JUSTICE

MINNESOTA ASSOCIATION FOR JUSTICE

March 16, 2026

Commissioner Nicole Blissenbach
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, MN 55155

RE: Opposition to Proposed Changes to the Intoxication Defense Standard

Dear Commissioner Blissenbach:

I write on behalf of the Minnesota Association for Justice to express our strong opposition to any legislative changes that would alter the burden of proof or proximate cause standard for the intoxication defense under Minn. Stat. § 176.021, subd. 1.

At the February 11, 2026, Workers' Compensation Advisory Council meeting, the Department presented data and case law on the intoxication defense, and business community representatives expressed frustration with the current legal standard. While we understand their perspective, we urge the Department and the Advisory Council to reject any proposal that would shift the burden of proof to injured workers or weaken the proximate cause requirement. Such changes would fundamentally undermine the grand bargain upon which Minnesota's workers' compensation system is built.

The Grand Bargain Requires Mutual Renunciation of Fault-Based Defenses

Minnesota's workers' compensation system rests on a carefully constructed exchange. As the Legislature declared in Minn. Stat. § 176.001, the system "is based on a mutual renunciation of common law rights and defenses by employers and employees alike." Employees surrendered their right to sue negligent employers for full tort damages. In exchange, employers surrendered common law defenses, including contributory negligence, assumption of risk, and the fellow-servant rule—what courts have called the "three evil sisters."

This reciprocity is not incidental; it is the foundation of the system. The Minnesota Supreme Court has described workers' compensation as contemplating "a reciprocal yielding and giving up of rights existing at common law for the new and enlarged rights and remedies given by the compensation act." *Breimhorst v. Beckman*, 227 Minn. 409 (1948); *Lambertson v. Cincinnati Corp.*, 312 Minn. 114 (1977).

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Shifting the Burden of Proof Reintroduces Contributory Negligence by Another Name

Any proposal requiring an injured worker to disprove intoxication—or creating a presumption that intoxication caused the injury based solely on a positive test—would effectively reintroduce contributory negligence into the workers' compensation system. This directly contradicts Minn. Stat. § 176.021, subd. 1, which provides that employers are liable "without regard to the question of negligence."

Intoxication is an affirmative defense. Affirmative defenses have always been proven by the party asserting them. The statute explicitly states: "The burden of proof of these facts is upon the employer." Reversing this burden would force injured workers to prove a negative—that they were not at fault—which is precisely what the grand bargain was designed to eliminate.

As the Minnesota Supreme Court observed in one of its earliest workers' compensation decisions, "in controversies under the Workmen's Compensation Act the contributory negligence of an injured employee is not a bar to his right to compensation." That principle must not be eroded through the back door.

This Is a Slippery Slope That Threatens the Entire System

If the Advisory Council recommends shifting the burden of proof for intoxication, what principle prevents the next erosion? If an employee must disprove that substances caused their injury, must they also disprove that a pre-existing condition, genetic predisposition, or cancer diagnosis was the "real" cause? The current standard—that a work injury must be a "substantial contributing cause"—exists precisely to prevent this kind of burden-shifting.

The proximate cause requirement for the intoxication defense serves a critical function: it ensures that employers cannot escape liability merely because an employee had detectable substances in their system. The presence of metabolites days after use, or even a high blood alcohol level, does not establish that intoxication caused the injury. That is why the law requires proof of proximate cause, and why courts have consistently held that blood tests alone are insufficient.

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If This Is About Workplace Safety, Then Open the Door to Negligence Claims

At the February 11 meeting, on WCAC member suggested that this issue is about workplace safety. If that were truly the case, we would expect proposals to strengthen workplace safety enforcement—not to strip protections from injured workers.

If the business community wishes to inject fault and negligence concepts into workers' compensation for injured workers, then fairness demands reciprocity. We would then need to discuss:

- Allowing injured workers to sue in tort when employers maintain negligent or unsafe workplaces
- Allowing injured workers to sue when delays in the workers' compensation system—denials, litigation, delayed treatment authorizations—cause or contribute to substance use disorders
- Substantially increasing penalty provisions for employers who violate workplace safety standards
- Creating employer liability for traumatic injuries sustained in workplaces that fail to meet safety standards

Currently, injured workers cannot sue their employers in tort regardless of how egregiously unsafe the workplace may be. That immunity exists because of the grand bargain. If we are going to reintroduce fault concepts to deny benefits to workers, then we must also reintroduce fault concepts to hold employers accountable. You cannot have it both ways.

The Data Does Not Support Systemic Change

The Department's own data demonstrates that the current system is working. Of 73 claims where the intoxication defense was raised since 2021, only 19 employees received any benefits. That means the defense succeeded in denying benefits in approximately 74% of cases. This is not a system that is failing employers—it is a system where the defense prevails in the vast majority of cases.

Changing the law based on a handful of cases where courts found the defense was not proven would be a disproportionate response that would harm thousands of legitimately injured workers.

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Practical Consequences of Burden-Shifting

If the burden shifts to employees, the practical consequences would be severe:

- **Routine drug testing of injured workers** would become standard practice, treating every injured worker as a suspected substance abuser
- **Increased claim denials** based solely on positive tests, regardless of whether substances contributed to the injury
- **Prolonged litigation** as injured workers are forced to hire experts to prove a negative
- **Delayed medical treatment** as claims are contested pending toxicology disputes
- **Disproportionate impact on workers taking prescribed medications**, including opioids prescribed for prior work injuries

These consequences would undermine the fundamental purpose of workers' compensation: ensuring that injured workers receive prompt medical care and wage replacement without the delays and uncertainties of fault-based litigation.

Conclusion

The Minnesota Supreme Court has warned that "care must be exercised lest long judicial habit in tort cases allows judicial thought in compensation cases to override the statutory scheme." The same caution applies to legislative changes. The workers' compensation system exists to ensure that "the burden of economic loss in work-related injuries is to be put on industry," not on injured workers, their families, or the public welfare system.

We respectfully urge the Department to oppose any changes to the intoxication defense that would shift the burden of proof to injured workers or weaken the proximate cause requirement. Such changes would take a sledgehammer to the grand bargain and expose Minnesota to the very problems—delayed benefits, expensive litigation, unpredictable outcomes, and injured workers thrown onto public relief—that the workers' compensation system was designed to prevent.

Thank you for your consideration. I would welcome the opportunity to discuss these concerns with you or to present the petitioner bar's perspective to the Advisory Council.

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Respectfully submitted,

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