Workers Compensation Seminar for Townships

Presented by:

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1. **Workers Compensation: What is it?**

The workers’ compensation system is a statutory system which involves tradeoffs for both injured employees and responsible employers. From the employee’s side, an injured employee is entitled to receive workers’ compensation benefits regardless of whether he/she is at fault for the injury. In exchange, the employee receives a limited set of benefits which does not include the pain and suffering recovery allowed in a civil lawsuit for personal injury. From the employer’s standpoint, the employer’s liability is generally confined to the benefits available under the workers’ compensation system. In exchange, the employer pays benefits even if the employee is 100% at fault for his/her injury.

2. **What are the basic elements of a claim?**

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

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

There are many permutations on each of these three concepts as is more fully set forth below.

3. **What constitutes an injury?**

There is no limit to the ways in which an employee can injure him/herself. Generally, however, injuries fall into three categories.

1. **Specific Injuries.**

The category of specific injuries includes the 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, a neck strain from a work-related motor vehicle accident and many others. The employee is typically aware immediately of both the injury and the causal connection to work. The initial medical likewise typically establishes a link to the work activity.
2. **Cumulative Trauma Injuries.**

The Minnesota Supreme Court first recognized the compensability of a repetitive minute trauma injury in the case of Gillette v. Harold, Inc., 101 N.W.2d 200 (1960). What is now commonly referred to as a "Gillette" injury is an injury caused by the ordinary duties of employment which, on a cumulative basis, result in an injury which may be as disabling as a single traumatic incident. Typical examples of cumulative trauma or Gillette-type injuries are carpal tunnel syndrome for secretaries, low back strain for those who bend and lift repetitively at the waist, shoulder bursitis for those who do extensive overhead work, to name a few. The courts typically find that a cumulative trauma injury "culminates" when the employee experiences a need for medical treatment or becomes disabled from employment. An employee is charged with giving notice to the employer only when he/she has been told by a doctor of the connection between the physical condition and the repetitive work activities.

3. **Occupational Disease.**

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

a. Employment;
b. Increases the risk of, and;
c. Proximately causes;
d. The disease.

Occupational diseases which are commonly recognized are asbestosis and silicosis. Heart-related diseases such as coronary arteriosclerosis may also be compensable.

4. **Pre-existing Injuries.**

A preexisting impairment does not automatically disqualify an employee from having a compensable injury. As long as the work-related injury is a substantial contributing cause to the employee’s disability or need for medical treatment, the injury is compensable. In such a case, the employee still receives full workers’ compensation benefits with the exception that permanent partial disability (addressed later in these notes) may be apportioned to certain prior injuries or congenital conditions. An employer may also be able to seek contribution from a prior responsible employer and limit their own liability to their fair share of the benefits.
5. **Psychological or Mental Injuries.**

Generally, psychological or mental injuries are compensable only if they are tied to a physical injury. In other words, cases where a mental stimulus produces physical injury or a physical injury produces mental injury are compensable. In cases where a mental stimulus produces the mental injury, the Minnesota courts have refused to recognize a compensable claim. An example of a compensable injury would be an employee who suffers a traumatic amputation which results in disabling depression. Likewise, an employee who was exposed to extreme stress through work which led to a heart attack may be compensable. An employee who is unable to come to work due to depression which he/she claims is work related and who has no physical injury is not compensable.

4. **What Does Arising out of and in the Course and Scope of Mean?**

The phrase "arising out of and in the course and scope of" contains two separate notions. The "arising out of" requirement means there must be a causal connection between the employment and the injury. The "in the course and scope of" requirement refers to the time, place and circumstances of the accident. These two concepts are further delineated below.

1. **"Arising out of" requirement.**

Over the years, the courts have helped draw lines of distinction as to when an injury has a causal connection to employment. For example, injuries caused by "acts of God" have been held not to be compensable since there is no connection to work. An exception to this general rule may occur if employment creates a greater risk that somebody would be affected by an act of God. An example of the exception would be an electrical worker struck by lightning while restoring power during a storm.

The courts have also held that employees traveling to and from work 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 ingress or egress from employment as driveways and parking lots owned and maintained by the employer are part of the work premises.

Injuries caused by third parties or by co-employees may fall on either side of the line. Such injuries may be compensable if the injury was caused unintentionally, or if motivated by the fact that the employee is an employee. Those injuries occurring for reasons personal to the parties involved would not be compensable.
The courts tend to analyze the "arising out of" requirements in terms of the risks associated with employment. If the employment places the employee at a greater risk of the resulting injury, it is more likely to be found to be compensable. Where injuries occur due to risks assumed by all employees or for reasons which are not unique to employment, it is less likely that an injury will be compensable.

2. "In the course and scope of" requirement.

The courts have also drawn lines of distinction for injuries occurring during the appropriate time, place and circumstances of employment. For example, traveling employees have been found to be in the course and scope of employment throughout their travel unless they have deviated from the employer’s business in some fashion. In the event the employee has a dual purpose for a trip, both business and personal, the courts will look at whether the performance of the service for the employer would have caused the trip to be taken even if it had not coincided with the employee’s personal trip. Whether the employer or the employee provided the means of transportation is not determinative of the course and scope issue. The courts will tend to look at all of the circumstances in making an assessment.

Over the years the courts have also developed guidelines regarding how injuries occurring during lunch breaks, at recreational activities or while engaged in horseplay are treated. The judges typically look at whether these activities are incidental to employment or whether they are personal to the employee. Those things occurring on a premises in control of the employer are more likely to be compensable.

5. What Constitutes Employment?

The statute 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 has liability for injuries arising in the course and scope of employment and affecting an employee. An employer has no responsibility generally for an independent contractor.

1. Employees.

A Township may have responsibility for many kinds of employees. M.S. § 176.011, Subd. 9 (6) regarding who is an 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;"

As a result, board members would only become employees if they adopt a
resolution electing to treat themselves so.

The situation with other Township employees does not require an ordinance
or resolution. 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. This list
is by no means exhaustive.

2. **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 and not as an employee. In response,
the workers’ compensation division has developed administrative rules
dictating both general and specific guidelines to assist in determining whether
an employment relationship exists or whether the person is truly an
independent contractor. These rules are found at Section 5224.0010, et. seq.

The specific guidelines are applicable to specific areas of employment such
as artisans, consultants, laborers, waste materials haulers, to name a few. All
other occupations are covered by the general rules.

Rule 5224.0330, Subp. 1, provides that the most important factor in
determining whether a person is an independent contractor is the degree of
control which the purported employer exerts over the manner and method of
performing the work contracted. The courts will then 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. A true independent contractor must possess a right to
discharge employees, to realize a profit or loss and to provide the services
fundamental to the business. There are many other factors under Section
5224.0340 which may come into play.

In response to ongoing difficulties in discerning employees from independent
contractors in the construction setting, the legislature in 2001 passed Minn.
Stat. §176.042. That section states that every independent contractor doing
commercial or residential building construction or improvements in the public
or private sector is considered an employee unless they meet each and every element of a 9-part test contained in the statute. The 9-part test is intended to assure that the contractor is independent in all respects and not simply called independent for avoidance of workers' compensation coverage.

3. **Volunteers.**

While the general rule is that a volunteer is not entitled to workers’ compensation benefits since there is no employment relationship, the legislature has specifically included certain volunteers in the workers’ compensation scheme. For example, a worker who performs volunteer ambulance driver or attendant services is considered an employee of the political subdivision or other entity for which services are provided. Likewise, a voluntary uncompensated worker who volunteers 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 specifically included in the definition of an employee under M.S. § 176.011, Subd. 9.

4. **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.

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.

6. **What Benefits Does an Injured Worker Receive?**

In general, an injured employee may receive wage loss benefits, compensation for permanent impairment of function, medical benefits and vocational rehabilitation including retraining. Within these broad categories, there are various types of benefits as set forth by statute.

1. **Wage Loss.**

The concept of wage loss in the workers’ compensation system is essentially a comparison between a fair approximation of the employee’s earning capacity at the time of injury with his/her earning capacity after the injury. To establish the fair approximation of earning capacity at the time of injury, the parties look at the employee’s average weekly wage. If the employee’s wage is regular and easy to determine, the analysis is quite limited. Where the
employee’s wages are difficult to determine, the courts typically look at a 26-week history of earnings and determine an average. Regular overtime may be included in the calculation. Where an employee has two or more regular employments, the total earnings may be used to calculate the average weekly wage.

Certain workers have special rules relating to calculation of their average weekly wage. For voluntary uncompensated workers such as ambulance drivers or first responders, the wage is calculated based upon the usual going wage paid for similar services if the services are performed by paid employees. For workers in the construction and mining industries or for seasonal workers, a daily wage is calculated based on days actually worked which is then multiplied by five for an imputed weekly wage.

All wage benefits are subject to certain maximums and minimums as established by statute. Wage benefits are also subject to escalation to account for the increase in the cost of living.

a. **Temporary Total Disability (TTD).**

For employees who are totally disabled from work on a temporary basis, M.S. § 176.101, Subd. 1, provides for temporary total disability payments at a rate of 66 & 2/3 percent of the weekly wage at the time of injury. Since October 1, 1995, temporary total disability benefits have been limited to 104 weeks of benefits. This benefit may be curtailed earlier in 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 his/her physical condition, to name few.

b. **Temporary Partial Disability (TPD).**

Where an employee has been able to return to work but at a lesser wage, M.S. § 176.101, Subd. 2, provides for temporary partial disability 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. 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 date of injury. Issues frequently arise in cases of temporary partial disability as to whether the employee is working to the level of his/her actual earning capacity.
c. **Permanent Total Disability (PTD).**

M.S. § 176.101, Subd. 4, provides that 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. 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.

Certain significant medical problems such as permanent loss of sight of both eyes, loss of both arms at the shoulder, are automatically deemed to be permanently and totally disabling. Other conditions require permanent partial disability ratings of 17% of the body as a whole or more to qualify for permanent total disability. The amount of permanency required declines once the employee reaches age 50 and again at age 55.

d. **Permanent Partial Disability (PPD).**

The workers’ compensation division has developed a permanent partial disability schedule as contained in Administrative Rules 5223.0010, et. seq. The purpose of the permanent partial disability schedules is to assign specific percentages of disability of the body as a whole for specific permanent partial disabilities. 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.

All permanent partial disability payments are now calculated based upon the percentage rating multiplied by a factor set forth in M.S. § 176.101, Subd. 2(a). For example, for a 5% rating the multiplier is $75,000.00 so that PPD equals $3,750.00; for a 10% rating the multiplier is $80,000.00 so that the PPD is $8,000.00; for a 15% rating the multiplier is $85,000.00 so that PPD is $12,750.00. Permanency is paid on a weekly basis in an amount determined by the employee’s average weekly wage.
2. **Medical Expenses.**

Pursuant to M.S. § 176.135, an injured employee is entitled to have his/her employer pay for medical, psychological, chiropractic, podiatric, surgical and hospital treatment and related supplies. The general standards for payment of treatment are whether the treatment prescribed by the physician is necessary and whether 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. 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 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.

3. **Vocational Rehabilitation.**

Pursuant to M.S. § 176.102, the injured employee is entitled to rehabilitation assistance to restore him/her to former employment or to a job which produces an economic status as close as possible to that he/she would have enjoyed without disability. 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 a computer course at a community college or may involve 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.

The Workers’ Compensation System is a statutorily defined system which governs the rights of and responsibilities for injured workers. The information above is meant to be a general overview of the system. It is essential that you work closely with your claim representative or attorney to assure that all of your obligations are being met in a timely fashion.