

## Workers' Compensation Division profile

Revised September 2011

- The Workers' Compensation Division is part of the Minnesota Department of Labor and Industry. (For an overview of the department, its vision, structure and history, visit [www.dli.mn.gov/Overview.asp](http://www.dli.mn.gov/Overview.asp).)
  - The responsibility for administration of workers' compensation is vested in a single administrator, the commissioner, who reports to the governor.
- The Workers' Compensation Division central office is located at 443 Lafayette Road N., St. Paul, MN 55155; telephone (651) 284-5032 or 1-800-342-5354, TTY (651) 297-4198; fax (651) 284-5720. Visit [www.dli.mn.gov/Direct.asp](http://www.dli.mn.gov/Direct.asp) for directions, maps and parking information.
- The department's website is at [www.dli.mn.gov](http://www.dli.mn.gov).
- Functions of the Workers' Compensation Division include:
  - reviewing claims administration activities by insurers, self-insurers and third-party administrators;
  - creating and maintaining files of all reported claims;
  - auditing files, monitoring benefits and penalizing insurers and employers for lack of compliance in claims reporting and benefit payments;
  - providing assistance, education and information to all parties;
  - receiving and first-level resolution, in coordination with the Office of Administrative Hearings ([www.oah.state.mn.us](http://www.oah.state.mn.us)), of workers' compensation disputes through a variety of alternative dispute-resolution methods;
  - administering the Special Compensation Fund;
  - claims processing for injured employees of uninsured and bankrupt self-insured employers;
  - administering supplementary benefits for injuries that occurred prior to Oct. 1, 1995, and second-injury reimbursement to insurers for injuries that occurred prior to July 1, 1992;
  - enforcing compliance with mandatory workers' compensation coverage by employers;
  - providing vocational rehabilitation services, as requested, to otherwise qualified employees whose claims have been denied;
  - certifying workers' compensation medical managed care organizations;
  - limited monitoring of medical providers and managed care organizations;
  - regulating the registration and providing oversight of vocational rehabilitation provider conduct; and
  - preparing statutory reports about prompt first action by insurers and self-insured employers and about the collection and assessment of fines and penalties, online at [www.dli.mn.gov/WC/ReportsPubs.asp](http://www.dli.mn.gov/WC/ReportsPubs.asp).
- DLI offers an alternative to formal litigation in resolving workers' compensation disputes through alternative dispute-resolution and mediation. Parties may choose to be represented by an attorney in alternative dispute-resolution or can participate without representation. The department also provides free mediation services to all parties to any workers' compensation dispute. Mediation is voluntary. If all parties are agreeable, a department mediator assists the parties in resolving their workers' compensation issues.
- The Research and Statistics unit ([www.dli.mn.gov/Research.asp](http://www.dli.mn.gov/Research.asp)) of the Department of Labor and Industry prepares an annual workers' compensation system report, prepares workers' compensation statistics for reports by other organizations, computes statistics for internal and external research projects and disseminates statistical information through articles and tables available on the agency's website.

This information can be provided to you in alternative formats (Braille, large print or audio).

- The Research and Statistics unit and the General Counsel unit provide updates of the rules for the medical fee schedule and treatment guidelines.
- The Workers' Compensation Division has seven Minnesota branch offices, located in Bemidji, Duluth, Fergus Falls, Mankato, St. Cloud and Rochester (see [www.dli.mn.gov/Offices.asp](http://www.dli.mn.gov/Offices.asp)).
  - Vocational rehabilitation services are available at all locations; all the services available in St. Paul are also available in Duluth.

## **Budget and financing**

- The Workers' Compensation Division operating budget is appropriated by the Legislature and approved by the governor.
- The Workers' Compensation Division's primary source of operating funds is by assessment on workers' compensation insurers and self-insured employers. Assessments are based on the prior year's data and are invoiced and paid in semiannual installments.
  - The insurers' premium surcharge rate is determined by dividing the insurer portion of the Special Compensation Fund state-fiscal-year liability by the amount of pure premium reported by all insurers.
  - The self-insured employers' assessment rate is determined by dividing the self-insured portion of the Special Compensation Fund state-fiscal-year liability by the total indemnity benefit amount reported by self-insured employers.
  - Assessment receipts are deposited into the Special Compensation Fund.
- Other functions funded by the operating budget include:
  - appellate functions to the level of Workers' Compensation Court of Appeals;
  - general support services, including legal, information technology, financial, policy development, research and statistics, and human resources; and
  - Department of Commerce investigation of alleged fraud by all parties.
- Indirect workers' compensation functions funded by the operating budget include the nonfederally funded portion of Minnesota OSHA ([www.dli.mn.gov/MnOsha.asp](http://www.dli.mn.gov/MnOsha.asp)) and two insurance regulation positions at the Department of Commerce.
- Money collected from penalties paid by insurers and employers is deposited in the Assigned Risk Safety Account. These funds are available to provide safety grants for employers. Complete information about safety grants is online at [www.dli.mn.gov/Wsc/Grants.asp](http://www.dli.mn.gov/Wsc/Grants.asp).

## **Second-injury fund**

- The second-injury fund no longer exists for new injuries. Minnesota Statutes, section 176.131, was repealed pursuant to Laws of Minnesota 1992, Chapter 510, Article 3, Section 36.
- For subsequent injuries occurring before July 1, 1992, claim reimbursements to insurers and self-insured employers are:
  - administered by the Special Compensation Fund; and
  - financed by the Special Compensation Fund assessment.

## Supplementary benefits

- These benefits no longer exist for new injuries. Minnesota Statutes, section 176.132, was repealed pursuant to Laws of Minnesota 1995, Chapter 231, Article 1, Section 35.
- Supplementary benefits provide an annually adjusting floor benefit level for long-term, permanently disabled employees.
- For employees meeting the benefit requirements with injuries occurring before Oct. 1, 1995, benefit reimbursements to insurers and self-insured employers are:
  - administered by the Special Compensation Fund; and
  - financed by the Special Compensation Fund assessment.

## Insurance requirements

- The Department of Commerce ([www.commerce.state.mn.us](http://www.commerce.state.mn.us)) has regulatory authority of workers' compensation insurance carriers and self-insurers. That department:
  - issues licenses for insurers to write Minnesota workers' compensation policies;
  - approves employer and employer-group applications for workers' compensation self-insurance and group self-insurance; and
  - disciplines carriers and self-insurers.
- The Workers' Compensation Division and the Department of Commerce monitor the performance of insurance carriers and self-insurers.
- Reinsurance is required through the Workers' Compensation Reinsurance Association (WCRA), which is regulated by the Department of Labor and Industry. Its website is at [www.wcra.biz](http://www.wcra.biz).
- Per Minnesota Statutes, chapter 79A ([www.revisor.mn.gov/statutes/?id=79A](http://www.revisor.mn.gov/statutes/?id=79A)), to qualify as an individual or group self-insurer, an employer must:
  - have a net worth equal to at least 10 percent of its assets and no less than 10 times the retention limit purchased from WCRA indicating a minimum net worth of \$3.9 million as of Jan. 1, 2006;
  - have a positive net income in three out of the past five years and cumulatively during the most recent five-year period;
  - have generated cash from operations in three out of the past five years and cumulatively;
  - post security determined by a certified actuarial opinion that can be no less than the greater of the retention limit selected by the WCRA or 110 percent of the discounted outstanding certified liability determination based on the future estimated two years of outstanding liability (one year for groups). The actuarial opinion must be accompanied by a sworn affidavit by an officer of the company on a form prescribed by the commissioner of the Department of Commerce;
  - submit for review, four years of loss experience and verification of experience modifier; and
  - submit certified audits, according to generally accepted accounting principles, of which the most recent year must be certified.
- Per Minnesota Statutes, chapter 79A, to qualify as a commercial self-insurance group, the group must:
  - have an initial aggregate group premium of \$400,000;
  - have a minimum combined net worth of 10 times the retention limit purchased from WCRA;

- submit a copy of the group’s combined compiled financial statement (from a CPA), including a copy of each members’ report letter (group members representing at least 50 percent total premiums must submit reviewed financial statements, the remaining members must submit compiled financial statements); and
  - submit the group’s business plan that includes a detailed risk profile of the membership, underwriting guidelines, marketing plan, minimal financial criteria for members, financial projections, rating plan and reinsurance coverage.
- Requirements differ for groups after three years.
  - If the Department of Commerce grants the authority to the self-insurer and feels the self-insurer has a competent claims-handling staff, the individual self-insurer is not required to have an office in the state that would have the authority to issue checks and make necessary decisions – approval must be granted in advance for “in-house” claims administration. This does not apply to group self-insurers. Any third-party administrator acting on the self-insurer’s behalf to issue checks and make decisions is required to be licensed in the state and have an office in the state.
  - The Special Compensation Fund unit of the Workers’ Compensation Division investigates uninsured employers; the Special Compensation Fund issues penalties for lack of compliance with workers’ compensation insurance coverage requirements ([www.dli.mn.gov/WC/AboutCov.asp](http://www.dli.mn.gov/WC/AboutCov.asp)).
    - Compliance is monitored through comparison of employer and insurance policy databases, through investigation of claims reported to the Special Compensation Fund and through queries made to the insurance verification staff in the fund.
    - An employer found in violation would be guilty of a misdemeanor and subject to a fine of up to \$1,000 per employee each week during which the employer was not in compliance.

## Reporting requirements

- Filing the First Report of Injury form ([www.dli.mn.gov/WC/WcForms.asp](http://www.dli.mn.gov/WC/WcForms.asp)) with the Workers’ Compensation Division is mandatory for all work-related fatalities and all injuries resulting in more than three calendar-days or partial days of work disability or permanent partial disability.
  - Fatalities and serious injuries must be reported within 48 hours from notice or knowledge.
  - Reports of nonfatal, nonserious injury resulting in more than three calendar-days or partial days of lost time or disability are due within 14 days of the first day of the disability or the date the employer was aware of the disability, whichever is later.
- Failure to file a first report of injury as prescribed will result in a fine of up to \$500 for each failure to report.

## Claims processing and monitoring

- In addition to the employer’s first report of injury, the following reports must be filed with the Workers’ Compensation Division as appropriate: Notice of Insurer’s Primary Liability Determination, Notice of Benefit Payment, Notice of Intention to Discontinue Benefits, Health Care Provider’s Report, Interim Status Report and Disability Status Report. All forms are online at [www.dli.mn.gov/WC/Wcforms.asp](http://www.dli.mn.gov/WC/Wcforms.asp).
- The Workers’ Compensation Division routinely monitors the initial payment or liability determination, periodic payments, last payment, payment of permanent partial disability and promptness of payments of workers’ compensation claims. On a complaint basis, other matters are reviewed for compliance with the law.

- When a reportable claim is not accepted, a Notice of Insurer's Primary Liability Determination form is due within 14 days of the first day of the disability or the date the employer was aware of the disability, whichever is later.
- To suspend or discontinue temporary total or temporary partial disability benefits, a Notice of Intention to Discontinue Benefits form must be served on the employee and filed with the Workers' Compensation Division.
  - An interim administrative conference is available if the claimant objects to the proposed discontinuance within 12 days of notice. In some cases, the time frame is extended to 30 or 40 days.
- A claimant's permanent partial disability rating is provided by the employee's doctor; however, if challenged, the decision can be determined by the compensation judge or the appellate court.
  - The permanent partial disability schedule in [Minnesota Rules Chapter 5223](#) is used to determine the disability rating.
- The First Report of Injury form is the only form accepted via electronic data interchange (EDI).
- Workers' compensation forms are available for download on the department's website. The forms have been converted to fillable PDF files that allow users to type directly into the form and then print it.

### **Contested-case handling**

- The steps or levels in the hearing process are:
  1. a formal hearing on record at the Office of Administrative Hearings ([www.oah.state.mn.us](http://www.oah.state.mn.us));
  2. the first appellate level, Workers' Compensation Court of Appeals (<http://mn.gov/workcomp>); and
  3. the Minnesota Supreme Court ([www.mncourts.gov/?page=550](http://www.mncourts.gov/?page=550)).
- Before the hearing process, a number of alternative dispute-resolution processes are used: interim discontinuance decisions, administrative conferences, settlement conferences, mediation sessions and informal intervention.
- The Office of Administrative Hearings (OAH) Mediation Unit is a mediation function within the OAH Workers' Compensation Hearing Division. The creation of the unit is intended to handle more complex cases the bar association would like to have mediated outside the scope of the formal hearing process. OAH workers' compensation mediation services started June 2, 2008. At the present time, there are two judges handling mediation cases one week each month. Mediation forms can be obtained at [www.oah.state.mn.us](http://www.oah.state.mn.us).
- The scope of appeal from the first level is on the record.
- Dockets are set and cases are assigned as follows:
  - alternative dispute-resolution – accommodation scheduling with choice of mediator;
  - formal hearing – a computer program is used to bloc assign judges on a rotating basis and the staff then schedules the case subject to the availability of the parties;
  - Workers' Compensation Court of Appeals – assigned scheduling with random assignment of appellate panel; and
  - Supreme Court – all petitions are reviewed, with a limited number of hearings before the Supreme Court en banc.

- At the formal hearing level, the rules of evidence are used as general format, but compensation judges are not technically bound to follow them. Also, the record of the proceedings is made by tape recorder or by court reporter.
- For current injuries, attorneys' fees are generally awarded on a contingent basis according to a statutory formula or awarded hourly as follows:
  - for monetary benefits, the contingent fee is 25 percent of the first \$4,000 of compensation and 20 percent of the remainder of compensation awarded to the injured employee, with a presumptive ceiling of \$13,000;
  - for medical and rehabilitation benefits, the employer/insurer is liable for attorney fees\* based on the contingent formula using the dollar amounts of disputed medical and rehabilitation benefits obtained or, for issues not involving such benefits, the attorney fees are hourly charges up to a maximum of \$500.

*\*Attorney fee provisions have changed over time for different dates of injury.*

- Claimant's attorney fees are paid out of the claimant's award, except for those paid by the employer or insurer, such as medical and rehabilitation disputes and disputes between insurers about liability.
- Compromise and release agreements, termed "stipulations for settlement," are allowed as follows:
  - agreements must be reviewed and awarded by a compensation judge or a Workers' Compensation Division mediator; and
  - agreements are presumed to be reasonable if all parties are represented by attorneys and the settlement does not close-out future medical or rehabilitation benefits.
- Awards on stipulations for settlement settle only those indemnity, medical or rehabilitation benefits specifically indicated as being topics and specifically itemized as settled. Most agreements are limited to the extent of the dispute as opposed to a full, final and complete settlement.
- Following the award, a specifically disputed benefit settled via stipulation may be reopened by the Workers' Compensation Court of Appeals only on showing of:
  - a mutual mistake of fact;
  - a substantial change in medical condition;
  - fraud; or
  - newly discovered evidence.

### **Medical care and evaluation**

- The Workers' Compensation Division has the authority to set medical and hospital maximum fees.
- A relative value medical fee schedule, when applicable, sets the maximum fees for which insurers and self-insurers are responsible. A conversion factor is applied each Oct. 1 to adjust the fees.
  - The relative value medical fee schedule is a modified version of the Medicare fee schedule. The conversion factor updates are based on annual changes in the producer price index for offices of physicians, as long as it is less than the annual change in the statewide average weekly wage.
  - Liability for hospital fees for inpatient services is limited to 85 percent of the provider's usual and customary charge, or 85 percent of the prevailing charge for similar services, except hospitals with fewer than 100 beds are paid at 100 percent of charges.

- The employee selects an initial treating physician unless the employer and insurer have agreed to provide treatment through a certified managed care organization. With a certified managed care organization there are exclusions that allow employees to seek treatment outside of the managed care organization. Information about certified managed care plans is online at [www.dli.mn.gov/WC/CertMgdCare.asp](http://www.dli.mn.gov/WC/CertMgdCare.asp).
- Employees may change physicians without approval once within 60 days after initiation of medical treatment.
- Although the Workers' Compensation Division does not monitor the course of medical treatment, the Department of Labor and Industry has one part-time medical consultant on staff who is an M.D. The medical consultant works on a variety of medical policy and research issues for the division and provides consultation services to the Special Compensation Fund. The Workers' Compensation Division also has a medical compliance officer.
- Disputes about medical care involving costs of \$7,500 or less can be handled through the alternative dispute-resolution processes in the Workers' Compensation Division. Disputes involving costs of more than \$7,500 go to OAH for resolution. The \$7,500 limit does not apply if the issue is whether a particular charge is excessive.
- Medical managed care organizations are authorized for workers' compensation by the commissioner of the Department of Labor and Industry. There are three certified medical managed care organizations operating in the state – [www.dli.mn.gov/WC/CertMgdCare.asp](http://www.dli.mn.gov/WC/CertMgdCare.asp).
- An insurer may require an injured employee to be examined by the employer's physician, at reasonable times and places. This is sometimes called an "independent medical examination." There is a separate fee schedule for these examinations. The maximum fees for these examinations are annually adjusted in the same manner and amount that the maximum fees in the relative value fee schedule are adjusted.
- Treatment parameters are incorporated into the workers' compensation rules. Medical provider work groups, under the direction of the Medical Services Review Board ([www.dli.mn.gov/Msrb.asp](http://www.dli.mn.gov/Msrb.asp)) and the agency's medical consultant, developed the parameters. The treatment parameters address back and neck pain, upper extremity disorders and reflex sympathetic dystrophy of the upper and lower extremities. The parameters define excessive treatment and present guidelines for imaging, hospitalization, surgery and chronic management. Treatment parameter information is online at [www.dli.mn.gov/WC/TpMain.asp](http://www.dli.mn.gov/WC/TpMain.asp).

## Rehabilitation

- The workers' compensation law provides for vocational rehabilitation of injured employees ([www.dli.mn.gov/WC/VocRehab.asp](http://www.dli.mn.gov/WC/VocRehab.asp)).
  - Physical rehabilitation is considered a part of medical treatment.
- Rehabilitation providers (qualified rehabilitation consultants (QRCs), QRC firms, QRC interns and job placement vendors) must be registered with the Workers' Compensation Division.
  - QRCs must obtain certification as a certified rehabilitation counselor (CRC) or as a certified disability management specialist (CDMS) within three years of registration by the department. For information about obtaining required certification, visit The Commission on Rehabilitation Counselor Certification at [www.crccertification.com](http://www.crccertification.com) or the Certification of Disability Management Specialists Commission at [www.cdms.org](http://www.cdms.org).

- The Workers' Compensation Division provides oversight of all vocational rehabilitation provided to injured employees covered by the Minnesota workers' compensation statutes. This oversight includes:
  - enforcing compliance with timelines for initiation of actions and reporting;
  - reviewing and approving retraining plans;
  - investigating complaints about professional conduct of vocational rehabilitation providers;
  - registering vocational rehabilitation providers;
  - training vocational rehabilitation providers;
  - providing information about vocational rehabilitation laws to all parties;
  - promulgating rules, including maximum fee levels;
  - disciplining QRCs for violations of professional conduct rules; and
  - resolving vocational rehabilitation disputes.
- The Workers' Compensation Division has a Vocational Rehabilitation unit ([www.dli.mn.gov/WC/Vru.asp](http://www.dli.mn.gov/WC/Vru.asp)) that provides direct vocational rehabilitation services.
  - There are full-time rehabilitation professionals in the Workers' Compensation Division who provide direct vocational rehabilitation services and there are two placement specialists.
  - While any injured employee may choose to use the unit's services, most of the unit's clients are employees involved in initial liability disputes.
- A vocational rehabilitation consultation is provided upon request to injured employees. The assigned QRC makes a determination during the consultation about whether the employee is a "qualified employee" eligible to receive vocational rehabilitation benefits. Insurers must refer employees who are expected to miss more than 13 weeks of work to a QRC for a rehabilitation consultation, unless the Workers' Compensation Division has granted a waiver of rehabilitation services.
- For current injuries, requests for retraining must be filed before 156 weeks of any combination of temporary total disability or temporary partial disability benefits have been paid. The law requires insurers to notify the employee of the time limitation before 80 days of benefits have been paid.
- The QRC works with the parties to develop mutually agreeable vocational rehabilitation plans.
  - Disputes are resolved by the Workers' Compensation Division or by a workers' compensation judge.
  - QRCs are required to file vocational rehabilitation plans with the Workers' Compensation Division.
  - Vocational rehabilitation retraining is limited to 156 weeks.
  - No specific time limit is set by statute for return-to-work plans using transferable skills, because the goal is to return employees as close as possible to their pre-injury economic status.
- A claimant who does not make a good faith effort to cooperate with the vocational rehabilitation plan might receive a Notice of Intention to Discontinue Workers' Compensation Benefits form to suspend benefits during the period of noncooperation.
- Vocational rehabilitation consultations and services are paid by insurers and self-insured employers, and through the Special Compensation Fund for claims of uninsured employers.

### **Public information and assistance**

- Employees and employers are informed of their rights and responsibilities under the law through publications, required posters in the workplace, presentations to employer and employee groups upon request, the department's website and by the Workers' Compensation Division dispute prevention and resolution specialists, who may be reached by calling 1-800-342-5354.

- After notice of a claim is received by the Workers' Compensation Division, a booklet is mailed to the employee describing injured employees' rights, responsibilities and entitlements.
- At the time of filing a First Report of Injury form, the employer is required to provide the employee with a copy of the Minnesota Workers' Compensation Employee Information Sheet ([www.dli.mn.gov/WC/EmpInfoSheet.asp](http://www.dli.mn.gov/WC/EmpInfoSheet.asp)), which contains a simple summary of benefits, the insurer's phone number and the Workers' Compensation Division phone number.
- The department's Communications staff maintains the Workers' Compensation Division Web pages, prepares news releases, responds to media inquiries and produces the quarterly newsletter *COMPACT*, which is available at [www.dli.mn.gov/WC/Compact.asp](http://www.dli.mn.gov/WC/Compact.asp). There are three Communications staff members, all can be reached at [dli.communications@state.mn.us](mailto:dli.communications@state.mn.us).

### **Management information system**

- The Workers' Compensation Division receives some First Report of Injury forms electronically from insurers and self-insured employers. This is accomplished via electronic data interchange (EDI). Learn more about EDI at [www.dli.mn.gov/WC/Edi.asp](http://www.dli.mn.gov/WC/Edi.asp).
- The Workers' Compensation Division has converted most of its standard workers' compensation forms to fillable PDF files. These forms are available online at [www.dli.mn.gov/WC/WcForms.asp](http://www.dli.mn.gov/WC/WcForms.asp), where customers can access forms, complete them online and print them for mailing.
- The workers' compensation imaging system at the Department of Labor and Industry provides the ability to scan, store, route and retrieve case files. It provides real-time, simultaneous access to the file by multiple users in several state agencies throughout Minnesota.
- Data from first reports, subsequent reports, vocational rehabilitation forms and dispute-resolution initiation forms is entered and coded by the Workers' Compensation Division's Compliance, Records and Training unit after the forms have been scanned. Some first report data received electronically is accepted into the database, other data is coded first.
- Using the data entered, some claims are automatically closed unless new information is received. Claims involving indemnity benefits are automatically queued for auditing benefit levels.
- The database is also programmed to identify potential penalty occurrences and to notify DLI's Compliance, Records and Training unit if an expected report has not yet been received.
- The Workers' Compensation Division uses the Internet to access legal information, including Minnesota workers' compensation statutes and rules. The Workers' Compensation Division has access to an encryption product that allows communications, such as sensitive or confidential workers' compensation cases, to safely occur via email. However, at this time the division does not accept email submission of most forms.