

To: Workers' Compensation Advisory Council

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South Dakota Department of Labor and Regulation

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Subject: 2025 Division Report on the State Workers' Compensation System

This report is prepared for submission at the August 4, 2025 meeting of the Workers' Compensation Advisory Council.

Overall, our state's workers' compensation system is functioning well, and competes successfully with neighboring states.

Effective July 1, 2025, through June 30, 2026, an overall average decrease of 3.9% was approved for the advisory loss costs in the voluntary market. This is the 14th consecutive decrease for loss costs in the voluntary insurance market. An overall average rate level decrease of 8.8% was approved in the Assigned Risk Market.

Indemnity and medical costs per case exhibit year-to-year variability. Lost time-claim frequency values continue to show a long-term pattern of decline.

The Department brought no legislation impacting workers' compensation during the 2025 legislative session. Similarly, the legislature passed no changes to SDCL Chapter 62 during the 2025 legislative session.

Although it would not have directly impacted this program, a proposal was introduced "to require proof of workers' compensation insurance for contractors of public improvements." SB 157 2025. The bill passed out of the Senate, but the House Commerce and Energy Committee deferred that bill to the 41st legislative day on a 7-6 vote.

Three South Dakota Supreme Court rulings were issued since the last update on court rulings.

In *Arneson v. GR Management, LLC and Risk Admin. Services, Inc.* (2024 S.D. 61), Claimant suffered an electrical shock while working for employer which the Department determined contributed to two medical conditions leading him to be permanently and totally disabled under the odd-lot category. After an initial appeal, the circuit court found the injury only contributed to one of the two medical conditions and reversed the Department's finding that Claimant is permanently and totally disabled. The Supreme Court reviewed and reinstated the Department's conclusions, including that Claimant is

permanently and totally disabled, despite finding error in the Department's initial odd-lot category analysis.

In *Brewer v. Tectum Holdings, Inc d/b/a Truxedo and Berkshire Hathaway Homestate Insurance Co.* (2025 S.D. 23), Claimant was injured at work while lifting a pallet in 2015. Employer initially covered medical care and pain treatment, but following an independent medical examination, Insurer refused to continue to cover Claimant's treatment, and a dispute arose. At an administrative hearing before the Department, the parties submitted medical expert testimony recorded by deposition. The administrative law judge (ALJ) resolved the deposition testimony in favor of Employer/Insurer on the issue of continued coverage of Claimant's treatment. Separately, the ALJ denied Claimant's request for permanent total disability benefits. The Court reviewed the deposition testimony *de novo*, reversed the ALJ's holding on continued treatment coverage, and remanded the case for further proceedings on that issue. Separately, the Court affirmed the ALJ's denial of permanent total disability benefits.

In *Pham v. Smithfield Foods* (2025 S.D. 41), Claimant was injured on the job and Employer voluntarily initiated payments for treatment. In 2020, Claimant filed a petition for hearing with the Department for payment of certain treatments following a permanent physical disability memorandum. Following the hearing, the administrative law judge (ALJ) issued a decision in favor of Employer and determined that Claimant failed to meet her burden under SDCL 62-1-1(7). Claimant appealed to circuit court. The circuit court reversed the Department, finding "for the first time in the litigation" that SDCL 62-7-33 applied. *Id.* Employer appealed to the Supreme Court, which reversed the circuit court, rejecting its application of SDCL 62-7-33 in this context and affirming the ALJ.

Thank you to the Council for this forum.

Gerald M. McCabe