Section 1
Workers' Compensation Overview

Workers' compensation is a no-fault system designed to provide benefits to employees injured as a result of their employment activities and to limit the liability of employers. Because it is a no-fault system, the employee does not need to prove negligence on the part of the employer in order to establish liability. It also means that the employer cannot use negligence on the part of the employee as a defense to a claim.

A work-related injury can be any condition that is caused, aggravated, or accelerated by employment activities. This includes traumatic injuries, gradual injuries, or occupational diseases. The employee needs to show only that the employment activities were a substantial contributing factor to the disability and/or need for medical care.

Basic Benefits

Workers' compensation provides four basic types of benefits:

- wage loss
- compensation for the loss of use of a part of the body
- medical benefits
- vocational rehabilitation services

Each of the four types of benefits is discussed in more detail later.

Controlling Events

The Minnesota workers' compensation statutes have undergone many revisions since the first law was enacted in 1913. It is very important for you to remember that **the date of injury or death controls**. This means the law in effect on the date of injury or death governs the type and amount of benefits that are payable to the employee or dependents of the employee. The wage on the date of injury also controls. This means the compensation rate is based on the employee's average weekly wage at the time of the injury and does not include any wage increases the employee might receive in the future.

For example, an employee is injured on August 30 with earnings of $400.00 per week. A labor agreement allows employees a cost-of-living increase on November 1 of an additional $1.00 per hour. Calculate the compensation rate by using the wage of $400.00 per week, as that is the employee's average weekly wage at the time of injury.

First Report of Injury (FROI)

The FROI is the reporting document for all work-related injury claims. It provides basic information necessary to start the claim. Deaths and serious injuries must be reported to the department within 48 hours. This can be done via telephone, facsimile, or electronic transmission, to be followed by the FROI. For all other injuries, where claimed disability exceeds three calendar days, the employer must get the FROI to their insurance company within 10 days of the first day of disability or the date they were aware of disability, whichever is later. Likewise, the insurance company must file the FROI with the department within 14 days of the first day of disability or the date the employer was aware of disability, whichever is later. For self-insured employers, the FROI must be filed with the department within 14 days of the first day of disability or the date the employer was aware of disability, whichever is later. The employee must be given a copy of the FROI along with the employee information sheet.

Employees **are not** responsible for completing the FROI. The form should be completed accurately, completely, legibly, and timely by the employer. Again, it is very important that the FROI be submitted timely to avoid unnecessary penalties.

Other Time Requirements

For injuries with claimed disability extending more than three calendar days, the insurer must make a determination regarding liability within 14 days of the first day of disability or the date the employer was aware of disability, whichever is later. This means the insurer must pay or deny a claim within 14 days. Failure to pay or deny within 14 days can result in penalties. Penalties regarding late filings, late payments, and late denials are discussed in the penalty section of the workbook.

Once payment of wage loss benefits has begun, they can not be stopped without giving notice to the employee. The insurer must advise the employee of the specific type of benefit that they are proposing to discontinue, the reason for the discontinuance, and the facts (including medical reports) that support the reason. This is done by filing a Notice of Intention to Discontinue benefits form (NOID) or a Petition to Discontinue. **Exception:** If the insurer begins to pay benefits and then determines soon afterward that the injury is not compensable, the insurer may deny primary liability and discontinue benefits by filing a Notice of Insurer's Primary Liability Determination (NOPLD) form within 90 days from the first day of disability or the date the employer was aware of disability, whichever is later. If more than 90 days have elapsed, the insurer must file an NOID to discontinue the benefits when denying primary liability.

Recovery of Overpayments

Overpayments of compensation are discussed in Minnesota Statutes §176.179. Under current law, if voluntary payments to an employee or an employee's dependents are received in good faith, the insurer is not entitled to a refund if it is later determined the payments were made under a mistake of fact or law. If further benefits are owed to that person for the same injury, the insurer is entitled to take a

partial credit against future periodic benefits. The credit cannot exceed 20% of the amount of the future benefits that otherwise would be payable. Future periodic benefits from which the insurer can take a credit include, but are not limited to, temporary total disability, temporary partial disability, economic recovery compensation, permanent partial disability, and permanent total disability. In situations where the employee is entitled to a lump sum payment, the insurer can take a credit for the entire overpayment from the lump sum due to the employee.

If a compensation judge or the commissioner determines the compensation paid by mistake was not received in good faith, they may order reimbursement of the compensation. These instances occur if the payments are received by fraudulent means or if the employee knew the compensation was paid under mistake of fact or law. (See Minnesota Statutes §45.0135 and 60A.951 for the laws concerning fraud.)

The insurer cannot take a credit against medical expenses or penalty amounts payable to the employee.

Maximum Medical Improvement (MMI)

MMI is defined in Minnesota Statutes §176.011, Subd. 13a. It is the date after which no further significant recovery from or lasting improvement to a personal injury can be reasonably anticipated, regardless of subjective complaints of pain. Once the date of MMI has been validly determined, the insurer does not need to request any further determinations of MMI unless the employee becomes medically unable to continue working [see Minnesota Statutes §176.101, Subd. 1(e)(2)]. For purposes of commencement or recommencement of temporary total disability benefits only, a new period of maximum medical improvement can begin when the employee becomes medically unable to continue working due to the injury.

MMI determinations are important because the employee's entitlement to future benefits can cease 90 days after the insurer serves a written report of MMI on the employee or as otherwise described in Minnesota Statutes §176.101, Subd. 1(e) to (l).

Waiting Period

Statutory Language

Below is the statutory language which defines the waiting period.

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 Minnesota Statutes §176.135, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in Minnesota Statutes §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.

Waiting Period Application

Here are the important elements in applying the waiting period:

- The waiting period is counted in consecutive calendar days, not work days.
- The first day of disability (claimed lost time or wages) is the first day of the waiting period.
- Any disability, including a fraction of a day of disability, is considered the first day of disability regardless of whether the employee is paid in full by the employer for that day.
- Temporary partial disability, including time lost from work to obtain medical treatment for a work related injury, is considered a day in which there is disability.
- If there is disability on the 10th calendar day or beyond (from the first day of disability), compensation is owed from the first day of disability.
- If the only disability beyond the waiting period is for non-scheduled work days, generally no compensation is owed for those non-work days.
- Counting the waiting period and paying benefits for the disability are separate issues. The claim must be reported to the department and action taken within the time frames previously described if the claimed disability exceeds the waiting period, even if the insurer is not making payment for the disability.

Waiting Period Examples:

For the following examples, the employee works Monday through Friday.

- *First day of disability is March 7, 2014 and return to work date without disability is March 10, 2014. The waiting period is March 7th through March 9th. The FROI does not need to be filed with the department and the insurer does not owe compensation, as the only disability occurred within the waiting period.*
- *First day of disability is March 7, 2014 and return to work date without disability is March 12, 2014. The waiting period is March 7th through March 9th, so the FROI needs to be filed with the department and timely payment or denial must occur. Compensation might be due for March 10th and March 11th.*
- *First day of disability is March 11, 2014 and return to work date without disability is March 25, 2014. The FROI needs to be filed with the department and timely payment or denial must occur. Compensation for the entire period from March 11th through March 24th might be due, as there is disability on or after the 10th calendar day (March 20th).*

- *First day of* disability *is March 11, 2014 and return to work date without disability is March 12, 2014. The employee again has disability beginning on March 17, 2014 and another return to work date without disability on March 20, 2014. The FROI needs to be filed with the department and timely payment or denial must occur as the disability extends beyond the waiting period, March 11th through March 13th. Compensation might be due for March 17th through March 19th.*

- *First day of disability is March 11, 2014 and return to work date without disability is March 13, 2014. The employee again has* disability *beginning March 20, 2014 and another return to work date without disability on March 25, 2014. The FROI needs to be filed with the department and timely payment or denial must occur as the disability extends beyond the waiting period, March 11th through March 13th. Both periods of disability (March 11th and March 12th and March 20th through March 24th) might be due, as there is disability on or after the 10th calendar day (March 20th).*

For the following example, the employee only works Saturdays and Sundays.

- *First day of disability is March 8, 2014 and return to work date without disability is March 15, 2014. The waiting period is March 8th through March 10th. The FROI should be filed with the department and timely action must occur even though compensation is probably not due as March 11th through March 14th are non-work days.*

Waiting Period – Exercise 1A

1. An employee who works Monday through Friday was injured on February 10, 2014. The employee lost one hour from work on the date of injury and remained off work through February 18, 2014. The employee returned to work on February 19, 2014. What are the dates of the waiting period?

2. An employee who works Monday through Friday was injured on March 7, 2014. The first day of disability was March 10, 2014 and the employee returned to work without disability on March 13, 2014. What are the dates of the waiting period? Are you required to report this claim to the department?

3. An employee who works Monday through Friday was injured on April 11, 2014, and lost one hour of work on that date. The employer paid the employee full wages for the date of the injury. The employee returned to work without disability on April 17, 2014. For which dates do you possibly owe compensation?

4. An employee who works Monday through Thursday was injured on May 1, 2014. The first day of disability wasn't until May 12, 2014. The employee returned to work without disability on May 19, 2014. Disability began again on May 22, 2014 with a return to work without disability on May 26, 2014. All dates of disability were authorized by the treating doctor. What are the dates of the waiting period? Should the waiting period be paid?

5. An employee who works Monday through Friday was injured on April 18, 2014 and lost three hours of work on the date of injury. The employer paid full wages for the date of the injury. The employee returned to work without disability on April 28, 2014. All disability was authorized by the treating doctor. What are the dates of the waiting period? Should the waiting period be paid?

Liability Determinations

The NOPLD form is used to notify the employee (or heirs/dependents of an employee), the employer, and the department of the insurer's position regarding primary liability on the claim, including specific details of the accepted or denied claim. It is important to remember that this form could be completed several different times on the same claim to reflect changes in the insurer's position or changes in the specific details of the claim. These subsequent filings of the form would be considered amended NOPLD forms. In addition, this form outlines the employee's rights and responsibilities.

The NOPLD form is used to convey to all parties on all claims (with claimed disability that exceeds the waiting period) what action the insurer is initially taking on the claim. In most situations it is filed only once on a claim. However in certain circumstances it can be filed multiple times. The following are some of the examples where this might occur:

- When the insurer initially denies primary liability, but later accepts liability.
- When the insurer initially accepts a claim and pays wage loss benefits, but later denies primary liability within 90 days per Minnesota Statutes §176.221, Subd. 1.
- When the insurer accepts a claim on which there are no wage loss benefits initially paid, but later pays wage loss benefits voluntarily.

Investigation Tips

An investigation or a good faith effort to attempt an investigation of the claim must be done on each claim before an informed decision can be made regarding acceptance or denial of liability. What is considered an adequate investigation can vary depending upon the type of injury, whether it was witnessed, and if the injury was caused, accelerated, or aggravated by the work activities. At times it is not necessary to talk to the employee prior to making a determination. Other times it might not be necessary to reach the employee's supervisor prior to making a determination.

Acceptance of Liability

(with payment of wage loss benefits)

After completing an investigation, if the injury and the claimed wage loss benefits are determined to be compensable, the insurer checks Box 1 on the NOPLD form. The payment must be made within 14 days of the first day of disability or the date the employer was aware of disability, whichever is later, to be considered timely. Complete all boxes that are applicable to the injury. If payments are continuing, indicate the day of the week that further checks will be issued and how often. Be sure to include the dates the payment covers, not just the amount of time covered.

For example, state the period is May 5, 2014, through May 11, 2014, not one week.

Partial Acceptance of Liability

(without payment of wage loss benefits)

For injuries where there is no claimed disability beyond the waiting period, the FROI and NOPLD are not required to be filed with the department. An exception to this occurs when the FROI showing possible disability beyond the waiting period has already been filed with the department. In these situations, Box 2A should be used on the NOPLD form to explain that liability for the injury is accepted but that the disability did not exceed the waiting period.

For injuries where there is claimed disability beyond the waiting period, if the insurer has determined that an injury is compensable but they are denying responsibility for the wage loss benefits, an NOPLD must be filed with the department. This is frequently called a partial denial of liability and the insurer checks Box 2C on the NOPLD form. The NOPLD must be served within 14 days of the first day of disability or the date the employer was aware of disability, whichever is later, to be considered timely. The reason given for denying payment of the wage loss must be specific and not frivolous. Again, remember that this is a denial of liability and it must be in compliance with all applicable statutes, rules, and case law.

Denial of Primary Liability

A primary denial of liability is a determination that the injury is not compensable under Minnesota workers' compensation statutes and rules. It informs the employee and the department that the insurer is not voluntarily paying any benefits because they do not believe the circumstances surrounding the injury indicate the claim is compensable.

Before a determination is made, the insurer must complete or at least attempt to complete an investigation of the claim. There can be many questions that need to be considered, two of which are:

- Did something happen at work and/or is it work related?
- Is it covered under Minnesota workers' compensation statutes and rules?

If the insurer is denying primary liability, an NOPLD form must be filed with the department, for any claim where the employee has claimed disability that exceeds the waiting period. The insurer checks Box 3 on the NOPLD form. The NOPLD must be served within 14 days of the first day of disability or the date the employer was aware of disability, whichever is later, to be considered timely.

Denials must meet the criteria in the statutes and rules in order to avoid being considered non-specific or frivolous. The insurer must attach supporting documentation, as necessary. If the denial is based on medical information, the insurer must attach a copy of the medical report. If the medical information was obtained over the telephone, in addition to stating the substance of the conversation, the name of the health care provider, along with the date the telephone information was obtained, should be stated on the form.

In order for a denial to be considered specific, the reasons for the denial must be clear and state a specific reason in language easily readable to a person of average intelligence and education. Remember both the employee and the department must be able to easily understand why the claim was denied.

In order for a denial not to be considered frivolous, the reason for denial must state a legal basis and provide an accurate statement of facts concerning the claimed injury. It must also show that an investigation has been completed or that a good faith effort to investigate has been attempted.

Presently, the department reviews denials for:

- proper wording
- inclusion of reported facts surrounding the injury
- extent of the investigation performed by the insurer
- a legal basis for the denial as stated by the insurer
- inclusion of supporting documentation, as necessary

Failure to give a specific and non-frivolous reason for the denial or failure to investigate or attempt to investigate a claim can be grounds for assessment of frivolous[1] and/or non-specific denial[2] penalties. Minnesota statutes and rules outline some basic information regarding what are considered frivolous and non-specific denials.

Statutory Language and Rule Cites

For additional information regarding liability determinations see Minnesota Statutes §176.194, Subd. 3(4) and Subd. 4, 176.221, Subd. 3a, and 176.225, Subd. 1. Also see Minnesota Rules Parts 5220.2570, Subp. 10B, 5220.2540, Subp. 4, 5220.2760, Subp. 1C, and 5220.2770, Subp. 2E.

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1 **Frivolous Denials**

Minnesota Rules Part 5220.2570, Subp. 10B defines a frivolous denial as one which:
(1) does not state facts indicating that an investigation has been completed or that a good faith effort to investigate has been attempted; or
(2) states a basis which is a clearly inaccurate statement of fact or the applicable law.

2 **Non-specific denials**

Minnesota Rules Part 5220.2570, Subp. 2E gives information regarding what is not considered a specific denial. In part the rule states:
... A denial which states only that the injury did not arise out of and in the course and scope of employment or that the injury was denied for lack of a medical report, for example, is not specific within the meaning of this item; ...

Liability Determination – Exercise 1B

Part 1

See the FROI for Susan Jones. The employee normally works Monday through Friday. You have been unable to reach the employee. Upon contacting the employer, you are told that the injury was witnessed and the supervisor took the employee to a local hospital for immediate medical attention. The employer also states that the employee has not returned to work yet and according to medical information, should stay off work at least until the follow-up appointment on February 14th.

1. Should liability be accepted or denied? Why?

2. What forms need to be filed?

3. What boxes need to be checked on the NOPLD?

Part 2

See the FROI for Sam Smith. This claim has been assigned to you.

1. What steps do you need to take to determine if the claim is compensable?

2. What questions should you ask of the employer/employee?

3. If the treating doctor said she had been treating the employee since he hurt his back three weeks ago lifting a refrigerator at home, would this affect your investigation and determination of liability?

4. Based on your determination, what box needs to be checked on the NOPLD?

Part 3

See the FROI for Andrew Anderson. You have tried on three occasions to reach the employee and left messages twice. The employee hasn't called you back. The employer tells you the employee was returning from a work-related training seminar when the vehicle accident occurred. The employee was taken from the scene of the accident by ambulance. You contact the treating doctor listed on the FROI. The doctor tells you the records have not been transcribed yet.

1. Should primary liability be accepted or denied? Why?

2. What boxes should be checked on the NOPLD?

3. After paying benefits for four weeks, the employee tells you he stopped at his parent's house on his way back from training. The police report verifies that the accident occurred two blocks from his parent's home. What should you do?