



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0117/1
MIM&MED:amn

2021 SENATE BILL 11

January 21, 2021 - Introduced by Senators JACQUE, WANGGAARD, BEWLEY, AGARD, BALLWEG, NASS, PFAFF, RINGHAND and L. TAYLOR, cosponsored by Representatives HORLACHER, EMERSON, ALLEN, BRANDTJEN, CALLAHAN, DITTRICH, EDMING, KERKMAN, KUGLITSCH, LOUDENBECK, MILROY, MURSAU, NOVAK, PETRYK, RAMTHUN and THIESFELDT. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to renumber and amend* 102.17 (4) and 102.58; *to amend* 102.04 (2m),
2 102.13 (2) (a), 102.29 (6m) (a) 3., 102.315 (1) (c), 102.315 (2), 102.42 (1), 102.49
3 (5) (b), 102.49 (5) (c) and 102.49 (5) (e); and *to create* 102.04 (2g), 102.17 (9),
4 102.29 (6m) (a) 1m., 102.315 (2e), 102.315 (2m), 102.315 (2s), 102.42 (1p),
5 102.44 (7) and 102.49 (5) (cm) of the statutes; **relating to:** various changes to
6 the worker's compensation law.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development and the Division of Hearings and Appeals in the Department of Administration (DHA).

PAYMENT OF BENEFITS; OTHER PAYMENTS

Liability for public safety officers

This bill makes changes to the conditions of liability for worker's compensation benefits for a law enforcement officer or a fire fighter (public safety officer) who is diagnosed with post-traumatic stress disorder (PTSD).

The bill provides that if a public safety officer is diagnosed with PTSD by a licensed psychiatrist or psychologist and the mental injury that resulted in that diagnosis is not accompanied by a physical injury, that public safety officer can bring a claim for worker's compensation benefits if the conditions of liability are proven by

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a preponderance of the evidence and the mental injury is not the result of a good-faith employment action by the person's employer. Under current law, an injured employee who does not have an accompanying physical injury must demonstrate a diagnosis based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by all employees as required under *School District No. 1 v. DILHR*, 62 Wis. 2d 370, 215 N.W.2d 373 (1974). Under the bill, such an injured public safety employee is not required to demonstrate a diagnosis based on that standard, and instead must demonstrate a diagnosis based on the new standard.

The bill also limits liability for treatment for a mental injury that is compensable under the bill's provisions to no more than 32 weeks after the injury is first reported. Under the bill, a public safety officer is restricted to compensation for a mental injury that is not accompanied by a physical injury and that results in a diagnosis of PTSD three times in his or her lifetime irrespective of a change of employer or employment.

Payments in cases of injuries resulting in death

Current law provides that, in each case of an injury resulting in death leaving no person dependent for support or leaving one or more persons partially dependent for support, the employer or insurer must pay into the work injury supplemental benefit fund (WISBF) the amount of the death benefit otherwise payable. This bill does the following:

1. Allows such amounts due to be paid in advance of when they would otherwise be due, including as a single, lump-sum payment. If an employer or insurer makes an advance or lump-sum payment, the bill requires DWD to give the employer or the insurer an interest credit, computed as otherwise provided under current law. Current law requires, in the case of a death leaving no dependents, that the payments be made in five equal annual installments.

2. Provides that, in the case of a violation of an employer policy against drug or alcohol use that is causal to an employee's injury resulting in death who leaves no person dependent for support or leaving one or more persons partially dependent for support, no payment is required to be made to WISBF. Current law provides that, in the case of such a violation, then neither the employee nor the employee's dependents may receive any compensation under the worker's compensation law for that injury, other than costs for treating the injury, but does not exempt the employer or insurer from the payment to WISBF.

Furnishing of billing statements

This bill requires a health care provider to furnish to the representative or agent of a worker's compensation insurer a complete billing statement for treatment of an injury for which an employee claims compensation upon request.

COVERAGE; LIABILITY***Leased employees***

Under current law, employee leasing companies are generally liable for injuries to their leased employees under the worker's compensation law. This bill provides that a client of an employee leasing company may instead assume the liability for

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leased employees under an employee leasing agreement. The bill also provides that if a client terminates or otherwise does not provide worker's compensation insurance coverage for the leased employees, the employee leasing company is liable for injuries to those leased employees under the worker's compensation law.

Statute of limitations

This bill clarifies that for worker's compensation claims the statute of limitations applies to an individual's employer, the employer's insurance company, and any other named party.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 102.04 (2g) of the statutes is created to read:

2 102.04 **(2g)** Liability under s. 102.03 with respect to a leased employee, as
3 defined in s. 102.315 (1) (g), shall be determined as provided in s. 102.315 (2) or (2m)
4 (c), whichever is applicable.

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

6 102.04 **(2m)** ~~A Except as otherwise provided in an employee leasing agreement~~
7 that meets the requirements of s. 102.315 (2m), a temporary help agency is the
8 employer of an employee whom the temporary help agency has placed with or leased
9 to another employer that compensates the temporary help agency for the employee's
10 services. ~~A Except as provided in s. 102.315 (2m) (c),~~ a temporary help agency is
11 liable under s. 102.03 for all compensation and other payments payable under this
12 chapter to or with respect to that employee, including any payments required under
13 s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except
14 as permitted under s. 102.29, a temporary help agency may not seek or receive
15 reimbursement from another employer for any payments made as a result of that
16 liability.

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1 **SECTION 3.** 102.13 (2) (a) of the statutes is amended to read:

2 102.13 (2) (a) An employee who reports an injury alleged to be work-related
3 or files an application for hearing waives any physician-patient,
4 psychologist-patient, or chiropractor-patient privilege with respect to any condition
5 or complaint reasonably related to the condition for which the employee claims
6 compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any
7 physician, chiropractor, psychologist, dentist, podiatrist, physician assistant,
8 advanced practice nurse prescriber, hospital, or health care provider shall, within a
9 reasonable time after written request by the employee, employer, worker's
10 compensation insurer, department, or division, or its representative, provide that
11 person with any information or written material reasonably related to any injury for
12 which the employee claims compensation. If the request is by a representative of a
13 worker's compensation insurer for a billing statement, the physician, chiropractor,
14 psychologist, dentist, podiatrist, physician assistant, advanced practice nurse
15 prescriber, hospital, or health care provider shall, within 30 days after receiving the
16 request, provide that person with a complete copy of an itemized billing statement
17 or a billing statement in a standard billing format recognized by the federal
18 government.

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

21 102.17 (4) (a) Except as provided in this subsection and s. 102.555 (12) (b), in
22 the case of occupational disease, the right of an employee, the employee's legal
23 representative, ~~or a dependent,~~ the employee's employer or the employer's insurance
24 company, or other named party to proceed under this section shall not extend beyond
25 12 years after the date of the injury or death or after the date that compensation,

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1 other than for treatment or burial expenses, was last paid, or would have been last
2 payable if no advancement were made, whichever date is latest, and in the case of
3 traumatic injury, that right shall not extend beyond 6 years after that date.

4 (b) In the case of occupational disease; a traumatic injury resulting in the loss
5 or total impairment of a hand or any part of the rest of the arm proximal to the hand
6 or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision,
7 or any permanent brain injury; or a traumatic injury causing the need for an
8 artificial spinal disc or a total or partial knee or hip replacement, there shall be no
9 statute of limitations, except that benefits or treatment expense for an occupational
10 disease becoming due 12 years after the date of injury or death or last payment of
11 compensation, other than for treatment or burial expenses, shall be paid from the
12 work injury supplemental benefit fund under s. 102.65 and in the manner provided
13 in s. 102.66 and benefits or treatment expense for such a traumatic injury becoming
14 due 6 years after that date shall be paid from that fund and in that manner if the date
15 of injury or death or last payment of compensation, other than for treatment or burial
16 expenses, is before April 1, 2006.

17 (c) Payment of wages by the employer during disability or absence from work
18 to obtain treatment shall be considered payment of compensation for the purpose of
19 this section if the employer knew of the employee's condition and its alleged relation
20 to the employment.

21 **SECTION 5.** 102.17 (9) of the statutes is created to read:

22 102.17 (9) (a) In this subsection:

23 1. "Fire fighter" means any person employed on a full-time basis by the state
24 or any political subdivision as a member or officer of a fire department, including the
25 1st class cities and state fire marshal and deputies.

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1 2. “Post-traumatic stress disorder” means that condition, as described in the
2 5th edition of the Diagnostic and Statistical Manual of Mental Disorders by the
3 American Psychiatric Association.

4 (b) Subject to par. (c), in the case of a mental injury that is not accompanied by
5 a physical injury and that results in a diagnosis of post-traumatic stress disorder in
6 a law enforcement officer, as defined in s. 23.33 (1) (ig), or a fire fighter, the claim for
7 compensation for the mental injury, in order to be compensable under this chapter,
8 is subject to all of the following:

9 1. The mental injury must satisfy all of the following conditions:

10 a. The diagnosis of post-traumatic stress disorder is made by a licensed
11 psychiatrist or psychologist.

12 b. The conditions of liability under s. 102.03 (1) are proven by the
13 preponderance of the evidence.

14 2. The mental injury may not be a result of any of the following actions taken
15 in good faith by the employer:

16 a. A disciplinary action.

17 b. A work evaluation.

18 c. A job transfer.

19 d. A layoff.

20 e. A demotion.

21 f. A termination.

22 3. The diagnosis does not need to be based on unusual stress of greater
23 dimensions than the day-to-day emotional strain and tension experienced by
24 similarly situated employees.

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1 (c) No individual may receive compensation for a claim of mental injury under
2 this subsection more than 3 times in his or her lifetime. The limitation under this
3 paragraph applies irrespective of whether the individual becomes employed by a
4 different employer or in a different position with the same employer.

5 **SECTION 6.** 102.29 (6m) (a) 1m. of the statutes is created to read:

6 102.29 (6m) (a) 1m. The employee leasing company that employs the leased
7 employee.

8 **SECTION 7.** 102.29 (6m) (a) 3. of the statutes is amended to read:

9 102.29 (6m) (a) 3. Any employee of the client ~~or, any employee of that other an~~
10 employee leasing company described in subd. 2., or the employee leasing company
11 that employs the leased employee, unless the leased employee who has the right to
12 make a claim for compensation would have a right under s. 102.03 (2) to bring an
13 action against the employee of the client, the employee leasing company that
14 employs the leased employee, or the leased employee of the ~~other~~ employee leasing
15 company described in subd. 2., if the employees and leased employees were
16 coemployees.

17 **SECTION 8.** 102.315 (1) (c) of the statutes is amended to read:

18 102.315 (1) (c) “Divided workforce” means a workforce in which some of the
19 employees of a client are leased employees and some of the employees of the client
20 are not leased employees, but does not include a workforce with respect to a client
21 that has elected to provide insurance coverage for leased employees under sub. (2m).

22 **SECTION 9.** 102.315 (2) of the statutes is amended to read:

23 102.315 (2) EMPLOYEE LEASING COMPANY LIABLE. ~~An~~ Except as otherwise
24 provided in an employee leasing agreement that meets the requirements of sub.
25 (2m), an employee leasing company is liable under s. 102.03 for all compensation

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1 payable under this chapter to a leased employee, including any payments required
2 under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60.
3 If a client that makes an election under sub. (2m) (a) terminates the election, fails
4 to provide the required coverage, or allows coverage to lapse, the employee leasing
5 company is liable under s. 102.03 as set forth in this subsection. Except as permitted
6 allowed under s. 102.29, an employee leasing company may not seek or receive
7 reimbursement from another employer for any payments made as a result of that
8 liability. An employee leasing company is not liable under s. 102.03 for any
9 compensation payable under this chapter to an employee of a client who is not a
10 leased employee.

11 **SECTION 10.** 102.315 (2e) of the statutes is created to read:

12 102.315 (2e) TERMINATION OF EMPLOYEE LEASING AGREEMENT. If an employee
13 leasing company terminates an employee leasing agreement with a client that has
14 made an election under sub. (2m) (a), the company shall provide notice of the
15 termination of an employee leasing agreement to the department and the client, on
16 a form prescribed by the department, at least 30 days before the termination of the
17 employee leasing agreement. The notice provided under this subsection must
18 contain all of the following information:

19 (a) The name, mailing address, and federal employer identification number of
20 the employee leasing company.

21 (b) The name, mailing address, and federal employer identification number of
22 the client.

23 (c) The effective date of the termination of the employee leasing agreement.

24 (d) The signatures of the authorized representatives of the client and the
25 employee leasing company.

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1 **SECTION 11.** 102.315 (2m) of the statutes is created to read:

2 102.315 **(2m)** CLIENT ELECTION TO PROVIDE INSURANCE COVERAGE. (a) A client
3 may elect to provide insurance coverage under this chapter for leased employees.
4 Such an election must be provided in an employee leasing agreement, and the leased
5 employees must be insured in the voluntary market and not under a mandatory
6 risk-sharing plan under s. 619.01.

7 (b) The client shall provide notice of an election or termination of an election
8 under par. (a) to the department and the employee leasing company on a form
9 prescribed by the department at least 30 days before the effective date of the election
10 or termination of the election. The notice provided under this subsection must
11 contain all of the following information:

12 1. The name, mailing address, and federal employer identification number of
13 the client.

14 2. The name, mailing address, and federal employer identification number of
15 the employee leasing company.

16 3. The effective date of the employee leasing agreement.

17 4. The signatures of the authorized representatives of the client and the
18 employee leasing company.

19 (c) A client that elects to provide insurance coverage under par. (a) is liable
20 under s. 102.03 for all compensation payable to a leased employee, including any
21 payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3),
22 102.57, or 102.60.

23 (d) If a client makes an election under par. (a), the employee leasing company
24 shall include the client's federal employer identification number on any reports to the

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1 department for the purposes of administering the worker's compensation program
2 or the unemployment insurance program under ch. 108.

3 (e) The experience rating under the standards and criteria under ss. 626.11 and
4 626.12 remain with a client that makes an election under par. (a).

5 **SECTION 12.** 102.315 (2s) of the statutes is created to read:

6 102.315 (2s) CLAIM REPORTING. Any claim filed under this chapter for a leased
7 employee shall include the client's federal employer identification number.

8 **SECTION 13.** 102.42 (1) of the statutes is amended to read:

9 102.42 (1) TREATMENT OF EMPLOYEE. The Subject to the limitations under sub.
10 (1p), the employer shall supply such medical, surgical, chiropractic, psychological,
11 podiatric, dental, and hospital treatment, medicines, medical and surgical supplies,
12 crutches, artificial members, appliances, and training in the use of artificial
13 members and appliances, or, at the option of the employee, Christian Science
14 treatment in lieu of medical treatment, medicines, and medical supplies, as may be
15 reasonably required to cure and relieve from the effects of the injury, and to attain
16 efficient use of artificial members and appliances, and in case of the employer's
17 neglect or refusal seasonably to do so, or in emergency until it is practicable for the
18 employee to give notice of injury, the employer shall be liable for the reasonable
19 expense incurred by or on behalf of the employee in providing such treatment,
20 medicines, supplies, and training. When the employer has knowledge of the injury
21 and the necessity for treatment, the employer's failure to tender the necessary
22 treatment, medicines, supplies, and training constitutes such neglect or refusal. The
23 employer shall also be liable for reasonable expense incurred by the employee for
24 necessary treatment to cure and relieve the employee from the effects of occupational
25 disease prior to the time that the employee knew or should have known the nature

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1 of his or her disability and its relation to employment, and as to such treatment subs.
2 (2) and (3) shall not apply. The obligation to furnish such treatment and appliances
3 shall continue as required to prevent further deterioration in the condition of the
4 employee or to maintain the existing status of such condition whether or not healing
5 is completed.

6 **SECTION 14.** 102.42 (1p) of the statutes is created to read:

7 102.42 (1p) LIABILITY FOR TREATMENT OF CERTAIN MENTAL INJURIES. The employer
8 of an employee whose injury is a mental injury that is compensable under s. 102.17
9 (9) is liable for the employee's treatment of the mental injury for no more than 32
10 weeks after the injury is first reported.

11 **SECTION 15.** 102.44 (7) of the statutes is created to read:

12 102.44 (7) In the case of an employee whose injury is a mental injury that is
13 compensable under s. 102.17 (9), the period of disability may not exceed 32 weeks
14 after the injury is first reported.

15 **SECTION 16.** 102.49 (5) (b) of the statutes is amended to read:

16 102.49 (5) (b) In addition to the payment required under par. (a), in each case
17 of injury resulting in death leaving no person dependent for support, the employer
18 or insurer shall, except as provided in s. 102.58 (2), pay into the state treasury the
19 amount of the death benefit otherwise payable, minus any payment made under s.
20 102.48 (1), The payment under this paragraph shall, except as provided in par. (cm),
21 be made in 5 equal annual installments, with the first installment due as of the date
22 of death.

23 **SECTION 17.** 102.49 (5) (c) of the statutes is amended to read:

24 102.49 (5) (c) In addition to the payment required under par. (a), in each case
25 of injury resulting in death, leaving one or more persons partially dependent for

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1 support, the employer or insurer shall, except as provided in s. 102.58 (2), pay into
2 the state treasury an amount which, when added to the sums paid or to be paid on
3 account of partial dependency and under s. 102.48 (1), shall equal the death benefit
4 payable to a person wholly dependent.

5 **SECTION 18.** 102.49 (5) (cm) of the statutes is created to read:

6 102.49 (5) (cm) The employer or insurer may make advance payments of
7 amounts owed under par. (b) or (c), up to and including a lump sum payment of the
8 entire amount owed. If an employer or insurer makes an advance payment, the
9 department shall give the employer or the insurer an interest credit against its
10 liability for payments made in excess of that required under par. (b) or (c). The credit
11 shall be computed at 5 percent.

12 **SECTION 19.** 102.49 (5) (e) of the statutes is amended to read:

13 102.49 (5) (e) The adjustments in liability provided in ss. 102.57, 102.58 (1),
14 and 102.60 do not apply to payments made under this section.

15 **SECTION 20.** 102.58 of the statutes is renumbered 102.58 (1) and amended to
16 read:

17 102.58 (1) If injury is caused by the failure of the employee to use safety devices
18 that are provided in accordance with any statute, rule, or order of the department
19 of safety and professional services and that are adequately maintained, and the use
20 of which is reasonably enforced by the employer, or if injury results from the
21 employee's failure to obey any reasonable rule adopted and reasonably enforced by
22 the employer for the safety of the employee and of which the employee has notice, the
23 compensation and death benefit provided in this chapter shall be reduced by 15
24 percent, but the total reduction may not exceed \$15,000.

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1 **(2)** If an employee violates the employer's policy concerning employee drug or
2 alcohol use and is injured, and if that violation is causal to the employee's injury, no
3 compensation or death benefits shall be payable to the injured employee or a
4 dependent of the injured employee and no payment under s. 102.49 (5) (b) or (c) shall
5 be payable. Nothing in this ~~section~~ subsection shall reduce or eliminate an
6 employer's liability for incidental compensation under s. 102.42 (1) to (8) or drug
7 treatment under s. 102.425.

8 **SECTION 21. Nonstatutory provisions.**

9 (1) WORKER'S COMPENSATION INSURANCE; RATE APPROVAL; NOTICE. The
10 commissioner of insurance shall submit to the legislative reference bureau for
11 publication in the Wisconsin Administrative Register a notice of the effective date
12 of new rates for worker's compensation insurance first approved by the
13 commissioner after the effective date of this subsection.

14 **SECTION 22. Initial applicability.**

15 (1) The treatment of ss. 102.17 (9), 102.42 (1) and (1p), and 102.44 (7) first
16 applies to injuries reported on the effective date of rate changes for worker's
17 compensation insurance approved by the commissioner of insurance under s. 626.13
18 after the effective date of this subsection.

19 **(END)**