

STATEMENT OF SCOPE
Department of Workforce Development

Rule No.

DWD 80.02 and 80.51

Relating to

Worker's Compensation Computation of the Weekly Wage for Part-Time Employees

Rule Type

Emergency and Permanent

Finding of Emergency

The Department of Workforce Development finds an emergency exists and that an emergency rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

2021 Wisconsin Act 232 repealed s. 102.11 (1) (am), Stats., which was the statutory authorization for using a 24-hour minimum workweek for the computation of the weekly wage for part-time employees who worked as part of a class, and created s. 102.11 (1) (ap), Stats., which establishes new requirements for computing the weekly wage for part-time employees for purposes of worker's compensation benefit eligibility.

The effective date for the changes to ch. 102, Stats., (Wisconsin Worker's Compensation Act) under 2021 Wisconsin Act 232 was April 10, 2022. The changes made under that new law apply to injuries occurring on and after that date.

An emergency rule is necessary and in the best interest of the stakeholders in the Wisconsin Worker's Compensation system, including employees, employers, and worker's compensation insurance carriers. While the Department completes the process for promulgating a permanent rule to administer the new law, an emergency rule is essential for correctly calculating worker's compensation benefits for part-time employees under the new law. The new law cannot be administered with the language contained in the current rule.

Detailed Description of the Objective of the Proposed Rule

The proposed emergency and permanent rules will make changes to ss. DWD 80.02 and 80.51, relating to the computation of the weekly wage for part-time employees for purposes of worker's compensation benefits. The Department's current rules do not conform with the new statutory requirements. The proposed rules will implement the new statutory requirements.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Under the previous law, the general rule was that the weekly wage for an employee who was injured while working at part-time employment was set on the basis of normal full-time employment in such a job. A part-time employee who worked as part of a class of other part-time employees had the weekly wage expanded to 24 hours per week. A part-time employee who restricted availability in the labor market to part-time work and was not employed elsewhere was paid worker's compensation benefits based on the average weekly wages of the part-time employment. The Department's current rules cover these part-time employment scenarios.

The new law repealed s. 102.11 (1) (am) and (f) 1., Stats., and thereby eliminated wage expansion to a 24-hour minimum workweek for a part-time employee working as part of a class of other part-time employees.

With the new law's creation of s. 102.11 (1) (ap), Stats., the average weekly wage for a part-time employee will be calculated as the greater of the following alternatives: 1) the actual average weekly earnings of the employee for the 52 calendar weeks before the injury, or 2) the employee's hourly earnings on the date of injury multiplied by the average number of hours worked in the 52 weeks before the injury. However, under both alternatives, weeks in which no work was performed are not considered. An employee's wage will only be expanded when the employee is employed by another employer at the time of injury, or if the employee was employed at part-time employment less than 12 months before the injury. Wage expansion may be rebutted when there is evidence to show an employee chose to restrict employment to part-time. The proposed emergency and permanent rules will implement these statutory changes.

The policy alternative is to do nothing. If the Department does not move forward with the proposed rules, the current rules will not conform to state statutes. In addition, the Department, worker's compensation insurance carriers, and self-insured employers will not be able to calculate the correct amount of benefits payable to part-time employees who are injured. This will result in the Department, worker's compensation insurance carriers and self-insured employers not being able to pay injured part-time employees the correct amount of benefits.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 102.15 (1) (a), Stats., as affected by 2021 Wisconsin Act 232, s. 33

"The department may promulgate rules as necessary to carry out its duties and functions under this chapter. ..."

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The estimated amount of time that state employees will spend developing the rule is 50 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

The proposed rules will affect part-time employees who sustain work-related injuries and incur disability for which compensation for indemnity is paid. The proposed rules will also affect the following:

- Unions representing employees, such as the Wisconsin AFL-CIO
- Worker's compensation insurance carriers and self-insured employers
- Insured employers who pay premiums for worker's compensation insurance
- Attorneys who represent injured employees
- Attorneys who represent employers and worker's compensation insurance carriers
- Wisconsin Insurance Alliance
- Wisconsin Manufacturers and Commerce
- Worker's Compensation Advisory Council
- Self-Insurers Council

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

There are no existing or proposed federal regulations related to the proposed rules.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

The proposed rules will have no significant impact locally or statewide. The proposed rules will have no significant impact on small business.

Contact Person

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