

**NOTICE OF PRIMARY LIABILITY DETERMINATIONS
(NOPLD's)**

I. Primary Liability

- A. This is a pivotal decision for which the remainder of the case often hinges. Despite this being such a fundamental decision, you often have almost no time to perform an investigation and make a decision.
- B. Minn. Stat. §176.221 provides if the employer/insurer intend to deny liability for a claimed injury, the **denial must be made within 14 days after notice to or knowledge by the employer of the alleged injury**. Even if you find out about the injury 13 days after the employee reported it to the employer, you still must admit or deny the very next day.

II. When the NOPLD (Notice of Primary Liability Determination) form shall be used.

- A. To report acceptance of an injury or death claim.
- B. To report a denial of liability of an injury or death claim.
- C. To amend a previous NOPLD.

Examples:

- accept liability on a previously denied claim
- deny liability on a previously accepted claim
- make a payment of wage loss benefits on a claim where previously no wage loss payments had been made
- make payment of TPD based upon receipt of wage loss information (example: if you previously accepted claim, but advised you would not commence payment of TPD until receipt of wage loss information. Once that information becomes available, you must file an Amended NOPLD)

*Make sure to mark **AMENDED** on the subsequent NOPLD forms.

*If you first admit the injury, then after further investigation realize you need to deny the claim, you may still do so with an Amended NOPLD if it is within 60 days of the notice to **the employer** of the injury. If more than 60 days have run, you then must file a Notice of Discontinuance pursuant to MSA §176.239 and §176.221(1). *{this is not good, do not want to end up in this situation.}*

III. Notice to Employee

- A. Minn. Stat. §176.221(1) states the **employee must receive written notice of the denial**.

B. Minn. R. 5220.2570(2) notice must contain: a **specific reason for the denial** and a clear statement of the facts forming the basis for the denial.

1. **Not acceptable:**

-“The injury did not arise out of and in the course and scope of employment” - not specific.

-“Denied pending further investigation” - frivolous.

-“The employee only worked one day” - not specific, does not tell the employee a specific reason for the denial.

2. Subject to Penalties

-non specific denials are subject to penalties payable to the Special Compensation Fund. Minn. R. 5220.2570(11).

-frivolous denials, “without a good faith investigation of the facts or on a basis that is clearly contrary to fact or law.” Minn. Stat. §176.225(1). This is within a judge’s discretion.

C. Denial must be timely

1. Minn. R. 5220.2770(2)(D) provides that failure to file a Denial of Liability within either the 14-day period creates a situation where a penalty of **up to \$1000.00** may be assessed, dependent upon how late the payment is.

2. In lieu of any other penalty, the **Commissioner may assess a penalty of up to \$2,000** payable to the assigned risk safety account in each instance where an employer or insurer does not pay benefits or file a Notice of Denial within the time limits prescribed.

3. These penalties are assessed against the insurer, even if it wasn’t your fault. You can then go after the employer for this, but is a pain and not a situation you want to be in, but often completely out of your control. Minn. Stat. §176.221(6)

IV. Potential/Frequent Scenario:

A work injury was reported to the employer on January 1, 2003. You don’t find out about this alleged work injury until January 10, 2003 when a First Report of Injury is faxed to you.

You now have just 4 days left (with a weekend in between) to compile enough information to admit or deny the injury. You call the employer repeatedly and the human resources person who deals with workers’ compensation injuries just happens to be on

vacation. The only person from the employer you are able to speak with has no idea what happened, but explains the employee is a pizza delivery person and is off work. You attempt to get exact details of his physical duties, but unfortunately the wishy-washy explanation from the employer gets you no closer to making a conclusion whether to admit or deny. The First Report of Injury does not explain the mechanism of the injury, it only states “carpel tunnel.” Your attempts to contact the employee for information are essentially useless. The employee is Somalian and speaks limited English. Unfortunately, you cannot understand him, nor he you. You hear from the one individual at the employer that the employee is very honest and reliable. However, a carpel tunnel injury for someone who delivers pizzas just does not add up. You wonder if he also makes pizzas, or cuts the pizzas, or does any type of repetitive hand movements; the individual at the employer says he has no idea.

You attempt to obtain medical records for further explanation, but you are having problems getting the medical provider to provide you with the records as she does not have it “coded” as workers’ compensation. The provider tells you unless you can produce a signed authorization from the employee, she is not authorized to release the information. You realize with your inability to communicate with the employee and with HR person on vacation, you will not have time to get the records before your deadline to admit or deny the injury.

What you really need is more time to investigate, but

What do you do?

- V. Recommendation from DOLI (Department of Labor and Industry) = Based on this information and the employee’s job duties, I think you have a basis to deny the injury. Answer with the information you have and try to do a very thorough job of talking to the employer, potential witnesses, speaking with a nurse at the hospital, whatever you can do. The Department of Labor and Industry recommending calling them and walking through the scenario. Ask to speak with Customer Service (651) 284-5030.
- VI. Other issues:
 - A. AWW - unknown. Oftentimes very little information is known and you can only do so much in 14 days or less. I recommend getting the closest wage you can and it is simple to go back and revise the wage once you have a more accurate assessment. If you determine there is an underpayment, you can draft a Notice of Benefit Payment and explain the underpayment in an attachment.
 - B. If anything in the NOPLD is not simple or not an option where you can check the box, always feel free to attach a separate sheet explaining what you are doing. The main point is that the employee and DOLI know what you are doing.