

**To:** Workers' Compensation Advisory Council

**From:** Amber L. Mulder, Director of Labor and Management, South Dakota  
Department of Labor and Regulation

**Date:** November 18, 2019

**Subject:** 2019 Division Report on the State Workers' Compensation System

This report is prepared for submission at the November 18, 2019, 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, 2019, through June 30, 2020, an overall average decrease of 11.9% was approved for the advisory loss costs in the voluntary market, and an overall average rate level decrease of 19.1% was approved in the Assigned Risk Market from the previous year. Due to the classification swing limit of 15%, the maximum increase per classification in the voluntary market is 3.1%, and the maximum decrease per classification is 26.9% from the prior year loss costs. This is the eighth year of decreases in the voluntary insurance market. Injury frequency continues to decrease and medical and indemnity severity increased slightly.

At the last Council meeting on October 9, 2018, there was discussion on a proposed change to SDCL 62-4-53 that would clarify the requirement for expert opinion when proving permanent total disability. The Council took no action on the proposal. The legislation was not brought by industry during the 2019 Legislative Session. The only legislation impacting this council during the 2019 Legislative Session was SB 36. An Act to revise the membership of the State Workers' Compensation Advisory Council passed, which allows the Governor to appoint the Chair of the WCAC. This legislation was signed by the Governor on March 7, 2019.

There were no Supreme Court cases that touch on workers' compensation since the last Council meeting.

With regard to *Bangston v. Charles Baker Farms*, a case discussed at last year's council meeting, there was a constitutional challenge of SDCL 62-3-15(2), exempting farm and agricultural laborers from the workers' compensation laws. The SD Supreme Court has issued a final ruling in that case and has ruled that statute is constitutional.

Thank you to the Council for this forum.

Amber L. Mulder