

PART III
PERSONNEL MANAGEMENT

CHAPTER 10: WORKING CONDITIONS FOR PUBLIC EMPLOYEES

I.	Workers' compensation.....	1:3
	A. Notice.....	1:3
	B. Coverage.....	1:3
	C. Eligibility for compensation	1:4
	D. Benefits payable.....	1:5
	E. Minimizing costs	1:5
II.	Occupational Safety and Health Act.....	1:5
	A. Hazardous substances.....	1:6
	B. Right to refuse to work	1:6
	C. Inspection	1:6
	D. Penalties	1:7
	E. AWAIR safety plans	1:7
III.	Political activities of employees.....	1:8
	A. Federal Hatch Act	1:8
	B. Minnesota law	1:9

1. Working conditions for public employees

This chapter deals with the following:

- I. **Workers' compensation**
- II. **Occupational Safety and Health Act & Right-to-Know Act**
- III. **Political activities of employees**

I. Workers' compensation

[Minn. Stat. ch. 176.](#)

For more information, contact the [Minnesota Department of Labor and Industry](#) at 651-284-5042 or 1-800-342-5354.

[Minn. Stat. § 176.181.](#)

With certain exceptions, all counties must pay workers' compensation benefits to their employees for all injuries from accidents arising out of, and in the course of, their county employment. The law is designed to ensure the quick and efficient delivery of benefits to injured workers. The law doesn't require counties to purchase insurance for this purpose, but they should do so, unless the board feels the county is financially able to pay compensation benefits from the county treasury.

A. Notice

[Minn. Stat. § 176.139.](#)

For a free notice, contact the [Minnesota Department of Labor and Industry](#) at 651-284-5042 or 1-800-342-5354.

All employers required or electing to carry workers' compensation coverage must post notice in a conspicuous place, advising employees of their rights and obligations under workers' compensation laws, assistance available to them, the name and address of the workers' compensation carrier insuring them, or the fact that the employer is self-insured.

B. Coverage

[Minn. Stat. § 176.011, subd. 9.](#)

Generally, the Workers' Compensation Act (Act) covers employees who perform services for hire, including minors. It also covers people if police officers request or command them to assist the officers. The Act states that police officers, firefighters, and civil defense workers are covered employees. So, too, are any other people who preserve the peace, or pursue and capture anyone charged or suspected of a crime.

[Minn. Stat. § 176.011, subd. 9\(6\)](#)

Unless the county board enacts an ordinance or resolution that says its elected and appointed officials are covered by the Act, they are outside its protection.

Graf v. Montgomery Ward & Co., 234 Minn. 485, 49 N.W.2d 797 (Minn. 1951).

Generally, county employees who the board or administrator appoints to specific terms of office are covered employees under the Act. Determining who is an employee under the Act is often difficult, but the element that carries the most weight is the factor of the “right of control.” The court has said a person is an employee if the employer has the right to control the performance of the work by prescribing in detail how the employee will do the work. Some “independent contractors” might be covered by the Act under this definition.

[Minn. Stat. § 176.042.](#)

The law concerning persons who do building construction or improvement work is very specific. Regardless of the amount or length of time involved, or any contractual arrangement, the law will consider that person an employee of the county unless the person or the contracting company the person works for meets all of the following tests:

- Maintains a separate business with the independent contractor’s own office, equipment, materials, and other facilities.
- Holds or has applied for a federal-employer-identification number.
- Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work.
- Incurs the main expenses related to the service or work the independent contractor performs under contract.
- Is responsible for the satisfactory completion of work or services the independent contractor contracts to perform and is liable for a failure to complete the work or service.
- Receives compensation for work or service performed under a contract on a commission or per-job or competitive-bid basis and not on any other basis.
- May realize a profit or suffer a loss under contracts to perform work or service.
- Has continuing or recurring business liabilities or obligations.
- The success or failure of the independent contractor’s business depends on the relationship of business receipts to expenditures.

C. Eligibility for compensation

[Minn. Stat. § 176.021, subd. 1.](#)

Minnesota workers’ compensation law covers all actions arising out of, and in the course of, covered employment. This generally includes occupational diseases as well as accidental injuries.

D. Benefits payable

[Minn. Stat. § 176.101.](#) The statutes establish a schedule of compensation for various types of disabilities. The schedule has four categories: temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability. The law sets the amount of benefits payable in the case of an employee's death depending on the number of remaining dependents.

[Minn. Stat. § 176.021, subs. 5 and 7.](#) The law provides that if covered public employees continue to receive a salary while they are receiving workers' compensation benefits, the county should deduct the amount of the workers' compensation benefits from the salary.
[A.G. Op. 523-e \(Dec. 23, 1981\).](#)

[Minn. Stat. § 176.021, subd. 5.](#) However, employees who are eligible to receive workers' compensation benefits may receive additional compensation under a collective-bargaining agreement or other contract. These payments and additional benefits may be unrelated to any accumulated sick leave, holiday or overtime credits and need not be charged against any accumulation. However, the additional payments cannot result in a total weekly rate of compensation that exceeds the employee's weekly wage. For example, labor agreements may provide for paid leave to supplement workers' compensation benefits, and employees may not have to lose sick leave or other earned leave in this case.

E. Minimizing costs

Counties should strive to have employees report any injury, no matter how small, to the county immediately after the incident, and the county should contact its insurer as soon as possible. All counties should also institute a safety program because workers' compensation premiums are largely based on the frequency of claims.

II. Occupational Safety and Health Act

[Minn. Stat. ch. 182.](#) The Minnesota Occupational Safety and Health Act (OSHA) was enacted to reduce the number of safety and health hazards in the workplace.
[Minn. R. ch. 5210.](#)

For more information contact the [Minnesota Department of Labor and Industry](#) at 651-284-5042 or 1-800-342-5354.

[Minn. Stat. § 182.658.](#)
[Minn. R. 5210.0420.](#)
[Minn. R. 5210.0530.](#)

For free posters, contact the [Minnesota Department of Labor and Industry](#) at 651-284-5042 or 1-800-342-5354.

State law authorizes rules to be promulgated requiring notices to be posted. Employers must post notices to keep employees informed of their rights and obligations under OSHA, and of the fact that employees should contact the employer or the Department of Labor and Industry for assistance and information. Employers who receive notification from OSHA of complaints or citations have additional posting requirements. Employers also must post an annual summary of any occupational injuries and illnesses for each work establishment.

[Minn. Stat. § 182.655.](#)

The state establishes OSHA standards under rules. These standards must be at least as effective as those rules that are promulgated by the federal government under its Occupational Safety and Health Act.

F. Hazardous substances

[Minn. Stat. § 182.653.](#)

Employers must provide working conditions and places of employment that are free from recognized hazards likely to cause death, serious injury or harm to their employees. All employers, including counties, are required to have safety information available to employees for certain hazardous substances, and to provide training to all workers who are routinely exposed to hazardous substances or harmful physical agents in the workplace.

G. Right to refuse to work

[Minn. Stat. § 182.654, subd. 11.](#)

If employees believe they are in imminent danger due to exposure to hazardous materials or substances, or if the employer has not provided training and information, workers have the right to refuse to work with that substance or agent. If the employer does not reassign the worker to another area, the worker may refuse to work and receive pay.

H. Inspection

[Minn. Stat. § 182.653, subds. 3, 4 and 5.](#)

The law also requires compliance with hazardous material standards or regulations. The commissioner of labor and industry, or a representative of the office, has the right to inspect the employer's place of business. Employers cannot interfere with these inspections, and they must assist the commissioner during inspections by supplying or making information and necessary personnel or inspection aids available. Employers or associations of employers can participate in the continuing development of standards, participate in hearings on standards, and request the development of right-to-know standards. The commissioner will protect trade secrets and other legally privileged communications.

Minn. Stat. § 182.659, subd. 1. The commissioner of labor and industry must set regulations for the inspection of places of employment.

Minn. Stat. § 182.659, subd. 4. Employees or their representatives may request inspections when they have reason to believe a violation of a safety or health standard exists and threatens physical harm, or that imminent danger exists. Notice of such a request must be given to the employer. If the Department of Labor and Industry finds a violation, the commissioner must issue a citation within six months. The citation must state the nature of the violation and direct the employer to take corrective action within a reasonable time after receiving the citation. Employers can contest citations. If an inspector finds that conditions of imminent danger exist that might cause serious injury or death, the inspector can issue an order prohibiting employment or continuing operation of the business pending corrective measures. The order cannot be for longer than three days.

Minn. Stat. § 182.66, subd. 1.

Minn. Stat. § 182.662, subd. 1.

I. Penalties

Minn. Stat. § 182.666. Any employer who willfully and knowingly repeats a violation or violates any standard, rule or order could be subject to a fine of not more than \$70,000 for each violation. In addition, the employer could be subject to penalties of up to \$7,000 for violation of posting requirements, \$7,000 for violating citations, and penalties of up to \$7,000 per day for continuing violations.

Minn. Stat. § 182.667. The Act provides criminal penalties of up to \$20,000, six months imprisonment, or both if the employer knowingly makes a false statement in any document the employer must file or maintain under the Act. The employer could also be subject to criminal penalties of up to \$70,000, six month's imprisonment, or both for knowing and willful violations of their duties, any safety and health standard, any existing regulation governing the conditions of employment promulgated by the department, or any regulation governing variances where the violation causes the death of any employee. The penalty for a second violation would be a fine of up to \$35,000, one-year imprisonment, or both.

Minn. Stat. § 182.669. The Act allows employees to request a hearing if they feel the employer has dismissed or discriminated against them because they exercised their rights under the Act. In addition to ordering the employer to cease and desist and take other actions, the review commission could order a rehiring or reinstatement of the employee to the former position along with fringe benefits, seniority rights, back pay, compensatory damages, reasonable attorney's fees, and any other consideration to which the employee might be entitled.

J. AWAIR safety plans

Minn. Stat. § 182.653, subs. 8, 9; Minn. R. 5208.1500, K. The workplace accident and injury reduction program (AWAIR) is designed to reduce unsafe acts that lead to on-the-job injuries. Counties that provide any services (for example, police, utility, or fire services) with the exception of public-administration services, must comply with AWAIR.

[Minn. Stat. § 182.653, subd. 8.](#)

To comply with AWAIR, a county must establish a written workplace accident and injury reduction program that promotes safe and healthful working conditions and is based on clearly stated goals and objectives for meeting those goals. The program must describe:

- How managers, supervisors, and employees are responsible for implementing the program and how continued participation of management will be established, measured, and maintained;
- The methods used to identify, analyze, and control new or existing hazards, conditions, and operations;
- How the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls;
- How work place accidents will be investigated and corrective action implemented; and
- How safe work practices and rules will be enforced.

A county must conduct and document a review of the work place accident and injury reduction program at least annually and document how program procedures are met.

III. Political activities of employees

K. Federal Hatch Act

[5 U.S.C. §§ 1501-1503.](#)

The Hatch Act applies to local government employees if the United States or a federal agency finances the employee's principal employment activity in any way. This includes employees of federally-assisted programs in public health, public welfare, housing and urban renewal, redevelopment, employment security, highways and public works, law enforcement, aeronautics and transportation, and labor and industry.

A local government officer or employee subject to the provisions of the Hatch Act may express opinions on political subjects and candidates, and take an active part in political management and political campaigns.

Local government employees may belong to and hold offices in a political party, organization or club. They may attend a political convention and participate in the deliberations or proceedings of the convention or any of its committees. They may be candidates for or serve as delegates at a convention as long as that candidacy does not involve a public-partisan election.

County employees may serve as volunteers for a partisan candidate, campaign committee, political party, or nominating convention of a political party. Under the amended law, an employee may campaign for a candidate in a partisan election by making speeches, writing on behalf of the candidate, or soliciting voters to support or oppose a candidate. The employee may sign nominating petitions for candidates in a partisan election for public office, and may originate or circulate these petitions. An employee may also drive voters to the polls. Employees may make a financial contribution to a political party or organization, and solicit and collect voluntary political contributions.

A local government employee subject to the provisions of the Hatch Act may not:

- Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.
- Directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.
- Be a candidate for elective office in a partisan election.

L. Minnesota law

[Minn. Stat. § 211B.09.](#)

No county employee or officer may, at any time, use authority or official influence to compel any person to apply for membership in, or become a member of any political organization, to pay or promise to pay a political contribution, or to take part in political activity.

Any person violating any of these provisions is guilty of a misdemeanor.

[Minn. Stat. § 211B.09.](#)

State law also provides that no political subdivision may impose or enforce any additional limitations on the political activities of its employees.

Martin v. Itasca County, 448 N.W.2d 368 (Minn. 1989).

The Minnesota Supreme Court approved a requirement adopted by a county that mandated a leave of absence when an employee sought election as a county commissioner. The court concluded that it is constitutionally permissible to suspend, or even discharge, a government employee who seeks elective office. The court did not address the effect of Minn. Stat. § 211B.09 in its decision. As a result, care should be taken in establishing any personnel policy that would have this effect and the county attorney should be consulted.

A county may expect a county employee to spend working hours performing county duties. Consequently, to the extent that an employee campaigning for office is unable to perform those duties, disciplinary action such as suspension or dismissal under personnel rules may be appropriate—just as if the non-performance were due to the neglect of duties for other reasons.

CASES

<i>Graf v. Montgomery Ward & Co.</i> , 234 Minn. 485, 9 N.W.2d 797 (1951)	4
<i>Martin v. Itasca County</i> , 448 N.W.2d 368 (Minn. 1989)	10

STATUTES

Minn. Stat. § 176.011, subd. 9 3
Minn. Stat. § 176.011, subd. 9(6)..... 3
Minn. Stat. § 176.021, subd. 1 5
Minn. Stat. § 176.021, subd. 5 5
Minn. Stat. § 176.021, subds. 5 and 7 5
Minn. Stat. § 176.042 4
Minn. Stat. § 176.101 5
Minn. Stat. § 176.139 3
Minn. Stat. § 176.181 3
Minn. Stat. § 182.653 6
Minn. Stat. § 182.653, subd. 8 8
Minn. Stat. § 182.653, subds. 3, 4 and 5 6
Minn. Stat. § 182.653, subds. 8, 9 8
Minn. Stat. § 182.654, subd. 11 6
Minn. Stat. § 182.655 6
Minn. Stat. § 182.658 6
Minn. Stat. § 182.659, subd. 1 7
Minn. Stat. § 182.659, subd. 4 7
Minn. Stat. § 182.66, subd. 1 7
Minn. Stat. § 182.662, subd. 1 7
Minn. Stat. § 182.666 7
Minn. Stat. § 182.667 7
Minn. Stat. § 182.669 7
Minn. Stat. § 211B.09 9
Minn. Stat. ch. 176 3
Minn. Stat. ch. 182 5

OTHER AUTHORITIES

5 U.S.C. §§ 1501-1503 8

RULES

Minn. R. 5208.1500, K 8
Minn. R. 5210.0420 6
Minn. R. 5210.0530 6
Minn. R. ch. 5210 5

AGENCIES

Minnesota Department of Labor and Industry 3, 5, 6

ATTORNEY GENERAL OPINIONS

A.G. Op. 523-C (Dec. 23, 1981) 5