

MINNESOTA STATUTES 1975 SUPPLEMENT

WORKERS' COMPENSATION 176.041

- 175.28** [Repealed, 1975 c 348 s 6]
175.29 [Repealed, 1975 c 348 s 6]
175.30 [Repealed, 1975 c 348 s 6]
175.31 [Repealed, 1975 c 348 s 6]
175.32 [Repealed, 1975 c 348 s 6]

CHAPTER 176. WORKERS' COMPENSATION

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176.011 Definitions.

[For text of subs 1 to 19, see M.S.1974]

Subd. 20. Average weekly wage. The statewide average weekly wage for any year means that wage determined by the commissioner in the following manner: On or before July 1 preceding the year in which the wage is to be applicable, the total wages reported on contribution reports to the department of employment services for the preceding 12 months ending on December 31 of that year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for the year ending December 31 by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the next highest dollar.

Subd. 21. Household worker. "Household worker" means one who is a domestic, repairman, groundskeeper, or maintenance worker in, for, or about a private home or household, but the term shall not include independent contractors nor shall it include persons performing labor for which they may elect workers' compensation coverage under section 176.012.

[1975 c 359 s 3,4]

176.041 Excluded employments; application, exceptions.

Subdivision 1. Employments excluded. This chapter does not apply to persons employed by any common carrier by railroad engaged in interstate or foreign commerce, which persons are covered by the Federal Employers' Liability Act (45 U.S.C. 51-60) or other comparable Federal law; persons employed by family farms, spouses, parents and children, regardless of their age, of a farmer employer working for him or on a family farm corporation as defined in section 500.24, subdivision 1, clause (c) or otherwise, or other farmers or members of their families exchanging work with the farmer employer in the same community, or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession, or occupation of his employer; nor does it apply to officers or members of veteran's organizations whose employment relationship arises solely by virtue of attending meetings or conventions of their organization, unless such veteran's organizations elect by resolution to provide coverage under this chapter for such officers or members. Professional athletes under contract for hire are not subject to this

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chapter if a written consent not to be bound thereby, signed by the professional athlete and the employer is filed with the commission. Neither shall the chapter apply to any person employed as a household worker in, for, or about, a private home or household who earns less than \$500 in cash in any three month period from a single private home or household provided that any household or casual worker who has earned \$500 or more from his present employer in any three month period within the previous year shall be covered by Laws 1975, Chapter 359 regardless of whether or not he has in the present quarter earned \$500.

Subd. 2. Extra-territorial application. If an employee who regularly performs the primary duties of his employment within this state, or who is hired 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 unless the transfer is normally considered to be permanent and the employee's primary duties do not require extensive travel out of the state into which the employee is transferred. If a resident of this state is transferred outside the territorial limits of the United States as an employee of a Minnesota employer, he shall be presumed to be temporarily employed outside of this state while so employed.

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. If the employer's business is in Minnesota and the employee's residence is in Minnesota, employment outside of this state shall be considered temporary.

Subd. 4. Out-of-state employments. If an employee who regularly performs the primary duties of his employment outside of this state or is hired to perform the primary duties of his 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 he may have a right to pursue in some other state.

[1975 c 359 s 5]

176.051 Assumption of liability.

An employer of workers on a family farm or household workers not otherwise covered by this chapter may assume the liability for compensation imposed by this chapter and such employer's purchase and acceptance of a valid insurance policy, which includes in its coverage a classification of workers on a family farm or domestics constitutes an assumption by the employer of such liability. This assumption of liability takes effect and continues from the effective date of the policy and as long only as the policy remains in force. If during the life of any such insurance policy any employee, who is a worker on a family farm or domestic, suffers personal injury or death arising out of and in the course of his employment, the exclusive remedy of the employee or his dependents is under this chapter.

[1975 c 359 s 6]

176.081 Legal services or disbursements; lien; review.

Subdivision 1. No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this chapter is an enforceable lien against the compensation or is valid or binding in any other respect unless approved in writing by the deputy commissioner of the department of labor and industry in charge of workers' compensation, compensation judge, or commission, if the claim arises out of a proceeding for compensation under this chapter, or by the judge presiding at the trial in an action for damages, or by a judge of the district court in a settlement of a claim for damages without trial. A compensation judge shall in matters before him have authority to approve a fee of up to 25 percent of the first \$4,000 of compensation awarded to the employee and 20 percent of the next \$20,000 of compensation awarded to employee. The workers' compensation commissioner

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shall have authority only to approve fees in settlements upon appeal before them up to 25 percent of the first \$4,000 of compensation awarded to the employee and 20 percent of the next \$20,000 of compensation awarded to the employee. If the employer or his insurer or the defendant is given written notice of such claims for legal services or disbursements, the same shall be a lien against the amount paid or payable as compensation, subject to determination of the amount and approval provided by this chapter.

Subd. 2. Any application for attorney fees in excess of the amount which a compensation judge or the workers' compensation commission may authorize shall be made to the deputy commissioner of the department of labor and industry in charge of workers' compensation. The application shall set forth the fee requested and the basis for such request and whether or not a hearing is requested. The application, with affidavit of service upon the employee, shall be filed by the attorney requesting the fee. If a hearing is requested by an interested party, a hearing shall be set with notice of such hearing served upon known interested parties. In all cases the employee shall be served with notice of hearing.

Subd. 3. An employee who is dissatisfied with his attorney fees, may file an application for review by the deputy commissioner of the department of labor and industry in charge of workers' compensation. Such application shall state the basis for the need of review and whether or not a hearing is requested. A copy of such application shall be served upon the attorney for the employee by the deputy and if a hearing is requested by either party, the matter shall be set for hearing. The notice of hearing shall be served upon known interested parties. The attorney for the employee shall be served with a notice of the hearing. The deputy commissioner of the department of labor and industry in charge of workers' compensation shall have the authority to raise the question of the issue of the attorney fees at any time upon his own motion and shall have continuing jurisdiction over attorney fees.

Subd. 4. The review of a determination by the deputy commissioner of the department of labor and industry in charge of workers' compensation shall be only by supreme court by certiorari upon the ground that it is arbitrary and unwarranted by the evidence. There shall be no review under sections 176.421 and 176.442.

Subd. 5. In the determination of the reasonable value of attorney fees arising out of a claim or proceeding under this chapter, the following principles are to be applied:

- (a) The fee in each individual case must be a reasonable one.
- (b) There is no set standard fee to be awarded in any workers' compensation matter.
- (c) No attorney-client fee contract or arrangement is binding in any workers' compensation matter.
- (d) In determining a reasonable attorney fee, important factors to be taken into account are: the amount involved, the time and expense necessary to prepare for trial, the responsibility assumed by counsel, the difficulties of the issues involved, the nature of proof needed to be adduced and the results obtained. The amount of money involved shall not be the controlling factor.
- (e) The determination of the fee in each specific workers' compensation matter must be done with the same care as the determination of any other fact question in the matter.
- (f) The determiner of the attorney fee in each matter must ascertain whether or not a retainer fee has been paid to the attorney and if so, the amount of the retainer fee.
- (g) The determiner of attorney fees in each case must personally see that the workers' compensation file contains fully adequate information to justify the fee that is determined.

Subd. 6. The deputy commissioner of the department of labor and industry in charge of workers' compensation may prescribe reasonable and proper

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rules and regulations to effect his and the division's obligations under this section without regard to the joint prescription required under section 175.17, subdivision 3.

Subd. 7. If the employer or insurer shall file a denial of liability, notice of discontinuance, or shall fail to make payment of compensation or medical expenses within the statutory period after notice of injury or occupational disease, or shall otherwise resist unsuccessfully the payment of compensation or medical expenses, and the injured person shall have employed an attorney at law, who successfully procures payment on behalf of the employee, the compensation judge, commissioner of the department of labor and industry, or the commission upon appeal, upon application, shall award to the employee against the insurer or self-insured employer or uninsured employer, in addition to the compensation benefits paid or awarded to the employee, an amount equal to 25 percent of that portion of the attorney's fee which has been awarded pursuant to this section that is in excess of \$250.

Subd. 8. Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to which is liable for payment, and litigation ensues to resolve such dispute, the employee shall be awarded against the party held liable for the benefits, the reasonable attorney fees, costs and disbursements he incurs to protect his rights, even if he is being voluntarily paid benefits by one of the parties to the dispute.

[1975 c 359 s 7]

176.101 Compensation schedule.

Subdivision 1. Temporary total disability. For injury producing temporary total disability, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury subject to the following limitations:

- (1) The maximum weekly benefits payable shall be \$135.
- (2) The minimum weekly compensation benefits for temporary total disability shall be 20 percent of the statewide average weekly wage.

This compensation shall be paid during the period of disability, payment to be made at the intervals when the wage was payable, as nearly as may be.

Subd. 2. Temporary partial disability. In all cases of temporary partial disability the compensation shall be 66 $\frac{2}{3}$ percent of the difference between the daily wage of the worker at the time of injury and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of disability, but not to exceed 350 weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to a maximum compensation of \$135 per week. If the employer does not furnish the worker with work which he can do in his temporary partially disabled condition and he is unable to procure such work with another employer, after reasonably diligent effort, the employee shall be paid at the full compensation rate for his or her temporary total disability.

Subd. 3. Permanent partial disability. For the permanent partial disability from the loss of a member the compensation for total disability during the healing period shall be as stated in subdivision 1. For partial disability during the healing period the compensation shall be as stated in subdivision 2. The healing period shall not exceed 104 weeks. Thereafter and in addition thereto, compensation shall be that named in the following schedule, subject to a maximum compensation of \$135 per week:

- (1) For the loss of a thumb, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 65 weeks;
- (2) For the loss of a first finger, commonly called index finger, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 40 weeks;
- (3) For the loss of a second finger, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 35 weeks;
- (4) For the loss of a third finger, 66 $\frac{2}{3}$ percent of the daily wage at the

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time of injury during 25 weeks;

(5) For the loss of a fourth finger, commonly called the little finger, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 20 weeks;

(6) The loss of the first phalange of the thumb or of any finger, is considered equal to the loss of one-half of the thumb or finger and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the thumb or finger;

(7) The loss of one and one-half or more phalanges is considered equal to the loss of the entire finger or thumb; but in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

(8) For the loss of a great toe, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 35 weeks;

(9) For the loss of a toe other than a great toe, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 15 weeks;

(10) The loss of the first phalange of any toe is considered equal to the loss of one-half of the toe, and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the toe;

(11) The loss of one and one-half or more phalanges is considered equal to the loss of the entire toe;

(12) For the loss of a hand, not including the wrist movement, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 195 weeks;

(13) For the loss of a hand, including wrist movement, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 220 weeks;

(14) For the loss of an arm, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 270 weeks;

(15) Amputation of the arm below the elbow is considered the loss of a hand, including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it is considered the loss of an arm;

(16) For the loss of a foot, not including ankle movement, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 140 weeks;

(17) For the loss of a foot, including ankle movement, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 165 weeks;

(18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 195 weeks;

(19) For the loss of a leg so close to the hip that no effective artificial member can be used, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 220 weeks;

(20) Amputation of a leg below the knee is considered as equal to the loss of a foot, including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member, otherwise it is considered as equal to the loss of a leg;

(21) For the loss of an eye, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 160 weeks;

(22) For the complete permanent loss of hearing in one ear, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 85 weeks;

(23) For the complete permanent loss of hearing in both ears, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 170 weeks;

(24) For the loss of an eye and a leg, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 475 weeks;

(25) For the loss of an eye and an arm, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 475 weeks;

(26) For the loss of an eye and a hand, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury during 450 weeks;

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- (27) For the loss of an eye and a foot, 66 2/3 percent of the daily wage at the time of injury during 400 weeks;
- (28) For the loss of two arms, other than at the shoulder, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (29) For the loss of two hands, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (30) For the loss of two legs, other than so close to the hips that no effective artificial member can be used, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (31) For the loss of two feet, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (32) For the loss of one arm and the other hand, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (33) For the loss of one hand and one foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (34) For the loss of one leg and the other foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (35) For the loss of one leg and one hand, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (36) For the loss of one arm and one foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (37) For the loss of one arm and one leg, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (38) For loss of the voice mechanism, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (39) For head injuries resulting in permanent partial disability, 66 2/3 percent of the daily wage at the time of injury for that proportion of 500 weeks which is represented by the percentage of such permanent partial disability as is determined from competent testimony adduced at a hearing before a compensation judge, a commissioner, or the commission;
- (40) For permanent partial disability resulting from injury to any internal organ, including the heart, 66 2/3 percent of the daily wage at time of injury for that proportion of 500 weeks which is represented by the percentage of such permanent partial disability as is determined from competent testimony adduced at a hearing before a compensation judge, a commissioner, or the commission;
- (41) For disfigurement or scarring not resulting from the loss of a member or other injury specifically compensated, affecting the employability or advancement opportunity of the injured person in the employment in which he was injured or other employment for which the employee is then qualified or for which the employee has become qualified, 66 2/3 percent of the daily wage at the time of injury during such period as the compensation judge or the commission in cases on appeal determines, not beyond 90 weeks;
- (42) For permanent partial disability resulting from injury to the back, 66 2/3 percent of the daily wage at the time of injury for that proportion of 350 weeks which is represented by the percentage of such permanent partial disability as is determined from competent testimony adduced at a hearing before a compensation judge, a commissioner, or the commission;
- (43) When an employee sustains concurrent injuries resulting in concurrent disabilities he shall receive compensation only for the injury which entitled him to the largest amount of compensation, but this does not affect liability for disfigurement affecting the employability of the injured person or liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in subdivision 5;
- (44) In all cases of permanent partial disability it is considered that the permanent loss of the use of a member is equivalent to and draws the same compensation as the loss of that member, but the compensation in and by this

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schedule provided shall be in lieu of all other compensation in such cases, except as otherwise provided by this section;

In the event a worker has been awarded, or is entitled to receive, a compensation for loss of use of a member under any workers' compensation law, and thereafter sustains a loss of such member under circumstances entitling him to compensation therefor under the workers' compensation act, as amended, the amount of compensation awarded, or that he is entitled to receive, for such loss of use, is to be deducted from the compensation due under the schedules of this section for the loss of such member, provided, that the amount of compensation due for the loss of the member caused by the subsequent accident is in no case less than 25 percent of the compensation payable under the schedule of this section for the loss of such member;

(45) In cases of permanent partial disability due to injury to a member, resulting in less than total loss of the member, not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the member which the extent of the injury to the member bears to its total loss;

(46) In cases of permanent partial disability caused by simultaneous injury to two or more members, the applicable schedules in this subdivision shall be increased by 15 percent. This clause shall not apply when the injuries are compensated under paragraphs 22 to 37 inclusive, of this subdivision. In cases of partial disability due to injury to both eyes resulting in less than total loss of vision in one or both eyes compensation shall be paid at the prescribed rate during that part of 450 weeks which the extent of the combined injury to both eyes bears to the complete loss of industrial vision;

(47) The commissioner of the department of labor and industry with the commission may make or revise rules for the determination of the extent of the impairment of the industrial use of one or both eyes taking into account all primary coordinate factors of vision. These rules shall be made or revised after consultation with experts on industrial vision and after public notice to and hearing of interested parties;

(48) For permanent partial disability resulting from injury to the body as a whole due to burns, 66 $\frac{2}{3}$ percent of the daily wage at the time of injury, for that proportion of 350 weeks which is represented by the percentage of such permanent partial disability as is determined from competent testimony adduced at a hearing before a compensation judge, a commissioner or the commission, said compensation to be paid in addition to such compensation as employee would otherwise be entitled to for loss of use to a member in accordance with this section;

(49) In all cases of permanent partial disability not enumerated in this schedule the compensation shall be 66 $\frac{2}{3}$ percent of the difference between the daily wage of the worker at the time of the injury and the daily wage he is able to earn in his partially disabled condition, subject to a maximum of \$100 per week, and continue during disability, not to exceed 350 weeks; and if the employer does not furnish the worker with work which he can do in his permanently partially disabled condition and he is unable to secure such work with another employer after a reasonably diligent effort, the employee shall be paid at his or her maximum rate of compensation for total disability.

Subd. 4. Permanent total disability. For permanent total disability, as defined in subdivision 5, the compensation shall be 66 $\frac{2}{3}$ percent of the daily wage at the time of the injury, subject to a maximum weekly compensation equal to the maximum weekly compensation for a temporary total disability and a minimum weekly compensation equal to the minimum weekly compensation for a temporary total disability. This compensation shall be paid during the permanent total disability of the injured employee but after a total of \$25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if such disability benefits are occasioned by the same injury or injuries which

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give rise to payments under this subdivision. Such reduction shall also apply to any old age and survivor insurance benefits. Payments shall be made at the intervals when the wage was payable, as nearly as may be. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable during the period of his confinement in such institution, unless he has wholly dependent on him for support some person named in section 176.111, subdivisions 1, 2 or 3, in which case the compensation provided for in section 176.111, during the period of such confinement, shall be paid for the benefits of such dependent person during dependency. The dependency of such persons shall be determined as though the employee were deceased.

Subd. 5. Total disability. The total and permanent loss of the sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties, or any other injury which totally incapacitates the employee from working at an occupation which brings him an income constitutes total disability.

Subd. 6. Minors. If any employee entitled to the benefits of this chapter is a minor or is an apprentice of any age and sustains a personal injury arising out of and in the course of employment resulting in permanent total or permanent partial disability, for the purpose of computing the compensation to which he is entitled for said injury the compensation rate for temporary total, temporary partial, retraining, permanent partial or permanent total disability shall be the larger of either the statewide average weekly wage or the employees weekly wage, but in no case shall the compensation exceed the maximum weekly compensation rate payable under chapter 176.

Subd. 7. Compensation during retraining. For any injury producing permanent disability which will prevent the employee from adequately performing the duties of the occupation he held at the time of injury, or any other injury which will or is likely to produce indefinite and continuous disability in excess of 26 weeks, the commissioner of the department of labor and industry shall require that the injured employee be promptly referred to the division of vocational rehabilitation, department of education, or other public or private, properly accredited agency, to determine if retraining for a new occupation would significantly reduce or remove any reduction in employability caused by the injury. The employer shall pay any usual and reasonable expenses and charges for such evaluation. If the evaluating agency certifies to the commissioner of the department of labor and industry that a period of retraining will significantly reduce or prevent the decrease in employability resulting from the injury, and if the commissioner of the department of labor and industry, compensation judge, or commission, in cases upon appeal, determines the retraining is necessary and makes an order for such compensation, the employer shall pay up to 156 weeks of additional compensation during the actual period of retraining according to the schedule of compensation for temporary total disability and shall pay any other expense determined as reasonably necessary to restore former earning capacity by the division of vocational rehabilitation and the commissioner of labor and industry to rehabilitate the employee.

[1975 c 359 s 8]

176.111 Dependents, allowances.

Subdivision 1. Persons wholly dependent, presumption. For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent:

(a) wife, unless it be shown that she was voluntarily living apart from her husband at the time of his injury or death;

(b) children under 18 years of age, or a child under the age of 21 years who is regularly attending as a full time student at a high school, college, or university, or regularly attending as a full time student in a course of vocational or technical training.

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[For text of subs 2 to 5, see M.S.1974]

Subd. 6. Widow, no dependent child. If the deceased employee leave a widow and no dependent child, there shall be paid to the widow 50 percent of the daily wage at the time of the injury of the deceased.

Subd. 7. Spouse, one dependent child. If the deceased employee leave a surviving spouse and one dependent child, there shall be paid to the surviving spouse for the benefit of such spouse and child 60 percent of the daily wage at the time of the injury of the deceased.

Subd. 8. Spouse, two dependent children. If the deceased employee leave a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of such spouse and such children 66 2/3 percent of the daily wage at the time of the injury of the deceased.

Subd. 9. [Repealed, 1975 c 359 s 22]

[For text of subd 10, see M.S.1974]

Subd. 11. Remarriage of widow. In the case of the remarriage of a surviving spouse without dependent children the surviving spouse shall receive a lump sum settlement equal to two full years compensation. In case of the remarriage of a surviving spouse who has dependent children the compensation which would otherwise become the surviving spouse's due shall be payable to the parent, guardian, or such other person as the commissioner of the department of labor and industry, compensation judge, or commission in cases upon appeal, orders for the use and benefit of the children during dependency. If the dependency of the children ceases before the equivalent of two years of the parent's compensation has been paid to the children, the remainder of the two years compensation shall be payable in a lump sum to the parent without deduction for interest. The payments provided herein shall be paid within 60 days after written notice to the employer of the remarriage or that the dependency of the children has ceased. No surviving spouse who has remarried shall be held to be a surviving spouse without dependent children when the deceased employee leaves any dependent child as defined by this chapter.

Subd. 12. Orphans. If the deceased employee leave a dependent orphan, there shall be paid 55 percent of the daily wage at the time of the injury of the deceased, for two or more orphans there shall be paid 66 2/3 percent of the wages.

[For text of subs 13 to 18, see M.S.1974]

Subd. 19. [Repealed, 1975 c 359 s 22]

Subd. 20. Actual dependents, compensation. Actual dependents are entitled to take compensation in the order named in subdivision 3 during dependency until 66 2/3 percent of the daily wage of the deceased at the time of injury is exhausted. The total weekly compensation to be paid to full actual dependents of a deceased employee shall not exceed in the aggregate an amount equal to the maximum weekly compensation for a temporary total disability.

Subd. 21. Death, benefits; coordination with governmental survivor benefits. The following provisions shall apply to any dependent entitled to receive weekly compensation benefits under this section as the result of the death of an employee, and who is also receiving or entitled to receive benefits under any government survivor program:

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(a) The combined total of weekly government survivor benefits and workmen's compensation death benefits provided under this section shall not exceed 100 percent of the weekly wage being earned by the deceased employee at the time of the injury causing his death; provided, however, that no state workmen's compensation death benefit shall be paid for any week in which the survivor benefits paid under the federal program, by themselves, exceed 100 percent of such weekly wage; and

(b) In the event that weekly workmen's compensation benefits payable as the result of an employee's death are reduced below the maximum benefit to which a dependent is otherwise entitled under this section, the 300 week limit on compensation payments provided in this section shall not apply.

[1975 c 359 s 9-16]

176.131 Subsequent disability, special fund.

[For text of subs 1 to 9, see M.S.1974]

Subd. 10. The special compensation fund is created for the purposes provided in this chapter in the following manner:

(1) In every case of death of an employee resulting from personal injury arising out of and in the course of his employment where there are no persons entitled to monetary benefits of dependency compensation, the employer shall pay to the commissioner of the department of labor and industry the sum of \$5,000 for the benefit of the special compensation fund; in every case of death of an employee resulting from personal injury arising out of and in the course of his employment where there are no persons entitled to at least \$5,000 in monetary benefits of dependency compensation, the employer shall pay to the commissioner of the department of labor and industry for the benefit of the special compensation fund the difference between the amounts actually paid for such dependency benefits and \$5,000; but in no event shall the employer pay the commissioner of the department of labor and industry less than \$1,000;

(2) When an employee shall suffer personal injury which results in permanent partial disability, temporary total disability, temporary partial disability, permanent total disability or death and which entitles him or dependents to compensation under sections 176.101 or 176.111, the employer shall in addition to compensation provided therein, pay to the commissioner of the department of labor and industry for the benefit of the special compensation fund a lump sum without interest deduction equal to seven percent of such total compensation, as soon as the amount payable for the particular injury is determined, or arrived at by agreement of the parties and such amount is approved by the commissioner of the department of labor and industry.

The provisions of clauses (1) and (2) shall apply to all workmen's compensation payments, exclusive of medical costs, paid under sections 176.101 and 176.111 for all injuries or death occurring on or after June 1, 1971.

Personal injuries that occurred prior to June 1, 1971 shall be assessed at the rate in effect on the date of occurrence.

The seven percent of the total compensation required to be paid by the employer to the commissioner of the department of labor and industry for the benefit of the special compensation fund as provided in clause (2) of this subdivision shall remain fixed at said seven percent for the period from June 1, 1971, to June 1, 1972. Effective June 1, 1972, through June 1, 1975, and there-

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after on January 1, beginning in 1976, the rate shall be adjusted on the following basis: if the balance in the special compensation fund as of April 30 in any year through 1975 and as of September 30, 1975, and each September 30 thereafter, is below \$1,000,000, the rate of payment shall be increased by two percent over the then prevailing rate. If the balance is at least \$1,000,000 but below \$1,500,000, the rate will be increased by one percent. If the balance is at least \$1,500,000 but below \$2,000,000, there shall be no change. If the balance is at least \$2,000,000 but less than \$2,500,000, the rate shall be decreased by one percent. If the balance is at least \$2,500,000, the rate shall be decreased by two percent. If the balance is \$3,000,000 or more the commissioner of the department of labor and industry shall within 30 days determine the percent of decrease, which shall be not less than two percent nor more than five percent.

Such sums as are paid to the commissioner of the department of labor and industry pursuant to the provisions hereof, shall be by it deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits provided by chapter 176. All money heretofore arising from the provisions of this section or similar law shall be transferred to this special compensation fund.

The state treasurer shall be the custodian of this special fund and the workmen's compensation division and the workmen's compensation commission in cases before it shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of clause (1) and dependency later is shown, or if deposit is or has been made pursuant to either clause (1) or (2) by mistake or inadvertence, or under such circumstances that justice requires a refund thereof, the state treasurer is hereby authorized to refund such deposit under order of the workmen's compensation division or the workmen's compensation commission. There is appropriated to the persons entitled to such refunds from the fund an amount sufficient to make the refund and payment.

Costs within the department of labor and industry for the accounting and legal procedures necessary for administration of the programs financed by the special compensation fund shall be paid from the moneys biennially appropriated to the department and not from the special compensation fund.

[1975 c 359 s 17]

[For text of subds 11 and 12, see M.S.1974]

176.132 Supplementary benefits.

[For text of subd 1, see M.S.1974]

Subd. 2. Amount. (a) The supplementary benefit payable under this section shall be the difference between the amount the employee receives on or after January 1, 1976, under section 176.101, subdivision 1 or subdivision 4, and 50 percent of the statewide average weekly wage as computed annually.

(b) In the event an eligible recipient is currently receiving no compensation or is receiving a reduced level of compensation because of a credit being applied as the result of a third party liability or damages, the employer or insurer shall compute the offset credit as if the individual were entitled to the actual benefit or 50 percent of the statewide average weekly wage as computed annually, whichever is greater. If this results in the use of a higher credit than otherwise would have been applied and the employer or insurer becomes liable for compensation benefits which would otherwise not have been paid, the additional benefits resulting shall be handled according to this sec-

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tion.

(c) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of a valid agreement in settlement of a claim, no supplementary benefit shall be payable under this section.

(d) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of prior limitations in the maximum amount payable for permanent total disability or because of reductions resulting from the simultaneous receipt of old age or disability benefits, the supplementary benefit shall be payable for the difference between the actual amount of compensation currently being paid and 50 percent of the statewide average weekly wage as computed annually.

(e) In the event that an eligible recipient is receiving simultaneous benefits from any government disability program, the amount of supplementary benefits payable under this section shall be reduced by five percent.

[1975 c 359 s 18]

[For text of subds 3 and 4, see M.S.1974]

176.133 Attorneys fees, supplementary benefits.

No attorneys fees shall be permitted or approved by the commission from the supplementary workers' compensation benefits provided by section 176.132, or amendments thereto, unless the case solely involves the obtaining of supplementary workers' compensation benefits. When such fees are allowed an amount equal to 25 percent of that portion of the fee which is in excess of \$250 shall be added to the employee's benefit as provided in section 176.081 rather than deducted as a portion thereof. The fees shall be subject to the limitations contained in section 176.081.

[1975 c 359 s 16]

176.151 Time limitations.

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

(1) Actions or proceedings by an injured employee to determine or recover compensation, three years after the employer has made written report of the injury to the commissioner of the department of labor and industry, but not to exceed six years from the date of the accident.

(2) 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 his 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.

(3) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act

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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.

(4) 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 his action within three years after the employee has knowledge of the cause of such injury and the injury has resulted in disability.

[1975 c 359 s 17]

176.461 Setting aside award.

Except where a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or where as a matter of law the determination of the supreme court cannot be subsequently modified, the commission, for cause, at any time after an award, upon application of either party and not less than five days after written notice to all interested parties, may set the award aside and grant a new hearing before itself or refer the matter for a determination on its merits to a compensation judge, who shall make such findings of fact, conclusions of law, and award or disallowance of compensation or other order as the pleadings and the evidence produced and the provisions of this chapter shall require.

[1975 c 359 s 18]

176.511 Costs.

[For text of subds 1 and 2, see M.S.1974]

Subd. 3. Attorney's fee, allowance. Where upon an appeal to the commission, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the commission may include in its award as an incident to its review on appeal an amount to cover a reasonable attorney's fee, or it may allow the fee in a proceeding to tax disbursements. When such fees are allowed an amount equal to 25 percent of that portion of the fee which is in excess of \$250 shall be added to the employee's benefit as provided in section 176.081 rather than deducted as a portion thereof. The fees shall be subject to the limitations contained in section 176.081. The fee under this provision shall be based on the difference between the offer of the employer and the final settlement.

[1975 c 359 s 19]

[For text of subds 4 and 5, see M.S.1974]

176.541 State departments.

[For text of subds 1 to 7, see M.S.1974]

Subd. 8. State may insure. The state of Minnesota may elect to insure its liability under the workmen's compensation law for persons employed under the federal Emergency Employment Act of 1971, as amended, and the Comprehensive Employment and Training Act of 1973, as amended, with an insurer properly licensed in Minnesota.

[1975 c 2 s 2]

176.611 Maintenance of state compensation revolving fund.

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[For text of subs 1 to 4, see M.S.1974]

Subd. 6a. Appropriations constituting fund. There is hereby appropriated from the general fund in the state treasury to the state compensation revolving fund the sum of \$967,690 to be used to pay claims of employees of the state. This appropriation together with the sum of \$74,013.12 heretofore appropriated from the trunk highway fund and \$2,395,986.88 heretofore appropriated from the general fund totals \$3,437,960 and constitutes the revolving fund.

[1975 c 204 s 77]

176.621 [Repealed, 1975 c 61 s 26]

176.631 [Repealed, 1975 c 61 s 26]

176.645 Adjustment of benefits.

For injuries occurring after October 1, 1975 for which benefits are payable under section 176.101, subdivisions 1, 2 and 4, and section 176.111, subdivision 5, the amount being paid to the employee by the employer shall on October 1, 1976, and each October 1 thereafter be adjusted by multiplying the benefit payable prior to each adjustment by a fraction, the denominator of which is the statewide average weekly wage for December 31, 21 months prior to the adjustment and the numerator of which is the statewide average weekly wage for December 31, nine months prior to the adjustment.

[1975 c 359 s 20]

176.82 Action for civil damages for obstructing employee seeking benefits.

Any person discharging or threatening to discharge an employee for seeking workmen's compensation benefits or in any manner intentionally obstructing an employee seeking workmen's compensation benefits is liable in a civil action for damages incurred by the employee including any diminution in workers' compensation benefits caused by a violation of this section including costs and reasonable attorney fees, and for punitive damages not to exceed three times the amount of any compensation benefit to which the employee is entitled. Damages awarded under this section shall not be offset by any workmen's compensation benefits to which the employee is entitled.

[1975 c 359 s 21]

CHAPTER 177. MINIMUM WAGES

Sec. 177.23	Definitions.	Sec. 177.43	Contracts for state projects; penalty.
177.41	State projects and state highway construction; public policy.	177.44	Highway contracts; hours of labor; wage rates; penalty.
177.42	Definitions.		

177.23 Definitions.

[For text of subs 1 to 6, see M.S.1974]

Subd. 7. "Employee" means any individual employed by an employer but shall not include

(1) any individual employed in agriculture on a farming unit or operation employing less than the equivalent of two full time workers and on any given day employing no more than four employees. For the purpose of this clause, equivalent of a full time worker means 40 weeks of employment in a calendar year;

(2) an individual who has not attained the age of 18 who is employed in agriculture on a farm;