

CHAPTER 176

WORKERS' COMPENSATION

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176.001 INTENT OF THE LEGISLATURE.

It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of chapter 176. It is the specific intent of the legislature that workers' compensation cases shall be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' compensation legislation shall not apply in such cases. The workers' compensation system in Minnesota is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Employees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the provisions of this chapter, and employers' rights to raise common law defenses such as lack of negligence, contributory negligence on the part of the employee, and others, are curtailed as well. Accordingly, the legislature hereby declares that the workers' compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

History: 1983 c 290 s 25

176.011 DEFINITIONS.

[For text of subds 1 to 8, see M.S.1982]

Subd. 9. **Employee.** "Employee" means any person who performs services for another for hire including the following:

- (1) an alien;
- (2) a minor;
- (3) a sheriff, deputy sheriff, constable, marshal, policeman, firefighter, county highway engineer, and peace officer while engaged in the enforcement of peace or in the pursuit or capture of any person charged with or suspected of crime and any person requested or commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any legal process in which case, for purposes of calculating compensation payable under this chapter, the daily wage of the person requested or commanded to assist an officer or to execute a legal process shall be the prevailing wage for similar services where the services are performed by paid employees;
- (4) a county assessor;
- (5) an elected or appointed official of the state, or of any county, city, town, school district or governmental subdivision in it. An officer of a political subdivision elected or appointed for a regular term of office, or to complete the unexpired portion of a regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;
- (6) an executive officer of a corporation, except an officer of a family farm corporation as defined in section 500.24, subdivision 1, clause (c), or an executive officer of a closely held corporation who is referred to in section 176.012;
- (7) a voluntary uncompensated worker, other than an inmate, rendering services in state institutions under the commissioner of public welfare and state institutions under the commissioner of corrections similar to those of officers and employees of these institutions, and whose services have been accepted or contracted for by the commissioner of public welfare or the commissioner of corrections as authorized by law, shall be employees. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;
- (8) a voluntary uncompensated worker engaged in peace time in the civil defense program when ordered to training or other duty by the state or any political subdivision of it, shall be an employee. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services where the services are performed by paid employees;
- (9) a voluntary uncompensated worker participating in a program established by a county welfare board shall be an employee. In the event of injury or death of the voluntary uncompensated worker, the wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid in the county at the time of the injury or death for similar services where the services are performed by paid employees working a normal day and week;
- (10) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section

84.089 shall be an employee. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of injury or death for similar services where the services are performed by paid employees;

(11) a member of the military forces, as defined in section 190.05, while in state active service, as defined in section 190.05, subdivision 5a. The daily wage of the member for the purpose of calculating compensation payable under this chapter shall be based on the member's usual earnings in civil life. If there is no evidence of previous occupation or earning, the trier of fact shall consider the member's earnings as a member of the military forces;

(12) a voluntary uncompensated worker, accepted by the director of the Minnesota historical society, rendering services as a volunteer, pursuant to chapter 138, shall be an employee. The daily wage of the worker, for the purposes of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of injury or death for similar services where the services are performed by paid employees;

(13) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota School for the Deaf or the Minnesota Braille and Sight-Saving School, and whose services have been accepted or contracted for by the state board of education, as authorized by law, shall be an employee. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(14) a voluntary uncompensated worker, other than a resident of the veterans home, who renders services at a Minnesota veterans home, and whose services have been accepted or contracted for by the commissioner of veterans affairs, as authorized by law, is an employee. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(15) a worker who renders in-home attendant care services to a physically handicapped person, and who is paid directly by the commissioner of public welfare for these services, shall be an employee of the state within the meaning of this subdivision, but for no other purpose; and

(16) those students enrolled in and regularly attending the medical school of the University of Minnesota, whether in the graduate school program or the post-graduate program, as provided in section 147.20, notwithstanding that the students shall not be considered employees for any other purpose. In the event of the student's injury or death, the weekly wage of the student for the purpose of calculating compensation payable under chapter 176, shall be the annualized educational stipend awarded to the student, divided by 52 weeks. The institution in which the student is enrolled shall be considered the "employer" for the limited purpose of determining responsibility for paying benefits payable under chapter 176.

In the event it is difficult to determine the daily wage as provided in this subdivision, then the trier of fact may determine the wage upon which the compensation is payable.

[For text of subs 9a to 22, see M.S.1982]

Subd. 23. **Retraining.** "Retraining" means a formal course of study in a school setting which is designed to train an employee to return to suitable gainful employment.

Subd. 24. **Health care provider.** "Health care provider" means a physician, podiatrist, chiropractor, dentist, optometrist, osteopath, psychologist, psychiatric social worker, or any other person who furnishes a medical or health service to an employee under this chapter but does not include a qualified rehabilitation consultant or approved vendor.

Subd. 25. **Maximum medical improvement.** "Maximum medical improvement" means the date after which no further significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability.

Subd. 26. **Monitoring period.** "Monitoring period" means the number of weeks during which economic recovery compensation pursuant to section 176.101, subdivision 3a, would have been paid if that compensation were payable.

History: 1983 c 193 s 2; 1983 c 290 s 26-30

176.012 ELECTION OF COVERAGE.

The persons, partnerships and corporations described in this section may elect to provide the insurance coverage required by this chapter.

(a) An owner or owners of a business or farm may elect coverage for themselves.

(b) A partnership owning a business or farm may elect coverage for any partner.

(c) A family farm corporation as defined in section 500.24, subdivision 2, clause (c) may elect coverage for any executive officer.

(d) A closely held corporation which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any executive officer if that executive officer is also an owner of at least 25 percent of the stock of the corporation.

(e) A person, partnership, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor.

The persons, partnerships and corporations described in this section may also elect coverage for an employee who is a spouse, parent or child, regardless of age, of an owner, partner, or executive officer, who is eligible for coverage under this section. Coverage may be elected for a spouse, parent or child whether or not coverage is elected for the related owner, partner or executive director and whether or not the person, partnership or corporation employs any other person to perform a service for hire. Any person for whom coverage is elected pursuant to this section shall be included within the meaning of the term employee for the purposes of this chapter.

Notice of election of coverage or of termination of election under this section shall be provided in writing to the insurer. Coverage or termination of coverage is effective the day following receipt of notice by the insurer or at a subsequent date if so indicated in the notice. The insurance policy shall be endorsed to indicate the names of those persons for whom coverage has been elected or terminated under this section. An election of coverage under this section shall continue in effect as long as a policy or renewal policy of the same insurer is in effect.

Nothing in this section shall be construed to limit the responsibilities of owners, partnerships or corporations to provide coverage for their employees, if any, as required under this chapter.

History: 1983 c 290 s 31

176.021 APPLICATION TO EMPLOYERS AND EMPLOYEES.

[For text of subd 1, see M.S.1982]

Subd. 1a. **Burden of proof.** All disputed issues of fact arising under chapter 176 shall be determined by a preponderance of the evidence, and in accordance with the principles laid down in section 176.001. Preponderance of the evidence means evidence produced in substantiation of a fact which, when weighed against the evidence opposing the fact, has more convincing force and greater probability of truth.

Questions of law arising under chapter 176 shall be determined on an even-handed basis in accordance with the principles laid down in section 176.001.

[For text of subd 2, see M.S.1982]

Subd. 3. **Compensation, commencement of payment.** All employers shall commence payment of compensation at the time and in the manner prescribed by this chapter without the necessity of any agreement or any order of the division. Except for medical, burial, and other nonperiodic benefits, payments shall be made as nearly as possible at the intervals when the wage was payable, provided, however, that payments for permanent partial disability shall be governed by section 176.101. If doubt exists as to the eventual permanent partial disability, payment for the economic recovery compensation or impairment compensation, whichever is due, pursuant to section 176.101, shall be then made when due for the minimum permanent partial disability ascertainable, and further payment shall be made upon any later ascertainment of greater permanent partial disability. Prior to or at the time of commencement of the payment of economic recovery compensation or lump sum or periodic payment of impairment compensation, the employee and employer shall be furnished with a copy of the medical report upon which the payment is based and all other medical reports which the insurer has that indicate a permanent partial disability rating, together with a statement by the insurer as to whether the tendered payment is for minimum permanent partial disability or final and eventual disability. After receipt of all reports available to the insurer that indicate a permanent partial disability rating, the employee shall make available or permit the insurer to obtain any medical report that the employee has or has knowledge of that contains a permanent partial disability rating which the insurer does not already have. Economic recovery compensation or impairment compensation pursuant to section 176.101 is payable in addition to but not concurrently with compensation for temporary total disability but is payable pursuant to section 176.101. Impairment compensation is payable concurrently and in addition to compensation for permanent total disability pursuant to section 176.101. Economic recovery compensation or impairment compensation pursuant to section 176.101 shall be withheld pending completion of payment for temporary total disability, and no credit shall be taken for payment of economic recovery compensation or impairment compensation against liability for temporary total or future permanent total disability. Liability on the part of an employer or the insurer for disability of a temporary total, temporary partial, and permanent total nature shall be considered as a continuing product and part of the employee's inability to earn or reduction in earning capacity due to injury or

occupational disease and compensation is payable accordingly, subject to section 176.101. Economic recovery compensation or impairment compensation is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation, subject to section 176.101. The right to receive temporary total, temporary partial, or permanent total disability payments vests in the injured employee or the employee's dependents under this chapter or, if none, in the employee's legal heirs at the time the disability can be ascertained and the right is not abrogated by the employee's death prior to the making of the payment.

The right to receive economic recovery compensation or impairment compensation vests in an injured employee at the time the disability can be ascertained provided that the employee lives for at least 30 days beyond the date of the injury. Upon the death of an employee who is receiving economic recovery compensation or impairment compensation, further compensation is payable pursuant to section 176.101. Impairment compensation is payable under this paragraph if vesting has occurred, the employee dies prior to reaching maximum medical improvement, and the requirements and conditions under section 176.101, subdivision 3e, are not met.

Disability ratings for permanent partial disability shall be based on objective medical evidence.

[For text of subds 3a to 8, see M.S.1982]

History: 1983 c 290 s 32,33

176.041 EXCLUDED EMPLOYMENTS; APPLICATION, EXCEPTIONS.

Subdivision 1. **Employments excluded.** This chapter does not apply to a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law; to a person employed by a family farm as defined by section 176.011, subdivision 11a, or the spouse, parent, and child, regardless of age, of a farmer-employer working for the farmer-employer; to a partner engaged in a farm operation or a partner engaged in a business and the spouse, parent, and child, regardless of age, of a partner in the farm operation or business; to an executive officer of a family farm corporation; to an executive officer of a closely held corporation referred to in section 176.012; to a spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 2, and employed by that family farm corporation; to a spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation referred to in section 176.012; to another farmer or to a member of the other farmer's family exchanging work with the farmer-employer or family farm corporation operator in the same community; to a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer; persons who are independent contractors as defined by rules adopted by the commissioner pursuant to section 176.83 except that this exclusion does not apply to an employee of an independent contractor; nor does this chapter apply to an officer or a member of a veterans' organization whose employment relationship arises solely by virtue of attending meetings or conventions of the veterans' organization, unless the veterans' organization elects by resolution to provide coverage under this chapter for the officer or member.

Neither does the chapter apply to a person employed as a household worker in, for, or about a private home or household who earns less than \$500 in cash in a

three-month period from a single private home or household provided that a household worker who has earned \$500 or more from the household worker's present employer in a three-month period within the previous year is covered by this chapter regardless of whether or not the household worker has earned \$500 in the present quarter.

This chapter does not apply to those persons employed by a corporation if those persons are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to the officers of the corporation, and if the corporation files a written election with the commissioner to have those persons excluded from this chapter except that a written election is not required for a person who is otherwise excluded from this chapter by this section.

This chapter does not apply to a nonprofit association which does not pay more than \$500 in salary or wages in a year.

This chapter does not apply to employees injured while participating in a ridesharing arrangement as defined in section 169.01, subdivision 63, between the employee's residence and place of employment or terminus near the place of employment. This chapter does apply if the employer elects to assume liability coverage under this chapter for persons injured while participating in ridesharing arrangements as outlined in section 176.051, subdivision 3.

[For text of subs 2 to 6, see M.S.1982]

History: 1983 c 290 s 34; 1983 c 311 s 8

176.051 ASSUMPTION OF LIABILITY; FARM AND HOUSEHOLD WORKERS; RIDESHARING.

Subdivision 1. Farm and household workers. An employer of workers on a farm operation or household workers not otherwise covered by this chapter may assume the liability for compensation imposed by this chapter and the employer's procurement of a workers' compensation policy constitutes an assumption by the employer of liability unless the employer elects in writing not to have those persons covered and the policy states that election. This assumption of liability takes effect and continues from the effective date of the policy and only as long as the policy remains in force. If during the life of the insurance policy, an employee, who is a worker on a farm operation or a household worker, suffers personal injury or death arising out of and in the course of employment, the exclusive remedy of the employee or the employee's dependents is under this chapter. For purposes of this section, farm worker does not include a spouse, parent, or child, regardless of age, of a farmer, a partner in a farm operation, or an officer of a family farm corporation as defined in section 500.24, subdivision 1, nor does it include other farmers in the same community or members of their family exchanging work with the farmer-employer or family farm corporation operator.

Subd. 2. Compensation limitation; ridesharing arrangements. The purpose of subdivisions 3 and 4 is to promote and encourage ridesharing arrangements by limiting compensation under this chapter to persons injured while in ridesharing arrangements in programs covered by an employer's election under subdivision 3.

Subd. 3. Employer liability assumptions. An employer of workers participating in a ridesharing arrangement as defined by section 169.01, subdivision 63 may assume the liability of compensation imposed by this chapter and the employer's procurement of a workers' compensation policy constitutes an assumption by the employer of liability unless the employer elects in writing not to have those persons covered and the policy states that election. Election by an employer to

assume liability of compensation imposed by this chapter does not extend to persons not employed by the employer.

Subd. 4. **No fault coverage primary.** Notwithstanding an election by an employer to assume liability of compensation imposed by this chapter, the benefits provided under chapter 65B are the primary coverage for an injury incurred by a driver or a passenger while in a ridesharing arrangement, including an injury incurred while entering or alighting from a motor vehicle used in a ridesharing arrangement.

History: 1983 c 311 s 9

176.061 THIRD PARTY LIABILITY.

Subdivision 1. **Election of remedies.** If an injury or death for which benefits are payable occurs under circumstances which create a legal liability for damages on the part of a party other than the employer and at the time of the injury or death that party was insured or self-insured in accordance with this chapter, the employee, in case of injury, or the employee's dependents, in case of death, may proceed either at law against that party to recover damages or against the employer for benefits, but not against both.

Subd. 2. **Action for recovery of damages.** If the employee, in case of injury, or the employee's dependents, in case of death, brings an action for the recovery of damages, the amount of the damages, the manner in which they are paid, and the persons to whom they are payable, are as provided in this chapter. In no case shall the party be liable to any person other than the employee or the employee's dependents for any damages resulting from the injury or death.

Subd. 3. **Election to receive benefits from employer; subrogation.** If the employee or the employee's dependents elect to receive benefits from the employer, or the special compensation fund, the employer or the special compensation fund has a right of indemnity or is subrogated to the right of the employee or the employee's dependents to recover damages against the other party. The employer, or the attorney general on behalf of the special compensation fund, may bring legal proceedings against the party and recover the aggregate amount of benefits payable to or on behalf of the employee or the employee's dependents, together with costs, disbursements, and reasonable attorney's fees of the action.

If an action as provided in this chapter is prosecuted by the employee, the employer, or the attorney general on behalf of the special compensation fund, against the third person, and results in judgment against the third person, or settlement by the third person, the employer has no liability to reimburse or hold the third person harmless on the judgment or settlement in absence of a written agreement to do so executed prior to the injury.

Subd. 4. **Application of subdivisions 1, 2, and 3.** The provisions of subdivisions 1, 2, and 3 apply only if the employer liable for benefits and the other party legally liable for damages are insured or self-insured and engaged, in the due course of business in, (a) furtherance of a common enterprise, or (b) in the accomplishment of the same or related purposes in operations on the premises where the injury was received at the time of the injury.

Subd. 5. **Cumulative remedies.** If an injury or death for which benefits are payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, that party being then insured or self-insured in accordance with this chapter, and the provisions of subdivisions 1, 2, 3, and 4 do not apply, or the party other than the employer is not then insured or self-insured as provided by this chapter, legal proceedings may be taken by the

employee or the employee's dependents in accordance with clause (a), or by his employer, or by the attorney general on behalf of the special compensation fund, in accordance with clause (b), against the other party to recover damages, notwithstanding the payment of benefits by the employer or the special compensation fund or their liability to pay benefits.

(a) If an action against the other party is brought by the injured employee or the employee's dependents and a judgment is obtained and paid or settlement is made with the other party, the employer or the special compensation fund may deduct from the benefits payable the amount actually received by the employee or dependents or paid on their behalf in accordance with subdivision 6. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer or the special compensation fund, upon application the court may grant the employer or the special compensation fund the right to intervene in the action for the prosecution of the action. If the injured employee or the employee's dependents or any party on their behalf receives benefits from the employer or the special compensation fund or institutes proceedings to recover benefits or accepts from the employer or the special compensation fund any payment on account of the benefits, the employer or the special compensation fund is subrogated to the rights of the employee or the employee's dependents or has a right of indemnity against a third party. The employer or the attorney general on behalf of the special compensation fund may maintain a separate action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the employee's dependents, or in the name of the employer, or in the name of the attorney general on behalf of the special compensation fund, against the other party for the recovery of damages. If the action is not diligently prosecuted by the employer or the attorney general on behalf of the special compensation fund, or if the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or the employee's dependents the right to intervene in the action for the prosecution of the action. The proceeds of the action or settlement of the action shall be paid in accordance with subdivision 6.

(b) If an employer, being then insured, sustains damages due to a change in workers' compensation insurance premiums, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of an employee which was caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the employer, notwithstanding other remedies provided, may maintain an action against the other party for recovery of the premiums. This cause of action may be brought either by joining in an action described in clause (a) or by a separate action. Damages recovered under this clause are for the benefit of the employer and the provisions of subdivision 6 are not applicable to the damages.

(c) The third party is not liable to any person other than the employee or the employee's dependents, or the employer, or the special compensation fund, for any damages resulting from the injury or death.

A co-employee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the co-employee or was intentionally inflicted by the co-employee.

Subd. 6. Costs, attorney fees, expenses. The proceeds of all actions for damages or of a settlement of an action under this section, except for damages received under subdivision 5, clause (b) received by the injured employee or the employee's dependents or by the employer or the special compensation fund, as provided by subdivision 5, shall be divided as follows:

(a) After deducting the reasonable cost of collection, including but not limited to attorneys fees and burial expense in excess of the statutory liability, then

(b) One-third of the remainder shall in any event be paid to the injured employee or the employee's dependents, without being subject to any right of subrogation.

(c) Out of the balance remaining, the employer or the special compensation fund shall be reimbursed in an amount equal to all benefits paid under this chapter to or on behalf of the employee or the employee's dependents by the employer or special compensation fund, less the product of the costs deducted under clause (a) divided by the total proceeds received by the employee or his dependents from the other party multiplied by all benefits paid by the employer or the special compensation fund to the employee or the employee's dependents.

(d) Any balance remaining shall be paid to the employee or the employee's dependents, and shall be a credit to the employer or the special compensation fund for any benefits which the employer or the special compensation fund is obligated to pay, but has not paid, and for any benefits that the employer or the special compensation fund is obligated to make in the future.

There shall be no reimbursement or credit to the employer or to the special compensation fund for interest or penalties.

Subd. 7. Medical treatment. The liability of an employer or the special compensation fund for medical treatment or payment of any other compensation under this chapter is not affected by the fact that the employee was injured through the fault or negligence of a third party, against whom the employee may have a cause of action which may be sued under this chapter, but the employer, or the attorney general on behalf of the special compensation fund, has a separate additional cause of action against the third party to recover any amounts paid for medical treatment or for other compensation payable under this section resulting from the negligence of the third party. This separate cause of action of the employer or the attorney general on behalf of the special compensation fund may be asserted in a separate action brought by the employer or the attorney general on behalf of the special compensation fund against the third party, or in the action commenced by the employee or the employer or the attorney general on behalf of the special compensation fund under this chapter, but in the latter case the cause of action shall be separately stated, the amount awarded in the action shall be separately set out in the verdict, and the amount recovered by suit or otherwise as reimbursement for medical expenses or other compensation shall be for the benefit of the employer or the special compensation fund to the extent that the employer or the special compensation fund has paid or will be required to pay compensation or pay for medical treatment of the injured employee and does not affect the amount of periodic compensation to be paid.

Subd. 8. [Repealed, 1983 c 290 s 35]

Subd. 8a. Notice to employer. In every case arising under subdivision 5, a settlement between the third party and the employee is not valid unless prior notice of the intention to settle is given to the employer within a reasonable time. If the employer or insurer pays compensation to the employee under the provisions of this chapter and becomes subrogated to the right of the employee or the employee's dependents or has a right of indemnity, any settlement between the employee or the employee's dependents and the third party is void as against the employer's right of subrogation or indemnity. When an action at law is instituted by an employee or the employee's dependents against a third party for recovery of damages, a copy of the complaint and notice of trial or note of issue in the action

shall be served on the employer or insurer. Any judgment rendered in the action is subject to a lien of the employer for the amount to which it is entitled to be subrogated or indemnified under the provisions of subdivision 5.

Subd. 9. **Service of notice on attorney general.** In every case in which the state is liable to pay compensation or is subrogated to the rights of the employee or the employee's dependents or has a right of indemnity, all notices required to be given the state shall be served on the attorney general and the commissioner.

Subd. 10. **Indemnity.** Notwithstanding the provisions of chapter 65B or any other law to the contrary, an employer has a right of indemnity for any compensation paid or payable pursuant to this chapter, including temporary total compensation, temporary partial compensation, permanent partial disability, economic recovery compensation, impairment compensation, medical compensation, rehabilitation, death, and permanent total compensation.

History: 1983 c 290 s 35

176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.

Subdivision 1. (a) A fee for legal services of 25 percent of the first \$4,000 of compensation awarded to the employee and 20 percent of the next \$27,500 of compensation awarded to the employee is permissible and does not require approval by the commissioner, compensation judge, or any other party except as provided in clause (b). If the employer or the insurer or the defendant is given written notice of claims for legal services or disbursements, the claim shall be a lien against the amount paid or payable as compensation. In no case shall fees be calculated on the basis of any undisputed portion of compensation awards. Allowable fees under this chapter shall be based solely upon genuinely disputed portions of claims, including disputes related to the payment of rehabilitation benefits or to other aspects of a rehabilitation plan.

(b) An attorney who is claiming legal fees under this section shall file a statement of attorney's fees with the commissioner, compensation judge before whom the matter was heard, or workers' compensation court of appeals on cases before the court. A copy of the signed retainer agreement shall also be filed. The employee and insurer shall receive a copy of the statement. The statement shall be on a form prescribed by the commissioner and shall clearly and conspicuously state that the employee or insurer has ten calendar days to object to the attorney fees requested. If no objection is timely made by the employee or insurer, the amount requested shall be conclusively presumed reasonable providing the amount does not exceed the limitation in subdivision 1. The commissioner, compensation judge, or court of appeals shall issue an order granting the fees and the amount requested shall be awarded to the party requesting the fee.

If a timely objection is filed, the commissioner, compensation judge, or court of appeals shall review the matter and make a determination based on the criteria in subdivision 5.

If no timely objection is made by an employer or insurer, reimbursement under subdivision 7 shall be made if the statement of fees requested this reimbursement.

Subd. 2. An application for attorney fees in excess of the amount authorized in subdivision 1 shall be made to the division, compensation judge, or district judge, before whom the matter was heard. An appeal of a decision by a compensation judge or district court judge on additional fees may be made to the workers' compensation court of appeals. The application shall set forth the fee requested and the basis for the 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 the hearing served upon known interested parties. In all cases the employee shall be served with notice of hearing.

[For text of subds 3 and 4, see M.S.1982]

Subd. 5. In the determination of an award of fees in excess of the amount authorized under subdivision 1, or if an objection is filed under subdivision 1, clause (b), 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 expertise of counsel in the workers' compensation field, 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 commissioner, office of administrative hearings, and the workers' compensation court of appeals may adopt reasonable and proper joint rules to effect each of their obligations under this section.

Subd. 7. If the employer or insurer files a denial of liability, notice of discontinuance, or fails to make payment of compensation or medical expenses within the statutory period after notice of injury or occupational disease, or otherwise unsuccessfully resists the payment of compensation or medical expenses, or unsuccessfully disputes the payment of rehabilitation benefits or other aspects of a rehabilitation plan, and the injured person has employed an attorney at law, who successfully procures payment on behalf of the employee or who enables the resolution of a dispute with respect to a rehabilitation plan, the compensation judge, commissioner, or the workers' compensation court of appeals 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.

[For text of subds 7a to 10, see M.S.1982]

Subd. 11. **When fees due.** Attorney fees and other disbursements for a proceeding under this chapter shall not be due or paid until the issue for which the fee or disbursement was incurred has been resolved.

History: 1983 c 290 s 36-41

176.101 COMPENSATION SCHEDULE.

Subdivision 1. **Temporary total disability.** For injury producing temporary total disability, the compensation is 66-2/3 percent of the weekly wage at the time of injury

(1) provided that during the year commencing on October 1, 1979, and each year thereafter, commencing on October 1, the maximum weekly compensation payable is the statewide average weekly wage for the period ending December 31, of the preceding year.

(2) The minimum weekly compensation benefits for temporary total disability shall be not less than 50 percent of the statewide average weekly wage or the injured employee's actual weekly wage, whichever is less. In no case shall a weekly benefit be less than 20 percent of the statewide average weekly wage.

Subject to subdivisions 3a to 3u 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 66-2/3 percent of the difference between the weekly wage of the employee at the time of injury and the wage the employee is able to earn in the employee's partially disabled condition. This compensation shall be paid during the period of disability except as provided in section 176.101, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to a maximum compensation equal to the statewide average weekly wage.

Subd. 3. [Repealed, 1983 c 290 s 173]

Subd. 3a. **Economic recovery compensation.** If an employee is not eligible for an impairment award pursuant to subdivision 3b, then the employee shall receive economic recovery compensation for a permanent partial disability pursuant to this subdivision. The compensation shall be 66-2/3 percent of the weekly wage at the time of injury subject to a maximum equal to the statewide average weekly wage. For permanent partial disability up to the percent of the whole body in the following schedule the compensation shall be paid for the proportion that the loss of function of the disabled part bears to the whole body multiplied by the number of weeks aligned with that percent.

Percent of disability	Weeks of compensation
0-25	600
26-30	640
31-35	680
36-40	720
41-45	760
46-50	800
51-55	880
56-60	960
61-65	1040
66-70	1120
71-100	1200

The percentage loss in all cases under this subdivision is determined according to the rules adopted by the commissioner pursuant to section 176.105, subdivision 4. This subdivision shall apply to a permanent partial disability incurred on or after the adoption of those rules.

Subd. 3b. **Impairment compensation.** An employee who suffers a permanent partial disability due to a personal injury and receives impairment compensation under this section shall receive compensation in an amount as provided by this subdivision. For permanent partial disability up to the percent of the whole body shown in the following schedule the amount shall be equal to the proportion that the loss of function of the disabled part bears to the whole body multiplied by the amount aligned with that percent in the following schedule:

Percent of disability	Amount
0-25	\$ 75,000
26-30	80,000
31-35	85,000
36-40	90,000
41-45	95,000
46-50	100,000
51-55	120,000
56-60	140,000
61-65	160,000
66-70	180,000
71-75	200,000
76-80	240,000
81-85	280,000
86-90	320,000
91-95	360,000
96-100	400,000

For all cases under this subdivision the percentage loss of function of a part of the body is determined according to the rules adopted by the commissioner pursuant to section 176.105, subdivision 4. This subdivision shall apply to a permanent partial disability incurred on or after the adoption of those rules.

Subd. 3c. **Maximum payable.** The maximum amount payable under subdivisions 3a and 3b is the maximum compensation payable to an employee who has a 100 percent disability to the body as a whole and under no conditions shall an employee receive more than those amounts even if the employee sustains a disability to two or more body parts.

Subd. 3d. **General.** An employee who has incurred a personal injury shall receive temporary total compensation until these benefits are no longer payable pursuant to this section. If the injury results in a permanent partial disability the employee shall receive compensation as provided in this section.

Subd. 3e. **End of temporary total compensation.** (a) 90 days after an employee has reached maximum medical improvement or 90 days after the end of an approved retraining program, whichever is later, the employee's temporary total compensation shall cease. This cessation shall occur at an earlier date if otherwise provided by this chapter.

(b) If during the 90-day period described in clause (a) the employee retires or the employer furnishes work to the employee that is consistent with an approved plan of rehabilitation or, if no plan has been approved, that the employee can do in his or her physical condition and that job produces an economic status as close as possible to that the employee would have enjoyed without the disability, or the employer procures this employment with another employer or the employee accepts this job with another employer, temporary total compensation shall cease and the employee shall, if appropriate, receive impairment compensation pursuant to subdivision 3b. This impairment compensation is in lieu of economic recovery

compensation under subdivision 3a, and the employee shall not receive both economic recovery compensation and impairment compensation. Temporary total compensation and impairment compensation shall not be paid concurrently. Once temporary total compensation ceases no further temporary total compensation is payable except as specifically provided by this section.

Upon receipt of a written medical report indicating that the employee has reached maximum medical improvement, the employer or insurer shall serve a copy of the report upon the employee and shall file a copy with the division. The beginning of the 90-day period shall commence on the day this report is served on the employee for the purpose of determining whether a job offer consistent with the requirements of this subdivision is made.

(c) The job which is offered or procured by the employer or accepted by the employee under clause (b) does not necessarily have to commence immediately but shall commence within a reasonable period after the end of the 90-day period described in clause (a). Temporary total compensation shall not cease under this subdivision until the job commences.

(d) If the job offered under clause (a) is not the job the employee had at the time of injury it shall be offered in writing and shall state the nature of the job, the rate of pay, the physical requirements of the job, and any other information necessary to fully and completely inform the employee of the job duties and responsibilities.

The employee has 14 calendar days to accept or reject the job offer. If the employee does not respond within this period it is deemed a refusal of the offer.

(e) Self-employment may be an appropriate job under this subdivision.

The commissioner shall monitor application of this subdivision and may adopt rules to assure its proper application.

Subd. 3f. Job prior to maximum medical improvement. If the employer offers a job prior to the employee reaching maximum medical improvement and the job is consistent with an approved plan of rehabilitation or if no rehabilitation plan has been approved and the job is within the employee's physical limitations; or the employer procures a job for the employee with another employer which meets the requirements of this subdivision; or the employee accepts a job with another employer which meets the requirements of this subdivision, the employee's temporary total compensation shall cease. In this case the employee shall receive impairment compensation for the permanent partial disability which is ascertainable at that time. This impairment compensation shall be paid at the same rate that temporary total compensation was last paid. Upon reaching maximum medical improvement the provisions of subdivisions 3e or 3p apply, whichever is appropriate, and economic recovery compensation or impairment compensation is payable accordingly except that the compensation shall be offset by impairment compensation received under this subdivision.

Subd. 3g. Acceptance of job offer. If the employee accepts a job offer described in subdivision 3e and the employee begins work at that job, although not necessarily within the 90-day period specified in that subdivision, the impairment compensation shall be paid in a lump sum 30 calendar days after the employee actually commences work.

Subd. 3h. Temporary partial compensation. An employee who accepts a job under subdivision 3e or subdivision 3f and begins that job shall receive temporary partial compensation pursuant to subdivision 2, if appropriate.

Subd. 3i. Lay off because of lack of work or released for other than seasonal conditions. (a) If an employee accepts a job under subdivision 3e and begins work

at that job and is subsequently unemployed because of economic conditions, other than seasonal conditions, the employee shall receive monitoring period compensation pursuant to clause (b). In addition, the employer who was the employer at the time of the injury shall provide rehabilitation consultation by a qualified rehabilitation consultant if the employee remains unemployed for 45 calendar days. The commissioner may waive this rehabilitation consultation if the commissioner deems it appropriate. Further rehabilitation, if deemed appropriate, is governed by section 176.102.

(b) Upon the employee's initial return to work the monitoring period begins to run. If the employee is unemployed for the reason in clause (a), prior to the end of the monitoring period the employee shall receive monitoring period compensation. This compensation shall be paid for the lesser of (1) the weeks remaining in the monitoring period, or (2) the weeks equal to the monitoring period minus the impairment compensation paid to the employee. For purposes of this clause the impairment compensation shall be converted to weeks by dividing the impairment compensation received by the employee by the employee's compensation rate for temporary total disability at the time of the injury. No monitoring period compensation is payable if the unemployment occurs after the expiration of the monitoring period. Monitoring period compensation is payable at the same intervals and in the same amount as when temporary total compensation ceased.

(c) If the employee returns to work and is still receiving monitoring period compensation, this compensation shall cease. Any period remaining in the monitoring period upon this return to work shall be used to determine further benefits if the employee is again unemployed under clause (a).

(d) Upon the employee's return to work pursuant to this section the insurer shall notify the employee of the length of the employee's monitoring period and shall notify the employee of the amount of impairment to be paid and the date of payment.

Subd. 3j. Medically unable to continue work. (a) If the employee has started the job offered under subdivision 3e and is medically unable to continue at that job because of the permanent partial disability, that employee shall receive temporary total compensation pursuant to clause (b). In addition, the employer who was the employer at the time of the injury shall provide rehabilitation consultation by a qualified rehabilitation consultant. Further rehabilitation, if deemed appropriate, is governed by section 176.102.

(b) Temporary total compensation shall be paid for up to 90 days after the employee has reached maximum medical improvement or 90 days after the end of an approved retraining plan, whichever is later. The temporary total compensation shall cease at any time within the 90-day period that the employee begins work meeting the requirements of subdivision 3e. If no job is offered to the employee by the end of this 90-day period, the employee shall receive economic recovery compensation pursuant to this section but reduced by the impairment compensation previously received by the employee for the same disability.

Subd. 3k. Unemployment due to seasonal condition. If an employee has started the job offered under subdivision 3e and is subsequently unemployed from that job because of the job's seasonal nature, the employee shall receive any unemployment compensation the employee is eligible for pursuant to chapter 268. The employee shall receive, in addition and concurrently, the amount that the employee was receiving for temporary partial disability at the time of the lay off. No further or additional compensation is payable under this chapter because of the seasonal lay off.

Subd. 3l. **Failure to accept job offer.** If the employee has been offered a job under subdivision 3e and has refused the offer, the impairment compensation shall not be paid in a lump sum but shall be paid in the same interval and amount that temporary total compensation was initially paid. Temporary total compensation shall cease upon the employee's refusal to accept the job offered and no further or additional temporary total compensation is payable for that injury. The payment of the periodic impairment compensation shall cease when the amount the employee is eligible to receive under subdivision 3b is reached, after which time the employee shall not receive additional impairment compensation or any other compensation under this chapter unless the employee has a greater permanent partial disability than already compensated for.

Subd. 3m. **Return to work after refusal of job offer.** If the employee has refused the job offer under subdivision 3e and is receiving periodic impairment compensation and returns to work at another job, the employee shall receive the remaining impairment compensation due, in a lump sum, 30 days after return to work.

Subd. 3n. **No temporary partial compensation or rehabilitation if job offer refused.** An employee who has been offered a job under subdivision 3e and has refused that offer and who subsequently returns to work shall not receive temporary partial compensation pursuant to subdivision 2 if the job the employee returns to provides a wage less than the wage at the time of the injury. No rehabilitation shall be provided to this employee.

Subd. 3o. **Inability to return to work.** (a) An employee who is permanently totally disabled pursuant to subdivision 5 shall receive impairment compensation as determined pursuant to subdivision 3b. This compensation is payable in addition to permanent total compensation pursuant to subdivision 4 and is payable concurrently. In this case the impairment compensation shall be paid in the same intervals and amount as the permanent total compensation is paid, and the impairment compensation shall cease when the amount due under subdivision 3b is reached. If this employee returns to work at any job during the period the impairment compensation is being paid, the remaining impairment compensation due shall be paid in a lump sum 30 days after the employee has returned to work and no further temporary total compensation shall be paid.

(b) If an employee is receiving periodic economic recovery compensation and is determined to be permanently totally disabled no offset shall be taken against future permanent total compensation for the compensation paid. No further economic recovery compensation is payable even if the amount due the employee pursuant to subdivision 3a has not yet been reached.

(c) An employee who has received periodic economic recovery compensation and who meets the criteria under clause (b) of this subdivision shall receive impairment compensation pursuant to clause (a) of this subdivision even if the employee has previously received economic recovery compensation for that disability.

(d) Rehabilitation consultation pursuant to section 176.102 shall be provided to an employee who is permanently totally disabled.

Subd. 3p. **No job offer.** Where the employee has a permanent partial disability and has reached maximum medical improvement or upon completion of an approved retraining program, whichever is later, that employee shall receive economic recovery compensation pursuant to subdivision 3a if no job offer meeting the criteria of the job in subdivision 3e is made within 90 days after reaching maximum medical improvement or 90 days after the end of an approved retraining plan, whichever is later.

Temporary total compensation shall cease upon commencement of the payment of economic recovery compensation. Temporary total compensation shall not be paid concurrently with economic recovery compensation.

Subd. 3q. Method of payment of economic recovery compensation. (a) Economic recovery compensation is payable at the same intervals and in the same amount as temporary total compensation was paid. If the employee returns to work and the economic recovery compensation is still being paid, the remaining economic recovery compensation due shall be paid in a lump sum 30 days after the employee has returned to work.

(b) Periodic economic recovery compensation paid to the employee shall not be adjusted pursuant to section 176.645.

Subd. 3r. Payment of compensation at death. If an employee receiving economic recovery compensation or impairment compensation in periodic amounts dies during the period from causes unrelated to the injury, the compensation shall be paid in the following manner:

(a) If the deceased employee leaves a dependent surviving spouse and no dependent children, as defined by section 176.111, subdivision 1, the spouse shall receive the periodic economic recovery or impairment compensation that the deceased was receiving before the death. This compensation shall be paid for a period of up to ten years after the date of death at which time payments and future entitlement to it ceases.

(b) If the deceased employee leaves a dependent spouse and dependent children, as defined in section 176.111, subdivision 1, the periodic economic recovery or impairment compensation shall continue to be paid to the surviving spouse for up to ten years after the last child is no longer dependent after which time payments and future entitlement to the compensation ceases.

(c) Payment of compensation under this subdivision shall cease prior to the end of the ten-year periods in this subdivision if the amount to which the employee is entitled to receive under subdivision 3, 3a, or 3b, is reached prior to the end of the ten-year period. If the deceased employee is not survived by dependent children or a dependent spouse as defined in section 176.111, no further economic recovery compensation or impairment compensation is payable to any person under this subdivision.

(d) If the death results from the injury, the payment of economic recovery compensation or impairment compensation shall cease upon the death and death benefits are payable pursuant to section 176.111.

Subd. 3s. Additional economic recovery compensation or impairment compensation. No additional economic recovery compensation or impairment compensation is payable to an employee who has received that compensation to which the employee is entitled pursuant to subdivision 3a or 3b unless the employee has a greater permanent partial disability than already compensated.

Subd. 3t. Minimum economic recovery compensation. (a) Economic recovery compensation pursuant to this section shall be at least 120 percent of the impairment compensation the employee would receive if that compensation were payable to the employee. The monitoring period shall be at least 120 percent of the weeks during which impairment compensation would be payable if paid weekly.

(b) An employee who has suffered a personal injury for which temporary total compensation is payable but which produces no permanent partial disability shall receive 26 weeks of economic recovery compensation if no job is offered within the time specified in and meeting the criteria of subdivision 3e.

Subd. 3u. **Medical benefits.** This section does not in any way limit the medical benefits to which an injured employee is otherwise entitled pursuant to this chapter.

Subd. 3v. **Administrative conference.** The provisions of section 176.242 apply if there exists a dispute regarding maximum medical improvement or whether the job offered meets the criteria under subdivision 3e or 3f.

[For text of subd 4, see M.S.1982]

Subd. 4a. **Preexisting condition or disability; apportionment.** (a) If a personal injury results in a disability which is attributable in part to a preexisting disability that arises from a congenital condition or is the result of a traumatic injury or incident, whether or not compensable under this chapter, the compensation payable for the permanent partial disability pursuant to this section shall be reduced by the proportion of the disability which is attributable only to the preexisting disability. An apportionment of a permanent partial disability under this subdivision shall be made only if the preexisting disability is clearly evidenced in a medical report or record made prior to the current personal injury. Evidence of a copy of the medical report or record upon which apportionment is based shall be made available to the employee by the employer at the time compensation for the permanent partial disability is begun.

(b) The compensable portion of the permanent partial disability under this section shall be paid at the rate at which the entire disability would be compensated but for the apportionment.

[For text of subd 5, see M.S.1982]

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 a compensable permanent partial disability, for the purpose of computing the compensation to which the employee is entitled for the injury the compensation rate for temporary total, temporary partial, a permanent total disability or economic recovery compensation shall be the statewide average weekly wage.

Subd. 8. **Retirement presumption.** For injuries occurring after the effective date of this subdivision an employee who receives social security old age and survivors insurance retirement benefits is presumed retired from the labor market. This presumption is rebuttable by a preponderance of the evidence.

History: 1983 c 290 s 42-68

176.102 REHABILITATION.

Subdivision 1. **Scope.** Rehabilitation is intended to restore the injured employee, through physical and vocational rehabilitation, so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.

[For text of subd 1a, see M.S.1982]

Subd. 2. **Administrators.** The commissioner shall hire a director of rehabilitation services in the classified service. The commissioner shall monitor and supervise rehabilitation services, including, but not limited to, making determinations regarding the selection and delivery of rehabilitation services and the criteria used to approve qualified rehabilitation consultants and rehabilitation vendors. The commissioner may also make determinations regarding fees for rehabilitation services, the fitness of qualified rehabilitation consultants and vendors to continue to be approved under this section and has authority to discipline, by fine or otherwise, the consultants or vendors who act in violation of this chapter or rules adopted pursuant to this chapter. The commissioner may hire qualified personnel to assist in his duties under this section and may delegate his duties and performance.

Subd. 3. **Review panel.** There is created a rehabilitation review panel composed of the commissioner or a designee, who shall serve as an ex officio member and two members each from employers, insurers, rehabilitation, and medicine, one member representing chiropractors, and four members representing labor. The members shall be appointed by the commissioner and shall serve four-year terms which may be renewed. Compensation for members shall be governed by section 15.0575. The panel shall select a chairman. The panel shall review and make a determination with respect to (a) appeals regarding eligibility for rehabilitation services, rehabilitation plans and rehabilitation benefits under subdivisions 9 and 11; (b) appeals on any other rehabilitation issue the commissioner determines under this section; and (c) appeals regarding fee disputes, penalties, discipline, certification approval or revocation of registration of qualified rehabilitation consultants and approved vendors. The panel shall continuously study rehabilitation services and delivery and develop and recommend rehabilitation rules to the commissioner.

Subd. 3a. **Review panel appeals.** Appeals to the review panel shall be heard before a panel of five members designated by the review panel. Each five-member panel shall consist of two labor members, two employer or insurer members, and one member representing medicine, chiropractic, or rehabilitation. The determination of the five-member panel shall be by a majority vote and shall represent the determination of the entire review panel and is not subject to review by the panel as a whole. When conducting a review of the commissioner's determination regarding any rehabilitation issue or plan the panel shall give the parties notice that the appeal will be heard. This notice shall be given at least ten working days prior to the hearing. The notice shall state that parties may be represented by counsel at the hearing. In conducting its review the panel shall permit an interested party to present relevant, competent, oral or written evidence and to cross-examine opposing evidence. Evidence presented is not limited to the evidence previously submitted to the commissioner. A record of the proceeding shall be made by the panel. Upon determination of the issue presented, the panel shall issue to the interested parties a written decision and order. The decision need not contain a recitation of the evidence presented at the hearing, but shall be limited to the panel's basis for the decision.

Subd. 4. **Rehabilitation plan; development.** (a) An employer or insurer shall provide rehabilitation consultation by a qualified rehabilitation consultant or by another person permitted by rule to provide consultation to an injured employee within five days after the employee has 60 days of lost work time due to the personal injury, except as otherwise provided in this subdivision. Where an employee has incurred an injury to the back, the consultation shall be made within five days after the employee has 30 days of lost work time due to the injury. The

lost work time in either case may be intermittent lost work time. If an employer or insurer has medical information at any time prior to the time specified in this subdivision that the employee will be unable to return to the job the employee held at the time of the injury rehabilitation consultation shall be provided immediately after receipt of this information.

For purposes of this section "lost work time" means only those days during which the employee would actually be working but for the injury. In the case of the construction industry, mining industry, or other industry where the hours and days of work are affected by seasonal conditions, "lost work time" shall be computed by using the normal schedule worked when employees are working full time.

If the employee objects to the employer's selection of a qualified rehabilitation consultant, the employee shall notify the employer and the commissioner in writing of the objection.

Upon receipt of the notice of objection, the commissioner may schedule an administrative conference for the purpose of determining which qualified rehabilitation consultant may be mutually acceptable. The employee has the final decision on which qualified rehabilitation consultant is to be utilized.

The employee and employer shall enter into a program if one is prescribed in a rehabilitation plan. A copy of the plan, including a target date for return to work, shall be submitted to the commissioner.

(b) If the employer does not provide rehabilitation consultation as required by this section, the commissioner shall notify the employer that if the employer fails to appoint a qualified rehabilitation consultant or other persons as permitted by clause (a) within 15 days to conduct a rehabilitation consultation, the commissioner shall appoint a qualified rehabilitation consultant to provide the consultation at the expense of the employer unless the commissioner determines the consultation is not required.

(c) In developing a rehabilitation plan consideration shall be given to the employee's qualifications, including but not limited to age, education, previous work history, interest, transferable skills, and present and future labor market conditions.

(d) The commissioner may waive rehabilitation consultation under this section if the commissioner is satisfied that the employee will return to work in the near future or that rehabilitation consultation will not be useful in returning an employee to work.

Subd. 5. On-the-job training. On-the-job training is to be given consideration in developing a rehabilitation plan especially where it would produce an economic status similar to that enjoyed prior to disability.

Subd. 6. Plan, eligibility for rehabilitation, approval and appeal. The commissioner shall determine eligibility for rehabilitation services and shall review, approve, modify or reject rehabilitation plans developed under subdivision 4. The commissioner shall also make determinations regarding rehabilitation issues not necessarily part of a plan including, but not limited to, determinations regarding whether an employee is eligible for further rehabilitation and the benefits under subdivisions 9 and 11 to which an employee is entitled. A decision of the commissioner may be appealed to the rehabilitation review panel within 30 days of the commissioner's decision. The decision of the panel may be appealed to the workers' compensation court of appeals in the same manner as other matters appealed to the court.

Subd. 6a. **Eligibility determination.** The commissioner has the sole authority under this chapter to determine eligibility for rehabilitation services under this section and to review, approve, modify, or reject rehabilitation plans and make other rehabilitation determinations pursuant to this chapter. These determinations shall not be made by a compensation judge but may be appealed to the rehabilitation review panel and workers' compensation court of appeals as provided by subdivision 6.

Subd. 7. **Plan implementation; reports.** Upon request by the commissioner, insurer, employer or employee, medical and rehabilitation reports shall be made by the provider of the medical and rehabilitation service to the commissioner, insurer, employer or employee.

Subd. 8. **Plan modification.** Upon request to the commissioner by the employer, the insurer, or employee, or upon the commissioner's own request, the plan may be suspended, terminated or altered upon a showing of good cause, including:

(a) a physical impairment that does not allow the employee to pursue the rehabilitation plan;

(b) the employee's performance level indicates the plan will not be successfully completed;

(c) an employee does not cooperate with a plan;

(d) that the plan or its administration is substantially inadequate to achieve the rehabilitation plan objectives.

An employee may request a change in a rehabilitation plan once because the employee feels ill-suited for the type of work for which rehabilitation is being provided if the rehabilitation plan includes retraining, this request must be made within 90 days of the beginning of the retraining program. Any decision of the commissioner regarding a change in a plan may be appealed to the rehabilitation review panel within 30 days of the decision.

Subd. 9. **Plan, costs.** An employer is liable for the following rehabilitation expenses under this section:

(a) Cost of rehabilitation evaluation and preparation of a plan;

(b) Cost of all rehabilitation services and supplies necessary for implementation of the plan;

(c) Reasonable cost of tuition, books and travel; and, in addition, reasonable costs of board, lodging and custodial daycare when rehabilitation requires residence away from the employee's customary residence;

(d) Reasonable costs of travel and custodial daycare during the job interview process;

(e) Reasonable cost for moving expenses of the employee and family if a job is found in a geographic area beyond reasonable commuting distance after a diligent search within the present community. Relocation shall not be paid more than once during any rehabilitation program, and relocation shall not be required if the new job is located within the same standard metropolitan statistical area as the employee's job at the time of injury. An employee shall not be required to relocate and a refusal to relocate shall not result in a suspension or termination of compensation under this chapter; and

(f) Any other expense agreed to be paid.

Subd. 10. **Rehabilitation; consultants.** The commissioner shall approve rehabilitation consultants who may propose and implement plans if they satisfy rules adopted by the commissioner for rehabilitation consultants. A consultant may be

an individual or public or private entity, but may not be a vendor or the agent of a vendor of rehabilitation services.

Subd. 11. **Retraining.** Retraining is limited to 156 weeks. An employee who has been approved for retraining may petition the commissioner for additional compensation not to exceed 25 percent of the compensation otherwise payable. If the commissioner determines that this additional compensation is warranted due to unusual or unique circumstances of the employee's retraining plan, the commissioner may award additional compensation in an amount the commissioner determines is appropriate, not to exceed the employee's request. This additional compensation shall cease at any time the commissioner determines the special circumstances are no longer present.

Subd. 11a. **Applicability of section.** This section is applicable to all employees injured prior to or on and after October 1, 1979, except for those provisions which affect an employee's monetary benefits.

Subd. 12. [Repealed, 1983 c 290 s 173]

Subd. 13. **Discontinuance.** All benefits payable under chapter 176 may, after a determination and order by the commissioner, be discontinued or forfeited for any time during which the employee refuses to submit to any reasonable examinations and evaluative procedures ordered by the commissioner to determine the need for and details of a plan of rehabilitation, or refuses to participate in rehabilitation evaluation as required by this section or does not make a good faith effort to participate in a rehabilitation plan. A discontinuance under this section is governed by section 140.

History: 1983 c 290 s 69-83

176.103 MEDICAL HEALTH CARE REVIEW.

Subdivision 1. **Purpose.** It is the purpose of this section to provide for review of clinical health care providers who render services to injured employees. This review shall be achieved by establishing a quality control system within the department of labor and industry.

The commissioner shall hire a medical consultant to assist in the administration of this section.

The medical consultant shall be a doctor of medicine licensed under the laws of Minnesota.

The medical consultant shall perform all duties assigned by the commissioner relating to the supervision of the total continuum of care of injured employees and shall also advise the department on matters on which the commissioner requests the consultant's advice or if the consultant deems it appropriate.

Subd. 2. **Scope.** The commissioner shall monitor the medical and surgical treatment provided to injured employees, the services of other health care providers and shall also monitor hospital utilization as it relates to the treatment of injured employees. This monitoring shall include determinations concerning the appropriateness of the service, whether the treatment is necessary and effective, the proper cost of services, the quality of the treatment, the right of providers to receive payment under this chapter for services rendered or the right to receive payment under this chapter for future services. The commissioner may penalize, disqualify, or suspend a provider from receiving payment for services rendered under this chapter, if the commissioner determines that the provider has violated any part of this chapter or rule adopted under this chapter. The commissioner's authority under this section also includes the authority to make determinations

regarding any other activity involving the questions of utilization of medical services, and any other determination the commissioner deems necessary for the proper administration of this section.

The commissioner has the sole authority to make determinations under this section with a right of appeal to the medical services review board as provided in subdivision 3 and the workers' compensation court of appeals. A compensation judge has no jurisdiction in making determinations under this section.

Subd. 3. Medical services review board; selection; powers. (a) There is created a medical services review board composed of the commissioner or the commissioner's designee as an ex officio member, two persons representing chiropractic, one person representing hospital administrators, and six medical practitioners representing different specialties which the commissioner determines are the most frequently utilized by injured employees. The board shall also have one person representing employees, one person representing employers or insurers, and one person representing the general public. The members shall be appointed by the commissioner and shall be governed by section 15.0575. Terms of the board's members may be renewed. The board shall appoint from among its clinical members a clinical advisory subcommittee on clinical quality and a clinical advisory subcommittee on clinical cost containment. Each subcommittee shall consist of at least three members one of whom shall be a member who is not a chiropractor or licensed physician.

The clinical quality subcommittee shall review clinical results for adequacy and recommend to the commissioner scales for disabilities and apportionment.

The clinical cost containment subcommittee shall review and recommend to the commissioner rates for individual clinical procedures and aggregate costs. The subcommittees shall make regular reports to the board and the commissioner which shall evaluate the reports for the purpose of determining whether or not a particular health care provider continues to qualify for payment under chapter 176 or is subject to any other sanctions or penalties authorized under this section and to determine whether an employee has been off work longer than necessary.

In evaluating the clinical consequences of the services provided to an employee by a clinical health care provider, the board shall consider the following factors in the priority listed:

- (1) the clinical effectiveness of the treatment;
- (2) the clinical cost of the treatment; and
- (3) the length of time of treatment.

In its consideration of these factors, the board shall utilize the information and recommendations developed by the subcommittees. In addition, the board shall utilize any other data developed by the subcommittees pursuant to the duties assigned to the subcommittees under this section.

After making a determination, the board shall submit its recommendation in writing to the commissioner. The board shall advise the commissioner on the adoption of rules regarding all aspects of medical care and services provided to injured employees.

(b) The board shall appoint three of its members to hear appeals from decisions of the commissioner regarding quality control and supervision of medical care; any other disputes regarding medical, surgical, and hospital care; decisions regarding the eligibility of medical providers to receive payments; or any other determinations of the commissioner pursuant to subdivision 2. The three-member panel shall be composed of one member who does not represent a health care specialty, one member who represents the same specialty as the specialty at issue

or, if the same specialty is not available, one member whose specialty is as close as possible considering the board's composition, and one member representing a different specialty. The three-member panel shall conduct a hearing in the same manner, giving the same notice and following other procedures required of the rehabilitation review panel in section 176.102, subdivision 3a. A majority vote of the three-member panel constitutes the decision of the full board. This decision may be appealed to the workers' compensation court of appeals.

(c) In any situation where a conflict of interest prevents the appointment of a full three-member panel or in any other situation where the commissioner deems it necessary to resolve a conflict of interest, the commissioner may appoint a temporary substitute board member to serve until the situation creating the conflict of interest has been resolved.

History: 1983 c 290 s 84

176.104 REHABILITATION PRIOR TO DETERMINATION OF LIABILITY.

Subdivision 1. **Dispute.** If there exists a dispute regarding whether an injury arose out of and in the course and scope of employment and an employee has been disabled for the requisite time under section 176.102, subdivision 4, prior to determination of liability, the employee shall be referred by the commissioner to the division of vocational rehabilitation which shall provide rehabilitation consultation. The services provided by the division of vocational rehabilitation and the scope and term of the rehabilitation are governed by section 176.102 and rules adopted pursuant to that section. Rehabilitation costs and services under this subdivision shall be approved, rejected, or modified by the commissioner.

Subd. 2. **Liability for past rehabilitation.** If liability is determined after the employee has commenced rehabilitation under this section the liable party is responsible for the cost of rehabilitation provided and approved by the commissioner. Future rehabilitation after liability is established is governed by section 176.102.

History: 1983 c 290 s 85

176.105 COMMISSIONER TO ESTABLISH DISABILITY SCHEDULES.

[For text of subs 1 to 3, see M.S.1982]

Subd. 4. **Legislative intent; rules; loss of more than one body part.** (a) For the purpose of establishing a disability schedule pursuant to clause (b) of this subdivision, the legislature declares its intent that the commissioner establish a disability schedule which, assuming the same number and distribution of severity of injuries, the aggregate total of impairment compensation and economic recovery compensation benefits under section 176.101, subdivisions 3a to 3u be approximately equal to the total aggregate amount payable for permanent partial disabilities under section 176.101, subdivision 3, provided, however, that awards for specific injuries under the proposed schedule need not be the same as they were for the same injuries under the schedule pursuant to section 176.101, subdivision 3. The schedule shall be determined by sound actuarial evaluation and shall be based on the benefit level which exists on January 1, 1983.

(b) The commissioner shall by rulemaking adopt procedures setting forth rules for the evaluation and rating of functional disability and the schedule for permanent partial disability and to determine the percentage of loss of function of a part of the body based on the body as a whole, including internal organs,

described in section 176.101, subdivision 3, and any other body part not listed in section 176.101, subdivision 3, which the commissioner deems appropriate.

Temporary rules shall be adopted for this purpose not later than January 1, 1984. Prior to the adoption of these rules, at least one public hearing shall be held by the commissioner, in addition to the requirements of sections 14.29 to 14.36. Notwithstanding sections 14.29 to 14.36, the temporary rules adopted under this subdivision shall be effective until superseded by permanent rules. The rules shall promote objectivity and consistency in the evaluation of permanent functional impairment due to personal injury and in the assignment of a numerical rating to the functional impairment.

Prior to adoption of temporary rules the commissioner shall conduct an analysis of the current permanent partial disability schedule for the purpose of determining the number and distribution of permanent partial disabilities and the average compensation for various permanent partial disabilities. The commissioner shall consider setting the compensation under the proposed schedule for the most serious conditions higher in comparison to the current schedule and shall consider decreasing awards for minor conditions in comparison to the current schedule.

The commissioner may consider, among other factors, and shall not be limited to the following factors in developing rules for the evaluation and rating of functional disability and the schedule for permanent partial disability benefits:

(1) the workability and simplicity of the procedures with respect to the evaluation of functional disability;

(2) the consistency of the procedures with accepted medical standards;

(3) rules, guidelines, and schedules that exist in other states that are related to the evaluation of permanent partial disability or to a schedule of benefits for functional disability provided that the commissioner is not bound by the degree of disability in these sources but shall adjust the relative degree of disability to conform to the expressed intent of clause (a);

(4) rules, guidelines, and schedules that have been developed by associations of health care providers or organizations provided that the commissioner is not bound by the degree of disability in these sources but shall adjust the relative degree of disability to conform to the expressed intent of clause (a);

(5) the effect the rules may have on reducing litigation;

(6) the treatment of preexisting disabilities with respect to the evaluation of permanent functional disability provided that any preexisting disabilities must be objectively determined by medical evidence; and

(7) symptomatology and loss of function and use of the injured member.

The factors in paragraphs (1) to (7) shall not be used in any individual or specific workers' compensation claim under this chapter but shall be used only in the adoption of rules pursuant to this section.

Nothing listed in paragraphs (1) to (7) shall be used to dispute or challenge a disability rating given to a part of the body so long as the whole schedule conforms with the expressed intent of clause (a).

(c) If an employee suffers a permanent functional disability of more than one body part due to a personal injury incurred in a single occurrence, the percent of the whole body which is permanently partially disabled shall be determined by the following formula so as to ensure that the percentage for all functional disability combined does not exceed the total for the whole body:

$$A + B(1 - A)$$

where: A is the greater percentage whole body loss of the first body part; and B is the lesser percentage whole body loss otherwise payable for the second body part.

For permanent partial disabilities to three body parts due to a single occurrence or as the result of an occupational disease, the above formula shall be applied, providing that A equals the result obtained from application of the formula to the first two body parts and B equals the percentage for the third body part. For permanent partial disability to four or more body parts incurred as described above, A equals the result obtained from the prior application of the formula, and B equals the percentage for the fourth body part or more in arithmetic progressions.

History: 1983 c 290 s 86

176.111 DEPENDENTS, ALLOWANCES.

[For text of subs 1 to 5, see M.S.1982]

Subd. 6. Spouse, no dependent child. If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse weekly workers' compensation benefits at 50 percent of the daily wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.

Subd. 7. Spouse, one dependent child. If the deceased employee leaves a surviving spouse and one dependent child, there shall be paid to the surviving spouse for the benefit of the spouse and child 60 percent of the daily wage at the time of the injury of the deceased until the child is no longer a dependent as defined in subdivision 1. At that time there shall be paid to the dependent surviving spouse weekly benefits at a rate which is $16\frac{2}{3}$ percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, including adjustments as provided in section 176.645.

Subd. 8. Spouse, two dependent children. If the deceased employee leaves a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of the spouse and children $66\frac{2}{3}$ percent of the daily wage at the time of the injury of the deceased until the last dependent child is no longer dependent. At that time the dependent surviving spouse shall be paid weekly benefits at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, adjusted according to section 176.645.

[For text of subd 8a, see M.S.1982]

Subd. 9a. Remarriage of spouse. A surviving spouse who remarries and is receiving benefits under subdivisions 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse is entitled to receive benefits pursuant to this section.

[For text of subs 10 to 17, see M.S.1982]

Subd. 18. Burial expense. In all cases where death results to an employee from a personal injury arising out of and in the course of employment, the employer shall pay the expense of burial, not exceeding in amount \$2,500. In case any dispute arises as to the reasonable value of the services rendered in connection

with the burial, its reasonable value shall be determined and approved by the commissioner, a compensation judge, or workers' compensation court of appeals, in cases upon appeal, before payment, after reasonable notice to interested parties as is required by the commissioner. If the deceased leave no dependents, no compensation is payable, except as provided by this chapter.

[For text of subds 20 and 21, see M.S.1982]

History: 1983 c 290 s 87-91

176.121 COMMENCEMENT OF COMPENSATION.

In cases of temporary total or temporary partial disability no compensation is allowed for the three calendar days after the disability commenced, except as provided by section 176.135, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 176.141. If the disability continues for ten calendar days or longer, the compensation is computed from the commencement of the disability. Disability is deemed to commence on the first calendar day or fraction of a calendar day that the employee is unable to work.

History: 1983 c 290 s 92

176.129 CREATION OF THE SPECIAL COMPENSATION FUND.

Subdivision 1. Deposit of funds. The special compensation fund is created for the purposes provided for in this chapter. The state treasurer is the custodian of the special compensation fund. Sums paid to the commissioner pursuant to this section shall be deposited with the state treasurer for the benefit of the fund and used to pay the benefits under this chapter. Any interest or profit accruing from investment of these sums shall be credited to the special compensation fund. Subject to the provisions of this section, all the powers, duties, functions, obligations, and rights vested in the special compensation fund immediately prior to January 1, 1984 are transferred to and vested in the special compensation fund recreated by this section. All rights and obligations of employers with regard to the special compensation fund which existed immediately prior to January 1, 1984, continue, subject to the provisions of this section.

Subd. 2. Payments to fund, death. In every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to monetary benefits of dependency compensation, the employer shall pay to the commissioner the sum of \$25,000 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 employment where there are no persons entitled to at least \$25,000 in monetary benefits of dependency compensation, the employer shall pay to the commissioner for the benefit of the special compensation fund the difference between the amounts actually paid for the dependency benefits and \$25,000; but in no event shall the employer pay the commissioner less than \$5,000.

Subd. 3. Payments to fund, injury. If an employee suffers a personal injury resulting in permanent partial disability, temporary total disability, temporary partial disability, permanent total disability, or death and the employee or the employee's dependents are entitled to compensation under sections 176.101 or 176.111 the employer shall pay to the commissioner a lump sum amount, without any interest deduction, equal to 20 percent of the total compensation payable. The rate under this subdivision shall remain constant and applies to injuries

occurring after June 1, 1971, and prior to January 1, 1984, for payments made on or after January 1, 1984. This payment is to be credited to the special compensation fund and shall be in addition to any compensation payments made by the employer under this chapter. Payment shall be made as soon as the amount is determined and approved by the commissioner.

Subd. 4. Time of injury. Subdivision 3 applies to all workers' compensation payments paid under sections 176.101, 176.102, 176.111, or 176.135, for an injury or death occurring on or after June 1, 1971, but before January 1, 1984.

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

Subd. 5. Determination of amount payable. (a) In addition to assessments under subdivisions 2 and 3, an employer shall, beginning in calendar year 1984, pay an assessment as provided in this subdivision. The assessment base shall be determined according to a method established by rule adopted by the commissioner. In determining this method, the commissioner shall consider, among other things, the frequency of indemnity claims, equity, potential for retaliation by other states against Minnesota insurers, administrative convenience, records maintained by employer's insurers and self-insurers, verification of underlying records, and degree of risk refinement. The assessment base shall not be determined by paid losses.

(b) Using the assessment base method established in clause (a), the commissioner shall annually determine the amount of the assessment base of each employer.

(c) The commissioner shall annually establish a uniform percentage rate to be applied to the assessment base determined pursuant to clause (b). In establishing this rate, the commissioner shall consider, among other things, the likely expenditures to be made by the special fund in the next calendar year, the current fiscal status of the fund, future expenditure trends, and the assessments estimated to be collected under subdivisions 2 and 3. The assessment rate multiplied by the assessment base of an employer is the assessment amount payable under this subdivision. The total amount assessed against all employers under this subdivision shall not exceed \$25,000,000 in calendar year 1984. The total amount which may annually be assessed under this subdivision may be increased by up to ten percent beginning on January 1, 1985, and each January 1 thereafter.

(d) An amount assessed pursuant to this subdivision is payable to the commissioner within 45 days of mailing notice of the amount due.

Subd. 6. Payments out of fund. The workers' compensation division, a compensation judge, the workers' compensation court of appeals, or district court in cases before them shall direct the distribution of benefits provided by this chapter. These benefits are payable in the same manner as other payments of compensation.

Subd. 7. Refunds. In case deposit is or has been made under subdivision 2 and dependency later is shown, or if deposit is or has been made pursuant to subdivision 2 or 3 by mistake or inadvertence, or under circumstances that justice requires a refund, the state treasurer is authorized to refund the deposit under order of the commissioner, a compensation judge, the workers' compensation court of appeals, or a district court. There is appropriated to the commissioner from the fund an amount sufficient to make the refund and payment.

Subd. 8. Commissioner as administrator. The commissioner is the administrator of the special compensation fund. The special fund shall be designated a party in an action regarding any right, obligation, and liability of the special fund.

The state treasurer, as custodian, does not have standing in an action determining any right, obligation, or liability of the special fund. The attorney general shall represent the special fund in all legal matters in which the special fund has an interest.

Subd. 9. **Powers of fund.** In addition to powers granted to the special compensation fund by this chapter the fund may do the following:

(a) sue and be sued in its own name;

(b) intervene in or commence an action under this chapter or any other law, including, but not limited to, intervention or action as a subrogee to the division's right in a third-party action, any proceeding under this chapter in which liability of the special compensation fund is an issue, or any proceeding which may result in other liability of the fund or to protect the legal right of the fund;

(c) enter into settlements including but not limited to structured, annuity purchase agreements with appropriate parties under this chapter;

(d) contract with another party to administer the special compensation fund; and

(e) take any other action which an insurer is permitted by law to take in operating within this chapter.

Subd. 10. **Penalty.** Sums paid to the commissioner pursuant to this section shall be in the manner prescribed by the commissioner. The commissioner may impose a penalty of up to 15 percent of the amount due under this section but not less than \$500 in the event payment is not made in the manner prescribed.

Subd. 11. **Administrative provisions.** The accounting, investigation, and legal costs necessary for the administration of the programs financed by the special compensation fund shall be paid from the fund during each biennium commencing July 1, 1981. Staffing and expenditures related to the administration of the special compensation fund shall be approved through the regular budget and appropriations process.

Subd. 12. **Report of commissioner.** The commissioner shall report biennially to the governor and to the legislature as to the financial status of the special compensation fund. The report shall include a statement of the receipts and the disbursements for the period covered.

Subd. 13. **Employer reports.** All employers shall make reports to the commissioner as required for the proper administration of this section and section 176.131.

History: 1983 c 290 s 93

176.131 SUBSEQUENT DISABILITY, SPECIAL FUND.

Subdivision 1. If an employee incurs personal injury and suffers disability that is substantially greater, because of a pre-existing physical impairment, than what would have resulted from the personal injury alone, the employer shall pay all compensation provided by this chapter, but the employer shall be reimbursed from the special compensation fund for all compensation paid in excess of 52 weeks of monetary benefits and \$2,000 in medical expenses, subject to the following exceptions:

If the personal injury alone results in permanent partial disability to a scheduled member under the schedule adopted by the commissioner pursuant to section 176.105, the monetary and medical expense limitations shall not apply and the employer is liable for the compensation, medical expense, and rehabilitation

attributable to the permanent partial disability, and may be reimbursed from the special compensation fund only for compensation paid in excess of the disability.

Subd. 1a. If an employee is employed in an on the job retraining program pursuant to section 176.102 and the employee incurs a personal injury that aggravates the personal injury for which the employee has been certified to enter the on the job retraining program, the on the job training employer shall pay the medical expenses and compensation required by this chapter, and shall be reimbursed from the special compensation fund for the compensation and medical expense that is attributable to the aggravated injury. The employer, at the time of the personal injury for which the employee has been certified for retraining, is liable for the portion of the disability that is attributable to that injury.

Subd. 2. If the employee's personal injury results in disability or death, and if the injury, death, or disability would not have occurred except for the pre-existing physical impairment registered with the special compensation fund, the employer shall pay all compensation provided by this chapter, and shall be fully reimbursed from the special compensation fund for the compensation except that this full reimbursement shall not be made for cardiac disease or a condition registered pursuant to subdivision 8, clauses (t) or (u) unless the commissioner by rule provides otherwise.

Subd. 3. To entitle the employer to secure reimbursement from the special compensation fund, the following provisions must be complied with:

(a) Provisions of section 176.181, subdivisions 1 and 2.

(b) The employee with a pre-existing physical impairment must have been registered with the commissioner prior to the employee's personal injury or within 180 days after notice of the employee's personal injury is received by the employer. Registration subsequent to the injury shall be based on a medical report or record made prior to the injury indicating the pre-existing physical impairment.

Subd. 4. Any employer who hires or retains in its employment any person who has a physical impairment shall file a formal registration for the employee with the commissioner on a form prescribed by the commissioner.

Subd. 5. Registration under this section may be made by the employee or any employer provided:

(a) registration is accompanied by satisfactory evidence of the physical impairment;

(b) registration is in effect as long as the impairment exists;

(c) upon request, a registered employee shall be furnished by the commissioner with a registration card evidencing the registration, and other facts as the commissioner deems advisable.

Subd. 6. When the employer claims reimbursement from the special compensation fund after paying compensation as prescribed by this section, the employer shall file with the commissioner written notice of intention to claim reimbursement in accordance with the rules adopted by the commissioner.

Subd. 7. Under subdivisions 1 and 2, an occupational disease may be deemed to be the personal (second) injury.

If the subsequent disability for which reimbursement is claimed is an occupational disease, and if, subsequent to registration as provided by subdivisions 4 and 5, the employee has been employed by the employer in employment similar to that which initially resulted in the occupational disease, no reimbursement shall be paid to the employer.

Subd. 8. As used in this section the following terms have the meanings given them:

"Physical impairment" means any physical or mental condition that is permanent in nature, whether congenital or due to injury, disease or surgery and which is or is likely to be a hindrance or obstacle to obtaining employment except that physical impairment is limited to the following:

- (a) Epilepsy,
- (b) Diabetes,
- (c) Hemophilia,
- (d) Cardiac disease,
- (e) Partial or entire absence of thumb, finger, hand, foot, arm or leg,
- (f) Lack of sight in one or both eyes or vision in either eye not correctable to 20/40,
- (g) Residual disability from poliomyelitis,
- (h) Cerebral Palsy,
- (i) Multiple Sclerosis,
- (j) Parkinson's disease,
- (k) Cerebral vascular accident,
- (l) Chronic Osteomyelitis,
- (m) Muscular Dystrophy,
- (n) Thrombophlebitis,
- (o) Brain tumors,
- (p) Pott's disease,
- (q) Seizures,
- (r) Cancer of the bone,
- (s) Leukemia,
- (t) Any other physical impairment resulting in a disability rating of at least ten percent of the whole body if the physical impairment were evaluated according to standards used in workers' compensation proceedings, and
- (u) Any other physical impairments of a permanent nature which the commissioner may by rule prescribe;

"Compensation" has the meaning defined in section 176.011;

"Employer" includes insurer;

"Disability" means, unless otherwise indicated, any condition causing either temporary total, temporary partial, permanent total, permanent partial, death, medical expense, or rehabilitation.

Subd. 9. [Repealed, 1983 c 290 s 173]

Subd. 10. [Repealed, 1983 c 290 s 173]

Subd. 11. [Repealed, 1983 c 290 s 173]

Subd. 12. [Repealed, 1983 c 290 s 173]

History: 1983 c 290 s 94-102

176.132 SUPPLEMENTARY BENEFITS.

Subdivision 1. **Eligible recipients.** (a) An employee who has suffered personal injury prior to the effective date of clause (b) for which benefits are payable under section 176.101 and who has been totally disabled for more than 104 weeks

shall be eligible for supplementary benefits as prescribed in this section after 104 weeks have elapsed and for the remainder of the total disablement. Regardless of the number of weeks of total disability, no totally disabled person is ineligible for supplementary benefits after four years have elapsed since the first date of the total disability, except as provided by clause (b), provided that all periods of disability are caused by the same injury.

(b) An employee who has suffered personal injury after the effective date of this clause is eligible to receive supplementary benefits after the employee has been receiving temporary total or permanent total benefits for 208 weeks. Regardless of the number of weeks of total disability, no person who is receiving temporary total compensation shall be ineligible for supplementary benefits after four years have elapsed since the first date of the total disability, provided that all periods of disability are caused by the same injury.

[For text of subs 2 to 4, see M.S.1982]

Subd. 5. **Rounding of payments.** A payment made under this section shall be rounded up to the nearest whole dollar.

History: 1983 c 290 s 103,104

176.134 REOPENED CASE FUND.

[For text of subs 1 to 3, see M.S.1982]

Subd. 4. **Administration.** The commissioner shall administer the reopened case fund as part of the special compensation fund provided that the reopened case fund is under separate accounting and audit procedures from the special fund.

[For text of subd 5, see M.S.1982]

History: 1983 c 290 s 105

176.135 TREATMENT; APPLIANCES; SUPPLIES.

Subdivision 1. **Medical, chiropractic, podiatric, surgical, hospital.** The employer shall furnish any medical, chiropractic, podiatric, surgical and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric, and surgical supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, chiropractic medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury. This treatment shall include treatments necessary to physical rehabilitation. The employer shall furnish replacement or repair for artificial members, glasses, or spectacles, artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches or wheel chairs damaged by reason of an injury arising out of and in the course of the employment. In case of his inability or refusal seasonably to do so the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing the same. The employer shall pay for the reasonable value of nursing services by a member of the employee's family in cases of permanent total disability. Orders of the commissioner or medical services review board with respect to this subdivision may be

reviewed by the workers' compensation court of appeals on petition of an aggrieved party or by writ of certiorari to the supreme court.

[For text of subds 1a to 2a, see M.S.1982]

Subd. 3. **Limitation of liability.** The pecuniary liability of the employer for the treatment, articles and supplies required by this section shall be limited to the charges therefor as prevail in the same community for similar treatment, articles and supplies furnished to injured persons of a like standard of living when the same are paid for by the injured persons. On this basis the commissioner, medical services review board, or workers' compensation court of appeals on appeal may determine the reasonable value of all such services and supplies and the liability of the employer is limited to the amount so determined.

[For text of subd 4, see M.S.1982]

History: 1983 c 290 s 106,107

176.136 MEDICAL FEE REVIEW.

The commissioner shall by rule establish procedures for determining whether or not the charge for a health service is excessive. In order to accomplish this purpose, the commissioner shall consult with insurers, associations and organizations representing the medical and other providers of treatment services and other appropriate groups. The procedures established by the commissioner shall limit the charges allowable for medical, chiropractic, podiatric, surgical, hospital and other health care provider treatment or services, as defined and compensable under section 176.135, to the 75th percentile of usual and customary fees or charges based upon billings for each class of health care provider during all of the calendar year preceding the year in which the determination is made of the amount to be paid the health care provider for the billing. The procedures established by the commissioner for determining whether or not the charge for a health service is excessive shall be structured to encourage providers to develop and deliver services for rehabilitation of injured workers. The procedures shall incorporate the provisions of sections 144.701, 144.702, and 144.703 to the extent that the commissioner finds that these provisions effectively accomplish the intent of this section or are otherwise necessary to insure that quality hospital care is available to injured employees. If the commissioner, medical services review board, the workers' compensation court of appeals or a district court determines that the charge for a health service or medical service is excessive, no payment in excess of the reasonable charge for that service shall be made under this chapter nor may the provider collect or attempt to collect from the injured employee or any other insurer or government amounts in excess of the amount payable under this chapter. The commissioner shall contract with a review organization as defined in section 145.61 for the purposes listed in section 145.61, subdivision 5, and report to the legislature by January 15, 1983 and thereafter on January 15 of every odd-numbered year, regarding the delivery of medical and health care services, including rehabilitation services, under the workers' compensation laws of this state.

The commissioner shall also conduct a study of the qualifications and background of rehabilitation consultants and vendors providing services under section 176.102 for the purpose of determining whether there are adequate professional standards provided, including safeguards to protect against conflicts of interest.

The commissioner shall adopt temporary rules in order to implement the provisions of this subdivision. Notwithstanding the provisions of section 14.14, subdivision 1, and any amendments, the temporary rules adopted by the commissioner pursuant to this subdivision may be extended for an additional 180 days if the procedures for adoption of a rule pursuant to sections 14.13 to 14.20 or 14.21 to 14.28, and other provisions of the administrative procedure act related to final agency action and rule adoption have not been concluded.

Any rules adopted by the commissioner of insurance pursuant to this section shall remain in effect but may be amended, modified, or repealed only by the commissioner of labor and industry.

History: 1983 c 290 s 108

176.138 MEDICAL DATA; ACCESS.

Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release of medical data related to a current claim for compensation under this chapter to the employee, employer, or insurer who are parties to the claim, or to the department of labor and industry, shall not require prior approval of any party to the claim. Requests for pertinent data shall be made in writing to the person or organization that collected or currently possesses the data. The data shall be provided by the collector or possessor within seven working days of receiving the request. In all cases of a request for the data, except when it is the employee who is making the request, the employee shall be sent written notification of the request by the party requesting the data at the same time the request is made. This data shall be treated as private data by the party who requests or receives the data and the employee or the employee's attorney shall be provided with a copy of all data requested by the requester.

Medical data which is not directly related to a current injury or disability shall not be released without prior authorization of the employee.

The commissioner may impose a penalty of up to \$200 payable to the special compensation fund against a party who does not release the data in a timely manner. A party who does not treat this data as private pursuant to this section is guilty of a misdemeanor.

History: 1983 c 290 s 109

176.152 [Repealed, 1983 c 290 s 173]

176.155 EXAMINATIONS.

[For text of subds 1 and 2, see M.S.1982]

Subd. 3. Refusal to be examined. If the injured employee refuses to comply with any reasonable request for examination, the right to compensation may be suspended by order of the division, a compensation judge or workers' compensation court of appeals in a matter before it, and no compensation shall be paid while the employee continues in the refusal.

[For text of subd 4, see M.S.1982]

Subd. 5. Testimony of health care provider. Any physician or other health care provider designated by the commissioner, compensation judge, or workers' compensation court of appeals or whose services are furnished or paid for by the employer, who treats, examines, or is present at any examination, of an injured

employee, may be required to testify as to any knowledge acquired by the physician or health care provider in the course of the treatment or examination relative to the injury or disability resulting from the injury only if the commissioner or a compensation judge makes a written finding that the appearance of the physician or health care provider is crucial to the accurate determination of the employee's disability. In all other cases all evidence related to health care must be submitted by written report as prescribed by the chief hearing examiner. A party may cross-examine by deposition a physician or health care provider who has examined or treated the employee. If a physician or health care provider is not available for cross-examination prior to the hearing and the physician's or health care provider's written report is submitted at the hearing, the compensation judge shall, upon request of the adverse party, require the physician or health care provider to testify at the hearing for the purpose of being cross-examined by the adverse party. All written evidence relating to health care must be submitted prior to or at the time of the hearing and no evidence shall be considered which was submitted after the hearing unless the compensation judge orders otherwise.

History: 1983 c 290 s 110,111

176.179 PAYMENTS OF COMPENSATION RECEIVED IN GOOD FAITH.

Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or the survivors of a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to an order of the workers' compensation division, a compensation judge, or court of appeals relative to a claim by an injured employee or the employee's survivors, and received in good faith by the employee or the employee's survivors shall be refunded to the paying employer or insurer in the event that it is subsequently determined that the payment was made under a mistake in fact or law by the employer or insurer. When the payments have been made to a person who is entitled to receive further payments of compensation for the same injury, the mistaken compensation may be taken as a credit against future benefit entitlement; provided, however, that the credit applied against further payments of temporary total disability, temporary partial disability, permanent total disability, retraining benefits or death benefits shall not exceed 20 percent of the amount that would otherwise be payable.

History: 1983 c 290 s 112

176.181 INSURANCE.

[For text of subds 1 and 2, see M.S.1982]

Subd. 2a. **Application fee.** Every initial application filed pursuant to subdivision 2 requesting authority to self-insure shall be accompanied by a fee of \$1,000. The fee is not refundable.

[For text of subds 3 to 6, see M.S.1982]

History: 1983 c 290 s 113

176.182 BUSINESS LICENSES OR PERMITS; COVERAGE REQUIRED.

Every state licensing agency shall withhold the issuance of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence

of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

Neither the state nor any governmental subdivision of the state shall enter into any contract for the doing of any public work before receiving from all other contracting parties acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

This section shall not be construed to create any liability on the part of the state or any governmental subdivision to pay workers' compensation benefits or to indemnify the special compensation fund, an employer, or insurer who pays workers' compensation benefits.

History: 1983 c 290 s 114

176.183 UNINSURED AND SELF-INSURED EMPLOYERS; BENEFITS TO EMPLOYEES AND DEPENDENTS; LIABILITY OF EMPLOYER.

Subdivision 1. When any employee sustains an injury arising out of and in the course of employment while in the employ of an employer, other than the state or its political subdivisions, not insured or self-insured as provided for in this chapter, the employee or the employee's dependents shall nevertheless receive benefits as provided for in this chapter from the special compensation fund, and the commissioner has a cause of action against the employer for reimbursement for all moneys paid out or to be paid out, and, in the discretion of the court, as punitive damages an additional amount not exceeding 50 percent of all moneys paid out or to be paid out. An action to recover the moneys shall be instituted unless the commissioner determines that no recovery is possible. All moneys recovered shall be deposited in the general fund. There shall be no payment from the special compensation fund if there is liability for the injury under the provisions of section 176.215, by an insurer or self-insurer.

Subd. 1a. When an employee or the employee's dependent is entitled to benefits under this chapter from a self-insurer, present or past, other than the state and its municipal subdivisions, but the self-insurer fails to pay the benefits, the employee or the employee's dependents, regardless of the date when the accident, personal injury, occupational disease, or death occurred, shall nevertheless receive the benefits from the special compensation fund. The commissioner has a cause of action against the self-insuring employer for reimbursement for all benefits and other expenditures paid out or to be paid out and, in the discretion of the court, the self-insurer is liable for punitive damages in an amount not to exceed 50 percent of the total of all benefits and other expenditures paid out or to be paid out. The commissioner shall institute an action to recover the total expenditures from the fund unless the commissioner determines that no recovery is possible. All proceeds recovered shall be deposited in the general fund.

Subd. 2. The commissioner of labor and industry, in accordance with the terms of the order awarding compensation, shall pay compensation to the employee or his dependent from the special compensation fund. The commissioner of labor and industry shall certify to the commissioner of finance and to the legislature annually the total amount of compensation paid from the special compensation fund under subdivisions 1 and 1a. The commissioner of finance shall upon proper certification reimburse the special compensation fund from the general fund appropriation provided for this purpose. The amount reimbursed shall be limited to the certified amount paid under this section or the appropriation made for this purpose, whichever is the lesser amount. Compensation paid under this section which is not reimbursed by the general fund shall remain a

liability of the special compensation fund and shall be financed by the percentage assessed under section 176.131, subdivision 10.

Subd. 3. (a) Notwithstanding subdivision 2, the commissioner may direct payment from the special compensation fund for compensation payable pursuant to subdivisions 1 and 1a, including benefits payable under sections 176.102 and 176.135, prior to issuance of an order of a compensation judge or the workers' compensation court of appeals directing payment or awarding compensation.

(b) The commissioner may suspend or terminate an order under clause (a) for good cause as determined by the commissioner.

Subd. 4. If the commissioner authorizes the special fund to commence payment under this section, the commissioner shall serve by certified mail notice upon the employer and other interested parties of the intention to commence payment. This notice shall be served at least ten calendar days before commencing payment and shall be mailed to the last known address of the parties. The notice shall include a statement that failure of the employer to respond within ten calendar days of the date of service will be deemed acceptance by the employer of the proposed action by the commissioner and will be deemed a waiver of defenses the employer has to a subrogation or indemnity action by the commissioner. At any time prior to final determination of liability, the employer may appear as a party and present defenses the employer has, whether or not an appearance by the employer has previously been made in the matter. The commissioner has a cause of action against the employer to recover compensation paid by the special fund under this section.

History: 1983 c 290 s 115-118; 1983 c 301 s 147

176.185 POLICY OF INSURANCE.

Subdivision 1. **Notice of coverage, termination, cancellation.** Within ten days after the issuance of a policy of insurance covering the liability to pay compensation under this chapter written by an insurer licensed to insure such liability in this state, the insurer shall file notice of coverage with the commissioner under regulations and on forms prescribed by the commissioner. No policy shall be canceled by the insurer within the policy period nor terminated upon its expiration date until a notice in writing is delivered or mailed to the insured and filed with the commissioner, fixing the date on which it is proposed to cancel it, or declaring that the insurer does not intend to renew the policy upon the expiration date. A cancellation or termination is not effective until 30 days after written notice has been filed with the commissioner in a manner prescribed by the commissioner unless prior to the expiration of the 30-day period the employer obtains other insurance coverage or an order exempting the employer from carrying insurance as provided in section 176.181. Upon receipt of the notice the commissioner shall notify the insured that the insured must obtain coverage from some other licensed carrier and that, if unable to do so, the insured shall request the commissioner of insurance to require the issuance of a policy as provided in section 79.251, subdivision 4. Upon a cancellation or termination of a policy by the insurer the employer is entitled to have a policy assigned to him in accordance with sections 79.251 and 79.252. Notice of cancellation or termination by the insured shall be served upon the insurer by written statement mailed or delivered to the insurer. Upon receipt of the notice the insurer shall notify the commissioner of the cancellation or termination and the commissioner shall ask the employer for the

reasons for the cancellation or termination and notify the employer of the duty under this chapter to insure the employer's employees.

[For text of subs 2 to 9, see M.S.1982]

Subd. 10. **Data collection contracts.** The commissioner may contract with other parties regarding the collection of appropriate data to assist in meeting the requirements of this section.

History: 1983 c 290 s 119,120

176.186 RECORDS FROM OTHER STATE AGENCIES.

Notwithstanding any other state law to the contrary, the commissioner may obtain from the department of revenue, department of economic security, and office of the secretary of state, or any other state agency, upon request, names or lists of employers doing business in the state. This information shall be treated by the commissioner in the manner provided by chapter 13 and shall be used only for insurance verification by the commissioner.

History: 1983 c 290 s 121

176.191 DISPUTE BETWEEN TWO OR MORE EMPLOYERS OR INSURERS REGARDING LIABILITY.

[For text of subs 1 to 4, see M.S.1982]

Subd. 5. Where a dispute exists between an employer, insurer, the special compensation fund, the reopened case fund, or the workers' compensation reinsurance association, regarding benefits payable under this chapter, the dispute may be submitted with consent of all interested parties to binding arbitration pursuant to the rules of the American arbitration association. The decision of the arbitrator shall be conclusive with respect to all issues presented except as provided in subdivisions 6 and 7. Consent of the employee is not required for submission of a dispute to arbitration pursuant to this section and the employee is not bound by the results of the arbitration. An arbitration award shall not be admissible in any other proceeding under this chapter. Notice of the proceeding shall be given to the employee.

The employee, or any person with material information to the facts to be arbitrated, shall attend the arbitration proceeding if any party to the proceeding deems it necessary. Nothing said by an employee in connection with any arbitration proceeding may be used against the employee in any other proceeding under this chapter. Reasonable expenses of meals, lost wages, and travel of the employee or witnesses in attending shall be reimbursed on a pro rata basis. Arbitration costs shall be paid by the parties, except the employee, on a pro rata basis.

Subd. 6. If the employee commences an action under this chapter for benefits arising out of the same injury which resulted in the dispute arbitrated under subdivision 5, and if the benefits awarded to the employee under the employee's claim are inconsistent with the arbitration decision, any increase in benefits over those paid pursuant to the arbitration proceeding is paid by the party or parties who ordinarily would have been required to pay the increased benefits but for the arbitration. Any reimbursement from the employee of any decrease in benefits from those paid pursuant to the arbitration is paid to the party or parties who previously had paid the increased benefits. The provisions of this subdivision apply regardless of whether more or fewer employers and insurers or the special

fund have been added or omitted as parties to the employee's subsequent action after arbitration.

Subd. 7. If an employee brings an action under the circumstances described in subdivision 6, the parties to the previous arbitration may be represented at the new action by a common or joint attorney.

Subd. 8. No attorney's fees shall be awarded under either section 176.081, subdivision 8, or 176.191 against any employer or insurer in connection with any arbitration proceeding unless the employee chooses to retain an attorney to represent the employee's interests during arbitration.

History: 1983 c 290 s 122-125

176.195 REVOCATION OF INSURER'S LICENSE.

[For text of subd 1, see M.S.1982]

Subd. 1a. **Additional grounds.** Where an insurer or agent of an insurer has failed to comply with provisions of this chapter, other than the provisions in subdivision 1, the commissioner of insurance may revoke the license of the insurer to write workers' compensation insurance.

Subd. 2. **Commencement of proceedings.** The commissioner of insurance may act under subdivision 1 or subdivision 1a upon his own motion, the recommendation of the commissioner of labor and industry, the chief hearing examiner, or the workers' compensation court of appeals, or the complaint of any interested person.

[For text of subs 3 to 6, see M.S.1982]

Subd. 7. **Report to commissioner of insurance.** The commissioner may send reports to the commissioner of insurance regarding compliance with this chapter by insurers writing workers' compensation insurance. A report may include a recommendation for revocation of an insurer's license under this section and may also recommend the imposition of other penalties which may be imposed upon insurers by the commissioner of insurance.

History: 1983 c 290 s 126-128

176.221 PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT.

Subdivision 1. **Commencement of payment.** Within 14 days of notice to or knowledge by the employer of an injury compensable under this chapter the payment of temporary total compensation shall commence. Commencement of payment by an employer or insurer does not waive any rights to any defense the employer may have on any claim or incident either with respect to the compensability of the claim under chapter 176 or the amount of the compensation due. Where there are multiple employers, the first employer shall pay, unless it is shown that the injury has arisen out of employment with the second or subsequent employer. If the employer or insurer has commenced payment of compensation under this subdivision but determines within 30 days of notice to or knowledge by the employer of the injury that the disability is not a result of a personal injury, payment of compensation may be terminated upon the filing of a notice of denial of liability. Upon the termination, payments made may be recovered by the employer if the commissioner or compensation judge finds that the employee's claim of work related disability was not made in good faith. A notice of denial of liability must state in detail specific reasons explaining why the claimed injury or

occupational disease was determined not to be within the scope and course of employment and shall include the name and telephone number of the person making this determination.

Subd. 2. [Repealed, 1983 c 290 s 129]

Subd. 3. **Payments to special compensation fund.** Where an employer or insurer fails to begin payment of compensation pursuant to subdivision 1, or to file a denial of liability within the 14-day period referred to in subdivision 1, it shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled because of the injury to receive up to the date compensation payment is made to the employee.

Subd. 4. [Repealed, 1983 c 290 s 129]

Subd. 5. [Repealed, 1983 c 290 s 129]

Subd. 6. **Assessment of penalties.** The division or compensation judge shall assess the penalty payments provided for by subdivision 3 and any increase in benefit payments provided by section 176.225, subdivision 5, against the insurer. The insurer is liable for a penalty payment assessed against it even if the delay is attributable to the employer.

An insurer who has paid a penalty under this section may recover from the employer the portion of the penalty attributable to the acts of the employer which resulted in the delay. A penalty paid by an insurer under this section which is attributable to the fault of the employer shall be treated as a loss in an experience rated plan, retrospective rating plan, or dividend calculation where appropriate.

Subd. 6a. **Medical, rehabilitation, economic recovery, and impairment compensation.** The penalties provided by this section apply in cases where payment for treatment under section 176.135, rehabilitation expenses under section 176.102, subdivisions 9 and 11, economic recovery compensation or impairment compensation are not made in a timely manner as required by law or by rule adopted by the commissioner.

Subd. 7. **Interest.** Any payment of compensation, charges for treatment under section 176.135 or rehabilitation expenses under 176.102, subdivision 9 not made when due shall bear interest at the rate of eight percent a year from the due date to the date the payment is made or the rate set by section 549.09, subdivision 1, whichever is greater.

Subd. 8. **Method and timeliness of payment.** Payment of compensation under this chapter shall be by immediately payable negotiable instrument, or if by any other method, arrangements shall be available to provide for the immediate negotiability of the payment instrument.

All payment of compensation shall be made within 14 days of the filing of an appropriate order by the division or a compensation judge, unless the order is appealed or if a different time period is provided by this chapter.

Subd. 9. **Payment of full wages.** An employer who pays full wages to an injured employee is not relieved of the obligation for reporting the injury and making a liability determination within the times specified in this chapter. If the full wage is paid the employer's insurer or self-insurer shall report the amount of this payment to the division and determine the portion which is temporary total compensation for purposes of administering this chapter and special compensation fund assessments. The employer shall also make appropriate adjustments to the employee's payroll records to assure that the employee's sick leave or the vacation

time is not inappropriately charged against the employee, and to assure the proper income tax treatment for the payments.

History: 1983 c 290 s 129

176.225 ADDITIONAL AWARD AS PENALTY.

Subdivision 1. **Grounds.** Upon reasonable notice and hearing or opportunity to be heard, the division, a compensation judge, or upon appeal, the workers' compensation court of appeals or the supreme court may award compensation, in addition to the total amount of compensation award, of up to 25 percent of that total amount where an employer or insurer has:

- (a) instituted a proceeding or interposed a defense which does not present a real controversy but which is frivolous or for the purpose of delay; or,
- (b) unreasonably or vexatiously delayed payment; or,
- (c) neglected or refused to pay compensation; or,
- (d) intentionally underpaid compensation.

Subd. 2. **Examination of books and records.** To determine whether an employer or insurer is liable for the payment provided by subdivision 1, the division, a compensation judge, or the workers' compensation court of appeals upon appeal may examine the books and records of the employer or insurer relating to the payment of compensation, and may require the employer or insurer to furnish any other information relating to the payment of compensation.

Subd. 3. **Defiance of division, compensation judge, or workers' compensation court of appeals, complaint.** If an insurer persists in an action or omission listed in subdivision 1, or does not permit the examination of books and records, or fails to furnish information as required, the commissioner or the chief hearing examiner shall file a written complaint with the insurance commissioner. The complaint shall specify the facts and recommend the revocation of the license of the insurer to do business in this state. The workers' compensation court of appeals may also file a written complaint.

[For text of subs 4 and 5, see M.S.1982]

History: 1983 c 290 s 130-132

176.231 REPORT OF DEATH OR INJURY TO COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

[For text of subs 1 and 2, see M.S.1982]

Subd. 3. **Physicians, chiropractors, or other health care providers to report injuries.** A physician, chiropractor, or other health care provider who has examined, treated, or has special knowledge of an injury to an employee which may be compensable under this chapter, shall report to the commissioner all facts relating to the nature and extent of the injury and disability, and the treatment provided for the injury or disability, within ten days after the health care provider has received a written request for the information from the commissioner or an authorized representative of the commissioner.

Subd. 4. **Supplementary reports.** The commissioner or an authorized representative may require the filing of supplementary reports of accidents as is deemed necessary to provide information required by law.

Supplementary reports related to the current nature and extent of the employee's injury, disability, or treatment may be requested from a physician, surgeon,

chiropractor, or other health care provider by the commissioner or a representative, an employer or insurer, or the employee.

Subd. 5. **Forms for reports.** The commissioner shall prescribe forms for use in making the reports required by this section. The first report of injury form which the employer submits shall include a declaration by the employer that the employer will pay the compensation the law requires. Forms for reports required by this section shall be as prescribed by the commissioner and shall be the only forms used by an employer, insurer, self-insurer, group self-insurer, and all health care providers.

[For text of subs 6 to 8, see M.S.1982]

Subd. 9. **Uses which may be made of reports.** Reports filed with the commissioner under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics. These reports are available to the department of revenue for use in enforcing Minnesota income tax and property tax refund laws, and the information shall be protected as provided in section 290.61 or 290A.17.

The division or office of administrative hearings or workers' compensation court of appeals may permit an attorney at law who represents an employer, insurer, or an employee or a dependent to examine its file in a compensation case if the attorney furnishes written authorization to do so from the attorney's client. Reports filed under this section and other information the commissioner has regarding injuries or deaths shall be made available to the workers' compensation reinsurance association for use by the association in carrying out its responsibilities under chapter 79.

Subd. 10. **Failure to file required report, penalty.** If an employer, physician, chiropractor, or other health provider fails to file with the commissioner any report required by this section in the manner and within the time limitations prescribed, or otherwise fails to provide a report required by this section in the manner provided by this section, the commissioner may impose a penalty of up to \$200 for each failure.

The attorney general shall sue in a civil action to collect this penalty upon notification of the matter by the commissioner. The commissioner shall certify to the attorney general each failure to report immediately upon its occurrence.

Penalties collected by the state under this subdivision shall be paid into the state treasury.

History: 1983 c 15 s 2; 1983 c 290 s 133-137

176.241 NOTICE TO DIVISION OF INTENTION TO DISCONTINUE COMPENSATION PAYMENTS.

[For text of subd 1, see M.S.1982]

Subd. 2. **Continuance of employer's liability; suspension.** Except when the commissioner orders otherwise, until the copy of the notice and reports have been filed with the division, the liability of the employer to make payments of compensation continues.

When the division has received a copy of the notice of discontinuance, the statement of facts and available medical reports, the duty of the employer to pay compensation is suspended pending an investigation, hearing, and determination

of the matter by the division or compensation judge as provided in the following subdivisions.

[For text of subd 3, see M.S.1982]

Subd. 4. **Order.** When the hearing has been held and the evidence duly considered, the person who held the hearing shall promptly enter an order directing the payment of further compensation or confirming the termination of compensation. If the order confirms a termination of compensation, the service and filing of the order relieves the employer from further liability for compensation subject to the right of review afforded by this chapter, and to the right of the compensation judge to set aside the order at any time prior to the review and to grant a new hearing pursuant to this chapter. Once an appeal to the workers' compensation court of appeals is filed, a compensation judge may not set aside the order but the court of appeals may remand the matter to a compensation judge for a new hearing.

History: 1983 c 290 s 138,139

176.242 ADMINISTRATIVE CONFERENCE PRIOR TO DISCONTINUANCE OF COMPENSATION.

Subdivision 1. **Notice of discontinuance; grounds.** If an employer or insurer files a notice of intention to discontinue, the employer or insurer shall serve a copy upon the commissioner and the employee including detailed reasons for the intended discontinuance.

Subd. 2. **Conference, request.** (a) The employee has ten calendar days from the date the notice was served to request that the commissioner schedule an administrative conference to determine the appropriateness of the proposed discontinuance. The employer or insurer may request an administrative conference under this section at any time whether or not a notice of intent to discontinue is filed. The commissioner shall schedule an administrative conference to be held within ten calendar days after the commissioner receives timely notice of the employee's or employer's request for an administrative conference.

(b) If the employee does not, in a timely manner, request that the commissioner schedule an administrative conference, or fails to appear, without good cause, at a scheduled conference, compensation may be discontinued, subject to the employee's right under section 176.241.

(c) An employee or employer may request a continuance of a scheduled administrative conference. If the commissioner determines that good cause exists for granting a continuance, the commissioner may grant the continuance which shall not exceed ten calendar days. No more than one continuance shall be granted. If the employee is granted a continuance, compensation need not be paid during the period of continuance but shall recommence upon the date of the conference unless the commissioner orders otherwise.

(d) The purpose of an administrative conference is to determine whether reasonable grounds exist for a discontinuance.

Subd. 3. **Necessity for conference, commissioner's discretion.** The commissioner may determine that no administrative conference is necessary under this section and permit the employer or insurer to discontinue compensation, subject to the employee's right under section 176.241.

The commissioner may permit compensation to be discontinued at any time after a notice pursuant to subdivision 1 is received even if no administrative conference has been held, if the commissioner deems the discontinuance appropri-

ate based on the information the commissioner has, subject to the employee's right under section 176.241.

Subd. 4. Administrative decision. After considering the information provided by the parties at the administrative conference, the commissioner shall issue to all interested parties a written administrative decision permitting or denying the employer's or insurer's request to discontinue compensation. The decision shall be issued within five working days from the close of the conference. The commissioner's decision is binding on the parties. The commissioner shall advise all parties of the right to petition to the chief hearing examiner under section 176.241 and of the right to be represented by an attorney at a hearing before a compensation judge.

Subd. 5. Objection to decision. If the commissioner grants the employer's or insurer's request to discontinue compensation and the employee objects to the discontinuance, the employee may file an objection to discontinuance under section 176.241. If the commissioner denies the request to discontinue compensation the employer or insurer may file a petition to discontinue under section 176.241.

Subd. 6. Effect of decision, appeal. If an objection or a petition is filed under subdivision 5, the commissioner's administrative decision remains in effect and the parties obligations or rights to pay or receive compensation are governed by the commissioner's administrative decision, pending a determination by a compensation judge.

Subd. 7. Decision as notice. If a party proceeds under subdivision 5, the commissioner's administrative decision under this section is deemed required notice to interested parties under section 176.241 and the commissioner's obligations under section 176.241 are deemed to be met.

Subd. 8. When discontinuance allowed. Compensation shall not be discontinued prior to an administrative conference except as provided under subdivision 2, clause (b), or if the commissioner determines pursuant to subdivision 3 that no administrative conference is necessary. The employer may discontinue compensation immediately without having an administrative conference if the discontinuance is because the employee has returned to work.

Subd. 9. Notice, forms. Notice to the employee under subdivision 1 shall be on forms prescribed by the commissioner.

Subd. 10. Fines, violations. An employer or insurer who discontinues compensation in violation of this section is subject to a fine of up to \$500 for each violation. Fines shall be paid to the special compensation fund.

Subd. 11. Application. This section is applicable to any notice of intent to discontinue which is filed after the effective date of this section, even if the injury occurred prior to the effective date of this section.

History: 1983 c 290 s 140

176.243 ADMINISTRATIVE CONFERENCE FOLLOWING RETURN TO WORK, SUBSEQUENT INABILITY TO WORK.

Subdivision 1. Confirmation of employment and wages. If an insurer has discontinued compensation to an employee because the employee has returned to work, the insurer shall contact the employee 14 calendar days after return to work. The insurer shall determine whether the employee is still employed after 14 days and shall also ascertain the wages being paid to the employee.

Subd. 2. **Notice to commissioner.** If upon contact the insurer determines that the employee is not working or that the employee is earning a lower wage than at the time of the injury, the insurer shall notify the commissioner in writing of this fact and shall also state the actions that the insurer has taken or intends to take regarding payment of compensation. A copy of this notice shall be served by the insurer by certified mail to the employee.

Subd. 3. **Employee request for administrative conference.** If the employee objects to the action of the insurer regarding payment of compensation upon the cessation of work by the employee, the employee may request an administrative conference with the commissioner to resolve disputed issues. A request for an administrative conference shall be made within ten calendar days after service of the notice on the employee. If the employee requests an administrative conference the commissioner shall schedule a conference to be held within 14 calendar days after the commissioner receives the request.

Subd. 4. **Administrative decision.** After considering the information provided by the parties at the administrative conference the commissioner shall issue to all interested parties a written administrative decision regarding payment of compensation. The commissioner's decision is binding upon the parties and the rights and obligations of the parties are governed by the decision. The commissioner shall advise all parties of the right to petition to the chief hearing examiner under section 176.241 and of the right to be represented by an attorney at a hearing before a compensation judge. A party aggrieved by the commissioner's decision may proceed under section 176.241.

Subd. 5. **Decision binding pending compensation judge decision.** If an aggrieved party files a petition under section 176.241, the commissioner's administrative decision remains in effect pending a determination by a compensation judge.

Subd. 6. **Decision as notice.** If a party proceeds under section 176.241, the commissioner's administrative decision is deemed to fulfill the division's obligations under section 176.241.

Subd. 7. **Obligations prior to administrative decision.** If an insurer has not voluntarily commenced compensation following the employee's cessation of work the insurer is not obligated to do so until an administrative conference is held and unless the commissioner determines that compensation shall be commenced.

Subd. 8. **Necessity of administrative conference.** If the commissioner deems it appropriate, based upon information the commissioner has, the commissioner may determine that an administrative conference is not necessary, in which case a party may proceed under section 176.241.

Subd. 9. **Application of section.** This section applies only when the employee has received at least 45 days of temporary total or temporary partial compensation prior to return to work and if no rehabilitation plan has been approved.

This section is applicable to all cases in which a return to work has occurred after the effective date of this section even if the injury occurred prior to the effective date.

Subd. 10. **Notice forms.** A notice under this section shall be on a form prescribed by the commissioner.

Subd. 11. **Fines, violations.** An employer or insurer who violates this section is subject to a fine of up to \$500 for each violation which shall be paid to the special compensation fund.

History: 1983 c 290 s 141

176.262 [Repealed, 1983 c 290 s 173]

176.281 ORDERS, DECISIONS, AND AWARDS; FILING; SERVICE.

When the commissioner or compensation judge or office of administrative hearings or the workers' compensation court of appeals has rendered a final order, decision, or award, or amendment to an order, decision, or award, it shall be filed immediately with the commissioner. If the commissioner, compensation judge, office of administrative hearings, or workers' compensation court of appeals has rendered a final order, decision, or award, or amendment thereto, the commissioner or the office of administrative hearings or the workers' compensation court of appeals shall immediately serve a copy upon every party in interest, together with a notification of the date the order was filed.

History: 1983 c 290 s 142

176.285 SERVICE OF PAPERS AND NOTICES.

Service of papers and notices shall be by mail or otherwise as the commissioner or the chief hearing examiner may by rule direct. Where service is by mail, service is effected at the time mailed if properly addressed and stamped. If it is so mailed, it is presumed the paper or notice reached the party to be served. However, a party may show by competent evidence that that party did not receive it or that it had been delayed in transit for an unusual or unreasonable period of time. In case of nonreceipt or delay, an allowance shall be made for the party's failure to assert a right within the prescribed time.

The commissioner and the chief hearing examiner shall ensure that proof of service of all papers and notices served by their respective agencies is placed in the official file of the case.

History: 1983 c 290 s 143

176.312 AFFIDAVIT OF PREJUDICE.

An affidavit of prejudice for cause may be filed by a party to the claim against a compensation judge, in the same manner as an affidavit of prejudice is filed pursuant to law or rule of district court. The filing of an affidavit of prejudice against a compensation judge has the same effect and shall be treated in the same manner as in district court.

History: 1983 c 290 s 144

176.321 ANSWER TO PETITION.

Subdivision 1. **Filing, service.** Within 20 days after service of the petition, an adverse party shall serve and file an answer to the petition. The party shall serve a copy of the answer on the petitioner or the petitioner's attorney.

[For text of subds 2 and 3, see M.S.1982]

History: 1983 c 290 s 145

176.331 AWARD BY DEFAULT.

If an adverse party fails to file and serve an answer and the petitioner presents proof of this fact, the commissioner or compensation judge may enter whatever award or order to which the petitioner is entitled on the basis of the facts alleged in the petition, but the compensation judge may require proof of an alleged fact. If the commissioner requires proof, the commissioner shall request the chief

hearing examiner to assign the matter to a compensation judge for an immediate hearing and prompt award or other order.

Where in a default case the petition does not state facts sufficient to support an award, the compensation judge shall give the petitioner or the petitioner's attorney written notice of this deficiency. The petitioner may thereupon serve and file another petition as in the case of an original petition.

History: 1983 c 290 s 146

176.341 HEARING ON PETITION.

Subdivision 1. **Time.** Upon receipt of a matter from the commissioner, the chief hearing examiner shall fix a time and place for hearing the petition. The hearing shall be held as soon as practicable and at a time and place determined by the chief hearing examiner to be the most convenient for the parties, keeping in mind the intent of chapter 176 and the requirements of section 176.306.

Subd. 2. **Place.** Unless otherwise ordered by the chief hearing examiner, the hearing shall be held in the county where the injury or death occurred.

Subd. 3. **Notice mailed to each party.** At least 30 days prior to the date of hearing, the chief hearing examiner shall mail a notice of the time and place of hearing to each interested party. This subdivision does not apply to hearings which have been continued from an earlier date. In those cases, the notice shall be given in a manner deemed appropriate by the chief hearing examiner after considering the particular circumstances in each case.

History: 1983 c 290 s 147

176.361 INTERVENTION.

A person who has an interest in any matter before the workers' compensation court of appeals, or commissioner, or compensation judge such that the person may either gain or lose by an order or decision may intervene in the proceeding by filing an application in writing stating the facts which show the interest.

The commissioner and workers' compensation court of appeals shall adopt rules to govern the procedure for intervention.

If the department of public welfare or the department of economic security seeks to intervene in any matter before the division, a compensation judge or the workers' compensation court of appeals, a nonattorney employee of the department, acting at the direction of the staff of the attorney general, may prepare, sign, serve and file motions for intervention and related documents and appear at prehearing conferences. This activity shall not be considered to be the unauthorized practice of law.

History: 1983 c 290 s 148

176.371 AWARD OR DISALLOWANCE OF COMPENSATION.

The compensation judge to whom a petition has been assigned for hearing, shall hear all competent, relevant evidence produced at the hearing. All questions of fact and law submitted to a compensation judge at the hearing shall be disposed of and the judge's decision shall be filed with the commissioner within 60 days after the submission, unless sickness or casualty prevents a timely filing, or the time is extended by written consent of the parties, or the chief hearing examiner extends the time for good cause. The compensation judge's decision shall include a determination of all contested issues of fact and law and an award or disallow-

ance of compensation or other order as the pleadings, evidence, this chapter and rule require. A compensation judge's decision shall include a memorandum only if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses. A memorandum shall not contain a recitation of the evidence presented at the hearing but shall be limited to the compensation judge's basis for the decision.

No part of the salary of a compensation judge shall be paid unless the chief hearing examiner determines that all decisions of that judge have been issued within the time limit prescribed by this section.

History: 1983 c 290 s 149

176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.

Subdivision 1. **Time for taking; grounds.** When a petition has been heard before a compensation judge, within 30 days after a party in interest has been served with notice of an award or disallowance of compensation, or other order affecting the merits of the case, he may appeal to the workers' compensation court of appeals on any of the following grounds:

- (1) the order does not conform with this chapter; or
- (2) the compensation judge committed an error of law; or
- (3) the findings of fact and order were unsupported by substantial evidence in view of the entire record as submitted; or
- (4) the findings of fact and order were procured by fraud, or coercion, or other improper conduct of a party in interest.

[For text of subd 2, see M.S.1982]

Subd. 3. **Notice of appeal.** The appellant or the appellant's attorney shall prepare and sign a written notice of appeal specifying:

- (1) the order appealed from;
- (2) that appellant appeals from the order to the workers' compensation court of appeals;
- (3) the particular finding of fact or conclusion of law which the appellant claims was unsupported by substantial evidence in view of the entire record as submitted or procured by fraud, coercion, or other improper conduct; and
- (4) any other ground upon which the appeal is taken.

An appeal initiates the preparation of a typewritten transcript of the entire record unless the appeal is solely from an award of attorney's fees or an award of costs and disbursements or unless otherwise ordered by the court of appeals. On appeals from an award of attorney's fees or an award of costs and disbursements, the appellant must specifically delineate in the notice of appeal the portions of the record to be transcribed in order for the court of appeals to consider the appeal.

Subd. 4. **Service and filing of notice; cost of transcript.** Within the 30-day period for taking an appeal, the appellant shall:

- (1) serve a copy of the notice of appeal on each adverse party;
- (2) file the original notice, with proof of service by admission or affidavit, with the chief hearing examiner and file a copy with the commissioner;
- (3) in order to defray the cost of the preparation of the record of the proceedings appealed from, pay to the state treasurer, office of administrative hearings account the sum of \$25.

The first party to file an appeal is liable for the original cost of preparation of the transcript. Cross-appellants or any other persons requesting a copy of the transcript are liable for the cost of the copy. The cost of a transcript prepared by a nongovernmental source shall be paid directly to that source and shall not exceed the cost that the source would be able to charge the state for the same service.

Upon a showing of cause, the chief hearing examiner may direct that a transcript be prepared without expense to the party requesting its preparation, in which case the cost of the transcript shall be paid by the office of administrative hearings.

All fees received by the office of administrative hearings for the preparation of the record for submission to the workers' compensation court of appeals or for the cost of transcripts prepared by the office shall be deposited in the office of administrative hearings account in the state treasury and shall be used solely for the purpose of keeping the record of hearings conducted under this chapter and the preparation of transcripts of those hearings.

[For text of subd 5, see M.S.1982]

Subd. 6. Powers of workers' compensation court of appeals on appeal. On an appeal taken under this section, the workers' compensation court of appeals' review is limited to the issues raised by the parties in the notice of appeal or by a cross-appeal. In these cases, on those issues raised by the appeal, the workers' compensation court of appeals may:

- (1) examine the record;
- (2) substitute for the findings of fact made by the compensation judge findings based on the total evidence; and,
- (3) make an award or disallowance of compensation or other order based on the facts and findings.

Subd. 7. Record of proceedings. At the division's own expense, the commissioner shall make a complete record of all proceedings before the commissioner and shall provide a stenographer or an audio magnetic recording device to make the record of the proceedings.

The commissioner shall furnish a transcript of these proceedings to any person who requests it and who pays a reasonable charge which shall be set by the commissioner. Upon a showing of cause, the commissioner may direct that a transcript be prepared without expense to the person requesting the transcript, in which case the cost of the transcript shall be paid by the division. Transcript fees received under this subdivision shall be paid to the workers' compensation division account in the state treasury and shall be annually appropriated to the division for the sole purpose of providing a record and transcripts as provided in this subdivision.

History: 1983 c 290 s 150-153; 1983 c 301 s 148-150

176.441 APPEAL BASED ON FRAUD OR INSUFFICIENCY OF EVIDENCE.

Subdivision 1. Disposition by workers' compensation court of appeals. Where an appeal has been taken to the workers' compensation court of appeals under this chapter, on either the ground that the findings or order or both were unsupported by substantial evidence in view of the entire record as submitted, or were procured by fraud, coercion, or other improper conduct of a party, the workers' compensation court of appeals may:

- (1) grant a hearing based on the record before the compensation judge; or,
- (2) remand the petition for a de novo hearing or a rehearing and notify the chief hearing examiner, who shall assign the de novo hearing or the rehearing before a compensation judge; or,
- (3) sustain, reverse, or modify the order appealed from.

History: 1983 c 301 s 151

176.442 APPEALS FROM DECISIONS OF COMMISSIONER.

Any decision or determination of the commissioner affecting a right, privilege, benefit, or duty which is imposed or conferred under this chapter is subject to review by the workers' compensation court of appeals. A person aggrieved by the determination may appeal to the workers' compensation court of appeals by filing a notice of appeal with the commissioner in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals.

History: 1983 c 290 s 154

176.461 SETTING ASIDE AWARD.

Except when a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or if as a matter of law the determination of the supreme court cannot be subsequently modified, the workers' compensation court of appeals, for cause, at any time after an award, upon application of either party and not less than five working days after written notice to all interested parties, may set the award aside and grant a new hearing and refer the matter for a determination on its merits to the chief hearing examiner for assignment to a compensation judge, who shall make findings of fact, conclusions of law, and an order of award or disallowance of compensation or other order based on the pleadings and the evidence produced and as required by the provisions of this chapter or rules adopted under it.

History: 1983 c 290 s 155

176.471 REVIEW BY SUPREME COURT ON CERTIORARI.

Subdivision 1. **Time for seeking review; grounds.** Where the workers' compensation court of appeals has made an award or disallowance of compensation or other order, if a party in interest acts within 30 days from the date he was served with notice of the order, he may have the order reviewed by the supreme court on certiorari upon one of the following grounds:

- (1) the order does not conform with this chapter; or,
- (2) the workers' compensation court of appeals committed any other error of law; or,
- (3) the findings of fact and order were unsupported by substantial evidence in view of the entire record as submitted.

[For text of subds 2 to 5, see M.S.1982]

Subd. 6. **Transmittal of fee and return.** When the writ of certiorari has been served upon the administrator of the workers' compensation court of appeals, the bond has been filed, and the filing fee has been paid, the administrator shall

immediately transmit to the clerk of the appellate courts that filing fee and the return to the writ of certiorari and bond.

[For text of subd 7, see M.S.1982]

Subd. 8. Return of proceedings transmitted to court. Within 30 days after the writ of certiorari, bond, and filing fee have been filed with the administrator of the workers' compensation court of appeals, the administrator shall transmit to the clerk of the appellate courts a true and complete return of the proceedings of the workers' compensation court of appeals under review, or the part of those proceedings necessary to allow the supreme court to review properly the questions presented.

The workers' compensation court of appeals shall certify the return of the proceedings under its seal. The petitioner or relator shall pay to the administrator of the workers' compensation court of appeals the reasonable expense of preparing the return.

Subd. 9. Application of rules governing appeals in civil actions. When the return of the proceedings before the workers' compensation court of appeals has been filed with the clerk of the appellate courts, the supreme court shall hear and dispose of the matter as in other civil cases.

[For text of subd 10, see M.S.1982]

History: 1983 c 247 s 72-74; 1983 c 301 s 152

176.521 SETTLEMENT OF CLAIMS.

[For text of subd 1, see M.S.1982]

Subd. 2. Approval. Settlements shall be approved only if the terms conform with this chapter.

The division, a compensation judge, the workers' compensation court of appeals, and the district court shall exercise discretion in approving or disapproving a proposed settlement.

The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with this chapter. A settlement agreement where both the employee or the employee's dependent and the employer or insurer and intervenors in the matter are represented by an attorney shall be conclusively presumed to be reasonable, fair, and in conformity with this chapter except when the settlement purports to be a full, final, and complete settlement of an employee's right to medical compensation under this chapter or rehabilitation under section 176.102. A settlement which purports to do so must be approved by the division, a compensation judge, or workers' compensation court of appeals.

The conclusive presumption in this subdivision applies to a settlement agreement entered into on or after January 15, 1982, whether the injury to which the settlement applies occurred prior to or on or after January 15, 1982.

Subd. 2a. Settlements not subject to approval. When a settled case is not subject to approval, upon receipt of the stipulation for settlement, a compensation judge, a settlement judge, or the workers' compensation court of appeals shall immediately sign the award and file it with the commissioner. Payment pursuant to the award shall be made within 14 days after it is filed with the commissioner. The commissioner may correct mathematical or clerical errors at any time.

Subd. 3. Setting aside award upon settlement. Notwithstanding the provisions of section 176.521, subdivision 1, 2, or 2a, or any provision in the agreement

of settlement to the contrary, upon the filing of a petition by any party to the settlement and after a hearing on the petition, the workers' compensation court of appeals may set aside an award made upon a settlement, pursuant to this chapter. In those cases, the workers' compensation court of appeals shall refer the matter to the chief hearing examiner for assignment to a compensation judge for hearing.

History: 1983 c 290 s 156-158

176.522 NOTICE TO EMPLOYER.

An employer shall be notified by the insurer 30 days after any final valid settlement is approved or otherwise made final under any provision of this chapter. The notice shall include all terms of the settlement including the total amount of money required to be reserved in order to pay the claim.

History: 1983 c 290 s 159

176.561 WORKERS' COMPENSATION COURT OF APPEALS POWERS AND DUTIES AS TO STATE EMPLOYEES; PROCEDURE FOR DETERMINING LIABILITY.

The division, a compensation judge and the workers' compensation court of appeals have the same powers and duties in matters relating to state employees as they have in relation to other employees.

Except as specifically provided otherwise in this chapter, the procedure for determining the liability of the state for compensation is the same as that applicable in other cases.

History: 1983 c 290 s 160

176.571 INVESTIGATIONS OF INJURIES TO STATE EMPLOYEES.

[For text of subs 1 to 5, see M.S.1982]

Subd. 6. **Formal hearing on objections.** If the commissioner determines that a formal hearing on the objections which have been filed to the proposed order is warranted, the commissioner shall refer the matter to the chief hearing examiner for the assignment of a compensation judge who shall hold a hearing.

[For text of subd 7, see M.S.1982]

History: 1983 c 290 s 161

176.572 CONTRACT WITH INSURANCE CARRIERS.

The commissioner may contract with group health insurance carriers or health maintenance organizations to provide health care services and reimburse health care payments for injured state employees entitled to benefits under this chapter.

History: 1983 c 290 s 162

176.66 OCCUPATIONAL DISEASES; HOW REGARDED.

[For text of subd 1, see M.S.1982]

Subd. 10. **Multiple employers or insurers; liability.** The employer liable for the compensation for a personal injury under this chapter is the employer in whose employment the employee was last exposed in a significant way to the hazard of the occupational disease. In the event that the employer who is liable for the

compensation had multiple insurers during the employee's term of employment, the insurer who was on the risk during the employee's last significant exposure to the hazard of the occupational disease is the liable party. Where there is a dispute as to which employer is liable under this section, the employer in whose employment the employee is last exposed to the hazard of the occupational disease shall pay benefits pursuant to section 176.191, subdivision 1.

Subd. 11. **Amount of compensation.** The compensation for an occupational disease is 66-2/3 percent of the employee's weekly wage on the date of injury subject to a maximum compensation equal to the maximum compensation in effect on the date of last exposure. The employee shall be immediately eligible for supplementary benefits if that employee's compensation is less than 65 percent of the statewide average weekly wage.

History: 1983 c 290 s 163,164

176.83 RULES.

In addition to any other section under this chapter giving the commissioner the authority to adopt rules, the commissioner may adopt, amend, or repeal rules to implement the provisions of this chapter. The rules include but are not limited to:

(a) rules necessary to implement and administer section 176.102, including the establishment of qualifications necessary to be a qualified rehabilitation consultant and the requirements to be an approved registered vendor of rehabilitation services.

In this regard, the commissioner shall impose fees under section 16A.128 sufficient to cover the cost of approving, registering and monitoring qualified rehabilitation consultants and approved vendors of rehabilitation services. The rules may also provide for penalties to be imposed by the commissioner against insurers or self-insured employers who fail to provide rehabilitation consultation to employees pursuant to section 176.102.

These rules may also establish criteria for determining "reasonable moving expenses" under section 176.102.

The rules shall also establish criteria, guidelines, methods, or procedures to be met by an employer or insurer in providing the initial rehabilitation consultation required under this chapter which would permit the initial consultation to be provided by an individual other than a qualified rehabilitation consultant. In the absence of rules regarding an initial consultation this consultation shall be conducted pursuant to section 176.102;

(b) rules establishing standards for reviewing and evaluating the clinical consequences of services provided by qualified rehabilitation consultants, approved registered vendors of rehabilitation services, and services provided to an employee by health care providers;

(c) rules establishing standards and procedures for determining whether or not charges for health services or rehabilitation services rendered under this chapter are excessive. In this regard, the standards and procedures shall be structured to determine what is necessary to encourage providers of health services and rehabilitation services to develop and deliver services for the rehabilitation of injured employees.

The procedures shall include standards for evaluating hospital care, other health care and rehabilitation services to insure that quality hospital, other health care, and rehabilitation is available and is provided to injured employees;

(d) in consultation with the medical services review board or the rehabilitation review panel, rules establishing standards and procedures for determining whether a provider of health care services and rehabilitation services, including a provider of medical, chiropractic, podiatric, surgical, hospital or other services, is performing procedures or providing services at a level or with a frequency that is excessive, based upon accepted medical standards for quality health care and accepted rehabilitation standards.

If it is determined by the commissioner that the level, frequency or cost of a procedure or service of a provider is excessive according to the standards established by the rules, the provider shall not be paid for the excessive procedure, service, or cost by an insurer, self-insurer, or group self-insurer. In addition, the provider shall not be reimbursed or attempt to collect reimbursement for the excessive procedure, service, or cost from any other source, including the employee, another insurer, the special compensation fund, or any government program.

A health or rehabilitation provider who is determined by the commissioner to be consistently performing procedures or providing services at an excessive level or cost may be prohibited from receiving any further reimbursement for procedures or services provided under chapter 176. A prohibition imposed on a provider under this clause may be grounds for revocation or suspension of the provider's license or certificate of registration to provide health care or rehabilitation service in Minnesota by the appropriate licensing or certifying body.

The rules adopted under this clause shall require insurers, self-insurers, and group self-insurers to report medical and other data necessary to implement the procedures required by this clause;

(e) rules establishing procedures and standards for the certification of physicians, chiropractors, podiatrists, and other health care providers in order to assure the coordination of treatment, rehabilitation, and other services and requirements of chapter 176 for carrying out the purposes and intent of this chapter;

(f) rules necessary for implementing and administering the provisions of sections 176.131, 176.132, 176.134, sections 176.242 and 176.243; sections 176.251, 176.66 to 176.669, and rules regarding proper allocation of compensation under section 176.111. Under the rules adopted under section 176.111 a party may petition for a hearing before a compensation judge to determine the proper allocation. In this case the compensation judge may order a different allocation than prescribed by rule;

(g) rules establishing standards or criteria under which a physician, podiatrist, or chiropractor is selected or under which a change of physician, podiatrist, or chiropractor is allowed under section 176.135, subdivision 2;

(h) rules to govern the procedure for intervention pursuant to section 176.361;

(i) joint rules with either or both the workers' compensation court of appeals and the chief hearing examiner which may be necessary in order to provide for the orderly processing of claims or petitions made or filed pursuant to chapter 176;

(j) rules establishing criteria to be used by the division, compensation judge, and workers' compensation court of appeals to determine "suitable gainful employment" and "independent contractor."

The chief hearing examiner shall adopt rules relating to procedures in matters pending before a compensation judge in the office of administrative hearings.

The commissioner may adopt rules regarding requirements which must be met by individuals who are employed by insurers or self-insurers or claims servicing or adjusting agencies and who work as claims adjusters in the field of workers' compensation insurance.

The commissioner may adopt temporary rules establishing qualifications necessary to be a qualified rehabilitation consultant and penalties to be imposed against qualified rehabilitation consultants or approved vendors who violate this chapter or rules, including temporary rules, adopted under this chapter. In addition to the provisions of sections 14.29 to 14.36, at least one public hearing shall be held prior to the adoption of these temporary rules.

The commissioner may prescribe forms and other reporting procedures to be used by an employer, insurer, medical provider, qualified rehabilitation consultant, approved vendor of rehabilitation services, attorney, employee, or other person subject to the provisions of this chapter.

History: 1983 c 290 s 165

176.84 SPECIFICITY OF NOTICE OR STATEMENT.

All notices or statements required by this chapter including, but not limited to, notices or statements pursuant to sections 176.102; 176.221; 176.241; 176.242; and 176.243 shall be sufficiently specific to convey clearly, without further inquiry, the basis upon which the party issuing the notice or statement is acting. If the commissioner or compensation judge determines that a notice or statement is not sufficiently specific to meet the standard under this section, the notice or statement may be rejected as unacceptable and the party issuing it shall be informed of this. The rejected notice or statement may be amended to meet the requirement of this section or a new one may be filed.

History: 1983 c 290 s 166

176.85 PENALTIES; APPEALS.

Subdivision 1. **Appeal procedure.** If the commissioner has assessed a penalty against a party subject to this chapter and the party believes the penalty is not warranted, the party may request that a formal hearing be held on the matter. Upon a request for a hearing the commissioner shall refer the matter to the chief hearing examiner for assignment to a compensation judge or hearing examiner.

The chief hearing examiner shall keep a record of the proceeding and provide a record pursuant to section 176.421.

The decision of the compensation judge or hearing examiner shall be final and shall be binding and enforceable. The decision may be appealed to the workers' compensation court of appeals.

Subd. 2. **Exception.** This section does not apply to penalties for which another appeal procedure is provided, including but not limited to penalties imposed pursuant to section 176.102 or 176.103.

Subd. 3. **Hearing costs.** For purposes of this section, a hearing before a hearing examiner shall be treated in the same manner as a hearing before a compensation judge and no costs may be charged to the commissioner for the hearing, regardless of who hears it.

History: 1983 c 290 s 167