

PENALTIES

I. PROHIBITED PRACTICES - Minn. Stat. § 176.194

A. Subdivision 3 enumerates nine prohibited acts by insurers, self-insurers, third-party administrators, etc.:

1. Failing to respond to a claimant's written request within 30 days;
2. Failing to commence benefits or advise the claimant of acceptance or denial of the claim within 45 days;
3. Failing to pay or deny medical bills within 45 days of the receipt of all information from medical providers;
4. Denying a claim without conducting an investigation;
5. Failing to pay weekly benefits in a timely manner;
6. Failing to respond to a written inquiry of the department within 30 days;
7. Failing to pay pursuant to a court order within 45 days (unless it is under appeal);
8. Advising a claimant not to retain an attorney; and
9. Altering information on a document to be filed with the department without the notice and consent of any person who previously signed the document and who would be adversely affected by the alteration.

- Amendment effective August 1, 2002.

B. Penalty for Violation. Written warning for 1st through the 5th violation; \$3,000 per violation in excess of five; and \$6,000 for each violation in excess of ten violations. Minn. Stat. § 176.194, subd. 4.

C. Reminders.

1. Statute is enforceable by the Commissioner of Labor & Industry, not the employee. Minn. Stat. § 176.194, subd. 1 (2001); *see also Case v. Knutson Construction Company*, 56 W.C.D. 230, 236 (W.C.C.A. 1996) (observing an employee lacks standing to pursue penalties under Minn. Stat. § 176.194).

2. Penalties under this section may be in addition to other penalties under, for example, § 176.225, for the same prohibited activity. Minn. Stat. § 176.194, subd. 2.
3. Penalties are payable to the Commissioner of Labor & Industry for deposit in the assigned risk safety account.
4. In addition to the per-violation penalties set forth in statute, an entity with 30 or more violations within any 12-month period may be subject to suspension or revocation of its license to write workers' compensation insurance, and/or administer and adjust claims, or authority to self-insure.
5. Appeal must be filed within 30 days of the date of penalty assessment. Minn. Stat. § 176.85, subd. 1.

II. PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT - Minn. Stat. § 176.221.

A. Subdivision 1 requires:

1. Commencement of temporary total or temporary partial disability benefits within 14 days of notice to or knowledge by the employer of an injury; or
2. Written denial of liability within 14 days of notice to or knowledge by the employer of an injury.

B. Penalty:

1. Increasing percentages based on number of days late; or
2. Up to \$2,000 per violation payable to the commissioner for deposit in the assigned risk safety account.

C. Penalty also applies for failure to pay medical or rehabilitation treatment or permanent partial disability benefits. Subdivision 6a.

III. ADDITIONAL AWARD AS PENALTY - Minn. Stat. § 176.225.

A. Provides for assessment of penalties in addition to the total amount of compensation award up to 30 percent of that total amount where the employer has:

1. Interposed a frivolous defense or for purposes of delay;
2. Unreasonably or vexatiously delayed payment;

3. Neglected or refused to pay compensation;
4. Intentionally underpaid compensation;
5. Frivolously denied a claim; or
6. Frivolously or vexatiously discontinued compensation.

B. Frivolous is defined as:

1. Without conducting a good faith investigation of the facts; or
2. On a basis clearly contrary to fact or law.

IV. NOTICE OF DISCONTINUANCE OF COMPENSATION - Minn. Stat. § 176.238.

- A. Requires written notice indicating the date of discontinuance and a statement of facts clearly indicating the reason for the action.
- B. Penalty. Fine of up to \$1,000 for each violation.

V. SPECIFICITY OF NOTICE OR STATEMENT - Minn. Stat. § 176.84.

- A. Requires notices of discontinuance and denial to be sufficiently specific to convey clearly, without further inquiry (i.e., on its face), the basis upon which the party issuing the notice or statement is acting.
- B. Penalty is \$500 for each violation.
- C. Reminders.
 1. Explanation must be sufficiently specific and clear to convey basis of action without further inquiry. This means Notices of Discontinuance, Notices of Primary Liability Determination, and other denials must be sufficiently specific to enable the employee to prepare to defend against the attempted discontinuance of benefits or other denial. *Meemken v. Circuit Science*, 1998 WL 473491, at *2, slip op. (W.C.C.A. July 24, 1998).
 2. The face of the document must make the employee fully aware of what issues will be addressed at the conference or hearing. *Id.* For example, the statement, “Paid under mistake of fact and error due to case law” is so broad as to encompass a multitude of possible legal defenses. *Id.* at *2-3. Without further inquiry, the statement provided the employee no guidance as to the specific factual and/or legal basis for the discontinuance. *Id.*
 3. Explanation must be a statement of **fact**, not a conclusion. For example, the statement, “The employee is not entitled to temporary partial disability,” is, without more, insufficient. *Id.* Whereas, “the employee is

not entitled to temporary partial disability *because* he no longer has work restrictions” provides the employee a sufficient factual basis to defend the discontinuance.

4. The requirement for specificity is a recurring theme running throughout the Workers’ Compensation Statute and Rules.
 - a. See Minn. R. 5220.2630, subp. 4 (B)(5) requiring **Notices of Intention to Discontinue** benefits to contain “the legal reason or reasons for the proposed discontinuance or reduction, stated in language which may easily be read and understood by a person of average intelligence and education, and in sufficient detail to inform the employee of the factual basis for the discontinuance or reduction[.]”
 - b. See Minn. Stat. § 176.238, subd. 1 (2001), requiring the **NOID** “shall . . . set forth a statement of facts clearly indicating the reason for the [discontinuance].”
 - c. See Minn. R. 5220.2570, subp. 4 and 5, requiring **letter denials** to include a “clear statement of the facts forming the basis for the denial.”

VI. APPEAL OF PENALTIES - Minn. Stat. § 176.85.

- Request for formal hearing on the penalty assessment must be filed within 30 days.