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2013 LEGISLATIVE CHANGES TO THE WORKERS' COMPENSATION ACT

On May 16, 2013, Governor Mark Dayton signed into law a new workers' compensation bill. The following is a summary of the most significant changes.

Changes Limited to Injuries Occurring On or After October 1, 2013

Additional Mental Health Claims: In Minn. Stat. § 176.011, subs. 15 & 16, the legislature expanded the definitions of occupational disease and personal injury to include post traumatic stress disorder. The diagnosis must come from a licensed psychiatrist or psychologist and shall be based upon the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association. Post traumatic stress disorder will not be considered an occupational disease "if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer."

Maximum Compensation Rate: Under Minn. Stat. § 176.101, subd. 1, the legislature revised the maximum compensation rate to be 102% of the statewide average weekly wage for the period ending December 31st of the preceding year.

Adjustment of Benefits: The legislature amended Minn. Stat. § 176.645, subs. 1 & 2, to reduce the delay in cost of living adjustments from 4 years to 3 years and increase the cap from 2% to 3%. In addition, no adjustment can be less than zero percent.

Increase in Contingency Fees: In Minn. Stat. § 176.081, subd. 1, the legislature doubled the maximum contingency fee from \$13,000.00 to \$26,000.00. In addition, the first \$4,000.00 is no longer paid at 25%. Instead, the entire fee is paid at 20%.

Reduction in Subdivision 7 fees: The legislature amended Minn. Stat. § 176.081 to exclude the payment of "subdivision 7 fees" on anything other than contingency fees. They will no longer be paid on other types of fees, such as *Roraff* and *Heaton* fees.

Reduced Job Placement Services: Under Minn. Stat. § 176.102, subd. 5, the legislature added language that limits job placement to 20 hours per month for 26 consecutive or intermittent weeks. After 13 consecutive or intermittent weeks of job development, unless the parties agree to extend job placement for up to an additional 13 consecutive or intermittent weeks, the QRC must file a rehabilitation request. The commissioner or compensation judge cannot order more than 26 total weeks of job placement.

Changes for All Dates of Injury Effective October 1, 2013

Disability Case Managers: The legislature added language to Minn. Stat. § 176.102, subd. 10, that precludes a QRC from providing medical, rehabilitation, or disability case management services, unless the case management services are part of an approved rehabilitation plan.

Rehabilitation Conferences: The legislature amended Minn. Stat. § 176.106, subd. 3, to provide that rehabilitation conferences shall occur within 21 days after the request is filed, unless the dispute only involves fees for services already provided, or for good cause. If there is a plan in effect, the services must continue through the initially scheduled date of the conference.

Treatment Parameters: Under Minn. Stat. § 176.83, subd. 5, the legislature added language requiring the treatment parameters to include rules governing the long-term use of opioids or other scheduled medications to alleviate intractable pain and improve function. The rules must include the use of written contracts between the patient and health care provider.

Back Fusions: The legislature directed the commissioner of labor and industry to implement a two-year patient advocate program for employees with back injuries who are considering back fusion surgery. The purpose of the program shall be to ensure that patients understand their treatment options and receive treatment pursuant to accepted medical standards. The services will be paid for from the special compensation fund.

Change for All Dates of Injury Effective July 1, 2013

Appellate Settlement Procedure: The legislature revised Minn. Stat. § 176.521 to provide that settlements of claims pending before the Workers' Compensation Court of Appeals (WCCA) shall be submitted for approval to a compensation judge at the Office of Administrative Hearings. Before submitting the settlement, the parties shall notify the WCCA and request that it suspend further action on the appeal pending review of the settlement. Within 14 days after the compensation judge's final approval or disapproval, the parties must inform the WCCA of the compensation judge's action and request the WCCA to dismiss or reactivate the appeal. This section is effective for settlement agreements submitted for approval on or after July 1, 2013 and applies to all dates of injury.