

2013 DRAFTING REQUEST

Bill

Received: 11/26/2013 Received By: gmalaise
 Wanted: Today Same as LRB:
 For: Workforce Development 7-6704 By/Representing: Jim O'Malley
 May Contact: Drafter: gmalaise
 Subject: Employ Priv - worker's comp Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: jim.omalley@dwd.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Worker's compensation; various changes

Instructions:

See attached--various changes relating to worker's compensation agreed to by the Worker's Comp Council

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 12/10/2013	kfollett 12/12/2013		_____			
/P1	gmalaise 1/2/2014		jfrantze 12/13/2013	_____	lparisi 12/13/2013		State S&L
/P2	gmalaise 1/17/2014	kfollett 1/8/2014	jfrantze 1/8/2014	_____	srose 1/8/2014		State S&L
/P3	gmalaise	kfollett	jfrantze	_____	mbarman		State

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	1/23/2014	1/21/2014	1/22/2014	_____	1/22/2014		S&L
/1	gmalaise 1/25/2014	kfollett 1/23/2014	jfrantze 1/23/2014	_____	sbasford 1/23/2014		State S&L
/2		kfollett 1/27/2014	jmurphy 1/27/2014	_____	srose 1/27/2014	mbarman 1/27/2014	State S&L

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1/?	gmalaise	1/15/12 12/12	1/15/12 12/12	03/12 01/13			

FE Sent For:

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Malaise, Gordon

From: O'Malley, Jim T - DWD <Jim.OMalley@dwd.wisconsin.gov>
Sent: Thursday, November 21, 2013 4:15 PM
To: Malaise, Gordon
Subject: WORKER'S COMPENSATION "AGREED UPON BILL"

The Worker's Compensation Advisory Council (WCAC) is in the process of discussing and considering proposed statutory changes for the next "WC Agreed Upon Bill". It may take another few weeks before the WCAC reaches agreement on all proposals. The next meeting of the WCAC is set for December 3, 2013.

The WCAC has tentatively agreed to some amendments proposed by the Labor and Industry Review Commission (LIRC) and by the Worker's Compensation Division (WCD) to Chapter 102, Stats. At this time I am forwarding the statutory amendments that were tentatively approved by the WCAC. I will forward other proposed statutory changes for drafting after they are approved.

The attachment of the left below contains more information and suggested language about some of the proposals made by the WCD.

The attachment in the middle below contains some other information about the WCD's proposals. On page 2 of this document the proposals to amend s. 102.28, Stats., related to self-insurance have not yet been approved by the WCAC.

The attachment on the right contains more information and suggested language about LIRC's proposals, No. 5, 6 & 7 below.



The WCAC tentatively agreed to approve the following proposed amendments to Chapter 102, Stats.

- 1.* s. 102.01 (2) (d) This amendment is to the definition of "municipality". The purpose of the amendment is to add to the definition of municipality special purpose district, political subdivision and taxing authority of the state.
- 2.* s. 102.07 (12m) This amendment will allow technical colleges as defined under Chapter 38, Stats., colleges defined under Chapter 36, Stats., post secondary education institutions and higher education institutions to accept worker's compensation liability for students engaged in performing services as part of a work training, work experience or training or work experience and extend the exclusive remedy protection to the employers who provide the work training or work experience.
- 3.* s. 102.077 (1) & (2) The purpose for this amendment is the same as for No. 2. The amendment will allow technical colleges, colleges, post secondary education institutions and higher education institutions to elect for purposes of Chapter 102, Stats., as its employee a student described in s. 102.07 (12m).

4. s. 102.13 (2) (c) This amendment will clarify that a treating practitioner's final medical report is not required in cases where the claim is completely denied and the injured worker does not contest the denial. The intent is to not require a final treating practitioner's report in cases where there is a complete denial of the claim and the claim is not contested by the employee. The purpose for this amendment is to remedy the situation where a claim is partially denied. An example of a partial denial is when a WC insurance carrier or self-insured employer pays indemnity for more than three (3) weeks, discontinues payments stating the claim is denied and that no final report is required. The intent is to require the final treating practitioner's report when any of the conditions in s. 102.13 (2) (c) occur even if additional payments are denied.
5. s. 102.18 (3) This amendment was proposed by LIRC. There are two (2) matters covered in this proposed amendment. The first is that appeals of orders awarding or denying compensation are to be filed only with LIRC. Appeals will no longer be filed with the Department of Workforce Development. The second is to clarify the language of the standard for LIRC to review late appeals. The standard remains the same; the appeal (petition for review) must be late for a reason beyond the petitioner's control before LIRC can review the appeal.
6. s. 102.18 (4) (a) This amendment was proposed by LIRC. This amendment is for language that to clarify that the time during which LIRC may set aside its decision for further consideration runs from the date of LIRC's decision. The amendment leaves open the option for LIRC to send decisions to the parties other than by mail in the future. 2013 WI 64
7. s. 102.23 (1) (a), (c) & (cm) This amendment was proposed by LIRC and is in response to the Wisconsin Supreme Court's decision in Excel Energy Services Inc. v. LIRC, 339 Wis.2d 413 (2013). With is amendment the party who files an appeal of a LIRC decision to the Circuit Court shall be named as the plaintiff and shall name as defendants LIRC and those persons or entities identified by LIRC in its decision as necessary to be named in the court appeal. The amendment also provides that a court may join other parties not identified by LIRC if the court determines the other party is necessary and joining the other party does not unduly delay the case. The amendment to s. 102.23 (1) (c) Stats., is to delete "the adverse party" and replace this with "any other defendant". The amendment to s. 102.23 (1) (cm), Stats., is to delete "an adverse party" and replace this with "a defendant".
8. s. 102.29 (8) The amendment to this section is needed to cross reference the amendments to ss. 102.07 (12m) & 102.077, Stats., to provide exclusive remedy to the employers who provide the students with work training or work experiences. See No. 2 & 3 above.
9. s. 102.43 (5) (c) The WCAC agreed to extend the sunset for two (2) additional years for this paragraph related to wages earned from part-time employment by an employee receiving instruction for vocational rehabilitation training. 102.23 (4)
10. s. 102.81 (1) (c) This amendment pertains to the Uninsured Employers Fund (UEF). This proposed amendment is complex and I will try to explain. The purpose for the amendment is to provide additional solvency for the UEF to make up for large claims in excess of \$1,000,000 that are not covered by excess or stop-loss reinsurance. The amendment provides that payments made on an uninsured claim under s. 102.81 (1) (a), Stats., in excess of \$1,000,000 shall be payable in the first instance by the UEF. The UEF will be entitled to an annual reimbursement for payments made on each claim in excess of \$1,000,000 in the prior calendar year when that claim is not covered under an excess or stop-loss reinsurance policy as specified under s. 102.81 (2), Stats. The cost for the reimbursement is to be paid from the annual assessment for administrative expenses for worker's compensation operations. Section 102.75, Stats., covers administrative expenses of the Worker's Compensation Division. Section 20.445 (1) (ra), Stats., covers WC operations. The UEF will file a claim to receive reimbursement from the Department. The reimbursement claim will set forth the

payments made on any claim in excess of \$1,000,000 and the total payments made on any such claim in the prior calendar year. Claims for such reimbursement shall be approved by the Department. The total amount of reimbursement based on all claims requested by the UEF shall not be in excess of \$500,000 per calendar year. Payments made for UEF claims in excess of \$1,000,000 that are more than the \$500,000 per year maximum reimbursement amount shall remain payable to the UEF with reimbursement for such payments being made in the subsequent calendar year or calendar years subject to the maximum \$500,000 per calendar year reimbursement amount.

We suggest this amendment be included as another paragraph to s. 102.81, Stats. Do you think another section should be created for this amendment?

s. 20.445 (1) (ra), Stats., should also be amended to reflect this amendment. Do you think that s. 102.75, Stats., should also be amended?

Some examples of how the amendment will apply are as follows:

1. A UEF claim exceeds \$1,000,000 in payments and in 2015 the total claims payments for that claim are \$1,250,000. In 2016 the UEF could claim reimbursement of \$250,000.
2. A UEF claim exceeds \$1,000,000 and in 2016 the total payments for that claim are \$1 650,000. In 2017 the UEF could claim reimbursement of \$500,000 and in 2018 the UEF could claim reimbursement of \$150,000.

I will forward any additional amendments for drafting after they are approved by the WCAC.

Let me know if you have any questions. Thank you for your assistance.

Worker's Compensation Division Proposals for the 2013 Agreed Bill Cycle.

Item 1: Amend s.102.07 (12m), Wis. Stats. and s. 102.077 Wis. Stats., to extend the law to technical colleges and universities and colleges -- allowing them to accept liability for certain work experience students and extend the exclusive remedy protection to the worksite employers.

Proposed Revision:

Under section 102.07(12m), Wis. Stats., A student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), or a technical college as defined under Chapter 38, or a college as defined under Chapter 36, or a postsecondary education institution, or a higher education institution, while he or she is engaged in performing services as part of a school work training, work experience or training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employee of a school district, private school, technical college, college or a postsecondary education institution, or a higher education institution that elects under s. 102.077 to name the student as its employee.

Footnote: This allows school districts, technical colleges, colleges and institutions of higher education to accept liability for certain work experience students and extends the exclusive remedy protection to the worksite.

Section 102.077, Wis. Stats., Election by school district, private school, technical college, college, postsecondary education institution, or a higher education institution.

(1) A school district or a private school, as defined in s. 115.001 (3r), or a technical college as defined under Chapter 38, or a college as defined under Chapter 36, or a postsecondary education institution, or a higher education institution, may elect to name as its employee for purposes of this chapter a student described in s. 102.07 (12m) by an endorsement on its policy of worker's compensation insurance or, if the school district, private school, technical college, college, postsecondary education institution, or a higher education institution, is exempt from the duty to insure under s. 102.28 (2), by filing a declaration with the department in the manner provided in s. 102.31 (2) (a) naming the student as an employee of the school district, private school, technical college, college or a postsecondary education institution, or a higher education institution for purposes of this chapter. A declaration under this subsection shall list the name of the student to be covered under this chapter, the name and address of the employer that is providing the work training or work experience for that student and the title, if any, of the work training, work experience or work study program in which the student is participating.

(2) A school district, private school, technical college, college, postsecondary education institution, or a higher education institution may revoke a declaration under sub. (1) by providing written notice to the department in the manner provided in s. 102.31(2) (a), the student and the employer who is providing the work training or work experience for that student. A revocation under this subsection is effective 30 days after the department receives notice of that revocation.

102.29 (8)

Item 2: Clarify the definition of “municipality” under s. 102.01 (d), Wis. Stats.

Current law:

(d) "Municipality" includes a county, city, town, village, school district, sewer district, drainage district and family care district and other public or quasipublic corporations.

Proposed revision:

(d) "Municipality" includes a county, city, town, village, school district, sewer district, drainage district, family care district, special purpose district, political subdivision and taxing authority of the state and other public or quasipublic corporations.

Item 3: Clarify the intent of s.102.13 (2) (c), Wis. Stats.

CSB 409)

Background: Since the Plain Language Summary 2011 for Wisconsin Act 183 has been published to the WC Division's web site there have been questions regarding the language referencing denials that was added to Section 102.13(2) (c).

The intention behind the added language is to statutorily codify the fact that a treating practitioner's final medical report is not due in cases where the claim is completely denied (a denial of causation) and the injured worker does not contest the denial.

The added language in no way alters the fact that a treating practitioner's final medical report is due in cases where the claim is partially denied (a denial of the extent of disability) and there is accepted liability for any permanent disability or temporary disability that exceeds three (3) weeks. In other words, the reporting requirement laid out in DWD 80.02 (2) (e) 4 still stands.

Proposed revision:

(c) Except as provided in this paragraph, if an injured employee has a period of temporary disability that exceeds 3 weeks or a permanent disability, if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia, or if the injured employee sustained an eye injury requiring medical treatment on 3 or more occasions off the employer's premises, the department may by rule require the insurer or self-insured employer to submit to the department a final report of the employee's treating practitioner. The department may not require an insurer or self-insured employer to submit to the department a final report of an employee's treating practitioner when there is a complete denial of the employee's claim for compensation by the insurer or self-insured employer ~~denies the employee's claim for compensation~~ and the employee does not contest that denial. A treating practitioner may charge a reasonable fee for the completion of the final report, but may not require prepayment of that fee. An insurer or self-insured employer that disputes the reasonableness of a fee charged for the completion of a treatment practitioner's final report may submit that dispute to the department for resolution under s. 102.16 (2).

Item 5: Amend s. 102.81 (1), Wis. Stats. to provide for insurer reimbursement of uninsured employer fund claim payments made in excess of \$1 million dollars on a claim.

Proposed revision:

Sec. 20.445(1) (ra), Wis. Stats., Worker's compensation operations. The amounts in the schedule for the administration of the worker's compensation program by the department. All moneys received under ss. 102.28 (2) (b) and 102.75 for the department's activities and not appropriated under par. (rp) shall be credited to this appropriation. From this appropriation, an amount not to exceed \$5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation. From this appropriation, a sum-sufficient amount may be expended each fiscal year for payment of reimbursement of claim payments made under s. 102.81 (1) (c).

102.81 Compensation for injured employee of uninsured employer. (1) (a) If an employee of an uninsured employer, other than an employee who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for which the uninsured employer is liable under s. 102.03, the department or the department's reinsurer shall pay to or on behalf of the injured employee or to the employee's dependents an amount equal to the compensation owed them by the uninsured employer under this chapter except penalties and interest due under ss. 102.16 (3), 102.18 (1) (b) and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60.

(b) The department shall make the payments required under par. (a) from the uninsured employers fund, except that if the department has obtained reinsurance under sub. (2) and is unable to make those payments from the uninsured employers fund, the department's reinsurer shall make those payments according to the terms of the contract of reinsurance.

CR (c) Payments made on a claim under sub. (1) (a) in excess of \$1,000,000 shall be payable in the first instance by the uninsured employers fund. The fund shall be entitled to an annual reimbursement of payments made on each claim in excess of \$1,000,000 in the prior calendar year when that claim is not covered under an excess or stop-loss reinsurance policy under sub. (2). The cost of the fund reimbursement shall be paid from the appropriation under s. 20.445(1) (ra). To receive reimbursement under this paragraph, the uninsured employers fund shall file a claim for that reimbursement with the department setting forth the payments made on any claim that is in excess of \$1,000,000 and the total of such payments made in the prior calendar year. Claims for such reimbursement shall be approved by the department. The total reimbursement requested under this subsection shall not be in excess of \$500,000 per calendar year. Payments made in excess of the \$500,000 per calendar year maximum shall remain payable to the uninsured employers fund, reimbursement for such payments shall be made in the subsequent calendar year or calendar years predicated upon the \$500,000 per calendar year maximum reimbursement, until paid in full. This subsection shall become effective January 1, 2014.

Footnote: By limiting a fund reimbursement request to \$500,000 per calendar year, reimbursement payments will be spread out (smoothed) over a course of time to mitigate the impact of year-to-year volatility if multiple catastrophic claims are made against the uninsured employers fund.

(2) The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop-loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.930 and all provisions of subch. IV of ch. 16, except s. 16.753, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (rp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

(3) An injured employee of an uninsured employer or his or her dependents may attempt to recover from the uninsured employer, or a 3rd party under s. 102.29, while receiving or attempting to receive payment under sub. (1).

(4) An injured employee, or the dependent of an injured employee, who received one or more payments under sub. (1) shall do all of the following:

(a) If the employee or dependent begins an action to recover compensation from the employee's employer or a 3rd party liable under s. 102.29, provide to the department a copy of all papers filed by any party in the action.

(b) If the employee or dependent receives compensation from the employee's employer or a 3rd party liable under s. 102.29, pay to the department the lesser of the following:

1. The amount after attorney fees and costs that the employee or dependent received under sub. (1).
2. The amount after attorney fees and costs that the employee or dependent received from the employer or 3rd party.

(5) The department of justice may bring an action to collect the payment under sub. (4).

(6) (a) Subject to par. (b), an employee, a dependent of an employee, an uninsured employer, a 3rd party who is liable under s. 102.29 or the department may enter into an agreement to settle liabilities under this chapter.

(b) A settlement under par. (a) is void without the department's written approval.

(7) This section first applies to injuries occurring on the first day of the first July beginning after the day that the secretary files a certificate under s. 102.80 (3) (a), except that if the secretary files a certificate under s. 102.80 (3) (ag) this section does not apply to claims filed on or after the date specified in that certificate.

Worker's Compensation Division Proposals for the 2013 Agreed Bill Cycle.

1. Amend s.102.07 (12m), Wis. Stats. & s. 102.077 Wis. Stats., to extend the law to technical colleges and universities and colleges -- allowing them to accept liability for certain work experience students and extend the exclusive remedy protection to the worksite employers.

2. Clarify the definition of "municipality" under s. 102.01 (d), Wis. Stats. to make clear the definition includes special purpose district, political subdivision or taxing authority of the state.

Current law:

(d) "Municipality" includes a county, city, town, village, school district, sewer district, drainage district and family care district and other public or quasipublic corporations.

Proposed revision:

(d) "Municipality" includes a county, city, town, village, school district, sewer district, drainage district, family care district, special purpose district, political subdivision or taxing authority of the state and other public or quasipublic corporations.

3. Clarify the intent of s.102.13 (2) (c), Wis. Stats.

Background: Since the Plain Language Summary 2011 for Wisconsin Act 183 has been published to the WC Division's web site there have been questions regarding the language referencing denials that was added to Section 102.13(2) (c).

The intention behind the added language is to statutorily codify the fact that a treating practitioner's final medical report is not due in cases where the claim is completely denied (a denial of causation) and the injured worker does not contest the denial.

The Act 183 added language in no way alters the fact that a treating practitioner's final medical report is due in cases where the claim is partially denied (a denial of the extent of disability) and there is accepted liability for any permanent disability or temporary disability that exceeds three (3) weeks. In other words, the reporting requirement laid out in DWD 80.02(2) (e) 4 still stands.

4. Amend DWD 80.72 Health service fee dispute resolution process and DWD 81 Worker's Compensation Treatment Guidelines related to the implementation of ICD-10 codes. The International Classification of Diseases (ICD) is the standard diagnostic tool for epidemiology, health management and clinical purposes. It is used to monitor the incidence and prevalence of diseases and other health problems. ICD-10 implementation is scheduled for October 1, 2014.

5. Amend Sec. 20.445(1) (ra), Wis. Stats., Worker's compensation operations related to the Uninsured Employers Fund (UEF) to include from this appropriation, a sum-sufficient amount may be expended each fiscal year for payment of reimbursement of claim payments made under s. 102.81 (1) (c).

Add s. 102.81 (1) (c) to provide that UEF payments made on a claim under sub.in excess of \$1,000,000 shall be payable in the first instance by the uninsured employers fund. The fund shall be entitled to an annual reimbursement of payments made on each claim in excess of \$1,000,000 in the prior calendar year when that claim is not covered under an excess or stop-loss reinsurance policy. The cost of the UEF reimbursement shall be paid from the appropriation under s. 20.445(1)(ra), which is the annual operations assessment paid by insurance carriers that write worker's compensation insurance. The total reimbursement requested under this subsection shall not be in excess of \$500,000 per calendar year. By limiting a fund reimbursement request to \$500,000 per calendar year, reimbursement payments will be spread out (smoothed) over a course of time to mitigate the impact of year-to-year volatility if multiple catastrophic claims are made against the uninsured employers fund.

6. Amend section 102.28(7), Stats. and DWD 80.40(1) of the Wisconsin Administrative Code to provide that all assessments against self-insured employers for insolvency will be made on a pro rata basis by payroll. Under current law assessments are based on equal shares by company for the first year, then on a pro rata basis by payroll for any subsequent years.

7. Create s. 102.28 (2) (bm), (cm), and (7) (bm), Stats., amend sections 102.28(2)(a) and (7)(b), Stats., DWD 80.60(3) and DWD 80.61(1), (b) of the Wisconsin Administrative Code to clarify the Self-Insurers Advisory Council is not involved in the process of approving self-insurance status of political subdivisions and that political sub-divisions will not be not responsible for assessments to the self-insured employers liability fund, and that employees of the political subdivisions will not be eligible for benefits from the self-insured employers liability fund.

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State of Wisconsin

Labor and Industry Review Commission

**Brief Summary of LIRC Proposed Law Changes for
Worker's Compensation Program Area
Wis. Stat. §§ 102.18 & 102.23**

- ✓ **Clarify the parties for judicial review actions:** Currently, Wis. Stat. § 102.23 provides that "adverse parties" shall be made defendants in a court appeal of a commission worker's compensation decision. A court case may be dismissed if the plaintiff does not name an adverse party correctly. The Wisconsin Supreme Court noted most recently in *Xcel Energy Services, Inc. v. LIRC* that the current language of the statute is not clear. The commission proposes to amend Wis. Stat. § 102.23 to clarify that the party who files an appeal of a commission decision to court shall be the named plaintiff, and shall name as defendants the commission and those persons or entities identified by the commission in its decision as necessary to be named in the court appeal. If a plaintiff names the commission and those persons or entities identified by the commission, the case would not be dismissed for failing to name a proper party. This is similar to the requirement that administrative agencies generally must identify the parties necessary for an appeal in decisions issued under chapter 227. The proposed change provides that a court may join other parties not identified by the commission if the court determines the other party is necessary and it would not unduly delay the case.
- ✓ **Require Worker's Compensation appeals to be filed at LIRC:** Currently, appeals to the commission of worker's compensation administrative law judge decisions may be filed either with DWD or the commission. The commission proposes that chapter 102 be amended to provide that appeals to the commission be filed only *with* the commission. This change will streamline the appeal process so that only one office is receiving appeals and so the commission has better control over its workload from the time of the appeal.
- ✓ **Clarify the "reason beyond control" standard of review for late appeals:** The commission proposes to clarify the language of the standard for the commission to review late appeals. The standard remains the same; the petition must be late for a reason beyond the petitioner's control before the commission can entertain the appeal. However, the commission proposes to use clearer language to state the standard. This change will benefit the parties who appeal before the commission so they can better understand the standard.
- ✓ **Clarify that the time to appeal runs from the date of LIRC's decision:** The commission proposes language to clarify that the time during which the commission may set aside its decision for further consideration runs from the date of the commission's decision. This does not change the amount of time in which the commission has authority to set aside its decisions because the commission's decisions are dated and mailed on the same date. Rather, this change clarifies the language and leaves open the option to send commission decisions to the parties other than by mail in the future.

Chapter 102 LIRC Other Proposed Changes

Brief Summary of Proposed Law Change: Currently, appeals to the commission of worker's compensation administrative law judge decisions may be filed either with the Department of Workforce Development or the commission. The commission proposes that chapter 102 be amended to provide that appeals to the commission be filed only *with* the commission. This change will streamline the appeal process so that only one office is receiving appeals and so the commission has better control over its own workload from the time of the appeal. The commission also proposes to clarify the language of the standard for the commission to review late appeals. The standard remains the same; the petition must be late for a reason beyond the petitioner's control before the commission can entertain the appeal. However, the commission proposes to use clearer language to state the standard. This change will benefit the parties who appeal before the commission so they can better understand the standard. Finally, the commission proposes language to clarify that the time during which the commission may set aside its decision for further consideration runs from the date of the commission's decision. This does not change the amount of time in which the commission has authority to set aside its decisions because the commission's decisions are dated and mailed on the same date. Rather, this change clarifies the language and leaves open the option to send commission decisions to the parties other than by mail in the future.

AMEND WIS. STAT. s. 102.18(3) TO REFLECT THAT PCRs MUST BE FILED AT THE COMMISSION AND TO CLARIFY THE STANDARD FOR LATE APPEALS (effective for PCRs filed after 12/31/2014):

102.18 Findings, orders and awards.

✓ (3) A party in interest may petition the commission for review of an examiner's decision awarding or denying compensation if the department or commission receives the petition within 21 days after the department mailed a copy of the examiner's findings and order to the party's last-known address. The commission shall dismiss a late petition which is not timely filed unless the petitioner shows probable good cause that the petition was late for a reason for failure to timely file was beyond the petitioner's control. If no petition is filed within 21 days from the date that a copy of the findings or order of the examiner is mailed to the last-known address of the parties in interest, the findings or order shall be considered final unless set aside, reversed or modified by the examiner within that time. If the findings or order are set aside by the examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the examiner the time for filing a petition commences with the date that notice of reversal or modification is mailed to the last-known address of the parties in interest. The commission shall either affirm, reverse, set aside or modify the findings or order in whole or in part, or direct the taking of additional evidence. This action shall be based on a review of the evidence submitted.

AMEND WIS. STAT. s. 102.18(4)(a) TO CLARIFY THAT THE TIME TO SET ASIDE A DECISION RUNS FROM THE DATE OF THE COMMISSION DECISION (effective upon publication):

✓ (4) (b) Within 28 days after a decision of the date of the commission's decision is mailed to the last-known address of each party in interest, the commission may, on its own motion, set aside the decision for further consideration.

Chapter 102 LIRC Proposed Change to Clarify Parties to Judicial Review Action

Brief Summary of Proposed Law Change: Currently, Wis. Stat. s. 102.23 provides that "adverse parties" shall be made defendants in a court appeal of a commission worker's compensation decision. A court case may be dismissed if the plaintiff does not name an adverse party correctly. The Wisconsin Supreme Court noted most recently in *Xcel Energy Services, Inc. v. LIRC* that the current language of the statute is not clear. The commission proposes that Wis. Stat. s. 102.23 be amended to clarify that the party who files an appeal of a commission decision to court shall be the named plaintiff, and that the plaintiff shall name as defendants the commission and those persons or entities identified by the commission in its decision as necessary to be named in the court appeal. If a plaintiff names the commission and those persons or entities identified by the commission, the case would not be dismissed for failing to name a proper party. This is similar to the requirement that administrative agencies generally must identify the parties necessary for an appeal in decisions issued under chapter 227. The proposed change also provides that a court may join other parties not identified by the commission if the court determines the other party is necessary and joining that party does not unduly delay the case.

AMEND WIS. STAT. s. 102.23(1)(A) TO CLARIFY WHO MUST BE NAMED IN A JUDICIAL REVIEW ACTION (effective for judicial review actions filed after the first Sunday after publication):

102.23 Judicial review. (1) (a) The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on it or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. Within 30 days after the date of an order or award made by the commission, ~~either originally or after the filing of a petition for review with the department under s. 102.48~~ any party aggrieved thereby may by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court commence, in circuit court, an action against the commission for the review of the order or award, ~~in which action the adverse party shall also be made a defendant.~~ The party filing the action shall be the plaintiff and shall name as defendants the commission and all other persons or entities identified by the commission in its decision as those persons or entities that must be made parties to the judicial review action. A court may join other persons or entities not identified by the commission if the court determines that the person or entity is necessary to the proper resolution of the action, provided that the joinder of the person or entity does not unduly delay the resolution of the action. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, it may extend the time in which an action may be commenced by an additional 30 days. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

227.48



State of Wisconsin
2013 - 2014 LEGISLATURE

IN 12110

Wanted Fri 12/13
DNOTE



LRB-3729/P
GMM...

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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- 1) AN ACT ...; relating to: various changes to the worker's compensation law,
- 2) ~~grating rule-making authority~~, and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development (DWD).

GENERAL COVERAGE

Local governmental units

Under current law, each county, city, town, village, school district, sewer district, drainage district, long-term care district, and other public or quasi-public corporation (municipality) is liable for worker's compensation when an employee in the service of the municipality, whether elected, appointed, or under a contract of hire, is injured while performing services growing out of and incidental to his or her employment.

This bill changes the term "municipality" to "local governmental unit" for purposes of the worker's compensation law and redefines that term to mean a political subdivision of this state; a special purpose district or taxing jurisdiction in this state; an instrumentality, corporation, combination, or subunit of any of the foregoing; or any other public or quasi-public corporation. Under current law, cities, villages, towns, and counties are political subdivisions of this state; special purpose districts include school districts, sewer districts, drainage districts, long-term care districts, and other districts created for special purposes; and taxing jurisdictions are entities, not including the state, that are authorized by law to levy property taxes.

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Postsecondary students participating in work study programs

Currently, a student of a public school or a private school, while he or she is engaged in performing services as part of a school work training, work experience, or work study program, who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employee of a school district or private school that elects to name the student as an employee for purposes of worker's compensation coverage. Also, under current law, a student who is named as an employee of a school district or private school for purposes of worker's compensation coverage and who makes a claim for worker's compensation against his or her school district or private school may not also make a claim for worker's compensation or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

This bill extends those provisions to a student of an institution within the University of Wisconsin System, a technical college, a tribally controlled college, a school approved by the Educational Approval Board, or a private, nonprofit institution of higher education located in this state (institution of higher education). Specifically, under the bill, a student of an institution of higher education, while he or she is engaged in performing services as part of a school work training, work experience, or work study program, who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employee of an institution of higher education that elects to name the student as an employee for purposes of worker's compensation coverage. The bill also provides that a student who is named as an employee of an institution of higher education for purposes of worker's compensation coverage and who makes a claim for worker's compensation against that institution may not also make a claim for worker's compensation or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

PAYMENT OF BENEFITS***Vocational rehabilitation***

Under current law, an injured employee is entitled to receive compensation for temporary disability while the employee is receiving vocational rehabilitation services under the federal Rehabilitation Act of 1973. If, however, the injury causes only partial disability, the employee's weekly indemnity is the proportion of the weekly indemnity rate for total disability that the actual wage loss of the injured employee bears to the injured employee's average weekly wage at the time of injury, *except* that compensation for temporary disability on account of receiving vocational rehabilitation services shall not be reduced on account of any wages earned for the first 24 hours worked by an employee during a week in which the employee is receiving those services and only hours worked in excess of 24 during that week shall be offset against the employee's average weekly wage in calculating compensation for temporary disability. That exception, however, does not apply after April 30, 2014. This bill extends that exception to April 30, 2016.

HEARINGS AND PROCEDURES***Final practitioner's report***

Under current law, if an injured employee has a period of temporary disability of more than three weeks or a permanent disability, has undergone surgery to treat an injury, other than surgery to correct a hernia, or sustains an eye injury requiring medical treatment on three or more occasions off the employer's premises, the employer or insurer must submit to DWD a final treating practitioner's report. Current law, however, prohibits DWD from requiring submission of that report when the employer or insurer denies the employee's claim for compensation and the employee does not contest that denial. This bill limits that prohibition to cases in which the employer or insurer denies the employee's claim for compensation *in its entirety*.

Administrative review of a worker's compensation decision

Under current law, a party to a worker's compensation proceeding may petition the Labor and Industry Review Commission (LIRC) for review of a DWD hearing examiner's decision awarding or denying worker's compensation (petition for review) if DWD or LIRC receives the petition for review within 21 days after DWD mailed a copy of the examiner's findings and order to the petitioner's last-known address. Currently, LIRC must dismiss a petition for review that is not timely filed unless the petitioner shows probable good cause that the reason for failure to timely file the petition was beyond the petitioner's control. This bill requires a party to file a petition for review with LIRC, not DWD. The bill also requires LIRC to dismiss a petition for review that is not filed within those 21 days unless the petitioner shows that the petition was filed late for a reason that was beyond the petitioner's control.

Under current law, within 28 days after a decision of LIRC is mailed to the last-known address of each party to a worker's compensation proceeding, LIRC may, on its own motion, set aside the decision for further consideration. This bill permits LIRC to set aside a decision within 28 days after the date of the decision, not the date of its mailing.

Judicial review of a worker's compensation decision

Under current law, a party that is aggrieved by an order or award made by LIRC may commence an action against LIRC in circuit court for judicial review of the order or award (action for judicial review). Current law requires the adverse party to also be made a defendant in an action for judicial review. Recently, a concurring opinion in *Xcel Energy Services, Inc. v. LIRC*, 2013 WI 64, "unequivocally and firmly" recommended that the Council on Worker's Compensation propose legislative revisions to clarify who must be included as a party in an action for judicial review. *Id.* at p. 71. That concurring opinion further proposed that LIRC consider adopting the practice of providing information with its order or award instructing the parties as to who is to be named as an adverse party in an action for judicial review. *Id.* at p. 73.

This bill requires LIRC to identify in an order or award the persons that must be made parties to an action for judicial review. The bill also requires the summons and complaint in the action to name those persons as defendants. In addition, the

bill permits the circuit court to join as a party to the action any other person determined necessary for the proper resolution of the action, unless joinder of the person would unduly delay the resolution of the action.

PROGRAM ADMINISTRATION

Uninsured employers fund

Under current law, if an employee of an uninsured employer suffers an injury for which the uninsured employer is liable, DWD, from the uninsured employers fund, or, if DWD obtains excess or stop-loss reinsurance from a reinsurer, the reinsurer pays benefits to the injured employee that are equal to the worker's compensation owed by the uninsured employer.

This bill requires DWD to pay a claim of an employee of an uninsured employer in excess of \$1,000,000 from the uninsured employers fund in the first instance, but provides that if the claim is not covered by excess or stop-loss reinsurance, the secretary of administration annually must transfer from the worker's compensation operations fund to the uninsured employers fund an amount equal to the amount by which payments from the uninsured employers fund on all such claims in the prior year are in excess of \$1,000,000 per claim, subject to a \$500,000 annual limit on the amount that the secretary of administration may transfer. If the amount to be transferred exceeds that \$500,000 annual limit, the secretary of administration must transfer the amount in excess of \$500,000 in the next calendar year or in subsequent calendar years until the amount in excess of \$500,000 is transferred in full.

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For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1. 20.445 (1) (ra) of the statutes is amended to read:

, as affected by 2013 Wisconsin Act 20,

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20.445 (1) (ra) *Worker's compensation operations fund; administration.* From the worker's compensation operations fund, the amounts in the schedule for the administration of the worker's compensation program by the department, for transfer to the uninsured employers fund under s. 102.81 (1) (c), and for transfer to the appropriation accounts under par. (rp) and sub. (2) (ra). All moneys received under ss. 102.28 (2) (b) and 102.75 shall be credited to this appropriation account. From this appropriation, an amount not to exceed \$5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's

1 compensation, an amount not to exceed \$500,000 may be transferred in each fiscal
 2 year to the uninsured employers fund under s. 102.81 (1) (c), the amount in the
 3 schedule under par. (rp) shall be transferred to the appropriation account under par.
 4 (rp), and the amount in the schedule under sub. (2) (ra) shall be transferred to the
 5 appropriation account under sub. (2) (ra).

History: 1971 c. 125 ss. 156, 522 (1); 1971 c. 211, 215; 1971 c. 228 s. 44; 1971 c. 259; 1973 c. 90, 180, 243, 333; 1975 c. 39, 147, 224, 274, 344; 1975 c. 404 ss. 3, 10 (1); 1975 c. 405 ss. 3, 11 (1); 1977 c. 29, 48, 203, 418; 1979 c. 34 ss. 512 to 522, 2102 (25) (a); 1979 c. 189, 221, 309; 1979 c. 329 s. 25 (1); 1979 c. 350 ss. 3, 27 (6); 1979 c. 353, 355; 1981 c. 20, 36, 92, 93, 317, 325, 364; 1983 a. 8; 1983 a. 27 ss. 411 to 425; 1983 a. 98 ss. 1, 31; 1983 a. 192, 384, 388, 410; 1985 a. 17, 29, 153, 313, 332; 1987 a. 27; 1987 a. 38 ss. 2 to 4, 136; 1987 a. 399, 403; 1989 a. 31, 44, 64, 77, 254, 284, 359; 1991 a. 39 ss. 372c, 545r, 545t, 545v, 547, 548, 548g, 548m, 549, 549b, 549g, 549p; 1991 a. 85, 89, 269, 315; 1993 a. 16, 126, 243, 437, 491; 1995 a. 27 ss. 772mm, 772mn, 776p to 778b, 778L, 778n, 778q, 778v, 778z to 780m, 781m to 782p, 782u, 841, 842, 849, 850, 854, 855, 858c, 873 to 876, 878, 880, 890 to 896, 962 to 1014c, 9126 (19), 9130 (4); 1995 a. 113 s. 2t; 1995 a. 117, 201, 216, 225, 289; 1995 a. 404 ss. 4, 6 to 8, 10 to 17; 1997 a. 3; 1997 a. 27 ss. 610 to 642m, 722; 1997 a. 35, 38, 39, 105, 112, 191, 235, 236, 237, 252; 1999 a. 9 ss. 270, 458 to 478; 1999 a. 15, 32; 2001 a. 16, 35, 43, 104, 109; 2003 a. 33, 197; 2005 a. 25, 86, 172; 2005 a. 443 s. 265; 2007 a. 20, 59; 2009 a. 28, 180; 2011 a. 32, 123, 183, 198; 2013 a. 9, 20, 36, 57.

6 **SECTION 2.** 102.01 (2) (d) of the statutes is amended to read:

7 102.01 (2) (d) ~~“Municipality” includes a county, city, town, village, school~~
 8 ~~district, sewer district, drainage district and long-term care district and “Local~~
 9 ~~governmental unit” means a political subdivision of this state; a special purpose~~
 10 ~~district or taxing jurisdiction, as defined in s. 70.114 (1) (f), in this state; an~~
 11 ~~instrumentality, corporation, combination, or subunit of any of the foregoing; or any~~
 12 ~~other public or quasi-public corporations corporation.~~

History: 1975 c. 147 ss. 7 to 13, 54; 1975 c. 200; 1979 c. 89, 278; 1981 c. 92; 1983 a. 98, 189; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1995 a. 27 ss. 3737 to 3741, 9130 (4); 1995 a. 117, 417; 1997 a. 3; 1999 a. 9, 14; 2001 a. 37; 2003 a. 139; 2007 a. 20.

13 **SECTION 3.** 102.03 (4) of the statutes is amended to read:

14 102.03 (4) The right to compensation and the amount of the compensation shall
 15 in all cases be determined in accordance with the provisions of law in effect as of the
 16 date of the injury except as to employees whose rate of compensation is changed as
 17 provided in ss. 102.43 (7) or 102.44 (1) or (5) or, before May 1, ~~2014~~ 2016, as provided
 18 in s. 102.43 (5) (c) and employees who are eligible to receive private rehabilitative
 19 counseling and rehabilitative training under s. 102.61 (1m) and except as provided
 20 in s. 102.555 (12) (b).

History: 1971 c. 148, 307, 324; 1975 c. 147 ss. 15, 54; 1977 c. 195, 272, 418; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1993 a. 49, 370, 490, 492; 2005 a. 172; 2007 a. 185; 2009 a. 206; 2011 a. 183.

21 **SECTION 4.** 102.04 (1) (a) of the statutes is amended to read:

1 102.04 (1) (a) The state, and each county, city, town, village, school district,
2 ~~sewer district, drainage district, long-term care district and other public or~~
3 ~~quasi-public corporations therein~~ local governmental unit in this state.

History: 1975 c. 199; 1983 a. 98; 1989 a. 64; 1993 a. 112; 1997 a. 38; 1999 a. 9; 2001 a. 37; 2005 a. 172; 2007 a. 20; 2009 a. 206.

4 **SECTION 5.** 102.07 (1) (a) of the statutes is amended to read:

5 102.07 (1) (a) Every person, including all officials, in the service of the state,
6 or of any ~~municipality therein~~ local governmental unit in this state, whether elected
7 or under any appointment, or contract of hire, express or implied, and whether a
8 resident of the state or employed or injured within or without the state. The state
9 ~~and or any municipality~~ local governmental unit may require a bond from a
10 contractor to protect the state or ~~municipality~~ local governmental unit against
11 compensation to employees of such the contractor or to employees of a subcontractor
12 under the contractor. This paragraph does not apply beginning on the first day of the
13 first July beginning after the day that the secretary files the certificate under s.
14 102.80 (3) (a), except that if the secretary files the certificate under s. 102.80 (3) (ag)
15 this paragraph does apply to claims for compensation filed on or after the date
16 specified in that certificate.

History: 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 29; 1979 c. 278; 1981 c. 325; 1983 a. 27, 98; 1985 a. 29, 83, 135; 1985 a. 150 s. 4; 1985 a. 176, 332; 1987 a. 63; 1989 a. 31, 64, 359; 1993 a. 16, 81, 112, 399; 1995 a. 24, 77, 96, 117, 225, 281, 289, 417; 1997 a. 35, 38, 118; 1999 a. 14, 162; 2001 a. 37; 2005 a. 96; 2007 a. 130; 2009 a. 28, 42, 288; 2011 a. 123; 2013 a. 20.

17 **SECTION 6.** 102.07 (1) (b) of the statutes is amended to read:

18 102.07 (1) (b) Every person, including all officials, in the service of the state,
19 or of any ~~municipality therein~~ local governmental unit in this state, whether elected
20 or under any appointment, or contract of hire, express or implied, and whether a
21 resident of the state or employed or injured within or without the state. This
22 paragraph first applies on the first day of the first July beginning after the day that
23 the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary

1 files the certificate under s. 102.80 (3) (ag) this paragraph does apply to claims for
2 compensation filed on or after the date specified in that certificate.

History: 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 29; 1979 c. 278; 1981 c. 325; 1983 a. 27, 98; 1985 a. 29, 83, 135; 1985 a. 150 s. 4; 1985 a. 176, 332; 1987 a. 63; 1989 a. 31, 64, 359; 1993 a. 16, 81, 112, 399; 1995 a. 24, 77, 96, 117, 225, 281, 289, 417; 1997 a. 35, 38, 118; 1999 a. 14, 162; 2001 a. 37; 2005 a. 96; 2007 a. 130; 2009 a. 28, 42, 288; 2011 a. 123; 2013 a. 20.

3 **SECTION 7.** 102.07 (3) of the statutes is amended to read:

4 102.07 (3) Nothing ~~herein contained shall prevent municipalities in this~~
5 chapter [✓] prevents a local governmental unit from paying teachers, police officers, fire
6 fighters and other employees a teacher, police officer, fire fighter, or any other
7 employee his or her full salaries salary during a period of disability, nor interfere
8 interferes with any pension funds fund, nor ~~prevent~~ prevents payment to teachers,
9 ~~police officers or fire fighters therefrom~~ a teacher, police officer, fire fighter, or any
10 other employee from a pension fund.

History: 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 29; 1979 c. 278; 1981 c. 325; 1983 a. 27, 98; 1985 a. 29, 83, 135; 1985 a. 150 s. 4; 1985 a. 176, 332; 1987 a. 63; 1989 a. 31, 64, 359; 1993 a. 16, 81, 112, 399; 1995 a. 24, 77, 96, 117, 225, 281, 289, 417; 1997 a. 35, 38, 118; 1999 a. 14, 162; 2001 a. 37; 2005 a. 96; 2007 a. 130; 2009 a. 28, 42, 288; 2011 a. 123; 2013 a. 20.

11 **SECTION 8.** 102.07 (7) (a) of the statutes is amended to read:

12 102.07 (7) (a) Every member of a volunteer fire company or fire department
13 organized under ch. 213, a legally organized rescue squad, or a legally organized
14 diving team is considered to be an employee of that company, department, squad, or
15 team. Every member of a company, department, squad, or team described in this
16 paragraph, while serving as an auxiliary police officer at an emergency, is also
17 considered to be an employee of that company, department, squad, or team. If a
18 company, department, squad, or team described in this paragraph has not insured
19 its liability for compensation to its employees, the ~~municipality or county~~ political
20 subdivision within which that company, department, squad, or team was organized
21 shall be liable for that compensation.

History: 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 29; 1979 c. 278; 1981 c. 325; 1983 a. 27, 98; 1985 a. 29, 83, 135; 1985 a. 150 s. 4; 1985 a. 176, 332; 1987 a. 63; 1989 a. 31, 64, 359; 1993 a. 16, 81, 112, 399; 1995 a. 24, 77, 96, 117, 225, 281, 289, 417; 1997 a. 35, 38, 118; 1999 a. 14, 162; 2001 a. 37; 2005 a. 96; 2007 a. 130; 2009 a. 28, 42, 288; 2011 a. 123; 2013 a. 20.

22 **SECTION 9.** 102.07 (10) of the statutes is amended to read:

1 102.07 (10) Further to effectuate the policy of the state that the benefits of this
2 chapter shall extend and be granted to employees in the service of the state, or of any
3 ~~municipality therein~~ local governmental unit in this state, on the same basis, in the
4 same manner, under the same conditions, and with like right of recovery as in the
5 case of employees of persons, firms, or private corporations, any question whether
6 any person is an employee under this chapter shall be governed by and determined
7 under the same standards, considerations, and rules of decision in all cases under
8 subs. (1) to (9). ~~Any statutes, ordinances, or administrative regulations which~~
9 statute, ordinance, or rule that may be otherwise applicable to the classes of
10 employees enumerated in sub. (1) shall not be controlling in deciding whether any
11 person is an employee for the purposes of this chapter.

History: 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 29; 1979 c. 278; 1981 c. 325; 1983 a. 27, 98; 1985 a. 29, 83, 135; 1985 a. 150 s. 4; 1985 a. 176, 332; 1987 a. 63; 1989 a. 31, 64, 359; 1993 a. 16, 81, 112, 399; 1995 a. 24, 77, 96, 117, 225, 281, 289, 417; 1997 a. 35, 38, 118; 1999 a. 14, 162; 2001 a. 37; 2005 a. 96; 2007 a. 130; 2009 a. 28, 42, 288; 2011 a. 123; 2013 a. 20.

12 **SECTION 10.** 102.07 (12m) of the statutes is renumbered 102.07 (12m) (b) and
13 amended to read:

14 102.07 (12m) (b) A student of a public school, ~~as described in s. 115.01 (1), or~~
15 a private school, ~~as defined in s. 115.001 (3r),~~ or an institution of higher education,
16 while he or she is engaged in performing services as part of a school work training,
17 work experience, or work study program, and who is not on the payroll of an employer
18 that is providing the work training or work experience or who is not otherwise
19 receiving compensation on which a worker's compensation carrier could assess
20 premiums on that employer, is an employee of a school district ~~or~~, private school, or
21 institution of higher education that elects under s. 102.077 to name the student as
22 its employee.

History: 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 29; 1979 c. 278; 1981 c. 325; 1983 a. 27, 98; 1985 a. 29, 83, 135; 1985 a. 150 s. 4; 1985 a. 176, 332; 1987 a. 63; 1989 a. 31, 64, 359; 1993 a. 16, 81, 112, 399; 1995 a. 24, 77, 96, 117, 225, 281, 289, 417; 1997 a. 35, 38, 118; 1999 a. 14, 162; 2001 a. 37; 2005 a. 96; 2007 a. 130; 2009 a. 28, 42, 288; 2011 a. 123; 2013 a. 20.

23 **SECTION 11.** 102.07 (12m) (a) of the statutes is created to read:

1 102.07 (12m) (a) In this subsection:

2 1. "Institution of higher education" means an institution within the University
3 of Wisconsin System, a technical college, a tribally controlled college, a school
4 approved under s. 38.50, or a private, nonprofit institution of higher education
5 located in this state.

6 2. "Private school" has the meaning given in s. 115.001 (3r).

7 3. "Public school" means a school described in s. 115.01 (1).

8 SECTION 12. 102.077 (1) of the statutes is amended to read:

9 102.077 (1) A school district ~~or a~~ private school, as defined in s. 115.001 (3r),
10 or institution of higher education may elect to name as its employee for purposes of
11 this chapter a student described in s. 102.07 (12m) (b) by an endorsement on its policy
12 of worker's compensation insurance or, if the school district ~~or~~ private school, or
13 institution of higher education is exempt from the duty to insure under s. 102.28 (2),
14 by filing a declaration with the department in the manner provided in s. 102.31 (2)
15 (a) naming the student as an employee of the school district ~~or~~ private school, or
16 institution of higher education for purposes of this chapter. A declaration under this
17 subsection shall list the name of the student to be covered under this chapter, the
18 name and address of the employer that is providing the work training or work
19 experience for that student, and the title, if any, of the work training, work
20 experience, or work study program in which the student is participating.

History: 1995 a. 117; 1997 a. 38; 1999 a. 14; 2001 a. 37.

21 SECTION 13. 102.077 (2) of the statutes is amended to read:

22 102.077 (2) A school district ~~or~~ private school, or institution of higher
23 education may revoke a declaration under sub. (1) by providing written notice to the
24 department in the manner provided in s. 102.31 (2) (a), the student, and the employer

1 who is providing the work training or work experience for that student. A revocation
2 under this subsection is effective 30 days after the department receives notice of that
3 revocation.

4 **History:** 1995 a. 117; 1997 a. 38; 1999 a. 14; 2001 a. 37.

SECTION 14. 102.13 (2) (c) of the statutes is amended to read:

5 102.13 (2) (c) Except as provided in this paragraph, if an injured employee has
6 a period of temporary disability that exceeds 3 weeks or a permanent disability, if the
7 injured employee has undergone surgery to treat his or her injury, other than surgery
8 to correct a hernia, or if the injured employee sustained an eye injury requiring
9 medical treatment on 3 or more occasions off the employer's premises, the
10 department may by rule require the insurer or self-insured employer to submit to
11 the department a final report of the employee's treating practitioner. The
12 department may not require an insurer or self-insured employer to submit to the
13 department a final report of an employee's treating practitioner when the insurer or
14 self-insured employer denies the employee's claim for compensation in its entirety
15 and the employee does not contest that denial. A treating practitioner may charge
16 a reasonable fee for the completion of the final report, but may not require
17 prepayment of that fee. An insurer or self-insured employer that disputes the
18 reasonableness of a fee charged for the completion of a treatment practitioner's final
19 report may submit that dispute to the department for resolution under s. 102.16 (2).

History: 1973 c. 272, 282; 1975 c. 147; 1977 c. 29; 1979 c. 102 s. 236 (3); 1979 c. 278; 1981 c. 92; 1983 a. 98, 279; 1985 a. 83; 1987 a. 179; 1989 a. 64, 359; 1991 a. 85; 1993 a. 81; 1997 a. 38; 2003 a. 144; 2005 a. 172; 2011 a. 183.

20 **SECTION 15.** 102.18 (3) of the statutes is amended to read:

21 102.18 (3) A party in interest may petition the commission for review of an
22 examiner's decision awarding or denying compensation if the ~~department~~
23 commission receives the petition within 21 days after the department mailed a copy
24 of the examiner's findings and order to the party's last-known address. The

1 commission shall dismiss a petition ~~which~~ that is not timely filed within those 21
 2 days unless the petitioner shows ~~probable good cause~~ that the petition was filed late
 3 for a reason for failure to timely file that was beyond the petitioner's control. If no
 4 petition is filed within those 21 days from the date that a copy of the findings or order
 5 of the examiner is mailed to the last-known address of the parties in interest, the
 6 findings or order shall be considered final unless set aside, reversed, or modified by
 7 the examiner within that time. If the findings or order are set aside by the examiner,
 8 the status shall be the same as prior to the setting aside of the findings or order set
 9 aside. If the findings or order are reversed or modified by the examiner, the time for
 10 filing a petition commences ~~with~~ on the date that notice of the reversal or
 11 modification is mailed to the last-known address of the parties in interest. The
 12 commission shall either affirm, reverse, set aside, or modify the findings or order in
 13 whole or in part, or direct the taking of additional evidence. ~~This~~ The commission's
 14 action shall be based on a review of the evidence submitted.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 29, 195; 1979 c. 89, 278, 355; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1997 a. 38; 1999 a. 14; 2001 a. 37; 2003 a. 144; 2005 a. 172; 2007 a. 185.

15 **SECTION 16.** 102.18 (4) (b) of the statutes is amended to read:

16 102.18 (4) (b) Within 28 days after the date of a decision of the commission
 17 ~~is mailed to the last-known address of each party in interest~~, the commission may,
 18 on its own motion, set aside the decision for further consideration.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 29, 195; 1979 c. 89, 278, 355; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1997 a. 38; 1999 a. 14; 2001 a. 37; 2003 a. 144; 2005 a. 172; 2007 a. 185.

19 **SECTION 17.** 102.21 of the statutes is amended to read:

20 **102.21 Payment of awards by municipalities.** ~~Whenever~~ When an award
 21 is made by the department under this chapter or s. 66.191, 1981 stats., against any
 22 municipality local governmental unit, the person in whose favor it the award is made
 23 shall file a certified copy ~~thereof~~ of the award with the municipal clerk of the local

1 governmental unit. Within 20 days thereafter, ~~unless an appeal is taken, such after~~
 2 ~~the filing of the award, the~~ clerk shall draw an order on the ~~municipal~~ treasurer of
 3 the local governmental unit for the payment of the award, ~~unless an appeal is taken.~~
 4 If upon appeal ~~such~~ the award is affirmed in whole or in part, the order for payment
 5 shall be drawn within 10 days after a certified copy of ~~such~~ the judgment on appeal
 6 is filed with the proper clerk. If more than one payment is provided for in the award
 7 or judgment, orders shall be drawn as the payments become due. No statute relating
 8 to the filing of claims against, ~~and or~~ the auditing, allowing ~~and, or~~ payment of claims
 9 by ~~municipalities,~~ local governmental units shall apply to the payment of an award
 10 or judgment under this section.

History: 1983 a. 191 s. 6.

11 **SECTION 18.** 102.23 (1) (a) of the statutes is renumbered 102.23 (1) (a) 1. and
 12 amended to read:

13 102.23 (1) (a) 1. The findings of fact made by the commission acting within its
 14 powers shall, in the absence of fraud, be conclusive. The order or award granting or
 15 denying compensation, either interlocutory or final, whether judgment has been
 16 rendered on it or not, is subject to review only as provided in this section and not
 17 under ch. 227 or s. 801.02. The commission shall identify in the order or award the
 18 persons that must be made parties to an action for the review of the order or award.

19 2. Within 30 days after the date of an order or award made by the commission
 20 ~~either originally or after the filing of a petition for review with the department under~~
 21 ~~s. 102.18,~~ any party aggrieved ~~thereby~~ by the order or award may commence an
 22 action in circuit court for the review ^{of} on the order or award by serving a complaint as
 23 provided in par. (b) and filing the summons and complaint with the clerk of the circuit
 24 court ~~commence, in circuit court, an action against the commission for the review of~~

1 ~~the order or award, in which action the adverse party shall also be made a defendant.~~
 2 The summons and complaint shall name the party commencing the action as the
 3 plaintiff and shall name as defendants the commission and all persons identified by
 4 the commission under subd. 1. If the circuit court determines that any other person
 5 is necessary for the proper resolution of the action, the circuit court may join that
 6 person as a party to the action, unless joinder of the person would unduly delay the
 7 resolution of the action. If the circuit court is satisfied that a party in interest has
 8 been prejudiced because of an exceptional delay in the receipt of a copy of any finding
 9 or order, it the circuit court may extend the time in within which an action may be
 10 commenced by an additional 30 days.

11 3. The proceedings shall be in the circuit court of the county where the plaintiff
 12 resides, except that if the plaintiff is a state agency, the proceedings shall be in the
 13 circuit court of the county where the defendant resides. The proceedings may be
 14 brought in any circuit court if all parties stipulate and that court agrees.

History: 1973 c. 150; 1975 c. 199; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 29; 1977 c. 187 ss. 59, 135; 1977 c. 195, 272, 447; Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1979 c. 278; 1981 c. 390 s. 252; 1983 a. 98, 122, 538; 1985 a. 83; 1997 a. 187; 2001 a. 37; 2005 a. 172, 442.

15 **SECTION 19.** 102.23 (1) (c) of the statutes is amended to read:

16 102.23 (1) (c) ~~Except as provided in par. (cm), the~~ The commission shall serve
 17 its answer within 20 days after the service of the complaint, ~~and, within the like time,~~
 18 ~~the adverse party.~~ Except as provided in par. (cm), any other defendant may serve
 19 an answer to the complaint within 20 days after the service of the complaint, which
 20 answer may, by way of counterclaim or cross complaint, ask for the review of the
 21 order or award referred to in the complaint, with the same effect as if the party
 22 defendant had commenced a separate action for the review ~~thereof~~ of the order or
 23 award.

History: 1973 c. 150; 1975 c. 199; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 29; 1977 c. 187 ss. 59, 135; 1977 c. 195, 272, 447; Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1979 c. 278; 1981 c. 390 s. 252; 1983 a. 98, 122, 538; 1985 a. 83; 1997 a. 187; 2001 a. 37; 2005 a. 172, 442.

1 **SECTION 20.** 102.23 (1) (cm) of the statutes is amended to read:

2 102.23 (1) (cm) ~~If an adverse party to the proceeding~~ a defendant in an action
3 brought under par. (a) is an insurance company, the insurance company may serve
4 an answer to the complaint within 45 days after the service of the complaint.

History: 1973 c. 150; 1975 c. 199; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 29; 1977 c. 187 ss. 59, 135; 1977 c. 195, 272, 447; Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1979 c. 278; 1981 c. 390 s. 252; 1983 a. 98, 122, 538; 1985 a. 83; 1997 a. 187; 2001 a. 37; 2005 a. 172, 442.

5 **SECTION 21.** 102.29 (8) of the statutes is amended to read:

6 102.29 (8) No student of a public school, ~~as described in s. 115.01 (1), or a private~~
7 school, ~~as defined in s. 115.001 (3r), or an institution of higher education~~ who is
8 named under s. 102.077 as an employee of the school district ~~or~~, private school, or
9 institution of higher education for purposes of this chapter and who makes a claim
10 for compensation under this chapter may make a claim or maintain an action in tort
11 against the employer that provided the work training or work experience from which
12 the claim arose.

History: 1975 c. 147 ss. 24, 54; 1977 c. 195; 1979 c. 323 s. 33; 1981 c. 92; 1985 a. 83 s. 44; 1985 a. 332 s. 253; 1987 a. 179; 1989 a. 64; 1995 a. 117, 289; 1997 a. 38; 1999 a. 9, 14; 2001 a. 16, 37; 2003 a. 144; 2005 a. 96, 172, 253; 2007 a. 20 ss. 2645, 9121 (6) (a); 2007 a. 97, 185; 2009 a. 42, 154; 2011 a. 183; s. 13.92 (1) (bm) 2.

13 **SECTION 22.** 102.43 (5) (c) of the statutes is amended to read:

14 102.43 (5) (c) Compensation for temporary disability on account of receiving
15 instruction under s. 102.61 (1) or (1m) shall not be reduced under sub. (2) on account
16 of any wages earned for the first 24 hours worked by an employee during a week in
17 which the employee is receiving that instruction. If an employee performs more than
18 24 hours of work during a week in which the employee is receiving that instruction,
19 all wages earned for hours worked in excess of 24 during that week shall be offset
20 against the employee's average weekly wage in calculating compensation for
21 temporary disability under sub. (2). An employee who is receiving compensation for
22 temporary disability on account of receiving instruction under s. 102.61 (1) or (1m)
23 shall report any wages earned during the period in which the employee is receiving

1 that instruction to the insurance carrier or self-insured employer paying that
2 compensation. This paragraph does not apply after April 30, 2014 2016.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1993 a. 370, 492; 1995 a. 225, 413; 2001 a. 37; 2005 a. 172; 2009 a. 206; 2011 a. 183.

3
4

SECTION 23. 102.80 (1) (e) of the statutes is created to read:

102.80 (1) (e) Amounts transferred to the uninsured employers fund from the
appropriation under s. 20.445 (1) (ra) as provided in s. 102.81 (1) (c).

SECTION 24. 102.81 (1) (c) of the statutes is created to read:

102.81 (1) (c) 1. The department shall pay a claim under par. (a) in excess of
\$1,000,000 from the uninsured employers fund in the first instance. If the claim is
not covered by excess or stop-loss reinsurance under sub. (2), the secretary of
administration shall transfer from the appropriation account under s. 20.445 (1) (ra)
to the uninsured employers fund as provided in subs. 2. to 4. an amount equal to
the amount by which payments from the uninsured employers fund on the claim are
in excess of \$1,000,000.

2. Each calendar year the department shall file with the secretary of
administration a certificate setting forth the number of claims in excess of
\$1,000,000 in the preceding year paid from the uninsured employers fund, the
payments made from the uninsured employers fund on each such claim, and the total
payments made from the uninsured employers fund on all such claims.

3. The secretary of administration shall determine the amount to be
transferred under subd. 1. in a calendar year by multiplying the number of claims
set forth under subd. 2. by 1,000,000 and subtracting that product from the total
payments set forth under subd. 2.

4. The maximum amount that the secretary of administration may transfer
under subd. 1. in a calendar year is \$500,000. If the amount determined under subd.

1 ✓ 3. is \$500,000 or less, the secretary of administration shall transfer the amount
2 determined under subd. 3. ✓ If the amount determined under subd. 3. exceeds ✓
3 \$500,000, the secretary of administration shall transfer \$500,000 in the calendar
4 year in which the determination is made and, subject to the maximum transfer
5 amount of \$500,000 per calendar year, shall transfer that excess in the next calendar
6 year or in subsequent calendar years until that excess is transferred in full. ✓

7 **SECTION 25.** 108.10 (4) of the statutes is amended to read:

8 108.10 (4) The department or the employing unit may commence action for the
9 judicial review of a commission decision under this section, provided the department,
10 or the employing unit, after exhausting the remedies provided under this section, has
11 commenced such action within 30 days after such decision was mailed to the
12 employing unit's last-known address. The scope of judicial review, and the manner
13 thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In
14 an action commenced by an employing unit under this section, the department shall
15 be ~~an adverse party~~ a defendant under s. 102.23 (1) (a) and shall be named as a ~~party~~
16 defendant in the complaint commencing the action.

17 **History:** 1973 c. 247; 1975 c. 343; 1977 c. 29; 1981 c. 36; 1985 a. 17 s. 66; 1987 a. 38 ss. 87, 88, 134; 1989 a. 77; 2007 a. 20; 2009 a. 287; 2013 a. 36.

17 **SECTION 26. Fiscal changes.**

18 (1) TRANSFER TO UNINSURED EMPLOYERS FUND. In the schedule under section
19 20.005 (3) ✓ of the statutes for the appropriation to the department of workforce
20 development under section 20.445 (1) (ra) ✓ of the statutes, as affected by the acts of
21 2013, the dollar amount is increased by \$500,000 ✓ for the first fiscal year of the fiscal
22 biennium in which this subsection takes effect to provide funding for transfer to the
23 uninsured employers fund in reimbursement of claims paid from that fund in excess
24 of \$1,000,000 in 2013. In the schedule under section 20.005 (3) ✓ of the statutes for the

1 appropriation to the department of workforce development under section 20.445 (1)
2 (ra) of the statutes, as affected by the acts of 2013, the dollar amount is increased by
3 \$500,000 for the second fiscal year of the fiscal biennium in which this subsection
4 takes effect to provide funding for transfer to the uninsured employers fund in
5 reimbursement of claims paid from that fund in excess of \$1,000,000 in 2014.

6 **SECTION 27. Initial applicability.**

7 (1) ~~TRANSFER TO UNINSURED EMPLOYERS FUND.~~ The treatment of sections 20.445
8 (1) (ra) and 102.81 (1) (c) of the statutes first applies to claims paid from the
9 uninsured employers fund in 2013.

10 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3729/P1dn

GMM...: 

Date

(1m)

Jim:

In reviewing this draft, please note all of the following: ✓

1. *Uninsured employers fund.* You requested that s. 20.445 (1) (ra) be amended to provide a sum sufficient for transfer to the uninsured employers fund. Section 20.445 (1) (ra), however, is not a sum sufficient appropriation. Rather, it is a sum certain appropriation under which the amount appropriated is limited to the amounts in the appropriation schedule. Moreover, the drafting instructions limit the amount that can be transferred to \$500,000 in each fiscal year. Accordingly, the draft authorizes the transfer of an amount not to exceed \$500,000 in each fiscal year. The draft also includes a nonstatutory fiscal change provision increasing the amount appropriated to s. 20.445 (1) (ra) by \$500,000 in each fiscal year of the current biennium to provide moneys for transfer to the uninsured employers fund.

X You also inquired whether s. 102.75 should be amended to reference the transfer of moneys from the worker's compensation operations fund to the uninsured employers fund. I do not think that s. 102.75 needs to be amended because s. 20.445 (1) (ra) is referenced in s. 102.75 (2) and s. 20.445 (1) (ra) is being amended by this draft, so the reference to s. 20.445 (1) (ra) incorporates the transfer language added to s. 20.445 (1) (ra) by this draft. I do, however, think that s. 102.80 (1) should be amended to include moneys transferred from s. 20.445 (1) (ra) as a revenue source for the uninsured employers fund. ✓

The drafting instructions call for DWD to transfer moneys from s. 20.445 (1) (ra) to the uninsured employers fund. Actually, DOA does the transferring. See s. 16.52 (12). Accordingly, this draft creates a process similar to s. 102.80 (3) under current law whereby DWD certifies to the Secretary of Administration the amount to be transferred and the Secretary of Administration does the actual transferring.

2. *Coverage of municipalities.* Strictly speaking, municipalities are cities, villages, and towns and political subdivisions are cities, villages, towns, and counties. When special purpose districts are added to the mix, the term to use is "local governmental unit." See section 14.02 (4), Drafting Manual. Accordingly, this draft, in addition to making the requested changes to the definition of "municipality," changes that term to "local governmental unit" throughout ch. 102.

3. *Institutions of higher education.* The draft defines "institution of higher education" to cover the full range of postsecondary institutions of higher education in this state, including universities and colleges within the UW System, technical colleges, tribal colleges (currently the College of the Menominee Nation and the Lac Courte Oreilles Community College), proprietary schools approved by the Educational Approval Board (for example, Herzing University), and private, nonprofit colleges in this state (for example, Beloit, Edgewood, etc.). If it was not the intent of the Council to include any of these types of postsecondary institutions, please advise.

If you have any questions, please do not hesitate to contact me at the phone number or e-mail address captioned below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3729/P1dn
GMM:kjf:jf

December 13, 2013

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