

# State of Wisconsin



Republished

2001 Senate Bill 251

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## 2001 WISCONSIN ACT 37

**AN ACT** to repeal 102.077 (3) and 102.125 (2); to renumber and amend 102.11 (1) (a) and 102.125 (1); to amend 15.227 (4), 102.04 (2), 102.07 (12m), 102.11 (1) (intro.), 102.11 (1) (b), 102.16 (2) (d), 102.16 (2m) (c), 102.17 (1) (c), 102.17 (1) (e), 102.17 (1) (h), 102.17 (4), 102.18 (1) (b), 102.20, 102.23 (1) (d), 102.29 (8), 102.31 (8), 102.32 (5), 102.32 (6), 102.33 (2) (a), 102.37, 102.38, 102.39, 102.43 (5), 102.43 (6) (b), 102.44 (1) (intro.), 102.44 (1) (a), 102.44 (1) (b), 102.57, 102.58, 102.59 (1), 102.61 (1), 102.61 (1m) (c), 102.61 (1m) (d), 102.61 (1m) (e), 102.61 (1m) (f), 102.61 (2), 102.66 (1), 102.66 (2) and 626.32 (1) (a); and to create 102.01 (2) (k), 102.07 (7m), 102.11 (1) (a) 4., 102.11 (1) (am), 102.123, 102.18 (1) (e), 102.26 (3) (b) 3., 102.33 (2) (c), 102.42 (1m) and 102.61 (1g) of the statutes; relating to: various changes to the worker's compensation law.

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

**SECTION 1.** 15.227 (4) of the statutes is amended to read:

15.227 (4) COUNCIL ON WORKER'S COMPENSATION. There is created in the department of workforce development a council on worker's compensation appointed by the secretary of workforce development to consist of a member or designated employee of the department of workforce development as chairperson, 5 representatives of employers, and 5 representatives of employees. The secretary of workforce development shall also appoint 3 representatives of insurers authorized to do worker's compensation insurance business in this state as nonvoting members of the council.

**SECTION 2.** 102.01 (2) (k) of the statutes is created to read:

102.01 (2) (k) "Workweek" means a calendar week, starting on Sunday and ending on Saturday.

**SECTION 3.** 102.04 (2) of the statutes is amended to read:

102.04 (2) 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 employees. Except as provided in s. 102.07 (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 is not the employer of any other person with respect to such that service, and such that other person shall, with respect to such that service, be deemed to be an employee only of such the employer for whom the service is being performed.

**SECTION 4.** 102.07 (7m) of the statutes is created to read:

102.07 (7m) An employee, volunteer, or member of an emergency management unit is an employee for purposes of this chapter as provided in s. 166.03 (8) (d), and a member of a regional emergency response team who is acting under a contract under s. 166.215 (1) is an

\* Section 991.11, WISCONSIN STATUTES 1999-00: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

employee for purposes of this chapter as provided in s. 166.215 (4).

**SECTION 5.** 102.07 (12m) of the statutes is amended to read:

102.07 (12m) A student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), 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, 2001.~~

**SECTION 6.** 102.077 (3) of the statutes is repealed.

**SECTION 7.** 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability, permanent total disability, or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than \$30 nor more than the wage rate ~~which that~~ results in a maximum compensation rate of ~~100%~~ 110% of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year, except that the average weekly earnings for temporary disability, permanent total disability, or death benefits for injuries occurring on or after January 1, 1998, and before January 1, 1999 ~~2006~~, shall be not more than \$784.50, resulting in a maximum compensation rate of \$523, and the average weekly earnings for temporary disability, permanent total disability or death benefits for injuries occurring on or after January 1, 1999, and before January 1, 2000, shall be not more than \$807, resulting in a maximum compensation rate of \$538 ~~the wage rate that results in a maximum compensation rate of 100% of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year.~~ The average weekly earnings for permanent partial disability shall be not less than \$30 and, for permanent partial disability for injuries occurring on or after January 1, 1998 ~~2002~~, and before January 1, 1999 ~~2003~~, not more than \$268.50 ~~\$318~~, resulting in a maximum compensation rate of \$179, and, ~~\$212~~, for permanent partial disability for injuries occurring on or after January 1, 1999 ~~2003~~, and before January 1, 2004, not more than \$276 ~~\$333~~, resulting in a maximum compensation rate of \$184 ~~\$222~~, for permanent partial disability for injuries occurring on or after January 1, 2004, and before January 1, 2005, not more than \$348, resulting in a maximum compensation rate of \$232, and, for permanent partial disability for injuries occurring on or after January 1, 2005, and before January 1, 2006, not more than \$363, resulting in a maximum compensation rate of \$242. Between such limits

the average weekly earnings shall be determined as follows:

**SECTION 8.** 102.11 (1) (a) of the statutes is renumbered 102.11 (1) (a) 1. and amended to read:

102.11 (1) (a) 1. Daily earnings shall mean the daily earnings of the employee at the time of the injury in the employment in which the employee was then engaged. In determining daily earnings under this paragraph, ~~over-time subdivision, any hours worked beyond the normal full-time working day as established by the employer, whether compensated at the employee's regular rate of pay or at an increased rate of pay,~~ shall not be considered.

2. If at the time of the injury the employee is working on part time for the day, the employee's daily earnings shall be arrived at by dividing the amount received, or to be received by the employee for such part-time service for the day, by the number of hours and fractional hours of such part-time service, and multiplying the result by the number of hours of the normal full-time working day ~~established by the employer~~ for the employment involved. The words "part time for the day" shall apply to Saturday half days and all other days upon which the employee works less than normal full-time working hours.

3. The average weekly earnings shall be arrived at by multiplying the ~~employee's hourly earnings by the hours in the normal full-time workweek as established by the employer, or by multiplying the employee's~~ daily earnings by the number of days and fractional days ~~normally worked per week in the normal full-time workweek as established by the employer,~~ at the time of the injury in the business operation of the employer for the particular employment in which the employee was engaged at the time of the employee's injury, ~~whichever is greater.~~

**SECTION 9.** 102.11 (1) (a) 4. of the statutes is created to read:

102.11 (1) (a) 4. It is presumed, unless rebutted by reasonably clear and complete documentation, that the normal full-time workweek established by the employer is 24 hours for a flight attendant, 56 hours for a firefighter, and not less than 40 hours for any other employee. If the employer has established a multi-week schedule with regular hours alternating between weeks, the normal full-time workweek is the average number of hours worked per week under the multi-week schedule.

**SECTION 10.** 102.11 (1) (am) of the statutes is created to read:

102.11 (1) (am) In the case of an employee who is a member of a regularly-scheduled class of part-time employees, average weekly earnings shall be arrived at by the method prescribed in par. (a), except that the number of hours of the normal working day and the number of hours and days of the normal workweek shall be the hours and days established by the employer for that class. An employee is a member of a regularly-scheduled class

of part-time employees if all of the following conditions are met:

1. The employee is a member of a class of employees that does the same type of work at the same location and, in the case of an employee in the service of the state, is employed in the same office, department, independent agency, authority, institution, association, society, or other body in state government or, if the department determines appropriate, in the same subunit of an office, department, independent agency, authority, institution, association, society, or other body in state government.

2. The minimum and maximum weekly hours regularly scheduled by the employer for the members of the class during the 13 weeks immediately preceding the date of the injury vary by no more than 5 hours. Subject to this requirement, the members of the class do not need to work the same days or the same shift to be considered members of a regularly-scheduled class of part-time employees.

3. At least 10% of the employer's workforce doing the same type of work are members of the class.

4. The class consists of more than one employee.

**SECTION 11.** 102.11 (1) (b) of the statutes is amended to read:

102.11 (1) (b) In case of seasonal employment, average weekly earnings shall be arrived at by the method prescribed in par. (a), except that the number of hours of the normal full-time working day and the number of days of the normal full-time ~~working week~~ workweek shall be such ~~the~~ hours and such ~~the~~ days in similar service in the same or similar nonseasonal employment. Seasonal employment shall mean employment ~~which that~~ 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.

**SECTION 12.** 102.123 of the statutes is created to read:

**102.123 Statement of employee.** If an employee provides to the employer or the employer's insurer a signed statement relating to a claim for compensation by the employee, the employer or insurer shall provide a copy of the statement to the employee within a reasonable time after the statement is made. If an employer or insurer uses a recording device to take a statement from an employee relating to a claim for compensation by the employee, the employer or insurer, on the request of the employee or the employee's attorney or other authorized agent, shall reduce the statement to writing and provide a written copy of the entire statement to the employee, attorney, or agent within a reasonable time after the statement is taken. The employer or insurer shall also make the actual recording of the statement available as an exhibit if a hearing on the claim is held. An employer or insurer that fails to provide an employee with a copy of the employee's statement as required by this section or that fails to make available as an exhibit the actual record-

ing of a statement recorded by a recording device as required by this section may not use that statement in any manner in connection with the employee's claim for compensation.

**SECTION 13.** 102.125 (1) of the statutes is renumbered 102.125 and amended to read:

**102.125 Fraudulent claims reporting and investigation.** 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 under this ~~subsection~~ section shall report on the results of that investigation to the department. If based on the investigation the department has a reasonable basis to believe that a violation of s. 943.395 has occurred, the department shall refer the results of the investigation to the district attorney of the county in which the alleged violation occurred for prosecution.

**SECTION 14.** 102.125 (2) of the statutes is repealed.

**SECTION 15.** 102.16 (2) (d) of the statutes is amended to read:

102.16 (2) (d) ~~For fee disputes that are submitted to the department before July 1, 2002, the~~ 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 database 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 from a database 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.

**SECTION 16.** 102.16 (2m) (c) of the statutes is amended to read:

102.16 (2m) (c) Before determining under this subsection 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. Before determining under sub. (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department may, but is not required to, obtain such an expert opinion. 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.

**SECTION 17.** 102.17 (1) (c) of the statutes is amended to read:

102.17 (1) (c) ~~Either~~ Any 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. No person, firm, or corporation, other than an attorney at law, ~~duly who is~~ licensed to practice law in the state, may appear on behalf 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. Except as provided under pars. (cm) and (cr), the license shall be issued by the department under rules ~~to be adopted~~ promulgated by the department. ~~There shall be maintained in the office of the department~~ The department shall maintain in its office 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, any license may be denied, suspended, nonrenewed, or otherwise withheld by the department for failure to pay court-ordered payments as provided in par. (cm) on the part of an agent, and any license may be denied or revoked if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes. Before suspending or revoking the license of the agent on the grounds of fraud or misconduct, 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~~ those charges. In denying, suspending, restricting, refusing to

renew, or otherwise withholding a license for failure to pay court-ordered payments as provided in par. (cm), the department shall follow the procedure provided in a memorandum of understanding entered into under s. 49.857. 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~~ of the renewed license.

**SECTION 18.** 102.17 (1) (e) of the statutes is amended to read:

102.17 (1) (e) The department may, with or without notice to ~~either~~ any party, cause testimony to be taken, ~~or~~ an inspection of the premises where the injury occurred to be made, or the time books and payrolls of the employer to be examined by any examiner, and may direct any employee claiming compensation to be examined by a physician, chiropractor, psychologist, dentist, or podiatrist. The testimony so taken, and the results of any such inspection or examination, shall be reported to the department for its consideration upon final hearing. All ex parte testimony taken by the department shall be reduced to writing and ~~either~~ any party shall have opportunity to rebut ~~such~~ that testimony on final hearing.

**SECTION 19.** 102.17 (1) (h) of the statutes is amended to read:

102.17 (1) (h) The contents of certified reports of investigation, made by industrial safety specialists who are employed, contracted, or otherwise secured by the department and available for cross-examination, served upon the parties 15 days prior to hearing, shall constitute prima facie evidence as to matter contained ~~therein~~ in those reports.

**SECTION 20.** 102.17 (4) of the statutes is amended to read:

102.17 (4) The right of an employee, the employee's legal representative ~~or, or a~~ 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, a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury, or any injury causing the need for a total or partial knee or hip replacement, 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 and in the manner provided in s. 102.66.

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.

**SECTION 21.** 102.18 (1) (b) of the statutes is amended to read:

102.18 (1) (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 any interlocutory or final award or order an order directing the employer or insurer to pay for any future treatment that may be necessary to cure and relieve the employee from the effects of the injury. If the department finds that the employer or insurer has not paid any amount that the employer or insurer was directed to pay in any interlocutory order or award and that the nonpayment was not in good faith, 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 that was not~~ paid as directed ~~thereby.~~ Where. When 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~~ the application upon the ground that the applicant has suffered no disability from ~~said~~ the disease shall not bar any claim ~~he or she~~ the employee may thereafter have for disability sustained after the date of the award.

**SECTION 22.** 102.18 (1) (e) of the statutes is created to read:

102.18 (1) (e) Except as provided in s. 102.21, if the department orders a party to pay an award of compensation, the party shall pay the award no later than 21 days after the date on which the order is mailed to the last-known address of the party, unless a party files a petition for review under sub. (3). This paragraph applies to all awards of compensation ordered by the department, whether the award results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department.

**SECTION 23.** 102.20 of the statutes is amended to read:

**102.20 Judgment on award.** If either any party presents a certified copy of the award to the circuit court for any county, the court shall, without notice, render judgment in accordance ~~therewith~~ with the award. A judgment rendered under this section shall have the same

effect as though rendered in an action tried and determined by the court, and shall, with like effect, be entered in the judgment and lien docket.

**SECTION 24.** 102.23 (1) (d) of the statutes is amended to read:

102.23 (1) (d) The commission shall make return to the court of all documents and papers on file in the matter, ~~and of all testimony which that~~ 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~~ specified 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~~ any 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.

**SECTION 25.** 102.26 (3) (b) 3. of the statutes is created to read:

102.26 (3) (b) 3. The claimant may request the insurer or self-insured employer to pay any compensation that is due the claimant by depositing the payment directly into an account maintained by the claimant at a financial institution. If the insurer or self-insured employer agrees to the request, the insurer or self-insured employer may deposit the payment by direct deposit, electronic funds transfer, or any other money transfer technique approved by the department. The claimant may revoke a request under this subdivision at any time by providing appropriate written notice to the insurer or self-insured employer.

**SECTION 26.** 102.29 (8) of the statutes is amended to read:

102.29 (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, 2001.~~

**SECTION 27.** 102.31 (8) of the statutes is amended to read:

102.31 (8) The Wisconsin compensation rating bureau shall provide the department with any information ~~it requests~~ that the department may request 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. No information obtained by the department under this subsection may be made public by the department except as authorized by the Wisconsin compensation rating bureau.

**SECTION 28.** 102.32 (5) of the statutes is amended to read:

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

**SECTION 29.** 102.32 (6) of the statutes is amended to read:

102.32 (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. Compensation for permanent disability that results from an injury for which the employer or the employer's insurer concedes liability and that is based on a minimum permanent disability rating promulgated by the department by rule shall begin within 30 days after the end of the employee's healing period or within 30 days after the employer or the employer's insurer receives a medical report that provides a permanent disability rating, whichever is later. Compensation for permanent disability that results from an injury for which the employer or the employer's insurer does not concede liability or that is based on a permanent disability rating that is above a minimum permanent disability rating promulgated by the department by rule shall begin within the later of those 30-day periods unless within the later of those 30-day periods the employer or insurer notifies the employee that the employer or insurer is requesting an examination under s. 102.13 (1) (a), in which case compensation for permanent disability shall begin within 30 days after the employer or insurer receives the report of the examination or within 90 days after the date of the request for the examination, whichever is earlier. Payments for permanent disability, including payments based on minimum permanent disability ratings promulgated by the department by rule, shall continue on a monthly basis and shall accrue and be payable between intermittent periods of temporary disability so long as the employer or insurer knows the nature of the permanent disability.

(6m) The department may direct an advance on a payment of unaccrued compensation or death benefits if ~~it the department~~ determines that the advance payment is in the best interest of the injured employee or ~~his or her~~ the employee's dependents. In directing the advance, the

department shall give the employer or the employer's insurer an interest credit against its liability. The credit shall be computed at 7%.

**SECTION 30.** 102.33 (2) (a) of the statutes is amended to read:

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

**SECTION 31.** 102.33 (2) (c) of the statutes is created to read:

102.33 (2) (c) Notwithstanding par. (a), a record maintained by the department that contains employer or insurer information obtained from the Wisconsin compensation rating bureau under s. 102.31 (8) or 626.32 (1) (a) is confidential and not open to public inspection or copying under s. 19.35 (1) unless the Wisconsin compensation rating bureau authorizes public inspection or copying of that information.

**SECTION 32.** 102.37 of the statutes is amended to read:

**102.37 Employers' records.** Every employer of 3 or more persons and every employer who is subject to this chapter shall keep a record of all accidents causing death or disability of any employee while performing services growing out of and incidental to the employment. This record shall give the name, address, age, and wages of the deceased or injured employee, the time and causes of the accident, the nature and extent of the injury, and any other information the department may require by rule or general order. Reports based upon this record shall be furnished to the department at such times and in such manner as ~~it the department~~ may require by rule or general order, upon forms in a format approved by the department.

**SECTION 33.** 102.38 of the statutes is amended to read:

**102.38 Records and reports of payments; reports thereon.** Every insurance company ~~which that~~ 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 and any other information to the department as ~~it the department~~ may require by rule or general order, upon forms in a format approved by the department.

**SECTION 34.** 102.39 of the statutes is amended to read:

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

**SECTION 35.** 102.42 (1m) of the statutes is created to read:

102.42 (1m) If an employee who has sustained a compensable injury undertakes in good faith invasive treatment that is generally medically acceptable, but that is unnecessary, the employer shall pay disability indemnity for all disability incurred as a result of that treatment. An employer is not liable for disability indemnity for any disability incurred as a result of any unnecessary treatment undertaken in good faith that is noninvasive or not medically acceptable. This subsection applies to all findings that an employee has sustained a compensable injury, whether the finding results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department.

**SECTION 36.** 102.43 (5) of the statutes is amended to read:

102.43 (5) 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.~~ Except as provided in s. 102.61 (1g), temporary disability shall also 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.

**SECTION 37.** 102.43 (6) (b) of the statutes is amended to read:

102.43 (6) (b) Wages In the case of an employee whose average weekly earnings are calculated under s. 102.11 (1) (a), 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 as provided in this paragraph. If an employee's weekly temporary disability benefits average weekly earnings are calculated under s. 102.11 (1) (a), wages received from other employment held by the employee when the injury occurred shall be offset against those average weekly earnings and not against the employee's actual earnings in the employment in which the employee was engaged at the time of the injury.

**SECTION 38.** 102.44 (1) (intro.) of the statutes is amended to read:

102.44 (1) (intro.) Notwithstanding any other provision of this chapter, every employee who is receiving

compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury which occurred prior to January 1, ~~1976~~ 1978, 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, ~~1978~~ 1980, and shall continue during the period of such total disability subsequent to that date.

**SECTION 39.** 102.44 (1) (a) of the statutes is amended to read:

102.44 (1) (a) If such employee is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit for a week of disability occurring after January 1, 2002, shall be an amount which, when added to the regular benefit established for the case, shall equal ~~\$150~~ \$202.

**SECTION 40.** 102.44 (1) (b) of the statutes is amended to read:

102.44 (1) (b) If such employee is receiving a weekly benefit which is less than the maximum benefit which was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after January 1, 2002, shall be an amount sufficient to bring the total weekly benefits to the same proportion of ~~\$150~~ \$202 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

**SECTION 41.** 102.57 of the statutes is amended to read:

**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, rule, or~~ 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 ~~that any~~ statute, rule, or order of the department constitutes failure by the employer to comply with that statute, rule, or order.

**SECTION 42.** 102.58 of the statutes is amended to read:

**102.58 Decreased compensation.** If injury is caused by the failure of the employee to use safety devices ~~which that~~ that are provided in accordance with any statute ~~or lawful, rule, or~~ order of the department and that 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.

**SECTION 43.** 102.59 (1) of the statutes is amended to read:

102.59 (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), ~~(6m)~~, and (7). No compromise agreement of liability for this additional compensation may provide for any lump sum payment.

**SECTION 44.** 102.61 (1) of the statutes is amended to read:

102.61 (1) Subject to ~~sub. subs. (1g) and~~ (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 disabled, 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).

**SECTION 45.** 102.61 (1g) of the statutes is created to read:

102.61 (1g) (a) In this subsection, "suitable employment" means employment that is within an employee's permanent work restrictions, that the employee has the necessary physical capacity, knowledge, transferable skills, and ability to perform, and that pays not less than 90% of the employee's preinjury average weekly wage, except that employment that pays 90% or more of the employee's preinjury average weekly wage does not constitute suitable employment if any of the following apply:

1. The employee's education, training, or employment experience demonstrates that the employee is on a

career or vocational path, the employee's average weekly wage on the date of injury does not reflect the average weekly wage that the employee reasonably could have been expected to earn in the demonstrated career or vocational path, and the permanent work restrictions caused by the injury impede the employee's ability to pursue the demonstrated career or vocational path.

2. The employee was performing part-time employment at the time of the injury, the employee's average weekly wage for compensation purposes is calculated under s. 102.11 (1) (f) 1. or 2., and that average weekly wage exceeds the employee's gross average weekly wage for the part-time employment.

(b) If an employer offers an employee suitable employment as provided in par. (c), the employer or the employer's insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) or for travel and maintenance expenses under sub. (1). Ineligibility for compensation under this paragraph does not preclude an employee from receiving vocational rehabilitation services under 29 USC 701 to 797b if the department determines that the employee is eligible to receive those services.

(c) On receiving notice that he or she is eligible to receive vocational rehabilitation services under 29 USC 701 to 797a, an employee shall provide the employer with a written report from a physician, chiropractor, psychologist, or podiatrist stating the employee's permanent work restrictions. Within 60 days after receiving that report, the employer shall provide to the employee in writing an offer of suitable employment, a statement that the employer has no suitable employment for the employee, or a report from a physician, chiropractor, psychologist, or podiatrist showing that the permanent work restrictions provided by the employee's practitioner are in dispute and documentation showing that the difference in work restrictions would materially affect either the employer's ability to provide suitable employment or a vocational rehabilitation counselor's ability to recommend a rehabilitative training program. If the employer and employee cannot resolve the dispute within 30 days after the employee receives the employer's report and documentation, the employer or employee may request a hearing before the department to determine the employee's work restrictions. Within 30 days after the department determines the employee's work restrictions, the employer shall provide to the employee in writing an offer of suitable employment or a statement that the employer has no suitable employment for the employee.

**SECTION 46.** 102.61 (1m) (c) of the statutes is amended to read:

102.61 (1m) (c) The employer 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 workforce 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.

**SECTION 47.** 102.61 (1m) (d) of the statutes is amended to read:

102.61 (1m) (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.

**SECTION 48.** 102.61 (1m) (e) of the statutes is amended to read:

102.61 (1m) (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).

**SECTION 49.** 102.61 (1m) (f) of the statutes is amended to read:

102.61 (1m) (f) The department of workforce 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.

**SECTION 50.** 102.61 (2) of the statutes is amended to read:

102.61 (2) The department of workforce development, the commission, and the courts shall determine the rights and liabilities of the parties under this section in like manner and with like effect as that the department, the commission, and the courts do determine other issues under compensation this chapter. A determination under this subsection may include a determination based on the evidence regarding the cost or scope of the services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

**SECTION 51.** 102.66 (1) of the statutes is amended to read:

102.66 (1) In the event that there is an otherwise meritorious claim for occupational disease, a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury, or any injury causing the need for a total or partial knee or hip replacement, and the claim is 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 of 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 whose 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.

**SECTION 52.** 102.66 (2) of the statutes is amended to read:

102.66 (2) In the case of occupational disease, a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury, or any injury causing the need for a total or partial knee or hip replacement, appropriate benefits may be awarded from the work injury supplemental benefit fund where when the status or existence of the employer or its insurance carrier cannot be determined or where when there is otherwise no adequate remedy, subject to the limitations contained in sub. (1).

**SECTION 53.** 626.32 (1) (a) of the statutes is amended to read:

626.32 (1) (a) *General.* Every insurer writing any insurance specified under s. 626.03 shall report its insurance in this state to the bureau at least annually, on forms and under rules prescribed by the bureau. The bureau must shall file, pursuant to under rules adopted promulgated by the department of workforce development, a record of such reports with the that department. No such information may be made public by the bureau or any of its employees except as required by law and in accordance with its rules. No such information may be made public by the department of workforce development or any of its employees except as authorized by the bureau.

**SECTION 54. Initial applicability.**

(1) NECESSITY OF TREATMENT DETERMINATIONS. The treatment of section 102.16 (2m) (c) of the statutes first applies to necessity of treatment determinations made on the effective date of this subsection.

**2001 Wisconsin Act 37**

**2001 Senate Bill 251**

(2) PAYMENTS OF AWARDS. The treatment of section 102.18 (1) (e) of the statutes first applies to orders awarding compensation entered on the effective date of this subsection.

(3) DISABILITY AS A RESULT OF UNNECESSARY TREATMENT. The treatment of section 102.42 (1m) of the statutes first applies to treatment provided on the effective date of this subsection.

(4) STATUTE OF LIMITATIONS; PAYMENTS FROM SUPPLEMENTAL WORK INJURY BENEFIT FUND. The treatment of sections 102.17 (4) and 102.66 (1) and (2) of the statutes first applies to benefits or treatment expenses that are payable on the effective date of this subsection, regardless of the date of the injury.

(5) PERMANENT DISABILITY PAYMENTS. The treatment of section 102.32 (6) of the statutes first applies to compensation that becomes due on the effective date of this subsection.

**SECTION 55. Effective date.**

(1) This act takes effect on January 1, 2002, or on the day after publication, whichever is later.

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