

Chapter Ind 80

WORKER'S COMPENSATION

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Ind 80.01 Definitions. (1) "Act," "compensation act" or "worker's compensation act" means ch. 102, Stats.

(2) "Department" means the department of industry, labor and human relations.

(3) "Commission" means the labor and industry review commission.

History: 1-2-58; am. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.02 Reports. (1) Employers. Employers covered by the provisions of ch. 102, Stats., shall, within one day after the death of an employe due to an accident or industrial disease, make a brief report of this occurrence to the department by telegraph, telephone or by letter. They shall also make a report on a form WC-12 on or before the fourth day after the accident or beginning of a disability from occupational disease upon every accident or disease causing death or a disability which exists beyond the third day after the employe leaves work as a result of the accident or disease. (s. 102.43, Stats.)

(2) **SELF-INSURED EMPLOYERS AND INSURANCE COMPANIES.** Pursuant to s. 102.37, Stats., for injuries which require the first report of injury set forth in (1), self-insured employers and insurance companies shall:

(a) Make a supplementary report on a form WC-13 on or before the fourteenth day following that on which the injury occurred, a copy of the WC-12 shall be attached to the initial WC-13, and if the wage is less than the maximum wage as defined by s. 102.11 (1), Stats., submit with the form WC-13, wage information on form WC-13a. If wage information is not available at the time the WC-13 is submitted, a notation should be made on the form WC-13 that a form WC-13a will be submitted at a later date. If an employe restricts his or her availability on the labor market to part-time employment and is not actively employed full time elsewhere, a statement confirming this intention must accompany the WC-13a. This statement is not required if the employe is under the age of 16.

(b) Make a report within 7 days from the date that payments are stopped for any reason. If any payments are stopped for a reason other than the employe's return to work, an explanation of such cessation must be provided to the department and the employe. The self-insured employer or insurance carrier shall advise the employe as to what the employe must do to reinstate payments.

(c) Make a report to the department on form WC-13 with a copy to the employe if payment of compensation is changed from temporary total disability or temporary partial disability to a permanent disability basis. Similar report shall be made if temporary disability benefits are reinstated.

(d) Notify the department and the employe immediately if liability for payment of compensation is denied, giving the reason for such denial. The notice shall advise the employe of the right to a hearing before the department.

(e) Make a final report on a form WC-13 when final payment of compensation has been made. A practitioner's report is necessary if temporary disability exceeds 3 weeks or if permanent disability has resulted. Copies of the final WC-13 form and the final practitioner's report must be sent to the employe.

(f) Notify the department and the employe if the employe fails to return to a practitioner for final examination. The notice shall also advise the employe that in order to determine permanent disability, if any, the final examination is necessary.

(g) Submit a final receipt as proof of payment of any increased compensation due to an injured employe.

(h) File a current form WC-13 indicating all payments to date and the periods of time for which these payments were made when submitting a stipulation or compromise, or at the time of hearing.

(i) Make immediate report to the department of any amputation which will require an artificial member or appliance.

History: 1-2-56; am. (1) and (2), Register, October, 1965, No. 118, eff. 11-1-66; am. Register, April, 1976, No. 232, eff. 6-1-76; am. (1), r. and recr. (2), Register, September, 1982, No. 321, eff. 10-1-82.

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Ind 80.03 Compromise. (1) Whenever an employer and an employe enter into a compromise agreement concerning the employer's liability under ch. 102, Stats., for a particular injury to that employe, the following conditions shall be fulfilled:

(a) The compromise agreement shall be in writing, or in the alternative, oral on the record at the time of scheduled hearing;

(b) The compromise agreement shall be mailed to the department unless made on the record;

(c) The compromise agreement must be approved by the department; and

(d) No compromise agreement may provide for a lump sum payment of more than the incurred medical expenses plus sums accrued as compensation or death benefits to the date of the agreement where the compromise settlement in a claim other than for death benefits involves a dispute as to the extent of permanent disability. Lump sum payments will be considered after approval of the compromise in accordance with s. Ind 80.39.

(e) Compromise agreements which provide for payment of a lump sum into an account in a bank, trust company or other financial institution, which account is subject to release as the department directs, will be authorized.

(2) If the department approves the compromise agreement, an order shall be issued by the department directing payment in accordance with the terms of the compromise agreement. No compromise agreement is valid without an order of the department approving the agreement.

History: 1-2-56; am., Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.04 Place of hearing. **History:** 2-1-56; am., Register, April, 1975, No. 232, eff. 5-1-75; r. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.05 Procedure on claim. (1) In cases of disputes in matters coming under the jurisdiction of ch. 102, ss. 66.191, 101.47, 56.21, or 40.65, Stats., any party to the dispute may apply to the department for relief and the department shall make such order or award as shall be lawful and just under the circumstances.

(2) In all such cases under sub. (1), the party complaining shall file his or her application with the department, along with sufficient copies of the application for service on the adverse parties. The department shall thereupon serve the adverse parties with a copy of the application and the adverse parties shall file an answer to the application with the department within 20 days after the service and likewise serve a copy of the answer on the party making application. The department shall thereupon notify the parties of the time and place of hearing, at least 10 days prior to the hearing. If no answer is mailed by the respondent within 20 days of mailing by the department, the department may issue an order by default, without hearing, in accordance with the application, as provided by s. 102.18 (1) (a), Stats. (s. 102.17, Stats.)

History: 1-2-56; am., Register, April, 1975, No. 232, eff. 5-1-75; am. Register, September, 1982, No. 321, eff. 10-1-82.

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Ind 80.06 Parties. The parties to the controversy shall be known as the applicant and the respondent. The party filing the application for relief shall be known as the applicant and an adverse party as the respondent. Any party may appear in person or by an attorney or agent.

History: 1-2-56; am. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.07 Service. All service of papers, unless otherwise directed by the department or by law, may be made by mail and proof of such mailing shall be prima facie proof of such service. Time within which service shall be made shall be the same as in courts of record unless otherwise specified by rule or order of the department.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.08 Amendments. Amendment may be made to the application or answer by letter mailed to the department prior to the date the notice of hearing is mailed. Copies of the letter shall be sent directly to the other parties. The letter shall state reasons for the amendment.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.09 Witness attendance; extention of time and postponement. (1) Upon receipt of the notice of hearing, it is the responsibility of each party to contact any witnesses necessary for that party's case and to make arrangements to have them attend the hearing.

(2) Requests for postponements and continuances shall be considered by the department only if such requests are received within a reasonable time before the date of the hearing.

(3) The department shall grant postponements and continuances only because of extraordinary circumstances. Neither the scheduling problems nor the convenience of the parties shall be considered extraordinary circumstances.

(4) A postponement, continuance or extension of time may not be granted upon the mutual agreement of the parties without the consent of the department.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.10 Stipulations. Parties to a controversy may stipulate the facts in writing, and the department may thereupon make its order or award. Stipulations must set forth in detail the manner of computing the compensation due and must be accompanied by a report from a physician stating the extent of the disability.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.11 Depositions. Depositions may be taken and used in any hearing only in accordance with s. 102.17 (1) (f), Stats. These depositions shall be taken in the same manner as in courts of record. Depositions for the purpose of discovery before the hearing are specifically prohibited.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; am. Register, September, 1982, No. 321, eff. 10-1-82.

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Ind 80.12 Rules of practice; selection of hearing site. (1) (a) The rules of practice before the department shall be such as to secure the facts in as direct and simple a manner as possible.

(b) The examiner may limit testimony to only those matters which are disputed.

(c) The examiner may not allow into the record, either on direct or cross-examination, redundant, irrelevant or repetitive testimony. Hearsay testimony may be admitted at the discretion of the examiner provided such testimony has probative value.

(2) The department may select places for a hearing after considering the geographical location and volume of claims in an area. A list of sites will be furnished upon request to interested parties by the department. From this list, a hearing site shall be selected at the discretion of the department. The department, in determining the site of the hearing, shall consider the following:

(a) The location choice of the applicant;

(b) The location of the office of the treating practitioner or practitioner appointed by the department under the provisions of s. 102.17, or 102.13 (3), Stats.; and

(c) The location where the injury occurred.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.14 Transcripts. (1) Transcripts of testimony taken or proceedings had before the department will be furnished to the applicant or respondent or their attorneys in accordance with the following provisions:

(a) After the commencement of an action to review an order of the commission in circuit court, a copy of the hearing record will be furnished to the plaintiff or other parties upon payment to the department of the reporter's fees set forth in s. 757.57 (5), Stats., and not as set forth in s. 757.57 (2), Stats.

(b) Transcripts of the hearing may not be provided until after commencement of an action in circuit court.

(c) Upon proper showing of financial inability to pay for copies of such testimony or proceedings, the department in its discretion will furnish copies of the same on such terms as may be agreed upon.

History: 1-2-56; am. (1) (a) and (b), Register, October, 1965, No. 118, eff. 11-1-65; am. Register, November, 1970, No. 179, eff. 12-1-70; am. (1) (a), Register, April, 1971, No. 184, eff. 5-1-71; r. and recr. (1) (a) and (b), Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.16 Exemptions from insurance; automatic. **History:** 1-2-56; r. and recr. Register, April, 1975, No. 232, eff. 5-1-75; r. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.17 Excess insurance. **History:** 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; r. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.18 Procedure in state cases. **History:** 1-2-56; am. (1) (a) and (f) and cr. (5), Register, October, 1965, No. 118, eff. 11-1-65; r. (4), Register, November, 1970, No. 179, eff. 12-1-70; am. Register, April, 1975, No. 232, eff. 5-1-75; r. Register, September, 1982, No. 321, eff. 10-1-82.

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Ind 80.19 Procedure on review by commission. History: 1-2-56; am. Register, November, 1970, No. 179, eff. 12-1-70; am. Register, April, 1975, No. 232, eff. 5-1-75; r. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.20 License to appear. (1) The following rules shall govern the issuance, suspension, or revocation of licenses to appear before the department in compensation matters under the provisions of s. 102.17 (1) (am), Stats.

(a) Permission to appear at a single hearing may be issued by the department through any examiner upon application evidencing qualifications provided by statute and the department's rules. Such permission may be given to appear in 3 cases before the issuing of license. When appearance has been made in 3 cases, license shall be required, which shall be issued only upon execution and filing with the department of application upon form prescribed by the department.

(b) Before license shall be issued applicant shall have appeared in representation of a party before the department on at least 3 formal hearings.

(c) The following conditions shall operate as grounds for refusal, suspension, or revocation of license.

1. Charging of excessive or unconscionable fees, misrepresentation of clients, dishonesty, fraud, sharp practice, neglect of duty, or other improper conduct in the representation of a party before the department, unless satisfactorily explained or excused by the department on the grounds of subsequent good conduct.

2. Disbarment from the practice of law, or resignation by request of properly constituted authorities, unless there has been subsequent reinstatement and continuance in good standing.

3. Contumacious conduct in hearing, gross discourtesy toward department representatives, or failure to conform to rulings or instructions of the department of its representatives.

4. Intentional or repeated failure to observe provisions of the compensation act or rules of procedure adopted by the department.

5. Any other gross evidence of lack of good moral character, fitness or act of fraud, or serious misconduct.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.21 Reports by practitioners and expert witnesses. (1) Upon the request of the department, any party in interest to a claim under ch. 102, Stats., shall furnish to the department and to all parties in interest copies of all reports by practitioners and expert witnesses in their possession or procurable by them.

(2) In cases involving nonscheduled injuries under 102.44 (2) or (3), Stats., any party in interest to a claim under the act shall, upon the request of the department, also furnish to the department and to all parties in interest any reports in their possession or reasonably available to them relating to the loss of earning capacity as set forth in s. Ind 80.34.

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(3) Any party who does not comply with the request of the department under sub. (1) or (2) shall be barred from presenting the reports or the testimony contained therein at the hearing.

(4) No testimony concerning wage earning impairment shall be received unless the party offering such testimony has notified the department and the other parties in interest of the intent to produce such testimony. The names of the witnesses who are going to testify as to wage earning impairment shall also be furnished to the department and the parties in interest. Such notification shall be given at least 30 days prior to a scheduled hearing.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-76; am. (1), cr. (2), (3) and (4), Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.22 Use of physicians' reports as evidence. See s. 102.17 (1) (as), Stats.

(1) Matters stated in such report which would not be competent or material evidence if given as oral testimony shall not be competent or material as prima facie evidence if objection is made, except as corroborated by competent and material oral testimony.

(2) Use of reports shall be permitted in any case in which claim for compensation is made, provided the reporting doctor is available for cross examination.

(3) An applicant shall be informed of the provisions of s. 102.17 (1) (d), Stats., and the department's rules and also that a form for reporting will be supplied to the applicant upon request.

(4) Report shall be submitted to the department upon a form prescribed by the department and shall be verified or certified. The department may require additional or supplementary reports. Upon failure of the applicant to submit such reports within the time specified prior to hearing, all reports previously filed may, in the discretion of the department, be excluded as evidence.

(5) Reports shall be filed with the application for adjustment of claim or as soon thereafter as possible. Reports not filed with the department 15 days prior to the date of hearing shall not be acceptable as evidence except upon good cause for failure so to file, established to the satisfaction of the department.

(6) Simultaneously with the filing of a WC-16B form or a verified report of a vocational expert with the department, a party shall serve copies upon all other parties in interest. Service upon the designated representative of a party shall be deemed service upon the party. Service upon the insurance carrier for an employer shall be deemed service upon the employer. However, if a party does not have a representative, the department may elect to make service upon other parties.

History: 1-2-56; am. (intro. par.), (7) and (4), Register, October, 1965, No. 118, eff. 11-1-66; am. Register, April, 1975, No. 232, eff. 5-1-76; am. (3) and r. and recr. (6), Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.23 Common insurance of employer and third party. In all cases where compensation becomes payable and the insurance carrier of an employer and of a third party shall be the same, or if there is common

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control of the insurer of each, the insurance carrier of the employer shall promptly notify the parties in interest and the department of that fact.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.24 Statement of employe. When an employe gives a statement signed by him, which in any way concerns his claim, a copy of such statement must be given to the employe. When such statement is taken by a recording device and is not immediately reduced to writing, a copy of the entire statement must be given to the employe or to his attorney within a reasonable time after application for hearing is filed, and the actual recording must be available as an exhibit if formal hearing is held. Failure on the part of the employer or insurance carrier to comply with the above will preclude the use of such statement in any manner in connection with that claim.

History: Cr. Register, March, 1956, No. 3, eff. April 1, 1956; am. Register, October, 1965, No. 118, eff. 11-1-65.

Ind 80.25 Loss of hearing; determined. The report of the medical committee which has revised and updated the report of 1954 is adopted. Such report is as follows:

(1) **HARMFUL NOISE.** Hearing loss resulting from hazardous noise exposure depends upon several factors, namely, the overall intensity (sound pressure level), the daily exposure, the frequency characteristic of the noise spectrum and the total lifetime exposure. Noise exposure level of 90 decibels or more as measured on the A scale of a sound level meter for 8 hours a day is considered to be harmful.

(2) **MEASUREMENT OF NOISE.** Noise shall be measured with a sound level meter which meets ANSI standard S1.4-1971 and shall be measured on the "A" weighted network for "slow response." Noise levels reaching maxima at intervals of one second or less shall be classified as being continuous. The measurement of noise is primarily the function of acoustical engineers and properly trained personnel. Noise should be scientifically measured by properly trained individuals using approved calibrated instruments which at the present time include sound level meters, octave band analyzers and oscilloscopes, the latter particularly for impact-type noises. See ss. Ind 11.03-11.06, inclusive. Register, July 1971, No. 187.

(3) **MEASURE OF HEARING ACUITY.** The use of pure tone air conduction audiometry performed under proper testing conditions is recommended for establishing the hearing acuity of workers. The audiometer should be one which meets the specifications of ANSI standard 53.6-1969 (4). The audiometer should be periodically calibrated. Preemployment records should include a satisfactory personal and occupational history as they may pertain to hearing status. Otological examination should be made where indicated. See s. Ind 11.10. Register, August 1972, No. 200; Ind 11.11. Register, July 1971, No. 187; and Ind 11.12. Register, August 1972, No. 200.

(4) **FORMULA FOR MEASURING HEARING IMPAIRMENT.** For the purpose of determining the hearing impairment, pure tone air conduction audiometry is used, measuring all frequencies between 500 and 6,000 Hz. This formula uses the average of the 3 speech frequencies of 1,000, 2,000, and 3,000 Hz. Audiometric measurement for these three frequencies averag-

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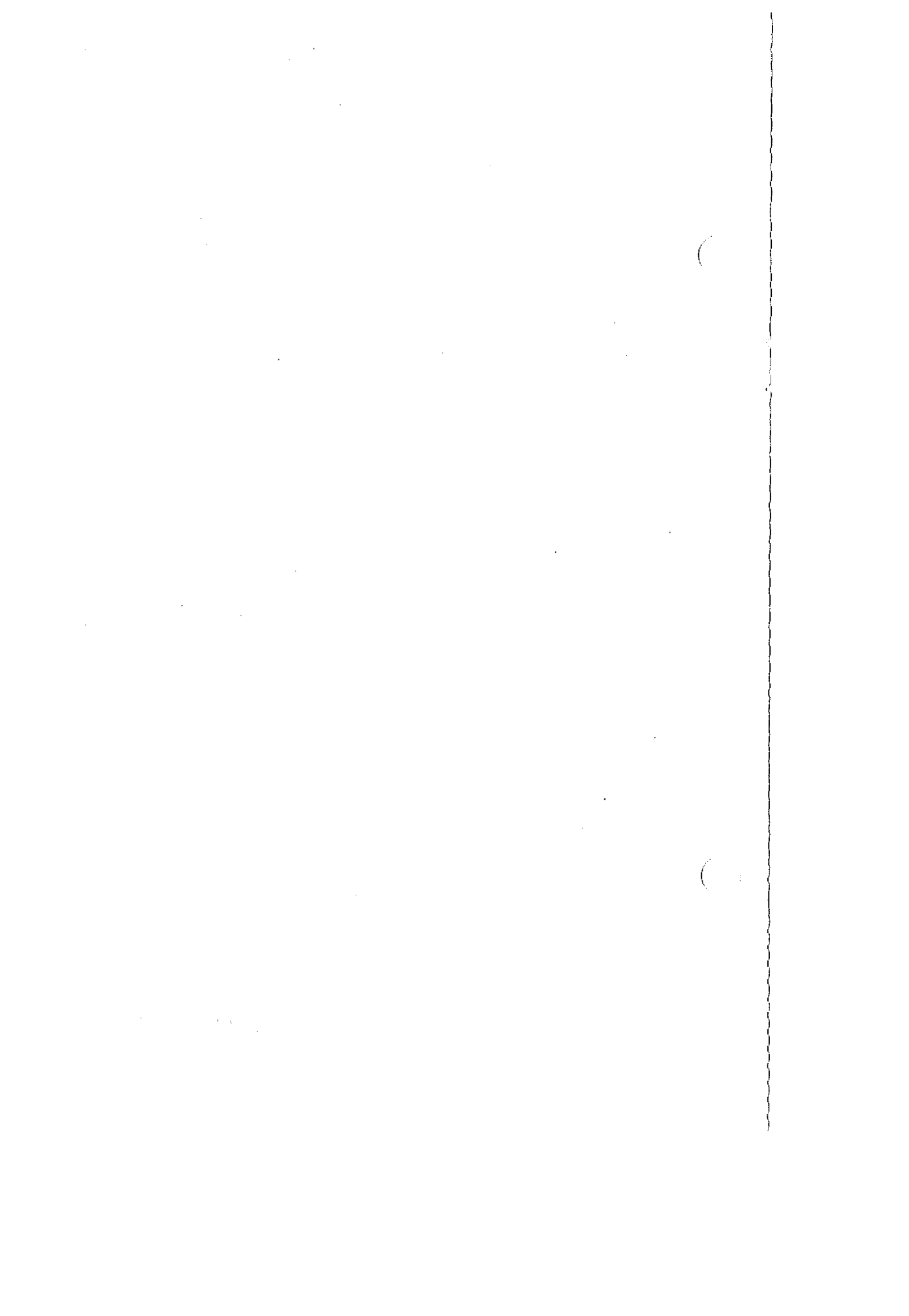
ing 35 decibels or less on the ANSI calibration does not constitute any practical hearing impairment. A table for evaluating hearing impairment based upon the average readings of these 3 frequencies follows below. No deduction is made for presbycusis.

(5) **DIAGNOSIS AND EVALUATION.** The diagnosis of occupational hearing loss is based upon the occupational and medical history, the results of the otological and audiometric examinations and their evaluation.

(6) **TREATMENT.** There is no known medical or surgical treatment for improving or restoring hearing loss due to hazardous noise exposure.

(7) **ALLOWANCE FOR TINNITUS.** In addition to the above impairment, if tinnitus has permanently resulted due to work exposure, an allowance of 5% loss of hearing impairment for the affected ear or ears shall be computed.

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C. Binocular Vision:

Diplopia in 3 rectangles (3/20) is 96.3% motor field efficiency.

D. Industrial Visual Efficiency of the one eye is:

$77.7\% \times 83.3 \times 96.3\%$ or 62.3%

E. Impairment of the one eye for industrial use is:

$100.0\% - 62.3\% = 37.7\%$

F. Compensation payable is (under major schedule since amendments of 1931):

Total impairment of one eye (age 50 or less) 250 weeks. $250 \text{ weeks} \times 37.7\% = 94.25 \text{ weeks}$
(Reduce the number of weeks by 2½% for each year that the age at time of injury exceeds 50.)

Note II—Example of computation covering partial disability to both eyes

1. Left Eye is 62.3% efficient, see Example I.

2. Right Eye:

A. Central Visual Acuity:

Distance—Reading of 20/30 with correction equals visual efficiency of..... 91.5%

Reading of 20/35 without glasses equals visual efficiency of 87.5%

Difference..... 4.0%

Rated efficiency is the vision without correction (because correction gives improvement of less than the 5% minimum allowance for glasses, and is not necessary to prevent eye strain, etc.) 87.5%.

Near— Reading of 14/14 with glasses equals visual efficiency of..... 100.0%

Reading of 14/21 without glasses equals visual efficiency of 91.5%

Difference..... 8.5%

Rated efficiency is 100.0% minus 5% (because 5% is the minimum allowance for glasses) or 95.0%

Final Central Visual Acuity Efficiency is:

$87.5\% \times 95\% = 277.5 \div 3 = 92.5\%$

B. Field vision is 100%

C. Binocular vision is 100%

D. Industrial visual efficiency of the right eye is:

$92.5\% \times 100\% \times 100\%$ or 92.5%

E. Impairment of right eye for industrial use is:

$100.0\% - 92.5\% = 7.5\%$

3. Compensation payable is (under major schedule since amendments of 1931, and at age 50 or less):

Left eye (Example I): 94.25 weeks

Right eye: $250 \text{ weeks} \times 7.5\% = 18.75$ 56.25 weeks

Total 150.5 weeks

(Reduce the number of weeks by 2½% for each year that the age at time of injury exceeded 50.)

Note III—Example of compensation covering enucleation of one eye and partial disability of the other eye

1. Left eye is 35.28% impaired ($77.7\% \times 83.3\% = 64.72\%$; $100\% - 64.72\% = 35.28\%$, as allowance for binocular vision is inapplicable when the other eye is enucleated or blind), which results, at age 50 or less, in indemnity payable for 88.2 weeks

2. Right eye is enucleated, which, at said ages, results in indemnity payable for 275 weeks

3. Total payable: $88.2 \text{ weeks} \times 3$ (multiple injury) = 264.6 + 275 = 539.6 weeks

(Subject to deduction of 2½% for each year over age of 50)

The number of weeks indemnity indicated as payable for impairment of vision or for enucleation is in addition to indemnity for temporary disability. All results are subject to the limitation that the total amount of indemnity payable, including that for temporary disability, shall not exceed the indemnity which would be payable for permanent total disability. The statutory and legal rules applicable to the determination of additional compensation payable out of the special state fund on account of preexisting disabilities are not here stated.

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Ind 80.27 Forms. A sample copy of all forms referred to in these rules may be obtained upon a request to the Worker's Compensation Division, Department of Industry, Labor and Human Relations, Post Office Box 7901, Madison, WI 53707.

History: Cr. Register, October, 1957, No. 22, eff. 11-1-57; am. (1), Register, October, 1965, No. 118, eff. 12-1-65; am. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.29 Value of room or meals. For the purpose of determining the value of lodging and meals for wage purposes under ch. 102, Stats., the allowance provided under ch. Ind 72 shall apply.

History: Cr. Register, October, 1960, No. 58, eff. 11-1-60; am. (1) (a) and (b), Register, October, 1963, No. 94, eff. 11-1-63; r. and recr. Register, January, 1967, No. 133, eff. 2-1-67; am. Register, November, 1970, No. 179, eff. 12-1-70; r. and recr. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.30 Average weekly earnings for members of volunteer fire companies or fire departments. The maximum average weekly earnings under the provisions of s. 102.11, Stats., which are in effect on the date of injury shall be used in computing the amount of compensation payable to an employe as defined by s. 102.07 (7), Stats., except as specific showing may be made in an individual case that such wage is not proper.

History: Cr. Register, June, 1961, No. 66, eff. 7-1-61.

Ind 80.31 Procedure and claims under chapter 66, Stats. The department shall observe the same rules and procedures and may use the same forms in processing and determining claims made under ch. 66, Stats. as are used under ch. 102, Stats.

History: Cr. Register, October, 1965, No. 118, eff. 11-1-65; am. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.32 Permanent disabilities. Percentages of loss of use for losses of motion as compared with amputations at the involved joints.

(1) The disabilities set forth in this section are the minimums for the described conditions. However, findings of additional disabling elements shall result in an estimate higher than the minimum. The minimum also assumes that the member, the back, etc., was previously without disability. Appropriate reduction shall be made for any preexisting disability.

Note: An example would be where in addition to a described loss of motion, pain and circulatory disturbance further limits the use of an arm or a leg. The removal of a semi-lunar cartilage in a knee with less than a good result would call for an estimate higher than 5% loss of use of the leg at the knee. The same principle would apply to laminectomies or spinal fusions. The schedule of minimum disabilities contained in this section was adopted upon the advice of the orthopedic advisory committee.

(2) *Amputations, upper or lower extremities*

At functional level	Equivalent to amputation at midpoint
Stump unsuitable to accommodate prosthesis	Equivalent to amputation at next most proximal joint
Stump not functional	Grade upward

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All ranges of joint motion or degrees of ankylosis not listed below are to be interpolated from existing percent of disability listed.

(3) *Hip*

Ankylosis, optimum position, generally 15° to 30° flexion	50%
Mal position	Grade upward

To compute disabilities for loss of motion relate % of motion lost to average range

Shortening of leg (no posterior or lateral angulation)

No disability for shortening less than 3/4 inch

3/4 inch	5%
1 inch	7%
1-1/2 inches	14%
2 inches	22%

Greater than 2 inches of shortening results in greater proportionate rating than above

Prosthesis Minimum of 50%

(4) *Knee*

Ankylosis, optimum position, 170° 40%

Remaining range, 180° - 135° 25%

Remaining range, 180° - 90° 10%

Prosthesis 40%

Removal of patella To be based on functional impairment

Semi lunar cartilage removal
 Excellent to good result 5%

(5) *Ankle*

Total ankylosis, optimum position 40%

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Ankylosis ankle joint 30%

Subtalar ankylosis 15%

(6) *Toes*

Ankylosis great toe at proximal joint 50%

All other toes at proximal 40%

Ankylosis great toe at distal joint 15%

All other toes at any interphalangeal joint If no deformity, no disability

Mal position On merits

Loss of motion No disability

(7) *Shoulder*

Ankylosis, optimum position, scapula free 55%

In mal position Grade upward

Limitation of active elevation in flexion and abduction to 45° but otherwise normal 30%

Limitation of active elevation in flexion and abduction to 90° but otherwise normal 20%

Limitation of active elevation in flexion and abduction to 135° but otherwise normal 5%

(8) *Elbow*

Ankylosis, optimum position, 45° angle

With radio-ulnar motion destroyed 60%

With radio-ulnar motion intact 45%

Rotational ankylosis in neutral position 20%

Any mal position Grade upward

Limitation of motion	
elbow	
joint, radio-ulnar	
motion	
unaffected	
Remaining range - 180°	
- 135°	35%
Remaining range - 135°	
- 90°	20%
Remaining range - 180°	
- 90°	10%
Rotation at elbow joint	
Neutral to full	
pronation	10%
Neutral to full	
supination	15%
(9) <i>Wrist</i>	
Ankylosis, optimum position 30° dorsiflexion	30%
Mal position	Grade upward
(10) <i>Complete Sensory Loss</i>	
Any digit	50% lesser involvement to be graded appropriately - 35% for palmar, 15% for dorsal surface
Total median sensory loss to hand	65-75%
Total ulnar sensory loss to hand	25%
Ulnar nerve paralysis	
Above elbow, sensory involvement	50% at wrist
Below elbow, motor and sensory involvement	45-50% at wrist
Below elbow, motor involvement only	35-45% at wrist
Below elbow, sensory involvement only	5-10% at wrist
Median nerve paralysis	
Above elbow, motor and sensory	

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involvement	55-65% at wrist
Thenar paralysis with sensory loss	40-50% at wrist
Radial nerve paralysis	
Complete loss of extension, elbow wrist and fingers	45-55% at shoulder
Complete loss of extension, wrist and fingers	45-55% at wrist
Paraneal nerve paralysis	
At level below knee	25-30% at knee

(11) *Back*

Laminectomy, no undue symptomatic complaints or any objective findings	5%
Spinal fusion L5-S1, good results	10%
Spinal fusion L4-S1, good results	10%
Cervical fusion, successful	5%
Compression fractures of vertebrae of such degree to cause permanent disability may be rated 5% and graded upward	

(12) *Fingers*

(a) Complete ankylosis

	Mid-position	Complete Extension
Thumb		
Distal joint only	25%	35%
Proximal joint only	15%	20%
Distal and proximal joints	35%	65%
Distal, proximal and carpometacarpal joints	85%	100%
Fingers		
Distal joint only	25%	35%
Middle joint only	75%	85%
Proximal joint only	40%	50%
Distal and middle joints	85%	100%
Distal, middle and proximal... joints	100%	100%

(b) Loss of Motion

Fingers	Loss of Flexion	Loss of Use	Loss of Extension	Loss of Use
Distal joint only	10% -	1%	10% -	2%
	20% -	2%	20% -	4%
	30% -	3%	30% -	6%
	40% -	5%	40% -	8%
	50% -	10%	50% -	15%
	60% -	15%	60% -	20%
	70% -	20%	70% -	30%
	80% -	25%	80% -	40%
		100% -	60%	
Middle joint only	10% -	5%	10% -	2½%
	20% -	10%	20% -	5%
	30% -	15%	30% -	10%
	40% -	25%	40% -	15%
	50% -	40%	50% -	30%
	60% -	50%	60% -	50%
	70% -	60%	70% -	70%
	80% -	70%	80% -	90%
		100% -	100%	
Proximal joint only.....	10% -	5%	10% -	2½%
	20% -	10%	20% -	5%
	30% -	15%	30% -	15%
	40% -	20%	40% -	20%
	50% -	25%	50% -	25%
	60% -	30%	60% -	40%
	70% -	35%	70% -	75%
	80% -	40%	80% -	85%
		90% -	100%	

History: Cr. Register, October, 1965, No. 118, eff. 11-1-65; r. and recr. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. (1), Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.33 Permanent disabilities; fingertip amputations. In estimating permanent disability as a result of fingertip amputations, amputation of the distal one-third or less shall be considered the equivalent of 45% loss of use of the distal phalanx, amputation of not more than the distal two-thirds but more than the distal one-third shall be considered the equivalent of 80% loss of use of the distal phalanx, and amputation of more than the distal two-thirds shall be considered as 100% loss of the distal phalanx, provided there is not added disability as a result of malformed nail or tissue. In no case shall the allowance be greater than it would have been for amputation of the entire distal phalanx.

History: Cr. Register, October, 1965, No. 118, eff. 11-1-65; am. Register, November, 1970, No. 179, eff. 12-1-70.

Ind 80.34 Loss of earning capacity. (1) Any department determinations as to loss of earning capacity for injuries arising under s. 102.44 (2) and (3), Stats., shall take into account the effect of the injured employe's permanent physical and mental limitations resulting from the injury upon present and potential earnings in view of the following factors:

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- (a) Age;
- (b) Education;
- (c) Training;
- (d) Previous work experience;
- (e) Previous earnings;
- (f) Present occupation and earnings;
- (g) Likelihood of future suitable occupational change;
- (h) Efforts to obtain suitable employment;
- (i) Willingness to make reasonable change in a residence to secure suitable employment;
- (j) Success of and willingness to participate in reasonable physical and vocational rehabilitation program; and
- (k) Other pertinent evidence.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.39 Advance payment of unaccrued compensation. (1) The department may order partial or full payment of unaccrued compensation to an employe or his or her dependents pursuant to s. 102.32 (6), Stats., upon consideration of the following factors:

- (a) The length of time since the injury;
- (b) The total income of the employe or the dependent;
- (c) The income of others in the employe's or the dependent's household;
- (d) The age of the employe or the dependent;
- (e) The other available assets of the employe or the dependent;
- (f) The loss of benefits because of interest credit due to self-insured employer or insurance carrier;
- (g) The purpose for which the advancement is requested;
- (h) The other financial obligations of the employe or the dependent;
- (i) The employment status of the employe or the dependent;
- (j) If the advancement is requested for the purchase of real estate, the cost of the real estate and availability of other necessary financing for the real estate;
- (k) The employe's or the dependent's previous experience in and likelihood of success in a proposed business venture;
- (l) The probable income and security of any proposed investment; and

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(m) Other information indicating whether an advancement is in the best interest of the applicant.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.41 Computation of monthly salary and reimbursement to retirement fund under s. 66.191. (1) Fringe benefits shall not be included in the computation of salary, earnings or wages under s. 66.191, Stats., unless such benefits are income for Wisconsin income tax purposes.

(2) An eligible employe under s. 66.191, Stats., shall file with the department before an award is entered, as provided in s. 66.191, Stats., a waiver of disability annuity payments which may be due under s. 40.63, Stats., and further shall consent to reimbursement to the Wisconsin retirement fund of all disability benefits recovered under the provisions of s. 40.63, Stats.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.42 Vocational rehabilitation; reporting requirement. In order to determine whether or not an employe should be referred to the division of vocational rehabilitation for services, the self-insured employer or insurance carrier shall notify the department whenever temporary total disability will exceed 13 weeks. This report shall be made within 13 weeks from the date of the initial disability or when such disability can be determined, whichever is earlier, and shall include a current practitioner's report.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.43 Fees and costs. Section 102.26, Stats., provides for a maximum attorney's fee of 20% of the amount in dispute. Section 102.26 (3), Stats., places upon the department the responsibilities for fixing the fee and providing for the direct payment of the fee. In the exercise of this responsibility, the department shall take into account the following considerations:

(1) The department shall balance the need to preserve the maximum amount of benefits for the injured employe and the need for fees which are sufficient to insure adequate representation for claimants under ch. 102, Stats.

(2) Fees shall not be allowed on medical expenses to the extent that other sources, such as group insurance, are available to pay such expenses.

(3) Fees for permanent total disability shall not be allowed on compensation awards due beyond 500 weeks.

(4) The existence of a dispute under s. 102.26 (2), Stats., is dependent upon a disagreement after the employer or insurer has had adequate time and information to take a position on liability. Neither the holding of a hearing nor the filing of an application for a hearing alone may determine the existence of a dispute. However, a finding that a dispute exists shall not be precluded by an employer's or insurer's purposeful inactivity on the issue of liability.

(5) Where representation is the result of the representative's employment by an insurance carrier, an employer, a union, a social service

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agency or a public agency, the representative may not charge a fee on a contingency basis.

(6) Where there has been successive representation by various representatives, the division of fees by the department shall take into account the relative value of the services performed by each representative, any concessions of disability, offers of settlement and other matters.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.44 Witness fees and travel reimbursement. The fees and travel reimbursement of witnesses and interpreters for attending a hearing before an examiner of the department, shall be the statewide rate currently paid under s. 885.05 (1) (bn), Stats., notwithstanding any local county variations.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.45 Renewed period of temporary total disability. A period of temporary total disability commencing more than 2 years after the date of injury may not be considered to be a renewed period of temporary total disability unless there has been an interruption in the period of temporary total disability. The employe shall have had medical authorization and physical ability to return to work before it shall be deemed that there has been an interruption of continuous disability.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.46 Contribution to support of unestranged surviving parent. In assessing support under s. 102.48, Stats., the payment of room and board by a child to his or her parent shall not be considered as contribution to support of the parent.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.47 Medical release of employe for restricted work in the healing period. Even though an employe could return to a restricted type of work during the healing period, unless suitable employment within the physical and mental limitations of the employe is furnished by the employer or some other employer, compensation for temporary disability shall continue during the healing period.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.48 Reassignment of death benefits. When a spouse who is entitled to death benefits remarries, the department shall reassign the death benefits to the children designated in ss. 102.51 (1) and 102.49, Stats., unless a showing is made that undue hardship would result for the spouse because of the reassignment.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.49 Vocational rehabilitation benefits. (1) The primary purpose of vocational rehabilitation benefits is to provide a method to restore an injured worker as nearly as possible to the worker's preinjury earning capacity and potential.

(2) The determination of eligibility for vocational rehabilitation training and whether a person is a suitable subject for training is the responsibility of the vocational rehabilitation division of the department of health and social services.

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(3) The determination of whether an industrial injury creates a necessity for vocational rehabilitation training is the responsibility of the worker's compensation division of the department. The division shall utilize the following presumptions:

(a) If an injury causes permanent disability entitling an employe to compensation for permanent disability of 100 or more weeks, it shall be presumed that the injury necessitates vocational rehabilitation training unless a showing is made to the contrary.

(b) If an injury causes no permanent disability or a permanent disability entitling an employe to less than 100 weeks of compensation for permanent disability, it shall be presumed that the injury did not necessitate vocational rehabilitation training unless a showing is made to the contrary.

(4) Extension of vocational rehabilitation benefits beyond 40 weeks may not be authorized if the purpose of such further training is primarily to improve upon preinjury earning capacity rather than restoring it.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.50 Computation of permanent disabilities. (1) In computing permanent partial disabilities, the number of weeks attributable to more distal disabilities shall be deducted from the number of weeks in the schedule for more proximal disabilities before applying the percentage of disability for the more proximal injury, except that:

(a) Such a deduction shall not include multiple injury factors under s. 102.53, Stats.; and

(b) Such a deduction shall include preexisting disabilities.

(2) The number of weeks attributable to scheduled disabilities shall be deducted from 1,000 weeks before computing the number of weeks due for a non-scheduled disability resulting from the same injury. This deduction shall not include multiple injury factors under s. 102.53, Stats.

(3) Multiple injury factors under 102.53, Stats., do not apply to compensation for disfigurement under s. 102.56, Stats.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.51 Computation of weekly wage. Pursuant to s. 102.11, Stats.: (1) In determining daily earnings, if the number of hours a full-time employe worked had been either decreased or increased for a period of at least 90 total days prior to the injury, then this revised schedule worked during those 90 days shall be considered to be normal full-time employment.

(2) When an employe furnishes his or her truck to the employer and is paid by the employer in gross to include operating expenses, one-third of that gross sum is considered as wages except as a showing is made to the contrary.

(3) Prisoners injured in prison industries are considered to be earning the maximum average weekly earnings under the provisions of s. 102.11, Stats., except as a showing is made to the contrary.

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(4) The 30 hour minimum workweek under s. 102.11 (1) (f), Stats., does not apply to a part-time employe unless the employe is a member of a regularly scheduled class of part-time employes. In all other cases part-time employment is on the basis of normal full-time employment in such job. However, this subsection does not apply to part-time employes defined in s. 102.11 (1) (f), Stats., who restrict availability on the labor market. As to the employes so defined, those wages will be expanded to the normal part-time or full-time wages unless the employer or insurance company complies with s. 80.02 (2) (a).

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.60 Exemption from duty to insure (self-insurance). (1) DEFINITIONS. In this section:

(a) "Self-insurance" means exemption from the duty to insure, as provided in s. 102.28 (2) (b), Stats.

(b) "Full-insurance" means the insurance of all liability by one policy, as required in s. 102.31 (1) (a), Stats.

(c) "Divided-insurance" means consent to the issuance of two or more policies, as provided in s. 102.31 (1), Stats.

(d) "Partial-insurance" means self-insurance of a part of the liability and consent to the issuance of one or more policies on the remainder of the liability, as provided in ss. 102.28 (2) (b) and 102.31 (1), Stats.

(e) "Excess insurance" means catastrophic insurance for employers granted self-insurance, and is not full-insurance, self-insurance, partial-insurance or divided-insurance.

(2) EXCESS INSURANCE. Excess insurance may be carried without further order of the department.

(3) REQUIREMENTS FOR THE STATE, ITS POLITICAL SUBDIVISIONS, AND STATE AND NATIONAL BANKS. (a) The state, its political subdivisions, and state and national banks may self-insure without further order of the department, if they are not partially-insured or fully-insured under one or more policies, and if they agree to report faithfully all compensable injuries and agree to comply with ch. 102, Stats., and rules of the department. However, any such employer desiring partial-insurance or divided-insurance must submit an application to the department and be given special consent as described in s. Ind 80.61.

(b) Self-insurance granted under par. (a) is subject to revocation under s. 102.28 (2) (c), Stats. Once the privilege of self-insurance is revoked, further self-insurance may be authorized only under the procedures set forth in sub. (4).

(4) REQUIREMENTS FOR OTHER EMPLOYERS. (a) *Application.* Employers, other than those specified in sub. (3), desiring self-insurance shall submit an application on department form WC A-19.3 to the department. If the application is approved, the department shall permit self-insurance by written order. Employers granted self-insurance shall submit renewal applications on a department form to the department annually. Self-insurance shall expire as of June 30 of each subsequent year.

(b) *Minimum requirements.* The minimum requirements for self-insurance are:

1. The employer shall be a corporation authorized to do business in Wisconsin and registered in the office of the secretary of state.

2. The employer shall have an average employment of at least 100 persons working in Wisconsin at the time the initial application is filed. All or some of these 100 persons may be employed in Wisconsin by its parent corporation, or by subsidiary or affiliated companies of the employer.

3. The employer shall own and maintain lands, buildings and plants in Wisconsin at least equal to a total net book value of \$500,000 or \$500 per employe, whichever amount is greater, including the net book value of the lands, buildings and plants owned in Wisconsin by the employer and its parent and subsidiary companies, less liens, if the employer is a corporation which is a wholly or majority owned subsidiary. The employer shall notify the department of any sale or transfer of this property which reduces the net book value below these minimum amounts.

4. If the employer is a corporation which is a majority or wholly owned subsidiary, it shall submit to the department a guaranty of payments by the ultimate or top parent company on a department form and a certified copy of the resolution adopted by the board of directors of the parent corporation.

5. The employer shall submit a certified copy of the resolution adopted by the board of directors authorizing the execution of the application and the agreement shall be submitted when the initial application is submitted.

6. The employer shall submit a copy of the latest financial report prepared for the stockholders of the corporation or its parent company and a copy of the latest annual 10-K filed by the corporation or its parent company with the U.S. securities and exchange commission with the submission of the initial and each renewal application. If neither report is prepared, the corporation shall submit an independently certified current financial statement together with such other financial information as the department may require to substantiate the financial data.

7. The employer shall make adequate arrangements in Wisconsin for claims administration under ch. 102, Stats., and this chapter, and for occupational safety and health, which are acceptable to the department.

8. The employer shall maintain acceptable performance in prompt payment and reporting of claims under ch. 102, Stats.

9. The employer shall maintain acceptable safety and health performance as measured by worker's compensation statistics and other occupational injury and illness information, including but not limited to the employer's OSHA incidence rating.

10. The employer shall furnish satisfactory security such as guaranty bond, deposit of securities, reserves, excess worker's compensation insurance, financial reports and reports on outstanding liabilities before and after self-insurance is granted, terminated or revoked, as the de-

partment requires to assure the payment of all past, present, existing and potential worker's compensation liability.

(c) *General criteria to be considered by the department.* The following factors may be used by the department, in addition to the minimum requirements, in evaluating the qualifications of the employer, the amount and type of guaranty and securities, and the number and kind of special reports to assure the payment of all worker's compensation claims:

1. The financial strength and liquidity of the employer, its profit and loss history, and changes in other key financial conditions affecting the employer's ability to promptly pay all compensation;
2. The employer's organizational structure, management background, kind of business, length of time in business, and any contemplated or newly implemented reorganization including but not limited to merger, consolidation, buying of new corporation, divesting or spinning off of current operations, and other corporate changes;
3. Tangible property of the employer and its subsidiaries or parent corporation, including but not limited to lands, buildings and plants owned and maintained in Wisconsin;
4. The employer's bond or other business ratings;
5. The number of employer's employees, payroll and hours worked in Wisconsin;
6. The claims administration and safety and health engineering programs maintained by the employer;
7. The compensation loss history, including reported losses, incurred losses, paid losses, unpaid losses, outstanding liability, and compensation premium of the employer;
8. Excess insurance, surety bond, deposit of securities, guaranty by parent company, and other guarantees and security pledged by the employer;
9. The employer's performance indicators under ch. 102, Stats., including, but not limited to, promptness or time taken in making first indemnity payments, promptness or time taken in submitting first reports, and injury and illness incidence and severity rates; and
10. The financial and performance ratios, characteristics and trends for the employer or the consolidated group of employers to which the employer belongs as compared with the financial and performance ratios, characteristics and trends for other employers and for the particular or most similar industry in which the employer or the employer's consolidated group is involved.

(d) *Surety bond, deposit of securities, excess insurance, or other security.* The required minimum bond, minimum amount of cash or securities, minimum excess insurance upper limit, maximum excess insurance retention, or other security satisfactory to the department, shall be determined after the application has been reviewed and analyzed by the department. The employer shall use the required department bond and deposit agreement form.

1. Guaranty bonds shall be written by companies authorized to transact surety business in Wisconsin.

2. Cash or securities shall be deposited with banks qualified to exercise trust powers in Wisconsin. These securities shall be negotiable and converted into cash at any time by the depository at request of the department.

3. If excess insurance is required by the department, it shall be procured from a licensed excess insurance worker's compensation company, and written on the basis of rates and policy form filed with and approved by the state of Wisconsin commissioner of insurance. The policy for the required excess insurance shall be filed with and approved by the Wisconsin compensation rating bureau.

(e) *Enjoining and restraining employer.* Whenever the department has probable cause to believe that an employer currently or previously granted self-insurance for its parent or subsidiary company is liquidating and distributing its assets to its stockholders, or is selling or is about to sell the tangible property it owns and maintains in Wisconsin and the employer or its parent or subsidiary company is moving or is about to move its operations out of Wisconsin, without providing for the payment under the terms of the agreement in the self-insurance application or guaranty form it has executed and submitted to the department, the department may, through the attorney general cause a petition to be filed to enjoin and restrain the employer or its parent or subsidiary company from engaging in such action.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.61 Divided-insurance and partial insurance requirements under s. 102.31 (1) and (6), for all employers, including employers participating in a joint venture and contractors working on a wrap-up project. (1) DEFINITIONS. In this section:

(a) "Divided-insurance" means consent to the issuance of 2 or more policies, as provided in s. 102.31 (1), Stats.

(b) "Partial-insurance" means self-insurance of a part of the liability and consent to the issuance of one or more policies on the remainder of the liability, as provided in ss. 102.28 (2) (b) and 102.31 (1), Stats.

(2) **REQUIREMENTS.** (a) The requirements for partial-insurance and divided-insurance by 2 or more insurance companies are as follows:

1. Submission of an application on department form WCA-19.3, WCA-19.4 or WCA-19.4 M to the department. If the application is approved, the department shall permit partial-insurance or divided-insurance by written order. In the application, the employer shall agree to assume full responsibility to immediately make all payments of compensation and medical expense as the department may require, pending a final determination as to liability between the insurance carriers under divided-insurance or between the employer and the insurance carrier under partial-insurance, if a dispute should arise as to which insurance company or whether the employer or insurance company is responsible for a particular injury or illness sustained during the time the written order is in effect.

2. If the applicant is a political subdivision of the state, it shall submit a certified statement by the attorney for the political subdivision which cites the legal authority for executing the application and agreement when the initial application is submitted.

3. If the applicant is a corporate employer, it shall submit a certified copy of a resolution duly adopted by its board of directors authorizing and directing the execution of the application and agreement when the initial application is submitted.

(b) Employers desiring divided-insurance by one insurance company may file a letter of application in lieu of the department form. The employer shall include the following information in the letter of application for each division or operating unit which is or will be separately insured by a separate policy:

1. The name of the division or operating unit;
2. The usual number of employes;
3. The worker's compensation policy number; and
4. The beginning and ending date of the policy period.

(c) Renewal applications shall be submitted to the department on a department form no later than 3 months prior to the expiration date of the department's order. Partial-insurance and divided-insurance shall expire on the date specified in the order unless continued in force by further order, as the department deems necessary.

(3) DIVIDED-INSURANCE FOR DESIGNATED CARRIER WRAP-UP CONSTRUCTION PROJECTS. (a) *Definitions.* In this subsection:

1. "Bureau" means the Wisconsin compensation rating bureau.
2. "Designated wrap-up carrier" means the designated carrier or insurance company which insures the wrap-up project under ch. 102, Stats.
3. "Job site" means the premises and vicinity upon which the operations covered under the contract with the contractor or subcontractor are to be performed.
4. "Material supplier" means vendors, suppliers, material dealers, and others whose function is solely to supply or transport material, equipment, or parts to or from the construction site.
5. "Owner" means the person, firm, corporation or municipality having lawful possession of the construction project.
6. "Regular carrier" means the insurance company which insures all operations of a contractor or subcontractor under ch. 102, Stats., except for work done on the wrap-up project.
7. "Subcontractor" means a person who contracts with a contractor and also includes any subcontractor of a subcontractor.

8. "Wrap-up project" means a construction project wherein the owner selects a carrier, and this carrier issues a separate worker's compensation policy to each contractor and subcontractor scheduled to work on

the project for work which will be done on the project, and where the owner pays for each such policy.

(b) *Minimum wrap-up project requirements.* Wrap-up projects shall comply with the following:

1. The estimated project cost of completion shall be equal to at least \$25 million. The estimated project cost of completion shall be the estimate of the costs of the total construction contracts to be awarded by the owner on the wrap-up project.

2. The estimated standard worker's compensation manual premium shall be equal to \$250,000 or more.

3. The project shall be confined to a single location except that in connection with the building of a road, bridge, pipeline, tunnel or waterway, the entire job is considered as a single location to the extent that there is single ownership or a single contractor.

4. The project shall have a definite completion date involving work to be performed continuously until completion and may not be extended to include maintenance work following completion.

5. All contractors and subcontractors shall be included under the wrap-up program.

6. All material suppliers shall be included in the safety program on the job site while unloading and handling material and performing other work, but material suppliers shall be excluded from the rest of the wrap-up program.

7. The submission of all bids and the letting of all contracts shall be on an ex-insurance basis.

(c) *Minimum requirements for owner.* The owner shall comply with the following requirements on a wrap-up project:

1. The wrap-up plan and application shall be submitted on department form WCA-19.5 W-U to the department. If the application is approved, the department shall permit divided-insurance on the wrap-up project.

2. The owner shall comply with all conditions and agreements in the application, including, but not limited to:

a. The reimbursement of the department's costs incurred because of the wrap-up project;

b. The selection of a licensed and qualified designated wrap-up carrier having a record of compliance with the requirements of ch. 102, Stats., which is acceptable to the department;

c. Informing each contractor and subcontractor and each contractor's and subcontractor's insurance company either directly or through the bureau, at the bureau's discretion, of each one's responsibilities and the need for attaching a proper endorsement to the regular carrier's policy to exclude coverage for the wrap-up job site;

d. The submission of each contractor's and subcontractor's application form WC A-19.4 W-U to the bureau prior to the time the contractor or subcontractor first starts work on the wrap-up project;

e. The notification of department and bureau of any entity status change resulting from ensuing reorganization;

f. The assumption of responsibility for immediately making direct compensation payments if a dispute arises over coverage; and

g. The payment of an employee's attorney's fees and lost wages resulting from a dispute.

3. If the owner is a corporation, it shall submit a certified copy of the resolution by the board of directors authorizing and directing the execution of the application and agreement.

4. If the owner is a subsidiary of a corporation, it shall submit a guaranty and agreement by the owner's ultimate or top parent company agreeing to promptly satisfy all of the requirements and obligations assumed by the owner on the wrap-up project in case of default by the owner.

(d) *Minimum requirements for designated wrap-up carrier.* 1. The designated wrap-up carrier shall submit an application on department form WC A-19.6 W-U to the department. If the application is approved, the department shall permit divided-insurance for each contractor and subcontractor scheduled to work on the wrap-up project.

2. The designated wrap-up carrier shall comply with all conditions and agreements in the application, including, but not limited to:

a. Informing each contractor's and subcontractor's insurance company either directly or through the bureau, at the bureau's discretion, of each one's responsibilities and the need for attaching a proper endorsement to the regular carrier's policy to exclude coverage for the wrap-up job site;

b. The issuance of each individual contractor's and subcontractor's wrap-up policy prior to the time the contractor and subcontractor begin work on the job site;

c. The notification of department and bureau of any entity status change resulting from ensuing reorganization;

d. Becoming the full risk insurer for any contractor or subcontractor not having purchased a worker's compensation policy during the time the contractor or subcontractor is under contract on the wrap-up project, except as to an employer granted self-insurance; and

e. Becoming the full risk insurer for any contractor or subcontractor not insured or self-insured while working on the wrap-up project.

3. The designated wrap-up carrier shall submit a certified copy of a statement from an officer authorizing and directing the execution of the application and agreement.

(e) *Minimum requirements for contractors and subcontractors.* The minimum requirements for contractors and subcontractors are as provided in subs. (1) and (2).

(f) *Reimbursement for expenses incurred by department.* The department shall be reimbursed for those expenses incurred because of the designated carrier wrap-up program. Where the department specifically consents to divided-insurance or partial-insurance on a wrap-up project, the owner shall reimburse the department, within 30 days after the date of a written request by the department, a sum determined by the department not to exceed 2% of the total audited worker's compensation premium charged, with payment not to exceed 1% of the estimated worker's compensation premium upon initial request. If an additional levy is determined to be necessary, a request shall be made for a sum that results in a total charge not to exceed 2% of the total audited worker's compensation premium charged.

(g) *Inapplicability to other employers.* Subsection (3) does not apply to any group of employers other than those specified in this section on any other type of operations nor to any single contract or policy of insurance for any group or association of employers.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.65 Notice of cancellation or termination. Notice of cancellation or termination of a policy under s. 102.31 (1) (a), Stats., shall be given by certified mail or personal service to the Wisconsin compensation rating bureau, as defined in s. 626.02 (2), Stats., rather than to the department. Whenever the Wisconsin compensation rating bureau receives notice of cancellation or termination pursuant to this section, it shall immediately notify the department of cancellation or termination.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.70 Malice or bad faith. (1) An employer who unreasonably refuses or unreasonably fails to report an alleged injury to its insurance company providing worker's compensation coverage, shall be deemed to have acted with malice or bad faith.

(2) An insurance company or self-insured employer who, without credible evidence which demonstrates that the claim for the payments is fairly debatable, unreasonably fails to make payment of compensation or reasonable and necessary medical expenses, or after having commenced those payments, unreasonably suspends or terminates them, shall be deemed to have acted with malice or in bad faith.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.