

Chapter Ind 80

WORKER'S COMPENSATION

Ind 80.01	Definitions (p. 1)	Ind 80.39	Advance payment of unaccrued compensation (p. 24-2)
Ind 80.02	Reports (p. 1)	Ind 80.40	Assessment for unpaid claims of insolvent self-insurer (p. 24-3)
Ind 80.025	Inspection and copying of records (p. 3)	Ind 80.41	Computation of monthly salary and reimbursement to retirement fund under s. 66.191 (p. 24-4)
Ind 80.03	Compromise (p. 4)	Ind 80.42	Vocational rehabilitation; reporting requirement (p. 24-4)
Ind 80.05	Procedure on claim (p. 5)	Ind 80.43	Fees and costs (p. 24-4)
Ind 80.06	Parties (p. 6)	Ind 80.44	Witness fees and travel reimbursement (p. 24-5)
Ind 80.07	Service (p. 6)	Ind 80.46	Contribution to support of unestranged surviving parent (p. 24-5)
Ind 80.08	Amendments (p. 6)	Ind 80.47	Medical release of employe for restricted work in the healing period (p. 24-5)
Ind 80.09	Witness attendance; extension of time and postponement (p. 6)	Ind 80.48	Reassignment of death benefits (p. 24-5)
Ind 80.10	Stipulations (p. 7)	Ind 80.49	Vocational rehabilitation benefits (p. 24-5)
Ind 80.11	Depositions (p. 7)	Ind 80.50	Computation of permanent disabilities (p. 24-6)
Ind 80.12	Rules of practice; selection of hearing site (p. 7)	Ind 80.51	Computation of weekly wage (p. 24-6)
Ind 80.14	Transcripts (p. 7)	Ind 80.60	Exemption from duty to insure (self-insurance) (p. 24-7)
Ind 80.20	License to appear (p. 8)	Ind 80.61	Divided-insurance and partial insurance requirements under s. 102.31 (1) and (6), for all employers, including contractors working on a wrap-up project (p. 24-10)
Ind 80.21	Reports by practitioners and expert witnesses (p. 8)	Ind 80.65	Notice of cancellation or termination (p. 24-14)
Ind 80.22	Use of physicians reports as evidence (p. 9)	Ind 80.67	Name or organizational change by insurer (p. 24-14)
Ind 80.23	Common insurance of employer and third party (p. 9)	Ind 80.68	Payment of benefits under s. 102.59, Stats. (p. 24-15)
Ind 80.24	Statement of employe (p. 10)	Ind 80.70	Malice or bad faith (p. 24-15)
Ind 80.25	Loss of hearing (p. 10)		
Ind 80.26	Loss of vision; determination (p. 13)		
Ind 80.27	Forms (p. 19)		
Ind 80.29	Value of room or meals (p. 20)		
Ind 80.30	Average weekly earnings for members of volunteer fire companies or fire departments (p. 20)		
Ind 80.31	Procedure and claims under ch. 40, Stats. (p. 20)		
Ind 80.32	Permanent disabilities (p. 20)		
Ind 80.33	Permanent disabilities; fingertip amputations (p. 24-1)		
Ind 80.34	Loss of earning capacity (p. 24-1)		
Ind 80.38	Assessment of administrative expenses (p. 24-2)		

Ind 80.01 Definitions. (1) "Act," "compensation act" or "worker's compensation act" means ch. 102, Stats.

(2) "Department" means the department of industry, labor and human relations.

(3) "Commission" means the labor and industry review commission.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; r. and rec. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.02 Reports. (1) Employers. Employers covered by the provisions of ch. 102, Stats., shall, within one day after the death of an employe due to an accident or industrial disease, make a brief report of this occurrence to the department by telegraph, telephone or by letter. They shall also make a report on a form WC-12 on or before the fourth day after the accident or beginning of a disability from occupational disease upon every accident or disease causing death or a disability which exists beyond the third day after the employe leaves work as a result of the accident or disease. (s. 102.43, Stats.)

(2) **SELF-INSURED EMPLOYERS AND INSURANCE COMPANIES.** Pursuant to s. 102.38, Stats., for injuries which require the first report of injury set forth in (1), self-insured employers and insurance companies shall:

(a) Make a supplementary report on a form WC-13 on or before the fourteenth day following that on which the injury occurred, a copy of the WC-12 shall be attached to the initial WC-13, and if the wage is less than the maximum wage as defined by s. 102.11 (1), Stats., submit with the form WC-13, wage information on form WC-13a. If wage information is not available at the time the WC-13 is submitted, a notation should be made on the form WC-13 that a form WC-13a will be submitted at a later date. If an employee restricts his or her availability on the labor market to part-time employment and is not actively employed full time elsewhere, a statement confirming this intention must accompany the WC-13a. This statement is not required if the employee is under the age of 16.

(b) Make a report within 7 days from the date that payments are stopped for any reason. If any payments are stopped for a reason other than the employee's return to work, an explanation of such cessation must be provided to the department and the employee. The self-insured employer or insurance carrier shall advise the employee as to what the employee must do to reinstate payments.

(c) Make a report to the department on form WC-13 with a copy to the employee if payment of compensation is changed from temporary total disability or temporary partial disability to a permanent disability basis. Similar report shall be made if temporary disability benefits are reinstated.

(d) Notify the department and the employee immediately if liability for payment of compensation is denied, giving the reason for such denial. The notice shall advise the employee of the right to a hearing before the department.

(e) Make a final report on a form WC-13 when final payment of compensation has been made. A practitioner's report is necessary if temporary disability exceeds 3 weeks or if permanent disability has resulted. Copies of the final WC-13 form and the final practitioner's report must be sent to the employee.

(f) Notify the department and the employee if the employee fails to return to a practitioner for final examination. The notice shall also advise the employee that in order to determine permanent disability, if any, the final examination is necessary.

(g) Submit a final receipt as proof of payment of any increased compensation due to an injured employee.

(h) File a current form WC-13 indicating all payments to date and the periods of time for which these payments were made when submitting a stipulation or compromise, or at the time of hearing.

(i) Make immediate report to the department of any amputation which will require an artificial member or appliance.

(3) In evaluating whether payments of compensation and reports made by insurance carriers and self-insured employers were prompt and proper under the provisions of s. 102.28 (2), Stats. and s. 102.31 (3),

Stats., and before undertaking to revoke the exemption from insurance under s. 102.28 (2) (c), Stats., or before recommending under s. 102.31 (3), Stats., to the commissioner of insurance that enforcement proceedings under s. 601.64 be invoked the department will consider the following performance standards together with all other factors bearing on the performance and activities of the insurance carrier or self-insured employer:

(a) *Payment of first indemnity.* Whether 80% or more of first indemnity payments are mailed to the injured employe in 14 days or less following the last day worked after the injury.

(b) *First report of injury.* Whether 70% or more of reports required under sub. (1) are received by the department within 14 days of the last day worked after injury.

(c) *Correct and complete names.* Names of self-insured employers on reports filed with the department must be correct and complete. The name of an insurance group is not a substitute for the name of the individual company insuring the risk. The name of an insurance service company is not a substitute.

(d) *Penalty frequency and severity.* The number and amount of penalties assessed for violations of ss. 102.18 (1) (bp), 102.22 (1), 102.57, and 102.60, Stats.

History: 1-2-56; am. (1) and (2), Register, October, 1965, No. 118, eff. 11-1-66; am. Register, April, 1976, No. 232, eff. 5-1-76; am. (1), r. and recr. (2), Register, September, 1982, No. 321, eff. 10-1-82; am. (2) (intro.) and cr. (3), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.025 Inspection and copying of records. (1) The policy of the state on public access to records is set forth in ss. 19.31 to 19.37, Stats. The policy of the department is to provide, to the greatest extent possible, ready and open access to public records. In the worker's compensation division, access may be limited in particular cases only when consideration of the information in a file leads to the conclusion that the public interest served by nondisclosure is greater than the public interest served by disclosure. The inspection and copying of worker's compensation records shall be subject to the conditions specified in this section.

(2) The requester shall provide sufficient information on each individual file requested to permit identification and location of the specific file. Desirable information on claim files includes:

(a) The correct name of the individual who has claimed a work-related disability;

(b) The claimant's social security number;

(c) The date the claimed injury or illness occurred;

(d) The name of the employing firm or firms at the time of the claimed injury or illness;

(e) The name of the employing firm's insurance carrier.

(3) Requesters may inspect claim files only in the division's Madison office and under the supervision of division staff. Requesters shall direct requests to inspect files to the receptionist between the hours of 7:45 a.m. and 4:30 p.m. Requesters shall return all files by 4:30 p.m.

(4) Requesters may not remove files from the division offices without written authorization from the administrator of the division.

(5) Requesters wishing to make copies of all or a part of a file may do so under the supervision of division staff on the coin-operated copy machine provided for that purpose.

(6) The division shall provide transcripts of testimony taken or proceedings had before the division only in accordance with s. Ind 80.14.

(7) The division shall furnish copies of documents from worker's compensation claim files as requested, with the following limits:

(a) At least one week must be allowed before copies can be delivered or mailed.

(b) Advance payment shall not be required except as provided in par. (e). The division shall send an invoice to the requester for the necessary costs as set forth in par. (c).

(c) The following fees shall apply:

1. 20 cents per page for photocopying.

2. \$2.00 for certifying copies.

3. \$3.00 per request for postage and handling when copies are to be mailed.

(d) Upon a proper showing of inability to pay, the division shall furnish the requested copies upon such terms as may be agreed.

(e) If the requester has unpaid copying fees from prior requests outstanding in an amount that exceeds \$5.00, the division shall require the requester to pay the amount owed before providing more copies.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

Ind 80.03 Compromise. (1) Whenever an employer and an employee enter into a compromise agreement concerning the employer's liability under ch. 102, Stats., for a particular injury to that employee, the following conditions shall be fulfilled:

(a) The compromise agreement shall be in writing, or in the alternative, oral on the record at the time of scheduled hearing;

(b) The compromise agreement shall be mailed to the department unless made on the record;

(c) The compromise agreement must be approved by the department; and

(d) No compromise agreement may provide for a lump sum payment of more than the incurred medical expenses plus sums accrued as compensation or death benefits to the date of the agreement and \$5,000 in unaccrued benefits where the compromise settlement in a claim other than for death benefits involves a dispute as to the extent of permanent disability. Lump sum payments will be considered after approval of the compromise in accordance with s. Ind 80.39.

(e) Compromise agreements which provide for payment of a lump sum into an account in a bank, trust company or other financial institution, Register, September, 1986, No. 369

which account is subject to release as the department directs, will be authorized.

(f) Appropriate structured settlements will be approved.

(g) All written compromise agreements submitted to the department shall contain the following:

The employe has the right to petition the department of industry, labor and human relations to set aside or modify this compromise agreement within one year of its approval by the department. The department may set aside or modify the compromise agreement. The right to request the department to set aside or modify the compromise agreement does not guarantee that the compromise will in fact be reopened.

(2) If the department approves the compromise agreement, an order shall be issued by the department directing payment in accordance with the terms of the compromise agreement. No compromise agreement is valid without an order of the department approving the agreement.

(3) Section 102.16 (1), Stats., places upon the department the responsibility for reviewing, approving, modifying, setting aside and issuing awards on compromise agreements. The action that is taken on any individual claim is dependent upon the facts, circumstances and judgment of the merits of compromise in that specific case. In arriving at a judgment of the merits the department will take into account the following general considerations:

(a) Medical reports, statements or other information submitted by the parties to show that there is a genuine and significant basis for a dispute between the parties.

(b) Estimates of the disability by the physicians, chiropractors or podiatrists which do not vary significantly in estimates of the scheduled or nonscheduled disability will not be presumed to demonstrate a basis for dispute.

(c) The length of time since active treatment has been necessary. The presumption is that the longer the interval the less likely that treatment will be required in the future.

(d) Scientific knowledge or experience indicating that there may be further progression of the disability or that future treatment may be required. Examples of such conditions are: skull fractures with laceration of the dura, sub-capitol fractures of the femur, silicosis and asbestosis.

(e) The length of time since the date of injury.

(f) Any and all other factors that bear on the equity of the proposed compromise.

History: 1-2-56; am., Register, April, 1975, No. 232, eff. 5-1-75; r. and rec. Register, September, 1982, No. 321, eff. 10-1-82; am. (1) (d), cr. (1) (f) and (g) and (3), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.05 Procedure on claim. (1) In cases of disputes in matters coming under the jurisdiction of ch. 102, ss. 101.47, 56.21, or 40.65, Stats., any party to the dispute may apply to the department for relief and the department shall make such order or award as shall be lawful and just under the circumstances.

Ind 80

(2) In all such cases under sub. (1), the party complaining shall file his or her application with the department, along with sufficient copies of the application for service on the adverse parties. The department shall thereupon serve the adverse parties with a copy of the application and the adverse parties shall file an answer to the application with the department within 20 days after the service and likewise serve a copy of the answer on the party making application. The department shall thereupon notify the parties of the time and place of hearing, at least 10 days prior to the hearing. If no answer is mailed by the respondent within 20 days of mailing by the department, the department may issue an order by default, without hearing, in accordance with the application, as provided by s. 102.18 (1) (a), Stats. (s. 102.17, Stats.)

History: 1-2-56; am., Register, April, 1975, No. 232, eff. 5-1-75; am. Register, September, 1982, No. 321, eff. 10-1-82; am. (1), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.06 Parties. The parties to the controversy shall be known as the applicant and the respondent. The party filing the application for relief shall be known as the applicant and an adverse party as the respondent. Any party may appear in person or by an attorney or agent.

History: 1-2-56; am. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.07 Service. All service of papers, unless otherwise directed by the department or by law, may be made by mail and proof of such mailing shall be prima facie proof of such service. Time within which service shall be made shall be the same as in courts of record unless otherwise specified by rule or order of the department.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.08 Amendments. Amendment may be made to the application or answer by letter mailed to the department prior to the date the notice of hearing is mailed. Copies of the letter shall be sent directly to the other parties. The letter shall state reasons for the amendment.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.09 Witness attendance; extension of time and postponement. (1) Upon receipt of the notice of hearing, it is the responsibility of each party to contact any witnesses necessary for that party's case and to make arrangements to have them attend the hearing.

(2) Requests for postponements and continuances shall be considered by the department only if such requests are received within a reasonable time before the date of the hearing.

(3) The department shall grant postponements and continuances only because of extraordinary circumstances. Neither the scheduling problems nor the convenience of the parties shall be considered extraordinary circumstances.

(4) A postponement, continuance or extension of time may not be granted upon the mutual agreement of the parties without the consent of the department.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.10 Stipulations. Parties to a controversy may stipulate the facts in writing, and the department may thereupon make its order or award.

Register, September, 1986, No. 369

Stipulations must set forth in detail the manner of computing the compensation due and must be accompanied by a report from a physician stating the extent of the disability.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.11 Depositions. Depositions may be taken and used in any hearing only in accordance with s. 102.17 (1) (f), Stats. These depositions shall be taken in the same manner as in courts of record. Depositions for the purpose of discovery before the hearing are specifically prohibited.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; am. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.12 Rules of practice; selection of hearing site. (1) (a) The rules of practice before the department shall be such as to secure the facts in as direct and simple a manner as possible.

(b) The examiner may limit testimony to only those matters which are disputed.

(c) The examiner may not allow into the record, either on direct or cross-examination, redundant, irrelevant or repetitive testimony. Hearsay testimony may be admitted at the discretion of the examiner provided such testimony has probative value.

(2) The department may select places for a hearing after considering the geographical location and volume of claims in an area. A list of sites will be furnished upon request to interested parties by the department. From this list, a hearing site shall be selected at the discretion of the department. The department, in determining the site of the hearing, shall consider the following:

(a) The location choice of the applicant;

(b) The location of the office of the treating practitioner or practitioner appointed by the department under the provisions of s. 102.17, or 102.13 (3), Stats.; and

(c) The location where the injury occurred.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.14 Transcripts. (1) Transcripts of testimony taken or proceedings had before the department will be furnished to the applicant or respondent or their attorneys in accordance with the following provisions:

(a) After the commencement of an action to review an order of the commission in circuit court, a copy of the hearing record will be furnished to the plaintiff or other parties upon payment to the department of the reporter's fees set forth in s. 757.57 (5), Stats., and not as set forth in s. 757.57 (2), Stats.

(b) Transcripts of the hearing may not be provided until after commencement of an action in circuit court.

Register, September, 1986, No. 369

Ind 80

(c) Upon proper showing of financial inability to pay for copies of such testimony or proceedings, the department in its discretion will furnish copies of the same on such terms as may be agreed upon.

History: 1-2-56; am. (1) (a) and (b), Register, October, 1965, No. 118, eff. 11-1-65; am. Register, November, 1970, No. 179, eff. 12-1-70; am. (1) (a), Register, April, 1971, No. 184, eff. 5-1-71; r. and recr. (1) (a) and (b), Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.20 License to appear. (1) The following rules shall govern the issuance, suspension, or revocation of licenses to appear before the department in compensation matters under the provisions of s. 102.17 (1) (c), Stats.

(a) Permission to appear at a single hearing may be issued by the department through any examiner upon application evidencing qualifications provided by statute and the department's rules. Such permission may be given to appear in 3 cases before the issuing of license. When appearance has been made in 3 cases, license shall be required, which shall be issued only upon execution and filing with the department of application upon form prescribed by the department.

(b) Before license shall be issued applicant shall have appeared in representation of a party before the department on at least 3 formal hearings.

(c) The following conditions shall operate as grounds for refusal, suspension, or revocation of license.

1. Charging of excessive or unconscionable fees, misrepresentation of clients, dishonesty, fraud, sharp practice, neglect of duty, or other improper conduct in the representation of a party before the department, unless satisfactorily explained or excused by the department on the grounds of subsequent good conduct.

2. Disbarment from the practice of law, or resignation by request of properly constituted authorities, unless there has been subsequent reinstatement and continuance in good standing.

3. Contumacious conduct in hearing, gross discourtesy toward department representatives, or failure to conform to rulings or instructions of the department or its representatives.

4. Intentional or repeated failure to observe provisions of the compensation act or rules of procedure adopted by the department.

5. Any other gross evidence of lack of good moral character, fitness or act of fraud, or serious misconduct.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; am. (1) (intro.), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.21 Reports by practitioners and expert witnesses. (1) Upon the request of the department, any party in interest to a claim under ch. 102, Stats., shall furnish to the department and to all parties in interest copies of all reports by practitioners and expert witnesses in their possession or procurable by them.

(2) In cases involving nonscheduled injuries under s. 102.44 (2) or (3), Stats., any party in interest to a claim under the act shall, upon the request of the department, also furnish to the department and to all parties Register, September, 1986, No. 369

in interest any reports in their possession or reasonably available to them relating to the loss of earning capacity as set forth in s. Ind 80.34.

(3) Any party who does not comply with the request of the department under sub. (1) or (2) shall be barred from presenting the reports or the testimony contained therein at the hearing.

(4) No testimony concerning wage earning impairment shall be received unless the party offering such testimony has notified the department and the other parties in interest of the intent to produce such testimony. The names of the witnesses who are going to testify as to wage earning impairment shall also be furnished to the department and the parties in interest. Such notification shall be given at least 30 days prior to a scheduled hearing.

History: 1-2-56; am. Register, April, 1975, No. 232, eff. 5-1-75; am. (1), cr. (2), (3) and (4), Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.22 Use of physicians' reports as evidence. See s. 102.17 (1) (d), Stats.

(1) Matters stated in such report which would not be competent or material evidence if given as oral testimony shall not be competent or material as prima facie evidence if objection is made, except as corroborated by competent and material oral testimony.

(2) Use of reports shall be permitted in any case in which claim for compensation is made, provided the reporting doctor is available for cross examination.

(3) An applicant shall be informed of the provisions of s. 102.17 (1) (d), Stats., and the department's rules and also that a form for reporting will be supplied to the applicant upon request.

(4) Report shall be submitted to the department upon a form prescribed by the department and shall be verified or certified. The department may require additional or supplementary reports. Upon failure of the applicant to submit such reports within the time specified prior to hearing, all reports previously filed may, in the discretion of the department, be excluded as evidence.

(5) Reports shall be filed with the application for adjustment of claim or as soon thereafter as possible. Reports not filed with the department 15 days prior to the date of hearing shall not be acceptable as evidence except upon good cause for failure so to file, established to the satisfaction of the department.

(6) Simultaneously with the filing of a WC-16B form or a verified report of a vocational expert with the department, a party shall serve copies upon all other parties in interest. Service upon the designated representative of a party shall be deemed service upon the party. Service upon the insurance carrier for an employer shall be deemed service upon the employer. However, if a party does not have a representative, the department may elect to make service upon other parties.

History: 1-2-56; am. (intro. par.), (7) and (4), Register, October, 1965, No. 118, eff. 11-1-65; am. Register, April, 1975, No. 232, eff. 5-1-75; am. (3) and r. and recr. (6), Register, September, 1982, No. 321, eff. 10-1-82; am. (Intro.), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.23 Common insurance of employer and third party. In all cases where compensation becomes payable and the insurance carrier of an em-

Register, September, 1986, No. 369

Ind 80

ployer and of a third party shall be the same, or if there is common control of the insurer of each, the insurance carrier of the employer shall promptly notify the parties in interest and the department of that fact.

History: 1-2-56; am. Register, April, 1976, No. 232, eff. 6-1-76.

Ind 80.24 Statement of employe. When an employe gives a statement signed by him, which in any way concerns his claim, a copy of such statement must be given to the employe. When such statement is taken by a recording device and is not immediately reduced to writing, a copy of the entire statement must be given to the employe or to his attorney within a reasonable time after application for hearing is filed, and the actual recording must be available as an exhibit if formal hearing is held. Failure on the part of the employer or insurance carrier to comply with the above will preclude the use of such statement in any manner in connection with that claim.

History: Cr. Register, March, 1956, No. 3, eff. April 1, 1956; am. Register, October, 1965, No. 118, eff. 11-1-65.

Ind 80.25 Loss of hearing. The department adopts the following standards for the determination and evaluation of noise induced hearing loss, other occupational hearing loss and accidental hearing loss:

(1) **HARMFUL NOISE.** Hearing loss resulting from hazardous noise exposure depends upon several factors, namely, the overall intensity (sound pressure level), the daily exposure, the frequency characteristic of the noise spectrum and the total lifetime exposure. Noise exposure level of 90 decibels or more as measured on the A scale of a sound level meter for 8 hours a day is considered to be harmful.

(2) **MEASUREMENT OF NOISE.** Noise shall be measured with a sound level meter which meets ANSI standard 1983 and shall be measured on the "A" weighted network for "slow response." Noise levels reaching maxima at intervals of one second or less shall be classified as being continuous. The measurement of noise is primarily the function of acoustical engineers and properly trained personnel. Noise should be scientifically measured by properly trained individuals using approved calibrated instruments which at the present time include sound level meters, octave band analyzers and oscilloscopes, the latter particularly for impact-type noises.

(3) **MEASURE OF HEARING ACUITY.** The use of pure tone air and bone conduction audiometry performed under proper testing conditions is recommended for establishing the hearing acuity of workers. The audiometer should be one which meets the specifications of ANSI standard 53.6-1969 (4). The audiometer should be periodically calibrated. Preemployment records should include a satisfactory personal and occupational history as they may pertain to hearing status. Otological examination should be made where indicated.

(4) **FORMULA FOR MEASURING HEARING IMPAIRMENT.** For the purpose of determining the hearing impairment, pure tone air conduction audiometry is used, measuring all frequencies between 500 and 6,000 Hz. This formula uses the average of the 4 speech frequencies of 500, 1,000, 2,000, and 3,000 Hz. Audiometric measurement for these 4 frequencies averaging 30 decibels or less on the ANSI calibration does not constitute any practical hearing impairment. A table for evaluating hearing impair-

Register, September, 1986, No. 369

ment based upon the average readings of these 4 frequencies follows below. No deduction is made for presbycusis.

(5) **DIAGNOSIS AND EVALUATION.** The diagnosis of occupational hearing loss is based upon the occupational and medical history, the results of the otological and audiometric examinations and their evaluation.

(6) **TREATMENT.** There is no known medical or surgical treatment for improving or restoring hearing loss due to hazardous noise exposure. Hearing loss will be improved in non-occupational settings with the use of a hearing aid. Since a hearing aid relieves from the effect of injury the cost is compensable where prescribed by a physician.

(7) **ALLOWANCE FOR TINNITUS.** In addition to the above impairment, if tinnitus has permanently resulted due to work exposure, an allowance of 5% loss of hearing impairment for the affected ear or ears shall be computed.

(8) **HEARING IMPAIRMENT TABLE**

Average Decibel Loss ANSI	Percent of Compensable Hearing Impairment	Average Decibel Loss ANSI	Percent of Compensable Hearing Impairment
30	0.0	62	51.2
31	1.6	63	52.8
32	3.2	64	54.4
33	4.8	65	56.0
34	6.4	66	57.6
35	8.0	67	59.2
36	9.6	68	60.8
37	11.2	69	62.4
38	12.8	70	64.0
39	14.4	71	65.6
40	16.0	72	67.2
41	17.6	73	68.8
42	19.2	74	70.4
43	20.8	75	72.0
44	22.4	76	73.6
45	24.0	77	75.2
46	25.6	78	76.8
47	27.2	79	78.4
48	28.8	80	80.0
49	30.4	81	81.6
50	32.0	82	83.2
51	33.6	83	84.8
52	35.2	84	86.4
53	36.8	85	88.0
54	38.4	86	89.6
55	40.0	87	91.2
56	41.6	88	92.8
57	43.2	89	94.4
58	44.8	90	96.0
59	46.4	91	97.6
60	48.0	92	99.2
61	49.6	93	100.0

(9) **METHOD FOR DETERMINING PERCENT OF HEARING IMPAIRMENT. (a)**
 Obtain for each ear the average hearing level in decibels at the 4 frequencies, 500, 1,000, 2,000 and 3,000 Hz.

Ind 80

(b) See Table for converting to percentage of hearing impairment in each ear.

(c) To determine the percentage of impairment for both ears, multiply the lesser loss by 5, add the greater loss and divide by 6.

Following are examples of the calculation of hearing loss:

A. Mild to Marked Bilateral Hearing Loss

	500 Hz	1,000 Hz	2,000 Hz	3,000 Hz
Right Ear	15	25	45	55
Left Ear	30	45	60	85

1. Calculation of average hearing threshold level:

$$\text{Right Ear: } \frac{15 + 25 + 45 + 55}{4} = \frac{140}{4} = 35 \text{ db} = 8\% \text{ loss}$$

$$\text{Left Ear: } \frac{30 + 45 + 60 + 85}{4} = \frac{220}{4} = 55 \text{ db} = 40\% \text{ loss}$$

2. Calculation of hearing handicap:

$$\begin{array}{l} \text{Smaller number (better ear)} \\ 8\% \times 5 = 40 \end{array}$$

$$\begin{array}{l} \text{Larger number (poorer ear)} \\ 40\% \times 1 = 40 \end{array}$$

$$\text{Total } 80 \div 6 = 13.33\% \text{ loss}$$

Therefore, a person with the hearing threshold levels shown in this audiogram would have a 13.33% hearing handicap.

B. Slight Bilateral Hearing Loss

	500 Hz	1,000 Hz	2,000 Hz	3,000 Hz
Right Ear	15	15	20	30
Left Ear	25	30	35	40

1. Average hearing threshold level:

$$\text{Right Ear: } \frac{15 + 15 + 20 + 30}{4} = \frac{80}{4} = 20 \text{ db} = 0\% \text{ loss}$$

$$\text{Left Ear: } \frac{25 + 30 + 35 + 40}{4} = \frac{130}{4} = 32.5 \text{ db} = 4.8\% \text{ loss}$$

Therefore, the hearing loss is 4.8% left ear

C. Severe to Extreme Bilateral Hearing Loss

	500 Hz	1,000 Hz	2,000 Hz	3,000 Hz
Right Ear	80	90	100	110
Left Ear	75	80	90	95

1. Average hearing threshold level (use 93 db maximal value):

$$\text{Right Ear: } \frac{80 + 90 + 100 + 110}{4} = \frac{380}{4} = 95 \text{ db} = 100\% \text{ loss}$$

$$\text{Left Ear: } \frac{75 + 80 + 90 + 95}{4} = \frac{340}{4} = 85 \text{ db} = 88\% \text{ loss}$$

2. Hearing handicap:

$$\begin{array}{l} \text{Smaller number (better ear)} \\ 88\% \times 5 = 440 \end{array}$$

Register, September, 1986, No. 369

Larger number (poorer ear)
 $100\% \times 1 = 100\%$

Total $540 \div 6 = 90\%$ loss

Therefore, the hearing handicap is 90%.

History: 1-2-56; am. Register, January, 1960, No. 49, eff. 2-1-60; am. Register, October, 1965, No. 118, eff. 11-1-65; r. and rec. Register, September, 1972, No. 201, eff. 10-1-72; am. (1) to (4), r. (5), renum. (6) and (7) to be (5) and (6), cr. (7) and am. (8), Register, September, 1975, No. 237, eff. 10-1-75; am. (intro.), (2) to (4), (6), (8) and (9), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.26 Loss of vision; determination. The following rules for determining loss of visual efficiency shall be applicable to all cases settled after December 1, 1941, irrespective of the date of injury, except that, in the examples for computations of compensation payable and of the percentage of permanent total disability, the computation of the percentage of visual impairment must be applied to the provisions of the worker's compensation act as they existed at the date of the injury.

(1) **MAXIMUM AND MINIMUM LIMITS OF THE PRIMARY COORDINATE FACTORS OF VISION.** In order to determine the various degrees of visual efficiency, (a) normal or maximum, and (b) minimum, limits for each coordinate function must be established; i.e., the 100% point and the 0% point.

(a) *Maximum limits.* The maximum efficiency for each of these is established by existing and accepted standards.

1. **Central visual acuity.** The ability to recognize letters or characters which subtend an angle of 5 minutes, each unit part of which subtends a 1 minute angle at the distance viewed is accepted as standard. Therefore a 20/20 Snellen or A.M.A. and a 14/14 A.M.A. are employed as the maximum acuity of central vision, or 100% acuity for distance vision and near vision respectively.

2. **Field vision.** A visual field having an area which extends from the point of fixation outward 65°, down and out 65°, down 55°, down and in 45°, inward 45°, in and up 45°, upward 45°, and up and out 55° is accepted as 100% industrial visual field efficiency.

3. **Binocular vision.** Maximum binocular vision is present if there is absence of diplopia in all parts of the field of binocular fixation, and if the 2 eyes give useful binocular vision.

(b) *Minimum limits.* The minimum limit, or the 0% of the coordinate functions of vision, is established at that degree of deficiency which reduces vision to a state of industrial uselessness.

1. **Central visual acuity.** The minimum limit of this function is established as the loss of light perception, light perception being qualitative vision. The practical minimum limit of quantitative visual acuity is established as the ability to distinguish form. Experience, experiment and authoritative opinion show that for distance vision 20/200 Snellen or A.M.A. Chart is 80% loss of visual efficiency, 20/380 is 96% loss, and 20/800 is 99.9% loss, and that for near vision 14/141 A.M.A. Reading Card is 80% loss of visual efficiency, 14/266 is 96% loss, and 14/560 is 99.9% loss. Table 1 shows the percentage loss of visual efficiency corresponding to the Snellen and other notations for distant and for near vision, for the measurable range of quantitative visual acuity.

Register, September, 1986, No. 369

2. Field vision. The minimum limit for this function is established as a concentric central contraction of the visual field to 5°. This degree of contraction of the visual field of an eye reduces the visual efficiency to zero.

3. Binocular vision. The minimum limit is established by the presence of diplopia in all parts of the motor field, or by lack of useful binocular vision. This condition constitutes 50% motor field efficiency.

TABLE 1
Percentage of Central Visual Efficiency Corresponding to
Specified Readings for Distant and for Near Vision for
Measurable Range of Quantitative Visual Acuity

A.M.A. Test Chart or Snellen Reading for Distance	A.M.A. Card Reading for Near	Percentage of Visual Efficiency	Percent-age Loss of Vision	A.M.A. Test Chart or Snellen Reading for Distance	A.M.A. Card Reading for Near	Percentage of Visual Efficiency	Percent-age Loss of Vision
20/20	14/14	100.0	0.0	20/122.5	—	40.0	60.0
20/15	14/17.5	95.7	4.3	20/137.3	—	35.0	65.0
20/25.7	—	95.0	5.0	20/140	14/98	34.2	65.8
20/30	14/21	91.5	8.5	20/155	—	30.0	70.0
20/32.1	—	90.0	10.0	20/160	14/112	28.6	71.4
20/35	14/24.5	87.5	12.5	20/175	—	25.0	75.0
20/38.4	—	85.0	15.0	20/180	14/126	23.9	76.1
20/40	14/28	83.6	16.4	20/200	14/141	20.0	80.0
20/44.9	14/31.5	80.0	20.0	20/220	14/154	16.7	83.3
20/50	14/35	76.5	23.5	20/240	14/168	14.0	86.0
20/52.1	—	75.0	25.0	—	14/178	12.3	87.7
20/60	14/42	69.9	30.1	20/260	14/182	11.7	88.3
20/60.2	—	70.0	30.0	20/280	14/196	9.7	90.3
20/68.2	—	65.0	35.0	20/300	14/210	8.2	91.8
20/70	14/49	64.0	36.0	20/320	14/224	6.8	93.2
20/77.5	—	60.0	40.0	20/340	14/238	5.7	94.3
20/80	14/56	58.5	41.5	20/360	14/252	4.8	95.2
20/86.8	—	55.0	45.0	20/380	14/266	4.0	96.0
20/90	14/63	53.4	46.6	20/400	14/280	3.3	96.7
20/97.5	—	50.0	50.0	20/450	14/315	2.1	97.9
20/100	14/70	48.9	51.1	20/500	14/350	1.4	98.6
20/109.4	—	45.0	55.0	20/600	14/420	0.6	99.4
20/120	14/84	40.9	59.1	20/700	14/490	0.3	99.7
—	14/89	38.4	61.6	20/800	14/560	0.1	99.9

(c) Where distance vision is less than 20/200 and the A.M.A. Chart is used, readings will be at 10 feet. The percentage of efficiency and loss may be obtained from this table by comparison with corresponding readings on the basis of 20 feet, interpolating between readings if necessary. In view of the lack of uniform standards among the various near vision charts, readings for near vision, within the range of vision covered thereby, are to be according to the American Medical Association Rating Reading Card of 1932.

(2) MEASUREMENT OF CORRDINATE FACTORS OF VISION AND THE COMPUTATION OF THEIR PARTIAL LOSS.

(a) *Central visual acuity.* 1. Central visual acuity shall be measured both for distance and for near, each eye being measured separately, both with and without correction. Where the purpose of the computation is to determine loss of vision resulting from injury, if correction is needed for a presbyopia due to age or for some other condition clearly not due to the injury (see section on miscellaneous regulations), the central visual acuity "without correction", as the term is used herein, shall be measured with a correction applied for such presbyopia or other preexisting condition but without correction for any condition which may have resulted from the injury. The central visual acuity "with correction" shall be measured with correction applied for all conditions present.

2. The percentage of central visual acuity efficiency of the eye for distance vision shall be based on the best percentage of central visual acuity between the percentage of central visual acuity with and without correction. However, in no case shall such subtraction for glasses be taken at more than 25%, or less than 5%, of total central visual acuity efficiency. If a subtraction of 5%, however, reduces the percentage of central visual acuity efficiency below that obtainable without correction, the percentage obtainable without correction shall be adopted unless correction is nevertheless necessary to prevent eye strain or for other reasons.

3. The percentage of central visual acuity efficiency of the eye for near vision shall be based on a similar computation from the near vision readings, with and without correction.

4. The percentage of central visual acuity efficiency of the eye in question shall be the result of the weighted values assigned to these 2 percentages for distance and for near. A onefold value is assigned to distance vision and a twofold value to near vision. Thus, if the central visual efficiency for distance is 70% and that for near is 40%, the percentage of central visual efficiency for the eye in question would be:

Distance (taken once)	70%
Near (taken twice)	40
	<u>40</u>
	$150 \div 3 = 50\%$ central visual acuity efficiency

5. The Snellen test letters or characters as published by the Committee on Compensation for Eye Injuries of the American Medical Association and designated "Industrial Vision Test Charts" subtend a 5 minute angle, and their component parts a 1 minute angle. These test letters or the equivalent are to be used at an examining distance of 20 feet for distant vision (except as otherwise noted on the Chart where vision is very poor), and of 14 inches for near vision, from the patient. The illumination is to be not less than three foot candles, nor more than ten foot candles on the surface of the chart.

6. Table 1 shows the percentage of central visual acuity efficiency and the percentage loss of such efficiency, both for distance and for near, for partial loss between 100% and zero vision for either eye.

(b) *Field vision.* 1. The extent of the field of vision shall be determined by the use of the usual perimetric test methods, a white target being employed which subtends a 1 degree angle under illumination of not less than three foot candles, and the result plotted on the industrial visual

field chart. The readings should be taken, if possible, without restriction to the field covered by the correction worn.

2. The amount of radial contraction in the 8 principal meridians shall be determined. The sum of the degrees of field vision remaining on these meridians, divided by 420 (the sum of the 8 principal radii of the industrial visual field) will give the visual field efficiency of one eye in per cent, subject to the proviso stated in the section on "Minimum Limits" that a concentric central contraction of the field to a diameter of 5 degrees reduces the visual efficiency to zero.

3. Where the impairment of field is irregular and not fairly disclosed by the 8 radii, the impaired area should be sketched upon the diagram on the report blank, and the computation be based on a greater number of radii, or otherwise, as may be necessary to a fair determination.

(c) *Binocular vision.* 1. Binocular vision shall be measured in all parts of the motor field, recognized methods being used for testing. It shall be measured with any useful correction applied.

2. Diplopia may involve the field of binocular fixation entirely or partially. When diplopia is present, this shall be plotted on the industrial motor field chart. This chart is divided into 20 rectangles, 4 by 5 degrees in size. The partial loss due to diplopia is that proportional area which shows diplopia as indicated on the plotted chart compared with the entire motor field area.

3. When diplopia involves the entire motor field, causing an irremediable diplopia, or when there is absence of useful binocular vision due to lack of accommodation or other reason, the loss of coordinate visual efficiency is equal to 50% loss of the vision existing in one eye (ordinarily the injured, or the more seriously injured, eye); and when the diplopia is partial, the loss in visual efficiency shall be proportional and based on the efficiency factor value of one eye as stated in table 2. When useful correction is applied to relieve diplopia, 5% of total motor field efficiency of one eye shall be deducted from the percent of such efficiency obtainable with the correction. A correction which does not improve motor field efficiency by at least 5% of total will not ordinarily be considered useful.

TABLE 2

Loss in Binocular Vision					
No loss	equals	100.0%	Motor	Field	Efficiency
1/20	"	99.0	"	"	"
2/20	"	97.7	"	"	"
3/20	"	96.3	"	"	"
4/20	"	95.0	"	"	"
5/20	"	93.7	"	"	"
6/20	"	92.3	"	"	"
7/20	"	90.7	"	"	"
8/20	"	89.0	"	"	"
9/20	"	87.3	"	"	"
10/20	"	85.7	"	"	"
11/20	"	83.7	"	"	"
12/20	"	81.7	"	"	"
13/20	"	79.7	"	"	"
14/20	"	77.3	"	"	"
15/20	"	75.0	"	"	"
16/20	"	72.7	"	"	"
17/20	"	69.7	"	"	"
18/20	"	66.0	"	"	"
19/20	"	61.0	"	"	"
20/20	"	50.0	"	"	"

(3) INDUSTRIAL VISUAL EFFICIENCY OF ONE EYE. The industrial visual efficiency of one eye is determined by obtaining the product of the computed coordinate efficiency values of central visual acuity, of field of vision, and of binocular vision. Thus, if central visual acuity efficiency is 50%, visual field efficiency is 80% and the binocular vision efficiency is 100%, the resultant visual efficiency of the eye will be $50 \times 80 \times 100 = 40\%$. Should useful binocular vision be absent in all of the motor field so that binocular efficiency is reduced to 50%, the visual efficiency would be $50 \times 80 \times 50 = 20\%$.

(4) COMPUTATION OF COMPENSATION FOR IMPAIRMENT OF VISION. When the percentage of industrial visual efficiency of each eye has been thus determined, it is subtracted from 100%. The difference represents the percentage impairment of each eye for industrial use. These percentages are applied directly to the specific schedules of the Worker's Compensation Act.

(5) TYPES OF OCULAR INJURY NOT INCLUDED IN THE DISTURBANCE OF COORDINATE FACTORS. Certain types of ocular disturbance are not included in the foregoing computations and these may result in disabilities, the value of which cannot be computed by any scale as yet scientifically possible of deduction. Such are disturbances of accommodation not previously provided for in these rules, of color vision, of adaptation to light and dark, metamorphopsia, entropion, ectropion, lagophthalmos, epiphora, and muscle disturbances not included under diplopia. For such disabilities additional compensation shall be awarded, but in no case shall such additional award make the total compensation for loss in industrial visual efficiency greater than that provided by law for total permanent disability.

(6) MISCELLANEOUS RULES. (a) Compensation shall not be computed until all adequate and reasonable operations and treatment known to medical science have been attempted to correct the defect. Further,

before there shall be made the final examination on which compensation is to be computed, at least 3 months shall have elapsed after the last trace of visible inflammation has disappeared, except in cases of disturbance of extrinsic ocular muscles, optic nerve atrophy, injury of the retina, sympathetic ophthalmia, and traumatic cataract; in such cases, at least 12 months and preferably not more than 16 months shall intervene before the examination shall be made on which final compensation is to be computed. In case the injury is one which may cause cataract, optic atrophy, disturbance of the retina, or other conditions, which may further impair vision after the time of the final examination, note thereof should be made by the examining physician on his report.

(b) In cases of additional loss in visual efficiency, when it is known that there was present a preexisting subnormal vision, compensation shall be based on the loss incurred as a result of eye injury or occupational condition specifically responsible for the additional loss. In case there exists no record or no adequate and positive evidence of preexisting subnormal vision, it shall be assumed that the visual efficiency prior to any injury was 100%. In order to effect the above purpose, the examining physician should carefully distinguish, in regard to each of the coordinate factors, between impairments resulting from the injury and impairments not so resulting as established by the type of proof here stated. Such other impairments should, however, be also reported, separately. Computation must occasionally also be made of impairment of vision not resulting from the injury, as, for instance, for the purpose of computing additional indemnity due under the provisions of the Worker's Compensation Act on account of preexisting disability of one or both eyes.

Note I—Example of computation covering partial disability to a single eye

A. Central Visual Acuity:

Distance—Reading of 20/32.1 with glasses equals visual efficiency of	90.0%
Reading of 20/200 without glasses equals visual efficiency of	20.0%
Difference	70.0%
Rated efficiency is 90.0% minus 25% (Because one-half of 70.0% exceeds 25) or 65.0%	
Near—Reading of 14/21 with glasses equals visual efficiency of	91.5%
Reading of 14/35 without glasses (except that correction is applied for presbyopia due to age) equals visual efficiency of	76.5%
Difference	15.0%
Rated efficiency is 91.5% minus 7.5% (which is one-half of 15%) or 84.0%	
Final Central Visual Acuity Efficiency is:	
65.0 + 84.0 + 84.0 = 233.0 ÷ 3 = 77.7%	

B. Field Vision:

Sum of eight principal meridians of the field remaining divided by 420 is:

40
50
50
50
40
40
40
40
40
40
420 350 = 83.3%

C. Binocular Vision:

Diplopia in 3 rectangles (3/20) is 96.3% motor field efficiency.

D. Industrial Visual Efficiency of the one eye is:

77.7% x 83.3% x 96.3% or 62.3%

E. Impairment of the one eye for industrial use is:

100.0% — 62.3% = 37.7%

F. Compensation payable is:

Total impairment of one eye 250 weeks. 250 weeks x 37.7% = 94.25 weeks

Note II—Example of computation covering partial disability to both eyes

1. Left Eye is 62.3% efficient, see Example I.

2. Right Eye:

A. Central Visual Acuity:

Distance—Reading of 20/30 with correction equals visual efficiency of.....	91.5%
Reading of 20/35 without glasses equals visual efficiency of.....	87.5%
Difference.....	4.0%

Rated efficiency is the vision without correction (because correction gives improvement of less than the 5% minimum allowance for glasses, and is not necessary to prevent eye strain, etc.) 87.5%.

Near— Reading of 14/14 with glasses equals visual efficiency of	100.0%
Reading of 14/21 without glasses equals visual efficiency of	91.5%
Difference.....	8.5%

Rated efficiency is 100.0% minus 5% (because 5% is the minimum allowance for glasses) or 95.0%

Final Central Visual Acuity Efficiency is:

$$87.5\% + 95\% + 95\% = 277.5 \div 3 = 92.5\%$$

B. Field vision is 100%

C. Binocular vision is 100%

D. Industrial visual efficiency of the right eye is:

$$92.5\% \times 100\% \times 100\% \text{ or } 92.5\%$$

E. Impairment of right eye for industrial use is:

$$100.0\% - 92.5\% = 7.5\%$$

3. Compensation payable is:

Left eye (Example I):	94.25 weeks
Right eye: 250 weeks x 7.5% = 18.75 + 200% multiple	56.25 weeks
Total	150.5 weeks

Note III—Example of compensation covering enucleation of one eye and partial disability of the other eye

1. Left eye is 35.28% impaired (77.7% x 83.3% = 64.72%; 100% - 64.72% = 35.28%, as allowance for binocular vision is inapplicable when the other eye is enucleated or blind), in indemnity payable for 88.2 weeks

2. Right eye is enucleated, which, results in indemnity payable for 275 weeks

3. Total payable: 88.2 weeks x 3 (multiple injury) = 264.6 + 275 = 539.6 weeks

The number of weeks indemnity indicated as payable for impairment of vision or for enucleation is in addition to indemnity for temporary disability. All results are subject to the limitation that the total amount of indemnity payable, including that for temporary disability, shall not exceed the indemnity which would be payable for permanent total disability. The statutory and legal rules applicable to the determination of additional compensation payable out of the special state fund on account of preexisting disabilities are not here stated.

Ind 80.27 Forms. A sample copy of all forms referred to in these rules may be obtained upon a request to the Worker's Compensation Division, Department of Industry, Labor and Human Relations, Post Office Box 7901, Madison, WI 53707.

History: Cr. Register, October, 1957, No. 22, eff. 11-1-57; am. (1), Register, October, 1965, No. 118, eff. 12-1-65; am. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.29 Value of room or meals. For the purpose of determining the value of lodging and meals for wage purposes under ch. 102, Stats., the allowance provided under ch. Ind 72 shall apply.

History: Cr. Register, October, 1960, No. 58, eff. 11-1-60; am. (1) (a) and (b), Register, October, 1963, No. 94, eff. 11-1-63; r. and recr. Register, January, 1967, No. 133, eff. 2-1-67;

Register, September, 1986, No. 369

Ind 80

am. Register, November, 1970, No. 179, eff. 12-1-70; r. and recr. Register, April, 1975, No. 232, eff. 5-1-75.

Ind 80.30 Average weekly earnings for members of volunteer fire companies or fire departments. The maximum average weekly earnings under the provisions of s. 102.11, Stats., which are in effect on the date of injury shall be used in computing the amount of compensation payable to an employe as defined by s. 102.07 (7), Stats., except as specific showing may be made in an individual case that such wage is not proper.

History: Cr. Register, June, 1961, No. 66, eff. 7-1-61.

Ind 80.31 Procedure and claims under ch. 40, Stats. The department shall observe the same rules and procedures and may use the same forms in processing and determining claims made under s. 40.65, Stats. as are used under ch. 102, Stats.

History: Cr. Register, October, 1965, No. 118, eff. 11-1-65; am. Register, April, 1975, No. 232, eff. 5-1-75; am. Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.32 Permanent disabilities. Percentages of loss of use for losses of motion as compared with amputations at the involved joints.

(1) The disabilities set forth in this section are the minimums for the described conditions. However, findings of additional disabling elements shall result in an estimate higher than the minimum. The minimum also assumes that the member, the back, etc., was previously without disability. Appropriate reduction shall be made for any preexisting disability.

Note: An example would be where in addition to a described loss of motion, pain and circulatory disturbance further limits the use of an arm or a leg. The removal of a semi-lunar cartilage in a knee with less than a good result would call for an estimate higher than 5% loss of use of the leg at the knee. The same principle would apply to laminectomies or spinal fusions. The schedule of minimum disabilities contained in this section was adopted upon the advice of the orthopedic advisory committee.

(2) *Amputations, upper or lower extremities*

At functional level	Equivalent to amputation at midpoint
Stump unsuitable to accommodate prosthesis	Equivalent to amputation at next most proximal joint
Stump not functional	Grade upward

All ranges of joint motion or degrees of ankylosis not listed below are to be interpolated from existing percent of disability listed.

(3) *Hip*

Ankylosis, optimum position, generally 15° to 30° flexion	50%
Mal position	Grade upward

To compute disabilities for loss of motion relate % of motion lost to average range

Register, September, 1986, No. 369

Shortening of leg (no posterior or lateral angulation)

No disability for shortening less than 3/4 inch

3/4 inch	5%
1 inch	7%
1-1/2 inches	14%
2 inches	22%

Greater than 2 inches of shortening results in greater proportionate rating than above

Prosthesis Minimum of 50%

(4) *Knee*

Ankylosis, optimum position, 170° 40%

Remaining range, 180° - 135° 25%

Remaining range, 180° - 90° 10%

Prosthesis 40%

Removal of patella To be based on functional impairment

Semi lunar cartilage removal
Excellent to good result 5%

(5) *Ankle*

Total ankylosis, optimum position 40%

Ankylosis ankle joint 30%

Subtalar ankylosis 15%

(6) *Toes*

Ankylosis great toe at proximal joint 50%

All other toes at proximal 40%

Ankylosis great toe at distal joint 15%

All other toes at any interphalangeal joint If no deformity, no disability

Ind 80

Mal position On merits
 Loss of motion No disability

(7) *Shoulder*

Ankylosis, optimum
 position, scapula free 55%

In mal position Grade upward

Limitation of active
 elevation in flexion and
 abduction to 45° but
 otherwise normal 30%

Limitation of active
 elevation in flexion and
 abduction to 90° but
 otherwise normal 20%

Limitation of active
 elevation in flexion and
 abduction to 135° but
 otherwise normal 5%

(8) *Elbow*

Ankylosis, optimum
 position, 45° angle

 With radio-ulnar
 motion destroyed 60%

 With radio-ulnar
 motion intact 45%

 Rotational ankylosis in
 neutral position 20%

 Any mal position Grade upward

 Limitation of motion
 elbow joint,
 radio-ulnar motion
 unaffected

 Remaining range
 180° - 135° 35%

 Remaining range
 135° - 90° 20%

 Remaining range
 180° - 90° 10%

 Rotation at elbow joint

 Neutral to full
 pronation 10%

Neutral to full supination	15%
(9) Wrist	
Ankylosis, optimum position 30° dorsiflexion	30%
Mal position	Grade upward
(10) Complete Sensory Loss	
Any digit	50% Lesser involvement to be graded appropriately - 35% for palmar, 15% for dorsal surface
Total median sensory loss to hand	65-75%
Total ulnar sensory loss to hand	25%
Ulnar nerve paralysis	
Above elbow, sensory involvement	50% at wrist
Below elbow, motor and sensory involvement	45-50% at wrist
Below elbow, motor involvement only	35-45% at wrist
Below elbow, sensory involvement only	5-10% at wrist
Median nerve paralysis	
Above elbow, motor and sensory involvement	55-65% at wrist
Thenar paralysis with sensory loss	40-50% at wrist
Radial nerve paralysis	
Complete loss of extension, elbow wrist and fingers	45-55% at shoulder
Complete loss of extension, wrist and fingers	45-55% at wrist
Paroneal nerve paralysis	
At level below knee	25-30% at knee

Ind 80

(11) *Back*

Laminectomy, no undue symptomatic complaints or any objective findings	5%
Spinal fusion L5-S1, good results	10%
Spinal fusion L4-S1, good results	10%
Cervical fusion, successful	5%
Compression fractures of vertebrae of such degree to cause permanent disability may be rated 5% and graded upward	

(12) *Fingers*

(a) Complete ankylosis

Thumb	Mid-position	Complete Extension
Distal joint only	25%	35%
Proximal joint only	15%	20%
Distal and proximal joints	35%	65%
Distal, proximal and carpometacarpal joints	85%	100%

Fingers

Distal joint only	25%	35%
Middle joint only	75%	85%
Proximal joint only	40%	50%
Distal and middle joints	85%	100%
Distal, middle and proximal joints	100%	100%

(b) Loss of Motion

Fingers	Loss of Flexion	Loss of Use	Loss of Extension	Loss of Use
Distal joint only	10%	1%	10%	2%
	20%	2%	20%	4%
	30%	3%	30%	6%
	40%	5%	40%	8%
	50%	10%	50%	15%
	60%	15%	60%	20%
	70%	20%	70%	30%
	80%	25%	80%	40%
		100%	60%	
Middle joint only	10%	5%	10%	2½%
	20%	10%	20%	5%
	30%	15%	30%	10%
	40%	25%	40%	15%
	50%	40%	50%	30%

INDUSTRY, LABOR AND HUMAN RELATIONS 24-1

Ind 80

	60% - 50%	60% - 50%
	70% - 60%	70% - 70%
	80% - 70%	80% - 90%
		100% - 100%
Proximal joint only	10% - 5%	10% - 2½%
	20% - 10%	20% - 5%
	30% - 15%	30% - 15%
	40% - 20%	40% - 20%
	50% - 25%	50% - 25%
	60% - 30%	60% - 40%
	70% - 35%	70% - 75%
	80% - 40%	80% - 85%
		90% - 100%

(13) Kidney

Loss of one kidney 5% permanent total disability.

(14) Loss of Smell

Total loss of sense of smell 2-1/2% permanent total disability.

History: Cr. Register, October, 1965, No. 118, eff. 11-1-65; r. and recr. Register, April, 1975, No. 232, eff. 5-1-75; r. and recr. (1), Register, September, 1982, No. 321, eff. 10-1-82; cr. (13) and (14), Register, September, 1986, eff. 369, eff. 10-1-86.

Ind 80.33 Permanent disabilities; fingertip amputations. In estimating permanent disability as a result of fingertip amputations, amputation of the distal one-third or less shall be considered the equivalent of 45% loss of use of the distal phalanx, amputation of not more than the distal two-thirds but more than the distal one-third shall be considered the equivalent of 80% loss of use of the distal phalanx, and amputation of more than the distal two-thirds shall be considered as 100% loss of the distal phalanx, provided there is not added disability as a result of malformed nail or tissue. In no case shall the allowance be greater than it would have been for amputation of the entire distal phalanx.

History: Cr. Register, October, 1965, No. 118, eff. 11-1-65; am. Register, November, 1970, No. 179, eff. 12-1-70.

Ind 80.34 Loss of earning capacity. (1) Any department determinations as to loss of earning capacity for injuries arising under s. 102.44 (2) and (3), Stats., shall take into account the effect of the injured employe's permanent physical and mental limitations resulting from the injury upon present and potential earnings in view of the following factors:

- (a) Age;
- (b) Education;
- (c) Training;
- (d) Previous work experience;
- (e) Previous earnings;
- (f) Present occupation and earnings;
- (g) Likelihood of future suitable occupational change;
- (h) Efforts to obtain suitable employment;

Register, September, 1986, No. 369

(i) Willingness to make reasonable change in a residence to secure suitable employment;

(j) Success of and willingness to participate in reasonable physical and vocational rehabilitation program; and

(k) Other pertinent evidence.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.38 Assessment of administrative expenses. (1) For purposes of determining assessment payments under s. 102.75, Stats., "indemnity paid or payable" excludes:

(a) Payments made for medical, hospital or related expenses.

(b) Additional payments for penalties and increased compensation.

(c) Payments made into the work injury supplemental benefit fund.

(d) Payments made from the work injury supplemental benefit fund other than those paid under s. 102.44 (1), Stats.

(e) Payments made under ss. 102.475, 102.35, and 102.18 (1) (bp), Stats.

(f) Payments made under statutory provisions other than those of ch. 102, Stats.

(g) Payments made pursuant to a compromise agreement to the extent that they cannot be determined to be indemnity paid or payable under sub. (2).

(2) For purposes of determining assessment payments under s. 102.75, Stats., "indemnity paid or payable" includes:

(a) Supplemental benefit payments made under s. 102.44 (1), Stats., from the work injury supplemental benefit fund if they were determined to be payable prior to the time the case is initially closed.

(b) Death benefits paid under ss. 102.46, 102.47, 102.48 and 102.50, Stats.

(c) Portions of social security benefits, sick leave, holiday pay, salary and other wage continuation payments which offset or are paid in lieu of the daily or weekly indemnity due.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84.

Ind 80.39 Advance payment of unaccrued compensation. (1) The department may order partial or full payment of unaccrued compensation to an employe or his or her dependents pursuant to s. 102.32 (6), Stats., upon consideration of the following factors:

(a) The length of time since the injury;

(b) The total income of the employe or the dependent;

(c) The income of others in the employe's or the dependent's household;

(d) The age of the employe or the dependent;

Register, September, 1986, No. 369

- (e) The other available assets of the employe or the dependent;
- (f) The loss of benefits because of interest credit due to self-insured employer or insurance carrier;
- (g) The purpose for which the advancement is requested;
- (h) The other financial obligations of the employe or the dependent;
- (i) The employment status of the employe or the dependent;
- (j) If the advancement is requested for the purchase of real estate, the cost of the real estate and availability of other necessary financing for the real estate;
- (k) The employe's or the dependent's previous experience in and likelihood of success in a proposed business venture;
- (l) The probable income and security of any proposed investment; and
- (m) Other information indicating whether an advancement is in the best interest of the applicant.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.40 Assessment for unpaid claims of insolvent self-insurer. If an employer currently or formerly exempted from the duty to insure by order of the department under s. 102.28 (7) (b) is unable to pay any award and if judgement against such employer is returned unsatisfied, the department shall determine payment into the fund established by s. 102.28 (8), Stats., as follows:

- (1) The department shall prepare an estimate of the payments that should be made by the insolvent exempt employer for a period of one year. If the department elects to retain an insurance carrier or insurance service organization under 102.28 (7), Stats., the department will prepare an estimate of the charges that will be made by such carrier or organization to process, investigate and pay such claims for the same one year period. The sum of these 2 amounts shall be divided by the total number of employers exempted under s. 102.28 (2), Stats.
- (2) The department shall assess and order payment within thirty days by each exempt employer the amount determined under sub. (1) to the state treasurer for deposit in the fund created by s. 102.28 (8), Stats.
- (3) The department shall prepare an estimate of the total remaining liability of the insolvent exempt employer and an estimate of the amount that may be recovered from that employer, its receiver or trustee in bankruptcy. Such estimates shall be communicated to all exempt employers.
- (4) At least annually following the original order the department shall estimate the amount due and payable during the following year and the charges expected from any insurance carrier or claims service for such year and assess and order payment by each exempt employer its pro rata share determined as provided by s. 102.28 (7) (b), Stats.
- (5) At the time orders are issued under sub. (4) the department shall prepare an estimate of the remaining liability of the insolvent exempt employer and the amount that may reasonably be expected to be recov-

Register, September, 1986, No. 369

ered from such employer, its receiver or trustee in bankruptcy. Such estimates will be communicated to all exempt employers.

(6) All money due and payable to injured employes which remain unpaid shall be considered money payable during the following year in making estimates.

(7) All money recovered by the attorney general and paid into the fund shall be used in the payment of unpaid claims and shall be taken into account in making estimates and assessments.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.41 Computation of monthly salary and reimbursement to retirement fund under s. 66.191. (1) Fringe benefits shall not be included in the computation of salary, earnings or wages under s. 66.191, Stats., unless such benefits are income for Wisconsin income tax purposes.

(2) An eligible employe under s. 66.191, Stats., shall file with the department before an award is entered, as provided in s. 66.191, Stats., a waiver of disability annuity payments which may be due under s. 40.63, Stats., and further shall consent to reimbursement to the Wisconsin retirement fund of all disability benefits recovered under the provisions of s. 40.63, Stats.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.42 Vocational rehabilitation; reporting requirement. In order to determine whether or not an employe should be referred to the division of vocational rehabilitation for services, the self-insured employer or insurance carrier shall notify the department whenever temporary total disability will exceed 13 weeks. This report shall be made within 13 weeks from the date of the initial disability or when such disability can be determined, whichever is earlier, and shall include a current practitioner's report.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.43 Fees and costs. Section 102.26, Stats., provides for a maximum attorney's fee of 20% of the amount in dispute. Section 102.26 (3), Stats., places upon the department the responsibilities for fixing the fee and providing for the direct payment of the fee. In the exercise of this responsibility, the department shall take into account the following considerations:

(1) The department shall balance the need to preserve the maximum amount of benefits for the injured employe and the need for fees which are sufficient to insure adequate representation for claimants under ch. 102, Stats.

(2) Fees shall not be allowed on medical expenses to the extent that other sources, such as group insurance, are available to pay such expenses.

(3) Fees for permanent total disability shall not be allowed on compensation awards due beyond 500 weeks.

(4) The existence of a dispute under s. 102.26 (2), Stats., is dependent upon a disagreement after the employer or insurer has had adequate time and information to take a position on liability. Neither the holding of a hearing nor the filing of an application for a hearing alone may determine

Register, September, 1986, No. 369

the existence of a dispute. However, a finding that a dispute exists shall not be precluded by an employer's or insurer's purposeful inactivity on the issue of liability.

(5) Where representation is the result of the representative's employment by an insurance carrier, an employer, a union, a social service agency or a public agency, the representative may not charge a fee on a contingency basis.

(6) Where there has been successive representation by various representatives, the division of fees by the department shall take into account the relative value of the services performed by each representative, any concessions of disability, offers of settlement and other matters.

(7) Where a claimant appears by an attorney of record any fee shall be payable to such attorney regardless of the cooperation or involvement of agents or other non-attorneys. The division of such fee with agents or other non-attorneys shall be at the discretion of the attorney of record. If there is disagreement among successive attorneys the department will make appropriate apportionment of any or all fees for services.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; cr. (7), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.44 Witness fees and travel reimbursement. The fees and travel reimbursement of witnesses and interpreters for attending a hearing before an examiner of the department, shall be the statewide rate currently paid under s. 885.05 (1) (bn), Stats., notwithstanding any local county variations.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.45 Renewed period of temporary total disability. History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; r. Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.46 Contribution to support of unestranged surviving parent. In assessing support under s. 102.48, Stats., the payment of room and board by a child to his or her parent shall not be considered as contribution to support of the parent.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.47 Medical release of employe for restricted work in the healing period. Even though an employe could return to a restricted type of work during the healing period, unless suitable employment within the physical and mental limitations of the employe is furnished by the employer or some other employer, compensation for temporary disability shall continue during the healing period.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.48 Reassignment of death benefits. When a spouse who is entitled to death benefits remarries, the department shall reassign the death benefits to the children designated in ss. 102.51 (1) and 102.49, Stats., unless a showing is made that undue hardship would result for the spouse because of the reassignment.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.49 Vocational rehabilitation benefits. (1) The primary purpose of vocational rehabilitation benefits is to provide a method to restore an

Register, September, 1986, No. 369

injured worker as nearly as possible to the worker's preinjury earning capacity and potential.

(2) The determination of eligibility for vocational rehabilitation training and whether a person is a suitable subject for training is the responsibility of the vocational rehabilitation division of the department of health and social services.

(3) The determination of whether an industrial injury creates a necessity for vocational rehabilitation training is the responsibility of the worker's compensation division of the department. The division shall utilize the following presumptions:

(a) If an injury causes permanent disability entitling an employe to compensation for permanent disability of 100 or more weeks, it shall be presumed that the injury necessitates vocational rehabilitation training unless a showing is made to the contrary.

(b) If an injury causes no permanent disability or a permanent disability entitling an employe to less than 100 weeks of compensation for permanent disability, it shall be presumed that the injury did not necessitate vocational rehabilitation training unless a showing is made to the contrary.

(4) Extension of vocational rehabilitation benefits beyond 40 weeks may not be authorized if the purpose of such further training is primarily to improve upon preinjury earning capacity rather than restoring it.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.50 Computation of permanent disabilities. (1) In computing permanent partial disabilities, the number of weeks attributable to more distal disabilities shall be deducted from the number of weeks in the schedule for more proximal disabilities before applying the percentage of disability for the more proximal injury, except that:

(a) Such a deduction shall not include multiple injury factors under s. 102.53, Stats.; and

(b) Such a deduction shall include preexisting disabilities.

(2) The number of weeks attributable to scheduled disabilities shall be deducted from 1,000 weeks before computing the number of weeks due for a non-scheduled disability resulting from the same injury. This deduction shall not include multiple injury factors under s. 102.53, Stats.

(3) Multiple injury factors under 102.53, Stats., do not apply to compensation for disfigurement under s. 102.56, Stats.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.51 Computation of weekly wage. Pursuant to s. 102.11, Stats. (1) In determining daily earnings, if the number of hours a full-time employe worked had been either decreased or increased for a period of at least 90 total days prior to the injury, then this revised schedule worked during those 90 days shall be considered to be normal full-time employment.

(2) When an employe furnishes his or her truck to the employer and is paid by the employer in gross to include operating expenses, one-third of Register, September, 1986, No. 369

that gross sum is considered as wages except as a showing is made to the contrary.

(3) Prisoners injured in prison industries are considered to be earning the maximum average weekly earnings under the provisions of s. 102.11, Stats., except as a showing is made to the contrary.

(4) The 30 hour minimum workweek under s. 102.11 (1) (f), Stats., does not apply to a part-time employe unless the employe is a member of a regularly scheduled class of part-time employes. In all other cases part-time employment is on the basis of normal full-time employment in such job. However, this subsection does not apply to part-time employes defined in s. 102.11 (1) (f), Stats., who restrict availability on the labor market. As to the employes so defined, those wages will be expanded to the normal part-time or full-time wages unless the employer or insurance company complies with s. Ind 80.02 (2) (a).

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.60 Exemption from duty to insure (self-insurance). (1) DEFINITIONS. In this section:

(a) "Self-insurance" means exemption from the duty to insure, as provided in s. 102.28 (2) (b), Stats.

(b) "Full-insurance" means the insurance of all liability by one policy, as required in s. 102.31 (1) (a), Stats.

(c) "Divided-insurance" means consent to the issuance of two or more policies, as provided in s. 102.31 (1), Stats.

(d) "Partial-insurance" means self-insurance of a part of the liability and consent to the issuance of one or more policies on the remainder of the liability, as provided in ss. 102.28 (2) (b) and 102.31 (1), Stats.

(e) "Excess insurance" means catastrophic insurance for employers granted self-insurance, and is not full-insurance, self-insurance, partial-insurance or divided-insurance.

(2) **EXCESS INSURANCE.** Excess insurance may be carried without further order of the department.

(3) **REQUIREMENTS FOR THE STATE AND ITS POLITICAL SUBDIVISIONS.**

(a) The state and its political subdivisions may self-insure without further order of the department, if they are not partially-insured or fully-insured, or to the extent they are not partially-insured by written order under s. 102.31 (1), Stats., under one or more policies, and if they agree to report faithfully all compensable injuries and agree to comply with ch. 102, Stats., and the rules of the department. However, any such employer desiring partial-insurance or divided-insurance must submit an application to the department and be given special consent as described in s. Ind 80.61.

(b) 1. Any political subdivision of the state electing to self-insure shall notify the department in writing of such election before undertaking self-insurance. Political subdivisions of the state that were self-insured on July 1, 1984, need not give notice of such election until January 1, 1987.

2. The notice of election to self-insure shall be accompanied by an agreement to faithfully report all compensable injuries and to comply

with ch. 102, Stats., and the rules of the department in accordance with s. 102.28 (2) (b) and (c).

(c) Self-insurance granted under par. (a) is subject to revocation under s. 102.28 (2) (c), Stats. Once the privilege of self-insurance is revoked, further self-insurance may be authorized only under the procedures set forth in sub. (4).

(4) REQUIREMENTS FOR OTHER EMPLOYERS. (a) *Application.* Employers other than those specified in sub. (3), desiring self-insurance shall submit an application on a form available from the department. If the application is approved, the department shall permit self-insurance by written order. Employers granted self-insurance shall submit renewal applications on a departmental form to the department annually. Self-insurance shall expire on the day specified by the department in its order.

(b) *Minimum requirements.* The minimum requirements necessary for initial consideration for self-insurance are:

1. The employer shall be a corporation authorized to do business in Wisconsin and registered in the office of the secretary of state.

2. The employer shall have an average employment of at least 100 persons working in Wisconsin at the time the initial application is filed. All or some of these 100 persons may be employed in Wisconsin by its parent corporation, or by subsidiary or affiliated companies of the employer.

3. The employer shall own and maintain lands, buildings and plants in Wisconsin at least equal to a total net book value of \$500,000 or \$500 per employe, whichever amount is greater, including the net book value of the lands, buildings and plants owned in Wisconsin by the employer and its parent and subsidiary companies, less liens, if the employer is a corporation which is a wholly or majority owned subsidiary. The employer shall notify the department of any sale or transfer of this property which reduces the net book value below these minimum amounts.

4. If the employer is a corporation which is a majority or wholly owned subsidiary, it shall submit to the department a guaranty of payments by the ultimate or top parent company on a department form and a certified copy of the resolution adopted by the board of directors of the parent corporation.

5. The employer shall submit a certified copy of the resolution adopted by the board of directors authorizing the execution of the application and the agreement shall be submitted when the initial application is submitted.

6. The employer shall submit a copy of the latest financial report prepared for the stockholders of the corporation or its parent company and a copy of the latest annual 10-K filed by the corporation or its parent company with the U.S. securities and exchange commission with the submission of the initial and each renewal application. If neither report is prepared, the corporation shall submit an independently certified current financial statement together with such other financial information as the department may require to substantiate the financial data.

7. The employer shall make adequate arrangements in Wisconsin for claims administration under ch. 102, Stats., and this chapter, and for occupational safety and health, which are acceptable to the department.

8. The employer shall maintain acceptable performance in prompt payment and reporting of claims under ch. 102, Stats.

9. The employer shall maintain acceptable safety and health performance as measured by worker's compensation statistics and other occupational injury and illness information, including but not limited to the employer's OSHA incidence rating.

10. The employer shall furnish satisfactory security such as guaranty bond, deposit of securities, reserves, excess worker's compensation insurance, financial reports and reports on outstanding liabilities before and after self-insurance is granted, terminated or revoked, as the department requires to assure the payment of all past, present, existing and potential worker's compensation liability.

11. An employer granted self-insurance may be excused from the requirements of s. Ind 80.60 (4) (b) 2 and 3 by the department if the number of employes or net book value of property in Wisconsin subsequently is reduced below the specified minimums.

(c) *General criteria to be considered by the department.* The following factors may be used by the department to initially grant or renew self-insurance, in addition to the minimum requirements, in evaluating the qualifications of the employer, the amount and type of guaranty and securities, the number and kind of special reports to assure the payment of all worker's compensation claims:

1. The financial strength and liquidity of the employer, its profit and loss history, and changes in other key financial conditions affecting the employer's ability to promptly pay all compensation;

2. The employer's organizational structure, management background, kind of business, length of time in business, and any contemplated or newly implemented reorganization including but not limited to merger, consolidation, buying of new corporation, divesting or spinning off of current operations, and other corporate changes;

3. Tangible property of the employer and its subsidiaries or parent corporation, including but not limited to lands, buildings and plants owned and maintained in Wisconsin;

4. The employer's bond or other business ratings;

5. The number of employer's employes, payroll and hours worked in Wisconsin;

6. The claims administration and safety and health engineering programs maintained by the employer;

7. The compensation loss history, including reported losses, incurred losses, paid losses, unpaid losses, outstanding liability, and compensation premium of the employer;

8. Excess insurance, surety bond, deposit of securities, guaranty by parent company, and other guarantees and security pledged by the employer;

9. The employer's performance indicators under ch. 102, Stats., including, but not limited to, promptness or time taken in making first

indemnity payments, promptness or time taken in submitting first reports, and injury and illness incidence and severity rates; and

10. The financial and performance ratios, characteristics and trends for the employer or the consolidated group of employers to which the employer belongs as compared with the financial and performance ratios, characteristics and trends for other employers and for the particular or most similar industry in which the employer or the employer's consolidated group is involved.

(d) *Surety bond, deposit of securities, excess insurance, or other security.* The required minimum bond, minimum amount of cash or securities, minimum excess insurance upper limit, maximum excess insurance retention, or other security satisfactory to the department, shall be determined after the application has been reviewed and analyzed by the department. The employer shall use the required department bond and deposit agreement form.

1. Guaranty bonds shall be written by companies authorized to transact surety business in Wisconsin.

2. Cash or securities shall be deposited with banks qualified to exercise trust powers in Wisconsin. These securities shall be negotiable and converted into cash at any time by the depository at request of the department.

3. If excess insurance is required by the department, it shall be procured from a licensed excess insurance worker's compensation company, and written on the basis of rates and policy form filed with and approved by the state of Wisconsin commissioner of insurance. The policy for the required excess insurance shall be filed with and approved by the Wisconsin compensation rating bureau.

(e) *Enjoining and restraining employer.* Whenever the department has probable cause to believe that an employer currently or previously granted self-insurance for its parent or subsidiary company is liquidating and distributing its assets to its stockholders, or is selling or is about to sell the tangible property it owns and maintains in Wisconsin and the employer or its parent or subsidiary company is moving or is about to move its operations out of Wisconsin, without providing for the payment under the terms of the agreement in the self-insurance application or guaranty form it has executed and submitted to the department, the department may, through the attorney general cause a petition to be filed to enjoin and restrain the employer or its parent or subsidiary company from engaging in such action.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; am. (3), (4) (a), (b) (Intro.) and (c) (Intro.), cr. (4) (b) 11., Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.61 Divided-insurance and partial-insurance requirements under s. 102.31 (1) and (6), for all employers, including contractors working on a wrap-up project. (1) DEFINITIONS. In this section:

(a) "Divided-insurance" means consent to the issuance of 2 or more policies, as provided in s. 102.31 (1), Stats.

(b) "Partial-insurance" means self-insurance of a part of the liability and consent to the issuance of one or more policies on the remainder of the liability, as provided in ss. 102.28 (2) (b) and 102.31 (1), Stats.

Register, September, 1986, No. 369

(2) REQUIREMENTS. (a) The requirements for partial-insurance and divided-insurance by 2 or more insurance companies are as follows:

1. Submission of an application on department forms available from the department. If the application is approved, the department shall permit partial-insurance or divided-insurance by written order. In the application, the employer shall agree to assume full responsibility to immediately make all payments of compensation and medical expense as the department may require, pending a final determination as to liability between the insurance carriers under divided-insurance or between the employer and the insurance carrier under partial-insurance, if a dispute should arise as to which insurance company or whether the employer or insurance company is responsible for a particular injury or illness sustained during the time the written order is in effect.

2. If the applicant is a political subdivision of the state, it shall submit a certified statement by the attorney for the political subdivision which cites the legal authority for executing the application and agreement when the initial application is submitted.

3. If the applicant is a corporate employer, it shall submit a certified copy of a resolution duly adopted by its board of directors authorizing and directing the execution of the application and agreement when the initial application is submitted.

(b) Employers desiring divided-insurance by one insurance company may file a letter of application in lieu of the department form. The employer shall include the following information in the letter of application for each division or operating unit which is or will be separately insured by a separate policy:

1. The name of the division or operating unit;
2. The usual number of employees;
3. The worker's compensation policy number; and
4. The beginning and ending date of the policy period.

(c) Renewal applications shall be submitted to the department on a department form no later than 3 months prior to the expiration date of the department's order. Partial-insurance and divided-insurance shall expire on the date specified in the order unless continued in force by further order, as the department deems necessary.

(3) DIVIDED-INSURANCE FOR DESIGNATED CARRIER WRAP-UP CONSTRUCTION PROJECTS. (a) *Definitions*. In this subsection:

1. "Bureau" means the Wisconsin compensation rating bureau.
2. "Designated wrap-up carrier" means the designated carrier or insurance company which insures the wrap-up project under ch. 102, Stats.
3. "Job site" means the premises and vicinity upon which the operations covered under the contract with the contractor or subcontractor are to be performed.
4. "Material supplier" means vendors, suppliers, material dealers, and others whose function is solely to supply or transport material, equipment, or parts to or from the construction site.

5. "Owner" means the person, firm, corporation or municipality having lawful possession of the construction project.

6. "Regular carrier" means the insurance company which insures all operations of a contractor or subcontractor under ch. 102, Stats., except for work done on the wrap-up project.

7. "Subcontractor" means a person who contracts with a contractor and also includes any subcontractor of a subcontractor.

8. "Wrap-up project" means a construction project wherein the owner selects a carrier, and this carrier issues a separate worker's compensation policy to each contractor and subcontractor scheduled to work on the project for work which will be done on the project, and where the owner pays for each such policy.

(b) *Minimum wrap-up project requirements.* Wrap-up projects shall comply with the following:

1. The estimated project cost of completion shall be equal to at least \$25 million. The estimated project cost of completion shall be the estimate of the costs of the total construction contracts to be awarded by the owner on the wrap-up project.

2. The estimated standard worker's compensation manual premium shall be equal to \$250,000 or more.

3. The project shall be confined to a single location except that in connection with the building of a road, bridge, pipeline, tunnel, waterway, or two or more concurrent wrap-up projects involving the same owner and the same insurance carrier the entire job or the concurrent projects are considered as a single project location.

4. The project shall have a definite completion date involving work to be performed continuously until completion and may not be extended to include maintenance work following completion.

5. All contractors and subcontractors shall be included under the wrap-up program.

6. All material suppliers shall be included in the safety program on the job site while unloading and handling material and performing other work, but material suppliers shall be excluded from the rest of the wrap-up program.

7. The submission of all bids and the letting of all contracts shall be on an ex-insurance basis.

(c) *Minimum requirements for owner.* The owner shall comply with the following requirements on a wrap-up project:

1. The wrap-up plan and application shall be submitted on department form WCA-19.5 W-U to the department. If the application is approved, the department shall permit divided-insurance on the wrap-up project.

2. The owner shall comply with all conditions and agreements in the application, including, but not limited to:

a. The reimbursement of the department's costs incurred because of the wrap-up project;

b. The selection of a licensed and qualified designated wrap-up carrier having a record of compliance with the requirements of ch. 102, Stats., which is acceptable to the department;

c. Informing each contractor and subcontractor and each contractor's and subcontractor's insurance company either directly or through the bureau, at the bureau's discretion, of each one's responsibilities and the need for attaching a proper endorsement to the regular carrier's policy to exclude coverage for the wrap-up job site;

d. The submission of each contractor's and subcontractor's application form WC A-19.4 W-U to the bureau prior to the time the contractor or subcontractor first starts work on the wrap-up project;

e. The notification of department and bureau of any entity status change resulting from ensuing reorganization;

f. The assumption of responsibility for immediately making direct compensation payments if a dispute arises over coverage; and

g. The payment of an employe's attorney's fees and lost wages resulting from a dispute.

3. If the owner is a corporation, it shall submit a certified copy of the resolution by the board of directors authorizing and directing the execution of the application and agreement.

4. If the owner is a subsidiary of a corporation, it shall submit a guaranty and agreement by the owner's ultimate or top parent company agreeing to promptly satisfy all of the requirements and obligations assumed by the owner on the wrap-up project in case of default by the owner.

(d) *Minimum requirements for designated wrap-up carrier.* 1. The designated wrap-up carrier shall submit an application on forms available from the department. If the application is approved, the department shall permit divided-insurance for each contractor and subcontractor scheduled to work on the wrap-up project.

2. The designated wrap-up carrier shall comply with all conditions and agreements in the application, including, but not limited to:

a. Informing each contractor's and subcontractor's insurance company either directly or through the bureau, at the bureau's discretion, of each one's responsibilities and the need for attaching a proper endorsement to the regular carrier's policy to exclude coverage for the wrap-up job site;

b. The issuance of each individual contractor's and subcontractor's wrap-up policy prior to the time the contractor and subcontractor begin work on the job site;

c. The notification of department and bureau of any entity status change resulting from ensuing reorganization;

d. Becoming the full risk insurer for any contractor or subcontractor not having purchased a worker's compensation policy during the time the contractor or subcontractor is under contract on the wrap-up project, except as to an employer granted self-insurance; and

e. Becoming the full risk insurer for any contractor or subcontractor not insured or self-insured while working on the wrap-up project.

3. The designated wrap-up carrier shall submit a certified copy of a statement from an officer authorizing and directing the execution of the application and agreement.

(e) *Application for contractors and subcontractors.* The owner shall submit an application for divided insurance on forms available from the department for each contractor and subcontractor scheduled to work on the project.

(f) *Reimbursement for expenses incurred by department.* The department shall be reimbursed for those expenses incurred because of the designated carrier wrap-up program. Where the department specifically consents to divided insurance or partial insurance on a wrap-up project, the owner shall reimburse the department, within 30 days after the date of a written request by the department, a sum determined by the department not to exceed 2% of the total audited worker's compensation premium charged, with payment not to exceed 1% of the estimated worker's compensation premium upon initial request. If an additional levy is determined to be necessary, a request shall be made for a sum that results in a total charge not to exceed 2% of the total audited worker's compensation premium charged.

(g) *Inapplicability to other employers.* Subsection (3) does not apply to any group of employers other than those specified in this section on any other type of operations nor to any single contract or policy of insurance for any group or association of employers.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; am. (2) (a) 1., (3) (b) 3. and (3) (d) 3., r. and recr. (3) (e), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.65 Notice of cancellation or termination. Notice of cancellation or termination of a policy under s. 102.31 (1) (a), Stats., shall be given by certified mail or personal service to the Wisconsin compensation rating bureau, as defined in s. 626.02 (2), Stats., rather than to the department. Whenever the Wisconsin compensation rating bureau receives notice of cancellation or termination pursuant to this section, it shall immediately notify the department of cancellation or termination.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.67 Name or reorganizational change by insurer. (1) Any worker's compensation insurer planning a change of name or a corporate restructuring such as consolidations or merger shall notify the department and the Wisconsin compensation rating bureau at least 90 days before the date of the planned change or restructuring.

(2) After the change of name or corporate restructuring is accomplished the insurance carrier shall notify each of its insured employers of the termination or cancellation of the existing policies and shall file such notice with the Wisconsin compensation rating bureau unless the procedure set out in sub. (3) applies.

(3) As an alternative to the procedure set forth in sub. (2), any worker's compensation insurer planning a change of name or a corporate restructuring may make advance arrangements with the department and the Wisconsin compensation rating bureau for the following procedure:

Register, September, 1986, No. 369

(a) Each existing policy issued by the insurer shall be terminated on its expiration date by notice to the employer and the Wisconsin compensation rating bureau in accordance with s. 102.31 (1), Stats.

(b) If the employer wishes to continue coverage, the reorganized insurer or the insurer with a new name shall file a new policy showing the new name and identity.

(4) Policies issued by an insurer to which sub. (1) applies shall not be endorsed for name change or for the reorganized insurer.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.68 Payment of benefits under s. 102.59, Stats. (1) Payment of benefits under s. 102.59, Stats., shall initially be made to the individual entitled to the benefits at such time as payments of primary compensation by the employer cease to be made or would have been made had there been no payment under s. 102.32 (6) unless the preexisting disability and the disability for which primary compensation is being paid combine to result in permanent total disability.

(2) Payments received by an employe or dependent from an account in a financial institution or from an annuity policy where such account or annuity policy are established through settlement of the claim for primary compensation, shall be considered payments by the employer or insurance carrier.

(3) Payments under s. 102.59 shall be on a periodic basis but subject to s. 102.32 (6) and (7), Stats.

Note: This rule is adopted to insure the solvency of the work injury supplemental benefit and to insure the protection of dependents as of the date of death of the employe with the preexisting disability.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.70 Malice or bad faith. (1) An employer who unreasonably refuses or unreasonably fails to report an alleged injury to its insurance company providing worker's compensation coverage, shall be deemed to have acted with malice or bad faith.

(2) An insurance company or self-insured employer who, without credible evidence which demonstrates that the claim for the payments is fairly debatable, unreasonably fails to make payment of compensation or reasonable and necessary medical expenses, or after having commenced those payments, unreasonably suspends or terminates them, shall be deemed to have acted with malice or in bad faith.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.