

## 2022 advisory council legislation signed into law

Gov. Tim Walz signed legislation Feb. 3, 2022, enacting statutory amendments recommended by the [Workers' Compensation Advisory Council](#) (WCAC). This bill, H.F. 1203, adopts recommendations made by WCAC related to:

- licensure of certain Medical Services Review Board members;
- correction of misspellings of the Minnesota Insurance Guaranty Association;
- the filing location of certain workers' compensation documents; and
- the revival and reenactment the workers' compensation COVID-19 presumption through Jan. 13, 2023.

Below is a brief overview of the 2022 workers' compensation legislation, [2022 Minnesota Session Laws, Chapter 32 – H.F. No. 1203](#).

- **Article 1, Section 1** requires health care provider members of the Medical Services Review Board maintain a Minnesota license throughout their appointment period to practice under their specific designation.
- **Article 1, Sections 2 and 3** amend sections of chapter 176 to correct misspellings of the Minnesota Insurance Guaranty Association.
- **Article 2, Sections 1 to 12** make technical amendments to various sections of the statute to make clear that certain workers' compensation documents should be filed with the Office of Administrative Hearings (OAH) and not the commissioner of the Department of Labor and Industry. It also clarifies when OAH or a compensation judge has authority during workers' compensation litigation, rather than the commissioner.
- **Article 2, Section 13** repeals a section of the statute that is unnecessary due to the clarifications regarding where to file documents from the other changes in Article 2.
- **Article 3, Section 1** revives and reenacts the workers' compensation COVID-19 presumption statute (Minnesota Statutes § 176.011, subdivision 15 (f)), effective the day of enactment of the section, with a sunset at 11:59 p.m., Jan. 13, 2023.

### Detailed summary

A detailed summary of this bill, including the effective dates, begins on page 10.

## State offices reopening April 22

All Minnesota state office buildings will reopen effective Friday, April 22, 2022, as the state slowly ramps up to pre-COVID-19 operations. Details will be posted at [www.dli.mn.gov/updates](http://www.dli.mn.gov/updates) as reopening plans are developed.

## Summit set to return in 2022

Planning is underway to set a date and location for a 2022 Workers' Compensation Summit. We will share details about the summit and how to get involved as the plans firm up. Hope to see you there!

## Mileage rate increases for 2022

The standard IRS mileage rate for the business use of an employee's personal vehicle increased Jan. 1 from 56 to 58.5 cents a mile.



## Brian Mak named Alternative Dispute Resolution director

Brian Mak has been named the director of the Department of Labor and Industry's (DLI's) Alternative Dispute Resolution (ADR) unit. ADR brings prompt resolution of workers' compensation disputes through early intervention with the parties, with administrative conferences and with mediations where needed. It answers questions from injured workers, employers, health care providers, attorneys and qualified rehabilitation consultants (QRCs) through calls to the Workers' Compensation Division Help Desk and to the arbitrators, with questions escalated to the appropriate level of expertise.

Prior to his promotion, for the past three years Mak has served as a mediator and arbitrator, and then a supervisor of ADR. Mak's more than 25 year career in Minnesota workers' compensation has been wide-reaching – after a clerkship in a defense firm, he represented injured workers in a plaintiff firm, managed claims for self-insured employers and supervised claim teams at third-party administrators (TPAs). Mak is from Vancouver, British Columbia, and he received his undergraduate degree in liberal arts from Thomas Aquinas College in Santa Paula, California, and his law degree from William Mitchell College of Law in St. Paul, Minnesota.



Brian Mak, director, DLI Alternative Dispute Resolution

## Work Comp Campus continues to support stakeholders, provide resources

Work Comp Campus, DLI's workers' compensation claims portal that launched Nov. 2, 2020, continues to support internal and external stakeholders through:

- stakeholder-specific newsletters that include recent system update information – sign up at [www.dli.mn.gov/about-department/news-and-media/sign-news-department-labor-and-industry](http://www.dli.mn.gov/about-department/news-and-media/sign-news-department-labor-and-industry);
- posting of FAQs specific to each stakeholder group – see [www.dli.mn.gov/business/workers-compensation/work-comp-campus-faqs](http://www.dli.mn.gov/business/workers-compensation/work-comp-campus-faqs);
- online availability of training materials and video resources – see [www.dli.mn.gov/business/workers-compensation/work-comp-campus-training](http://www.dli.mn.gov/business/workers-compensation/work-comp-campus-training);
- an anonymous feedback form – see <https://secure.doli.state.mn.us/stakeholderfeedback/>; and
- staffing the Workers' Compensation Division Help Desk, which is available by phone or email Monday through Friday from 8 a.m. to 4:30 p.m. Contact the help desk at 651-284-5005 (press 3), 800-342-5354 (press 3) or [helpdesk.dli@state.mn.us](mailto:helpdesk.dli@state.mn.us).

A screenshot of the 'Sign In' page for the Department of Labor and Industry's Work Comp Campus. The page features the DLI logo and the text 'DEPARTMENT OF LABOR AND INDUSTRY WORK COMP CAMPUS'. Below the logo is a 'Sign In' heading, followed by an 'Email \*' field with a placeholder 'Email', and a 'Password \*' field. A link for 'Forgot password?' is visible. At the bottom, there are two buttons: a yellow 'Login' button with a key icon and a white 'Sign Up' button. The right side of the screenshot shows a scenic background image of a forest with tall trees and a body of water.

# Workers' compensation claims, costs continue to show long-term downward trend

By Ender Kavas, Hared Mah and Brian Zaidman, DLI Research and Statistics

Minnesota's workers' compensation total claim rate and the system cost per \$100 of payroll decreased in 2020, continuing the long-term downward trend in both. This is based on estimates of 2020 values that were strongly affected by the COVID-19 pandemic, causing an influx of COVID-19 claims and a reduction in employment, and leading to lower numbers of claims for other injuries and illnesses.

Figure 1 shows the estimated rate of paid claims per 100 full-time-equivalent (FTE) workers from 2000 through 2020. During this period, the total claim rate fell by 58%, from 8.1 to 3.4 per 100 FTE workers, and the indemnity claim rate fell by 21%, from 1.67 to 1.32. During the 20-year period, the total claim rate fell at an average annual rate of 3.6%, even though the total claim rate was stable from 2016 through 2019.

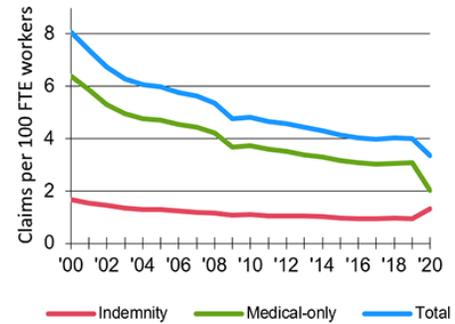
However, from 2019 to 2020, there was: a 41% increase in the indemnity claim rate from 0.94 to 1.32 per 100 FTE workers; a 34% decrease in the medical-only claim rate from 3.1 to 2.0; and a 16% decrease in the total claim rate from 4.0 to 3.4. These changes can be attributed to the impact of COVID-19 in 2020. COVID-19 claims accounted for 48% of the 2020 claims; nearly 90% of COVID-19 claims were for indemnity benefits, whereas most claims for all other injuries and illnesses were medical-only claims.

Figure 2 shows total workers' compensation system cost per \$100 of covered payroll. The total cost of Minnesota's workers' compensation system was an estimated \$1.63 billion for 2020, or \$.96 per \$100 of payroll. From 2000 through 2020, system cost fell from \$1.31 to \$.96 per \$100 of payroll, a drop of 27%. During the long term, system cost per \$100 of payroll follows a cycle of about 10 years.<sup>1</sup> Taking averages over adjacent 10-year periods gives an average annual rate of decline of 2.7%.

While the falling claim rate – at an average annual rate of 3.6% – tends to push down system cost per \$100 of payroll, the latter is also affected by the trend in average claim cost. As adjusted for average wage growth, average claim cost grew rapidly from 2000 to 2008, but has been relatively stable since 2008. Without the decrease in the claim rate, the increase in average claim cost during the first half of the period would have brought about an increase in system cost per \$100 of payroll, but the increase in average claim cost was counteracted by the falling claim rate.

**Figure 1**

**Paid claims per 100 full-time-equivalent workers, injury years 2000-2020 [1]**

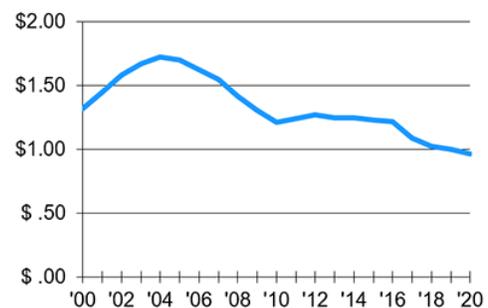


Injury year	Indemnity claims	Medical-only claims	Total claims
2000	1.67	6.4	8.1
2007	1.19	4.4	5.6
2016	.94	3.1	4.0
2017	.94	3.0	4.0
2018	.96	3.1	4.0
2019	.94	3.1	4.0
2020	1.32	2.0	3.4

1. Developed statistics from DLI data and other sources.

**Figure 2**

**System cost per \$100 of payroll, 2000-2020 [1]**



Injury year	Cost per \$100 of payroll
2000	\$1.31
2005	1.70
2010	1.21
2016 [2]	1.22
2017 [2]	1.09
2018 [2]	1.02
2019 [2]	1.00
2020 [2]	.96

1. Data from several sources. Includes insured and self-insured employers.  
2. Subject to revision.

<sup>1</sup>This cycle follows a nationwide cycle of alternating "hard" and "soft" insurance markets – periods of high and low premiums, respectively, relative to claim costs.

# Ask the ADR pro

## DLI's Alternative Dispute Resolution unit answers frequently asked questions

ADR contributors: Brian Mak, director; Donna Olson, supervisor; and Rena Cummings and Nancy Wallrich, mediators/arbitrators

*Editor's note: The Alternative Dispute Resolution (ADR) unit at the Minnesota Department of Labor and Industry seeks early intervention in workers' compensation disputes through conferences and mediation. It handles calls from the Workers' Compensation Division Help Desk and responds to questions from injured workers and their employers.*

**Q.** Can the Department of Labor and Industry (DLI) handle a vocational rehabilitation dispute if it involves a dollar amount greater than \$7,500?

**A.** Yes, the \$7,500 limit only applies to medical disputes. Minnesota Statutes 176.106, subdivision 1, provides that the commissioner shall have jurisdiction to have an administrative conference and issue decisions and orders under this section if the amount in dispute at the time the medical request is filed is \$7,500 or less. This rule does not apply to vocational rehabilitation disputes. DLI has jurisdiction to have conferences for all vocational rehabilitation disputes according to the authority granted in Minn. Stat. 176.106, subd. 1, and Minnesota Rules 5220.0950. No matter the size of the rehabilitation dispute, DLI has jurisdiction of the dispute, unless primary liability is denied by the employer or insurer. Minnesota Statutes 176.106, subd. 8, provides that the commissioner does not have authority to make determinations relating to medical or rehabilitation benefits when there is a genuine dispute about whether the injury initially arose out of and in the course of employment.

The \$7,500 limit also does not apply if the medical issue to be determined is whether a charge for a service, article or supply is excessive under [Minn. Stat. 176.136, subds. 1, 1a, 1b or 1c](#), and corresponding Minnesota Rules.

The final point to keep in mind is when the same or a nearly identical issue in the same case is pending with the Office of Administrative Hearings (OAH), the Workers' Compensation Court of Appeals or another court, DLI must decline to issue a decision and defer to OAH or the court if issuing a decision will result in an inconsistent determination (Minn. Rules 1415.3700, subpart 5).

**Q.** Could you share some tips on filing medical requests and rehabilitation requests in Work Comp Campus?

**A.** Medical requests and rehabilitation requests are now known as requests for assistance (RFA). Parties no longer need to complete a Medical Request or Rehabilitation Request form, make copies of the attachments for everyone who is to be served and file everything in the mail with the uncertainty of when it will arrive at DLI. By initiating a dispute in Campus and completing the fields, an RFA webform with an affidavit of service is created with any documents you have uploaded.

Upon successful submission, the RFA is served immediately on any service parties who are registered to be served electronically, with the document number displayed as proof of submission. Copies only need to be made for



those service recipients who are not set up to be served electronically. Which type of service is needed will be displayed in the "Affidavit of Service" section in Campus.

The following are helpful tips for initiating a dispute, to accomplish an efficient and accurate filing of an RFA.

- **Initiating a dispute:** Find this starting point either through your Campus homepage or from the "Claim" page of the relevant claim. In either case, click "Submit Filing," then "Initiate a Dispute." If you had previously initiated a dispute to request certification, go back to that dispute to start your RFA.
- **"Claim Locator" page:** If you cannot locate your claim with the data you have, contact the Workers' Compensation Division Help Desk to see if the claim information may be different from what you have. You can reach the help desk at 651-284-5005 (press 3), 800-342-5354 (press 3) or [helpdesk.dli@state.mn.us](mailto:helpdesk.dli@state.mn.us).
- **"Tell us more about the claim you are filing to" page:** If the claim does not exist, the dispute can still proceed – you will be prompted to enter some information about the injury. Be sure to complete all the required fields (marked with an asterisk), as well as the employee's nine-digit Social Security number and the address for the employee.
- **"Associated Claims" page:** The claim you have identified will be displayed; no additional claims are needed. Simply click "Next."
- **"Identify Other Parties in Dispute" line:** Click all the other parties to create the proper caption of the RFA.
- **"Choose a Dispute Resolution Service" line:** To file an RFA, select "Request an Administrative Conference." This tells DLI's Alternative Dispute Resolution (ADR) a conference needs to be scheduled. Other service options include requesting a dispute certification and requesting a mediation. These do not result in conferences being scheduled.
- **"What Type of Request are You Filing?" line:** Be sure to select either "Medical" or "Rehabilitation."
- **"Disputed Issues" line:** Be sure to select an issue to be heard; you can add more than one disputed issue.
- **"Supporting Attachments" line:** Uploaded exhibits need to be portable document format (PDF) files.
- **"Explain the details of your request" line:** Any detailed rationale or argument should be entered here. Another option is to simply type "See attached" and upload your detailed rationale with the supporting attachments.
- **"Summary" page:** Review all of the information for any errors.
- **"Electronic Signature" line:** The name entered here must exactly match the login name. Some users enter an extra space before or after the name, which will cause an error. Be sure there are no extra spaces entered.
- **"Affidavit of Service" page:** Select all parties to be served. Additional parties may automatically be added because the primary parties have elected to have those individuals served. After "Submit Form" is clicked, the RFA will be generated and required documents will be served electronically. The new dispute number (DS-xx-xxx-xxx) and the document number of the RFA (DO-xx-xxx-xxx) will be displayed. The RFA can be viewed by either clicking on the "DO" link or by clicking on the "DS" link and locating your new RFA in the "Documents" tab of the dispute. Print it with the attachments for any mail service recipients.

For help with any questions, contact the Workers' Compensation Division Help Desk at 651-284-5005 (press 3), 800-342-5354 (press 3) or [helpdesk.dli@state.mn.us](mailto:helpdesk.dli@state.mn.us).

# Outcomes of complaints about registered rehabilitation providers, 2021

By Mike Hill, rehabilitation policy specialist

If a party believes a rehabilitation provider is not following the statutes or rules, they can file a written complaint with the Minnesota Department of Labor and Industry (DLI). Upon receipt and review of the information provided, DLI may perform an investigation to determine if disciplinary action is warranted. Below: Table 1 details complaints received and where they originated; Table 2 details complaints and their outcomes; and Table 3 details the violations and the statutes or rules involved.

Year	ER/IR	EE	Attorney	Rehabilitation provider	DLI	Other	Total
2021	1	1	0	2	0	0	4
2020	2	0	1	0	1	0	4
2019	3	0	0	0	1	0	4
2018	0	0	0	0	14	0	14
2017	1	0	2	0	5	0	8
2016	1	0	1	0	15	0	17

## Complaint outcomes

A complaint may allege violations of workers' compensation statutes or rehabilitation rules. During the course of an investigation, additional issues may be identified. Outcomes are determined by the findings of the investigation. Possible outcomes include the following.

- **Unsubstantiated or complaint withdrawn** – The allegations are not supported by the information obtained.
- **Letter of instruction** – A letter is not considered to be formal discipline; the letter is retained by DLI in case subsequent inquiries into a provider's conduct are undertaken.
- **Discipline/stipulation** – Discipline, in the form of a stipulated agreement, involves corrective action and a fine. The severity of the disciplinary action may be increased if the subject has a history of similar violations.
- **Inactive rehabilitation provider** – The rehabilitation provider's registration became inactive during the investigation. The complaint must be resolved before a rehabilitation provider can re-register.

Year	No jurisdiction	Unsubstantiated or withdrawn	Letter of instruction	Stipulation	No appeal	Inactive	Total
2021	0	2	1	2	0	1	6
2020	0	2	1	1	0	0	4
2019	0	0	1	3	0	0	4
2018	0	1	7	4	0	3	15
2017	1	1	6	2	0	1	11
2016	1	7	4	1	0	2	15

**Table 3. 2021 rehabilitation violations of Minnesota Statutes and Minnesota Rules**

Violation	Statute (ch. 176), rule (pt. 5220)
*Failure to cooperate with disciplinary proceedings by not providing requested rehabilitation files	5220.1806, subp. 4
*Failure to be knowledgeable about workers' compensation laws	5220.1803, subp. 2 5220.1801, subp. 9 (E)
*Failure to disclose business referral or other arrangements (verbal or written) to the injured worker	176.102, subd. 4 (c) 5220.1803, subp. 1 (A), (B)
*Filing false or misleading rehabilitation consultation cost information on R-2 and R-8 forms to DLI and the parties	5220.1801, subp. 9 (A) 5220.1801, subp. 9 (E)
*Failure to file an R-2 Rehabilitation Plan form with initial evaluation reports, covering eight required points, within 45 days of the first in-person meeting	5220.0510, subp. 2d 5220.1801, subp. 9 (E)
Failure to use an invoice form that is compliant with the rules and exemplified on DLI's website	5220.1900, subp. 1a 5220.1801, subp. 9 (E)
Failure to file an R-3 Rehabilitation Plan Amendment form and to provide evidence the form was sent to the parties for their review	5220.0510, subp. 2d 5220.1801, subp. 9 (E)
Failure to comply with data privacy laws, including safeguarding and maintaining under conditions of security all information sent by email by use of encryption or other secure transmission	5220.1802, subp. 5 5220.1801, subp. 9 (E)
A rehabilitation provider shall not misrepresent themselves, their duties or their credentials	5220.1805, paragraph B
Failure to disclose any potential conflicts of interest to the parties to the case and their attorneys	5220.1801, subp. 11

\*Similar professional conduct violations were reported in the December 2020/January 2021 edition of *COMPACT*, for 2020.

## Conclusion

The purpose of a professional conduct investigation is to determine if a violation of the rules and statutes has occurred so the behavior can be corrected and future problems prevented. Through outreach, education and compliance efforts DLI strives to work with rehabilitation providers to improve the quality of services provided to the stakeholders in Minnesota.

## More information

DLI's [Work comp: For rehabilitation providers](#) webpage was developed to provide information to qualified rehabilitation consultants and placement vendors to enhance their work product. Stakeholders with rehabilitation questions and concerns may also contact DLI's Workers' Compensation Division Help Desk at [helpdesk.dli@state.mn.us](mailto:helpdesk.dli@state.mn.us), 651-284-5005 (press 3) or 800-342-5354 (press 3).

## Training: OSHA recordkeeping basics offered May 6

The Department of Labor and Industry is offering a free, online introductory-level training seminar about OSHA recordkeeping requirements May 6, from 8:30 to 11 a.m.

Maintaining an accurate OSHA log of recordable work-related injuries and illnesses is an important skill that benefits employers, workers, safety professionals and government agencies.

Topics will include: recordability of injuries and illnesses; differences between OSHA cases and workers' compensation claims; classifying cases; counting time; privacy cases; how many logs to keep; maintaining logs; creating a log summary; reporting log data to OSHA; and recording COVID-19 cases.

Learn more about the sessions and register to attend (required) at [www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard](http://www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-recordkeeping-standard).

## Stay in the know: Subscribe for news from DLI

Did you know the Department of Labor and Industry offers more than two dozen email lists you can subscribe to receive news targeted to specific groups? (If you are reading this, you are probably on the *COMPACT* email list.)

Lists related to workers' compensation news include the following:

- Adjusters updates
- Employer updates
- Rehabilitation providers updates
- Attorney updates
- Medical providers updates
- Trading partner updates



Other email lists are available for:

- Agency news
- Construction codes, licensing and building trades
- Minnesota OSHA and workplace safety
- Apprenticeship, dual-training and Youth Skills Training
- Labor standards, worker rights, wage and hour
- Rulemaking

To learn more about the available email lists, visit [www.dli.mn.gov/about-department/news-and-media/sign-news-department-labor-and-industry](http://www.dli.mn.gov/about-department/news-and-media/sign-news-department-labor-and-industry).

## Turn to Office of Workers' Compensation Ombudsman for help with claims

The Department of Labor and Industry's Office of Workers' Compensation Ombudsman informs, assists and empowers injured workers and small businesses having difficulty navigating the workers' compensation system. It also recommends statute or rule changes to improve the effectiveness of the workers' compensation system. To request assistance, contact the Office of Workers' Compensation Ombudsman at [dli.ombudsman@state.mn.us](mailto:dli.ombudsman@state.mn.us), 651-284-5013 or 800-342-5354.

**The ombudsman assists injured workers by:**

- providing information to help them protect their rights and to pursue a claim;
- contacting claims adjusters and other parties to resolve a dispute;
- assisting in preparing for settlement negotiations or mediations; and
- making appropriate referrals to other agencies or entities if needed.

**The ombudsman assists small businesses by:**

- providing information about what to do when an employee is injured;
- directing them to appropriate resources for assistance in obtaining and resolving issues regarding workers' compensation insurance; and
- responding to questions pertaining to employers' responsibilities under Minnesota's workers' compensation law.



# CompFact: Reasons for denial in recent claims

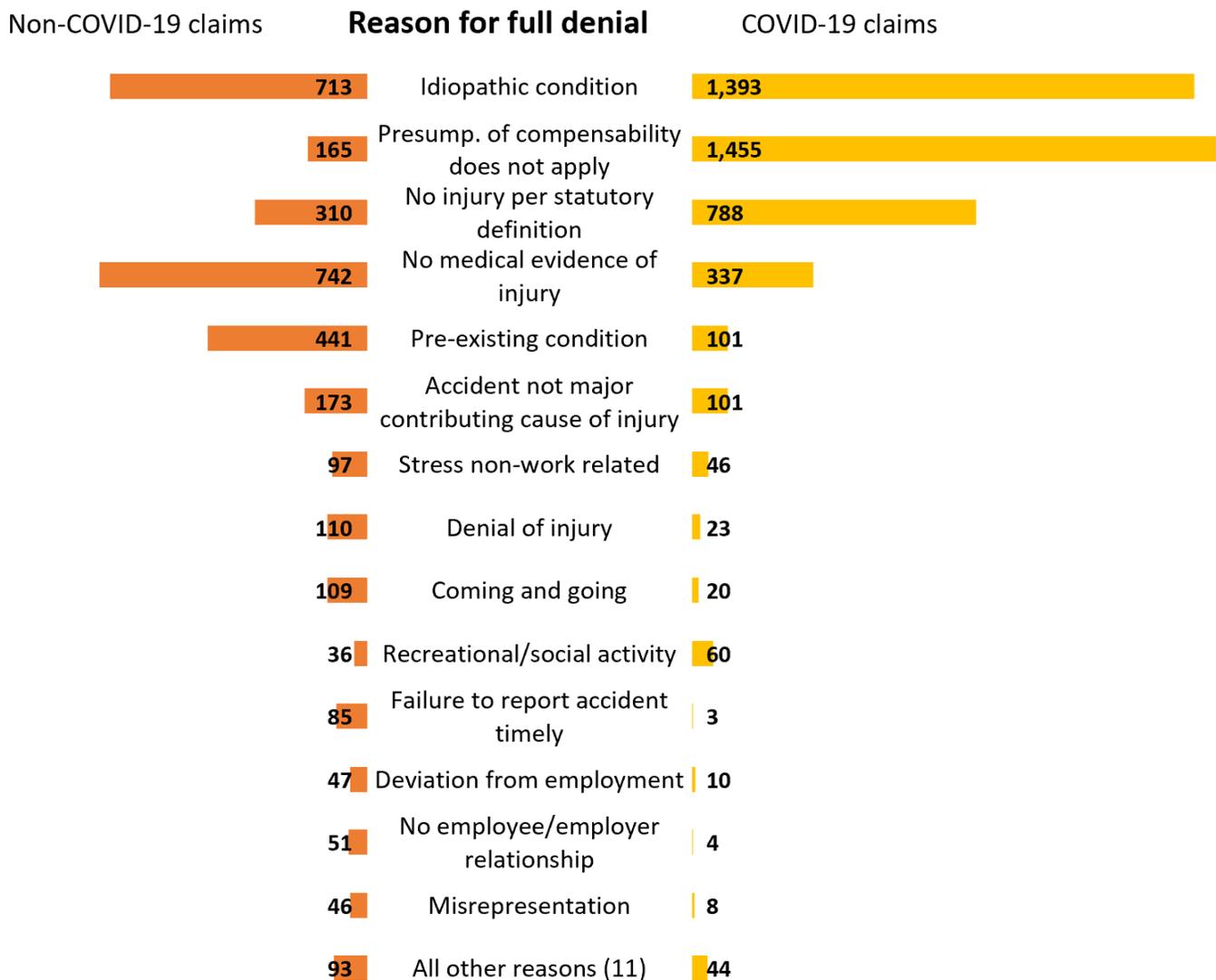
By Brian Zaidman, Research and Statistics

When insurance companies and self-insured employers submit claims denials to the Department of Labor and Industry, they also supply a denial reason. This article examines denials of lost-time claims, starting with claims submitted in November 2020 when Work Comp Campus first went live, with injury dates from January 2020 through September 2021. There were 33,412 lost-time claims during this period, with 28% of the claims receiving a denial. Of these denials, 81% were full denials and 19% were partial denials.

COVID-19 claims account for 41% of the 33,412 lost-time claims during this period, so Figure 1 shows the denial reasons for full denials separately for the COVID-19 claims and for all other injuries and illnesses. There are different distributions of the denial reasons for the COVID-19 claims and for all other claims.

Among the non-COVID-19 claims, the top denial reasons were no medical evidence of injury and idiopathic condition, followed by pre-existing condition. For the COVID-19 claims, the most common reason for a full denial of primary liability was that the presumption of compensability (of COVID-19) does not apply. This was closely followed by using idiopathic condition as the denial reason. The third most common COVID-19 denial reason was that there was no injury according to statutory definition. This was likely used when a worker reported an exposure and was later found not to have a positive test for COVID-19.

**Figure 1. Reasons for full denial of primary liability, 2020 and 2021 claims reported between November 2020 and September 2021**



# Workers' Compensation Advisory Council legislation summary 2022

## 2022 Minnesota Session Laws, Chapter 32 – H.F. No. 1203; governor approval: Feb. 3, 2022

This provides only a summary of the 2022 workers' compensation legislation. The actual language of chapter 32 is online at [www.revisor.mn.gov/laws/2022/0/Session+Law/Chapter/32/](http://www.revisor.mn.gov/laws/2022/0/Session+Law/Chapter/32/).

### Article 1, Section 1

#### Minnesota Statutes § 176.103, subdivision 3 – Medical Services Review Board; selection; powers

The amendment requires health care provider members of the Medical Services Review Board to maintain a license to furnish medical or health services under their specific designation throughout their appointment to the board.

Effective date: This section is effective for appointments made on or after Aug. 1, 2022.

### Article 1, Sections 2 and 3

#### Minn. Stat. § 176.231, subd. 9a – Access to division file without an authorization; attorney access

#### Minn. Stat. § 176.2612, subd. 3 – Creating a CAMPUS account

These sections update references to the Minnesota Insurance Guaranty Association by correcting the spelling in previous references in the statute.

Effective date: These sections are effective Aug. 1, 2022.

### Article 2, Filing location amendments

Effective date: All amendments in Article 2 are effective Aug. 1, 2022

### Article 2, Sections 1 and 2

#### Minn. Stat. § 176.106, subd. 7 – Request for hearing

#### Minn. Stat. § 176.291 – Disputes; petitions; procedure

These sections amend the statute to clarify that a request for a formal hearing under Minn. Stat. § 176.106, subd. 7, and a claim petition under Minn. Stat. § 176.291, should be filed with the Office of Administrative Hearings (OAH).

### Article 2, Sections 3 and 4

#### Minn. Stat. § 176.295, subd. 1 – Affidavit of inability to effectuate service

#### Minn. Stat. § 176.295, subd. 2 – Action in district court

These sections amend Minn. Stat. § 176.295, subs. 1 and 2, to require a petitioner, employee or employee's dependent that cannot serve a claim petition on an employer that is a nonresident or foreign corporation to file an affidavit with the chief administrative law judge at the OAH stating they were unable to effectuate service. The language also clarifies that a complaint can be brought in district court and must state a petition has been filed with OAH and include the affidavit of inability to effectuate service.

### Article 2, Sections 5 and 6

#### Minn. Stat. § 176.305, subd. 1 – Hearings on petitions

#### Minn. Stat. § 176.305, subd. 4 – Striking from calendar

These sections amend Minn. Stat. § 176.305, subs. 1 and 4, to clarify that a claim petition should be filed with the OAH and that a compensation judge may take actions related to striking a case from the active trial calendar.

## **Article 2, Sections 7 and 8**

### **Minn. Stat. § 176.321, subd. 2 – Contents**

### **Minn. Stat. § 176.321, subd. 3 – Extension of time in which to file answer**

These sections amend Minn. Stat. § 176.321, subs. 2 and 3, to indicate that information on an adverse examination as part of an answer to a petition under Minn. Stat. § 176.321 must be shared with the OAH prior to the examination and that OAH has the authority to grant an extension to file an answer.

## **Article 2, Sections 9 and 10**

### **Minn. Stat. § 176.331 – Proceedings when answer not filed**

### **Minn. Stat. § 176.341, subd. 1 – Time**

These sections amend Minn. Stat. §§ 176.331 and 176.341, subd. 1, to clarify that the OAH sets a hearing when an answer is not filed under Minn. Stat. § 176.331 or when a petition is filed under Minn. Stat. § 176.341.

## **Article 2, Section 11**

### **Minn. Stat. § 176.391 – Investigations**

This section amends Minn. Stat. § 176.391, subs. 1 through 4, to provide that only a compensation judge, and not the commissioner, has the power to make an independent investigation of facts alleged in a petition or answer.

## **Article 2, Section 12**

### **Minn. Stat. § 176.421, subd. 4 – Service and filing of notice; cost of transcript**

This section amends Minn. Stat. § 176.421, subd. 4, to clarify that a notice of appeal should be filed with the chief administrative law judge, and a copy with the commissioner, pursuant to Minn. Stat. § 176.285. It also removes unnecessary language regarding filing by facsimile.

## **Article 2, Section 13**

### **Repealer**

This section repeals Minn. Stat. § 176.305, subd. 2, because the petition and answer, as noted through other changes, is filed with the OAH directly.

## **Article 3, Section 1**

### **Minn. Stat. § 176.011, subd. 15, paragraph (f) – Occupational disease**

This section revives and reenacts the workers' compensation COVID-19 presumption statute (Minn. Stat. § 176.011, subd. 15 (f)), with a sunset at 11:59 p.m., Jan. 13, 2023. It provides, as does the current presumption statute, that when the law sunsets, and in the period from Jan. 1, 2022, to the date of enactment, the employee is still entitled to claim workers' compensation for contracting work-related COVID-19 but, as with other injuries and illnesses, the employee is no longer entitled to the presumption that the disease was work-related.

Effective date: This section is effective Feb. 3, 2022.

# Workers' compensation events calendar

**Note: Event dates may change. Always check the online calendar at [www.dli.mn.gov/about-department/about-dli/events-workers-compensation](http://www.dli.mn.gov/about-department/about-dli/events-workers-compensation).**

## March 2022

**March 16**                      **Workers' Compensation Insurers' Task Force**

## April 2022

**April 7**                         **Rehabilitation Review Panel**

**April 13**                      **Workers' Compensation Advisory Council**

**April 21**                      **Medical Services Review Board**

**April 25-26**                 **Workers' Compensation Institute, Minnesota CLE**

## May 2022

**May 6**                         **Training: The basics of OSHA recordkeeping**

**May 18**                      **Workers' Compensation Insurers' Task Force**

## June 2022

**June 8**                        **Workers' Compensation Advisory Council**

### Rehabilitation Review Panel seeks new members

The Rehabilitation Review Panel (RRP) currently has openings for:

- one insurer member (four-year term);
- one union labor member (four-year term); and
- one union labor representative alternate member (annual term).

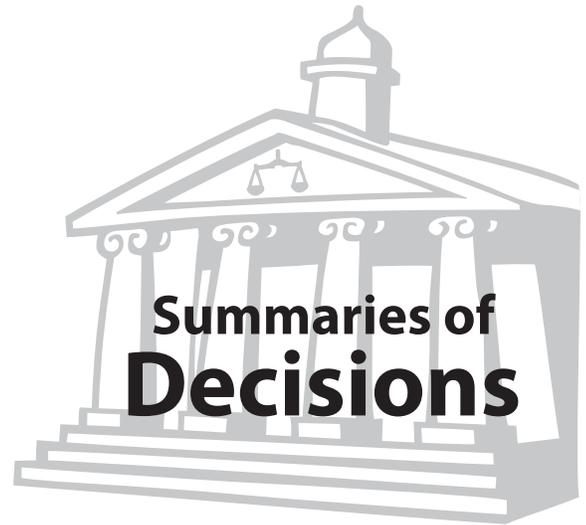
To apply for one of these positions, visit [www.sos.state.mn.us/boards-commissions](http://www.sos.state.mn.us/boards-commissions) on the Secretary of State website.

Learn more about the Rehabilitation Review Panel at [www.dli.mn.gov/about-department/boards-and-councils/rehabilitation-review-panel](http://www.dli.mn.gov/about-department/boards-and-councils/rehabilitation-review-panel).

# Workers' Compensation Court of Appeals

November 2021 through January 2022

Case summaries published are  
those prepared by the WCCA



## ***Victor Lemus Pantoja v. Innovative Food Processors, Inc. (IFP), Nov. 15, 2021***

### **Causation – Temporary Injury**

Substantial evidence, including medical records and expert medical opinion, supported the compensation judge's finding that the employee's July 22, 2019, work injury is no longer a substantial contributing factor to his low back condition and that he reached maximum medical improvement no later than March 2, 2020.

Affirmed.

## ***Troy Erickson v. Grand Itasca Clinic and Hospital, Nov. 16, 2021***

### **Evidence – Expert Medical Opinion Causation – Substantial Evidence**

Where the compensation judge erred by relying on an expert medical opinion that was based on evidence that was not relevant to this case, did not adequately explain the basis for the opinion and misstated a fact that discredits the entire report and opinion, and the remaining findings are not supported by the evidence, the compensation judge's findings are manifestly contrary to the weight of the evidence and are not reasonably supported by the record.

### **Appeals – Remand**

Where the compensation judge did not address whether the recommended arthroscopic right shoulder surgery was reasonable and necessary medical treatment, the matter is remanded for determination of this issue.

Reversed and remanded.

## ***Gregory A. Deline v. Flare Heating and Air Conditioning, Inc., Nov. 19, 2021***

### **Vacation of Award – Substantial Change in Condition**

Where the employee's petition to vacate a 2009 award on stipulation based on a substantial change in medical condition involves a complex medical causation issue with conflicting medical opinions, the matter is referred to the Office of Administrative Hearings (OAH) for an evidentiary hearing.

Referred to OAH for an evidentiary hearing.

***Arthur H. Wendroth v. Madsen and Sons, Nov. 19, 2021***

**Permanent Partial Disability – Substantial Evidence**

Substantial evidence, including medical records and expert medical opinion, supports the compensation judge's ratings of permanency under the "old law" in effect on the date of injury, as well as the findings that the employee's lumbar and cervical conditions are solely related to the effects of a consequential injury from chemical meningitis rather than partly due to his original injury, but that the employee failed to prove that the chemical meningitis condition was a substantial contributing cause of his brain and upper and lower extremity conditions.

**Credits and offsets**

A credit for permanent partial disability (PPD) previously paid to the employee for his original injury, against PPD ordered for conditions found to result solely from a later consequential injury, was not warranted where the prior payment preceded the initial diagnosis of the consequential injury and was referenced in a full, final and complete settlement of any and all claims relating specifically to the original injury.

Affirmed.

***Antwan Flowers v. St. Paul Public Schools, Independent School District 625, Nov. 24, 2001***

**Wages – Multiple Employments  
Wages – Calculation**

Wages from a second employer are properly excluded from wage calculation where the employee was no longer employed by that employer on the date of injury, and no evidence is offered that the employee sought to or had any expectation of replacing that work.

Affirmed.

***Larry Horton v. Aspen Waste Systems, Inc., Dec. 1, 2-21***

**Attorney Fees – Substantial Evidence**

Where substantial evidence fails to support the compensation judge's determination that there was a genuine dispute over permanent partial disability benefits, the fees awarded based on those benefits must be reversed.

Reversed.

***Mary Schoneck v. Pathway Health Services, Dec. 3, 2021***

**Practice and Procedure – Service**

Where the affidavit of service is flawed as a matter of law, and there is no other substantial evidence to prove proper service was made on the potential intervenor in accordance with Minnesota Statutes and Minnesota Rules, the compensation judge's finding the notice of the right to intervene was properly served is reversed and the matter is remanded for findings on the potential intervenor's intervention claim.

Reversed and remanded.

***Douglas Juntunen v. Carlton County, Dec. 28, 2021***

**Statutes Construed – Minnesota Statutes § 176.011, subdivision 15  
Evidence – Burden of Proof  
Practice and Procedure – Remand**

Where the employee, a deputy sheriff, had been diagnosed with post-traumatic stress disorder (PTSD) at the time of disablement, the presumption under Minn. Stat. § 176.011, sub. 15(e), that the employee's diagnosis was due to the nature of employment was met, and because there was no other evidence disputing the employee's PTSD diagnosis at the time of disablement, the compensation judge's denial of the employee's PTSD claim is reversed as the presumption was un rebutted, and the matter is remanded to the compensation judge for findings on the employee's claim for benefits.

Reversed and remanded.

***Mohamed Ahmed v. Allina Health Systems, Jan. 3, 2022***

**Practice and Procedure – Record  
Practice and Procedure – Dismissal**

The compensation judge's dismissal of the employee's claim petition with prejudice for failure to comply with an order to attend an independent medical examination is vacated and the matter remanded for a hearing on the employer's motion to dismiss.

Vacated and remanded.

***Sandra Berglund v. Wildrose Health Care, Jan. 7, 2022***

**Termination of Employment – Voluntary Termination**

Substantial evidence in the record supports the compensation judge's determination that the employee voluntarily resigned from her employment with the employer.

**Temporary Total Disability – Job Search**

Substantial evidence in the record supports the compensation judge's determination that because the employee voluntarily resigned from her employment, she was obligated to conduct a diligent job search and her failure to do so rendered her ineligible to receive temporary total disability benefits.

Affirmed.

***Elsie Maynard v. Macy's Inc., Jan. 14, 2022***

**Practice and Procedure – Record**

The compensation judge's award of attorney fees and denial of the employee's objection to the statement of attorney fees as untimely are vacated and the matter remanded for a hearing on the issues raised by the employee, including whether the statement of attorney fees was properly served and received.

Vacated and remanded.