CHAPTER 102

WORKER’S COMPENSATION

102.01 Definitions. (1) This chapter may be referred to as the “Worker’s Compensation Act” and allowances, recoveries and liabilities under this chapter constitute “Worker’s Compensation”.

(2) In this chapter:

(a) “Commission” means the labor and industry review commission.

(ag) “Commissioner” means a member of the commission.

(am) “Compensation” means worker’s compensation.

(ap) “Department” means the department of industry, labor and job development.

NOTE: 1995 Wis. Act 289, s. 275, authorizes the department of industry, labor and job development to use the name “department of workforce development” for any official purpose.

(bm) “Examiner” includes the deputy administrator of the worker’s compensation division of the department.

(bm) “General order” means such order as applies generally throughout the state to all persons, employers, places of employment or public buildings, or all persons, employments or places of employment or public buildings of a class under the jurisdiction of the department. All other orders of the department shall be considered special orders.

(c) “Injury” means mental or physical harm to an employe caused by accident or disease, and also means damage to or destruction of artificial members, dental appliances, teeth, hearing aids and eyeglasses, but, in the case of hearing aids or 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.

(d) “Municipality” includes county, city, town, village, school district, sewer district, drainage district and other public or quasi-public corporations.

(dm) “Order” means any decision, rule, regulation, direction, requirement or standard of the department, or any other determination arrived at or decision made by the department.

(e) “Primary compensation and death benefit” means compensation or indemnity for disability or death benefit, other than increased, double or treble compensation or death benefit.

(eg) “Religious sect” means a religious body of persons, or a division of a religious body of persons, who unite in holding certain special doctrines or opinions concerning religion that distinguish those persons from others holding the same general religious beliefs.

(em) “Secretary” means the secretary of industry, labor and job development.

(f) “Temporary help agency” means an employer who places its employe with or leases its employes to another employer who controls the employe’s work activities and compensates the first employer for the employe’s services, regardless of the duration of the services.
(g) Except as provided in s. 102.555 with respect to occupational deafness, “time of injury”, “occurrence of injury”, or “date of injury” means:

1. In the case of accidental injury, the date of the accident which caused the injury.
2. In the case of disease, the date of disability or, if that date occurs after the cessation of all employment that contributed to the disability, the last day of work for the last employer whose employment caused disability.

(gm) “Wisconsin compensation rating bureau” means the bureau provided for in s. 626.06.

(h) “Uninsured employer” means an employer that is in violation of s. 102.28 (2).

(i) “Uninsured employer assessment” means the assessment imposed under s. 102.85 (4).

(j) “Uninsured employers fund” means the fund established under s. 102.80 (1).

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; 1993 a. 27 ss. 3737 to 3741, 9130 (4); 1995 a. 117, 417.

In occupational disease claim, examiner may find date of injury to be other than last day of work. Royal−Globe Ins. Co. v. DILHR, 82 W (2d) 90, 260 NW (2d) 670.

“Temporary help agency” under (2) (f) is not restricted to employers in business of placing employees with other employers. Gansch v. Nekoosa Papers, Inc., 158 W (2d) 743, 463 NW (2d) 682 (1990).


102.03 Conditions of liability. (1) Liability under this chapter shall exist against an employer only where the following conditions concur:

(a) Where the employe sustains an injury.

(b) Where, at the time of the injury, both the employer and employe are subject to the provisions of this chapter.

(c) 1. Where, at the time of the injury, the employe is performing service growing out of and incidental to his or her employment.

2. Any employe going to and from his or her employment in the ordinary and usual way, while on the premises of the employer, or while in the immediate vicinity thereof if the injury results from an occurrence on the premises, any employe going between an employer’s designated parking lot and the employer’s work premises while on a direct route and in the ordinary and usual way or any fire fighter or municipal utility employe responding to a call for assistance outside the limits of his or her city or village, unless that response is in violation of law, is performing service growing out of and incidental to employment.

3. An employe is not performing service growing out of and incidental to his or her employment while going to or from employment in a private or group or employer−sponsored car pool, van pool, commuter bus service or other ride−sharing program in which the employe participates voluntarily and the sole purpose of which is the mass transportation of employees to and from employment. An employe is not performing service growing out of and incidental to employment while engaging in a program designed to improve the physical well−being of the employe, whether or not the program is located on the employer’s premises, if participation in the program is voluntary and the employe receives no compensation for participation.

4. The premises of the employer include the premises of any other person on whose premises the employe performs service.

5. To enhance the morale and efficiency of public employes in this state and attract qualified personnel to the public service, it is the policy of the state that the benefits of this chapter shall extend and be granted to employes in the service of the state or of any municipality therein on the same basis, in the same manner, under the same conditions, and with like right of recovery as in the case of employes of persons, firms or private corporations. Accordingly, the same considerations, standards, and rules of decision shall apply in all cases in determining whether any employe under this chapter, at the time of the injury, was performing service growing out of and incidental to the employe’s employment. For the purposes of this subsection no differentiation shall be made among any of the classes of employers enumerated in s. 102.04 or of employes enumerated in s. 102.07; and no statutes, ordinances, or administrative regulations otherwise applicable to any employes enumerated in s. 102.07 shall be controlling.

(d) Where the injury is not intentionally self−inflicted.

(e) Where the accident or disease causing injury arises out of the employe’s employment.

(f) Every employe whose employment requires the employe to travel shall be deemed to be performing service growing out of and incidental to the employe’s employment at all times while on a trip, except when engaged in a deviation for a private or personal purpose. Acts reasonably necessary for living or incidental thereto shall not be regarded as such a deviation. Any accident or disease arising out of a hazard of such service shall be deemed to arise out of the employe’s employment.

(g) Members of the state legislature are covered by this chapter when they are engaged in performing their duties as state legislators including:

1. While performing services growing out of and incidental to their function as legislators;
2. While performing their official duties as members of committees or other official bodies created by the legislature;
3. While traveling to and from the state capital to perform their duties as legislators;
4. While traveling to and from any place to perform services growing out of and incidental to their function as legislators, regardless of where the trip originated, and including acts reasonably necessary for living but excluding any deviations for private or personal purposes except that acts reasonably necessary for living are not deviations.

(2) Where such conditions exist the right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employe of the same employer and the worker’s compensation insurance carrier. This section does not limit the right of an employe to bring action against any coemploye for an assault intended to cause bodily harm, or against a coemploye for negligent operation of a motor vehicle not owned or leased by the employer, or against a coemploye of the same employer to the extent that there would be liability of a governmental unit to pay judgments against employes under a collective bargaining agreement or a local ordinance.

(3) Providing or failing to provide any safety inspection or safety advisory service incident to a contract for worker’s compensation insurance or to a contract for safety inspections or safety advisory services does not by itself subject an insurer, an employer, an insurance service organization, a union, a union member or any agent or employe of the insurer, employer, insurance service organization or union to liability for damages for an injury resulting from providing or failing to provide the inspection or services.

(4) The right to compensation and the amount of the compensation shall in all cases be determined in accordance with the provisions of law in effect as of the date of the injury except as to employes whose rate of compensation is changed as provided in ss. 102.43 (7) and 102.44 (1) and (5) and employes who are eligible to receive private rehabilitative counseling and rehabilitative training under s. 102.61 (1m).

(5) If an employe, while working outside the territorial limits of this state, suffers an injury on account of which the employe, or in the event of the employe’s death, his or her dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employe, or in the event of the employe’s death resulting from such injury, the dependents of the employe, shall be entitled to the benefits pro-
vied by this chapter, if at the time of such injury any of the following applies:

(a) His or her employment is principally localized in this state.

(b) He or she is working under a contract of hire made in this state in employment principally localized in another state whose worker’s compensation law is not applicable to that person’s employer.

(c) He or she is working under a contract made in this state in employment principally localized in another state whose worker’s compensation law is not applicable to that person’s employer.

(d) He or she is working under a contract of hire made in this state for employment outside the United States.

(e) He or she is a Wisconsin law enforcement officer acting under an agreement authorized under s. 175.46.

History: 1971 c. 148, ss. 307, 324; 1975 c. 147 ss. 15, 54; 1977 c. 195, ss. 272, 418; 1979 c. 203 ss. 98; 1985 s. 83; 1993 c. 49, ss. 970, 490, 493; 1995 c. 279.

Committee Note, 1971: The Wisconsin Supreme Court in the case of Halama v. ILHR Department, 48 Wis. (2d) 328 (1970), suggested that consideration be given to extending coverage to an employee who is injured while going to or from work on a direct route between two portions of the employer’s premises, i.e., parking lot and work premises. [Bill 371-A]

In a proceeding on a claim for death benefits of an office worker and receptionist caused by multiple stab wounds inflicted by an unknown assailant upon the employee at the close of her working day while she alone remained in the office portion of a factory building, the employee who had been assigned to working in the factory area and office employees, the ILHR Department correctly found that the accident arose out of the deceased’s employment, since the isolated work environment in which the deceased worked constituted the usual or regular workplace and the pure positional risk doctrine was applicable. Allied Mfg., Inc. v. ILHR Dept. 45 W (2d) 253, 173 NW (2d) 690.

The holding in Brown v. Ind. Comm., 9 W (2d) 555, that causation legally sufficient to support compensation claim relies on the absence of strain or exertion greater than that normally required by the applicant’s work efforts, was not intended to preclude a doctor, when determining medical causation, from considering whether the employee had another task at the time of injury, although the doctor should not automatically conclude each time one is injured while performing a task which he previously performed on a regular basis that such injury was caused by preexisting condition rather than by his employment. Pitch v. ILHR Dept. 47 W (2d) 55, 176 NW (2d) 390.

Where a herniated disc was diagnosed within a few days after the claimed injury, the evidence did not justify ILHR in finding that the employee did not meet his burden of proof. Erickson v. ILHR Dept. 49 W (2d) 114, 181 NW (2d) 495.

The department cannot divide liability for compensation among successive employers unless there are sufficient facts to support a finding that the disability arose from successive injuries; it can neither assess all the liability against one of several employers nor divide liability equally among each of several employers where there is no evidence to support a finding that the injury or injuries contributed to the disability in that manner. Semons Department Store v. ILHR Dept. 50 W (2d) 518, 184 NW (2d) 871.

While susceptibility to further injury does not necessarily establish a permanent disability under the “as is” doctrine, an employee’s predispension to injury does not relieve a present employer from liability for workmen’s compensation benefits if the employee becomes injured due to his employment, even though the injury may not have been such as to have caused disability in a normal individual. Semons Department Store v. ILHR Dept. 50 W (2d) 518, 184 NW (2d) 871.

Where an employee, even if he relates to the extent of spending several hours in a tavern, and is killed on his ordinary route home, his estate is entitled to compensation. Lager v. ILHR Dept. 50 W (2d) 651, 185 NW (2d) 300.

An employee’s separate and independent cause of action against her husband’s employer for damages because of loss of consortium due to injuries sustained by the husband in an industrial accident covered by workmen’s compensation. Roosevelt Telephone Co. 54 W (2d) 154, 194 NW (2d) 643.

Finding of commission that deceased was performing service sustained even though he was killed while walking on a street in Milwaukee at 3 in the morning and tests showed he was intoxicated. Phillips v. ILHR Dept. 56 W (2d) 509, 202 NW (2d) 249.

An employee cannot bring a 3rd party action against a member of the employing partnership. Candler v. Hardware Dealers Mut. Ins. Co. 57 W (2d) 85, 203 NW (2d) 655.

The “exclusive remedy” provision in (2) does not prevent an action for personal injuries against a supervisory co-employee on the basis of negligence common law standards. It makes no difference that the co-employee is being brought in by means of a 3rd-party complaint. Lampada v. State Sand & Gravel Co. 58 W (2d) 315, 206 NW (2d) 135.


Satisfaction of the employer’s employment status for services rendered in this state was substantial and not transitory, and the relationship was not interrupted by cessation of work for the Wisconsin employer, the department erred when it precipitated its denial of benefits because of the employee’s conflicting testimony by his employer whose office was 193 miles away and to which he was not required to report, was performing services incidental to his employment when he sustained a back injury in a fall on the icy driveway where he had intended to get into and start for his first call. Black River Dairy Products, Inc. v. ILHR Dept. 58 W (2d) 337, 207 NW (2d) 65.

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A contract “made in this state” under sub. (5) (b) is determined by where the contract was made. A contract accepted by telephone is made where the acceptor speaks. Horton v. Haddow, 186 W2d 174, 519 NW 2d (2d) 736 (Cl. App. 1994).

Settlement of an employee’s worker’s compensation claim for a work-related injury precluded the assertion of the employee’s claim that she was entitled to leave for the injury under the Family Medical Leave Act, s. 103.10. Finnel v. DLHR, 186 W2d (2d) 187, 519 NW 2d (2d) 736 (Cl. App. 1994).

Employer payment of travel expenses does not alone render commuting a part of employment subject to coverage. Where travel is a substantial part of the employment and the employee provides a vehicle under its control and pays costs, coverage may be triggered. Doering v. LIRC, 187 W2d (2d) 471, 523 NW 2d (2d) 142 (Cl. App. 1994).

Whether physical contact of a sexual nature was an assault by a co-employee not subject to the exclusive remedy provision of sub. (2) is a question of fact. A reasonable person would conclude that sexual conduct could be so offensive that a reasonable person would have understood that physical injury such as loss of sleep, weight loss or ulcers was substantially certain to follow. West Bend Mutual Ins. Co. v. Berger, 192 W2d (2d) 743, 531 NW 2d (2d) 636 (Cl. App. 1995).

Claims for defamation by an employee against an employer are preempted by this section. Claims for tortious interference with contract are not for injuries covered by the worker’s compensation act and not precluded. Wolf v. F & M Banks, 193 W2d (2d) 439, 534 NW 2d (2d) 877 (Cl. App. 1995).

Nothing in this chapter precludes an employer from agreeing with employees to continue salaries for injured workers in excess of worker’s compensation benefits. Excess payments are not worker’s compensation and may be conditioned on the parties’ agreement. City of Milwaukee v. DLHR, 193 W2d (2d) 626, 534 NW 2d (2d) 903 (Cl. App. 1995).

A waiver of employer immunity from suit under this section may be made by an express agreement of indemnification. Schaub v. West Bend Mutual, 195 W2d (2d) 181, 536 NW 2d (2d) 213 (Cl. Ct. App. 1995).

Where an employer through intentional sexual harassment injures an employee, the injury is not an accident under sub. (1) (c) and is not subject to the exclusivity provision of sub. (2). Simmons v. Atlas Vac Mach. Co. 493 W2d (2d) 457, 536 NW 2d (2d) 451 (Cl. App. 1995).

If an employer of one employee is injured while attempting to rescue an employee of another employer, the rescuing employee becomes an employee of the injured employee’s employer even though he has been identified as an employee of the rescuing employee’s employer. Schaub v. West Bend Mutual Ins. Co. v. Berger, 192 W2d (2d) 743, 531 NW 2d (2d) 636 (Cl. App. 1995).

Even though a co-employee’s sexual harassment was intentional the resulting emotional injuries may lie within the purview of “accident” and be compensable if the injuries were not unforeseeable, were unexpected. Byers v. LIRC, 200 W2d (2d) 728, 547 NW 2d (2d) 788 (Cl. App. 1996).

The exclusive remedy provision does not bar a ship owner from asserting a right to indemnification against the employer of the injured man even though he has been paid the statutory amount. Bagrow v. American Export Isbrandtsen Lines, 440 F2d (2d) 502 (2d Cir. 1970).

Emotional distress injury due to sexual harassment was exclusively compensable under this section. Zabkowsk v. West Bend Co. Div. Dart Industries, 789 F2d (2d) 540 (1986).

Under either Minnesota or Wisconsin law, airline which paid compensation benefits to stewardess under terms of contract was not liable to U.S. for injuries to stewardess in her tort action against U.S. for fitting to stewardess under laws of Minnesota was not liable to U.S. on theory of indemnification against the employer of the injured man even though he has been identified as an employee of the rescuing employee’s employer. Simmons v. Atlas Vac Mach. Co. 493 W2d (2d) 457, 536 NW 2d (2d) 451 (Cl. App. 1995).

102.03 WORKER’S COMPENSATION

102.04 Definition of employer. (1) The following shall constitute employers subject to the provisions of this chapter, within the meaning of s. 102.03:
(a) The state, each county, city, town, village, school district, sewer district, drainage district and other public or quasi-public corporations therein.
(b) 1. Every person who usually employs 3 or more employees, whether in one or more trades, businesses, professions or occupations, and whether in one or more locations.
2. Every person who usually employs less than 3 employees, provided the person has paid wages of $500 or more in any calendar quarter for services performed in this state. Such employer shall become subject on the 10th day of the month next succeeding such quarter.
(c) 1. Every person engaged in farming who on any 20 consecutive or nonconsecutive days during a calendar year employs 6 or more employees, whether in one or more locations. The provisions of this chapter shall apply to such employer 10 days after the twentieth such day.
(d) Every joint venture electing under s. 102.28 (2) (a) to be an employer.
(e) Every person to whom pars. (a) to (d) are not applicable, who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the injury to the employee for which compensation may be claimed, shall, as provided in s. 102.05, have elected to become subject to the provisions of this chapter, and who shall not, prior to such accident, have effected a withdrawal of such election.
(f) Except with respect to a partner or member electing under s. 102.075, members of partnerships or limited liability companies shall not be counted as employers. Except as provided in s. 102.075 (5) (a), a person under contract of hire for the performance of any service for any employer subject to this section (1961) shall not constitute an employer of any other person with respect to such service and such other person shall, with respect to such service, be deemed to be an employee only of such employer for whom the service is being performed.

102.05 Election by employer, withdrawal. (1) An employer who has had no employees at any time within a continuous period of 2 years shall be deemed to have effected withdrawal, which shall be effective on the last day of such period. An employer who has not usually employed 3 employees and who has not paid wages of at least $500 for employment in this state in any calendar quarter in a calendar year may file a withdrawal notice with the department, which withdrawal shall take effect 30 days after the date of such filing or at such later date as is specified in the notice. If an employer who is subject to this chapter only because the employer elected to become subject to this chapter under sub. (2) cancels or terminates his or her contract for the insurance of compensation under this chapter, that employer is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.
(2) Any employer who shall enter into a contract for the insurance of compensation, or against liability therefor, shall be deemed thereby to have elected to accept the provisions of this chapter, and such election shall include farm laborers, domestic servants and employees not in the course of a trade, business, profession or occupation of the employer if such intent is shown by the terms of the policy. Such election shall remain in force until withdrawn in the manner provided in sub. (1).

(3) Any person engaged in farming who has become subject to this chapter may withdraw by filing with the department a notice of withdrawal, if the person has not employed 6 or more employees as defined by s. 102.07 (5) on 20 or more days during the current or previous calendar year. Such withdrawal shall be effective 30 days after the date of receipt by the department, or at such later date as is specified in the notice. Such person may again become subject to this chapter as provided by s. 102.04 (1) (c) and (e).

History: 1983 a. 98 s. 31; 1993 a. 81, 492.

102.06 Joint liability of employer and contractor. An employer shall be liable for compensation to an employee of a contractor or subcontractor under the employer who is not subject to this chapter, or who has not complied with the conditions of s. 102.28 (2) in any case where such employer would have been liable for compensation if such employee had been working directly for the employer, including also work in the erection, alteration, repair or demolition of improvements or of fixtures upon premises of such employer which are used or to be used in the operations of such employer. The contractor or subcontractor, if subject to this chapter, shall also be liable for such compensation, but the employee shall not recover compensation for the same injury from more than one party. The employer who becomes liable for and pays such compensation may recover the same from such contractor, subcontractor or other employer for whom the employee was working at the time of the injury if such contractor, subcontractor or other employer was an employer as defined in s. 102.04. This section does not apply to injuries occurring on or after the first day of the first July beginning after the day that the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary files the certificate under s. 102.80 (3) (ag) this section does apply to claims for compensation filed on or after the date specified in that certificate.

History: 1975 c. 147 s. 54; 1975 c. 199; 1989 a. 64; 1995 a. 117.

"Contractor under" is one who regularly furnishes to a principal employer materials or services which are integrally related to the finished product or service provided by that principal employer. Green Bay Packaging, Inc. v. DLHR, 72 W2 (2d) 26, 240 NW2 (2d) 422.

Franchisee held to be "contractor under" franchisor within meaning of this section. Maryland Cas. Co. v. DLHR, 77 W2 (2d) 472, 253 NW2 (2d) 228.

102.07 Employee defined. "Employee" as used in this chapter means:

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

(b) Every person, including all officials, in the service of the state, or of any municipality therein whether elected or under any appointment, or contract of hire, express or implied, and whether a resident or employed or injured within or without the state. This paragraph first applies on the first day of the first July beginning after the day that the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary files the certificate under s. 102.80 (3) (ag) this paragraph does apply to claims for compensation filed on or after the date specified in that certificate.

History: 1975 c. 147 s. 54; 1975 c. 199; 1989 a. 64; 1995 a. 117.

(2) Any peace officer shall be considered an employee while engaged in the enforcement of peace or in the pursuit and capture of those charged with crime.

(3) Nothing herein contained shall prevent municipalities from paying teachers, police officers, fire fighters and other employees full salaries during disability, nor interfere with any pension funds, nor prevent payment to teachers, police officers or fire fighters therefrom.

(4)(a) Every person in the service of another under any contract of hire, express or implied, all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer, including minors, who shall have the same power of contracting as adult employees, but not including the following:

1. Domestic servants.

2. Any person whose employment is not in the course of a trade, business, profession or occupation of the employer, unless as to any of said classes, the employer has elected to include them.

(b) Par. (a) 2. shall not operate to exclude an employee whose employment is in the course of any trade, business, profession or occupation of the employer, however casual, unusual, desultory or isolated the employer’s trade, business, profession or occupation may be.

(4m) For the purpose of determining the number of employees to be counted under s. 102.04 (1) (b), but for no other purpose, a member of a religious sect is not considered to be an employee if the conditions specified in s. 102.28 (3) (b) have been satisfied with respect to that member.

(5) For the purpose of determining the number of employees to be counted under s. 102.04 (1) (c), but for no other purpose, the following definitions shall apply:

(a) Farmers or their employees working on an exchange basis shall not be deemed employees of a farmer to whom their labor is furnished in exchange.

(b) The parents, spouse, child, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of a farmer shall not be deemed the farmer’s employees.

(c) A shareholder-employee of a family farm corporation shall be deemed a “farmer” for purposes of this chapter and shall not be deemed an employee of a farmer. A “family farm corporation” means a corporation engaged in farming all of whose shareholders are related as lineal ancestors or lineal descendants, or as spouses, brothers, sisters, uncles, aunts, cousins, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law or sisters-in-law of such lineal ancestors or lineal descendants.

(d) A member of a religious sect is not considered to be an employee of a farmer if the conditions specified in s. 102.28 (3) (b) have been satisfied with respect to that member.

(6) Every person selling or distributing newspapers or magazines on the street or from house to house. Such a person shall be deemed an employee of each independent news agency which is subject to this chapter, or (in the absence of such agencies) of each publisher’s or (other intermediate) selling agency which is subject to this chapter, or (in the absence of all such agencies) of each publisher, whose newspapers or magazines the person sells or distributes. Such a person shall not be counted in determining whether an intermediate agency or publisher is subject to this chapter.

(7)(a) Every member of any volunteer fire company or fire department organized under ch. 213 or any legally organized rescue squad shall be deemed an employee of such company, department or squad. Every such member, while serving as an auxiliary police officer at an emergency, shall also be deemed an employee of said company, department or squad. If such company, department or squad has not insured its liability for compensation to its employees, the municipality or county within which such com-
pany, department or squad was organized shall be liable for such compensation.

(b) The department may issue an order under s. 102.31 (1)(a) permitting the county within which a volunteer fire company or fire department organized under ch. 213, a legally organized rescue squad or an ambulance service provider, as defined in s. 146.50 (1)(c), is organized to assume full liability for the compensation provided under this chapter of all volunteer members of that company, department, squad or provider.

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

(b) An independent contractor is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:
1. Maintains a separate business with his or her own office, equipment, materials and other facilities.
2. Holds or has applied for a federal employer identification number.
3. Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work.
4. Incurs the main expenses related to the service or work that he or she performs under contract.
5. Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service.
6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.
7. May realize a profit or suffer a loss under contracts to perform work or service.
8. Has continuing or recurring business liabilities or obligations.
9. The success or failure of the independent contractor’s business depends on the relationship of business receipts to expenditures.
(c) The department may not admit in evidence state or federal laws, regulations, documents granting operating authority or licenses when determining whether an independent contractor meets the conditions specified in par. (b) 1. or 3.

(9m) An employer who is subject to this chapter is not an employer of any person who employs independent contractors to perform work or service in the course of the other employer’s trade, business, profession or occupation.

(9) Members of the national guard and state defense force, when on state active duty under direction of appropriate authority, but only in case federal laws, rules or regulations provide no benefits substantially equivalent to those provided in this chapter.

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

(11) The department may 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 employees for the purposes of this chapter. Election shall be by endorsement upon the worker’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 department shall by rule prescribe the means and manner in which notice of election by the employer is to be provided to the volunteer workers.

(11m) Subject to sub. (11), a volunteer for a nonprofit organization described in section 501 (c) of the internal revenue code, as defined in s. 71.01 (6), that is exempt or eligible for exemption from federal income taxation under section 501 (a) of the internal revenue code who receives from that nonprofit organization nominal payments of money or other things of value totaling not more than $10 per week is not considered to be an employee of that nonprofit organization for purposes of this chapter.

(12) A student in a technical college district while, as a part of a training program, he or she is engaged in performing services for which a school organized under ch. 38 collects a fee or is engaged in producing a product sold by such a school is an employee of that school.

(12m) A student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3e), while he or she is engaged in performing services as part of a school work training, work experience or work study program, and 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 under s. 102.077 to name the student as its employee. This subsection does not apply after December 31, 1997.

(13) A child performing uncompensated community service work as a result of a deferred prosecution agreement under s. 938.245, a consent decree under s. 938.32 or an order under s. 938.34 is an employee of the county in which the court ordering the community service work is located. No compensation may be paid to that employee for temporary disability during the healing period.

(14) An adult performing uncompensated community service work under s. 304.062, 943.017 (3), 971.38, 973.03 (3), 973.05 (3), 973.09 or 973.10 (1m) is an employee of the county in which the district attorney requiring or the court ordering the community service work is located or in which the place of assignment under s. 304.062 or 973.10 (1m) is located. No compensation may be paid to that employee for temporary disability during the healing period.

(15) A sole proprietor or partner or member electing under s. 102.075 is an employee.

(16) An inmate participating in a work release program under s. 303.065 (2) or in the transitional employment program is an employee of any employer under this chapter for whom he or she is performing service at the time of the injury.

(17) A prisoner of a county jail who is assigned to a work camp under s. 303.10 is not an employee of the county or counties providing the work camp while the prisoner is working under s. 303.10 (3).

(17m) A participant in a trial job under s. 49.147 (3) is an employee of any employer under this chapter for whom the participant is performing service at the time of the injury.

NOTE: Sub. (17m) is shown as renumbered from sub. (17), as created by 1995 Wis. Act 289, by the revisor under s. 13.93 (1) (b).

(18) A participant in a community service job under s. 49.147 (4) or a transitional placement under s. 49.147 (5) is an employee of the Wisconsin works agency, as defined under s. 49.001 (9), for the purposes of this chapter, except to the extent that the person for whom the participant is performing work provides worker’s compensation coverage.
a. 31, 64, 759; 1993 a. 16, 81, 112, 399; 1995 s. 24, 77, 96, 117, 225, 281, 289, 417; s. 13.93 (1) (b).

Where the claimant, owner of a truck, working exclusively for a trucking company under a lease agreement, fell and sustained injuries in the company’s truck parking area while in the process of repairing his truck, the department properly found that the claimant, although an independent contractor, was at the time of his injury a statutory employee of the company under s. (8). Employers Mut. L. Ins. Co. v. ILHRR Dept. 52 W (2d) 515, 190 NW (2d) 907.

There was no employment when a member of an organization borrowed a refrigerated truck from a packing company for use at a picnic and was injured when returning it. Kress Packing Co. v. Kottwitz, 61 W (2d) 175, 212 NW (2d) 97.

Nothing in this chapter precludes an employer from agreeing with employees to continue salaries for injured workers in excess of worker’s compensation benefits. Excess payments are not worker’s compensation and may be conditioned on the parties’ agreement. City of Milwaukee v. DLHRR, 193 W (2d) 626, 534 NW (2d) 903 (Ct. App. 1995).

Members of state boards, commissions, committees or councils, who are compensated by per diem or by actual and necessary expense are covered employees. 58 Atty. Gen. 10.

102.075 Election by sole proprietor, partner or member. (1) Any sole proprietor, partner or member of a limited liability company engaged in a vocation, profession or business on a substantially full—time basis may elect to be an employee under this chapter by procuring insurance against injury sustained in the pursuit of that vocation, profession or business. This coverage may be obtained by endorsement on an existing policy of worker’s compensation insurance or by issuance of a separate policy to the sole proprietor, partner or member on the same basis as any other policy of worker’s compensation insurance.

(2) For the purpose of any insurance policy other than a worker’s compensation insurance policy, no sole proprietor, partner or member may be considered eligible for worker’s compensation benefits unless he or she elected to be an employee under this section.

(3) Any sole proprietor, partner or member who elected to be an employee under this section may withdraw that election upon 30 days’ prior written notice to the insurance carrier and the Wisconsin compensation rating bureau.

History: 1983 a. 98; 1993 a. 112.

102.076 Election by corporate officer. (1) Not more than 2 officers of a corporation having not more than 10 stockholders may elect not to be subject to this chapter. Except as provided in sub. (2), the election shall be made by an endorsement, on the policy of worker’s compensation insurance issued to that corpora
tion, naming each officer who has so elected. The election is effective for the period of the policy. An officer who so elects is an employee for the purpose of determining whether the corporation is an employer under s. 102.04 (1) (b).

(2) If a corporation has not more than 10 stockholders, not more than 2 officers and no other employees and is not otherwise required under this chapter to have a policy of worker’s compensation insurance, an officer of that corporation who elects not to be subject to this chapter shall file a notice of that election with the department on a form approved by the department. The election is effective until the officer rescinds it by notifying the department in writing.


102.077 Election by school district or private school. (1) A school district or a private school, as defined in s. 115.001 (3r), 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 or private school 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 or private school 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.

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such hours and such days in similar service in the same or similar nonseasonal employment. Seasonal employment shall mean employment which can be conducted only during certain times of the year, and in no event shall employment be considered seasonal if it extends during a period of more than fourteen weeks within a calendar year.

(c) In the case of persons performing service without fixed earnings, or where normal full-time days or weeks are not maintained by the employer in the employment in which the employee worked when injured, or where, for other reason, earnings cannot be determined under the methods prescribed by par. (a) or (b), the earnings of the injured person shall, for the purpose of calculating compensation payable under this chapter, be taken to be the usual going earnings paid for similar services on a normal full-time basis in the same or similar employment in which earnings can be determined under the methods set out in par. (a) or (b).

(d) Except in situations where par. (b) applies, average weekly earnings shall in no case be less than actual average weekly earnings of the employee for the 4 calendar quarters before his or her injury within which the employee has been employed in the business, in the kind of employment and for the employer for whom the employee worked when injured. Calendar weeks within which no work was performed shall not be considered under this paragraph. This paragraph applies only if the employee has worked within a total of at least 6 calendar weeks during the 4 calendar quarters before his or her injury in the business, in the kind of employment and for the employer for whom the employee worked when injured. For purposes of this section, earnings for part-time services performed for a labor organization pursuant to a collective bargaining agreement between the employer and that labor organization shall be considered as part of the total earnings in the preceding 4 calendar quarters, whether payment is made by the labor organization or the employer.

(e) Where any things of value are received in addition to mone
tary earnings as a part of the wage contract, they shall be deemed a part of earnings and computed at the value thereof to the employee.

(f) 1. Except as provided in subd. 2., average weekly earnings may not be less than 24 times the normal hourly earnings at the time of injury.

2. The weekly temporary disability benefits for a part-time employee who restricts his or her availability in the labor market to part-time work and is not employed elsewhere may not exceed the average weekly wages of the part-time employment.

(g) If an employee is under twenty-seven years of age, the employee’s average weekly earnings on which to compute the benefits accruing for permanent disability or death shall be determined on the basis of the earnings that such employee, if not disabled, probably would earn after attaining the age of twenty-seven years. Unless otherwise established, said earnings shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable.

(2) The average annual earnings when referred to in this chapter shall consist of fifty times the employee’s average weekly earnings. Subject to the maximum limitation, average annual earnings shall in no case be taken at less than the actual earnings of the employee in the year immediately preceding the employee’s injury in the kind of employment in which the employee worked at the time of injury.

(3) The weekly wage loss referred to in this chapter, except under s. 102.60 (6), shall be such percentage of the average weekly earnings of the injured employee computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of the employee’s earning capacity in the employment in which the employee was working at the time of the injury, and other suitable employmens, the same to be fixed as of the time of the injury, but to be determined in view of the nature and extent of the injury.


102.12 Notice of injury, exception, laches. No claim for compensation may be maintained unless, within 30 days after the occurrence of the injury or within 30 days after the employee knew, or ought to have known the nature of his or her disability and its relation to the employment, actual notice was received by the employer or by an officer, manager or designated representative of an employer. If no representative has been designated by post
ers placed in one or more conspicuous places, then notice received by any superior is sufficient. Absence of notice does not bar recovery if it is found that the employer was not misled thereby. Regardless of whether notice was received, if no payment of compensation, other than medical treatment or burial expense, is made, and no application is filed with the department within 2 years from the date of the injury or death, or from the date the employee or his or her dependent knew or ought to have known the nature of the disability and its relation to the employment, the right to compensation therefor is barred, except that the right to compensation is not barred if the employer knew or should have known, within the 2-year period, that the employee had sustained the injury on which the claim is based. Issuance of notice of a hearing on the department’s own motion has the same effect for the purposes of this section as the filing of an application. This section does not affect any claim barred under s. 102.17 (4).

History: 1983 a. 98.

102.125 Fraudulent claims reporting and investigation. (1) If an insurer or self−insured employer has evidence that a claim is false or fraudulent in violation of s. 943.395 and if the insurer or self−insured employer is satisfied that reporting the claim to the department will not impede its ability to defend the claim, the insurer or self−insured employer shall report the claim to the department. The department may require an insurer or self−insured employer to investigate an allegedly false or fraudulent claim and may provide the insurer or self−insured employer with any records of the department relating to that claim. An insurer or self−insured employer that investigates a claim shall report the results of the investigation to the insurer or self−insured employer.

(2) The department shall submit a report to the appropriate standing committees under s. 13.172 (3) and the governor detailing, for the previous year, the number of reports under sub. (1) that the department received, the number of referrals for prosecution that the department made and the results of those referrals.

History: 1993 a. 81.

102.13 Examination; competent witnesses; exclusion of evidence; autopsy. (a) Except as provided in sub. (4), whenever compensation is claimed by an employee, the employee shall, upon the written request of the employee’s employer or worker’s compensation insurer, submit to reasonable examinations by physicians, chiropractors, psychologists or podiatrists provided and paid for by the employer or insurer. No employee who submits to an examination under this paragraph is a patient of the examining physician, chiropractor, psychologist or podiatrist for any purpose other than for the purpose of bringing an action under ch.
When compensation is claimed for loss of earning capacity under s. 102.44 (2) or (3), the employer shall, on the written request of the employee's employer or insurer, submit to reasonable examinations by vocational experts provided and paid for by the employer or insurer.

An employer or insurer who requests that an employee submit to a physical examination under par. (a) or (am) shall tender to the employee, before the examination, all necessary expenses including transportation expenses. The employee is entitled to have a physician, chiropractor, psychologist or podiatrist provided by himself or herself present at the examination and to request and receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, podiatrist or vocational expert. The employee is also entitled to have a translator provided by himself or herself present at the examination if the employee has difficulty speaking or understanding the English language. The employer's or insurer's written request for examination shall notify the employee of all of the following:

1. The proposed date, time and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist, podiatrist or vocational expert.
2. The procedure for changing the proposed date, time and place of the examination.
3. The employee's right to have his or her physician, chiropractor, psychologist or podiatrist present at the examination.
4. The employee's right to request and receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, podiatrist or vocational expert.
5. The employee's right to have a translator provided by himself or herself present at the examination if the employee has difficulty speaking or understanding the English language.

So long as the employee, after a written request of the employer or insurer which complies with par. (b), refuses to submit to or in any way obstructs the examination, the employee's right to begin or maintain any proceeding for the collection of compensation is suspended, except as provided in sub. (4). If the employee refuses to submit to the examination after direction by the department or an examiner, or in any way obstructs the examination, the employee's right to the weekly indemnity which accrues and becomes payable during the period of that refusal is barred, except as provided in sub. (4).

Subject to par. (e):
1. Any physician, chiropractor, psychologist, podiatrist or vocational expert who is present at any examination under par. (a) or (am) may be required to testify as to the results thereof.
2. Any physician, chiropractor, psychologist or podiatrist who attended a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the department when it so directs.
3. Notwithstanding any statutory provisions except par. (e), any physician, chiropractor, psychologist or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employee, employer, worker's compensation insurer, or the department information and reports relative to a compensation claim.
4. The testimony of any physician, chiropractor, psychologist or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

No person may testify on the issue of the reasonableness of the fees of a licensed health care professional unless the person is licensed to practice the same health care profession as the professional whose fees are the subject of the testimony. This paragraph does not apply to the fee dispute resolution process under s. 102.16 (2).

If an employee claims compensation under s. 102.81 (1), the department may require the employee to submit to physical or vocational examinations under this subsection.

An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician–patient, psychologist–patient or chiropractor–patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer or department or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation.

Any physician, chiropractor, podiatrist, psychologist, hospital or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per page or $7.50 per request, plus the actual costs of postage. Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the requester's right to the duplicates under par. (a).

If 2 or more physicians, chiropractors, psychologists or podiatrists disagree as to the extent of an injured employee's temporary disability, the end of an employee's healing period, an employee's ability to return to work at suitable available employment or the necessity for further treatment or for a particular type of treatment, the department may appoint another physician, chiropractor, psychologist or podiatrist to examine the employee and render an opinion as soon as possible. The department shall promptly notify the parties of this appointment. If the employee has not returned to work, payment for temporary disability shall continue until the department receives the opinion. The employer or its insurance carrier or both shall pay for the examination and opinion. The employer or insurance carrier or both shall receive appropriate credit for any overpayment to the employee determined by the department after receipt of the opinion.

The rights of employees to begin or maintain proceedings for the collection of compensation and to receive weekly indemnities which accrue and become payable shall not be suspended or barred under sub. (1) when an employee refuses to submit to a physical examination, upon the request of the employer or worker's compensation insurer or at the direction of the department or an examiner, which would require the employee to travel a distance of 100 miles or more from his or her place of residence, unless the employee has claimed compensation for treatment from a practitioner whose office is located 100 miles or more from the employee's place of residence or the department or examiner determines that any other circumstances warrant the examination. If the employee has claimed compensation for treatment from a practitioner whose office is located 100 miles or more from the employee's place of residence, the department or examiner may request, or the department or an examiner may direct, the employee to submit to a physical examination in the area where the employee's treatment practitioner is located.

The department may refuse to receive testimony as to conditions determined from an autopsy if it appears that the party offering the testimony had procured the autopsy and had failed to make reasonable effort to notify at least one party in adverse interest of the department at least 12 hours before the autopsy of the time and place it would be performed, or that the autopsy was performed by or at the direction of the coroner or medical examiner.
or at the direction of the district attorney for purposes not authorized by ch. 979. The department may withhold findings until an autopsy is held in accordance with its directions.


102.14 Jurisdiction of department; advisory committee. (1) This chapter shall be administered by the department.

(2) The council on worker’s compensation shall advise the department in carrying out the purposes of this chapter. Such council shall submit its recommendations with respect to amendments to this chapter to each regular session of the legislature and shall report its views upon any pending bill relating to this chapter to the proper legislative committee. At the request of the chairpersons of the senate and assembly committees on labor, the department shall schedule a meeting of the council with the members of the senate and assembly committees on labor to review and discuss matters of legislative concern arising under this chapter.

History: 1975 c. 147 s. 54; 1979 c. 278.

102.15 Rules of procedure; transcripts. (1) Subject to this chapter, the department may adopt its own rules of procedure and may change the same from time to time.

(2) The department may provide by rule the conditions under which transcripts of testimony and proceedings shall be furnished.

(3) All testimony at any hearing held under this chapter shall be taken down by a stenographic reporter, except that in case of an emergency, as determined by the examiner conducting the hearing, testimony may be recorded by a recording machine.

History: 1977 c. 418; 1989 a. 64.

102.16 Submission of disputes, contributions by employers. (1) Any controversy concerning compensation or a violation of sub. (3), including controversies in which the state may be a party, shall be submitted to the department in the manner and with the effect provided in this chapter. Every compromise of any claim for compensation may be reviewed and set aside, modified or confirmed by the department within one year from the date the compromise is filed with the department, or from the date an award has been entered, based thereon, or the department may take that action upon application made within one year. Unless the word “compromise” appears in a stipulation of settlement, the settlement shall not be deemed a compromise, and further claim is not barred except as provided in s. 102.17 (4) regardless of whether an award is made. The employer, insurer or dependent under s. 102.51 (5) shall have equal rights with the employee to have review of a compromise or any other stipulation of settlement. Upon petition filed with the department, the department may set aside the award or otherwise determine the rights of the parties.

(2) (a) The department has jurisdiction to resolve a dispute between a health service provider and an insurer or self−insured employer over the reasonableness of a fee charged by the health service provider for health services provided to an injured employee who claims benefits under this chapter. The department shall deny payment of a health service fee that the department determines under this subsection to be unreasonable. A health service provider and an insurer or self−insured employer that are parties to a fee dispute under this subsection are bound by the department’s determination on the reasonableness of the disputed fee, unless that determination is set aside on judicial review under par. (f).

(b) An insurer or self−insured employer that disputes the reasonableness of a fee charged by a health service provider shall provide reasonable notice to the health service provider that the fee is being disputed. After receiving reasonable notice that a health service fee is being disputed, a health service provider may not collect the disputed fee from, or bring an action for collection of the disputed fee against, the employee who received the services for which the fee was charged. (c) After a fee dispute is submitted to the department, the insurer or self−insured employer that is a party to the dispute shall provide to the department information on that fee and information on fees charged by other health service providers for comparable services. The insurer or self−insured employer shall obtain the information on comparable fees from a data base that is certified by the department under par. (h). Except as provided in par. (e) 1., if the insurer or self−insured employer does not provide the information required under this paragraph, the department shall determine that the disputed fee is reasonable and order that it be paid. If the insurer or self−insured employer provides the information required under this paragraph, the department shall use that information to determine the reasonableness of the disputed fee.

(d) For fee disputes that are submitted to the department before July 1, 1998, the department shall analyze the information provided to the department under par. (c) according to the criteria provided in this paragraph to determine the reasonableness of the disputed fee. The department shall determine that a disputed fee is reasonable and order that the disputed fee be paid if that fee is at or below the mean fee for the health service procedure for which the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown by data from a data base that is certified by the department under par. (h). The department shall determine that a disputed fee is unreasonable and order that a reasonable fee be paid if the disputed fee is above the mean fee for the health service procedure for which the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown by data base that is certified by the department under par. (h), unless the health service provider proves to the satisfaction of the department that a higher fee is justified because the service provided in the disputed case was more difficult or more complicated to provide than in the usual case.

(e) 1. Subject to subd. 2., if an insurer or self−insured employer that disputes the reasonableness of a fee charged by a health service provider cannot provide information on fees charged by other health service providers for comparable services because the data base to which the insurer or self−insured employer subscribes is not able to provide accurate information for the health service procedure at issue, the department may use any other information that the department considers to be reliable and relevant to the disputed fee to determine the reasonableness of the disputed fee. 2. Notwithstanding subd. 1., the department may use only a hospital radiology data base that has been certified by the department under par. (h) to determine the reasonableness of a hospital fee for radiology services.

(f) A health service provider, insurer or self−insured employer that is aggrieved by a determination of the department under this subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.

(g) Section 102.13 (1) (e) does not apply to the fee dispute resolution process under this subsection.

(h) The department shall promulgate rules establishing procedures and requirements for the fee dispute resolution process under this subsection, including rules specifying the standards that health service fee data bases must meet for certification under this paragraph. Using those standards, the department shall certify data bases of the health service fees that various health service providers charge. In certifying data bases under this paragraph, the department shall certify at least one data base of hospital fees for radiology services, including diagnostic and interventional radiology, diagnostic ultrasound and nuclear medicine.

(2m) (a) The department has jurisdiction to resolve a dispute between a health service provider and an insurer or self−insured employer over the necessity of treatment provided for an injured employee who claims benefits under this chapter. The department shall deny payment for any treatment that the department determines under this subsection to be unnecessary. A health service
provider and an insurer or self−insured employer that are parties to a dispute under this subsection over the necessity of treatment are bound by the department’s determination on the necessity of that treatment, unless that determination is set aside on judicial review under par. (e).

(b) An insurer or self−insured employer that disputes the necessity of treatment provided by a health service provider shall provide reasonable notice to the health service provider that the necessity of that treatment is being disputed. After receiving reasonable notice that the necessity of treatment is being disputed, a health service provider may not collect a fee for that disputed treatment from, or bring an action for collection of the fee for that disputed treatment against, the employee who received the treatment.

(c) Before determining the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department shall obtain a written opinion on the necessity of the treatment in dispute from an expert selected by the department. To qualify as an expert, a person must be licensed to practice the same health care profession as the individual health service provider whose treatment is under review and must either be performing services for an impartial health care services review organization or be a member of an independent panel of experts established by the department under par. (f). The department shall adopt the written opinion of the expert as the department’s determination on the issues covered in the written opinion, unless the health service provider or the insurer or self−insured employer present clear and convincing written evidence that the expert’s opinion is in error.

(d) The department may charge a party to a dispute over the necessity of treatment provided for an injured employee who claims benefits under this chapter for the full cost of obtaining the written opinion of the expert under par. (c). The department shall charge the insurer or self−insured employer for the full cost of obtaining the written opinion of the expert for the first dispute that a particular individual health service provider is involved in, unless the department determines that the individual health service provider’s position in the dispute is frivolous or based on fraudulent representations. In a subsequent dispute involving the same individual health service provider, the department shall charge the losing party to the dispute for the full cost of obtaining the written opinion of the expert.

(e) A health service provider, insurer or self−insured employer that is aggrieved by a determination of the department under this subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.

(f) The department may contract with an impartial health care services review organization to provide the expert opinions required under par. (c), or establish a panel of experts to provide those opinions, or both. If the department establishes a panel of experts to provide the expert opinions required under par. (c), the department may pay the members of that panel a reasonable fee, plus actual and necessary expenses, for their services.

(g) The department shall promulgate rules establishing procedures and requirements for the necessity of treatment dispute resolution process under this subsection, including rules setting the fees under par. (f).

(3) No employer subject to this chapter may solicit, receive or collect any money from an employee or any other person or make any deduction from their wages, either directly or indirectly, for the purpose of discharging any liability under this chapter or recovering premiums paid on a contract described under s. 102.31 (1) (a); nor may any such employer sell to an employee or other person, or solicit or require the employee or other person to purchase, medical, chiropractic, podiatric, psychological or hospital tickets or contracts for medical, surgical, hospital or other health care treatment which is required to be furnished by that employer.

(4) The department has jurisdiction to pass on any question arising out of sub. (3) and has jurisdiction to order the employer to reimburse an employee or other person for any sum deducted from wages or paid by him or her in violation of that subsection. In addition to the penalty provided in s. 102.85 (1), any employer violating sub. (3) shall be liable to an injured employee for the reasonable value of the necessary services rendered to that employee pursuant to any arrangement made in violation of sub. (3) without regard to that employee’s actual disbursements for the same.

(5) Except as provided in s. 102.28 (3), no agreement by an employee to waive the right to compensation is valid.


102.17 Procedure; notice of hearing; witnesses, contempt; testimony, medical examination. (1) (a) Upon the filing with the 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 department may bring in additional parties by service of a copy of the application. The department shall cause notice of hearing on the application to be given to each party interested, by service of such notice on the interested party personally or by mailing a copy to the interested party’s last−known 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 with the department of financial institutions 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. The hearing may be adjourned in the discretion of the department, and hearings may be held at such places as the department designates, within or without the state. The department may also arrange to have hearing held by the commission, officer or tribunal having authority to hear cases arising under the worker’s compensation law of any other state, or 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 department and be part of the record in the case. Any evidence so taken shall be subject to rebuttal upon final hearing before the department.

(b) In any dispute or controversy pending before the department, the department may direct the parties to appear before an examiner for a conference to consider the clarification of issues, the joining of additional parties, the necessity or desirability of amendments to the pleadings, the obtaining of admissions of fact or of documents, records, reports and bills which may avoid unnecessary proof and such other matters as may aid in disposition of the dispute or controversy. After this conference the department may issue an order requiring disclosure or exchange of any information or written material which it considers material to the timely and orderly disposition of the dispute or controversy. If a party fails to disclose or exchange within the time stated in the order, the department may issue an order dismissing the claim without prejudice or excluding evidence or testimony relating to the information or written material. The department shall provide each party with a copy of any order.

(c) Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the department. The department may inform any attorney or corporation of the state of any party in interest before the department or any member or employee of the department assigned to conduct any hearing, investigation or inquiry relative to a claim for compensation or benefits under this chapter, unless the person is 18 years of age or older, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, is otherwise qualified and has obtained from the department a license with authorization to appear in matters or proceedings before the department. The
license shall be issued by the department under rules to be adopted by the department. There shall be maintained in the office of the department a current list of persons to whom licenses have been issued. Any license may be suspended or revoked by the department for fraud or serious misconduct on the part of an agent. Before suspending or revoking the license of the agent, the department shall give notice in writing to the agent of the charges of fraud or misconduct, and shall give the agent full opportunity to be heard in relation to the same. The license and certificate of authority shall, unless otherwise suspended or revoked, be in force from the date of issuance until the June 30 following the date of issuance and may be renewed by the department from time to time, but each renewed license shall expire on the June 30 following the issuance thereof.

(d) The contents of certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and of certified reports by experts concerning loss of earning capacity under s. 102.44 (2) and (3), presented by a party for compensation constitute prima facie evidence as to the matter contained in them, subject to any rules and limitations the department prescribes. Certified reports by doctors of dentistry are admissible as evidence of the diagnosis and necessity for treatment but not of disability. Any physician, podiatrist, surgeon, dentist, psychologist, chiropractor or expert who knowingly makes a false statement of fact or opinion in such a certified report may be fined or imprisoned, or both, under s. 943.395. The record of a hospital or sanatorium in this state operated by any department or agency of the federal or state government or by any municipality, or of any other hospital or sanatorium in this state which is satisfactory to the department, established by certificate, affidavit or testimony of the supervising officer or other person having charge of such records, or of a physician, podiatrist, surgeon, dentist, psychologist or chiropractor to be the record of the patient in question, and made in the regular course of examination or treatment of such patient, constitutes prima facie evidence in any worker's compensation proceeding as to the matter contained in it, to the extent that it is otherwise competent and relevant. The department may, by rule, establish the qualifications of and the manner provided in ss. 814.67 and 885.06. Except as provided in sub. (2s), the subpoena shall be on a form provided by the department and shall give the name and address of the party requesting the subpoena.

(2) If the department shall have reason to believe that the payment of compensation has not been made, it may on its own motion give notice to the parties, in the manner provided for the service of an application, of a time and place when a hearing will be held for the purpose of determining the facts. Such notice shall contain a statement of the matter to be considered. Thereafter all other provisions governing proceedings on application shall attach insofar as the same may be applicable. When the department schedules a hearing on its own motion, the department does not become a party in interest and is not required to appear at the hearing.

(2m) Any party, including the department, may require any person to produce books, papers and records at the hearing by personal service of a subpoena upon the person along with a tender of witness fees as provided in ss. 814.67 and 885.06. Except as provided in sub. (2s), the subpoena shall be on a form provided by the department and shall give the name and address of the party requesting the subpoena.

(2s) A party’s attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding.

(3) Any person who shall wilfully and unlawfully fail or neglect to appear or to testify or to produce books, papers and records as required, shall be fined not less than $25 nor more than $100, or imprisoned in the county jail not longer than 30 days. Each day such person shall so refuse or neglect shall constitute a separate offense.

(4) The right of an employee, the employee’s legal representative or dependent to proceed under this section shall not extend beyond 12 years from the date of the injury or death or from the date that compensation, other than treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest. In the case of occupational disease there shall be no statute of limitations, except that benefits or treatment expense becoming due after 12 years from the date of injury or death or last payment of compensation shall be paid from the work injury supplemental benefit fund under s. 102.65
Payment of wages by the employer during disability or absence from work to obtain treatment shall be deemed payment of compensation for the purpose of this section if the employer knew of the employee’s condition and its alleged relation to the employment.

(5) This section does not limit the time within which the state may bring an action to recover the amounts specified in ss. 102.49 (5) and 102.59.

(6) If an employee or dependent shall, at the time of injury, or at the time the employee’s or dependent’s right accrues, be under 18 years of age, the limitations of time within which the employee or dependent may file application or proceed under this chapter, if they would otherwise sooner expire, shall be extended to one year after the employee or dependent attains the age of 18 years.

If, within any part of the last year of any such period of limitation, an employee, the employee’s personal representative, or surviving dependent be insane or on active duty in the armed forces of the United States such period of limitation shall be extended to 2 years after the date that the limitation would otherwise expire. The provision hereof with respect to persons on active duty in the armed forces of the United States shall apply only where no applicable federal statute is in effect.

(7) (a) Except as provided in par. (b), in a claim under ss. 102.44 (2) and (3), testimony or certified reports of expert witnesses on loss of earning capacity may be received in evidence and considered with all other evidence to decide on an employee’s actual loss of earning capacity.

(b) Except as provided in par. (c), the department shall exclude from evidence testimony or certified reports from expert witnesses under par. (a) offered by the party that raises the issue of loss of earning capacity if that party failed to notify the department and the other parties of interest, at least 60 days before the date of the hearing, of the party’s intent to present the testimony or reports and of the names of the expert witnesses involved. Except as provided in par. (c), the department shall exclude from evidence testimony or certified reports from expert witnesses under par. (a) offered by a party of interest in response to the party that raises the issue of loss of earning capacity if the responding party failed to notify the department and the other parties of interest, at least 45 days before the date of the hearing, of the party’s intent to provide the testimony or reports and of the names of the expert witnesses involved.

(c) Notwithstanding the notice deadlines provided in par. (b), the department may receive in evidence testimony or certified reports from expert witnesses under par. (a) when the applicable notice deadline under par. (b) is not met if good cause is shown for the delay in providing the notice required under par. (b) and if no party is prejudiced by the delay.

(8) Unless otherwise agreed to by all parties, an injured employee shall file with the department and serve on all parties at least 15 days before the date of the hearing an itemized statement of all medical expenses and incidental compensation under s. 102.44 claimed by the injured employee. The itemized statement shall include, if applicable, information relating to any travel expenses incurred by the injured employee in obtaining treatment incurred in connection with the injured employee’s disability, destination, number of round trip mileage and meal and lodging expenses. The department may not admit into evidence any information relating to medical expenses and incidental compensation under s. 102.44 claimed by an injured employee if the injured employee failed to file with the department and serve on all parties at least 15 days before the date of the hearing an itemized statement of the medical expenses and incidental compensation under s. 102.44 claimed by the injured employee, unless the department is satisfied that there is good cause for the failure to file and serve the itemized statement.


Plaintiff—employer was not deprived of any substantial due process rights by the department’s refusal to invoke its rule requiring inspection of opposing parties’ medical reports where plaintiff had ample notice of the nature of the employee’s claim.

Theodore Fleisner, Inc. v. ILHR Dept. 65 W (2d) 317, 222 NW (2d) 605.

See note to 102.18, citing Kohler Co. v. DILHR, 81 W (2d) 11, 259 NW (2d) 695.

Under facts of case, refusal to grant employer’s request for adjournment was denial of due process. Bituminous Cas. Co. v. DILHR, 97 W (2d) 730, 295 NW (2d) 183 (Cl. App. 1980).

See note to 102.66, citing State v. DILHR, 101 W (2d) 396, 304 NW (2d) 758 (1963).

Sub. (1) (d) does not create a presumption that evidence presented by treating physicians is correct. The statute enforces the idea that LIRC determines the weight to be given medical witnesses. Conradt v. Mt. Carmel School, 197 W (2d) 60, 539 NW (2d) 713 (Ct. App. 1995).


102.175 Apportionment of liability. (1) If it is established at the hearing that 2 or more accidental injuries, for each of which a party to the proceedings is liable under this chapter, have each contributed to a physical or mental condition for which benefits would be otherwise due, liability for such benefits shall be apportioned according to the proof of the relative contribution to disability resulting from the injury.

(2) If after a hearing or a prehearing conference the department determines that an injured employee is entitled to compensation but that there remains in dispute only the issue of which of 2 or more parties is liable for that compensation, the department may order one or more parties to pay compensation in an amount, time and manner as determined by the department. If the department later determines that another party is liable for compensation, the department shall order that other party to reimburse any party that was ordered to pay compensation under this subsection.

History: 1979 c. 278; 1993 a. 81.

102.18 Findings, orders and awards. (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.

(b) Within 90 days after the final hearing and close of the record, the department shall make and file its findings upon the ultimate facts involved in the controversy, 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 department may in its discretion after any hearing make interlocutory findings, orders and awards which may be enforced in the same manner as final awards. The department may include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it finds that noncompliance was not in good faith, not exceeding 25% of each amount which shall not have been paid as directed thereby. Where there is a finding that the employee 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 or she may thereafter have for disability sustained after the date of the award.

(bp) The department may include a penalty in an award to an employee if it determines that the employer’s or insurance carrier’s suspension of, termination of or failure to make payments or failure to report injury resulted from malice or bad faith. This penalty is the exclusive remedy against an employer or insurance carrier for malice or bad faith. The department may award an amount which it considers just, not to exceed the lesser of 200% of total compensation due or $15,000. The department may assess the penalty against the employer, the insurance carrier or both. Neither the employer nor the insurance carrier is liable to reimburse the other for the penalty amount. The department may, by rule, define actions which demonstrate malice or bad faith.

(bw) If an insurer, a self-insured employer or, if applicable, the uninsured employers fund pays compensation to an employee in excess of its liability and another insurer is liable for all or part of the excess payment, the department may order the insurer or self-insured employer that is liable to reimburse the insurer or self-insured employer that made the excess payment or, if applicable, the uninsured employers fund.
(c) If 2 or more examiners have conducted a formal hearing on a claim and are unable to agree on the order or award to be issued, the decision shall be the decision of the majority. If the examiners are equally divided on the decision, the department may appoint an additional examiner who shall review the record and consult with the other examiners concerning their personal impressions of the credibility of the evidence. Findings of fact and an order or award may then be issued by a majority of the examiners.

(d) Any award which falls within a range of 5% of the highest or lowest estimate of permanent partial disability made by a practitioner which is in evidence is presumed to be a reasonable award, provided it is not higher than the highest or lower than the lowest estimate in evidence.

(2) The department shall have and maintain on its staff such examiners as are necessary to hear and decide disputed claims and to assist in the effective administration of this chapter. These examiners shall be attorneys and may be designated as administrative law judges. These examiners may make findings and orders, and approve, review, set aside, modify or confirm stipulations of settlement or compromises of claims for compensation.

(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 petition which is not timely filed unless the petition shows probable good cause that the 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.

(4) (a) Unless the liability under s. 102.35 (3), 102.43 (5), 102.49, 102.57, 102.58, 102.59, 102.60 or 102.61 is specifically mentioned, the order, findings or award are deemed not to affect such liability.

(b) Within 28 days after a decision of the commission 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.

(c) On its own motion, for reasons it deems sufficient, the commission may set aside any final order or award of the commission or examiner within one year after the date of the order or award, upon grounds of mistake or newly discovered evidence, and, after further consideration, do any of the following:

1. Affirm, reverse or modify, in whole or in part, the order or award.
2. Reinstatement the previous order or award.
3. Remand the case to the department for further proceedings.

(d) While a petition for review by the commission is pending or after entry of an order or award by the commission but before commencement of an action for judicial review or expiration of the period in which to commence an action for judicial review, the commission shall remand any compromise presented to it to the department for consideration and approval or rejection pursuant to s. 102.16 (1). Presentation of a compromise does not affect the period in which to commence an action for judicial review.

(5) If it shall appear to the department that a mistake may have been made as to cause of injury in the findings, order or award upon an alleged injury based on accident, when in fact the employee was suffering from an occupational disease, the department may upon its own motion, with or without hearing, within 3 years from the date of such findings, order or award, set aside such findings, order or award, or the department may take such action upon application made within such 3 years. Thereafter, and after opportunity for hearing, the department may, if in fact the employee is suffering from disease arising out of the employment, make new findings and award, or it may reinstate the previous findings, order or award.

(6) In case of disease arising out of the employment, the department may from time to time review its findings, order or award, and make new findings, order or award, based on the facts establishing disability or otherwise as they may then appear. This subsection shall not affect the application of the limitation in s. 102.17 (4).


Committee Note, 1971: The intent is to authorize the commission within its absolute discretion to reopen final orders on the basis of mistake or newly discovered evidence within a period of one year from the date of such order where this is found to be proper. The intent is to authorize the commission to grant or deny compensation, including the right to increase or to decrease benefits previously awarded. [Bill 371–A]

Interlocutory orders of the ILHR department in workmen’s compensation cases are not res judicata. Worsch v. ILHR Dept. 66 W 2d 504, 175 NW (2d) 201.

Where in a workmen’s compensation case the department reverses an examiner’s findings and makes independent findings, the latter should be accompanied by a memorandum opinion indicating only prior consultation with the examiner and review of the record, but a statement or statements of reasons for reaching a different result or conclusion—this particularly where credibility of witnesses is involved. Transamerica Ins. Co. v. ILHR Dept. 54 W 2d 272, 195 NW (2d) 656.

The department could properly find no permanent disability in the case of a successful fusion of vertebrae and still retain jurisdiction to determine future disability where doctors testified that there might be future effects. Vernon County v. ILHR Dept. 60 W 2d 736, 211 NW (2d) 441.

Where the department in a workmen’s compensation case involving conflicting testimony reverses an examiner’s findings, fundamental fairness requires a separate statement by it explaining the reasons for its decision, since the record has been closed prior to that decision, and the party must rely on the review of the record its consultation with the examiner with respect to impressions or conclusions in regard to the credibility of witnesses. Simonton v. ILHR Dept. 62 W 2d 112, 214 NW (2d) 305.

Where department increased examiner’s award, resort to AMA standards to interpret rule was proper and its validity properly could be predicated on the department’s uniform administrative interpretation of its rule to mean that a contact lens does not afford a “useful” correction. Employers Mut. Liability Ins. Co. v. ILHR Dept. 62 W 2d 327, 214 NW (2d) 587.

Sub. (5) is inapplicable where at the original hearing the examiner considered the possibility of both accidental injury and injury caused by occupational disease, and denied the applicant benefits. Murphy v. ILHR Dept. 63 W 2d 248, 217 NW (2d) 376.

It is not disputed that the shoveling, though unusual, was part of defendant’s employment activities. The doctor’s testimony is thus sufficient evidence to support a conclusion that the heart attack was caused by employment-related exertion. Theodore Fleisner, Inc. v. ILHR Dept. 65 W 2d 317, 222 NW (2d) 600.

Authority granted under (3), to modify the findings of a hearing examiner in a workmen’s compensation proceeding does not extend to the making of findings and conclusions in an alternative basis of liability neither tried by the parties nor ruled on by the examiner, and where other basis of liability is applicable, it is required to set aside the examiner’s findings and order and direct the taking of additional testimony, with the examiner to make new findings as to the substituted basis. Jos. Schlitz Brewing Co. v. ILHR Dept. 67 W 2d 185, 226 NW (2d) 492.

Where dismissal of application was neither based upon stipulation or compromise nor after a hearing, dismissal is void and limitation under 102.17 does not bar claim brought 12 years later. Koehler Co. v. DLHR, 81 W 2d 11, 259 NW (2d) 696.

While department is not required to make specific findings as to defense to workman’s claim, it is better practice to either make such findings or state why none were made. Universal Foundry Co. v. DLHR, 82 W 2d 479, 263 NW (2d) 172.

Commission guidelines, formulated as internal standards of credibility in worker’s compensation cases, are irrelevant to court’s review of findings of commission. E. F. Breuker Co. v. DLHR, 82 W 2d 634, 264 NW (2d) 183.

General finding by DLHR implies all facts necessary to support it. Valadzic v. Briggs & Stratton Corp. 92 W 2d 583, 286 NW (2d) 540 (1976).

The commission may not reject a medical opinion absent something in the record to support the rejection; counteropinions are not required in all cases. Leist v. LIRC, 183 W 2d 450, 515 NW (2d) 268 (Cl. App. 1994).

Sub. (1) (bp) is constitutional. Messner v. Briggs & Stratton Corp. 120 W 2d 127, 353 NW (2d) 363 (Cl. App. 1984).

Employer was penalized for denying claim which wasn’t “fairly debatable.” Kimberly–Clark Corp. v. LIRC, 138 W 2d 58, 405 NW (2d) 684 (Cl. App. 1987).

Sub. (4) (c) grants review commission exclusive authority to set aside findings due to newly discovered evidence; trial court does not possess such authority. Hopp v. LIRC, 146 W 2d 172, 430 NW (2d) 359 (Cl. App. 1988).

To show bad faith under (1) (bp) claimant must show that employer acted without reasonable basis for delay and with knowledge or of reckless disregard of lack of rea...
the first payment that is due an injured employee for more than 30 days after the date on which the employee leaves work as a result of an injury and if the amount due is $500 or more, the payments as to which the delay is found shall be increased by 10%. If the employer or his or her insurer inexcusably delays in making the first payment that is due an injured employee for more than 14 days after the date on which the employee leaves work as a result of an injury, the payments as to which the delay is found may be increased by 10%. If the employer or his or her insurer inexcusably delays for any length of time in making any other payment that is due an injured employee, the payments as to which the delay is found may be increased by 10%. Where the delay is chargeable to the employer and not to the insurer s. 102.62 shall apply and the relative liability of the parties shall be fixed and discharged as therein provided. The department may also order the employer or insurance carrier to reimburse the employee for any finance charges, collection charges or interest which the employee paid as a result of the inexcusable delay by the employer or insurance carrier.

(2) If the sum ordered by the department to be paid is not paid when due, that sum shall bear interest at the rate of 10% per year. The state is liable for such interest on awards issued against it under this chapter. The department has jurisdiction to issue award for payment of such interest at any time within one year of the date of its order, or upon appeal after final court determination. Such interest becomes due from the date the examiner’s order becomes final or from the date of a decision by the labor and industry review commission, whichever is later.

(3) If upon petition for review the commission affirms an examiner’s order, interest at the rate of 7% per year on the amount ordered by the examiner shall be due for the period beginning on the 21st day after the date of the examiner’s order and ending on the date paid under the commission’s decision. If upon petition for judicial review under s. 102.23 the court affirms the commission’s decision, interest at the rate of 7% per year on the amount ordered by the examiner shall be due up to the date of the commission’s decision, and thereafter interest shall be computed under sub. (2).

History: 1977 c. 195; 1979 c. 110 s. 60 (13); 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1993 a. 81.

The department can assess the penalty for inexcusable delay in making payments prior to the entry of an order. The question of inexcusable delay is one of law and the courts are not bound by the department’s finding as to it. Milwaukee County v. ILHR Dept. 48 W 2d 392, 180 NW (2d) 513. Penalty under (1) does not bar action for bad faith failure to pay claim. Coleman v. American Universal Ins. Co. 86 W (2d) 915, 273 NW (2d) 220 (1979).

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. 102.18 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, 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. 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.

(b) In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon a commissioner or agent authorized by the commis-
tion to accept service constitutes complete 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 shall mail one copy to each other defendant.

(c) The commission shall serve its answer within 20 days after the service of the complaint, and, within the like time, the adverse party may serve an answer to 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 the party had commenced a separate action for the review thereof.

(d) The commission shall make return to the court of all documents and papers on file in the matter, and of all testimony which has been taken, and of the commission’s order, findings and award. Such return of the commission when filed in the office of the clerk of the circuit court shall, with the papers mentioned in s. 809.15 constitute a judgment roll in the action; and it shall not be necessary to have a transcript approved. The action may thereupon be brought on for hearing before the court upon the 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.

(e) 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:

1. That the commission acted without or in excess of its powers.
2. That the order or award was procured by fraud.
3. That the findings of fact by the commission do not support the order or award.

(f) Upon the trial of any such action the court shall disregard any irregularity or error of the commission or the department unless it is made to affirmatively appear that the plaintiff was damaged thereby.

(3) The record in any case shall be transmitted to the department within 5 days after expiration of the time for appeal from the order or judgment of the court, unless appeal shall be taken from such order or judgment.

(4) Whenever an award is made against the state the attorney general may bring an action for review thereof in the same manner and upon the same grounds as are provided by sub. (1).

(5) The commencement of action for review shall not relieve the employer from paying compensation as directed, when such action involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies.

(6) If the commission’s order or award depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission’s order or award and remand the case to the commission if the commission’s order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.


**Judicial Council Committee’s Note, 1976:** The procedure for initiating a civil action under s. 801.02 rather than mere technical error. Gomez v. LIRC, 153 W (2d) 686, 451 NW (2d) 475 (Ct. App. 1989).

**History:** 1973 c. 147; 1975 c. 29; 1979 c. 278; 1995 a. 224.

**102.24 Remanding record.** (1) Upon the setting aside of any order or award, the court may remit the controversy and remand the record in the case to the commission for further hearing or proceedings, or it may enter the proper judgment upon the findings of the commission, as the nature of the case shall demand. An abstract of the judgment entered by the circuit court upon the review of any order or award shall be made by the clerk of circuit court upon the judgment and lien docket entry of any judgment which may have been rendered upon the order or award. Transcripts of the abstract may be obtained for like entry upon the judgment and lien dockets of the courts of other counties.

(2) After the commencement of an action to review any award of the commission the parties may have the record remanded by the court for such time and under such condition as they may provide, for the purpose of having the department act upon the question of approving or disapproving any settlement or compromise that the parties may desire to have so approved. If approved the action shall be at an end and judgment may be entered upon the approval as upon an award. If not approved the record shall forthwith be returned to the circuit court and the action shall proceed as if no remand had been made.

**History:** 1973 c. 147; 1975 c. 29; 1979 c. 278; 1995 a. 224.

**102.25 Appeal from judgment on award.** (1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal therefrom within the time period specified in s. 808.04 (1). A trial court shall not require the commission or any party to the action to execute, serve or file an undertaking under s. 808.07 or to serve, or secure approval of, a transcript of the notes of the stenographic reporter or the tape of the recording machine. The state is a party aggrieved under this subsection if a judgment is entered upon the review confirming any order or award against it. At any time before the case is set down for hearing in the court of appeals or the supreme court, the parties may have the record remanded by the court to the department in the same manner and for the same purposes as provided for remanding from the circuit court to the department under s. 102.24 (2).

(2) It shall be the duty of the clerk of any court rendering a decision affecting an award of the commission to promptly furnish the commission with a copy of such decision without charge.


**Judicial Council Note, 1983:** Sub. (1) is amended to replace the appeal deadline of 30 days after service of notice of entry of judgment or award by the standard time specified in s. 808.04 (1). Section 269.36 applies to appeals to the supreme court; when service of an entry of judgment by the circuit court is served by mail, the time for appeal is extended to 35 days from the date of mailing. Chequamegon Telephone Cooperative v. ILHR Dept. 55 W (2d) 507, 200 NW (2d) 441.

An appeal to the supreme court by a party who has unsuccessfully sought judicial review in the circuit court of an order or award in a workmen’s compensation case, made by entry, under (1), within 30 days after the date of service of the notice of entry of the circuit court judgment or within 35 days if service is effected by mail. Beloit Corp. v. ILHR Dept. 65 W (2d) 23, 216 NW (2d) 233.
102.26 Fees and costs. (1) No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and certified transcripts of judgments. In proceedings to review an order or award, costs as between the parties shall be in the discretion of the court, but no costs may be taxed against the commission.

(2) Unless previously authorized by the department, no fee may be charged or received for the enforcement or collection of any claim for compensation, nor may any contract therefor be enforceable where such fee, inclusive of all taxable attorney fees paid or agreed to be paid for such enforcement or collection, exceeds 20% of the amount for which such claim is compromised or of the amount awarded, adjudged or collected, except that in cases of admitted liability where there is no dispute as to amount of compensation due and in which no hearing or appeal is necessary, the fee charged shall not exceed 10% but not to exceed $100, of the amount at which such claim is compromised or of the amount awarded, adjudged or collected. The limitation as to fees shall apply to the combined charges of attorneys, solicitors, representatives and adjusters who knowingly combine their efforts toward the enforcement or collection of any compensation claim.

(2m) In any action for the recovery of costs of hospitalization in a tuberculosis sanatorium, where such cost was incurred by a patient whose tuberculosis entitled the patient to worker’s compensation, no attorney fee for the recovery of such cost shall be allowed to the attorney for such patient in such worker’s compensation action, unless, by express agreement with the governing board of such institution the attorney has been retained by such governing board to also act as its attorney.

(3) (a) Except as provided in par. (b), compensation exceeding $100 in favor of any claimant shall be made payable to and delivered directly to the claimant in person.

(b) 1. The department may upon application of any interested party and subject to sub. (2) fix the fee of the claimant’s attorney or representative and provide in the award for that fee to be paid directly to the attorney or representative.

2. At the request of the claimant medical expense, witness fees and other charges associated with the claim may be ordered paid out of the amount awarded.

(c) Payment according to the directions of the award shall protect the employer and the employer’s insurer, or the uninsured employer, from any claim of attorney’s lien.

(4) The charging or receiving of any fee in violation of this section shall be unlawful, and the attorney or other person guilty of such violation shall be subject to the enforcement or collection of any compensation claim.

102.28 Preference of claims; worker’s compensation insurance. (1) Preference. The whole claim for compensation for the injury or death of any employee or any award or judgment thereon, and any claim for unpaid compensation insurance premiums are entitled to preference in bankruptcy or insolvency proceedings as is given creditors’ actions except as denied or limited by any law of this state or by the federal bankruptcy act, but this section shall not impair the lien of any judgment entered upon any award.

(2) Required insurance; exceptions. (a) Duty to insure payment for compensation. Unless exempted by the department under par. (b) or sub. (3), every employer, as described in s. 102.04 (1), shall insure payment for that compensation in an insurer authorized to do business in this state. A joint venture may elect to be an employer under this chapter and obtain insurance for payment of compensation. If a joint venture that is subject to this chapter only because the joint venture elected to be an employer under this chapter is dissolved and cancels or terminates its contract for the insurance of compensation under this chapter, that joint venture is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

(b) Exemption from duty to insure. The department may grant a written order of exemption to an employer who shows its financial ability to pay the amount of compensation, agrees to report faithfully all compensable injuries and agrees to comply with this chapter and the rules of the department. The department may condition the granting of an exemption upon the employer’s furnishing of satisfactory security to guarantee payment of all claims under compensation. The department may require that bonds or other personal guarantees be enforceable against sureties in the same manner as an award may be enforced. The department may from time to time require proof of financial ability of the employer to pay compensation. Any exemption shall be void if the application for it contains a financial statement which is false in any material respect. An employer who files an application containing a false financial statement remains subject to par. (a). The department may promulgate rules establishing an amount to be charged to an initial applicant for compensation under this chapter and an annual amount to be charged to employers that have been exempted under this paragraph.

(c) Revocation of exemption. The department, after seeking the advice of the self–insurers council, may revoke an exemption granted to an employer under par. (b), upon giving the employer 10 days’ written notice, if the department finds that the employer’s financial condition is inadequate to pay its employees’ claims for compensation, that the employer has received an excessive number of claims for compensation or that the employer has failed to discharge faithfully its obligations according to the agreement contained in the application for exemption. The employer may, within 10 days after receipt of the notice of revocation, request in writing a review of the revocation by the secretary or the secretary’s designee and the secretary or the secretary’s designee shall review the revocation within 30 days after receipt of request for review. If the employer is aggrieved by the determination of the secretary or the secretary’s designee, the employer may, within 10 days after receipt of notice of that determination, request a hearing under s. 102.17. If the secretary or the secretary’s designee determines that the employer’s exemption should be revoked, the employer shall obtain insurance coverage as required under par. (a) immediately upon receipt of notice of that determination and, notwithstanding the pending of proceedings under s.
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102.17 to 102.25, shall keep that coverage in force until another exemption under par. (b) is granted.
(d) Effect of insuring with unauthorized insurer. An employer who procures an exemption under par. (b) and thereafter enters into any agreement for excess insurance coverage with an insurer not authorized to do business in this state shall report that agreement to the department immediately. The placing of such coverage shall not by itself be grounds for revocation of the exemption.

(3) Provision of alternative benefits. (a) An employer may file with the department an application for exemption from the duty to pay compensation under this chapter with respect to any employee who signs the waiver described in subd. 1. and the affidavit described in subd. 2. if an authorized representative of the religious sect to which the employee belongs signs the affidavit specified in subd. 3. and signs the agreement and provides the proof of financial ability described in subd. 4. An application for exemption under this paragraph shall include all of the following:

1. A written waiver by the employee or, if the employee is a minor, by the employee and his or her parent or guardian of all compensation under this chapter other than the alternative benefits provided under par. (c).

2. An affidavit by the employee or, if the employee is a minor, by the employee and his or her parent or guardian stating that the employee is a member of a recognized religious sect and that, as a result of the employee's adherence to the established tenets or teachings of the religious sect, the employee is conscientiously opposed to accepting the benefits of any public or private insurance that makes payments in the event of death, disability, old age or retirement, or that makes payments toward the cost of or provides medical care, including any benefits provided under the federal social security act, 42 USC 301 to 1397f.

3. An affidavit by an authorized representative of the religious sect to which the employee belongs stating that the religious sect has a long-standing history of providing its members who become dependent on the support of the religious sect as a result of work-related injuries, and the dependents of those members, with a standard of living and medical treatment that are reasonable when compared to the general standard of living and medical treatment for members of the religious sect.

4. An agreement signed by an authorized representative of the religious sect to which the employee belongs to provide the financial and medical assistance described in this subdivision, the department shall presume that a 25-year history of providing that financial and medical assistance is long-standing for purposes of this subdivision.

4. The religious sect to which the employee belongs has agreed to provide the financial and medical assistance described in subd. 3. to the employee and to the dependents of the employee if the employee sustains an injury that, but for the waiver under par. (a) 1., the employer would be liable for under s. 102.03 and that the religious sect has the financial ability to provide that financial and medical assistance.

(c) An employee who has signed a waiver under par. (a) 1. and an affidavit under par. (a) 2., who sustains an injury that, but for that waiver, the employer would be liable for under s. 102.03, who at the time the injury was a member of a religious sect whose authorized representative has filed an affidavit under par. (a) 3. and an agreement and proof of financial responsibility under par. (a) 4. and who as a result of the injury becomes dependent on the religious sect for financial and medical assistance, or the employee's dependent, may request a hearing under s. 102.17 (1) to determine if the religious sect has provided the employee and his or her dependents with a standard of living and medical treatment that are reasonable when compared to the general standard of living and medical treatment for members of the religious sect.

(d) The department shall provide a form for the application for exemption of an employer under par. (a) (intro.), the waiver and affidavit of an employer under par. (a) 1. and 2., the affidavit of a religious sect under par. (a) 3. and the agreement and proof of financial responsibility of a religious sect under par. (a) 4. A properly completed form is prima facie evidence of satisfaction of the conditions under par. (b) as to the matter contained in the form.

(4) Closure order. (a) When the department discovers an uninsured employer, the department may order the employer to cease operations until the employer complies with sub. (2). If after hearing, the department determines that the religious sect has not provided that standard of living or medical treatment, or both, the department may order the religious sect to provide alternative benefits to that employee or his or her dependent, or both, in an amount that is reasonable under the circumstances, but not in excess of the benefits that the employee or dependent could have received under this chapter but for the waiver under par. (a) 1. If the religious sect does not provide the alternative benefits as ordered by the department, the department may use the financial commitment under par. (a) 4. to pay the alternative benefits ordered, including any penalties that may be appropriate.

(b) If the department believes that an employer may be an uninsured employer, the department shall notify the employer of the alleged violation of sub. (2) and the possibility of closure under this subsection. The employer may request and shall receive a hearing under s. 102.17 on the matter if the employer applies for a hearing within 10 days after the notice of the alleged violation is served.

(c) After a hearing under par. (b), or without a hearing if one is not requested, the department may issue an order to an employer to cease operations on a finding that the employer is an uninsured employer.

(d) The department of justice may bring an action in any court of competent jurisdiction for an injunction or other remedy to enforce the department's order to cease operations under par. (c).

(5) Employer's liability. If compensation is awarded under this chapter, against any employer who at the time of the accident has not complied with sub. (2), such employer shall not be entitled to such award or any judgment entered thereon, to any of the exemptions of property from seizure and sale on execution allowed in ss. 815.18 to 815.21. If such employer is a corporation, the officers and directors thereof shall be individually and jointly and severally liable for any portion of any such judgment as is returned unsatisfied after execution against the corporation.

(6) Reports by employer. Every employer shall upon request of the department report to it the number of employees and
the nature of their work and also the name of the insurance company with whom the employer has insured liability under this chapter and the number and date of expiration of such policy. Failure to furnish such report within 10 days from the making of a request by certified mail shall constitute presumptive evidence that the delinquent employer is violating sub. (2).

(7) **INSOLVENT EMPLOYERS: ASSESSMENTS.** (a) If an employer who is currently or was formerly exempted by written order of the department under sub. (2) is unable to pay an award, judgment is rendered in accordance with s. 102.20 against that employer and execution is levied and returned unsatisfied in whole or in part, payments ordered to be made to the employer's liability fund shall be made from the fund established under sub. (8). If a currently or formerly exempted employer files for bankruptcy and not less than 60 days after that filing the department has reason to believe that compensation payments due are not being paid, the department in its discretion may make payment for the employer's liability from the fund established under sub. (8). The state treasurer shall proceed to recover such payments from the employer or the employer's receiver or trustee in bankruptcy, and may commence an action or proceeding or both for the recovery of such payments against that employer and such loss fund. If a currently or formerly exempted employer files a petition for bankruptcy and is not confirmed, the department may obtain a judgment and judgment entered in any court of record or by the court of record or by the department. If notice is given as provided in this subsection, the liability of the tort−feasor shall be determined as to all parties having a right to make claim, and irrespective of whether or not all parties join in prosecuting such claim, the proceeds of such claim shall be divided as follows: After deducting the reasonable cost of collection, one−third of the remainder shall in any event be paid to the injured employee or the employee's personal representative or other person entitled to bring action. Out of the balance remaining, the employer, insurance carrier or, if applicable, uninsured employers fund shall be reimbursed for all payments made by it, or which it may be obligated to make in the future under this chapter, except that it shall not be reimbursed for any payments of increased compensation made or to be made under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57 or 102.60. Any balance remaining shall be paid to the employee or the employee's personal representative or other person entitled to bring action. If both the employee or the employee's personal representative or other person entitled to bring action, and the employer, compensation insurer or department, join in the pressing of said claim and are represented by counsel, the attorneys' fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court or by the department. A settlement of any third party claim shall be void unless said settlement and the distribution of the proceeds thereof is approved by the court before whom the action is pending and if no action is pending, then by a court of record or by the department.

(b) Each employer exempted by written order of the department under sub. (2) shall pay into the fund established by sub. (8) a sum equal to that assessed against each of the other such exempt employers upon the issuance of an initial order. The order shall provide for a sum sufficient to secure estimated payments of the insurer or exempt employer due for the period up to the date of the order and for one year following the date of the order and to pay the estimated cost of insurance carrier or insurance service organization services under par. (c). Payments ordered to be made to the fund shall be paid to the department within 30 days. If additional moneys are required, further assessments shall be made based on orders of the department with assessment prorated on the basis of the gross payroll for this state of the exempt employer, reported to the department for the previous calendar year for unemployment compensation purposes under ch. 108. If the exempt employer is not covered under ch. 108, then the department shall determine the comparable gross payroll for the exempt employer. If payment of any assessment made under this subsection is not made within 30 days of the order of the department, the attorney general may appear on behalf of the state to collect the assessment.

(c) The department may retain an insurance carrier or insurance service organization to process, investigate and pay valid claims. The charge for such service shall be paid from the fund as provided under par. (b).

(8) **SELF−INSURED EMPLOYERS LIABILITY FUND.** The moneys paid into the state treasury under sub. (7), together with all accrued interest, shall constitute the “self−insured employers liability fund”.


The “insure payment” requirement of sub. (2) (a) requires an employer to provide coverage for every employee in all possible employment situations. Substantial compliance with (2) (a) is not sufficient. This provision does not violate due process. State v. Koch, 195 W (2d) 801, 537 NW (2d) 39 (Ct. App. 1995).

**102.29 Third party liability.** (1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employer shall not affect the right of the employer, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any other party for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury to which ss. 102.03 to 102.64 are applicable, or the adjustment of any such claim, affect the right of the injured employee or the employee’s dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the department pays or is obligated to pay a claim under s. 102.81 (1), the department shall also have the right to maintain an action in tort against any other party for the employee’s injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel. If a party entitled to notice cannot be found, the department shall become the agent of such party for the giving of a notice as required in this subsection and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate such party. Each shall have an equal voice in the prosecution of said claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department. If notice is given as provided in this subsection, the liability of the tort−feasor shall be determined as to all parties having a right to make claim, and irrespective of whether or not all parties join in prosecuting such claim, the proceeds of such claim shall be divided as follows: After deducting the reasonable cost of collection, one−third of the remainder shall in any event be paid to the injured employee or the employee's personal representative or other person entitled to bring action. Out of the balance remaining, the employer, insurance carrier or, if applicable, uninsured employers fund shall be reimbursed for all payments made by it, or which it may be obligated to make in the future under this chapter, except that it shall not be reimbursed for any payments of increased compensation made or to be made under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57 or 102.60. Any balance remaining shall be paid to the employee or the employee's personal representative or other person entitled to bring action. If both the employee or the employee’s personal representative or other person entitled to bring action, and the employer, compensation insurer or department, join in the pressing of said claim and are represented by counsel, the attorneys' fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court or by the department. A settlement of any third party claim shall be void unless said settlement and the distribution of the proceeds thereof is approved by the court before whom the action is pending and if no action is pending, then by a court of record or by the department.

(2) In the case of liability of the employer or insurer to make payment into the state treasury under s. 102.49 or 102.59, if the injury or death was due to the actionable act, neglect or default of a third party, the employer or insurer shall have a right of action against such third party to recover the sum so paid into the state treasury, which right may be enforced either by joining in the action mentioned in sub. (1), or by independent action. Contributory negligence of the employee because of whose injury or death such payment was made shall bar recovery if such negligence was greater than the negligence of the person against whom recovery is sought, and the recovery allowed the employer or insurer shall be diminished in proportion to the amount of negligence attributable to such injured or deceased employee. Any action brought under this subsection may, upon order of the court, be consolidated and tried together with any action brought under sub. (1).

(3) Nothing in this chapter shall prevent an employee from taking the compensation he or she may be entitled to under it and also maintaining a civil action against any physician, chiropractor, psychologist or podiatrist for malpractice.

(4) If the employer and the third party are insured by the same insurer, or by the insurers who are under common control, the employer’s insurer shall promptly notify the parties in interest and the department. If the employer has assumed the liability of the 3rd party, it shall give similar notice, in default of which any settlement with an injured employee or beneficiary is void. This subsection does not prevent the employer or compensation insurer from

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sharing in the proceeds of any 3rd party claim or action, as set forth in sub. (1).

(5) An insurer subject to sub. (4) which fails to comply with the notice provision of that subsection and which fails to commence a 3rd party action, within the 3 years allowed by s. 893.54, may not plead that s. 893.54 is a bar in any action commenced by the injured employee under this section against any such 3rd party subsequent to 3 years from the date of injury, but prior to 6 years from such date of injury. Any recovery in such an action is limited to the insured liability of the 3rd party. In any such action commenced by the injured employee subsequent to the 3-year period, the insurer of the employer shall forfeit all right to participate in such a recovery as a co-claimant and to recover any payments made under this chapter.

(6) No employee of a temporary help agency who makes a claim for compensation may make a claim or maintain an action in tort against any employer who compensates the temporary help agency for the employee’s services.

(7) No employee who is loaned by his or her employer to another employer and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who accepted the loaned employee’s services.

(8) No student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an employee of the school district or private school for purposes of this chapter and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose. This subsection does not apply to injuries occurring after December 31, 1997.

(8m) No participant in a community service job under s. 49.147 (4) or a transitional placement under s. 49.147 (5) who, under s. 49.147 (4) (c) or (5) (c), is provided worker’s compensation coverage by a Wisconsin works agency, as defined under s. 49.001 (9), and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the community service job or transitional placement from which the claim arose.

(9) No participant in a work experience component of a job opportunities and basic skills program who, under s. 49.193 (6) (a), is considered to be an employee of the agency administering that program, or who, under s. 49.193 (6) (a), is provided worker’s compensation coverage by the person administering the work experience component, and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the work experience from which the claim arose. This subsection does not apply to injuries occurring after December 31, 1997.

History:

NOTE: See cases annotated under 102.03 as to the right to bring a 3rd party action against a coemployee.

When an employee sues a coemployee, who was also the president of the employer, he cannot impose on the defendant the increased burden of proof under s. 49.193 (5) in a temporary help agency where the employer’s basis for liability is an indemnity agreement for injuries to the employee occurring subsequent to 3 years from the date of injury when the insurer of the employer shall forfeit all right to participate in such a recovery as a co-claimant and to recover any payments made under this chapter.

Right to participate in proceeds was not dependent on participation in prosecution. Guyette v. West Bend Mut. Ins. Cos. 102 W (2d) 496, 307 NW (2d) 311 (Ct. App. 1981).

See note to s. 102.03, citing Jenkins v. Sabourin, 104 W (2d) 309, 311 NW (2d) 600 (1981).

Indemnity agreements in worker’s compensation cases discussed. Hortman v. Otis Elevating Co., Inc. 108 W (2d) 456, 322 NW (2d) 482 (Ct. App. 1982).

Award for loss of consortium under s. 893.54 is subject to allocation under (1). DeMeueneare v. Transport Ins. Cos. 116 W (2d) 322, 342 NW (2d) 56 (Ct. App. 1983).


See note to 102.03, citing Mulder v. Acme–Cleveland Corp. 95 W (2d) 173, 290 NW (2d) 176 (1980).

Right to participate in proceeds was not dependent on participation in prosecution. Guyette v. West Bend Mut. Ins. Cos. 102 W (2d) 496, 307 NW (2d) 311 (Ct. App. 1981).
102.30 Other insurance not affected; liability of insured employer. (1) This chapter does not affect the organization of any mutual or other insurance company or the right of the employer to insure in mutual or other companies against such liability or against the liability for the compensation provided for by this chapter.

(2) An employer may provide by mutual or other insurance, by arrangement with employees or otherwise, for the payment to those employees, their families, their dependents or their representatives, of sick, accident or death benefits in addition to the compensation provided under this chapter. Liability for compensation is not affected by any insurance, contribution or other benefit due to or received by the person entitled to that compensation.

(3) Unless an employee elects to receive sick leave benefits in lieu of compensation under this chapter, if sick leave benefits are paid during the period that temporary disability benefits are payable, the employer shall restore sick leave benefits to the employee in an amount equal in value to the amount payable under this chapter. The combination of temporary disability benefits and sick leave benefits paid to the employee may not exceed the employee's weekly wage.

(4) Regardless of any insurance or other contract, an employee or dependent entitled to compensation under this chapter may recover compensation directly from the employer and may enforce in the person's own name, in the manner provided in this chapter, the liability of any insurance company which insured the liability for that compensation. The appearance, whether general or special, of any such insurance carrier by agent or attorney constitutes waiver of the service of copy of application and of notice of hearing required by s. 102.17.

(5) Payment of compensation under this chapter by either the employer or the insurance company shall, to the extent thereof, bar recovery against the other of the amount so paid. As between the employer and the insurance company, payment by either the employer or the insurance company directly to the employee or the person entitled to compensation is subject to the conditions of the policy.

(6) The failure of the assured to do or refrain from doing any act required by the policy is not available to the insurance carrier as a defense against the claim of the injured employee or the injured employee's dependents.

(7) (a) The department may order direct reimbursement out of the proceeds payable under this chapter for payments made under a nonindustrial insurance policy covering the same disability and expenses compensable under s. 102.42 when the claimant consents or when it is established that the payments under the nonindustrial insurance policy were improper. No attorney fee is due with respect to that reimbursement.

(b) An insurer who issues a nonindustrial insurance policy described in par. (a) may not intervene as a party in any proceeding under this chapter for reimbursement under par. (a).


102.31 Worker's compensation insurance; policy regulations. (1) Every contract for the insurance of compensation provided under this chapter or against liability therefor is subject to this chapter and provisions inconsistent with this chapter are void.

(b) Except as provided in par. (c), a contract under par. (a) shall be construed to grant full coverage of all liability of the assured under this chapter unless the department specifically consents by written order to the issuance of a contract providing divided insurance or partial insurance.

(c) 1. Liability under s. 102.35 (3) is the sole liability of the employer, notwithstanding any agreement of the parties to the contrary.

2. An intermediate agency or publisher referred to in s. 102.07 (6) may, under its own contract of insurance, cover liability of employees as defined in s. 102.07 (6) for an intermediate or independent news agency, if the contract of insurance of the publisher or intermediate agency is endorsed to cover those persons. If the publisher so covers, the intermediate or independent news agency need not cover liability for those persons.

(d) A contract procured to insure a partnership may not be construed to cover the individual liability of the members of the partnership in the course of a trade, business, profession or occupation conducted by them as individuals. A contract procured to insure an individual may not be construed to cover the liability of a limited liability company of which the individual is a member or to cover the liability of the individual arising as a member of any partnership.

(dL) A contract procured to insure a limited liability company may not be construed to cover the individual liability of the members of the limited liability company in the course of a trade, business, profession or occupation conducted by them as individuals. A contract procured to insure an individual may not be construed to cover the liability of a limited liability company of which the individual is a member or to cover the liability of the individual arising as a member of any limited liability company.

(e) An insurer who provides a contract under par. (a) shall file the contract as provided in s. 626.35.

(2) (a) No party to a contract of insurance may cancel it within the contract period or terminate or not renew it upon the expiration date until a notice in writing is given to the other party fixing the proposed date of cancellation or declaring that the party intends to terminate or does not intend to renew the policy upon expiration. Except as provided in par. (b), when an insurance company does not renew a policy upon expiration, the nonrenewal is not effective until 60 days after the insurance company has given written notice of the nonrenewal to the insurer and the department. Cancellation or termination of a policy by an insurance company for any reason other than nonrenewal is not effective until 30 days after the insurance company has given written notice of the cancellation or termination to the insurer and the department. Notice to the department may be given either by personal service of the notice upon the department at its office in Madison or by sending the notice by facsimile machine transmission or certified mail addressed to the department at its office in Madison. The department may provide by rule that the notice of cancellation or termination be given by certified mail or facsimile machine transmission to the Wisconsin compensation rating bureau rather than to the department. Whenever the Wisconsin compensation rating bureau receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination.

(b) 1. In the event of a court-ordered liquidation of an insurance company, a contract of insurance issued by that company terminates on the date specified in the court order.

2. Regardless of whether the notices required under par. (a) have been given, a cancellation or termination is effective upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2).

(3) The department may examine from time to time the books and records of any insurer insuring liability or compensation for an employer in this state. The department may require an insurer to designate one mailing address for use by the department and to respond to correspondence from the department within 30 days. Any insurer that refuses or fails to answer correspondence from

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the department or to allow the department to examine its books and records is subject to enforcement proceedings under s. 601.64.

(4) If any insurer authorized to transact worker’s compensation insurance in this state fails to promptly pay claims for compensation for which it is liable or fails to make reports to the department required by s. 102.38, the department may recommend to the commissioner of insurance, with detailed reasons, that enforcement proceedings under s. 601.64 be invoked. The commissioner shall furnish a copy of the recommendation to the insurer and shall set a date for a hearing, at which both the insurer and the department shall be afforded an opportunity to present evidence. If after the hearing the commissioner finds that the insurer has failed to carry out its obligations under this chapter, the commissioner shall institute enforcement proceedings under s. 601.64. If the commissioner does not so find, the commissioner shall dismiss the complaint.

(5) If any employer whom the department exempted from carrying compensation insurance arbitrarily or unreasonably refuses employment to or discharges employees because of a nondisabling physical condition, the department shall revoke the exemption of that employer.

(6) The department has standing to appear as a complainant and present evidence in any administrative hearing or court proceeding instituted for alleged violation of s. 628.34 (7).

(7) If the department by one or more written orders specifically consents to the issuance of one or more contracts covering only the liability incurred on a construction project and if the construction project owner designates the insurance carrier and pays for each such contract, the construction project owner shall reimburse the department for all costs incurred by the department in issuing the written orders and in ensuring minimum confusion and maximum safety on the construction project.

(8) The Wisconsin compensation rating bureau shall provide the department with any information it requests relating to worker’s compensation insurance coverage, including but not limited to the names of employers insured and any insured employer’s address, business status, type and date of coverage, manual premium code, and policy information including numbers, cancellations, terminations, endorsements and reinstatement dates. The department may enter into contracts with the Wisconsin compensation rating bureau to share the costs of data processing and other services.

Sub. (1) (b) does not apply to a joint venture and insurance written in the name of one adventurer is sufficient to cover his joint liability. Insurance Co. of N. A. v. ILHR Dept. 45 W (2d) 361, 173 NW (2d) 192.

102.32 Continuing liability; guarantee settlement, gross payment. In any case in which compensation payments have extended or will extend over 6 months or more from the date of the injury (or at any time in death benefit cases), any party in interest may, in the discretion of the department, be discharged from, or compelled to guarantee, future compensation payments as follows:

(1) By depositing the present value of the total unpaid compensation upon a 7% interest discount basis with a credit union, savings bank, savings and loan association, bank or trust company designated by the department; or

(2) By purchasing an annuity within the limitations provided by law, in such insurance company granting annuities and licensed in this state, as may be designated by the department; or

(3) By making payment in gross upon a 7% interest discount basis to be approved by the department; and

(4) In cases where the time for making payments or the amounts thereof cannot be definitely determined, by furnishing a bond, or other security, satisfactory to the department for the payment of compensation as may be due or become due. The acceptability of the bond, or other security, and the form and sufficiency thereof, shall be subject to the approval of the department. If the employer or insurer is unable or fails to immediately procure the bond, then, in lieu thereof, deposit shall be made with a credit union, savings bank, savings and loan association, bank or trust company designated by the department, of the maximum amount that may reasonably become payable in these cases, to be determined by the department at amounts consistent with the extent of the injuries and the law. The bonds and deposits are to be reduced only to satisfy claims and withdrawn only after the claims which they are to guarantee are fully satisfied or liquidated under sub. (1) (b) or (3); and

(5) Any insured employer may, within the discretion of the department, compel the insurer to discharge, or to guarantee payment of its liabilities in any such case under this section and thereby release himself or herself from compensation liability therein, but if for any reason a bond furnished or deposit made under sub. (4) does not fully protect, the compensation insurer or uninsured employer, as the case may be, shall still be liable to the beneficiary thereof.

(6) If compensation is due for permanent disability following an injury or if death benefits are payable, payments shall be made to the employee or dependent on a monthly basis. The department may direct an advance on a payment of unaccrued compensation or death benefits if it determines that the advance payment is in the best interest of the injured employee or his or her dependents. In directing the advance, the department shall give the employee or the employer’s insurer an interest credit against its liability. The credit shall be computed at 7%.

(7) No lump sum settlement shall be allowed in any case of permanent total disability upon an estimated life expectancy, except upon consent of all parties, after hearing and finding by the department that the interests of the injured employee will be conserved thereby.


102.33 Department forms and records; public access. (1) The department shall print and furnish free to any employer or employee such blank forms as it shall deem requisite to facilitate efficient administration of this chapter; it shall keep such record books or records as it shall deem required for the proper and efficient administration of this chapter.

(2) (a) Except as provided in par. (b), the records of the department related to the administration of this chapter are subject to inspection and copying under s. 19.35 (1).

(b) Notwithstanding par. (a), a record maintained by the department that reveals the identity of an employee who claims worker’s compensation benefits, the nature of the employee’s claimed injury, the employee’s past or present medical condition, the extent of the employee’s disability, the amount, type or duration of benefits paid to the employee or any financial information provided to the department by a self–insured employer or by an applicant for exemption under s. 102.28 (2) (b) is confidential and not open to public inspection or copying under s. 19.35 (1). The department may deny a request made under s. 19.35 (1) or, subject to s. 102.17 (2m) and (2s), refuse to honor a subpoena issued by an attorney of record in a civil or criminal action or special proceeding to inspect and copy a record that is confidential under this paragraph, unless one of the following applies:

1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. An attorney or authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the department.

2. The record that is requested contains confidential information concerning a worker’s compensation claim and the requester is an insurance carrier or employer that is a party to any worker’s compensation claim involving the same employee or an attorney or authorized agent of that insurance carrier or employer, except that the department is not required to do a random search of its records and may require the requester to provide the approximate date of
the injury and any other relevant information that would assist the department in finding the record requested. An attorney or authorized agent of an insurance carrier or employer that is a party to an employee’s worker’s compensation claim shall provide a written authorization for inspection and copying from the insurance carrier or employer if requested by the department.

3. The record that is requested contains financial information provided by a self−insured employer or by an applicant for exemption under s. 102.28 (2) (b) and the requester is the self−insured employer or applicant for exemption or an attorney or authorized agent of the self−insured employer or applicant for exemption or a attorney or authorized agent of the self−insured employer or of the applicant for exemption shall provide a written authorization for inspection and copying from the self−insured employer or applicant for exemption if requested by the department.

4. A court of competent jurisdiction in this state orders the department to release the record.

History: 1975 c. 147 s. 54; 1989 a. 64; 1991 a. 85; 1995 a. 117.

102.38 Records of payments; reports thereon. Every insurance company which transacts the business of compensation insurance, and every employer who is subject to this chapter but whose liability is not insured, shall keep a record of all payments made under this chapter and of the time and manner of making the payments, and shall furnish reports based upon these records to the department as it may require by general order, upon forms approved by the department.

History: 1975 c. 147 s. 54; 1975 c. 199; 1979 c. 89; 1985 a. 83.

102.39 General orders; application of statutes. The provisions of s. 103.005 relating to the adoption, publication, modification and court review of general orders of the department shall apply to all general orders adopted pursuant to this chapter.

History: 1995 a. 27.

102.40 Reports not evidence in actions. Reports furnished to the department pursuant to ss. 102.37 and 102.38 shall not be admissible as evidence in any action or proceeding arising out of the death or accident reported.

102.42 Incidental compensation. (1) TREATMENT OF EMPLOYE. The employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employee, if the employer has not filed notice as provided in sub. (4), Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employee’s neglect or refusal seasonably to do so, or in emergency until it is practicable for the employee to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing such treatment, medicines, supplies and training. Where the employer has knowledge of the injury and the necessity for treatment, the employer’s failure to tender the necessary treatment, medicines, supplies and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational disease prior to the time that the employee knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the condition of the employee or to maintain the existing status of such condition whether or not healing is completed.

(2) CHOICE OF PRACTITIONER. (a) Where the employer has notice of an injury and its relationship to the employment the employer shall offer to the injured employee his or her choice of any physician, chiropractor, psychologist or podiatrist licensed to practice and practicing in this state for treatment of the injury. By mutual agreement, the employee may have the choice of any qualified practitioner not licensed in this state. In case of emergency, the employer may arrange for treatment without tendering a choice. After the emergency has passed the employee shall be given his or her choice of attending practitioner at the earliest opportunity. The employee has the right to a 2nd choice of attending practitioner on notice to the employer or its insurance carrier. Any further choice shall be by mutual agreement. Partners and clinics are deemed to be one practitioner. Treatment by a practi-
tioner on referral from another practitioner is deemed to be treatment by one practitioner.

(b) The employer is not liable for the expense of unreasonable travel to obtain treatment.

(3) **PRACTITIONER CHOICE UNRESTRICTED.** If the employer fails to tender treatment as provided in sub. (1) or choice of an attending practitioner as provided in sub. (2), the employee’s right to choose the attending practitioner is not restricted and the employer is liable for the reasonable and necessary expense thereof.

(4) **CHRISTIAN SCIENCE.** Any employer may elect not to be subject to the provisions for Christian Science treatment provided for in this section by filing written notice of such election with the department.

(5) **ARTIFICIAL MEMBERS.** Liability for repair and replacement of prosthetic devices is limited to the effects of normal wear and tear. Artificial members furnished at the end of the healing period for cosmetic purposes only need not be duplicated.

(6) **TREATMENT REJECTED By EMPLOYEE.** Unless the employee has elected Christian Science treatment in lieu of medical, surgical, hospital or sanatorium treatment, no compensation shall be payable for the death or disability of an employee, if the death be caused, or insofar as the disability may be aggravated, caused or continued (a) by an unreasonable refusal or neglect to submit to or follow any competent and reasonable medical or surgical treatment, (b) or, in the case of tuberculosis, by refusal or neglect to submit to or follow hospital or sanatorium treatment when found by the department to be necessary. The right to compensation accruing during a period of refusal or neglect under (b) shall be barred, irrespective of whether disability was aggravated, caused or continued thereby.

(7) **AWARD TO STATE EMPLOYEE.** Whenever an award is made by the department in behalf of a state employee, the department of industry, labor and job development shall file duplicate copies of the award with the department of administration. Upon receipt of the copies of the award, the department of administration shall promptly issue a voucher in payment of the award from the proper appropriation under s. 20.865 (1) (fm), (kr) or (ur), and shall transmit one copy of the voucher and the award to the officer, department or agency by whom the affected employee is employed.

(8) **REHABILITATION, PHYSICAL AND VOCATIONAL. (a) One of the primary purposes of this chapter is restoration of an injured employee to gainful employment. To this end, the department shall employ a specialist in physical, medical and vocational rehabilitation.

(b) Such specialist shall study the problems of rehabilitation, both physical and vocational and shall refer suitable cases to the department for vocational evaluation and training. The specialist shall investigate and maintain a directory of such rehabilitation facilities, private and public, as are capable of rendering competent rehabilitation service to seriously injured employees.

(c) The specialist shall review and evaluate reported injuries for potential cases in which seriously injured employees may be in need of physical and medical rehabilitation and may confer with the injured employee, employer, insurance carrier or attending practitioner regarding treatment and rehabilitation.

**History:** 1971 c. 61; 1973 c. 150, 282; 1975 c. 147; 1977 c. 195 ss. 24 to 28, 45; 1977 c. 273; 1979 c. 278; 1981 c. 20; 1987 a. 179; 1989 a. 64; 1995 a. 27 ss. 3743m, 3744 and 9130 (4).

The requirement that medical treatment be supplied during the healing period (defined as prior to the time the condition becomes stationary) is not determined by reference to the percentage of disability but by a determination that the injury has stabilized. Custodial care, as distinguished from nursing services, is not compensable. Mednicoff v. ILHR Dept. 54 W (2d) 7, 194 NW (2d) 670.

In appropriate cases, the ILHR Department is warranted in, at the least, postponing a determination of permanent disability for a reasonable period of time until after a claimant completes a competent and reasonable course of physical therapy or vocational rehabilitation as an essential part of the treatment required for full recovery and minimization of damages. Transamerica Ins. Co. v. ILHR Dept. 54 W (2d) 272, 195 NW (2d) 656.

An employee who wishes to consult a 2nd doctor on the panel after the first says no further treatment is needed may do so without notice or consent, and if the 2nd doctor prescribes an operation which increases disability, the employer is liable. Spencer v. ILHR Dept. 55 W (2d) 525, 200 NW (2d) 611.

**102.43 Weekly compensation schedule.** If the injury causes disability, an indemnity shall be due as wages commencing the 4th calendar day from the commencement of the day the scheduled work shift began, exclusive of Sundays only, excepting where the employee works on Sunday, after the employee leaves work as the result of the injury, and shall be payable weekly thereafter, during such disability. If the disability exists after 7 calendar days from the date the employee leaves work as a result of the injury and only if it so exists, indemnity shall also be due and payable for the first 3 calendar days, exclusive of Sundays only, excepting where the employee works on Sunday. Said weekly indemnity shall be as follows:

(a) If the injury causes total disability, two-thirds of the average weekly earnings during such disability.

(b) If the injury causes partial disability, during the partial disability, such proportion of the weekly indemnity rate for total disability as the actual wage loss of the injured employee bears to the injured employee’s average weekly wage at the time of the injury.

(c) If the disability caused by the injury is at times total and at times partial, the weekly indemnity during each total or partial disability shall be in accordance with subs. (1) and (2), respectively.

(d) If the disability period involves a fractional week, indemnity shall be paid for each day of such week, except Sundays only, at the rate of one-sixth of the weekly indemnity.

(e) Temporary disability, during which compensation shall be payable for loss of earnings, shall include such period as may be reasonably required for training in the use of artificial members and appliances, and shall include such period as the employee may be receiving instruction pursuant to s. 102.61 (1) or (1m). Temporary disability on account of receiving instruction of the latter nature, and not otherwise resulting from the injury, shall not be in excess of 80 weeks. Such 80-week limitation does not apply to temporary disability benefits under this section, travel or maintenance expense under s. 102.61 (1) or private rehabilitation counseling or rehabilitative training costs under s. 102.61 (1m) if the department determines that additional training is warranted. The necessity for additional training as authorized by the department for any employee shall be subject to periodic review and reevaluation.

(f) Except as provided in par. (b), no sick leave benefits provided in connection with other employment or wages received from other employment held by the employee when the injury occurred may be considered in computing actual wage loss from the employer in whose employ the employee sustained injury.

(g) Wages received from other employment held by the employee when the injury occurred shall be considered in computing actual wage loss from the employer in whose employ the employee sustained the injury, if the employee’s weekly temporary disability benefits are calculated under s. 102.11 (1) (a).

(h) Wages received from the employer in whose employ the employee sustained injury or from other employment obtained after the injury occurred shall be considered in computing benefits for temporary disability.

(i) If an employee has a renewed period of temporary disability commencing more than 2 years after the date of injury and, except as provided in par. (b), the employee returned to work for at least 10 days preceding the renewed period of disability, payment of compensation for the new period of disability shall be made as provided in par. (c).
WORKER'S COMPENSATION

102.44 Maximum limitations. Section 102.43 shall be subject to the following limitations:

(1) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous total temporary disability more than 24 months after the date of injury resulting from an injury which occurred prior to January 1, 1976, shall receive supplemental benefits which shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. These supplemental benefits shall be paid only for weeks of disability occurring after January 1, 1976, and shall continue during the period of such total disability subsequent to that date.

(a) If such employee is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit shall be an amount which, when added to the regular benefit established for the case, shall equal $150.

(b) If such employee is receiving a weekly benefit which is less than the maximum benefit which was in effect at the date of the injury, the supplemental benefit shall be an amount sufficient to bring the total weekly benefits to the same proportion of $150 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

(c) The employer or insurance carrier paying the supplemental benefits required under this subsection shall be entitled to reimbursement for each such case from the fund established by s. 102.65, commencing one year from the date of the first such pay-
department may reopen any award and make a redetermination taking into account loss of earning capacity.

(c) The determination of wage loss shall not take into account any period during which benefits are payable for temporary disability.

(d) The determination of wage loss shall not take into account any period during which benefits are paid under ch. 108.

(e) For the purpose of determining wage loss, payment of benefits for permanent partial disability shall not be considered payment of wages.

(f) Wage loss shall be determined on wages, as defined in s. 102.11. Percentage of wage loss shall be calculated on the basis of actual average wages over a period of at least 13 weeks.

(g) For purposes of this subsection, if the employer in good faith makes an offer of employment which is refused by the employee without reasonable cause, the employee is considered to have returned to work with the earnings the employee would have received had it not been for the refusal.

(h) In all cases of permanent partial disability not covered by ss. 102.52 to 102.56, whether or not the employee has returned to work, the permanent partial disability shall not be less than that imposed by the physical limitations.


Committee Note 1971: Employees who are totally disabled receive compensation at the wage level and the compensation rate in effect as of the date of their injury. This is an average of approximately $45.90 per week for the employees who are injured previous to February 1, 1970. The intent is to provide for payment of supplemental benefits; for example, an employee who was injured in October 1951 and earning wages in excess of $52.86 per week is receiving $37 a week for total disability. This employee will receive supplemental benefits of $42 a week to bring the total up to $79, which was the maximum February 1, 1970. An employee injured in October 1951 with a wage of $26.43 has been receiving $18.50 per week for total disability. This is 50% in excess of the maximum of $52.86 per week. The department must disregard total loss of earning capacity in the case of a relative or dependents. Balczewski v. DILHR, 76 W 2d 487, 251 NW 2d 794.

Sub. (6) (a) includes only wage loss suffered at employment where injury occurred and does not include wage loss from second job. Ruff v. LIRC, 159 W 2d 239, 464 NW 2d (Cl. App. 1990).

LIRC exceeded its authority when it ordered temporary total disability payments for an indefinite future period. TTD payments are not authorized for the period after a medical condition has stabilized and before the employee undergoes surgery. GTC Auto Parts v. LIRC, 184 W 2d 450, 516 NW 2d (Cl. App. 1993).

See note to Art. IV, s. 26 as to (1), citing 62 Aty. Gen. 69.

102.45 Benefits payable to minors; how paid. Compensation and death benefit payable to an employer or dependent who was a minor when the employee’s or dependent’s right began to accrue, may, in the discretion of the department, be ordered paid to a bank, trust company, trustee, parent or guardian, for the use of such employee or dependent as may be found best calculated to conserve the employee’s or dependent’s interests. Such employee or dependent shall be entitled to receive payments, in the aggregate, at a rate not less than that applicable to payments of primary compensation for total disability or death benefit as accruing from the employer’s or dependent’s 18th birthday.

History: 1973 c. 150; 1993 a. 492.

102.46 Death benefit. Where death proximately results from the injury and the deceased leaves a person wholly dependent upon him or her for support, the death benefit shall equal 4 times his or her average annual earnings, but when added to the disability indemnity paid and due at the time of death, shall not exceed two-thirds of weekly wage for the number of weeks set out in s. 102.44 (3).

History: 1979 c. 278; 1981 c. 92.


102.47 Death benefit, continued. If death occurs to an injured employee other than as a proximate result of the injury, before disability indemnity ceases, death benefit and burial expense allowance shall be as follows:

(1) Where the injury proximately causes permanent total disability, they shall be the same as if the injury had caused death, except that the burial expense allowance shall be included in the items subject to the limitation stated in s. 102.46. The amount available shall be applied toward burial expense before any is applied toward death benefit. If there are no surviving dependents the amount payable to dependents shall be paid, as provided in s. 102.49 (5) (b), to the fund created under s. 102.65.

(2) Where the injury proximately causes permanent partial disability, the unaccrued compensation shall first be applied toward funeral expenses, not to exceed the amount specified in s. 102.50. Any remaining sum shall be paid to dependents, as provided in this section and ss. 102.46 and 102.48, and there is no liability for any other payments. All computations under this subsection shall take into consideration the present value of future payments. If there are no surviving dependents the amount payable to dependents shall be paid, as provided in s. 102.49 (5) (b), to the fund created under s. 102.65.


102.475 Death benefit; law enforcement and correctional officers, fire fighters, rescue squad members, national or state guard members and emergency management personnel. (1) SPECIAL BENEFIT. If the deceased employee is a law enforcement officer, correctional officer, fire fighter, rescue squad member, national guard member or state defense force member on state active duty as described in s. 102.07 (9) or if a deceased person is an employee or volunteer performing emergency management activities under ch. 166 during a state of emergency or a circumstance described in s. 166.04, who sustained an accidental injury while performing services growing out of and incidental to that employment or volunteer activity so that benefits are payable under s. 102.46 or 102.47 (1), the department shall voucher and pay from the appropriation under s. 20.445 (1) (aa) a sum equal to 75% of the primary death benefit as of the date of death, but not less than $50,000 to the persons wholly dependent upon the deceased. For purposes of this subsection, dependency shall be determined under ss. 102.49 and 102.51.

(2) PAYMENTS TO DEPENDENTS. (a) If there are more than 4 persons who are wholly dependent upon the deceased employee an additional benefit of $2,000 shall be paid for each dependent in excess of 4.

(b) If there is more than one person who is wholly dependent upon the deceased employee, the benefits under this section shall be apportioned between such dependents on the same proportional basis as the primary death benefit.

(c) Notwithstanding sub. (1), if there are partial dependents of the deceased employee who are entitled to benefits under s. 102.48, they shall be entitled to such portion of the benefit determined under sub. (1) that their partial dependency benefit bears to the primary benefit payable to one wholly dependent upon the deceased. No payment to a partial dependent shall be less than $1,000.

(3) DISPUTES. In case of dispute, dependents may file applications as provided in s. 102.17, and ss. 102.17 to 102.27 shall apply. In such case, if the claim for a primary death benefit is compromised, any claim under this section shall be compromised on the same proportional basis. The attorney general shall represent the interests of the state in case of such dispute.

(5) MINORS. Benefits due to minors under this section may be paid as provided in s. 102.45.

(6) PROOF. In administering this section the department may require reasonable proof of birth, marriage, relationship or dependency.

(7) NOT TO AFFECT OTHER RIGHTS, BENEFITS OR COMPENSATION. The compensation provided for in this section is in addition to, and not exclusive of, any pension rights, death benefits or other compensation otherwise payable by law.

(8) DEFINITIONS. As used in this section:
(a) “Correctional officer” means any person employed by the state or any political subdivision as a guard or officer whose principal duties are supervision and discipline of inmates at a penal institution, prison, jail, house of correction or other place of penal detention.

(b) “Firefighter” means any person employed by the state or any political subdivision as a member or officer of a fire department or a member of a volunteer department, including the state fire marshal and deputies or a member of a legally organized rescue squad.

(c) “Law enforcement officer” means any person employed by the state or any political subdivision for the purpose of detecting and preventing violations of the laws or ordinances who is authorized to make arrests for violations of the laws or ordinances the person is employed to enforce, whether that enforcement authority extends to all laws or ordinances or is limited to specific laws or ordinances.

(d) “Political subdivision” includes counties, municipalities and municipal corporations.

(e) “State” means the state of Wisconsin and its departments, divisions, boards, bureaus, commissions, authorities and colleges and universities.

History: 1975 c. 274, a21; 1977 c. 29 ss. 1029m to 1029s; 1980 c. 143; 1987 c. 329; 1991 a. 98; 1993 a. 177; 1995 a. 247.

102.48 Death benefit, continued. If no person who survives the deceased employee is wholly dependent upon the deceased employee for support, partial dependency and death benefits therefor shall be as follows:

(1) An unestranged surviving parent or parents to whose support the deceased has contributed less than $500 in the 52 weeks next preceding the injury, causing death shall receive a death benefit of $6,500. If the parents are not living together, the department shall divide this sum in such proportion as it deems to be just, considering their ages and other facts bearing on dependency.

(2) In all other cases the death benefit shall be such sum as the department shall determine to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employee but for the injury. To establish anticipation of support and dependency, it shall not be essential that the deceased employee made any contribution to support. The aggregate benefits in such case shall not exceed twice the average annual earnings of the deceased; or 4 times the contributions of the deceased to the support of such dependents during the year immediately preceding the deceased employee’s death, whichever amount is the greater. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person wholly dependent. Where there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term “support” as used in ss. 102.42 to 102.63 shall include contributions to the capital fund of the dependents, for their necessary comfort.

(3) A death benefit, other than burial expenses, except as otherwise provided, shall be paid in weekly instalments corresponding in amount to two-thirds of the weekly earnings of the employee, until otherwise ordered by the department.

History: 1973 c. 147; 1979 c. 278; 1989 a. 43; 1993 a. 492.

102.49 Additional death benefit for children, state fund. (1) Where the beneficiary under ss. 102.46 or 102.47 (1) is the wife or husband of the deceased employee and is wholly dependent for support, an additional death benefit shall be paid from the funds provided by sub. (5) for each child by their marriage who is living at the time of the death of the employee, and who is likewise wholly dependent upon the employee for support. Such payment shall commence at the time that primary death benefit payments are completed, or if advancement of compensation has been paid at the time when payments would normally have been completed. Payments shall continue at the rate of 10% of the surviving parent’s weekly indemnity until the child’s 18th birthday.

If the child is physically or mentally incapacitated, such payments may be continued beyond the 18th birthday but the payments may not continue for more than a total of 15 years.

(2) A child lawfully adopted by the deceased employee and the surviving spouse, prior to the time of the injury, and a child not the deceased employee’s own by birth or adoption but living with the deceased employee as a member of the deceased employee’s family at the time of the injury shall for the purpose of this section be taken as a child by their marriage.

(3) Where the employee leaves a wife or husband wholly dependent and also a child or children by a former marriage or adoption, likewise wholly dependent, aggregate benefits shall be the same in amount as if the children were the children of such surviving spouse, and the entire benefit shall be apportioned to the dependents in such amounts as the department shall determine to be just, considering their ages and other facts bearing on dependency. The benefit awarded to the surviving spouse shall not exceed four times the average annual earnings of the deceased employee.

(4) Dependency of any child for the purposes of this section shall be determined according to s. 102.51 (1), in like manner as would be done if there was no surviving dependent parent.

(5) (a) In each case of injury resulting in death, the employer or insurer shall pay into the state treasury the sum of $5,000.

(b) In addition to the payment required under par. (a), in each case of injury resulting in death leaving no person dependent for support, the employer or insurer shall pay into the state treasury an amount which, when added to the sums paid or to be paid on account of partial dependency and under s. 102.48 (1), shall equal the death benefit payable to a person wholly dependent.

(d) The payment into the state treasury shall be made in all such cases regardless of whether the dependents or personal representatives of the deceased employee commence action against a 3rd party under s. 102.29. If the payment is not made within 20 days after the department makes request therefor, any sum payable shall bear interest at the rate of 7% per year.

(e) The adjustments in compensation provided in ss. 102.57, 102.58 and 102.60 do not apply to payments made under this section.

(6) The department may award the additional benefits payable under this section to the surviving parent of the child, to the child’s guardian or to such other person, bank or trust company for the child’s use as may be found best calculated to conserve the interest of the child. In the case of death of a child while benefits are still payable there shall be paid the reasonable expense for burial, not exceeding $1,500.

(7) All payments received under this section shall be deposited in the fund established by s. 102.65.

History: 1971 c. 260 s. 92 (4); 1975 c. 147, 199; 1977 c. 195; 1979 c. 110 s. 60 (13); 1979 c. 278, 355; 1985 a. 83; 1991 a. 85; 1993 a. 492. Death benefits for dependent children are not increased by 102.57. Schwartz v. DILHR, 72 W (2d) 217, 240 NW (2d) 173.

102.50 Burial expenses. In all cases where death of an employee proximately results from the injury the employer or insurer shall pay the reasonable expense for burial, not exceeding $6,000.


102.51 Dependents. (1) Who are. (a) The following persons are entitled to death benefits as if they are solely and wholly dependent for support upon a deceased employee:

1. A wife upon a husband with whom she is living at the time of his death.
2. A husband upon a wife with whom he is living at the time of her death.
3. A child under the age of 18 years upon the parent with whom he or she is living at the time of the death of the parent, there being no surviving dependent parent.
4. A child over the age of 18 years, but physically or mentally incapacitated from earning, upon the parent with whom he or she is living at the time of the death of the parent, there being no surviving dependent parent.

(b) Where a dependent who is entitled to death benefits under this subsection survives the deceased employee, all other dependents shall be excluded. The charging of any portion of the support and maintenance of a child upon one of the parents, or any voluntary contribution toward the support of a child by a parent, or any right to support a child by a parent constitutes living with any such parent within the meaning of this subsection.

(2) Who are not:(a) No person shall be considered a dependent unless a member of the family or a spouse, or a divorced spouse who has not remarried, or lineal descendant or ancestor, or brother or sister of the deceased employee.
(b) Where for eight years or more prior to the date of injury a deceased employee has been a resident of the United States, it shall be conclusively presumed that no person who has remained a nonresident alien during that period is either totally or partially dependent upon the deceased employee for support.
(c) No person who is a nonresident alien shall be found to be either totally or partially dependent on a deceased employee for support who cannot establish dependency by proving contributions from the deceased employee by written evidence or tokens of the transfer of money, such as drafts, letters of credit, microfilm or other copies of paid share drafts, canceled checks, or receipts for the payment to any bank, express company, United States post office, or other agency commercially engaged in the transfer of funds from one country to another, for transmission of funds on behalf of said deceased employee to such nonresident alien claiming dependency. This provision shall not be applicable unless the employee has been continuously in the United States for at least one year prior to his or her injury, and has been remuneratively employed therein for at least 6 months.

(3) Division among dependents. If there is more than one person wholly or partially dependent, the death benefit shall be divided between such dependents in such proportion as the department shall determine to be just, considering their ages and other facts bearing on such dependency.

(4) Dependency as of the date of death. Questions as to who is a dependent and the extent of his or her dependency shall be determined as of the date of the death of the employee, and the dependent’s right to any death benefit becomes fixed at that time, regardless of any subsequent change in conditions. The death benefit shall be directly recoverable by and payable to the dependents entitled thereto or their legal guardians or trustees. In case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the benefit as is then unpaid is payable to the dependent’s personal representatives in gross, unless the department determines that the unpaid benefit shall be reassigned, under sub. (6), and paid to any other dependent who is physically or mentally incapacitated or a minor. A posthumous child is for the purpose of this subsection a dependent as of the date of death.

(5) When not interested. No dependent of an injured employee shall be deemed a party in interest to any proceeding by the employee for the enforcement of the employee’s claim for compensation, nor with respect to the compromise thereof by such employee. A compromise of all liability entered into by an employee is binding upon the employee’s dependents, except that any dependent of a deceased employee may submit the compromise for review under s. 102.16 (1).

(6) Division among dependents. Benefits accruing to a minor dependent child may be awarded to either parent in the discretion of the department. Notwithstanding sub. (1), the department may reassign the death benefit, in accordance with their respective needs therefor as between a surviving spouse and children designated in sub. (1) and s. 102.49.

(7) Certain defense barred. In proceedings for the collection of primary death benefit or burial expense it shall not be a defense that the applicant, either individually or as a partner or member, was an employer of the deceased.

Posthumously born illegitimate child does not qualify as a dependent under (4).

102.52 Permanent partial disability schedule. In cases included in the following schedule of permanent partial disabili-

(1) The loss of an arm at the shoulder, 500 weeks;
(2) The loss of an arm at the elbow, 450 weeks;
(3) The loss of a hand, 400 weeks;
(4) The loss of a palm where the thumb remains, 325 weeks;
(5) The loss of a thumb and the metacarpal bone thereof, 160 weeks;
(6) The loss of a thumb at the proximal joint, 120 weeks;
(7) The loss of a thumb at the distal joint, 50 weeks;
(8) The loss of all fingers on one hand at their proximal joints, 225 weeks;
(9) Losses of fingers on each hand as follows:
   (a) An index finger and the metacarpal bone thereof, 60 weeks;
   (b) An index finger at the proximal joint, 50 weeks;
   (c) An index finger at the second joint, 30 weeks;
   (d) An index finger at the distal joint, 12 weeks;
   (e) A middle finger and the metacarpal bone thereof, 45 weeks;
   (f) A middle finger at the proximal joint, 35 weeks;
   (g) A middle finger at the second joint, 20 weeks;
   (h) A middle finger at the distal joint, 8 weeks;
   (i) A ring finger and the metacarpal bone thereof, 26 weeks;
   (j) A ring finger at the proximal joint, 20 weeks;
   (k) A ring finger at the second joint, 15 weeks;
   (L) A ring finger at the distal joint, 6 weeks;
   (m) A little finger and the metacarpal bone thereof, 28 weeks;
   (n) A little finger at the proximal joint, 22 weeks;
   (o) A little finger at the second joint, 16 weeks;
   (p) A little finger at the distal joint, 6 weeks;
   (10) The loss of a leg at the hip joint, 500 weeks;
   (11) The loss of a leg at the knee, 425 weeks;
   (12) The loss of a foot at the ankle, 250 weeks;
   (13) The loss of the great toe with the metatarsal bone thereof, 83 1/3 weeks;
   (14) Losses of toes on each foot as follows:
      (a) A great toe at the proximal joint, 25 weeks;
      (b) A great toe at the distal joint, 12 weeks;
      (c) The second toe with the metatarsal bone thereof, 25 weeks;
      (d) The second toe at the proximal joint, 8 weeks;
      (e) The second toe at the second joint, 6 weeks;
      (f) The second toe at the distal joint, 4 weeks;
      (g) The third, fourth or little toe with the metatarsal bone thereof, 20 weeks;
      (h) The third, fourth or little toe at the proximal joint, 6 weeks;
      (i) The third, fourth or little toe at the second or distal joint, 4 weeks;
      (15) The loss of an eye by enucleation or evisceration, 275 weeks;
(16) Total impairment of one eye for industrial use, 250 weeks;
(17) Total deafness from accident or sudden trauma, 330 weeks;
(18) Total deafness of one ear from accident or sudden trauma, 55 weeks.

History: 1973 c. 150; 1975 c. 147; 1979 c. 278.

In a workmen’s compensation proceeding brought by an employee who suffered total deafness from an industrial accident, the ILHR department did not err in determining that the hearing loss was a scheduled disability under (18), with a separate award for the additional physical effects of the deafness, rather than considering the entire range of disabilities as a whole, where a loss is recognized by and compensable under this section, the schedule therein is exclusive. Vande Zande v. ILHR Dep't, 70 W2d 1086, 236 NW (2d) 255.

The “loss of an arm at the shoulder” under sub. (1) encompasses injuries to the arm and does not include an injury to the shoulder. Hagen v. LIRC, 201 W2d 51, 547 NW (2d) 812 (Ct. App. 1996).

102.53 Multiple injury variations. In case an injury causes more than one permanent disability specified in ss. 102.44 (3), 102.52 and 102.55, the period for which indemnity shall be payable for each additional equal or lesser disability shall be increased as follows:

1. In the case of impairment of both eyes, by 200%.
2. In the case of disabilities on the same hand covered by s. 102.52 (9), by 100% for the first equal or lesser disability and by 150% for the 2nd and 3rd equal or lesser disabilities.
3. In the case of disabilities on the same foot covered by s. 102.52 (14), by 20%.
4. In all other cases, by 20%.
5. The aggregate result as computed by applying sub. (1), and the aggregate result for members on the same hand or foot as computed by applying subs. (2) and (3), shall each be taken as a unit for applying sub. (4) as between such units, and as between such units and each other disability.

History: 1973 c. 150; 1979 c. 278.

102.54 Injury to dominant hand. If an injury to an employe’s dominant hand causes a disability specified in s. 102.52 (1) to (9) or amputation of more than two-thirds of the distal joint of a finger, the period for which indemnity is payable for that disability or amputation is increased by 25%. This increase is in addition to any other increase payable under s. 102.53 but, for cases in which an injury causes more than one permanent disability, the increase under this section shall be based on the periods specified in s. 102.52 for each disability and not on any increased period specified in s. 102.53.

History: 1993 a. 81.

102.55 Application of schedules. (1) Whenever amputation of a member is made between any 2 joints mentioned in the schedule in s. 102.52 the determined loss and resultant indemnity therefore shall bear such relation to the loss and indemnity applicable in case of amputation at the joint next nearer the body as such injury bears to one of amputation at the joint nearer the body.

(2) For the purposes of this schedule permanent and complete paralysis of any member shall be deemed equivalent to the loss thereof.

(3) For all other injuries to the members of the body or its faculties which are specified in this schedule resulting in permanent disability, though the member be not actually severed or the faculty totally lost, compensation shall bear such relation to that named in this schedule as disabilities bear to the disabilities named in this schedule. Indemnity in such cases shall be determined by allowing weekly indemnity during the healing period resulting from the injury and the percentage of permanent disability resulting thereafter as found by the department.

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 employee is subjected to noise.

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

(3) An employe who because of occupational deafness is transferred by his or her 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 $7,000 in the aggregate from all employers. “Time of injury”, “occurrence of injury”, and “date of injury” in such case mean the date of wage loss.

(4) Subject to the limitations provided in this section, there shall be payable for total occupational deafness of one ear, 36 weeks of compensation; for total occupational deafness of both ears, 216 weeks of compensation; and for partial occupational deafness, compensation shall be based on one of the following events to an employe:

(a) Transfer to nonnoisy employment by an employer whose employment has caused occupational deafness;
(b) The last day actually worked before retiring, regardless of vacation pay or time, sick leave or any other benefit to which the employe is entitled;
(c) Termination of the employer–employe relationship; or
(d) Layoff, provided the layoff is complete and continuous for 6 months.

(5) No claim under sub. (4) may be filed until 7 consecutive days of removal from noisy employment after the time of injury except that under sub. (4) (d) the 7 consecutive days’ period may commence within the last 2 months of layoff.

(6) The limitation provisions in this chapter 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 hearing tests have been conducted by a competent medical specialist after the employe has been removed from the noisy environment for a period of 2 months.

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

(8) An employer is liable for the entire occupational deafness to which his or her employment has contributed; but if previous deafness is established by a hearing test or other competent evidence, whether or not the employer was exposed to noise within the 2 months preceding such test, the employer is not liable for previous loss so established nor is the employer liable for any loss for which compensation has previously been paid or awarded.

(9) 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.

(10) No compensation may be paid for tinnitus unless a hearing test demonstrates a compensable hearing loss other than tinnitus. For injuries occurring on or after January 1, 1992, no compensation may be paid for tinnitus.

(11) Compensation under s. 102.66 for permanent partial disability due to occupational deafness may be paid only if the loss of hearing exceeds 20% of binaural hearing loss.

Committee Note, 1971: Where an employer discontinues a noisy operation and transfers the employees to nonnoisy employment, they have been unable to make claim for occupational deafness until the conditions of sub. (b), (c) or (d) were met. The employer will now have the option of filing a claim at the time of transfer at the current rate of compensation with a 2-1/2% reduction for each year of age over 50 or waiting until he meets the conditions of sub. (b), (c) or (d) when he may file claim at the then current rate of compensation with a 1/2% reduction for each year of age over 50. [Bill 371–A] 

Prerequisite for benefits award under (10) is that employee must have suffered some compensable hearing loss other than tinnitus; (10) does not require compensable hearing loss in both ears or in a particular ear. General Castings Corp. v. LIRC, 152 W (2d) 631, 449 NW (2d) 619 (Cl. App. 1989).

Agency interpretation and application of sub. (8) discussed. Harnischfeger Corp. v. LIRC, 196 W (2d) 650, 539 NW (2d) 335 (1995).

102.56 Disfigurement. (1) If an employee is so permanently disfigured as to occasion potential wage loss, the department may allow such sum as it deems just as compensation therefor, not exceeding the employee’s average annual earnings as defined in s. 102.11. In determining the potential for wage loss and the sum awarded, the department shall take into account the age, education, training and previous experience and earnings of the employee, the employee’s present occupation and earnings and likelihood of future suitable occupational change. Consideration for disfigurement allowance is confined to those areas of the body that are exposed in the normal course of employment. The department shall also take into account the appearance of the disfigurement, its location, and the likelihood of its exposure in occupations for which the employee is suited.

(2) Notwithstanding sub. (1), if an employee who claims compensation under this section returns to work for the employer who employed the employee at the time of the injury at the same or a higher wage, the employee may not be compensated unless the employee shows that he or she probably has lost or will lose wages due to the disfigurement.


102.565 Toxic or hazardous exposure; medical examination; conditions of liability. (1) When an employee working subject to this chapter, as a result of exposure in the course of his or her employment over a period of time to toxic or hazardous substances or conditions, develops any clinically observable abnormality or condition which, on competent medical opinion, predisposes or renders the employee in any manner differentially susceptible to disability to such an extent that it is inadmissible for the employee to continue employment involving such exposure, or if the employee is discharged from or ceases to continue the employment, and suffers wage loss by reason of such discharge, or such cessation, the department may allow such sum as it deems just as compensation therefor, not exceeding $13,000. In the event a nondisabling condition may also be caused by toxic or hazardous exposure not related to employment, and the employee has a history of such exposure, compensation as provided by this section shall not be allowed nor shall any other remedy for loss of earning capacity. In case of such discharge prior to a finding by the department that it is inadmissible for the employee to continue in such employment and if it is reasonably probable that continued exposure would result in disability, the liability of the employer who so discharges the employee is primary, and the liability of the employer’s insurer is secondary, under the same procedure and to the same effect as provided by s. 102.62.

(2) Upon application of any employer or employee the department may direct any employee of the employer or an employee who, in the course of his or her employment, has been exposed to toxic or hazardous substances or conditions, to submit to examination by a physician or physicians to be appointed by the department to determine whether the employee has developed any abnormality or condition under sub. (1), and the degree thereof. The cost of the medical examination shall be borne by the person making application. The results of the examination shall be submitted by the physician to the department, which shall submit copies of the reports to the employer and employee, who shall have opportunity to rebut the reports provided request therefor is made to the department within 10 days from the mailing of the report to the parties. The department shall make its findings as to whether or not it is inadmissible for the employee to continue in his or her employment.

(3) If an employee refuses to submit to the examination after direction by the commission, or any member thereof or the department or an examiner thereof, or in any way obstructs the same, the employee’s right to compensation under this section shall be barred.

(4) No payment shall be made to an employee under this section unless he or she shall have worked for a reasonable period of time for the employer from whom he or she claims compensation for exposing him or her to toxic or hazardous conditions.

(5) Payment of a benefit under this section to an employee shall stop such employee from any further recovery whatsoever from any employer under this section.

History: 1977 c. 29, 195; 1979 c. 278.

Sub. (1) requires that employee’s termination be connected to the employment which caused the susceptibility to disease. General Castings Corp. v. Winstead, 156 W (2d) 752, 457 NW (2d) 557 (Cl. App. 1990).

102.57 Violations of safety provisions, penalty. If injury is caused by the failure of the employer to comply with any statute or any lawful order of the department, compensation and death benefits provided in this chapter shall be increased 15% but the total increase may not exceed $15,000. Failure of an employer reasonably to enforce compliance by employees with statute or order of the department constitutes failure by the employer to comply with that statute or order.

History: 1981 c. 92; 1983 a. 98.

This section and 102.58 may be applicable in the same workmen’s compensation case if the negligence of both are causes of the employee’s injury. Milwaukee Forge v. ILHR Dept. 66 W (2d) 428, 225 NW (2d) 476.

102.58 Decreased compensation. If injury is caused by the failure of the employee to use safety devices which are provided in accordance with any statute or lawful order of the department and are adequately maintained, and the use of which is reasonably enforced by the employer, or if injury results from the employee’s failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of the employee and of which the employee has notice, or if injury results from the intoxication of the employee by alcohol beverages, as defined in s. 125.02 (1), or use of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), the compensation and death benefit provided in this chapter shall be reduced 15% but the total reduction may not exceed $15,000.


The burden of proof is on the employer to establish not only the fact of intoxication, but a causal connection between the injury or accident and the intoxication. Haller Beverage Corp. v. ILHR Dept. 49 W (2d) 233, 181 NW (2d) 418.

102.59 Preexisting disability, indemnity. (1) If an employee has at the time of injury permanent disability which if it had resulted from such injury would have entitled him or her to indemnity for 200 weeks and, as a result of such injury, incurs further permanent disability which entitles him or her to indemnity for 200 weeks, the employee shall be paid from the funds provided in this section additional compensation equivalent to the amount which would be payable for said previous disability if it had resulted from such injury or the amount which is payable for said further disability, whichever is the lesser. If said disabilities result in permanent total disability the additional compensation shall be in such amount as will complete the payments which would have been due had said permanent total disability resulted from such injury. This additional compensation accrues from, and may not be paid to any person before, the end of the period for which compensation for permanent disability resulting from such injury is payable by the employer, and shall be subject to s. 102.32 (6) and (7). No compromise agreement of liability for this additional compensation may provide for any lump sum payment.

(1m) A compromise order issued under s. 102.16 (1) may not be admitted as evidence in any action or proceeding for benefits compensable under this section.
(2) In the case of the loss or of the total impairment of a hand, arm, foot, leg or eye, the employer shall pay $7,000 into the state treasury. The payment shall be made in all such cases regardless of whether the employee, the employee’s dependent or personal representative commences action against a 3rd party as provided in s. 102.29.

(3) All payments received under this section shall be deposited in the fund established by s. 102.65.


The fund was not liable for disability benefits where employer was liable for permanent total disability. Green Bay Soap Co. v. DILHR, 87 W2d 361, 275 NW2d (2d) 190 (Cl. App. 1979).

102.60 Minor illegally employed, compensation. When the injury is sustained by a minor illegally employed, compensation and death benefits shall be as follows:

(1) Double the amount otherwise recoverable, if the injured employee is a minor of permit age, and at the time of the injury is employed, required, suffered or permitted to work without a written permit issued pursuant to ch. 103, except as provided in sub. (2).

(2) Treble the amount otherwise recoverable, if the injured employee is a minor of permit age, and at the time of the injury is employed, required, suffered or permitted to work without a permit in any place of employment or at any employment in or for which the department acting under authority of ch. 103, has adopted a written resolution providing that permits shall not be issued.

(3) Treble the amount otherwise recoverable if the injured employee is a minor of permit age, and at the time of the injury is employed, required, suffered, or permitted to work at prohibited employment.

(4) Treble the amount otherwise recoverable, if the injured employee is a minor under permit age and illegally employed.

(5) (a) A permit or certificate of age unlawfully issued by an officer specified in ch. 103, or unlawfully altered after issuance, without fraud on the part of the employer, shall be deemed a permit within the provisions of this section.

(b) If the employer is misled in employing a minor illegally because of fraudulent written evidence of age presented by the minor, the increased compensation provided by this section shall not be paid to the employee, but shall be paid into the fund established by s. 102.65.

(6) If the amount recoverable under this section for temporary disability shall be less than the actual loss of wage sustained by the minor employee, then liability shall exist for such loss of wage.

(7) Subsections (1) to (6) shall not apply to employees as defined in s. 102.07 (6) if the agency or publisher shall establish by affirmative proof that at the time of the injury the employee was not employed with the actual or constructive knowledge of such agency or publisher.

(8) This section shall not apply to liability arising under s. 102.06 unless the employer sought to be charged knew or should have known that the minor was illegally employed by the contractor or subcontractor.

(9) The increased compensation or increased death benefits recoverable under sub. (1) may not exceed $7,500. The increased compensation or increased death benefits recoverable under subs. (2), (3) or (4) may not exceed $15,000.

History: 1975 c. 147 s. 57; 1975 c. 199; 1977 c. 29, 195.

102.61 Indemnity under rehabilitation law. (1) Subject to sub. (1m), an employee who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving instructions under 29 USC 701 to 797b, as administered by the state in which the employee resides or in which the employee resided at the time of becoming physically handicapped, shall, in addition to other indemnity, be paid the actual and necessary expenses of travel and, if the employee receives instructions elsewhere than at the place of residence, the actual and necessary costs of maintenance, during rehabilitation, subject to the conditions and limitations specified in sub. (1r).

(1m) (a) If the department has determined under sub. (1) that an employee is eligible for vocational rehabilitation services under 29 USC 701 to 797b, but that the department cannot provide those services for the employee, the employee may select a private rehabilitation counselor certified by the department to determine whether the employee can return to suitable employment without rehabilitative training and, if that counselor determines that rehabilitative training is necessary, to develop a rehabilitative training program to restore as nearly as possible the employee to his or her preinjury earning capacity and potential.

(b) Notwithstanding s. 102.03 (4), an employee whose date of injury is before May 4, 1994, may receive private rehabilitative counseling and rehabilitative training under par. (a).

(c) The employee or insurance carrier shall pay the reasonable cost of any services provided for an employee by a private rehabilitation counselor under par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c) and by rule, if the private rehabilitation counselor determines that rehabilitative training is necessary, the reasonable cost of the rehabilitative training program recommended by that counselor, including tuition, fees, books and maintenance and travel expenses. Notwithstanding that the department of industry, labor and job development may authorize under s. 102.43 (5) a rehabilitative training program that lasts longer than 80 weeks, a rehabilitative training program that lasts 80 weeks or less is presumed to be reasonable.

(d) If an employee receives services from a private rehabilitation counselor under par. (a) and later receives similar services from the department of health and family services under sub. (1) without the prior approval of the employer or insurance carrier, the employer or insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) or for travel and maintenance expenses under sub. (1) that exceed what the employer or insurance carrier would have been liable for under the rehabilitative training program developed by the private rehabilitation counselor.

(e) Nothing in this subsection prevents an employer or insurance carrier from providing an employee with the services of a private rehabilitation counselor or with rehabilitative training under sub. (3) before the department of health and family services makes its determination under par. (a).

(f) The department of industry, labor and job development shall promulgate rules establishing procedures and requirements for the private rehabilitation counseling and rehabilitative training process under this subsection. Those rules shall include rules specifying the procedure and requirements for certification of private rehabilitation counselors.

(1r) An employee who receives a course of instruction or other rehabilitative training under sub. (1) or (1m) is subject to the following conditions and limitations:

(a) The employee must undertake the course of instruction within 60 days from the date when the employee has sufficiently recovered from the injury to permit so doing, or as soon thereafter as the officer or agency having charge of the instruction shall provide opportunity for the rehabilitation.

(b) The employee must continue in rehabilitation training with such reasonable regularity as health and situation will permit.

(c) The employer may not have expenses of travel and costs of maintenance under sub. (1) or costs of private rehabilitation counseling and rehabilitative training under sub. (1m) on account of training for a period in excess of 80 weeks in all, except as provided in s. 102.43 (5).
the cost or scope of services or compensation or insurance carrier under sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program under developed under (1m) (a).

(3) Nothing in this section prevents an employer or insurance carrier from providing an employee with services of a private rehabilitation counselor or with rehabilitative training if the employee voluntarily accepts those services or that training.


Federal vocational rehabilitation law cited in (1) is now found in Rehabilitation Act of 1973, PL 93–112. See also note to Art. IV, sec. 1, citing Dane County Hospital & Home v. LIRC, 125 W (2d) 308, 371 NW (2d) 815 (Cl. App. 1985).

Under 102.42 (9) (a), 102.45 (5) and this section, department may extend temporary disability, travel expense and maintenance costs beyond forty weeks if additional training is warranted. Beloit Corp. v. State, 152 W (2d) 579, 449 NW (2d) 299 (Cl. App. 1989).

The provisions of this section encompass formalized courses of instruction only. Johnson v. LIRC, 177 W (2d) 736, 503 NW (2d) 1 (Cl. App. 1993).

102.62 Primary and secondary liability; unchangeable. In case of liability for the increased compensation or increased death benefits provided for by s. 102.57, or included in s. 102.60, the liability of the employer shall be primary and the liability of the insurance carrier shall be secondary. In case proceedings are had before the department for the recovery of such increased compensation or increased death benefits the department shall set forth in its award the amount and order of liability as herein provided. Execution shall not be issued against the insurer or the employer so as to satisfy any judgment covering such increased compensation or increased death benefits until execution has first been issued against the employer and has been returned unsatisfied as to any part thereof. Any provision in any insurance policy undertaking to guarantee primary liability or to avoid secondary liability for such increased compensation or increased death benefits shall be void. In case the employer shall have been adjudged bankrupt, or have made an assignment for the benefit of creditors, or if the employer, other than an individual, have gone out of business, or have been dissolved, or if a corporation, its charter have been forfeited or revoked, the insurer shall be liable for the payment of increased compensation and death benefits without judgment or execution against the employer, without altering the primary liability of the employer.

102.63 Refunds by state. Whenever the department shall certify to the state treasurer that excess payment has been made under s. 102.59 or under s. 102.49 (5) either because of mistake or otherwise, the state treasurer shall within 5 days after receipt of such certificate draw an order against the fund in the state treasury into which such excess was paid, reimbursing such payor of such excess payment, together with interest actually earned thereon if the excess payment has been on deposit for at least 6 months.

History: 1981 c. 92.

102.64 Attorney general shall represent state and commission. (1) Upon request of the department of administration, a representative of the department of justice shall represent the state in cases involving payment into or out of the state treasury under s. 20.865 (1m), (kr) or (ur) or 102.29. The department of justice, after giving notice to the department of administration, may compromise the amount of any such payments but such compromises shall be subject to review by the department of industry, labor and job development. If the spouse of the deceased employee compromises his or her claim for a primary death benefit, the claim of the children of such employee under s. 102.49 shall be compromised on the same proportional basis, subject to approval by the department. If the persons entitled to compensation on the basis of total dependency under s. 102.51 (1) compromise their claim, payments under s. 102.49 (5) (a) shall be compromised on the same proportional basis.

(2) Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. The department of justice shall represent the interests of the state in proceedings under s. 102.49, 102.59 or 102.66. The department of justice may compromise claims in such proceedings, but the compromises are subject to review by the department of industry, labor and job development. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.

(3) In any action to review an order or award of the commission, and upon any appeal therein to the court of appeals, the attorney general shall appear on behalf of the commission, whether any other party defendant shall be represented or not, except that in actions brought by the state the governor shall appoint an attorney to appear on behalf of the commission.

History: 1975 c. 147; 1977 c. 134; 1977 c. 195; 1979 c. 110 a. 60 (11); 1981 c. 20; 1983 a. 98; 1993 a. 27 ss. 3745, 9130 (4).

Alleged invalidity of (3) cannot be grounded on claimant’s contention that this results in providing public counsel for a private party litigant, because nowhere does the statute make the attorney general the claimant’s attorney, but expressly states he shall appear on behalf of the department. Hunter v. ILHR Dept. 64 W (2d) 97, 218 NW (2d) 314.

102.65 Work injury supplemental benefit fund. (1) The moneys payable to the state treasury under ss. 102.47, 102.49 and 102.59, together with all accrued interest, shall constitute a fund to be known as the “Work Injury Supplemental Benefit Fund”.

(2) For proper administration of the moneys available in the fund the department shall by order, set aside in the state treasury suitable reserves to carry to maturity the liability for benefits under ss. 102.44, 102.49, 102.59 and 102.66. Such moneys shall be invested by the investment board in accordance with s. 25.14 (5).

(3) If the balance in the fund on any June 30 exceeds 3 times the amount paid out of such fund during the fiscal year ending on such date, the department shall, by order, direct an appropriate proportional reduction of the payments into such fund under ss. 102.47, 102.49 and 102.59 so that the balance in the fund will remain at 3 times the payments made in the preceding fiscal year.


102.66 Payment of certain barred claims. (1) In the event that there is an otherwise meritorious claim for occupational disease barred solely by the statute of limitations under s. 102.17 (4), the department may in lieu of worker’s compensation benefits direct payment from the work injury supplemental benefit fund under s. 102.65 such compensation and such medical expenses as would otherwise be due, based on the date of injury to or on behalf of the injured employee. The benefits shall be supplemental to the extent of compensation liability to any disability or medical benefits payable from any group insurance policy where the premium is paid in whole or in part by any employer, or under any federal insurance or benefit program providing disability or medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

(2) In the case of occupational disease, appropriate benefits may be awarded from the work injury supplemental benefit fund where the status or existence of the employer or its insurance carrier cannot be determined or where there is otherwise no adequate remedy, subject to the limitations contained in sub. (1).

History: 1975 c. 147; 1979 c. 276.

Commission was authorized by s. 102.66 (1). 1975 stats., to award benefits for claim barred by statute of limitations in effect at time claim arose. State v. ILHR, 136 W (2d) 396, 304 NW (2d) 758 (1981).

Where disabled worker could have claimed permanent total disability benefits under this section but failed to do so before dying of causes unrelated to compensable injury, surviving dependent may not claim the disability benefits. State v. LIRC, 136 W (2d) 396, 304 NW (2d) 758 (1981).

102.75 Administrative expenses. (1) The department shall assess upon and collect from each licensed worker’s compensation insurance carrier and from each employer exempted under s. 102.28 (2) by special order or by rule, the proportion of Wisconsin Statutes Archive.
total costs and expenses incurred by the council on worker’s compensation for travel and research and by the department and the commission in the administration of this chapter for the current fiscal year plus any deficiencies in collections and anticipated costs from the previous fiscal year, that the total indemnity paid or payable under this chapter by each such carrier and exempt employer in worker’s compensation cases initially closed during the preceding calendar year, other than for increased, double or treble compensation bore to the total indemnity paid in cases closed the previous calendar year under this chapter by all carriers and exempt employers other than for increased, double or treble compensation. The council on worker’s compensation and the commission shall annually certify any costs and expenses for worker’s compensation activities to the department at such time as the secretary requires.

(2) The department shall require that payments for costs and expenses for each fiscal year shall be made on such dates as the department prescribes by each licensed worker’s compensation insurance carrier and employer exempted under s. 102.28 (2). Each such payment shall be a sum equal to a proportionate share of the annual costs and expenses assessed upon each carrier and employer as estimated by the department.

(4) From the appropriation under s. 20.445 (1) (ha), the department shall allocate the amounts that it collects in application fees from employers applying for exemption under s. 102.28 (2) and the annual amount that it collects from employers that have been exempted under s. 102.28 (2) to fund the activities of the department under s. 102.28 (2) (b) and (c).

History: 1975 c. 39; 1975 c. 147 s. 54; 1977 c. 195, 418; 1981 c. 20, 92; 1987 a. 27; 1991 a. 85; 1995 a. 117.

102.80 Uninsured employers fund. (1) There is established a separate, nonlapsing trust fund designated as the uninsured employers fund consisting of all the following:

(a) Amounts collected from uninsured employers under s. 102.82.

(b) Uninsured employer assessments collected under s. 102.85 (4).

(d) Amounts collected from employees or dependents of employees under s. 102.81 (4) (b).

(e) All moneys received by the department for the uninsured employers fund from any other source.

(3) (a) If the cash balance in the uninsured employers fund equals or exceeds $4,000,000, the secretary shall consult the council on worker’s compensation within 45 days after that cash balance equals or exceeds $4,000,000. The secretary may file with the secretary of administration, within 15 days after consulting the council on worker’s compensation, a certificate attesting that the cash balance in the uninsured employers fund equals or exceeds $4,000,000.

(a) The secretary shall monitor the cash balance in, and incurred losses to, the uninsured employers fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the uninsured employers fund on known claims and on incurred, but not reported, claims exceed 85% of the cash balance in the uninsured employers fund, the secretary shall consult with the council on worker’s compensation. If the secretary, after consulting with the council on worker’s compensation, determines that there is a reasonable likelihood that the cash balance in the uninsured employers fund may become inadequate to fund all claims under s. 102.81 (1), the secretary shall file with the secretary of administration a certificate attesting that the cash balance in the uninsured employer’s fund is likely to become inadequate to fund all claims under s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will be paid.

(am) If the secretary files the certificate under par. (a), the department may expend the moneys in the uninsured employers fund, beginning on the first day of the first July after the secretary files that certificate, to make payments under s. 102.81 (1) to employees of uninsured employers and to obtain reinsurance under s. 102.81 (2).

(b) If the secretary does not file the certificate under par. (a), the department may not expend the moneys in the uninsured employers fund.

(c) If, after filing the certificate under par. (a), the secretary files the certificate under par. (ag), the department may expend the moneys in the uninsured employers fund only to make payments under s. 102.81 (1) to employers of uninsured employers on claims made before the date specified in that certificate and to obtain reinsurance under s. 102.81 (2) for the payment of those claims.

(4) (a) If an uninsured employer who owes to the department any amount under s. 102.82 or 102.85 (4) transfers his or her business assets or activities, the transferee is liable for the amounts owed by the uninsured employer under s. 102.82 or 102.85 (4) if the department determines that all of the following conditions are satisfied:

1. At the time of the transfer, the uninsured employer and the transferee are owned or controlled in whole or in substantial part, either directly or indirectly, by the same interest or interests. Without limitation by reason of enumeration, it is presumed unless shown to the contrary that the “same interest or interests” includes the spouse, child or parent of the individual who owned or controlled the business, or any combination of more than one of them.

2. The transferee has continued or resumed the business of the uninsured employer, either in the same establishment or elsewhere; or the transferee has employed substantially the same employees as those the uninsured employer had employed in connection with the business assets or activities transferred.

(b) The department may collect from a transferee described in par. (a) an amount owed under s. 102.82 or 102.85 (4) using the procedures specified in ss. 102.83, 102.835 and 102.87 and the preference specified in s. 102.84 in the same manner as the department may collect from an uninsured employer.


102.81 Compensation for injured employe of uninsured employer. (1) (a) If an employe of an uninsured employer, other than an employer 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 the injured employe or the employe’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.

(2) The department may retain an insurance carrier or insurer 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 20.918 and subch. IV of ch. 16 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) (hp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

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

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

(a) If the employe or dependent begins an action to recover compensation from the employe’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 employe or dependent receives compensation from the employe’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 employe or dependent received under sub. (1).

2. The amount after attorney fees and costs that the employe 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 employe, a dependent of an employe, 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.

History: 1989 a. 64, 1995 a. 133.

102.82 **Uninsured employer payments.** (1) An uninsured employer shall reimburse the department for any payment made under s. 102.81 (1) to an employe of the uninsured employer or to an employe’s dependents, less amounts repaid by the employe or dependents under s. 102.81 (4) (b).

(2) (a) Except as provided in pars. (ag), (am) and (ar), all uninsured employers shall pay to the department the greater of the following:

1. Twice the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for worker's compensation insurance in the preceding 3–year period based on the employer’s payroll in the preceding 3 years.

2. Seven hundred and fifty dollars.

(ag) An uninsured employer who is liable to the department under par. (a) 2. shall pay to the department, in lieu of the payment required under par. (a) 2., $100 per day for each day that the employer is uninsured if all of the following apply:

1. The employer is uninsured for 7 consecutive days or less.

2. The employer has not previously been uninsured.

3. No injury for which the employer is liable under s. 102.03 has occurred during the period in which the employer is uninsured.

(1) (am) The department may waive any payment owed under par. (a) by an uninsured employer if the department determines that the uninsured employer is subject to this chapter only because the uninsured employer has elected to become subject to this chapter under s. 102.05 (2) or 102.28 (2).

(ar) The department may waive any payment owed under par. (a) or (ag) if the department determines that the sole reason for the uninsured employer’s failure to comply with s. 102.28 (2) is that the uninsured employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or insurance broker or by a person whom a reasonable person would believe is an insurance agent or insurance broker.

(b) The payment owed under par. (a) or (ag) is due within 30 days after the date on which the employer is notified. Interest shall accrue on amounts not paid when due at the rate of 1% per month.

(c) The department of justice or, if the department of justice consents, the department of industry, labor and job development may bring an action in circuit court to recover payments and interest owed to the department of industry, labor and job development under this section.

(3) (a) When an employe dies as a result of an injury for which an uninsured employer is liable under s. 102.03, the uninsured employer shall pay $1,000 to the department.

(b) The payment under par. (a) is in addition to any benefits or other compensation paid to an employe or survivors or the work injury supplemental benefit fund under ss. 102.46 to 102.51.


102.83 **Collection of uninsured employer payments.** (1) (a) 1. If an uninsured employer fails to pay to the department any amount owed to the department under s. 102.82 and no proceeding for review is pending, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state.

NOTE: Subd. 1. is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

2. The clerk of circuit court shall enter in the judgment and lien docket the name of the uninsured employer mentioned in the warrant and the amount of the payments, interest, costs and other fees for which the warrant is issued and the date when the warrant is entered.

3. A warrant entered under subd. 2. shall be considered in all respects as a final judgment constituting a perfected lien on the uninsured employer’s right, title and interest in all of the uninsured employer’s real and personal property located in the county where the warrant is entered.

4. After the warrant is entered in the judgment and lien docket, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the uninsured employer is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the uninsured employer to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 60 days after receipt of the warrant.

(b) The clerk of circuit court shall accept and enter the warrant in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fees for which the warrant is issued and collected and the date when the warrant is entered.

(2) The department may issue a warrant of like terms, force and effect to any employe or other agent of the department, who may file a copy of the warrant with the clerk of circuit court of any county in the state, and thereupon the clerk of circuit court shall enter the warrant in the judgment and lien docket and the warrant shall become a lien in the same manner, and with the same force and effect, as provided in sub. (1). In the execution of the warrant, the employe or other agent shall have all the powers conferred by law upon a sheriff, but may not collect from the uninsured employer any fee or charge for the execution of the warrant in excess of the actual expenses paid in the performance of his or her duty.
(3) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the amount due for payments, interest, costs and other fees as if the department had recovered judgment against the uninsured employer and an execution had been returned wholly or partially not satisfied.

(4) When the payments, interest costs and other fees specified in a warrant have been paid to the department, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter the satisfaction of the judgment in the judgment and lien docket. The department shall send a copy of the satisfaction to the uninsured employer.

(5) The department, if it finds that the interests of the state will not be jeopardized, and upon such conditions as it may exact, may issue a release of any warrant with respect to any real or personal property upon which the warrant is a lien or cloud upon title. The clerk of circuit court shall enter the release upon presentation of the release to the clerk and payment of the fee for filing the release and the release shall be conclusive proof that the lien or cloud upon the title of the property covered by the release is extinguished.

(6) At any time after the filing of a warrant, the department may commence and maintain a garnishee action as provided by ch. 812 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a judgment. The place of trial of an action may be either in Dane county or the county where the debtor resides and may not be changed from the county in which the action is commenced, except upon consent of the parties.

(7) If the department issues an erroneous warrant, the department shall issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. The clerk shall void the warrant and any liens attached by it.

(8) Any officer or director of an uninsured employer that is a corporation may be found individually and jointly and severally liable for the payments, interest, costs and other fees specified in a warrant under this section if after proper proceedings for the collection of those amounts from the corporation, as provided in this section, the corporation is unable to pay those amounts to the department. The personal liability of the officers and directors of a corporation as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation and shall be set forth in a determination or decision issued under s. 102.82.

History: 1993 a. 81; 1995 a. 117, 224; s. 13.93 (2) (c).

102.835  Levy for delinquent payments. (1) DEFINITIONS. In this section:

(a) “Debt” means a delinquent payment.

(b) “ Levy” means all powers of distraint and seizure.

(c) “Payment” means a payment owed to the department under s. 102.82 and includes interest on that payment.

(f) “Property” includes all tangible and intangible personal property and rights to that property, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, amounts paid periodically pursuant to a pension or retirement program, rents, proceeds of insurance and amounts paid pursuant to a contract.

(2) POWERS OF LEVY AND DISTRAINT. If any uninsured employer who is liable for any debt fails to pay that debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the uninsured employer. If the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the uninsured employer until the debt and expenses of the levy are fully paid.

(3) DUTIES TO SURRENDER. Any person in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the property or rights or discharge the obligation to the department, except that part of the property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

(4) FAILURE TO SURRENDER; ENFORCEMENT OF LEVY. (a) Any uninsured employer who fails to surrender any property or rights to property that is subject to levy, upon demand by the department, is subject to proceedings to enforce the amount of the levy.

(b) Any 3rd party who fails to surrender any property or rights to property subject to levy, upon demand of the department, is subject to proceedings to enforce the levy. The 3rd party is not liable to the department under this paragraph for more than 25% of the debt. The department shall serve a final demand as provided under sub. (13) on any 3rd party who fails to surrender property. Proceedings may not be initiated by the department until 5 days after service of the final demand. The department shall issue a determination under s. 102.82 to the 3rd party for the amount of the liability.

(c) When a 3rd party surrenders the property or rights to the property on demand of the department or discharges the obligation to the department for which the levy is made, the 3rd party is discharged from any obligation or liability to the uninsured employer with respect to the property or rights to the property arising from the surrender or payment to the department.

(5) ACTIONS AGAINST THIS STATE. (a) If the department has levied upon property, any person, other than the uninsured employer who is liable to pay the debt out of which the levy arose, who claims an interest in or lien on that property and who claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane county. That action may be brought whether or not that property has been surrendered to the department. The court may grant only the relief under par. (b).

(b) No other action to question the validity of or to restrain or enjoin a levy by the department may be maintained.

(b) In an action under par. (a), if a levy would irreparably injure rights to property, the court may enjoin the enforcement of that levy. If the court determines that the property has been wrongfully levied upon, it may grant a judgment for the amount of money obtained by levy.

(c) For purposes of an adjudication under this subsection, the determination of the debt upon which the interest or lien of the department is based is conclusively presumed to be valid.

(6) DETERMINATION OF EXPENSES. The department shall determine its costs and expenses to be paid in all cases of levy.

(7) USE OF PROCEEDS. (a) The department shall apply all money obtained under this subsection first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the uninsured employer.

(b) The department may refund or credit any amount left after the applications under par. (a), upon submission of a claim for a refund or credit and satisfactory proof of the claim, to the person entitled to that amount.

(8) RELEASE OF LEVY. The department may release the levy upon all or part of property levied upon to facilitate the collection of the liability or to grant relief from a wrongful levy, but that release does not prevent any later levy.

(9) WRONGFUL LEVY. If the department determines that property has been wrongfully levied upon, the department may return the property at any time, or may return an amount of money equal to the amount of money levied upon.

(10) PRESERVATION OF REMEDIES. The availability of the remedy under this section does not abridge the right of the department to pursue other remedies.
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11  EVASION. Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized under this section with intent to evade or defeat the assessment or collection of any debt may be fined not more than $5,000 or imprisoned for not more than 3 years or both, and shall be liable to the state for the costs of prosecution.

12  NOTICE BEFORE LEVY. If no proceeding for review permitted by law is pending, the department shall make a demand to the uninsured employer for payment of the debt which is subject to levy and give notice that the department may pursue legal action for collection of the debt against the uninsured employer. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service which requires a signature of acceptance, at the address of the uninsured employer as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including costs and fees, and the name of the uninsured employer who is liable for the debt. The uninsured employer’s failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same uninsured employer within one year after the date of service of the original levy.

13  SERVICE OF LEVY. (a) The department shall serve the levy upon the uninsured employer and 3rd party by personal service or by any type of mail service which requires a signature of acceptance.

(b) Personal service shall be made upon an individual, other than a minor or incapacitated person, by delivering a copy of the levy to the uninsured employer or 3rd party personally; by leaving a copy of the levy at the uninsured employer’s dwelling or usual place of abode with some person of suitable age and discretion residing there; by leaving a copy of the levy at the business establishment of the uninsured employer with an officer or employee of the uninsured employer; or by delivering a copy of the levy to an agent authorized by law to receive service of process.

(c) The department representative who serves the levy shall certify service of process on the notice of levy form and the person served shall acknowledge receipt of the certification by signing and dating it. If service is made by mail, the return receipt is the certificate of service of the levy.

(d) The uninsured employer’s or 3rd party’s failure to accept or receive service of the levy does not invalidate the levy.

14  ANSWER BY 3RD PARTY. Within 20 days after the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the uninsured employer, including a description of the property or the rights to property and the nature and dollar amount of any such obligation.

15  DURATION OF LEVY. A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is satisfied, until the levy is released or until one year after the date of service, whichever occurs first.

16  RESTRICTION ON EMPLOYMENT PENALTIES BY REASON OF LEVY. No employer may discharge or otherwise discriminate with respect to the terms and conditions of employment against any employee by reason of the fact that his or her earnings have been subject to levy for any one levy or because of compliance with any provision of this section. Whoever wilfully violates this subsection may be fined not more than $1,000 or imprisoned for not more than one year or both.

19  HEARING. Any uninsured employer who is subject to a levy proceeding made by the department may request a hearing under s. 102.17 to review the levy proceeding. The hearing is limited to questions of prior payment of the debt that the department is proceeding against, and mistaken identity of the uninsured employer. The levy is not stayed pending the hearing in any case in which property is secured through the levy.

20  COST OF LEVY. Any 3rd party is entitled to a levy fee of $5 for each levy in any case where property is secured through the levy. The 3rd party shall deduct the fee from the proceeds of the levy.

History: 1993 a. 81; 1995 a. 117.

102.84 Preference of required payments. Subject to the federal bankruptcy laws, in the event of an uninsured employer’s dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in circuit courts, the payments required of the uninsured employer under s. 102.82 shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages.

History: 1993 a. 81.

102.85 Uninsured employers; penalties. (1) (a) An employer who fails to comply with s. 102.16 (3) or 102.28 (2) for more than 10 days shall forfeit not less than $10 nor more than $1,000.

(b) An employer who fails to comply with s. 102.16 (3) or 102.28 (2) for more than 10 days shall forfeit not less than $10 nor more than $100 for each day on which the employer fails to comply with s. 102.16 (3) or 102.28 (2).

(2) An employer who is required to provide worker’s compensation insurance coverage under this chapter shall forfeit not less than $100 nor more than $1,000 if the employer does any of the following:

(a) Gives false information about the coverage to his or her employees, the department or any other person who contracts with the employer and who requests evidence of worker’s compensation coverage in relation to that contract.

(b) Fails to notify a person who contracts with the employer that the coverage has been canceled in relation to that contract.

(2m) The court may waive a forfeiture imposed under sub. (1) or (2) if the court finds that the sole reason for the uninsured employer’s failure to comply with s. 102.82 (2) is that the uninsured employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or insurance broker or by a person whom a reasonable person would believe is an insurance agent or insurance broker.

(3) An employer who violates an order to cease operations under s. 102.28 (4) may be fined not more than $10,000 or imprisoned for not more than 2 years or both.

(4) (a) If a court imposes a fine or forfeiture under subs. (1) to (3), the court shall impose an uninsured employer assessment equal to 75% of the amount of the fine or forfeiture.

(b) If a fine or forfeiture is suspended in whole or in part, the uninsured employer assessment shall be reduced in proportion to the suspension.

(c) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the uninsured employer assessment prescribed in this section. If the deposit is forfeited, the amount of the uninsured employer assessment shall be transmitted to the state treasurer under par. (d). If the deposit is returned, the uninsured employer assessment shall also be returned.

(d) The clerk of the court shall collect and transmit to the county treasurer the uninsured employer assessment and other amounts required under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2. The state treasurer shall deposit the amount of the uninsured employer assessment, together with any interest thereon, in the uninsured employers fund as provided in s. 102.80 (1).

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A citation under this section shall be signed by a department deputy, or by an officer who has authority to make arrests for the violation, and shall contain substantially the following information:

(a) The name, address and date of birth of the defendant.
(b) The name and department of the issuing department deputy or officer.
(c) The violation alleged, the time and place of occurrence, a statement that the defendant committed the violation, the statute or rule violated and a designation of the violation in language which can be readily understood by a person making a reasonable effort to do so.
(d) A date, time and place for the court appearance, and a notice to appear.
(e) The maximum forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment for which the defendant is liable.
(f) Provisions for deposit and stipulation in lieu of a court appearance.
(g) Notice that if the defendant makes a deposit and fails to appear in court at the time specified in the citation, the failure to appear will be considered tender of a plea of no contest and submission to a forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment plus costs not to exceed the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and plea, may decide to summon the defendant or may issue an arrest warrant for the defendant upon failure to respond to a summons.
(h) Notice that if the defendant makes a deposit and signs the stipulation, the stipulation will be treated as a plea of no contest and submission to a forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment plus costs not to exceed the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and stipulation, may decide to summon the defendant or issue an arrest warrant for the defendant upon failure to respond to a summons, and that the defendant may, at any time before or at the time of the court appearance date, move the court for relief from the effect of the stipulation.
(i) Notice that the defendant may, by mail before the court appearance, enter a plea of not guilty and request another date for a court appearance.

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(c) If the defendant has made a deposit and stipulation of no contest, the citation serves as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment plus costs not to exceed the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons or an arrest warrant. After signing a stipulation of no contest, the defendant may, at any time before or at the time of the court appearance date, move the court for relief from the effect of the stipulation. The court may act on the motion, with or without notice, for cause shown by affidavit and upon just terms, and relieve the defendant from the stipulation and the effects of the stipulation.

(8) If a citation or summons is issued to a defendant under this section and he or she is unable to appear in court on the day specified, the defendant may enter a plea of not guilty by mailing a letter stating that inability to the judge at the address indicated on the citation. The letter must show the defendant’s return address. The letter may include a request for trial during normal daytime business hours. Upon receipt of the letter, the judge shall reply by letter to the defendant’s address setting a time and place for trial. The time shall be during normal business hours if so requested. The date of the trial shall be at least 10 days from the date on which the letter was mailed by the judge. Nothing in this subsection forbids the setting of the trial at any time convenient to all parties concerned.

(9) A department deputy or an officer who collects a forfeiture, penalty assessment, jail assessment, applicable insured employer assessment and costs under this section shall pay the money to the county treasurer within 20 days after its receipt. If the department deputy or officer fails to make timely payment, the county treasurer may collect the payment from the department deputy or officer by an action in the treasurer’s name of office and upon the official bond of the department deputy or officer, with interest at the rate of 12% per year from the time when it should have been paid.

History: 1989 a. 64.

102.87 WORKER’S COMPENSATION

102.88 Penalties; repeaters. (1) When a person is convicted of any violation of this chapter or of any department rule or order, and it is alleged in the indictment, information or complaint, and proved or admitted on trial or ascertained by the court after conviction that the person was previously subjected to a fine or forfeiture within a period of 5 years under s. 102.85, the person may be fined not more than $2,000 or imprisoned for not more than 90 days or both.

(2) When any person is convicted and it is alleged in the indictment, information or complaint and proved or admitted on trial or ascertained by the court after conviction that such person had been before subjected to a fine or forfeiture 3 times within a period of 3 years under s. 102.85 and that those convictions remain of record and unreversed, the person may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

History: 1989 a. 64; 1991 a. 85.

102.89 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter or of any department rule or order under this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person does any of the following:

(a) Directly commits the violation.

(b) Aids and abets the commission of the violation.

(c) Is a party to a conspiracy with another to commit the violation or advises, hires or counsels or otherwise procures another to commit it.

(3) No penalty for any violation of this chapter or rule or order of this chapter may be reduced or diminished by reason of this section.

History: 1989 a. 64.