

**176.011 DEFINITIONS.**

**[For subdivisions 1-10, see M.S.]**

**Subd. 9. Employee.**

(a) "Employee" means any person who performs services for another for hire including the following:

(1) an alien;

(2) a minor;

(3) a sheriff, deputy sheriff, police officer, firefighter, county highway engineer, and peace officer while engaged in the enforcement of peace or in the pursuit or capture of a person charged with or suspected of crime;

(4) a person requested or commanded to aid an officer in arresting or retaking a person who has escaped from lawful custody, or in executing legal process, in which cases, for purposes of calculating compensation under this chapter, the daily wage of the person shall be the prevailing wage for similar services performed by paid employees;

(5) a county assessor;

(6) an elected or appointed official of the state, or of a county, city, town, school district, or governmental subdivision in the state. An officer of a political subdivision elected or appointed for a regular term of office, or to complete the unexpired portion of a regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;

(7) an executive officer of a corporation, except those executive officers excluded by section 176.041;

(8) a voluntary uncompensated worker, other than an inmate, rendering services in state institutions under the Direct Care and Treatment executive board and commissioner of corrections similar to those of officers and employees of the institutions, and whose services have been accepted or contracted for by the Direct Care and Treatment executive board and commissioner of corrections as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(9) a voluntary uncompensated worker engaged in emergency management as defined in section 12.03, subdivision 4, who is:

(i) registered with the state or any political subdivision of it, according to the procedures set forth in the state or political subdivision emergency operations plan; and

(ii) acting under the direction and control of, and within the scope of duties approved by, the state or political subdivision.

The daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed by paid employees;

(10) a voluntary uncompensated worker participating in a program established by a local social services agency. For purposes of this clause, "local social services agency" means any agency established under section 393.01. In the event of injury or death of the worker, the wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid in the county at the time of the injury or death for similar services performed by paid employees working a normal day and week;

(11) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section 84.089. The daily wage of the worker for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(12) a voluntary uncompensated worker in the building and construction industry who renders services for joint labor-management nonprofit community service projects. The daily wage of the worker for the purpose of calculating compensation under this chapter shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(13) a member of the military forces, as defined in section 190.05, while in state active service, as defined in section 190.05, subdivision 5a. The daily wage of the member for the purpose of calculating compensation under this chapter shall be based on the member's usual earnings in civil life. If there is no evidence of previous occupation or earning, the trier of fact shall consider the member's earnings as a member of the military forces;

(14) a voluntary uncompensated worker, accepted by the director of the Minnesota Historical Society, rendering services as a volunteer, pursuant to chapter 138. The daily wage of the worker, for the purposes of calculating compensation under this chapter, shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(15) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota State Academy for the Deaf or the Minnesota State Academy for the Blind, and whose services have been accepted or contracted for by the commissioner of education, as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

(16) a voluntary uncompensated worker, other than a resident of the veterans home, who renders services at a Minnesota veterans home, and whose services have been accepted or contracted for by the commissioner of veterans affairs, as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

(17) a worker performing direct support services;

(i) under section 256B.0659 where the personal care assistance provider agency is responsible for maintaining workers' compensation insurance for any employments not excluded under this chapter for a recipient in the home of the recipient or in the community under section 256B.0625, subdivision 19a, who is paid from government funds through a fiscal intermediary under section 256B.0659, subdivision 33. For purposes of maintaining workers' compensation insurance, the employer of the worker is as designated in law by the commissioner of the Department of Human Services, notwithstanding any other law to the contrary;

(ii) under section 256B.85 where the worker is either employed by an agency-provider or by a participant. When the worker is employed by a participant, the financial management services provider must require and verify the participant maintains workers' compensation insurance for any employments not excluded under this chapter. When the worker is employed by an agency-provider, the agency-provider is responsible to maintain workers' compensation insurance for any employments not excluded under this chapter;

(iii) under section 256B.4911 where the worker is employed by the consumer-directed community supports participant. The financial management services provider must require and verify the participant maintains workers' compensation insurance for any employments not excluded under this chapter; and

(iv) under section 256.476 where the worker is employed by the consumer support grant participant. The financial management services provider must require and verify the participant maintains workers' compensation insurance for any employments not excluded under this chapter.

(18) students enrolled in and regularly attending the Medical School of the University of Minnesota in the graduate school program or the postgraduate program. The students shall not be considered employees for any other purpose. In the event of the student's injury or death, the weekly wage of the student for the purpose of calculating compensation under this chapter, shall be the annualized educational stipend awarded to the student, divided by 52 weeks. The institution in which the student is enrolled shall be considered the "employer" for the limited purpose of determining responsibility for paying benefits under this chapter;

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

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

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

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

(21) a voluntary uncompensated worker, accepted by the commissioner of administration, rendering services as a volunteer at the Department of Administration. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

(22) a voluntary uncompensated worker rendering service directly to the Pollution Control Agency. The daily wage of the worker for the purpose of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees;

(23) a voluntary uncompensated worker while volunteering services as a first responder or as a member of a law enforcement assistance organization while acting under the supervision and authority of a political subdivision. The daily wage of the worker for the purpose of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees;

(24) a voluntary uncompensated member of the civil air patrol rendering service on the request and under the authority of the state or any of its political subdivisions. The daily wage of the member for the purposes of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees; and

(25) a Minnesota Responds Medical Reserve Corps volunteer, as provided in sections 145A.04 and 145A.06, responding at the request of or engaged in training conducted by the commissioner of health. The daily wage of the volunteer for the purposes of calculating compensation payable under this chapter is established in section 145A.06. A person who qualifies under this clause and who may also qualify under another clause of this subdivision shall receive benefits in accordance with this clause.

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

(b) For purposes of this chapter "employee" does not include farmers or members of their family who exchange work with other farmers in the same community.

**[For subdivision 10, see M.S.]**

**Subd. 11. Executive officer of a corporation.** "Executive officer of a corporation" means any officer of a corporation elected or appointed in accordance with its charter or bylaws, [or pursuant to section 302A.011, subdivision 18.](#)

## **176.041 EXCLUDED EMPLOYMENTS; APPLICATION, EXCEPTIONS, ELECTION OF COVERAGE.**

### **Subdivision 1. Employments excluded.**

This chapter does not apply to any of the following:

(1) a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law;

(2) a person employed by a family farm as defined by section [176.011, subdivision 11a](#);

(3) the spouse, parent, and child, regardless of age, of a farmer-employer working for the farmer-employer;

(4) a sole proprietor, or the spouse, parent, and child, regardless of age, of a sole proprietor;

(5) a partner engaged in a farm operation or a partner engaged in a business and the spouse, parent, and child, regardless of age, of a partner in the farm operation or business;

(6) an executive officer, [as defined by section 176.011, subdivision 11](#), of a family farm corporation;

(7) an executive officer, [as defined by section 176.011, subdivision 11](#), of a closely held corporation having less than 22,880 hours of payroll in the preceding calendar year, if that executive officer owns at least 25 percent of the stock of the corporation;

(8) a spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section [500.24, subdivision 2](#), and employed by that family farm corporation;

(9) a spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation who is referred to in clause (7);

(10) another farmer or a member of the other farmer's family exchanging work with the farmer-employer or family farm corporation operator in the same community;

(11) a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer;

(12) persons who are independent contractors as defined by sections [176.043](#) and [181.723](#), and any rules adopted by the commissioner pursuant to section [176.83](#) except that these exclusions do not apply to an employee of an independent contractor;

(13) an officer or a member of a veterans' organization whose employment relationship arises solely by virtue of attending meetings or conventions of the veterans' organization, unless the veterans' organization elects by resolution to provide coverage under this chapter for the officer or member;

(14) a person employed as a household worker in, for, or about a private home or household who earns less than \$1,000 in cash in a three-month period from a single private home or household provided that a household worker who has earned \$1,000 or more from the household worker's present employer in a three-month period within the previous year is covered by this chapter regardless of whether or not the household worker has earned \$1,000 in the present quarter;

(15) persons employed by a closely held corporation who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to an officer of the

corporation, who is referred to in clause (7), if the corporation files a written election with the commissioner to exclude such individuals. A written election is not required for a person who is otherwise excluded from this chapter by this section;

(16) a nonprofit association which does not pay more than \$1,000 in salary or wages in a year;

(17) persons covered under the Domestic Volunteer Service Act of 1973, as amended, United States Code, title 42, sections 5011, et seq.;

(18) a manager of a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year, if that manager owns at least a 25 percent membership interest in the limited liability company;

(19) a spouse, parent, or child, regardless of age, of a manager of a limited liability company described in clause (18);

(20) persons employed by a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to a manager of a limited liability company described in clause (18), if the company files a written election with the commissioner to exclude these persons. A written election is not required for a person who is otherwise excluded from this chapter by this section; or

(21) members of limited liability companies who satisfy the requirements of clause (12).

### **176.135 TREATMENT; APPLIANCES; SUPPLIES.**

#### **Subdivision 1. Medical, psychological, chiropractic, podiatric, surgical, hospital.**

(a) The employer shall furnish any medical, psychological, chiropractic, podiatric, surgical and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric, and surgical supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, chiropractic medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury. This treatment shall include treatments necessary to physical rehabilitation.

(b) The employer shall pay for the reasonable value of nursing services provided by a member of the employee's family or household in cases of permanent total disability.

(c) Exposure to rabies is an injury and an employer shall furnish preventative treatment to employees exposed to rabies.

(d) The employer shall furnish replacement or repair for artificial members, glasses or spectacles, artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches, or wheel chairs damaged by reason of an injury arising out of and in the course of the employment. If an item under this paragraph is customized specifically for the injured worker, the item is the property of the injured worker. For the purpose of this paragraph, "injury" includes damage wholly or in part to an artificial member. In case of the employer's inability or refusal to timely provide the items required to be provided under this

paragraph, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing the same, including costs of copies of any medical records or medical reports that are in existence, obtained from health care providers, and that directly relate to the items for which payment is sought under this chapter, limited to the charges allowed by subdivision 7, and attorney fees incurred by the employee.

(e) Both the commissioner and the compensation judges have authority to make determinations under this section in accordance with sections 176.106 and 176.305.

(f) An employer may require that the treatment and supplies required to be provided by an employer by this section be received in whole or in part from a managed care plan certified under section 176.1351 except as otherwise provided by that section.

(g) An employer may designate a pharmacy or network of pharmacies that employees must use to obtain outpatient prescription and nonprescription medications. An employee is not required to obtain outpatient medications at a designated pharmacy unless the pharmacy is located within 15 miles of the employee's place of residence.

(h) Notwithstanding any fees established by rule adopted under section 176.136, an employer may contract for the cost of medication provided to employees. All requests for reimbursement from the special compensation fund formerly codified under section 176.131 for medication provided to an employee must be accompanied by the dispensing pharmacy's invoice showing its usual and customary charge for the medication at the time it was dispensed to the employee. The special compensation fund shall not reimburse any amount that exceeds the maximum amount payable for the medication under Minnesota Rules, part 5221.4070, subparts 3 and 4, notwithstanding any contract under Minnesota Rules, part 5221.4070, subpart 5, that provides for a different reimbursement amount.

### **176.151 TIME LIMITATIONS.**

The time within which the following acts shall be performed shall be limited to the following periods, respectively:

(a) Actions or proceedings by an injured employee to determine or recover compensation, three years after ~~the employer has made a~~ written report of the injury ~~has been made~~ to the commissioner of the Department of Labor and Industry, but not to exceed six years from the date of the accident.

(b) Actions or proceedings by dependents to determine or recover compensation, three years after the receipt by the commissioner of the Department of Labor and Industry of written notice of death, given by the employer, but not to exceed six years from the date of injury, provided, however, if the employee was paid compensation for the injury from which the death resulted, such actions or proceedings by dependents must be commenced within three years after the receipt by the commissioner of the Department of Labor and Industry of written notice of death, given by the employer, but not to exceed six years from the date of death. In any such case, if a dependent of the deceased, or any one in the dependent's behalf, gives written notice of such death to the commissioner of the Department of Labor and Industry, the commissioner shall forthwith give written notice to the employer of the time and place of such death. In case the deceased was a native of a foreign country and leaves no known dependent within the United States, the

commissioner of the Department of Labor and Industry shall give written notice of the death to the consul or other representative of the foreign country forthwith.

(c) In case of physical or mental incapacity, other than minority, of the injured person or dependents to perform or cause to be performed any act required within the time specified in this section, the period of limitation in any such case shall be extended for three years from the date when the incapacity ceases.

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

### **176.175 RIGHT TO COMPENSATION, AWARD.**

[For subdivision 1, see M.S.]

Subd. 2. **Nonassignability.** No claim for compensation or settlement of a claim for compensation owned by an injured employee or dependents is assignable. Except as otherwise provided in this chapter, any claim for compensation owned by an injured employee or dependents is exempt from seizure or sale for the payment of any debt or liability, up to a total amount of ~~\$1,000,000~~ \$5,000,000 per claim and subsequent award.

### **176.361 INTERVENTION.**

[For subdivision 1, see M.S.]

Subd. 1a. **Notice to Potential Intervenors.** Any attorney representing a party in a workers' compensation proceeding shall ask their client whether a third party, other than a workers' compensation insurer, has paid or provided benefits or services to the employee or on the employee's behalf, or whether there is an outstanding order under chapter 518, for an employer to withhold sums for the payment of support or maintenance that may entitle the person or entity to intervene as a party under this section. At the time inquiry discloses the existence of a potential intervenor, the attorney must promptly serve the potential intervenors with written notice of its right to petition or move for intervention and reimbursement. Notice to potential intervenors may not be given before a proceeding at the division or office has commenced. The attorney shall attach to the notice a copy of all notices and orders served by the office or division in this case and all pleadings except demands for discovery, responses to demands for discovery, motions or petitions to intervene, objections to motions or petitions to intervene, and all motions or petitions for which an order was previously served by the division or office.

Subd. 2. **Written motion.** A person desiring to intervene in a workers' compensation case as a party, including but not limited to a health care provider who has rendered services to an employee or an insurer who has paid benefits under section 176.191, shall submit a timely written motion to intervene to the commissioner, the office, or to the court of appeals, whichever is applicable.

- (a) The motion must be served on all parties, except for other intervenors, either personally, by first class mail, or by registered mail, return receipt requested. A motion to intervene must be served



and filed within 60 days after a potential intervenor has been served with notice of a right to intervene or within 30 days of notice of an administrative conference or expedited hearing. Upon the filing of a timely motion to intervene, the potential intervenor shall be granted intervenor status without the need for an order. Objections to the intervention may be subsequently addressed by a compensation judge. Except where a member of the employee's family or household is supplying nursing services pursuant to 176.135, subd. 1, paragraph (b), ~~Where~~ where a motion to intervene is not timely filed under this section, the potential intervenor interest shall be extinguished and the potential intervenor may not collect, or attempt to collect, the extinguished interest from the employee, employer, insurer, or any government program.

- (b) The motion must show how the applicant's legal rights, duties, or privileges may be determined or affected by the case; state the grounds and purposes for which intervention is sought; and indicate the statutory right to intervene. The motion must be accompanied by the following:
- (1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;
  - (2) a summary of the medical or treatment payments, or rehabilitation services provided by the Vocational Rehabilitation Unit, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;
  - (3) copies of all medical or treatment bills for which payment is sought;
  - (4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;
  - (5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;
  - (6) the name and telephone number of the person representing the intervenor who has authority to represent the intervenor, including but not limited to the authority to reach a settlement of the issues in dispute;
  - (7) proof of service or copy of the registered mail receipt evidencing service on all parties except for other intervenors;
  - (8) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and
  - (9) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

[For subdivisions 3-8, see M.S.]

#### **176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.**

[For subdivisions 1-3, see M.S.]

Subd. 4. **Service and filing of notice; cost of transcript.** Within the 30-day period for taking an appeal, the appellant shall:

(1) serve a copy of the notice of appeal on each adverse party; and

(2) pursuant to section 176.285, file the original notice of appeal, with proof of service by admission or affidavit, with the chief administrative law judge ~~and file a copy with the commissioner.~~

In order to defray the cost of the preparation of the record of the proceedings appealed from, each appellant and cross-appellant shall pay to the commissioner of management and budget, Office of Administrative Hearings account the sum of \$25. The filing fee must be received by the Office of Administrative Hearings within ten business days after the end of the appeal period. If the filing fee is not received within ten days after the appeal period, the appeal is not timely filed.

The first party to file an appeal is liable for the original cost of preparation of the transcript. Cross-appellants or any other persons requesting a copy of the transcript are liable for the cost of the copy. The chief administrative law judge may require payment for transcription costs to be made in advance of the transcript preparation. The cost of a transcript prepared by a nongovernmental source shall be paid directly to that source and shall not exceed the cost that the source would be able to charge the state for the same service.

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

All fees received by the Office of Administrative Hearings for the preparation of the record for submission to the Workers' Compensation Court of Appeals or for the cost of transcripts prepared by the office shall be deposited in the Office of Administrative Hearings account in the state treasury and shall be used solely for the purpose of keeping the record of hearings conducted under this chapter and the preparation of transcripts of those hearings.

[For subdivisions 5-7, see M.S.]

**Repealer**

Minnesota Rules, part 5220.2840 is repealed.