issues of maximum medical improvement or whether a job offer meets the criteria under section 176.101, subdivision 3(e), 3(f), or 3(p), the 90-day period referred to in those subdivisions are tolled and commence on the date of filing of a final determination on the issue. For purposes of this subdivision, a "final determination" means a decision from which no appeal has been or may be taken.

Subd. 7. **Decision as notice.** If a party proceeds under subdivision 5, the commissioner's administrative decision under this section is deemed required notice to interested parties under section 176.241 and the commissioner's obligations under section 176.241 are deemed to be met.

Subd. 8. **When discontinuance allowed.** Compensation shall not be discontinued prior to an administrative conference except as provided under subdivision 2, clause (b), or if the commissioner determines pursuant to subdivision 3 that no administrative conference is necessary. The employer may discontinue compensation immediately without having an administrative conference if the discontinuance is because the employee has returned to work. If the commissioner has denied a requested discontinuance and a compensation judge later rules that the discontinuance was proper, payments made under the commissioner's order as provided under subdivision 4 shall be treated as an overpayment which the employer or insurer may recover from the employee subject to the provisions of section 176.179.

Subd. 9. **Notice, forms.** Notice to the employee under subdivision 1 shall be on forms prescribed by the commissioner.

Subd. 10. **Fines, violations.** An employer or insurer who discontinues compensation in violation of this section is subject to a fine of up to $500 for each violation. Fines shall be paid to the special compensation fund.

Subd. 11. **Application.** This section is applicable to any notice of intent to discontinue which is filed after the effective date of this section, even if the injury occurred prior to July 1, 1983.

History: *1983 c 290 s 140; 1984 c 432 art 2 s 38-41; 1984 c 640 s 32; 1986 c 461 s 27*

176.2421 RECOMMENCEMENT OF TEMPORARY TOTAL; CONFERENCE.

Subdivision 1. **When right accrues.** Following the receipt of temporary total compensation, an employee who has returned to work but is unable to continue working for at least 14 days because of medical reasons associated with the injury has a right to an administrative conference under this section to determine whether compensation shall be recommenced.

Subd. 2. **When held.** A request for an administrative conference under this section shall be made within ten calendar days after the employee ceased working. The commissioner shall schedule an administrative conference within ten calendar days after receiving a timely request. The conference shall be held in accordance with section 176.243, subdivision 4, and the provisions of section 176.243, subdivisions 5 to 7, are applicable.

History: *1985 c 234 s 15*

176.243 ADMINISTRATIVE CONFERENCE FOLLOWING RETURN TO WORK, SUBSEQUENT INABILITY TO WORK.

Subdivision 1. **Confirmation of employment and wages.** If an insurer has discontinued compensation to an employee because the employee has returned to work, the insurer shall contact the employee 14 calendar days after return to work. The insurer shall determine whether the employee is still employed after 14 days and shall also ascertain the wages being paid to the employee.

Subd. 2. **Notice to commissioner.** If upon contact the insurer determines that the employee is not working or that the employee is earning a lower wage than at the time of the injury, the insurer shall notify the commissioner in writing of this fact and shall also state the actions that the insurer has taken or intends to take regarding payment of compensation. A copy of this notice shall be served by the insurer by certified mail to the employee.

Subd. 3. **Employee request for administrative conference.** If the employee objects to the action of the insurer regarding payment of compensation upon the cessation of work by the employee or regarding the payment of temporary partial disability benefits, the employee may request an administrative conference with the commissioner to resolve disputed issues. A request for an administrative conference shall be made within ten calendar days after filing of the notice with the department. If the employee requests an administrative conference the commissioner shall schedule a conference to be held within 14 calendar days after the commissioner receives the request.

Subd. 4. **Administrative decision.** After considering the information provided by the parties at the administrative conference the commissioner shall issue to all interested parties a written administrative decision regarding payment of compensation. The commissioner's decision is binding upon the parties and the rights and obligations of the parties are governed by the decision. The commissioner shall advise all parties of the right to petition to the chief administrative law judge under section 176.241 and of the right to be represented by an attorney at a hearing before a compensation judge. A party aggrieved by the commissioner's decision may proceed under section 176.241.

Subd. 5. **Decision binding pending compensation judge decision.** If an aggrieved

party files a petition under section 176.241, the commissioner's administrative decision remains in effect pending a determination by a compensation judge.

Subd. 6. **Decision as notice.** If a party proceeds under section 176.241, the commissioner's administrative decision is deemed to fulfill the division's obligations under section 176.241.

Subd. 7. **Obligations prior to administrative decision.** If an insurer has not voluntarily commenced compensation following the employee's cessation of work the insurer is not obligated to do so until an administrative conference is held and unless the commissioner determines that compensation shall be commenced.

Subd. 8. **Necessity of administrative conference.** If the commissioner deems it appropriate, based upon information the commissioner has, the commissioner may determine that an administrative conference is not necessary, in which case a party may proceed under section 176.241.

Subd. 9. **Application of section.** This section applies only when the employee has received at least 45 days of temporary total or temporary partial compensation prior to return to work and if no rehabilitation plan has been approved.

This section is applicable to all cases in which a return to work has occurred after the effective date of this section even if the injury occurred prior to the effective date.

Subd. 10. **Notice forms.** A notice under this section shall be on a form prescribed by the commissioner.

Subd. 11. **Fines, violations.** An employer or insurer who violates this section is subject to a fine of up to $500 for each violation which shall be paid to the special compensation fund.

History: *1983 c 290 s 141; 1984 c 432 art 2 s 42; 1984 c 640 s 32; 1986 c 461 s 28*

176.244 ADMINISTRATIVE CONFERENCE SCHEDULED BY COMMISSIONER, FILING.

(a) The commissioner may schedule an administrative conference under section 176.242, 176.2421, or 176.243 if it appears to the commissioner that the employer or insurer has not properly or timely filed or served a notice required by those sections and the employee requests the conference within 40 days of the date the employer or insurer should have filed the notice. The commissioner may, if appropriate, order that compensation be paid through the date of the conference where compensation is discontinued.

(b) Where an employer or insurer is required to file a notice under section 176.242, 176.2421, or 176.243, service on the employee by mail or in person must occur on or before the date of filing.

History: *1986 c 461 s 29*

176.245 RECEIPTS FOR PAYMENT OF COMPENSATION, FILING.

An employer shall promptly file with the division receipts for payment of compensation as may be required by the rules of the division.

The commissioner of the department of labor and industry 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.

History: *1953 c 755 s 35; 1973 c 388 s 80*

176.25 [Repealed, 1953 c 755 s 83]

176.251 DUTIES OF THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

The commissioner of the department of labor and industry shall actually supervise and require prompt and full compliance with all provisions of this chapter relating to the payment of compensation.

History: *1953 c 755 s 36; 1973 c 388 s 81*

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 the employer.

History: *1953 c 755 s 37; 1986 c 444*

176.255 [Repealed, 1953 c 755 s 83]

176.26 [Repealed, 1953 c 755 s 83]

176.261 EMPLOYEE OF COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY MAY ACT FOR AND ADVISE A PARTY TO A PROCEEDING.

When requested by an employer or an employee or an employee's dependent, the commissioner of the department of labor and industry may designate one or more of the division employees to advise that party of 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.

History: *1953 c 755 s 38; Ex1967 c 1 s 6; 1973 c 388 s 82; 1986 c 444*

176.262 [Repealed, 1983 c 290 s 173]

176.265 [Repealed, 1986 c 461 s 37]

176.27 [Repealed, 1953 c 755 s 83]

176.271 INITIATION OF PROCEEDINGS.

Subdivision 1. Unless otherwise provided by this chapter or by the commissioner of labor and industry, all proceedings before the division are initiated by the filing of a written petition on a prescribed form with the commissioner of labor and industry at the commissioner's principal office.

Subd. 2. Before a proceeding is initiated pursuant to subdivision 1 the party contemplating initiation of a proceeding shall notify the party against whom the proceeding will be directed including an employer who has an interest in the matter and shall state the relief that will be sought in the proceeding. If the party to whom the notice is directed does not respond to the satisfaction of the party supplying the notice within 15 days of the receipt of the notice a proceeding may be initiated pursuant to subdivision 1. This notification is not required in cases where compliance with this subdivision would result in the claim being barred by section 176.151 or other sections or a proceeding under section 176.103, 176.242 or 176.243 or other proceeding for which the commissioner determines this notice is not necessary.

History: *1953 c 755 s 40; Ex1967 c 1 s 6; 1973 c 388 s 84; Ex1979 c 3 s 58; 1984 c 432 art 2 s 43; 1986 c 444*

176.275 FILING OF PAPERS.

The workers' compensation division and the workers' compensation court of appeals shall file any paper which has been delivered to it for filing immediately upon its receipt in the office of the commissioner of the department of labor and industry. The commissioner of the department of labor and industry shall file any paper which has been delivered to the commissioner for filing immediately upon its receipt.

History: *1953 c 755 s 41; Ex1967 c 1 s 6; 1973 c 388 s 85; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1986 c 444*

176.28 [Repealed, 1953 c 755 s 83]

176.281 ORDERS, DECISIONS, AND AWARDS; FILING; SERVICE.

When the commissioner or compensation judge or office of administrative hearings or the workers' compensation court of appeals has rendered a final order, decision, or award, or amendment to an order, decision, or award, it shall be filed immediately with the commissioner. If the commissioner, compensation judge, office of administrative hearings, or workers' compensation court of appeals has rendered a final order, decision, or award, or amendment thereto, the commissioner or the office of administrative hearings or the workers' compensation court of appeals shall immediately serve a copy upon every party in interest, together with a notification of the date the order was filed.

History: *1953 c 755 s 42; 1969 c 276 s 2; 1973 c 388 s 86; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1982 c 405 s 1; 1983 c 290 s 142*

176.285 SERVICE OF PAPERS AND NOTICES.

Service of papers and notices shall be by mail or otherwise as the commissioner or the chief administrative law judge may by rule direct. 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 that party did not receive it or that it had been delayed in transit for an unusual or unreasonable period of time. In case of nonreceipt or delay, an allowance shall be made for the party's failure to assert a right within the prescribed time.

The commissioner and the chief administrative law judge shall ensure that proof of service of all papers and notices served by their respective agencies is placed in the official file of the case.

History: *1953 c 755 s 43; 1973 c 388 s 87; 1983 c 290 s 143; 1984 c 640 s 32*

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 commissioner 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 commissioner by rule requires; and,

(6) such other facts as are necessary for the information of the commissioner, a compensation judge or the workers' compensation court of appeals.

History: *1953 c 755 s 44; 1973 c 388 s 88; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 104*

176.295 NONRESIDENT EMPLOYERS; FOREIGN CORPORATION.

Subdivision 1. **Affidavit of inability to obtain service.** Where an employee or an employee's dependent has filed a petition for compensation with the commissioner of the department of labor and industry, and 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 commissioner of the department of labor and industry stating that the petitioner is so unable to make service.

Subd. 2. **Action in district court.** When the petitioner has filed the affidavit with the commissioner of the department of labor and industry, 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 commissioner of the department of labor and industry, 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 commissioner of the department of labor and industry, 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.

History: *1953 c 755 s 45; Ex1967 c 1 s 6; 1973 c 388 s 89-91; 1986 c 444*

176.30 [Repealed, 1953 c 755 s 83]

176.301 DETERMINATION OF ISSUES.

Subdivision 1. **Trial by court; reference to commissioner.** 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 commissioner. In the latter case, the commissioner shall refer the matter to the chief administrative law judge for assignment to a compensation judge. The compensation judge shall report findings and decisions to the district court. The court may approve or disapprove such decision in the same manner as it approves or disapproves the report of a referee. The court shall enter judgment upon such decision.

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

History: *1953 c 755 s 46; 1969 c 276 s 2; 1973 c 388 s 92; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 105; 1984 c 640 s 32; 1986 c 444*

176.305 PETITIONS FILED WITH THE WORKERS' COMPENSATION DIVISION.

Subdivision 1. **Hearings on petitions.** The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. The original petition shall then be filed with the commissioner together with an appropriate affidavit of service. When any petition has been filed with the workers' compensation division, the commissioner shall, within ten days, refer the matter presented by the petition to a settlement judge. The settlement judge shall schedule a settlement conference if appropriate within 60 days. If a settlement conference is not appropriate, or if such a conference or conferences do not result in progress toward a settlement, the settlement judge shall certify the matter for a hearing before a compensation judge and shall refer the matter to the chief administrative law judge to be heard by a compensation judge.

Subd. 2. **Copy of petition.** The commissioner shall deliver the original petition and answer, after certification for a hearing before a compensation judge by a settlement judge, to the office of administrative hearings for assignment to a compensation judge.

Subd. 3. **Testimony.** Where the chief administrative law judge has substituted a compensation judge originally assigned to hear a matter, the testimony taken before the substitute compensation judge shall be considered as though taken before the judge before whom it was originally assigned.

History: *1953 c 755 s 47; 1969 c 9 s 45; 1969 c 276 s 2; 1973 c 388 s 93-95; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 106; 1984 c 640 s 32*

176.306 SCHEDULED HEARINGS.

Subdivision 1. **Chief administrative law judge.** The chief administrative law judge shall schedule workers' compensation hearings on as regular a schedule as may be practicable in no fewer than six widely separated locations throughout the state, including at least four locations outside of the seven county metropolitan area and Duluth, for the purpose of providing a convenient forum for parties to a compensation hearing and shall maintain a permanent office in Duluth staffed by at least one compensation judge.

Subd. 2. **District administrators; clerks of court.** The judicial district administrators or the court administrators of the county or district courts nearest to the locations selected by the chief administrative law judge pursuant to subdivision 1 shall provide suitable hearing rooms at the times and places agreed upon for the purpose of conducting workers' compensation hearings.

History: *1981 c 346 s 107; 1982 c 424 s 45; 1984 c 640 s 32; 1Sp1986 c 3 art 1 s 82*

176.31 [Repealed, 1953 c 755 s 83]

176.311 REASSIGNMENT OF PETITION FOR HEARING.

Where a petition is heard before a compensation judge, at any time before an award or order has been made in such proceeding, the chief administrative law judge may reassign the petition for hearing before another compensation judge.

History: *1953 c 755 s 48; 1969 c 276 s 2; 1973 c 388 s 96; 1981 c 346 s 108; 1984 c 640 s 32*

176.312 AFFIDAVIT OF PREJUDICE.

An affidavit of prejudice for cause may be filed by a party to the claim against a compensation judge, in the same manner as an affidavit of prejudice is filed pursuant to law or rule of district court. The filing of an affidavit of prejudice against a compensation judge has the same effect and shall be treated in the same manner as in district court.

History: *1983 c 290 s 144*

176.32 [Repealed, 1953 c 755 s 83]

176.321 ANSWER TO PETITION.

Subdivision 1. **Filing, service.** Within 20 days after service of the petition, an adverse party shall serve and file an answer to the petition. The party shall serve a copy of the answer on the petitioner or the petitioner's attorney.

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 workers' compensation court of appeals, commissioner, or compensation judge from requiring proof of the fact.

Subd. 3. **Extension of time in which to file answer.** Upon showing of cause, the commissioner of the department of labor and industry may extend the time in which to file an answer or reply for not more than 30 additional days. The time to file an answer or reply may also be extended upon agreement of the petitioner. If an answer is not filed and there has been no extension by order of the commissioner or by agreement, the failure to file an answer shall be treated as a default.

History: *1953 c 755 s 49; 1969 c 276 s 2; 1973 c 388 s 97; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 109,110; 1983 c 290 s 145*

176.33 [Repealed, 1953 c 755 s 83]

176.331 AWARD BY DEFAULT.

If an adverse party fails to file and serve an answer and the petitioner presents proof of this fact, the commissioner or compensation judge may enter whatever award or order to which the petitioner is entitled on the basis of the facts alleged in the petition, but the compensation judge may require proof of an alleged fact. If the commissioner requires proof, the commissioner shall request the chief administrative law judge to assign the matter to a compensation judge for an immediate hearing and prompt award or other order.

Where in a default case the petition does not state facts sufficient to support an award, the compensation judge shall give the petitioner or the petitioner's attorney written notice of this deficiency. The petitioner may thereupon serve and file another petition as in the case of an original petition.

History: *1953 c 755 s 50; 1973 c 388 s 98; 1981 c 346 s 111; 1983 c 290 s 146; 1984 c 640 s 32*

176.34 [Repealed, 1953 c 755 s 83]

176.341 HEARING ON PETITION.

Subdivision 1. **Time.** Upon receipt of a matter from the commissioner, the chief administrative law judge shall fix a time and place for hearing the petition. The hearing shall be held as soon as practicable and at a time and place determined by the chief administrative law judge to be the most convenient for the parties, keeping in mind the intent of chapter 176 and the requirements of section 176.306.

Subd. 2. **Place.** Unless otherwise ordered by the chief administrative law judge, the hearing shall be held in the county where the injury or death occurred.

Subd. 3. **Notice mailed to each party.** At least 30 days prior to the date of hearing, the chief administrative law judge shall mail a notice of the time and place of hearing to each interested party. This subdivision does not apply to hearings which have been continued from an earlier date. In those cases, the notice shall be given in a manner deemed appropriate by the chief administrative law judge after considering the particular circumstances in each case.

History: *1953 c 755 s 51; 1969 c 276 s 2; 1973 c 388 s 99-101; 1975 c 359 s 23; 1981 c 346 s 112; 1983 c 290 s 147; 1984 c 640 s 32*

176.35 [Repealed, 1953 c 755 s 83]

176.351 TESTIMONIAL POWERS.

Subdivision 1. **Oaths.** The compensation judge to whom a petition has been assigned for hearing shall administer an oath to each witness. The commissioner may also administer an oath when required in the performance of duties.

Subd. 2. **Subpoenas.** Acting with or without the written request of an interested party, the commissioner or compensation judge 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. The commissioner may also 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 pending and are designated in the subpoena.

Subd. 2a. **Subpoenas not permitted.** A member of the rehabilitation review panel or medical services board or an employee of the department who has conducted an administrative conference or hearing under section 176.102, 176.103, 176.135, 176.136, 176.242, or 176.243, shall not be subpoenaed to testify regarding the conference, hearing, or concerning a mediation session. A member of the rehabilitation review panel, medical services board, or an employee of the department may be required to answer written interrogatories limited to the following questions:

(a) Were all statutory and administrative procedural rules adhered to in reaching the decision?

(b) If the answer to question (a) is no, what deviations took place?

(c) Did the person making the decision consider all the information presented prior to rendering a decision?

(d) Did the person making the decision rely on information outside of the information presented at the conference or hearing in making the decision?

(e) If the answer to question (d) is yes, what other information was relied upon in making the decision?

In addition, for a hearing with a compensation judge and with the consent of the compensation judge, an employee of the department who conducted an administrative conference, hearing, or mediation session, may be requested to answer written interrogatories relating to statements made by a party at the prior proceeding. These interrogatories shall be limited to affirming or denying that specific statements were made by a party.

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 commissioner shall pay for the attendance of witnesses who are subpoenaed by the commissioner. The chief administrative law judge shall pay for the attendance of witnesses who are subpoenaed by a compensation judge. 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 commissioner or compensation judge 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.

History: *1953 c 755 s 52; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 102-105; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 113; 1984 c 432 art 2 s 44; 1984 c 640 s 32; 1986 c 444*

176.36 [Repealed, 1953 c 755 s 83]

176.361 INTERVENTION.

Subdivision 1. **Right to intervene.** A person who has an interest in any matter before the workers' compensation court of appeals, or commissioner, or compensation judge such that the person may either gain or lose by an order or decision may intervene in the proceeding by filing an application in writing stating the facts which show the interest. The commissioner is considered to have an interest and shall be permitted to intervene at the appellate level when a party relies in its claim or defense upon any statute or rule administered by the commissioner, or upon any rule, order, requirement, or agreement issued or made under the statute or rule.

The commissioner may adopt rules, not inconsistent with this section to govern intervention. The workers' compensation court of appeals shall adopt rules to govern the procedure for intervention in matters before it.

If the department of human services or the department of jobs and training seeks to intervene in any matter before the division, a compensation judge or the workers' compensation court of appeals, a nonattorney employee of the department, acting at the direction of the staff of the attorney general, may prepare, sign, serve and file motions for intervention and related documents, appear at prehearing conferences, and participate in matters before a compensation judge or the workers' compensation court of appeals. Any other interested party may intervene using a nonattorney and may participate in any proceeding to the same extent an attorney could. This activity shall not be considered to be the unauthorized practice of law. An intervenor represented by a nonattorney shall be deemed to be represented by an attorney for the purposes of the conclusive presumption of section 176.521, subdivision 2.

Subdivisions 3 to 6 do not apply to matters pending in the mediation or rehabilitation and medical services sections.

Subd. 2. **Written application.** A person desiring to intervene in a workers' compensation case as a party, including but not limited to a health care provider who has rendered services to an employee or an insurer who has paid benefits under section 176.191, shall submit a timely written application to intervene to the compensation or settlement judge to whom the case has been assigned. If the case has not yet been assigned, the application shall be made to the calendar judge if the case has been certified to the office, or to the division if the case has not been certified to the office or to the mediation or rehabilitation and medical services section if the matter is pending in that section.

(a) The application must be served on all parties either personally, by first class mail, or registered mail, return receipt requested. An application to intervene must be served and filed within 30 days after a person has received notice that a claim has been filed or a request for mediation made. An untimely application is subject to denial under subdivision 7.

(b) In any other situation, timeliness will be determined by the judge or awarding authority in each case based on circumstances at the time of filing. The application must show how the applicant's legal rights, duties, or privileges may be determined or affected by the case; state the grounds and purposes for which intervention is sought; and indicate the statutory right to intervene. The application must be accompanied by the following, if applicable, except that if the action is pending in the mediation or rehabilitation and medical services section, clause (6) is not required and the information listed in clauses (1) to (5) may be brought to the conference rather than attached to the application:

(1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by the division of vocational rehabilitation, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

(4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;

(5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

(6) a proposed order allowing intervention with sufficient copies to serve on all parties;

(7) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;

(8) proof of service or copy of the registered mail receipt;

(9) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and

(10) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

Subd. 3. **Stipulation.** If the person submitting the application for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor who must file it with the division or judge or serve upon the intervenor and all other parties and file with the division specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the petitioner has asserted is compensable.

If a party has not returned the signed stipulation or filed objections within 30 days of service of the application, the intervenor's right to reimbursement for the amount sought is deemed established provided that the petitioner's claim is determined to be compensable.

Subd. 4. **Attendance by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

Subd. 5. **Order.** If an objection to intervention remains following settlement or pretrial conferences, the calendar judge shall rule on the intervention and the order is binding on the compensation judge to whom the case is assigned for hearing.

Subd. 6. **Presentation of evidence by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall present evidence in support of the claim at the hearing unless otherwise ordered by the compensation judge.

Subd. 7. **Effects of noncompliance.** Failure to comply with this section shall not result in a denial of the claim for reimbursement unless the compensation judge, commissioner, or settlement judge determines that the noncompliance has materially prejudiced the interests of the other parties.

History: *1953 c 755 s 53; 1969 c 276 s 2; 1973 c 388 s 106; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1983 c 290 s 148; 1984 c 432 art 2 s 45; 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 75; 1986 c 461 s 30,31*

176.37 [Repealed, 1953 c 755 s 83]

176.371 AWARD OR DISALLOWANCE OF COMPENSATION.

The compensation judge to whom a petition has been assigned for hearing, shall hear all competent, relevant evidence produced at the hearing. All questions of fact and law submitted to a compensation judge at the hearing shall be disposed of and the judge's decision shall be filed with the commissioner within 60 days after the submission, unless sickness or casualty prevents a timely filing, or the time is extended by written consent of the parties, or the chief administrative law judge extends the time for good cause. The compensation judge's decision shall include a determination of all contested issues of fact and law and an award or disallowance of compensation or other order as the pleadings, evidence, this chapter and rule require. A compensation judge's decision shall include a memorandum only if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses. A memorandum shall not contain a recitation of the evidence presented at the hearing but shall be limited to the compensation judge's basis for the decision.

No part of the salary of a compensation judge shall be paid unless the chief administrative law judge determines that all decisions of that judge have been issued within the time limit prescribed by this section.

History: *1953 c 755 s 54; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 114; 1983 c 290 s 149; 1984 c 640 s 32*

176.38 [Repealed, 1953 c 755 s 83]

176.381 REFERENCE OF QUESTIONS OF FACT.

Subdivision 1. **Hearing before workers' compensation court of appeals.** In the hearing of any matter before the workers' compensation court of appeals, the chief judge of the workers' compensation court of appeals may refer any question of fact to the chief administrative law judge for assignment to a compensation judge either to hear evidence and report it to the workers' compensation court of appeals or to hear evidence and make findings of fact and report them to the workers' compensation court of appeals. The workers' compensation court of appeals shall notify the commissioner of any matter referred to a compensation judge under this subdivision.

Subd. 2. **Hearing before compensation judge.** In the hearing of any petition before a compensation judge, the chief administrative law judge may refer any question of fact to another compensation judge to hear evidence and report it to the original compensation judge.

History: *1953 c 755 s 55; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 107,108; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 115; 1984 c 640 s 32*

176.39 [Repealed, 1953 c 755 s 83]

176.391 INVESTIGATIONS.

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

Subd. 2. **Appointment of physicians, surgeons, and other experts.** The compensation judge assigned to a matter, or the commissioner, may appoint one or more neutral physicians or surgeons from the list established by the commissioner to examine the injury of the employee and report thereon except as provided otherwise pursuant to section 176.1361. 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 commissioner and the compensation judge assigned to the matter if any. The report shall be made a part of the record of the case and be open to inspection as such.

Subd. 4. **Compensation.** The commissioner or compensation judge 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 workers' compensation division, but shall be taxed as costs to either party, or both, or otherwise, as the commissioner or compensation judge 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.

History: *1953 c 755 s 56; 1969 c 9 s 46; 1969 c 276 s 2; 1973 c 388 s 109-112; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 59; 1981 c 346 s 116*

176.40 [Repealed, 1953 c 755 s 83]

176.401 HEARINGS PUBLIC.

All hearings before a compensation judge are public.

History: *1953 c 755 s 57; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 117*

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 a compensation judge makes an investigation or conducts a hearing, the compensation judge 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 and shall comport with section 176.021.

Subd. 2. **Depositions.** Except where a compensation judge 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.

History: *1953 c 755 s 58; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 118,119*

176.42 [Repealed, 1953 c 755 s 83]

176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.

Subdivision 1. **Time for taking; grounds.** When a petition has been heard before a compensation judge, 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, the party may appeal to the workers' compensation court of appeals on any of the following grounds:

(1) the order does not conform with this chapter; or

(2) the compensation judge committed an error of law; or

(3) the findings of fact and order were unsupported by substantial evidence in view of the entire record as submitted; 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 workers' compensation court of appeals may extend the time for taking the appeal for not more than 30 additional days.

Subd. 3. **Notice of appeal.** The appellant or the appellant's attorney shall prepare and sign a written notice of appeal specifying:

(1) the order appealed from;

(2) that appellant appeals from the order to the workers' compensation court of appeals;

(3) the particular finding of fact or conclusion of law which the appellant claims was unsupported by substantial evidence in view of the entire record as submitted or procured by fraud, coercion, or other improper conduct; and

(4) any other ground upon which the appeal is taken.

An appeal initiates the preparation of a typewritten transcript of the entire record unless the appeal is solely from an award of attorney's fees or an award of costs and disbursements or unless otherwise ordered by the court of appeals. On appeals from an award of attorney's fees or an award of costs and disbursements, the appellant must specifically delineate in the notice of appeal the portions of the record to be transcribed in order for the court of appeals to consider the appeal.

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 chief administrative law judge and file a copy with the commissioner;

(3) in order to defray the cost of the preparation of the record of the proceedings appealed from, pay to the state treasurer, office of administrative hearings account the sum of $25.

The first party to file an appeal is liable for the original cost of preparation of the transcript. Cross-appellants or any other persons requesting a copy of the transcript are liable for the cost of the copy. The cost of a transcript prepared by a nongovernmental source shall be paid directly to that source and shall not exceed the cost that the source would be able to charge the state for the same service.

Upon a showing of cause, the chief administrative law judge may direct that a transcript be prepared without expense to the party requesting its preparation, in which case the cost of the transcript shall be paid by the office of administrative hearings.

All fees received by the office of administrative hearings for the preparation of the record for submission to the workers' compensation court of appeals or for the cost of transcripts prepared by the office shall be deposited in the office of administrative hearings account in the state treasury and shall be used solely for the purpose of keeping the record of hearings conducted under this chapter and the preparation of transcripts of those hearings.

Subd. 5. **Transcript; certification of the record.** When the notice of appeal has been filed with the chief administrative law judge and the fee for the preparation of the record has been paid, the chief administrative law judge shall immediately order the preparation of a typewritten transcript of that part of the hearing delineated in the notice. The official reporter or other person designated by the chief administrative law judge who transcribes the proceedings shall certify to their correctness.

If the transcript is prepared by a person who is not an employee of the office of administrative hearings, upon completion of the transcript, the original shall be filed with the chief administrative law judge.

When the transcript has been completed and is on file with the chief administrative law judge, the chief judge shall certify the record to the workers' compensation court of appeals and notify the commissioner of the certification.

Subd. 6. **Powers of workers' compensation court of appeals on appeal.** On an appeal taken under this section, the workers' compensation court of appeals' review is limited to the issues raised by the parties in the notice of appeal or by a cross-appeal. In these cases, on those issues raised by the appeal, the workers' compensation court of appeals may:

(1) grant an oral argument based on the record before the compensation judge;

(2) examine the record;

(3) substitute for the findings of fact made by the compensation judge findings based on the total evidence;

(4) sustain, reverse, make or modify an award or disallowance of compensation or other order based on the facts, findings, and law; and,

(5) remand or make other appropriate order.

Subd. 7. **Record of proceedings.** At the division's own expense, the commissioner shall make a complete record of all proceedings before the commissioner and shall provide a stenographer or an audio magnetic recording device to make the record of the proceedings.

The commissioner shall furnish a transcript of these proceedings to any person who requests it and who pays a reasonable charge which shall be set by the commissioner. Upon a showing of cause, the commissioner may direct that a transcript be prepared without expense to the person requesting the transcript, in which case the cost of the transcript shall be paid by the division. Transcript fees received under this subdivision shall be paid to the workers' compensation division account in the state treasury and shall be annually appropriated to the division for the sole purpose of providing a record and transcripts as provided in this subdivision. This subdivision does not apply to any administrative conference or other proceeding before the commissioner which may be heard de novo in another proceeding including but not limited to proceedings under section 176.102, 176.103, 176.242, or 176.243.

History: *1953 c 755 s 59; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 113-115; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 120-124; 3Sp1981 c 2 art 1 s 21-23; 1983 c 290 s 150-153; 1983 c 301 s 148-150; 1984 c 432 art 2 s 46; 1984 c 640 s 32; 1986 c 444; 1986 c 461 s 32*

176.43 [Repealed, 1953 c 755 s 83]

176.431 [Repealed, 1986 c 461 s 37]

176.44 [Repealed, 1953 c 755 s 83]

176.441 Subdivision 1. [Repealed, 1986 c 461 s 37]

Subd. 2. [Repealed, 1981 c 346 s 145; 1986 c 461 s 37]

176.442 APPEALS FROM DECISIONS OF COMMISSIONER.

Except for a commissioner's decision which may be heard de novo in another proceeding including but not limited to a decision from an administrative conference under section 176.102, 176.103, 176.242, or 176.243, any decision or determination of the commissioner affecting a right, privilege, benefit, or duty which is imposed or conferred under this chapter is subject to review by the workers' compensation court of appeals. A person aggrieved by the determination may appeal to the workers' compensation court of appeals by filing a notice of appeal with the commissioner in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals.

History: *1973 c 388 s 119; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1983 c 290 s 154; 1984 c 432 art 2 s 47*

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 the employee's 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 court administrator 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. **Court administrator's fees.** The court administrator shall charge $5 for the entire service the court administrator performs under this section.

Subd. 4. **Matters for determination; judgment.** When a judge 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.

History: *1953 c 755 s 62; 1986 c 442 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

176.46 [Repealed, 1953 c 755 s 83]

176.461 SETTING ASIDE AWARD.

Except when a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or if as a matter of law the determination of the supreme court cannot be subsequently modified, the workers' compensation court of appeals, for cause, at any time after an award, upon application of either party and not less than five working days after written notice to all interested parties, may set the award aside and grant a new hearing and refer the matter for a determination on its merits to the chief administrative law judge for assignment to a compensation judge, who shall make findings of fact, conclusions of law, and an order of award or disallowance of compensation or other order based on the pleadings and the evidence produced and as required by the provisions of this chapter or rules adopted under it.

History: *1953 c 755 s 63; Ex1967 c 40 s 15; 1973 c 388 s 120; 1975 c 271 s 6; 1975 c 359 s 18,23; 1976 c 134 s 78; 1981 c 346 s 127; 1983 c 290 s 155; 1984 c 640 s 32*

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 workers' compensation court of appeals has made an award or disallowance of compensation or other order, a party in interest who acts within 30 days from the date the party was served with notice of the order 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 workers' compensation court of appeals committed any other error of law; or,

(3) the findings of fact and order were unsupported by substantial evidence in view of the entire record as submitted.

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 administrator of the workers' compensation court of appeals within the 30 day period referred to in subdivision 1. The party shall also at this time pay to the administrator the fee prescribed by rule 103.01 of the rules of civil appellate procedure which shall be disposed of in the manner provided by that rule.

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 workers' compensation court of appeals 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 workers' compensation court of appeals 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 administrator of the workers' compensation court of appeals, the bond has been filed, and the filing fee has been paid, the administrator shall immediately transmit to the clerk of the appellate courts 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 administrator of the workers' compensation court of appeals, the administrator shall transmit to the clerk of the appellate courts a true and complete return of the proceedings of the workers' compensation court of appeals under review, or the part of those proceedings necessary to allow the supreme court to review properly the questions presented.

The workers' compensation court of appeals shall certify the return of the proceedings under its seal. The petitioner or relator shall pay to the administrator of the workers' compensation court of appeals 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 workers' compensation court of appeals has been filed with the clerk of the appellate courts, the supreme court shall hear and dispose of the matter as in other civil cases.

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.

History: *1953 c 755 s 64; 1971 c 686 s 1; 1973 c 388 s 121-124; 1975 c 271 s 6; 1975*

c 359 s 23; 1976 c 134 s 78; 1976 c 239 s 37; 1981 c 346 s 128-131; 1983 c 247 s 72-74; 1983 c 301 s 152; 1986 c 444

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 workers' compensation court of appeals for a new hearing or for further proceedings with such directions as the court deems proper.

History: *1953 c 755 s 65; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78*

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 for a new hearing before a compensation judge or further proceedings before the workers' compensation court of appeals.

History: *1953 c 755 s 66; 1973 c 388 s 125; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 132*

176.50 [Repealed, 1953 c 755 s 83]

176.501 ATTORNEY GENERAL ACTS FOR WORKERS' COMPENSATION COURT OF APPEALS.

Unless the workers' compensation court of appeals directs otherwise, when an order of the workers' compensation court of appeals is reviewed by the supreme court under this chapter, the attorney general shall represent the workers' compensation court of appeals. The attorney general shall prepare and present such papers, briefs, and arguments as the attorney general deems necessary to support the order under review.

History: *1953 c 755 s 67; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1986 c 444*

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 appeals before the workers' compensation court of appeals or hearings before a compensation judge, the rehabilitation review panel, or the medical services review board costs shall not be awarded to either party.

Subd. 2. **Disbursements, taxation.** The compensation judge, the commissioner on behalf of the rehabilitation review panel or the medical services review board or on appeals to the workers' compensation court of appeals, the workers' compensation court of appeals 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 workers' compensation court of appeals, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the workers' compensation court of appeals 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.

History: *1953 c 755 s 68; 1969 c 276 s 2; 1973 c 388 s 126; 1975 c 271 s 6; 1975 c 359 s 19,23; 1976 c 134 s 78; 1977 c 342 s 22; 1981 c 346 s 133; 1985 c 234 s 16,17*

176.52 [Repealed, 1953 c 755 s 83]

176.521 SETTLEMENT OF CLAIMS.

Subdivision 1. **Validity.** An agreement between an employee or an employee's dependent and the employer or insurer to settle any claim, which is not upon appeal before the workers' compensation court of appeals, for compensation under this chapter is valid where it has been executed in writing and signed by the parties and intervenors in the matter, and, where one or more of the parties is not represented by an attorney, the division or a compensation judge has approved the settlement and made an award thereon. If the matter is upon appeal before the workers' compensation court of appeals or district court, the workers' compensation court of appeals or district court is the approving body.

Subd. 2. **Approval.** Settlements shall be approved only if the terms conform with this chapter.

The division, a compensation judge, the workers' compensation court of appeals, and the district court 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. A settlement agreement where both the employee or the employee's dependent and the employer or insurer and intervenors in the matter are represented by an attorney shall be conclusively presumed to be reasonable, fair, and in conformity with this chapter except when the settlement purports to be a full, final, and complete settlement of an employee's right to medical compensation under this chapter or rehabilitation under section 176.102. A settlement which purports to do so must be approved by the division, a compensation judge, or workers' compensation court of appeals.

The conclusive presumption in this subdivision applies to a settlement agreement entered into on or after January 15, 1982, whether the injury to which the settlement applies occurred prior to or on or after January 15, 1982.

Subd. 2a. **Settlements not subject to approval.** When a settled case is not subject to approval, upon receipt of the stipulation for settlement, a compensation judge, a settlement judge, or the workers' compensation court of appeals shall immediately sign the award and file it with the commissioner. Payment pursuant to the award shall be made within 14 days after it is filed with the commissioner. The commissioner may correct mathematical or clerical errors at any time.

Subd. 3. **Setting aside award upon settlement.** Notwithstanding the provisions of subdivision 1, 2, or 2a, or any provision in the agreement of settlement to the contrary, upon the filing of a petition by any party to the settlement, the workers' compensation court of appeals may set aside an award made upon a settlement, pursuant to this chapter. In appropriate cases, the workers' compensation court of appeals may refer the matter to the chief administrative law judge for assignment to a compensation judge for hearing.

History: *1953 c 755 s 69; 1973 c 388 s 127,128; 1975 c 271 s 6; 1975 c 359 s 23; 1976*

c 134 s 78; 1979 c 271 s 1; Ex1979 c 3 s 60; 1981 c 346 s 134,135; 3Sp1981 c 2 art 1 s 24-26; 1983 c 290 s 156-158; 1984 c 640 s 32; 1986 c 444; 1986 c 461 s 33

176.522 NOTICE TO EMPLOYER.

An employer shall be notified by the insurer 30 days after any final valid settlement is approved or otherwise made final under any provision of this chapter. The notice shall include all terms of the settlement including the total amount of money required to be reserved in order to pay the claim.

History: *1983 c 290 s 159*

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 there has been an award of compensation under this chapter to 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.** It is the intent of this section that there be prompt payment of compensation.

History: *1953 c 755 s 70; 1973 c 388 s 129; 1981 c 346 s 136*

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 commissioner of the department of labor and industry believes that a claim against the state for compensation should be contested, the commissioner 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 commissioner of the department of labor and industry or a department of this state requests the attorney general to assume the defense, the attorney general shall do so.

Subd. 4. **Medical examination of employee; witnesses; conduct of defense.** In conducting a defense against a claim for compensation, the commissioner of the department of labor and industry 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 commissioner of the department of labor and industry may employ such legal and clerical help as authorized by the department of administration. 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.

Subd. 7. **Historical society as state department.** For the purposes of workers' compensation as provided by this chapter, the Minnesota historical society is a state department and such chapter applies to its employees the same as it applies to employees of any department of the state government.

Subd. 8. **State may insure.** The state of Minnesota may elect to insure its liability under the workers' compensation law for persons employed under the federal Emergency Employment Act of 1971, as amended, and the Comprehensive Employment and Training Act of 1973, as amended, with an insurer properly licensed in Minnesota.

History: *1953 c 755 s 71; 1967 c 8 s 1; 1971 c 422 s 10; 1973 c 388 s 130-133; 1975 c 2 s 2; 1975 c 359 s 23; 1986 c 444*

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.

History: *1953 c 755 s 72*

176.56 [Repealed, 1953 c 755 s 83]

176.561 WORKERS' COMPENSATION COURT OF APPEALS POWERS AND DUTIES AS TO STATE EMPLOYEES; PROCEDURE FOR DETERMINING LIABILITY.

The division, a compensation judge and the workers' compensation court of appeals have the same powers and duties in matters relating to state employees as they have in relation to other employees.

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

History: *1953 c 755 s 73; 1973 c 388 s 134; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1983 c 290 s 160*

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 commissioner of the department of labor and industry has otherwise received information of the occurrence of an injury to a state employee for which liability to pay compensation may exist, the commissioner of the department of labor and industry shall make a preliminary investigation to determine the question of probable liability.

In making this investigation, the commissioner of the department of labor and industry may require the assistance of the head of any department or any employee of the state. The commissioner of the department of labor and industry 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 commissioner of the department of labor and industry has completed an investigation, the commissioner shall make findings of fact and shall enter an award or other order which the commissioner proposes to make relating to the liability of the state to pay compensation.

Subd. 3. **Copies of findings and proposed order, mailing.** The commissioner of

the department of labor and industry shall mail a copy of the findings and proposed order to the employee, the head of the department in which the employee 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 commissioner of the department of labor and industry may fix, the employee, or the head of the department, or the attorney general, may file an objection to the order with the commissioner of the department of labor and industry.

Subd. 5. **Reconsideration of order.** When an objection has been filed under subdivision 4, the commissioner of the department of labor and industry shall reconsider a proposed order. Subject to subdivision 6, in making this reconsideration, the commissioner of the department of labor and industry 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.** If the commissioner determines that a formal hearing on the objections which have been filed to the proposed order is warranted, the commissioner shall refer the matter to the chief administrative law judge for the assignment of a compensation judge who shall hold 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 commissioner of the department of labor and industry to reform or modify it under this chapter.

The findings and order which the commissioner of the department of labor and industry makes upon a reconsideration are likewise final though subject to the same review under this chapter.

History: *1953 c 755 s 74; 1973 c 388 s 135-141; 1983 c 290 s 161; 1984 c 640 s 32; 1986 c 444*

176.572 CONTRACT WITH INSURANCE CARRIERS.

The commissioner may contract with group health insurance carriers or health maintenance organizations to provide health care services and reimburse health care payments for injured state employees entitled to benefits under this chapter.

History: *1983 c 290 s 162*

176.58 [Repealed, 1953 c 755 s 83]

176.581 FINDINGS AND FINAL ORDER.

Subdivision 1. **Filing of certified copies.** The commissioner of the department of labor and industry shall file a certified copy of the findings and final order with the attorney general and the commissioner of finance.

Subd. 2. **Payment of compensation.** 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 the employee's 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 commissioner of the department of labor and industry all current interim and final receipts for such payment as is required of employers.

History: *1953 c 755 s 75; 1973 c 388 s 142-144; 1973 c 492 s 14; 1986 c 444*

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 commissioner of the department of labor and industry.

History: *1953 c 755 s 76; 1973 c 388 s 145*

176.60 [Repealed, 1953 c 755 s 83]

176.601 [Repealed, 1974 c 355 s 30]

176.602 PAYMENTS FROM STATE COMPENSATION REVOLVING FUND.

The state treasurer shall only pay from the state compensation revolving fund the awards of compensation and the expenses of other benefits to an employee or the employee's dependent.

History: *1974 c 355 s 31; 1986 c 444*

176.603 COST OF ADMINISTERING CHAPTER, PAYMENT.

The annual cost to the commissioner of the department of labor and industry of administering this chapter in relation to state employees and the necessary expenses which the department of labor and industry or the attorney general incurs in investigating, administering, and defending a claim against the state for compensation shall be paid from the state compensation revolving fund.

History: *1974 c 355 s 32; 1986 c 461 s 34*

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. **State departments.** Every department of the state, including the University of Minnesota, shall reimburse the fund for money paid for the administration of its claims at such times and in such amounts as the commissioner of the department of labor and industry shall certify has been paid out of the fund on its behalf. The heads of the departments shall anticipate these payments by including them in their budgets.

Subd. 3. [Repealed, 1986 c 461 s 37]

Subd. 4. [Repealed, 1986 c 461 s 37]

Subd. 5. [Repealed, 1974 c 355 s 14]

Subd. 6. [Repealed, 1974 c 355 s 14]

Subd. 6a. **Appropriations constituting fund.** There is hereby appropriated from the general fund in the state treasury to the state compensation revolving fund the sum of $967,690 to be used to pay claims of employees of the state. This appropriation together with the sum of $74,013.12 heretofore appropriated from the trunk highway fund and $2,395,986.88 heretofore appropriated from the general fund totals $3,437,690 and constitutes the revolving fund.

History: *1953 c 755 s 78; 1955 c 744 s 1; 1957 c 656 s 1; 1963 c 551 s 1; 1965 c 57 s 1; 1969 c 399 s 49; 1971 c 907 s 1; 1973 c 388 s 147-149; 1974 c 355 s 15; 1975 c 204 s 77; 1976 c 166 s 7; 1979 c 50 s 19; 1986 c 461 s 35*

176.62 [Repealed, 1953 c 755 s 83]

176.621 [Repealed, 1975 c 61 s 26]

176.63 [Repealed, 1953 c 755 s 83]

176.631 [Repealed, 1975 c 61 s 26]

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.

History: *1953 c 755 s 81*

176.645 ADJUSTMENT OF BENEFITS.

Subdivision 1. **Amount.** 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 total benefits due the employee or any dependents shall be adjusted in accordance with this section. On October 1, 1981, and thereafter on the anniversary of the date of the employee's injury the total benefits due shall be adjusted by multiplying the total benefits due prior to each adjustment by a fraction, the denominator of which is the statewide average weekly wage for December 31, of the year two years previous to the adjustment and the numerator of which is the statewide average weekly wage for December 31, of the year previous 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.

Subd. 2. **Time of first adjustment.** For injuries occurring on or after October 1, 1981, the initial adjustment made pursuant to subdivision 1 shall be deferred until the first anniversary of the date of the injury.

History: *1975 c 359 s 20; 1977 c 342 s 23; 1981 c 346 s 137*

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.

History: *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 shall be regarded as a personal injury within the meaning of the workers' compensation law.

Subd. 2. [Repealed, 1973 c 643 s 12]

Subd. 3. [Repealed, 1973 c 643 s 12]

Subd. 4. [Repealed, 1973 c 643 s 12]

Subd. 5. [Repealed, 1973 c 643 s 12]

Subd. 6. [Repealed, 1973 c 643 s 12]

Subd. 7. [Repealed, 1973 c 643 s 12]

Subd. 8. [Repealed, 1973 c 643 s 12]

Subd. 9. [Repealed, 1973 c 643 s 12]

Subd. 10. **Multiple employers or insurers; liability.** The employer liable for the

compensation for a personal injury under this chapter is the employer in whose employment the employee was last exposed in a significant way to the hazard of the occupational disease. In the event that the employer who is liable for the compensation had multiple insurers during the employee's term of employment, the insurer who was on the risk during the employee's last significant exposure to the hazard of the occupational disease is the liable party. Where there is a dispute as to which employer is liable under this section, the employer in whose employment the employee is last exposed to the hazard of the occupational disease shall pay benefits pursuant to section 176.191, subdivision 1. If this last employer had coverage for workers' compensation liability from more than one insurer during the employment the insurer on the risk during the last period during which the employee was last exposed to the hazard of the occupational disease shall pay benefits as provided under section 176.191, subdivision 1, whether or not this insurer was on risk during the last significant exposure. The party making payments under this section shall be reimbursed by the party who is subsequently determined to be liable for the occupational disease, including interest at a rate of 12 percent a year. For purposes of this section, a self-insured employer shall be considered to be an insurer and an employer.

Subd. 11. **Amount of compensation.** The compensation for an occupational disease is 66-2/3 percent of the employee's weekly wage on the date of injury subject to a maximum compensation equal to the maximum compensation in effect on the date of last exposure. The employee shall be eligible for supplementary benefits notwithstanding the provisions of section 176.132, after four years have elapsed since the date of last significant exposure to the hazard of the occupational disease if that employee's weekly compensation rate is less than the current supplementary benefit rate.

History: *(4327) 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; 1963 c 497 s 2; 1967 c 905 s 9; Ex1967 c 1 s 6; 1973 c 643 s 11; 1975 c 359 s 23; 1983 c 290 s 163,164; 1984 c 432 art 2 s 48,49; 1985 c 234 s 18*

176.661 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]
176.662 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]
176.663 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]
176.664 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]
176.665 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]
176.666 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]
176.667 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]
176.668 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.669 EXPENSES; RULES.

Subdivision 1. **Payment of expenses.** Any expense incurred by the department of labor and industry 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 department shall make such rules and orders with reference to procedure as it deems necessary not inconsistent with Laws 1943, chapter 633.

History: *1943 c 633 s 15,16; 1969 c 9 s 49; 1973 c 388 s 164,165; 1985 c 248 s 70*

176.67-176.79 [Repealed, 1953 c 755 s 83]
176.80 [Obsolete]
176.81 [Repealed, 1953 c 755 s 83]

176.82 ACTION FOR CIVIL DAMAGES FOR OBSTRUCTING EMPLOYEE SEEKING BENEFITS.

Any person discharging or threatening to discharge an employee for seeking

workers' compensation benefits or in any manner intentionally obstructing an employee seeking workers' compensation benefits is liable in a civil action for damages incurred by the employee including any diminution in workers' compensation benefits caused by a violation of this section including costs and reasonable attorney fees, and for punitive damages not to exceed three times the amount of any compensation benefit to which the employee is entitled. Damages awarded under this section shall not be offset by any workers' compensation benefits to which the employee is entitled.

History: *1975 c 359 s 21,23*

176.83 RULES.

Subdivision 1. **Generally.** In addition to any other section under this chapter giving the commissioner the authority to adopt rules, the commissioner may adopt, amend, or repeal rules to implement the provisions of this chapter. The rules include but are not limited to the rules listed in this section.

Subd. 2. **Rehabilitation.** Rules necessary to implement and administer section 176.102, including the establishment of qualifications necessary to be a qualified rehabilitation consultant and the requirements to be an approved registered vendor of rehabilitation services.

The rules may also provide for penalties to be imposed by the commissioner against insurers or self-insured employers who fail to provide rehabilitation consultation to employees pursuant to section 176.102.

These rules may also establish criteria for determining "reasonable moving expenses" under section 176.102.

The rules shall also establish criteria, guidelines, methods, or procedures to be met by an employer or insurer in providing the initial rehabilitation consultation required under this chapter which would permit the initial consultation to be provided by an individual other than a qualified rehabilitation consultant. In the absence of rules regarding an initial consultation this consultation shall be conducted pursuant to section 176.102.

Subd. 3. **Clinical consequences.** Rules establishing standards for reviewing and evaluating the clinical consequences of services provided by qualified rehabilitation consultants, approved registered vendors of rehabilitation services, and services provided to an employee by health care providers.

Subd. 4. **Excessive charges for medical services.** Rules establishing standards and procedures for determining whether or not charges for health services or rehabilitation services rendered under this chapter are excessive. In this regard, the standards and procedures shall be structured to determine what is necessary to encourage providers of health services and rehabilitation services to develop and deliver services for the rehabilitation of injured employees.

The procedures shall include standards for evaluating hospital care, other health care and rehabilitation services to insure that quality hospital, other health care, and rehabilitation is available and is provided to injured employees.

Subd. 5. **Excessive medical services.** In consultation with the medical services review board or the rehabilitation review panel, rules establishing standards and procedures for determining whether a provider of health care services and rehabilitation services, including a provider of medical, chiropractic, podiatric, surgical, hospital or other services, is performing procedures or providing services at a level or with a frequency that is excessive, based upon accepted medical standards for quality health care and accepted rehabilitation standards.

If it is determined by the payer that the level, frequency or cost of a procedure or service of a provider is excessive according to the standards established by the rules, the provider shall not be paid for the excessive procedure, service, or cost by an insurer, self-insurer, or group self-insurer, and the provider shall not be reimbursed or attempt to collect reimbursement for the excessive procedure, service, or cost from any other source, including the employee, another insurer, the special compensation fund, or any

government program unless the commissioner, medical services review board, or workers' compensation court of appeals determines at a hearing that the level, frequency, or cost was not excessive in which case the insurer, self-insurer, or group self-insurer shall make the payment deemed reasonable.

A health or rehabilitation provider who is determined by the commissioner to be consistently performing procedures or providing services at an excessive level or cost may be prohibited from receiving any further reimbursement for procedures or services provided under this chapter. A prohibition imposed on a provider under this subdivision may be grounds for revocation or suspension of the provider's license or certificate of registration to provide health care or rehabilitation service in Minnesota by the appropriate licensing or certifying body.

The rules adopted under this subdivision shall require insurers, self-insurers, and group self-insurers to report medical and other data necessary to implement the procedures required by this clause.

Subd. 6. **Certification of medical providers.** Rules establishing procedures and standards for the certification of physicians, chiropractors, podiatrists, and other health care providers in order to assure the coordination of treatment, rehabilitation, and other services and requirements of chapter 176 for carrying out the purposes and intent of this chapter.

Subd. 7. **Miscellaneous rules.** Rules necessary for implementing and administering the provisions of sections 176.131, 176.132, 176.134, sections 176.242 and 176.243; sections 176.251, 176.66 to 176.669, and rules regarding proper allocation of compensation under section 176.111. Under the rules adopted under section 176.111 a party may petition for a hearing before a compensation judge to determine the proper allocation. In this case the compensation judge may order a different allocation than prescribed by rule.

Subd. 8. **Change of provider.** Rules establishing standards or criteria under which a physician, podiatrist, or chiropractor is selected or under which a change of physician, podiatrist, or chiropractor is allowed under section 176.135, subdivision 2.

Subd. 9. **Intervention.** Rules to govern the procedure for intervention pursuant to section 176.361.

Subd. 10. **Joint rules.** Joint rules with either or both the workers' compensation court of appeals and the chief administrative law judge which may be necessary in order to provide for the orderly processing of claims or petitions made or filed pursuant to this chapter.

Subd. 11. **Suitable gainful employment.** Rules establishing criteria to be used by the division, compensation judge, and workers' compensation court of appeals to determine "suitable gainful employment" and "independent contractor."

Subd. 12. **Compensation judge procedures.** The chief administrative law judge shall adopt rules relating to procedures in matters pending before a compensation judge in the office of administrative hearings.

Subd. 13. **Claims adjuster.** The commissioner may adopt rules regarding requirements which must be met by individuals who are employed by insurers or self-insurers or claims servicing or adjusting agencies and who work as claims adjusters in the field of workers' compensation insurance.

Subd. 14. **Rehabilitation consultant qualifications.** The commissioner may adopt emergency rules establishing qualifications necessary to be a qualified rehabilitation consultant and penalties to be imposed against qualified rehabilitation consultants or approved vendors who violate this chapter or rules, including emergency rules, adopted under this chapter. In addition to the provisions of sections 14.29 to 14.36, at least one public hearing shall be held prior to the adoption of these emergency rules.

Subd. 15. **Forms.** The commissioner may prescribe forms and other reporting procedures to be used by an employer, insurer, medical provider, qualified rehabilitation consultant, approved vendor of rehabilitation services, attorney, employee, or other person subject to the provisions of this chapter.

History: *1983 c 290 s 165; 1984 c 432 art 2 s 50; 1984 c 640 s 32; 1986 c 461 s 36*

176.84 SPECIFICITY OF NOTICE OR STATEMENT.

All notices or statements required by this chapter including, but not limited to, notices or statements pursuant to sections 176.102; 176.221; 176.241; 176.242; and 176.243 shall be sufficiently specific to convey clearly, without further inquiry, the basis upon which the party issuing the notice or statement is acting. If the commissioner or compensation judge determines that a notice or statement is not sufficiently specific to meet the standard under this section, the notice or statement may be rejected as unacceptable and the party issuing it shall be informed of this. The rejected notice or statement may be amended to meet the requirement of this section or a new one may be filed.

History: *1983 c 290 s 166*

176.85 PENALTIES; APPEALS.

Subdivision 1. **Appeal procedure.** If the commissioner has assessed a penalty against a party subject to this chapter and the party believes the penalty is not warranted, the party may request that a formal hearing be held on the matter. The request must be filed within 30 days of the date that the penalty assessment is served on the party. Upon receipt of a timely request for a hearing the commissioner shall refer the matter to the chief administrative law judge for assignment to a compensation judge or administrative law judge.

The chief administrative law judge shall keep a record of the proceeding and provide a record pursuant to section 176.421.

The decision of the compensation judge or administrative law judge shall be final and shall be binding and enforceable. The decision may be appealed to the workers' compensation court of appeals.

Subd. 2. **Exception.** This section does not apply to penalties for which another appeal procedure is provided, including but not limited to penalties imposed pursuant to section 176.102 or 176.103.

Subd. 3. **Hearing costs.** For purposes of this section, a hearing before an administrative law judge shall be treated in the same manner as a hearing before a compensation judge and no costs may be charged to the commissioner for the hearing, regardless of who hears it.

History: *1983 c 290 s 167; 1984 c 432 art 2 s 51; 1984 c 640 s 32*