DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3500/P1dn
GMM:cjs:jf

September 4, 2001

Dick:

In reviewing this draft, please note all of the following:

1. In addition to the changes requested by labor, management, and the department, this draft also corrects s. 15.227 (4) to delete a reference to "members" of the department. That reference should have been deleted in last session's bill when members of LIRC were removed from the council.

2. The draft does not include the department's recommended change to s. 102.07 (4m) because members of a religious sect that does not believe in worker's compensation who are engaged in farming are already covered in s. 102.07 (5) (d).

3. Section 102.07 (7m), relating to emergency response team members, cross–references regional emergency response team members under s. 166.215 as well as municipal, county, and state emergency response team members under s. 166.03 (8) (d).

4. Labor's instructions that the maximum compensation rate under s. 102.11 (1) (intro.) shall equal the state's average weekly earnings "plus 10%" do not specify 10% of what. Alternatives include 10% of the *state's* average weekly earnings or 10% of the *employee's* average weekly earnings. This preliminary draft specifies that the 10% refers to the *employee's* average weekly earnings. If that is incorrect, please advise.

5. The definition of "workweek" for purposes of s. 102.11 (1) (a) was inserted in s. 102.01 (2), the general definitions section for the chapter, because there was no place in s. 102.11 (1) (a) to squeeze in a definition. Accordingly, the draft also changes a reference to "working week" in s. 102.11 (1) (b) to "workweek" to conform that paragraph to the new definition.

References to "week" and "weekly" abound throughout the chapter. If any of those references actually refer to a calendar week beginning on Sunday and ending on Saturday, that is, a "workweek" as defined in the bill, rather than to a period of seven days that may begin on any day of the week, then those references might also need to be changed to "workweek."

6. In s. 102.11 (1) (f) 1., relating to the 24–hour floor for members of a class of part–time employees, the draft lays a foundation for the definition of "class of part–time

employees" by first clarifying that the provision only applies to an employee who is a member of such a class of employees. The draft also clarifies that the average weekly earnings of such an employee may be expanded to 24 times the employee's hourly wage *or the employee's actual weekly wage*, whichever is greater.

7. In s. 102.123, relating to statements provided by an employee, DWD 80.24 does not specify *when* a written statement must be given to the employee. Accordingly, this draft specifies that a written statement must given to the employee within a reasonable time after the statement is made. The draft treats a recorded statement similarly.

8. In ss. 102.17 (4) and 102.66 (1) and (2), relating to the statute of limitations for an employee who loses a hand or the rest of the arm or a foot or the rest of the leg, this draft refers to *any part* of the rest of the arm or leg because "the rest of the arm or leg" standing alone implies that the employee must lose his entire arm from the shoulder on down or his entire leg from the hip on down when, in fact, the employee might only lose his arm from the elbow on down or his leg from the knee on down.

Indeed, if we say "any part of the arm" does a reference to "hand" become redundant since the hand is part of the arm? Also, what about losing a part of the hand, *e.g.*, a thumb or finger, is that situation intended to be covered by this draft? If so, we should probably specify "any part of the hand."

9. In s. 102.18 (1) (e), relating to the 21–day payment period, note that s. 102.21 provides for a different procedure for municipal employers. Accordingly, the draft provides an exception for municipal employers covered under s. 102.21.

10. With respect to information received from the Wisconsin compensation rating bureau, note that the draft amends not only s. 102.31 (8), but also ss. 102.33 and 626.32 (1) (a) to provide for confidentiality of that information under those provisions as well.

11. In s. 102.32 (6), the department's proposed language refers to the insurer having "clear information regarding the nature of the injury or surgery." That subsection, however, contains no antecedent for the reference to "injury or surgery." Accordingly, this draft refers to the employer's knowledge of the *permanent disability*, which is what the subsection is talking about.

For alternative methods of expressing the employer's knowledge of the employee's injury, see, for example, ss. 102.17 (4) and 102.42 (1).

12. In s. 102.42 (1m), relating to liability for unnecessary treatment that causes further disability, the draft, for the sake of clarity, states not only when the employer is liable, but also when the employer is not liable, that is, the employer is liable when the treatment is invasive and medically acceptable, but is not liable when the treatment is either noninvasive or not medically acceptable.

13. In s. 102.43 (6) (b), relating to offsetting wages from another job when calculating the employee's wage loss, the concept of "wage expansion" is not expressed in the statutes in so many words. Accordingly, this draft describes that concept by reference to "average weekly earnings calculated under s. 102.11 (1) (a)."

If you have any questions about the draft or this drafter's note, please do not hesitate to contact me directly at the phone number or e–mail address listed below.

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