

Workers' compensation settlements

This document contains general information. It is not legal advice. Every situation is different and other laws might apply to your situation. If you have questions, contact an attorney, visit the Department of Labor and Industry website at www.dli.mn.gov/WorkComp.asp or call the workers' compensation hotline at 1-800-342-5354 and press 3.

What does settlement mean?

Generally, when people in the workers' compensation system use the term "settlement," they are referring to a written agreement reached by the employee and the employer/insurer. The agreement is not effective until a workers' compensation judge issues an order approving the settlement. The written agreement is called a Stipulation for Settlement and the order is called an Award on Stipulation. The agreement often requires an employee to give up the right to past and/or future workers' compensation benefits. In return, the employee receives a specific sum of money from the employer/insurer.

Must I settle my workers' compensation claim?

No, you are not required to settle any of your workers' compensation benefits, but you may choose to settle some or all of your benefits if the settlement proposal is acceptable to you. You do not have to enter into a settlement to receive the benefits owed to you under the law. However, settlements frequently occur because they are often a practical result for the parties, usually when the employer/insurer disputes that the injury or medical condition is work-related or that the employee is entitled to certain benefits.

What are "intervenor"?

Intervenors are parties who may gain or lose by a settlement agreement, other than you (the employee), the employer and the insurer. Examples of intervenors are health care providers that treated you, state or federal agencies that provided you with assistance (such as Medicare), health insurers that paid for your medical care and other insurers that paid you short- or long-term disability benefits or benefits under a motor-vehicle policy.

Do settlements have to be approved by a judge?

Yes, most of the time settlements have to be approved by a judge. An agreement between an employee, or his/her dependent(s) and/or estate, and the employer/insurer to settle any claim for workers' compensation benefits is valid when it has been executed in writing and signed by the parties, including the intervenors. Where one or more of the parties is not represented by an attorney, the settlement is not valid unless the commissioner of the Department of Labor and Industry or a compensation judge approves it and issues an

award. Generally, when attorneys represent the parties, the settlement is automatically approved and legally binding after a judge's signature. However, if an agreement completely and finally settles out an employee's rights to medical compensation or vocational rehabilitation services, the judge must review, evaluate and approve the settlement for it to be binding. Usually the Stipulation for Settlement will be submitted to a compensation judge at the Office of Administrative Hearings.

What are some factors to consider when evaluating a settlement proposal?

It is best to think carefully about the future consequences of any settlement decision you make. Below are some examples of questions that are important to consider as you evaluate the nature and extent of your potential future benefits and the likelihood of establishing your right to them in a hearing.

What is the nature of your injury?

1. How severe is your injury?
2. What is the state of your physical recovery?
3. Will you need future medical treatment for your injury, including surgery?

What are your employment prospects?

1. What are your work restrictions?
2. Have you been offered a suitable job?
3. Have you returned to work at a light-duty job?
4. Are you receiving vocational rehabilitation?
5. Do you have a claim for retraining?

What are your current and future sources of income?

1. Are you receiving wage-loss benefits?
2. Are there other disability benefits that would be affected by your settlement, such as Social Security disability?
3. Are you close to or currently eligible for any retirement benefits?
4. Are you able to manage a lump-sum settlement to meet your future needs?

How will you pay for your future medical expenses?

1. Do you have health insurance?
2. Will you need future medical treatment?

What is the nature of the dispute about your entitlement to benefits?

1. How far along in proving your claim are you?
2. What is the likelihood you will be able to clearly establish you are, in fact, entitled to all of the benefits you claim or may claim in the future?
3. Is your permanent partial disability rated by a doctor; if so, to what degree? Is the rating in dispute?

What does a Stipulation for Settlement include?

A Stipulation for Settlement should contain a brief statement of the admitted material facts, a statement of the matters in dispute, the positions of the parties and supporting documentation, and the matters agreed upon by the parties.

The Stipulation for Settlement may also include the weekly wage at the time of injury, the compensation rate, prior payments by the employer/insurer and third parties (intervenor), statements concerning entitlement to adjustments and specific statements concerning vocational rehabilitation and medical expenses, including whether they have been paid and by whom, as well as other information specific to your case.

The Stipulation for Settlement will often include a section on attorney fees that will be paid. Finally, the Stipulation for Settlement will state what the employer/insurer is paying you in exchange for the claims for specific workers' compensation benefits you are giving up.

What will I be giving up as a result of the settlement?

The settlement may be a full, final and complete settlement of all of the possible benefits you could receive or it may settle just a portion of your claims for benefits. For example, you and the employer/insurer may disagree about a proposed surgery and negotiate only your claim regarding that surgery. Make sure you understand the type of settlement the employer/insurer is offering and what benefits your settlement will affect. The benefits you are entitled to are controlled by the law on the date you were injured. Ask questions so that you clearly understand what you are giving up and what you are getting in return.

For example, if you agree to a full, final and complete settlement with only limited medical benefits left open, the only benefits you can claim after the award on the settlement is medical treatment that is not specifically closed out in the Stipulation for Settlement. In the future, you would not receive any wage-loss benefits or any vocational rehabilitation services to assist with your return-to-work efforts. The trade-off is that you will typically receive one or more cash payments.

When can settlements be set aside and reopened?

The Workers' Compensation Court of Appeals can set aside a settlement for good cause if it was based on fraud or a mistake of both parties or if there is newly discovered evidence or a substantial change in the employee's

medical condition. You should never enter into a final settlement with the expectation that you can reopen it later. The court is reluctant to set aside settlements.

Here is a list of the most common types of workers' compensation benefits. For each of the following, make sure you understand for what period of time you are settling the benefit. Are you giving up the benefit forever (past, present and future)? Are you giving up the benefit only through the date of settlement? The parties can agree to close benefits for any period of time they wish. You should read the Stipulation for Settlement carefully and talk to your attorney if you do not understand the benefits you are giving up and why.

A. **Wage loss and permanent impairment** – A Stipulation for Settlement may close out any or all of the following:

- temporary total disability (compensation for loss of wages if temporarily unable to work);
- temporary partial disability (compensation for loss of wages due to returning to work at reduced hours or wages);
- permanent total disability (compensation for permanent loss of wages if it is determined you will never be able to return to work);
- adjustment of benefits (a cost-of-living adjustment to wage-loss benefits); and
- permanent partial disability (compensation for permanent physical impairment, according to a health care provider's rating, close out may be limited to a specific percentage).

B. **Interest, penalties, etc.** – These may be payable in certain circumstances when benefits are not paid by an employer/insurer on time or in the correct amount.

C. **Attorney fees and costs** – Under the law, if you hire an attorney to pursue workers' compensation benefits on your behalf, generally your attorney's fees are deducted from your benefits and paid to your attorney. The fees are a percentage of the benefits obtained for you by the attorney. There are also other types of attorney's fees the employer/insurer may have to pay.

D. **Vocational rehabilitation** – These are services/benefits associated with the return-to-work process and may include retraining.

E. **Medical treatment and expenses** – These are specific and unique to each employee's claim. The Stipulation for Settlement should be very detailed about what medical treatment you are giving up and what treatment remains available to you after the settlement. The Stipulation for Settlement should address whether the employer/insurer will pay for the following.

- Medical bills that are outstanding at the time of the settlement or reimbursement to a third party that paid medical bills on your behalf.
- Reimbursements to you for your out-of-pocket medical expenses, past and future, which might include reimbursement for money you paid for over-the-counter medication, co-pays, medical supplies, parking and mileage to attend medical appointments.

- Future medical treatment you might need to treat your injury. Read the Stipulation for Settlement carefully to see if your claims for future medical treatment are limited or foreclosed entirely. Commonly, claims for future treatment are limited to specific body parts or specific types of treatment.

What department resources are available?

The Department of Labor and Industry has an Alternative Dispute Resolution unit that is available to assist you and the employer/insurer if you decide to settle your claim. Many parties find the assistance of a mediator helpful in the settlement process. The mediator will not advise you whether you should accept a particular offer, but can facilitate discussions. The mediation process is voluntary – no party is required to participate. If no agreement is reached through the process, you may still pursue your legal remedies under workers’ compensation law. If an agreement is reached, the mediator can arrange for the Mediation Resolution/Award to be signed, awarded, and served and filed. Or, parties may choose to draft a Stipulation for Settlement reflecting the agreement and submit the stipulation to a compensation judge at the Office of Administrative Hearings for approval.

Workers’ compensation specialists are also available at (651) 284-5032 to help you understand workers’ compensation benefits. The specialist cannot give you legal advice; you should consult with a workers’ compensation attorney for legal advice. Information is also available online at www.dli.mn.gov/WorkComp.asp.

Twin Cities area

Minnesota Department of Labor and Industry
 Workers’ Compensation Division
 443 Lafayette Road N., St. Paul, MN 55155

Alternative Dispute Resolution specialists (651) 284-5032 or 1-800-342-5354
 Spanish speakers (651) 284-5099

Duluth area

Minnesota Department of Labor and Industry
 Workers’ Compensation Division
 525 Lake Ave. S., Suite 330, Duluth, MN 55802

Alternative Dispute Resolution specialists (218) 733-7810 or 1-800-342-5354
 Spanish speakers (651) 284-5099