

WORKERS' COMPENSATION BASICS

The workers' compensation system is a statutory system that requires qualifying employees be compensated for injuries related to their employment. The system involves tradeoffs for injured employees and responsible employers. These tradeoffs center around the burden on the employer and the benefit of the employee when injuries happen. In exchange for the limited set of benefits received when an injury occurs, no matter who is at fault, the employee is prevented from recovering special damages like pain and suffering that may otherwise be available in a personal injury lawsuit. The benefit to the employer is that liability is generally confined to the benefits available under workers' compensation even if the employee is at fault for the injury.

Townships must pay worker's compensation benefits to qualifying employees, the same as any other employer. Workplace injuries can be serious and lasting, amounting to many thousands of dollars that could be owed to an employee. Because of these high costs, townships should carry workers' compensation insurance to protect the township when employees or officers are injured on the job. Townships that do not carry such insurance are self-insuring – carrying all risk on the township. No township in Minnesota should be self-insuring workers compensation risks.

I. WORKERS' COMPENSATION

In order to have a compensable claim, an employee must show three essential things:

1. That the employee sustained an injury;
2. That the injury arose out of and in the course and scope of;
3. Employment.

I. TYPES OF INJURIES

There is no limit to the ways in which an employee can be injured. Generally, however, injuries fall into these categories.

A. Specific Injuries

Specific injuries include most common traumatic events such as an injury to the back from lifting a heavy box, a broken ankle from a slip and fall at work, a crush-type injury to the finger

from a punch press, or a neck strain from a work-related motor vehicle accident. The employee is generally aware immediately of the injury and the connection to the employee's work. Likewise, the initial medical check-up usually shows a link to the work activity.

B. Cumulative Trauma Injuries

The Minnesota Supreme Court first recognized cumulative trauma injuries as compensable in 1960.¹ These injuries are sometimes called a "Gillette" injury. A Gillette injury is caused by ordinary duties of employment which, due to repetition, cause injury that may be similarly disabling to a single traumatic incident. Typical examples Gillette injuries are carpal tunnel syndrome, low back strains by bending and lifting repetitively, and shoulder bursitis from overhead work. The courts typically find that a Gillette injury "culminates" when the employee experiences a need for medical treatment or becomes disabled from employment.

C. Occupational Disease

The Workers' Compensation Statute generally defines occupational disease as requiring four essential elements:

1. Employment;
2. Increases the risk of, and;
3. Proximately causes;
4. The disease.

Common examples of occupational diseases are asbestosis, silicosis, and some heart-related diseases such as coronary arteriosclerosis. More recently, Post-Traumatic Stress Disorder (PTSD), was added as an occupational disease, but usually, to be a compensable injury, PTSD must be diagnosed by a licensed psychiatrist or psychologist and casually connected to the employment. However, PTSD is presumed to be causally connected to employment and a compensable occupational disease for emergency services employees like police officers and fire fighters.²

D. Pre-existing Injuries

A pre-existing injury does not automatically prevent an employee from receiving workers' compensation benefits. If the work-related injury substantially contributed to the disability or need for medical treatment, the injury is compensable. In these cases, the employee still receives full workers' compensation benefits. The exception is that permanent partial disability may be apportioned to other prior injuries or congenital conditions. An employer may also be

¹ *Gillette v. Harold, Inc.*, 101 N.W.2d 200 (1960)

² See Minn. Stat. § 176.011, subd. 15(b).

able to seek contributions from employers who may also be responsible and limit their own liability to their fair share of the benefits.

E. Psychological or Mental Injuries

Generally, an employee can receive benefits for psychological or mental injuries if the injury were the result of either: (1) a mental stimulus that produced a physical injury; or (2) a physical stimulus that produced a mental injury. An example of the first kind would be if the mental stress of the work caused a heart attack.³ An example of the second kind would be if an employee lost his hearing because of work-related conditions, and the employee then developed depression because of the hearing loss.⁴

An employee cannot receive compensation when a mental stimulus produces a mental injury, except in the limited circumstances of the emergency services employee PTSD injuries. For example, an employee who is unable to come to work due to depression which they claim is work related and who has no physical injury dies not have a compensable injury. Likewise, an employee subjected to more than the ordinary level of mental stress at work would not have a compensable injury if he developed depression related to the workplace-stress.⁵

II. ARISING OUT OF AND IN THE COURSE AND SCOPE OF

To understand the phrase “arising out of and in the course and scope of” we must break it down into two separate parts. Generally, “arising out of” means there must be a connection to the employment and the cause of the injury. While, “in the course and scope of” refers to the time, place and circumstances of the accident.

A. “Arising out of” requirement.

This factor is a legal causation test that considers if the injury is connected to the employment. Courts tend to analyze “arising out of” in terms of the risks associated with employment. If the employment leads to a greater risk of injury, it is more likely to be covered. The fact that an injury occurs at or during work is not enough to show that the injury arose from the

³ See *Aker v. State Dep't of Nat. Res.*, 282 N.W.2d 533, 531 (Minn. 1979). (An employee suffered a fatal heart attack after removing two badly decomposed bodies from a campsite. The extreme stress of seeing, handling, and removing the bodies was deemed to be a mental stress that led to the physical injury, the heart attack.)

⁴ See *Dotolo v. FMC Corp.*, 375 N.W.2d 25 (Minn. 1985) (Employee’s depression was deemed a compensable mental injury because it was causally related to a physical trauma led to the mental injury.)

⁵ See *Egeland v. City of Minneapolis*, 344 N.W.2d 597 (Minn. 1984) (Police officer subjected to above-ordinary mental stress levels at work developed depression and an ulcer. Officer’s depression was not a compensable injury because it was a mental injury cause by mental stimulus. The officer’s ulcer was a compensable injury because it was a physical injury cause by a mental injury.) (Note – the result in this case may be different now than in 1984 because of the PTSD presumptions related to emergency services employees.)

employment. When injuries occur due to risks that are assumed by all employees or for reasons which are not unique to employment, it is less likely that an injury will be covered.

Injuries caused by “acts of God” have been held not to be covered since there is no connection to work. However, if employment creates a greater risk that somebody would be affected by an act of God, the injury may be covered. For example, an electrical worker struck by lightning while restoring power during a storm may be covered under workers’ compensation because the nature of the work made him more likely to suffer the Act of God injury.

The courts have also held that employees are not covered during their commute, unless the employment requires use of the streets as part of the ordinary risk of employment. A narrow exception to this rule is that an employer must provide safe entrance and exit to driveways and parking lots owned and maintained by the employer are part of the work premises.

Injuries caused by third parties or by co-workers may or may not be covered. These injuries may be covered if the injury was caused unintentionally or motivated by the fact that the employee is an employee. However, injuries occurring for reasons personal to the parties involved are not usually covered.

B. “In the course and scope of” requirement.

This factor considers if the injury was related to the time, place, and circumstances of the employment. In particular, the factor considers if the injury happened within the period of employment, at a place where the employee reasonably may be for business purposes, and whether the employee is engaged in a business activity. For example, traveling employees have been found to be in the course and scope of employment throughout their travel unless they have deviated from business. When the employee has a dual purpose for a trip, both business and personal, courts look at whether the employer would have caused the trip to take place if it had not coincided with the employee’s personal trip. Whether the employer or the employee provided the transportation does not determine the course and scope issue. Courts will tend to look at all the circumstances in making an assessment.

Courts have also developed guidelines regarding how injuries occurring during lunch breaks, at recreational activities or while engaged in horseplay are treated. Judges typically look at whether these activities are incidental to employment or whether they are personal to the employee. Injuries occurring on the premises in control of the employer are more likely to be covered. However, injuries that result from violations of the rules or instructions, or that are caused by the employee’s intoxication are unlikely to be covered injuries.

III. Employment in the worker's compensation system

The law provides that an employer is anyone who employs another to perform a service for hire. While certain employments are excluded from coverage under the Workers' Compensation Act, most workers will fall under the general categories of employee or independent contractor. An employer is liable for injuries arising in the course and scope of employment and affecting an employee. However, worker's compensation laws may apply differently depending on whether the injured person is an employee, an independent contractor, or a volunteer.

A. Employees

For Worker's Compensation purposes, the term "employee" includes, "an elected or appointed official of the state, or of a county, city, town, school district, or governmental subdivision in the state. 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 As a result, board members become "employees" for workers' compensation purposes if they adopt a resolution electing to treat themselves so.

Other Township employees are automatically covered by workers' compensation laws and no ordinance or resolution is needed. Examples of potential employees are police, firefighters, first responders, maintenance workers, assessors, dog catchers, zoning administrators, election judges, secretaries, solid waste collectors, road graders, and those working on culverts, cemeteries, or tree trimming.

B. Independent Contractors

Throughout the years, employers have devised "ingenious" schemes to avoid workers' compensation liability. One such scheme is to characterize any worker as an independent contractor rather than an employee. In response, the workers' compensation division has developed administrative rules giving both general and specific guidelines to determine whether an employment relationship exists or whether the person is truly an independent contractor.⁷

The specific guidelines are applicable to specific areas of employment such as artisans, consultants, laborers, and waste materials haulers. Occupations that are not listed in the specific guidelines are covered by the general rules.

⁶ Minn. Stat. § 176.011, subd. 9 (6)

⁷ These rules are found in Minnesota Rules § 5224.0010, et. seq.

The most important factor in determining if there is an independent contractor is the degree of control which the employer exerts over the manner and method of performing the work.⁸ The courts look to specific factors to evaluate control such as;

- the authority to hire,
- require compliance with instructions,
- require oral or written reports,
- determine the place of work,
- personally perform the work,
- set the hours of work,
- provide training,
- work for others and satisfy regulatory and licensing agencies

The more control exercised by the purported employer, the more likely the person is not truly independent. True independent contractors possess a right to discharge employees, to realize a profit or loss and to provide the services fundamental to the business.⁹

Minn. Stat. § 181.723 helps in discerning employees from independent contractors in the construction setting. Under this statute, an independent contractor doing commercial or residential building construction or improvements in the public or private sector is considered an employee unless they meet every element of a 9-part test contained in the statute. The 9-part test is intended to assure that a contractor is independent in all respects and not called independent to avoid workers' compensation coverage.

C. Volunteers

While the general rule is that a volunteer does not receive workers' compensation benefits since there is no employment relationship, the legislature has specifically included certain volunteers in the workers' compensation scheme. For example, a volunteer ambulance driver or attendant is considered an employee of the entity to which they provide the services. Others who volunteer their services as a first responder or as a member of a law enforcement assistance organization under the supervision and authority of a political subdivision is entitled to benefits. These individuals are also listed as employees.¹⁰

D. Joint Employment and Loaned Servants

The courts have recognized that certain situations may indicate joint employment by two or more employers. Each is jointly and severally liable for the employee's injury. Responsibility for an injury occurring in joint employment is typically arranged in advance by contract between the joint employers.

⁸ Rule 5224.0330, subp. 1

⁹ Section 5224.0340 considers these as well as other factors.

¹⁰ Minn. Stat. § 176.011, subd. 9.

The courts also recognize that one employer may loan an employee to another for a limited purpose. In such a case, both the general and specific employers become liable for workers' compensation benefits.

IV. BENEFITS FOR AN INJURED WORKER

In general, compensation for injured employees appears in four categories: (1) wage loss; (2) permanent impairment of function; (3) medical; and (4) vocational rehabilitation. Within these broad categories, there are various types of benefits set forth by statute.

A. Wage Loss

Wage loss in the workers' compensation system compares a fair estimate of the employee's earning capacity at the time of injury with their earning capacity after the injury. A fair estimate of earning capacity at the time of injury will often be, if not close to, the employee's average weekly wage. If the employee's wage is regular and easy to determine, the analysis might be limited. When the employee's wages are difficult to figure out, the courts usually consider a 26-week history of earnings and determine an average.¹¹ Regular overtime may be included in the calculation. Where an employee has two or more regular jobs, the total earnings may be used to calculate the average weekly wage.

Certain workers have special rules for calculating their average weekly wage. Volunteer workers like ambulance drivers or first responders, the wage is calculated based upon the usual going wage for similar services performed by paid employees. For workers in the construction and mining industries or for seasonal workers, a daily wage is calculated based on days worked and then multiplied by five for an imputed weekly wage.

All wage benefits are subject to certain maximums and minimums which are found statutes. Wage benefits may be increased to account for cost of living changes.

1. **Temporary Total Disability (TTD):** For employees who are totally disabled from work on a temporary basis, payments are paid at a rate of 66 & 2/3 percent of the weekly wage at the time of injury.¹² The weekly amount is subject to weekly minimums and maximums. This benefit may be curtailed earlier in certain circumstances such as return to work, withdrawal from the labor market, failure to diligently search for appropriate work, or refusal of an offer of work that the employee can do in their physical condition.

¹¹ Minn. Stat. § 176.011, subd. 8a

¹² Minn. Stat. § 176.101, subd. 1.

2. **Temporary Partial Disability (TPD):** Where an employee has been able to return to work but at a lesser wage, temporary partial disability applies. Temporary partial disability is paid in the amount of 66 & 2/3 percent of the difference between the weekly wage at the time of injury and the wage post injury.¹³ Since October 1, 1992, this benefit has been limited to 225 weeks of benefits paid. These benefits must be used within 450 weeks of the injury. Issues frequently arise in cases of temporary partial disability as to whether the employee is working to the level of their actual earning capacity.
3. **Permanent Total Disability (PTD):** An employee who is permanently and totally disabled due to injury can receive 66 & 2/3 percent of the wage at the time of the injury subject to a minimum PTD rate.¹⁴ Permanent total disability shall cease at age 67 due to a presumption of retirement from the labor market, but that presumption may be rebutted by the employee. In the event the employee receives Social Security Disability or Retirement income, an offset may be taken by the workers' compensation carrier for the payments after \$25,000.00 of weekly compensation has been paid.
4. **Permanent Partial Disability (PPD):** The purpose of the permanent partial disability schedules is to assign specific percentages of disability of the body for specific permanent partial disabilities.¹⁵ PPD injury payments are then based on the amounts described in the schedules of injury found in Minnesota Administrative Rules,¹⁶ as applied to the values provided for the percentage of disability. While the categories for rating impairment are extensive, not every condition is specifically stated in the schedule. Disabilities not found are in the schedule rated in the next closest category describing the condition.

B. Medical Expenses

An injured employee is entitled to have their employer pay for medical, psychological, chiropractic, podiatric, surgical, and hospital treatment and related supplies.¹⁷ The general standards for payment of treatment are whether the treatment prescribed by the physician is necessary and the cost is reasonable. Due to much litigation over the issue of necessity for treatment, the Department of Labor & Industry developed guidelines for treatment referred to as the Medical Treatment Parameters.¹⁸ The Medical Treatment Parameters form a basis for determining whether treatment is necessary. Variations from the treatment parameters or guidelines is permissible by agreement or at the discretion of the workers' compensation Judge. The issue of reasonableness has also been addressed by the Department of Labor & Industry by establishing

¹³ Minn. Stat. § 176.101, subd. 2.

¹⁴ Minn. Stat. § 176.101, subd. 4.

¹⁵ Minn. Stat. § 176.101, subd. 2a. (permanent partial disability schedule of benefits.)

¹⁶ Minn. R. Ch. 5223.

¹⁷ Minn. Stat. § 176.135

¹⁸ Minn. Stat. §§ 5221.6010-6600

a Medical Fee Schedule. This schedule sets forth the maximum amount that an employer or insurer is obligated to pay for a specific type of treatment. Both the Medical Treatment Parameters and the Medical Fee Schedule have gone a long way toward reducing the frequency of medical disputes.

C. Vocational Rehabilitation

An injured employee is entitled to rehabilitation assistance to restore their to former employment or to a job which produces a similar economic status to the job they would have worked without disability.¹⁹ For an eligible employee, this assistance may take the form of guidance in preparing a resume, career evaluation, and job placement. The assistance comes from a Qualified Rehabilitation Consultant (QRC) and/or through a placement vendor. The QRC also has a role in helping to coordinate medical care for the employee.

In some cases, an injured employee may require retraining to restore lost earning capacity. In that case, retraining may involve anywhere from single computer course at a community college to a full college degree. The QRC works with the employee to prepare a proposed retraining plan which must be approved by the insurer or ordered by a Judge.

¹⁹ Minn. Stat. § 176.102