



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2005 Wisconsin Act 172**  
[2005 Senate Bill 474]

**Worker's Compensation**

Act 172 was developed by the Wisconsin Worker's Compensation Advisory Council. The Act makes a number of changes in the state worker's compensation program. The Act contains the following substantive provisions:

1. An employee who is injured while engaged in a voluntary and uncompensated event or activity designed to improve the employee's physical well-being is not eligible for worker's compensation.
2. The maximum benefit rates for permanent partial disability are increased for injuries occurring on or after January 1, 2006 to \$252 and to \$262 for injuries occurring on or after January 1, 2007.
3. The maximum benefit rate for temporary total disability, permanent total disability, and death benefits is established at 110% of the state's average weekly earnings as determined under s. 108.05, Stats.
4. A treating practitioner may charge a reasonable fee for completing a final report, but cannot require prepayment of the fee, and an insurer or self-insured employer can dispute the reasonableness of the fee charge for completion of the final report.
5. The Department of Workforce Development may promulgate administrative rules to establish treatment guidelines to be applied in resolving necessity of treatment disputes.
6. Clarifies that medical and vocational evidence in the form of certified reports submitted at hearings may be relied on by the Department of Workforce Development in issuing orders without the necessity of the practitioner or expert appearing.

---

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

7. Clarifies that certified reports from industrial safety specialists admitted at hearings may be relied upon by the Department of Workforce Development in issuing orders without the necessity of the experts appearing at the hearings.

8. Eliminates the statute of limitations for injuries resulting in the loss or total impairment of the hand or any part of the rest of the arm proximal to the hand, or the foot, or any part of the rest of the leg proximal to the foot, and a loss of vision, any permanent brain injury or any injury causing the need for a total or partial knee or hip replacement and provides that the insurer or self-insured employer is responsible for payment. In addition, it adds artificial spinal disk as a traumatic injury that is covered under s. 102.17 (4), Stats.

9. Clarifies that the Department of Workforce Development shall apply the treatment guidelines to be promulgated by rule in deciding necessity of treatment disputes in orders following hearings.

10. Increases the maximum penalty for bad faith from \$15,000 to \$30,000 and provides that if a bad faith penalty is imposed, increased compensation under s. 102.22 (1), Stats., or other increases cannot also be awarded for that event or occurrence.

11. Clarifies that a party ordered to pay compensation must pay that compensation while the case is on appeal when the only issue on appeal is liability between the employer and one or more insurance companies.

12. Provides that the Self Insured Employer's Liability Fund is not lapsable and the money in the fund may only be used for the statutory purposes.

13. Requires professional employer organizations to provide the Department of Workforce Development notice within 10 days after entering into an agreement with a client and to provide 30 days notice before the termination date of a client agreement.

14. Requires that money received by the Department of Workforce Development for administering the insurance wrap up project be deposited into the worker's compensation operations fund.

15. Provides that an employee who is still in the healing period and has returned to work is eligible to receive payments for permanent partial disability based on minimum ratings established by administrative rule.

16. Provides that an employee or dependent can receive no more than three advancements per calendar year.

17. Provides that the Labor and Industry Review Commission has the same access to confidential records as is provided to the Department of Workforce Development and permits the release of confidential information to government agencies, educational institutions, and nonprofit research organizations with the assurance that information will not be further released without authorization from the Department of Workforce Development.

18. Transfers deposits of surcharges and payments from the School Fund to the Work Injury Supplemental Benefit Fund and provides that interest at a rate of 1% per month shall be charged on any unpaid surcharges that remain unpaid after 90 days.

19. Codifies current policy that injured employees receive mileage reimbursement for travel to obtain treatment or to attend vocational rehabilitation training at the same rate as is received by state employees.

20. Establishes a pharmacy fee schedule that limits charges to the average wholesale price, plus a \$3 dispensing fee and the applicable state and federal taxes. Also, encourages the use of generic drugs and prohibits pharmacists from balance billing employees for charges over the fee schedule amount.

21. Provides that employees are not eligible to receive compensation for temporary disability if they refuse an offer of suitable employment without reasonable cause, if the employment was suspended or terminated by the employer because of a commission of a crime substantially related to the employment, or if the employment was suspended or terminated by the employer because of a violation of the employer's drug policy in effect and enforced at the time of the injury.

22. Increases the maximum supplemental benefit rate in two steps. The first step increases the maximum rate from \$233 per week to \$321 per week for injuries occurring before January 1, 1985 and payable for weeks of disability beginning on January 1, 2006. The second step will increase the maximum benefit rate from \$321 per week to \$338 per week for injuries occurring before January 1, 1987 and payable for weeks of disability beginning January 1, 2007.

23. Increases the assessment to the Work Injury Supplemental Benefit Fund by insurers and self-insured employers for injuries resulting in death or dismemberment from \$10,000 to \$20,000.

24. Provides that employers are not subject to double and treble compensation penalties for the illegal employment of minors if the employer is misled in hiring because of fraudulent written evidence of age presented by the minor. In addition, redirects penalties for double and treble compensation and surcharge and interest payments for the illegal employment of minors to the Work Injury Supplemental Benefit Fund.

25. Provides that specified traumatic barred claims will no longer be paid by the Work Injury Supplemental Benefit Fund and will become the liability of insurers and self-insured employers. Provides that the worker's compensation operations fund is a separate nonlapsable fund to be used only for the statutory purposes provided for the fund. Also provides that interest at the rate of 1% per month on any unpaid assessments that are not paid within 90 days are payable to the Work Injury Supplemental Benefit Fund.

26. Makes a number of miscellaneous technical amendments to the Insured Employers Fund, including a requirement that amounts in the fund cannot be used for any other purpose.

**Effective Date:** 2005 Wisconsin Act 172 takes effect on April 1, 2006, except that the treatment of s. 102.44 (1) (intro.) (by SECTION 38) of the statutes and the repeal and recreation of s. 102.44 (1) (a) and (b) takes effect on January 1, 2007 and except that SECTION 73 (1) takes effect retroactively to January 1, 2006.

**Prepared by:** William Ford, Senior Staff Attorney

June 9, 2006

WF:rv