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☛ Informational hearing October 14, 2009: Worker's Compensation Insurance Issues

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Forestry...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2013)

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Jim Doyle, Governor
Roberta Gassman, Secretary
Frances Huntley-Cooper, Division Administrator

October 14, 2009

To: Representative Gary Sherman (Chair), and Members of the Assembly
Committee on Forestry

From: John Conway and Brian Krueger, DWD Worker's Compensation Division

We are pleased to meet with the Committee to discuss issues pertaining to worker's compensation coverage in the Wisconsin logging industry. We wish to share the following documents to help frame our discussion:

1. A summary of the statutory mandate for worker's compensation coverage in Wisconsin, including definitions of "employer" and "employee," and the nine point test for establishing "independent contractor" status in Wisconsin.
2. The 2007 state-by-state premium rates for the manual logging class code.
3. Excerpted material from OSHA's National Census of Fatal Occupational Injuries in 2008.

We look forward to discussing these and other matters with the Committee at the upcoming hearing.

Who is an employer under the Wisconsin Worker's Compensation Act?

Under s. 102.04(1)(b), Wis. Stats., an employer is defined as:

1. Every person who usually employs 3 or more employees, whether in one or more trades, businesses, professions or occupations, and whether in one or more locations.
2. Every person who usually employs less than 3 employees, provided the person has paid wages of \$500 or more in any calendar quarter for services performed in this state. Such employer shall become subject on the 10th day of the month next succeeding such quarter.

Who is an employee under the Wisconsin Worker's Compensation Act?

Under section 102.07(4)(a), Wis. Stats., an employee is defined as "[e]very person in the service of another under any contract of hire, express or implied, all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer, including minors, who shall have the same power of contracting as adult employees...but not including (1) domestic servants, (2) any person whose employment is not in the trade, business, profession or occupation of the employer,...unless the employer elects to cover them."

When is an employer required to have a worker's compensation policy under the Wisconsin Worker's Compensation Act?

Under s. 102.04(1)(b), Wis. Stats., an employer becomes subject to the Act and must carry a worker's compensation insurance policy if:

- 1) The employer usually employs three or more persons full-time or part-time. This employer needs insurance immediately upon employing a third person.
- 2) The employer has one or more full-time or part-time employees and has paid gross combined wages of \$500 or more in any calendar quarter for work done in Wisconsin. This employer must have insurance by the 10th day of the first month of the next calendar quarter. (There are four calendar quarters in a calendar year; the 1st quarter is January through March, the 2nd quarter is April through June, the 3rd quarter is July through September; and, the 4th quarter is October through December.)
- 3) The farm (farmer) employs 6 or more employees (at one or more locations) on the same day for 20 days (consecutive or non-consecutive) during a calendar year. A calendar year is January through December. This farmer must have insurance within 10 days after the 20th day of employment. Some relatives of the farmer are not counted towards the 6 employees, but will be covered under a policy if one is purchased.

What about independent contractors?

If one company hires another company to come in and do some work for it, the second company is ordinarily an "independent contractor" and not an employee of the first company. Sometimes, however, a company hires one person to come in and perform a specific job and disputes arise as to whether or not that person is an employee or an independent contractor.

There are specific statutory conditions under s. 102.07(8), Wis. Stats., that must be met before a worker in the service of another person is considered not to be an employee. There is a nine-part test that establishes whether independent contractors are employees. Any owner/operator or independent contractor who does not meet and maintain all of the nine specific tests of independence in the Wisconsin law (and who is not an employer himself or herself) is an employee of any employer they are working under in Wisconsin. Independent contractors who have no employees or who are not required to be insured may buy a policy to cover themselves.

What is the nine-part definition of an independent contractor under the Wisconsin Worker's Compensation Act?

Under s. 102.07(8)¹ of the Act, a person is required to meet a nine-part test before he or she is considered an independent contractor rather than an employee. A person is not an independent contractor for worker's compensation purposes just because the person says they are, or because the contractor over them says so, or because they both say so, or even if other regulators (including the federal government and other state agencies) say so. The nine-part statutory test set forth under s. 102.07(8) of the Act, must be met before a person working under another person is considered not to be an employee. To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements:

The worker's compensation employment relationship will be determined, in each case, solely by the evidentiary facts relating to the nine-point statutory test. Any worker's compensation claim filed by an independent contractor injured while performing services under these conditions is determined on a case-by-case basis according to the facts and circumstances at the time of injury. To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements:

1. Maintain a separate business.
2. Obtain a Federal Employer Identification number from the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on the work or service in the previous year. (A social security number cannot be substituted for a FEIN and does not meet the legal burden of s. 102.07(8) of the Act.)
3. Operate under specific contracts.
4. Be responsible for operating expenses under the contracts.
5. Be responsible for satisfactory performance of the work under the contracts.
6. Be paid per contract, per job, by commission or by competitive bid.
7. Be subject to profit or loss in performing the work under the contracts.
8. Have recurring business liabilities and obligations.
9. Be in a position to succeed or fail if business expense exceeds income.

¹ Except as provided in par. (b), every independent contractor is, for the purpose of this chapter, an employee of any employer under this chapter for whom he or she is performing service in the course of the trade, business, profession or occupation of such employer at the time of the injury.

(b) An independent contractor is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:

1. Maintains a separate business with his or her own office, equipment, materials and other facilities.
 2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on that work or service in the pervious year.
 3. 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.
 4. Incurs the main expenses related to the service or work that he or she performs under contract.
 5. Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service.
 6. 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.
 7. May realize a profit or suffer a loss under contracts to perform work or service.
 8. Has continuing or recurring business liabilities or obligations.
 9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.
- (c) The department may not admit in evidence state or federal laws, regulations, documents granting operating authority or licenses when determining whether an independent contractor meets the conditions specified in par. (b) 1 or 3. [s. 102.07(8), Stats.]

Rank	State	All States Year 2007 - Classification Code 2702 - Manual Logging or Lumbering Premium Rate Per \$100 of Payroll
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1	Kentucky	\$122.00
2	Tennessee	\$63.71
3	Ohio	\$54.49
4	Alaska	\$52.79
5	Utah	\$51.06
6	Illinois	\$50.36
7	Nevada	\$49.70
8	Delaware	\$47.91
9	South Dakota	\$47.29
10	Pennsylvania	\$45.35
11	North Carolina	\$43.95
12	Missouri	\$42.19
13	Mississippi	\$41.79
14	Louisiana	\$38.87
15	New Hampshire	\$38.76
16	Georgia	\$38.33
17	Connecticut	\$35.67
18	Michigan	\$35.55
19	New York	\$35.37
20	Virginia	\$35.17
21	Rhode Island	\$33.95
22	West Virginia	\$33.55
23	Wisconsin	\$32.82
24	District of Columbia	\$32.77
25	Alabama	\$32.40
26	Oregon	\$31.91
27	Hawaii	\$31.01
28	New Jersey	\$29.71
29	Maine	\$29.60
30	Montana	\$29.31
31	Nebraska	\$27.78
32	Arkansas	\$27.72
33	Indiana	\$25.84
34	Arizona	\$25.54
35	New Mexico	\$25.47
36	Texas	\$24.38
37	Kansas	\$23.98
38	Iowa	\$23.88
39	South Carolina	\$23.48
40	Colorado	\$22.18
41	Idaho	\$20.93
42	California	\$20.63
43	Oklahoma	\$20.10
44	Virginia	\$19.94
45	Massachusetts	\$18.99
46	Maryland	\$17.44
47	Wyoming	\$15.12
48	Washington	\$13.02
49	Florida	\$10.63
50	North Dakota	\$7.77
51	Minnesota	\$7.22

WI 2 ADJUSTED
PER 100% OF

Note: The rates listed for each state are calculated manual rates and may include loss cost multipliers and assessments. Where states appear to have the same rate for a class, the ranking may be done based on the values prior to rounding to two decimal places. If the states have exactly the same calculated manual rate, they are ranked alphabetically.

Source: Research and Analysis Section, Information Management Division, Oregon Department of Consumer and Business Services (12/08)

2007). Included in the manufacturing total are the 14 workers who perished in a sugar refinery explosion in Georgia in February 2008.

Among service-providing industries, workers in the transportation and warehousing sector incurred 762 fatalities, a 14 percent decrease. Truck transportation, the largest subsector in transportation and warehousing, had a 20 percent decrease in fatalities in 2008. Among other transportation sectors, workers in air and water transportation industries incurred fewer fatalities in 2008, but the number of fatal work injuries in rail transportation increased.

Both wholesale and retail trade had fewer fatal work injuries in 2008 than in 2007. Fatalities were down 17 percent in retail trade and 15 percent in wholesale trade in 2008.

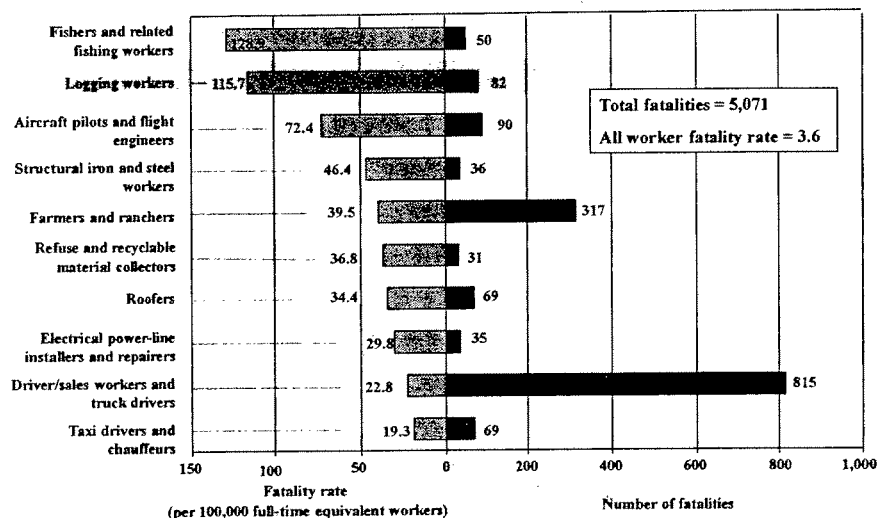
Other service-providing industry sectors with large declines in 2008 included the information industry (down 43 percent), professional and business services (down 18 percent), the leisure and hospitality industry (down 10 percent), and educational and health services (down 8 percent). Fatalities in the finance and insurance sector were down nearly 50 percent in 2008, from 46 to 24 fatalities.

Fatalities among government workers were down 4 percent. While fatalities incurred by federal and local government workers decreased in 2008, fatalities among state government workers were at the highest level since 1998 (115 fatal work injuries in 2008).

Profile of fatal work injuries by occupation

About one-fourth of all occupational fatalities in 2008 involved workers in transportation and material moving occupations, though fatalities among these workers declined by 12 percent in 2008. Driver/sales workers and truck drivers, the largest occupation group in this sector, led the decline with 16 percent fewer fatal work injuries in 2008 than in 2007. Heavy and tractor-trailer truck driver fatalities were lower by 13 percent.

Selected occupations with high fatality rates, 2008*



*Data for 2008 are preliminary.

NOTE: In 2008, CFOI implemented a new methodology, using hours worked for fatality rate calculations rather than employment. For additional information on the fatality rate methodology changes please see <http://www.bls.gov/iif/oshnotice10.htm>.

SOURCE: U.S. Bureau of Labor Statistics, U.S. Department of Labor, 2009.

Fatalities in construction and extraction occupations, which accounted for nearly one-fifth of all fatalities in 2008, decreased by 18 percent from the previous year. Construction laborer fatalities were

down 31 percent (from 345 in 2007 to 239 in 2008). Carpenters, brick masons, electricians, roofers, pipe layers, plumbers, and extraction workers were among the other groups that saw declines in 2008. First-line supervisors/managers of construction trades and extraction workers, construction equipment operators, and painters/paperhangers were among the occupational groups in construction and extraction that had higher numbers of fatal injuries in 2008.

Fatal work injuries among protective service occupations fell by 13 percent in 2008 after rising 22 percent from 2006 to 2007. Fewer fatalities among law enforcement workers (down 15 percent), fire fighting and prevention workers (down 14 percent), and security guards (down 23 percent) led the decline in this occupational group.

Among the occupation groups with a higher number of fatalities in 2008 were farming, fishing, and forestry (up 6 percent) and management occupations (up 2 percent). **Four occupations with particularly high fatality rates in 2008 were fishers and related fishing workers with a fatality rate of 128.9 per 100,000 FTE's, logging workers (115.7), aircraft pilots and flight engineers (72.4), and structural iron and steel workers (46.4).**

Profile of fatal work injuries by demographic characteristics

While the number of fatal work injuries among White, non-Hispanic workers fell 8 percent in 2008, greater declines were observed among non-Hispanic Black or African American workers (down 16 percent) and Hispanic or Latino workers (down 17 percent).

The decline in fatal work injuries among Hispanic or Latino workers in 2008 primarily involved foreign-born Hispanic or Latino workers. Fatalities among foreign-born Hispanic or Latino workers were lower by 24 percent (from 634 in 2007 to 480 in 2008), but among native-born Hispanics, the decline was only 3 percent.

Overall, 795 fatal work injuries were incurred by workers who were born outside of the United States—a decline of 21 percent from 2007. Fatalities involving foreign-born workers accounted for 16 percent of all fatal work injuries in the U.S. Of the foreign-born workers who were fatally-injured in the U.S. in 2008, the largest share (42 percent) was born in Mexico.

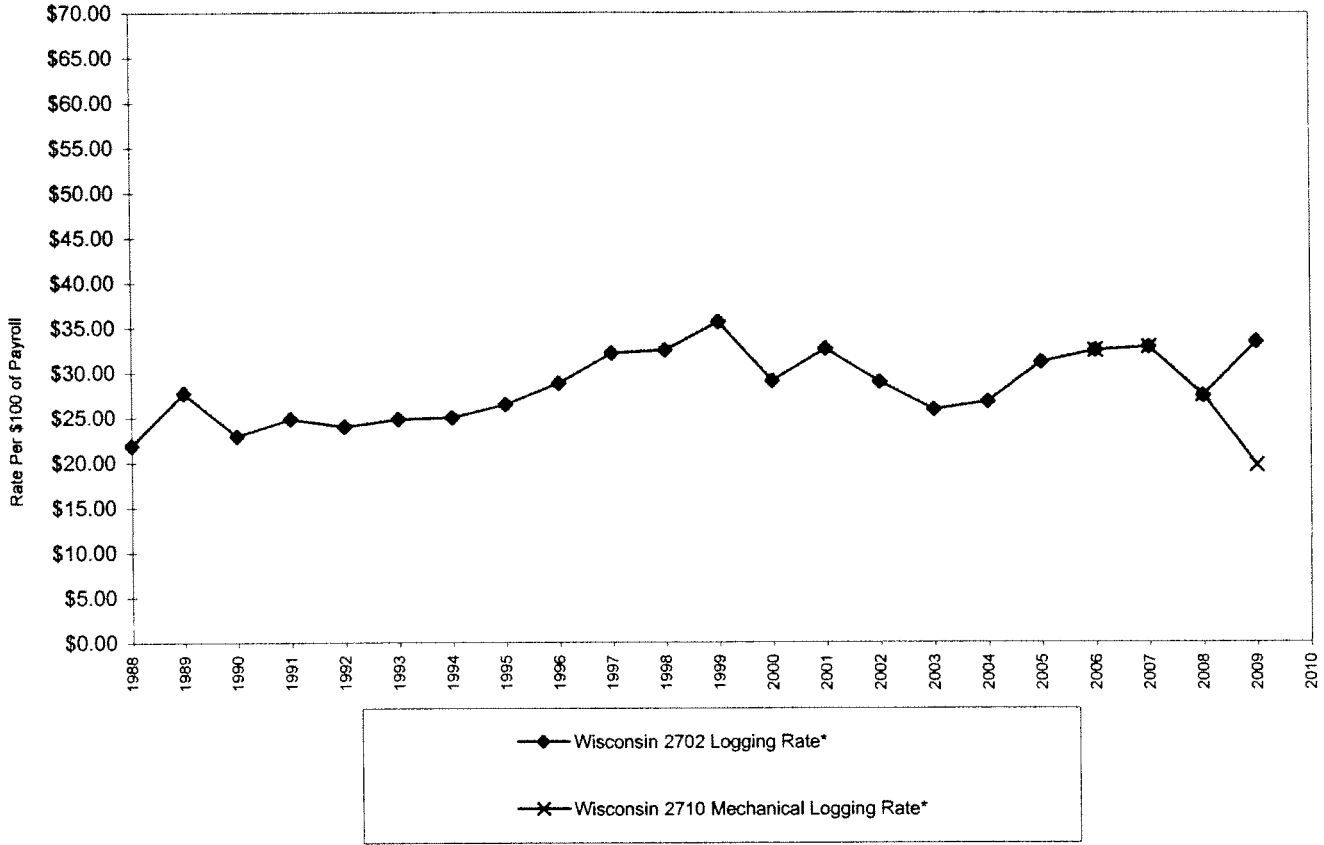
The number of fatalities declined for all age categories in 2008 except for 16 to 17 year-old workers. Fatality rates for 16 to 17 year-old workers rose from 1.9 in 2007 to 2.5 in 2008.

Self-employed workers had a 4 percent drop in fatalities, while fatalities among wage and salary workers fell by 12 percent. Workplace fatalities among both male and female workers decreased in 2008.

Profile of fatal work injuries by State

Thirty-five States and the District of Columbia reported lower numbers of fatal work injuries in 2008 than in 2007, 14 States reported higher numbers, and one State was unchanged. For more detailed State results, contact the individual State agency responsible for the collection of CFOI data in that State. Although data for Puerto Rico and the Virgin Islands are not included in the national totals for this release, results for Puerto Rico and the Virgin Islands are available. Participating agencies and their telephone numbers are listed in Table 6.

Wisconsin Worker's Compensation Rate History For
 Classification Code 2702 - Manual Logging & Classification Code 2709 - Mechanized Logging

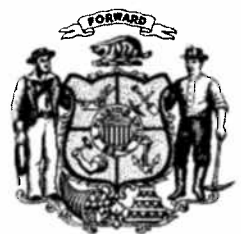


Year	Wisconsin 2702 Manual Logging WC Premium Rate Per \$100 of Payroll	Wisconsin 2709 Mechanized Logging WC Premium Rate Per \$100 of Payroll
1988	\$ 21.88	
1989	\$ 27.73	
1990	\$ 22.92	
1991	\$ 24.81	
1992	\$ 23.95	
1993	\$ 24.77	
1994	\$ 24.95	
1995	\$ 26.44	
1996	\$ 28.77	
1997	\$ 32.13	
1998	\$ 32.47	
1999	\$ 35.62	
2000	\$ 29.04	
2001	\$ 32.59	
2002	\$ 28.92	
2003	\$ 25.84	
2004	\$ 26.75	
2005	\$ 31.14	
2006	\$ 32.48	\$ 32.48
2007	\$ 32.82	\$ 32.82
2008	\$ 27.47	\$ 27.47
2009	\$ 33.40	\$ 19.67

* Wisconsin rates are effective 10/01/2009



WISCONSIN STATE LEGISLATURE



①

9 POINT TEST

CF. UNEMPLOYMENT = 7 OUT OF 9

DOR = 20 QUESTION TEST

MINN = SUBSIDIZED LOGGING WC

30¢ PER CORD

SAFETY ↑ = PARTICIPATION ↑ = WAGES ↑ = PREMIUMS ↓

GOOD FOR LOGGERS

G? IS THERE A CORRESPONDING BENEFIT TO END USERS

ANS: POSSIBLY STABILITY OF/AVAILABILITY OF WOOD

- MIN/MIN POLICY - IF ANY POLICY

900 ANNUAL COST = NO CLAIMS = 680 REBATE

AVERAGE OF ALL CLASSIFICATIONS ≈ \$2.21 PER \$100

STEPS TO REDUCE COST

→ CERTIFIED LOGGER TRAINING DISCOUNT (FLSTA)

ALL REPORTED WAGES

MECHANIZED = 55% OF TOTAL

MANUAL = 45% OF TOTAL

= PROTECTS EMPLOYER AS WELL AS EMPLOYEE

MURSKU: SELF INSURED POOL LEGISLATION

② GEN MANAGER 17 YEARS

MICH = SELF-INSURED

- EXCLUSION FORMS -

"TEETH"

→ OWNER RUN - SELF POLICING

PROPERLY FUNDED

(MI FUND ADMINISTRATOR COULDN'T TESTIFY)

- ① ^{1ST CHOICE} SELF-INSURED
- ② ^{2ND CHOICE} MUTUAL

G? WHY SELF-INSURANCE BETTER THAN CAPTIVE MUTUAL

F? WOULD ELIMINATING MIN/MIN ACHIEVE SAME GOAL AS SELF-INSURED FUND

A: NO: MEMBERS WOULDN'T CONTROL OR GET REFUNDS

MI? LEGALITY OF SELF-INSURANCE

A: MICHIGAN ALLOWS & IS CLOSED MUST BE ^{MICH} COMPANY

MU? [?] STANDARDS?

EL? [?] LIGHTLY CAPITALIZED SOLE/SMALL LEASERS

WOULD THEY BENEFIT AS WELL UNDER SELF INS

③ LOGGER. 27 YEARS
"TY TO JOHN CONWAY"

- SALES ON PUBLIC LAND BEING CONDUCTED
W/O FOLLOWING LAWS ON WORKERS COMP REQ
SUB-CONTRACTORS
MIN/MIN POLICIES
NO PERSONAL COVERAGE

④

RESPECT FOR COMMITTEE MEMBERS

MINNESOTA BENEFITS FROM HAVING
OPEN RATING SYSTEM
SUBSIDIES

MICHIGAN

SELF-INSURANCE IS A HELP BUT
SAFETY FACTOR IS KEY - (RSTA)

SURVEY -

6? TWO SUGGESTIONS

- SELF INSURANCE
- CAPTIVE MUTUAL
- REQUIRE ALL WORKERS TO HAVE INSURANCE
ON ANY JOB ON PUBLIC LAND

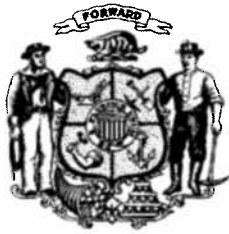
FRISKE INTRO +

CLARK INTRO + / (1) +

CLARK



WISCONSIN STATE LEGISLATURE



Text Cleveland

Wia Compensation Relij Bureau.

262-796-4586

RE: hearing.

will not come.