

CHAPTER 281

AN ACT to repeal 102.565 (6) ; to amend 102.01 (2), 102.11 (1) (intro. par.), 102.49 (5), 102.565 (1), (2) and (4), and 102.59 (2) ; and to create 102.555 of the statutes, relating to compensation for injuries under workmen's compensation.

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

SECTION 1. 102.01 (2) of the statutes is amended to read:

102.01 (2) "Act" as used in this chapter means "chapter"; "compensation" means workmen's compensation; "primary compensation and death benefit" mean compensation or indemnity for disability, or death benefit, other than increased, double or treble compensation or death benefit; "injury" is mental or physical harm to an employe caused by accident or disease, and also damage to or destruction of artificial members, dental appliances, teeth, and eyeglasses, but, in the case of eyeglasses, only if such damage or destruction resulted from accident which also caused personal injury entitling the employe to compensation therefor (either for disability or treatment); \* \* \* "municipality" includes county, city, town, village, school district, sewer district, drainage district, and other public or quasi-public corporations; and "commission" means the industrial commission of Wisconsin. "Time of injury", "occurrence of injury", "date of injury" is the date of the accident which caused the injury, or in the case of disease, the last day of work for the last employer whose employment caused disability, *except that in case of occupational deafness the definition in s. 102.555 shall control.*

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

102.11 (1) (intro. par.) The average weekly earnings for temporary disability shall be taken at not less than \$12.50 nor more than \* \* \* \$65; for permanent total disability or death at not less than \$20 nor more than \* \* \* \$65; and for permanent partial disability at not less than \$20 nor more than \$52.86. Between said limits the average weekly earnings shall be determined as follows:

SECTION 3. 102.49 (5) of the statutes is amended to read:

102.49 (5) In each case of injury resulting in death, leaving no person wholly dependent for support, the employer or insurer shall pay into the state treasury such an amount, when added to the sums paid or to be paid on account of partial dependency, as shall equal the death benefit payable to a person wholly dependent, such payment to the state treasury in no event to exceed \* \* \* \$5,500. The payment into the state treasury shall be made in all such cases regardless of whether the dependents or personal representatives of the deceased employe commence action against a third party as provided in s. 102.29. If such payment is not made within 20 days after the commission makes request therefor, any sum payable shall bear interest at the rate of 6 per cent per annum.

SECTION 4. 102.555 of the statutes is created to read:

102.555 OCCUPATIONAL DEAFNESS: DEFINITIONS. (1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means sound capable of producing occupational deafness.

"Noisy employment" means employment in the performance of which an employe is subjected to noise.

(2) No benefits shall be payable for temporary total or temporary partial disability under this act for loss of hearing due to prolonged exposure to noise.

(3) An employe who because of occupational deafness is transferred by his employer to other noisy employment and thereby sustains actual wage loss, shall be compensated at the rate provided in s. 102.43 (2), not exceeding \$3,500 in the aggregate from all employers. "Time of injury," "occurrence of injury," "date of injury" in such case shall be the date of wage loss.

(4) Subject to the limitations herein contained and the provisions of s. 102.53 (2) there shall be payable for total occupational deafness of one ear, 32 weeks of compensation; for total occupational deafness of both ears, 160 weeks of compensation; and for partial occupational deafness compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided. In cases covered by this subsection "time of injury," "occurrence of injury," "date of injury" shall be exclusively the date of occurrence of any of the following events to an employe:

(a) Transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;  
 (b) Retirement;  
 (c) Termination of the employer-employe relationship;  
 (d) Layoff, provided the layoff is complete and continuous for one year;

(e) No claim under this subsection shall be filed, however, until 6 consecutive months of removal from noisy employment after the time of injury except that under par. (d) such 6 consecutive months period may commence within the last 6 months of layoff.

(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 filed, or from the date of subsequent death, provided that no claim shall accrue to any dependent unless an award has been issued or liability admitted.

(6) No payment shall be made to an employe under this section unless he shall have worked in noisy employment for a total period of at least 90 days for the employer from whom he claims compensation.

(7) An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by a hearing test or other competent evidence, whether or not the employe was exposed to noise within the 6 months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

(8) Any amount paid to an employe under this section by any employer shall be credited against compensation payable by any employer to such employe for occupational deafness under subs. (3) and (4). No employe shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this section for total occupational deafness.

SECTION 5. 102.565 (1), (2) and (4) of the statutes are amended to read:

102.565 SILICOSIS, NONDISABLING; MEDICAL EXAMINATION; CONDITIONS OF LIABILITY. (1) When an employe working subject to this chapter is, because he has a nondisabling silicosis \* \* \*;

discharged \* \* \* from the employment in which he is engaged, or when an employe ceases such employment and it is in fact inadvisable for him on account of a nondisabling silicosis \* \* \* to continue in it, and suffers wage loss by reason of such discharge, \* \* \* or such cessation, the commission may allow such compensation on account thereof as it may deem just, not exceeding \$3,500. In case of such discharge prior to a finding by the industrial commission that it is inadvisable for him to continue in such employment, the liability of the employer who shall so discharge his employe \* \* \* shall be primary, and the liability of the insurer shall be secondary, under the same procedure and to the same effect as provided by s. 102.62.

(2) Upon application of any employer or employe the commission may direct any employe of such employer or such employe who, in the course of his employment, has been exposed to the inhalation of silica, \* \* \* to submit to examination by a physician or physicians to be appointed by the industrial commission to determine whether such employe has silicosis \* \* \*, and the degree thereof. The cost of such medical examination shall be borne by the person making application. The results of such examination shall be submitted by the physician to the industrial commission, which shall submit copies of such reports to the employer and employe, who shall have opportunity to rebut the same provided request therefor is made to the commission within 10 days from the mailing of such report to the parties. The commission shall make its findings as to whether or not it is inadvisable for the employe to continue in his employment.

(4) No payment shall be made to an employe under this section unless he shall have worked for the employer from whom he claims compensation in work exposing him to inhalation of silica \* \* \* for a total period of at least 90 days.

SECTION 6. 102.565 (6) of the statutes is repealed.

SECTION 7. 102.59 (2) of the statutes is amended to read:

102.59 (2) In the case of the loss or of the total impairment of a hand, arm, foot, leg \* \* \* or eye, the employer shall be required to pay \* \* \* \$850 into the state treasury. The payment shall be made in all such cases regardless of whether the employe, his dependents as personal representatives, commence action against a third party as provided in s. 102.29.

SECTION 8. This act shall take effect on July 1, 1955.

Approved June 21, 1955.

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