

Proposed amendments prohibiting subpoenas of DLI employees, unless DLI is a party

Revised draft for discussion at the WCAC meeting on Feb. 24, 2021

1 **176.351 TESTIMONIAL POWERS.**

2 **Subdivision 1.Oaths.** The compensation judge to whom a petition has been assigned for hearing
3 shall administer an oath to each witness. The commissioner may also administer an oath when
4 required in the performance of duties.

5 **Subd. 2.Subpoenas.** Acting with or without the written request of an interested party, the
6 commissioner or compensation judge before whom a hearing is held may issue a subpoena for the
7 attendance of a witness or the production of such books, papers, records and documents as are
8 material in the cause and are designated in the subpoena. The commissioner may also issue a
9 subpoena for the attendance of a witness or the production of such books, papers, records, and
10 documents as are material in the cause pending and are designated in the subpoena.

11 **Subd. 2a. Subpoenas not permitted of decision-makers.** A member of the rehabilitation review
12 panel or Medical Services Board or an employee of the department who has conducted an
13 administrative or settlement conference or hearing under section [176.106](#) or [176.239](#), or who has
14 certified or has declined to certify a dispute under section [176.081, subdivision 1](#), paragraph (c),
15 shall not be subpoenaed to testify regarding the conference, hearing, dispute certification, or
16 concerning a mediation session. A member of the rehabilitation review panel, Medical Services
17 Board, or an employee of the department may be required to answer written interrogatories
18 limited to the following questions:

- 19 (a) Were all statutory and administrative procedural rules adhered to in reaching the decision?
20 (b) If the answer to question (a) is no, what deviations took place?
21 (c) Did the person making the decision consider all the information presented prior to rendering
22 a decision?
23 (d) Did the person making the decision rely on information outside of the information presented
24 at the conference or hearing in making the decision?
25 (e) If the answer to question (d) is yes, what other information was relied upon in making the
26 decision?

27 In addition, for a hearing with a compensation judge and with the consent of the compensation
28 judge, an employee of the department who conducted an administrative conference, hearing, or
29 mediation session, may be requested to answer written interrogatories relating to statements

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30 made by a party at the prior proceeding. These interrogatories shall be limited to affirming or
31 denying that specific statements were made by a party.

32 **Subp. 2b. Subpoenas not permitted of department employees who provide assistance**

33 The commissioner and any employee of the department shall not be subject to a subpoena
34 for purposes of providing expert testimony or describing the nature of assistance or advice
35 provided under this chapter. This prohibition does not apply to: testimony of a department
36 employee in a workers' compensation enforcement proceeding brought by the
37 commissioner; ~~or~~ a dispute in which the commissioner or the special compensation fund is a
38 party; or a qualified rehabilitation consultant, qualified rehabilitation consultant intern, or
39 job placement coordinator employed in DLI's vocational rehabilitation unit established
40 under section 176.104, who has provided rehabilitation, job placement, or job development
41 services under a rehabilitation plan for an employee with a workers' compensation claim.

42 **Effective Date: This section is effective the day following final enactment.**

Statutes related to subpoena proposal

326B.075 COMMISSIONER NOT SUBJECT TO SUBPOENA. The commissioner shall not be subject to subpoena for purposes of providing expert testimony, except in an enforcement proceeding brought by the commissioner. "Commissioner" means the commissioner of labor and industry or a duly designated representative of the commissioner who is either an employee of the Department of Labor and Industry or a person working under contract with the department.

176.261 EMPLOYEE OF COMMISSIONER OF DEPARTMENT OF LABOR AND INDUSTRY MAY ACT FOR AND ADVISE A PARTY TO A PROCEEDING.

When requested by an employer or an employee or an employee's dependent, the commissioner of the Department of Labor and Industry may designate one or more of the division employees to advise that party of rights under this chapter, and as far as possible to assist in adjusting differences between the parties. The person so designated may appear in person in any proceedings under this chapter as the representative or adviser of the party. In such case, the party need not be represented by an attorney at law.

Prior to advising an employee or employer to seek assistance outside of the department, the department must refer employers and employees seeking advice or requesting assistance in resolving a dispute to an attorney or other technical, paraprofessional, or professional Workers' Compensation Division employee, whichever is appropriate.

The department must make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers, and health care providers, on behalf of employers and employees and using the department's persuasion to settle issues quickly and cooperatively. The obligation to make efforts to settle problems exists whether or not a formal claim has been filed with the department.

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182.659, subd. 8. Protection from subpoena; data.

Neither the commissioner nor any employee of the department, including those employees of the Department of Health providing services to the Department of Labor and Industry, pursuant to section 182.67, subdivision 1, is subject to subpoena for purposes of inquiry into any occupational safety and health inspection except in enforcement proceedings brought under this chapter. Data that identify individuals who provide data to the department as part of an investigation conducted under this chapter shall be private.

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