

Extraterritorial jurisdiction: A summary

This document contains general information. It is not legal advice. Every situation is different and other laws might apply to your situation. If you have questions, contact an attorney, visit the Department of Labor and Industry website at www.dli.mn.gov/business/workers-compensation-businesses or call the workers' compensation hotline at 800-342-5354 and press 3.

Note: This information sheet is about coverage under the Minnesota Workers' Compensation Act for: employees injured while performing duties outside of Minnesota; and employees who regularly work outside of Minnesota who are injured while performing duties in Minnesota for the same employer. It is not about workers' compensation coverage under the laws of other states.

Injuries occurring outside the state of Minnesota

An employee who is injured outside the state of Minnesota is only covered under the Minnesota Workers' Compensation Act if the Act's requirements for "extraterritorial application" or "temporary out-of-state employment" are met.

Extraterritorial application

The requirements for "extraterritorial application" are in Minnesota Statutes, section 176.041, subdivision 2.

Subd. 2. **Extraterritorial application.** If an employee who regularly performs the primary duties of employment within this state receives an injury while outside of this state in the employ of the same employer, the provisions of this chapter shall apply to such injury. If a resident of this state is transferred outside the territorial limits of the United States as an employee of a Minnesota employer, the resident shall be presumed to be temporarily employed outside of this state while so employed.

Under this statute, Minnesota workers' compensation benefits apply if any employee who "regularly performs" the "primary duties" of employment in Minnesota is injured while working for the same employer outside of Minnesota. In considering whether the employee "regularly performs the primary duties of employment" in Minnesota, judges have looked at the following factors.

- Does the employee regularly, customarily or normally perform job duties in Minnesota?
- Is the employment casual in nature or are the duties performed considered a regular part of the employer's business?
- Are the duties performed in Minnesota fundamental or basic to performing the job?ⁱ

Temporary out-of-state employment

The requirements for “temporary out-of-state employment” are in Minn. Stat. § 176.041, subdivision 3.

Subd. 3. **Temporary out-of-state employment.** If an employee hired in this state by a Minnesota employer, receives an injury while temporarily employed outside of this state, such injury shall be subject to the provisions of this chapter.

Under this statute, Minnesota workers’ compensation benefits apply if an employee is: hired in Minnesota; hired by a Minnesota employer; and injured while temporarily employed outside Minnesota. Each of these requirements is discussed in more detail below.

Employee hired in Minnesota

This requirement applies to the initial hiring only. In determining whether the employee was hired in Minnesota, courts have looked at where the employee was located when the employee accepted the job offer. In one case, the employer was a Minnesota corporation whose representative made the job offer by telephoning from another state. The employee accepted the job offer by telephone while in Minnesota and the judge determined that the employee was hired in Minnesota. See MacAdams v. Askew Construction, WCCA 6-25-90. In another case, although the employer’s representative telephoned the employee at home in Minnesota to tell him about the job opening, the employee was interviewed in North Dakota and was offered and accepted the job in North Dakota. The judge found that the employee had been hired in North Dakota. See Wood v. Fred Madsen Construction Co., 512 N.W.2d 106 (Minn. 1993).

Employee hired by a Minnesota employer

In determining whether a “Minnesota employer” exists, judges have considered whether the employer maintains any offices, operations or facilities in Minnesota. A corporation does not need to incorporate in Minnesota to be considered a “Minnesota employer.”ⁱⁱ

Employee temporarily employed outside Minnesota

In determining whether an employee is temporarily employed outside Minnesota, judges have considered the duration of the employment and whether the employee is expected to return to Minnesota in the future. In Fischer v. Malleable Iron Range Co., 225 N.W.2d 542 (Minn. 1975), the Supreme Court stated the word “temporarily” is used in its most natural and ordinary sense, as meaning not of long duration, not permanent, but for a short time.” The court also stated that if an employee goes to a different state on a regular basis as part of his work, he could still be considered to be temporarily employed outside of Minnesota since he was hired in Minnesota by a Minnesota employer.ⁱⁱⁱ

Extraterritorial injuries occurring within Minnesota

An employee who is injured while temporarily working in the state of Minnesota is only covered under the Minnesota Workers’ Compensation Act if the Act’s requirements for coverage of “out-of-state employments” are met or if the special requirements for coverage of North Dakota employers are met.

Out-of-state employment, generally

The general requirements for coverage of out-of-state employments are stated in Minn. Stat. § 176.041, subdivision 4.

Subd. 4. **Out-of-state employment.** If an employee who regularly performs the primary duties of employment outside of this state or is hired to perform the primary duties of employment outside of this state, receives an injury within this state in the employ of the same employer, such injury shall be covered within the provisions of this chapter if the employee chooses to forego any workers' compensation claim resulting from the injury that the employee may have a right to pursue in some other state, provided that the special compensation fund is not liable for payment of benefits pursuant to section 176.183 if the employer is not insured against workers' compensation liability pursuant to this chapter and the employee is a nonresident of Minnesota on the date of the personal injury.

Under this subdivision, Minnesota workers' compensation benefits apply if the employee:

- regularly performs or is hired to perform the primary duties of employment outside of Minnesota;
- is injured in Minnesota while working for the same employer; and
- chooses to forego any workers' compensation claim in another state.

However, if these conditions apply and the employer is uninsured, the Special Compensation Fund is only liable for workers' compensation benefits if the employee is a resident of Minnesota on the date of injury.

An employee "foregoes" workers' compensation benefits of another state when the employee makes a voluntary selection with full knowledge of rights. One way to obtain this knowledge is to consult with an attorney. If the employee had filed a claim petition in another state or had an appeal pending in another state, the employee would have to withdraw the claim petition or appeal or make some affirmative statement that he or she was not pursuing the other state's workers' compensation benefits.^{iv}

If benefits had been paid voluntarily by the insurer according to the laws of another state but the employee later wanted benefits according to Minnesota law, this could be accomplished by filing a claim petition in Minnesota. In this circumstance, filing a claim petition in Minnesota is considered evidence of a choice to forego benefits the employee might have a right to pursue in some other state.^v

North Dakota employers

In 2005, the Minnesota Legislature added Minnesota Statutes, section 176.041, subdivision 5b, regarding North Dakota employers.

Subd. 5b. **North Dakota employers.** Notwithstanding the provisions of subdivision 4, workers' compensation benefits for an employee hired in North Dakota by a North Dakota employer, arising out of that employee's temporary work in Minnesota, shall not be payable under this chapter. North Dakota workers' compensation law provides the exclusive remedy available to the injured worker. For purposes of this subdivision, temporary work means work in Minnesota

for a period of time not to exceed 15 consecutive calendar days or a maximum of 240 total hours worked by that employee in a calendar year.

This subdivision became effective for injuries on or after Oct. 1, 2005. Under this subdivision, an employee injured in Minnesota is not entitled to benefits under Minnesota's workers' compensation law if the:

- employee is hired in North Dakota;
- employee is hired by a North Dakota employer; and
- employee's injury in Minnesota arose out of temporary work in Minnesota, where "temporary work" means work in Minnesota for not more than 15 consecutive calendar days or not more than 240 total hours worked by that employee in a calendar year.

ⁱSee *Breault v. United Airlines*, 519 N.W.2d 210 (Minn.1994); *Pederson v. Service Specialists of American, et al.*, 531 N.W.2d 847 (Minn. 1995); *Hoffman v. Dutch Mill Trucking*, 515 N.W.2d 57 (Minn. 1994); *Gillund v. Royal/Milbank*, 485 N.W.2d 145 (Minn. 1992); *McSherry v. City of St. Paul*, 277 N.W. 541 (Minn. 1938); *Burgard v. Innworks, Inc.*, WCCA 5-6-96.

ⁱⁱSee *Rundberg v. Hirschback Motor Lines*, 520 N.W.2d 747 (Minn. 1994); *Bilotta v. Peerless Pump*, WCCA 12-10-91.

ⁱⁱⁱSee *Vaughn v. Nelson Brothers Construction*, 520 N.W.2d 395 (Minn.1994); *Lund v. Anderson Trucking Service*, 481 N.W.2d 371 (Minn. 1992); *Wefel v. Smith Truck Brokerage*, WCCA 3-20-92; *MacAdams v. Askew Construction*, WCCA 6-25-90; *Titchenal v. Radio Ingstad Minnesota, Inc.*, 51 W.C.D. 1 (1994); *Stenberg v. Kemp-Paulucci Seafoods, Inc.*, 44 WCD 269 (1990).

^{iv}*Stolpa v. Swanson Heavy Moving Co.*, 315 N.W.2d 615 (Minn. 1982). In *Rackow v. Kujak Transport and Labor Resources, Inc.*, 468 N.W.2d 337 (S. Aff'd. 44 W.C.D. 388) (Minn. 1991), the employee when hired had signed the employer's form stating that the employee agreed to be bound by the Indiana Workers' Compensation Act. The employee sustained a work injury in Minnesota. The Indiana workers' compensation insurer required the employee to sign an Indiana form called "Standard Form for Agreement as to Compensation" before paying the employee Indiana benefits. Later the employee consulted with an attorney and pursued benefits under the Minnesota Workers' Compensation Act. The Minnesota court said that signing the two forms regarding Indiana compensation did not constitute the employee's voluntary election of Indiana coverage made with full knowledge of his rights. Under oath at the Minnesota hearing, the employee made an oral waiver of all entitlement to Indiana workers' compensation benefits. The court said the employee had thus foregone his entitlement to Indiana benefits and was entitled to Minnesota workers' compensation benefits.

^v*Pauli v. Pneumatic Systems, Inc.*, 328 N.W.2d 743 (Minn. 1983).