

1969 Senate Bill 344

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**CHAPTER 341, LAWS OF 1969**

AN ACT to renumber and amend 102.18 (1) and 102.22; to amend 102.11 (1) (intro.), (f), 102.17 (1) (a), 102.18 (3), 102.23 (1) (intro.) and 102.555 (5); and to create 102.07 (11) and 102.18 (1) (a) of the statutes, relating to changes in workmen's compensation law.

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

SECTION 1. 102.07 (11) of the statutes is created to read:

102.07 (11) The commission shall by rule prescribe classes of volunteer workers who may, at the election of the person for whom the service is being performed, be deemed to be employes for the purposes of this chapter. Election shall be by endorsement upon the workmen's compensation insurance policy with written notice to the department. In the case

of an employer exempt from insuring liability, election shall be by written notice to the department. The commission shall by rule prescribe the means and manner in which notice of election by the employer is to be provided to the volunteer workers.

SECTION 2. 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability shall be taken at not less than \$12.50 nor more than ~~\$104.29~~ \$112.86, resulting in a maximum weekly compensation rate of ~~\$73~~ \$79; for permanent total disability or death at not less than \$20 nor more than ~~\$104.29~~ \$112.86, resulting in a maximum weekly compensation rate of ~~\$73~~ \$79 for permanent total disability and of ~~\$52.145~~ \$56.43 for death benefits; and for permanent partial disability at not less than \$20, nor more than ~~\$47.86~~ \$69.29, resulting in a maximum weekly compensation rate of ~~\$47.50~~ \$48.50. Between said limits the average weekly earnings shall be determined as follows:

SECTION 3. 102.11 (1) (f) of the statutes is amended to read:

102.11 (1) (f) Average weekly earnings shall in no case be less than 30 times the normal hourly earnings, at the time of injury, ~~provided that for injury occurring before September 1, 1947, they shall not be less than 40 times such earnings.~~ However, this section shall not apply to temporary disability benefits, if the part-time employe restricts his or her availability, on the labor market, to part-time work and is not actively employed full-time elsewhere. In such case the weekly temporary disability benefits shall not exceed the average weekly wages of the part-time employment.

SECTION 4. 102.17 (1) (a) of the statutes is amended to read:

102.17 (1) (a) Upon the filing with the ~~commission~~ department by any party in interest of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall mail a copy of such application to all other parties in interest and the insurance carrier shall be deemed a party in interest. The ~~commission~~ department may bring in additional parties by service of a copy of the application. The ~~commission~~ shall fix a time for the hearing on such application which shall not be more than 40 days after the filing of such application. The ~~commission~~ department shall cause notice of such hearing, on the application to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known post-office address at least 10 days before such hearing. In case a party in interest is located without the state, and has no post-office address within this state, the copy of the application and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered or certified mail to the last known post-office address of such party. Such filing and mailing shall constitute sufficient service, with the same effect as if served upon a party located within this state. ~~Such~~ The hearing may be adjourned from time to time in the discretion of the ~~commission~~ department, and hearings may be held at such places as the ~~commission~~ department designates, within or without the state. The ~~commission~~ department may also arrange to have hearing held by the commission, officer or tribunal having authority to hear cases arising under the workmen's compensation law of any other state, of the District of Columbia, or of any territory of the United States, the testimony and proceedings at any such hearing to be reported to the ~~commission~~ department and to be part of the record in the case. Any evidence so taken shall be subject to rebuttal upon final hearing before the ~~commission~~ department.

SECTION 5. 102.18 (1) of the statutes is renumbered 102.18 (1) (b) and amended to read:

102.18 (1) (b) After final hearing the ~~commission~~ department shall make and file its findings upon ~~all~~ the ultimate facts involved in the con-

troversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the ~~commission~~ department may after any hearing make interlocutory findings, orders and awards which may be enforced in the same manner as final awards. The ~~commission~~ department may include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it ~~shall find~~ finds that noncompliance was not in good faith, not exceeding ~~twenty-five per cent~~ 25% of each amount which shall not have been paid as directed thereby. Where there is a finding that the employe is in fact suffering from an occupational disease caused by the employment of the employer against whom the application is filed, a final award dismissing such application upon the ground that the applicant has suffered no disability from said disease shall not bar any claim he may thereafter have for disability sustained after the date of ~~said~~ the award.

SECTION 6. 102.18 (1) (a) of the statutes is created to read:

102.18 (1) (a) All parties shall be afforded opportunity for full, fair, public hearing after reasonable notice, but disposition of application may be made by compromise, stipulation, agreement, or default without hearing.

SECTION 7. 102.18 (3) of the statutes is amended to read:

102.18 (3) If no petition is filed within ~~twenty~~ 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or orders shall be considered the findings or order of the ~~industrial commission as a body~~, unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or orders set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the ~~commission~~ department shall run from the date that notice of such reversal or modification is mailed to the last known address of the parties in interest. ~~Within ten days after the filing of such petition with the commission~~ The commission shall either affirm, reverse, set aside or modify such findings or order in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another ~~twenty~~ 20 days for filing petition with the ~~commission~~ department.

SECTION 8. 102.22 of the statutes is renumbered 102.22 (2) and (1), respectively, and amended to read:

102.22 (2) If the sum ordered by the ~~commission~~ department to be paid ~~shall is not be~~ paid when due, such sum shall bear interest at the rate of 6 ~~per cent~~ % per annum. The state of Wisconsin shall be liable for such interest on awards issued against it under this chapter. The ~~commission~~ department shall have jurisdiction to issue award for payment of such interest at any time within one year of the date of its order or upon appeal within one year after final court determination.

(1) Where the employer or his insurer is guilty of inexcusable delay in making payments, the payments as to which such delay is found shall be increased by 10 ~~per cent~~ %. Where such delay is chargeable to the employer and not to the insurer s. 102.62 shall be applicable and the relative inability of the parties shall be fixed and discharged as therein provided.

SECTION 9. 102.23 (1) (intro.) of the statutes is amended to read:

102.23 (1) (intro.) The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive; and the or-

der or award, either interlocutory or final, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within ~~thirty~~ 30 days from the date of an order or award originally made by the commission ~~as a body~~ or following the filing of petition for review with the ~~commission~~ department under s. 102.18 any party aggrieved thereby may commence, in the circuit court for Dane county, an action against the ~~commission~~ department for the review of such order or award, in which action the adverse party shall also be made defendant. In such action a complaint, which need not be verified, but which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the *executive secretary* of the ~~commission~~ department, or any ~~member~~ of the ~~commission~~ commissioner, shall be deemed completed service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the ~~commission~~ department shall mail one such copy to each other defendant. If the circuit court is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 30 days in which such action may be commenced. The ~~commission~~ department shall serve its answer within 20 days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to ~~said~~ the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if such party had commenced a separate action for the review thereof. ~~With its answer, the commission~~ The department shall make return to ~~said~~ the court of all documents and papers on file in the matter, and of all testimony which ~~may have~~ has been taken therein, and of ~~its~~ the commission's order, findings and award. Such return of the ~~commission~~ department when filed in the office of the clerk of the circuit court shall, with the papers mentioned in supreme court Rule 251.25 constitute ~~the record~~ a judgment roll in such action; and it shall not be necessary to have a transcript approved. ~~Said~~ The action may thereupon be brought on for hearing before said court upon such record by either party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

SECTION 10. 102.555 (5) of the statutes is amended to read:

102.555 (5) The limitation provisions in this act shall control claims arising under this section. Such provisions shall run from the first date upon which claim ~~may be~~ is filed, or from the date of subsequent death, provided that no claim shall accrue to any dependant unless an award has been issued or ~~liability admitted~~ *hearing tests have been conducted by a competent medical specialist after the employe has been removed from the noisy environment for a period of 6 months.*

SECTION 11. EFFECTIVE DATE. This act shall take effect on July 1, 1969 or on the first day of the month following passage and publication, whichever is later.

Approved December 31, 1969.

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