

May 30, 2008

**2008 Changes to Workers' Compensation Act**

On April 30, 2008, Minnesota Governor Tim Pawlenty signed S.F. 3218, implementing recommendations of the Workers' Compensation Advisory Committee. (The WCAC is a statutorily-created body including members from all "stakeholders" in the Minnesota workers' compensation system which makes policy recommendations to the legislature on workers' compensation issues.) The following are some of the changes made.

**EFFECTIVE for injuries on or after October 1, 2008:**

Maximum compensation rate:	<u>increased</u> from \$750 to <b>\$850</b> ;
Statutory cap on temporary total disability (TTD) benefits:	<u>increased</u> from 104 weeks to <b>130</b> weeks; and
Time limit to request retraining:	<u>increased</u> from 156 weeks of combined TTD/TPD to <b>208</b> weeks.

**EFFECTIVE immediately:**

**Who is considered an "Employee"**

The definition of "employee" is changed for those people performing in-home care for recipients of medical assistance paid from government funds. For workers' compensation coverage purposes, these individuals will be considered an employee of the employer designated by the commissioner of the Department of Human Services.

"Employee" now includes volunteers from the Minnesota Responds Medical Reserve Corps. The calculation of their daily wage and receipt of benefits is governed by Minn. Stat. § 145A.06.

**Definition of Independent Contractor**

For purposes of exclusion from workers' compensation benefits, the definition of "independent contractor" is now the same as in other areas of Minnesota employment law. This statute adopts the definition of "independent contractor" found in Minn. Stat. § 181.723. Under this section, an individual is an independent contractor, and not an employee of the person for whom the individual is performing services in the course of the person's trade, business, profession, or occupation, only if (1) the individual holds a current independent contractor exemption certificate issued by the commissioner, and (2) the individual performing services for the person under the independent contractor exemption certificate as provided by subdivision six of this statute.

### **Compensable Medical Treatment**

The fee schedule of medical treatment has been replaced with the relative value fee schedule tables adopted for the federal Medicare program.

Payment to providers outside of Minnesota is limited to the amount to which they are entitled under the workers' compensation law in their state.

Any service, article, or supply provided by an unlicensed complementary and alternative health care practitioner is not compensable. Some examples include acupressure, detox-therapy, healing touch, herbal-based therapy and massage.

### **Union Employers**

The ability for collective bargaining agreements to dictate the handling of workers' compensation claims has been expanded from only self-insured Employers or Employers with significant self-insured retention plans or deductibles to all insured Employers. This provision allows for the resolution of workers' compensation claims through alternative dispute resolution rather than through the workers' compensation system. Not all "union shops" are covered by this provision, only those whose collective bargaining agreements specifically adopt an ADR alternative to Minnesota's workers' compensation system.

**Uninsured and Self-insured Employers**

For employees receiving benefits through the Special Compensation Fund, the commissioner is no longer required to comply with the procedures in chapter 16C before purchasing, paying for, or reimbursing an employee for medical treatment, equipment, or supplies that are compensable.

**Administrative Changes**

- The Department of Labor & Industry may assign a designated work comp ID number, other than the claimant's social security number, in workers compensation documents filed with the state;
- The statute now allows electronic filing of documents if electronic filing is authorized by DOLI, OAH and/or the WCCA and transmitted in a manner and format authorized by them;
- The maximum hourly rate for QRC's is increased to \$91.00 and \$81.00 for interns. See Minn. R. 5220.1900, subp. 1c and d.

For additional information on these amendments to the Minnesota Workers' Compensation Act or to answer any questions, please contact any of the attorneys in the workers' compensation practice group at Johnson & Condon at (952) 831-6544, or through our web site, [www.johnson-condon.com](http://www.johnson-condon.com).

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