

Section 5

Penalties

The Minnesota Legislature established penalties as a consequence for behavior which violates the workers' compensation law. Just as important, the department views the assessment of penalties as an educational tool which helps insurers to keep future claims on track. The following material will make you more aware of the process we use to determine if a penalty is warranted for a violation of the workers' compensation statutes and rules.

The types of penalties assessed are warnings and monetary fines payable to the Assigned Risk Safety Account (ARSA) and the employee. The penalty amount is set by the statutes and rules. Many of these penalties may also be assessed by a compensation judge. A comprehensive list of penalties that may be assessed by Compliance is included in this section.

Assessment Factors

Before a penalty is assessed, the following factors are taken into consideration:

- Do we have sufficient factual evidence to support the penalty?
- Do we have the statutory authority to assess the penalty?
- Do we have clear support of this penalty in the rules of practice?
- Is the penalty supported by department policy?
- Has the violation occurred within the last two years? (*See Minnesota Rules Part 5220.2710*)

What to do when a Penalty is Received

- Review the claim to determine if the penalty is valid. If there is no legal or factual basis to object to the penalty, it must be paid within 30 days of the date it was served and filed. This date is stamped on the front of the penalty.
- If there are questions on why the penalty was assessed, call the author of the penalty. If we can resolve any issues quickly, we will do so. Such conversations should not keep someone from filing an Objection to Penalty Assessment in a timely manner.
- If there is a reason to believe the penalty is not appropriate, an Objection to Penalty Assessment must be filed within 30 days of the date the penalty was served and filed. The author of the penalty will contact the party objecting to the penalty if any additional information is needed or if the penalty can be amended or rescinded. The Objection to Penalty Assessment process will be discussed later in this section.

Late Filing of the First Report of Injury (FROI)

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|--------------------|--|
| Statutes Violated | Minnesota Statutes §176.231, Subd. 1 and 2 |
| Applicable Rule | Minnesota Rules Part 5220.2820 |
| Assessment Statute | Minnesota Statutes §176.231, Subd. 10 |
| Penalty Payable to | ARSA |
| Assessed Against | Employer or Insurance Company |

Determination

The information used to determine if a penalty will be assessed includes:

- the first day of disability
- the date the employer was notified of the injury or disability, whichever is later
- the date the insurer received notice of the injury from the employer
- the date the FROI is received by the department

The penalty may be assessed against the **employer** if the insurance company does not receive the FROI within **10 days** of the first day of disability or the date the employer received notice, whichever is later.

The penalty may be assessed against the **employer** if the employer is self-insured and if the FROI is not received by the department by the **14th day** after the first day of disability or the date the employer received notice, whichever is later.

The penalty may be assessed against the **insurance company** if the insurance company received the FROI from the employer in a timely manner but did not file the report with the department by the **14th day** after the first day of disability or the date the employer received notice, whichever is later.

If the date the FROI is due falls on a weekend or legal holiday, the due date is the next regular business day.

This penalty can be assessed on claims that are required to be filed per Minnesota Statutes §176.231. If there was no claimed disability beyond the waiting period, the claim was not required to be reported and was not subject to this penalty.

Calculation

The penalty amount is based on the number of penalties assessed against the employer or insurance company for violations over the previous 12-month period prior to the current violation. The chart below shows the penalty amount for each violation.

| <u>Violation Number</u> | <u>Penalty Amount</u> |
|-------------------------|-----------------------|
| 1 | Warning |
| 2 | \$125.00 |
| 3 | \$250.00 |
| 4 | \$375.00 |
| 5 or more | \$500.00 |

How to Avoid

Documentation is the key to avoiding this penalty. The insurance company should document the date they received the FROI from the employer in box 50 of the form. Make sure the date is marked clearly. If it is not clear, the date will not be readable when it is placed in our imaging system.

The Minnesota workers' compensation statutes do not require the filing of a FROI with the department if the claimed disability does not exceed the waiting period. Quite often an insurer does not send us a FROI for this reason, but later learns that there is claimed disability beyond the waiting period. The insurer then sends us benefit payment information on a claim for which we have no FROI. By the time the insurer files the FROI in response to our written request, the filing is late and subject to a penalty. So in cases where the injury originally did not have claimed disability beyond the waiting period, the insurer should ensure that the FROI is filed with the department as soon as they receive notice of the claimed disability beyond the waiting period later on in the claim. Also they need to document the status of the original period of disability when filing the Notice of Insurer's Primary Liability Determination (NOPLD) form.

Continually educate employers in the timely filing of claims. Remind them of the consequences if they fail to file the FROI in a timely manner. Supply as much of the information requested on the FROI as possible, especially the data used to determine timeliness of the FROI. If there are unusual circumstances we should know about, they should attach a note to the FROI.

Late First Payment of Benefits

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|---------------------|--|
| Statute Violated | Minnesota Statutes §176.221, Subd. 1 |
| Applicable Rules | Minnesota Rules Part 5220.2770 Minnesota Rules Part 5220.2790 |
| Assessment Statutes | Minnesota Statutes §176.221, Subd. 3 Minnesota Statutes §176.225, Subd. 5 |
| Penalty Payable to | ARSA Employee |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

The information used to determine if a penalty will be assessed includes:

- the first day of disability
- the date the employer was notified of the injury or disability, whichever is later
- the date of first payment of temporary total disability
- whether the employer is continuing to pay the employee full wages per Minnesota Statutes §176.221, Subd. 9

The first payment of temporary total disability must be issued by the 14th day after the first day of disability or the date the employer received notice, whichever is later. If the payment is late and the claim has not previously been denied, a penalty may be assessed. A penalty is not assessed if there is a proper wage continuation plan by the employer.

Calculation

When penalties are assessed for late first payment of temporary total disability, two penalty amounts are calculated. One is payable to the employee and the other is payable to the ARSA.

Payable to the Employee per Minnesota Statutes §176.225

The amount of the penalty payable to the employee is 25% of the benefits found to be delayed. The amount of benefits found to be delayed is the amount of benefits paid up to a date two weeks before the date the first payment was made.

Payable to the ARSA per Minnesota Statutes §176.221

The amount payable to the ARSA is based on:

- the number of days the payment was made late, and
- the amount of benefits due to the date of the first payment.

The amount of benefits due to the date of the first payment is multiplied by a set percentage, determined by the number of days the first payment is late. The amount is subject to a maximum set by statute and rule. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> | <u>Maximum Penalty Amount</u> |
|----------------------------|---------------------------|-------------------------------|
| 1-15 | 30% | \$500.00 |
| 16-30 | 55% | \$1,500.00 |
| 31-60 | 80% | \$3,500.00 |
| 61 or more | 105% | \$5,000.00 |

How to Avoid

When the insurer receives the FROI from the employer in a timely manner, it is up to them to make payment or deny the claim in a timely manner. They need to file an NOPLD form, being sure that all the dates and information requested on the form is completed and accurate.

The Unavoidable

The insurer may not always be able to avoid this penalty. If the employer is late in filing the claim, there is a good chance the first payment will also be late. While Minnesota Statutes §176.221, Subd. 6 requires that this penalty be assessed against the insurer, it also provides for recovery of penalty costs in situations where the late first payment is caused by the employer's late filing of the claim.

Late Denial of Liability

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|--------------------|--|
| Statute Violated | Minnesota Statutes §176.221, Subd. 1 |
| Applicable Rule | Minnesota Rules Part 5220.2770 |
| Assessment Statute | Minnesota Statutes §176.221, Subd. 3a |
| Penalty Payable to | ARSA |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

The information used to determine if a penalty will be assessed includes:

- the first day of disability
- the date the employer was notified of the injury or disability, whichever is later
- the date the denial was served on the employee

A denial of liability served on the employee and must be filed with the department within 14 days of the first day of disability or the day the employer received notice, whichever is later. If the denial of liability is served beyond the 14 day time limit and no other liability determination has been previously filed, the denial of liability is late and a penalty may be assessed.

If the 14th day falls on a weekend or legal holiday, the day the denial is due becomes the next regular business day.

This penalty can be assessed on claims that are required to be filed per Minnesota Statutes §176.231. If there is no claimed disability beyond the waiting period, the claim is not required to be reported and is not subject to this penalty.

Calculation

The amount payable to the ARSA is based on the number of days the denial was filed late. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>Penalty Amount</u> |
|----------------------------|-----------------------|
| 1-15 | \$250.00 |
| 16-30 | \$500.00 |
| 31-60 | \$1,000.00 |
| 61 or more | \$2,000.00 |

How to Avoid

When the insurer receives the FROI from the employer in a timely manner, it is up to them to make payment or deny the claim in a timely manner. They need to file an NOPLD form, being sure that all the dates and information requested on the form is completed and accurate.

When filing an NOPLD denying either primary or partial liability, be sure to give a complete and specific reason for the denial as required by Minnesota Rules Part 5220.2570, Subp. 2. Remember, penalties can also be assessed for non-specific or frivolous denials.

The Unavoidable

The insurer may not always be able to avoid this penalty. If the employer is late in filing the claim, there is a good chance the denial of liability will also be late. While Minnesota Statutes §176.221, Subd. 6 requires that this penalty be assessed against the insurer, it also provides for recovery of penalty costs in situations where the late denial of liability is caused by the employer's late filing of the claim.

Frivolous Denial of Liability

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|---------------------|--|
| Statutes Violated | Minnesota Statutes §176.221, Subd. 1 Minnesota Statutes §176.225, Subd. 1 |
| Applicable Rules | Minnesota Rules Part 5220.2570 Minnesota Rules Part 5220.2770 Minnesota Rules Part 5220.2760 |
| Assessment Statutes | Minnesota Statutes §176.221, Subd. 3a Minnesota Statutes §176.225, Subd. 1 |
| Penalty Payable to | ARSA Employee |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

A frivolous denial under the rules includes one which:

- does not state facts indicating that an investigation has been completed or that a good faith effort to investigate has been attempted; or
- states a basis which is clearly an inaccurate statement of fact or applicable law.

Calculation

The amount payable to the ARSA is based on the number of penalties against the insurer for violations in the two year period prior to the current assessment. The chart below shows the penalty amount for each violation.

| <u>Violation Number</u> | <u>Penalty Amount</u> |
|-------------------------|-----------------------|
| 1-5 | \$1,000.00 |
| 6 or more | \$2,000.00 |

In addition, a penalty may be assessed under Minnesota Statutes §176.225, Subd. 1, payable to the employee, in the amount of up to 30% of the benefits found to be delayed.

These penalties may be assessed in addition to penalties for late denials of liability under the provisions of Minnesota Statutes §176.221, Subd. 3a and Minnesota Rules Part 5220.2770.

How to Avoid

The easiest way to avoid this penalty is to promptly investigate claims and be familiar with the statutes and rules. Do not deny a claim without conducting an investigation and documenting the investigation. Inform employers that prompt reporting allows more time to conduct an investigation in order to make proper determinations regarding acceptance or denial of liability. Remind health care providers that authorizations to release medical information are not necessary for work related injuries. Be sure to attach to the denial any medical and other documentation used as a basis for the denial.

Some questions the insurer should ask themselves prior to filing the denial include:

- Have I provided a specific reason explaining why the claimed injury is not compensable?
- Have I used language that may not be clearly understood by all the parties and the department without further inquiry?
- Have I provided detailed facts underlying the specific reasons for denying liability?

Penalties

- Have I shown that I completed an investigation or made a good faith effort to investigate the claim before denying liability?
- Have I attached any medical records or provided a summary of medical information I received verbally that I am using to support my reasons for denying liability?
- Have I provided a reason for denial that is clearly not contrary to the facts of the claim?
- Have I provided a reason for denial that is clearly not contrary to the statutes, rules, and case law?

Non-Specific Denial of Liability

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|--------------------|--|
| Statute Violated | Minnesota Statutes §176.84, Subd. 1 |
| Applicable Rule | Minnesota Rules Part 5220.2570 |
| Assessment Statute | Minnesota Statutes §176.84, Subd. 2 |
| Penalty Payable to | ARSA |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

Minnesota Statutes §176.84 states “...denials of liability shall be sufficiently specific to convey clearly, without further inquiry, the basis upon which the party issuing the notice or statement is acting.”

Minnesota Rules Part 5220.2570 goes further to say a denial of liability, whether it be a primary or partial denial, must include “...a specific reason for the denial which must be in language easily readable and understandable to a person of average intelligence and education and a clear statement of the facts forming the basis for the denial. 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.”

Calculation

Before the department may assess a penalty for a non-specific denial, Minnesota Statutes §176.84 requires that the department notify the insurer that the reason for the denial was not sufficiently specific to meet the standard of the statute and rules. This allows the insurer an opportunity to amend the denial to meet the requirements. If the insurer corrects the language of the denial in a timely manner a penalty is not assessed.

The amount payable to the ARSA is \$500.00 per violation. This penalty may be assessed in addition to penalties for late or frivolous denials of liability.

How to Avoid

The easiest way to avoid this penalty is to become familiar with the statute and rules. Do not use the language which the rules define as being non-specific. Do not deny a claim without conducting an investigation. Remind health care providers that authorizations to release medical information are not necessary for work related injuries. Also, see the questions the insurer should ask themselves prior to filing the denial included above under Frivolous Denial of Liability.

Also, as the statute allows an opportunity to amend the denial to meet the requirements, an insurer that takes this opportunity to correct the language of the denial in a timely manner can avoid having this penalty be assessed.

See Seller v. Dura Supreme Inc. WCCA 2/25/2008 and Marshall v. Steinbrecher Painting Inc. WCCA 8/26/2008 for penalty cases involving non-specific denials of liability.

Prohibited Practices

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|--------------------|--|
| Statute Violated | Minnesota Statutes §176.194, Subd. 3 |
| Assessment Statute | Minnesota Statutes §176.194, Subd. 4 |
| Penalty Payable to | ARSA |
| Assessed Against | Insurance Company, Self-Insured Employer, Third-Party Administrator, or Adjuster |

Special Note

Prohibited practice penalties may be assessed in addition to any other penalties provided by the workers' compensation laws. They may be assessed against insurance companies or self-insured employers, third-party administrators who act on behalf of an insurer, adjusters, the Minnesota Insurance Guaranty Association, or any other entity.

Determination

A penalty may be assessed when the department finds that any of nine specific types of prohibited conduct have occurred in the handling of claims. These are:

- 1) failing to reply, within 30 calendar days after receipt, to all written communication about a claim from a claimant that requests a response;
- 2) failing, within 45 calendar days after receipt of a written request, to commence benefits or to advise the claimant of the acceptance or denial of the claims by the insurer;
- 3) failing to pay or deny medical bills within 45 days after the receipt of all information requested from medical providers;

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- 4) filing a denial of liability for workers' compensation benefits without conducting an investigation;
- 5) failing to regularly pay weekly benefits in a timely manner, as prescribed by the rules adopted by the commissioner, once weekly benefits have begun. Failure to regularly pay weekly benefits means failure to pay an employee on more than three occasions in any 12-month period, within three business days of when payment was due;
- 6) failing to respond to the department within 30 calendar days after receipt of a written inquiry from the department about a claim;
- 7) failing to pay pursuant to an order from the department, compensation judge, court of appeals, or the supreme court, within 45 days from the filing of the order, unless the order is under appeal;
- 8) advising a claimant not to obtain the services of an attorney or representing that payment will be delayed if an attorney is retained by the claimant; or
- 9) altering information on a document to be filed with the department without the notice and consent of any person who previously signed the document and who would be adversely affected by the alteration.

The prohibited conduct most commonly penalized for by the department is failing to respond to the department within 30 days after receipt of a written inquiry from the department about a claim. The law requires a response to the request within 30 days. If we do not receive a response by then, a penalty may be assessed or a courtesy second request may be sent to the attention of the claims manager.

Calculation

The amount payable to the ARSA is based on the number of penalties assessed against the party for violations over the previous 12-month period prior to the current violation. The chart below shows the penalty amount for each violation.

| <u>Items 1-6 and 9</u> | | <u>Items 7 and 8</u> | |
|------------------------|-----------------|----------------------|-----------------|
| Violation Number | Penalty Amount | Violation Number | Penalty Amount |
| 1-5 | Warning | 1-5 | \$3,000.00 each |
| 6-10 | \$3,000.00 each | 6-30 | \$6,000.00 each |
| 11-30 | \$6,000.00 each | | |

If a party has 31 or more violations during a 12-month period, a penalty of \$6,000.00 is assessed for each violation. In addition, the department may refer the party to the Minnesota Department of Commerce for review of their license.

How to Avoid

Although the law requires a response to our written request within 30 days, we realize that the information we request may not be readily available, especially when an older claim is involved. When a party receives a request from the department but is unable to supply the requested information within 30 days, please let the department know. Telling the department that the information can not be immediately supplied will generally satisfy the statutory requirement to respond to the initial request. The department will continue to expect to receive the information that was requested, so if the information is not supplied at a later date, it will be requested again.

If a party receives a second written request, they need to respond as soon as possible to avoid a penalty. If they had already answered the original request, they should contact the person that made the second request to determine if the information needs to be resent.

When the department asks for information that a party no longer has available because their file has been destroyed, they should contact the person who made the request. Together we can often find alternative ways to obtain the information.

Communication with the department is the key to avoiding penalties for failure to respond. When a file is reviewed for a prohibited practices penalty for failure to respond to our written request, we usually have already requested the information at least twice.

Late or Improper Payment of Permanent Partial Disability

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|---------------------|--|
| Statutes Violated | Minnesota Statutes §176.021, Subd. 3 or 3a Minnesota Statutes §176.221, Subd. 6a Minnesota Statutes §176.221, Subd. 7 |
| Applicable Rules | Minnesota Rules Part 5220.2550 Minnesota Rules Part 5220.2750 Minnesota Rules Part 5220.2760 Minnesota Rules Part 5220.2790 |
| Assessment Statutes | Minnesota Statutes §176.221, Subd. 3 Minnesota Statutes §176.225, Subd. 5 or 1 |
| Penalty Payable to | ARSA Employee |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

A penalty may be assessed where payment of permanent partial disability, economic recovery compensation, or impairment compensation is not made in a timely manner as provided in Minnesota Statutes §176.101 and Minnesota Rules Part 5220.2550.

Permanent partial disability must be paid at the times specified in Minnesota Statutes §176.021 and 176.101. When permanent partial disability is being paid periodically, the payments must be continued without interruption at the same intervals that the temporary total disability was or would have been paid. This applies whether or not temporary partial disability is being paid concurrently. When permanent partial disability is being paid periodically and concurrently with the payment of permanent total disability, the payments must be continued without interruption at the same intervals as the permanent total disability is being paid.

When the extent of the permanent partial disability is not disputed, the insurer must, within 30 days of knowledge of a minimum rating or receipt of a medical report containing a rating:

- make at least a minimum lump sum payment or begin periodic payments to the employee and
- inform the employee in writing of the rating and the number of weeks the permanent partial disability payments will be made under the statute.

When the extent of the PPD is disputed, the insurer must, within 30 days of the receipt of a medical report containing a rating:

- make at least the minimum lump sum payment or begin periodic payments, based any undisputed portion of the rating,
- notify the employee in writing that an independent medical examination has been scheduled and the date, time and place of the examination, and
- determine and pay any remaining PPD within 120 days of receipt of the initial medical report which contained the PPD rating.

Calculation

When penalties are assessed for late or improper payment of permanent partial disability, two penalty amounts are calculated. One is payable to the employee and the other is payable to the ARSA.

Payable to the Employee per Minnesota Statutes §176.225

If the penalty is being assessed for failure to pay the benefits owed, the amount payable to the employee under Minnesota Statutes §176.225, Subd. 5 is 25% of the benefits found to be delayed.

If the penalty is being assessed for late payment of the benefits, the amount payable to the employee under Minnesota Statutes §176.225, Subd. 1 is based on:

- the number of days the payment was made late, and
- the amount of benefits due to the date of the first payment.

The total benefits paid late is multiplied by a set percentage, determined by the number of days the payment is late. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> |
|----------------------------|---------------------------|
| 1-5 | 6% |
| 6-15 | 12% |
| 16-30 | 18% |
| 31-60 | 24% |
| 61 or more | 30% |

Payable to the ARSA per Minnesota Statutes §176.221

If the penalty is being assessed for failure to pay the benefits owed, the amount payable to the ARSA is based on:

- the number of days from when payment was due through the date of the penalty, and
- the amount of benefits due through the date of the penalty.

The total benefits due as of the date of the penalty is multiplied by a set percentage, determined by the number of days the payment is late. The amount is subject to a maximum set by statute and rule. The chart below shows the penalty amount.

If the penalty is being assessed for late payment of the benefits, the amount payable to the ARSA is based on:

- the number of days the payment was made late, and
- the amount of benefits due to the date of the first payment.

The total benefits paid on the date of first payment is multiplied by a set percentage, determined by the number of days the payment is late. The amount is subject to a maximum set by statute and rule. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> | <u>Maximum Penalty Amount</u> |
|----------------------------|---------------------------|-------------------------------|
| 1-15 | 30% | \$500.00 |
| 16-30 | 55% | \$1,500.00 |
| 31-60 | 80% | \$3,500.00 |
| 61 or more | 105% | \$5,000.00 |

How to Avoid

Review the medical reports that were received to determine if the treating doctor has provided a permanency rating or medical information from which a rating may be determined. Develop knowledge of those medical conditions and surgical procedures that are likely to result in permanency. Be aware of when these benefits

are due. Communicate with the employee when a disputed rating is received from the treating doctor and follow the timelines for clarification of the disputed rating.

Late Payment of an Order or Award

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|---------------------|--|
| Statute Violated | Minnesota Statutes §176.221, Subd. 8 |
| Applicable Rules | Minnesota Rules Part 5220.2780 Minnesota Rules Part 5220.2760 |
| Assessment Statutes | Minnesota Statutes §176.221, Subd. 3 or 3a Minnesota Statutes §176.225, Subd. 1 |
| Penalty Payable to | ARSA Employee |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

Where payment of compensation or expenses is not made within 14 days following an order as required by Minnesota Statutes §176.221, Subd. 6a and 8, the department may assess penalties provided in Minnesota Statutes §176.221, Subd. 3 or 3a. However, the department shall not issue a penalty under unless payment is made after the 30th day following a final order. A penalty may be issued, however, for a payment after the 14th day and through the 30th day following a settlement award under Minnesota Statutes §176.521. Payments made after the 14th day must include interest to the payee.

Calculation

When penalties are assessed for late payment of an order or award, two penalty amounts are calculated. One is payable to the employee and the other is payable to the ARSA.

Payable to the Employee per Minnesota Statutes §176.225

The amount payable to the employee is calculated under Minnesota Statutes §176.225, Subd. 1 and is based on:

- the number of days the payment was made late, and
- the amount of benefits due to the date of the first payment.

The total benefits paid late is multiplied by a set percentage, determined by the number of days the payment is late. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> |
|----------------------------|---------------------------|
| 1-5 | 6% |
| 6-15 | 12% |

| | |
|------------|-----|
| 16-30 | 18% |
| 31-60 | 24% |
| 61 or more | 30% |

Payable to the ARSA per Minnesota Statutes §176.221

When the dollar amount paid late is known, the amount payable to the ARSA is calculated under Minnesota Statutes §176.221, Subd. 3. The amount of the penalty is based on:

- the number of days the payment was made late, and
- the amount of benefits due to the date of the payment.

The total benefits paid late is multiplied by a set percentage, determined by the number of days the payment is late. The amount is subject to a maximum set by statute and rule. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> | <u>Maximum Penalty Amount</u> |
|----------------------------|---------------------------|-------------------------------|
| 1-15 | 30% | \$500.00 |
| 16-30 | 55% | \$1,500.00 |
| 31-60 | 80% | \$3,500.00 |
| 61 or more | 105% | \$5,000.00 |

When the dollar amount paid late is not clearly known, the amount payable to the ARSA is calculated under Minnesota Statutes §176.221, Subd. 3a. The penalty is based on the number of days the payment was late. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>Penalty Amount</u> |
|----------------------------|-----------------------|
| 1-15 | \$500.00 |
| 16-30 | \$1,000.00 |
| 31-60 | \$1,500.00 |
| 61 or more | \$2,000.00 |

How to Avoid

Remain informed of the status of legal actions from which an order or award may result. If represented by legal counsel, remain in contact with that attorney to avoid being caught unaware when an order is served and filed. Do not delay making a decision whether to appeal an order or not.

When involved in a stipulated settlement, prepare for the payment of the settlement before receiving the award. The terms of the settlement should be clearly spelled out in the stipulation. Read the stipulation thoroughly to make certain all payments are issued properly.

Penalties

There are times where payments of orders or awards are delayed due to issuing payments to an outdated address. Keep good records of up to date addresses for all parties involved. Compare the address on record to any address provided in the stipulation.

See Osterkamp v. Craftsman Press WCCA 8/23/1990 and Aune v. Conagra Inc. WCCA 11/19/1999 for penalty cases involving late payment of an order or award.

Improper Discontinuance of Benefits

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|---------------------|---|
| Statutes Violated | Minnesota Statutes §176.238 Minnesota Statutes §176.239 |
| Applicable Rules | Minnesota Rules Part 5220.2720 Minnesota Rules Part 5220.2760 |
| Assessment Statutes | Minnesota Statutes §176.238, Subd. 10 Minnesota Statutes §176.221, Subd. 3 Minnesota Statutes §176.225, Subd. 1 |
| Penalty Payable to | ARSA Employee |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

A penalty for improper discontinuance will be made by the department, if appropriate, where:

- benefits were discontinued without timely notice to the employee and the employee's attorney as required under Minnesota Rules Part 5220.2630 and Minnesota Statutes §176.238.
- the discontinuance occurred despite an administrative determination denying a request to discontinue under Minnesota Rules Part 1415.3900 and Minnesota Statutes §176.239.
- the discontinuance occurred without notice despite a final decision of a compensation judge, the Workers' Compensation Court of Appeals, or the Supreme Court requiring payment of ongoing benefits.
- an administrative conference was requested and the request was not withdrawn, and the discontinuance occurred before the date of the administrative conference, except where allowed by Minnesota Rules Part 1415.3900, Subp. 3.
- a notice of intention to discontinue benefits is required to be filed but the discontinuance is retroactive, taking effect prior to the date that the notice of intention to discontinue benefits is served and filed with the department or served on the employee, except as allowed by Minnesota Rules Part 5220.2630.

Calculation

When penalties are assessed for improper discontinuance of benefits, two penalty amounts are calculated. One is payable to the employee and the other is payable to the ARSA.

Payable to the Employee per Minnesota Statutes §176.225

The amount payable to the employee is only calculated in cases where additional benefits are clearly due. The penalty is calculated under Minnesota Statutes §176.225, Subd. 1 and is based on:

- the number of days the payment was made late, and
- the amount of benefits due.

The total benefits owed is multiplied by a set percentage, determined by the number of days the payment is late. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> |
|----------------------------|---------------------------|
| 1-5 | 6% |
| 6-15 | 12% |
| 16-30 | 18% |
| 31-60 | 24% |
| 61 or more | 30% |

Payable to the ARSA per Minnesota Statutes §176.221 or §176.238

When the dollar amount owed is known, the amount payable to the ARSA is calculated under Minnesota Statutes §176.221, Subd. 3. The amount of the penalty is based on:

- the number of days the payment was made late, and
- the amount of benefits owed.

The total benefits owed is multiplied by a set percentage, determined by the number of days the payment is late. The amount is subject to a maximum set by statute and rule. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> | <u>Maximum Penalty Amount</u> |
|----------------------------|---------------------------|-------------------------------|
| 1-15 | 30% | \$500.00 |
| 16-30 | 55% | \$1,500.00 |
| 31-60 | 80% | \$3,500.00 |
| 61 or more | 105% | \$5,000.00 |

Penalties

When the dollar amount owed is not clearly known, the amount payable to the ARSA is calculated under Minnesota Statutes §176.238, Subd. 10. The penalty amount is based on:

- the number of days late, and
- the number of penalties against the insurer for violations in the last year prior to the current assessment.

For the first violation in the last year, a warning letter is issued. If the violation is not corrected within 10 days of the warning, the chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> |
|----------------------------|---------------------------|
| 11-20 | \$200.00 |
| 21-30 | \$600.00 |
| 31-60 | \$800.00 |
| 61 or more | \$1,000.00 |

For all subsequent violations in the last year, the chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> |
|----------------------------|---------------------------|
| 1-10 | \$400.00 |
| 11-20 | \$600.00 |
| 21-30 | \$800.00 |
| 31 or more | \$1,000.00 |

How to Avoid

When discontinuing benefits for reasons other than return to work, be certain to provide timely notice to the employee and the employee's attorney. Also be certain to pay benefits through the date of the discontinuance.

Avoid discontinuing benefit payments that have been ordered payable as the result of an administrative conference or by a compensation judge, the Workers' Compensation Court of Appeals, or the Supreme Court.

For those claims on which it is expected the employee will soon return to work, keep in contact with the employer for confirmation of the return to work date. Don't rely on information indicating the employee will return to work on a certain day in the future.

See Douville v. JoAnn Stores Inc. 62WCD593 and Haag v. D.S. Brown Co. WCCA 11/1/2004 for penalty cases involving improper discontinuance of benefits.

Late Payment of Ongoing Benefits

| | |
|---------------------|---|
| Statute Violated | Minnesota Statutes §176.221. Subd. 1 |
| Applicable Rules | Minnesota Rules Part 5220.2540 Minnesota Rules Part 5220.2790 |
| Assessment Statutes | Minnesota Statutes §176.221, Subd. 3a Minnesota Statutes §176.225, Subd. 5 |
| Penalty Payable to | ARSA Employee |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

Once temporary total or permanent total disability have been commenced, they must continue to be paid on a regular basis at the intervals the employee would have received wages from the employer had the employee continued working. Less frequent payments may be arranged by written agreement of the parties. With the initial payment of temporary total or permanent total disability, the insurer must notify the employee in writing of the day of the week that further payments will be made and the frequency with which payments will be made. If the initial payment is a first and final payment, then notification need not be sent.

The same time limits apply to payments of temporary partial disability. If the current wage varies so that wage documentation for calculation of temporary partial disability benefits is necessary, payment is due ten days following the date the employee or employer sends wage verification to the insurer. If the employee is receiving a regular wage during the period of partial disability, the receipt of wage verification is not required prior to issuing payment temporary partial disability. (See Kjeldergaard v. Pueringer Distributing Inc. WCCA 3/20/2002)

When a claim has not been denied but payment is not made as provided by Minnesota Statutes §176.221, the failure is deemed inexcusable delay under Minnesota Statutes §176.225, Subd 5.

Where other payment of temporary total, temporary partial, permanent total, or permanent partial disability is not made within three business days of the date provided by statute or rule on more than three occasions in any 12-month period, the failure is deemed inexcusable.

Calculation

When penalties are assessed for late payment of ongoing benefits, two penalty amounts may be calculated. One is payable to the employee and the other is payable to the ARSA.

Payable to the Employee per Minnesota Statutes §176.225

The amount payable to the employee is calculated under Minnesota Rules Part 5220.2790 and Minnesota Statutes §176.225, Subd. 5. The amount is 25% of the benefits found to be delayed.

Payable to the ARSA per Minnesota Statutes §176.221

The amount payable to the ARSA is calculated under Minnesota Statutes §176.221, Subd. 3a. The amount is based on the number of days payments were delayed, a percentage of the amount due, and is subject to a maximum amount of up to \$2,000.00. There are currently no set rules for the calculation of this penalty.

How to Avoid

Consistency is the key. Penalties for late payment of ongoing benefits usually happen when an employee's compensation checks are removed from a repetitive pay system. Issuing payments of weekly compensation benefits on a regular schedule that is as close as possible to the claimant's regular work payday will help avoid this penalty assessment.

For those claims on which it is expected the employee will soon return to work, keep in contact with the employer for confirmation of the return to work date. Don't rely on information indicating the employee will return to work on a certain day in the future. Confirming the return to work date before discontinuing benefit payments will also help avoid a penalty assessment for late ongoing payments.

On those claims for which temporary partial disability is being paid, set up a process for the employee or employer to send the wage verification to ensure this information is received with enough time to process a timely payment. Remember, payment of temporary partial disability is due within 10 days of the date on which the wage verification is sent, not received.

Late Reinstatement of Benefits

| | |
|---------------------|--|
| Statute Violated | Minnesota Statutes §176.221. Subd. 1 |
| Applicable Rules | Minnesota Rules Part 5220.2540 Minnesota Rules Part 5220.2770 Minnesota Rules Part 5220.2790 |
| Assessment Statutes | Minnesota Statutes §176.221, Subd. 3 Minnesota Statutes §176.225, Subd. 5 |

| | |
|--------------------|--|
| Penalty Payable to | ARSA Employee |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

Payment of compensation must be commenced within 14 days of “notice to or knowledge by the employer of a new period of lost time due to a previous work related injury unless an extension is requested under Minnesota Statutes §176.221 176.221, Subd. 1.

Calculation

When penalties are assessed for late reinstatement of benefits, two penalty amounts may be calculated. One is payable to the employee and the other is payable to the ARSA.

Payable to the Employee per Minnesota Statutes §176.225

The amount of the penalty payable to the employee is 25% of the benefits found to be delayed. The amount of benefits found to be delayed is the amount of benefits paid up to a date two weeks before the date the payment was made.

Payable to the ARSA per Minnesota Statutes §176.221

The amount payable to the ARSA is based on:

- the number of days the payment was made late, and
- the amount of benefits due to the date of the payment.

The amount of benefits due to the date of the payment is multiplied by a set percentage, determined by the number of days the payment is late. The amount is subject to a maximum set by statute and rule. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>% of Late Benefits</u> | <u>Maximum Penalty Amount</u> |
|----------------------------|---------------------------|-------------------------------|
| 1-15 | 30% | \$500.00 |
| 16-30 | 55% | \$1,500.00 |
| 31-60 | 80% | \$3,500.00 |
| 61 or more | 105% | \$5,000.00 |

How to Avoid

Payment or denial of a claim for reinstatement of benefits is due within 14 days of the date on which the employer has notice or knowledge of a new period of lost time claimed to be due to a previous work related injury. Insurers should inform employers

that it is imperative that they provide notice to them as soon as possible to allow them enough time to make a liability determination within that 14 day time period.

Unlike the initial period of claimed lost time, on claims for reinstatement of benefits the insurer is allowed to request an extension of time to make the liability determination by filing a Request for Extension form within the 14 day time period. If the form is properly filed with the department, payment must be made no later than 30 days from the notice to or knowledge by the employer of the new period of lost time. If payment is not commenced, a letter of denial of payment must be sent to the employee (with a copy to the department) within the 30 day time period. If payment is commenced, a Notice of Benefit Reinstatement must be filed with the department.

The Unavoidable

The insurer may not always be able to avoid this penalty. If the employer takes too much time in reporting the claim for reinstatement of benefits, there is a good chance the payment will be late.

Late Payment or Denial of Medical Bills

| | |
|--------------------|--|
| Statutes Violated | Minnesota Statutes §176.135 Minnesota Statutes §176.221, Subd. 6a |
| Applicable Rules | Minnesota Rules Part 5220.2740 Minnesota Rules Part 5221.0600 |
| Assessment Statute | Minnesota Statutes §176.221, Subd. 3a |
| Penalty Payable to | ARSA |
| Assessed Against | Insurance Company or Self-Insured Employer |

Determination

As soon as reasonably possible, and no later than 30 calendar days after receiving a medical bill, the insurer shall pay the charge or any portion of the charge which is not denied, or deny all or a part of the charge with written notification to the employee and the health care provider explaining the basis for denial. All or part of a charge must be denied if any of the following conditions exists:

- 1) the injury or condition is not compensable under this chapter;
- 2) the charge or service is excessive under this section or section 176.136;
- 3) the charges are not submitted on the prescribed billing form; or
- 4) additional medical records or reports are required under Minnesota Statutes §176.135, Subd. 7 to substantiate the nature of the charge and its relationship to the work injury.

If payment is denied under clause (3) or (4), the insurer shall reconsider the charges in accordance with this subdivision within 30 calendar days after receiving additional

medical data, a prescribed billing form, or documentation of enrollment or certification as a provider.

Calculation

Payable to the ARSA per Minnesota Statutes §176.221

The amount payable to the ARSA is calculated under Minnesota Statutes §176.221, Subd. 3a. The amount is based on the number of days the payment was late. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>Penalty Amount</u> |
|----------------------------|-----------------------|
| 1-15 | \$500.00 |
| 16-30 | \$1,000.00 |
| 31-60 | \$1,500.00 |
| 61 or more | \$2,000.00 |

How to Avoid

Develop a process in which all medical bills received are reviewed and a liability determination is made within 30 days of receipt. Document compliance with the rules governing payment or denial of medical bills. If denying payment of any medical bills, document clearly the reason for denial.

Failure to Release Existing Medical Data

| | |
|--------------------|--|
| Statute Violated | Minnesota Statutes §176.138 |
| Applicable Rule | Minnesota Rules Part 5220.2810 |
| Assessment Statute | Minnesota Statutes §176.138 |
| Penalty Payable to | ARSA |
| Assessed Against | Any party to a claim that is holding medical data relating to the claim. |

Determination

Any party or the department may request a penalty be assessed against a collector or possessor for failure to release medical data in accordance with Minnesota Statutes §176.138. The request must be in writing, clearly state the factual basis upon which the penalty is requested, and be accompanied by copies of the written requests for medical data made by the requestor and any response received. The request also must be accompanied by a copy of the written notification to the employee of the request for medical data, unless the employee is the requesting party.

Upon receipt of a request for a penalty assessment, the department may assess a penalty if it determines that the request meets the following requirements:

- A. the medical data requested is related to a current claim for compensation, which means any claim for compensation under Minnesota Statutes §176, for which benefits are currently being paid or are being claimed by an employee, whether or not a claim petition has been filed;
- B. the requested medical data is specifically identified and in existence at the time of the request;
- C. the requested medical data is directly related to a current injury or disability for which compensation is claimed or being paid;
- D. the applicant sent written notification of the request for medical data to the employee at the time the request was made;
- E. if required by federal law, appropriate authorizations for release of information were furnished; and
- F. the requested medical data was not provided within seven working days after receipt of the request by a party and receipt of appropriate authorizations, if required by federal law.

Calculation

The department must send a warning letter before a monetary penalty is assessed unless the initial request for records is from the department. The warning letter must advise the collector or possessor against whom the penalty is sought of the obligation to provide medical data under Minnesota Statutes §176.138, that a penalty will be assessed if it fails to provide the requested data within seven working days after the warning letter, and to file written verification of the release of the data or a copy of the data with the department within that time.

Payable to the ARSA per Minnesota Statutes §176.138

The amount payable to the ARSA is based on the number of days the existing medical reports were filed late. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>Penalty Amount</u> |
|----------------------------|-----------------------|
| > 7 | \$300.00 |
| > 30 | \$450.00 |
| > 60 | \$600.00 |

How to Avoid

As the statute allows the possessor of the medical data an opportunity to send the requested information before a penalty is assessed, this penalty is easily avoidable. When a written request is received from the department for existing medical data, the possessor of the data must respond within 7 days. If there is a question concerning what is being requested, contact the person requesting the data to discuss it.

Other Failure to File Required Reports in a Timely Manner

| | |
|--------------------|--|
| Statutes Violated | Minnesota Statutes §176.231, Subd. 3, 4, 6, 8, and/or 10 |
| Applicable Rule | Minnesota Rules Part 5220.2830 |
| Assessment Statute | Minnesota Statutes §176.231, Subd. 10 |
| Penalty Payable to | ARSA |
| Assessed Against | Insurance Company, Employer, Self- Insured Employer, Third Party Administrator, Health Care Provider, or Qualified Rehabilitation Consultant |

Determination

The department may assess a penalty for failure to file a required report if:

- A report, other than the first report of injury, required to be filed by Minnesota Statutes §176.231 is not filed in the manner or within the time limitations prescribed; or
- A report on a prescribed form is requested by the department but is not provided within 21 days of the department's request.
- A changed or corrected electronic first report of injury that corrects all identified errors, as provided in Minnesota Rules Part 5220.2530, Subp. 5, item C, is not filed within 60 days after the department sent the insurer an electronic acknowledgment transmission describing the errors

Calculation

For a report required to be filed by Minnesota Statutes §176.231 that is not filed in the manner or within the time limitations prescribed, the amount payable to the ARSA is based on the number of days the required report was filed late. The chart below shows the penalty amount.

Number of Days Late Penalty Amount

Penalties

| | |
|-------|----------|
| > 30 | \$125.00 |
| > 90 | \$375.00 |
| > 180 | \$500.00 |

For a required report requested by the department that is not provided within 21 days of the department's request, the amount payable to the ARSA is based on the number of days the required report was filed late. If the 21st day falls on a legal holiday, the day the required report is due becomes the next regular business day. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>Penalty Amount</u> |
|---|-----------------------|
| Not filed within 21 days of written request | \$125.00 |
| Not filed after second request | \$375.00 |
| Subsequent failure to file | \$500.00 |

Where a changed or corrected electronic first report of injury that corrects all identified errors is not filed in the manner or within the time limitations prescribed, the amount payable to the ARSA is based on the number of days the required report was filed late. The chart below shows the penalty amount.

| <u>Number of Days Late</u> | <u>Penalty Amount</u> |
|----------------------------|-----------------------|
| > 30 | \$125.00 |
| > 90 | \$375.00 |
| > 180 | \$500.00 |

How to Avoid

When a written request is received from the department to file a required form, file the requested form within 21 days of the request.

If the required form has already been filed, verify the claim information on the request that was received to see if it matches the previously filed form. If the claim information does not match, there is a chance that two files exist in our system for this claim. Contact the requestor to discuss it.

If there is any question concerning what is being requested, contact the person requesting the data to discuss it. Before sending a copy of a form that has already been filed, make sure the request is not for an updated form.

Failure to Notify the Employee of the Time Limit to Request Retraining Benefits

| | |
|--------------------|---------------------------------------|
| Statute Violated | Minnesota Statutes §176.102, Subd. 11 |
| Applicable Rule | N/A |
| Assessment Statute | Minnesota Statutes §176.102, Subd. 11 |

| | |
|--------------------|---|
| Penalty Payable to | ARSA |
| Assessed Against | Insurance Company or Self- Insured Employer |

Determination

The insurer must notify the employee in writing of the 208 week limitation for filing a request for retraining with the department. This notice must be given before any combination of 80 weeks of temporary total disability and temporary partial disability have been paid, regardless of the number of weeks that have elapsed since the date of injury. If the notice is not given before the 80 weeks, the period of time the employee has to file a request for retraining is extended by the number of days the notice is late, but in no event may a request be filed later than 225 weeks after any combination of temporary total disability or temporary partial disability have been paid.

This penalty applies only to dates of injury October 1, 1995 or after.

Calculation

The amount payable to the ARSA is \$25.00 per day that the notice is late, up to a maximum penalty of \$2,000.00.

How to Avoid

Keep track of the number of weeks of compensation that have been paid and set up a reminder to provide this notice in a timely fashion.

Since the statute requires this notice to be given prior to 80 weeks of benefits being paid, consider sending this notice to the employee at the time of the initial payment of benefits.

Objection to Penalty Assessment

(Minnesota Rules Part 5220.2870)

Effective Filing

When filing an Objection to Penalty Assessment form, the objecting party must do the following:

- Supply all information requested on the Objection to Penalty Assessment form, including a notarized proof of service to all parties.
- Send the original form directly to the department.
- Send a copy to the employee only if part of the penalty assessed is payable to the employee.
- Send a copy to the employer.

- Serve the objection on all parties within 30 days of the date the penalty was served. Remember, to be considered timely, the objection must be **received** by the department by the 30th day.
- Include a detailed statement explaining the legal or factual basis for the objection. Supply documentation to support the objection.
- Attach any additional information that is relevant.

Department Procedure

Our procedure for handling most Objections to Penalty Assessment starts with an immediate review of the objection by the staff person who wrote the penalty. The department generally has five options for responding to the objection. Those options are:

- 1) **Rescind the Penalty.** The department rescinds the penalty when the information supplied on or with the objection is sufficient to show the penalty was not appropriate. An order rescinding the penalty is issued to all involved parties and the objection process is considered complete.
- 2) **Amend the Penalty.** If information supplied on or with the objection shows that the original penalty amount was not accurate, the penalty is amended to reflect the new information. The department considers the objection process complete when the amended penalty is served and filed.
- 3) **Write for additional information.** If information received on or with the objection is not clear, the department will contact the party filing the objection, asking for additional clarification. Once final clarification is received, the department will follow one of the other options to complete the objection process.
- 4) **Negotiate a settlement.** If the department is not able to rescind or amend the penalty after reviewing the information, the department may open negotiations to settle the penalty. This is done before the objection is forwarded to the Office of Administrative Hearings (OAH). If the negotiations result in an agreement to settle the penalty, a stipulation for settlement of the penalty assessment is written and signed by the parties. The stipulation is then forwarded to OAH with a request for an award approving the settlement.

The department does not have the authority to negotiate a settlement of any penalty amount payable to the employee. If the negotiations result in a change in the penalty amount payable to the employee, the employee must be included in all negotiations. This being the case, it is generally easier to only negotiate settlement of the amount payable to the state while agreeing that as part of the settlement the full penalty amount will be paid to the employee.

- 5) **Refer to OAH.** The objection is forwarded to OAH for one of two actions:
 - A. Request for Dismissal, because of late filing or lack of legal or factual basis for the objection; or

- B. Scheduling of a settlement conference and any additional conferences and hearings that might be necessary.

Penalties – Exercise 5A

Review the FROI found on the next page and answer the following questions:

1. Did the employer submit the FROI to the insurance company on time?
2. Did the insurance company submit the FROI to the department on time?
3. In order for the FROI to be considered filed timely, by what dates did the insurance company and the department need to receive the FROI?

Review the NOPLD, found on the next page after the FROI and answer the following questions:

1. By what date was the first payment or denial due?
2. Was the payment made timely?

Compliance Penalty Reference Table

| Workers' Compensation Penalties Assessed by Compliance | | | | | | | | | | | | | | | | | | | | |
|--|------------------|---|------------------------------------|---------------------|--|------------|-------------|---------|-----------|-------|-----------|-------|-----------|-----------|-----------|-----|-----------|------|------|-----------|
| Violation | Statute Violated | Applicable Rules | Assessment Statutes | Paid to | Formula and dollar amount | | | | | | | | | | | | | | | |
| Late 1st report of injury Against ER or IR | 176.231 s1 & 2 | 5220.2820 | 176.231 s10 | ARSA | <i>based on # of violations in last 12 months prior to the assessment</i> 1st = warning 2nd = \$125.00 3rd = \$250.00 4th = \$375.00 5th + = \$500.00 | | | | | | | | | | | | | | | |
| Late 1st payment of benefits Against IR or Self-Insured ER | 176.221 s1 | 5220.2770 & 5220.2790 | 176.221 s3 & 176.225 s5 | ARSA & EE | <i>based on # of days late, % of amount due, subject to maximums</i> <table border="1"> <thead> <tr> <th>Days late</th> <th>% of \$ due</th> <th>Maximum</th> </tr> </thead> <tbody> <tr> <td>01-15</td> <td>30%</td> <td>\$500.00</td> </tr> <tr> <td>16-30</td> <td>55%</td> <td>\$1500.00</td> </tr> <tr> <td>31-60</td> <td>80%</td> <td>\$3500.00</td> </tr> <tr> <td>61 +</td> <td>105%</td> <td>\$5000.00</td> </tr> </tbody> </table> & 25% of amount found to be delayed | Days late | % of \$ due | Maximum | 01-15 | 30% | \$500.00 | 16-30 | 55% | \$1500.00 | 31-60 | 80% | \$3500.00 | 61 + | 105% | \$5000.00 |
| Days late | % of \$ due | Maximum | | | | | | | | | | | | | | | | | | |
| 01-15 | 30% | \$500.00 | | | | | | | | | | | | | | | | | | |
| 16-30 | 55% | \$1500.00 | | | | | | | | | | | | | | | | | | |
| 31-60 | 80% | \$3500.00 | | | | | | | | | | | | | | | | | | |
| 61 + | 105% | \$5000.00 | | | | | | | | | | | | | | | | | | |
| Late denial of liability Against IR or Self-Insured ER | 176.221 s1 | 5220.2770 | 176.221 s3a | ARSA | <i>based on # of days late</i> <table border="1"> <thead> <tr> <th>Days late</th> <th>\$Penalty</th> </tr> </thead> <tbody> <tr> <td>01-15</td> <td>\$250.00</td> </tr> <tr> <td>16-30</td> <td>\$500.00</td> </tr> <tr> <td>31-60</td> <td>\$1000.00</td> </tr> <tr> <td>61 +</td> <td>\$2000.00</td> </tr> </tbody> </table> | Days late | \$Penalty | 01-15 | \$250.00 | 16-30 | \$500.00 | 31-60 | \$1000.00 | 61 + | \$2000.00 | | | | | |
| Days late | \$Penalty | | | | | | | | | | | | | | | | | | | |
| 01-15 | \$250.00 | | | | | | | | | | | | | | | | | | | |
| 16-30 | \$500.00 | | | | | | | | | | | | | | | | | | | |
| 31-60 | \$1000.00 | | | | | | | | | | | | | | | | | | | |
| 61 + | \$2000.00 | | | | | | | | | | | | | | | | | | | |
| Frivolous denial of liability Against IR or Self-Insured ER | 176.221 s1 | 5220.2570 5220.2770 5220.2540 & 5220.2760 | 176.221 s3a & 176.225 s1 | ARSA & EE | <i>based on # of violations in last two-year period prior to the assessment</i> <table border="1"> <thead> <tr> <th>Violations</th> <th>\$Penalty</th> </tr> </thead> <tbody> <tr> <td>1-5</td> <td>\$1000.00</td> </tr> <tr> <td>6 +</td> <td>\$2000.00</td> </tr> </tbody> </table> & <i>Up to 30% of amount found to be delayed.</i> This penalty may be assessed in addition to penalties for late or non-specific denial. | Violations | \$Penalty | 1-5 | \$1000.00 | 6 + | \$2000.00 | | | | | | | | | |
| Violations | \$Penalty | | | | | | | | | | | | | | | | | | | |
| 1-5 | \$1000.00 | | | | | | | | | | | | | | | | | | | |
| 6 + | \$2000.00 | | | | | | | | | | | | | | | | | | | |
| Non-specific denial of liability or NOID Against IR or Self-Insured ER | 176.84 s1 | 5220.2570 | 176.84 s2 | ARSA | <i>based on set \$ amount</i> \$500.00 This penalty may be assessed in addition to penalties for late or frivolous denial. | | | | | | | | | | | | | | | |
| Prohibited practices Against IR, Self-Insured ER, TPA, or Adjuster | 176.194 s3 | None | 176.194 s4 | ARSA | <i>based on # of violations in last 12 months</i> violation of: subd. 3 (1-6 & 9) 01-05 = warning 06-10 = \$3000.00 each 11-30 = \$6000.00 each 31 + = \$6000.00 each for subd. 3 (1-9). In addition, may refer to Minnesota Department of Commerce for license review. violation of: subd. 3 (7-8) 01-05 = \$3000.00 each 06-30 = \$6000.00 each | | | | | | | | | | | | | | | |

Penalties

| Workers' Compensation Penalties Assessed by Compliance | | | | | |
|--|--|--|--|---------------------------------------|---|
| Violation | Statute Violated | Applicable Rules | Assessment Statutes | Paid to | Formula and dollar amount |
| Late or improper payment of permanent partial disability Against IR or Self-Insured ER | 176.021 s3/3a &/or 176.221 s6a &/or 176.221 s7 | 5220.2750 & 5220.2790 or 5220.2760 | 176.221 s3 & 176.225 s5 = fail to pay or 176.225 s1 = late pay | ARSA & EE or EE | <i>based on # of days late, % of amount due, subject to maximums</i> <u>Days late</u> <u>% of \$ due</u> <u>Maximum</u> 01-15 30% \$500.00 16-30 55% \$1500.00 31-60 80% \$3500.00 61 + 105% \$5000.00 & 25% of amount found to be delayed or <u>Days late</u> <u>% of \$ due</u> 01-05 6% 06-15 12% 16-30 18% 31-60 24% 61 + 30% |
| | | | | | |
| Late payment of order or award Against IR or Self-Insured ER | 176.221 s8 | 5220.2780 & 5220.2760 | 176.221 s3 or 176.221 s3a (used when \$ amount owed isn't clear) & 176.225 s1 | ARSA & EE | <i>based on # of days late, % of amount due, subject to maximums or based on set amount</i> <u>Days late</u> <u>% of \$ due</u> <u>Maximum</u> 01-15 30% \$500.00 16-30 55% \$1500.00 31-60 80% \$3500.00 61 + 105% \$5000.00 or <u>Days late</u> <u>\$Penalty</u> 01-15 \$500.00 16-30 \$1000.00 31-60 \$1500.00 61 + \$2000.00 & <u>Days late</u> <u>% of \$ due</u> 01-05 6% 06-15 12% 16-30 18% 31-60 24% 61 + 30% |
| | | | | | |
| Improper discontinuance of benefits Against IR or Self-Insured ER | 176.238 or 176.239 | 5220.2720 & 5220.2760 | 176.238 s10 = If \$ amount owed is unclear or 176.221 s3 = If \$ amount owed is clear & 176.225 s1 = only if additional benefits clearly due | ARSA or ARSA & EE | <i>based on # of violations in last year and days late</i> 176.238 s10 1st violation in 1 year = warning If not corrected in 10 days of warning, apply following: 11-20 days late = \$200.00 21-30 = \$600.00 31-60 = \$800.00 61 + = \$1000.00 2nd+ violation in 1 year, then the following applies: 1-10 days late = \$400.00 11-20 = \$600.00 21-30 = \$800.00 31 + = \$1000.00 or <u>Days late</u> <u>% of \$ due</u> <u>Maximum</u> 01-15 30% \$500.00 16-30 55% \$1500.00 31-60 80% \$3500.00 61 + 105% \$5000.00 & <u>Days late</u> <u>% of \$ due</u> 01-05 6% 06-15 12% 16-30 18% 31-60 24% 61 + 30% |
| | | | | | |

| Workers' Compensation Penalties Assessed by Compliance | | | | | | | | | | | | | | | | | | | | |
|--|--------------------------|---------------------------------|------------------------------------|---------------------|---|------------------|--------------------|----------------|----------|-------|-----------|-------|-----------|-----------|-----------|-----|-----------|------|------|-----------|
| Violation | Statute Violated | Applicable Rules | Assessment Statutes | Paid to | Formula and dollar amount | | | | | | | | | | | | | | | |
| Late payment of ongoing benefits Against IR or Self-Insured ER | 176.221 s1 | None & 5220.2790 | 176.221 s3a & 176.225 s5 | ARSA & EE | <i>based on # of days late, % of amount due, subject to maximum up to \$2000.00 (no set rules)</i> & 25% of amount found to be delayed | | | | | | | | | | | | | | | |
| Late reinstatement of benefits Against IR or Self-Insured ER | 176.221 s1 | 5220.2770 & 5220.2790 | 176.221 s3 & 176.225 s5 | ARSA & EE | <i>based on # of days late, % of amount due, subject to maximums</i> <table border="0"> <tr> <td><u>Days late</u></td> <td><u>% of \$ due</u></td> <td><u>Maximum</u></td> </tr> <tr> <td>01-15</td> <td>30%</td> <td>\$500.00</td> </tr> <tr> <td>16-30</td> <td>55%</td> <td>\$1500.00</td> </tr> <tr> <td>31-60</td> <td>80%</td> <td>\$3500.00</td> </tr> <tr> <td>61 +</td> <td>105%</td> <td>\$5000.00</td> </tr> </table> & 25% of amount found to be delayed | <u>Days late</u> | <u>% of \$ due</u> | <u>Maximum</u> | 01-15 | 30% | \$500.00 | 16-30 | 55% | \$1500.00 | 31-60 | 80% | \$3500.00 | 61 + | 105% | \$5000.00 |
| <u>Days late</u> | <u>% of \$ due</u> | <u>Maximum</u> | | | | | | | | | | | | | | | | | | |
| 01-15 | 30% | \$500.00 | | | | | | | | | | | | | | | | | | |
| 16-30 | 55% | \$1500.00 | | | | | | | | | | | | | | | | | | |
| 31-60 | 80% | \$3500.00 | | | | | | | | | | | | | | | | | | |
| 61 + | 105% | \$5000.00 | | | | | | | | | | | | | | | | | | |
| Late payment or denial of medical bills Against IR or Self-Insured ER | 176.135 & 176.221 s6a | 5220.2740 | 176.221 s3a | ARSA | <i>based on # of days late, set amount</i> <table border="0"> <tr> <td><u>Days late</u></td> <td><u>\$Penalty</u></td> </tr> <tr> <td>01-15</td> <td>\$500.00</td> </tr> <tr> <td>16-30</td> <td>\$1000.00</td> </tr> <tr> <td>31-60</td> <td>\$1500.00</td> </tr> <tr> <td>61 +</td> <td>\$2000.00</td> </tr> </table> | <u>Days late</u> | <u>\$Penalty</u> | 01-15 | \$500.00 | 16-30 | \$1000.00 | 31-60 | \$1500.00 | 61 + | \$2000.00 | | | | | |
| <u>Days late</u> | <u>\$Penalty</u> | | | | | | | | | | | | | | | | | | | |
| 01-15 | \$500.00 | | | | | | | | | | | | | | | | | | | |
| 16-30 | \$1000.00 | | | | | | | | | | | | | | | | | | | |
| 31-60 | \$1500.00 | | | | | | | | | | | | | | | | | | | |
| 61 + | \$2000.00 | | | | | | | | | | | | | | | | | | | |
| Failure to release existing medical data Any party to a claim that is holding existing medical data relating to the claim. | 176.138 | 5220.2810 | 176.138 | ARSA | <i>based on # of days late</i> <ul style="list-style-type: none"> > 7 days without response = \$300.00 > 30 days without response = \$450.00 > 60 days without response = \$600.00 | | | | | | | | | | | | | | | |
| Other failure to file required reports in a timely manner Against IR, Self-Insured ER, TPA, HCP, QRC | 176.231 s3, 4, 6, 7, 10 | 5220.2830 | 176.231 s10 | ARSA | <i>based on # of days late</i> <ul style="list-style-type: none"> Not filed within 21 days of written request = \$125.00 Not filed after 2nd request = \$375.00 Subsequent failure to file = \$500.00 or <ul style="list-style-type: none"> Not filed within 30 days of date due = \$125.00 Not filed within 90 days of date due = \$375.00 Not filed within 180 days of date due = \$500.00 | | | | | | | | | | | | | | | |

Penalties

| Workers' Compensation Penalties Assessed by Compliance | | | | | |
|--|------------------------------|--------------------------|---------------------|---------|---|
| Violation | Statute Violated | Applicable Rules | Assessment Statutes | Paid to | Formula and dollar amount |
| Failure to notify EE of time limit to request retraining Against IR or Self-Insured ER | 176.102 s11 | None | 176.102 s11 | ARSA | <i>based on # of days late</i> \$25.00 per day up to \$2000.00 max Note: Applies only to dates of injury October 1, 1995 or later. |
| Late payment of rehabilitation Against IR or Self-Insured ER | 176.102 s9, 11 & 176.221 s6a | 5220.1900 s19 ? None? | 176.221 s3 or 3a ? | ARSA | No clear rule regarding penalties. Note: Rules pending. |

ABBREVIATIONS

ARSA: Assigned Risk Safety Account
 DOI: Date of Injury
 EE: Employee
 ER: Employer
 FROI: First Report of Injury
 HCP: Health Care Provider

IR: Insurance Company
 MCO: Managed Care Organization
 NOID: Notice of Intention to Discontinue Benefits
 QRC: Qualified Rehabilitation Consultant
 TPA: Third Party Administrator (adjusting company)