



HANDBOOK FOR MINNESOTA CITIES

**Chapter 9
Working Conditions for Public
Employees**

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This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.



HANDBOOK FOR MINNESOTA CITIES

Chapter 9 Working Conditions for Public Employees

Learn about the protections required for worker safety by the Occupational Safety and Health Act (OSHA), as well as employee benefits in case of work-related injuries that must be provided under state workers' compensation law. Limits and protections for employee political activity are also included.

RELEVANT LINKS:

For more information, contact the [Minnesota Department of Labor and Industry](#) at 651-284-5005 or 1-800-342-5354. [Minn. Stat. § 176.181](#). The [League of Minnesota Cities Insurance Trust](#) provides workers' compensation insurance to cities. See Handbook, [Municipal Budgeting](#).

[Minn. Stat. § 176.139](#). For a free notice, contact the [Minnesota Department of Labor and Industry](#) at 651-284-5005 or 1-800-342-5354.

[Minn. Stat. § 176.011, subd. 9](#).

[Minn. Stat. § 176.011, subd. 9\(6\)](#). See LMC information memo, [LMCIT Workers' Compensation Coverage Guide](#).

I. Workers' compensation

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

A. Notice

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

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.

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

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RELEVANT LINKS:

[Graf v. Montgomery Ward & Co.](#), 234 Minn. 485, 49 N.W.2d 797 (Minn. 1951). LMC information memo, [Employee or Independent Contractor? The Legal Implications and Ramifications.](#)

[Tillquist v. Dep't of Labor & Indus.](#), 216 Minn. 202, 12 N.W.2d 512 (Minn. 1943). Minn. Stat. § 176.011, subds. 1 and 9.

Minn. Stat. § 176.021, subd. 1. See LMC information memo, [Workers' Compensation Claim Management.](#)

Minn. Stat. § 176.101.

Minn. Stat. § 176.021, subds. 5 and 7. A.G. Op. 523-e (Dec. 23, 1981).

Minn. Stat. § 176.021, subd. 5.

Generally, city employees appointed by the council or city manager 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 to 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 individuals that are identified as “independent contractors” might be covered by the Act under this definition.

The courts have said a public officer is different from an employee in the greater “importance, dignity, and sovereignty” of the former’s position. According to the court, a public-officer position must also require the exercise of independent sovereign power in its performance. The Workers’ Compensation Act would generally cover most people the city employs on a regular basis.

C. Eligibility for compensation

The Workers’ Compensation Act provides coverage for the personal injury or death of an employee “arising out of and in the course of employment without regard to the question of negligence.” This generally includes occupational diseases as well as accidental injuries.

D. Benefits payable

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.

The law provides that if covered public employees continue to receive a salary while they are receiving workers’ compensation benefits, the city should deduct the amount of the workers’ compensation benefits from the salary.

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.

RELEVANT LINKS:

[Minn. Stat. ch. 182.](#)
[Minn. R. ch. 5210.](#)
For more information contact the [Minnesota Department of Labor and Industry](#) at 651-284-5005 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 651-284-5005 or 1-800-342-5354.

[Minn. Stat. § 182.655.](#)
Cities with a population under 30,000 with [LMCIT](#) workers' compensation coverage may participate in a [Regional Safety Group](#).

[Minn. Stat. § 182.653.](#)

[Minn. Stat. § 182.654, subd. 11.](#)

E. Minimizing costs

Cities should strive to have employees report any injury, no matter how small, to the city immediately after the incident, and the city should contact its insurer as soon as possible. All cities should also institute a safety program because workers' compensation premiums are largely based on the frequency of claims. Cities that purchase workers' compensation insurance through the League of Minnesota Cities Insurance Trust (LMCIT) are eligible for free advice on how to minimize the possibility of claims.

II. Occupational Safety and Health Act

The Minnesota Occupational Safety and Health Act (OSHA) was enacted to reduce the number of safety and health hazards in the workplace.

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.

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.

A. Hazardous substances

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 cities, 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.

B. Right to refuse to work

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.

RELEVANT LINKS:

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

[Minn. Stat. § 182.659, subd. 1.](#)

[Minn. Stat. § 182.659, subd. 4.](#)

[Minn. Stat. § 182.66, subd. 1.](#)
[Minn. Stat. § 182.662, subd. 1.](#)

[Minn. Stat. § 182.666.](#)

[Minn. Stat. § 182.667.](#)

If the employer does not reassign the worker to another area, the worker may refuse to work and receive pay.

C. Inspection

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.

The commissioner of labor and industry must set regulations for the inspection of places of employment.

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 in effect for longer than three days.

D. Penalties

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 a fine of up to \$7,000 for each violation of posting requirements, a fine of up to \$7,000 for violating citations, and a fine of up to \$7,000 per day for continuing violations.

The Act provides criminal penalties of a fine of up to \$20,000, up to 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.

RELEVANT LINKS:

[Minn. Stat. § 182.669.](#)

[Minn. Stat. § 182.653, subs. 8, 9. Minn. R. 5208.1500, K.](#) For more information on how to set up an AWAIR program, contact the [League of Minnesota Cities Insurance Trust](#), 145 University Avenue West, St. Paul, MN 55103-2044. Telephone: (651) 281-1200 or (800) 925-1122; See also [AWAIR \(A Workplace Accident & Injury Reduction Program\) Safety Manual for Cities](#).

[Minn. Stat. § 182.653, subd. 8.](#)

Employers could also be subject to criminal penalties of a fine of up to \$70,000, up to six months 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 conviction for a violation committed after a first conviction shall be a fine of up to \$100,000, imprisonment of up to one year, or both.

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.

E. AWAIR safety plans

A workplace accident and injury reduction program (AWAIR) is designed to reduce unsafe acts that lead to on-the-job injuries. Cities that provide any services (for example, police, utility, or fire services) with the exception of public-administration services, must comply with AWAIR requirements.

To comply with AWAIR, a city must establish a written AWAIR 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.
- How safe work practices and rules will be enforced.

RELEVANT LINKS:

[5 U.S.C. §§ 1501-1503](#). For more information on the Federal Hatch Act see the [U.S. Office of Special Council](#) website.

[5 U.S.C. §§ 1502-1503](#).

A city must conduct and document a review of the AWAIR program at least annually and document how program procedures are met.

III. Political activities of employees

A. Federal Hatch Act

The Hatch Act applies to local government employees or officers if the United States or a federal agency finances their 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 employee or officer 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 or officers 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.

Local government employees or officers may serve as volunteers for a partisan candidate, campaign committee, political party, or nominating convention of a political party. Under the law, employees or officers 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. Employees or officers may sign nominating petitions for candidates in a partisan election for public office and may originate or circulate these petitions. Employees or officers may also drive voters to the polls. Employees or officers may make a financial contribution to a political party or organization and solicit and collect voluntary political contributions.

Local government employees and officers subject to the provisions of the Hatch Act may not:

RELEVANT LINKS:

[Minn. Stat. § 211B.09. Minn. Stat. § 211B.19.](#)

[Martin v. Itasca County, 448 N.W.2d 368 \(Minn. 1989\). Minn. Stat. § 211B.19.](#)

- 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 if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency.

B. Minnesota law

No city 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. State law also provides that no political subdivision may impose or enforce any additional limitations on the political activities of its employees. Any person violating any of these provisions is guilty of a misdemeanor.

The Minnesota Supreme Court has held that a county's policy requiring employees to take a temporary unpaid leave of absence during a political candidacy was constitutional under the U.S. Constitution. The Supreme Court also held that a county employee who was a candidate for a county office had no due process right to a hearing before being placed on unpaid leave. The Supreme Court reasoned that government employers have a public interest in prohibiting government employees from certain political activity to ensure that civil servants serve the public and not a political party. However, the Supreme Court did not address a state statute that appears to limit the restrictions government employers may place on government employees' political activities. Cities should consult their city attorney before adopting any policies regulating their employees' political activities.

A city may expect a city employee to spend working hours performing city 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.